

CITY OF CUPERTINO  
10300 Torre Avenue  
Cupertino, California 95014

DRAFT RESOLUTION

OF THE PLANNING COMMISSION OF THE CITY OF CUPERTINO DENYING AN APPEAL  
AND UPHOLDING THE FEBRUARY 23, 2017 ADMINISTRATIVE HEARING OFFICER'S  
DECISION TO APPROVE THE MODIFICATION OF AN EXISTING USE PERMIT TO ALLOW  
A DAYCARE USE TO OPERATE AT 940 S. STELLING ROAD

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SECTION I: PROJECT DESCRIPTION

Application No.: U-2016-02  
Applicant: Diane Hsu (Christian Light and Salt Foundation)  
Appellant: Srilakshmi Vemulakonda  
Location: 940 South Stelling Road (APN 359-25-041)

SECTION II: FINDINGS

WHEREAS, the Planning Commission of the City of Cupertino received an appeal of the Administrative Hearing Officer's February 23, 2017 decision to approve the modification of an existing Use Permit to allow a daycare center to operate in a Quasi-Public Building Zone; and

WHEREAS, the project is categorically exempt from the California Environmental Quality Act (CEQA); and

WHEREAS, the necessary public hearing notices have been given as required by the Procedural Ordinance of the City of Cupertino, and the Planning Commission has held at least one public hearing in regard to the application; and

WHEREAS, the applicant has met the burden of proof required to support said application; and

WHEREAS, the Planning Commission finds:

1. The proposed development and/or use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience;

*A daycare center will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety general welfare, or convenience. Noise impacts from the proposed project would be mitigated by new or existing wooden fences located on the site or at the shared property lines. The proposed*

*use provides a convenience to the community, including potentially low-cost child care services.*

2. The proposed development and/or use will be located and conducted in a manner in accord with the Cupertino Comprehensive General Plan, underlying zoning regulations, and the purpose of this title and complies with the California Environmental Quality Act (CEQA).

*The proposed project is consistent with and will be conducted in a manner in accordance with the General Plan, Zoning Ordinance and is consistent with previous approvals. The proposed use will be reviewed further by the California State Department of Community Care Licensing, Building Department and Fire Department to ensure compliance with rules and regulations for pre-schools. Furthermore, the use is categorically exempt under CEQA in that the proposed project involves negligible changes to an existing use.*

NOW, THEREFORE, BE IT RESOLVED:

That after careful consideration of maps, facts, exhibits, testimony and other evidence submitted in this matter, subject to the conditions which are enumerated in Section III and IV of this Resolution beginning on Page 2 thereof, the Application No. U-2016-02 is hereby approved; and that the sub-conclusions upon which the findings and conditions specified in this Resolution are based and contained in the public hearing record concerning Application U-2016-02 as set forth in the Minutes of the Administrative Hearing Meeting of February 23, 2017, and the Planning Commission Meeting of April 25, 2017, and are incorporated by reference as though fully set forth herein.

SECTION III: CONDITIONS ADMINISTERED BY THE COMMUNITY DEVELOPMENT DEPARTMENT

1. APPROVED EXHIBITS

Approval is based on the plan set entitled "Playground Furniture Installation at Good Shepherd Christian Church, 940 S. Stelling Road, Cupertino CA" consisting of six (6) sheets labeled as A0.1, A1.1, A1.2, A2.1, L-1 drawn by RCUSA Corporation, two (2) sheets from Playcraft Systems, and project description dated received January 5, 2017, except as may be amended by conditions in this resolution.

2. ACCURACY OF PROJECT PLANS

The applicant/property owner is responsible to verify all pertinent property data including but not limited to property boundary locations, building setbacks, property size, building square footage, any relevant easements and/or construction records. Any misrepresentation of any property data may invalidate this approval and may require additional review.

3. ANNOTATION OF THE CONDITIONS OF APPROVAL

The conditions of approval set forth shall be incorporated into and annotated on the first page of the building plans.

4. CONCURRENT APPROVAL CONDITIONS

The conditions of approval contained in file no. DIR-2016-34 shall be applicable to this approval.

5. PREVIOUS CONDITIONS OF APPROVAL

All previous conditions of approval, in accordance with 6-U-86, Resolution No.2777 as approved by the Planning Commission on February 3, 1986, and the modification of the use permit M-2009-05, Resolution No. 6559 as approved by the Planning Commission on June 23, 2009, shall remain in effect except as may be amended by conditions contained in this resolution.

6. ALLOWED USES

A private school/daycare use is allowed to operate on the site between the hours of 8:00 a.m. and 6:30 p.m. for a maximum of 70 students. Staff may arrive as early as 7:00 a.m. The private school/daycare operator shall designate a point of contact and monitor for all complaints, circulation, parking and other onsite activities.

7. TRAFFIC MANAGEMENT PLAN

The private school/daycare operator will in their welcome packages, and with on-site signage, inform 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. A traffic monitor shall also be identified and assigned to manage the plan and the onsite traffic, parking, and circulation conditions.

8. REVIEW OF NOISE GENERATION

The City shall conduct a periodic review of the noise generated by the use to ensure consistency with Cupertino Municipal Code Chapter 10.48: Community Noise Control.

9. NEW DRIVEWAY APPROACH

The property owner shall work with the Department of Public Works to study and implement a new driveway approach, where feasible, along South Stelling Road. If feasible, the driveway approach is to be completed prior to occupancy of the private school/daycare use.

10. FUTURE REVIEW OF USE PERMIT

In the event of any documented substantial problems, the City reserves the right to review this use permit at any time for additional mitigation measures or revocation of the use permit.

11. SIGNAGE

Signage is not approved with this use permit application. The applicant shall be required to submit an application for a sign program and signage prior to installation of any signage on site. Signage shall conform to the City's Sign Ordinance.

12. CONSULTATION WITH OTHER DEPARTMENTS

The applicant is responsible to consult with other departments and/or agencies with regard to the proposed project for additional conditions and requirements. Any misrepresentation of any submitted data may invalidate an approval by the Community Development Department.

13. INDEMNIFICATION

Except as otherwise prohibited by law, the applicant shall indemnify and hold harmless the City, its City Council, and its officers, employees and agents (collectively, the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against one or more of the indemnified parties or one or more of the indemnified parties and the applicant to attack, set aside, or void this Resolution or any permit or approval authorized hereby for the project, including (without limitation) reimbursing the City its actual attorneys' fees and costs incurred in defense of the litigation. The applicant shall pay such attorneys' fees and costs within 30 days following receipt of invoices from City. Such attorneys' fees and costs shall include amounts paid to counsel not otherwise employed as City staff and shall include City Attorney time and overhead costs and other City staff overhead costs and any costs directly related to the litigation reasonably incurred by City.

14. NOTICE OF FEES, DEDICATIONS, RESERVATIONS OR OTHER EXACTIONS

The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.

SECTION IV: CONDITIONS ADMINISTERED BY THE BUILDING DEPARTMENT

15. BUILDING PERMIT ISSUANCE

A building permit is required for the alteration to the classrooms and the installation of the playground structure to guarantee compliance to the 2016 California Building Codes.

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PASSED AND ADOPTED this 25<sup>th</sup> day of April 2017, at a Regular Meeting of the Planning Commission of the City of Cupertino by the following roll call vote:

AYES:            COMMISSIONERS:  
NOES:           COMMISSIONERS:  
ABSTAIN:       COMMISSIONERS:  
ABSENT:        COMMISSIONERS:

ATTEST:

APPROVED:

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Benjamin Fu  
Asst. Director of Community Development

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Don Sun  
Chair, Planning Commission