



STAFF REPORT

December 30, 2005

To: South Central Consolidated Zoning Board
Fr: Jeff Malotte, Planner
Re: Application No. SC-CU-2656

APPLICATION INFORMATION

Applicants: Michael and Michelle Rodd

Owner: Michael Rodd

Requested Action: Conditional Use Permit

Purpose: Home day-care CUP expansion from 12 to 24 children per day

Legal Description: Tract located in the SE ¼ of Section 24, Township 14, Range 23

Site Address/Location: 17350 Ridgeview Road

Existing Land Use and Zoning: Residential use; Rural District

Existing Improvements: Single-family residence with in-home day-care center

Site Size: Approximately 10 acres

Proposal: To allow the expansion of an in-home day-care center. An existing conditional use permit (CUP), expiring in 2007, allows the Rodd's to operate a day-care center in their home with a maximum of 12 children per day. They now wish to expand the maximum number of children allowed per day to 24. The applicants have requested a ten-year permit, but five years is the maximum term specified in the *Zoning and Subdivision Regulations* for day-care CUPs. If this CUP application is approved, it would rescind and replace the previous CUP, thereby extending the term to five years beyond the date of BOCC approval of this application.

The dedicated day-care area utilizes 1,400 sq. ft. of the approximately 4,000 sq. ft. home. A fenced, outdoor play area exists adjacent to the south end of the house. The house is approximately 200 ft. from the north, west and south property lines and is almost 600 feet from the east property line along Ridgeview Road. The applicants have verbally indicated to staff that there will be one employee helping to operate the day-care center. Day-care will be provided year-around, Monday-Friday, 7:00 am to 6:00 pm. Drop-off and pick-up will occur in the driveway adjacent to the home. Off-street parking is provided next to the house. The facility must be licensed in accordance with State of Kansas requirements.

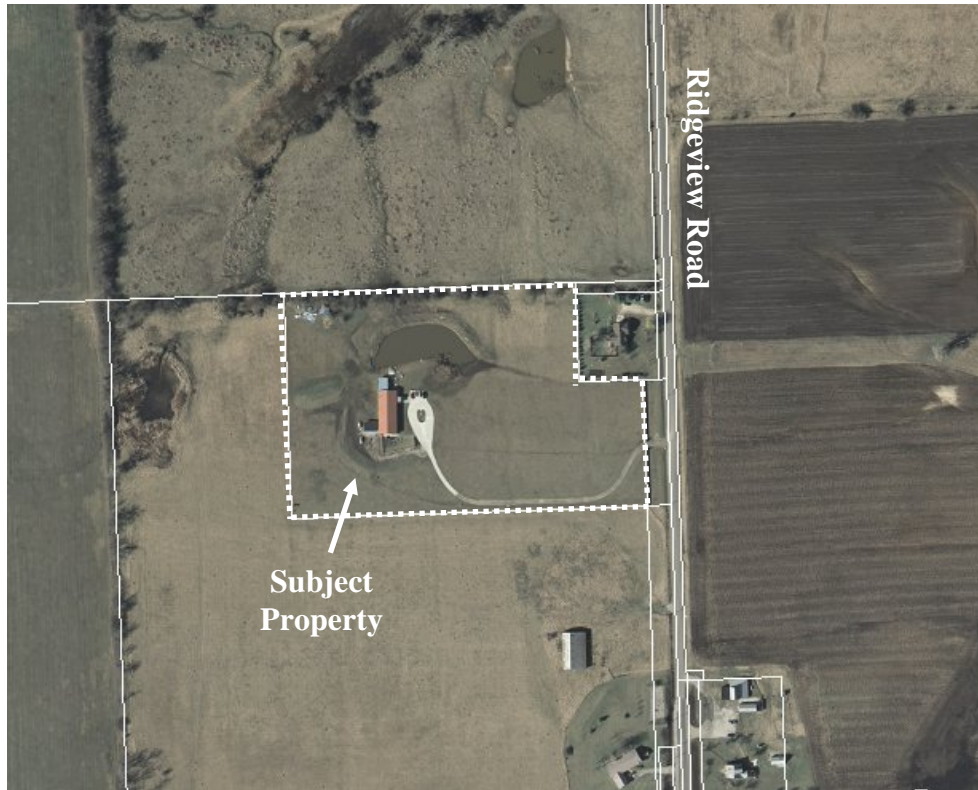


Figure 1: Subject property and surrounding area



Figure 2: Front view of building and entrance

Zoning History: This property was zoned Rural District as part of the county-wide rezoning in March 1994. A development plan for construction of a fence along the front property line was issued by the county in 2000 and a five-year day-care CUP for a maximum of 12 children per day was approved in 2002 by Resolution 070-02.

Subdivision History: The subject 10-acre tract was divided from a 40 acre tract in accordance with the *Zoning and Subdivision Regulations* lot-split procedures in 1995.

Existing Infrastructure and Minimum Infrastructure Requirements

The *Johnson County Zoning and Subdivision Regulations* state that the minimum infrastructure requirements shall be *guidelines* for interpretation of the minimum infrastructure required for each conditional use.

Infrastructure:

Water: Water is provided by WaterOne, with a 4-inch main serving the property. No additional water service is proposed for the expanded day-care use.

Sewers: This property is not located within an established sewer district. An individual, on-site wastewater system will be utilized. The Environmental Department has indicated to staff that the applicants' existing Mound System is insufficient to handle the increase from 12 to 24 children and a second Mound System would likely be needed to handle the increase of 180 gallons of water usage per day.

Prior to Zoning Permit approval, the applicants shall obtain Environmental Department approval of a septic system to handle the increased day-care use as proposed herein (24 child maximum). A maximum of 12 children shall not be exceeded until a septic system to handle all 24 children is approved by the Environmental Department, said system is fully operational, and the Planning Department has issued a Zoning Permit. A copy of Environmental Department documents indicating that said septic system is approved and operational shall be provided to the Planning Department prior to Zoning Permit approval. An appropriate stipulation is proposed under the Recommendation section of this report.

Public Safety: Police protection is provided by the Johnson County Sheriff's Department. Fire Protection is provided by Johnson County Fire District Number 2. The nearest fire station is located at 191st and Lackman, 4 miles to the east and south.

Transportation: Ridgeview Road is a two-lane, paved, county-maintained, CARNP major arterial road without shoulders. No road improvements are proposed for this use. The additional trips generated by 12 more children should not burden Ridgeview Road beyond its capacity.

Summary: The proposed use will have a very minimal effect on the infrastructure system and with the appropriate stipulation for the septic system, this proposal will meet the minimum infrastructure guidelines. With the stipulation proposed, the infrastructure system will be sufficient to support the proposed use; therefore, the minimum infrastructure requirements will be satisfied.

STAFF ANALYSIS

In-home day-care operations are allowed in the Rural District provided that a Conditional Use Permit is first issued. The regulations, the Rural Comprehensive Plan, and laws in Kansas indicate that consideration should also be given to whether a proposed conditional use is in the interest of the public health, safety, morals, and the general welfare of the community. This conditional use permit expansion has been considered with regard to:

1. Whether the use would be consistent with the zoning and uses of nearby properties.

Zoning to the north, west, and south is Rural District. Land within the City of Olathe lies directly to the east across Ridgeview Road and consists of large tracts in crops and vacant land. Surrounding uses are largely farm uses, with some single-family dwellings located on tracts fronting on section line roads. In 2002, on the property adjacent to the south, a CUP was approved for the Living Hope Church, which has yet to begin building.

A residence-based day-care center, which maintains the primary residential use and appearance of the property, is consistent with the zoning and residential uses of nearby properties.

2. Whether the use is compatible with the character of the neighborhood.

The neighborhood has an agricultural/rural character. In keeping with that character, the home/day-care center is on a large lot (10 acres) and there are no other homes within 500 feet. An expanded day-care operation would not be incompatible with the neighborhood character if the owner maintains the fencing and residential appearance of the property.

3. Suitability of the property for uses to which it has been restricted.

The property is suited for residential use and for the day-care use previously approved by CUP. The County has received no complaints regarding the day-care use since it was begun in 2002.

4. Extent of detrimental effects to nearby parcels should the rezoning be approved.

The home/day-care center is at least 200 feet to property lines and more than 500 feet from the nearest existing home. Staff is of the opinion that given the limited nature of this operation, the distance of the home from property lines, the rural characteristics of the neighborhood, and the fence screening of the property and play area; there will be few, if any, detrimental effects to nearby properties caused by increasing the number of children served from 12 to 24 per day.

5. Length of time the property has remained vacant as zoned.

The property has been used for a single-family residence since 1999 and for a home-based day-care (serving up to twelve children each day) since 2002.

6. Relative gain to the public health, safety, and welfare as opposed to the hardship imposed upon the landowner by denying the request.

Given appropriate stipulations, denying this application to increase to 24 children from the 12 currently approved would likely not help or harm the public welfare in so far as there is already an operating, state-licensed day-care use on the property. According to the Mid-America Regional Council, home-based day-care centers provide more than thirty percent of child day-care in Kansas. Day-care centers are a vital resource for working parents.

7. Whether the use is in keeping with the Comprehensive Plan.

The Rural Comprehensive Plan: A Plan for the Unincorporated Area of Johnson County (Plan) designates this property as Urban Fringe Policy Area near Olathe. The Urban Fringe Area does not directly speak to day-care facilities but does suggest close coordination with adjacent cities when reviewing proposals. Other than reminding the applicants that urbanization is occurring around the subject property, the City of Olathe had no specific comments regarding the proposed day-care use. The *Johnson County Zoning and Subdivision Regulations* allow such facilities with a CUP if the conditions and requirements in Article 23, Section 6 (B) (8) and (C) are met.

ZONING AND SUBDIVISION REGULATION STANDARDS

Article 23, Sec. 6 (C) establishes that the granting of the requested CUP shall not be recommended unless the Zoning Board first makes a finding that the following conditions are met:

- 1) *Is in harmony with the general purpose and intent of the regulations.* This CUP is generally in harmony with the general purpose and intent of the regulations because, with the suggested stipulations, it will meet the special requirements for day-care operations.
- 2) *Will not impair the adequate supply of light and air to adjacent property.* The granting of the requested CUP will have no impact on the supply of light and air to adjacent properties.
- 3) *Will not increase hazards from fire or other dangers.* Granting the CUP will not increase hazards from fire or other dangers.
- 4) *Will not increase traffic on streets beyond their capacity.* Granting the CUP will not adversely affect optimum average daily traffic flows. Ridgeview Road is a two-lane, paved, county-maintained, CARNP major arterial road without shoulders.
- 5) *Will not increase potential for flood damage to adjacent property or lead to additional public expense for flood protection, rescue or relief.* There is no floodplain on the subject property. Granting the CUP will not have any impact on flooding.
- 6) *Will not otherwise unduly impair the public health, safety, comfort, morals, or general welfare of the inhabitants of the County, or otherwise create a nuisance or nuisance-like situation.* Granting the CUP will not impair the public health, safety, comfort, morals, or general welfare of the County residents; nor will it create any nuisance-like situations.
- 7) *Will not pollute the air, land, or water.* The CUP should not significantly add to pollution of the land or water.

Article 23 Sec. 6 (B)(8) establishes specific standards for day-care homes, preschools, and other such uses. The regulations which apply to day-care uses in residences are as follows:

1. *Preschools shall not have more than one employee per day other than immediate family members residing on the premises, except in occasional, emergency situations.*

The applicants' narrative indicates that they wish to care for up to 24 children between 2 and 5 years of age. Staff reviewed Kansas Department of Health and Environment requirements and found that while two caregivers are sufficient for 24 children, if all were between 3 years old and school age (at least 1 adult per 12 children), at least one additional adult caregiver would likely be required if some children are between the ages of 2 and 3 (at least 1 adult per 7 children). Accordingly, the applicants have verbally indicated that the proposed Center would have one non-resident employee, in addition to the two applicants, to comply with state requirements. With the previous CUP for 12 children, there were no employees.

2. *The maximum number of persons receiving care per day shall not exceed 12. The County may permit a greater number when a finding is made that such additional persons will not adversely impact neighboring properties.*

The applicants are requesting to care for 24 children per day with this application. They were limited to 12 children per day under the previous CUP.

To gauge the impact of varying numbers of children on neighboring property owners, staff researched previously approved day-care/pre-school CUPs with similar limits. A day-care CUP located in a part of the county with similar residential densities was renewed in 2004, at Life Church, located at 159th and Lone Elm. It was approved for 41 children per day with six employees. Also in 2004, in a more densely populated neighborhood than this application, on a two-acre lot in the Rio-Lobo subdivision, an in-home pre-school was approved for 17 children per day. The County has received no complaints about either of these day-care uses. As such, to staff's knowledge, there has been no negative impact on neighbors from either use.

Since this application is proposed to allow roughly half as many children and caregivers as at Life Church, and as long as the applicants comply with all state requirements and the stipulations suggested herein, the increase from 12 to 24 children should not adversely affect neighboring properties.

3. *The owners shall occupy the structure as their private residence.*

The applicants operate the day-care center in a portion of their private residence. About 1,400 square feet of the approximately 4,000 square foot home is dedicated to the day-care use.

4. *Only one (1) non-illuminated ground or wall sign not more than two square feet in sign area may be used at the residence containing the use.*

On the entrance gate, just below the street address numbers, the name of the center, "Heartland," is spelled out in 3-inch letters (see Figure 2, page 2 of this report). This is the only identification approximating a sign that is visible on the property. It appears to comply with the above standard.

5. *In establishing greater or lesser quantities of employees or persons being served, a finding shall be made that the impact on neighborhood properties such as traffic levels, ingress and egress, location of drop-off and pick-up, amount of off-street parking, access to arterial streets and screening of outdoor play areas from adjacent properties has been adequately addressed.*
 - a. *Traffic levels:* Please see item 4, page 5 of this report, above.
 - b. *Ingress and egress:* A turnaround area was established as part of the 2002 CUP approval, located to the east of the gate between the gate and Ridgeview Road. Its purpose is to allow vehicles to turn around outside of the fence without backing onto Ridgeview when the gate is closed. As of this writing, the turnaround exists but it is overgrown, surrounded by landscape lights, and contains an area too small to be useful to most vehicles.
The existing turnaround shall be increased in size to at least 9 feet wide by 17 feet long and shall be maintained with additional gravel in an amount sufficient to provide a stable and well-defined surface area of at least 9 feet by 17 feet. A small ground sign with a single face no more than 1 ft. high by 2 ft. wide, containing the word "TURNAROUND," shall be clearly and visibly posted at the north end of the turnaround. Said turnaround and sign, as specified above, shall be provided within 30 days of the approval of this CUP. The turnaround shall be maintained free of plant growth and other obstructions and the sign shall be maintained to be visibly clear and legible for the duration of the term of this CUP. An appropriate stipulation is provided.
 - c. *Off-street parking:* Please see item 3 on page 7 of this report, below.
 - d. *Access to arterial streets:* Access to Ridgeview Road, a county-maintained major arterial street, is accomplished from the driveway entrance of the property.
 - e. *Screening of outdoor play area:* The outdoor play area is located more than 500 feet from the nearest home and is surrounded by a six-foot high privacy fence. The combination of fence and distance is adequate to screen the play area from homes on adjacent properties.
6. *If a finding is made that neighborhood properties have been detrimentally affected, the County may, as part of the renewal, require the number of employees or persons receiving care to be reduced and traffic may be restricted to ensure compatibility with surrounding land uses, safe ingress and egress, and safe drop-off and pick-up. Additional off-street parking and screening of play areas from adjacent properties may be required.*

Not applicable.

County Regulations which apply to all day-care/preschools, regardless of where they are operated, are as follows:

- 1) *The Conditional Use Permit should be granted for an initial period of time of 12 months; however, initial permits and permit renewals may be granted for a maximum period of time not to exceed five years per permit.*

Given that a five-year term was granted for the previous CUP, Planning staff recommends that a 5-year term be granted for this application.

- 2) *All licensing requirements of the Johnson County Health Department must continually be satisfied during operation of the facility.*

The applicants shall provide a current copy of their license prior to Zoning Permit approval. Said license shall indicate approval for the total number of children requested in this application (24).

- 3) *Off-street parking and loading spaces shall be provided at least as follows:*
 - a) *One space for each employee expected to be on-premises at any one time during a routine day of operation.*
 - b) *One space for each five (5) persons being provided services on-premises at any one time during a routine day of operation.*

Based on a maximum 24 children and one employee, the day-care center is required to have 6 off-street parking spaces. The property currently has only four parking spaces. The applicants shall comply with this requirement prior to zoning permit approval. An appropriate stipulation is provided.

City of Olathe staff: Please see attached memo

Public Works Department Staff: No comments

County Building Official Comments: Please see attached memo

RECOMMENDATION

Planning staff recommends **approval** of the Conditional Use Permit, subject to the following stipulations:

1. Rescind Previous Resolution. BOCC Resolution No. 070-02 shall be and hereby is rescinded upon the approval of this resolution by the BOCC.
2. Permitted Use. An in-home day-care use shall be allowed. The day-care shall be operated in accordance with the site development plan, as amended by these stipulations, attached hereto as Exhibit A.
3. Drop-off and Pick-up. No children shall be dropped-off or picked-up in the street.
4. Vehicular Access. No vehicles shall back into the street. Instead, all vehicles shall utilize the turnaround near the house when the front gate is open. To provide a turnaround when the front gate is closed, the existing turnaround between the front gate and Ridgeview Road shall be increased in size to at least 9 feet wide by 17 feet long and shall be maintained with additional gravel in an amount sufficient to provide a stable and well-defined surface area of at least 9 feet by 17 feet. A small ground sign with a single face no more than 1 ft. high by 2 ft. wide, containing the word "TURNAROUND," shall be posted at the north end of the turnaround and shall be clearly legible and visible from the adjacent driveway. Said turnaround and sign, as specified above, shall be provided within 30 days of the approval of this CUP. The turnaround shall be maintained free of plant growth and other obstructions and the sign shall be maintained to be clearly visible and legible for the duration of the term of this CUP.
5. Off-Street Parking: Prior to Zoning Permit approval, the applicants shall expand the existing parking area adjacent to the house to provide at least six parking spaces, with each space containing an area no less than 9 feet wide by 17 feet long, as required by the *Zoning and Subdivision Regulations Performance Standards* for day-care centers.

6. Operation. The day-care center shall operate in compliance with the site development plan, as amended by these stipulations, and the following standards:
 - a. Maximum number of children per day: twenty-four (24)
 - b. Maximum number of days per week: five (5); Monday through Friday
 - c. Hours of operation: 7:00 am to 6:00 pm
 - d. Maximum number of non-resident employees: one (1)

7. Licensing. The licensing requirements of the Kansas Department of Health and Environment, through their agent, the Johnson County Health Department, shall continually be satisfied during operation of the day-care center and during the term of this Conditional Use Permit. The applicants shall provide a copy of the license to the Planning Department before Zoning Permit approval. Said license shall indicate approval for the total number of children requested in this application (24).

8. Term. The term of the permit shall be for a period not to exceed five (5) years commencing from the date of BOCC approval of this resolution.

9. Owner Occupancy. The applicants shall continuously occupy the house as their private residence during the term of this Conditional Use Permit.

10. Septic System. Prior to Zoning Permit approval, the applicants shall obtain Environmental Department approval of a septic system sufficient to handle all wastewater from the increased day-care use as proposed herein (24 child maximum). A maximum of 12 children shall not be exceeded until a septic system to handle all 24 children is approved by the Environmental Department, said system is fully operational, and the Planning Department has issued a Zoning Permit. A copy of Environmental Department documents indicating that said septic system is approved and operational shall be provided to the Planning Department prior to Zoning Permit approval. The septic system shall continually be operated and maintained in accordance with the requirements of the Environmental Sanitary Code.

11. Building Code Compliance. The day-care center shall continually meet the requirements of the adopted version of the Johnson County Building and related codes.

Reasons for Recommendation:

1. The day-care use is consistent with the zoning and use of surrounding properties.
2. The day-care use is compatible with the character of the neighborhood.
3. Approval of this application would not conflict with the health, safety, or welfare of the public.
4. The day-care use is in keeping with the Comprehensive Plan.
5. The Conditional Use Permit meets the standards set forth in the Johnson County *Zoning and Subdivision Regulations*, particularly the standards set forth in Article 23, Section 6(B) 8 and (C).

Enclosures: Vicinity Map
 Narrative
 Development Plan
 City of Olathe comments
 County Building Official Comments