

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

In the Matter of the Appeal of

JOHN CRULL FOR GARY STORDAHL

FILE NO. S-89-002

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

Introduction

Gary Stordahl, owner of an existing six-unit apartment at 650 West Bertona Street, seeks to establish a seventh apartment unit. The issue posed is whether roof decks may be counted as open space to satisfy the requirements for the existing, non-ground-related units in this Lowrise 1 - zoned, nonconforming structure. DCLU answered the question in the negative.

The appellant exercised the right to appeal pursuant to the Seattle Municipal Code, Section 23.88.020, as amended.

Parties to the proceedings were: appellant, John Crull for Gary Stordahl; and the DCLU Director by Hermia Ip.

This matter was heard before the Hearing Examiner on February 8, 1989. By agreement of the parties, the decision was issued February 24, 1989.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, as amended, unless otherwise indicated.

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

Findings of Fact

1. Appellant is owner of an existing six-unit apartment building addressed as 650 West Bertona Street. The building, creatively adapted to its "narrow, sloping, triangular-shaped lot," is located in the Lowrise 1 zone, on Queen Anne. Appellant wishes to establish for the record a seventh unit in the basement area formerly used for the laundry/storage. DCLU's interpretation determined that because of the development's open space deficiencies the seventh unit could not be "established for historical use for the record and must (therefore) be removed." Appellant submitted this appeal.

2. The facts indicated in the Interpretation's Findings of Fact are undisputed and are generally restated below for ease of reference. Hearing Examiner exceptions or modifications are included.

3. The subject property is a triangular shaped lot about 56 ft. x 164 ft. x 173 ft. with an area of approximately 4500 sq. ft.

4. The legal description of the property is: Lot 21, 22 and the east half of Lot 23, Block 5, Ross Second Addition to Seattle.

5. The site is relatively steep and slopes about 20 ft. downhill from the west to the east.

6. The existing apartment was built under Building Permit 459554, dated October 1, 1957, which authorized a 3-story, 6-unit apartment. The zoning under which the permit was issued was R2-A, a designation included under the 1947 Zoning Ordinance

which permitted apartment buildings within a certain bulk standard. The property was subsequently rezoned to RD 5000 (Duplex Residential) under Title 24. In 1982 when the City Council adopted the new Multifamily Code (Title 23), the property was redesignated Lowrise 1. No zoning change has occurred since then.

7. Each of the six existing apartment units has a deck or balcony located on the same level as the living space. With the exception of the 72 sq. ft. roof deck, the others are generally 48 sq. ft. There are also nine existing parking stalls: six in the basement and three open parking stalls immediately east of the building.

8. The applicant converted the former basement laundry/storage room into a seventh unit without permit. According to the applicant, this took place before the City Council adopted the Multifamily Interim Zoning Code in March, 1988. This interim code allows only one unit for each 1400 sq. ft. of lot area. (Seattle Municipal Code Section 23.45.006.5.) The applicant contends that the seventh unit can be established in historical use for the record if the Department determines that the seventh unit meets the code requirements in effect at the time of conversion.

9. The existing apartment use is nonconforming in that its units are not ground-related. Seattle Municipal Code Section 23.45.004(A).

10. The proposed seventh unit, in the basement, is ground-related. Establishing this unit within the building interior does not cause the existing structure to violate the development standards of the code including height, width and setbacks.

11. Per Section 23.45.016(A)(1), a minimum of 300 sq. ft. of private, usable open space at ground level and directly accessible to each unit shall be required in L-1 zones. To satisfy ground level open space requirements, the applicant proposes to delete one open parking stall, adjacent to the unit, and replace it with a fenced-in patio.

12. According to the applicant, there is about 1,920 sq. ft. of ground-level open space on site, including the proposed patio for the new unit. Of this total, however, DCLU asserts that approximately 140 sq. ft. located at the tip of the triangular lot fails to meet the minimum dimension of the code (Section 23.86.018(G)(3)) and that therefore only 1,780 sq. ft. can be credited for ground level open space purposes. DCLU further concluded that this amount is 320 sq. ft. short of the total required 2100 sq. ft. of open space required for the proposed 7-unit building ($1920 - 140 = 1780$; $2100 - 1780 = 320$ sq. ft.).

13. The applicant contends that the open space deficit can and should be satisfied by counting the roofdeck on the third floor as open space. Currently, the roofdeck is 72 sq. ft. The applicant proposes to extend it towards the fulfillment of the required amount of open space. Of all existing decks and balconies in the building, the roofdeck is the only one which can potentially meet the code's horizontal dimensions of open space without intruding into the required setbacks. As an alternative theory, appellant suggests that credit should be given for the deck space offered the existing units.

Conclusions

1. The Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.88, Seattle Municipal Code. According to Seattle Municipal Code Section 23.88.020(E)(7), the Director's interpretation shall be given "substantial weight". Further, the Hearing Examiner decision shall be made "upon the same basis as was required of the Director." Having accorded the requisite weight to the Director's determination, the Hearing Examiner concludes that the Interpretation was "clearly erroneous." It is therefore reversed.

2. It is not disputed that additional open space is required for the development. Seattle Municipal Code Section 23.45.016(A)(1). Nor is it disputed that the present structure is not ground-related and is therefore a nonconforming structure for the L-1 zone.

3. As the Hearing Examiner understands the DCLU position, the expanded roofdeck open space should not be allowed to compensate for the (320 sq. ft.) open space shortfall. Such compensation, the DCLU position continues, is inconsistent with the ground-related open spaces intent of the lowrise policies and code:

The codes's intent for development in L-1 is for ground related housing with ground level open space, not apartments with decks" (emphasis in original).

DCLU Interpretation, Conclusion 4.

4. Per Seattle Municipal Code Section 23.45.182(C), additional ground-related developing units may be added to an L-1 nonconforming structure

provided, that the addition shall conform to the development standards of the Lowrise 1 Zone....Open space for additional dwelling units shall be provided in addition to that required by subsection B (emphasis supplied).

The proposed unit is ground related and will have the requisite open space. The referenced subsection B does not dictate the location of the additional open space to be provided.

5. While one can assume that the code drafters intended that all of the additional open space be at ground level, Policy 6, Open Space, indicates that while ground-related housing shall have ground level, directly accessible open space, Implementation Guideline 2 clearly acknowledges that open space areas may be provided above ground level in the forms of decks and balconies. Seattle Municipal Code Section 23.16.002(B)(6).

6. Therefore, the provisions of Seattle Municipal Code Section 23.45.016(A), requiring 300 sq. ft. per unit of ground level open space, cannot be read to constrict nonconforming uses, such as the one in this case, where units themselves are not ground related. Again, Seattle Municipal Code Section 23.45.182, nonconforming uses, is more directly on point. It requires that the addition conform to the L-1 standards, inclusive of the standard for directly accessible open space.

7. Since appellant can presumably provide a total of 2100 sq. ft. of open space, the proposal is consistent with the thrust of Director's Rule 39-82, as properly related to Seattle Municipal Code Section 23.45.182:

In Lowrise 1 zones, additions may be made to nonconforming apartment buildings and new ground-related dwelling units may be added to nonconforming apartment buildings provided the additions or new units meet all development standards of the zone...

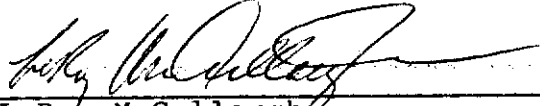
8. It would be incongruous and violative of the policy intent to require 2100 sq. ft. of open space at ground level when the apartments, theoretical beneficiaries of the open space, are themselves not at ground level.

9. The Interpretation is therefore reversed. Appellant should indicate by revised plans to DCLU how the roof deck will compensate for a 320 sq. ft. area deficit. This is in recognition of the fact that the base of the triangular tip proposed for ground level open space (west) is less than 10 ft. Seattle Municipal Code Section 23.45.016(B)(1), Section 23.06.018(G)(3).

Decision

The Interpretation is reversed.

Entered this 24th day of February, 1989.


Leroy McCullough
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.