

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-80-015

from a determination of the
Superintendent of Buildings

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

Introduction

Concerned People of the Ravenna Neighborhood, appellant, appeal from certain portions of an interpretation by the Superintendent of Buildings regarding property at 6504 - 20th Avenue N.E.

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

This appeal was consolidated for hearing on May 5, 1980 with the appeal of Puget Consumers Coop, Inc. of another portion of the interpretation and continued for post hearing submittals to May 28, 1980.

Parties were represented at hearing as follows: Concerned People of the Ravenna Neighborhood by Robert W. McKisson, attorney at law; Puget Consumers Coop by Diane Dray Kenny, attorney at law; Superintendent of Buildings by Darcy C. Goodman, Assistant City Attorney.

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 located at 6504 - 20th Avenue N.W. and is occupied by a building used by Puget Consumers Coop (PCC) primarily for the retail sale of food with sale of some other non-food items.

2. Membership in PCC is, or exceeds, 18,000 persons, many of whom do not live in the surrounding neighborhood.

3. Section 14.21(b) permits outright the following uses in the BN zone:

Retail business and services serving primarily the residents of the neighborhood; such as, but not limited to, grocery, delicatessen, meat market, drug store, hardware store,

4. In an appeal of a use permit issued to PCC for the establishment of a variety store (S-79-012), the Hearing Examiner ruled that Section 14.21(b) is properly read to preclude "issuance of a use permit when the evidence proves the use would not serve primarily the residents of the neighborhood."

5. In an interpretation signed March 13, 1980, the Superintendent of Buildings concluded that no use permit was necessary since PCC continued the use (grocery store) which

had existed prior to 1957; that the interpretation followed by the Superintendent of Buildings at the time of the change to PCC ownership assumed that the specific uses listed in Section 14.21(b) had been found by the City Council to serve the neighborhood; and that applying the Hearing Examiner's decision retroactively would "produce hardship and injustice to PCC."

6. The parties agreed, at hearing, to the remanding of the issue of the legality of a shed on the north side of the principal building, for consideration by the Superintendent of Buildings of additional evidence in the form of testimony at the hearing and a photograph to be submitted later.

Conclusions

1. The enforcement of an ordinance provision which is subject to differing interpretations, one of which has been consistently followed by the official charged with the duty of enforcement since the inception of the ordinance, is distinct from the situation involved in Eastlake Community Council v. Roanoke Associates, Inc., 82 Wn.2d 475 (1973), relied upon by appellants Belt and Balch. That case involved renewal of permits without required plans and without satisfying the procedural requirements of laws passed after the expiration of the original permits.


2. Where there has been justifiable reliance on an overruled interpretation and the reliance interests would be defeated, the courts have applied the new interpretation prospectively only. Haines v. Anaconda Aluminum, 87 Wn.2d 28 (1976); Cascade Security Bank v. Butler, 88 Wn.2d 777 (1977).

3. PCC has justifiably relied on the Superintendent's long-standing interpretation of Section 14.21(b). The Hearing Examiner's interpretation in S-79-012 should not be applied retroactively to the subject grocery store use.

Decision

The appeal is DENIED and the Decision of the Superintendent of Buildings is AFFIRMED with respect to Section 14.21(b) and the issue regarding the legality of the shed has been remanded by agreement.

Entered this 15 day of June 1980.


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 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).