

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

RICHARD J. MICHELA

FILE NO. S-79-027

from a determination of the
Superintendent of Buildings

The appeal is GRANTED and the Findings and Decision of
the Superintendent of Buildings are reversed.

Introduction

On September 17, 1979, Richard J. Michela filed an
appeal from the issuance of a use permit for property at
7227 - 31 Third Avenue N.W.

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, Richard
J. Michela; Superintendent of Buildings represented by Greg
Borba; and the applicant, James Schloredt, owner of the
building, and Bonnie Jensen, lessee and proprietress of the
second-hand store.

This matter was heard before the Hearing Examiner on
October 4, 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 subject property at 7227 - 31 Third Avenue
N.W., is zoned Single Family Residence High Density Zone (RS
5000).

2. Prior to 1957, the property's use was a grocery
store, and the property was zoned Business District Area C.
A grocery store was a permitted use in that zone.

3. The area was reclassified in 1957 to RS 5000 and
the grocery store continued in this location as a legal
nonconforming use up to 1969.

4. In 1969, John H. Schloredt purchased the building
and obtained a business license and second hand dealer's
license for this address. No use permit was applied for.

5. In November, 1970, a business license was issued
for "Unique Shop", a second hand store, at this location,
but no use permit was applied for.

6. The Superintendent of Buildings submitted copies of
other business licenses for this property issued to John
Schloredt, d/b/a S & E Sales for 1975, 1976, 1977, 1978 and
1979. Second-hand Dealer's licenses were issued 11/18/75,
5/11/76 and 10/9/78. No use permits were applied for through
this 10-year period.

7. The Zoning Ordinance, Section 25.2 states:

"It shall be unlawful for an owner to permit the establishment or change of use of any structures; buildings or premises, or any part thereof, until a use permit shall have been issued by the Superintendent."

Section 5.34(d) states:

"A nonconforming building or part which has been unoccupied continuously for one (1) year or more shall not be reoccupied except by a nonconforming use."

8. Pertinent definitions in the Zoning Code include:

Section 3.22 "U":

"Nonconforming use: A lawful use of land or structure in existence on the effective date of this Ordinance or at the time of any amendments thereto and which does not conform to the use regulations of the zone in which such use is located.

Section 3.03 "B":

A building or structure specifically designed or occupied for any use which is a nonconforming use and lawfully existing prior to the effective date of this Ordinance or the effective date of any amendment changing the zone classification of the land upon which such building or structure is located.

9. A second-hand store is a use excluded from the Neighborhood Business (BN) Zone, the least intense business zone equivalent to the designation of this property prior to 1957. Section 14.1(c) states:

Goods sold shall consist primarily of new merchandise, and all goods produced shall be sold at retail on the premises where produced.

10. The appellant presented evidence showing no regular retail operation at the premises, but rather a storage use or warehouse use for second-hand furniture for this ten-year period.

11. Evidence presented by long-time neighbors about the nature of the use was supported by the applicant, Mr. Schloredt, who testified that he did not have regular hours at the store, that he advertised his goods and met customers there and sold wholesale lots and some retail items from time to time. The merchandise was second hand.

12. The Superintendent argued that even though the use was unlawful, Section 5.34(d) protects a nonconforming status unless the building would have been unoccupied continuously for one year or more.

13. The Superintendent acknowledged that the policy of the Ordinance is to phase out nonconforming uses.

14. The facts of the current use developed as follows:

February 26, 1979 - letter from Mrs. Jensen to Building Department inquiring about opening a "second-hand merchandise business" at 7231 - Third Avenue N.W. and stating that the 10-year owner John Schloredt has been "unable to maintain the business, but his second-hand stock has been stored in the building."

March 12, 1979 - letter from Superintendent of Buildings to Mrs. Jensen advising her erroneously that a change of use in 1968 from the grocery store to a second-hand store would have been permitted, however, a permit was never obtained to change this use and advising her that she must apply for a use permit to "legally establish the use as a second-hand store."

May 30, 1979 - letter to Building Department from neighbor, Richard J. Michela, regarding the opening of Mrs. Jensen's second-hand store at 7227 - N.W. Third and complaining of its location in a neighborhood zoned for single family dwellings.

July 5, 1979 - letters to: (1) Mrs. Jensen ordering her to obtain a use permit or face criminal prosecution, and (2) Mr. Michela advising him of above action.

September 4, 1979 - letter to Mr. Michela advising him that the Department had published an intention to issue a use permit. "This determination was based on the fact that business licenses have been obtained from 1969 - 1979 to operate a second-hand store at this address, and several letters have been submitted which state there has been retail activity in this building during the past ten years."

15. The letters to the Superintendent in support of the applicant's allegation of continued retail use were scant and included a forgery and no neighbors testified in person to a continued retail use through ten years.

Conclusions

1. The change of use in 1969 from grocery store to second-hand store was unlawful since the code specifically directs "goods sold shall consist primarily of new merchandise, and all goods produced shall be sold at retail on the premises where produced."

2. No use permits were issued in the past 10 years for this property, so any use was unlawful pursuant to Section 25.2.

3. The evidence was conclusive that the primary use through the past 10 years was for storage of second-hand merchandise (unlawful in this zone) with occasional wholesale sales (unlawful in this zone) by appointment and retail sales by appointment. But all activity involved second-hand merchandise, an unlawful use in this zone.

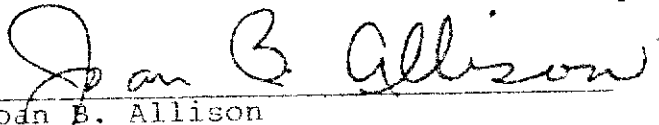
4. This single family residential zone is protected from unwarranted business activity by the policy of phasing out nonconforming uses and the Single Family Residential Policies.

5. There has been no lawful nonconforming use for ten years. Therefore, the structure has lost its legal nonconformity. Any use now must be a conforming use for the present zone.

Decision

The appeal is GRANTED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 15th day of October 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).