

**Town of Cary, North Carolina
Special Use Staff Report
14-SU-001 Busy Bee Preschool
Large Day Care Home
Town Council Quasi-Judicial Hearing
April 3, 2014**

REQUEST

The owner of the detached residential dwelling located at 1202 Lyerly Lane in the Ivy Meadows subdivision has requested approval of a Special Use Permit to operate a Large Day Care Home to allow for the care of up to 12 children at any given time. The applicant is currently operating a state-licensed daycare home that allows her to care for up to eight children.

SPECIAL USE NOTES:

Special uses are generally compatible with other land uses permitted in the zoning district. However, because of the unique characteristics or potential impacts on the surrounding neighborhood and on the Town as a whole, they require individual consideration as to location, to design, to configuration, and/or to operation at a particular location. [LDO Sec. 3.8.1(A)].

In accordance with Section 3.8.3(C) of the LDO, the Town Council must follow quasi-judicial procedures when deciding special use permits.

SUBJECT PARCELS

Property Owner	Wake County Parcel Identification Number (PIN) (10-digit)	Real Estate ID Number	Deeded Acreage
Bozenna Maciejewska	0773264118	0081619	0.28
Total Area			0.28

BACKGROUND INFORMATION

Applicant's Special Use Agent	David York Smith Moore Leatherwood 434 Fayetteville Street Suite 2800 Raleigh, NC 27601
Location	1202 Lyerly Lane Cary, NC 27511
Land Use Plan Designation	Low Density Residential (LDR)
Zoning District	Residential 12 (R-12)
Within Town Limits	Yes
Staff Contact	Debra Grannan, Senior Planner Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 460-4980 Debra.grannan@townofcary.org

LIST OF EXHIBITS

The following documents incorporated into this staff report are to be entered into the record for this hearing:

- Exhibit A: Zoning Map from Applicant
- Exhibit B: Child Care License
- Exhibit C: Vicinity Map
- Exhibit D: Photo of Driveway
- Exhibit E: Special Use Application
- Exhibit F: Wake Co. Book of Maps 1971 Page 375
- Exhibit G: Sketch of Site
- Exhibit H: Applicant's Justification Statement
- Exhibit I: LDO Table 7.8-1 Off-Street Parking Schedule "A"

PROJECT DESCRIPTION/SUMMARY OF REQUEST

According to Section 5.3.4 of the Cary Land Development Ordinance

5.3.4 (L) Day Care Homes, Large

(1) A large day care home is intended for the care of seven to 12 children at any given time. Large Day Care homes may be permitted as a special use in any single-family residential dwelling unit on lots which are twelve thousands (12,000) square feet or greater in size provided the following provisions are met:

- (a) Appropriate licensing by the North Carolina Department of Health and Human Services Division of Child Development is maintained;
- (b) The home shall be reviewed and approved as a special use in accordance with the procedures and standards set forth in Section 3.8 of the Land Development Ordinance;
- (c) No building modifications may be made to the structure to accommodate the use except those required by Building Code;
- (d) The home shall comply with or exceed the parking standards in Table 7.8-1 and the number and location of parking spaces shall be adequate to provide for child drop-off and pick-up in a safe manner;
- (e) A sketch of the site shall be provided showing the residence, driveway and parking areas, outdoor play area, fencing, residences located on adjoining lots;
- (f) The principal person or person's operating the day care home must reside on the premises;
- (g) The day care home shall employ no more than one person who does not reside on the premises; and
- (h) The operator obtains all required permits and licenses from the town of Cary

(2) Day care homes that are licensed by the State of North Carolina and Authorized by the Town of Cary to care for up to eight children as of January 28, 2010 shall be deemed conforming and may continue to operate as approved without a Special Use permit as long as a valid license from the North Carolina Department of Health and Human Services, Division of Child Development is maintained and the use does not cease operation for more than on 180 consecutive days.

SITE CHARACTERISTICS

Streams: According to Cary's most current GIS maps, there are no stream buffers located on the subject property.

Floodplain: According to Cary's most current GIS maps, there is no floodplain or flood hazard area located on the property.

Wetlands: According to Cary's most current GIS maps, no wetlands located on the property.

Topography: There are no significant changes to the topography on the subject property.

Surrounding Land Uses:

North – Detached residential (Opposite side of Lyerly Lane and Ivy Lane)

South – Detached residential

East – Detached residential

West – Detached residential (Opposite side of Ivy Lane)

SUMMARY OF PROCESS AND ACTIONS TO DATE**Application**

The applicant filed an application for a Special Use Permit on January 30, 2014.

Notification

The Planning Department mailed notification of the public hearing on the special use permit and site plan to property owners within 400 feet of the site on March 13, 2014. Notification was duly published on the Town's website and posted on the subject property.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)**Traffic**

The proposed use did not exceed the LDO threshold for peak hour trips; therefore, a traffic study was not required.

Comprehensive Transportation Plan (CTP) Improvements

No additional right-of-way needs or road improvements were identified in association with the property's frontage either Lyerly Lane or Ivy Lane.

Buffers and Streetscapes

No buffers or streetscapes are required.

Stormwater Management

There are no proposed improvements on the subject property; therefore, no additional stormwater treatment would be required on the site.

Utilities

The existing detached residential dwelling on the subject property is served by public water and sewer.

Lot Size

Large day care home uses may be permitted as a special use on any single-family residential dwelling unit on lots which are 12,000 square feet or greater in size. The subject property is 0.28 acres which equates to 12,196 square feet.

Parking

Table 7.8-1 stipulates that for a Large day care home four parking spaces per home plus one additional space if there is an employee who does not reside in the home are required. The dwelling contains a single-car garage; however the driveway is widened to accommodate additional parking.

**SPECIAL USE WORKSHEET
AND
SUGGESTED MOTIONS**

Section 3.8.3 of the LDO states the following: *“The decision-making body shall not approve a proposed special use and any accompanying site plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case.”*

1. Does the proposed use or development of the land generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town?

Applicant’s Statement: The proposed use is a large day care home. In the Town’s Land Development Ordinance (LDO), large day care homes are considered as accessory to a residence. The applicant is the operator of the day care home where she lives. The Town of Cary Comprehensive Land Use Plan identifies the site for the proposed Special Use as Low Density Residential (LDR) within close proximity to Commercial (Com), the Cary Town Center. The proposed day care home generally conforms to the Comprehensive Plan. (It does not appear that the Town’s or other adopted plans i.e., Growth Management, Affordable Housing, Open Space, Historic Resources, etc. apply to this Special Use application.)

Staff Observations: The proposed use confirms with the Comprehensive Plan. Determination of compliance with NC State Building code must be determined by a building code official. A building permit and inspection of the subject property will be required before a certificate of occupancy may be issued for the proposed use.

TEST SATISFIED? __ YES __ NO

2. Does the proposed use or development of the land materially endanger the public health or safety?

Applicant’s Statement: The site is located on a corner lot, with direct driveway access onto Lyerly Lane. Ivey lane is on the north side of the Applicant’s Day Care Home. Ivy Lane serves as a connector street providing access to the site for the parents dropping off their children at the day care in the morning and picking them up in the afternoon.

Staff Observations: No public health or safety concerns would be anticipated in association with the proposed Large Day Care Home, provided the use complies with all State licensing requirements and NC State Building and Fire Code.

TEST SATISFIED? __ YES __ NO

3. Is the proposed use reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community?

Applicant’s Statement: The provision of conveniently located, quality day care for pre-school age children of working parents is certainly one of the most important and essential services in any community.

In North Carolina, child care is regulated by the Division of Child Development in the Department of Health and Human Resources. As “Purpose of Request” indicated, a day care home currently operates from the Site, License Number 92001024 meeting the requirement of Section 5.3.4 (L)(1) (a) for a large day care home.

Staff Observations: The proposed large day care home would represent an expansion of the services currently offered by property owner.

TEST SATISFIED? __ YES __ NO

4. Does the proposed use or development of the land substantially injure the value of adjoining or abutting property?

Applicant's Statement: One of the requirements for child day care is that the person operating the day care resides in the house. The operator of the day care, the Applicant, lives at the Site in accordance with LDO Section 5.3.4 (L) (1) (g) . She is currently operating a small day care at this location. Approval of the Special Use Permit will allow for up to 12 pre-school age children at this day care home.

Staff Observations: Day Care Homes are a permitted use in the subject zoning district. No exterior changes are proposed to the existing residence.

TEST SATISFIED? __ YES __ NO

5. Is the proposed use or development of the land in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located?

Applicant's Statement: The house at 1202 Lyerly Lane is of the same size and general appearance of the other houses adjacent to and in close proximity to it. The size of the property is 0.28 acres, or 12,196 square feet which meets the Cary LDO requirement of a minimum lot size of 12,000 square feet for a large day care home. A solid wooden fence approximately six feet in height is located along the side and rear property lines and along Ivy Lane. This fence effectively screens the outdoor play areas from view and also helps to block sound.

Staff Observations: The subject lot and dwelling are of a similar size to adjacent properties. There are no exterior changes proposed to the existing home and, therefore, no impacts to the aesthetics of the surrounding community.

TEST SATISFIED? __ YES __ NO

6. Is the proposed use appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities?

Applicant's Statement: The site is served by Lyerly and Ivy Lane both are Town of Cary streets. Ivy Lane is a short distance to Walnut Street which provides access to the Cary Community by way of Maynard Road and US Highway 1-64 Municipal services, such are provide to the site by the Town of Cary.

Staff Observations: The property is located within the corporate limits of Cary with convenient access to public services and transit. The proposed large daycare home would not significantly increase demands on those services nor generate additional demands on water, sewer, or solid waste services due to the nature of the proposed use.

TEST SATISFIED? __ YES __ NO

7. Does the proposed use cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway?

Applicant's Statement: A day care for up to 12 pre-school age children will generate very little traffic. Parents will drop their children off in the morning before heading to work and pick them up at night before heading home. The site's driveway is off Lyerly Lane; the driveway is wide enough to accommodate six vehicles; three vehicles parked side-by-side between Lyerly Lane and the front of the house meeting the requirements of Section 5.3.4(L)(1)(e) This driveway provides parking which exceeds the standards for a day care home of four spaces per home (plus

one additional space if there is an employee who does not reside in the home) found in Table 7.8-1 of Cary's Land Development Ordinance, and as required by Section 5.3.4 (L)(1)(d).

Staff Observations: The dwelling on the subject property contains a one-car garage. The existing driveway has been widened to accommodate additional parking.

TEST SATISFIED? YES NO

SUGGESTED MOTIONS FOR SPECIAL USE

MOTION TO GRANT THE APPLICATION

For the reasons discussed, I move that we **APPROVE** the request for a special use permit as the proposed expansion to the existing use meets all of the approval criteria set forth in Section 3.8.3. This approval shall include the following conditions:

1. The Resolution and Permit approved in this special use application shall be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per Section 3.8.4(E) of the LDO. The original recorded Resolution and Permit shall be returned to the Planning Department when received from the Register of Deeds.
2. The approval of this special use is conditioned on the subsequent approval of a development plan in accordance with LDO Section 3.8.1(B)(2) and as required under LDO Section 3.9.
3. The operator shall obtain all required permits and licenses from the Town of Cary.

NOTE: The above two conditions are LDO requirements; any additional condition(s) may be added or modified at the council's discretion.

OR

MOTION TO DENY THE APPLICATION

For the reasons discussed, I move that we **DENY** the request for a special use permit as the proposed use does not meet all of the approval criteria set forth in Section 3.8.3.