

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

APPLE THEATER, INC.

FILE NO. S-80-023

from a determination of the  
Superintendent of Buildings

#### Introduction

Appellant, Apple Theater, Inc., appeals from an interpretation by the Superintendent of Buildings regarding the application of an adult motion picture theater for a variance from Section 5.33(d) for property at 1508 Boren Avenue.

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

Parties to the proceeding were: Appellant, represented by Charles Stixrud, attorney at law, and the Superintendent of Buildings, represented by Elizabeth A. Huneke, Assistant City Attorney.

This matter was heard before the Hearing Examiner on May 7, 1980.

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 subject property is a theater at 1508 Boren Avenue.
2. The zoning classification of the property is General Commercial (CG).
3. The use of the property as an adult motion picture theater was legally established.
4. On July 7, 1976, Section 18.7 was amended to prohibit adult motion picture theaters in the CG zone.
5. Section 5.33(d) was added June 27, 1976, and provides:

Adult Motion Picture Theaters which are nonconforming in the zone in which located shall be discontinued within 90 days of the date the use became or becomes nonconforming.

6. Section 28.3(a) states, in part:

...no variance shall be granted to permit the establishment of a use otherwise prohibited in the zone in which the property concerned is located, and applications for such variance shall not be accepted for filing.

7. Appellant desires to file an application for a variance from Section 18.7(b) and/or Section 5.33(d).

8. The Superintendent of Buildings determined that it cannot accept for filing an application for a variance to permit the establishment of a use otherwise prohibited in the zone.

#### Conclusions

1. A variance from Section 18.7(b) clearly would be contrary to Section 28.3(a) as a use variance.

2. The Council's intent in amending the ordinance to prohibit adult motion picture theaters in certain zones and to provide for the termination of those existing in 90 days is unmistakable. Such uses were intended to be illegal after 90 days. Therefore, any variance having the effect of continuing the use would be contrary to Section 28.3(a) and no application for variance for such use can be accepted.

#### Decision

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

Entered this 14<sup>th</sup> day of May 1980.

M. Margaret Klockars  
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Deputy 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).