

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

GALFER AND WILEY

FILE NO. H-79-003

from an Order of the Superintendent
of Buildings pursuant to the Housing
Code, Ordinance 106319

Introduction

Pat Saxon, property manager, Galfer and Wiley, appellants, filed an appeal from an order of the Superintendent of Buildings regarding compliance with Housing Code requirements for a building at 1106½ Pike Street.

The appellants exercised their right to appeal pursuant to Section 4.23 of the Housing Code, Ordinance 106319.

Parties to the proceeding were: Michael Wiley, Galfer and Wiley, and Clifford Hester representing the Superintendent of Buildings.

The matter was heard before the Hearing Examiner on November 19, 1979.

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 a three-story building at 1106½ Pike Street. Fifty-six dwelling units are contained on the second and third floors.

2. Four of the dwelling units have private bathrooms within the units. The remaining 52 units share four bathrooms, three with tubs and one with a shower.

3. The Superintendent classifies the structure as "Other Buildings" under Section 4.05, Ordinance 106319. That section requires not less than one toilet, one lavatory and one bathtub or shower, accessible from a public hallway, for each 8 occupants.

4. A Notice of Violation was served on Patricia Saxon for appellant on September 4, 1979. A hearing was held by the Superintendent on September 18, 1979. Appellants' request for a variance from the requirements of Section 4.05 was considered by the Superintendent but denied. The Order of the Superintendent of Buildings to comply was served September 24, 1979.

5. A notice of appeal was filed by the appellants October 24, 1979.

6. The units in the subject building currently rent for \$57.50 to \$81. Those units without private bathrooms have a sink.

7. Appellants assert that there is never a line of people waiting to use the shared bathrooms and that often they are not in use by anyone.

8. Occupants are generally low income, elderly persons. The occupancy of the building drops in the summer.

9. To bring the building into compliance with Section 4.05 the appellants would terminate the tenancy of the tenants of the four units with private bathrooms and open them for use by the tenants-at-large. The rental rate would be raised on the remaining units to provide the same total return to the owners.

10. The vacancy rate for low-cost rental housing in Seattle is extremely low.

Conclusions

1. Section 4.22 permits the Superintendent to authorize variances from Section 4.05, inter alia, when strict application would result in undue hardship and adversely affect a property right of an owner or tenant and where, because special circumstances of the building or occupancy, a variance would not be materially detrimental or injurious to the safety, health or general welfare of the occupants, neighboring properties or occupants or the public.

2. Strictly applying the requirement of one bathroom per 8 occupants would have the effect, in this case, of terminating the tenancy of four occupants which is clearly an effect adverse to the property right they now enjoy.

3. Whether granting a variance would be detrimental to the occupants or the general public involves a weighing of the various interests. Section 4.01 states that the purpose of the minimum standards, Section 4.05, among them, is to protect against hazardous conditions, promote the maintenance of housing and encourage rehabilitation and reuse of structurally sound buildings.

4. The interests of the City in the general welfare of its citizens, according to the Superintendent's representative, is to provide healthy and safe housing. The Superintendent's ruling is an indication that the Superintendent considers any housing falling below these standards to be unhealthy or unsafe. The testimony offered by the appellant that no lines of occupants waiting to use the bathroom facilities occur must be taken as true since no contrary evidence was offered. While having more bathrooms would add to the quality of the housing the existing condition is not materially detrimental or injurious.

5. The City also has an interest in assuring that its residents have affordable shelter. Both the potential increase in rental cost and loss of four dwelling units would be contrary to this interest. The higher vacancy rate in the spring and summer months indicates that the need for housing or shelter is less in those months. If the minimum standards must be enforced, the changes necessary should occur at a time of lesser need.

6. The Superintendent's representative indicated that the Superintendent's concern about granting a variance was that the occupancy could change to a group which would use the bathrooms more. Apparently a variance for a term was not considered because of a prohibition in the ordinance against reinspection of the building for three years.

7. The conditions of Section 4.22 for variance being present, the Superintendent erred in not granting a variance for a term to avoid immediate hardship to the tenants who would be evicted. A reinspection to ascertain circumstances of the building and occupancy should be made at the termination of the variance along with consideration of the City's housing demand/supply picture at that time.

Decision

The appeal is granted and the matter is remanded to the Superintendent of Buildings to authorize a variance for a specified term.

Entered this 7th day of December 1979.

M. Margaret Klockars
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Deputy Hearing Examiner