

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DENNIS MORGAN

FILE NO. S-78-028

from a ruling of the Superintendent
of Buildings.

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

Introduction

The appellant, Dennis Morgan, filed an appeal from and interpretation of the Superintendent that property at 5205 Palatine Avenue North had never been established as a legal nonconforming triplex.

The appellant exercises his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

Parties to the proceeding were: the appellant, represented by Richard M. Kovak, and the Superintendent, represented by Joyce Kling.

This matter was heard before the Hearing Examiner on December 14, 1978. The matter was originally set for December 6, 1978 but continued at the request of the appellant.

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 consists of a residential structure at 5205 Palatine Avenue North. The property is located in a Single Family Residence High Density (RS 5000) zone in which the only permitted residential units are single family dwellings except for legally established nonconforming uses.

2. Dennis Morgan, a recent purchaser of the property, sought a use permit to establish a triplex use on October 25, 1978. Notice of the intention to deny the permit was published on October 31, 1978 and a timely appeal was filed.

3. City records show that the building was constructed in the early 1900's as an apartment building. In 1973, Leon Moore, the owner of the building, was issued a permit to construct partitions in the basement. That permit shows the occupancy to be duplex. The Superintendent's records are incomplete since the permit refers to a letter on occupancy which was not available. See Superintendent's Exhibit C.

4. An affidavit submitted by Leon Moore, the former owner, stated that he was aware that the building permit labeled the building as a duplex but that he did not contest the labeling because he planned on selling the building and wanted to have the work done as soon as possible. He further stated that he continued to use the premises as a triplex. See Appellant's Exhibit 1.

5. Two residents of the area that have lived near to the subject property for over forty years testified that the subject property has been occupied since before 1957 as a triplex.

6. The City cited the Polk Directory as showing that the building was occupied as an apartment building until 1971, but that from 1971 to 1975 it was occupied as a duplex.

7. The use of the property as an apartment building, that is for three or more dwelling units, would be a nonconforming use in the RS 5000 zone. A duplex use would also be nonconforming. Section 5.34(e) provides that a nonconforming use in a nonconforming building may be changed to a use permitted in a less intensive zone.

8. The Superintendent determined that the building has been legally established for duplex use but that any triplex use was abandoned for a period of over one year from 1971 to 1975. Section 5.34 provides that a nonconforming building which has been unoccupied continuously for one year or more shall not be reoccupied except by a conforming use.

Conclusions

1. The testimony of two nearby residents, who have no financial interest in the property, clearly established that the building has been occupied as a triplex for many years prior to 1957 and continuously from 1957 to the present. The testimony of these two residents must be given far more weight than the entries in the Polk Directory. Such directories may provide some circumstantial evidence of the nature of occupancy but they are certainly not conclusive.

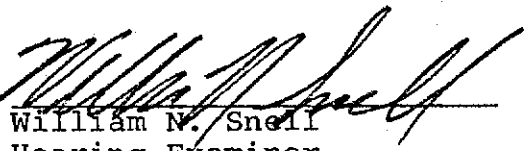
2. Prior building permits do show the building classified as a duplex but it has not been shown that use is clearly determined by the issuance of such permits where the permit only involves minor remodeling of an existing structure and there is no change in actual use. Certainly it would have been more advisable for the owner to contest the classification at the time but the fact of actual occupancy as a triplex is not changed by this omission.

3. In light of the present housing shortage in the City, continued use as a triplex of a building that is compatible with surrounding properties would be in the public interest. Laches has been applied where there was a failure for over ten years to object to a nonconforming use. Anderson, AMERICAN LAW OF ZONING, Section 6.12. Based on the circumstances in this case the applicant should be issued a use permit for a triplex.

Decision

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

Entered this 28th day of December 1978.


William N. Snell
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.