

City of Colville

ZONING BOARD OF ADJUSTMENT

December 22, 2009

9:00 a.m. – City Hall

MINUTES

The Colville Zoning Board of Adjustment met on Tuesday, December 22, 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, Sandra Wilma, Diana Raines, and Chris Montgomery. MEMBERS ABSENT: Ned Swanson. STAFF PRESENT: Director of Building & Planning Jim Lapinski and Assistant Planner Melinda Lee. OTHERS PRESENT: William Provost, Jerry Brown, Lori Wicks, Ray Clark, Steve Harris, Ruth Harris, and Ken Marsh. RECORDING SECRETARY: Susan Davis.

MINUTES OF PREVIOUS MEETING

The minutes of the previous meeting of December 1, 2009 had been distributed to each member prior to the meeting. Daron Tate moved and Sandra Wilma seconded the motion to approve the minutes as written. Roll Call: Diana Raines – yes; Sandra Wilma – yes; Chris Montgomery – yes; Daron Tate – yes. Motion carried unanimously.

CONTINUED 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 reconvened the public hearing, continued from December 1, 2009, 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 Board members had engaged in communications with either proponents or opponents outside the hearing on the issue to be heard. Mr. Montgomery advised that following the December 1st meeting, he spoke with Officer Robert M. Lucas, WA State Liquor Control Board. Copies of email communications were distributed to each Board member and Mr. Montgomery summarized the substance of these communications (copies on file). Chairman Montgomery reopened the public hearing and requested an updated staff report.

Assistant Planner Melinda Lee presented the supplemental staff report, which had been distributed to each Board member and the applicant prior to the meeting (copy on file). Copies of the staff report were available to the public. Ms. Lee explained that a public hearing was held on December 1, 2009, regarding the request for a conditional use permit to locate a church in the C-2 (General Commercial) District as a

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 2

second use within the AmericanWest Bank building. The December 1st meeting was continued for further clarification of specific issues brought to the Board's attention.

Ms. Lee advised that business and property owners within proximity of the proposed use expressed their concerns about losing existing liquor licenses or the risk of denial of new future liquor licenses. The Board postponed a final decision until additional information was available. The Board requested that an attempt be made to acquire comments from the Washington State Liquor Control Board regarding the liquor license questions. As a response, Officer Robert M. Lucas of the Washington State Control Board stated: "It will not affect the current license, nor assumption applications – just new applicants or any other businesses that constitute a Public Posting Notice." It was clarified that the church would be taken into consideration for any new liquor licenses within 500 feet of the premises, even though it only occupies a portion of the building.

Ms. Lee referenced the Washington State Liquor Control Board's website that displays a brief list of "Frequently Asked Questions" and reviewed answers relating to liquor license denial. Related comments from the December 1st public hearing were summarized as follows:

- a. Andrew C. Braff, P.S., Attorney at Law, representing Terry Lawson, adjoining property owner, commented in his letter dated November 23, 2009, in part: "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, "Any request for a liquor license would be met with additional scrutiny over and above the already rigorous application procedure that applicants are exposed to."
- b. City staff advised that the proposed church-related use would not be unduly detrimental to the businesses within its proximity, based on the text of RCW 66.24.010(9)(a). It states that that the [Liquor Control] board shall give 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. The RCW outlines restrictions for issuance of a liquor license if written objections are received by any tax-supported public elementary or secondary school within 500 feet of proposed licensed premises; and that consideration be given to churches or public institutions within that same proximity. The location of a church close to the subject property does not automatically preclude the issuance of a liquor license.
- c. The applicant stated at the initial hearing that he had no intention to oppose liquor sales in the area.
- d. It was the opinion of Jim Doherty, Legal Consultant, Municipal Research & Services Center, that "the decision of whether or not to allow the church-related use should be dependent upon the normal concerns – such as adequate parking, etc. If a church-related use is allowed near places that serve alcohol, that proximity should not impact the ability of the liquor uses to remain," and "...any complaints they [the church] raise regarding renewal of liquor permits should not be considered – the liquor uses were there first."
- e. It was also pointed out there may be similar restrictions for licensing to sell firearms and related accessories in the vicinity of churches.

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 3

- f. Staff conducted a keyword search of the Federal Firearms Licensing laws; there were no prohibitions of the sale of firearms and/or accessories in the proximity of religious or church-related.
- g. A review of RCW 9.41.110, Dealer's Licenses, indicated there are no restrictions that relate to the sale of firearms/accessories within the proximity of religious or church-related uses.
- h. The Police Department is responsible for the issuance of local firearms licenses. The Colville Police Department has indicated that there are no known restrictions to the sale of firearms within the vicinity of a church.

The following items, which were discussed at the December 1st public hearing, were presented with additional clarification:

1. Processing the application as a Conditional Use Permit vs. a Temporary Use Permit, per Chapter 17.84.030(A).

The proposed use would occupy a portion of an existing building where the existing and primary use is the AmericanWest Bank. The Zoning Ordinance, Chapter 17.04.060, defines a church as "a building used exclusively for religious worship and schooling or other activity in connection therewith."

It was questioned whether or not it would have been more appropriate to use the temporary use permit rather than a conditional use permit for this application. A temporary use permit is an administrative approval process reserved for temporary, minor land uses that are expected to last for six months or less and require little or no mitigation.

Ms. Lee stated that the Building & Planning Department determined that the potential intensity of church activities, the required mitigation necessary for occupancy such as fire control, and the effects a church use would or may have on neighboring properties went beyond the purpose intended for a temporary use permit. It was determined that the intensity of the proposed use warranted processing a conditional use permit, and going through the public notification and environmental review process.

2. Establishing a school at this location in the future could affect the issuance of liquor licenses.

Table 17.12.070, Permitted and Conditionally Permitted Uses in Base Zone Districts, states "Schools, public and private" are conditional uses in all districts in which they may be permitted. Establishing a school at this location would substantially alter the church use causing a re-evaluation of any existing conditional use permit rather than determining it as an "accessory use" that may normally be acceptable for a use that was permitted outright. Ms. Lee explained that Sunday school is typically an accessory use to a church-related use and would not have to be reviewed separately. The literal terms of the ordinance would also very likely necessitate a school being treated as an individual use requiring a separate permit, somewhat dependant on the scale and scope of any proposed future school.

3. Concerns about a tax-exempt facility being located within the commercial core.

The location of such a facility may still contribute to the economic vitality by attracting members of the public to the area that may not typically patronize other businesses in the vicinity. Also, securing a long-term lease for a portion of an existing building provides economic benefit to the building owner.

ZONING BOARD OF ADJUSTMENT

December 23, 2009

Page 4

Ms. Lee stated that based on the new information received, staff recommended adding an additional condition to the three original conditions to state,

4. The Church, or any affiliates of the Church, shall not file any formal protest to any agency of jurisdiction for or on behalf of the Church that would affect the liquor licensing or any other licensing required for any other legally permitted business use to conduct normal business. This condition shall be in effect throughout the effective life of this conditional use permit.

At this time, Chairman Montgomery asked for questions from the Board to staff.

Board member Sandra Wilma requested clarification concerning the email communications between Mr. Montgomery and Mr. Lucas, Washington State Liquor Control Board. Mr. Montgomery stated he interpreted Officer Lucas's response to say that on any new application he would do the 500 foot measurement and submit his findings to the Liquor Control Board regardless of whether the church occupies some or all of the building. Relative to this issue, Jim Lapinski, Director of Building & Planning, commented that staff's suggested new condition would ensure that there would not be any interference with current and future liquor licenses of the businesses in the vicinity.

Board member Diana Raines requested clarification relative to the possibility of a future school use within the facility. Relative to a concern expressed at the previous meeting about potential impacts of a school use in the future, Ms. Lee pointed out the applicant is not proposing a school at this site. Per the Zoning Ordinance, any future school use would be required to go through a separate conditional use permit application process before that use would be permitted.

There were no communications or petitions to be presented at this time on the issue being heard.

At this time, Chairman Montgomery asked if anyone wished to speak on behalf of the application.

Bill Provost, applicant, 699 Pend Oreille Loop, Colville, WA, thanked the Board for its consideration. With the additional information that was presented, Mr. Provost felt Lifeline Ministries meets the criteria for conditional use permit approval. He added that denial of the application would create a hardship for the church because they would have to pay off their lease and find another location. He noted that the Lutheran Church on E. Dominion Avenue is 280 feet from Clark's All Sports property, with no apparent negative impact. Mr. Provost also reiterated that they have no intention of opposing liquor sales in the area.

The following persons spoke in favor of the proposed church use:

Jerry Brown, 380 Bastian Lane, Colville, WA.

Lori Wicks, 487 S. Alder Street, Colville, WA.

Steve Harris, 413 Ridge Top Way, Colville, WA

Ruth Harris, 413 Ridge Top Way, Colville, WA

Ray Clark, Clark's All Sports, 557 S. Main Street, Colville, WA, summarized his concerns. He pointed out that the granting of a liquor license appears to be at the discretion of the Liquor Control Board. Relative to firearms, he stated the Alcohol, Tobacco, & Firearms (ATF) Manual prohibits the issuance of an ATF license to businesses located within 1000 feet of any type of school. Mr. Clark requested that the Board carefully consider the potential impacts a church use could have on the future resale of the buildings and the granting of liquor licenses to businesses in the area.

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 5

Ken Marsh, Copper Bowl, 750 S. Main Street, Colville, WA, felt the issue is the location of a church use in close proximity to businesses that sell liquor and firearms. He also expressed concern regarding future decisions of the Liquor Control Board and the resale of properties in the area if the Board approves this proposal.

Chairman Montgomery closed the public testimony portion of the hearing and opened it to Board discussion.

Diana Raines pointed out that the Lutheran Church existed prior to the construction of Clark's All Sports. She questioned how the laws relative to the issues of liquor and firearms might have been applied at that time. In response, Chris Montgomery felt it is unknown what the circumstances were at the time, but presumably under the current laws the church would have been listed as being within 500 feet and would have been considered.

Sandra Wilma expressed the opinion that because the Colville Zoning Ordinance defines a "church" as a building used 'exclusively' for religious purposes, the AmericanWest Bank building does not meet the definition of a church. In researching court cases, Sandra advised that she found that once the use is determined to be a church, it is protected under the 1st amendment, including school use.

Jim Lapinski confirmed that churches are permitted conditionally in all zoning districts. As the Administrative Official of the Zoning Ordinance, Mr. Lapinski explained that he has the authority to make interpretations, when necessary. In this case, he determined that a conditional use permit rather than a temporary use permit is required due to the intensity of the proposed use. Mr. Lapinski indicated that he also took into consideration the fact that the proposed use is not displacing a commercial use. He noted that the Board can require re-evaluation of a conditional use permit at some time in the future, if deemed necessary.

Board member Daron Tate expressed the opinion that the proposal is a church function. He personally did not feel that the church use conflicts with the commercial uses around it. However, he felt a school would have an impact on adjacent uses and pointed out it has been determined that any future school use would require another conditional use permit. Mr. Tate supported the recommendation of staff to add Condition #4 to clarify the liquor license issue.

Diana Raines recognized that churches do good things for the community but felt the location of the proposed church use in the bank building seemed inappropriate. She echoed the earlier concerns about potential impacts on adjacent properties; especially properties like the Red Bull that might apply to the Liquor Control Board for a liquor license.

Sandra Wilma cited a Supreme Court case (*City of Woodinville vs. Northside United Church of Christ – 7/16/09*), dealing with accessory uses (church buildings as accessory buildings, shelters for homeless, unwed pregnant teenage girls including prenatal care, life skills training, and spiritual education) that were determined to be integral parts of a church's missionary purposes. Sandra felt if the church use is allowed, these types of accessory uses could occur on the premises.

Bill Provost responded that Lifeline Ministries leases its space from the bank. He did not feel that the bank would allow accessory uses like tent cities on the premises. Mr. Provost pointed out he and other members of the congregation have expressed their intent not to burden adjacent properties.

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 6

In response to Ms. Wilma's concern about constitutional rights, Chairman Montgomery read excerpts from the Religious Land Use & Institutionalized Persons Act of 2000 – an act to protect religious liberty and other purposes. It was his interpretation that the application of the act provides for a government to make or have in place formal or informal procedures or practices that permit the government to make individualized assessments of the proposed uses for the property involved. It was Mr. Montgomery's feeling that the conditional use permit process provides for that assessment. The act prohibits discrimination and says "No government shall impose or implement a land use regulation that unreasonably limits religious assembly, institutions, or structures within a jurisdiction."

Saundra Wilma expressed the feeling that it would be unreasonable to prohibit the church from having a school because it is part of the ministry. Chris Montgomery pointed out there are differences between a church and a school. Regarding the liquor license in particular, it is just an automatic denial if there is a school nearby. If it is a church, it is just a factor that is reported and considered and doesn't mean that a liquor license will automatically be denied. Mr. Montgomery pointed out in the application Lifeline Ministries does not seek permission for a school use. He felt the Board has the authority to prohibit a school as part of this request.

Melinda Lee provided examples of other churches and schools in the city that have been granted conditional use permits. It was her experience that churches in the community have been respectful of neighbors and traditionally seek City staff advice to find out what they need to do to decrease any impact.

The Board reviewed and discussed the original staff findings and conditions of approval as outlined on Pages 4-7 of the November 24, 2009 staff report.

Chris Montgomery moved and Daron Tate seconded the motion that the Board approve Conditional Use Permit #3-09 and adopt the following original staff findings and conditions of approval, as amended:

FINDINGS OF FACT:

- 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;
- 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. "Church" as defined in Colville Municipal Code, Section 17.04.060, is "a building used exclusively for religious

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 7

worship and schooling or other activity in connection therewith.” Staff has determined that exclusive use exists when it is being used for the purposes applied for.

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 (with food and alcohol services), 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 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 “a building used exclusively for religious worship, schooling, or other activity in connection therewith during its times of operation, which are when the bank is closed.” 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. 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:

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.
3. The Church, or any affiliates of the Church, are not granted any special privileges by virtue of this conditional use permit and shall not file any formal protest to any agency of jurisdiction for or on behalf of the Church that would affect the liquor licensing or any other licensing required for any other legally permitted business use to conduct normal business in the C-3 (General Commercial) District, as the applicant has chosen to locate your church in the General Commercial District. This condition shall be in effect throughout the effective life of this conditional use permit. Any violations of this condition will result in automatic revocation of this conditional use permit.

ZONING BOARD OF ADJUSTMENT

December 22, 2009

Page 9

4. In lieu of requiring physical parking separation from neighboring properties, the applicant shall notify its congregation not to park on adjacent properties and provide maps to the congregation on where to park so that the congregation is not parking on adjacent properties. Three (3) verified patterned violations by City staff of the parking limitations will result in automatic revocation of this conditional use permit.
5. There shall be no school operated on the premises without a new conditional use permit being approved prior to any such activity. This condition is consistent with the applicant's stated intended use of the premises. This would not prohibit Sunday school classes associated with church services unless the applicant seeks to make such classes a religious school, as defined by state, local, or federal regulations.
6. The applicant shall not object to any federal firearms license applications for existing or new businesses within the C-3 (General Commercial) District. Any violation of this condition will result in automatic revocation of this conditional use permit.
7. Future uses beyond the scope of the applicant's application must be approved as an additional conditional use permit prior to any such use.
8. 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.

Roll Call: Diana Raines – yes; Sandra Wilma – no; Chris Montgomery – yes; Daron Tate – yes. Motion carried (3 yes – 1 no).

COMMUNICATIONS & PUBLIC PRESENTATIONS: There were none.

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 Chris Montgomery seconded the motion to adjourn. There were no objections and the meeting was adjourned at 11:20 a.m.