

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

In the Matter of the Appeal of

JOHN HOGE and RICHARD BEYER

FILE NO. S-82-002

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

Introduction

Appellants, John Hoge and Richard Beyer, appeal the interpretation by the Director of the Department of Construction and Land Use (Director) applying the zoning code to property at 120 N.W. Canal Street.

The appellants exercised their right to appeal pursuant to the Seattle Municipal Code, Section 24.10.030, as amended.

This matter was heard before the Hearing Examiner on March 16, 1982.

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. Appellants requested an interpretation as to whether the zoning code would permit artist's studio/dwellings at 120 N.W. Canal Street in the shorelines district.

2. The Director issued his interpretation concluding that an artist's shop could be authorized but that the residential portion would not be permitted by the Seattle Shoreline Master Program. This appeal followed.

3. The subject lot is located in a General Industrial (IG) zone and is designated Urban Development (UD) under the Shoreline Master Program. It is upland from the ship canal and has no access to the water because of Canal Park which intervenes.

4. Appellants plan to establish artist's studios with domestic space for the artist on the site. Living accommodations for the artist are desirable from a economic standpoint and because the work may require continuous attention or attention at various stages which do not necessarily conform to normal scheduling of work. The studio use, as an industrial use, is not permitted in residential zones.

5. The subject lot is on a street on which the only uses are residences. The sales of residences in the area in the past few years has not resulted in any intensification of use. Nearby, other artists' studios, galleries and living spaces are being developed or proposed.

6. The underlying IG zone classification permits small industrial shops and, as a special exception, artist's studio/dwellings. Section 24.56.020 and 24.56.100. Except for caretaker quarters and the artist's studio/dwellings, dwelling units are prohibited in the IG zone.

7. In the UD environment the only clearly "residential" uses permitted are retirement and group homes but then only if permitted by the underlying zoning. Section 24.60.420.

8. The purpose of the UD environment is stated in Section 24.60.360.

The areas included in the UD environment are primarily those which are appropriate for commercial and industrial purposes. The intent of the designation is to provide for efficient utilization of such areas for water-dependent commerce and industry consistent with the Shoreline Management Act of 1981, as amended, and with other applicable regulations.

9. The subject site would not be appropriate for water-dependent commerce because of the inaccessability of the water.

10. The zoning code was recently amended to provide for artist's studio/dwelling units which are defined as:

"Artist's studio/dwelling" means a combination studio and dwelling unit for artist. An artist's dwelling unit consists of a room or suite of rooms on one or more floors designed for and including adequate working space reserved for the artist or artists residing therein. Section 24.08.020(12).

11. The Director has not determined if caretaker quarters are permitted in the UD environment. His representative indicated that caretaker quarters, as accessory to a water-dependent use, may possibly be permitted in the UD.

12. The Council, in amending the zoning code to provide for artist's studio/dwellings overlooked the Shoreline Master Program Regulations.

Conclusions

1. It does not appear that artist's studio/dwellings at the proposed location would be contrary to the purpose of the UD environment since water-dependent uses could not function at this location. Nor would such a use detract from the liveability of the street to the extent that permitted industrial uses would.

2. Merely being not in conflict with the purpose does not mean that the use can be permitted. The specific provisions of the code control unless ambiguous. Only then may the purpose be considered in construction of the provision to resolve the ambiguity. Permitted uses are listed in Section 24.60.420 and artist's studio/dwellings use is not among them. There is no ambiguity.

3. The proposed use fits squarely within the definition of an artist's studio/dwelling. While the proposed use may also fit in the caretaker quarters classification, the narrower legislative definition, where given and appropriate, must be used.


4. The indication by the Director's representative that the City Council overlooked the Shoreline Master Program when amendments for artist's studio/dwellings were made does not allow the examiner to give the use special consideration in the UD environment. A common rule of statutory construction, and followed by the courts of this state, is that they are not permitted to read into statutes things which they believe may have been left out unintentionally. State v. Basel, 28 Wn.App. 303, 623 P.2d 696 (1981). This rule has been followed even when the omission does not appear logical. See Thigpen v. City of Kent, 64 Wn.2d 823, 394 P.2d 686 (1964).

5. The remedies to the situation that appear to be available to appellants are the text amendments being considered by the Department or a rezone to change the classification of the environment.

Decision

For the above reasons, the decision of the Director is AFFIRMED.

Entered this 30th day of March, 1982.


M. Margaret Klockars
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 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.