



PLANNING COMMISSION MEETING MINUTES

City Council Chamber
200 Old Bernal Avenue, Pleasanton, CA 94566

APPROVED

Wednesday, June 27, 2018

(Staff has reviewed the proposed changes against the recorded proceedings and confirms that these Minutes are accurate.)

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

The Planning Commission Meeting of June 27, 2018, was called to order at 7 p.m. by Chair Nagler.

The Pledge of Allegiance was led by Commissioner Ritter.

Staff Members Present: Gerry Beaudin, Director of Community Development; Ellen Clark, Planning Manager; Julie Harryman, City Attorney; Jenny Soo, Associate Planner; Eric Luchini, Associate Planner; Mark Dennis, Sr. Code Enforcement Officer; Amy Statham, Recording Secretary

Commissioners Present: Commissioners Nancy Allen, Justin Brown, Greg O'Connor, Herb Ritter, and Chair David Nagler

Commissioners Absent: Commissioner Balch absent

2. APPROVAL OF MINUTES

There were no minutes for approval.

3. MEETING OPEN FOR ANY MEMBER OF THE AUDIENCE TO ADDRESS THE PLANNING COMMISSION ON ANY ITEM WHICH IS NOT ALREADY ON THE AGENDA

There were no members of the audience wishing to address the Commission.

4. AGENDA AMENDMENTS

Director of Community Development Beaudin recommended Item 6.c. (Inclusionary Zoning Ordinance amendments) be continued to the July 11th meeting, and the Commission approved its continuance.

5. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved, or adopted by one motion unless a request for removal for discussion or explanation is received from

the Planning Commission or a member of the public by submitting a speaker card for that item.

There were no Consent Calendar items.

6. PUBLIC HEARING AND OTHER MATTERS

a. P16-1883/P16-0288, Chabad of the Tri-Valley

Applications for Conditional Use Permit and Design Review approvals to operate a religious institution with a childcare facility/preschool and for site modifications including a playground and outdoor terrace at 3370 Hopyard Road. Zoning for the property is RM-2,500 (Multi-Family Residential) District. (Public Hearing continued from April 25, 2018).

Planning Manager Ellen Clark presented the agenda report.

Commissioner Allen asked and confirmed there could be unlimited outdoor events with fewer than 25 people.

Commissioner Ritter confirmed with staff that a CUP runs with the land and that a new owner would be responsible for complying with all conditions unless they request amendment of the CUP.

Chair Nagler stated that if the prior use of the building was not a religious organization and the current occupant is, he asked if the current occupant would affect what is enforceable by the City.

Ms. Clark responded that there are some protections given to religious institutions. Mr. Beaudin added that the City's goal is to treat religious institutions the same as other uses and not be overly prescriptive or punitive. He noted that both the lodge and religious institution are types of community assembly uses, , with the additional component in this application being the preschool.

Commissioner Brown stated PMC Section 18.124.370 uses the term "daycare" as well as "childcare" and "preschool" which are being used interchangeably. He asked if that code applies to this project.

Ms. Clark described the various definitions of the PMC under child care facilities such as tutoring centers, daycare and preschools. Home-based family daycares are categorically different; the PMC has a definition for a "nursery school" which is the only type of facility that is described and under which staff interprets both preschools and daycares to fall. The proposed use is not a large or small family daycare which has a specific definition under State law, and is operated within a residential home.

City Attorney Julie Harryman asked if the question raised was about over-concentration and the distance between them.

Commissioner Brown said one item in the code relates to the 300-foot separation and also the Zoning Administrator comments in terms of detriment and asked if either of those things apply. Categorically, this project does not apply because it is not considered a family daycare.

Ms. Harryman confirmed that separation and over-concentration factors did not apply because the project is not a large family daycare

Commissioner Brown referred to condition #10 and confirmed that only 2 of the 15 events listed would be permitted to have music.

Commissioner O'Connor referred to equal treatment of the preschool/daycare and asked why would a change in outside activities be changed if the City treats everybody equal, the CUP runs with the land and no outside activities were permitted under the Mason's CUP.

Mr. Beaudin explained this is a new user and a community assembly use as well as a religious institution which also has applied for the daycare use. All of these factors require staff reviewing it in a fresh perspective based on the circumstances, zoning and conditions in the area and staff evaluates the merits of the application accordingly.

Chair Nagler asked if it would be problematic for the Commission to maintain all of the previously applied conditions of the Mason's CUP, for this religious facility.

Ms. Harryman explained that staff reviews the zoning of the property, and while it has history, a parcel of land can have various uses allowed. One use allowed is religious institution, which differs from the prior use; staff looks at the proposal as it stands today.

Chair Nagler asked if it was possible from a legal perspective for the City to restrict the use of the building in the same way the building was restricted in its uses for non-religious occupancy.

Ms. Harryman stated their office has reviewed cases relating to the Religious Land Use and Institutionalized Persons Act (RLUIPA). Such cases are typically very fact driven and as a result she could not provide an answer either way. If this group came to the Commission with no history on the parcel the Commission would look at it fresh and should treat it like any other religious entity that wanted to use the parcel. She added that there are different parcels and different results. All are factually driven and she cited varying outcomes for daycare approvals, such as the one behind the Raley's Shopping Center and another at the Vintage Hills Shopping Center.

Chair Nagler referred to discussion regarding a contemplation garden at the back side of the property. This was not part of the formal application and he asked for its status.

Ms. Clark replied at this time it was not part of the application, but staff had suggested the applicant could return and propose this as an additional component.

THE PUBLIC HEARING WAS OPENED.

James Schwartz, attorney representing the applicant, disagreed with comments from the City Attorney relating to RLUIPA and voiced opposition to the following conditions and restrictions:

- Condition No. 5 to relinquish one-third of their property, as no other house of worship has such measures and cited buildings and parking lots which are closer than Chabad's.
- The 1997 permit stated that activity should focus away from the northern residents and not completely restrict activity and asked for no restrictions for the contemplation

garden. Regarding Condition No. 8 for the outdoor playground, there are no other houses of worship with three hour limitations for use a day for a preschool.

- Condition No. 28 relating to loitering is also an affront to all Jews, this is unconstitutional and staff did not name or indicate how this was applied elsewhere in the community and respectfully asked that this condition be removed.
- Regarding the indemnification condition, the Chabad cannot afford to have legal counsel.
- Regarding the parking count, there is a parking contract between St. Clare and the Chabad which has been in effect for two years. He was opposed to the one-year review which is unfair and unwarranted, given the contract has been working with no complaints.
- Lastly, he asked the Commission to consider RLUIPA in all of its decisions.

Neil Newman, Director of Security and Building Development, Chabad of the Tri-Valley, spoke regarding the community meeting, stating he mediated the meeting and neighbors provided three alternatives to the playground which he described and said the common ground was to move the playground away from the neighbors' area and stagger the children's use of it. After the meeting, a number of people told him they supported that idea but when this idea was brought to the Millers, it was rejected. He believes there is a very small part of the neighborhood that will not accept the outdoor play area under any conditions, but this is not viable financially or with respect to the religious functions.

Michael Miller, neighbor, stated the activities Chabad wishes to conduct outside the building will be very noisy, are social and not religious in nature, and neighbors have a right to live in peace. Neighbors agreed to up to four outdoor activities since only four of the 15 listed activities/events require them to be outside; he asked that only those required by their faith be allowed. Chabad has asked for an unlimited amount of social outdoor activities of smaller group sizes without justification, yet they will be very noisy and occurring all day and all year. There is no religious requirement for these small events and he asked that the Commission prohibit them.

Darlene Miler, neighbor, stated many middle school and high school members of Chabad attended the last meeting stating they wanted their Hebrew school and neighbors could not agree with them more. It is only the noisy outdoor parties, playground and terrace they object to because the noise is detrimental. The report from the sound engineer indicates noise would exceed the noise code. They also have a petition from 28 neighbors who ask that no outside activity be allowed and she questioned whether the Commission would like these noisy activities on the other side of their backyard fences.

She noted that the three playgrounds that will exist in the neighborhood will bombard the neighbors with noise all day long and there is no other example in Pleasanton of three schools clustered together. Furthermore, the code requires the activity be 300 feet from another large day care or nursery school to protect neighbors from cumulative increases in noise from multiple schools; the cumulative noise issues have not been addressed. The Commission can use the separation requirement for family daycares as guidance to not build the playground because it is less than 300 feet from St. Clare's and Harvest Valley. Neighbors also disagree with Chair Nagler's statement that they are starting over from the City Council's decision of no outside activity and have documented reasons for this.

Rabbi Resnick cited a Pleasanton Weekly article which included hateful comments and he rebutted the false accusations that they are bad neighbors, stating they have had good standing history in the community for 13 years. They had a licensed family daycare with 12-14 children which included outdoor play. He and his wife hold religious meetings in their home every Saturday night with other families, and from Friday night to Saturday night they have larger crowds than usual. He recognized other activities which most likely take place more often than those in regular neighborhoods; however, one of the reasons they purchased the property was that they like to conduct these activities in this area versus a regular residence.

Eileen Cooper stated if the Chabad is restricted in their religious operations she similarly voiced concerns with her nearby neighbors' ability to hold their Catholic religious parties and marches or anything that is near the Miller's home. Also, when more Valley Trails residents learn of this they will no longer be able to have any Christian activities.

Kartnik, neighbor, said he has changed his mind and now thinks the CUP should be fully enforced because he sees the Chabad as a very business-like activity. The 1997 CUP was created because it provides rights and protections and the experimentation done by reducing restrictions went badly. He also agreed the activities of Chabad would affect the quality of life but thought it was possible to shield noise with a dome as has been used in a similar church in Fremont.

Jonathan Wisemoth, neighbor, said Chabad has been very important to him and his family and believes Chabad would be respectful of neighbors at all times and opposed the restrictions.

Alina Ostrovsky, neighbor, spoke about a home across the street from her which was zoned commercially and is now a massage parlor due to it being grandfathered in. She thought neighbors need to be aware of the zoning in neighborhoods and the fact they are taking a risk that public activity could occur based on zoning.

Naomi Bloom provided a letter to the Commission.

Lynn MacAnee recognized the animosity in her neighbor and thinks neighbors simply want the best situation for themselves and for Chabad. If the Millers were to sell their home they would have to make certain disclosures which would affect their home's values as well as others nearby. She supported a meditation garden as a buffer with trees, and believed this should be discussed and worked out and not litigated.

Nancy Hecht, neighbor, said she attended the community meeting and stated that the St. Clare representative indicated they were not interested in sharing their parking lot forever. He also stated that St. Clare's would consider putting in a driveway for an entrance and exit off of North Valley Trails which would be a problem for her, given she lives on the corner. She questioned what would happen if St. Clare's made these decisions, voiced concerns with impacts from noise and increased traffic from Chabad as well as a new subdivision proposed nearby and said she must close her doors and windows to get any peace.

Stella Beck praised Rabbi Resnick and his family, said she was not for or against the matter as she puts up with noise every day. She spoke of the caliber of the Resnick family and what they have done in the community as outstanding.

David James voiced confusion stating that the CUP goes with the property which has no restrictions for outdoor use, for daycare, for kids playing outside. Chabad purchased the building understanding this was all included in the CUP. The property is zoned RM-2,500, could have 12-15 apartments on it, each with its own family daycare and there are a number of preschools, daycares and a park in the neighborhood. In terms of home values and disclosures, a home just sold within one week across from St. Clare's church for \$126,000 over asking price so the argument regarding reduced home values is not accurate.

Shyamal Gurazada, neighbor, questioned why the current CUP was not being implemented given there was a unanimous decision in the past. Chabad is a religious institution that wants to use the property for social gatherings and religious events and they will follow rules and be respectful. He asked if any research has been done on Chabad's behaviors at past locations and while he and his wife would appreciate quietness during the week, there will be noise which is distracting.

Judy Lawrence spoke about noise from I-580 which over time people get used to, said Chabad is here to be a community for Pleasanton, she hoped neighbors recognize that they want to work out things and asked that they be given this opportunity.

Connie Cox spoke about Chabad's statements at meetings that they would undergo many improvements to the building and surroundings, but did not indicate this was predicated on the daycare and receipt of funds. She disagreed Chabad has been good neighbors up to this point but would like to work things out, thinks that events with 125 people would cause many traffic problems and noise, and asked that all options be explored.

Merritt Wisemoth spoke of trade-offs, the fact that things change with the times, weighing of pluses and minuses, Judaism as a culture and a way of living, and protected rights under the First Amendment.

Geoff Falcon spoke of his experience as a commissioner for the San Francisco Bay Area Council as a troop leader and said Troop 908 is the largest and based in Pleasanton with over 120 young men and soon to be women. Every week the troop meets at St. Clare's outdoors during the summer months in the same grass area adjacent to Chabad. He remembers no restrictions imposed, did not remember any complaints from neighbors, believes that Chabad is not a noisy group and thinks it is unfair to impose restrictions.

Vascar Moty said he knew of issues with the property and noted that the Valley Trails Church was built with the neighborhood and has no restrictions. This property has restrictions and voiced opposition to the many parties and outdoor activities. He questioned what would happen if St. Clare's Church does not share their parking lot in the future and asked to respect the neighborhood impacts of noise and traffic and not allow outdoor activities.

Leonard Cooper questioned why the City is restricting where, when and how he can celebrate his religion. He read the First Amendment, said Chabad is an excellent member of the community and believed the restrictions are a violation of the Constitution.

Usha Gurazada, neighbor, stated she respects religious activities and thought this has to do with protection of quality of life. The City Council voted unanimously to uphold no outdoor activity and Rabbi Resnick knew that and purchased the property. She questioned how the

City will protect residents' interests once approved and stated residents have been portrayed and attacked as intolerant which is disrespectful.

Debra Grossman thinks what the country and Pleasanton need is civility and respect for each other, stated she has been participating in Chabad activities for 13 years and every event has been infused with learning about their faith with respect and civility. She spoke of discrimination given restrictions, stated children do not screen, and every event she has attended has had a Jewish component and also charity and survival components.

Simon Cohen said Chabad has brought wonderful events to the entire Tri-Valley community that have enriched and educated residents. Their passion, concern and appreciation for the well-being of the valley are immeasurable and he quoted a supporter's comments. The distance of the facility relative to houses is indistinct from other preschools and churches in the area and limiting activities or restricting Chabad in any way distinct from others will awaken the entire community to fight such an injustice. He spoke of anti-Semitism and limits on freedoms, stated he lost many family members in the Holocaust and cited draconian conditions.

Stan Himowitz stated the Resnick family has the highest ethics and moral values and he could not imagine they would tell anyone to move away if they do not like the facility. They are great communicators and any events have a high religious component with no drugs, alcohol or loud music, and he hoped the CUP could be approved and that people continue to respect Chabad's contribution to the Pleasanton community.

Ryan Ball voiced perplexity that this daycare center is a point of contention given St. Clare's Church hosts non-religious social events for over 200 Boy Scouts weekly for 15 years. He suggested a comprehensive review of what is occurring at St. Clare's Church, stated his Jewish education and community largely comprised of Chabad has been a large part of who he is today and it would be sad if kids would not be able to have the same experiences he has benefitted from.

Pierre Dutcher stated on behalf of Valley Trails residents who could not attend most of their concerns are increased traffic and noise violations. He cited arguments of unfairness as unsubstantial, said the Millers have shown the same concern about the previous groups who had caused noise outside, and said there are limitations with religious freedoms which are accepting unless they harm others.

Bennett Copeland, Sunol, supported staff's recommendation, thinks if an activity was being held at Chabad when noise exceeded the code, residents could call the police as is done normally. He asked if outdoor playground noise will be enforced throughout the City, noting this will include all schools, daycare centers, and other places where kids play outside. He is a retired pediatrician and stands for children and believes restrictions were terrible to require kids be kept in a glass cage.

Adam Falcon, Danville, echoed points of Geoff Falcon and Ryan Ball and stated he was once a Patrol Leader for Troop 908 and was never once alerted to any complaints or advised to be considerate of noise.

Helen Princavie said she has been a neighbor of Chabad for 10 years prior to moving to Pleasanton and commented that she contacts the City Manager regularly to apprise him of her observations and never had a problem with noise. Her experience has been that there are

many events and at times traffic has gotten busy, but things are always managed and people have always been polite and neighbors never complained about Chabad.

Dr. Jason Belk, Livermore, stated the original restrictions were put in place for the Masonic Lodge which is not a religious congregation. He asked that the synagogue be treated equally with all other religious organizations and said freedom of religion means that one does not have to restrict their practice indoors. He noted that other religious organizations do not have restrictions and asked that the Commission follow prior actions, not set limitations, and not discriminate against Jews of the Tri-Valley.

Dr. Laura Silverstein, OBGYN and Vice Chair at Valley Care, said the reason her family chose to move to Pleasanton was because of the Chabad community and so their children could have an education with the preschool. She spoke of delays with her daughter being able to start pre-kindergarten with Chabad and referred to Table 1 regarding playgrounds of different religious institutions, stating Valley Church which is twice the size has no restrictions and she believed this to be unacceptable. She then referred to Item 3 on page 6 of the packet where staff indicates newer churches have more information in the CUPs; however, these have no restrictions for outdoor activities based on location or site-specific characteristics.

Edward Weiss, San Ramon, spoke about the importance of teaching his family religion, said Chabad provides joy for their children and they need a synagogue where they can have community inside and outside. He has also attended Chabad functions and observed no loud noise.

Steve Williams, Tri-Valley business owner, echoed comments about the Resnick's outstanding, respectful reputation, referred to the glass domes around playgrounds which he thought was ridiculous and unfair, believes all concerns will be non-issues and asked the Commission not to restrict any activities.

Bella Copleton, Dublin, voiced concerns about the level of resistance, discussed traffic getting to BART in the morning and noted that another 700 units and a commercial center were being built, voiced concern with her two young children crossing a busy street to go to the park as well as the time it would take to get there, believes there was compromise to move the playground to the side of the building and thinks it is ridiculous to add a restriction to keep windows closed. She asked for approval of the project and to remove restrictions.

David Silverman said a meeting was held between the two parties and neither side compromised. He thought the recommendation for a dome was not viable, stated RLUIPA laws are powerful and favor organizations like Chabad and to disregard that was unfair. He asked the Commission to move forward and approve the project.

Sagir Weiss-Ishai, Alamo, questioned why there was so much disparity between Chabad and other church's restrictions which he opposed and said he works as a Fire Engineer and issues permits to daycares and preschools all the time. He also conducts decibel level studies and stated 80 dBs was nothing compared to traffic noise and would not impact neighbors. Regarding decrease in property usage, when the Miller's bought their property 30 years ago and wanted to renovate they would follow the codes, and he said Chabad was simply following these.

Mark Hoffman said he recalled in April that the Commission was poised to make a decision for approval, that they agreed the previous CUP was not germane, were told that as a religious institution they should not be treated differently than any other institution and there was consensus there should be a preschool playground and an approved outdoor event area and that those conditions would be determined at today's meeting. Before the final decision was made, Commissioners asked staff to gather more information about conditions of other religious organizations and to meet again with the neighbors. He confirmed that a number of meetings have been held but neighbors want zero tolerance, and compromises were either not legal or were impractical. He stated improvements would be difficult to pay for without income for Chabad and he believed Chabad was very capable of being a good neighbor.

Rabbi Resnick thanked the Commission and said what they propose is a very watered-down version of what they really wanted and thought what they compromised with was significant. He thanked staff for their months of work for the project and asked the Commission if similar restrictions have been placed on other houses of worship.

THE PUBLIC HEARING WAS CLOSED.

Mr. Beaudin clarified and corrected some of the points of information noted in the testimony:

- The proposed timeframes for use of the playground space comes directly from the application.
- Given the preschool space was going to be a new use at this location, staff reviewed the hours of operation and the buffer space between the back of the building and rear fences to the homes.
- The application does not include a proposed use for the area outside of the playground and patio, did include the space on the north side of the building for use as the playground. Through discussions staff recommended shifting the outdoor play area to the other side of the building and there is a proposed patio area by the parking lot.
- All proposed outdoor uses including the 15 events come from the application itself.
- There is confusion about the CUP process works and CUPs run with the land. There was a determination when Rabbi Resnick purchased the property that he agreed to operate the location consistent with the CUP that was running with the land with the understanding that he did want to do more things at that location, for which Chabad would need to submit for a new application.

BREAK

Chair Nagler adjourned the meeting at 9:15 p.m., and thereafter, reconvened the meeting at 9:28 p.m.

Commissioner Ritter asked what percentage of the 54 conditions the applicant had agreed with.

Mr. Beaudin replied that Mr. Schwartz called out five outstanding conditions of approval they are concerned with out of the 54 conditions of approval and they include:

- Condition Nos. 5; the outdoor activities and limited the location of activities. Staff noted that for this site there is sensitivity to noise and activity in outdoor areas. He referred to

Exhibit B.1; the Chabad's narrative for the CUP which speaks to the preschool daily schedule. If there is more flexibility necessary there, staff can update it.

- Condition No. 8; use of the playground specific to hours of use. Regarding activity in the buffer area, Mr. Beaudin said there is space for outdoor events proposed which is part of the site plan outdoor near the parking lot area.
- Condition No. 19; surveying the parking condition during the first year of usage of the facility. Regarding parking, this is an intensification of the use and a wider range of uses that will occur on the property and staff is suggesting that parking should be monitored for the first year of use. If there are issues they can be addressed.
- Condition No. 28; loitering and gathering condition. This is typically used where there are people coming and going at different hours and gathering at locations for events when they are in close proximity to other uses including residential; and
- Condition No. 43; standard indemnification condition. This is a standard condition that runs with all project approvals for the City of Pleasanton if there is a CUP or discretionary action.

Commissioner Ritter asked and confirmed that Chabad was amenable to all other proposed conditions.

Chair Nagler asked the Commission to focus on the five conditions and then discuss any other conditions the Commission would like to talk about.

Commissioner Allen stated she wanted to start with a larger discussion about the main issues: how the Commission feels about daycare, the number of large events, and about smaller events. Once the Commission focuses on those points, that would guide discussion on the five conditions.

Chair Nagler agreed and suggested Commissioners make comments about the proposed use of the building.

Commissioner Allen prefaced her comments by saying she was struggling with how other cities tackle the predicament the Commission was in now which is religious institutions in residential areas. She looked at best practices and came away with three observations:

The City's history is that religious institutions used to be right in neighborhoods where people walk to churches and there was no traffic because they operated on Sundays. However, in today's environment tensions occur because people are driving to churches, churches have increased their use, and expanded into daycare and additional programs to serve their communities. This puts a big stress on traffic and on noise.

The Commission is developing a CUP because this allows a public discussion and debate to try to create the best win/win for all. In everything she read it was that churches are part of a residential community but they need to operate in a way to limit impacts. All concerns she hears are all valid and the Commission's job is to create the best balance. Also, one church in one situation is not necessarily the same situation as another church in another residential neighborhood. Each situation must be reviewed individually.

She sees this use as different from the Masons and she needs to look at this with the need to consider the needs of this religious institution and recognize there are others in town, what they are allowed to do, and provide a balance.

- Regarding daycare, she voiced support of allowing daycare because it is a common and expected part of a religious institution. It is a deserving right.
- Regarding outdoor use, the Commission should allow some outdoor playtime because California State law requires a certain amount of square footage for daycares, and while they do not specify amounts of time for outdoor play, the expectation is that cities should allow kids some playtime. Today, if this institution was not here, this could easily be a small daycare home located next to residences. If it was a small daycare home there would be no conditions the Commission could place on a small daycare home with kids screaming at the fence line 24 hours a day.
- Regarding the number of outdoor activities, the balancing act is that they do not want to turn any religious institution so close to residences into a social event center. The line she would like to draw to start with a conservative line because of the sensitivity to noise, given the proximity of nearby residences. She supported allowing the church to be able to celebrate four religious holidays, with no more than one event per month starting incrementally. If after a year of 6 events per year there are no problems, the Commission can review whether to increase this or not.
- Regarding the small events, she worries about these the most because of the ability for parties to occur at any time with up to 25 people. This is a large party for most residents, so she would like to see more parameters applied. Her personal debate is whether to allow unlimited parties and then let the residents complain if there are any problems. This is a religious institution and business as well, and the City typically has restrictions on things that involve 25 people if left unrestricted. She suggested starting small and if everything works out, it can be expanded. She did not want residents have to watch things and manage it and recommended Chabad show that they are a great neighbor so they can come back in one year and have the neighbors come with them and relay the situation and whether to support an increase.
 - Her preferred choice would be to limit small events to no more than 10 people.
 - Her second choice would be to maintain 25 people but limit how many times this could be done, which she felt was too restrictive.

Commissioner O'Connor stated he does not see this application as a religious issue but more as a land use issue. In 1977 the Commission approved construction of an 8,000 square foot building only anticipating St. Clare's Church; they never anticipated another 8,000 square foot structure and the number of people who would occupy it. Recognizing the impacts of this on surrounding residents, the Commission imposed very restrictive conditions before the City had any issues with the Masonic Lodge. These conditions would run with the land and there were no outside activities.

At the time the Commission talked about the buffer zone on the north and west to be kept as open space, about directing any activities to the south which is the parking lot, all doors and windows on the north side of the building were to remain closed and one emergency door for exits. Years later, staff had approved the installation of the double French doors on the north

side and then a patio was constructed and this is when the noise issues began when people began using that north side of the building.

In 2016, the Commission at that time modified the conditions to allow up to four outside activities a year. When this was appealed, the Council reversed the Commission's decision and mandated that the French doors be replaced with solid wood doors for emergency exits. Chabad was fully informed of these conditions and he thinks if outside activities were required by this organization a different property should have been selected. Residents are supportive of allowing up to the four required outdoor activities, but he was not sure the Planning Commission should be considering reversing what the City Council had mandated to enforce the original conditions of approval.

Commissioner Ritter said while Chabad knew what they were getting into when they purchased it, on the flip side, the Commission reviews change of use all the time and they must relook at how properties are used. He also agrees the issue is one of land use and not religion. He was involved with Boy Scouts and had to deal with neighbors on various issues of kids being outside which is important, but he sees the building as having something to do with the community and activities which is what the building is designed for. But, he would support daycare and suggested keeping it the same as St. Clare's so as not to set precedent, keep the same restrictions placed on other properties of similar institutions and thinks staff and the applicant have gotten close to agreement and was somewhat frustrated that compromise has not yet been completely worked out.

Commissioner Brown said he was considering everything from the April meeting, disclosed that he had a phone call with the Miller's to clarify their position, and he did not believe the neighbors' concerns are religious based and did not like the assertions they are.

Any recommendation he would make is independent of any relation to the religion and thinks the Commission needs to consider RLUIPA as part of their role in terms of representing the City and residents. He is disappointed there is no architectural diagram, but he recognized the Commission needs to render a recommendation and City staff can resolve this.

Commissioner Brown further stated he believes faith-based preschools are an expression of religious freedom, that it generates a source of revenue that allows other forms of religious expression and this is independent of what religion it is and thinks the Commission has an obligation to be consistent. He had asked many questions regarding 18.124.370 and explained his logic. If the Municipal Code does not restrict unamplified voice and the parking agreement with St. Clare's is sufficient and coordination of events is sufficient, he has no logical reason to deny a change in conditional use that includes a preschool.

In terms of the playground location, he was concerned with it being on the west side versus staff's revised location. He would be supportive if the residents wanted it on the west side versus the north side but he has not heard whether this could be on the north or west. From a logical perspective he would prefer it on the north side as it shaves off 6 feet in terms of closeness to the nearest house.

In terms of the playground hours, he would be in favor of restricting it to registered students only during regular preschool hours but no specific hours and leave it up to Chabad to figure out the best schedule. He would not want the preschool playground being used as a general play area in the evenings and on weekends for non-students. He was opposed to encouraging

anything that makes the building into an events center, did not want to see weddings and large congregations with amplified music, is comfortable with the limitation on two amplified music events, willing to consider smaller than 15 whether an agreement can be reached, and agrees with Commissioner Allen that it is not advisable to try and limit smaller events, as it would be an undue burden to try and police this.

He emphasized with local residents and concerns about noise, but he considers what is permitted per the Municipal Code, what is a reasonable and rightful use of the property and the change in ownership, and that the Commission must take each CUP application in its entirety and consider their impacts.

Chair Nagler said when the Commission was talking about the CUP for the Masons and said he had a different recollection of the Commission's conversation. He recalled trying to make a point that whatever recommendation or action they were taking was going to be precedential for the next occupant, and hearing from his fellow Commissioners that in fact every new occupant may have a different intention for the building and is welcomed by City ordinance to go through the CUP process and that CUPs are decided upon based on their merits, needs and balancing of the community and interests. The new occupant now has a different intention for the use of the building and therefore, based upon the Commission's prior commentary, it is completely appropriate for the Commission to revisit the CUP whether or not the neighborhood believes that a prior decision made should be one made forever.

This is a land use activity permitting question, but it is undeniable that the applicant practices a particular religion in the building and therefore is to be considered on that basis, and, that as a religious organization it is appropriate that this organization would want to have an early childhood education program and childcare as part of their religious teachings.

He also believes it is not appropriate for a governmental entity to say that an appropriate way to teach children is to keep them indoors; as such he supports an outdoor play area. Given there is history with the neighbors' objections, he was supportive of the compromise that it be located on the side of the building facing St. Clare's Church.

He visited the Chabad center around 6PM on evening and said there was a congregation of teenagers gathered in front of St. Clare's on the outdoor lawn. They were being respectful and pleasant and he would find it hard to imagine any neighbor looking out on this would call the police department. Again, he was not sure why the Commission believes it is appropriate to put restrictions and assume bad intent or behavior on a building that is right next door particularly if the loitering is to occur on the front side of the building which is not near neighbors.

Therefore, his point is that he thinks the Commission needs to approach this application from a perspective of reasonableness and appropriateness, and take into account that neighbors have history with the occupants of the building; that the separation from the back of this building and neighbors is a shorter distance than is typical between religious institutions and other neighbors so restrictions are appropriate.

He was supportive of childcare, supported the number specified in the staff recommendation for outdoor events, did not have much confidence in a process that sees how things go over the next year and come back and discuss it all over again, since he wasn't sure these neighbors and this occupant have the capacity to hold such a conversation. He would rather

the Commission make a reasonable decision today regarding the number of outdoor activities possible and then see if there are problems. If there are problems, there are remedies.

Regarding smaller events, Chair Nagler referred to challenges with respect to the use of the buffer, as there is no contemplation garden specifically included in the proposal. He questioned if it would be possible to approve the CUP, while reserving the decision as to use of the buffer area, to be brought back for a subsequent action if the applicant were to come up with a proposal for this area. If the applicant does not propose a specific use, it should be maintained as an unspecified area or by definition, a buffer.

Mr. Beaudin suggested an approach to this condition of approval, for the area be designed in some way acceptable to the Commission as part of this approval, with the specifics to be brought back for approval by the Commission, as a follow-up requirement. If the determination is for landscape enhancements only, the City has a landscape architect on staff, and so it could be handled at a staff level. If the condition is designed to create a landscape edge along the residential property line and use of the space consistent with a contemplation garden or something similar, the Commission could make a decision as to whether this would need to come back to the Commission or have it handed through a staff-level development review process, as well as to timing of the improvement.

Chair Nagler supported this approach, and suggested it could be a condition of approval allowing for review by staff. In that context, he would be supportive of limiting the number of people that could be gathered in that space, which would be a reasonable solution to allow small group outdoor activity while being sensitive to the neighbors.

Mr. Beaudin suggested the Commission make a decision as to whether to continue beyond 11:00 p.m., noting the next applicant does want to be heard.

Chair Nagler suggested, and the Commission agreed, to move through the current item and also undertake the next item on the agenda.

Chair Nagler asked if there were any other conditions other than the 5 conditions any Commissioner would like to discuss.

Commissioners requested a discussion of revisions to Condition Nos. 3, 5, 7, 10, 11, 18, 24 and 26:

Condition Nos. 5 and 7: Building a condition regarding a contemplation garden and staff's recommendation to relocate the playground.

- Location of the Playground: There was consensus among the Commissioners for the playground location on the west side.
- Addition of a condition for a contemplation garden: Commissioners suggested it be included in the approval and to allow staff to review its design. Commissioner O'Connor disagreed due to the area's close proximity to neighbors, and wanted to leave it as a buffer zone. Chair Nagler was opposed to restricting the number of small group outdoor activities; however, if a contemplation garden is allowed to be designed, this is a way to give Chabad use of the land and the trade-off will be the size of the outdoor activities anywhere.

- Mr. Beaudin suggested modifying Condition No. 5, rather than No. 7. Commission discussion ensued regarding the number of people allowed outdoors in the buffer area/contemplation area on the north side and noise.
- Regarding the outdoor patio area which is adjacent to the parking lot, the majority of Commissioners (3-2) supported the condition for unrestricted use for up to 24 people from 10AM to 10PM;
- Regarding the contemplation garden, Commissioners supported leaving it as a buffer zone which disallows Chabad to do anything in this area (On a straw poll, 4-1- Nagler opposed) (i.e. no changes to Conditions 5 or 7)

Other Conditions:

- Condition No. 8 regarding specified hours of the outdoor playground: Commissioners agreed revising the third sentence to state, “The outdoor playground shall be restricted to up to 24 students to be used no more than 2 ½ hours a day in total.”
- Condition No. 28 regarding loitering, Commissioners confirmed this was a common condition, and specific in that it suggests that Chabad must regularly inform all users of the facility, of the condition. Mr. Beaudin said staff recommends including it because it reminds people to be mindful of their neighbors. Chair Nagler suggested amendment of the condition to indicate to “be respectful of neighbors and to be quiet when entering or leaving the building” and to strike the clause with respect to “loitering”.
- Condition No. 43 regarding indemnification, the Commission recommended it be retained.
- Condition No. 19 regarding the monitoring of parking, the Commission discussed its retention or deletion, and changing monitoring to 6 months from 1 year. Mr. Beaudin, during discussion of Condition No. 21 below, agreed to revise the wording of the condition to be less prescriptive and remove the Hebrew school reference.
- Condition No. 21 which requires Chabad to provide off-site parking when they anticipate large events. Commissioners agreed to change the condition to require Chabad to count once during each large event, a count will be taken of empty parking spaces and reported to the Planning Department.
- Condition No. 3 which addresses the number of events. Commissioners agreed to keep as is and Commissioner Allen asked to add “...as identified on Attachment D.” This is Chabad’s list of religious ceremonies, noting that weddings are not on that list.
- Condition No. 18 regarding the event calendar, Commissioner Allen requested that the calendar be posted on the website or at the site for the public to see as well. Since Chabad will be negotiating this with St. Clare in advance, she felt it reasonable for the public to be made aware of the schedule.

- Condition No. 24, regarding repainting the building, Commissioner Allen had initially stated she wished to propose minor revisions to this condition, but withdrew her request to do so.
- Condition No. 26 regarding landscaping, Commissioner Allen referred to landscape maintenance, litter and overgrown weeds on the property. When driving by South Valley Trails looking at the parking lot, there was a lot of litter and overgrown weeds, and confirmed with staff they will add verbiage to require maintenance.
- Condition No. 10 regarding amplification, Commissioner Brown said as the Commission discussed amplified voices. Commissioner Allen asked to reword the condition so that it could apply both to amplification in general, and not just amplified music.
- Condition No. 11 regarding exterior doors, Commissioner Allen asked if the daycare center on the north side be used for any activity besides from daycare and suggested rewording the condition to state, "...or during any events where inside music could be heard by neighbors." Mr. Beaudin said staff can revise the condition to make it clear that the expectation is that people come and go from the parking lot side of the building.

**Commissioner Ritter moved to approve Cases P16-1883 and P16-0288 with conditions as proposed and amended.
Chair Nagler seconded the motion.**

ROLL CALL VOTE:

AYES:	Commissioners Allen, Nagler, Brown and Ritter
NOES:	Commissioner O'Connor
ABSENT:	Commissioner Balch
RECUSED:	None

Resolution PC-2018-11 approving Cases P16-1883 and P16-0288 was entered and adopted as motioned.

a. P18-0113, Tharaldson Hospitality Development

Application for Design Review approval to construct two new hotels totaling 231 rooms, a drive-through coffee shop and related site improvements within the Johnson Drive Economic Development Zone (JDEDZ) at 7280 Johnson Drive. Zoning for the property is PUD-C (Planned Unit Development – Commercial) District.

Associate Planner Eric Luchini presented the agenda report.

Chair Nagler confirmed the architectural finishes shown in the Commission's plan sets are those proposed for the project. He asked staff to describe how the architecture fits with the proposed architecture for Costco.

Mr. Luchini cited similarities in the hotel's materials, which follow some of the prominent features of the Costco. He confirmed that, to the extent that Costco personalizes its architecture, materials, features and landscaping will be complementary and uniform to the design elements of the proposal.

Chair Nagler referred to the drive-thru coffee shop, confirmed with staff that it was always included in the project and part of the analysis in the EIR.

THE PUBLIC HEARING WAS OPENED.

Don Cape, Tharaldson Hospitality Development, applicant, stated they have worked well with staff in the process and PUD guidelines and they are excited to move forward, stating they provided more than what was required for some elements such as trees, given potential loss over the years, discussed the need for hotels in Pleasanton and that these would be the first new hotels in 18 years.

Commissioner Ritter asked if the colors were standard corporate colors for the hotel. Mr. Cape spoke about today's palette which address timeless value.

Commissioner Brown asked for an explanation of the two brand names for the hotel.

Mr. Cape stated they come up with a new franchise name for the various hotel brands available under the Marriott Hotel chain. Some have larger rooms and amenities, but they are similar. His company will also own and manage the hotel, stating they are Marriott's largest franchisee and have built and operated over 250 hotels over the last 35 years.

Commissioner Allen referred to a Springhill Suites in San Diego which had a circular entranceway and asked if this could be improved.

Mr. Cape explained that the building is developed around the market, is a function of the market and this will warrant construction costs in downtown San Diego. Generally, the proposed design is appropriate and similar to what will be seen in a suburban market.

Commissioner Brown asked if the coffee shop will be operated under the same franchise.

Mr. Cape stated they are not sure yet as they want to ensure its operation is managed properly and is successful. They will maintain control of it in perpetuity.

Commissioner Brown commented on the well-designed crosswalk at the drive-through and the ability for queuing of 14 cars.

THE PUBLIC HEARING WAS CLOSED.

Commissioner Allen moved to approve Case P18-0113 per staff's recommendation. Commissioner Ritter seconded the motion.

ROLL CALL VOTE:

AYES:	Commissioners Allen, Brown, Nagler, O'Connor, and Ritter
NOES:	None
ABSENT:	None
RECUSED:	Commissioner Balch

Resolution PC-2018-11 approving Case P18-0113 was entered and adopted as motioned.

7. MATTERS INITIATED BY COMMISSION MEMBERS

No items were discussed or actions taken.

8. MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

a. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)

Commissioner Ritter reported on his attendance to the Bicycle, Pedestrian and Trails meeting.

Commissioner Brown reported on his attendance at the Downtown Specific Plan Update Task Force meeting.

b. Future Planning Calendar

Ms. Clark reported out on the upcoming agenda items.

c. Actions of the City Council

No items were discussed or actions taken.

d. Actions of the Zoning Administrator

No items were discussed or actions taken.

9. ADJOURNMENT

Chair Nagler adjourned the meeting at 11:24 p.m.

Respectfully submitted,

Amy Statham
Recording Secretary