

**Minutes of Planning Commission Meeting
held Monday, March 9, 2015, at 7:00 P.M.
in the Council Chambers, 11 North 3rd Street,
Jacksonville Beach, Florida**



Call to Order

The meeting was called to order Chairman Sutton.

Roll Call

Greg Sutton, Chairperson
Terry DeLoach, Vice Chairperson
Bill Callan
David Dahl
Georgette Dumont *Absent*

Alternates:

Britton Sanders
Jeffrey Jones

Also present were Bill Mann, Planning Official, Susan Erdelyi, City Attorney, and Amber Lehman, Staff Assistant.

Approval of Minutes

There were no minutes to approve.

Correspondence

There was no correspondence.

New Business

- (A) **PC #5-15 - 301 10th Avenue North**
Conditional Use approval for a proposed package liquor store and drinking establishment in a *Commercial Limited: C-1* zoning district, pursuant to Sections 34-342(d)(4) and 34-342(d)(3) respectively, of the Jacksonville Beach Land Development Code.

Staff Report:

The applicant would like to lease a tenant space in an existing commercial shopping center on the northwest corner of 3rd Street and 10th Avenue North, in a *Commercial limited: C-1* zoning district. He would like to operate a small retail beer store whose main business is the sale of full “growler” beer containers for off-site consumption, and where customers could also sample “flights” of beer prior to purchase, and also buy pints of

beer for on-site consumption while waiting on growler fills. Beer would be the only alcoholic beverage stocked and sold in the store.

The applicant was recently approved for this same conditional use request at a location in the *Pablo Plaza* shopping center with his former business partner (reference PC#31-14). They have since dissolved their partnership, and the applicant is seeking the same approvals, in his name only, and in a new location.

The proposed location has been reviewed against the locational criteria in Land Development Code Sec. 34-393 standards, and it is located more than 500' from the main entry of the nearest church, school, or other drinking establishment by most direct pedestrian route. There are two restaurants across 10th Avenue to the south that both have alcoholic beverage licenses, but each contains 150 or more seats, which exempts them from the Sec. 34-393 distance standards relative to the applicants proposed business.

Adjacent uses consist of the other tenant spaces of the commercial center to the immediate east and west, a mix of small residential and commercial uses behind the center to the north, and commercial and restaurant uses across 10th Avenue to the south. The applicant's proposed location is in a shopping center with a long established commercial character and adequate on-site parking.

The applicant, Tim Brack, 2086 Merritt Blvd., stated that the store they are talking about is 1500 square feet, and they do not intend to have seating.

Public Hearing:

Mr. Sutton opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Elaine Hinson, 1028 North 4th Street, stated that she owned a condominium unit behind Mellow Mushroom. She stated that she was here when it was denied across the street. She stated that parking is still a nightmare. Ms. Hinson stated that she was not opposed to the business, but that this was not the right location.

Jim Sorrell, 428 North 10th Ave., stated that the area has changed a lot since 1976, when he moved here. The commercial development has engrossed the residential area. Mellow Mushroom was using his front yard and side lot for their parking. In addition, employees are parking off site, which is a nuisance to the residents in this area. He stated that they were less than 500 feet from a school.

Al Kellerman, 428 North 10th Ave., stated that he worked at night and the businesses are intruding on the residences.

Robin Dannehower, 1028 4th Street N., stated that their condo association has spent thousands of dollars to put up rocks and trees to stop people from parking on their property. There are beer cans and bottles left behind by people parking there. The signs

that say 'no parking' are against the building and can't be seen. Parking there also prevents you from seeing at the intersection.

Tim Griffin, Johns Creek, Ga., stated that they were not denied – they withdrew their request. Mr. Dahl asked about the hours. Mr. Brack answered that they would be open noon to 9pm.

Seeing no one else who wished to address the Commission, Mr. Sutton closed the public hearing.

Discussion:

Mr. Brack stated that they wanted to coexist with the neighbors. The concept is for people to buy their beer and take it home.

Mr. DeLoach asked what the appeal is to this location. Mr. Brack stated that they have been through three places. The other locations they cannot get the owners to move forward. There are not many areas where they fit in the parameters.

Mr. DeLoach stated that they wanted to help them. Pablo Plaza would be a much better fit. The problem lies with going back to the same location as last time.

Mr. Brack stated that they chose this one because the parking situation is different than the other location close by.

Mr. DeLoach asked about the problem with Pablo Plaza. Mr. Brack responded that they could be within 500 feet of a drinking establishment.

Mr. Sutton asked Mr. Mann about the original location and the problem with parking. This strip center has its own parking. Mr. Mann stated they do direct line for property notice distance, but for a drinking establishment, it is measured via the most direct pedestrian route to front door of facility.

Mr. Jones asked about the prior tenant of the space in question. Mr. Brack responded that it was a clothing store.

Mr. Sanders stated that any tenant would generate parking issues, and asked if this tenant would generate any more. He asked if we could put parking time limits. Mr. Mann stated he wasn't sure of the enforceability of such a condition.

Mr. Dahl asked about the average dwell time at this type of business. Mr. Brack responded that it was about 10 minutes. Mr. Dahl then asked about the peak times of business. Mr. Brack responded that the peak hours are after work from about 5 to 8.

Mr. Sutton asked if we could put operating hours on this business. Mr. Mann responded that they could. Mr. Sutton stated that there is parking generally available at this location

and this is preferable to the other location.

Mr. DeLoach stated that they already have a bottleneck in this area. We could have traffic from the restaurants patrons getting growlers. Adding an alcoholic establishment will make it worse. A real estate office would use less parking.

Motion: Mr. DeLoach made a motion to deny the application, seconded by Mr. Dahl.

Roll call vote: Ayes (to deny) – Dahl, DeLoach, and Callan
Nays - Sutton and Sanders
The application was denied with a vote of 3 to 2.

Old Business

(A) **PC #9-13 - 11 1st Street North**

Conditional Use approval for a religious organization located in a Residential, single family: RS-1 zoning district, pursuant to Section 34-336(d)(2) of the Jacksonville Beach Land Development Code.

Staff Report:

Mr. Mann read the following staff report into the record:

The applicant is the pastor of *Church of Our Savior* (the former *Resurrection Anglican Church - Beaches*). The congregation is currently meeting in the historical wooden chapel building that is located on City-owned land on Beach Blvd. at 5th Street N., one block west of the *Beaches Historical Society* museum.

The applicant seeks a new permanent site for his congregation.

Staff met with the applicant's agent in March 2013 and was informed that they had identified the subject properties as a desired location for their church. They were informed that the subject properties were zoned RS-1, and, as such, conditional use approval would be required for use of the property for a religious organization.

Per the application, the two subject properties would together support the construction of a maximum 7,440 s.f., one-story building, containing a sanctuary with a capacity of 208 people, together with other ancillary space. At one space per four seats, the on-site parking requirement for the building is 52 spaces. The site plan included in the application shows the location of the proposed building and the required parking. The building location conforms to RS-1 setbacks. Maximum coverage would be 35%. The plan shows the required landscape buffer and 6' opaque fence adjacent to neighboring single-family uses. Access to the property would be from a single driveway onto the south Beach Boulevard frontage road, at the foot of the Intracoastal Waterway Bridge. The church and property would only be used for religious activities. The applicants are aware that child daycare is a separate conditional use in RS-1 districts, and they are not

requesting that approval. The children's play area indicated on the plan is for use by the congregation.

The site plan shows the subject properties as being divided from north to south, with the referenced children's play area indicated on the southern parcel. This parcel is divided from the northern parcels by a City-owned parcel containing a City sewer lift station that lies roughly 75' south of the proposed building location. The applicant's agent has met with Public Works, and that Department is aware of the church's plans and has indicated that the proposed site plan and use of the subject properties by the applicant would not interfere with Public Works' maintenance of that lift station.

Adjacent uses include the referenced single-family lots along the west and south side of the subject properties, on the east side of Hopson Rd., vacant commercially zoned land to the east, and the *Beach Marine* development 300' to the north, across Beach Boulevard. The vacant commercial property to the east is in the process of being developed as grassed, landscaped overflow parking for *Adventure Landing*.

The owner of one of the subject properties has approached staff several times over the past 15 years seeking some sort of commercial use of his property, but he was informed that a commercial use was not consistent with the Comprehensive Plan Future Land Use designation of his property, and would not be supported. The currently requested use of the subject properties is contemplated in RS-1 zoning, so it is not inconsistent with the properties' Comprehensive Plan *Residential – Low Density* designation. The requested use represents a reasonable low intensity use of the undeveloped parcels surrounding the City's lift station, and would serve as transition between the proposed commercial parking facilities to the east, and the Hopson Road neighborhood to the west and south.

Current Status

On April 8, 2013, the Planning Commission denied Conditional Use application PC#9-13 filed by the applicant. On September 9, 2013, the Commission denied a similar application, PC#25-13, submitted by the same applicant. Based on these denials, the applicant filed suit against the City in federal court in Jacksonville, in a case titled *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346-TJC-JBT. After a trial, the applicant prevailed as to one of its several claims against the City. The City is challenging the trial court's ruling issued on November 25, 2014, has filed a motion for reconsideration of the court's ruling, and is actively appealing the ruling to the Eleventh Circuit Court of Appeal. Meanwhile, on February 17, 2015, the trial court formally ordered the City to grant a conditional use permit to the applicant in accordance with application PC#9-13. The order states that the City "is **DIRECTED** to grant the application for conditional use permit submitted by the *Church of Our Savior* on March 8, 2013 and to issue a conditional use permit to the Church, with any reasonable conditions, in accordance with the City's procedures and Land Development Code, no later than **March 25, 2015**." (Emphasis on original).

To comply with the court orders issued on November 25, 2014, and February 17, 2015, this matter is again before the Planning Commission for issuance of a Conditional Use permit as to application PC#9-13. The issuance of the Conditional Use permit by the Commission shall occur under compulsion of federal court order and under protest, explicitly without waiving the City's right to appeal or further challenge the trial court rulings in the above referenced case. In essence, the City has advised the Court that, by following the Court's directive, the City is not waiving its right to ultimately appeal the Court's decision. The City's attorneys have recommended that the Chairman re-state on the record that the City is NOT waiving the right to appeal the Court's decisions, following the Commission's approval of application PC#9-13.

Additionally, and separate from the court-ordered approval of application PC#9-13, under Section 34-232 of the Land Development Code the Planning Commission may impose conditions upon the issuance of a Conditional Use permit. The court has not constrained the Planning Commission from imposing conditions upon the Conditional Use permit. In the orders issued November 25, 2014, and February 17, 2015, the court recognized the Commission's authority in this respect. Upon review of application PC#9-13 and as the City is now being ordered to approve application PC#9-13, staff proposes the following reasonable conditions for consideration relative to that approval:

1. The applicant shall develop the subject property in conformance with applicable Land Development Code standards, including but not limited to Residential, single-family: RS-1 zoning district regulations, without exception and without seeking a variance in any respect, including but not limited to lot coverage. No City-owned property may be used by the applicant to meet such standards.
2. The applicant shall provide a seven-foot wide buffer between the subject property and any adjacent residential uses, in conformance with LDC Sec 34-425(b)(2) standards, and including a continuous six-foot high opaque screen or barrier.
3. The applicant shall pay to have installed, a six-foot high opaque fence with 24-foot wide vehicular access gate across the City-owned property known as 11 Hopson Road, between the easterly corner of the property known as #9 Hopson Road and the northerly corner of the property known as #13 Hopson Road. This access to the City's property shall be for exclusive use by City employees.
4. The City shall prepare a pedestrian-only access easement agreement to the benefit of church staff and congregants across the portion of the City-owned property at #11 Hopson Road lying adjacent to and between the applicant's two parcels. Such agreement shall include a liability insurance policy with coverage of \$1,000,000.00 per incident, and shall list the City as an additional insured. The Church shall maintain these policies for so long as it continues to use the City-owned property at #11 Hopson Road for access to the southern parcel. The Church shall submit proof of coverage to the City on an annual basis. The agreement shall otherwise provide that the Church shall indemnify, defend, and hold harmless the City, as to any and all claims for damages which are caused by

or suffered by Church staff, congregants, guests, or members while upon the City-owned property at #11 Hopson Road, including but not limited to bodily injury and damage to City property and improvements.

5. The applicant shall secure Development Plan approval for the development of its proposed facilities within twelve months of issuance of the conditional use permit by the planning commission granting the applicant's conditional use request, or the conditional use approval shall be rendered null and void.
6. The applicant shall be responsible for payment of applicable water and sewer tap fees, storm water and mobility fees, any related work required to extend existing public utilities to the subject property, and any other development and permit fees associated with its proposed development. However, pursuant to Section 7-21 of the Code of Ordinances, no fees shall be charged to the applicant for permits and inspections for the construction of the applicant's religious facilities, provided the applicant files the required documentation described in Section 7-21 whenever such permit application is filed with the City.

The intent of these proposed conditions is to ensure compliance and conformity with the land use controls found in the Land Development Code, in particular those which apply to the RS-1 residential zone, to promote the expeditious development of this project, and to protect the City from liability which may result from injuries sustained, or damage caused, by individuals associated with *Church of Our Savior* while traversing the City's adjacent Lift Station property.

Recommendation:

1. Approve Conditional Use application PC#9-13, in compliance with the federal court orders issued November 25, 2014, and February 17, 2015, in *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346-TJC-JBT. This approval shall occur under compulsion of federal court order and under protest, explicitly without waiving the City's right to appeal or further challenge the trial court rulings in the above case.
2. Further, staff recommends that the Planning Commission, pursuant to its authority under Section 34-232, and as contemplated by the federal court orders issued November 25, 2014, and February 17, 2015, in *Church of Our Savior v. City of Jacksonville Beach*, case no. 3:13-cv-01346-TJC-JBT, impose the six reasonable conditions provided above.

Applicant:

The applicant's attorney, Daniel Dalton, of Detroit, Michigan, stated that he would represent the Church of Our Savior in this Conditional Use Permit application. He stated that he was here to address the recommendation provided by the Planning Commission regarding his client's Conditional Use Application.

He urged the Board to reject the recommendation, and instead approve the Conditional Use Permit the City's Planning Department staff recommended for approval nearly two years ago today.

He read the following into the record. "As you are aware, we are here today a result of the United States District Court order entered in the case of *Church of Our Savior v. City of Jacksonville Beach*, Case No 3:13-cv-01346, wherein the Church prevailed at trial in its as-applied Equal Terms claim under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. 2000cc ("RLUIPA").

Again, the Church sought, and obtained, equitable relief from the District Court based upon this Planning Commission's prior two denials of the Church's Conditional Use Permit ("CUP") applications.

You are being asked to issue a CUP with reasonable conditions. The conditions recommended by the legal staff for the City are neither reasonable or rationale. The history provided by the planner is incomplete. You should be aware of the facts that were established at trial.

1. In early 2013, the Church identified land for sale along Beach Boulevard in the City (hereinafter referred to together as the "Property") that meets the Church's three criteria: affordability, identifiability and accessibility.
2. The vacant Property, which has never been developed, consists of two separately parcels, one of which are separated by a City-operated sewer lift station.
3. Because of the Property's location, the Church's worship facility will be the first structure people observe after crossing the Intracoastal Waterway and entering the City.
4. The Property, once zoned commercial and rezoned by the City to RS-1, is *the only land* zoned RS-1 on Beach Boulevard in the City
5. The Property is accessed via a frontage road along Beach Boulevard; there is no need to drive on Hopson Road to access the Property.
6. To the north of the Property is the six-lane Beach Boulevard, and directly across Beach Boulevard are a marina, Nippers restaurant, and Billy's Boathouse restaurant.
7. Immediately to the east is vacant land leased to Adventure Landing for overflow parking, and to the east of the overflow parking is Adventure Landing, an amusement park that offers water slides, miniature golf and go-cart racing.
8. To the west is Hopson Road, which contains 24 residential homes, 10 of which are two stories and 20 new townhouses which are all two stories.
9. To the south is undeveloped marshland.
10. Since trial, the Church purchased the first parcel, the Duval County Land Trust property (closest to Beach Boulevard)
11. The Church has also purchased the north part of the second parcel, known as the Goodloe parcel, which has the City-operated sewer lift station in the middle. The

- Church has an option to purchase the south half of the property and intends to do so.
12. Because the land is zoned RS-1 and religious assembly was not permitted as of right, the Church retained Fred Atwill, who has more than 35 years of experience with the City of Jacksonville and other municipal land use, zoning and planning, to serve as its liaison with the City and assist the Church in preparing and presenting its CUP request, and architect Michael Bruce to assist in designing a site plan for the Property to include in its application.
 13. Given the site dimensions, along with the land use code requirements for lot coverage, parking and setbacks, and in light of the Church's desire to limit its sanctuary to hold 200 people, a site plan was prepared to show a 7,440 square foot building on the Duval County Land Trust Property and first Goodloe parcel.
 14. With the initial CUP application, the Church deliberately sited the building on the easternmost portion of the Property to provide the maximum buffer from the Hopson Road neighborhood.
 15. Likewise, the initial CUP application showed that the proposed facility is 155 feet and 122 feet away from the closest Hopson Road neighbors.
 16. There are existing topographical hills, vegetation and a tree buffer on the Property.
 17. The City Land Development Code contains explicit criteria the Planning Commission must consider when deciding a CUP request.
 18. The Planning Department reviews all CUP applications and issues recommendations of approval or denial to the Planning Commission.
 19. The Planning Commission is the final decision maker regarding CUPs.
 20. On March 11, 2013, the Church submitted its CUP application to the Planning Department.
 21. At the time, the Planning Department was comprised of two trained planners who possessed fifty years of combined land use, zoning and planning experience in the City.
 22. The Planning Department staff, with their combined fifty years of experience, recommended the Church's application be approved since it met all standards for conditional use approval under the LDC, including parking, lot coverage, setback requirements, and landscape and fencing buffers.
 23. The Planning Department also found the proposal to be a reasonable transitional use between the Hopson Road neighborhood to the west and commercial uses to the east.
 24. Senior Planner Bill Mann had no concerns about noise or traffic impact on the Hopson Road neighborhood (or elsewhere) since ingress and egress to the Property is via the Beach Boulevard frontage road, which does not impact Hopson Road.
 25. No traffic study was required, as the LDC only requires such a study for "major developments" and the Church's proposal fell below that threshold.
 26. Mr. Mann also found the Church's proposal complied with the LDC's parking requirements.
 27. Mr. Mann also had no concerns about the impact of the children's play area on the neighborhood.

28. In summary, the Planning Department found the Church's proposal to be consistent with the Comprehensive Plan since religious assembly is a contemplated use in the RS-1 zoning district.
29. Significantly, Mr. Mann's recommendation was the first of *eight separate instances*¹ where the Planning Department has recommended approval of the Church's application: twice in Mr. Mann's reports, twice at Planning Commission meetings, twice at depositions, and twice at trial. In fact, at trial both Mr. Mann and Planning Department Director Steve Lindorff testified that, to this day, they *still* recommend approval of the Church's proposal.
30. Securing the Planning Department's approval was significant given that in the prior 30 years, *only twice* has the Planning Commission denied a CUP that had been recommended for approval by the Planning Department.
31. Further, two neighbors provided letters in support of the Church. One of these neighbors, who actually lives in the home closest to the Church's proposed building, told Father David he feared a commercial structure going onto the Property and said the Church would be a welcomed addition to the neighborhood.
32. On April 8, 2013, the Planning Commission heard the Church's CUP request at a public hearing.
33. Despite the Planning Department's recommendation of approval, the Planning Commission voted to unanimously deny the Church's request.
34. After some discussion with City officials, the Church submitted a second, slightly modified CUP application in August 2013.
35. Once again, the professional Planning Department staff recommended approval since the application met all the LDC's substantive requirements.
36. The application also complied with the LDC's requirement for successive applications since it contained a material change from the first application.
37. Yet again, the Planning Department found the proposal to be a reasonable transitional use between Hopson Road to the west and commercial area to the east.
38. A month prior to the second hearing, Mr. Lindorff told the Plan Commission that he and Mr. Mann still recommended approval and advised that if the Commission denied the CUP, the City would likely be sued for violating the Religious Land Use and Institutionalized Persons Act.
39. Nonetheless, on September 9, 2013, the Planning Commission again ignored the Planning Department's recommendation and unanimously denied the CUP request.
40. This case proceeded to trial in federal court in September 2014. In late November, the Court issued an Opinion finding that the City of Jacksonville Beach violated the Equal Terms provision of the Religious Land Use and Institutionalized Persons Act.
41. The City attempted to appeal Judge Corrigan's decision, which the Court of Appeals has since dismissed.
42. The Court has ordered this body to issue the Church a CUP consistent with the application and approval letter of the Church's March 2013 application.

43. The Court has further entered an Order providing that the Court will address any objections the Church may have to the CUP passed by this Planning Commission on April 10, 2015.
44. Prior to this date, the Church has sought to meet with the City to review any proposed recommendations.
45. The City has refused to meet with the Church.
46. Rather, the City created the conditions for recommendation of approval of the CUP without any input from the Church. To be clear, we have no doubt that the City Planner did not create these conditions. Rather, based on information and belief, the conditions are nothing more than spite conditions imposed by another.
46. As with the amendment to the LDC adopted by City Council 36 hours prior to trial, the City did not provide me, who at this point has served as the Church's attorney for nearly two years, of the proposed CUP conditions of approval at any time.
47. The letter with the conditions of approval were first provided to the Church four days ago, far too limited in time for the Church's attorneys and other professionals to conduct a thorough review the conditions of approval before tonight's meeting.
48. From a cursory review, the conditions for recommendation of approval proffered by the City substantially and effectively limit the ability of the Church to build on its property.
49. The City has not imposed similar conditions on any other Church, or secular assembly, in the past.
50. The Court found that Discovery Montessori School, which has had two CUPs approved by this Planning Commission (one as recently as March of 2013), is an Equal Terms comparator to the Church for the following reasons:
 - a. Discovery Montessori contains classroom space for educational activities and a lunchroom and gymnasium where children assemble together.
 - b. Similarly, the Church's proposal includes classroom space for religious educational activities for adults and children, and a sanctuary where congregants can assemble to worship.
 - c. Discovery Montessori and the Church's Property are both located "on the edge of residential development."
 - d. Discovery Montessori sought to utilize two existing adjacent residential homes for educational and assembly purposes..
 - e. Discovery Montessori's 18,000 square foot structure has a more sizeable impact on a surrounding residential neighborhood than the Church's proposed 7,400 square foot structure.
 - f. Discovery Montessori's 328 students, plus additional faculty and staff members, frequenting a structure five days a week will have a greater impact on a surrounding residential neighborhood than the Church's 200-member planned facility that will likely be frequented one day a week.
 - g. The Planning Department recommended approval of Discovery Montessori's CUP application with certain conditions, and the Planning Commission approved the application subject to the conditions.

- h. The CUP approval allows Discovery Montessori to build a two-story, 18,000 square foot structure that will contain nine classrooms, office and other ancillary space to house 328 students, plus facility and staff.
 - i. In response to concerns regarding increased traffic volume, much like the concerns raised when considering the Church's CUP applications, the Planning Commission voted to impose certain restrictions on Discovery Montessori's CUP application to ease its traffic apprehension.
51. By contrast, the City failed to even suggest, let alone impose, conditions upon the Church like it did for Discovery Montessori.
 52. The proposed facility will actually serve to enhance the area by making productive and positive use of long vacant properties, and the structure can be accommodated at that location without causing negative land use impacts. A recent University of Pennsylvania study that was introduced at trial found religious congregations make positive and significant economic contributions to local communities.
 53. The Church will likely provide similar economic benefits to the local community with its proposed church. Again, at trial evidence was introduced demonstrating that researchers found "that neighborhood churches are amenities that enhance property values [for] at least one-half mile[.]"

I will now turn to the specific problems with the Conditional Use Permit

The Church does not have an objection to the second and sixth condition imposed by the City. Both the requirement of a buffer and fence, and payment of fees for permits as necessary, is required under the LDC and state law.

The Church has legitimate concerns regarding **conditions 1, 3, 4, and 5**, as proposed by the City in this application. The conditions, which likely were not drafted by the City Planner, result in the effective prohibition of building on the Property, violate RLUIPA's Equal Terms Clause and the First Amendment Free Exercise Clause, and result in an unconstitutional taking. The conditions were not previously required, are not based in any fact, not based in law, and are not imposed on any other assembly use – secular or religious – within Jacksonville Beach.

The law is clear that "the public has no interest in enforcing an unconstitutional ordinance." *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006). And, the "loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). If an infringement on First Amendment rights is shown, the Court presumes irreparable injury. *Cate v. Oldham*, 707 F.2d 1176, 1189 (11th Cir. 1983). It follows from *Elrod* and *Cate* that RLUIPA violations constitute irreparable harm, as RLUIPA is broadly construed to protect First Amendment freedoms and religious exercise. *See* 42 U.S.C. § 2000cc-3(g) ("This chapter shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this chapter and the Constitution."); *see also Reaching Hearts Int'l, Inc. v. Prince George's Cnty.*, 584 F.

Supp. 2d 766, 795 (D. Md. 2008) (“[T]he infringement of one’s rights under RLUIPA constitute[s] irreparable injury.”).

The problems with the proposed conditions are as follows:

1. The condition that the development occur “limited to residential – single family: RS-11 zoning district regulations, without exception and without seeking a variance in any respect, including but not limited to lot coverage. No City owned property may be used by the application to meet such standards” must be stricken. The Church is not going to be built as a single family home and restricting it to the same violates the integrity of this process and the rights of the Church. Further, no other church in the City is limited by these requirements. There was a suggestion that the Church is limited to one story. This must be rejected. No other assembly in the City is limited to one story and the 10 of the 24 adjacent residential units are more than one story. In addition, the 20 new townhouses are all two stories. The “no variance” requirement must also be rejected. Until the formal review process is started, where the Church may be opened up to an interpretive element, this project, like any, should be allowed to have variance request rights, especially to things that would have no bearing on the neighbors. This places an undue burden on the design, the location of the buildings in relation to the residents on Hopson Road, and has never been imposed on any CUP approved by the City. And, no other assembly is subject to the same requirement. The lot coverage issue is particularly distressing. The maximum lot coverage noted 35% is related to the building only and that the total “impervious” improvements lot coverage is of an 80% range (70% minimum). These conditions have not been imposed on any other CUPs approved by this body let alone no other assembly use.
2. With respect to the third proposal of building a 6 foot high opaque continuous opaque fence with a 24 foot vehicle access gate. This must be rejected. First, the requirement of approval of a CUP is conditioned on an act unrelated to the building proposal is a municipal exaction, which violates the Taking Clause of the Fifth Amendment to the United States Constitution. The United States Supreme Court has dealt with this issue in *Nollan v California Coastal Commission* and more recently in *Koontz v. St Johns Water District* and found similar conditions unconstitutional. The imposition of this condition is inviting another lawsuit. Second, the Church has purchased the north parcel of the Goodloe property. Should the Church build the church on the North parcel along with the fence across the public way, and not close on the south parcel, the Goodloes would have to sue this City to remove the fence allowing access to the parcel. Third, the City has never imposed a similar condition for approval for any religious or secular use.
3. With respect to the 4th condition of approval, the City is simply trying to limit the Church from accessing the south parcel, thus making it an “orphan parcel” that is impossible to develop. A pedestrian-only easement, by its very nature, precludes any type of motorized vehicle from entering the south parcel. In addition, this

condition results in the Church not being able to convey utilities and or storm-water conveyance across the public land to the south parcel. Further, there is a legitimate question over the ownership of the land noted in condition number four, which may result in the City losing its claimed ownership to the same. In addition, as noted above, this condition has not been imposed on any other CUP approval in the past with respect to a secular or religious assembly.

4. With respect to the 5th condition, to “secure” approval within 12 months of CUP issuance, this does not leave any room for dealing with an issue that may come up along the way through local, state, or federal reviews. Further, it is very limiting, especially since we still don’t have specific answers from City staff on development questions. This also ties into the “no” variances allowed condition 1. In addition, as noted above, this condition has not been imposed on any other CUP approval in the past with respect to a secular or religious assembly.

Conclusion

The Church respectfully requests this body to reject the proposed conditions of approval for the CUP, but rather approve the CUP the Church submitted in March 2013, which was recommended for approval by the City’s professional Planning Department staff on eight separate occasions without any conditions. Good planning requires you follow the law. The law was followed by the Planning Department in March 2013 when it recommended the CUP be approved. Approval of the current proposal, as I have stressed, is not good planning. It is a spiteful response of the City legal staff who lost a lawsuit and is using the “conditions” to ensure that the Church can never build a building. Approval of the recommendations is simply an invitation to additional legal wrangling in this case and additional federal lawsuits in the future. Thank you for your consideration.

Mr. Sutton asked for questions to the applicant.

Mr. Dahl thanked Mr. Dalton for the analysis. He asked about the appeal being dismissed on March 6. Mr. Dalton responded that the Court did dismiss the motion. Mr. Dahl asked further explanation on the issue of a two story building. Mr. Dalton responded that at the initial meeting in April 2013, they did not designate one or two story building, they just looked at footprint. They did not commit to a one story building.

Mr. Dahl then addressed municipal extractions. He agreed to defer to the City Attorney.

Mr. Dahl then asked about the statement that one year is not reasonable, and asked if there was a time frame that would be reasonable. Mr. Dalton responded that at this time he did not know because of the appeal of the court decision.

Mr. Dahl then asked about traffic and parking, and the issue of overflow parking on the street. Mr. Dalton stated that there will be no parking on Hopson Road.

Mr. DeLoach asked Mr. Mann where the recommendations came from. Mr. Mann responded that they came from internal meetings. Mr. DeLoach stated that the same staff

that arrived at the recommendations that approval was based on came up with these recommendations.

Susan Erdelyi, City Attorney, addressed Mr. Dahl's question about the appeal. She stated that ordinarily a case is tried and an order and judgment are issued. In this case the judge ordered the City to issue a CUP and to negotiate conditions. They were not able to come up with agreement. The second order was issued a month ago; just to be safe the outside council appealed the first order in case it was a final order. She stated that the appeal is alive and has not been dismissed.

Mr. DeLoach asked about the time limit. Ms. Erdelyi stated that she would address that later on.

Mr. Dahl asked if from a legal aspect that these conditions are reasonable. Ms. Erdelyi thought they were reasonable. She explained that these conditions would go to the Court who would weigh in on the conditions. The purpose today is to comply with the Court's order.

Mr. Jones asked about condition 1, inquiring whether this would be lot coverage. Mr. Mann responded that lot coverage was not calculated. It did not raise a red flag in their review. Mr. Jones asked if there was anything that would violate the standards – Mr. Mann responded that he did not know. Mr. Jones asked about the City owned parcel and the status of public access. Mr. Mann stated that they would have to ask Public Works. Mr. Mann thought that they would probably not be able to go to the other parcel without such as easement.

Ms. Erdelyi added that the City has agreed as a condition to a pedestrian easement to connect both parcels, which is consistent with the first application.

Public Hearing

Mr. Sutton opened the public hearing and asked if anyone wished to speak in favor of or in opposition to the application.

Nancy Sabbag, 3836 Tropical Terrace, requested that the Commission approved the permit as submitted in 2013.

Marshall Gallop, 1369 Pinewood Road, spoke in support of the Church's position.

Betty Johnson, 951 13th Ave. South, requested the Commission approve the original conditional use permit.

Tiffie Mackowl, 1301 First Street South, spoke in support.

Joan Hubbard, 11 19th Ave. N., spoke in support.

Zann Williams, 45 Oakwood Road, stated that she has seen many changes, and that our churches in the City serve as a positive buffer.

Stacy McCarthy, 603 Great Abaco Ct., spoke in favor.

The following spoke in opposition:

Ty Gordon, 2 Hopson Road, questioned if the conditional use was consistent with the surrounding area, and asked that they continue to appeal the judge's ruling.

Pat Stinson, 18 Hopson Road, asked what happens when a residential property come up for sale and the church buys it, as has happened in the Riverside area of Jacksonville.

John Sproviero, 21 Hopson Road, expressed his concerns with the proposal. The residents of Hopson Road bought their homes assuming it would stay the same. He expressed concern that they will continue to ask for changes – at some point a stand needs to be taken.

Greg Slayton, 1 Hopson Road, expressed concern about wetland issues. He stated that 52 parking spaces would not be an RS-1 stipulation. He stated that Beach Marine may not be able to rent out to establishments due to the presence of the church.

Art Mead, 10 Hopson Road, opposed the proposal due to insufficient parking, questioning how the applicant will address the issue. He also opposed the proposal due to traffic safety concerns about parking on the street. Access to this property is the Beach Blvd. access road – traffic will have to turn against three lanes of traffic.

Spike Cissell, 14 Hopson Road, suggested that they add conditions addressing traffic.

Lynn Hileman, 22 Hopson Road, thanked the Commission for listening to the citizens, stating that the church has doubled its size even though they had stated their intent not to grow. He stated that there are other places in the Beach where they could put their church.

Billee Bussard, 16 Hopson Road, stated that when they bought their property they were told it would be residential. The intent of the subject property was to be maintained as residential. She stated that the church would be a violation of their contract and a taking of their property rights. She questioned the comparisons to the Montessori school.

The following spoke in favor:

Steve McCoy, 9 Hopson Road, stated that he was a pastor for 40 years, and he was in favor and did not think that he heard any opposition that was valid. He stated that traffic impacts should be minimal. He agreed that there needs to be a buffer, but that should be sufficient to handle the issues with noise and light.

Seeing no one else who wished to address the Commission, Mr. Sutton closed the public hearing.

Discussion:

Mr. Dalton stated that they did not dispute that the church would have to meet Land Development Code requirements for parking and traffic. He stated that this is not beach front property. He noted that the Hopson Road properties were developed beginning in 1969, and at that time the parcels were zoned as C-1, Commercial. They were rezoned to RS-1 in 1987.

Mr. Dalton stated that wetland issues are not an issue of the CUP, and it meets the lot coverage requirements. The 500 foot issue is not an issue to this matter. Mr. Dalton added that the original application had no conditions.

Mr. Dalton added that with respect to parking on Hopson Road – they would not be parking on Hopson Road. In addition, there are multiple points of access onto Hopson Road. They will meet the land development code requirements for parking. They are not a nuisance and will bring in services to the City and are a value to the community. In addition, the issue of tax exemption is a violation of Federal Law to be addressed in approval of churches. Mr. Dalton added that the issue of traffic was sufficiently addressed.

Mr. Dahl asked about the traffic study and what was its time frame. Mr. Dalton stated that there was a request at the first hearing in 2013, even though Mr. Mann stated one was not required.

Mr. DeLoach asked how they would frame a condition of no parking on Hopson Road. Mr. Mann stated that ‘No Parking’ signs could be posted, which would apply to Hopson Road residents and their guests as well.

Mr. DeLoach stated that he was struggling with the time frame since we are going through an appeal process, asking if it was too strict. Ms. Erderlyi stated that the 12 month time frame came from the fact that the court wanted to put the trial through expeditiously. They came up with that condition because the City felt it was reasonable. Ms. Erdely stated that the Court has laid out a time line. She stated that the Commission’s duty is to issue the CUP with reasonable conditions according to the Land Development Code. Mr. Mann noted that the conditions have to be enforceable.

Ms. Erdely noted that the Court will look at the conditions and will determine whether the conditions are reasonable. She noted that on April 10 there will be a hearing in Federal District Court to address the City’s issues.

Mr. Jones asked if there is a standard 12 month time limit. Mr. Mann stated that there is not a standard time frame, but this time frame was one of good faith that they will be building what they agree to. He did note that the City does have a 24 month time frame

for applying for a building permit, upon receiving development plan approval.

Mr. Sanders asked about parking. Mr. Mann stated that this was the parking standard for churches.

Mr. Dahl asked Mr. Mann about the motion that was read. If that was the motion would that have to be read as part of the motion. Mr. Mann stated that they can refer to the staff report except for those that they may want to modify.

Ms. Erderly stated that even with approval the City is maintaining its right to appeal.

Mr. Sutton stated that he did not have an issue with the church but has an obligation to the residents of Jacksonville Beach. He stated that he remains in opposition to the approval of this application, however, the applicant has chosen to pursue approval through the courts and he will comply with the direction. He also restated that the City is not waiving the right to appeal the court's decision.

Mr. DeLoach concurred with Mr. Sutton.

Motion: Mr. DeLoach made a motion to approve as directed with all recommendations by staff. The motion was seconded by Mr. Dahl.

Roll call vote: Ayes – Sutton, Dahl, DeLoach, Callan and Sanders
The application was approved unanimously.

Planning & Development Director's Report

Mr. Mann advised the Commission that the next meeting is scheduled for Monday, April 13, 2015, but there were no items for that agenda. The next meeting, then, would potentially be on April 27, 2015.

Adjournment

There being no further business coming before the Commission, Mr. Sutton adjourned the meeting at 9:25 P.M.

Submitted by: Amber Maria Lehman
Staff Assistant

Approval:

/s/Terry DeLoach
Chair

Date: April 27, 2015