

PLANNING COMMISSION MINUTES OF FEBRUARY 8, 2010

2009-0756: Appeal of a decision of the Administrative Hearing Officer denying a Use Permit to allow a child care center for up to 24 children for a site located at **260 S. Mary Avenue** (APN: 165-09-014) RK

Trudi Ryan, Planning Officer, presented the staff report. She said that staff recommends the Commission deny the appeal and uphold the denial of the Use Permit.

Comm. Hungerford clarified with staff that this site is zoned residential, yet the residential use can be abandoned to become a day care if approved by a Use Permit. Ms. Ryan said that the Use Permit process allows opportunity for review to determine if the findings can be made that the use is compatible with the neighborhood.

Comm. Rowe said there is a lot of concrete on this site and asked staff about landscaping and concrete requirements and allowances. Ms. Ryan said in a single family neighborhood there are no landscaping requirements; however no more than 50% of the front yard can be covered in concrete, with no concrete maximums in the rear yard. Ms. Ryan said that the planner looked at the site and with the calculations provided by the applicant determined there was less than 50% concrete in the front yard. Ms. Ryan said there is a proposed addition to the parking and the applicant would be using other materials that can be parked or driven on yet still allow grass to grow through. Comm. Rowe discussed with staff the proposed ramp.

Chair Chang opened the public hearing.

Architect **Bill Maston** and applicant **Saini Rashmi**, addressed the Commissioners' questions. Mr. Maston confirmed that the front yard does not exceed the concrete allowance and said the ramp would be placed where there is already concrete with no reduction of the landscaped area. Mr. Maston said he discussed the reasons for the appeal. He discussed the success of the applicant's program, said they have worked with staff on the technical issues, with the remaining issue being compatibility with the neighborhood including noise. He said the noise of children playing outside is compatible and any excessive noise would be regulated. He said one neighbor expressed concern about possible parking problems. Mr. Maston discussed the advantages of this site, including that he thinks the mid-block location rather than at a corner, is less risky. He said this day care responds to the needs of the local neighborhood and that Mary Avenue should be able to support the few extra cars if the student number increase is approved. He said drop off and pick up times of students is

staggered and the two car garage is proposed to be used for employee parking which increases the available on site parking. Mr. Maston said he hopes the Commission will grant the appeal subject to the conditions in Attachment B.

Comm. Klein discussed with the applicant the regulating of the arrival and departure times of parents with Ms. Rashmi and Mr. Maston explaining the different schedules.

Comm. Hungerford said it is dramatic to change a house into a day care and asked if the applicant had looked for a different location nearby. Ms. Rashmi said they did look for a different location, however part of their philosophy is for the day care to be a homey and comfortable environment and they are a neighborhood school.

Emily Johnson, a parent of a student in the day care, spoke in support of approving the increase in students. She said she drives her daughter to day care and has never had a problem with traffic or parking and that the day care is a gem and an asset to the neighborhood.

Comm. Hungerford discussed with Ms. Johnson whether she has had any difficulty with traffic on Mary Avenue, with Ms. Johnson stating that the traffic is not difficult and that the driveway allows room to turn around safely.

Comm. Sulser discussed with Ms. Johnson her drop off and pick up times.

Jennifer Ayre, a parent of a student in the day care, said Ms. Rashmi and the staff have worked to regulate the schedules. She said she walks her child to day care and occasionally drives and has had no problems parking or with traffic. She said nothing bad would come of allowing more students.

Erica McClure, a parent of a student in the day care, said she agrees with the other parents and has never had an issue with drop off or pick up. She said Ms. Rashmi works with families' schedules, and her daughter has grown academically while attending the day care. Ms. McClure said she supports the day care increasing the number of students.

Comm. Sulser asked Ms. McClure if she has noted any excessive noise. She said the noise is not a problem and explained that the day care is very compatible with the neighborhood, and that the provider reaches out to the neighbors and works with helping the child transition from home to school.

Sandeep Tamhankar, a parent of a student in the day care, spoke about his child's academic growth since attending the day care. He said that the teachers are well trained and praised the values of the school. He said over 50% of the parents of the day care are in attendance this evening in support of expanding the allowed number of students at the school.

Vice Chair Travis recused himself as he said his residence is within 500 feet of the proposed site. He left the Council Chambers.

Vaibhavi Gala, a parent of a student in the day care, spoke in support of expanding the day care student numbers. She said it is hard to find good day care and that she wanted a home based day care. She said the staff has a passion and dedication to child development and Ms. Rashmi has hired high caliber, well rounded staff.

Ketan Banjara, a parent of a student in the day care, said he is very impressed with the way the school is run. He said he likes the family environment, multi generational teachers, healthy food, and cleanliness. He said he has never had a problem with parking or traffic.

Anisa Rangwala, a parent of a student in the day care, spoke in support of allowing the day care to increase in numbers. She said her daughter has easily transitioned into this day care, and that the day care has helped her daughter's language adjustment, social skills, and that the environment is loving and caring. She said she has never had a problem with traffic or parking.

Charlie Zhu, a parent of a student in the day care, said he lives two doors down from the site. He spoke in support of allowing the student numbers to increase. He said he works from home sometimes and can hear them playing, but not excessive noise.

Mr. Maston said that it is obvious this is a high quality school. He said there remains a question of compatibility. He said the parents have attested to the location being a benefit, that the nearby traffic light helps parents get in and out safely from the site, and that the mid-block location seems to be a benefit rather than a problem. He said he hopes the information presented tonight is adequate to change the previous decision by the Administrative Hearing Officer.

Comm. Sulser discussed with the applicant her methods for managing noise levels. Ms. Rashmi said they have a 1 to 7 ratio of teachers to children and groups can be staggered in their activities. She said they are very responsive to the neighbors. Comm. Sulser discussed with Ms. Rashmi the different schedules for students that help prevent drop off and pick up congestion.

Chair Chang closed the public hearing.

Comm. Rowe moved to deny the appeal and uphold the denial of the Use Permit. Comm. McKenna seconded the motion.

Comm. Rowe said there are some wonderful day cares in Sunnyvale, however that is not the issue. She said the issue is compatibility of the use with the neighborhood. She said she has concerns about the need for consistent monitoring of the school as once the Commission grants a permit like this, the site becomes a commercial piece of property. She said she thinks this is a busy street with fast traffic, and she is concerned with the affects of increasing the number of students and with entering and exiting the roadway. She said in the future Mary Avenue is expected to experience heavier traffic. Comm. Rowe said she cannot make the findings. She discussed a letter from a neighbor who agrees this is a good day care, but opposes the increase in numbers due to possible affects on the traffic, parking, and noise. Comm. Rowe said it is exciting that Ms. Rashmi is a good teacher and has a good program, she wishes her continued success, however, she is concerned about this site becoming commercial in a residential area.

Comm. McKenna said this is not an issue about the program or quality of the teaching. She said the question is should the Commission allow this site to go commercial and double the day care in size. She said that this is a question of land use and she does not see a commercial facility with 24 children sandwiched between all residential as a compatible use. She said the decision is a matter of protecting the neighborhood.

Comm. Sulser said he would not be supporting the motion. He said he is concerned about the noise, however the use is allowed, he can make the findings, and he would have granted the appeal.

Comm. Hungerford said he would not be supporting motion. He said he finds that the use is compatible with the neighborhood. He said this is a mixed use area along Mary Avenue and he can make the findings.

Comm. Klein said he would be supporting the motion. He said there is no question about the day care's high quality, however this is a land use issue. He said he is concerned about the affects on neighbors, parking and noise. He said once this site is approved for commercial it could be misused by a future facility in the same location. He said he could not make the findings to make this land use change as it could negatively affect the surrounding neighbors in a large way.

Chair Chang said this is a land management issue. He said he was able to make the findings, and that drop off, pick up and noise would need to be managed. He said he would not be supporting the motion.

ACTION: Comm. Rowe made a motion on 2009-0756 to deny the appeal and uphold the denial of the Use Permit. Comm. McKenna seconded. Motion failed, 3-3, with Chair Chang, Comm. Hungerford and Comm. Sulser dissenting, and Vice Chair Travis recusing himself.

APPEAL OPTIONS: With a 3-3 vote, the Planning Commission did not grant the appeal and therefore the decision of the Administrative Hearing Officer stands. This action is final unless appealed to City Council no later than February 23, 2010.

Vice Chair Travis returned to the Council Chambers.