



## Legislation Text

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**File #:** CPC CU 21-00196, **Version:** 2

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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 and infants at 8265 Clifton Drive.

(Quasi-Judicial)

**Presenter:**

Tamara Baxter, Senior Planner, Planning & Community Development Department  
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**Summary:**

Owner: Jesus Perez and Anna Marie Johnson  
Location: 8265 Clifton Drive

City Planning Commission approved a conditional use development plan on April 24, 2022, for the Little Monkeys Treehouse Childcare to allow the establishment of a large daycare home with a maximum of twelve (12) children in a R1-6/AO (Single-Family with Airport Overlay), on 0.18 acres. On April 29, 2022, the Appellant, Ms. Sandra Foss, who lives at 8275 Clifton Drive, 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's proposal was for 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 (**see "Conditional Use Development Plan" attachment**). A Home Day Care Permit was issued by the City of Colorado Springs on January 1, 2006 (Permit Number DCP-17539). A State of Colorado Child Care license was issued on July 13, 2013, for a home daycare (#1634384). The Applicant indicated that she did not operate a home day care between 2006 to 2013.

The site configuration for Little Monkey Treehouse Childcare consists of an 8,080 square foot lot, with pedestrian and vehicle access from Clifton Drive. The daycare will continue to operate Monday through Friday from 7:15 am to 4:00 pm, closed on weekends. The daycare will follow Academy School District 20 calendar. The daycare will be closed days that Academy School District 20 is closed such as summers, spring break, Thanksgiving break, Christmas break, snow days, etc. Drop-off and pick-up will be staggered times. Parents arriving and departing with their children will do so within the three-car driveway and, if necessary, via on-street public parking directly in front of the residence (**see "Conditional Use Development Plan"**). The parking will not interfere with the neighborhood. Some families have more than one child in the daycare, thus keeping traffic at any given time to a minimum along Clifton Drive. Staff finds that the proposed drop-off and pick-up

design is safe for kids and parents. The Applicant noted that there will be one employee, most likely her mother-in-law to assist with the large home day care. 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 per child must be 35 square feet per child and the outdoor play area per child is at least 75 square feet per child. In accordance with State of Colorado standards for a maximum of 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 1,162 square feet of indoor and 1,700 square feet of outdoor play area, which exceeds the State's minimum requirement noted above. The outdoor area is fully fenced with a wood fence and a gate on both the west and east side of the residence. 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 were based on the following findings for granting the application:

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 injure the value and quality of the surrounding neighborhood, as the immediate area is currently developed with similar single-family residential uses. There are other childcare operations in the immediate area and the applicant has been operating a licensed day care at this location since 2013. Based on the State of Colorado Office of Early Childhood website, there are two (2) licensed daycare homes (with attendance of no more than six (6) children full time plus two (2) children part time) within a mile of the residence. There is also childcare associated with Ranch Creek Elementary School in Wolf Ranch and Prairie Hills Elementary School in the Fairfax neighborhood. There is a private school to the north (The Goddard School) which provides licensed childcare. The value and quality of the surrounding neighborhood will not be injured by the proposed request for a large daycare home request (**see "Context Map" attachment**).

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.*

Based on City Code Section 7.3.101, residential zone districts are intended to provide for "... residential living with a broad range of dwelling unit densities and development types..". Residential zone districts are also envisioned to allow for and/or accommodate other land uses should certain standards be met and approvals be granted. The applicant's request to develop a large daycare home use is consistent with the additional standards set forth in City Code Section 7.3.105(B)(2) for a large daycare homes, which are structured to mitigate potential impacts that apply to certain uses conditionally permitted in residential zone districts; thus, ensuring the intent and purpose of City Code to promote public health, safety and general welfare is adhered with.

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

The proposed large daycare home and conditional use site plan conforms to the goals and policies of the City Comprehensive Plan (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 is a compatible use with the residential neighborhood.

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 Little Monkeys Treehouse Childcare to allow the establishment of a large daycare home with a maximum of twelve (12) children R1-6/AO (Single-Family with Airport Overlay) zone district.

On April 29, 2022, 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 cited several private/civil matters and zoning concerns about the approved application. The private/civil matters raised by the Appellant, included devaluing private property, neighbor-to-neighbor conflicts (i.e., property destruction, snow removal, etc.), and enforcement of private covenants, which are not factors covered by the applicable review criteria for a large home day care and findings for granting a conditional use development plan. 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, parking, and traffic. The parking for the large home daycare meets City Code off street parking standard. The applicant has provided a parking plan as part of the Conditional Use Development Plan (**see "Conditional Use Development Plan" attachment**). 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 will be staggered times and will occur within the existing driveway per the parking plan. Some families have multiple children, thus less vehicles to the site. Staff considered the standards for the request for a large daycare home at this location based on State of Colorado requirements, as well as City Code Section 7.3.105(B)(1-5). The applicant has been operating a daycare home since 2013, 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.

The appellant also noted that the City Planning Commission hearing was improperly conducted and did not allow for a full objection of the application. At the onset of the hearing, Planning Commission Chair Hente explained that each member of the public provided comments would be limited to 3-minutes, which is standard protocol for the City Planning Commission. Based on City Planning staff's review of the hearing record, the Appellant was afforded over the 3-minute limit to present her objections.

**Previous Council Action:**

Previous Council has taken previous action in this neighborhood on January 28, 1997, for a zone change.

**Financial Implications:**

NA

**City Council Appointed Board/Commission/Committee Recommendation:**

At the City Planning Commission on April 21, 2022, 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, and private/civil issues. 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 6:2:1 (Rickett and Slattery voted against; Commissioner Graham was excused).

**Stakeholder Process:**

The Appellant spoke at the April 21, 2022, Commission hearing for the conditional use development plan. Despite the concerns that Ms. Foss raised at this time, Commission voted to approve the application as presented. Staff sent out an email on April 21, 2022, 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 Friday, April 29, 2022, within the 10-day appeal window.

During the internal review stage and prior to the Planning Commissions hearing, postcards were mailed to 269 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. One additional stakeholder comment has been received after the Commission hearing (see "**Public**

**Comment\_4.28.22”).**

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

- **Traffic:** As stated in the Conditional Use Development Plan proposal section of this report, the children will not be dropped off and picked-up at the same time, the drop-off and pick-up times vary, and those times are staggered per child/family. This will keep at any given time to a minimum.
- **Parking:** As stated in the Conditional Use Development Plan proposal section of this report, the parking requirement complies with City Code Section 7.4.203: Parking Space Requirements by Use. The parking for the large daycare home will not interfere with the neighborhood.
- **Noise and Business Operation:** Sound from children is common in a single-family residential neighborhood. The daycare hours of operation will be 7:00 am to 4:00 pm, Monday through Fridays, and follow the Academy School District 20 calendar. There will be no daycare during summer months or holidays. The noise from the daycare large home project will not exceed the permissible noise levels outlined in City Code Section 9.8.104.
- **Daycare is not allowed per covenants:** The applicant has maintained a valid State license for 9 years, since July 2013, of a small home daycare (#1634384). The subject property had a violation regarding the parking of an RV and the operation of the small daycare in 2019. The applicant has valid home day care permit with the City (DCP-17539). This violation was closed out by Neighborhood Services Division March 2019. Neighborhood covenants are civil and not enforced by the City of Colorado Springs. The applicant noted that there is not an active homeowner's association for this area. 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 issues with the 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. Approval 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 Little Monkey's Treehouse Childcare Large Home Daycare conditional use development plan, 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.

NA