

October 18, 2024

VIA E-MAIL ONLY (zoning@cityofmadison.com)

City of Madison
Attn: Matthew Tucker
Building Inspection
P.O. Box 2984

RE: Bright Beginnings Day School, LLC – Conditional Use Permits

Dear Mr. Tucker,

I represent Bright Beginnings Day School, LLC (“BBDS”), Sarah Tuttle and 11Eleven LLC. Ms. Tuttle recently applied for two conditional use permits at 8402 Castle Pines Drive and 933 S. Holt Circle. I want to provide you and your office with additional information regarding applications in advance of the City of Madison Plan Commission Meetings.

We are in receipt of the Planning Division Staff Report. At the outset, Ms. Tuttle wishes to convey that she greatly appreciates the time and effort in generating the report, as well as the recommendation that the permit be granted. However, Ms. Tuttle respectfully disagrees with the recommended conditions of approval. While Ms. Tuttle currently meets and can meet the recommended conditions of approval, such conditions conflict with Wisconsin law, which states that “no municipality may establish standards or requirements for family childcare homes that are different from the licensing standards established under s. 48.65.” *See Wis. Stat. § 66.1017(2)*. The recommended conditions of approval *are* different from the licensing standards and, as such, are not permitted.

BBDS has a license to operate a family childcare home at the properties issued by the Wisconsin Department of Children and Families pursuant to Wis. Stat § 48.65. A “family childcare home” is defined by Wis. Stat. § 66.1017(1)(a) as “a dwelling licensed as a childcare center by the department of children and families under Wis. Stat. § 48.65 where care is provided for not more than 8 children.”

The City of Madison is required by Wis. Stat. § 66.1017 to permit operation of a family childcare home on the properties. Wis. Stat. § 66.1017(2) states:

(2) No municipality may prevent a family childcare home from being located in a zoned district in which a single-family residence is a permitted use. No municipality may establish standards or requirements for family childcare homes that are different from the licensing standards established under s. 48.65.

This subsection does not prevent a municipality from applying to a family childcare home the zoning regulations applicable to other dwellings in the zoning district in which it is located.

A “family childcare home” means a dwelling licensed as a child care center by the Department of Children and Families under s. 48.65 where care is provided for not more than 8 children.” Wis. Stat. § 66.1017(1)(a). Thus, the City cannot prevent the location of a child family care home at the properties because single family residences are a permitted use. The City cannot establish any standards or requirements different from the licensing standards under Wis. Stat. § 48.65. The City *can* apply all the other regulations in the zoning district that are applicable to other dwellings in the district. This would include lot dimensions, setbacks, building height, and lot coverage and building area.

Here, the City’s enforcement of Ordinance § 28.151 is in contravention of Wis. Stat. § 66.1017(2). The ordinance requires that the provider in a family day care home reside in the home. However, Wis. Stat. § 66.1017(2) does not make that requirement, nor does Wis. Stat. § 48.65 which is cited by Wis. Stat. § 66.1017(2). Moreover, the applicable regulation Wisconsin Admin Code DCF Ch. 250 does not require that a provider primarily reside in the family child care home or that no more than two employees are permitted at the dwelling. The only requirements a provider must meet are (1) be physically, mentally, and emotionally able to provide responsible care to all children, including children with disabilities and (2) be at least eighteen (18) years of age. *See* Wis. Admin Code DCF § 250.05(3)(a)1.-2. As a result, the City’s ordinance adds an additional standard beyond those standards established in Wis. Stat. § 48.65, which violates Wis. Stat. § 66.1017(2). The City’s enforcement of this ordinance would violate state law.

I am happy to discuss this further with you and answer any questions if you believe it would be helpful.

Best,
DeWitt LLP



Barret V. Van Sicklen
BVV:emh