

Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 8, 2013 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Christman called the meeting to order at 6:33 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chair Laura Christman, Commissioner Al Blum, Commissioner Joe Poche, Commissioner Jim Rubin, Commissioner Peter Savoie, Commissioner Steve Szymanski and Commissioner David Wyman.

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

Chair Christman welcomed Commissioner Blum to his first meeting and asked that he introduce himself.

Commissioner Blum said that he is an attorney and has resided in the City for over 17 years. He has a background in real estate development.

APPROVAL OF MINUTES

Commissioner Szymanski made a motion, which was seconded by Commissioner Wyman, to accept the November 13, 2012 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Request by Denver First Church of the Nazarene for an Expanded Use Permit to Construct a Gymnasium and Youth Building Addition and Zone Map Amendment

Mr. Zuccaro stated that staff is presenting an application by Denver First Church for an Expanded Use Permit for a proposed expansion and associated site improvements. The hearing was continued from the November 13, 2012 meeting at which the Commission recommended approval of a zone map amendment for several properties owned by the applicant but continued the Expanded Use Request hearing so that the church could address several issues raised at the first hearing. The proposed addition includes a gymnasium, bookstore, youth gathering space, basement storage area, restrooms and expanded lobby area. The main area of the expansion is proposed on the northwest side of the existing facility.

Mr. Zuccaro continued that the applicant previously proposed two undeveloped overflow parking lots. Since the previous hearing, the applicant has eliminated the overflow lot on E. Jefferson Avenue and amended the proposal to include developed parking on four of the five lots on S. Monroe Street. The lot on the church's main property is proposed to be restriped to create additional spaces. Based on the square footage of the addition, the applicant is required to provide 1,352 parking spaces. The applicant is proposing a total of 967 spaces. The City can grant a reduction of up to 40% as long as it is shown that the applicant can provide adequate parking for use of the facility. The applicant is requesting a parking reduction of 28.5%.

Mr. Zuccaro said that the parking contiguity and design variances that the applicant had previously requested are no longer required as the overflow lot on E. Jefferson Avenue has been eliminated and the overflow lot on S. Monroe Street is proposed to be developed. The applicant is also proposing a large landscape buffer and wall to the south of the overflow lot. The wall is proposed at 8 feet in height to match the existing wall along E. Jefferson Avenue and will require a variance. A variance was previously granted for the existing 8-foot wall as the City only allows a maximum height of 6 feet.

Mr. Zuccaro stated that the applicant has requested a variance for the floor area ratio and required setbacks. The maximum floor area ratio allowed in the R-1 zone district is .23, and the applicant is requesting a floor area ratio of .40. The required setbacks for institutional properties are 200 feet from all property lines. The facility was previously granted a setback variance in 1971. The proposed setbacks for the addition are 90 feet to the north property line, 118 feet to the west and 144 feet to the south. The applicant is also proposing an auxiliary building in addition to the main expansion, which would require a variance for the required setback to the south.

Mr. Zuccaro continued that the applicant has provided a revised drainage plan, which includes three options for the overflow lot. The first two concepts propose impervious asphalt with the use of an expanded detention vault or new detention vaults. The third concept proposes porous pavement, which does not have a detention requirement. The applicant has provided a revised traffic management plan with circulation of the overflow lot and an updated traffic study letter. The applicant has also provided the revised Development Agreement. Exhibit B of the Development Agreement intends to define and limit the facility's uses in order to ensure that concurrent events do not occur, requiring more than 950 parking spaces. If an event requires more than 950 spaces, the applicant would be required to receive approval from the City.

Mr. Zuccaro said that staff recommends approval of the Expanded Use Permit with three conditions. First, staff does not support the first two options proposed in the drainage report as detention vaults are currently not permitted by the City, and the applicant has proposed expanding upon an existing vault or installing new vaults. Staff suggests that the applicant provide a final Phase III Drainage report that meets the City's requirements and includes the use of porous pavement, which would not require expansion of the existing vault or the installation of new vaults. Second, if the applicant intends to use the existing underground detention vault for run-off, documentation must be provided that demonstrates maintenance responsibility of the drainage infrastructure, which was not previously assigned. Third, staff has requested that an indemnification clause be added to the Development Agreement for the church to indemnify the City should litigation arise as a result of approval of the application. This type of indemnification is commonly used in development agreements among local governments.

Commissioner Rubin asked what porous pavement is.

Mr. Carmann replied that porous pavement is a type of surfacing that provides sufficient strength to support the weight of vehicles while allowing run-off to drain through voids in the pavement. It mimics the conditions of an undeveloped lot.

Commissioner Rubin asked what it looks like.

Mr. Carmann responded that if you were to walk on the lot, you can see the voids. He added that it is not most favorable to pedestrian traffic, but in terms of drainage, it outperforms other types of surfacing.

Commissioner Blum asked if the entire overflow lot would be surfaced with porous pavement.

Mr. Carmann said yes.

Chair Christman stated that the parking lot on the church's main property will not be surfaced with porous pavement.

Mr. Carmann said yes.

Commissioner Wyman asked how deep the voids need to be and if the drainage plan is based on a 10-year or 100-year storm system.

Mr. Carmann responded that it would depend on the soil on-site. A sample and analysis of the soil would be required to determine if porous pavement would be a reliable type of surfacing and how deep the voids would have to be. If it was not, detention or another means of drainage would have to be used.

Commissioner Wyman stated that the drainage report lists the soil as Type C or D. He asked if this is a favorable type of soil.

Mr. Carmann said that the soil conditions are generalized, and it would be unwise to base the decision to recommend porous pavement based on the generalized soil type alone. He added that porous pavement with Type C soil is a feasible condition, however.

Commissioner Wyman asked to what extent the voids are subject to sedimentation.

Mr. Carmann replied that over the last decade there have been improvements in the maintenance of porous pavement. There are also various techniques for regular maintenance that can be employed to improve performance.

Commissioner Wyman asked what the impact would be if two large storms occurred in a short amount of time.

Mr. Carmann responded that the volume design of porous pavement does not differ from other drainage infrastructures like a detention pond. All drainage infrastructures would be affected by a surcharge.

Commissioner Poche stated that he disagrees that the proposed addition will not have an impact on traffic.

Mr. Carmann responded that according to the criteria listed in the Municipal Code increased trip generation accounts for required traffic improvements. According to the traffic study, the proposed addition does not increase the number of trips to the facility. It can be more difficult to require improvements for facilities like churches that have periodic spikes in volume. He added that the Colorado Department of Transportation would not permit the installation of a traffic signal at S. Monroe Street and E. Hampden Avenue because of the impact on state highway traffic.

Commissioner Poche said that ingress and egress should be eliminated at S. Monroe Street and E. Hampden Avenue.

Chair Christman stated that the church received permission from the Colorado Department of Transportation to adjust the traffic signal at S. Colorado Boulevard and E. Hampden Avenue on Sundays.

Mr. Carmann replied that it is easier for cross-traffic to warrant a signal change on Sundays when state highway traffic is low.

Mr. Zuccaro stated that the traffic study submitted by the applicant came to the conclusion that traffic improvements were not required because the applicant is not proposing an expansion of the facility's primary use. The City concurs with the conclusion that the gymnasium will not increase traffic volume during peak periods.

Commissioner Savoie asked if Denver police controls the traffic signal on Sundays.

Mr. Zuccaro said that the City police have access to the signal but is not sure whether Denver police or City police control it. He added that historically the City has not been in favor of making improvements to the intersection at S. Colorado Boulevard and E. Hampden Avenue because moving traffic through the intersection at a faster rate might encourage additional cut-through traffic.

Commissioner Savoie asked if the City could require that the applicant request assistance from the City police if a certain number of parking spaces are used.

Chair Christman stated that the Development Agreement identifies a threshold in which assistance would be required.

Commissioner Poche replied that the traffic management does not address the issue of safety on E. Hampden Avenue.

Commissioner Wyman asked if the two funerals held at the church during the past year required special permits.

Mr. Zuccaro replied no. He added that the church is not currently required to receive approval from the City for such events. He added that such events do not occur on a regular basis. If the Development Agreement was approved, the church would have to receive approval from the City to host such an event, and the City could waive the 60-day application period if good cause was shown. The applicant would also have to show that adequate parking will be provided.

Commissioner Wyman expressed concern for the floor area ratio variance because the proposed addition is contrary to the intent of the floor area ratio.

Chair Christman asked if a condition could be added that would prohibit the applicant or any future property owner from building a structure on the overflow lot.

Mr. Zuccarro replied that a new Expanded Use Permit would be required for any other development and would most likely require new variances.

Chair Christman said that she is concerned that if the floor area ratio variance is granted other facilities might apply for a similar exception. She said that she would like to clarify the restrictions of the variance.

Commissioner Savoie asked if the installation of lighting on the S. Monroe Street lot is an improvement or degradation to the community.

Mr. Zuccaro responded that the lighting is required as an issue of safety. A condition could be added that restricts when the lights can be used.

Commissioner Savoie asked if such a condition could be added to the Development Agreement.

Mr. Zuccaro said yes. He added that the applicant has provided documentation that shows compliance with the City's minimum lighting standards.

Commissioner Savoie asked if the maintenance of the landscape plan will be the applicant's responsibility.

Mr. Zuccaro said yes. He added that the maintenance of the landscape plan will be included in the property records and will be the responsibility of future property owners, as well.

Chair Christman asked if the 8-foot wall is at the request of the Covington subdivision residents.

Mr. Zuccaro replied yes, that is his understanding.

Chair Christman stated that the City has been fairly strict in the enforcement of the 6-foot height limit for fences and walls. She continued that the purpose of the wall is to provide a buffer for the community, which seems appropriate. She asked what the justification for the original variance was.

Mr. Zuccaro said that the minutes from the meeting were included in the packet. He added that it seems as though the original variance was approved because it provided a buffer for the community from the church's more intense parking lot use.

Chair Christman stated that it seems as though the reasons for the variance are consistent.

Mr. Zuccaro stated that the criteria was probably different at the time the original variance was granted, but staff feels that the variance meets the current criteria, as well.

Commissioner Savoie asked if there is a buffer to the west and north of the overflow lot.

Mr. Zuccaro said no. He continued that there is existing landscaping in both locations.

Mr. Rich Cantwell, representative of Denver First Church, stated that the church would be unable to host funerals without assistance from the City. If the City was opposed to such an event, the church would not agree to host it. The church has not needed Denver police to change the traffic signal at S. Colorado Boulevard and E. Hampden Avenue for over a year and a half due to a change in the service schedule.

Mr. Doug Spuler, representative of the applicant and Beck Architecture, stated that changes have been made following the November 13, 2012 meeting and several discussions with members of the Covington home owners association. The buffer along E. Jefferson Avenue has been increased to 9 to 10 feet in width, and an additional 100 parking spaces have been added to the church's main parking lot. The overflow lot on S. Monroe Street provides 265 parking spaces and will be paved, lit and landscaped. The light fixtures proposed are dark sky compliant and provide minimal light glare.

Mr. Spuler continued that the proposed 8-foot wall provides a visual and acoustic buffer for the neighborhood and also creates a pocket park to the south of the overflow lot. Two gateway entry monuments are also proposed in order to identify entry to the Covington neighborhood and discourage cut-through traffic. Mr. Spuler added that if the S. Monroe Street lots were included conceptually with the church's main property, the facility would be located on a 13-acre parcel. Additionally, if the square footage of the facility was counted at 100% rather than 200% for high volume spaces, the floor area ratio of the property would be .22.

Commissioner Szymanski said that the letter from First Plymouth Congregational Church states that Denver First Church is allowed to use 100 parking spaces located on First Plymouth's property. He added that the additional spaces do not seem to tie into the Development Agreement.

Mr. Zuccaro replied that staff did not support inclusion of the spaces in the total parking count because it was an informal agreement between the churches.

Mr. Spuler stated that it would be difficult to get an easement from First Plymouth for the parking spaces. The applicant intends to use the spaces located on First Plymouth's property before using the overflow lot. There is also an informal agreement between the Highline Community Church and Denver First Church for additional spaces.

Commissioner Savoie asked if the applicant is planning to let trail-goers use the overflow lot for parking for the Highline Canal.

Mr. Spuler responded that residents from the Covington subdivision requested that a portion of the overflow lot be roped off for trailhead parking in order to discourage trail-goers from parking along E. Jefferson Avenue.

Commissioner Rubin asked how traffic circulates through the overflow lot.

Mr. Spuler responded that cars will enter from the south entry and fill the spaces in the north end of the lot first. Cars will then exit from the north entry.

Commissioner Rubin asked how traffic circulates in the primary lot.

Mr. Spuler said that traffic circulates similarly. He believes that the south portion of the lot will be the last to fill.

Chair Christman asked if there is a main entrance to the facility.

Mr. Spuler replied that there are three primary entrances.

Commissioner Wyman stated that some vehicles may cut-through the Covington subdivision.

Commissioner Savoie said that drivers already cut-through the neighborhood.

Commissioner Wyman replied that there will be an additional parking lot, however.

Commissioner Rubin asked if there is an acceleration lane on E. Hampden Avenue to the east of S. Monroe Street.

Commissioner Szymanski said that there is a full third lane that does not end until east of S. Colorado Boulevard.

Commissioner Rubin asked if S. Monroe Street is wide enough for a vehicle to turn on from the overflow lot while there is another vehicle on the road.

Mr. Spuler replied yes.

Chair Christman asked if there is another drive to the east of the primary lot.

Mr. Spuler said that there is a gate that prevents lot-to-lot transfer from Denver First Church to First Plymouth.

Commissioner Rubin asked if the landscape buffer will be irrigated.

Mr. Spuler said yes. He added that there is large density of plantings that will be fully irrigated.

Chair Christman asked what the applicant's response is to the City's request for the indemnification clause in the Development Agreement.

Mr. Spuler said that the applicant is open to an indemnification clause but had some questions about the necessity of it.

Chair Christman stated that the basement expansion is to be used for storage only, which does not require additional parking. She asked if the applicant would be opposed to a covenant in the Development Agreement stating that the basement area is only to be used for storage.

Mr. Spuler said that the basement expansion may not occur, but the applicant would not be opposed to a covenant if the expansion is built.

Chair Christman asked if the applicant would be opposed to an obligation that requires the applicant to maintain the porous pavement according to the manufacturer's specifications or replace it with a comparable or better type of surfacing.

Mr. Spuler said no.

Chair Christman stated that a community church had previously been denied the use of a television broadcast center. She asked if the same restriction could be applied to the applicant.

Deputy City Attorney Foster said that the church broadcasting its services seems like a reasonable extension of use.

Chair Christman said that she would like to prevent broadcasting from being the primary function of the church.

Mr. Cantwell replied that Denver First Church already broadcasts its services.

Commissioner Poche said that one of the facilities was denied permission to build satellite dishes to broadcast its services.

Commissioner Savoie stated that the City broadcasts its City Council meetings.

Mr. Cantwell said that the church does not intend to build any satellite dishes. He added that such equipment would probably require approval from the Federal Communications Commission, as well as the City.

Chair Christman asked what distinguishes the auditorium from the gymnasium.

Mr. Cantwell said that the auditorium is the sanctuary worship center.

Chair Christman asked why Exhibit B of the Development Agreement states that "the Auditorium shall not be used for competitive athletic events".

Mr. Zuccaro suggested that this was a mistake, and the sentence should be located under Section 1(d) rather than Section 1(c).

Commissioner Blum asked if there was a conflict for a non-sponsored Denver First Church event like a funeral.

Mr. Cantwell replied that a funeral would be considered a sponsored event.

Commissioner Savoie asked if the facility could be rented to another organization like the University of Denver.

Mr. Cantwell said that City approval would be required for a large event.

Chair Christman asked if rental of the facility should be prohibited.

Mr. Cantwell stated that the facility could be rented for concerts and other events associated with the mission of the church with the City's approval. He added that such activities help cover the cost of the facility.

Chair Christman stated that the language in the Development Agreement does not adequately restrict rental of the facility.

Mr. Cantwell said that the church as a non-profit organization would not be able to host events that generate too much revenue from unrelated business.

Deputy City Attorney Foster added that there is a clear federal test for non-profit organizations and religious institutions in regards to revenue.

Ms. Jerri Jenkins, law partner at Foster Graham Milstein and Calisher, stated that the language in the Development Agreement intends to allow rentals that the church is willing to sponsor.

Chair Christman replied that there does not seem to be a restriction on use of the facility as long as the church is willing to sponsor the event.

Mr. Cantwell said that the gymnasium is intended for youth and church-related activities, but if an organization approached the church to rent the facility for an event, it would be considered for sponsorship.

Deputy City Attorney Foster stated that such rentals generally provide a forum for the community, which can be considered an accessory use of the facility.

Chair Christman asked if the facility could be turned into an event center.

Deputy City Attorney said that the Internal Revenue Service would not allow a religious institution to become an event center.

Mr. Cantwell said that the 8,000 square foot gymnasium is intended to be a family life center. He added that the church does not have enough staff to become an event center.

Chair Christman asked if seats can be sold for an event.

Deputy City Attorney Foster replied that seats could be sold if the event was consistent with the mission of the church.

Chair Christman expressed concern for such activity by future tenants.

Mr. Cantwell said that the only events that would be allowed are uses permitted in the R-1 zone district.

Commissioner Savoie asked if the allowed uses of the facility should be added to the rental portion of the Development Agreement.

Commissioner Blum suggested that "Subject to the above limitations in Paragraph 1" be added to Section 1(d).

Chair Christman agreed. She asked for clarification regarding the hours of operation of the facility listed in Paragraph 2.

Mr. Spuler responded that the applicant has proposed a calendar of regularly scheduled events that the City can access, which would mitigate the need to specify the hours of operation.

Commissioner Rubin asked if it is necessary to have a calendar for regularly scheduled events.

Commissioner Savoie said that the Municipal Code states that that the lights in the facility have to be turned off by 11 p.m. and asked if additional restrictions could be placed on the lighting when not in use.

Mr. Zuccaro stated that additional lighting restrictions could be added to the Development Agreement.

Chair Christman stated that the calendar should only reflect minor and major events. She asked if the applicant will schedule events to avoid peak traffic hours.

Mr. Cantwell replied yes.

Commissioner Szymanski said that the applicant also needs to avoid scheduling concurrent events.

Chair Christman asked what would be considered a minor event.

Mr. Cantwell replied that the Church uses 623 parking spaces as a threshold for a minor event because the existing primary paved lot is full and the City police are contacted for assistance with security and traffic.

Chair Christman asked how many parking spaces are used during one service.

Mr. Cantwell said approximately 400 spaces are used during the largest service. There is some transition from the first and second service, which accounts for around 100 spaces.

Mr. Zuccaro suggested that it might be appropriate for the applicant's engineer to propose a threshold in which a minor event would be defined. The traffic management plan still needs to be finalized.

Chair Christman opened the hearing for public comment.

Ms. Patti Haas, 3 Covington Drive, stated that she is on the board of the Covington home owners association. She expressed concern for the neighborhood if the applicant was no longer renting the property, and a future tenant was able to conduct activities permitted by the Expanded Use Permit. She continued that since the November 13, 2012 meeting the

home owners association has been in contact with the applicant, and several items have been agreed upon. There are still a few outstanding issues that need to be addressed. The home owners association has requested that the landscape buffer be irrigated and maintained, and a new path would be established to deter trail-goers from parking along E. Jefferson Avenue.

Mr. Zuccaro said that the existing trail easement is located on residential property to the south of the overflow lot. If the easement is relocated or a new trail is built, the proposal would have to go before the Parks, Trails and Recreation Commission.

Mr. Spuler said that the applicant was open to adding language to the Development Agreement to enhance the trail system by relocating the existing trail or adding a new trail that leads to the section of the overflow lot reserved for trail-goers, however, expressed concern over the lengthy requirements by the City for vacating the old trail right-of-way.

Chair Christman closed the public comment portion of the hearing. She continued that it seems that there are still several pending items that need to be resolved. She suggested that the applicant and staff continue to finalize the Development Agreement for review by the Commission.

Mr. Zuccaro stated that the outstanding items in the Development Agreement to finalize include: lighting restrictions for the overflow lot; restriction of the basement expansion for storage only; maintenance and replacement of the porous asphalt and final Phase III Drainage Report; final traffic management plan; facility calendar to include minor and major events; language regarding time and use restrictions; the threshold for minor events; the indemnification clause; formalized development prohibition of the S. Monroe Street lots; parking access for trail-goers in the overflow lot; and traffic personnel during services on Sundays.

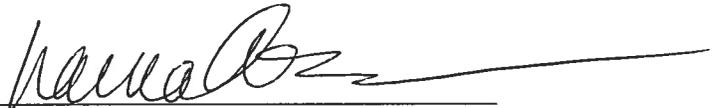
Commissioner Blum made a motion to continue the hearing to January 22, 2013, which was seconded by Commissioner Rubin. The motion passed unanimously.

Deputy City Attorney Foster added that this evening's meeting would be his last as the City has recently selected a different firm for legal consultation.

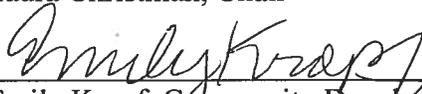
Chair Christman thanked Deputy City Attorney Foster for his excellent legal advice throughout the past five years.

ADJOURNMENT

The meeting was adjourned at 9:07 p.m.



Laura Christman, Chair



Emily Kropf, Community Development Clerk