



City of Sunnyvale

Agenda Item-No Attachments (PDF)

File #: 19-1209, Version: 1

REPORT TO PLANNING COMMISSION

SUBJECT

Proposed Project: Appeal of a decision by the Zoning Administrator to approve a Special Development Permit to allow a childcare center providing preschool for 120 children within an existing 6,920 square foot building.

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

File #: 2019-7502

Zoning: C-2/PD

Applicant / Owner: JY International Education LLC (applicant) / Atul S and Kusum A Sheth Trustee (owner)

Environmental Review: The Class 1, 3, and 32 Categorical Exemptions relieves this project from the requirements of CEQA.

Project Planner: Cindy Hom, 408-730-7411, chom@sunnyvale.ca.gov

REPORT IN BRIEF

General Plan: Commercial

Existing Site Conditions: Commercial building with surface parking and landscaping.

Surrounding Land Uses

North: Multi-family residential uses

South: Multi-family residential and quasi-public uses (across Brookfield Avenue)

East: Commercial buildings and uses (across Bernardo Avenue)

West: Multi-family residential uses

Issues: Noise and neighborhood compatibility

Staff Recommendation: Deny the appeal and affirm the Zoning Administrator's approval of the Special Development Permit subject to the recommended Conditions of Approval in Attachment 6.

SUMMARY OF ZONING ADMINISTRATOR ACTION

A Special Development Permit and Variance to allow a childcare center for the site and associated site improvements was first considered by the Zoning Administrator on November 28, 2018. The proposed project at that time included the outdoor play area along the west property line, adjacent to the existing apartment building. The Zoning Administrator denied the application due to potential noise impacts related to the operation of the outdoor play area in proximity to residential uses. The Zoning Administrator found that the project did not meet a California Environmental Quality Act (CEQA) Categorical Exemption and warranted further environmental review.

The applicant redesigned the project to meet the City's noise standards by relocating the outdoor play area towards the Bernardo Avenue frontage. The project was scheduled for the September 26, 2019 Zoning Administrator hearing but was continued to allow time to respond to public comments received after the report was published. A subsequent public hearing was held by the Zoning Administrator on October 16, 2019. The report to the Zoning Administrator for the October 16, 2019

hearing is provided in Attachment 1, with the September 25, 2019 report attached. After taking public testimony, the Zoning Administrator found the project to be compliant with the CEQA Categorical Exemptions in the report, and approved the project as recommended by staff (see Minutes in Attachment 2).

APPEAL

On October 31, 2019, the project was appealed by two members of the public, including the property owner of a commercial property owner across Bernardo Avenue and a representative of the church located across Brookfield Avenue. The appeal letter is included in Attachment 3. The appellants request the Planning Commission deny the Special Development Permit for the following reasons:

1. The Class 1, 3 and 32 California Environmental Quality Act (CEQA) exemptions are not applicable and should be reversed. Further environmental review should have been warranted due to “unusual circumstances” surrounding the location of the project that include blind corners, cross-driveway intersections, traffic generation, parking, and children foot traffic that would have adverse impacts.
2. The project site is not suitable for childcare due to health and safety concerns related to the proximity to the PG&E overhead power lines, auto repair and exposure to near-road pollution.
3. The project would reduce the available shared parking for the First Orthodox Presbyterian Church located at 1210 Brookfield Way.

STAFF ANALYSIS

The following is staff’s response to the appeal:

1. The Project meets the provisions for a Class 1 (Existing Facilities), Class 3 (New Construction and Conversion of Small Structures) and Class 32 (Infill Development) CEQA exemptions.

Staff has conferred with the City Attorney’s Office and finds that the exemptions were adequately used. In addition, there is no evidence of “unusual circumstances” that would warrant additional environmental review.

Staff has also reached out to AECOM, the traffic consultant that prepared the Traffic Operation Analysis (TOA) for the project in 2018, to determine if any of the traffic concerns raised by the appellant change any of the findings or conclusions. The consultant’s response is in Attachment 4. In summary, the consultant found there to be no evidence of safety hazards associated with the existing roadway configuration (curved road and sight distance when turning onto Bernardo Avenue) or driveway locations on other properties. The Transportation and Traffic Division also reviewed collision data along Bernardo Avenue within the last five years and did not find the data to indicate a serious hazard. In addition, the data is not unusual for this type of roadway.

The methodology used in the TOA for traffic generation is based on standard practice based on established ITE (Institute of Transportation Engineers) Generation used by all cities within Santa Clara County. Therefore, the trip generation and operational analysis for the project is accurate and no additional analysis is required.

2. The project is appropriate for the site and is compatible with the neighborhood.

The City’s adopted Guidelines for Commercial Child Care Centers in Sunnyvale provide guidance for

siting childcare facilities. Staff finds that the location is appropriate because there are no other uses on the same site that may conflict with parking, circulation and hazards. The adjoining property to the north and west are apartment complexes, which is complementary to childcare use. The appellant claims that the existing automobile service station and repair shop across Bernardo Avenue to the east poses a hazard to the childcare use. Staff does not find evidence that being located across the street from an auto facility is a hazard. In fact, other childcare uses have been approved across the street from other automobile facilities, such as Bright Horizons at 1010 Sunnyvale Saratoga Road, Tulip Kids Academy at 1279 Lawrence Station Road, and Tulip Kids Academy at 1159 Willow Avenue.

The automobile facility across the street has had previous environmental remediation on their site and continues to have residual contamination, which is not uncommon for automobile service stations throughout the City. In 2005, a closure letter was issued by the County of Santa Clara Department of Environmental Health, which confirms the completion of the investigation and cleanup of the previous underground storage leak. Therefore, the existing automobile facility does not currently appear to pose a hazard. Any future redevelopment of the automobile facility would have to comply with all applicable regulations at that time.

The appellant also claims that the high voltage power lines that bisect the parking lot on the site pose a safety risk for children. Currently, there are no Federal standards limiting residential or occupational exposure to Electromagnetic Force (EMF) from power lines. Moreover, there are no Sunnyvale Municipal Code (SMC) regulations that require a setback and/or land use restriction from power lines.

Lastly, the appellant also claims that the location of the outdoor play area facing Bernardo Avenue is unsafe for the children. As proposed, the outdoor play area ranges between 4 feet to 15 feet from the sidewalk along Bernardo Avenue, with landscaping and a 6-foot metal fence buffer. Bernardo Avenue is not a major arterial or freeway and traffic is considered to be low to moderate. Therefore, staff does not find evidence that there would be air quality, noise or traffic safety hazards with the proposed location of the outdoor play area.

3. First Orthodox Presbyterian Church cannot rely solely on subject site to meet their parking requirements.

The First Orthodox Presbyterian Church is located across Brookfield Avenue to the south and was built in the mid-1950s. At the time of the original Use Permit approval parking requirements were based on the size of the building, which resulted in 13 required parking spaces. In 1963, an expansion of the building was approved which eliminated their on-site parking spaces and increased their parking requirement to 93 parking spaces. This was because the parking requirements in effect at that time were based on the number of seats and employees. The Use Permit for the church expansion was required to secure parking spaces off-site. A private agreement was found in the file, which demonstrated a private agreement between the church and the subject property which was once part of the Cherry Chase Shopping center and allowed the use of 150-200 parking spaces. City staff have recently obtained a copy of the current parking license agreement between the church and the current owners of 755 S. Bernardo which provides that the church can use the parking lot on Sundays only. The agreement is for a month-to-month term and does not specify the number of spaces available.

Staff has conferred with the City Attorney's Office and found that there no legal basis to deny the current application due to the obligation to satisfy their own parking requirements. The church's private arrangement with 755 S. Bernardo does not entitle the church to parking in perpetuity or restrict the ability of the owners of 755 S. Bernardo to redevelop their property.

PUBLIC CONTACT

270 notices were sent to surrounding property owners and residents adjacent to the subject site in addition to standard noticing practices and on-site posting. Additionally, staff has received one public comment letter since the October 16, 2019 Zoning Administrator hearing.

ALTERNATIVES

1. Deny the appeal and affirm the Zoning Administrator's approval of the Special Development Permit subject to the recommended Conditions of Approval in Attachment 6.
2. Deny the appeal and modify the Zoning Administrator's approval subject to modified Conditions of Approval.
3. Grant the appeal and reverse the Zoning Administrator's decision to approve the Special Development Permit.
4. Continue the public hearing to a date certain if Planning Commission finds more information is needed.

RECOMMENDATION

The proposed childcare center complies with established Guidelines for Commercial Child Care Centers in Sunnyvale and is a compatible with the neighborhood. The project design complies with development standards and requires no deviations. Proper CEQA Exemptions were used and no further environmental review is required.

Alternative 1. Approve the Special Development Permit with recommended Conditions in Attachment 6 subject to the recommended findings in Attachment 5.

Prepared by: Cindy Hom, Associate Planner

Reviewed by: Noren Caliva-Lepe, Principal Planner

Reviewed by: Andrew Miner, Assistant Community Development Director

ATTACHMENTS

1. October 16, 2019 and September 25, 2019 Zoning Administrator Staff Reports
2. October 16, 2019 Zoning Administrator Meeting Minutes
3. Appeal Letter Dated October 31, 2019
4. Response from Traffic Consultant
5. Recommended Findings
6. Recommended Conditions of Approval
7. Public Comment Letter