



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Case No: CU 17-23
Proposal: Church Ministry Homeless Shelter Program
Applicant: First Presbyterian Church (agent: Kristy Miller)
Owner: First Presbyterian Church
Location: 505 Sawmill Creek Road
Legal Desc.: Lots 10-13 Block 20 US Survey 1474
Zone: R-2 multi-family residential district
Size: Approximately 29,500 square feet
Parcel ID: 1-2920000
Existing Use: Existing Legal Non-Conforming Use (which happens to be a Church)
Adjacent Use: Residential, General Commercial, Central Business, School, Grocery, Education, & Non-profit
Utilities: Existing Municipal Utilities
Access: SMC and Baranof

KEY POINTS AND CONCERNS:

- The use is an existing legal nonconforming use, which happens to be a Church and that is a religious use. Religious uses and vested legal nonconforming uses have constitutional protections that must be considered.
- Community impacts such as concerns about safety, noise, odor, property value impacts, crime, traffic, loitering must be supported by substantial evidence and not just fears of the concern alone.
- Concerns about impact to residential character can be taken into account; however, the neighborhood is not just residential and also includes general commercial uses and central business district uses (grocery, island institute, school, social lodge, motel, police department), which should also be considered in establishing the character of the neighborhood.
- At each consideration, one suggestion is to consider the proposal against the status quo. For example, will the proposal make traffic safer or less safe than it is right now?

RECOMMENDATION:

It is recommended that the Planning Commission postpone a decision on the nonconforming use permit, but give some general direction to the applicant on feasibility of proposal and suggested policy and procedure considerations.

ATTACHMENTS

- A. Vicinity Map
- B. Aerial Map
- C. Zoning and Flood Map
- D. Floor Plans
- E. Plats

- F. Photos
- G. Application
- H. Narrative
- I. Mailing List
- J. Proof of Payment
- K. Comments

Project Summary & Background

Proposal: The applicant is proposing a seasonal men's shelter to run from October 1 to March 31 and accommodate up to 20 men from 7pm to 830am. The shelter would utilize the existing dorm hall and facilities of the existing non-conforming use of the First Presbyterian Church. The church would provide showers, laundry, food, and cots with existing infrastructure. It would be staffed by volunteers.

Community Outreach: The applicant has had 3 community scoping meetings and also have done walk-arounds with door knocking and letter/info sharing. Staff have worked with the applicant on community outreach and also with neighbors about their concerns. Staff attended all meetings hosted by the applicant. In addition, staff have sent out mailed notices as required by code and also posted this on the Planning Commission agenda via all necessary mediums.

Nonconforming Use Summary: A legal nonconforming use is allowed to exist until it is abandoned. This religious church nonconforming use has not been abandoned. Further, an existing legal non-conforming use is allowed reasonable expansion. It is in question whether a ministry program such as a men's shelter is an expansion or whether it is a part of their existing ministry. If a men's shelter is part of their existing ministry, the City would have no authority to approve or deny this proposal.

Summary of Update from Applicant: The applicants have been and will continue to work on building a community coalition, developing a policies and procedures, and addressing community concerns. The applicant's do not think they can get the shelter up and running this year. But they want to move forward with developing a community coalition and addressing community concerns and operational requirements.

Burden Upon Applicant: The legal burden is not upon staff, but upon the applicant. The applicant has more information to share and the burden, by code, is upon the applicant to present the proposal and to provide evidence that it comports with the zoning code, the Comprehensive Plan, and that it does not

negatively impact the public health, safety, or welfare, nor impact the surrounding properties or the character of the neighborhood.

Important Definitions and Considerations

The following includes definitions that the Planning Director felt were important to include to consider and to compare and contrast. Highlighted are specific areas of importance to draw your attention to key definitions, words, and/or phrases. After these definitions, there is further staff analysis and discussion.

22.16.050 R-2 multifamily residential district.

A. Intent. The R-2 [residential](#) district is intended to include lands suited by topography and other natural conditions for urban development and which are provided with the full range of public utilities, including sewers, water, electricity, and storm drains or are intended to be provided with such utilities in the near future. This district is intended primarily for single-family and multiple-family residences at moderately high population [densities](#). [Structures](#) required to serve governmental, educational, recreational, religious and limited professional [office](#) needs are allowed subject to permitted or [conditional use](#) restrictions intended to preserve and protect the [residential](#) character of the R-2 district.

22.08.167 Church.

“Church” means a [building](#) or [structure](#) generally open to the public and used as a place of gathering for the purpose of religious worship or related activities. The definition of a [church](#) shall be dependent upon IRS interpretation and that of the State Assessor’s [Office](#). A standard single-family residence not remodeled for public meetings shall not be considered a [church](#). (Ord. 02-1683 § 4 (part), 2002.)

22.08.840 Use, principal.

“Principal use” means the main, primary or [principal use](#) of the land, [buildings](#), or [structures](#) located on a [lot](#) or parcel of land. (Ord. 02-1683 § 4 (part), 2002.)

22.08.830 Use, accessory.

“Accessory use” means a use customarily incidental and subordinate to the [principal use](#) of the land, [building](#) or [structure](#) and located on the same [lot](#) or parcel of land. (Ord. 02-1683 § 4 (part), 2002.)

22.08.160 Building, principal or main.

“Principal or main building” means a [building](#) which contains the principal or main use of the [lot](#) on which it is situated. In a [residential](#) district, the [principal building](#) shall be the residence. In a [commercial](#) district, the [principal building](#) would be the [commercial](#) use. (Ord. 02-1683 § 4 (part), 2002.)

22.08.190 Commercial.

“Commercial” means activities involving sales or rental of any article, substance or commodity and the provision of all [commercial](#) services including financial institutions and [personal services](#). (Ord. 02-1683 § 4 (part), 2002.)

22.08.210 Conditional use.

“Conditional use” means a provision which allows for flexibility within the zoning title by permitting certain specified uses in zoning districts where said uses could be considered appropriate, but only after additional conditions and safeguards are applied to insure their compatibility with permitted [principal uses](#). Such conditions might include such things as parking, [signs](#), fences or other sight and sound buffers, protection of natural resources of value to the community or similar public concerns. (Ord. 02-1683 § 4 (part), 2002.)

22.08.360 Family.

“Family” means any number of individuals related by blood or marriage; any number of individuals coming under the definition of “handicapped persons” in the Fair Housing Act, with such persons present as reasonable accommodation will require for such handicapped persons to

occupy a [dwelling](#); or an unrelated group of not more than five persons, living together as a single housekeeping unit in a [dwelling unit](#). (Ord. 02-1683 § 4 (part), 2002.)

22.08.455 Hostel.

“Hostel” means a place where travelers may stay for a limited duration at low cost in a facility operated by a nonprofit entity that is appropriately recognized by a state or national [hostel](#) organization that may include dormitory-like sleeping accommodations. (Ord. 05-47 § 4(A), 2005.)

22.08.461 Household.

“Household” means a housekeeping unit consisting of any number of related persons; eight or fewer nonrelated, nontransient persons; or eight or fewer related and nonrelated nontransient persons, unless a grant of special or reasonable accommodation allows an additional number of persons. (Ord. 02-1683 § 4 (part), 2002.)

22.08.640 Nonconformity.

“Nonconformity” means any [lot](#), [structure](#), use of land, use of a [structure](#) or characteristics of such use which does not conform to the terms of this title but which was in lawful and active use on the effective date of the ordinance codified in this title. (Ord. 02-1683 § 4 (part), 2002.)

22.08.710 Quasi-institutional home.

“Quasi-institutional home” means a [residential](#) facility located in a residence or living unit, the [principal use](#) being to serve as a place for no more than six persons in an R-1 zone and twenty persons in an R-2 or larger zone seeking rehabilitation, counseling, self-help and [family](#) environment. This definition shall not include [dwellings](#) intended for use as a [family](#) setting for handicapped persons as defined in the Fair Housing Act. (Ord. 02-1683 § 4 (part), 2002.)

22.24.050 Nonconforming use permit.

A. **Purpose.** The purpose of this section is to establish decision criteria and procedures to allow reasonable limited expansion and continuance of nonconformities as defined in Section 22.08.640. Nonconformities including lots of record, buildings, and uses of land require a special degree of control to ensure compliance with applicable regulations and compatibility with the comprehensive plan, adjacent uses and the character of the surrounding areas. Limited exceptions, expansions or changes of use are allowed after approval of a nonconforming use permit by the city or after approval of an administrative nonconforming use permit. Nonconformities which do not comply with the provisions of this section shall be abandoned pursuant to city action.

1. **Nonconforming Use Permit.** Exceptions to the development standards of this title are allowed after approval from the city through a nonconforming use permit. The city may impose such conditions as deemed necessary to ensure proposals conform to the intent of the comprehensive plan and this code.

D. **Nonconforming Uses of Land.** Where, at the time of the passage of the ordinance codified in this title, lawful uses of land existed that would not be permitted under the regulations imposed by this title, the use may be continued so long as it remains otherwise lawful; provided, that:

1. No such nonconforming uses of land shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the date of the adoption of the ordinance codified in this title.
2. No such nonconforming uses of land shall be moved, in whole or part, to any portion of land or lot or parcel other than that occupied on the date of the adoption of the ordinance codified in this title.
3. If, for any reason whatsoever, the nonconforming use of land ceases for a period of twelve consecutive months or one year, any subsequent use of the land shall conform to the regulations specified in this title for the district in which the land is located.
4. No additional structures not conforming to the requirements of this title shall be erected in connection with such a nonconforming use of land.

F. **Extension of Nonconforming Structures and Uses.** Substantial alterations, expansions creating a material change in use or impacting adjacent properties, or moving of nonconforming structures or uses shall be subject to the following:

1. Variances are required for extensions of nonconforming single-family structures including mobile/manufactured homes and nonconforming accessory buildings on lots containing single-family structures, when the proposed extensions are within the required setbacks of the zoning district.
2. **Conditional use permits are required for all other proposed changes to nonconforming structures and uses not covered in subsection (F)(1) of this section.** This applies when a nonconforming use is to be changed to another equally nonconforming use. Conditional use permits granted in accordance with this section shall not change the fact that the use is still nonconforming and subject to the terms and conditions set forth in this title.

22.30.030 Administrator.

The term “administrator” shall mean the city and borough administrator, or an individual operating with his/her express knowledge on his/her behalf. Said individual may include, **but is not limited to,** the planning director or planning assistant. **The administrator is responsible for the administration of this title and shall review and act on the following:**

- A. **Administrative Interpretation.** Upon request or as determined necessary, the administrator shall interpret the meaning or application of the provisions of said titles and issue a written administrative interpretation. All administrative determinations shall be reported to the planning commission within a reasonable period of time following their issuance.
- B. **Nonconforming use permits.**
- C. **Administrative approvals as set forth in Section 22.30.150.**
- D. **Permit Procedures.** The administrator shall determine the proper procedure for all development applications.

Article V. Review and Approval Process

22.30.150 Administrative approvals without notice.

A. The administrator may approve, approve with conditions, or deny the following without notice:

6. **Required Findings for Nonconforming Use Permits.** The city shall grant a nonconforming use permit if documentary evidence is provided by the [applicant](#) to support the planning commission's findings that:

- a. Granting a nonconforming use permit is necessary to adapt the nonconforming use and associated [structures](#) to changes in technology, merchandising, or other generally recognized trends which affect the utility of [structures](#) or the applicant's ability to compete;
- b. Granting a nonconforming use permit will not introduce any (additional) hazards or interfere with the potential development of nearby properties in accordance with present zoning regulations;
- c. The nonconforming use and associated [structures](#) will comply with the requirements of Section [22.24.050\(B\)](#);
- d. The applicant's proposal will result in improvements in functionality or safety, or in exterior appearance, screening, access and other features which will make the use or [structure](#) more compatible with allowed uses; and
- e. Granting a nonconforming use permit will not detract from the intent of the [comprehensive plan](#) and any implementing regulation.

B. Administrator's decisions under this section shall be final on the date issued.

(Ord. 16-28 § 4, 2016; Ord. 04-60 § 4(J), 2004; Ord. 03-1746 § 4 (part), 2003; Ord. 02-1683 § 4 (part), 2002.

Summary of Code

Important to Compare and Contrast Various Definitions

It is important to compare and contrast the various definitions of the multi-family residential R-2 zone, with definitions of residential, church, nonconforming uses, principal uses, accessory uses, and commercial uses.

Current Definition of Church and Family/Household and R-2 zone.

Under existing code, one could operate a church in one's house with few restrictions and invite any persons into with little limits. More, one could permanently house between 5-8 unrelated 'family' or 'household' members (see definition of Church, family, and household).

R-2 Zone and Conditional Use Permit vs. Non-conforming Use Permit

A church in an R-2 zone requires a conditional use permit. Though this is a Church, since it is existing a Church use does not require a conditional use permit in this case. This is a firm conclusion.

What is the proper process? Permitted Existing Nonconforming Use or Conditional Expansion of Non-conforming use

What this existing nonconforming use may require is still in question. The code grants the Administrator or Planning Director the authority to decide this issue. The decision could be that either:

1. No City approval is needed because a men's shelter could be considered within the principal existing ministry use of the existing legal non-conforming use; or
2. That a non-conforming use permit to be approved by the Director with findings of fact by the Planning Commission. Staff will approach the analysis under this rubric. Though, staff have requested a legal opinion on this decision for further confirmation. Staff will report back next time on this decision.

Assuming that a non-conforming use permit is proper, then the following is required:

- I. The findings of 22.30.150.A.6 are required:

Required Findings for Nonconforming Use Permits. The city shall grant a nonconforming use permit if documentary evidence is provided by the [applicant](#) to support the planning commission's findings that:

- a. Granting a nonconforming use permit is necessary to adapt the nonconforming use and associated [structures](#) to changes in technology, merchandising, or other generally recognized trends which affect the utility of [structures](#) or the applicant's ability to compete;
- b. Granting a nonconforming use permit will not introduce any (additional) hazards or interfere with the potential development of nearby properties in accordance with present zoning regulations;

- c. The nonconforming use and associated [structures](#) will comply with the requirements of Section [22.24.050\(B\)](#);
- d. The applicant's proposal will result in improvements in functionality or safety, or in exterior appearance, screening, access and other features which will make the use or [structure](#) more compatible with allowed uses; and
- e. Granting a nonconforming use permit will not detract from the intent of the [comprehensive plan](#) and any implementing regulation.

II. The following are restrictions or prohibitions upon Non-Conforming Uses:

- 1. No such nonconforming uses of land shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the date of the adoption of the ordinance codified in this title.
- 2. No such nonconforming uses of land shall be moved, in whole or part, to any portion of land or [lot](#) or parcel other than that occupied on the date of the adoption of the ordinance codified in this title.
- 3. If, for any reason whatsoever, the nonconforming use of land ceases for a period of twelve consecutive months or one year, any subsequent use of the land shall conform to the regulations specified in this title for the district in which the land is located.
- 4. No additional [structures](#) not conforming to the requirements of this title shall be erected in connection with such a nonconforming use of land.

Neighborhood Character and Negative Impacts

Through these required findings, it important is to analyze the potential impacts to adjacent properties and character of the neighborhood. Of note, is that the neighborhood consists of an elementary school, a grocery store, single family homes and duplexes, the Island Institute, the Elks Lodge, the Police Department parking lot. Motel 8, and the Salvation Army. Except for the Salvation Army, the rest of the commercial and public institutional uses are across the street in the General Commercial District (C-1) and Central Business District (CBD). Staff would then conclude that the character of the neighborhood is mixed use that includes education and commercial uses as well as residential; though staff recognize that Sawmill Creek Road, for the most part, divides the commercial from residential uses. Staff used 300-400 feet radius from project location to determine neighborhood vicinity. There is no single definition of what constitutes a neighborhood, but typically a variety of factors can decide that such as distance, streets, feel, charm, essence, character, physical features, etc.

Conclusions and Recommendation

At this time, due to lack of a provided policy and procedures manual from the applicant, staff can't fully analyze the proposal and instead must conclude that more information is needed and

that the applicant has not met their burden. Again, the applicant has the burden to prove the proposal meets the required findings and code regulations and comprehensive plan goals, objectives, policies, and implementation actions. It is important to note that the applicant is making progress on their Policies and Procedures and will continue to work on that, plus continue to work on community outreach and coalition building as well as addressing community concerns.

Motions:

1. I move that it is found that the applicant has not met their burden of proof at this time in regards to negative impacts and neighborhood character nor provided enough information on the details of the proposed operation, but is making progress towards that. And it is further found that the applicant has been proceeding in good faith and came before the Commission to give the Commission and Public an opportunity to comment on their work in progress.
2. I move to postpone the public hearing and consideration of an expansion of a nonconforming use permit (church) for a seasonal men's shelter that proposes to operate from October 1 to March 31 from 7 PM to 8:30 AM at 505 Sawmill Creek Road. The postponement is to allow the applicant more time to develop their policies and procedures. In addition, this postponement will benefit the community by giving additional opportunity for input/comment. The property is also known as Lots 10, 11, 12, 13 Block 20 US Survey 1474. The request is filed by First Presbyterian Church. The owner of record is First Presbyterian Church.