

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

In the Matter of the Appeal of

JOYCE TOY, ET AL.

FILE NO. MUP-81-072(V)  
APPLICATION NO. 81132-0031

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

Introduction

Appellants, Joyce Toy, et al., appeal the decision of the Director of the Department of Construction and Land Use (Director) to grant a variance under a master use permit application for property at 6757-38th Avenue South.

The appellants exercised their right to appeal pursuant to the Master Use Permit Ordinance, Chapter 24.84, Seattle Municipal Code.

The permit applicant did not appear at the hearing.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code, Title 24 (Ordinance 86300, as amended) unless otherwise indicated.

This matter was heard before the Hearing Examiner on December 4, 1981.

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. Akerei Motu applied for a master use permit for the Samoan Community Church to convert an existing single family residence to church use. The Director determined that a variance to provide less than the minimum required setback from another lot in a residential zone would be required and conditionally granted the variance. Appellants filed their appeal of this decision.

2. The subject property is a lot with 80.5 ft. of frontage on 38th Avenue South, is 128 ft. in depth and is occupied by a structure which was previously a single family residence and a shed which was formerly a garage. The garage is 6 in. from the north property line. The principal structure is 10 ft. 8 in. from the north property line.

3. The property is zoned Single Family Residence High Density (RS 5000) and is at the southern edge of that zone. To the north and northeast of the subject lot are single family residences. To the south, across an access road owned by Seattle Housing Authority, is a playfield. To the east is a Multiple Residence Low Density (RM 800) zone with apartment buildings, vacant lots and a single family residence. The Holly Park housing project is located to the west of the subject site with an open part of that development between the two.

4. Churches are permitted outright in an RS 5000 zone provided any building or active play area is at least 20 ft. from any other lot in the zone. Sections 24.20.010, 24.18.010, 24.16.010.

5. The Director's decision was based on the structure's orientation away from other RS 5000 zoned properties and the open areas on the west and south. Conditions to protect the adjacent property from noise were imposed.

6. According to appellant Toy, the structure's orientation has recently been changed by applicant. The entrance had previously faced east but was closed and a new one established on the south.

7. Appellant Toy presented evidence of annoyances to the neighborhood from the church's use of the playfield late in the evening, blocking of the street and access to the playfield, traffic noise, etc. While the church represented to the Director that the building was in use only Wednesday and Friday evenings and Sunday morning and evening, appellant Toy testified that the building is occupied 24 hours per day all week long.

### Conclusions

1. For variance relief, an applicant must show that, because of a unique property condition, the strict application of the ordinance will deprive the property of rights and privileges enjoyed by other properties in the zone or vicinity. Whether the location of an existing building to be converted to church use is a unique property condition meeting this requirement has been the issue in several variance applications throughout the city. Where the building is a single family residence in a single family zone such variances have generally been denied. The Director's decision in this case was based, in part, on the orientation away from the single family zone but even if this were a condition denying comparable development, which is questionable, it may not be relied upon here because the record shows that the applicant created it by remodeling the structure. Self-created conditions are excluded from consideration.

2. The record is devoid of any reference to any churches not observing the required setback in the zone or vicinity or any conversions of single family residences to church use in the area.

3. The complaints from neighbors about the church do not relate directly to the amount of separation from the adjoining RS zoned lot. They would be eliminated for these neighbors, of course, if the church were to occupy other property meeting the separation requirement.

4. The Single Family Residential Areas Policies do not specifically address the separation requirement. They do provide for church use in single family zones by conditional use authorization. Separation could then be considered as well as other potential or realized impacts. It is not clear then whether this variance would conflict with the land use policies. The Director, in his variance decision, seems to have used the conditional use standards and concluded that, because of the open space on the west and south the church use would be appropriate. The land use policies have not yet been codified so the variance analysis and criteria must still be used.

5. Without variance relief from the setback requirement church use may not be made of this property. The record does not show that exclusion of that use would deny the property rights and privileges enjoyed by other properties in the zone or vicinity. Without that showing, a variance may not be granted.

Decision

The decision of the Director to grant a variance is REVERSED.

Entered this 17th day of December, 1981.

M. Margaret Lockars  
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Deputy 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 further appeal must be filed with the Superior Court within 14 days of the date of this decision. Vance v. Seattle, 18 Wn.App. 418 (1977); JCR 73 (1981). Should an appeal be filed, instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court.