

OC PLANNING REPORT

DATE: March 9, 2022

TO: Orange County Planning Commission

FROM: OC Development Services / Planning

SUBJECT: Public Hearing on Planning Application PA21-0055 for a Use Permit to establish a temple with an accessory preschool with shared parking, and a Variance for a reduction in the minimum building site area.

PROPOSAL: A request for a Use Permit to establish a place of worship (temple) and educational facility and a Variance to permit a place of worship on a building site of less than 40,000 square feet. The North Tustin Specific Plan (NTSP) requires the approval of a Use Permit by the Planning Commission for churches, temples and other places of worship, per Chapter 3.A.4.b.(1) of the NTSP and a Use Permit per Chapter 3.A.4.b.(2) of the NTSP for the establishment of an educational facility (a 30-student preschool for children ages 3 to 5 is proposed as an accessory use). The temple and the preschool will utilize shared parking. The Applicant also request approval of a Variance from the NTSP standard that requires such religious facilities be on a parcel with a minimum building site area 40,000 square feet. The subject building site area is 31,680 square feet in area.

ZONING: North Tustin Specific Plan (NTSP) - "Residential Single Family" (RSF-100) District

GENERAL PLAN: 1B "Suburban Residential"

LOCATION: The property is located on 18802 East 17th Street in the unincorporated North Tustin area, within the Third (3rd) Supervisorial District. (APN 401-081-12.)

APPLICANT: Chabad of Tustin Inc., Property owner
Rabbi Shuey Eliezrie, Applicant
Martin Kanselbaum, Agent

STAFF CONTACT: Kevin Canning, Contract Planner
Phone: (714) 667-8847

RECOMMENDED ACTIONS

OC Development Services recommends that the Planning Commission:

- 1) Receive staff report and public testimony as appropriate;
- 2) Adopt Negative Declaration PA21-0055; and,
- 3) Approve Planning Application PA21-0055, a Use Permit for a temple and preschool with shared parking and a Variance to permit a religious facility on a parcel of less than 40,000 square feet building area subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS

The subject property is located along the southerly side of East 17th Street, approximately 800 feet west of Newport Avenue. This segment of 17th Street is improved with some curbside parking and a striped bike lane crossing the frontage of the property until the street widens for a right turn lane onto Newport Avenue. The site is generally level and developed with an existing single-family residence, built in the 1950s, that is in disrepair. The existing landscaping on the site is overgrown. Existing single-family homes abut the subject site on the east, and a live-in nursing and rehabilitation facility abuts the subject site on the west. A 45-foot deep parking area serving the rehabilitation facility lies behind the subject site and separates it from additional single-family homes to the south.

View of Project Site



For the last seven years, the Chabad Jewish Center of Tustin (Applicant) has operated in leased office space at a Tustin commercial center at 13112 Newport Avenue, Suite H. For the last five years, the existing synagogue's congregation has sought a permanent home. The subject site was acquired by the Applicant in November 2019. Because the subject site is within a mile of the

commercial center they currently operate in, it is expected that the congregation will remain largely the same.

PROPOSED PROJECT

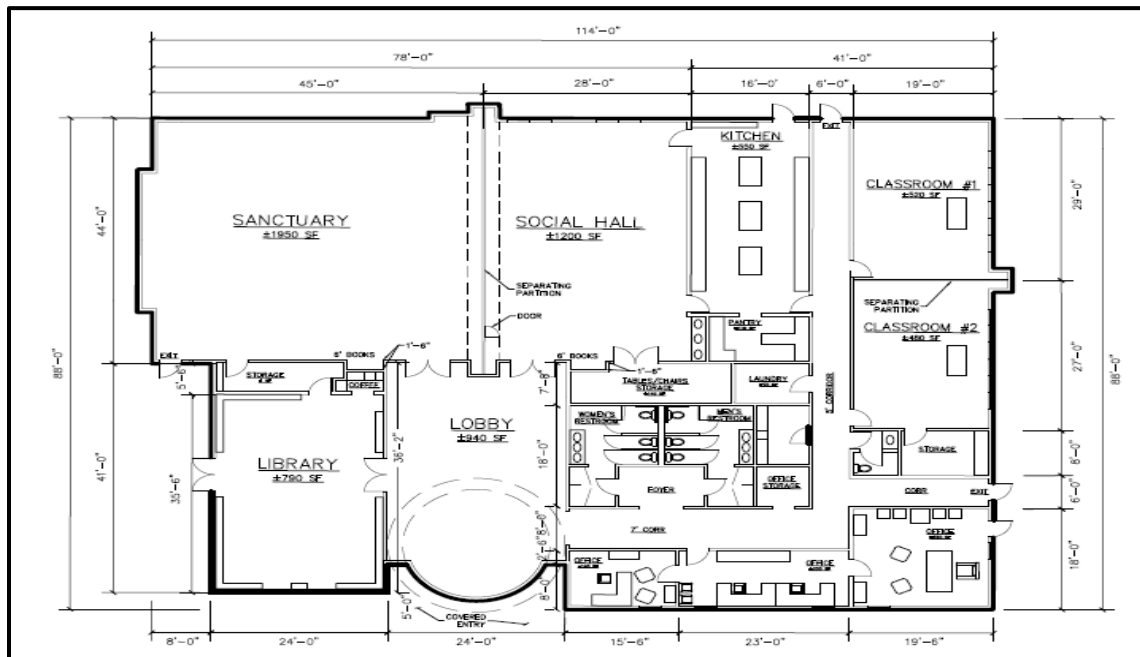
The project proposes the establishment of a new 9,850 square-foot place of worship, the Chabad of Tustin. The structure would include the following use areas:

- Main sanctuary with 50-fixed seats,
- Ancillary spaces/facilities (e.g., administrative offices, restrooms, laundry room, storage space);
- 1,080 square-foot in two classrooms; 790 square foot Torah library;
- 1,200 square foot social area;
- 550 square-foot kitchen and associated pantry space;
- 940 square-foot lobby;
- Passive outdoor areas for fellowship and social gatherings; and
- Off-street parking accommodating 20 vehicles (17 spaces required by the Zoning Code)

The operational characteristics would include the following components:

- Synagogue (main sanctuary): Saturday services between 10:00 AM to 12:00 PM;
 - Note: because this will be a religious orthodox synagogue, there is no use of amplified music or live instruments during services;
- Hebrew Sunday School: Sundays between 10:00 AM and 12:00 PM;
The Hebrew Sunday School does not offer general education and is not age specific. The primary purpose of the Hebrew Sunday School is to teach children to learn and to read Hebrew for recital at their bar/bat mitzvah.
- Private preschool with play yard: Monday through Friday between 8:00 AM and 5:30 PM
 - State-licensed, maximum of 30 preschool age children.

Floor Plan

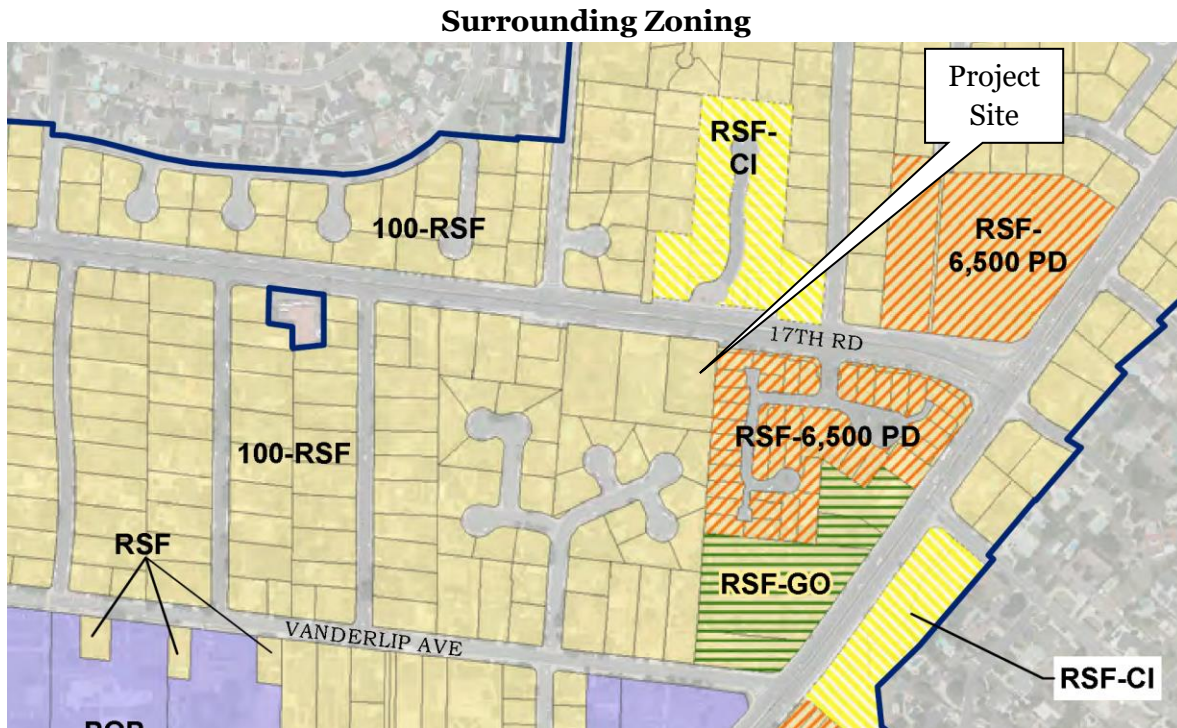


The parking for the facility will be in the front portion of the lot with separate driveways for ingress and egress and landscaping to partially screen the area. The parking will be shared among the uses given the varying times of use. The proposed structure will be located 78 feet back from 17th Street, where the North Tustin Specific Plan (NTSP) RSF designation would allow a 25-foot front setback. The rear setback will be 50 feet (NTSP would allow 25 feet), and the side yards comply with the required 14-foot (10% of lot width) setback. The structure will be a single-story with a maximum height of 30 feet at its highest point, as portions of the structure will have a vaulted ceiling, typical for a place of worship. The NTSP would allow a 35-foot height maximum.

SURROUNDING LAND USE

The project site is designated as Residential Single Family (100-RSF) with a minimum lot width of 100 feet for newly created lots within the NTSP. All surrounding properties are also with the NTSP. Zoning and existing land uses for other surrounding properties near the project site are as follows:

Direction	Zoning	Existing Land Use
Subject Site	NTSP 100-RSF	Residential
North	NTSP 100-RSF and RSF-CI	Residential
East	NTSP RSF-6500 PD	Residential
South	NTSP 100-RSF	Parking area/Residential
West	NTSP 100-RSF	Medical facility



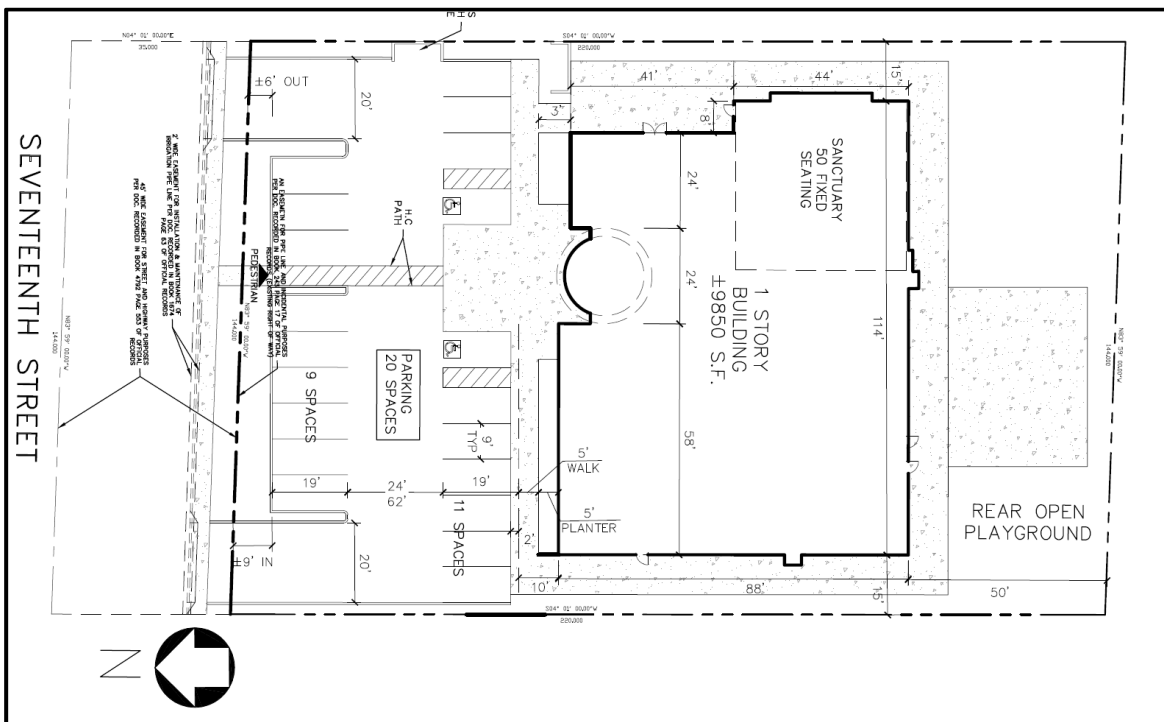
DISCUSSION/ANALYSIS

Below is a table comparing the development standards for the NTSP (RSF-100) District with the Applicant's proposal:

STANDARD	REQUIRED	PROPOSED
Building Site Area	40,000 sf minimum ¹	31,680 (existing) ²
Maximum Height	35'	30' ³
Front Setback	25' min	78'
Side Setback	14' min. (10% of lot width)	14'
Rear Setback	25' min	50'
Parking	17 spaces (1 per each fixed seat)	20

- 1 - Minimum lot area for a place of worship
- 2 - Variance requested
- 3 - Building height was reduced from 34 feet to 30 feet in response to a request from the North Tustin Advisory Committee to 'address the height'

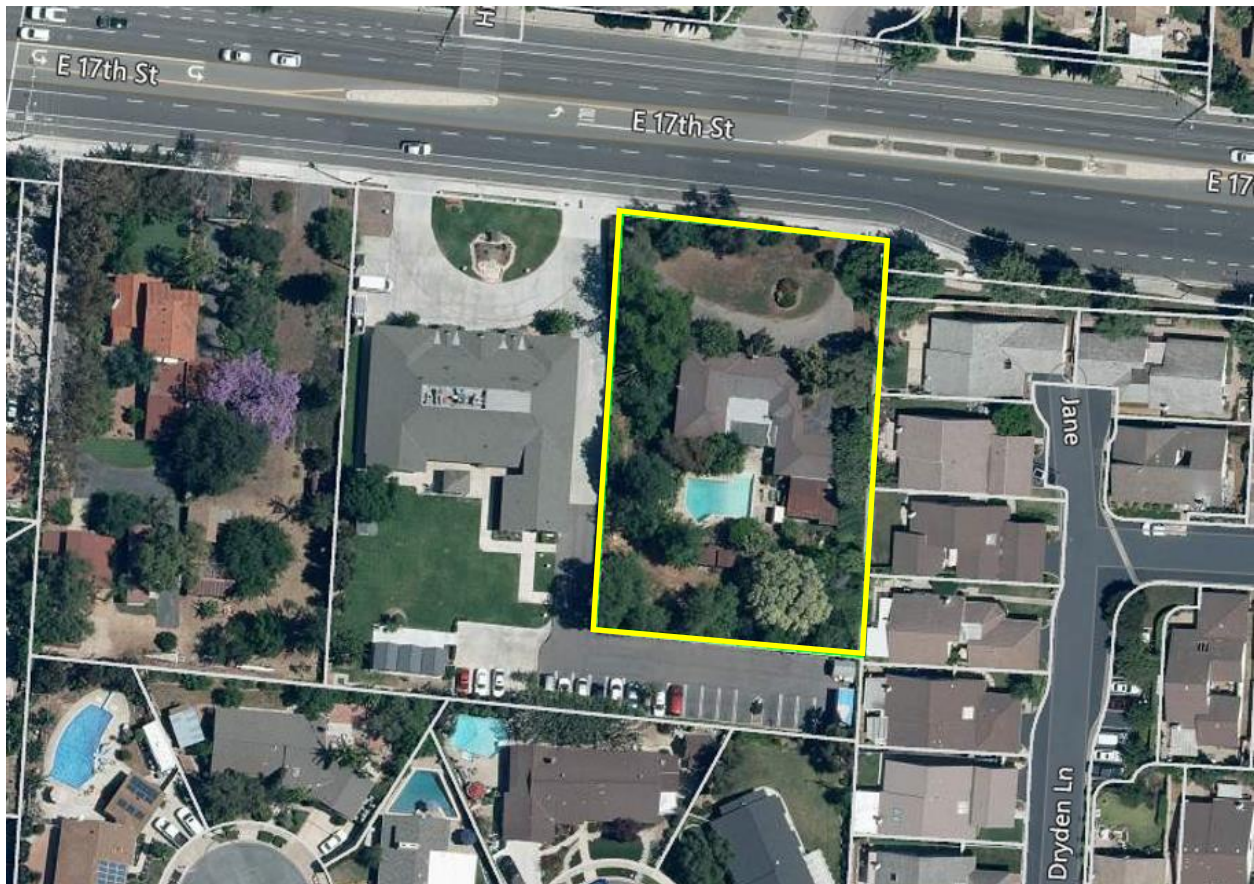
Site Plan



Request for Use Permit

The NTSP Residential Single Family district permits the establishment of places of worship and educational institutions with the approval of a Use Permit by the Planning Commission (Chapter 3.A.4.b.(1) and (2)). The purpose of the Use Permit review is to allow decisionmakers to assess a specific use proposal for a specific site and to determine if that use on that site is appropriate and whether the requested use can function on the site in a manner that is not detrimental to the surrounding community. Conditions can be included with an approval to ensure that potential

negative aspects of the project/use can be mitigated or eliminated. The discussion below reviews aspects of the subject request with an assessment of the compatibility of the project to applicable regulations and the project's environs.



The proposed structure meets all setback requirements and exceeds front setbacks, proposing a 78-foot front setback where zoning would permit 25 feet. The minimum required rear setback is 25 feet, where the proposal is 50 feet, and is further buffered from adjacent residential to the south by the additional 44-foot wide parking area serving the adjacent rehabilitation facility. The playground area for the preschool would be situated away from the residential uses to the east. An existing Montessori school, four lots west at 18692 17th Street, has open play areas directly abutting adjacent residential uses. Additionally, landscaped areas will abut adjacent uses, screening the proposed outdoor uses for the project.

To respect the easterly adjacent neighbors, the structure has been designed with no door or window openings facing the east side (except for one required emergency exit in the library area). To further enhance the privacy protection of the adjacent residence, the project will maintain the existing 8-foot block wall that runs along the common property line. The preschool play area has been located as far from the easterly neighbors as possible. The rear parking area serving the rehabilitation use, although offsite, will function as a buffer and additional setback from homes to the south.

The Chabad will have limited hours of worship (noted above in Proposed Project section) that would represent the peak use times, and periods of less intensive use for the Hebrew school. The

Applicant states that in accordance with their beliefs there will be no amplified music during worship services. The facility would also allow for other ancillary special services (e.g., bar or bat mitzvas) or social gatherings within the center at times other than their worship services, similar to gatherings that could occur in adjacent residential homes. The preschool will operate weekdays during daytime hours (8:00 AM to 5:30PM), and as evidenced by the nearby Montessori school (four lots west), such uses can successfully coexist with adjacent residences.

After an assessment of the uses and site design proposed for this site, staff has concluded that the uses as proposed would be compatible with surrounding uses and supports the application.

Parking

The County's Zoning Code requires that churches and temples provide parking based upon "1 for each 3 fixed seats, or 1 for each 35 square feet of gross floor area where there are no fixed seats (every 18 lineal inches of bench seating shall be considered one fixed seat), plus 1 space for every 3 employees of the largest shift." The Applicant proposes 50 fixed seats for the sanctuary area, which would require 17 off-street parking spaces plus an additional space for each employee (the rabbi) totaling 18 spaces, where 20 are proposed. Other spaces within the structure are complimentary to the main use of the facility as a worship center and would not generate a separate parking demand during times when the worship center is in use. This is consistent with the previous applications of the off-street parking calculations for churches and similar uses.

The secondary use as a private state-licensed educational preschool would serve up to 30 students. The preschool use would operate weekdays (8:00 AM to 5:30PM) at times separate from any worship service. Childcare that may be provided for worshipers attending services is not counted toward the educational preschool. The parking requirement for the preschool is 2 for each 3 employees and teachers plus 1 loading space for every 8 children or approximately 14 spaces (assuming 6 employees/teachers). In comparison, the Foothill Montessori provides 16 parking spaces and their website states that it serves 75 students.

The Zoning Code permits the shared or joint use of off-street parking by separate uses on a single site where it is found that there is no overlap in or coincident need of the required parking with the Director's approval of Site Development Permit. Because the other application requests require Planning Commission consideration, the shared parking request has been elevated to the Planning Commission for consideration and action. For proposed shared parking arrangements, the Code requires that the property owner or use operators enter into an agreement with the County that ensures that modifications to the uses that would change the circumstances of the parking demand may not occur without the Director's approval.

As noted, that the amount of parking provided complies with the Zoning Code requirements (the NTSP references the Zoning Code for its parking requirements).

The Applicant has also noted that due to the beliefs of the Chabad congregation, many of the congregation members do not drive to the Shabbat services that are scheduled on Saturdays. This was also mentioned by speakers during the NTAC virtual meeting (see North Tustin Advisory Committee meeting summary below). While this is not an enforceable restriction by the County, staff acknowledges that this is an established faith community (seven years) and that they have knowledge of their own well-established practices and habits.

Commenters have cautioned that special events (such as high holidays or other celebrations) could have an increased number of attendees. Staff supports the Applicant's statements that because this will be a religious, as opposed to a commercial, facility, the operator (congregation)

will be better able to monitor events and related parking demands than would be the case for a public commercial or retail use. As noted, the applicant must enter into an agreement with the County that, among other provisions, guarantees that there shall be no substantial alteration in the uses that will create a greater demand for parking. Condition of Approval No. 13 is proposed that will allow the County to address the situation if the parking provided is inadequate for special events.

Architecture

The Applicant has stated that the proposed architecture was chosen as appropriate for the use and character of a religious assembly building, and that care and consideration was given to the surrounding residential uses and the provisions of the NTSP. Concern has been expressed regarding the proposed architecture, including its size, height, setbacks and overall massing. Chapter 7 ‘Building Orientation and Character’ of the NTSP is cited as the basis for these concerns (Attachment 5 includes this section as well as other related excerpts from the NTSP). Several commenters have cited two provisions of Chapter 7 that state:

1. *Roofs shall be sloped, of hip, gable or shed design. Roofs shall have a minimum pitch of one (1) foot of rise to three (3) feet of run and shall have a maximum pitch of one (1) foot of rise to one (1) foot of run.*
[. . .]
3. *Buildings shall create a residential appearance in conformity with the design guidelines and criteria of the North Tustin Specific Plan.*

(NTSP, Page III-31)

However, it should be noted that these design provisions of the NTSP are guidelines and not regulatory, as clarified in following excerpt from the Executive Summary of the NTSP:

Community Design Guidelines - The community design guidelines are supportive of and included in the Land Use and Development Regulations. For developers and County officials reviewing development proposals, the guidelines provide a frame-work for achieving design compatibility between proposed projects and existing community character. The guidelines represent a specific set of criteria for the design of projects and their subsequent evaluation.

(NTSP, Page xi)



Further, the NTSP itself also recognizes that community facilities such as schools and churches may be larger and different than nearby residences, and that certain areas of the Specific Plan may change over time:

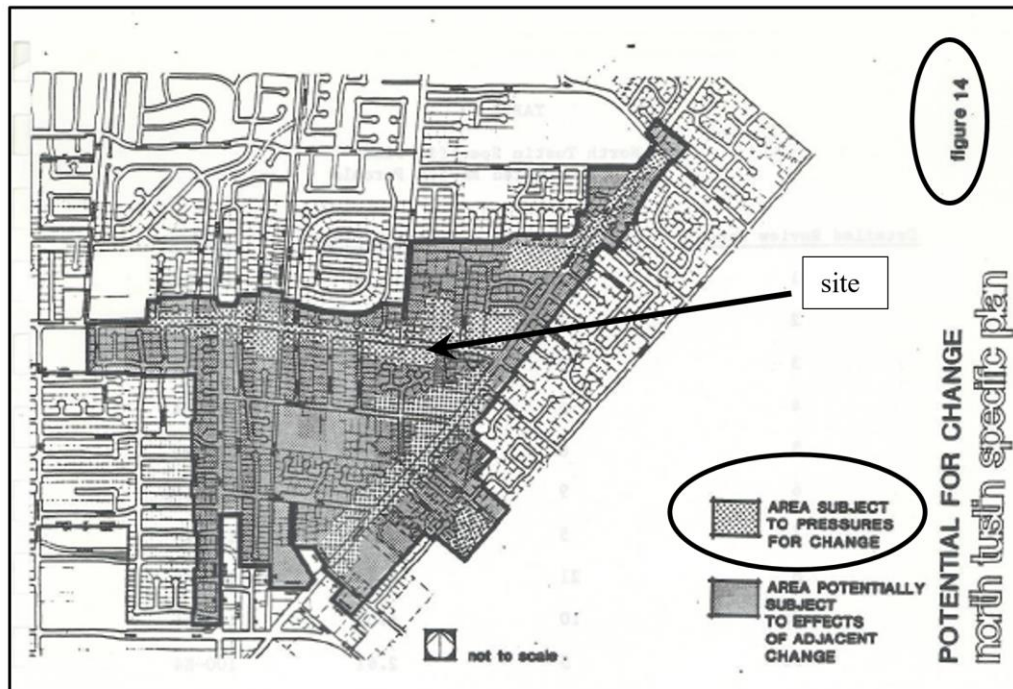
Community Facilities

Community facilities include existing and future schools (public and private) and churches in the area. Buildings would be larger than nearby residences. A low profile, typically one story would be maintained although roofs of some churches may be peaked more steeply and reach a greater height than is common of neighboring residences. Each site would provide internal circulation and on-site parking facilities.

(NTSP, Page II-1-63)

Pressure for Change - The preceding discussions have indicated that within the North Tustin Specific Plan area the pattern of land use has been changing in some locations due to various environmental factors. It is also evident that the surrounding community is susceptible to the effects of change if the process is not properly managed. Figure 14 depicts, in a general sense, the area considered to be subject to pressure for change and the immediately surrounding community potentially subject to the effects of that change. It is evident in Figure 14 that the pressure for change is limited to narrow corridors along the arterial streets. The surrounding residential neighborhoods and uses which are oriented away from these streets and generally toward residential collector or local streets within the specific plan area provide a context for evaluating and managing the potential change and their effects.

NTSP Exhibit



(NSTP Pages II-1-27 & 28)

The Pressure for Change discussion notes that uses along a main arterial, such as 17th Street, are inherently different than inner residential areas oriented along smaller collector and local streets.

The structure proposes a maximum height of 30 feet, reduced from the originally proposed 34 feet as the Applicant has reduced the height to respond to comments from NTAC. However, it is a single story structure with the only use areas located on a ground floor. The vaulted ceiling over the sanctuary and entry foyer would not impose any privacy intrusion into the adjacent residences, as could be possible if the site were developed as a two-story residence. If a single family home were to be built on the site, it would require no discretionary or design review, it could be 35 feet in height and have a second floor area that could potentially intrude upon neighbors' privacy. A single family home could also be much larger, up to a 50% lot coverage or roughly 15,000 square feet of coverage (calculated as building footprint and would not include the area of any second floor).

The design of the structure addresses the potential noise nuisance to adjacent residences to the east. Except for the (unopenable) clerestory window at the eave line, the sanctuary area of the proposed structure has only one required fire egress door along its east side. One other door faces the east, from the library, not the sanctuary, to an outside patio area.

Easterly Elevation



Variance Request

The application includes a request for a Variance from the NTSP RSF standard that places of worship be located on a minimum building site of 40,000 square feet. The subject property has a net building site area of 31,680 square feet. The Zoning Code provides that a Variance may be approved with the following findings:

- (1) Special circumstances. There are special circumstances applicable to the subject building site that, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.*

(2) *No special privileges. Approval of the application will not constitute a grant of special privileges that are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with.*

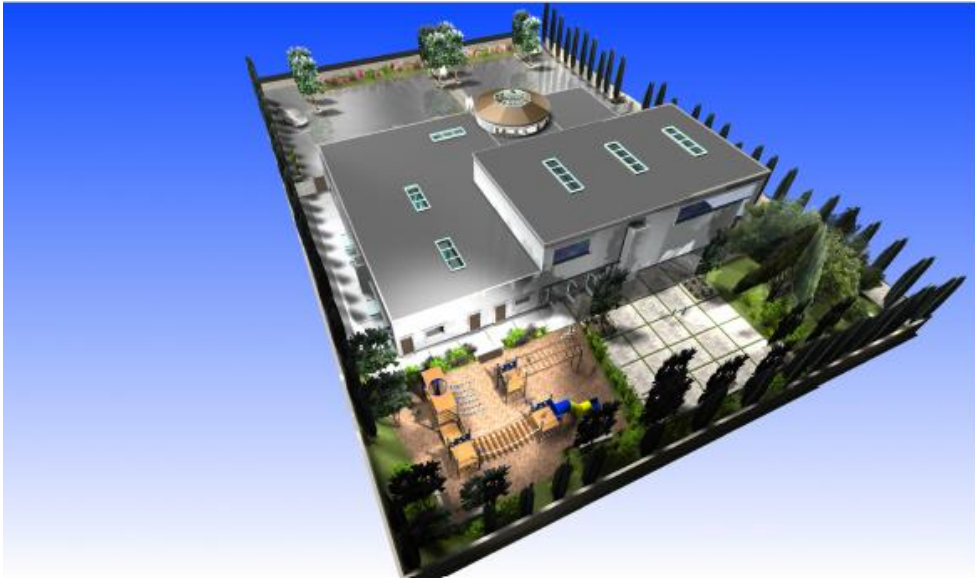
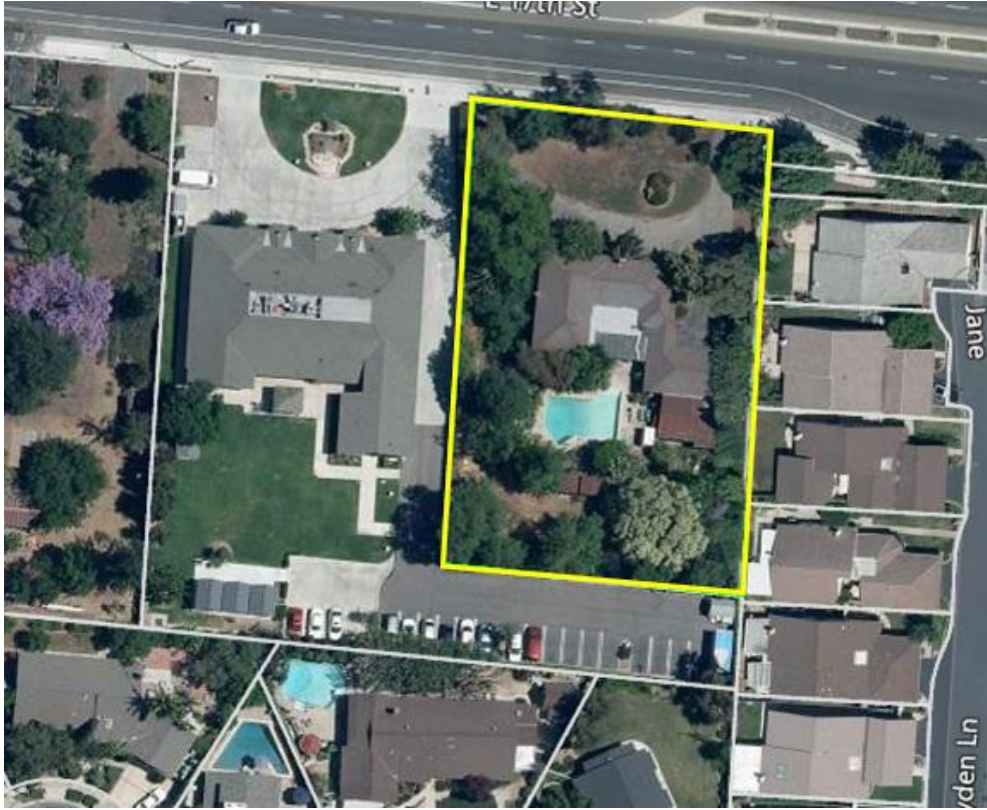
By deed description, the full property is 38,160 square feet, and extends to the centerline of 17th Street. However, the front 45 feet of the property (6,480 square feet) exists as the improved 17th Street (to centerline and including 8 feet of sidewalk and parkway), thus reducing its usable area to 31,680 square feet. This is not an uncommon situation in the unincorporated County, that the original deed creating the lot includes an area that ultimately becomes a public right-of-way, and because the owner does not have right to ‘use’ this area, the tax parcels mapped by the Tax Assessor’s office would not include this area for tax assessment purposes and the related Assessor’s Parcel Number (APN) is not equivalent to a legal building site.

To achieve the desired ultimate width for the roadway, as properties along the arterial roadway propose development, the County will condition the improvements to require the final increment (15-foot width in this case) be offered for dedication. In this way, at such time as the County determines that the roadway must be widened, it will have the right to exercise the offer and use this area for road widening without purchasing the land area from the affected property owner or compensating the owner for improvements on this piece of the property. Until that time, the land area is available for use by the property owner.

The County has designated 17th Street as an arterial roadway with an ultimate design width of 120 feet, or a 60-foot half width. The majority of 17th Street in this vicinity is improved only to the 45-foot half-width. The exhibit below reflects the boundaries of properties’ APN in the project’s vicinity along the south reach of 17th Street. The yellow line represents the front line to a street width of 45 feet, the white line represents properties where projects were approved and an offer of dedication was required. It also shows that even where offers were made the area of the offer is improved and usable to the current owner.

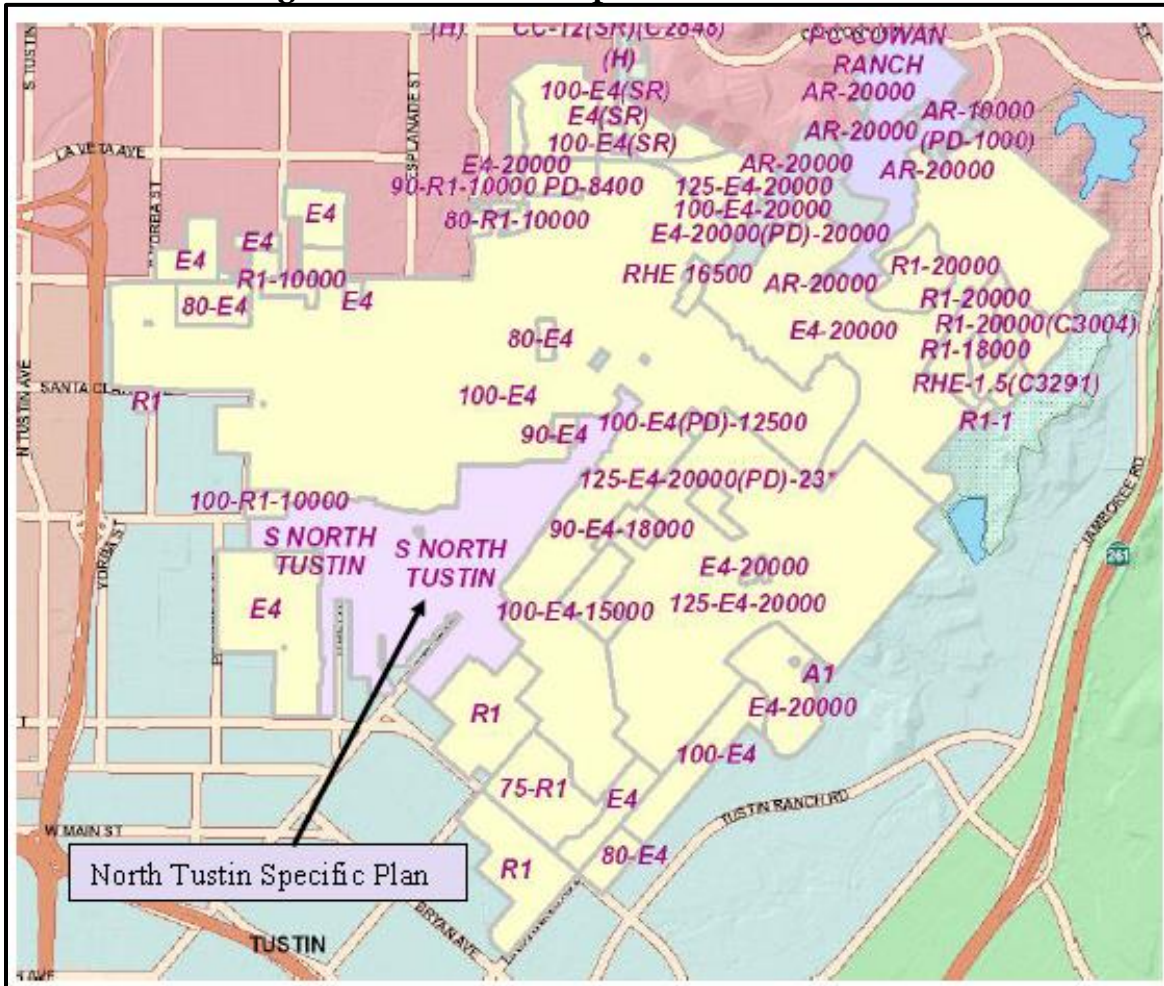


Although located off-site, the rehabilitation center’s rear parking area serves to provide an additional buffer from residences to the south. The Applicant has anecdotal information that this area was at one time within the subject property, however any such transfer likely happened prior to the Subdivision Map Act regulations because no specific record can be found. The Applicant notes that this area functions as a buffer for the proposed use.



The subject property is located within the unincorporated area of North Tustin. As seen below, the NTSP area is only a small percentage of this unincorporated area, and it does not have the large minimum lot areas depicted by the zoning designations of the larger unincorporated area, as shown below.

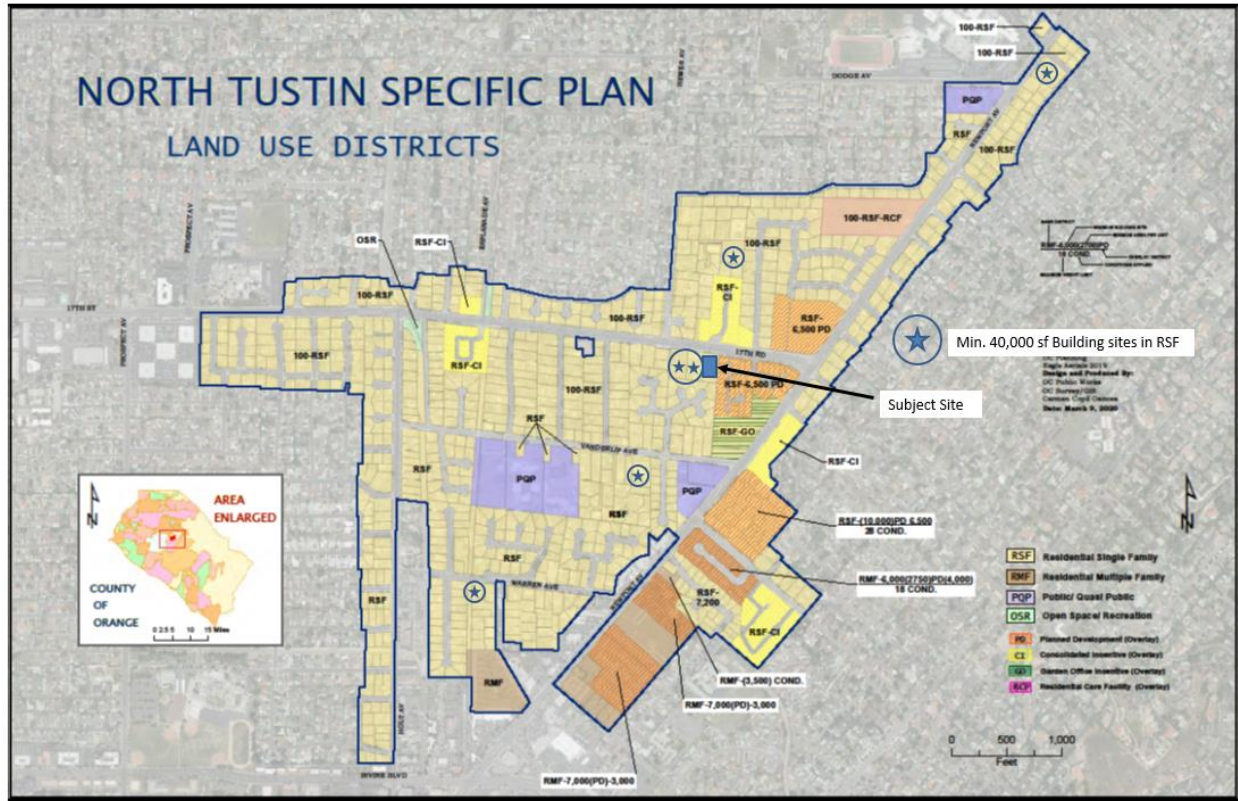
Zoning Districts – Unincorporated North Tustin area



Within the RSF District subarea of the NTSP, there is a total of approximately 1,450 lots with an average lot area of 11,287 square feet (median size is 10,800 square feet), and only six sites with a building site area of 40,000 square feet or more.



Minimum 40,000 sf Building Site Area in RSF District



Of these six sites, one is undeveloped, but has an odd, narrow shape that would not lend itself to the proposed use. Two are developed with very large ‘estate-like’ homes located on interior residential collector or local streets and are fully surrounded by developed residential properties on homesites averaging approximately 13,000 to 15,250 square feet in area. A fourth site is located at Newport Avenue (an arterial) and Foothill Avenue, across from Foothill High School, and it is also developed with an estate-like compound of several large residential structures. The final two sites of 40,000 square feet or greater are immediately adjacent to the subject site on 17th Street and are developed with a medical rehabilitation facility and another estate-like residence.

The subject property, in its current condition of disrepair, represented an opportunity for the Chabad to relocate yet remain within the area of its existing congregation. The property takes its access from an arterial roadway, which is beneficial for a community facility such as a place of worship and thereby avoids the potential incompatibilities with access via local and collector roadways. Although less than the standard 40,000 square foot requirement, the site is deep enough to set the structure well back (70 feet) from front property line.

Although not explicitly stated within the NTSP, the purpose of the 40,000 square foot minimum building site area for places of worship is presumably to enable the site to properly accommodate the facility and necessary off-street parking. Such types of facilities are normally thought of as large structures to accommodate large congregations. In this instance, the Applicant has used the substandard lot area and designed a facility that accommodates the existing congregation with a

50 fixed seat sanctuary as well as providing all required off-street parking. Although project related traffic would be minimal and only at limited times of the week, locating any community facility (schools, churches, or other public uses) on an arterial roadway is preferable to a site that utilizes local or collector streets.

The finding of special circumstances applicable to the request include the lack of alternative sites of the proper minimum area, its location on an arterial roadway, its reduced use/sanctuary size to accommodate an existing, identifiable congregation with all required parking, and its overall site design that recognizes and mitigates potential conflicts with adjacent residential uses.

The finding of no special privileges applicable to the project can be made due to the unique circumstances of no appropriate alternative sites, and the site's unique location on a preferred arterial street.

REFERRAL FOR COMMENT AND PUBLIC NOTICE

A copy of the planning application and proposed site plan were distributed for review and comment to County Divisions (the Building Official, Building/Grading Plan Check, Watersheds, Flood, and Traffic Engineering), OCFA, and the North Tustin Advisory Committee (NTAC).

Staff has reviewed all comments received, and where appropriate, has addressed the comments through recommended Conditions of Approval, which are provided as Attachment 2. Public notices were mailed to all owners of record within 300 feet of the subject property, and posted in front of the project site, the Orange County Hall of Administration at 333 W. Santa Ana Boulevard, and in the lobby at the County Administration South (CAS) building located at 601 N. Ross St at least ten days prior to this public hearing, as required by law.

North Tustin Advisory Committee

The North Tustin Advisory Committee (NTAC) reviewed the project at their July 21, 2021 virtual meeting. The Committee discussed the project for approximately two hours, including public comments from the Applicant and 9 public speakers. Committee comments, as well as those of the public speakers, are summarized below and the Committee's meeting minutes are included as Attachment 5. Following all discussion, the Committee passed the following recommendation by a 4 to 3 vote:

“To recommend to the Planning Commission that the variance be approved and recommend to the Planning Commission that it consider the height of the project, the setback and the concerns of the neighbors regarding that, as they consider further approvals of the project.” (architectural design review was also added as an amendment to the motion).

Summary of Comments (see refer to the minutes for further detail as well as additional discussion of topical subjects within this staff report):

Following the introduction of the project by the Applicant, Committee members identified the following concerns:

- Clarifications regarding the calculation of the lot size
- If the on-site parking is adequate for the proposed uses
- Architectural consistency with certain provisions of the NTSP
- If the Applicant had met with the neighboring property owners

Public Comment - Nine members of the public spoke

- Four speakers identified concerns with the project's size (square footage, massing and height), setbacks from adjacent residential uses, reduced lot area, adequacy of proposed parking, and architectural design.
- Four speakers spoke in support of the project (including three who identified themselves as members of the Chabad), one noting that parking should not be an issue as many members of the Chabad walk to services in observance of their orthodox tenets.
- The President of the Foothills Communities Association spoke (and submitted a pre-meeting letter – attached to the Committee's minutes in Attachment 5) citing concerns with the size, height of the structure, the reduction of the minimum lot area, and had questions regarding the calculation of the lot area.

CEQA COMPLIANCE

In accordance with County's policies regarding implementation of the California Environmental Quality Act, the County of Orange conducted an Initial Study to determine whether the project may have a significant adverse effect on the environment. On the basis of that study, staff recommends that the Planning Commission find that the proposed project will not have a significant adverse effect on the environment and does not require the preparation of an Environmental Impact Report because no significant environmental impacts requiring mitigation have been identified, and that Negative Declaration PA21-0055 is the appropriate environmental documentation for the project.

Also, in accordance with County policies, the proposed Negative Declaration and a Notice of Intent to Adopt a Negative Declaration (Notice of Intent or NOI) were posted for public review on January 24, 2022. The NOI was posted at the project site, mailed to all adjoining property owners of record and renters (and also to persons who had previously requested notification by mail of any project notices), posted in front of the project site, at the Orange County Hall of Administration at 333 W. Santa Ana Boulevard, and uploaded to the State Clearinghouse database, as required by established state and County policy. The NOI included information to direct the public to the proposed Negative Declaration which was posted online at the County's project-specific webpage.

The NOI solicited any public comments regarding the proposed Negative Declaration. The proposed Negative Declaration was posted and circulated for public review from January 24, 2022 to February 14, 2022 to comply with the required minimum 20-day public review period.

All comments received, along with any appropriate staff response, are included with Attachment 5 “Response to Comments.”

CONCLUSION

Staff has determined that the proposed project complies with the NTSP development standards and architectural guidelines. Staff recommends approval of the Use Permit proposal to establish a place of worship with religious educational facilities, as well as a private preschool. Staff also recommends approval of the requested Variance to allow a place of worship on a building site of less than 40,000 square feet subject to Findings and Conditions of Approval provided in Attachments 1 and 2.

Submitted by:



Justin Kirk, Planning Division Manager
Planning, OC Development Services

Concurred by:



Amanda Carr, Interim Deputy Director
OC Public Works/Development Services

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions of Approval
3. Applicant’s Letter of Explanation
4. Negative Declaration PA21-0055
 - a. Appendix A Air Quality and Greenhouse Gas Emissions Analysis
 - b. Appendix B Vehicle Miles Traveled Analysis
 - c. Notice of Intent to Adopt Negative Declaration
5. Response to Comments
6. NTAC Minutes
7. Site Photos
8. Project Plans

APPEAL PROCEDURE:

Any interested person may appeal the decision of the Planning Commission on this permit to the Orange County Board of Supervisors within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$500 filed at the County Service Center, 601 N Ross St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to OC Development Services / Planning Division.