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CITY OF MERCER ISLAND, WASHINGTON

Department of Community Development
November 26, 1979

Lewis Weiner
Executive Director
Herzl-Ner Tamid
3700 E. Mercer Way
Mercer Island, WA 98040

Dear Lewis:

I just telephoned Julius Skolnik to advise him that the Planning Commission will be able to hear the Conditional Use Permit for the Herzl on Dec. 5, 1979. He will be providing me with seven copies of the revised site plan together with a transmittal letter asking for consideration of the revised proposal.

I have attached a copy of a memorandum from the City Attorney dated July 17, 1979, regarding the possibility of circumventing the Conditional Use Permit requirement by viewing the proposed improvements as accessory buildings. He does not find that the proposed improvements fit the definition of accessory buildings and must, therefore, complete the Conditional Use Permit process. The City Attorney also advised me that the City Council intent was very clear to view the improvements as additions to the existing facility and bring the entire Herzl property into conformance through a Conditional Use Permit.

Sincerely,

David P. Guillen
Principal Planner

DPG:ms
Encl.

CITY OF MERCER ISLAND

MEMORANDUM

July 17, 1979

To: Department of Community Development
From: City Attorney
Re: Herzl-Ner-Tamid Development Proposal, Requirement for Conditional Use Permit

1. The existing Herzl facilities have become a non-conforming use by virtue of the fact that the City Zoning Code currently requires churches and uses associated therewith to obtain a conditional use permit. (See Zoning Code, Section 4.02). As a general rule non-conforming uses may not be expanded (which includes further development of the property) unless the use is made conforming.

In the case of the Herzl application which involves additional development on the site, including landscaping, relocation of paved play area, creation of a bark play area, repairing a barbecue and the relocation of an outdoor chapel area, the proposal involves the expansion of a non-conforming use. Such development can only be permitted if it becomes conforming with the provisions of the Zoning Code. In order to conform to the provisions of the Zoning Code, Herzl must apply for and receive a conditional use permit.

2. It has been suggested that the development proposed by Herzl is more of an accessory use of land permitted under Section 4.01 of the Zoning Code rather than a use covered by the non-commercial recreational area provision of the code found in Section 2.

In my opinion the development proposed by Herzl fits squarely within the definition of a non-commercial recreational use of the property and must be governed by Section 4.02(4) non-commercial recreational areas and Herzl must obtain a conditional use permit for such development.

Herzl contends that the additional development of the property is an accessory use incidental to that of the main building under Section 4.01(7) of the Zoning Code. If that were the case it would be necessary to have obtained a building permit for the main structure in order to allow the additional development. Since the passage of Ordinance No. 385 in July, 1975 the city has consistently required conditional use permits in cases involving uses covered by provisions of Section 4.02 of the Zoning Code. The only way in which non-commercial recreational area uses are permitted under the provisions of the Zoning Code are through the issuance of a conditional use permit.

A church use and other uses which may be incidental or accessory thereto are no longer permitted outright in a single family zone. The outright permission for such uses has been changed as of July , 1975 and a conditional use permit is required. The expansion of uses accessory to or incidental to church uses would have been permissible without a conditional use permit prior to 1975 but currently the ordinance requires the obtaining of a conditional use permit.


Ronald C. Dickinson
Ronald C. Dickinson

RCD/rh