

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

MICHAEL R. SCOTT AND
JOHN H. PAPAJANI

FILE NO. S-79-030

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the Findings and Decision of
the Superintendent of Buildings are affirmed.

Introduction

Michael R. Scott and John H. Papajani, appellants,
filed an appeal from the denial of a use permit for property
at 620 North 85th Street.

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

Parties to the proceeding were: Michael R. Scott and
John H. Papajani, appellants, and the Superintendent of
Buildings, represented by Joyce C. Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on
October 9, 1979.

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 appellants applied for a use permit to esta-
blish a skating rink at 620 North 85th Street.

2. The subject property was used as a skating rink
for some 30 years prior to 1974 when it was converted to
warehouse use.

3. The Superintendent of Buildings published his
denial of the permit September 27, 1979. The denial was
based on the lack of required parking on site. The Superin-
tendent further determined that the appellants do not qualify
for joint use parking under Section 23.28.

4. The Superintendent has determined that 80 parking
spaces are required for a roller skating rink of the size
proposed. The property can accommodate 41 spaces on site.
The appellants have arranged with a Seattle-First National
Bank branch at 404 North 85th Street to use their parking
lot for the remaining required spaces.

5. The appellants propose to operate after 6:30 p.m.
weekdays and 12:30 p.m. on weekends. The bank generally
does not operate after 6 p.m.

6. The Superintendent determined that only those uses
specified in Section 23.28(a), infra, qualify for joint use
of parking with a day-time use.

Up to fifty (50) percent of the parking facilities required by the Article for a theater, bowling alley, dance hall, bar or restaurant may be supplied by the off-street parking facilities provided by certain other types of buildings or uses specified in Section 23.28(d).

7. Those day time uses are set forth in Section 23.28(d):

For the purposes of this Article, the following uses are considered as day-time uses: banks... and other similar primarily day-time uses when authorized by the Superintendent.

8. Section 23.28(b) provides that up to 50 percent of the off-street parking required for day-time uses listed in 23.28(d) may be provided by night-time or Sunday uses listed in (e) including "auditoriums incidental to a public or private graded school, churches, bowling alleys, dance halls, theaters, bars or restaurants, and other similar primarily night-time uses when authorized by the Superintendent."

9. Section 23.3 establishes the minimum number of parking spaces required for various specified uses including dance halls (1 space/each 75 sq. ft. of dance floor area) and skating rinks and theaters (1 space/each 100 sq. ft. of main auditorium.)

10. Section 23.28(f) sets out three required conditions for joint use - no greater than 800 ft. separation, showing of no substantial conflict in operating hours and the filing of a joint use agreement. Section 23.28(g) requires special notice of a use permit involving joint use of off-street parking facilities.

11. The proposed roller skating rink would be the only one in the city.

12. The proposed use has close similarity to a dance hall use since the lighting and sound system are identical to those in discos and skating has become dancing on wheels.

13. Studies show that a large percentage (60-70%) of patrons are of school age and are dropped off by parents reducing the need for parking. Seventeen bus lines serve the area of the proposed rink.

Conclusion

1. The Superintendent of Buildings is charged with the enforcement of the Zoning Ordinance Section 25.1(a). To enforce the Ordinance the Superintendent first must interpret it and the Superintendent's interpretation is to be regarded as prima facie correct by the Hearing Examiner on appeal Section 25.44.

2. The general rule is that where the language of a provision is clear and free from ambiguity, there is no room for construction. Krystad v. Lau, 65 Wn.2d 827 (1965). Section 23.28(a) is unambiguous in its specification of uses that may enjoy joint-use parking. While extending the joint use provision to a skating rink which meets the other requirements would seem to be both reasonable and desirable it would also be legislating.

3. Legislative intent must be derived solely from the language used when there is no ambiguity. Where the ordinance specifically designates things to which it refers, the inference must be that the legislature or Council intended to omit anything not listed. State v. Seger, 1 Wn.App. 516 (1969).


4. The term "skating rink" is used in the list of uses permitted in the BC zone, Section 15.22, and in Section 23.3 where parking requirements are set out. These examples show that the Council did not overlook the existence of skating rinks.

5. It is hard to disregard the financial hardship to appellants caused by the Superintendent's decision but it would be unwise to base administrative interpretation of the law on such grounds. The remedy of a variance is available under the ordinance or the text of the ordinance can be changed through the legislative process. The Superintendent's interpretation and decision was correct as the ordinance now stands.

Decision

The appeal is DENIED and the Findings and Decision of the Superintendent of Buildings are reversed.

Entered this 24th day of October 1979.


M. Margaret Klockars
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).