

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FRED R. BUTTERWORTH

FILE NO. S-78-017

from a ruling of the Superintendent
of Buildings.

The appeal is DENIED and the Findings and Decision
of the Superintendent of Buildings are affirmed.

Introduction

The appellant, Fred R. Butterworth, attorney at law, representing Bruce Burton, the property owner, filed an appeal from an interpretation by the Superintendent of Buildings relating to property at 2808 South West Holden Street.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended, by Ordinance 104795.

This matter was heard before the Hearing Examiner on July 25, 1978.

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 comprised of Lots 29 and 30 of Block 6 of the West Hill Addition. The property is zoned Single Family Residence High Density (RS 5000) and is developed with a non-residential structure.
2. The structure was constructed in 1946 and a permit issued for a store. In 1959, the use of the structure was changed from a plumbing shop to an upholstering shop. In 1966 a permit was issued for use as a pharmacy. In 1973, an application for a permit was approved for its use as a nongraded preschool. Other interim uses occurred however the most recent use was the preschool use.
3. The property is in a Single Family Residence High Density (RS 5000) zone. West Seattle General Hospital is approximately ½ block to the east. A large playfield is across the street as is a church. Single family residences border on the west across the alley to the north and east.
4. The use proposed for the building which prompted the request for an interpretation was storage and maintenance of medical equipment used in assisting patients with breathing problems. The equipment is used by West Seattle General Hospital. Further amplification of the proposal at hearing revealed that approximately 1/6 of the space would be used for storage and that the remainder of it would be offices for a medical director and secretary and conference room. The appellant indicated that this could be changed to some extent to attempt to fit within the code requirement.

5. The Superintendent of Buildings determined that the proposed use is a "warehouse" and as such is first permitted outright in a CM zone which is more intensive than in the RM 800 zone which the preschool use would first be permitted outright. The Superintendent determined that, therefore, the use may not be changed to a warehouse.

6. A "nonconforming use" is defined by Section 3.22, Ordinance 86300, as amended, to be:

"A lawful use of land or structure in existence on the effective date of this Ordinance or any amendments thereto and which does not conform to the use regulations of the zone in which such use is located".

7. A Nonconforming use may be changed to a use permitted in a zone less intensive than the one in which the nonconforming use would be conforming or to another use listed in the same zone as permitted outright but no more detrimental than the previous nonconforming use to other properties. Section 5.34(e).

8. A warehouse use is first permitted in a Metropolitan Commercial (CM) zone, which is more intensive than RM 800. Offices of physicians and surgeons are first permitted outright in the Multiple Residence High Density (RMH 350) zone which is more intensive than the RM 800 zone classification. That use is allowed only conditionally in the RM 800 zone.

9. At the time the owner applied to change the use from pharmacy to preschool he was not advised that by doing so he was further restricting potential future uses.

10. The proposed use, whether physicians' office or warehouse, would have fewer actual adverse impacts on the surrounding neighborhood than the preschool use despite the zoning scheme which places a preschool in a less intense zone than the other uses.

Conclusions

1. While the result appears to be somewhat unfair as the law is applied in this case, the Superintendent's interpretation must be upheld as it is a correct interpretation of the zoning code. The ordinance encourages the scaling down of nonconforming uses toward conformity so the proposed use is prohibited by Section 5.34(e) because it is first permitted outright in a more intensive zone.

2. The appellant urges administrative flexibility or a means of granting exceptions. "Use variances" are expressly forbidden but even if they weren't, an invitation to make exceptions without written standards is also an invitation to exercise subjective judgment which can easily lead to abuse. Hopefully, the Superintendent will work with the owner to find a permitted use for the building to allow reasonable use of this property.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are affirmed.

Entered this 8th day of August 1978.

M. Margaret Klockars
M. Margaret Klockars
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.