

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

LYNN ORTEGA

FILE NO. S-81-037

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

#### Introduction

The Director issued interpretation No. 220 which found that the garage structure at 2308 N. 59th Street was in use as a dwelling unit and is without the status of a legal nonconforming use.

The appellant exercised her right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceedings were: appellant by P.J. Sferra, Atwood, Sferra, Shuey and Ambur; the Director of the Department of Construction and Land Use (DCLU) by Bud Duffy.

This matter was heard before the Hearing Examiner on March 2, 1982.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24, as amended, unless otherwise indicated.

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

#### Findings of Fact

1. The subject property is located in a Single Family Residence High Density (RS 5000) zone at 2308 N. 59th Street. The legal description follows:

Lots 7 and 8, Block 15, Kilbourne's Division  
of Green Lake Addition.

2. Appellant-present owner Lynn Ortega has resided at the subject property for approximately five years. Another person resides at the subject property as part of the family unit, utilizing the upstairs bedroom. In addition to a single family residence, built in 1904, the lot is developed with a 16 by 20 ft. detached "garage structure" that was erected in 1905. Its entrance is approximately 12 ft. from the rear door of the principal dwelling.

3. Prior to 1923, no zoning laws were effective in the City of Seattle. The property was in a First Residence District from 1923-1957. The present RS 5000 classification was implemented in July, 1957.

4. The garage structure presently has a bathroom connected to the sewer system, a sink, a telephone extension, electric service, a range with burners (appellant is unsure whether the oven works), refrigerator, cabinets, counter space, an electric heater and a couch. Appellant testified that she uses the area as a study although guests occasionally use the area for overnight accommodations. A letter of record identified by appellant's housemate stated that the garage area was used by that person as a library study and further, that the housemate was not residing in the garage.

5. In addition to observing the items described above the Director's housing inspector-witness noted a separation between the area of the couch and the remaining area.

6. The housing inspector-witness for the Department of Construction and Land Use testified that on one site visit he did observe a gentleman in the garage structure and inquired of him whether rent was being paid for the structure, to which inquiry the gentleman answered in the negative.

7. There is no separate house number for the garage structure. It is locked with a house type entry lock. No rent is received from the use of the garage structure. For the subject address there is one electric meter, one water meter and one sewer count with Metro.

8. Appellant requested an interpretation of the zoning code relevant to the subject property, then filed an appeal from the Director's Interpretation, No. 220, which interpretation concluded that the garage constituted a second dwelling unit and that the project did not have legal nonconforming use status.

### Conclusions

1. The Director's decision is to be accorded substantial weight and the burden of proving the contrary rests with the appellant. Hearing Examiner Appeal Rule 8.9; Section 24.10.070.

2. Section 24.08.130 defines a lot as

A platted or unplatted parcel of land... occupied...by a principal use or building and accessory buildings, together with such yard and open spaces as are required by this subtitle...(Emphasis supplied).

3. Use is defined in Section 24.08.220 as follows:

The purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

4. Bulk is defined in Section 24.08.030 as the "size and location of buildings and structures in relation to the lot." Accordingly, as concluded by the Director, interpretation of the provisions has been that in a residential zone one principal use (building) per lot is allowed and two such buildings on a lot constitute a nonconformity as to bulk. Such a circumstance would require legalization as defined by the Director in the subject interpretation. The key query then becomes, for purposes of the instant case, whether or not two dwelling units, i.e., principal uses are present on the subject lot. The next question would be the legal status of those uses.

5. Dwelling unit is defined at Section 24.08.050 as

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 room or rooms shall be evidence of the existence of a dwelling unit. (Emphasis supplied).

6. The Director cites Superintendent's Ruling 35-78 for the contention that a dwelling unit does, in fact, exist in the garage. The referenced ruling notes that the existence of additional food preparation areas, including some combination of stove, refrigerator, kitchen cabinets, and sink constitutes evidence of an additional dwelling unit.

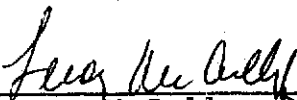
7. However, the existence of the food preparation area within the definition of Section 24.08.050 and as well per the delineated items in Superintendent's Ruling 35-78 are not conclusive as to the question of whether a dwelling unit is present.

8. The record reflects that while many of the traditional trappings of a residential unit are present in the garage structure, no individual regularly lives within the structure. No rent is generated by use of the garage structure as a separate unit. To the extent that the garage structure is used intermittently as accommodations, the record does not reflect this to be "independent from (applicant's or) any other family". Family is defined as any number of related persons "or not to exceed eight nonrelated persons". Section 24.08.070.

#### Decision

The interpretation of the Director is REVERSED.

Entered this 16th day of March, 1982.

  
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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. Any further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal 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.