

CITY OF OAK HARBOR
HEARING EXAMINER

RE: Conditional Use Permit) CUP-10-03
Application for)
)
Oak Harbor Kingdom Hall) FINDINGS OF FACT,
Jehovah's Witnesses) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks Conditional Use Permit Approval for the use of a worship hall within the R-1 zoning district, located at 301 NE Ronhaar Street, Oak Harbor, Washington.

Decision: The Hearing Examiner for the City of Oak Harbor grants the requested Conditional Use Permit, subject to Conditions of Approval.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

Applicant: Mark Lee for the Oak Harbor English Congregation of Jehovah's Witnesses

Property Owner: Oak Harbor English Congregation of Jehovah's Witnesses

Address of Proposal: 301 NE Ronhaar Street
Oak Harbor, WA 98277

Parcel Number: R13336-121-0160

Comprehensive Plan Designation: Low Density Residential

Zoning Designation: R-1, Single-Family Residential

Application Presented for Action:
Conditional Use Permit (CUP-10-03) – Review Process III

Hearing Date: January 23, 2012

Parties of Record:

Mark Lee
1829 Conifer Lane
Oak Harbor, WA 98277

Mike Merkel
1542 West McKinnon
Oak Harbor, WA 98277

Melissa Sartorius, Associate Planner
City of Oak Harbor

Exhibits:

- 1 Staff Report
 - Attachment 1 Aerial Photo of Site
 - Attachment 2 Zoning Map of Site
 - Attachment 3 Conditional Use Application dated 6/25/2010 and updated Site and Landscape Plans dated 1/12/2012
 - Attachment 4 Supplemental Information from Applicant dated December 12, 2011 and January 9, 2012
 - Attachment 5 Public Comments
 - Attachment 6 Public Noticing Documents

II.

The Oak Harbor English Congregation of Jehovah's Witnesses is seeking Conditional Use Permit Approval for the construction of a new kingdom hall that will replace the existing building due to disrepair. The property in question is located in the R-1, Single-Family Residential zone. Assembly halls are a Conditional Use in this Zoning District.

The Oak Harbor Planning Department has reviewed the application and has submitted a report to the Hearing Examiner. This report is Exhibit No. 1 in the Hearing Examiner file. The Staff Report sets forth the Findings of Fact made by Staff, as well as their Conclusions of Law and Recommendation. The Hearing Examiner finds that the factual matters set forth in the Staff Report are accurate and the Hearing Examiner hereby adopts these Factual Findings as Findings of Fact herein. A copy of the Staff Report is attached hereto and the factual findings of Staff as set forth in the Staff Report are adopted as

Findings of Fact by this reference.

III.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this proposal at the public hearing.

Two neighboring property owners submitted letters of concern to the Development Services Department. These concerns included potential impacts on the nearby park, noise, and traffic concerns. The Hearing Examiner finds that the Oak Harbor Planner has adequately addressed the concerns in the Staff Report and agrees with Staff that by demolishing the existing structure, and obtaining a conditional use permit for the construction of the new kingdom hall, the proposal "... will become a conforming use within the district and thus meet the purpose of the district." [Staff Report, page 6].

The property in question has been the site of this Church for more than 30-years. The membership of the Church has declined some over the years. After completion of construction, the traffic and noise impacts will not increase over the current usage.

Reconstruction will result in an upgraded stormwater drainage system and the new structure and ongoing use will be in conformance with applicable standards for Church use in this residential zone.

There is no evidence in the record which would support a finding of significant adverse impacts on the neighborhood or support a finding of increased impacts after construction is completed.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed construction of a new worship hall can be approved if the Conditional Use Application is consistent with the Conditional Use Criteria of OHMC 19.67. The Hearing Examiner for the City of Oak Harbor has concluded that the proposal is consistent with the Conditional Use Criteria of OHMC 19.67 and that a Conditional Use Permit should be granted, subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Conditional Use Permit is hereby granted to Oak Harbor English Congregation of Jehovah's Witnesses, allowing for the construction of a new 3,960-square foot kingdom hall, with improvements, on 1.34-acres located at 301 NE Ronhaar Street, Oak Harbor, Washington, Parcel No. R13336-121-0160, subject to the following conditions:

1. The conditional use shall not be transferable to a subsequent user unless specifically authorized by the Hearing Examiner who finds it appropriate, and a permit authorizing the transferability is on record with the Island County Auditor.
2. The Conditional Use Permit must be acted on within one year of the date of granting. Otherwise the Conditional Use Permit shall expire and be null and void.
3. The Conditional Use Permit applies only to the property for which the application is made.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for enforcement action pursuant to OHMC 19.100. Complaints regarding a violation of the conditions of this permit should be filed with the City of Oak Harbor Development Services Department.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF

This decision of the Hearing Examiner for the City of Oak Harbor is final ten days after the issuance of this decision unless it is appealed to the Island County Superior Court within ten days of the issuance of this decision, pursuant to 30.70C R.C.W.

DATED this 26th day of January 2012.



Michael Bobbink, Hearing Examiner

Oak Harbor Kingdom Hall of Jehovah's Witnesses
Case No. CUP-10-03
Staff Report to Hearing Examiner
January 23, 2012

APPLICATION:

The application is to consider a conditional use permit for the use of a worship hall within the R-1 zoning district.

PRELIMINARY INFORMATION:

Applicant: Mark Lee for the Oak Harbor English Congregation of Jehovah's Witnesses, 1818 Wellington Drive, Oak Harbor, WA 98277

Property Owner: Oak Harbor English Congregation of Jehovah's Witnesses, 301 NE Ronhaar Street, Oak Harbor, WA 98277

Address of proposal: 301 NE Ronhaar Street, Oak Harbor, WA 98277

Parcel Number: R13336-121-0160

Comprehensive Plan Designation: Low Density Residential

Zoning Designation: R-1, Single Family Residential

Application Presented for Action:

-Conditional Use Permit (CUP-10-03), Review Process III

Attachments:

Attachment 1	Aerial Photo of Site
Attachment 2	Zoning Map of Site
Attachment 3	Conditional Use Application dated 6/25/10 and updated Site and Landscape Plans dated 1/12/12
Attachment 4	Supplemental Information from applicant dated December 12, 2011 and January 9, 2012
Attachment 5	Public Comments
Attachment 6	Public Noticing Documents

BACKGROUND:

The subject property is located at 301 NE Ronhaar Street in Oak Harbor (Attachment 1) and is zoned R-1 or single-family residential (Attachment 2). On June 25, 2010, Mr. Mark Lee, a representative for the Oak Harbor English Congregation of Jehovah's Witnesses submitted materials for a Conditional Use Application for construction of a new kingdom hall to replace the

existing building due to disrepair (Attachment 3). The property is zoned R-1, Single Family Residential and in accordance with OHMC 19.20.115(4), churches and associated rectories, convents or other similar structures require a conditional use permit in the R-1 zoning district. The existing kingdom hall does not have a conditional use permit on file and therefore is considered a non-conforming use in the R-1 district. Per 19.18.030 of the Oak Harbor Municipal Code, a non-conforming use that occupies a building or structure that has been damaged in excess of 50 percent of its real valuation exclusive of foundations shall not be permitted to reoccupy the building or structure. Any subsequent use at that location must conform to the use regulations for the zoning district in which it is located. Therefore a conditional use permit is needed since the hall plans to demolish the existing building and construct a new one.

Hall History

City building department files show that the existing kingdom hall was built in 1974 and was 2,368 square feet in size. In 1981 the building was expanded an additional 1,296 square feet for a total of 3,664 square feet, which it remains today. A new roof and porch over the entry-way was added in 1995. The applicant recently provided staff with additional information on the history of the hall and the size of the congregation over time (see Attachment 4).

Review Process

In accordance with OHMC Section 18.20.250(2)(b), applications for conditional uses are Review Process III actions. Such actions are subject to an open record public hearing before the Oak Harbor Hearing Examiner, followed by a final decision by the Examiner.

After due and proper notice, the public hearing to consider CUP-10-03 has been scheduled for 10:00 a.m., or as soon as possible thereafter, on January 23, 2012.

PROJECT DESCRIPTION

The applicant proposes to construct a new 3,960 square foot kingdom hall, with improvements, on 1.34 acres. The improvements include a combination of rain garden infiltration and pervious cement infiltration parking lot for storm water treatment, landscaping, and fencing. The existing building on the property will be demolished. It is proposed by the applicant that the building will be demolished by way of a practice burn by the City of Oak Harbor Fire Department.

The applicant provided operational characteristics of the hall in a document dated December 12, 2011 (Attachment 4). According to the document, the hall generally has meetings on Wednesdays, Thursdays, and Sundays, with smaller service group meetings on other days of the week. Their schedule of meetings remains the same as the existing use and no new trips are proposed to be added.

SITE GEOGRAPHY

The site is 1.34 acres in size, is developed with the existing hall and its associated parking lot and is essentially flat. The site is near Sumner Park which contains a few Garry Oak Trees (protected critical areas). The project does not propose disturbance near the Garry Oak Trees found in the park therefore no impacts to the protected critical areas are anticipated. Surrounding uses are residential and recreational (Attachment 1). Land uses abutting the site include the following

(Attachment 2):

	Existing Land Use	Zoning
North:	Residential	R-1, Single Family Residential
South:	Park	PF, Public Facilities
East:	Residential	R-1, Single Family Residential
West:	Residential	R-1, Single Family Residential

LEGAL NOTICE:

The application was determined to be complete for processing on July 16, 2010. The City issued a Notice of Application that was advertised in the Whidbey News Times on July 21, 2010 with a 15-day comment period that closed on August 4, 2010. Letters went out to all property owners within a 300-foot radius of the project on July 20, 2010 and notice was posted on the subject property on July 20, 2010. The City requested additional information on the project from the applicant in 2010 resulting in delays of the project. Although working diligently on the project, there was a significant passage of time before the applicant was able to respond.

Because of this passage of time, public notifications were again advertised beginning in 2011. A revised Notice of Application was advertised in the Whidbey News Times on November 26, 2011 with a 15-day comment period that closed on December 12, 2011. Letters were sent to all property owners within a 300-foot radius of the project on November 22, 2011 and a revised Notice of Application was posted on the subject property on November 23, 2011 (Attachment 6).

Then a Notice of Public Hearing was advertised in the Whidbey News Times on January 7, 2011. Letters were sent to all property owners within a 300-foot radius of the project on January 5, 2011 and a revised combined Notice of Application and Notice of Public Hearing was posted on the subject property on January 5, 2011 (Attachment 6).

PUBLIC COMMENTS:

The City received a total of five written public comment letters during the public comment periods held in both 2010 and 2011 (Attachment 5).

The City received a letter from the Department of Archaeology and Historic Preservation (DAHP) during the 2011 public comment period, requesting a professional archaeological survey of the property be conducted prior to ground disturbing activities. The applicant conducted a survey of the property per DAHP's request. The report concluded that no protected cultural resources or historic properties were encountered during the survey. The report's recommendations will be formally transmitted to the applicant via the Notice of Decision on the project.

The second letter was from the Samish Indian Nation saying they appreciated consultation but had no cultural resource concerns on the project.

The third letter was from Martha Yount, a nearby property owner who opposes the project due to traffic concerns with the existing and proposed use in proximity to residential areas. Ms. Yount claims that a street other than NE Ronhaar Street was originally intended to serve the subject property. Staff researched this claim extensively through title reports, county assessor files, and existing documents but found no evidence of a street or street easement existing at this location. Staff did find dashed lines on an old city annexation map that appear to indicate old property lines rather than an easement or street.

The remaining letters are both from Diane Carr, also a nearby resident, who opposes the project due to potential impacts on the nearby park, noise, and traffic concerns.

SEPA:

A Determination of Non-Significance (DNS) was issued for the project on December 31, 2011. The DNS became final on January 13, 2011. The DNS informed the project proponent of DAHP's request and inadvertent discovery protocol.

CONDITIONAL USE REVIEW FOR THE USE OF THE HALL

The applicant proposes to use the new kingdom hall to conduct services and weekly meetings. Churches and associated rectories, convents or other similar structures located in the Single Family Residential (R-1) zoning district require a conditional use permit by the hearing examiner per OHMC 19.20.115(4).

The Oak Harbor Municipal Code 19.67 Conditional Uses, states that a conditional use permit shall be granted if the following criteria are met:

1. All special conditions for that particular use are met.

No special conditions are established within the R-1 zoning district for churches or similar structures. The Hearing Examiner may establish conditions of approval as provided for by OHMC 19.67.050.

2. It does not have a significant, adverse environmental impact resulting in excessive noise, light and glare or soil erosion on adjacent property.

The conditional use requested will be accommodated within a new structure and therefore noise impacts from the building should be minimal. Any noise located outside the structure is subject to Chapter 6.56 of the Oak Harbor Municipal Code, Public Nuisance Noises, which regulates excessive, unnecessary or unusual loud noises which are prolonged and unusual in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the people of the city of Oak Harbor. The hall generally has meetings on Wednesdays, Thursdays, and Sundays with smaller service group meetings on other days of the week. Their schedule of meetings remains the same and no new trips are proposed to be added. The proposed building size increase of 349 square feet (not including outdoor covered areas) also results in no new added trips for the

project. Subsequently, no level of service analysis for concurrency is required. The applicant has applied for a certificate of concurrency per OHMC 11.32.030 and one may be issued pending site plan approval. Thereby the amount of noise generated by traffic shall be the same as the existing use and no increase in noise is anticipated. Therefore, the proposed use is not anticipated to have a significant, adverse environmental impact resulting in excessive noise.

The property is already developed and is mostly flat in slope so the potential for soil erosion is minimal. In addition, the applicant is proposing a combination of rain garden infiltration and pervious cement infiltration for storm water treatment which improves the property's current situation of no storm water treatment so no soil erosion is anticipated. Light and glare to adjacent properties will be minimal as the proposed parking lot lighting will comply with City of Oak Harbor code and design guidelines for lighting which requires downward directing or shielded light fixtures.

3. It is provided with adequate parking.

Churches, auditoriums and similar enclosed places of assembly are required to provide off-street parking facilities at the ratio of one parking space per four seats and/or one per 30 square feet of assembly space without fixed seats per OHMC 19.44.100. The assembly space without fixed seats is 2,140 square feet. This equates to approximately 71 required parking spaces. The site plan proposes 80 parking spaces which meets and exceeds the required amount.

4. It is served with adequate public streets, public utilities and facilities.

The site is located at the terminus of, and has access from, NE Ronhaar Street. Public utilities already serve the site.

5. It otherwise meets the purpose of the district in which it is to be placed.

The conditional use permit process is intended to ensure compatibility of different uses within the zoning district. The purpose of the R-1 zoning district is to provide a zone for low-density, urban, single-family residential uses. The existing kingdom hall is currently a non-conforming use in the R-1 zoning district. The R-1 zoning district allows a number of uses other than single-family residential including religious institutions to be located within the district if approved as a conditional use. Assisted living facilities, community centers, group homes, and government buildings are just a few of the uses listed (not representing the entire list) as examples.

Churches typically are common in residential districts and may have been more so in the past when people walked to church rather than drove. According to the American Planning Association¹, "planners often considered religious institutions

¹ American Planning Association, Zoning Practice, Issue Number Nine, *Practice Religious Institutions*, September 2008.

to be a crucial component of a complete neighborhood” (pg. 3). The thought was that churches served as an important civic function similar to city or town halls and should be placed near the center of the community or at the center of a neighborhood. According to the article, a series of changes in the last half-century have changed the traditional way of thinking about the location for religious institutions, some of these changes include: divergent size of congregations (storefront to megachurch), increased religious diversity, growth of accessory functions (daycare, homeless services, school, etc.), and intensive use of facilities more than one day per week. Today, due to automobile dependence and the increased activities at religious institutions as described above, a conditional use permit helps to evaluate the impacts of a church in a residential neighborhood.

In this case, the hall has existed in the neighborhood since 1974. A religious institution, appropriately conditioned (if needed), does have similar or less impacts than other low intensity listed uses, including group homes, government buildings, and community centers and therefore does meet the purpose of the district. By demolishing the existing structure and building a new one the hall is required to obtain a conditional use permit and will become a conforming use within the district and thus meet the purpose of the district.

6. It meets the goals and policies of the Oak Harbor Comprehensive Plan.

Specific goals and policies of the Oak Harbor Comprehensive Plan that the Application will meet include the following:

Land Use Element:

Goal 6 -To develop indoor and outdoor opportunities/facilities for youths, adults and families.

Goal 8 – To ensure that the location, situation, configuration, and relationship of the varied land uses within the UGA are consistent and compatible.

Goal 15 -To establish and maintain sufficient land within the City of Oak Harbor zoned to ensure a wide range of public and quasi public services to meet community needs.

Goal 19 – To create and maintain a balanced community that mixes residential use and non-residential uses in a way that promotes environmental quality and community aesthetics.

CONCLUSION AND RECOMMENDATION

Staff finds that the Conditional Use Permit application with the conditions listed below meets the criteria as listed in OHMC 19.67 and recommends approval.

STAFF RECOMMENDATION

Staff recommends that the Hearing Examiner approve CUP-10-03 subject to the following conditions:

1. The conditional use shall not be transferable to a subsequent user unless specifically authorized by the hearing examiner who finds it appropriate and a permit authorizing the transferability is on record with the Island County auditor.
2. The conditional use permit must be acted on within one year of the date of granting. Otherwise the conditional use permit shall expire and be null and void.
3. The conditional use permit applies only to the property for which the application is made.