

7. **SUPPLEMENT TO JUSTIFICATION FOR REZONING FROM A-U to R-3 AND FOR CONDITIONAL USE PERMIT.**

TLW

Applicant, Milk and Honey Day Care, Inc., submits the following supplement in support of its Section 7 narrative to its Application for a zone change for the property located at 2700 Todds Road, Lexington, Fayette County, Kentucky 40509 (the "Property"), from A-U to R-3, and for approval of a conditional use of a Child Care Center, as defined in the LFUCG Zoning Ordinance, on the Property.

As background, the Property is currently zoned A-U. Its primary use is a church, and it currently enjoys a conditional use permit to operate a Child Care Center at on the Property, as permitted by Article 8-4(d)(1), which in part refers to Article 8-1(d). Specifically, a Child Care Center is a permitted conditional use in the A-R Zone under Article 8-1(d), subpart 21:

21. Kindergartens, nursery schools and child care centers for four (4) or more children when accessory to a church or school, as permitted herein. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.

A. Conditional Use Permit and Zone Change can be heard together.

Article 6-4(c) of the Zoning Ordinance provides:

6-4(c) CONDITIONAL USES AND VARIANCES ALLOWED AT THE TIME OF ZONING - The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days from the date of the application, unless postponed further by the applicant.

See, e.g., KRS 100.203.

"Conditional uses" are generally "uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met." *See, e.g.,* KRS § 100.237. As noted above, the Planning Commission can hear a request for a conditional use permit contemporaneously with a zone change request (although normally such requests are within the purview of the Board of Adjustment). In considering such conditional uses, the Commission:

1. A Child Care Center is a permitted conditional use in the A-U Zone currently, and R-3 Zone when rezoned.
2. A Child Care Center will not harm the public health, safety or welfare, and will not impair the integrity and character of this zone or adjoining zones because: (i) it is a use that the Property is currently enjoying, (ii) it is a use that the Property has enjoyed for a number of years, and (iii) it is a use that would continue into the future.
3. The conditional use is consistent with the 2013 Comprehensive Plan. This includes:
 - a. Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible (Goal 2);
 - b. Increasing small business development (Objective C-2a); and
 - c. Providing opportunities for quality of life for young professionals by providing day care (for customers) and work (for employees) (Objective C-2d).

See original submittal for further discussion of the objectives and goals of the Comprehensive plan and how the Conditional Use will promote those.

4. All public facilities which are needed are available and adequate to the site. All needed public utilities are available and already present at the site. Police and fire protection are available, and located close to the Property.
5. It allows the Property to be used in the same manner it is currently being used. Thus, it allows the property to be rezoned to better reflect the neighboring properties zone classification and Comprehensive Plan's goals, while allowing the same use that the Property and the local neighborhoods enjoy.

E. Conclusion

Accordingly, for the reasons previously submitted and above, we request rezoning of the Property from A-U to R03, and for a conditional use for the following reasons:

1. The Property and its features are better suited for R-3 zoning, as opposed to its current A-U zoning;
2. The rezoning will bring the Property into compliance with the 2013 Comprehensive Plan and 2007 Comprehensive Plan Land Use Map recommendations;
3. The Rezoning and Conditional Use will satisfy the 2013 Comprehensive Plan Goals and Objectives;
4. The Rezoning is consistent with the existing zoning for adjacent land use; and

7. **SUPPLEMENT TO JUSTIFICATION FOR REZONING FROM A-U to R-3 AND FOR CONDITIONAL USE PERMIT.**

TLW

Applicant, Milk and Honey Day Care, Inc., submits the following supplement in support of its Section 7 narrative to its Application for a zone change for the property located at 2700 Todds Road, Lexington, Fayette County, Kentucky 40509 (the "Property"), from A-U to R-3, and for approval of a conditional use of a Child Care Center, as defined in the LFUCG Zoning Ordinance, on the Property.

As background, the Property is currently zoned A-U. Its primary use is a church, and it currently enjoys a conditional use permit to operate a Child Care Center at on the Property, as permitted by Article 8-4(d)(1), which in part refers to Article 8-1(d). Specifically, a Child Care Center is a permitted conditional use in the A-R Zone under Article 8-1(d), subpart 21:

21. Kindergartens, nursery schools and child care centers for four (4) or more children when accessory to a church or school, as permitted herein. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.

A. **Conditional Use Permit and Zone Change can be heard together.**

Article 6-4(c) of the Zoning Ordinance provides:

6-4(c) **CONDITIONAL USES AND VARIANCES ALLOWED AT THE TIME OF ZONING** - The Planning Commission may hear and act upon requested conditional uses and variances associated with a zone change. If the Planning Commission should choose to hear a conditional use or variance request, the Planning Commission shall have all of the powers and responsibilities of the Board of Adjustment, as defined in Articles 7-6(a) and 7-6(b) of the Zoning Ordinance. All conditional use and variance applications shall be acted upon by the Planning Commission within ninety (90) days from the date of the application, unless postponed further by the applicant.

See, e.g., KRS 100.203.

"Conditional uses" are generally "uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met." *See, e.g.,* KRS § 100.237. As noted above, the Planning Commission can hear a request for a conditional use permit contemporaneously with a zone change request (although normally such requests are within the purview of the Board of Adjustment). In considering such conditional uses, the Commission:

(1) may approve, modify, or deny any application for a conditional use permit. If it approves such permit it may attach necessary conditions such as time limitations, requirements that one (1) or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit, along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The board shall have power to revoke conditional use permits, or variances for noncompliance with the condition thereof. Furthermore, the board shall have a right of action to compel offending structures or uses removed at the cost of the violator and may have judgment in personam for such cost.

KRS § 100.237(1).

B. Conditional Use Requested is the same as currently permitted Conditional Use.

If the rezoning to R-3 is granted, the following conditional use will continue to be permitted under Article 8-12(d):

5. Kindergartens, nursery schools, and child care centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.

In other words, the conditional use permit sought with the rezoning of the Property, seeks to continue the same conditional use that the Property and the Applicant currently enjoys.

C. Definition of "Child Care Center."

A "Child Care Center" is

Any facility which provides full or part-time care, other than family child care, day or night, to children who are not the children, grandchildren, nieces, nephews, or children in legal custody of the operator, as regulated by the Commonwealth of Kentucky.

See LFUCG Zoning Ordinance, Article 1, General Provisions and Definitions.

D. Analysis.

The Applicant seeks a conditional use permit, allowing a Child Care Center once the Property is rezoned to R-3 for the following reasons:

1. A Child Care Center is a permitted conditional use in the A-U Zone currently, and R-3 Zone when rezoned.
2. A Child Care Center will not harm the public health, safety or welfare, and will not impair the integrity and character of this zone or adjoining zones because: (i) it is a use that the Property is currently enjoying, (ii) it is a use that the Property has enjoyed for a number of years, and (iii) it is a use that would continue into the future.
3. The conditional use is consistent with the 2013 Comprehensive Plan. This includes:
 - a. Identify areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features whenever possible (Goal 2);
 - b. Increasing small business development (Objective C-2a); and
 - c. Providing opportunities for quality of life for young professionals by providing day care (for customers) and work (for employees) (Objective C-2d).

See original submittal for further discussion of the objectives and goals of the Comprehensive plan and how the Conditional Use will promote those.

4. All public facilities which are needed are available and adequate to the site. All needed public utilities are available and already present at the site. Police and fire protection are available, and located close to the Property.
5. It allows the Property to be used in the same manner it is currently being used. Thus, it allows the property to be rezoned to better reflect the neighboring properties zone classification and Comprehensive Plan's goals, while allowing the same use that the Property and the local neighborhoods enjoy.

E. Conclusion

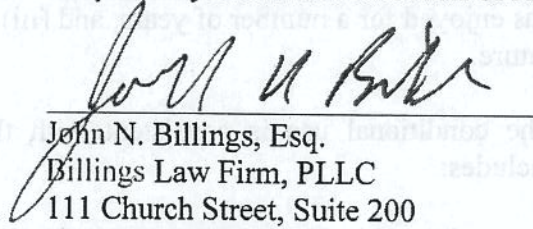
Accordingly, for the reasons previously submitted and above, we request rezoning of the Property from A-U to R03, and for a conditional use for the following reasons:

1. The Property and its features are better suited for R-3 zoning, as opposed to its current A-U zoning;
2. The rezoning will bring the Property into compliance with the 2013 Comprehensive Plan and 2007 Comprehensive Plan Land Use Map recommendations;
3. The Rezoning and Conditional Use will satisfy the 2013 Comprehensive Plan Goals and Objectives;
4. The Rezoning is consistent with the existing zoning for adjacent land use; and

5. The Conditional Use is consistent with the current accessory, conditional use of the Property.

Thank you for your consideration of this zone change request and conditional use permit application.

Respectfully submitted on behalf of Applicant:



John N. Billings, Esq.
Billings Law Firm, PLLC
111 Church Street, Suite 200
Lexington, KY 40507
nbillings@blfky.com
(o) 859-225-5240

And

Rick Moore
Moore Surveying
107 COLLINS DRIVE
Nicholasville, KY 40356
mooresurveying@windstream.net
(859) 887-3007