

McCordsville

ESTD  1988

INDIANA

Board of Zoning Appeals Staff Report Meeting Date: February 1, 2023

PETITIONER: Kadija Munye

PETITION: Special Exception

EQUEST: Petitioner requests approval of a Special Exception to allow an in-home daycare in a residential dwelling.

LOCATION: The property is located at 6846 Oakcrest Drive.

ZONING: The property is zoned Oakcrest Planned-Unit Development (PUD).

Zoning

North: Oakcrest PUD
South: Oakcrest PUD
East: Oakcrest PUD
West: Oakcrest PUD

Land Use

Common Area
Single-family residential
Single-family residential
Single-family residential

STAFF REVIEW: The petitioner seeks approval for an in-home daycare in a residential dwelling. In-home daycares are considered home occupations, by the Town's Zoning Ordinance. Most occupations, including in-home daycares, require a Special Exception. All home occupations must follow the regulations denoted in the Zoning Ordinance in order to be considered for approval. Those regulations are listed below:

1. Face-to-face wholesale/retail sale of stocked goods is limited to 25% of the total home occupation sales;
2. Manufacturing activities are hereby expressly prohibited;
3. No equipment or process used in the home occupation shall create noise, vibration, glare, smoke, fumes, odors, or electrical interference that is detectable, without the aid of instruments, off the premises;
4. There shall be no electrical or mechanical equipment utilized in the home occupation that will create any visual or audible interference with radio or television reception;
5. At least one person residing within the dwelling must be the primary operator of the home occupation;
6. The home occupation may not involve the on-site employment or regular on-site gathering of more than one person, other than those residing at the location of the home occupation;

7. There shall be no exterior storage of products, equipment or materials that are related to the home occupation;
8. The home occupation shall not exceed a total of 500 square feet or 25% of the total floor area of the dwelling;
9. The home occupation must not require any structural or aesthetic alterations to the dwelling that changes its residential character as described below:
 - a. The structure shall not be altered in its appearance and the home occupation shall not be conducted in such a manner as to differentiate the dwelling from the residential character of the area by the use of colors, materials, construction, or lighting;
 - b. The home occupation shall not require any additional entrances to the dwelling;
 - c. The home occupation shall not require increasing or enhancing the size, capacity, or flow of the water, gas, waste treatment, or electrical systems beyond what standard for a residence;
 - d. There shall be no interior alterations to the interior of the dwelling to accommodate the home occupation that would render it the structure undesirable for residential uses;
10. The home occupation shall not involve on-site customers, employees, meetings, or other events that necessitate the installation of any off-street parking spaces in addition to those require by the dwelling unit;
11. The home occupation must not require the regular use of commercial vehicles for pickup and deliveries, other than those from the U.S. Postal Service or other small package carriers; and
12. No sign of any type shall be used, other than those permitted in the applicable zoning district.

Staff has discussed these regulations with the petitioner and believes the petitioner is compliance with them but will request confirmation at the meeting. As this criterion applies to all home occupations, some criteria must be interpreted on a case-by-case basis to determine compliance. In this case, staff has made one interpretations of this criterion. Regarding No. 6, no daycare could operate as a home occupation without the gathering of children. Therefore, it is staff's interpretation that a gathering which is inherent to the home occupation is permitted. An example of a gathering that would not be permitted, would be a gathering or meeting of staff for an in-home business. Such a gathering or meeting of staff could occur off-site. The children could not gather off-site. Staff has made this same interpretation with the previous requests for approval of in-home daycares.

STAFF RECOMMENDATION:

Staff has generally supported previous requests for in-home daycares, so long as they comply with the criteria in the Zoning Ordinance, and our suggested conditions of approval are adopted. With that said, staff is aware of some concerns voiced by residents in the Oakcrest neighborhood and opposition from the HOA. The HOA's opposition primarily stems from the fact that it appears in-home daycares are prohibited by the HOA's covenants. The Town does not enforce covenants, as they are private party agreements between the HOA and owners of land within the subdivision. Town staff is asked to make a recommendation based upon our experience, planning principles, and the Town's Ordinances.

Therefore, staff is in support of this petition so long as the suggested conditions of approval, noted below, are included:

- Any additional equipment, playset or otherwise, used by the home occupation must be first presented to the BZA for approval prior to installation.
- Petition confirms that they understand and will stay in compliance with the home occupation criteria listed in this staff report.

With that said, staff would also be in full support of a continuance if there was a belief that additional time would be beneficial.

The BZA may include these conditions of approval. If any conditions are included, those conditions should be incorporated into the ballots. They may be amended, added to, or removed by the BZA during the course of discussions. The petitioner also has the right to request them to be amended, added to, or removed until the time the BZA has made a motion on the conditions.

The BZA has four (4) options in considering this request; the Board may approve, approve with modifications, deny, or continue this petition.

