

SUPPLEMENTAL STAFF REPORT

Point of Connection Ministry Church, CUP#18-10

March 26, 2019

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01. APPLICANT: Neal Isley, President, Point of Connection Ministries
83346 Joseph Hwy
Joseph, OR 97846
02. REPRESENTATIVE: Michael Robinson, Schwabe, Williamson & Wyatt
03. OWNER: Point Of Connection Ministries
04. REQUEST: To permit church use with "Transformational Housing" in the R-1 zone
05. LOCATION: The property description is Township 02S Range 45 Section 19 Tax lot 500
06. PARCEL CHARACTERISTICS: The parcel is zoned R-1, Rural Residential and is bordered to the immediate north by Rural Residential. Parcels farther north are zoned Rural Commercial. The subject parcel is bordered to the west and south by EFU and to the east, across Highway 82, by Rural Commercial. The Rural Commercial zone east of Highway 82 extends to the south. Immediately to the east of the Rural Commercial properties is a block of subdivisions zoned Rural Residential.
07. OTHER INFORMATION:
- Previously distributed:
Area and zone map
Permit application.
Findings from previous 2016 application.
Copies of RLUIPA and applicable ORS
08. PREVIOUS PLANNING DEPARTMENT AND OTHER AGENCY ACTIONS:
- | | | |
|------|------------|--|
| 1980 | ZP# 80/74 | Add a garage |
| 1996 | CUP#96/25 | Permit a sewing business and shop building |
| 2003 | CUP# 03-09 | Allow a Community Center in the form of a Youth Center |
| 2016 | CUP# 16-03 | Request to allow Transformational Housing. Denied and appealed to LUBA. Voluntarily remanded, but no action taken. |
09. STAFF COMMENT:

This hearing has been re-noticed. The applicant is applying for a Conditional Use Permit for church use with "Transformational Housing," or, clean and sober housing in the form of Community Based Structured Housing (CBSH) for up to 15 residents.

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Although there are multiple authorities having jurisdiction, there are two key regulatory entities whose legal authority should govern the evaluation of this application:

- 1) The Oregon Health Authority (OHA) through Oregon Administrative Rules (OAR), which define the nature of, and requirements for the use under review and
- 2) The Department of Housing and Urban Development (HUD) through Federal Law and the Fair Housing Act (FHA), which defines discrimination criteria and how jurisdictions may apply zoning rules.

These two entities establish rules (OAR 309-060-(0100-0170) and law (FHA) that take precedence over county land use and zoning regulations.

Per OAR, a CBSH is congregate housing where services and support are provided by the owner or operator of the facility to assist residents who have mental, emotional, behavioral, or substance use disorders (OAR 309-060-0105(9)). A CBSH does not require State licensing, but is subject to registration with the Oregon Health Authority. OAR rules pertaining to CBSH registration include occupancy limits, code compliance requirements, annual renewal, revocation criteria, and allowance for inspections.

Federal Law prohibits discrimination against anyone with a disability, which includes those with drug addiction or alcoholism. The FHA prohibits state and local land use and zoning laws, policies, and practices that discriminate based on a protected characteristic, such as a disability.

A joint statement by HUD and the Department of Justice (DOJ) outlines how local jurisdictions must apply the FHA with regard to land use and zoning. The FHA asserts that when two or more persons with disabilities live together, they may not be subject to requirements or conditions that are not imposed on a household consisting of *persons without disabilities* or more applicable in a residential zone, *families*. It does not matter if the housing is considered a group home. In the FHA context, the term “group home” refers to a dwelling that is or will be occupied by unrelated persons with disabilities. Therefore, limiting a residential zone to dwellings occupied only by families or unrelated adults cohabitating, but not allowing a dwelling to be occupied as a group home would be discrimination under the FHA.

Additionally, the Fair Housing Act requires that a state or local government must grant a reasonable accommodation request. A reasonable accommodation is a change, exception, or adjustment to a rule, policy, practice or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling. This could be interpreted as requiring an exception to a Residential zone land use ordinance so that it allows an FHA-defined group home as an outright use, or perhaps a conditional use, as long as the conditions were consistent with those that would be required for a family.

With regard to limitations on the number of occupants, Wallowa County land use regulation does not currently limit the number of related (family) or unrelated residents that can live in a dwelling, and therefore cannot limit on the number of persons with disabilities that can

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cohabitate, according to the FHA. However, OAR 309-060-0155 does describe CBSH occupancy limits, based on the number and size of bedrooms and OAR 309-060-0140 provides the OHA the authority to enforce rules through revocation of registration. As well, the local Fire Marshal has the authority to limit the number of occupants based on fire safety regulations and safety concerns.

Furthermore, as described in the HUD DOJ joint statement, the Commission would be in violation of the Fair Housing Act if it were to reject the proposal based on the fears, prejudices, stereotypes, or unsubstantiated assumptions that community members may have regarding persons with disabilities.

Given the reach of Federal and State legal authority pertaining to this application, Staff believes is not necessary to go through additional arguments. Staff acknowledges that the applicant provided a plethora of information. This included Oxford House case law, which illustrates an example of a similar proposal's local denial being overturned. As well, the applicant provided adequate proof that POC is a Church, and denial of the Church Use aspect of the application would not be defensible at the Federal level under RILUPA.

The Commission's options re this application include:

Approval as submitted.

Conditional approval

Consider a requirement for registration as a CBSH with the Oregon Health Authority and the requirement to remain in compliance with OAR CBSH registration requirements. The Commission should not impose conditions that it would not equally impose on other single-family residences in the zone, such as periodic reviews.

Denial as submitted.

10. PROPOSAL: To permit church use with "Transformational Housing" in the R-1 zone.

11. REVIEW CRITERIA:

Article 5, Public Hearing Review, Section 5.025;

Article 9, Conditional Use Permit, Sections 9.020 and 9.025;

Article 17, Rural Residential, Sections 17.015(03), 17.020(01), (03) and (08); RLUPA;

OAR 309-060-0100 through 309-060-0170;

Joint Statement from the Department of Housing and Urban Development and the Department of Justice; various other ORSs, and other applicable zoning ordinances or goals of Wallowa County and or laws of the State of Oregon.

PUBLIC HEARING REVIEW

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SECTION 5.025, NOTICE OF PUBLIC HEARING:

01. Public Hearing Review requires notice of hearing be given to all owners of property lying within:
[.....]

B. Two hundred fifty (250) feet of the exterior boundary of the subject property where the subject property is outside an urban growth boundary and not within a farm or forest zone;
[.....]

The Director will provide notice to other parties should it be determined their interests may be affected by the proposal or they have other need for notice. The notice shall be mailed or otherwise delivered no later than ten days prior to the hearing date.

02. Notice of public hearing shall be placed in a newspaper of general circulation no later than 10 days prior to the hearing date nor greater than twenty 20 days prior to the hearing date.

03. Notice of public hearing shall be posted on the Wallowa County Courthouse Public Notice Board no later than 10 days nor greater than 20 days prior to the hearing date.

04. Notice of public hearing regarding an application required by this ordinance shall, at a minimum, contain the following information:

- A. Name of applicant.
- B. Name of property owner.
- C. Property identification.
- D. Nature of request.
- E. Ordinance provisions which govern the review.
- F. Where application can be reviewed.

CONDITIONAL USE PERMIT

SECTION 9.020, REVIEW CRITERIA: After taking into account location, size, design, and the general nature of the proposed use; the hearing body must determine that the development will comply with all of the following criteria to approve a Conditional Use Permit.

01. The proposed use will be consistent with the purpose of [and is allowed conditionally in] the zone in which the use proposed.

02. The use will not create excessive traffic congestion, noise, dust, glare from lights, or other conditions that may be hazardous.

03. The proposed use will not overburden the public services of water, sewer, storm drainage, electrical service, fire protection, and school.

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- 04. The site is suitable to accommodate the proposed use, such as: topography, soils, and parcel size.
- 05. The proposed use will not interfere with uses permitted on adjacent parcels.
- 06. The application satisfies the pertinent criteria of Article 36, Salmon Habitat Restoration.

[.....]

SECTION 9.025, SPECIAL CONDITIONS: In granting a Conditional Use Permit, the review authority may impose any of the following conditions:

- 01. Limit the manner in which the use is conducted including the time an activity may take place and restraints to minimize noise, dust, glare, and odor.
- 02. Designate the size, number, location, or nature of vehicle access points.
- 03. Increase the amount of required street dedication, roadway width, or improvements within the street right-of-way.
- 04. Limit or otherwise designate the number, size, location, and height or lighting of signs.
- 05. Limit the location and intensity of outdoor lighting or require its shielding.
- 06. Require landscaping or screening to protect nearby property.
- 07. Protect existing trees, vegetation, water resources, wildlife habitat, or other significant natural resources.
- 08. Specify other conditions to permit the development of the County in conformity with the intent and purpose of the land use plan.

RURAL RESIDENTIAL ZONE

SECTION 17.015, PERMITTED USES: In a Rural Residential Zone, the following uses and their accessory uses are permitted:

- 03. Single-family dwellings.

SECTION 17.020, BUILDINGS AND ACTIVITIES PERMITTED CONDITIONALLY IN A RURAL RESIDENTIAL ZONE: The following uses and their accessory uses are permitted, subject to the provisions of Article 9, Conditional Use Permit.

- 01. Park, playground, or community center.

[.....]

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03. School

[.....]

08. Residential care homes and facilities. Homecare over 5 individuals.

12. STAFF RECOMMENDATION:

Staff believes that the applicant's narrative is consistent with definitions in OAR for a CBSH. Based on the reasoning above, staff believes that denial of the application would constitute discrimination under the FHA. Therefore, Staff recommends approval of this application with the sole condition of requiring CBSH Registration with the OHA, which is consistent with OAR.

12. CONCLUSIONS: To be developed at the hearing.