

City of Colville

ZONING BOARD OF ADJUSTMENT

December 1, 2009

9:00 a.m. – City Hall

MINUTES

The Colville Zoning Board of Adjustment met on Tuesday, December 1, 2009, in the Council Room at City Hall. Chairman Chris Montgomery called the meeting to order at 9:00 a.m. with a quorum present.

MEMBERS PRESENT: Daron Tate, Saundra Wilma, and Chris Montgomery. MEMBERS ABSENT: Diana Raines and Ned Swanson were out of town. STAFF PRESENT: Assistant Planner Melinda Lee. OTHERS PRESENT: William Provost, Ken Marsh, Mark Smith, Frank Sety, Ray Clark, Terry Lawson, Ron Matney, and others. RECORDING SECRETARY: Susan Davis.

MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting of August 24, 2009 had been distributed to each member prior to the meeting. Saundra Wilma moved and Daron Tate seconded the motion to approve the minutes as written. Roll Call: Saundra Wilma – yes; Chris Montgomery – yes; Daron Tate – yes. Motion passed.

PUBLIC HEARING

Subject: Conditional Use Permit Application #3-09

Applicant: Lifeline Ministries

Location: 621 S. Main, Suite B

Request: To allow a church to utilize the North section of the AmericanWest Bank building, in the C-3 (General Commercial) District, pursuant to Chapter 17.84 of the Colville Zoning Ordinance

Chairman Chris Montgomery convened the scheduled public hearing to consider a request for a conditional use permit by Lifeline Ministries. The Chairman reviewed the subject and outlined the hearing procedure. He asked if any of the Board members had an interest in the matter being heard which would be in conflict with the appearance of fairness requirements. There were none. There were no objections from the public to any of the Board members participating in the hearing process. The Chairman asked if any of the Board members had engaged in communications with either proponents or opponents outside the hearing on the issue to be heard. Saundra Wilma stated that she had been contacted by a constituent and Board member Diana Raines but did not discuss the issue with either of them. Chairman Montgomery declared the public hearing open and requested the staff report.

Assistant Planner Melinda Lee presented the staff report, which had been distributed to each Board member and the applicant prior to the meeting (attached hereto and made a part of these minutes). Copies of the staff report were available to the public. Ms. Lee explained that William Provost, representing Lifeline Ministries, submitted an application for a conditional use permit for a church facility within a C-3 (General Commercial) District. The applicant has obtained a two-year lease for the northern portion of the AmericanWest Bank building, at 621 S. Main Street, Suite B. The remaining portion of the building is occupied by the bank.

Ms. Lee advised that the applicant inadvertently leased and moved into the proposed site in May 2009, without knowledge of the need for a conditional use permit. Prior to the distribution of the Notice of

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Application to adjoining property owners, no problems or concerns were expressed relating to the use.

It was further explained that in all districts where church facilities are allowed, a conditional use permit must be obtained in accordance with the Table of Uses in the Colville Zoning Ordinance Chapter 17.72.070. Conditional Use Permit applications are a Type III, Quasi-judicial process, to be presented at a public hearing before the Zoning Board of Adjustment for their evaluation and determination.

A SEPA checklist was also processed to identify potential impacts to the neighboring properties due to the intensity of use typically associated with a church facility. Mitigations to these impacts were evaluated and proposed as conditions of approval, as appropriate.

As outlined in the staff report, Melinda Lee presented an analysis and site evaluation. The proposed site is a fully developed, 1.46-acre parcel that is owned by AmericanWest Bank. There is a 7,653 square foot building, in which the bank occupies the majority of the south side. The church leases 3,000 square feet on the north side of the building, which includes their tenant space and shared access to restroom facilities.

The site has existing paved parking that will be shared between the two uses, due to the opposing hours of operation. The main entrance to the site is from Main Street on the north side of the property and loops around to the south side of the building to drive-up teller windows and then continues west and exits onto Main Street. There are established parking areas on the north, east, and west sides of the property.

Surrounding land use consists of professional offices, a pizza establishment, a veterinary clinic, and a vacant building typically used as a "bar and grill" to the north-northwest; Clark's All Sports to the northeast; a multi-family apartment complex to the east, with single family residences east of this complex; Washington State Patrol offices and the National Forest Service Headquarters to the south; a bowling alley to the southwest; and professional offices, and a restaurant to the west.

Ms. Lee explained that the purpose of the C-3 (General Commercial) District is to serve those commercial and business uses which, because of large space requirements, truck traffic generated, or similar characteristics, should not be located in the central business district of the community. The development standards for the C-3 District include no minimum lot sizes, zero setbacks (except if adjacent to existing residential), and 100 percent lot coverage. There is also no limitation on the building height.

The proposed use is utilizing a portion of an existing site which was developed to accommodate commercial automobile traffic patterns. Staff felt it is compatible with existing surrounding uses that also inherently have high-volume usage. However, the church facility's primary hours of operation are on Sunday mornings, which would not cause an additional burden to the existing traffic in the area. Further analysis of the site revealed the following:

- The City of Colville services the site with water and sanitary sewer.
- There is existing storm water drainage established at the site.
- Access to the site is directly from Main Street at two locations.
- There are 68 developed parking spaces on the site; the bank has given permission for full, shared access to existing parking. The proposed use would only require 13 spaces, based on their 1242 square feet of assembly area within the sanctuary.
- The site is adequately served with electric, natural gas, telephone, and refuse disposal.
- The site is adequately served by fire hydrants and emergency response facilities.

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- Due to the assembly occupancy of a church facility, the property owner (AmericanWest Bank) has agreed to install a fire alarm/monitoring system in the entire building, upon approval of the conditional use permit. The conditional use permit review process was delayed while the property owner evaluated this Building Code requirement.

It was noted that an environmental checklist was completed and submitted, pursuant to WAC 197-11. Following the review and comment period, a Determination of Non-Significance (DNS) was issued on October 9, 2009. Public comments received during the comment period were attached to the staff report.

As outlined in the staff report, public notification was provided pursuant to Chapter 17.112 of the Zoning Ordinance. Ms. Lee reviewed the following comments, which were received through telephone calls or inquiries made in person, relating to the proposal:

1. Sherri Marsh, representing the Copper Bowl: Concerned that the proximity of a church would affect their liquor license;
2. Mark Smith, representing Pizza Factory: Concerned that the proximity of the church would affect their liquor license.
3. Dr. Terry Lawson, Lawson's Chiropractic Clinic: Concerned with the church affecting other's liquor licenses; locating a church on Main Street; and problems with parking issues.
4. Ray Clark, Clark's All Sports: Concerned with overflow parking from the church use as there is no physical barrier between his lot and the bank's. Questioned the church's full use of "68" spaces; he had been told by the bank this was not the case. Was also concerned about the future use of his building by a business that may want to sell liquor.
5. Dale Wilson, Rural Resources: Has no concerns about the proposal by Lifeline Ministries.

Ms. Lee advised that these issues are further evaluated in the staff's suggested Findings of Fact.

Conditional use permits are processed in accordance with Chapters 17.84 and 17.108 of the Zoning Ordinance. They are reviewed by city departments and other applicable public agencies, which forward their comments and recommendations to the Zoning Board of Adjustment for evaluation and determination at a public hearing. As a conditional use, a determination by the Board can be made to assure that the use is so designed and so used that it will not have a detrimental effect upon surrounding properties and that the use is consistent with the Zoning Ordinance and Comprehensive Plan.

Melinda Lee suggested the following Findings of Fact for Board consideration:

FINDINGS FOR CONDITIONAL USE PERMIT:

1. ***The project is consistent with the City of Colville Comprehensive Plan and meets the requirements and intent of the Colville Zoning Ordinance, including the type of land use, and the density/intensity of the development, and the protection of critical areas, if applicable:***

The Goals & Policies in the Comprehensive Plan (Section II.G) state that we should:

- Balance need for private-sector development for economic vitality with need to protect community values;

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- Concentrate urban/commercial growth within the core of the city to the maximum extent possible; and,
- Manage growth to conserve and enhance environmental quality, to utilize community facilities and services in an efficient and sound manner to coincide with the modernization and provision of infrastructure, and to promote a productive economy.

Locating the church facility in an existing commercial space provides a balance between economic benefit and protection of community values; concentrates growth within the core of the city; and manages growth to protect and enhance environmental quality by utilizing existing infrastructure.

Churches are assembly uses that are conditionally permitted within the C-3 District. Potential impacts from the intensity of such a use may be addressed with appropriate mitigation.

Parking requirements for public and semi-public places of assembly are calculated based on the square footage of the assembly area, the number of fixed seats, or total inches of lineal bench-type seating. In this case, the required number of 13 parking spaces was based on the 1,242 square feet used for their assembly area (or sanctuary).

There are no critical areas on or near this project site.

The project meets this criterion.

2. *The project will not be unduly detrimental to the use of properties in the project vicinity.*

The site is located within a developed commercial district. The land uses in the vicinity are professional and government offices, retail, veterinary clinic, bowling alley, two restaurants, and a vacant building typically used as a “bar and grill”. There is an apartment complex directly east of it, buffering the use from single-family residences on the west side of Elm Street.

The main hours of the church operation will be Sunday morning from approximately 8:00 a.m. to noon. The administrative functions are performed on Thursdays during the day with only staff members present. The use is contained within an existing building and is currently under a two-year lease, expiring May 14, 2011, with renewal options.

The location of a church within the vicinity of establishments that sell liquor has become a concern. RCW 66.24.010(9)(a) reads as follows:

“Before the board issues any license to any applicant, it shall give (i) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (ii) written notice, with receipt verification, of the application to public institutions identified by the board as appropriate to receive such notice, churches, and schools within five hundred feet of the premises to be licensed. The board shall not issue a liquor license for either on-premises or off-premises consumption covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the main entrance of the school to the nearest public entrance of the premises proposed for license, and if, after receipt by the school of the notice as provided in this subsection, the board receives written objection, within twenty days after receiving such notice, from an official representative or representatives of the school within five hundred feet of said proposed licenses premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. The board may extend the

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time period for submitting objections. For the purpose of this section, "church" means a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. For the purpose of this section, "public institution" means institutions of higher education, parks, community centers, libraries, and transit centers."

The applicant will be occupying the north portion of an existing bank building; therefore, it is not "a building used exclusively for religious worship, schooling, or other activity in connection therewith." The presence of a church within 500 feet of such establishments does not restrict the issuance of a liquor license; it does, however, require that the church be considered in the decision.

- 3. The project makes adequate provision for access and circulation, water supply, storm drainage, sanitary sewage disposal, emergency services, and environmental protection.***

The existing site development and building has established provisions for the criterion listed above.

- 4. The project adequately mitigates impact identified through SEPA review process, if applicable.***

The City of Colville reviewed the proposed project for adverse environmental impacts on October 27, 2009, and November 3, 2009. A Notice of Application and SEPA Review was issued on November 6, 2009. The comment due date was November 25, 2009. Comments received during the comment period are included in the staff report. Appropriate mitigations were identified through the SEPA review process and incorporated as conditions of approval within this staff report.

- 5. The project is beneficial to the public health, safety, and welfare, and is in the public interest.***

The project is situated in an existing facility that meets design standards for public safety and welfare. AmericanWest Bank, the property owner, has agreed to install a fire alarm/monitoring system compliant with building codes relating to assembly uses, upon approval of this permit. The facility is within the public interest by providing a faith-based, social resource for the residents of the community that would foster mutual support in performing all functions of life.

The project meets this criterion.

CONDITIONS OF APPROVAL:

Assistant Planner Melinda Lee concluded that the applicant has satisfied the conditional use criteria. Therefore, staff recommends approval of this request subject to the following conditions:

1. A fire alarm and monitoring system shall be installed upon approval of this application, or as approved by the building official. Failure to comply with this condition may cause the applicant to vacate the premises.
2. This conditional use approval shall expire December 19, 2010, unless a building permit has been issued and the fire alarm system has been installed. A written request for up to one (1) year extension may be approved by the Administrative Official if the Administrative Official finds the facts on which the Conditional Use Permit was approved have not changed substantially.

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3. If the use authorized under a Conditional Use Permit ceases or is interrupted for six (6) consecutive months or more, then a new Conditional Use Permit will be required.

Saundra Wilma asked why churches are classified as a “conditional use”. Melinda Lee explained that churches are a unique type of land use which due to its nature requires special consideration of its impact on the neighborhood and land uses in the vicinity.

The Chairman requested additional petitions or communications relating to the issue being heard. For the record, Ms. Lee read the following communications, which were attached to the staff report:

1. Email communication from Jim Doherty, Legal Consultant, Municipal Research and Services Center (MRSC), which concluded the church related use is choosing to move into the neighborhood – any complaints they raise regarding renewal of liquor permits should not be considered – the liquor uses were there first (Exhibit H.2).
2. Written communication from Attorney Andrew C. Braff representing Terry Lawson who owns property just north of the proposed request. Mr. Braff requested that the Board deny the proposed project based on the fact that the proposed conditional use permit would present a substantial impact and restriction on not only current tenants, but future tenants who may need or desire a liquor license to operate or fully maximize their business potential and because the proposed use is inconsistent with the commercial use that has existed for 30 plus years in the area (Exhibit H.1).

At this time, Chairman Montgomery asked to hear from the applicant relative to the issue being heard.

William Provost, 699 Pend Oreille Loop, Colville, WA, applicant, stated that he had no intention to oppose liquor sales in the area. Mr. Provost explained that the goal of Lifeline Ministries is to present and develop ministries that will provide benefits to the community that are not being met by others.

Chairman Montgomery opened the floor for comments from the audience.

Ken Marsh, Copper Bowl, 750 S. Main Street, Colville, WA, objected to the location of the proposed church because he felt it could negatively impact his liquor license and sales.

Mark Smith, Pizza Factory, 662 S. Main Street, Colville, WA, expressed concern regarding the negative impact the proposed church could have on current liquor license holders in the area. He felt the location of the proposed use is detrimental to the commercial district.

Frank Sety, P.O. Box 256, Chewelah, WA, explained that he owns a vacant lot at 680 S. Main Street, Colville, WA. He felt the proposed conditional use could negatively affect the future sale of his lot. He further felt that the proposed use could potentially impact parking in the vicinity due to activities associated with the church, such as funerals and weddings. He questioned whether churches add to the tax base of the city and pointed out the other businesses in the area contribute local tax revenues.

Ray Clark, Clark's All Sports, 557 S. Main Street, Colville, WA, explained that his business as well as Westside Pizza are open on Sundays and felt that overflow parking could become an issue. He indicated that he has engaged an attorney to research what impact a proposed church use would have on his Federal Firearms License. He also had concerns about the impact on current and future liquor licenses in the area.

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Terry Lawson, 555 S. Main Street, Colville, WA, expressed concern regarding the use of his building as it pertains to his tenants and future liquor license applications. He felt that locating a church in the area takes away business opportunities in the commercial district, which is not a benefit to the community.

Assistant Planner Melinda Lee explained that she was not aware of the Federal Firearms License issue and had not addressed it in the staff report.

Sandra Wilma asked Mr. Provost how he intended to delineate and control parking for the church. Mr. Provost indicated that the congregation members have been using the parking area near the front door of the building and parking has not been an issue. He expressed a willingness to direct the congregation to use certain parking areas to minimize any impact on adjacent businesses.

Chairman Chris Montgomery asked the applicant if they would be opposed to using something like cones and rope to restrict parking. Mr. Provost indicated he would be willing to use cones or some acceptable method of delineation as long as it is not cost prohibitive. He added that he was not aware of Clark's All Sports Federal Firearms License and advised that Lifeline Ministries would want to get out of their lease if their use caused a problem for Clark's.

Mr. Montgomery asked Mr. Provost if he would have a problem if the Board approved the conditional use permit with a condition that it would terminate if the church use interferes with the ability of businesses to obtain or renew liquor licenses or Federal Firearms Licenses. Mr. Provost commented that that would be acceptable. He advised that the church does not want to burden anyone or drive businesses out of the area; but rather they want to enhance the area.

Daron Tate questioned whether the church meets on any other nights or has other events that were not included in the application. Mr. Provost explained that they are contemplating adding a recovery ministry to help persons with addictions. This group would most likely meet during the evening. He advised that a small group of 5-10 people meets on Wednesday nights for prayer. No funerals or weddings are performed at this site.

Chairman Montgomery recognized that parking appears to be a common concern. He asked Mr. Clark if there has ever been any consideration given to putting in some sort of barrier to separate parking areas and would using cones and rope to delineate the church parking help mitigate parking problems. Mr. Clark indicated that they have all shared the parking areas and have not had a major problem with simultaneous functions. A permanent barrier has never been needed. He expressed a concern that people tend to take the shortest route to buildings and this could become a problem for his business.

Terry Lawson indicated he had no problem sharing parking but expressed concern about potential uses in the future, such as a school.

Ron Matney, 790 S. Main Street, Colville, WA, expressed concerns about the potential impact of a church use so close to Clark's All Sports and, with a growing congregation, the possibility of operating a school in the future.

At this time, the Chairman asked to hear from anyone else wishing to speak for or against the issue being heard. Seeing and hearing no one, the public testimony portion of the hearing was closed and opened to Board discussion and dispensation.

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Chairman Montgomery advised that he had called the Washington State Liquor Control Board Enforcement Office and had to leave a call back message. He stated he was concerned about how the Liquor Control Board Enforcement Office would interpret the RCW referenced in the staff report. He felt that the opinion of MRSC Legal Consultant Jim Doherty appears to fall within the statute. Mr. Montgomery also expressed concern regarding the potential impact on Mr. Clark's Federal Firearms License. He suggested that the Board postpone a decision pending additional information and consideration. He stated he felt uninformed about these issues which are very important to the approval or disapproval of this request.

Saundra Wilma pointed out Chapter 17.04 of the Zoning Ordinance defines "church" as a building used exclusively for worship or schooling or other activity in connection therewith. She questioned how the proposed church could be considered a conditional use when it is located in a bank, which is the primary use of the building. Melinda Lee explained that it was the feeling of the staff that because of its intensity the proposed use is clearly a church even though it is leasing a portion of a building. As a church, it was felt the use would still have the same impact on neighboring properties as if it were using the entire building.

Daron Tate also felt the definition of "church" is important in classifying the proposed use. He felt the temporary use permit process would appear to be more appropriate for this proposal.

Chairman Montgomery questioned staff as to whether there are any other churches that share facilities. Melinda Lee stated that to her knowledge two different groups rent the Library basement for worship services exclusively on a weekly or monthly basis. It appears that the EMS building and the Draper Memorial building are also used for religious services. Ms. Lee explained that temporary use permits are for uses that do not continually occupy a building or have ownership. Temporary use permits are processed administratively for passive uses based on their ability to abide by health and safety issues.

Saundra Wilma questioned whether a church is an appropriate use in a commercial district. She pointed out the Comprehensive Plan Goals & Policies that were identified in the staff report as relating to this proposal pertain to economic vitality. She also expressed the feeling that this proposal does not appear to meet the criteria for a temporary use permit.

Daron Tate moved that the Board continue discussion on this issue for a period of three weeks, to meet on December 22, 2009, to obtain more information. Chris Montgomery seconded the motion. Roll Call: Saundra Wilma – yes; Chris Montgomery – yes; Daron Tate: yes. Motion carried unanimously.

Chairman Montgomery noted that additional information is needed from the applicant. He requested staff to contact the Liquor Control Board and provide a generic report at the next meeting on their position regarding existing and future liquor licenses. He requested that staff provide assistance to Mr. Clark, if needed, as he researches potential impacts on his Federal Firearms License.

Melinda Lee pointed out that some concerns had been expressed regarding the possibility for a future school use. She explained that the applicant would have to apply to modify the conditional use permit if a school is ever proposed at this site.

Chairman Montgomery stated that the application before the Board at this time is for "church" use. He stated the Board has the authority to place conditions on the proposal and could limit it to church use only. He agreed with staff that the Board would have to review any future school proposal at this site.

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Mr. Provost felt that the definition of “church” needs to be clarified because it was his opinion that “church” generally includes “school”. He questioned whether a conditional use permit would be required if they were to rewrite their lease to use the building on specific days and not on a full-time basis and how that might affect liquor or firearms licenses.

As stated earlier, Melinda Lee indicated that congregations currently renting space in other buildings for religious services are considered temporary uses because they only meet on specific days and have no ownership in the buildings. Sandra Wilma also pointed out if a sign is put up advertising the location of a church then it falls outside the scope of a temporary use.

COMMUNICATIONS & PUBLIC PRESENTATIONS: There were no other communications or public presentations.

OLD BUSINESS: There was no Old Business to be presented.

NEW BUSINESS: There was no New Business to be presented.

REPORTS: There were no reports.

ADJOURNMENT

As there was no further business, Sandra Wilma moved and Daron Tate seconded the motion to adjourn. Motion passed unanimously.

Time of adjournment: 10:45 a.m.