

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

CONCERNED PEOPLE OF THE
RAVENNA NEIGHBORHOOD

FILE NO. S-79-019

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the decision of
the Superintendent of Buildings is AFFIRMED.

Introduction

The appellants, Concerned People of the Ravenna Neighborhood, 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.

This matter was heard before the Hearing Examiner on August 30, 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 City of Seattle appeared through Assistant City Attorney Gordon Crandall; the Concerned People of the Ravenna Neighborhood appeared through counsel, Robert W. McKisson; and a representative of Puget Consumers Co-op was present without counsel.

2. The parties agreed and stipulated as to the facts that:

A. On July 17, Sam Salkin of Puget Consumers Co-op applied for a use permit for a professional office at 6500 - 20th Avenue N.E. to be used by R. W. Moss and Associates, a consulting firm currently under contract with the Seattle School District.

B. The property is zoned Neighborhood Business (BN) and Sections 14.21(a) and (b) of the Zoning Ordinance state the principal uses permitted outright in the BN zone:

- (a) RMH 350 Principal Uses permitted outright as specified and regulated in Article 13, unless modified in this Article.
- (b) Retail businesses 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.

C. The Superintendent of Buildings published his intention to grant the above use permit on July 31, 1979, without inquiry as to whether said professional office was a service "serving primarily the residents of the neighborhood."

D. This procedure is standard Superintendent of Buildings procedure in use permit issuance. The procedure is based on interpretation of the Ordinance that all specified uses are permitted outright and the phrase "serving primarily the residents of the neighborhood" is merely a guide in determining which uses, other than those listed in the code, are permitted in the BN zone.

E. The consulting firm would not be a professional office "serving primarily the residents of the neighborhood."

3. The appellants argue that:

A. Section 14.2 is unambiguous and the use for a "consulting firm doing contract work for Seattle School District" does not constitute a retail business or service serving primarily the residents of the neighborhood, and

B. The Superintendent of Buildings failed to comply with RCW 43.21c (State Environmental Policy Act) prior to the issuance of this use permit.

4. The Superintendent responds that:

A. Its consistent interpretation of Sections 14.21(b) to allow all uses listed specifically follows "clear legislative intent to allow these particular uses in a BN zone, since these types of uses are associated with serving the residents of a neighborhood."

B. The proposed change of use from a pharmacy to an office is exempt from the threshold determination and EIS requirements of SEPA, and therefore is categorically exempt pursuant to WAC 197-10-170 and Seattle Ordinance 105735 (as amended) and that the Superintendent did comply with the provisions of RCW 43.21c prior to issuance of the use permit.

5. The consulting firm would use the existing former pharmacy structure. No evidence was offered of any contemplated physical change or adverse environmental impacts.

Conclusions

1. First, as to the SEPA compliance, this change of use is categorically exempt pursuant to the Washington Administrative Code Guidelines. It is not an action potentially affecting the environment and subject to SEPA under the state guidelines since it does not involve modification of the physical environment, WAC 197-10-040(2)(a), WAC 197-10-040(20), WAC 197-10-170(5)(i). This use permit regulates a present structure and no material changes are involved.

2. As to the interpretation of the Zoning Ordinance, the legislative intent is paramount. East v. King Co., 22 Wn. App. 247, 589 P.2d 805 (1978). The ordinance sets out the purpose of business zones in Section 2.3.

Four business zone classifications are provided to promote retail business development on the basis of function performed and to minimize conflicts within each zone and with uses in adjacent residential zones.

The BN Zone provides small areas in local neighborhoods for neighborhood retail stores near the homes which they serve.

The BI Zone, generally located on the boundaries of neighborhoods, provides for intermediate sized shopping areas to serve the abutting neighborhoods.

The BC Zone provides for larger business centers serving the greater needs of several neighborhoods of the community district.

The BM Zone protects the retail core of the Central Business District, fostering first floor retail frontages and providing maximum safety, convenience and amenity for the pedestrian shoppers. Buildings of maximum bulk are permitted with incentives for plazas and arcades.

The BN zone principal uses Sections 14(a) and (b) are consistent with this general scheme.

3. If the language were reversed, that is, if the ordinances read "the following uses are permitted outright" (listing of uses) followed by: "other uses serving primarily the residents of the neighborhood," the Superintendent's interpretation could stand. But the construction of this section is such that the words "primarily serving the neighborhood" are applicable to the listed uses.

4. Zoning ordinances are to be construed as a whole and any unreasonable construction must be rejected. Bartz v. Board of Adjustment, 80 Wn.2d 209, 492 P.2d 1374 (1972). Professional offices are first permitted in less intensive non-business zones without a neighborhood qualifier ("serving primarily the residents of the neighborhood"). In the RM 800 zone, Section 12.22(e) permits professional offices as a conditional use with no neighborhood qualifier.

5. In the RMH 350 zone, Section 13.11(c) and in RMV 150, Section 13B.11(c), professional offices are permitted as principal uses, without the neighborhood qualifier.

Section 13.11(c):

Offices and clinics of physicians, surgeons, psychiatrists, psychologists, dentists, chiropractors, chiropodists, osteopaths, optometrists, engineers, surveyors, lawyers, public accountants, architects, landscape architects, or interior designers, having no stock in trade and making no retail sales on the premises, and offices of civic, religious, or charitable organizations, provided such offices or clinics occupy no more than the first two (2) stories of a building or a cellar of a building and the story next above.

6. In the RM-MD Multiple Residence-Mixed Density Zone, Sections 13C.11(c) and (d) divide uses into those requiring area qualification and those which do not as follows:

- (c) Retail business and services serving primarily the residents of the vicinity, such as, but not limited to: grocery, delicatessen...
- (d) Commercial business and services serving or related to the central business, such as, but not limited to: business and professional offices, automobile rental...

7. As we come to the business zones we increase intensity and retail business and services are lumped together with the neighborhood qualifier. See Section 14.21(b) quoted above. It is two zones more intense than the BN zone before the neighborhood qualifier disappears. In the Community Business Zone (BC) the following uses permitted are set out in Section 15.21:

- (a) BI Principal Uses as specified and regulated in Article 14A, unless modified in this Article and not limited (emphasis added) to uses primarily serving the surrounding neighborhood.
- (b) Retail store and personal service establishments, banks and financial institutions, business and professional offices, hotels, catering establishments, trade or business school, experimental or testing laboratory which does not employ machinery or equipment not permitted in the BC Zone, taxidermy shop, locksmith, appliance repair shops, convalescent homes, homes for the retired, dance and music studios, antique shops and second-hand shops.

8. In this scheme, the legislative intent becomes obscure and reasonable construction of the whole difficult, if not impossible. It is clear that the BN zone is the least intensive business zone and legislative intent is to protect the neighborhood from large, intrusive business. There is a strong presumption that the listed uses are permitted outright, to be overcome by a showing that the business does not serve the neighborhood.

9. If it were not for the other less intense zones permitting professional offices outright without the neighborhood qualifier, the same would have to apply to professional offices because of the construction of Section 14.21(b).

10. However, zoning ordinances should be given a reasonable construction and application in order to serve their purpose and scope. State ex rel Edmond Meany Hotel, Inc. v. Seattle, 66 Wn.2d 329, 402 P.2d 486 (1965).

Here reasonable application permits the Superintendent to note that professional offices are permitted in less intense zones without neighborhood qualification and to assume their inclusion in Section 14.21(b) under the neighborhood qualifier was legislative oversight. This interpretation is not without difficulties and the Council should be made aware of these apparent inconsistent intensity of use designations.

11. Great weight is to be given the Building Department's interpretation, but if a purpose of the zoning ordinance to protect the neighborhoods is ignored thereby, its interpretation must be modified. Here, no negative impacts to the neighborhood

were alleged by the appellants and the issuance of this use permit appears to meet the requirements that the use not be materially detrimental to the public welfare nor injurious to property in the zone or vicinity. These standards are legislatively dictated as applicable to the issuance of conditional use permits and serve here as a guide to aid in finding both legislative intent and a reasonable construction of the ordinance as a whole.

12. All the words in the ordinance must be construed so as not to nullify nor render superfluous any portion thereof. Taylor v. Redmond, 89Wn.2d 315 (1977). To do this one cannot ignore the "primarily serving the residents of the neighborhood" phrase.

13. Therefore, giving great weight to the Superintendent's interpretation, reading the plain meaning of the section, and looking at the zoning ordinance as a whole, a reasonable and supportable construction of Section 14.21(b) would read:

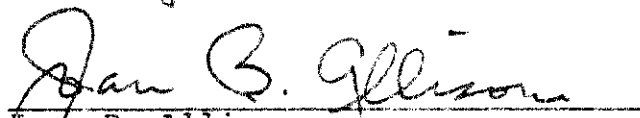
There is a strong presumption that the specified uses are permitted outright in this zone which can be overcome by a showing that the use does not serve the neighborhood and that it negatively impacts the neighborhood.

14. Any administrative problems arising from this section or the general scheme of the zoning ordinance must be rectified by amendment or other legislative revision. The Examiner is bound by the rules of statutory interpretation in reading the words of the ordinance and by an understanding of the scope and purpose of zoning laws in construing them as a whole in a reasonable manner.

Decisions

The appeal is DENIED and the decision of the Superintendent is AFFIRMED.

Entered this 10th day of September, 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, 18 Wn.App. 418 (1977).