

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

In the Matter of the Appeal of

VANN BROTHERS INC.

FILE NO. S-75-006

from a ruling of the
Superintendent of Buildings

The appeals are DENIED.

Introduction

The appellants filed two separate appeals, one dated November 12, 1975 and the other dated December 5, 1975, relating to parking requirements for property located at 4546-8 California Avenue S.W.

The two appeals were consolidated and this matter was heard before the Hearing Examiner on December 22, 1975.

Representation at the hearing was as follows: John C. O'Rourke, attorney for the appellant, Jerome L. Hillis, attorney for the permittee, and Mary Jenney for the Superintendent of Buildings.

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 permittee has applied for a permit to remodel an existing structure at 4546-8 California Avenue S.W. and occupy it as a restaurant to be named: Capelouto-Alaska Junction Restaurant. Seven off-street parking spaces are required.

2. The appellant, Vann Brothers Inc., filed an appeal on November 12, 1975 under Section 25.40(a) of Ordinance 104795 from the issuance of a building/use for property located at 4546-8 California Avenue S.W. The date of publication was October 30, 1975. The appellant listed five separate grounds for appeal but at the hearing withdrew all grounds for appeal, except that relating to the term of the parking covenant and an interpretation of the applicable language in Section 26.46.030(7), Seattle Code.

3. The permittee entered into a parking covenant with a lease period running from month to month and 30 days notice required for termination (permittee's exhibit 4). No objection has been raised by the appellant as to the validity of the covenant, or its conformance to the requirements of Section 26.46.030(7), Seattle Code, except as to the term of the lease.

4. Section 26.46.030(7), Seattle Code, provides as follows:

When accessory parking space is to be provided on a parcel of land or a lot whether or not contiguous with the parcel or lot which is or will be the site of a principal building, then evidence shall be provided that a covenant has been filed with the King County auditor, said covenant providing that the area used or to be used for parking accessory to the principal building located elsewhere shall be diverted or converted to no other use as long as the principal building to which the parking is accessory shall continue to exist.

5. A second appeal was filed on December 5, 1975 under Section 25.40(d) of Ordinance 104795 from Findings and Decision of the Superintendent relating to the Junction Merchant's Association Cooperative Parking Facility. The appellant alleges that there was no capacity on the part of the person signing the plan for the Junction Merchant's Association to bind the parties.

6. Section 26.46.080, Seattle Code, provides that the Superintendent is authorized to approve a cooperative parking plan if the facility serves two or more buildings or uses and occupies an area of no less than 20,000 square feet.

7. The Findings and Decision relating to the cooperative parking facility were signed by the Superintendent and by Dan Snyder on behalf of the Junction Merchant's Association. The property used for the parking lots is owned by West Seattle Trusted Properties, Inc. Junction Merchant's Association is not listed as a Washington corporation with the Secretary of State but there is a listing for Junction Shopping Center in West Seattle, Inc. (appellant's exhibit 3A).

Conclusions

1. With regard to the November 12, 1975 appeal, the only issue is whether the term of the lease set forth in the parking covenant meets the requirements of Section 26.46.030(7), Seattle Code. The purpose of this provision is to assure, by means of a binding agreement, that a specific area will be utilized exclusively for parking accessory to the principal use. If the lease is terminated, then the permittee has the burden of obtaining sufficient off-street parking to comply with the zoning code or his existing use would be illegal.

2. The intent of the zoning code provisions relating to parking is to assure that the required number of off-street parking spaces will be provided and this requirement is met with the filing of a binding covenant. No specific lease term is required. Therefore, it is concluded that the covenant (permittee's exhibit 4) is valid and is in conformance with the requirements of Section 26.46.030(7), Seattle Code.

3. With regard to the December 5, 1975 appeal, the main issue is the capacity of the person signing the Findings and Decision for the Junction Merchant's Association to bind the parties. Section 26.46.080, Seattle Code, provides that a cooperative parking plan requires the approval of the Superintendent, which was accomplished in the Findings and Decision, dated November 25, 1975, and signed by the Superintendent.

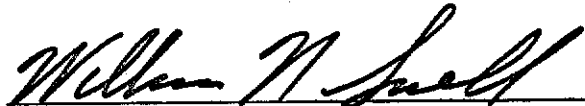
Since the foregoing document is a plan and also the Findings and Decision, the only required signature is that of the Superintendent. The signature of the person signing for the Junction Merchant's Association is not required, since his signature amounts to a mere acknowledgement of the terms. If the cooperative parking facility is not operated in accordance with the plan, the Superintendent has the authority to revoke his approval. In conclusion the issue of capacity is not determinative, since the signature of anyone other than the Superintendent is not required.

4. The rulings and interpretation of the Superintendent are regarded as prima facie correct. With regard to both appeals, the appellant has failed to sustain his burden of establishing the contrary.

Decision

The appeals are DENIED.

Entered this 24th day of December, 1975.



William N. Snell
Hearing Examiner