

## FINDINGS AND DECISION

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

In the Matter of the Appeal of

MORRIS H. PIXLEY

FILE NO S-76-027

from a decision of the Superintendent  
of Buildings

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

#### Introduction

The appellant, Morris H. Pixley, filed an appeal from a decision of the Superintendent of Buildings to issue a use permit for the construction of a single-family residence to be used as a group home on property located at 9523 15th Avenue N.W. The appellant contends that the proposed use does not qualify as a single-family residence and that the application for a use permit should therefore have been denied.

The appellant exercised his right to appeal pursuant to Section 25.40, Ordinance 86300, as amended by Ordinance 104795.

This matter was heard before the Hearing Examiner on November 17, 1976.

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. United Friends Group Home (hereinafter permittee) applied on September 2, 1976, for a use permit for the construction of a single-family residence to be used as a group home on the subject property. On October 5, 1976, the Superintendent of Buildings (hereinafter Superintendent) published notice of the decision to grant the requested use permit. The appellant filed the instant appeal with the Office of Hearing Examiner on October 15, 1976.

2. The subject property is located at 9523 15th Avenue N.W. The property has a width of 74 feet and an approximate depth of 182 feet for a total lot area of 13,491 square feet. The property is generally larger than most in the immediate vicinity, although the property abutting immediately to the south is somewhat larger in size.

3. The subject property is located in a Single Family Residence Medium Density (RS 7200) Zone which, pursuant to Sections 26.14.010 and 26.12.010(a), Seattle Code, permit outright the construction and use of single-family dwellings.

4. The permittee intends to use the proposed structure as a residence for 8 persons, 6 of whom are developmentally disabled. Persons who are developmentally disabled are defined as those who have a substantial disability or handicap which prevents them from functioning independently. Examples are those persons who are afflicted with retardation, cerebral palsy, epilepsy, deafness or blindness. The two remaining residents will be supervising persons who will serve as quasi-parents. All residents will be of legal adult age and

the disabled residents will foreseeably be the offspring of the directors of the permittee, which is a non-profit corporation.

5. The proposed structure will comply with all bulk provisions of the zoning code with respect to height, setbacks, and lot coverage. The structure could in fact be larger than is proposed since its lot coverage is somewhat less than the maximum permitted by the code. Separate bedrooms will be provided for all residents and there will be only one kitchen facility within the proposed structure.

6. No medical treatment, counseling, rehabilitation, group therapy or other similar services will be provided for the residents on the site. All such services will be available to the residents only at other locations such as at hospitals or clinics. The disabled residents will be employed at locations outside of the immediate neighborhood or will receive vocational training at an appropriate institution of learning. The disabled residents will travel to their place of employment or training by means of public transportation or will be driven via private vehicle.

7. The proposed use will be of a non-transient nature in that the disabled residents will reside at the subject location for an indefinite period. The proposed use is not a temporary stopping place for persons who are receiving rehabilitation or social readjustment processing but are rather persons who are developmentally disabled and require a place of residence. Evidence in the record indicates that the turnover rate for similar group homes in Seattle is very slight.

8. The Superintendent has issued use permits for three group homes of a nature very similar to that of the use proposed herein for locations within the city of Seattle. All locations are within single-family residential zones and all were determined by the Superintendent to be single-family dwellings. The first such permit was issued in 1970 with the two subsequent ones being issued in 1973.

9. The purpose of single-family residential zones, pursuant to Section 26.02.040, Seattle Code, is to promote and protect various densities and the uniformity of development within each zone classification.

10. The purpose of multiple-family residential zones, pursuant to Section 26.02.060, Seattle Code, is to provide zone classifications that permit the development of apartment houses and other group living.

11. A family is defined, pursuant to Section 26.06.070, Seattle Code, as:

Any number of related persons, or not to exceed eight non-related persons, or not to exceed a total of eight related and non-related, nontransient persons living as a single, nonprofit housekeeping unit as distinguished from a group occupying a club; boarding, lodging, or rooming house; fraternity, sorority, or group student house.

12. A multiple dwelling or apartment house is defined, pursuant to Section 26.06.050, Seattle Code, as a "building or portion thereof containing three or more dwelling units".

13. A dwelling unit is defined, pursuant to Section 26.06.050, Seattle Code, as "a room or a suite of two or more rooms that is designed for and not occupied by more than one family doing its own cooking therein and having only one kitchen facility located within a building".

14. A halfway house is defined pursuant to Section 26.06.090, Seattle Code, as:

An establishment operated with full-time supervision for housing resident persons who, by reason of their condition and circumstances, require a period of time for rehabilitation and social readjustment. Services provided shall be limited to counseling, vocational guidance, training, group therapy and similar activities. No medical treatment other than that for minor illness or injury shall be provided. A drug or alcohol detoxification center, mental or penal institution shall not be construed to be included in this definition.

A halfway house is permitted in an RS 7200 zone only if conditional use authorization is received.

15. A boarding, lodging, or rooming house is defined, pursuant to Section 26.06.030, Seattle Code, as "a building, other than a hotel, where meals and/or room or lodging are provided for compensation for seven or more non-transient persons". Such a use is not permitted in an RS 7200 zone and is first permitted in an RM 800 (multiple family) zone.

16. A children's resident home is defined, pursuant to Section 26.06.040, Seattle Code, as "a dwelling unit occupied by a family which provides full-time supervision for from 7 to 12 children unrelated to the resident family". A children's resident home is permitted in an RS 7200 zone as a conditional use.

17. Appeals concerning environmental determinations made pursuant to the State Environmental Policy Act (SEPA) (RCW 43.21C) may be filed with the Hearing Examiner in conformance with procedures set forth in Section 20, Ordinance 105735. The instant appeal has not been filed in pursuance of the aforementioned ordinance and the required procedures for such an appeal have not therefore been followed. The construction of a single-family residence is categorically exempted from the threshold determination procedures of SEPA, pursuant to WAC 197-10-170(1)(a).

### Conclusions

1. Pursuant to Section 25.44 of Ordinance 86300, as amended by Ordinance 104795, the decision of the Superintendent is to be regarded as prima facie correct and the burden of proof is on the appellant. When a decision is by statute to be regarded as prima facie correct, it means that there is a presumption on appeal that the decision is correct unless it can be found from a preponderance of the evidence that the decision is in error. Allison vs. Department of Labor and Industries, 66 Wn.2d 263, 401 P.2d 982 (1965). The appellant has not met the burden of proof and has not presented any credible evidence that would establish that the decision of the Superintendent is incorrect.

2. The Superintendent has properly determined that the residents of the group home will be a single family and the use to which the proposed structure will be put will be that of a single-family residence. In that a single-family residence is permitted outright in an RS 7200 zone, the Superintendent properly determined that a use permit shall be issued to the permittee. Courts have determined in cases similar to the instant one that a group home set up in theory, size, appearance and structure to resemble a family unit fits within the definition of a family for purposes of a zoning ordinance. City of White Plains vs. Ferraioli, 34 N.Y. 2d 300, 313 N.E. 2d 756 (1974). It is not required that the residents of the proposed group home be biologically related, in that the Seattle Zoning Code specifically provides

that up to eight unrelated persons may be considered a family. Further the proposed use satisfies the test set forth by the court in the White Plains case, supra, that there by a group headed by a householder caring for a reasonable number of children as one would be likely to find in a biologically unitary family.

3. The proposed use is not an apartment house due to the fact that only one dwelling unit is involved. The residents of the home qualify as a family and there will be only one kitchen facility within the structure. The number of bedrooms or bathrooms in the proposed structure is not relevant to a consideration of the number of dwelling units within the structure as argued by the appellant, since these rooms are not a part of the definition of a dwelling unit. If the Superintendent were to consider the number of bedrooms in a structure as a determining factor of the number of dwelling units in that structure, the Superintendent would be arbitrarily expanding upon the definition of a dwelling unit and that interpretation would, in fact, render many large residences in this city improper uses in their single-family zones. Since a structure must contain three or more dwelling units to be classified as a multiple dwelling or apartment house, the proposed group home cannot properly be considered to be such a use.

4. The group home that is proposed by the permittee does not fit within the definition of a halfway house and conditional use approval is therefore not required. The proposed use is of a nontransient nature and will not provide any of the services on the subject property that are identified in the aforementioned definition of a halfway house. It is clear that the group home does not have any of the indicia of an institution and its intent and purpose is to avoid all resemblance in appearance and substance to an institution.

5. The proposed group home does not fit within the definition of a boarding, lodging, or rooming house in that no compensation is involved for the room and board. The use, additionally, does not qualify as a children's residence home since all of the developmentally disabled residents will be the legal adult age and there will only six 6 of these residents. Consequently, no conditional use authorization is required.

6. The spirit and purpose of the single-family residential zones is not violated by the location of the proposed use in an RS 7200 zone. The purpose of the single family and multiple family residential zones is set forth at an early stage in the zoning code and are broad statements that are more fully developed by specific zoning code provisions. The Superintendent has properly interpreted and applied these specific provisions of the zoning code. It is clear that the legislative authority for the city intended that any single family shall be permitted to reside in a single-family residential zone. As stated by the court in the case of Little Neck Community Association vs. Working Organization or Retarded Children, 383 N.Y.S. 2d 364 (1976), a group home of retarded persons will not in and of itself alter the quality of life or the character of a neighborhood, which a single-family residential zone is specifically designed to protect and enhance. The court in the Little Neck case, supra, specifically found that a group home for mentally retarded children constituted a family for the purposes of a zoning ordinance and that there was no violation of the spirit and purpose of that ordinance. There are no factors in the instant case to reasonably distinguish this situation from that involved in the Little Neck case, supra.

7. The appellant and several others residing in the vicinity of the subject property have raised several factors which they feel the Superintendent should have taken into consideration in determining whether the proposed use is a

proper one in an RS 7200 zone. They question whether the proposed structure is architecturally compatible with other structures in the vicinity due to the size of the building and the number of bedrooms and bathrooms, in addition to the fact that the structure will be more expensive than other residences in the vicinity. The marketability of the structure, should the group home leave the property some time in the future, and also the social compatibility of the residents of the group home with other residents in the neighborhood is also questioned. All of the aforementioned factors are not regulated by the Seattle Zoning Code, since the municipal government does not dictate to property owners the number or type of rooms to be located in a residence, nor that all residences should be of a certain architectural design or all have similar characteristics. These factors, in addition to whether a structure will be subsequently marketable, are properly left to the discretion of individual property owners. Similarly, social compatibility of the residents within a neighborhood is not a factor that the zoning code is properly concerned with and the Superintendent cannot lawfully discriminate against the residents of the proposed group home on the basis that they are developmentally disabled.

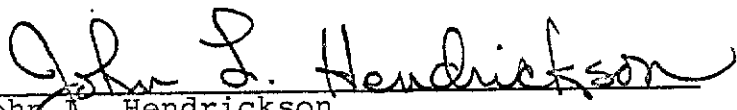
8. The Superintendent, and Hearing Examiner on appeal, are concerned only with a permit applicant's compliance with the zoning code and cannot enter into questions of legislative policy, since this would invite discretion and potentially lead to violations of the equal protection of the laws. State ex. rel. Ogden vs. Bellevue 45 Wn. 2d 492, 275 P. 2d 899 (1954), and Eastlake Community Council vs. Roanoke Associates, Inc. 82 Wn. 2d 475, 513 P. 2d 36 (1973). If the appellant and others residing in the vicinity are dissatisfied with the zoning code provisions as they exist, the code can be changed only by means of ordinance approved by the Seattle City Council. The Superintendent, or Hearing Examiner on appeal, has no legislative authority to alter or modify the zoning code.

9. The Hearing Examiner has no jurisdiction in this case to render a decision on whether the provisions of SEPA have been complied with, since the appellant has failed to properly file an appeal in accordance with the ordinance which created an appeal procedure. Additionally, since the proposed structure and use will be a single-family residence the proposal would be categorically exempted from the threshold procedures required by SEPA.

#### Decision

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

Entered this 24<sup>th</sup> day of November, 1976.

  
John L. Hendrickson  
Deputy Hearing Examiner

#### Notice of Right to Appeal

The decision of the Hearing Examiner in this case is the final administrative determination. Any appeal must be made to the courts. Section 12, Ordinance 102228, the Administrative Code, sets forth the procedure for staying enforcement of an administrative order or decision pending judicial review.