

.CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C 09/28/05 Item No.:

File Number
CP04-011

Application Type
Conditional Use Permit

Council District
10

Planning Area SNI
Edenvale None

Assessor's Parcel Number(s)
694-33-071

STAFF REPORT

PROJECT DESCRIPTION

Completed by: David Tynn

Location: Northeast corner of Garces Avenue and Santa Teresa Boulevard (5998 Garces Ave)

Gross Acreage: 0.14

Net Acreage: 0.14

Net Density: n/a

Existing Zoning: R-1-8 Residence

Existing Use: Private school for performing arts

Proposed Zoning: No change

Proposed Use: Conditional Use Permit to legalize the conversion of a single-family detached residence to a private school for dance, music and art instruction

GENERAL PLAN

Completed by: DT

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: DT

North: Single-family detached residential

R-1-8 Single-Family Residence

East: Commercial

CP Commercial Pedestrian

South: Single-family detached residential

R-1-8 Single-Family Residence

West: Single-family detached residential

R-1-8 Single-Family Residence

ENVIRONMENTAL STATUS

Completed by: DT

Environmental Impact Report adopted
 Negative Declaration circulated on
 Negative Declaration adopted on

Exempt
 Environmental Review Incomplete
 Addendum to EIR

FILE HISTORY

Completed by: DT

Annexation Title: Alamitos No. 14

Date: July 17, 1968

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____

Action
 Recommendation

OWNER	CONTACT	
Anthony Fagundas 850 Monica lane Campbell, CA 95008	Tonisue Fagundas 5998 Garces Avenue San Jose, CA 95123	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DT

Department of Public Works

- See the attached memo.

Other Departments and Agencies

- See the attached memos from Building and Fire.

GENERAL CORRESPONDENCE

- None.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Tonisue Fagundas, is requesting a Conditional Use Permit (CUP) to allow an existing private school for dance, music and art instruction in an existing single-family residence located at the northeast corner of Garces Avenue and Santa Teresa Boulevard (5998 Garces Ave). The Zoning Ordinance requires a Conditional Use Permit for a private school in the R-1-8 Single-Family Residence Zoning District. The proposed use has been operating without benefit of a Conditional Use Permit for several years. The subject 0.14 gross acre site is surrounded by single-family detached residential uses to the north, west, and south. Commercial uses adjoin the site to the east.

Project Description

The proposed Conditional Use Permit would allow the applicant to provide individual and small-group lessons in music and fine arts as a medium for child education. Student ages range from two years to 14 years old. The proposed hours of operation are Monday through Thursday 10:00 a.m. to 12:00 noon, and 3:00 p.m. to 6:30 p.m.; and Saturday 10:00 a.m. to 2:00 p.m. The small group lessons are a half hour to an hour in duration with 8 students maximum, but are usually 4-6 students. Private and semi-private lessons are a half hour to an hour in duration for 1-2 students.

The applicant is proposing to have special events or student showcases, three to four times per year. These would occur on a Friday evening or a Saturday afternoon. Estimated attendance would be 15-50 persons including students' families and teachers, depending on the event. The staff for this private school consists of one director and two teachers. Eight parking spaces would be located at the rear of the building adjacent to a shopping center driveway after removal of a metal storage building measuring approximately 16 by 20 feet. The building takes access through a gate and door at the rear of the building. Staff and students would not use the entrance on Garces Avenue.

The existing two story single-family residence is uninhabited. The living room at the southwest corner of the building has been converted to a dance studio. The attached garage has been converted to a classroom. The family room at the north side of the house is used as a waiting area for parents. Upstairs bedrooms are used for office and storage.

ANALYSIS

The primary issues evaluated for this proposal are conformance with the City's General Plan, compliance with CEQA, land use compatibility, including compatibility with the surrounding neighborhood, access and parking, and suitability of the facility to accommodate the proposed use. The analysis of each of these issues is discussed below.

General Plan Conformance

The General Plan Land Use/Transportation Diagram designation for the site is Medium Low Density Residential (8 du/ac). The project proposes a quasi-public use within an existing single-family detached residence. Since the General Plan does not specify sites for all future public or quasi-public development, the determination of conformance with the General Plan of such a use will be made on the basis of applicable General Plan goals and policies and a demonstrated need for the facility being proposed.

The General Plan includes goals and policies relevant the subject proposal in the area of Neighborhood Identity and Land Use. One goal related to Neighborhood Identity is to "enhance the sense of neighborhood identity in San Jose." A policy of this goal is to ". . . include places for interaction among residents such as parks, community centers, schools, commercial, area, churches, and other gathering points." The proposed private school is the very type of use suggested in the above policy which offers area residents the opportunity to have their children join together and interact in a small learning environment.

The General Plan also includes a Residential Land Use Goal of "providing a high quality living environment in residential neighborhoods." To achieve this goal, there is a policy which states that "residential neighborhoods should be protected from the encroachment of incompatible activities or land uses which may have a negative impact on the residential living environment. . . ." The proposed use is located within an existing residential structure at the edge of the neighborhood and is situated such that the activity is centered away from the residential interface and more towards the commercial interface the parcel shares with the adjacent commercial center. The restrictions on operation including time, numbers of students, and teachers ensures minimal impact on the residential living environment.

Given the type and size of the proposed private school, and given the discussion above related to the applicable goals and policies of the General Plan, staff concludes that the proposed use is in conformance with the City of San Jose 2020 General Plan

Environmental Review

The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15322(b) of the California Environmental Quality Act (CEQA) Guidelines. Section 15322(b) *Educational or Training Programs Involving No Physical Changes*, exempts the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. The proposed performing arts school meets this criteria in that it involves physical changes only in the interior of the existing structure.

Land Use Issues

Compatibility with the Surrounding Neighborhood

The proposed private school for performing arts is generally compatible with the surrounding neighborhood in that it is operated with a maximum of eight students, and with normal daytime business hours. The existing structure generally maintains the appearance of a single-family detached residence with well-maintained landscaping on Garces Avenue and Santa Teresa Boulevard. As discussed below, all of the parking, student drop off, and access to the facility would occur at the rear of the facility. This parking and entrance area is adjacent to the existing commercial shopping center to the east and is oriented away from the single-family neighborhood.

Access and Parking

Access and parking for the private school occurs entirely at the rear of the building, which interfaces directly with the adjacent shopping center to the east. The site takes vehicular access from a driveway on Santa Teresa Blvd., which is shared by the subject site and the adjacent shopping center. The school provides onsite parking and drop off. The parking area would be striped for eight parking spaces after removal of a metal storage building.

The Zoning Ordinance requires private schools to have one space per three students plus one per staff member. The project requires a total of six parking spaces based on a maximum of eight students, and three faculty members. The project provides eight parking spaces. Therefore, the proposed parking conforms to the Zoning Ordinance.

Suitability of the Facility to Accommodate the Proposed Use

The structure on the site was originally constructed and occupied as a single-family home. Approval of the subject Conditional Use permit would permit the existing private school for performing arts. It would not allow any portion of the building to be used as a dwelling unit. The performance arts curriculum is taught in a dance/music studio room on the southwest side of the site, and in a classroom in the converted attached garage on the east side of the site adjacent to the shopping center. The family room at the north side of the site is used as a waiting area for parents while students are in class. The facility could operate without disturbing the surrounding residential uses because ample space existing within the building for up to eight students and three faculty members.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. A community meeting was held on December 9, 2004. At that time the project proposal was for a private school, which was to substitute for a public school curriculum. The community expressed concern and opposition to that proposal. Subsequently the application was revised to reflect the current proposal. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following facts, findings, and conditions in its resolution.

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

1. The applicant, Tonisue Fagundas, is requesting a Conditional Use Permit (CUP) to allow an existing private school for dance, music and art instruction in an existing single-family residence located at the northeast corner of Garces Avenue and Santa Teresa Boulevard (5998 Garces Ave). The Zoning Ordinance requires a Conditional Use Permit for a private school in the R-1-8 Single-Family Residence Zoning District. The proposed use has been operating without benefit of a Conditional Use Permit for several years. The subject 0.14 gross acre site is surrounded by single-family detached residential uses to the north, west, and south. Commercial uses adjoin the site to the east.
2. The proposed Conditional Use Permit would allow the applicant to provide individual and small-group lessons in music and fine arts as a medium for child education. Student ages range from two years to 14 years old. The proposed hours of operation are Monday through Thursday 10:00 a.m. to 12:00 noon, and 3:00 p.m. to 6:30 p.m.; and Saturday 10:00 a.m. to 2:00 p.m. The small group lessons are a half hour to an hour in duration with 8 students maximum, but are usually 4-6 students. Private and semi-private lessons are a half hour to an hour in duration for 1-2 students.
3. The applicant is proposing to have special events or student showcases, three to four times per year. These would occur on a Friday evening or a Saturday afternoon. Estimated attendance would be 15-50 persons including students' families and teachers, depending on the event. The staff for this private school consists of one director and two teachers. Eight parking spaces would be located at the rear of the building adjacent to a shopping center driveway after removal of a metal storage building measuring approximately 16 by 20 feet. The building takes access through a gate and door at the rear of the building. Staff and students would not use the entrance on Garces Avenue.
4. The existing two story single-family residence is uninhabited. The living room at the southwest corner of the building has been converted to a dance studio. The attached garage has been converted to a classroom. The family room at the north side of the house is used as a waiting area for parents. Upstairs bedrooms are used for office and storage.
5. The General Plan Land Use/Transportation Diagram designation for the site is Medium Low Density Residential (8 du/ac). The General Plan Land Use/Transportation Diagram text states that "since parcels of two acres and less in size may be too small to be separately identified on a map of the scale of the official Land Use/Transportation Diagram, any developed parcel of two acres or less is deemed to be in conformance with the General Plan regardless of how it is designated." The proposed project conforms to the General Plan in that the site is less than two acres in size, and the subject parcel is developed with an existing single-family detached residence containing a private school for performing arts. Therefore, the project is deemed to be in conformance with the General Plan.

6. The Director of Planning, Building, and Code Enforcement has determined that the proposed project is exempt under Section 15322(b) of the California Environmental Quality Act (CEQA) Guidelines. Section 15322(b) *Educational or Training Programs Involving No Physical Changes*, exempts the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. The proposed performing arts school meets this criteria in that it involves physical changes only in the interior of the existing structure.
7. The proposed private school for performing arts is generally compatible with the surrounding neighborhood in that it is operated with a maximum of eight students, and with normal daytime business hours. The existing structure generally maintains the appearance of a single-family detached residence with well-maintained landscaping on Garces Avenue and Santa Teresa Boulevard. As discussed below, all of the parking, student drop off, and access to the facility would occur at the rear of the facility. This parking and entrance area is adjacent to the existing commercial shopping center to the east and is oriented away from the single-family neighborhood.
8. Access and parking for the private school occurs entirely at the rear of the building, which interfaces directly with the adjacent shopping center to the east. The site takes vehicular access from a driveway on Santa Teresa Blvd., which is shared by the subject site and the adjacent shopping center. The school provides onsite parking and drop off. The parking area would be striped for eight parking spaces after removal of a metal storage building. The Zoning Ordinance requires private schools to have one space per three students plus one per staff member. The project requires a total of six parking spaces based on a maximum of eight students, and three faculty members. The project provides eight parking spaces. Therefore, the proposed parking conforms to the Zoning Ordinance.
9. The structure on the site was originally constructed and occupied as a single-family home. Approval of the subject Conditional Use permit would permit the existing private school for performing arts. It would not allow any portion of the building to be used as a dwelling unit. The performance arts curriculum is taught in a dance/music studio room on the southwest side of the site, and in a classroom in the converted attached garage on the east side of the site adjacent to the shopping center. The family room at the north side of the site is used as a waiting area for parents while students are in class. The facility could operate without disturbing the surrounding residential uses because ample space existing within the building for up to eight students and three faculty members.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project complies with the California Environmental Quality Act.

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 in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. 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. **Payment of Recording Fees.** Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara should be submitted to the Director of Planning within 30 days of approval of this permit, but must be submitted prior to issuance of a Building Permit. Submittal of the recording fee less than one week prior to issuance of a Building Permit will delay the Building Permit issuance for up to one week to allow for recordation of the permit with the County Recorder. This Permit shall be effective at such time when recordation with the County of Santa Clara occurs.

2. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

CONCURRENT CONDITIONS

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

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "CP04-011, The Crosley School" dated December 15, 2004, on file with the Department of Planning, Building and Code Enforcement.
2. **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, CP04-011, shall be printed on all construction plans submitted to the Building Division.
3. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
4. **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.
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.

6. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include damp washing as necessary of all exterior walls and sidewalks along the project's frontage.
7. **Lighting.** This permit allows no new on-site, exterior lighting. Any exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
8. **Changes to the Structure.** No interior or exterior modifications to the structure are approved with this permit. Any changes shown on the plans other than the vertical baler were part of a previous permit and were not reviewed as part of this approval.
9. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
10. **Parking.** Parking shall be provided as shown on the approved plans.
11. **Hours of Operation.** The performing arts school may operate Monday through Thursday 9:30 a.m. to 6:30 p.m., and Saturday 10:00 a.m. to 2:00 p.m.
12. **Maximum Number of Students and Faculty.** The maximum number of students allowed in the facility at any time is eight. The maximum number of faculty is three.
13. **Special Events.** The applicant may hold special events or student showcases up to four times per calendar year during the approved hours of operation. The maximum number of occupants allowed in the facility is 50 persons including students, families, and teachers.
14. **Public Works Clearance for Building Permits:** Prior to issuance of building permits, the applicant must satisfy all of the following Public Works conditions in file no. 3-16694. The applicant is advised to apply for any necessary Public Works Permits prior to applying for building permits.
 - a. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. **Street Improvements:** Install handicap ramps (2) at opposite returns across Garces Ave.
 - c. **Electrical:** Relamping of existing electrolier(s) along project frontage may be required.
 - d. **Landscape:**
 - i. Install street trees within the public right-of-way along the entire Garces Avenue frontage per City standards.
 - ii. The locations of the street trees will be determined at the street improvement stage.
 - iii. Contact the City Arborist at (408) 277-2756 for the designated street tree.

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 in accordance with Title 20 to extend the validity of this Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions are approved. 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 20.44, 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