

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

In the Matter of the Appeal of

THOMAS W. MALONE

FILE NO. S-75-004

from a ruling of the Superintendent of Buildings

The appeal is GRANTED and the findings and decision  
of the Superintendent of Buildings are reversed.

Introduction

The appellant, Thomas W. Malone, filed an appeal from the findings and decision of the Superintendent of Buildings (hereinafter the Superintendent). The findings and decision were in response to a request by the appellant for a written interpretation of the zoning ordinance as it applies to a beauty shop as a home occupation in an RS 5000 zone.

The appellants exercised their right to appeal pursuant to Section 25.40(d), Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on November 17, 1975.

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 Superintendent, on October 21, 1975, issued a decision with findings that determined that a beauty shop is not a permissible home occupation in a single-family residence zone. The decision and the findings included therein were appealable rulings pursuant to Section 25.40(d), Ordinance 86300, as amended by Ordinance 104795. Notice of this decision was published on October 23, 1975. The instant appeal was filed with the Hearing Examiner on October 30, 1975.

2. Section 6.31j, Ordinance 86300, as amended, establishes that home occupations of a resident person, when clearly incidental to the use of the property for dwelling purposes, are permitted outright as accessory uses in an RS 9600 zone, although they are subject to four conditions. Pursuant to Sections 7.31 and 8.31 of the same ordinance, this provision is applicable also to the RS 7200 and RS 5000 zones.

3. The appellant is concerned with establishing a beauty shop as a home occupation in a residence located at 411 North 61st Street, which is in an RS 5000 zone.

4. A beauty shop is permitted outright as an accessory use, subject to several conditions, in the RMV 200 zone, pursuant to Section 13A.31(c), Ordinance 86300, as amended (Section 26.26.040(c), Seattle Code). This is the least intensive zone in which a beauty shop is so permitted.

5. An accessory use or structure is defined, pursuant to Section 3.22 "U", Ordinance 86300, as amended (Section 26.06.220, Seattle Code) as:

A use or structure incidental to a permitted principal use, provided that such use or structure shall be located on the same lot as the principal use or structure, except when permitted elsewhere as specifically set forth in this Ordinance.

6. Chapter 18.18, Revised Code of Washington (RCW) regulates the profession of cosmetology. RCW 18.18.260, states that rooms which are used for residential or sleeping purposes are not to be used as a hairdressing or cosmetology shop. This section further provides that an outside entrance to a hairdressing and cosmetology shop shall be maintained separate from entrances to rooms which are used for sleeping or residential purposes.

### Conclusions

1. There is no indication from Section 6.31j, Ordinance 86300, as amended, or elsewhere in the zoning code, that a beauty shop is prohibited per se from being classified as a home occupation. There is no enumeration of those uses which shall or shall not be regarded as home occupations nor is the term "home occupation" defined, other than with the conditions which must be met before a proposed use can be approved.

2. The RCW regulation of cosmetology does not prohibit a beauty shop from being located within a single-family residence, but merely prohibits such a shop from existing coincidentally with a residential or sleeping use in the same room. No legislative intent can be inferred to reach a conclusion that a residential use and a beauty shop use cannot exist within the same structure. Similarly, it is possible to have an exclusive entrance for the beauty shop use without violating the four conditions inherent to a home occupation approval, or resulting in a depreciation of the residential character or appearance of a dwelling. Therefore, a conclusion that a particular beauty shop qualifies as a home occupation under the Seattle zoning code would not be inconsistent with the RCW regulations.

3. The fact that a beauty shop is permitted outright as an accessory use in the more intensive RMV 200 zone does not preclude a determination that a restricted beauty shop use may qualify as home occupation in an RS 5000 zone. The conditions which necessarily limit a home occupation are far more numerous and severe than that which appear in the RMV 200 classification, so that as a home occupation a beauty shop would be a significantly different type of use, with respect to its intensity and potential impact on a neighborhood. If a particular beauty shop could meet all of the conditions which accompany a home occupation classification, the use would not have a foreseeable negative affect on nearby persons or property and the spirit and purpose of the zoning code would not be contravened.

4. A distinct line of cases in other jurisdictions have determined that barber shops or beauty shops do not qualify as home occupations within the accessory use provision of individual zoning regulations. Gold v. Zoning Board of Adjustment, 393 Pa.401, 143 A.2d 59(1958), Boreth v. Philadelphia Zoning Board of Adjustment, 396 Pa.82, 151 A.2d 474(1959), LaMontagne v. Zoning Board of Review of Warwick, 95 RI 248, 186 A.2d 239(1962). In all cases, however, the courts reviewed the relevant ordinances of the individual cities, which uniformly included the word "customary" as a modifier of "home occupation" or "accessory use". For example, the City of Philadelphia definition of "home occupation", which was reviewed in the Boreth and Gold cases supra was as follows: "Any lawful occupation customarily conducted in a dwelling as an incidental use", Section 14-102(17) of the Philadelphia Code of General Ordinances. The courts have uniformly found that a beauty shop does not come within this definition or language which similarly uses the word "customary".

5. The Seattle zoning code does not use the word "customary" in describing a home occupation or defining an accessory use, but rather uses the phrase "clearly incidental" in the former case and the word "incidental" in the latter. This language is more permissive than that which is involved in those cases where a beauty shop did not qualify as a home occupation. The Seattle language is more similar to that of Verona, New Jersey, which has used the following language: "home occupation incidental to the use as a residence...", Section 6.3 of Verona, New Jersey zoning ordinance. This language was interpreted in Jantausch v. Verona, 24 N.J.326, 131 A.2d 881(1957), wherein the court determined that a beauty parlor could be included in a dwelling in a single family residential zone as a home occupation. The court emphasized that the ordinance did not utilize the word "customary" and such word could not be inserted into the ordinance by implication, since it would result in an additional restraint on the term "home occupation".

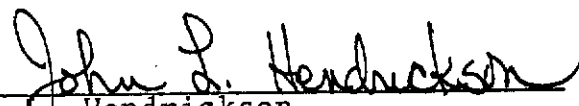
6. An application for a beauty shop to be designated as a home occupation should be considered on the merits of each application, to determine whether the proposed use is clearly incidental to the use of the property for dwelling purposes and whether it complies with the four conditions. The language of Section 6.31j, Ordinance 86300, as amended, is not sufficiently restrictive to conclude that a beauty shop could never qualify as a home occupation.

7. No inference shall be drawn from this decision regarding the qualification of the proposed beauty shop in the dwelling at 411 North 61st Street as a home occupation. This is a determination which can properly be made only by the Superintendent in reviewing the facts of the proposal in light of the conditions in the aforementioned Section 6.31j.

#### Decision

The appeal is GRANTED and the findings and decision of the Superintendent of Buildings are reversed.

Entered this 25<sup>th</sup> day of November, 1975.

  
John L. Hendrickson  
Deputy Hearing Examiner