

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

In the Matter of the Appeal of

JOHN R. POTTER

FILE NO. H-83-001

from a decision of the Director of the Department of Construction and Land Use pursuant to Title 22, Subtitle II, Seattle Municipal Code (Housing Code, Ordinance 106319)

Introduction

Appellant, John R. Potter, appeals the Order of the Director following Reconsideration of Notice of Violation. The Order relates to premises at 1415-11th Avenue.

The appellant exercised his right to appeal pursuant to Section 22.206.230, Seattle Municipal Code (Section 4.23, Ordinance 106319).

This matter was heard before the Hearing Examiner April 19, 1983.

Parties to the proceeding were: appellant, pro se and the Director of the Department of Construction and Land Use represented by Stephen Horswill.

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. Appellant and others own an eighteen unit apartment building located at 1415-11th Avenue.

2. On December 7, 1982, the building was inspected by a housing inspector who found several violations of the Housing Code. A Notice of Violation was issued January 4, 1983.

3. Appellant requested reconsideration and following a hearing on February 22, 1983, the Order of the Director following Reconsideration of Notice of Violation was issued affirming the Notice of Violation but extending the compliance date to April 4, 1983.

4. Appellant filed an appeal April 5, 1983, challenging one cited violation and required correction, namely,

1. Inadequate Light and Ventiliation

a. Provide an aggregate window area of not less than ten (10) square feet or one-tenth ($\frac{1}{10}$) of the floor area, whichever is greater, and provide that one-fourth ($\frac{1}{4}$) of it be openable: 1) front bedrooms lack windows in units B, J and K; 2) no openable windows in unit B.

5. Approximately 25 years ago the cited units were altered to divide their one large bedroom into two, one an interior room without windows. Ventilation was provided by an air space above the closet.

6. Section 22.206.040, Seattle Municipal Code, requires habitable rooms to have a window area not less than one tenth the floor area or ten square feet, whichever is greater. The windows must face on a yard, court, street or alley. Subsection C allows

An approved system of mechanical ventilation or vent shafts and artificial light may be used in lieu of windows required by this section in bathrooms, kitchens, and similar rooms. In no case shall transoms be used for required ventilation.

7. The Director interprets the phrase "and similar rooms" in Section 22.206.040C not to include bedrooms.

8. The Director suggested that the violations can be corrected by the removal of the dividing walls.

9. Appellant's position is that the tenants would have to be evicted to make the alterations and the one bedroom apartments would not meet the needs of those tenants who rented the units as two bedroom apartments.

10. Appellant requested a variance from the window standards for the units. The request was not formally addressed by the Director or his hearing officer. The Director's representative testified, however, that the variance option is known to the hearing officer and would have been part of his consideration.

11. It is reasonably foreseeable that the actual eviction or constructive eviction of current tenants for or by the removal of the second bedrooms will cause undue hardship to those tenants.

12. The Director has determined that the minimum ventilation standard must be met to protect the health of the occupants of a dwelling unit and it would be materially detrimental to those occupants to provide inadequate, i.e., less than the minimum standard, ventilation.

13. There are no special circumstances or conditions of this building or its occupancy which make ventilation by windows unneeded.

Conclusions

1. The Director's order is to be deemed prima facie correct by the Hearing Examiner. The burden of proving the contrary is upon the appellant. Section 22.206.230, Seattle Municipal Code.

2. Appellant does not dispute the facts on which the Director based his order but urges that the hardship that would affect both the occupants and the ownership warrants variance from the standard.

3. Since appellant showed no special condition or circumstance that would meet that criterion for variance, the variance could not have been granted.


4. As to the interpretation of Section 22.206.040C, deference must be given the official responsible for enforcement. Keller v. Bellingham, 92 Wn.2d 726 (1979). Moreover, appellant offered no evidence that the interpretation was wrong.

5. Hardship to current tenants can be reduced by coordinating the compliance date with normal vacancy of the units. As the second bedrooms have been occupied for some 25 years, a short additional occupancy period should not cause material hazard.

Decision

The Director's order is AFFIRMED except that the date for compliance is modified to within two weeks of the vacation of any of the three units or December 31, 1983, whichever is earlier.

Entered this 18th day of May, 1983.


M. Margaret Klockars
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 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).