June 29, 2022

To: Board of Zoning Adjustment

Re: Upcoming Board of Zoning Adjustment Meeting

The Frankfort/Franklin County Board of Zoning Adjustments will host a regular meeting at 5:30 P.M. on Tuesday, July 12, 2022 in the Council Chambers at City Hall, 315 West Second Street. The following items are on the agenda for consideration:

ROLL CALL

APPROVAL OF MINUTES: June 14, 2022

NEW BUSINESS:

1. In accordance with Articles 4, 18, and 19 of the City of Frankfort Zoning Ordinance, Dee Clark and Teaching Learning Caring Childcare II are requesting an amendment to the conditions of approval for a Conditional Use Permit granted on June 14, 2022 that authorized a daycare with more than 35 children for the property located at 676 East Main Street. The property is more particularly described as PVA Map Number 074-41-02-014.00. (City Item)

2. In accordance with Sections 155.085, 155.089, and 155.105 of the Franklin County Code of Ordinances, Timothy E. & Katelin R. Gobler are requesting approval of a Conditional Use Permit to allow the operation of a short term rental at 482 Colston Lane. The property is more specifically described as Property Valuation Administrator map ID #093-00-00-004.26. Zone-RR (Rural Residential) (County Item)

3. In accordance with Sections 155.085 and 155.105, of the Franklin County Code of Ordinances, Jessica Ford is requesting approval of a Conditional Use Permit to allow the operation of a reception/assembly hall at 6880 Owenton Rd. The property is more specifically described as Property Valuation Administrator map ID #093-00-00-004.26. Zone-AG (Agricultural) (County Item)

OTHER BUSINESS: None

ADJOURN
REPORT AND RECOMMENDATION

TO: FRANKFORT-FRANKLIN COUNTY BOARD OF ZONING ADJUSTMENTS

FROM: Jordan Miller, Senior Planner

SUBJECT: Conditional Use Permit for Daycare

DATE: June 29, 2022

MEETING DATE: July 12, 2022

CUP No.: 20220614

GENERAL INFORMATION

Applicant: Dee Clark
Teaching Learning Caring Childcare II
180 Clubhouse Dr
Georgetown, KY 40324

Request: In accordance with Articles 4, 18, and 19 of the City of Frankfort Zoning Ordinance, Dee Clark and Teaching Learning Caring Childcare II are requesting an amendment to the conditions of approval for a Conditional Use Permit granted on June 14, 2022 that authorized a daycare with more than 35 children for the property located at 676 East Main Street. The property is more particularly described as PVA Map Number 074-41-02-014.00

BACKGROUND

At the June 14, 2022, BZA meeting, the Board approved a request for a Conditional Use Permit to operate a daycare for the property located at 676 East Main Street. Staff had all positive findings for the request except for provision 19.067 of the Zoning Regulations which states that "no Day Care facility, Nurseries, or Kindergartens shall be allowed or approved to be located less than 1,000 feet from an established residence of a registered sex offender." The full Staff Report from that meeting can be found online at http://www.frankfort.ky.gov/AgendaCenter/ViewFile/Agenda/_06142022-528

During that meeting the Board, Staff, and Counsel discussed a way to remediate this requirement. The Commonwealth of Kentucky provides mechanisms to ensure that this same standard is fulfilled, albeit in a different way that places the burden on the sex offender and not the daycare facility/new business. See attached KRS 17.545. The Board approved the CUP with the following conditions:

1. The conditional use applies only for operation of a childcare facility with a maximum enrollment of 117 children and the prescribed age ranges denoted in the application.
2. The conditional use is permitted only at 676 East Main Street.
3. The conditional use is granted only to Dee Clark of Teaching Learning Caring Childcare II, or any corporation they are a party to.
4. The conditional use is not transferable and any change in ownership or use will make this approval null and void.
5. Any new exterior signage shall require a sign permit prior to installation.
6. Prior to occupancy, the applicant shall have an approved building permit for a change of use,
and have a final inspection completed.
7. Children using the outdoor playground shall be supervised at all times by one or more staff persons.
8. A business license shall be obtained from the City Finance Department prior to operation of the childcare facility.
9. The applicant shall coordinate with the Kentucky State Police and Franklin County Probation and Parole Office to ensure that any registered sex offender(s) located within 1,000-feet of the subject property have been relocated so as to fulfill the City’s requirement (Section 19.067) and the State’s requirement (KRS 17.545) prior to the opening of the daycare.
10. The applicant shall also coordinate with City Staff regarding the progress and/or fulfillment of this requirement. If any sex offenders are still located within 1,000 feet after 6 months or in the process of compliance from the date of this approval, the Conditional Use Permit will expire and become null and void.

The applicant and property owner contacted Staff after receiving the Final Order of Approval, and had concerns after speaking with the Kentucky State Police and Franklin County Probation and Parole Office. The State’s Statute requiring the sex offender to relocate within 90 days of a daycare opening does not take effect until the daycare opens for business. Condition Number 9 would prevent that from happening and the State Statute from kicking into effect. The applicant and owner also had concerns with Condition Number 10 and the 6-month expiration date. Staff conferred and now recommends the following conditions of approval.

STAFF SUGGESTION – AMENDED CONDITIONS OF APPROVAL FOR PREVIOUSLY ISSUED CONDITIONAL USE PERMIT

1. The conditional use applies only for operation of a childcare facility with a maximum enrollment of 117 children and the prescribed age ranges denoted in the application.
2. The conditional use is permitted only at 676 East Main Street.
3. The conditional use is granted only to Dee Clark of Teaching Learning Caring Childcare II, or any corporation they are a party to.
4. The conditional use is not transferable and any change in ownership or use will make this approval null and void.
5. Any new exterior signage shall require a sign permit prior to installation.
6. Prior to occupancy, the applicant shall have an approved building permit for a change of use, and have a final inspection completed.
7. Children using the outdoor playground shall be supervised at all times by one or more staff persons.
8. A business license shall be obtained from the City Finance Department prior to operation of the childcare facility.
9. The applicant shall demonstrate that they have notified the Kentucky State Police and Franklin County Probation and Parole Office of their daycare opening date, so they are aware to begin their process of enforcing KRS 17.545.

ADDITIONAL DISCUSSION

Staff would also like to discuss with the Board whether a text amendment to Article 19.067 of the Zoning Regulations should be considered in the future with the Zoning Update Committee.
17.545 Registrant prohibited from residing or being present in certain areas -- Violations -- Exception.

(1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line to the nearest property line of the registrant's place of residence.

(2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

(3) For purposes of this section:
   (a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and
   (b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

(4) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.

   (a) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.
   (c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.

(5) Any person who violates subsection (1) or (4) of this section shall be guilty of:
   (a) A Class A misdemeanor for a first offense; and
   (b) A Class D felony for the second and each subsequent offense.

(6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety
(90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.

(7) The prohibition against a registrant:
(a) Residing within one thousand (1,000) feet of a publicly leased playground as outlined in subsection (1) of this section; or
(b) Being on the grounds of a publicly leased playground as outlined in subsection (2) of this section;
shall not operate retroactively.

(8) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

Effective: July 15, 2020


Formerly codified as KRS 17.495.

Legislative Research Commission Note (6/25/2009). A reference in subsection (5) of this statute to "subsection (3) of this section" has been changed in codification to "subsection (4) of this section" to accurately reflect the renumbering of subsections of this statute in 2009 Ky. Acts ch. 38, sec 2.
June 28, 2022

To: Adjoining Property Owner

From: Jordan Miller, Senior Planner
        Department of Planning & Community Development

Re: Upcoming Board of Zoning Adjustment meeting

You have been identified as a property owner whose land adjoins property affected by the following request that will be heard before the Board of Zoning Adjustment:

In accordance with Articles 4, 18, and 19 of the City of Frankfort Zoning Ordinance, Dee Clark and Teaching Learning Caring Childcare II are requesting an amendment to the conditions of approval for a Conditional Use Permit granted on June 14, 2022 that authorized a daycare with more than 35 children for the property located at 676 East Main Street. The property is more particularly described as PVA Map Number 074-41-02-014.00.

The Frankfort/Franklin County Board of Zoning Adjustments will host a regular meeting at 5:30 P.M. on Tuesday, July 12, 2022, in the Council Chambers at City Hall, 315 West Second Street.

Staff reports for these items may be available seven (7) days prior to the meeting at http://www.frankfort.ky.gov/AgendaCenter. Additional information may also be obtained by calling 352-2097 during business hours, Mondays through Fridays, 8:00 a.m. to 4:30 p.m.

Sincerely,

Jordan Miller, Senior Planner
Planning & Community Development
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<td>THOMAS JOHN W &amp; JOYCE L</td>
<td>141 ALLNUTT DR</td>
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<td>FRANKFORT, KY 40601</td>
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<td>SINGH MART 4 LLC</td>
<td>607 HODGENVILLE RD</td>
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<td>ELIZABETHTOWN, KY 42701</td>
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<td>HATCHETT FRANK &amp; DEBORAH K</td>
<td>116 SCHENKEL LANE</td>
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<td>MCINTOSH PHARMACY PROPERTIES LLC</td>
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<td>MIDWAY, KY 40347</td>
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