



CITY OF NOVATO
COMMUNITY DEVELOPMENT

DATE: November 12, 2020

TO: City Council
City Manager
Community Development Director

FROM: Steve Marshall, Zoning Administrator

SUBJECT: Zoning Administrator's Hearing of November 12, 2020

NEW ITEM:

1. RELIGIOUS FACILITY
CEQA CATEGORICALLY EXEMPT: SECTION 15301
P2020-046; USE PERMIT
APN 153-112-01; 695 DE LONG AVENUE

Conduct a public hearing and possibly approve a use permit application for operation of a religious facility with a preschool within the existing commercial office building at 695 De Long Avenue.

PRESENT

Rabbi Menachem Landa, Applicant
Gary Cohen, Applicant's Representative
Kaitlin Zitelli, Planner II

PUBLIC HEARING

Zoning Administrator Marshall opened the public hearing.

Zoning Administrator Marshall noted that this item had been continued from the hearing of October 22, 2020, and the changes to the project within that time included withdrawal of the Applicant's initial requests for a private school on the second floor of the building and allowance of on-street parking on Davidson Street. The Applicant is now requesting a preschool, which is part of the definition of religious facility in the municipal code.

Zoning Administrator Marshall acknowledged there being a comment letter questioning the noticing and agenda procedures for the proposal. He stated the public notice and agenda posting procedures for this project had been performed in accordance with State law requirements.

Rabbi Landa presented the project and provided information about the religious organization which he represents.

Zoning Administrator Marshall acknowledged reviewing three comment letters received the day of the hearing and opened the public comment period.

Eileen Vollowitz commented she lives in the neighborhood and would welcome the religious facility and believes it is a perfect use for the building and that the site has been underutilized.

Linda Cooney stated she lives in the neighborhood at the bottom of the hill and her main concerns are parking, traffic, and noise. The children playing outside as part of the preschool would cause noise. There have been vehicle accidents in the area. She would have preferred that the project information was released earlier than Monday. She noted that 40 preschool students would create many cars coming and going from the site and may interfere with existing traffic on the street related to the Novato Corp Yard and Novato Sanitary District Facility at the end of Davidson Street.

Phil Sweeney, 630 Davidson Street, said that his concerns were provided in writing and are related to parking and he believes this has not been resolved. Mr. Sweeney commented that the preschool will result in traffic, and perhaps crosswalks and traffic calming signs will be installed on the street. He is also concerned with the outdoor play area creating noise. Mr. Sweeney asked for clarification on whether the use permit runs with the land.

Zoning Administrator Marshall closed the public comment period.

Zoning Administrator Marshall noted the request for on-street parking along Davidson Street has been withdrawn by the Applicant.

Zoning Administrator Marshall responded that a use permit runs with the land and explained that if a subsequent religious facility wanted to operate at this location they would be required to meet any conditions of approval and operating characteristics of an existing use permit authorizing a religious facility at the site or a new operator could request modification of the use permit subject to public review procedures. He further explained that corrective action is available if the conditions of a use permit are not being met, including up to revocation of the permit.

Zoning Administrator Marshall noted the definition of a religious facility in the municipal code includes a preschool, while a school is a separate land use definition. He also noted the project was referred to the Novato Public Works Department for their review; department staff did not note or require any changes to the right-of-way or associated signs.

Zoning Administrator Marshall said there is an outstanding issue regarding the location of the outdoor play area for the preschool. He said that the applicant had provided a plan for the outdoor play area, however it was provided after the staff report and agenda had been released. He noted that the hearing could be continued to December 10, 2020, to allow time for review of the outdoor play area plans and sought input from the Applicant.

Gary Cohen, the Applicant's real estate representative, asked if the outdoor play area plan could be reviewed now, at the meeting.

The outdoor play area plan was provided via the 'screen share' option on Zoom for everyone to see.

Mr. Cohen described the plan, stating that the outdoor play area is proposed behind the building (west side of the building). Zoning Administrator Marshall asked if parking would be removed as a result of the play area, and Mr. Cohen responded no, all existing parking would be maintained.

Zoning Administrator Marshall stated that he would allow further public comment given the additional information on the outdoor play area that was provided for review.

The public comment period was reopened.

Ms. Vollowitz commented that the play area was a very small space and the children would be exposed to pollution from the freeway. She commented that she is in favor of the use, but if the membership outgrew the building, this could result in dangerous traffic during special events. She said perhaps traffic signs including a 'No U-Turn' sign could be added to the street. She stated that the freeway noise in the neighborhood is substantial and the sounds of children outside would be pleasant compared with the freeway.

Ms. Cooney questioned the placement of the outdoor play area close to the freeway. She noted there have been protests on the freeway overpass which could affect the children. She asked how grading would work for the outdoor play area and notes there are drainage issues in the area.

A phone-in caller performed the 'raise hand' function, however no comments were heard.

Zoning Administrator Marshall closed the public comment period.

Zoning Administrator Marshall acknowledged the additional comments regarding special event parking, noting the low frequency of special events proposed at the site. He also noted the applicant's willingness to manage parking during events by providing off-site parking and providing a shuttle or carpool to the site; a condition of approval is proposed to address parking management. He also noted that some members of the congregation walk to events and services as described in the application materials. He asked Mr. Cohen about the drainage at the site.

Mr. Cohen responded that the drainage in the area is not proposed to change, that the area is protected and that the outdoor play area would be designed in such a way that the drainage would be managed.

Zoning Administrator provided a final opportunity for public comment since a prior caller appeared to have re-entered the hearing.

Dale Smith, 655 Adrienne Street, stated that he has two concerns, noise and parking. He described his participation in the Sansone Restaurant Use Permit process in 1997. He said he does not object to a preschool, however if there is a big event where would the parking be and where will the outdoor play area be.

Ms. Cooney stated that she would like to hear Mr. Sweeney's opinion on the outdoor play area as he lives across from the site. She says that 10-15% of the congregation would walk to services and that is not a large number.

Mr. Sweeney commented that the outdoor play area behind the building is very small. He said that he owns an 8-car parking lot across the street from this site and users of the project site might park in this parking lot or use the lot to turnaround. He states that the project will change the character of the residential neighborhood.

Zoning Administrator Marshall closed the public comment period.

Zoning Administrator Marshall stated that the use permit process is an opportunity to review a project's characteristic to determine whether use is compatible with the surrounding area. In this instance, the staff report described the project operation as being akin to a restaurant, office, or personal service use, all of which are permitted uses at the site. Zoning Administrator Marshall noted that applicants should be allowed the opportunity to operate a use in the way in which they have proposed if found compatible with surrounding uses. If an applicant is not operating as proposed and are in violation of an approved use permit, there are corrective steps and measures that can be taken by the City to address such a violation. He also noted that with respect to the children's play area, the City does not have location criteria addressing whether a play area is or is not allowed next to a freeway or roadway, and noted the Applicant must meet the State licensing requirements for such a facility.

Zoning Administrator Marshall stated he was inclined to modify the recommended conditions of approval to allow an outdoor play area as shown on the site plan provided at the meeting, subject to the Applicant securing any required building permit and State licenses.

Zoning Administrator Marshall stated he was approving the use permit with modifications, based on the findings in the staff report, subject to the conditions of approval below, with the modification of condition #6 to allow the proposed children's play area subject to securing any required building permit and State licenses. He said this approval is based on elimination of the private school previously proposed on the second floor, noting the second floor would remain an office use; the approval includes the preschool with occupancy limited to 40 students, and the approval does not include an allowance for on-street parking along Davidson Street.

Zoning Administrator Marshall noted there is an appeal period of ten (10) calendar days.

The public hearing was adjourned at 2:48 p.m.

FINDINGS

1. The proposed project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines, pursuant to CEQA Guidelines Section 15301 Existing Facilities. Section 15301 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing private structures involving negligible or no expansion of existing or former use, including interior alterations.

The proposed project consists of operation of a religious facility within an existing building. The project includes minor interior tenant improvements, and no exterior changes to the building are proposed. Existing and former uses at the site include general office and restaurant uses, and the religious facility will operate similarly to an office during the weekdays, and similarly to a restaurant in terms of gathering, socializing, and special events and number of people on the site. As such, the religious facility use is substantially similar to existing and former uses at the site, resulting in minor alterations to the building and a negligible expansion of existing and former uses. The project meets the criteria for this CEQA exemption.

2. In accordance with Sections 19.42.050E of the Novato Municipal Code, the Zoning Administrator hereby grants a use permit for operation of Chabad Jewish Center of Novato, a religious facility at 695 De Long Avenue, on the basis of the findings below as supported by the facts discussed in the staff analysis contained in the staff and subject to the conditions of approval specified below.
 - a. The proposed use is consistent with the General Plan and any applicable specific plan;
 - b. The proposed use is allowed with a use permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan;
 - c. The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of the persons residing or working in the neighborhood of the proposed use;
 - d. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
 - e. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

ACTION TAKEN

In accordance with NMC Section 19.42.050.E (Use Permit – Findings and Decision) the Zoning Administrator hereby makes the required findings as listed and discussed within the Staff Analysis section of the staff report, to allow for a religious facility and preschool to operate within an existing office building at 695 De Long Avenue.

CONDITIONS OF APPROVAL

The following conditions of approval shall be met to the satisfaction of the *Novato Planning Division*:

1. The Use Permit approval shall expire two (2) years from the date of approval unless the activity authorized herein has commenced operation.
2. A sign permit issued by the City of Novato Planning Division shall be obtained for any signs at the site.

3. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, and recordation of final maps or other entitlements.
4. The applicant or successor in interest shall operate the religious facility in substantial conformance with the program of use submitted with the use permit application and any modifications thereto shall not result in individual or combined assembly room and office occupancies exceeding the availability of on-site parking.
5. The proposed pre-school shall serve no more than 40 children.
6. The applicant shall obtain all necessary permits and licenses for the outdoor play area proposed on the west side of the building.
7. The applicant or successor in interest shall implement management measures for special and holiday events coinciding with office occupancy or where an event could generate parking demand exceeding the amount of on-site parking at the project site. Such measures may include, but not be limited to, selecting an alternative location for special/holiday events, coordinating carpooling, implementing a shuttle service, or procuring an off-site parking location. The applicant shall provide parking information to attendees prior to special/holiday events and, if necessary, provide a parking monitor for the event(s).

The following conditions must be met to the satisfaction of the *Building Division of the City of Novato Community Development Department*:

8. The applicant shall obtain building permits issued by the City of Novato Building Division as necessary for all interior and site improvements.

The following conditions must be met to the satisfaction of the *Novato Sanitary District*:

9. The proposed kitchen facility shall install a grease interceptor, as required for all non-residential kitchens.
10. Any additional plumbing fixtures installed will require a Novato Sanitary District permit and inspection.

The following conditions must be met to the satisfaction of the *North Marin Water District*:

11. The project must conform to District Regulation 15 – Mandatory Water Conservation Measures. Occupancy approval shall not be granted until compliance with water conservation measures, as applicable, can be verified.
12. Installation of an above-ground, reduced pressure principle (RPP) backflow prevention device at the meter is required in accordance with the District's Regulation 6 and California

Department of Health Regulations. Upon installation, an inspection report must be completed and returned to the District prior to the commencement of business activities.

The following conditions must be met to the satisfaction of the *Novato Fire Protection District*:

13. Changes or alterations to the building that effect Fire Sprinkler coverage shall be evaluated by a qualified licensed contractor. If alterations are required to the Fire Sprinkler System, a separate submittal of plans, permits, and fees shall be submitted directly to NFD.
14. All automatic fire sprinkler and fire alarm systems, flow switches, and control valves shall be monitored by an approved UL Central Station company, zoned and enunciated as required by the Novato Fire District and Fire Protection Standards #400.
15. Roadways and driveways shall have a minimum clearance of not less than 20-feet horizontal by 14-feet vertical clearance. No object shall encroach into this horizontal and vertical plane.
16. 'No Parking Fire Lane' curbs and signs shall be installed in accordance with NFD Standards #204, as required by the Fire Marshal.
17. 'Knox' key access shall be installed at the premises conforming to Novato Fire Protection Standards #202.
18. Stairway markings and identification shall be installed and maintained on the interior stairwell landing doors conforming to Novato Fire District Standard #116.
19. The address shall be posted clearly visible from the street with numerals illuminated and contrasting color to their background conforming to Novato Fire Protection Standard #205.
20. The facility and improvements shall comply with California Building Code and State Fire Marshal building standards and regulations.
21. Maximum Occupant Capacity signs shall be installed as required by the Fire Marshall conforming to Fire District Standard #115.
22. Portable fire extinguishers shall be installed and maintained in accordance with California Fire Code Chapter 9.
23. Changes or alterations to cook line/appliances that effect hood and duct coverage shall be evaluated by a qualified licensed contractor. If alterations are required to the hood and duct system, a separate submittal of plans, permits, and fees shall be submitted directly to Novato Fire Protection District.
24. Changes or alterations to the building that effect fire alarm coverage shall be evaluated by a qualified licensed contractor. If alterations are required to the fire alarm system, a separate submittal of plans, permits, and fees shall be submitted directly to Novato Fire Protection District.

25. **Indemnity and Time Limitations**

- a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.
- b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- c. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- d. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
- e. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 66020(d) (1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

FURTHER ACTION

No further action on the application will be taken unless an appeal is filed in writing within ten (10) calendar days, along with the required filing fee.