



**STAFF REPORT
DUBLIN CITY COUNCIL**

CITY CLERK
File # -

DATE: June 19, 2018
TO: Honorable Mayor and City Councilmembers
FROM: Chris Foss, City Manager
SUBJECT: **Public Hearing:** Safari Kid Daycare and Community Center Appeal of the Planning Commission's decision to deny the Site Development Review Permit, Conditional Use Permit and Minor Use Permit (PLPA-2017-00050)
Prepared By: Mandy Kang, Senior Planner

EXECUTIVE SUMMARY:

The City Council will consider an appeal by the applicant for the approval of a Site Development Review Permit, Conditional Use Permit and Minor Use Permit to build a new daycare facility and community room on the vacant 2.1-acre Semi-Public parcel in Positano. The proposed project includes construction of a 14,936 square foot building comprised of a 10,667 square foot childcare center to be operated by Safari Kid and a 4,269 square foot multipurpose room that will be open for rent to the community, and related site improvements including an outdoor play area for the childcare center, shared parking for both uses, and a minor amendment to the Planned Development Zoning to establish development standards. On April 10, 2018, the Planning Commission denied the request. The applicant has appealed that action to the City Council. The City Council will hold a public hearing to consider the matter.

RECOMMENDATION:

Disclose ex parte contacts, conduct the public hearing, deliberate and take the following action: Adopt the following resolutions: a) Resolution reversing the Planning Commission's decision and approving a Conditional Use Permit for a minor amendment to the Planned Development Zoning Stage 2 Development Plan for the site designated as Semi-Public in Positano; b) Resolution reversing the Planning Commission's decision and approving a Site Development Review Permit for a 14,936 square foot building comprised of a 10,667 square foot childcare center and 4,269 square foot community center; and c) Resolution reversing the Planning Commission's decision and approving a Minor Use Permit for shared parking between the 10,667 square foot daycare and the 4,269 square foot and community center.

Submitted By
Community Development Director

Reviewed By
Assistant City Manager

FINANCIAL IMPACT:

All costs associated with processing this application are borne by the applicant.

DESCRIPTION:

The project site is an undeveloped parcel located at the southwest corner of Positano Parkway and West Cantara Drive in the Positano neighborhood as shown in Figure 1. The subject property is approximately 2.1 acres and currently vacant. The project site has a General Plan and Eastern Dublin Specific Plan land use designation of Semi-Public which allows day care centers and community rooms among other community serving uses. The site is generally surrounded by residential homes and a water quality basin (across Positano Parkway).

Figure 1. Project Site



The Applicant is requesting approval to construct a 14,936 square foot building comprised of a 10,667 square foot childcare center and a 4,269 square foot multipurpose room that will be open for rent to the community. The proposed project includes a 12,897 square foot outdoor play area for the childcare center, and related improvements including parking, landscaping. Please refer to Attachments 1 and 2 for a complete discussion of the proposed project.

The current request for the proposed project includes the following entitlements:

Site Development Review Permit - For a 14,936 square foot building comprised of a 10,667 square foot childcare center and a 4,269 square foot multipurpose room, and associated site and landscape improvements with public access taken from a driveway on West Cantara Drive (only emergency vehicles will be able to access the site from the driveway on Positano Parkway).

Figure 2. Proposed Site Plan

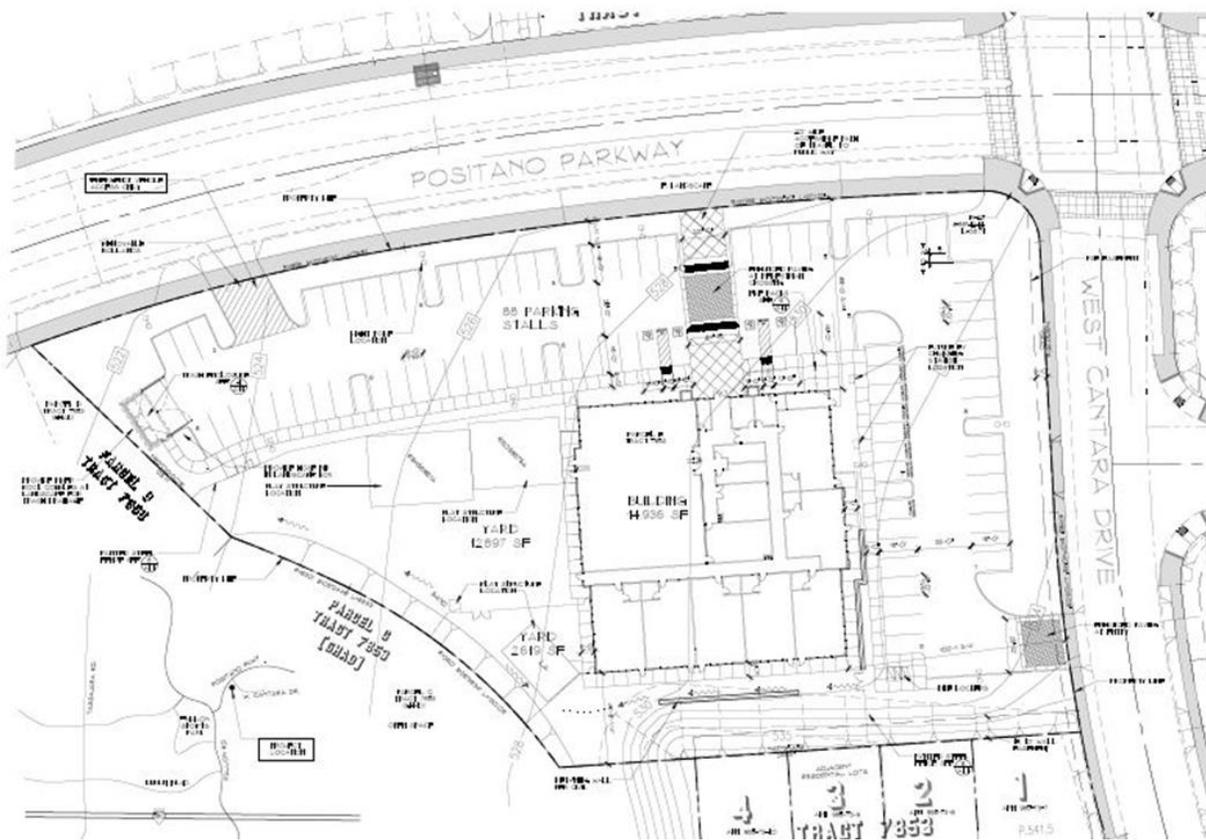


Figure 3. Perspectives



View @ North Corner



View @ West Corner

Conditional Use Permit – To amend the Planned Development Zoning Stage 2 Development Plan to establish the following development standards and hours of operation.

Table 1. Development Standards

Maximum Building Height	25 feet
Minimum Setbacks	Along Positano Pkwy: 20 feet Along West Cantara Dr: 20 feet Adjacent to Residential Properties (South & Southeast): 40 feet Adjacent to Vacant Land (Southwest): 40 feet

The daycare center will typically operate Monday through Friday during the day and the community center will be open for use in the evenings during the week and throughout the day on weekends. Outdoor activities, including use of the play equipment, will be limited to the hours of 9 a.m. and 6 p.m. Monday through Friday. The play equipment will only be used by the daycare center. The building shall only be open for use during the following hours:

Table 2. Hours of Operation

Day	Time
Monday-Thursday	6:30 a.m.-8 p.m.
Friday	6:30 a.m.-10 p.m.
Saturday	8 a.m.-10 p.m.
Sunday	8 a.m.-8 p.m.

Minor Use Permit – For a parking reduction for shared parking between the daycare facility and the community center because they will operate at different times. A condition of approval has been included which prohibits the daycare center and community center from operating at the same time in order to ensure that adequate parking is available on site.

Table 3. Parking Requirement

Land Use	Parking Requirement	Square Footage/ Daycare Req.	Required Stalls
Community Center	1 parking space per 50 square feet for non-fixed seating in the assembly area	4,269	85
Daycare	1 per employee, plus 1 per company vehicle, plus a loading space for every 5 children or clients at the facility	25 Employees 229 children 2 company vehicles	73

PLANNING COMMISSION ACTION:

On February 13, 2018, the Planning Commission held a public hearing to consider the proposed project. No members of the public addressed the Planning Commission regarding the project. The Planning Commission raised concerns about traffic and safety, site improvements, architectural details, signage and landscaping. The Planning Commission continued the item in order for staff and the applicant to address these concerns. The Planning Commission Meeting Minutes are included as Attachment 3.

On April 10, 2018, the Planning Commission held a second public hearing to consider the revised project. The Planning Commission Meeting Minutes are included as Attachment 4. Twenty-four members of the public addressed the Planning Commission (7 people spoke in favor of the project and 17 members of the public spoke in opposition of the project). An additional 18 people

submitted speaker slips but chose not to speak (of those 12 people indicated support of the project and 6 were opposed to the project). The Planning Commission expressed concerns that the project site is not suitable for the type and intensity of the proposed use and will generate more traffic than the roadway can accommodate in an area the Planning Commission perceived as already being congested. The Planning Commission voted unanimously (4-0-1 with Commissioner Wright being absent) to adopt resolutions denying the Site Development Review Permit (Resolution 18-09), Conditional Use Permit (Resolution 18-10) and Minor Use Permit (Resolution 18-11). These resolutions are included as Attachment 5.

The Planning Commission denied the project based on the following findings that it could not make in the affirmative to support approval of the project.

Site Development Review Permit Denial Findings:

- a. *The subject site is not suitable for the type and intensity of the approved development.*
- b. *The site has not been adequately designed to ensure the proper circulation for bicyclists, pedestrians, and automobiles.*

Conditional Use Permit Denial Findings:

- a. *The project will adversely affect the health or safety of persons residing or working in the vicinity, and be detrimental to the public health, safety and welfare.*
- b. *There are not adequate provisions for public access, water, sanitation, and public utilities and services to ensure that the proposed use and related structures would not be detrimental to the public health, safety, and welfare.*

Minor Use Permit Denial Findings:

- a. *The proposed use and related structures are not compatible with other land uses, transportation and service facilities in the vicinity.*
- b. *The project will adversely affect the health or safety of persons residing or working in the vicinity, and be detrimental to the public health, safety and welfare.*
- c. *There are not adequate provisions for public access, water, sanitation, and public utilities and services to ensure that the proposed use and related structures would not be detrimental to the public health, safety, and welfare.*

On April 20, 2018, the applicant appealed the denial of the Safari Kid Daycare Center Project by the Planning Commission (Attachment 6).

APPEAL PROCESS:

Chapter 8.136 of the Zoning Ordinance contains the regulations and procedures that must be followed if an action of the Planning Commission is appealed to the City Council. In brief, an appeal and filing fee must be filed with the City Clerk within 10 calendar days of the Planning Commission action. The appeal must be scheduled for a Public Hearing within 45 days (June 3, 2018) of the filing of the appeal. The City Council may defer decision on the appeal at the Public Hearing but must take action within 75 days (July 4, 2018) of the filing of the appeal, or the decision of the Planning Commission is deemed affirmed. The applicant requested that the City Council postpone the public hearing until June 19, 2018 to provide it with additional time to prepare for the meeting (Attachment 7).

Pursuant to the appeals process set forth in the City of Dublin Zoning Ordinance (Chapter 8.136) for planning actions, the appellant must state the "extent of the appeal and the reasons and grounds for appeal". The appeal of the Planning Commission's denial on April 10, 2018 is

confined to the approval of the findings for the Site Development Review Permit, Conditional Use Permit and Minor Use Permit.

Chapter 8.136 of the Zoning Ordinance states that the City Council may, by majority vote, affirm, affirm in part, or reverse the Planning Commission's decision to deny the Project. If the City Council decides to reverse the Planning Commission's decision, the City Council may adopt additional conditions of approval that address the specific subject of the appeal. The City Council's action must be supported by findings of fact based on information before the Council when it hears and considers the appeal. Staff recommends that the City Council reverse the Planning Commission's decision, and adopt resolutions approving the proposed Site Development Review Permit, Conditional Use Permit and Minor Use Permit (Attachments 8, 10, and 12).

ANALYSIS:

The Zoning Ordinance provides findings which must be made by the decision-making body in order to approve a Site Development Review Permit (Section 8.104.090), a Conditional Use Permit (8.100.060), and a Minor Use Permit (Section 8.102.060). These findings are included in Attachments 8, 10 and 12 of this Staff Report. The Zoning Ordinance states that all of these findings must be made in order to approve each of these permit types and shall be supported by evidence in the public record.

The appeal of the Planning Commission's decision is confined to the denial of the Site Development Review Permit, Conditional Use Permit, and Minor Use Permit on the grounds that the project is not consistent with the Required Findings necessary for approval of the subject entitlements. Accordingly, this Staff Report addresses only whether the decision made by the Planning Commission should be affirmed, affirmed in part, or reversed.

Issues Raised in Appeal

The appeal asserts that the Planning Commission acted unfairly. The primary issues raised by the appellant and responded to in detail below include the following:

- The proposed project is consistent with the adopted General Plan/Eastern Dublin Specific Plan Land Use Designation and Planned Development Zoning;
- The project site is adequately served by existing infrastructure to support the proposed use; and
- Denial of the proposed project would constitute an inverse condemnation and other constitutional violations including Due Process and Equal Protection.

The proposed project is consistent with the adopted General Plan/Eastern Dublin Specific Plan Land Use Designation and Planned Development Zoning

Issues Raised by Appellant

The appeal states that the Planning Commission ignored the Semi-Public land use designation and the Planned Development Zoning Stage2 Development Plan which permits daycare centers and community rooms. The appeal further states that the proposed use of the site is consistent with the City's Semi-Public Facilities policy and the uses that the City Council intended to occur on this site.

Staff Response

The City Council approved the Positano Project as part of the larger Fallon Village Project in 2005. The approvals included a General Plan and Eastern Dublin Specific Plan Amendment, Planned

Development Rezone with a related Stage 2 Development Plan, and a Vesting Tentative Map creating the residential lots, along with the subject Semi-Public site, and sites designated for a Neighborhood Park, Neighborhood Square, elementary school site, and land designated Rural Residential/Agriculture and Open Space.

The adopted General Plan and Eastern Dublin Specific Plan Amendment established land use designations throughout the project. The subject site was given a Semi-Public land designation which is defined below. The site was given this designation in accordance with the Semi-Public Facilities Policy (Attachment 13). The purpose of the policy is to ensure that sites are set aside to support future uses such as childcare centers, religious institutions, and other uses that provide community services.

Semi-Public Facilities (Maximum FAR: .50; Employee Density: 590 square feet per employee)

This designation allows quasi-public uses, such as child care centers, youth centers, senior centers, special needs program facilities, religious institutions, clubhouses, community centers, community theatres, hospitals, private schools and other facilities that provide cultural, educational, or other similar services and benefit the community. Semi-public facilities may be used for more than one such use.

The City Council also adopted Planned Development Zoning which established the permitted and conditionally uses on the Semi-Public parcel. The zoning expressly permits daycare centers and community centers on the subject site.

The applicant proposed to construct a 14,936 square foot daycare center and community room with a floor area ratio of 0.19, well below the maximum FAR of 0.50 allowed on the site. The proposed project is conforming to the development standards and regulations for the site including the maximum floor area ratio. The proposed use of the site for a daycare center and community room is consistent with the General Plan/Eastern Dublin Specific Plan land use, and the use implements the intent of the adopted Semi-Public Facilities Policy by providing space for a daycare center and a community room. These uses are also consistent with the uses permitted by the Planned Development Zoning for the site.

The project site is adequately served by existing infrastructure to support the proposed use.

Issues Raised by Appellant

The appeal challenges the Planning Commission's findings that there is "inadequate traffic capacity to serve the proposed project" and there are "inadequate public utilities" to serve the site. The appellant asserts that there is adequate infrastructure, including roads and utilities to serve the project and support by technical analysis.

Staff Response

The project site is located within the Positano neighborhood which is part of the larger Fallon Village project area. Fallon Village was the subject of a Supplemental Environmental Impact Report (SEIR) which supplemented two prior EIRs (the Eastern Dublin EIR (SCH # 91103064), and the Eastern Dublin Properties Annexation and Pre-Zoning EIR (SCH # 2001052114)). The SEIR includes a traffic study that was prepared by TJKM Transportation Consultants. The traffic study analyzed development of the mix of uses within the Positano neighborhood, including the use of the subject site for semi-public uses.

The City's Transportation and Operations Manager conducted a site visit and reviewed the operating characteristics and site plan for the proposed project against the SEIR's traffic study for Positano. The proposed project was found to be consistent with the assumptions in the traffic study and did not warrant additional traffic analysis. A site visit confirmed that traffic on Positano Parkway increases when parents drop their children off at Amador Elementary School, located east of the project site, between the hours of 8:00 AM and 8:30 AM. The applicant submitted a written statement that describes the operation of the proposed daycare, including a summary of the student drop-off and pick up times (Attachment 14). The daycare will have staggered drop-off and pick-up times, and no drop-offs will occur from 8:00 AM - 8:30 AM. The staggered drop-off and pick-up times help to distribute vehicle trips over a period of time rather than to concentrate them all at one time. Additionally, staff included a Condition of Approval which requires the staggered drop-offs and provides an enforcement mechanism should issues arise during the peak traffic times of 8:00 AM to 8:30 AM (Attachment 10, Condition #95).

Additionally, the Applicant modified the site plan to address traffic and safety concerns raised by the Planning Commission at their meeting on February 13, 2018. The primary change was to eliminate the public use of the proposed driveway on Positano Parkway to alleviate the Commission's concerns about traffic impacts and visibility from vehicles entering/existing the site from Positano Parkway. As modified, vehicular access to the site will be restricted to West Cantara Drive. A driveway has been retained on Positano Parkway for exclusive use by emergency responders to meet Building and Fire Code requirements and will be restricted with bollards.

Denial of the proposed project would constitute an inverse condemnation and other constitutional violations including Due Process and Equal Protection.

Issues Raised by Appellant

The appeal indicates that the applicant will be submitting additional evidence prior to the City Council hearing demonstrating that the denial would constitute an inverse condemnation action, entitling the applicant to damages from the City. It also indicates that the applicant would make additional constitutional claims, including Due Process and Equal Protection, and claims that the denial would be arbitrary and capricious.

Staff Response

As of the date of this report, the City has not received the additional evidence the applicant has indicated it intends to submit. Staff cannot therefore respond in any detail to the potential claims. Obviously, were the appeal granted, such claims would not be pursued. As it stands, because the lack of detail regarding the claims, this aspect of the appeal would not serve as a proper basis for granting the appeal. Should the applicant submit additional evidence prior to the hearing, Staff will provide a response to the City Council in either open or closed session.

ENVIRONMENTAL REVIEW:

The project is located within the Fallon Village project, which was the subject of the Fallon Village Project Supplemental Environmental Impact Report (EIR). The EIR supplemented the Eastern Dublin EIR which was certified by the City Council on May 10, 1993 (SCH # 91103064, Resolution No. 51-93). In 2002, a Supplemental EIR (SCH # 2001052114, Resolution No. 40-02) was completed for the Eastern Dublin Specific Plan to analyze new information and changed circumstances since the 1993 EIR. Supplemental mitigation measures were adopted.

Another Supplemental EIR (SCH # 2005062010, Resolution No. 222-05) was adopted on December 6, 2005, as part of the Fallon Village project. The project had proposed some additional

residential and commercial development beyond the 2002 approvals and adjusted some of the land use designation boundaries throughout the project area. The Final Supplemental EIR was a supplement for both the 1993 and 2002 EIRs.

Pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15168(c)(2), the proposed project was examined to determine if another environmental document should be prepared. The project includes a proposal for a daycare and community center on a Semi-Public site, which has been analyzed for potential environmental factors in the previous Supplement EIR. There is no substantial evidence in the record that any new effects would occur, that any new mitigation measures would be required, or that any of the conditions triggering supplemental environmental review under CEQA Guidelines section 15162 exists.

NOTICING REQUIREMENTS/PUBLIC OUTREACH:

In accordance with State law, a public notice was mailed to all property owners and occupants within 300 feet of the proposed project to advertise the project and the upcoming public hearing. A public notice also was published in the *East Bay Times* and posted at several locations throughout the City. A Planning Application sign was posted on the project site and the project was also included on the City's development projects webpage. A copy of this Staff Report has been provided to the Applicant.

ATTACHMENTS:

1. Planning Commission Staff Report dated February 13, 2018 without attachments
2. Planning Commission Staff Report dated April 10, 2018 without attachments
3. Planning Commission Meeting Minutes dated February 13, 2018
4. Planning Commission Meeting Minutes dated April 10, 2018
5. Planning Commission Resolution 18-09 Site Plan Review, Planning Commission Resolution 18-10 Conditional Use Permit, and Planning Commission Resolution 18-11 Minor Use Permit
6. Letter of Appeal dated April 20, 2018
7. Letter Requesting Public Hearing Date Time Extension
8. Resolution Reversing Planning Commission Resolution 18-10 denying a Conditional Use Permit and Findings of Fact Supporting the City Council's Decision
9. Exhibit A to Attachment 8-Development Standards
10. Resolution Reversing Planning Commission Resolution 18-09 denying a Site Development Review Permit and Findings of Fact Supporting the City Council's Decision
11. Exhibit A to Attachment 10-Project Plans
12. Resolution Reversing Planning Commission Resolution 18-11 denying a Minor Use Permit and Findings of Fact Supporting the City Council's Decision
13. City of Dublin Semi-Public Facilities Policy
14. Applicant's Written Statement