

**MINUTES
SARATOGA PLANNING COMMISSION**

DATE: Wednesday, June 13, 2007
PLACE: Council Chambers/Civic Theater, 13777 Fruitvale Avenue, Saratoga, CA
TYPE: Regular Meeting

Chair Hlava called the meeting to order at 7:00 p.m.

ROLL CALL

Present: Commissioners Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers (arrived shortly after the roll call) and Zhao
Absent: None
Staff: Director John Livingstone, Senior Planner Chris Riordan and Assistant City Attorney Jonathan Wittwer

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES – Regular Meeting of May 23, 2007.

The correct set of minutes for the meeting of May 23, 2007, was not included in the packets so these minutes will be reviewed and adopted at the next regular meeting.

ORAL COMMUNICATION

There was no oral communication.

REPORT OF POSTING AGENDA

Director John Livingstone announced that, pursuant to Government Code 54954.2, the agenda for this meeting was properly posted on June 7, 2007.

REPORT OF APPEAL RIGHTS

Chair Hlava announced that appeals are possible for any decision made on this Agenda by filing an Appeal Application with the City Clerk within fifteen (15) calendar days of the date of the decision, pursuant to Municipal Code 15-90.050(b).

CONSENT CALENDAR

There were no Consent Calendar items.

PUBLIC HEARING - ITEM NO. 1

Application #07-299 (366-57-003) Cheadle, 20865 Wardell Road, Lot C: The applicant requests Design Review Approval to construct an approximately 6,800 square foot, two-story single-family residence with an attached garage. The maximum height of the proposed residence will not be higher than 26 feet. The net lot size of the parcel is approximately 1.4 acres and the site is zoned Hillside Residential. (Chris Riordan)

Chair Hlava advised that Item No. 1 would be continued to a date uncertain.

PUBLIC HEARING - ITEM NO. 2

APPLICATION #07-297 (517-22-024) Whitney, 15374 Madrone Hill Road: The applicant requests Design Review Approval to construct a new two-story single-family dwelling. The dwelling will consist of approximately 5,124 square feet of gross floor area and a basement. The height of the structure will not exceed the 26-foot height limitation. The gross lot size is approximately 2 acres and the site is located in the R-1-40,000 zoning district. Design Review Approval by the Planning Commission is required pursuant to Saratoga Municipal Code Section 15-45.060. (Chris Riordan)

Senior Planner Chris Riordan presented the staff report as follows:

- Distributed a materials board to the Commission.
- Advised that the applicant is seeking Design Review Approval to allow the demolition of an existing single-family residence and construction of a new two-story, single-family residence with an attached garage and basement. The parcel is zoned R-1-40,000.
- Explained that the existing pool and deck would remain.
- Said that the parcel is accessed via a private drive that takes access from Madrone Hill Road.
- Stated that dense vegetation exists and screens the parcel from the road.
- Said that traditional materials including clay roof tiles, stained wood main and garage doors and red shutters will be incorporated.
- Said that the project includes the removal of seven protected trees, three of which are redwoods and one oak tree. These trees have been appraised at a value of \$10,060 and replacement trees of equal value will replace the removed trees.
- Recommended approval.

Commissioner Rodgers asked if the FAR exceeds that allowed.

Senior Planner Chris Riordan replied no it is just under the maximum allowed FAR.

Commissioner Zhao asked how the topmost height is measured.

Senior Planner Chris Riordan said that it is determined by averaging the lowest and highest existing grade on site.

Chair Hlava opened the public hearing for Agenda Item No. 2.

Mr. David Whitney, Project Applicant and Property Owner:

- Said that they have followed the City's Residential Design Guidebook when designing this house.
- Said that the natural hillside's contours are not changed and the new house will very much appear similar to the existing structure as the second story is pulled back.
- Added that natural materials and colors would be used.
- Said that little of the roofline is visible from the road and that precautions have been taken to avoid any privacy impacts.
- Advised that they would utilize smaller trucks when clearing demolition materials to avoid any damage to Madrone Hill Road.

Commissioner Nagpal asked if the use of smaller vehicles for removing demolished materials would be conditioned.

Senior Planner Chris Riordan said that staff is not proposing that as a condition but that the issue was raised at the site visit and the applicant proposed this option as a solution to that concern. He said the Commission could elect to add this requirement to the conditions of approval if it chose to do so.

Commissioner Rodgers pointed out that the house includes several fireplaces and one of them is wood burning. She said that many people incorporate a wood-burning fireplace because they want the edifice of a wood-burning fireplace that might not be possible in a gas fireplace. She asked Mr. David Whitney if it might not be possible to put a gas fireplace in place of the proposed wood-burning one.

Mr. David Whitney said that this fireplace is an architectural feature. He added that it is not anticipated that this wood-burning fireplace would be used for burning wood all that often but he is not sure if a gas fireplace would achieve the same edifice as a wood-burning one.

Commissioner Cappello asked if the double doors depicted on the rear elevation mean that this house has a walkout basement.

Mr. David Whitney replied correct. The elevation is within the 42-inches allowed for a basement at that point.

Commissioner Cappello asked at what point a basement element becomes a story.

Mr. David Whitney replied that the finish grade for a basement cannot exceed 42 inches to remain a basement versus a floor or story.

Commissioner Kumar asked Mr. David Whitney if he had considered building around the trees proposed for removal.

Mr. David Whitney replied that they had tried to do so. However, due to the proximity to the structure and the foundation design, it brings the basement close to these trees. He added that the structure in the back as well as the elimination of a porch means that the oak tree in the back might be preserved, if possible.

Chair Hlava pointed out that the oak tree is indicated for removal. She asked for clarification that the plan is to try and keep that tree. Is that correct?

Mr. David Whitney replied yes.

Chair Hlava closed the public hearing for Agenda Item No. 2.

Chair Hlava pointed out that a number of letters of support from surrounding neighbors have been provided in the packets.

Commissioner Nagpal added that one neighbor came to the site visit to express full support of this project.

Commissioner Rodgers said that she can make all findings and is happy to support this project.

Commissioner Kundtz said that he can make the findings as well. He thanked Mr. David Whitney for voluntarily putting up story poles and said that this new home would be a dramatic improvement over the existing structure.

Commissioner Cappello expressed appreciation for the summary of energy conserving features planned for this home.

Commissioner Nagpal pointed out that the two-dimensional drawing does not do justice to how nicely this home would actually fit onto the site. She added that she would not suggest conditioning the use of smaller trucks to remove demolition debris from the site. She suggested adding a condition that calls for the effort to save Tree #19 if at all possible.

Motion: Upon motion of Commissioner Nagpal, seconded by Commissioner Cappello, the Planning Commission granted Design Review Approval (Application #07-297) to construct a new two-story single-family residence on property located at 15374 Madrone Hill Road with the added condition that attempts be made to preserve Tree #19 (oak) if at all possible, by the following roll call vote:

AYES: Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao
NOES: None
ABSENT: None
ABSTAIN: None

PUBLIC HEARING - ITEM NO. 3

APPLICATION #07-384 (397-01-012) St. Archangel Michael Serbian Eastern Orthodox Church, 18870 Allendale Avenue: The Planning Commissioner has scheduled a Use Permit Modification and/or Revocation Hearing regarding Use Permits 29 and 147 applicable to St. Archangel Michael Serbian Eastern Orthodox Church, which is currently the subject of allegations of violation of those Use Permits issued in 1961 and 1968 respectively. Use Permit 29 authorized the St. Michaels Archangel Serbian Orthodox Church Center. Use Permit 147 authorized a parish residence, classroom addition and future sanctuary. City Code Section 15-06.540 defines a Religious Institution as a use providing facilities for organized religious worship and religious education and other activities incidental thereto. City Code Section 15-55.100 authorizes the Planning Commission to modify or delete any conditions of a use permit or impose any new conditions if the Commission makes certain determinations. City Code Section 15-55.110 authorizes the Planning Commission to revoke a use permit upon a determination that the holder of such use permit has failed to comply with any condition thereof or has violated any applicable provision of the City Zoning Regulations. The Planning Commission will consider whether or not to modify or revoke Use Permits 29 and/or 147. (Jonathan Wittwer)

Chair Hlava provided an overview of how discussion of this item would be conducted this evening as follows:

- Explained that this is a City-initiated action so there is not specific applicant and/or appellant.
- Said that a neighborhood representative would be given 10 minutes to make its presentation. Someone from the church would subsequently be given 10 minutes to provide its position.
- Added that following both sides' presentations, the public hearing would be opened up for comments from the public, with three minutes available to all interested speakers.
- Suggested that if members of the audience agree with points made by a previous speaker, they should state that fact without completely restating that point that has already been made.
- Stated that at the end of public commentary, both sides would be given five minutes for rebuttal comments.
- Asked that all present be kind and fair.
- Stated that there shall be no shouting out comments, yelling, booing and/or clapping. Demeanor shall be as professional and business-like as possible.
- Suggested that if others in the room agree with a particular point being made, they can raise their hands to demonstrate that support.
- Stated that what this Commission is seeking is a clear understanding of what is allowed on this property and to clarify what uses the Use Permits would allow.

City Attorney Jonathan Wittwer presented the staff report as follows:

- Said that the City Attorney's Office prepared the report for this item, as there are lots of legal issues to be considered.
- Advised that a lot of emails and other communications have been received and distributed to the members of the Commission.

- Cautioned that many may believe that tonight's action is about the church's proposed new sanctuary for which story poles are currently displayed. However, the staff and environmental review for that project are not yet complete.
- Clarified that this evening's hearing is about two Use Permits issued for this church. One was issued in 1961 and the other in 1968.
- Reminded that properties are zoned for specific uses. This property is zoned for single-family residential uses. Single-family residences are allowed in this zoning designation without a Use Permit. Other uses are allowed in single-family zoning districts with issuance of a Use Permit. Such other uses include religious institutions, nursing homes, Police stations and Fire stations. For such other uses, City Code requires issuance of a Conditional Use Permit whereby conditions are imposed on that use.
- Advised that the two Use Permits issued for this property did not include conditions of approval. The Use Permit in 1961 allowed for a church center. It was not defined any more than that and no conditions were imposed. The Use Permit in 1968 was for a classroom addition, home for the father and a new sanctuary. However, the new sanctuary was never built. Only two conditions were imposed. One was to limit members to 150 and the other was to require issuance of a Design Review Permit.
- Explained that a Use Permit brings certain rights regarding the start and continuation of a use. Normally a City cannot take rights away unless a modification or revocation of said Use Permit is processed.
- Added that the Planning Commission has continuing jurisdiction and can modify Use Permits as well as revoking them.
- Pointed out that this staff report is recommending modifications and not revocation. A revocation is harsh and usually only occurs after several attempts to correct problems and achieve compliance has occurred.
- Stated that staff has not found violations that rise to the level where revocation is warranted. Pretty strong evidence is required to support a revocation.
- Said that modifications attempt to take care of problems and clear up any lack of clarity for a Use Permit without sufficient conditions.
- Said that a definition of a religious institution includes religious worship and/or education as well as incidental uses to that.
- Added that there are divergent views on what uses are incidental on both sides (the neighbors and the church). Specific areas of divergent viewpoints are what must be focused upon.
- Recommended combining the Use Permits and making them clearer including clarifying what is incidental uses versus what is not considered an incidental use to a church. Typically, it would be an activity that can be directly related to the church; would not involve rental to the public; would not involve catering for public events; must be one of the following: intrinsically religious; directly related to religious activities (i.e. fellowship meetings); or predominately fundraising for the church itself.
- Said that in 1968, the City informed the church that its activities must be considered directly related to the operations of the church.
- Advised that in 1998 and 2001, the City advised the church not to involve rental of its facilities to the public.
- Added that the church has indicated that they understood that and would comply. They may have crossed the line in some cases in that respect.

- Said that this evening's staff report has been made available to the public.
- Informed that Federal law requires that in land use decisions concerning religious use that there be recognition of religious practices and to provide equal treatment.
- Stated the issues:
 - Operating a restaurant by virtue of the sale of food with a County restaurant permit. Added that one website lists this church as a restaurant although the church has no power over that listing but rather it is simply based on the fact that they have the restaurant permit. He reminded that per City Code one cannot have a restaurant in a single-family district but can have a church but pointed out that many churches have food service for its members. One has to evaluate if this food service is open to the public or if it is simply an incidental use for a church. He said that he believes this is incidental but that fact should be made clear in the Use Permit so that line is not crossed.
 - Allegation of the sale of alcoholic beverages. He said that the church does have an ABC (Alcohol Beverage Control) permit to serve alcohol.
 - Allegation of the operation of a catering business as part of the ABC licensing process. The licensing process is required to allow service to members and/or guests of the church for service of food and/or alcohol on site.
 - Allegation of the operation of a public dance hall and conduction of public dances. He said that this church considers the dances to be a part of their orthodox religion. They may have gone over the line sometimes because their dances were advertised to the public and charged an entrance fee.
 - Allegations of parking concerns and the fact that the adjacent property, also owned by this church, is being used for church overflow parking.
 - Allegations of operating a bookstore without a permit. This can be seen as an incidental use of the church as the "bookstore" is a kind of closet that is primarily stocked with religious books. He recommended that this not be found to be a bookstore.
 - Allegations on signage on site. One is a structure that consists of two posts with a piece of plywood attached that shows a depiction of the proposed new church facilities. This is something the City encourages to demonstrate to neighbors what construction is proposed. This is a proper feature. Additionally there is a cross and identification sign, both of which are illuminated. Neither has a permit. The cross could be considered a sign or not a sign. A freestanding sign is not allowed without a permit. He recommended that the church be given 60 days to produce the permit it believes was issued, get a new permit or remove the sign.
 - Allegations of noise and disturbances to the neighborhood and inappropriate hours of operation. He advised that the City was called out and did not find a violation of the Noise Ordinance with sound readings that were taken. He recommended limiting the hours on site, including how long would be allowed for wedding preparations on site and only for members of this church. Hours should be imposed for activities on site including limits on how early events/activities can start and how late they can last.

Chair Hlava asked about special services such as an early-morning Easter service or late night Christmas service. She asked if it would be possible to specify such events in the conditions of approval.

City Attorney Jonathan Wittwer replied yes.

Commissioner Nagpal asked what the ramifications might be if conditions imposed for a Use Permit are not met.

City Attorney Jonathan Wittwer said that there are a number of possible ramifications. That is the benefit of a Use Permit. It is much easier to enforce a use if there are conditions of approval. Types of enforcement available include a citation (criminal); notice of nuisance; a civil lawsuit and/or bringing the Use Permit back to the Planning Commission for possible revocation.

Commissioner Nagpal asked if it is possible to require compliance monitoring to bring a use back for review.

City Attorney Jonathan Wittwer replied yes.

Commissioner Nagpal asked for clarification about the recommendations to deal with the parking issue. She asked if one option is to change the residential parcel into a quasi-public parcel.

Director John Livingstone advised that the General Plan states that a quasi-public land use designation is required for a church use. One option might be to make the adjacent residential parcel belonging to the church into a part of the church property. This would require a change in the General Plan land use designation from residential to quasi-public.

Commissioner Nagpal sought verification that the Use Permit under discussion is for the church site and not the adjoining residential property owned by the church.

Director John Livingstone replied yes.

Commissioner Rodgers asked if a Measure G election would be required prior to processing an amendment to the General Plan to change the land use designation of the residential parcel to quasi-public use.

Director John Livingstone replied yes.

Chair Hlava:

- Pointed out that the issue of overflow parking was raised during the site visit.
- Asked if there is a condition proposed for the Use Permit on overflow parking.
- Stated that no church in Saratoga has a sufficient number of parking spaces for all of its large events.

City Attorney Jonathan Wittwer said that the application pending for the new church sanctuary does not show the residential parcel being used for parking. The plan does appear to show adequate parking. He added that the Commission could require a plan to be developed for dealing with overflow parking.

Commissioner Rodgers said that fences may not solve the problems raised and she asked what kind of fence is proposed.

Director John Livingstone:

- Said that the condition requiring a fence is intended to solve the problem of the adjacent residential property owned by the church being used on a regular basis for church parking.
- Pointed out that there is a considerable amount of parking available on the church property at the rear.
- Added that the fence is not designed as security fencing but rather just to keep the two properties separate.
- Said that most parking lots are left open for convenience rather than having gates that are less convenient.

Commissioner Rodgers thanked City Attorney Jonathan Wittwer for his wonderful report.

Commissioner Zhao asked if it is a violation if the owner of the second parcel, a residential property, is willing to allow parking on their property.

Director John Livingstone said that if that adjacent parcel is actively used for church uses, it should function as such and be reviewed as such. That adjacent residential property is owned by the church but functions as a single-family residence.

City Attorney Jonathan Wittwer pointed out that the City Code for single-family residential zoning has a list of allowable accessory uses. That list does not mention use of a residential property as a parking lot.

Commissioner Kumar asked how one defines religious events, activities and fundraising.

City Attorney Jonathan Wittwer:

- Said that the Planning Commission can go into more detail.
- Added that the numbers and types of religious events and activities are infinite.
- Advised that staff has tried to come up with four identifiers as to what is incidental or not.

Commissioner Kumar asked about the list of activities provided by the church and the fact that the neighbors don't believe that list is complete.

Commissioner Zhao asked how many violations have been reported since this church's priest sent out a 2001 letter to the neighbors.

City Attorney Jonathan Wittwer said that an email from a neighbor identified 32 that they felt were violations. He added that one event, a model railroad program, was listed but did not actually occur.

Commissioner Kumar said that public dances occurred in the church. The church considers these dances to be church related orthodox dances. He questioned whether it could be supported to have alcohol served at such dances.

City Attorney Jonathan Wittwer said that decision would be based on whether such a use is determined to be incidental or not.

Commissioner Kumar said that fine-tuning is required on the issue of service of alcohol.

Commissioner Rodgers said that she wanted to put on the record the fact that she has spoken to a number of people regarding this situation. She said that she has received numerous emails, calls and faxes. She has spoken with neighbors as well as parishioners. She said that she also visited the parking lot as well as one of the church dances.

Chair Hlava said that all of the Commissioners have gotten hundreds of emails both for and against the church Use Permit.

City Attorney Jonathan Wittwer said that if any Commissioner learned anything from these communications that is not included in the record but would be important to the decision-making process, that information should be disclosed now.

Commissioner Rodgers said that the County offers a free mediation service to which she referred the neighbors and the church. She said that she spoke with the mediator regarding the mediation process but did not participate in the mediation.

Commissioner Kundtz said that many of the independent communications received dealt with the proposed Design Review for the new church that will be reviewed in the future. There was nothing that is relevant to tonight's discussion of the Use Permit.

Commissioner Nagpal asked about a list of churches in Saratoga with liquor and food service.

City Attorney Jonathan Wittwer said that he believes that there is no other church that has an ABC (Alcohol Beverage Control) liquor and restaurant permit.

Chair Hlava said that other churches have commercial kitchens and asked what the difference is.

City Attorney Jonathan Wittwer said that per City Code a restaurant permit from the County is required. That is the smallest level permit that one can get in order to be able to serve food to others.

Director John Livingstone:

- Explained that the City requires that social halls and other such gathering places to have a commercial kitchen, which in turn requires that the County issue a restaurant permit.
- Said that such a kitchen is required whenever food is sold and/or served free to others.
- Advised that a commercial grade kitchen permit is called a restaurant permit.

Chair Hlava opened the public hearing for Agenda Item No. 3.

Mr. Bernie Mills, Neighborhood Representative and Resident on Sara Oaks Court:

- Advised that he has resided in Saratoga since 1999.

- Said that there are concerns that the draft resolution does not go far enough.
- Reported that so far the City hasn't been able to do much in response to complaints.
- Added that the neighborhood is not against the church whatsoever.
- Pointed out that he has personally been involved in churches since the day he was born and was a member of a church in Southern California that had 10,000 members.
- Assured that this is not an "us versus them" situation.
- Added that he wants the church to be able to practice as they see fit.
- Said that the neighborhood has specific requests and that additional requests will be made directly from members of the neighborhood.
- Said that neighbors would like to be involved in the Use Permit process together with the City and the church to come up with something that works for everybody.
- Listed some items desired by the neighborhood as follows:
 - Maintain the limitation of a 150 seat maximum.
 - Cease all non-religious activities on the property.
 - Require the church to surrender its alcohol and restaurant catering licenses.
 - Prohibit on-site catering.
 - Prohibit food sales.
 - Prohibit the sale of liquor.
 - Specify exactly how many and what specific functions are permitted and no more than two special events a year that end at 8 p.m., which must be of a religious nature.
 - Adhere to the City Code Article 4-15.010(c) 3 that clearly states that only two dance functions are allowed per year.
 - Require adequate paved parking so that no overflow parking occurs outside of the church property and that includes 18390 Allendale Avenue, along with any of the surrounding neighborhood streets.
 - Variances should not be allowed to extend the allowable impervious coverage. If any Variances occur, they should be more restrictive and not less.
 - Require that a sound wall be installed around the property to protect the adjoining residential properties from noise, litter and vandalism problems.
 - Enter into discussions with the church, City and neighbors to craft a Use Permit.
- Stated that even today many neighbors were unaware that this hearing was going to occur.
- Said that this Commission is going to be hearing from neighbors, including some emotion.
- Asked that the Planning Commissioner please hear their comments and not just the emotion.
- Stressed the importance of considering the impacts on the neighbors as a result of this church use.
- Agreed that fairness on what is happening from church to church should be considered.
- Said that he has five children and must practice fairness between each of his five children.
- Asked that this matter be looked at and taken very seriously.
- Suggested that the City implement the requirements they have raised.
- Expressed appreciation that the consideration of the new building has been discontinued until this issue of the Use Permit can be resolved.

Commissioner Cappello asked Mr. Bernie Mills if he has a written list of the items he has raised this evening.

Mr. Bernie Mills replied yes.

Commissioner Kundtz asked Mr. Bernie Mills if he could offer a definition of what is a non-religious activity.

Mr. Bernie Mills:

- Said that other neighbors can speak to this better than he can.
- Suggested that dance classes with participants from outside of the church become more of a class and less of a religious activity.
- Said that non-religious activities are those activities offered to folks from outside the church community.
- Agreed that this becomes an issue of judgment.

Commissioner Kundtz agreed that the fact this is a judgment issue is what has brought this matter before the Commission tonight. He asked Mr. Bernie Mills if he could offer any other types of activities that might not be considered religious.

Mr. Bernie Mills again said he would defer to other neighbors.

Commissioner Nagpal asked Mr. Bernie Mills if he has seen the conditions proposed, including for dances. She said that she thinks this addresses what he has said but asked if he agreed.

Mr. Bernie Mills said that some issues are not adequately addressed but admitted that he did not yet have sufficient time to do a point-by-point comparison.

Commissioner Nagpal pointed out that the condition limiting seating to 150 maximum seats was imposed for a sanctuary that was never built so does not apply.

Mr. Bernie Mills said that the concern is that anything larger than that is going to have an adverse impact on the neighborhood.

Commissioner Rodgers:

- Reminded that the proposed new sanctuary is an issue that will come up at a future hearing and will consider size, location and other facts. However, that issue is not before the Commission right now.
- Said that people from a large number of religions feel that dancing should be prohibited while others think that dancing is an integral part of the worship service. Still others think it is part of a cultural heritage that is important to their religious exercise.
- Stated that this church appears to consider dance to be cultural but not part of the religious service.
- Asked Mr. Bernie Mills if he considers that as exceeding the boundaries of religious activity for him personally or for the neighborhood?

Mr. Bernie Mills:

- Replied yes, he would personally say it does, speaking for himself.

- Added that he came from a church that had two dances a year that were more social than religious events. They also had dances outside of the church facility.
- Said that from his perspective and the way he understands this church, dances are more cultural than religious.

Commissioner Rodgers asked Mr. Bernie Mills if he prefers not to allow cultural types of dances.

Mr. Bernie Mills said that he is not saying that but would suggest a limit.

Commissioner Kumar:

- Thanked Mr. Bernie Mills for his suggestions.
- Advised that the City is trying to work with all parties involved.
- Added that some of the conditions proposed by the neighbors seem drastic.

Mr. Bernie Mills:

- Pointed out that alcohol and restaurant licenses are not typical of churches.
- Questioned what happens when there is alcohol around?
- Added that the issue is equity for the church as well as with neighbor concerns.
- Said that limiting the number of functions helps create equity with other churches in the area.

Ms. Jolie Houston, Berliner, Cohen, Attorney for St. Archangel Michael Serbian Eastern Orthodox Church:

- Thanked staff and especially the City Attorney.
- Advised that they have submitted letters to answer as many questions as they could and cooperated as much as possible including providing documents requested.
- Said that this has been a thorough process for the church.
- Stated that they support the staff report and conditions of approval proposed.
- Pointed out that staff has concluded that there are no current violations.
- Assured that they would comply with the City's recommendations regarding the use of the adjacent lot.
- Added that a pending Use Permit request for a new sanctuary will address parking in the future.
- Said that the focus tonight is any current violations and not past violations.
- Reported that in 2006 there were no calls and in 2007 there has been just one.
- Said that what is proposed here is an enforceable Use Permit.
- Reminded that many allegations have been made but have not been proven and that the City has determined there are no use violations at this time.
- Informed that there are many parishioners present this evening in support of the church but most will not speak this evening. She asked those present in support of the church to raise their hands to give the Commission an idea of the number.
- Said that some restrictions proposed by the neighbors would impair the church's ability to function and would be against State law.

Father Jovic, St. Archangel Michael Serbian Eastern Orthodox Church:

- Reported that their church is a part of the family of Eastern Orthodox churches.
- Explained that they use wine for Eucharistic purposes.
- Described their church is a Christ center, which shows its love for God and love for one another. Their church includes prayers and services for our country and government, even City government, as well as neighbors, every human being and the armed forces.
- Said that when the City needed a temporary library location, they offered their help although another temporary solution was found.
- Explained that one benefit of a church is to respond to need in the community including homeless, orphans and those who are victims of natural disasters.
- Added that they have a long-lasting tradition of brotherly and sisterly fellowship and said that in addition to their Eucharistic celebrations, they have Sunday fellowship luncheons and special occasion events such as Christmas and Easter.
- Assured that they try to be good neighbors.
- Admitted that some of their noise generated might reach their nearest neighbors and he asks forgiveness for any such noise impacts.

Mr. Radmillo Brozinovich, Board President for St. Archangel Michael Serbian Eastern Orthodox Church:

- Thanked the City for its diligence and time in reviewing the church's application.
- Said that their church is a diverse parish with different social and cultural backgrounds.
- Added that this church was established 40 years ago.

Commissioner Kundtz asked Mr. Radmillo Brozinovich for the current number of parishioners that are annual givers to this church.

Mr. Radmillo Brozinovich replied that there are approximately 100 active families.

Commissioner Kundtz asked what the percentage of the church's annual revenue is represented by the sale of food and alcohol.

Mr. Radmillo Brozinovich replied that this is a minor source of income.

Commissioner Kundtz asked if it could be considered an incidental amount.

Mr. Radmillo Brozinovich explained that the service of food and alcohol is a matter of fellowship and being together. They don't make money on their Sunday luncheons but rather they probably lose money, as they don't turn anyone away if they can't pay for their meal.

Commissioner Nagpal asked Mr. Radmillo Brozinovich how many of the church's parishioners are Saratoga residents. She asked if the church is able to adequately park its parishioners on their church property for daily operations.

Mr. Radmillo Brozinovich said that their biggest events occur on Christmas and Easter. He added that this past Easter he took special care and saw to it that no one parked on the adjacent church-owned residential lot. Everyone parked on legitimate parking spots on the

church parcel and no one parked on the street. He said that this provides conclusive proof that they can accommodate their parishioners on their property.

Commissioner Nagpal asked if this is a condition that the church can live with.

Mr. Radmillo Brozinovich replied in a sense, yes. He added that in a practical sense there might be an occasional need for overflow parking.

Mr. Jerry DeYoung, Planning Consultant for St. Archangel Michael Serbian Eastern Orthodox Church:

- Explained that a traffic report was prepared by Higgins & Associates in May 2007 and has been presented to the City as part of the package for the church's upcoming Use Permit for a new sanctuary.
- Advised that this report indicates that there were 180 vehicles on Easter and that all were on the church site and the adjacent residential parcel and not in the neighborhood.
- Added that only about once a year would the parking demand exceed parking available on site.
- Said that the study by Higgins & Associates counted 112 people in a peak period on Sunday. That requires 65 parking spaces based upon an average number of people per car ranging between 1.2 to 2.3 persons.
- Reported that the plan on file for the pending sanctuary indicates that 128 spaces would be made available to serve the church, which does not count any parking occurring on the adjacent residential church-owned property.
- Reiterated that for the vast majority of events on site, there is adequate parking.

Commissioner Nagpal asked if the church would be willing to put in the parking soon if this Use Permit is approved.

Mr. Jerry DeYoung said that the parking that occurs on the adjacent residential parcel is a matter of convenience rather than need or demand.

Commissioner Nagpal asked if there are parking spots on site to support the existing use.

Mr. Jerry DeYoung said that one option to optimize parking on site could be the use of valet style parking. This is possible since all people arrive at the same time and parking could be directed.

Commissioner Kumar said that he heard at the site visit that there is quite a bit of spillover parking onto the side streets.

Mr. Jerry DeYoung disagreed and said that he saw no off-site parking on the day of the study. He said that on the other hand he did see people parking on church property to visit a residence across the street.

Commissioner Nagpal asked if parking is illegal on Allendale.

Director John Livingstone replied that street parking is allowed.

Commissioner Rodgers asked Mr. Jerry DeYoung to describe the role of dancing and how it relates to religious activities.

Ms. Jolie Houston, Attorney for the church:

- Said that the dancing involves dancing in circles and holding hands. It is not social pairs dancing but rather cultural group dancing.
- Added that a parishioner is teaching youth dancing.
- Said that this dancing is not Parents without Partners but rather is a part of the culture and religious practices of this church community. Snacks are shared and donations are requested. However, no one is turned away if they cannot pay. The dances are open to the public, which is a common practice of a church.
- Reported that the circle of the dance is a symbol and that this dancing is very much tied to their religion.

Commissioner Kundtz pointed out that neighbors have indicated what they believe are an acceptable number of events. He added that his own church keeps a 12-month calendar of projected activities and asked if the church can show how many activities are calendared for the balance of the year.

City Attorney Jonathan Wittwer advised that Commission that he was distributing a 2006/2007 calendar that the church provided to staff.

Mr. Radmillo Brozinovich said that every Sunday there are activities after the worship service.

Commissioner Kundtz asked if this could be considered a pretty active campus.

Mr. Radmillo Brozinovich said that most of the time not much is happening.

Commissioner Nagpal asked Mr. Radmillo Brozinovich if he could identify the most common hours of activities and when most of those activities are over.

Mr. Radmillo Brozinovich said that most regular events are done by 11 p.m. on weekends, 10 p.m. or sooner on weeknights. Dance events end by 11 p.m.

Commissioner Nagpal asked the end time on Sundays.

Mr. Radmillo Brozinovich said that nothing occurs beyond afternoon or starts before 10 a.m.

Commissioner Nagpal asked about the alcohol. Is it wine only or all types of alcohol?

Mr. Radmillo Brozinovich:

- Said that they are licensed to serve all types of alcohol.
- Added that this may be a more intense type of ABC license than is necessary as the church is functioning these days.
- Advised that other liquor license options will be explored that may cost the church less each year.

- Informed that they usually only serve beer and wine but that occasionally something else is served.
- Assured that this is not a public bar but rather the service of alcohol is simply a part of the church's fellowship activities.

Commissioner Nagpal asked what the lesser version of an alcohol license might allow.

Mr. Radmillo Brozinovich said that one such ABC license is issued on an event basis.

Commissioner Nagpal said that she is interested in hearing more about that option if it is available over a general liquor license.

Mr. Radmillo Brozinovich said that the option needs to be evaluated and revisited with the Church's Board and representatives from ABC. There would be a per event fee charged.

Commissioner Nagpal asked Mr. Radmillo Brozinovich if the church is willing to contemplate such a license.

Mr. Radmillo Brozinovich said that they would contemplate that option and try to switch if it works for the church's operations.

Commissioner Kumar said that he has respect for alcohol used as part of religious dictate. He asked what days of the week the dances are held at which alcohol is sold.

Mr. Radmillo Brozinovich said that wine and beer are served at the fellowship luncheons. At dance classes no alcohol is served. At the fundraising dances some food and drinks are served, both alcoholic and non-alcoholic beverages.

Commissioner Kumar asked if wine is one type of alcohol that is imperative for a church to be able to serve.

Mr. Radmillo Brozinovich said that they are entitled to serve it and should continue to be entitled to serve it.

Rabbi Daniel Pressman:

- Advised that he is the Senior Rabbi for Congregation Beth David located on Prospect.
- Said that there is a breadth of activities that can be considered incidental for any faith community.
- Added that faith communities worship, study, share social activities as well as cultural activities. They are houses of worship and schools of learning.
- Pointed out that faith communities do a lot for the community and help form the foundation of American life. They are an irreplaceable part of what makes Saratoga a good place to live.
- Joked that his own faith cannot do anything without including food except for Yom Kippur.

Commissioner Kundtz asked Rabbi Pressman if his temple has a liquor license.

Rabbi Pressman replied no. He added that they do have a commercial grade kitchen. They are more of a food-based than liver-based culture and never serve more than wine with meals.

Commissioner Zhao asked Rabbi Pressman if they have plans to get a restaurant license.

Rabbi Pressman said that they have the necessary licensing to serve food from their commercial grade kitchen. He assured that none of the faith communities is a restaurant like Denny's.

Commissioner Nagpal asked Rabbi Pressman if they have no license for alcohol service.

Rabbi Pressman said that they do not have a full liquor license.

Commissioner Nagpal pointed out that either all faith communities must need such licensing or perhaps none do.

Rabbi Pressman said that each faith-based community does its best to do what is required. He assured that they are not in violation in their food service safety, as they want to be good and law-abiding neighbors.

Mr. Dick Wheeler, Resident on Chester Avenue:

- Said that his home is located about one-tenth of a mile from the church and that he is an 18 year resident of Saratoga.
- Stated that he is against having a bar and restaurant located in his residential neighborhood.
- Added that he intends no disrespect to this church, as he has been a member of St. Andrews for the last 18 years.
- Said that he is against this Use Permit.

Mr. Alex Pance, Resident on Williams Avenue:

- Said that he moved into the neighborhood in 1999. He and his wife are professionals who are highly educated and raising two children.
- Advised that his son will graduate from Saratoga High School tomorrow.
- Stated that this is a great community.
- Said that he wanted to be close to his Serbian church.
- Added that he understands what the Planning Commission is trying to do. They are trying to reach accommodation for both sides.
- Cautioned against crossing the line and going into defining what a religious activity is supposed to be. That is unacceptable.
- Assured that they are trying as a community to address the issues being raised here.
- Pointed out that he passes by five different churches each Sunday on his way to this one.

Ms. Brooks Szozyga, Member of St. Nicholas Orthodox Church:

- Said that she belongs to another orthodox church in the community, St. Nicholas. She has resided in Saratoga since 1987.

- Advised that her priest asked her to read his statement into the record. His comments said that the church is a meeting place for many occasions including feast days, baptisms, weddings, funerals, memorials, and for special needs and regular services. It is the center and heart of the Orthodox Christian community. He said that he prays for the realization of St. Michael's dream.

Ms. Sonja Cvitanich, Resident on Devon Avenue:

- Said that she is a resident of Saratoga who is not a member of this church but who does attend services.
- Stated that the church is a place for people to come together.
- Added that the dances are cultural and traditional.
- Said that they need to be allowed to have a place to gather.
- Asked that the City not place so many restrictions that they cannot function.

Mr. Bernie Mills pointed out that he had Assyrian line dancing at his wedding.

Ms. Diane Drewke, Resident on Serra Oaks Court:

- Said that her home is located quite close to this church.
- Quoted that those who don't learn from history are doomed to repeat it.
- Pointed out that there have been problems with this church as neighbors.
- Recounted that in 1998 a letter was sent from the church to adjacent neighbor Mrs. Wong.
- Added that the Wongs were so impacted by the church that they moved out.
- Assured that she is not against this church or religion but the neighborhood has the right to live in a quiet neighborhood.
- Listed events that occur at the church site including a European Train event, Serbian panel and Remembering Home banquet.
- Asked for assurances on the enforcement of any Use Permit approved. She asked what vehicle there would be for complaints and what the consequences of non-compliance would be.
- Reiterated that she is not against any church.
- Advised that the City has an Ordinance that limits public dances to two. These dances create problems for the neighborhood.
- Reported that the reason the neighbors want to see the seating limited to 150 is because Council established that number in 1968 due to the parking situation.

Commissioner Nagpal said that she has questions about violations. She pointed out that there haven't been as many in recent years. She added that the mechanism for enforcement is with the conditions of approval that will be imposed with this updated Use Permit.

Ms. Diane Drewke said that the question remains how that enforcement is generated.

Commissioner Nagpal said that it is based on calls received.

Ms. Diane Drewke said that quite a number of complaint calls have been received and Director Livingstone can verify that since he supervises the Code Enforcement staff.

Commissioner Nagpal cautioned that complaints are not necessary violations.

Ms. Diane Drewke said that she does not know how to get a violation.

Commissioner Nagpal said that it appears that in recent years things have gotten better. However, at the present time there is no Use Permit that is sufficient to enforce. She asked Ms. Diane Drewke if there are any issues that are not addressed in the draft resolution for this Use Permit.

Ms. Diane Drewke said that neighbors would describe their experiences with the church.

Commissioner Rodgers said that this is an updated Use Permit for this existing church that had a lot of complaints in the past. The Commission will try to address those issues it can. She added that she is not hearing from anyone that there should not be a Use Permit issued. She said that she wants to hear from the neighbors what they want to put forward.

Ms. Diane Drewke said that the City already has an Ordinance that is explicit about only allowing two dances per year. She added that they are not allowed in a residential zone only commercial.

Chair Hlava pointed out that that particular Ordinance is directed to a public dance. The issue is whether dance lessons are considered public dance.

Commissioner Nagpal said that Condition 9 deals with the dances.

Mr. Danny Wong, Property Owner on Allendale Avenue:

- Said that he is here tonight with his wife.
- Advised that they moved to Allendale Avenue in 1986 and stayed in that house until early 2002.
- Explained that part of the reason they moved was that they could not live with the environment created by activities of the church.
- Added that there was a lack of effective management.
- Said that they had to live with morning catering truck deliveries as early as 6 a.m., before they wanted to wake up in the morning.
- Said that they reported this situation to the City's Code Enforcement.
- Added that some of the evening dances lasted beyond midnight.
- Said that he kept the Sheriff's and Code Enforcement numbers on the refrigerator and they didn't deserve that.
- Said that apologies and promises of better behavior were offered by letter in 1998 and again in 2001. At the 2007 mediation meeting apologies were again made by the current President of the church.
- Asked how many apologies they are expected to accept.
- Said he seeks fairness to the neighbors.

Commissioner Nagpal asked Mr. Danny Wong to specify hours of operation he felt were reasonable for a church.

Mr. Danny Wong said simply reasonable hours.

Commissioner Nagpal said that she is asking for his direct input on operational hours since his home is located right next door to the church. She asked if 9 a.m. to 10 p.m. is acceptable.

Mr. Danny Wong said that on weeknights he would prefer activities conclude before 10 p.m.

Commissioner Nagpal asked about hours to 11 p.m. on Saturdays.

Mr. Danny Wong said that this is too late from his standpoint. He added that there is lots of room for improvement on the City's complaint form and the enforcement process.

Dr. Robert Barr, Resident on Camino Barco:

- Said that some of what he intended to say has already been covered.
- Advised that things have escalated including having peeping toms on the church property looking into his yard and pool area to the discomfort of his wife and daughter.
- Said that his house has been egged and trash has been dumped on his front yard. Someone threw dirt on his daughter as she rode her bicycle in the backyard.
- Reported that he added three extra feet of plywood to his back fence to protect his family.
- Stated that alcohol service causes and/or escalates problems.
- Suggested that this church be allowed only the same uses as are allowed at the other 15 churches located in Saratoga.
- Pointed out that his church has potluck events with food cooked off site.
- Said that he has three things that he would like to see the City do and handed a list to staff.

Chair Hlava called for a break at 10:08 p.m.

Chair Hlava reconvened the meeting at 10:18 p.m.

Mr. Darryl Huff, Resident on Harleigh Drive:

- Pointed out that this church has known for years that they were not supposed to allow church parking on their adjacent residential property.
- Suggested the following parking conditions:
 - Parking is not allowed on the adjacent church residential property.
 - Build and maintain a permanent fence on the property line adjacent within 30 days of issuance of a new permit.
 - Provide sufficient church parking on the church property.
 - Provide shuttle service if necessary.
 - Include a monitoring and compliance program with penalties for lack of compliance with the conditions of the Use Permit.
- Stated that the Use Permit must state what is allowed and what is not allowed.
- Said that a painted line delineating the two separate properties is not sufficient since the church has a long-standing lack of compliance and years of consistent violations.
- Added that the Use Permit must address the concerns of the surrounding neighbors.

Ms. Rhonda Huff, Resident on Harleigh Drive:

- Said that her home is located two-tenths of a mile from the church.
- Said that neither liquor nor restaurant permits are permitted or conditioned uses in a residential neighborhood. It is unacceptable to excuse those uses in a residential neighborhood.
- Asked why this church is receiving special consideration when there are obvious public safety concerns.
- Pointed out that no other church in Saratoga has either a liquor or restaurant license.
- Said that no preferential treatment should be given a religious organization over regular residents.
- Said that the law should be followed and that this church no longer should be allowed to sell food or liquor in our neighborhood.

Ms. Virginia King, Resident on Serra Oaks Court:

- Said that dance lessons are held every Thursday and she believes they are public events and not religious events.
- Pointed out that folk dancers are meeting there.
- Reminded that the City Code limits no more than two dances a year at a church.
- Reiterated that this is not part of a religious service.
- Advised that there were five no-host bar parties that lasted until 10 p.m.
- Added that there are fundraising activities for the church held weekly.

Mr. Nikola Milo Miljevich, Resident on Miljevich Drive:

- Reported that he is hard of hearing.
- Said that he had thought that this would be a meeting about a building permit for a new church.
- Said that banquets have been held at this church for 47 years and all of the sudden there is still discussion about food and liquor.
- Reported that he was the President of the church when the social hall was constructed. A bar was put in place to raise money to pay the mortgage. Sometimes they made \$4,000 a night.
- Asked if he was against liquor and responded no, he has consumed a lot in his life.
- Added that he does expect liquor to be controlled and that he is against a mobile bar.
- Opined that this is not a Serbian church any more but more a Serbian social club.

Chair Hlava pointed out that lots of Serbian families were part of the founding of Saratoga as evidenced by street names honoring those families such as Mr. Miljevich's.

Mr. Steve Schwartzkopf, Resident of Camino Barco:

- Said that he had heard rumors of neighborhood problems with this church when he first moved in.
- Added that he sent emails and left voicemails at the City to learn more but there was a failure to respond.
- Said that this appears to exemplify the way the City has dealt with this situation in the past.
- Stated that the only logical remedy is to start this with a clean slate – a new Use Permit.

- Said that the church should be afforded the same rights as other churches in Saratoga as well as the same restrictions. That way the rights of the neighborhood and church are protected.
- Said the City should develop the conditions for the operation of this church with participation by the church and neighbors.
- Advised that there is a lack of trust that has been fostered by the City's neglect in the past, which has caused a rift in this neighborhood.

Ms. Muriel Mahrer, Resident of Myren Drive:

- Stated that this is her third house in Saratoga.
- Added that she has been a Saratoga resident for over 50 years and raised seven children here.
- Informed that she is not a member of this church but she has attended functions there including folk dance classes, which are a community event.
- Cautioned against restrictions against this and other churches.
- Pointed out that she has been to similar activities at other churches in Saratoga.
- Said that she has left early from folk dance classes at this church and found that one cannot hear any noise from that activity outside of the building. The classes run from 7:30 p.m. to 10 p.m.
- Suggested that members of the Commission come to class to see what happens. It includes both church and non-church participants.
- Urged careful consideration on restrictions placed on this church.

Jody Tatro, Resident on Chester Avenue:

- Stated thanks for what the Commission does for the City as volunteers.
- Suggested that all act as good neighbors.
- Said that there should be limits to what can occur in a single-family area.
- Added that they should be treated fairly.
- Reported that St. Andrews has one big function a year that goes to 10 p.m.
- Added that this church does not have to stop being a church but it has to be kept in check.

Ms. Cheri Jensen, Resident on Quito Road:

- Said that there are landscaping and setback issues.
- Said that this Serbian church is ragged and unfinished. Nothing there is planned.
- Added that this is not a big enough property for the kind of uses being talked about. This land does not meet a Saratoga level of developed land. The physical environment needs to be addressed.
- Added that it is not set back far enough from its neighbors.

Mr. Arvin Engelson, Resident on Seagull Way:

- Said that he is with Saratoga Federated Church as well as a Saratoga resident.
- Reported that the two earliest faith communities in Saratoga were formed in 1872 and 1878 and were later merged to become Federated Church.
- Stressed the need to "love your neighbor."
- Pointed out that there are no social services provided by the City. Instead churches provide such services.

- Said that in addition to religious activities, churches serve the community. If restricted to serving only its members, core convictions are overlooked.
- Added that 20 percent of those served by his church are not a part of the community.

Commissioner Hlava asked if other issues embodied in this Use Permit's conditions are not workable for a church to function.

Mr. Arvin Engelson:

- Replied yes.
- Added that one that limitation that causes concern is the restriction limiting the raising of funds only for operations of the church.
- Advised that their church raises and gives away more than its annual operational budget each year.
- Said that both regional and global giving is encouraged. Good causes can be invented or found.
- Added that they have a commercial grade kitchen but is not sure what type of County license they have.
- Said that with the aging of the population there is also a change of volunteerism.
- Advised that if this Use Permit is too tightly conditioned it will create problems not embraced by any faith community in town.
- Pointed out that elementary schools don't even have enough parking for its events.
- Reported that Federated completed two major projects in the last couple of years.
- Added that their project's design was improved by this body (Planning Commission) and our neighbors.

Chair Hlava said that she belongs to the Foothill Club and Federated Church helps by providing overflow parking.

Mr. Charles Walton, Resident on Allendale Avenue:

- Said that he is representing the Church of Jesus Christ of Latter Day Saints.
- Asked that the Commission consider how the activities of faith-based communities benefit the community.
- Advised that his church does not charge for the use of its facilities. They allow the use of their field for sports such as soccer. They have a full-sized basketball court and indoor stage that they make available for community groups including Eastfield Ming Quong, Cub Scouts, Boy Scouts, youth dances, Red Cross blood drives, 12-step programs and emergency preparedness training. They have a donation trailer and sponsor a humanitarian project where hygiene kits are assembled.
- Said that such activities benefit the whole community.

Ms. Lisa Kurasch, Resident on Ravenwood Drive:

- Said that she is not a parish member but is a member of the neighborhood.
- Stated that she has never heard noise from their activities. She has never seen a problem with street use or circulation or noticed any disorderly conduct at all.
- Expressed her support for the renewal of this Use Permit.
- Stated that she concurs with the conclusions of the staff report.

- Said that social events help fund church objectives.
- Pointed out that few conditions were imposed on St. Andrews. They are allowed Code exemptions, as should be St. Michaels. If uses were negated on one church site, they would have to be negated on others.
- Said that it is wonderful to have exposure to other cultures.
- Advised that St. Andrews is open to friends, neighbors and family members of parishioners.

Mr. Robert Adzich, Resident of Cupertino:

- Said that he has been a member of this church since he was born.
- Advised that he is married with three small children.
- Stated that churches are a vital part of our nation's communities.
- Described how church has impacted his life over the years.
- Explained that this church welcomed his parents into the community before he was even born.
- Added that the church helped his father to find employment and helped build his parents' home in which they still live today.
- Said that the church has had a powerful impact.
- Recounted that his grandmother used to make the Eucharist bread weekly.
- Informed that while the church could not accommodate his wedding celebration, he was able to hold the reception for 400 people there with no disturbance.
- Said that his children were baptized there and his grandmother's 100th birthday party was held at the church. At age 105, his grandmother passed. In her last years, she took great comfort in the daily visits from the priest of this church.
- Concluded by saying this is a brief insight on the wonderful impact this church has held in his life.

Mr. Tomo Galeb, Resident of Seagull Way:

- Explained that he was watching this hearing on television and felt the need to come here to speak.
- Added that it felt like an inquisition was going on here.
- Said that St. Michaels holds both cultural and funding raising events. There is a lot of Serbians that need help. Over the years, money has been sent back to the old country instead of into the church building.
- Suggested that when someone buys a house next to a church, it goes with the territory that activities will occur at that church. He compared this to the fact that he lives next to a train track so he deals with trains.
- Said that one person who placed restrictions on religious freedom was Hitler.

Mr. William Brooks, Resident of Merrick Drive:

- Said that he is not a member but rather belongs to another church.
- Added that he is also not a neighbor to this church.
- Said that a magnificent job was done on the staff report and he is impressed.
- Stated that the report gives the tools needed to deal with the concerns raised by the neighbors.

- Pointed out that on page 6 it is clear that City Code provides that problems with a Use Permit can be brought back to the Planning Commission.
- Suggested that this church be given the opportunity to prove itself.
- Said that the modified Use Permit should be adopted with conditions. Any problems can be brought back to see if tighter restrictions are needed at that time.
- Said that churches do more for the community at large and not just for their members.
- Added that if the church is willing to go with these conditions, they should be adopted.

Mr. John Ivancovich, Resident of Hollister:

- Said that he is a member of this church as are his parents.
- Said that it has been tough to hear the criticism.
- Added that they have done their best and met with a mediator and the neighbors.
- Stated that the issue is “beyond me” and he is not sure where it is coming from.
- Assured that the church does not operate as a bar. A bar was constructed in the building decades ago but was also torn down years ago.
- Stated that everything made by God is good.
- Said that dance for children and adults is a good thing.
- Said that they are trying to be good neighbors and provide the services that God asks us to provide.
- Expressed hope that when they build their beautiful new church that all will feel welcome to come there on Sunday.

City Attorney Jonathan Wittwer read a letter into the record from Claire Ann Johnson who lives on Johnson Drive. She explained in her letter that she has lived in Saratoga since 1981 and wants strict controls on this church. She adds that she does not support their liquor and restaurant uses.

A neighborhood representative presented the rebuttal comments as follows:

- Said that Diane’s banker box of information on this situation is helpful in demonstrating how the church’s activities are implemented and resulted in noise, litter and damage.
- Said that it is important to be a good citizen and communicate.
- Stated that Code Enforcement will need to make sure that the community is facilitated.
- Added that imposing conditions that are successful in controlling activities will help heal the rift that has developed in this neighborhood with this church.
- Opined that no church needs to serve hard liquor. It is an out and out bad idea.
- Reminded that no one has said anything about not wanting to have the church there.
- Said that what is desired is a cooperative relationship with everyone getting along.

Ms. Jolie Houston, Attorney for the church:

- Said that many emotional statements have been made.
- Stated that the focus needs to be on uses allowed included incidental uses and to determine what are church-related uses.
- Said that every church is different and the focus needs to be on this church’s needs and beliefs.
- Added that it should be based on hours of operation as well as limits on the number of special events each year.

- Asked that dance lessons and fundraisers not be limited.
- Pointed out that there are disputes about past activities.
- Said that the focus needs to be on the conditions agreed to by the church.
- Expressed the hours of operation as being 9 a.m. to 10 p.m. weekdays; 9 a.m. to 11 p.m. on Saturday; and 8 a.m. to 10 p.m. on Sundays.
- Said that faith-based practices should be allowed.
- Reminded that there are enforcement mechanisms available to the City.
- Suggested a one-year review.
- Reminded that another Use Permit application would soon come forward before this Commission for a new church building.

Chair Hlava closed the public hearing for Agenda Item No. 3.

Chair Hlava explained to those in attendance that this is now the time for this Commission to deliberate. They will ask the City Attorney questions and make a decision after reviewing the conditions one by one.

Commissioner Nagpal said that there might be an opportunity to lump a few of the conditions together.

Chair Hlava:

- Said that Condition 1 states that this new Use Permit under consideration this evening will supersede the two previous Use Permits.
- Explained that Condition 2 clarifies that the updated Use Permit pertains to the existing facilities.
- Said that Condition 3 offers a definition of the operation of a religious institution and religious activities.

City Attorney Jonathan Wittwer explained that the intent is not to say that the church could not have fundraising events for another cause just that the church itself sponsor the event. It prevents other groups not related to the church for doing so. He added that it is better if the church sponsors any fundraiser and is the recipient of the funds even if the funds are later to be given over to another charity by the church.

Chair Hlava suggested that the language would be clearer if it states that predominately fundraising should be for the church or its purposes.

City Attorney Jonathan Wittwer asked if it should be limited just to the church's religious purposes.

Commissioner Nagpal said that she thought the existing language covers that fundraising would be specific to the church's function, which is appropriate under this definition.

Commissioner Cappello said that the fundraising for the church could be for whatever purpose and not just for the building.

Commissioner Kundtz agreed as long as the church sponsors it. The church must sponsor the event and the proceeds go to the church for its programs.

Chair Hlava said that from the point of view of the neighbors there would be concern, as this would okay virtually anyone from using this facility. That's exactly what the neighbors don't want.

Commissioner Cappello said that the neighbors simply want operations managed so as not to be a hindrance to them.

Commissioner Nagpal pointed out that Condition 4 lists uses that are incidental to worship and religious purposes of the church.

Chair Hlava asked if this would allow a Boy Scout troop to be formed at the church.

Commissioner Kundtz said that the funds generated could be used to the benefit of the community. He said that he thought Condition 4 contains pretty good language.

Chair Rodgers said that a lot of churches get involved in outside activities and suggested that the focus be on the impacts on the community.

Commissioner Kundtz said that he wants it to be more open ended.

Commissioner Rodgers said that the neighbors are looking at church-related activities.

Commissioner Kundtz said that is best handled through limits on hours and parking.

Commissioner Rodgers said that instead of listing what they can do it would be better to list what they cannot do.

Commissioner Nagpal said that the activities should be geared to the purpose of the church.

Chair Hlava said that they should be directly related to the core values of the church.

Commissioner Kumar said that the verbiage should say, "meet the religious objectives."

Commissioner Nagpal asked about Condition 6.

Chair Hlava:

- Reviewed Condition 5 as relating to continuing jurisdiction of the Planning Commission.
- Said that Condition 6 states that the church must have the proper license for the preparation and service of food and alcohol with church events. This is not a restaurant and is not to be advertised as a restaurant that is open to the public.

Commissioner Rodgers said that they should be able to provide food to the underprivileged.

Commissioner Nagpal added that they should be able to feed guests to the church.

Commissioner Rodgers questioned the text that reads, "...only if incidental to the church's...."

Commissioner Nagpal stated that the list includes, "worship, education and objectives."

City Attorney Jonathan Wittwer said that the intent is to allow objectives to be carried out.

Commissioner Nagpal stressed that this is not a restaurant but rather that it is just a health permit category known as a restaurant permit.

Commissioner Rodgers said that she does not want to prohibit churches from doing charitable work. Church encompasses more than just their worship services.

Chair Hlava said that the allowed uses are related to objectives.

Commissioner Nagpal said that they include community, social services and all that. She stated that churches are faith communities and we want them in our neighborhoods and to be good neighbors.

Commissioner Kundtz asked whether the language is specific enough to be enforceable or does it represent a new level of vagary.

City Attorney Jonathan Wittwer said that it is a specific as we can get without adding a long list.

Commissioner Nagpal said as long as impacts are mitigated.

Chair Hlava said it appears the general consensus on Condition 6 has been reached. She asked if the same standard applies to alcohol and Condition 7.

Commissioner Kundtz said that alcohol is an integral part of the activities and events of the church. He added that he is of the mind to reduce from a full liquor license. He suggested that the church be required to apply to ABC for just a beer and wine license within the next 60 days.

Commissioner Nagpal said that this condition is the one she had the most trouble with as a result of the impacts raised by neighbors.

Commissioner Rodgers reminded that some beverages are a cultural part of a religious group. She added that as for bottles being thrown over a fence, she is not sure that a cause and effect can be made here. That may not even be a part of the church activities.

Commissioner Kundtz said one solution would be a keg in the bar instead of bottles.

Commissioner Rodgers said that she is not sure the problem is related to the liquor license for the church.

Commissioner Nagpal said that it is important to respect the heritage of the church members. She said that it confuses her that none of the other churches appears to have a license to serve alcohol. She said that she is not sure if it is not required or whether all churches do need such a license.

Commissioner Cappello said that if the Commission were to restrict alcohol in its entirety, when wine has always been involved in church activities and services, it would be setting a poor precedent.

Commissioner Kumar asked how this Use Permit might affect other churches in Saratoga. Is it setting precedent?

Commissioner Zhao said she has the same question and said it is important to find out if a liquor license is needed for a church to serve wine.

Chair Hlava said that her mother was a Methodist where no wine was included in church activities. Her son attended Bellermine where wine was included at all events. The LDS church allows no alcohol. It is such an individual thing that is based on what a specific church currently does.

Commissioner Nagpal reiterated her preference that within the next six months an effort be made to tone down the type of liquor license for this church.

Commissioner Kundtz said there must be delineation between wine used as part of the sacrament versus social drinking. He added that churches have fundraisers with open bars. He said that the type of liquor license spawns a discussion.

Commissioner Rodgers said that a little common sense has to come into play on this issue.

Chair Hlava asked if there are any changes needed for Condition 7.

Commissioner Cappello said he likes the wording very much. It is very carefully crafted and well put.

City Attorney Jonathan Wittwer suggested adding the words, "...and objectives" to the text.

Commissioner Nagpal asked for comments from the Commission on the idea of having the church evaluate the possible reduction of its type of liquor license within the next 60 days or so.

Commissioner Cappello said that this may not do much for us as it may be determined that the license must remain, as it is necessary to serve the needs of the church's activities.

Chair Hlava reminded that this Commission would be looking at the whole issue of this church again when the next Use Permit comes up within the next 60 to 90 days for the proposed new sanctuary. She suggested that this recommendation for an evaluation to consider the reduction in type of liquor license be done in conjunction with that Use Permit.

Commissioner Rodgers suggested that this issue be reported back to the Commission.

Commissioner Zhao questioned what drove the church to apply for a liquor license. She asked for clarification as to whether this means that every church needs such a license in order to serve any alcohol.

City Attorney Jonathan Wittwer said that the City does not have any control over ABC licensing at all. The City can change the allowed uses of a site but not the liquor license category that is applicable for those uses.

Commissioner Nagpal stressed the need for the church to evaluate the frequency of alcohol use and the applicability of the licensing for liquor service.

City Attorney Jonathan Wittwer:

- Said that he spoke with someone at ABC.
- Advised that legally a license is required for alcohol service but there are different types of licenses. One is a per-event license.
- Added that ABC is aware that not everyone complies with the requirement to have a license from ABC to serve alcohol.
- Stated that some churches do have the licensing and others do not.

Chair Hlava:

- Said that this raises an important question if a lot of churches should have ABC licenses but do not.
- Pointed out that this church has gone out and gotten the necessary license from ABC.
- Reminded that this church used to rent out its hall so perhaps that license was more necessary when that rental activity was occurring.

Commissioner Kundtz reminded that one member of the church mentioned that the hall used to be rented out in order to pay the mortgage.

Chair Hlava said that the easiest thing for the church to do might be to simply renew their existing license, which is why they have likely continued to do so each year.

Commissioner Cappello asked what if they want to reduce their use.

Commissioner Nagpal said that the existing use would have to be reviewed.

Commissioner Cappello questioned whether an event-based license is practical for this church.

Commissioner Rodgers reminded that the definitions of the licensing are ABC's. She reminded that they simply represent a category that encompasses a lot of organizations.

Chair Hlava asked who wants the liquor use and ABC licensing to be evaluated.

Commissioner Zhao pointed out that a lot of the neighbors have concern about alcohol while she does not have such a concern. She added that there should be measures to manage events where alcohol is served.

Commissioner Rodgers said that might include a need for security but that requirement might have to be imposed on other churches as well.

Chair Hlava asked for a sentence to complete the text for Condition 7 that accomplishes the goals of the Commission on the issue of service of alcohol.

Commissioner Nagpal suggested, "Require the applicant to evaluate the frequency and type of alcohol use for a per event license versus their existing ABC license within 120 days or when the new Use Permit is processed."

Director John Livingstone said he is looking for structure of how to implement this requirement. He asked if it is the Commission's intention to have the church come back and speak under Oral Communications. Does the Commission want to see the Use Permit modified again once the research is done through ABC on licensing options for this church?

Commissioner Kundtz said that the language in Condition 7 should stay as it is. A condition can be included that indicates that a new building is proposed which will be evaluated and conditioned through the issuance of a new Use Permit.

Director John Livingstone reiterated that he needs direction to understand what forum and/or action this Commission wants to use to bring the updated information back.

Commissioner Kundtz said that it would be sufficient under Oral Communications.

City Attorney Jonathan Wittwer cautioned that an item would have to be on an agenda in order for the Commission to give direction to the applicant.

Director John Livingstone added that the applicant would have to pay a filing fee. It is a real structured process.

Commissioner Nagpal asked staff when the application for the new sanctuary would be brought before the Commissioner.

Director John Livingstone said he does not know. The environmental review is not complete. It is a long process.

Commissioner Nagpal supported bringing the issue under Oral Communication.

Commissioner Nagpal said she has trouble with that restriction.

City Attorney Jonathan Wittwer said that there is a disturbance condition that has not yet been discussed that includes enforcement options.

Commissioner Nagpal pointed out that there is a lack of trust and a bad history between the neighbors and church that needs to heal. She stressed the need for some mechanism to allow for communication, some sort of monitoring. She suggested conditioning a review in the next six to 12 months.

Chair Hlava reminded that this Commission has continuing jurisdiction. She asked staff if a monitoring review could be conditioned in six months.

Commissioner Nagpal suggested that such a review would not require that the applicant file a new application.

Commissioner Kundtz said that the President of the church board has said he would look into the alternate liquor licensing options.

Commissioner Nagpal said that there is an opportunity to condition a review in a year. She added that it would be her hope that the review would reveal a success story.

Chair Hlava suggested letting this issue sit for a moment and go on with the review of the other conditions.

Commissioner Kumar said that wine is relevant with religions, as per our discussion with the Church President, but other use of alcohol at events may fall outside of religious activities. While wine use may be imperative, all other uses of alcohol are probably not relevant for this church.

Chair Hlava raised the issue of Condition 8 that applies to on-site catering that includes weddings and banquets as well the issue of delivery hours. She reminded that Mr. Wong has specific objections to these deliveries but he was okay with delivery hours after 9 a.m. He also felt that 11 p.m. was too late for any activity on site including catering clean up. She asked if there is any way to restrict trucks at the back near the Wong property.

Commissioner Kumar said the Commission needs to differentiate between weekdays and weekends.

Commissioner Nagpal said that defining Condition 10 would help with Condition 8.

Chair Hlava asked for suggested hours of operation.

Commissioner Nagpal said 9 a.m. to 10 p.m. on weekdays and 9 a.m. to 11 p.m. on Fridays and Saturdays.

Chair Hlava asked about allowing 8 a.m. on weekends as church services often start earlier than 9 a.m.

Commissioner Kumar suggested that 10 p.m. might be a drastic closing time on weekdays and pointed out that his own kids are in bed at 8 p.m.

Commissioner Nagpal asked for the hours for the dance classes.

Commissioner Rodgers replied 7:30 to 10 p.m.

Chair Hlava added that there are a couple of dinners that last to 11 p.m.

Commissioner Rodgers pointed out that the Mountain Winery events end at 10 p.m.

Chair Hlava pointed out that two-hour shows are all they do there.

Commissioner Nagpal asked if the hours should be less than 11 p.m. on Sundays.

Chair Hlava suggested 9 a.m. to 10 p.m. on weekdays; 8 a.m. to 11 p.m. on Fridays and Saturdays and 8 a.m. to 6 p.m. on Sundays.

Commissioner Nagpal said that these hours would not include Christmas and Easter. She suggested specifying the number of special events.

Commissioner Rodgers pointed out that a fair number of church meetings occur on Sunday evenings.

Chair Hlava suggested modifying Sunday hours to 8 a.m. to 9 p.m.

Commissioner Nagpal asked how these hours impact catering trucks and deliveries.

Commissioner Cappello said the hours are fine but no activities can occur beyond those times including deliveries that are a hindrance to nearby neighbors. All activities occurring on site during the week can start at 9 a.m. and must end by 10 p.m. On Friday and Saturday, activity can start at 8 a.m. but must conclude by 10 p.m.

Chair Hlava asked if the church ever has early morning services and it appears they do not based on comments from the audience. She restated the suggested hours as being between 9 a.m. and 10 p.m. weekdays, 8 a.m. to 11 p.m. on Friday and Saturday and from 9 a.m. to 9 p.m. on Sunday.

Commissioner Rodgers pointed out that this is a small parcel and the neighbors are very close.

Commissioner Hlava said that deliveries could only occur during allowed operational hours. She brought up Condition 9 that prohibits public dances.

Commissioner Nagpal said that Condition 9 is worked quite well. She added that the existing dance lessons are not public dances but rather activities related to the church.

Commissioner Rodgers reminded that people are invited beyond parishioners.

Commissioner Cappello asked if Israeli dances would be allowed as the text reads or if the term "orthodox" dancing might be too restrictive.

Commissioner Kundtz agreed that the dance lessons reflect many different folk cultures.

City Attorney Jonathan Wittwer wanted it added to the record that community outreach is okay but advertising to the general public is not.

Chair Hlava mentioned that Condition 11 requires the church to obey the regulations of the Noise Ordinance. Condition 13 deals with applicable Codes on parking.

Commissioner Nagpal said that she has a problem with how Condition 13 is worded.

Chair Hlava said the problem is with the first sentence that states, "the church shall primarily utilize the main lot for parking." The condition goes on to provide what actions would need to be done to use the residential church parcel.

Commissioner Kundtz said that he envisions poles with chains. The chains can be dropped for overflow parking on Christmas and Easter. All other times the church would be required to use proper parking and the property line would be cordoned off.

Commissioner Nagpal questioned whether the second parcel should be allowed to be used for certain circumstances for parking.

Chair Hlava said that the intent of the Condition 13 is to require all parking on church property. Any mention of the residential lot for overflow is inappropriate.

Commissioner Nagpal asked what about for Christmas and Easter.

Commissioner Kumar said that the church should have an overflow lot somewhere.

Director John Livingstone:

- Said that he likes things to be black and white.
- Added that the residential parcel is either a part of the church parcel or it is not.
- Reminded that there is no provision in the residential zoning to allow a parking lot on a residential lot.
- Said that the residential lot is not a part of this project.
- Stressed the importance of putting in a fence to effectively separate the two parcels so it is clear that no parking can occur on the church's residential parcel. The fence should be put up and kept in place.

Chair Hlava said that it must be clear that only the church lot can provide parking. She brought up Condition 14 on signs.

Commissioner Rodgers suggested that some landscaping might be added and would be a good way to do outreach to neighbors. She suggested that the story poles be taken down as they are unattractive and block some available parking spaces.

Chair Hlava said that this is a timing thing. It is difficult to require that money be spent on landscaping when the whole site will change when the pending new sanctuary application is processed. She added that story poles are helpful but that she could support putting in a time period by which the new sanctuary plans must be before this Commission. If that does not happen, some landscaping could be required in the interim.

Commissioner Rodgers said that landscaping on the borders could be installed.

Commissioner Nagpal agreed that this could serve as a sound barrier. She suggested some dialog between neighbors and the church.

Commissioner Rodgers reminded that mediation was tried already.

Commissioner Cappello said that landscaping doesn't make sense with a new proposal pending.

Commissioner Nagpal said she supports a time line.

Director John Livingstone advised that the project for the sanctuary is undergoing the CEQA review process. It is moving forward and could be before this Commission within three to four months or it could take six months or longer.

Chair Hlava asked if it would be inside of a year.

Director John Livingstone said he cannot control that answer. He added that after tonight the church could decide they don't want to go forward with that project.

Chair Hlava suggested a review by this Commission one year from today.

City Attorney Jonathan Wittwer suggested that a letter be solicited by the church and neighbors in one year to see if issues have come up that require review by the Commission.

Director John Livingstone:

- Said he prefers that the Planning Commission make that decision for review now.
- Added that the Commission could decide to impose a landscaping requirement along the shared borders with neighbors.
- Said that the alcohol issue is between beer and wine and a broader license. If the Commission prefers no hard liquor be allowed that is up for discussion but some hard alcohol is very much a part of ceremonies and/or traditions.

Commissioner Nagpal said that she likes the idea of a one-year review and suggested the addition of Condition 15 that requires a status letter from the applicant and neighbors after a year. She added that landscaping is not that expensive and adding some landscaping along the Wong property might serve as some kind of privacy barrier.

Commissioner Cappello pointed out that the Commission did not hear any complaints about aesthetics.

Chair Hlava asked what landscaping would be taller than a fence.

Commissioner Nagpal suggested trees.

Chair Hlava said that trees also take time.

Director John Livingstone added that trees are not that effective for sound attenuation but just aesthetics.

Commissioner Rodgers pointed out that the Wong fence's heights and gaps provide an inadequate barrier. She suggested that temporary fencing be put in place that is higher than permitted under the Fence Ordinance to offer adequate privacy.

Chair Hlava said the Commission couldn't approve that. The owners would have to apply for a height exception.

Commissioner Rodgers said that she wants to do something regarding noise and nuisance issues.

Chair Hlava asked if there is agreement on the proposed one-year review.

Commissioner Cappello said if it helps the project move forward he is in agreement with the one-year review.

Director John Livingstone said that the Condition for a one-year review should include the recommendation that each side send a letter to the Commission one year from now.

Chair Hlava asked for comments on the issues of landscaping and fences.

Commissioner Zhao said that she can support that idea but questioned how easy a Variance would be to process.

Director John Livingstone clarified that Code only allows a six-foot high fence. The Commission cannot condition a Variance finding. The applicant would have to apply for a Variance.

Chair Hlava asked if there is support for adding the text, religious worship, education or objectives"

Commissioner Cappello replied yes.

Commissioner Rodgers said that she feels better with a one-year review.

Commissioner Cappello said that any problems would generate a complaint that would bring this Use Permit back to the Commission.

City Attorney Jonathan Wittwer asked if the Commission wants to allow the church to retain the ability to charge for alcohol served at weddings.

Chair Hlava said that this is a good idea. If people pay for drinks they don't drink as much as they do with an open bar.

Commissioner Rodgers said that she is nervous telling churches what they can and cannot do. She added that the City might be initiating an avalanche of Use Permits for churches.

Chair Hlava summarized the edits to the conditions as follows:

- Condition #A – must be directly related to religious objectives.
- Condition 6 – organized worship, education and objectives.
- Condition 7 – same addition as Condition 6.
- Condition 8 – delivery times consistent with hours of operation listed in Condition 10.
- Condition 9 – corrected type from “and” to “any.”
- Condition 10 – Weekday hours from 9 a.m. to 10 p.m.; Friday and Saturday hours from 8 a.m. to 11 p.m.; Sunday hours from 9 a.m. to 9 p.m., excluding Christmas and Easter.
- Condition 11 – no change.
- Condition 12 – no change.
- Condition 13 – only park on the church lot and fence off the adjacent church-owned residential property.
- Condition 17 – add a requirement for a one-year review with status letters to be provided by neighbors and the church.
- Condition 18 – previously was numbered as Condition 17.

City Attorney Jonathan Wittwer suggested an addition to Condition 4 to add religious objectives. He asked that staff be allowed to add to Condition 7 and/or 8 the provision to allow the church to charge for alcohol served at weddings.

Motion: **Upon motion of Commissioner Cappello, seconded by Commissioner Kundtz, the Planning Commission approved a Conditional Use Permit (Application #07-384) for St. Archangel Michael Serbian Eastern Orthodox Church located at 18870 Allendale Avenue, with conditions of approval as modified by the Commission, by the following roll call vote:**

AYES: Cappello, Hlava, Kumar, Kundtz, Nagpal, Rodgers and Zhao

NOES: None

ABSENT: None

ABSTAIN: None

Chair Hlava said that she hopes this new Use Permit offers enough specificity to be clear and enforceable.

DIRECTOR'S ITEMS

There were no Director's Items.

COMMISSION ITEMS

There were no Commission Items.

COMMUNICATIONS

There were no Communications Items.

ADJOURNMENT TO NEXT MEETING

Upon motion of Commissioner Cappello, seconded by Commissioner Zhao, Chair Hlava adjourned the meeting at approximately 1 a.m. to the next Regular Planning Commission meeting of **June 27, 2007**, at 7:00 p.m.

MINUTES PREPARED AND SUBMITTED BY:
Corinne A. Shinn, Minutes Clerk