

**CITY OF LEAVENWORTH
PLANNING COMMISSION
COMMISSION CHAMBERS, CITY HALL
100 N. 5th Street
Leavenworth, KS 66048**

**REGULAR SESSION
Monday, March 12, 2018
7:00 p.m.**

CALL TO ORDER:

- 1. Roll Call/Establish Quorum**
- 2. Approval of Minutes: December 4, 2017**

OLD BUSINESS:

None

NEW BUSINESS:

- 1. ELECTION OF OFFICERS**
- 2. PROPOSED MEETING TIME CHANGE**
- 3. 2018-03 SUP – 1922 5TH AVENUE**

Conduct a public hearing for Case No. 2013-03 SUP – 1922 5th Avenue. The applicant, Savannah Nelson, is requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 1922 5th Avenue.

OTHER BUSINESS:

ADJOURN:

CITY OF LEAVENWORTH PLANNING COMMISSION

COMMISSION CHAMBERS, CITY HALL
100 N 5th Street, Leavenworth, Kansas 66048

REGULAR SESSION
Monday, December 4, 2017
7:00 PM

CALL TO ORDER:

Commissioners Present

Jay Byrne
Mike Burke
Claude Wiedower
Camalla Leonhard
Sherry Hanson

Commissioners Absent

John Karrasch
Linda Bohnsack

City Staff Present

Julie Hurley
Michelle Baragary

Chairman Byrne called the meeting to order at 7:00pm and noted a quorum was present.

Approval of Minutes: November 6, 2017

Chairman Byrne asked for comments or a motion on the minutes presented for approval: November 6, 2017. Ms. Leonhard moved to accept the minutes as presented, seconded by Mr. Wiedower. The minutes were approved by a vote of 5-0.

OLD BUSINESS:

None

PLANNING COMMISSION PUBLIC HEARING PROCESS:

Chairman Byrne explained the public hearing process for those in the audience. City Planner will provide the staff report based on the request by the applicant and an explanation of the decision factors, which will be used by the Planning Commission with its determination. The City Planner will explain those planning factors and provide the commission with her results of the staff analysis and her recommendation regarding those factors. The Planning Commission can accept or reject the recommendation of the city staff as far as a recommendation but the planning factors themselves are what the commissioners will use as far as making their determination. Once the staff report is provided, the Planning Commissioners may ask questions of the City Planner and the applicant. Once that is completed, the Chairman will open the public hearing. At that time, anyone wishing to speak for or against the Special Use Permit request is invited to the podium. All questions should be addressed to the Planning Commission. The commissioners will then ask the applicant the questions. When the public hearing is complete, there will be a discussion among the commissioners, followed by a motion. There are three motions available: 1) motion to recommend approval to the City Commission, 2) motion to recommend denial to the City Commission, and 3) motion to table the issue for

additional information/consideration. The Planning Commission is not the final decision makers on the Special Use Permit request. The Planning Commission only makes a recommendation to the City Commission.

NEW BUSINESS:

1. 2017-21 SUP – 2115 RIDGEVIEW DRIVE

Conduct a public hearing for Case No. 2017-21 SUP – 2115 Ridgeview Drive. The applicant, Arwa Habib, is requesting a Special Use Permit to allow a Residential Home-Stay in a district zoned R1-9, Medium Density Single Family Residential District. The subject property is a single family home that is part of the Cedar Ridge Drive in the same residential subdivision and is surrounded by other similar single family homes.

Chairman Byrne called for the staff report.

City Planner Julie Hurley stated the applicant, Arwa Habib, is requesting a Special Use Permit to allow a Residential Home-Stay in a district zoned R1-9, Medium Density single Family Residential District. The subject property is a single family home that is part of the Cedar Ridge Drive in the same residential subdivision and is surrounded by other similar single family homes. The owner of the property resides at 2119 Cedar Ridge Drive in the same residential subdivision. The owner currently utilizes the subject property as a short term rental to cover the costs associated with maintaining the property. The subject property is advertised as available for rent on the short-term rental website Airbnb. The subject property is also currently listed for sale.

With the rise of short-term rental properties and home-sharing sites such as Airbnb, the City of Leavenworth has determined that properties identified as meeting this description be processed as a “Residential Home-Stay” as currently defined in the Development Regulations. The Development Regulations define a Residential Home-Stay as follows:

Residential Home-Stay: Any furnished residential structure wherein one limited-term boarder (not to exceed 180 days) is allowed the use of an entire structure and its grounds and housekeeping services are provided at least weekly. No management or owner presence is required and no meals are served. In approval of a ***Residential Home-Stay*** the city may consider impact on neighbors’ parking needs, etc. and place additional requirements as deemed appropriate. Such a business shall be registered with the City Clerk as a rental property.

A Residential Home-Stay is a permitted use in the R1-9 zoning district with the issuance of a Special Use Permit.

Since notification was sent to property owners within 200’ of the subject property, staff has received contact from multiple neighbors indicating concerns with the requested Special Use Permit. Concerns involve parties being held at the property by renters, with at least one incident requiring police involvement.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

A Residential Home-Stay at this location contributes to the economic development and convenience of the public by providing an alternative rental solution for individuals seeking a short-term stay in Leavenworth. However, past incidences at the subject property have indicated a negative impact on existing neighbors.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not believe that the proposed use will cause injury to the value of other property in the neighborhood. A Residential Home-Stay, as defined, is compatible with the R1-9 zoning district and existing land use within the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

The proposed Residential Home-Stay is compatible with existing residential uses within the neighborhood in regards to nature and intensity. Any approval of a Special Use Permit for a Residential Home-Stay will require that the owner of the property ensure that all activities taking place at the property fall within the definition of the use. As the property is situated on a cul-de-sac, parking on the street is limited for existing neighbors. The driveway of the subject property can reasonably accommodate 4 vehicles. With the definition of a Residential Home-Stay stipulating that the property be used by just one limited term boarder, there should be no need for any activity taking place at the property to interfere with parking available to the neighbors.

STAFF RECOMMENDATION:

Ms. Hurley stated staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. The owner of the property shall be registered with the City Clerk as a rental property.
2. The Special Use Permit shall become null and void upon the sale of the property.

3. The property shall be used for the boarding of one limited-term boarder (individual or family) only, and shall not function as an event venue, to include the hosting of parties attended by individuals not listed on the lease agreement.
4. Any guests of the property must park in the driveway or garage of the home.
5. Any police response to the subject property shall be reported to the City Commission, which may result in revocation of the Special Use Permit.

ACTION/OPTIONS:

- Motion, based upon findings as stated to recommend approval to the City Commission
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Chairman Byrne called for questions from the commissioners about the staff report.

Ms. Hines Whitson asked what the situation was with the police department being called.

Ms. Hurley stated there was a party reported to the police department which involved a weapon being fired. At least one arrest was made for underage drinking. This occurred on November 4, 2017.

Ms. Hines Whitson asked if it was a family member who hosted the party.

Ms. Hurley stated she did not believe it was a family member. It was a renter of the property.

Mr. Wiedower asked how the revocation of the Special Use Permit would work if there should be a problem at the property.

Ms. Hurley stated that would be up to the City Commission since the City Commission is the body to grant final approval or denial of the Special Use Permit. If the Special Use Permit were to be approved with these stipulations then any police response would be reported to the City Planner. The City Planner would report the issue to the City Commission and they would make the decision based on the nature of the response if it warranted revocation of the Special Use Permit. It would be the decision of the City Commission if the revocation would be immediate or if they would allow a certain amount of days for the revocation (i.e. 30 days).

Ms. Hines Whitson asked if the Special Use Permit is for the 180 days or is it to make the property a rental property for an unspecified amount of days.

Ms. Hurley stated the 180 days is what a boarder would be limited to. The 180 days is considered short term so a person could choose to rent the property for up to 180 days. Should the Special Use Permit be approved, it would be in place until the property is sold or until the City Commission may have cause to revoke the Special Use Permit.

Mr. Byrne asked for clarification that a Special Use Permit for a Residential Home-Stay is permitted all residential districts, not just the R1-9 District.

Ms. Hurley responded in the affirmative.

Mr. Byrne asked if the City Commission has revoked a Special Use Permit since Ms. Hurley has been employed with the City of Leavenworth.

Ms. Hurley stated that some daycare Special Use Permits have been rescinded because the owner had moved or chose not to pay the renewal fee but she is not aware of any that have been revoked for infractions or anything of that nature.

Mr. Byrne asked if the Planning Commission recommends approval with the conditions provided by staff, how would that keep an incident from occurring.

Ms. Hurley stated the owner would be under the understanding that they must comply with all the conditions. Once a Special Use Permit is in place, the City has more oversight over its operations. If an incident occurs, the City has the right to revoke the permit and disallow the use at the property. It would still be at the discretion of the property owner to ensure they are renting to appropriate individuals and keeping track of the activities occurring at the property.

Mr. Byrne stated one of the conditions is that the property shall be used for the boarding of one limited-term boarder (individual or family) only. Mr. Byrne asked if it is obvious that more than one boarder (individual or family) is living at the property, who would be enforcing this.

Ms. Hurley stated with any Special Use Permit, if they receive a report about activities taking place which are in opposition to what the approval stipulated, the report is sent to the City Commissioners and they will review the use of the Special Use Permit and have the ability to revoke the permit at their discretion.

Mr. Wiedower stated the staff report indicated at least one incident required police involvement. He asked if they would have knowledge of the police being called to this property more than once.

Ms. Hurley stated she spoke with Police Chief Pat Kitchens and verified only one call has been made to this property.

Mr. Burke asked for clarification for the term 'party'.

Ms. Hurley responded her interpretation is no gathering should be taking place at the property. The only person(s) at the property are those listed on the lease agreement.

Mr. Burke asked if airbnb or the homeowner require a list of names for everybody staying at the property.

Ms. Hurley stated she is not sure but the owner could answer that question.

Ms. Hines Whitson asked if someone is currently staying at the property.

Ms. Hurley stated the owner could answer that question.

Mr. Byrne asked if there are currently any Special Use Permits for a Residential Home-Stay.

Ms. Hurley responded there are not. She stated airbnb does not give an exact address of a property but rather shows a general location, which makes it difficult for the city to locate properties like this. This is the first one in a residential area that has been reported to the city.

With no further questions regarding the staff report, Chairman Byrne opened the public hearing.

The petitioner, Arwa Habib, who lives at 2119 Cedar Ridge Drive, addressed the board stating she and her husband have lived in this community for 20 years. The property located at 2115 Ridgeview Drive was purchased for her family. The house is currently for sale. To help with expenses maintaining the property until it sells, the Habib's listed the property on airbnb. She stated there were no issues with the first five people who rented the home. She has a restriction that no more than six people are allowed to live at the property and no parties are allowed. Since the incident with the police, Ms. Habib has added other restrictions to Airbnb, which requires preauthorization prior to making a reservation and a background check. The preauthorization requires names and drivers licenses of the people who will be staying at the house. Ms. Habib further stated she and/or her husband will check on the property 4-5 times per night when the home is rented.

Ms. Leonhard asked how long the home has been for sale.

Ms. Habib stated the house has been on the market for two weeks.

Ms. Hanson asked if the home was rented through airbnb when the people rented the home in November when the police were called.

Ms. Habib said it was through airbnb but the background check and preauthorization restrictions were not on the airbnb account at that time.

Mr. Wiedower states he appreciates the Habib's admitting to making mistakes and learning lessons through this process. However, he further stated it is the Habib's responsibility as property owners to manage their property in a way to keep harmony within the community.

Ms. Habib apologizes for what happened and hopes it does not happen in the future.

Josh Hoppes (3941 21st Street), representing the HOA, addressed the board in opposition of the proposed special use permit. He addresses the findings individually.

1. The proposed special use complies with all applicable provisions of this ordinance.
The HOA does not disagree with this finding.
2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

The HOA believes the special use fails to provide any of this. There are four new hotels in the city limits. Airbnb competes directly with these hotels and pays no transient guest tax. Every time airbnb takes a room away from the four hotels that's fewer dollars for the Convention and Visitors Bureau and less rooms rented at the four hotels, which we have built here in the city. This fails the economic development test.

Mr. Hoppes further states the HOA agrees with staff's last sentence, "past incidences at the subject property have indicated a negative impact on existing neighbors". The operation of a Residential Home-Stay at this location has already had a negative impact on the neighbors in the short time it has been operating, which fails the public welfare test.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Mr. Hoppes argues it does requesting the board to look no farther than the covenants and restrictions that govern their community. The primary purpose of covenants and restrictions is to provide a layer of protection for homeowners in that neighborhood that their property values will be protected from poor property maintenance and undesirable uses. The proposed special use permit would violate Oakwood's covenants in three separate instances.

Mr. Hoppes stated there was another incident on November 18, 2017 where the police were not called. There were five vehicles at the residence. The vehicle tags were from Wyandotte, Douglas, Johnson and Missouri. Mr. Hoppes stated this was another party which occurred after the incident on November 4, 2107 and after the Habib's had put the additional safeguards in place.

Regarding the November 4th incident, Mr. Hoppes stated Mr. Habib came by the subject property while the party was going on and did nothing. The incidences on November 4th and 18th show a property owner who is not capable of properly vetting the tenants in the property. The willful violation of the covenants shows a property owner who does not want to concern himself with the rules that govern his property.

Mr. Hoppes stated the stipulations added by staff are a clear indication that staff has a concern that the property owner will not properly operate the Residential Home-Stay. If the board recommends approval, Mr. Hoppes feels the board is shirking the responsibility and pushing it to the folks in the neighborhood to monitor the operations.

Mr. Byrne asked if the two events on November 4th and 18th had not occurred, would this still be in violation of the covenants of their Homeowners Association.

Mr. Hoppes stated that any short-term rental is in violation of the covenants.

Mr. Byrne stated he is not sure if an HOA can restrict such as use.

Ms. Hurley stated the City of Leavenworth has no involvement in an HOA's covenants and restrictions and it is not something the City enforces or considers in their review.

Mr. Byrne asked if a covenant for no short-term rentals can be legally enforced.

Ms. Hurley stated from a legal standpoint she is not sure. She further stated there are other rental properties in the neighborhood but none have been reported to the City as short-term rentals. Any discrepancy between HOA covenants and a use within a neighborhood are outside city regulations and becomes a civil matter for the HOA to pursue.

Mr. Burke asked how many homes are not occupied by their owners.

Ms. Hurley stated there are nine homes not occupied by their owners.

Mr. Hoppes wanted to clarify the nine rentals are long-term rentals.

Mr. Burke asked if the police have been dispatched to the neighborhood often or if this is the only time the police have been called.

Mr. Hoppes stated he did not know as he does not monitor every police call. He further stated it is public record if the board would like to look into it.

Doug Waters (867 Clearview, Lansing), attorney representing Oakwood Estates of Leavenworth Association, Inc., addressed the board. Mr. Waters stated the General Warranty Deed for the subject property is owned by Arwa Habib, it was purchased in 2012, and the deed itself is subject to the easements, restrictions and assessments of record, which would include the Homeowners Association. The HOA was last modified in 2007. Mr. Waters presented a copy of the police report from November 4, 2017 (staff already has a copy of it). Mr. Waters stated the police response involved gun shots, there were no adults at the property, alcohol was in use by minors, evidence of marijuana in one of the vehicles, a young lady was passed out in one of the vehicles, and cars were lining both sides of the street. Mr. Waters further stated the owner of the subject property has indicated the property is scheduled to be rented three more times in December.

Mr. Waters provided the board with a copy of the HOA restrictions. You can have a home business; however, your home business cannot have employees or customers on the premises for the protection of the neighborhood. No more than three people in the home who are not family members. The home shall not be rented for transient or hotel purposes.

Dave Zoellner (2116 Ridgeview Drive) addressed the board. Mr. Zoellner spoke of the party on November 4, 2017. He stated there were 16 vehicles lining the streets on both sides of the street, 35-40 people were at the party, beer cans laying around outside and there were 9 guns shots around 11:45 p.m. Two female police officers responded. He stated the police said everyone at the party was 18 years of age. Mr. Zoellner responded that is underage drinking. He further stated the police were shutting down the party and had to attend to a female that was passed out in a van. This occurred at 1:30 a.m. At 3:05 a.m., Mr. Zoellner stated the party was still going on to include loud music. Mr. Zoellner did state that Mr. Habib came by around 2:15 a.m. and spoke with someone in the driveway at the subject property. Mr. Habib drove by again approximately 20 minutes later and left. Mr. Zoellner stated he spoke with Mr. Habib around 10:00 a.m. and asked him what is going on at the subject property. Mr. Habib said everything was legal with the city. Mr. Zoellner stated he thought a special use permit was needed as the property is not commercial.

Mr. Zoellner spoke of the party on November 18, 2017 stating there were 15-20 people at the subject property having another party. Mr. Zoellner stated he overheard the partygoers saying to park further up the street at the swimming pool parking lot so the neighbors would not know there was a party. He said the party was still going on at 4:30 a.m.

Mr. Zoellner stated he purchased his home on Ridgeview Drive as him retirement home. The short-term rental at the subject property is negatively affecting his quality of life, negatively impacting the entire neighborhood and bringing down the property values in the neighborhood.

Chairman Byrne asked if anyone else would like to speak or provide new information. Chairman Byrne asked for a show of hands from people in the audience for those who support the special use permit. Mr. and Mrs. Habib raised their hands in support of the special use permit. Mr. Byrne asked for a show of hands for those who are in opposition of the special use permit. Twenty-one people raised their hands.

Don Clauser, HOA board member, addressed the Planning Commissioners. Mr. Clauser stated he wrote down tag numbers to the various vehicles attending the party on November 18, 2017. The vehicles were from Wyandotte, Douglas, Johnson counties and Missouri. He asked if that is what we want in Leavenworth...people bringing in drugs and partying. Mr. Clauser said at 7:30 a.m. he spoke with a young man who was attending the party and asked him what he was doing. The young man said they were having a party. Mr. Clauser responded to the young man saying they were not welcome here and that the neighborhood would continue to call the police if the parties continued. Mr. Clauser then spoke with Mr. Habib telling him there is a problem with the activities going on at the subject property.

With no one wishing to speak, Chairman Byrne closed the public hearing and called for any additional questions from the commissioners.

With no further questions or comments from the commissioners, Chairman Byrne stated this is the first Residential Home-Stay request they have received. He believes anyone who submits a request for a short-term rental will face opposition, as most people would not want this type of use in their neighborhood. If the city keeps this type of use permitted with a special use permit in the Development Regulations, then the city cannot deny all future requests based on the fact that something could happen or that neighbors just don't want this type of use in their neighborhood. It's unfortunate that the first one to go before the Planning Commission is this one, which has caused a lot of problems and raised many concerns with the neighborhood and has not been controlled properly. Chairman Byrne further stated that a special use permit like this, with the conditions that were given, should probably be considered favorably. However, in this case, with what did happen in the neighborhood on at least two occasions, Chairman Byrne would disagree with staff finding on the particular provision that this Residential Home-Stay contributes to the economic development and convenience of the public.

With no further discussion, Chairman Byrne read the special use permit action/options:

- Motion, based upon findings as stated to recommend approval to the City Commission
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Mr. Wiedower moved to recommend denial to the City Commission for a special use permit for the property located at 2115 Ridgeview Drive based upon all information presented. The motion was seconded by Ms. Hines Whitson and passed by a unanimous vote 5-0.

Ms. Hurley stated the request will be scheduled to be heard by the City Commission on January 9, 2018, which neighbors are invited to come to speak at. Tomorrow will begin the fourteen day protest petition period. The protest petition is to protest the Planning Commission's motion not protesting the request.

With no further business the meeting was adjourned at 8:01 p.m.

JH/mb

Administrative Note: It was determined after the meeting the statement about the protest petition was incorrect. Letters were mailed to property owners with correct information about the protest petition (see attached). This will be brought up in the next Planning Commission meeting as a General Discussion.

DOUGLAS G. WATERS, JR., P.A.

Attorney at Law
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E-MAIL: dwaters@firstcitylaw.com

November 20, 2017

Arwa Habib
2115 Ridgeview Drive
Leavenworth, KS 66048

Fariz and Arwa Habib
2119 Cedar Ridge drive
Leavenworth, KS 66048

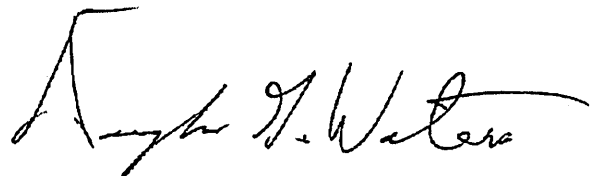
Re: 2115 Ridgeview Drive, Leavenworth, KS

As the attorney for Oakwood Estates of Leavenworth Association, Inc., I have been requested to review the conditions, covenants, and restrictions of Oakwood Estates of Leavenworth and Oakwood Estates South with regards to the above property. This review included police reports from the Leavenworth Police Department relative to an incident on November 5, 2017, and contacts with other owners in the area.

The purpose of this letter is to place you on notice that the operation of the above property by you is in violation of the conditions, covenants, and restrictions which include, but are not limited to, that a home business is not allowed when you involve customers on the premises, three or more non-members of the family without prior written consent of the Board, an annoyance and nuisance to the neighborhood, and the property is being rented for transient or hotel purposes.

I note that you have further applied for a special use permit, which is set for hearing on December 4, 2017, at 7:00pm. The Association will oppose that. I also understand that you have placed this residence for sale. If it is your intention to recall this application and to no longer operate the premises in violation of the conditions, covenants and restrictions, I would ask that you contact this office immediately to verify the same. Otherwise, we must proceed with appropriate proceedings to protect the interests of the Association.

Very truly yours,



Douglas G. Waters, Jr.
Attorney at Law

cc. Oakwood Homeowners Association Board



* 2 0 0 8 R 0 2 3 3 5 3 0 *

Doc #: 2008R02335

STACY R. DRISCOLL/REGISTER OF DEEDS
LEAVENWORTH COUNTY

RECORDED ON

03/10/2008 10:43AM

RECORDING FEE: 124.00

INDEBTEDNESS: 0.00

PAGES: 30

**AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
OAKWOOD ESTATES OF LEAVENWORTH
AND
OAKWOOD ESTATES SOUTH**

THIS DECLARATION is made as of the 13 day of
August, 2007, by Larkin Construction, L.L.C. ("Declarant"), and by
not less than 75% of the current Owners of Lots in Oakwood Estates No. 2 and
Oakwood Estates South.

WITNESSETH:

WHEREAS, the Declarant executed and filed with the Register of Deeds
of Leavenworth County, Kansas, a "Declaration of Covenants, Conditions and
Restrictions of Oakwood Estates of Leavenworth," recorded at Page 853 of Book
899, for the following described property:

Lots 1 through 41, inclusive, in the Oakwood Estates No. 2
Subdivision, a subdivision in the Southwest Quarter,
Northwest Quarter and the Southeast Quarter of Section 10,
Township 9 South, Range 22 East of the 6th Principal
Meridian, in the City of Leavenworth, Leavenworth County,
Kansas.

Also described as follows:

Commencing at the Southeast corner of said Southwest
Quarter; thence North 01°23'46" West, along the east line of
said Southwest Quarter, a distance of 1858.13 feet to a point
described to be 792.0 feet South of the Northeast corner of
said Southwest Quarter (794.28 feet calculated); thence
South 88°10'40" West, 1049.57 feet to a one-half inch iron
bar in concrete with DG White LS 356 cap found at the
Southeast corner of Oakwood Estates and the Point Of
Beginning; thence North 38°13'58" East, along the East line
of Oakwood Estates, 378.07 feet to a one-half inch iron bar

(l) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse, outbuilding, fence, patio wall, privacy screening, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, swing set, trampoline, sandbox, playhouse, tree house or other recreational or play structure, and all exterior sculptures, statuary, fountains and similar yard décor.

(m) "Board" means the Board of Directors of the Association.

(n) "Hazardous Substances" means and includes all regulated, hazardous and toxic substances (including without limitation petroleum and petroleum products), pesticides, metals or heavy metals, infectious wastes, solid, liquid or gaseous wastes or materials, any pollutants or contaminants (including, without limitation, PCBs, asbestos and materials or components which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, statute, ordinance, rule or regulation pertaining to environmental protection, regulation, contamination or clean-up, toxic waste, underground storage tanks and hazardous substance or material handling, treatment, storage, use, transportation or disposal, including without limitation the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), state lien or environmental clean-up statutes, all as exist from time to time.

2. Use of Land. Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. Notwithstanding the foregoing, an Owner is permitted to operate a business from a Home, provided, however, that such business does not have employees and does not involve having customers on the premises at any time. Operation of a daycare business within the Property is specifically prohibited. No trailer, or improvement other than a Home, shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved on to, or maintained upon any of the Lots used for human habitation; provided, however, that nothing herein shall prevent the Declarant or others (including, without limitation, builders and real estate sales agencies) authorized by the Declarant from using temporary buildings or structures, or any residence for model, office, sales or storage purposes during the development of the Property.

Para 2

materials, to the extent practical, used in construction of the Home on such Lot, which shall be placed in the rear yard of the Lot, as far away from any adjacent street as possible. Any variance from materials used in the Home on the lot shall be submitted to the Architectural Committee for review and consideration prior to Construction. The Architectural Committee shall make a recommendation to the Board, and the Board shall approve or disapprove such variances in writing. Prefabricated metal or plastic storage sheds are strictly prohibited. Storage shall be permitted under a deck provided such area is screened from the view from any street.

(v) Trash and Refuse. Each Owner shall properly maintain his Lot and the improvements thereon in a neat, clean and orderly fashion. Trash, ashes or other refuse shall not be thrown, placed or dumped upon any Lot, except in trash receptacles complying with this Declaration. All trash cans, garbage cans, and wood piles shall be kept screened by adequate planting or fencing, so as to conceal them from view from any street or adjacent Lot. All rubbish, trash and garbage shall be regularly removed from each Lot and Home. No trash burning shall be permitted anywhere within the Property. No trash, refuse, or garbage can or receptacle shall be placed outside any Home or appropriately screened enclosure, except the day of regularly scheduled trash collection and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

(w) Hazardous Substances. Each Owner shall keep such Owner's Lot free from Hazardous Substances and in compliance with all applicable environmental laws. Each Owner shall remove any Hazardous Substances and/or cure any violations of any environmental law, as applicable, as required by law, promptly after the Owner becomes aware of same. Nothing herein shall prevent an Owner from recovering such expenses from any other party that may be liable for such removal or cure. In no event shall outside or underground fuel storage tanks of any kind be permitted on any Lot.

(x) Occupancy Restrictions. No Home shall be occupied by more than three (3) persons who are not members of the same family without prior written consent of the Board. The term "members of the same family" shall be deemed to mean spouse, parents, parents-in-law, brothers, sisters, children or grandchildren.

(y) Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any Lot, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the Property shall be observed. The obligation of complying with

Para 10 General Restrictions
10, x, y, z

requirements of such governmental bodies as to the maintenance, modification or repair of any part of the Property shall be imposed on the same person who has the obligation to maintain and repair such Property by the terms of this Declaration. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any unsightly objects or nuisances be erected, placed or permitted to remain on any Lot, nor shall anything be done which may become an annoyance or a nuisance to the neighborhood, nor shall any Lot or any improvement be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident of any Home.

(z) Leasing. No Home shall be rented for transient or hotel purposes. Any lease of a Home shall contain a provision to the effect that the rights of the tenant to use and occupy the Home shall be subject and subordinate in all respects to the provisions of this Declaration.

(aa) Sales. No garage sales, sample sales, yard sales, trunk sales, or similar activities shall be held by any resident, except as a part of an annual or semi-annual event organized and sponsored by the Association. The Association-sponsored event shall be of a frequency, time, and location selected by the Board.

(bb) Signs. Except for signs erected by or for Declarant or its approved realtor for the Property, no sign, advertisement or billboard may be displayed on any Lot, except that:

(i) One (1) sign of not more than three (3) feet high or three (3) feet wide, and not to exceed a total of six (6) square feet, may be maintained offering a Lot for sale or lease.

(ii) One (1) political sign per candidate or issue, not more than three (3) feet high or three (3) feet wide, and not to exceed a total of six (6) square feet, is permitted for up to three (3) weeks before the vote on such candidate or issue, but must be removed within twenty-four (24) hours after such vote.

(cc) Vehicle Repair Prohibited. No vehicle repair (except minor routine maintenance) or rebuilding or any other form of manufacture, whether for hire or otherwise, shall occur on any Lot.

(dd) Parking and Storage of Vehicles Prohibited. No truck or commercial vehicle with gross vehicle weight of 12,000 pounds or over (other than a truck parked on a temporary basis actually being used for the specific purpose for which it was designed), trailer, mobile home, recreational vehicle, boat, personal watercraft, airplane, equipment,



December 7, 2017

Resident

RE: 2017-21-SUP, 2115 Ridgeview Drive

Dear Resident,

During the Planning Commission public hearing regarding the above referenced request for a Special Use Permit on Monday, December 4th, an inaccurate statement was made regarding the process for submittal of a Protest Petition. To clarify, the adopted language regarding submittal of a Protest Petition is as follows:

If a written protest against a proposed special use permit is filed in the office of the City Clerk within 14 days as of the date of the conclusion of the public hearing, pursuant to the publication notice, signed by the owners of record of 20% or more of the total area required to be notified by this application for a special use permit, excluding streets and public ways, the ordinance adopting such amendment shall not be passed except by at least a three-fourths vote of all of the members of the City Commission.

As there may have been some confusion regarding the process for submittal of a Protest Petition, the City shall extend the period in which to submit such petition by 7 days. Any Protest Petition must be submitted to the Office of the City Clerk by 5:00pm on **Tuesday, December 26th** in order to be considered. If you wish to submit such a petition, you may wish to consult with an attorney to ensure proper execution of the petition.

The referenced Special Use Permit request is scheduled to be heard by the City Commission on Tuesday, January 9, 2018.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Hurley".

Julie Hurley, AICP
City Planner
(913) 680-2616
jhurley@firstcity.org

PLANNING COMMISSION AGENDA ITEM
2018-03 SUP
1922 5TH AVENUE

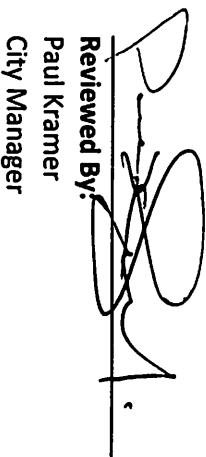
MARCH 12, 2018

SUBJECT:

A request for a Special Use Permit to allow the operation of a Child Care Center at 1922 5th Avenue



Prepared By:
Julie Harfley
City Planner



Reviewed By:
Paul Kramer
City Manager

NATURE OF REQUEST

The applicant, Savannah Nelson, is requesting a Special Use Permit to allow the operation of Child Care Center in their home located at 1922 5th Avenue. The property is currently zoned R1-9 (Medium Density Single Family Residential). Child Care Centers are allowed in the R1-9 zoning district with issuance of a special use permit.

The applicant is licensed by the State of Kansas to care for a maximum of 12 children, dependent upon the ages of the children in care.

CONDITIONS OF DETERMINATION

In recommending approval of a special use, the Planning Commission may impose such conditions, safeguards and restrictions as may be necessary to carry out the general purpose and intent of the ordinance. The development regulations stipulate specific conditions as a requirement for the approval of Child Care Centers as follows:

1. Shall not be located along an arterial street as designated on the Major Street Plan Map unless indirect vehicular access to that street, such as with a frontage road is available. The City Planner, with the advice of the DRC, shall determine if the drop off and pick up arrangements of a childcare center or business appear safe. Appeal of any negative decision shall be to the City Commission.
The subject property is located along 5th Avenue, which is classified as a Secondary Collector street.
2. Shall provide at least one hundred (100) square feet of open space per child. This open space shall be 100% enclosed by a minimum four (4) foot high fence or wall.
The subject property includes a back yard area of approximately 4,500 sqft., partially enclosed by a 4' chain link fence. There is an existing driveway accessing the back yard from 7th Street that is not enclosed by any type of fence or gate, leaving the back yard open to 7th Street.

3. Shall provide a loading zone capable of accommodating at least two (2) automobiles for the easy picking up and discharging of passengers.

The subject property includes a paved driveway in the front capable of accommodating 2 cars at one time, and a paved driveway in the back accessed off of 7th Street capable of accommodating 3 cars at a time.

4. Shall conform to all requirements of the State of Kansas and shall acquire a State of Kansas Child Care Center License.

The applicants have provided a copy of their Group Day Care Home permit from the Kansas Department of Health and Environment.

5. All childcare centers operated in residential zoning districts shall be the only legal residence of the operator.

The home functions as the only residence of the operator/owner.

6. Childcare centers in residential districts may have one non-illuminated monument sign with no more than 3 square feet per side and a maximum of 2 sides or one non-illuminated sign affixed to the main structure of 3 square feet.

The applicant is currently displaying a window sign in the front window of the house, within the allowable signage area.

COMMISSION FINDINGS

The Commission may recommend issuance of a special use permit whenever it finds that:

1. The proposed special use complies with all applicable provisions of this ordinance.

Staff believes that this application complies with all provisions of City of Leavenworth Development Regulations with the exception of the requirement to provide a totally enclosed open space. Any approval will be subject to provisions being made to completely enclose the required outdoor open space.

2. The proposed special use at the specified location will contribute to and promote the economic development, welfare or convenience of the public.

Child Care Centers are an essential service to working parents in the community, and promote the economic development, welfare and convenience of the public.

3. The special use will not cause substantial injury to the value of other property in the neighborhood in which it is located.

Staff does not feel that the proposed Child Care Center will cause any substantial injury to the value of other property in the neighborhood.

4. The location and size of the special use, the nature and intensity of the operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the special use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning district regulations.

No new structures or building modifications are proposed as part of this special use permit. The property will continue to look and function as a residential structure.

Notification was sent to property owners within 200' of the subject property, as required by Kansas statute. Since notifications were mailed, staff has received two phone calls in opposition to the proposed Special Use.

STAFF RECOMMENDATION:

Staff recommends approval of the Special Use Permit request based on the analysis and findings included herein, subject to the following conditions:

1. A minimum of 1,200 square feet of open space 100% enclosed by a minimum 4' high fence or wall shall be provided and maintained in good condition.
2. A copy of the permanent Group Day Care Home license shall be provided annually upon renewal by the State of Kansas.
3. The operation shall be limited to a maximum of 12 children.
4. No additional home occupations may be carried out at the residence.

Failure to maintain compliance with all conditions shall result in revocation of the Special Use Permit.

ACTION/OPTIONS:

- Motion, based upon findings as stated and conditions as presented, to recommend approval to the City Commission with included conditions
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration.

Attachments:

Application materials
Photos of property
Location map



LEAVENWORTH COUNTY KANSAS

RADIUS SEARCH AERIAL

Leavenworth County Kansas

Date: 11/21/2017



200' RADIUS SEARCH
PID# 1010102024005000
35 parcels



LVCO

1 inch = 112 feet



2016 Aerial Photo

This map is projected to real world coordinates.
However, it is not intended for legal purposes.
Accuracy is not guaranteed.

Case No: 2018-03 SUP



SPECIAL USE PERMIT
CITY OF LEAVENWORTH, KANSAS

Application No. 3399
Fee (non-refundable) \$350.00
Filing Date 1-12-18
Fee Paid/Received By Beu Wilson
Publication Date 2-15-18
Hearing Date 3-12-18

As provided in Section 2.04 of the 2016 Development Regulations, application is hereby made for a SPECIAL USE PERMIT for the operation of a: child care center

in accordance with the attached site plan on the following described property:

Address:	<u>1922 5th Ave Leav. KS 66048</u>		
Legal Description:	<i>(Attach a full legal description provided by the Register of Deeds Office or Title Company)</i>		
Real Estate PID #:	<u>101-01-0-20-24-005.00-0</u>		
Zoning:	<u>R1-6</u>	Historic District:	<u>N/A</u>

I/We, the undersigned, depose and state we are the owners of the above described property:

Name(s) of Owner (print):	<u>Savannah E Nelson</u>		
Owner Address:	<u>1922 5th AV</u>		
Contact No.	<u>(913) 547-6354</u>	Email:	<u>Savannahnelson103@gmail.com</u>
Signature of Owner(s):	<u>Savannah E Nelson</u>		

State of KANSAS
County of Leavenworth (SEAL)



Signed or attested before me on (date)	<u>1-12-18</u>	(by)	<u>Michelle Baragary</u>
Notary Public	<u>Michelle Baragary</u>	My appointment expires:	<u>8-16-20</u>

If business is operated by someone other than the owner, provide name and address of operator(s).

Name of Applicant(s):			
Address:			
Contact No.	()	Email:	

NOTE: All signatures must be in ink. Signature of owner(s) must be secured and notarized.
Check list below...

1. Non-Refundable Fee of \$350.00 is due at time of application
2. Attach list of the owners for property within two hundred (200) feet of the subject property
3. Attach full legal description (may be provided by the Register of Deeds Office or Title Company)
4. Site Plan drawn to scale (See General Instructions)
5. Supporting documentation (See General Instructions)

Kansas Department of Health and Environment
License

Group Day Care Home
License No. 0051867-003

Licensee: Savannah Esther Nelson

Facility: Savannah Smile

Located at: 1922 5th Ave
Leavenworth, KS 66048



02/28/2019

In the county of: Leavenworth

Having complied with the laws and regulations of the State of Kansas governing Group Day Care Homes, Savannah Esther Nelson is hereby authorized to care for a maximum of 12 children, under one of the following options:

MAXIMUM LICENSED CAPACITY IF ONE ADULT IS PRESENT WITH THE CHILDREN:

- 9 children, at least 2 ½ years but under 11 years of age*; or
- 10 children, at least 3 years but under 11 years of age*; or
- 12 children, at least 5 years but under 11 years of age; or refer to Table I in K.A.R. 28-4-114(e) if children under 2 ½ years of age are in attendance.

MAXIMUM LICENSED CAPACITY IF TWO ADULTS ARE PRESENT WITH THE CHILDREN:

- 12 children, infancy to 11 years of age*, with not more than 9 children under 5 years of age, 3 of whom may be under 18 months of age; or
- 10 children, infancy to 11 years of age*, with not more than 8 children under 5 years of age, 4 of whom may be under 18 months of age; or
- 12 children, at least 18 months but under 11 years of age*, with not more than 5 children, 18 months to 2½ years of age.

*Children five years of age and over may be substituted for younger children in the license capacity. Children under 11 years of age who are related to the applicant with a temporary permit, the licensee, or any other provider shall be included in the maximum number of children in each age group. Children at least 11 years of age but under 16 years of age who are unrelated to the provider shall be included in the license capacity if child care for this age group as a whole exceeds three hours a week.

This License is effective 02/23/2018 and remains in effect until the expiration date noted by the above sticker unless invalidated by a change of owner, operator, location or it is administratively closed.

Smoking is prohibited inside the day care home during hours of operation.

** Local codes and ordinances may prescribe other requirements for the legal operation of this facility.

Acting Secretary
Kansas Department of Health and Environment

Backyard View

