

RECORD OF PROCEEDINGS

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 8, 2012 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Vice Chair Christman called the meeting to order at 6:35 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Vice Chair Laura Christman, Commissioner Joe Poche, Commissioner Jim Rubin, and Commissioner Steve Szymanski.

Present at the meeting were the following staff members: Robert Zuccaro, Community Development Director; David Foster, Deputy City Attorney; and Emily Kropf, Community Development Clerk.

Absent were Chairman Ira Plotkin, Commissioner Ann Kerr and Commissioner Peter Savoie.

APPROVAL OF MINUTES

Commissioner Szymanski made a motion, which was seconded by Commissioner Rubin, to accept the February 28, 2012 minutes as written. The motion passed unanimously.

AGENDA ITEMS***Preliminary Application Review – Denver First Church of the Nazarene “Expanded Use Permit” for Gymnasium and Youth Building Addition***

Mr. Zuccaro stated that staff is presenting a request by the Denver First Church of the Nazarene for a preliminary review of an expanded use permit for a gymnasium and youth building. An expanded use permit is required for a new building or addition to an existing building in a residential or open space zone district for a religious facility, private club or non-profit institution. Following the preliminary review, the applicant will have the opportunity to submit the full application, which will include a drainage report, traffic study, detailed site plan, building elevations and parking analysis.

Mr. Zuccaro continued that the preliminary review is an opportunity for the applicant to make an initial presentation to the Commission and receive preliminary feedback. The Commission will not make any formal motions or recommendations during the preliminary review. Once the full application has been submitted, staff will present an analysis and recommendation at a public hearing, and the Commission will make a recommendation to City Council for a final decision.

Mr. Zuccaro said that the Denver First Church site is located to the south of E. Hampden Avenue and west of S. Colorado Boulevard. There are two other churches located in close proximity to the site, the Highline Community Church and the First Plymouth Congregational Church. Denver First Church also owns several adjacent lots, including five undeveloped residential lots that were platted as part of the Covington subdivision.

Mr. Zuccaro stated that the applicant is proposing a 27,630 square-foot addition to the existing 101,871 square-foot facility. The main portion of the addition is proposed at the

northwest corner of the site and includes a gymnasium, youth gathering space, new restroom facilities and expanded lobby area. The applicant also lists a bookstore as a possible use for part of the addition in the traffic study but not on the plans. Mr. Zuccaro asked that the applicant clarify whether a bookstore is being proposed as a possible use for the addition.

Mr. Zuccaro continued that other improvements being proposed include landscaping, hardscaping and lighting around the north and south entrances to the new lobby and new landscape islands in the parking lot. The applicant is also proposing to relocate an existing driveway from E. Jefferson Avenue 275 feet to the west to avoid some site obstruction issues. These issues make it difficult for drivers to see other vehicles and pedestrians when leaving the site.

Mr. Zuccaro said that the applicant is seeking setback variances for the proposed addition and a variance to the maximum Floor Area Ratio (FAR) requirement. The property is zoned R-1, and the minimum setbacks required for a religious facility is 200' from all property lines. The proposed setback for the main addition is 90' from the north property line and 118.5' from the west property line. Mr. Zuccaro added that the applicant is also seeking an extension of the utility building off of the administration wing. The proposed setback for the utility building is 140' from the south property line. The maximum FAR for the lot is .23, and the applicant has proposed an FAR of .40.

Mr. Zuccaro stated that the applicant is also seeking a parking reduction of 39.6%. The City may grant up to a 40% reduction in the required parking if it is demonstrated that the parking needs of the facility can be adequately served. The applicant will provide more detailed parking plans when the full application is submitted.

Mr. Zuccaro said that the existing building was constructed in 1972 after height and setback variances were granted by the City in 1971. The applicant was granted setback variances of 75' from the north property line, 142' from the west property line, 150' from the east property line and 120' from the south property line in order to accommodate the original development. There was also a height variance of 50' approved for the main building, 75' for the tower and a height of greater than 75' for a decorative extension.

Vice Chair Christman asked if the applicant's proposal was the result of a prior lawsuit.

Mr. Zuccaro responded that there is a settlement agreement between the City and Denver First Church, and part of the agreement was that Denver First Church come to the City and apply for an expanded use permit for a new addition. Mr. Zuccaro added that he is not aware of the specific details of the agreement.

Vice Chair Christman stated that she did not want any of the Commissioners to say anything that might violate the settlement agreement.

Deputy City Attorney Foster responded that the Commissioners should feel free to say anything that relates to the plans being presented.

Mr. Zuccaro added that the applicant has not been asked to address the settlement.

Commissioner Poche asked if it was relevant to know why the Board of Adjustment and Appeals (BOAA) granted the height and setback variances in 1972.

Mr. Zuccaro replied that he has included the minutes from the BOAA meeting in 1971 in the materials provided to the Commission. He added that staff was unable to locate the original application file.

Vice Chair Christman stated that it seems as though the BOAA determined that the proposed height and setbacks were reasonable because of the size of the property. The applicant also agreed to move the facility closer to E. Hampden Avenue in order to mitigate the concerns of residents.

Commissioners Szymanski asked if the 200' setback requirement has always existed.

Mr. Zuccaro responded that the requirement was in place during the 1972 variance.

Mr. Douglas Spuler, architect for the Beck Group, stated that he, Executive Pastor Richard Cantwell and Chair of the Expansion Committee Curtis Clay were present to answer any questions that the Commission might have.

Mr. Spuler said that he has prepared an informal and introductory presentation for the preliminary review. He continued that the subject property is 10.01 acres with E. Hampden Avenue to the north, S. Monroe Street to the west and E. Jefferson Avenue to the south. The proposed addition is purposefully located in the northwest quadrant of the site. Following several design studies with the applicant, this location was selected because it is advantageous to the applicant, buffers from adjoining neighbors and provides minimal impact to the community.

Mr. Spuler continued that the proposed addition consists of approximately 22,000 square feet on the ground level and includes a recreational gymnasium, kitchen and lobby. The addition also consists of approximately 5,000 square feet on the second story, which functions as a youth lounge and lobby. Mr. Spuler said that the applicant's goal is not to increase the size of its existing congregation but to provide additional amenities to meet its current needs. The addition also includes a new pedestrian plaza and vehicular drop-off along the north entrance of the facility and a similar plaza and patio space with enhanced landscaping at the south entrance.

Mr. Spuler stated that the proposed addition complements the existing architectural elements of the facility, which include a metal roof, stone walls, sloping roof forms and angled walls. The applicant has chosen to enhance the visual quality of the existing facility by complimenting the architectural elements of the facility with a folded metal roof, stone wall base, glass, sloping roof forms and angled walls.

Mr. Spuler said that the applicant would like to relocate the existing driveway from E. Jefferson Avenue due to safety concerns. Moving the driveway approximately 275' to the west would mitigate blind corners along the driveway and enhance the traffic flow with the new pedestrian drop-off. The applicant is also planning to utilize underground detention vaults in order to prevent any drainage from being directed to the Highline Canal. Mr. Spuler added that the addition does not include the removal of an existing bookstore. The bookstore is not retail-oriented but primarily utilized by members of the congregation.

Commissioner Szymanski asked what the request for a parking reduction is based on.

Mr. Spuler replied that there are currently 595 parking spaces on the property, and the applicant has proposed paving a gravel lot in order to create 77 new spaces. The applicant would be required to provide 955 spaces for the 2,864 auditorium seats; 13 spaces for the 3,646 square feet of the administrative wing; and 144 spaces for the 14,341 square feet of the classroom area. The 40% reduction would lower the required number of spaces from 1,112 to 668, and the applicant would be able to meet the requirement with 672 spaces.

Vice Chair Christman said that it does not appear that the applicant has accounted for any parking spaces for the youth area and gymnasium.

Mr. Spuler stated that the youth area is considered an ancillary lobby space for the auditorium, and the gymnasium is for recreational use only and is not intended to be an assembly space. Therefore, additional parking spaces would not be required.

Vice Chair Christman asked why the applicant had provided a picture of the youth area with tables and chairs on the second floor.

Mr. Spuler replied that the tables and chairs are intended for use before and after services as an extension of the lobby.

Mr. Zuccaro stated that the City would typically require a gymnasium to be considered an assembly space, but the Commission could discuss whether removing the assembly use would change the parking requirements for the youth area and gymnasium.

Vice Chair Christman asked what the parking requirement would be if the youth area and gymnasium were used as assembly spaces.

Mr. Zuccaro responded that the requirement for assembly space without fixed seats would be one parking space for every 100 square feet of floor area.

Vice Chair Christman asked if the applicant was proposing an addition of 27,000 square feet or 42,000 square feet as stated in the applicant's letter.

Mr. Spuler said that the approximate square footage of the addition is less than 28,000 square feet. The owner of the property has considered building a storage basement, which would increase the square footage to 42,000 but the additional square footage would be below-grade.

Mr. Zuccaro stated that the actual FAR of the addition is less than 28,000, but when tall ceiling heights are taken into account, the square footage is increased to 42,000. Any square footage that has a ceiling height of taller than 16' is counted at 200% in the FAR.

Vice Chair Christman asked if the 42,000 square feet mentioned in the applicant's letter includes the storage basement.

Mr. Spuler said yes. He added that it does not impact the proposed FAR.

Vice Chair Christman asked if there is a parking requirement for basement space.

Mr. Zuccaro replied that there is not a parking requirement for basement storage.

Vice Chair Christman asked if there is a parking requirement if the basement is not used for storage.

Mr. Zuccaro said yes. He continued that if the basement is used for an office, classroom or assembly use additional parking spaces would be required.

Mr. Spuler stated that he is still not sure if the applicant intends to build the basement area. He knows that the applicant definitely plans to build the addition, however.

Commissioner Rubin asked if there is a current parking problem at the site.

Mr. Spuler replied that Denver First Church has structured its services in order to avoid any parking issues. There are two services on Sunday morning rather than one large service. He added that there are approximately 150 open parking spaces on Sunday morning.

Commissioner Rubin stated that it seems as though the applicant is not introducing a new use to the property and would not need to provide additional parking as a result.

Commissioner Poche asked why the applicant is requesting a variance for the FAR.

Mr. Spuler said that the existing facility is in violation of the FAR. The applicant believes that an FAR of .40 on a 10-acre site is still low.

Commissioner Poche replied that several of the churches on E. Hampden Avenue were mentioned during the Commission's discussion of the FAR regulation. He continued that the purpose of the FAR is to prevent large structures from impacting adjacent properties. Commissioner Poche also noted that the BOAA did not seem to address any hardships when granting the height and setback variances in 1972.

Commissioner Rubin stated that the properties in which the churches are located should not be zoned for residential use. He added that Denver First Church has been located in the residential zone district since 1972 and imposing residential standards on the facility is questionable.

Vice Chair Christman responded that the property is appropriately zoned as R-1 permits churches.

Commissioner Rubin stated the property is not being used as a residential use.

Vice Chair Christman said that the City has always been open to accommodating churches in the community.

Commissioner Szymanski stated that as a point of reference a shopping center with an FAR of .40 would be a very dense retail site, and parking would have to be provided. Commissioner Szymanski asked if there has been a 40% parking reduction granted elsewhere in the City.

Mr. Zuccaro responded that he searched the records for the other churches but was unable to find another parking reduction that was granted. Mr. Zuccaro added that he cannot say whether the other churches meet the current parking requirements. The only other facility in the City that was granted a parking reduction is Kent Denver. The school was granted a 15% parking reduction.

Vice Chair Christman stated that Kent Denver and St. Mary's Academy have recreational facilities, and both seem to meet their FAR requirement. St. Mary's Academy also meets the parking requirement while Kent Denver has been granted a 15% reduction.

Mr. Spuler said that the FAR of the proposed addition would only be .297 if the square footage was counted at 100% rather than 200% for certain portions.

Commissioner Szymanski stated that the parking reduction is a double-edged sword. If the applicant were to provide fewer spaces, it might encourage individuals to carpool or drive less. On the other hand, the Commission does not control the facility's schedule. If Denver First Church were to change back to one service on Sunday, a shortage in parking spaces could become an issue.

Vice Chair Christman added that the number of congregational members could increase.

Commissioner Szymanski agreed and asked that the applicant provide more of a basis for the parking reduction. He asked if staff could also provide the FAR of the other churches.

Commissioner Poche said that he is also looking for rational reasons to exceed the FAR.

Commissioner Szymanski asked if the addition fits within the bulk plane.

Mr. Spuler responded that there would be slight bulk plane encroachments based on the proposed setbacks.

Commissioner Szymanski stated that relocating the driveway from E. Jefferson Avenue also presents a problem for the lots to the south. These properties will be impacted by light and noise pollution.

Mr. Spuler replied that the applicant would be open to realigning the driveway.

Vice Chair Christman said that it seems as though the applicant has proposed moving the major drop off site for the church from the north side to the south side.

Mr. Spuler responded that the applicant has added a drop off site on the south side in addition to the one located on the north side in order to mitigate an unsafe condition with an existing drive aisle.

Mr. Zuccaro stated that the applicant was asked to provide the actual setback for the addition rather than what would have been required to fit within the bulk plane. He also added that the lot directly to the south of the proposed new drive aisle is an open space lot that is zoned O-1 and is restricted for open space, parks and recreation.

Commissioner Poche asked where the drainage goes that is directed to the underground detention vaults.

Mr. Spuler replied that the drainage will be directed to a slow-release detention and there will not be an increase in the amount of impervious surface on the property.

Commissioner Poche recommended that the applicant contact the Home Owners' Association for the area as residents had expressed concerns regarding the property's drainage.

Mr. Zuccaro stated that the applicant will be required to submit a Phase III drainage report with the full application.

Mr. Clay added that the underground vaults currently exist and tie into a water feature at the Wellshire Golf Course.

Commissioner Poche asked if the other residential lots owned by Denver First Church could be used for temporary parking.

Mr. Zuccaro responded that the City allows adjacent formalized parking for such uses and adjacency is allowed across the right-of-way for up to 60'.

Commissioner Poche added that traffic flow is a problem on Sunday morning.

Vice Chair Christman replied that she believes it is more dangerous on Wednesday night.

Commissioner Poche suggested using S. Monroe Street to enter the facility and S. Colorado Boulevard to exit.

Vice Chair Christman responded that drivers do not stop at the stop sign on S. Colorado Boulevard. She added that on Sunday morning police are stationed at the church and the timing for the light at E. Hampden Avenue and S. Colorado Boulevard is changed.

Vice Chair Christman continued that in order to be granted a variance, an exceptional hardship must be demonstrated. If the applicant is unable to demonstrate an exceptional hardship, there is a federal law that could possibly overrule the Commission's decision. Vice Chair Christman said that it would be better if the applicant could demonstrate an exceptional hardship like anyone else who applies for a variance, however.

Vice Chair Christman stated that the applicant could use the gymnasium during overflow services and additional parking should be provided as a result. She continued that the applicant might install bleachers in the gymnasium at a later date. Vice Chair Christman asked what the use of the gymnasium will be. She asked if there will be tournaments, dances or concerts held in the recreational facility and concluded that safety and parking issues associated with additional uses should be addressed.

Commissioner Rubin suggested that when the applicant goes through the formal review process, the Commission could state which uses would be allowed for the recreational facility in order to mitigate concerns. Commissioner Rubin added that he believes that the hardship criteria is difficult to apply to the applicant's request, but it would be better to know now if certain standards were going to be imposed.

Vice Chair Christman stated that if the applicant is unable to meet the variance criteria, a different set of standards could be established according to the Religious Land Use and Institutionalized Persons Act (RLUIPA). Vice Chair Christman continued that it would be preferable if the applicant could meet the criteria, however, in order to apply the same rules to everyone.

Commissioner Rubin asked if the RLUIPA overrules local jurisdiction.

Vice Chair Christman responded that it creates a different set of criteria for the Commission to use.

Commissioner Rubin stated that it is a difficult decision because it is not a residence being proposed in a residential zone district.

Vice Chair Christman replied that there are several other churches and schools located in the residential zone district, and the same standards should be applied to all facilities. She asked if the applicant had any questions for the Commission.

Mr. Spuler thanked Mr. Zuccaro and the Commission for their efforts. He continued that he hopes to address any concerns expressed during the preliminary review and submit the full application within 4 weeks.

Ordinance Amendments to Municipal Code Sections 16-1-10 and 16-5-10 Defining Short-Term Rental and Providing Limitations on Short-Term Rentals of Single-Family Dwellings

Mr. Zuccaro stated that staff is presenting for recommendation to City Council a proposed ordinance amendment addressing the issue of short-term vacation rentals. The issue was brought to the City's attention a couple of months ago when it was noted that one property in Old Cherry Hills was being advertised as a vacation home.

Mr. Zuccaro continued that staff has had several discussions with City Council regarding the issue and was asked to draft an ordinance discouraging vacation rentals as a standard use for residential properties. City Council's direction was to generally prohibit vacation

rentals with exceptions for housing swaps and special events, such as professional golf tournaments and events like the Democratic National Convention.

Mr. Zuccaro said that staff is proposing two draft ordinances for consideration. The first proposal, Exhibit A, defines short-term rentals as the rental or lease of a single-family dwelling for a period of less than 30 days, other than house exchanges for which there is no payment. Short-term rentals would be limited to not more than two times in a 12-month period. The second proposal, Exhibit B, defines short-term rentals as the rental or lease of a single family dwelling for a period of less than 90 days, other than house exchanges for which there is no payment or a month-to-month rental or lease after an initial lease period of at least 90 days. Short-term rentals would be limited to not more than two times in a 12-month period.

Vice Chair Christman asked staff to explain the restriction of two times in a 12-month period.

Mr. Zuccaro responded that a homeowner could lease his property as a vacation rental for a 30-day period twice in a year but could not do it a third time.

Vice Chair Christman asked if the homeowner could lease his property for a 10-day period three times.

Mr. Zuccaro replied no. The homeowner would be limited to a 10-day period twice in a year.

Commissioner Poche asked why the City would want to prohibit short-term rentals.

Mr. Zuccaro responded that there are concerns regarding noise and parking impacts. The advertisement for the home in Old Cherry Hills specifically mentioned renting the residence for bachelor and bachelorette parties. There are provisions in the Code that prohibit some rentals currently based on the type of rental, but City Council wanted to clarify that continuous short-term rental would be an inappropriate use for a residence.

Commissioner Poche asked why the City has the right to prohibit renting a home to another individual.

Mr. Zuccaro stated that the current Code allows a homeowner to lease his house to a family for any amount of time as many times per year as he would like.

Commissioner Poche asked why the City would want to change that. He continued that if there is a problem with noise, Code Enforcement can be called to address the issue.

Vice Chair Christman stated that if the homeowner rents the house to a different party every night, he is operating a hospitality business but calling it a short-term rental. She continued that the City is a residential community and should be trying to prevent residences from becoming businesses. Short-term rentals have become an issue for the City of Vail.

Commissioner Poche replied that the City does not have the right to prohibit rentals.

Vice Chair Christman asked if Commissioner Poche's objection is related to the fact that the City has not discerned between individuals who are renting their homes to be used as single family residences from those who are renting their homes to be used otherwise.

Commissioner Poche responded yes.

Vice Chair Christman stated that she agrees.

Commissioner Rubin said that prohibiting rentals could become a problem. He added that the issue of short-term vacation rentals has only been mentioned this one time.

Vice Chair Christman added that the City is not the primary residence for many of its residents. She added that while it is okay to rent a home, it is important to make sure that the City remains a residential community.

Commissioner Rubin stated that most individuals rent their homes on a long-term basis.

Vice Chair Christman asked if staff could look at other communities to see how they have dealt with similar issues.

Mr. Zuccaro responded that several examples of how other communities regulate short-term rentals have been provided to the Commissioners in their staff packets. He continued that some communities allow short-term rentals but regulate them while others prohibit short-term rentals altogether with some exceptions. Mr. Zuccaro added that while only one instance of a short-term rental has been brought to the City's attention, the subject residence has been advertised for several years and the community has expressed concerns.

Commissioner Poche stated that he owns two properties outside of the City that he cannot sell due to similar restrictions.

Vice Chair Christman replied that the property behind her house had been leased to several college students and was not used as a single family residence.

Commissioner Poche said that the police should have been called if noise was an issue.

Vice Chair Christman responded that you cannot call the police every day.

Mr. Zuccaro said that the City Code defines a family as individuals related to one another or no more than three individuals who are not related to one another living together.

Vice Chair Christman asked if an individual can host an event at a residence.

Mr. Zuccaro replied that a homeowner can rent his house to an individual who can host an event at the residence, but only individuals meeting the definition of family would be able to temporarily live at the residence.

Commissioner Rubin stated that it would be allowed unless it was used on a continual basis for events.

Mr. Zuccaro responded that the house in Old Cherry Hills is attempting to rent the property on a regular basis.

Commissioner Rubin said that the house is not being used for a residential use.

Vice Chair Christman stated that the Commission could address the use of the rental.

Deputy City Attorney Foster added that the Commission could focus on non-owner events.

Vice Chair Christman stated that the homeowner's right to rent his house on a regular basis has still not been addressed.

Mr. Zuccaro responded that if the Commission recommended the first proposed ordinance, the homeowner would be allowed to rent his house for a 30-day period 12 times a year. The minimum rental term is one month.

Commissioner Poche said that he agrees that he does not want to see a hospitality business located in the City, but during events like the Democratic National Convention, he would like to leave the City and rent his house to another individual.

Mr. Zuccaro replied that a homeowner would be allowed to do that under the proposed ordinance. He added that City Council felt that there was not adequate coverage in the City Code to prohibit short-term rentals. It is also easier to enforce if the violation is clarified.

Vice Chair Christman stated that she would like additional feedback from City Council about what it is the City is trying to prevent and what would be allowed. Vice Chair Christman added that it seems as though City Council is trying to prevent any hospitality businesses from operating in the City.

Commissioner Poche stated that any issues that arise as a result of a short-term rental can be addressed by the current regulations.

Vice Chair Christman said that stronger enforcement of the current regulations might also be the answer.

Mr. Zuccaro stated that the Commission has several options in regards to the proposed ordinance. First, the Commission can recommend denial of the proposed ordinance, and the minutes from the meeting would reflect the Commission's reasons for denial. Second, the Commission can look at the minutes from City Council's study sessions or listen to the recordings in order to better understand City Council's reasons for the proposed ordinance. Third, the Commission can draft an alternative ordinance. Fourth, staff can request a joint study session with City Council and the Commission.

Deputy City Attorney Foster said that if the Commission recommends denial, City Council could adopt the proposed ordinance without the Commission's feedback. He recommends that the Commission draft an alternative ordinance. The Commission might also want to address vacation homes that are purchased by employers and made available to employees.

Commissioner Rubin asked if staff could go back to City Council and ask for more clarification.

Commissioner Szymanski stated that short-term rentals could be allowed with a permit and fee, which could function as a deterrent.

Commissioner Rubin responded that issuing a permit would allow short-term rentals, which the City does not want.

Vice Chair Christman stated that short-term rentals of a minimum of two weeks could be permitted. The City would have the contact information for the homeowner and would be able to contact him immediately if there was an issue, which is what the City of Denver does. Vice Chair Christman asked if the City has a definition for a hospitality use in the City Code.

Mr. Zuccaro replied that there might be some remnant language in the City Code regarding a hospitality use from the Buell Mansion subdivision when it was zoned for hotel use.

Vice Chair Christman said that the City might have already prohibited the use of short-term rental homes for non-residential use.

Commissioner Szymanski stated that the Commission needs more foundation and clarification from City Council before proceeding.

REPORTS

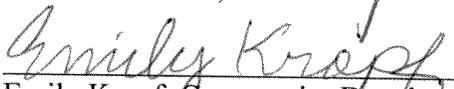
Mr. Zuccaro stated that there were no reports.

ADJOURNMENT

The meeting was adjourned at 8:15 p.m.



Laura Christman, Vice Chair



Emily Kropf, Community Development Clerk