REGULAR MEETING OF THE
CITY OF CONCORD
ZONING ADMINISTRATOR
9:00 a.m., Wednesday, June 26, 2019
CITY COUNCIL CHAMBER
1950 Parkside Drive, Concord

AGENDA

PUBLIC COMMENT PERIOD
(The public may speak on any item within the jurisdiction of the Zoning Administrator not listed on this agenda. Approximately 15 minutes is allocated for the Public Comment Period, and each speaker will be allowed approximately 3 minutes.)

HEARINGS:

1. My Third Home Family Child Care Appeal (PL19057 – AP) – Appeal of an approval for a large family child care home for up to 14 children at 1165 Linden Drive. The General Plan designation is Low Density Residential; Zoning classification is RS6 (Single Family Residential, minimum lot size of 6,000 square feet); APN 128-232-011. The proposed project is Statutorily Exempt pursuant to CEQA Section 15274, Family Day Care Homes, which states that CEQA does not apply to the establishment or operation of a large family day care home which provides in-home care for up to 14 children, as defined in Section 1596.78 of the Health and Safety Code. Therefore, no environmental review is required. Project Planner: Frank Abejo @ (925) 671-3128

ADJOURNMENT

Next Regularly Scheduled Zoning Administrator Meeting: July 10, 2019

In accordance with the Americans with Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3021, at least five (5) days in advance of the hearing. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

Correspondence and writings received within 72 hours of the scheduled Zoning Administrator meeting that constitute a public record under the Public Records Act concerning any matter on the agenda is available for inspection during normal business hours at the Permit Center located at 1950 Parkside Drive, Concord. For additional information contact the Planning Division at (925) 671-3152.

APPEALS

Decisions of the Zoning Administrator may be appealed to the Planning Commission. Appeals and the required filing fee must be filed with the City Clerk within ten (10) days of the decision.

If you challenge any of the foregoing described actions in court, an appeal first of said actions to the Zoning Administrator, Planning Commission, and/or City Council (as applicable) in the manner and within the time period established in Development Code Chapter 18.510 (Appeals and Calls for Review) is required, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Zoning Administrator and/or Planning Commission (as applicable) at, or prior to, said public hearing.
DATE: June 26, 2019

SUBJECT: My Third Home Family Day Care Appeal (PL19057 – AP)

Recommendation: Adopt Order No. 19-09ZA, denying the appeal of the administrative application approval for My Third Home Family Day Care

CEQA: Establishment and operation of large family day care homes, which provide in-home care for up fourteen (14) children are statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15274 – Family Day Care Homes of the CEQA Guidelines. Therefore no environmental review is required for the project.

I. Introduction

A. Application Request

Appeal of an Administrative Application approving a large family day care for up to 14 children at 1165 Linden Drive.

B. Location

The proposed large family day care is proposed at 1165 Linden Drive APN 128-232-011
II. Background

The licensing of child day care facilities is governed by California Health and Safety Code, Sections 1596.70 – 1597.621 (a.k.a. “California Child Day Care Act,” hereafter referred to as “the Act”). Through the Act, the Legislature has stated its intent, “family day care homes for children must be situated in normal residential surroundings so as to give children the home environment which is conducive to a healthy and safe development. It is the public policy of this state to provide children in a family day care home the same environment as provided in a traditional home setting.”

Under the Act, small family day care homes (serving a maximum of 8 children) are considered a residential use of the property that do not require a permit or approval from local jurisdictions. The Act further requires local jurisdictions to allow large family day care homes (serving a maximum of 14 children) on properties zoned for single-family dwellings. While the Act allows local jurisdictions to require a permit for large family day care homes on properties zoned for single-family dwellings, family day care homes must be approved when they comply with “reasonable local standards, restrictions, or requirements relating to space and concentration, parking, traffic control, and noise.” Moreover, the Act prohibits local jurisdictions from requiring a public hearing prior to approving large family day homes, and limits any public notification for a proposed family day care to properties within 100 feet of the facility. Further, both small and large family day care homes require licensure by the State of California through its Community Care Licensing Division.

On April 4, 2017, the City Council amended provisions of Concord Development Code (CDC) § 18.200.050, related to child day care facilities to ensure consistency with the Act by implementing the following changes:

1) The discretionary minor use permit and public hearing requirement was replaced with a streamlined, non-discretionary administrative permit that must be approved without a public hearing if the large family day care home is determined to comply with the following standards:
   a) The facility will provide one off-street parking space per employee (in addition to the parking required for the residential use) and a safe area for pick-up and drop-off of children.
   b) The location of the facility, including outdoor play area, is sited to minimize noise impacts to neighboring properties and noise levels will comply with the standards identified in the general plan for residential uses.
   c) The facility is not within 100 feet of any other such licensed facility.
   d) The primary use of the home is as a residence.
   e) The facility meets all applicable state licensing requirements.

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1 Cal. Health & Safety Code § 1597.40
2 Id. § 1597.45
3 Id. § 1597.46 (a)(3)
2) Notification to property owners and tenants within 100 feet of the proposed facility informing them of the City’s decision and the opportunity to appeal the decision to the Zoning Administrator.

3) A reduction in the application fee to $300.

The City has approved six large family day care facilities, without an appeal being filed, since amending its day care provisions. On April 11, 2019, the City approved its seventh large family day care home administrative permit to Luciana Moscoso to operate My Third Home Family Day Care at 1165 Linden Drive. On April 22, 2019, Daryl Bergman filed a timely appeal of the approval.

III. General Information

A. General Plan and Zoning

The General Plan designation for the proposed large family day care is Low Density Residential. The property is zoned RS-6 (Single-family residential; minimum 6,000 square foot lot).

B. CEQA Status

Establishment and operation of large family day care homes, which provide in-home care for up to fourteen (14) children are statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15274 – Large Family Day Care Homes of the CEQA Guidelines. Therefore no environmental review is required for the project.

IV. Day Care Description

Luciana Moscoso currently operates a State-licensed small family day care home for up to eight children at her residence, located at 1165 Linden Drive. Ms. Moscoso has applied for a large family day care license with the State’s Department of Social Services Community Care Licensing Division to increase the number of children served by the day care from a maximum of eight to a maximum of 14 children (Attachment 3).^4

The day care will operate on weekdays, generally between the hours of 7:30 a.m. to 6:00 p.m. Children are typically dropped off between 7:30 a.m. – 8:00 a.m. and picked up between 5:00 p.m. – 6:00 p.m. Outdoor play, recreation, and snack time generally occurs between 10:00 a.m. – 11:00 a.m., as weather permits. Ms. Moscoso will employ one assistant as required by State law for large family day care homes.

Pursuant to CDC § 18.160.040, single-family homes require two off-street parking spaces and the subject residence provides at least four parking spaces, two in the garage and two in the existing driveway. The existing driveway can be used by the day care assistant/employee and for loading/unloading during drop off and pick up times. Additionally, there are no restrictions on Linden Drive or surrounding streets that would prohibit its use for parking or loading by day care clients.

^4 Up to 14 children allowed if two of the children belong to the day care operator.
V. Appeal

Ms. Bergman’s reasons for appealing the proposed large family day care facility are detailed in Attachment 2. In summary, Ms. Bergman opposes the child care facility for the following reasons:

1) The location of the day care on Linden Drive is problematic due to the excessive overcrowding of the homes and apartments, which have eliminated street parking. The situation makes it impossible for customers or the one day care employee to use street parking.
2) The area does not receive the same level of city services available to other parts of the city, such as street sweeping and garbage pickup.
3) There will be insufficient parking if all parents arrive at the same time for pickup.
4) The neighborhood is zoned residential single family and not commercial or mixed use.
5) This is the third day care operated by the applicant.
6) Property values will decrease.
7) The day care is not consistent with General Plan policies related to preserving neighborhood characteristics.
8) The day care is not appropriate due to various traffic issues and accidents that have occurred in the area.

VI. Analysis

As explained above, the California Child Day Care Act limits the City’s discretion to approve or deny a large family day care home on whether the day care complies with standards adopted by the City. The appeal discusses various concerns with Linden Drive and the surrounding area, with an emphasis on existing traffic and parking conditions. However, the concerns raised are unrelated to the large family day care standards adopted by the City or fail to make the case that the proposed day care cannot meet the required standards. For example, the appeal asserts that there will not be enough parking due to “excessive overcrowding of the homes and apartments, which have eliminated parking on this street” or because of “parents…picking up their kids at the same time.” These points cannot be considered because the only parking-related standard a large family day care must meet is to provide an off-street parking space for the assistant/employee, which will be provided by the existing driveway. Furthermore, staff does not agree with the appeal’s implication that “children running out into the street” and visibility issues caused by large trucks will result in safety issues during drop off and pick up activities. It is reasonable to expect that children will be safely monitored by both parents and the day care operator at all times.

VII. Public Contact

Notification was mailed to all owners and occupants of property within one-hundred (100) feet of the subject parcel. This item has also been posted at the Civic Center and at the subject site at least 10 days prior to the public hearing.

VIII. Summary and Recommendations

Staff finds that the appeal fails to make the case that the proposed family day care does not meet the standards related to large family day cares set forth in Development Code Section. Therefore, staff recommends that the Zoning Administrator open the public hearing, consider the staff report and presentation by the applicant, the public testimony, and close the hearing upon completion of public testimony. Staff recommends the Zoning Administrator adopt Order No. 19-09ZA denying the appeal
of the administrative application approval for My Third Home Large Family Day Care at 1165 Linden Drive.

Prepared by: 

[Signature]

Frank Abejo  
Principal Planner  
(925) 671-3128  
Frank.Abejo@cityofconcord.org

Attachments:  
1 - Order No. 19-09ZA  
2 - Appeal from Ms. Daryl Bergman date-stamped received April 22, 2019  
3 - My Third Home Large Family Day Care Application Materials
ZA ORDER NO. 19-09

OFFICE OF THE ZONING ADMINISTRATOR
CITY OF CONCORD

DENYING THE APPEAL OF AN ADMINISTRATIVE APPLICATION APPROVING MY
THIRD HOME LARGE FAMILY DAY CARE AT 1165 LINDEN DRIVE

Appellant: Daryl Bergman
Project Name: My Third Home Large Family Day Care

WHEREAS, the licensing of child day care facilities is governed by California Health and
Safety Code, Sections 1596.70 – 1597.621 (a.k.a. “California Child Day Care Act,” hereafter referred


to as “the Act”); and

WHEREAS, the intent of the Act is to address a statewide need and concern on the
availability of child care services by encouraging family day care homes to establish in residential
surroundings and by streamlining the regulatory review for family day cares; and

WHEREAS, on April 4, 2017, the City Council amended provisions related to large family
day care homes contained in Development Code Section 18.200.050 for consistency with the Act; and

WHEREAS, Luciana Moscoso currently operates My Third Home Family Day Care, a State-
licensed small family residential day care home for up to eight children at her residence located at
1165 Linden Drive; and

WHEREAS, on March 11, 2019, Luciana Moscoso submitted an administrative application to
the City to increase the number of children served by the day care for a maximum of 14 children; and

WHEREAS, Luciana Moscoso has submitted an application to the California Department of
Social Services Community Care Licensing Division for a large family day care home to serve a
maximum of 14 children; and

WHEREAS, on April 11, 2019, the Planning Division approved the administrative application
for My Third Home after determining that the proposed large family day care home complies with the
applicable standards and requirements of Development Code Section 18.200.050; and

WHEREAS, pursuant to the provisions of the California Environmental Quality Act (CEQA)
of 1970, as amended, the establishment and operation of large family day care homes, which provide
in-home care for up to fourteen (14) children are statutorily exempt under Section 15274 – Large
Family Day Care Homes and no further environmental review is required; and
WHEREAS, on April 11, 2019, notice was provided to property owners and tenants within 100 feet of the proposed large family day care home of the administrative application approval and the opportunity to appeal the decision; and

WHEREAS, on April 22, 2019, Daryl Bergman, 1160 Linden Drive, filed a timely appeal of the administrative application approval; and

WHEREAS, on June 26, 2019, the Zoning Administrator, after providing all notices required by State law and the Concord Municipal Code, held a public hearing to consider the appeal; and

NOW, THEREFORE, BE IT RESOLVED that the Zoning Administrator does hereby deny the appeal of the administrative application for My Third Home Family Day Care for up to 14 children at 1165 Linden Drive, based on the following findings:

1. My Third Home Family Day Care is consistent with the California Child Day Care Act and Development Code; the City’s decision to approve or deny My Third Home Family Day Care is limited to whether the proposal complies with standards adopted by the City of Concord for large family day cares.

2. My Third Home Family Day Care complies with the following requirements for large family day cares: a) the facility will provide one off-street parking space per employee (in addition to the parking required for the residential use) and a safe area for pick-up and drop-off of children; b) the location of the facility, including the outdoor play area, is sited to minimize noise impacts to neighboring properties and noise levels will comply with the standards identified in the general plan for residential uses; c) the facility is not within 100 feet of any other such licensed facility; d) the primary use of the home is a residence; and e) the facility meets all applicable state licensing requirements.

3. The concerns raised by the appellant are unrelated to the large family day care home standards adopted by the City, or fail to make the case that the proposed day care cannot meet the standards. For example, the appeal asserts that there will not be enough parking due to “excessive overcrowding of the homes and apartments, which have eliminated parking on this street” or because of “parents...picking up their kids at the same time.” These points cannot be considered because the only parking-related standard a large family day care must meet is to provide an off-street parking
space for the assistant/employee and a safe pick up and drop off location, which will be provided by
the existing driveway. Furthermore, the appellant’s examples of “children running out into the street”
and visibility issues caused by large trucks will not prohibit the safe pick up and drop off of children
as it can be reasonably expected that children will be safely monitored by parents and/or the daycare
at all times.

Based on the above findings, on June 26, 2019, the Zoning Administrator denied said appeal
of the administrative application approval for My Third Home Family Day Care to serve up to 14
children at 1165 Linden Drive.

Michael P. Cass
Zoning Administrator
TO: City Council
City of Concord
1950 Parkside Drive, MS#157
Concord, CA 94519-2578

RECEIVED
CITY OF CONCORD
Concord
2019 APR 22 PM 4:05
32 min

CITY CLERK'S OFFICE
ADMINISTRATIVE SERVICES

I hereby appeal the decision / requirement of the Planning Department (ADMINISTRATOR OR COMMISSION)
in approving / denying the application of My Third Home Family Childcare, Luciana Mascaso (NAME OF APPLICANT) on 4/22/2019 for Large Family Day Care (TITLE OF ITEM BEING APPEALED).

Please indicate the specific action(s) or requirement(s) being appealed:
1. The current neighbors have been involved in hit and run accidents involving homeowners' vehicles and homes have been hit because of the blind curve.
2. An immediate neighbor to this project works nights. This neighborhood already hosts 2 of Concord's large family day cares. Two of them are flanking the blind curve. The permit mandates that the business has on-site back parking space per employee in addition to the parking required for residential use. A safe area for pickup and drop off for children but a neighbor witnessed a parent parking the car in the middle of the road running into to pick up their child. The dream continues...

Daryl H. Bregman
(firm name)

ADDRESS FOR NOTICES
1156 Linden Dr, Concord, CA 94520

APPELLANT'S ADDRESS
1160 Linden Dr, Concord, CA 94520

HOME PHONE
925-890-6748
BUSINESS PHONE
925-890-6708

SIGNATURE OF APPELLANT / REPRESENTATIVE
Daryl H. Bregman

NAME OF RESPONSIBLE PLANNER
F. Abejo

PROJECT PLANNER

FOR STAFF USE ONLY
ADDRESS OF PROPERTY INVOLVED
1165 Linden Drive

ASSESSOR'S PARCEL NUMBER(S)
128-232-011

MUNICIPAL CODE SECTION
19.206.050

FILE NUMBER
PDA057-AA

FILE TITLE
My Third Home Family Child Care

RECEIVED BY
F. Abejo

REFERENCE SHEET

CITY CLERK USE ONLY

Received written appeal on April 22, 2019 4:07 p.m.

Scheduled for Council agenda of to set for Public Hearing on

Copies distributed to appropriate parties

DEPUTY CITY CLERK

PINK - APPELLANT
WHITE - CITY CLERK
CANARY - ORIGINATING DEPARTMENT
Reasons for the permit appeal of My Third Home Family Childcare owned by Luciana Moscoso at 1165 Linden Dr, Concord, CA 94520

1) The location of Ms Moscoso's Child Day Care on Linden Dr is extremely problematic due to the excessive overcrowding of the homes and apartments, which have eliminated parking on this street. This street is extremely busy and there is no parking available at all on the street on the weekends or after the work day when people are picking up their kids from the day care. This makes it impossible for Ms Moscoso to claim that she can provide parking for her employees or the children's parents. In this neighborhood nobody can ever guarantee a parking spot due to Concord's policy of increasing density in the Monument Corridor, and over occupancy of the homes and the apartments surrounding us.

2) This community of homeowners does not currently receive the same level of city services available to other homeowners elsewhere in the city. These services include street sweeping and garbage pick up. It is not the fault of the city drivers but the city's general plan housing element, which has up zoned this already densely populated community.

3) There are only 4 large family day care centers in Concord. Three of them are in Cambridge's single-family neighborhood. Linden and Victory are the same street. Victory turns into Linden at the curve. One large family daycare is on the Victory side of the curve and this proposed business is the Linden side of the curve. In 2004 a truck ended up in my house as a result of speeding drunks going to fast. Every house has had vehicles or property destroyed in hit and run accidents. This business will increase the possibility of these types of accidents.

4) Due to the fact that most of the vehicles are large trucks it makes it extremely difficult to back out of our driveways safely. Many here have older cars without the ability to alert the driver of cars coming and visibility is zero. We also fear a child running out into the street between two vehicles that obstruct visibility.
5) One neighbor saw a parent park and leave their vehicle in the middle of the street and then the parent ran in to get their child because she couldn’t find parking.

6) The number of children in the day care is also an issue. There are no guarantees that all the parents would not be picking up their kids at the same time and there would be no parking for 14 parents or anyone else who lives in the neighborhood.

7) The number of hit and runs in this neighborhood is extremely excessive. One neighbor has been involved in 4 hit incidents involving damage to their vehicles 6 times. As I mentioned I had someone else’s vehicle inside of my already full garage after atwo drunks (uninsured, unlicensed, undocumented) spun out of control. Every home here has had multiple incidents of hit and run accidents…and we’re the ones who are getting hit.

8) This neighborhood is zoned residential single family and not commercial or mixed use.

9) This street is a feeder street so the number of cars, trucks and commercial vehicles driving through it is quite large. We need a traffic study to determine what that number is and how do we mitigate the hit and run accidents that plague the people that live on this street. Most large day cares are located on busy arterial roadways not narrow feeder streets.

10) This is the third daycare this woman has opened in the Cambridge neighborhood. Evidently her business is booming at our expense.

11) It will further decrease our property values and we have to disclose it’s existence when we sell our homes. We already have the worst schools, the most crime, the worst parking, the least green space and the most blight and now this?

12) A neighbor saw Ms Moscoso smoking at 4:30 when the children were still there. I did not see it and I do not know if the children
were outside with her when she was smoking or if she was by herself outside but it is a cause for concern.

13) The appeal process regarding this application leaves a lot to be desired. Some neighbors believe that there was lack of transparency and an attempt to eliminate our input. We were given false information that we had to come up with $99.00 for the appeal paperwork and $1500 for filing it. This was not true and we feel that it was an attempt to keep us from filing it.

I happened to call Frank Abeyo this morning for information and he told me that we did not need to pay $1500, however, nobody called to tell us that this was the case. Many of the neighbors work in San Francisco and are unable to get to meetings or go to city hall. They are hourly workers and do not have the funds to fight city hall. If I had not called I would not know about the removal of the fee. Frank, kindly brought the application to my home, which I truly appreciate. Unfortunately, this clumsy process has made those of us who live here feel more forgotten and marginalized than we were prior to this experience. Denying this application for a LARGE family day care permit could go far in addressing our concerns.

The fact that we received the notice 2 days prior to an important religious holiday when people are unavailable made me think this city is using the political tool of putting out bad news on the eve of holidays or weekends, such as the Mueller Report. It makes us think the city is just trying to cram this through when we would not be around to oppose it. This project does not belong in this neighborhood.
Addendum to appeal application for a Day Care My Third Family Day Care at 1165 Linden Dr:

Since I turned in the appeal application I realized that I had failed to mention other reasons that this location is not appropriate for a day care on this street.

They are listed below:

14) This will not fit with Concord’s Mission Statement for it’s general plan which is to: Preserve Concord’s Neighborhood Characteristics. While that may be true for the rest of Concord’s single-family neighborhoods it appears that has never been the case in the Cambridge Area.

15) I failed to mention that two vehicles that were hit (and the culprit ran) were parked right in front of the Day Care. One car was totaled.

16) Three of the hit and run incidents involved extremely drunk drivers. Two of those drunk-driving incidents occurred during the day. We do not know if the hit and runs that happened at night involved drunk drivers.

17) Frequently the Concord PD has alcohol check-points and this may encourage drunks to cut through our community to avoid the police check-points. I am not against the check-points but this is just another safety concerns.

18) I am uncomfortable with the fact that there is a trail that is occupied by homeless people and those children should NEVER be left alone in that yard as some of the homeless are sex-offenders. I am not saying that all homeless are sex offenders or child predators but that because we don’t know who they are there is a risk.
CITY OF CONCORD
PLANNING DIVISION
PHONE: (925) 671-3152
FAX: (925) 671-3381

APPLICATION FORM

Date Received by Planning: 3/11/19

PROJECT INFORMATION:

PROJECT NAME: My Third Home
PROJECT SITE ADDRESS/LOCATION: 1165 Linden Dr., Concord CA 94520
ASSESSOR'S PARCEL NUMBER: 128-232-011

PROJECT DESCRIPTION: (Provide brief description and submit a more detailed description as an attachment.)
Large Family Day Care

14 children

NOTE: All applicants are encouraged to hold a neighborhood meeting with nearby property owners and tenants early in the development review process. Planning Division staff will work with applicants to schedule the neighborhood meeting.

APPLICANT'S CONTACT INFORMATION

NAME/COMPANY: Luciana Mascaro / My Third Home
ADDRESS: 1165 Linden Dr., Concord, CA 94520
CITY, STATE: Concord, CA ZIP: 94520
BUSINESS PHONE: 925.688.1335 CELL: 925.457.8600
FAX: EMAIL: lucimascaro@hotmail.com

PROPERTY OWNER'S CONTACT INFORMATION

NAME/COMPANY: 
ADDRESS: 
CITY, STATE: 
ZIP: 
BUSINESS PHONE: 
CELL: 
FAX: 
EMAIL: 

Agent Authorization Note: If the Applicant is not the Property Owner, then the Property Owner must sign below to authorize the Applicant as his/her official representative.

I, ___________________________, Owner, authorize ___________________________ to act as the official representative on my behalf for this project and in all matters relating to this application. I have read and agree with all of the above (application must be signed by property owner).

Property Owner's Signature: ___________________________
Date: 3/11/19

FOR PLANNING DIVISION USE ONLY:

FILE NAME: My Third Home Day Care
FILE NUMBERS: PL/9057
APPLICATION RECEIVED BY: 
GP DESIGNATION: 
ASSOCIATED FILES: 
PLANNER: CF
ENGINEER: 
ZONING: 

FEES FIN. REV. CODE

Application PL-4.dot (Rev. 8-17) Page 1 of 2
Facility Sketch (Floor Plan)

Applicants are required to provide a sketch of the floor plan of the home or facility and outside yard. The floor sketch must label rooms such as the kitchen, bath, living room, etc. Circle the names of the rooms that will be used by staff/residents/clients/children. Door and window exits from the rooms must be shown in case of an emergency (see Emergency Disaster Plan). Show room sizes (e.g. 8.5 x 12). Keep close to scale. Use the space below. See back for yard sketch.

Facility Name: My Third Home
Address: 1165 Linden Dr. Lomita CA 90717

Patio/Outside Yard
Living Room
Kitchen
Main Bedroom
Bedroom 2nd
Main Bath
Living Room
Garage
Street Parking
Garden

Received: Mar 11, 2019