

TOWN OF TIBURON

STAFF REPORT

ITEM NO.
MEETING DATE: 9/8/2004

To: PLANNING COMMISSION
From: SCOTT ANDERSON, DIRECTOR OF COMMUNITY DEVELOPMENT
Subject: 215 BLACKFIELD DRIVE: ANNUAL REVIEW OF CONDITIONAL
USE PERMIT FOR KOL SHOFAR SYNAGOGUE AND
APPURTENANT DAY SCHOOL; FILE NO. 48404(C)
Date: SEPTEMBER 2, 2004

BACKGROUND

Pursuant to a condition of approval of a use permit, Town Staff annually conducts a review of the Congregation Kol Shofar Synagogue conditional use permit, first issued by the Town in 1985 and amended in 1997 and 2001. If, in the opinion of Town Staff, significant issues related to conformance with the use permit conditions are raised during the staff-level review, the matter is referred to the Planning Commission.

Staff mailed out notices of the annual conditional use permit review in March 2004. Two response letters were received claiming non-compliance with conditions of approval and asserting incompatibility of the uses with surrounding residential uses. While progress has been made in addressing some of the issues raised, the matter is being referred to the Planning Commission for review.

The Town of Tiburon originally approved a conditional use permit for a synagogue and day school at the site in 1985. See attached **Exhibit 1** for a current site plan and **Attachments A & B** for the applicable resolutions. In 1997, the conditional use permit was reviewed and revised to reflect changed conditions, both in terms of growing membership and activity at the synagogue and the fact that a new residential development had been constructed adjacent to the site. The use permit was again revised in 2001 in response to a change in tenancy to a high school. The high school remained only one year before moving out of the county. The Planning Commission reviewed the use permit in March 2002 and found it in compliance. A staff level review

in November 2003 made the same finding, and no correspondence or complaints were received during that review.

Annual reviews involve sending courtesy notices to property owners within at least 300 feet of the site, and to the surrounding homeowner associations of Bel Aire Estates, Tiburon Crest, Tiburon Hills, Ring Mountain-Blackfield Drive, Cypress Hollow, and Vista Tiburon.

The applicable section of the approval regarding review of the permit is condition No. 18 from the 2001 approval, as follows:

“This conditional use permit, as amended, shall be initially reviewed by the Planning Commission within nine (9) months of adoption of this resolution. The reviewing body and frequency of reviews shall be determined by the Planning Commission following the initial review, with the provision that, at a minimum, an annual review by Planning Division staff will be required.

Review of the permit shall be to ensure, among other things, compliance with conditions of approval and continued compatibility of the uses with surrounding residential development, including but not limited to traffic safety, parking, and traffic congestion issues. Permittee shall be responsible for all Town processing costs associated with the review. Permittee shall be responsible for submitting, at least 30 days prior to review date, a detailed narrative of the current use and operation of the synagogue and day school, and supporting documentation to demonstrate compliance with conditions of approval of this permit.”

ANALYSIS

The latest round of Staff review began in January, 2004 when Congregation Kol Shofar submitted its updated detailed narrative in response to an earlier request by staff. The letter dated January 21, 2004, describing the current operations and status, is attached as **Exhibit 2**. Courtesy notices were mailed out on March 3, 2004 and letters from James Miller, 32 Via Los Altos (see **Exhibit 3**), and from Lee Kranefuss & Nina Frank, 35 Reedland Woods Way (see **Exhibit 4**), were received during the comment period.

A timeline of the most recent permit review is as follows:

December, 2003: Staff sends letter to Kol Shofar requesting updated detailed narrative describing current use.
January, 2004: Kol Shofar submits detailed narrative.
March, 2004: Courtesy notices mailed out concerning staff-level review. Miller and Kranefuss/Frank letters arrive in response to courtesy notice.

April, 2004: Town advises Kol Shofar of negative comment letters and offers an opportunity to respond. Staff meets with Kol Shofar representatives to discuss comments. Kol Shofar constructs gate on emergency access road to control unauthorized use.

May, 2004: Kol Shofar responds in writing to issues raised in comment letters.

June, 2004: Staff sends a letter requesting additional written information regarding the playground area.

July, 2004: Mr. Miller, Kol Shofar representatives, and Town Staff meet at the site to discuss the playground noise issues.

August, 2004: Kol Shofar indicates that it believes the use is in substantial compliance with the permit. Staff refers the matter to the Planning Commission. Courtesy notices are mailed out.

Kranefuss/Frank letter

The Kranefuss/Frank letter states that traffic from the synagogue using Reedland Woods Way (and especially the emergency access road) creates dangerous conditions that are incompatible with surrounding residential development [Condition No. 18 as revised by Resolution 2001-07]. The letter also states that the required education program regarding traffic and parking [Condition No. 5 of Resolution No. 97-17] is inadequately implemented, and that Kol Shofar does not adequately monitor and control its tenant, the Ring Mountain Day School. The letter further states that the neighborhood liaison [Condition No. 16 of Resolution No. 97-17] is not responsive to calls.

With respect to the traffic issues raised, installation of the control gate at the emergency/service road access, completed in April 2004, should greatly reduce the volume of use and any perceived traffic safety problems along Reedland Woods Way generated by the synagogue and/or day school. The entry/exit design of the main synagogue parking lot is safer than most in that it emphasizes right-hand turns, in close proximity to a collector street [Blackfield Drive], without the presence of conflicting turning movements or other driveways on the local streets [Via Los Altos and Reedland Woods Way] between the entrance/exit and the collector street. Staff believes that due to installation of the control gate, traffic safety on Reedland Woods Way (at least as it relates to the synagogue and day school) should be better than at any time since construction of the homes along this street in the mid-1990's.

With regard to the educational program, Kol Shofar has provided staff with a copy of the parking/carpool/shuttle information provided in 2003 (see **Exhibit 5**). Staff believes that this information (which has been determined by the Planning Commission to comply with the condition in prior reviews), remains adequate.

With regard to complaints about excessive day school use of the emergency/service access road, the recently-installed control gate should greatly alleviate this problem.

With respect to a contact person, the current designated neighborhood liaison is Mark Levy. Staff is not in a position to confirm the responsiveness of Mr. Levy to phone calls or inquiries, other than to indicate that Mr. Levy has been responsive to phone calls and requests for information from Town staff.

Miller letter

The Miller letter states that noise from the children's play area directly below their residence increased drastically after the Ring Mountain Day School resumed its playground use of the area [following the departure of the Jewish Community High School after the 2001-2002 school year] and after the installation of new playground equipment at that time. The thrust of the Miller letter is that noise from the rear playground area has intensified to a level where this use is incompatible with surrounding residential development [Condition No. 18 as revised by Resolution No. 2001-07].

Subsequent to his March 14, 2004 letter, Mr. Miller has raised additional issues, both in a meeting and as generally set forth in a follow-up letter (**Exhibit 6**) dated September 1, 2004, as described below:

- The new rear playground equipment and its surrounding plastic perimeter fence were installed without permits and have created an attractive nuisance.
- The plastic fence is not adequate, is poorly maintained (holes have developed in it), and does not confine children to the playground area. The steep hill above the rear playground (most of which is on his property) is dangerous and the fence does not prevent children from climbing the slope. Holes in the fence also allow children access to the nearby drainageway, which is unsafe during high flow periods.
- The location of the play area is dangerous because of its proximity to numerous eucalyptus trees, which are inherently prone to breakage and are unsafe.

In response, Kol Shofar has provided a narrative describing overall conditional use permit compliance in a letter dated May 26, 2004, attached as **Exhibit 7**, and has provided a history of the rear playground area in a letter dated June 30, 2004, attached as **Exhibit 8**. According to this letter, except for the 2001-2002 school year (when the playground was converted to a volleyball court/recreation area for the Jewish Community High School students), the area has been used continuously since 1994 as a playground area with play equipment. The older, dilapidated play equipment was removed during the 2001-2002 school year, and was replaced during the 2002-2003 school year with new equipment. Staff believes the new play equipment is more extensive and more used than the old equipment. According to the Ring Mountain Day School, there has been a slight increase in the number of children using the equipment as the percentage of "younger" children has increased [the "older" children use the front play area overlooking Blackfield Drive]. Recess times have not been expanded, and use of the site by synagogue children has also not increased, according to the letters.

The Ring Mountain Day School was found to be in compliance with state licensing requirements during its most recent review in October, 2003 (see **Exhibit 9**), which addressed the perimeter fence issue.

Staff is frankly at a loss to identify any single root cause that would explain the Millers dramatically increased inconvenience/annoyance from the playground noise, which annoyance seems genuine and heartfelt. It may be that a number of minor changes have cumulatively led to the noise becoming more bothersome. These could include 1) installation of more popular/exciting play equipment than the previous equipment; 2) an increase in the number of children who actually use the equipment; 3) loss of some trees between the Miller house and the play area; 4) loss of a significant percentage of the trees in the adjacent eucalyptus grove; 5) an increase in the amount of time spent at home by the Millers; 6) louder children; 7) an increased sensitivity to noise; 8) a mild year weather-wise, when windows were open more often; or 9) other unidentified factors.

The Millers have requested that the play area below their home be combined with the front playground area overlooking Blackfield Drive. Kol Shofar indicates that the lease with Ring Mountain Day School clearly allows this area to be used as a playground, and that RMDS would consider it a breach of the lease were they asked to stop using it (see e-mail dated August 6, 2004, attached as **Exhibit 10**). Staff has also been told that state guidelines require physical separation between age groups at the Ring Mountain Day School playground areas. Kol Shofar also indicates that their expansion plan application, now on file with the Town, would relocate this play area away from the Miller residence to a location acceptable to the Millers. The relocation could be some years away, however, even if the expansion plan were approved in its current form.

With respect to permits, no building permits were secured for the play equipment and neither design review nor building permits were secured for the fencing around the rear play area. Permit applications have since been filed, but are being held as incomplete pending this review. The plastic fence is not an acceptable material for permanent fencing, and it has already developed substantial gaps which hinder its purposes. A more substantial fence that would keep children off the steep slope and contained within the playground area would be preferable for safety purposes. Due to the height of the Miller home above the playground, even a tall, solid fence would not provide substantial noise reduction.

With respect to safety issues from the eucalyptus trees, this is a potential liability matter that is the responsibility of the property owner and tenant to assess. The California Department of Social Services, which annually inspects the day school for safety, has not raised this as an issue in its most recent report.

General Review of Use Permit Conditions

Below is a listing of the conditions of approval from the applicable resolutions, and a brief staff discussion of compliance based upon the Kol Shofar's updated narrative letter, the letter dated May 26, 2004 from IPA, Inc., and from meetings and site visits conducted by Staff.

1. The baseline characteristics of the synagogue and day school uses are set forth in the letter dated May 7, 2001 from Mark Goldman to the Town of Tiburon, attached hereto as Exhibit A, and made a part of this resolution.
2. No membership cap is established for the synagogue use; however, the Town will continue to monitor and document growth of the membership with regard to adequacy of parking, traffic congestion, and neighborhood compatibility.

Discussion: Based on the detailed information submitted in Exhibit 5, membership units and total members decreased slightly between 2001 and 2004. Events and activities remained essentially similar over that time period. Staff has received no substantial evidence that parking or traffic congestion impacts have worsened. Neighborhood compatibility issues are addressed elsewhere in this report.

3. The day school shall be limited to a maximum student enrollment of 100 children.

Discussion: The Ring Mountain Day School (RMDS) currently operates at the site with an enrollment of 100 pre-school children.

4. On High Holy Days, the synagogue shall provide split religious services. Those services shall be separated by not less than sixty (60) minutes between the end of the first service and the beginning of the second service.

Discussion: Split services have been held for several years running. A 60-minute time gap is observed between services. A shuttle from Westminster Church (Tiburon Boulevard at Greenwood Cove Drive) is used during the High Holy Days.

5. Permittee will conduct an educational program for its members concerning traffic control and parking. The program will include written materials sent to each membership unit providing the following:
 - A. A notice strongly encouraging that parking should be in the synagogue's on-site parking lots.
 - B. Diagrams showing parking locations and circulation patterns, including entrances to and exits from parking lots.

- C. A notice informing members of safety measures to be observed regarding neighborhood traffic and pedestrians.
- D. A statement encouraging courteous conduct toward neighbors in all matters relating to the use of the site.

The educational program outlined above should be implemented on an ongoing basis.

Discussion: Printed materials covering the above items are distributed annually (prior to the High Holy Days) to all membership units (see Exhibit 5).

- 6. Permittee shall create a database of its members to facilitate and encourage carpooling. The information from this database shall be used to provide information to members about potential car pool partners, and will be targeted to members for whom car pooling may be a viable means of reaching the synagogue. Car pooling information shall be included in the educational program outlined above.

Discussion: There is no direct mention of a database for carpooling in the materials submitted, and the database program needs to be revived and implemented. Carpooling (as well as the shuttle service) is encouraged in the High Holy Day literature distributed by the Synagogue.

- 7. Improved directional/informational signage relating to parking and site circulation on the property shall be installed. Within 30 days of final approval of this permit, permittee shall submit for review and approval by the Planning Director and Town Engineer such a signage plan. The approved signage plan shall be installed within 30 days of said staff approval.

Discussion: Additional signage was installed prior to the 1998 annual review. The existing signage is adequate. Red curbs were painted along the Kol Shofar frontage of Reedland Woods Way in response to neighborhood concerns.

- 8. Operational success of the current Sunday school drop-off location and circulation shall be reviewed pursuant to the review schedule set forth below. This review is especially critical if the approved but as yet unconstructed middle parking lot is completed.
- 9. A shuttle program shall be in place and implemented for the High Holy Days observance in 1997. Permittee shall develop a shuttle program for review and approval by the Planning Director. For the first year of High Holy Days following completion of the approved middle parking lot, the shuttle service need not be provided but activity shall be monitored and photographed by the permittee for use at the next annual review, when the possible continuing need for a shuttle program shall be considered.

Discussion: The referenced paving of the middle lot has never occurred. A shuttle program has been successfully used since 1997 during the High Holy Days.

10. Parking lot lighting shall be on timers to turn off no later than 10:00 P.M. each day. The duration of the lighting may be extended via manual override device when occasions demand, but shall in no event be kept on beyond 11:00 P.M. on any occasion, except for Rosh Hashanah, Yom Kippur, Selichot, Shavuot, and the second night of Passover, at which times the parking lot lighting may remain on until no later than fifteen minutes after the last vehicle has exited the parking lots.

Discussion: Parking lot lights are on a timer that operates in accordance with the condition of approval. Staff has received no complaints regarding parking lot lighting within the past several years.

11. Permittee shall prepare an annual calendar of planned events, usually on or around July of each year. Said calendar shall be submitted to the Planning Director upon completion and shall be posted outside the synagogue in a manner such that it is available for review by the public. Any changes to the calendar shall be forwarded to the Planning Director and shall be posted as described above.

Discussion: The preparation and public posting of the annual calendar was discontinued after the September 11, 2001 terrorist attacks for security reasons. A monthly calendar of events is prepared and made available to members. Staff has received no complaints regarding the discontinuance of the annual calendar, and understands the reasons for its discontinuance.

12. Permittee shall advise the Tiburon Police Department when it anticipates that there will be heavy use of access roads to the facility. "Heavy use" shall mean when the Executive Director of Kol Shofar expects that an event scheduled at the facility will result in the parking lots at the synagogue and Via Los Altos street parking below Vista Tiburon Drive will be full. Permittee shall coordinate such events with the Police Department, and shall be responsible for costs of any additional required traffic control as determined by the Police Department.

Discussion: Synagogue representatives have been coordinating such events with the Tiburon Police Department for years, and this practice will be continued.

13. Exterior amplified sound is approved for the annual Sunday School closing ceremony only, at which time speakers shall be faced toward the facility and away from surrounding residential uses. Any other event at which exterior amplified sound is proposed must secure a Special Event Permit from the Town.

Discussion: There have been no complaints received by Planning Division Staff since the previous review regarding sound amplification.

14. No specific limitations on outdoor activities after dark are imposed at this time. However, the Town shall review this provision during its periodically-scheduled reviews of the conditional use permit as set forth below.

Discussion: Staff has received no complaints regarding outdoor Synagogue activities after dark.

15. Permittee will advise and educate its tenant (the day school) concerning this use permit, with special emphasis on minimizing traffic, noise, lighting, courtesy to neighbors, and other issues addressed in the use permit conditions of approval.

Discussion: The day school, which is a long-time tenant, is aware of the Town's resolutions and their conditions.

16. Permittee shall designate a responsible and accessible person in a position of authority to act as the official contact person for surrounding neighborhoods, and to respond to communications, complaints, or perceived problems. The Town shall be notified of the name and phone number for this contact person, whose name and phone number shall be posted next to the annual calendar of events referenced above.

Discussion: Mr. Mark Levy has been designated as the official contact person for the Congregation Kol Shofar. He works at the site and is regularly available.

17. Any significant expansion or modification of the uses or operations allowed herein, as determined by the Town of Tiburon, shall require an amendment to this permit.

Discussion: Staff is not aware of any significant changes to the actual operations on the site since the previous review.

18. This conditional use permit, as amended, shall be initially reviewed by the Planning Commission within nine (9) months of adoption of this resolution. The reviewing body and frequency of reviews shall be determined by the Planning Commission following the initial review, with the provision that, at a minimum, an annual review by Planning Division staff will be required.

Review of the permit shall be to ensure, among other things, compliance with conditions of approval and continued compatibility of the uses with surrounding residential development, including but not limited to traffic safety, parking, and traffic congestion issues. Permittee shall be responsible for all Town processing costs associated with the review. Permittee shall be responsible for submitting,

at least 30 days prior to review date, a detailed narrative of the current use and operation of the synagogue and day school, and supporting documentation to demonstrate compliance with conditions of approval of this permit.

Discussion: The annual review has been accelerated in response to potential future concerns regarding the change in day school tenancy.

19. The Town of Tiburon reserves the right to amend or revoke this Conditional Use Permit for cause, in accordance with Zoning Ordinance regulations of the Town.

Discussion: Condition noted.

CONCLUSION

It appears to Staff that the synagogue and day school uses are currently operating in overall substantial compliance with the conditions and parameters of the conditional use permit, as currently constituted. Playground noise issues are not unexpected given that private residences have been built in close proximity to the day school over the past 10+ years. While the apparently intensified playground noise is clearly annoying to the Millers, Staff has been unable to identify substantial changes in the approved use that would render the use “incompatible” with surrounding residential development. Despite efforts, Staff has also been unable to successfully facilitate a compromise solution to the noise issue between the permittee and the Millers. Options such as installation of sound-blocking devices and temporary relocation were considered, but all face significant obstacles to implementation.

An eventual permanent solution to the rear playground noise problem is proposed within the Kol Shofar expansion plan application now on file with the Town, but even if approved as proposed, that solution is probably at least two to three years away from completion.

Staff believes that there are a few areas where compliance with the current conditions of use permit approval need improvement. These are:

- Owner and tenant need to secure all required permits (in advance) for all installation/construction of improvements. Recent improvements for which permits were not secured include the emergency access control gate (since approved); the rear playground equipment and fencing; fencing around the “garden” area of the front playground overlooking Blackfield Drive; and the canopy structure on the front lawn leading to the main entry of the synagogue (permits pending).
- Update the carpool database and make the information available to members.

- Improve communication/coordination between the synagogue and day school, including coordinating timely responses to neighbor complaints that involve the day school.

RECOMMENDATION

The Planning Commission should hear public testimony on the conditional use permit review, and determine whether the use remains in substantial compliance with the terms and conditions of the conditional use permit.

If the Commission determines the use to be in substantial compliance, a simple motion to that effect will suffice.

If the Commission determines that the use is not in substantial compliance, it should provide direction to staff regarding any changes or amended conditions that the Commission believes would bring the use into compliance. Options regarding the play area could include directing modifications to the play area, relocating or combining the rear play area with the front play area, limiting hours of use of the rear play area, or directing that the parties mediate the issue and report back to the Commission.

EXHIBITS

1. Site Plan dated 3/2004, Kol Shofar property, 215 Blackfield Drive.
2. Narrative description of current site uses in letter dated 1/21/2004.
3. Letter from James Miller dated 3/14/2004 (with photos).
4. Letter from Lee Kranefuss and Nina Frank dated 3/17/2004.
5. Kol Shofar parking/carpool information from September 2003.
6. Letter from James Miller dated September 1, 2004.
7. Letter from IPA dated May 26, 2004.
8. Letter from IPA dated June 30, 2004.
9. Memo from IPA dated 8/10/2004 with Facility Evaluation Report from California Department of Social Services dated 10/15/2003.
10. E-mail from Scott Hochstrasser (IPA) dated 8/6/2004 regarding various playground options.

ATTACHMENTS

- A. Planning Commission Resolution 2001-07.
- B. Planning Commission Resolution No. 97-17.

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