

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

PETER MAR for the CHINESE
CHRISTIAN FELLOWSHIP

FILE NO. MUP-82-008(V)
APPLICATION NO. 81318-0446

from a decision of the Director of
the Department of Construction and
Land Use on a master use permit
application

Introduction

The applicant proposes to convert an existing single family residence at 4556 15th Avenue South to an accessory church use building. The Department of Construction and Land Use denied variances requested therefor.

The appellant exercised the right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

Parties to the proceedings were: appellant, pro se; the Department of Construction and Land Use (DCLU) by Amy South and Cliff Portman.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on February 25, 1982.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in a Single Family Residence High Density (RS 5000) zone at 4556 15th Avenue S. The site is developed with a single family dwelling that also has frontage on S. Snoqualmie Street. The existing dwelling provides a 4 ft. north side yard cutback. The north adjacent lot is also developed with a single family residence; there is no topographical or similar separation from the subject property. The applicant proposes to convert the use of the subject single family dwelling to accessory church use.

2. The principal church use leased by the applicant is east of a 25 ft. wide "alley" from the subject dwelling. The facility, the Beacon Hill Presbyterian Church, is located at 1625 S. Columbian Way. Because of the dual congregation use, the church facility is extensively used; present assembly use includes the lobby and the choir room closet.

3. Applicant therefore proposes to use the subject dwelling as a parsonage, for Bible study and for Chinese and English language classes. The dwelling would be in most use on Sundays, 10:30 a.m. to 11:30 a.m. and occasionally on Friday evenings from 7:30 p.m. to 10:30 p.m. No change in the physical structure of the dwelling is proposed. Worship services would continue out of the sanctuary at 1625 S. Columbian Way. No more than two automobiles would be parked on site, one in the garage provided and the other on the on-site parking space provided. It is proposed that primary parking continue to be provided in the church lot.

4. Applicant accordingly applied for variance relief to allow an accessory church use to be located on a lot other than that of the principal use; and to provide less than the 20 ft. minimum required setback for an accessory church structure from an adjacent RS zoned lot. DCLU denied the requested variances and this appeal followed.

At hearing, the applicant urged that the hardship criteria of the zoning ordinance are met in that the present dwelling cannot be reoriented such that the minimum 20 ft. setback will be provided; further, that nonownership of the subject principal use effectively precludes the option of removing the dwelling onto the lot of the principal use; and that the location of the dwelling is in itself a hardship. Additionally, the appellant and supporting witnesses testified that the facility would be well maintained and that the use would not be detrimental to the public welfare.

5. No testimony in opposition to the application was presented. However, several comment letters contained pointed objections to the proposed use of the single family residence as an accessory building for church use. One letter capsulizes the comments in opposition:

...This is a residential area and this has always been a private residence. We see no reason for using it as a church accessory. We feel it will have a negative impact on our property...

6. Approximately 62 persons attended the public hearing on this matter and were on record in support of the proposal. Additionally, a nine page petition indicating "no objection" to the proposal was submitted into the record. The petition was on 8½ by 11 inch paper. Not all pages were completed with signatures.

7. No similar variances were reported for the vicinity.

Conclusions

1. Variance relief is proper where unique conditions applicable to the subject property would deprive the applicant of rights and privileges enjoyed by other properties in the same zone or vicinity without variance relief. The hardship may not be self-created. The variance should not adversely affect the Comprehensive Plan of Seattle; nor should it prove materially detrimental to the public welfare. The relief may not exceed the minimum necessary for relief, and should not constitute a grant of special inconsistent privilege to the applicant. Section 24.74.030. All of the criteria must be met in order for the variance relief to be properly issued.

2. The applicant urges that the location of the subject dwelling is a hardship and cites X-80-116 for support of the general proposition. However, in the cited case, the use of the church was preexisting; the building was in the Neighborhood Business Zone and a similar variance had been granted to another property in the same vicinity. These factors distinguish that case from the instant case.

3. The subject application is also to be distinguished from that analyzed in X-79-203, also cited by applicant, wherein the noise and other problems associated with the church use of the RS 5000 zoned residential structure amounted to a material detriment to the vicinity. In that case, the Examiner also concluded that

A special privilege would be conferred because the use of this property is not restricted in any way consistent with the limitations on any other property in the vicinity or zone.

4. In X-78-182, application was made to convert an existing residence to a church. The Examiner denied a proposed 6 ft. separation (a 16 ft. separation was required) concluding that "the applicant has the full use of the property and is denied no rights enjoyed by other properties similarly situated." Where church construction and use were of long standing, variance relief was found proper in X-80-434 and in X-80-410. And where a lot was located in a general commercial and RS 5000 zone and was developed with a structure that was designed for use as a meeting hall but which was nevertheless nonconforming for that purpose variance relief was deemed proper. X-80-547. In X-80-398, it was concluded that where the nearest dwelling was 150 ft. from the church building, even though the west side yard provided was 3 ft. shy of the required 20 ft., the variance relief was the minimum necessary for relief since the existing conditions would remain constant and since the purpose of the zoning code, i.e., separation of incompatible uses, would not be violated by authorizing the variance. An accessory use was approved in X-78-048 for a structure previously used as a barn on a 1.7 acre lot in the RS 9600 zone. The Department there recommended that the 12.5 ft. distance from the next R zoned lot be variances on the condition that the accessory use be limited to parking and storage. The Hearing Examiner denial of the variance was reversed by the Board of Adjustment. The Board concluded that the location of the subject building pre-dating the zoning code was a hardship and opined that no public good would come from removing the barn in order to accommodate religious use of the principal dwelling. The Board continued:

However, this finding depends upon the continued use of the building only for a garage and storage area which has been the prior use for many years...As conditioned by the Board, the building will not be altered from its existing accessory garage and storage use... (Emphasis supplied).

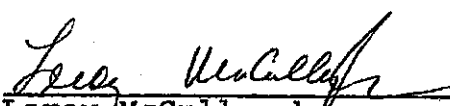
5. The applicant is proposing a change in the use of the single family dwelling to a church accessory use. Cf. X-78-048, X-80-116, X-80-410, X-80-434. No topographical separation appears between the subject dwelling and its north adjacent lot such that the separation intent of the zoning code would be honored. Cf. X-80-398. The subject dwelling has not been proved as nonconforming, Cf. X-80-547, and the single family use of the property would be consistent with limitations on other properties in the zone. X-79-203. No similar variances were reported for the vicinity.

6. Based on the foregoing, the contemplated variance would constitute a grant of special, inconsistent privilege to the applicant and would operate precedentially to the material detriment of the public welfare and to the property in the subject zone and vicinity by defeating the intent and purpose of the zoning code. The variance criteria have not been met. The Director's decision is affirmed.

Decision

The decision of the Director of the Department of Construction and Land Use is AFFIRMED.

Entered this 11th day of March, 1982.



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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.