

Keith Rosema and Anee Brar, and City of Seattle v. An Yu, Shui-Xian Fu, and  
David Lee, No. 65607-4-I

Schindler, J. (concurring) — I concur with the analysis of the majority but write separately to also point out and emphasize the intent of the City to preserve a nonconforming use. A city has the right “to preserve, limit or terminate nonconforming uses subject only to the broad limits of applicable enabling acts and the constitution.” Rhod-A-Zalea & 35th, Inc. v. Snohomish County, 136 Wn.2d 1, 7, 959 P.2d 1024 (1998). The City of Seattle adopted regulations that favor permitting a nonconforming use and are designed to avoid inadvertently discontinuing a legally established nonconforming use. SMC 23.42.100(B) states:

It is the intent of these provisions to establish a framework for dealing with nonconformity that allows most nonconformities to continue. The Code facilitates the maintenance and enhancement of nonconforming uses and developments so they may exist as an asset to their neighborhoods. The redevelopment of nonconformities to be more conforming to current code standards is a long term goal.<sup>[1]</sup>

The SMC also defines “use” to include what the building is designed for as well as how the building is used. “Use” means the purpose for which land or a structure is designed or maintained. SMC 23.84A.040. Here, Rosema cannot show that DPD did not correctly interpret and apply the provisions of the SMC in concluding the residence was designed and “continuously maintained” as a duplex.

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<sup>1</sup> (Emphasis added.)

