

2. MILK & HONEY DAYCARE/PRESCHOOL ZONING MAP AMENDMENT & COVENANT CHURCH, INC./THE PINES ZONING DEVELOPMENT PLAN

- a. MARC 2014-5: MILK & HONEY DAYCARE/PRESCHOOL (5/4/14)* - petition for a zone map amendment from an Agricultural Urban (A-U) zone to a Planned Neighborhood Residential (R-3) zone, for 5.48 net (5.84 gross) acres, for property located at 2700 Old Todds Road. A conditional use permit request was also filed with this zone change.

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 petitioner proposes to rezone the subject property in order to establish the child care center as the primary land use on the property, and increase the number of children that may be cared for at the center. A conditional use permit has also been requested as part of this zone change.

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

The Staff Recommends: Approval, for the following reason:

1. The proposed Planned Neighborhood Residential (R-3) zoning is appropriate, and the existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
 - a. The subject property is located within the Urban Service Area boundary, and the existing A-U zoning is no longer appropriate since all utilities and urban services are available to serve the site.
 - b. The proposed R-3 zoning is most compatible with the surrounding residential zoning.
 - c. The child care center, in existence since 1995, is a beneficial and necessary neighborhood service for this portion of the Urban Services Area.
2. This recommendation is made subject to the approval and certification of ZDP 2014-19: COVENANT CHURCH, INC./THE PINES, 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 CONDITIONAL USE

1. Child Care Center

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

The Staff Recommends: Approval, for the following reasons:

- a. A child care facility at this location, even if expanded, should not adversely affect the subject or surrounding properties. The day care has existed at this location for about 20 years, in conjunction with the church, and will not cause a problem if it continues as the principal use of the property. The existing screened and fenced play area, the parking, and other facilities can easily accommodate the proposed use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Provided the Urban County Council rezones the subject property R-3; otherwise, any Planning Commission action of approval is null and void.
2. Should the subject property be re-zoned to R-3 by the Council, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Commission.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction, and prior to occupancy of the new facilities.
4. The parking lot and driveways shall be paved, with spaces delineated, and landscaped in accordance with Articles 16 and 18 of the Zoning Ordinance, with a minimum of 30 parking spaces.
5. Signage shall comply with Article 17 of the Zoning Ordinance.
6. That the hours of operation be from 6:30 am to 6:00 pm, Monday through Friday.
7. A fenced and screened play area shall remain on the property that is no less than 5,000 square feet in size.
8. That the child care center be limited to a maximum enrollment of two hundred (200) children, or as allowed by the State based on the square footage of the building. Should the applicant desire to accommodate any more than 200 children in the future, BOA approval will be required.

- c. ZDP 2014-19: COVENANT CHURCH, INC./THE PINES (5/4/14)* - located at 2700 Old Todds Road.

(MSC)

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3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~11. Dimension parking aisles, spaces and apron.~~
- ~~11.12. Dimension sidewalks and apron.~~
- ~~12.13. Addition of tree preservation plan information.~~
- ~~14. Identify and dimension all buildings shown on plan and correct site statistics to include basement sq. ft.~~
- ~~15. Addition of "existing" and "proposed" zoning information on site data.~~
- ~~16. Addition of landscaping along northeast corner of existing parking lot and eastern property corner.~~
- 13.17. Discuss Denote that all improvements to Old Todds Road shall be completed prior to issuance of an occupancy permit for the first floor.
- ~~18. Discuss dumpster location (existing and proposed).~~

Mr. Martin stated that, although this revised plan had satisfied many of the previous conditions for approval, conditions #11 and #12 refer to some additional "clean-up" work that needs to be done. Condition #13 arose from the submission of the revised plan, which included street improvements in the depicted cross-section.

Mr. Martin explained that the staff spoke to the petitioner immediately prior to the start of today's public hearing, and learned that the petitioner was not aware of the requirement to construct improvements prior to the issuance of an occupancy permit. The petitioner is concerned with their ability to construct those improvements in the required time frame. After a discussion with the staff of the Division of Traffic Engineering, the staff is recommending that condition #13 require the provision of a sidewalk along the Old Todds Road frontage, prior to the issuance of a certificate of occupancy for the first floor of the building. The staff is concerned about the impact of the expansion of the child care use on traffic in the vicinity of the subject property; and they believe that, at a minimum, a sidewalk should be provided for parents and employees traveling to and from the child care center. Mr. Martin noted that the staff believes that the construction of curb and gutter could be deferred to the time of any future development of the subject property. He also noted that one of the zone change conditions requires that, should the capacity of the child care center exceed 200 children, the petitioner would have to return to the Board of Adjustment. The staff believes that curb, gutter, and other street improvements could be reviewed at that time as well. The petitioner has indicated that they are concerned about the placement of the proposed sidewalk due to the topography of the property, but the staff believes that that could be resolved by placing the sidewalk in an easement adjacent to the right-of-way.

Commission Questions: Ms. Mundy stated that she had looked at the subject property, and it appeared to be very steep. She asked if requiring construction of a sidewalk on the property would cause a hardship for the petitioner. Mr. Martin answered that the staff believes that a sidewalk can be provided, but the location might need to be adjusted to accommodate those slope conditions.

Mr. Penn asked if the property could be subdivided once it is rezoned to R-3. Mr. Martin answered affirmatively, and noted that, if it were proposed for subdivision in the future, the staff would discuss the necessary public improvements as required by the Subdivision Regulations.

Mr. Cravens asked if Old Todds Road is a state roadway. Mr. Martin answered that it was formerly a state road at some point, but he was unsure about its status at this time. Mr. Cravens asked if the Kentucky Department of Transportation (KTC) would need to be involved if it is, in fact, a state road. Mr. Martin responded that KTC might need to be involved, but the sidewalk could be constructed in an easement rather than in the right-of-way.

Mr. Owens asked if a condition should be added to reflect the need for public improvements if the property is proposed for subdivision. Mr. Martin answered that a condition could be added to review the need for additional improvements at future development or subdivision of the property.

Conditional Use Presentation: Mr. Emmons presented the staff report on the requested conditional use. He explained that, in 1984, the Board of Adjustment approved a church on the subject property. In 1994, the childcare center, in association with the existing church, was approved by the BOA.

Mr. Emmons stated that, in reviewing the conditional use request, the staff determined that there is sufficient room on the subject property for the childcare use to expand, since it has an adequate amount of play area and sufficient parking. He said that the BOA approved the childcare use in 1994 with typical conditions, such as hours of operation. At the time, the BOA did limit the childcare facility to 60 children. The petitioner has indicated a desire to expand to

changing condition #13 to read: "Denote that improvements to Old Todds Road shall be revisited upon any redevelopment proposed for the subject property."

3. ZOTA 2014-2: AMENDMENTS TO ARTICLES 8-17, 8-18, & 8-19 & ARTICLE 27 TO IMPLEMENT "DESIGN EXCELLENCE" – petition for a Zoning Ordinance text amendment to implement, in part, the "Design Excellence" program.

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The Staff Recommends: Approval, for the following reason:

1. The proposed Planned Neighborhood Residential (R-3) zoning is appropriate, and the existing Agricultural Urban (A-U) zoning is inappropriate for the subject property, for the following reasons:
 - a. The subject property is located within the Urban Service Area boundary, and the existing A-U zoning is no longer appropriate since all utilities and urban services are available to serve the site.
 - b. The proposed R-3 zoning is most compatible with the surrounding residential zoning.
 - c. The child care center, in existence since 1995, is a beneficial and necessary neighborhood service for this portion of the Urban Services Area.
2. This recommendation is made subject to the approval and certification of ZDP 2014-19: COVENANT CHURCH, INC./THE PINES, 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 CONDITIONAL USE

1. Child Care Center

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

The Staff Recommends: Approval, for the following reasons:

- a. A child care facility at this location, even if expanded, should not adversely affect the subject or surrounding properties. The day care has existed at this location for about 20 years, in conjunction with the church, and will not cause a problem if it continues as the principal use of the property. The existing screened and fenced play area, the parking, and other facilities can easily accommodate the proposed use.
- b. All necessary public facilities and services are available and adequate for the proposed use.

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

1. Provided the Urban County Council rezones the subject property R-3; otherwise, any Planning Commission action of approval is null and void.
2. Should the subject property be re-zoned to R-3 by the Council, it shall be developed according to the submitted Zoning Development Plan, or as further amended by the Commission.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction, and prior to occupancy of the new facilities.
4. The parking lot and driveways shall be paved, with spaces delineated, and landscaped in accordance with Articles 16 and 18 of the Zoning Ordinance, with a minimum of 30 parking spaces.
5. Signage shall comply with Article 17 of the Zoning Ordinance.
6. That the hours of operation be from 6:30 am to 6:00 pm, Monday through Friday.
7. A fenced and screened play area shall remain on the property that is no less than 5,000 square feet in size.
8. That the child care center be limited to a maximum enrollment of two hundred (200) children, or as allowed by the State based on the square footage of the building. Should the applicant desire to accommodate any more than 200 children in the future, BOA approval will be required.

- c. ZDP 2014-19: COVENANT CHURCH, INC./THE PINES (5/4/14)* - located at 2700 Old Todds Road.

(MSC)

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

1. Provided the Urban County Council rezones the property R-3; 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 street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Dimension parking aisles, spaces and apron.
12. Dimension sidewalks.
13. Addition of tree preservation plan information.
14. Identify and dimension all buildings shown on plan and correct site statistics to include basement sq. ft.
15. Addition of "existing" and "proposed" zoning information on site data.
16. Addition of landscaping along northeast corner of existing parking lot and eastern property corner.
17. Discuss improvements to Old Todds Road.
18. Discuss dumpster location (existing and proposed).

Zoning Presentation: Ms. Wade presented the staff report on the requested zone change, briefly orienting the Commission to the location of the subject property on the south side of Old Todds Road, between North Mt. Tabor Road and Palumbo Drive. She said that the subject property is bounded on all sides by residential zoning, with R-1T zoning to the north and south; R-3 to the east; and R-4 to the west. She displayed two aerial photographs of the subject property, noting the location of Palumbo Drive and the existing structure, which is located in the middle of the property, with parking on both sides.

Ms. Wade stated that the petitioner is requesting the rezoning to R-3 in order to allow the existing daycare center to remain on the property and expand its operations. The existing church intends to sell the property to the daycare center, which has been operating in the basement of the facility for a number of years. The daycare center is proposing to remodel the main floor of the building, and expand their facilities to use that space as well, in order to serve more children.

Ms. Wade said that the Board of Adjustment (BOA) approved the daycare as a conditional use on the subject property in the mid-1990s. The petitioner is proposing a residential zone in this location because daycare centers are conditional uses in the R-3 zone. The existing A-U zone only permits a childcare center when it is accessory to a church or school. Ms. Wade stated that, for that reason, the staff believes that the proposed R-3 zone is appropriate for the subject property, even though no residential use is proposed at this time. She noted that the subject site cannot be connected to any of the surrounding development, because there are no existing stub streets, but the parcel is large enough to accommodate between 25 and 50 dwelling units if the childcare center ceases to exist or a portion of the property is sold for development. The staff also believes that the daycare center provides a necessary service to this portion of the county. Ms. Wade noted that the A-U zone is typically considered a "holding zone" until more urban development is possible at a location. The Zoning Ordinance notes specifically that it is "a placeholder until appropriate urban services are available to serve the land." All urban services are currently available on the subject property.

Ms. Wade stated that the staff and Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the associated final development plan, noting that revised conditions for approval had been distributed to the Commission members prior to the start of this hearing. Referring to a rendered development plan, he noted the existing driveway access into the parking area, which has 79 spaces. He stated that the existing structure on the property is 11,556 square feet in size, including the basement. One large play area, over 5,000 square feet in size, is located toward the rear of the property, and an additional play area adjoins the building. There is an existing detention area on the property as well.

Mr. Martin stated that this is a revised version of the plan. He said that the staff is recommending approval of the plan, subject to the following revised conditions:

1. Provided the Urban County Council rezones the property R-3; 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 street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
- ~~11. Dimension parking aisles, spaces and apron.~~
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- 13.17. Discuss Denote that all improvements to Old Todds Road shall be completed prior to issuance of an occupancy permit for the first floor.
- ~~18. Discuss dumpster location (existing and proposed).~~

Mr. Martin stated that, although this revised plan had satisfied many of the previous conditions for approval, conditions #11 and #12 refer to some additional "clean-up" work that needs to be done. Condition #13 arose from the submission of the revised plan, which included street improvements in the depicted cross-section.

Mr. Martin explained that the staff spoke to the petitioner immediately prior to the start of today's public hearing, and learned that the petitioner was not aware of the requirement to construct improvements prior to the issuance of an occupancy permit. The petitioner is concerned with their ability to construct those improvements in the required time frame. After a discussion with the staff of the Division of Traffic Engineering, the staff is recommending that condition #13 require the provision of a sidewalk along the Old Todds Road frontage, prior to the issuance of a certificate of occupancy for the first floor of the building. The staff is concerned about the impact of the expansion of the child care use on traffic in the vicinity of the subject property; and they believe that, at a minimum, a sidewalk should be provided for parents and employees traveling to and from the child care center. Mr. Martin noted that the staff believes that the construction of curb and gutter could be deferred to the time of any future development of the subject property. He also noted that one of the zone change conditions requires that, should the capacity of the child care center exceed 200 children, the petitioner would have to return to the Board of Adjustment. The staff believes that curb, gutter, and other street improvements could be reviewed at that time as well. The petitioner has indicated that they are concerned about the placement of the proposed sidewalk due to the topography of the property, but the staff believes that that could be resolved by placing the sidewalk in an easement adjacent to the right-of-way.

Commission Questions: Ms. Mundy stated that she had looked at the subject property, and it appeared to be very steep. She asked if requiring construction of a sidewalk on the property would cause a hardship for the petitioner. Mr. Martin answered that the staff believes that a sidewalk can be provided, but the location might need to be adjusted to accommodate those slope conditions.

Mr. Penn asked if the property could be subdivided once it is rezoned to R-3. Mr. Martin answered affirmatively, and noted that, if it were proposed for subdivision in the future, the staff would discuss the necessary public improvements as required by the Subdivision Regulations.

Mr. Cravens asked if Old Todds Road is a state roadway. Mr. Martin answered that it was formerly a state road at some point, but he was unsure about its status at this time. Mr. Cravens asked if the Kentucky Department of Transportation (KTC) would need to be involved if it is, in fact, a state road. Mr. Martin responded that KTC might need to be involved, but the sidewalk could be constructed in an easement rather than in the right-of-way.

Mr. Owens asked if a condition should be added to reflect the need for public improvements if the property is proposed for subdivision. Mr. Martin answered that a condition could be added to review the need for additional improvements at future development or subdivision of the property.

Conditional Use Presentation: Mr. Emmons presented the staff report on the requested conditional use. He explained that, in 1984, the Board of Adjustment approved a church on the subject property. In 1994, the childcare center, in association with the existing church, was approved by the BOA.

Mr. Emmons stated that, in reviewing the conditional use request, the staff determined that there is sufficient room on the subject property for the childcare use to expand, since it has an adequate amount of play area and sufficient parking. He said that the BOA approved the childcare use in 1994 with typical conditions, such as hours of operation. At the time, the BOA did limit the childcare facility to 60 children. The petitioner has indicated a desire to expand to

enrollment to 120 – 150 children. Mr. Emmons stated that the staff is recommending approval of this request, for the reasons as listed on the agenda, with the eight conditions as listed. He noted that the staff is recommending that enrollment be limited to 200 children; should the petitioner desire to increase enrollment beyond that number, BOA approval would be required.

Petitioner Representation: Nathan Billings, attorney, was present representing the petitioner. He stated that the petitioner is in agreement with the staff's recommendations for the zone change, conditional use, and development plan, with the exception of the improvements to Old Todds Road.

Mr. Billings said that there was a discussion about those improvements at the Commission's Subdivision Committee meeting three weeks ago; and because of some poor communication with the engineer, the improvements were included on the revised version of the development plan. The petitioner contends that the childcare center's daily functioning will not change at all if the property is rezoned, except that it is likely to grow at some point in the future. The site is not currently accessible to pedestrians, with the exception of one sidewalk to an adjacent townhouse development. The Chelsea Woods subdivision, located across Old Todds Road from the subject property, does not have street improvements, nor does the adjacent single family residence. Mr. Billings stated that the petitioner believes that sidewalk and road improvements would be appropriate on the site, but only if the childcare use changes or the property is subdivided. He said that it would be appropriate to include a note on the plan, denoting that road improvements to Old Todds Road, including the sidewalk, should be done in the future. If the Commission chooses to require the construction of a sidewalk at this time, the petitioner believes that it could be located outside the 30' right-of-way. Mr. Billings said that there is an existing detention basin and a significant slope, which will affect the location and configuration of the sidewalk, but the petitioner believes that it can be constructed.

Commission Questions: Mr. Penn asked if the petitioner was in agreement with limiting the enrollment of the childcare center to 200 children. Mr. Billings answered affirmatively.

Ms. Mundy asked if any of the children access the facility on foot. Jackie Pittard, presenting on behalf of the petitioner, stated that there have never been any children or parents who access the childcare center on foot. She noted that even Fayette County Public Schools' busses drive directly to the front door of the center to drop off and pick up students.

Mr. Berkley stated that he believed that placement of a sidewalk on the subject property would be difficult, until Old Todds Road is re-designed. He said that he did not believe that the petitioner should have to provide the sidewalk at this time, only to have it removed as part of a road improvement project in the future.

Citizen Comments: There were no citizens present to comment on this request.

Commission Discussion: Mr. Owens stated that there is a residential development to the east of the subject property, and he believed that there could be residents there who would want to walk to the subject property. He added that he is always in favor of the requirement of street improvements whenever possible.

Mr. Berkley asked if the Commission members would be willing to add a condition to the plan to require that the street improvements be reconsidered if the subject property is redeveloped.

Ms. Blanton asked if it would be appropriate to add a condition that a sidewalk would be required at the time of improvements to Old Todds Road. She said that she believed that people might walk to the childcare center if a sidewalk was available.

Mr. Berkley stated that, on other sections of Todds Road, sidewalks were included as part of road improvement projects.

Mr. Penn asked if it would be appropriate to add a condition #14 to require sidewalks at the time of redevelopment of the property, and if a condition should be added to limit the number of children to 200. Mr. Sallee answered that condition #8 for the conditional use request includes a limit of 200 children.

Zoning Action: A motion was made by Mr. Penn, seconded by Mr. Cravens, and carried 10-0 (Brewer absent) to approve MARC 2014-5, for the reasons provided by staff.

Conditional Use Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 10-0 (brewer absent) to approve the requested conditional use, for the reasons provided by staff, subject to the eight conditions as listed on the agenda.

Development Plan Action: A motion was made by Mr. Penn, seconded by Ms. Mundy, and carried 10-0 (Brewer absent) to approve ZDP 2014-19, subject to conditions #1 - #12 as listed in the revised staff recommendation, and

changing condition #13 to read: "Denote that improvements to Old Todds Road shall be revisited upon any redevelopment proposed for the subject property."

3. ZOTA 2014-2: AMENDMENTS TO ARTICLES 8-17, 8-18, & 8-19 & ARTICLE 27 TO IMPLEMENT "DESIGN EXCELLENCE" – petition for a Zoning Ordinance text amendment to implement, in part, the "Design Excellence" program.

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changing condition #12 to read: Delete the improvements to Old Lodge Road which are revised as in any revision.
condition proposed for the subject property.

2014 2014-2 AMENDMENTS TO ARTICLES 8-17, 8-18 & 8-19 & ARTICLE 11 TO IMPLEMENT PROGRAM
EXHIBIT B - Motion for a zoning Ordinance text amendment to implement Part 1 of the Design Excellence
Program