

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

In the Matter of the Appeal of

WILLIAM JOEY ING,
ING AND ASSOCIATES

FILE NO. S-80-011

from a determination of the
Superintendent of Buildings

Introduction

Willian Joey Ing, Ing and Associates, appellant, filed an appeal from the Superintendent of Buildings' denial of a use permit for property at 1344 Alki Avenue S.W.

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. Ing, appellant, and his assistant John Minato, and Joyce Kling, Zoning Administrator, for the Superintendent of Buildings.

This matter was heard before the Hearing Examiner on March 20, 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. Appellant applied for a use permit to establish a six unit apartment building.

2. The Superintendent determined that the "mezzanine" shown on the plans must be considered a story for zoning code purposes. The plans did not provide sufficient side yard for a four story building of the proposed length so the use permit was denied and that decision was published March 11, 1980.

3. Appellant filed an appeal of that decision March 13, 1980, contending that the proposed mezzanine is within the definition of "mezzanine" in the Building Code and should not be counted as a story.

4. The 1973 Building Code defines "mezzanine floor" as:

A partial, intermediate floor in any story or basement of a building having an area not more than one-half of the area of the room or space in which it is constructed with a net ceiling height of not less than 7 ft. above and below.

5. "Story" is defined in Section 3.20 of the Zoning Code as:

That portion of a building, except a mezzanine, included between the surface of any floor and the surface of the floor next above, except that the highest story is that portion of the building included between the highest floor surface and the ceiling or roof above. The basement shall be counted as a story.

6. "Mezzanine" is not defined in the Zoning Ordinance.
7. "Mezzanine" is defined in Webster's New International (from Superintendent response).
8. The building Department has consistently used the 1973 Building Code definition of mezzanine in their determinations as to number of stories for zoning code purposes for many years. The 1973 Building Code has been replaced by a new code with a different definition of mezzanine. The 1973 code still applies to the appellant's project under a 6 months carry-over provision.
9. The instant application brought the practice of using the Building Code definition of mezzanine for Zoning Code purposes to the attention of Building Department administration. The Superintendent determined that the definition should not be used since the purposes of the codes were different and that work on a new ruling and ordinance amendment would be begun. The Superintendent applied the ordinary meaning (Webster's definition) to the plans for this application.

Conclusions

1. The common, ordinary meaning of a term not defined in an ordinance should be used. Where an inappropriate definition has been used in interpreting and applying the terms of an ordinance the Superintendent has the duty to correct the interpretation. In this case, however, because the Building Code definition had been used consistently over a long period of time, the applicant was entitled to some notice of the change. Publication of a new ruling would give architects some opportunity to know that the practice was to be changed.

2. The abrupt change without notice operated unfairly against the applicant/appellant. The definition used in the past by the Building Department should be applied to the applicant/appellant's plans for determination of side yard requirement or the appellant could elect to alter his plans to come within Webster's definition of "mezzanine".

Decision

The appeal is GRANTED and the matter is REMANDED to the Superintendent of Buildings to determine the number of stories using the 1973 Building Code definition of "mezzanine" unless the appellant elects to conform to Webster's definition.

Entered this 3rd day of April 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).