

CITY OF SEATTLE

In the Matter of the Appeal of

MICHAEL AURIGEMMA

FILE NO. M-79-005

from a decision of the Pike Place
Market Historical Commission

The appellant, Michael Aurigemma, filed an appeal from the denial of his application for a certificate of approval for a proposed use, City Kites.

The appellant exercised his right to appeal pursuant to Section 6 of Ordinance 100475, as amended. References to ordinance in the body of this decision refer to Ordinance 100475, as amended.

Parties to the proceeding were the appellant represented by Frank Shoichet, attorney at law, and the Pike Place Market Historical Commission (Commission), represented by John Turnbull, staff person.

This matter was heard before the Hearing Examiner on October 11, 1979.

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 appellant filed an application for a certificate of approval for a proposed use, City Kites, with the Commission. The application was considered by the Commission at a public meeting, August 15, 1979. The application was denied.

2. The proposed use for space No. 102 in the Economy Market Arcade is a kite shop which would sell ready-made kites. The appellant would make some himself for promotion, demonstration and display and would offer classes on building and flying kites.

3. At the time of application and decision space No. 102 was in Zone 3. Zone 3 permits all uses in priority.

4. Rehabilitation of the Economy Market was completed about one year ago creating the new arcade space. The space formerly fronted on First Avenue and was occupied by a sporting goods store. It now functions as a part of the Economy Arcade, at least one half of which is Zone 1.

5. At least one Commission member believed there was an informal policy to treat the arcade as a Zone 1 area but understood that a kite shop would be a permitted use because the zone was actually 3.

6. Four uses have received approval in the arcade - a cooky shop, espresso bar, herbs and medicine shop and delicatessen. A temporary use also has been approved for a bread vendor.

7. Appellant contends that the existence of an informal policy to permit only Zone 1 uses in the Arcade operated unfairly against him. Amended guidelines were adopted just prior to the hearing in this matter and appellant maintains that the "informal policy" was an action of the Commission without formal resolution in violation of Section 5 of the ordinance.

8. The letter formalizing the denial of the application (Appellant's Exhibit, 2) stated that since the proposed use did not serve the needs of low-income consumers and was not food related, it was not a high priority use. Further, in this location the Commission desired to maintain a mix of uses in which higher priority uses predominate.

9. The Guidelines of the Market Historical Commission lists uses in order of priority categorized as "Food-Related Uses" and "Non-Food Uses". The zone map is included in the Guidelines and shows the various categories and sub-categories permitted in each zone. For Zone 3 it states "all uses in priority".

Conclusions

1. The Ordinance and Guidelines give the Commission broad discretion in carrying out its responsibility. The zoning and priorities established by the Guidelines represent the Commission's attempt to develop standards for its decision-making.

2. The Hearing Examiner may overturn the Commission's decision only if it violates the terms of the ordinance or Guidelines or if there is a procedural violation.

3. Although in Zone 3 all uses may be permitted, the Commission must still exercise its discretion as to what uses would best carry out the purpose of the ordinance. While they may choose to approve a lower priority use "to achieve distribution, quantity and mix of uses", etc., the priority list is generally applicable as the zone description, "all uses in priority," indicates. Choosing to treat this Zone 3 area as Zone 1 would not violate either the ordinance or Guidelines since Zone 1 consists of the upper categories of the priority list and Zone 3 allows all uses in priority. That choice would be within the discretion accorded the Commission and does not conflict with the Guidelines then in effect. Therefore, the examiner is without authority to reverse or modify the Commission's decision.

Decision

The appeal is DENIED and the decision of the Commission is affirmed.

Entered this 20th day of June 1979.

M. Margaret Klockars
Deputy Hearing Examiner