ALTA HEIGHTS NEIGHBORHOOD COALITION
[redacted]

April 15, 2024

Napa City Council
c/o Napa City Clerk
955 School Street
Napa, CA 94559

RE: PL23-0159

Dear Napa City Council,

First and foremost, and on behalf of the ALTA HEIGHTS NEIGHBORHOOD COALITION, we fully support a childcare use at the former Mormon church. It would be a welcome addition to our neighborhood. However, we cannot support the scope of this project, including the ancillary use of both the Community Playroom and the Gymnasium/multi-use space which was incorrectly approved by the Planning Commission likely due to a misunderstanding of the threshold required for approval under NMC section 17.08.020. The Planning Commission also failed to fully consider CEQA and its own zoning ordinance, both of which render its approval unlawful.

The key reference here in such section is "customarily incidental and clearly subordinate".

There is significant case law supporting a higher threshold for use than that taken at the Planning Commission hearing.

No examples of cases were provided? What cases said a daycare or school cannot have other ancillary uses?

An "accessory use" of property under our zoning law is a use which is "customarily incidental" to its principal or main use. The word "incidental" in this context means that the use must not be the primary one, but one subordinate in its significance. It is not enough, however, that the use be subordinate; it must also be attendant or concomitant. The word "customarily", when used in the same context, requires that the use be scrutinized to determine whether it has commonly, habitually and by long practice been established as reasonably associated with the primary use.

The word "incidental" as employed in this definition of "accessory use" incorporates two concepts. It means that the use must not be the primary use of the property but rather one which is subordinate and minor in significance. We find the word "subordinate" included in the definition of the ordinance, but "incidental," when used to define an accessory use, must also incorporate the concept of a reasonable relationship with the primary use. It is not enough that the use be subordinate; it must also be attendant or concomitant. To ignore this latter aspect of "incidental" would be to permit any use which is not primary, no matter how unrelated it is to the primary use.

The word "customarily" is also important to apply. Although it is used in this and many other ordinances as a modifier of "incidental", it should be applied as a separate and distinct test. Courts have often held that use of the word "customarily" places a duty on the governing board or court to determine whether it is usual to maintain the use in question in connection with the primary use of the

These three paragraphs are simply copied (plagiarized?) from Lawrence v. Zoning Board of Appeals from 1969 in the Supreme Court of Connecticut. In this case, a resident wanted to keep goats and chickens on his residential property, the town and its zoning commission said he could not have them, and he appealed.

The court upheld the finding of the zoning commission and notes: *"In applying the law to the facts of a particular case, the board is endowed with a liberal discretion, and its action is subject to review by the courts only to determine whether it was unreasonable, arbitrary or illegal." Toffolon v. Zoning Board of Appeals, 155 Conn. 558, 560, 236 A.2d 96.*

This case basically says the local board should be trusted to make decisions and supports LPE's case, unless you plan on raising goats and chickens :)

https://casetext.com/case/lawrence-v-zoning-board-of-appeals

land. In examining the use in question, it is not enough to determine that it is incidental in the two meanings of that word as discussed above. The use must be further scrutinized to determine whether it has commonly, habitually, and by long practice been established as reasonably associated with the primary use. As stated in 1 Rathkopf, Zoning Planning (3d Ed.), p. 23-4: "In situations where there is no . . . specific provision in the ordinance, the question is the extent to which the principal use as a matter of custom, carries with it an incidental use so that as a matter of law, in the absence of a complete prohibition of the claimed incidental use in the ordinance, it will be deemed that the legislative intent was to include it."

We have contacted most childcare facilities in Napa, Solano, and Sonoma Counties Including La Petit Academy, one of the largest operators in the US. Not a single operator, whether large or small, allows outside rental of their facility. Case law has established "customarily incidental" to mean the ancillary use must be "commonly, habitually, and by long practice reasonably associated with the primary use of the property (childcare). It is not in this case. This leaves a finding of "customarily incidental" without merit here. There is simply no evidence in the record that the Community Playroom and/or Gymnasium commercial uses are customarily incidental or accessory uses to a child care facility. Rather, these are unrelated commercial uses of the facility which are not allowed under the applicable zoning, and for that reason should be denied.

The City has also not complied with CEQA concerning the approval of this project, or its own zoning ordinance The City's non-compliance includes (but is not limited to):

- CEQA Guidelines Section 15301 is inapplicable. Application of this exemption requires "negligible or no expansion of existing or former use." The use here is completely different from the prior religious use of the facility. Specifically on day care uses, Section 15301(p) states that Section 15301 would apply to "a small family day care home." The day care portion of the project here would serve up to 250 children and over 50 staff in a former church, and in no way could be considered "a small family day care home."
- The application of CEQA Guidelines Section 15332 is not supported by substantial evidence in the record. In addition, as discussed above, the Community Playroom and Gymnasium commercial uses are not consistent with the zoning, and so the project does not comply with Section 15332(a).
- The conditions of approval incorporate mitigation measures from the Transportation Impact Study, even if they are not so labeled.
- Further, CEQA Guidelines Section 15300.2 makes any categorical exemption inapplicable. Given the project's location in close proximity to Alta Heights Elementary School, the cumulative impacts of this project are potentially significant, particularly concerning traffic and emergency access (Section 15300.2(b), (c)).
- The City's decision to waive applicable parking requirements is not supported by substantial evidence in the record, and does not comply with the requirements of Chapter 17.54, and in particular the findings necessary for the City to approve a variation from the parking requirements.

At a minimum, this project should be subject to a mitigated negative declaration, supported by appropriate studies and other substantial evidence in the record, that analyze and mitigate as needed the environmental impacts of this project.

This quote states the opposite of their argument. In the absence of a specific provision or complete prohibition stating that a daycare facility shall not also have a community playroom/gymnasium, "it will be deemed that the legislative intent was to include it." They point to no specific provision or complete prohibition of the proposed use.

This is disingenuous. The intent of the zoning code is not to require new projects to be just like other projects, and what happens in other jurisdictions is irrelevant.

- **Any daycare facility for children 3 and over is classified as an educational (E) occupancy per the 2022 California Building Code, section 305. Therefore, a portion of LPE is E occupancy, just like any K-12 school.**
- **The previous use of the church had weekend and evening activities:** *From 1956 to 2021, the Site served as a religious institution, offering worship services, religious education, and a meeting place for faith-based clubs and organizations. The existing church building contains a Cultural Hall, which includes a stage and gymnasium historically used to host sports, religious, and community events. A kitchen and serving area are attached to the Cultural Hall, traditionally used for food service during religious group activities and events.*
- **Any member of the public can rent the Alta Heights Elementary School Cafeteria/Multi-Purpose Room for $42.57 per hour. <u>Members of the Alta Heights community rented it themselves on March 21 at 6pm to meet about this very project.</u> It is tough to see how this proposed use 300 feet away is any different and is unreasonable in an RS zone.**

The size of the building is not expanding (except perhaps for an exterior elevator). I would also argue that the proposed maximum occupant load is smaller than the permitted use of the church

15301(p) has nothing to do with this project and this exemption was not referenced by anyone. *Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.*

This is the same 'community playroom/gym cannot be part of a daycare' argument they make elsewhere.

This is a single project of one type at one time – there is no cumulative impact and 15300.2 (b) does not apply:

(b) *Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.*

The traffic study says the project will not have a significant impact on vehicles miles traveled or a significant impact on emergency access. 15300.2 (c) is not applicable. See also staff report section VII.

(c) *Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.*

This letter specifically incorporates by reference all oral and written comments submitted to the City concerning this project.

We also seek operating hours to include weekdays only and not evenings. If the uses of the ancillary buildings are only allowed as part of traditional child care, there would be no need for weekend or evening operations nor should there be.

Additionally, the requested parking amendments were only sought to support the ancillary uses and are, therefore, not needed for the childcare operation. These should be denied.

Subject to compliance with CEQA and zoning outlined above, if possible, we seek approval of the project by the City Council with the determination that there be no ancillary uses of facilities. We also seek a reduction in hours of operation, a significant reduction in the project's overall scope that would be consistent with a family day care center and a denial of any off-property parking.

We are hopeful that the City Council will recognize that the project as approved by the Planning Commission is significantly flawed, was approved in error and will uphold the appeal and deny the project. If not, we are prepared to pursue our remedies in court for the City's failure to comply with its own zoning regulations and with CEQA.

Respectfully,

ALTA HEIGHTS NEIGHBORHOOD COALITION

Represented by:

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The two oldest tricks in the book to stop projects in California are to use CEQA and threaten legal action. This is lazy and sad.