

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

In the matter of the Appeal of

EVELYN L. STRATMAN

MUP-89-044(CU)

APPLICATION NO. 8901484

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 Ordinance, Chapter 23.76, Seattle Municipal Code.

This matter was heard before the Hearing Examiner on September 13, 1989.

Parties to the proceedings were: appellant, represented by Lin Senter of the Haller Lake Community Council; applicant, represented by Dan R. Young, attorney at law; and the Director, Department of Construction and Land Use, represented by Jay B. Laughlin, land use specialist.

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

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

Findings of Fact

1. Applicant is seeking to legally establish an already in operation buddist monastery as a religious facility within a single family zone (SF 7200). The administrative conditional use permit application was filed following a zoning violation action regarding this use in March, 1989. The address of this single family residence is 2121 North 130th Street. The residence has been adapted as the living quarters for a group of Buddist monks. It is also used as a place of assembly by followers of the monks. DCLU conditionally granted the administrative conditional use application necessary to legally change the residence to a church monastery. Evelyn L. Stratman, a vicinity resident, on behalf of the Haller Lake Improvement Club, appealed this decision on the general grounds that the lot was too small for the level of use which was likely to ultimately occur and that the conditions approved to restrict large assembly gatherings were unenforceable.

2. The subject property is two blocks north of Haller Lake on North 130th Street. The residence is located north towards the street and the site has a total area of 9,133 sq. ft. with 50 ft. of frontage on North 130th Street and 182.6 ft. of depth.

3. Most of the rear yard has been converted to a nine space parking lot. North 130th Street is a busy four lane arterial with no permitted parking on either side.

4. Development in the immediate vicinity is primarily single family houses within the single family zone. Interstate 5 is approximately six blocks to the east. Ingraham High School is five blocks west. Haller Lake, with shoreline development of single family residences, is two blocks south.

5. Applicant proposes to legally establish the monastery as a religious facility with a fenced front yard worship area, three bedrooms, and two assembly/mediation areas within the residence occupying 580 sq. ft. The nine space parking area at the rear of the side would be fenced and landscaped to shield it from view of neighboring properties.

6. Vicinity residents during the public comment period which ended April 20, 1989, submitted approximately 34 letters commenting on this proposal. Thirty two of these letters were adverse to applicant's proposal. A substantial number of letters were received by DCLU following the public comment period. Most were from vicinity residents who had previously written during the public comment period. The specific objections raised were that unacceptable levels of traffic, parking, noise, and crime would result from the grant of the conditional use approval. In addition, allowing the residence in question to be changed to a monastery was viewed as spot zoning within a single family zone.

7. These letters in opposition also objected to the fence around the back yard of the residence as being in violation of the Seattle Municipal Code in that this fence was approximately 8 ft. 9 in. to 9 ft. in height.

8. The letters received by DCLU in support of the proposal viewed the proposed use as being conducive to and in keeping with the peaceful residential character of the neighborhood.

9. DCLU imposed conditions prior to issuance of the master use permit which required that applicant and/or responsible party(s):

...shall remove the top of the front yard fence above six feet high or shall make application for a variance from the Land Use Code.

10. Evidence elicited at the public hearing established that applicant has complied with this prior issuance condition by removing that portion of the fence above the permitted height.

11. DCLU also imposed in pertinent part conditions which required that applicant and/or responsible party(s) prior to occupancy of the residence as a legally established religious facility and for its permanent life

...shall direct and shield exterior illumination so that all lighting is contained on the property, and nearby properties or street traffic are not affected by light or glare.

...reduce the impact of added noise on this site...(by) landscaping according to the plan approved by the Land Use Specialist....

12. Evidence elicited at the public hearing from vicinity residents and DCLU established that applicant has complied fully with these aforementioned prior occupancy conditions.

13. Also imposed by DCLU as a prior occupancy condition was the requirement that applicant and/or responsible party(s) develop a carpooling network to be used during large gatherings. Evidence if this network in the form of a list of names and addresses were to be submitted to the land use specialist to be filed with DCLU.

14. The proposed carpooling network list has not been submitted for filing with DCLU. Evidence elicited in the form of the testimony of applicant witness Loc Huinh indicates that lack of knowledge as to which followers were to assemble at which large gatherings has hindered compliance with this condition.

15. Imposed as a DCLU condition for the permanent life of

the permit is the requirement that applicant and/or responsible party(s) limit regular gathering of non-resident adherents to five or less in number.

16. Applicant witness Loc, as spokesperson for the resident monks, testified credibly that they would comply with this condition and did not find it objectionable.

17. Also as a permanent condition for the life of the permit, DCLU limited gatherings of up to 25 adherents to four times per year. Evidence elicited from DCLU at the public hearing clarified this limitation as a fluid rather than an absolute number for these large gatherings.

18. Evidence elicited at the public hearing in the form of testimony from applicant spokesperson Loc established that there are only four times per year when up to 25 adherents would gather at the monastery. The hearing examiner finds that there is no intent on the part of the applicant to expand the monastery beyond the current level of activity on the present lot.

19. Evidence elicited at the public hearing did not establish that operation of the residence as a monastery would cause unacceptable levels of impacts on traffic and crime. Appellants expressed considerable concern that the proposed activity would cause traffic and crime to increase. However, the presentation of evidence did not contain sufficient facts to permit a finding in this regard. Conditions placed on the grant of the permit by DCLU would sufficiently ameliorate the impact of added noise and parking on the site.

Conclusions

1. The Office of the Hearing Examiner has jurisdiction of this appeal pursuant to Chapter 23.76, Seattle Municipal Code. As this is an administrative conditional use decision herein appealed, no substantial weight or other deference is accorded the underlying DCLU decision. Seattle Municipal Code Section 23.76.022C7.

2. Religious facilities, such as a monastery, may be permitted as a conditional use in a single family zone so long as the provisions of Seattle Municipal Code Section 23.44.022A through M, except subsection K which has been repealed, are met.

3. A conditional use of this nature must also meet the development standards for uses permitted outright in Seattle Municipal Code Section 23.44.008 and the parking location and access requirements of Seattle Municipal Code Chapter 23.54 as may be modified by DCLU pursuant to the provisions of Seattle Municipal Code Section 23.44.016.

4. Pursuant to Seattle Municipal Code Section 23.44.018C, the proposed conditional use must, in addition to meeting the criteria for establishing the specific conditional use, not

be materially detrimental to the public welfare or injurious to property in the zone or vicinity in which the property is located.

Conditions may be imposed to mitigate adverse negative impacts necessary to protect other properties in the zone or vicinity in which the property is located. Seattle Municipal Code Section 23.44.018D.

5. The proposed conditional use, by virtue of its present size as an existing single family structure and its present level of intensity of use, is not a major institution as defined in Seattle Municipal Code Section 23.44.022B.

6. The proposed conditional use also meets the development standards for uses as set forth in Seattle Municipal Code Sections 23.44.008 and 23.44.016 in that the structure is on an established lot and parking location and access as required in

Seattle Municipal Code Chapter 23.54 are provided.

7. The nine space parking area located at the rear of this site could be inadequate for the larger assembly gatherings which will occur four times yearly. Appellant has argued that this potential inordinate parking demand would constitute a detrimental or negative impact on the public welfare and to other properties in the zone. However, DCLU has the authority to tailor conditions which will adequately control the concerns and potential impacts.

8. Based on the factual evidence elicited at the public hearing, there is no showing that the expressly limited large assembly gatherings as conditioned would rise to the prohibitory level of a material detriment to the the public welfare and to other properties in the zone. Nor would the small gathering of adherents at any given time be materially detrimental.

9. As an existing structure, the proposed monastery site is sufficiently dispersed from any other nearby lot line or institution. Seattle Municipal Code Section 23.44.022D.

10. The proposed use will not require the demolition of the present residential structure for any use, including provisions for parking, and therefore meets the requirements of Seattle Municipal Code Section 23.44.022E.

11. The proposed conversion of the existing structure to partial use as a place of assembly, as well as a residence, meets the conditional use provisions with respect to reuse of an existing structure. Seattle Municipal Code Section 23.44.022F.

12. Noise and odors which may emanate from the site as the result of the proposed conditional use may cause higher levels of impacts on adjacent properties. The factual evidence elicited at the public hearing and made a part of the record herein fails to show that such impacts have occurred or are likely to occur in the future given the nature and infrequency of the proposed use. Moreover, the proposal, as conditioned, sufficiently mitigates those potential adverse negative impacts. Specifically, the level of activity is expressly limited and landscaping and a perimeter fence are required for the permanent life of the conditional use. These conditions, which have been met, satisfy the requirements of Seattle Municipal Code Sections 23.44.022G. and H. and 23.44.018D.

13. Exterior illumination of the area of the entry way expansion has been directed and shielded away from adjacent properties and street traffic so that all lighting is contained on the property consistent with the provisions of Seattle Municipal Code Section 23.44.022I.

14. The bulk and siting provisions of Seattle Municipal Code Section 23.44.022J do not pertain to the proposal, as conditioned, since those provisions would not affect the adapted use of the existing single family residence. The front yard fence has, as established by testimony elicited at the public hearing, been lowered to the requisite height to comply with the standards of this section of the Seattle Municipal Code.

15. The nine space parking area at the rear of the site meets the requirements of Seattle Municipal Code Section 23.44.022L. Pursuant to the provisions of this section, DCLU may encourage the use of transportation modes such as vanpools, carpools and public transit to reduce and mitigate the impacts of single occupancy vehicles.

16. Per Seattle Municipal Code Section 23.44.022M, the proposed use may be conditioned by imposing the requirement that a transportation plan be submitted by the applicant with respect to the potential adverse impacts of large gatherings or on other properties in the zone or vicinity in which the property is located.

17. That plan may require the applicant to address the number of users, guests, or followers who would be present at the large gatherings which will occur four times yearly. In addition, that plan could be required to address the level of vehicular traffic which these gatherings would generate; the parking and traffic peaking characteristics of this vehicular traffic on the religious facility and in the immediate area; likely vehicle use patterns; types and numbers of vehicles associated with the four large assembly gatherings at the religious facility; the possible extent of traffic congestion; and mitigating measures, such as a space reservation system, taken by the applicant. Seattle Municipal Code Section 23.44.022M.1.

18. Also, this plan may be required to address measures taken by the applicant to give preference to carpool and vanpool vehicles or arrange similar private mass transportation programs. Seattle Municipal Code Section 23.44.022M.

19. The condition that the applicant shall develop and implement a transportation plan which organizes a carpooling network for large gatherings is proper and consistent with the provisions of Seattle Municipal Code Section 23.44.022M.

20. The further requirement that evidence of the development of this network be submitted to DCLU to be placed on file appears to be in contravention of the Seattle Municipal Code to the extent that applicant is to submit a plan in the form of a list of names and addresses. Seattle Municipal Code Section 23.44.022M. However, the hearing examiner recognizes that the only challenge to the DCLU decision is that of the neighborhood appellant group.

21. The Office of the Hearing Examiner is cognitive of the legitimate concerns raised by the appellant that the conditional use approval could adversely effect the quality of life in the neighborhood. However, the undersigned is persuaded by the weight of the evidence and the law that the proposed conditional use would be unobtrusive and would remain in keeping with the character of the neighborhood. The conditions imposed on the proposal will provide a means for the facility to primarily function as a residence while accommodating the religious aspects of its occupancy.

22. No conclusion is made as to the constitutional considerations raised and addressed during the course of this public hearing.

Decision

The DCLU decision to grant the proposed administrative conditional use requested by applicant is Affirmed. The hearing examiner recommends that DCLU review the form of the transportation plan to be submitted by applicant in order to ascertain whether this condition, particularly as it relates to the submission of a list of names, is in strict compliance with the provisions of Seattle Municipal Code Section 23.44.022M.

Entered this 27th day of September, 1989.


Stan Taylor
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 23.76.022C.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, Room 1320 Alaska Building, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521.