

**CONDITIONAL USE PERMIT 2661-07**

**RESOLUTION NO. PC 33-07**

**A RESOLUTION OF THE PLANNING COMMISSION  
APPROVING CONDITIONAL USE PERMIT 2661-07  
ALLOWING AN EXISTING PRIVATE SCHOOL TO  
ESTABLISH A PRESCHOOL COMPONENT IN EXISTING  
FACILITIES AT 1130 EAST WALNUT AVENUE  
WHEREBY THE TOTAL COMBINED NUMBER OF  
CHILDREN ENROLLED IN THE GRADE SCHOOL AND  
PRESCHOOL DOES NOT EXCEED 150 AS REQUIRED BY**

component in existing facilities at 1130 East Walnut Avenue whereby the total combined number of children enrolled in the grade school and preschool does not exceed 150 as required by Conditional Use Permit 2511-04 based on the following findings:

## SECTION 1 – FINDINGS

1. *A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.*

Allowing a preschool component to the existing K-8 private school will result in providing additional preschool choices close to residential development. The preschool would be located at an existing school and church site, would not increase the maximum enrollment at the existing school, and would allow school enrolment needs to dictate the ratio of preschool to grade-school students. The preschool would provide educational and care services required by residents and persons that work in the City.

2. *A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.*

The project will not create deterioration of bordering residential uses because the maximum allowed student enrollment shall not increase and therefore traffic and noise generated by the school will not increase. The preschool instruction and outdoor play area is specifically confined toward the center of the site and buffers adjacent residential uses with existing adjacent church and school buildings. The school shall continue to adhere to the required operational conditions of approval established by Conditional Use Permit 2511-04, which serve to mitigate noise, traffic, and other effects that could be caused by the proximity of the school to adjacent residences.

3. *A Conditional Use Permit shall be considered in relationship to its effects on the community or neighborhood plan for the area in which it is located.*

No detrimental neighborhood or community effects have been identified for the preschool given that no student enrollment increase is proposed at the school and the school shall continue to be required to adhere to the operational conditions of approval established by Conditional Use Permit 2511-04, which serve to mitigate noise, traffic, and other effects that could be caused by the proximity of the school to adjacent residences.

4. *A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.*

The school and preschool are required to adhere to the operational conditions of approval established by Conditional Use Permit 2511-04, which serve to mitigate noise, traffic, and other effects that could be caused by the proximity of the school to adjacent residences.

## **SECTION 2 – ENVIRONMENTAL REVIEW**

This project is categorically exempt from the provisions of the California Environmental Quality Act per State CEQA Guidelines Section 15301 (Class 1 – Existing Facilities).

## **SECTION 3 – CONDITIONS OF APPROVAL**

BE IT FURTHER RESOLVED that the following conditions are to be imposed with approval:

### **General**

1. Within two days of final approval of this project, the applicant shall deliver to the Planning Division a cashiers check payable to the Orange County Clerk in an amount required to fulfill the fee requirements of Fish and Game Code Section 711.4(d)(2) and the County administrative fee, to enable the City to file the Notice of Determination required under Public Resources Code 21152 14 Cal. Code Regulations 15075. If it is determined that there will be no impact upon wildlife resources, the fee shall be \$50.00.
2. The applicant shall comply with all federal, state, and local laws, including all City regulations. Violation of any of those laws in connection with the use will be cause for revocation of this permit.
3. The applicant agrees to indemnify, hold harmless, and defend the City, it's officers, agents, and employees from any and all liability or claims that may be brought against the City arising out of its approval of this permit, save and except that caused by City's active negligence.
4. The project proponent, school operator, property owner, and all such assigns and successors shall be to the conditions of approval for Conditional Use Permit 2511-04 as adopted in City Council Resolution Number 10016.

### **Code Provisions**

The following Code provision is applicable to this project and is included for information only. This is not a complete list, and other Code provisions may apply to the project:

- If not utilized, this project approval expires two years from the approval date. An extension of time may be permitted upon a written request, if received before the expiration deadline (O.M.C. Section 17.10.030I.1.)

I hereby certify that the foregoing resolution was adopted on September 5, 2007, by the Planning Commission of the City of Orange by the following vote:

AYES: Commissioners Imboden, Bonina, Merino, Whitaker and Steiner

NOES: None

ABSTAIN: None

ABSENT: None



Robert Imboden, Planning Commission Chair

09.14.07

September 5, 2007

**12. PUBLIC COMMENTS**

Anja Friday, 731 W. Cully Dr. – Spoke in opposition to the General Plan proposal to rezone their street from Residential to Light Industrial.

Dorothy Stewart, address on file – Requested Council address the apartments bounded by Glassell, Hoover and Adams, indicating that this area was a blighted area.

Reggie Mundekis, 2908 E. Wilson – Spoke on alleged cuts to the Code Enforcement Division's 05-06 budget; requesting an audit to be performed and made available to the public.

**13. PUBLIC HEARINGS****13.1 APPEAL NO. 501-05 – CONDITIONAL USE PERMIT (CUP) 2511-04 – CREEKSIDE CHRISTIAN SCHOOL. (A4000.0 APP-501-05)**

Time set for public hearing to consider an appeal, by Michael Worcester, of the Planning Commission's decision to adopt Mitigated Negative Declaration No. 1748-05 and approve CUP No. 2511-04; a proposal to expand the current private school use of a developed property from 75 students to 150 students in grades K-8, by utilizing the existing classrooms and grounds maintained by a church (First Christian Church of Orange).

NOTE: Negative Declaration No. 1748-05 was prepared to evaluate the potential environmental impacts of the proposed project in accordance with the provisions of the California Environmental Quality Act.

Reason for Appeal: "A conditional use permit shall not be granted if it will cause deterioration of bordering land uses.

- In one years time the number of children has increased from 20 (1/2 day) to 75 (all day) and now to 150 (all day). This is a greatly expanded and intensified use and significantly impacts the neighbors' privacy and noise environments.
- The proposed mitigation for privacy (Condition No. 11) is inadequate and not permanent.
- Noise impacts never considered the changes in ambient environment."

Discussion – Community Development Director, Alice Angus gave a brief staff report on the Planning Commission's approval of the CUP and indicated that the Commission's resolution contained 12 conditions for the approval, including a wall on the eastern and southern boundaries; and landscaping to buffer the noise and offer privacy to the neighboring homes affected by the expansion of the school's population. Also included are the earliest possible start and dismissal times—staggering times with the neighboring Cambridge Elementary School's times; as well as times for drop-off and pick-up of students. She reported that technical consultants prepared a traffic and noise study; and that the noise did not exceed the residential threshold.

**13. PUBLIC HEARINGS (Continued)**Speaking in support of the school:

Joe Perring, 1130 E. Walnut  
Jason Burris, 5809 E. San Juan  
Claudia Burris, 5809 E. San Juan  
Marilyn Buchtel, 1439 E. Rose  
Danielle Jacobs, 560 N. Milford  
Wayne Arnold, 2334 N. Rockridge  
Marci Claudius, 1108 W. Trinity  
Richard Vogel, 9272 Tritt Circle, Villa Park  
Tim Kistler, 6401-54 E. Nohl Ranch Road  
Rich Martin, 5321 Strasbourg, Irvine  
Darrell Williams, 1910 W. Palmyra Avenue  
Judith Hollister Kenney, 700 W. La Veta Avenue

Speaking in support of the appeal:

Jim Gary, 1107 E. Sycamore

Councilmember Smith asked for clarification on the height of the wall, suggesting that the school could build a seven-foot high wall; and stated that the condition allowing only 55 students use of the playground at a time elongated the timeframe for noise.

Appellant, Mike Worcester indicated that it would take three more layers of bricks to get an eight-foot wall. He indicated that the neighbors are not opposed to the school opening on September 7, but the request is for reduction in noise by approving the CUP with the change in the mitigation to require an eight-foot wall. He added that if the wall is not eight feet then the landscaping is necessary for privacy issues also; and reiterated that it is unreasonable to ask the neighbors to help pay for the wall.

**THE MAYOR CLOSED THE PUBLIC HEARING**

Councilmember Dumitru asked about the process for an eight foot wall

City Attorney, David DeBerry indicated an eight foot wall would require a Variance, which would need to go back through the Planning Commission for a hearing.

Mayor Murphy noted that the City has no jurisdiction over the public schools. However, the City can place conditions on private schools. He noted there seems to be a desire for an eight-foot wall, but not to share the cost on the part of the neighbors. He also reiterated that the Planning Commission approved the CUP with the six-foot wall and landscaping conditions, which meets the requirements. He suggested that the school be allowed to open on time while an 8-foot wall is discussed. He suggested the school and the neighbors get together to work out the 8-foot wall and landscaping issue and the costs involved. He added that the criteria for the Negative Declaration and the CUP were met.

14. **PLANNING AND ENVIRONMENT – None.**


15. **ADJOURNMENT**

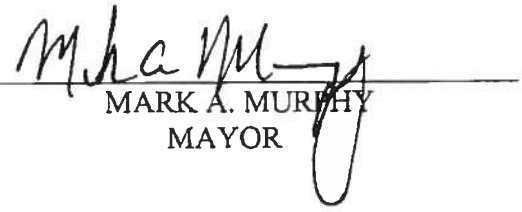
The City Council adjourned at 9:00 p.m. in memory of David Hart. The next Regular Council meeting is scheduled for August 9, 2005.

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Declaration of City Clerk, Mary E. Murphy, declaring posting of City Council agenda of a regular meeting of July 26, 2005 at Orange Civic Center kiosk, Police facility at 1107 North Batavia, Shaffer Park; all of said locations being in the City of Orange and freely accessible to members of the public at least 72 hours before commencement of said regular meeting; and available at the Civic Center City Clerk's Office.

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MARY E. MURPHY  
CITY CLERK

  
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MARK A. MURPHY  
MAYOR

**CONDITIONAL USE PERMIT 2511-04**

**RESOLUTION NO. PC 22-05**

**A RESOLUTION OF THE PLANNING COMMISSION OF  
THE CITY OF ORANGE ADOPTING MITIGATED  
NEGATIVE DECLARATION 1748-05 AND APPROVING  
CONDITIONAL USE PERMIT 2511-04 TO ALLOW THE  
EXPANSION OF A PRIVATE SCHOOL TO A MAXIMUM  
ENROLLMENT OF 150 STUDENTS AT THE PROPERTY  
LOCATED AT 1130 EAST WALNUT AVENUE**



support of or opposition to the expansion of a private school using existing church facilities upon property generally described as follows:

Portion of Lot 10 of the A.B. Chapman Tract

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission adopts Mitigated Negative Declaration No. 1748-05 and approves Conditional Use Permit 2511-04 to allow the increase in enrollment from 75 students to 150 students in grades K-8, by utilizing the existing classrooms and grounds maintained by a church located at 1130 East Walnut Avenue based on the following findings:

**SECTION 1 – FINDINGS**

1. *A Conditional Use Permit shall be granted upon sound principles of land use and in response to services required by the community.*

An increase in the allowable maximum enrollment at the K-8 private school, will result in providing additional educational choices close to residential development providing alternatives for residents within the community as well as those that may not reside in the City, but work within the City limits providing a response to the services required by the community at large.

2. *A Conditional Use Permit shall not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.*

The project will not create deterioration of bordering residential uses because conditions have been included to provide fence/wall improvements that meet current OMC requirements and include the addition of landscaping at the playground perimeter to address special problems related to privacy. Further, since the noise and traffic studies prepared and attached to Mitigated Negative Declaration No. 1748-05 found that established thresholds were Less Than Significant, deterioration of bordering land uses is not anticipated to occur with the increased enrollment as it relates to noise and traffic impacts.

3. *A Conditional Use Permit shall be considered in relationship to its effects on the community or neighborhood plan for the area in which it is located.*

By altering the start and dismissal times for the instructional day with the proposed increased enrollment, off-setting them one-half hour later than they are currently, contributions to the peak surge on the roadways can be reduced, improving the relationship of the proposal with the rest of the community. Additionally, restricting special event use by the private school to be coordinated with the church and other renters improves the relationship of the proposal with the rest of the community by coordinating use of the facilities as they relate to available parking.

4. *A Conditional Use Permit, if granted, shall be made subject to those conditions necessary to preserve the general welfare, not the individual welfare of any particular applicant.*

The proposed project includes operational conditions as discussed above and attached as described in Section 3 below in consideration of the general welfare over the individual request of the private school to increase its enrollment.

## **SECTION 2 – ENVIRONMENTAL REVIEW**

The Initial Study for Mitigated Negative Declaration No. 1748-05 was prepared in conjunction with Conditional Use Permit No. 2511-04. After examining the Initial Study and Mitigated Negative Declaration, including the mitigation measures incorporated herein as conditions, the Planning Commission finds that the proposed project could not have a significant effect on the environment. Further, as a result of the public hearing, in accordance with Section 15074.1 of CEQA, the Commission deleted Mitigation Measure LU/P 3 (Condition No. 7 of this Resolution), substituting it with an equivalent Mitigation Measure LU/P 3 (Replacing Condition No. 7 of this Resolution). The Commission also determined that the replacement Mitigation Measure LU/P 3 in itself would not cause any potentially significant effect on the environment. There is no evidence before the City of Orange that the proposed project will have any potentially adverse environmental impacts, either individually or cumulatively, on wildlife resources or the habitat upon which the wildlife depends. Therefore, the proposed development is found to have a de minimus impact in its effect on fish and wildlife. Therefore, the Planning Commission herein adopts Mitigated Negative Declaration No. 1748-05.

## **SECTION 3 – CONDITIONS OF APPROVAL**

BE IT FURTHER RESOLVED that the following conditions are to be imposed with approval:

### **General**

1. Within two days of final approval of this project, the applicant shall deliver to the Planning Division a cashiers check payable to the Orange County Clerk in an amount required to fulfill the fee requirements of Fish and Game Code Section 711.4(d)(2) and the County administrative fee, to enable the City to file the Notice of Determination required under Public Resources Code 21152 14 Cal. Code Regulations 15075. If it is determined that there will be no impact upon wildlife resources, the fee shall be \$43.00.
2. The applicant shall comply with all federal, state, and local laws, including all City regulations. Violation of any of those laws in connection with the use will be cause for revocation of this permit.
3. The applicant agrees to indemnify, hold harmless, and defend the City, it's officers, agents, and employees from any and all liability or claims that may be brought

against the City arising out of its approval of this permit, save and except that caused by City's active negligence.

4. The applicant shall provide by December 1<sup>st</sup> of every year to the City the "Private School Affidavit" as prepared for the California Department of Education.
5. Use of the play yard areas, lunch tables, and blacktop space, by the private school is limited to a maximum of 55 students at any one time during instructional hours. *(Mitigation Measure LU/P 1)*
6. The private school shall ensure that a drop off/pick up procedure is distributed and enforced to have a faculty-assisted student on-site loading and unloading area, and a designated faculty driveway proctor to control the interface of pedestrian crossing while vehicles enter/exit the driveways during arrival/dismissal times of the instructional day. *(Mitigation Measure LU/P 2)*
7. Normal daily start and dismissal times for the private school regular school day, hours of instruction, during weekdays shall be offset ½ hour in comparison with the adjacent public elementary school. *(Mitigation Measure LU/P 3)*
8. Start time for the day care operation shall not be before 6:45 a.m. and children shall be kept inside the buildings until at least 7:45 a.m.
9. The private school shall prepare a Traffic Management Plan incorporating the Mitigation Measures LU/P 2 and 3 and submit such plan to the City's Traffic Engineer for review and approval. Such Plan shall be provided to all parents at the start of each school year and shall be enforced by the faculty.
10. The secondary access to Sycamore Avenue shall not be utilized by the private school use of the subject property.
11. A landscape plan shall be prepared for review and approval by the Director of Community Development, or designee, to add shrubs to the areas where the boundary is shared between the playground areas and the adjacent residential yard areas. Plant material shall be fast growing, low-maintenance, a minimum of 5 gallon in size, spaced at intervals and maintained at a height to achieve a visual screen from the residential yards to the subject site. *(Mitigation Measure LU/P 4)*
12. The wall/fence height at the perimeter of the playground areas shall be brought into conformance with current Code requirements and built to the maximum allowable height as stated in the current OMC. Such improvement shall be in place prior to the start of the fall, 2005 school year of the private school.
13. The private school use of the property shall limit its use of the church facilities for special events and functions based upon the amount of available parking. When such special events are held on the play yard areas, they should conclude by 8:00 p.m.

and/or move to the interior of the church buildings. These activities shall not be scheduled during the hours of church services of the primary church use of the property or church services of the renters.

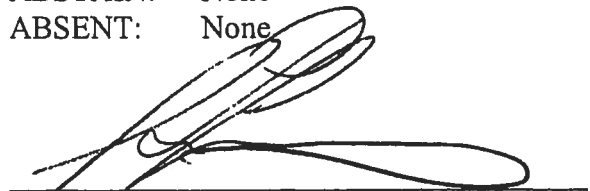
**Code Provisions**

The following Code provision is applicable to this project and is included for information only. This is not a complete list, and other Code provisions may apply to the project:

- If not utilized, this project approval expires two years from the approval date. An extension of time may be permitted upon a written request, if received before the expiration deadline.

I hereby certify that the foregoing resolution was adopted on May 16, 2005, by the Planning Commission of the City of Orange by the following vote:

AYES: Commissioners Bonina, Enderby, Imboden, Pruett  
NOES: None  
ABSTAIN: None  
ABSENT: None



\_\_\_\_\_  
Planning Commission Chair

\_\_\_\_\_  
Date