

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: December 19, 2005
Prepared Date: December 12, 2005
Reviewed By: _____

SUBJECT: Appeal of Planning and Zoning Commission approval of Planning Application 05-067, extension of Conditional Use Permit for the Albany Berkeley Chinese School, 720 Jackson Street (Vista Elementary School Site)

FROM: Billy Gross, Associate Planner

RECOMMENDATION

Staff recommends that the City Council deny the appeal and uphold the decision of the Planning and Zoning Commission to extend the conditional use permit for the Albany Berkeley Chinese School to June 30, 2006.

PROJECT DESCRIPTION

The applicant requested an extension of the conditional use permit to continue to operate a private school within existing structures at a site previously occupied by a public school.

APPELLANT

James Cleveland, 724 Cerrito St
Linda Koenig, 720 Cerrito St

BACKGROUND

The Planning and Zoning Commission originally heard this item on October 11, 2005, and again on October 25, 2005. Public testimony was given, and concerns discussed included maintenance on the site, use of the portable building located at the southwest portion of the site, waste management trucks backing out from the site, the location of the dumpsters, violation of drop off and pick up procedures, monitoring of children at the school, and parking of vans and staff cars on the lot and street. After discussion among the Commission members at the October 25th meeting, and the addition of several conditions, the Commission approved the application to extend the conditional use permit by a vote of 5-0.

This approval is being appealed to the City Council on the basis that the CEQA findings necessary to enable a permit renewal are incorrect, and therefore the application for the extension of the conditional use permit should be denied.

ANALYSIS OF APPEAL

Environmental Review

As part of the CEQA process, during the initial conditional use permit approval for the two private schools (Albany Berkeley Chinese School and Bright Star Montessori School) in 1999, the City of Albany planning staff performed an Initial Study. This documents reviews the environmental impact of various aspects of a project. These areas include:

- Aesthetics
- Agriculture Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soils
- Hazards and Hazardous Materials
- Hydrology/ Water Quality
- Land Use/ Planning
- Mineral Resources
- Noise
- Population/ Housing
- Public Services
- Recreation
- Transportation/ Traffic
- Utilities/ Service Systems

After reviewing the specific questions contained in the Initial Study, each area was determined to have “no impact”. It was noted that the project would be contained within existing structures, involved no construction or earth movement, and was similar to the type of use previously existing at the site (Vista Elementary School). The applicants proposed an intensity of usage that was generally less than or equal to the intensity of usage by Vista School, except for the longer hours of operation. Staff therefore recommended the adoption of a Negative Declaration, which the Planning and Zoning Commission did on January 11, 2000.

Since the original approval, staff has found that the extension of the use permit was exempt from CEQA per Section 15301 of the CEQA Guidelines, which states that the operation of an existing public or private structure involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination is categorically exempt from the provisions of CEQA.

ISSUES ADDRESSED BY PLANNING AND ZONING COMMISSION

Maintenance of site

As part of the October 25, 2005 approval by the Planning and Zoning Commission, a condition of approval required that ABCS enter into a maintenance contract to ensure upkeep of the site. The contract has not been entered into at this time, but ABCS has agreed to enter into a contract if the decision of the Commission is upheld. Staff has included a site plan that shows the basic location of the areas that each school is currently responsible for. The basic provisions of the contract are as follows:

- Sweeping and trash pick-up on all sidewalks, including Cerrito Street
- Specific times that work will be completed, with a minimum of twice weekly (i.e. Tuesday and Friday), and more often as needed
- Requirement to submit the following items to the Community Development Department by the first of each month
- Work reports listing dates work completed

- All tasks performed on those specific days
- Invoices of payment by ABCS to contractor
- After an initial time period of 6 months, if the Community Development Department finds ABCS is fulfilling the reporting requirements, the reporting period timeline can be altered to at most 3 month periods.

If the action of the Commission is upheld, staff will require that ABCS enter into the maintenance contract with a private contractor of their choice as soon as possible.

Use of portable building for school purposes

As a result of discussions with the owners of the property, Albany Unified School District (AUSD), it was determined that the portable building at the south end of the site was moved there for storage purposes by AUSD. After the building was placed there, ABCS asked AUSD for permission to use the building, which AUSD granted (not knowing that this would require an amendment to the conditional use permit).

When Planning staff was originally made aware of the new building, which was owned and placed by AUSD, staff did not check further to determine if the change would require an amendment to the use permit. However, during the preparation of the P&Z Commission staff report for October 25, 2005, staff became aware of condition of approval J-2, which states:

“No new exterior construction or additions are needed or proposed. Exterior changes for private school purposes will require Design Review approval from the Planning and Zoning Commission.”

Therefore, staff asked the Commission to determine whether or not ABCS could continue to use the portable building as classroom space. At the meeting, the Commission stipulated that the building should be moved if access by Waste Management trucks could not be improved, but did not direct ABCS to stop using the portable building.

Waste Management truck access to the site

Due to the location of the portable building and the fencing, Waste Management vehicles are not able to turn around and exit the site; instead trucks must back out of the property, causing early morning noise from the warning beep. As part of the Fire Department conditions, the existing fencing in the southwest portion of the site will have to be removed, and a new access gate will be built at the bottom of the driveway leading from Cerrito Street to the school property. The removal of the fencing will allow the dumpsters to be relocated, and the Waste Management trucks will again be able to exit the driveway going forward.

Drop off/ Pick-up on Jackson Street

As included in the notice of action, ABCS will be required to work with the Traffic & Safety Commission to enter into a Joint Traffic Management Plan, which may include the creation of a formal pick-up/ drop-off zone on Jackson Street. The process is intended to be similar to that recently completed by the Traffic & Safety Commission for all of the public schools in Albany.

Monitoring of Children

There have been comments received during each public hearing that ABCS was not properly monitoring children at the site. Staff obtained all records that the Community Care Licensing Division (CCLD) had regarding ABCS, including complaint investigations and facility evaluation reports. ABCS has been cited

for violations for not having proper documentation of teachers, for having a ratio of students to teachers greater than that allowed by law, and for the physical condition of the facility.

Staff asked CCLD if the violations on record were enough to warrant the revocation of ABCS childcare license. CCLD responded that although ABCS has repeatedly had similar violations, CCLD had not found any conditions that made them seriously consider beginning revocation proceedings because the violations were not of the type that indicated a serious risk to the safety and wellbeing of the children at the school.

Fire Department Site Visit

On November 1, 2005, at the request of James Cleveland, the Fire Department conducted a site visit of the school site, specifically looking at access from Cerrito Street. As a result of this meeting, the Fire Chief sent a letter to ABCS (Attachment 7) stating that the Fire Department must have unobstructed access to the school at all times, and provided a list of conditions that must be met within 90 days of the November 1, 2005 meeting at the site (i.e. February 2, 2006).

As a result of the letter, staff consulted the City Attorney, and chose to ask the Commission to amend the prior Notice of Action to include the Fire Department's conditions. While the Fire Dept. conditions did not require incorporation into the CUP in order to be enforced, it was determined there was a benefit in providing the opportunity for public comments and in placing the conditions into a single document.

At the November 22, 2005 Planning and Zoning Commission meeting, the Commission amended the conditional use permit to include a condition of approval related to the Fire Department requirements. The specific language of that condition of approval is as follows:

- J-9 By February 2, 2006, the applicant must comply with the following to the satisfaction of the Fire Department:
1. Access gate from Cerrito St. This access gate would be best if it was placed at the bottom of the driveway. A swinging gate would give access to the fire department vehicles and would prevent children from walking out on the street and to the private resident next to your school. The gate entrance must be at least 20 feet wide. The current gate must be removed, as it does not meet current fire code.
 2. Remove all temporary fencing. Temporary fencing shortens fire apparatus turnarounds.
 3. Move all garbage collection away from fire access.
 4. Adjust play structure, as discussed, to improve fire access and turnaround.
 5. Build a permanent fence around play structure that is not to be used by children. This fence must be built inside the play area to maximize fire access.
 6. All low-level plate glass windows, must be protected from possible broken glass.
 7. Fire access must be labeled on the pavement in red "Fire Access".
 8. Submit all plans through the City of Albany Building Department. Failure to comply with the stated requirements and date will result in a \$100 per day fine.
 9. If the applicant fails to complete the actions stated above, the approval of the CUP shall be null and void and the right to operate the Albany Berkeley Chinese School shall cease.

As of the date of this staff report, ABCS had complied with items #6, and had submitted plans to the Building Department regarding the access gate from Cerrito St. (item #1). ABCS reports that when the access gate is installed, the contractor will complete all of the other items on the list. Planning staff

discussed the property with the Fire Department, which stated that fire access to the site would be adequate with the changes listed above.

EXPIRATION DATE OF THE CONDITIONAL USE PERMIT FOR ABCS

A sunset date of June 30, 2006 was placed on the conditional use permit. This was done for two reasons. First, AUSD recommended an earlier date because they believed they would know their plans for the site at that time. Second, because of the issues discussed above, staff believed that the earlier sunset date would also allow the City of Albany to determine if ABCS had adequately met the conditions of approval. If at that time AUSD has decided not to make any changes at the site, and ABCS has met all provisions as listed in the conditions of approval, staff likely would recommend that no sunset date be required in the future. As a conditional use permit, it can be reviewed by the Commission if needed.

SUMMARY

The Planning and Zoning Commission determined that the school was still an appropriate use on the site, subject to the revised conditions of approval and to the findings to support approval of the amended Conditional Use Permit, as stated in the October 25, 2005 and November 22, 2005 Notices of Action.

Therefore, staff recommends that the City Council uphold the Planning and Zoning Commission's decision to approve Conditional Use Permit #05-067.

ATTACHMENTS

- 1- Appeal Application
- 2- Existing and Proposed Site Plans (not to scale)
- 3- November 22, 2005 Planning and Zoning Commission Notice of Action
- 4- November 22, 2005 Minutes
- 5- October 25, 2005 Staff Report
- 6 – October 25, 2005 P&Z Commission Minutes
- 7 – October 11, 2005 P&Z Commission Minutes
- 8- November 1, 2005 letter from Fire Chief Marc McGinn