

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

In the Matter of the Appeal of
HALLER LAKE IMPROVEMENT CLUB, INC.

FILE NO. S-80-025

from a determination of the
Superintendent of Buildings

The decision of the Superintendent is AFFIRMED with one
additional condition.

Introduction

The appellant, Haller Lake Improvement Club, Inc., appeals the issuance of a use permit for a church at 11505-5th Avenue N.E. of the Vedanta Society of Western Washington.

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

Parties to the proceeding were: Appellants represented by Beverly B. Stanton, president; Vedanta Society represented by James D. Braman Jr.; Superintendent of Buildings represented by Darcy C. Goodman, Assistant City Attorney.

This matter was heard before the Hearing Examiner on May 29, 1980.

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 Superintendent of Buildings published his intention to issue a use permit to construct a church building with rectory at 11505-5th Avenue N.E. on the application of the Vedanta Society of Western Washington.

2. A declaration of non-significance (DNS) was issued by the Building Department for the proposal. Adverse impacts were identified associated with [soil disruptions, dust, noise, additional vehicular movement and demand for additional parking] The DNS was appealed by appellant and affirmed by the Hearing Examiner in a decision issued concurrently with this decision.

3. The property is zoned Single Family Residence Medium Density (RS 7200). Single family residences are located to the east, north and west of the site. Also to the west is a Water Department Pump Station. To the south, across N.E. 115th, is a daycare center.

4. The site is located at the northwest corner of the intersection of N.E. 115th Street and 5th Avenue N.E.

5. Five churches are located within an ½ mile radius. Two are within two blocks.

6. The church holds services at 11 a.m. on Sunday and study classes at 7:30 p.m. on Tuesdays. Membership is presently 97. An average of approximately 47 persons attend Sunday services and an average of 21 attend Tuesday classes. Generation of 50 vehicle trips (25 one way) is projected for Sunday services.

7. The rectory could house eight persons.

8. On-site parking for 12 vehicles is required and will be provided.

9. Arrangements with Group Health Cooperative for 20 parking spaces during the Sunday service have been made. That parking is located over 500 ft. away.

10. The traffic volume during the time of Sunday services on 5th Avenue N.E. is 49-55% of the Friday volume during the same period. The traffic generated by the project on Sundays can be expected to increase the volume from 8-14%.

11. N.E. 115th Street has no curbs or sidewalks at this location. The proposal includes the installation of a curb. A ditch forces pedestrians into the street when cars are parked along the north side of N.E. 115th.

12. The streets within 200 ft. of the intersection of 5th Avenue N.E. with N.E. 115th Street have the capacity to park 39 vehicles.

13. A 15 in. storm drain pipe is located in 5th Avenue N.E. and the drainage system for the subject site would be connected directly to it.

14. The project would result in 64% of the site covered with impervious surface.

15. The vehicular entrance to the site would be from 5th Avenue N.E. with driveways and parking along the north and west perimeters.

16. Landscaping is proposed for the north and west margins of the property but may not be sufficiently high to prevent the glare of headlights from striking the houses adjoining to the north and west.

Conclusions

1. The decision by the Superintendent of Buildings regarding a use permit is to be regarded as prima facie correct and the burden of establishing the contrary is on the appellant. Section 25.44. To sustain its burden, the appellant must show by a preponderance of the evidence that the decision is in error. Allison v. Department of Labor and Industries, 66 Wn.2d 263(1965).

2. Driveways and accessory parking in the rear yard or side yard (not along a street) are not prohibited by any provision in the zoning code. The plans conform to the code in that respect.

3. Section 5 of the Drainage Ordinance, 108080, requires submission and approval of a Drainage Control Plan prior to the processing of a "Building/Use Permit." The submission is a condition precedent to the issuance of the permit.

4. Appellant contends that the issuance of the use permit prior to submission and approval of plans is error. The meaning of Section 5, Ordinance 108080, is ambiguous because of the use of the term, "Building/Use Permit." Webster's New Collegiate Dictionary, p. 1524 (1977), as one explanation of the use of a

virgule (/), explains that it is used to separate alternatives. "Alternative," according to Webster, supra, at p. 34 is defined as 1a: a proposition or situation offering a choice between two or more things only one of which may be chosen." The "Building/Use Permit" choice would allow the Superintendent to choose if both would be required by a project but to require submittal of plans for any project if only one permit was required.

5. Here, since both use and building permits would be required the Superintendent is permitted to process and issue the use permit and require the Drainage Control Plan as a condition precedent to processing the Building permit. While the building permit is not a decision subject to appeal, the Council, in passing the Drainage Control portion of Ordinance 108080, did not create any opportunity for public review or appeal of Drainage Control Plans for individual projects, except when an environmental impact statement is involved, so this construction of the term would not violate legislative intent.

6. A permit may be denied only when significant adverse impacts have been identified which cannot be substantially mitigated by imposition of conditions. Section 19, Ordinance 105735, as amended. No significant adverse impacts having been identified for this project, the Superintendent may not deny a permit for a use permitted outright.

7. The Superintendent may impose reasonable conditions to mitigate identified adverse environmental impacts. The evidence showed that the storm sewer hook-up will be adequate to mitigate drainage and flooding impacts; the parking demand can be accommodated, the streets can handle the increased traffic volume and without increasing hazard to a degree of concern, the increase in noise level and air pollutants would not be measurable, therefore the Superintendent did not err in imposing no mitigating conditions for those impacts.

8. The current landscaping plans may not be sufficient to mitigate the effects of glare from headlights if the proposed plantings are not of sufficient height. The permit should have been conditioned on landscaping plans showing plantings or fencing of sufficient height to avoid that impact. The decision should be modified to reflect that condition.

9. Appellant contends that the Single Family Residential Area Policies (SFRA) give the Superintendent authority to deny a permit for a church, as an institution, to avoid a concentration of institutions which would create or aggravate parking shortage, traffic congestion and noise or physical scale and bulk incompatible with single family residences. While SFRA policies are to be used in decisions not controlled by the Zoning Ordinance, they cannot be used in the instant case since churches are a use permitted outright in the Zoning Ordinance, Sections 6.11 and 7.11. The SFRA resolution contemplates eventual revision and amendment to the Zoning Ordinance to make establishment of institutional uses subject to the conditional use process. Until adoption of that revision, the Superintendent has no discretion except for that conferred by SEPA.

Decision

The decision of the Superintendent, with the added condition that the landscaping plan be modified to assure protection for adjoining residences from light of headlights entering and leaving the property, is AFFIRMED.

Entered this 13th day of June, 1980.

M. Margaret Klockars
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Deputy Hearing Examiner

Notice of Right to Appeal

Pursuant to Section 20A of the SEPA Ordinance (105735, as amended) a party to the hearing before the Hearing Examiner may file an appeal with the City Council no later than the fifteenth (15th) day after the date the decision appealed from is filed with the SEPA Public Information Center. The appeal must be filed with the City Clerk. Rules have been adopted by the City Council governing the appeal procedure and should be reviewed prior to filing an appeal.

The City Council will only review issues relating to compliance with Section 19, Ordinance 105735, as amended. Section 19 relates to substantive authority to condition or deny a proposal on environmental grounds.