

STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

ZOTA 2015-5: AMENDMENT TO THE DEFINITION AND REGULATION OF “DAY SHELTERS”

INITIATED BY: Urban County Council

PROPOSED TEXT: See Attached Text

STAFF REVIEW:

The Urban County Council has initiated a text amendment to Articles 1, 8 and 23 of the Zoning Ordinance to modify the definition of “day shelter,” adjust regulations for the use to be permitted within additional areas of the community, and to be regulated in a manner similar to how “community centers” are regulated by the Zoning Ordinance. In accordance with KRS 100, this text amendment must be reviewed and acted on by the Planning Commission within 60 days of the Council initiation, which is mid-June, at the latest.

Currently, a community center is permitted in several zoning categories, and is a principal permitted use within a number of commercial zones; but a day shelter, which for some uses could possibly be serving the same clientele, is more restrictive. Prior to 2012, day shelters had been classified as a “community center” use. In 2012, a text amendment was initiated by the Council to address several neighborhood associations that were concerned about the fact that a “community center” was established near downtown. That particular use began serving the community’s less fortunate, and was established without any public hearing or neighborhood notification, as “community center” was a principal use in that zone. That text amendment ultimately defined two new uses – “adult day care center” and “day shelter” – and regulated such uses in the P-1, B-1, B-2, B-2A, and P-2 zones. Ultimately, the Council chose to regulate day shelters as a conditional use in these five zones, with no zones as a principal permitted use, whereas the “adult day care center” use was deemed appropriate as a principal permitted use in the same zones.

The Department of Law began reviewing and scrutinizing both the definition and the regulation of day shelters, when a complaint was filed with HUD regarding the way community centers and day shelters are defined and regulated by the Zoning Ordinance. The complaint was eventually referred by HUD to the Department of Justice. The complaint basically asserts that the current Ordinance is a violation of the Fair Housing Act, which provides some level of protection to the nation’s homeless population. A community center that would permit overnight accommodations is regulated inconsistently with a day shelter, even though the facilities may be serving the same persons at different times throughout the day.

The proposed text amendment, as initiated by the Council, would address these inconsistencies and permit a day shelter as follows:

Principal Permitted Use

- Professional Office (P-1) zone
- Neighborhood Business (B-1) zone
- Downtown Business (B-2) zone
- Downtown Business Frame (B-2A) zone
- Office, Industry and Research Park (P-2) zone
- Planned Shopping Center (B-6P) zone, and
- Expansion Area Community Center (CC) zone

Conditional Use (Board of Adjustment public hearing and approval required)

- Planned Neighborhood Residential (R-3) zone
- High Density Apartment (R-4) zone
- High Rise Apartment (R-5) zone, and
- Light Industrial (I-1) zone

Where allowed as a principal permitted use, the use would be permitted “by-right.”

All conditional use applications require notification to nearby property owners, a mailed notice to the nearest registered neighborhood association, and a public hearing before the Board of Adjustment prior to locating such a facility.

The text amendment also proposes to re-define a day shelter to more clearly differentiate it from a community center and avoid the use of the term “homeless,” as follows:

Day Shelter – A facility which provides on a free or not-for-profit basis access to indoor shelter, generally during the hours encompassing dawn to dusk, and which may also provide in conjunction therewith personal support services, primary to, or intended for, persons who otherwise may not have access to indoor shelter if only available on a cost or for profit basis. This definition shall not include temporary emergency heating or cooling shelters which operate only during extreme weather periods.

Although no new day shelters have been requested in Lexington-Fayette County since the adoption of the previous text amendment, it is appropriate to modify the Zoning Ordinance at this time to address any perceived inequities. It is logical that day shelters and community centers that include overnight accommodations should be regulated similarly. This can allow for their co-location and, ultimately, will allow for accessible community facilities and services to meet the health, safety and quality of life needs of Lexington-Fayette County’s residents and visitors which would be consistent with the 2013 Comprehensive Plan’s *Theme D: Improving a Desirable Community, Goal #2 (page 7)*.

The Staff Recommends: **Approval**, for the following reasons:

1. The proposed text amendment will regulate day shelters in the same manner as are community centers, which will facilitate their co-location and could provide additional services to the community. The amendment will also more clearly define “day shelter.”
2. The proposed changes to the Zoning Ordinance are supported by the 2013 Comprehensive Plan. These text amendments will help to provide more accessible community facilities and services to meet the health, safety and quality of life need for both residents and visitors, especially those persons who are less fortunate (consistent with Theme D, Goal #2 of the Plan).

TLW/BJR/WLS/CDK

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