

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

JEAN JONGEWARD

FILE NO. MUP-81-055(V)
APPLICATION NO. 81170-0134

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

Introduction

The appellant exercised her right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant by Stanley N. Kasperson, attorney at law; Department of Construction and Land Use (DCLU) by Kermit Robinson.

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

This matter was heard before the Hearing Examiner on October 12, 1981. At the request of the appellant the record was left open for submission of supporting memoranda and DCLU reply to October 13, and October 14, respectively.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. Appellant, Jean Jongeward, is an interior designer. Approximately five years ago she removed her business from the Pioneer Square area of Seattle to the present location, her residence of 119 Tower Place. By this appeal appellant is seeking to reverse the DCLU decision that denied variance relief which would have allowed appellant to employ more than one non-resident person at the appellant's place of business.

2. The subject property is located in the Single Family Residence High Density (RS 5000) zone. The 7,100 sq. ft. area lot is developed with a two story, single family dwelling and a detached two car garage located in front of the dwelling in the northeast corner of the lot. The subject vicinity is marked by primarily single family residential development. The single family homes are all, according to one neighborhood resident, "expensive".

3. Tower Place is a short, narrow, dead-end street which has a north-south and an east-west segment. The east-west segment provides access to appellant's lot. Tower Place itself serves as access to a total of four lots. Warren Avenue North is east of the property and also runs in a north-south direction. Accordingly, the residence located on the west side of Warren Avenue at 1227 Warren Avenue North is, in relation to appellant's property, the east adjacent residence with a rear that abuts the appellant's property.

4. In her home occupation, appellant employs an interior designer, a non-resident of the subject dwelling. In addition, appellant would like to employ a second non-resident employee, a part-time bookkeeper. Appellant proposes that this person work 9:00 a.m. to 5:00 p.m. a maximum of four days per week. The bookkeeper would park on Lee Street, north, or some other location away from the appellant's property so as not to impact the parking circumstances on or around the appellant's lot.

5. In general, appellant visits her customers' homes or offices to conduct her business. The evidence, however, was persuasive that some business deliveries are made to the appellant's residence, sometimes after an improper stop at a neighboring residence. The evidence further showed that traffic activity, at least two cars per day, is generated by the appellant's dwelling/business. Neighbors' general concerns were with the "constant activity" generated by the clients and their vehicles; their impact on the vicinity's limited parking and safety of the children; and on the attendant decline in the nature and character of the single family neighborhood. The dwelling itself shows no outward physical sign of its business.

6. One neighbor testifying in support felt that the Jongeward-related traffic was nothing extraordinary, and further that daytime occupancy of the residence was an asset.

7. There have been no similar variances granted in the vicinity.

8. With regard to the State Environmental Policy Act of 1971 (SEPA) and Ordinance 105735, as amended, Chapter 25.04, Seattle Municipal Code, the action proposed in this subject application has been determined by the responsible official to be categorically exempt pursuant to the provisions of WAC 197-10-170.

Conclusions

1. Section 24.16.050, Seattle Municipal Code, permits home occupations of a resident person under specified conditions. The criteria are applicable to the RS 5000 zone.

2. Appellant requests variance relief from the conditions found in Section 24.16.050(J)(4) which provision restricts the number of nonresident employees to one person.

3. Variance criteria are found at Section 24.74.030, Seattle Municipal Code. Based on those criteria the variance in this instance should be denied.

4. It was not alleged or proved that by reason of size, shape, physical separation, or other real property characteristics that the appellant was deprived of development privileges enjoyed by others in the subject zone or vicinity. Inasmuch as no similar variances have been granted the requested relief would serve as a inconsistent grant of special privilege to applicant.

5. The purpose of the Seattle Municipal Code limitation on single family residential home occupations was to basically limit the business intensity; accordingly, allowing the requested variance would, without the necessary showing of real property hardship, prove detrimental to the public welfare by frustrating that purpose.

6. To the degree that the appellant is confronted with a hardship of electing to remove the business or to remove that additional (bookkeeping) aspect of the business to another facility, the hardship is personal. Seattle Municipal Code provisions require variance sustaining hardships to be property related. Because of the direct mandate of these provisions the case cited by appellant of City of Harrison v. Wilson, 453 S.W.2d 730 (1970) is less persuasive.

Decision

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

Entered this 27th 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.