

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

In the Matter of the Appeal of

SAVE OUR NEIGHBORHOODS

FILE NO. S-79-021

from a determination of the
Superintendent of Buildings

The appeal is DENIED and the findings and decision of
the Superintendent of Buildings are AFFIRMED.

Introduction

The appellant, Save Our Neighborhoods, filed an appeal from the proposed issuance by the Superintendent of Buildings (Superintendent) of a use permit for a church use at 6601 N.E. Windermere Road.

The appellant exercised its right to appeal pursuant to Section 25.40 of the Zoning Ordinance (86300, as amended).

Parties to the proceeding were: Save Our Neighborhoods, represented by Roger Leed, the Superintendent, represented by Ross Radley, and the Unification Church, represented by Jon Schneidler.

This matter was heard before the Hearing Examiner on September 10, 1979.

For purposes of this decision, all section numbers, unless otherwise indicated, refer to the Zoning Ordinance (86300, as amended).

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 property that is the subject of the application is developed with a large single-family residence with a basement plus three stories and a detached garage. The site is surrounded by single-family properties. The property does not abut a street and the only means of access is a narrow (12 ft. wide) gravel driveway, that extends for approximately a distance of 150 feet from N.E. 60th Street to a parking area on the subject site.

2. The subject property is zoned Single Family Residence Low Density (RS 9600). Properties in the zone are developed exclusively with single-family residential uses. Pursuant to Section 6.11(f), a church is an outright permitted use in the RS 9600 zone.

3. In written findings, dated July 31, 1979, the Superintendent determined that the application of the Unification Church to use the existing residence as a church and accessory rectory met all applicable zoning code requirements and should be granted.

4. Notice of intention to issue a use permit was published on August 2, 1979. A timely appeal was filed by Save Our Neighborhoods on August 16, 1979.

5. A "church" is defined in Section 3.04 as: "a building or portion thereof used for religious worship". "Worship" is defined in Webster's Third New International Dictionary as: "An act, process or instance of expressing reverence or veneration rendered a divine being or supernatural power by performing or taking part in religious exercises or ritual."

6. Section 6.31(a) also permits in the RS 9600 zone accessory uses customarily incidental to a principal church use such as rectories or other similar church residence. "Rectory" is defined in Webster's Third New International Dictionary as: "a rector's residence; parsonage".

7. The applicant proposes to use the living room, which contains about 500 feet, as a nave which would be used for church services and meetings.

8. The applicant supplied the Superintendent with information on the activities that would be held in the building. Morning church services would be held on Sunday with an average attendance of from 20 to 25 persons. The capacity of the nave is 49 persons. Workshops would be held from Saturday morning until Sunday evening. Members would sometime stay overnight, probably at a frequency of no more than once every 2 or 3 months in groups of no more than 20. Numerous international fellowships meeting with a dinner would be held. From 6 to 8 persons, who are clergy and caretakers, would reside on the premises. Fund raising would be limited to activities customarily conducted by churches. No business or commercial activity would take place. No church office will be located on the site. Eight parking spaces would be provided and persons attending are expected to arrive in church vans rather than by automobiles.

9. Marc Lee, head of the Unification Church in Washington State, testified that the theology of the church includes belief in and worship of God and that in fact it considers itself a Christian Church.

10. A declaration of non-significance (DNS) was issued by the Superintendent with regard to the proposed change of use. The DNS determination was upheld on appeal by the Hearing Examiner. The decision of the Hearing Examiner noted that the activity generated by the church use in the form of noise and traffic would disturb the adjacent neighbors' quiet enjoyment of their property.

11. The church structure meets all bulk requirements of the zoning ordinance with the exception of providing a required 20 foot setback from the nearest lot in a single-family zone. A variance to permit the existing accessory garage to be located at a distance of less than 20 feet was granted by the Board of Adjustment. The Board imposed conditions limiting the use of the garage to residential parking and storage of a non-commercial nature. Church type uses are not permitted in the garage.

12. The subject property was not subdivided in accordance with legal requirements when it was sold separately from the property directly to the west. Section 32 of the Subdivision Ordinance (105636) prohibits the issuance of permits for land subdivided in violation of the law but an exception is provided for an innocent purchaser for value without actual notice. Marc Lee, a representative of the applicant, filed an affidavit claiming that he is an innocent purchaser for value without actual notice.

13. On May 14, 1979 the City Council adopted Resolution 25968, which establishes land use policies for Single Family Residential Areas. The Section on institutions and facilities in single family residential areas provides:

POLICY INTENT: The City recognizes the positive contributions many institutions have made to the neighborhood in which they are located, respecting community needs and providing appropriate services. However, location, scale, access and development standards of institutions and facilities shall be controlled in order to reduce negative impacts such as noise, traffic and parking problems, and to protect Seattle's single family housing stock. Implementation Guideline 1: Institutions and facilities may be established or expanded within Single Family Residential Areas through the Hearing Examiner (see Definitions) conditional use authorization process.

Conclusions

1. The record in this case shows that the applicant seeks to use the property for church use and qualifies as a church under the zoning code definition. Responsible City officials have an obligation, which they have fulfilled in this case, to inquire of the applicant and determine whether or not it actually proposes a church use. The record shows that the applicant intends to hold services that clearly come within the definition of worship services. Although the extensive practice of having members or prospective members stay overnight does not appear to be widely practiced by other religious organizations, it is not so unrelated to a church use as to fall outside the parameter of permitted church activities. Although the Unification Church is markedly different from many other churches in the nature of its recruitment and money raising techniques, those are not relevant matters of inquiry under the zoning code.

2. Once it is determined that the applicant is a church and proposes to use the site for a church use the Superintendent is left with no real discretion, since a church is an outright permitted use in the RS 9600 zone.

3. The accessory use of a portion of the building as a rectory is also supported by the record. A residence for those persons directly associated with the church use is permitted outright by Section 6.31(a). The record shows that several persons, not to exceed eight, associated with the church would reside in the residential portion of the building.

4. The appellant has failed to bring forth any evidence to support the allegation concerning an illegal subdivision. Therefore, this issue is dismissed as a matter of law.

5. Section 25.44 provides that in appeals to the Hearing Examiner the determination of the Superintendent is to be considered prima facie correct. The appellant has failed to produce sufficient credible evidence to overcome the presumption of the correctness of the Superintendent's decision.

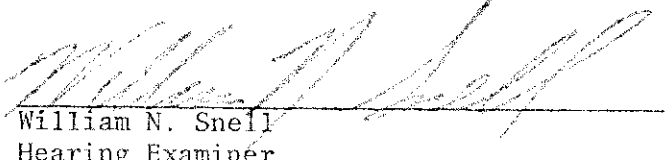
6. The neighbors, who have filed the appeal, have been placed in an extremely difficult position because of an obvious and glaring gap in the City zoning code. The record from the environmental hearing shows that the neighbors have been impacted by the noise and traffic generated by the church use, which may become worse when the church use is legitimized. Given the location of the church, not abutting on a street and surrounded by single family properties, it is obviously an inappropriate site for such a facility. If the church use required a conditional use, its location and impacts are clearly the type that would result in outright denial or the imposition of extensive conditions limiting traffic, and the hours of operation. Unfortunately for the beleaguered neighbors, this is not the case.

7. The City in its recently adopted Single Family Residential Area Policies has recognized the need to control institutional impacts on single family neighborhoods and has indicated an intention to adopt a zoning ordinance that will include limitations on uses such as churches. Unfortunately for the Windermere neighbors, such action will come too late.

Decision

The appeal is DENIED and the findings and decision of the Superintendent of Buildings are AFFIRMED.

Entered this 17th day of September, 1979.


William N. Snell
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 appeal to the Superior Court should be filed within 20 days of the date of this decision. Vance v. Seattle, 18 Wn. App. 418 (1977).