

## **FACTSHEET**

**TITLE:** **SPECIAL PERMIT NO. 1851A**, requested by Tabitha, Inc. and Tabitha Housing Corporation, to amend Special Permit No. 1851, to operate a combined early childhood care facility and adult care center for a maximum of 42 children and 20 adults, with a maximum of 9 employees, including a request to waive the requirement that access must be to an arterial street, on property generally located at 48<sup>th</sup> & "J" Streets.

**STAFF RECOMMENDATION:** Conditional Approval.

**ASSOCIATED REQUEST:** Change of Zone No. 3283 (00-181).

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 09/20/00  
Administrative Action: 09/20/00

**RECOMMENDATION:** Conditional Approval (8-1: Duvall, Taylor, Schwinn, Steward, Krieser, Newman, Carlson and Bayer voting 'yes'; Hunter voting 'no').

### **FINDINGS OF FACT:**

1. This proposed amendment to Special Permit No. 1851 and the associated Change of Zone No. 3283 were heard at the same time before the Planning Commission.
2. The Planning staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.5-6, concluding that the plan meets the requirements for an early childhood day care facility and the proposed adult care center facility, except vehicular access is from a local street.
3. The applicant's testimony is found on p.9-11. The only change to the approved special permit is the request to provide both early childhood and adult care. Special Permit No. 1851 allowed use solely as an early childhood care facility.
4. Testimony in support is found on p.10.
5. There was no testimony in opposition.
6. Please refer to the Minutes of the Planning Commission (pp.9-14) for the discussion by the Planning Commission with the applicant and with the staff regarding adult care in residential districts. Commissioners Carlson, Hunter and Newman voted against the associated text amendment to allow adult care centers in the R-1 through R-5 Residential Districts.
7. On September 20, 2000, the Planning Commission voted 8-1 to agree with the staff recommendation of conditional approval on this amendment to Special Permit No. 1851 (Hunter dissenting). See Minutes, p.12-14.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** September 26, 2000

**REVIEWED BY:** \_\_\_\_\_

**DATE:** September 26, 2000

**REFERENCE NUMBER:** FS\CC\FSSP1851A



## **EXISTING LAND USE:**

Single and two family housing

## **SURROUNDING LAND USE AND ZONING:**

To the west, north and east are single and two-family dwellings, to the south across "J" Street is the Tabitha health care facility. R-4 Residential to the west and south, R-2 and R-4 to the north, and R-2 Residential to the east.

## **COMPREHENSIVE PLAN SPECIFICATIONS:**

The site is shown as Urban Residential.

## **HISTORY:**

**July 10, 1967**, City Council approved the general concept for Special Permit #384, Tabitha's nursing home expansion on the Tabitha property south of "J" Street. Specific plans were to be submitted at the time of construction.

**July 7, 1969**, City Council approved Special Permit #384, which allowed the expansion of the Tabitha long term nursing care unit to 245 beds on the Tabitha property south of "J" Street.

**1979 Zoning Update**, the western portion of the property was converted from B Two Family Dwelling District to R-4 Residential, and the eastern portion of the property was converted from A-2 Single Family Dwelling District to R-2 Residential.

**August 23, 1982**, City Council approved Special Permit #384A, which allowed the operation of a daycare facility on the Tabitha property south of "J" Street.

**November 17, 1986**, City Council approved Special Permit #384B, which increased the number of on-site parking spaces and reduced the number of curb cuts on the Tabitha property south of "J" Street.

**December 5, 1988**, City Council approved Special Permit #384C, which extended the development and occupancy schedule for the paving of parking lots on the Tabitha property south of "J" Street.

**April 18, 1990**, Planning Commission approved Special Permit #384D, which allowed the expansion of the Tabitha health care facility and the addition of parking stalls on property south of "J" Street.

**October 23, 1996**, Planning Commission adopted Special Permit #1649, which allowed Sprint to construct and operate rooftop cellular antennae on the Health Care Building at Tabitha south of “J” Street.

**June 27, 1997**, the Board of Zoning Appeals granted a variance of maximum height from 35 feet to 40 feet on the Tabitha Property south of “J” Street. This allowed a proposed addition to match the height of the rest of the facility .

**January 26, 2000**, the Planning Commission approved Special Permit #1649A, which allowed Nextel Partners to install wireless communication antennae on top of the penthouse of Prescott Hall on the Tabitha property south of “J” Street.

**July 17, 2000**, the City Council approved Special Permit #1851 for a early childhood care facility for 62 children and waived the provision that access must be to an arterial to allow access to J Street.

### **SPECIFIC INFORMATION:**

#### **UTILITIES:**

City utilities are available.

#### **TOPOGRAPHY:**

The building will be located on a hump with the land sloping down 10' towards 48<sup>th</sup> Street.

#### **TRAFFIC ANALYSIS:**

Trip Generation, 6<sup>th</sup> Edition a report by the Institute of Transportation Engineers had studies for pre-school children but none for adult care.

Trip Generation, 6<sup>th</sup> Edition by the Institute of Transportation Engineers indicates for daycare facilities that an average of 0.82 trips are generated per student during weekday A. M. peak hour and an average of 0.86 trips are generated per student during weekday P. M. peak hour.

Depending on the location of the recipients' homes some of the trips may use S. 46<sup>th</sup> Street and some may use “J” Street west of 47<sup>th</sup> Street.

“J” Street and S. 46<sup>th</sup> Street are local residential streets.

The Design Standards for Early Childhood Care Facilities requires facilities with 31 or more students to have frontage on an arterial street. The Zoning Ordinance permits the City Council to waive this provision and the applicant has requested a waiver.

S. 48<sup>th</sup> Street adjacent to the property has a 40' building line district. Non required parking adjacent to S. 48<sup>th</sup> Street may encroach into the required yard a distance equal to the width of the building line district (7') per Section 27.71. 200 (b) of the Zoning Ordinance. 9 non required parking spaces are located 7' into the required yard. The Zoning Ordinance requires that the property owner shall reimburse the City for the costs of removing the parking spaces which exceed the costs the city would normally incur in the widening of such street. This is noted on the plans.

#### **PUBLIC SERVICE:**

The nearest fire station is located at Cotner Boulevard and "A" Street.

#### **REGIONAL ISSUES:**

An increase in traffic on S.48th Street and Randolph Street.

The introduction of a non residential use into the residential neighborhood north of "J" Street.

The loss of existing homes on the site and an increase in the amount of impervious material on the site.

#### **ENVIRONMENTAL ISSUES:**

The Lincoln Lancaster County Health Department conducted a review of the surrounding land-uses and zoning for the proposed facility and did not identify any adjacent land-uses which may pose significant environmental health risks.

The Health Department is also concerned about indoor air quality and offered to provide technical assistance.

#### **AESTHETIC CONSIDERATIONS:**

The Landscape Plan meets the minimum landscape screen requirements.

A change in the character of the block face (replacing dwellings with a parking lot) along the north side of "J" Street and along S. 48<sup>th</sup> Street.

#### **ANALYSIS:**

1. The plan provides 15 drop-off parking spaces which exceeds the requirement of 7 (one space per 10 children and one space per 10 adults).

9 parking spaces are provided for the 9 employees which is equal to the requirement of one parking space per employee on the largest shift.

2. The facility fronts on S. 48<sup>th</sup> Street, an arterial street. Access to the facility is from “J” Street a local street. The City Council waived this provision when approving Special Permit #1851. Again the applicant has requested such a waiver. Access to “J” Street is acceptable since the property south of “J” Street is used for a health care facility and not used as residential.
3. The parking lot (including drop-off and pick-up area) is designed to enter “J” Street in a forward motion.
4. The outdoor play area is entirely fenced with a 6' opaque fence.
5. The children and adults do not have to cross driveways, alleys, streets, parking lots, or other hazardous areas in order to move from the building to the play area.
6. The Lincoln Lancaster County Health Department reported that the outdoor play area exceeds the state regulation of 50 square feet per child with only ¼ of the facility's capacity using the play area at any one time. The Health Department recommended the applicant follow Consumer Product Safety Commission Guidelines for Public Playgrounds.
7. The applicant's conversion plan shows the 7,000 square foot building changed to a duplex and the parking lot removed should the daycare facility cease to operate.

To be compatible with the surrounding homes the west building elevation should include a main entrance facing 47<sup>th</sup> Street on the conversion plan.

A duplex is a permitted use on the site.

The plan includes the building face for each side of the building.

The proposed building has considerably more floor area than the surrounding homes however it is a one story building with a pitched roof and masonry siding similar to the surrounding homes.

The Public Works & Utilities Department finds the conversion plan acceptable except the driveway and radii onto “J” Street will need to be reconstructed to meet residential design standards.

### **STAFF CONCLUSION:**

The plan meets the requirements for an early childhood day care facility and the proposed adult care center facility, except vehicular access is from a local street.

**STAFF RECOMMENDATION:**

Conditional approval

**CONDITIONS:**

Site Specific:

1. This approval permits:
  - 1.1 An early child care facility for a maximum of 42 children, an adult care center for a maximum of 20 adults and 9 employees.
  - 1.2 A waiver to the design standards to allow vehicular access to the site from a local street rather than from an arterial street.

General:

2. Before receiving building permits:
  - 2.1 The construction plans shall comply with the approved plans.

**STANDARD CONDITIONS:**

3. The following conditions are applicable to all requests:
  - 3.1 Before occupying the day care facility/ adult care center all development and construction shall have been completed in compliance with all applicable state and local requirements and building requirements and the approved plans.
  - 3.2 All privately-owned improvements shall be permanently maintained by the owner.
  - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
  - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
  - 3.5 The City Clerk shall file a copy of the resolution approving the permit and the letter of acceptance with the Register of Deeds. The Permittee shall pay the recording fee in advance.

4. This resolution voids and supersedes Resolution No. A-80274 which approved Special Permit #1851 and all previously approved site plans.

Prepared by:

Ray Hill  
Planner

**CHANGE OF ZONE NO. 3283  
and  
SPECIAL PERMIT NO. 1851A**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 20, 2000

Members present: Duvall, Hunter, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer.

Planning staff recommendation: Approval of the text amendment and conditional approval of the special permit.

These items were removed from the Consent Agenda and had separate public hearing at the request of Commissioner Hunter.

Proponents

**1. John Bergmeyer** appeared on behalf of the applicant. The text amendment will allow adult care facilities as special permitted uses in the R-1 through R-5 zoning districts. Currently, adult care facilities are not permitted as special uses within those districts. In July, Tabitha received approval of Special Permit No. 1851, which allows a facility to be constructed at 48<sup>th</sup> & J Streets for use solely as an early childhood care facility, serving a maximum of 62 children. From the beginning, Tabitha has wanted to use the facility as a joint facility providing both early childhood care for 42 children and adult care for a maximum of 20 adults. Tabitha has received a \$100,000 grant from the state to use in connection with the development of an adult care facility.

With respect specifically to the amendment to the special permit, there have been no changes whatsoever to the design of the facility which is already approved for the early childhood care facility. They are simply requesting that the special permit be amended to allow the facility to be used jointly as an early childhood care facility and as an adult care facility.

The east side of the property is zoned R-4, and the west side is zoned R-2. These are the only two zoning designations that affect this property; however, in an effort to work in conjunction with the staff and Law Department, they thought it was expedient and most efficient to go ahead and make the proposal apply to all of the R-1 through R-5 zoning districts.

Carlson inquired whether Tabitha anticipates locating other adult day care centers in the city. Bergmeyer was not aware of any at this time. Tabitha owns a variety of properties throughout the city. They do have a facility in the northern part of the city which will be serving as an adult care facility. It is an apartment complex that will be converted to adult care facilities. With respect to the Tabitha campus itself and this property, this would be the only adult care facility in that specific location. Carlson is trying to get a sense of potential for other sites around the city. Bergmeyer recalled that Tabitha had opposed the development of a project in Williamsburg for a retirement facility because Tabitha owns some property in that area that Tabitha has also considered using as a retirement facility as opposed to adult day care.

Steward asked the applicant to distinguish how this facility would differ from housing in related facilities for the physically handicapped and domiciliary care facilities. Bergmeyer stated that there is a separate designation for the adult care facilities. We are talking about adult day care and providing the same type of care services and facilities to adults who are ambulatory or who are wheelchair mobile as would be provided to children in an early childhood care facility. All of the requirements relating to early childhood care facility would also apply to this. They did consider the other definition such as domiciliary care, but it just didn't fit based upon the analysis of the City Attorney and Planning Department.

But from a health care practice point of view, Steward wondered whether it would be fair to say that domiciliary care facilities are live-in, overnight residences, and the adult care facility would be day hours only? Bergmeyer agreed. They would not allow any activity from 6:00 p.m. to 6:00 a.m.

Ray Hill of Planning staff clarified that domiciliary care facility is accommodations and supervision for four or more persons, 60 years of age or more. Day care is not limited to elderly adults. The proposed operation is not a 24-hour operation, and not for residence and sleep-over. Steward asked whether the Commission is guided definitionally by "ambulatory" versus "wheelchair bound"? Hill stated no, that is left to the operator. The state does the licensing and most of the control falls within the state licensing.

Newman inquired as to the difference between a senior center and an adult day care. Will people be coming and going all day? Bergmeyer believes it would be a lot like the traffic involved with the early childhood care facility. The demand exists and is growing. Newman asked whether the applicant would foresee an adult recipient of the services driving himself to this facility. Bergmeyer stated no, absolutely not. It would be either the guardian or the adult children of the adult who would drop them off, etc.

Hill further clarified that the zoning ordinance defines adult care center as, "...a facility in which a program of structured and supervised social, manual, physical and intellectual services or activities are provided to adults who are either ambulatory or wheelchair mobile. Such services or activities shall be provided for a minimum of three hours per day, but shall not provide for overnight stays by participating adults."

**2. Mike Morosin**, past president of **Malone Neighborhood Association**, testified that he is somewhat in support but he did get a lot of phone calls. He does have a concern about separation of the adults from the children. At Day Watch they had to bar some of the children from the adults. There was no testimony in opposition.

Carlson expressed concern that the timing of these two applications and their proximity of being heard at the same time on the agenda makes him wonder if we are changing the zoning text to facilitate a specific use in a specific location. He wants a sense of the demand for this type of service. He suspects that the demand is out there, but wants to make sure we are making the text change for its own reason. Hill believes that adult day care should be given the same privilege as early childhood. The staff believes there is a shortage in the zoning ordinance for that.

Presently, it is only permitted in commercial and industrial districts and the staff does not believe that is the only place it should be permitted. This applicant cannot request the special permit unless there is a change in the zoning ordinance.

Carlson wondered whether the text amendment concept had been percolating prior to this application. Hill believes there is a shortage in the zoning ordinance to allow for adult day care and that is the reason staff is supporting the application.

Newman inquired whether the text amendment was brought to the Mayor's Neighborhood Roundtable. She recalled that the Child Care Task Force met for a couple years and all this day care business was brought to the Roundtable twice and the number of children went down from 20 to 15 and there were major discussions. There are no neighborhood people here because they do not know about this. Hill acknowledged that this text amendment was not submitted to the Roundtable.

Rick Peo, City Attorney, pointed out that some of the problems with the zoning ordinance is that the state keeps creating new definitions of care type facilities and the city has a hard time fitting them into the zoning ordinance. Adult care was a recent innovation of the state and, at the time, the city did not have as much need to figure out where it would fit. This is in response to more demand from the state for facilities to be offered. Since Tabitha submitted the request for R-2 and R-4, the city staff determined that it should be expanded to include the R-1 through R-5 residential districts.

Carlson asked staff to confirm that there is no existing category that meets the needs of the proposal. Peo responded that the purpose of adult day care in 1992 was under a different concept than what society is looking at today as to locations. We were addressing specific problems at that time instead of overall. Carlson asked whether there is another category that would allow this use in R-1 to R-5. Rick advised that the staff did investigate and did not find anywhere else that it would fit.

### Response by the Applicant

Bergmeyer advised that certain areas of the facility will be used only for the adults; certain areas will be used only for the children; and some are joint. Some portions of the facility will be used both by the adults and by the children; however, he did not know whether they would be jointly used at the same time. There will be nine employees. The services provided will be governed by the state statutes and Tabitha will comply with all laws, regulations and rules pertaining to the childhood care facility, the adult care facility and the two in conjunction.

Hunter inquired whether the day care center was originally developed for the purpose of Tabitha employees. Bergmeyer indicated that partially, but not in total. It is anticipated that others will use the facility as well as employees of Tabitha.

Newman suggested that the term spot zoning comes to mind. She is really uncomfortable with a text amendment to do something for one entity. She is worried about sweeping all of R-1 through R-5 with the same use. Peo advised that spot zoning is where you zone the property for the benefit of one property only, i.e. agricultural to R-1. The text change is within the districts that already exist and expands the uses to those districts. This is not a spot zone to add more uses within the district. Everyone zoned R-1 would have that same privilege. There is no district to zone the property. At a

minimum, you would make this change in R-2 and R-4 for this special permit. But, from staff's perspective, it was believed that the R-1, R-3 and R-5 are substantially the same.

Schwinn believes the reason that this property cannot be spot zoned is because we don't have a definition of adult day care to spot zone with. Peo clarified that we do not have adult day care as a permitted use in this district. Newman wanted to know how to go about amending the text to provide that it can only be approved if it does not unduly influence the character of the neighborhood. Peo advised that this is a special permitted use so the Commission already has that type of discretionary authority in its review. There are certain criteria for access, etc., but the Commission can still consider the surrounding neighborhood and make their own determination as to whether it fits into the neighborhood and does not cause a significant adverse effect.

Carlson believes that adult day care is currently allowed by right in B-1, B-3, I-1, I-2 and B-4. The larger Tabitha site is zoned R-4 and a portion B-1. They are there by special permit for a health care facility. If this facility were zoned B-1 they would have the adult day care center by right. Ray concurred. If zoned B-1 they would have the right for the adult day care with no special permit. Carlson believes that would be spot zoning. Peo advised that it would not be a spot zone to expand the boundaries of the B-1 district.

Carlson is concerned about the text change and what other avenues were considered by staff.

Public hearing was closed.

### **CHANGE OF ZONE NO. 3283**

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 20, 2000

Hunter moved to deny, seconded by Carlson.

Hunter agrees that it would have been easier to expand the B-1 zoning on the Tabitha existing site. Bayer clarified that Tabitha is zoned R-4.

Hunter does not agree with adding this use to all of the residential districts. They could all submit to have adult centers, with or without early childhood. She believes it is in violation of the rights of a neighborhood. We need to have a continuing commitment to neighborhoods to protect their owner's investments. A residential neighborhood needs to remain a residential neighborhood. The concept of discriminating against one use or another has come up and she thinks it is more a situation of locating these types of uses in an area where zoning is applicable, and that is not in an R district.

Steward suggested that the Commission has the opportunity to make the list, shorten the list or extend the list for permitted special uses in any zone and that is the question at hand. He will vote against the motion on the basis that housing and related facilities for physically handicapped are already allowed as potential special uses in all of the R districts. Domiciliary care facilities are already allowed as potential special uses, and he believes this is a movement in our society for paying more attention to the full needs of care of elderly citizens. If they cannot be in a neighborhood, where would you like them to be? Every person in this room has been both the receiver of care and sooner or later will be a giver of care. We do not have enough variety in enough pleasant settings for the care of our senior citizens.

He will do anything possible to expand that option. Frankly, he believes we carry the residential protection too far for eliminating some of the potential mixed use options which increase the quality of life of people in the residence.

Carlson agrees that the proposal has truly high and noble aims as far as the care of the elderly and increasing the opportunity. The difficulty he has is having a text change to facilitate a specific location. He believes the text amendment needs to have its own discussion as opposed to being related to this special permit. This amendment should come forward as a separate application. This particular use on this site is actually very good, but he is concerned about joining the two items without appropriate community discussion on the text change. He wants to vote on the merits of the text change itself.

Peo pointed out that there are substantially equivalent uses permitted in these districts, i.e. health care, domiciliary care, handicap. That is why staff considered more than just the one district for the special permit. The concepts overlap in these types of groups. He does not believe this intrudes into the district with a new and unusual type use. Health care facility even includes hospitals and they are allowed in the same districts.

Duvall agrees with Steward. It is a matter of adding another definition for the needs in our community.

The difference Newman sees from domiciliary is that there is the ability to start dropping off 30 adults at 6:00 a.m. on a collector street. That is an intensive use of a collector street in a neighborhood. Allowing up to 30 adults in any R district is not acceptable.

Schwinn believes that every zoning issue starts with two things being pared together. It has to be brought forward. Staff can't be expected to bring every new state definition forward. They wait until someone comes in and makes the application. Then that triggers the process. There are already 26 different special permitted uses in the R-1 zoning. This just adds another definition to what already goes on. You consider the traffic situation on each special permit on a case by case basis. Schwinn believes that this definition needs to be in the zoning ordinance, but he pointed out that each specific case will be brought forward by special permit and be reviewed on its own merit.

Carlson believes that this discussion is affirmation of the fact that this needs community input. He believes there is a need and it may be completely appropriate. But there are questions that deserve a larger discussion than this particular forum. He believes the Commission should receive more community input.

Bayer stated that he cannot see why this isn't a slam dunk. We put them there as kids, and bury them there, but we can't take care of them there. These adults have a right to be in any neighborhood they want to be. When I had to find a place for my mother, I couldn't.

Motion to deny failed 3-6: Hunter, Newman and Carlson voting 'yes'; Duvall, Taylor, Schwinn, Steward, Krieser and Bayer voting 'no'.

Steward moved approval, seconded by Duvall and carried 6-3: Duvall, Taylor, Schwinn, Steward, Krieser and Bayer voting 'yes'; Hunter, Newman and Carlson voting 'no'.

**SPECIAL PERMIT NO. 1871A**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

September 20, 2000

Duvall moved approval, with conditions, seconded by Schwinn and carried 8-1: Duvall, Taylor, Schwinn, Steward, Newman, Krieser, Carlson and Bayer voting 'yes'; Hunter voting 'no'.