



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections

Engineering

Planning & Zoning

August 31, 2018

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Gabriel and Justice Kreider for a special use permit per Section 10-3-52 (4) of the Zoning Ordinance to allow a major family day home in the R-4, Planned Unit Residential District. A major family day home can have up to 12 children under the age of 13, exclusive of any children who reside in the home. The 2,348 +/- square feet property is located at 661 Northfield Court and is identified as tax map parcel 32-T-6.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: August 8, 2018

Chair Way read the request and asked staff to review.

Ms. Dang said the Comprehensive Plan designates this area as Medium Density Residential. This designation states that these areas are designated in areas near major thoroughfares or commercial areas. Most of these areas have been developed or are approved for development of a variety of housing types such as single-family, duplex, and in special circumstances, apartments. Depending on the specific site characteristics, densities in these areas may range from 1 to 15 units per acre.

The following land uses are located on and adjacent to the property:

Site: Townhome, zoned R-4

North: Townhomes, zoned R-4

East: Townhomes, zoned R-4

South: Across East Washington Street, Ralph Sampson Park, zoned R-2

West: Townhomes, zoned R-4

The applicants are requesting a special use permit per Section 10-3-52 (4) of the Zoning Ordinance to allow a "major family day home" (MFDH) within the R-4, Planned Unit Residential District. The property is situated off Northfield Court within the townhouse and duplex community of Northfield Estates. MFDH's are defined by 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.* It is helpful to understand how MFDH's are different from minor family day homes. Minor family day homes are 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. Minor family day homes are allowed by right within all residential districts. MFDHs are permitted only by SUP in all residential districts, except the R-5 district, where they are not permitted.

The applicant, Justice Kreider, describes in her letter that she and her friend, Amber Hess, plan to have their daycare licensed by the Virginia Department of Social Services by March 2019 where the maximum number of children they can care for as a licensed facility would be 12. The Virginia Department of Social Services (VDSS) 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 VDSS requires an applicant to maintain compliance with local ordinances and laws. VDSS 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 applicants to operate as a MFDH, with the proper licensing from the VDSS.

The operating hours for their daycare will be 6:30am-6:00pm, Monday through Friday. There is a parking lot in front of the home that serves two rows of townhomes with a total of 20 homes. Each home has two assigned parking spaces located in front of the unit. Additionally, there is on street parking available on Northfield Court. The rear of the subject property faces East Washington Street. Staff has discussed with the applicant that there is a bike lane on East Washington Street, therefore, on-street parking is prohibited.

While other MFDH SUPs have been approved by the City, this is the first application requesting for a MFDH to be operated in a townhome unit. Staff is concerned with parking, unloading and loading, and maneuvering within the parking lot and on Northfield Court during peak drop off and peak pick up times. It is difficult to turn a vehicle around in the parking lot if all parking spaces are occupied by clients and neighbors. Additionally, staff is concerned with clients parking on Northfield Court, which may require crossing the street on foot, to reach the home. While there could be sibling groups attending the daycare, there could also be up to 12 individual drop-offs in the morning and 12 individual pick-ups in the evening, which could create issues for both the clients and neighbors maneuvering through the area at the same time of day. It is highly possible that clients will not have anywhere to park when they are dropping off or picking up their children.

In an effort to address staff's concerns, the applicant describes that she and her husband will park their vehicles on Northfield Court to allow clients dropping off and picking up children to utilize the parking spaces in front of their home. The applicant's letter also describes the following drop off/pick up policy for clients (written verbatim):

Check in/Check out procedures: When dropping off and picking up children please make it brief. We don't want to disrupt the flow of the morning/day. Please be sure to directly hand child off to the staff. There is an attendance sheet that we ask for parents to sign when dropping off and picking up. Please limit dropping off and picking up to no more than 5 minutes.

Although staff understands the need for a care facility of this type in our community, staff does not believe a "major family day home" should operate at this location. In general, staff believes that increased vehicular traffic during peak drop off and pick up times would cause unsafe conditions. Therefore, staff recommends denial of the special use permit request.

If Planning Commission however, desires to recommend approval to City Council, staff suggests that the following conditions be placed on the special use permit:

- a. During operating hours, at least one parking space assigned to the property in front of the property shall be dedicated for drop off and pick up.

- b. If in the opinion of Planning Commission or City Council, parking or traffic becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

As previously acknowledged, this property is part of the Northfield Estates community. The community has a Homeowners Association (HOA) governed by a Board of Directors and has its own private covenants that may place restrictions on the use of the properties. While the City, through its Zoning Ordinance, may allow certain uses, the private covenants may prohibit those uses. The property owner was advised by staff to check with their HOA on whether a daycare for up to 12 children can be operated from the home. Staff received an email on July 26, 2018 from the Northfield Estates HOA stating that they are “not prepared to give a response to [the Krieders] regarding [their] day care business until such matter can be presented to the homeowners at the Annual Meeting in September.”

Chair Way asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if the applicant would like to speak regarding this request.

Justice Kreider, the applicant, said I am the home owner.

Pamela Houck said I am the Child Care Aware representative. I am a consultant and I work for Child Care Aware of Virginia. I am here to answer any questions that she may not realize yet, and I already have a suggestion to put into your possible recommendation.

Chair Way asked if there were any questions for the home owner. Hearing none, he asked if the applicant or the representative have anything to say.

Ms. Houck said there are two young ladies trying to open this business together. The one resides in Rockingham County and her site did not get approved by the Department of Social Services; I believe it was a water well situation. These two ladies want to work together, would it be possible to lower the number of children they are licensed, so they can be together in one home and provide quality care? In the Harrisonburg area we are in a deficit with child care providers. A brand new center just opened in Rockingham County and there are 86 infants and toddlers on a waiting list. There is nowhere for these infants and toddlers to go, so it would be a great asset to Harrisonburg to be able to open this facility, even if it is say with nine children. Can we look at the traffic flow and see how that works and maybe she can come back later and ask for possibly more children or to move her facility to say her church and expand? But it is a much needed service. Thank you for listening.

Chair Way asked is that your recommendation; to keep the cap at nine?

Ms. Houck said yes to keep the cap at nine, so they can still be under the same roof.

Chair Way asked if there were any questions for the applicant. Hearing none, he asked if anyone one else would like to speak in favor or against this request. Hearing none, he closed the public hearing and he asked Planning Commission for a motion on the request or for discussion.

Mrs. Whitten said it is difficult because we all know there is a real need for quality daycare. We all agree that is a concern and an interest of good City planning is to have quality daycare. The location does bother me and I do not know if nine will make me feel better. Potentially nine cars twice a day.

Chair Way said it was a tight spot when we were there yesterday.

Mrs. Whitten said it is.

Mr. Colman said I expect that during the drop-off and pick-up times, when the parking lot is full and residents are coming in and out of the development it will certainly create a traffic jam there. People trying to turn around and leave the parking lot would be difficult to do and potentially unsafe.

Chair Way asked if staff had any thoughts about the nine cap or does that make any difference.

Ms. Dang said it does not change staff's recommendation.

Ms. Houck said someone from the audience had a great idea. Where she is located is a wonderful location for them to possibly get off the bus there, and children could also live within walking distance. There is no childcare in that area, those are lower income families who may not even have access to transportation, so it could be a win-win.

Chair Way said so an after-school sort of thing, maybe.

Ms. Houck said yes.

Mrs. Whitten said I do not think we can really say you cannot come if you have a car.

Chair Way said I think it is a good idea but the trouble is we cannot dictate how people access the major family day home. It is interesting though.

Mr. Fletcher said just so Planning Commission is aware, staff contemplated whether or not we wanted to recommend a cap. We never came up with a desired number that made sense, so four is allowed by right, they can have four as a minor family day home and then five is that threshold. We talked about whether or not we wanted to recommend a condition to you all about a cap. It has already been said a couple of times about the need for this and sometimes it hurts to recommend denial for such good things that we want in the City. I do not know if these applications filtered themselves before they even get to us, when they are in townhomes or duplexes or things like that or smaller spaces. When we did our history research, it was interesting to find that this is the first time we have had an application in a townhome. As Ms. Dang had pointed out there are good things, but we see more complications from a land use planning perspective and maneuverability for traffic; that in and out movement and just the compactness of that space. It is already a dense space for residential uses.

Mrs. Whitten said there was something that concerned me too and that is the floor space inside the unit for that number of children and there is not much of a play area outside.

Mr. Fletcher said those are things that we cannot consider. The Department of Social Services does that, we do not get into the size of the unit or what their backyard looks like, whether it is fenced or how close it is to the intersection or things like that. We have to talk about the land use application of it and we thought four was probably about the maximum accommodation that a townhome could probably even have.

Chair Way said I know we ring our hands very carefully about these. I remember that one on South Mason Street, we think about the parking and the access. There was that one off Nelson Drive, that was about fire access, so we look at these very carefully on a case-by-case basis.

Mrs. Whitten said as much as I do not want to, I am going to make a motion to deny this permit. I am very sorry and I hope maybe you can start a little smaller like even with four and then try to grow your business from there.

Mrs. Fitzgerald seconded the motion.

Chair Way said we have a motion and a second. Is there any more discussion?

Mr. Finnegan asked have any of the neighbors spoken out. I know we received a lot of emails on some of the other things on tonight's agenda, but have any of the neighbors raised a concern?

Ms. Dang said I have not been contacted by any of the neighbors.

Mr. Finnegan said given that this is a need in the City and there are conditions on a SUP that we can revisit it, I would be inclined to vote against denial, but the motion has already been made.

Mr. Baugh said it is interesting, because the parking, traffic, and congestion, has not been raised by the neighbors. Yet we have had other MFDHs that are often within established neighborhoods where we have had people say, “it is going to be terrible for traffic and we are going to have all sorts of problems.” I will join you Mr. Finnegan, I will vote with you. I think this is a close call. There really is a need for this, I think I have voted for these uses every time they came up, even when they were not always unanimous. I certainly understand where staff is coming from and heck, I may end up changing my mind if I get to vote for it again; but, I will join Mr. Finnegan in supporting this.

Mr. Colman asked if there is a way to condition it. I understand we cannot condition the access idea, but if it is just for the neighborhood it makes sense. You do not want to have a daycare somewhere else for people that cannot get to it. Really it has merits from that standpoint. I am really conflicted in terms of the accessibility, vehicles could go in and out of this, that is why I find a safety issue.

Mr. Baugh said and the default aspect of it is sort of troubling each way. Because, on the one hand we are having some hesitation about not approving it. As with all special use permits, if it does not work, you can always revisit it, but in all honesty, there is the flipside of it, you grant the special use permit, it does not work, we say we will come back and revisit, but you can easily see where that would not be a whole lot of fun.

Ms. Houck said the property owner has also let me know that many of her neighbors do not even have cars. There is a possibility that maybe she could meet some of the neighbors. She got signed permission from her direct neighbor, maybe if she could find another neighbor who is near her that does not have a vehicle that she can get permission to use their parking space and get something in writing for you.

Chair Way said I think that is an interesting point. I mean we have had people come to an agreement before. I do not know if we can condition anything like that. The trouble is when the property then passes hands to somebody else, is it enforceable then or it cannot work in the long term, that is the tricky thing.

Mr. Fletcher said there is kind of a possibility of that, now that I am thinking about that option – it gets tricky though. She can obtain say three or four more parking spaces from particular neighbors, but those neighbors may not always live there.

Chair Way said that is what I am saying, the property can change hands.

Mr. Fletcher said you can say “oh, so long as you have three privately secured parking spaces,” well then let us say two years down the road she loses one and she cannot secure the other. Number one, we are not going to know. Our inspectors do check on conditions on special use permits during proactive enforcement, this would have to be one, we would have to reach out to them. Technically speaking that is a possibility, but it is very complicated to enforce.

Chair Way said we often talk about walkability and trying to discourage the use of cars and trying to have more alternative transportation. One way to do that is to make a situation where it really is the premises of the walking, it has to be pedestrian access and so by accommodating the full sweep of car access you tend to reinforce that driving emphasis that we have.

Mrs. Whitten said it would be easier to say you can take six kids that come on foot and six kids that come by car. It is hard.

Mr. Finnegan said one of the issues for me is we talk about lower income neighborhoods or working-class neighborhoods and typically, they do not come with a lot of parking. I agree that this is not a traditional neighborhood design, I feel that part of the reality of more affordable housing is there may not be that much parking to go with it. I understand the concerns about parking, I think it is a valid concern especially during the mornings and evening hours, however, I am still inclined to vote against denial just based on the idea that it is a need that is needed in that neighborhood and it is not a perfect parking situation, but I think as long as we have conditions and can revisit it, that is where I stand on that.

Mr. Baugh said at first glance I was not sure where this location was, I was thinking on the next block. With this location, at least you pull off Washington Street and Northfield Court and it has its contained area. I think if it was down the street in the older units where there is no space to maneuver and you probably have people backing onto East Washington Street, then I think I would have to say no on it. Like you said there is an element in here and I think it is okay to look at these things individually and yes, it is not ideal but, it certainly is close to some that are worse and I think it should be entertained.

Mr. Finnegan said I think there is also the potential, where we parked when we went to look at it in the pouring rain yesterday was on Northfield Court, we did not pull into that parking lot. That does create a safety concern with people crossing Northfield Court, but there is a potential to turn around and park on the other side.

Mr. Baugh said I use to live over there, as busy streets go, there are worse ones.

Mr. Colman asked were there any comments from Public Works in terms of traffic on that street.

Ms. Dang said they said that “Public Works is concerned with the increase potential for conflict caused by the number of vehicles that would be parking, loading, unloading, and/or crossing the street concurrently during peak hours.”

Chair Way called for a roll call vote on the motion.

Chair Way: No

Commissioner Colman: Yes

Commissioner Whitten: Yes

Commissioner Fitzgerald: Yes

Commissioner Baugh: No

Commissioner Finnegan: No

Chair Way said let me ask a question. Since we have a split vote here, does that go forward to City Council as a denial or recommendation.

Ms. Dang said it goes forward as a recommendation to deny.

Mr. Baugh said it has to be an affirmative approval.

Mr. Fletcher said even if the motion was the opposite, a motion for approval, it would still go forward as a denial.

Chair Way said the final vote was a split vote (3-3), therefore the special use permit at 661 Northfield Court (Major Family Day Home) will move forward as a recommendation of denial.

Chair Way said this will go forward to City Council on September 11, 2018.

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner