

**BEFORE THE LAND USE HEARINGS EXAMINER
CITY OF VANCOUVER, WASHINGTON**

REGARDING THE APPLICATION FOR)
CONDITIONAL USE PERMIT APPROVAL)
TO ALLOW FOR A SINGLE-PLOT)
CEMETERY ON A SIX ACRE PARCEL IN)
AN R-10 ZONING DISTRICT IN THE)
CITY OF VANCOUVER, CLARK)
COUNTY, WA.

FINAL ORDER

Weber Cemetery
PRJ2001-00743/CUP2001-
00005

APPROVED

INTRODUCTION

This is a request for conditional use permit approval to allow for a single-plot cemetery. The plot is proposed to be designated only with an in-ground marker or a memorial bench. The parcel includes approximately six acres, which is to be developed to a park-like state and designated as the E. Jane Weber Arboretum. The parcel located in the R1-10 zoning district has a Comprehensive Plan designation of Urban Low (Density) Residential. Adjacent land uses include single-family residential and adjacent zoning designations are also R1-10.

The property was annexed to the City of Vancouver on January 1, 1997, by Ordinance M-3278. The site was originally settled by John Stanger in 1839 and was deeded in an 1865 land grant by Abraham Lincoln. The existing residence is indicated as being constructed in 1901 (Clark County Assessor's Records). The site was listed on the National Register of Historic Places in 1990.

Location: 9215 SE Evergreen Highway

Applicant/owner: Elson C. Strahan
Clark College Foundation
1800 E McLoughlin Boulevard
Vancouver, Washington 98663

SEPA: Exempt

REGULATIONS: A. Comprehensive Plan
B. Vancouver Municipal Code (VMC)
1. Title 11 Streets and Sidewalks
2. Title 14 Water and Sewers
3. Title 16 Fire

4. Title 17 Building and Construction
5. Title 20 Zoning
6. Title 21 State Environmental Policy Act

HEARING AND RECORD

The Public Hearing on this matter was held on October 16, 2001 and the record was closed at the end of the hearing. A record of all testimony received into the record is included herein as Exhibit I (Parties of Record), Exhibit II (Audio Tape), and Exhibit III (Written Testimony, exhibits 1-4). These exhibits are filed at the City of Vancouver Development Review Services.

The Examiner has conducted an unaccompanied site visit prior to the Hearing. No comments were received prior to the completion of this report. One comment signed by several individuals favoring the proposal was received at the hearing (Exhibit 5).

FINDINGS

The Hearing Examiner adopts as his own and incorporates by reference the findings and conclusions contained in the STAFF REPORT AND RECOMMENDATION (dated September 28, 2001), except to the extent expressly modified or supplemented herein.

COMPREHENSIVE PLAN

Land Use Designation: Urban Low (Density) Residential.

General: The City has reviewed the application for compliance with the comprehensive plan. The use proposed is not addressed in the polices or implementation measures of the comprehensive plan. The use is allowed in all R1 zones by conditional use permit.

Under the provisions of RCW 36.70B.030 (1), the fundamental land use planning choices made in the adopted comprehensive plan and development regulations shall serve as the foundation for project review. The review of a proposed project's consistency with applicable regulations, or in the absence of applicable regulation the adopted comprehensive plan, under RCW 30.70B.040, shall incorporate the determinations under this section. Staff has interpreted this to indicate that once the land use regulations are adopted, there is no requirement to determine compliance with the comprehensive plan for a specific project.

Comprehensive plan policies legally do not need to be addressed in staff reports for conditional use permits and site plan reviews which do not involve a planned unit development, land division, or variance.

The applicant has offered the following to address compliance with the comprehensive plan:

This request complies with VMC 13.04.600, which states that no new cemeteries may be established within the city limits of the city of Vancouver except in accordance with the provisions of city ordinance including but not limited to the City Zoning Code, Title 20 VMC. According to VMC table 20.11.200F, cemeteries are allowed in the single-family R1-10 zone with conditional use permits.

This permit is also in compliance with (Comprehensive Plan) Implementation Measure 34, which makes provision to publicly recognize people and organizations that donate or preserve land, easements, or make contributions of equipment or service for parks, recreation, and open space.

VANCOUVER MUNICIPAL CODE (VMC)

Title 11 Streets and Sidewalks

Finding: The proposal will not have any impact on the existing transportation system. No new trips will be generated.

Conclusion: The application will not require any street or sidewalk improvements. The project meets the requirements of 11.80. There will be no impact on the transportation system. The application meets the requirements of 11.90. The application has been determined not to require concurrency review because it has virtually no impact.

Title 14 Water and Sewers

Finding: No additional water or sewer improvements are proposed as part of this application. No extensions of either water or sewer service is required.

Conclusion: The application meets the requirements of 14.04.

14.24 Erosion Control

Finding: The application only requires the excavation of material for the actual burial. The application indicates that the grave site will be open for less than one day.

Conclusion: The application will not be required to meet erosion control requirements.

14.25 Storm Sewer

Finding: As no new impervious surfaces are proposed, surface water management review will not be required

Conclusion: No stormwater-related improvements are required.

Title 16 Fire and Title 16 Building

Fire and building code requirements are inapposite to this use.

Title 20 Zoning

20.11 R1 Districts:

20.11.200 Uses

Uses shall be identified as permitted outright, permitted by conditional use permit, or prohibited. Prohibited uses shall not be allowed. Conditional uses shall be allowed if approval is granted pursuant to VMC 20.71.

Finding: Table 20.11.200 at item “F” indicates that cemeteries are allowed in the R1-10 zone by conditional use permit.

The applicant has requested a conditional use permit to allow for the single burial site.

Conclusion: The proposed use requires approval of a conditional use permit.

20.11.320 Dimensional Standards:

Finding: The residential use of the site includes more than one lot. The proposed site is located on one of the lots. This lot encompasses 0.89 acres. Based on the site plan submitted, a portion of the existing house is located on the subject lot. The house straddles the lot lines.

The lot has a greater area than the maximum lot size allowed. The application does not include any additional units or land divisions. This is a nonconforming lot. The application is not for any additional dwelling units. No change in the residential density is proposed. As such, there is no requirement to meet the minimum density requirements.

The zoning ordinance does not address lot area requirements for cemeteries although the use is allowed in the R1-10 district.

Conclusion: The application is grandfathered regarding dimensional standards.

20.71 Conditional Use Permits

The criteria for approval of a conditional use permit is set forth in Title 20.71.320 (A) and reads as follows:

In order to grant any conditional use, the hearings examiner must find that the establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case, be significantly detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City.

- 1) The proposed use will not be significantly detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such use.

Finding: The application addresses compatibility as follows:

"The proposed 0.89-acre, R1-10 developed residential site, located on Lot 48 of the John Stanger DLC Plat, along with approximately five adjoining acres, was gifted to the Clark College Foundation to develop into an arboretum and educational resource for Clark College. The proposed use of the site has been expanded to include a single-plot burial/cemetery, where the donor requested to be buried. Given the parameters of the gift, the single/burial cemetery will never be expanded to more than the single burial. The burial/cemetery site will be located in a discrete area of the lot, marked by an in-ground marker or a memorial bench. The property is surrounded by residential, single-family homes, maintained in park-like settings. The property will be developed as an arboretum and will be maintained in a manner consistent with surrounding properties.

According to VMC Table 20.11.200F, cemeteries are allowed in the single-family R1-10 zone with a conditional use permit. Because the code allows for this possibility under special conditions, it is therefore deemed compatible with the neighborhood if those conditions are met."

The applicant indicates that as a use is allowed by special conditions, it is automatically compatible with the surrounding neighborhood. Section 20.71.100 indicates within the purpose statement that in certain districts, conditional uses may be permitted, subject to granting of a conditional use permit. Because of their unusual characteristics, or the special characteristics of the area in which they are to be located, conditional uses require special considerations so that they may be properly located with respect to the objectives of this Title and their effect on surrounding properties.

Section 20.71.200 indicates that the city shall have the authority to approve, approve with conditions, disapprove, or revoke conditional use permits, subject to the provisions of this chapter.

20.71.320 indicates again that the city has the authority to disapprove a conditional use permit if it finds that the establishment, maintenance, or operation of the use applied for will be significantly

detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the City.

The proposed use will have virtually no physical impact on the surrounding area or the city. As indicated in previous sections, there will be no above ground structures associated with the proposal, other than an in-ground grave marker or a memorial bench. There will be no traffic impacts; no additional trips will be generated. The request will not require additional parking. It will not change the residential characteristics of the site or the area. No changes in noise levels are anticipated by the approval of the proposed single-burial cemetery.

Private cemeteries are regulated by RCW Title 68. Prior to the interment the applicants will be required to comply with these state statutes.

Staff finds that the interment does not intensify the use of the site. Once completed, there will be virtually no visible indications other than the proposed marker and bench. No additional noise or traffic will be generated.

Conclusion: Based on the above discussion, Criterion 1 has been met.

- 2) *The use will not be detrimental or injurious to the property and improvements in the neighborhood.*

Finding: The applicant presented the following proposed findings to address desirability of the project for the community:

“The proposal to locate a single-burial cemetery on the proposed site will have negligible impact on the community. It is neither desirable nor undesirable to the community. The private burial plot will be located in a discrete area of the lot and will be inconspicuously identified by an in-ground marker or memorial bench. The value in locating the single-burial cemetery on this site is to honor the wishes of the donor of this wonderful educational and community resource.”

The applicant also has proposed the following findings addressing how the project is proposed to minimize impacts on the neighborhood:

- A. *Size and arrangement of site and buildings:
The proposed site consists of 0.89 acres of residential property with a residence and a storage shed located on it. The Clark College Foundation is contemplating future development of the residence (to be reviewed through a separate process if pursued). The storage shed is in poor condition and eventually will be removed. The single-burial plot will be located on a discrete area of the lot and inconspicuously identified by an in-ground marker or memorial bench. There are no other buildings located on the site and none are proposed.*

B. Accessibility, parking and expected traffic volume

The single-burial cemetery will be located approximately 15 feet east of the end of the driveway leading to the residence located on the site. There will be no walkway leading to the burial plot. Given the fact that this is a private burial and not a public cemetery, there should be no parking or traffic volume that would pose an issue now or in the future. Because none of the donor's family resides in the Pacific Northwest, potential visits from relatives would be minimal. There will be no posted hours of operation for the site other than those of the future arboretum.

C. Potential dust, odor, noise, glare, etc.

This will be a single-burial cemetery, with work to be completed within a day. Burial will be done by Evergreen Memorial Gardens in compliance with city, state and federal guidelines and should not create any adverse conditions. A backhoe will be used to excavate the plot, and equipment will be used to place the vault and the casket in the plot.

The noise caused by this work should be minimal and is not expected to last more than a total of four hours. The dust generated by this work should also be minimal and should be contained on site. This work is not expected to create any odor, glare or other adverse conditions.

D. This will be a single-plot burial and the site/cemetery will be maintained along with the rest of the property and in keeping with the appearance of the surrounding residential properties. A \$25,000 endowment held by Clark College Foundation will be in place to care for the burial/cemetery site in perpetuity. The plot will be inconspicuously identified. There will be an in-ground marker or memorial bench at the burial site. There will be no signage on the site that identifies the property as a cemetery.

The applicant indicates that the proposed use will have virtually no impact on the surrounding property as it will be virtually unnoticeable. There are to be no outward indications, beyond the boundaries of the site, that there is a single-plot burial on the site.

The use of the site as proposed will not create any additional traffic and the use will not create physical impacts that will affect the neighborhood.

Conclusion: Based on the above discussion, Criterion 2 has been met.

3) The use will not be detrimental or injurious to the general welfare of the city.

Finding: The application indicates that there will be no significant changes to the site or the use of the property. There are to be no signs or highly visible monuments. Based on this, no detrimental or injurious impacts to the general welfare of the city are anticipated.

Conclusion: Based on the above discussion, Criterion 3 has been met.

20.83 Landscaping and Open Storage

Landscaping and Open Storage shall be as provided in VMC 20.83.

Finding: 20.83.200 indicates that all new structures, parking lots, and any new structural alteration in excess of 50 percent of assessed valuation within all districts, with the exception of single-family dwelling units and the AO, OS, AO-20, AO/WL, C, A, and MH Districts shall meet the minimum landscaping requirements of the zone in which they are located.

The single burial plot cemetery is part of an existing, developed single-family use. The use does not include a structure, parking lot, or alterations in excess of 50 percent of the assessed value of the entire development.

No open storage is allowed in the R-1 districts. No open storage is proposed.

Conclusion: The request is not required to meet the landscaping requirements. No open storage is required.

20.96 Tree Conservation Ordinance

Any development within the City is subject to the Tree Conservation ordinance and may be required to develop a tree plan and to meet the minimum tree density of thirty tree units per acre.

Finding: The project consists of the excavation of the burial plot, interment, replacing the earth, and placing a marker at the grave. The estimated disturbance area is less than 50 square feet or

0.00115 acre. At thirty tree units per acre, the number of tree units required is 0.03.

20.04.502(B) states that when any measurement technique for determining the number of items required or allowed, including but not limited to, parking or bicycle spaces, dwelling units, or required trees or shrubs, results in fractional requirements, any fraction less than one-half of the applicable unit of measurement shall be disregarded and fractions of one-half or larger shall require the next higher full unit of measurement.

The number of trees units required is less than one-half of one unit; no tree units are required.

Conclusion: The application meets the requirements of VMC Section 20.96.

20.99 Archaeological Resource Preservation

The provisions of this chapter shall apply to all applications for ground-disturbing activities for which a permit or approval is required where any portion of the disturbance area is located within Model Probability Level A, and/or where the disturbance area is at least 5 acres and, located

within Model Probability Level B or if the disturbance area is located within a one-quarter mile of a known, recorded archaeological site.

Finding: The site is within Level A of the Predictive Model for Archaeological Resources. The applicant has submitted a predetermination regarding the site. That predetermination has been reviewed by the City of Vancouver's contract archaeologist and found to be acceptable.

Conclusion: The application meets the requirements of VMC Section 20.99.

Title 21 State Environmental Policy Act (SEPA)

The project has been determined to be categorically exempt per WAC 197-11-800(1)(b)(v), excavation of less than 500 cubic yards of material.

DECISION

The proposed development is permitted through approval of a conditional use permit. Based upon the findings and conclusions herein, the criteria for approval have been satisfactorily met. The Examiner concludes that the request will not be significantly detrimental to the health, safety, or general welfare of the residents or land within the neighborhood or the City and hereby APPROVES the requested **conditional use permit** without conditions.

Dated this 25th day of October 2001

J. Richard Forester
Vancouver Hearing Examiner

NOTE: *Only the decision and the condition of approval are binding on the applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the city staff, or the Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.*

APPEAL: Decisions of the Hearings Examiner are appealable to the City Council within 10 working days after the Hearings Examiner's decision is mailed. Appeals must be made in writing to the Manager of Development Review Services and must contain the following information:

- A. The case number(s) designated by the City and the name of the applicant;

- B. The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under this Chapter. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative for all contact with the Director. All contact with the Director regarding the petition, including notice, shall be with this contact representative;
- C. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; and
- D. The appeal fee adopted by the City Council (\$1,000.00); provided, the fee shall be refunded if the appellant files with the Director at least fifteen (15) calendar days before the appeal hearing a written statement withdrawing the appeal.

Submit the appeal request and fee to the address below:

Manager
Development Review Services
City of Vancouver
PO Box 1995
Vancouver, WA 98668-1995

In the absence of a valid appeal within the timelines specified above, the Hearings Examiner's decision shall become final and conclusive.