



# City of Sunnyvale

## Meeting Minutes

### Zoning Administrator Hearing

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Wednesday, October 10, 2018

3:00 PM

West Conference Room, City Hall, 456 W.  
Olive Ave., Sunnyvale, CA 94086

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#### **CALL TO ORDER**

Gerri Caruso, Zoning Administrator, called the meeting to order at 3:03 p.m.

#### **PUBLIC HEARINGS**

**File #:** 2018-7519

**Location:** 1025 The Dalles (APN: 320-11-010)

**Applicant / Owner:** Sunny Chinese Learning Center (applicant) / St Luke Lutheran Church Of Sunnyvale Ca (owner)

**Proposed Project:**

**USE PERMIT** to allow modification to a previously approved Use Permit (2012-7479 - Condition of Approval AT-1 and AT-7) to allow extended hours of operation (11:30 AM - 6:30 PM during school days and 8:30 AM-6:30 PM when students are on break) and outdoor play areas for the after-school educational enrichment facility, which now is considered a daycare use.

**Reason for Permit:** A Use Permit is required to amend a condition of approval (that is considered a major change) of an approved educational enrichment/daycare use in a PF (Public Facility) zoning district.

**Project Planner:** Shétal Divatia, Planner, (408) 730-7637, sdivatia@sunnyvale.ca.gov

**Issues:** Neighborhood Impact

**Recommendation:** Approve with conditions (Conditions of Approval in Attachment 2)

Ms. Caruso inquired with Shetal Divatia, project planner, had any comments or changes to the staff report.

Mrs. Divatia stated an addition to the 'Background' section of the staff report should include the additional hours of 5 p.m. to 5: 45 p.m. for the Youth Program that is held outdoors every Thursday.

Ms. Caruso opened the hearing to the applicants.

Lucy Liu, applicant, stated her concern with her organization being categorized as a

daycare center based on city code and would prefer it be called as an educational enrichment center.

Ms. Caruso inquired about the nature of the children's activities at the center.

Ms. Liu stated the children are taught Chinese language and culture.

Ms. Divatia stated the extended hours in which the children stay at the center are like those of a childcare in nature, thus the categorization is labeled as such under city code however the county still calls the center a heritage school.

Ms. Caruso inquired if the applicant would still need a use permit if the categorization stayed the same.

Mrs. Divatia stated they applicant would still require the use permit and there would be no difference otherwise.

Ms. Liu stated she would still prefer to be called an enrichment center due to the subject matter being taught.

Michael Colligan, Vice President of Saint Luke Lutheran Church, stated the school is registered and advertised as a heritage school and should reflect the same in the categorization.

Ms. Caruso stated the city code does not have the distinction of a heritage school, but the county and state does include it. Staff has reviewed the project under the city's definition for application of a use permit but the applicants can advertise as a heritage school. Currently, there is no city code listing for a heritage school distinction.

Ms. Divatia stated the staff report has noted the categorization of the heritage school in attachment 4.

Ms. Caruso inquired if the applicants have seen and read the conditions.

Mr. Colligan stated they have read the report.

Bob McKee, pastor of the church, inquired about placement of the wall.

Ms. Divatia stated the wall will be placed along the entire north property line. This determination includes results from the noise analysis, the concern from car noise during drop-off and pick-up during the extended hours during non-school days, and general increased use of the parking lot.

Pastor McKee inquired if neighbors do not want a wall, can the requirement of a wall be removed.

Ms. Caruso stated that if the consensus is towards not requiring the wall, she would take that into consideration and review the noise analysis report again. The noise ordinance should be met but here may be a different type of wall that could be used, but the masonry wall was suggested for its effectiveness in noise attenuation. Ms. Caruso stated she would like to hear from the neighbors first before making a final decision.

Mr. Colligan stated neighbors may not be happy with a masonry wall as the current fences open into the church property. He would like to further address the noise report and suggested a counter offer to extend the fence height around the entire north property line surrounding the Sunny Chinese outdoor activity area.

Ms. Caruso stated the description mentioned school activities would take place outside of the fenced area but understands why the fence was suggested.

Stan Shelly, the noise report author, stated he understands the intent of noise disturbance prevention. The city's requirement of a wall is unnecessary since it does not take into account that noise levels will not exceed the city's limit.

Ms. Caruso opened the hearing to members of the public.

Melita Chow, neighbor, stated she owns a property right next to the church property and inquired who suggested the new wall.

Ms. Caruso stated city staff recommended the wall be required once the project gets approved.

Ms. Chow inquired how long it would take to put up the wall.

Ms. Caruso stated the masonry wall will be hand built, and she estimated the wall would be built within one to two weeks. The old fence may be removed, based on

neighbor preference.

Ms. Chow stated she does not mind the noise from children and can deal with noise from traffic but would rather not have a solid wall since she would lose her view.

Ms. Caruso inquired if a different type of wall at 8-feet in height would change her mind.

Ms. Chow requested that if a wall is required, there should be natural looking alternatives outside a one made of masonry. She noted she noticed there is noise past the hours of operation, but she does not mind the noise of children playing and the masonry wall is unnecessary.

Janet O'Rourke, stated she lives along the north side of the church property. She and her husband purposefully looked for a house in a quiet neighborhood. Mrs. O'Rourke stated she and her husband have had problems with the Sunny Chinese school since its inception. After speaking with the school owners and church, there have been no long term effective noise mitigation measures. Even though they have acknowledged the problem, the noise levels return back to normal after a few weeks. Neighborhood Preservation has been involved three times over the past few years. In 2014, a Neighborhood Preservation Specialist visited the site and stated the center was in violation of their permit. In 2015, the specialist spoke with the center again and mailed a compliance letter and issued a citation for the violation. This past June, the specialist visited the site again and advised the center of their violations and conducted weekly follow up investigations and issued a total of three violations.

Since the center did not adhere to the conditions for approval in the past, Mrs. O'Rourke does not believe they will follow any of the current conditions of approval. When the center got approval in the past, they put in a play structure where children can see into her backyard. As such, she is against the request for extended hours. With regards to the recommended wall, Mrs. O'Rourke does not want it and prefers her redwood fence. If a wall is necessary, it should be placed around the center's fenced play area instead.

Glynis Price, neighbor, stated her house is located against the fire lane on the westward side of the church near the Amazing Creations preschool. When she was at a previous hearing in 2012, there was discussion of outside play and at the time the commissioner took into consideration the neighbors were already dealing with

noise of outside play with the daycare thus the Sunny Chinese learning center was told they could not allow for outside play.

Ms. Price also stated that at the same time the permit was approved, the play areas were built and the children play soccer in the afternoons and do outside activities at the picnic tables, with pictures shown to the Zoning Administrator. Ms. Price does not believe the center will not observe the permit requirements since they have not done so for the last six years. Ms. Price stated she worked with the church to get them to work with the businesses on site, with plans to let a limited number of children outside. This plan is similar to the request currently, and since the center did not honor it before, she does not believe the center will honor it now. Within the last few months, the Amazing Creations preschool just recently doubled the size of the play area backing up against the fire line. The play structures are so tall they can look over into the backyard. As a result, the play area for the preschool affects many more areas of the neighborhood. The center now also will be playing outside. Just a week ago, there were many kids outside playing when they are not supposed to be outside.

This permit should be in the context of the whole property and how it affects the neighborhood and whether or not it is compatible. While Ms. Price does not know if the expansion of the outdoor play area of the preschool was a permit modification but it did affect the neighborhood.

Dr. Christopher Oliva, neighbor, stated he appeared for the past related hearing in 2012 and expressed his concern that you can't expect to have 45 kids in two portable units and not expect them to go or be outside. As a business man, he complies with his use permits and does not violate them intentionally. Dr. Oliva stated the applicant has violated the use permits consistently since 2012. Now neighbors are being asked to accept another use permit for a program that has already been going on. The applicants have been cited multiple times, and are offering after school care and a camp in the summer in violation of the use permit. There is a pattern where this business is not complying with the regulations. The center should apply for a school accreditation if it is indeed a school, however this business is essentially a daycare center where kids are being dropped off after school. There is already a daycare center on the church property and there is at least one other daycare provider within 2 blocks from the site. This is not compatible with neighborhood. Dr. Oliva questions why businesses coming to this area and why is the neighborhood expected to absorb the increase in traffic, noise, inconvenience, lowered quality of life and property value. While he understands the

efforts of the church, the current developments are just too much. He and his wife moved next to a church and not next to a block of businesses.

Ms. Caruso closed the hearing to the public.

Ms. Caruso inquired with the applicants if they have a response.

Mr. Colligan stated Saint Luke has a lot of space and felt it important to offer these spaces to children to learn about their cultures and language. Considering the amount of land the church has and the number of operating businesses, he does not think it an excessive amount. The traffic in the neighborhood is mostly from the middle school nearby. The church grounds do not have walls, and neighbors are welcome on the property. The church is interested in a noise mitigation program that makes a beneficial situation for everyone. The church wants to extend the use of the campus in a way that is mutually beneficial but there has to be a mutually agreeable situation in terms of noise level. The noise report has been completed and shown to be within city ordinance levels. The church is willing to mitigate the noise levels further by utilizing alterative methods, so the noise will be limited to their own areas of activity.

Mr. Colligan recalled his attendance at the 2012 hearing and stated there was a misunderstanding in terms of outdoor activities including the educational elements of the curriculum being performed outside as opposed to children taking short breaks. A change in the use permit would be required to continue outside recess activities and that is why the church and the applicant are here today.

Stan Shelly stated improving the walls around the play areas would be more effective for noise mitigation, since the masonry wall would not be any more affective than an double wood fence. He recommended to extend the existing wall to 8 feed to reduce the noise transmission. The wall should be modified it to have two layers of wood with no cracks between the boards, for this kind of noise, a wood wall would be better and easier to construct.

Ms. Caruso inquired with the applicant about the preschool and why the expansion occurred.

Bob McKee stated the preschool wanted a better space for the kids. The school has spoken to the fire department and the enrollment has not increased. The preschool instructor stated the kids cannot look into the neighbor's backyards.

Ms. Liu stated the children are only taking a break anywhere between 10 to 30 minutes. The center tries to let the kids out during times when she thinks neighbors are not around and does not allow the kids to be out for long periods of time since the focus would be on studies.

Hong Zhang, a teacher at the Sunny Chinese Center, stated the elementary school kids are ages 5 to 9. Since the children go to school in the day, by the time they get to the center, they are already tired. The center lets them have recess and break times for fresh air. The kids did not perform well if they spent the entire time inside. The play structures are for an interesting play experience. The older children understand the situation however there are times where they get loud. They are reminded often to stay quiet when they are outside.

Ms. Caruso closed the hearing.

Ms. Caruso stated she understood where the church is coming from and the city has limited space for people to operate a legal childcare facility. At the same time the city has a responsibility to other property owners and neighbors to make sure they still feel they live in a residential area and that they can enjoy their homes.

Ms. Caruso will take the item under advisement to explore the past violations and revisit the noise standards and what the city is asking the applicant to do. Regardless of the fence, this will not address the disturbance to the neighbors. Between the hearing date and Friday, Mrs. Divatia will be working with Ms. Caruso for any questions she may have. Ms. Caruso sympathizes with the neighbors and will take all the statements into advisement and balance the information to determine a decision.

On October 12, 2018, the Zoning Administrator has determined the following:

**ACTION:** Denied the proposed project because the proposed expansion of the learning center use was not compatible within the immediate neighborhood.

**REQUEST FOR CONTINUANCE TO A DATE UNCERTAIN**

**File #:** 2018-7376

**Location:** 755 S. Bernardo Ave. (APN:198-16-006)

**Proposed Project:**

**SPECIAL DEVELOPMENT PERMIT:** To allow for the operation of a

6,920 square foot child care center within an existing one-story office building and installation of associated site improvements on a 0.87-acre parcel.

**Applicant / Owner:** JY International Group, Inc. / Atul S And Kusum A Sheth Trustee

**Environmental Review:** Class 1(a) Categorical Exemption from the California Environmental Quality Act (CEQA)

**Staff Contact:** Cindy Hom, 408-730-7411, [chom@sunnyvale.ca.gov](mailto:chom@sunnyvale.ca.gov)

This item was continued to a date uncertain.

### **ADJOURNMENT**

Ms. Caruso adjourned the hearing at 3:57 p.m.