

NOTICE OF APPEAL HEARING

**“Childcare Center Conditional Use Permit” File No. Z21-071CUP2
Appeals Z21-127APPL and Z21-128APPL**

Notice is hereby given that the Planning Director’s July 9, 2021, decision on a Type II Conditional Use Permit (attached) has been timely appealed by two separate parties. **There will be a combined open record appeal hearing on these appeals** before the City of Spokane Hearing Examiner Pro Tem on **Wednesday, August 25, 2021, at 9:00 AM**. The hearing will be held in-person at Spokane City Hall, City Council Chambers (lower level), 808 W. Spokane Falls Boulevard, Spokane, WA 99201. Note that masks may be required for all participants per the prevailing Covid-19 guidance in effect at the time of the hearing.

For additional information contact Planning & Development at:

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APPLICATION INFORMATION:

Agent: Russell Page Architects 204 N Division, Suite E Spokane, WA 99202	Applicant/Owner: Brimfull Properties 13515 N Addison Spokane, WA 99208
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File Number: Z21-071CUP2

State Environmental Policy Act (SEPA): This project is exempt from SEPA.

Location Description: The subject properties are at 4504 S Freya, 3585, 3529, 3557 and 3545 E 46th Ct., Parcel Nos. 34032.5301, .5302, .5303, .5304 and .5305. See map on pg. 1 of attached decision.

Description of Proposal: The applicant is proposing to build a new childcare center, including new parking and landscaping and the demolition of the existing shop. This application will be reviewed as a Type II Conditional Use Permit by the Planning and Development Department.

Current Zoning: RSF (Residential Single-Family)

Project webpage - <https://my.spokanecity.org/projects/childcare-center/>

APPEAL INFORMATION:

Z21-127APPL Appellants:

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Z21-128APPL Appeal:

Southgate Neighborhood Council
c/o Andrew Hoyer
4219 E. 42nd Avenue
Spokane, WA 99223
ahoyer@comcast.net

**PLANNING DIRECTOR'S DECISION ON
CONDITIONAL USE PERMIT APPLICATION
FILE NO. Z21-071CUP2**

The applicant has applied for an Administrative Conditional Use Permit (Type II) from the Planning Director to allow the construction of a new 7,000+ SF childcare center with play areas, parking and landscaping in the Residential Single Family zone.

The site is located at 4504 S Freya, 3585, 3529, 3557 and 3545 E 46th Ct., on Parcel Numbers 34032.5301, .5302, .5303, .5304 and .5305, on the following described property:

03-24-43: MORAN SOUTH FINAL CITY SHORT PLAT #Z20-076PSP LOTS 1-5 (AFN 7028774)

FINDINGS OF FACT:

- A. **Site Description:** The site was originally a large single-family parcel which was recently subdivided into 5 single family lots. There are existing single family homes to the north and single family parcels to the south of the site for future development, Fieldstone Memory Care is to the east and single-family and multi-family are to the west. The site is generally flat. 46th Avenue was recently paved and new curbs and sidewalks have been



installed with the new plat that surrounds the site.

- B. **Project Description:** The proposed project would construct a new 7,000+ SF childcare center with play areas, parking and landscaping. The existing single-family home would remain and serve as staff offices and the kitchen for the childcare center. The existing detached shop would be removed.
- C. **Surrounding Zoning:** The surrounding zoning is residential single family (RSF).

- E. Adjacent Land Use: The surrounding land use designation is Residential 4-10.
- F. Applicable Zoning Regulations: Spokane Municipal Code (SMC) 17C. 110, Residential Zones; SMC 17C.320.080 (F), Conditional Use Decision Criteria, and SMC 17G.060.170, Decision Criteria.
- G. Procedural Requirements:
- A Community Meeting was held on April 14, 2021;
 - Application was submitted on May 5, 2021;
 - A Request for Comments notice was sent to Departments and Agencies on May 5, 2021;
 - The applicant was notified on June 4, 2021, that the application was technically complete;
 - A Notice of Application was mailed and posted on the subject property on June 10, 2021, which began the 15-day public comment period;
 - A Revised Notice of Application was mailed and posted on the subject property on June 14, 2021, which corrected and extended the 15-day public comment period; and
 - The Public Comment Period closed on June 29, 2021.

DEPARTMENT REPORTS:

Notice of this proposal was sent to City departments and outside agencies for their review and comments on May 5, 2021. Their comments are included with the file and are made part of this application by reference.

PUBLIC COMMENT:

Staff received public comments both in support and opposed to the proposal. Letters of opposition had concerns about the traffic that will be generated from the site and the compatibility with adjacent single-family homes.

CONCLUSIONS AND DECISION CRITERIA – CONDITIONAL USE PERMIT

The intent of the conditional use permit criteria procedure is to determine the conditions under which a use may be permitted. These permits are subject to specific review during which conditions may be imposed to assure compatibility of the use with other uses permitted in the surrounding area. A conditional use permit may be granted only if the following facts and conditions are found to exist:

Uses permitted that are subject to limitations are listed in Table 17C.110-1 with an "L." These uses are allowed if they comply with the limitations as listed in the footnotes following the table and the development standards and other standards of this chapter. In addition, a use or development listed in Part 3 of this division, Special Use Standards, is also subject to the standards of those chapters.

Daycares are listed in the Residential Zone Primary Uses Table 17C.110-1 with a L[5]/CU. Limited Use Standards identifies limitation [5] as:

5. *Daycare.*

This regulation applies to all parts of Table 17C.110-1 that have a note [5]. Daycare uses are allowed by right if locating within a building or residence, and providing services to no more than twelve (children or clients). Daycare facilities for more than twelve children are a conditional use and are processed as a Type II application in the RA, RSF and RTF zones. However, in the RSF zone, daycare centers up to forty children are permitted if locating within a building that currently contains or did contain a college, medical center, school, religious institution or a community service facility.

SMC 17C.320.080 Decision Criteria

1. *The proposal is allowed under the provisions of the land use codes. SMC 17G.060.170(C)(1)*

Relevant Facts:

In the Residential Single Family (RSF) zone, daycare facilities for more than twelve children are a conditional use and are processed as a Type II application in the RA, RSF and RTF zones. See SMC 17C.110.110 Limited Use Standards, section E. Daycare.

SMC 17C.190.430 defines Daycare use includes day or evening care for two or more children outside of the children's homes for a fee. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision. Accessory uses include offices, play areas and parking. Examples include preschools, nursery schools, latch key programs and adult daycare programs.

Staff finds this criterion is met.

2. *The proposal is consistent with the comprehensive plan designation and goals, objectives, and policies for the property. SMC 17G.060.170(C)(2)*

Relevant Facts:

**Policy LU 2.2 Performance Standards: Employ performance and design standards with sufficient flexibility and appropriate incentives to ensure that development is compatible with surrounding land uses.*

**Policy N2.1 Neighborhood Quality of Life: Ensure that neighborhoods continue to offer residential transportation and living options, safe streets, quality schools, public services, and cultural, social, and recreational opportunities in order to sustain and enhance the vitality, diversity and quality of life within neighborhoods.*

**Policy N2.3 Special Needs: Ensure that neighborhood-based services are available for special needs and located in proximity to public transit routes in order to be accessible to local residents.*

**Policy SH2.1 Care Facilities: Distribute care facilities fairly and equitably throughout all neighborhoods.*

Staff finds that this criterion is met.

3. *The proposal meets the concurrency requirements of chapter 17D.010 SMC. (SMC 17G.060.170(C)(3))*

Relevant Facts: The application was circulated on May 5, 2021, amongst all City departments and outside agencies with jurisdiction and there were no departments or agencies that reported that concurrency could not be achieved.

Staff finds this criterion is met.

4. *If approval of a site plan is required, the property is suitable for the proposed use and site plan considering the physical characteristics of the property, including but not limited to size, shape,*

location, topography, soils, slope, drainage characteristics, the existence of ground or surface water and the existence of natural, historic or cultural features. SMC 17G.060.170(C)(4)

Relevant Facts: The application included elevations of the proposed childcare center which indicated a single-story building with pitched roofs and was of an architectural style that is complementary to single-family homes. The site will be required to meet the residential development standards with regards to setbacks, height and lot coverage. The proposal will also be required to comply with the institutional design standards. The site location along an arterial provides direct access to and from the facility without impacting local neighborhood street systems. No known historical or cultural features are known to exist within the site area.

This site is located within the Critical Aquifer Recharge Zone and must comply with SMC Chapter 17E.010 Critical Aquifer Recharge Areas-Aquifer Protection.

Staff finds that this criterion is met.

5. *The proposal will not have a significant adverse impact on the environment or the surrounding properties, and if necessary conditions can be placed on the proposal to avoid significant effects or interference with the use of neighboring property or the surrounding area, considering the design and intensity of the proposed use.*

Relevant Facts: This project is categorically exempt from SEPA review. There was no evidence staff received that the environmental impacts make the project unfeasible. The childcare center will be open for daycare services M-F 7:00 am to 5:30 pm and will be required to abide by the City Noise ordinance stated in SMC Title 10 (10pm-7am quiet hours).

The proposal will be required to meet the standards set out in SMC 17C.110.500 through SMC 17C.110.575, Institutional Design Standards in Residential Zones at time of building permit review.

Staff finds that this criterion is met.

Decision Criteria for Institutional and Other Uses in Residential Zones are described in SMC 17C.320.080(F), what follows is a review of these criteria.

Chapter 17C.320.080 (F) Decision Criteria for Institutional and Other Uses in Residential Zones. *These approval criteria apply to all conditional uses in RA through RHD zones. The approval criteria allow institutional uses (including expansions of existing facilities), allow increases to the maximum occupancy of group living, and permit other non-residential household living uses in a residential zone. These types of uses must maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:*

1. *Proportion of Residential Household Living Uses.*
The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the residential household living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the residential household living category and is specifically based on the:
 - a. *number, size and location of other uses not in the residential household living category in the residential; and*

- b. intensity and scale of the proposed use and of existing residential household living uses and other uses.*

Relevant Facts: Fieldstone Memory Care Center was approved by CUP on December 13, 2017, Z17-489CUP3. It is located across Freya Street from the subject site. While the childcare use will add additional vehicle trips to Freya, the City Traffic Engineer did not indicate that concurrency could not be achieved. Access will be directly onto an arterial and not directed to local access residential streets.

The site will be required to meet the residential development standards with regards to setbacks, height, lot coverage and landscape screening. The proposal will also be required to comply with the institutional design standards.

Staff finds this criterion is met.

2. *Physical Compatibility.*
- a. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks and landscaping; or*
- b. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping and other design features.*

Relevant Facts:

The applicant provided building elevations as a part of their application, which indicate that the building is keeping within the residential character of the neighborhood. Additionally, institutional design standards require compatibility between more intensive uses and the lower intensity uses of adjacent residential uses. During the permitting process, the applicant will be required to adhere to design standards through treatment of blank walls, providing prominent entrances, designing appropriate massing, and providing necessary screening. The applicant's site plan indicates providing required perimeter landscaping and screening.

Staff finds this criterion is met.

3. *Livability.*
- The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:*
- a. noise, glare from lights, late-night operations, odors and litter; and*
- b. Privacy and safety issues.*

Relevant Facts: The applicant has stated that not all children present at the center will be outside at the same time and that any noise associated with children playing will be typical. The playground is located in the front of the building away from existing single-family residential uses. The site will include landscaping to act as an additional buffer as well. Any new overhead lighting is required to be contained on the site per SMC 17C.110.520 Lighting. No late-night operations are proposed and the use will be required to adhere to the City Noise ordinance stated in SMC Title 10 (10pm-7am quiet hours). Refuse will be screened and landscaped and will have its weekly pick up services.

Staff finds this criterion is met.

4. *Public Services.*

- a. *The proposed use is in conformance with the street designations of the transportation element of the Comprehensive Plan.*
- b. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include:*
 - a) *street capacity, level of service and other performance measures;*
 - b) *access to arterials;*
 - c) *connectivity;*
 - d) *transit availability;*
 - e) *on-street parking impacts;*
 - f) *access restrictions;*
 - g) *neighborhood impacts;*
 - h) *impacts on pedestrian, bicycle and transit circulation;*
 - i) *safety for all modes; and*
 - j) *adequate transportation demand management strategies.*
- c. *Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems concept are acceptable to the engineering services department.*

Relevant Facts:

As mentioned above, concurrency can be met for this proposal. The proposed use is in conformance with the street designation. The Comprehensive Plan designated Freya Street as a Principal Arterial. Principal Arterials are designed to permit relatively unimpeded traffic flow between major traffic generators. The site has access to all City of Spokane public services, and will not require any additions to be made in order to fully accommodate the proposed site development.

Staff finds this criterion is met.

DECISION

TO APPROVE the Conditional Use Permit to allow the construction of a new childcare center, located at 4504 S Freya, 3585, 3529, 3557 and 3545 E 46th Ct.; substantially in conformance with the plans and application on file in Planning and Development, and the following conditions of approval:

1. The project will be developed in substantial conformance with SMC 17C.110.500, Land Use Standards, Residential Zones, Institutional Design Standards, to maintain compatibility with, and limit the negative impacts on surrounding residential areas.
2. A Boundary Line Adjustment will be required to aggregate all 5 contiguous lots back into one lot.
3. No parking is permitted in the front yard setback of the property in residential zones.
4. Vehicular access shall be from Freya Street.
5. All new parking areas, driveways, utility, stormwater, and street improvements shall be designed by a Professional Engineer, licensed with the State of Washington. Design and construction of these improvements shall be in accordance with City Standards and shall be complete prior to occupancy of any facilities.

6. The Spokane Tribe of Indians recommends that an inadvertent discovery plan be in place. If any artifacts or human remains are found upon excavation, the Spokane Tribe of Indians and the City of Spokane Planning & Development Services shall be immediately notified and the work in the immediate area cease. Pursuant to RCW 27.53.060 it is unlawful to destroy any historic or prehistoric archaeological resources. RCW 27.44 and RCW 27.53.060 require that a person obtain a permit from the Washington State Department of Archaeology & Historic Preservation before excavating, removing or altering Native American human remains or Archaeological resources in Washington.
7. Prior to the issuance of building permits for the construction contemplated in this conditional use permit application, the applicant shall submit evidence to this file that the property owner has signed and caused the "Conditional Use Permit Agreement" to be recorded with the Spokane County Auditor's Office.
8. Adhere to any additional performance and development standards documented in comment or required by City of Spokane, Spokane County Washington State, and any Federal agency.
9. This approval does not waive the applicant's obligation to comply with all of the requirements of City Departments and outside agencies with jurisdiction over land development.

Time Limitation.

*A CUP (Type I or Type II) application automatically expires and becomes void if the applicant fails to apply for a building permit within **three years** of the effective date of the CUP.*

NOTICE OF RIGHT TO APPEAL

Appeals or requests for reconsideration of decisions by the Planning Director are governed by Spokane Municipal Code 17G.060.210 – Appeals. Decisions of the Planning Director regarding Type I or II applications are final unless appealed to the City of Spokane Hearing Examiner. All appeals must be filed with the Development Services Center within fourteen (14) calendar days of the date of the decision. All requests for reconsideration must be filed with Development Services Center within seven (7) days of the date of the decision.

The date of the decision is July 12, 2021.

THE DATE OF THE LAST DAY TO APPEAL IS July 26, 2021 AT 5:00 P.M.

In addition to paying the appeal fee (\$250) to appeal the decision, the ordinance requires payment of a transcript fee to the City of Spokane to cover the costs of preparing any required transcripts.



Louis Meuler, Interim Planning Director
City of Spokane

By: Tami Palmquist, Principal Planner
Planning and Development