

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

SPECIAL EXCEPTION

2023-004

DECISION

Application:	Day Care Center for Children
Applicant:	Karen Williamson T/A First Learning Stages Day Care, LLC
Opposition:	N/A
Hearing Date:	September 18, 2024
Decision Date:	December 19, 2024
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

- (1) Special Exception 2023-004 is a request for permission to use approximately 0.35 acres of land in the CGO (Commercial, General and Office) Zone located at 1004 White Oak Drive, Oxon Hill, for a Day Care Center for Children.
- (2) At the conclusion of the evidentiary hearing, the record was left open for additional documents, upon receipt of all but one document the record was closed on November 4, 2024. The remaining document, the Certificate of Good Standing, will be a condition of approval of the instant Application. There are 27 exhibits in the record and 1 transcript.

FINDINGS

Subject Property

- (1) The Subject Property is located at 1004 White Oak Drive, Oxon Hill, Maryland, which is on the north side of White Oak Drive, 200 feet west of the intersection with Livingston Road. The Property is located on Tax Map 105 in Grid B2 and identified as Lot 30 of Livingston Park, in Plat Book BB 8 Plat 14, recorded in the Prince George's County Land Records in 1940. The Property is approximately 0.35 acres and is encumbered by an existing one-story, 1,352-square-foot brick building and associated paved parking. There are three parking spaces in front of the building, a two-way drive aisle to the east side of the building, and six parking spaces in the rear of the building. There is one Americans with Disabilities Act (ADA) van-accessible parking space included in the rear parking area. The site has three small sheds that are to be removed. An approximately 25-foot grass strip runs along the north rear Property line, separating it from the parking lot. The northeast corner of the lot has a grassed area that will be used for the proposed 1,500-square-foot outdoor play

area. This play area will be enclosed by a 6-foot-high wooden fence.

Neighborhood and Surrounding Uses

(2) The general neighborhood is a mix of residential and commercial properties. The neighborhood is bordered by Livingston Road to the east, Broderick Drive to the south, Maryland 210 (Indian Head Highway) to the west, and Oxon Hill Road to the north. The Applicants expert land planner, Mr. John Ferrente, concurs with this neighborhood. The immediate uses surrounding the Subject Property are as follows:

North - Vacant land owned by Potomac Electric Power Company in the RSF-65 (Residential, Single-Family-65) Zone.

East - A brick utility building owned by Potomac Electric Power Company in the RSF-65 Zone, a non-conforming single-family dwelling in the CGO Zone, and a day care center in the CGO Zone.

South – Single-family dwellings in the RSF-65 Zone and commercial properties in the CS (Commercial Service) Zone.

West - Single-family dwellings in the RSF-65 Zone.

History and Previous Approvals

(3) The Subject Property was recorded in the Prince George's County Land Records in 1940. Lot 30 was recorded on a final Plat, prior to October 27, 1970, and has never been the subject of a Preliminary Plan of Subdivision (PPS). There is no PPS approval for this site, and it has remained in its same platted configuration and acreage since it was recorded. The proposed use does not require the development of any additional square feet of gross floor area (GFA) and will not generate more than 50 trips. Therefore, a PPS or a new Final Plat is not required, in accordance with § 24-3402(b)(1)(C) of the Subdivision Regulations.

The Subject Application included a Stormwater Management (SWM) Site Development Concept Approval (44024-2024-INC) from the Prince George's County Department of Permitting, Inspections, and Enforcement (DPIE) that was approved on April 4, 2024, and expires on April 4, 2027. This approval came with four conditions that must be met prior to permit issuance.

Applicants' Proposal

(4) The subject Application is for a Special Exception for a Day Care Center for Children. The facility will care for a maximum of 20 children. The Day Care Center will have a 1,500-square-foot

outdoor, fenced play area. The Applicant's Statement Of Justification (SOJ) states that outdoor play shall be limited to the hours from 7:00 a.m. to 5:00 p.m.

BURDEN OF PROOF

(5) [T]he Court ... (of Appeals of Maryland)... has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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 Board 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. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. 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. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

(6) [T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md.

App. 1, 666 A.2d 1253 (1995).

LAW APPLICABLE

(1) The criteria for approval of a Special Exception for Day Care Center for Children in the CGO Zone are the general criteria for approval of a Special Exception, § 27-3604(e)(1), and the Additional Requirements for approval of Day Care Center for Children, § 27-5402(x).

(2) Section 27-3604(e)(1) of the Zoning Ordinance provides that a Special Exception may be approved if:

(A) *The proposed use and Site Plan are in harmony with the purpose of this Subtitle;*

The Zoning Ordinance has a hierarchy of Purposes, for the Ordinance as a whole, for Nonresidential Base Zones generally, and for the CGO Zone in specific. Staff failed to address required purposes of the Nonresidential Base Zones generally and also failed to address the purposes of the CGO Zone.

The eighteen purposes of the Zoning Ordinance are laid out in § 27-1300. Staff failed to address the specific purposes but generally found harmony of the subject project with these Purposes 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 7:00 a.m. to 5:00 p.m. The outdoor play area will be fenced and will be at least 25 feet from the adjoining single-family uses.

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

The proposed SPE Use and Site Plan demonstrate harmony with the purposes of Subtitle 27 of the County Code.

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

The proposed use is in conformance with the requirements and regulations set forth in

Subtitle 27.

The proposed use is being evaluated according to the general required findings of approval for all SPEs contained in § 27-3604(e) of the Zoning Ordinance.

The Application also demonstrates conformance with § 27-5402(x), Additional Requirements for Specific Special Exception Uses pertaining to a Day Care Center for Children, as discussed in Section III.(C) of the Zoning Ordinance.

(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;

The applicable Master Plan is the 2006 Approved Henson Creek-South Potomac Master Plan and Sectional Map Amendment. The Master Plan recommends commercial future land uses on the Subject Property. The Application is consistent with the goals, policies, and strategies of the 2014 Plan Prince George’s 2035 Approved General Plan (Plan 2035), because the proposed use provides a much-needed service within the context of supporting the existing nearby community.

In addition, the Master Plan recommends the following (policies and strategies) to help advance the intent and purpose of the Plan:

Development Pattern Element Chapter

Developed Tier

Policy 1: Preserve and enhance existing suburban residential neighborhoods.

Strategies

- **Design institutional or special exception uses to – reflect the scale and character of the surrounding neighborhood. (page 36)**

The Application conforms to the goals, policies and strategies of the Master Plan because the proposed Day Care Center will be in a one-story brick structure that matches the scale and character of the surrounding single-family detached neighborhood to the west and commercial uses along Livingston Road to the east and south.

(D) The proposed use will not adversely affect the health, safety, or welfare of

residents or workers in the area;

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.

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

The general neighborhood is residential and commercial. The proposed use does not propose any changes to the exterior of the existing commercial building, aside from the fenced, outdoor play area. Given the modest improvements to the existing site, Staff find the proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood.

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

No Type 2 Tree Conservation Plan is required with this Application.

(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.

No regulated environmental features (REF) exist on-site; therefore, none will be impacted by the proposed development. The site has already been graded and improved with a one-story brick building. The site has an approved standard LOE (S-092-2023) from the WCO, that was submitted for the proposed project, which is valid until June 2, 2025.

(3) 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

This criterion is not applicable, as the proposed development is not located within the Chesapeake Bay Critical Area Overlay (CBCAO) Zone.

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

This criterion is not applicable, as the proposed development is not located within the CBCAO Zone.

(4) Special Exception General Required Findings—§ 27-5401 of the Zoning Ordinance provides the following applicable findings:

(a) Required Findings

In addition to the required findings for the approval of a special exception specified in Section 27-3604(e), Required Findings, all special exception applications shall comply with Subsections (b) and (c), below, and all regulations applicable to the proposed use(s) as specified in § 27-5402, Additional Requirements for Specific Special Exception Uses.

The subject Application demonstrates conformance with the subsections regarding setbacks, landscaping, buffering, and screening as analyzed below.

(b) Setbacks

All setbacks shall be measured from the boundary line of the land for which the special exception is requested or approved, regardless of whether this boundary line is a lot, property, street, or other line. This Section applies to all setback requirements of this Subtitle which are specifically applicable to the special exception use.

The Subject Property is located in the CGO Zone. There are no required setbacks for this use in the CGO Zone, however, the submitted Plan does dimension the existing building setback, to the nearest boundary line, to the north and east. A Condition has been included herein requiring the Applicant to provide building setbacks as measured from the boundary line of the requested SPE area.

(c) Landscaping, Buffering, and Screening

(1) All landscaping required for a special exception, including any amendments to landscaping, buffering, and screening requirements which may be proposed by the applicant, shall be approved at the same time the special exception is approved. A special exception shall comply with the Landscape Manual through the approval of a landscape plan. The District Council may require additional landscaping, screening, or buffering if it determines that the amount required by the Landscape Manual is insufficient to adequately protect adjacent uses.

(2) Amendments to landscaping, buffering, and screening required in an approved special exception shall be made in accordance with Section 27-

3604(i), Changes to Approved Special Exceptions: Minor Changes.

The subject Application does not request any amendments to the landscaping, buffering, and screening requirements. The proposed development has been evaluated according to the requirements of the 2018 Prince George's County Landscape Manual (Landscape Manual).

(5) Additional Requirements for Specific Special Exception Uses- § 27-5402(x), Day Care Center for Children, provides the following applicable additional requirements:

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

(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;

The proposed outdoor play area is 1,500 square feet. This provides 75 square feet per child and, therefore, meets the minimum requirement.

(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;

The proposed outdoor play area is at least 25 feet from any dwelling on an adjoining lot and is enclosed by a proposed 6-foot-high fence.

(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;

Staff find that the proposed setback and fence height is adequate 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;

The proposed outdoor play area is located on the property and is safely accessible. It should be noted that the on-premises outdoor play area does cross the drive aisle that accesses the rear parking area. However, access to this parking area will be restricted during operating hours by an existing chain gate.

(v) *The play area shall contain sufficient shade during the warmer months to afford protection from the sun;*

A note on the Plan states that the outdoor play area shall be sufficiently shaded during the warmer months to afford protection from the sun. The shade structure should be a durable and quality structure, such as a canvas sunscreen, with permanent structural elements affixed to the ground. A Condition has been included herein requiring the Applicant to detail how the shade canopy will adhere to the ground and to show it on the final SPE Site Plan.

(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*

The outdoor play area will not be used before or after daylight hours.

(vii) *Outdoor play shall be limited to the hours between 7 a.m. and 9 p.m.;*

The outdoor play area will be limited to the hours between 7:00 a.m. and 5:00 p.m.

(6) In addition to the requirements of § 27-3604(c), Special Exception Submittal Requirements, the Site Plan shall show:

(A) *The proposed enrollment;*

The proposed enrollment for this application is 20 children and is noted on the Site Plan.

(B) *The location and use of all buildings located on adjoining lots; and*

The Site Plan shows the use of all buildings located on adjoining lots. However, a condition has been added to show building locations.

(C) *The location and size of outdoor play or activity areas.*

The location and size of the outdoor play area is shown on the Site Plan.

(7) **Parking Regulations**

In accordance with the Parking and Loading Regulations contained in § 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 20 children and, therefore, would require two parking spaces. The Applicant is proposing nine spaces, one of which will be handicap-accessible. The submitted Plan states that there are 10 spaces provided. A condition has been included in the approval to correct this error.

(8) **2018 Prince George's Landscaping Manual Requirements**

This Application is exempt from the Landscape Manual per § 1.1(b) which states that "Existing conditions on developed sites not in conformance with the requirements of this manual that were otherwise lawful on April 1, 2022, and not the subject of any building or grading permit, may continue as a matter of right".

(9) **Fences and Walls**

This SPE proposes the installation of a 6-foot-high fence to enclose the outdoor play area, as shown on the Plan. This fence meets the requirements of § 27-6600.

(10) **Neighborhood Compatibility Standards**

This SPE will have minimal impact on surrounding uses. The proposed use will make no changes to the exterior of the existing one-story brick building, apart from the addition of the fenced, outdoor play area. As such, it will protect the character of the existing neighborhood while providing a much-needed service to the community.

(11) **Signage**

No signage is proposed with this Application.

(12) **2010 Prince George's County Wood and Wildlife Habitat Conservation Ordinance**

This Property has an approved standard LOE (S-092-2023) from the Woodland Conservation Ordinance, which is valid until June 2, 2025.

(13) Prince George's County Tree Canopy Coverage Ordinance

The Property is exempt from the Prince George's County Tree Canopy Coverage Ordinance as it does not require a building or grinding permit and does not propose 5,000 square feet or greater of gross floor area of disturbance. § 25-127(a)(1).

DISPOSITION

Based on the testimony, Applicant's Statement of Justification, the Technical Staff Report, associated referrals, and materials in the record, the Applicant has demonstrated conformance with the required Special Exception findings, as set forth in § 27-3604(c) and § 27-5402(x) of the Prince George's County Zoning Ordinance.

Special Exception SE 2023-004 for First Learning Stages Day Care Center, is APPROVED, subject to the following Conditions:

1. Prior to certification of the Special Exception Site Plan, the following revisions shall be made, or information shall be provided:
 - a. The paved area between the two parking spaces and the proposed fence surrounding the outdoor play area in the northeast portion of the site shall be striped, to indicate that it is not a parking space.
 - b. The handicap-accessible marking and signage details for the handicap van-accessible parking space shall be demonstrated on the Site Plan.
 - c. Show and dimension all existing and proposed gates on the Site Plan.
 - d. Revise the parking tabulation to state nine parking spaces are provided, as shown on the Plan.
 - e. Show the location of all adjacent buildings on the Site Plan.
 - f. Show a dimension from the fenced play area to the closest adjacent building on the Site Plan.

