

File Number
CP 03-017

Application Type
Conditional Use Permit

Council District 5

Planning Area
Alum Rock

Assessor's Parcel Number(s)
592-15-025

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Caleb Gretton

Location: East side of Francis Drive approximately 450 feet southerly of Patt Avenue

Gross Acreage: 1.16 Net Acreage: 1.16 Net Density: N/A

Existing Zoning: R-1-8 Residential Existing Use: Church

Proposed Zoning: No Change Proposed Use: The replacement of an existing 2,256 square foot church building with a new 8,717 square foot church building and associated underground parking lot.

GENERAL PLAN

Completed by: CG

Land Use/Transportation Diagram Designation
Medium Low Density Residential (8 DU/AC)

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: CG

North: Multi-Family Residential R-M

East: Church R-1-8 Residential

South: Single-Family Residential Unincorporated County Land

West: Single-Family Residential Unincorporated County Land

ENVIRONMENTAL STATUS

Completed by: CG

Environmental Impact Report
 Negative Declaration circulated on
 Negative Declaration

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: CG

Annexation Title: McKee No.114

Date: March 16, 1993

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date:

Approved by: _____
 Action
 Recommendation

APPLICANT/OWNER

Larry Tong
Southbay Chinese Baptist Church
454 Francis Drive
San José CA 95133

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: CG

Department of Public Works

See attached memo.

Other Departments and Agencies

Santa Clara Valley Water District, San José Police Department, San José Fire Department: See attached memo(s).

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The applicant, South Bay Chinese Baptist Church, is requesting a Conditional Use Permit (CUP) to allow the replacement of an existing 2,256 square foot church building with a 8,717 square foot church building and associated below grade parking lot on a 1.16 gross acre in the R-1-8 Residential Zoning District located on the east side of Francis Drive, approximately 450 feet southerly of Patt Avenue. A Conditional Use Permit is required for a church/religious assembly use in the R-1-8 Residential Zoning District.

The subject site is a flat square lot that is developed with both a 2,256 square foot building and a 7,930 square foot building used for church/religious assembly uses and associated surface parking. The site is fully improved with surface parking and perimeter landscaping per the previously approved Site Development Permit File # H98-044, which approved the addition of 3,000 square feet of classroom space in the existing church and associated surface parking. All construction per the approved Site Development Permit has been completed. To the north of the subject property is a multi-family apartment complex, to the east is a church, and to the south and west are single-family residential uses.

The proposed project includes the demolition of the existing 2,256 square foot building that is currently used as part of the existing church, and the construction of an 8,717 square foot church building and associated below grade parking lot. The church will continue to use the adjacent 7,930 square foot structure for classroom and multi-purpose uses. Use of the multi-purpose space would be restricted to times when the sanctuary is not in use. The classroom space could be used at the same time as the sanctuary if only used for church associated child education purposes. The proposed project would provide 116 parking spaces, and improve the existing perimeter landscaping. The proposed building would be 29 feet in height and set back approximately 25 feet from Francis Drive.

GENERAL PLAN CONFORMANCE

The proposal is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8 DU/AC) in that church uses are considered appropriate land uses within the residential neighborhoods when developed to be compatible with the surrounding neighborhood.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA). CEQA Guidelines (Section 15332) include an exemption for in-fill development. The Planning Director has determined that the proposed project adequately conforms to this section of the guidelines in that the proposed project is consistent with the General Plan and Zoning Code, the proposed project is less than five acres in size, the site is fully served by all required City services, and the site is fully within the City limit.

PUBLIC OUTREACH

Public Notices of the Planning Commission hearing on the Conditional Use Permit were mailed to area residents and owners of property with 500 feet of the subject site. Staff has been available to discuss the project with the public.

ANALYSIS

The primary issues associated with this project are conformance with the City's Zoning Ordinance parking requirements, and the Church Location Policy.

Conformance with the Zoning Ordinance Parking Requirements

The Zoning Code requires that Church/Religious Assembly uses be provided with a minimum of one (1) parking space per four (4) fixed seats, or one (1) parking space per six (6) linear feet of seating provided within the primary worship/assembly area of the proposed development.

The proposed church would include 393 fixed seats in the new church building, which would require 99 parking stalls. The proposed church project would include 116 parking spaces, 42 of which would be provided by a below grade parking lot, exceeding the requirements of the Zoning Code.

Conformance with the Church Location Policy

The Church Location Policy was adopted in 1991 for the purpose of providing appropriate guidelines for the location of new church development within the City of San José. Although the proposed project is the expansion of an existing church use, an analysis of the conformance to the Policy is discussed to further illustrate the appropriateness of the proposed project (See attached policy).

The proposed church is generally consistent with all of the criteria outlined in the Church Location Policy. The proposed church is the expansion of an existing church on a site that is sufficient in size for the proposed development, and the proposed project includes appropriate setbacks (25-foot front with 15 feet of landscaping, plus 5 feet of landscaping on interior property lines) and landscaping to adequately buffer the proposed use from adjacent residential uses. The expanded church development provides suitable access and sufficient parking on the site, and will not impact the residential neighborhood. The subject site is 1.16 acres in size, consistent with the Policy guideline for churches on sites of more than 1 acre. As described above, the proposed church development more than meets the parking required by the zoning code.

Based on the above stated facts, the proposed project is in complete compliance with the Church Location Policy and the Zoning Code parking requirements. The proposed project will improve the street frontage along Francis Drive and will not negatively impact the residential neighborhood. Staff is recommending approval of the proposed project.

RECOMMENDATION

Planning Staff recommends that the Planning Commission approve the Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium Low Density Residential (8 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The proposed church use is consistent with the Medium Low Density Residential (8 DU/AC) land use designation.
3. The 1.16-acre site is located in the R-1-8 Residential Zoning District.
4. This Permit includes the demolition of a 2,265 square foot structure in the R-1-8 Residential Zoning District.
5. The subject site is fully developed with a two buildings totaling 10,186 square feet and surface parking that is currently utilized by the Southbay Chinese Baptist Church. The new development will include the existing 7,930 square foot building, and the new 8,717 square foot church. The below-grade parking plus existing surface parking meets the zoning code requirement.
6. The proposed project is consistent with the Church Location Policy as follows:
 - a. The proposed church and associated church uses are located in an area that will not negatively impact the residential environment.
 - b. The size of the subject property is greater than one acre (1.16 acres).
 - c. The project includes a 25-foot setback from all property lines.
 - d. The project includes a 15-foot landscape area along the properties Francis Drive street frontage, and five-foot landscaped areas along the interior property lines.
 - e. The subject site is not located within a Campus Industrial Land Use designation.
 - f. The subject site is not located within an industrially designated area.
7. Under the provisions of Section 15332 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment in that the proposed project is characterized as an in-fill development because the project is consistent the General Plan and Zoning designation, the proposed development occurs within the City Limits on no more than five acres, the project site has no value as habitat, and the site can be adequately served by all required utilities.

The Planning Commission concludes and finds based on an analysis of the above facts that:

1. The proposed project is consistent with the San José 2020 General Plan Land/Use Transportation Diagram designation of Medium Density Residential (8 DU/AC).
2. The proposed project is in compliance with the requirements of the California Environmental Quality Act.
3. The proposed use will be compatible with uses in the surrounding area.
4. The proposed project is consistent with the Church Location Policy.
5. The benefits of permitting the demolition, removal or relocation of subject structure outweigh the impacts of the demolition, removal or relocation.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The Planning Commission has considered all of the following criteria in evaluating the proposed demolition.
 - a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition.
 - b. The failure to approve the permit would jeopardize public health, safety or welfare.
 - c. The approval of the permit would not negatively impact the supply of existing housing stock in the City of San José.
 - d. Both inventoried and non-inventoried buildings, sites and districts of historical significance should not be negatively impacted.
 - e. Rehabilitation or reuse of the existing building would not be feasible.
 - f. The approval of the demolition of the building should facilitate a project which is compatible with the surrounding neighborhood.

- g. The demolition of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.
4. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
3. **Conformance with Plans.** Construction and development shall conform to approved Planned Development Plans entitled, "Worship Center Facility" dated June 13, 2003 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04)
4. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
5. **Demolition Permit.** Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
6. **Sign Approval.** No signs are approved at this time. All signs shall be subject to approval by the Director of Planning.
7. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
8. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
9. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 18 feet above grade.
10. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.
11. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
12. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Fire Flow.** Required fire flow for the site is 4,250 gpm, or as otherwise specified in writing from the Fire Department.
14. **Multi-Purpose/Classrooms.** Multi-purpose space in the adjacent structure shall not be used concurrently with the sanctuary. The classroom space may be used at the same time as the sanctuary for church associated child education purposes only.

15. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-13199) to the satisfaction of the Director of Public Works:
- a. *Sewage Fees.* In accordance with City Ordinance, all storm sewer area fees, sanitary sewer connections fees, and sewage treatment plant connection fees, less previous credits, are due and payable and shall be paid by the applicant prior to Public Works Clearance.
 - b. *Grading Permit.* The applicant shall obtain a Grading Permit prior to the issuance of Public Works Clearance.
 - c. *Storm Water Pollution Prevention Plan.* The project involves a land disturbance of one or more acres so the applicant shall be required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity.
 - d. *Electrical.* The applicant shall install electroliers along Francis Drive frontage to the satisfaction of the Director of Public Works. The applicant shall also replace existing HPS luminaries in electroliers along the property frontage with LPS luminaries if required.
 - e. *Street Trees.* The applicant shall install street trees in cut-outs at the back of curb within the public right-of-way along the entire street frontage per City standards. The location of the street trees will be determined at the street improvement stage.
 - f. *Street Improvements.* The applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction. The applicant shall remove and replace broken or uplifted curb, gutter, and sidewalk along the project frontage, close unused driveway cuts.
 - g. *Minor Improvement Permit.* The applicant shall be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works.
16. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP 03-017, shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans With Disabilities Act.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA).
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.