

**REPORT and DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: May 23, 2007

PLAT/PROJECT NAME: **WOODIN VALLEY BAPTIST CHURCH**

APPLICANT/
LANDOWNER: Woodin Valley Baptist Church

FILE NO.: 05-123423-000-00-LU

TYPE OF REQUEST: Major Modification to Conditional Use Permit (96-100489) for the
addition of a Fellowship Hall.

DECISION (SUMMARY): GRANTED subject to CONDITIONS

BASIC INFORMATION

LOCATION: The subject property is located at 5404 228th Street SE, Bothell, Washington

ACREAGE: 4.13 Acres

ZONING: Rural 5-Acre (R-5)

COMPREHENSIVE PLAN:

General Policy Plan: Rural Residential

SCHOOL DISTRICT: Northshore

FIRE DISTRICT: No. 7

UTILITIES: Water: Alderwood Water District
Sewer: On-site septic systems

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approval subject to conditions

INTRODUCTION

The applicant is requesting a Major Modification of a Conditional Use Permit (CU 96-100489) for the addition of a 10,372 square foot multi-use, educational/fellowship hall. The new facility is proposed as a three story structure, consisting of a basement and two floors above grade, and it will be adjacent to the existing church building. The new facility will provide the church with additional space for meetings, religion classes, and a day school which may eventually serve up to 120 students. The applicant is also proposing, to include an outdoor activity/sport court adjacent to 228th St SE and a potential community day-care for up to 35 toddlers/children within the proposed multi-use building. Finally, the applicant is proposing additional parking, outside lighting, and landscaping.

The Major Revision Conditional Use application was originally submitted to Planning and Development Services (PDS) on August 4, 2006, and was determined to be complete for regulatory purposes, but insufficient for further review. A resubmittal of the application was received on January 23, 2007. A final submittal was received on May 1, 2007. This is a request for a Major Revision to a Conditional Use Permit (CU 96-100489) for a an 8,254 square foot church, which was granted by the Snohomish County Hearing Examiner on July 24, 1996 (Exhibit No. 18).

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 15 -17)

A SEPA determination was made on April 9, 2007. (Exhibit 14) No appeal was filed.

The examiner conducted a site visit on May 7, 2007.

The Examiner held an open record hearing on May 9, 2007, the 112th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on May 9, 2007 at 1:00 p.m.

1. The Examiner indicated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular request involved.
2. The Examiner admitted into the record the staff report and exhibits 1-30.
3. Witnesses expressing an interest in testifying were administered the oath/affirmation
4. Paul Lichter, Planner for Snohomish County PDS, appeared and testified. He presented the staff report. He gave the history of the project starting with the 1996 conditional use permit for a

8,254 square foot church. The proposal is now to add an approximately 10,000 square foot fellowship hall along with additional parking and outdoor lighting. This hall will be used for education including a community homeschool and a potential day-care. The Hearing Examiner in 1996 said that if a day school were added, that there would have to be a revision to the conditional use permit. He discussed the three letters of concern received by PDS. Two dealt with traffic issues. The county has reviewed the traffic studies and concludes that there will be no un-addressed traffic issues. There was a third letter which made statements about the prior order which were not supported by the 1996 order. Mr. Lichter said that the fellowship hall will be located behind the church building. There will be one floor beneath ground level and two stories above. He indicated the current set of plans is exhibit 20. He made one correction to page six of the staff report by deleting the word "home" at the end of the second sentence on the section relating to Drainage and Grading.

5. Gene Miller, PO Box 3366, Arlington, the consultant for the church appeared and testified. He introduced exhibit 31 into the record, a letter stating that three additional neighbors had been contacted by the church. He gave an overview of the proposed project. The plan is not to increase the size of the congregation, rather to provide additional services to the existing congregation. The additional parking is to accommodate overlapping activities. He said the church will mitigate the parking with additional buffering landscaping. The fellowship hall will fit within a courtyard of the current building. There will be an activity court added for the use of the children of the congregation. He agrees with the conditions set out in the staff report
6. No one appeared in opposition to the request.
7. The applicant and county consented to a short delay in the Examiner's preparation of this decision.

The hearing concluded at 1:15 p.m.

NOTE: For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein.

3. PDS received three letters from concerned neighbors in opposition to the request. Two of the letters primarily dealt with traffic concerns of a larger church. These concerns have been studied by the PDS which concluded that the applicant's Traffic Study (Exhibit No. 13) adequately analyzed this issue. PDS states that adequate provisions have been made for additional traffic. Another question raised in the community letters was the adequacy of the applicant's on-site septic system and drain field. The applicant will be required to obtain approval for any additional building from the Snohomish Health District prior to the issuance of a building permit. Finally, one letter states that the original Examiner's Decision (Exhibit No 18) specifically prohibited parking alongside 53rd Ave SE, and prohibited any access onto 53rd Ave SE, except for emergency access. However, the Examiner's Decision does not contain any of these conditions. In fact, in 1996 the Examiner specifically stated in Conclusion #6(C) that there was no evidence to prohibit access/egress on 53rd Ave SE. Furthermore, the Examiner made no comment on parking on 53rd Ave SE. Finally, PDS indicates that it has never received a complaint or petition to review the original Conditional Use Permit, as discussed in the Examiner's 1996 Decision, Conclusion #11.
4. The applicant is requesting a Major Modification of a Conditional Use Permit (CU 96-100489) for the addition of a 10,372 square foot multi-use, educational/fellowship hall. The new facility is proposed as a three story structure, consisting of a basement and two floors above grade, and it will be adjacent to the existing church building. The new facility will provide the church with additional space for meetings, religion classes, and a day school which may eventually serve up to 120 students. The applicant is also proposing, to include an outdoor activity/sport court adjacent to 228th St SE and a potential community day-care for up to 35 toddlers/children within the proposed multi-use building. Finally, the applicant is proposing additional parking, outside lighting, and landscaping.
5. The site is generally rolling, and slopes down from a knoll in all directions. The site contains a mixture of evergreen and deciduous trees (hemlock, cedar, fir, maple, and alder), shrubs, and grasses. On-site buildings include the existing church/fellowship hall, a pastoral residence and detached garage, parking and landscaping. The proposed addition will be located adjacent to the existing church building.
6. The building "envelope" for the proposed facility is no closer to neighboring properties than the existing church. This project meets zoning code requirements associated with allowed uses, bulk regulations, and other regulatory criteria subject to conditional use approval.
7. The surrounding area is zoned almost exclusively R-5, and adjacent uses are primarily residential or vacant land. The area is semi-rural in character.
8. The request will not generate impacts to the County's park system or the school system.
9. The PDS Traffic reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of that review, the PDS

Traffic has determined that the development is concurrent and has no objection to the requests subject to various conditions.

10. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC.
11. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC.
12. The subject property is designated R-5 which conditionally allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
13. The proposed Major Revision to a Conditional Use Permit is a conditional use in the R-5 zone, the zoning of the subject property at the time the application was determined to be complete.

Specific decision criteria for conditional use permits are listed at SCC 30.42.100 (1) and (2):

- (1) The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:
 - (a) The proposal is consistent with the comprehensive plan;
 - (b) The proposal complies with applicable requirements of this title;
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
 - (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
- (2) As a condition of approval, the hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by this title;
 - (b) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2) (b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100 (2)(b) and 30.42C.100 (2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
 - (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in

consideration of other existing and potential uses, within the general area in which the use is proposed to be located;

- (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
 - (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
 - (h) Impose any requirement that will protect the public health, safety, and welfare.
14. This proposal satisfies the requirements for a Major Revision to a Conditional Use Permit, based upon the aforementioned criteria.
15. The request is consistent with Section 30.70.100 SCC, which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP and GMA-based county codes.
16. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Examiner has jurisdiction to conduct this public hearing and render this decision
3. The PDS Traffic recommends that the request be approved as to traffic use subject to specific conditions.
4. The request is consistent with the GMACP, GMA-based County codes, and the type and character of land use permitted on the site, the permitted density and the applicable design and development standards.
5. Adequate public services exist to serve the proposal.
6. With the conditions set out below, the proposal makes adequate provisions for the public health, safety and general welfare.
7. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a **Major Revision to a Conditional Use Permit** hereby **CONDITIONALLY APPROVED**, subject to the following conditions:

- A. The site plan(s) marked Exhibits No. 4D-4I and 20A-D shall be the official approved plan(s) for this project. Any discrepancy between the content of the official approved plan(s) and the performance standards of the SCC shall be resolved in favor of the standards contained within the SCC. Revisions of official approved development plan(s) is regulated by SCC 30.42C.110.
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
 - i.. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- C. A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
- D. The following conditions shall be imposed prior to building permit issuance:
 - i. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area "E" in the amount of \$20,409.61.
 - ii. The applicant shall make a payment to Snohomish County for the WSDOT in the amount of \$3,401.64 for mitigation of traffic impacts to State highways.
 - iii. The amount \$7,519.70 shall be paid to the City of Bothell for traffic impacts to projects within the City.
 - iv. .5 feet of right-of-way shall be deeded to Snohomish County on 228th St. SE, as shown on the site plan.
 - v. Additional right-of-way that is tangent to the ultimate right-of-way on 228th St. SE and 53rd Ave. SE with a 35 foot radius at the northwest corner of the subject property shall have been deeded.
- E. The following conditions shall be imposed prior to any Certificate of occupancy being issued or final inspection:
 - i. Rural frontage improvements shall be constructed along the parcel's frontage on 228th St. SE; and
 - ii. Rural frontage improvements shall be constructed along the parcel's frontage on 53rd Ave SE.

- F. The preliminary landscape plan (Exhibit 20B) shall be implemented. All required landscaping shall be installed in accordance with the approved landscape plan.
- G. All exterior lighting, including any sign lighting shall be shielded so as to cast no direct glare on adjacent properties.
- H. That portion of the site which is east of the existing residence shall be left in its natural state, except for minimal disturbance required in to order to dispose of proposed building foundation excavation.
- I. All development activity shall conform to the requirements of Chapter 30.63A SCC.
- J. This approval is limited to the plans as submitted, and does not include approval of any future building or expansion of the church facility on this site. Future expansion will require an application for an additional conditional use permit.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Decision issued this 23rd day of May, 2007.

James Densley, Hearing Examiner Pro Tem

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 4, 2007**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.”** [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and

Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **JUNE 6, 2007** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Paul Lichter

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
