

**MEMORANDUM**

**To:** Mayor & City Council

**From:** Steve Foote, AICP

**Date:** April 21, 2014

**Subject:** **SLUP 14-031:** Candace Johnston, owner of 4789 Coldstream Drive, Dunwoody, GA 30360, seeks the permission to operate a child day care facility in a single-family zoning district under the approval of a Special Land Use Permit. The tax parcel number is 18 358 06 017.



**BACKGROUND**

The subject property is located in the Dunwoody Highlands subdivision, west of the intersection at Tilly Mill Road and Peeler Road. It is currently zoned R-100 (Single-Family Residential District). Pursuant to the City of Dunwoody Zoning Ordinance §27-4.20, applicant, Candace Johnston, seeks permission for a Special Land Use Permit (SLUP) to operate a child day care facility in a single-family residential zoning district.

The site comprises an existing single-family detached home on approximately 16,288.39 square feet (.37 acre) of land. The property abuts single-family home development on all sides. The lot is generally flat, relative to the average slopes found in the region, and has landscaping throughout as well as mature tree cover on the southern and eastern portions.

According to the site plan submitted January 6, 2014, the applicant proposes to use almost 35 percent of her home to operate a child day care facility. There will be three separate rooms utilized for operations: 192 square foot indoor play area, 144 square foot eating area for

meals/snacks, and 120 square foot sleeping area. The rear yard will also be devoted to outdoor playtime, which is entirely fenced in and allots 4,790 square feet to the children’s play area. The applicant proposes to only have a maximum of four children enrolled at one time.

**SPECIAL LAND USE ANALYSIS**

**Section 27-57. Uses Allowed.**

The following table identifies uses allowed in residential zoning districts. See subsection 27-111(4) for information about how to interpret the use table.

Use	R-100 District	Supplemental Regulations
Day Care		
Day care facility, child (6 or fewer persons)	S	27-137

*S = special land use permit req'd*

**Section 27-137. Day cares.**

- ...
- d) *Child day care facility.* Child day care facilities are subject to all of the following requirements:
1. At least 30 square feet of indoor play area must be provided for each child, based on maximum allowed enrollment.
  2. At least 100 square feet of outdoor play area must be provided for each child, based on maximum allowed enrollment. All outdoor play areas must be enclosed by a fence or wall at least 4 feet in height.
  3. Not more than 50% of the floor area of a residence may be used for a child day care facility.
  4. The exterior residential appearance of the dwelling must be maintained, and no signs other than those otherwise permitted within the subject zoning district are allowed. No cut-outs, animal characters, or other graphics may be affixed to the exterior of the building or displayed on the premises.
  5. Persons seeking to operate a child day care facility must file a permit application with the community development department. Each application must be accompanied by the applicant's affidavit certifying the maximum number of children that will be served simultaneously and that the proposed child day care facility will meet and be operated in accordance with all applicable state laws and regulations and with all ordinances and regulations of the city. The community development department may require that the applicant provide additional information deemed necessary to determine whether the proposed facility will meet applicable laws, ordinances and regulations. If a proposed child day care facility is required to obtain a certificate of registration from the state department of human resources, a permit for the operation of the facility may not be issued until proof has been submitted by the applicant that the certificate of registration has been obtained.

**Conditions of the Zoning Ordinance**

Chapter 27, Section 27-359 identifies the following criteria to be applied by the department of planning, the planning commission, and the city council in evaluating and deciding any application for a special land use permit. No application for a special land use permit shall be granted by the city council unless satisfactory provisions and arrangements have been

made concerning each of the following factors, all of which are applicable to each application:

- 1) Whether the proposed use is consistent with the policies of the comprehensive plan; ***The proposed use is consistent with the comprehensive plan. The residential features and function of the site will remain intact despite the modified use.***
- 2) Whether the proposed use complies with the requirements of this zoning ordinance; ***The proposed use, child day care facility, is authorized in R-100 district only by the special land use permit, and subject to the additional requirements of Section 27-137(d). The total square footage for the house is 2,200 square feet. According to the site plan, the indoor play area is approximately 192 square feet, which equates to 48 square feet per child. The amount of outdoor space available for a play area is roughly 4,790 square feet—providing 1,197.5 square feet per child. The applicant certifies that care will be provided for a maximum of 4 children simultaneously and that no more than 50 percent of the dwelling will be used for business operations.***
- 3) Whether the proposed site provides adequate land area for the proposed use, including provision of all required open space, off-street parking and all other applicable requirements of the subject zoning district; ***The site is more than adequate for the proposed use in terms of open space and off-street parking requirements. The Zoning Ordinance requires at least 100 square feet of outdoor play area be provided for each child, based on maximum allowed enrollment. The applicant's backyard is approximately 4,790 square feet, so if four children were enrolled in the facility, then there would be 1,197.5 square feet of outdoor play area per child. The rear yard is also configured to help screen the property from adjoining neighbors with a 4-foot high fence along the property lines, which extends to 5 feet on the north side and 6 feet on the architectural front side of the house as well as mature tree cover on the southern and eastern portions.***

***For a child day care facility, the minimum off-street motor vehicle parking spaces required is four. The applicant's property is capable of meeting this standard due to the driveway being 82.6 feet long and 15.6 feet wide (or 1,288.56 square feet)—allowing for cars to stack during times of pick-up and drop-off instead of parking on the street.***

- 4) Whether the proposed use is compatible with adjacent properties and land uses, including consideration of:
  - a. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of noise, smoke, odor, dust or vibration generated by the proposed use; ***The proposed use will not generate adverse impacts from excessive noise, smoke, odor, dust, or vibration towards adjoining land uses.***
  - b. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the hours of operation of the proposed use; ***The applicant proposes to operate the child day care facility between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday. These hours of operation are compatible with the requirements of the City Noise Ordinance and will likely not create adverse impacts upon any adjoining residential properties.***



- c. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the manner of operation of the proposed use; ***The proposed use will substantially be operated inside the dwelling, except for occasional outdoor play time. Due to the lack of difference from what is currently carried out in the surrounding area, it should not create adverse impacts on neighboring land uses.***
  - d. Whether the proposed use will create adverse impacts upon any adjoining land use by reason of the character of vehicles or the volume of traffic generated by the proposed use; ***It is unlikely that adjacent land uses will be adversely affected by the volume of cars created by the proposed use. At a maximum, four separate vehicles will be at the property at one time; however, the driveway is long enough to accommodate any stacking and will prevent the possibility of on-street parking.***
  - e. Whether the size, scale and massing of proposed buildings are appropriate in relation to the size of the subject property and in relation to the size, scale and massing of adjacent and nearby lots and buildings; ***The subject property consists of approximately 16,288.39 square feet, and the existing structures are constructed at a size and scale for the current performance standards expected on a lot of this size. The majority of operations for the child day care facility will take place inside the dwelling, and will not require any adjustments to the home's character or interfere with the neighborhood's overall aesthetic.***

and
  - f. Whether the proposed plan will adversely affect historic buildings, sites, districts, or archaeological resources; ***There are no known historic buildings, sites, districts, or archaeological resources in any proximity to the site, nor would any such resources be impacted by the proposed use.***
- 5) Whether public services, public facilities and utilities—including motorized and non-motorized transportation facilities—are adequate to serve the proposed use; ***The current infrastructure is adequate to serve the proposed use.***
  - 6) Whether adequate means of ingress and egress are proposed, with particular reference to non-motorized and motorized traffic safety and convenience, traffic flow and control and emergency vehicle access; ***The subject property is a part of Dunwoody Highlands subdivision, which has four access points available for entry/exit onto either Tilly Mill Road, Peeler Road, or Happy Hollow Road. While there is only one access point to the house via residential driveway, the neighborhood, as a whole, provides adequate ingress and egress to the site and its structures for vehicular and pedestrian traffic.***
  - 7) Whether adequate provision has been made for refuse and service areas; ***Since the residence already exists, there are already adequate refuse and service areas. The average weekly amount of waste for the residence is sure to increase with the intensified use; however, it is not anticipated that the use will generate more refuse than a typical residential use.***

and

- 8) Whether the proposed building as a result of its proposed height will create a negative shadow impact on any adjoining lot or building. ***The existing structure and layout of the home will remain intact. There are no proposed changes to the dwelling's architectural characteristics.***

In addition to the generally applicable special land use permit approval criteria of §27-359, the community development department, planning commission, and city council must consider the following factors when reviewing and acting on special land use permit applications for child day care facilities:

1. Whether there is adequate off-street parking for all staff members and for visitors to the child day care facility; ***The applicant will be the sole staff member for the day care facility. At a maximum, there will be four visitors at one time and the size of the driveway is adequate enough to provide off-street parking for these individual vehicles.***
2. Whether the proposed off-street parking areas and the proposed outdoor play areas can be adequately screened from adjacent properties so as not to adversely impact any adjoining land use; ***The residence's driveway will be the location for all off-street parking. It is located towards the southern portion of the lot, which has mature tree cover to screen the vehicles from the neighboring property. Additionally, outdoor play will take place in the rear yard, which is completely enclosed by a fence that is 4 feet high on the south side and rear, 5 feet high on the north side, and 6 feet high in the front. The placement of the fence, together with existing landscaping, helps create a buffer between adjoining lots.***
3. Whether there is an adequate and safe location for the dropping off and picking up of children at the child day care facility; ***The applicant's existing driveway provides an adequate amount of space for the dropping-off and picking-up of children in a safe and timely manner.***

and

4. Whether the character of the exterior of the proposed structure will be compatible with the residential character of any surrounding residential buildings. ***No new structures are proposed as a function of this use. The existing home is properly scaled in relation to the remainder of the neighborhood.***

### Council Actions

Pursuant to Section 27-358 of the Zoning Ordinance, upon receipt of recommendations from the planning commission, the mayor and city council must hold a public hearing on the special land use permit (SLUP) application. Following the close of the public hearing, the mayor and city council must act by simple majority vote to:

1. Approve the SLUP as presented,
2. Approve the SLUP with conditions, or
3. Deny the SLUP based on the applicable review and approval criteria of section 27-359.

The mayor and city council are also authorized to defer action on the special land use permit or allow the applicant to withdraw the SLUP without prejudice.

The first and third options are: approve the use consistent with the submittal documents, after finding they comply and are congruent with the terms found in the above analysis, or deny the application, for not being appropriate.

When creating conditions of approval, the choices may seem endless, but in fact are limited to those conditions which are found to have a rational nexus between the uses proposed and the conditions assigned, and those conditions which do not derivate from the established policies and procedures found in the City Code. The conditions of approval must only apply directly to the initiation of the new use as submitted.

## **RECOMMENDATION**

Staff recommends **approval** of the Special Land Use Permit application to operate a child day care facility in a single-family residential zoning district with the following conditions:

1. The child day care facility may only operate between the hours of 8:00 a.m. and 5:30 p.m., Monday through Friday.
2. The maximum number of children that may be enrolled at the day care facility at one time is four.
3. No vehicle (including the property owner's vehicle) may be parked on the public right of way in such a manner to block or impede regular traffic flow, block or impede fire hydrants, or block or impede neighbor's access to their property and regular ingress/egress to their driveway.
4. The exterior of the residential dwelling must be maintained, and no signs other than those otherwise permitted within the subject zoning district are allowed.

The Planning Commission heard the applicant's request to operate an in-home child day care facility in the R-100 district at their regular March meeting. After much discussion with the applicant and staff, the Commission recommended approval of the request (7 – 0) with the following condition, in addition to the other recommendations by staff:

5. The special land use permit runs with homeowner for a ten year period.

## **Attachments**

- Location Map, Zoning Districts Map, Future Land Use Map
- Planning Commission Meeting Minutes
- Application Packet