

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2009-0018
Application for)
)
North County) FINDINGS OF FACT,
Christ The King) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to construct phased tenant improvements and new construction of a religious facility with associated parking, campsites and playfield area for church members and guests on an approximately five and three quarter acre site.

Decision: The requested Zoning Conditional Use Permit is approved, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

I.

Applicant: North County Christ the King Community Church

Applicant’s Representative: Lesa Starkenburg-Kroontje

Property Address: 8794 Kendall Road
Kendall, Washington

Legal Description: SE ¼ of Section 16, Township 40, Range 5E, W.M.

Assessor’s Parcel Number: 400516 445370 0000 & 400516 414380 0000

Zone: R5A, Rural-1 Unit/5 Acres

Subarea: Foothills

Comprehensive Plan: Rural

SEPA Review: Determination of Non-significance, issued on 2/2/2010

Shoreline Designation: N/A

Fire District: No. 14

School District: Mt. Baker School District No. 507

Water: Well

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Rural/Residential
South: Rural/Residential
East: Rural/Residential
West: Rural/Residential

AUTHORIZING ORDINANCES AND POLICY

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
Whatcom County Code Title 24, Health Regulations

Legal Notices: Posted – February 24, 2010
Mailed – February 19, 2010
Published – February 25, 2010

Hearing Date: March 10, 2010

Parties of Record:

North County Christ The King
1816 18th Street
Lynden, WA 98264

Lesla Starckenburg-Kroontje
PO Box 231
Lynden, WA 98264

Sanja Barisic
Division of Engineering

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Agent Authorization
 - 1-2 Supplemental Application
 - 1-3 Trustee's Deed
 - 1-4 Determination of Completeness, dated October 13, 2010
 - 1-5 Property Owners within 1000-feet
 - 1-6 Notice of Application, dated October 19, 2009
 - 1-7 Form Memo to Tech Committee
 - 1-8 PDS Form "Instructions for Obtaining Names"
 - 1-9 Customer's Receipt
 - 1-10 Application Checklist
- 2 Staff Report, dated March 5, 2010
- 3 Agency Comments
- 4 DNS, dated February 2, 2010, with SEPA Checklist attached
- 5 Aerial Photo
- 6 Vicinity Map
- 7 Zoning Map
- 8 USGS Site Map
- 9 Proposed Site Plan
- 10 Preliminary Stormwater Proposal
- 11 Preliminary Traffic & Concurrency Information
- 12 PDS Application Form
- 13 Revocable Encroachment Permit Application
- 14 Washington State Health Department – Office of Drinking Water

- 15 Legal Notice, SEPA, dated February 2, 2010 [no affidavit attached]
- 16 Legal Notice of Application, dated October 19, 2009 [no affidavit attached]
- 17 Certificate of Mailing, dated February 19, 2010
- 18 Certificate of Posting, dated February 24, 2010
- 19 Affidavit, Legal Notice of Public Hearing, dated February 25, 2010

II.

The Land Use Services Division of Whatcom County Planning and Development Services recommended approval of the requested Zoning Conditional Use Permit, subject to conditions. The Findings of Fact and Conclusions of Law of the Division are set forth in a Staff Report, Exhibit #2, dated 2010, a copy of which is attached hereto and incorporated herein by this reference.

The Applicant indicated there were no factual inaccuracies in the Staff Report. The Applicant indicated no objection to any of the Conditions of Approval requested by Staff. There was no public comment on this matter.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed phased construction and remodel of an existing building as a church facility can be approved if it is consistent with the Zoning Conditional Use Criteria of WCC 20.84.220 (1 through 8). Subject to the Conditions of Approval attached to the granting of this permit, the proposal is consistent with the Conditional Use Criteria. A Zoning Conditional Use Permit should be granted, subject to conditions.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

A Zoning Conditional Use Permit is hereby granted to North County Christ The King for the proposed phased construction and remodel of an existing building to establish a church facility to be located on

Assessor's Parcel Nos.400516 445370 and 400516 414380, 8794 Kendall Road, Kendall, Washington, subject to the following conditions:

1. The use and location on the site as approved by this permit shall not be amended or changed in any way without further approval of the Hearing Examiner.
2. The Applicant shall comply with the conditions of the Division of Engineering, memorandum dated January 8, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.
3. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum dated November 3, 2009; unless modified by the Plans Examiner or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the Whatcom County Health Department memorandum dated December 3, 2009; unless modified by the Health Department or appealed to the appropriate agency.
5. The Applicant shall comply with the conditions of the Whatcom County Fire Marshal's Office, memo dated October 20, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
6. The Applicant shall obtain and complete the requirements for a Commercial Building Permit and any Land Disturbance Permits that may be required.
7. The Applicant shall provide a final parking plan which meets the requirements of WCC20.80.500 at the time of Building Permit Application.
8. The Applicant shall provide a landscape plan at the time of Building Permit Application which meets the requirements of WCC20.80.300.
9. The Applicant shall obtain a commercial sign permit for all proposed signs.
10. Any lights used to illuminate the parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
11. All trash and/or garbage collection and storage areas must be screened from view from

adjacent streets and properties using a solid fence or wall a minimum of six feet high.

12. Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.
13. The Applicant shall complete construction of Phase 1A within twenty-four (24) months of the date of the issuance of this decision. Failure to complete construction or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.
14. The Applicant shall apply for and diligently pursue the necessary building permits for construction of the additional phases of the permit within seventy two (72) months of the date of the issuance of this decision. Failure to apply for these permits or demonstrate compliance shall result in the expiration of this permit. Substantial progress toward completion may satisfy the terms of this condition if approved by Whatcom County Planning & Development Services and the Hearing Examiner. The applicant or permit holder may apply for an extension for a term of up to one year upon a showing that substantial progress has been made toward completion or compliance. An extension shall be granted if the Hearing Examiner finds that the applicant or permit holder will suffer a substantial hardship if the extension is denied. The Hearing Examiner may grant an extension for any other good cause shown, in his discretion, but extraordinary circumstances must be shown to obtain an extension of more than one year. The Hearing Examiner shall obtain the comments of Whatcom County Planning & Development Services before granting any extension.

NOTICE

This approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit

should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing.

Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 19th day of March 2010.

Michael Bobbink, Hearing Examiner

March 5, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of	CUP2009-00018
North County Christ the King	FINDINGS, CONCLUSIONS,
Community Church for a Zoning	AND RECOMMENDATIONS
Conditional Use Permit	

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting a zoning conditional use permit in order to construct phased tenant improvements and new construction of a religious facility with associated parking, campsites and playfield area for church members and guests on an approximately five and three quarter acre site.

Anticipated Phasing:

Phase 1: Tenant improvement of the existing building consisting of a meeting area, class room and office areas together with any required improvements to the existing kitchen, restrooms and on site sewage system. Also, an addition to the existing building or placement of a modular on an existing concrete pad is anticipated as well as some site development work in the southwest corner of the site for an informal play area.

Phase 1a: Campsite Construction consisting of paved pull-in sites for RV's or tent camping with power and water (no septic), as well as construction of a covered picnic area. This phase will also consist of new construction of an approximately 3,000 square foot sanctuary, commons, offices and conference room with associated parking.

Phase 2: New construction of an approximately 3,000 square foot addition to the approximately 3,000 square foot sanctuary and commons constructed in Phase 1a. This new construction will be for a middle school, kids place, nursery, restrooms and kitchen.

Recommendation: Staff recommends approval of the request, subject to the attached conditions.

II. PRELIMINARY INFORMATION

Applicant: North County Christ the King Community Church

Applicant's Representative: Lesa Starkenburg-Kroontje

Property Address: 8794 Kendall Road
Kendall, WA.

Legal Description: SE ¼ of Section 16, Township 40, Range 5,E., W.M.

Assessor's Parcel Number: 4005164453700000 & 4005164143800000

Zone: R(5) Rural-1 Unit/5 Acres

Subarea: Foothills

Comprehensive Plan: Rural

SEPA Review: Determination of Nonsignificance issued on 2/2/2010

Shoreline Designation: N/A

Fire District: #14

School District: Mt. Baker School District #507

Water : Well

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Rural/Residential
South: Rural/Residential
East: Rural/Residential
West: Rural/Residential

AUTHORIZING ORDINANCES AND POLICY:

1. Whatcom County Comprehensive Land Use Plan.
2. Whatcom County Code Chapter 15, Building Code
3. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11
4. Whatcom County Code Chapter 16.16, Critical Areas
5. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
6. Whatcom County Code Title 24, Health Regulations

III. FINDINGS

In order for the Conditional Use permit to be approved, the proposal must satisfy the criteria of WCC 20.84.220 (1 through 8). In summary, these criteria state that

the proposal must: be harmonious and in accordance with the general and specific goals and policies of Whatcom County's Comprehensive Plan and zoning regulations, be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

Applicable Codes and Policies:

Churches, educational, and religious training institutions, summer camps and cemeteries are conditionally permitted in the Rural zone pursuant to WCC20.36.153.

The Whatcom County Comprehensive Plan makes no reference to religious facilities.

WCC20.84.220(1) through (8) sets forth the criteria that must be satisfied in order for the request for a conditional use permit is granted.

If applicable, conditions are established in order to ensure the criteria are satisfied and potential impacts are mitigated. These conditions are set forth in the Conditions of Approval Section of this report.

Zoning Review:

Building Setbacks: Pursuant to WCC20.80.210, the required front yard setback is 45 feet and the side and rear yard setbacks are 5 feet. A review of the site plan indicates the setback requirements for the proposed new construction are met.

Lot Coverage: Pursuant to WCC20.36.450, "No structure or combination of structures, including accessory buildings, shall occupy or cover more than 2,500 square feet or 35 percent, whichever is greater of the total area." A review of the site plan indicates the lot coverage requirements are met.

Building Height: Pursuant to WCC20.36.400, Maximum height shall be limited to 35 feet. A review of the preliminary elevations depicted in the structural drawings indicates the building height limitation is met.

Landscaping: Landscaping shall be installed pursuant to WCC20.80.300. Prior to

the issuance of a building permit a scaled landscape site plan shall be submitted to and approved by planning and development services.

Parking: Parking shall be installed pursuant to WCC20.80.580. Pursuant to WCC 20.80.580(15), one space for each four seats is required.

Lighting: Pursuant to WCC20.80.523; any lights used to illuminate a parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.

Trash and storage areas: Pursuant to WCC20.80.355; all trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.

Signage: The applicant has proposed signage that will be in conformance with Whatcom County Code Requirements.

Conditional Use Criteria (WCC 20.84.220):

Before approving an application for a conditional use permit, the hearing examiner shall ensure that any specific standards of the use districts defining the conditional use are fulfilled, and shall find adequate evidence showing that the proposed conditional use at the proposed location:

(1) Will be harmonious and in accordance with the general and specific objectives of Whatcom County's Comprehensive Plan and zoning regulations.

Discussion:

The proposed phased construction of the religious and educational facility with associated parking, campsite area, covered picnic area and playfield area are an allowed use with a Conditional Use Permit pursuant to WCC20.36.153. The conditions set forth in the "Conditions of Approval" section of this report establish compliance, harmony and accordance with the Whatcom County Zoning Ordinance via the parking, landscaping, screening and buffering provisions set forth in the code. Compliance with these requirements as well as the standard setback, building height and lot coverage provisions will provide compatibility with existing surrounding land uses; thereby establishing harmony and accordance with the general and specific objectives of the Whatcom County Zoning Ordinance and the conditional use at the proposed location. The Whatcom County Comprehensive Plan makes no reference to religious facilities.

(2) Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential character of the same area?

Discussion:

Design and construction: The proposed religious/educational facility is designed and constructed in a manner that is harmonious and appropriate in appearance with the existing and intended character of the general vicinity because the proposed design has the appearance of the type of construction common in the rural areas of Whatcom County.

Operation and maintenance: The owners will provide regular maintenance in order to maintain the essential character of the area. Landscaping conditions to ensure compatibility with the existing and intended character of the general vicinity are established in the Conditions section of this report.

Essential character: The proposed religious/educational facility will not change the essential character of the area. Landscaping, signage and lighting conditions are established in the Conditions section of this report.

(3) Will not be hazardous or disturbing to existing or future neighboring uses?

Discussion:

The proposed use is not hazardous and is replacing the former use with improvements to the existing development and a new building, parking, RV campsites and playfield area with associated parking, landscaping, screening, buffering and lighting requirements. Whatcom County Engineering Services has required the applicant to contact the Washington State Department of Transportation for any requirements regarding an access permit.

(4) Will be serviced adequately by necessary public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services?

Discussion:

The site is serviced adequately by necessary public facilities. Police protection is provided by the Whatcom County Sheriff's Office. Fire protection is provided by Fire District #14. Refuse disposal is provided by the private sector. Potable water is provided by the on site well and the Whatcom County Health Department has required written justification from a licensed on-site sewage designer that the existing on-site sewage system will be sufficient for the proposed uses at the time of building permit application. In addition, certified As-Built drawings for the drainage system installed on the site is required for review by Engineering Services prior to the issuance of the Certificate of Occupancy.

(5) Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community?

Discussion:

The proposed improvements will not create excessive additional requirements at public cost. The costs of the proposed improvements will be borne by the church and will be a benefit to the economic welfare of the community as a result of private investment.

(6) Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors?

Discussion:

The activities associated with the new religious/educational facility will involve normal long term uses however will not be detrimental to persons, property, or the general welfare due to the conditions placed on the proposed use of the property which will serve to mitigate potential impact. Building lights will be placed to avoid the glare produced by such lights. No fumes or odors are anticipated as a result of this proposal. Traffic, noise and glare impacts will be mitigated by the imposition of conditions on the use of the land for the new facility.

(7) Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets?

Discussion:

Whatcom County Engineering Services has required the applicant to contact the Washington State Department of Transportation regarding any requirements they may have with respect to the access permit for this development

The requirements that must be met in order for the access permit to be issued address the design criteria that must be satisfied in order to mitigate interference with traffic.

(8) Will not result in the destruction, loss or damage of any natural, scenic or historic feature of major importance?

Discussion:

The proposed project will not result in the destruction, loss or damage of natural, scenic or historic feature of major importance.

IV. PUBLIC NOTICE AND COMMENT

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on October 19, 2009. Notice was also mailed to property owners within 1000 feet of the site.

- Public Input: During the public comment period for the Notice of Application, the County did not receive any public comment.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication.

V. STATE ENVIRONMENTAL POLICY ACT (SEPA)

A Determination of Nonsignificance was issued on February 2, 2010.

VI. AGENCY COMMENTS

Traffic, Drainage, and other Engineering Comments

Sanja Barisic of Whatcom County Public Works Department, Engineering Services provided comment on January 8, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Safety and Fire Comments

Police and fire protection for the site is provided by the Whatcom County Sheriff's Office and Fire District #7. No comments or concerns regarding this proposal were received from either agency.

Bill Hewett, Fire Inspector of the Whatcom County Fire Marshal's Office provided comment on October 20, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Health Department Comments

Charles Sullivan, Environmental Health Specialist for the Whatcom County Health Department provided comment on December 3, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Building Services Comments

Larry Kwiatkowski, Whatcom County Plans Examiner provided comment on November 3, 2009. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Critical Areas Comments

Lyn Morgan-Hill, Senior Planner, Natural Resources provided comment on February 2, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

VII. RECOMMENDATION

Planning and Development Services recommends approval of the Zoning Conditional Use Permit application subject to the following conditions:

VII. CONDITIONS OF APPROVAL

- 1) The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
- 2) The applicant shall comply with the attached conditions of the Division of Engineering's memo dated January 8, 2010; unless modified by the Division of Engineering or appealed to the appropriate agency.
- 3) The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner's memo dated November 3, 2009; unless modified by the Plans Examiner or appealed to the appropriate agency.
- 4) The applicant shall comply with the attached conditions of the Whatcom County Health Department memo dated December 3, 2009; unless modified by the Health Department or appealed to the appropriate agency.
- 5) The applicant shall comply with the attached conditions of the Whatcom County Fire Marshal's Office memo dated October 20, 2009; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
- 6) The applicant shall obtain and complete the requirements for a commercial building Permit and any Land Disturbance Permits that may be required.
- 7) The applicant shall provide a final parking plan which meets the requirements of WCC20.80.500 at the time of building permit application.
- 8) The applicant shall provide a landscape plan at the time of building permit application which meets the requirements of WCC20.80.300.
- 9) The applicant shall obtain a commercial sign permit for all proposed signs.
- 10) Any lights used to illuminate the parking lot shall be so arranged as to direct the light away from the adjoining property and the public road.
- 11) All trash and/or garbage collection and storage areas must be screened from view from adjacent streets and properties using a solid fence or wall a minimum of six feet high.
- 12) Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi

Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.

Report prepared in coordination with the Technical Review Committee by:
Brenda Wilson
Senior Planner