



Planning Commission Staff Report

October 14, 2015
Item 6.b.

SUBJECT: P15-0432

APPELLANTS: Gerald Sobrero

APPLICANT: Denise Alioto

PROPERTY OWNER: Moji Montazeri

PURPOSE: Appeal of the Zoning Administrator's approval of a Conditional Use Permit to operate a Large Family Daycare Home for a maximum of 12 children at an existing residence

LOCATION: 3763 Muirwood Drive

GENERAL PLAN: Medium Density Residential

ZONING: R-1-6,500 (One-Family Residential) District

EXHIBITS:

- A. [Zoning Administrator approval letter and conditions of approval dated "August 19, 2015"](#)
- B. [Approved project plans and written narrative, dated "Received July 27, 2015"](#)
- C. [Appeal from Gerald Sobrero and neighborhood petition dated "Received September 2, 2015"](#)
- D. [Public comment letters submitted to Planning Commission](#)
- E. [Public comment letters submitted to Zoning Administrator](#)
- F. [Zoning Administrator hearing minutes dated August 19, 2015](#)
- G. [Location and Notification Map](#)

BACKGROUND

On July 7, 2015, Denise Alioto, tenant at 3763 Muirwood Drive, submitted an application for a Conditional Use Permit (CUP) to operate a Large Family Daycare Home with a maximum of 12 children aged 0-5 years in her home. The applicant is currently operating a Small Family Daycare Home which serves approximately six children at any one time; this use is permitted and does not require a CUP, as described in the Pleasanton Municipal Code (PMC) requirements section below. On July 31, 2015, the applicant received a license from the State of California Department of Social Services-Community Care Licensing Division to operate a Large Family Daycare Home.

On August 19, 2015, a Zoning Administrator hearing was held on the subject proposal. The hearing was attended by several households from streets within the immediate vicinity of the subject parcel, including Muirwood Drive and Arrowwood Court. Prior to and after the hearing, staff received email and/or phone correspondence from 10 households (including the property owner), all in opposition to the proposed Large Family Daycare Home. Concerns ranged from lack of adequate parking and loading areas, noise impacts to neighbors, impacts on home values, traffic congestion and safety, and land use compatibility. Written correspondence is provided in Exhibit E.

After discussion with the parties and review of the proposed plans/narrative in the context of the project site and surrounding neighborhood, the Zoning Administrator approved the project, subject to conditions of approval designed to reduce impacts on the neighborhood to a level resulting from operation of the existing Small Family Daycare Home. The Zoning Administrator's Approval Letter and Conditions of Approval dated "August 19, 2015" are attached as Exhibit A. The Zoning Administrator Hearing minutes are also attached as Exhibit F.

The Zoning Administrator's approval of the CUP for the Large Family Daycare Home is the subject of this appeal (Exhibit C) and is before the Planning Commission for review and action.

SITE AND AREA DESCRIPTION

The subject site is a single-family home located at 3763 Muirwood Drive. The lot is approximately 8,000 square feet in area and is surrounded by similar-sized single-family homes and lots to the east, west, and south and larger homes and lots (over 20,000 square feet) to the north. Foothill High School is located further north of the subject site and vacant land in unincorporated Alameda County further to the south. The location of the site and the surrounding area are shown in Figure 1 and Exhibit G.

Figure 1: Subject Property and Surrounding Area



PLEASANTON MUNICIPAL CODE REQUIREMENTS

California State Law (Health and Safety Code) defines two categories of family daycare homes, as paraphrased below:

- A “Small Family Daycare Home” provides family daycare for up to six children, or for up to eight children if the criteria of Section 1597.44¹ are met. Enrollment limits include children under age 10 who live in the licensee's home; and
- A “Large Family Daycare Home” provides family daycare for seven or eight and up to 12 children, or for up to 14 children if the criteria of Section 1597.465² are met. Enrollment limits include children under age 10 who live in the licensee's home and the assistant/teacher provider's children under age 10.

¹ (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
(b) No more than two infants are cared for during any time when more than six children are cared for.
(c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.
(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

² (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
(b) No more than three infants are cared for during any time when more than 12 children are being cared for.
(c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
(d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

The subject property is located in the R-1-6,500 (One-Family Residential) District. Small Family Daycare Homes are permitted uses in this district, meaning that the applicant does not need a CUP to serve up to eight children at the subject property in certain circumstances per State Law. However, Large Family Daycare Homes are conditionally permitted uses to allow the City to mitigate potential impacts.

PROJECT DESCRIPTION

The proposal is summarized below and the applicant's narrative and project plans are attached as Exhibit B.

The daycare home is proposed for up to 12 children from 0-5 years, at any given time. There are no children under the age of 10 who are residing in the home or are being brought to the home by other employees. The daycare home is proposed to operate from 7:30am to 5:30pm, Monday through Friday. It would employ one full-time teacher in addition to the tenant/applicant. The daycare home would occupy the first and middle floors of the split-level home, in addition to the rear yard play area. According to the proposed schedule, outdoor play time is designated from 10:30 to 11:15am and indoor/outdoor play time from 3:30 to 5:15pm.

On-site activities include art, music, and playtime, in addition to sleeping and feeding activities. Approximately two times per week, a supplementary teacher would come to the site to teach music and soccer from approximately 10:00 to 10:30am. The program also includes occasional field trips, consisting of walking to local parks, or driving in staff or parent vehicles to off-site destinations. These trips are typically scheduled in the middle of the day.

The subject house includes a two-car garage that would be reserved for use by the tenants. The applicant has identified five additional spaces that may be used for parking or loading during pick-up and drop-off times. There are three spaces in the driveway and two on-street spaces directly in front of the subject house. According to the applicant, drop-offs for the existing Small Family Daycare Home tend to be staggered between 7:30 and 9:30am and pick-ups tend to be staggered between 5:00 and 5:30pm.

ANALYSIS

In response to the growing need for in-home child care, in 1983 a new State Law was passed (Senate Bill 163) in order to clearly distinguish Small Family Daycare Homes and set forth the requirements as to how they are to be treated at the local (City) level. The State Law does not allow a City to restrict or regulate Small Family Daycare Homes in any way.

Also under Senate Bill 163, a City cannot adopt local ordinances prohibiting Large Family Daycare Homes on lots zoned for single-family dwellings, but must treat the homes in one of the following ways:

1. Classify Large Family Daycare Homes as a permitted use in residential districts;
2. Grant nondiscretionary permits subject to pre-established sites and operational requirements; or
3. Require the daycare provider to apply for and be granted a CUP if the Large Family Daycare Home complies with local ordinances prescribing reasonable requirements concerning spacing and concentration, traffic control, parking, noise control, and Building and Fire Codes.

The City has adopted an ordinance based on this State Law establishing a CUP procedure to evaluate each Large Family Daycare Home on an individual basis. Under this ordinance, the City requires a Large Family Daycare Home provider to meet standards which relate to spacing, traffic control, parking, noise control, and Fire Codes. The City must grant a CUP for a Large Family Daycare Home if it complies with these standards. Conditions of approval may be added to ensure compliance.

It is important to note that by adopting Senate Bill 163, the State:

1. Established the policy that Large Family Daycare Homes are appropriate in single-family residential zoning districts;
2. Established the policy that Family Daycare Homes for children must be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development;
3. Set procedures to increase and expedite the processing of such facilities; and
4. Made void any deed restrictions which prevent Family Daycare Homes from existing in single-family residential zoning districts.

The subject property is zoned R-1-6,500 (One-Family Residential), which supports this type of use, and as discussed above, is supported and encouraged by State Law. Accordingly, it is necessary to acknowledge the State's expressed need for such establishments and the City's responsibility to approve proposals for facilities that can be conditioned to mitigate impacts that would otherwise restrict the land use. Large Family Daycare Homes with 7-14 children at any time³ are conditionally permitted uses in the R-1-6,500 district in order to allow the City to mitigate impacts. The applicant has

³ Under certain conditions, State Law allows day care homes with seven or eight children to qualify as a Small Family Day Care Home.

applied for a CUP as required for Large Family Daycare Homes in the R-1-6,500 district. Therefore, if the CUP were granted, the Large Family Daycare Home would be consistent with the applicable land use regulations.

As part of the CUP approval, staff and the Zoning Administrator assessed the requirements for a Large Family Daycare Home as outlined in Chapter 18.124.240(A-E) of the PMC. The relevant text from the PMC and a discussion of the application's compliance with each standard follow:

A. Spacing: No Large Family Daycare Home shall be approved if the site of the proposed use is located within three hundred feet (300 feet) of the exterior boundary of another Large Family Daycare Home or nursery school, unless the Zoning Administrator makes the specific finding that the concentration of such uses will not adversely affect the neighborhood in which it is located due to the cumulative increase in noise, traffic and/or parking requirements.

Staff has verified that the proposed facility is not within 300 feet of another Large Family Daycare Home or nursery school.

B. Traffic Control: Large Family Daycare Homes shall not create any traffic hazard. The Zoning Administrator may prescribe such conditions as may be reasonably required to ensure the safety of all affected by the proposed use, including requiring traffic-control measures reasonably required to avoid any identified adverse effect.

The subject site is located approximately 1/3-mile from the south entrance of Foothill High School. According to the City of Pleasanton Traffic Engineering Division, vehicles periodically back up on Foothill Road south of the high school for up to a mile (to Bernal Avenue) during school AM and PM peak periods. The City's Traffic Engineering Division has indicated that the highest traffic volumes on Foothill Road either passing, entering, or exiting the school are between 7:25 and 8:00am and 2:45 and 4:00pm (except Wednesday during the AM peak, when the school starts at a later time). The traffic congestion is typically most severe at the beginning of the school year and subsides somewhat after the first few weeks as students and parents adjust their schedules and routes. Some of this traffic affects turning movements to and from Muirwood Drive.

Potential vehicle trips can be estimated as follows. Assuming each of the 12 children is dropped off and picked up by separate vehicles each morning and afternoon, approximately 24 daily trips would be generated by the Large Family Daycare Home. However, as described in the project narrative (Exhibit B), the applicant tends to have clients with multiple children who would presumably be dropped off and picked up by a single vehicle/parent. Assuming three sets of siblings out of 12 children, approximately 18 daily trips would be generated by the Large Family Daycare Home

(including nine trips in the morning and nine trips in the late afternoon). Additionally, the daycare home would have one employee who would generate an additional trip in the morning and evening, resulting in two additional daily trips. Also, an additional teacher for music and soccer would travel to the subject site twice a week, generating four additional weekly trips. Therefore, based on the above parameters, approximately 20 to 26 daily trips would be generated by the Large Family Daycare Home. This does not include the four weekly trips generated by the additional teacher for music and soccer.

In the comment letters sent to the Zoning Administrator and attached as Exhibit E, several neighbors have indicated that the traffic tends to be fast-moving and substantial on Muirwood Drive and that the proposal would contribute to the traffic congestion and be affected by the existing traffic safety issues.

The addition of 20 to 26 daily trips would not result in a significant increase in overall traffic volume and would not significantly worsen the traffic conditions within the area. In consideration of the concerns expressed by the neighbors, the Zoning Administrator included in the project approval, conditions of approval to reduce traffic impacts, including restrictions on drop-off times that prohibit drop-offs immediately before Foothill High School classes start, pick-up protocols that prohibit U-turns in neighboring resident driveways, and parking practices that include using the driveway and those on-street parking spaces in front of the subject parcel and not allowing double-parking. Please see Exhibit A for more details.

C. Parking Requirements: Parking spaces, including both off-street and on-street, shall be available for the actual parking demand created by the use, including the applicant's own vehicles, those of employees, and those of persons delivering and picking up children. On-street parking is available for the use if such spaces are within a reasonable distance of the home and can be reached safely from the home by children.

As indicated in item B above, approximately nine to 12 parent/guardian vehicles would temporarily park to drop-off and pick-up children in the morning and afternoons, and one teacher would park in the driveway or on the street all day in front of the subject site. The special music and soccer teacher would need to park on the street in front of the subject site twice per week from 10:00 to 10:30am. The two-car garage would accommodate the two tenants' vehicles. The project narrative indicates that drop-off and pick-up times tend to be staggered, such that there are typically no more than two or three vehicles temporarily parked for drop-off and pick-up at any one time. In general, pick-up and drop-off takes approximately five minutes per parent/guardian.

In phone calls and the comment letters sent to the Zoning Administrator and attached as Exhibit E, neighbors have indicated that the local parking supply is constrained, in part due to overflow parking from the nearby Foothill High School, and suggested that parking would be further constrained with implementation of the project.

Prior to the Zoning Administrator hearing, staff made two site visits to the property, during the morning and afternoon periods, respectively. Three to five out of the five proposed parking/loading spaces in the driveway and on the street in front of the house were available and there was ample on-street parking along Muirwood Drive and the intersecting cul-de-sacs. While Foothill High School was not in session during these site visits, past experience indicates that the spillover student parking tends not to reach the frontage of the subject parcel, as described below. Subsequent to the filing of this appeal, staff made an additional site visit to the property during the morning and afternoon periods. Foothill High School was in session during this most recent site visit, and staff observed that the number of available parking spaces on Muirwood Drive was no different than described above.

According to the City's Traffic Engineering Division, over the years several residential permit parking areas have been established at the request of property owners on Muirwood Drive and the nearby cul-de-sacs to restrict parking to residents and prevent students from parking on these streets. Currently, resident-only permit parking on Muirwood Drive extends from Foothill Road through Fallwood Court, west of the subject parcel (see Figure 1). Although the subject parcel was previously included in the permit parking area, the area around the site has been excluded from the permit area since the parking constraints did not extend as far east along Muirwood Drive as initially suspected, and property owners elected to eliminate the permit requirements.

Staff believes that the five spaces identified by the applicant for parking and loading would sufficiently accommodate the additional employee vehicle and the nine to 12 parent/caretaker vehicles that would temporarily park at staggered times in the morning and afternoon. The spaces are located within a reasonable distance of the home and can be reached safely by parents and children, as they do not require crossing a street.

- D. Noise Control: Large Family Daycare Homes shall not create noise levels in excess of those allowed in single-family residential areas in the Noise Element of the General Plan or in excess of those allowed in residential property by Chapter 9.04 of the Municipal Code. The zoning administrator may impose reasonable limits on the hours of operation of the Large Family Daycare Home in order to ensure that these limits are met.**

The PMC permits the Zoning Administrator to place reasonable limits on the hours of operation of the daycare home to ensure that noise levels do not exceed that allowed in residential zones by the General Plan or Chapter 9.04 of the PMC (Noise Ordinance).

The General Plan and PMC do not allow noise levels in excess of 60 decibels (dBA) beyond the property line of the noise source in a residential zone. Sixty dBA is equivalent to the sound of a vacuum cleaner at ten feet. An average residence generates noise levels of approximately 45 dBA (this average includes noise made by children playing outside of a residence). Although 12 children may produce additional noise above that produced by a typical family, or by a Small Family Daycare Home with only six children (the number of children permitted by State Law without a City permit, and that currently occupies the subject site on a daily basis), staff believes the actual noise level will not exceed the 60 dBA level permitted by the General Plan or PMC.

The applicant proposed to limit the children's outdoor play times to 10:30 to 11:15am and indoor/outdoor play time from 3:30 to 5:15pm. Staff feels the proposed outdoor play locations and hours are acceptable and would not adversely impact adjacent properties. Also, since some of the children are infants and would not be able to play outside, noise levels may be reduced compared to a daycare home with older children.

However, to enhance the noise protection for the adjacent properties, the Zoning Administrator conditioned staggered, small-group outdoor playtime to further reduce the outdoor noise impact. Staff and the Zoning Administrator believe that staggering the play times of the children and limiting the outdoor activities to seven children at any given time, would adequately mitigate any noise impacts on the surrounding properties.

E. Fire Code Requirements: Large Family Daycare Homes shall meet all regulations of the State Fire Marshal adopted as part of the California Administrative Code and relating specifically to Large Family Daycare Homes. (Ord. 1126 § 9, 1984; Prior Code§ 2-11.20(c))

Health and Safety Code Section 13235 states that family daycare homes must obtain a fire safety clearance by the local fire enforcing agency. The Livermore/Pleasanton Fire Department conducted a pre-inspection and verified compliance as it relates to State law.

In general, staff feels that the specific conditions of approval imposed by the Zoning Administrator for the CUP adequately address State Law and City ordinance standards and will ensure that the proposed Large Family Daycare Home will not create any adverse impacts on the surrounding properties.

FINDINGS

The Zoning Administrator made the following findings prior to granting the Conditional Use Permit:

A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.

Objectives of the Zoning Ordinance include: fostering a harmonious, convenient, workable relationship among land uses; protecting existing land use from inharmonious influences; promoting a safe, effective traffic circulation system; facilitating the appropriate location of community facilities and institutions; protecting and enhancing real property values; and ensuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, the proposed Large Family Daycare Home would be consistent with these objectives because it would retain the residential characteristics of the neighborhood and not generate large volumes of traffic or noise due to its limited scale and size.

The subject site is zoned R-1-6,500 District. Some of the purposes of the R-1 District include: reserving appropriately located areas for family living; minimizing traffic congestion; providing necessary space for off-street parking; and protecting residential properties from noise and other objectionable influences. Large Family Daycare Homes are allowed in single-family residential districts subject to the standards of the PMC. Staff feels that, as conditioned, the PMC standards are met.

Therefore, the CUP for the Large Family Daycare Home is in accordance with the objectives of the zoning district, and staff believes the above finding can be made.

B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.

The applicant has already received a license for a Large Family Daycare Home from the State allowing up to 12 children at the home. To ensure that the transition from a Small Family Daycare Home to a Large Family Daycare Home would generate minimal impact to the adjacent residents as well as to the neighborhood, the applicant would be required to reserve the driveway area for parking by the daycare use. As proposed and conditioned, the applicant would stagger drop-off and pick-up times to reduce traffic, advise guardians not to double park during pickup/drop off time, and not to use neighbors' driveways to park or make a U-turn. In addition, children's outdoor play times would be staggered to reduce noise impacts on adjacent properties. Staff believes that with the imposed conditions, the proposed Large Family Daycare Home would be operated in a manner that would not significantly adversely affect the neighborhood.

As proposed and as required by conditions, staff does not find that the proposed Large Family Daycare Home would be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity. Staff and the Zoning Administrator believe that this finding can be made.

C. That the proposed conditional use will comply with each of the applicable provisions of the Municipal Code which apply to Conditional Uses.

Staff finds that, as conditioned, the proposed Large Family Daycare Home will comply with the Large Family Daycare Home standards listed in Section 18.124.240 of the Zoning Ordinance, including spacing, traffic control, parking, noise control, and Fire Code requirements. The proposed Large Family Daycare Home, as conditioned, would also comply with the Uniform Fire Code. Staff and the Zoning Administrator believe that the third finding can be made.

PUBLIC NOTICE

Notice of this application was sent to surrounding property owners within 1,000-feet of the site, as shown in Exhibit G. As previously mentioned, prior to and after the August 19, 2015 Zoning Administrator hearing, staff received email and/or phone correspondence from seven households (including the property owner), all in opposition to the proposed Large Family Daycare Home. Concerns ranged from lack of adequate parking and loading areas, noise impacts to neighbors, impacts on home values, traffic

congestion and safety, and land use compatibility concerns. Written correspondence is provided in Exhibit E. Additionally, subsequent to the notice sent for this hearing, staff received two additional emails from surrounding households expressing similar concerns with the proposed use. These emails are attached as Exhibit D.

All of the neighborhood concerns, with the exception of home values, are addressed above. Staff could not find any evidence that a properly operated Large Family Daycare Home would reduce property values in a given area. Large Family Daycare Homes typically create a similar amount of traffic and noise as most single-family homes, which are some of the typical concerns of home buyers and real estate agents. In addition, owners/renters of daycare homes usually keep their homes well maintained. The proposed Large Family Daycare Home would not be noticeably different in appearance from other homes on Muirwood Drive. While staff believes that some potential home buyers may not want to purchase a home next to a daycare home, others may find such an adjacent use desirable and convenient. Therefore, staff does not believe that the proposed Large Family Daycare Home would result in a loss of home value for the adjacent properties. Furthermore, State Law precludes a City from considering this factor when making a determination on a proposed daycare home application.

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines, Section 15301, Existing Facilities, Class 1. Therefore, no environmental document accompanies this report.

CONCLUSION

It is important to acknowledge the need for family daycare home establishments and the City's responsibility to approve proposals for home daycare home facilities that can be conditioned to mitigate impacts that would otherwise restrict the land use. As conditioned, staff finds that the potential impacts of the proposed Large Family Daycare Home can be adequately mitigated.

STAFF RECOMMENDATION

Staff recommends that the Planning Commission deny the appeal and uphold the Zoning Administrator's approval of Case P15-0432.

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