

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

In the Matter of the Appeal of

VERNA BELT, and others

FILE NO. S-79-012

from a ruling of the  
Superintendent of Buildings

The appeal is GRANTED and the decision of the Superintendent  
of Buildings is REVERSED.

Introduction

The appellants, Verna Belt, Joan and Charles Heggen, Mrs. D.R. Langham, Falker and Lorita Junglov, Frank Papasedero, D.M. and R.G. Scott, Ralph W. Everett, Jennie Conlen, Don and Boni Piper, Carolyn Stevens, Doris Balch, Mr. and Mrs. M.E. Barager, and Mr. and Mrs. Arthur J. Klempke, filed an appeal from a decision of the Superintendent of Buildings to issue a use permit for property at 6500-20th Avenue N.E.

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

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

This matter was heard before the Hearing Examiner on June 21, 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 subject property is located at 6500-20th Avenue N.E. and consists of a corner store, formerly used as a pharmacy.

2. This store is part of a larger building, extending north on 20th Avenue N.E., which presently houses the Puget Consumers' Co-op store, but there is no inside access from one store to the other.

3. On April 1, 1979, the Puget Consumers' Co-op applied for a use permit to convert the use of the pharmacy to a retail variety store.

4. On May 17, 1979, the Superintendent of Buildings published his intention to grant this use permit in the List of Appealable Actions and on May 18, the permit was issued subject to the right of appeal as provided in Section 25.40 of the Zoning Ordinance (86300, as amended).

5. On May 21, 1979, a timely appeal was filed by Verna Belt and others followed as listed above.

6. This corner is zoned Neighborhood Business (BN) and is surrounded by single family residences zoned RS 5000.

7. Principal uses permitted in the BN zone are governed by Section 14.21(b) which states:

"Retail business and services serving primarily the residents of the neighborhood; such as, but not limited to, grocery, delicatessen, meat market, drug store, hardware store, gift shop, confectionery, bakery, shoe repair shop, barber shop, beauty shop, hand or coin operated laundry, dry cleaning shop, upholstery shop, business and professional offices, florist shop, variety or notions store, millinery store, or restaurant without live entertainment, dancing or alcoholic beverages." (Emphasis added).

Section 14.1(b) restricts the size of the business as follows:

"The gross building floor area occupied by any one business enterprise shall be no greater than seventy-five hundred (7500) square feet."

The rest of Section 14 indicates, by restricting number of employees, horsepower of machinery, etc., that small neighborhood business is being addressed. And, as the BN zone is the least intensive zone allowing business of any sort, it preserves livable neighborhoods uninterrupted by major or large-scale business.

8. Because the variety store use is permitted outright in the BN zone, the Building Department did not inquire whether or not it would serve primarily the residents of the neighborhood.

9. The present Puget Consumers' Co-op Store occupies 9300 square feet. Adding the variety store would increase the area of the business enterprise to over 10,000 square feet well in excess of the 7500 square foot limit of one business enterprise imposed by Section 14.1(b).

10. The evidence presented by the appellants indicating that this store is one large enterprise, was supported by the testimony of the Co-op personnel who talked in terms of "our variety section" being moved into the corner store, our "planning for the expansion into the pharmacy", etc., indicating that although there is a solid wall between their present store and the corner drug store, that is the only separation. There is one management, one set of employees, one Co-op membership list, all of which add up to "one enterprise" when examined in relation to this location and the history of this applicant.

11. The Puget Consumers' Co-op testified that the statements in a page 1 article of their April Newsletter headlined "PCC to Open Clothing - Bank - Vitamin Store" were essentially correct that:

"The move does not involve an increase in products or inventory. It is a way of spreading the merchandise we have over a larger area and more effectively using space."

12. Puget Consumers' Co-op is a large cooperative business with membership exceeding 18,000 and over \$4 million in income in 1978. Its store adjacent to the subject use-permit application's site employs 65 and its check-out stand rates sometimes exceed 100 per hour. Its store at 6504 20th Avenue N.E. presently carries food, clothing, small hardware, dishes, small appliances glassware, etc. It is the variety store items which it plans to move into the 6500 20th Avenue N.E. location.

13. The Co-op did not claim that this variety store would be "...serving primarily the residents of the neighborhood," as required by the ordinance.

14. Although attendance at the hearing was large,

there was no testimony that a variety store would serve the residents of the neighborhood, any more than the variety section of the present Co-op store does. The evidence was that the Co-op store, including its variety section, not only does not serve the residents of the neighborhood, but intrudes significantly into the single family residence area with its overflow parking, traffic and noise.

15. Although the Co-op testified at length on plans to limit its membership, thus acknowledging its negative impact on this residential area, it is difficult to see how expansion of floor space, less crowding and more pleasant shopping surroundings would lessen the numbers of patrons at this store. The membership continues to grow significantly: 143 in May 1979, was the Co-op testimony.

### Conclusions

1. The BN zone permits a variety store use, which the Co-op proposes for this location. But the Superintendent's practice of issuing use permits for businesses listed in the ordinance without inquiry as to whether or not such use would serve primarily the residents of the neighborhood in a BN zone violates a fundamental rule of statutory construction that statutes and ordinances must be construed to avoid nullifying, voiding or rendering superfluous any portion thereof. Taylor v. Redmond, 89 Wn.2d 315, 319 (1977). Therefore, proper interpretation of Section 14.21(b) precludes the issuance of a use permit when the evidence proves the use would not serve primarily the residents of the neighborhood.

2. Section 25.44 provides that in appeals to the Hearing Examiner, the determination of the Superintendent is considered prima facie correct. To overcome the presumption, the trier of fact must find from a fair preponderance of credible evidence that the findings and decision are incorrect. Allison v. Department of Labor and Industries, 66 Wn.2d 263 (1965). The appellants met this burden and presented sufficient evidence that the uses requested would not serve primarily the residents of the neighborhood to overcome the presumption.

3. Although the Superintendent's decision to issue the use permit is presumed correct, the appeal is a de novo hearing in which the appellants have also shown by overwhelming evidence that this location is in actuality the expansion of the present Puget Consumers' Co-op store adjacent at 6504 20th Avenue N.E. and adding this location at 6500 20th Avenue N.E. would increase this one business enterprise to over 10,000 square feet well in excess of the 7500 square foot limit of "one enterprise" prescribed by Section 14.1(b).

4. The Superintendent must issue use permits when the ordinance requirements are met. Here, however, by ignoring part of the ordinance, the Superintendent has denied to the neighborhood the protection intended by the Zoning Code. This neighborhood spoke, practically with one voice, indicating that this proposed use permit would not only not serve it, but add parking and traffic problems seven days a week to its residential streets. The proposed variety store would not serve primarily the residents of the neighborhood.

5. The Co-op testimony consistently indicated that this variety store was merely one department of its larger store moving next door to provide more space. No real separation exists other than an interior wall. Therefore, the requirement of Section 14.1(b) that one enterprise in a BN zone not exceed 7500 square feet applies and this expansion into the approximately 1000 square foot store would bring the total size of the enterprise to over 10,000 square feet.


6. A general purpose of the Zoning Code to aid neighborhoods to exist without the intrusion of big businesses would be circumvented by issuance of this use permit.

7. The ordinance Section 14.21(b) which controls the use permitted in BN zone, must be read in its entirety including the phrase "serving primarily the residents of the neighborhood." The evidence was sufficient to sustain the appellants' burden of proof that this use would not so serve. Therefore, the use permit is denied.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent are REVERSED.

Entered this 27<sup>th</sup> day of June 1979.

  
Joan B. Allison  
Hearing Examiner  
Pro Tempore

Notice of Right to Appeal

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