

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

In the Matter of the Appeal of

JOHN BRANINER

FILE NO. MUP-90-091(W)
APPLICATION NO. 8906808

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

Introduction

The appellant exercised the right to appeal pursuant to the Master Use Permit (MUP) Ordinance, Chapter 23.76., Seattle Municipal Code.

This matter was heard before the undersigned Deputy Hearing Examiner (Examiner) on December 3, 1990. The record was left open until December 7, 1990, to allow the Examiner to conduct a site inspection.

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

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

Findings of fact

1. The applicant, St. Andrews Episcopal Church, is an institution as defined in SMC 23.44.022 and may be permitted as a conditional use in a single family zone. The church has applied for an administrative conditional use to demolish an existing garage and establish accessory parking in the rear yards of three single family residences owned by the church.

2. The church is located in an area zoned Single Family 5000 (SF 5000), requiring a minimum lot size of 5000 square ft. The area surrounding the church is primarily developed with single family residences.

3. The busiest period for church facilities is during the two Sunday morning services, when an average of 200 parishioners attend services. In addition to church services, the church facilities are used in activities sponsored by the church and for community services, such as a preschool and a women's Alcoholic Anonymous group meetings.

4. To help alleviate some of the on-street parking problems caused by the use of the church facilities, the church purchased three single family residences in the immediate vicinity of the church. The buildings will continue to be used as single family dwellings. The church proposes to use the rear yards of the houses for additional parking. The church began to use the yards for parking before they applied for the MUP. The rear yards of the

residences would be used as follows:

7737 Second Avenue N.E.	- 4	parking spaces
7741 Second Avenue N.E.	- 4	parking spaces
7732 First Avenue N.E.	- 5	parking spaces
	=	13 parking spaces

5. When the church was built in 1955 they were only required to provide 7 on site parking spaces. Under current land use requirements the church would required to provide 40 on site spaces. The church currently has 7 on site parking spaces with the 13 additional spaces requested in this MUP application, the church would still have a deficit of 20 parking spaces relative to current code requirements.

6. Access to the requested parking spaces would be from an abutting alley. The proposed parking would be conveniently located for the church's elderly population and is accessible for disabled drivers.

7. DCLU conditionally granted the administrative conditional use because the project met the conditions of SMC 23.44.018. The DCLU conditions require the applicants to mitigate noise impacts and to screen the parking from the neighboring residential properties. The required screening and landscaping must be maintained in good condition and replaced when necessary.

8. The appellants live next door to one of the single family residences currently used by the church for parking. The appellant's primary challenge to the DCLU decision relates to the conclusion that there is a need for additional parking. The appellants contend that neither DCLU nor the church has presented any documented evidence for the need for additional parking. The appellants have conducted their own private parking study during periods of peak uses for church and church conducted activities, and for non-church activities, and concluded that the only period of parking congestion was during Sunday morning services. Existing parking is adequate during other time periods.

9. The appellants are appealing the DCLU decision because they contend that granting the church an administrative conditional use will violate the code requirement of 5000 square feet minimum lot size for single family residences. The church proposes using between 1120 and 1600 square ft. of the rear yard of the single family dwellings for accessory parking. The remaining lot will be between 3360 and 3840 square feet. In addition, the appellants are concerned that if the rear yards of the single family residences are used for church purposes, the nature of the property becomes both single family and institutional. The appellants query as to the whether the City is allowing two uses on one lot in a single family neighborhood in violation of the code requirement.

10. The appellants are also concerned that the City cannot guarantee the surrounding neighbors, nor has the church offered any guarantees, that they will not continue to acquire single family residences in the neighborhood to use for parking and/or to demolish existing housing to use the land for additional parking. The appellants are apparently not comforted by the church's assertions that escalating real estate cost in the area prohibits further property acquisition by the church.

11. The neighbors had an extended comment period for this application. The first 15 day notice period was extended for 15 days, and the second 15 day notice period on a renote was also extended for 15 days, for a total 60 days comment period. The neighbors are divided on allowing the church to proceed with the project. A total of 22 responses were received, 6 households responded in opposition, and 8 letters plus 2 petitions were received in favor of the project. Most of the neighbors comments relate to the parking issues. The neighbors in opposition feel the parking is adequate and neighbors in favor of the project report a need for additional parking to prevent parishioners from blocking their driveways and negatively impacting the area during periods of peak church use.

Conclusions

1. There is jurisdiction to hear this matter pursuant to SMC 23.76.006 (c)(7).

2 The appeal hearings are de novo. The Director's decisions on administrative conditional use determination are given no deference.

3. At the outset, the undersigned must note that some of the issues raised by the appellants are beyond the scope of this decision. The appellants concerns regarding whether the nature of the single family residences changes when the church acquires the property and, or whether by granting the church permission to use accessory parking in the rear yard of the single family dwelling the City is not allowing two uses on one single family lot cannot be resolved in this decision. For a full and complete answer to the appellant's concerns, the appellants would have to seek an interpretation through DCLU.

4. The appellant's other concern that the church may continue to acquire property for parking in the immediate area is also beyond the scope of this proceeding. This tribunal cannot impose restrictions against the church's acquisition of property, unless that acquisition is in violation of the Land Use Codes or Ordinances. The only apparent limits on the church's ability to acquire additional property in a single family zone is SMC 23.44.020(c), which prohibit expansion in excess of 2 1/2 acres, and/or the church's financial circumstances which can impose limitations on the church's ability to purchase additional property.

5. The administrative conditional use may be approved upon a determination that the church meets the criteria for establishing a specific conditional use in SMC 23.44.022, and that the use would not be materially detrimental to the public welfare or injurious to the property in the zone or the vicinity in which the property is located. SMC 23.44.018(c).


6. The applicant has satisfied the criteria for establishing a specific conditional use of converting the rear yards of the three single family residences for expanded accessory parking for the church. The church has presented a unique solution to maintaining existing single family dwellings, and addressing a need for additional on-site parking. The expansion of accessory parking will not be materially detrimental to the public welfare or injurious to the property in the zone or vicinity in which the parking will be located. Though the neighbors are split on the need for increasing off-street

parking for the church, it is uncontested that with the current 7 on-site parking spaces and even with the additional proposed 13 spaces, the church will be considerably below the 40 spaces which would be required if the church were developed under current zoning requirements. Further, as the church has prematurely used the rear yards of the single family residences for parking without any apparent adverse impact on the neighborhood, it would be difficult to conceive that circumstances would change and injuries to the neighborhood or zoned increase as a result of granting the church formal approval for their accessory parking.

Decision

The DCLU decision to conditionally grant the administrative conditional use and the conditions imposed by DCLU in the analysis and decision are **AFFIRMED**.

Entered this 27th day of December, 1990.


Rupert Alexis
Deputy Hearing Examiner

CONCERNING FURTHER REVIEW

Pursuant to Seattle Municipal Code Section 23.76.024, a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth day after the date of the decision appealed from is filed with the SEPA Public Information Center, 5th Floor Municipal Building, 684-8322. The appeal statement must be filed with the City Clerk on the first floor of the Municipal Building. The City Council's review on appeal shall be limited to the issue of compliance with Section 25.05.660. The City Council Land Use Committee should be consulted regarding further appeal specifics.

If an appeal is taken pursuant to Section 23.76.024, the time for filing a request for judicial review of the underlying governmental action and/or other SEPA issues is stayed until the City Council renders a final decision on this City Council appeal.

If no appeal is taken to the City Council, 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 request for judicial review of the decision on the underlying governmental action must be filed in King County Superior Court within fifteen days of the date of this Hearing Examiner decision. Seattle Municipal Code Section 23.76.22.(C)(12)(c). Judicial review under SEPA shall without exception be of the decision on the underlying governmental action together with its accompanying environmental determinations. SEPA issues may be added to the request for review within 30 days after the date of this decision if a notice of intent to seek judicial review of SEPA issues is filed with the Director of the Department of Construction and Land Use, 400 Seattle Municipal

Building, Seattle, Washington 98104, within fifteen days of the date of this decision. See Chapter 43.21C, RCW and Chapter 25.05, Seattle Municipal Code.

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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104. As an alternative to the written transcript, RCW 43.21C.075(6)(b) provides that a tape may be used for court review. If a taped transcript is to be reviewed by the court the record shall identify the location on the taped transcript of testimony and evidence to be reviewed. Parties are encouraged to present the issues raised on review, but if a party alleges that a finding of fact is not supported by evidence, the party should include in the record all evidence relevant to the disputed finding. Any other party may designate additional portions of the taped transcript relating to issues raised on review.