City of Chula Vista

Legislation Details (With Text)

File #:	16-0116	**Name:**	Appeal of Zoning Administrator approval of Conditional Use Permit PCC-15-014 for the Rancho Vista Covenant Church
Type:	Public Hearing	**Status:**	Withdrawn
		In control:	City Council
On agenda:	4/5/2016	**Final action:**	4/5/2016
Title:	CONSIDERATION OF AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION REGARDING CONDITIONAL USE PERMIT PCC-15-014 (Rancho Vista Covenant Church) RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DENYING THE APPEAL AND AFFIRMING THE ZONING ADMINISTRATOR'S DECISION GRANTING APPROVAL OF CONDITIONAL USE PERMIT (PCC-15-014) FOR THE RANCHO VISTA COVENANT CHURCH AT 2088 OTAY LAKES ROAD, SUITES 101 & 201		
Sponsors:			
Indexes:			
Code sections:			
Attachments:	1. Item 6 - Resolution, 2. Item 6 - Attachment 2 - PCC-15-014 Locator Map, 3. Item 6 - Attachment 3 - RVCC Parking Agreement & CCRs, 4. Item 6 - Attachment 4 - Appeal Form filed 2.1.16, 5. Item 6 - Attachment 5 - Objections Letter filed 10.16.15, 6. Item 6 - Attachment 6 - PCC-15-014 ZA CUP NOD, 7. Item 6 - Attachment 7 - Chronology of RVCC Church Site Search, 8. Item 6 - Written Communication.pdf		

Date	Ver.	Action By	Action	Result
4/5/2016	1	City Council	withdrawn	

CONSIDERATION OF AN APPEAL OF THE ZONING ADMINISTRATOR'S DECISION REGARDING CONDITIONAL USE PERMIT PCC-15-014 (Rancho Vista Covenant Church)

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA DENYING THE APPEAL AND AFFIRMING THE ZONING ADMINISTRATOR'S DECISION GRANTING APPROVAL OF CONDITIONAL USE PERMIT (PCC-15-014) FOR THE RANCHO VISTA COVENANT CHURCH AT 2088 OTAY LAKES ROAD, SUITES 101 & 201

RECOMMENDED ACTION

Council conduct the public hearing and adopt the resolution.

SUMMARY

The Applicant, Pastor John Rose for the Rancho Vista Covenant Church, submitted a Conditional Use Permit (CUP) application requesting approval to relocate their church from temporary facilities to 2088 Otay Lakes Road, Suites 101 & 201 (Project) (See Attachment 2 - Locator Map). On January 13, 2016, the Zoning Administrator (ZA) approved the CUP Notice of Decision (NOD) (see Attachment 6) with the required CUP findings and conditions necessary for the proposal. The ZA considered all the facts surrounding the proposal prior to approving the Project. Chula Vista Municipal Code Section 19.14.100 requires the ZA NOD to be posted for an appeal period of 10 business days from the date on which the decision was made. The ZA NOD was posted on the City's website on January 15, 2016 and the appeal application was submitted by Benjamin Green, Esquire

on behalf of Frank Carrillo the appellant on the tenth business day, i.e., February 1, 2016, in accordance with Chula Vista Municipal Code Section 19.14.100.

ENVIRONMENTAL REVIEW

Environmental Notice
The Project qualifies for a Class 1 Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the California Environmental Quality Act State Guidelines.

Environmental Determination
The Director of Development Services has reviewed the Project for compliance with the California Environmental Quality Act (CEQA) and has determined that the Project qualifies for a Class 1 Categorical Exemption pursuant to Section 15301 (Existing Facilities) of the State CEQA Guidelines. Thus, no further environmental review is required.

BOARD/COMMISSION RECOMMENDATION
On January 13, 2016, after considering all reports and evidence including the issues raised in the objection letter (See Attachment 5), the Zoning Administrator approved the Project, subject to the findings and conditions noted in the Notice of Decision PCC15-014 (See Attachment 6).

DISCUSSION

Project Description:

The Rancho Vista Covenant Church proposes to relocate their church from temporary facilities to 2088 Otay Lakes Road, Suites 101 & 201. This project site is an office condominium building complex located south of Otay Lakes Road and west of and adjacent to the SR-125 tollway, in a Professional & Administrative (PA) zoned planning area of the Eastlake II Sectional Planning Area (SPA) Plan. The two suites are part of a two-story building providing approximately 7,000-square feet of gross floor area on both floors. The suites will provide for a lobby, auditorium and restrooms on the first floor, and classrooms, a nursery, an office and counseling space on the second floor. The 1,330-square foot auditorium will be utilized for services on Sundays only from 7:00 a.m. to 10:00 p.m., and will provide seating capacity for up to 150 persons. The suites are allocated 26 parking spaces seven days a week, and an additional 20 parking spaces are provided by a parking agreement for an additional 20 parking spaces on Sundays, when 43 parking spaces are required to meet the seating capacity of 150 persons.

Background:

In January 2015, an inquiry was made on behalf of an applicant wishing to establish a church at the proposed Project location. The PA zone expressly prohibits religious institutions; however, the Applicant believed that Federal Law (The Religious Land Use and Institutionalized Persons Act, or RLUIPA; 42 U.S.C.A 2000cc, *et seq*.) took precedence over the provisions of the subject PA Zone because other non-secular assembly uses were permitted with the approval of a CUP in the PA Zone. The Applicant further opined that a religious institution should also be permitted via a CUP. The Director of Development Services considered the Applicant's position and agreed with the Applicant

that a religious institution should be permitted in the subject PA Zone via a CUP. The Development Services Department (DSD) received a CUP application for completeness review on March 2, 2015.

The completeness review was limited to a review of the CUP application checklist requirements for conformance to development standards such as parking; the review also took into account the previous decision by the Director of Development Services to permit the subject church via a CUP. The completeness review letter also stated that the CUP would be limited to three (3) years.

On August 25, 2015 a formal CUP application submittal was made for the Rancho Vista Covenant Church. After working with the Eastlake Professional Center Owners Association, the church obtained a parking agreement (See Attachment 3) that would guarantee 20 additional parking spaces in addition to the 26 allocated to their own office condominium building suites to meet their parking demand for up to a 150 seat capacity on Sundays. The Notice of Application (NOA) was sent September 1, 2015 describing the Project as a church only, and the Public Notice sent October 1, 2015 stated that the Project was a "Proposed church facility for Sunday Services, and Monday through Saturday small group meetings. No pre-school or day care uses are proposed as part of this permit application."

On October 15, 2015 a letter was received from attorney Benjamin Green, representing Frank Carrillo Commercial Properties LLC, located at 2088 Otay Lakes Road, Suites 102 and 202, which is the business office condominium abutting the proposed church suites (Suites 101 and 201), where SIMNSA healthcare administrative offices are located. SIMNSA representatives previously made inquiries to the Mayor's office in April 2015 and those inquiries were forwarded to DSD regarding their awareness of the March 2015 completeness review application for a church. The letter (See Attachment 5) raised concerns regarding parking, traffic, and noise, as well as the potential for weekday uses outside the Sunday only uses proposed. Staff took into consideration the issues raised in the objection letter by recognizing that most parking, traffic and noise had to do with potential impacts from Sunday services. These concerns are addressed in the CUP findings, conditions of approval and the parking agreement, by limiting the church assembly uses to Sundays only, when most Professional and Administrative business offices in the complex are closed.

ANALYSIS

Appeal:

The appellant is asking the City Council to approve their appeal request and deny the request for the subject CUP based on information they set forth in their appeal request (See Attachment 4). These concerns are identified as enumerated in the appeal request and responses are provided below:

Appellant Allegation #1: The appellant alleges that "[t]he finding that the proposed use is necessary or desirable in this area is not supported by the information available in the SPA [Plan]" because "[r]eligious institutions are expressly not permitted in the PA land use district."

This fact was not overlooked by the Zoning Administrator. Indeed, religious institutions are expressly not permitted in the PA Zone. This express prohibition, however, probably would run afoul of the RLUIPA. The RLUIPA states that "No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly, or institution (A) is in furtherance of a compelling government interest; and (B) is the least restrictive means of furthering that compelling government interest." 42 U.S.C. (US Code) Section 2000cc (a) (1). As such, prohibiting churches entirely within a zone is highly problematic because an agency meeting the aforementioned US Code Section (which is referred to as the "Strict Scrutiny Test") is very difficult, if at most times, impossible to do. And in this instance (i.e., with this dated SPA Plan), because there is virtually no substantial evidence in the record that created the SPA Plan that prohibiting churches in the PA Zone does serve a compelling government interest and is the least restrictive way of furthering that compelling government interest, then arguably, this church should be permitted in the subject PA Zone. In addition, other non-secular assembly uses have been permitted in the PA Zone through the CUP process; as such, this fact leads to another prong of the RLUIPA. RLUIPA section (b)(1) states that "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 USCA 2000 cc (b) (1). Case law holds that a government agency is in violation of this "equal terms" provision when a secular competitor is treated in a less than equal way with the church. Therefore, denying a similar assembly type use, particularly one that would only occur one day per week when the majority of the other PA Zone uses are not in operation further ads a credible argument to allow the subject church via a CUP. Lastly, this type of assembly use can also be viewed as necessary being located near the community it serves and desirable operating on a day when other nearby businesses and assembly uses are not in operation.

Staff's view prior to the appeal filing was that the Eastlake II SPA, approved prior to 2000, would not have included the religious prohibition if it had been written after the RLUIPA legislation. In addition, the finding of fact made by the Zoning Administrator prior to the appeal was that the church assembly use would only be offered on Sundays, while Monday through Saturday use would only be for administrative and small group meetings. The concerns in the objection letter regarding possible impacts of traffic, parking and the potential for noise are mitigated by the conditions prohibiting large assembly gatherings during the work week as well as on Saturdays.

Appellant Allegation #2: The appellant alleges that the Applicant proposes seven days of operation, but that the City is only requiring the Applicant to provide 43 parking spaces on Sunday and a lesser amount of parking Monday through Saturday.

The Applicant proposes to have administrative office activity and small group meetings limited to 25 persons, based on 26 permanently assigned parking spaces (small group meetings and/or bible study) six days a week (Monday through Saturday). The Applicant has rights to 26 parking spaces seven days a week under the Parking Agreement pursuant to the CC&Rs for Parking Allocation (See Attachment 3) to meet the parking demand for administrative office activity and small group meetings. The Applicant's CUP request for actual church use activities is only for Sundays from 10 am to 7 pm. The Applicant entered into a Parking Agreement with the Eastlake Professional Center Owners Association for 20 additional parking spaces on Sundays, for a total of 46 parking spaces. The church assembly area allows for 150 persons. The parking requirement is 1 space per 3.5 seats, requiring 43 parking spaces to be available on Sundays. The 46 spaces granted represent 20-percent of the 230 parking spaces in the Eastlake Business Center, most of which will be available on Sundays.

Appellant Allegation #3: The appellant alleges that "[t]he use does not comply with the regulations… specified in the code" and that only providing 43 parking spaces on Sunday amounts to the Applicant only providing a temporary parking allocation for one day of the week, and as such, the CUP should not be granted for a use if the use cannot comply with parking requirements seven days a week.

There are numerous CUPs with parking agreements that allow for shared parking, where varying hours and days of operation of a particular use are taken into consideration in order to allow for shared use of adjacent or nearby parking spaces, and to accordingly limit the hours and days of operation. The purpose of the proposed church CUP is to ensure compliance with the request for a church use on Sundays only, and to limit functions to only administrative office and small group meeting uses from Monday through Saturday, otherwise the CUP may be revoked. The Zoning Code (CVMC 19.62.040) provides for alternative parking arrangements between private parties, provided that the shared parking is on-site, or off-site within 200-feet. The parking agreements are based on an analysis of the parking demand during certain days and hours, and are approved by the City through the CUP process, and/or by the City Engineer and Development Services Director.

Appellant Allegation #4: The appellant alleges that the Zoning Administrator attempts to dispose of the religious institution prohibition in the subject PA Zone because the prohibition is unenforceable under federal law (i.e., RLUIPA), and that the Zoning Administrator's determination is incorrect because the subject prohibition does not place a substantial burden on the exercise of religion. The appellant states that the threshold of "substantial burden" has not been met in the exercise of religion with regards to RLUIPA that is invoked to dispose of the subject Eastlake II SPA plan religious institution prohibition in the PA zone.

As discussed above in Appellant Allegation #1, it is staff's opinion that, with the state of the subject SPA Plan, it would be extremely difficult to meet the "substantial burden test" because there is virtually no substantial evidence in the record that created the SPA Plan that prohibiting churches in the PA Zone serves a compelling government interest and is the least restrictive way of furthering that compelling government interest and therefore, in this instance, disposing of the PA Zone prohibition against religious institutions is legally appropriate.

Conditions: The appellant states here and in the overview that the Project conditions of approval do not prevent the applicant from operating a pre-school or day care.

The first finding for approval of the CUP is explicit in describing the only authorized uses Monday through Saturday are for small group meetings, bible study, and general administrative uses. Sundays are the only day authorized for assembly and worship services, which is when the nursery, classrooms, and counseling space on the second floor will be used. Condition #7 memorializes the fact that the CUP authorization is only for small group meetings, bible study, and general administrative uses Monday through Saturday, and that the church assembly use on Sundays in the auditorium is limited to 150 persons based on the seating capacity. The classrooms, nursery, and counseling space, like the restrooms, are part of the basic functional components of the buildings for Sunday services. The proposed CUP does not authorize any pre-school or day care uses at the site. In addition, a pre-school or day care license would require the provision of an outdoor play area, which is not possible at this location.

Conclusion:

Based on the analysis of the appellant's allegations, staff does not find merit for the appeal to deny the CUP. Therefore, staff recommends denial of the appeal and affirmation of the Zoning Administrators approval of the proposed Project, based on the findings and subject to the conditions of the Zoning Administrator's Notice of Decision, PCC-15-014, which are attached to the City Council Resolution.

DECISION-MAKER CONFLICT

No Property within 500 feet

Staff has reviewed the property holdings of the City Council members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action. Consequently, this item does not present a disqualifying real property-related financial conflict of interest under California Code of Regulations Title 2, section 18702.2(a)(11), for purposes of the Political Reform Act (Cal. Gov't Code §87100,et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. The Project implements the Strong and Secure Neighborhoods Strategic goal by providing construction of a development project in a manner that ensures code compliance, public health and safety of the community.

CURRENT YEAR FISCAL IMPACT

There are no fiscal impacts during the current fiscal year from the processing of the project. All costs for this appeal are covered by the deposit account paid for by the applicant. The Appellant paid the required filing fee for the appeal. Costs associated with the processing of future implementing permits, will also be covered by permit fees or deposit accounts.

ONGOING FISCAL IMPACT

The Project is privately owned and operated and will not create future expenditures for the City associated with approval of the item, including facility maintenance and operations.

ATTACHMENTS

1. City Council Resolution
2. Locator Map
3. Agreement for Assignment of Parking Spaces July 28, 2015, including referenced portions of CC&Rs (Article 2 Ownership and Easements, Section 2.6.3 Parking Allocation, and Article 6 Use Restrictions, Section 6.2 Permitted Uses)
4. Appeal Submitted by Benjamin Green February 1, 2016
5. Objections Letter Submitted by Benjamin Green October 15, 2015
6. Zoning Administrator CUP Notice of Decision PCC-15-014
7. Chronology of RVCC 10-year search for a church site in Chula Vista

Staff Contact: Harold Phelps, Associate Planner

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