

BUSINESS OF THE CITY COUNCIL
City of Mercer Island, Wa.



APPEAL FROM DENIAL OF CONDITIONAL USE
PERMIT - HERZL-NER-TAMID CONGREGATION.

BILL NO. 810
DEPT. OF ORIGIN Community Development
DATE SUBMITTED July 9, 1979
FOR AGENDA OF July 23, 1979
CLASS: Minute Order

PROCEEDING:

PUBLIC HEARING TO CONSIDER CONDITIONAL
USE PERMIT APPLICATION BY HERZL-NER-TAMID
CONGREGATION TO ESTABLISH A NON-COMMERCIAL
RECREATIONAL AREA

EXHIBITS: Letter of Appeal, Vicinity
Map, Staff Report, Minutes,
Legal Opinion, Correspondence

CLEARANCE: City Attorney

APPROVED BY CITY MANAGER
FOR SUBMITTAL:

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED: \$ N/A	BUDGETED: \$ N/A	REQUIRED: \$ N/A

SUMMARY STATEMENT

On June 20, 1979 the Planning Commission denied the request of the Herzl-Ner-Tamid for a Conditional Use Permit to establish a non-commercial recreation area on a portion of the synagogue property adjacent to Lake Washington. The non-commercial recreation area was to include a small outdoor amphitheater, basketball court, "big toy", barbecue pit, landscaping, and a relocated caretakers' home.

The denial by the Planning Commission required the Herzl to appeal the decision to the City Council for consideration since only an affirmative action on a Conditional Use Permit by the Planning Commission is automatically heard by the City Council. The City Council may affirm, modify, or disaffirm the action of the Planning Commission. The exhibits attached to this agenda bill set forth the previous action on this matter.

RECOMMENDED ACTION

David P. Guillen, Principal Planner

1. Approve the Conditional Use Permit subject to conditions thus overturning the decision of the Planning Commission.
2. Approve the Conditional Use Permit as submitted thus overturning the decision of the Planning Commission
3. Deny the appeal and Conditional Use Permit thus upholding the decision of the Planning Commission.
4. Return the matter to the Planning Commission for reconsideration.

BILL NO. 810

INSLEE, BEST, CHAPIN, UHLMAN & DOEZIE, P.S.

David Alpheus Best
Jerome D. Carpenter
Richard U. Chapin
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Patricia A. Murray
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Milan Gail Ryder
Wes Uhlman

PLEASE REPLY TO: Bellevue

June 29, 1979

Mr. Ron Dickinson
City Attorney
Mercer Island City Hall
Mercer Island, Washington 98040

Dear Ron:

Please note the last paragraph of my appeal as I would appreciate your reviewing our contention. Please bear in mind that the main buildings are a sanctuary, office and classrooms. There is absolutely no doubt in my mind that the two play areas which are being relocated are accessory uses. Certainly every public school and church school has play areas far more extensive than this as accessory uses. Likewise the relocation of the outdoor sitting for occasional church classes and worship services is an accessory use. Likewise the caretaker's home.

The landscaping itself, I assume, can be done without any permit.

Please let me hear from you after you have had a chance to think this one over.

Sincerely,

INSLEE, BEST, CHAPIN,
UHLMAN & DOEZIE, P.S.

Dick

Richard U. Chapin

RUC:sp
Enclosure

6/29/79

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IN THE CITY OF MERCER ISLAND
OF THE STATE OF WASHINGTON

In the Matter of the Application of) APPEAL TO CITY COUNCIL
HERZL-NER TAMID SYNAGOGUE)

1. Pursuant to the provisions of Section 21.03, Mercer Island Zoning Code, Herzl-Ner Tamid Synagogue hereby appeals to the City Council from a decision of the Planning Commission denying its application for what has been denominated as a conditional use for a non-commercial recreation area.

2. The requested structures and uses which have been defined as a non-commercial recreation area are as follows:

- a. Landscaping what is now a field.
- b. Replacing a single family residence with a new single family residence (caretaker's home).
- c. Relocating a paved play area from the adjacent parking lot, total asphalt approximately 42' by 64'.
- d. Creating a bark covered play area approximately 170 square feet.
- e. Repairing a brick barbeque.
- f. Relocation of the present outdoor open chapel area and the installation of log sitting for occasional school classes and religious services.

3. The reason for the appeal is that the Planning Commission denial is in error because a) it is not supported by facts, b) it is contrary to the weight of the evidence, c) it is based upon a fallacious interpretation of the zoning ordinance, and d) the facts meet the requirements of Sections 4.02(4) and 19.02 of the zoning code as specified in the staff report and recommendation for approval.

4. For the record it should be noted, that although staff

APPEAL TO CITY COUNCIL - 1

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1 apparently advised the applicant that it should apply for a
2 conditional use for a non-commercial recreational area, it is
3 the applicants position that, with the possible exception of
4 rebuilding the barbeque, all of the other buildings and uses
5 being requested are "accessory buildings and uses which are
6 incidental to that of the main building." (Section 4.01) and
7 do not require a conditional use permit or any other permit
8 except a building permit.

9 INSLEE, BEST, CHAPIN, UHLMAN & DOEZIE, P.S.

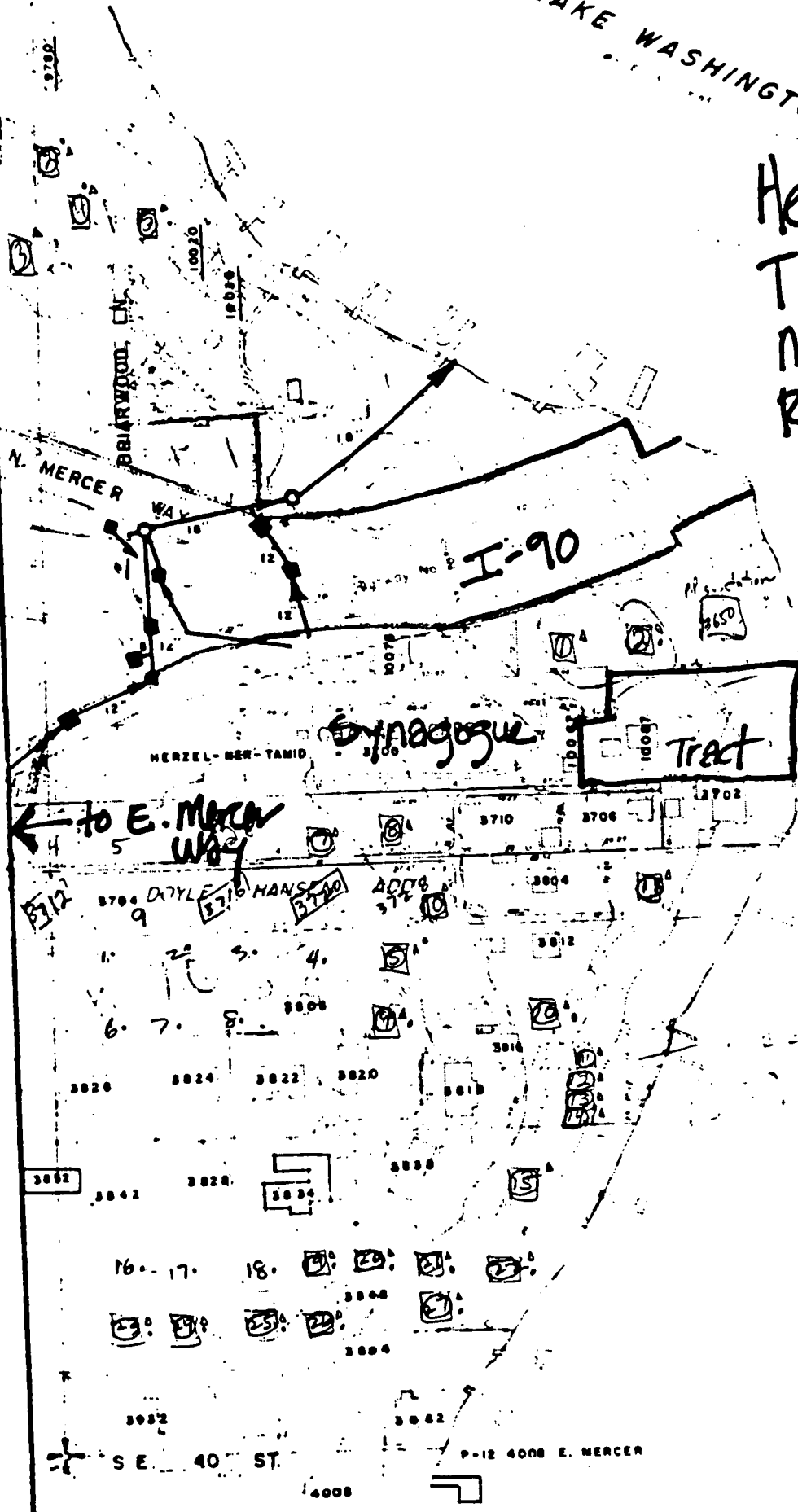
10 By Richard U. Chapin
11 Richard U. Chapin
12 Attorneys for Applicant
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APPEAL TO CITY COUNCIL -2

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LAKE WASHINGTON

Herzl Ner
Tamid
Non-commercial
Recreation Tract



to E. Mercer Way

S E 40 ST

P-12 4008 E. MERCER

4008

CITY OF MERCER ISLAND
Planning Commission

STAFF REPORT

APPLICANT: HERZL-NER-TAMID SYNAGOGUE ✓

LOCATION: 3¹600 BLOCK, EAST MERCER WAY

ZONING: R-9.6

APPLICABLE SECTION OF CODES: ZONING CODE SECTION 4.02 AND 19.02

HEARING DATE: JUNE 20, 1979

PREVIOUS ACTION: APRIL 25, 1979, PRELIMINARY REVIEW, DESIGN COMMISSION

EXHIBITS: STAFF REPORT, VICINITY MAP

RESPONSIBLE STAFF: DAVID P. GUILLEN, PRINCIPAL PLANNER

REQUEST: THE APPLICANT REQUESTS APPROVAL OF A CONDITIONAL USE PERMIT IN ORDER TO ESTABLISH A NON-COMMERCIAL RECREATIONAL AREA.

STAFF SUMMARY

1. History Background.

In 1971 the Herzl-Ner-Tamid Congregation applied to the Planning Commission for a variance from the Zoning Code to allow the subject property to be utilized as a semi-private waterfront tract. A variance was required for the request because of inadequate square footage and waterfrontage for the proposed tract. The Planning Commission denied this request and suggested that the congregation limit the number of families that could use the tract.

2. Requirement for the Conditional Use Permit.

Section 4.02 of the City Zoning Code allows establishment of non-commercial recreational areas in a single family residential zone subject to five conditions. The application must also satisfy the criteria for a Conditional Use Permit.

3. Requested Use.

The Zoning Code defines a non-commercial recreational area as one which includes facilities and equipment for recreational purposes, such a swimming pool, tennis courts, golf course, or playground maintained and operated by a nonprofit club or organization with specified limitations upon the number of members, or limited to residents of the block, subdivision, neighborhood, community, or other specific area residence for exclusive use of members and their guests.

It should be made very clear that this is not an application for a semi-private tract; if such was the case the applicant would necessarily go through the variance procedure prior to consideration by the Planning Commission. The improvements proposed are limited to non-water related activities. The major improvements to the tract include a play area, outdoor chapel, landscaping, barbecue pit, and a relocation of the existing custodian's residence. The Herzl property extends from East Mercer Way to Lake Washington. Adjoining properties to the north include the Showalter Instruments Co. and Puget Power. The entire southerly boundary of the subject property is bounded by single family residences consistent with the existing R-9.6 zoning.

4. Required Showings for Conditional Use Permit.

Before any Conditional Use Permit may be granted, it shall be shown:

- A. That such permit is consistent with the restrictions applicable to the zone in which the lot or tract is located for which the permit is sought.

Comment: The subject proposal is consistent with the land use restrictions in the R-9.6 zone. Most of the restrictions in this zone relate to uses rather than specific Design Guidelines. However, the proposal must meet the minimum setback requirements and height requirements of the R-9.6 zone. The proposal as submitted, is primarily landscaping with no structures within the waterfront setback, the side yard setbacks, or violations of the 35 foot height limitations.

- B. That the proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed use, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings, and membership, and satisfies the purposes of the island's Comprehensive Plan.

Comment: At present the subject site is, in fact, being used as a non-commercial recreational tract by people within the congregation. The intent of the improvement is to formalize the uses permitted, and at the same time, afford further protection of adjoining properties, especially to the south. The active areas, such as fire pit, large play toy, and outdoor chapel (small amphitheater) are located in the northern one-half which is closest to the Puget Power property and I-90. The other major improvement on the property is the new caretaker's residence which is replacing an existing residence now in the middle of the property. The new caretaker's residence will be in the southern portion of the property in the southwest corner adjoining other single family homes. The membership of the synagogue would not be effected by any improvements to the proposed tract. Rather, the current members of the congregation will be more able to fully utilize the property. With respect to the Comprehensive Plan, the subject tract is zoned for single family homes and could support two or three single family residences, thus increasing 24-hour activity on the subject property.

The remaining two conditions of Conditional Use Permit approval relate to procedural requirements and options available to the Planning Commission for their consideration of the Conditional Use Permit, such as attaching conditions that would mitigate noise, physical hazard, or other nuisances. Additionally, the City Council, on recommendation of the Planning Commission, can revoke the Conditional Use Permit if the conditions of any approval of the Conditional Use Permit are not complied with.

5. Non-Commercial recreational areas are permitted in single family zones subject to the following conditions:

A. Access to local and/or arterial thoroughfares be reasonably provided.

Comment: The subject property fronts onto East Mercer Way, a designated arterial via the Herzl Synagogue parking lot.

B. Outdoor lighting shall be located to minimize glare upon abutting property and streets.

Comment: The applicant proposes no outdoor lighting for the recreational tract. The Design Commission, in its consideration, stated that outdoor lighting would not be appropriate.

C. Buildings and active play areas shall be located 20 feet or more from all boundaries above the line of ordinary high water.

Comment: The site plan as submitted, complies with this requirement. The closest active area is the outdoor chapel which is approximately 45 feet from the high water mark.

D. Boundaries of the area above the line of ordinary high water shall be reasonably screened or fenced, or both, from abutting property and streets and appropriately landscaped. The maintenance of privately owned landscaped screens shall be guaranteed by posting a bond to the City in a reasonable amount, if required by the Design Commission. The above requirements shall be accomplished consistent with a reasonable time schedule or park development.

Comment: The Design Commission required that the existing vegetation along the south property line be augmented with English Laurel hedge instead of the ornamental pines as previously proposed. Additionally, there is a six foot high fence along the entire southern boundary of the property.

E. A plot, landscape, and building plan showing compliance with the conditions shall be filed with and approved by the Design Commission, and the construction and maintenance of buildings and other improvements, and the establishment and continuation of uses shall comply with the approved plot, landscape, and building plan with deviation permitted only upon filing an approval of an amended plan.

Comment: This condition shall be complied with and is not really a condition to be satisfied prior to issuance of the Conditional Use Permit.

STAFF ANALYSIS

The plan as proposed is a product of the applicant's original submission and review by the Design Commission. Additionally, the applicant has had the input of a registered landscape architect. The uses on the subject property are clearly related to the land and not the shoreline. One major exception to this is an existing dock with pilings, which is clearly dilapidated. I think it prudent that the Planning Commission recommend to the Council that this dock, which is an existing hazard, be removed for two reasons. One, the dock is in disrepair and is a public nuisance. Secondly, the dock might at some point be reconstructed and be attached to the non-commercial recreational tract. This would essentially make a non-commercial recreational tract into a semi-private waterfront tract by providing water-related facilities. This situation would cause numerous problems in the future.

STAFF RECOMMENDATION

The request does meet the conditions for a Conditional Use Permit and non-commercial recreation area. Much of this compliance is due to the review by the Design Commission in a preliminary phase.

Staff will recommend that the Non-Commercial Recreational Tract for the Herzl-Ner-Tamid Congregation be approved as submitted on June 20, 1979, subject to the following conditions:

1. That activity in the recreational tract shall be limited to daylight hours between 7:00 A.M. and 10:00 P.M.
2. That the dilapidated existing dock be removed.
3. That a bond be secured in the amount to install all the proposed improvements in addition to possible reconstruction of the existing fence and removal of the existing dilapidated dock.

- (g) Outdoor lighting shall be located to minimize glare upon abutting property and streets.
- (h) Covered moorage structures are prohibited.
- (i) Adequate parking shall be provided.
- (j) Access for emergency vehicles shall be provided to areas which are for the use of ten or more families.
- (k) Sales of supplies, equipment, petroleum products or the like and boat charters or rentals are prohibited.
- (l) Adequate provisions shall be made to prevent pollution, obnoxious odors or excessive noise.
- (m) A plot, landscape and building plan showing compliance with these conditions shall be filed with and approved by the Planning Commission; and the construction and maintenance of docks and other structures, and the establishment and continuation of uses, shall comply with the approved plot, landscape and building plan, with deviation permitted only on filing and approval of an amended plan. The Plan shall list or otherwise describe the families entitled to use the area and shall contain a statement as to the total number of such families. Where the right of use is appurtenant to or a part of the ownership or occupancy of other land, the individual legal description of each such tract of land shall be set forth on the plan. Provided, no additional filing or Planning Commission approval shall be required if the plot, landscape and building plan is part of a plat which contains the above information and is approved by the Planning Commission.

4.02 USES PERMITTED WHEN AUTHORIZED BY THE ISSUANCE OF A CONDITIONAL USE PERMIT.

Ord.

385

The following uses are permitted when authorized by the issuance of a Conditional Use Permit when the conditions imposed by Section 19 of this Code are met as well as those conditions imposed by this Section:

- 1. Public utility and governmental buildings or structures including art galleries, libraries and museums:

- (a) Must be located twenty (20) feet or more from any other lot in an "R" zone.
- (b) Off-street parking shall be established and maintained at a minimum ratio of one (1) parking space for each two hundred (200) square feet of gross floor area.
- (c) Not more than thirty-five (35) percent coverage of site area with structures.
- (d) Public utilities must be shielded from abutting properties and highways by a sight obscuring protective strip of trees or shrubs.

2. Private schools accredited or approved by the State for compulsory school attendance, subject to conditions (a) through (d) contained in Section 4.01.8 of this Code.

3. Churches, but subject to the following conditions:

- (a) Must be located thirty-five (35) feet or more from any other lots in an "R" zone.
- (b) Off-street parking shall be established and maintained at a ratio of one (1) parking space for each five (5) seats in the chapel or nave.
- (c) Not more than thirty-five (35) percent coverage of the site area with structures.

4. Non-commercial recreational areas subject to the following conditions:

- (a) Access to local and/or arterial thoroughfares shall be reasonably provided.
- (b) Outdoor lighting shall be located to minimize glare upon abutting property and streets.
- (c) Buildings and active play areas shall be located twenty (20) feet or more from all boundaries above the line of ordinary high water.
- (d) Boundaries of the area above the line of ordinary high water shall be reasonably screened or fenced, or both, from abutting property and streets and appropriately landscaped. The maintenance of privately owned landscape screens shall be guaranteed by posting a bond to the City in a reasonable amount if required by the

Design Commission. The above requirements shall be accomplished consistent with a reasonable time schedule of park development.

- (e) A plot, landscape and building plan showing compliance with these conditions shall be filed with and approved by the Design Commission, and the construction and maintenance of buildings and other improvements and the establishment and continuation of uses, shall comply with the approved plot, landscape and building plan, with deviation permitted only upon filing and approval of an amended plan.

5. Semi-private waterfront recreation areas for use by more than ten families, subject to conditions (a) through (m) contained in Section 4.01.11 of this Code and subject to the additional condition that there must be a minimum frontage of two additional feet for each family from eleven through one hundred, and one additional foot for each family over one hundred.

4.03 BUILDING HEIGHT LIMIT:

Except as provided in Section 16, General Provisions, no building shall be erected to a height in excess of thirty-five (35) feet.

4.04 BUILDING SITE AREA REQUIREMENTS:

The lot area shall not be less than eighty-four hundred (8,400) square feet; lot width shall be not less than sixty (60) feet fronting on a public street or highway or at the building line; and lot depth shall be not less than eighty (80) feet. The minimum lot area required for each single family dwelling unit shall be eighty-four hundred (8,400) square feet.

4.05 YARD REQUIREMENTS:

Each lot shall have side and rear yards not less than the depths or widths following:

Front yard depth:	Twenty (20) feet or more
Side yard abutting a street:	Ten (10) feet or more
Side yard abutting interior lot line:	Five (5) feet or more
Rear yard depth:	Twenty-five (25) feet or more

One (1) side yard setback requirement shall be increased to twenty (20) feet for any residential structure that does not make provision for a garage or carport.

18.03 PLANNING DEPARTMENT DEVIATION FROM YARD REQUIREMENTS:

The Planning Director may grant a deviation from the required front or rear yard requirements of this Ordinance upon a finding that the circumstances of Section 18.02 apply. Any such deviation shall not exceed 20% of the front or rear yard setback otherwise required by this Ordinance.

Ord. SECTION 19. CONDITIONAL USE PERMITS.

385 19.01 AUTHORITY TO GRANT CONDITIONAL USE PERMIT:

The City Council, on the recommendation of the Planning Commission, shall have the authority to grant a conditional use permit for any use for which this Ordinance requires such permit.

19.02 REQUIRED SHOWING FOR CONDITIONAL USE PERMIT:

Before any conditional use permit may be granted, it shall be shown:

1. That such permit is consistent with the restrictions applicable to the zone in which the lot or tract is located for which the permit is sought;
2. That the proposed use is determined to be acceptable in terms of size and location of site, nature of the proposed use, character of surrounding development, traffic capacities of adjacent streets, environmental factors, size of proposed buildings and membership, and satisfies the purposes of the Island's Comprehensive Plan;
3. That conditions shall be attached to such permit which will assure that such particular use on such particular site will be compatible with other existing and potential uses within the same general area, and shall not constitute a nuisance in fact, recognizing and compensating for variations and degrees of noise, smoke, dust fumes, vibration, odors, hazard or public need, together with available technological processes and equipment for control of such factors; and
4. That such permit shall be subject to revocation or amendment by the City Council, on recommendation of the Planning Commission.

CITY OF MERCER ISLAND
Planning Commission

PUBLIC MEETING

June 20, 1979

MINUTES

Present: Planning Commission Staff Others
 V.C. Bryant D. Guillen W. Stewart
 D. Clancy
 L. Copass
 R. Keever
 J. Nelson

Not present:
 C.P. Gregory
 S. Fry

The meeting was called to order at 7:32 p.m. by Chairman Keever in the School Administration building. The minutes of the May 16, 1979 Planning Commission meeting were approved as submitted.

Communications: Receipt of letters from Edward Watanabe, Dale and Barbara Showalter, Morgan L. Bates, and Leo and Margaret Anderson was acknowledged.

PUBLIC MEETING

- CAPEDER
Watercourse Deviation

Mr. Guillen described the site and the watercourse as outlined in the Staff Summary. He explained that in Staff's opinion the requested location of the driveway provided the best solution for the site because it utilized an existing driveway, thus limiting the number of accesses onto East Mercer Way. He stated that Staff would prefer a wood to a concrete surface on the timber bridge. He went on to say that Staff recommended approval subject to the four conditions listed in the Staff Recommendation. In response to Commissioner Copass' inquiry, Mr. Guillen stated that the design did meet the rear yard setback requirements.

Al Lee of 15655 N.E. 85th, Redmond, was present as a proponent and stated he was available to answer questions.

John JeDroanie, civil engineer for the project, pointed out the location of the catch basin and described the proposed de-watering system, which included a continuous slot grate and an outfall pipe leading from the catchbasin.

Motion: Commissioner Bryant moved that the watercourse deviation request of Mirto and Ludmila Capeder be approved subject to the following conditions:

1. That the improvements be in substantial compliance with the site plan as presented June 6, 1979.
2. That all work in the 25-foot setback be performed by manual means.
3. That the heavy timber bridge be surfaced with a wood material and not concrete or asphalt.
4. That a work program (sequence and method of construction) be approved by the Code Official prior to building permit application.

The motion was seconded by Commissioner Clancy and passed unanimously.

PUBLIC HEARING

- HERZL-NER-TAMID
Request for Conditional Use Permit for
Non-Commercial Recreational Tract

Mr. Guillen presented the Staff report as outlined in the Staff Summary. He explained that in 1971 a variance to use the same property as a semi-private waterfront tract had been denied. He explained that this application was for a Conditional Use Permit to allow use of the property as a non-commercial recreational area. He went on to say that establishment of a non-commercial recreational area was allowed by the Zoning Code subject to five conditions, all of which were satisfactorily met by the applicant. Mr. Guillen described

PRELIMINARY
SUBJECT TO REVISION



**PRELIMINARY
SUBJECT TO REVISION**

PLANNING COMMISSION MINUTES
June 20, 1979 Page 2

the proposed improvements, which included an asphalt play court, a children's play area, an outdoor chapel, a barbecue pit, and a new custodian's cottage in addition to more landscaping. He stated that Staff felt the dilapidated pier located in the southeast corner of the property should be removed so the non-commercial recreational area could not in any way be construed as a permit for a waterfront recreation area.

Mr. Guillen informed the Commission that the Design Commission had recommended that the twenty-foot property line setback requirement be relaxed, resulting in the placement of the asphalt play area and the amphitheater within the twenty-foot setback area to the north. He said this had been done in an effort to move the active areas as far away from the residential area as possible.

Mr. Guillen went on to say that the Temple Herzl Congregation was using the site in many of the ways described in the request. He summarized Staff's recommendations as outlined in the Staff Summary and suggested the Planning Commission might want to include in the bond the reconstruction of the existing fence as it was such an important part of the landscape plan. He also suggested the Planning Commission might want to set a time limit for completion of the proposed improvements.

Commissioner Copass noted that a non-commercial recreational area had as part of its definition in the Zoning Code a specified limit of the number of members. She asked if the 480-500 families the congregation was reported to have as members would be an upper limit.

In response to Commissioner Clancy's inquiry, Mr. Guillen reported that the temple was not operating under a Conditional Use Permit presently, as it predated the sections of the Zoning Code which require a permit for such a use.

Ted Roseblume, immediate past president of the congregation, spoke as a proponent of the plan. He stated that he felt it was inappropriate to require removal of the existing dock because it was not connected in any way with the application and because such removal might jeopardize future water-use rights of the congregation. He said it was unnecessary to require a bond because the Congregation could be relied upon to implement the plan without one. He stated that they would be happy to share the cost of replacing the fence but that it should be a mutual responsibility with adjoining property owners. He indicated they would be amenable to a reasonable time limit, as they were themselves anxious to complete the job. He objected strongly to the idea of limiting membership. He stressed that they were requesting a social use of the site which was incidental to the synagogue. He added that they had had no complaints from neighbors and planned to continue the good relationship with neighbors. He went on to say that all play areas had been planned away from residential areas and that the plan had been presented to neighbors prior to its submission to the Design Commission.

Julius Skolnik, president of the Congregation, emphasized the point that by definition the site would not be a recreational area but would be for social use incidental to the function as a church. He also said he felt a bond was unnecessary, the fence should not have to be replaced before its useful life was ended, and that he would be agreeable to a reasonable time limit.

Joe Piha, executive director of Temple Herzl, explained that the asphalt play area was conceived to move the children's activities out of the driveway to a safer location.

Dale Showalter of 3702 East Mercer Way, said he felt the Congregation had been a good neighbor but that it was a nuisance because of the number of people involved. He disagreed with earlier testimony that there was already widespread use of the site and expressed concern over the impossibility of controlling what would go on in the recreational area if the Conditional Use Permit were granted. He concluded by saying he felt the property was inadequate for the types of uses proposed and asked the Planning Commission to reject the proposal.

Gary Shavey of 7900 Northbrook Lane said he felt the Planning Commission was committed to review the application in the context of the definition of a non-commercial recreational tract with the membership limited by number or by area.