



DATE: February 26, 2019

CATEGORY: Public Hearing

DEPT.: Community Development

TITLE: **Appeal of Conditional Use Permit Approval for a Large Family Day Care at 1880 Miramonte Avenue**

RECOMMENDATION

Adopt a Resolution Upholding the Zoning Administrator’s Approval of a Conditional Use Permit which Conditionally Permits a Large Family Day Care for Up to 14 Children in an Existing Single-Family Residence at 1880 Miramonte Avenue, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

At the December 12, 2018 Administrative Zoning Public Hearing, the project applicant, Karina Makushenka, was granted approval of a Conditional Use Permit (CUP) for a large family day care in a single-family residence located at 1880 Miramonte Avenue.

On December 17, 2018, the City received an appeal of the Zoning Administrator’s decision to approve the CUP, citing “property not suitable for day care.” The appellant provided the following reasons why the Council should overturn the Zoning Administrator’s decision, which are further explained in the appellant’s attached Statement of Appeal (see Attachment 2 – Statement of Appeal):

1. Noise impacts from children playing outside;
2. Traffic, parking, and safety issues on Miramonte Avenue; and
3. History of the 1880 Miramonte Avenue property.

Project Site

The project site is approximately 10,300 square feet and is developed with an approximately 3,000 square foot, one-story, single-family home. The property is located on the west side of Miramonte Avenue, between Gest Drive and Madison Drive, and is surrounded by single-family homes to the north, south, and west, and Saint Francis High School is located across the street from the site to the east.



Location Map

Description of Project

The proposal is for a large family day care for up to 14 children in an existing approximately 3,000 square foot, one-story residence with a two-car garage. A large family day care may be licensed for up to 14 children by the State of California (Community Care Licensing Department) if at least two of the children are a minimum of six years old and there are no more than three infants less than two years old. Children who live in the home who are under the age of 10 are required to be counted in the total child count for the day care.

The applicant has three children of their own who would be counted toward the maximum of 14 children, which leaves space for up to 11 children at this day care coming from outside the home. There will be at least two children who are six years or older, and one infant. The majority of the children are proposed to be between the ages of two and five. There will be two caregivers: the applicant and an employee, and the proposed hours of operation are 8:00 a.m. to 6:00 p.m., Monday through Friday. A daily schedule is provided with the project description (see Attachment 3).

There is approximately 4,000 square feet of backyard play area (roughly 80'x50') enclosed by a 6' tall wood fence. Vehicle access to the site is provided via a driveway off Miramonte Avenue. The parking and drop-off area would be on the driveway where there are four available spaces: one for an employee and three for visitors (see Attachment 4 – Site Plan). The applicant will park in the two-car garage.

The applicant anticipates there will be 10 cars dropping off children in the morning because three children are their own and one child may arrive in the afternoon. A staggered drop-off plan is proposed to allow for up to four vehicles to arrive every 15 minutes between 8:00 a.m. and 9:00 a.m. to manage use of the on-site drop-off space and minimize potential conflicts with traffic associated with the start times of three nearby schools (Saint Francis High School, Blach Intermediate School, and Springer Elementary School) which have start times ranging from 8:05 a.m. to 9:20 a.m. (see Attachment 5– Drop-Off Plan).

California Child Day-Care Facilities Act and Zoning Ordinance Requirements

“Large family day cares” provide in-home care for 7 to 14 children pursuant to the regulations and requirements of the California Child Day-Care Facilities Act, which also limits local regulation of family day cares to four areas, including: spacing and concentration, traffic control, parking control, and noise control. The Act establishes State oversight for licensing day-care facilities and aims to streamline day-care facility review based on the need for these services in California. The Mountain View Zoning Ordinance allows the use of a large family day care within a single-family home in a residential zone with the approval of a nondiscretionary Conditional Use Permit in accordance with State law and subject to the criteria in Section 36.28.20.d., including:

1. **Spacing/concentration.** No residential property shall be bordered on more than one side by a day-care facility.
2. **Traffic control.** A drop-off and pick-up area shall be established to ensure that children are not placed at risk and street traffic is not unduly interrupted. The driveway may serve as its drop-off area. Adequate drop-off and pick-up areas shall be provided so that traffic does not back up onto public roadways or does not create circulation problems in parking lots.
3. **Adjacent uses.** The proposed site shall not be located adjacent to a business that uses, sells, or stores significant amounts of hazardous materials or creates high noise levels or fumes.
4. **Outdoor play areas.** Outdoor play areas shall be set back from adjoining residential dwellings and enclosed with a minimum 6’ fence. A 6’ wood or masonry fence is required along the boundaries with residential uses.

Staff reviewed the application pursuant to these criteria and found that the proposal was compliant with all four criteria.

Public Outreach

Large family day cares are considered as nondiscretionary CUPs under the City's Zoning Ordinance and are meant to be subject to a more streamlined process which have special noticing requirements that are different from typical CUPs. Nondiscretionary CUPs for large family day cares do not require a public hearing unless requested in writing by the applicant or member of the public. On September 28, 2018, public notices were sent to property owners and tenants within 100' of the property pursuant to the requirements of Section 36.28.20.b.1 of the Zoning Ordinance, notifying them that the application had been received by the City and that a decision would be rendered in 10 days unless a public hearing was requested. On October 1, 2018, an adjacent neighbor sent a written request for a public hearing.

On November 4, 2018, the applicant held a neighborhood meeting at their residence to discuss the proposed day care and listen to neighbor concerns. Eight adjacent neighbors attended the meeting and expressed concerns regarding noise and traffic.

On November 7, 2018, Planning staff met with neighbors of the property at approximately 8:30 a.m. to review and discuss their traffic concerns on Miramonte Avenue in front of Saint Francis High School. Traffic issues such as congestion that would cause difficulty entering or exiting the driveway were not observed.

Administrative Zoning Hearing

On December 12, 2018, the Zoning Administrator held a duly noticed public hearing on the nondiscretionary CUP for this large family day care. Prior to the hearing, staff received seven written public comments from adjacent and nearby property owners expressing their concerns about the proposed day care (see Attachment 6—Public Comment Letters).

At the hearing, the applicant spoke about their desire to operate a family day care and willingness to work with the neighbors to try to address their concerns, including altering outdoor play hours to accommodate others' schedules and providing a staggered drop-off plan to reduce the potential traffic conflicts. Five members of the public spoke about concerns with noise, traffic, and potential soil contamination on the property. Four members of the public submitted written letters addressing their concerns and petitions with 61 signatures requesting denial of the CUP at the meeting for the record.

The Zoning Administrator conditionally approved the application because it was determined to be compliant with the four criteria defined by the California Child Day-Care Facilities Act and the Zoning Ordinance, the applicant proposed a drop-off plan and specific day-care schedule information to try to address the neighbor concerns regarding noise and traffic, and because there are no records of soil contamination on the site and any potential soil issues in the future would be addressed by the Community Care Licensing Division responsible for investigating the site before licensing the day care, subject to conditions of approval (see Attachment 7 – Findings Report for PL-2018-179).

ANALYSIS

Appeal

On December 17, 2018, Anne Marie Pelella submitted an appeal contesting the Zoning Administrator's decision. The appellant stated three reasons for the Council to consider, as summarized below, along with staff's analysis as to why these reasons do not support overturning the Zoning Administrator's decision.

1. *Noise issues:* Adjacent property owners point to Table 7.1 of Chapter 7 in the Noise Element of the General Plan that provides noise level guidance of acceptable noise levels in a single-family residential area to be an average of 55 dB(A) and for playgrounds to be between 68 and 70 dB(A). The property owners are concerned that the noise from the children will be equal to that of a playground and is not suitable for a single-family residential area.

The Zoning Ordinance allows large family day cares with a nondiscretionary CUP in single-family homes because of the need for child-care facilities and because they are considered compatible with other residential uses if they comply with the applicable criteria in the Code. The City uses the criteria limiting the spacing/concentration and outdoor play area criteria to help address potential noise issues. The proposed large family day care meets the noise-related criteria regarding spacing/concentration of no more than one day care facility bordering a residential property and providing the fenced outdoor play area.

In addition, the guidance of Table 7.1 of the General Plan is an average noise level for day and night criteria. The proposed day-care use is not equivalent to a playground use because the outdoor time will be limited to two separate hours of the day versus all day which would occur at a playground. The applicant has tried to address the neighbor concerns by providing a daily schedule that outlines when

the children are expected to play outside, which will be between 10:30 a.m. and 11:30 a.m. and 3:30 p.m. and 4:30 p.m.

Given the appeal, the applicant has indicated that they would consider upgrading their compliant property boundary fence to include either a sound wall and/or dense shrubs to further mitigate the neighbors' concerns. If desired by Council, this additional measure could be added as a condition of approval.

2. *Traffic, parking, and safety issues on Miramonte Avenue:* The appellant also expressed concern that the day care would add 14 vehicle trips on Miramonte Avenue—across from Saint Francis High School—overlapping with start times for three nearby schools and potentially causing a traffic hazard in that location. Saint Francis has varying start times from 8:05 a.m., 8:20 a.m., or 9:20 a.m., depending on the day of the week. There are student collaboration hours that begin as early as 7:45 a.m. Blach Intermediate School is one-half mile southeast from the proposed day care, near the corner of Miramonte Avenue and Covington Road, and has a start time of 8:30 a.m. most days and 9:17 a.m. on Wednesdays. Springer Elementary is 0.5 mile northwest from the proposed day care, near the corner of Springer Road and Rose Avenue, and has a start time of 8:30 a.m.



Map of Nearby Schools

As noted earlier, the day care expects to receive a maximum of 10 cars dropping off children in the morning. There are spaces in the driveway for three cars, in addition to the one employee space, and the applicant will operate with a staggered drop-off schedule allowing up to four cars every 15 minutes between 8:00 a.m. and 9:00 a.m.

Staff reviewed the proposal for any potential traffic and parking impacts or concerns with queuing into the public roadway and found that based on the number of 10 expected vehicles within an hour, staggered drop-off timing, and availability of existing parking, the large family day care is not expected to create a parking impact. Staff also consulted the City's Traffic Engineering Division for information about the existing roadway capacity on this portion of Miramonte Avenue and what effects the additional 10 vehicles may have on this capacity. Staff found that Miramonte Avenue has two lanes in each direction. Roadway capacity is about 900 to 1,000 vehicles per hour for each direction. The addition of 10 trips per hour is about 1 percent of capacity and is considered insignificant.

3. *History of the 1880 Miramonte Avenue property:* The current property owners have owned the property since June 2017. Neighbors report that the previous property owner stored old cars; car materials, such as motor oil and batteries; construction materials; and other items in the yard for many years, and that these materials could have permeated the soil and need to be further evaluated.

The City has no records of contamination or a hazardous materials release on this property or any property in the vicinity. Staff does not consider the storage of cars or construction materials hazardous materials storage which would warrant investigation or oversight by the Fire Department. Additionally, day-care providers require a license from the California Community Care Licensing Department, which will be conducting a site inspection and detailed analysis as part of the licensing process.

ENVIRONMENTAL REVIEW

This project qualifies as Statutorily Exempt under the California Environmental Quality Act (CEQA), Section 15274 ("Family Day-Care Homes"), which states that CEQA does not apply to establishment or operation of a large family day-care home, which provides in-home care for up to 14 children.

FISCAL IMPACT – None.

CONCLUSION

Large family day-care applications require nondiscretionary CUPs in Mountain View, based on substantial evidence and criteria identified in the Zoning Ordinance and California Child Day-Care Facilities Act. Staff has reviewed the application and determined the proposed day care is in compliance with these criteria.

Furthermore, the applicant has held a neighborhood meeting and has tried to address neighbors' noise and traffic concerns by developing an outdoor play schedule and providing a staggered morning drop-off plan. There are no reports of hazardous waste contamination on the site or in the vicinity. For all these reasons, staff recommends the City Council uphold the Zoning Administrator's approval of the CUP for a large family day care at 1880 Miramonte Avenue.

PROCEDURE FOR APPEAL

Staff will begin the item by giving a brief presentation and introducing the item to Council. The appellant will be given 10 minutes to present their appeal and is allowed time for rebuttal. The City Council may then ask questions and will open the item for public comment. At their discretion, the City Council may ask additional questions, allow the appellant additional time, and then will deliberate and act on the item. The appellant has the burden of proof to demonstrate the Zoning Administrator's decision was not supported by substantial evidence.

In order to provide a fair and impartial hearing and preserve due process for the appellant, the City Attorney will act in an advisory role to the City Council as the decision maker; the Senior Assistant City Attorney will act in a prosecutorial role in representing the Community Development Department.

At the conclusion of the hearing, the City Council will vote on whether to uphold the Zoning Administrator's decision or take alternative action, examples of which have been provided below.

ALTERNATIVES

1. Uphold the Zoning Administrator's decision with additional and/or modified conditions of approval.

2. Refer the project back to the Zoning Administrator for additional consideration or project modifications.
3. Overturn the Zoning Administrator's decision.

PUBLIC NOTICING

The Council's agenda is advertised on Channel 26, and the agenda and this report appear on the City's website. All property owners and tenants within a 750' radius were notified of this meeting and the original Zoning Administrator public hearing.

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- Attachments:
1. Resolution Upholding the Zoning Administrator's Approval
 2. Statement of Appeal
 3. Project Description
 4. Site Plan
 5. Drop-Off Plan
 6. Public Comment Letters
 7. Findings Report for PL-2018-179