

Case Nos: S.E. 4639/AC-11018-01

Applicant: The Little People's Place

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 4 - 2013

AN ORDINANCE to approve a Special Exception and Alternative Compliance.

WHEREAS, Application S.E. 4639 was filed to request permission to operate a Day Care Center for 40 Children, along with a request for alternative compliance from Section 4.7 (Buffering Incompatible Uses) of the Landscape Manual along the southeastern property line, in the R-R (Rural Residential) Zone, on .48 acre, located approximately 650 feet north of the intersection of Dower House Road and Woodyard Road (MD 223), also identified as 6800 Dower House Road, Upper Marlboro, Maryland; and

WHEREAS, the application was advertised and the property posted prior to public hearing, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by the Technical Staff and Planning Board, which filed recommendations with the District Council; and

WHEREAS, a public hearing on the application was held before the Zoning Hearing Examiner; and

WHEREAS, the Zoning Hearing Examiner's recommendations were filed with and considered by the District Council; and

WHEREAS, having reviewed the record, the District Council has determined that the application should be approved subject to modifications and additional conditions; and

WHEREAS, as the basis for this action the District Council adopts, as modified, the

findings of fact, conclusions, and decision of the Zoning Hearing Examiner in this case.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

Section 1. The Special Exception 4639 and Alternative Compliance AC-11018-01 are approved, pursuant to §§ 27-102, 27-131, 27-296, 27-317, and 27-348.01 of Subtitle 27 of the Prince George's County Code, subject to the following modified and additional conditions, which must be satisfied prior to the issuance of permits:

1. Substitution of segmented masonry unit, Keystone Compac, or equal may be allowed in lieu of a concrete retaining wall in the vicinity of the handicapped parking space and the play area provided Applicant revise the Site Plan to include color details of the proposed retaining wall with materials clearly labeled.
2. Applicant shall revise the Site Plan to show a driveway constructed to commercial standards (STD 200.01). The driveway shall be one-way in only. A culvert may be provided under the driveway exit to convey stormwater if approved by the Department of Public Works and Transportation. An approval letter must be submitted to the Office of the Zoning Hearing Examiner.
3. The Site Plan shall be revised to show the location of all adjoining buildings, uses and their distances from the subject property line.
4. The Site Plan shall be revised to add a general note stating that "this plan is located within the DNL 70 to 74dB Noise Contour, as documented in the 2007 Andrews AFB Air Installation Compatible Use Zone (AICUZ) Study."
5. The Site Plan shall be expressly labeled as "Special Exception Site Plan" and the Landscape Plan shall be expressly labeled as "Special Exception Landscape Plan". Both Plans must also include the Special Exception Number (SE-4639).
6. The Landscape Plan shall be revised by eliminating the duplicate set of General Notes, owners/applicant information, "proposed special exception for" information.
7. Revise the Site Plans to specify a natural color of the shade structure and materials, the retaining wall and materials, and the proposed fences.

8. Revise the Site Plans to provide a color detail for the proposed sign, with materials clearly labeled landscaping and lighting details for the proposed sign.
9. Revise the Landscape Plan to replace the plants proposed between the parking space located at the end of the drop-off area and the right-of-way with an evergreen species.
10. Revise the Landscape Plan's landscape schedule to rename the areas northeast, southeast, southwest, and northwest, as appropriate.
11. Revise the plant schedule to remove Nandina (an invasive species) and replace with a native plant to conform to Section 4.9, Sustainable Landscape Requirements of the *Prince George's County Landscape Manual*.
12. Revise the Special Exception Site Plan to include a six foot board-on-board fence to the rear of the property (the northeast) where it borders the Alford's property at 6805 Brown Wood Road.
13. Revise the Special Exception Site plan to add a note to limit the hours of use for the play area from 10:00 a.m. and 6:00 p.m., and to allow a maximum of 10 children in the play area at one time.
14. The revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record, prior to the issuance of any permits.

Affirmance is also subject to additional conditions by the District Council, which are based on the following findings of fact and conclusions:

- The subject property for this special exception, to operate a day care for 40 children, is a three level single-family residence located in a predominantly single-family residential area consisting of homes that are quite elegant, nicely constructed and well maintained. (T. 6-7) With a finished basement, the three level single-family residence is approximately 4,078 square feet, which the current owners and their 6 children have completely outgrown. (T. 25-26). The square footage of the first two levels of the subject property is approximately 2,878 and the basement is approximately 1,200 finished square feet. (T. 25) If approved, the Health Department prohibits the upper level of the residence (1,439 square feet or 1/2 of 2,878) from being used as part of the day care for the children due to lack of exits, leaving only the first level and the basement (approximately 2,639 square feet) for the proposed day care for 40 children. (T. 25-27)

- The subject property fronts onto and is accessible by a circular driveway from Dower House Road. Technical Staff Report, November 7, 2011 at 2. According to the Transportation Planning Section, the proposed use of a day care facility for 40 children, while presenting no apparent safety issues, will be more traffic-intensive than the existing residence. The existing residential use accounts for a total of 9 daily trips. The proposed day care for 40 children will add 98 daily trips. Transportation Planning Section, June 24, 2011 Memo at 1-2.
- According to the applicant's land use expert, parking will be small, with a total of 5 parking spaces dedicated to the proposed day care for 40 children. (T. 13) According to Ms. LaRonda Schine, an owner of the property, employees needed for the 40 children day care will depend on the 0-6 age group of children, but she does not want to put a number on how many infants will be enrolled. If all infants, there is a need for 1 employee for every 2 infants (maximum of 20 employees). 2-3 year olds will require two adults per 15 children (if 30 2-3 year olds, at least 4 employees plus 5 for infants). And children between 4-6 year olds will require 1 teacher plus an aide for every 15 children (if 30 4-6 year olds, at least 4 employees plus 5 for infants). (T. 41) Neighbors have complained of commercial or tow trucks, owned and operated by the current owners of the subject property, parking at the subject property, which is a violation of County parking regulations. (T. 30, 31, 37-39) However, Ms. Schine testified that if this special exception is approved, parking of commercial trucks at the subject property will cease. (T. 23, 35-36)
- Based on the proposed enrollment of 40 children, a total of 3,000 square feet of play area is required to accommodate the full enrollment at one time. However a play area of 50 percent of the enrollment (20 children) may be provided as long as only half the children are in the play area at a given time. Technical staff has recommended that, based on applicant's proposed 1,638 square feet fenced in area, no more than 20 children are allowed in the play area at a given time. Technical Staff Report, November 7, 2011 at 4. Ms. Schine testified however, that based on the age groups she intends to enroll in the day care it is unlikely that 20 children will be out in the play area at any given time. (T. 35) According to applicant's land use expert, the proposed 14-foot by 24-foot awning, attached to the house, for the play area will shade a portion of the play area. (T. 22), Technical Staff Report, November 7, 2011 at 5. The land use expert also testified that there is no direct connection from the house into the play area, so children will have to come out of the house and essentially walk down a walkway through a gate into the play area. (T. 22)

- The Alfords are retired and reside directly behind the applicant's property. The Alfords have submitted several photographs into the record depicting the plain view from their property to the applicant's property and the proposed fenced in play area for the proposed day care for 40 children. Present day, there is no buffering between the Alfords property and the rear of the applicant's property. (T. 39). Evergreen buffering is proposed which may take in excess of 5 years to reach its maximum height of 6-8 feet. (T.40) While there is a 17 foot drop from the play area, (T. 43), to the boundary line of the Alford's property, the proposed play area is at the same level of the Alford's bedroom window. (T. 36), Technical Staff Report, November 7, 2011 at 2. The Alfords are very concerned about the noise the day care will generate in addition to the existing noise from the nearby Clinton Christian School and airplanes and the impact such noise will have on their sleep. (T. 28, 38, 40-41) Ms. Alford testified that she is also concerned that the proposed day care for 40 children will worsen the stacking of balls in her backyard from the children's play area because she has previously collected a storage tub full of balls from the subject property. (T. 32-33)
- According to the Joint Base Andrews Naval Air Facility Washington Joint Land Use Study (JLUS), this property, constructed in 2005, falls within a high noise area (70 to 74dB). According to JLUS, 65dB is the accepted maximum dB level for outdoor activity noise areas. Prolonged exposure to loud noise (greater than 65 dB) can cause eardrum damage and hearing loss. Community Planning South Division Memo, July 9, 2010, Department of the Air Force Memo, July 21, 2010.
- The record reflects that the applicant and the name of this project is "The Little People's Place." Technical Staff Report, November 7, 2011, ZHE Exhibit 16. According to testimony from Ms. Schine, The Little People's Place is a limited liability company, which does not legally exist. Ms. Schine also testified that if this special exception is granted, The Little People's Place will be legally incorporated. (T. 29-30)

Pursuant to Section 27-102 of the Zoning Ordinance, some purposes of the Zoning Ordinance are to protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County; promote the most beneficial relationship between the uses of land and buildings, and protect landowners from adverse impacts of adjoining development; to lessen the danger and congestion of traffic on the streets, and to insure usefulness of all elements of the transportation system for their planned functions;

and to 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. § 27-102 (1)(6)(11)(13). Pursuant to Section 27-318 of the Zoning Ordinance, when a special exception is approved, any requirements or conditions deemed necessary to protect adjacent properties and the general neighborhood may be added to those of this subtitle.

Before a day care center for children is permitted, the District Council may specify the maximum number of children to be enrolled, which may not be increased by the State or local health, education, or fire regulations. § 27-348.01 (a)(1). Permission to operate a day care is also subject to providing a play area that has sufficient shade during the warmer months to afford protection from the sun. § 27-348.01 (a)(2)(E).

Based on the above findings of fact and conclusions, in order to protect adjacent properties and the surrounding neighborhood, along with promoting other purposes of the Zoning Ordinance such as to protect the children and adjacent properties against undue noise exposure, and to lessen the danger and congestion of traffic on the streets, affirmance is subject to the following additional conditions, which must be satisfied prior to the issuance of permits:

15. The maximum number of children to be enrolled in the day care for this special exception shall be 20;
16. The total number of children to use the play area at one (1) time shall be 10;
17. At no time shall the owners of the property or its agents be allowed to park any commercial trucks, including tow trucks relating to its trucking or tow trucking business at the subject property; and
18. The owners of the subject property shall submit proof, to the Zoning Hearing Examiner, that “The Little People’s Place” is a legally registered entity with the Maryland State Department of Assessment and Taxation (SDAT). The owners of the subject property shall also submit a letter, to the Zoning Hearing Examiner, showing that “The Little People’s Place” is in good standing with the SDAT.

Section 2. This Ordinance shall take effect on the date of its enactment.

Enacted this 22nd day of April 2013 by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Lehman, Olson, Patterson,
Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF THE
MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

By: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council