

**CITY OF ALBANY  
PLANNING AND ZONING AGENDA  
STAFF REPORT**

Agenda date: 11/11/08  
Prepared by: AC  
Reviewed by: JB

**ITEM/ 4c**

**SUBJECT: Planning Application 08-068. Conditional Use Permit. Parking Exception.**  
Request for Conditional Use Permit Approval to allow a large family day care to be conducted at a private residence. A parking exception is requested to allow one off-street parking space for the day care where two are required.

**SITE: 1140 Key Route**

**APPLICANT/**

**OWNER: Alia Suassuna Medeiros and Tatiana Medeiros Salvator**

**ZONING: R-1 (Single-Family Residential)**

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**STAFF RECOMMENDATION**

Approve the request for a Minor Conditional Use Permit and Parking Exception, subject to the draft findings and conditions.

**BACKGROUND/PROJECT DESCRIPTION**

The applicant is requesting a minor conditional use permit to allow a large family day care, which allows a maximum of 14 children at any one time, to be conducted at 1140 Key Route. There will be one full time employee, which requires one off-street parking space. A waiver of the required parking is requested.

The day care is proposed to operate Monday through Friday from 7:00am-6:00pm. Drop-off and pick-up hours vary. Most of the children are between the ages of three months and four years. The granting of a minor conditional use permit allows any children less than eighteen years old to be permitted in a large family day care. There will be one full time employee, and one to two part time employees, depending upon the number of children attending for the day.

The lot has a single-story home with a rear yard that is approximately 1,150sq.ft. in area. The applicant use an interior room and the rear yard for play areas. The parcel has some unique characteristics in that it is located at the intersection of Santa Fe Avenue, Key Route Boulevard, and Dartmouth Street. The BART tracks are located to the west (see attachment 4).

The home is legal non-conforming in that: (a) there is only one off-street parking space where two are required; and (b) it does not meet the required 15' front yard setback. There is an attached one-car garage, which provides one off-street parking space. The driveway, however, is located in the required front yard and is not long enough to be considered a legal off-street parking.

The Municipal Code requires one off-street parking space for every full time employee of a large family day care, not including the resident-owner. There is not a place to provide the additional parking space for the full-time employee; therefore a parking exception is requested.

Typically the administrative hearing officer reviews requests for minor conditional use permits but is being reviewed by the Commission because a parking exception is also being requested, which requires Commission review. Staff believes the requests are interrelated and it is more efficient for the requests to be reviewed by one deciding body.

## **ENVIRONMENTAL ANALYSIS**

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15303(a) of the CEQA Guidelines, which exempts one single-family residence or a second dwelling unit in a residential zone.

## **DISCUSSION OF KEY ISSUES**

### **Conditional Use Permit**

The City's ability to regulate family day care facilities in residential districts is limited by state law. In particular, a day care facility with up to 14 children is considered a residential use. The standards of review are limited by Municipal Code Section 20.20.020, which states that "large family day cares shall not be abutted on more than one side by any combination of a large family day care, a day care center or a residential care home." The Municipal Code also states "no large family day care home or day care center shall be permitted if any other licensed large family day care home or day care center is located within three hundred (300) feet of the lot subject to the application. The State of California Department of Child Care Licensing Department holds a list of all large family day cares. The only other large family day care registered in Albany is on the 1000 block of Cornell Avenue. Staff believes that there are no adjacent family day cares, of any size, adjacent to the subject site. Thus, there does not appear to be a factual basis to deny the use.

Staff believes that the day care will provide an asset to the city considering there is only one other large family day care within the city limits and many young families in the area. The day care's scheduling is not structured like a school, thus drop-off and pick-up is expected to be scattered throughout the day, reducing the possibility of stacked cars or numerous vehicles at the site. In addition, due to variation in schedules, often times there will be less than the maximum allowed children on-site.

If the Commission deems the minor conditional use permit appropriate for approval staff recommends the following project-specific conditions as part of the approval:

- 1) All fences in the rear yard shall be replaced with a new, solid, 6' tall fence to help barrier noise. All play structures shall be no higher than the height of the fence;
- 2) If at anytime more than one full time employee is needed the owner must apply for an additional parking exception;
- 3) All signage shall be subject to review and approval by staff;
- 4) The fire alarm system must be directly linked to the Fire Department, and any other conditions set forth by the Fire Department must be complied with;
- 5) The operator shall work in good faith with the adjacent neighbors to locate the primary play areas away from neighboring sensitive areas;
- 6) The operator shall work in good faith with adjacent neighbors to create a schedule of meaningful quiet times during the day when all the children are indoors.

### Parking Exception

Municipal Code Section 20.20.020 requires that one off-street parking space be provided for each full time employee. As previously stated there is only one off-street parking space, in the form of an attached garage. The applicant is requesting a parking exception to waive the one on-site parking space requirement.

Staff did not conduct formal parking counts since they are not required by code. Staff did, however, visit the site on Monday, November 3 at 5:30pm, Wednesday, November 5 at 8:30am, and Wednesday, November 5 at 12:45pm to access the available parking. At all three visits, there appeared to be roughly a 50% vacancy rate within a 200-foot radius of the site (not including Masonic Avenue). Thus, staff believes that there appears to be ample parking spaces throughout the day for both residents and parents. It also could be noted that the site's location is relatively distant from Solano Avenue, San Pablo Avenue, Gilman Street, other schools, or a BART station to be impacted by parking for those areas.

Staff recommends approval of the parking exception with the following conditions of approval:

- 1) Parents shall sign a contract agreeing to abide by all traffic laws and use only legal, designated areas for parking during drop-off, pick-up and all other day care related trips;
- 2) Parents shall try to park along Key Route Boulevard and not Santa Fe Avenue to reduce the number of trips across the street where there is not a pedestrian crosswalk.

It should be noted that the BART tracks create noise; however, the noise levels do not exceed any of those normally found at any residential property next to the train tracks.

### Attachments:

1. Analysis of Zoning Requirements
2. Findings
3. Conditions of Approval
4. Application, Social Services Application, Site Plan/Floor Plan, Photos

# ATTACHMENT 1 – ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

## 20.12 Zoning Districts And Permitted Uses

General Plan: Low Density Residential  
Zoning: R-1 – Single Family Residential

## 20.16 Land Use Classifications

Single family residential

Surrounding	North - SFR	East – SFR
Property Use	South - SFR	West – SFR

### 20.20.080 Secondary Residential Units.

Not applicable.

### 20.24.020 Table Of Site Regulations By District.

Not applicable.

### 20.24.030 Overlay District Regulations.

Not applicable.

### 20.24.040 Hillside Residential Regulations.

Not applicable.

### 20.24.050 Floor-Area-Ratio.

Not applicable.

### 20.24.060 Setback Areas, Encroachments.

Not applicable.

### 20.24.100 Distances Between Structures.

Not applicable.

### 20.24.110 Fences, Landscaping, Screening.

Not applicable.

### 20.24.130 Accessory Buildings.

Not applicable.

### 20.28 Off-Street Parking Requirement.

See project description and discussion.

### 20.40 Housing Provisions

Not applicable.

20.44 Non-conforming Uses, Structures and Lot  
Not applicable.

20.48 Removal of Trees  
Not applicable.

20.52 Flood Damage Prevention Regulations  
Not applicable.

20.100.030 Use Permits.  
See project description and discussion

20.100.040 Variances.  
Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on October 31, 2008 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.  
See Summary of Key Issues

Green Building Requirements  
Not applicable.

## ATTACHMENT 2 – FINDINGS

Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)

<i>Required Finding</i>	Explanation
<p>1. <b><i>Necessity, Desirability, Compatibility.</i></b> <i>The project’s size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.</i></p>	<p>The General Plan designates this area for residential uses. Large family day cares are consistent with residential uses. Additionally, the project meets City zoning standards for location, intensity and type of use and development.</p>
<p>2. <b><i>Adverse Impacts.</i></b> <i>The project’s use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> <li>a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i></li> <li>b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;</i></li> <li>c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i></li> <li>d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i></li> </ul>	<ul style="list-style-type: none"> <li>a. The size shape and arrangement of structures on the site are appropriate for a large family day care.</li> <li>b. The pick up and drop off times vary from day to day and are not structured like a school schedule; therefore ,there is reduced concern about traffic flow and volumes.</li> <li>c. New solid fences in the rear yard will be required to create a barrier against noise. It is a residential street with lower levels of traffic so noise affecting the children is not a concern.</li> <li>d. A condition of approval requiring that all signage receive design review approval, and aesthetically the site will not change from its existing condition.</li> </ul>
<p>3. <b><i>Consistency with Zoning Ordinance, General Plan and Specific Plan.</i></b> <i>That such use or feature as proposed will comply</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact</p>

<i>with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan and any applicable specific plan.</i>	property, improvements or potential future development in the area.
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Findings for Parking Exceptions (Per section 20.28.040.A.2 of the AMC)

<i>Required Finding</i>	<i>Explanation</i>
1. <i>Required spaces cannot be located in front or side yards.</i>	The existing home has a nonconforming front yard setback, which does not provide the area for a parking space. The home is situated at the center of the lot with side yard setbacks of 2' (south) and 4' (north), which does not allow the required area for parking in the side yards.
2. <i>Space is not available to provide required parking facilities without undue hardship.</i>	The applicant would have to demolish one of the sidewalls and completely reconstruct one sidewall of the home to allow access to the rear yard for parking. This is exceeding difficult and an "undue hardship" considering the project will not require demolition or replacement of sidewalls. It is an expansion of a residential use, not a residential structure, and the home is already of a relatively small/moderate size.
3. <i>Provision of required parking spaces would be disruptive to landmark trees or would severely restrict private outdoor living space on the site.</i>	No landmark trees would be disturbed by granting the parking exception nor will it restrict outdoor living space on the site.
4. <i>Creation of new off-street spaces would require the elimination of an equivalent or higher number of on-street parking spaces.</i>	Not applicable.
5. <i>The proposed reduction in parking requirements is appropriate to the total size of the dwelling unit upon completion of the proposed addition.</i>	The home will remain a single-family home and the existing garage will be maintained for parking. Staff conducted three site visits and at all three visits, there appeared to be roughly a 50% vacancy rate within a 200-foot radius of the site (not including Masonic Avenue). Parents will not be parking for long periods of time but having a quick pick-up and drop-offs through out the day in an area where there appears to be adequate parking for such a use.

### ATTACHMENT 3 - CONDITIONS OF APPROVAL

1. This Conditional Use Permit and Front Yard Parking Exception approval is for approval to allow a large family day care (up to fourteen children), except as may be modified by conditions herein. Plans include a site plan/floor plans/elevations submitted by Alia Suassuna Medeiros and Tatiana Medeiros Salvator, dated received by the Community Development Department on November 3, 2008, and presented to the Planning and Zoning Commission at its meeting of November 11, 2008.
2. The applicants shall pay any and all City and other related fees applicable to the property. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check and Inspection Fees.
3. All fences in the rear yard shall be replaced with a new, solid, 6' tall fence to help barrier noise. All play structures shall be no higher than the height of the fence;
4. If at anytime more than one full time employee is needed the owner must apply for an additional parking exception;
5. All signage shall be subject to review and approval by staff;
6. The fire alarm system must be directly linked to the Fire Department, and any other conditions set forth by the Fire Department must be complied with;
7. The operator shall work in good faith with the adjacent neighbors to locate the primary play areas away from neighboring sensitive areas;
8. The operator shall work in good faith with adjacent neighbors to create a schedule of meaningful quiet times during the day when all the children are indoors.
9. If at anytime more than one full time employee is needed the owner must apply for a parking exception.
10. Parents shall sign a contract agreeing to abide by all traffic laws and use only legal, designated areas for parking during drop-off, pick-up and all other day care related trips/
11. Parents shall try to park along Key Route Boulevard and not Santa Fe Avenue to reduce the number of trips across the street where there is not a pedestrian crosswalk.
12. All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way.



13. Pursuant to Government Code Section 66474.9, the applicants (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicants of any such claim action or proceeding and cooperate fully in the defense.