

New Business:**7B.****Staff Presentation:**

Morgan Hester, Project Manager, gave a presentation describing the scope and next steps for the Unified Development Code. The focus of this presentation is the district renamings based on the UDC, which was adopted by City Council in February, and next steps.

Commissioner Rickett confirmed everything remains the same today and property owners would not have to meet the new zoning requirement unless they redevelop. Ms. Hester confirmed it would remain the same, but if redevelopment happened, they would have to come into compliance with the Unified Development Code.

Public Comment:

Dennis Jaspen wanted to know if the change in zoning would allow the building of more houses. Vice-Chair McMurray said there was no change to the underlying standard of the code. This is an administrative item as part of the approval process. The ordinance is renaming some of the zones. Mr. Jaspen asked why the zones need to be renamed. Vice-Chair McMurray clarified this item is tied to a code update that has been happening for the past three years and we are following up with items that have been approved by City Council.

7A.

Commissioner Slattery recused herself due to being a resident of the Raven Hills neighborhood.

Staff Presentation:

Peter Lange, Planner II, gave a presentation describing the scope and intent of the project.

Questions:

None.

Applicant Presentation:

The applicant, Stacy Warren, gave a presentation describing the scope and intent of her application.

Her background is a Colorado licensed teacher. She taught in School District 12 from 2006-2013 and has a master's degree in Early Childhood Special Education. At her previous residence, she organized some structured two-hour play groups for preschoolers. She was doing everything to stay within the bounds of a licensed exempt status, but could not accommodate the number of families she was working with. In March 2022, she purchased the home at 50 East Mikado Drive. She learned about Senate Bill 126, which says that HOAs cannot prevent in-home licensed childcare if they are following state regulations and licensing and she began the licensing process. Once living in the neighborhood, she notified Amanda Funk, the community manager with Diversified Properties for the Raven Hills HOA, about her program. She did not receive any negative feedback and proceeded getting authorized and approved by her licensing agent to develop a program for preschoolers with some childcare. Adjacent neighbors were supportive of what she was doing and had children participating in her program. When notices were sent out about her change, she found out not all were in support of what she was providing.

She has staggered drop off and pick times for two families approximately every 10 minutes and, with her expansion, it would be three families. There is sufficient parking and nobody parks in front of her neighbors' houses. All activities happen on her property only.

Her license for the large childcare will not be approved until this process is approved. Her licensing specialist wrote a letter stating she was in compliance, approved her training, capabilities as well as her background check, and her facility was approved.

The Raven Hills HOA is a limited expense HOA compared to a regular HOA. Small and limited expense HOAs are subject to Section 38-33.3-106.5 of SB 126; however certain ones are exempt from many provisions of the Colorado Common Interest Ownership Act (CCIOA) and are still subject to that which protects family childcare homes.

Questions:

Commissioner Rickett said this is listed as a preschool. Ms. Warren stated, yes, it is a preschool. Preschools are licensed under the same entity in childcare licensing provisions under the Colorado Office of Early Childhood. The licensing regulations are the same whether it is called a preschool or a childcare. Her program has very structured curriculum, whereas a daycare primarily provides care. It is the same even though the words are different under the law.

Support:

None.

Opposed:

Greg Anthony, resident of the Raven Hills neighborhood, stated the HOA covenants prohibit business enterprises. CCIOA and SB 126 contain a mix of conflicting statements of which even attorneys can make little sense. Since Ms. Warren's application is based on unsettled law, it would be premature for the Planning Commission to approve this project. According to a licensing specialist at the CDEC's Division of Early Learning and Administration, Ms. Warren does not have a license to operate a family childcare home at any site. She is operating a childcare home in violation of the Code of Colorado regulations and the CDEC. The application for a conditional use permit has not been properly vetted by the planning staff, is incomplete and breaches the covenants of the Raven Hills HOA and should be denied on its face.

Kristina Anderson, resident of Raven Hills, several people ceded their times to Ms. Anderson, those people were: Milam Gray, Kevin Kezel, Susie Cooper, James Schaffner, Diana Mellinger.

Ms. Anderson represents herself and Raven Hills HOA and those that ceded their time. Since receiving the notice for the conditional use, nearly all members within the HOA are adamantly opposed. This is not a hearing for a daycare, it is for a conditional use. The primary concerns raised are value, noise, traffic, safety, and character.

Ms. Anderson stated the conditional use criteria were not met. The values and qualities of the surrounding neighborhood will be injured by this business. The area already has a problem with noise with decibel levels at the home above 55, which is in violation of the noise statute

and will only worsen with twelve children. There is no traffic study, no evacuation plan, no inspection, no health and safety inspections, it is not ADA compliant, there is no license, and no inspection by the fire marshal. There is a current investigation for too many children, noise, and operating business without a license. There are safety concerns due to the school traffic and the additional cars this project will bring. The Comprehensive Plan is not met because it does not include Raven Hills, an established community that does not need any enhancement from the plan. When Mr. Lange said there were no comments by local government agencies, that is because daycares are state licensed and not done at the local level. This is an application for a conditional use, not a daycare, and the applicant is relying on the state law to get the planner to approve this project. State statute does not require the City to give a conditional use permit for daycares. Ms. Warren is operating illegally and not in compliance of state regulations. Ms. Warren is falsely representing her status to get the Planning Department to get this approved. Ms. Anderson said they want this denied or returned to the Planning Department until all the required studies are completed.

On the phone in support:

Mary Jenkins, member of the Architectural Control Committee of the Raven Hills HOA and lives on Mikado, supports this application. She likes the idea of a daycare less than a block away from her home. There might be an issue with traffic, but that is because of the nearby school that causes cars to be lined up and down the street in the morning and afternoon. The HOA may have expressed being unhappy with a daycare, but they do not represent an entire area's opinions. A daycare is a perfect addition for a neighborhood that has young families moving in every year.

On the Phone:

Patrick Misnick, resident of Raven Hills, said that the Planning Commission should table this item. They have been in the neighborhood almost three years and enjoy the quiet, the peace and serenity. The traffic for the school is a problem and should be looked at. If there was a fire during that time and adding a daycare facility will only add to the problem.

Rebuttal:

Ms. Warren clarified in her project statement the large childcare home license is in progress pending City Planning approval. She is zoned for the regular size licensed childcare and has been so since August 2022, but everything for the large shows as pending. As soon as this conditional use process is completed and, if approved, she will send all the pertinent documentation to the board and then it becomes public information. Her licensing specialist, Heather Jesse, inspected her home on August 2, 2022. Ms. Warren has submitted her emergency plans and they have been approved and has those in place in her home. She is teaching single skill classes. Single skills class are considered a license-exempt classification that does not have a limited number of children. The only stipulation is the class must be under four hours. The traffic is for the Rockrimmon Elementary School, not for her program. She has not been notified of any violations and neither has her licensing specialist. Ms. Warren stated she had been there nine months before the HOA started questioning things and that was after the notice for this project was sent out. Members of the HOA board actually sit outside her house regularly monitoring her.

Questions:

Commissioner Hensler asked Ms. Warren if she is licensed for six or is she not currently licensed and teaching individual classes that don't require a license. Ms. Warren stated the latter was correct. She started the licensing process a year and a half ago, so her license is pending. Commissioner Hensler asked if the pending status is based on this conditional use and Ms. Warren stated it is.

Commissioner Hensler asked how many children are attending on a daily or weekly basis. Ms. Warren said eight in the morning and four in the afternoon.

Commissioner Hensler asked if the State allowed Ms. Warren to have those children based on the pending status. Ms. Warren said yes, and state licensing has an exempt category since she is teaching individual skill classes. Her specialist has walked her through all of this to make sure she stayed in good status.

Commissioner Rickett confirmed with Ms. Warren she is not a state licensed small daycare. Ms. Warren confirmed that was correct. She was in the process getting everything completed for the zoning approval for the small childcare and, once approved, she decided to switch for the large to mid process. That changed everything so she had to be reinspected and do all the steps again.

Commissioner Rickett asked if there is zoning for a small daycare. Mr. Lange said there is and that Ms. Warren has a current small daycare license for this property from the City.

Commissioner Hensler confirmed the conditional use is the trigger for when it goes to a large childcare and Mr. Lange said that is correct. Commissioner Hensler reiterated that Ms. Warren was operating legally as a small daycare, and it is the change to the large that triggered the conditional use. Mr. Lange again confirmed that was correct.

Commissioner Rickett said she was operating as a small daycare because she was zoned for a small daycare which is licensed by the city and not the State, correct. Mr. Lange said that was correct. They go through the city for the small and the State for the large. Commissioner Rickett said he thought both the small and the large are licensed by the State.

Ms. Katie Carleo, Planning Manager, stated what Mr. Lange is referring to is the initial permit that is in current code that is required on the City's side for a small day care. The State's requirements are separate from us, but they do look to city jurisdiction to have the nod of approval for whatever the City requires. According to current code, what is on the property is an approved small daycare. The applicant stated that midstream she transitioned to seeking a large daycare, which is what has put her in front of this body today for the conditional use and she is continuing through the State process, which is pending and separate from what we look at from the local level.

Commissioner Rickett confirmed there is no small daycare licensed by the State and that Ms. Warren is jumping right to the large daycare. Ms. Warren said that is correct.

Commissioner Rickett asked the City Attorney, Lisa O'Boyle, if there is different licensing by the State for a daycare or a preschool or if it is the same. Ms. O'Boyle stated the childcare licensing portion of the State has the definition for a childcare center with two provisions, but

either way encompasses both. A preschool-type setting is one that requires a teaching curriculum provided at the facility. A daycare is not required to have an education-type curriculum. She would agree with what the applicant has stated, that the two are used synonymously.

Commissioner Rickett stated the neighborhood said there was a complaint filed and he asked with what entity that was filed. Both Mr. Anthony and Ms. Anderson confirmed that they filed complaints with the CDEC.

Ms. Anderson said while Mr. Anthony filed the complaint, she saw the cars going in and out, so she also filed a complaint with the CDEC. Ms. Anderson said a statement from a licensing representative she spoke with just two days ago confirmed there was not an open license at the address and that a provider without a license falls into the category of having no more than four allowed. Since the State said she was not licensed, Ms. Anderson filed the complaint.

Commissioner Rickett asked for confirmation that city code exceeds what the State requires for a large daycare and that the City requires a conditional use permit. Ms. O'Boyle stated the requirement of the conditional use permit is what is required today, which is more restrictive than what is required in State statute on what the large home daycare needs to provide.

Commissioner Briggs ask Ms. Anderson if the noise complaint was made before or after they were made aware of the change that was being requested by Ms. Warren. Ms. Anderson said the complaint was forwarded to her, but the person who made it was in the audience. James Schaffner came to the podium and confirmed that he filed the complaints both before and after. Commissioner Briggs confirmed they had made multiple complaints. Mr. Schaffner said there were and he has a problem with kids screaming.

Commissioner Briggs ask Ms. Anderson if prior to notice was she aware that the business was "being conducted". Ms. Anderson said she was not. There had been no communication to the board. Ms. Anderson stated Ms. Warren said she spoke with the property manager, but they did not forward it to the board.

Commissioner Briggs asked if, as a board, were they aware of any other businesses being conducted in the neighborhood. Ms. Anderson said there might be some home-based businesses, but there are no businesses in their community that they are aware of. Ms. Anderson said there are not any that she was aware of that drive traffic to the community like Ms. Warren's people do and they now do extensive research and have representatives on all their streets looking for violators.

Commissioner Briggs confirmed it was after the notification they were doing this. Ms. Anderson said yes. Ms. Anderson said as a board they try and keep their eye on the neighborhood. They do their due diligence, but they do not always have the opportunity to go by and park at people's houses to see who is coming and going. Commissioner Briggs asked what other due diligence the board does to ensure other businesses are in compliance. Ms. Anderson stated they are now making sure this business has its licensing and meets city and state regulations. If we see something happening, we will approach the business or neighbor directly and ask if something is going on, but it has never happened before this.

Commissioner Briggs confirmed that prior to the notification that Ms. Warren's business was not on their radar. Ms. Anderson said that was correct.

Commissioner Almy asked for confirmation of the fact that the conditional use is tied to the property and if so, does that mean it is always available to be a childcare center regardless of ownership. Mike Tassi, Assistant Planning Director, stated a conditional use is not affected by changes in tenancy, ownership, or management of the property. The conditional use shall be attached to and run with the land unless otherwise conditioned. A future property owner would still need to go through the proper licensing requirements.

Commissioner McMurray confirmed with Mr. Lange that City Traffic provided no comments and asked if he had any insights about that. Mr. Lange clarified City Traffic does review conditional use permits and found, with this project, that the roads have adequate capacity for the project and had no additional comments.

Commissioner McMurray commented that in the previous items like this State licensure has not come up. Since the conditional use runs independent of the state licensing requirement, the State is dependent on this body's decision before they can provide the state license. Ms. O'Boyle said that was correct and further added the State is waiting on the City's approval since that is the State's requirement that the large daycare goes through whatever requirements are needed at the local level.

Discussion and Vote:

Commissioner Rickett agreed that the City needs additional daycare. Their review is based on the criteria in code and based on the neighborhood's input he believes Criteria A of the conditional use criteria is not met. The criteria states that the value and qualities in the neighborhoods surrounding the conditional use are not substantially injured. It appears she is already running an unlicensed daycare out of her home. This will be a large one and since that criteria is not met and he will voting against it.

Commissioner Hensler disagreed with Commissioner Rickett and that Ms. Warren is running a licensed small daycare per the City and that is an important distinction. Commissioner Rickett stated that she is not licensed with the State. Commissioner McMurray clarified that was because it is not required by the State. Commissioner Hensler reiterated state licensing is not required for a small daycare, a license for a small daycare is required by the City, which she has and has clarified that.

Commissioner Rickett asked the City Attorney if a state license was required for a small daycare. Ms. O'Boyle stated she wouldn't comment on whether or not there is a violation because that was not what they were here to decide. There are limits to having a specific number of children or below that number, but you are not required to get a license. Ms. O'Boyle could not say if Ms. Warren met those guidelines or not, but there is a threshold. Commissioner Rickett said the State says four without a license, six with a small daycare license, and 12 with a large daycare.

Commissioner Hensler provided clarification that staff said it was licensed for a small daycare with the City and is now seeking approval with the State for the large daycare. The State needs to have approval from the City for the conditional use for the large daycare, so it is

actually very clear. There is a great need for daycare in our community. It is unfortunate that those who may not work outside the home or have small kids or grandkids are vilifying this business. It seems to be being run in compliance with all regulations and has done so for some time. She also thought children playing outside and making noise is better than being stuck inside all day and the noise is not any louder than a lawn mower or a trash truck. Ms. Warren is following all regulations and appeared to meet all the criteria. Commissioner Hensler said she will be voting in favor of the project.

Commissioner Almy stated criteria is subjective; however, he thought having daycare in a community is a plus in the long run. Regarding the traffic and the noise, the traffic is for the school, not the daycare. The cars for this business are not going to impact traffic either way. Regarding the noise, the community has remedies if they think this is not being run according to the ordinances. They can make complaints and let the regulatory agencies handle that. The HOA being there does not influence the commission's decision, since it has its own covenants and its own remedies, but he did not think they would stand up based on current laws. He will vote in support of the project. It is a benefit to the community and the applicant is running a well-structured program.

Commissioner McMurray spoke to the discussion point of the nature of the conditional use being in harmony with the residential area. Conditional uses are put in the code as an indication that those uses are both anticipated and acceptable within that zone and that they are compatible inherently with the underlying zone. The conditional use allows people to check out the project and make sure what is happening. Sometimes it can create an adverse impact, but the degree of impact here is negligible. He is sympathetic to the neighborhood given the existing impacts of the elementary school in their neighborhood, but we cannot put that on this applicant. He will vote in support of the project.