

RESOLUTION NO. 2021-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AN APPEAL AND GRANTING A MODIFICATION TO AN EXISTING CONDITIONAL USE PERMIT TO ADD A WEEKDAY DAYTIME PRIVATE SCHOOL USE AT AN EXISTING RELIGIOUS INSTITUTION ON PROPERTY ZONED R-1-20 LOCATED AT 1600 NORTH ACACIA AVENUE

ZON-2020-0067 / ZON-2021-0061

APPLICANT: SAGE BEHAVIOR SERVICES  
PROPERTY OWNER: TEMPLE BETH TIKVAH

RECITALS

WHEREAS the City received an application to modify a Conditional Use Permit to add a weekday daytime private school use at an existing religious institution, more specifically described as Orange County Assessor's Parcel No. 283-021-02.

WHEREAS the City of Fullerton Planning Commission held a duly noticed public hearing for ZON-2020-0067 in compliance with the noticing requirements of Fullerton Municipal Code (FMC) Chapter 15.76,

WHEREAS the Planning Commission denied the request for the CUP modification.

WHEREAS, The applicant filed an appeal of the decision by the Planning Commission to the City Council pursuant to FMC Section 15.76.170.

WHEREAS, City council heard the appeal of the Planning Commission action (ZON-2021-0061) during a duly noticed public hearing pursuant to FMC Section 15.70.060.B.

WHEREAS FMC Section 15.17.020.C provides the Community and Economic Development Director to determine an activity not specifically listed in the permitted uses table as consistent with a listed permitted use if it is consistent with the zone's purpose, subject to the approval of a Conditional Use Permit.

WHEREAS FMC Section 15.70 establishes the criteria to consider in evaluating a Conditional Use Permit request and authorizes City Council to approve a project when it can make applicable findings.

WHEREAS FMC Section 15.55.030.D specifies the requirements for approval of a private school.

RESOLUTION

NOW, THEREFORE, the City Council of the City of Fullerton hereby resolves, as follows:

1. In all respects as set forth in the Recitals of the Resolution.

2. The City Council, pursuant to Fullerton Municipal Code Section 15.70.040.D, finds as follows:

- a. Finding: That FMC conditionally permits the proposed use in the zone and the proposed use complies with all applicable zoning standards.

Fact: In accordance with FMC Section 15.17.020.C, the Community and Economic Development Director can determine an activity not specifically listed in the permitted uses table as consistent with a listed permitted use consistent with the zone's purpose. Sage Behavior Services provides individualized services to meet the needs of children eligible for special education either in a one-on-one or small group setting including working on improving functional communication, self-help skills, play skills, safety skills and overall independence. These services are not unlike those of a private school and/or child-care center. The City FMC permits both uses in a residential zone with a CUP and are has already approved for the 1600 North Acacia property through a previously approved CUP. In addition, the proposed CUP modification does not include site improvements or additions to the existing facilities onsite and therefore the property continues to comply with the relevant standards which have not changed since the entitlement of the administration / classroom building in 2005 and as modified in 2008.

- b. Finding: That the proposed use is consistent with the goals and policies of the General Plan of the City or any specific plan applicable to the area of the proposed use.

Fact: The subject property has a General Plan land use designation of Religious Use and zoning designation of R-1-20 (Single-Family Residential, 20,000 square-foot minimum lot size). The use is consistent with the conditionally permitted uses in the in the residential zone and while the private school is incidental in nature to the primary use of the property as a religious institution, the use of the property remains compatible with the land use designation to provide opportunities for religious gathering, worship and related educational and community service activities.

- c. Finding: That the proposed use as conditioned will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity.

Fact: A private school is conditionally permitted in the R-1-20 zone subject to the approval of a CUP. The existing CUP for Temple Beth Tikvah included approval for a private school and child-care center. The proposed operational changes to the CUP will expand the private school use and will allow Sage Behavior Services to operate consistent with a private school use at this location. A review of the operations of Temple between 2005 and 2020 found no complaints regarding the operations made to Code Enforcement, the Fire Department or the Police Department. Multiple Code Enforcement inspections have not substantiated complaints received in 2020 and 2021 regarding impacts to the neighborhood from the addition of Sage Behavior Services on the premises. The expansion of the existing private school use in conjunction with the continued operation of the religious institution as proposed and conditioned will not be detrimental to the health, safety or general welfare of the persons residing or working in the vicinity.

- d. Finding: That the project or use demonstrates compliance with the Design Criteria specified in Section 15.47.060 of Chapter 15.47.

Fact: The proposed CUP modification does not include site improvements or additions to the existing facilities onsite and therefore the property continues to comply with the relevant standards which have not changed since the entitlement of the administration / classroom building in 2005 and as modified in 2008.

3. City Council, pursuant to Fullerton Municipal Code Section 15.55.030.D, finds as follows:

- a. Finding: That the use conforms with relationships between proposed and existing land uses.

Fact: The proposed operational changes to expand the existing private school use will occur within an existing building previously approved for a private school use. The addition of weekday daytime private school activities, although operating concurrently with the previously approved child-care center, continue to remain activities ancillary to the primary use of the religious institution, the peak activity for which occurs on weekends.

- a. Finding: No potential impacts exist on surrounding uses involving noise, glare, parking, traffic, dust, odor, fumes, activity, solid waste and security.

Fact: The operational changes to the private school use, even when considering concurrently operating uses, will not result in a demand for onsite parking great than that available and as such will not negatively impact the parking of the existing surrounding uses. All uses associated with the private school occur inside an existing building already authorized for use as a private school. Furthermore, the private school use does not generate glare, dust or odor.

- b. Finding: Provision of support facilities for potential expansion. The application shall require a master plan of the facility.

Fact: The private school use is ancillary to the previously approved religious institution the approval for which considered and conditioned the potential for expansion.

- c. Finding: That the current infrastructure accommodates the proposed use and additional demands generated by it.

Fact: The CUP modification would expand the private school use operational hours to the weekday daytime (Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m. to operate). Even with concurrently operating uses, they remain under the previously approved peak occupancy. Furthermore, the proposed operational changes to expand the existing private school use will occur within an existing building previously approved for a private school use. As such, the CUP modification will not generate greater demand on the existing infrastructure.

- d. Finding: That the use conforms to the following guidelines:

- Zone limitations on building height shall apply. However, a non-habitable structure such as a bell tower, steeple or chimney may exceed the height limitations, but the City will allow only one structure of this type for the facility.
- The City will evaluate whether zone limitations on lot coverage of buildings and parking areas based on surrounding uses. The applicant shall landscape all required setbacks from streets and shall not use the setbacks for parking.
- On-site buildings and structures intended for occupancy other than residential units generally should not locate closer than 30 feet to any property line of a lot with a residential zone classification.
- The applicant will construct and maintain a solid wall not less than six feet in height on any property line adjoining a property with a residential zone classification, provided that such wall shall not extend into any required front yard.
- The applicant shall arrange all lights provided to illuminate any parking area or building on such site as to direct light away from adjoining premises.
- A submitted site plan shall identify the location, size and type of proposed space for outdoor recreational activities.

Fact: The CUP modification does not include site improvements or additions to the existing facilities onsite and therefore the property continues to comply with the relevant standards which have not changed since the entitlement of the administration / classroom building in 2005 and as modified in 2008. All uses associated with the private school occur inside an existing building already authorized for use as a private school.

4. In accordance with the California Environmental Quality Act (CEQA) Guidelines City Council finds this request exempt from further review per Section 15301 Class 1 – Existing Facilities.

Finding: The project, consists of the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of existing or former use.

Fact: The property is fully developed and the proposed changes are limited to operational changes in the existing facilities.

THEREFORE, the City Council does hereby APPROVE said Appeal (ZON-2021-0061) and grants CONDITIONAL USE PERMIT modification (ZON-2020-0067) subject to the following conditions of approval:

1. The approval and the following conditions supersede the previously approved Conditional Use Permit (CUP 421B).
2. The property shall be in substantial conformance with the plans, descriptions and statements provided by the applicant, excepting any modifications made by the Planning Commission. This includes, but is not limited to, the proposed schedule of operations

(Attachment 1). Upon significant changes to the plans, descriptions and statements provided by the applicant, as determined by the Director of Community and Economic Development, staff shall initiate a review of the CUP at a noticed public hearing before the Planning Commission.

3. Prior to business license renewal approval, Sage Behavior Services, shall submit building plans to and receive permits from the Community and Economic Development Department for any interior improvements constructed as part of the commencement of business operations.
4. Prior to a future expansion of the sanctuary / assembly area, should parking demand exceed on-site parking, the applicant shall secure off-site parking in an agreement brought before the Planning Commission in a noticed public hearing for review and approval or otherwise increase on-site parking.
5. The City Council or Planning Commission may modify or revoke this Conditional Use Permit should they determine that the proposed use or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvement in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
6. If the use sustains three or more verified complaints received by the Fullerton Code Enforcement Division, the Fire Department or the Police Department within a 12-month period regarding violations to City Ordinances or regulations caused by staff or business conducted at the site, it shall be grounds for revocation proceedings of this Conditional Use Permit.
7. The applicant shall agree to indemnify, hold harmless and defend the City of Fullerton, its officers, agents and employees, from any and all liability or claims that may be brought against the City arising out of this approval or arising out of the operation of the business, save and except that caused by the City's active negligence.
8. Conditional Use Permit approval shall become null and void if not exercised within 24 months from the date of approval. Upon written request of the applicant, the authority that gave final approval to the original request may extend the time at which such approval expires.

ADOPTED BY THE FULLERTON CITY COUNCIL ON JUNE 15, 2021.

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Bruce Whitaker  
Mayor

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Lucinda Williams, MMC  
City Clerk

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Date

Attachment:

Attachment 1 – Schedule of Operations