



File #: 18-1052, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: APPEAL by the applicant of a decision by the Zoning Administrator to deny: **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 with the proposed extended hours of operation would be considered a daycare use.

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

File #: 2018-7519

Zoning: PF (Public Facility)

Applicant / Owner: Sunny Chinese Learning Center (applicant) / St. Luke Lutheran Church of Sunnyvale (owner)

Environmental Review: Class 1 CEQA Exemption (CEQA Guidelines Section 15301, Existing Facilities)

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REPORT IN BRIEF

SUMMARY OF ZONING ADMINISTRATOR HEARING ACTION

This Use Permit was considered by the Zoning Administrator on October 10, 2018. A copy of the staff report is provided in Attachment 9 and meeting minutes of the public hearing are in Attachment 10.

The Zoning Administrator considered a request to modify the hours of operation and to permit outdoor play areas for the Sunny Chinese Learning Center. The Sunnyvale Chinese Learning Center is not a licensed child care or day care center; it is a “heritage school” that offers Chinese language instruction and cultural activities to school age children. Heritage schools do not need to be licensed by the state, but must comply with relevant local government regulations (Educ. Code Section 33195.4(f)).

The applicant proposes operating hours from 11:30 AM to 6:30 PM on days that public schools are in session and from 8:30 AM to 6:30 PM when schools are on break.

Several neighbors attended the public hearing and expressed their concerns for expansion of the use including:

- Noise exposure from kids playing in the outdoor play areas.
- Objection to staff’s recommended condition of approval for an 8-foot tall masonry wall because it would impair their views.
- On-going non-compliance issues that have not been remediated successfully.

Based on the administrative record and public testimony, the Zoning Administrator was unable to make the Use Permit findings. The Zoning Administrator determined the expanded use would not be compatible with the immediate residential neighborhood. The incompatibility of the expanded non-conforming use is demonstrated by the fact the applicant is already operating with extended hours, utilizing areas for outdoor play and the negative feedback received by adjacent neighbors.

The original Use Permit for this school was approved in August 2012 at a Zoning Administrator public hearing. The project included installation of two portable classrooms (total of 1,920 s.f. in size) for an after-school Chinese learning program for up to 84 students from K-8. That approval was subject to conditions of approval including restriction on hours of operations and outdoor play areas and the provision of landscape buffer to minimize the impact of this use on the adjoining residential neighbors. The operator has not operated the facility in compliance with the original use permit approval. The property owner has not acted with adequate oversight to ensure conditions of approval are addressed. As such, a good faith effort by the applicant and property owner has not been established. Approval of the permit would not be in the public interest as required by Sunnyvale Municipal Code 19.88.050 if issuance of the permit will impair the existing uses of adjacent properties.

ENVIRONMENTAL REVIEW

The proposed action is categorically exempt from CEQA pursuant to a Class 1 Exemption from (CEQA Guidelines, Section 15301, Existing Facilities). Staff considers the proposed modifications of the permit to be a negligible expansion of the existing use of the site under CEQA.

APPEAL

On October 26, 2018, the applicant for the Sunny Chinese Learning Center appealed the Zoning Administrator decision to deny a request for an expansion of the hours of operation and outdoor play area for a childcare center. The letter of appeal is included as Attachment 11 and states the “determination was not based on substantial evidence in the record”. The applicant also submitted a supplemental letter (Attachment 12) that proposes subsequent changes to the project that would:

- Further restrict the hours of operation and time periods for outdoor play;
- Implement noise monitors to ensure the noise levels do not exceed the City’s noise standards;
- Remove the requirement for the 8-foot tall masonry wall; and,
- Remove the landscaped screening (hedge) that was required as part of the original use permit.

STAFF COMMENTS

As indicated in the Zoning Administrator public hearing minutes, the Zoning Administrator’s decision was based on the following information provided in the administrative record, including:

Code Enforcement History

A summary of code enforcement activity is found in Attachment 13. Based on the complaint history log, the facility has been cited three times by Neighborhood Preservation for noise complaints and non-compliance with the conditions of approval. The use permit for this center was originally approved in 2012. The first citation was issued in March 11, 2014. At that time the applicant indicated they would apply for an amendment to their use permit to change the hours of operation and expand the outdoor play area. No application was filed. The second citation was issued in April 9, 2015 and resulted in an administrative fine of \$100. The most recent citation was issued in May 31, 2018. An application to amend the hours of operation and expand the outdoor play area was received on July 2, 2018.

Based on the code enforcement history, the applicant has repeatedly violated its conditions of approval. The applicant has not been proactive with addressing the noise complaints and slow to take the necessary action to bring the use into compliance. The non-compliance continues to occur to this date. Staff conducted a site visit in February 2019, and observed that the outdoor play area for the adjacent preschool (Amazing Creations Preschool, on the same church site) has extended their outdoor play area on the west side without a Planning Permit. This would be a separate code violation

on the same property, and is an indication that the property owner is not monitoring its tenants adequately.

In a letter received on March 1, 2018, the applicant argues that the past code violations at the property are not relevant to the required findings in Sunnyvale Municipal Code 19.88.050, which provides:

“The director, planning commission or city council may approve any use permit upon such conditions, in addition to those expressly provided in other applicable provisions of this code, as it finds desirable in the public interest, upon finding that the permit will either:

“(a) Attain the objectives and purposes of the general plan, specific plan, precise plan, or other specialized plan of the city of Sunnyvale; or

“(b) Ensure that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair either the orderly development of, or the existing uses being made of, adjacent properties.”

Applicant argues that if either of the findings (a) or (b) are met, then the Planning Commission must grant the permit. However, the first paragraph of Section 19.88.050 states that the Planning Commission must find that the permit is “desirable in the public interest”. A permit may be found “desirable in the public interest” if it either attains the objectives of the General Plan or if it “will not impair either the orderly development of, or the existing uses being made of, adjacent properties.” However, even if the permit meets the objectives and purposes of the General Plan, the Planning Commission still has discretion to find that it is not in the public interest because of its impacts on adjacent properties.

Applicant also cites several General Plan policies that refer to child care centers. The proposed use was not originally approved to be a child care or day care center; it is an educational enrichment use that provides language instruction and cultural activities.

Site Context and Design

As depicted in the aerial photo below, the St. Luke’s Church campus consists of the main sanctuary building, two auxiliary buildings, and two portable buildings. The central auxiliary building is used by the church for meeting spaces and adult and children’s bible studies. The auxiliary building located in the northwest corner is occupied by the Amazing Creation Preschool which utilizes open space on the south side of their building. The Sunny Chinese Learning Center operates in the two portable buildings adjacent to the Amazing Creation preschool. The applicant utilizes the adjacent open space as outdoor play areas on the north side of the campus which is not currently allowed by their use permit. Residential homes on the north and west side are separated from the childcare uses and their outdoor play areas by a parking lot to the north and a driveway on the west. The northwest corner is the most active area of the church campus with the preschool and learning center and their respective outdoor play areas. This area of the church campus is also the closest to residential homes. Based on the site context and history of code enforcement issues, the Zoning Administrator determined the request to legalize the proposed outdoor play areas (areas highlighted in red) would be an intensification and create an incompatibility.

*areas noted in red indicate proposed outdoor play areas

Noise Analysis

The applicant submitted a noise study (Attachment 5) which indicated the anticipated project generated noise levels meet the City’s noise standards. Although the noise study did not require any mitigation, staff recommended an 8-foot tall masonry wall due to the previous complaints about noise and the proposed extended hours of operations. The condition for the masonry wall was not acceptable to the neighboring residents because they felt that the location of the wall on the shared property line would impair their views. As such, the Zoning Administrator felt there were no other conditions that staff could impose that would mitigate the noise concerns and/or ensure compatibility.

If the Planning Commission can make the findings and can approve the project, however, staff recommends a condition that the existing 6-foot tall wood fence around the outdoor play area be augmented to improve its function as a noise barrier. This option was not included in the amended project proposal and therefore has not been examined in greater detail. Some of the residents stated their preference would be to have a wall/fence to be located around the perimeter of the play yards instead of a wall between their properties and the church site. The Noise Consultant stated improving the

fence around the play areas would be more effective for noise reduction compared to a masonry wall. He also recommended extending the existing 6-foot fence to 8 feet and consisting of two layers of wood with no cracks between the boards to reduce the noise transmission.



*areas noted in red indicate proposed outdoor play areas

Public Testimony at the Zoning Administrator Hearing (October 2018)

Approximately a dozen neighbors attended the public hearing and staff received comments from four people who live in the immediate neighborhood. Most of the residents in attendance felt their quiet enjoyment of their homes and backyards have been impaired by the noise generated from the outdoor play areas at the site. They do not support the project because there hasn't been long term, effective noise mitigation due to the applicant's failure to comply with the original conditions of approval that are supposed to ensure neighborhood compatibility. The residents felt the expansion of the use would further increase the incompatibility and intensify the site especially because the church facility is also home to other uses including the Amazing Creations Preschool, St. Luke's Youth program, Vacation Bible School and Boy Scouts which sometime overlap each other and make for a busy site. The neighbors also communicated their frustration about non-compliance and unpermitted changes that occur at the site.

Subsequent Changes to the Project proposal by the Applicant

a. Hours of Operation

The applicant had proposed to operate from 11:30 AM to 6:30 Monday through Friday when school is in session and 8:30 AM to 6:30 PM during school holidays and breaks. Based on the suggested changes by the applicant, the time restriction

would be applied to the operating schedule for the regular school session. The hours of operation would be limited to the following:

- 2:25 PM - 6:30 PM on Mondays, Wednesdays and Thursdays
- 1:45 PM - 6:30 PM on Tuesdays,
- 1:00 PM to 6:30 PM on Fridays.
- Additional/modified hours depending on Sunnyvale and Cupertino School District's schools schedules

The applicant is also asking for exceptions to the above hours during the first 6 weeks of the school year in which a maximum of 25 kindergartners will arrive at 11:55 AM Monday through Friday, and on early dismissal days (typically once per month) students will also arrive at 11:55 AM.

In staff's opinion, the proposed changes are very minimal as compared to the expanded hours of operations considered at the Zoning Administrator Hearing. These proposed amended hours are subject to change and exceptions which would make it difficult to monitor for compliance and therefore, enforce.

b. Outdoor Activity

The applicant had proposed four 30-minute outdoor play periods for a total of 2 hours per day. Each 30-minute period will have a maximum of 24 children supervised by at least one teacher (12 kids in each group with 2 groups at a time). Based on the amended operations by the applicant, the outdoor play times would remain the same but limited to 3:30-5:00pm in the fenced area. However, during summer breaks outdoor play will also be allowed between 10:30am-11:30am. The amendment also notes that children will not be allowed to play outdoors after they are picked up by their parents and that their teachers will strictly enforce this requirement. In staff's opinion, this change is considered very minimal and difficult to apply. It does not fully alleviate the noise concerns because the site would still have the same number of children outside twice a day generating noise that affects the surrounding residents. Impact from the proposed increased activity (drop-off and pick-up for camps) will continue to remain.

c. Noise Monitor

The applicant proposes to utilize a noise level monitor in the play areas to ensure that noise levels are within the noise standards. The applicant did not provide additional information on what type of monitor will be used. Staff consulted with Neighborhood Preservation Staff and they have indicated that a noise monitoring device would not be a preferred enforcement tool because of equipment maintenance and calibration issues and would require additional oversight by Neighborhood Preservation Staff. Staff does not consider a noise monitoring device as an appropriate measure to address noise impacts.

d. Removal of the requirement for the Masonry Wall and Landscaped Screening

The applicant would like to remove the requirement for the masonry wall adjacent to the surrounding neighbors because it is not desired by them or the residents. As mentioned in the meeting minutes, the residents did not want the wall on the shared property line because they felt it would impair their view. If they were to build a new wall, they preferred a wood fence to be in character with the neighborhood. Staff supports this request to remove the requirement for a masonry wall but maintain the existing perimeter wood fencing.

e. No planting of hedge/landscaping as required by original Use Permit

The landscape screening was one of the original conditions that has not been satisfied. The edge between the residents and church property could benefit from enhanced landscaping. Additionally, the landscaped buffer is a development standard that is applied for any use in a nonresidential zoning district which abuts a residential zoning district. As such, staff is not supportive of this change considering it is consistent with the City's development standards and there are no site constraints to make it infeasible or difficult to provide.

CONCLUSION

Staff recommendation for the Use Permit considered in October 2018, was to approve the project subject to Conditions of Approval (Attachment 9). Based on the testimony received at the Zoning Administrator public hearing and other factors noted in the meeting minutes (Attachment 10), the Zoning Officer denied the application.

Given the site's ongoing non-compliance history and ongoing code violations (and analysis of the

subsequent project changes as discussed above), staff recommends that the Zoning Administrator's decision be upheld to deny the use permit because the findings could not be made that the use meets Sunnyvale's General Plan goals and policies and adversely affects the neighboring single family residences.

PUBLIC CONTACT

Public contact was made by posting the Planning Commission agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website. Courtesy notices regarding the Council meeting were mailed to property owners and tenants within 300 feet of the project as shown in Attachment 1.

ALTERNATIVES

1. Deny the Appeal and uphold the decision of the Zoning Administrator to deny the Use Permit.
2. Find that the Action is Exempt from CEQA, Make the necessary Use Permit findings (Attachment 3) and grant the Appeal and approve the Use Permit as requested by the applicant subject to the findings in Attachment 9 and Conditions of Approval in Attachment 9.
3. Find that the Action is Exempt from CEQA, Make the necessary Use permit findings (Attachment 3) and grant the Appeal and approve the Use Permit with modifications, as determined by the Planning Commission, subject to modified Findings and modified Conditions of Approval.

STAFF RECOMMENDATION

Alternative 1: Deny the Appeal and uphold the decision of the Zoning Administrator to deny the Use Permit

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Reviewed by: Gerri Caruso, Principal Planner

Reviewed by Andrew Miner, Assistant Director, Community Development Department

ATTACHMENTS:

1. Vicinity and Noticing Radius Map
2. Standard Requirements and Recommended Conditions of Approval
3. Previously Approved Use Permit No 2012-7479 (Staff Report and Final Conditions of Approval)
4. Informational on Heritage Schools - California State Department of Education.
5. Noise and Mitigation Study
6. Letter from the Applicant
7. Public Comments Received
8. Site Plan and Photographs

Additional Attachments

9. October 10, 2018, Zoning Administrator Hearing Staff Report
10. October 10, 2018, Zoning Administrator Public Hearing - Meeting Minutes
11. Appeal Letter from Applicant
12. Applicant's Supplemental Letter
13. Code Violation Summary
14. Recommended Findings