

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION
2023-001**

DECISION

Application:	Day Care Center for 16 Children
Applicant:	Esprirales Montessori Bilingual, LLC
Opposition:	Mr. Chuckwudi Perry
Hearing Date:	March 20, 2024
Decision Date:	July 17, 2024
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF REQUEST

- (1) Special Exception 2023-001 is a request to operate a Day Care Center for 16 Children within 966 square feet of a single-family detached residence on a 17,399-square-foot parcel located in the RSF-95 (Residential Single-Family 95) Zone, identified as 7207 Hitching Post Lane, Hyattsville, Maryland. The property lies within the municipal boundaries of the City of Hyattsville.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 4)
- (3) Mr. Chuckwudi Perry appeared in opposition to the request.
- (4) At the conclusion of the hearing, the record was left open to allow Applicant to submit additional items. The last of these items, a State Ethics Affidavit, was submitted on June 17, 2024, and the record was closed at that time.¹

FINDINGS OF FACT

Subject Property

- (1) The subject property is located on a dead-end street, which serves a total of five single-family detached residences. The property is improved with a dwelling, driveway, and parallel parking made with permeable pavers. (Exhibits 12 and 17)

¹ The record consists of 47 Exhibits and the transcript of testimony from one hearing. Per state law, the decision could not be released until at least 30 days after receipt of all State Ethics affidavits from all Applicants and owners of the subject property. As a result, it is being released beyond the 100-day limit mandated in the Zoning Ordinance and the Regional District Act.

(2) The subject property has an approved standard letter of exemption from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance that is valid until September 2025. (Exhibit 4, p. 4 and Exhibit 8) It is also exempt from the requirements of the Prince George's County Tree Canopy Coverage Ordinance pursuant to Section 25-127 (b) of the Prince George's County Code.

Surrounding Property/Neighborhood

(3) The neighborhood is defined by the following boundaries:

- North – University Boulevard
- South – Belcrest Road and Toledo Road
- East – Adelphi Road
- West – West Park Drive

(4) The following uses surround the subject property:

- North – Single-family dwellings in RSF-95 Zone
- South – Single-family dwellings in the RSF-95 Zone, and undeveloped land in the RSF-A Zone
- East – Single-family dwellings in the RSF-95 Zone
- West – Single-family dwellings in the RSF-95 Zone, including the Hitching Post Hill Historic Site (68-001)

Sector Plan/Zoning/General Plan

(5) The subject property lies within an area governed by the 1994 Approved Master Plan for Planning Area 68, and the Application's consistency with this Plan is addressed below by the Technical Staff.

(6) The 2014 General Plan ("Plan Prince George's 2035") placed the property in the Established Communities. The vision for the Established Communities encourages "context-sensitive infill and low-to medium-density development." (2014 General Plan, Prince George's 2035, p.16) The Application's consistency with the General Plan is also addressed below.

Applicant's Request

(7) The Applicant, Espirales Montessori Bilingual, LLC is certified by the State Department of Assessments and Taxation to conduct business within Maryland. (Exhibit 21) HPL Holdings, LLC owns the subject property and has also been issued a State Department of Assessment and Taxation certificate to conduct business within Maryland. (Exhibit 20)

(8) Espirales Montessori Bilingual Childcare Center (“Espirales”) has been issued a certificate of registration by the Maryland Department of Education and a Certificate of Occupancy by Prince George’s County, which authorize it to operate a Family Day Care Center for up to eight (8) children in the Simasek’s home. (Exhibits 24 and 25) (T.86) At the time of the hearing, there were seven children enrolled, including their daughter. Mrs. Simasek is a certified Montessori teacher who provides bilingual education to infants and children three months to four years of age. Espirales has proven to be a success in the neighborhood, as there is a waitlist. Applicant wishes to lease the subject property to relocate the Day Care Center, allow it to grow in the same neighborhood, and serve the families currently enrolled. (T.89) The new location is “a stone’s throw” from the Simasek’s home. (T. 86)

(9) The Day Care Center will only enroll a maximum of 16 children, supervised by three employees. It will operate within the 966-square-foot first-floor area of the structure formerly used as a dwelling. The basement will not be utilized. (T. 92-93) Applicant submitted a floor plan, and there will be no interior changes to the structure. (Exhibit 27; T. 91) There is an existing 6-foot-tall wooden fence along the northern property line. Applicant intends to provide a 3,480-square-foot play area enclosed by a fence four (4) feet in height made of pressure-treated wood. The outdoor play area will only be used during daylight hours. There is no proposed signage for the use. (T. 87, 107-108) Applicant provided several photographs that accurately depict the exterior of the structure and the property, including the permeable pavers for parking and the area to be used as the play area. (Exhibits 26(a) –(k); T. 96-103)

(10) The Day Care Center will be open Monday through Friday from 7:30 a.m. to 5:00 p.m., but there may be before-and-after care as necessary, which will expand the hours to 7:00 a.m. to 6:00 p.m. (T. 113). Parents are expected to drop off and pick up the children in a staggered manner between 7:30 and 9:00 AM and 4:00 and 5:00 PM, respectively. This should reduce the impact of traffic in the immediate area.

(11) Mr. Simasek testified as to the few changes to be made to the subject property:

[W]e’re proposing four basic changes. One will be additional plantings along the ... edges of the property line to meet the buffer yard requirements. So, that will include some shade trees and shrubs.

An additional change will be a 4[-]foot wooden fence within the property line to provide the requirement for a fenced outdoor play area that will be well-shaded and ... safe for the children. Another change will be to pave the driveway and include an ADA[-]compliant access aisle from that ... driveway.

And along the lines of ADA compliance to build a wooden ramp up to the stoop ... to enable somebody in a wheelchair, or... even families pushing a stroller to be able to get in the door, there will be a wooden ramp that will come out and right from the driveway [to] the walkway. They’ll be able to enter the house. So, those are the four basic changes.

(T. 88)

(12) Kelley Okleson, a licensed landscape architect, prepared the Special Exception Site Plan and testified on Applicant's behalf. The Site Plan provides a 29-foot-wide buffer yard to the south of the site, a 19-foot-wide buffer yard to the north, and a 40-foot-wide buffer yard to the east. (Exhibit 17; T. 119-120). All landscaping requirements will be satisfied since Applicant is providing a 20-foot buffer yard on the south side of the property, a 40-foot buffer yard on the east side, and a 19-foot buffer yard on the north side. (T. 120) Ms. Okleson opined that the Site Plan addresses all specific requirements for the use set forth in Section 27-5402(x) since:

- A maximum of 16 children will be enrolled;
- The proposed play area will be 3,480 square feet, providing 217.5 square feet per child;
- The play area is located in the rear yard and will be enclosed by a four-foot-tall fence;
- The play area will have sufficient shade on sunny days and will only be used during daylight hours;
- The play area is located a minimum of 28 feet from any dwelling on an adjoining lot.
- 1.6 parking spaces are required, and 2.0 will be provided. One space is ADA-accessible and has a 5-foot-wide access aisle. There is also an ADA ramp into the facility;
- All required setbacks for the use exceed the minimum required, and
- The conditions will ensure that the Site Plan includes the location and use of all buildings on adjoining lots.

(T. 119-132)

(13) The People's Zoning Counsel requested that the Special Exception Site Plan be revised to include the topography of the area to ensure that the play area could be safely used by the children and would not require grading. (T. 132)

(14) Applicant agreed with all conditions of approval recommended by the Technical Staff. (T. 104)

(15) Several individuals testified in support of the request. Many had enrolled their children at the Simasek's daycare and were very impressed with the services provided, as the following testimonies note:

- "As a theater teaching artist ... [w]hen the pandemic hit, I suddenly was unemployed and I used the opportunity to... [create] experiences in neighbors' yards for a safe and physically distant art learning experience.... Espirales Montessori Bilingual, LLC has been [an] integral part of [my] journey supporting our expansion and growth....

[W]e have conducted weekly free sessions for early learners and their caretakers at the park.... [We have] collaborated ...on several

summer programs with the aim of nurturing stewards of the Anacostia Watershed. Working with [Applicant] has been a fantastic experience and a dream come true....” (T.22-24)

- “The work they are doing to provide affordable, high-quality, local day care is so valuable to the community, especially in an area like Hyattsville where there really is a shortage of affordable daycare.... Espirales cared for my daughter for two years.... Claudia and the other dedicated staff members are nurturing, caring and provide such an enriching environment for young children. I know of multiple Hyattsville families that are on the Espirales wait list and hoping to get in if the daycare is able to expand.” (T.27-28)
- “Espirales is a woman-owned and operated small business providing...an invaluable service to our community at an affordable rate. I’ve had numerous conversations with my neighbors about this proposed extension, and have not heard a single negative comment... I also believe that moving the daycare center to Hitching Post Lane will provide a slight degree of better safety for the children, as Hitching Post Lane is a less well-traveled street than Gumwood, which is somewhat of a through street in our neighborhood, and we’ve had issues with speeding and other careless driving.” (T.29-30)
- “As someone who has a PhD in child development, I want to emphasize the critical importance of these early social learning experiences ... and cannot say enough about how Espirales ... meets and exceeds these needs for young children in our community....” (T. 37)
- “I’ve been acquainted with Ms. Claudia Simasek for over 10 years. We’ve worked together, she [has cared] for my baby boy.... She’s very passionate about her work, ... about what she [does].... She loves showing her children in her daycare ... her culture and teach them about it too.... I am super excited about her expanding her business because ... I have a new baby that I would love to have in Claudia’s center if I have the chance....” (T. 39-40)
- “Espirales thoughtfully approaches its work with children and invests in the surrounding community.... She has also worked with other area businesses to cater meals for the children and parents, and so an investment in Espirales is an investment in the community overall. We know many families that are on the waiting list at Espirales ... as well as other daycares in the area, and there’s a severe gap between supply and demand for high-quality care in Hyattsville.

It [would] be a missed opportunity not to let this well-established daycare expand into a larger space in order to welcome more children and families....” (T. 45-46)

- “I’ve ... worked in cultural and historic resources management in Prince George’s County for more than 20 years as a private sector consultant....[T]he house on the property was constructed in 1917, according to county land records. The land was platted around the house in 1947 .. so the house is situated in a post war residential subdivision and all the neighboring houses [were] constructed in the 1940s and the 50s and the 60s....[T]he house at 7207 Hitching Post Lane is one of only three or four dwellings throughout the area of University Hills today that were built ... by 1938. And none of those other houses are still standing. So, [the subject property] is the only pre-war house and the oldest ... other than Ash Hill nearby, constructed in 1840. So, ... this very modest square footage of the house makes the property a target for tear down and redevelopment....[T]he present owners have invested in saving the house and averting the tear down and redevelopment of the property.... [T]he proposed use retains the existing building and the neighborhood does not lose this diversity of housing built in different historical periods.... It is an appropriate and sustainable use of the existing building ... and it’s the definition of adaptive reuse that I’m happy to see....” (T. 162-165)

Opposition’s concerns

(16) Mr. Perry appeared in opposition to the request. Although he cross-examined a few witnesses, he did not offer any testimony. Most of Mr. Perry’s questions focused on the ability of the local streets to handle any additional traffic.

City, Technical Staff and Other Agency Comment

(17) The City of Hyattsville noted no objection to the Applicant’s request for a daycare center for “16 infants and children (ages 6 months-4 years) to be cared for by three certified childcare providers within an existing one-story dwelling, along with 5,000 sf of fenced outdoor play area....” (Exhibit 4, Backup p. 1)

(18) The Department of Permitting, Inspections and Enforcement (“DPIE”) had no objection to the Application but did note the probability that Applicant would either need a Site Development Concept or a Site Development Grading Permit, and an Infill Commercial Case depending on the limit of disturbance for all proposed site work, including the building or outdoor play area. (Exhibit 4, Backup pp. 10-11)

(19) The Maryland National Capital Park and Planning Commission (“MNCPPC”) Transportation Planning Section opined that “[n]either the [Master Plan of Transportation] nor [the] 1994 *Approved Master Plan for Planning Area 68* recommends any pedestrian or bicycle routes adjacent to the property.” (Exhibit 4, Backup p. 2) It also stated that there are no master plan recommendations or frontage improvements required by the Application. The proposed 16-student day care will only generate an additional 13 AM and PM peak hour vehicular trips; due to this minimal amount, no traffic study is required. The Transportation Planning Section recommended approval reasoning as follows:

The latest site plan includes an [ADA-compliant] access ramp to the existing house to accommodate all users. The site also includes two parking spaces and space available for vehicular egress from the site, minimizing the impact of traffic flow on adjacent street[s]. Staff finds that the spaces allotted for vehicular egress [are] acceptable....

In consideration of the scope of this application, the Transportation Planning Section recommends approval ... with no conditions.

(Exhibit 4, Backup pp. 3-4)

(20) The MNCPPC Environmental Planning Section reviewed the request and recommended approval with no conditions, reasoning as follows:

The ... application proposes to utilize an existing dwelling unit as a childcare facility with an enclosed play area. The project is subject to the current regulations of Subtitle 25 (Woodland and Wildlife Habitat Conservation Ordinance) and Subtitle 27 (Zoning Ordinance). The application is not subject to a Natural Resource Inventory (NRI) Equivalency Letter as the [limit] of disturbance is 0 square feet. An approved standard letter of exemption from the Woodland Conservation Ordinance (S-131-2023) which is valid until September 6, 2025, was submitted for the proposed project....

This site is exempt from stormwater approval as the site is less than 40,000 square feet in size and is proposing less than 5,000 square feet of ground disturbance....

No regulated environmental features (REF) are located on-site, and the site has already been graded and improved with a single-family detached residence....

(Exhibit 4, Backup p. 14)

(21) The MNCPPC Subdivision Section noted that the subject property, known as Lot 5, Block A of Hitching Post Hill, was recorded in the Prince George’s County Land Records in 1947 and is improved with a building previously used as a single-family dwelling. It recommended approval with one condition (related to the revision of a leader line for a bearing and distance label), reasoning as follows:

The existing lot was recorded on a final plat prior to October 27, 1970. Lot 5 has never been the subject of a preliminary plan of subdivision. No additions to the structure are proposed, and the cumulative development on the site will not exceed 5,000 square feet of gross floor area (GFA). The GFA of the daycare will be 966 square feet, as stated on

the [Special Exception] site plan. The proposed development will not generate more than 50 trips, as confirmed by the Transportation Planning Section. Therefore, pursuant to Section 24-3402(b)(1)(B) of the Subdivision Regulations, the proposed development will not require [the] filing of a new preliminary plan of subdivision or final plat....

This property is not required to have an approved [certificate of adequacy]in accordance with Section 24-4503 of the Subdivision Regulations because the proposed development is exempt from filling a [preliminary plan of subdivision] and final plat....

(Exhibit 4, Backup p. 12)

(22) The MNCPPC Community Planning Division provided the following comment on the request:

The property is located [on the] eastside of Hitching Post Lane, a local street that terminates approximately 150 feet south of Gumwood Drive, a local thoroughfare. The subject property is in the midst of a largely developed single family residential neighborhood....

This application is in the Established Communities Growth Policy Area. Plan 2035 classifies existing residential neighborhoods and commercial areas served by public water and sewer outside of the Regional Transit Districts and Local Centers, as Established Communities. Established Communities are most appropriate for context-sensitive infill and low-to medium-density development.' (p. 20). Plan 2035 considers it 'vital' that the County 'support its Established Communities.' (p. 75). In addition, the plan notes that, 'Established Communities make up the County's heart – its established neighborhoods, municipalities, and unincorporated areas outside designated centers,' (p. 106) and 'Urban design is equally relevant to the planning and design of urban and suburban Established Communities as it is to rural areas,' (p. 196).

To meet these objectives, Plan 2035 includes the following policy and strategies....

'Strengthen and enhance existing residential areas and neighborhoods in the Plan 2035 Established Communities.'(page 115)....

The 1994 *Approved Master Plan for Planning Area 68* recommends Multifamily Residential land use on the subject property [(Page 9, Map 9)]. The proposed childcare facility is for commercial use in an existing single family residential neighborhood. The proposed use will generate more traffic in an established residential neighborhood. The neighborhood Character is largely developed single family residential.

The ... plan recommends the following goals and objectives: ...

Protect, maintain, and enhance area neighborhoods to further foster safe and stable residential environments....

All land uses within residential areas shall be physically and visually compatible with the neighborhood character. [(page 16)]....

Reduce the volume of traffic traveling through or parking on residential streets. ([page 19])....

The proposed use could increase the volume of traffic on the residential streets. The application conforms to the goals, policies, and strategies of the ... plan. The proposed use should continue to reinforce the established character of the area neighborhoods. It is important the proposal is visually and functionally compatible with the Approved Master Plan for Planning Area 68....

(Exhibit 4, Backup pp. 5-6)

(23) The MNCPPC Historic Preservation Section reviewed the Application and provided the following comment:

The subject site is adjacent to the Hitching Post Hill Historic Site (68-001). Hitching Post Hill was built by Robert Clark, an Englishman who had acquired the land from George Calvert in 1836. The mansion was purchased in 1875 by General Edward F. Beale, who entertained Presidents Grant, Cleveland, and Buffalo Bill Cody here. A large, two-story brick mansion with a square plan, dentilled cornice, a bracketed cupola, and Greek Revival trim. The house is a unique example of its type in Prince George's County.

The 1994 *Approved Master Plan for Planning Area 68* contains goals and policies related to Historic Preservation. However, these are not specific to the subject site or applicable to the proposed development. The proposed change in use and installation of the 4-foot-tall wood fence will have minimal impact on the adjacent Historic Site. The proposed fence will not affect any known prehistoric or historic archeological resources. Historic Preservation Section staff recommend approval of [Special Exception]-2022-001, Espirales Montessori Bilingual Childcare, with no conditions.

(Exhibit 4, Backup p. 8)

(24) The Technical Staff opined that the request satisfied all applicable requirements of the Zoning Ordinance, and recommended approval with conditions, reasoning as follows:

Staff find that the proposed use will not negatively impact the health, safety, and welfare of the public. The proposed hours of operation for the day care center are Monday through Friday, from 7:30 a.m. to 5:00 p.m. The outdoor play area will be fenced and buffered from adjoining single-family uses.

The proposed use is compatible with the surrounding land uses in that the proposed use will maintain the architectural character of the existing single-family dwellings. As previously mentioned, the outdoor play area will be fenced and buffered from adjoining uses. The day care center for children will provide a much-needed service to the surrounding neighborhood....

The proposed use is in conformance with the requirements... set forth in Subtitle 27....

The 2014 *Plan Prince George's 2035 Approved General Plan* (Plan 2035) classifies this application as located within the Established Communities Growth Policy Area. These areas are most appropriate for context-sensitive infill and low-to medium-density development. The application is consistent with the goals, policies, and strategies of Plan 2035, because the proposed use provides a much-needed service within the context of supporting the existing community.

The 1994 *Planning Area 68 Approved Master Plan and [Sectional] Map Amendment* (master plan) recommends ... the ... [goal to p]rotect, maintain, and enhance area neighborhoods to further foster safe and stable residential environments. The proposed use will align with the goal ... by offering a much-needed service and creating a safe and stable environment for the residents. [The Master plan includes the objectives to have a]land uses within residential areas ... physically and visually compatible with the neighborhood character ... [and to r]educe the volume of traffic traveling through or parking on residential streets.... The proposed application makes no exterior changes to the existing single-family dwelling. The only improvements will consist of a handicap-accessible parking space and ramp, and the addition of a fenced play area.... Although the proposed use may increase the volume of traffic, the total new peak-hour trips will total 13 a.m. and 13 p.m. Required parking is provided on site, therefore, no parking will be required on the residential streets....

Staff find that the proposed use of a day care center for children will not adversely affect the health, safety, or welfare of residents or workers in the area...[nor] **be detrimental to the use or development of adjacent properties or the general neighborhood[.]**

The general neighborhood is residential. The proposed use does not propose any changes to the exterior dwelling and will be adequately buffered from adjacent uses....

No Type 2 tree conservation plan is required with this application....

The project is subject to the current regulations of Subtitle 25 ... and Subtitle 27.... The application is not subject to a Natural Resources Inventory equivalency letter as the limit of disturbance is [zero] square feet. Approved standard LOE from the Woodland Conservation Ordinance which is valid until September 6, 2025, was submitted for the proposed project.

No regulated environmental features are located on-site, and the site has already been graded and improved with a single-family detached residence....

[T]he proposed development is not located within the Chesapeake Bay Critical Area Overlay ... Zone....

The subject application demonstrates conformance with the subsections regarding setbacks, landscaping, buffering, and screening.... The submitted site plan shows all building setbacks are measured from the boundary line of the requested [Special Exception].... The subject application does not request any amendments to the landscaping, buffering, and screening requirements ...[and]

has been evaluated according to the requirements of the 2018 *Prince George's County Landscape Manual*....

The proposed outdoor play area is 3,480 square feet. This provides 217.5 square feet per child, well above the minimum requirement.... The proposed outdoor play area is at least 25 feet from any dwelling on an adjoining lot and is enclosed by a proposed 4-foot-high fence.... Staff finds that the proposed setback and fence height is adequate to protect the health and safety of the children utilizing the play area... The proposed outdoor play area is located on the property and is safely accessible.... The outdoor play area is located on the property and is safely accessible.... The outdoor play area is sufficiently shaded by existing trees.... The outdoor play area will not be used before or after daylight hours.... The day care hours of operation are from 7:30 a.m. to 5:00 p.m.... Proposed enrollment for this application is 16 children and is noted on the site plan.... The site plan shows the location and uses of all buildings located on adjoining lots [(once conditions are addressed)].... The location and size of the outdoor play area [are] shown on the site plan....

In accordance with the parking and loading regulations contained in Section 27-6300 of the Zoning Ordinance, a day care center for children requires 1.0 spaces per 10 children. This application proposes a limit of 16 children and, therefore, would require two parking spaces. The applicant is proposing two spaces, one of which will be handicapped-accessible. Transportation Planning staff found that, despite the lack of a drive aisle, the spaces allotted for vehicular egress are acceptable, to prevent backing directly onto the street. The Hyattsville City Council reviewed the application and voted in support of the request. No loading spaces are required for this use....

This [Special Exception] proposes the installation of a 4-foot-high fence to enclose the outdoor play area.... This fence meets the requirements of Section 27-6600....

This [Special Exception] will have minimal impact on surrounding uses. The proposed use will make no changes to the exterior of the existing detached single-family dwelling, apart from the addition of a handicap-accessible ramp. As such, it will protect the character of the existing neighborhood while providing a much-needed service to the community....

No signage is proposed with this application...

Per Section 25-127 of the Prince George's County Code, is exempt from the Prince George's County Tree Canopy Coverage Ordinance....

Based on the applicant's statement of justification, the analysis contained in the technical staff report, associated referrals, and materials in the record, the applicant has demonstrated conformance with the required special exception findings Staff find that the proposed application satisfies the requirements for approval, and that the application will be in conformance with the Prince George's County Zoning Ordinance requirements....

APPLICABLE LAW

(1) The instant request must satisfy the criteria set forth in Sections 27-3604 (e) and 27-5402(x) of the Zoning Ordinance. These Sections provide as follows:

27-3604. Special Exception

(e) Required Findings

(1) A special exception may only be approved if:

(A) The proposed use and site plan are in harmony with the purposes of this Subtitle;

(B) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

(C) The proposed use shall be consistent with the General Plan and shall conform with the relevant goals, policies, and strategies of the applicable Area Master Plan, Sector Plan, or Functional Master Plan for the subject property and its surrounding area;

(D) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(E) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(F) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

(G) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirements of Subtitle 24:Subdivision Regulations.

(2) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay (CBCAO) Zone, a special exception shall not be granted:

(A) Where the existing lot coverage in the CBCAO exceeds that allowed by this Subtitle, or

(B) Where granting the special exception would result in a net increase in the existing lot coverage in the CBCAO.

Section 27-5402. Additional Requirements for Specific Special Exception Uses

(x) Day Care Center for Children

(1) A day care center for children may be permitted, subject to the following:

- (A) The District Council may specify the maximum number of children to be enrolled, which may not be increased by State or local health, education, or fire regulations;
- (B) An ample outdoor play or activity area shall be provided, in accordance with the following:
- (i) All outdoor play areas shall have at least seventy-five (75) square feet of play space per child for fifty percent (50%) of the licensed capacity or seventy-five (75) square feet per child for the total number of children to use the play area at one (1) time, whichever is greater;
 - (ii) All outdoor play areas shall be located at least twenty-five (25) feet from any dwelling on an adjoining lot, and shall be enclosed by a substantial wall or fence at least four (4) feet in height;
 - (iii) A greater set back from adjacent properties or uses or a higher fence may be required by the District Council if it determines that it is needed to protect the health and safety of the children utilizing the play area;
 - (iv) Any off-premises outdoor play or activity area shall be located in proximity to the day care center, and shall be safely accessible without crossing (at grade) any hazardous area, such as a street or driveway;
 - (v) The play area shall contain sufficient shade during the warmer months to afford protection from the sun;
 - (vi) Sufficient lighting shall be provided on the play area if it is used before or after daylight hours to [ensure] safe operation of the area; and
 - (vii) Outdoor play shall be limited to the hours between 7 a.m. and 9 p.m.;
- (C) In the CGO, CS, IE, and IH zones, a special exception for a day care center for children shall be allowed only if the Council finds that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed use.
- (2) In addition to the requirements of Section 27-3604(c), Special Exception Submittal Requirements, the site plan shall show:
- (A) The proposed enrollment;
 - (B) The location and use of all buildings located on adjoining lots; and
 - (C) The location and size of outdoor play or activity areas.
- (3) Any day care center for children which has, on or before the effective date of this Ordinance, fully complied with the provisions of this Subtitle in effect at the time the use commenced shall not be required to meet the requirements of this Section, provided that the use has not been expanded or changed since that time. Any expansion or change shall be governed by the provisions of this Section, or of Section 27-5102(d)(2)(A), Day Care Center for Children.

- (4) For the purposes of this Section, enrollment shall mean the largest number of children enrolled in the center in any one (1) session.

(2) The Special Exception Site Plan must measure all setbacks from the boundary lines of the Special Exception and satisfy all applicable provisions of the Landscape Manual. (Sections 27-5401 (b) and (c)) The Special Exception Site Plan must also satisfy development standards in Part 6 of the Zoning Ordinance pertaining to off-street parking and loading, landscaping, fencing and walls, neighborhood compatibility and signage.

(3) Finally, the Application should comport with the applicable purposes of the Zoning Ordinance, in general, as well as the purposes of the RSF-95 Zone, in particular. These are found in Sections 27-1300 and 27-4202 (a) and (d)(1), which provide as follows:

SEC. 27-1300 GENERAL PURPOSE AND INTENT

The purposes of the Zoning Ordinance are to:

- (a) Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;
- (b) Implement the General Plan, Area Master Plans, Sector Plans, and Functional Master Plans;
- (c) Promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;
- (d) Guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;
- (e) Support pedestrian-friendly, higher-intensity, mixed-use development in the appropriate locations, including support and emphasis upon a framework for multi-modal forms of mobility for pedestrians, bicyclists, transit users, and motorists;
- (f) Support redevelopment and infill development within established areas of the County;
- (g) Provide adequate light, air, and privacy;
- (h) Encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (i) Ensure a high level of quality development in general, for the benefit of all citizens and residents, throughout the County;
- (j) Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (k) Protect the established character of residential communities and neighborhoods;
- (l) Protect the County from fire, flood, panic, and other dangers;
- (m) Provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (n) Prevent the overcrowding of land;
- (o) Protect the rural character of the County in designated, appropriate locations;

- (p) Ensure the provision of open space to protect scenic beauty and the natural features of the County, as well as provide adequate recreational space;
- (q) Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features; and
- (r) Protect and conserve the agricultural industry and natural resources.

27-4202. Residential Base Zones

(a) General Purposes of Residential Base Zones

(1) The Residential base zones established in this Section are intended to provide a comfortable, healthy, safe, and pleasant environment in which to live and recreate. More specifically, they are intended to:

(2) Ensure adequate light, air, privacy, and open space for each dwelling, and protect residents from the negative effects of noise, excessive population density, flooding, and other significant adverse environmental impacts;

(3) Ensure protection from fires, explosions, toxic fumes and substances, and other public safety hazards;

(4) Provide for residential housing choice, affordability, and diversity with varying housing densities, types, and designs;

(5) Provide for safe and efficient vehicular, bicycle, and pedestrian access and circulation, and neighborhoods that promote multiple forms of mobility;

(6) Provide for the public services and facilities needed to serve residential development;

(7) Protect the existing character of lands in the residential zones from incompatible development;

(8) Accommodate new infill development and redevelopment that is consistent with the context and the character of the residential zone in which it is located; and

(9) Promote sustainable development in terms of energy efficiency and conservation, greenhouse gas reductions, food security, materials recycling, and similar sustainability goals.

(d) Residential, Single-Family-95 (RSF-95) Zone

(1) Purposes

The purposes of the Residential, Single-Family-95 (RSF-95) Zone are:

(A) To provide for and encourage variation in the size, shape, and width of single-family detached residential subdivision lots, in order to better utilize the natural terrain;

(B) To facilitate the planning of single-family residential developments with medium-sized lots and dwellings of various sizes and styles;

(C) To encourage the preservation of trees and open spaces; and

- (D) To prevent soil erosion and stream valley flooding.

Special Exceptions

- (4) The Supreme Court of Maryland (formerly the “Court of Appeals”) provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1,11-12, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

- (5) The test in Schultz has been applied over the decades, but there has been clarification as to what was meant by “the neighborhood,” as noted in Attar v. DMS Tollgate, LLC, 451 Md. 272, 280 (2017):

[Under the County’s law], a special exception use is prohibited if it is ‘detrimental to the health, safety or general welfare of the locality involved.’ In Schultz v. Pritts, we held that an applicant for a special exception ‘does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood ... he has met his burden.’ 291 Md. 1, 11, 432 A. 2d 1319, 1325 (1981).

We further held in Montgomery County v. Butler, “the phrase ‘detriment to the neighborhood’ implies necessarily that the Board’s task is to determine if there is or likely will be a detriment to the *surrounding properties*.” 417 Md. 271, 305, 9 A. 3d 824, 844 (2010) (emphasis added). Thus, we held that, within the context of a special exception, the ‘neighborhood’ means ‘the surrounding properties’”

- (6) Finally, absent language in the Code to the contrary, the special exception use is “conceptually ... compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.” People’s Counsel for Baltimore County v. Loyola College Md., 406 Md. 54, 106 (2008)

CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-1300. The instant Application satisfies the following purposes for the reasons provided:

Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the county

The Applicant is already providing this service in the community. There is a waitlist for parents clamoring to send their children to the Day Care Center. Several residents testified in support of the Application because they believe the service provided by Applicant at the existing daycare to be exceptional. Providing daycare in the community and in a manner that quells the concerns of parents who must leave their children in the care of others satisfies this purpose.

Implement the General Plan, Area Master Plans, Sector Plans, and Functional Master Plans

The various Plans do not specifically address this use at this location. However, the 2014 General Plan places the site within the Established Communities Growth Policy Area, and identifies this area as one most appropriate for context-sensitive infill and low-to medium-density development. This limited use of an existing vacant home will not detract from the character of the neighborhood and, therefore, qualifies as context-sensitive infill development.

Promote the conversion, creation, and expansion of communities that will be developed with adequate public facilities and services

The use should not impact any public facilities as no one will reside in the home, and the MNCPPC Transportation Planning Section noted that the use will not attract many AM or PM peak hour vehicular trips.

Encourage economic development activities that provide desirable employment and a broad, protected tax base

The use will allow a small business within the community to slightly expand and thrive, thereby furthering the purpose.

Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development

The use will operate in an existing single-family detached dwelling, although no one will reside therein. No changes are proposed to the building. The adjoining homes will not be impacted by any encroachment. The outdoor play area will be fenced and only used

during daylight hours. There will be on-site parking to minimize the number of cars that may be using street parking spaces while dropping off/picking up the children. Accordingly, this purpose is satisfied.

Prevent the overcrowding of land

Ensure the provision of open space to protect scenic beauty and the natural features of the County

Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic visits, and other similar features

These purposes are furthered for the same reasons noted above.

(2) The Application satisfies the applicable purposes of the Residential Base Zones and the RSF-95 Zone found in Sections 27-4202 (a) and (d), *supra*, for the following reasons:

- The adaptive use of an existing dwelling with no changes to the structure or the various required setbacks will ensure the provision of adequate light, air, privacy, and open space for the adjacent dwellings, and protect residents from the negative effects of noise, excessive population density, flooding, and other significant adverse impacts. It will also ensure protection from fires, explosions, toxic fumes and substances, and other public safety hazards.
- A small day care center in the middle of a residential community is the type of infill use that protects the existing character of lands from incompatible development and is consistent with the character of the neighborhood.
- This adaptive use will not change the exterior of the site to remove trees, grade, or otherwise affect the soil, and therefore, can be found to encourage the preservation of trees and open spaces and prevent soil erosion and stream valley flooding.

(3) The request satisfies the criteria for approving all Special Exceptions found in Section 27-3604 (e), *supra*, since:

- The Day Care Center and Special Exception Site Plan are in harmony with the applicable purposes of the Zoning Ordinance (as noted above);
- The use does not require the approval of a variance or departure and, once the conditions of approval are satisfied, will be in conformance with all the applicable requirements and regulations of the Zoning Ordinance;

- The request is consistent with the 2014 General Plan and the Approved 1994 Master Plan for Planning Area 68 and Sectional Map Amendment since the General Plan recommends context-sensitive infill development and the Day Care Center would qualify as such, and the Master Plan goals/objectives of fostering safe and stable residential environments and ensuring that all land uses within residential areas be physically and visually compatible with the character of the neighborhood are furthered by installing a use so revered in that area and so necessary for growing families, and by using an otherwise empty residence in a manner that will remain physically and aesthetically compatible with the surrounding neighborhood.
- The use is providing a needed service to that area; the increase in traffic during the peak hours will be minimal; no changes to the existing site will occur other than fencing, installation of a small playground area, and pavers for parking of an additional vehicle; and no variances or departures are requested. Therefore, the use will not adversely affect the health, safety, or welfare of residents or workers in the area, nor be detrimental to the use or development of adjacent properties or the general neighborhood.
- No Type 2 Tree Conservation Plan is required with this Application.
- The Application has been developed with a single-family residence since the earlier part of the last century. It is not subject to the Natural Resources Inventory requirements since the limits of disturbance of land is zero square feet, an approved letter of exemption from the Woodland and Wildlife Habitat Conservation Ordinance has been issued, and there are no regulated environmental features on site.
- The property does not lie within a Chesapeake Bay Critical Area Overlay Zone.

(4) The Application satisfies the general and specific criteria for the use set forth in Sections 27-5401 and 27-5402 of the Zoning Ordinance since:

- All setbacks shown on the Special Exception Site Plan are measured from the boundary lines of the requested Special Exception, and the development is in conformance with the requirements of the Landscape Manual once the condition below is addressed and no amendments to the requirements are requested.
- Applicant has provided 3,480 square feet of play area, which is approximately 217.5 square feet per child, in excess of the minimum requirement of 75 square feet per child.

- The outdoor play area is a minimum of 28 feet from any dwelling on an adjoining lot, and will be enclosed by a 4-foot-high fence. Given the location on a dead-end street with few residences these setbacks and fence height will be adequate to protect the health and safety of the children that may utilize the play area.
- The proposed outdoor play area will be located on the subject property.
- There are sufficient existing trees on site to shade the play area.
- The play area will only be used during daylight hours, between 7:00 a.m. and 6:00 p.m.
- The Special Exception Site Plan shows the proposed enrollment of 16 children. Once the condition is addressed, it will show the location and use of all buildings on adjoining lots. It also shows the location and size of the outdoor play area.

(5) Pursuant to Section 27-3402 the instant request must address certain development standards found in Part 6 of the Zoning Ordinance. Section 27-6204 requires that the site plan include a circulation plan, and Section 27-6303 requires a parking plan. The instant request involves a very small structure and a relatively small lot. The Applicant did include circulation and parking information on the Site Plan, and these standards are therefore satisfied. The extra required parking space will be surfaced with pavers as allowed under Section 27-6304. Section 27-6305 requires 1 space per 10 children, and two are provided. Part 3 of the Zoning Ordinance requires adherence to the Landscape Manual, as discussed above - Section 27-6500 does as well, and the provisions of the Landscape Manual have been satisfied, once the condition is addressed. The fence around the play area, as depicted on the Site Plan, satisfies the applicable fencing requirements set forth in Section 27-6600, et.seq., relating to location, height, materials used, and gating. Neighborhood compatibility standards set forth in Section 27-61200 are not impacted by this limited use of an existing unoccupied dwelling, given the need for child care, the limited enrollment, and the limited hours. Finally, no signage is proposed, in part to limit any change to the residential character of the neighborhood, so Section 27-61500 is inapplicable.

(6) The record does not indicate that the use at this location in the RSF-95 Zone will adversely impact the residents or workers in the area in a manner greater than it would elsewhere within the neighborhood on similarly-zoned property. Accordingly, this Examiner finds that the Application can be granted once the conditions noted below are met.

DISPOSITION

Special Exception 2023-001 is Approved, subject to the following conditions:

1. Prior to certification of the Special Exception, the Special Exception Site Plan shall be revised as follows, and submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:

- a. Add the Special Exception Application Number (“SE-2023-001”) and outline the subject property in red. Insert “SE” and remove “SPE” wherever the latter has been included. Refer to the use as a “Day Care Center.”
- b. Add a Note for the hours of operation of the Day Care Center and the outdoor play area, consistent with the facts noted herein.
- c. Amend Note 4 to “Residential dwellings in the RSF-95 Zone.”
- d. Add dimensions for Americans with Disabilities Act parking and access aisle.
- e. Provide striping or other design feature to ensure that egress for the Americans with Disabilities Act parking space on-site does not interfere with the parallel parking space.
- f. Delineate the landscape buffer line. Revise Schedule 4.7-1 Note 10 to state, “Minimum width of landscape yard provided.”
- g. Show the building dimensions and height.
- h. Provide the width of all gates for the proposed fence.
- i. The use located to the east of the subject property shall be added.
- j. Show the center line of Hitching Post Lane.
- k. Revise the leader line for the “N 17°00’ 40” W 33.54” bearing and distance label on the southwestern property line so it is pointing at its associated property line on Lot 5, rather than at the front property line for neighboring Lot 4.

2. If required by the Prince George’s County Department of Permitting, Inspections and Enforcement (“DPIE”), provide an approved Stormwater Management Concept Plan prior to the issuance of any building permits. If DPIE does not require such approval, submit a letter to that effect to the Office of the Zoning Hearing Examiner for inclusion in the record.

[NOTE: The Special Exception Site Plan and Landscape Plan is Exhibit 17]