

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.