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Hearing Examiner Sharon Rice
Office of the Hearing Examiner
P.O. Box 97010
Mail Stop 3NFN
Redmond, WA 98073

Re: BelRed Family Resource Center, LAND-2016-01036 Conditional Use Permit Application

Dear Madam Hearing Examiner:

You have asked the Redmond City Attorney to address certain legal points offered by opponents (“Opponents”) to a conditional use application for a 40-person women’s and children’s shelter, to be known as the BelRed Family Resource Center, in the City’s Idylwood neighborhood. Specifically, Opponents argue that the proposed shelter is forbidden in the applicable zone under the Redmond Zoning Code (“RZC” or “Code”); that the site’s pre-existing conditional use permit is invalid and therefore cannot serve as a basis for granting the current permit; and that the proposed use is inconsistent with Redmond’s comprehensive plan. This letter is intended to serve as my response to those contentions. I hope it is helpful in guiding your consideration of the present application.

BACKGROUND

The Evangelical Chinese Church (“ECC”) and the Creekside Covenant Church (“CCC”) have applied for a conditional use permit to operate a 40-person women and children’s homeless shelter on a lot in the City’s Idylwood neighborhood (the “house lot”), which lies in the City’s R-3 zone. The house lot is owned by the CCC and lies adjacent to the lot containing the CCC’s main house of worship (the “church lot”), but it is a legally distinct parcel. The house lot currently contains a six-bedroom house that was formerly used as excess office and classroom space for a religious school and as a private single-family home.

In 1968, the CCC’s predecessor in title, the Sherwood Baptist Church, sought and received a conditional use permit for both lots (which, at the time, were a unified parcel) for use as a church.¹ According to information submitted by Opponents, the Sherwood Baptist Church then legally divided the parcel in 1973 and sold what is now the house lot to the Gutschmidt family for their own personal, non-religious use.

¹ Under the zoning ordinance in effect at the time, all churches in the zone required a conditional use permit.

The Gutschmidts lived on the property for at least one year.² Under the zoning ordinance in effect when the conditional use permit was granted, a conditional use became void if the permittee abandoned the use for a year or more. There is also evidence that the City issued “special development permits” (“SDPs”) for expansion projects on the house and church lots in the mid to late 1980s.

The City’s approach in processing the Applicants’ plans has been to treat the shelter as a “religious use” under the City Code. Religious uses with fewer than 250 seats are permitted as of right in the R-3 zone, while religious uses with more than 250 seats require a conditional use permit. See RZC tbl. 21.08.050C, item 25. While the 40-person shelter would ordinarily be permitted as of right in the R-3 zone, because there is an existing conditional use permit attached to the church and/or house parcels, and because the proposed shelter represents a major departure from that historic use, the City has required a new conditional use application for the proposed shelter.³

In the public hearings on the shelter’s application, neighbors raised significant concerns over the potential for increased noise, traffic, and crime in the neighborhood. Several of these neighbors are represented by an attorney and have filed a brief in opposition to the conditional use permit application. The parties held a hearing on the Church’s conditional use application on February 5, 2017. The application is now before the Hearing Examiner for consideration.

DISCUSSION

In Opponents’ brief they offer three main arguments against the shelter. First, they argue that the shelter is prohibited in the R-3 zone because it is really a “social assistance, welfare and charitable service” use and not a “religious use” or an accessory to a religious use. Second, they argue that the City cannot rely on the historic conditional use permit as a basis for granting the current conditional use approval because the existing conditional use approval was abandoned in the 1970s and because the SDPs for the parcels issued in the 1980s nullify the conditional use. Finally, Opponents argue that the shelter is inconsistent with the City’s comprehensive plan.

I. The shelter is a “religious institution” use not a “social assistance, welfare, and charitable service use,” and is therefore allowed in the R-3 zone.

The proposed shelter is a “religious institution” use under the Code, not a “social assistance, welfare and charitable use.” Under the RZC, “religious institutions” are defined as “[c]hurches, temples, synagogues, monasteries, and similar establishments operated by religious organizations.” RZC 21.78(R). “Social assistance, welfare, and charitable use” is defined as “[t]he provision of social assistance services, including shelters, directly to individuals in need.” RZC 21.76(S).

² Further evidence submitted by Opponents suggests that the house parcel was used for a private residence until the mid-1980s.

³ The City was unaware of the abandonment of the historic conditional use on the house lot when it initially reviewed the application.

Under the Code, the definition of “religious institution” is broad—it includes not merely houses of worship, but other types of religious institutional housing (e.g., monasteries). The City therefore interprets this use to include uses that are fundamental to an organization’s religious mission, even if the use could fit within another, secular definition. *C.f. City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, ¶¶ 18, 22, 211 P.3d 406 (2009) (holding that homeless encampments on church property can be religious uses if sincerely related to a church’s central beliefs). This interpretation helps ensure compliance with the City’s obligations under the First Amendment because the City’s zoning regulations applicable to religious uses are designed to accommodate First Amendment rights.

In the City’s Technical Report, City staff observed that the church was an “associated accessory use” to the Church. Opponents take issue with this characterization, arguing that it does not meet the definition of an “accessory use” under RZC 21.78.A. The City agrees that the shelter is not an accessory use in the term-of-art meaning of that phrase. The characterization of the shelter as an accessory use in the technical report was intended to convey that the shelter use is centrally related to the Church’s religious mission and is therefore protected as a religious use under *City of Woodinville*, 166 Wn.2d 633, ¶ 22, not that the shelter should be permitted as of right as an accessory use.

In summary, because the shelter is centrally related the applicant churches’ religious mission, it is a religious use in its own right, which is permitted within the R-3 zone.

II. The underlying conditional use permit is valid as to the church lot, and the proposed shelter constitutes an expansion of that use requiring new conditional use permitting.

Throughout the shelter’s permitting process, the City has noted the existence of an underlying, historic conditional use permit attached to the neighboring church. Opponents appear to misinterpret the significance of this historic conditional use. They argue that the underlying conditional use permit cannot be a basis for granting the conditional use permit in this case. The City agrees—it is not. Rather, the underlying conditional use permit is the basis for requiring a conditional use permit at all—the alternative is for this use to be permitted outright as a religious institution with fewer than 250 seats. See RZC tbl. 21.08.050C, item 25.

The evidence submitted by Opponents does not undermine the City’s position that the shelter requires a conditional use permit, however. From Opponents’ evidence, it seems that the original conditional use permit was legally abandoned as to the house lot during the 1970s, when the church sold the parcel to a family for private use. However, because the conditional use as to the *church* parcel continues to be valid, and because the shelter constitutes a significant expansion of the church use, the City maintains that the shelter requires a conditional use permit (rather than being permitted as of right).

The Opponents argue that even the *church* parcel’s conditional use is invalid because the conditional use was superseded by two special development permits (“SDPs”) the City granted to the church in late 1980s. Opponents argue, “Because a property cannot simultaneously have a CUP and an SDP, the SDPs . . . superseded the 1968 CUP . . .” Opponents offer no Code citation to support of their premise that “a

property cannot simultaneously have a CUP and an SDP” or their conclusion that an SDP expunges a conditional use.⁴ The Hearing Examiner should dismiss this as an unsupported argument.

Finally, the City simply adds that Opponents’ argument that the conditional use permit is no longer valid as to either or both parcels only hurts themselves—without a valid conditional use permit attaching to at least the church parcel, there is no basis for requiring a conditional use permit because the shelter is a religious use with fewer than 250 seats, which is a use permitted outright in the R-3 zone.

III. The proposed shelter is consistent with the City’s comprehensive plan.

Finally, the Opponents argue that the church is not entitled to a conditional use permit because the shelter does not comply with the comprehensive plan, as required under RZC 21.76.070.K.4.a.

First, the City considers its comprehensive plan a “planning factor” or “guidance document” when it comes to project-specific permits—in other words, while conditional uses should strive to be consistent with the comprehensive plan, because the plan is written in aspirational (rather than mandatory) language, it rarely dictates an outcome in conditional use permitting.⁵

Second, most of the provisions Opponents cite in their brief⁶ are ambiguous as applied to the shelter. For instance, LU-30 promotes “appropriately scaled” religious facilities in residential zones and “standards in the Redmond Zoning Code for locating and designating these uses.” The City’s regulations for the R-3 zone implement this requirement by establishing a 250-seat threshold for requiring conditional use permits for religious uses, setting a benchmark for “appropriately scaled” religious uses.⁷ The shelter, with 40 beds, more than satisfies this. Similarly, LU-33 is intended to provide for “low-density residential neighborhoods for lands inappropriate for more intense urban development due to *environmentally critical areas, extreme cost or difficulty in extending public facilities, or the presence of natural features Redmond is seeking to retain.*” (Emphasis added). Allowing a shelter in an R-3 zone does not violate the spirit of this goal because, as a preexisting building, it does not exacerbate critical areas, public facilities, or natural features.

⁴ The current Zoning Code does not appear to provide for “special development permits” and there is certainly no provision for expungement of conditional use permits if an SDP is granted.

⁵ Historically, comprehensive plans in Washington were treated as “planning factors”—*i.e.*, as guidelines for a City’s later-enacted development regulations. See Wash. Real Prop. Deskbook Series: *Land Use Planning*, § 2.2(2). When Washington enacted the GMA, comprehensive plans became binding *as to a City’s development regulations*, because of the GMA’s requirement that development regulations be consistent with comprehensive plans. See *id.* § 2.5 (citing RCW 36.70A.040(3)–(5)). Generally speaking, however, comprehensive plans remain mere “guidelines” or “[b]lueprints” when applied to specific local projects. See *id.* § 2.5(2) (citing *Woods v. Kittitas County*, 162 Wn.2d 597, ¶ 26, 174 P.3d 25).

⁶ LU-11, LU-27, LU-28, LU-30, LU-32, LU-33, HO-1, HO-14, FW-1, FW-13, and FW-22. The City’s comprehensive plan is available at <https://user-6418068785.cld.bz/Redmond-20305#92/z>.

⁷ This is not to say that a church with over 250 seats would be inappropriately scaled, but the fact that a facility with fewer than 250 seats would not even require a conditional use permit should indicate the kind of scale the regulations and plan consider appropriate.

Furthermore, for as many provisions as Opponents cite in opposition to the project, there are other comprehensive-planning goals that support it. *See, e.g.*, LU-31 (“[C]onsider allowing . . . flexibility in regulations, if a proposal meets community goals for affordable . . . or other types of innovative housing.”); HO-1 (“[A]llow for an appropriate mix of housing types to accommodate Redmond’s projected share of King County population growth.”); HO-2 (“[C]reat[e] residences that are affordable to low- and moderate-income households.”); HO-28 (“Work with . . . health and social service organizations to develop a coordinated, regional approach to homelessness.”).

Perhaps the best summary of the comprehensive plan is that it envisions a balance between preserving neighborhood character and supporting affordable, innovative housing. Through appropriately tailored conditions, the shelter will perfectly embody this goal.

IV. The Hearing Examiner should interpret and apply the City Zoning Code in light of the constitutional context of this case.

The primary task of any hearing examiner is to interpret and apply city codes to the facts of an application or appeal. Indeed, this is the *sole* task of a hearing examiner, as they lack the power to issue binding determinations on constitutional issues. *Exendine v. City of Sammamish*, 127 Wn. App. 574, ¶ 22, 113 P.3d 494 (2005).

However, the City asks the Hearing Examiner to note the constitutional context of this case so that she may follow the Supreme Court’s mandate to Washington cities to “use flexibility when applying local land use regulations to churches in order to avoid conflict with state and federal constitutional religious freedoms.” *See Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 181, 61 P.3d 332 (citing *City of Sumner v. First Baptist Church*, 97 Wn.2d 1, 9–10, 639 P.2d 1358 (1982)). Under these cases, cities may *regulate* religious use of property, but may generally not ban religious use outright. *See, e.g., City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633, ¶¶ 22–24, 211 P.3d 406 (2009) (addressing the distinction between regulation and prohibition).

The City has demonstrated flexibility in its approach to the shelter use thus far: in order to best serve the community, it has requested (and the churches has graciously agreed) to subject the shelter to conditional use permitting. Through this process, the City can impose conditions and other restrictions to ensure compatibility with surrounding uses. Without this process, the shelter would be a use permitted outright, and the City would lose the opportunity for any community input. After diligent work by City technical staff, the City has recommended a number of conditions that strike an appropriate balance between the Church’s religious freedoms and the interests of the surrounding neighborhood. This is the kind of flexibility called for in the Supreme Court’s religious land use cases, and this is the context in which this conditional use permit arises.

CONCLUSION

Opponents’ argument that the church is a “social assistance” use rather than a “religious use” misses the broader context of the City Code, under which “religious use” is designed as a broad category incorporating any use that is sincerely held and central to a religious group’s mission. Opponent’s argument that the underlying CUP cannot be a basis for granting this CUP permit misapprehends the

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significance of the underlying CUP: it is not a basis for *granting* the shelter's CUP, but for subjecting the shelter to conditional use permitting at all. Opponents' argument that the shelter is inconsistent with the City plan reads certain provisions in isolation and ignores other plan goals that clearly support the shelter. The Hearing Examiner should therefore grant the conditional use permit to the shelter, subject to appropriate conditions that strike a balance between the Church's religious exercise and neighbors' concerns.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.

James E. Haney

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