

1. KID'S HOUSE ZONING MAP AMENDMENT & KID'S HOUSE ZONING DEVELOPMENT PLAN

- a. MARV 2014-4: KID'S HOUSE (5/4/14)* - petition for a zone map amendment from a Single Family Residential (R-1C) zone to a Professional Office (P-1) zone, for 1.083 net (1.219 gross) acres, for property located at 1449-1451 Bryan Avenue. Landscaping variances were also requested with this application.

COMPREHENSIVE PLAN AND PROPOSED USE

The 2013 Comprehensive Plan's mission statement is to "provide flexible planning guidance to ensure that development of our community's resources and infrastructure preserves our quality of life, and fosters regional planning and economic development." The mission statement notes that this will be accomplished while protecting the environment, promoting successful, accessible neighborhoods, and preserving the unique Bluegrass landscape that has made Lexington-Fayette County the Horse Capital of the World.

The subject property is located within the boundary of the Central Sector Small Area Plan (CSSAP) and Subarea "D", adopted by the Planning Commission in April 2009. The CSSAP makes no specific land use or corridor recommendations for the Bryan Avenue area, but does encourage the development of neighborhood service nodes that offer a variety of products and services (Principle #2: Redevelopment and Investment, Goal #1). The petitioner proposes to rezone the property in order to become fully compliant as a commercial child care center, because the use is non-conforming in the current zone.

The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommends: Approval, for the following reasons:

1. The Central Sector Small Area Plan (CSSAP), adopted by the Planning Commission in 2009, and incorporated into the 2013 Comprehensive Plan, encourages the development of neighborhood service nodes that offer a variety of products and services (Principle #2: Redevelopment and Investment, Goal #1). The existing child care center provides a necessary neighborhood service for the immediate area, and helps to implement that recommendation.
2. The proposed Professional Office (P-1) zoning is appropriate, and the existing Single-Family Residential (R-1C) zoning is inappropriate, for the following reasons:
 - a. The existing use has been located on the property for over 35 years; thus, it is a stable land use and is unlikely to relocate.
 - b. A child care center is a principal permitted use in the P-1 zone; thus, the rezoning will bring the use into compliance with the local zoning regulations as it was in 1977, as requested by the state oversight agency.
 - c. The child care center, combined with the adjoining church use, create an appropriate transition from the more intense highway service business uses along New Circle Road. The child care center is a step down in land use as it adjoins single-family residential dwellings.
 - d. The child care center, along with the church and several other small businesses along the Bryan Avenue corridor, create a neighborhood service node for the Castlewood and Meadow Park neighborhoods in this portion of the Central Sector.
3. This recommendation is made subject to the approval and certification of ZDP 2014-18: KID'S HOUSE, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCE

1. Reduce the property perimeter landscaping and screening from 15' to 5' and remove the requirement for a double row 6' hedge.

The Staff will report at the hearing.

- c. ZDP 2014-18: KID'S HOUSE (5/4/14)* - located at 1449 and 1451 Bryan Avenue.

(Barrett Partners)

The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Discuss existing driveway and arrows for direction.
8. Discuss compliance with Article 18 or need for landscape variance.

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quorum. There were two members present, and they discussed the proposal with the staff members who were present. Those discussions led to two general recommendations from the members. First, they felt there should be the planting of shade trees along the property frontage, in the style of street trees, since there is no Ordinance provision that would require street trees at this location. In addition, the committee members felt that this proposal was acceptable, so long as no physical changes were proposed to the property. However, should the property redevelop at some point in the future, the committee members were concerned about the possible effects of the landscape variance. Mr. Sallee stated that the staff, in drafting their conditions for approval, tried to address those two concerns. He said that the staff is recommending approval of the requested variances, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing buildings or parking lot is proposed by the applicant, and because it would be difficult to locate additional fences or hedges along these property lines due to the location and layout of the existing perimeter driveway, the existing parking spaces, and along the southwestern property line, due to the existing trees.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the existing child care use pre-dates the landscaping requirements of the Zoning Ordinance, and no physical expansion of any of the site facilities is proposed. In addition, there is some well-established landscaping and trees in place along the northwestern and southwestern sides of the subject property.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that three sides of the subject site are bordered by a collector street and/or non-residential uses. Thus, the existing trees and shrubs will continue all the necessary screening along the northwestern and northeastern property lines, which meets the intent of the landscape requirements.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because there already exists adequate screening between the subject property and the adjacent property. The applicant is not planning any substantial change to the existing parking area, and there are no physical changes associated with the day care center use that has been at this location for decades.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant, as the current day care land use is a legal non-conforming use of the property, and the rezoning has been requested only as a result of the requirements of the Commonwealth of Kentucky.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to obtaining any new Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. Five (5) shade trees shall be planted along the front of the subject property, within 10' of the existing sidewalk. Trees may be from the large species list on the adopted Planting Manual, and shall be at least 1" caliper at the time of their planting. A minimum of one (1) tree per year shall be planted on the subject property, beginning in 2014, provided that all must be installed within 36 months of the approval of this zone change and variance.
6. A note shall be added to the development plan indicating that the need for additional landscaping will be considered along the property lines in the event a future redevelopment is proposed for the subject property.

Mr. Sallee stated that the last two conditions address the concerns of the Landscape Review Committee. Condition #5 would require the planting of five shade trees along the property frontage, over the next five planting seasons, to implement the recommendations of the committee. Condition #6 would require the review of the perimeter landscaping provisions, should the subject property redevelop at some point in the future.

Commission Questions: Mr. Berkley asked why the staff was recommending the planting of shade trees along the property frontage. Mr. Sallee answered that it is essential to provide a good line of sight for the child care center's outdoor play area. He explained that it was his understanding that the two Landscape Review Committee members who were present at the meeting were concerned about the need for additional tree canopy on the subject property. He stated that the P-1 zone requires 20% tree canopy, and the subject property is unlikely to attain that figure if the requested variance is granted. The additional trees recommended can be considered as an attempt to increase the canopy, even though it is unlikely to meet the requirement. Mr. Sallee added that the Commission could choose to delete that condition, if they do not agree with that assessment.

Petitioner Representation: Bill Bausch, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, and will comply with all of the conditions if necessary. However, the peti-

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The Zoning Committee Recommended: Approval, for the reasons provided by staff.

The Staff Recommends: Approval, for the following reasons:

1. The Central Sector Small Area Plan (CSSAP), adopted by the Planning Commission in 2009, and incorporated into the 2013 Comprehensive Plan, encourages the development of neighborhood service nodes that offer a variety of products and services (Principle #2: Redevelopment and Investment, Goal #1). The existing child care center provides a necessary neighborhood service for the immediate area, and helps to implement that recommendation.
2. The proposed Professional Office (P-1) zoning is appropriate, and the existing Single-Family Residential (R-1C) zoning is inappropriate, for the following reasons:
 - a. The existing use has been located on the property for over 35 years; thus, it is a stable land use and is unlikely to relocate.
 - b. A child care center is a principal permitted use in the P-1 zone; thus, the rezoning will bring the use into compliance with the local zoning regulations as it was in 1977, as requested by the state oversight agency.
 - c. The child care center, combined with the adjoining church use, create an appropriate transition from the more intense highway service business uses along New Circle Road. The child care center is a step down in land use as it adjoins single-family residential dwellings.
 - d. The child care center, along with the church and several other small businesses along the Bryan Avenue corridor, create a neighborhood service node for the Castlewood and Meadow Park neighborhoods in this portion of the Central Sector.
3. This recommendation is made subject to the approval and certification of ZDP 2014-18: KID'S HOUSE, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

b. REQUESTED VARIANCE

1. Reduce the property perimeter landscaping and screening from 15' to 5' and remove the requirement for a double row 6' hedge.

The Staff will report at the hearing.

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The Subdivision Committee Recommended: Approval, subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Department of Environmental Quality's approval of environmentally sensitive areas.
7. Discuss existing driveway and arrows for direction.
8. Discuss compliance with Article 18 or need for landscape variance.

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Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property, on the north side of Bryan Avenue inside New Circle Road. She said that the predominant zoning in the vicinity of the subject property is single family residential, with B-1 zoning along Bryan Avenue to the west and near New Circle Road, and B-3 zoning along New Circle Road to the northeast.

Ms. Wade displayed several aerial photographs of the subject property, noting the large detention basin located to its rear, as well as the right-of-way of a former alley. She said that several houses were removed some years ago in order to allow for the construction of the detention basin, which provides for stormwater drainage from the New Circle Road area and under Bryan Avenue to the south. The subject property is also bounded by two single family homes to the west, and a church to the east. The child care center shares parking with the church, since it has only four parking spaces on the subject property. Ms. Wade noted that there are many existing commercial uses in the B-3 zone along New Circle Road, including restaurants, gas stations, and a Walgreen's drugstore.

Ms. Wade stated that the petitioner is requesting the P-1 zone in order to maintain the existing child care center on the subject property. The petitioner has had some difficulty convincing the State agency that is in charge of local Ordinance compliance that their use is, in fact, compliant; even though the staff has provided a zoning letter to that effect. The petitioner is requesting to rezone the property in order to mitigate that issue. Ms. Wade explained that the petitioner is requesting the P-1 zone because a daycare center is a principal use in that zone. She said that the daycare center was established on the subject property, in the R-1C zone, in 1977. At that time, a daycare center was a conditional use in the single-family residential zones; but, since then, that conditional use is no longer available. The daycare center is, therefore, currently considered a legal non-conforming use. It has maintained the same maximum number of children since it located on the subject property in 1977.

Ms. Wade stated that the subject property is located within Subarea D of the Central Sector Small Area Plan (SAP) boundary. That SAP, which was adopted by the Planning Commission in 2009, does not make any specific land use or corridor recommendations for Bryan Avenue. It does, however, encourage development of neighborhood commercial and service nodes, to offer a variety of products and services. The petitioner contends that the P-1 zone is appropriate at this location, and the existing R-1C zone is inappropriate, with which the staff is in agreement. The staff is recommending approval of this request, for the reasons as listed in the staff report and on the agenda; and the Zoning Committee recommended approval at their meeting three weeks ago.

Development Plan Presentation: Ms. Gallt presented the corollary final development plan, noting that there was no need for additional square footage on the subject property, since the existing child care facility is proposed to remain. She said that the Subdivision Committee recommended approval of this plan, subject to the eight conditions as listed on the agenda.

With regard to condition #7, Ms. Gallt stated that, in reviewing the plan, the existing driveway appears to be only partially paved. The staff had some questions about the use of the additional driveway area, so they recommended the addition of condition #7 to address those concerns.

Variance Presentation: Mr. Sallee presented the staff report on the requested variance, explaining that the petitioner is requesting to reduce the zone-to-zone perimeter screening requirements. Those requirements call for a buffer area of 15' inside the subject property to screen it, when a non-residential zone is adjacent to a residential zone. The petitioner is requesting to reduce the buffer to between 5' and 8' around the perimeter of the subject property, and to be relieved from the requirement of installing additional plantings. Mr. Sallee stated that the aerial photograph displayed by Ms. Wade depicted that there is some existing landscape material around the subject property. Referring to an exhibit displayed on the overhead, he said that the staff had received it one day prior to this hearing. That exhibit depicts the extent to which the petitioner is proposing to retain the existing landscape buffer, primarily along the southwest and northwest property lines. The petitioner is proposing to augment the landscaping along the northeast and north corners of the property, with an additional hedge planting and four trees along the northeast property line.

Mr. Sallee stated that the child care use has been in existence on the subject property in the R-1C zone since 1977, when it was approved by the Board of Adjustment. In 1983, the Zoning Ordinance was amended to no longer allow a freestanding daycare center in any of the single family residential zones, which caused the subject property to become a non-conforming use. The petitioner is not proposing any physical changes to the site, other than the addition of plantings, as depicted on their exhibit. The petitioner contends that the existing landscape buffer is sufficient to buffer the property from the church, the detention basin, and the one dwelling unit that adjoins the property to the southwest. Mr. Sallee said that the staff was generally in agreement, and finds that the existing landscape material, although not technically compliant with Article 18, is sufficient to buffer the property, as it has been for years.

Mr. Sallee stated that the Landscape Review Committee is established by Article 18 to review all proposals for landscape variances. This request was to be discussed at their meeting in March, but the committee did not have a

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quorum. There were two members present, and they discussed the proposal with the staff members who were present. Those discussions led to two general recommendations from the members. First, they felt there should be the planting of shade trees along the property frontage, in the style of street trees, since there is no Ordinance provision that would require street trees at this location. In addition, the committee members felt that this proposal was acceptable, so long as no physical changes were proposed to the property. However, should the property redevelop at some point in the future, the committee members were concerned about the possible effects of the landscape variance. Mr. Sallee stated that the staff, in drafting their conditions for approval, tried to address those two concerns. He said that the staff is recommending approval of the requested variances, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; and will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing buildings or parking lot is proposed by the applicant, and because it would be difficult to locate additional fences or hedges along these property lines due to the location and layout of the existing perimeter driveway, the existing parking spaces, and along the southwestern property line, due to the existing trees.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the existing child care use pre-dates the landscaping requirements of the Zoning Ordinance, and no physical expansion of any of the site facilities is proposed. In addition, there is some well-established landscaping and trees in place along the northwestern and southwestern sides of the subject property.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that three sides of the subject site are bordered by a collector street and/or non-residential uses. Thus, the existing trees and shrubs will continue all the necessary screening along the northwestern and northeastern property lines, which meets the intent of the landscape requirements.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship to the applicant because there already exists adequate screening between the subject property and the adjacent property. The applicant is not planning any substantial change to the existing parking area, and there are no physical changes associated with the day care center use that has been at this location for decades.
- e. The circumstances surrounding the requested variances are not the result of the actions of this applicant, as the current day care land use is a legal non-conforming use of the property, and the rezoning has been requested only as a result of the requirements of the Commonwealth of Kentucky.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property P-1; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission; or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. Prior to obtaining any new Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
5. Five (5) shade trees shall be planted along the front of the subject property, within 10' of the existing sidewalk. Trees may be from the large species list on the adopted Planting Manual, and shall be at least 1" caliper at the time of their planting. A minimum of one (1) tree per year shall be planted on the subject property, beginning in 2014, provided that all must be installed within 36 months of the approval of this zone change and variance.
6. A note shall be added to the development plan indicating that the need for additional landscaping will be considered along the property lines in the event a future redevelopment is proposed for the subject property.

Mr. Sallee stated that the last two conditions address the concerns of the Landscape Review Committee. Condition #5 would require the planting of five shade trees along the property frontage, over the next five planting seasons, to implement the recommendations of the committee. Condition #6 would require the review of the perimeter landscaping provisions, should the subject property redevelop at some point in the future.

Commission Questions: Mr. Berkley asked why the staff was recommending the planting of shade trees along the property frontage. Mr. Sallee answered that it is essential to provide a good line of sight for the child care center's outdoor play area. He explained that it was his understanding that the two Landscape Review Committee members who were present at the meeting were concerned about the need for additional tree canopy on the subject property. He stated that the P-1 zone requires 20% tree canopy, and the subject property is unlikely to attain that figure if the requested variance is granted. The additional trees recommended can be considered as an attempt to increase the canopy, even though it is unlikely to meet the requirement. Mr. Sallee added that the Commission could choose to delete that condition, if they do not agree with that assessment.

Petitioner Representation: Bill Bausch, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations, and will comply with all of the conditions if necessary. However, the peti-

tioner would like to ask the Commission to consider the line of sight issues along the property frontage, given that the driveway is used primarily for loading and unloading children from busses. Mr. Bausch said that employees of the child care center are also concerned about visibility on the property when they arrive and depart from the property in the dark. He asked that the Commission consider the number of trees suggested, and recommend providing fewer trees with more space between them, in order to provide for greater visibility on the property.

Commission Questions: Mr. Penn asked if the petitioner has a reciprocal parking agreement with the church, and if that is where employees will park. Mr. Bausch answered that the child care center staff and parents who are dropping off children will park there. He said that a reciprocal agreement was put in place as part of the application process for this rezoning request. Mr. Bausch stated that there are 17 delineated parking spaces, and the terms of the lease were set forth in the agreement. Mr. Penn asked if the busses enter and leave the property from the same access. Mr. Bausch answered that the child care center typically uses vans, which do enter and exit the property from the same access point.

Ms. Blanton asked if the petitioner would prefer to remove the tree requirement altogether, or reduce the number of trees. Mr. Bausch answered that it would not be onerous to provide the trees, since a 1" caliper was specified. He said that the petitioner would be willing to provide three trees, located closer to the southeast corner of the property, with the hope that, as they grow, a line of sight to the driveway could still be maintained.

Mr. Owens asked if the petitioner's main concern is about the five recommended street trees. Mr. Bausch answered affirmatively.

Citizen Comment: There were no citizens present to comment on this item.

Zoning Action: A motion was made by Ms. Blanton, seconded by Mr. Penn, and carried 10-0 (Brewer absent) to approve MARV 2014-4, for the reasons provided by staff.

Variance Action: A motion was made by Ms. Blanton, seconded by Mr. Wilson, and carried 10-0 (Brewer absent) to approve the requested variance, for the reasons provided by staff, subject to the six conditions, changing #5 from five shade trees to three shade trees.

Development Plan Action: A motion was made by Ms. Blanton, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve ZDP 2014-8, subject to the first six conditions; changing #7 to read "resolve;" and deleting #8.

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