

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

KIRO, INC., LEO A. DALY, AGENT

File No. S-78-019

from a ruling of the Superintendent
of Buildings

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

Introduction

Leo A. Daly, on behalf of KIRO, Inc., appellant, filed an appeal from an interpretation of the Zoning Ordinance by the Superintendent of Buildings as it applies to a proposed transmitter building to be located at 1516-20 Queen Anne Avenue North.

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

This matter was heard before the Hearing Examiner on August 8, 1978.

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. KIRO proposed to construct a new building housing its transmitter on its property at 1516-20 Queen Anne Avenue North which is currently occupied by its transmitter tower.
2. In a written interpretation dated July 21, 1978, the Superintendent of Buildings determined that the proposed transmitter building should be classified as a radio or television studio and as such must be 100 feet or more from a lot in an R zone.
3. KIRO filed its notice of appeal from this interpretation July 28, 1978. It urges that a TV transmitter function is substantially different from a studio function and therefore should not be classed as such.
4. A TV studio is the place where a TV program originates which houses the functions necessary for the actual filming of a show, processing and business functions. The live or taped program goes from the KIRO studio at Third and Broad to a rooftop antenna, via coaxial cable and a 1/10 watt transmitter to be beamed to the transmitting tower and transmitter. The transmitter is currently housed in the basement of the Community Services for the Blind building which is on property immediately adjacent to the subject property. The staff of the KIRO studio is approximately 250 people.
5. The transmitter building would be a 40 by 50 foot building, between 12 and 14 feet in height, which would house the transmitter and auxiliary equipment. The 1/10th watt signal from the studio is fed to the transmitter which amplifies the signal and then feeds it via a large coaxial cable to the antenna. Most of the function is automatic, however, one person would be on duty during the normal work week.
6. The transmitter and antenna on the tower must be physically close to each other.

7. The Superintendent determined that the term "radio or television studio", as used in the zoning ordinance, includes the transmitter function contemplated; that a transmitter, as an accessory use to a studio, cannot be located on a site other than a studio site; and that if it is, it is then deemed the principal use and therefore must be 100 feet from a lot in an R zone.

8. The transmitter building could be placed on the subject property in such a way as to be in conformance with the setback restriction. This siting would be undesirable both aesthetically and from a security standpoint.

9. The subject property is in a Community Business (BC) zone. Section 15.21, Ordinance 86300, as amended, includes in its listing of principal uses permitted outright in a BC zone, (f) Radio or television studio, subject to conditions that the principal building shall be located 100 feet or more from any lot in an R zone and that any transmitting tower on the lot shall conform to Section 22.22(a). Accessory uses customarily incidental to a principal use permitted outright are also permitted outright. Section 15.41(a).

10. At the time of the passage of Ordinance 86300, most stations had remote studios and transmitter buildings next to the antenna tower. Now, the broadcasting studio is usually in a separate location.

11. KIRO's property with the building housing the studio function has no tower. The tower on the subject property was, in 1957, accessory to a principal building.

Conclusions

1. The scheme of the zoning ordinance is, in general, that if a use is not listed it is not permitted in that zone. The Superintendent is then forced to attempt to find a classification for all uses. Here the Superintendent has classified the transmitter use as a studio for want of a category which more accurately defines the function.

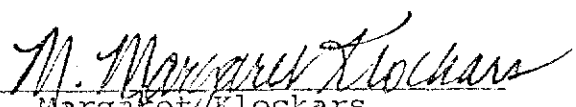
2. Since the studio and transmitter functions were geographically separated at the time of the drafting of the ordinance but only one category, that of radio or TV studio, was provided, the intent of the Council must be considered to have been to treat both as a studio unless one assumes omission in the failure to separately provide for the transmitter use.

3. The need for the 100 foot setback for the actual studio function would seem much more apparent, given the activity and noise which might be associated with 250 persons producing a broadcast, than for the transmitter functions which is largely mechanical and emits no noise. A review of permitted uses in the ordinance did not result however, in finding any classification which more closely matched the function. A new classification would be needed, therefore, if the use were not to be classed as a "studio", which would require Council action on an amendment to the ordinance.

Decision

Therefore, finding no other existing fitting classification, the appeal must be dismissed.

Entered this 18th day of August 1978.


M. Margaret Klockars
Deputy Hearing Examiner

Notice of Appeal

The decision of the Hearing Examiner in this case is the final administrative determination and any further appeal must be made to the courts.