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CLERK OF THE BOARD

GTB DEPUTY



NOTICE OF APPEAL

Monterey County Code
Title 19 (Subdivisions)
Title 20 (Zoning)
Title 21 (Zoning)

No appeal will be accepted until a written decision is given. If you wish to file an appeal, you must do so on or before 8/25/17 (10 days after written notice of the decision has been mailed to the applicant). Date of decision 8/9/17.

1. Please give the following information:

- a) Your name Anthony Lombardo, Lombardo and Associates
- b) Phone Number 831-751-2330
- c) Address 144 West Gabilan City Salinas Zip 93901
- d) Appellant's name (if different) First Baptist Church

2. Indicate the appellant's interest in the decision by checking the appropriate box:

- Applicant
- Neighbor
- Other (please state) _____

3. If you are not the applicant, please give the applicant's name:

4. Indicate the file number of the application that is the subject of the appeal and the decision making body.

| | File Number | Type of Application | Area |
|---------------------------|------------------|---------------------|-----------------|
| a) Planning Commission: | <u>PLN140683</u> | <u>Use Permit</u> | <u>Cachagua</u> |
| b) Zoning Administrator: | _____ | _____ | _____ |
| c) Subdivision Committee: | _____ | _____ | _____ |
| d) Administrative Permit: | _____ | _____ | _____ |

5. What is the nature of the appeal?

conditions of

a) Is the appellant appealing the approval or the denial of an application? (Check appropriate box)

b) If the appellant is appealing one or more conditions of approval, list the condition number and state the condition(s) being appealed. (Attach extra sheets if necessary).

Condition 10 - (PD032) - Permit Length: Limiting the life of the permit to 2 years.

Condition 30 - (PDSP003) - Limiting the maximum number of persons to be at the Church at any time to 65 persons.

6. Check the appropriate box(es) to indicate which of the following reasons form the basis for the appeal:

- There was a lack of fair or impartial hearing; or
- The findings or decision or conditions are not supported by the evidence; or
- The decision was contrary to law.

You must next give a brief and specific statement in support of each of the bases for appeal that you have checked above. The Board of Supervisors will **not** accept an application for appeal that is stated in generalities, legal or otherwise. If the appellant is appealing specific conditions, you must list the number of each condition and the basis for the appeal. (Attach extra sheets if necessary).

Attached

7. As part of the application approval or denial process, findings were made by the decision making body (Planning Commission, Zoning Administrator, Subdivision Committee or Director of Planning). In order to file a valid appeal, you must give specific reasons why the appellant disagrees with the findings made. (Attach extra sheets if necessary).

Attached

8. You are required to submit stamped addressed envelopes for use in notifying interested persons that a public hearing has been set for the appeal. The Resource Management Agency - Planning will provide you with a mailing list.

9. Your appeal is accepted when the Clerk of the Board's Office accepts the appeal as complete on its face, receives the filing fee (Refer to the most current adopted Monterey County Land Use Fees document posted on the RMA Planning website at http://www.co.monterey.ca.us/planning/fees/fee_plan.htm) and stamped addressed envelopes.

APPELLANT SIGNATURE *Rose JH* DATE 8/25/17

ACCEPTED _____ DATE _____
(Clerk to the Board)

FIRST BAPTIST CHURCH (PLN140863)

POINTS OF APPEAL

BACKGROUND

First Baptist Church (“the Church”) proposes to establish a church on Cachagua Road. The Church site is a 10 acre lot that currently has two houses on it. One house will be used as the parsonage. The second house will be modified for use as a Church. The Church building would eventually have seating for approximately 65 persons. The Church plans to operate as a church normally would and offer a range of activities during the year. And as is typical with churches, there would be an ebb and flow of activities. Some days would be busy while others would have relatively little activity.

The Church began the use permit application process in November, 2014 when they received application instructions from the Planning Department. As part of those instructions they were required to have several special studies done including:

- Biological report (Regan, 2015)
- Geologic and Soils Engineering Report (Landset, 2015)
- Percolation and Groundwater Study (Grice, 2015)
- Water Demand Estimate and Hydrogeologic Report (Feeney, 2015)
- Noise Assessment (Pack, 2016)
- Traffic Assessment (Pinnacle, 2015)

Additionally, during the hearing process the Church was required to prepare and submit additional reports to address drinking water standards and water system design.

As required by CEQA the County prepared an Initial Study. That Study was circulated for public review from September 19, 2016 to October 19, 2016. Based on the conclusions in the Initial Study the staff found that the Church would not have a significant effect on the environment and recommended that a Negative Declaration, meaning the Church required no mitigations and would not have significant effect on the environment, be adopted. The Planning Commission concurred.

THE APPEAL

The Church’s appeal has only to do with Conditions 10 and 30. The full text of the conditions is attached.

Condition 10: The Church believes Condition 10 should be deleted in its entirety. Condition 10 causes the Use Permit to expire in two years. This condition would require that the Church install a water system and make other improvements and then in less than two years apply for an entirely new Use Permit. That application would include new application fees (the application fee for this permit was \$16,420), may require additional studies, and would require public hearings and undoubtedly appeals, with their associated costs. This would all be with no

assurance that the subsequent use permit would be approved. Such a condition is unprecedented in the County and places a substantial burden on the Church.

Condition 30: The Church asks that Condition 30 be amended to add "...the maximum capacity shall not exceed a weekly average of 65 persons per day." The key factors for the Church's water, wastewater and traffic impacts were based on average daily or annual use. They were not measured by the maximum use for a single day. To limit use of the Church to a single day maximum of 65 persons places a limit on the use of the Church inconsistent with use permits that were found for other churches and is contrary to the nature of the typical operation and use of churches.

THE FINDINGS AND CONDITIONS ARE NOT SUPPORTED BY THE EVIDENCE

During the course of the Planning Commission hearing there was significant confusion caused in part by the staff's inability to explain the potential impacts of the Church particularly as they related to average daily use versus maximum daily use of water and wastewater. Therefore the Planning Commission's decision to limit the maximum daily use to 65 persons and to cause the use permit to expire in two years (and for which the Planning Commission made no specific findings) are not supported by the evidence.

Water Demand:

The estimated water demand for the Church was calculated based on the water use figures and practices of the Monterey Peninsula Water Management District ("the District"). The District has two categories of use in determining water demand: residential and non-residential. These water demand factors are based on numerous surveys and technical publications and reflect average water use. Water demand for residential use is based on fixture units (X amount of water per toilet, sink, washing machine, etc.). Non-residential water demand is calculated based on the proposed use and the square footage of that use. Table 1 of the Feeney Report clearly shows water use calculations for the existing uses (2 residences) to be 0.4 acre feet per year and the water use for the proposed use (one residence and the church) to be 0.376 AFY, a 0.024 AFY reduction. The Feeney Report concluded there would be a reduction in the intensification of water use and that the Church use would be "...much lower than adjacent properties of similar zoning (Feeney 2015, page 5)."

During the Planning Commission discussion the staff could not clearly explain how the water use for the Church was calculated, the different water use factors used by the District or provide the conclusions of the Feeney report. This was a critical factor in the Planning Commission's decision to limit the use permit to two years and limit the Church's use to a maximum of 65 persons per day. That decision is not supported by the evidence.

Waste Water:

The quantity of waste water the Church would produce was an average of 300 gallons per day. That is equivalent to a single family dwelling. It was not clearly presented to the Planning Commission that the 300 gallons per day is an average daily use and is not intended to be a daily maximum. This too was a critical factor in the Planning Commission's decision to limit the use

permit to two years and limit the Church's use to a maximum of 65 persons. Planning Commission's decision is not supported by the evidence.

We have had further discussions with Janna Faulk of the Environmental Health Bureau on this question. Ms. Faulk, on August 24th, stated that EHB would agree to a condition that did not have a maximum number of persons allowed per day provided the weekly average did not exceed 65 persons per day.

The Church agrees with the EHB recommendation.

Traffic:

The Initial Study states "Policy CACH-2.6 of the Cachagua Area Plan establishes LOS C as the acceptable level of service for County roads and intersections within the planning area. LOS C would equal to 10,800 ADT (average daily trips). RMA Public Works performed traffic counts for Cachagua Road on August 4, 2015 which resulting in traffic count of 709 vehicles per day. The Project Trip Generation Analysis and Traffic Impact Fee(s) report submitted for the project concluded that project implementation would increase the traffic counts by 112 daily trips. The combined existing and projected traffic trips would equal to 821 daily trips, which would be well below 10,800 ADT. Therefore, the operational components of the project would have no impact to the LOS of Cachagua Road and would not conflict with local or regional policies or regulations for circulation."

The acceptable level of service in Cachagua is LOS C (10,800 ADT). The traffic on Cachagua including the proposed Church use is estimated to be 821 ADT, less than 6% of the LOS C ADT.

The Planning Commission's finding that it had to limit the use permit to two years and to limit the Church's use to a maximum of 65 persons due to traffic constraints is not supported by the evidence.

Establishing the Maximum Capacity for a Church is Unprecedented in the County:

We have reviewed County records and cannot find a use permit to establish a church that included a condition establishing a maximum daily limit. The County staff did a similar review and found one instance where a limit was placed on a camping activity that was done in conjunction with an existing church but even then there was no daily limit on the number of persons who could attend church activities.

Two Year Expiration:

The use permit is conditioned to expire two years from the date of the completion of a new water system. It is estimated that the water system and other initial improvements will cost \$75,000 and the other planned improvements will be an additional \$300,000 to \$400,000. This time limit is intended, as we understand it, to give the Planning Commission an opportunity to review the permit and to consider whether or not to allow the Church to continue to operate. There are no specific findings to explain why it is necessary to require a re-examination of the Church's

activities in two years, why it is necessary to cause the permit to expire the permit to do that review or why the current provisions in the Zoning Ordinance are insufficient.

Section 21.74.040 A of the Monterey County Code states “Where one or more of the conditions of a Use Permit have not been, or are not being complied with, or when a Use Permit was granted on the basis of false material information, written or oral, given willfully or negligently by the applicant, the Appropriate Authority may revoke or modify the Use Permit following public hearing pursuant to Chapter 21.78 of this Title.” Under this section should there be evidence that the conditions of approval are not being met or that the information the applicant provided was incorrect, the Planning Commission has the authority to bring this permit back at any time for public hearings and may revoke or amend the permit.

The resource constraints mentioned in Condition 30 do not exist to a degree that would necessitate conditioning this permit to expire in two years. The County’s Initial Study for the Church examined the effect of typical activities and operations of a church with 65 members. It is well established that the use of a church is not a daily constant. There are days when there is a higher level of use but it is far more common for churches to have days with limited or no activities.

THERE WAS A LACK OF A FAIR AND IMPARTIAL HEARING

Given the confusion and misinformation over key issues the Church did not receive a fair hearing based on the facts of the application.

THE TWO YEAR EXPIRATION IS CONTRARY TO LAW

The Religious Land Use and Institutionalized Persons Act of 2000 states “...no government shall impose or implement a land use regulation in a manner that imposes a substantial burden [on religious assembly] ...unless the government demonstrates [the regulation] is in furtherance of compelling government interest and is the least restrictive means of furthering that compelling governmental interest.” The Planning Commission’s decision fails on several points:

- There is nothing in the Planning Commission’s findings that explains why a two year expiration is necessary or how the Church might otherwise interfere with a “compelling governmental interest.” To the contrary, the land use issues with which the County generally concerns itself (water, waste water, traffic, biological resources) have all been examined and it has been found that the Church would not have a significant effect on the environment.
- There is nothing in Planning Commission’s findings that explains how a two year expiration is the “least restrictive means” to meet a compelling government interest. Nor is there anything in the record to explain why the process already established in Section 21.74.040 A of the Monterey County Code is not sufficient in this case.
- The two year expiration, particularly in light of the significant costs to establish the Church, and then the costs to apply for a new use permit is a substantial burden. The Church has spent nearly three years and \$50,000 in pursuit of this permit. They will be

required to spend \$75,000 on the water system and other improvements to establish the Church and plan to spend \$300,000 to \$400,000 for other improvements. To require this Church to invest upwards of \$500,000 (not counting the land cost of \$760,000) based on a permit that will expire in two years is a substantial burden.

SUMMARY

The Church respectfully requests that the Board of Supervisors grant their appeal for the reasons stated, delete Condition 10 in its entirety and amend Condition 30 in part to read "...the maximum capacity shall not exceed a weekly average of 65 persons per day.."

Condition 10

Responsible Department: RMA-Planning

This permit shall expire 2 years after commencement of use. Completion by Owner/Applicant of the compliance actions for Condition Nos. 14 (New Water System Permit) and 15 (Fluoride Treatment), and verification by RMA of compliance with those conditions shall constitute “commencement of use” for the purpose of this condition.

Condition/Mitigation Monitoring Measure:

Prior to the expiration date, the Owner/Applicant shall apply for a Use Permit. During review of the Use Permit application, the County shall re-evaluate potential impacts of the use on the surrounding neighborhood to assure that the nature of the area has not changed sufficiently to cause the use to be detrimental to the area, and to review the conditions of the prior Use Permit to determine their continuing adequacy.

(RMA-Planning)

Compliance or Monitoring Action to be Performed

At least 30 days prior to the expiration date, the Owner/Applicant shall submit an Use Permit application to continue the use to the satisfaction of the RMA Chief of Planning.

Condition 30

Responsible Department: RMA-Planning

The types of activities allowed by this Use Permit shall be consistent with those activities listed on page 3 of the environmental document prepared by the County for the proposed use (Initial Study/Negative Declaration; SCH No. 2016091045), and as described in the Initial Study and Planning Commission Resolution No. 17 - 030 for RMA-Planning File No. PLN140863.

Condition/Mitigation Monitoring Measure:

The scope or level of use for any consistent activity shall be limited based on site constraints identified in the Initial Study, such as on-site wastewater treatment capacity and area available for parking. Based on site constraints, the maximum capacity shall not exceed 65 persons.

The types of activities may include, but are not limited to:

- Church services (indoor, or outdoor when weather permits)
- Bible studies and prayer meetings
- Counseling services
- Children/youth support activities
- Including separate church services, classrooms, nursery, etc.
- Day camps and overnight camping
- Maximum of two overnight camping events per year; up to 3 nights per event
- Community service activities
- Disaster response activities

- Including temporary staging, storage, and/or shelter, etc.
 - Trade-skills training
 - Congregation-related major events
 - Including weddings and memorial services
- (RMA-Planning)

Compliance or Monitoring Action to be Performed:

On an on-going basis, the Owner/Applicant shall adhere to the scope of allowed intensity of use.

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