

**Planning and Zoning Commission Meeting
December 5, 2018 at 6:00 p.m.
Draft Summary of Discussion**

**Item 8.3: 18-350-00003
SPECIAL USE PERMIT FOR A CHURCH IN ESTRELLA CROSSING BUSINESS
PARK PLANNED AREA DEVELOPMENT DISTRICT**

Request for a Special Use Permit to allow a church in a portion of a building on 5.0 acres in the Business Park/Light Industrial area of the Estrella Crossing Business Park Planned Area Development (PAD) District at 15635 W. Illini Street (Lot 16 of the Estrella Crossing Business Park),

Long Range Planner, Joe Schmitz presented the staff report to the Commission and noted that two additional emails stating an objection to the Special Use Permit for the church were received from Randy Persson, owner of Lot 5, and Tall Development as owner of Lots 1, 2, 3 and 4. Mr. Schmitz displayed a map showing the location of the properties owned by the objectors. He also noted that the objections received cited the potential impact the church might have on certain uses that have a separation requirement from a church. He displayed another map showing the 300-foot separation associated with liquor license uses; the 500-foot separation associated with adult uses; and the 1,000-foot separation associated with medical marijuana dispensaries and cultivation facilities. He added that no medical marijuana facilities would be allowed in this area because it falls within the one-mile buffer of another medical marijuana facility.

Comm. Barnes asked if a waiver could be given from these separation requirements. Mr. Schmitz responded that a variance could be requested from the City if it is a City-required separation, but some of the buffers for liquor licenses are required by State law and there is no provision to allow a waiver of this requirement.

Chairman Bray asked about a previous Special Use Permit that was issued for a church in the commercial center to the northeast of this site and whether it had a time limit on it tied to its lease. Mr. Schmitz responded that the River of Life had been located in that center and had moved away on its own accord, not because of a stipulation.

Lupe Brown spoke on behalf of Senior Pastor Jim Brown who had a health emergency and could not attend. She explained that the church is established in the community and has 50-60 members. They have found affordable space and will be able to meet all code requirements. A church was previously approved in this area with the Special Use Permit for River of Life church in 2014. Other family-friendly businesses have moved into that commercial center and the church will be compatible with them. The church will not adversely affect traffic, has adequate parking, and will bring business to the surrounding businesses. The church will operate primarily on Sunday and takes church services to a local assisted living facility on Wednesdays and Sundays. Many of the church members live in Goodyear and their children attend local schools. The church's hours of operation will not compete with the other uses and the church will be compatible with this area. Chairman Bray asked if the church was growing and would

eventually build its own building. Mrs. Brown said the church was growing, but did not indicate if the use of this building would be temporary or permanent.

Terry Kirk stated that he was the Managing Partner of Kuma Development LLC, owner of several lots in Estrella Crossing Business Park; President of the Crossing Development Inc.; a member of the board for the Estrella Crossing Business Park Property Owners Association (POA); and a member of the Architectural Review Board for the POA. Mr. Kirk stated that the buffer map provided by staff was not entirely correct because the 300-foot buffer is measured from the building, not the center of the building as shown on the map, and the other buffers are measured from the property line of the church. The buffers actually extend farther than shown and would impact the building where a pizzeria is currently located and prevent them from changing their existing beer and wine license to a full service liquor license. He said they do not have a problem with the church, but do have a problem with the separation requirement that comes with the church and precludes them from using their property for certain uses. He noted that the 1,000-foot buffer starts at the property line of the church and extends north of Elwood Street and even reaches the property at the northeast corner of Elwood Street and Estrella Parkway. It also would extend to cover Lot 8 which is currently for sale and would not be able to put in any of the uses with the exception of adult uses, as noted by staff, which is incorrect because adult uses are expressly prohibited by the Estrella Crossing Business Park PAD zoning. He restated that they do not want to have the use of their properties restricted in any way by setback requirements due to a church. He would support the issuance of a waiver, through designation of an entertainment district, if that was possible. He concluded his remarks by saying that staff only notified property owners within 500 feet, so owners between 500 feet and 1,000 feet were not notified, but are affected.

Brian Gleason, who represents the owner of the property, said the statement that the businesses in the nearby commercial center could not have a liquor license was incorrect. The distance from the northeast corner of the church to the commercial building is over 460 feet, well in excess of the 300 foot required. The other buildings in the area are Wilhelm Automotive and a self-storage facility and it is unlikely that they would seek a liquor license. The other uses that might be affected by a separation requirement are marijuana facilities, adult bookstores and strip clubs.

Chairman Bray asked if a pizzeria wanted to change from a beer and wine license to a license that allows the sale of all types of liquor, would they be able to do it. Mr. Schmitz first clarified how the buffer lines on the map were established. The 300-foot line, which typically is related to liquor licenses, was measured from premises to premises, that is, from the walls of the church building, not the center of the building as stated by Mr. Kirk. This buffer does touch the lot at the northeast corner of 156th Avenue and Illini Street and extends into two of Mr. Kirk's lots due north of the church site. As for the 500-foot and 1,000-foot lines, Mr. Schmitz conceded that they too were based on the walls of the building, but should have been based on the property lines of the subject property. However, the 1,000-foot line only applies to medical marijuana uses and the requirement for a separation of one-mile from another medical marijuana use would preclude any such use in this area since it is less than one mile from an existing facility. Regarding the 500-foot requirement, Mr. Schmitz said this only applies to adult businesses and, as Mr. Kirk correctly noted, the Estrella Crossing Business Park PAD zoning prohibits such uses

making that buffer immaterial. Mr. Schmitz noted that in response to the original question, a liquor license that is within 300 feet of a church is grandfathered and may be transferred to another owner. If a property is within 300 feet of a church and wants to convert a beer and wine license to a full restaurant license, that would be precluded. A restaurant with a beer and wine license is exempt from the 300-foot requirement. Katie Wilken, Planning Manager, said she found the State's liquor license website and a restaurant is exempt from the 300-foot requirement as long as it doesn't sell growlers. She also noted that microbreweries and wholesale distributors are exempt from the 300-foot requirement, as well as producers, such as breweries. Mr. Schmitz commented that Ms. Wilken was referring to the State's liquor license separation requirements while he had mostly discussed the City's separation requirements with Mr. Kirk. Comm. Barnes asked which types of liquor licenses were definitely prohibited within 300-feet of a church. Ms. Wilkens responded that a bar license, a beer and wine bar license, and a liquor store would not be allowed.

Comm. Barnes said he would like to make a motion to approve the request, but would like to include a stipulation that preference be given to an existing property owner who wants to apply for a waiver. Sarah Chilton, Assistant City Attorney, stated she would advise against such a stipulation because you cannot bind a future City Council, and suggested the Commission recommend that staff revisit some of the City's separation requirements, but that would not change any of the State's requirements. The City could modify its requirements to match the State's if desired. Christopher Baker, Development Services Director, stated that staff was already pursuing a review of some of the City's requirements and standards for Use Permits and Special Use Permits and a review of these separation requirements could be included in that effort. He also advised that religious institutions enjoy certain federal protections and staff will be looking at the City's ordinances to make sure they comply. Comm. Barnes would still like to get a statement on the record that a waiver of the 300-foot buffer would be viewed favorably by the Commission. Chairman Bray suggested that the best way to do that would be during the discussion of a motion.

Planning and Zoning Commission Action:

A motion was made by Comm. Walters, seconded by Comm. Molony, to approve the Special Use Permit for the church as presented.

Discussion:

Comm. Barnes stated for the record that owners of property within the 300-foot buffer should be given preferential treatment for waivers within that area and this statement should be read into the record at the City Council meeting. Comm. Walters stated that although she made the motion to approve the Special Use Permit, she would be voting against the motion because she felt that there was a lack of clarity between staff and the concerned property owners regarding what would or would not be subject to the separation requirements and whether the City's rules were more strict than the State's. She said she did not think this item should advance without more complete and accurate information, but there may be an opportunity for staff to clarify this matter before the City Council meeting.

Chairman Bray agreed that there was some confusion but thought staff could clarify these questions before the City Council meeting so everyone had the same, accurate information. He

said he also agreed with Comm. Barnes that future businesses should be given some consideration in the future within the confines of the law. Comm. Barnes said he understood why there were buffer requirements, but he thought most churches did not object to being located next to some of these uses and might even consider it an opportunity to minister to persons who visit such businesses. Chairman Bray suggested Comm. Barnes may need to talk to the legislature.

Ayes: Chairman Bray and Comm. Barnes

Nays: Comm. Walters, Comm. Steiner, and Comm. Molony.

Absent: Comm. Keys and Comm. Kish

Motion failed to pass by a vote of 2 to 3 with two Commissioners absent. This item will be forwarded to the City Council as a recommendation from the Planning and Zoning Commission for denial of the Special Use Permit, pursuant to the Planning and Zoning Commission Rules of Procedure.