

**WALTON BOARD OF ADJUSTMENT  
WALTON SENIOR CENTER  
BUSINESS MEETING  
MARCH 4, 2019  
6:30 P.M.**

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Chairman Hincks called the meeting to order at 6:34 P.M.

**BOARD MEMBERS PRESENT:**

Mr. David Hincks, Chairman  
Mrs. Caitlin Fugate  
Mr. Edward Sedor  
Mr. Steve Turner

**BOARD MEMBERS NOT PRESENT:**

Mr. Kevin Ryan

**LEGAL COUNSEL PRESENT:**

Mr. Dale Wilson

**APPROVAL OF MINUTES:**

Chairman Hincks stated the Board members received copies of the minutes of the Walton Board of Adjustment meeting of November 27, 2018. Mr. Turner moved they be approved and Ms. Fugate seconded the motion. Chairman Hincks asked for a vote and it carried unanimously.

**AGENDA ITEMS:**

1. Request of **Little Learners Learning Center** for a Conditional Use Permit. The Conditional Use Permit would allow a daycare center to occupy a tenant space in an existing building and construct an accessory playground. The 1.996 acre lot is located at 130 Mullen Drive, Walton, Kentucky and is currently zoned Industrial One (I-1).

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a Power Point presentation (see Staff Report).

Ms. Gina Daugherty said she presently owns Little Learners Learning Center on Needmore Street. She got a Conditional Use Permit from this board three years ago for that property. Four months after opening she reached capacity and there is no way to expand. She does not own the property and the current owner is not willing to sell. As a result, she is looking for a bigger property. Her business has received two stars from the Commonwealth of Kentucky in terms of quality reviews. They have never had a complaint or investigation and they have passed every inspection. She is presently licensed for 25 children and she stays full with a waiting list. The proposed location is good for a childcare center because of its proximity to North Walton Pointe, Aosta Valley, and KY 16.

She said she would answer the questions found in the Staff Report.

- A. What is the maximum number of children that could be enrolled at the facility? What ages are the children that will be cared for?** The new location will be licensed for approximately 40 children. She is currently working with the Code of Enforcement Office to determine a final number. The children will be from 6 weeks to 12 years old.
- B. How many children could be outside in the play area at any given time? Explain how they are monitored?** State law requires 65 square feet per child. The play area will be secured with fencing and a gate and they always have to maintain proper staffing to child ratios per state law.
- C. What type of playground equipment is proposed? Will any of the playground equipment be taller than the fence?** The biggest thing she will have is a swing set. They also have riding toys, push toys, and balls. The swing set will probably be taller than the fence.
- D. Is any additional exterior lighting being proposed? If so, please explain.** No.
- E. The business is currently operating on Needmore Street. Will this be a second business location?** It will not. The Needmore location will close once this space can be occupied.

Mr. Hincks asked what size play area she wants? The plan shows a 50' x 50' area and the email references a 50' x 40' area. She said either work for her but she would prefer the 50' x 50' area. The play area on Needmore Street is 40' x 40' and she wants this one to be larger since she will have more kids.

Mr. Sedor said the adjoining business is listed as a machine shop. He asked if the business can be explained? Ms. Daugherty said the gentleman that owns the building makes purge plugs and sells them to steel plants. He normally operates from 6:00 P.M. - 3:00 A.M. Mr. Turner asked if she had a list of the chemicals that he stores on site? Ms. Daugherty said she did not. She said there will be a firewall between her business and his. Mr. Turner asked if the wall would be gas protected? He wants to know if the owner has compressed gasses in his tenant space. Ms. Daugherty said she cannot get a daycare license without the State Fire Marshal's approval. Mr. Sedor asked if the previous business in this space was a crematorium and mortuary? Ms. Daugherty replied it was. He asked if embalming chemicals were stored there? Ms. Daugherty replied they were but the current owner has owned the property the last 3 to 4 years. Mr. Sedor asked if it is free of toxic chemicals, such as formaldehyde? Ms. Daugherty said all that type of stuff has been removed. Mr. Turner said the problem is the existing industrial business could be fine but there is nothing to say that he will not move out in the future and another industrial use will move in. There are three pages of principally permitted uses in the Industrial One (I-1) zoning district. Mr. Morgan said one thing to consider is that proposed daycare would effectively take all the parking. The industrial business that operates now is a one man business. A future industrial business would have to go through the Tenant Finish

Permit application process and show that there was sufficient parking on site. Mr. Turner asked if additional parking could be put in? Mr. Morgan said it could as long as it met all code requirements. Mr. Turner asked if all principally permitted I-1 use would be allowed? Mr. Morgan said they would be if sufficient parking is located on site. Mr. Sedor said he would like to know if the space is free of toxic chemicals, like formaldehyde. There have been big lawsuits over chemicals and the concern is valid with a daycare wanting to operate out of the space. Mr. Hincks asked if that is something the State would look at? Mr. Morgan said he did not know if the State Fire Marshal would look at that? Ms. Daugherty said the State Fire Marshal knows how the building was used in the past. Mr. Sedor said he believes that is a completely different issue. Mr. Turner said he remains concerned because any industrial use could go in the back of the building and have compressed gasses. The wall that would separate the spaces wouldn't be air tight or gas tight. Ms. Daugherty said she has an option to buy the property if the owner decides to sell. Mr. Turner said that doesn't help because she doesn't own the building now.

Mrs. Fugate asked what type of play area fencing is proposed? Ms. Daugherty said it has to be at least 4' tall and could be chainlink, metal, wood, vinyl. The property on Needmore Street has a 6' tall privacy fence.

Mr. Hincks asked for clarification that there wouldn't be any competition for parking on this site? Ms. Daugherty said there wouldn't be because the property owner is the only person that works out of his space and he works off peak hours. He asked if her normal business hours were from 6:00 AM to 6:00 PM? She confirmed they were. He asked if the business could be opened beyond 6:00 PM? She replied it could be if a parent is late. The parents pay \$2.00 a minute if they are late.

Mr. Turner asked if there were any concerns from Amerigas? Mr. Morgan said an employee from Amerigas saw him post the sign and he asked what type of business was proposed. He has not heard from anyone from Amerigas since then. Mr. Turner asked if there were any concerns from the Fire Marshal? Mr. Morgan said he has not heard any concerns. Ms. Daugherty added that there is a residential subdivision behind Amerigas. Mr. Turner agreed.

Mrs. Fugate asked if a shaded area would be provide in the play area? Ms. Daugherty said it is required by law. Mrs. Fugate said she saw the applicant wanted to add a sign. She asked if it would be on the building or out in the lawn? Ms. Daugherty responded it would be in the yard. Mr. Morgan said the property can have up to a 10' tall, 100 square foot monument sign. Mrs. Fugate asked if there is ample lighting in the parking lot? Ms. Daugherty said there is an exterior light at the door.

Mrs. Fugate asked how big the garage space is between the childcare facility and the shop? Mrs. Daugherty said it is a decent size space. Mr. Turner asked for clarification if the building would have 2 or 3 tenant spaces. Mrs. Daugherty said the garage space is part of the owner's business. There would only be 2 tenant spaces.

Mrs. Fugate asked how many classrooms she would have? Ms. Daugherty responded 6. Mrs. Fugate asked if her space would have a kitchen. Ms. Daugherty responded yes.

Mr. Hincks asked if anybody in the audience wanted to speak regarding the request? There was no response.

Mr. Sedor said he would like to make sure that the space isn't chemically contaminated. He thinks it should be verified before they move forward.

Mr. Tuner said he would also like to know what type of chemicals are in the back tenant space before action is taken. He would like Material Safety Data Sheets (MSDS) to be furnished for the chemicals that are being stored back there. Mr. Sedor said that should be part of the Fire Marshal's final report. Ms. Daugherty said the Fire Marshal only reviews buildings that are already day cares and Code Enforcement reviews buildings that have never been a daycare.

Mr. Hincks said it may be the EPA that would look at something like that. He isn't sure. He asked if they could word a motion to include a condition that the tenant space would be environmentally safe and clean? Mr. Sedor said that is what he would like to see for the applicant, kids, and City of Walton. Mr. Turner said he still has concerns because it is unknown what could go in the back tenant space in the future. All principally permitted I-1 uses would be allowed. Mr. Hincks said her customers would have to make a decision if the facility is safe if another user occupies the back tenant space. Ms. Daugherty said she could word the lease with him that she has to be notified if the use in the back tenant space changes. Mrs. Fugate said she would recommend doing that. The I-1 principally permitted use list is a big list.

Mr. Wilson said it sounds like all principally permitted uses would have to go through the Tenant Finish Permit application process to occupy the back tenant space. The Board could look at a condition requiring her daycare to be reviewed by this Board again if certain principally permitted Industrial One (I-1) uses were being sought in the back tenant space. The Board could impose this as a condition because it is a potential safety issue. The condition would also not be an automatic revocation of her Conditional Use Permit. She would be entitled to another hearing before the Board and she could make her case that the new use does not present a safety issue to the daycare. Mr. Hincks and Mrs. Fugate said they liked the recommendation. Mr. Hincks said they could go through the list of I-1 uses and come up with a list of businesses that concern them. However, the list contains 49 uses. Mr. Morgan added that they would also have to review the principally permitted uses of the Office Two (O-2) and Office One (O-1) zones. Mr. Hincks said he does not know if he feels qualified to determine which of these uses would be harmful when locating next to a daycare center. Mr. Sedor asked for confirmation that Planning Commission Staff cannot stop a principally permitted use from moving into a tenant space unless the required parking isn't there? Mr. Morgan agreed. Ms. Daugherty asked if she could have a stipulation in the lease that prohibits him from leasing the building to anyone else? Mr. Turner said he didn't know how the Board could enforce that. Mrs. Fugate asked if the Board can impose conditions on a lease? Mr. Wilson said the condition should deal with the use and not the lease. Mr. Hincks asked how that should be worded? Mr. Wilson said they would basically be wording a condition that requires the back industrial user to remain. Any proposed change to the back industrial tenant space would require the daycare operator to come back before the Walton Board of Adjustment and address if the new use creates a safety issue.

Mr. Turner said he would still like to require a condition that requires the current use in the back of building to be checked for anything that could be harmful to human beings. It could be chemicals that he is using or residual chemicals from previous uses. Mr. Morgan said almost all industrial users have some chemicals on site. Ms. Daugherty said the owner's space has a firewall and an overhead suppression system. Mr. Turner said they really need to see a list of the chemicals that the owner has in his space. He would be required to have a MSDS log of everything he has on site. Mrs. Fugate asked if they should wait for that information? Mr. Morgan said they can if that is the wish of the Board. Mr. Turner said he cannot vote for the request until he sees what is there. Mrs. Fugate and Mr. Sedor agreed. Mr. Turner said he likes the other condition which would require her to come back to this Board if the use in the back tenant space is proposed to change.

Mrs. Fugate asked if the inspectors would be going back into the adjoining tenant space when they came to the site? Ms. Daugherty said Code Enforcement has already been back in his space. Mrs. Fugate asked if there would be inspections on an annual basis? Mrs. Daugherty responded childcare does but they wouldn't go in to the adjoining tenant space.

Mr. Hincks asked if the Board is wanting to see that the building is environmentally clean before they act on the request? Mr. Turner said yes but also wants to know what is being stored in the adjoining tenant space. The owner should supply his MSDS log. He would also like to know if he has loud machinery. It has been explained that he only operates at night but there is nothing to say he can't operate in the day. Mrs. Fugate she would also like to get a better explanation of what purge plugs are and visit the site. Mr. Morgan asked if the entire Board is interested in visiting the site and both tenant spaces? Mr. Hincks said it sounds like they are. They should also make Mr. Ryan aware of the site visit in the event he can make the next meeting. Mr. Morgan said he will notify him.

Mr. Morgan asked Ms. Daugherty if she could:

1. Reach out to the property owner and determine if he and the Board can come to the site and visit both spaces?
2. Reach out to various agencies and determine which would make a determination that the building is environmentally clean.
3. Think about how long she will need to get information the Board is looking for.

Mr. Hincks said he would like to visit the site and have the documentation from the proper authority on the same night. Mr. Morgan asked Ms. Daugherty if a couple week postponement would give her enough time to get the documentation? She replied it would be. Mr. Morgan asked the Board if a couple weeks from tonight was good for them? Mr. Sedor said it wouldn't work for him. Nothing would work for him until April. He suggested doing the meeting without him. Mr. Hincks asked if that would be March 18<sup>th</sup>, at 6:30 PM? Mr. Morgan replied it would be. Ms. Sharon Stevenson, with the City of Walton, said the this meeting room would be available that night. Mr. Hincks said if possible, he would like to do the site visit right before the meeting.

Mr. Wilson said the Board has the right to view a site before they vote. That is a viewing and not a meeting. When they get back to the meeting they will each put into the record when they were there and what they observed. Mr. Morgan asked what is the protocol if they have questions for the owner. Mr. Wilson said those questions should be asked at the meeting. He added that Staff can ask the owner questions during the site visit but the Board members cannot. Mr. Morgan said it would be best if the property owner was present at the next meeting.

Ms. Daugherty said the owner just sent her his MSDS sheets. Mr. Morgan asked her to email them to him and he will forward them onto the Board members. He said it will also be helpful to know how much of each chemical he currently has on site.

Mr. Morgan suggested doing the site visit at 5:45 P.M. on March 18<sup>th</sup>. That would give everyone enough time to visit the site and get back here for the start of the meeting, at 6:30 P.M. Everybody was agreeable.

**Chairman Hincks asked for a motion on the request. Mr. Turner moved to table the request until March 18, 2019, at 6:30 P.M., and Mr. Sedor seconded the motion. Chairman Hincks called for a vote on the motion and it carried unanimously.**

2. Request of **Airgas** for a Conditional Use Permit. The Conditional Use Permit would allow a 45' x 50' expansion to the outside gas cylinder storage area. The approximate 2.54 acre lot is located at 12094 Chandler Drive, Walton, Kentucky and is currently zoned Industrial One (I-1).

Staff Member, Todd Morgan, AICP, presented the Staff Report which included a Power Point presentation (see Staff Report).

Mr. Geoff Mangino, said he was the District Manager for the Walton Branch of Airgas. The reason for the expansion has been their growth. They have moved about 3 million dollars of business from their Cincinnati Dayton Road location to the Walton branch, which opened in February 2018. Their projected growth was 20% for 2018 and they exceeded that by 30%. They service the Northern Kentucky area and go all the way down to Dry Ridge and Carrollton areas. On the pad, they store flammables and oxidizers and inside they store inert gasses (Argon, Carbon Dioxide, and Nitrogen). They have already outgrown their pad because of construction growth in this area. The main reason is the number of empty tanks. The inert empties from inside are taken outside and staged for their trucks. They originally forecasted the trucks to make deliveries once on Monday and once on Wednesday. They are now making two deliveries on Monday and two on Wednesday. They have to stage the inert empties on the pad with their flammable gasses and it is very inefficient. It is taking their drivers 3 to 4 hours just to load and unload the trucks. This process should only take an hour. Expanding the pad gives them more room to store their empties and make them more efficient.

Mr. Clyde Froslear, with Airgas, said he would address the bunker questions. He said they normally install the bunkers shown in the PowerPoint photo in much larger facilities. Those bunkers are 6' long. When they have more than 10,000 pounds of flammable gasses they

absolutely want to contain it with bunkers. At this facility, they are averaging 4,000 pounds of propane, 400 pounds of acetylene, and 2 pounds of hydrogen a day. He would have put the bunkers up but they would have taken a large area of the only outside storage area that they have and they are also not warranted by the amount of flammables that they have. They keep 25' of distance between the acetylene, propane, and hydrogen tanks. As mentioned earlier their flammable business really hasn't grown and that is why the bunkers have not been installed. The growth has been in the inert gasses and the problem has been the empty tanks.

Mr. Hincks asked if they would reconsider installing the bunkers now that they plan on expanding the pad? Mr. Froslear said if they had to he would be willing to put a bunker in for propane. They only average 2 pounds of hydrogen a day and that cylinder could easily be put in a corner by itself. A bunker would be overkill for a cylinder or two.

Mr. Turner asked if the chemical chart and quantities listed in the Staff Report is still up to date? Mr. Froslear said it will be roughly the same because they will be storing a lot more empties. Some of the quantities shown in the chart have gone up and others have gone down. For example, oxygen went from 7,000 pound to 5,000 pounds. Mr. Turner asked if they store the flammables and oxidizers with the non-flammables? Mr. Froslear said the oxygen can go with the inerts but definitely not next to hydrogen or acetylene.

Mr. Sedor asked for clarification what the new pad will hold? Mr. Froslear said the new pad will hold their inert empties. The flammables will probably stay where they are on the existing pad.

Mr. Sedor asked where the school was in relationship to the existing and future pads? Mr. Morgan reviewed the PowerPoint slide. Mr. Hincks added the school could have athletic fields in the back of their property. He said the safety aspect should be considered because they are adjoining a school property. The bunkers that were originally discussed were a positive for this reason. He likes that the idea of the new pad being used to store the inert empties because it closer to the school property. He asked if that could change and flammable cylinders be stored on the new pad? Mr. Froslear said he wouldn't anticipate that with the growth that they are seeing with the inert gasses. He added that everything is stored on pallets and separated. He reviewed the PowerPoint slide showing this. The pallets can be used in lieu of the bunkers for storage of empties. The rear of their property also has a rise and a tree line which protect the school property from viewing the storage area. He estimated the fence would be 200 feet from the school property line. He also reviewed how the electric pole would be relocated. The pole needs to be relocated because they need to be at least 12' away from it. They would have probably sought a bigger pad in the first place if it weren't for that pole.

Mr. Sedor asked what their procedure is for handling the cylinders? Mr. Froslear said the cylinders are always delivered on pallets. They always have at least 2 straps around the cylinders. No more than 14 cylinders will be placed on a pallet and the cylinders will not be overlapped. Larger quantities are fork lifted on and off the trucks. When a driver delivers a smaller quantity he will take the cylinder to the tail gate, chain it to the side, drop the tailgate to the ground, and deliver the cylinder with a two-wheeler to the customer. Mr. Sedor asked if the cylinders are always capped? Mr. Froslear replied they are always capped and labeled.

Mr. Hincks asked if anybody else in the audience wanted to speak regarding the request? There was no response.

Mr. Turner said he likes the idea of the bunkers but the fire department didn't seem to have a strong preference. In addition, the new pad is a good distance from the school property and will be used to store empties.

**Chairman Hincks asked for a motion. Mr. Turner made a motion to approve the request with the following conditions:**

- 1. The outside tank storage limits shall not be expanded beyond what is being proposed unless another Conditional Use Permit is approved by the Board.**
- 2. The rear two sides of the chain link fence compound shall be screened with PVC or metal privacy slats.**

**Mrs. Fugate seconded the motion. Chairman Hincks called for the vote and it carried unanimously.**

**OTHER**

No other business was discussed.

**ADJOURNMENT**

Mr. Hincks asked for a motion to adjourn. Mr. Turner so moved and Ms. Fugate seconded the motion. The motion carried by unanimous consent and the meeting adjourned at 7:56 P.M.

**APPROVED**

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**David Hincks  
Chairman**

**Attest:**

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**Todd K. Morgan, AICP  
Senior Planner, Zoning Services**