



Legislation Text

File #: CUDP-22-0015, **Version:** 2

An appeal of City Planning Commission's decision to approve a conditional use development plan for a licensed large daycare home with a maximum of twelve (12) children at 50 Mikado Drive East.

(Quasi-Judicial)

Presenter:

Peter Lange, Planner II, Planning & Community Development Department
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Summary:

Owner: Stacie Warren
Location: 50 Mikado Drive East

City Planning Commission approved a conditional use development plan on March 8, 2023, for a large home daycare located at 50 Mikado Drive East which would allow for a maximum of twelve children in a Single-Family Residential (R1-6000) with Hillside Overlay (HS) zone, on a 12,000 square foot lot. On March 20, 2023, the Appellant, Raven Hills Homeowner Association, whose address is 4325 N. Nevada Avenue, filed an appeal of the City Planning Commission's decision to approve the above referenced project within the 10-day appeal window.

Background:

The Applicant proposes a Conditional Use Development Plan to establish a large daycare home for a maximum of 12 children in accordance with City Code Section 7.3.105(B)(2) which requires a conditional use in most residential zone districts. A Home Day Care Permit that allows 8 children (6 full-time and 2 part-time) was issued by the City of Colorado Springs on August 23, 2022 (Permit Number HMDC-22-0002). The applicant is also currently pursuing a Child Care license with the State of Colorado, which would allow for the number of children to increase to a maximum of twelve children at one time. The parking will not interfere with the neighborhood. Staff finds that the proposed drop-off and pick-up design is safe for kids and parents. Typically, no outside employees are allowed as part of a home occupation, but in accordance with City Code Section 7.3.105 (B)(1), one part-time teaching assistant that does not reside in the home may work at the daycare.

According to the State of Colorado, the indoor floor space must be 35 square feet per child and the outdoor play area must be at least 75 square feet per child. Therefore, for 12 children, 420 square feet is the minimum indoor floor space necessary and 900 square feet is the minimum for outdoor play area. The Applicant has provided 2,290 square feet of indoor and 754 square feet of outdoor play area, which exceeds the State's minimum requirement noted above. The outdoor play area in the rear of the property is fully fenced with a 6-foot-high wood fence. This outdoor area is designated for the children's playground area with a variety of playtime activities with adult supervision. Children are not permitted to be in the front yard of the property. City Planning staff finds these conditions to

adhere with the State of Colorado requirements for a large daycare home, as well as City Code Section 7.3.105(B)(1-5), as stated below:

1. No more than one part time employee who does not reside in the home may work at the home;
2. Substitute providers are allowed when the normal provider cannot be present;
3. One wall sign not more than two (2) square feet is allowed;
4. No part of the required outdoor space shall be situated within any front building setback. The required outdoor space shall be screened from adjacent residential properties when necessary and appropriate to reduce play area sounds; and,
5. Subject to the approval of a daycare permit from the Community Development Department.

In accordance with City Code Section 7.5.704 Authorization and Findings, City Planning staff's recommendation to approve the requested Conditional Use Development Plan was based on the following findings:

1. *Surrounding Neighborhood: That the value and qualities of the neighborhood surrounding the conditional use are not substantially injured.*

City Planning staff finds that the request will not substantially injure the value and quality of the surrounding neighborhood, as the immediate area is developed with similar single-family residential uses. The proposed use is compatible with the surrounding residential uses and will support and benefit the surrounding area. As previously stated, the daycare has been operating for over three years with no known violations. The value and quality of the surrounding neighborhood will not be injured by the proposed request for a large home daycare.

2. *Intent of Zoning Code: That the conditional use is consistent with the intent and purpose of this Zoning Code to promote public health, safety, and general welfare.*

The project site is a single-family residence, is located adjacent to single-family residences, and the proposed use (large day care) is considered a supportive nonresidential land use by providing essential services to the neighboring residential community.

The applicant's request to establish a large daycare home use is consistent with the above-referenced purpose section, as the additional standards set forth in City Code Section 7.3.105 (B)(2) for a large daycare home have been met. More specifically, these standards were designated to mitigate potential impacts that apply to certain uses allowed in residential zone districts (including residential PUDs); thus, ensuring the intent and purpose of the City Code to promote public health, safety, and general welfare are adhered to.

3. *Comprehensive Plan: That the conditional use is consistent with the Comprehensive Plan of the City.*

The proposed large home daycare and conditional use development plan conform to the goals

and policies of the City's Comprehensive (herein referred to as "PlanCos"). This project provides a service for the greater vicinity as there is a need for childcare in Colorado Springs and the use is compatible with the surrounding residential neighborhood.

City Planning staff finds that these conditions adhere with the State of Colorado requirements for a large daycare home, as well as City Code Section 7.3.105(B)(1) and (2).

The City Planning Commission ultimately found the application to be consistent with all applicable review criteria for a large home day care and findings for granting a conditional use development plan, as discussed above. As such, the City Planning Commission approved the requested conditional use development plan for the large daycare located at 50 Mikado Drive East with a maximum of twelve (12) children R1-6000/HS (Single-Family with Hillside Overlay) zone district.

On March 20, 2023, an appeal of City Planning Commissions approval of the above referenced project was filed, within the 10-day appeal window. The Appellant's formal appeal statement cites that the Conditional Use Permit does not meet the Conditional Use Development Plan review criteria, as well as traffic, noise, and property value impacts. City Planning staff is only able to speak to those matters that are based the applicable review criteria and findings for granting a Conditional Use Development Plan provided in City Code. The Appellant's objections that relate to City Code consist of the permitting parameters for large daycare homes in residential zone districts, noise, and traffic. Noise is regulated by City Code and threshold for noise levels are established per City Code Section 9.8.104. The primary use of this property is residential, the large home daycare is subordinate to the residential use. Traffic Engineering noted that there are no traffic issues with the large daycare home. Pick-up and drop-off times will be staggered and will occur within the existing driveway based on the information conveyed by the applicant in the project statement. Staff considered the standards for the request for a large daycare homes at this location based on State of Colorado requirements for a large daycare home, as well as City Code Section 7.3.105(B)(1-5). The applicant has been legally operating a daycare home at this location since 2022, and staff determined that based on the proposed project, the increase of four additional children did not significantly increase the way the current daycare home business is operating.

Under the adopted Unified Development Code (to become effective June 5), a "child day care, large, accessory" to a single-family residence is a permitted use (by right). After the effective date of the UDC, all permitting, and inspections will be administered through the State of Colorado Childcare services. If the subject Conditional Use Development Plan is denied by City Council, the applicant will have the opportunity to re-apply with the State as of June 5, 2023, and if all State criteria are met, the large daycare license will be approved by the State. No approvals from the City, as of June 5, 2023, will be required to obtain a large daycare license.

Previous Council Action:

N/A

Financial Implications:

N/A

City Council Appointed Board/Commission/Committee Recommendation:

At the City Planning Commission on March 8, 2023, the project application was heard under the New Business Calendar portion of the hearing. Formal presentations of the project were provided by City

Planning staff, the applicant, and public comments in favor and against the project were taken from members of the public in-person and virtually. The Appellant spoke at the Commission hearing expressing concerns of the use of the daycare with respect to covenants, impact to the neighborhood and devaluing of property, increased noise, and traffic congestion. The Appellant and others also provided written public comment which were provided to the Commission prior to the hearing. City staff addressed questions from the Commission related to the project such as covenants, which the City is not party too and cannot enforce, as well as small home day care use and large home day care use parameters, which are outlined in City Code Section 7.3.105(B)(1) and (2) Daycare Homes, Large Daycare Homes, And Daycare Centers. The City Planning Commission approval of the project applications by a vote of 5 to 1 (Commissioner Hensler, Briggs, Foos, McMurray, and Almy voted for approval, Commissioner Rickett against; Commissioners Raughton and Hente absent, and Commissioner Slattery recused).

Stakeholder Process:

The Appellant spoke at the March 8, 2023, Commission hearing for the conditional use development plan. Despite the concerns that Ms. Anderson raised at this time, the Commission voted to approve the application as presented. Staff sent out an email on March 8, 2023, to all interested stakeholders that had contact staff during the review processes, including the Appellant, notifying of the approval of the conditional use development plan, and providing information on the appeal process which was presented at the Commission hearing. Shortly thereafter, the Appellant contacted staff to notify of her appeal. The Appellant submitted the appeal application on Monday, March 20, 2023, within the 10-day appeal window.

During the internal review stage and prior to the Planning Commissions hearing, postcards were mailed to 202 property owners within 1,000-foot buffer of the site. The site was also posted during these two occasions. Prior to the City Council hearing from the appeal, the site was also posted, and postcards will be mailed to all property owner within 1,000-foot buffer of the site.

The City Planning Commission were also provided the following responses to the comments and concerns raised through received public comments:

- **Traffic:** Traffic impacts will be minimal as the Applicant proposes staggered drop off and pickup times and at most, a maximum of twelve cars will come to the site at any given time from Monday to Friday.
- **Noise:** The area is bordered to the north, west, south, and east by existing single-family residences and the community is concerned with an increase in noise by the proposed use. The proposed daycare operates from 8:00 AM to 3:30 PM, Monday through Friday, and does not operate during the weekends. The operating hours tend to align with hours in which residence are working and the facility closes prior to residences returning from work. In addition, the project site is located south of Rockrimmon Elementary school, which would be a significant contributor to traffic, in addition to noise in comparison with the proposed daycare facility. The applicant has operated a small daycare since July 2021 and Planning staff is unaware of any complaints or violations.
- **Daycare is not allowed per covenants:** Neighborhood covenants are civil and not enforced by the City of Colorado Springs. The proposed large daycare home has been reviewed per the criteria outlined in City Code Sections 7.3.105(B)(2) and 7.5.502(E). It is anticipated that the large daycare home will operate with little to no impact on the surrounding residents.

City Planning staff also sent the conditional use development application plan to the standard internal and external review agencies for comments. Commenting agencies included Colorado Springs Fire Department, City Engineering, Stormwater Enterprise, and City Traffic Engineering. City Planning staff notes that the following review agencies provided project specific comments:

- City Traffic - The City's Traffic Engineering Division stated that there are no traffic concerns related to the operation of the proposed large daycare home project.
- City Fire - The City's Fire Department (CSFD) did not have any comments or exceptions with the development plan as submitted.
- City Engineering - The City Engineering Development Review (EDR) had no comments with the project.
- SWENT -Stormwater Enterprise (SWENT) had no comments for this project.

Alternatives:

1. Deny the appeal, thereby upholding the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Approve the appeal, overturning the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration.

Proposed Motion:

Deny the appeal, thereby upholding Planning Commission's action to approve the large daycare Conditional Use Development Plan for the property located at 50 Mikado Drive East, based on the findings that the applicant complies with the review criteria set forth in City Code Sections 7.5.704 (Conditional Use) and 7.5.502.E (Development Plan), and that the appeal criteria found in City Code Section 7.5.906.B are not met.

N/A