

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MARGE AND NEAL SAFFER

FILE NO. S-78-032

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 appellants, Marge and Neal Saffer, filed an appeal from a decision of the Superintendent of Buildings to deny a use permit (change of use) for Quesnel's Charcoal Broiler at 4703 Beach Drive S.W.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

The appellants exercised their right to appeal pursuant to Section 25.40.

Parties to the proceeding were: the Superintendent, represented by Joyce Kling, and the appellants, represented by John Harris.

This matter was heard before the Hearing Examiner on January 4, 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 appellants own and operate a restaurant, Quesnel's Charcoal Broiler, at 4703 Beach Drive S.W. The restaurant seats a maximum of 50 people and is open from 5:00 p.m. to 10:00 p.m. on Wednesday through Saturday and 1:00 p.m. to 8:00 p.m. on Sunday.

2. The restaurant is located in a Single Family Residence High Density (RS 5000) zone. This zone is primarily designed for the location of single family dwelling units. Restaurants are not permitted in this zone. However, the restaurant was established in October 1959, when a grocery store on the site was converted to the present use. The restaurant is classified as a legal nonconforming use in the RS 5000 zone.

3. On October 16, 1978 the appellants applied for a use permit, which essentially was a change of use, to permit the sale of alcoholic beverages in the restaurant. The application was limited to permission to serve only wine with meals and not any other alcoholic beverage.

4. Notice of the intention to deny the use permit was published on December 5, 1978 and the appellants filed a timely appeal on December 18, 1978.

5. The subject restaurant was involved in a previous administrative proceeding in 1976. In 1976 the present appellants filed an application for a conditional use and variance to permit the service of alcoholic beverages with

meals at the restaurant. This application was denied by the Hearing Examiner (File No. X-76-064). The application was filed on the basis that a conditional use is required for the service of alcoholic beverages with meals in a Neighborhood Business (BN) zone and a variance was needed to permit a change from one nonconforming use to another nonconforming use that was not permitted outright.

6. The appellants argue that the service of alcoholic beverages with meals should be permitted outright. The appellants cite Section 5.34(e) which provides as follows:

In any zone, except an M or I Zone, a nonconforming use in a nonconforming building, may be changed to a use permitted in a less intensive zone than the zone in which the nonconforming use would be conforming, or to another use which is listed and grouped in the same classification as an outright permitted use, provided such new use will be no more detrimental or injurious than the previous nonconforming use to other property in the same zone or vicinity. (Emphasis supplied).

7. The appellants in relying on Section 5.34(e) argue that since the service of alcoholic beverages is permitted outright in the RM-MD zone, which they claim is less intensive than the BN zone, that a change of use permit should be granted.

8. Section 14.32(d) provides that a restaurant serving alcoholic beverages with meals requires a conditional use approval in the BN zone. The BN zone is to provide for small areas in local neighborhoods for retail stores near the homes they serve (See Section 2.2).

9. Section 2.24 provides as follows:

The RM-MD Zone provides for variable density housing including tower apartment houses where such buildings have a desirable relationship with surrounding structures, and certain non-residential uses compatible with housing and with adjacent commercial areas, located in close proximity to the City center or other major subcenters and employment areas, and having access to adequate transportation facilities and other amenity features.

Superintendent's Exhibit No. 1 shows that the purpose behind the RM-MD zone was to encourage development in the Denny Regrade of a mix of housing types and commercial facilities. This zone was adopted many years after the other zones were established.

10. Section 3.27 defines "less intensive zone" as follows: "In the list of zones in Section 4.11 each zone shall be deemed to be less intensive than the zone succeeding it." In Section 4.11 the RM-MD zone is succeeded by the BN zone.

Conclusions

1. The appellants are seeking to have wine served with meals in their restaurant. It is understandable that due to competition and economic factors that wine service would be advantageous. However, the restaurant in question is in a single family zone and developed with single family dwellings except for the nonconforming restaurant. The overall purpose of the Zoning Code (Section 2.11) is to keep separate incompatible land uses, and to prevent intensification of nonconforming uses.

2. The appellants argument that Section 5.34(e) provides a basis for permitting the change of use is not persuasive on several grounds. The service of alcoholic beverages in a restaurant is not an outright permitted use in the BN zone, since a conditional use is required. The conditional use process requires a public hearing and a finding that approval will not be materially detrimental to the public welfare or injurious to property in the vicinity. The appellants once tried to obtain a conditional use and were denied after a public hearing. The requirement for a conditional use clearly shows that since the use (restaurant service with alcoholic beverages) is not a conforming use in the BN zone without a conditional use that it cannot be changed to a use permitted in a less intensive zone since this would result in circumvention of the conditional use requirement. In summary the appellants do not meet the requirement of Section 5.34(e) that the use be conforming in order to qualify for a change that would be permitted in a less intensive zone.

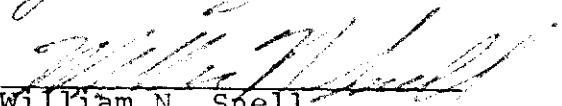
3. The appellants also do not meet the requirement of Section 5.34(e) because they are not seeking a change in use (for example, from a restaurant to a grocery store) but only an increase in the intensity of use, i.e., from a restaurant to a restaurant that serves alcoholic beverages.

4. The appellants argument that the RM-MD zone should be considered less intensive for purposes of Section 5.34(e) is not consistent with the overall policy established in the zoning code, the history of the RM-MD zone, or a comparison of the uses permitted in the two zones. The RM-MD zone was adopted subsequent to other zone classifications and is not integrated into the overall zoning system. For example, no subsequent zoning classifications refer back to uses permitted in the RM-MD zone. Many uses permitted in the RM-MD zone are not again permitted outright except in a much more intense zone. All of the above factors strongly show that the RM-MD zone should not be considered less intense than the BN zone.

Decision

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

Entered this 17th day of January 1979.


William N. Snell
Hearing Examiner

NOTICE OF APPEAL

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal to the Superior Court should be filed within 20 days of the date of the decision. Vance v. Seattle, 18 Wn. App. 418 (1977)