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8 BEFORE THE HEARING EXAMINER
9 FOR THE CITY OF MERCER ISLAND

10 In the Matter of:

11 **Development Code Interpretation No. 22-004**

Hearing Examiner File No.: APL 22-004
(Interpretation No. 22-004)

12 **DECLARATION OF JOHN HALL,**
13 **NEIGHBOR OF THE JEWISH**
14 **COMMUNITY CENTER IN SUPPORT**
15 **OF MERCER ISLAND'S CODE**
16 **INTERPRETATION**

17 Comes forth John Hall, and states under penalty of perjury of the laws of the State of
18 Washington as follows:

19 1.1 I am over 18 and competent to testify herein. I make these declarations upon my
20 personal knowledge of the facts. I support the City of Mercer Island's interpretation that a
21 conditional use in a residential neighborhood may not request a variance for regulatory limits.
22 Attached to this declaration is an exhibit index and true and accurate copies of the documents.

23 1.2 I am a resident of Mercer Island. I have lived on Mercer Island since 1958. My wife
24 and I currently reside at 9970 S.E. 40th St. Mercer Island, WA. We have resided in this house

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1 for the last 41 years, during which we raised our 3 children. Our house is adjacent to the
2 southeast property line of the JCC in a community called Mercerwood.

3 1.3 This Declaration is to set forth the JCC's attempts to obtain preferential regulatory
4 limits since at least 1971, the huge increases in intensity of use of its property over the years,
5 and the harm to the neighborhoods.

6 1.4 I have been involved in the JCC's attempts to increase the intensity of use of their
7 property and school, as well as the regulatory limits applicable to their property, including
8 leasing to the French American school, since at least 1980. During this time, the JCC has
9 continually attempted to obtain increased regulatory limits in excess of those regulatory limits
10 applicable to the surrounding neighborhoods. The JCC has known the limit of its footprint
11 and intensity of use since 1967 under Ordinance 142 and its current and past conditional use
12 permits.

13 1.5 The first thing to understand about the JCC is how different it is in membership,
14 traffic, and intensity of use from other private clubs and conditional uses on Mercer Island.
15 Although the JCC refuses to reveal the specific number of members, public reports puts the
16 number at between 6,000 and 10,000 members throughout the region. Attached as Exhibit 1 is
17 the JCC's 2016 Form 990 showing the total number of individuals employed as 472, together
18 with 115 volunteers, with program service revenue of \$8,000,907.94, and salaries and other
19 compensation of \$6,072,824.00. As noted in Exhibit 1, a September 8, 2015, letter from the
20 JCC, states:

21 *"Our 250 year round employees, which grow to 400 seasonally,*
22 *serve more than 15,000 people every year, including 195 children*
23 *for preschool, close to 1000 summer day campers and over 500*
24 *seniors, plus any more members and guests."*

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1 Also attached in Exhibit 1 is the 2016 Form 990 for the French American
2 school showing 126 employees and 250 volunteers. The French American school
3 has approximately 435 students in grades PK-8.

4 1.6 By comparison, the other private conditional use permit organizations such as the
5 Beach Club, Shore Club, and other community organizations on Mercer Island have 500 or
6 fewer members and generally 1 to 2 dozen employees depending on peak season.

7 1.7 Attached as Exhibit 2 are the May 20, 1970, Minutes of the Planning Commission
8 regarding the JCC's request for outdoor lighting and outdoor activities. Also attached in
9 Exhibit 2 is a letter dated July 1, 1971, from the City of Mercer Island noting the City Council
10 had voted unanimously to affirm the decision of the Planning Commission to deny appeal of
11 the JCC's conditional approval of plans submitted by the JCC. Also attached is the JCC's
12 June 9, 1971, letter promising there would be no outdoor lighting, no outdoor activities, and a
13 "goal" of 1,000 families. None of those promises were ever kept, see Exhibit 2, page 5.

14 1.8 Attached in Exhibit 3 is a letter from the City of Mercer Island dated May 2, 1985,
15 regarding the city's denial of the JCC's conditional use permit to incorporate adjacent
16 residential properties, and to convert the use of that property from single family residential to
17 a day care facility along with the Planning Commission's Findings of Fact Supporting Denial.
18 Attached in Exhibit 3 is an article from the Mercer Island Reported dated May 7, 1985, noting
19 that the Mercer Island Planning Commission rejected the JCC's request to obtain a
20 conditional use permit allowing it to convert a 2100 square foot residential home into a day
21 care facility for 15 to 20 children and noting complaints from the neighbor due to the noise,
22 traffic, and lack of landscaped screening.

23 1.9 Over the last 10 or so years, the JCC has purchased several additional adjacent
24 residential properties on speculation of a rezone. Over the last decades the JCC had the

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1 opportunity to buy commercially zoned property to the north of its property but only
2 purchased one parcel. Attached in Exhibit 4 are three maps highlighting the purchased
3 properties. Recently the Mercer Island City Council adopted a code amendment that requires
4 a conditional use permit organization to resubmit a new conditional use permit application if
5 seeking to incorporate properties into the CUP MCC 19.06.111(c).

6 2 Attached in Exhibit 5 is a newspaper article from the Mercer Island reporter dated
7 March 26, 2002, noting the city's approval of the JCC's application for a street vacation over
8 the objection of the neighbors on the ground that approving the vacation allows the JCC to
9 add more density, traffic, and congestion, which is exactly what happened after the approval
10 of the street vacation. As noted in the JCC's Street Variation Criteria Response, Paragraph e,
11 the vacated area cannot be used to increase commercial density. This is exactly what
12 happened after the street vacation was granted.

13 2.1 In 2017, the JCC applied for and obtained an amendment to the Comprehensive Plan
14 creating a "Community Facilities Zone." This new zone would apply to conditional use
15 permit holders in the residential zone, and presumably allow them different regulatory limits
16 than under the residential development code that had just undergone a major revision effective
17 October 31, 2017 to stop "McMansions. The CFZ was highly unpopular with the citizens, in
18 large part because the amendment did not include the concurrent implementing development
19 regulations.

20 2.2 Our neighborhood formed a group called Concerned Neighbors for the Protection of
21 the Community and hired an attorney Alex Sidles to appeal the adoption of the CFZ to the
22 Growth Management Hearings Board (GMHB). Another citizen named Mark Coen filed a
23 separate appeal. The primary concern and focus of the Petitioners' appeal was the adoption of
24

1 the CFZ required concurrent adoption of the implementing development regulations so the
2 citizens knew just what the CFZ meant or was.

3 2.3 The GMHB agreed with our appeal, but rather than invalidating the CFZ it remanded
4 it to the City of Mercer Island with instructions to draft and adopt the implementing
5 development regulations. However, when the JCC's draft implementing development
6 regulations were first disclosed at the Planning Commission, they were extreme, to say the
7 least, and unorthodox, including tricks like measuring setbacks not from the JCC's property
8 line but from adjacent properties, including from across the street. This caused a firestorm
9 among the city, and even the other CUPs objected.

10 2.4 Subsequently the Mercer Island City Council held an emergency joint session with the
11 Planning Commission to discuss the CFZ and the draft development regulations to implement
12 the CFZ. At the joint session, the mayor, Benson Wong, noted “**The solution has become the**
13 **problem.**” Rather than remand the development regulations back to the Planning Commission
14 for further work, the Council decided to repeal the CFZ, which was subsequently repealed.

15 2.5 The cost to the city for the public meetings prior to adoption of the CFZ, staff time,
16 and outside litigation fees was estimated to be between \$250,000 and \$400,000. The JCC did
17 not contribute to the defense of the CFZ at the GMHB. Our own neighborhood that is modest
18 by Mercer Island standards spent over \$40,000 in attorney’s fees fighting the CFZ when the
19 JCC spent nothing and left all the costs to the city and taxpayers.

20 2.6 Shortly thereafter, a citizen attorney named Robert Medved filed an appeal to the
21 GMHB requiring the City to adopt an annual docketing system for proposed code
22 amendments that require any proposed amendment to be filed by October 31 of the preceding
23 year in order to have it be considered by the Council to be placed on the following years
24 Planning Commission docket. The JCC’s attorney, Richard Hill, drafted a code amendment

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1 that became known as “The Hill Amendment,” although it was on behalf of the JCC. This
2 code amendment again sought extraordinary regulatory limits for the JCC but included
3 language that would make the code amendment applicable only to the JCC. Again, there was
4 substantial public objection, both to the amendments and to the fact The Hill Amendment was
5 clearly a preferential spot zone. Although the JCC failed to file its proposed code amendment
6 by the deadline on October 31, the Council granted the JCC preferential treatment and
7 allowed it to be added to the docket for consideration the following February.

8 2.7 The Hill Amendment was not popular among the Council, which included many new
9 members. The JCC, seeing the writing on the wall, was allowed to withdraw its application
10 and again received preferential treatment by receiving a refund of the \$26,000 application fee.

11 2.8 After that the JCC had numerous meetings with city staff in an attempt to obtain
12 preferential regulatory limits. That led to the JCC seeking variances that are part of this
13 appeal, that once again will give the JCC extraordinary regulatory limits for height, gross
14 floor area to lot area ratio, and impervious surface limits compared to the surrounding
15 residential zone and neighborhoods.

16 3 The three major concerns I, and my neighbors, have regarding the JCC’s request for
17 variances to the regulatory limits applicable to their property that will exceed the surrounding
18 zone are:

- 19 1. The variances the JCC seeks will harm our neighborhood because the
20 development will be out of scale and will increase the intensity of use that is
21 already causing harm to the neighborhood and is inconsistent for a residential
22 zone. Since the CFZ was adopted in 2018, six neighbors have sold their homes
23 due to the uncertainty, and each had to disclose the JCC’s never-ending
24 proposals in their seller’s disclosure forms. The JCC’s goal is to increase its

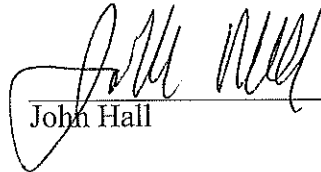
1 gross floor area to lot area ratio, height, lot coverage, and impervious surface
2 limits that are already above the current limits for the residential zone in order
3 to increase the number of its members, students, users, and private and public
4 functions that are wildly out of scale compared to every other CUP on Mercer
5 Island. The JCC knows the proper course for this kind of preferential
6 regulatory treatment is a code amendment, but it also knows that the citizens
7 and council are opposed to that preferential treatment.

8
9 2. If a CUP on Mercer Island with the intensity of use of the JCC can obtain
10 increased regulatory limits simply because it wants to build structures and
11 impervious surfaces not available to the surrounding zone, then how will the
12 city ever be able to tell the owner of a single family home – that is not a
13 conditional use – that that owner is not entitled to the same variances simply
14 because, like the JCC, the owner wants a taller or bigger house, fewer trees,
15 more impervious surfaces, or smaller yard setbacks. The preferential treatment
16 the JCC has already received, and abused, is the conditional use.

17
18 3. No organization on Mercer Island has required more time and received
19 more favorable treatment than the JCC when it comes to the last 50 years of
20 seeking preferential treatment. The size, scale, and intensity of use long ago
21 exceeded what is appropriate in a residential zone or any other CUP on the
22 Island, and the JCC now seeks variances to further increase this inconsistent
23 scale of development and use. Over the last 50 years, the JCC's efforts have
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1 cost the city at least \$500,000 in public meetings, staff time, outside counsel,
2 and litigation.

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4 DATED this 10 day of January, 2023.

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7 _____
8 John Hall