

ITEM V-A: ADMINISTRATIVE PERMIT – 2325 STAGHORN WAY– EL SOL BILINGUAL DAYCARE AND PRESCHOOL– PL15-0021

REQUEST

The applicant requests approval of an Administrative Permit to allow a Large Family Day Care to operate within a single-family residence. The request will allow a daycare facility serving fourteen (14) or fewer children receiving supervision for periods of less than 24 hours.

Applicant/Owner – Marisol Keizer, homeowner

SUMMARY RECOMMENDATION

The Planning Division recommends that the Planning Commission take the following actions:

- A. Adopt the three (3) findings of fact for the Administrative Permit; and
- B. Approve the Administrative Permit subject to fourteen (14) conditions of approval.

SUMMARY OF OUTSTANDING ISSUES

An Administrative Permit for a Large Family Day Care may be approved by the Planning Director unless a request for a public hearing is received. A Notice of Intent to Approve an Administrative Permit for the Large Family Day Care was sent to property owners within a 300-foot radius. In response, City staff received four requests for a public hearing (Attachment 1). Staff has spoken with each of the residents who requested a hearing, and has also corresponded via e-mail. The general areas of concern are safety, noise, and traffic. Attachment 2 includes e-mail correspondence received by City staff which details these concerns, and also lists some conditions which residents would like applied to the project. The residents' concerns and staff responses are provided in the "Neighborhood Outreach and Concerns" section of this staff report.

BACKGROUND

The project site is located at 2325 Staghorn Way, in the West Roseville Specific Plan. The property is zoned single-family residential with development standards (R1/DS) and has a land use designation of Low Density Residential. The site is developed with a single-family residence and is surrounded by residential properties within the same zone.

According to Section 19.08.080.G of the City's Zoning Ordinance, Large Family Day Care Homes are defined as a private single-family dwelling where care, protection, and supervision of between eight (8)

Figure 1: Project Location



and fourteen (14) children is provided for periods of less than twenty-four (24) hours. This definition is consistent with the California Health and Safety Code (Section 1596.78) definition of these facilities; the relevant Health and Safety Code sections are included as Attachment 3. Large Family Day Care Homes require the approval of an Administrative Permit in residential zones.

The Government Code that regulates day care operations (California Child Day Care Facilities Act - California Health and Safety Code Chapter 3.6) made the finding that family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties, and do not fundamentally alter the nature of the underlying residential uses. The legislature also found that family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment. Section 1597.40 (a) of the Health and Safety Code states “it is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting,” and that this was a “policy of statewide concern” whose purpose included “prohibit[ing] any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.”

The California Child Day Care Facilities Act allows local agencies to apply ordinances and other standards such as local health and safety codes, setbacks, or noise regulations. These regulations cannot be applied to the daycare facility any differently than any other single-family residence. Section 1597.46(3) of the Act states that a permit to operate *shall be granted* if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning the following factors: spacing and concentration, traffic control, parking, and noise control. Consistent with this provision, the City Zoning Ordinance contains Chapter 19.46 (Attachment 4), which establishes requirements and standards for the location and operation of Large Family Day Care Homes. Pursuant to California law, the City’s discretion is limited to ensuring compliance with the regulations contained in the Zoning Ordinance for Large Family Day Care Facilities. The criteria identified in the Zoning Ordinance are addressed in the discussion of the findings necessary for approval of the Administrative Permit.

SITE INFORMATION

Location: 2325 Staghorn Way

Total Size: 0.25 acres

Topography: The parcel was graded flat prior to the construction of the single-family home on the property.

EVALUATION

Section 19.78.060A of the City of Roseville Zoning Ordinance requires that three findings be made prior to the approval of an Administrative Permit. The required findings are listed below in ***italicized bold print*** and are followed by an evaluation.

1. The proposed use or development is consistent with the City of Roseville General Plan and any applicable specific plan.

The General Plan land use designation for the subject property is Low Density Residential. The LDR land use designation is intended to allow for the development of attached and detached single-family residences. It also contemplates secondary uses such as churches, schools, and day care facilities. A day care facility that provides care, protection, and supervision of 14 or fewer minor children for periods of

less than 24 hours per day is consistent with this designation. The General Plan relies on the Zoning Ordinance, through the Administrative Permit requirement, to evaluate the consistency of individual requests with the applicable criteria. The Large Family Day Care is consistent with the City of Roseville General Plan.

2. *The proposed use or development conforms with all applicable standards and requirements of the Zoning Ordinance.*

The property is zoned R1/DS (single-family residential with development standards). As noted previously, the Zoning Ordinance provides that a Large Family Day Care may be located within residential zoning districts upon approval of an Administrative Permit. This process allows the Planning Division the opportunity to evaluate and, if necessary, attach conditions of approval to the project, within the limits established by State law. The Zoning Ordinance regulates noise from outdoor play, parking, and the proximity of Large Family Day Cares to one another.

It is the intent of the Zoning Ordinance that noise from outdoor play areas is kept to a level consistent with residential neighborhoods. Therefore, the Zoning Ordinance restricts the hours of outdoor play activity, allowing outdoor activity from 8:00 am to 6:00 pm, as these hours are generally consistent with normal outdoor play times on single-family residential properties. The operator has defined the hours of operation of the Large Family Day Care as 6:00 am to 6:00 pm, Monday through Friday, with outdoor play times restricted to 8:00 am to 6:00 pm consistent with the Zoning Ordinance noise requirements (see Exhibit A, Operational Description). The Large Family Day Care has identified the four-car garage as a space for art activities, free choice/play, and gross motor activities; this has been approved as part of the State license. If these activities take place with the garage door open, then the space will be treated as an outdoor play area for the purposes of this section, and activities therein will be restricted to the hours of 8:00 am to 6:00 pm.

Zoning Ordinance parking standards require two off-street spaces for the occupants of the home, one off-street space for each employee not living in the home, and four spaces for the loading and unloading of children (Section 19.46.020). Only two of the loading spaces are required to be off-street. The remaining two may be on-street, but must be in front of the Large Family Day Care. The property has more than 40 feet of street frontage (excluding the driveway apron), which provides room for two spaces, and the subject property has a two-car garage and a four-car garage, plus enough driveway apron for three additional spaces, for a total of eleven potential parking spaces. However, the Zoning Ordinance has additional restrictions on the use of tandem parking, wherein vehicles park behind—and block in—other vehicles, and the four-car garage has been identified as a play area. Thus, of the eleven potential spaces for the site, the property has seven spaces which are available and which meet Zoning Ordinance standards.

The applicant has identified the two-car garage as the location of the required two spaces for the home occupants, and has identified three loading spaces on the driveway and one space on the street in front of the home, for a total of six spaces. There are currently no employees living outside of the home, so employee spaces are not needed at this time. However, should an employee be added in the future, there is sufficient street frontage to allow two loading spaces in front of the home, two on the driveway, and one employee space on the driveway, for a total of seven spaces. Based on the operational characteristics provided, the site parking cannot accommodate more than one employee living outside of the home, so a condition to this effect has been added.

The Zoning Ordinance also requires that new Large Family Day Care Homes not be located within 500 feet of an existing state-licensed Large Family Day Care Home or within 500 feet of any other child day

care center licensed to care for fifteen (15) or more children. City and State records indicate that no Large Family Day Care Homes or other child day care centers are currently located within 500 feet of this site (Attachment 5).

3. *The location, size, design, and operating characteristics of the use or development is compatible with and shall not adversely affect or be materially detrimental to the health, safety, or welfare of persons residing or working in the area, or be detrimental or injurious to public or private property or improvements.*

The operating characteristics and health and safety issues have been addressed through consistency with Section 19.46.020 of the Zoning Ordinance and through the conditions of approval noted below. Comments were received from various City Departments and all comments were added as conditions of approval. The Planning Division has identified no other potential health, safety, or welfare impacts associated with the project.

NEIGHBORHOOD OUTREACH AND CONCERNS

Prior to submitting an application, the operator indicates that the two neighbors directly on either side of the subject property and the neighbor of the one home directly behind the subject property were contacted to advise them of the application. After the City published a Notice of Intent and received four requests for a public hearing from other nearby neighbors, staff suggested that the operator broaden her outreach. The operator held a neighborhood meeting in her home. Though there were only two attendees, this was due to scheduling conflicts, not lack of interest; it is staff understanding that those in attendance discussed the meeting with those interested neighbors who could not attend.

City staff has spoken to and exchanged e-mails with all four of the citizens who submitted the hearing requests, in an effort to better understand their concerns, explain the City's process and limited authority, and to determine whether it might be possible to allay or address concerns without a need for a hearing. Though the community members and the operator worked cooperatively with staff on this effort, it was ultimately concluded that a hearing should take place. The following is a list of concerns, recommended conditions, or issues raised by commenters (in italicized text), along with staff responses in normal text:

- *What authority does the City have to regulate the daycare and impose conditions? Can the project be denied?* As discussed in the staff report, the City's authority is very limited. Health and Safety Code Section 1597.46(3) begins "A city, county, or city and county shall not prohibit [emphasis added] large family day care homes on lots zoned for single-family dwellings," and then goes on to describe the processes which are allowed. The City may (1) allow it as a principally permitted use (no permit required), (2) grant a non-discretionary permit, or (3) require a discretionary permit which "shall be granted" [emphasis added] if the project complies with local ordinances prescribing reasonable standards related to four areas (spacing and concentration, traffic control, parking, and noise control). The City enacted option three, and the project's consistency with these standards is discussed in the staff report. As the project is consistent, it is staff opinion that the project cannot be denied. Any conditions imposed must be related to one of the four areas, as described and defined by the Zoning Ordinance.
- *Weekend operation should not be allowed.* The days of operation are not one of the four items jurisdictions are permitted to regulate.

- *Parents should drop off children in the driveway.* The Zoning Ordinance allows two drop-off/pick-up spaces in front of the home, so drop-off/pick-up cannot be restricted to the driveway.
- *Parents should avoid U-turns on Staghorn Way.* While this could be classified as “traffic control,” it is also a legal maneuver. The operator can request that clients not make U-turns on Staghorn Way, and the request could be included in the written handout required by condition 5, but U-turns cannot be prohibited.
- *Outdoor playtimes should be restricted to 10 am–11 am and 2 pm–3 pm.* Outdoor playtimes have been restricted to the hours when outdoor play typically occurs in residential neighborhoods. This condition cannot be imposed because the City would then be treating the daycare differently than it treats other single-family homes. State law requires that the daycare be treated the same as other single-family homes.
- *Only four children at one time should be allowed outside during outdoor playtime.* As with the recommended condition above, the City cannot treat the daycare differently than it treats other single-family homes. In addition, it would conflict with the allowed staffing ratios of the child care license. The operator may have up to eight children without an assistant present, but an assistant would be required if some of the children were outside, and some inside. The condition would therefore impose a staffing requirement that the City does not have the authority to impose.
- *How will drop-off and pick-up times be managed to avoid traffic and congestion?* As a standard condition, the City requires drop-off and pick-up times to be staggered. This is to ensure that there will always be an open parking space on the driveway or in front of the home, so that clients are not parking in front of other homes. The pick-up and drop-off times do not require a large stagger, so can generally be arranged to accommodate the needs of the families and the needs of the neighborhood. Not all clients will need to drop off or pick up at exactly the same time, and the stagger can be arranged so that up to four clients can drop off during the same time interval. The City has experience with many family daycares in the City, and typically we do not have issues with congestion and traffic.
- *How will the City enforce conditions? Are there penalties?* If neighbors observe that the daycare is being operated in a manner inconsistent with the conditions, the Planner can be called to discuss the issue. The Planner will then coordinate with the complainant and the operator to resolve the issue. If necessary, Code Enforcement can be involved, and the City does have the ability to levy fines for non-compliance. However, as previously mentioned, the City has not had this type of problem occur at other daycares in the City.
- *There are concerns about unknown families/vehicles in the neighborhood. The provider agreed to provide a list of client vehicle descriptions.* There will be people coming to the neighborhood who are unfamiliar. We understand that the neighborhood would like to keep track of suspicious persons, and would like to know who “belongs” in the neighborhood, particularly in the early hours of the morning. To try and achieve compromise, City staff was willing to work with the operator and the neighbors on a condition which would require a list of vehicle descriptions (make, model, color) to be maintained by the applicant, which would be provided on request to neighbors. This clearly falls outside of the four items which a jurisdiction may regulate, but because it was an informational item related to public safety rather than an operational item—and because the operator seemed willing—staff felt it was possible to include. However, in checking with potential clients, the operator indicates that some are unwilling to have their

information listed in this way. Thus, while it may be possible—if the operator is willing—to include a condition related to vehicle descriptions, such a condition would need to allow clients to opt out.

- *Does the provider live on the property, or is this strictly a business?* The provider lives in the home.
- *Unvaccinated children pose a health hazard to the local community, and the children at the daycare will be playing at the public park. What are the provider's policy/procedures regarding vaccinations? Can there be a requirement that the children be vaccinated?* The City is aware of the public health concerns related to low vaccination/herd immunity rates, but it is well-established in case law that local laws/ordinances/conditions cannot supersede or conflict with state laws. California law allows personal belief vaccine exemptions. As a private business, the operator could choose not to accept unvaccinated children, but the City cannot impose a legal condition requiring that choice.

CONCLUSION

A review of the City's files indicates approximately 60 Large Family Day Cares have been approved within the City; staff is not aware of any ongoing issues related to these existing Large Family Day Cares. The Project is consistent with the reasonable standards, restrictions, and requirements established within Chapter 19.46 of the Zoning Ordinance, and on these grounds staff recommends approval.

ENVIRONMENTAL DETERMINATION

The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3), General Rule, and pursuant to Section 305 of the City of Roseville CEQA Implementing Procedures.

RECOMMENDATION

The Planning Division recommends the Planning Commission take the following actions:

- A. Adopt the three (3) findings of fact as stated in the staff report for the **ADMINISTRATIVE PERMIT – 2325 STAGHORN WAY – EL SOL BILINGUAL DAYCARE AND PRESCHOOL – PL15-0021**.
- B. Approve the **ADMINISTRATIVE PERMIT – 2325 STAGHORN WAY – EL SOL BILINGUAL DAYCARE AND PRESCHOOL – PL15-0021** subject to fourteen (14) of conditions of approval.

CONDITIONS OF APPROVAL FOR ADMINISTRATIVE PERMIT

1. The project is approved as shown in Exhibit A and as conditioned or modified below. (Planning)
2. This Administrative Permit approval shall be valid for a period of two (2) years from this date and if not effectuated shall expire on **March 26, 2017**. Prior to said expiration date the applicant may apply for an extension of time, provided this approval shall not be extended beyond **March 26, 2018**. (Planning)
3. Noise shall be kept to a level consistent with residential neighborhoods. Outdoor play activity shall only be between the hours of 8:00 am and 6:00 pm. This standard includes any activities which take place in the four-car garage while the garage door is open. Radio or other electronic

amplification devices shall not be audible beyond the exterior boundary of the day care site. (Planning)

4. The hours of operation are limited to those specified in the application materials, which is the hours of 6:00 am to 6:00 pm, Monday through Friday. (Planning)
5. The operator is responsible for reminding parents of the posted speed limits on the residential streets, notifying parents that parking is only permitted directly in front of the daycare or on the daycare driveway, and reminding clients not to loiter in the neighborhood (to maintain available parking). The operator shall prepare a flyer which includes these reminders to hand to each client; one copy shall be forwarded to the Planning Division for our records. (Planning)
6. The parking requirements are two spaces for the occupants of the home, one space for each employee not residing in the home, and four spaces for the loading and unloading of children. The two spaces for the residents shall be in the garage, all employee parking shall be off-street, and at least two of the loading spaces shall be off-street. Parking shall be provided consistent with the Zoning Ordinance standards. (Planning)
7. Based on the provided operational characteristics, parking is sufficient to support only one employee not residing in the home. On this basis, no more than one employee living outside of the home is permitted. (Planning)
8. During the operating hours of the day care, the residents' vehicles shall be parked in the garage. (Planning)
9. Drop-off and pick-up times shall be staggered so that no more than two client vehicles are parked on the street at one time. (Planning)
10. Exterior signage for the Large Family Day Care is prohibited. (Planning)
11. The maximum number of children permitted is fourteen (14). (Planning, Fire)
12. Prior to requesting a fire department inspection, a building department final occupancy permit must be issued. (Fire)
13. A fire department inspection is required as regulated by the State prior to operations. An inspection cannot be scheduled until the State submits their 850 Form to our department for approval. To schedule for an inspection, you may contact the fire & life safety division at 916-774-5800. All amendments, standards, policies and our fee schedule can be found on the City's web site www.roseville.ca.us or you may contact our division at 916-774-5800 for information. (Fire)
14. Large Family Day Care Facilities are defined and regulated by the 2013 California Residential Code (CRC). They are defined as: "A provider's own home which is licensed to provide day care for periods less than 24 hours per day for nine to 14 persons, including children under the age of 10 years who reside at the home." The use of this facility is classified as an R-3 Occupancy, which is a permitted use within a single family dwelling also classified as an R-3.

Every story or basement shall be provided with 2 exits. Additional minimum life-safety shall include: Smoke alarms, fire extinguisher, at least one (1) manual fire alarm device, unenclosed water heater to be protected to prevent children from making contact with the appliance.

A building permit will not be required for this change in use, since remodeling has not been proposed. Reference CRC Sec. R326. (Building)

Attachments

1. Requests for Hearings
2. Neighbor Correspondence
3. Health and Safety Code 1597.30
4. Zoning Ordinance Section 19.46
5. Concentration/Spacing of Large Family Day Care

Exhibits

- A. Operational Description

Note to Applicant and/or Developer: Please contact the Planning Division staff at (916) 774-5276 prior to the Commission meeting if you have any questions on any of the recommended conditions for your project. If you challenge the decision of the Commission in court, you may be limited to raising only those issues which you or someone else raised at the public hearing held for this project, or in written correspondence delivered to the Planning Manager at, or prior to, the public hearing.