

Department of Community Planning and Economic Development - Planning Division
Conditional Use Permit
BZZ-5674

Date: August 30, 2012

Applicant: Mike Huber, Seward Child Care Center

Address of Property: 2323 32nd Ave S

Project Name: Seward Child Care Center

Contact Person and Phone: Mike Huber (612) 724-3030

Planning Staff and Phone: Kimberly Holien (612) 673-2402

Date Application Deemed Complete: August 2, 2012

End of 60 Day Decision Period: October 1, 2012

Ward: 2 Neighborhood Organization: Seward

Existing Zoning: R1A Single-Family District

Zoning Plate Number: 22

Legal Description: Not applicable

Existing Use: Child Care Center

Concurrent Review:

Conditional Use Permit: To amend a Conditional Use Permit for a child care center.

Applicable zoning code provisions: Chapter 525, Article VII Conditional Use Permits; Chapter 546 Residence Districts

Background: The Seward Child Care Center has submitted an application to amend their existing conditional use permit for a child care center in the R1A district. The existing child care center received a conditional use permit in 1974 (C-358) that was later amended in 1992 (C-1414) and again in 2009 (BZZ-4280). The amendment in 2009 was specifically to address the conditions of approval that were approved initially in 1974. In March of 2011 the site went through Preliminary Development Review for a number of exterior site improvements including landscaping, a living wall and a water harvesting/irrigation system. The request at this time again relates solely to the conditions of approval. As it currently stands, the use is subject to the following conditions:

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1. That there be no more than 30 children on the premises at any one time and that there be no more than 10 children outdoors at play at any one time and that such outdoor play does not commence until 9:00 a.m.
2. The child care center shall be required to comply with the MN Department of Human Services adult-child ratio requirements for child care centers, in lieu of requiring four adults on the premises at all times.
3. That all exterior remodeling and maintenance be done during regular working hours.
4. The child care center shall be allowed to be open to the public within the hours permitted for the R1A district, in accordance with Section 546.60 of the zoning code.
5. That a privacy fence satisfactory to the immediate neighbors be erected on the premises.
6. That the property must be suitably maintained throughout the 12 month permit period.
7. That the residents within one block of the premises be allowed three seats on the board of directors for the center.

A number of the above conditions were proposed by the Seward Neighborhood Group and subsequently adopted by the City Council in 1974. The initial CUP was granted for one year with the potential to extend it. In 1975 the permit was extended for one additional year and in 1976 the conditional use permit was approved to be extended indefinitely. The initial conditional use permit was amended in 1992 to allow a 448 square foot addition to the building and to increase the maximum number of children cared for in the facility to 29. That number was increased to 30 in 2009. The applicant is now requesting to further amend the conditional use permit as it relates to conditions 1, 5 and 7 as noted above.

As it relates to condition 1, the applicant is requesting that the language limiting the number of children that are allowed outdoors at any one time be eliminated so that children are allowed to play outside as needed for their health and development. Condition 5 required that a privacy fence be constructed on site. That fence has been erected and is currently in satisfactory condition. As it relates to this condition, the applicant is requesting that the phrase “satisfactory to the immediate neighbors” be eliminated. Finally, the applicant is proposing to completely eliminate condition 7, which requires that residents within one block of the site be allowed three seats on the board of directors, as the applicant believes this condition is burdensome and impractical.

As of the writing of this report staff had not received any correspondence from the Seward Neighborhood Group. Any correspondence, if received, will be forwarded to the Planning Commission for review.

CONDITIONAL USE PERMIT: to amend conditions of approval for a child care center

Findings as Required by the Minneapolis Zoning Code:

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The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.

The use has existed on the site since 1974 and was reviewed in 1975, 1976, 1992 when the conditional use permit was first amended and in 2009 when the conditional use permit was most recently amended. The use is currently in compliance with the previously approved permit and is compatible with the adjacent residential uses. The requested modifications to the existing Conditional Use Permit are as follows:

- To allow an unlimited number of children to play outside at any one time.

For this condition, the statement submitted by the applicant asserts that while there will typically be approximately 10 children outside at any given time, there are two 30 minute periods each day when up to 14 children may be outside. There are also four potlucks and four parent workshops each year during which there may be more than 10 children outside. Staff is recommending that this condition be eliminated in its entirety as the Minnesota Department of Human Services regulates the staff to child ratios for child care centers. Per the State requirements, up to 30 children can be on the premises at any one time.

- To modify the condition related to the required privacy fence so that the neighbor's approval of the fence design is not necessary.

A wood privacy fence is currently located along the north and east property lines. This fence has been kept in good repair. There is no language in the zoning code that requires the neighbor's input on the fence design for this use.

- To eliminate the condition requiring the child care center to give three seats on their board of director's to neighbors within one block of the site.

The applicant is requesting to eliminate this condition, stating that it is burdensome and impractical. The applicant has further stated that no neighbors have ever run for the board of directors due to the legal responsibilities and time commitment.

The above conditions, while legally enforceable, are atypical and have not been replicated for any child care centers in recent years. The requested modifications to the conditional use permit should have no impact to the public health, safety, comfort or general welfare provided it complies with all applicable state and local licensing ordinances. In addition to the conditional use permit, the use is required to comply with applicable child care requirements of the Minnesota Department of Human Services.

2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

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The proposed changes will not be injurious to the use and enjoyment of other property in the vicinity nor would it cause the use to impede the normal and orderly development of the surrounding area. The surrounding area is completely developed with primarily low density residential uses. The proposed changes would allow the use to maintain compliance with existing Minnesota Department of Human Services requirements and other City ordinances.

Over the last year there have been a number of complaints regarding the use from a neighboring property owner(s). While not emergencies, these complaints have been called in via the City's 911 system and have consumed a significant amount of City resources from the Police Department and CPED-Planning Division. The majority of these complaints were noise related and specifically cited the condition of approval that no more than 10 children be outside at any one time. At least one of these complaints was related to exterior work being performed on the site on a Saturday. While not requested by the applicant, staff is recommending that condition 3 (above) also be eliminated to alleviate the use of future City resources. Condition 3 reads:

3. That all exterior remodeling and maintenance be done during regular working hours

The City's Regulatory Services Department regulates this type of activity. City ordinances state that no construction, demolition or commercial power maintenance equipment shall be operated within the city between the hours of 6:00 p.m. and 7:00 a.m. on weekdays or during any hours on Saturdays, Sundays and state and federal holidays, except under permit. In lieu of the condition above, staff recommends that the use simply be required to comply with applicable ordinances related to the timing of exterior remodeling and maintenance.

- 3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Roads and utilities are existing and adequate. The site has existing alley access and no exterior modifications are proposed at this time. The site went through Preliminary Development Review in 2011 and utilities, access, drainage and other facilities were evaluated by Public Works staff at that time.

- 4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The use is existing and no additional traffic congestion is expected to result from the requested modifications to the conditions of approval. The site has ample bicycle parking and designated drop-off spaces in the public street.

- 5. The conditional use is consistent with the applicable policies of the comprehensive plan.**

The Minneapolis Plan for Sustainable Growth designates the site as urban neighborhood on the future land use map. The urban neighborhood designation calls for a range of residential densities with other small-scale uses, including neighborhood-serving commercial, and institutional and semi-public uses (for example, schools, community centers, religious institutions, public safety facilities, etc.) scattered throughout. The child care center use is appropriate in a residential setting. The following policies of the Comprehensive Plan apply:

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Land Use Policy 1.1: Establish land use regulations to achieve the highest possible development standards, enhance the environment, protect public health, support a vital mix of land uses, and promote flexible approaches to carry out the comprehensive plan.

1.1.5 Ensure that land use regulations continue to promote development that is compatible with nearby properties, neighborhood character, and natural features; minimizes pedestrian and vehicular conflict; promotes street life and activity; reinforces public spaces; and visually enhances development.

Land Use Policy 1.8: Preserve the stability and diversity of the city's neighborhoods while allowing for increased density in order to attract and retain long-term residents and businesses.

1.8.2 Advance land use regulations that retain and strengthen neighborhood character, including direction for neighborhood serving commercial uses, open space and parks, and campus and institutional uses.

Open Space and Parks Policy 7.1: Promote the physical and mental health of residents and visitors by recognizing that safe outdoor amenities and spaces support exercise, play, relaxation and socializing.

Amending the conditional use permit as requested by the applicant would allow the use to maintain consistency with the Comprehensive Plan and specifically those policies cited above.

6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.

With the requested modifications to the conditional use permit the use will conform to the applicable district regulations.

Specific Development Standards:

In addition to the conditional use standards, the following specific development standards also apply to child care centers:

1. In the residence and OR1 Districts, the use shall be located in a nonresidential structure existing on the effective date of this ordinance, or nursing home.

Staff comment: The use is in a non-residential building, previously a retail store.

2. The use shall provide a designated area for the short-term parking of vehicles engaged in loading and unloading children, as specified in Chapter 541, Off-street Parking and Loading. The designated area shall be located as close as practical to the principal entrance of the building and shall be connected to the building by a sidewalk.

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Staff comment: Short-term parking for loading and unloading of children is available on 32nd Ave S and 24th Street E, both connected to the building entrance by a public sidewalk. Loading and unloading is also possible in the driveway located in the rear yard of the property. These conditions are existing and no modifications are proposed.

3. Play equipment shall not be located in required front, side, or rear yards and shall be effectively screened from any adjacent residential use located in a residence or office residence district or from a ground floor permitted or conditional residential use, as specified in Chapter 530, Site Plan Review.

Staff comment: The play equipment is located in the rear yard. Recreational playground equipment is a permitted obstruction in the rear yard. The rear yard is enclosed with a wooden fence, screening the play structure from adjacent properties.

4. To the extent practical, all new construction or additions to existing buildings shall be compatible with the scale and character of the surroundings, and exterior building materials shall be harmonious with other buildings in the neighborhood.

Staff comment: No new construction is proposed as part of the amended Conditional Use Permit.

5. An appropriate transition area between the use and adjacent property shall be provided by landscaping, screening, and other site improvements consistent with the character of the neighborhood.

Staff comment: The use is screened from the property to the east by a wood fence that extends the entire length of the property. The use is separated from the property to the north by a public alley, and the same wood fence provides additional screening in this location.

RECOMMENDATIONS:

Recommendation of the Community Planning and Economic Development Department - Planning Division for the amended conditional use permit:

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the amended Conditional Use Permit for a child care center at the property of 2323 32nd Ave S, and is now subject only to the following conditions:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
2. The child care center shall be required to comply with the MN Department of Human Services adult-child ratio requirements for child care centers, in lieu of requiring four adults on the premises at all times.

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3. The child care center shall be allowed to be open to the public within the hours permitted for the R1A district.
4. A privacy fence shall be erected and maintained on the premises.
5. That the property must be suitably maintained throughout the 12 month permit period.

Attachments:

1. Statement from applicant.
2. E-mail from the applicant to the Seward Neighborhood Organization and CM Gordon dated July 24, 2012.
3. Correspondence.
4. Summary of year to date 911 calls.
5. Zoning map.
6. Past applications, C-358 and C-1414
7. Site plans and floor plans.
8. Photos.