

**BEFORE the HEARING EXAMINER for the
CITY of LYNNWOOD**

DECISION

FILE NUMBERS: CUP-010101-2023 & PDR-010104-2023

APPLICANT: ¹ Family Peace Association USA
ATTN: Kenshu Aoki, President
6328 180th Street SW
Lynnwood, WA 98037

AGENT: Designs Northwest Architects
ATTN: Russell Weiser
26915 102nd Drive NW, Suite 201
Stanwood, WA 98292

TYPE OF CASE: Consolidated permits to remodel and enlarge an existing church facility: 1) Conditional Use Permit; 2) Project Design Review; and 3) Landscape buffer reduction ²

STAFF RECOMMENDATION: Approve all applications subject to conditions

EXAMINER DECISION: GRANT all applications subject to conditions

DATE OF DECISION: March 19, 2024

INTRODUCTION ³

Family Peace Association USA (“Pacific Peace Center”) seeks a Conditional Use Permit (“CUP”), Project Design Review (“PDR”), and landscape buffer reduction approval to remodel and enlarge an existing church facility.

Pacific Peace Center filed the CUP and PDR applications on September 5 and 14, 2023; the landscape buffer reduction was filed on December 5, 2023. (Exhibits 1, PDF 2; 6; 7 ⁴) Pacific Peace Center requested that the

¹ Family Peace Association USA is the name under which the applicant is registered with the IRS. (Testimony) Lynnwood Family Peace Center, LLC is a subordinate entity in whose name the subject property is owned. (Exhibit 5) Pacific Peace Center is the physical facility’s commonly used name. (Testimony)

² The landscape buffer reduction request has no assigned case number. (Exhibit 18)

³ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

⁴ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF

applications be consolidated for processing. (Exhibit 4, PDF 4; testimony) The Lynnwood Development and Business Services Department, Community Planning Division, (“Planning”) deemed the CUP and PDR applications to be complete on September 14, 2023. (Exhibit 16) Planning issued a Notice of Application on September 22, 2023. (Exhibit 17) Planning issued to abutting property owners a separate notice of requested landscape buffer reduction as required by the LMC on February 13, 2024. (Exhibit 18)

The subject property is located at 6328 180th Street SW. Its Assessor’s Parcel Number is 00373400801000 (“Parcel 010”). (Exhibit 1, PDF 1)

The Lynnwood Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery collected August 23, 2022; Street View imagery collected in October 2015.

The Examiner held a hybrid open record hearing on March 14, 2024: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. Planning gave notice of the hearing as required by the Lynnwood Municipal Code (“LMC”). (Exhibit 14)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 13: As enumerated in Exhibit 1, the Planning Staff Report
- Exhibit 14: Notice of Hearing
- Exhibit 15: Applicant’s PowerPoint hearing presentation
- Exhibit 16: Notice of Complete Application
- Exhibit 17: Notice of Application
- Exhibit 18: Notice of landscape buffer reduction request

Section 1.35.025 LMC requires that decisions on project permit applications be issued within 120 calendar days after the application is found to be complete; subsection 1.35.025(A) LMC lists four exclusions from the 120-day count, one of which is an extension mutually agreed upon by Planning and the applicant. The open record hearing was held on the 131st review day. Pacific Peace Center agreed to extend the timeline by 30 days. (Exhibit 12 ⁵)

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

⁵ use PDF page numbers, not source document page numbers. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record. As Exhibit 12 notes, the delay in scheduling the hearing was due to the “Hearing Examiner’s absence”. The Examiner had surgery in mid-February and required a month for recuperation.

FINDINGS OF FACT

1. Parcel 010 contains approximately 1.8 acres occupying the southeast quadrant of the 64th Avenue W/180th Street SW intersection. The site is essentially flat and devoid of significant vegetation. Parcel 010 has contained a church facility since in or around the 1960s. The facility consists of a sanctuary/classroom and support building, a small utility garage, and two large, uncontrolled, paved parking areas. The main building is in “L” shaped: The north-south “leg” is one story and contains the sanctuary; the east-west “foot” is a two-story building and contains offices, classroom, and support spaces. (Exhibits 3; 15, PDF 7 & 12 – 15)

Parcel 010 is surrounded by single-family residences except for a private school which occupies the northeast quadrant of the 64th Avenue W/180th Street SW intersection across 180th Street SW from Parcel 010. (Exhibit 15, PDF 16; Google Earth imagery) Parcel 010 is within an area zoned RS-8, single-family residential, 8,400 square feet minimum lot size. ⁶ (Exhibit 1, PDF 3)
2. In or around 2022 the previous occupants of the church facility merged into another church and put Parcel 010 on the market for sale. Pacific Peace Center, which registered with the state in 2021 as a church, had been looking for a location in the Lynnwood area as many of its members live in the area. Pacific Peace Center purchased the property in 2022, began holding services in the existing facility, and began the process to design and obtain permits to modernize and enlarge the facility. ⁷ The existing facility, with the exception of the sanctuary which appears to be in very good condition (Exhibit 15, PDF 11), has become rundown and is not up to current code; e.g.: The siding is worn “T-1-11” plywood, the windows are substandard, the building is not sprinklered, the number of restrooms is insufficient, etc. (Exhibit 15, PDF 12 – 15; testimony)
3. Pacific Peace Center is a non-denominational church which follows the teachings of Jesus Christ and strives for “a world of peace through God-centered families.” (Testimony)
4. Pacific Peace Center proposes to essentially encapsulate the existing sanctuary in a new shell, add a formal entry (a “narthex”) at the northeast corner of the building, and add a one-story extension to the south to provide office spaces. The existing two-story building will have new siding, windows, and additional bathrooms, but will otherwise remain essentially as is. The sanctuary will not be enlarged from its current 256 person capacity. The parking will be significantly changed to meet city

⁶ The statement near the bottom of Exhibit 1, PDF 7, that Parcel 010 is zoned General Commercial (CG) is incorrect, likely the result of a scrivener’s error.

⁷ Shortly after purchasing the property, Pacific Peace Center decided to host a neighborhood “block party,” not to proselytize, but just to introduce themselves to the neighborhood residents. The lead pastor (“Aoki”) and his wife went door-to-door around the neighborhood inviting folks to attend and ensuring them that this would be just a fun time to get to know one another and have a hot dog, not a church service. (Testimony) Some neighbors misunderstood and came away with the mistaken impression that Pacific Peace Center was not a church and would not be holding church services on the site. (Exhibits 1, PDF 10; 13)

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code for width of parking lot access onto the abutting streets, delineation of parking stalls, lighting, and parking lot landscaping. A children's play area (south of the two-story building) and a gathering plaza (adjacent to the narthex) will be added. Sidewalks will be provided on both street frontages. Substantial landscaping will be installed on the site. The utility building will have to be moved to make way for the children's play area and parking lot; Pacific Peace Center proposes to relocate it to the edge of the parking lot near the southeast corner of the site. (Exhibits 3; 4; 8; 10; 11; 15)

5. Planning, which normally handles all PDR actions for the City and which would have been responsible for PDR if Pacific Peace Center had not requested consolidation of the three applications, has reviewed the proposal against the Citywide Design Guidelines for All Districts. Planning has concluded that the design features of the proposal meet all applicable Guidelines. (Exhibit 1, PDF 7 & 8)
6. Pacific Peace Center wants to continue to use the small garage as a utility shed. It cannot remain in its present location near the southeast corner of the two-story building because of parking lot requirements and the children's play area. Pacific Peace Center proposes to move it to the southeast corner of the site adjacent to the parking lot. The proposal is to place the garage parallel with and 6.5 feet from the east property line. The garage will be oriented so that a 20-foot long blank wall will face east. The zoning code requires a 5 foot setback from the property line, but landscape requirements for a non-residential land use adjacent to residences (which is the case here) require a 10-foot wide landscaped buffer. Pacific Peace Center cannot shift the garage 3.5 feet west because the northwest portion of the garage would then block part of the required 20-foot wide fire lane through the parking lot. Pacific Peace Center has thus asked for a landscape buffer reduction of 3.5 feet for the length of the garage wall (about 20 feet). To compensate for the reduction, dense plantings will be installed between the garage and the property line. In addition, a solid 6-foot fence will run along the entire east property line. (Exhibits 3; 7; 15, PDF 6 - 10)
7. The proposal is categorically exempt from the threshold determination requirements of the State Environmental Policy Act ("SEPA"). (Exhibit 1, PDF 2)
8. Four significant trees will have to be removed to accommodate the proposal. In accordance with the City's tree retention regulations, 28 replacement trees will be planted on the site. (Exhibits 10; 11)
9. The hearing record contains a few public comments. One person has no objection in principle, but worries that the facility might become a "mega-church." Another is worried about noise and parking. (This person is one of the persons who misunderstood what Aoki said in his door-to-door block party invitation process.) A third commenter was also confused by the block party invitation and doesn't want the facility to become a homeless shelter. (Exhibit 13) Finally, a witness at the hearing had no objection to either the scale of the proposal or the modernization. However, she was concerned about parking and expressed concern that overflow parking along the adjacent streets could put drivers and passengers in danger if they cross the street anywhere other than at the intersection. (Testimony)

10. Zoning regulations require 64 on-site parking stalls for a church sanctuary with a 256 person occupancy plus 4 on-site parking stalls for the Sunday school classroom for a total of 68 on-site parking stalls. (Exhibit 1, PDF 6) The site plan proposes 68 on-site parking stalls. (Exhibit 3)
11. Planning recommends approval of the three applications subject to three conditions. (Exhibit 1, PDF 11) Pacific Peace Center has no objection to the recommended conditions. (Testimony)
12. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁸

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A CUP is a Process I application which is subject to an open record hearing before the Examiner. A PDR is a Process III application which is handled administratively by Planning. A landscape buffer reduction request is not a classified action, but is handled administratively just as are Process III applications. When consolidated, applications are subject to whichever process has the highest ranked decision maker. The Examiner is ranked higher than Planning staff. Therefore, these consolidated applications are subject to Process I. The Examiner makes a final decision on the consolidated applications which is subject to the right of reconsideration and appeal to Superior Court. [LMC 1.35.100, .168, and .175 and 21.24.050]

Review Criteria

Conditional Use Permit

The review criteria for CUPs are set forth at LMC 21.24.100 and .150:

... In considering any conditional use permit, the hearing examiner shall prescribe any conditions that he/she deems to be necessary to or desirable for the public interest, and where appropriate may stipulate that the permit is temporary and establish an expiration date. However, no conditional use permit shall be granted unless it is found:

A. That the use for which such a permit is sought will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and

B. Will be in harmony with the general purpose of [the zoning code].

The hearing examiner may allow relaxation of the development standards of this title if he/she finds that alternative amenities, improvements, proposed location of uses or

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

structures, or other features incorporated into the proposal are in harmony with the general purpose of this title and would provide equal or better protection to the public interest than would the standards proposed to be relaxed.

[LMC 21.24.100]

In determining findings, the hearing examiner shall take into account the character and use of adjoining buildings and those in the vicinity, the number of persons residing or working in such buildings or upon such land, traffic conditions in the vicinity, compliance with any special conditional use criteria for that specific use set forth in [Chapter 21.24 LMC] and all factors relevant to the public interest.

[LMC 21.24.150]

Project Design Review

The review criteria for PDR are set forth at LMC 21.25.145(B):

Decisional Criteria. The director shall use the criteria listed in this section.

1. It is consistent with the comprehensive plan.
2. It is consistent with all applicable provisions of this chapter.
3. It is consistent with the applicable design guidelines found in the applicable design guidelines, adopted by this reference and incorporated in the provisions of the LMC and this chapter as fully as if herein set forth.
4. For development applications for remodeling or expansion of an existing development, it is consistent with those provisions in the applicable design guidelines identified by the director as being applicable.
5. For such applications, the director may modify applicable design standards and guidelines to provide continuity between existing and new development and/or proposed phases of development.

[Italics in original]

Landscape Buffer Reduction

The review criteria for a landscape buffer reduction are set forth at LMC 21.08.250(C)(1):

... The applicant or person(s) requesting the buffer reduction may request a reduction if they can prove that, due to the intensity of existing or proposed landscaping, change in topography between properties, use of the properties along the abutting property line, or other characteristics of the abutting properties, a reduced buffer width or deviation from the landscape code requirements will provide adequate separation and screening between properties. ...

A “consistency determination” is also required for every project application. A consistency determination follows four steps set forth at LMC 1.35.070. Consistency criteria are:

1. Type of land use permitted at the site, including uses that may be allowed under certain circumstances if decision criteria are met;
2. Density of residential development (if applicable); and,
3. Availability and adequacy of public facilities (for those facilities identified in the comprehensive plan, if the plan or the city’s development regulations provide for funding of these facilities).

[LMC 1.35.070(A)]

Vested Rights

“Vesting” serves to “fix” the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, 183 Wn. App. 191 (2014), *review denied*, 182 Wn.2d 1004, 342 P.3d (2015)]

In 2014 the State Supreme Court flatly declared: “While it originated at common law, the vested rights doctrine is now statutory.” [*Town of Woodway v. Snohomish County*, 180 Wn.2d 165, 173, 322 P.3d 1219 (2014)] The *Potala* court rejected a contention that the filing of a complete shoreline substantial development permit application vested development rights because no statutory provision established vested rights for shoreline permits. [*Supra*, at 196-206]

CUPs are not the subject of any state vesting statute. If Lynnwood had a local vesting ordinance applicable to land use applications, the Examiner would be obliged to follow it as enacted. [*Erickson & Associates v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994); *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wn.2d 242, 250, 218 P.3d 180 (2009)] But the City has no such local ordinance. Thus, the Examiner must follow the most current case law.

Under the most current case law, there is no vesting for CUP applications because there is no statutory provision providing vesting for such applications.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [LMC 1.35.155]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

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CONCLUSIONS OF LAW

Conditional Use Permit

1. The request complies with CUP criterion LMC 21.24.100(A). This facility has operated as a church in the neighborhood for some 60 years. There is no evidence of any reported conflicts between the former church group's use of the facility and the neighborhood. Pacific Peace Center's proposed uses will essentially be the same, with the same size sanctuary for worship services.
2. The request complies with CUP criterion LMC 21.24.100(B). The "general purpose of the zoning code" is to

avoid[] or abat[e] public nuisances. This title also intends to promote the protection and promotion of the quality of the natural environment and the health, safety, morals, and other aspects of the general welfare of present and future inhabitants of the city of Lynnwood in accordance with the comprehensive plan and state law, judicial decisions, and Central Puget Sound Growth Management Hearings Board decisions regarding land use regulations. To these ends, it is the intent of these regulations to implement the city of Lynnwood comprehensive plan and the future land use plan map.

[LMC 21.04.015] As stated above, this facility has operated as a church in the neighborhood for some 60 years. A church is a listed Conditional Use in the RS-8 zone. Churches are routinely sited in residential neighborhoods.

3. The request complies with CUP criterion LMC 21.24.150. Because the sanctuary capacity will not be increased, the intensity of site use will likely not be significantly different from the past 60 years. However, neighborhood safety will be substantially improved by the addition of sidewalks and properly sized parking lot entry/exit curb cuts. Changing the parking configuration from two separated, unconnected lots into a unified parking lot with drive-through capability will improve traffic circulation associated with church use: Attendees will be able to enter from/exit onto either abutting street depending on their origin/destination.
4. The requested CUP should be granted.

Project Design Review

5. The proposal is consistent with the adopted Comprehensive Plan. (Exhibit 1, PDF 3 – 5) Planning's analysis was not challenged and is adopted herein by reference as if set forth in full.

6. Planning's analysis of the design found it to be consistent with all applicable provisions of Chapter 21.25 LMC. (Exhibit 1, PDF 5) Planning's analysis was not challenged and is adopted herein by reference as if set forth in full.
7. Planning's analysis of the design found it to be consistent with all applicable Design Guidelines. (Exhibit 1, PDF 6) Planning's analysis was not challenged and is adopted herein by reference as if set forth in full.
8. The exterior façade of the building is being completely updated and will comply with the Design Guidelines. Modulation of the sanctuary's west wall will break up a long expanse and add interest to the façade. The new roof lines will also add interest to the facility and, as they will be gable design, will blend with the residential character of the general area. The narthex and gathering area adjacent to it will provide a more welcoming focal point for entry into the church. The addition of sidewalks and extensive landscaping will improve the visual appearance of the site.
9. Pacific Peace Center's proposal complies with the four applicable PDR approval criteria. (The fifth "criterion" is actually authorization for Planning to modify some of the Design Guidelines if deemed necessary.)
10. PDR should be granted.

Landscape Buffer Reduction

11. The requested landscape buffer reduction will apply to only 20 feet of the total 283 foot east property line. (Exhibit 15, PDF 8) The back yard of the lot which abuts the affected 20 feet contains several large conifers. Pacific Peace Center proposes dense plantings between the utility garage and the property line fence, both on the east and south sides of the garage. A small, single-story utility garage, with no windows in its east wall, surrounded by dense plantings, will result as nearly as possible in a situation equal to a 10-foot buffer. Shifting the garage to the west is not practical because of the need to preserve a 20-foot wide fire lane through the parking lot. Demolishing the existing utility garage and replacing it with a smaller one would be a waste of resources, given the low impact of the current proposal. (It should be noted that if the p[ro]posal were a single family residential use, the garage would only have to maintain the 5-foot side yard setback. The small utility garage is more residential than institutional.) The fence and landscaping as proposed will adequately screen the garage.
12. The proposed buffer reduction meets the decision-making considerations and should be granted.

General

13. The proposal passes the "consistency" test: A church is permitted as a Conditional Use in the RS-8 zone; density is not applicable as this is not a residential use; and adequate utilities are available to serve the church (which has been served for years at this location).

14. The recommended conditions of approval as set forth in Exhibit 1 (at PDF 11) are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
- A. Recommended Condition 1. The plan set referenced by Planning by date in this condition is Exhibit 3 in the hearing record. A reference by exhibit number is preferable to a reference by date. The condition mentions only the CUP. Exhibit 3 contains all the data needed to serve as the approved PDR plan set as well. The “LMC 1.35.180” reference is to the code provision which allows administrative approval of minor revisions to approved plans. The purpose of that reference will be clarified.
 - B. Exhibit 3 also contains all the data needed to serve as the approved landscaping buffer reduction plan. However, the Examiner will list it separately as the reduction applies to only a limited portion of the east property line buffer. Exhibit 15, PDF 10, contains an enlargement of the landscape buffer area along the east property line. That sheet will also be referenced. The areal limitation needs to be clearly set out. A new condition will be added.
 - C. Recommended Condition 2. This condition provides that the “City” has approval authority for materials substitution. “City” is too vague an authority reference. The appropriate City Department is Planning, the department which has administrative PDR approval authority. The text will be changed to specify that authority.
15. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner’s site view, the Examiner **GRANTS** the requested Conditional Use Permit, Project Design Review, and landscape buffer reduction to remodel and enlarge the existing church facility at 6328 180th Street SW **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued March 19, 2024.

John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁹

Karl Almgren
Kenshu Aoki

Dan Nelson
Linda Wold

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Lynnwood Development and Business Services Department a written request for reconsideration within seven calendar days following the issuance of this Decision in accordance with the procedures of LMC 1.35.168. Any request shall specify the error of law or fact, procedural error, or new evidence which could not have been reasonably available at the time of the hearing conducted by the Examiner which forms the basis of the request. See LMC 1.35.168 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record (See LMC 1.35.148.) with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of LMC 1.35.175 and the Land Use Petition Act [Chapter 36.70C RCW]. See LMC 1.35.175 for additional information and requirements regarding judicial appeals.

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.”

⁹ The official Parties of Record register is maintained by the City’s Hearing Clerk.

**CONDITIONS OF APPROVAL
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PACIFIC PEACE CENTER REMODEL AND ENLARGEMENT**

This Conditional Use Permit, Project Design Review, and landscape buffer reduction are subject to compliance with all applicable provisions, requirements, and standards of the Lynnwood Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. Exhibit 3 is the approved plan set for the Conditional Use Permit and for Project Design Review. Revisions to the approved plans are subject to the provisions of LMC 1.35.180.
2. Exhibit 3, especially Sheets L1.2 and L1.3 (Exhibit pages PDF 17 and 18) and Exhibit 15, page PDF 10, are the approved plans for the landscape buffer reduction. The landscape buffer reduction is limited strictly to the area immediately east of the relocated utility garage as depicted on the referenced exhibits and a distance not to exceed 10 feet to the north and south of the garage to provide for transition of the buffer width. Revisions to the approved plans are subject to the provisions of LMC 1.35.180.
3. Subject to prior approval by Planning, building and landscape materials may be substituted only if they are of similar quality and appearance to those in the approved plans.
4. All signs must acquire a sign permit prior to installation.