

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

In the Matter of the Appeal of

MICHAEL MONTANA

FILE NO. S-80-024

from a determination of the  
Superintendent of Buildings

The appeal is DENIED and the Superintendent's  
decision as modified at the hearing is AFFIRMED.

Introduction

The appellant, Michael Montana, filed an appeal from a decision of the Superintendent of Buildings to issue a joint use permit for parking at 2363 N.W. 80th Street, 7554 - 24th Avenue N.W. and 7553 - 24th Avenue N.W.

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

Parties to the proceeding were: appellant, Michael Montana, neighbor resident; Dr. Michael Harris, owner of the medical clinic seeking joint use; and the Superintendent of Buildings represented by Joyce Kling, Zoning Administrator.

This matter was heard before the Hearing Examiner on May 21, 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. A medical-dental clinic located at 7715 - 24th N.W. (Legal: Lots 11 and 12 - Block 16, HLE. Nelson's Addition) was granted a joint use permit to utilize off-site parking jointly with the Philadelphia Church and an affiliate Bible School on three lots in the area:

(a) 2363 N.W. 80th Street - (Bible School parking lot) Legal: Lots 27, 28, 29 and 30 of Block 15, H.E. Nelson's Addition except North 5 ft. thereof.

(b) 7554 - 24th Avenue N.W. - (Philadelphia parking lot) Legal: Lots 28, 29 and 30, Block 18, H.E. Nelson's Addition.

(c) 7553 - 24th Avenue N.W. - (Loyal Heights Manor, low-income elderly housing). Legal: Lots 1, 2 and 3, Block 17, H.E. Nelson's Addition.

2. Section 23.28 of the Zoning Ordinance controls joint use parking. Conditions required for joint use:

(a) The building or use for which application is being made to utilize the offstreet parking facilities provided by another building or use shall be located within eight hundred (800) feet of such parking facilities.

(b) The applicant shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of offstreet parking facilities is proposed.

(c) An agreement providing for joint use of such parking facilities and executed by the parties concerned shall, together with the use permit pertaining thereto, be filed with the Superintendent. Joint use parking privilege shall continue in effect only so long as such agreement, binding on all parties, remains in force. If such agreement becomes legally ineffective, then parking shall be provided as otherwise required by Article 23.

3. The clinic is remodeling and can provide only 9 on-site parking spaces while 22 are required. It obtained a variance to Section 23.28 (X-79-346) to permit more than 50 percent of its required parking to be off-site.

4. The clinic provided the 13 off-site spaces through an agreement dated July 24, 1979 with Philadelphia Church to utilize spaces in any of the three lots detailed above.

5. All three of the lots are within 600 ft. of the medical clinic.

6. The clinic is open from 8:00 a.m. to 5:30 p.m. most days.

7. The Bible School's operating hours are approximately 8:30 to 12:30 Monday through Friday.

8. The Philadelphia Church has customary church hours on Sunday mornings, plus Saturday evening meetings and occasional weekday use.

9. The Loyal Heights Manor as a home for the elderly will not have regular hours of usage but will provide 54 parking spaces on a lot which formerly had 35 spaces. This significantly exceeds the 9 spaces which HUD requires for elderly housing.

10. At present, construction at both the medical center and the Loyal Heights Manor precludes parking. The medical center construction is nearing completion, but the Loyal Heights construction is far from completion. Therefore, the present available parking is temporarily severely curtailed for the area. The former 34 spaces at Loyal Heights site (will be 54 spaces upon completion) and 14 spaces at the medical center (which will be 9 following expansion) are temporarily unavailable during construction and there are construction workers' vehicles in the area.

11. The Agreement filed with the Superintendent states in part that:

1. The owner does hereby agree to allow the tenants, including their tenant, to utilize thirteen parking spaces which parking spaces shall be situated upon one of the three parking lots which the owner now owns in the vicinity of N.W. 77th Street and 24th Avenue N.W., Seattle, Washington 98117. Each of these three lots are (sic) situated within 600 feet of the tenants' clinic building.

2. It is further agreed that the thirteen parking spaces shall not be specifically located on any one parcel of property that the owner now owns but that the owner will make available thirteen spaces on one or more of the parcels that the owner now owns. The owner agrees from time to time to designate the thirteen spaces and notify the tenants in writing of such designation but with the understanding that the specific designation may be changed

at the discretion of the owner from time to time as the owner should determine. The owner also agrees to notify the City of Seattle Zoning Department of any changes in the parking designation.

12. The appellant's central concern is that frequently parking at the Philadelphia Church parking lots overflows on the side streets making parking for residents difficult.

13. At the hearing, the Superintendent modified its approval of joint use to exclude the Bible School lot upon evidence that its hours coincided with those of the medical center.

#### Conclusions

1. Section 25.44 provides that the determination of the Superintendent is considered prima facie correct upon appeal to the Hearing Examiner.

2. The Superintendent had approved this use permit for all three lots, but modified the approval to include only the church parking lot and the Loyal Heights elderly housing parking lot which would meet the Code requirements of no substantial conflict in principal operating hours at the time of the hearing.

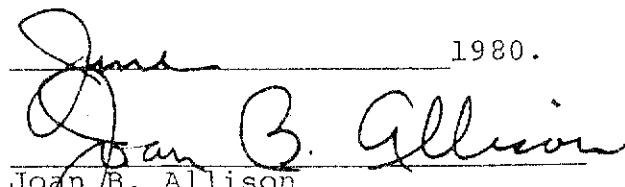
3. To overcome the presumption that the Superintendent's decision is correct, the appellant must present by a preponderance of credible evidence that the decision is incorrect. The appellant did not carry his burden to show the Superintendent incorrect as to the two lots labelled "B" and "C". His evidence as to the conflicting operating hours of the Bible School and the medical center presumably modified the Superintendent's position prior to the hearing as to Lot "A", the Bible School lot.

4. The Agreement must be amended to specify the Church lot (B) and Loyal Heights lot (C) and exclude the Bible School lot, and presented to the Superintendent to meet the Section 23.28 conditions.

#### Decision

The appeal is DENIED and the Decision of the Superintendent as modified to exclude the Bible School lot are upheld on condition that amendments to the Agreement are filed with the Superintendent to exclude said Bible School lot.

Entered this 5<sup>th</sup> day of June 1980.

  
Joan B. Allison  
Hearing Examiner Pro Tempore

#### 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).