

PRELIMINARY  
SUBJECT TO REVISION



Horace Hall of 4006 East Mercer Way said he was opposed to the relaxation of the setback requirement.

Byron Meyers of 3804 East Mercer Way said he felt the recreational tract would downgrade the neighborhood. He presented a letter, which was read for the record, written by Dr. James Bethel in 1971 to the Planning Commission in opposition to a request for a waterfront recreational tract. The letter expressed concern over having an institution for a neighbor because of uncontrollable membership and the problems inherent in that growth.

Barbara Showalter said her main concern centered about the two questions of how many people and what kinds of control.

Mr. Skolnik commented that the residential area would have better protection than if single family homes were to be built on the site, as the setback could be as little as five feet from the property line. He also noted that a majority of the residences abutting the property had been built after the construction of the temple.

Mrs. Meyers of 3804 East Mercer Way said she was concerned that in the future the facility would be expanded even further to include water use.

Mr. Piha reiterated that their intent was merely to improve what already existed.

Mr. Rosenwald elaborated on the landscape plan which he said was conceived to protect the neighbors by discouraging active play in the area adjacent to the homes. He said he thought there would be less activity after implementation of the plan, as there would be shrubs and plants in what was now essentially an open area.

The meeting was at this point closed to the public.

In response to Commissioner Clancy's question, Mr. Guillen stated the application was classified as an application for a non-commercial recreational tract upon Staff's opinion that many of the uses were recreational-type uses. He added that it would be possible for the applicant to come back before the Planning Commission and seek approval for individual improvements without creating a non-commercial tract.

Commissioner Bryant asked how often the site was used, what times of the year it was used, and what time of the day it was used. Mr. Guillen's reply was that it was used sporadically based upon information provided by Mr. Piha.

Commissioner Nelson asked if a new application would have to be approved before mooring buoys and other types of water equipment could be used. Mr. Guillen replied that the tract ended at the high water mark and thus the application did not include that portion of the property. He added that the Congregation could apply for use of the dock at a future time.

Commissioner Keever observed that the membership was bound to increase when the facilities were made more attractive. He went on to say that this main concern was the effects additional traffic would have on the bicyclists and joggers along East Mercer Way. He suggested the applicant be asked to provide bicycle and jogging paths to help mitigate the effects.

Commissioner Clancy said he felt it was not appropriate to grant a Conditional Use Permit "on top of" an existing conditional use of the property as a church in a residential neighborhood. He added that activities should be restricted to those related to the original conditional use. He went on to say that the circumstances of the applicant did not meet the criteria for a non-commercial recreational tract because the membership was not in any way limited.

Commissioner Bryant discounted the importance of definitions and added that in his opinion the primary issue was the use of the land. He said he did not believe development of the site would change the use. He suggested more plants be added along the south boundary to better shield the Showalters. He said in his opinion there was no way to control how the site was used whether or not the application was approved.

Commissioner Nelson said the two major issues in her opinion were traffic and potential waterfront use.

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Commissioner Copass said she felt very strongly that the dock should be removed so that there was no possibility the site could be used as a semi-private waterfront tract.

Commissioner Keever said he felt it would be reasonable to require the applicant to replace the fence, to provide bicycle and pedestrian paths, and to put up a bond.

Motion: Commissioner Clancy moved that the application be denied.

The motion was seconded by Commissioner Bryant and passed unanimously.

PUBLIC MEETING

- SWANSON-DEAN  
Watercourse Deviation

Mr. Guillen explained that the address of the subject property in the Staff report had been transposed and the location of the site was the 4700 block rather than the 7400 block of 81st Avenue S.E. He noted that the vicinity map had reflected that error. He then presented the Staff report as outlined in the Staff Summary. He said that although there was a significant problem with flooding on Forest Avenue, that issue should not have bearing on the decision unless the watercourse deviation would actually affect the drainage problem. He concluded by saying that with proper storm water retention, the existing drainage problem would not be increased and that Staff recommended approval with the conditions as stated in the Recommended Motion.

Commissioner Keever asked if anyone present objected to the vicinity map being in error. Albert Perret of 4661 Forest Avenue S.E. said he objected on the ground that he did not have enough time to prepare for the meeting.

Al Swanson spoke as a proponent of the application. He said access from Forest Avenue would be very difficult and hoped the watercourse deviation would be granted to allow access from 81st.

Morgan Bates of 4651 Forest Avenue S.E. suggested that a guarantee bond for at least two years be required to protect property owners who might be affected.

Mr. Perret criticized the notification procedure and said he felt the Staff report should be made available further ahead of time. He asked if there were any guarantees that major groundwork be completed before the rainy season and that vegetation along the watercourse remain undisturbed. Mr. Guillen replied that the City required the work to be completed within the April to October time frame and that the only clearing which would be allowed within the setback area would be for utility purposes.

The meeting was at this point closed to the public.

Commissioner Bryant asked if the site was classified as a steep slope. Mr. Guillen replied that he was not certain but that even if it was not considered a steep slope the City Engineer would require soils testing and on-site water retention.

In response to Commissioner Copass' inquiry, Mr. Guillen clarified the intent of Condition 1 of Staff's Recommended Motion to offer the alternative of a tightline system from the property to Lake Washington or a storm water retention system.

Considerable discussion ensued concerning the significance of the inclusion of the incorrect location in the Staff Report. Mr. Guillen stated that he could not determine at that time if the legal notice in the Reporter had indicated the right address. He added that legal notification is not required for public meetings. Commissioner Clancy suggested going ahead on the assumption that a correct legal notice had been given and if they found out later it was incorrect they could reconsider. Commissioner Bryant said he felt unable to properly evaluate the application without having seen the property. Commissioner Copass reminded the Commission that the applicant also had rights, including the right to a timely decision. Commissioner Clancy indicated he did not feel he needed to see this particular property in order to evaluate the application.

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

RCD/rh

EDWARD M. WATANABE

LANDSCAPE ARCHITECT

3312 RAINIER AVENUE SOUTH  
SEATTLE, WASHINGTON 98144  
723-6740 324-4594

June 1, 1979

Ms. Phyllis Meck-Emery  
Associate Planner  
City of Mercer Island

Dear Ms. Meck-Emery

As the design commission has requested, I have been retained by Herzl-Ner Tamid Conservative Congregation on the re-drawing of the "Waterfront Master Plan."

The plan has been re-drawn by Mr. Josef Piha with my advice and consultation. We have complied with all recommendations made in your letter of April 27, 1979. The plan fits very well into the natural style of the area and yet meets the aim of the property owners.

It is my feeling that the plan will improve the property, but that it will not significantly affect the property usage by Herzl-Ner Tamid members.

Yours truly,

*Edward M. Watanabe*

3702 E. Mercer Way  
Mercer Island, Wa. 98040

June 14, 1979

Phyllis Meck-Emory, Assoc. Planner  
Dept. of Community Development  
Mercer Island, Wa. 98040

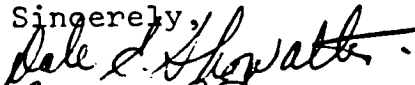
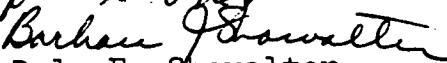
Dear Ms. Meck-Emory,

It is our understanding that the application by Herzl Ner-Tamid is for development of a Non-Commercial Recreational area, and, as such, does not allow for water-related recreational activities. It is our further understanding that Semi-Private Waterfront Recreation areas must conform to the Mercer Island Zoning Code Sections 4.01.11 and 4.02.05. We respectfully request that the Planning Commission consider the fact that the land in question is waterfront property which fails to meet the requirements for Semi-Private Waterfront Recreation areas.

The Mercer Island Zoning Code requires that the organization or club applying for Non-Commercial Recreational use of residential property must fulfill one of two membership requirements. The club or organization must either (1) have specified limitations on the number of its members, or (2) have membership limited to residents of a specific area or residence. We ask that the Planning Commission, in making their decision regarding the property development, determine the following:

1. Projected Use (based on):
  - a. number of families in the congregation
  - b. number of students enrolled in the school(s)
  - c. other persons/organizations having access to this park
  - d. frequency of use
  - e. hours of use
2. Method of control of use:
  - a. by members of the congregation
  - b. by persons/groups not affiliated with the Synagogue
3. Future plans for development of this tract of land.

We also ask that the Commission be made aware that a distance of less than eight (8) feet separates our home from this proposed development. Thank you for your consideration.

Sincerely,  
  
  
Dale E. Showalter  
Barbara J. Showalter

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

APPEAL - HERZL NER TAMID

BILL NO. 807  
DEPT. OF ORIGIN Community Development  
DATE SUBMITTED July 5, 1979  
FOR AGENDA OF July 9, 1979  
CLASS: Minute Order

PROCEEDING:

SET A PUBLIC HEARING DATE TO HEAR AN APPEAL  
BY THE HERZL NER TAMID SYNAGOGUE FROM A  
PLANNING COMMISSION DECISION ON A CONDITIONAL  
USE PERMIT APPLICATION

EXHIBITS: None  
CLEARANCE: City Attorney

APPROVED BY CITY MANAGER  
FOR SUBMITTAL *[Signature]*

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

On June 20, 1979 the Planning Commission denied a Conditional Use Permit application by the Herzl Ner Tamid Synagogue for the establishment of a Non-Commercial Recreational Area for a portion of the Herzl property. On June 29, 1979 a letter of appeal from Richard Chapin, counsel for the Herzl Ner Tamid was received asking for council consideration of the matter in a Public Hearing.

RECOMMENDED ACTION

David Guillen, Principal Planner

1. That the City Council set a Public Hearing date for July 23, 1979.
2. That the City Council set a Public Hearing date at the next available date, August 6, 1979.
3. That the City Council set an alternate date.