

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PAUL GUIMARIN

FILE NO. S-80-008

from a determination of the
Superintendent of Buildings

The appeal is GRANTED, and the Findings and
Decision of the Superintendent of Buildings
are REVERSED.

Introduction

The appellant, Paul Guimarin, filed an appeal from the decision of the Superintendent to deny a use permit for duplex use for his property at 5259 17th Avenue N.E.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: The appellant, Paul Guimarin represented by Karen L. Gilbert, counsel, and the Superintendent represented by Joyce C. Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on March 10, 1980.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

After due consideration of the evidence elicited during the public hearing, the following findings of fact and conclusions shall constitute the decision of the Hearing Examiner on this appeal.

Findings of Fact

1. This duplex is located in a Single Family Residence High Density Zone (RS 5000) which was downzoned in 1977 from RD 5000.

2. The residence was originally built in 1915 by permit No. 140917. In 1923 a garage was added and the permit is on file. At that time, the zone was First Residence District.

3. A basement apartment was established in 1956 and has been in continuous use since.

4. The property was zoned RD 5000 from 1957 until 1977, and duplexes were legal conforming uses under that designation.

5. There is no record that the duplex was lawfully established. Since it exceeds lot coverage and its south side yard is less than required, variances would have been necessary to so establish it between 1957 and 1977 and none is of record.

6. Prior to 1957, conditional use authorization was required and none is of record.

7. The appellant purchased the subject property in 1967 as a duplex and retained the basement apartment use continuously since that time.

8. The appellant was notified by letter from the Superintendent dated August 7, 1979 that this property was in violation of Sections 8.6(a) and 25.2 of the Zoning Ordinance and that he could clear this violation by discontinuing illegal maintenance of a duplex in a Single Family High Density (RS 5000) zone or obtain a permit to establish the legal, nonconforming use of the residence as a duplex by meeting pertinent code requirements. Following the instructions of the letter, the appellant applied for a permit on November 26, 1979, paid a \$25 fee, submitted a plot plan and affidavit to its continuous use as a duplex since 1956.

9. The Superintendent denied the appellant's use permit application and so notified the appellant by letter dated February 5, 1980, based on Superintendent's Ruling 20-79. This ruling states the Building Department policy that:

The Building Department will issue a use permit to establish an existing nonconforming use for which a permit was not before given if all the following can be shown;

1. That the use could have been lawfully established either by construction or conversion under the Zoning Ordinance at the time from which its existence can first be proved. For example, yards and parking must meet applicable standards of the Zoning Ordinance provisions in force at the time establishment of the use can be proved. If discretionary approval such as conditional use or variance would have been required for establishment of the use at the time its establishment can be proved, proof that such approval was given must be submitted. Only official documents from the authorizing agency are acceptable.

2. That the use has been in existence continuously with an interruption of no more than one year since the change in the Ordinance that made the use nonconforming.

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10. Notice of this decision was published on February 7, 1980. The appeal was filed February 20, 1980.

11. Zoning Ordinance (86300) Section 3.22 provides:

"Use, Non-Conforming - A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such is located."

12. The duplex could have been lawfully established prior to 1957 by conditional use authorization based on a determination that the use was not materially detrimental to the public welfare nor injurious to the property in the zone and is compatible with the surrounding properties and so consistent with the spirit and purpose of the ordinance.

13. This area, close to the University of Washington, and this particular block, have numerous duplexes and more intense multiple uses.

14. The duplex could have been lawfully established by variance from 1957 - 1977 by a showing of (1) a unique

condition which would deny reasonable use compared to the surrounding properties, (2) non-detriment to the area, (3) no special privilege and (4) conformance to the Comprehensive Plan.

15. In 1973, the Land Use Enforcement Ordinance was passed requiring the seller of any property, other than single family residential, to provide a certificate to the buyer indicating current zoning and permitted use.

Conclusions

1. The Superintendent's decision is regarded as prima facie correct, but the appeal before the Hearing Examiner is de novo.

2. A duplex use was permitted outright in this zone from 1957 to 1977 and were it not for minor yard and lot coverage deviations, this use would have been lawfully established.

3. The undisputed continuous use of this property as a duplex from 1956 to the present leads to a conclusion that such use was acceptable, compatible and non-detrimental to this neighborhood. Therefore, had conditional use been sought prior to 1957, it would probably have been granted establishing the lawful use. The current owner (from 1967) was not protected by the 1973 ordinance requiring certificate of use and he cannot retroactively apply for conditional use for the 1956 establishment.

4. The Superintendent's policy as enunciated in Ruling No. 20-79 is consistent with the Single Family Residential Policies. Neither addresses long-time use, or sets any time limits on enforcement. However, rules of statutory construction require reasonable construction and interpretation of the ordinance as a whole Bartz v. Board of Adjustment, 80 Wn. 2d 209, 492 P.2d 1374 (1972).

5. Laches has been applied where there has been no objection to a nonconforming use for over ten years. American Law of Zoning Section 6.12. Enforcement now would cause inequity and hardship to the appellant since he purchased the duplex in 1967 as a duplex.

6. The yard and lot coverage issues are relevant to a lawful establishment during the 1957 - 1977 years when a variance would have been required, and again if such variances had been applied for, it is likely they would have been granted since such variances are frequent in this neighborhood because of its development prior to the zoning code adoption. However, the appellant cannot now turn the clock back and go through this process, so he cannot now establish as a lawful use a use which is compatible with the area, of long standing, non-detrimental and consistent with the spirit and intent of the ordinance.

7. The use permit should be issued for continued use of this property as a duplex, as a matter of equity and law.

Decision

The appeal is GRANTED, and the Findings and Decision of the Superintendent of Buildings are REVERSED.

Entered this 19th day of March 1980.

Jean B. Allison
Jean B. Allison
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. Any appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).

BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of

PAUL GUIMARIN

FILE NO. S-80-008

from a determination of the
Superintendent of Buildings

ORDER GRANTING MOTION
FOR RECONSIDERATION

On March 19, 1980, the Hearing Examiner issued a decision granting the appeal and reversing the findings and decision of the Superintendent of Buildings. On March 31, 1980 the Superintendent of Buildings filed a Motion for Reconsideration to correct error in that decision. On April 3, the appellant responded to said Motion for Reconsideration.

Upon review of the Motion for Reconsideration, the affidavits of Linda Doupe and Janet Worthington in support thereof and the response to said Motion, the Hearing Examiner hereby grants the Motion for Reconsideration.

The principle of finality has as its purpose ending controversy so that normal relations can continue. In this case, no rights are interrupted or held in limbo by this re-opening.

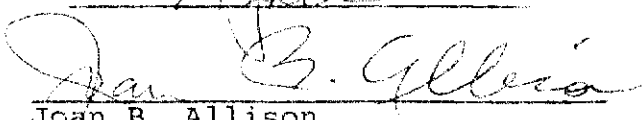
Notice was given and the community should have intervened in a timely manner. However, a serious question of fraud upon the court is raised by the affidavits as to the continuous use of this structure as a duplex.

Therefore, further evidence may be presented. Tangible evidence would be helpful. The 1967 purchase and sale documents may show on their face a duplex and such evidence should be presented. Income tax returns of the applicant would show rental income, or rent receipts during this period.

Because the Building Department had no reason to doubt the continuous use, the witness testifying was not cross-examined on this question.

Therefore, in the interests of justice this matter will be reconsidered on a date acceptable to both counsel.

Entered this 14th day of April 1980.


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The appeal is GRANTED, and the Findings and
Decision of the Superintendent of Buildings
is REVERSED.

On April 14, 1980, the above appeal was reopened pursuant
to the Hearing Examiner's granting the Superintendent's Motion
for Reconsideration.

The new evidence presented by the Superintendent cast
doubts about the use of this duplex as a duplex in 1967,
and the early 1970's.

Further written evidence was provided by Karen Gilbert,
attorney for appellant, and Joyce Kling for the Superintendent.
Both counsel waived the right to cross-examination of all
witnesses whose testimony was entered via affidavits.

After due consideration of all additional evidence
submitted since the decision on the appeal on March 19, 1980,
the Hearing Examiner finds that the Findings of Fact and
Conclusions of law entered on that date stand. The use
permit should be issued for continued use of this property
as a duplex.

Decision

Upon reconsideration, the appeal is GRANTED and the
Findings and Decision of the Superintendent of Buildings
are REVERSED.

Entered this 3rd day of July 1980.

Joan B. Allison
Hearing Examiner Pro Tempore

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the
final administrative determination by the City. Any appeal
to the Superior Court should be filed within 20 days of the
date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977).