

TO: Town of Harrison Planning Board

FROM: M. McKinley Mertz, PP, AICP, LEED Green Associate

RE: All Seasons Childcare and Learning Center, LLC
10-12 North 3rd Street
Block 14 Lot 26
Waiver of Formal Site Plan

DATE: September 14, 2023

As requested, we have reviewed the following revised application materials:

- Town of Harrison Standard Development Application, dated August 8, 2023; and
- 1-sheet set of plans entitled, "Conversion of Vacant Commercial Space to Day Care," prepared by Crearc LLC, dated March 10, 2023.

Property Description and Project Proposal

The subject property, located at 10-12 North 3rd Street (Block 14 Lot 26 of the Town's Tax Map), is within the 2F-1 Two-Family Detached Zone and is developed with a one- to three-story building with a commercial ground floor and retail on the upper floors. It is our understanding that the ground floor commercial space was previously a non-conforming restaurant space but is now vacant. The property borders the NC Neighborhood Commercial District to the south and residential properties in the 2F-1 Zone to the north, east, and west.

The applicant is proposing a child care center in the ground floor commercial space. The floor plans show three different classrooms along with a multipurpose room, bathrooms, and a reception area and office. It is unclear if any changes are proposed to the site itself or exterior of the building.

No changes are proposed for the upper floor apartments.

The applicant is requesting a waiver of site plan to retrofit the space for a child care center.

Zoning

The subject property is situated in the 2F-1 Two-Family Detached Zone where child care centers are not permitted but institutional and public uses are permitted. We note that an "institutional and public use" is defined by the Town's Land Development Ordinance as follows:

"Non-profit, public or quasi-public institutions and uses such as public and private schools, libraries, and municipally owned or operated buildings, structures, or land uses for public purposes, not including houses of worship."

As a relative definition, we note the definition of “school” is as follows:

“Any building or part thereof which is designed, constructed or used for education of students up to and through the secondary level and licensed by the State of New Jersey Board of Education.”

We note that child care centers are not licensed by the State of New Jersey Board of Education but instead by the Department of Human Services.

Aerial of Site



Planning Comments

1. The applicant shall first and foremost confirm the nature of the proposed use to determine which definition it falls into pursuant to the Town's Land Development Ordinance. We note that if the applicant does not qualify as a "institutional or public use," this application must move forward at the Zoning Board of Adjustment to seek a d-1 use variance. Additionally, pursuant to the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70, if there is any need to interpret the zoning ordinance, that duty and jurisdiction fall to the Zoning Board of Adjustment, and not the Planning Board.
2. We note the following relevant points and statutes:
 - a. Child care centers are not permitted in the 2F-1 Zone.
 - b. Day cares pursuant to the MLUL at N.J.S.A. 40:55D-66.5b are distinct and would be permitted in the residential 2F-1 Zone, but they are required to operate within a residence. As the use is not within a residence, this MLUL standards for this use do not apply.
 - c. Child care facilities, as defined and regulated by the MLUL at N.J.S.A. 40:55D-66.6 and 66.7 and licensed by New Jersey Department of Human Services, are permitted in all nonresidential zones but have no such protection in residential zones.
 - d. Finally, child care programs as defined in the MLUL at N.J.S.A. 40:55D-66.7a are permitted to be operated by a public school *in* a public school building. The proposed use is not within a public school building and appears to be a private entity, not a public school.
 - e. Based on the application material provided to our office, the applicant appears to be a business and not a public entity. The use appears to be a for-profit child care center (a use that is not permitted in the zone) and does not fall under the previously discussed categories in MLUL, and therefore is not granted any specific dispensation in residential zones.

Should the resolution of comments 1 and 2 above determine the jurisdiction remains at the Planning Board, the applicant shall continue with providing testimony regarding the below comments:

3. Ordinance Section 17-62.2.D. gives the Planning Board the power to waive the requirement of a formal site plan approval where certain conditions are met. The applicant shall speak to each condition to confirm:
 - i. The use is permitted in the zone.
 - ii. The application does not involve any site improvements, including drainage and stormwater management.

- iii. The application does not involve any non-conforming landscaping, signage, and lighting.
 - iv. The structure is existing, and no structural improvements are proposed. Interior changes as well as exterior painting and compliant signage are permitted.
 - v. Existing non-conformities that are not exacerbated shall be permitted to remain.
 - vi. Where a change in use includes an increase in required parking, a waiver of site plan shall be permitted if the applicant demonstrates that no existing parking is being removed and there is no potential to add additional parking.
 - vii. The Planning Board may request the involvement of their professionals in waiver of site plan applications where the Board determines such involvement is warranted by the facts of the application.
4. The Board should take into consideration that if a formal site plan approval is waived, the site will remain as it currently exists, but with a new tenant in the building. No improvements as per the Town's ordinance will be required of the applicant.
5. The floor plan submitted appears to only encompass half of the existing ground floor space within the subject building. The applicant shall confirm they will only be occupying this portion of the ground floor and testify to the use in the adjacent ground floor commercial space.
6. The applicant shall provide additional information regarding the operations of the business, including but not limited to:
- a. Hours of operation
 - b. Child drop off and pick up
 - c. Is there food prep on-site?
 - d. Deliveries
 - e. Number of employees
 - f. Expected number of children
 - g. Trash/recycling pick up
7. The applicant shall provide a status update of licensure.

Should you have any questions regarding the above memo, please don't hesitate to contact our office.