

RESOLUTION NO. ZA2021-087

A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT NO. UP2021-040 TO INCREASE THE CAPACITY OF AN EXISTING CHILD DAY CARE HOME FROM EIGHT (8) TO FOURTEEN CHILDREN AT 1126 GOLDENROD AVENUE (PA2021-244)

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Gordon Preschool, with respect to property located at 1126 Goldenrod Avenue, and legally described as Lot 67 of Tract 2202, requesting approval of a minor use permit.
2. The applicant proposes to increase the capacity of an existing child day care home from (eight) 8 to 14 children. The hours of operation are from 9:00 a.m. to 1:00 p.m., Monday through Friday. No physical changes are proposed to the existing residence, which includes three (3) existing open parking spaces on the driveway. The proposed development complies with all applicable development standards and no deviations are requested.
3. The subject property is designated Single Unit Residential Detached (RS-D) by the General Plan Land Use Element and is located within the Single-Unit Residential (R-1-6000) Zoning District.
4. The subject property is not located within the coastal zone.
5. A public hearing was held on December 16, 2021, online via Zoom. A notice of time, place and purpose of the hearing was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt pursuant to Section 15301 of the California Code of Regulations (Title 14, Division 6 Chapter 3, Guidelines for Implementation of the California Environmental Quality Act) under Class 1 (Existing Facilities).
2. Class 1 exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use. The proposed project consists of the increase in occupancy for an existing child day care home use from (eight) 8 to 14 children without any physical changes to the existing dwelling.

SECTION 3. REQUIRED FINDINGS.

Child Day Care Facilities

In accordance with Section 20.48.070 (Day Care Facilities) of the Newport Beach Municipal Code, the following standards are set forth for child day care facilities:

Standard:

- A. *The operator of a small or large adult or child day care home shall obtain a license from the California Department of Social Services.*

Fact in Support of Standard:

1. The operator of the child day care home currently has an active license from the California Department of Social Services for a maximum capacity of eight (8) children. The operator is in process of obtaining a license to increase the capacity to 14 children.

Standard:

- B. *The single-family dwelling in which each small and large adult or child day care home is located shall be the principal residence of the care provider, and the use shall be clearly residential in character, and shall be accessory to the use of the property as a residence.*

Facts in Support of Standard:

1. The single-family dwelling is the principal residence of the care provider. The dwelling includes 5,442 square feet of living area and a three (3)-car garage. The dwelling includes a kitchen, four (4) bedrooms, an upstairs study area, and a subterranean-level garage, which are off-limits to children and not a part of the day care facility.
2. The hours of operation of the child day care home use is from 9:00 a.m. to 1:00 p.m. and is limited in nature as an accessory use to the residence.

Standard:

- C. *A large adult or child day care home within a residential zoning district shall not be located within five hundred (500) feet of another day care home.*

Fact in Support of Standard:

1. There are no day care facilities located within five hundred (500) feet of the subject property.

Standard:

- D. A minimum of two off-street parking spaces as a drop-off and pick-up area shall be provided, in addition to the spaces required for the dwelling unit. A driveway may be used to provide these spaces, subject to approval by the Traffic Engineer based on traffic and pedestrian safety considerations.*

Fact in Support of Standard:

1. The existing dwelling provides three (3) open parking spaces on the existing driveway. Additionally, street parking is available on Goldenrod Avenue. The project has been reviewed by the Public Works Department and there are no improvements necessary for traffic and pedestrian safety considerations.

Standard:

- E. In order to protect adjacent residential dwellings from noise impacts, a day care home within a residential zoning district shall only operate a maximum of fourteen (14) hours for each day between the hours of 6:00 a.m. and 8:00 p.m. and shall only conduct outdoor activities between the hours of 7:00 a.m. and 7:00 p.m.*

Fact in Support of Standard:

1. The existing hours of operation are from 9:00 a.m. to 1:00 p.m., Monday through Friday and are proposed to remain. The child day care home has previously operated with these hours without negative impacts to the surrounding neighborhood.

Minor Use Permit

In accordance with Section 20.52.020.F (Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a minor use permit are set forth:

Finding:

- F. The use is consistent with the General Plan and any applicable specific plan.*

Facts in Support of Finding:

1. The General Plan Land Use Element designates the site as Single Unit Residential Detached (RS-D), which is intended for a range of detached single-family residential dwelling units on a single legal lot and does not include condominiums or cooperative housing.
2. The lot currently consists of a single-family residence with an accessory small child day care home. The proposed project is for an increase in capacity from a small child day care home (eight [8] or fewer) to a large child day care (nine [9] to fourteen [14]). The applicant proposes to have a maximum of 14 children at any time.

3. The child day care home is compatible with the surrounding neighborhood, which is comprised of single-family residences. The use provides child-care services for the surrounding neighborhood. Additionally, the limited hours of operation from 9:00 a.m. to 1:00 p.m. reduce the opportunity for negative impact to the residential neighborhood.
4. The subject property is not part of a specific plan area.

Finding:

- G. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code.*

Facts in Support of Finding:

1. The zoning designation for the subject property is Single-Unit Residential (R-1-6000), which is intended to provide for areas appropriate for a range of detached single-family residential dwelling units, each located on a single legal lot, and does not include condominiums or cooperative housing. Pursuant to Zoning Code Section 20.18.020 (Residential Zoning Districts Land Uses and Permit Requirements), large child day care uses (nine [9] to 14 children) are permitted subject to the approval of a minor use permit.
2. The Zoning Code requires a three (3)-car garage for the single-unit residence. The existing three (3)-car garage complies with the requirements of the Zoning Code.

Finding:

- H. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity.*

Facts in Support of Finding:

1. The subject lot is located within the Harbor View Hills Community Association, which is a residential community comprised of single-family residences. The child day care home is an accessory use to the single-unit residence, which is the primary use on the property.
2. The proposed child day care home will maintain limited hours of operation from 9:00 a.m. to 1:00 p.m., Monday through Friday for preschool instruction, and from 1:00 p.m. to 4:00 p.m. for extended care and has been conditioned to comply with the City's noise ordinance.

Finding:

- I. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities.*

Facts in Support of Finding:

1. The project site consists of a single-unit residence which operates an existing child day care home as an accessory use. The proposed project is for the expansion of capacity from eight (8) to 14 children and does not include any physical changes to the residence which would prohibit access.
2. The existing residence has been reviewed to ensure adequate public and emergency vehicle access, public services, and utilities were provided for on-site. The existing plans of the residence were reviewed for compliance with applicable building and fire codes.

Finding:

- J. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, and safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding:

1. The existing child day care home has operated without being detrimental to the surrounding neighborhood. There is not another child day care home within 500 feet of the subject property to cause an overconcentration of this use for the neighborhood.
2. The child day care home has limited hours of operation between 9:00 a.m. and 1:00 p.m.
3. The subject property includes three (3) driveway parking spaces for drop-offs. The child care home use is not expected to create a parking issue within the neighborhood.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2021-040, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
2. This action shall become final and effective 14 days following the date this Resolution was adopted unless within such time an appeal or call for review is filed with the Community Development Director in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 16TH DAY OF DECEMBER, 2021.



Jaime Murillo
Zoning Administrator

EXHIBIT “A”**CONDITIONS OF APPROVAL**

(Project-specific conditions are in italics)

1. The development shall be in substantial conformance with the approved site plan, floor plans and building elevations stamped and dated with the date of this approval (except as modified by applicable conditions of approval).
2. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
4. This Use Permit may be modified or revoked by the Zoning Administrator if determined that the proposed uses or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
5. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Use Permit or the processing of a new Use Permit.
6. *The applicant shall obtain a building permit to add a large day care home use to the existing single-family residence.*
7. *There shall be a maximum of 14 children for the child day care home use at any given time during operation hours.*
8. *The hours of operation are limited from 9:00 a.m. to 1:00 p.m., Monday through Friday for preschool instruction, and from 1:00 p.m. to 4:00 p.m. for extended care.*
9. *The home day care use shall comply with California Building Code Section 455 (Large Family Day-Care Homes).*
10. *The residence shall maintain a minimum of two (2) off-street parking spaces as a drop-off and pick-up area. A driveway may be used to provide these spaces.*
11. *The use shall maintain a valid and active license from the California Department of Social Services.*
12. Prior to the issuance of a building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.

13. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

14. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner or the leasing agent.
15. The exterior of the residence shall be maintained free of litter and graffiti at all times. The owner or operator shall provide for daily removal of trash, litter debris and graffiti from the premises and on all abutting sidewalks within 20 feet of the premises.
16. Storage outside of the building in the front of the property shall be prohibited.
17. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
18. This approval shall expire and become void unless exercised within 24 months from the actual date of review authority approval, except where an extension of time is approved in compliance with the provisions of Title 20 Planning and Zoning of the Newport Beach Municipal Code.
19. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of Gordon Preschool including, but not limited to, Minor Use Permit No. UP2021-040 (PA2021-244). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant

shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.