

Board of Zoning Adjustment

Staff Report

August 2, 2021



Case No:	21-CUP-0094
Project Name:	Toyland Play Palace Childcare
Location:	2516 W. Chestnut Street
Owner/Applicant:	Demetrice Floyd
Jurisdiction:	Louisville Metro
Council District:	5 – Donna Purvis
Case Manager:	Zach Schwager, Planner I

REQUEST

Conditional Use Permit to allow a day care facility in the R-6 Residential Multi-Family zoning district Land Development Code (LDC) 4.2.19 and a Landscape Waiver to not provide the perimeter landscape buffer areas.

CASE SUMMARY/BACKGROUND

The subject property is located on the south side of W. Chestnut Street in between S. 24th Street and S. 26th Street and is 0.3958 acres. It is zoned R-6 Residential Multi-Family and is in the Traditional Neighborhood Form District. The structure is 2 ½ stories and has 2,892 sq. ft. of finished space according to PVA. The applicant is proposing to operate a day care facility for more than six children. The applicant lives on the subject property and currently has a registered home occupation for a day care under case 15CERT1356. There will be one other employee that also lives on site and a maximum of 20 children. The hours of operation will be from 6 AM to 6 PM. There are no proposed additions to the existing structure and the applicant will need to have a designated drop off and pick up area approved and installed by Public Works along W. Chestnut Street. The landscape waiver is for section 10.2.4, which requires a perimeter landscape buffer and screening. Staff is supportive of the landscape waiver but recommends installation of a six-foot privacy fence around the private yard area for enclosure purposes and to partially address the screening requirement.

STAFF FINDING / RECOMMENDATION

There are ten listed requirements and the applicant will either meet them or they do not apply. Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit and a Landscape Waiver.

RELATED CASES

21-WAIVER-0088 – Landscape waiver to not provide perimeter landscape buffer areas.

TECHNICAL REVIEW

The plan has received preliminary approval from Transportation Planning and MSD.

INTERESTED PARTY COMMENTS

No interested party comments have been received by staff.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

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

STAFF: The proposal meets all applicable policies of the Comprehensive Plan.

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: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

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: The subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal.

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

There are ten listed requirements and the applicant will either meet them or they do not apply. Day Care Facilities may be allowed in the R-R, R-E, R-1, R-2, R-3, U-N, R-5A, R-5B, R-6, and R-7 districts upon the granting of a Conditional Use Permit and in compliance with the listed requirements.

A. Signs - There shall be allowed one non-illuminated sign identifying the name and use, which sign shall be limited in size to four square feet and be placed on the building.

STAFF: The applicant is aware of this requirement.

B. Residential Structure - The structure shall remain or shall be constructed so that the exterior design and ornamentation is residential in character and compatible with the immediate neighborhood, so that there is no evidence from the street that the use is other than residential (except for the sign).

STAFF: There are no proposed additions to the existing structure, and it will continue to have a residential design.

C. Alterations or Improvements to the Structure - Where such a use is permitted in a structure which has been used as a residence, the permittee shall make no substantial alterations or improvements to the structure which would impair the structure's use as a residence at a later time.

STAFF: There are no proposed additions and it will remain residential in character and design.

D. On-Site Drop-off and Pick-up Area - An on-site area shall be provided where passengers from automobiles may safely exit the automobile and enter the building and vice versa. The design of this area must be approved by the appropriate agency responsible for transportation planning.

STAFF: The applicant has been informed of this requirement and has been provided the information on how to apply to Public Works for approval of an on-street drop off and pick up area.

E. Parking Spaces - The appropriate number of parking spaces shall be provided for members of the day care center staff. The number of parking spaces required pursuant to this section shall be determined by the Board of Zoning Adjustment, and may thereafter be modified by the Board of Zoning Adjustment by petition from the owner of the premises granted a Conditional Use Permit or upon recommendation from the zoning inspector or other authorized personnel after an annual inspection of the premises or other such inspection. The parking layout must be approved by the appropriate agency responsible for transportation planning.

STAFF: Transportation Planning has reviewed the and approved the parking. The applicant intends to lay gravel at the rear of the property, which has also been approved by Transportation Planning. There is space for four off-street parking spaces, two in the garage and two to the side of the garage.

F. Drainage Control - The development plan shall have the approval of the appropriate agency responsible for surface drainage control.

STAFF: MSD has reviewed and approved the plan.

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

STAFF: The existing structures meet the zoning and form district requirements. There are no proposed additions.

H. Fence - A fence with a minimum height of 4 feet shall be erected around the outdoor play area.

STAFF: The applicant is aware of this requirement. Staff proposes a condition of approval that the play area be shown on the plan with required fencing identified.

I. Alterations or Improvements to the Property – Where such a use is permitted on a lot with an existing residential structure; the residential character of the lot shall not be disturbed by exterior changes to the property that are visible from the public street. Off-street parking shall not be located within the front and/or street-side yards. Drop- off and pick-up shall not be located in front yard and/or street-side yard of the existing residential structure, except for driveways approved by Metro Public Works.

STAFF: There are no proposed alterations to the existing structure. It will remain residential in character and design. The off-street parking is located at the rear of the property off the alley. There are also three on-street parking spaces and the proposed space for the drop off and pick up area.

J. Conditional use permits for Day Care Facilities in R-4 and R-5 zoning districts issued prior to the effective date of this ordinance (March 9, 2011) may continue to operate as authorized under the approved conditional use permit. Upon request by an applicant, such conditional use permits may be modified in any manner the Board determined, in its discretion, to be appropriate.

STAFF: This section does not apply.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER FROM SECTION 10.2.4

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as there are a variety of land uses in the general vicinity.

- (b) The waiver will not violate specific guidelines of Plan 2040; and

STAFF: Community Form Goal 1, Policies 9 and 10 of Plan 2040 call to ensure an appropriate transition between uses that are substantially different in scale and intensity or density of development. The transition may be achieved through methods such as landscaped buffer yards, vegetative berms, compatible building design and materials, height restrictions and setback requirements and the impacts caused when incompatible developments unavoidably occur adjacent to one another. Community Form Goal 1, Policy 12 states design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. The waiver request can be justified because there are no proposed additions to the structures on the property, there is adequate parking as determined by Transportation Planning and the Planning Director, and the property is not large enough to reasonably prove the required landscaping.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as they are applying for the waiver to bring the existing site conditions into compliance.

- (d) Either:
(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR
(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provision would deprive the applicant of the reasonable use of the land because the property is not large enough to install the required landscaping. The applicant is also proposing to keep the residential character of the property.

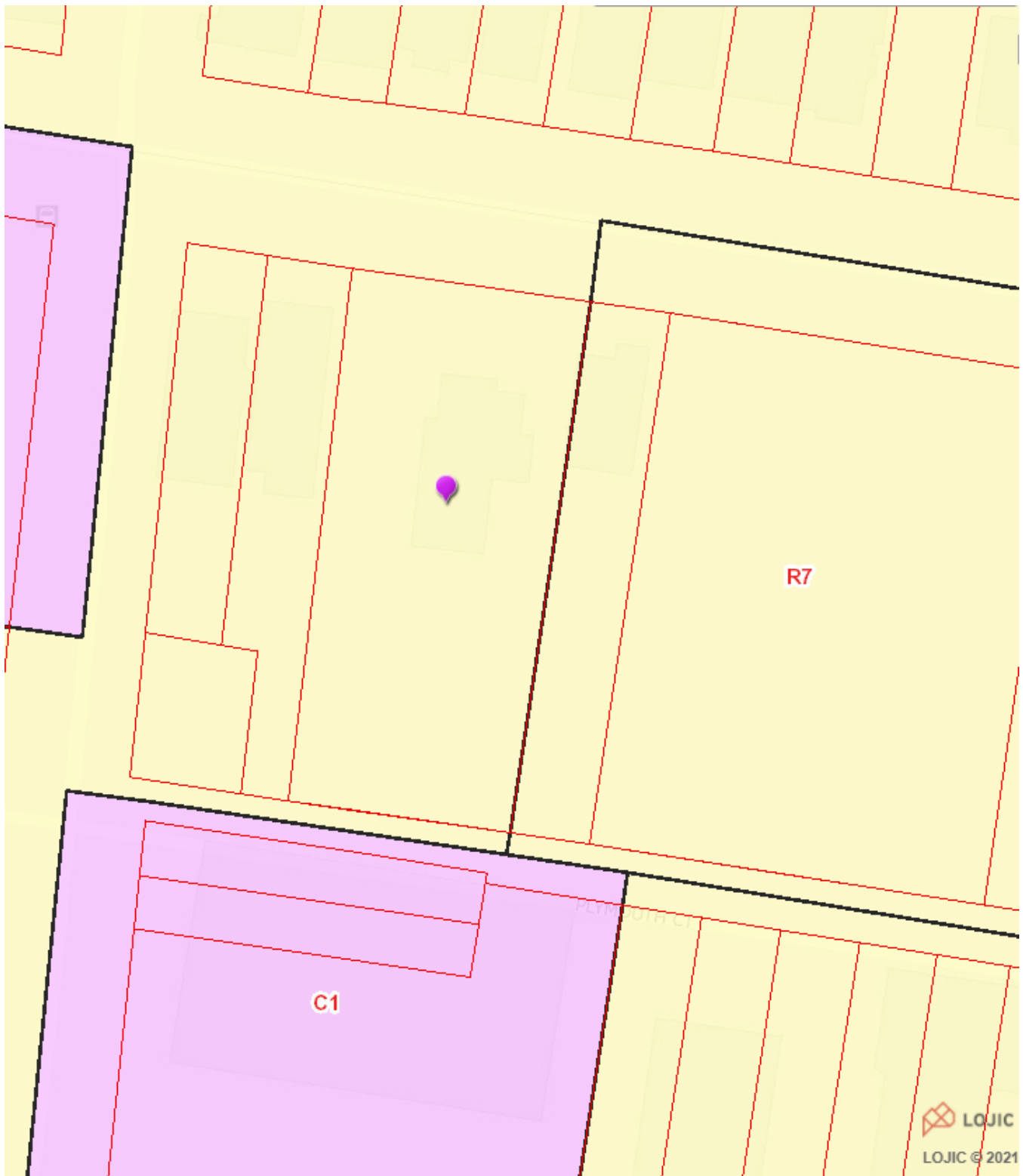
NOTIFICATION

Date	Purpose of Notice	Recipients
3/30/2021	Neighborhood Meeting	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 5
7/14/2021	Hearing before BOZA	1 st and 2 nd tier adjoining property owners and residents Registered Neighborhood Groups in Council District 5
7/19/2021	Hearing before BOZA	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. 2040 Checklist
4. Conditions of Approval

1. **Zoning Map**



2. Aerial Photograph



3. 2040 Checklist

Conditional Use Permit Checklist

+ Meet policy

- Does not meet policy

+/- Meets/Does not meet some portion of policy

NA – Not applicable

NIS – Information needed

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
Community Form – Goal 1			
4.	Ensure new development and redevelopment are compatible with the scale and site design of nearby existing development and with the desired pattern of development within the Form District. Quality design and building materials should be promoted to enhance compatibility of development and redevelopment projects.	+	The applicant is proposing to operate a daycare facility for more than six children.
11.	Ensure setbacks, lot dimensions and building heights are compatible with those of nearby developments that meet Form District guidelines.	+	The existing structures meet the zoning and form district requirements. There are no proposed additions.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
12.	Design parking, loading and delivery areas located adjacent to residential areas to minimize adverse impacts from noise, lights, and other potential impacts. Ensure that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. Parking and circulation areas adjacent to the street shall be screened or buffered. Use landscaping, trees, walls, colonnades or other design features to fill gaps along the street and sidewalk created by surface parking lots. Encourage the placement of parking lots and garage doors behind or beside the building rather than facing the street. The use of alleys for access to parking lots is encouraged, especially in Downtown Louisville, Urban Center Neighborhoods, Traditional Neighborhoods and Traditional Marketplace Corridors. Encourage elimination or reduction of parking minimums in areas readily accessible to transit routes.	+	Transportation Planning has reviewed and approved the proposal.
14.	Ensure that signs are compatible with the Form District pattern and contribute to the visual quality of their surroundings. Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety. Encourage signs that are integrated with or attached to structures wherever feasible; limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. Give careful attention to signs in historic districts, parkways, scenic corridors, design review districts and other areas of special concern. For freestanding signs in multi-lot the number of signs by including signage for each establishment on the same support structure and encourage consistent design (size, style, and materials).	+	The applicant informed staff that they plan on installing a sign that will meet the requirement established in 4.2.19.
17.	Mitigate adverse impacts of traffic from proposed development on nearby existing communities.	+	Transportation Planning has reviewed and approved the proposal.

Policy#	Plan Element or Portion of Plan Element	Staff Finding	Comments
18.	Mitigate adverse impacts of noise from proposed development on existing communities.	+	All activities shall be in compliance with the Metro Noise Ordinance (LMCO Chapter 99).
19.	Mitigate adverse impacts of lighting from proposed development on nearby properties, and on the night sky.	+	Lighting will be directed and focused away from surrounding residential uses.
Goal 2 Community Facilities			
3.	Ensure that all development has adequate means of sewage treatment and disposal to protect public health and to protect water quality in lakes and streams as determined by the Metropolitan Sewer District (MSD).	+	MSD has reviewed and approved the proposal.

4. 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 a day care facility (providing care for more than 6 children) until further review and approval by the Board.
3. The applicant shall show the location of the outdoor play area on the plan prior to operation of the day care facility.
4. The applicant shall install a six-foot privacy fence to enclose the rear of the property. The fence shall be shown on the approved conditional use permit plan. The fence shall be installed prior to operation of the day care facility.