



# Monterey County

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## Board Report

Legistar File Number: RES 17-172

October 24, 2017

**Introduced:** 10/18/2017

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** BoS Resolution

PLN140863 - FIRST BAPTIST CHURCH (CONTINUED FROM OCTOBER 17, 2017)

Public hearing to consider an appeal by the First Baptist Church from the August 9, 2017, decision of the Planning Commission to adopt a Negative Declaration and approve a Use Permit to convert a single-family dwelling into a church. First Baptist Church is challenging conditions regarding Permit Expiration (2 years) and Scope of Use (maximum occupancy of 65 persons).

Proposed CEQA Action: Adopt a Negative Declaration per Section 15074 of the CEQA Guidelines.

Project Location: 19345 Cachagua Road, Carmel Valley, Cachagua Area Plan

### RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Grant in part the appeal of the First Baptist Church from the decision of the August 9, 2017 Planning Commission decision approving an application (First Baptist Church/PLN140863) for a Use Permit to convert a single-family dwelling into a church;
- b. Adopt a Negative Declaration; and
- c. Approve a Use Permit to convert a single-family dwelling into a church.

A draft resolution with findings and evidence supporting this recommendation is attached for consideration (**Attachment B**). Staff recommends approval subject to 30 conditions.

### PROJECT INFORMATION:

**Owner:** First Baptist Church

**Agent:** Dale Ellis, Anthony Lombardo & Associates

**APN:** 418-441-006-000

**Zoning:** RC/20 (Resource Conservation, 20 acres per unit)

**Parcel Size:** 10 acres

**Flagged and Staked:** Yes

### SUMMARY:

First Baptist Church, who is both the Applicant and Appellant, received Planning Commission approval to change the primary use of the property from residential to public/quasi-public to establish a church. Implementation of the project would convert one of the two residential dwellings on the parcel to a public/quasi-public use for the establishment of the Cachagua Bible Church. Approval was granted subject to 30 conditions. First Baptist Church is challenging Condition No. 10, limiting the permit length to two (2) years, and Condition No. 30, limiting the maximum number of persons to 65. Staff supports amendments to these conditions whereby Condition 10 would require Planning Commission review (versus expiration) in three years with potential to modify the conditions at that time, and Condition 30 to allow major activities involving up to 125 persons on a limited basis.

DISCUSSION:

Proposed site improvements include modifications to the main residence, consisting of a 744 square foot addition to the first floor, a new 830 square foot basement, and associated grading. County zoning requires the Use Permit to establish a church use, whereas the site improvements require only ministerial permits. There are no improvements proposed to the second existing dwelling unit, which would be used as a residential unit for church staff. Proposed parking for the church would be located at the southern edge of the site, along Cachagua Road, and would provide 31 standard parking spaces and 2 ADA-accessible spaces (33 total parking spaces). After completion of the proposed site improvements, the use would require a minimum of 17 parking spaces for standard activities and 33 parking spaces for major activities.

Concerns raised by the public during review of the project are generally categorized by traffic and site access, biological resources, water and wastewater, noise, exterior lighting, and rural/residential character. County staff reviewed the comments received, as well as the submitted application materials, and determined the project is consistent with the 2010 Monterey County General Plan, the Cachagua Area Plan, the requirements of the applicable zoning ordinance (Title 21), and other County health, safety, and welfare ordinances related to land use. The surrounding parcels are primarily zoned Farmland, Resource Conservation, and Permanent Grazing. Uses in the immediate project vicinity include homes on large rural lots and agricultural activities

On January 11, 2017, the Planning Commission conducted a public hearing on the project, and continued the hearing to February 22, 2017, with direction for staff to address questions raised regarding project scope, water quality, and parking area drainage. The questions regarding scope and parking area drainage were addressed by February; however, the question regarding water quality required additional time for the Applicant to compile the requested information, and the Planning Commission granted three further continuances to May 31, July 26, and August 9, 2017. On August 9, 2017, the Planning Commission voted 9 - 1 to adopt a negative declaration and approve a Use Permit to allow the proposed development (see Planning Commission Resolution No. 17-030 at Attachment D). Due to concerns raised in public testimony regarding potential impacts on the surrounding community, the Planning Commission revised Condition No. 10 to limit the duration of the Use Permit to two years, and to require the Applicant to re-apply for a new Use Permit at that time. The Planning Commission also approved staff's recommendation of a maximum of 65 persons allowed on-site (Condition No. 30). The questions raised by the Planning Commission and the project are discussed in detail in the Discussion at **Attachment A**.

The Appellant, First Baptist Church, then timely filed an appeal from the August 9, 2017, decision of the Planning Commission. The appeal challenges the Planning Commission's application of Condition No. 10, limiting the permit length to two (2) years, and Condition No. 30, limiting the maximum number of persons to 65. The appeal contends that the application of these two conditions occurred because there was a lack of a fair or impartial hearing, and that the findings or decision or conditions are not supported by the evidence.

Condition No. 10 - Permit Expiration

The County's application of time limits or other restrictions on discretionary permits is not unprecedented, have been applied specifically to non-residential (e.g., public/quasi-public) uses

proposed in residential or agricultural neighborhoods, and is well within the County's authority to assure public health and safety. In addition, at the Planning Commission's hearing on the application, the Applicant volunteered the idea of a review by the Planning Commission at the two year mark, although the Applicant did not agree to limiting the permit to two years in duration.

The County has imposed time limits, or other types of restrictions and limitations, on a proposed use when on-going review is deemed necessary to assure the proposed use is not detrimental to the area, and to review the adequacy of the conditions. Examples of types of limits and restrictions may be found in various chapters of Monterey County Code (MCC) regarding land use, such as Chapter 21.64.095 (Cottage Industries), Chapter 21.64.100 (Bed and Breakfast Facilities), and 21.64.280 (Transient Use of Residential Property (Short-Term Rental)).

In the past, the County has granted Use Permits and Special Permits for churches subject to various conditions of approval related to parking, access improvements, wastewater treatment system improvements, water system improvements, exterior lighting, drainage and erosion control, landscaping and fencing, and signage. However, based on research of County land use records, no previously-approved permits for churches were found where the County applied a clearly-defined expiration date on the use. In addition, based on County staff review of the application materials and environmental analysis, the facts of this proposed use do not warrant the application of a 2-year permit expiration timeframe, yet do warrant a 3-year review with the potential for the Planning Commission to modify conditions to assure that the use is not detrimental to the area. Therefore, staff has prepared a draft revision to Condition No. 10 (**Attachment K**) removing the 2-year expiration timeframe, and replacing it with a requirement for Planning Commission review of the use and conditions in three years with the option to revise, modify, or change the conditions, or take other measures as deemed necessary, to assure that continuation of the use is not detrimental to the area.

#### Condition No. 30 - Scope of Use

The granting of a Use Permit by the County is a discretionary action, and subject to conditions of approval based on site constraints to ensure that the establishment, maintenance, or operation of the use or structure applied for, will not, under the circumstances of the particular case, be detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood of such proposed use; or be detrimental or injurious to property and improvement in the neighborhood; or to the general welfare of the County. In furtherance of this governmental interest, the Planning Commission limited the scope or level of intensity of permitted activities based on identified property constraints and the associated environmental review.

In the environmental analysis, County staff identified site constraints, such as on-site wastewater treatment capacity and available parking area, that could limit the scope or level of use for health and safety. County staff included draft Condition No. 30 at the August 9th Planning Commission hearing to address the question regarding scope of use, including types of activities and a maximum capacity of 65 persons based on site constraints. The maximum capacity of 65 persons was based on the estimated amount of wastewater generated per user, per day. As proposed, the on-site wastewater treatment system (OWTS) would have a capacity of approximately 300 gallons per day, which equates to approximately 65 persons at just under 5 gallons per person per day. Hence, the maximum of 65 persons allowed on-site at any given time is based on the capacity of the OWTS. Based on

established health and safety regulations, the original Condition No. 30 applied a reasonable limit on the scope of activities to assure the use was not detrimental to persons residing or working in the area of the proposed use. The limit was also reasonable by the Applicant's/Appellant's own estimate of current and future regular members or attendees, supported by documentation submitted by the Applicant to the County.

However, based on additional information provided by the Environmental Health Bureau (EHB), the OWTS could absorb additional flow on a periodic basis, provided the system is allowed sufficient recovery time between the periods of additional wastewater flow. Pursuant to this additional analysis, staff has prepared a draft revision to Condition No. 30 (**Attachment K**). The revised Condition No. 30 incorporates the additional information from EHB, combined with the proposed parking capacity, to allow major activities involving up to, but not exceeding, 125 persons on-site at any given time within specific limits. These major activities shall be limited to not more than two days per month, with at least six days between each major activity to ensure sufficient recovery time for the OWTS. As combined with the proposed on-site parking capacity, the 125-person limit would also allow all parking to remain on-site and not overflow onto Cachagua Road.

#### Water Demand

Questions regarding water demand were raised and discussed at the August 9th Planning Commission hearing, which may have resulted in some misunderstanding about the project. Upon review of RMA-Planning File No. PLN1408963, staff determined that the water demand methodology was used consistently throughout the project review, including in the environmental analysis, and in County staff's recommendations to the Planning Commission and the Board of Supervisors.

#### Appeal Hearing Action

Although the appeal focuses on only two conditions, the hearing on the project at the Board is de novo. Staff has prepared a draft resolution granting the appeal in part, adopting the negative declaration, and approving the project with revised Condition Nos. 10 and 30. If the Board desires to take a different action, the Board could adopt a motion of intent and continue the hearing to a date certain for the staff to prepare a resolution with modified findings.

See **Attachment A** for a detailed project description and discussion, including project analysis and responses to the Appellant's contentions.

#### ENVIRONMENTAL REVIEW:

Monterey County, as Lead Agency, prepared an Initial Study and Negative Declaration for this project (**Attachment G**). The Initial Study/Negative Declaration were filed with the County Clerk on September 16, 2016, and circulated for public review and comment from September 19 through October 19, 2016 (SCH No. 2016091045). The County received no comments from state or local agencies during the 31-day circulation period, but did receive seven comment letters from interested parties. The comment letters and the County responses to the submitted comments are at **Attachment H**. Based on staff review, the comments did not alter the conclusions in the Initial Study and Negative Declaration, and accordingly, staff recommends adoption of the Negative Declaration. Potential environmental impacts have been considered and analyzed, and determined to be less than significant.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project:

- RMA-Public Works
- RMA-Environmental Services
- Environmental Health Bureau
- Water Resources Agency
- Cachagua Fire Protection District

The project was referred to the Cachagua Land Use Advisory Committee (LUAC) for review. The LUAC, at a duly-noticed public meeting on October 28, 2015, voted unanimously (5 - 0) to support the project as proposed (**Attachment F**). The LUAC also recommended the County condition the project to ensure it maintains the rural character of the community, and to address potential traffic and noise generated by the proposed use.

FINANCING:

Funding for staff time associated with this project is included in the FY2017-18 Adopted Budget within RMA-Planning's General Fund 001, Appropriation Unit RMA001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Joe Sidor, Associate Planner, x5262  
Reviewed by: Brandon Swanson, RMA Services Manager  
Approved by: Carl P. Holm, AICP, RMA Director

The following attachments are on file with the Clerk of the Board:

- Attachment A - Project Discussion
- Attachment B - Draft Board Resolution, including:
  - Exhibit 1 - Recommended Conditions of Approval
  - Exhibit 2 - Site Plan, Floor Plans, Elevations, and Parking Plan
- Attachment C - Notice of Appeal (August 25, 2017)
- Attachment D - Planning Commission Resolution No. 17-030 (August 9, 2017)
- Attachment E - Vicinity Map
- Attachment F - Cachagua Land Use Advisory Committee Minutes
- Attachment G - Negative Declaration and Initial Study
- Attachment H - Comments on the Negative Declaration and Responses to Comments

Attachment I - Applicant TMF Correspondence (June 30, 2017)  
Attachment J - Public Correspondence (received since August 9, 2017)  
Attachment K - Draft Revisions to Condition Nos. 10 and 30

cc: Front Counter Copy; Cachagua Fire Protection District; RMA-Public Works;  
RMA-Environmental Services; Environmental Health Bureau; Water Resources Agency; Joseph Sidor, Associate Planner; Brandon Swanson, RMA Services Manager; First Baptist Church (Orville Myers), Property Owner; Joshua Stewman, Agent; Anthony Lombardo & Associates (Dale Ellis), Agent; Josh Beddingfield, Don and Pam Bonsper, Diane and Jeff Colon, Rod McMahan, Jeanne Mileti, Derek Bonsper, Greg and Mary Martin, John Hammond, Dane Bonsper, Cara and Tom Nason, Leslie Glasenapp, Jennifer Wolf, Dru Hammond, Carolyn Todd, Jody Kueny, Jerald King, Daniel Duerr, Rex Miller, Gip Tegtmeier, Guy Glasenapp, and Mignon Higgins, Interested Parties; The Open Monterey Project (Molly Erickson); LandWatch; Project File PLN140863