

Planning Commission Staff Report

July 9, 2014
Item 6.a.

- SUBJECT:** Appeal of **P14-0191**
- APPLICANT/APPELLANT:** Shilpa Parekh, Golden Future Montessori LLC
- PROPERTY OWNERS:** Shilpa and Shrenik Parekh
- PURPOSE:** Appeal of the Zoning Administrator's denial of a Conditional Use Permit for a Large Family Daycare at the existing residence.
- LOCATION:** 4034 San Giorgio Court
- ZONING:** Zoning for the property is Planned Unit Development – High Density Residential (PUD-HDR).
- EXHIBITS:**
- A. [Zoning Administrator's Denial Letter dated "June 6, 2014"](#)
 - B. [Daycare Narrative and Plans dated "Received May 20 2014"](#)
 - C. [Sections 18.124.070 and 18.124.190-250 of the Pleasanton Municipal Code](#)
 - D. [Letter of Appeal dated "Received June 17, 2014"](#)
 - E. [Original Letters of Opposition prior to Zoning Administrator Denial](#)
 - F. [Additional Letters of Opposition after Zoning Administrator appeal](#)
 - G. [Location and Noticing Maps](#)
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I. BACKGROUND

Conditional Use Permit – P14-0191

On June 6, 2014, Shilpa Parekh submitted an application to expand an existing Small Family Daycare (1-6 children) to a Large Family Daycare, which would allow 7-14 children (attached as Exhibit B). The applicant requested to limit the daycare to 10 children, which reflects the existing (unpermitted) enrollment. During the review process staff received nine emails (including one from Signature at Hacienda Owners Association, the Homeowners Association (HOA) encompassing the proposed daycare), as well as three phone calls, all in opposition to the proposed Large Family Daycare. Concerns ranged from lack of adequate parking and loading areas, noise impacts on adjoining neighbors with common walls, inadequate interior space, lack of outdoor space, and HOA liability concerns. After discussion with all parties and

review of the site and Conditional Use Permit requirements, the Zoning Administrator denied the request (Exhibit A) because the appropriate findings could not be made. In particular, the proposed expansion does not comply with the Large Family Daycare Homes standards set forth in Sections 18.124.190-250 and the findings required for Conditional Use Permits listed in Section 18.124.070 of the Pleasanton Municipal Code (attached as Exhibit C). Staff has provided the applicable Municipal Code excerpts and discussion in the Analysis and Findings sections of this report (sections IV and VI). The major issues involved in the denial include parking, parking-related child safety issues, and noise.

Shilpa Parekh, the applicant, is appealing the Zoning Administrator's denial of the request for a Conditional Use Permit, stating that she has addressed the City's concerns about parking, child safety, and noise (attached as Exhibit D). The applicant has stated that her one employee and most of the children enrolled in her daycare live within walking distance of the facility, therefore creating no parking impacts within the development. Additionally, the applicant has indicated that the 2 to 6 year olds enrolled in her daycare are well-behaved and do not create substantial noise.

The applicant obtained a Large Family Daycare license through the State in August 2013, but has not obtained an approved City Conditional Use Permit or City business license to commence business operations as a Large Family Daycare. The applicant has been operating a Large Family Daycare with 10 children in violation of City Code since August 2013 and is currently under City Code Enforcement for operating without a City permit or business license.

II. SITE DESCRIPTION

The project site is located in a townhome development (Signature Siena Townhomes) southeast of the intersection of Gibraltar and Hacienda Drives, within the Hacienda Business Park. The development contains private streets and commonly owned and maintained parking to serve 162 attached townhome units. The subject site is a middle unit located on San Giorgio Court, which is a dead-end private street. The applicant has an approximately 1,316 square-foot attached townhome with a two-car garage and 240 square-foot rear yard on a 988 square-foot lot as shown in Figure 1 on the next page. The applicant's townhome does not contain a dedicated driveway (i.e., the private street, shared by other residents, is used to access the garage). The guest parking spaces and common areas are property of the townhome development and are managed by the Signature HOA. The guest parking spaces in closest proximity to the applicant's home are located approximately 150 away on Siena Street, just north of the intersection of San Giorgio Court and Siena Street.

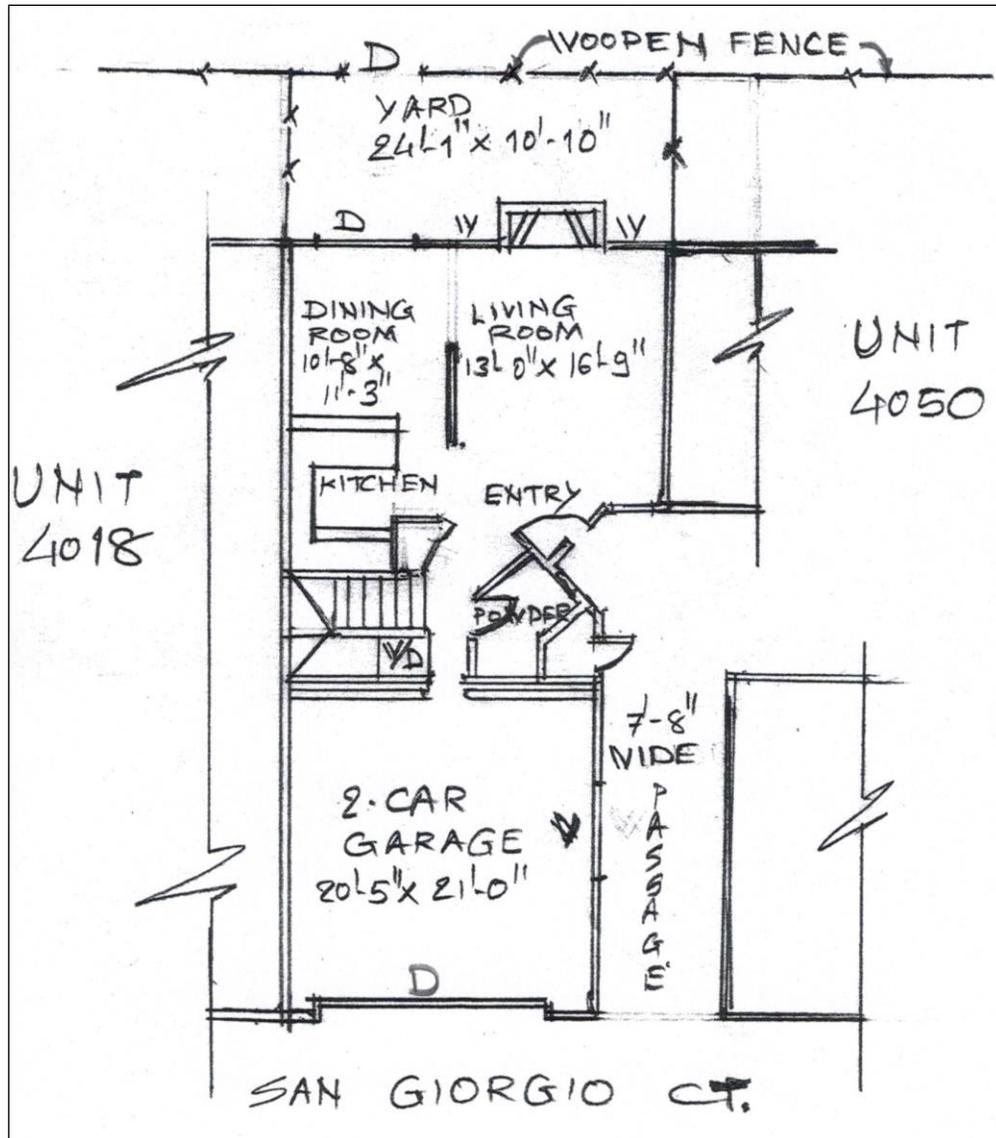


Figure 1 – Floor Plan

III. PROPOSED PROJECT

The applicant proposes to legalize the existing daycare facility such that it meets the requirements for Large Family Daycare Homes in the Municipal Code. The existing facility occupies approximately 337 square feet of the first floor. The applicant has provided a schedule of daily activities, consisting largely of free time activities, outdoor play, and mealtimes. The outdoor playtime would be conducted in the rear yard of the subject lot, limited to 3 children at a time. The applicant's existing facility is currently operating above the approved capacity allowed by the Zoning Code, which allows up to 6 children for a Small Family Daycare. The current daycare enrollment is 10 children, which would include any of the applicant's children under 10 years of age. The ages of the current attendees are 2 to 6 years.

The Zoning Administrator has acknowledged the proposal to limit the enrollment below the maximum 14 children to 10, but determined that parking, related child safety, and noise impacts could not be mitigated even with a restricted enrollment, as discussed below.

IV. ANALYSIS

Conditional uses are those uses which, by their nature, require special consideration so that they may be located properly with respect to the objectives of the Municipal Code and with respect to their effects on surrounding properties. Large Family Daycare Homes are specifically addressed within Municipal Code Sections 18.124.190-250 because they are located within residential zones but have some characteristics similar to commercial uses. In order to achieve these purposes, the Zoning Administrator is empowered to approve, conditionally approve, or deny applications for use permits. Actions by the Zoning Administrator may then be appealed to the Planning Commission.

Land Use

The State of California Planning, Zoning and Development Laws mandate that Large Family Daycare homes be considered single-family residences with respect to occupancy requirements. The subject property is zoned PUD-HDR (Planned Unit Development- High Density Residential), which supports this type of use. The intent of the State regulations for child daycare facilities is to encourage them to be located in residential neighborhoods with minimal regulation.

Most importantly, it is necessary to acknowledge the need for such establishment 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 Daycares with 7-14 children at any time are conditionally permitted uses in the PUD-HDR district to allow the City to mitigate impacts. The applicant has applied for a Conditional Use Permit, as required for Large Family Daycares in the PUD-HDR district. Therefore, if the use permit were granted, the Large Family Daycare would be consistent with applicable land use regulations.

Large Family Daycare Home Regulations

Staff has assessed the requirements for a Large Family Daycare as outlined in Chapter 18.124.240(A-E) of the Pleasanton Municipal Code. Staff has provided the text in the Municipal Code and a brief discussion on each standard:

- 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 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 application narrative indicated that the majority of the children lived within walking distance and would not create additional traffic hazards within the neighborhood. However, on June 25 between the hours of 8:30 a.m. to 9:30 a.m. staff observed five children being dropped off: two who walked with their guardians, two whose guardians parked in guest stalls and walked them to the door, and one whose guardian parked illegally in the fire lane in front of a garage and walked their child to the door. The increased traffic and the lack of accessible parking with direct access to the home creates a traffic hazard while loading, unloading, or transitioning children to the home while illegally parked along San Giorgio Court. This traffic hazard and increase in traffic is further exacerbated by the site design of the townhouse development and the location of the subject parcel on a narrow dead-end private street with limited visibility and no viable on-site parking during peak a.m. and p.m. drop-off and pick-up times as shown in Figure 2.



Figure 2 – San Giorgio Court

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.

The site currently contains a two-car garage with no driveway and no street parking in front of the residential unit. The residents of the home maintain two vehicles which they park in the garage. Additionally, one employee is on-site daily. The applicant maintains that this employee lives within the community and walks to work.

The current facility has failed to provide viable non-guest space parking for the parents to use when dropping off and picking up their children. During staff's observations on June 25 between the hours of 8:30 a.m. to 9:30 a.m., only 4-7 of the 24 guest parking spaces along Siena Street were available. Furthermore, the fire lane along this section of San Giorgio Court has done little to discourage the patrons from parking there while loading, unloading, or transitioning children to and from their vehicles, according to surrounding neighbors and as observed by staff, creating potential circulation and traffic hazards onsite. The only parking that can be reasonably offered to the patrons of the facility are those intended for the guests of the whole development. Although the applicant has indicated that the majority of the enrolled children live within walking distance of the facility, staff observations indicate that many children do not walk to the facility. In addition, the rate of pedestrian travel to the site may change as children enrolled at the facility change. This raises concerns for the applicant's ability to provide on-site parking/loading zones and the use of property not owned by the applicant for the operation of her business.

The proposed use of the guest parking does not meet the requirement that on-street (offsite parking) be within a reasonable distance of the home and must be safely accessed from the home by a child. The guest spaces in question (i.e., the ones in closest proximity) are located approximately 150 feet from the subject lot. The guest spaces require patrons to cross three other townhome garage entries to reach the subject lot. Additionally, there is no pedestrian walkway along San Giorgio Court, requiring patrons to walk within the drive aisle to access the home entry. Staff is concerned about the safety of children walking to the facility as a result of the insufficient loading zone, convenient parking and lack of designated sidewalk along San Giorgio Court.

Additional considerations that indicate insufficient parking to serve the proposed use include the lack of parking during peak drop-off and pick-up times for potential guest users of other development residents, the enforceability of requiring the applicant to mandate that patrons use the guest spaces, and the possibility that patrons would illegally use the fire lane to drop off children during poor weather conditions. The location of the subject site, the pre-existing parking issues, and the concerns voiced by neighbors and the HOA indicate that the local parking supply would be insufficient to serve the proposed use.

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.

Noise levels generated within a multi-family residential property are restricted to 60 A-weighted decibels (dBA) when measured at 4 feet from any wall, floor, or ceiling inside the dwelling unit (with doors and windows closed), as stated in Chapter 9.04.030.B of the Pleasanton Municipal Code. At this time, the applicant has not provided evidence that noise standards would be met and staff has not conducted measurements to verify current measurement levels. However, staff has received concerns of the existing noise level. Section VI (Public Correspondence) of this report details the neighbor's concerns. A Large Family Daycare Home could conceivably generate additional noise that would affect surrounding homes when the children are engaging in outdoor and indoor playtime. The enrollment of 10 children on the site could increase on-site noise compared to the currently permitted enrollment of 6 children. Given that the community comprises attached townhomes with shared walls, the proposed expansion may significantly affect the immediate neighbors of the subject unit.

Staggered, small-group outdoor playtime would reduce the outdoor noise impact, but would not constitute adequate mitigation. Large interior group or playtime has not been mitigated for potential noise impacts. Furthermore, additional window treatments and wall insulation may be necessary to ensure that the adjacent townhomes would not be exposed to a noise level greater than 60 dBA.

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))

The Fire Safety Clearance section of the Department of Social Services – Family Child Care Homes (Section 102371) states that family daycare homes must obtain a Fire Safety Clearance by the City Fire Department. Staff conferred with the Livermore/Pleasanton Fire Department, which verified that the proposed facility has obtained a fire safety clearance.

California Health and Safety Code

The applicant is required by the California Health and Safety Code, Section 1597.531, to provide insurance in the amount of \$100,000 (per occupant) for injury to clients and guests and either insurance or a bond in the amount of \$300,000 (total annual aggregate) for negligence on behalf of the licensee or its employees. The insurance would hold the HOA harmless should the children be injured while in the common area, which begins at the threshold of each townhome and includes all parking spaces. The State Department of Social Services-Community Care Licensing Division also requires this insurance to be in place prior to

operation. The applicant has included proof of a \$1 million insurance policy, included within her letter of appeal (Exhibit D).

V. PUBLIC NOTICE

Notice of the appeal of this Conditional Use Permit application was mailed to property owners and tenants within 1,000 feet of the subject property. The location and noticing maps are included as Exhibit G.

The applicant submitted emails from two neighbors which indicated no concerns about the proposal. However, after the applicant submitted the application, staff received nine emails (including one from Signature HOA), as well as three phone calls, all in opposition to the proposed Large Family Daycare, which are included within Exhibit E. Eight additional emails and two telephone calls have been received in opposition to the appeal application (attached as Exhibit F). All correspondence expressing concern about the proposal is from neighbors adjacent to the site, owners/residents within the development, or residents within close proximity to the development. Concerns ranged from lack of parking and loading areas, noise impacts, lack of outdoor space, and HOA liability concerns. All concerned parties expressed objection to the request for an expanded facility at this location and requested that the Planning Commission deny the appeal.

VI. FINDINGS

The Planning Commission must make 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 ordinances 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 and harmful intrusions; 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.

Based on the design of the existing development, the lack on-site parking within a reasonable distance, comments from neighbors, and staff observations, the operation of a Large Family Daycare home in this high- density residential area is not appropriate and would not be harmonious or compatible with the existing residential development. The potential circulation, parking and noise impacts created by the operation of a Large Family Daycare within the existing residential development could adversely affect adjacent residents.

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.

Based on the unique nature of the townhouse development design, the location of the subject parcel on a narrow dead-end private street with limited visibility, no pedestrian walkways, no viable on-site parking, parking issues, noise concerns, and other circulation concerns, the finding in support of the project request could not be made. Granting the proposed Conditional Use Permit would be detrimental to the public health, safety, and welfare.

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

The Conditional Use Permit does not comply with the provisions of the Zoning Ordinance for the establishment of this use within a residentially zoned district. As discussed in Section IV (Analysis) of this report, the proposed use does not meet 3 of the 5 required standards as outlined in Section 18.124.240(A-E) of the Pleasanton Municipal Code. The finding in support of the project request could not be made and the proposed project was found to not comply with the relevant provisions of the Zoning Ordinance.

VII. ENVIRONMENTAL ASSESSMENT

Projects of this nature are categorically exempt (Section 15301, Existing Facilities, Class 1) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

VIII. CONCLUSION

The City of Pleasanton encourages daycare establishments in single-family residential neighborhoods and is usually able to require conditions of approval for daycare facilities within high-density developments to mitigate impacts. Staff works with providers and the neighbors to find satisfactory solutions to the issues that arise. However, in this case the circulation, child safety, parking and noise concerns combine to create an undesirable and unsafe situation. Because the project is located on a narrow dead-end private street with limited visibility and no pedestrian walkways, staff was unable to resolve the parking and overall safety issues.

In conclusion, staff finds that the impacts of the proposed project cannot be mitigated and the neighboring homeowners would be adversely impacted. The proposed Large Family Daycare facility would be detrimental to the health, safety and welfare of the neighborhood, and the child safety and parking concerns cannot be mitigated to an insignificant level per the requirements of the Municipal Code. Therefore, staff recommends the Planning Commission deny the appeal of the Zoning Administrator decision.

IX. STAFF RECOMMENDATION

Staff recommends the Planning Commission deny the appeal and uphold the Zoning Administrator's denial of case P14-0191.

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