

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

GREENBERG CONSTRUCTION CO.

FILE NO. S-88-001

from an interpretation of the  
Director, Department of  
Construction and Land Use

#### Introduction

Appellant challenges DCLU Interpretations No. 87-024 and 88-008 of the Land Use Code as it applies to property at 1126 - 10th Avenue E.

Parties to the proceeding were appellant Greenberg Construction Co. represented by its attorney, Richard B. Sanders, and the Director, Department of Construction and Land Use (Director), by Andrew McKim, land use specialist.

This matter was heard before the Hearing Examiner on June 9, 1988. The record remained open for memoranda until July 1, 1988.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

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. Greenberg Construction Co. (Greenberg) applied for a permit to construct a triplex on property at 1126 - 10th Avenue E. The Department of Construction and Land Use (DCLU) zoning plans examiner rejected the application on the basis that the proposed development was a 15-unit apartment building. A formal code interpretation was requested, issued and appealed. In the interpretation the Director addressed the effect of an easement granted for parking on the subject property. Greenberg asked that the Director decide the issue raised in the previous interpretation and the hearing on the appeal was continued "to facilitate consolidation of appeal issues." The decision was issued but Greenberg did not separately appeal the second interpretation.

2. The Director was aware that Greenberg objected to the decision of the second interpretation and that it intended to challenge the interpretation.

3. The Director moved to dismiss Greenberg's challenge to the second interpretation. The Hearing Examiner, finding that jurisdiction over the subject matter was acquired by the timely filing of the first appeal, that the Director had notice of Greenberg's intent to pursue its challenge and that Greenberg had relied on the reference in the agreed continuance that issues would be consolidated, denied the motion to dismiss.

4. The Director decided in Interpretation No. 87-024 that the design of the proposed structure functions as a 15-unit apartment building. The Director's conclusion that there would be 15 units was based upon the physical arrangement of a series of rooms along a corridor, each similar in size and shape and each in a separable area with relatively complete facilities.

5. The proposed structure would be a three-story building. Each floor is to have an entrance into a hallway. The corridors are to run down the north side of the structure with an entry into a living/dining room/kitchen and doors into four bedrooms on each floor. Each bedroom would have a built-in counter, optional hobby sink and bathroom. In three bedrooms on each floor, the bathroom has a lavatory, shower and toilet. In one, a tub is

substituted for the shower. The living/dining room/kitchen is slightly different in shape and size from the bedrooms. The kitchen, which is a part of the same room, is to have a refrigerator, range, sink and dishwasher. A bathroom of the same size as those in the bedrooms would lie off the entry to the living room.

6. Greenberg's explanation for the unusual corridor configuration is that it maximizes privacy and provides a southern exposure for all units which exposure artists prefer. The building adjacent on the south is set back farther than the one on the north which is only 2 ft. from the property line and has only one window on the side facing the subject property where the building on the other side has a number of south-facing windows. The built-in cabinet is a unit intended for TV, books, etc. The hobby sink is intended to allow artists to clean brushes, develop film, etc.

7. Director's Rule 7-83 lists elements, the existence of one or several is to be considered evidence of more than one dwelling unit. The elements found by the Director's land use specialist to be present in the proposed design are:

c. Lockable interior doors that can exclude a portion of the dwelling unit from access to the entire dwelling unit.

\* \* \*

d. Separate lockable entrance to rooms or areas which are separated from other rooms or areas by key locks or privacy locks on bathrooms and bedrooms shall be allowed.

\* \* \*

j. Additional food preparation areas, including some combination of the following features: stove, refrigerator, kitchen cabinets, microwave oven, hotplate, sink, dishwasher.

\* \* \*

3. Name of area - No matter what it is called, (wet bar, refreshment area, or canning room), if it appears to be a food preparation area as indicated by the factors above, it shall not be permitted.

4. Even if there is no food preparation area, a dwelling unit may exist.

\* \* \*

m. Additional complete bathroom facilities in a separable part of the structure.

8. There does not appear to be any door in the entry to the living/dining room/kitchen.

9. If the hobby sinks were not installed, the only feature of a kitchen would be the built-in cabinets, which alone could not constitute a food preparation area.

10. Lots 6, 7 and 18, Block D, Phinneys Addition, were platted in 1882.

11. A permit for an apartment building (Volunteer Park Apartments) on Lot 6 was issued in 1916. No parking was required or provided at that time.

12. Conditional use was requested in 1977 to allow parking accessory to the apartment building on Lot 18 to continue. Lot 18 was zoned RS 5000. Parking had been located on Lots 7 and 18 since 1943. At the time of the conditional use there were 12 stalls with 10 proposed to be on Lot 18 and two on Lot 7.

13. A use permit was issued in 1977 "to establish use as a parking lot" on "Lot 6-7-18." The plot plan attached to the permit shows five parking spaces, two wholly on Lot 18, one entirely on Lot 7 and two overlapping both Lots 18 and 7.

14. Lots 6, 7 and 18 were under common ownership from 1943 until at least 1981.

15. In 1981, the DCLU advised the owner that Lot 18 could be sold or developed separately from the others provided the parking was relocated on Lot 6 or 7.

16. In 1984, Lot 7 was sold to appellant and Lot 18 was owned by someone other than the seller. Appellant granted a perpetual easement on Lot 7 for five parking spaces and ingress and egress to serve Volunteer Park Apartments to fulfill a condition of the sale. By the easement agreement, Greenberg is entitled to charge the apartment owner a monthly fee for parking; move the location of the parking; and terminate the easement agreement if the zoning is changed so that the spaces may be removed without violating the code.

17. Vehicle access to the parking was available only from 10th Avenue E. across Lot 7. A fence along the lot line was established at some point which would have precluded vehicular access from Lot 7 to Lot 18 and vice versa. The fence was removed and a concrete wall built to replace it sometime after 1982.

18. Appellant purchased Lot 8 which is south of Lot 7 in 1981.

19. No parking covenant has ever been recorded.

20. Interpretation No. 83-009 was issued in response to a question by the owner of Lots 6 and 7 as to whether the parking spaces on Lot 7 are legally established and must be continued. The decision was that a five-car accessory parking area was legally established and may not be discontinued. An appeal of that decision was filed but not pursued. Greenberg Construction Co., by Mr. Greenberg, sent a letter to the Department of Construction and Land Use commenting on the merits of the request for interpretation. He agreed that parking on Lot 7 had been legally established and must be continued. He does not dispute that he had notice of that interpretation.

### Conclusions

1. The Hearing Examiner's jurisdiction was invoked by the timely appeal of interpretation No. 87-024. Interpretation No 88-008 was an expansion of the opinion offered in the earlier interpretation to provide sufficient basis for review. The language of the Hearing Examiner's order continuing the hearing indicated that understanding and extended the jurisdiction to encompass the future challenge. Therefore, the Hearing Examiner has jurisdiction to review both interpretations.

2. The floor plans proposed are unusual, however the only elements in Director's Rule 7-83 present in those plans are a potential food preparation area comprised of a cabinet and small sink and extra bathrooms. No door to the living room area is shown so that area could not be closed off into a separate unit. Those elements alone are not a sufficient basis to conclude that the structure will function as a 15-unit apartment building. The Director is entitled to assure that it will not become a 15-unit building by requiring the elimination of the hobby sinks.

3. The Director contends that Interpretation No. 83-009, that parking is legally established on Lot 7 and cannot be discontinued, is binding on appellant because appellant is a successor in interest to the owner of Lot 7 who had requested the interpretation and because appellant had actual notice at the time of the interpretation and at the purchase of the lot.

4. Section 23.88.020.E.7 provides that after the appeal of an interpretation "the decision of the Hearing Examiner shall be final, and the applicant, appellant and Director shall be bound

by it." The effect of an interpretation which has not been appealed is not explicitly stated in the code. While words may not be read into a statute, Coughlin v. Seattle, 18 Wn. App 285, 567, P.2d 262 (1977), the conclusion that an interpretation binds no one unless appealed to the Hearing Examiner is absurd. The provisions must be read in a way to give effect to the legislative purpose behind the interpretation provisions which is to provide certainty to all who have had notice of the request and decision. See Alderwood Water District v. Pope and Talbot, Inc., 62 Wn.2d 319 (1963). The Director's interpretation would be binding on the Director, property owner and person requesting the interpretation. As the successor to the owner who was bound by the interpretation, Greenberg, who purchased the property with knowledge of the interpretation, is also bound.

5. While appellant's case points to several areas of difficulty in the facts and analysis in the earlier interpretation, because that interpretation is binding on the parties the Examiner is forced to adopt the conclusion that the five spaces were legally established and must be continued. The current law as to location of parking, Section 23.45.046C.1, is that parking must be located on the same site as the principal structure. Given that requirement, the fact that no covenant was ever recorded, which could have provided evidence that Lot 7 was indeed a separate site, and that the Hearing Examiner is required to give substantial weight to the decision of the Director, Section 23.88.020E.5, the Hearing Examiner must affirm the interpretation that Lot 7 may be developed separately only with a variance from Section 23.45.046C.1 to allow parking for the Volunteer Park Apartments to be on a separate site or to eliminate that parking.

#### Decision

Interpretation No. 87-024 that the design of the proposed structure functions as a 15-unit apartment building is reversed on the condition that optional hobby sinks be removed from the plans.

Interpretation No. 88-008 that Lot 7 may not be developed as a separate site from Lot 6 unless a variance is obtained is affirmed.

Entered this 18th day of July, 1988.

M. Margaret Klockars  
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Deputy Hearing Examiner

#### CONCERNING FURTHER REVIEW

The decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such a request be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.