

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

In the Matter of the Appeal of

TEMPLE BETH AM

MUP-90-081(CU)  
APPLICATION NO. 8904071

from a decision by 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 undersigned Deputy Hearing Examiner on November 7, 1990. The record was held open until November 13, 1990 to allow time for a site visit by the Examiner.

Parties to the proceeding were: the appellant, Temple Beth Am by I. M. Gorasht, architect; and the Director, Department of Construction and Land Use (Director) by Christina VanValkenburgh, senior land use specialist.

After due consideration of the evidence elicited during the public hearing and as a result of the personal inspection of the subject property and surrounding area by the Hearing Examiner, the following shall constitute the findings of fact, conclusions and decision of the Hearing Examiner on appeal.

Findings of Fact

1. The subject property is located on the west side of 27th Avenue N.E., between N.E. 80th and N.E. 82nd Streets, immediately north of the University Preparatory Academy (UPA) property. The property is addressed as 8015 27th Avenue N.E.

2. The site has 321 feet of frontage along 27th Avenue N.E. and is approximately 341 feet deep. The total area is approximately 115,000 square feet.

3. The site is currently occupied by Temple Beth Am, which has religious, social, educational and administrative facilities on the site. In the current action, the Temple

has sought conditional use approval to expand its facilities by 11,850 square feet.

4. As part of its proposal, the Temple would permanently close the existing vehicular access from 27th Avenue N.E. A new permanent access easement 33 feet 4 inches in width, from N.E. 80th Street along the eastern edge of UPA, will provide vehicular and pedestrian access to the Temple. The easement would be developed with a 22-foot wide driveway, a sidewalk, and landscaping. As the driveway enters the Temple site from University Prep, it would extend approximately 20 feet further north, and then turn west into the Temple parking lot.

5. A photinia hedge exists along the eastern (27th Avenue N.E.) boundary of the Temple. The hedge extends from the north boundary of the site south to a point 55 to 60 feet north of the south boundary.

6. A blackberry hedge of some four feet in height grows along the eastern edge of the University Prep site. The hedge protrudes for several feet into the adjoining street right-of-way. The absence of any sidewalk along 27th Avenue N.E. at this location, in combination with the blackberries, tends to discourage persons using the Dahl Playfield to the south of N.E. 80th from walking north along 27th into the neighborhood.

7. The Department of Construction and Land Use entered its decision in this matter on September 13, 1990. While approving the application, the Department attached 14 conditions. Condition number nine (9) reads as follows:

In order to mitigate the potential noise impacts along the relocated driveway, the owner(s) and/or responsible part(s) shall revise the landscaping plan to show a 6-foot high, solid fence along the east property line. The fence shall extend from the southeast corner of the site, to the north, to the point where it meets the existing photinia hedge.

8. It is the above condition nine that forms the basis of this appeal.

9. The fence required by condition nine would form a continuation of the fence required under project 8901959. Under that project, University Preparatory Academy was required to revise its landscape plan to show a six-foot high solid fence along the entire length of its east property line, a distance of 150 feet. No timely appeal was taken from the DCLU decision in that case.

10. DCLU's reason for requiring a fence both in this case and in 8901959 was to screen the Temple's access driveway from 27th Avenue N.E. (which it parallels) and from the residential neighborhood to the east of 27th. In DCLU's view, the fence is needed to mitigate the noise impacts created by cars using the new access driveway. The fence would also control light and glare generated by cars using the driveway and parking lot.

11. Appellants assert that the failure to file any appeal to the condition imposed under 8901959 was an error. Appellants argue that the fence required under that project, and the one required here, are unnecessary. In addition, appellants are concerned that the requirement for the fence will impede their ability to create an aesthetically pleasing entrance to the Temple. The Temple envisions a 22-foot wide driveway and five-foot wide sidewalk flanked on both sides by at least 5 feet of landscaping. The Temple's easement is but 33.33 feet wide, between three and four feet short of the sum of the above numbers. The Temple's plan was to use the existing blackberry hedge on the east property line of the UPA site as the landscaping on the west side of their driveway, thereby avoiding the need to place the entire five feet of landscaping on that side of the driveway within their easement. However, if a fence must be placed at the property line, that plan does not work, and all the landscaping would have to be within the easement.

### Conclusions

1. The Hearing Examiner has jurisdiction over this appeal pursuant to Chapter 23.76, Seattle Municipal Code. Under the terms of that Chapter, the decision of the Director on a conditional use application is to be given no deference.

2. The conditions imposed under application 8901959 on University Prep are not subject to review by the Examiner. As no timely appeal was filed from the DCLU decision in that case, the Examiner has no jurisdiction over the matter.

3. Accordingly, only the conditions imposed by the Department on Temple Beth Am under the current application can be considered.

4. The Examiner agrees with the Department's conclusion that some sort of screening is necessary between the southern edge of the property and the photinia hedge. However, the Examiner reaches this conclusion on a somewhat different basis than does the DCLU. In DCLU's view, noise was the prime consideration. While acknowledging that cars entering and leaving the site will generate some noise, the Examiner is equally about visual screening and possible

light and glare impacts. As noted at the hearing, cars leaving the Temple parking lot will be headed east until they turn south onto the access driveway. This means that at night, there would be a period during which cars leaving the lot would have their headlights aimed directly at the houses across the street.

5. In light of those concerns, a fence represents a reasonable condition. Were the only concern visual screening and the blockage of light and glare, it would be less important that the screen be a solid fence. Vegetation does not form a noise barrier as does a solid fence, but can perform equivalent visual screening. However, noise is a legitimate concern. Moreover, there are practical concerns about vegetation and landscaping versus fencing. Fencing can be installed and its existence verified prior to the issuance of certificates of occupancy for this project. With vegetation there would be the difficulty of choosing appropriate vegetation to achieve the screening, the question of whether it would form a protective screen from the time of its installation or would need time to grow, and finally the question of the maintenance of the vegetation to assure that it continued to form a good screen. An additional issue would be the placement of the vegetation as the plans submitted at hearing do not show enough space between the driveway entering the parking lot and the east property line to accommodate landscaping.

6. Finally, while the question is not properly before the Examiner, the appellant appeared to have some legitimate concerns about the condition imposed on University Prep under application 8901959. The Examiner believes that the fact that the blackberry hedge already exists along the UPA boundary may represent a meaningful difference between the situation in that case and the one presented here. However, the Department did not come to the hearing on the current application prepared to defend that prior decision, and the Examiner had the benefit of the testimony of only one neighbor. If the appellant continues to have the same concerns as were expressed at the hearing, those concerns should be discussed with DCLU, as should the means for altering that condition.

Decision

The decision of the Director is AFFIRMED.

Entered this 28<sup>th</sup> day of November, 1990.

  
\_\_\_\_\_  
Guy E. Fletcher  
Deputy Hearing Examiner

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 (15) calendar days of the date of this decision. Seattle Municipal Code Section 23.76.22.C.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, 618 Second Avenue, Seattle, Washington 98104, (206) 684-0521..