

AN ORDINANCE AMENDING ARTICLE 8-20 OF THE ZONING ORDINANCE TO ALLOW KINDERGARTENS, NURSERY SCHOOLS AND CHILD CARE CENTERS WITHOUT RESTRICTION IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE. (ONE VENUE, LLC).

WHEREAS, the Lexington-Fayette Urban County Planning Commission has considered a text amendment to Article 8-20 of the Zoning Ordinance to allow kindergartens, nursery schools and child care centers without restriction in the Highway Service Business (B-3) Zone. Planning Commission did recommend APPROVAL of the staff alternative text by a vote of 10-0; and

WHEREAS, this Council agrees with the recommendation of the Planning Commission; and

WHEREAS, the recommendation form of the Planning Commission is attached hereto and incorporated by reference herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That Article 8-20 of the Zoning Ordinance of the Lexington-Fayette Urban County Government is hereby amended as follows:


8-20 HIGHWAY SERVICE BUSINESS (B-3) ZONE

8-20(b) Principal Uses

22. Kindergartens, nursery schools and child care centers. A fenced and screened play area shall be provided in an area, located a minimum of twenty (20) feet from a collector or arterial street, and shall contain not less than 25 square feet per child. An indoor play area which meets the same size requirements may be utilized.

Section 2 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 25, 2017


MAYOR

ATTEST:


Clerk of Urban County Council

Published: June 1, 2017-1t

Recd by Bm

Date: 5-12-17

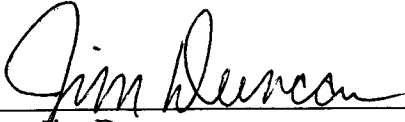
RECOMMENDATION OF THE
URBAN COUNTY PLANNING COMMISSION
OF LEXINGTON AND FAYETTE COUNTY, KENTUCKY

IN RE: ZOTA 2017-3: KINDERGARTENS, NURSERY SCHOOLS & CHILD CARE CENTERS IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE – petition for a Zoning Ordinance text amendment to Article 8-20 to allow kindergartens, nursery schools and child care centers without restriction in the Highway Service Business (B-3) Zone.

Having considered the above matter on April 27, 2017, at a Public Hearing and having voted 10-0 that this Recommendation be submitted to the Lexington-Fayette Urban County Council, the Urban County Planning Commission does hereby recommend APPROVAL of alternate text for this matter for the following reasons:

1. The proposed text amendment will allow kindergartens, nursery schools and child care centers to be permitted in the B-3 zone without restriction or affiliation to a church, non-profit organization or adjacent employers. The amendment will be more consistent with the existing provisions of the office and business zones, which allow such uses.
2. The staff alternative text permits indoor play areas to be utilized in order to meet the 25 square-foot play area requirements established by the Zoning Ordinance, and a doubling of the separation standard for outdoor play areas. In the B-3 zone, an indoor play area may be more suitable and appropriate in many instances.

ATTEST: This 12th day of May, 2017.



Secretary, Jim Duncan

WILLIAM WILSON
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Traci Wade, Senior Planner, Division of Planning, Planning Services Section.**

OBJECTIONS _____

OBJECTORS _____

• None

• None

VOTES WERE AS FOLLOWS:

AYES: (10) Brewer, Berkley, Cravens, Mundy, Owens, Penn, Plumlee, Richardson, Smith and Wilson

NAYS: (0)

ABSENT: (1) Drake

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Approval** of **ZOTA 2017-3** carried.

Enclosures: Application
Recommended Text
Staff Report
Applicable excerpts of minutes of above meeting.

GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

1. APPLICANT INFORMATION:

Name: One Venue, LLC

Address: 56 Avenue of Champions

City, State, Zip Code: Nicholasville, KY 40356

Phone Number: 859-977-3172

2. ATTORNEY (Or Other Representative) INFORMATION:

Name: Jacob C. Walbourn of McBrayer, McGinnis, Leslie & Kirkland, PLLC

Address: 201 East Main Street, Suite 900

City, State, Zip Code: Lexington, KY 40507

Phone Number: 859-231-8780

3. DESCRIBE YOUR REQUESTED TEXT CHANGE: Date of Pre-application Conference: 2/15/17

Zoning Ordinance Article # 8-20(b) Specific text change proposed:

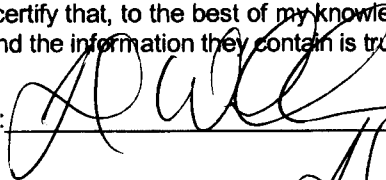
Please see attached letter.

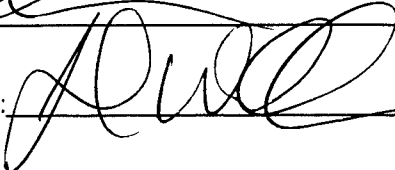
4. DESCRIBE THE JUSTIFICATION FOR MAKING THIS CHANGE: (Use attachment if necessary.)

Please see attached letter.

5. SIGN THIS APPLICATION:

I do hereby certify that, to the best of my knowledge and belief, all application materials are herewith submitted, and the information they contain is true and accurate.

APPLICANT: 

ATTORNEY (or other representative): 

LFUCG EMPLOYEE/OFFICER, if applicable: _____

March 6, 2017

Mr. William Wilson, Chairman
Lexington-Fayette Urban County Planning Commission
200 East Main Street
Lexington, Kentucky 40507

RE: Zoning Ordinance Text Amendment ("ZOTA"), Article 8-20

Dear Chairman Wilson:

Please be advised that we represent One Venue, LLC ("One Venue"), a real estate development company headquartered here in central Kentucky. On behalf of One Venue, I propose amending Article 8, Section 20 of the Lexington-Fayette Urban County Zoning Ordinance ("Zoning Ordinance") to expand the kindergarten/nursery school/child care use in the Highway Service Business (B-3) zone. Specifically, we propose the following amendments to the Zoning Ordinance:

§8-20(b) Principal Uses

22. Kindergartens, nursery schools and child care centers, ~~where enrollment of children is sponsored and licensed by established churches and non-profit community based groups, and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment which is located on or abutting the same lot as the proposed child care facility.~~ A fenced and screened play area shall be provided in an area, located a minimum of ten (10) feet from a collector or arterial street, and shall contain not less than 25 square feet per child.

26. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers, provided that none shall be located within a 500-foot radius of any agricultural or residential zone, any elementary or secondary school, any kindergarten, nursery school, child care center, any park attended by persons under 18 years of age, or within a 1,000-foot radius of any other similarly regulated adult business.

As you can see, the request involves two changes to the Zoning Ordinance. One change removes a requirement from the existing regulation that the kindergarten/nursery school/child care use be affiliated with a church, non-profit community group, or "on-site" childcare for business located in the zone. The other change ensures that any adult uses are adequately separated from the kindergarten/nursery school/child care use.

We believe this proposed change to the Zoning Ordinance is relatively minor in scope and is appropriate given the intent and general function of the B-3 zone. As you can see from the proposed changes, the kindergarten/nursery school/child care use is already contemplated as a principal use in the zone. However, the use as presently is tied only to on-site business that provide child care or non-profit or religious organizations. The amendment we propose merely removes the “affiliation” requirement, and expands the use to all providers of child care. From a functional perspective, there would be little to no externally observable difference between a child care facility operated by a religious or non-profit group and one operated by a for-profit entity. In other words, from a use perspective, there would be little noticeable difference to the public at large in approving this ZOTA. Additionally, we submit that the child care use is substantially similar to the “schools for academic instruction” use, which is a principal permitted use in the zone. Aside from (potentially) the age of the children present at the site, there is little distinction between a child care facility and an elementary school.

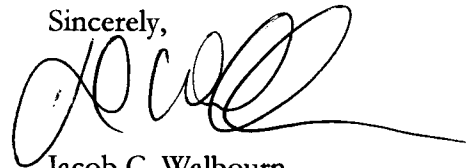
Additionally, we submit that the B-3 zone is appropriate for this use. As a threshold matter, and as mentioned above, the “use” (albeit a narrower version) is already permitted in the zone, as are uses like schools, which are vastly similar in character. Furthermore, the primary/typical location of B-3 zoning is along significant roadways in our community, including major and minor arterial roadways. Obviously, many residents in our community utilize the child care use, and drop off or pick up children while commuting to work. Accordingly, permitting the child care use along significant roadways would be convenient for the many commuters who also utilize child care services. In fact, ideally, this may lead to shorter commutes for parents. As you are aware, reducing Lexington’s carbon footprint is one of the goals of the 2013 Comprehensive Plan.

We are mindful that the B-3 zone does permit some more “intense” uses than the B-1 and P-1 zones, where the child care use is permitted as a principal use. In recognition of that fact, we have added the child care use as one that needs to be physically separated from the adult uses permitted in the B-3 zone. We believe this is appropriate based on the inclusion of schools in the existing regulation. Though many B-3 developments, particularly those more recently zoned, restrict adult uses via conditional zoning restrictions, in light of the universal nature of a text amendment, we felt it appropriate to include this restriction.

On balance, we submit that this text amendment is a relatively minor one, but one that would have positive results for Lexington citizens. The kindergarten/nursery school/child care use is one that is already permissible in the zone, albeit only when affiliated with a business, non-profit, or religious entity. Simply stated, we believe broadening the use to include all providers of child care is not only appropriate, but in fact could enhance the community and provide more convenient locations for parent commuters to utilize for their child care needs. We have attempted to be mindful of the permitted adult uses in the zone, and their incompatibility with the child care use. To that end, we have restricted the location of the adult uses in the same manner as schools, which we believe is a comparable use.

Of course, we look forward to working with staff and addressing any questions they may have in regard to this application. We thank you for your attention to it as well, and look forward to discussing it with you. We appreciate your consideration, and would ask for your support of this request.

Sincerely,



Jacob C. Walbourn
Counsel for One Venue, LLC

JCW/klm

4829-5337-7347, v. 1

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

**ZOTA 2017-3: KINDERGARTENS, NURSERY SCHOOLS & CHILD CARE CENTERS
IN THE HIGHWAY SERVICES BUSINESS (B-3) ZONE**

REQUESTED BY: One Venue, LLC

PROPOSED TEXT: (Note: Underlined text indicates an addition to the current Zoning Ordinance; and ~~strikethrough-text~~ indicates a deletion from the current Zoning Ordinance.)

8-20 HIGHWAY SERVICE BUSINESS (B 3) ZONE

8-20(b) Principal Uses

22. Kindergartens, nursery schools and child care centers, ~~where enrollment of children is sponsored and licensed by established churches and non-profit community-based groups, and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment which is located on or abutting the same lot as the proposed child care facility.~~ A fenced and screened play area shall be provided in an area, located a minimum of ten (10) feet from a collector or arterial street, and shall contain not less than 25 square feet per child.

26. Adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers, provided that none shall be located within a 500-foot radius of any agricultural or residential zone, any elementary or secondary school, any kindergarten, nursery school, child care center, any park attended by persons under 18 years of age, or within a 1,000-foot radius of any other similarly regulated adult business.

STAFF REVIEW:

The applicant, One Venue, LLC, has requested a text amendment to the Highway Service Business (B-3) zone in order to remove the restrictive language about who may apply for a kindergarten, nursery school or child care center within the zone. Currently, the Zoning Ordinance only allows churches, non-profit community-based groups, or adjoining businesses to operate such an establishment. The applicant is also requesting that a spacing requirement be established to restrict adult businesses from establishing within 500 feet of a kindergarten, nursery school or child care center. This restriction would be added to the existing distance/spacing requirement for adult businesses to be located at least 500 feet from any elementary or secondary school, any park and any other similarly regulated adult business.

This principal use was originally added to the B-3 zone in 1989 at the request of Saint Joseph Hospital, and later amended in 1999 at the request of Brookins Community A.M.E. (African Methodist Episcopal) Church. In 1989, Saint Joseph Hospital wished to relocate and expand an existing child care center from the hospital site to the Kentucky Inn site, across Waller Avenue from the hospital (ZOTA 89-11: Amendment to Article 8 to Allow Day Care Centers on the B-3 Zone). The staff was supportive of adding kindergartens, nursery schools, and child care centers to the B-3 zone in order to support large employers that wished to offer this "important benefit to their workers." At that time, the staff also expressed some reservation about possible conflicts in the B-3 zone between highway traffic and the screened outdoor play areas provided for children. For this reason, the staff recommended that the required play area be located at least 10 (ten) feet from a collector or arterial street. The Planning Commission recommended approval of the staff alternative text and the Urban County Council adopted the change shortly thereafter.

In 1999, the Brookin Community A.M.E. Church filed a text amendment that would permit a church (or other non-profit organization) to establish a child care center in the B-3 zone (ZOTA 99-11: Kindergartens, Nursery Schools & Child Care Centers in the B-3 Zone). The text amendment application was filed after the church received Board of Adjustment approval to use a building in the B-3 zone for a place of worship, and wished to create an accessory child care center. The applicant offered two options – one was to delete the limiting language, and the second, was to expand the restriction to include churches and non-profit community-based groups. The staff recommended that the Planning Commission adopt the later, more restrictive of the two options, citing consistency with the Zoning Ordinance.

In a similar fashion, the applicant is requesting that child care center be permitted without restriction or affiliation, while at the same time prevents such centers from being impacted by any future adult businesses (adult business include: adult arcades, massage parlors, adult bookstores, adult video stores, adult cabarets, adult dancing establishments, adult entertainment establishments, and sexual entertainment centers).

The existing text of the Zoning Ordinance has been the subject of numerous questions and discussion between the staff and potential applicants over the years. To that point, at least one applicant has established a non-profit community-based group in order to locate their facility within a B-3 zone. Some might consider this evading or skirting the Ordinance. Because these provisions have been used very little since they were initially established, the staff believes the existing restrictions are obsolete and in need of replacement.

The staff is of the opinion that the existing restriction is no longer necessary and removing it will allow for child care centers to be located in more convenient locations with good access along some of the community's major arterial roadways (New Circle Road, Richmond Road, Nicholasville Road, and Broadway, among others). Removing the existing affiliation requirement will also be more consistent with the other professional office and business zones. The staff also believes that indoor play areas may be more suitable and appropriate in the B-3 zone, and that the outdoor separation requirement should be doubled (to 20' or more).

Although the staff understands the logic of the 500-foot spacing proposal for adult businesses from child care centers, it may be excessive. The adult businesses are already heavily regulated, and our community must provide adequate locations for them to operate locally. For this reason, the staff does not believe this portion of the proposed text amendment should be adopted.

STAFF ALTERNATIVE TEXT:

8-20 HIGHWAY SERVICE BUSINESS (B 3) ZONE

8-20(b) Principal Uses

22. Kindergartens, nursery schools and child care centers ~~where enrollment of children is sponsored and licensed by established churches and non-profit community-based groups, and/or where enrollment may be limited to children of employees and staff of an office, business or commercial establishment which is located on or abutting the same lot as the proposed child care facility.~~ A fenced and screened play area shall be provided in an area, located a minimum of twenty (20) feet from a collector or arterial street, and shall contain not less than 25 square feet per child. An indoor play area which meets the same size requirements may be utilized.

The Staff Recommends Approval of the Staff Alternative text, for the following reason:

1. The proposed text amendment will allow kindergartens, nursery schools and child care centers to be permitted in the B-3 zone without restriction or affiliation to a church, non-profit organization or adjacent employers. The amendment will be more consistent with the existing provisions of the office and business zones, which allow such uses.
2. The staff alternative text permits indoor play areas to be utilized in order to meet the 25 square-foot play area requirements established by the Zoning Ordinance, and a doubling of the separation standard for outdoor play areas. In the B-3 zone, an indoor play area may be more suitable and appropriate in many instances.

- 1. **ZOTA 2017-3: KINDERGARTENS, NURSERY SCHOOLS & CHILD CARE CENTERS IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE** – petition for a Zoning Ordinance text amendment to Article 8-20 to allow kindergartens, nursery schools and child care centers without restriction in the Highway Service Business (B-3) Zone.

REQUESTED BY: One Venue, LLC

PROPOSED TEXT: (Note: Underlined text indicates an addition to the current Zoning Ordinance; and ~~strikethrough text~~ indicates a deletion from the current Zoning Ordinance.)

8-20 HIGHWAY SERVICE BUSINESS (B 3) ZONE

8-20(b) Principal Uses

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STAFF ALTERNATIVE TEXT:

8-20 HIGHWAY SERVICE BUSINESS (B 3) ZONE

8-20(b) Principal Uses

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The Zoning Committee made no recommendation, due to lack of a quorum.

The Staff Recommends: Approval of the Staff Alternative text, for the following reason:

- 1. The proposed text amendment will allow kindergartens, nursery schools and child care centers to be permitted in the B-3 zone without restriction or affiliation to a church, non-profit organization or adjacent employers. The amendment will be more consistent with the existing provisions of the office and business zones, which allow such uses.
- 2. The staff alternative text permits indoor play areas to be utilized in order to meet the 25 square-foot play area requirements established by the Zoning Ordinance, and a doubling of the separation standard for outdoor play areas. In the B-3 zone, an indoor play area may be more suitable and appropriate in many instances.

Staff Zoning Presentation – Ms. Wade presented and summarized the staff report and recommendations for this text amendment. She said this is a request made by One Venue, LLC, to remove the restrictive language related to kindergartens, nursery schools and child care centers within the B-3 zone and to add a spacing requirement between child care centers and adult businesses. She presented the past history for the current Zoning Ordinance language and said the staff is recommending approval of a staff alternative text, as follows:

8-20 HIGHWAY SERVICE BUSINESS (B3) ZONE

8-20(b) Principal Uses

22. Kindergartens, nursery schools and child care centers, ~~where enrollment of children is sponsored and licensed by established churches and non-profit community-based groups, and/or where enrollment may be limited to children~~

* - Denotes date by which Commission must either approve or disapprove request, unless agreed to a longer time by the applicant.

~~of employees and staff of an office, business or commercial establishment which is located on or abutting the same lot as the proposed child care facility.~~ A fenced and screened play area shall be provided in an area, located a minimum of ~~ten (10)~~ twenty (20) feet from a collector or arterial street, and shall contain not less than 25 square-feet per child. An indoor play area which meets the same size requirements may be utilized.

Commission Comments – Mr. Owens asked if the staff is recommending the text in #26, associated with adult uses, not to be included. Ms. Wade replied that it is the intent of the staff to not include changes to #26. Mr. Owens also asked if the child care playground facilities will be improved so that the children won't have to cross a parking lot. Ms. Wade replied that the staff hasn't discussed that matter.

Petitioner Presentation – Jacob Walbourn, attorney, was present representing the petitioner. He said that the applicant is in agreement with the staff's recommendations and the staff alternative.

Citizen Comment – There were no citizens present to speak to this application.

Action – A motion was made by Mr. Owens, seconded by Ms. Richardson, and carried 10-0 (Drake absent) to approve ZOTA 2017-3: KINDERGARTENS, NURSERY SCHOOLS & CHILD CARE CENTERS IN THE HIGHWAY SERVICE BUSINESS (B-3) ZONE, for the reasons provided by the staff.