

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

DAVID BESSETTE

FILE NO. S-80-018

from a determination of the
Superintendent of Buildings

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

Introduction

The appellant, David Bessette, filed an appeal of the Superintendent of Building's decision to issue a use permit for a woodworking shop as a nonconforming use at 1829 Queen Anne Avenue North.

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

Parties to the proceeding were: Appellant, John Lee Ryan, Sr., permittee and the Superintendent of Buildings represented by Greg Borba.

This matter was heard before the Hearing Examiner on April 24, 1980.

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. The subject property is a lot developed with a residence and a 20 by 29 ft. building in the rear yard at 1829 Queen Anne Avenue North in a Multiple Residence Low Density (RM 800) Zone.
2. John Lee Ryan, Sr., permittee, applied for a use permit to legally establish a woodworking shop as a nonconforming use on the subject property. The Superintendent of Buildings published his intention to issue the permit April 1, 1980. Appellant filed his appeal April 4, 1980.
3. A business under the name of A and A Glass Company had operated out of the shop until 1969 according to business license records and the Polk Directory. The business was a permitted use and established under an earlier zoning of the area - Business District, Area District C.
4. When the present Zoning Ordinance was adopted in 1957 the property was zoned RM 800. A custom glass shop (or glass manufacturing) is not a permitted use in the RM 800 zone.
5. No business license was issued for the property after 1969 except one in 1979 to Gail Sausser, presumably a tenant in the residential building.
6. Mr. Klineland purchased the property in 1947 and founded A and A Glass Co. after that. Mr. Knoll worked with the owner in the glass company and did custom cabinet work as well. A and A Glass Co. was sold to permittee who continued the business but phased out the glasswork. Business licenses

were not obtained because of Mr. Knoll's belief that they were not required.

7. Mr. Knoll used the shop in his remodelling of the residential structure on the lot and for his business, Carl's Specialties, in which he did woodworking and electronics work. He was engaged in an auto repair business in White Center for approximately two years during his ownership of the property.

8. The permittee purchased the property in 1976 from Carl and Lucinda Knoll.

9. Permittee began remodelling the residential structure on the lot for which he used the shop in October, 1976. Mr. Knoll remained as a tenant of permittee and his tools - saws, benches, joiners, drill presses, etc. - remained in the shop. Permittee moved his tools in when Mr. Knoll's were moved out.

10. Permittee's tools are generally less powerful than were Mr. Knoll's. Permittee uses the shop to store and use lightweight tools. He makes cabinets, doors, outdoor furniture, special windows, etc. He has no "employees" but is helped by his sons and allows others to use his shop.

11. The delivery of lumber and pick up of large cabinets causes congestion in the alley on occasion. Noise from the operation of machines has disturbed neighbors, including appellant.

12. Appellant observed Mrs. Knoll using the shop as a greenhouse or garden shed and had not seen continuous business activity.

Conclusions

1. A nonconforming use may be changed to a use permitted in a less intensive zone or to another use listed and grouped in the same zone classification as an outright permitted use if it will be no more detrimental or injurious to other property than the previous nonconforming use, according to Section 5.34(e).

2. Section 5.34(d) provides that if the building is unoccupied continuously for one year then only a conforming use may reoccupy it.

3. Tools of the business have been stored there at all times and woodworking activity has occurred intermittently. Appellant has not proved that the building has been "unoccupied" by the use continuously for any one year period.

4. The regulation of woodworking, electronics and glass manufacturing all occurs in the same zone classification. Sections 17A.23(d) and 19.22(e) list and group them all as outright permitted uses in the CMT zone. Therefore, woodworking could be substituted for glass manufacturing as long as it is not more detrimental.

5. Evidence shows that the woodworking operation under the permittee is more detrimental than under the former owner's operation. No comparison to the glass manufacturing was made. Without a showing that it is more detrimental than the glass business, the burden of proof has not been met and the Superintendent's decision cannot be overturned.

Decision

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

Entered this 12th day of May 1980.

M. Margaret Klockars
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Deputy 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, 18 Wn.App. 418 (1977).