

## FINDINGS AND DECISION

### OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID B. WHATMORE

FILE NO. S-79-014

from a determination of the  
Superintendent of Buildings

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

#### Introduction

The appellant, David B. Whatmore, filed an appeal from the issuance of a use permit by the Superintendent of Buildings (Superintendent) for property at 6601-19 Roosevelt Way.

The appellant exercised his right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: the appellant, represented by Jeffery Needle; the Superintendent, represented by Joyce Kling; and Seattle-First National Bank, represented by Duncan Bayne.

This matter was heard before the Hearing Examiner on June 19, 1979.

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

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 project proponent, Seattle-First National Bank, proposes to demolish several existing structures including the existing bank and to construct a new bank with about 10,000 square feet of commercial space. The bank would have four drive-up windows. Customers using the drive-up windows could communicate by means of microphones and pneumatic tubes with staff located in the bank. Nine teller cages would be located in the bank itself.

2. On May 22, 1979, the Superintendent published a use permit for a bank with drive-in facilities as an incidental accessory use at 6601-19 Roosevelt Way N.E. The bank site is located primarily in the Community Business (BC) zone although under the zone extension provision a portion extends into the Duplex Residence High Density (RD 5000) zone.

3. On June 5, 1979, the appellant, David B. Whatmore, filed a timely appeal. It is the contention of the appellant that a drive-in bank as an accessory use is not permitted in the BC zone.

4. Under the Zoning Ordinance, zones are organized in an ascending order of intensity ranging from the least intensive (Single Family Residence Low Density - RS 9600) to the most intensive (Heavy Industrial - IH). The four zones that have relevance to this appeal are listed in order of increasing intensity as follows:

<u>Zone</u>	<u>Zoning Ord. Article</u>	<u>General Purpose</u>	<u>Bank Uses Permitted</u>
BI	14A	To provide for intermediate sized shopping areas serving abutting neighborhoods	Banks not permitted
BC	15	To provide business center serving the needs of several neighborhoods or community district	Banks permitted outright as principal use.
BM	16	To protect the retail core of the Central Business District	Banks permitted outright as principal use.
CM	17	To provide for a wide variety of non-retail commercial and business uses functionally related to the core of the the business district	Banks permitted outright as principal use. Drive-in banks permitted as a conditional use

5. The BI, BC, BM & CM zones all contain provisions prohibiting uses in the subject zone which are permitted only in more intense zones. See Sections 14A.7, 15.7, 16.7 and 17.7.

6. The BI, BC, BM and CM zones all contain limitations on accessory uses especially when the accessory use is first permitted in a more intensive zone. In the BC zone Section 15.52(b) provides that as a conditional use the following uses are permitted: "Any principal use permitted in Article 16, but only when necessary as an appurtenant accessory use to a principal use permitted in this Article". In other words the use can only be permitted as accessory in the BC zone if it is permitted outright as a principal use in the next most intensive zone, which in this case is the BM zone. In addition before the accessory use could be permitted it would require conditional use approval. The BI, BM and CM zones contain similar restrictions on accessory uses.

7. Article III of the Zoning Ordinance contains the following definitions of terms:

"Use" is defined as the purpose for which land or a building is designed, arranged or intended, or for which it is occupied or maintained, let or leased.

"Principal Use" is defined as the use conducted on the lot or the building housing the principal use as distinguished from any separate buildings housing accessory uses.

"Accessory Use" is a use or structure incidental to a permitted principal use.

8. If a use requires conditional use approval a public hearing must be held and a determination made that the use will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity. See Section 28.1.

9. It is the Superintendent's interpretation that a drive-in bank is permitted as an accessory use in a BC zone pursuant to Section 15.41(a) which provides that accessory uses customarily incidental to a principal use are permitted outright except of a type prohibited in Section 15.7. Section 15.7 prohibits uses that are permitted in zones more intensive than BC.

10. The Superintendent further argues that since a drive-in business is permitted outright in the less intensive BI zone, then a drive-in bank is permitted as an accessory

use in the BC zone. In the BI zone, Section 14A.41(c) permits as an accessory outright use a "drive-in business." Section 3.05(d) defines "drive-in business" as follows: "A business where a customer is permitted or encouraged, either by the design of physical facilities or by service and/or packaging procedures, to carry on business, in the off-street parking area accessory to the business, while seated in a motor vehicle."

11. The Superintendent concludes that a drive-in bank is included in the definition of a "drive-in business" and since it is accessory and customarily incidental to a bank which is permitted in the BC zone it is permitted outright as an accessory use.

### Conclusions

1. The basic issue to be resolved is whether or not a drive-in bank is permitted outright as an accessory use to a bank in a BC zone. On its face the Superintendent's interpretation appears to be reasonable in that the term "drive-in business" is broad in scope and would appear to encompass the term "drive-in bank". However, a "drive-in bank" is a specific use that is permitted only in the more intensive CM zone, which clearly makes the Superintendent's interpretation inconsistent with the general organization and purpose of the Zoning Ordinance.

2. The Zoning Ordinance is organized, as shown in finding of fact numbers 4 and 5, so that uses permitted in more intensive zones are not permitted as uses in less intensive zones. Section 15.7 prohibits any use which is permitted only in a more intensive zone. The term "use" does not distinguish between principal or accessory uses. Since a drive-in bank is first permitted as a conditional use in the more intensive CM zone, such a use, either accessory or principal, is prohibited in the BC zone by Section 15.7.

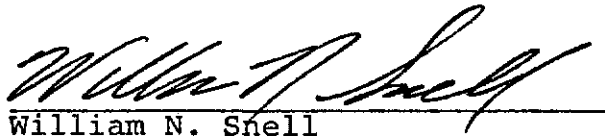
3. As shown in finding of fact number 6, the Zoning Ordinance contains clear and specific restrictions on accessory uses. Section 15.52(b) provides that the only situation in which a more intensive use will be permitted as an accessory use in the BC zone is when it is permitted outright in the next most intensive zone and even then the use requires conditional use approval. Assuming for a moment that a drive-in bank is permitted outright in the BM zone, then under Section 15.52(b) conditional use approval would be required for its location in the BC zone. Under the Superintendent's interpretation, the appellant would be in a stronger position if a drive-in bank were permitted outright in a zone less intense than the BM zone since at least a conditional use would be required. It is entirely inconsistent with Section 15.52(b) and the general organization and purpose of the Zoning Ordinance for the Superintendent to permit as an accessory use in the BC zone, a use which is first permitted, and then only as a conditional use, in the CM zone, which is two zones more intensive than the BC zone.

4. Section 25.44, provides that in appeals to the Hearing Examiner the determination of the Superintendent is to be considered prima facie correct. To overcome the presumption, the trier of fact must find from a fair preponderance of the credible evidence that the findings and decision are incorrect. Allison v. Department of Labor and Industries, 66 Wn.2d 263, 401 P.2d 982(1965). The appellant has shown from the evidence and arguments presented that the interpretation of the Superintendent is incorrect and inconsistent with the purpose and intent of the Zoning Ordinance.

Decision

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

Entered this 25th day of June 1979.

  
William N. Shell  
Hearing Examiner

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, 18 Wn.App. 418 (1977).