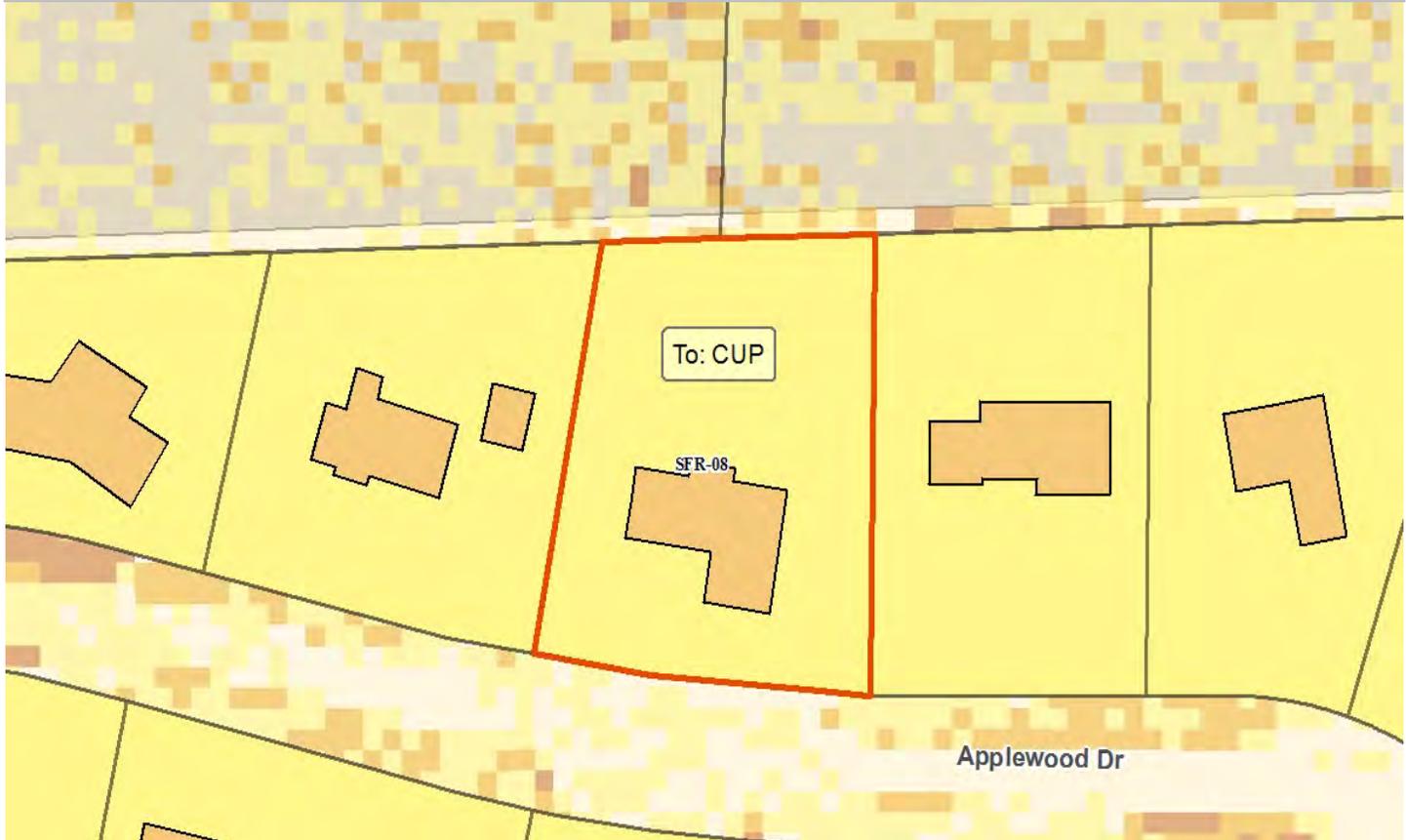


<b>Staff Report</b>    <b>Zoning and Land Regulation Committee</b>	<u>Public Hearing:</u> <b>October 26, 2021</b>		<b>CUP 02533</b>
	<u>Zoning Amendment Requested:</u> <b>TO CUP: Daycare Center</b>		<u>Town/Section:</u> <b>MIDDLETON, Section 27</b>
	<u>Size:</u> <b>0.802 Acres</b>	<u>Survey Required.</u>	<u>Applicant:</u> <b>11ELEVEN LLC</b>
	<u>Reason for the request:</u> <b>Daycare Center</b>		<u>Address:</u> <b>7069 APPLEWOOD DR.,</b>



**DESCRIPTION:** The applicant is owner/operator of Bright Beginnings Day School and is requesting approval of a Conditional Use Permit (CUP) for a Daycare Center for no more than 8 children under the age of 12. The daycare would be located in the existing single family residence located at 7069 Applewood Dr.

**OBSERVATIONS/ FACTUAL INFORMATION:** The 0.82 acre property is zoned SFR-08 (Single Family Residential) and current use is single family residential. Surrounding parcels are also zoned SFR-08 and uses are also single family residential. The Holy Name Catholic Center borders the property to the north. The property is located in the Applewood Hill subdivision which consists of 41 lots with Applewood Drive providing access to Junction Road. The subdivision is effectively a “town island” surrounded by the city of Madison. The subject property is served by private well and septic. There appear to be mature trees lining the western property line as well as portions of the eastern property line. There are two access points for the driveway onto Applewood Drive.

Small, in-home childcare operations serving 8 or fewer children are addressed under **Wisconsin Statutes § 66.1017**. The statute limits local regulation of such operations. A municipality cannot, “...prevent a family child care home from being located in a zoned district in which a single-family residence is a permitted use.” The Wisconsin Department of Children and Families licenses small daycares as Family Child Care Homes.

**66.1017 Family child care homes.**

(1) In this section:

(a) "Family child care 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.

(b) "Municipality" means a county, city, village or town.

(2) No municipality may prevent a family child care 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 child care 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 child care home the zoning regulations applicable to other dwellings in the zoning district in which it is located.

History: 1983 a. 193; 1995 a. 27 s. 9126 (19); 1999 a. 150 s. 361; Stats. 1999 s. 66.1017; 2007 a. 20; 2009 a. 185.

Dane County Ordinance 10.004(50) defines Day Care Center as, "A place or home which provides care for eight (8) or more children."

Day care centers are listed as a conditional use in the SFR-08 zoning district.

**TOWN:** The town has not taken action on the petition and it appears they may not do so. The town action report included a notation that states, "The Town Board moved to take no action... and to refer matter to Dane County for their interpretation of their zoning code..."

**STAFF:** As noted above, state law places limitations on the ability of local units of government to regulate small daycare operations providing care for not more than 8 children. The applicant has provided additional information, including a copy of the state license required under state statute 48.65. The county ordinance may be at odds with the state statute and it appears the county may be obliged to grant a permit to a properly licensed daycare facility providing care to no more than 8 children.

Staff is aware of significant opposition to the proposal from neighboring residents. In accordance with the ZLR Committee rules and procedures, staff recommends postponement of the petition at the October 26<sup>th</sup> public hearing due to the anticipated opposition.

If you have any questions or comments please contact Senior Planner Curt Kodl at (608) 266-4183 or [kodl@countyofdane.com](mailto:kodl@countyofdane.com)

**11/9/2021 Staff Update:** On 10/26/2021 ZLR postponed action in part to get clarification of the issue from Corporation Counsel. On 10/27 Zoning Administrator Lane forwarded the questions to Dave Gault in Corporation Counsel who formally responded on 11/2. The opinion stated was to approve the CUP with only 2 conditions, please see the letter from Mr. Gault for the complete opinion.

Per that opinion, staff suggests approval of the CUP with the following 2 conditions:

1. The Child care shall be for no more than 8 children, and
2. That a license from the department and children and families under Wis. Stat. §48.65 shall be maintained.



## OFFICE OF THE CORPORATION COUNSEL

Carlos Pabellón, Interim Corporation Counsel

Eve M. Dorman, Legal Director of Permanency Planning  
Vue Yang, Legal Director of the Child Support Agency

November 2, 2021

Mr. Roger Lane  
Dane County Zoning Administrator  
Room 116, City-County Building  
Madison, WI 53703

RE: Family Child Care Homes

Assistant Corporation Counsels

Claire Altschuler  
Andrea Brendemuehl  
Scott D. Drummond  
David R. Gault  
Gary Gomez  
Shawna L. Guinn  
Dyann L. Hafner  
Jane A. Jacobs  
Mary M. Kasperek  
Signé Mbainai  
Kelly S. Nesvacil  
Andra L. Nollendorfs  
Dawn M. Peters  
Amanda J. Ramaker  
Susan H. Rauti  
John C. Talis  
Amy B. F. Tutwiler  
Michelle R. Wagner

Dear Mr. Lane:

The Zoning and Land Regulation (ZLR) Committee has posed three questions regarding CUP #2533, regarding a Family Child Care Home in a single family residence in the SFR-08 Zoning District. State law requires that the County permit such use for 8 or fewer children if located in a district in which single family residences are permitted, and the facility is licensed by the State. It is my understanding that all of those requirements are met. Therefore, it is my opinion that ZLR should grant the CUP application.

Wis. Stat. §66.1017(1)(a) defines a “family child care home” as “a dwelling licensed as a child care center by the department of children and families under s. 48.65 where child care is provided for not more than 8 children.” Sub (2) then states: “No municipality may prevent a family child care home from being located in a zoning district in which a single-family residence is a permitted use. No municipality may establish standards or requirements for family child care homes that are different from the licensing standards established under s. 48.65.”

A single-family residence is a permitted use in the SFR-08 district. The applicant’s proposed use is licensed by the state pursuant to Wis. Stat. §48.65, and the proposed use is for no more than 8 children. In my opinion Wis. Stat. §66.1017 requires the County to grant a CUP for a family child care home under these circumstance. Furthermore, the only conditions that can be required are those mentioned in the statute; 1) child care for no more than 8 children, and 2) that a license from the department and children and families under Wis. Stat. §48.65 be maintained.

Please contact me if I can provide additional information on this matter.

Sincerely,

*David R. Gault*

David R. Gault

Assistant Corporation Counsel