

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

CALVARY CHRISTIAN CENTER,            )  
  )  
                          Plaintiff,            )  
  )  
vs.    )  
  )  
CITY OF FREDERICKSBURG,            )  
VIRGINIA,                                 )  
  )  
                          Defendant.        )  
\_\_\_\_\_ )

Case No. \_\_\_\_\_

**VERIFIED COMPLAINT FOR PRELIMINARY AND PERMANENT INJUNCTIVE  
RELIEF, DECLARATORY JUDGMENT, AND DAMAGES**

COMES NOW the Plaintiff, by counsel, and for its Complaint against the Defendant  
CITY OF FREDERICKSBURG, VIRGINIA, alleges and states as follows:

**INTRODUCTION**

1. On December 16, 2010, the City of Fredericksburg denied a special use permit to Calvary Christian Center (“Church”) to operate a private school for disabled children in its church facility.
2. The City Council denied the Special Use Permit despite the fact that the Director of Planning and Community Development recommended approval of the Church’s application.
3. The City Council denied the Special Use Permit despite the fact the City Planning Commission, after a public hearing, unanimously recommended approval of the Church’s application.
4. In denying the Church’s application for a Special Use Permit, the members of the City Council made stereotypical and discriminatory remarks regarding the disabled children the

Church proposed to include in its school.

5. The only reasons given by the City Council for the denial of the Church's applications were discriminatory and stereotypical statements about disabled children that were based on unfounded fears and prejudices regarding the disabled.

6. The City Council's denial placed a substantial burden on the Church's exercise of religion without any compelling interest that was advanced in the least restrictive means available.

7. The City Council's denial of the Church's Special Use Permit application was discriminatory, arbitrary, and violated the Church's constitutional and statutory rights.

8. To redress irreparable harm to its rights, Plaintiff seeks declaratory and injunctive relief for violation of its constitutional and statutory rights, and seeks compensatory and nominal damages to redress past legal injuries.

#### **JURISDICTION AND VENUE**

9. This action arises under the United States Constitution; federal law, particularly 42 U.S.C. §§ 1983 and 1988, RLUIPA, 42 U.S.C. §2000cc-1, *et seq.*, the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, and the Rehabilitation Act, 29 U.S.C. §701, *et seq.*

10. This Court is vested with original jurisdiction over the federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367.

11. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

12. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

13. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988, 42

U.S.C. §12205, and 29 U.S.C. §794a.

14. Venue is proper in United States District Court for the Eastern District of Virginia, Richmond Division under 28 U.S.C. § 1391(b), and Local Civil Rule 3(c), in that the Defendant resides in this district, the events giving rise to the claim occurred within the district, and the subject property is located in this district.

### **PARTIES**

15. Plaintiff Calvary Christian Center is a church and an unincorporated association.

16. Defendant City of Fredericksburg, Virginia, is a municipality established, organized, and authorized under and pursuant to the laws of Virginia, with the authority to sue and be sued, and was at all times relevant herein, operating within the course and scope of its authority and under color of state law.

### **STATEMENT OF FACTS**

#### **Background on Calvary Christian Center**

17. Calvary Christian Center is a church that has been in existence in the City of Fredericksburg since 1951.

18. The Pastor of Calvary Christian Center is Michael Hirsch.

19. Calvary is currently located at 2222 Jefferson Davis Highway in Fredericksburg, Virginia.

20. The Church's property is within the C-T "commercial/office-transitional" zoning district. *See* Fredericksburg Zoning Code §78-479.<sup>1</sup>

21. A Church or other place of worship is allowed as a permitted use in the C-T

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<sup>1</sup> The Zoning Code is a public document and can be accessed at <http://library.municode.com/index.aspx?clientId=12340&stateId=46&stateName=Virginia>. All references herein to "§ \_\_\_" refer to the Zoning Code, which is incorporated by reference, and can be accessed by following this link, and then clicking on "Chapter 78: Zoning, Planning and Development."

zoning district.

22. The Church operates from two connected buildings at the Jefferson Davis Highway property. *See* Plans of Church property and building layout attached as Exhibit "A".

23. The Church and its members have a sincere religious belief to gather together to read the Bible, sing religious songs, pray, and to share biblical insight.

24. One of the purposes of the Church is to educate, inform, and train people regarding biblical truth, including teaching a biblical worldview of moral, cultural, and civic issues.

25. Individual and communal prayer is a central tenet of Christianity and Plaintiff's religious beliefs.

26. The Church believes that it is to regularly assemble with others to pray, study the Bible, sing religious songs, and share biblical insight on moral, cultural, and civic issues through education and training as an act of worship.

27. In accordance with its sincerely held religious beliefs, the Church meets regularly for worship, Bible study, community ministry, and Christian fellowship at its property in Fredericksburg.

28. The Church has a sincerely-held religious belief to reach families and children with the Gospel of Jesus Christ and to minister the love of Christ to the City of Fredericksburg and the surrounding areas.

29. The Church believes that it has been called by God specifically to care for and minister to children.

30. As part of its sincere religious beliefs, Calvary operates a before and after school daycare called Precious Moments Day Care.

31. Precious Moments Day Care is licensed by the Commonwealth of Virginia as a religiously exempt child day care center to care for 32 children ages six through twelve years. *See Exhibit "B"*.

32. The day care operates only in Rooms 114 and 116 of the first floor of the Church building. *See Building layout attached as Exhibit "A"*.

33. The day care operates before school from 6:00 to 8:15 a.m. and then after school from 3:30 to 6:00 p.m.

34. In 2009, the Church applied for and was granted a Special Use Permit by the City of Fredericksburg to operate the child day care center. *See Exhibit "C"*.

#### **Application for Special Use Permit for Day School**

35. As part of the Church's sincerely held religious beliefs, the Church applied for a special use permit to operate a day school at its property in Fredericksburg for emotionally and mentally disabled children. *See Composite Exhibit "D"*.

36. The Church was required to apply for a special use permit as private schools are not a permitted as of right in the C-T zoning district. *See Zoning Code §78-480*.

37. The City Council has the sole authority to grant special use permits. *See Zoning Code §78-993(a)*.

38. The standards the City Council considers in deciding whether to grant a special use permit are contained in the Zoning Code §78-994, and are as follows:

- (a) The proposed special use at a specified location shall be:
  - (1) In harmony with the adopted comprehensive plan.
  - (2) In harmony with the purpose and intent of the zoning district regulations.
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or

discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

(c) As minimum standards for a proposed special use, the planning commission may recommend and city council may require:

- (1) Appropriate screening, buffer planting and landscaping.
- (2) Enhanced utility, drainage, parking, sidewalk, loading and other on-site facility design requirements.
- (3) Sign standards of a stricter nature than those which apply to the district in which the proposed use is located.
- (4) Open space requirements of a stricter nature than those which apply to the district in which the proposed use is located.
- (5) Participation in off-site pro rata improvements for reasonable and necessary sewerage and drainage facilities as provided for in this division.
- (6) Other standards and criteria arising out of and applicable to the specific nature of a given structure or use as deemed necessary by the director of building and development services or the zoning administrator.

39. Private schools are a use permitted in the C-T zoning district with a special use permit. *See* Zoning Code §78-481(4).

40. The Church has a sincere religious belief to minister to emotionally and mentally disabled children.

41. The Church's desire to minister to special needs children also flows from its sincerely held belief in the contents of the Biblical book of Matthew, chapter 19, verses 13 through 14 which state:

Then were there brought unto [Jesus] little children, that he should put his hands on them, and pray: and the disciples rebuked them. But Jesus said, "Suffer little children, and forbid them not, to come unto me: for of such is the kingdom of heaven." (KJV)

42. The Church's vision, which flows from this Scripture is to have the Church operate as an integral place of learning with an integrated on-site ministry to children with emotional or mental disabilities.

43. Pastor Hirsch was introduced to Fairwinds Day School through a pastor acquaintance.

44. Fairwinds Day School is a day school for children with emotional and mental disabilities.

45. Fairwinds has been in operation since 2009.

46. Fairwinds desires to move to the Church's location and the Church will operate Fairwinds as a ministry of the Church.

47. During the 2009-2010 school year, Fairwinds enrolled twelve students.

48. In order to be enrolled at the day school, a student must have an Individual Education Plan (IEP) that determines the child has a qualifying disability and states that the child shall attend a private day school.

49. The students in the day school have been diagnosed with conditions such as PTSD related to child abuse, bi-polar disorder, speech and language impairment, Pervasive Developmental Disorder, Specific learning disabilities related to cognitive processing problems, Reactive attachment disorder, and depression.

50. The day school will operate at the Church from 8:30 a.m. to 3:00 p.m.

51. The day school will utilize classrooms 202 and 203 on the second floor of the Church building and will also use offices in rooms 204 and 205 on the second floor of the Church's building.

52. None of the day school operations will be conducted on the first floor of the Church facilities.

53. The day school will have 6 full time staff.

54. The student to staff ratio exceeds the ratio required by the Virginia Department of Education requirements.

55. Fairwinds has never had any safety issues with the children in the day school.

56. The space to be utilized by the day school was inspected by the Fredericksburg Fire Department on or about July 30, 2010, and was found to be in compliance with City fire codes.

57. The Virginia Department of Social Services also conducted a health inspection on January 10, 2010, and the space to be utilized by the day school passed.

58. The Virginia Department of Education, after an application and inspection process, issued a license to operate the day school at the Church for children with emotional disability and other health impairment, speech, or language impairment. *See Exhibit "E"*.

#### **The Staff Report on the Church's Application for a Special Use Permit**

59. On or about September 8, 2010, Raymond P. Ocel, the Director of Planning and Community Development for the City of Fredericksburg, prepared and submitted a memorandum to the Planning Commission concerning the Church's application for a special use permit. *See Exhibit "D"*.

60. The report stated that the proposed day school at the Church would be in harmony with the adopted comprehensive plan of the City of Fredericksburg.

61. The report stated, "Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged."

62. The report stated that the proposed day school at the Church would be in harmony with the purpose and intent of the zoning district regulations.

63. The report stated, "The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area."

64. The report stated that the proposed day school at the Church would be in harmony



with the existing uses or planned uses of neighboring properties.

65. The report stated, “The requested permit is in keeping with and in (sic) compatible with the zoning and other uses in the neighborhood.”

66. The report also stated that the “proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.”

67. The report concluded, “Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit” with the conditions listed in the report.

#### **Public Hearings on the Special Use Permit**

68. On September 8, 2010, the Planning Commission for the City of Fredericksburg met and considered the Church’s special use permit application. *See* Minutes of Planning Commission meeting of September 8, 2010, attached as Exhibit “F”.

69. After some of the members of the Planning Commission asked questions of the Church about the day school, the public hearing was closed and the meeting adjourned without any Planning Commission decision on the Church’s application.

70. On September 29, 2010, the Planning Commission again met to consider the Church’s application for a special use permit.

71. Mr. Ocel, the Director of Planning and Community Development for the City resubmitted his memorandum report recommending approval of the Church’s application for a day school. *See* Exhibit “G”.

72. The Planning Commission, during the September 29, 2010, meeting, voted to unanimously approve the requested special use permit for the Church’s day school. *See* Exhibit

“H”.

73. On October 26, 2010, the Fredericksburg City Council met to consider the Church’s special use permit application.

74. Mr. Ocel submitted a memorandum report to the City Council that detailed the Planning Commission’s recommendation of approval for the day school, repeated the earlier analysis that the staff had performed of the special use permit application, and reiterated a staff recommendation of approval of the application. *See* Composite Exhibit “I”.

75. Pastor Michael Hirsch and Mr. Ed Murphy, director of the day school, spoke in favor of the application for a special use permit and answered questions from the members of the City Council.

76. At the October 26 hearing, City councilwoman Kerry Devine noted that she had requested and received a map from the zoning staff of homes and facilities serving disabled and special needs individuals within Fredericksburg.

77. Ms. Devine stated, “Fredericksburg City is struggling, I think, at being the host to what may be an abundance of group homes and group facilities which is why we requested that information and that map to begin with.”

78. Ms. Devine questioned the location of the school in the City when it served disabled individuals with special needs outside of the City.

79. City councilman Bradford Ellis also spoke at the October 26 hearing and stated, “I can’t say I’m really in favor of hosting additional students from surrounding jurisdictions.”

80. City councilman George Solly asked about the nature of the disabilities of the children that would be served by the day school.

81. Councilman Ellis expressed that the overarching question for him was why have a

day school in Fredericksburg. He referenced the map provided to the City Council by staff that catalogued group homes and facilities with services for disabled and special needs individuals and stated that, “We just don’t have a lot of space and, in my opinion, we’re kind of saturated with this sort of....”

82. During the October 26 hearing, City Attorney Kathleen Dooley cautioned the City Council after several questions were raised by the members of the City Council about the operations of the school and the safety of the students in the day care at the Church. Ms. Dooley cautioned that the proper consideration under the zoning code was the land use impact such as traffic and space and not the internal workings of the school.

83. No public speakers spoke in opposition to the Church’s application.

84. At the conclusion of the October 26 hearing, the City Council voted 6-1 to table the motion for two weeks until the next City Council meeting due to the concerns raised by the members of the Council during the meeting and a potential conflict of interest issue with one City councilman.

85. The City Council again considered the Church’s application during its November 9, 2010, meeting.

86. Mr. Ocel again provided a report and recommendation of approval for the special use permit. *See* Composite Exhibit “J”.

87. Attached to the staff report were several public comments in support of the Church’s application for a day school. *See* Exhibit “J”.

88. At the November 9, 2010, meeting several public speakers spoke in favor of the Church’s application.

89. Mayor Thomas Tomzak moved to grant the special use permit application at the

November 9 meeting.

90. After the motion by Mayor Tomzak was not seconded, Mayor Tomzak moved to table the issue for two more weeks until the next Council meeting.

91. Councilman Ellis stated at the meeting that his concern boiled down to safety and “whether or not it is safe to operate a special needs day school within the same facility as a daycare.”

92. Councilman Ellis stated with regard to the children to be served by the day school that, “Kids from these backgrounds can often have significant outbursts that can greatly disturb or even harm the younger children in the daycare setting.”

93. Councilman Ellis stated that he spoke with parents who had children in daycare and that “the possibility that a special daycare school student could cause harm to a child in daycare was a constant concern.”

94. Councilman Ellis also stated that he spoke with a licensed social worker who expressed concern that the day school students would harm the daycare students.

95. After the Council discussion, the motion to table the consideration of the special use permit until the next Council meeting passed 4-1.

96. The City Council next took up the issue of the Church’s special use permit application at its November 23, 2010, meeting.

97. Mr. Ocel again submitted a staff report recommending approval of the application and updating the City Council on the prior consideration of the application. *See* Composite Exhibit “K”.

98. The comments made by Councilman Ellis during the November 9 meeting concerning the safety of the day care students were reprinted and attached to the staff report. *See*

Exhibit “K”.

99. The staff report also contained a letter from Pastor Michael Hirsch responding to the concerns of safety raised by the Council. *See* Exhibit “K”.

100. Pastor Hirsch’s letter noted that the Church facility where the day school would be located had been inspected and approved by the City Department of Building and Development Services who issued a certificate of occupancy, by the Virginia Department of Social Services, by the Virginia Department of Health, and by the City Fire Marshall.

101. Pastor Hirsch’s letter pointed out that the day care and the day school operating schedules had a time buffer so that they did not operate and occupy the facility at the same time.

102. Pastor Hirsch also provided licensing information for the individuals who would work in the day school.

103. Pastor Hirsch spoke in favor of the application at the November 23 meeting and stated that the Church would not discriminate against disabled students and asked the City Council to approve the special use permit.

104. Rev. Susan Hirsch, a trustee of the Church, spoke in favor of the Church’s application and noted the time difference between the day care and the day school and expressed the Church’s commitment to the safety of the children in both the day care and the day school.

105. Several members of the public also spoke in favor of the Church’s application during the November 23 meeting.

106. Mayor Tomzak commented that a lot of the concerns regarding safety raised by the Council were not justifiable issues and moved to approve the special use permit.

107. Councilman Ellis again raised concerns about the safety of the day care students if they come into contact with the day school students.

108. Councilman Ellis stated that he was concerned about the safety of the day care students because there was nothing to stop the day school students from co-locating in the same space with the day care students “ever, ever, ever.”

109. Councilman Ellis suggested that the Church have its special use permit for the day care revoked if it wanted to pursue the day school.

110. The Council voted 3-3 on the motion and so the motion failed because of a tie.

111. The City Council denied the Church’s application for a special use permit. *See* Exhibit “L”.

112. The City Council encouraged the Church to give up its special use permit for the day care if it wanted to have a day school for the disabled children.

113. The Church desires to operate a day school from its location in accordance with its religious beliefs but is prohibited from doing so because of the Council’s denial of its application for a special use permit.

114. Because of the Council’s denial of the special use permit, the Church is unable to minister to the children in the day school and will have to forego those ministry opportunities in the future.

115. The day school currently has no location to meet and provide services to disabled children.

116. The day school cannot accept any students until it moves into Calvary’s facility.

117. If the day school is not allowed to operate in the Church, disabled children that could be served by the day school will have to be turned away.

118. If the day school cannot move into the Church, Calvary will be prohibited from exercising its religious beliefs in ministering to children with disabilities.

119. There is no adequate remedy at law for the violations of the Church's constitutional and statutory rights as set forth herein.

120. The Church is irreparably harmed by the Council's denial of its special use permit as it is unable to exercise its religious beliefs in ministering to the children in the day school.

**COUNT 1 – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

121. Plaintiff realleges all matters set forth above in ¶¶1-120.

122. Defendant City of Fredericksburg, Virginia, is a public entity.

123. Plaintiff desires to operate a day school for children with mental or emotional disabilities.

124. Children with mental or emotional disabilities are disabled.

125. The school will only accept children who have an Individualized Education Plan (IEP) pursuant to 20 U.S.C. §1414.

126. A child may not have an Individualized Education Plan (IEP) unless that child has been found to be disabled as defined in 20 U.S.C. §1401(3).

127. The children in the day school have a physical or mental impairment that substantially affects one or more of their major life activities.

128. The children in the day school have a record of having a physical or mental impairment that substantially affects one or more of their major life activities.

129. The children in the day school are regarded as disabled by the Defendant who discriminated against them because of an actual or perceived physical or mental impairment.

130. Defendant's decision to deny Plaintiff's request for a special use permit was a direct result of animus towards children in the day school.

131. Defendant has no legitimate, nondiscriminatory reason for denying Plaintiff's

request for a special use permit.

132. Any nondiscriminatory reason given by the Defendant for denying Plaintiff's request for a special use permit was a pretext for discrimination.

133. The denial of the special use permit has an unlawful discriminatory effect upon disabled children in the day school.

134. The denial of the special use permit has a significantly adverse or disproportionate impact on disabled children in the day school.

135. The Defendant failed to make a reasonable accommodation for disabled children in the day school.

WHEREFORE, Plaintiff respectfully requests that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiff as are reasonable and just.

**COUNT 2 – VIOLATION OF THE REHABILITATION ACT**

136. Plaintiff realleges all matters set forth above in ¶¶1-120.

137. Defendant City of Fredericksburg, Virginia, is a public entity.

138. Upon information and belief, Defendant receives federal financial assistance

139. Plaintiff desires to operate a day school for children with mental or emotional disabilities.

140. Children with mental or emotional disabilities are disabled.

141. The school will only accept children who have an Individualized Education Plan (IEP) pursuant to 20 U.S.C. §1414.

142. A child may not have an Individualized Education Plan (IEP) unless that child has been found to be disabled as defined in 20 U.S.C. §1401(3).

143. The children in the day school have a physical or mental impairment that



substantially affects one or more of their major life activities.

144. The children in the day school have a record of having a physical or mental impairment that substantially affects one or more of their major life activities.

145. The children in the day school are regarded as disabled by the Defendant who discriminated against them because of an actual or perceived physical or mental impairment.

146. Defendant's decision to deny Plaintiff's request for a special use permit was a direct result of animus towards children in the day school.

147. Defendant has no legitimate, nondiscriminatory reason for denying Plaintiff's request for a special use permit.

148. Any nondiscriminatory reason given by the Defendant for denying Plaintiff's request for a special use permit was a pretext for discrimination.

149. The denial of the special use permit has an unlawful discriminatory effect upon disabled children in the day school.

150. The denial of the special use permit has a significantly adverse or disproportionate impact on disabled children in the day school.

151. The Defendant failed to make a reasonable accommodation for disabled children in the day school.

WHEREFORE, Plaintiff respectfully requests that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiff as are reasonable and just.

### **COUNT 3 – VIOLATION OF RLUIPA**

152. Plaintiff realleges all matters set forth above in ¶¶1-120.

153. Defendant's denial of Plaintiff's requested special use permit violates Plaintiff's free exercise of religion as guaranteed by RLUIPA, 42 U.S.C. §2000cc, et seq.

154. Plaintiff's religious beliefs are sincerely and deeply held.

155. Defendant's denial of Plaintiff's special use permit application imposes a substantial burden on Plaintiff's religious exercise.

156. Defendant's denial of Plaintiff's special use permit application is not in furtherance of a compelling governmental purpose.

157. Defendant's denial of Plaintiff's special use permit application is not the least restrictive means of furthering any governmental interest.

158. Upon information and belief, Defendant receives federal financial assistance.

159. Upon information and belief, Defendant's Zoning Code affects commerce with foreign nations, among the several states, or with Indian tribes.

160. Defendant's Zoning Code permits it to make individualized assessments of the proposed uses of property within the County, including the Property at issue in this case.

161. Plaintiff is a religious assembly or institution.

162. Defendant's denial of Plaintiff's special use permit application treats Plaintiff on less than equal terms with other secular assemblies or institutions.

163. Defendant's denial of Plaintiff's special use permit application discriminates against Plaintiffs on the basis of religion.

164. Defendant's denial of Plaintiff's special use permit application unreasonably limits Plaintiffs within the zoning jurisdiction of the Property as the Church is prohibited from utilizing its Property to exercise its religion in the way its faith mandates.

WHEREFORE, Plaintiff respectfully requests that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiff as are reasonable and just.

**COUNT 4 – VIOLATION OF THE FREE EXERCISE CLAUSE  
OF THE FIRST AMENDMENT**

165. Plaintiff realleges all matters set forth above in ¶¶1-120.

166. Defendant's denial of Plaintiff's special use permit application violates Plaintiff's right to free exercise of religion, as guaranteed by the First Amendment to the United States Constitution.

167. Plaintiff's religious beliefs are sincerely and deeply held.

168. Defendant's denial of Plaintiff's special use permit application substantially burdens Plaintiff's sincerely held religious beliefs.

169. Defendant's denial of Plaintiff's special use permit application is neither neutral nor a law of general applicability.

170. Defendant's denial of Plaintiff's special use permit application specifically and discriminatorily targets religion and religious worship.

171. Defendant's Zoning Code contains a system of individualized exemptions such that it is not neutral and generally applicable.

172. There is no compelling government interest sufficient to justify the denial of Plaintiff's special use permit application.

173. The denial of Plaintiff's special use permit application is not the least restrictive means to accomplish any permissible government purpose sought to be served by the Zoning Code.

174. Defendant's denial of Plaintiff's special use permit application is not narrowly tailored, as required for restrictions on Plaintiff's free exercise of religion.

175. Defendant has failed or refused to accommodate Plaintiff's sincerely held religious beliefs.

WHEREFORE, Plaintiff respectfully requests that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiff as are reasonable and just.

**COUNT 5 – VIOLATION OF FREE SPEECH UNDER THE  
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION**

176. Plaintiff realleges all matters set forth above in ¶¶1-120.

177. Defendant's denial of Plaintiff's special use permit application and its standards for granting a special use permit under §78-994 of the Zoning Code violate the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states through the Fourteenth Amendment.

178. Plaintiff's use is entitled to First Amendment protection as expressive content and expressive conduct.

179. The Zoning Code §78-994 is an improper prior restraint on speech.

180. The Zoning Code §78-994 does not contain precise and objective criteria to govern the discretion of the City Council in deciding whether to grant a special use permit.

181. The Zoning Code §78-994 empowers the City Council to covertly discriminate against uses that are protected by the First Amendment.

182. To determine whether a proposed use is allowed as a special use, the City must analyze the content and viewpoint of speech and other expressive activity.

183. The City denied Plaintiff's special use permit application because of the Church's religious expression and expressive association in ministering to disabled children.

184. Defendant's denial of Plaintiff's special use permit application restricts Plaintiff's speech based on viewpoint and content.

185. Defendant's denial of Plaintiff's special use permit application is overbroad because it sweeps within its ambit protected First Amendment speech, thus violating the rights of

Plaintiffs and third parties not before the Court.

186. Defendant's denial of Plaintiff's special use permit application does not leave open ample alternative channels of communication.

187. Defendant does not have a compelling interest for the denial of Plaintiff's special use permit application.

188. Defendant's denial of Plaintiff's special use permit application is not narrowly tailored to achieve a compelling interest.

189. Defendant's denial of Plaintiff's special use permit application is not the least restrictive means of achieving a compelling interest.

WHEREFORE, Plaintiff respectfully requests that the Court grant the declaratory and injunctive relief set forth herein and award such damages to Plaintiff as are reasonable and just.

#### **PRAYER FOR RELIEF**

Plaintiff prays for judgment as follows:

a. That this Court preliminarily and permanently enjoin the conduct of Defendant, its officers, agents, servants, and employees which violates the rights of Plaintiff and other parties not before the Court as protected by the First and Fourteenth Amendments to the United States Constitution, RLUIPA, the ADA, and the RA;

b. That this Court preliminarily and permanently enjoin the Defendant, its officers, agents, servants, and employees from prohibiting Plaintiff from operating its day school in its church building;

c. That this Court render a Declaratory Judgment declaring the denial of Plaintiff's special use permit application as alleged herein to be invalid and unconstitutional in all respects under the First and Fourteenth Amendments to the United States Constitution, RLUIPA, the

ADA, and the RA;

- d. That this Court grant to Plaintiff compensatory and nominal damages;
- e. That this Court grant to Plaintiff an award of their costs of litigation, including reasonable attorneys' fees and expenses;
- f. That this Court grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 23 day of May, 2011.



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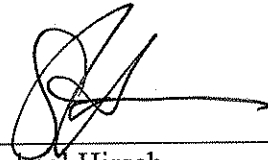


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Local Counsel for Plaintiff

## VERIFICATION OF COMPLAINT

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I have read the foregoing Verified Complaint and the factual allegations thereof and that to the best of my knowledge the facts alleged therein are true and correct.

Executed this 23 day of May, 2011.

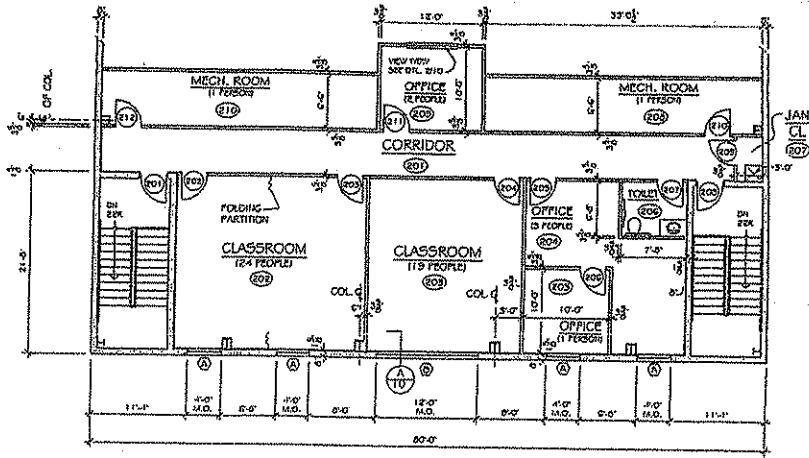


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Michael Hirsch  
Pastor and Trustee  
Calvary Christian Center

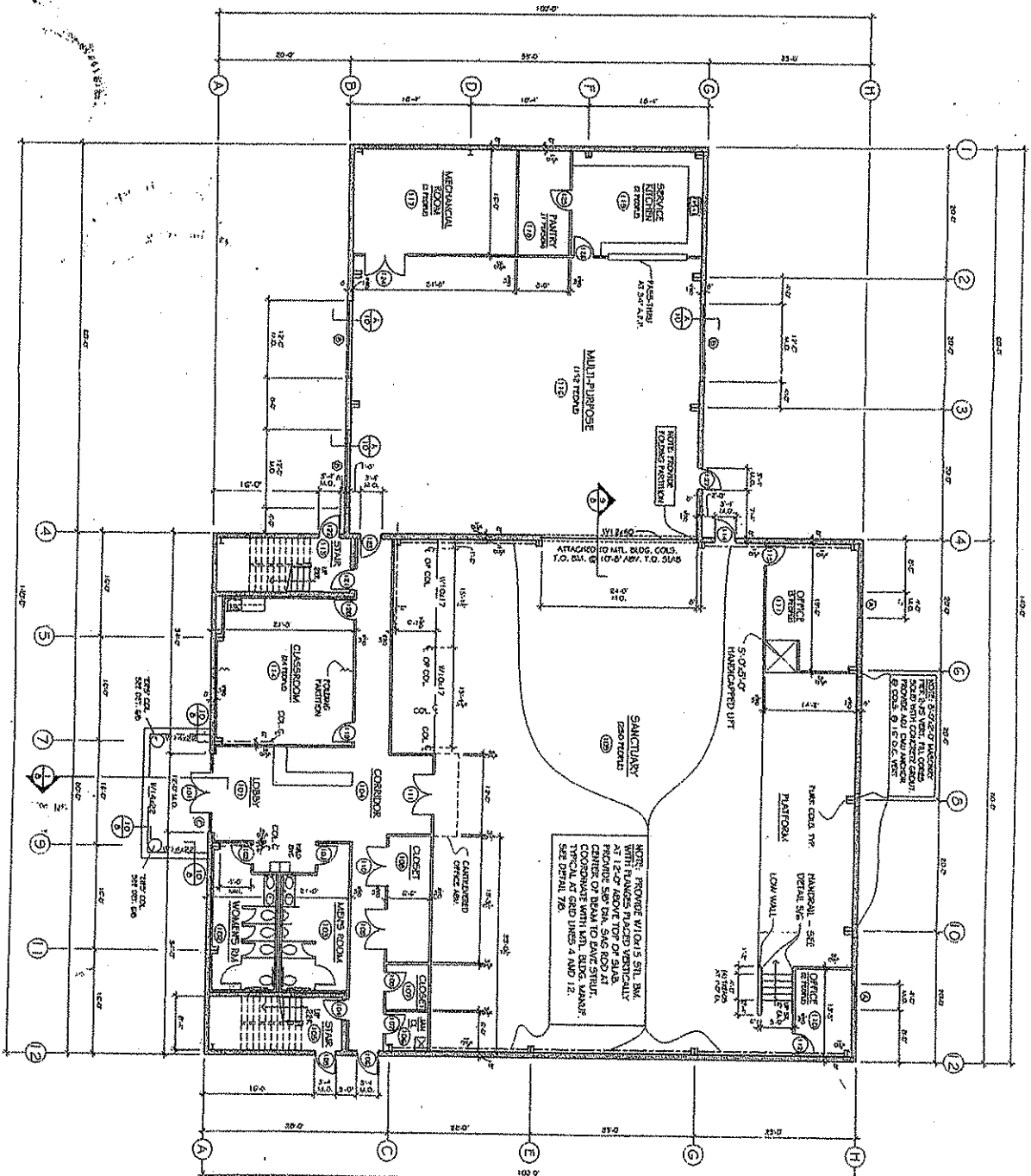






SECOND FLOOR PLAN  
1/8" = 1'-0"

NOTE: SEE FLOOR PLAN  
NOTES ON SHEET 3.



FLOOR PLAN  
1/8" = 1'-0"

NORTHERN REGIONAL OFFICE  
 DIVISION OF LICENSING  
 170 WEST SHIRLEY AVENUE  
 SUITE 200  
 WARRENTON, VIRGINIA 20186  
 (FAX) 540-347-6304  
 (540) 347-6345



COMMONWEALTH of VIRGINIA  
 DEPARTMENT OF SOCIAL SERVICES

March 24, 2011

Reverend Michael S. Hirsch  
 Calvary Christian Church  
 2222 Jefferson Davis Highway  
 Fredericksburg, VA 22401

Dear Pastor Hirsch:

Previous Moments Day Care, operated by Calvary Christian Church and located at 2222 Jefferson Davis Highway, Fredericksburg, Virginia, has filed the required documentation as a religiously exempt child day center. This exemption is effective January 28, 2011 through January 27, 2012.

You may provide services to 32 children in the age range from six years through 12 years. Enrolled children may only use Rooms 114 & 116 for day care purposes.

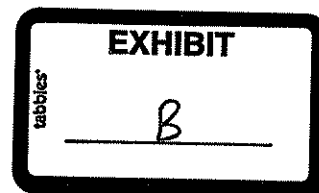
According to the information you have filed with us, your program is in compliance with the staff-child ratios required in the law. The exemption law requires that you maintain these staff-child ratios throughout the year. Any changes in the number of staff or children should be documented on a new Staff/Child Ratio Sheet (along with the supporting health statement for any new employees) and be submitted to this office in order that we may update our records for your facility.

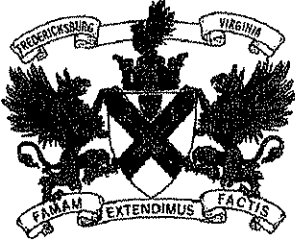
The exemption law requires that you file the required documentation annually. You will be notified approximately 60 days before the expiration date in order to facilitate the timely filing of the renewal documentation. If you have questions, please feel free to contact Kim Abel, Administrative Program Assistant, at (540) 347-6345.

Thank you for your cooperation.

Sincerely,

Mary Guerrant Goodwin  
 Licensing Administrator





**CITY OF FREDERICKSBURG  
Virginia**

**NOTIFICATION OF CITY ACTION**

**TO:** Calvary Christian Center  
200 McConkey Street  
Fredericksburg, VA 22401

**FROM:** Raymond P. Ocel, Jr., Director of Planning & Community Development *MMO*

**DATE:** August 13, 2009

**RE: SUP2009-12: Calvary Christian Center Church to Operate a Day Care**

Your request for:	<input type="checkbox"/> Subdivision Plat/Plan	
<input type="checkbox"/> Rezoning	<input checked="" type="checkbox"/> Special Use Permit	
<input type="checkbox"/> Site Plan		
<input type="checkbox"/> Change of Non-Conforming Use		
has been:		
<input checked="" type="checkbox"/> Approved, with conditions	<input type="checkbox"/> Approved with proffers	<input type="checkbox"/> Denied
<input type="checkbox"/> Other	_____	
At the August 11, 2009 meeting of the:		
<input type="checkbox"/> Planning Commission	<input checked="" type="checkbox"/> City Council	
Your next step should be:		
<input type="checkbox"/> File additional/revised plans as required		
<input checked="" type="checkbox"/> Obtain other required permits: (as required)		
<input type="checkbox"/> No further information is required		

*SPECIFICS/CONDITIONS (Continued on reverse, if necessary)*

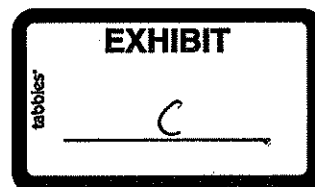
*Your request for a special use permit in order to operate a child day care within the Calvary Christian Church located at 2222 Jefferson Davis Highway has been approved, with the following conditions.*

1. That the maximum number of children enrolled in the program be a maximum of 32 children.
2. The before and after program will operate in conjunction with the City schools and will not be open during the summer.
3. The day care will be located on the first floor of the Church as depicted in the application materials.
4. The day care entrance and drop off point will be from the front door of the Church. Children shall be escorted to the Church from the front drive area by a member of the day care facility.
5. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
6. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.
7. That there shall be no outdoor play area established for the day care.
8. The age of children attending the school shall be between 5 and 12 years of age.

c: Building & Development Services  
Department of Public Works

Commissioner of the Revenue Fire Department  
Planning Commission

School Board





**MOTION: KELLY**

**August 11, 2009  
Regular Meeting  
Resolution No. 09-72**

**SECOND: TURNER**

**RE: GRANTING A SPECIAL USE PERMIT TO CALVARY CHRISTIAN CHURCH TO OPERATE A BEFORE AND AFTER SCHOOL DAY CARE FACILITY FOR CHILDREN AT CALVARY CHRISTIAN CENTER LOCATED AT 2222 JEFFERSON DAVIS HIGHWAY, FREDERICKSBURG, VIRGINIA**

**ACTION: APPROVED: Ayes 7; Nays: 0**

**WHEREAS**, the applicant, Calvary Christian Church, has applied to this Council for a special use permit to operate a before and after school day care facility for children at Calvary Christian Center located at 2222 Jefferson Davis Highway, Fredericksburg, Virginia.

**WHEREAS**, the Council after notice and public hearing thereon, has considered the application in light of its conformity with the City's Comprehensive Plan, its harmony with the purposes and standards of the zoning district regulations, its compatibility with existing or planned uses of neighboring properties, and whether the proposed special use and related improvements will be designed, sited, and landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**NOW, THEREFORE, BE IT RESOLVED,**

1. Based on the above considerations, Council finds: (a) the request as submitted or modified does conform to the City's Comprehensive Plan, or to specific elements of such plan and to official policies adopted pursuant thereto (b) the request is in harmony with the purpose and intent of the zoning district regulations, (c) this request will not have an undue adverse impact on the surrounding neighborhood, in terms of public health, safety or general welfare; and (d) this request is appropriately designed, sited, and landscaped and otherwise configured.
2. This Council grants Calvary Christian Church a special use permit to operate a before and after school day care facility for children in the Calvary Christian Center located at 2222 Jefferson Davis Highway in substantial accordance with its application for a special use permit filed on March 30, 2009, subject to the following conditions:
  1. The maximum number of children enrolled in the program shall be a 32.



## MEMORANDUM

TO: Chairman McAfee and Members of the Planning Commission  
FROM: Raymond P. Ocel, Jr. Director of Planning and Community Development  
DATE: September 8, 2010  
SUBJECT: SUP 2010-06: Fair Winds

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### **BACKGROUND:**

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to locate the school in two offices and two classrooms (rooms 202 and 203) located on the second floor of the Center. (See attached floor plan) The property is zoned C-T, Commercial Transitional and is owned by Calvary Christian Center. A site plan of the property is shown on the opposite side of the aforementioned floor plan. The property is located on Jefferson Davis Highway and contains the existing church building and its associated parking lot. The property is currently being used for services in the sanctuary, related church functions and a day care operated by the Center.

In order to attend the school, a student has to be determined, in an individual educational plan, to have a qualifying disability and directed to attend a private day school. All of the students will be ambulatory as the school is not staffed to accept a student with a physical disability. Students who attend the school come from surrounding school jurisdictions as well as the City and currently includes students from Stafford, Spotsylvania and Fairfax Counties as well as from the City school system. The applicant notes that out of the current enrollment, 6 students live in group homes, 5 live with their family, and 1 lives in foster care.

### **PROJECT DEVELOPMENT:**

The applicants propose to operate a special day school for student's ages 10-15 between the hours of 8:30 am to 3:00 pm. Students are dropped off shortly before school starts and teachers arrive by 8:00 am. The request is for a maximum of 12 children but the applicant states that 10 students are enrolled thus far. The school will operate on a similar schedule to City schools and will be open during the summer if a student's individual education plan requires it. The school will have 4 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Center.

EXHIBIT

tabbies

0

## **SPECIAL USE PERMIT ANALYSIS:**

Special use permits are evaluated utilizing the criteria contained within section 14-704 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:
  - (1) In harmony with the adopted comprehensive plan;
  - (2) In harmony with the purpose and intent of the zoning district regulations;
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

### **(1) In harmony with the adopted comprehensive plan;**

The future land use map contained within the Comprehensive Plan designates this property as Commercial Transitional. The surrounding properties are designated as commercial across Jefferson Davis Highway; high density residential to the northeast (apartments); low density residential to the east and across McConkey Street. The property lies within Planning Area 10-Lafayette Boulevard/National Park. The Plan does not provide specific recommendations for this property although the application assists in meeting one of the key issues that relates to preserving the integrity of the City. Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged.

Chapter 1: Vision found on page 7 of the Comprehensive Plan contains the City Council's vision for the City and one aspect of the vision states: To be a city inspired by active arts, cultural and education communities."

### **(2) In harmony with the purpose and intent of the zoning district regulations;**

The intent section of the C-T district states that the district is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses.

The corresponding uses permitted by right and by special use permit are listed because they contribute towards meeting the intent of the district. Residential and institutional uses are included within the use by special use because such uses can be appropriate in certain neighborhoods in the City and would maintain the character of the block on which it is located. Currently the Church provides both spiritual and educational benefits for its

congregation and its location on Jefferson Davis Highway is in harmony with its neighbors.

The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area.

**(3) In harmony with the existing uses or planned uses of neighboring properties.**

Staff notes that the requested permit is in keeping with good zoning practice as it will enable the Church to continue to expand its ministry. The requested permit is in keeping with and in compatible with the zoning and other uses in the neighborhood. Other uses in the area include residential uses (apartments and single family houses) office uses and commercial uses on the opposite side of Jefferson Davis Highway.

**(b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.**

There are no improvements proposed to the building or the property. The proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**RECOMMENDATION:**

Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit with the following conditions:

1. That the maximum number of children be limited to 12 between the ages of 10-15.
2. School hours will be from 8:00 am to 3:00 pm. The school will operate on a similar schedule to City schools and may be open during the summer.
3. The school will establish classrooms only in rooms 202 and 203 on the second floor of the Church as depicted in the application materials.
4. The school shall obtain all applicable State and local licenses prior to operation of the school and provide copies of such licenses to the Department of Planning and Community Development.
5. The school entrance and drop off point will be from the front door of the Church.
6. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
7. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.

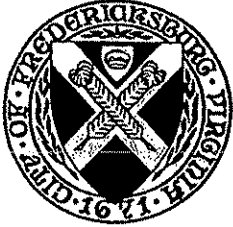
**ATTACHMENTS:**

Application and Supporting Materials.



*Original*

Application # SUP 2010 P2



**CITY OF FREDERICKSBURG, VIRGINIA**  
**APPLICATION FOR SPECIAL USE PERMIT**

*Prior to submitting a Special Use Permit application you will need to contact the Building & Development Services Office at (540)372-1080 to schedule a pre-plan conference.*

**Definition**

Special permit uses are uses which may have an undue impact or are incompatible with other land uses within a given area. These uses may be allowed, however, under standards, controls, limitations, performance criteria, restrictions, and other conditions specified in the Special Use Permit issued by the City Council.

**Approval of a Special Permit Use**

Each special permit use is carefully evaluated. The City may decide upon conditions for approval but may also deny such uses as incompatible with existing uses or the surrounding areas.

**Application Requirements**

Special permit use applications must be filed with the Office of Planning & Community Development. *Applications must include the application fee of \$150.00 for single-family residential OR \$300 for all other requests, as well as the original application PLUS 25 additional copies of the application and 25 copies of the preliminary plan with the following information (attach additional sheets as necessary):*

1. Certified boundary survey of the property.
2. Total area of the property.
3. Location and dimensions of all existing structures and facilities.
4. Location and dimensions, including height, of all proposed structures, site improvements, facilities, parking and loading access points, utilities and landscaping.
5. Description of the development's impact on neighboring and adjacent properties.
6. A certified plat, signed and sealed by a professional surveyor as well as by an engineer and/or architect who is qualified to certify structural, grading, utility, and other site improvements.
7. Statement of proposed use, ownership, maintenance plan, management program, and other information, to include hours of operation, proposed number of employees, operator's qualifications, traffic impact projections, market area to be served, and architectural features of proposed structures.

**Planning Commission and City Council Action**

The Planning Commission will provide public notice and hold a public hearing concerning a

Special Use Permit before rendering a decision. Upon a recommendation by the Planning Commission, the City Council will render a final decision on all applications within sixty (60) days after the Planning Commission has acted upon it.

**Special Use Permit Appeal**

Appeals of City Council action on special use permit applications may be filed with the Clerk of the Circuit Court, within 30-days of City Council Action.

**Conditions**

The City may impose conditions, safeguards and restrictions upon a proposed Special Use Permit as it may deem necessary in the public interest to secure compliance with the Zoning Ordinance and the Comprehensive Plan including, but not limited to, the following conditions:

1. Limit the hours of operation for the Special Use Permit.
2. Place a time limit on the Special Use Permit and require that it be periodically renewed or extended.

The City may also revoke a Special Use Permit, but must hold a hearing on the revocation and shall give the holder at least ten (10) days written notice of the hearing.

**Extensions/Renewal of Permits**

Applications for extension or renewal of Special Use Permits must be filed in writing to the zoning administrator ninety (90) days before the expiration of the permit. The City will monitor the Special Use Permit to determine if the use continues to satisfy the conditions of the original permit.

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Date of Application 8/1/10 Fee: \$150.00 or \$300.00  
Check # \_\_\_\_\_

Name of Applicant CALVARY CHRISTIAN CENTER

Mailing Address 200 MC CONKEY ST.

FREDERICKSBURG, VA 22401 Telephone: (540) 371-6328

The undersigned hereby applies for a Special Use Permit for (FAIRWINDS) DAY SCHOOL

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The property in question is described as follows:

Property Location 2222 JEFF DAVIS HWY FREDERICKSBURG VA 22401

Property Owned By CALVARY CHRISTIAN CENTER

Owner's Mailing Address 200 Mc CONKEY ST. FDBG., VA 22401

Proposed Use of Property (be specific) SEE ATTACHMENT FOR PROPOSED USE AND THE FOUR IMPACT STATEMENTS.

Hours of Operation 8AM - 3:30 office 8:30 - 3 Students:          Number of Employees 6

Anticipated Number of Patrons or Clients 12

Description of the development's impact on neighboring and adjacent properties (please submit a complete and accurate description on a separate sheet of paper):

- ① Compliance with Comprehensive Plan:
- ② In harmony with the purpose and intent of the zoning district regulations:
- ③ In harmony with the existing uses of planned use of the neighboring properties:
- ④ Traffic Impact:


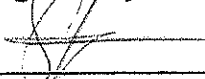
### LIST OF ABUTTING PROPERTY OWNERS

**IMPORTANT:** *To be considered for a special use permit, the applicant is required to provide a list of the abutting property owners and property owners immediately across the street or road from the subject property, as shown on the current real estate tax assessment books. This information can be obtained from the Real Estate Division of the Commissioner of the Revenue's Office, Room 107, Fredericksburg, City Hall, 715 Princess Anne Street, Fredericksburg, Virginia, the applicant shall provide a copy of a tax map or composite of several tax maps highlighting the properties that property owner information is provided. Additional sheets may be used if necessary.*


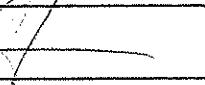
Assessor's Parcel No.	Name of Property Owner	Mailing Address of Abutting Property Owner
310 B 100	WELLINGTON LAKES	P.O. Box 320159 FLOWWOOD MS 39 232
310 B 2300	HOWE HOLDINGS LLC	311 CANON CIRCLE, FDBG., VA 22401
310 B 205	JOSEPH WILLIAMS	WAVERLY 8479 DAHLGREN RD

310-A-200	MICHAEL HIRSCH	200 MC LONKEY ST. FDB6, VA 22401
310-A-PB	CALVARY CHRISTIAN CHURCH	200 MC LONKEY ST. FDB6, VA 22401
<del>317-A-PS</del>	<del>RH DEVELOPMENT INC</del>	<del>PO BOX 1927 STAFFORD VA 22554</del>
<del>317-3301</del>	<del>ADL INVESTMENTS, LLC</del>	<del>175 MINE RD. STAFFORD VA 22554</del>
292-2301	DANIEL GEORGE	DRG INC 2301 JEFF DAVIS HWY FDB6 VA 22401
293-2105	LEE ENTERPRISES	P.O. BOX 849 FDB6 VA 22404
293-2209	KLR LLC	18 CHERRY TREE LN. FDB6 VA 22405
293-2215	HRV LLC	2215 JEFF DAVIS HWY FDB6 VA 22401

The undersigned is aware that any Special Use Permit issued is revocable on the failure of either the operator of the use covered or the owner of the property to observe all requirements of law with respect to the maintenance and conduct of the use and all conditions in connection with the permit that were designated by the City of Fredericksburg in issuing same.



 8/9/2010

Signature of Applicant \_\_\_\_\_ Date 7/30/2010  
 PRINT NAME REV. MICHAEL S HIRSCH

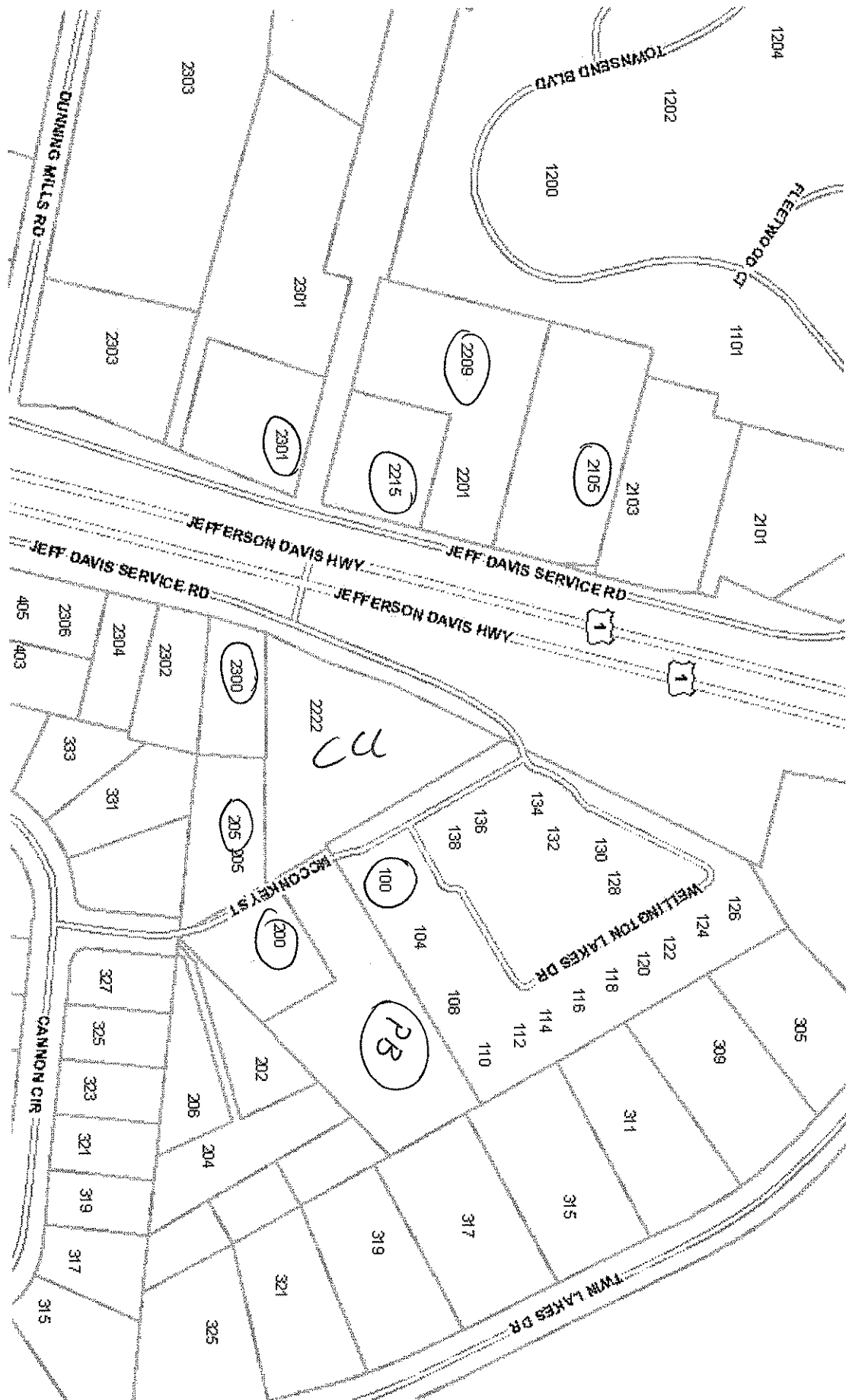


 8/9/2010

Signature of Property Owner \_\_\_\_\_ Date 7/30/2010  
 PRINT NAME: REV. MICHAEL S HIRSCH AGENT/TRUSTEE

**NOTE:** PLEASE BE AWARE THAT YOU WILL NOT BE CONTACTED PRIOR TO THE PLANNING COMMISSION MEETING UNLESS THE STAFF HAS QUESTIONS CONCERNING THE APPLICATION. IF YOU WOULD LIKE A COPY OF THE STAFF MEMO, WHICH CONTAINS THE STAFF'S RECOMMENDATION, PLEASE PROVIDE A FAX OR E-MAIL ADDRESS. MEMOS WILL BE AVAILABLE THE MONDAY PRIOR TO THE PLANNING COMMISSION MEETING.

*Please do not write below this line.*

Action by Planning Commission \_\_\_\_\_  
 Date \_\_\_\_\_  
 Action by City Council \_\_\_\_\_



2222 Gd Hwy

**Raymond P. Ocel, Jr.**  
Director of Planning &  
Community Development



**City of Fredericksburg**  
P.O. Box 7447  
Fredericksburg, VA 22404-7447  
Telephone: 540-372-1179  
Fax: 540-372-6412

August 5, 2010

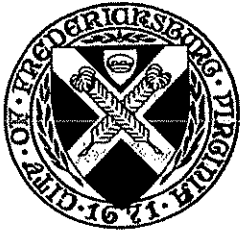
Calvary Christian Center  
200 McConkey Street  
Fredericksburg, Virginia 22401

Re: Day School Special Use Permit

Dear Pastor Mike:

Staff has completed review of the special use permit application for the above referenced use and finds that the following information needs to be submitted in order for the application to be deemed to be complete.

1. Provide a floor plan showing the location of the proposed school and the day care that was previously approved.
2. Provide pages 2 and 4 of the application as both pages are missing from the submittal.
3. At least one of the applications being submitted must contain original signature(s).
4. The names and mailing addresses of all adjacent property owners and property owners across any street must be provided with the application. It does not appear that the property owners across Route 1 were listed in the application. In addition, a tax map or composite of tax maps must be submitted indicating which property owners are being notified.
5. The four review criteria listed on page 3 of the application need to be answered in detail.
6. Is the use proposed to be conducted only during the regular public school system months of operation?
7. Provide a breakdown of the number of students who come from the various jurisdictions to better understand the population being served.
8. How will the hours of operation of the school affect the day care facility, in particular dropping off and picking up students?
9. In regard to the review criteria the following comments are provided:
  - a. Compliance with the Comprehensive Plan. While the property is accurately noted being located in Land Use Planning Area 10, the rest of the information provided is zoning related and the language comes out of the Zoning



**CITY OF FREDERICKSBURG, VIRGINIA**  
**APPLICATION FOR SPECIAL USE PERMIT**

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**Definition**

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**Approval of a Special Permit Use**

Each special permit use is carefully evaluated. The City may decide upon conditions for approval but may also deny such uses as incompatible with existing uses or the surrounding areas.

**Application Requirements**

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1. Certified boundary survey of the property.
2. Total area of the property.
3. Location and dimensions of all existing structures and facilities.
4. Location and dimensions, including height, of all proposed structures, site improvements, facilities, parking and loading access points, utilities and landscaping.
5. Description of the development's impact on neighboring and adjacent properties.
6. A certified plat, signed and sealed by a professional surveyor as well as by an engineer and/or architect who is qualified to certify structural, grading, utility, and other site improvements.
7. Statement of proposed use, ownership, maintenance plan, management program, and other information, to include hours of operation, proposed number of employees, operator's qualifications, traffic impact projections, market area to be served, and architectural features of proposed structures.

**Planning Commission and City Council Action**

The Planning Commission will provide public notice and hold a public hearing concerning a

Property Owned By CALVARY CHRISTIAN CENTER

Owner's Mailing Address 200 McCONKEY ST. FDBG., VA 22401

Proposed Use of Property (be specific) SEE ATTACHMENT FOR PROPOSED USE AND THE FOUR IMPACT STATEMENTS.

Hours of Operation 7:30 - 3:30 office Number of Employees 6  
8:00 - 2:30 students

Anticipated Number of Patrons or Clients 12

Description of the development's impact on neighboring and adjacent properties (please submit a complete and accurate description on a separate sheet of paper):

- ① Compliance with Comprehensive Plan:
- ② In harmony with the purpose and intent of the zoning district regulations:
- ③ In harmony with the existing uses of planned use of the neighboring properties:
- ④ Traffic Impact:

#### LIST OF ABUTTING PROPERTY OWNERS

**IMPORTANT:**

*To be considered for a special use permit, the applicant is required to provide a list of the abutting property owners and property owners immediately across the street or road from the subject property, as shown on the current real estate tax assessment books. This information can be obtained from the Real Estate Division of the Commissioner of the Revenue's Office, Room 107, Fredericksburg, City Hall, 715 Princess Anne Street, Fredericksburg, Virginia, the applicant shall provide a copy of a tax map or composite of several tax maps highlighting the properties that property owner information is provided. Additional sheets may be used if necessary.*

Assessor's Parcel No.	Name of Property Owner	Mailing Address of Abutting Property Owner
310 B 100	WELLINGTON LAKES	P.O. Box 320159 FLOWWOOD MS 39 232
310 B 2300	HOWE HOLDINGS LLC	311 CANON CIRCLE, FDBG., VA 22401
310 B 205	JOSEPH WILLIAMS	WAVERLY 8479 DAHLGREN RD

KING GEORGE, VA 22485



Proposed use for the space identified on the Special Use Permit is a day school for children with disabilities. Fair Winds Day School will be the occupant. Fair Winds Day School is operated by Ed Murphy and Associates, a registered corporation with the Virginia Corporation Commission, and licensed through the Virginia Department of Education. Offices for Ed Murphy and Associates are located in the City of Fredericksburg, and last year paid in excess of \$22,000 to the City of Fredericksburg by way of business tax, personal property tax, and real estate taxes.

Fair Winds Day School is currently licensed for 12 students aged between 10 and 15 years old, which are divided into two classrooms located on the second floor and identified as Classroom 202 and 203 with capacity for 24 and 19 respectively. Enrollment is anticipated to not exceed 24 as the need from referrals arises.

Each classroom of 6 students has two full time teachers totaling four. There is also a full time Site Supervisor on grounds and full time principal as well for a total of 6 full time staff. Our teachers are licensed special education teachers, two of whom have their Masters Degree. Our staff to student ratio, which exceeds the Virginia Department of Education requirements, fosters maintaining an academic environment in order to address on an individual basis the learning disabilities and the difficulties that accompany them. Our business is education, not crowd control.

During our first year of operation 2009 -2010 enrollment of our twelve students, four have been successfully mainstreamed back into public schools in the greater Fredericksburg area. Our students come to Fredericksburg from Fredericksburg, Stafford, and Spotsylvania jurisdictions. Some students arrive by public school bus, others are transported privately. Currently a total of five vehicles transport all students, who will be dropped off and picked up at the front door identified on the first floor plan as door 101, so traffic impact would be minimal. Our students are transported by van to local facilities (Paragon Gymnastics, YMCA) for physical education so there is little time that they spend outside of the building other than coming and going.

Hours of operation are from 7:30 to 3:30 PM for teachers and 8 to 2:30 PM for students. With few exceptions Fair Winds Day School follows the Fredericksburg City School Calendar and offers extended school year services whenever a Students Individual Education Plan calls for supplemental support, however not outside the hours of operation.

The proposed space for the school includes the two classrooms already described and an office/small group area on the second floor identified as Office duplex 204 and 205 which will be used by the speech therapist and occupational therapist for scheduled appointments. Code Data for all of these spaces are 2000 IBC Use Group: Non-Separated Mixed Use (A-3) Assembly and (E) Educational as the building plans approved by the City Department of Building and Development Services and bears the architectural stamp of John Burger.

The spaces were recently inspected and passed the Fredericksburg Fire Department inspection with No Violations Found as reported by the Office of the Fire Marshal personally by H. Babcock FM-1 on his field report of 7/30/2010.

The Spaces have also passed the Virginia Department of Social Services Health inspection, dated 1/10/2010.

Fair Winds has agreed to maintain their use areas and grounds using the existing maintenance staff of the Owner, Calvary Christian Center.

Regarding the description of the Day Schools impact on the neighboring and adjacent properties

**1. Compliance with Comprehensive Plan.** The site is located in Planning Area 10, Zoned (C-T) Commercial/Office-Transitional which is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses. The day school meets this criteria and is in compliance with the Comprehensive Plan for Planning Area 10.

It is worth noting that the site is surrounded by commercial properties such as private businesses and two apartment complexes with the only exception being adjacent abutting property owned by the Owners (Calvary Christian Center) which provides a convenient transitional buffer between any neighboring single family residential properties.

**2. In harmony with the purpose and intent of the Zoning District regulations.** Regarding harmony with the purpose and intent of the (C-T) Zoning District regulations a Day School is permitted by Special Use Permit (Sec.78-481, see item 4. Private schools and related uses).

**3. In harmony with the existing use of planned use of the neighboring properties.** Regarding impact on neighboring and adjacent properties the Day School is in harmony with the existing uses of planned use of the neighboring properties in as much as the Owner, Calvary Christian Center already conducts similar uses in the proposed areas in their ongoing weekly Sunday School, annual Vacation Bible School (A Religious Day School) and occasional Religious Educational conferences, seminars and webinars.

**4. Traffic Impact.** There should be no adverse effect on traffic as Day School Students arrive by Public Bus and four private vehicles.

Rev. Michael Hirsch is the person signing the SUP Application on behalf of the Owner and is legally authorized to do so.



2217 Princess Anne Street, Suite 200-1, Fredericksburg, VA 22401

August 9, 2010

Mr. Raymond P. Ocel Jr.  
Director of Planning and  
Community Development  
City of Fredericksburg  
PO Box 7447  
Fredericksburg, VA 22401-7447

Dear Mr. Ocel,

Thank you for your letter of August 5, 2010 regarding our application for a special use permit for a special day school. To make things easy I will address each item by number.

1. Floor plan provided which indicates that the school will be operating on the second floor in classrooms 202, and 203, as well as office space in rooms 204 and 205. On the same set of plans it can be seen that the day care uses the classrooms 114 and 116 on the first floor. It should be noted that as well as occupying separate space the day school operates at different times. Day care operates from 6 AM – 8:15 AM, and from 3:30 PM to 6 PM. The day school operates from 8:30 AM to 3 PM. Students are generally dropped off no earlier than 8:20 AM.
2. My apologies, I am rightfully embarrassed.
3. Original signature of Pastor Mike is now included.
4. All adjacent property owners are now identified.
5. This will be addressed in #9.
6. As stated, Fair Winds Day School follows the Fredericksburg City school calendar. This includes extended school year services (summer school) for those whose Individual Education Plan (IEP's) call for remediation.
7. In order to attend Fair Winds Day School a child has to be determined in an Individual Educational Plan (IEP) to have a qualifying disability and an IEP that states he shall attend a private day school. All of our students are ambulatory as physical disabilities is not a disability we serve. The district that writes the IEP has responsibility for that student's education. Our student's have IEP's that are written by Stafford County Schools (5), Fredericksburg City Schools (3), Spotsylvania County Schools (2), and Fairfax County Schools (2). This fall we have an enrollment of 10 thus far, we lose a Fairfax student and a Spotsylvania County student, both will be attending public school.

Our current enrollment consists of students of which 6 live in a group home, 5 live with their families, and 1 lives with a foster family.

Payment for the students does not always come from the locality that writes the IEP. If a foster child was placed in Fredericksburg, and Fredericksburg City Schools was responsible for his or her education and recommended special day school, the placing district gets the bill. Presently Fredericksburg City Schools writes the IEP's for 3 of our students but only gets billed for one.

Our goal with all of our students is to get them back to public school. We are not a permanent solution to most if not all of our students, but rather an intervention to address the issues that keeps them from attending public school. Four of our students from last year will be attending public school this year. For this reason we have at least a 3 to 1 ratio of students to staff.

8. Due to the different hours mentioned above there will be no conflict in the morning or afternoons. Our students are dropped off after day care has been picked up, and are students are gone by the time day care arrives.
9. A. In reviewing the key issues regarding Planning Area 10 in the comprehensive plan for the city, a private day school works in harmony with the intent as well as what is already there. It provides a nice buffer between the apartments and the light commercial businesses in the area. It is less than half a mile to the Fredericksburg City Middle and Upper Elementary Schools, a day care operates across the street, and the church where the school intends to reside has occupancy for 500. We will be using a space that is otherwise vacant during the hours we propose to use it.

B. Sec. 78-479 indicates that the C-T district is established to provide for the location of predominantly non-retail commercial use in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses. A day school program fits this description. We are a non-retail entity with a low intensity which will occupy an existing facility used for similar purposes at different times. A private school is listed as a permitted use in a C-T district, public Schools are located very nearby, and a day care exists across the highway.

C. The proposed site for the day school is surrounded by schools, a day care, offices, and residential units. A day school is compatible with all the surrounding businesses as our footprint will be small and our business does not have any negative impact on the environment or traffic. It is also in harmony with the planned use of the neighborhood as the church that will house the school was built to education standards for the various education and religious programs one can expect from a Christian Center and a day school for students with disabilities fits with the mission of the church.

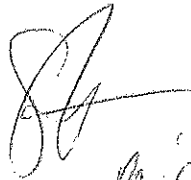
D. Presently our students are transported by bus and 3 private vehicles. Students are dropped off at 8:20 AM. Prior to the arrival of the students, the teachers arrive by 8 AM driving their vehicles. This would total 9 vehicles in the morning and afternoon at different times. About once per week, students go on field trips. This would involve two vans leaving after 8:30 AM, and returning before 3PM. Visitors during the day may number 4 or 5 by way of a speech therapist, occupational therapist, or IEP meetings. No other traffic is anticipated.

We hope that this answers all the questions you have. If you need further information or clarification we happily provide it.

Sincerely,

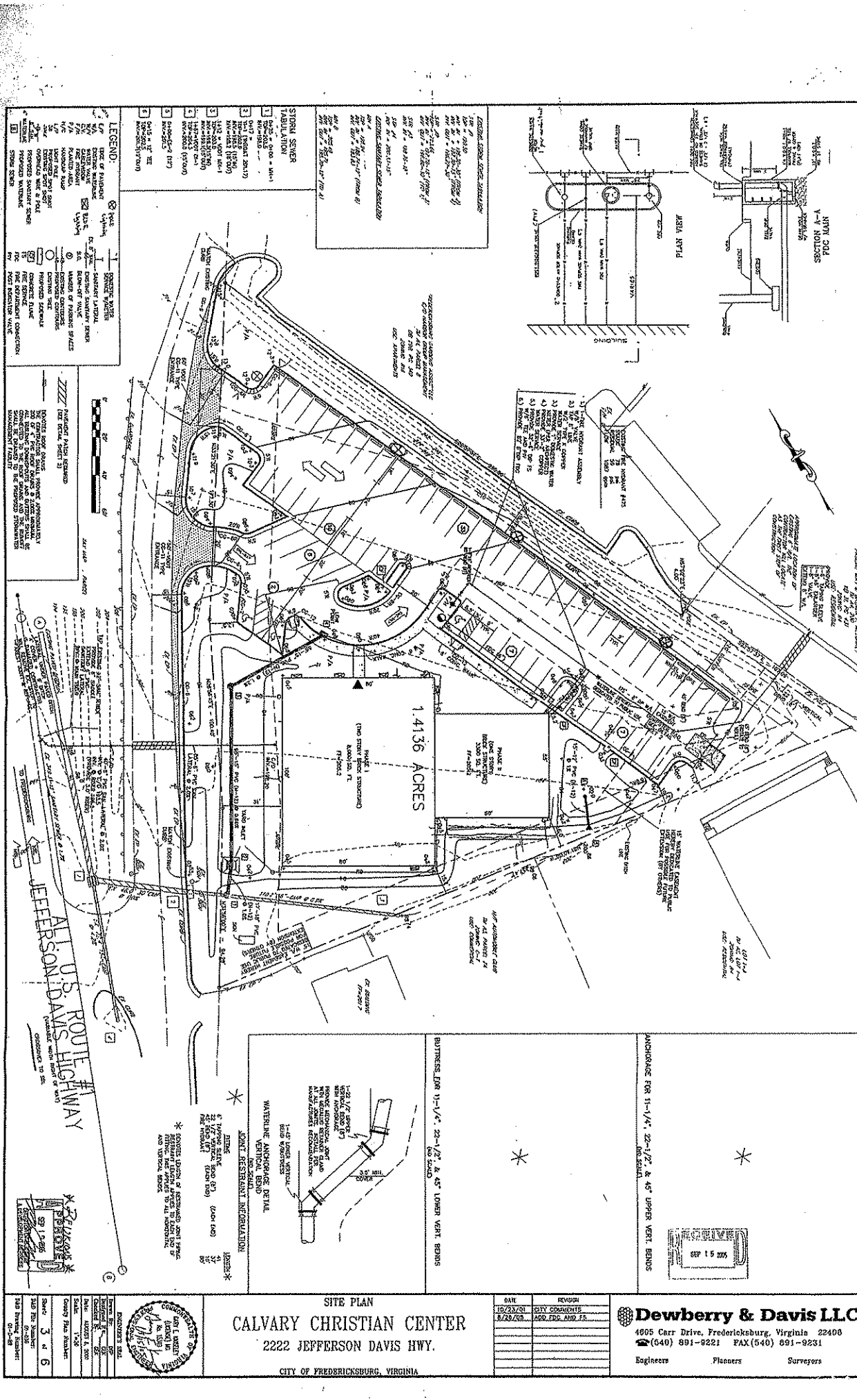


Ed Murphy, LCSW



MICHAEL S. HENSCH  
OWNER/ABERT CCC

8/9/2010



**LEGEND:**

Symbol	Description
Circle with 'S'	STORM SEWER
Circle with 'W'	WATER MAIN
Circle with 'G'	SEWER MAIN
Circle with 'F'	FIRE MAIN
Circle with 'E'	ELECTRIC MAIN
Circle with 'T'	TELEPHONE MAIN
Circle with 'C'	CABLE MAIN
Circle with 'D'	DRINKING WATER MAIN
Circle with 'A'	ALUMINUM
Circle with 'B'	BRICK
Circle with 'C'	CONCRETE
Circle with 'D'	GLASS
Circle with 'E'	IRON
Circle with 'F'	STEEL
Circle with 'G'	WOOD
Circle with 'H'	ASPHALT
Circle with 'I'	GRAVEL
Circle with 'J'	PAVEMENT
Circle with 'K'	CONCRETE DRIVE
Circle with 'L'	CONCRETE SIDEWALK
Circle with 'M'	CONCRETE CURB
Circle with 'N'	CONCRETE RAMP
Circle with 'O'	CONCRETE WALL
Circle with 'P'	CONCRETE SLAB
Circle with 'Q'	CONCRETE FOUNDATION
Circle with 'R'	CONCRETE COLUMN
Circle with 'S'	CONCRETE BEAM
Circle with 'T'	CONCRETE JOIST
Circle with 'U'	CONCRETE FLOOR
Circle with 'V'	CONCRETE ROOF
Circle with 'W'	CONCRETE CEILING
Circle with 'X'	CONCRETE WALL
Circle with 'Y'	CONCRETE CURB
Circle with 'Z'	CONCRETE RAMP

**STORM SEWER STABILIZATION**

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**PLANT VIEW**

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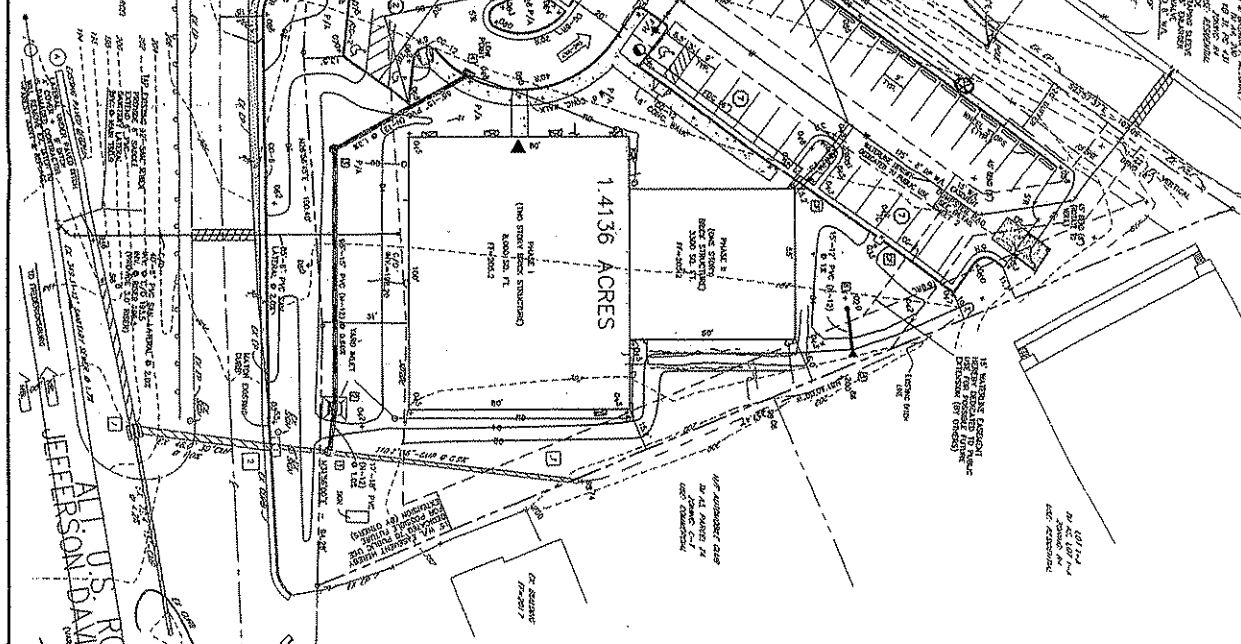
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**ANCHORAGE FOR 11-1/4", 22-1/2" & 45" UPPER VERT. BEAMS**

DATE: 10/23/01

REVISION: 10/23/01

BY: [Signature]

CHECKED: [Signature]

APP. FOR: [Signature]

**WATERLINE ANCHORAGE DETAIL**

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**SITE PLAN**

**CALVARY CHRISTIAN CENTER**

2222 JEFFERSON DAVIS HWY.

CITY OF FREDERICKSBURG, VIRGINIA

**Dewberry & Davis LLC**

4065 Carr Drive, Fredericksburg, Virginia 22408

(540) 891-8221 FAX (540) 891-9231

Engineers Planners Surveyors

**NOTICE TO CONTRACTORS**

THIS PLAN IS THE PROPERTY OF DEWBERRY & DAVIS LLC AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF DEWBERRY & DAVIS LLC.

DATE: 10/23/01

REVISION: 10/23/01

BY: [Signature]

CHECKED: [Signature]

APP. FOR: [Signature]

Scale: 1" = 100'

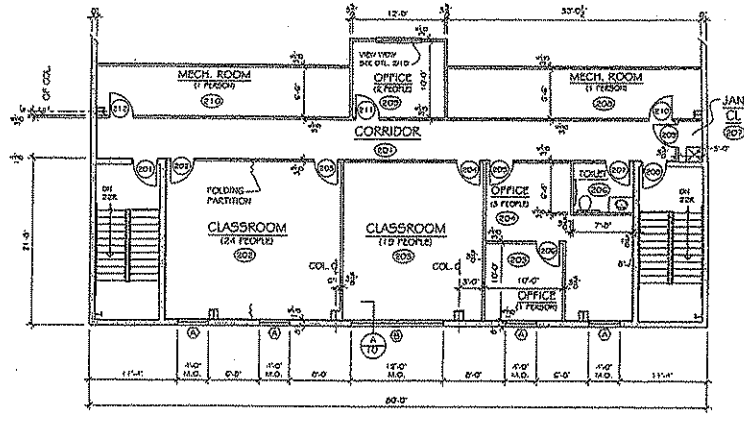
Sheet: 3 of 6

Drawn by: [Signature]

Checked by: [Signature]

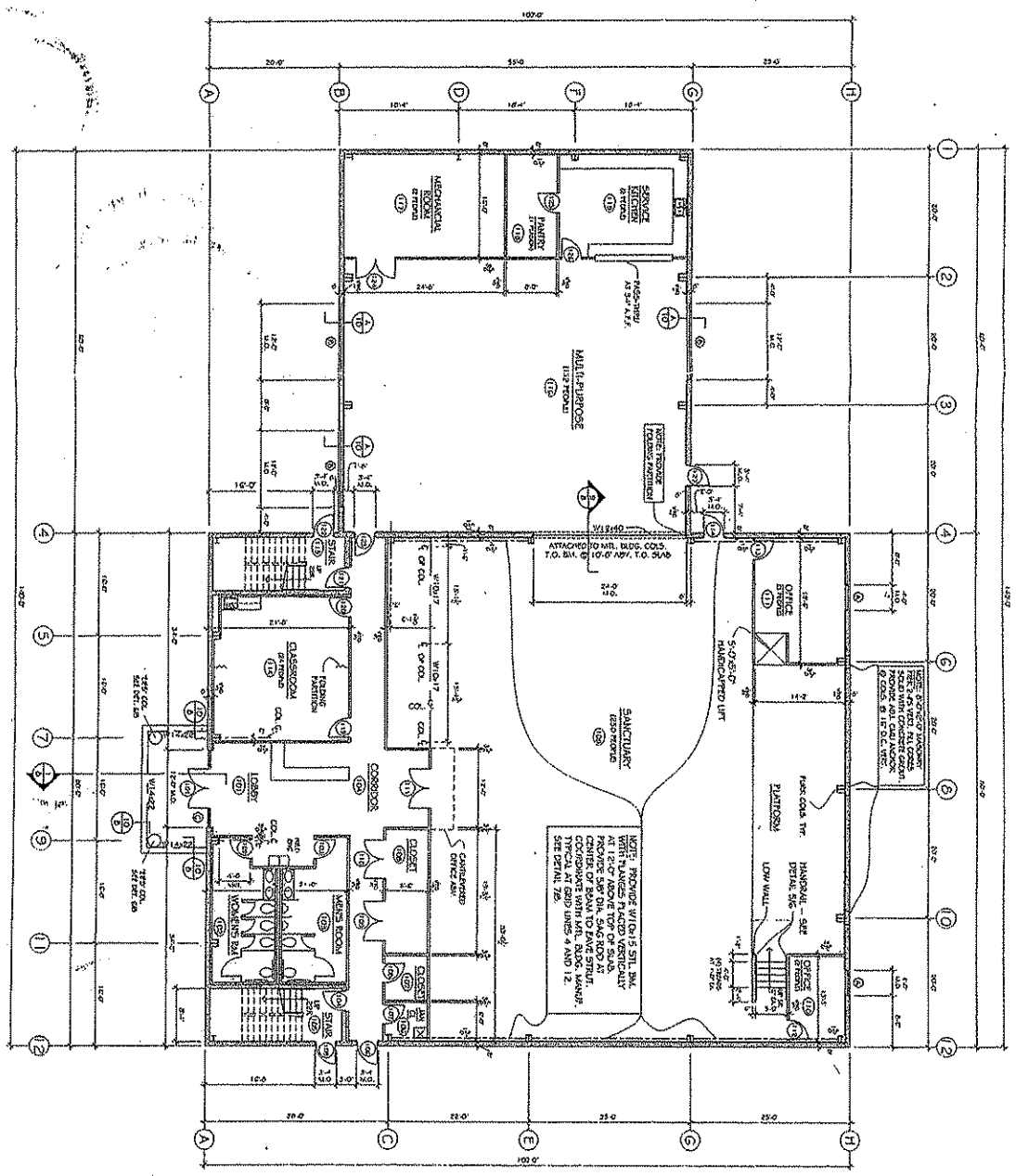
Approved by: [Signature]

10/23/01



SECOND FLOOR PLAN  
1/8" = 1'-0"

NOTE: SEE FLOOR PLAN NOTES ON SHEET 3.



FLOOR PLAN  
1/8" = 1'-0"

3	REVISIONS:	SHEET TITLE:	CALVARY CHRISTIAN CENTER 2222 JEFFERSON DAVIS HIGHWAY FREDERICKSBURG, VIRGINIA	JOHN J. BURGER, P.C. ARCHITECT FREDERICKSBURG, VIRGINIA (540) 371-8356
	DATE: 10 OCT 02 JOB NO.: 0223 SHEET NO.:	FLOOR PLAN		
	25 OCT 03 21 JUNE 05 26 JUL 05			

# Commonwealth of Virginia



## LICENSE TO OPERATE

In accordance with the provisions of Title 22.1, Chapter 16, Sections 22.1-319 through 22.1-335 of the Code of Virginia (2050) as amended, and applicable regulations of the Board of Education, this License to Operate a Private Day School for Students with Disabilities is issued to:

### Fair Winds Day School

2222 Jefferson Davis Highway  
Fredericksburg, Virginia 22401

Ownership:

Ed Murphy & Associates  
2217 Princess Anne Street  
Fredericksburg, Virginia 22401

Age:

6-15

Capacity:

12

Gender:

M/F

Disability Categories:

Emotional Disability  
Other Health Impairment  
Speech or Language Impairment

Issue Date: March 7, 2011

Expiration Date: March 6, 2012

This certificate is valid through the date shown above unless revoked or suspended for cause. In witness whereof, the Board of Education has caused this license to be issued.

*Patricia J. Wright*  
Superintendent of Public Instruction

tabbles	EXHIBIT
	E





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF EDUCATION

P.O. BOX 2120  
RICHMOND, VA 23218-2120

March 11, 2011

Mr. Ed Murphy  
Fair Winds Day School  
2222 Jefferson Davis Highway  
Fredericksburg, Virginia 22401

Dear Mr. Murphy:

Based on your application and the re-licensure visit on October 15, 2010 and February 3, 2011, enclosed is your *License to Operate* Fair Winds Day School. This license is issued in accordance with the provisions of Title 22.1, Chapter 16, and Sections 22.1-319 through 22.1-335 of the Code of Virginia. The license shall be prominently displayed on the premises of the school at all times. The term of the license will expire on March 6, 2012. The current maximum capacity of your school is 12.

You are authorized to serve only students with the disabilities noted on your license and are required to notify the Board of all changes in the operation of the school. Requests to add new programs or to serve students with other disability classifications must be submitted well in advance of the anticipated start date, and they may not be advertised until you have been authorized to do so.

Please let me know if you have any questions or if I may be of assistance to you in anyway. You may reach me by e-mail at [karen.schonauer@doe.virginia.gov](mailto:karen.schonauer@doe.virginia.gov) or by telephone at (804) 786-3234.

Sincerely,

A handwritten signature in black ink that reads "Karen Schonauer".

Karen Schonauer, Monitoring Specialist  
Private Schools for Students with Disabilities

KS/rge  
Enclosure



# PLANNING COMMISSION

## MINUTES

September 8, 2010

7:30 P.M.

CITY OF FREDERICKSBURG  
715 PRINCESS ANNE STREET  
COUNCIL CHAMBERS

### COMMISSION MEMBERS

Roy McAfee, Chair  
Dr. Roy Gratz, Vice-Chair  
Susan Spears, Secretary, Absent  
Ricardo Rigual  
Edward Whelan, III  
Vic Ramoneda  
Berkley Mitchell

### CITY STAFF

Ray Ocel, Director of Planning  
Erik Nelson, Sr. Planner  
Kevin Utt, B&DS

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#### 1. CALL TO ORDER

The September 8, 2010 Planning Commission meeting was called to order at 7:30 p.m. by Chairman Roy McAfee.

#### 2. PLEDGE OF ALLEGIANCE

#### 3. ADOPTION OF MINUTES

- June 9, 2010, Work Session minutes were approved/adopted with a correction in Commissioner Rigual's name, which had been misspelled.
- July 28, 2010 minutes were approved/adopted as submitted.

- #### 4. SUP2010-06: Calvary Christian Center - Special Use Permit request in order to operate a private school for children with a qualifying disability (not physical) in the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant, Fair Wind, proposes to operate a special day school for up to 12 children. The property is zoned CT, Commercial Transitional and is designated Transitional/Office on the Future Land Use Map found within the 2007 Comprehensive Plan.

Mr. Ocel provided an overview of the application. He added that there were a couple corrections to his staff report under the conditions section. He said the ages of the children should read 8 – 15 years. Hours of operation are to be 8:00 a.m. – 3:00 p.m. The maximum number of children is amended to 18.

Dr. Gratz asked if this school is already in operation as the staff reports indicates that they are.

Mr. Ocel said they had been operating at another location in the City without the proper permits but that once they had decided to locate in the subject property they became aware that they

EXHIBIT

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## MEMORANDUM

TO: Chairman McAfee and Members of the Planning Commission  
FROM: Raymond P. Ocel, Jr. Director of Planning and Community Development  
DATE: September 8, 2010/September 29, 2010  
SUBJECT: SUP 2010-06: Fair Winds

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### SEPTEMBER 29<sup>TH</sup> ADDENDUM:

At the September 8<sup>th</sup> public hearing, the Commission did not receive any public comments in regard to the application. Mr. Rigual raised a question about any interaction that may occur between children in the day care on the first floor and the students in the proposed school. The applicant noted that due to different arrival and departure times and being located in different parts of the building, there would be little to no interaction between the two groups.

### BACKGROUND:

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to locate the school in two offices and two classrooms (rooms 202 and 203) located on the second floor of the Center. (See attached floor plan) The property is zoned C-T, Commercial Transitional and is owned by Calvary Christian Center. A site plan of the property is shown on the opposite side of the aforementioned floor plan. The property is located on Jefferson Davis Highway and contains the existing church building and its associated parking lot. The property is currently being used for services in the sanctuary, related church functions and a day care operated by the Center.

In order to attend the school, a student has to be determined, in an individual educational plan, to have a qualifying disability and directed to attend a private day school. All of the students will be ambulatory as the school is not staffed to accept a student with a physical disability. Students who attend the school come from surrounding school jurisdictions as well as the City and currently includes students from Stafford, Spotsylvania and Fairfax Counties as well as from the City school system. The applicant notes that out of the current enrollment, 6 students live in group homes, 5 live with their family, and 1 lives in foster care.

Calvary Christian previously received approval to operate a day care facility for up to 32 children ages 5-12 between the hours of 6:00 am to 6:00 pm on the first floor of the

EXHIBIT

tabbies

6

building. The school will operate on a similar schedule to City schools and will not be open during the summer. The school will have 3 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Church and will be escorted to and from the building by a teacher or administrator. To date this child care center has not begun operation.

### **PROJECT DEVELOPMENT:**

The applicants propose to operate a special day school for student's ages 8-15 between the hours of 8:30 am to 3:00 pm. Students are dropped off shortly before school starts and teachers arrive by 8:00 am. The request is for a maximum of 18 children but the applicant states that 10 students are enrolled thus far. The school will operate on a similar schedule to City schools and will be open during the summer if a student's individual education plan requires it. The school will have 4 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Center.

### **SPECIAL USE PERMIT ANALYSIS:**

Special use permits are evaluated utilizing the criteria contained within section 14-704 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:
  - (1) In harmony with the adopted comprehensive plan;
  - (2) In harmony with the purpose and intent of the zoning district regulations;
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

#### **(1) In harmony with the adopted comprehensive plan;**

The future land use map contained within the Comprehensive Plan designates this property as Commercial Transitional. The surrounding properties are designated as commercial across Jefferson Davis Highway; high density residential to the northeast (apartments); low density residential to the east and across McConkey Street. The property lies within Planning Area 10-Lafayette Boulevard/National Park. The Plan does not provide specific recommendations for this property although the application assists in meeting one of the key issues that relates to preserving the integrity of the City. Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged.

Chapter 1: Vision found on page 7 of the Comprehensive Plan contains the City Council's vision for the City and one aspect of the vision states: To be a city inspired by active arts, cultural and education communities."

**(2) In harmony with the purpose and intent of the zoning district regulations;**

The intent section of the C-T district states that the district is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses.

The corresponding uses permitted by right and by special use permit are listed because they contribute towards meeting the intent of the district. Residential and institutional uses are included within the use by special use because such uses can be appropriate in certain neighborhoods in the City and would maintain the character of the block on which it is located. Currently the Church provides both spiritual and educational benefits for its congregation and its location on Jefferson Davis Highway is in harmony with its neighbors.

The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area.

**(3) In harmony with the existing uses or planned uses of neighboring properties.**

Staff notes that the requested permit is in keeping with good zoning practice as it will enable the Church to continue to expand its ministry. The requested permit is in keeping with and in compatible with the zoning and other uses in the neighborhood. Other uses in the area include residential uses (apartments and single family houses) office uses and commercial uses on the opposite side of Jefferson Davis Highway.

**(b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.**

There are no improvements proposed to the building or the property. The proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**RECOMMENDATION:**

Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit with the following conditions:

1. That the maximum number of children be limited to 18 between the ages of 8-15.
2. School hours will be from 8:00 am to 3:00 pm. The school will operate on a similar schedule to City schools and may be open during the summer.
3. The school will establish classrooms only in rooms 202 and 203 on the second floor of the Church as depicted in the application materials.
4. The school shall obtain all applicable State and local licenses prior to operation of the school and provide copies of such licenses to the Department of Planning and Community Development.
5. The school entrance and drop off point will be from the front door of the Church.
6. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
7. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.

**ATTACHMENTS:**

Previously Provided.



# PLANNING COMMISSION

## MINUTES

September 29, 2010

4:00 P.M.

CITY OF FREDERICKSBURG  
715 PRINCESS ANNE STREET  
COUNCIL CHAMBERS

### COMMISSION MEMBERS

Roy McAfee, Chair  
Dr. Roy Gratz, Vice-Chair  
Susan Spears, Secretary  
Ricardo Rigual, Absent  
Edward Whelan, III  
Vic Ramoneda  
Berkley Mitchell, Absent

### CITY STAFF

Ray Ocel, Director of Planning  
Erik Nelson, Sr. Planner

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### 1. CALL TO ORDER

The September 29, 2010 Planning Commission meeting was called to order at 4:00 p.m. by Chairman Roy McAfee.

### 2. PLEDGE OF ALLEGIANCE

### 3. ADOPTION OF MINUTES

- September 8, 2010 Minutes were approved and adopted as submitted.

### UNFINISHED BUSINESS/ACTION ITEMS

4. **SUP2010-06: Calvary Christian Center** - Special Use Permit request in order to operate a private school for children with a qualifying disability (not physical) in the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant, Fair Wind, proposes to operate a special day school for up to 12 children. The property is zoned CT, Commercial Transitional and is designated Transitional/Office on the Future Land Use Map found within the 2007 Comprehensive Plan.

Mr. Ocel noted that at the September 8<sup>th</sup> public hearing, the Commission did not receive any public comments in regard to the application. Mr. Rigual raised a question about any interaction that may occur between children in the day care on the first floor and the students in the proposed school. The applicant noted that due to different arrival and departure times and being located in different parts of the building, there would be little to no interaction between the two groups.

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to

**EXHIBIT**

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    H

October 26

**STAFF MEMO**  
**Special Use Permit #SUP 2010-06**  
**Fair Winds**

Staff Recommendation:

Approval with Conditions

1. Overview

A. Request:

The applicant requests approval of a special use permit to operate a special day school within the Calvary Christian Center.

B. Applicant:

Calvary Christian Center on behalf of Ed Murphy of Fair Winds

C. Owner of Property:

Calvary Christian Center

D. Site Details: Address  
: Current Use

2222 Jefferson Davis Highway  
Church

E. Lot Acreage

Approximately 1.41 acres

F. Surrounding Zoning:

C-T, Commercial Transitional

G. Surrounding Uses:

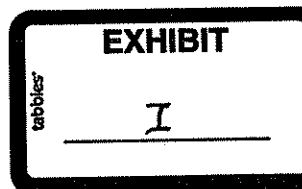
Office, Residential, Commercial

H. Planning Commission:

September 8<sup>th</sup> and 29<sup>th</sup>

I. Future Land Use Designation:

Transitional/Office







## MEMORANDUM

TO: Beverly R. Cameron, City Manager  
FROM: Raymond P. Ocel, Jr. Director of Planning and Community Development  
DATE: October 26, 2010  
SUBJECT: SUP 2010-06: Fair Winds

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### **ISSUE:**

This is a request by the Calvary Christian Center on behalf of Ed Murphy of Fairwinds to obtain a special use permit in order to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway.

### **STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the special use permit with the conditions noted in the City Attorney's resolution.

### **PLANNING COMMISSION RECOMMENDATION:**

At its September 29th meeting, the Planning Commission, by a vote of 5-0 recommended approval of the special use permit with the conditions recommended by staff. Mr. Rigual raised a question concerning any interaction that may occur between children in the day care on the first floor and the students in the proposed school. The applicant noted that due to different arrival and departure times and being located in different parts of the building, there would be little to no interaction between the two groups.

No members of the public spoke in regard to this application at the public hearing.

### **BACKGROUND:**

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to locate the school in two offices and two classrooms (rooms 202 and 203) located on the second floor of the Center. (See attached floor plan) The property is zoned C-T, Commercial Transitional and is owned by Calvary Christian Center. The property is located on Jefferson Davis Highway and contains the existing church building and its associated parking lot. The property is currently being used for services in the sanctuary, related church functions and a day care operated by the Center.

In order to attend the proposed school, a student has to be determined, in an individual educational plan, to have a qualifying disability and directed to attend a private day school. All of the students will be ambulatory as the school is not staffed to accept a student with a physical disability. Students who attend the school come from surrounding school jurisdictions as well as the City and currently includes students from Stafford, Spotsylvania and Fairfax Counties as well as from the City school system. The applicant notes that out of the current enrollment, 6 students live in group homes, 5 live with their family, and 1 lives in foster care.

Calvary Christian Center previously received approval to operate a day care facility for up to 32 children ages 5-12 between the hours of 6:00 am to 6:00 pm on the first floor of the building. To date this child care center has not begun operation. (See attachment #2) The proposed school will operate on a similar schedule to City schools and will not be open during the summer. It will employ 3 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Church and will be escorted to and from the building by a teacher or administrator.

#### **PROJECT DEVELOPMENT:**

The applicant proposes to operate a special day school for student ages 8-15, between the hours of 8:30 am to 3:00 pm. Students are dropped off shortly before school starts and teachers arrive by 8:00 am. The request is for a maximum of 18 children. The school will operate on a similar schedule to City schools and will be open during the summer if a student's individual education plan requires it. The school will have 4 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Center.

#### **SPECIAL USE PERMIT ANALYSIS:**

Special use permits are evaluated utilizing the criteria contained within section 78-994 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:
  - (1) In harmony with the adopted comprehensive plan;
  - (2) In harmony with the purpose and intent of the zoning district regulations;
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**(a) (1) In harmony with the adopted Comprehensive Plan;**

The future land use map contained within the Comprehensive Plan designates this property as Commercial Transitional. The surrounding properties are designated as commercial across Jefferson Davis Highway; high density residential to the northeast (apartments); low density residential to the east and across McConkey Street. The property lies within Planning Area 10-Lafayette Boulevard/National Park. The Plan does not provide specific recommendations for this property although the application assists in meeting one of the key issues that relates to preserving the integrity of the City. Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged.

Chapter 1: Vision found on page 7 of the Comprehensive Plan contains the City Council's vision for the City and one aspect of the vision states: To be a City inspired by active arts, cultural and education communities."

**(a) (2) In harmony with the purpose and intent of the zoning district regulations;**

The intent section of the C-T district states that the district is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses.

The corresponding uses permitted by right and by special use permit are listed because they contribute toward meeting the intent of the district. Residential and institutional uses are included within the district by special use because such uses can be appropriate in certain neighborhoods in the City and would maintain the character of the block on which they are located. Currently the Center provides both spiritual and educational benefits for its congregation and its location on Jefferson Davis Highway is in harmony with its neighbors.

The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area.

**(a) (3) In harmony with the existing uses or planned uses of neighboring properties.**

Staff notes that the requested permit is in keeping with good zoning practice as it will enable the Center to continue to expand its ministry. The requested permit is in keeping with and is compatible with the zoning and other uses in the neighborhood. Other uses in the area include residential uses (apartments and single family houses), office uses, and commercial uses on the opposite side of Jefferson Davis Highway.

- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.**

There are no improvements proposed to the exterior of the building or the property. The proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

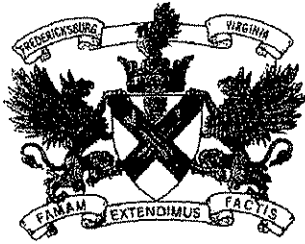
**RECOMMENDATION:**

Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit with the following conditions:

1. That the maximum number of children be limited to 18 between the ages of 8-15.
2. School hours will be from 8:00 am to 3:00 pm. The school will operate on a similar schedule to City schools and may be open during the summer.
3. The school will only establish classrooms in rooms 202 and 203 on the second floor of the Center as depicted in the application materials.
4. The school shall obtain all applicable State and local licenses prior to operation of the school and provide copies of such licenses to the Department of Planning and Community Development.
5. The school entrance and drop off point will be from the front door of the Center.
6. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
7. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.

**ATTACHMENTS:**

1. Application and Supporting Materials
2. Approved SUP for Day Care



**CITY OF FREDERICKSBURG  
Virginia**

**NOTIFICATION OF CITY ACTION**

**TO:** Calvary Christian Center  
200 McConkey Street  
Fredericksburg, VA 22401

**FROM:** Raymond P. Ocel, Jr., Director of Planning & Community Development *MMO*

**DATE:** August 13, 2009

**RE: SUP2009-12: Calvary Christian Center Church to Operate a Day Care**

Your request for:	
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Subdivision Plat/Plan
<input type="checkbox"/> Site Plan	<input checked="" type="checkbox"/> Special Use Permit
<input type="checkbox"/> Change of Non-Conforming Use	
has been:	
<input checked="" type="checkbox"/> Approved, with conditions	<input type="checkbox"/> Approved with proffers
<input type="checkbox"/> Other _____	<input type="checkbox"/> Denied
At the August 11, 2009 meeting of the:	
<input type="checkbox"/> Planning Commission	<input checked="" type="checkbox"/> City Council
Your next step should be:	
<input type="checkbox"/> File additional/revised plans as required	
<input checked="" type="checkbox"/> Obtain other required permits: (as required)	
<input type="checkbox"/> No further information is required	

*SPECIFICS/CONDITIONS (Continued on reverse, if necessary)*

*Your request for a special use permit in order to operate a child day care within the Calvary Christian Church located at 2222 Jefferson Davis Highway has been approved, with the following conditions.*

1. That the maximum number of children enrolled in the program be a maximum of 32 children.
2. The before and after program will operate in conjunction with the City schools and will not be open during the summer.
3. The day care will be located on the first floor of the Church as depicted in the application materials.
4. The day care entrance and drop off point will be from the front door of the Church. Children shall be escorted to the Church from the front drive area by a member of the day care facility.
5. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
6. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.
7. That there shall be no outdoor play area established for the day care.
8. The age of children attending the school shall be between 5 and 12 years of age.

c: Building & Development Services  
Department of Public Works

Commissioner of the Revenue Fire Department  
Planning Commission

School Board



**MOTION: KELLY**  
**SECOND: TURNER**

**August 11, 2009**  
**Regular Meeting**  
**Resolution No. 09-72**

**RE: GRANTING A SPECIAL USE PERMIT TO CALVARY CHRISTIAN CHURCH TO OPERATE A BEFORE AND AFTER SCHOOL DAY CARE FACILITY FOR CHILDREN AT CALVARY CHRISTIAN CENTER LOCATED AT 2222 JEFFERSON DAVIS HIGHWAY, FREDERICKSBURG, VIRGINIA**

**ACTION: APPROVED: Ayes 7; Nays: 0**

**WHEREAS**, the applicant, Calvary Christian Church, has applied to this Council for a special use permit to operate a before and after school day care facility for children at Calvary Christian Center located at 2222 Jefferson Davis Highway, Fredericksburg, Virginia.

**WHEREAS**, the Council after notice and public hearing thereon, has considered the application in light of its conformity with the City=s Comprehensive Plan, its harmony with the purposes and standards of the zoning district regulations, its compatibility with existing or planned uses of neighboring properties, and whether the proposed special use and related improvements will be designed, sited, and landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**NOW, THEREFORE, BE IT RESOLVED,**

1. Based on the above considerations, Council finds: (a) the request as submitted or modified does conform to the City=s Comprehensive Plan, or to specific elements of such plan and to official policies adopted pursuant thereto (b) the request is in harmony with the purpose and intent of the zoning district regulations, (c) this request will not have an undue adverse impact on the surrounding neighborhood, in terms of public health, safety or general welfare; and (d) this request is appropriately designed, sited, and landscaped and otherwise configured.
2. This Council grants Calvary Christian Church a special use permit to operate a before and after school day care facility for children in the Calvary Christian Center located at 2222 Jefferson Davis Highway in substantial accordance with its application for a special use permit filed on March 30, 2009, subject to the following conditions:
  1. The maximum number of children enrolled in the program shall be a 32.

November 9

**STAFF MEMO**  
**Special Use Permit #SUP 2010-06**  
**Fair Winds**

Staff Recommendation:

Approval with Conditions

1. Overview

- A. Request: The applicant requests approval of a special use permit to operate a special day school within the Calvary Christian Center.
- B. Applicant: Calvary Christian Center on behalf of Ed Murphy of Fair Winds
- C. Owner of Property: Calvary Christian Center
- D. Site Details: Address : Current Use 2222 Jefferson Davis Highway Church
- E. Lot Acreage Approximately 1.41 acres
- F. Surrounding Zoning: C-T, Commercial Transitional
- G. Surrounding Uses: Office, Residential, Commercial
- H. Planning Commission: September 8<sup>th</sup> and 29<sup>th</sup>
- I. Future Land Use Designation: Transitional/Office

EXHIBIT

tabbles

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## MEMORANDUM

TO: Beverly R. Cameron, City Manager  
FROM: Raymond P. Ocel, Jr. Director of Planning and Community Development  
DATE: October 26, 2010/November 9, 2010  
SUBJECT: SUP 2010-06: Fair Winds

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### **NOVEMBER 9<sup>TH</sup> UPDATE:**

At the October 26<sup>th</sup> public hearing, Council members directed a number of questions and concerns to the applicant, Ed Murphy of Fair Winds and the property owner, Pastor Mike Hirsch of the Calvary Christian Center. After a thorough review of the application and issues raised at the meeting, Council voted to defer action on the application due to the concerns raised by Council members during the discussion with the applicant and to give Mr. Howe time to discuss his potential conflict of interest on this application with the City Attorney.

### **ISSUE:**

This is a request by the Calvary Christian Center on behalf of Ed Murphy of Fairwinds to obtain a special use permit in order to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway.

### **STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the special use permit with the conditions noted in the City Attorney's resolution.

### **PLANNING COMMISSION RECOMMENDATION:**

At its September 29th meeting, the Planning Commission, by a vote of 5-0 recommended approval of the special use permit with the conditions recommended by staff. Mr. Rigual raised a question concerning any interaction that may occur between children in the day care on the first floor and the students in the proposed school. The applicant noted that due to different arrival and departure times and being located in different parts of the building, there would be little to no interaction between the two groups.

No members of the public spoke in regard to this application at the public hearing.



## **BACKGROUND:**

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to locate the school in two offices and two classrooms (rooms 202 and 203) located on the second floor of the Center. (See attached floor plan) The property is zoned C-T, Commercial Transitional and is owned by Calvary Christian Center. The property is located on Jefferson Davis Highway and contains the existing church building and its associated parking lot. The property is currently being used for services in the sanctuary, related church functions and a day care operated by the Center.

In order to attend the proposed school, a student has to be determined, in an individual educational plan, to have a qualifying disability and directed to attend a private day school. All of the students will be ambulatory as the school is not staffed to accept a student with a physical disability. Students who attend the school come from surrounding school jurisdictions as well as the City and currently includes students from Stafford, Spotsylvania and Fairfax Counties as well as from the City school system. The applicant notes that out of the current enrollment, 6 students live in group homes, 5 live with their family, and 1 lives in foster care.

Calvary Christian Center previously received approval to operate a day care facility for up to 32 children ages 5-12 between the hours of 6:00 am to 6:00 pm on the first floor of the building. To date this child care center has not begun operation. (See attachment #2) The proposed school will operate on a similar schedule to City schools and will not be open during the summer. It will employ 3 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Church and will be escorted to and from the building by a teacher or administrator.

## **PROJECT DEVELOPMENT:**

The applicant proposes to operate a special day school for student ages 8-15, between the hours of 8:30 am to 3:00 pm. Students are dropped off shortly before school starts and teachers arrive by 8:00 am. The request is for a maximum of 18 children. The school will operate on a similar schedule to City schools and will be open during the summer if a student's individual education plan requires it. The school will have 4 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Center.

## **SPECIAL USE PERMIT ANALYSIS:**

Special use permits are evaluated utilizing the criteria contained within section 78-994 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:

- (1) In harmony with the adopted comprehensive plan;
  - (2) In harmony with the purpose and intent of the zoning district regulations;
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**(a) (1) In harmony with the adopted Comprehensive Plan;**

The future land use map contained within the Comprehensive Plan designates this property as Commercial Transitional. The surrounding properties are designated as commercial across Jefferson Davis Highway; high density residential to the northeast (apartments); low density residential to the east and across McConkey Street. The property lies within Planning Area 10-Lafayette Boulevard/National Park. The Plan does not provide specific recommendations for this property although the application assists in meeting one of the key issues that relates to preserving the integrity of the City. Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged.

Chapter 1: Vision found on page 7 of the Comprehensive Plan contains the City Council's vision for the City and one aspect of the vision states: To be a City inspired by active arts, cultural and education communities."

**(a) (2) In harmony with the purpose and intent of the zoning district regulations;**

The intent section of the C-T district states that the district is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses.

The corresponding uses permitted by right and by special use permit are listed because they contribute toward meeting the intent of the district. Residential and institutional uses are included within the district by special use because such uses can be appropriate in certain neighborhoods in the City and would maintain the character of the block on which they are located. Currently the Center provides both spiritual and educational benefits for its congregation and its location on Jefferson Davis Highway is in harmony with its neighbors.

The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area.

**(a) (3) In harmony with the existing uses or planned uses of neighboring properties.**

Staff notes that the requested permit is in keeping with good zoning practice as it will enable the Center to continue to expand its ministry. The requested permit is in keeping with and is compatible with the zoning and other uses in the neighborhood. Other uses in the area include residential uses (apartments and single family houses), office uses, and commercial uses on the opposite side of Jefferson Davis Highway.

**(b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.**

There are no improvements proposed to the exterior of the building or the property. The proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**RECOMMENDATION:**

Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit with the following conditions:

1. That the maximum number of children be limited to 18 between the ages of 8-15.
2. School hours will be from 8:00 am to 3:00 pm. The school will operate on a similar schedule to City schools and may be open during the summer.
3. The school will only establish classrooms in rooms 202 and 203 on the second floor of the Center as depicted in the application materials.
4. The school shall obtain all applicable State and local licenses prior to operation of the school and provide copies of such licenses to the Department of Planning and Community Development.
5. The school entrance and drop off point will be from the front door of the Center.
6. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
7. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.

**ATTACHMENTS:**

Public Correspondence since the Public Hearing.



## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Thursday, October 28, 2010 6:38 AM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - approval of Calvary Christian Church SUP 2010-06

See below.  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [Reneebaday@gmail.com](mailto:Reneebaday@gmail.com) <[Reneebaday@gmail.com](mailto:Reneebaday@gmail.com)>  
**To:** Tonya Lacey  
**Sent:** Thu Oct 28 05:54:22 2010  
**Subject:** Website Comment - approval of Calvary Christian Church SUP 2010-06

**The following has been submitted from Fredericksburgva.gov.**

Name: Renee Hochenberger

E-mail address: [Reneebaday@gmail.com](mailto:Reneebaday@gmail.com)

Phone: 540 318 6188

Subject: approval of Calvary Christian Church SUP 2010-06

Question or Comment: Please distribute this to the members of City Council. It is important that this special use permit application be approved asap! Every day counts in the life of a child. Thank you

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 9:52 AM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - Calvary Christian Church SUP 2010-06

See below.

Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [jtsk8rats@aol.com](mailto:jtsk8rats@aol.com) <[jtsk8rats@aol.com](mailto:jtsk8rats@aol.com)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 09:28:55 2010  
**Subject:** Website Comment - Calvary Christian Church SUP 2010-06

### **The following has been submitted from Fredericksburgva.gov.**

Name: Juan L Torres

E-mail address: [jtsk8rats@aol.com](mailto:jtsk8rats@aol.com)

Phone:

Subject: Calvary Christian Church SUP 2010-06

Question or Comment: I support the initiative mentioned in the subject line. This initiative for Special Use Permit application for the Day School at Calvary Christian church in Fredericksburg will be of great benefit not only to the the community, but to the 18 children that the school will be serving. Please send this email to all the council members with my urge to approve, as soon as possible, this initiative! Thank you for your attention to this matter.

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 6:44 AM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - Fair Winds Day School

See below.  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [dcarraher@comcast.net](mailto:dcarraher@comcast.net) <[dcarraher@comcast.net](mailto:dcarraher@comcast.net)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 06:23:00 2010  
**Subject:** Website Comment - Fair Winds Day School

### **The following has been submitted from Fredericksburgva.gov.**

Name: Deborah Carraher

E-mail address: [dcarraher@comcast.net](mailto:dcarraher@comcast.net)

Phone:

Subject: Fair Winds Day School

Question or Comment: Please distribute this e-mail to the City Council. I am shocked and dismayed that you did not approve the special use permit to allow Fair Winds Day School to operate in the Calvary Chrisitan Church. These children need this service. What were you thinking? Please explain yourselves.  
Deborah Carraher [dcarraher@comcast.net](mailto:dcarraher@comcast.net)

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Monday, October 25, 2010 4:18 PM  
**To:** Brenda T. Martin; Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net'; 'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - SUP 2010-06

See below.

Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [mshsbhccc@aol.com](mailto:mshsbhccc@aol.com) <[mshsbhccc@aol.com](mailto:mshsbhccc@aol.com)>  
**To:** Tonya Lacey  
**Sent:** Mon Oct 25 16:12:52 2010  
**Subject:** Website Comment - SUP 2010-06

### **The following has been submitted from Fredericksburgva.gov.**

Name: Michael Hirsch

E-mail address: [mshsbhccc@aol.com](mailto:mshsbhccc@aol.com)

Phone: 5402954872

Subject: SUP 2010-06

Question or Comment: Dear Tonya, Greetings, Please distribute to City Council. I look forward to our meeting with City Council tomorrow evening. If you have any questions or inquiries regarding CCC's SUP 2010 -06 please feel free to give me a call at your convenience. Thank you. Blessings, Pastor Michael Hirsch Calvary Christian Church



**Robin Martin**

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 4:58 PM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net'; 'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - approval of Calvary Christian Church SUP 2010-06

See below  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [wework4jesus@yahoo.com](mailto:wework4jesus@yahoo.com) <[wework4jesus@yahoo.com](mailto:wework4jesus@yahoo.com)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 16:46:57 2010  
**Subject:** Website Comment - approval of Calvary Christian Church SUP 2010-06

**The following has been submitted from Fredericksburgva.gov.**

Name: Thomas & Flor Yuhas  
E-mail address: [wework4jesus@yahoo.com](mailto:wework4jesus@yahoo.com)  
Phone:  
Subject: approval of Calvary Christian Church SUP 2010-06

Question or Comment: Dear MS. Lacey, Please support and approve of "Calvary Christian Church SUP 2010-06". We are former members of Pastor Michael Hirsch's Church, Calvary Christian Center. We humbly ask you to distribute this letter of support to the rest of the city council members. We ask that all carefully consider Pastor Mike's request. He is not doing any of this for personal gain or glory. The approval of the Special Use Permit application for the Day School for 18 children with disabilities is a much needed addition to the community! Thank you for your support. -Thomas & Flor Yuhas

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 8:20 PM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - Calvary Christian Church

See below.  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [mab608@comcast.net](mailto:mab608@comcast.net) <[mab608@comcast.net](mailto:mab608@comcast.net)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 18:10:08 2010  
**Subject:** Website Comment - Calvary Christian Church

### **The following has been submitted from Fredericksburgva.gov.**

Name: Monica Bolling

E-mail address: [mab608@comcast.net](mailto:mab608@comcast.net)

Phone: 540-972-1759

Subject: Calvary Christian Church

Question or Comment: I Monica Bolling support pastor Michael Hirsch 100% and Calvary Christian Church in the outreach of Special Needs day care and Special needs ministries. I feel this is a very special gift to be able to handle such an outreach. I thank you very much for giving me and opportunity to voice my views. In his service Monica Bolling 9518 Robert E. Lee Drive Spotsylvania, Va. 22551 540-972-1759

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 2:34 PM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - SUP 2010-06

See below.  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [Donetasdo@aol.com](mailto:Donetasdo@aol.com) <[Donetasdo@aol.com](mailto:Donetasdo@aol.com)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 14:32:11 2010  
**Subject:** Website Comment - SUP 2010-06

**The following has been submitted from Fredericksburgva.gov.**

Name: Doneta Sporney

E-mail address: [Donetasdo@aol.com](mailto:Donetasdo@aol.com)

Phone: 540-972-6711

Subject: SUP 2010-06

Question or Comment: Please take seriously the request (SUP2010-06) for the day school at 2222 Jefferson Davis Highway, as I feel it will be a very important and great addition to the city. It has been something that a lot of parents would like to see in this area. Thank you for your consideration to this request.

## Robin Martin

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**From:** Tonya Lacey  
**Sent:** Wednesday, October 27, 2010 1:50 PM  
**To:** Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net';  
'marykatherine.greenlaw@thalhimer.com'; Thomas J. Tomzak; Robin Martin; Beatrice  
Paolucci Home; Frederic N. Howe  
**Subject:** Fw: Website Comment - Calvary Christian Church Appeal

See below  
Tonya B. Lacey  
Clerk of Council  
City of Fredericksburg  
Sent from my Blackberry

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**From:** [mab608@comcast.net](mailto:mab608@comcast.net) <[mab608@comcast.net](mailto:mab608@comcast.net)>  
**To:** Tonya Lacey  
**Sent:** Wed Oct 27 13:48:45 2010  
**Subject:** Website Comment - Calvary Christian Church Appeal

### **The following has been submitted from Fredericksburgva.gov.**

Name: Monica A. Bolling

E-mail address: [mab608@comcast.net](mailto:mab608@comcast.net)

Phone: 540-972-1759

Subject: Calvary Christian Church Appeal

Question or Comment: Please accept and forward this message, in support of the approval of the Special Use Permit application for the Day School at Calvary Christian Church SUP 2010-06 in Fredericksburg, VA, to the Secretary of City Council asking her to distribute it to the members of the City Council. In addition, please add my name to the list of those that will make a five minute affirmative comment during the preliminary public comments at the opening of the meeting of City Council on Tuesday, November 9. V/R,  
Monica A. Bolling

## Robin Martin

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**From:** Thomas J. Tomzak  
**Sent:** Thursday, October 28, 2010 8:42 PM  
**To:** Frederic N. Howe; Tonya Lacey; Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net'; 'marykatherine.greenlaw@thalhimer.com'; Robin Martin; Beatrice Paolucci Home  
**Cc:** Beverly R. Cameron; Ray P. Ocel  
**Subject:** Re: Website Comment - approval of Calvary Christian Church SUP 2010-06

Fred  
Your question about e-mail locations is "right on". That is why I ask speakers to list their ZIP CODE. I would support your request of the clerk + request you put it on the next Council agenda  
R + K pls file

---

**From:** [fredhowe@utilitypros.com](mailto:fredhowe@utilitypros.com) <[fredhowe@utilitypros.com](mailto:fredhowe@utilitypros.com)>  
**To:** Tonya Lacey; Brad C. Ellis; George C. Solley; Kerry P. Devine; Mary K. Greenlaw ([marykatherine.greenlaw@thalhimer.com](mailto:marykatherine.greenlaw@thalhimer.com)); Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home  
**Cc:** Beverly R. Cameron; Ray P. Ocel  
**Sent:** Thu Oct 28 17:09:31 2010  
**Subject:** RE: Website Comment - approval of Calvary Christian Church SUP 2010-06

Folks -

I believe it is clear Pastor Mike has asked the entire congregation to email us to drive his point across (no surprise).

We discussed the need for an address to determine residency on just such issues and IT is working on that presently.

I would like to suggest we have staff pre-qualify residents to non-residents in such email instances, which don't include an address – before these get forwarded to us. I believe this also serves to send a message to the respondent.

Would it be appropriate to have the Clerk of Council or whoever may be responding to our Council web mail – to ask for address / city residency as a point of order in dealing with these type mass emails?

I am very interested in what my constituents think and feel about impacts on City services and "their" concerns – I have a different feeling when it comes to those who don't reside in the City telling us what we should and shouldn't do.

I ask for your feed back on my suggestion – thanks.

Frederic N. Howe, III  
*Principal*  
*City of Fredericksburg Councilman*  
*Utility Professional Services, Inc.*  
*DBE & WBE SWaM Va. / MWAA - LDBE Certified*  
2300 Jefferson Davis Hwy. / Fredericksburg, Va. 22401  
(540) 604-5877 off. / (540) 604-5878 fax / (703) 507-4364 cell  
*"God Bless the Republic of America - In God We Trust"*

**From:** Tonya Lacey [<mailto:tlacey@fredericksburgva.gov>]

**Sent:** Thursday, October 28, 2010 6:38 AM

**To:** Brad C. Ellis; [solleyg@cox.net](mailto:solleyg@cox.net); [kerrydevine@cox.net](mailto:kerrydevine@cox.net); [marykatherine.greenlaw@thalhimer.com](mailto:marykatherine.greenlaw@thalhimer.com); Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home; Frederic N. Howe

**Subject:** Fw: Website Comment - approval of Calvary Christian Church SUP 2010-06

See below.

Tonya B. Lacey

Clerk of Council

City of Fredericksburg

Sent from my Blackberry

---

**From:** [Reneebaday@gmail.com](mailto:Reneebaday@gmail.com) <[Reneebaday@gmail.com](mailto:Reneebaday@gmail.com)>

**To:** Tonya Lacey

**Sent:** Thu Oct 28 05:54:22 2010

**Subject:** Website Comment - approval of Calvary Christian Church SUP 2010-06

**The following has been submitted from Fredericksburgva.gov.**

Name: Renee Hochenberger

E-mail address: [Reneebaday@gmail.com](mailto:Reneebaday@gmail.com)

Phone: 540 318 6188

Subject: approval of Calvary Christian Church SUP 2010-06

Question or Comment: Please distribute this to the members of City Council. It is important that this special use permit application be approved asap! Every day counts in the life of a child. Thank you

## Robin Martin

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**From:** Thomas J. Tomzak  
**Sent:** Thursday, October 28, 2010 8:35 PM  
**To:** Frederic N. Howe; Tonya Lacey; Brad C. Ellis; 'solleyg@cox.net'; 'kerrydevine@cox.net'; 'marykatherine.greenlaw@thalhimer.com'; Robin Martin; Beatrice Paolucci Home  
**Cc:** Beverly R. Cameron; Ray P. Ocel  
**Subject:** Re: Website Comment - approval of Calvary Christian Church SUP 2010-06

Kemo sabe

In this PARTICULAR circumstance u r comparings USN to USMC or for some apples to oranges.

This program fullfills a profound community need + I support it.

Robin + Kathleen file this in the proper place

T

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**From:** [fredhowe@utilitypros.com](mailto:fredhowe@utilitypros.com) <[fredhowe@utilitypros.com](mailto:fredhowe@utilitypros.com)>  
**To:** Tonya Lacey; Brad C. Ellis; George C. Solley; Kerry P. Devine; Mary K. Greenlaw ([marykatherine.greenlaw@thalhimer.com](mailto:marykatherine.greenlaw@thalhimer.com)); Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home  
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Frederic N. Howe, III  
*Principal*  
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2300 Jefferson Davis Hwy. / Fredericksburg, Va. 22401  
(540) 604-5877 off. / (540) 604-5878 fax / (703) 507-4364 cell  
*"God Bless the Republic of America - In God We Trust"*

**From:** Tonya Lacey [mailto:[tlacey@fredericksburgva.gov](mailto:tlacey@fredericksburgva.gov)]

**Sent:** Thursday, October 28, 2010 6:38 AM

**To:** Brad C. Ellis; [solleyq@cox.net](mailto:solleyq@cox.net); [kerrydevine@cox.net](mailto:kerrydevine@cox.net); [marykatherine.greenlaw@thalhimer.com](mailto:marykatherine.greenlaw@thalhimer.com); Thomas J. Tomzak; Robin Martin; Beatrice Paolucci Home; Frederic N. Howe

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Tonya B. Lacey

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E-mail address: [Reneebaday@gmail.com](mailto:Reneebaday@gmail.com)

Phone: 540 318 6188

Subject: approval of Calvary Christian Church SUP 2010-06

Question or Comment: Please distribute this to the members of City Council. It is important that this special use permit application be approved asap! Every day counts in the life of a child. Thank you



November 23

**STAFF MEMO**  
**Special Use Permit #SUP 2010-06**  
**Fair Winds**

Staff Recommendation:

Approval with Conditions

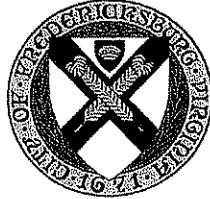
1. Overview

- A. Request: The applicant requests approval of a special use permit to operate a special day school within the Calvary Christian Center.
- B. Applicant: Calvary Christian Center on behalf of Ed Murphy of Fair Winds
- C. Owner of Property: Calvary Christian Center
- D. Site Details: Address : Current Use 2222 Jefferson Davis Highway Church
- E. Lot Acreage Approximately 1.41 acres
- F. Surrounding Zoning: C-T, Commercial Transitional
- G. Surrounding Uses: Office, Residential, Commercial
- H. Planning Commission: September 8<sup>th</sup> and 29<sup>th</sup>
- I. Future Land Use Designation: Transitional/Office

EXHIBIT

tabbles

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## MEMORANDUM

TO: Beverly R. Cameron, City Manager  
FROM: Raymond P. Ocel, Jr. Director of Planning and Community Development  
DATE: October 26, 2010/November 9, 2010/November 23, 2010  
SUBJECT: SUP 2010-06: Fair Winds

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### NOVEMBER 23<sup>RD</sup> UPDATE:

At the November 9<sup>th</sup> meeting, Council members directed a number of questions regarding the operation of the special day school to the applicant (Fair Winds) and the property owner, Calvary Christian Center. While Council voted to defer action on the special use permit, there was considerable concern with the operation of a special day school within the Center on the second floor while the Center operated its day care on the first floor.

Mr. Ellis noted he talked to a number of professionals about the arrangement to have these two groups occupy the same building at the same time and Mr. Ellis's comments are attached. Pastor Hirsch has provided a response letter to those questions raised at the November 9<sup>th</sup> meeting and it too is attached to this memo. Ms. Devine and Ms. Paolucci also echoed the concerns raised by Mr. Ellis.

Attached to Pastor Hirsch's response letter are copies of a license issued by the Commonwealth of Virginia to operate a day school at 1500 Stafford Avenue. The Living Word Church is located at this address and the applicant began to operate his special day school until it was learned by staff that he was operating without zoning approval. He ceased to operate at this location after being informed that zoning approval (special use permit) was required to operate a special day school at this location or future locations. The applicant subsequently began operating the special day school from the St. Anne's Church. When notified once again that zoning approval was needed, the school ceased to operate at the Church shortly thereafter.

In addition, copies of staff licenses are attached, although it is not clear if the staff members whose licenses have been provided will work at the Calvary Christian Center. Staff has requested that Pastor Hirsch confirm that these three persons will be employed at the proposed special school.

Pastor Hirsch has confirmed that the day care previously approved to operate in the Center is operating but he has not taken any enrollments as the Center is now considering the needs of children with disabilities. He noted that he will again be taking enrollments

after this special use permit process has been completed as the enrollment must be reported to the State by January 26, 2011.

**NOVEMBER 9<sup>TH</sup> UPDATE:**

At the October 26<sup>th</sup> public hearing, Council members directed a number of questions and concerns to the applicant, Ed Murphy of Fair Winds and the property owner, Pastor Mike Hirsch of Calvary Christian Center. After a thorough review of the application and issues raised at the meeting, Council voted to defer action on the application due to the concerns raised by Council members during the discussion with the applicant and to give time for Mr. Howe to discuss his potential conflict of interest on this application with the City Attorney.

**ISSUE:**

This is a request by the Calvary Christian Center on behalf of Ed Murphy of Fairwinds to obtain a special use permit in order to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway.

**STAFF RECOMMENDATION:**

Staff recommends that the City Council approve the special use permit with the conditions noted in the City Attorney's resolution.

**PLANNING COMMISSION RECOMMENDATION:**

At its September 29th meeting, the Planning Commission, by a vote of 5-0 recommended approval of the special use permit with the conditions recommended by staff. Mr. Rigual raised a question concerning any interaction that may occur between children in the day care on the first floor and the students in the proposed school. The applicant noted that due to different arrival and departure times and being located in different parts of the building, there would be little to no interaction between the two groups.

No members of the public spoke in regard to this application at the public hearing.

**BACKGROUND:**

This is a request to approve a special use permit to operate a special day school within the Calvary Christian Center located at 2222 Jefferson Davis Highway. The applicant proposes to locate the school in two offices and two classrooms (rooms 202 and 203) located on the second floor of the Center. (See attached floor plan) The property is zoned C-T, Commercial Transitional and is owned by Calvary Christian Center. The property is located on Jefferson Davis Highway and contains the existing church building and its associated parking lot. The property is currently being used for services in the sanctuary, related church functions and a day care operated by the Center.

In order to attend the proposed school, a student has to be determined, in an individual educational plan, to have a qualifying disability and directed to attend a private day school. All of the students will be ambulatory as the school is not staffed to accept a student with a physical disability. Students who attend the school come from surrounding school jurisdictions as well as the City and currently includes students from Stafford, Spotsylvania and Fairfax Counties as well as from the City school system. The applicant notes that out of the current enrollment, 6 students live in group homes, 5 live with their family, and 1 lives in foster care.

Calvary Christian Center previously received approval to operate a day care facility for up to 32 children ages 5-12 between the hours of 6:00 am to 6:00 pm on the first floor of the building. (See attachment #2)

The proposed school will operate on a similar schedule to City schools and will not be open during the summer. It will employ 3 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Church and will be escorted to and from the building by a teacher or administrator.

#### **PROJECT DEVELOPMENT:**

The applicant proposes to operate a special day school for student ages 8-15, between the hours of 8:30 am to 3:00 pm. Students are dropped off shortly before school starts and teachers arrive by 8:00 am. The request is for a maximum of 18 children. The school will operate on a similar schedule to City schools and will be open during the summer if a student's individual education plan requires it. The school will have 4 teachers the first year depending upon the total enrollment. Children will be dropped off and picked up at the front door of the Center.

#### **SPECIAL USE PERMIT ANALYSIS:**

Special use permits are evaluated utilizing the criteria contained within section 78-994 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:
  - (1) In harmony with the adopted comprehensive plan;
  - (2) In harmony with the purpose and intent of the zoning district regulations;
  - (3) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**(a) (1) In harmony with the adopted Comprehensive Plan;**

The future land use map contained within the Comprehensive Plan designates this property as Commercial Transitional. The surrounding properties are designated as commercial across Jefferson Davis Highway; high density residential to the northeast (apartments); low density residential to the east and across McConkey Street. The property lies within Planning Area 10-Lafayette Boulevard/National Park. The Plan does not provide specific recommendations for this property although the application assists in meeting one of the key issues that relates to preserving the integrity of the City. Churches and related uses have been an important and constant use in the City and their continued expansion should be encouraged.

Chapter 1: Vision found on page 7 of the Comprehensive Plan contains the City Council's vision for the City and one aspect of the vision states: To be a City inspired by active arts, cultural and education communities."

**(a) (2) In harmony with the purpose and intent of the zoning district regulations;**

The intent section of the C-T district states that the district is established to provide for the location of predominantly non-retail uses in a low intensity manner such that they can be employed as transitional land uses between residential neighborhoods and higher intensity uses.

The corresponding uses permitted by right and by special use permit are listed because they contribute toward meeting the intent of the district. Residential and institutional uses are included within the district by special use because such uses can be appropriate in certain neighborhoods in the City and would maintain the character of the block on which they are located. Currently the Center provides both spiritual and educational benefits for its congregation and its location on Jefferson Davis Highway is in harmony with its neighbors.

The proposed school use fits within the intent section of the CT district as it is a use which will be compatible with the surrounding residential and commercial uses in the area.

**(a) (3) In harmony with the existing uses or planned uses of neighboring properties.**

Staff notes that the requested permit is in keeping with good zoning practice as it will enable the Center to continue to expand its ministry. The requested permit is in keeping with and is compatible with the zoning and other uses in the neighborhood. Other uses in the area include residential uses (apartments and single family houses), office uses, and commercial uses on the opposite side of Jefferson Davis Highway.

- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.**

There are no improvements proposed to the exterior of the building or the property. The proposed school operation will not hinder or discourage the development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

**RECOMMENDATION:**

Based upon the application meeting the criteria noted above, staff recommends approval of the special use permit with the following conditions:

1. That the maximum number of children be limited to 18 between the ages of 8-15.
2. School hours will be from 8:00 am to 3:00 pm. The school will operate on a similar schedule to City schools and may be open during the summer.
3. The school will only establish classrooms in rooms 202 and 203 on the second floor of the Center as depicted in the application materials.
4. The school shall obtain all applicable State and local licenses prior to operation of the school and provide copies of such licenses to the Department of Planning and Community Development.
5. The school entrance and drop off point will be from the front door of the Center.
6. The proposed use shall commence business within six months of the date of the adoption of the City Council Resolution.
7. The proposed use of the property is permitted only so long as it continues and is not discontinued for more than two years.

**ATTACHMENTS:**

1. Councilman Ellis's Comments from the November 9<sup>th</sup> meeting.
2. Pastor Mike Hirsch's Reply Letter.

**WRT SUP for a Special Day School:**

Mr. Ellis  
(Comments)

I agree there needs to be a school that provides educational opportunities for these children and I applaud the desire to provide this service. However, my concern with this application boils down to safety and whether or not it is safe to operate a Special Day School within the same Facility as a Day Care.

I discussed this matter with a licensed professional social worker who places kids in foster homes, a licensed rehabilitation specialist who specializes in working with these children on a daily basis, a teacher who has worked in a Day Care setting as well as in grades K-3, and several parents who have children in Day Care.

The Teacher felt the risk was not worth it. Kids from these backgrounds can often have significant outbursts or behaviors that can greatly disturb or even harm younger kids in a Day Care setting and therefore, operating both types of education within the same facility was not advisable.

The parents felt that the safety of their children could be in jeopardy with this type of scenario. The assumption by parents is that when their children are in Day Care...they are safe. Kids that would attend the Special Day School range, in age, from 8-12. Kids in Day Care are typically much younger. The possibility that a Special Day School student could cause harm to a child in Day Care was a constant concern with each parent I spoke with.

The Social Worker immediately expressed concerns regarding safety. In her view, Day Treatment for these kids can be very severe and the possibility of interacting with Day Care children should be avoided at all cost. Her concerns centered around what type of safety guidelines would be in place given that kids attending the Special Day School can often run, hit, etc. and cause harm to the Day Care children. She went on to say that due to the very intense nature of the education and treatment requirements for the Special Day School children that the two populations of children should never be allowed to mix. Lastly, she indicated that these types of environments can become very explosive and therefore distinct separate facilities should be provided for the Special Day School and the Day Care.

The Rehabilitation Specialist, who successfully led the establishment of an Alternative Day School in Fairfax, felt that while combining the two could be doable—a whole of of red flags go up in her opinion. What parameters will be in place to keep children separate and if children from the Day Care and Special Day School would interact; what provisions would be in place to ensure effective supervision? She would question the type of people on staff: teachers trained specifically in dealing with these type of children and Clinicians trained as well to ensure adequacy in the teaching component and the therapeutic component. She stated that councilors would also need to be employed to provide assistance throughout the day. This is a very altruistic endeavor, however, in her opinion everything possible must be done to ensure the safety of the children and I do not see anything in the application that addresses this.

In light of what I've presented, what provisions are you going to make WRT ensuring that kids from Day Care and kids from the Special Day School do not interact?

Lastly, once again, from a safety stand-point, based upon the information I have received from professionals within this field, I do not feel you have demonstrated how the safety of the children will be insured based upon the parameters I've laid out. As such, based on your application, I do not feel it is advisable to have a Day Care and a Special Day School operating within the same facility?

I am not questioning the need for this service; only the location. This is a good idea but the wrong location.



Responses to City Council concerns regarding SUP 2010 – 06

SITE – The land was granted to the Unincorporated Association (The Owners, a church) in 1995 by the family of the former Governor of Virginia, Albertis S. Harrison Jr. for the purpose of serving the community.

The site lies within the annexation from Spotsylvania.

The site plan was designed by Dewberry and Davis with the greatest of care and consideration of the public safety and with a desire to maintain a minimum impact to the neighborhood always in mind.

A copy of the site plan with all revisions as approved for construction by the City of Fredericksburg has been submitted with the SUP 2010-06 application.

A summary review will show that the ingress and egress was designed with two alternative entry points and one exit.

The purpose of the double lane upper entry in a 25 MPH zone was specifically designed to accommodate public school buses. In fact, the Fredericksburg School bus drivers have in the past used our parking lot to turn around in when delivering children to the neighboring apartments (Now Camden Hills).

The parking lot design was planned with the safest transfer of children possible, with the delivery point at the front door of the facility (Facing north) completely enclosed served by a barrier created by the circular buffer which also serves as a landscaped area.

The lighting on the site was specifically inspected at the request of the owners. Accordingly in addition to lighting on the building serving the parking lot a second set of lights with shoe box fixtures was installed at the far side (along the embankment which rises to the apartments) to assure more than adequate lighting. The design also prohibits any overflow ambient light.

The owners have secured a FENCE AND/OR WALL PERMIT issued on 7/1/2009 for the construction of a fence height of 6 foot Pine Stockade to run with the property points as designated with the apartments.

At our option we will install the fence in order to prohibit our apartment dwelling neighbors' children from climbing or gleefully sliding down the embankment!

STRUCTURE – Along with the SUP 2010 – 06 application a copy of the floor plan as revised and approved for construction of the building was also submitted.

A summary review will show that the building is designated a 2000 IBC USE GROUP:NON-SEPARATED MIXED USE (A3) CHURCH, (E ) EDUCATIONAL AND (I4) DAY CARE TO THE MOST RESTRICTIVE USE OF (A3).

Subsequently a CERTIFICATE OF OCCUPANCY was issued by the Fredericksburg City Department of Building and Development services for USE GROUP A-4 ASSEMBLY CHURCHES.

**received**  
10-15-10 alw

Later a second CERTIFICATE OF OCCUPANCY was issued by the Fredericksburg City Department of Building and Development services for USE GROUP EDUCATIONAL for classrooms.

A VIRGINIA DEPARTMENT OF SOCIAL SERVICES REQUEST FOR BUILDING INSPECTION was also submitted to VADSS by Fredericksburg City Department of Building and Development services.

A REPORT OF ENVIRONMENTAL SANITATION INSPECTION requested by VIRGINIA DEPARTMENT OF SOCIAL SERVICES As authorized by Title 63.2, Code of Virginia was submitted by The City Of Fredericksburg Health Director or Designee, Tracey Stockman as APPROVED.

A COMMONWEALTH OF VIRGINIA, VIRGINIA DEPARTMENT OF HEALTH General Facility Establishment Evaluation Report regarding Critical Hazards and Non-Critical Hazards shows that there were NO CRITICAL OR NON-CRITICAL HAZARDS OBSERVED by ENVIRONMENTAL HEALTH SPECIALIST Tracy Stockman.

A FREDERICKSBURG FIRE DEPARTMENT OFFICE OF THE FIRE MARSHALL INSPECTION REPORT DATED 7/30/2010 SHOWS NO VIOLATIONS ISSUED TO THE CHURCH.

A FREDERICKSBURG FIRE DEPARTMENT OFFICE OF THE FIRE MARSHALL INSPECTION REPORT DATED 7/30/2010 SHOWS NO VIOLATIONS ISSUED TO THE DAY SCHOOL.

The records show that we have given all diligence to assure that the facility is beyond any reasonable or lawful concern for safety!

SAFETY – In accord with the CCC Constitution and By –Laws, our By- Laws as amended in August 2009, “ARTICLE VII – DUE DILIGENCE REQUIRED FOR CHILDREN/YOUTH WORKERS

Adult church workers who assume responsibility for the spiritual well being of children of the congregation, whether as paid workers or as volunteers, will not be alone with children or youth at any time and will undergo an application process for every position which shall include background checks and references.”

Accordingly VIRGINIA DEPARTMENT OF SOCIAL SERVICES/CHILD PROTECTIVE SERVICES CENTRAL REGISTRY RELEASE OF INFORMATION FORMS have returned good reports of all workers.

Also CCC employs SAFE HIRING SOLUTIONS, a leader in its field, to perform further background checks on all persons for criminal convictions as well as convictions while operating motor vehicles to fully assure safe transfer of minors, all reports have further confirmed the ensured safety of the children.

Regarding the students of the Day School, all of them have been diagnosed with a disability and an Individual Education Plan arranged for them. As such each child receives the very best of care and is assured a safe learning environment.

It is noteworthy that the Day Care operating schedule and the Day School operating schedule keep a time buffer so that these populations do not occupy the facility at the same time.

However, we will not discriminate against disabled children who are enrolled in the Day School and may also require accommodations of their need in our Day Care!

In over 59 years of operation CCC has never had a complaint or any incident which has ever called into question the safety of the children receiving services.

As you will see below all Staff of Fairwinds are properly Licensed, Certified and trained to work with children with disabilities.

CCC will always assure that all children, including children with disabilities will always be cared for in a safe and secure manner.

The entrance doors remain locked at all times after the arrival of the children and motion sensors are installed in all of the access hallways and entries as per our building plan.

This facility is SAFE!

#### LICENSURE AND CERTIFICATIONS --

All of the required State Licenses for Fairwinds and the necessary Certifications for the Staff have been provided to the satisfaction of CCC and we ask that you please refer to the attached six pages courteously provided by Fairwinds for your consideration.

On a closing note CCC again extends an invitation to those of our esteemed City Council Members to tour our grounds and facility that haven't already availed themselves of the opportunity to do so.

I trust that these responses are sufficient to quiet all of your concerns and we will not be further hindered as we seek a vote of approval. I rest assured that none of these delays have been to the pleasure of anyone's purposes of seeking the furtherance of personal political interests.

Sincerely seeking your vote of approvals,

  
Michael S. Hirsch

# Commonwealth of Virginia



## LICENSE TO OPERATE

In accordance with the provisions of Title 22.1, Chapter 16, Sections 22.1-319 through 22.1-335 of the Code of Virginia (2050) as amended, and applicable regulations of the Board of Education, this License to Operate a Private Day School for Students with Disabilities is issued to:

### Fair Winds Day School

Location:	Age Range:	Capacity:	Gender:	Disability Category (ies):
1500 Stafford Avenue Fredericksburg, Virginia 22401	6-15	10	M/F	Emotional Disability Speech/Language Impairment

Issue Date: September 1, 2009

Expiration Date: February 2, 2010

This certificate is valid through the date shown above unless revoked or suspended for cause.  
In witness whereof, the Board of Education has caused this license to be issued.

*Pat J. Wright*  
Superintendent of Public Instruction

Issued: 9/3/09

# Commonwealth of Virginia



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Location:	Age Range:	Capacity:	Gender:	Disability Category (ies):
1500 Stafford Avenue Fredericksburg, Virginia 22401	6-15	12	M/F	Emotional Disability Speech/Language Impairment

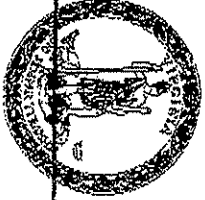
Issue Date: February 10, 2010  
(capacity amended)

Expiration Date: July 2, 2010

This certificate is valid through the date shown above unless revoked or suspended for cause.  
In witness whereof, the Board of Education has caused this license to be issued.

  
Dale J. Wright  
Superintendent of Public Instruction

# Commonwealth of Virginia



## LICENSE TO OPERATE

In accordance with the provisions of Title 22.1, Chapter 16, Sections 22.1-319 through 22.1-335 of the Code of Virginia (2050) as amended, and applicable regulations of the Board of Education, this License to Operate a Private Day School for Students with Disabilities is issued to:

**Fair Winds Day School**  
1009 Stafford Avenue  
Fredericksburg, Virginia 22401

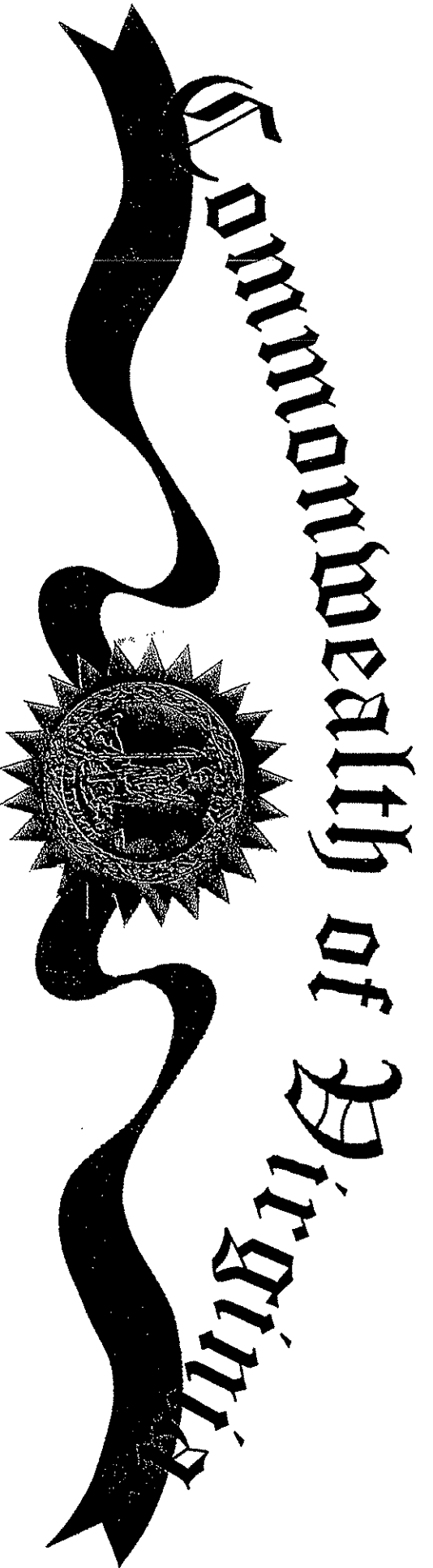
Owner:	Age:	Capacity:	Gender:	Disability Category (es):
Ed Murphy & Associates 2217 Princess Anne Street Suite 100 Fredericksburg, Virginia 22401	6-15	12	M/F	Emotional Disability Other Health Impairment Speech/Language Impairment

Issue Date: June 29, 2010  
(Change of Location)

Expiration Date: August 31, 2010

This certificate is valid through the date shown above unless revoked or suspended for cause. In witness whereof, the Board of Education has caused this license to be issued.

*Patricia Wright*  
Superintendent of Public Instruction



**POSTGRADUATE PROFESSIONAL LICENSE**

*Effective July 1, 2008 to June 30, 2013*

**SHELLA HOLLAND COMFORT**

*(MASTER'S DEGREE)*


This individual is authorized to teach or hold positions in Virginia schools indicated below:

MIDDLE EDUCATION GRADES 4-8  
READING SPECIALIST  
SPECIFIC LEARNING DISABILITIES K-12

*(Educational technology standards have been met.)  
(Child abuse recognition and intervention requirement has been met.)*

  
Mark E. Embidge  
President, Board of Education

License Number: PGP-326813  
July 9, 2008

  
Billy K. Cannaday, Jr.  
Superintendent of Public Instruction

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Licensure

### Teaching and Educator License Information

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This site provides information concerning active teaching and educator licenses only, as issued by the Virginia Board of Education. Licenses that are inactive (expired), pending action, or on hold are not included in this query. Local licenses also are not included.

**Name** Julia D. Hopkins  
**Highest Degree Reported\*** Master's Degree

#### Active License(s)

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<b>License Type</b>	Postgraduate Professional License
<b>Expiration Date</b>	06/30/2012
<b>Endorsement(s)</b>	Specific Learning Disabilities K-12 Emotional Disturbance K-12

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\* The "Highest Degree Reported" denotes the highest degree reported to the Division of Teacher Education, Licensure, and Professional Practice for this individual. Please note that individuals may have an advanced degree (master's or doctorate), and the degree has not been reported to the Division of Teacher Education, Licensure, and Professional Practice.

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Licensure

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**Name** Misha Joy Sanborn  
**Highest Degree Reported\*** Bachelor's Degree

#### Active License(s)

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<b>License Type</b>	Provisional (Special Education) License
<b>Expiration Date</b>	06/30/2012
<b>Endorsement(s)</b>	Special Ed. - General Curriculum K-12

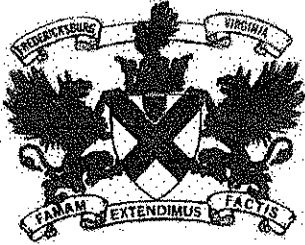
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\* The "Highest Degree Reported" denotes the highest degree reported to the Division of Teacher Education, Licensure, and Professional Practice for this individual. Please note that individuals may have an advanced degree (master's or doctorate), and the degree has not been reported to the Division of Teacher Education, Licensure, and Professional Practice.

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**CITY OF FREDERICKSBURG  
Virginia**

**NOTIFICATION OF CITY ACTION**

**TO:** Calvary Christian Center  
200 McConkey Street  
Fredericksburg, VA 22401

**FROM:** Raymond P. Ocel, Jr., Director of Planning & Community Development *RPO*

**DATE:** December 16, 2010

**RE:** SUP2010-06: Calvary Christian Center – Special Use Permit Request to Operate a Private School.

Your request for:	
<input type="checkbox"/> Rezoning	<input type="checkbox"/> Subdivision Plat/Plan
<input type="checkbox"/> Site Plan	<input checked="" type="checkbox"/> Special Use Permit
<input type="checkbox"/> Change of Non-Conforming Use	
has been:	
<input type="checkbox"/> Approved, with conditions	<input type="checkbox"/> Approved with proffers
<input type="checkbox"/> Other _____	<input checked="" type="checkbox"/> Denied
At the November 23, 2010 meeting of the:	
<input type="checkbox"/> Planning Commission	<input checked="" type="checkbox"/> City Council
Your next step should be:	
<input type="checkbox"/> File additional/revised plans as required	
<input type="checkbox"/> Obtain other required permits: (as required)	
<input checked="" type="checkbox"/> No further information is required	

*SPECIFICS/CONDITIONS (Continued on reverse, if necessary)*

*Your application for a special use permit in order to operate a private school for children with a qualifying disability (not physical) in the Calvary Christian Center located at 2222 Jefferson Davis Highway has been denied. On November 23, 2010, the City Council's motion to grant the special use permit failed because of a 3 – 3 tie vote, therefore denying the application.*

*cc:* Building & Development Services  
Department of Public Works

Commissioner of the Revenue Fire Department  
Planning Commission

School Board

