

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

SOUTHEAST QUEEN ANNE ASSOCIATION,  
ET AL.

FILE NO. S-78-023

from a ruling of the Superintendent  
of Buildings.

The appeal is DENIED and the Findings and Decision  
of the Superintendent of Buildings are affirmed.

#### Introduction

The Southeast Queen Anne Association (SEQA), and Stephen C. Ellis, individually filed an appeal from a decision of the Superintendent of Buildings (Superintendent) to issue a use permit for the construction of a single family residence at 162 Highland Drive.

The appellants exercised their right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

Parties to the proceeding were: The appellants, represented by Robert Lamb, the Superintendent, represented by Joyce Kling; and the project developer, Terry Durst.

This matter was heard before the Hearing Examiner on September 12, 1978.

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. Terry Durst proposes to construct a single family residence at 162 Highland Drive. The plans show a 3-story building that would contain on the first floor an exercise room, a billiard room, a photography and hobby room, a dark room, a storage room, a bathroom and a wet bar. The second floor would contain a bedroom with a bathroom, a den, a utility room, family room, and a kitchen and dining area. The third floor would contain two bedrooms, two bathrooms, and a wetbar. The proposed building contains 5,300 square feet.

2. On August 10, 1978, the Superintendent published notice of intention to issue a use permit for the proposed single family residence.

3. In an appeal filed on August 22, 1978, the appellants challenged the issuance of the use permit and alleged that the proposed structure was not a single family residence but a multiple dwelling unit. In support of their contention the appellants point out the following factors as supporting the conclusion that the structure is not designed for single family use: Each of the 3 floors is virtually identical in layout. A wetbar shown on the first and third floors could easily be converted to kitchen use. Three hot water tanks are located in the building. A light-weight aggregate concrete is shown over the plywood subfloors, which is normally used in apartment buildings to deaden sound.

The stairway arrangement would permit independent and private access and egress from each floor. Inside the entry door on each floor is a marked guest closet. The bulk of the building although within the zoning code requirements, has more of an appearance of a multiple dwelling than of a single family unit.

4. The proposed project is to be developed in Single Family Residence High Density (RS 5000) zone.

5. Section 3.5 "D" of the Zoning Ordinance defines a dwelling unit.

A room or rooms located within a building, designed, arranged, occupied or intended to be occupied by not more than one family and permitted roomers or boarders, as living accommodations independent from any other family. The existence of a food preparation area within such a room or rooms shall be evidence of the existence of a dwelling unit.

6. Section 3.07 "F" of the Zoning Ordinance defines food preparation area as follows:

A room or rooms designed, arranged, intended or used for cooking or otherwise making food ready for consumption for a family living independently from other families within the same building. A recreation room "wet bar" or similar convenience accessory food preparation facility is not included in this definition.

7. The Superintendent has also prepared a ruling numbered 6-78, adopted on May 11, 1978, which lists elements to be considered in evaluating whether or not a separate family independent from any other family is located in the dwelling.

#### Conclusions

1. The design and size of the structure raises many appearances of a multiple dwelling. The 3 levels, the similar floor plans, the stairway arrangement, and the 3 hot water tanks all create a suspicion that the house is intended for other than single family occupancy. On the other hand, one of the primary tests for determining whether or not a building is intended for use by more than one family is the existence of more than one food preparation area. Only one food preparation area is shown on the plans. The evidence raises a suspicion but is not sufficient to support a finding that the building is intended for use by more than one family.

2. To require the builder to redesign his structure to minimize the possibility of an illegal conversion or use would require difficult evaluations that could easily become arbitrary. The builder has testified that he is proposing to occupy the dwelling with his business partner and that he had it designed so that each of the residents or their guests could be assured privacy. Should the government be in the position of telling a person how he should arrange the rooms in his dwelling or how many water tanks are to be installed? Such a result would be required by denying the permit. It is recognized that the government frequently sets minimum standards and even controls design in historical areas but in this case the building has met the minimum zoning code provisions and there are not standards or justifications for imposing design control.

3. The concern of the appellants is understandable in that redesign of the building could alleviate the need for continuous monitoring and requests for enforcement actions from an understaffed Building Department in the event efforts are made to occupy the building by more than one family.

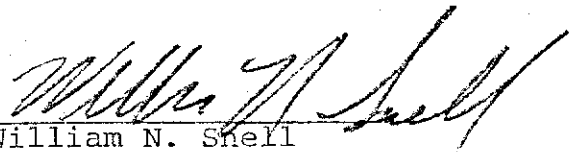
However, the present zoning ordinance definitions do not provide a basis, under the facts presented in this case, to conclude that the proposed building is not properly classified as a single family residence.

4. Generally it is not in the best economic interests of a builder to construct a building that is not well suited for single family use in a single family zone, due to the extra costs involved and the limitations on use as well as probable poor design. However, in the event individuals are attempting to subvert the general density limitation in single family zones then remedial legislation is the appropriate solution.

#### Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 21st day of September 1978.

  
William N. Shell  
Hearing Examiner

#### Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.