

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

FREMONT COMMUNITY COUNCIL

FILE NO. MUP-81-048(SE)  
APPLICATION NO. 81125-0011

from a decision of the Director of  
the Department of Construction and  
Land Use on a master use permit  
application

#### Introduction

Appellant filed an appeal from the decision of the Director of the Department of Construction and Land Use (DCLU) to grant a special exception to Christopher Webb for the establishment of artists' studio/dwelling units at 418-420 N. 35th Street in the General Industrial zone of Seattle.

Appellant exercised its right to appeal pursuant to the master use permit ordinance Chapter 24.84, Seattle Municipal Code.

Parties to the proceeding were: appellant by Bruce M. Blume, Bogle and Gates; applicant, pro se; and Department of Construction and Land Use (DCLU) by Carol Proud.

For purposes of this decision all section numbers refer to Title 24, Seattle Municipal Code, as amended (Ordinance 86300, as amended) unless otherwise indicated.

The matter was heard before the Hearing Examiner on October 2, 1981.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

#### Findings of Fact

1. The subject property is located in the General Industrial (IG) Zone in the Fremont area of Seattle one block north of the Lake Washington Ship Canal. Proceeding north-easterly is a General Commercial zone beyond which is multiple and single family residential zoning. Across the ship canal is a mixture of General Industrial, Manufacturing and General Commercial zoning.

2. The subject lot's width is 60 ft., also the dimension of its frontage on N. 35th Street. Lot depth is 100 ft. To the rear, north of the site, is a 16 ft. wide alley, then residential dwellings and a graphic arts business oriented away from the subject site.

3. The site is currently developed with two structures, one occupied as an artist's residence and the second by a wood finish manufacturer on the first floor and a caretaker's unit on the first floor.

4. The applicant purchased the subject property in 1975. He engages in the design and manufacture of furniture. He proposes to demolish the two existing structures and construct a single three story building containing a maximum of five artist's/dwelling units, retail space and a minimum of five first floor area parking spaces with access from the rear alley. DCLU approved the special exception application and an appeal was taken by the Fremont Community Council, appellant herein.

5. Appellant questioned the sufficiency of the notice provided to community businesses, and as well as the general process employed by DCLU in arriving at the subject decision. No prejudice was alleged, nor continuance requested. DCLU asserted compliance with code requirements and submitted into the record an affidavit of notice to property owners as required by the applicable Seattle Municipal Code provisions.

6. Representations in opposition to the application were pointed: Some opponents viewed the proposal as an affront to the existing "well planned" and "diminishing supply" of industrial zoned land. Appellant submitted a designated Department of Buildings information bulletin, (Exhibit 1) which purports to define zoning and building code technical requirements generally applicable to an artist's studio/dwelling. That document, dated May 5, 1980, includes language that it refers to a unit "that would be created without substantial rehabilitation." Others were concerned that by appellant's proposed construction, to be distinguished from rehabilitation of the existing dwellings, a negative precedent will be set such that other IG zoned properties might be pressured to yield to residential uses. Some opponents were of the opinion that as business owners paid for the vicinity street paving they should be able to use the street for the loading, unloading and parking of the commercial vehicles. By approving the application, the opposition continues, more residents, shoppers, and browsers would be attracted to the area, further impacting the heavily used vicinity streets and further detracting from the proper use of the zone. One witness pointed out that the Fremont area offers several more suitable and compatible locations for residential construction. The less stringent fire code for the unit was also an issue as was the potential of residents' complaint, litigious or otherwise, about noise or other industrial activity results that could potentially serve to hamper the area's proper industrial growth.

7. Representations in favor of the project were also direct. Proponents urged that the proposal would add to the health and vitality of an area that currently enjoys a unique mixture of residential and industrial use; that the proposal is preferred to a large warehouse, for example, that would be unoccupied during the evening hours; that the proposal is compatible and consistent with the subject area as well as with the well considered policy of allowing artists' studio/dwellings in the IG zone; that concerning parking and related issues the time for use of the proposed building would not necessarily conflict with the primarily day use of the local industry; further, that on-site parking will be provided. According to applicant trucks from a vicinity industrial center are in fact used in the applicant's business.

8. In their approval of the application, DCLU assessed that artists have been living in the vicinity for several years "without incident" or adverse impacts upon adjacent or surrounding properties.

9. The subject vicinity has a mix of industrial uses - machine shops, metal fabricator, brush and broom manufacturing establishments. Residential uses are also extant. An artist studio/workshop, sometimes used as a gallery, is located one block from the subject site. Single family residences are east and west adjacent to the subject site. A disposal company is across the street to the south.

10. A September 1, 1977, letter to the Seattle Planning Commission from the Department of Community Development (DCD), Director's Exhibit 4, capsulizes a study and recommendation regarding artists' studio/dwellings. After a review of the various restrictions on artists studios in the residential and other zones of the City of Seattle, the document stated that research by the Seattle Arts Commission staff and others found industry and art production uses to be, under certain circumstances, compatible. The letter concluded with a recommendation that the zoning ordinance be amended to, among other things, permit an artist's studio/dwelling as a special exception in the IG zone.

11. With regard to the action proposed in this application, a declaration of non-significance (DNS) has been prepared by the responsible official pursuant to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, and is part of the record. Regarding Land Use the environmental checklist noted that the proposal would not result in the alteration of the present or planned land use of the area. It further recognized that:

The addition of retail and studio space will create new parking demands but minimal in nature as the retail space is less than 2,500 sq. ft. The building is providing 9 off street parking sites.

#### Conclusions

1. The DCLU affidavit of notification reflects that written and posted notice was properly effected. Appellant's suggestion that the notice was insufficient or that other procedural irregularities tainted DCLU's decision have been considered by the Examiner. However, no prejudice was asserted or proved, nor a continuance requested. The Hearing Examiner rules that the process was not defective. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 24.84, Seattle Municipal Code.

2. Generally, the authorization of special exceptions is subject to the considerations of Section 24.74.010, i.e., the project must not be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located. Secondly, authorization of the project must be consistent with the spirit and purpose of the zoning provisions of the Seattle Municipal Code.

3. Section 24.74.027 provides that an artist's studio/dwelling may be allowed as a special exception in any M or I zone as specified in that code section. The authorization is by way of a revocable permit for a period of not more than two years renewable by the Director of Construction and Land Use upon a satisfactory showing to that Director that the occupant continues to be a bona fide working artist and further subject to the following:

- a. The nature of the artist's work shall be such that there is a genuine need for the space involved.
- B. The nature of the artist's work shall be similar to the type of uses permitted in the zone.

4. Appellant urges that the 1956 Comprehensive Zoning recognized industrial use as the highest and best use for the subject area and accordingly zoned it industrial; further, that a review of the code and historical department information reveals that the artist's studio/dwelling exception contemplated the use of pre-existing structures. Accordingly, appellant urges, approval of the subject application would violate the spirit and purpose of the zoning provisions.

5. Such a position, however, is not supported by the evidence of record. Appellant's designated Exhibit 1 could be read to suggest its reference only to a unit "that would be created without substantial rehabilitation". However, assuming that the document intended to only address existing structures, it is considered as evidence to be considered against the existence of specific zoning provisions that allow artist's studio/dwelling special exceptions in the I zone. Section 24.74.027 could have, but does not, include any prohibition against new construction. The 1977 DCD forerunner of the text change recognized that industrial uses could be compatible with art production.

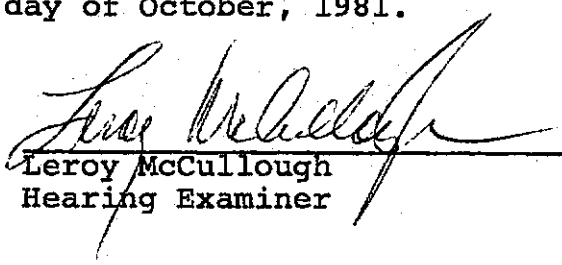
6. Although the proposal is for a new building the character of the current use of the property will be unchanged. The proposed use is consistent and compatible with vicinity development. Based on the proposal and the history and reading of the special exception provision at issue, we conclude that the special exception is consistent with the spirit, purpose and history of the zoning provisions of the Seattle Municipal Code.

7. Applicant's proposal also comports with the spirit and terms of Section 24.74.027. Applicant requires the large space. His artistry is similar in nature to the manufacture of his products and similar to some of the vicinity industry. Single family residences are east and west adjacent. Other residential dwellings are located in the immediate vicinity. An artist's studio/workshop sometimes used as a gallery is located one block from the subject site. Off-street parking and a maximum of five studio/dwelling units are proposed. Some hours of use may complement the hours of industrial activities. To the extent the hours of use do not, the added traffic may be considered a negative factor insofar as the appellant desires more availability of the street for more industrial use. However, "material detriment" is not presented by this item nor by the potential of complaints leveled by area residents. The issue of fire safety is more properly a matter of code compliance. The land use pattern will not be affected. We conclude that the proposed use will not be materially detrimental to the public welfare nor injurious to properties in the subject zone or vicinity.

#### Decision

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

Entered this 16th 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.