

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

SECOND CHANCE, INC.

FILE NO. S-79-025

from a determination of the
Superintendent of Buildings

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

Introduction

The appellant, Second Chance, Inc., filed an appeal challenging a written interpretation of the Superintendent of Buildings (Superintendent) relating to property at 1421 Minor Avenue.

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

Parties to the proceeding were: the appellant, represented by Jack J. Ackerman, and the Superintendent, represented by Joyce Kling.

This matter was heard before the Hearing Examiner on September 27, 1979.

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. Second Chance, Inc. contracts with the State of Washington to provide work-release programs for persons from State institutions.

2. Second Chance, Inc. operates its program for 100 persons from a six-story building at 1421 Minor Avenue, that was formerly used as a nursing home. The property is zoned Multiple Residence Highest Density Variable Height (RMV 150).

3. An application was filed by Second Chance, Inc. to establish the use as a "halfway house" and for a variance to permit 100 residents instead of 20 or 30. A conditional use is required for a "halfway house" in the RMV 150 zone (Sections 13B.22 and 12.22(f)).

4. In an interpretation, dated August 27, 1979, the Superintendent held that the work-release program operated by Second Chance, Inc. came within the zoning code definition of "work-release center" and did not come within the definition of "halfway house". The Superintendent also held that the requested variance was a use variance which is prohibited by Section 28.3(a). The appellant filed a timely appeal.

5. Section 3.24 defines "work-release center" as: "An establishment other than a jail operated with full-time supervision, housing 20 or more resident persons who are on a pre-release, work-release or probationary status and employed or enrolled in a supervised education/training program."

Under Section 17.31, a "work-release center" is first permitted in the CM zone, which is more intensive than the RMV 150 zone, and then only under specified conditions.

Section 3.09 defines "halfway house" as: "An establishment operated with full-time supervision for housing resident persons who, by reason of their mental or physical disability, addiction to drugs or alcohol, or family and social adjustment problems, require a transitional non-medical treatment program for rehabilitation and social readjustment....Programs providing alternatives to imprisonment, including pre-release, work-release and probationary programs which are under the supervision of a court, state or local agency, are included within this definition."

Under Section 12.22(f) a "halfway house" cannot have more than 30 persons in residence. A conditional use is required for the location of a "halfway house" in the RMV 150 zone pursuant to Section 13B.22.

Section 28.3(a) provides in part: "No variance shall be granted to permit the establishment of a use otherwise prohibited in the zone in which the property concerned is located, and applications for such variance shall not be accepted for filing."

Conclusions

1. Work-release programs are permitted in a "halfway house" and a "work-release center". The primary means of distinguishing between the two types of programs is the number of residents. The plain meaning of the ordinance language is that a use involving 100 residents comes within the definition of "work-release center", which allows for 20 or more residents, as opposed to a "halfway house", which allows for a total of 30 residents.

2. Since a "work-release center" can be a large institutional use, depending on the number of residents, it is only permitted in the more intensive zones starting with the CM zone. A "work-release center" is not permitted in the RMV 150 Zone and the appellant is apparently attempting to avoid this restriction by claiming that the use qualifies as a "halfway house".

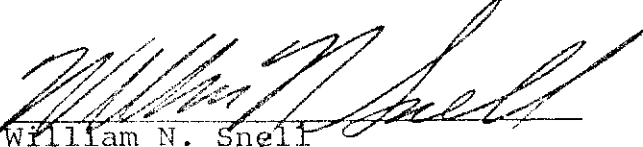
3. Since a "halfway house" permits a maximum of 30 residents and a "work-release center" 20 or more residents, there may appear to be some conflict with regard to the ordinance provisions. It is a general rule of statutory construction that where statutes are in conflict the last one enacted prevails as being the latest expression of legislative intent. In applying this rule of statutory construction, any conflict is resolved since the "work-release center" provisions were the most recently adopted provisions.

4. A variance to permit up to 100 residents cannot be accepted for filing. The use as proposed is a "work-release center" and not a "halfway house". A variance to increase the number of residents under these circumstances would amount to a use variance which is prohibited by Section 28.3(a).

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Building are affirmed.

Entered this 10th day of October 1979.


William N. Snell
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, 19 Wn. App. 418 (1977).