

WHATCOM COUNTY HEARING EXAMINER

RE: Zoning Conditional Use Permit) CUP2010-0001
Application for)
)
Redeemer Lutheran Church) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting a Zoning Conditional Use Permit to expand the operation of Bridgeway Christian Academy which currently operates a small school at the Redeemer Lutheran Church located at 858 West Smith Rd. The request is to add one additional 38-ft x 17-ft classroom within the existing building to accommodate 12 students.

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: Redeemer Lutheran Church/Bridgeway Christian Academy

Property Address: 858 West Smith Road
Bellingham, WA 98226

Legal Description: SW ¼ of Section 26, Township 39, Range 2E, W.M.

Assessor's Parcel Number: 390226 035018 0000

Zone: R5A, Rural-1 Unit/5 Acres

Subarea: Cherry Point/Ferndale

Comprehensive Plan: Rural

SEPA Review: SEPA Exempt

Shoreline Designation: N/A

Fire District: No. 7

School District: Ferndale School District No. 7

Water: Deer Creek Water Association

Sewage Disposal: On Site Sewage System

Neighboring Uses: North: Rural/Residential
South: Rural/Residential
East: Rural/Residential
West: Rural/Residential – Bakerview Christian School

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: Mailed – May 24, 2010
Published – May 27, 2010

Hearing Date: June 9, 2010

Parties of Record:

Redeemer Lutheran Church
Roxanne Rose
858 West Smith Road
Bellingham, WA 98226

Brenda Wilson
Planning and Development Services

Exhibits:

- 1 Land Use Application
- 1-1 Customer Receipt, dated January 14, 2010

- 1-2 Health and Safety Inspection Approval, dated July 15, 2009
 - 1-3 Supplemental Application
 - 1-4 Proposal Description
 - 1-5 Statutory Warranty Deed
 - 1-6 Determination of Completeness, dated January 26, 2010
 - 1-7 Form Memo, dated February 10, 2010
 - 1-8 Comment Letter Form, dated February 10, 2010
 - 1-9 PDS Instructions form
 - 1-10 Neighboring Properties, addresses and labels
 - 1-11 Staff Request for hearing date
 - 1-12 PDS Application Checklist
- 2 Staff Report, dated May 25, 2010
 - 3 Agency Comments
 - 4 Aerial Map
 - 5 Vicinity Map
 - 6 Zoning Map
 - 7 Site Plan
 - 8 Notice of Application requesting Legal Notice for February 10, 2010
 - 9 Certificate of Mailing of Public Hearing, dated May 24, 2010
 - 10 Affidavit of Publication of Public Hearing, dated May 27, 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 May 25, 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 construction of an additional classroom within Redeemer Lutheran Church in order to add 12 new students to the existing Bridgeway Christian Academy 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 Redeemer Lutheran Church for the proposed construction of a new classroom, adding 12 new students to the operation of the existing Bridgeway Christian Academy located on Assessor's Parcel No.390226 035018, 858 West Smith Road, Bellingham, 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 Whatcom County Plans Examiner, memorandum, dated February 12, 2010; unless modified by the Plans Examiner or appealed to the appropriate agency.
3. The Applicant shall comply with the conditions of the Whatcom County Health Department, memorandum, dated April 27, 2010; unless modified by the Health Department or appealed to the appropriate agency.
4. The Applicant shall comply with the conditions of the Whatcom County Fire Marshal's Office, memorandum, dated February 17, 2010; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
5. The Applicant shall obtain and complete the requirements for a Commercial Building Permit.
6. The Applicant shall obtain a Commercial Sign Permit for any proposed signs.
7. The Applicant shall complete construction or, if no construction is contemplated as a part of this permit, shall demonstrate compliance with all of the conditions of this permit within 24 (twenty-four) 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.

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 10th day of June 2010.

Michael Bobbink, Hearing Examiner

May 25, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of Redeemer Lutheran Church For a Zoning Conditional Use Permit	CUP2010-00001 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
---	---

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting a zoning conditional use permit in order to expand the operation of Bridgeway Christian Academy which currently operates a small school at the Redeemer Lutheran Church located at 858 West Smith Rd. The request is to add one additional 38' x 17' classroom within Redeemer Lutheran Church for 12 more students.

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

II. PRELIMINARY INFORMATION

Applicant: Redeemer Lutheran Church/Bridgeway Christian Academy

Applicant's Representative: Roxanne Rose

Property Address: 858 W. Smith Rd. Bellingham, WA. 98226

Legal Description: SW ¼ of Section 26, Township 39, Range 2,E., W.M.

Assessor's Parcel Number: 3902260350180000

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

Subarea: Cherry Point/Ferndale

Comprehensive Plan: Rural

SEPA Review: SEPA EXEMPT

Shoreline Designation: N/A

Fire District: #7

School District: Ferndale School District #7

Water : Deer Creek Water Association

Sewage Disposal: On Site Sewage System

Neighboring uses: North: Rural/Residential
South: Rural/Residential
East: Rural/Residential
West: Rural/Residential – Bakerview Christian School

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 for the approval of a conditional use permit.

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: N/A – Tenant Improvement within an existing church facility.

Lot Coverage: N/A – Tenant Improvement within an existing church facility.

Building Height: N/A – Tenant Improvement within an existing church facility.

Landscaping: Existing

Parking: Parking is established. Pursuant to WCC 20.80.580(22), one space for each teacher and pursuant to WCC 20.80.580(31), 2 spaces for each classroom.

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 was approved for a sign via a Request for a Revision to CUP1995-00015 approved by the Whatcom County Hearing Examiner’s Office on 8/18/09.

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 addition of one classroom to the operation of Bridgeway Christian Academy is 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 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:

The proposed additional classroom is located within Redeemer Lutheran Church and the use will not change the essential character of the area.

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

Discussion:

The addition of one classroom to an existing school located within an existing church will not be hazardous or disturbing to neighboring uses.

(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 #7. Refuse disposal is provided by the private sector. Potable water is provided by Deer Creek Water Association. Access is via existing county roads.

(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 Academy 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 addition of one classroom 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 are 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 are not significant as a result of adding one classroom within an existing church.

(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:

The vehicular approaches to the property are existing and have been reviewed by Whatcom County Engineering Services through CUP1995-00015.

(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 February 10, 2010. 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)

The application is exempt from SEPA review

VI. AGENCY COMMENTS

Traffic, Drainage, and other Engineering Comments

Sanja Barisic of Whatcom County Public Works Department, Engineering Services provided comment on February 26, 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 February 17, 2010. 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 April 27, 2010. See attached memo for entry into the Hearing Examiner File as an exhibit and condition of approval.

Building Services Comments

Curtis Metz, Whatcom County Plans Examiner provided comment on February 12, 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 conditions of the attached Whatcom County Plans Examiner's memo dated February 12, 2010; unless modified by the Plans Examiner or appealed to the appropriate agency.
- 3) The applicant shall comply with the attached conditions of the Whatcom County Health Department memo dated April 27, 2010; unless modified by the Health Department or appealed to the appropriate agency.
- 4) The applicant shall comply with the attached conditions of the Whatcom County Fire Marshal's Office memo dated February 17, 2010; unless modified by the Fire Marshal's Office or appealed to the appropriate agency.
- 5) The applicant shall obtain and complete the requirements for a commercial building Permit.
- 6) The applicant shall obtain a commercial sign permit for any proposed signs.

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