

BEFORE THE HEARING EXAMINER

CITY OF SEATTLE

In the Matter of the Appeal of

FAIRMONT PARTNERSHIP

FILE NO. M-80-005

from a decision of the Pike Place  
Market Historical Commission

Introduction

Fairmont Partnership, appellant, appeals the decision of the Pike Place Market Historical Commission (Commission) to deny a Certificate of Approval to Gretchen Mathers for use of space at 1905 First Avenue for a seafood restaurant.

The appellant exercised its right to appeal pursuant to Section 6 of Ordinance 100475, as amended. All reference to section numbers will be to Ordinance 100475, as amended, unless otherwise indicated.

Parties to the proceeding were: appellant, represented by Attorney J. Anthony Hoare, and the Commission by Assistant City Attorney James Fearn, Jr.

The matter was heard before the Hearing Examiner on October 2, 1980, upon agreement of the parties. The record remained open for reply memoranda. The record was closed on October 27, 1980.

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. Appellant is the Fairmont Partnership, owners of the Fairmont Hotel, 1905 First Avenue, located within the Pike Place Market Historical District.

2. The subject space, in the south half of the Fairmont Hotel, has been without a tenant for approximately four years. In December, 1978, the Commission formally approved the concept of a restaurant location at this First Avenue level of the building.

3. Following two unsuccessful years of attempts at securing restaurant business for the premises, the appellants engaged in discussion with Gretchen Mathers. Mathers is owner-operator of "Gretchen's of Course," located on the southwest side of the Fairmont Hotel.

4. "Gretchen's" is a cafeteria-style restaurant at 94 Stewart Street. The restaurant also caters from this location, which is directly below the subject space of this appeal.

5. On or about June 9, 1980, Mathers submitted an application to use the subject Fairmont Hotel space for a seafood restaurant.

6. The first Commission hearing on the application was held June 11, 1980. The matter was tabled and referred to committee for report at the next meeting of June 25, 1980, when the applicant's and the general public's testimony were received. The matter was then referred to a committee of the whole for formal vote to be had July 9, 1980.

7. On July 9, 1980, the Commission denied the application "as presented," concluding in relevant part:

(2.) With this specific application, however, the Commission has been presented with a proposal in which two separate businesses would be owned and operated by the same person. As such, approval of the application would be contrary to Section I.C.5 of the Guidelines which states that "Growth through the introduction of new, independent start-up enterprises is strongly preferred over extension, expansion or financial affiliation with another business." Such multiple ownership of businesses within the District is also inconsistent with the language of the Guidelines that states "...The Commission shall never endorse the ownership of more than one business in the Market by the same proprietary interest." Both sections cited from the Guidelines were written by the Commission for use in preventing developments inconsistent with Criteria B. of Ordinance 100475 which charges the Commission with the perpetuation of the Market as "...an outstanding example of small independent businesses."

8. The existing kitchen facilities of "Gretchen's" would be used as preparation for the upstairs restaurant, since "the upstairs kitchen is too small." Although there would be no connection of the two spaces accommodating patrons, the up-and-down spaces would be connected by a mechanical dumbwaiter and service stairways. The upstairs business would be called "Gretchen's Upstairs."

9. The July 9, 1980, Commission findings included those that the evidence "clearly indicates" that a connection or affiliation of the two is planned; that there is no evidence that approval of the subject application will result in the closure of existing speciality food retailing concerns or adversely impact the health and mix of Market uses; that the new business will operate independently of the existing restaurant, and will therefore constitute a new, as opposed to an expanded use; that there is no evidence that a common ownership of the two businesses will result in detrimental concentration of merchandising powers; and that there is no evidence that another restaurateur capable of establishing a new, independent business in this space can be found.

10. Some market businesses have operational and separate storage spaces. No one owner to date has been allowed to operate different enterprises in the Market.

11. Appellant offered that the characterization of the upstairs as a separate business is erroneous since both facilities would have the same ownership, management, kitchen and food storage. The Commission's view was that at issue was the matter of two separate businesses related by a common kitchen.

12. No issue was taken with respect to the regularity of the Commission procedures. Appellant did appear before the Commission at the hearings on the application.

#### Conclusions

1. The subject ordinance states a purpose to, inter alia, promote the municipality's general welfare, and assure its "harmonious, orderly, and efficient growth and development." Section 1.

2. The resulting guidelines are to be liberally interpreted, and should stimulate harmonious and orderly development. (Guidelines, approved October 10, 1979.) A major Commission goal per the Guidelines is "to preserve the Market as a widely varied shopping area of many small, owner-operated shops." It is further

stated that "Growth through the introduction of new, independent start-up enterprises is strongly preferred over extension, expansion or financial affiliations with another existing business (emphasis added)." Another pertinent Guideline provision is that, concerning a change of use, "(t)he Commission shall never endorse the ownership of more than one business in the Market by the same proprietary interest." Appellant challenges this restrictive language as ultra vires.

3. It is clear that the ordinance itself is concerned with the promotion of Market economic resources, the general welfare, and efficient growth.

4. It is also clear that if the subject upstairs restaurant use is a separate, independent use, and if the restriction concerning the number of single proprietary interests is valid, the applicant's case must fail.

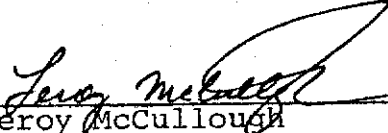
5. We conclude, however, that based on the proposed physical relationship of the two uses; and on the fact that the uses would have the same kitchen, food storage, ownership and management, that the application should be treated as one for an extension of an existing business, notwithstanding the slightly different name for the upstairs use and other matters not germane to the actuality of the case. It is noted that the Guidelines do not prohibit extensions or expansions of existing businesses; rather, they merely prefer new independent enterprises.

6. Based on the above findings and conclusions that proposed is an extension of one business, we do not reach the question of whether the restrictive guideline regarding more than one business in the Market is ultra vires.

#### Decision

This matter is remanded to the Commission for further consideration of the application as one for an extension of an existing business.

Entered this 20th day of October, 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).