

FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

FIRST CHURCH OF NAZARENE

FILE NO. MUP-86-019(CU)

for an administrative conditional
use pursuant to the provisions of
Title 23, Seattle Municipal Code

DCLU FILE NO. 8504145

Introduction

The appellant is proposing to demolish two single family residences for the purpose of expanding its facilities and to provide additional parking.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 23, unless otherwise indicated.

Correspondence and testimony in opposition were entered into the record.

Present at the hearing were the appellant, First Church of Nazarene by attorney Jay Derr, and the Director, Department of Construction and Land Use by Patrick Doherty.

This matter was heard before the Hearing Examiner on June 9, 1986.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated.

After due consideration of the evidence presented by the appellant, evidence elicited during the public hearing, the following findings of fact and conclusions of law shall constitute the decision of the Hearing Examiner.

Findings of Fact

1. The subject site, 4401 - 2nd Avenue, is located in the south 2/3rds of the block bounded by 1st Avenue N.E. and 2nd Avenue N.E. on N.E. 44th Street in the Wallingford area of Seattle. The legal description is of record and is incorporated herein.

2. The site is currently developed with a church at the south east corner and a 38 space parking lot at the rear of the church that runs the length of the block between 1st Avenue N.E. and 2nd Avenue N.E.

3. Abutting to the west of the church are two single family residences, oriented toward 44th N.E., owned by the church, that were originally proposed to be demolished or removed to accommodate the church's expansion of its sanctuary. The appellant modified its proposal at the public hearing to request demolition of only the immediate abutting residence. Approximately mid-block on 1st Avenue N.E. is a privately owned residence that abuts the church's parking lot and abutting the parking lot at the north boundary is another church owned single family residence that is proposed to be demolished for expansion of the parking lot. Abutting north of this residence is Dick's Drive - In which faces N.E. 45th.

4. N.E. 45th is zoned BC and a large variety of retail and service businesses are located along N.E. 45th. The block in which the subject site is located is the northern edge of a large SF 5000 zoned area that is predominately developed with single family residences. No other institutions are located within 600 feet of the site.

5. As modified at the public hearing, the appellant's proposal would be to demolish the one residence on N.E. 44th for ex-

pansion of its facilities and to demolish the residence on 1st Avenue N.E. for parking, leaving in the block two residences along 1st Avenue N.E. Appellant has applied for a House Demolition License, HPO-86-001.

6. Appellant's representative stated that the church is committed to remain in its present location but that in order to meet the changing needs of the community, the 1628 sq. ft. expansion is required to increase the chancel area and choir loft and to provide for baptismal services. The addition as stated will be tasteful and modulated in design.

7. Appellant argues that demolition for facilities expansion is not violative of the Land Use Code in that demolition for parking is the interest sought to be protected by the code. Appellant through its survey of the neighborhood indicates that this issue is the concern of the residents in the neighborhood.

8. The testimony, petition, and letters of residents' in opposition are found by the Hearing Examiner to more accurately reflect the residents' position, and that the residents indicate that demolition of single family residences is unwarranted in the single family zone.

9. Appellant argues that the residence to be demolished for parking is of lesser value and unsuited for residential use because the residence is bordered by the parking lot and Dick's Drive - In. Rodents and sanitation problems are stated by appellant's representative to befoul the residence and the representative states that these problems will continue to exist until the Drive - In ceases to exist and until public restrooms are provided by the Drive - In.

10. In weighing the testimony regarding the condition of the residence, the Hearing Examiner does not find the residence unsuitable for residential use.

The Hearing Examiner finds that code provisions will permit waiver of the parking requirements for the proposal for the purpose of preserving the single family residence.

11. Appellant further argues that the proposal as modified with required landscaping in place and the parking lot reconfigured provides a lesser impact on the surrounding residential properties than was originally proposed.

12. Residents through credible testimony stated that the block containing the site is the edge of the single family zone, sensitive and fragile to intrusion of non-residential use to the zone and the Hearing Examiner so finds.

13. The record is replete with letters in opposition, (15), and a petition signed by 54 residents "opposed to expansion of the parking lot and the demolition of single family residences." Testimony from residents expressed concern over possible severe adverse impacts to the single family zone from the demolition of residences on the subject block.

14. Credible testimony of residents expressed possible adverse impacts from the encroachment of auto traffic, noise and emissions into the single family zone especially if the residence next to the Drive - In were demolished. The Hearing Examiner finds that despite appellant's offer to reconfigure the lot and to provide landscaping, the loss of the single family residence would result in exposing the single family zone to said impacts.

15. Credible testimony and a resident's survey indicated that in general, on Sundays, the church's present parking lot is underutilized, parking is available at another church parking lot across 1st Avenue N.E., parking is available on streets, and that parking is available by agreement at Dick's Drive - In.

16. Appellant stated that for certain religious activities present parking spaces are insufficient and despite pursuit of alternatives, the modified proposal is the only plan by which the church can feasibly utilize its property to expand its facili-

ties.

17. In weighing the impact of the demolition of two residential structures versus the benefit of an increased sanctuary and parking lot even with the required landscaping and reconfiguration, the Hearing Examiner does not find that the loss of single family housing is justified. Regardless of the purpose of the demolition, the loss of two residences in the block will expose the surrounding residential properties to a variety of non-residential uses.

18. Appellant argues that denial of its proposed sanctuary expansion possibly infringes upon the church's exercise of its First Amendment Rights. Testimony for appellant was that baptismal services require the need for changing/dressing rooms as well as increases in the chancel and choir areas. In that regulation of expansion would be a limitation on its worship activities, appellant argues for a narrow and strict application of the Code for preservation of its rights.

19. The Hearing Examiner finds that while denial of the proposed expansion will prevent the church from realizing its desired method and process of worship activities, the worship activity can continue unabated as in the present and that the worship activity will not be caused to be terminated or decreased by this denial.

20. The Hearing Examiner does not find that the demolition of two single family residences in a SF 5000 zone, is out weighed by the church's need for expansion of its sanctuary and parking lot.

21. A determination of non-significance was made by the responsible official on behalf of the lead agency reviewing the completed environmental checklist and other information on file with responsible departments.

Conclusions of Law

1. Relevant code requirements for expansion of institutions in a single family zone are found at Seattle Municipal Code Section 23.44.22 and Seattle Municipal Code Section 23.44.08.

2. In that the single family residence next to the Drive - In is to be demolished for parking, the Hearing Examiner concludes that said demolition must be denied. Appellant has argued that landscaping and reconfiguration of the lot will outweigh the loss of the residence but the Hearing Examiner concludes that the single family character of the property would be destroyed if the use were permitted.

3. Although the appellant's representative had stated that occasionally the present church parking is not sufficient, testimony of residents revealed that in general, parking is available on Sundays in the lots, on the streets and at Dick's Drive - In. The Hearing Examiner concludes that the code required parking could be waived for preservation of the single family residence on 1st Avenue.

4. The Hearing Examiner concludes in agreement with resident's testimony regarding that residence's buffering effect and deterrence of traffic, associated noise and emissions to protect the single family zone from intrusion of non-residential uses.

5. The Hearing Examiner concludes that the residence is suitable for use as a residence despite the indicated problems. As the block is the northern edge of the large single family zone abutting the 45th N.E. business corridor, the Hearing Examiner concludes that the block is fragile and sensitive and must be maintained for the benefit of the Single Family zone.

6. In regard to the single family residence next to the church that is to be demolished for expansion of the sanctuary, the Hearing Examiner concludes that this administrative conditional use must also be denied.

7. Appellant has argued that the Land Use Code prohibits demolition of a residence only if the demolition is for parking and that since this demolition is for facilities expansion, the code is not applicable.

8. The Hearing Examiner concludes the code is not solely addressed to the impacts of turning single family residences in single family zones into parking lots, but rather, primarily concerned with the preservation of housing stock in said zones. Seattle Municipal Code Section 23.16.002.

9. Appellant has stated that it has been a good neighbor instituting programs and activities that have benefited not only the immediate neighbors but the community at large and that the expansion is for continuation of its programs and activities and that no other alternative is available.

10. The Hearing Examiner concludes that demolition of this residence will adversely affect the single family use character of the property and of the zone and its demolition should be denied.

The Hearing Examiner concludes that the expansion requested by the administrative conditional use will be materially detrimental to the public welfare and injurious to other properties in the zone.

11. The Hearing Examiner concludes that appellant has not made a showing of a need nor public benefit that outweighs the impacts from the loss of two single family residences from the zone.

12. The Hearing Examiner concludes that while denial of the proposal will prevent the church from realizing its desired worship activity, especially in regards to baptism, the church as a practical matter will not, directly or indirectly, be denied its 1st amendment rights. The church can carry on as it is presently or modify further its expansion plans. Appellant presented no testimony that its worship or baptismal activity would cease upon denial of this proposal.

13. The Hearing Examiner distinguishes Sumner v. First Baptist Church, 97 Wn.2d 1 (1982). There, enforcement of the municipality's zoning and building codes caused the church's school to cease operations, and the trier of fact did not balance the interests concerned. Here, there is no cessation of church activity and the Hearing Examiner has considered the opposing interests and rights of the parties and has concluded that the church's interest, on balance, do not outweigh those of the residents' in opposition.

14. Although appellant has met several of the criteria for expansion of an institution in a single family zone, the proposal would destroy housing stock that the Land Use Code seeks to preserve. The preservation of the residences will prevent encroachment of non-residential uses and will maintain the single family character of the zone.

Decision

Appeal is DENIED.

Entered this 23rd day of June, 1986.

Roger Shimizu
Roger Shimizu
Hearing Examiner Pro Tempore

Concerning Further Review of Hearing Examiner Final Decisions on Master Use Permits

The decision of the Hearing Examiner in this case is final

and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any party's request for judicial review of the decision must be by application to King County Superior Court for a writ of review within fifteen calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22(C)(12)(c).

If the Superior Court orders a review of the decision the person seeking review must arrange for and bear the cost of preparing a verbatim transcript of the hearing, but will be reimbursed if successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104, (206) 625-4197.