

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA UPHOLDING THE PLANNING COMMISSION DENIAL OF ZONING APPLICATION ZA-15-38, WITHOUT PREJUDICE, FOR A MINOR CONDITIONAL USE PERMIT FOR A DEVIATION FROM SHARED PARKING REQUIREMENTS DUE TO OFF-SET HOURS OF OPERATION FOR A RELIGIOUS EDUCATION AND CULTURAL ASSEMBLY USE AT 3184 AIRWAY AVENUE, SUITE J

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed Salim Rahemtulla, authorized agent for Randy Shafer, the property owner, requesting approval of the following:

Zoning Application ZA-15-38, which was approved by the Zoning Administrator on December 10, 2015, a minor conditional use permit for a deviation from shared parking requirements due to off-set hours of operation for a religious education and cultural assembly use:

- Monday through Sunday 4:00 a.m. – 6:00 a.m. and 7:00 p.m. – 9:30 p.m.
- Saturday 10:00 a.m. – 2:00 p.m.
- Sunday 10:00 a.m. – 2:00 p.m. (10 times per year).

The request was approved by the Zoning Administrator on December 10, 2015, and called up for review by the Planning Commission on December 11, 2015.

WHEREAS, a duly noticed public hearing held by the Planning Commission on February 8, 2016 with all persons having the opportunity to speak for and against the proposal; and

WHEREAS, the Planning Commission reversed the Zoning Administrator's approval and denied, without prejudice, ZA-15-38 on a 3-2 vote; and

WHEREAS, an appeal of the Planning Commission's denial was filed by the applicant on February 16, 2016.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, the City Council hereby upholds the Planning Commission's decision and **DENIES, WITHOUT PREJUDICE**, Planning Application ZA-15-38 with respect to the property described above.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this

resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 15th day of March, 2016.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

EXHIBIT A

FINDINGS (DENIAL)

- A. The information presented does not comply with Costa Mesa Municipal Code Section 13-29(g)(2) in that:

Finding: The proposed use is not compatible with developments in the same general area and would be materially detrimental to other properties within the area.

Facts in Support of Findings: Evidence presented during the hearing showed that the parking demand for the proposed use would not be compatible with uses in the surrounding area, specifically, an existing church with offset hours of operation at 3184 Airway Avenue, Suite A (Berean Community Church). Public testimony at the hearing, which included representatives from the Berean Community Church, indicated that the parking demand for the existing church result in parking spaces throughout the property being occupied by churchgoers during their hours of operation, which would be exacerbated with the parking demand of the proposed use. As a result, the proposed use is not compatible with developments in the same general area and would be materially detrimental to other properties within the area.

Finding: Granting the minor conditional use permit will be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.

Facts in Support of Findings: Based on the public testimony received during the meeting, the close proximity of two similar uses on the same property would be materially detrimental to the health, safety, and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. Specifically, resulting in a shortage of available on-site parking spaces for other tenants and customers.

Finding: Granting the minor conditional use permit will allow a use, density, or intensity which is not in accordance with the General plan designation.

Facts in Support of Findings: Photographic evidence was presented during the hearing indicating that the existing church use operating at the property creates a shortage of available parking spaces for surrounding tenants and customers. Therefore, granting the minor conditional use permit will allow a use, density, or intensity which is not in accordance with the General plan designation for the property.

- B. Denial would **not** place a "substantial burden" on the religious activities of the project.

Facts in Support of Findings: The existing church currently operates at a different location. Moreover, there are other locations within the City of Costa Mesa that may accommodate the proposed project.

- C. There is a “compelling governmental interest” to support the denial.

Facts in Support of Findings: Evidence presented during the hearing showed that the parking demand for the proposed use would not be compatible with uses in the surrounding area, specifically, an existing church with offset hours of operation at 3184 Airway Avenue, Suite A (Berean Community Church). Public testimony at the hearing, which included representatives from the Berean Community Church, indicated that the parking demand for the existing church result in parking spaces throughout the property being occupied by churchgoers during their hours of operation, which would be exacerbated with the parking demand of the proposed use. As a result, the proposed use is not compatible with developments in the same general area and would be materially detrimental to other properties within the area.

- D. Denial is the “least restrictive means of furthering that compelling governmental interest.”

Facts in Support of Findings: Due to the hours of operation required of the project that conflict with the hours of operation of existing businesses within the industrial park, the MCUP may not be conditioned so as to approve the use at this location.

- E. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City’s environmental procedures. Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- F. The project is exempt from Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.

RESOLUTION NO. 16-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA REVERSING THE PLANNING COMMISSION'S DECISION AND APPROVING ZONING APPLICATION ZA-15-38, FOR A MINOR CONDITIONAL USE PERMIT FOR A DEVIATION FROM SHARED PARKING REQUIREMENTS DUE TO OFF-SET HOURS OF OPERATION FOR A RELIGIOUS EDUCATION AND CULTURAL ASSEMBLY USE AT 3184 AIRWAY AVENUE, SUITE J

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed Salim Rahemtulla, authorized agent for Randy Shafer, the property owner, requesting approval of the following:

Zoning Application ZA-15-38, which was approved by the Zoning Administrator on December 10, 2015, a minor conditional use permit for a deviation from shared parking requirements due to off-set hours of operation for a religious education and cultural assembly use:

- Monday through Sunday 4:00 a.m. – 6:00 a.m. and 7:00 p.m. – 9:30 p.m.
- Saturday 10:00 a.m. – 2:00 p.m.
- Sunday 10:00 a.m. – 2:00 p.m. (10 times per year).

The request was approved by the Zoning Administrator on December 10, 2015, and called up for review by the Planning Commission on December 11, 2015.

WHEREAS, a duly noticed public hearing held by the Planning Commission on February 8, 2016 with all persons having the opportunity to speak for and against the proposal; and

WHEREAS, the Planning Commission reversed the Zoning Administrator's approval and denied, without prejudice, ZA-15-38 on a 3-2 vote; and

WHEREAS, an appeal of the Planning Commission's denial was filed by the applicant on February 16, 2016.

WHEREAS, the project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt from CEQA under Section 15301 for Existing Facilities.

WHEREAS, the CEQA categorical exemption for this project reflects the independent judgment of the City of Costa Mesa.

BE IT RESOLVED that, based on the evidence in the record and the findings contained in Exhibit A, and subject to the conditions of contained within Exhibit B, the City Council hereby **APPROVES** Zoning Application ZA-15-38.

BE IT FURTHER RESOLVED that the Costa Mesa City Council does hereby find and determine that adoption of this Resolution is expressly predicated upon the activity as described in the staff report for Zoning Application ZA-15-38 and upon the applicant's compliance with each and all of the conditions in Exhibit B, and compliance of all applicable federal, state, and local laws. Any approval granted by this resolution shall be subject to review, modification or revocation if there is a material change that occurs in the operation, or if the applicant fails to comply with any of the conditions of approval and/or mitigation measures.

BE IT FURTHER RESOLVED that if any section, division, sentence, clause, phrase or portion of this resolution, or the documents in the record in support of this resolution, are for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions.

PASSED AND ADOPTED this 15th day of March, 2016.

STEPHEN M. MENSINGER
Mayor, City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

CITY CLERK OF THE
CITY OF COSTA MESA

CITY ATTORNEY

EXHIBIT A

FINDINGS (APPROVAL)

- A. The information presented complies with Costa Mesa Municipal Code Section 13-29(g)(2) in that:
1. The proposed use is compatible and harmonious with developments in the same general area and would not be materially detrimental to other properties within the area. The proposed use will have offset hours of operation that will minimize any parking impacts on surrounding uses. The use is quiet in nature and will not have any noise impacts on surrounding uses.
 2. Granting the minor conditional use permit will not be detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood. All activities will take place underroof. The center will be in operation only during the early morning, evening, and weekends, when most other businesses in the center are closed.
 3. Granting the minor conditional use permit will not allow a use, density or intensity that is not in accordance with the General Plan designation and any applicable specific plan for the property. The proposed use does not substantially increase the density or intensity at the property since no building area will be added; the use will operate outside normal business hours; and is quiet in nature.
- B. The information presented complies with Costa Mesa Municipal Code Section 13-29(e) in that:
1. There will be a compatible and harmonious relationship between the proposed building and the site development, and use(s), and the building and site developments, and uses that exist or have been approved for the general neighborhood. Parking impacts will be avoided by conditioning the religious education and cultural center to operate during the early morning, evening, and weekends only.
 2. Safety and compatibility of the design of buildings, parking area, landscaping, luminaries, and other site features which may include functional aspects of the site development such as automobile and pedestrian circulation have been considered. The proposed hours of operation are during the early morning, evening, and weekends only and adequate parking exists for both this use as well as the existing church at 3184 Airway Avenue, Suite A; therefore, no traffic or parking impacts are anticipated.
 3. The project complies with performance standards described elsewhere in this Zoning Code, and is conditioned to operate as described in this staff report.
 4. The use is consistent with the General Plan in that a religious and cultural education center is considered a compatible use in the Industrial Park land use designation.
 5. This zoning application is for a project-specific case and is not to be construed to be setting a precedent for future development.
- C. The project has been reviewed for compliance with the California Environmental Quality

Act (CEQA), the CEQA Guidelines, and the City environmental procedures, and has been found to be exempt under Section 15301, Existing Facilities, of the CEQA Guidelines.

- D. The project, as conditioned, is consistent with Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated by the payment of traffic impact fees.

EXHIBIT B

CONDITIONS OF APPROVAL

- Plng. 1. The use shall be limited to the type of operation described in this staff report: a religious education and cultural assembly center with the following hours of operation:
Monday-Sunday: 4:00 a.m. to 6:00 a.m. and 7:00 p.m. to 9:30 p.m.
Saturday: 10:00 a.m. to 2:00 p.m.
Sunday: 10:00 a.m. to 2:00 p.m. (10 times per year)
Any change in the operational characteristics including, but not limited to, type of service provided or hours of operation will require approval of an amendment to the minor conditional use permit, subject to Zoning Administrator approval.
2. All uses shall be conducted within the tenant space (underroof).
3. If parking shortages or other parking-related problems arise, the center operator shall institute appropriate operational measures necessary to minimize or eliminate the problem, including, but not limited to, modifying the hours of operation.
4. The conditions of approval and ordinance or code provisions of zoning application ZA-15-38 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
5. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of /utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.

CODE REQUIREMENTS

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- Plng. 1. Approval of the zoning application is valid for one year from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by one of the following actions: 1) obtains building permits for the authorized construction and initiates construction; and/or 2) obtains a business license and/or legally establishes the business. If the applicant is unable to establish the use/obtain building permits within the one-year time period, the applicant may request an extension of time. The Planning Division must receive a written request for the time extension prior to the expiration of the zoning application.
2. Permits shall be obtained for all signs according to the provisions of the Costa Mesa Sign Ordinance.
- Bldg. 3. Comply with the requirements of the 2013 California Building Code, 2013 California Electrical Code, 2013 California Mechanical Code, and 2013 California Energy Code (or the applicable adopted, California Building Code, California Electrical Code, California Mechanical Code, and California Energy Code at the time of plan submittal or permit issuance) and California Code of Regulations also known as the

California Building Standards Code, as amended by the City of Costa Mesa. Requirements for accessibility to sites, facilities, buildings, and elements by individuals with disability shall comply with Chapter 11B of the 2013 California Building Code.

4. Requirements for accessibility to sites, facilities, buildings, and elements by individuals with disability shall comply with chapter 11B of the 2013 California Building Code.
 1. Accessibility shall be to and through the front door and to the commercial space from the public sidewalk.
 2. Accessible restrooms/bathrooms in the commercial space.
 3. Accessible parking.
 4. Accessible entry door, ramps, landings, sidewalks, hallways, strike edge clearances, and elevation changes.

Additional access requirements may be required as per 2013 California Building Code.

5. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
6. If required, a business license shall be obtained prior to the initiation the business.
7. The applicant shall submit a \$2,172 Traffic Impact Fee to the Transportation Division prior to the effective date of the Minor Conditional Use Permit. The traffic impact fee is based upon the average daily trip generation rate of 9.11 net trip ends for the proposed use. The fee is required to fulfill mitigation of off-site traffic impacts pursuant to the prevailing schedule of charges adopted by the City Council. The traffic impact fee is calculated and includes credits for existing uses. NOTE: The Traffic Impact Fee will be recalculated at the time of issuance of the Minor Conditional Use Permit based upon any changes in the prevailing schedule of charges adopted by the City Council and in effect at that time.

SPECIAL DISTRICT REQUIREMENTS

The requirements of the following special districts are hereby forwarded to the applicant:

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| Sani. | 1. | It is recommended that the applicant contact the Costa Mesa Sanitary District at (949) 645-8400 for current district requirements. |
| CDFA | 2. | Comply with the requirements of the California Food and Agriculture (CDFA) to determine if red imported fire ants exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information. |
| AQMD | 3. | Applicant shall contact the Air Quality Management District (800) 288-7664 for potential additional conditions of development or for additional permits required by AQMD. |