



**PIMA COUNTY
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HEARING ADMINISTRATOR'S FINDINGS AND DECISION

P16CU00007

**TORTOLITA PRESBYTERIAN CHURCH — W. CAMINO ALTO
Type I Conditional Use – Child Care Center**

Background/Authority

Section 18.07.030 of the Pima County Zoning Code requires a Type I conditional use permit to operate a child care center on property zoned SR (Suburban Ranch). This particular request is on a property that contains an existing church and which is located at the northeast corner of Thornydale Road and Camino Alto. The childcare facility will utilize the existing church building, as well as a new/proposed children's outdoor play area.

Public Hearing

In accordance with Pima County Zoning Code Section 18.97.030.F.3, a public hearing was held on this application on July 13, 2016. The property owner and applicant (Rev. Jennifer Cummins, on behalf of Tortolita Presbyterian Church) presented the conditional use permit request and answered the Hearing Administrator's various questions.

Five (5) members of the public (all being nearby residential property owners) attended the hearing, four (4) of whom chose to speak on the matter. As the applicant had not conducted any neighborhood outreach prior to the hearing, most of the speakers were unfamiliar with the particulars of the request and the specifics of the proposed school's operation. As such, many of the speakers asked questions along these lines. While none of them expressed a unilateral opposition to the concept of a child care facility, they all expressed strong objections based upon the perceived negative impacts they felt would be associated with its operation, specifically noise, traffic, degradation of Camino Alto (a dirt road), and general harm to their quiet, secluded residential lifestyle. One speaker in particular voiced strong opposition to the outdoor play area being located adjacent to his rear yard and the intrusive noise he felt it would bring. There was a general consensus amongst the speakers that the Church had seldom demonstrated any past effort or desire to communicate with its neighbors.

Staff indicated that it had received one (1) telephone inquiry on the case prior to the public hearing and had provided that individual's contact information to the applicant.

After hearing all of the above, the Hearing Administrator indicated to the applicant that, while he was willing to render a decision in the case, he was also offering the applicant the opportunity of a sixty (60) day continuance to allow them the opportunity to meet with the surrounding neighbors, discuss their concerns, and determine whether any accommodations or modifications could be made to address their objections. The applicant chose the option of continuing the hearing and promised to interact with the neighbors accordingly. The continued hearing was set for September 14, 2016 and those in attendance were instructed as to its time and location.

The continuation of the public hearing commenced on September 14 as scheduled. Six (6) members of the public appeared at the hearing, four (4) of whom chose to speak. The owner/applicant indicated that they had obtained a neighbor mailing list from Pima County and had originally attempted to hand-deliver their meeting invitations. They ultimately hand-delivered twenty-two (22) of them, mailing the remaining thirty-four (34), as these could not be hand-delivered due to residents either being not at home or having no trespassing or solicitation signs posted on their property. The applicant's meeting was held on September 7, 2016 at the Church and five (5) neighbors attended. According to the applicant, they made a presentation on the proposed child care operation, the neighbors reiterated their various concerns, and the applicant offered a series of assurances in an attempt to address those issues and objections.

The speakers testifying at the September 14 public hearing reiterated their opposition. One (1) speaker had canvassed the neighborhood and presented a packet of documentation indicating that over 80% of the neighbors she canvassed shared her opposition to the application.

After hearing all of the above, the Hearing Administrator made a few closing comments, thanked the owner/applicant and the neighbors for their comments, and then closed the public hearing.

Required Standards and Findings

Following are the Hearing Administrator's findings relative to the standards set by Pima County Code Sec. 18.97.030.F.3.c. These Sections stipulate that the following standards be met by the proposed use:

1. It will not be in serious conflict with the objectives of the general land use plan or the area plan in which situated.

The Comprehensive Plan designates the subject property as a combination of *Low Intensity Urban (LIU)*. The purpose of the *LIU* district is to, "designate areas for low density residential and other compatible uses".

In contemplating the proposed childcare facility on an existing church campus and within the surrounding residential setting, the Hearing Administrator notes that several similar childcare facilities have been approved in the *LIU* district in the past within established residential areas. In many of those past cases, concerns have been expressed as to noise, traffic, and neighborhood deterioration. The fear of such impacts has proven to be greater than the reality of facilities' operations. This Hearing Administrator is unaware of any complaint that has been filed against an approved childcare facility operating at a church campus.

With all of the above in mind, the Hearing Administrator finds the proposed childcare facility on this existing church campus to not be in conflict with the stated goals of the Comprehensive Plan of the *LIU* category, as long as appropriate restrictions are placed upon it through a series of special conditions.

2. It will provide safeguards for the protection of adjacent developed property, or if the adjacent property is undeveloped, for the legal permitted uses of such property.

Experience throughout Pima County has shown that the operation of child care centers and even small private schools can co-exist peacefully within established residential neighborhoods as long as appropriate operational and development restrictions are placed upon the facility. These are outlined in the *Special Conditions* below.

3. It has adequate accessibility to the County road network.

The church site presently has formally approved driveway access only off of a public dirt roadway (Camino Alto). This is insufficient and not appropriate for accommodating the new and increased traffic that will occur as a result of the facility. *Special Conditions* below require the owner/developer to make appropriate improvements to their site in order to provide a legitimate ingress/egress driveway from Thornydale Road, which is a designated “Major Street” per the Pima County Major Streets & Routes Plan. Subject to providing the required site driveway upgrades outlined in the *Special Conditions* below, access to and from the site is found to be adequate.

4. It has sufficient off-street parking and loading facilities, that will be developed in accordance with County engineering standards.

The appropriate provision of parking, loading, etc. will be verified by staff during the site plan review & permitting process.

5. It will meet County standards in terms of control of noise, smoke, glare or heat, odors, vibrations, fly, ash, dust, fumes, vapors, gasses, and other forms of air pollution, liquids and solid wastes.

The proposed use is found to not threaten the surrounding properties in any of the above ways, including noise, subject to adherence to the stipulated *Special Conditions* below. Standard code requirements shall serve to adequately address these issues.

6. Hours of operation will not be detrimental to adjoining residents.

The hours of operation will fit within those prescribed by the Zoning Code (6:00 AM to 9:00 PM). *Special Conditions* below provide more specific parameters.

7. Landscaping will be fully in conformance with zoning code regulations.

All applicable landscaping requirements will be verified through the prior site plan review and permitting process.

Hearing Administrator's Comments and Considerations

Certain issues are commonly raised attendant to childcare and private-school operations and have also been raised by several neighboring property owners in this case. The following comments on the issues raised in opposition to this application are offered below so that all concerned can more fully understand the rationale underlying the Hearing Administrator's decision in this case:

- **Traffic.** The new/additional traffic associated with the proposed childcare facility is directed (per the *Special Conditions* below) to take its ingress/egress exclusively from Thornydale Road, and not utilize Camino Alto nor pass through the adjacent residential neighborhood.
- **Dust and Roadway Deterioration.** The new driveway, as stipulated in the *Special Conditions* below, will have a paving surface sufficient to eliminate the generation of dust.
- **Noise.** The term “noise”, in the determination of the Hearing Administrator, applies to sound that can be reasonably considered a nuisance. Examples would include inappropriately loud music, outdoor public gatherings, parties, or special events, outdoor announcements from loudspeakers or a public address system, or sound generated by machinery and/or light manufacturing/assembly. With this particular conditional use permit, the outdoor sound being generated is that of small children playing, which is not viewed as a nuisance or as irritating in nature by the Hearing Administrator. That being said, a *Special Condition* has been proposed to require that the sound-generating element of the childcare facility (i.e. the children's outdoor play area) be located such that the existing church building buffers the nearest neighbor from it.
- **Deterioration of Neighborhood Character.** The Hearing Administrator has heard this fear expressed with numerous past childcare and private school proposals within or adjacent to established residential settings. The fear has proven greater than reality when it comes to their actual operation. In practice, these approved childcare centers and schools have co-existed peacefully with their residential surroundings and have yielded no complaints from neighbors.
- **Neighborhood Canvas and Documentation of Opposition.** The submitted canvass materials asserting strong neighborhood opposition have been given their appropriate weight in the Hearing Administrator's considerations. They repeatedly refer to this application, incorrectly, as a “rezoning” of the property, which it is not. Rezoning is far more involved and usually accompanied by a far greater land use intensity and associated impacts. Even with generally less intensive conditional use permit requests, however, it is common for some individuals to possess particularly strong feelings of opposition; these are a protected right and are duly respected. In reviewing the various canvass materials submitted by an individual neighbor in this particular case, (which included a “Neighborhood Announcement” and case summary, “Neighborhood Opinion” survey sheets, and various other supporting and explanatory materials), the Hearing Administrator finds that they clearly reflect the preparer's personal viewpoint and general opposition to the application. It is not unreasonable to suspect that these feelings were further communicated and amplified verbally during whatever one-on-one canvassing discussions the individual had with each neighbor before the latter rendered their positions on the “Neighborhood Opinion” survey sheets. In short, the canvass materials have an underlying bias that taints and skews their presented results.
- **Existence of Other Christian Preschools in the Surrounding Area.** The presence of other Christian preschools in the surrounding area is not relevant. Irrespective of how many other such schools may already be operating in the area, this applicant (or any other one) has the free-market right to desire one on their own property, tailored to their vision and intended market, and to pursue whatever approvals may be necessary to operate it.

Hearing Administrator's Decision

This application for a Type I conditional use permit to operate a childcare center, on the existing Tortolita Presbyterian Church campus, on property zoned SR, is hereby approved by the Hearing Administrator. This approval is subject only to the *Standard Code Requirements* and *Special Conditions* outlined below:

Standard Conditions & Code Requirements

- 1) A decorative masonry wall, fence, or combination, at least four feet in height, shall be provided for the enclosure of the outdoor play area.
- 2) Existing off-street parking and loading areas may be utilized, however, they shall be in accordance with Chapter 18.75 (Off-Street Parking & Loading).
- 3) Hours of operation shall be between six a.m and nine p.m.
- 4) License: the childcare center shall be licensed to operate as a child care center by the Office of Child Day Care of the Arizona Department of Health Facilities.
- 5) Shall have an approved development plan (condition previously met by the original church development, now also subject to additional Hearing Administrator stipulations in the *Special Conditions* below).

Special Conditions

- 1) The property is approved for a childcare center and its customary attendant uses only. No other non-residential uses are approved and would require a new/separate conditional use permit process, public notice, public hearing, etc.
- 2) The maximum number of students allowed at the school at any one time (i.e. per a given morning or afternoon session) is twenty-five (25). Students shall be pre-kindergarten.
- 3) Normal daily operation of the school and childcare center will be only between 8:00 AM to 4:00 PM. This restriction does not apply to occasional parent-night or family-night events, if offered. Any such evening activities shall all occur indoors.
- 4) The outdoor play area shall be located on the south side of the existing church building so as to provide a sound buffer to the adjacent property owner to the north. Any type of enclosure for the play area that satisfies standard Code requirements shall be sufficient.
- 5) The owner/applicant is responsible for the construction of a new ingress/egress driveway off of Thornydale Road, to be located in the same general entry location as that of the existing dirt entry drive. The driveway will extend from the existing Thornydale Road pavement to the existing paved parking area on the church campus.
- 6) The alignment, width, and paving surface of the new driveway improvements shall be coordinated with the Site Group of the Development Services Department (DSD).
- 7) The owner/applicant shall submit a revised site plan illustrating Item *Special Condition* Nos. 4, 5 & 6 above to the Deputy Chief Zoning Inspector, who shall coordinate its review and approval through the DSD Site Group.
- 8) In all of its application and enrollment materials, the Church will instruct its patrons as follows: a) all drop-off and pick-up of children at the childcare facility shall occur via the new driveway off of Thornydale Road, and b) patrons refusing to honor these instructions will be asked to remove their children from enrollment. The owner/applicant is allowed to state in their materials that these stipulations come directly from Pima County as a condition of the facility's operation.
- 9) The Deputy Chief Zoning Inspector is charged with enforcing, implementing, and interpreting all of the above *Special Conditions* so as to insure their proper application in keeping with the Hearing Administrator's intent.

As is the case with all Type I conditional use applications, this decision is subject to a statutory 30-day protest period from the date of this decision. If a valid protest is received within the 30-day period, an appeal hearing will be scheduled before the Board of Supervisors, who shall then make the final decision on this conditional use permit.

Any party interested in filing an appeal should contact Mr. Tom Drzazgowski, Pima County Deputy Chief Zoning Inspector, at phone number 740.6675. Please be advised that filing fees apply to any appeal, and that these fees are payable by the party filing the appeal request.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "J. Portner", with a vertical line extending downwards from the bottom of the signature.

Jim Portner
Pima County Hearing Administrator

September 20, 2016

Date