

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

LENNY BOOZE

FILE NO. S-80-050

from a determination of the Director,
Department of Construction and Land Use

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

Introduction

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

Parties to the proceeding were: the appellant, Lenny Booze, and the Department of Construction and Land Use, represented by Greg Borba.

The matter was heard before the Hearing Examiner on November 4, 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 located in a Single Family Residence High Density (RS 5000) Zone at 8801-16th Avenue S.W. Prior to this current zoning designation the property was classified as permitting only single family dwellings from 1923 to 1957 (RIA).

2. The property consists of a building which has a single family dwelling unit toward its rear. The building was occupied by a grocery store from approximately 1939 until 1978.

3. In approximately 1978 the appellant began renting the property and using it as a woodworking shop. He moved in the living area in approximately May, 1980.

4. The appellant's customers are primarily by a referral basis. No merchandise is displayed for sale. The appellant purchases handpicked material and works alone in this trade 8 to 10 hours per day. Some of his products include chairs, dressers, beds and recently a jewelry case. At present 20% of the floor area of the entire structure is used as a residence while the remaining 80% is designated as a shop area. Appellant's tools, 2 horse power or less, are stored in the shop area. In addition the shop area is used for the construction and assembly of the products.

5. The issue of the use permit surfaced following a routine inspection by the Seattle Fire Department. Entered into evidence was a designated petition of neighbors approving of the business. The Director denied the use permit and the appellant brought this appeal.

Conclusions

1. Retail businesses and services serving primarily the residents of the neighborhood, such as grocery stores, are initially permitted in the Neighborhood Business (BN) Zone. Section 14.21(b). Custom manufacture for sale at retail on the premises of articles or merchandise from wood is initially permitted in the Metropolitan Business (BM) Zone. Section 16.23. Both zones are more intense than the single family zone designation of the subject property. The grocery store use is accordingly considered as a prior nonconforming use.

2. Section 5.34 of the ordinance, limitations on nonconforming uses, provides that:

In any zone, except an M or I Zone, a nonconforming use in a nonconforming building, may be changed to a use permitted in a less intensive zone than the zone in which the nonconforming use would be conforming, or to another use which is listed and grouped in the same zone classification as an outright permitted use, provided such new use will be no more detrimental or injurious than the previous nonconforming use to other property in the same zone or vicinity.

The nonconforming grocery store use would be conforming in a BN Zone. Thus, its nonconforming use may be changed to a use permitted in a zone less intensive than a BN Zone so long as the new use will be no more detrimental or injurious. The BM Zone in which woodworking shops, i.e. custom manufacturing uses, are allowed, is more intensive than the BN Zone. Accordingly, the approval of the change to a woodworking shop may not rest on this section of the code.


3. Further, based on the present arrangement of the living area and workshop area the woodworking shop use may not be considered as an approved home occupation. Reference Section 6.31(j) of the ordinance provides that home occupations of the resident person, when clearly incidental to the use of the property for dwelling purposes and subject to conditions are permitted as accessory uses in the subject zone. In general, a home occupation will be permitted in a residential district only if it is subordinate to the residential use of the property. Anderson, American Law of Zoning, 2nd, Section 13.02. Some zoning ordinances provide that a home occupation may not occupy more than a specified part of a dwelling in a residential district, ranging from 20% of the gross floor area to one-third of the gross floor area. Op. cit. Section 13.26.

4. Although clearly not the typical family residence with a den or other room set aside for a home occupation, it would appear that the subject property could, under proper circumstances, qualify pursuant to this section. However, under the circumstances of this case we conclude that the dwelling by the appellant is subordinate to the use of the property for business purposes. A major factor is the ratio of living to shop area. The requirement of a more proportionate residential use of the floor area is reasonable in view of the fact that the subject property lies in a single family residential zone.

Decision

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

Entered this 10th day of November, 1980.


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 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).