

Recd by _____

Date: _____

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

IN RE: **PLN-ZOTA-22-00016: AMENDMENT TO ARTICLE 8-16 RE-CATEGORIZING COMMUNITY CENTER, DAY SHELTER, AND ADULT DAY CARE USES FROM A PRINCIPAL USE TO A CONDITIONAL USE** – a petition for a Zoning Ordinance text amendment to re-categorizing Community Center Day Shelter, and Adult Day Care uses from a Principal Use to a Conditional Use.

Having considered the above matter on **November 17, 2022**, 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 **DISAPPROVAL** for this matter for the following reasons:

1. Community centers, day shelters, and adult day care facilities provide services which are substantially similar to principal uses within the Neighborhood Business (B-1) zone, thus should remain principal uses.
2. The applicant provides no details or information as to how community centers, day shelters, and adult day care facilities necessitate greater review by the Board of Adjustment (BOA) within a commercial zone.
3. The proposed text amendment is contrary to the findings of the Planning Commission and the Urban County Council in the establishment of community centers, day shelters, and adult day care centers in the B-1 zone.
4. The addition of barriers to community serving facilities proposed by the applicant is not in agreement with the 2018 Comprehensive Plan as it reduces the ability to provide community facilities that are integrated within neighborhoods (Theme A, Equity Policy #7) and can limit social service community facilities that address homelessness, substance abuse, mental health, and other significant issues (Theme D, Support Policy #5).
5. The proposed text diminishes the ability to achieve the goals laid out in the Five-Year Strategic Plan to Enhance Affordable Housing and Reduce and Effectively End Homelessness in Fayette County.
6. The proposed text amendment adds barriers to community servicing facilities, which disproportionately impacts people of color and individuals with a disability.
7. The proposed text is substantially similar to the 2012 text amendment, which resulted in a complaint by the United States Department of Justice and the Department of Housing and Urban Development. The proposed text could result in legal challenges and loss of funding for programs that support individuals who are economically insecure or experiencing homelessness.

ATTEST: This 6th day of January, 2023.



Secretary, Jim Duncan

LARRY FORESTER
CHAIR

At the Public Hearing before the Urban County Planning Commission, this petition was represented by **Keith Clark**.

OBJECTORS

- Walt Gaffield, 2001 Bamboo Drive
- John Hackworth, 220 Market Street
- Wants neighbors to have a say about what happens in their neighborhood.
- Wants neighbors to have a say about what happens in their neighborhood.

VOTES WERE AS FOLLOWS:

AYES: (10) Barksdale, Bell, de Movellan, Forester, Meyer, Michler, Nicol, Penn, Pohl, and Worth

NAYS: (0)

ABSENT: (1) Davis

ABSTAINED: (0)

DISQUALIFIED: (0)

Motion for **Disapproval** of **PLN-ZOTA-22-00016** carried.

Enclosures: Application
Justification
Staff Report
Applicable excerpts of minutes of above meeting

GENERAL INFORMATION - Zoning Ordinance Text Amendment Application

1. **APPLICANT INFORMATION:**

Name: Keith Clark

Address: 482 West Second Street

City, State, Zip Code: Lexington, KY 40507

2. **ATTORNEY (Or Other Representative) INFORMATION:**

Name: Benjamin Gallagher

Address: 227 Miller Street

City, State, Zip Code: Lexington, KY 40507

Email: ben@gallagheroa.com

3. **REQUESTED TEXT CHANGE:** Date of Pre-application Conference: 08/02/2022

Zoning Ordinance Article 8-16 (see attached)

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

See attached letter of justification.

Sec. 8-16. - Neighborhood Business (B-1) Zone.

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

1. Banks, credit agencies, security and commodity brokers and exchanges, credit institutions, savings and loan companies, holding and investment companies.
2. Offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations, including, but not limited to, real estate sales offices.
3. Research development and testing laboratories or centers.
4. Schools for academic instruction.
5. Libraries, museums, art galleries and reading rooms.
6. Funeral parlors.
7. Medical and dental offices, clinics and laboratories.
8. Telephone exchanges, radio and television studios.
9. Studios for work or teaching of fine arts, such as photography; music; drama; dance and theater.
10. ~~Community centers and p~~Private clubs.
11. Nursing homes, personal care facilities and assisted living facilities.
12. Computer and data processing centers.
13. Ticket and travel agencies.
14. Kindergartens, nursery schools and childcare centers for four (4) or more children. A fenced and screened play area shall be provided, which shall contain not less than twenty-five (25) square feet per child.
15. Business colleges, technical or trade schools or institutions.
16. Rehabilitation homes; but only when more than five hundred (500) feet from a residential zone, school for academic instruction or a childcare center.
17. Establishments for the retail sale of food products, such as supermarkets; dairy, bakery, meat, beer, liquor, and wine and other food product stores; and provided that production of food products is permitted only for retail sale on the premises.
18. Restaurants, and brew-pubs, except as prohibited under Subsection (e)(14) and (15) of this section, which offer no live entertainment or dancing.
19. Establishments for the retail sale of merchandise, including: clothing, shoes, fabrics, yard goods; fixtures, furnishings, and appliances, such as floor covering, radios, TV, phonograph products and other visual and sound reproduction or transmitting equipment; furniture;

kitchen and laundry equipment; glassware and china; and other establishments for the retail sale of hardware and wallpaper, lawn care products, paint and other interior or exterior care products, hobby items, toys, gifts, antiques, newspapers and magazines, stationery and books, flowers, music, cameras, jewelry and luggage, business supplies and machines; sporting goods and recreational equipment; prescription and non-prescription medicines and medical supplies.

20. Beauty shops and barber shops.
21. Shoe repair, clothing alterations and tailoring services.
22. Self-service laundry or laundry pick-up stations, including clothes cleaning establishments of not more than forty (40) pounds capacity and using a closed-system process.
23. Automobile service stations, provided such use conforms to all requirements of Article 16.
24. Parking structures; provided such use conforms to the conditions of Article 16, and provided that at least twenty-five percent (25%) of the first floor is occupied by another permitted use or uses in the B-1 zone.
25. Repair of household appliances.
26. Retail sale of plant nursery or greenhouse products, except as prohibited herein.
27. Miniature golf or putting courses.
28. Quick copy services utilizing xerographic or similar processes, but not utilizing offset printing methods.
29. Carnivals, special events, festivals, or concerts on a temporary basis; and upon issuance of a permit by the Divisions of Planning and Building Inspection, which may restrict the permit in terms of time, parking, access, or in other ways to protect public health, safety, or welfare; or deny such if public health, safety, or welfare is adversely affected. A carnival, special events, festivals, or concerts may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
30. Indoor theaters, limited to three (3) screens or stages.
31. Rental of equipment whose retail sale would be permitted in the B-1 zone.
32. Dwelling units, provided the units are not located on the first floor of a structure; and provided that at least the first floor is occupied by another permitted use or uses in the B-1 zone, with no mixing of other permitted uses and dwelling units on any floor.
33. Arcades, including pinball and electronic games.
34. Pawnshops, which:(1)Were in operation prior to August 31, 1990 and in compliance with the provisions of KRS 226.010 et seq. and Code of Ordinances, Sections 13-52 and 13-53; or(2)Had on file with the Lexington-Fayette Urban County Government, prior to August 31, 1990, an application for a business license or certificate of occupancy.

35. Athletic club facilities.

36. Banquet facilities.

~~37. Adult day care centers.~~

~~38~~37. Animal grooming facilities.

~~39~~38. Mail service facilities.

~~40~~39. Tattoo parlors.

~~41~~40. Form-based neighborhood business project, as per Subsection (o)(3) of this section.

~~42. Day shelters.~~

~~43~~41. Commercial farm markets and market gardens.

~~44~~42. Establishments primarily engaged in agricultural sales and services, but only when located within five hundred (500) feet of an Agricultural Rural (A-R) zone.

~~45~~43. Ecotourism activities to include hiking, bicycling and equine trails; recreational outfitters, and canoeing and kayaking launch sites.

~~46~~44. Places of religious assembly.

~~47~~45. Offices of veterinarians, animal hospitals or clinics, provided that:

- (a) All exterior walls are completely soundproofed;
- (b) Animal pens are located completely within the principal building; and
- (c) Boarding is limited to only animals receiving medical treatment.

(d) Conditional Uses. (Permitted only with Board of Adjustment approval.)

1. Self-service car washes, provided that surface water from such establishments shall not drain onto adjacent property, and that adequate on-site storage lanes and parking facilities shall be provided so that no public way shall be used for such purposes.
2. The rental of trucks (single rear axle: Twenty-eight (28) feet maximum overall length), trailers and related items in conjunction with the operation of an automobile service station, provided that the service station abuts a state or federal highway. No more than five (5) trucks shall be stored for longer than forty-eight (48) hours on any service station. A site plan shall be submitted for the approval of the Board of Adjustment for the continued control of such activity and shall show the entire property, buildings, signs, parking and location of the proposed storage area.
3. A restaurant or brew-pub, without live entertainment or dancing, which devotes more than twenty-five percent (25%) of its public floor area primarily to the preparation and service of malt beverages, wine or alcoholic beverages.

4. Outdoor live entertainment and/or dancing, cocktail lounges or nightclubs, unless prohibited under Subsections (e)(14) and (15) of this section. Such uses shall be located at least one hundred (100) feet from any residential zone; and indoor uses shall be sound-proofed to the maximum extent feasible by using existing technology, with noise or other emissions not creating a nuisance to the surrounding neighborhood. The Board may also impose time restrictions to minimize nuisance to the surrounding neighborhood.
5. Indoor live entertainment and/or dancing, when accessory to a restaurant, brew-pub or banquet facility; but only when located closer than one hundred (100) feet from a residential zone.
6. Upholstery shop.
7. Mining of non-metallic minerals, but only when the proposal complies with the requirements of the Mining/Quarrying Ordinance (Code of Ordinances #252-91) and the conditions and requirements as set forth therein. The Board of Adjustment shall specifically consider and be able to find:
 - a. That the proposed use will not constitute a public nuisance by creating excessive noise, odor, traffic, dust, or damage to the environment or surrounding properties;
 - b. That a reasonable degree of reclamation and proper drainage control is feasible; and
 - c. That the owner and/or applicant has not had a permit revoked or bond or other security forfeited for failure to comply with any federal, state or local laws, regulations or conditions, including land reclamation, pertaining to the proposed use.
8. Gasoline pumps available to the public without an employee on site, provided a plan is approved by the Board of Adjustment for periodic inspection of the site by an employee for the following purposes:
 - a. To check all operating equipment;
 - b. To check fire suppression system(s);
 - c. To check the condition of the fire alarm(s);
 - d. To check for indications of fuel leaks and spillage;
 - e. To remove trash from the site;
 - f. To monitor the general condition of the site.
9. Rehabilitation homes, but only when located closer than five hundred (500) feet from a residential zone, school for academic instruction or a childcare center.
10. Temporary structures designed for use or occupancy for sixty-one (61) to one hundred eighty (180) days per 12-month period on a single property, calculating said period by cumulative consideration of the use of any and all such structures on a single property.

11. Circuses, provided all structures are located not less than two hundred (200) feet from any residential zone; and further provided that all structures for housing animals shall be two hundred (200) feet from any residential zone, residential use, school, hospital, nursing or rest home. A circus may not displace more than twenty-five percent (25%) of the minimum required parking for the site it occupies.
12. Automobile and vehicle refueling stations, provided such uses conform to all requirements of Article 16.
13. Extended-stay hotels.
14. Parking lots, provided such use conforms to the conditions of Article 16.
15. Drive-through facilities for the sale of goods or products, or the provision of services otherwise permitted herein, except as accessory uses herein.
16. Ecotourism activities to include zip line trails; tree canopy tours; fishing clubs; botanical gardens; nature preserves; and seasonal activities.
17. Recreation vehicle and trailer campgrounds, but only when located within five hundred (500) feet of an interstate interchange.
18. Hunting clubs, but only when located more than five hundred (500) feet from a residential zone.
19. Country inns, but only when located within five hundred (500) feet of an Agricultural Rural (A-R) zone.
20. Community Center
21. Adult Day Care
22. Day Center

Supporting Documentation for Zoning Ordinance Text Amendment

Members of the Planning Commission,

The requested Zoning Ordinance Text Amendment to modify Community Centers, Day Shelters, and Adult Day Care Centers from Principal Use to a Conditional Use is appropriate per the findings of the LFUCG Board of Adjustment in its disapproval of Conditional Use Application PLN-BOA-21-00018.

In that Conditional Use Application, the Board of Adjustment voted to disapprove a request for conditional use for a community center within the defined Infill and Redevelopment Area in a High Density Apartment (R-4) zone, on property located at 203 E. Fourth St. based on the following reasons:

1. *The proposed use will have an adverse effect on the adjoining properties and the nearby neighborhoods due to the concentration of social services being provided in the immediate area. The applicant's proposed use and services are duplicative of social services being provided by agencies and organizations in the neighborhood.*
2. *The addition of another social service and community center leads to public health, safety and welfare concerns. Police and fire emergency services will be additionally burdened due to increased activities at the site.*

It is of high importance to note that the reason for disapproval was not because the requested Conditional Use was inappropriate within the High Density Apartment (R-4) zone, but rather that the surrounding neighborhood was already supporting a significant concentration of similar social service uses. Unique circumstances such as these are the very reason Conditional Uses exist in the Zoning Ordinance.

LFUCG Zoning Ordinance Section 7-6 "Specific Powers", a) Conditional Use Permits states the following:

*The Board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the planning area of uses which are specifically named in this Zoning Ordinance, which may be suitable only in specific locations in the zone only if certain conditions are met **and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood.***

This reasoning applies equally to any zone that might potentially be adversely impacted by a given use for the unique circumstances of a specific surrounding neighborhood. In these cases, it is appropriate for the surrounding neighborhood to be notified of the requested use and provided a public forum to debate the potential beneficial or adverse impacts of said use. Consistent with the Board of Adjustment's reasons for disapproval in the previously referenced conditional use application, this text amendment is appropriate in the B-1 zone for the same reasons.

The **intent** of the Neighborhood Business (B-1) Zone is to:

accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Generally, they should be planned facilities and should be located as

recommended in the Comprehensive Plan. This zone should be oriented to the residential neighborhood and should have a roadway system which will be adequate to accommodate the anticipated vehicular traffic.

While there certainly may be cases where uses outside of the principal intent would be appropriate, it is equally possible that these same uses would have significant adverse impacts based on the unique circumstances of the neighborhood where the B-1 zoned property in question exists.

The purpose of the LFUCG Zoning Ordinance is to:

*implement the adopted Comprehensive Plan and other adopted Community Plans of Lexington-Fayette Urban County; **to promote the public health, safety, morals, and general welfare**; to facilitate orderly and harmonious development in the visual and historic character of Lexington-Fayette Urban County; to regulate the density of population and intensity of land use in order to provide for adequate light and air; to provide for vehicle parking and loading space; to improve the appearance of vehicular use areas and property abutting public rights-of-way; **to require buffering between non-compatible land uses and to protect, preserve and promote the aesthetic appeal, character, and value of the surrounding neighborhoods**; to promote public health and safety through the reduction of noise pollution, air pollution, visual pollution, air temperature, and artificial light glare; to further fair housing choice and the purposes behind the Federal Fair Housing Act; **to facilitate fire and police protection; to prevent the overcrowding of land, blight, danger, and congestion in the circulation of people and commodities; to prevent the loss of life, health, or property from fire, flood, or other dangers**; to protect airports, highways, and other transportation facilities, public facilities, including schools and public grounds, historic districts, central business districts, natural resources, and other specific areas of Lexington-Fayette Urban County which need special protection.*

I appreciate your consideration of this Zoning Ordinance Text Amendment and thank you for your diligence and prudent judgement in considering it.

Respectfully,



Keith Clark



STAFF REPORT ON PETITION FOR ZONING ORDINANCE TEXT AMENDMENT

PLN-ZOTA-22-00016: AMENDMENT TO ARTICLE 8-16(b) and 8-16(d) TO RECLASSIFY COMMUNITY CENTERS, DAY SHELTERS, AND ADULT DAY CARE FROM A PRINCIPAL USE TO A CONDITIONAL USE

APPLICANT: KEITH CLARK

PROPOSED TEXT: (Note: Text underlined indicates an addition to the existing Zoning Ordinance; text ~~stricken through~~ indicates a deletion.)

ARTICLE 8-16 NEIGHBORHOOD BUSINESS (B-1) ZONE

(b) Principal Uses. (Other uses substantially similar to those listed herein shall also be deemed permitted.)

...

~~10. Community centers and p~~Private clubs.

...

~~37. Adult day care centers.~~

3837. Animal grooming facilities.

3938. Mail service facilities.

4039. Tattoo parlors.

4140. Form-based neighborhood business project, as per Subsection (o)(3) of this section.

~~42. Day shelters.~~

4341. Commercial farm markets and market gardens.

4442. Establishments primarily engaged in agricultural sales and services, but only when located within five hundred (500) feet of an Agricultural Rural (A-R) zone.

4543. Ecotourism activities to include hiking, bicycling and equine trails; recreational outfitters, and canoeing and kayaking launch sites.

4644. Places of religious assembly.

4745. Offices of veterinarians, animal hospitals or clinics, provided that:

(a) All exterior walls are completely soundproofed;

(b) Animal pens are located completely within the principal building; and

(c) Boarding is limited to only animals receiving medical treatment.

(d) Conditional Uses. (Permitted only with Board of Adjustment approval.)

...

20. Community center.

21. Adult day care centers.

22. Day shelters.



STAFF REVIEW:

The petitioner, Keith Clark, is requesting a text amendment to the Zoning Ordinance in order to reclassify community centers, day shelters, and adult day care centers from a principal use to a conditional use in the Neighborhood Business (B-1) zone. The intent of the B-1 zone is to accommodate neighborhood shopping facilities to serve the needs of the surrounding residential area. Community centers are defined as “buildings and facilities for a social, educational, or recreational purpose, operated by a non-profit organization, which are generally open to the public and which do not render a service customarily carried on as a business.” These facilities provide different services throughout the Urban Service Area and serve various populations. Adult day care centers are defined as “any adult care facility, which provides part-time care, day or night, but less than twenty-four (24) hours, to at least four (4) adults who are not related to the operator by blood, marriage or adoption. The operator must be certified or licensed by a state public agency and may include personal care assistance, administering and/or assistance with medication, and social recreational activities.” Day shelters are defined as “facilities which provide 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, primarily to, or intended for, persons who otherwise may not have access to indoor shelter if only available on a cost or for profit basis. The term "day shelter" shall not include temporary emergency heating or cooling shelters which operate only during extreme weather periods.” Whereas Community Centers and Adult Day Care facilities can range in the population served, Day Shelters serve Lexington’s population that are economically insecure or are experiencing homelessness.

The uses of concern with this Zoning Ordinance text amendment are currently allowable as conditional uses in three residential zones (R-3, R-4, and R-5 zones), and the Light Industrial (I-1) zone, and are principal uses within eight commercial zones (P-1, B-1, B-2, B-2A, B-6P, P-2, CC and ED zones). Principal uses, or those that are determined to be substantially similar to those uses listed, are land uses that are allowable “by right” for owners of property within the zone. Conditional uses necessitate further review by the Board of Adjustment, as the uses are typically of a higher intensity land use than those principally permitted, but can provide a necessary services to or be supportive of the principal uses within the same zone.

Over the course of the last 39 years, the B-1 zone has been modified 33 times. The majority of these modifications added uses to the zone or modified the requirements of the zone, including setbacks, height of structures, and parking. With all Zoning Ordinance text amendments, it is imperative to look at the various aspects of the applicant’s request, including but not limited to the rationale provided, the historical context of the zone, the other land uses allowable in the zone, the potential impacts that the change may have on other components of the Zoning Ordinance, the legal impacts of the proposed change, and the community impacts of the proposed change.

The applicant indicates that the proposed amendment to the B-1 zone is in line with a recent decision of the Board of Adjustment for the property located at 203 East Fourth Street (PLN-BOA-21-00018). The BOA’s review of this application was for a conditional use for a Community Center within the High Density Apartment (R-4) zone. Currently, there are a total of 23 conditional uses allowable in the R-4 zone, including hospitals, community centers, community garages, kindergartens, nursery schools, and child care centers, parking lots, boarding or lodging houses, bed and breakfast facilities, and day shelters. These land uses are included as conditional uses within the R-4 zone as they allow for commercial land uses within a residential zone, but can also serve the residential population in



the area. Commercial land uses can produce a greater amount of impacts on the surrounding residential landscape, as they often increase the activity within residential areas and can increase the amount of vehicular movement along streets that are typically residential in character.

The applicant cites that the BOA makes decisions on applications for conditional use permits to allow the proper integration into the planning area of uses, which may be suitable only in specific locations in the zone, only if certain conditions are met, and which would not have an adverse influence on existing or future development of the subject property or its surrounding neighborhood. In the case cited by the applicant, the BOA found that the inclusion of the Community Center within the residential zone was inappropriate citing two findings:

1. The proposed use will have an adverse effect on the adjoining properties and the nearby neighborhoods due to the concentration of social services being provided in the immediate area. The applicant's proposed use and services are duplicative of social services being provided by agencies and organizations in the neighborhood.
2. The addition of another social service and community center leads to public health, safety and welfare concerns. Police and fire emergency services will be additionally burdened due to increased activities at the site.

The applicant opines that the BOA's decision for disapproval was not due to the inappropriateness of the conditional use within the R-4 zone, but that the surrounding neighborhood was already supporting a significant concentration of similar social service uses. The applicant indicates that such reasoning applies equally in a commercial zone that is associated with a neighborhood. The applicant states that it is appropriate for the surrounding neighborhood to be notified of the requested use and provided a public forum to debate the potential beneficial or adverse impacts of community centers, day centers, and adult day care facilities. The applicant believes that the intent of the B-1 zone and the intent of the Zoning Ordinance are in support of their proposed modification.

The staff finds no merit in the justification that has been made by the applicant. The applicant's rationale that the disapproval of a conditional use that is of greater intensity within a residential context would translate to a use within the B-1 zone is inaccurate. Any decision of the Board of Adjustment (BOA) is founded on a case by case evaluation that is based on the specific aspects of an application and a property. The proposed text amendment would impact the whole of the community and provide greater barriers to certain services. While the BOA made a determination regarding the quantity of the community center facilities in the immediate area, the inclusion of a community center as a conditional use in the R-4 zone is that it would be a non-residential land use within a residential zone, but that does not mean they determined that the use was not appropriate as a possible conditional use in the zone or any other zone. Staff finds that community centers, day shelters, and adult day care facilities are of an equal land use impact to the other land uses currently found within the B-1 zone.

There are currently 47 land uses that are expressly defined as principal uses within the B-1 zone and an additional 19 conditional uses. The applicant makes no reference within their letter of justification to the specific land uses within the B-1 zone. While the intent of the B-1 zone focuses on the accommodation of neighborhood shopping facilities to serve the needs of the surrounding residential area, there are other neighborhood serving facilities that are included as primary uses. Banks and credit agencies; offices for business, professional, governmental, civic, social, fraternal, political, religious and charitable organizations; research development and testing laboratories or centers; medical and dental offices; clinics and laboratories, and restaurants are all allowable uses



within the zone and all have a similar impact to the uses that the applicant is seeking to require increased review and scrutiny. All uses allow for individuals to access a wide variety of resources, provide an amenity or space for users to occupy that space, and support different elements of Lexington's community. The services that are provided by the community centers, day shelters, and adult day care facilities are also substantially similar to those services that are provided by places of religious assembly, which the applicant has not discussed within their letter of justification.

The applicant's proposed text also removes the three uses from the B-2, and B-2A, which allow all uses within the B-1 zone by reference. The removal of these uses from the downtown business zones lessens the availability of services within the Lexington community for those who are in need. The removal of the uses within downtown business zones is also problematic as access via transit is a significant factor in the placement of services that target individuals who are income insecure or are experiencing homelessness. Additionally, the P-1 zone, which is considered to be a lesser intensity zone, would still allow for the uses to be principal uses, which creates a discontinuity within the Zoning Ordinance.

As the three uses are of similar land use impact to others within the B-1 zone, the applicant's justification regarding the need for greater barriers to the establishment of facilities is unnecessary. Furthermore, the applicant does not provide any information as to the negative impacts that such facilities have on the surrounding community. Within the applicant's letter of justification, they bold several areas of the purpose statement of the Zoning Ordinance that they believe are pertinent to their justification, including to promote the public health, safety, morals, and general welfare, buffering between non-compatible land uses and to protect, preserve and promote the aesthetic appeal, character, and value of the surrounding neighborhoods, and to facilitate fire and police protection; to prevent the overcrowding of land, blight, danger, and congestion in the circulation of people and commodities; to prevent the loss of life, health, or property from fire, flood, or other dangers. The applicant provides no details or information as to how community centers, day shelters, and adult day care facilities are not promoting of the public health, safety, morals and general welfare of the community, how they are non-compatible to surrounding land uses, how they inhibit fire and police protection, or promote the loss of life, health, or property from fire, flood, or other dangers.

The suggestion from the applicant's provided letter of justification is not that the use is the problem, but the individuals who operate or seek to obtain the services of community centers, day shelters, and adult day care facilities themselves. This is further supported by the uses the applicant is not concerned with. While the applicant seemingly has no concern with the inclusion of restaurants in the B-1 zone, they believe that it is necessary to have further review of facilities that provide food for free to those members of Lexington's community who are experiencing homelessness or income insecurity, which is a common example of a community center use. Each provides a service of food. One requires a patron to provide monetary compensation. The difference between the two uses is the clientele, not the use itself. The Zoning Ordinance may not bias against those individuals who are less fortunate or are experiencing financial insecurity.

The concern suggested by the applicant regarding social interaction with individuals of lesser economic means or those who are experiencing homelessness in Lexington was the focus of a 2012 text amendment. Prior to 2012, adult day care facilities had been classified as a community center use. In May of 2012, the Urban County Council, citing concerns with the impact of community centers, specifically those that provided day time services to economically disadvantaged individuals



and individuals experiencing homelessness, on neighborhoods located closer to the downtown areas, initiated a text amendment (Ord. 243-2012; ZOTA 2012-10). This initial text provided by the Council sought to specifically define adult day care centers and require them to receive a conditional use permit to operate. The Planning Commission recommended alternative text that specifically defined adult day care facilities and recommended language that allowed the use to be operated as either a conditional use or primary use based on distance requirements to residential developments within the Professional Office (P-1), Neighborhood Business (B-1), Downtown Business (B-2, B-2A), and Office, Industry, and Research Park (P-2) zones. The ZOTA was modified by the Council to require all adult day care facilities to be operated as conditional uses (Ord. 129-2013).

In April of 2015, the Urban County Council, as a result of a complaint filed by the United States Department of Justice on behalf of the Department of Housing and Urban Development (HUD) and under the guidance of the Department of Law, initiated a second text amendment (Ord. 180-2015; ZOTA 2015-5) to re-establish adult day care facilities as principal uses within business zones and conditional uses within zones that allow multi-family residential. The Council saw that the language that was developed made the establishment of new facilities that were focused on helping members of the community exceedingly difficult and stated that the change resulted in an inequitable situation (Musgrave 2015). During the Planning Commission review, an additional use of day shelter was added to the text, providing greater clarity to the different uses. The Council adopted the text with the finding that day shelters and adult day care facilities provided more equitable community facilities and services to meet the health, safety and quality of life needs for both residents and visitors, especially those persons who are less fortunate. Councilmember Peggy Henson specifically noted that the Council was concerned with the lack of development of new services between the 2013 and 2015, which were made nearly impossible due to the new barriers created through the establishment of day shelters as conditional uses in commercial zones (Musgrave 2015).

The removal of barriers to provide services to the community, not the addition thereof, has been the focus of various adopted documents by the Planning Commission, Mayor's administration, and Urban County Council over the course of the last decade. The 2018 Comprehensive Plan stresses the need to provide community facilities that are integrated within neighborhoods (Theme A, Equity Policy #7). Additionally, Theme D, Support Policy # 5 states that the LFUCG should provide equity in social services by ensuring those in need are served by social service community facilities that address homelessness, substance abuse, mental health, and other significant issues. The Comprehensive Plan as a whole is focused on providing a more open community that seeks to promote a more equitable and supportive Urban County.

In 2021, LFUCG published their Five-Year Strategic Plan to Enhance Affordable Housing and Reduce and Effectively End Homelessness in Fayette County. This document provides a strategic plan and develops a comprehensive community plan to reduce and effectively end homelessness and enhance affordable housing options in Lexington. This plan stresses the need for collaboration with non-profit organizations, who "know the needs of the people they serve" and are necessary if Lexington hopes to reduce homelessness within the community (Office of Homeless Prevention and Intervention 2021). The Strategic Plan was supported by Council both in spirit with the adoption of Resolution No. 312-2021, but also with the continued support of the activities of the Affordable Housing Fund and the Innovative Sustainable Solutions to Homelessness Fund (Ord. No. 103-2014). The success of the Strategic Plan, the Affordable Housing Fund and the Innovative Sustainable Solutions to Homelessness Fund are heavily reliant on the non-profit and not-for-profit sectors within



the community to provide services to those in need. By adding barriers for community partners to locate throughout Lexington, meeting the goals of these plans would be even more difficult.

It is also important to understand who would be affected to a greater extent through the incorporation of added barriers to facilities that serve various persons within Lexington. The racial composition of homelessness and income insecurity in the United States, which is reflective of Lexington, is heavily weighted to people of color and more specifically those individuals who identify as Black or African American. As of 2021, 40.2% of those experiencing sheltered homelessness, or those individuals who were utilizing social services, were Black or African American (US HUD 2021). This is a particularly impactful number as those who identify as Black or African American comprise only 13.6% of the United States population (US Census Bureau 2022). The creation of barriers to the establishment of new social services that are focused on helping individuals in our community find housing, have food, and get into safe spaces would heavily impact those individuals within our community who are Black or African American.

Additionally, recent studies show that approximately 24% of individuals who experience chronic homelessness, individuals who are homeless for at least a year or experienced at least four periods of homelessness adding up to twelve months in a three year period, possess a disability (Wared 2022). Disabled individuals suffer a higher risk of homelessness due to high cost of care, inaccessible housing, and unaffordable housing. For those who are able to obtain housing or social services, like those provided by community centers and adult day care facilities, can help offset costs and provide necessities. However, the inclusion of such facilities in neighborhoods or where people live is essential, as difficulties in mobility, access to vehicles, and costs inhibit access.

By increasing barriers to community serving facilities, which are substantially similar to land uses to those within the B-1 zone and which disproportionately impact people of color and individuals who are protected under the Americans with Disabilities Act (ADA), Lexington would not only be failing to protect the health, safety, and welfare of the community, the LFUCG would also be opening the community to legal challenges and loss of funding for programming that supports individuals who would be negatively impacted by these barriers. The proposed modification is similar to the text that was adopted by the Urban Government and was challenged by the US Department of Justice and HUD. By incorporating the proposed text into the Zoning Ordinance, Lexington would be taking a step backward, diminishing access to services that promote the quality of life available for everyone.

Staff recommends disapproval of the proposed text amendment.

The Staff Recommends: Disapproval of the proposed text amendment to the Zoning Ordinance, for the following reasons:

1. Community centers, day shelters, and adult day care facilities provide services which are substantially similar to principal uses within the Neighborhood Business (B-1) zone, thus should remain principal uses.
2. The applicant provides no details or information as to how community centers, day shelters, and adult day care facilities necessitate greater review by the Board of Adjustment (BOA) within a commercial zone.
3. The proposed text amendment is contrary to the findings of the Planning Commission and the Urban County Council in the establishment of community centers, day shelters, and adult day care centers in the B-1 zone.



4. The addition of barriers to community serving facilities proposed by the applicant is not in agreement with the 2018 Comprehensive Plan as it reduces the ability to provide community facilities that are integrated within neighborhoods (Theme A, Equity Policy #7) and can limit social service community facilities that address homelessness, substance abuse, mental health, and other significant issues (Theme D, Support Policy #5).
5. The proposed text diminishes the ability to achieve the goals laid out in the Five-Year Strategic Plan to Enhance Affordable Housing and Reduce and Effectively End Homelessness in Fayette County.
6. The proposed text amendment adds barriers to community servicing facilities, which disproportionately impacts people of color and individuals with a disability.
7. The proposed text is substantially similar to the 2012 text amendment, which resulted in a complaint by the United States Department of Justice and the Department of Housing and Urban Development. The proposed text could result in legal challenges and loss of funding for programs that support individuals who are economically insecure or experiencing homelessness.

HB/TLW

PLN-ZOTA-22-00016: Staff Report (Community Centers, Day Shelters, Adult Day Care)



C. PUBLIC HEARINGS ON ZONING ORDINANCE TEXT AMEMENDMENTS

1. **PLN-ZOTA-22-00016: AMENDMENT TO ARTICLE 8-16 RE-CATEGORIZING COMMUNITY CENTER DAY SHELTER, AND ADULT DAY CARE USES FROM A PRINCIPAL USE TO A CONDITIONAL USE** – a petition for a Zoning Ordinance text amendment to re-categorizing Community Center Day Shelter, and Adult Day Care uses from a Principal Use to a Conditional Use.

INITIATED BY: Keith Clark

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: **No Recommendation.**

The Staff Recommends: **Disapproval,** for the following reasons.

1. Community centers, day shelters, and adult day care facilities provide services which are substantially similar to principal uses within the Neighborhood Business (B-1) zone, thus should remain principal uses.
2. The applicant provides no details or information as to how community centers, day shelters, and adult day care facilities necessitate greater review by the Board of Adjustment (BOA) within a commercial zone.
3. The proposed text amendment is contrary to the findings of the Planning Commission and the Urban County Council in the establishment of community centers, day shelters, and adult day care centers in the B-1 zone.
4. The addition of barriers to community serving facilities proposed by the applicant is not in agreement with the 2018 Comprehensive Plan as it reduces the ability to provide community facilities that are integrated within neighborhoods (Theme A, Equity Policy #7) and can limit social service community facilities that address homelessness, substance abuse, mental health, and other significant issues (Theme D, Support Policy #5).
5. The proposed text diminishes the ability to achieve the goals laid out in the Five-Year Strategic Plan to Enhance Affordable Housing and Reduce and Effectively End Homelessness in Fayette County.
6. The proposed text amendment adds barriers to community servicing facilities, which disproportionately impacts people of color and individuals with a disability.
7. The proposed text is substantially similar to the 2012 text amendment, which resulted in a complaint by the United States Department of Justice and the Department of Housing and Urban Development. The proposed text could result in legal challenges and loss of funding for programs that support individuals who are economically insecure or experiencing homelessness.

Staff Text Amendment Presentation – Mr. Hal Baillie presented and summarized the staff report and recommendations for this text amendment. Mr. Baillie indicated that the applicant is seeking to re-categorize day shelters, community centers, and adult day care centers from a principal use to a conditional use in the Neighborhood Business (B-1) zone. Mr. Baillie highlighted the arguments from the applicant's justification letter, which included a lack of transparency, discontent with the definitions of the land uses, and the planning process as a whole.

Mr. Baillie went on to review the points that the applicant did not address including no explanation of the negative impact of the three types of uses, how the uses are different, nor any information as to the appropriate locations for them. Mr. Baillie went on to provide the definitions of the three uses, as well as the differences in a conditional and principal use, explaining that there are added barriers to getting the use if it is a conditional one. Additionally, Mr. Baillie presented the zones where the three uses are currently allowed as principal and conditional uses, as well as the basics of the Board of Adjustment, and PLN-BOA-22-00018, a Board of Adjustment case that the applicant cites in the justification. Mr. Baillie then showcased how land uses are similar, noting the example of a soup kitchen and a restaurant, the difference is at one place you are paying for your food, at another, you are not. Therefore there is no differentiation from a land use perspective, merely a difference in who is accessing those services.

Mr. Baillie stated that this text amendment would affect other zones within the Zoning Ordinance, eliminating these uses in the B-2 and B-2A zones, and creating a discontinuity in the B-2 and P-1 zones. Mr. Baillie also cited a 2013 text amendment that was similar to this text amendment that was eventually revoked, due to a Department of Justice complaint, where it was determined that the text amendment negatively impacted a protected class. Additionally, Mr. Baillie highlighted the ethical concerns this text amendment presents, as well as the history of planning as a tool for segregationist and classist policies.

Mr. Baillie concluded his presentation stating that this text amendment would put up barriers to those who would need the services of adult day cares, community centers, and day-shelters the most and stated that staff is recommending disapproval.

Applicant Comment – Keith Clark, applicant, stated that he was overwhelmed by the staff response, but said he had no intention of stopping anyone from occupying a property. Mr. Clark said that this text amendment was to open a clear and transparent discussion about an applicant wanting to open an adult daycare, community center, or day shelter in a B-1 zone. Mr. Clark went further saying that people in the neighborhood do not get a say and how he does not understand how a discussion is a barrier.

Commission Questions – Mr. Penn asked Mr. Clark if he wanted the Board of Adjustment to decide if having one of these uses is fair and equitable. Mr. Clark responded that he would like the Board of Adjustment to review what the effect of a social service center is going to have on a community.

Staff Comment – Ms. Traci Wade stated that she attended a neighborhood meeting about a property in the neighborhood that was going to become a social services facility and that it was ugly.

Applicant Comment – Keith Clark, applicant, stated that Ms. Wade was correct, and that the neighborhood was upset because the social service facility was set up “under the radar” and it changed the dynamic of the neighborhood, without anyone knowing.

Public Comment – Walt Gaffield, 2001 Bamboo Drive, agreed with Mr. Clark, that there is not an opportunity for the neighbors to have a say in what goes in their neighborhood and urged the Planning Commission to fix that issue.

John Hackworth, 220 Market Street, stated that he was previously the director of admissions at Sayre School. During his tenure at Sayre School, a social service center was established in close proximity to two schools, without any kind of input from the neighborhood.

Kim Livesay, Lexington Rescue Mission, stated that they are currently experiencing the number of people they serve exploding. She stated that the organization wants to locate its services where the need is within the community, and she is here to speak for those who could not.

Staff Rebuttal – Mr. Baillie stated that the applicant only applied for discussion of these three uses and broke down everything an applicant would have to do just to apply for a conditional use for these three land uses. Mr. Baillie discussed that the applicant is specifically targeting these three uses and that the local government cannot make a distinction between those who have and those who have not. Additionally, Mr. Baillie reiterated there is no difference from a land use perspective between a restaurant that serves food at a given price, and a soup kitchen which serves at no cost.

Commission Questions – Mr. Pohl asked if there is data that suggests that these uses should be treated any differently than other uses and if the people going there are any different. Mr. Baillie indicated that from a land use perspective, you cannot talk about the people that are going there, and that the data on land use cannot give the minute details on the people.

Ms. Worth asked if the senior center on Richmond Road and the Community Action Center would fall into this category of land uses. Mr. Baillie responded saying that the senior center is not because it is a government use.

Mr. Michler asked if the land use is the same, why restaurants and soup kitchens are defined at all. Ms. Wade stated that there was no definition of soup kitchen or social service in the ordinance.

Commission Comment – Mr. Penn stated that this was an interesting case because it sets the public’s right to know against what is best for the community. Mr. Baillie responded that we do not get to choose our neighbors. Mr. Penn agreed, he just wanted to voice that opinion.

Ms. Meyer stated that she had heard cases like this while serving on the Board of Adjustment, and that it was unfortunate there is not an avenue for the neighborhoods, but she agreed with Mr. Baillie, we do not get to choose our neighbors.

Mr. Michler asked Ms. Meyer if her experience with these cases at the Board of Adjustment were up or down votes and if it was ever constructive. Ms. Meyer responded that she could remember one case like this, and the Board did vote to disapprove the conditional use request, but reminded the Commission of the duty of the Board was to protect the health, safety, and welfare of the community for all people.

Mr. de Movellan indicated that he agreed with the communication aspect from Mr. Clark's concerns but is currently against this text amendment.

Zoning Action – A motion was made by Ms. Meyer, seconded by Ms. Barksdale and carried 10-0 (Davis absent) PLN-ZOTA-22-00016: AMENDMENT TO ARTICLE 8-16 RE-CATEGORIZING COMMUNITY CENTER DAY SHELTER, AND ADULT DAY CARE USES FROM A PRINCIPAL USE TO A CONDITIONAL USE to disapprove for the reasons provided by the staff.