



City of Seattle

Gregory J. Nickels, Mayor

Department of Planning and Development

D. M Sugimura, Director

**CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR
OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

Application Number: 3009982

Applicant Name: Craig Belcher for Congregation Beth Shalom

Address of Proposal: 6830 35th Ave NE

SUMMARY OF PROPOSED ACTION

Land Use Application to expand the campus of an existing institution (Congregation Beth Shalom) to include a 4,590 square foot lot abutting the north property line of the existing campus and to change the use of existing 1,369 square foot structure from single family dwelling to religious institution (for use as accessory office and meeting space).

The following Master Use Permit components are required:

Administrative Conditional Use - to allow the expansion of an existing institution in a single family zone (Seattle Municipal Code [SMC] Section 23.44.022).

Variance - to allow a variance from the ACU dispersion criteria for an expanding institution (SMC Section 23.44.022.D.1)

SEPA – Chapter 25.05 Seattle Municipal Code.

SEPA DETERMINATION Exempt DNS MDNS EIS

DNS with conditions.

DNS involving non-exempt grading or demolition or involving another agency with jurisdiction.

BACKGROUND

The building that is now home to Temple Beth Shalom was built in 1955 for the View Ridge Brethren Church. In 1964 the structure was converted to a private school associated with the University Unitarian Church (which is located across the street to the south) and the building was first occupied by Congregation Beth Shalom in 1977 (according to permit history).

Existing Conditions

The main campus of the Temple is a 34,370 square foot site at the corner of 35th Avenue NE and NE 68th Street. The existing two story institutional structure has a footprint of approximately 8,200 square feet, and covers approximately 23% of the main campus site. The site is split zoned single family (SF5000, on the northern two thirds of the site) and multifamily (L-2, on the southern third of the property). There are 24 parking spaces on the main campus and parking is accessed off of both 35th Av NE and NE 68th Street¹. According to the applicant, hours of operation for the Temple include:

Office Hours:

Monday – Thursday	9am to 5pm
Fridays	9am to 2pm
Tuesday – Thursday	evening meetings

Worship Services:

Friday evenings	6pm to 7 pm
Saturdays	9am to noon
Sundays	9am to noon

The religious institution also owns two additional properties along 35th Ave. NE, at 6830 35th Ave NE and at 6834 35th Ave NE. The 4,590 square foot lot at 6830 35th Ave NE, that abuts the north property line of the main campus, is the site that is subject to the proposed change of use. The subject site is zoned Single Family (SF5000). The existing single family structure on the subject site was built in 1930 and purchased by the Congregation Beth Shalom in 2007. The property to the north of the subject site, which is rented for residential use, is not subject to this review.

The zoning changes three times on the block face along 35th Ave NE beginning with Neighborhood Commercial (NC1) on the corner lot to the north, changing to single family (SF5000) on the seven interior lots and to multifamily (L-2) at the southern portion of the block face. A commercial building located on the northwest corner of the same block face, at 6850 35th Ave NE, is used for offices. There are only two other lots with single family homes (not owned by the Institution) on the portion of the block face between NE 70th Street and NE 68th Street.

¹ There are an additional 34 parking spaces available, established through an off-site parking covenant with the Children's Home Society, at 3300 NE 65th Street.

The Northeast branch of the Seattle Public Library is located across the street, on the northwest corner of 35th Avenue NE (an arterial) and NE 68th Street. The Theodora, a 114 unit apartment building, sits on the southwest corner of the intersection of 35th Av NE and NE 68th Street and the University Unitarian Church (UCC) is located on the southeast corner. There are neighborhood commercial nodes one block north and south of the subject site and there are transit stops north and south bound (on the east and west side respectively) on the same block as the subject site.

Proposal

The applicant proposes to expand the campus of an existing Institution (Congregation Beth Shalom) to include a 4,590 square foot lot abutting the north property line of the existing campus and to change the use of an existing 1,369 square foot structure from single family dwelling to religious institution, for use as accessory office and meeting space. Per the applicant, a maximum of two (2) employees are expected at the site and an average of five (5) people are expected for occasional meetings. Congregation Beth Shalom reports that the space “is intended for overflow from the main building [and] there will be times when there will be no one in the house”.²

An Administrative Conditional Use (ACU) is required to establish (or expand) and institutional use in a single family zone (SMC 23.44.022) and because the Institution is less than 600 feet from another Institution a Variance component was also required. A SEPA analysis is also required to change the use on a site with lot area over 4,000 square feet (per DR 17-2008).

Public comment

Three comment letters were received during the initial public comment period, which ended on May 27th, 2009. Two letters were received when a Variance component was added and public notice was provided a second time. The second comment period ended July 22, 2009. Concerns were expressed about increased Institutional use of an informal access across the single family lots the north (that has to date only been used by vehicles and pedestrians associated with single family use), about the potential for increased traffic and pollution, increased number of people in proximity to the neighborhood and erosion of the single family character of the block.

SEPA ANALYSIS

Environmental review resulting in a Threshold Determination is required pursuant to the State Environmental Policy Act (SEPA), WAC 197-11, and the Seattle SEPA Ordinance (Seattle Municipal Code Chapter 25.05). The initial disclosure of the potential impacts from this project was made in the environmental checklist dated April 7, 2009 and reviewed by the Department. The information in the checklist, public comment, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

² The main building (at 6800 35th Ave NE) has approximately 1,300 square foot of floor area devoted to administrative uses such as reception, offices, meeting rooms, related storage and copying.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part: *"Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,"* subject to some limitations. Under some limited circumstances (SMC 225.05.665 D1-7) mitigation can be considered.

Short-Term Impacts

Typically short term impacts are temporary construction-related impacts. The proposed change of use will maintain the existing single family house and only minor changes (pursuant to this Decision) will be made to convert the structure to office and meeting space accessory to the religious institution, including a fence at the perimeter of the lot. City Building codes apply to the construction of the fence (discussed below under the Variance analysis) and the Zoning Code provides for regulation of the location, height and/or setback that may apply to the fence. Compliance with the applicable codes will be sufficient and further mitigation for short term impacts, pursuant to SEPA policies, is not necessary.

Long-term Impacts

Long-term or use-related impacts typically anticipated as a result of approval of a proposal include: increased traffic in the area; increased demand for parking and increased demand for public services and utilities.

Typically two (2) peak hour trips would be expected per day from a single family residence. Up to four (4) employee commute trips are expected for the proposed two (2) employees at the site. This is mitigated by the presence of north and south bound Metro bus stops on the block. Further, the applicant reports that there is no increase anticipated in the number of employees or employee trips related to the office use already existing on the main campus of the Institution, only improved working conditions so there is no increase in the number of commute trips expected. As discussed below (under the conditional use analysis) all institutional parking will be restricted to the main campus, in previously established parking areas, as there is no formally established access to the subject site. Per the Applicant, there are 24 established parking spaces on the main campus (at 6800 35th Avenue NE).

Based on experience, the applicant expects an average of 5 (five) people at day or evening meetings that might be held at the site. While the number of people in the building on any given day might exceed the number of people in a typical family, the use of public services and utilities (water, sewer, electricity) is not expected to be as high as a single family use because of the nature and duration of their stay at the site. The applicant has stated that there is no anticipated increase in the size or frequency of meetings only improved meeting space.

The scope of the long term impacts related to the proposed change of use does not warrant additional conditioning pursuant to SEPA policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined not to have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).

[] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(c).

ANALYSIS - ADMINISTRATIVE CONDITIONAL USE

Section 23.44.022 of the Seattle Municipal Code provides that institutions, including religious facilities, may be permitted as conditional uses in single family zones. The Code also states that “. . . expanding institutions shall meet the development standards for uses permitted outright in Sections 23.44.008 through 23.44.016 unless modified elsewhere in this subsection...” (i.e. lighting, trees, yards, height, lot coverage). The proposal must also satisfy the additional conditional use requirements found in SMC 23.44.022 as discussed below.

General Development standards for the zone (SMC 23.44.022.D.1)

The existing structure was built as a single family residence in 1930 and is conforming to the general development standards for the zone (as noted above). The exterior lighting on the front and back porch is required to be shielded. In order to retain the residential character of the site, there will be a condition of this Decision to retain the existing trees on site (per SMC 23.44.022.I). The development standard for vehicle access and parking will be amended to reflect the current conditions for legal access and to protect nearby residential properties. When the single family structure on the site was occupied by a residential use, vehicles had informal access via a driveway from NE 70th Street however this access was never established by a formal easement nor is it a platted alley (i.e. part of the public right-of-way system). The access cuts across the eastern portion of three other lots to the north, that are still in residential use. As a condition of this Decision, a fence at the perimeter of the lot (on the north and east property lines) will keep vehicles associated with the Institutional use from accessing the subject site via the informal access. All parking associated with the Institutional use of the subject site will be required to park in existing parking stalls on the main campus to the south.

Expansion (SMC 23.44.022.D.3)

Code provides for institutional campus expansions, of up to 2.5 acres, onto lots developed with residential structure. The proposed expansion is less than one tenth of an acre.

Dispersion (SMC 23.44.022.E)

In order to reduce or distribute some of the impacts (such as traffic and overflow parking) Code requires that an Institution be located 600 feet or more from another institution in residential areas. There are two institutions within 600 feet of the subject institution. The library to the west is mitigated by the intervening arterial (35th Avenue NE) as allowed per code (see SMC 23.44.022.E.1.b) however there is a Church directly south of the Temple across NE 68th Street that is not separated by some “*physical or other element which provides substantial separation*”. Because the dispersion criterion for the Administrative Conditional Use is not met a Variance is required and dispersion will be discussed (below) under the Variance analysis.

Demolition of Residential Structures (SMC 23.44.022.F)

No residential structures will be demolished.

Reuse of Existing Structures (SMC 23.44.022.G) and Yards (SMC 23.44.022.K.2)

Reuse of the existing residential structure is proposed preserving the single family scale of development and retaining trees (and other landscaping) on site. A 10 foot side yard is required for an institutional use unless the Director finds that the reduced setback will not significantly increase impacts (such as noise and odor and scale) and there is a public benefit. In this case, the plans show seven feet from the existing single family structure to a fence on the north property line and an additional seven feet from the fence to the next single family residence (also owned by the Institution) at 6834 35th Ave NE. The Director finds that the benefit of preserving the existing structure with a low impact use (office and meeting space), preventing use of the informal access (as discussed above under the general development standards) and maintaining the single family character with the existing shrubs and fencing between the two sites, allows for the current seven foot side yard (for a total of 14 feet between the two structures).

Noise and Odors (SMC 23.44.022.H)

A maximum of seven (7) people are expected on the site on any given day. Daytime use is expected from 9 am to 5 pm and occasional evening meetings may occur mid-week (Tuesday – Thursday). The expected activity (related to office work and meetings) is not expected to generate interior or exterior noise greater than noise levels associated with a residential use and will be regulated by the existing Noise Ordinance. Further, restricting parking to the main campus (as a condition of this Decision) will prevent noise associated with vehicles arriving or leaving from the subject site. No increased noise or odor impacts are expected by the use of the single family structure as office and meeting space.

Landscaping (SMC 23.44.022.I)

As discussed above General Development Standards and Reuse of Existing Structure, the existing vegetation (trees and shrubs), typical of the landscaping found on single family lots, will remain unchanged as a condition of this Decision.

Light and Glare (SMC 23.44.022.J)

The existing front and back porch lights will remain and no new exterior lighting is proposed. The zoning code requires that any lighting be shielded so that no light spills over the property line. A requirement for additional perimeter fencing and prohibiting parking at the subject site (as discussed below under parking) will prevent potential headlight glare. No light or glare impacts are anticipated.

Bulk and Siting (SMC 23.44.022.K)

The existing single family structure conforms to Single Family height and yard requirements (also see 23.44.022.G). Except for providing a complete perimeter fence on the property, no additions or changes to the existing structure are proposed and the bulk and siting requirements are met.

Parking and Loading Berth Requirements (SMC 23.44.022.L)

The parking requirements for an institution are based on the size of public gathering space. This proposal does not increase the size of public gathering space and so no additional parking is required. Further, as discussed above under General Development Standards, vehicle access to the site has been from an informal driveway off of NE 70th Street which was never formally established as an access easement. In order to protect the three lots to the north that are still in single family use, a fence will be required at the north and east property line which will prevent any vehicle access to the subject site. All Institutional parking will be located in the existing (24 stall) parking lot accessory to the Temple on the main campus.

Transportation Plan (SMC 23.44.022.M)

Per code, a Transportation Plan is not required for a project of this size.

Summary

There are no interior or exterior changes to the existing single family structure as a result of the proposed change of use therefore the Administrative Conditional Use (ACU) requirement to meet the development standards for the zone will be met. The Director also finds that the existing seven foot side yard is adequate for the proposed institutional use given the reuse of the structure and the low impact of the proposed use (office and meeting rooms with up to seven people on site). There is no formal (legal) access to the site (i.e. there is no curb cut from 35th Ave NE and the driveway in the back was never established by easement). No additional parking is required per code (because no public assembly space is being proposed) and parking on the site will be prohibited by establishing a fence on the north and east property lines in order to mitigate

the Institutions (access and parking) impact to the three lots north of the site that are still in single family use. Instead any associated Institutional parking will be in the existing 24 stalls of parking on the main campus of the Temple. All other decision criteria for the Administrative Conditional Use can be met, except for the “dispersion” criteria.

When an expansion of an Institution’s boundaries is proposed the code states that the campus of the Institution cannot be within 600 feet of another institution unless there are physical or other elements which provide substantial separation. The proposed expansion does not meet the applicable ACU criteria for dispersion (SMC 23.44.022.E) due to the proximity of the University Unitarian Church campus located to the south, across the residential street NE 68th Street. Subsequent to the application for an Administrative Conditional Use, a Variance component was added for further analysis of the dispersion requirement (as discussed below).

DECISION - ADMINISTRATIVE CONDITIONAL USE

The Conditional Use is **Granted** *subject to the Approval of the Variance and the Conditions of this Decision.*

ANALYSIS –VARIANCE

As provided in SMC 23.40.020C, variance from the provisions or requirements of this Land Use Code shall be authorized only when *all* of the following facts and conditions are found to exist:

1. *Because of unusual conditions applicable to the subject property, including size, shape, topography, location or surroundings, which were not created by the owner or applicant, the strict application of this Land Use Code would deprive the property of rights and privileges enjoyed by other properties in the same zone or vicinity;*

The Institutional uses on the northwest, northeast and southeast corners of the intersection of 35th Ave NE and NE 68th Street were established prior to the time the dispersion criteria was required by code. The library on the northwest corner of 35th Ave NE and NE 68th Street was built in 1953 (and is now a designated historic landmark). The location of the library, across a major arterial from the subject site meets the code allowance for separation from the subject site with respect to the dispersion criteria. According to the City’s permit history and County Assessor’s data the building now occupied by Temple Beth Shalom, on the northeast corner of the intersection, was built in 1955 by the Brethern Church and has been used as a religious facility since that time. Congregation Beth Shalom first occupied the building on the main campus (at 6800 35th Ave NE) in 1977... The University Unitarian Church (UCC), on the southeast corner, was built in 1957 and has been occupied as a religious institution since that time.

The proximity to the surrounding Institutions was not created by the owner of the subject property and the applicant suggests that the strict application of this Land Use Code (for dispersion) for conditions not created by the applicant would deprive the Congregation of rights and privileges (for expansion) enjoyed by other institutional properties in the same zone and vicinity. Further the limited use proposed by the Applicant and conditioned by this Decision, (as discussed above) will not worsen the existing condition.

2. *The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the vicinity and zone in which the subject property is located;*

Reuse of an existing structure can reasonably be considered the minimum necessary to afford relief as it does not involve changes to the neighborhood character (such as height, bulk and scale), that might be the result of new construction at the site. No exterior changes to landscaping and yards are proposed as part of the proposed Change of Use except that a perimeter fence will be required and parking will be kept off site. Use of the site by up to two office employees and an average of five meeting participants is expected to be similar to a single family residential use in terms of lighting, noise or odor impacts (as discussed above under the ACU analysis).

By maintaining the existing single family developments standards on the site the proposal is consistent with the limitations on other sites in the zone and vicinity. Further by limiting the use of the existing building to office and meeting space, as a condition of this decision, the Variance would not exceed “the minimum necessary to afford relief” and is not granting special privilege.

3. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located;*

The location of the lot proposed for the expansion of the Institution (Temple Beth Shalom), on an arterial offers some mitigation of impacts (that are intended to be addressed by the (ACU) dispersion criteria) such as parking and circulation. There is direct access to the parking on the main campus (next to the subject site), from both 35th Ave NE and NE 68th Street. Employees or meeting goers would not be expected to be driving through the single family neighborhood to the east of the site to get to the campus. The use of the site for meetings and office space is expected to be off-set from worship services for Congregation Beth Shalom and parking for employees and meetings is expected to be available in established parking spaces on the main campus, at 6800 35th Ave. NE (as conditioned by the ACU).

There was strong concern expressed about (increased) use of the informal access that has been used in the past to allow vehicles to come and go across the back of the (three) other single family zoned lots that front on 35th Avenue. A formal easement or dedication for use of the access (with begins at NE 70th Street) was not provided. Therefore it is appropriate, as a condition of this Decision, to mitigate the potential impact of the proposed change of use to Institution by preventing any Institutional use of the informal access by requiring a fence at the north and east property lines to prohibit institutional traffic from passing through the (three) single family zoned lots to the north. Parking associated with the use of the existing structure for offices and meeting space will be required on the main campus.

As conditioned, granting the variances would not be expected to be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity in which the subject property is located and will reduce traffic along the rear of the other single family lots on the block face.

4. *The literal interpretation and strict application of the applicable provisions or requirements of this Land Use Code would cause undue hardship or practical difficulty;*

The variance application states, “Beth Shalom is simply asking to be allowed to use a building they already own (purchased in 2007) to allow for additional meeting rooms and office space for existing activities and personnel ... to provide more space and improve working conditions ...”. Causing the congregation to find space further away from the campus in office space they do not own would cause a practical difficulty for the Institution.

5. *The requested variance would be consistent with the spirit and purpose of the Land Use Code and adopted Land Use Policies or Comprehensive Plan, as applicable.*

The adopted Comprehensive Plan addresses the circumstances of the proposed Institutional expansion in Land Use Policy LU22 which states the intentions to “allow the continued use of non-conforming institutional facilities by allowing for expansion or structural changes, as long as such expansion does not increase the structure’s non-conformity and is within the development standards of the zone”. Further, the Land Use Code (SMC 23.44.022.D.3) provides for institutional campus expansions, of up to 2.5 acres. In this case, the expansion proposed is less than one-tenth of an acre and both the structure on the main campus and the single family structure on the subject site conform to the development standards for the zone and provide consistency with both the spirit and the standards of adopted Code.

In order to reduce or distribute some of the impacts associated with institutional uses (such as traffic and overflow parking) Code requires that an Institution be located 600 feet or more from another institution in residential zones. With regard to the requested Variance from the dispersion criteria, the low impact use (i.e. no additional employees and no increased number of people anticipated at meetings) and the location along a street with north and south bound bus transportation available on the same block, mitigation is provided for potential traffic and parking impacts. Further, travel to the site and access to parking is expected to be along the arterial (35th Ave NE) preventing traffic and parking impacts in the residential area to the east of the Institutions campus. In addition, the residential zoning changes to Commercial zoning one block north and south of the subject site where the use would be permitted outright and not subject to dispersion. The conditions of the subject site, the main campus and the surrounding area, along with the conditions to be applied as a result of this Decision are such that granting the variance from the dispersion criteria is consistent with the spirit and purpose of the code to allow for expansion of institutions.

Summary

The proximity of the subject property to other institutions was established prior to the Code requirement for dispersion of Institutional uses. The applicant proposes reuse of an existing single family structure for a proposed use (office and meeting space) that is expected to be similar in impacts to the existing single family use. The applicant also reports that there is no increase in the number of employees of scope of activity proposed in the new meeting and office space. Further, the location along an arterial offers some mitigation to the impacts associated with the close proximity of two different institutions and provides a buffer to the single family neighborhood east of the subject site.

Together with the conditions of this Decision to limit vehicle access (with construction of fencing on the north and east property lines) and to limit the type of institutional activity at the site and to require parking for the site be provided in previously established parking spaces on the (main) campus the request to allow expansion of the institutional boundaries within a distance that is less than the code required 600 feet is granted.

DECISION - VARIANCE

The Variance is **Granted** *subject to the Conditions of this Decision.*

CONDITIONS OF THE CONDITIONAL USE APPROVAL

For the Life of the Project

1. All exterior lighting shall be shielded to prevent light from spilling across the property line to the north and east.
2. In order to retain the residential characteristics of the site all landscaping including the (5) trees on the site shall remain and the landscaping along the north property line shall also be maintained as a buffer between the institutional use and the abutting residential use.
3. A fence shall be constructed and maintained (without gates), on the north and east property lines of the subject site to prevent pedestrians and vehicles associated with the Institution from using the informal access that runs along the east property lines of the single family zoned lots to the north.

CONDITIONS OF THE VARIANCE APPROVAL

For the Life of the Project

4. All parking for the accessory Institutional office and meeting space being established shall be provided in the existing parking areas on that portion of the Institution's Campus at 6800 35th Ave. NE.
5. The use of the existing structure and the site that are subject to this approval shall be limited to office and meeting space accessory to Temple Beth Shalom. Any other institutional use of the site and/or the building shall be subject to a new review under the Seattle Municipal Code in effect at the time.

Signature: (signature on file)
Justina Guyott, Land Use Planner
Department of Planning and Development

Date: October 26, 2009