

CITY CLERK'S OFFICE

2014 OCT 27 A 11:49



October 25, 2014

City of Colorado Springs
30 S Nevada Ave, Suite 101
Colorado Springs, CO 80903

Attention: City Clerk's Office

VIA HAND DELIVERY

Re: Appeal of Colorado Springs City Planning Commission (the "**Planning Commission**")
Decision on October 16, 2014 with Respect to Agenda Items 7A and 7B Regarding Property
Collectively Referred to as 501 Castle Road (the "**Property**")

Dear Colorado Springs City Council:

Calvary Worship Center (the "**Church**") was adversely impacted by the decision of the Planning Commission described above and hereby appeals such decision pursuant to Section 7.5.906 of the City Code.

The grounds for the Church's appeal, which shall be elaborated in more detail in the discussion of specific areas of concern below, include:

1. the Planning Commission's decision was unreasonable based on existing zoning of contiguous property and prevents the highest and best use of the Property, and unreasonably rejected Planning Commission's Staff's (the "**Staff**") recommendation to approve the Church's change of zone and development plan request; and
2. the Planning Commission's decision was erroneous and based on misleading, irrelevant, and factually inaccurate data and assumptions.

Specific areas of concern giving rise to the grounds for the Church's appeal include: the impact of a zone change if granted; ground area coverage of property (density); geotechnical / slope instability concerns; the aesthetics of proposed retaining wall systems; stormwater drainage; parking and traffic; and; disparate treatment of the Church based on its proposed religious uses of the property.

A. ZONING

The Church's proposed conversion of the Property from PBC (Planned Business Center) and R-2/cr (Two-family Residential with conditions of record) to PUD Religious Use (Planned Urban Development) is required to designate the Property under a single zone district over the entirety of the property, under City Zoning Code 7.2.105.B.

It was unreasonable for the Planning Commission to deny the zone change because the proposed zone change will result in identical building standards as those currently existing. Indeed, in its recommendation of approval, Staff noted that the Church would maintain the same building parameters, including building height (45 feet in previously-designated PBC zones and 30 feet in previously-designated R-2/cr zones). *CPC Agenda*, October 16, 2014, pg. 149. Furthermore, religious use is currently permitted in zone PBC (City Zoning Code 7.3.203) and conditionally permitted in R-2 (City Zoning Code 7.3.103).

Accordingly, the Planning Commission's decision with respect to zoning was unfounded and unreasonable. Proposed zoning modifications will be consistent with City Zoning Code 7.2.105.B while not changing existing building requirements from current zoning. This represents a balance between (i) compliance with the need for a single zone to encompass the entire property as required by City Zoning Code 7.2.105.B, and (ii) the compromise agreed to by the Church not to expand beyond current zoning parameters and requirements, thus maintaining consistency with the neighborhood's current and past zoning and use expectations.

B. USE DENSITY / GROUND AREA COVERAGE

The Planning Commission appeared influenced by density of proposed building structures following Phase 3 of development upon the site. These considerations are unwarranted, unreasonable, and not based on a matter of law.

The existing PBC zone does not contain ground area coverage use restrictions, which means that the Planning Commission's determination regarding the same was not based on a measurable standard. Even if the Church were asked to agree to a ground area restriction, the current proposal, as noted on the first page of the Church's development plan would result in a structure lot coverage area ratio equal to 14.2% of the total footprint, well within the guidelines and character of the existing neighborhood. It should also be noted that a coverage ratio of 14.2% of total footprint is half the density requirement of comparable smaller commercial zones, such as PIP-1 (planned industrial park) requiring 30%; OR (office residential) requiring 50%; or OC (office complex) requiring 30%.

The Church also objects to the Planning Commission's characterization of planned building expansion in Phase 3 as too large. Even post-construction, the total ground area coverage of improvements remains less than 15%. The Planning Commission's determinations are not based on existing PBC, the proposed PUD zone requirements, or any other legal requirement related to land use.

C. GEOTECHNICAL, SOIL AND SLOPE INSTABILITY CONCERNS

The Planning Commission erroneously and unreasonably dismissed the Church's compliance with analyzing, identifying, and mitigating existing geotechnical, soil, and slope instability concerns. As noted by Staff, Jonathan L. White, Senior Engineering Geologist of the Colorado Geological Survey reviewed the Church's Geologic Hazard Study prepared by RMG Engineers dated June 2, 2014, and found, "We have reviewed the RMG report and generally concur with its conclusions and recommendations for the off-street parking structures. **Off-street parking at the toe of the slope is the best and most appropriate land use for this problematic parcel.**" (Emphasis supplied). In summary, Mr. White concurred with the conclusion of RMG that, "The proposed development, specifically the construction of the parking lot and retaining walls, does not exacerbate existing geologic hazards. Additionally, existing geologic hazards can be adequately mitigated through proper engineering and construction methods."

The Church objects to the Planning Commission's apparent reliance on factually irrelevant materials presented by opposition at the October 16th meeting. Opposing neighbors presented photographs of individual property problems resulting from their own individual foundation problems, which are unrelated to and do not necessarily adjoin the parcels at issue in the Church's development plan.

The Church also objects to the Planning Commission's assertions that the Property should be treated as though it were designated in a Hillside Overlay Zone. The Property is not so included, and therefore an impact analysis with the standards and development requirements of Hillside Overlay property do not apply to the Church. The Planning Commission was in error to deny the Church's application based on any treatment or consideration of the Property as a Hillside Overlay project.

Finally, the Church notes that its proposed retaining wall systems arguably may reinforce and prevent further slope instability, thereby better protecting both the property to the North and South of the current R-2 zone than leaving the soil as it currently remains.

D. RETAINING WALL AESTHETICS AND FUNCTION

Opposing neighbors raised objections to installation of the retaining walls currently proposed, and specifically to the "crib-lock" design. As a preliminary note, the proposed retaining walls are generally not visible to the owners of the property to the North and East. In addition, the Church has proposed, and the Staff has recommended approval of, mitigating measures both to improve overall aesthetics (including irrigated vegetative coverage) while maintaining safety.

The proposed crib-lock design, with its open cells, will best prevent raised concerns regarding "freeze-thaw" cycles because the open face / cellular design will allow groundwater to escape without expanding during a freeze into damaging cracks. The gravity-type wall design proposed by the Church is also superior in stability and overall risk impact as it may be installed with shallower cuts into the existing slope required than alternative installation suggestions. It was also the design recommended in the Church's geotechnical analysis.

E. STORMWATER DRAINAGE

The Church adequately has prepared a preliminary drainage report regarding impact of the proposed parking lots, which has been generally accepted by the City Engineering Development

Review (pending final acceptance of the development plan). The Church's proposed additions will not only address excess stormwater runoff caused by its development, arguably, it will improve existing conditions by installing a retention pond and "rain garden" that will result in a more-even flow of stormwater and prevent sedimentation and buildup along Willamette and Wilhelmina Avenues. Indeed, the installation of a retention pond will decrease sedimentary outflow and better regulate flow volumes onto existing downflow areas than will current conditions.

F. PARKING AND TRAFFIC

The Code requires that religious land use maintain a ratio of one parking space to every four seats, a ratio met in the current development plan. City Zoning Code 7.4.203.A. This is consistent with a number of similar uses that entertain sporadic, high-volume parking such as public assembly halls, semi-public community recreation centers, funeral services, stadiums or sports arenas, and theaters. *Id.* The proposed development meets this standard.

The City Traffic Engineering department requested that a traffic management plan be provided at the time of Phase 3, which the Church has accepted.

G. RELIGIOUS USE

The Church further requests that the City Council reverse the Planning Commission's denial in light of the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. The Planning Commission's rejection of the Church's proposed development plan will, unless corrected, substantially burden its religious exercise. That decision is therefore subject to strict scrutiny under RLUIPA, the most demanding level of scrutiny applied to government actions. RLUIPA also makes it illegal for the City to "impose or implement a land use regulation in a manner that treats" the Church "on less than equal terms with a nonreligious assembly or institution."

Two examples highlight the legal infirmity of the Planning Commission's denial under RLUIPA. First, by requiring the Church to provide more than one parking space for every four seats, the Planning Commission has not only deviated from the Zoning Code; it also treats the Church on less than equal terms with public assemblies (City Zoning Code 7.3.712). Second, the Planning Commission found the Church's development plan too dense, even though the proposed lot coverage is 14.2% of the total footprint. Given that this standard does not come from the Code, and that the Code itself permits a density of 30%, 40%, and even up to 50% (City Zoning Code 7.3.204), it is probable that the City would likewise be unable to defend this decision under RLUIPA.

Conclusion

The Church urges City Council to reverse the determination of the Planning Commission. The Church reiterates Staff's findings that the Church's project:

- Conforms to the City Comprehensive Plan, and specifically:
 - *Policy N 302* – Promotes development of mixed-use neighborhoods;
 - *Objective LU 4*: Encourages infill and redevelopment;

- *Policy LU 401*: Encourages appropriate uses and designs for redevelopment and infill projects;
- *Objective N 1*: Focuses on neighborhoods;
- *Objective N3*: Varies neighborhood patterns; and
- *Objective CCA 6*: Fits new development into the character of the surrounding area
- Conforms to the Area's Master Plan
- Does not deviate from existing zoning standards
- Has, and will continue to be subject to design and review standards with respect to proposed zoning (including building construction and height), slope stability and geotechnical requirements, traffic flow, and stormwater concerns
- Will not be issued final building permits to implement the development plan until all necessary stormwater, geotechnical, and traffic requirements reasonably imposed by the City have been met.

For the reasons set forth above, the Church appeals the above-mentioned decision of the Colorado Springs City Planning Commission to the City of Colorado Springs City Council.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Al Pittman', with a long horizontal flourish extending to the right.

Al Pittman
Senior Pastor