



OFFICE OF COMMUNITY DEVELOPMENT

CITY HALL

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## PLANNING COMMISSION STAFF REPORT

**Agenda Date:** April 25, 2017

**SUBJECT:**

Consider an appeal of a Modification of an existing Use Permit (6-U-86 and M-2009-05) to allow a private school/daycare center to operate where an afterschool care is currently allowed and a Director's Minor Modification to allow installation of an outdoor play structure. (Application No.(s): U-2016-02, DIR-2016-34; Applicant(s): Diane Hsu (Christian Light and Salt Foundation); Location: 940 S. Stelling Road; APN: 359-25-041) Appellant: Srilakshmi Vemulakonda.

**RECOMMENDATION:**

That the Planning Commission deny the appeal, and uphold the Administrative Hearing Officer's decision to approve the project, in accordance with the draft resolutions (Attachments 1 and 2).

**DISCUSSION:**

**Application Summary:**

Appeal to an amendment to an existing Use Permit (M-2009-05 and 6-U-86) to allow for private school/daycare center to increase their hours of operation from 12pm to 6:30pm, to 7:00 am to 6:30 pm with a total of 70 students, and a Director's Minor Modification to allow for an outdoor play structure.

**Project Data:**

<b>General Plan Designation:</b>	Quasi-Public
<b>General Plan Neighborhood:</b>	Jollyman
<b>Zoning Designation:</b>	BQ (Quasi-Public Building)
<b>Lot Area:</b>	67,114
<b>Acreage:</b>	1.49 acres

Building SF:	Existing		Proposed
Building A:	1,985 square feet		No Change
Building B:	1,894 square feet		
Building C:	2,091 square feet		
Parking Stalls	Required	Existing	Proposed
Vehicular Parking	11stalls	57 stalls	54 stalls (after installation of new driveway)
Project Consistency with:			
General Plan:	Yes		
Zoning:	Yes		
Environmental Assessment:	Categorically Exempt		

**Analysis:*****Background***

On July 29, 2016, the applicant, Diane Hsu, representing the property owner, Christian Light and Salt Foundation, applied for a Modification of an existing Use Permit (6-U-86 and M-2009-05) to consider allowing a private school/daycare center to operate where an afterschool care is currently allowed and a Director's Minor Modification to allow installation of an outdoor play structure (see Attachments 3 and 4). The proposed project is consistent with Chapter 19.156 and Chapter 19.164 of the Cupertino Municipal Code as discussed in the Administrative Hearing Staff Report (Attachment 5.)

Prior to the Administrative Hearing, the applicant held two public outreach meetings on February 10, 2017 at 10:00 a.m. and 4:00 p.m. The meetings were attended by four neighbors.

Prior to the public hearing on the project, staff received comments from citizens with concerns about:

- Parking and traffic impacts.
- Noise impacts.
- Neighborhood safety
- Privacy

The project was heard and approved by the Hearing Officer at the February 23, 2017 Administrative Hearing at which Conditions of Approval were added to address the concerns raised by the neighbors. The conditions included (1) delaying the start time of the private school/daycare use to 8am, (2) requiring the preparation and establishment

of a Traffic Management Plan and traffic monitor for the parking lot, (3) periodic review of the noise generated, and (4) to study with the City on the feasibility of a new driveway approach on Stelling Road.

On March 8, 2017, the appellant, Mr. Srilakshmi Vemulakonda, filed an appeal (see Attachment 6).

### ***Basis of the Appeal***

The appellant's basis of appeal is summarized below in *italics* and staff responses follow.

#### **1. Parking and Traffic Impacts**

- a. Traffic was not addressed sufficiently (i.e. traffic study, examination of Jollyman Lane and South Stelling Road).*

The City's Senior Transportation Engineer determined that, based on the size and the scope of the project and Valley Transportation Authority (VTA) guidelines, a traffic study was not necessary. The total number of cars, from the proposed project, even if it is assumed that there would be no siblings attending the school (therefore reducing the number of trips), is a very small volume for a standard residential street that serves approximately 20 homes and would not result in any safety or operational issues.

The project also proposes to reduce the total number of students from 90 to 70, and will therefore, result in a decrease in the amount of p.m. traffic from the project. Finally, as a condition of approval, the property owner is required to work with the City on a new driveway approach along South Stelling Road. The opening of a new curb cut on Stelling Road at a controlled intersection would incentivize more users of the site to use the new driveway, thus further reducing the impact to Jollyman Lane.

- b. The change of the start time does not help alleviate traffic concerns. A start time of 9:00 a.m. to 6:00 p.m. sharp with no incidental pick up may alleviate concerns.*

Pre-schools generally operate between the hours of 7:30 a.m. to 6:00 p.m. and most, if not all, allow incidental late pick up and drop off, for a fee, until 6:30 p.m. as a service to parents who run late or get delayed due to unforeseen circumstances. The request for the restricted start times may not align with standard operating practices for childcare services.

The Conditions of Approval, including the start time, are intended to ensure consistency with the City's Municipal Code, and are intended to address concerns identified by the public at the Administrative Hearing, including traffic.

- c. *Traffic and safety concerns at the intersection of Jollyman Lane and Stelling Road. A traffic monitor should monitor operations and enforce rules at this intersection during school hours.*

As a condition of approval, the applicant is required to work with the Department of Public Works to determine the feasibility and implementation of a new driveway curb-cut on Stelling Road to help alleviate traffic on Jollyman Lane. The applicant has confirmed that the new driveway approach is feasible and will be completed prior to occupancy of the private school/daycare use. Since the new driveway would provide direct access to Stelling Road at a four-way stop intersection, it would likely be the preferred entrance/exit for the site and the driveway entrance on Jollyman Lane would function as a secondary entrance.

- d. *Concern regarding the feasibility of constructing a new driveway.*

The driveway was not part of the original project scope. The driveway was added as a Condition of Approval in order to address concerns raised during the Administrative Hearing additionally, see response to (c.) above.

## 2. Noise Impacts

- a. *The Noise Study conducted was not accurate.*

The Noise Study, prepared by the City's Acoustical Consultant, used current and industry-wide recognized best practices to determine noise impacts (Attachment 7.) The analysis concluded that based on the projected noise levels (shown in the table below) the outdoor play activities would not have a significant impact. The maximum yard noise levels are below the limits (60dBA at receiving property line) allowed by the City's Community Noise Control Ordinance.

**PROJECT NOISE LEVELS (dBA)**  
**Good Shepherd Cristian School, Cupertino**

Receptor location	Max Yard Noise Levels
1. adjacent Jollyman Lane residence - south	43-48
2. adjacent Jollyman Lane residence - north	45-50

The church yard is separated from the two residences to the east by an approximately 20-foot wide driveway that serves the property located at 20896 Jollyman Lane. The residential portions of the home on 20896 Jollyman Lane are located beyond an existing three-car garage on the property. Living spaces and usable yards of 20896 Jollyman Lane, the property closest to the play structure, are located approximately 100 feet away. Usable yards of 20894 Jollyman Lane, the other property on the east, are located approximately 70 feet away and separated by two wooden fences and mature landscaping.

- b. With the increased hours in the permit and the proposed playground structure, there would be far more hours of the day where noise would be present. 70 cars and 70 kids will add noise to the neighborhood.*

The noise study concludes that the overall ambient noise levels in the project area depend primarily on existing traffic noise from cars driving on adjacent streets (including Stelling Road), and this will continue to be the dominant source of noise in the area for the foreseeable future. The Noise Study does not indicate that no noise will be generated from the activities in the playground; rather, it concludes that noise levels generated would be consistent with the City's Community Noise Control Ordinance.

- c. Noise monitoring*

The conditions of approval of the project require periodic review of the noise generated by the use to ensure consistency with City's Community Noise Control Ordinance. The Noise Control Officer, or his/her designee, would periodically verify conformance with the City's Community Noise Control Ordinance with sound level decibel meters.

### 3. Neighborhood Safety

- a. Concern of the "commercial use" (such as a daycare use) being allowed in the neighborhood.*

The Quasi-Public (BQ) zoning district, within which the church is located in, is intended to accommodate religious, community service, child care, residential care, or recreational facilities in the City. The City's zoning ordinance allows the proposed use upon City review, with a Conditional Use Permit, to ensure that adequate mitigation measures are in place.

- b. *The City should strictly monitor and act proactively on any permit violation and take immediate action/response that are brought to the attention of the Church, the Sheriff or the City.*

As with all other perceived violations of City regulations, perceived violations of the approved project must be reported to the City. The Code Enforcement Division will review the perceived violation(s), and determine necessary steps to ensure consistency with project condition of approvals.

- c. *The daycare use will make it difficult to watch out for activities in the area, such as unknown cars parked in the residential neighborhood.*

There is adequate parking on site to accommodate the proposed use, and due to the age of the students served, state licensing regulations require that the parents/guardians sign the children in and out of the school. Additionally, due to the ages of the students and the distance from the classrooms to the street curb, it is unlikely that parents park on the public street during pickup and drop off due to safety concerns for their wards.

Finally, a condition of approval of the project requires that the private school/daycare operator include notices in welcome packages, and install on-site signage, informing parents/guardians of enrolled students that, in the interests of being good neighbors, on-street parking should be avoided, including during pick up and drop off.

However, this would not prevent other members of the public from parking on Jollyman Lane for up to 72 hours since this is permitted on all public streets within the City. If desired, the neighborhood may apply for Residential Permit Parking in the neighborhood to control parking within the neighborhood.

- d. *The potential violation of traffic regulations due to the additional traffic congestion from the project, and the potential for accidents because of the additional number of cars, people, and situations.*

As previously discussed, while there will be a negligible increase in traffic in the morning A.M. hour; there will be a decrease in traffic during the P.M. peak hours with the proposed project.

All drivers, pedestrians and bicyclists, regardless of their destination, are required to adhere to traffic laws to prevent accidents.

#### 4. Privacy

- a. *Appellant believes that there will be compromised privacy due to the play structure location, and view into the two adjacent properties on the east (neighboring resident's driveway, front door, and living space).*

While the peak of the play structure is approximately 14 feet tall, the highest platform is only at five feet from the adjoining grade. The structure will be placed approximately 55 feet from the eastern property line. As previously mentioned, living spaces and usable yards of 20896 Jollyman Lane, located about 100 feet away, are separated by a wooden fence, mature foliage and/or it's three-car garage while usable yards of 20894 Jollyman Lane, located about 70 feet away, are separated by a 20-foot wide driveway, two wooden fences and mature foliage.

While the distance of the play structure from the property line and the existence of the fence and mature landscaping would significantly hinder the ability of children to intrude into the neighbor's privacy, the appellant has suggested that the height of the property line fence be increased, and a ground level playground be utilized instead.

#### 5. Miscellaneous

- a. *The Administrative Hearing Summary does not summarize the meeting appropriately, and does not reflect the challenges caused by the proposed project.*

The Appellant was provided with the Administrative Hearing Summary which is different from meeting minutes, since the minutes were are not available at that the time of the request.

- b. *Have appropriate indemnity should the children and/or staff cause damage to any property.*

It is not anticipated that preschoolers or staff from the preschool will cause damage to property in the neighborhood.

- c. *Require that any changes to the specific permit be approved by the impacted neighbor's before approval (type of school, number of students, play structure, and hours).*

All applicants must consult with, and, if required, obtain permits from the City prior to making any changes to their permit/operations. The City encourages meaningful community outreach by applicants prior to scheduling any public

meetings or public hearings for a project. In this case, the applicant held two community meetings to allow neighbors the opportunity to review the proposed project, ask questions and collect comments. As a result of the concerns raised by the neighbors, the applicant voluntarily proposed to install a new driveway opening along S. Stelling Road to help alleviate traffic and safety concerns.

## **PUBLIC NOTICING & COMMUNITY OUTREACH**

The following table is a brief summary of the noticing done for this project:

<b>Notice of Public Hearing, Site Signage &amp; Legal Ad</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>▪ <i>Posted on the site (10 days prior to hearing)</i></li><li>▪ <i>48 notices mailed to property owners adjacent to the property site (10 days prior to hearing).</i></li><li>▪ <i>Legal ad placed in newspaper (at least 10 days prior to hearing)</i></li></ul>	<ul style="list-style-type: none"><li>▪ <i>Posted on the City's official notice bulletin board (one week prior to hearing)</i></li><li>▪ <i>Posted on the City of Cupertino's Web site (one week prior to hearing)</i></li></ul>

## **ENVIRONMENTAL REVIEW**

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), Section 15301, Class 1. Existing Facilities.

## **PERMIT STREAMLINING ACT**

The appeal is subject to the Permit Streamlining Act (Government Code Section 65920 – 65964). The City has complied with the deadlines found in the Permit Streamlining Act.

*Project Received:* July 29, 2016;

*Deemed Incomplete:* September 1, 2016;

*Project Resubmitted:* December 12, 2016;

*Deemed Incomplete:* December 21, 2016

*Project Resubmitted:* January 5, 2017;

*Deemed Complete:* January 20, 2017

## **NEXT STEPS AND CONCLUSION**

The Planning Commission's decision on this project is final unless appealed within 14 days of the decision. If appealed, the City Council will hear the final appeal on this project.

Since the proposed plans and conditions of approval address all concerns to the proposed project, staff recommends that the Planning Commission deny the appeal and uphold the Administrative Hearing Officer's decision to approve the Modification to the Use Permit and the Director's Minor Modification.

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Prepared by: Erick Serrano, Associate Planner

Reviewed by: Piu Ghosh, Principal Planner

Approved by: Benjamin Fu, Assistant Director of Community Development

**ATTACHMENTS:**

- 1 – Draft Resolution to deny the appeal and uphold approval of U-2016-02
- 2 – Draft Resolution to deny the appeal and uphold approval of DIR-2016-34
- 3 – Applicant Project Description
- 4 – Plan Set
- 5 – Administrative Hearing Staff Report dated February 23, 2017
- 6 – Appellant's Letter
- 7 – Noise Study
- 8 – Administrative Hearing Summary