

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MATT SUROWIECKI

FILE NO. S-81-024

from an interpretation of the
Director of the Department of
Construction and Land Use.

Introduction

Appellant seeks legalization of the operation of a business office in a detached unit containing one dwelling unit at 2312-23rd Avenue South.

The appellant exercised his right to appeal pursuant to Seattle Municipal Code, Section 24.10.030, as amended.

Parties to the proceeding were: Matt Surowiecki, pro se; the Director of the Department of Construction and Land Use (DCLU) by Bud Duffey.

The matter was heard before the Hearing Examiner on September 28, 1981.

For purposes of this decision all section numbers, unless otherwise indicated, refer to Title 24, Seattle Municipal Code, as amended.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions, and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant operates the Grabber Construction and Supply Company. The business address where the warehouse is located is 2215 Rainier Avenue South.

2. Appellant owns a single family dwelling located in the Single Family Residence High Density (RS 5000) zone roughly 200 ft. from the warehouse at 2312-23rd Avenue South. The legal description appears in the record and is incorporated herein by reference.

3. The basement of the single family dwelling is used as an office for the construction and supply company while the remainder of the dwelling is not used. No one resides at the 2312-23rd Avenue South address.

4. In general, the persons working in the basement office include the appellant, one full time employee and a part time employee.

5. August 14, 1981, the Director of DCLU issued an interpretation that the operation of

...a business office is not a permitted principal use in the RS 5000 zone; that a business office is only permitted in an RS 5000 zone when clearly accessory to the use of the site as a dwelling and when operated by persons residing at the site; and that, without a variance, employment of more than one (1) person is an accessory "home occupation", even on a temporary basis, is not permitted.

6. Appellant filed a timely appeal from that interpretation acknowledging that Section 24.16.050(J) stipulations of residency and on the number of employees were not met by his operation. However, appellant urged, when viewing the purpose of the zoning ordinance and the actual operation of his business - as opposed to other uses permitted, conditionally or out-right in the single family zone, such as commercial nurseries - his operation should be approved.

7. Specifically, appellant testified that the 2312 residence has no signs; does not have a large number of cars or people affiliated with the business; has the amenity of shrubbery; enjoys a very good relationship with the neighbors; and has no trucks such that the overall appearance is that of a home, and not a business. In addition, the property is located near certain commercial uses.

Conclusions

1. By the terms of the Seattle Municipal Code, the interpretation of the Director shall be given substantial weight. It is the appellant's burden to establish a position to the contrary. Section 24.10.070.

2. Appellant's sole, accordingly principal use of the subject RS 5000 zoned property is for a business office. The issue before the Examiner is whether said use under the circumstances in this case is permissible. We conclude it is not.

3. Uses not permitted in the RS 5000 or less intensive zones are prohibited. Section 24.20.110. Business office use is not a principal use permitted out-right in either the RS 5000 zone or the less intensive Single Family Medium Density (RS 7200) or Single Family Low Density (RS 9600) zones. Sections 24.20.010, 24.18.010, 24.16.010.

4. Nor is business office use in the RS 5000 zone permitted as a use contingent on City Council or Hearing Examiner approval. Sections 24.20.020; 24.20.030.

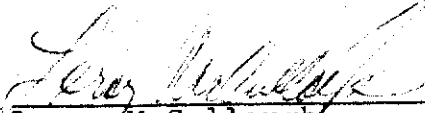
5. As appellant acknowledges, subject to specified conditions home occupations of a "resident person when clearly incidental to the use of the property for dwelling purposes" are permitted out-right in the RS 5000 and other residential zones. Section 24.20.040, reference 24.18.040, reference 24.16.050(J). Appellant also acknowledges that the proposed activity does not comply with either the residency requirement or with the limitation on the number of persons, non-residents of the subject dwelling, who may be employed in such a "home occupation". Appellant urges that the business office activity should nevertheless be authorized since, in contrast to commercial nurseries or other activities permitted in some circumstances in residential zones, the business office is practically and visually much less obtrusive.

6. However, in contrast to business office use, the Seattle Municipal Code specifically permits commercial nurseries in the RS 7200 zone pursuant to the provisions of the ordinance. Section 24.18.030(B). The determination of what uses are permitted in specific zones and under what circumstances is legislative. Based on the legislative provisions currently in effect, the Director's interpretation is affirmed.

Decision

The interpretation of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 7th day of October, 1981.



Leroy McCullough
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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.