



CITY OF HARRISONBURG COMMUNITY DEVELOPMENT

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August 28, 2024

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Consider a request from Paulin Mupenda Makungu and Beni Ndjoni Tamnwe for a special use permit to allow a major family day home at 1561 Gilmer Circle

EXTRACT FROM THE DRAFT MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 14, 2024

Chair Finnegan read the request and asked staff to review.

Ms. Rupkey said major family day home (MFDH) is defined in the Zoning Ordinance as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for five (5) through twelve (12) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation.”* MFDHs are permitted only by special use permit (SUP) in all residential districts, except the R-5 district, where they are not permitted.

When considering a MFDH it is helpful to know how it differs from a minor family day home. A minor family day home is allowed by right within all residential districts and is defined as: *“A child day care program offered in the residence of the provider or the home of any of the children in care for one (1) through four (4) children under the age of thirteen (13), exclusive of any children who reside in the home, when at least one (1) child receives care for compensation. A minor family day home shall be considered a home occupation and therefore requires that a home occupation permit be granted by the zoning administrator; however, no conditions more restrictive than those imposed on residences occupied by a single family shall be imposed on the day home.”*

The applicant has been advised by staff to work with the Virginia Department of Education (VDOE) for licensure requirements. The VDOE regulates licensing standards of family day homes and ensures that the facility and the operation of the MFDH are favorable to the welfare of the children in care. Approval and licensing from the VDOE require an applicant to maintain compliance with local ordinances and laws. VDOE requires applicants to submit a form signed by the locality’s Zoning Administrator to verify that the use is allowed at the requested location. Approval of the SUP would allow for the applicant to operate as a MFDH at the subject location with the proper licensing from the VDOE.

The applicant is requesting a special use permit (SUP) per Section 10-3-34 (6) of the Zoning Ordinance to allow a major family day home (MFDH) within the R-1 District. The +/- 16,140-square foot property is addressed as 1561 Gilmer Circle and is identified as tax map parcel 91-L-24.

The applicant is planning to care for a up to 10 children and to operate Monday through Friday from 6:00 am to 5:00 pm. Staff is not recommending conditions on the hours of operation or facility schedule, and therefore, if the request is approved as submitted, the hours of operation, facility schedule, and number of children in their care may change at times, up to 12 children.

Land Use

The Comprehensive Plan designates this site as Low Density Residential and states:

These areas consist of single-family detached dwellings in and around well-established neighborhoods with a target density of around 4 dwelling units per acre.

The low density residential areas are designed to maintain the character of existing neighborhoods. It should be understood that established neighborhoods in this designation could already be above 4 dwelling units per acre.

Transportation and Traffic

A traffic impact analysis (TIA) was not required for the SUP request.

Public Water and Sanitary Sewer

Staff has no concerns with the special use permit as it relates to water and sewer matters.

Recommendation

Staff believes the intended MFDH use should have little impact on the surrounding neighborhood and recommends approval of the SUP request with no conditions.

Chari Finnegan said just to clarify, when we were on the site tour yesterday, we saw the blue zone parking permits. There is a two-car driveway that might be big enough for two cars?

Ms. Rupkey said for this site, yes, they could fit cars and there is also a garage that they currently store a vehicle in as well.

Chair Finnegan said so to get cars in and out of there it would be using the driveway because people cannot park on the street. And the applicant is aware of that?

Ms. Rupkey said yes, I talked to him today.

Chair Finnegan asked if there were any more questions for staff. Hearing none, he opened the public hearing and invited the applicant or applicant's representative to speak to their request.

Paulin Mupenda Makungu, the applicant, came forward to speak to the request. He said I have a strong accent. French is my everyday language. I am a production supervisor for Cargill. I requested an application for my wife because I do not want my wife to work anymore, I want her to stay home. That is why we submitted the application to see if we can get approved for five or six kids for daycare. Her and my mom are in the house, that is why we submitted the application, to see if we can get that. Before we came here, we talked to our neighbors and we informed everyone around to let them know that we submitted an application for a daycare. We think that everybody we saw around, they 100% agree with that. We went to a couple of houses, we knocked on the door, nobody opened the door, but most of the people for our street we talked to them, we explained to them [the request] and they said they are okay with it.

Vice Mayor Dent asked are there children in your neighborhood who you imagine would be children that you would watch in your daycare?

Mr. Makungu said the first thing you want to submit a request for permit. After that, we found out how we can get kids. We do not have any kids yet. We want to get the permit first and then after

that we are going to be in contact with the Department of Education. After we get our permit, we can start finding kids, but we do not have kids yet. We want to make sure everything is approved with the government and then we can get the kids.

Chair Finnegan said we did receive some comments, concerns about parking and traffic in and out of there. Do you have any concerns about...people dropping off children can use the driveway but because it is a permit parking zone I guess you can park in the streets but the people dropping off the children would not be able to park on the street. Do you think that would present a problem?

Mr. Makungu said I think in my house, as you can see in the picture, I have big garage that can fit two cars inside, my car and my wife's car. Outside, when a visitor coming to see us, they can park like five cars. I already talked to all my neighbors because the first neighbor is the teacher of my daughter and he agreed. My right-side neighbor, I talked to her, and she said sometimes people can make traffic they say it is okay. In front of my house, five cars can park. They can do all traffic in front of my house. I talk to my neighbors, and they agree. They said it is okay, we do not have any problem with it.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request.

Barbara Keppel, a resident at 1510 Gilmer Circle, came forward to speak to the request. She said I have been working with Meg as a result of this request. [This request] increases a tremendous amount of traffic into our little neighborhood and if you have been into that neighborhood that would be very congested. It would be like adding 12 additional houses in that small little circle with people trying to get in and out. Those are my concerns, the traffic and the safety. I am out there every morning and every evening walking as well as the rest of our neighbors.

Chair Finnegan asked if there was anyone in the room or on the phone wishing to speak to the request. Hearing none, he closed the public hearing and opened the matter for discussion.

Commissioner Nardi said is it correct from the description that City staff has given that this designation can accommodate 5 to 12 children?

Ms. Rupkey said yes.

Commissioner Nardi said what I am getting at is the difference between five children and twelve children in terms of parking and traffic and safety is something I am concerned about but at the same time I understand the need for daycare. Just as a comment, I am balancing those two things as I confirmed how many children this designation allows.

Ms. Dang said if I may add that the designation would allow five to twelve children but if the number of children is of concern to the Planning Commission you all could recommend a condition that reduces the maximum.

Chair Finnegan said because this is a special use permit and not a rezoning?

Ms. Dang said that is correct.

Mr. Fletcher said and staff cannot speak to this, but I just want to acknowledge that the Department of Education has a system that I am not versed in about the number of children that can be provided by the provider based upon age, number of people caring for children. I cannot speak to what that is, but there is a system that the Department of Education regulated.

Commissioner Baugh said this system got put in place around 35 years ago but essentially what it is there are three levels to the system historically, and this is level two. It has taken this long for us to even see the trickle of applications because what has tended to happen was that people went into one of the other two categories. The five is sort of an upper limit of what you can just do essentially being unregulated.

Mr. Fletcher clarified that you could have four children with then by-right ability.

Commissioner Baugh said yes, four that is right. If you go over twelve you have to be a fully licensed accredited full blown regulatory process. This was the status that was created to have an interim where they basically told all of the local governments you cannot be more restrictive of this than a special use permit type item, you have to generally have some [unintelligible]. It is kind of an in between, you are not as unregulated as you are with four kids, but you do not have to go through all the full-blown separate building and everything. Historically, there were almost none of these because everybody looked at it and said I am either going to stay under the threshold to be unregulated or I am going to a full center. We do not have a ton of these. We have probably slowly seen more over time. Staff could speak better as to the exact of how many we have in town. This is what this is somebody who has said they want to go for that middle ground. It is the regulatory system that creates the five to twelve.

Mr. Fletcher said in fact, the state dropped the number. It used to be over five and they dropped the unregulated number down to four. You can care for one to four children in the first category, and they changed the regulation and said now it is five to twelve and it used to be above five.. What I have observed over the years and what I have learned from applicants coming in, the younger the children, the more adults are needed. I never really versed myself well in that but that is what I have observed and learned from applicants over the years.

Chair Finnegan said that is instructive. Do we have an estimate or does staff know how many major family day homes [we have in the City]?

Mr. Fletcher said if I had to guess less than 10, maybe 10.

Chair Finnegan said I know that it has come up a few times.

Vice Mayor Dent said major daycare home is for children under the age of 13, is there a minimum age? If it is infants that is a different standard for how many people.

Commissioner Baugh said I do not remember what it is, but it is considerably more restrictive if you are talking about newborns and infants.

Vice Mayor Dent said it says that the applicant has been advised by staff to work with the Virginia Department of Education for licensure requirements. Licensure might require a minimum age.

Ms. Dang said as the applicant had explained they were seeking to get a special use permit first because the Virginia Department of Education will not issue the license without zoning approval. They will go through those steps with them.

Vice Chair Byrd said a citizen, a resident in Harrisonburg, has concern about an active special use permit, what department do they go to?

Ms. Dang said Community Development.

Chair Finnegan said I just wanted to enter this into the discussion that during the ARPA [American Rescue Plan Act] discussions that were had that ICAD [Institute for Constructive Advocacy and Dialogue] was doing in 2022 there were more than 3,000 people in Harrisonburg who engaged with the process to kind of identify the needs in the City. Accessible childcare for working families was one of the top three needs identified by folks in that ARPA process. I want to keep that in mind as we are having this discussion too, this is something the City has a real need for. I know of plenty of families in Harrisonburg that are having a hard time getting their child into daycare.

Vice Chair Byrd said I am in favor of this special use permit. Even if they were able to get to the maximum, it is child daycare which means there are no cars being parked there it is more of cars coming there picking up their kids. So, there is a traffic thing the neighborhood needs to be aware of it and keeps an eye on it. If it does become a nuisance, then they know who to report to about that. Outside of that, taking care of children in a formal manor by classifying themselves under that puts them under other laws and other governmental bodies that they have to answer to. Those are the reasons why I would be in favor of this.

Chair Finnegan said any other thoughts or motions on this? Is there an appetite to put, as staff has mentioned, there is a potential middle ground here to approving it as submitted and putting suggested conditions on such as capping it at ten instead of twelve. Is that something we want to do?

Vice Chair Byrd said I have not heard any ideas; I would like to make a motion to recommend approval of the special use permit as submitted by the applicant.

Vice Mayor Dent seconded the motion.

Vice Mayor Dent said to Chair Finnegan's remark, affordable accessible childcare is one of our top priorities in the City. The reason I asked if you have neighborhood children is because I really like the model of in neighborhood daycare so that the burden does not fall on the much steeper climb of setting up whole childcare facilities. The more we can have distributed childcare in the neighborhood, the better. As for the traffic, I see that as a minor inconvenience to a few people compared to a major need for a lot of people.

Commissioner Baugh said I think I have voted for everyone of these that have come up. I think that we mentioned yesterday we actually drove by the one time we ever had one that we were probably going to not approve, staff was going to recommend against it. Given where that property is located relative to some major roads, that was the driver on that and that applicant actually pulled the application so it never actually came to a vote. I think we have approved every one that has come up. We have had some that have had more opposition to it than this. This is a special use permit item so if it starts to create a problem, we can always go back and look at it. To my knowledge, there has been a lot of concerns about things, but we never had one where anybody ever filed a complaint. We had one that we agonized over and it was because it was located very close to a fairly major road, the opposite of this. They actually reconfigured their driveway. The other thing I would say from experience a lot of times, not just with things like this, I understand when you fear the worst you start saying if you can have twelve kids there and they are all from different families and they all showed up at one time and you look at it...if it is actually causing a problem we can revisit it but it does not really happen because people have different schedules and come at different times. It is sort of unrelated but in a way it sort of is not I am reminded of some discussions that the County was having about these major storage units. One of the things that was put forward was look at the number of units and when all these people show up at the same time to get their things it is going to change the character. It is like, have you ever seen one of those? They are the most desolate looking things in the world because you never have everyone show up.

Ms. Rupkey said the condition that are on some special use permits about recalling it if it becomes a nuisance is not conditioned on this special use permit.

Commissioner Baugh said I will defer to Mr. Russ. There has always been a debate about whether we [include that]. My sense has been that we put that on there for ones where we kind of want notice on things. The nature of a special use permit is once you determine the property owner is not living up to the obligations you can look at it.

Mr. Russ said just to be safe we typically we have to include it on the list of conditions if any concerns at all.

Vice Chair Byrd said if the commissioners are concerned about that, we can easily vote down this motion, I will just make another motion that has the condition on it.

Chair Finnegan said can we do a friendly amendment to this?

Vice Chair Byrd said I will take a friendly amendment to add the condition.

Ms. Rupkey said if in the opinion of Planning Commission or City Council the use becomes a nuisance, the special use permit can be recalled for further review which could lead to the need for additional conditions, restrictions, or revocation of the permit.

Vice Chair Byrd said therefore the motion would change to actually add that condition?

Chair Finnegan said are we okay with that?

Vice Mayor Dent seconded the amended motion.

Chair Finnegan called for a roll call vote.

Commissioner Nardi	Aye
Commissioner Baugh	Aye
Vice Chair Byrd	Aye
Vice Mayor Dent	Aye
Commissioner Alsindi	Aye
Chair Finnegan	Aye

The motion to recommend approval of the special use permit with suggest conditions passed (6-0). The recommendation will move forward to City Council on September 10, 2024.