

**CITY OF LEAVENWORTH PLANNING COMMISSION**  
**COMMISSION CHAMBERS, CITY HALL**  
100 N 5<sup>th</sup> Street, Leavenworth, Kansas 66048  
**REGULAR SESSION**  
**Monday, March 12, 2018**  
7:00 PM

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**CALL TO ORDER:**

**Commissioners Present**

Mike Burke  
John Karrasch  
Claude Wiedower  
Linda Bohnsack  
Sherry Hanson

**Commissioners Absent**

Jay Byrne  
Camalla Leonhard

**City Staff Present**

Julie Hurley  
Michelle Baragary

Vice-Chairman Burke called the meeting to order at 7:02 p.m. and noted a quorum was present.

**Approval of Minutes:** December 4, 2017

Vice-Chairman Burke asked for comments or a motion on the minutes presented for approval: December 4, 2017. City Planner Julie Hurley made note about the Administrative Note that was added to December 4, 2017 meeting minutes in reference to the information given about protest petitions. Ms. Hurley incorrectly stated a protest petition would be in regards to the Planning Commission's action. However, a protest petition is actually in regards to the application, not the action of the Planning Commission. A letter was sent to the affected property owners with the correct information for protest petitions. Mr. Karrasch moved to accept the minutes as presented, seconded by Ms. Whitson. The minutes were approved by a vote of 5-0.

**OLD BUSINESS:**

None

**NEW BUSINESS:**

**1. ELECTION OF OFFICERS**

Selection of board members to hold the position of Chairman and Vice-Chairman for the Planning Commission.

Vice-Chairman Burke called for a motion of a nominee for Chairman of the Planning Commission. Mr. Wiedower nominates Mr. Byrne for the position of Chairman, seconded by Ms. Whitson and approved by a vote 5-0.

Vice-Chairman Burke called for a motion of a nominee for Vice-Chairman of the Planning Commission. Mr. Wiedower nominates Mr. Burke for the position of Vice-Chairman, seconded by Ms. Whitson and approved by a vote 5-0.

## **2. PROPOSED MEETING TIME CHANGE**

Propose meeting time change from 7:00 p.m. to 6:00 p.m.

Vice-Chairman Burke called for a motion to change the Planning Commission meeting time. Mr. Karrasch moved to table the issue until the next Planning Commission meeting, seconded by Mr. Wiedower and passed by a vote of 5-0.

## **3. 2018-03 SUP – 1922 5<sup>th</sup> AVENUE**

Conduct a public hearing for Case No. 2018-03 SUP – 1922 5<sup>th</sup> Avenue. The applicant, Savannah Nelson, is requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 1922 5<sup>th</sup> Avenue.

Vice-Chairman Burke called for the staff report.

City Planner Julie Hurley stated the applicant, Savannah Nelson, is requesting a Special Use Permit to allow the operation of a Child Care Center in their home located at 1922 5<sup>th</sup> Avenue. The property is currently zoned R1-6 (High Density Single Family Residential District). Child Care Centers are allowed in the R1-6 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 5<sup>th</sup> 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 7<sup>th</sup> Street that is not enclosed by any type of fence or gate, leaving the back yard open to 7<sup>th</sup> 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 7<sup>th</sup> 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 with a maximum of the 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
- Motion, to recommend denial to the City Commission
- Table the issue for additional information/consideration

Vice Chairman Burke called for questions from the commissioners about the staff report.

Ms. Whitson asked if the callers in opposition stated why they were in opposition of the day care.

Ms. Hurley stated one caller did not and the other caller stated their concern was related to police activity at the residence within the last year.

Mr. Wiedower asked when the applicant is licensed by the State of Kansas is the City informed if the applicant has another operating daycare at a different location within the City of Leavenworth.

Ms. Hurley stated the City would not know that. The State of Kansas licenses specific locations and the license would not include information about a different location.

Mr. Burke asked if this is a new application.

Mr. Hurley stated to her knowledge it is; the applicant is not moving a child care center from a different location.

Ms. Bohnsack asked if the applicant lives at the subject property because she does not see any rooms designated as private rooms/bedrooms on the site plan.

The applicant, Savannah Nelson, 1922 5<sup>th</sup> Avenue, approached the board. Ms. Nelson stated although her and her husband owned the property when the police activity occurred, they were not occupying the home at that time. Ms. Nelson stated she took over the home in July 2017 in order to start a child care center.

Mr. Karrasch asked if the police activity was prior to the Nelson's having ownership of the property.

Ms. Nelson responded it was.

Ms. Hurley clarified the Nelson's did own the home at the time of the police activity but they were not actually living in the home at that time.

Mr. Nelson stated they were renting the house at the time. When they discovered what was occurring at the property, they evicted the renters and cleaned up the property in order to operate a daycare.

Mr. Wiedower asked the applicant if she has experience with child care centers.

Ms. Nelson stated she has experience working with her pastor but this is the first child care center she will be operating.

Using the diagram of the house layout, Mr. Burke asked where the Nelson's will be staying.

Ms. Nelson stated there are two additional bedrooms that are not shown on the diagram. The diagram only displays the area where the children will be.

Mr. Wiedower asked about staffing for twelve children.

Ms. Nelson stated there is another person who works with her, which is why she is authorized to have up to twelve children at the child care center.

Mr. Burke asked how they plan to repair the back yard fencing.

Ms. Nelson stated she was told as long as she is outside with the children and enclosed fence is not required.

Ms. Hurley stated that was the State inspection. It's the City's requirement for an enclosed space by a minimum 4' high fence or wall.

Mr. Burke stated the fence will need to be repaired prior to beginning operations.

Ms. Nelson stated she is already operating the child care center.

Mr. Burke asked if the vehicle in the rear of the property is operational.

Ms. Nelson stated the vehicle is operational. They just need to replace the back window that broke.

Ms. Whitson asked if pick-up and discharge is in the front and the back of the property.

Ms. Nelson stated it is only in the back of the property.

Mr. Wiedower asked how it will affect the staffing pattern if the child care centers have numerous infants.

Ms. Nelson stated if there are too many infants she will need to hire more help. She further stated she will do background checks on applicants.

Ms. Hurley stated that according to the State of Kansas the maximum number of children under 18 months is four. The State has specific ratios that child care centers must adhere to.

Ms. Whitson asked when the applicant began operations of the child care center, how many children are currently enrolled and their ages.

Ms. Nelson stated the center opened February 1, 2018. She currently has three children; ages are 3 months, 9 months and 2 years.

With no further comments, Vice Chairman Burke called for questions/discussion among the commissioners.

Mr. Wiedower asked for clarification that an enclosed fence will be a condition with approving a special use permit.

Vice-Chairman Burke stated it would be a condition.

With no further discussion, Vice-Chairman Burke called for a motion. Mr. Karrasch moved to recommend approval to the City Commission the request for the Special Use Permit 2018-03 SUP to allow for the operation of the child care center at 1922 5<sup>th</sup> Avenue with the conditions as recommended by staff. The motion was seconded by Ms. Bohnsack and passed by a unanimous vote of 5-0.

With no further business the meeting was adjourned at 7:26 p.m.

JH/mb