

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

In the Matter of the Appeal of

DELORES DANILSON

FILE NO. S-80-052

from a determination of the
Director, Department of
Construction and Land Use

The decision of the Director of the Department of
Construction and Land Use is AFFIRMED.

Introduction

Appellant, Delores Danilson, appeals the Director's denial of application for a use permit for two individual residence uses at 1013 N.E. 115th.

The appellant exercised her right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were:

Attorney Josephine Vestal, for the appellant; the
Director by Attorney Joyce Kling, Manager, Land
Use Support Services.

This matter was heard before the Hearing Examiner on December 4, 1980, following a requested and approved continuance from the original November 24, 1980, hearing date.

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. The subject property is located in a Single Family Residence Medium Density (RS 7200) Zone at 1013 N.E. 115th. The legal description appears in the application and in the response of the Director.

2. The appellant purchased the property in 1978 after specifically seeking a house that would provide a separate unit (Mother-in-law apartment) for daycare purposes. The property has been taxed, however, as a single family dwelling.

3. The 60 ft. by 107.5 ft. lot is developed with a three bedroom main dwelling. Per the plot plan to the east and rear of the main dwelling is a designated garage. At the time of the appellant's purchase the garage was in use as a one bedroom "cottage" providing a living room and kitchen. The cottage is presently occupied by the appellant's son and daughter-in-law.

4. A building permit of October 22, 1956, granted permission for the then owner to "construct addition to existing one family dwelling per plan filed." On August 29, 1975, a permit was issued to the then owner "to construct a second story addition to an existing single dwelling as per plan." Both permits showed the occupancy and group classification as I (Single Family Dwelling) J (detached garage). September 5, 1975, a permit to install electrical equipment to increase service was issued "subject to compliance with the Ordinances of the City of Seattle." An electric meter for the second unit was installed by City Light in March, 1976.

5. The subject property was annexed to the City of Seattle on August 20, 1952, along with certain other Northgate District properties through Ordinance 81186. County property records pre-dating that time have been destroyed. As of the annexation, the property was zoned First Residence District, under which classification duplexes were not permitted without conditional use authorization.

6. The appellant attempted to but was unable to secure affidavit or other data showing the preannexation use or classification of the property. The one affidavit secured showed that the property was in use as a duplex at least dating from the affiant's moving into a home directly behind the subject property. The pertinent language reflects that the mother-in-law cottage had "been in use since (I) moved into (my) home about November 1, 1953."

7. September 24, 1980, the appellant applied for a permit to "establish for records of existing duplex per plans and evidence submitted." The Director's denial of the application is the subject of this appeal.

Conclusions

1. The decision of the Director is deemed prima facie correct and the burden of establishing the contrary is that of the appellant. Zoning Ordinance 86300, Section 25.44 (as amended).

2. Section 3.22 of the Zoning Ordinance defines a nonconforming use as a lawful use of land or structure in existence on the effective date of the Zoning Ordinance and which presently does not conform to the applicable zoned use regulations (emphasis added).

3. In published Ruling 11-80 (effective March 24, 1980) the Director of Construction and Land Use listed four conjunctive required showings for proof of status as a legal nonconforming use. Two of those are:

- (a) that the use could have been lawfully established either by construction or conversion under the zoning ordinance at the time from which its existence can first be proved;
- (b) the use was continuance since the Ordinance changed which rendered the use as nonconforming.

4. The ruling provides that the Director may accept affidavits from persons as proof of the existence of a nonconforming use at a time when it would have been lawful.

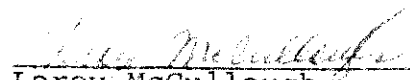
5. The only affidavit ascertainable regarding the use of the property concerns a use dating November 1, 1953. Thus, without some special consideration the determination of the Director must be upheld.

6. Appellant asserts the defense of laches. The appellant purchased the subject property in 1978. An electric meter for the garage (cottage) was installed two years prior in 1976. However, the 1956 and 1975 permits for the property clearly identify the property as single family with a detached garage. Thus any failure on the part of the City supportive of the defense of laches can only date from 1976. Cf. In Re Turner, File No. S-80-026 (1980). There is no allegation that prior to that time, the City was advised by permit application or otherwise of the existence of two uses at the subject property. In addition the property was taxed as a single family dwelling. We cannot conclude in this case that the doctrine of laches is applicable, personal circumstances notwithstanding. The fact that following a complaint, the appellant became the subject of an action by the Director does not alter this necessary legal conclusions.

Decision

The decision of the Director of Construction and Land Use is AFFIRMED.

Entered this 1-4-81 day of December, 1980.


Leroy McCullough
Hearing Examiner

Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination by the City. After 5 days from the date of this decision, a permit may be issued unless a party of record files with the Director of the Department of Construction and Land Use a written notice of intent to seek judicial review of the City's action. 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).