



2011. At this time, the applicant is requesting that the special use permit be extended for an additional five year period.

The operation of Guardian Angel Daycare Center has remained unchanged since the business initially opened.

2. **Special Use Details:**

The applicant is licensed by the state and is authorized to care for up to 50 children ranging from 1 to 10 years in age. The hours of operation are from 6:30 a.m. to 6:00 p.m., Monday through Friday. A total of 11 individuals are employed.

3. **Surrounding Zoning/Land Use/Character of the Area:**

The subject property is zoned R-2 (two-family residential) and CP-1 (planned retail business). Surrounding properties are a variety of uses and zoning classifications. North are properties zoned R-2 (two-family residential), east are properties zoned R-3 (low-density residential). South of the site is a small manufacturing facility zoned M-2 (general industrial). This is an area of a variety of uses and zoning districts, the existing day care facility is compatible with the character of the area.

4. **Anticipated Impacts:**

The childcare center is regulated and approved by the Kansas Department of Health and Environment. There are no anticipated impacts on the surrounding neighborhood with the renewal of this special use permit. Since there have been no reported problems with the childcare center since the time of the last renewal, it is recommended that the special use permit be renewed for a five (5) year period.

5. **Staff Recommendation:**

a. Staff recommends approval of SU-11-007 for the following reasons:

- (1) The daycare would continue to provide a service to the city and surrounding area.
- (2) The daycare is compatible with the mixed-use character of the surrounding area.
- (3) The site has been operating as a daycare center since 1982.

b. Staff recommends approval of SU-11-007 subject to the following stipulations:

- (1) The Special Use Permit shall expire in five (5) years from the date of Governing Body approval, tentatively October 15, 2016.
- (2) The group day-care shall be operated in conformance with the license by the Kansas Department of Health and Environment (i.e., maximum number of children, ratio of adults to children, fire

inspections, health screens, etc.). The owner shall notify the city if application is made to the state for expansion of the day-care operation.

*Following staff presentation, the Chairman opened the meeting up to questions from commissioners:*

Chairman Campbell: Any communication from anyone in the public regarding this?

Mr. Clements: No, sir, we did not have any calls or inquiries.

Chairman Campbell: This is a public hearing. We'll hear from the applicant now.

*Pat Kelly, 1370 West Prairie Court, Olathe, Applicant, appeared before the Planning Commission and made the following comments:*

Mr. Kelly: We hope to continue providing care for the children in our neighborhood. Any questions?

Chairman Campbell: Any questions for the applicant?

Comm. Locke: I have a question, and now that I'm thinking about it, I don't know if it's a question that should be asked to the owner or Mr. Clements. You've been there since 1982 and you ask for special use every five years. Is there a reason why every five years?

Mr. Kelly: As far as I know, that's the way the City sets these up. Mr. Clements might know better than I.

Mr. Clements: That's a good question. The [inaudible] special use application after they have demonstrated that the use is not going to have any adverse impact on a neighborhood. I think our special use permits are given an indefinite timetable, and perhaps that's for the consideration by the Planning Commission. Five years is just kind of a pattern Mr. Kelly is in with this special use, and we processed it as such, but there's nothing that says it has to be five years.

Comm. Locke: I should have asked you that question because I know we have done that regarding other special use cases, where we have extended indefinitely, or at least longer than five years, especially since it has been there since 1982. I do know a couple children who, a long time ago, were clients there, who were very positive. So, I think it's a good business for the city.

Chairman Campbell: The special use would go with the land, or would it be contingent with the current ownership?

Mr. Clements: Special use permits go with the owner and can be transferred.

Chairman Campbell: They can be transferred? So if they were to sell and the operation changed, the new operation would have an indefinite, if that's the direction we're heading.

Mr. Clements: If the special use permit is transferred, any new owners would be required to meet the stipulations.

Chairman Campbell: Okay. Just wanted to be clear. Any other questions?

Comm. Kohler: Is it safe to assume, Mr. Kelly, that you would be interested - ? Are you tired of seeing us every five years?

Mr. Kelly: I would certainly be open to an extension for however long you feel comfortable with, and I may not be back, in that case. [*Laughter*]

Chairman Campbell: Other questions or comments? Is there anyone else here who would like to speak in favor of this item? Seeing or hearing none, is there anyone who would like to speak in opposition? Seeing or hearing none, we'll bring it back for questions, comments, or a motion.

Motion by Commissioner Locke, seconded by Commissioner Ling, to close the public hearing.

*Motion carries 7-0.*

Comm. Locke: About making the motion, I don't know if that should be an indefinite, since you asked the question that you asked, but it does appear that the owner would be in agreement that an indefinite use – And the fact that we've been told that if the ownership changed, that they would be required to come back – is that correct? If the ownership changed, then the business use changed.

Mr. Clements: No, a new owner would not be required to come back to the Planning Commission. The special use permit and stipulations could be transferred. It's just a paperwork transfer and would not require Planning Commission approval.

Chairman Campbell: But they would need to meet the KDHE requirements, the ratio, the fire inspection – Everything that is already in the stipulations.

Comm. Locke: Or if the nature of the business changed, they would have to come back before planning staff.

Mr. Clements: Yes.

Comm. Ling: I sure would like to see some consistency here. We're kind of doing this at the bench, one at a time, and I know in the recent past we have extended some of these five years. Also, where there's infrastructure involved, significant capital cost, we've gone to a longer, indefinite period. But some of these type of establishments, fairly recently we have done five year approvals. I just have a comfort level where we're kind of picking and choosing which ones here. I guess I'd like to apply some consistency at this point. I definitely understand that the applicant has done fine here. It's nothing against the applicant; it's about the process. I guess I'm a little bit nervous about just allowing one of these to without a real infrastructure. This individual isn't doing any additional capital investment like some of the other infrastructure SUPs that we've dealt with in the past. So, my thought would be to leave this at five years, but I also very much understand the direction that you're seeking, Ms. Locke, on a longer period, especially with this specific applicant.

Chairman Campbell: I would normally agree there, and do agree, when we're working toward some standardization there. But I know that recently we did have an applicant that was this long in coming and I think we granted a ten year. I'd feel a little better about doing that, personally, than an indefinite, especially since we have such a long track record here, back to 1982. That's how I am feeling at this point. Until we get a definitive of what we are doing, how many years, as we look at UDO updates and amendments. I would make a motion to that effect.

Motion by Chairman Campbell, seconded by Commissioner Kohler, to recommend approval of SU-11-007, for the following reasons:

- (1) The daycare would continue to provide a service to the city and surrounding area.
- (2) The daycare is compatible with the mixed-use character of the surrounding area.
- (3) The site has been operating as a daycare center since 1982.

Chairman Campbell's motion included recommending approval with the following stipulations to be included in the ordinance, as amended:

- (1) The Special Use Permit shall expire in ~~five (5)~~ **ten (10)** years from the date of Governing Body approval, tentatively October 15, ~~2016~~ **2021**.
- (2) The group day-care shall be operated in conformance with the license by the Kansas Department of Health and Environment (i.e., maximum number of children, ratio of adults to children, fire inspections, health screens, etc.). The owner shall notify the city if application is made to the state for expansion of the day-care operation.

Motion carries 7-0.



home is on one lot, and he would like to sell the second lot for construction of a new home. Ms. Bailey owns one lot and would like to construct a new home on her property. The proposed rezoning is necessary for the applicant's to obtain building permits for their plans.

## II. EXISTING CONDITIONS

### A. **Utilities/Municipal Services:**

The property is located in the City of Olathe water service area. The property is currently served by a septic system.

### B. **Access/Streets:**

The properties have direct driveway access from 122<sup>nd</sup> Street.

## III. ANALYSIS

Staff's analysis of this application is based in part on the criteria established in *Golden v. City of Overland Park*, which determined factors a planning commission and city council should consider in making decisions on rezoning and special use applications. The following is the criteria for considering applications as listed in *Unified Development Ordinance (UDO) Section 18.12.140* and staff findings for each item:

### A. ***The conformance of the proposed use to the Comprehensive Plan and other adopted planning policies.***

The future land use plan for the *Comprehensive Plan* identifies the subject property as conventional residential. The proposed rezoning is appropriate for this area, and meets the designation of the comprehensive plan.

### B. ***The character of the neighborhood including but not limited to: land use, zoning, density (residential), architectural style, building materials, height, structural mass, sitting, open space and floor-to-area ratio (commercial and industrial).***

The character of the neighborhood is a mix of large lot residential properties and conventional platted subdivisions.

### C. ***The extent to which approval of the application would detrimentally affect nearby properties.***

The proposed rezoning would not be detrimental to nearby properties. The existing use of the property is residential in nature and the proposed R-1 district is the most appropriate zoning classification for this area.

### D. ***The extent to which the proposed use would substantially harm the values of nearby properties.***

The proposed rezoning to an R-1 classification would not harm the value of nearby properties. The R-1 zoning district will allow the construction of new homes that will enhance property values in this neighborhood.

***E. The gain, if any, to the public health, safety, and welfare due to denial of the application as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.***

Denial of the application provides no specific gain to the public health, safety, and welfare. A city zoning district is necessary for the applicants to improve their properties.

**IV. STAFF RECOMMENDATIONS**

Staff recommends approval of the proposed rezoning from County RN-1 to an R-1 Single Family Residential. The proposed R-1 zoning district is appropriate for the character, nature and use of the subject property.

*Following staff presentation, the Chairman opened the meeting up to questions from commissioners:*

Chairman Campbell: Any questions for staff? All right, let's hear from the applicant.

*Rodney Kirk, 19265 West 122nd Street, Olathe, appeared before the Planning Commission and made the following comments:*

Mr. Kirk: I own the center lot, the house on the center lot. The empty lot in Tract 4 on the screen there is the lot we are trying to sell. The buyer is actually here as well. And Tress and Jim Bailey are here, and they own Tract 5, and they are planning to build on that lot. So, we'll have building going on on both sides at the same time. That's the plan.

Chairman Campbell: Thank you. Any questions or comments? Motion to close the public hearing?

Motion by Commissioner Kohler, seconded by Commissioner Almeida, to close the public hearing.

*Motion passes 7-0.*

Motion by Commissioner Ling, seconded by Commissioner Almeida, to recommend approval of RZ-11-011, the proposed rezoning from County RN-1 to an R-1 Single Family Residential. The proposed R-1 zoning district is appropriate for the character, nature and use of the subject property.

*Motion passes 7-0.*

**MOTION - MINUTES  
CITY OF OLATHE  
STAFF REPORT**

**CASE # VAC-11-001**

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**Case Planner:** Sean Pendley                      **Planning Commission Meeting Date:** September 26, 2011

**Request:** Vacation of two waterline easements for Lot 1, Battle Creek.

**Location:** Vicinity of southeast corner of 119<sup>th</sup> Street and Sunset Drive.

**Owner:** Battle Creek, LLC

**Applicant/  
Engineer:** Phelps Engineering, Judd Claussen

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1.    **Comments:**

Staff is working with the applicant on revisions for the associated preliminary plat (P-11-029) for Battle Creek Apartments and final site development plan (PR-11-019) for Legacy Senior Residences. Since these items are related, all the applications must be continued to the next Planning Commission meeting in order for the applicant to address staff comments.

2.    **Recommendation:**

Staff recommends continuation of VAC-11-001 to the October 10, 2011 Planning Commission meeting.

Motion by Commissioner Ling, seconded by Commissioner Locke, to continue item VAC-11-001 to the October 10, 2011, meeting.

*Motion passes 7-0.*

OTHER MATTERS – September 26, 2011

Mr. Clements: Your next scheduled meeting will be on October 10th. You have four or five items on the Consent Agenda, several public hearings, and we will be bringing back the revised request for the Legacy Apartments at their new location on 119th Street. We are anxious for you to see that. That meeting will be preceded by our normal 5:30 workshop.

I'd also like to point out that we have completed our interviews of consultant teams for the update to the Unified Development Ordinance. We interviewed that last consultant team today and we hope to make a selection tomorrow. It is our goal to have that contract on the City Council agenda next Tuesday, October 4th. We'll have a complete update for you on that our workshop on October 10th.

Chairman Campbell: We are shooting to make sure we have all the agenda items on the 24th moved to the 10th or later so that we can cancel that meeting, because we do have our annual joint City Council/Planning Commission meeting on October 25th. Does anyone else have anything?

Comm. Fry: I had a quick comment about the special use permit issue, just to get it on the record. What is the process by which we can get some more systematic guidelines on the length of time for these special use permits? Is that going to go through the UDO process? Is that the plan?

Mr. Clements: Yes, exactly. We've done some work on that, and the Planning Commission has even talked about it in their workshops. We've tried to standardize it to some extent, so when someone comes in, they'll kind of know what the deal is. We think that is important. We've discussed that, and it kind of got rolled into this overall update of the development ordinance. So, we hopefully will have a better road map when we get to that point.

Chairman Campbell: With that, we are adjourned. Thank you.