**File #:** 2013-7202  
**Location:** 260 S. Mary Avenue in R-0 Zoning District (APN: 165-09-014)  
**Proposed Project:** Appeal by a neighbor of a Zoning Administrator decision to approve a Use Permit to allow continued operation and expansion of a commercial day care facility, per Condition of Approval #4a of the original Use Permit #2009-0756.

**Applicant/Owner**  Harmesh K. Saini  
**Staff Contact:** Ryan Kuchenig, 408-730-7431, rkuchenig@sunnyvale.ca.gov

### REPORT IN BRIEF:

**Existing Site Conditions**  Commercial Day Care Facility

**Surrounding Land Uses**

<table>
<thead>
<tr>
<th>Direction</th>
<th>Land Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>North</td>
<td>Single-family residence</td>
</tr>
<tr>
<td>South</td>
<td>Single-family residence</td>
</tr>
<tr>
<td>East</td>
<td>Single-family residence</td>
</tr>
<tr>
<td>West</td>
<td>Single-family residence &amp; commercial uses (across S. Mary Ave.)</td>
</tr>
</tbody>
</table>

**Issues**  Continued Operation, Expansion of Use

**Environmental Status**  A Class 1 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Zoning Administrator Decision**  Approved the Use Permit with modified conditions.

**Staff Recommendation**  Deny the appeal and uphold the decision of the Zoning Administrator to approve the Use Permit with conditions.
PROJECT DESCRIPTION

<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Plan:</td>
<td>Residential Low Density</td>
<td>Same</td>
</tr>
<tr>
<td>Zoning District:</td>
<td>R-0</td>
<td>Same</td>
</tr>
<tr>
<td>Lot Size:</td>
<td>7,217 s.f.</td>
<td>Same</td>
</tr>
<tr>
<td>Floor Area:</td>
<td>2,217 s.f.</td>
<td>Same</td>
</tr>
<tr>
<td>Parking:</td>
<td>4</td>
<td>Same</td>
</tr>
</tbody>
</table>

Previous Planning Projects related to Subject Application: The site was approved for a commercial day care facility with a maximum of 18 children by the City Council on April 6, 2010. The site had been previously approved as a large family day care (up to 14 children) on July 8, 2008.

Neighborhood Preservation Complaints: There are no active code enforcement cases related to the subject site. In 2011, the Neighborhood Preservation Division had been notified of possible violations of the Use Permit related to the use of the garage. An inspection determined that the garage was being used for parking, as required, and that no violation had occurred. A recent complaint was made, since the Zoning Administrator hearing, regarding similar issues related to parking. An unannounced inspection determined that no violation has occurred.

Administrative Hearing Action: The project was reviewed at a Zoning Administrator hearing on May 15, 2013. During the public hearing, six members of the public spoke including neighbors and parents of children who attend the daycare and a nearby business owner spoke in support of the proposal. A neighbor located adjacent to the site at 270 S. Mary Avenue noted concerns related to noise, parking and trash thrown into his yard. The Zoning Administrator approved the proposal with an added condition of approval requiring that no more than 12 children at a time be permitted in the rear yard, in an effort to reduce noise impacts from an expanded facility (Condition of Approval AT-8). The minutes of the Zoning Administrator hearing are provided in Attachment F.

Appeal: The Zoning Administrator decision was appealed by an adjacent resident on May 28, 2013. The appeal notes increased traffic, inadequate parking, noise, and trash as the primary reasons to recommend denial of the application. The appeal letter is included in Attachment G. Additional staff comments on the appeal are provided on page 4 under “Staff Comment on the Appeal.”

Use Description: The existing use (Windsor Academy) is a commercial day care facility. A Condition of Approval of the use required that a separate Use Permit be submitted for continued operation after one year of operation. In addition to
continued operation, the applicant seeks to expand the use to 24 children. The initial request for a Use Permit in 2010 was for 24 students; however, a maximum of 18 was approved by the City Council. Although the Use Permit was approved approximately three years ago, the facility has only been operating as a commercial day care facility under the applicable state license for one year. Since establishment of the facility, the site has not been utilized for residential uses.

As noted by the applicant, the state requires 35 s.f. of indoor and 75 s.f. outdoor space per child. The applicant has provided information within the plan and project description to support that these requirements have been met.

**Hours of Operation:** The day care operation would remain from 8 a.m. to 6 p.m. Monday through Friday. Drop off and pick up occur the first and last two hours during business operation.

**Expected Students / Customers:** The proposal would expand the maximum number of children for the facility from 18 to 24. The children would range from one and a half to six years old. Two teachers would be present at the site during business operation.

**Floor Plan:** The interior layout of the expanded facility would remain the same. The existing floor plan consists of several rooms designated for activities, learning and staff for day care use. A two car garage, two bathrooms and a kitchen are also provided. The floor plan is provided in Attachment C.

**Exterior Changes:** There are no planned exterior changes associated with the expansion request. Modifications to the site and structure were undertaken when the building was converted to the day care facility in 2009.

An eight-foot sound wall was constructed along the south property line when improvements were previously made to the site. This wall was constructed as an attempt to address previous concerns that were noted during the public hearing process regarding the potential for increased noise.

Per approval of the original Use Permit, no signage is permitted on the site. This Condition of Approval remains as a requirement for this proposal (Condition of Approval GC-4). The restriction was placed to facilitate the integration of a commercial use in a single family neighborhood. The sign code was recently modified and allows residential properties a maximum .33 s.f. per lineal foot of building frontage for sign area.

**Parking & Circulation:** At the time of the original Use Permit approval, Sunnyvale Municipal Code parking requirements required one space per employee (during a maximum shift), plus one space per 14 students. The
facility consists of two employees and 18 children, which requires a total of (3.2) four spaces. In addition to this total space requirement, one of the spaces was designed to be van loading accessible, per Building Code requirements. This space, however, is not required to be utilized as a handicap accessible space. The additional six children would not necessitate additional parking according to requirements in effect at the time of the original approval. Since the approval, the new parking requirements have been adopted. A Code standard of one space per four children has been adopted for day care facilities; therefore, two additional parking spaces would be needed (six) under current standards.

As stated previously, the project was approved by City Council with a required one-year review and expansion of up to 24 children could be considered at that time. Since the project was originally evaluated for up to 24 children and parking requirements were met, staff is not requiring that additional parking be provided on-site. The Zoning Administrator concurred with this analysis.

The applicant has provided information regarding a staggered drop-off and pick-up program for children depending on their schedule. An incentive program has also been established that rewards children for walking or riding a bike to the site. The applicant has indicated that a carpool list will be maintained to further encourage reduced trips. Staff has included as Condition of Approval AT-6, to formalize these programs through a Parking Management Plan. A separate Miscellaneous Plan Permit is required to be submitted for approval prior to the increased capacity.

Public Contact: Eight notices were sent to surrounding property owners and residents adjacent to subject site. The applicant has provided letters of recommendation from neighboring residents and businesses. Prior to the Zoning Administrator hearing, staff received one letter of objection, from the adjacent neighbor to the south located at 270 S. Mary Avenue. The neighbor cites concerns with traffic, parking, noise and trash as a result of children throwing objects over the existing wall. These letters are included in Attachment E.

Staff Comment on the Appeal: The appellant states concerns with increased traffic and inadequate parking for the commercial day care facility. Staff finds that conditions of approval have adequately addressed these issues through required parking management. Neighborhood Preservation staff have inspected the site on unannounced visits and determined that no code violations have occurred with respect to required parking within the garage. To address possible increased noise from a larger day care facility, Condition of Approval AT-8 limits the amount of children outside to 12 at a time.
Environmental Determination: A Categorical Exemption Class 1 (minor changes in use) relieves this project from CEQA provisions.

FINDINGS
In order to approve the Use Permit, the following findings must be made:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *(Finding Met)*

   **Land Use and Transportation Element**
   **Policy N1.1** – Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.

   **Action Statement N1.1.1** - Limit the intrusion of incompatible uses and inappropriate development into city neighborhoods.

   The day care center facility meets applicable development standards and the continued operation with an expanded capacity up to 24 children is considered appropriate at this location. As stated in the report, the site had been evaluated under parking requirements applicable at the time and no further parking improvements are being required at this time. Previous improvements on the site through the construction of a sound wall attenuate noise and reduce impacts to the neighborhood.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties. *(Finding Not Met)*

   The expanded use of the site will not result in visual changes to the site. No interior or exterior changes are being proposed to the building. The facility has been operating as a commercial day care use for approximately one year. Previous code enforcement actions determined that no violations have occurred. Increased capacity may result in a minor increase in traffic to the site. Conditions of Approval require existing transportation incentives be formalized through a parking management plan.
ALTERNATIVES:

1. Deny the appeal and grant approval of the Use Permit with recommended Conditions in Attachment B.
2. Deny the appeal and grant approval of the Use Permit with modifications.
3. Grant the appeal and deny the Use Permit.

RECOMMENDATION

Alternative 1. Deny the appeal and grant approval of the Use Permit with recommended Conditions in Attachment B.

Reviewed by:

Gerri Caruso
Principal Planner

Prepared By: Ryan Kuchenig, Associate Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

A. Vicinity Map
B. Standard Requirements and Recommended Conditions of Approval
C. Site and Architectural Plans
D. Letter and Justifications from the Applicant
E. Letters from Interested Parties
F. Minutes of the Zoning Administrator Hearing of 5-15-13
G. Appeal Letter
The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with “Mitigation Measure” and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

**GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE APPROVED PROJECT.**

**GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:**
All building permit drawings and subsequent construction and operation shall substantially conform with the approved planning application, including: drawings/plans, materials samples, building colors, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing. [COA] [PLANNING]
GC-2. USE EXPIRATION:
The approved use Permit for the use shall expire if the use is discontinued for a period of one year or more. [SDR] (PLANNING)

GC-3 PERMIT EXPIRATION:
The permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date and is approved by the Director of Community Development. [SDR] (PLANNING)

GC-4 SIGNS:
Signage is prohibited for this use per City Council approval of the original Use Permit (2009-0756). [CITY COUNCIL] [COA]

GC-5 CAPACITY: The maximum capacity for the day care center shall be limited to 24 children. Any proposed expansion of the use requires approval through a Zoning Administrator Hearing.

GC-6. OBTAIN OTHER PERMITS AND LICENSES: The following additional permits and licenses are required prior to commencement of the approved use:
   a) Obtain all required permits or licenses to operate as a commercial daycare facility from State Department of Social Services.
   b) Obtain required permits from the City of Sunnyvale Department of Public Safety, Fire Services.
   c) Obtain a City of Sunnyvale business license. [COA] [PLANNING]

AT: THE FOLLOWING CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH AT ALL TIMES THAT THE USE PERMITTED BY THIS PLANNING APPLICATION OCCUPIES THE PREMISES.

AT-1. HOURS OF OPERATION:
The use permitted as part of this application shall comply with the following hours of operation at all times:
   a) The hours of operation for the day care facility are limited to 8:00 a.m. to 6:00 p.m. Monday through Friday. Expansion of these hours, including weekend use, require approval through a Zoning Administrator Hearing. [COA] [PLANNING]
AT-2. **RECYCLING AND SOLID WASTE:**
All exterior recycling and solid waste shall be confined to approved receptacles and enclosures. [COA] [PLANNING]

AT-3. **LOUDspeakers Prohibited:**
Out-of-door loudspeakers shall be prohibited at all times. [COA] [PLANNING]

AT-4. **LANDSCAPE MAINTENANCE:**
All landscaping shall be maintained in accordance with the approved landscape plan associated with Use Permit 2009-0756 and shall thereafter be maintained in a neat, clean, and healthful condition. [COA] [PLANNING]

AT-5. **PARKING LOT MAINTENANCE:**
The parking lot shall be maintained in accordance with the approved plans and the following conditions shall are required:

   a. The required two employee parking spaces shall be limited to the garage.

   b. Employees using the two garage spaces shall be provided access to such spaces. This shall be addressed through the installation of an automatic garage door with an opener given to employees to access during their employment.

   c. Guest parking and drop off area shall remain available and unobstructed during business hours.

AT-6. **PARKING MANAGEMENT PLAN:**
A separate Parking Management Plan shall be submitted through a Miscellaneous Plan Permit subject to approval by staff detailing measures that reduce traffic to the site. Such measures may include a carpool program, staggered hours drop off and pick up times, or other incentive programs that encourage alternate modes of transit to the site. [COA] [PLANNING]

AT-7. **FIRE PREVENTION:** Provide required number of approved fire extinguishers (minimum size of 2A10BC) [COA] [PUBLIC SAFETY – FIRE PREVENTION]

AT-8 **MAXIMUM CAPACITY - REAR YARD:** No more than 12 children shall be permitted within the year at a time. *(per Zoning Administrator action of 5-15-13)*
LIGHTING PLAN

NUMERATED SHEET NOTES:
1. All lighting devices, switches and branch circuits in this view are center to grade.
2. Connect to existing ceiling outlet.

SAINI DAYCARE
SANTA CRUZ, CALIFORNIA

ATTACHMENT C
Page 7 of 9
FIRE ALARM SYSTEM
FLOOR PLAN

FLOOR PLAN 1/4" = 1'-0" (F/A SYSTEM FLOOR PLAN)
2013-7202 Attachments D to G

Will be coming soon