Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, January 22, 2013 at 6:30 p.m.
At the Village Center

CALL TO ORDER

Chair Christman called the meeting to order at 6:36 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 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.

Absent was Commissioner Jim Rubin.

APPROVAL OF MINUTES

Chair Christman stated that she had not yet reviewed the latest set of minutes and suggested that approval of the January 8, 2013 minutes be delayed until the next meeting.

AGENDA ITEMS

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

Mr. Zuccaro stated that staff is presenting the third hearing for a request by Denver First Church for an Expanded Use Permit. The previous hearings were continued to give the applicant time to address concerns expressed by the Commission. Staff has provided a list of changes that have been made since the previous hearings, which include: an updated Traffic Management Plan that defines a minor event as the use of between 350 (during peak hours) or 450 (during non-peak hours) and 950 parking spaces; consideration of relocating the public trail that connects the sidewalk along E. Jefferson Avenue to the Highline Canal to south of the proposed buffer wall, which the applicant has decided not to pursue in conjunction with the Expanded Use Permit; and consideration of several edits to the proposed development agreement.

Mr. Zuccaro said that the revised development agreement and a supplemental memo with staff's analysis were emailed to the Commission and hard copies were provided on the dais. Staff has an additional revision in Section 8.8 and recommends that the last sentence be removed and replaced with the following: "In the event of any violation of this Agreement or the expanded use permit, the City reserves the right to revoke the expanded use permit".

Mr. Zuccaro continued that staff also finds that in Exhibit B, Section 1.f. should be revised to be more restrictive and recommends that the language be amended to state that the basement expansion will only be used for storage purposes and that no events or gatherings shall be held in that portion of the basement. Some clarification language was added to Section 2.a., which defines a minor event per the Traffic Management Plan. A minor event is defined as use that generates demand for fewer than 950 parking spaces but more than

450 parking spaces or 350 parking spaces if scheduled to conclude between 4:00 and 6:00 p.m. on a weekday. For all minor events, the church shall implement the Parking and Traffic Management Plan referenced in Section 3. Staff also recommends that Section 3 be amended to state that the "City may require that the Plan be updated from time to time to respond to new information or new issues identified by the City or DFC".

Commissioner Wyman asked if in Section 2.c., the third line should read "Major Events, as defined above".

Chair Christman stated that there are several definitional issues that have to be addressed.

Mr. Zuccaro continued that the last sentence of Section 3.3 should be revised to state that alternative storm drainage facilities must be approved by amending the drainage plan through the public process.

Mr. Zuccaro stated that staff recommends approval of the Expanded Use Permit and the associated variances with three conditions. The first condition is prior to the City Council hearing, the applicant shall provide a final Phase III Drainage Report meeting all City drainage requirements for the entire project site in a format satisfactory to the City Engineer, with such Drainage Report incorporating the porous asphalt pavement option for the proposed parking lot west of S. Monroe Street. The second condition is prior to the City Council hearing, the applicant shall provide documentation in a format satisfactory to the City Attorney and City Engineer assuring maintenance responsibility of the existing drainage infrastructure. The third condition is the incorporation of staff's proposed edits in the draft development agreement outlined in the January 22, 2013 supplemental memo.

Commissioner Blum said that during the previous hearing the applicant agreed to provide access from the overflow parking lot on S. Monroe Street to the Highline Canal with either the relocated trail or a new trail, which the agreement does not reflect.

Mr. Zuccaro replied that the applicant did not want to address the trail as part of the official Expanded Use Permit process.

Chair Christman stated that she believes that the applicant did not commit to relocating the existing trail but to adding a new trail from the overflow lot.

Mr. Zuccaro responded that the concept had been discussed, but the applicant had only committed to exploring the relocation of the existing trail or the installation of a new trail.

Mr. Doug Spuler, representative of Beck Architecture, stated that the applicant has decided to defer the relocation of the trail in conjunction with the Expanded Use Permit due to the complexity of the right-of-way vacation process, but the applicant is planning to resolve the issue.

Mr. Chris Fasching, representative of Felsburg Holt and Ullevig, stated that he provided the updated Traffic Management Plan. He determined that a minor event is the use of 450 parking spaces during non-peak hours and 350 spaces during peak hours. For minor events, the traffic management measures include: police management at E. Hampden Avenue and S. Monroe Street, as well as E. Jefferson Avenue and S. Colorado Boulevard; police operation of the traffic signal at E. Hampden Avenue and S. Colorado Boulevard; traffic personnel; temporary signage; and an officer or attendant located at E. Jefferson Avenue and S. Monroe Street.

Chair Christman asked if the agreement includes a requirement for adequate off-street parking for major events.

Mr. Zuccaro replied that the agreement states that the applicant must provide documentation to the City showing adequate off-street parking for major events.

Ms. Jerri Jenkins, law partner at Foster Graham Milstein and Calisher, said that the applicant would also have to receive approval of a major event permit.

Commissioner Wyman asked if the agreement states how many officers are required for minor and major events.

Mr. Fasching replied that the number of officers and their location depends on the size of the event. He added that two or three officers would be needed to manage the primary parking lot, and three or four officers would be needed if the overflow parking lot was also in use.

Commissioner Wyman asked if a minor event requires a permit.

Mr. Fasching said no.

Commissioner Wyman asked how the applicant would communicate with the City police for a minor event.

Mr. Fasching replied that the applicant would contact the City police and information would be available on the website.

Commissioner Poche said that individuals leaving the church from S. Monroe Street turn right onto E. Hampden Avenue and then immediately turn left onto S. Colorado Boulevard, which creates a traffic hazard.

Chair Christman asked if restrictive signage could be used.

Mr. Fasching said that signage might help.

Chair Christman asked if the Traffic Management Plan is flexible enough to change if a problem should arise in the future.

Commissioner Savoie said that Section 3 of Exhibit B states that the Traffic Management Plan may be updated to respond to new information or new issues as identified by the church or the City.

Mr. Fasching added that prohibiting cars to turn left on S. Colorado Boulevard from E. Hampden Avenue might have unintended consequences. For example, it could lead to additional cut-through traffic in the Covington subdivision.

Commissioner Wyman asked if traffic personnel will be used in addition to City police.

Mr. Rich Cantwell, representative of Denver First Church, stated that the church currently uses two or three officers during minor events and Sunday mornings to assist with security and traffic control.

Commissioner Savoie said that Section 2.a. states that two traffic attendants will be used during minor events. He asked if traffic personnel will be used instead of officers.

Mr. Cantwell replied that the traffic personnel are in addition to the officers.

Mr. Zuccaro suggested that Section 2.a. be amended to state that "For all minor events, Denver First Church will enact the Traffic Management Plan".

Chair Christman said that the Traffic Management Plan states that the minimum amount of cars that requires officers and traffic personnel is 450 parking spaces during non-peak hours and 350 parking spaces during peak hours. She asked if this is the minimum number of cars that requires traffic management.

Mr. Fasching replied yes.

Chair Christman continued that she would like to address several substantive definitional issues in the development agreement. First, she would like to clarify that maintenance of landscaping and the wall belongs to the church.

Mr. Spuler agreed.

Chair Christman stated that she would like to notify the neighbors in the Covington subdivision of the amended agreement.

Deputy City Attorney Foster suggested notifying the home owners association.

Commissioner Savoie said that the home owners association is present.

Mr. Spuler said that the applicant intends on continuing communication with the neighbors.

Chair Christman continued that the applicant should not be released from the agreement until the new property owner assumes responsibility.

Commissioner Savoie said that the property owner is liable.

Chair Christman replied that the applicant has asked to be released from the agreement if the property is sold. She does not agree with an automatic release, however.

Deputy City Attorney Foster stated that indemnity survives if the applicant sells the property.

Commissioner Wyman asked if any future modifications to the Municipal Code will be applicable.

Chair Christman responded yes.

Commissioner Blum said that the agreement needs to state that indemnity survives if the property is sold.

Chair Christman agreed.

Commission Szymanski suggested amending the last sentence of Section 8.10 of the agreement to maintain City discretion in regards to releasing the applicant.

Chair Christman agreed. She continued that Section 1.c. and 1.d. of Exhibit B need to be clarified as the language states that the auditorium shall not be rented to third parties or outside organizations or used for any non-DFC sponsored event or activity in excess of six times per calendar year without written permission from the City Manager, and the gymnasium shall not be rented to third parties or outside organizations or used for any non-DFC sponsored event or activity in excess of 12 times per year without written permission from the City Manager. Chair Christman asked if the applicant was planning to give rather than rent the facility to outside organizations for non-DFC sponsored events.

Mr. Cantwell replied that the applicant was trying to clarify that the facility will only be rented to outside organizations for non-DFC sponsored events up to six times per year. The applicant will ask for permission from the City to host any event in excess of the six allowed events.

Commissioner Savoie said that Section 1.c. and 1.d. is pursuant to Section 1.

Chair Christman agreed.

Mr. Cantwell responded that an example of a non-church related event is that the University of Denver would like to rent the gymnasium for overflow during graduation.

Chair Christman stated that the agreement as written would not allow for rental of the facility for an event that is not a church-related use.

Ms. Jenkins agreed and said that Section 1 prohibits such events.

Deputy City Attorney Foster replied that the agreement can be revised to allow for six exceptions per year that are unrelated to the church.

Mr. Cantwell said that the applicant cannot commit to completely restricting rental of the facility for outside events. He added that the facility is to be rented by vendors for the 2014 BMW Golf Championship, which is currently allowed and helps to cover the cost of the facility.

Commissioner Savoie asked if the Commission wants to allow rental of the facility to outside organizations for non-DFC sponsored events up to six times per year.

Commissioner Szymanski said that the six exceptions allowed could include events that range anywhere from a crafts fair to a large concert.

Chair Christman replied that historically events held at the facility have been related to the mission of the church. She understands that the applicant does not want to restrict the mission of the church by limiting the type of events that can be held at the facility. However, a variety of events could be held if the proposed language was approved. For instance, a gun show could be one such event.

Mr. Cantwell said that the applicant is willing to limit certain uses but did not want to fully restrict its ability to rent the facility to other organizations.

Mr. Zuccaro clarified that the proposed language allows for 12 events in the gymnasium and six events in the auditorium per year.

Chair Christman said that she is concerned about retail use of the facility.

Mr. Cantwell replied that he agrees.

Chair Christman responded that the current language does not allow the applicant to rent the facility to outside organizations for events that are not a church-related use. She added that the allowed uses needs to be clarified.

Deputy City Attorney Foster asked what uses the Commission would like to restrict.

Chair Christman added that there is no time restraint for each event, which also needs to be addressed.

Mr. Cantwell said that the applicant does not intend to host 12 events that last one month each.

Deputy City Attorney Foster suggested that each event be limited to one day.

Commissioner Savoie said that the Commission has not decided whether to allow outside events. He asked if there are any limitations that the Commission would like to add like retail use.

Mr. Cantwell replied that the rental for the 2014 BMW Golf Championship will not be for retail use.

Chair Christman said that she is hearing that the Commission is more comfortable allowing community-related events.

Commissioner Poche recommended adding a retail restriction.

Commissioner Szymanski asked if the Commission wants to allow six exceptions per year in the auditorium if retail use is prohibited.

Mr. Zuccaro added that if the Commission approved the proposed language 12 exceptions per year would be allowed in the gymnasium, as well.

Commissioner Savoie asked if community-related events should be limited to six times per year.

Mr. Zuccaro responded that youth events are not limited. He continued that staff is not comfortable with the applicant requesting approval from the City for outside events beyond the number of events proposed. Staff recommends that only major events require further City approval.

Chair Christman asked who proposed allowing six events in the auditorium and 12 events in the gymnasium.

Mr. Cantwell replied that he suggested the number of events allowed.

Commissioner Poche said that if the applicant and City are satisfied with the number of events allowed, it should not be an issue.

Commissioner Savoie agreed.

Chair Christman asked that the applicant clarify the space used for the bookstore and add City discretion to waive deadlines for event approval.

Commissioner Wyman asked how the City will access the facility's calendar.

Mr. Zuccaro replied that the calendar will be available online, and the City can request a hard copy.

Commissioner Wyman said that if it is not obligatory it might be overlooked.

Mr. Zuccaro stated that it would be up to staff to diligently check the calendar.

Deputy City Attorney Foster asked if the church has a newsletter.

Mr. Cantwell replied yes.

Deputy City Attorney Foster suggested that the applicant email the newsletter with the calendar to staff.

Commissioner Savoie stated that the applicant would not have to go through the vacation process if a new trail was added from the overflow parking lot to the existing trail. He added that the trail would be useless if the lot is not accessible, however.

Mr. Cantwell replied that the applicant intends to explore several options. He added that it has not been decided if the lot will be accessible.

Commissioner Blum said that the Covington residents have expressed that they would prefer to see a portion of the lot reserved for trail-goers.

Commissioner Savoie added that it would be easier for the applicant to add a new trail or relocate the existing trail while the lot is being constructed.

Deputy City Attorney Foster replied that the Commission is asking for the applicant to provide a public trail via private property, which could cause an issue of liability. There could be a public dedication of the private trail, but it would require further dialogue and a hearing before the Parks, Trail and Recreation Commission might be a more appropriate setting.

Commissioner Savoie asked what the current agreement is.

Mr. Zuccaro responded that the City has on-street parking on S. Monroe Street with signage for trail-goers. The church also provides parking in the primary lot with signage but does not have an agreement with the City.

Chair Christman said that Commissioner Savoie is suggesting that the new trail be added in conjunction with the site improvements and kept private, and the applicant can pursue public dedication of the trail at a later date.

Commissioner Wyman asked if the residents of Covington have a preference.

Commissioner Savoie replied that the neighbors would prefer that the existing trail is vacated and relocated.

Commissioner Poche said that the Commission will have to trust that the applicant will resolve the issue.

Commissioner Szymanski agreed.

Mr. Cantwell added that the applicant has been responsive to the Covington residents thus far.

Chair Christman opened the hearing for public comment.

Ms. Patti Haas, 3 Covington Drive, stated that if the overflow lot is going to be inaccessible for trail-goers, a new trail would be a waste of time and money. She continued that the Covington home owners association would prefer to see the existing trail vacated and relocated. Additional signage restricting parking along E. Jefferson Avenue could be added if the existing trail is to remain in its current location. The home owners association is willing to leave the issue open with good faith that the applicant will resolve the issue.

Chair Christman closed the public comment portion of the hearing.

Mr. Curtis Clay, Chairman of the Denver First Church Expansion Committee, said that Section 8.8 of the development agreement states that the City may immediately revoke the Expanded Use Permit without warning if there is a violation of the terms of the agreement. Mr. Clay expressed the applicant's discomfort with such extreme action as the agreement does not require warning before the Expanded Use Permit is revoked.

Deputy City Attorney Foster replied that notice of final determination would be given to the applicant by the City Manager. The City's Manager's decision can be appealed before the Board of Adjustment and Appeals. The applicant can also appeal the decision of the Board of Adjustment and Appeals through district court.

Chair Christman suggested adding a 30-day period before revocation would take place after notice was given.

Mr. Clay said that additional time helps, but the applicant would like to avoid revocation of the Expanded Use Permit due to an unforeseen emergency, such as a tornado in which individuals gather in the basement for safety and simultaneously violate the terms of the agreement.

Chair Christman said that the City's concern is equally valid. She continued that a violation might be incurable, and the City would be unable to revoke the permit if notice was required. She asked if a 60-day period before revocation would help the applicant.

Mr. Clay stated that the applicant would prefer to receive warning before a revocation occurs. He believes that the revocation of the permit is an extreme remedy for an extreme situation and could possibly undermine the ability of the applicant to use the facility.

Deputy City Attorney Foster responded that if a resident were to use a property improperly, they would receive a notice to cease and desist and would have to appeal the decision before the Board of Adjustment and Appeals, as well. The Commission's offer of a period of time before revocation takes place is more than other property owners receive.

Chair Christman added that the City would have to make a case before the Board of Adjustment and Appeals as to its final determination.

Commissioner Wyman asked if one infraction would cause revocation of the Expanded Use Permit.

Deputy City Attorney Foster said yes, as the agreement is drafted. He continued that the applicant is concerned about future City staff while the City is concerned about future property owners. The applicant is assuming additional risk by requesting an expansion, however.

Mr. Clay stated that a resident who received a notice to cease and desist would not have to go before the Board of Adjustment and Appeals to move back into their residence. He added that most contracts require notice before an agreement is terminated.

Deputy City Attorney Foster said that some violations are potentially curable while others are not. For instance, if the church held a seventh outside event when only six were permitted, it would be incurable. He added that it makes sense to give notice if a violation is curable.

Commissioner Szymanski said that it seems as though a large concern is maintenance-related.

Chair Christman replied that maintenance is curable.

Mr. Zuccaro said that revocation of the permit is not the only option if a violation occurs. The City can issue a fine and would most likely notify and work with the applicant to resolve the issue.

Commissioner Poche suggested that the language be approved as proposed.

Commissioner Savoie suggested that the applicant be given a 30-day period before revocation of the permit occurs.

Commissioner Blum said that the revocation of the permit can be based on non-minor violations.

Commissioner Savoie recommended adding a standard of materiality.

Chair Christman asked if tree maintenance would be considered material.

Deputy City Attorney Foster said that a debate over materiality would occur. He asked what should be considered a non-minor violation.

Chair Christman replied that it might be difficult to determine materiality.

Commissioner Poche suggested that the Commission vote on whether to amend Section 8.8 of the agreement or continue with the language as drafted.

Commissioner Blum, Commissioner Savoie and Commissioner Poche voted to continue with the language as drafted.

Commissioner Szymanski voted to modify the language.

Chair Christman and Commissioner Wyman chose to abstain from the vote.

Deputy City Attorney Foster said that the applicant will have the opportunity to make a case to amend the language before City Council.

Mr. Zuccaro stated that the Commission can make a motion to recommend approval of the application with staff's proposed language and the additional edits put forth by the Commission. The applicant can choose to incorporate the Commission's recommended changes going forward. If the applicant chooses not to incorporate the changes, the Commission's recommendation of approval would be negated.

Deputy City Attorney Foster added that he can revise the development agreement and send it to the Commissioners to review and make comments on, as well.

Commissioner Szymanski made a motion to recommend approval of the proposed Expanded Use Permit to allow an expansion to the Denver First Church of the Nazarene facilities as outlined in the January 3, 2013 application materials and the associated requests for setback, floor area ratio and fence height variances and the parking reduction with the following conditions: first, prior to the City Council hearing, the applicant shall provide a final Phase III Drainage Report meeting all City drainage requirements for the entire project site in a format satisfactory to the City Engineer, with such Drainage Report incorporating the porous asphalt pavement option for the proposed parking lot west of S. Monroe Street; second, prior to the City Council hearing, the applicant shall provide documentation in a format satisfactory to the City Attorney and City Engineer assuring

maintenance responsibility of the existing drainage infrastructure; and third, the applicant must revise the development agreement to reflect the changes recommended and discussed by staff and the Commission.

Commissioner Blum seconded the motion.

Chair Christman, Commissioner Blum, Commissioner Poche, Commissioner Savoie and Commissioner Szymanski voted in favor of the motion.

Commissioner Wyman voted against the motion.

ELECTION OF VICE CHAIR

Commissioner Poche suggested that the Commission elect a Vice Chair.

Chair Christman asked if there was a nomination.

Commissioner Poche nominated Commissioner Savoie as Vice Chair.

Commission Szymanski made a motion to elect Commissioner Savoie as Vice Chair, which was seconded by Commissioner Wyman. The motion passed unanimously.

ADJOURNMENT

The meeting was adjourned at 8:58 p.m.

Laura Christman, Chair

Emily Kropf, Community Development Clerk