

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

In the Matter of the Appeal of

WEST SEATTLE CHRISTIAN CHURCH

FILE NO. MUP-83-009
APPLICATION NO. 82-274

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 with application no. 82-275 on June 2, 1983. Pursuant to parties' agreement the record remained open for post-hearing submittals, the last of which was received in the Office of Hearing Examiner July 8, 1983, at which time the record was closed.

Parties to the proceedings were: appellant by Edward L. Mueller, Carney, Stephenson, Badley, Smith and Mueller, P.S.; the Director of the Department of Construction and Land Use (Director) by Rosemary Horwood.

For purposes of this decision, all section numbers refer to the Seattle Municipal Code unless otherwise indicated. As the subject application was made prior to the effective date of Title 23, Title 24 provisions apply.

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. The subject property is located near the southwest corner of 42nd Avenue S.W. and S.W. Genesee Street.
2. At issue is the location of an accessory 19 space parking lot on the site commonly known as 4401-42nd Avenue S.W. Appellant, West Seattle Christian Church, to which the lot is accessory, is directly east across 42nd Avenue S.W.
3. Commercial uses are west of the site, to California Avenue S.W. Holy Rosary Catholic Church and related development is located north, across S.W. Genesee Street. Single family residences are located to the south.
4. Pursuant to Title 24, the subject site and the church are zoned RD 5000 (Duplex Residence High Density). Section 24.26.090A imposes a 20 ft. minimum front yard setback on properties within the zone. Section 24.64.040 provides that no parking space shall be located in a required front yard.
5. The predecessor in interest of the subject property was another church from whom appellant, West Seattle Christian Church, purchased the property. In 1956, an education building was

constructed on-site. The education building is oriented to east adjacent 42nd Avenue S.W. Its parking/playground area at issue is south adjacent and is marked by a 4 ft. high wire fence near the east and west, i.e., front and rear, lot lines. The front fence begins roughly 3 ft. 6 in. west of the front lot line. The rear fence is closer to the rear lot line.

6. The south lot line is also fenced. Beyond this fence is the adjacent caretakers' residence which has an enclosed rear yard. The yard contains the more stationary play equipment for the students.

7. The east fence was erected by appellant, West Seattle Christian Church, pursuant to their understanding of the east boundary's location. In fact, the initial fence was in the public right of way. Some 20 years later, appellant consented to then "Building" Department directions to remove the fence westerly, which accounts for the present location of the east fence.

8. The fenced area is used for parking and as a play area during recess when cars are generally required to be moved and the entry and the exit gates are closed. In some instances, children play around cars that happen to remain on-site.

9. The exit is a right turn only to a one way, north-bound alley.

10. School children arrive on-site by private automobiles and carpools.

11. On-street parking is at a premium in the vicinity on Sunday mornings.

12. The subject lot was in use for parking for several years prior to 1957. Applicant's exhibit 27 is a copy of a December 13, 1957, letter of appreciation from the neighboring West Seattle Post Office for use of the lot for "several" years.

13. Director's Exhibit 6 is a 1956 architect's drawing of the site showing circa 1956 "Revisions" such as addition of catch basins, May 31, 1956. Exhibit 6 also bears notations "property Zoning R1-A"; and "parking space for eight cars." Appellant urges that the number eight represented a minimum number.

14. The Director denied variances to allow parking in the required front yard; and to waive required screening of the parking lot, citing Section 24.64.160. Appellant submitted this appeal from the denial and as well from the imposition of four conditions on the Director's approval of the administrative conditional use, Director's reference Section 24.64.170. The referenced conditions generally require a 20 ft. westerly relocation of the existing fence, landscaping, slat screening and removal of the two currently easternmost parking spaces.

Conclusions

1. As no opponent of the parking use submitted any appeal from the DCLU administrative conditional use authorization, the only issues before the Examiner are those raised by the appellant, West Seattle Christian Church.

2. As to authorization of the administrative conditional use, the Director is required to consider adjacent uses and is empowered to impose conditions and requirements

...with respect to location, installation, construction, maintenance and operation and extent of open spaces as may be deemed necessary for the protection of other properties in the zone or vicinity and the public interest. Section 24.74.010.

3. Section 24.74.030, Variances, allows variances from the provision of the zoning code which are not contrary to the public interest where unique or unusual property conditions would deprive the property of comparative rights and privileges if variance relief is denied. The variance should not be materially detrimental to the public welfare nor injurious to the vicinity property or improvement. (See also Section 23.40.20.)

4. The variance relief to allow for parking in the required front yard and to waive screening was properly denied. No unique or unusual real property condition has been shown. The unfortunate chronicles of the site's development are personal non-property related circumstances which are not legislated bases for variance relief. It is acknowledged that compliance could mean loss of two well desired parking spaces although restriping could reduce the loss.

5. Specifically, as to screening, Section 24.64.160A, provides that it is to be provided

...on each side of such parking areas which abuts upon or faces across a street, alley or place any lot in an R Zone...but in no case shall be permitted to constitute a traffic hazard.

6. Since the gate to the parking lot-play area is closed during recess, concerns for children's exiting the subject area and traffic view obstruction as a result of screening are minimized to a legally sufficient degree. However, the examiner is persuaded that in view of the location and visibility factor concerning the alley west screening would present a traffic hazard. Accordingly, no alley side screening is required. Further, no aesthetic streetscape benefit would be gained by alley side screening. Section 24.74.010.

7. The examiner cannot agree with the inference by applicant that if the parking area doubles as a play area, screening should not be required. Such a conclusion would conflict with the legislative intent such as is embodied in Section 24.64.110, which states that paved recreation space may be used for parking on the condition that

A. Such parking areas ... be subject to all locational and development provisions of this chapter. (emphasis added.)

8. Much has been stated in this and the companion case concerning what appellant urges are its vested rights to continue to use the property as a nonconforming use. It shall be noted that this decision on the subject application concerns whether the variance and administrative conditional use criteria are satisfied. And that in general, the legislatures and the courts favor their limitation and eventual termination, 1 Anderson American Law of Zoning, Section 6.06, even though some are accorded legal protection. In order to come within that protection, the use should be one which

lawfully existed prior to the enactment of a zoning ordinance and which is maintained after the effective date of the ordinance although it does not comply with the use restrictions applicable to the area in which it is situated.... Anderson, Section 6.01.

9. It would appear that the hearing record insufficiently establishes the lawful more intense use as urged by appellant. Anderson notes that


...the burden of proof is upon the person asserting the right to maintain a nonconforming use, and a denial of such right will be sustained where the evidence in support of prior use is insufficient or contradictory. Section 6.09.

10. The Director's denial of the variances is accordingly affirmed. The administrative conditional use conditions are also affirmed, except that slat or other suitable screening may be used. Secondly, no screening is required on the west (alley) side of the parking area.

Decision

The Director's decision is AFFIRMED as modified in conclusion 10 above.

Entered this 21st day of July, 1983.


Leroy McCullough
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.