

FINDINGS AND DECISION
OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ASIAN PASTRIES

FILE NO. H-78-001

from a decision of the Pike Place
Market Historical Commission

Remanded to the Commission for further consideration.

Introduction

The appellant, Alicia B. Pacifico of Asian Pastries, filed an appeal from a denial of a change of use by the Pike Place Market Historical Commission, hereinafter Commission.

The appellant exercised her right to appeal pursuant to Section 6 of Ordinance 100475, as amended.

This matter was heard before the Hearing Examiner on January 24, 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. On August 24, 1977, a certificate of approval was granted for Pastries Oriental at 1526 Pike Place allowing the sale of Chinese pastry and baked products. A restriction on the certificate stated that the products are to be pre-packaged for sale and not provided hot and ready for consumption on the premises.
2. Subsequent to the original approval the business has been purchased by Alicia B. Pacifico and renamed Asian Pastries. Ms. Pacifico filed a timely appeal.
3. For a two week period a Chinese pastry called humbaws were sold from the premises. Humbaws need to be heated either in a steamer or oven prior to eating. Ms. Pacifico stated that over 50% of her total sales were humbaws.
4. Asian Pastries is located in that portion of the Market designated as zone 1 and "take-out" foods are not listed as a permitted use.
5. Asian Pastries provides a hard to find Asian food which attracts Asian customers. In addition over 50% of the customers were estimated to be residents of the Market area.

Conclusions

1. This case is remanded to the Commission for further consideration. The Examiner after reviewing the record is

of the firm impression that the decision of the Commission operates unfairly against the appellant and that there is a need for further review.

2. The Examiner is not in a position to substitute his judgment for that of the Commission, which is composed of persons with familiarity with the workings and history of the Market. However, in this case the record indicates the need for further consideration by the Commission.

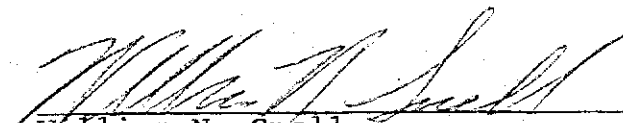
3. Asian Pastries is located in zone 1 so that strict adherence to the priorities stated in the guidelines, which prohibit "take out" foods in this zone is understandable. However, if the business is not permitted in zone 1 the guidelines do not prohibit its location in other zones. The record does not indicate that any consideration was given to relocating the business in an acceptable zone. Since Asian Pastries will most likely fail as a business if it is not allowed to sell humbaws, such a consideration would be consistent with the economic purpose of the ordinance.

4. One of the reasons for denial as stated by the Commission's representative is that the business did not conform to the guidelines providing that "business serving principally local residents are preferred." The factual statements in the record show that over 50% of the customers of Asian Pastries were local residents. The facts do not support the Commission's action in this regard.

Decision

This case is remanded to the Commission for further consideration. The Commission is to consider the possibility of relocating the business to a zone in the market where the sale of "take out" food would be acceptable under the guidelines. Pending further review by the Commission, the appellant shall be permitted to sell humbaws at her place of business.

Entered this 6th day of February,
1978.


William N. Snell
Hearing Examiner

Notice of Right to 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.