

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SAMUEL A. JAMES

FILE NO. S-80-028

from a determination of the
Superintendent of Buildings

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

Introduction

Samuel A. and Evelyn W. James, appellants, appeals the denial of a use permit by the Superintendent of Buildings to legally establish a triplex at 621 - 23rd Avenue East.

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

Parties to the proceeding were: Mr. James, represented by Sandra J. Campbell, his daughter, and Joyce Kling, Zoning Administrator, for the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on June 24, 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. The subject property is a triplex residence on a 3,900 sq. ft. lot at 621 - 23rd Avenue East.
2. The property is presently zoned Single Family Residence (RS 5000). A triplex residence is not a permitted use in that zone.
3. The appellants purchased the property in 1953 as a triplex.
4. A permit was issued in 1908 to construct a residence. In 1935, another permit established the use as a duplex. An electric meter for a third floor apartment was installed in 1947.
5. From 1923 to 1957 the property was zoned RIA which permitted single family residences outright and duplexes under certain conditions but not triplexes.
6. In 1957, with the adoption of the current Zoning Ordinance, the property was zoned Duplex Residence High Density (RD 5000). Triplexes are permitted in the RD 5000 zone on lots of 6,500 sq. ft. or greater and at one time on steeply sloping lots of 5,000 sq. ft.
7. In 1979, the property was included in the area of a downzone to RS 5000.

8. Housing code inspections, at the request of appellants, were conducted in 1978. The existence of three units was known to inspectors. Violations of minimum fire safety standards and other substandard conditions were subsequently corrected.

9. In 1980, on an inspector's complaint, appellants were notified of the zoning violation.

10. Appellants acted in good faith at all pertinent times.

Conclusions

1. The use of the subject property was not legally established through the permit process prior to the effective date of the current Zoning Ordinance. From 1957 to 1979, with variance from the lot area requirement, a permit legally establishing the triplex use could have been issued. Because of the 1979 downzone such a variance application cannot now be accepted.

2. The Single Family Residential areas Policies recognize the existence of higher density residential uses in single family zones. The policy expressed is to legalize such uses when they "may have been legal under zoning in the past", but not if conditional use authorization or variance would have been required. The policy should not apply in the instant case for the reasons set forth below.

3. While the doctrine of equitable estoppel or laches does not generally apply to cases of uses not legally established, it can be applied in clear and compelling cases. See Rathkopf, Law of Zoning and Planning, (4th Ed.) Chapter 57 Section 12 (1979); Yokely, Zoning and Practice, (4th ed.) Section 15-8 (1978).

4. In the instant case, an estoppel is necessary to avoid manifest injustice. The record shows that the appellants were never aware that their use was not legally established until 1980. The City's inspection and order to correct housing code violations added further to appellant's belief that their triplex was legal. Only after any opportunity for correcting the status had passed did the City act on the zoning violation. Under these circumstances the triplex use should be legalized.

Decision

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

Entered this 30th day of June 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

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).