

**WALTON BOARD OF ADJUSTMENT
WALTON SENIOR CENTER
BUSINESS MEETING
MARCH 18, 2019
6:30 P.M.**

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

BOARD MEMBERS PRESENT:

Mr. David Hincks, Chairman
Mrs. Caitlin Fugate
Mr. Kevin Ryan
Mr. Steve Turner

BOARD MEMBERS NOT PRESENT:

Mr. Edward Sedor

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 March 4, 2019. Mr. Turner moved they be approved and Mrs. 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).

Mr. Wilson said the meeting was tabled on March 4th so the Board would have the opportunity to review the site. The Board first needs a motion to lift the application from the table which is seconded and passed and then needs to discuss what they observed during the site visit. Mr. Ryan should also put into the record that he is familiar with the record that was made since he was not present at the last meeting.

Mr. Hincks asked for a motion to lift the application from the table. Mrs. Fugate made a motion to lift the application from the table and Mr. Turner seconded it. Mr. Hincks called for the vote and it carried unanimously.

Mr. Ryan said he has read the meeting minutes from the last meeting and also attended the site visit today. He feels comfortable acting on the request.

Mrs. Fugate said during the site visit today she witnessed that the facility had its own entrance and several rooms that would be converted to classrooms. She also saw a garage space with some storage and a shop in the back with machines, tools, and equipment.

Mr. Ryan said he observed the owner's oven or kiln in the back of the building. He would like the owner to address fire suppression in that area. Mrs. Daugherty replied there is a Halon system in the back. Mr. John Eltzroth said he owned the building and makes purge plugs in the back of the building. He uses the oven to burn out the plastic that is used to stir the molten steel. The back room in the building has a fire suppression system that was used by the former mortuary business. He said the kitchen area in the back of the building has two tanks and contains something similar to Halon. Those tanks are inspected routinely.

Mr. Hincks said there was a large bag of refractory material in the back and there was some light dust. The refractory material is used in the mixing process. The owner's personal work station was about 10 feet away. He would assume that the owner would not leave the bag open if it were hazardous. He did not notice any dust in the area that is to be rented to the daycare.

Mr. Eltzroth said his desk is about 5 feet away from the tabular alumina. That is the specific refractory he needs to get the best erosion resistance so it can be used at a steel plant. He would not keep the refractory 5 feet away from him if it were hazardous. Mr. Turner asked if the sheet that was in front of them was the MSDS Sheet for the tabular alumina (see Exhibit 1). Mr. Eltzroth said it was. Mr. Turner said the product contains silica and it can cause silicosis in your lungs. Mr. Eltzroth replied there is a small chance. Mr. Turner said silica is listed as a carcinogen. He asked if any tests had been done to show if there was any residual formaldehyde.

Mr. Eltzroth replied he did a Google search on formaldehyde and the ½ life is 1 hour. No formaldehyde has been used at the facility for 5 years since the mortuary was in business. Mr. Turner said there were 6 floor drains in the area where the bodies were kept. He is sure they were a lot of nasty things that went down those drains and he would like to know if any residual matter remains. Ms. Daugherty said she made a lot of calls and cannot find anyone that will test for formaldehyde. She would be glad to pay for a test if someone would come out. Mr. Morgan said he sent Ms. Daugherty the business link that Mr. Turner sent him. She said she tried that number and they do not answer the phone or return calls. She also tried to contact Walton Fire Department but they don't do that type of testing. They sent her to Boone County Emergency Management System and they don't do it. They sent her to the EPA and they don't do it. EPA did direct her to a link on their website that talks about formaldehyde. She submitted a letter she wrote and the formaldehyde information she printed off from the EPA and cancer.org websites into the record (see Exhibits 2 and 3). The formaldehyde information says it doesn't live in the air or water. Formaldehyde is used in wood flooring, furniture, soap, etc.

Mr. Turner said he noticed that the owner had a considerable amount of welding gasses in the back. He said he did not see any MSDS Sheets for those. Mr. Eltzroth said that it's just argon and carbon dioxide gas mix. Mr. Turner said he also didn't see the tanks

chained to the wall. Mr. Eltzroth said a guy from the fire department came by and said that was fine. Mr. Turner asked if the empty buckets he saw in the garage space were full at one time? Mr. Eltzroth said he got them from a guy in Cincinnati and he cleaned them out.

Mr. Hincks asked the owner if he had the drains cleaned since he owned the building? Mr. Eltzroth replied not really. Mr. Hincks asked if those drains have been used since he owned the building? He said he didn't think he had used them. Ms. Daugherty said she plans on installing carpet in the classrooms. Mr. Hincks asked if his space had floor drains? Mr. Eltzroth said there are two floor drains in the garage area and they go to holding tanks.

Mr. Turner said the drop ceiling in the one area and the back area is only separated by one beam. There are penetrations in that beam and he is sure it isn't sealed on the bottom or the top. Ms. Daugherty said that will be done to code. Mr. Turner replied it isn't air tight. Ms. Daugherty said the wall isn't complete yet. There have to be 2 sheets of 5/8 fire wall that go above the beam and any openings for pipe, etc., have to be sealed with fire rated caulk. A contractor will do all that work and it will be inspected. Mr. Turner asked about the doors that go from the front to the back? Mr. Ryan said there was a tag on them saying they were rated at 20 minutes. Mr. Turner said you can see daylight underneath them. Ms. Daugherty said Code Enforcement didn't say anything about them.

Mr. Hincks said he noticed that the front half of the building has central heating and air and the back space does not. He said he also didn't notice any discharge pipes from the oven. Mr. Eltzroth said there are some heat vents and an after burner that would take care of any particulates.

Mr. Hincks said the Board needs to look at safety with a Conditional Use Permit. The attention factor is probably a little bit higher because a daycare is being proposed and there will be children. Ms. Daugherty said Code Enforcement is looking at that as well. They inspect all buildings that children are going in.

Mr. Ryan asked if there charge was to permit a daycare operation? He asked if they should be looking at the fire rating of doors because other agencies will be looking at that? Mr. Morgan said there are other agencies that look at those type of matters. However, the Board needs to apply the Conditional Use Permit criteria to the application. One of those refers to safety and the operation not being detrimental to people. Mr. Ryan said in his opinion the building is currently not fit to house children. Should they be relying on the other agencies to follow up and make sure everything meets code? Ms. Daugherty said she cannot get a daycare license without Code Enforcement signing off. Mr. Morgan said they should rely on Code Enforcement.

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

Mr. Turner said what he can't get beyond is not knowing the contamination factor and not knowing if any other agency will do that testing. Mr. Hincks said he is on the Federal EPA side of things for his job. The State EPA would be able to isolate contaminants coming from this industrial park if something bad was coming from these drains and getting into the

water. He can only assume this hasn't happened. He asked Mr. Eltzroth how long he owned the building? Mr. Eltzroth replied 3 years. He added that the mortuary hasn't operated for 5 years. Ms. Daugherty said formaldehyde doesn't live at water. Mr. Hincks said he is talking about all the chemicals that were used in the embalming process. Mr. Eltzroth said the mortgage company didn't require any type of environmental compliance certificate. Mrs. Fugate said she imagines there was a process for flushing those drains. Ms. Daugherty said there was a handle in the embalming room that released water.

Mr. Ryan asked if all the work she mentioned earlier had to be done before she could apply for her daycare license? Ms. Daugherty replied that was correct. Mr. Turner said if the doors aren't sealed air will flow into the daycare from the back.

Mrs. Fugate asked if they can add conditions about the doors? Mr. Ryan said he doesn't believe they have the expertise to say what the doors should be. Mr. Morgan said they could possibly impose a condition which would violate building or fire codes. Ms. Daugherty said Code Enforcement has been up to the building 3 times and outlined what needed to be done for fire protection. Once they approve the work that has been done the childcare people from the State of Kentucky will come up and do an inspection. She added that she will be required to have a hard wired fire alarm system and if one goes off, they all go off.

Mr. Hincks said it is ultimately up to parents to decide if their children will go here. Mr. Turner said most parents probably will not know about the chemicals that they are discussing. Mr. Hincks said they should know that there is an industrial business in the back of the building and to ask questions. He would think a parent would ask these question if their child had respiratory problems and would dig into what approvals were given. Mr. Eltzroth said he believes his business would be a lot more compatible with a daycare than other industrial businesses. He basically makes concrete and doesn't have any metal shavings. Ms. Daugherty said there are daycares in some bigger industrial plants. Mr. Turner said he would believe that they are pretty far removed from the manufacturing operation.

Mr. Hincks asked for a motion. Mr. Turner motioned to deny the request based on the fact that there are too many unknown questions on contamination and how it will impact public safety. Mr. Ryan seconded the motion. A roll call vote found that Mr. Turner and Mr. Ryan were in favor and Mr. Hincks and Mrs. Fugate were opposed. The motion did not carry because the vote was 2-2. Mr. Wilson said the Board can keep deliberating and someone can make another motion. The Board also has a 5th member that isn't present tonight.

Ms. Daugherty asked what she can do? She would gladly get an inspection if she could find someone to do one. She doesn't know who to call. Mr. Hincks said an environmental remediation company would do testing. Mr. Turner said he would like to see that testing done before they vote. Mrs. Fugate said she would be okay with tabling the request again if further testing is going to be done. She would hope as a parent that the State would be stringent on a matter like this but she doesn't know if they are. Mr. Ryan agreed. Mrs. Fugate said she would also be willing to take documentation from a state agency saying that they would do this type of testing before she opens. Mr. Turner said he doesn't want to hope that another agency will check something without knowing that they will.

Mr. Hincks said they should be careful not to question another agency that would be responsible for this. Mr. Ryan said there has been no documentation presented to them that indicates who would do the testing they are looking for. Mr. Flynn asked if Walton Fire Department would be doing an inspection? Ms. Daugherty said the State would look at it.

Ms. Daugherty showed the Board a copy of her permit from Code Enforcement that allowed her to start the work inside the building. Mr. Morgan said he didn't believe she would receive the final permit until the work was done and it was inspected. Ms. Daugherty agreed. She added the guy from code enforcement determines what improvements need to be made and then inspects them. She said if the building had already been a daycare then the State Fire Marshal would look at it. Mr. Turner said he is not seeing where they do an environmental check. He still isn't sure if any agency would do an environmental check. Mr. Hincks asked if she contacted Kentucky EPA? She said she had and they were the ones that directed her to the information on their website regarding formaldehyde.

Mr. Morgan said he understands the issue to be more than formaldehyde. It sounds like the Board wants her to test the drains and the air. Ms. Daugherty said she can buy a kit online and test the air herself. Mr. Hincks said his primary concern is the drains. Mr. Turner said nothing has been checked and he is not sure if anyone will do an environmental check. Mr. Hincks said they could look at a condition that would require an environmental remediation company to certify that the building is environmentally clean. Mr. Ryan said another thing that concerns him is fire egress. Mr. Morgan said he feels comfortable that all building code and fire code issues would be checked. Ms. Daugherty said the State Fire Marshal and State Childcare will inspect the business once a year after she opens.

Mr. Morgan said Mr. Hincks potential condition would need to be clarified further so he could enforce it. What specific things does she need to test for to satisfy the Board? Without that list, a company could test for mold only. Mr. Hincks said there are certain levels (parts per million) of anything that are considered dangerous. Mr. Morgan agreed and said he should know the list of things the Board wants tested so she can fulfill the condition. Ms. Daugherty asked if the Board could do the testing? She said she would pay for it.

Mrs. Fugate said the concern is what may be in the drains. Mr. Turner added that he is also concerned about the silica in the air. There are people that are more susceptible than others to certain things. He doesn't feel comfortable with children being in the front of the building and they are breathing in air from the back of the building and there is something in the air that could harm them. Mr. Morgan said she could certainly get air quality samples and test the drains for toxins but he doesn't know what toxins would fulfill the Board's list. Mrs. Fugate said the air sample may help them determine if anything is coming up from the drains because the drains haven't been used in the last 5 years. The applicant may not want to have the drains tested if the air quality is bad.

Mr. Turner asked if the drains were going to be shut and closed when the new carpeting is put in? Mr. Eltzroth said there would be no reason to use the drains if carpeting is installed over them. Mrs. Fugate said the flooring contractor may need to do something to cover the drains. Mr. Hincks asked Mr. Turner if his concern about drain toxins would go

away if the drains were sealed? Mr. Turner replied no because it would be an issue down the road.

Ms. Daugherty said she doesn't feel like anything will work unless she gets the name of a company. Mr. Wilson said the Board shouldn't give her the name of company unless they want to endorse the result. Mr. Hincks agreed.

Mr. Ryan said he is looking at cancer.gov and .03 parts of formaldehyde per million is considered an acceptable level. An environmental remediation company could also test for silica. Mr. Turner said the test should be done when the back of the building is being used. Mr. Ryan said there should be parameters for the test. He believes a radon test is done over a week or two week time period. An accredited business would know what to do.

Mr. Hincks said he was going to make a motion to approve the request with the following conditions:

1. An acceptable air quality test will be done and submitted to the Board. The test will list everything that is present in the air and if the levels are at acceptable EPA standards.
2. A test will be done to show what toxins are present in the floor drains. The test will list everything that is present in the drains and if the levels are at acceptable EPA standards.

Mr. Eltzroth recommended the air test be done in his work area and the office area so a comparison can be made. Mr. Turner said he would like to know if any formaldehyde is present. Ms. Daugherty said she doesn't know if she will be able to fulfill the condition. She has called everybody from home inspectors to the EPA.

Mr. Hincks asked Mr. Wilson if they could give her a list of contractors? Mr. Wilson said the burden is on the applicant. The Board can determine if the information is credible when it comes back. If the Board identifies who is doing the test then they are marrying themselves to those results.

Ms. Daugherty said she doesn't know who will test for formaldehyde. Mr. Morgan stated that Mr. Hincks draft condition would require everything that is found to be listed. Mr. Turner said his concern is he is not sure the company will look for every possible thing. Mr. Hincks said a company should use a mass spectrometer and it would test for everything. Mr. Turner said the condition should say that then. Mrs. Fugate said she thinks the test would be like a drug test and anything that shows up is listed. Mr. Morgan said the Board could also require the test list everything that was tested for. Mrs. Fugate said an air quality sample would make her feel comfortable. She assumes that the State knows how this building was used in the past.

Mr. Hincks repeated his motion. Mr. Turner said he suggested adding on another condition which would require the front and rear sections of the building to be air tight from each other unless a door was opened. Mr. Morgan said he doesn't know if he can enforce that condition. That would be a building code issue. Mr. Ryan said the whole purpose of

the rooms being air tight would be negated as soon as someone opened the door between the two spaces. Mr. Hincks said he would leave the motion as it was originally worded. Mr. Turner asked if he wanted to include the condition that was discussed at the first meeting? That condition would require the applicant to come back for another Conditional Use Permit if another industrial user wanted to occupy the back of the building. Mr. Morgan suggested that Mr. Hincks also take a look at the Staff recommendations in the Staff Report.

Mr. Hincks said he would add the following conditions to his motion:

3. Any proposed change in use 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.
4. The approval is based on the preliminary plan and business outline that was submitted with the application. Minor modifications can be permitted by the Zoning Administrator.
5. The business shall only be permitted to operate Monday through Friday. Business hours shall be limited from 6:00 a. m. to 6:00 p. m.
6. The play area shall be limited to a 50' x 50' area.
7. No more than 7 employees shall work on site at any given time.
8. No company (daycare) vehicles shall be kept on site.
9. On-site parking and handicapped signage for both businesses shall comply with the requirements of the Boone County Zoning Regulations.
10. The parking lot shall be re-stripped so the parking stalls are visible.

Ms. Daugherty asked if she would need to come back if the back of the building was vacant? Mr. Morgan replied she would not. She would need to come back if the industrial user changes or if she is proposing to expand the daycare into the back of the building.

Mrs. Fugate seconded the motion. Mr. Hincks called for the vote and it found Mr. Hincks, Mr. Ryan, and Mrs. Fugate in favor and Mr. Turner opposed. The motion carried 3-1.

OTHER

No other business was discussed.

ADJOURNMENT

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

APPROVED

David Hincks
Chairman

Attest:

Todd K. Morgan, AICP
Senior Planner, Zoning Services

Exhibit 1 - MSDS Sheet

Exhibit 2 - Letter From Gina Daugherty

Exhibit 3 - Formaldehyde information from EPA and Cancer.org Websites