

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. 8/10/05 Item: 3.b.

File Number
CP04-113

Application Type
Conditional Use Permit

Council District
6

Planning Area
Willow Glen

Assessor's Parcel Number(s)
442-08-005

STAFF REPORT

PROJECT DESCRIPTION:

Completed by: **Ed Schreiner**

Location: **Northeast corner of Leigh and Harris Avenues**

Gross Acreage: **2.18**

Net Acreage: **2.18**

Net Density: **N/A**

Existing Zoning: **R-1-5 Residence**

Existing Use: **Church**

Proposed Zoning: **No Change**

Proposed Use: **No change.**

GENERAL PLAN

Completed by: **ES**

Land Use/Transportation Diagram Designation
Public/Quasi-Public

Project Conformance:
 Yes No
 See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING FOR CHURCH SITE

Completed by: **ES**

North: **Single-family detached residential**

R-1-8 Residence

East: **Single-family detached residential**

R-1-5 Residence

South: **Public Elementary School**

R-1-8 Residence

West: **Single-family detached residential**

R-1-5 Residence

Completed by: **ES**

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

Exempt
 Environmental Review Incomplete

FILE HISTORY

Completed by: **ES**

Annexation Title: **Leigh No. 11**

Date: **August 24, 1962**

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

Approval
 Approval with Conditions
 Denial
 Uphold Director's Decision

Date: _____

Approved by: _____
 Action
 Recommendation

OWNER/APPLICANT

Covenant Orthodox Presbyterian Church (James Huizinga)
2350 Leigh Ave
San Jose, CA 95124

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: ES

Department of Public Works

See attached memorandum

Other Departments and Agencies

See attached memorandum from Fire Department

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Covenant Orthodox Presbyterian Church, is requesting a Conditional Use Permit to allow a 1,739 square-foot addition to an existing church on a 2.18 gross-acre site and associated landscaping and minor site improvements. The addition will include church offices and one classroom. No change is proposed to the church's sanctuary. The existing church use is legal non-conforming in that the use was implemented prior to the requirement for a Conditional Use Permit. The expansion of a legal non-conforming religious assembly use requires a Conditional Use Permit in the subject R-1-5 Residence Zoning District. The Conditional Use Permit also will serve as a Site Development Permit for the construction of the proposed addition.

The roughly triangular corner site is developed with an approximately 9,800 square-foot church building oriented to Leigh Avenue and a 600 square foot portable building located at the rear of the site. The southerly half of the site includes a parking lot and an unimproved open space area. An 80-foot wide Pacific Gas and Electric (PG&E) easement traverses the center of the site in a roughly east/west direction.

The site is surrounded on the north, east and west by single-family residential uses. Bagby Elementary School is located to the south across Harris Avenue.

ENVIRONMENTAL REVIEW

The proposed religious assembly project is exempt from environmental review under Section 15301(e) of the California Environmental Quality Act Guidelines concerning additions to existing structures that will not result in an increase of more than 50 percent of the floor area or 2,500 square feet, whichever is less. The proposed addition to the church is less than 50% of the existing floor area and is under 2,500 square feet.

GENERAL PLAN CONFORMANCE

The *San José 2020 General Plan Land Use/Transportation Diagram* designates the project site as *Public/Quasi Public*. The existing religious assembly use and the proposed expansion of said use conforms to this designation.

ANALYSIS

The primary issues for this proposal include land use compatibility, conformance with the parking requirements of Title 20 of the San José Municipal Code and conformance with the requirements of the Building Code.

Land Use Compatibility

The expanded building and the associated landscaping will improve the compatibility of the site with the surrounding neighborhood. The design of the proposed addition matches the architecture of the existing church and provides additional building mass along the Leigh Avenue Street frontage, a clear improvement for this large underdeveloped property. The addition will match the existing 25-foot front setback provided by the existing church in conformance with the requirements of the R-1-5 Residence District. The applicant is proposing to landscape the area around the new addition, to replace missing street trees along the project frontage and to add seven trees in existing planters in the parking lot and along the Leigh Avenue frontage. The project landscape plan currently proposes Crape Myrtle trees in these areas. Staff has included a revised plan condition in the Draft Permit specifying that the seven Crape Myrtle trees proposed for the parking lot and the Leigh Avenue frontage be replaced with a larger shade tree species.

Parking

The Zoning Code parking requirement for religious assembly uses is one parking space per four fixed seats, or one per six linear feet of pew. The parking for churches is generally calculated based on the number of seats in the assembly area or areas that are used concurrently. In this case, the assembly area consists of the existing church sanctuary, which includes approximately 331 linear feet of seating. This seating requires a total of 56 parking spaces. The existing parking lot, which is proposed to be retained, provides 77 spaces. The proposed addition includes office and classroom space and does not involve an expansion of the existing sanctuary seating or inclusion of new assembly area; consequently, no additional parking is required.

Conformance with the Building Code

The 600 square-foot portable building was approved via a Building Permit in the early 70's as a temporary storage building. Currently, the building is equipped as a classroom or other activity area, although it does not appear to be on a permanent foundation. Staff has included a condition in the Draft Permit requiring that the building be brought into conformance with the Building Code for

storage or classroom use within six months of approval of this Permit, or that it be removed from the site.

Conclusion

Based on the above analysis, staff concludes that the proposed church expansion, as conditioned, is compatible with surrounding uses and consistent with the Zoning and Building Codes.

COMMUNITY OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public. This staff report has been available on the City of San Jose's website one week prior to the Planning Commission Public Hearing.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the attached findings and conditions in its Resolutions.

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Public/Quasi Public on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed religious assembly use is in conformance with this designation.
2. The applicant, Covenant Orthodox Presbyterian Church, is requesting a Conditional Use Permit to allow a 1,739 square-foot addition to an existing church on a 2.18 gross-acre site and associated landscaping and minor site improvements. The addition will include church offices and one classroom. No change is proposed to the church's sanctuary. The existing church use is legal non-conforming in that it was constructed prior to the requirement for a Conditional Use Permit. The expansion of a legal non-conforming religious assembly use requires a Conditional Use Permit in the subject R-1-5 Residence Zoning District. The Conditional Use Permit also will serve as a Site Development Permit for the construction of the proposed addition.
3. The roughly triangular corner site is developed with an approximately 4,000 square-foot church building oriented to Leigh Avenue and a 600 square foot portable building located at the rear of the site. The southerly half of the site includes a parking lot and an unimproved open space area. An 80-foot wide Pacific Gas and Electric (PG&E) easement traverses the center of the site in a roughly east/west direction.
4. The site is surrounded on the north, east and west by single-family residential uses. Bagby Elementary School is located to the south across Harris Avenue.

5. Under the provisions of Section 15301(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from environmental review requirements.
6. The existing building and proposed addition are in conformance with the R-1-5 Single Family Residence Zoning District, which requires a 25-foot front setback.
7. The Zoning Code parking requirement for religious assembly uses is one parking space per four fixed seats, or one per six linear feet of pew. The parking for churches is generally calculated based on the number of seats in the assembly area or areas that are used concurrently. In this case, the assembly area consists of the existing church sanctuary, which includes approximately 331 linear feet of seating. This seating requires a total of 56 parking spaces. The existing parking lot, which is proposed to be retained, provides 77 spaces. The proposed addition includes office and classroom space and does not involve an expansion of the existing sanctuary seating or inclusion of new assemble area; consequently, no additional parking is required.
8. The design of the proposed addition matches the architecture of the existing church and provides additional building mass along the Leigh Avenue Street frontage.. The addition matches the existing 25-foot front setback provided by the existing church in conformance with the requirements of the R-1-5 Residence District.
9. The project includes new landscaping in the area around the new addition and adds seven trees in existing planters in the parking lot and along the Leigh Avenue frontage. The project landscape plan proposes Crape Myrtle trees in these areas. A condition has been included in the Permit requiring revised plans that replace the seven Crape Myrtle trees in the parking lot and along the Leigh Avenue frontage with a larger shade tree species.
10. The 600 square-foot portable building was approved via a Building Permit in the early 70's as a temporary storage building. Currently, the building is equipped as a classroom or other activity area. It is not located on a permanent foundation. A condition is included in the Permit requiring that the building be brought into conformance with the Building Code for storage or classroom use within six months of approval of this Permit, or that it be removed from the site.
11. The project does not include the removal of any ordinance-size trees.

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

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The number of off-street parking spaces provided adequately meets the parking requirements of the individual buildings and uses as specified in Chapter 20.90 of this Title.

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 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.
4. The location of the tree proposed for removal in respect to the proposed improvements unreasonably restricts the economic development of the parcel.

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.
3. **Revised Plans.** Within 60 days of the issuance of this Permit and prior to recordation and issuance of Building Permits, the project developer shall revise the project plans to include the items(s) listed below to the satisfaction of the Director of Planning.
 - a. The landscape plan shall be revised to replace the seven Crape Myrtle trees proposed for the parking lot and Leigh Avenue frontage with a large shade species.

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, "Covenant Presbyterian Church" dated March 1, 2004, last revised June 6, 2005, as revised in Precedent Condition No. 3 of this Permit, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
3. **Nuisance.** This use shall be operated in a manner, which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Lighting.** No on-site building lighting is approved with this permit.
5. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
6. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set.

7. **Sign Approval.** No new signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
8. **Landscaping.** 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.
9. **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.
10. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
11. **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 (3-16312) to the satisfaction of the Director of Public Works:
 - a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
 - b. **Storm:** Finished floor elevations must be one foot higher than overland release elevation.
 - c. **Grading/Geology:** A grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.

- d. **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.
 - e. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Leigh Avenue prior to issuance of a Public Works clearance. Twenty-five (25) percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
 - f. **Street Improvements:**
 - a) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage.
 - b) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
 - g. **Landscape:** Replace any missing street trees in empty tree wells along Leigh Avenue and match existing trees.
9. **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, CP04-113, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
10. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
11. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief. All alternate means of protection shall be reviewed by the Fire Department.
12. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
13. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
14. **Fire Flow.** Required fire flow for the site is 3,000 gpm, or as otherwise approved in writing by the Fire Chief.

15. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
16. **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. Interior work that does not result in any audible noise from outside the structure is permitted on Saturday between the hours of 8:00 a.m. and 7:00 p.m.
17. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public streets each working day. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
18. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
19. **Noise.** The project shall limit noise generated from the project site so that it does not exceed 55 db DNL at any site property line adjacent to property used or zoned for residential and so that it does not exceed 60 db DNL at any site property line adjacent to property used or zoned for non-residential purposes.
20. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
21. **Storage Building.** Within six months of approval of this Permit, the applicant shall remove the temporary storage building from the site or obtain all necessary Building Permits and modify the building as necessary to bring it into conformance with the Building Code for either storage or classroom/church use. Within seven months of approval of this Permit, the applicant shall submit a report to the satisfaction of the Director of Planning documenting that the building has been removed from the site or brought into conformance with the Building Code. The project File No. CP04-113 shall be placed on this report.

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 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.

In accordance with the findings set forth above, a permit to use the subject property for said purpose specified above is hereby approved