

Board of Zoning Adjustment Staff Report

December 19, 2022



Case No:	22-CUP-0333
Project Name:	Poplar Montessori
Location:	4624 Poplar Level Road
Owner(s):	Pilar Cruz
Applicant:	Poplar Montessori - Pilar Cruz
Jurisdiction:	Louisville Metro
Council District:	21 – Nicole George
Case Manager:	Joel Dock, AICP, Planning Coordinator

REQUEST(S)

- **Conditional Use Permit** for Child Care Center (LDC 4.2.19) with relief from item A.3 to allow off-street parking in front of the residence
- **Variance** from Land Development Code (LDC), Section 5.3.1.C to encroach upon the required front yard:

	Required	Proposed	Variance
Front Yard	30'*	12'	18'

**15' (Table 5.3.1) + 15' supplemental (arterial) = 30 'total*

CASE SUMMARY

The applicant has requested a conditional use permit (CUP) for a child care center in a residential district to allow for the care of up to 12 children. The applicant currently operates a family child care home, which provides for the care of up to 6 children. The operator of the proposed center is also the primary resident. This is required by the license offered by the State for this type of child care service, known as Type II child care. Outdoor activities and play will occur in the rear yard where a wood fence secures the area.

Relief is necessary from item A.3 of the conditional use permit standards to safely provide pick-up/drop-off in an off-street location. Because the subject property is located along a major arterial that also does not allow on-street parking or loading, a location on site to allow for vehicles to enter the property and safely turn around and be forward facing before exiting onto Poplar Level Road is proposed. A variance will also be necessary since this parking/loading area does not lead to the home, garage, or rear yard and is in the front setback.

STAFF FINDING

The conditional use permit with relief for the location of parking (pick-up/drop-off) and variance each appear to be adequately justified for approval based on staff's analysis contained in the standard of review.

TECHNICAL REVIEW

- **Child Care** – Care for a child in a center or home that regularly provides full or part-time care, day and/or night, and includes developmentally-appropriate play and learning activities. This term includes nursery and kindergartens but does not include schools, care provided as an accessory to a school or provided during services conducted in a religious building or other exemption authorized by the Commonwealth of Kentucky. Child Care is further regulated by Kentucky Administrative Regulations Title 922 (922 KAR).
- Child Care is licensed by the Kentucky Department of Community Based Services, Division of Child Care. The applicant will be applying for a Type II license. A licensed type II childcare facility is the primary residence where childcare is regularly provided for at least seven (7), but no more than twelve (12) children, including no more than (12) children related to the licensee.

STANDARD OF REVIEW FOR CONDITIONAL USE PERMITS

1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

Staff: The proposal is consistent with the land use and development policies of Plan 2040. The proposed use advances the equitable distribution of community services and promotes neighborhoods that have access to the resources necessary to maintain health and well-being, including access to expanded child care services.

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

Staff: The proposal is compatible with the area and the general character of the area. The site is located along an arterial level roadway, which contains a wide variety of uses from residential to industrial, and the proposed use and improvements are consistent with the development of the area, including parking in front of primary structures.

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

Staff: Necessary transportation facilities are proposed to ensure the safety of customers/clients and the general public. A parking area is included which allows for vehicles to enter the property and safely turn around and be forward facing before exiting back onto Poplar Level Road. Other transportation options are available, including public sidewalks and transit. Child care is further regulated by Kentucky Administrative Regulations Title 922 (922 KAR).

4. Does the proposal comply with the following specific standards required to obtain the conditional use permit requested?

Child and Adult Care Centers may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, PRD, R-7, TNZD, M-1, M-2, and M-3 districts upon granting of a Conditional Use Permit and in compliance with the listed requirements:

A. Existing Residential Structure

1. The structure shall remain, or property improved so that the exterior design and ornamentation is residential in character and compatible with the immediately surrounding neighborhood and form district(s).
2. Should the structure remain, there shall be no alterations or improvements which would impair future use of the structure as a primary residence.
3. Associated off-street parking shall not be located between the principal structure and the front property line or within the street side yard setback, except on driveways leading to the home, rear yard, or garage.
4. Outdoor activities shall be limited to the rear yard, except that corner lots may utilize the street side yard. No play equipment in excess of 4' in height is allowed in the required street side yard of the form district.

B. Industrial Zoning Districts – Standards Not applicable

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C. Drainage Control – Preliminary plan approval must be received by the Louisville Metro Sewer District (MSD).

D. Fence – A fence shall enclose all areas for outdoor activity.

E. Signs – In residential zoning districts, there shall be allowed one non-illuminated attached business sign not to exceed 4 square feet in area, regardless of the form district. No changing image signs shall be permitted.

F. Hours – No outdoor activities shall occur between the hours of 9 P.M. and 7 A.M., except for pick-up/drop-off.

G. Buildings – All buildings and structures shall conform to the requirements of the zoning and form district in which they are located.

H. The use shall be in compliance with all applicable regulations as administered by the Kentucky Cabinet for Health and Family Services.

Staff: The existing residential structure will not be modified in a manner which prevents future use as a residence and the operator is the primary resident. State license requirements for Type II facilities require that the home remain the primary residence of the operator. Improvements will be made to the interior of the structure to the satisfaction of state building and fire officials but not to the extent that the property is no longer a residence. The applicant will be installing hard-wired smoke detectors and exit signage to comply with licensing requirements. Outdoor activities occur in the rear yard, which is secured by a wood fence.

Pick-up/drop-off will be provided in an area parallel to Poplar Level Road from the existing driveway to ensure the safety of children, their families, and users of the roadway, which is an arterial roadway and does not allow for on-street parking/loading. The pick-up/drop-off area proposed allows for vehicles to enter the property and safely turn around and be forward facing before exiting back onto Poplar Level Road. This roadway contains a wide variety of uses from residential to industrial, and the proposed use and improvements are consistent with the development of the area, including parking in front of primary structures. Parking for the primary resident and one non-

resident employee are available using the current garage and carport and this parking does not interfere with the proposed pick-up/drop-off zone. Other transportation options are available, including public sidewalks and transit.

The use will comply with all applicable regulations as administered by the Kentucky Cabinet for Health and Family Services

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variances will not adversely affect public health, safety or welfare as the setback does not impede the safe movement of vehicles or pedestrians and increases the ability for vehicles to safely enter and exit the subject site from/to an arterial roadway.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variances will not alter the essential character of the general vicinity as the subject site is located along an arterial roadway containing a wide variety of uses from residential to industrial, and the proposed improvements are consistent with the development of the area and the form, including parking in front of primary structures.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public as the setback does not impede the safe movement of vehicles or pedestrians and increases the ability for vehicles to safely enter and exit the subject site from/to an arterial roadway.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations as the proposal does not cause a hazard or nuisance or result in adverse impacts to public health, safety, or welfare.

ADDITIONAL CONSIDERATIONS:

1. The requested variance does not arise from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone as the proposed setback variance is associated with child care services and a desire to limit improvements to the exterior while also providing safe vehicular movement.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land as relief in accordance with items 'a' through 'd' of the standard of review have been adequately justified.

3. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as no development has occurred.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the **Conditional Use Permit** for Child Care Center (LDC 4.2.19) with relief from item A.3 to allow off-street parking in front of the residence
- **APPROVE** or **DENY** the **Variance** from Land Development Code (LDC), Section 5.3.1.C to encroach upon the required front yard:

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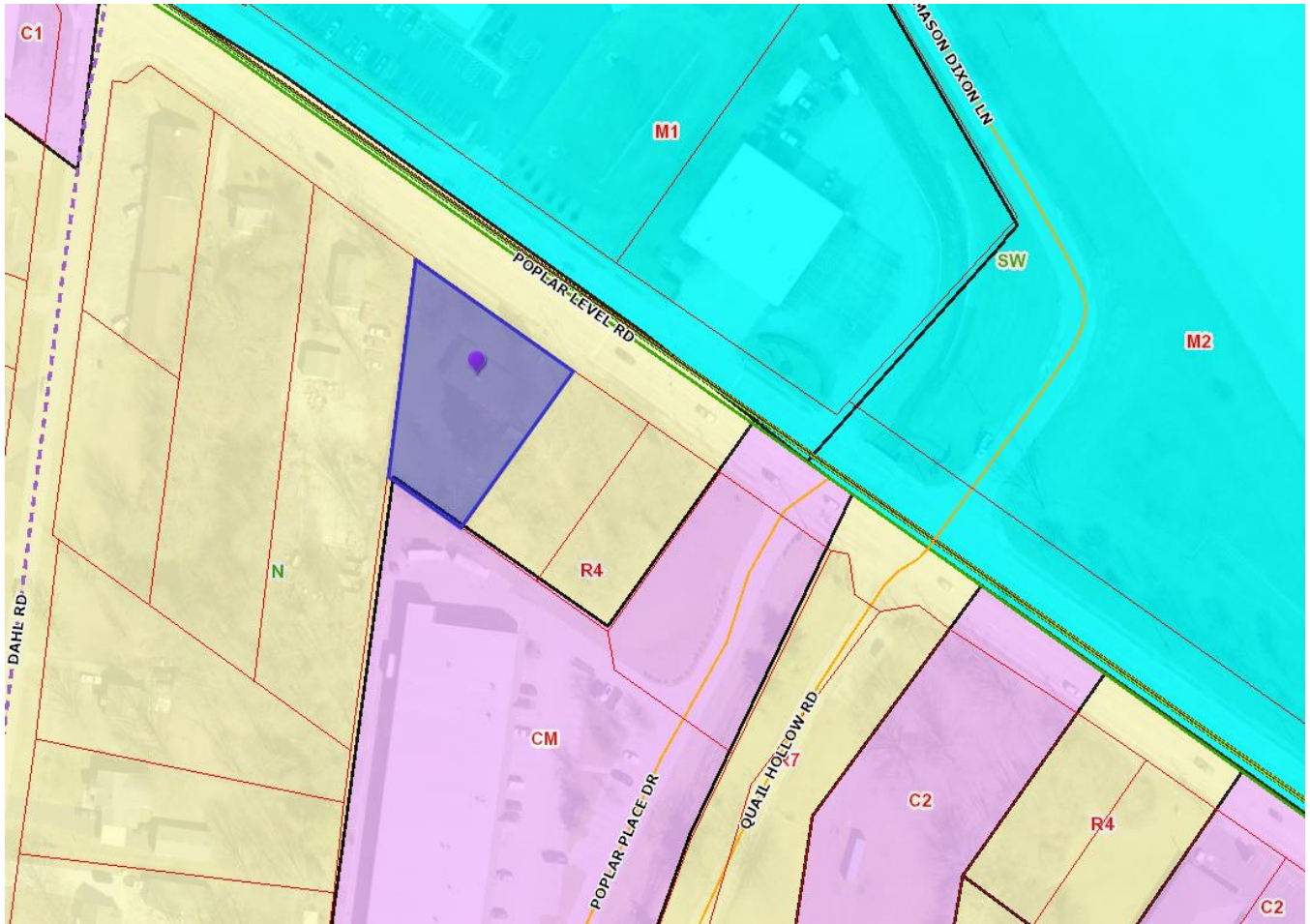
NOTIFICATION

Date	Purpose of Notice	Recipients
12/1/22	Hearing before BOZA	1 st and 2 nd tier adjoining property owners and “current residents” Registered Neighborhood Groups in Council District 21

ATTACHMENTS

1. Zoning Map
2. Aerial Map
3. Proposed Conditions of Approval

1. **Zoning Map**



2. Aerial Map



3. Proposed Conditions of Approval

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for child care center until further review and approval by the Board.
3. The child care center shall be limited to a maximum of 12 children.
4. Passenger pick-up/drop-off shall occur in the area designated on the approved plan, unless otherwise approved by the Board of Zoning Adjustment.