



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT

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June 30, 2014

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider a request from Erica Lynn Dorsey for a special use permit per Section 10-3-34 (6) of the Zoning Ordinance to allow a Major Family Day Home within the R-1, Single Family Residential District. Major family day homes can have from six to 12 children under the age of 13, exclusive of any children who reside in the home. The 21,444 +/- sq. ft. property is located at 1214 Windsor Road and is identified as tax map parcel 84-E-4.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: June 11, 2014

Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Low Density Residential. This designation states that these areas consist of single-family detached dwellings with a maximum density of 1 to 4 units per acre. Low-density sections are found mainly in well-established neighborhoods and are designed to maintain the existing character of neighborhoods and to provide traditional areas for home ownership.

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

Site: Single-family dwelling and minor family day home operation, zoned R-1

North: Single-family dwelling, zoned R-1

East: Single-family dwellings fronting along Nelson Drive, zoned R-1

South: Single-family dwelling, zoned R-1

West: Across Windsor Road, Single-family dwellings, zoned R-1

The applicant is requesting a special use permit per Section 10-3-34 (6) of the Zoning Ordinance to allow a "major family day home" within the R-1, Single Family Residential District. "Major family day homes" are 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 six (6) 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.*

Currently, the applicant operates a "minor family day home," Tots 'N Toyland, at the property located at 1214 Windsor Road. A "minor family day home" is allowed through the home occupation permit process and 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 one (1) through five (5) 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. No conditions more restrictive than those imposed on residences occupied by a single-family shall be imposed on the day home. At this time, Tots 'N Toyland has four children enrolled in the program. The applicant is working with the Virginia Department of Social Services (VDSS) to become licensed as a major family day home and expand enrollment beyond the allowable five children.

The VDSS has strict requirements regarding issues such as safety, cleanliness, play time, and floor area that individuals must meet in order to obtain a license to provide child care in a home. Approval and licensing from the VDSS does not, however, exempt an applicant from maintaining compliance with local ordinances or laws. Approval of this special use permit would allow for the applicant to operate as a major family day home, with the proper licensing from the VDSS for more than five children.

The applicant has described the facility as having an indoor activity and sleeping area of approximately 714 square feet along with an additional 400 square feet of outdoor play area. Parking is available at the top of the drive way where there is room for three cars at a time without blocking one another in. Hours of operation for the major family day home are 7:30 am until 6:00 pm, Monday thru Friday. Staff recognizes that the size of the facility and hours of operation are not conditions of the SUP and may change at times.

When operating a minor family day home with a Home Occupation Permit, care providers must abide by the regulations set forth in the permit; therefore, no person outside the family members residing on the premises shall be employed by the business. If the SUP is approved for a major family day home, the applicant may hire outside employees to work at the business. The applicant has stated that she intends to hire help after becoming licensed.

Windsor Road is a narrow cul-de-sac and does not have curb, gutter, or sidewalk along either side. While parking is permitted along the street, staff expressed concern to the applicant about cars parking along the shoulder of the road and impeding traffic. The applicant has stated that parents arrive at different times and they will generally use the driveway to drop-off and pick-up children. If needed the garage can be use for parking.

Staff does not foresee any negative impact in approving this application. Staff supports approval of the special use permit with the following condition:

If in the opinion of Planning Commission or City Council, parking 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.

Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked if the applicant would like to speak.

Erica Dorsey, 1214 Windsor Road, said she is the applicant and thanked Planning Commission for the opportunity to speak. My primary goal for asking for the special use permit is to expand the allowable children in my home beyond five. I currently have four enrolled; however, three are of the ages one, fifteen months, and two. I also have one three year old. As far as their development goes socially, the younger children are doing well; however, the three year old does not really have adequate socialization. I do have a four year old daughter, but she has autism and regularly attends a special education program through Harrisonburg City Schools. I do have a part time child attending three days a week, but he takes up an entire position and I cannot enroll another child because I am not allowed to overlap children. So only having five children does constrict the day care somewhat because I cannot get the proper children to socialize. However, I do not have any intentions of moving to twelve children. I would prefer to have two or three more, for a total of eight. In the event that I did have more than seven or eight enrolled it would only be because some were part time.

I know that the concern was with parking and I have had a really good conversation with all the parents about parking. We have regularly had traffic in and out of the home since we moved there two years ago; because our daughter is autistic and we have a younger son with epilepsy there are quite a few therapists that come and go from the house. I hope it has never been an issue for my neighbors.

It is my goal to be transparent and I love my neighborhood and neighbors; I do not want to do anything that would make my neighborhood a block party. Thank you.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of this proposal.

Barbara McKee said she lives at 1213 Windsor Road which is diagonal across the street from the applicant. We are not concerned about traffic; we have very little traffic on our street. We do not have curb or sidewalk and the street is not wide, but we do not have pedestrian traffic either. We do not think the street is well maintained, but we all like our street and the quietness of the street. Right now we do not have children in the neighborhood, except for Erica's children, so we are happy to have more children in the neighborhood. We are not opposed and are very pleased that she is going to do this.

Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak against the request.

Jerry Hopkins, 1142 Nelson Drive, said he is an adjoining land owner and he would like to thank staff for sending a notice to the adjoining property owners letting us know of this change. Prior to the notice I did not have any knowledge of the request. I think I represent fifty percent of the adjoining property owners. One of the adjacent property owners, on the west side of the site, died in testate over a year ago, so there has been no one residing in the house for over a year at least. That leaves two adjoining property owners, of which I am one. I object to the special use permit. The reason I object is primarily for four reasons. We have a problem with noise from the JMU athletic fields, during the student sessions, from the blaring of the music in the loud speakers. With the additional noise of probably twelve plus children there could be considerable more noise in the quiet residential neighborhood. The second reason is I would like the integrity of the residential zoning be maintained and not to allow commercial enterprises. Thirdly, there are other properties available within the City if someone would like to open a daycare center. There is actually one at the bottom of the hill along Port Republic Road; it has been for rent for some time. With a fence around it, it would give a lot of area for children to play. It is adjoining ComSonics. Two blocks down there is another daycare center, across from the JMU athletic fields. So there are available areas to open a commercial enterprise for a daycare center. The fourth reason is in two parts and is in regard to safety. The property owner on the east side has signs on the fence that say "Beware of Dog"; people put these signs up for a reason. This is like an invitation for children to see what is behind the fence. The second safety issue is that the streets in this Ashby Subdivision would not be allowed by City standards today. The grades of the streets are very steep and when you get to Windsor Road the pavement narrows. When you have municipal vehicles such as refuse, snow removal, or even fire trucks, there is no way they can turn around at the end of Windsor Road; they must back up. When you back up you put the burden of responsibility on that driver. Because of these four issues I recommend to the Planning Commission that they disallow the special use permit for 1214 Windsor Road.

Mrs. Dorsey asked to speak again. I absolutely appreciate what Mr. Hopkins is saying, I just wanted to clarify a few points that he mentioned. In regards to the house next door at 1012 Windsor Road, my in-laws just purchased that home and they are in favor of this request. Again, that is the house right next door. I volunteer for Hose Company Number 4, which is the fire department in the County. The City of Harrisonburg Fire Department and Rescue Squad have visited my home many times for my son's epilepsy and I understand what Mr. Hopkins is saying; however, they are able to get in and out of the area with no problems. The noise I understand; however, Mr. Hopkins house is probably fifty yards above mine. I

have no intentions of moving to twelve children, and the children I do keep are very young and not rambunctious, because they must be under the age of five. That was all I wanted to say.

Chair Fitzgerald asked if there was anyone else wishing to speak in regards to the special use permit.

Mr. Roger Jones said I live at 1216 Windsor Road; I am the home closest to the Dorsey house. I notice they have built an enclosure for the children to be outside when the weather is nice. I have always been a person who believes that someone ought to be able to do with their own property as they wanted as long as it did not infringe upon someone else. If they can put up with my dogs barking, I can put up with children. Thank you.

Mr. Hopkins asked to speak again stating that while the fire trucks and refuse trucks do have access, they still have to back out of the street and there is a problem with backing out of that street. You need to ride there and take a look for yourself to understand.

Chair Fitzgerald agreed and said Planning Commission was there on Monday.

Mr. Hopkins said although the fact is that no one has the intention or adding twelve children, the special use permit allows for twelve children.

Chair Fitzgerald replied point taken – thank you. She then asked if there was anyone else wishing to speak. Hearing none, she closed the public hearing and asked for a motion or discussion on the request.

Dr. Dilts said I move to recommend approval of the special use permit request for 1214 Windsor Road for a major family day home with the stated condition.

Mr. Heatwole seconded the motion.

Chair Fitzgerald asked if there was any discussion.

Mr. Way asked how many of the major family day homes are there in the City currently.

Mrs. Banks replied since 1996 there have been five applications; currently operating there is only one. The first request in 1996 was denied. The second request was withdrawn, it was on the corner of West Market Street and Garbers Church Road, a very busy intersection, and staff was not supportive of the request. The third was at the intersection of Blue Ridge Drive and Country Club Road, some of you may recall this request. It was approved with conditions regarding parking, entering and exiting the property. The applicant operated from this location for some time before expanding the business and opening a child daycare center elsewhere in a B-2 district. The fourth request was on Eastover Drive; this request was also approved with conditions. Again, the applicants have expanded the business and moved on to operating a child daycare center. The most recent request, which continues to operate as a major family day home, is on South Mason Street near the intersection with Martin Luther King Boulevard.

Mr. Fletcher said with each of the approved requests there have not been any complaints or concerns received from staff.

Mr. Baugh said if I remember correctly, the Eastover Drive request had fairly substantial neighborhood opposition.

Mrs. Banks said since the public hearing sign went up and the adjoining property owner letters went out, staff has only received one phone call. The caller was questioning if a sign would be allowed at the site; because they really did not think a sign would be appropriate in the neighborhood.

Mr. Baugh said as we discussed some at the site visit, what tends to happen regarding these three categories (minor, major, and child daycare facilities) is this middle category is not very heavily used. It is often seen as an intermediate step; you need licensing from the Department of Social Services, yet there is

a cap on the number of children you can keep. It has historically been under- utilized because most people just make a decision do I stay under the limit and not be regulated or do I jump right into the daycare business. I do recall the applicant along Country Club Road was very clear in her intent to expand into a daycare center.

Mr. Colman asked if there were any space requirements in terms of the number of children you are keeping.

Mrs. Banks replied that is all regulated through the Department of Social Services.

Mr. Colman said do we know if in this case if they could expand to full capacity or not?

Mrs. Banks said I do not know the exact answer to that; but, I would believe Social Services would not license the applicant for twelve if the space was not available in the home.

Mr. Fletcher added that there is also a point system regarding the number of children and the number of caregivers. I do not know the precise numbers; I imagine the applicant could speak further regarding that.

Mr. Baugh said there is the fact that if you have concerns regarding the day home you have not just one, but two bodies you can turn to for answers – Social Services and the City. This really has more teeth to it than if you were just keeping five or fewer children.

Mr. Da'Mes asked, since the applicant does not intend to keep up to twelve children and does not plan to have older children, was there any thought to placing limits on numbers and ages.

Mr. Fletcher said we did not feel it was necessary.

Mr. Da'Mes asked Planning Commission what their thoughts were; should we limit to not more than ten.

Dr. Dilts replied I do not believe so.

Mr. Way said the condition addresses parking becoming a nuisance; therefore, to address Mr. Hopkins concerns that if noise or safety becomes a nuisance should we say the SUP could be recalled. These may be too subjective.

Mr. Baugh said a special use permit is always at the discretion of the City; it is not like a rezoning where it is a vested right. Citizens always have the right to come back before the City with concerns regarding the SUP based upon these representations. If it is something different from what was represented we can always look at it again.

Chair Fitzgerald called for a voice vote on the motion to recommend approval with the condition.

All voted in favor (7-0) of the request.

Chair Fitzgerald said the motion passes and will be heard at City Council on July 8th.

Respectfully Submitted,

Alison Banks
Senior Planner