

File: 2019-7502

RE: Appeal to deny the Special Development Permit for a childcare center providing preschool and after school care for 120 children within an existing 6,920 square foot building

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

Appellant: Allen Yu and Other Concerned Neighbors

Date: 10/31/2019

Dear Planning Committee:

I am writing to submit an Appeal of Director Decision to Planning Commission regarding File #2019-7502 (granting a Special Development Permit allowing for the construction of a childcare center providing preschool and after school care for 120 children within an existing 6,920 ft² building located at 755 S. Bernardo Ave.).

To save costs, John Leding and myself will join in the Appeal, with several other concerned neighbors contributing to this appeal.

Included here is a memo regarding CEQA and suitability of proposed site for childcare, and another set of documents directly related to issues of Church parking at the site.

I will email Cindy Hom separately on anyone who let me know they would like to be directly copied regarding future communication regarding this Appeal, but for now, it is sufficient to put myself and John as primary contact.

Our party is currently searching for and considering either jointly or separating retaining experts – including traffic expert, environment and land use attorney, noise expert, real estate attorney, etc. To the extent we do successfully hire expert who do separate reports, we will notify Cindy and send a copy of those reports to the City as expeditiously as possible.

Thank You.

Allen Yu

10/31/2019

APPEAL OF DIRECTOR DECISION TO PLANNING COMMISSION – MEMO REGARDING CEQA AND SUITABILITY OF PROPOSED SITE FOR CHILDCARE

File: 2019-7502

RE: Appeal to Reverse the Grant of the Special Development Permit by Planning Director

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

Appellant: Allen Yu, John Leding, and Other Concerned Neighbors

Date: 10/31/2019

CONTENTS

Contents	1
Introduction	3
On Why The Class 1 Categorical Exemption Must Be Reversed	3
On Why The Class 3 Categorical Exemption Must Be Reversed	4
Blind Corners	5
Cross-Driveway Intersections	5
Realistic Traffic Generation	6
The Issue of Parking.....	7
Children Foot Traffic.....	7
Concluding Thoughts.....	8
On Why The Class 32 Categorical Must Be Reversed	8
The City Should Deny the Conditional Permit location a 120 full-day childcare facility on 755 S. Bernardo.....	9
Located Directly Across from an Auto Repair Business, The permitted ChildCenter is inconsistent with the City’s guidelines for commerical child centers.....	9
located directly under 110 Kilo Volt High Voltage Transmission Lines, The Contemplated Child-Center is incosistent with established state norms and policies on school siting.....	11
By Locating Sensitive Areas of the School such as the Playgrounds Immediately Adjoining a Busy Street, The	12
Concluding remarks on CEQA and the special use permit in general	13

INTRODUCTION

This memo is submitted as part of the Appeal of Director Decision to Planning Commission relating to File #2019-7502. The Planning Director had granted a Class 1, Class 3, and Class 32 Categorical Exemption under CEQA and has also granted the permit to allow for the construction of a 120 children childcare facility with conditions. Appellant is appealing to the Commission to:

- Reverse the Planning Director's grant of all the Categorical exemptions under CEQA;
- Deny generally the Special Development Permit.

ON WHY THE CLASS 1 CATEGORICAL EXEMPTION MUST BE REVERSED

The Planning Committee should reverse the Planning Director's grant of Categorical 1 exemption because the contemplated use for the project does not involve a negligible or no expansion of use of the property at 755 S. Bernardo Ave.

Under CEQA Article 19, Class 1 exemptions apply to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities ... **involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.**

The Planning Department has determined the previous use is a medical office. The conversion of the current property from a medical office to a 120 children, commercial childcare center does not constitute "a negligible or no expansion of use" for several reasons.

First, childcare centers are governed by very different regulations than medical offices or general offices. Under Sunnyvale permit categories, a medical offices and commercial childcare centers are listed under separate categories. The current proposal in the location requires a "special development permit" while a new medical office would not.

Second, childcare centers impose traffic loads of a very different nature than that by a medical office. Traffic is generally distributed over the day for medical offices while traffic for full-day childcare facilities is clumped at beginning and end of day, during rush hours. A single doctor – working at full load might see 4 patients an hour, distributed throughout the day. A 120-children childcare operating at peak capacity would see 120 children coming and leaving at the beginning and end of day.

Third, evidence of the expansion of use of the proposed childcare center can be found throughout the plan document. Consider, for example, the following:

- To accommodate safe and efficient pick-up and drop off operations and to mitigate traffic impacts on Bernardo, the plan calls for a complete reconfiguration of the parking

lot – including limiting the directionality of traffic within the parking lot – and the conversion of the southern driveway to an emergency-vehicle-only restricted access.

- In anticipation of increased children foot traffic across Brookfield, the plan also calls for modifying the corner radius at the Brookfield Avenue and S. Bernardo Avenue intersection to reduce the crosswalk distance there.
- To reduce noise impacts on Citra Apartments to the West, the plan calls for the installation of a 6 ft. masonry wall along the entirety of the West and North property lines abutting Citra Apartments ... this despite having already moved the playgrounds from the West abutting Citra Apartments to the East abutting Bernardo.
- To protect children from traffic as well as the public that are in close proximity to the playgrounds, the plan calls for the installation of bollards between the drive aisle and the playground on the south side of the building as well as to surround all playground areas with 6-ft. tall fencing.

In McQueen v. Mid-Peninsula Regional Open Space (1988) 202 Cal. App. 3d 1136, the court declared that categorical exemptions are to be construed strictly and shall not be unreasonably expanded beyond their terms. A commercial, 120-student, full-day child care center would not constitute a negligible or no expansion of use. Granting a Class 1 exemption for a full-day childcare center here would constitute an unreasonable expansion of exemptions.

ON WHY THE CLASS 3 CATEGORICAL EXEMPTION MUST BE REVERSED

The Planning Committee should also reverse the Planning Director's granting of Categorical 3 exemption under CEQA because due to "unusual circumstances" surrounding the "location" of the project, the project would cause adverse impacts on the community in a "cumulative" and "significant" way.

Under Article 19 of the CEQA, Class 3 Categorical Exemption applies to construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. Section 15303(c) categorically allows for the conversion of commercial buildings up to 10,000 square feet in urbanized areas.

However, categorical exemptions – unlike statutory exemptions – are not absolute. Important exceptions limit categorical exemptions.¹

Section 15300.2(c) provides that "[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Thus, a project with "significant cumulative impacts" or which otherwise has a "reasonable possibility of resulting in a significant effect" does not qualify for categorical exemptions.

¹ CEQA 15031 Discussions on application of exemptions in general.

In McQueen v. Mid-Peninsula Regional Open Space, the court emphasized, “categorical exemptions ... may not be used where there is substantial evidence that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts which threaten the environment.”

The corner of Bernardo and Brookfield, where the project is located, features several “unusual circumstances” whereby adoption of the project would result in “cumulative” and “significant impacts” that threaten the environment.

BLIND CORNERS

First, several “blind corners” can be found at and near the vicinity of the Bernardo-Brookfield intersection that were never studied or even acknowledged in the Traffic Operation Report dated September 2018. Appendix 1 details a few of these “blind corners.”

At Brookfield, for example, traffic making a left onto Bernardo faces a “blind spot” to the south on Bernardo. Distracted and stressed drivers are often seen darting out from Brookfield trying to beat traffic that might leap out at any moment’s notice from their right.

This poses a danger to all, including not just other cars, but also bicyclists and pedestrians who cross the intersection. During the winter months when rush hour traffic occurs in the dark or during rainy season, this corner can be especially dangerous.

While the neighbors have been able to deal with such blind spots because traffic flow along Bernardo is generally not that high, the intersection is already tricky if not dangerous to navigate. The addition of traffic generated by a 120 children childcare facility may tip these intersections to be truly dangerous.

CROSS-DRIVEWAY INTERSECTIONS

A second “unusual circumstance” relates the closely located and unusual of set of driveways located crisscross from each other north of the project site. Appendix 2 describes a set of “Cross-Driveway” intersections formed by driveways of Citra Apartments and Cherry Chase Center on one end and three commercial properties (650, 660 and 700 S. Bernardo Ave.) across the street [herein “Business Plaza Across Street”] on the other.

These “Cross-Driveway” intersections functionally form another two sets of bona fide, unsignalized intersections and pose unique challenges. As described in Appendix 2, these intersections bring about not only the standard crisscrossing and conflicts of street intersections, but also unique mid-street crisscrossing and conflicts.

Many of these conflicts are made exponentially worse by the presence of the “blind spots” just discussed. For example, traffic leaving the south driveway of the Business Plaza Across Street has to negotiate not just oncoming traffic from the driveway across the street, regular traffic on Bernardo from the north, but also the potentially “blind” traffic from the south and the mid-street conflicts.

As noted in the Appendix, what is at concern here is that none of the issues associated with “Cross-Driveway” intersections are studied or even acknowledged in the Traffic Operation Report dated September 2018. A full impact report that takes into account the mid-street conflicts, that recognizes the existence of these “Cross-Driveway” intersections as bona fide traffic intersections, and that acknowledges the blind traffic coming from the south in light of the traffic generation by the proposed facility must be conducted to properly account for the environmental impact of the facility.

REALISTIC TRAFFIC GENERATION

Because of the “unusual circumstances” described above, it is paramount to get a realistic measure of the traffic that is to be generated by the project. The Traffic Operation Report dated September 2018 is insufficient for several reasons.

To start with, by presuming an AM peak hour traffic of only 94 (50 inbound trips and 44 outbound trips) and a PM peak hour traffic of 95 (45 inbound trips and 50 outbound trips), the study appears to presume a distributed traffic pattern more attuned to that of a general or medical offices than a full-day child care center.

A full-occupied 120 children childcare facility will generate a peak hour traffic of 240 by their clients alone (120 in + 120 out = 240 for the students). Per plan documents, the facility will need a staff of 25. This means the facility will generate a peak our traffic of around 270 during rush hour traffic when fully occupied.

The Applicant may argue for using average ITE numbers to assess environmental impact. However, while ITE numbers are useful for general planning purposes, they are not definitive numbers that are useful for assessing environment impact, especially where “unusual circumstances” have been identified – where accuracy is of importance.

In general, there are many problems with average numbers to access environmental impact in sensitive areas. In case of ITE, the numbers are averaged nationally – across urban, suburban, and rural areas – across facilities small and large – fully occupied and lightly occupied – across single income and dual income communities – communities that carpool and that do not, that bike and that do not – and finally, over a very long time (with some of the data used go back to the 1960’s), etc.

Not surprisingly, the data intrinsically possesses large standards of deviation, with the resulting average rarely corresponding realistically to any one area. A study by N. Carolina Department of Transportation on high schools, for example, reveals that while ITE publishes the trips generated per student to range from a rate of .71-2.49, with a mean of 1.31, the observed rate through the state was actually 1.22-3.96, with a mean of 2.40.²

² “Trip Generation Rate Update for Public High Schools,” PETERR.M. SLIPPAND JOSEPHE.HUMMER, available at <https://pdfs.semanticscholar.org/2863/37a4f8e9c8bee7ab9d50e26ce0291e8b9061.pdf>

Nevertheless, if the City must use an ITE model, the better model to use may be a public elementary school because a fully-occupied daycare in Silicon Valley where both parents work (and hence need full day child care) is most like a public elementary school, where students are dropped off and picked up around the same time at beginning of day and end of day.³

According to ITE 10th edition, traffic generation in elementary school is around 2 per student and according to Tripgen.org, 2.6 per student. This gives a trip generation of 240-312 for a 120 student facility compared to 94 or 95 presumed in the permit.

THE ISSUE OF PARKING

Another related issue to traffic impact is parking. According to the planning documents, the facility will provide 31 parking slots – including 10 drop-off/pick-up, 2 ADA slots, 1 for EV charging, and 2 for carpool. The report does not state whether 10 spaces would be enough for 120 students for pick-up/drop-off. Further, since the facility will require 25 for its staff, and assuming that the ADA, EV, and carpool slots will often be left unused, that means the facility will realistically require 40 spots⁴ while only providing 31, leaving a shortage of 9.

According to the Traffic Operation Report dated September 2018 there is plenty of street parking along Brookfield. This may be true for the sections immediately adjoining the property. However, just a few feet down the street, not much street parking is observed, at least before 8:30. Many apartments and other dense living dwellings occupy both sides of Brookfield, and it appears that many residents park their cars on the street.

Usually a small or even medium shortage in parking is per se not a major cause for concern for most locations. However, this is not the case for the project because of yet another “unusual circumstance.”

According to the Traffic Operation Report dated September 2018 noted, parking along Brookfield and Bernardo is not recommended for families with children and should be strictly prohibited by the school for safety reasons. Given this condition, any deficiencies in parking should be carefully evaluated, not just for impact on the neighborhood, but also potential impact on the safety of children who will be attending the facility.

CHILDREN FOOT TRAFFIC

One last issue is the potential foot traffic impact on traffic at the intersection. In the Traffic Operation Report dated September 2018, it is noted that the project is not expected to generate much foot traffic.

³ This is consistent with facts revealed in The Traffic Operation Report dated September 2018, where it is noted that Applicant expects pickup to be an issue and will commit to a staggered pick up time based on different age groups to reduce traffic impact between 6:00 – 6:30.

⁴ 25 (staff) + 10 (pick-up/drop-off) + 2 ADA + 2 carpool + 1 EV = 40 total

We are not so sure of this. The Project is to create a facility for both a childcare and afterschool. To the extent that this facility will be used as an afterschool, we might expect many children to walk from Cherry Chase Elementary, located just around 1,500 ft. away, to walk to the facility along Bernardo, crossing the Brookfield-Bernardo intersection.

What will be the impact of this on the Brookfield-Bernardo intersection? The Traffic Operation Study done thus far does not address the issue.

CONCLUDING THOUGHTS

Under CEQA, a Negative Declaration can be prepared only when there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.⁵

The Planning Director in the Agenda Item Prepared for the Public Hearing on October 16, 2019 referenced *Waters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809 where the Court held that there was nothing “unusual” *per se* about having a car wash and coffee shop in a commercial zone even when they abut residential areas so long as the project had adequate street access, would not have a significant impact on traffic, did not emit noise that go above permitted limits, and complied with all other codes and regulations. We have no problem with that case. The courts have always stipulated that “unusual circumstances” are to be evaluated in a case by case manner.

We fail to understand Planning Director’s response that this project “falls squarely within the rationale” of that case. However, we do believe we have produced herein “substantial evidence” that supports a “fair argument” that “due to unusual circumstances” associated with the location of this project, significant, adverse effects will probably result. As such, the categorical exemptions granted must be reversed, and a full set of EIR under CEQA must be produced.

ON WHY THE CLASS 32 CATEGORICAL MUST BE REVERSED

The Planning Committee should also reverse the Planning Director’s grant of Categorical 32 exemption under CEQA because the permit does not constitute an “in-fill development.”

Under CEQA Section 15332, Class 32 exemptions involve projects characterized as “in-fill development.” The section notes that this exemption “is intended to promote infill development within urbanized areas ... consist[ing] of environmentally benign in-fill projects which are consistent with local general plan and zoning requirements. This class is not intended to be applied to projects which would result in any significant traffic, noise, air quality, or water quality effects. Application of this exemption, as all categorical exemptions, is limited by the factors described in section 15300.2.”

⁵ http://resources.ca.gov/ceqa/flowchart/lead_agency/EIR-ND.html

Class 32 exemption is not appropriate for this project because this is not an “in-fill” project. Infill developments refer to the development of vacant parcels within previously built areas, involving the development of vacant or under-used parcels that got passed over by previous developments. Also, this exemption, should not be allowed where the project “would result in any significant traffic.” As with all other categorical exemptions, the exemption should not be allowed where there is a reasonable expectation of significant impacts on the environment.

THE CITY SHOULD DENY THE CONDITIONAL PERMIT LOCATION A 120 FULL-DAY CHILDCARE FACILITY ON 755 S. BERNARDO

In addition to asking the Planning Committee to reverse all the Planning Director’s grant of categorical exemptions under CEQA, we also ask the Planning Committee to take note of the many critical health and safety issues raised by this project. We believe that many aspects of this project contravene the health and safety guidelines that the City of Sunnyvale, PG&E, the California Department of Education, and the EPA have all adopted relating to the siting and design of commercial child care facilities.

LOCATED DIRECTLY ACROSS FROM AN AUTO REPAIR BUSINESS, THE PERMITTED CHILDCENTER IS INCONSISTENT WITH THE CITY’S GUIDELINES FOR COMMERCIAL CHILD CENTERS

First, the current project contemplates locating a child care center directly across an auto repair business. The City has published “Guidelines for Commercial Child Care Centers in Sunnyvale”⁶ which states:

The location of the child care center is critical to a child’s safety, well-being and quality of care. ... Commercially-zoned areas can include many different types of uses, some of which may not be compatible with the presence of many children. Examples include auto repair uses, businesses with high turnover of cars entering and leaving the facility, the use of chemicals or processes that could endanger children, and adult businesses. ... Child care centers should not be located within close proximity to adult businesses, auto repair uses and hazardous material sites.”

One of the Staff on the project told me that because the gas station and auto repair shop was located across the street, instead of on the same side, they felt the project complied with the City’s Guidelines.

I was shocked to hear that answer. It would appear that the Planning Director had no basis to determine what “close proximity” means. Would the City also approve a childcare facility directly across the street from an adult store? Should it be at the complete discretion of the Planning Director?

⁶ Available at <https://sunnyvale.ca.gov/civicax/filebank/blobdload.aspx?BlobID=24041>.

It should be clear that the City would like to prohibit locating childcare centers “within close proximity to” auto repair shops and gas stations because they emit pollutants that pose significant hazards to people who work or live nearby.⁷ Children are particularly sensitive and at risk.⁸ According to the NIH, children should not be allowed to play near gas stations.⁹ In siting new schools, the EPA recommends that attention be paid to the existence of gas stations “onsite as well as adjacent or nearby locations” – up to 1,000 feet away.¹⁰

Recent studies have shown that dangerous pollution from gas stations extends much further and in much higher concentrations than previously believed.¹¹ One prominent researcher noted that based on current knowledge, a “minimum” distance of 50 meters (164 ft.) should be maintained between gas stations and new construction of homes and 100 meters (or 328 ft.) for new constructions of “especially vulnerable” facilities such as “hospitals, health centers, schools, and old people’s homes.”¹²

Given the City’s clear Guidelines on locating childcare centers away from auto service facilities and clear scientific consensus recognizing the pollution footprints posed by such facilities on children extends at least a couple of hundred feet away, the City should not be approving a 120 full-day childcare center – especially with one that features playgrounds up front – directly across the street from an auto repair shop and gas station.

⁷ See <https://toxtown.nlm.nih.gov/sources-of-exposure/gas-station> (noting benzene, volatile organic compounds, particulate matter, and other chemicals such as solvents, antifreeze, asbestos, antifreeze, etc. as pollutants that endangers the surrounding public); <https://www.environmentalpollutioncenters.org/repair-shops/> (detailing some of the pollutions emitted by auto repair shops); “EPA Environment Siting Criteria Considerations,” p.59, available at https://www.epa.gov/sites/production/files/2015-06/documents/environmental_siting_criteria_considerations.pdf (listing the potential hazards gas stations pose to the immediate community: air pollution, soil contamination, ground water contamination, vapor intrusion into structures, vehicular traffic). See also “Hydrocarbon Release During Fuel Storage and Transfer at Gas Stations: Environmental and Health Effects”, available at https://www.researchgate.net/profile/Bernat_Adria/publication/282588456_Hydrocarbon_Release_During_Fuel_Storage_and_Transfer_at_Gas_Stations_Environmental_and_Health_Effects/links/573f209808ae298602e8eb6a/Hydrocarbon-Release-During-Fuel-Storage-and-Transfer-at-Gas-Stations-Environmental-and-Health-Effects.pdf (“Even if only a small fraction of unburned fuel is lost during vehicle refueling and fuel storage, the cumulative release of fuel to the environment can be large. ... Particularly affected are residents nearby gas stations who spend significant amounts of time [nearby]”)

⁸ See, supra note **Error! Bookmark not defined.** researchgate article (“Of particular concern are children who, for example, live nearby, play nearby, or attend nearby schools, because children are more vulnerable to hydrocarbon exposure.”)

⁹ <https://toxtown.nlm.nih.gov/sources-of-exposure/gas-station>

¹⁰ See supra note 7, EPA Environment Siting Criteria Considerations, at p.59.

¹¹ See e.g. <https://newwoodburncommunityschool.org/2011/03/19/gas-stations-are-not-school-and-child-friendly/> (“Gas Stations Are Not School and Child Friendly”, referencing, among others, a study that shows measurable cancer-causing pollution levels up to 400 ft. away from gas stations); <https://www.sciencedaily.com/releases/2011/02/110204130315.htm> (University of Murcia article); <https://www.newsweek.com/gas-station-toxic-fume-emission-high-1153637>; <https://www.sciencedaily.com/releases/2018/10/181004110021.htm> (“Gas stations vent far more toxic fumes than previously thought”, Oct. 4, 2018, Science News).

¹² See note 11 University of Murcia article

**LOCATED DIRECTLY UNDER 110 KILO VOLT HIGH VOLTAGE
TRANSMISSION LINES, THE CONTEMPLATED CHILD-CENTER IS
INCOSISTENT WITH ESTABLISHED STATE NORMS AND POLICIES ON
SCHOOL SITING**

A second reason why this location is not be suitable for a commercial childcare center is that the proposed project is located directly under 110 KVt high voltage transmission lines.¹³ Both PG&E and the California Department of Education have recognized the sensitive nature of children to potential environmental that hazards such as EMF pose to schools.¹⁴ Since 2006, PG&E has adopted a general EMF policy refraining from locating any new high voltage transmission directly over any area of a “school,” where “school” is explicitly defined to include “licensed day cares.” PG&E has also since prioritized “schools” over all other property types – including “homes” – to relocate preexisting high voltage electrical wires away from.

In line with PG&E policy, the California Education board has codified minimal setbacks for high voltage transmission wires for all new schools under its jurisdiction.¹⁵ Without a special exemption, no public school in the State today can be built under high voltage transmission lines; all new schools must be located away from high voltage transmission lines by set, legally codified distances.

The Planning Director responded in the Agenda Item for the October 16, 2019 Hearing (19-079) that there are no federal standards limiting EMF exposures from powerlines and no specific municipal codes against building schools under high voltage powerlines. Even if true, we believe the City is invested with the discretionary power to require all new commercial childcares to satisfy the setbacks mandated by both PG&E and CDE for new schools out of an abundance of care for the children. The City has time and again – throughout its municipal codes and through publications such as the Commercial Childcare Guidelines discussed above – recognized the sensitivity of children and the preeminence of children safety.

The Planning Director seems to believe that EMF exposure would be minimized when children spends time indoors.¹⁶ This is not scientifically true. If EMF exposure is an issue outside, it is an issue inside also because unlike RF or EF, EMF penetrates most building materials.

We would also like to bring to the attention of the Planning Committee CEQA Section 15186(c)(3)(B)(1), which requires that “[t]he health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.” We believe that “school” under that section should apply to large, commercial childcare facilities such as the one being proposed.

¹³ See Appendix 4 for details about these powerlines.

¹⁴ See e.g. “Electromagnetic Fields Design Guidelines for Electrical Facilities in Compliance with Decision 06-01-042,” available at https://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_2864-E.pdf and <https://www.cde.ca.gov/ls/fa/sf/powerlinesetback.asp>.

¹⁵ California Code of Regulations, Title 5, Section 14010(c), available at <https://www.cde.ca.gov/ls/fa/sf/title5regs.asp>.

¹⁶ Responding to our concern about EMF exposure by noting that “[m]ost activity will occur inside the building, with limited outdoor activity.” See Agenda Item for Oct. 16 meeting.

According to Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, conditional use permits allow cities to consider special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district, through a public hearing process. Conversely, conditional use permits also provides municipalities flexibility to control uses which could have detrimental effects on the community even if they are not explicitly prohibited by law.

At the minimum, the City should require the Applicant – either under CEQA or its own guidelines – to demonstrate that building a new school under high voltage powerlines – in violation of the proper setbacks mandated under the guidelines of both PG&E and CDE – would not prove harmful to the children who attend the facility.

Better yet, the City should deny this project based on the existence of these powerlines alone. Would the City to approve the construction of a set of new high voltage powerlines that run directly over existing schools and large childcare facilities? If not, why is the City approving a new school under existing lines?

If California is not building any new public schools under high voltage transmission lines; if PG&E is not building any new high voltage transmission lines over existing schools, including “licensed day cares”; and if PG&E has prioritized moving high voltage transmission lines from schools and “licensed day cares” over even “homes,” why is the City approving this project?

**BY LOCATING SENSITIVE AREAS OF THE SCHOOL SUCH AS THE
PLAYGROUNDS IMMEDIATELY ADJOINING A BUSY STREET, THE**

Another problem with the current project is that the project will locate the children’s play areas immediately adjoining Bernardo, a busy street that is also frequented by buses.

The EPA has long acknowledged the dangers of near-road pollution to children at Schools.¹⁷ The agency specifically recommends “locating land uses such as maintenance, storage, parking, and office facilities in the area closest to the roadway [so] classroom and play areas can be located farther from the roadway in areas where air pollutant concentrations tend to be lower.”

By locating playgrounds immediately adjoining Bernardo Ave, with no meaningful setbacks, the current plans subject children not only to near-road pollution, but also pollution from the gas station and auto repair shop across the street.

Besides near-road air pollutions, the EPA – and other organizations such as the WHO – has also recognized noise as an independent environmental hazard.¹⁸ Researchers have recently found

¹⁷ EPA Publication “Best Practices for Reducing Near-Road Pollution Exposure at Schools,” Available at <https://www.epa.gov/schools/best-practices-reducing-near-road-pollution-exposure-schools>

¹⁸ See, e.g., <https://www.epa.gov/clean-air-act-overview/clean-air-act-title-iv-noise-pollution>. See also <https://www.environmentalpollutioncenters.org/noise-pollution/> (specifically noting that noise pollution “negatively affects school performance in children”)

near-road noise pollutions to be a major primary environmental stressor on par with near-road air pollution.¹⁹

In the Noise Report by EDWARD L. PACK ASSOCIATES, INC. dated May 7, 2019, ambient noise levels were measured at three locations. However, none of three locations were not near the location of the playground most exposed to traffic noise at the boundary of Bernardo. Furthermore, all measurements were averaged into a cumulative DNL noise reading.

DNL (day-night average sound level) is a noise metric used to reflect a person's cumulative exposure to sound over a 24-hour period, expressed as the noise level for the average day of the year. Exposure to sudden and intermittent noise spikes, such as regular cars or buses passing by, however can cause long-term health effects even if they do not increase 24 hour averages such as the DNL.

We have only anecdotal evidence that Bernardo is not a quiet street. Walking down the street talking on our cellphones would be fine, for example, until cars or even buses pass by, at which time we would either have to ask the other side to repeat or have to yell into the phone for the other side to hear us. By setting the playground up front on the street side of the property, we are placing young children into that type of unhealthy environment.

Given that the project concerns a sensitive facility such as a school, the City should at the minimum require Applicant to submit more concrete evidence that siting the playground near the street would not expose children to unhealthy doses of noise. Even better, the Planning Committee should require the Applicant to relocate the playgrounds away from the streets, or deny this permit as a whole.

CONCLUDING REMARKS ON CEQA AND THE SPECIAL USE PERMIT IN GENERAL

As long-time members of the community, we acknowledge that quality childcare centers are in high demand in the area. However, the City has a responsibility to ensure that the sites chosen for commercial childcare facilities are consistent with all local zoning guidelines, do not adversely impact the neighborhoods, do not harm public health and safety, and do not harm the health and safety of children who will be attending the facility.

We do not believe the location for this project is suitable for the construction of a new 120 children childcare facility. The project not only brings about severe traffic impact to the neighborhood but raise serious concerns for the health and safety of the children who will be attending the facility.

At the minimum, we ask the Planning Committee to reverse the grant of all CEQA exemptions for the project and require the Applicant to go about preparing the full set of EIRs required under the CEQA. However, given that we have also found so many health and safety concerns, we

¹⁹ See e.g. "Noise Effects on Health in the Context of Air Pollution Exposure," Int. J. Environ. Res. Public Health 2015, 12, 12735-12760 available at <https://pdfs.semanticscholar.org/c31f/f744febd5a27764d6fd8cc01327518f6562c.pdf>

also ask the Planning Committee to take this opportunity to deny the special development permit if the concerns raised here are valid. Rather than force the Applicant to go through submitting the EIRs to only have the City reject the plan, a denial now will free the Applicant to go about searching for another site for their daycare and the property owners at 755 S. Bernardo Ave. to more expeditiously find a more suitable use for their property.

APPENDIX 1 BLIND CURVE CORNERS AT BERNARDO

The starting point of this Appendix is the Traffic Operation Report Dated September, 2018. The report is defective in a number of ways. One was that it did not mention unusual features such as blind spots in the vicinity of 755 S. Bernardo Ave. In fact, the report specifically noted:

The intersection of S Bernardo and Brookfield Avenue (#4) is expected to carry most of the foot traffic to the proposed child care/preschool. This unsignalized intersection, which has adequate sight-distance, provides a marked cross-walk across Brookfield Avenue which is stop-controlled.

This Appendix seeks to demonstrate how the “S-Curve” on S. Bernardo near the Brookfield Ave.-Bernardo Intersection creates several “blind” spots in the vicinity for traffic entering Bernardo.

The first blind spot involves traffic going along Brookfield turning left on Bernardo. As Figure 1 and Figure 2 show, the sight-distance as measured from Brookfield around the bend to the south is at best 305 ft. (with no cars parked on street) and at worst 175 ft. (with cars parked on street). Generally, based on national based standards,²⁰ you need about 11 feet of sight distance for every mile of posted speed limit plus 10. Since the posted speed limit in the area is 30 MPH (in reality, many cars actually travel closer to 40 MPH than 30 MPH, but for the purpose of this discussion, we will presume a speed limit of 30 MPH), this means that ideally, the sight-distance here should be 440 ft. A sight distance of 138 – 295 represents a 40-60% deficiency.



FIGURE 1: SIGHT-DISTANCE FROM BROOKFIELD LOOKING SOUTH WITH NO CARS PARKED ON BERNARDO

²⁰ See, e.g., A Policy on Geometric Design of Highways and Streets, 7th Edition. Alternatively see 2015 NJ Road Design Manual, Figure 6-A, available at <https://www.nj.gov/transportation/eng/documents/RDM/documents/2015RoadwayDesignManual20171129.pdf>



FIGURE 2: SIGHT -DISTANCE FROM BROOKFIELD LOOKING SOUTH WITH CARS PARKED ON BERNARDO

To better illustrate the blind spot, Figure 3 - Figure 7 showing several street view of Bernardo as seen from Brookfield are provided.

The neighbors have been able to deal with this deficiency because traffic flow along Bernardo is generally not that high. However during rush hour traffic, this corner can be tricky to navigate. Drivers turning north on Bernardo are often stressed and distracted from blind traffic and seen darting out from Brookfield trying to beat “blind” traffic that might leap out from the south at any moment’s notice.

Slower traffic such as bicyclists travelling south on Bernardo or on Brookfield trying to make a turn north onto Bernardo are especially at risk. During the winter months when rush hour traffic occurs in the dark or during rainy season, this corner can be especially dangerous.



FIGURE 3: BROOKFIELD, PROPERLY STOPPED AT CROSSWALK



FIGURE 4: BROOKFIELD, INCHING INTO CROSSWALK, POTENTIALLY IMPEDING PEDESTRIANS



FIGURE 5: BROOKFIELD, NOSING PAST CROSSWALK, COMPLETELY BLOCKING PEDESTRIANS



Figure 6: from middle of Brookfield looking south



FIGURE 7: 3/4 WAY TO CHURCH ON BROOKFIELD
CROSSWALK LOOKING SOUTH

A second blind spot is located on the northern driveway of the gas station across the street. Figure 8 shows that the sight-distance from the south and north driveways is 260 ft. – a 40% deficiency.



FIGURE 8: BLIND SPOT FROM NORTH DRIVEWAY OF GAS STATION ACROSS THE STREET

A third blind spot occurs further up north on Bernardo at the two driveways of the three commercial properties (650, 660 and 700 S. Bernardo Ave.) across the street [herein “Business Plaza Across Street”] on the other end of the “S-Curve.” Figure 9 and Figure 10 show that the sight-distance from the south and north driveways are at best 231 ft. and 385 ft. – i.e. a 10-50% deficiency.

Just like the blind spot on Brookfield and from the gas station, the community has been able to deal with this deficiency because the traffic flow along Bernardo is generally not that high. However during rush hour traffic, these driveways – especially the south driveway – can be dangerous to navigate. People who use the Business Plaza Across Street are often seen driving around to the north driveway or even Blair Ave to exit the plaza during rush hours. In fact, the Applicant of the project operates an afterschool in the Business Plaza Across Street and regularly instructs parents not to use the south driveway after pickup.

None of the blind spots described in this section were not studied or acknowledged in the Traffic Operation Reported Dated September 2018.

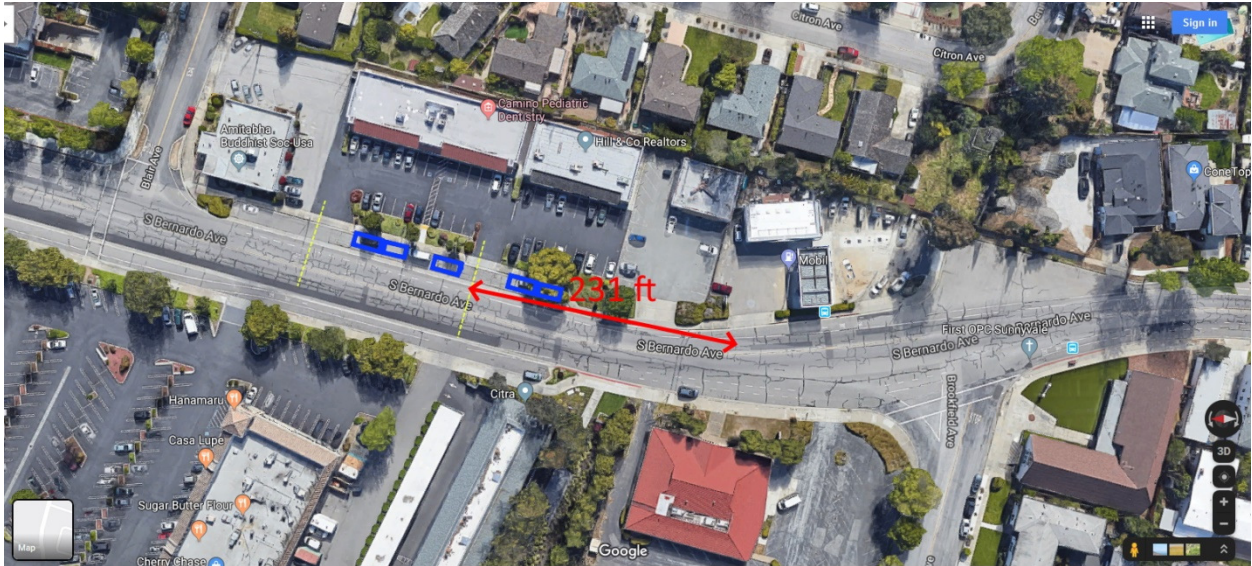


FIGURE 9: BLIND SPOT FROM SOUTH DRIVEWAY OF SHOPPING PLAZA ACROSS CHERRY CHASE CENTER



FIGURE 10: BLIND SPOT FROM NORTH DRIVEWAY OF SHOPPING PLAZA ACROSS CHERRY CHASE CENTER



Figure 11: View from south driveway of Business Plaza Across Street as driver inches into bike lane



Figure 12: View from northern driveway of Business Plaza Across Street as driver inches into bike lane

*APPENDIX 2 CROSS-DRIVEWAY INTERSECTION ALONG BERNARDO
BETWEEN CITRUS APARTMENT AND CHERRY CHASE CENTER AND THE
BUSINESS PLAZA ACROSS STREET*

Besides the blind spots described in Appendix 1, another unusual feature that is not acknowledged or studied in the Traffic Operation Report dated September 2018 relate to the sets of “Cross-Driveway” intersections between Citrus Apartments and Cherry Chase Center on one side and the Business Plaza Across Street on the other.

Figure 13 shows four driveways A, B, C, and D used by Cherry Chase Center, Citrus Apartments, and the Business Plaza Across Street. These Driveways functionally form two more intersections on Bernardo, with AC forming one set of “Cross-Driveway” intersection and B and D forming another.



FIGURE 13: "CROSS-DRIVEWAY" TRAFFIC ON BERNARDO. AS CAN BE SEEN, CLOSING OFF THE NORTHERN DRIVEWAY AND MAKING THE SOUTH EMERGENCY ACCESS ONLY, THE PROJECT DOES REDUCE “CROSS-DRIVEWAY” TRAFFIC ISSUES ON BERNARDO.

Because these driveway are bona fide intersections, all the regular crisscrossing and conflicts associated with normal street intersections arise here as well. Figure 14 illustrates how traffic leaving the south driveway of Business Plaza Across Street has to negotiate both oncoming traffic from the driveway across the street as well as the traffic along Bernardo.



FIGURE 14: CRISSCROSSING TRAFFIC ON SOUTH DRIVEWAY OF BUSINESS PLAZA ACROSS STREET WITH DRIVEWAY ACROSS STREET AND BERNARDO

Another issue that arises from the “Cross-Driveway” intersections is that because these are narrow routes, not wide streets, and because these driveways are offset just slightly, opposing traffic on Bernardo making left turns into properties on opposite side of the street inevitably crisscross and conflict in the middle of the street, as shown in Figure 15.

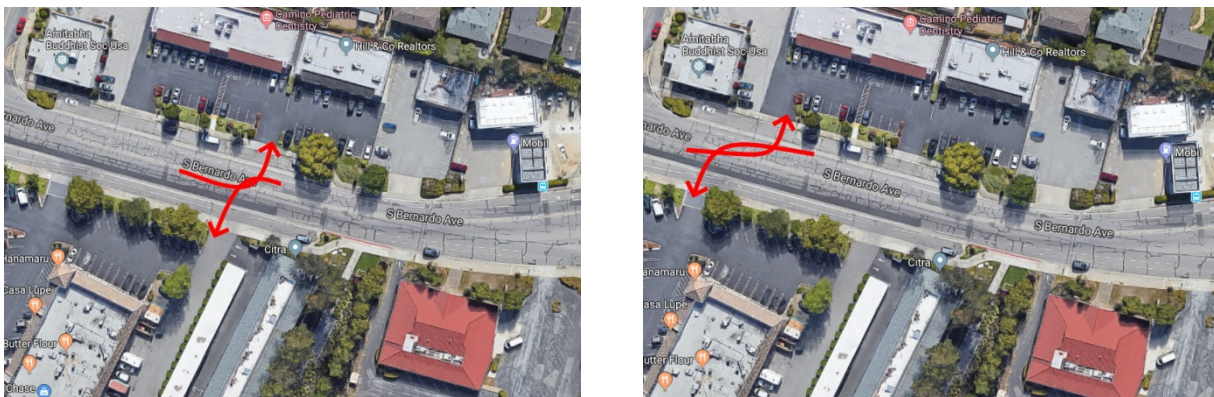


FIGURE 15: OPPOSING TRAFFIC ON BERNARDO TURNING LEFT AND CRISSCROSSING EACH OTHER IN MIDDLE OF STREET

What is at concern here – and not studied or even acknowledged in the Traffic Operation Report dated September 2018 – is not any one of these factors, but the combination off issues: the mid-street conflicts, the normal crisscrossing of intersections, all in combination with the blind traffic coming from the south.

APPENDIX 3 TRIP GENERATION RATES FOR PUBLIC K-12 SCHOOLS

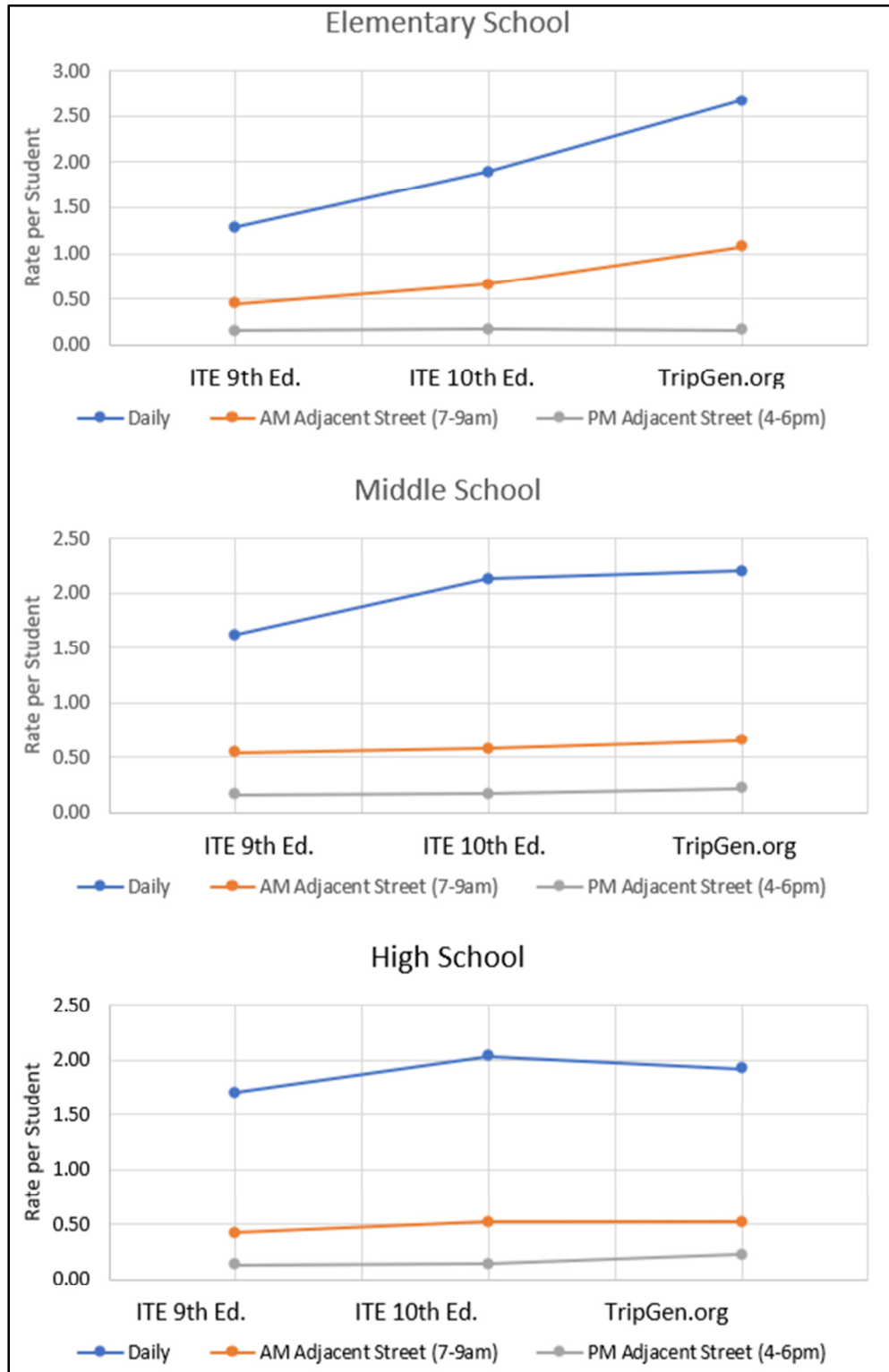


FIGURE 16: TRIP GENERATION RATES FOR PUBLIC SCHOOLS, SOURCED FROM [HTTP://WWW.MIKEONTRAFFIC.COM/TRIP-GENERATION-REVIEW-SCHOOLS/](http://www.mikeontraffic.com/trip-generation-review-schools/)

APPENDIX 4 THE HIGH VOLTAGE POWERLINES OVER 755 S. BERNARDO AVE.

The Appendix gives some more information over the high voltage powerlines in context of the proposed project. The powerlines is owned by PG&E and carries 115 KvT power.

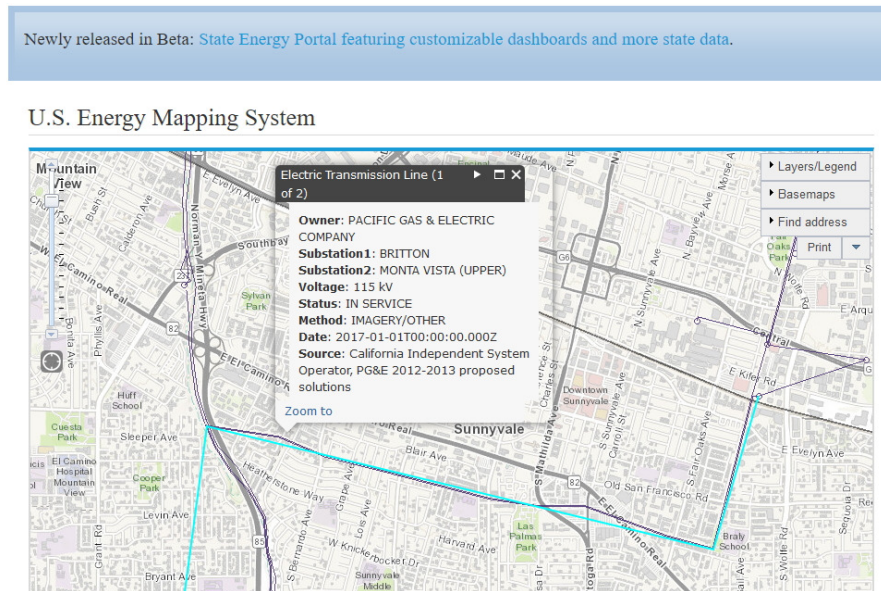


FIGURE 17: INFORMATION ABOUT THE POWERLINE FROM [HTTPS://WWW.EIA.GOV/STATE/MAPS.PHP](https://www.eia.gov/state/maps.php).



FIGURE 18: POWERLINE TOWERS ACROSS STREET



FIGURE 19: OVERVIEW OF POWERLINE OVER PROPOSED PROJECT



FIGURE 20: AN ROUGH OVERLAY OF PG&E AND CDE'S 150 FT. **NO SCHOOL ZONE** OVER THE PROPOSED PROJECT



FIGURE 21: POWER LINES IN CONTEXT OF PARKING AND PLAYGROUND IN THE PROPOSED PROJECT

APPENDIX 5 SOME IDEAS FOR MITIGATION

Some of the ideas for mitigating the adverse effects of the project are listed below.

- Place a three way stop sign at the intersection of S. Bernardo and Brookfield;
- Since many drivers speed around the “S-Curve” – travelling 40 MPH or more – let’s put some traffic calming device (e.g. flashing light with measured flashing on a display, or perhaps other ideas?) to slow down northbound traffic on Bernardo coming into and out of the “S-Curve”;
- Put a right turn only sign to route traffic coming out of the Facility so they do not enter back to Bernardo (even though many inevitably will find a way around this restriction by making a U-turn or something)

Documents relating to Church Parking at 755 S. Bernardo Ave.

Around 1955 First Orthodox Presbyterian Church of Sunnyvale purchased land at 1210 Brookfield Avenue from Chevy Chase Center Inc. This property was purchased in order to construct a church building for fellowship and worship. The Church purchased this property with the understanding that it would have permanent parking across the street at what is now known as 755 Bernardo Avenue. This parking easement was implied in the purchase of the land. The City of Sunnyvale has twice granted permission to the Church for the construction of its building on the basis it had the permanent use of the parking at 755 Bernardo. Without the demonstrated permanence of the parking for the Church the City would never have granted permission for these building permits. In the granting of the permit to build a childcare center at 755 Bernardo the City is greatly reducing the available parking to the Church. The City is also reversing its course on two prior decisions when it granted permission to build the Church with the use of this parking. The City is causing harm to the Church by the granting of this building permit without full acceptance by First Orthodox Presbyterian Church regarding the use of parking it has at 755 Bernardo.

- 1) In 1963 the City of Sunnyvale issued a building permit with the following condition having been met: "Proof that off-street parking meets ordinance requirements and will remain available to the Church" (Exhibit A)
- 2) This parking requirement was met by a letter submitted to the City of Sunnyvale on April 20, 1956 from the original owner of 755 South Bernardo Ave. the Cherry Chase Center (Exhibit B)

April 20, 1956

Mr. Wm. Patapoff,
P. O. Box 7,
San Jose, Calif.

Dear Sir:

RE: Church Parking in
Cherry Chase Center

As per our agreement when your church is completed on the corner of Brookfield and Bernardo, Lot 71, we will provide parking area across the street in Cherry Chase Center underneath the power line.

Yours very truly,
CHERRY CHASE CENTER, INC.

Fred C. Rudisill

FCR:bk

CC: John Cone

Sunnyvale Planning Commission - Agenda

March 25, 1963

USE PERMIT

876 - First Orthodox Presbyterian Church of Sunnyvale: application for approval of plans to add 3700 square feet to present building. Property located corner of Bernardo Avenue and Brookfield Avenue, 1210 Brookfield Avenue. (P-C Zone)

Staff Recommendation:

Approval of plans with yards as indicated, subject to the following conditions:

1. Provide proof that off-street parking meets ordinance requirements and will remain available to the church.
2. Parking area shall be paved per City standards.
3. Street cut permit and payment of standard City utility fees required.
4. Approval of landscape plans by Director of Planning.

Staff Discussion:

The City has no written evidence indicating that off-street parking is available to the church.

MINUTES

March 25, 1963

Public Discussion:

Mr. William Patapoff, P.C. Box 7, San Jose, representing the applicant, stated that he believed a letter had been submitted with the original use permit confirming the fact that the area across the street from the church, under the power poles, had been paved and was available for parking. Mr. Patapoff stated that he took no exception to the conditions of the Staff Recommendation.

Planning Commission Action:

Comm. Lawson moved that the Commission approve the plans in accordance with the Staff Recommendation, seconded by Comm. Leary and carried unanimously.

Reason for Action:

The Commission approved this addition as a logical extension of the present use already approved.

Sanctuary - Seating - 272