

Case No. DSP-12045  
First Beginnings Children's Center

Applicant: First Beginnings Children's Center LLC

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

ORDER AFFIRMING PLANNING BOARD DECISION,  
WITH CONDITIONS

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 13-23(A), to approve with conditions a detailed site plan for approval of a day care center for 38 children<sup>1</sup> in a 1,613-square-foot Unit E of the existing Shops at Silver Hill shopping center in the Commercial Shopping Center (C-S-C) Zone, located in the northeastern quadrant of the intersection of Silver Hill and Old Silver Hill Roads, bounded to the south by Old Silver Hill Road; to the north by Silver Hill Road; to the east by multifamily housing; and to the west by the Silver Hill Shopping Center, is AFFIRMED, subject to the District Council's original jurisdiction pursuant to §27-132(f)(1) of the Zoning Ordinance and its authority to modify the decision of the Planning Board pursuant to 27-290(d) of the Zoning Ordinance.

As the basis for this action, the District Council, pursuant to §27-132(f)(1) and §27-290 of the Zoning Ordinance, adopts and incorporates by reference as if fully stated herein, the findings and conclusions stated by the Planning Board in its Resolution, PGCPB No. 13-23(A), except as otherwise stated herein.

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<sup>1</sup> For reasons discussed *infra*, Planning Board's recommendation to approve DSP-12045 for 38 children will be modified by the District Council and approval is limited to 20 children.

### A. Applicable Law

The Maryland General Assembly has delegated zoning power for most of Prince George's County to the Prince George's County District Council. Pursuant to § 22-104 of the Land Use Article, Md. Ann. Code (2013), the District Council may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text to regulate, in the portion of the regional district lying within its county the size of lots, yards, courts and other open spaces. *See Prince George's County v. Ray's Used Cars*, 398 Md. 632, 635-36, 922 A.2d 495, 497 (2007). Subtitle 27 of the Prince George's County Code is the Zoning Ordinance for the County (hereinafter referred as "§27 \_\_.")

Requirements for site plans, including detailed site plans, are provided for in Subtitle 27, Division 9, Subdivision 3. The following sections of the Zoning Ordinance are relevant to this application.

#### **§27-281. Purpose of Detailed Site Plans.**

##### **(a) Examples.**

**(1) Because the detailed design of land development significantly affects the health, safety, and welfare of the general public, and because regulation of land development through fixed standards can result in monotonous design and lower quality development, certain types of land development are best regulated by a combination of development standards and a discretionary review of a Detailed Site Plan.** Such cases include:

- (A) Attached housing, such as townhouses and multifamily dwellings;
- (B) Planned employment parks;
- (C) Planned mixed-use developments;
- (D) Large parking compounds;
- (E) Recreational community developments;
- (F) Screening or buffering as a necessary design element;
- (G) Large single-use developments;
- (H) Environmentally sensitive land, or land that contains important natural features that are particularly worthy of attention;
- (I) Development which is potentially incompatible with land uses on surrounding properties; and

(J) Buildings or land uses that are a part of particularly sensitive views as seen from adjacent properties or streets.

(b) **General purposes.**

(1) The general purposes of Detailed Site Plans are:

(A) To provide for development in accordance with the principles for the orderly, planned, efficient and economical development contained in the General Plan, Master Plan, or other approved plan;

(B) To help fulfill the purposes of the zone in which the land is located;

(C) To provide for development in accordance with the site design guidelines established in this Division; and

(D) To provide approval procedures that are easy to understand and consistent for all types of Detailed Site Plans.

(c) **Specific purposes.**

(1) The specific purposes of Detailed Site Plans are:

(A) To show the specific location and delineation of buildings and structures, parking facilities, streets, green areas, and other physical features and land uses proposed for the site;

(B) To show specific grading, planting, sediment control, woodland conservation areas, regulated environmental features and storm water management features proposed for the site;

(C) To locate and describe the specific recreation facilities proposed, architectural form of buildings, and street furniture (such as lamps, signs, and benches) proposed for the site; and

(D) To describe any maintenance agreements, covenants, or construction contract documents that are necessary to assure that the Plan is implemented in accordance with the requirements of this Subtitle.

(Emphasis added.)

Because the proposed day care center is within an existing shopping center in the C-S-C Zone (Commercial Shopping Center), the subject application must also comply with the requirements of the C-S-C Zone. Subtitle 27, Part 6, Divisions 1-5 define the general and specific purposes, permitted uses, and additional requirements of Commercial Zones. The following sections of the Zoning Ordinance are relevant to this application.

**§27-446. General purposes of Commercial Zones.**

(a) The purposes of Commercial Zones are:

(1) **To implement the general purposes of this Subtitle;**

(2) To provide sufficient space and a choice of appropriate locations for a variety of commercial uses to supply the needs of the residents and businesses of the County for commercial goods and services;

- (3) To encourage retail development to locate in concentrated groups of compatible commercial uses which have similar trading areas and frequency of use;
- (4) To protect adjacent property against fire, noise, glare, noxious matter, and other objectionable influences;
- (5) To improve traffic efficiency by maintaining the design capacities of streets, and to lessen the congestion on streets, particularly in residential areas;
- (6) To promote the efficient and desirable use of land, in accordance with the purposes of the General Plan, Area Master Plans and this Subtitle;
- (7) To increase the stability of commercial areas;
- (8) To protect the character of desirable development in each area;
- (9) To conserve the aggregate value of land and improvements in the County; and
- (10) To enhance the economic base of the County.

**§27-454. C-S-C Zone (Commercial Shopping Center).**

**(a) Purposes.**

- (1) The purposes of the C-S-C Zone are:
  - (A) To provide locations for predominantly retail commercial shopping facilities;
  - (B) To provide locations for compatible institutional, recreational, and service uses;
  - (C) To exclude uses incompatible with general retail shopping centers and institutions; and
  - (D) For the C-S-C Zone to take the place of the C-1, C-2, C-C, and C-G Zones.

**(b) Landscaping and screening.**

- (1) Landscaping and screening shall be provided in accordance with Section 27-450.

**(c) Uses.**

- (1) The uses allowed in the C-S-C Zone are as provided for in Table of Uses I (Division 3 of this Part).

**(d) Regulations.**

- (1) Additional regulations concerning the location, size, and other provisions for all buildings and structures in the C-S-C Zone are as provided for in Divisions 1 and 5 of this Part, the Regulations Table (Division 4 of this Part), General (Part 2), Off-Street Parking and Loading (Part 11), Signs (Part 12), and the Landscape Manual.

**§27-464.02. Day care center for children.**

- (a) A day care center for children permitted (P) in the Table of Uses I shall be subject to the following:

**(1) Requirements.**

- (A) 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 Planning Board if it determines that it is needed to protect the health and safety of the children utilizing the play area;

(iv) An 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;

(iv) Sufficient lighting shall be provided on the play area if it is used before or after daylight hours to insure safe operation of the area; and

(vii) Outdoor play shall be limited to the hours between 7 A.M. and 9 P.M.

(2) **Site plan.**

(A) A Detailed Site Plan shall be approved for the center, in accordance with Part 3, Division 9, of this Subtitle, to insure compliance with the provisions of this Section.

(B) In addition to the submittal requirements of Part 3, Division 9, the Detailed Site Plan shall show:

(i) The proposed enrollment;

(ii) The location and use of all buildings on adjoining lots;

(iii) The location and size of outdoor play or activity areas;

and

(iv) The location, quantity, and type of screening and landscaping.

(3) **Enrollment.**

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

The purposes of the Zoning Ordinance, pursuant to §27-102(a), are:

**(1) To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;**

(2) To implement the General Plan, Area Master Plans, and Functional Master Plans;

(3) To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;

(4) To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;

(5) To provide adequate light, air, and privacy;

- (6) To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;
- (7) To protect the County from fire, flood, panic, and other dangers;
- (8) To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;
- (9) To encourage economic development activities that provide desirable employment and a broad, protected tax base;
- (10) To prevent the overcrowding of land;
- (11) To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;
- (12) To insure the social and economic stability of all parts of the County;
- (13) 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;
- (14) To provide open space to protect scenic beauty and natural features of the County, as well as to provide recreational space; and
- (15) To protect and conserve the agricultural industry and natural resources.

B. The Day Care Center

The proposed day care center is located at the Shops at Silver Hill shopping center, Unit E, 1,613-square-foot, in the central portion of Building No. 1. The play area for the day care center is proposed to be located to the rear of Building No. 1, an existing wooded area which would be cleared to provide the required 1,475-square-foot outdoor play area. PGCPB No. 13-23(A) at 3.

The Prince George's County Health Department offered the following comments:

- (1) The site is located approximately 300 feet from an arterial roadway where high traffic volumes can be expected, and therefore subject to the potential adverse health impacts associated with traffic-related noise. Published scientific reports have found that road traffic, considered a chronic environmental stressor, could impair cognitive development in children, such as reading comprehension, speech intelligibility, memory, motivation, attention, problem-solving, and performance on standardized tests. Noise can also be detrimental to health with respect to hearing impairment, sleep disturbance, cardiovascular effects, psycho-physiologic effects and psychiatric

symptoms, and fetal development. The applicant should consider modifications, adaptations and/or mitigation to be provided as necessary to minimize the potential adverse health impacts of noise on the susceptible population.

- (2) The site is located approximately 300 feet from an arterial roadway where high traffic volumes can be expected and therefore subject to the potential adverse health impacts associated with traffic-related air pollutants. There is an emerging body of scientific evidence indicating that exposure to traffic-related air pollution is a cause of and trigger for asthma; and that living, working, or going to school near a busy roadway or freeway increases the severity of asthma symptoms, especially in children. The applicant should consider modifications, adaptations and/or mitigation as necessary to minimize the potential adverse health impacts of air pollutants on the susceptible population.

The site is located within an existing shopping center consisting of a bank, a building of 5,600 square feet for retail uses, and a larger building of 23,640 square feet for retail uses. The proposed day care center for 38 children would occupy 1,613 square feet of the larger 23,640-square-foot building, the site is served by a signalized intersection on Silver Hill Road (MD 458) and a commercial driveway on Old Silver Hill Road. PGCPB No. 13-23(A) at 9.

We have reviewed the record, Slide 3 (Site Vicinity), Slide 4 (Zoning Map), Slide 5 (Aerial Map), Slide 6 (Site Map), Slide 7 (Site Plan), Slide 8 (Rendered Landscape Plan), and Slide 9-11 (Bird's-Eye View of Proposed Site), and concur with the Prince George's County Health Department, for the reasons it has stated, that traffic related noise and pollutants will be an issue for the outdoor play area because no modifications, adaptations, and/or mitigation has been recommended to minimize the potential adverse health effects of noise.

The proposed outdoor play area is behind the linear shopping center. The play area will also expand beyond the actual day care in the rear curtilage area of other tenants of the integrated shopping center. *See* Slide 3 (Site Vicinity), Slide 4 (Zoning Map), Slide 5 (Aerial Map), Slide 6

(Site Map), Slide 7 (Site Plan), Slide 8 (Rendered Landscape Plan), and Slide 9-11 (Bird's-Eye View of Proposed Site). The children will be subject to inventory delivery of several businesses at any given time when they are exiting the day care center from the rear to enter the proposed outdoor play area and the same dangers exist when the children would have to re-enter the day care center. While DSP-12045 may represent a reasonable alternative for satisfying the site design guidelines, we also find that providing day care for 38 children (not including staff) within a floor space of 1,613 square-feet with an outdoor play area, to accommodate 19 children at a time, in the rear of the Shopping Center will significantly affect the health, safety, and welfare of the general public.

We also reviewed the evidentiary hearings before the Planning Board. (3/14/13 Tr. and 9/12/13). The detailed site plan requests approval of 38 children with an outdoor play area behind the shopping center. In the event of a fire, the record has **no** evidence of a fire evacuation plan or security plan or system for the outdoor play area. Even if there was a fire evacuation plan, we find that the proposed enrollment of 38 children (not including staff) is excessive for a floor plan of 1,613 square-feet. We also find, in the event of a fire, that the proposed enrollment of 38 children and staff, which must utilize an outdoor play area that is at the rear of a shopping center would significantly affect the health, safety, and welfare of the general public. Such an excessive enrollment of children (not including staff) within a floor plan of 1,613 square-feet would not protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County.

Because the detailed design of land development significantly affects the health, safety, and welfare of the general public, we shall, pursuant to §27-132(f)(1) and §27-290(d), modify the Planning Board's approval of the number of children from 38 to 20 in order to protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future

inhabitants of the County. Affirmance of the Planning Board's decision is subject to the following conditions:

1. The maximum number of children to be enrolled in the day care for DSP-12045 shall be 20.
2. The total number of children to use the play area at one (1) time shall be 10.
3. To enhance the safety of the children and staff, the Applicant shall install a high resolution color CCTV (close circuit television) security system (minimum of 60 pixels per foot), if one does not already exist, in the day care facility to include the exterior and interior of Unit E. The exterior high resolution color CCTV security system (minimum of 60 pixels per foot) shall be installed in a location capable of monitoring and recording the outdoor play area, without obstruction, between 8:30 A.M. and 5:30 P.M.
4. Prior to certification, the applicant shall revise the plans as follows or provide the specified documentation:
  - a. The detailed site plan (DSP)/landscape plan (LSP) and the Type II tree conservation plan (TCP2) shall be revised to show the location of the 65 dBA noise contour.
  - b. A note shall be added to the plans stating that "a maximum of 10 children are permitted to play in the outdoor play area at one time."
  - c. The DSP/LSP shall be revised to specify a six-foot-high, ~~\*[low sheen vinyl]~~ wrought iron (or similar metal) product to be utilized for the fence to surround the play area. \*Final design of said fence is to be approved by the Planning Board or their designee.
  - d. The DSP/LSP shall be revised to include a shade structure in the outdoor play area and a detail of same shall be included on the plans. The Planning Board or their designee shall approve the design and location of said shade structure.
  - e. Note 13 under "Playground Notes" shall be amended to read: "Outdoor play shall be limited to the hours between 8:30 A.M. and 5:30 P.M or shall not be used after daylight hours, whichever is earlier."

- f. The parking schedule shall be amended to include the parking ratio for each use as identified in Part 11 of the Prince George's County Zoning Ordinance.
- g. A loading schedule, on a unit-by-unit basis, as required by Part 11 of the Prince George's County Zoning Ordinance, shall be included on the plans.
- h. The TCP shall be revised as follows:
  - (1) Show the original tree line per Type II Tree Conservation Plan TCPII-30-98.
  - (2) Show the corrected TCPII worksheet submitted to the Planning Board or its designee.
  - (3) Revise the title of the plan as "Shops at Silver Hill – New Beginnings Children's Center."
  - (4) Revise the plan scale from 1 inch equals 20 feet one inch equals 30 feet.
  - (5) Label the area of woodland north of the proposed clearing area as "woodland preserved area – not counted" on the plan and detail.
  - (6) Show the woodland conservation signage on the plan and provide the correct symbol in the legend.
  - (7) Revise the vicinity map to remove the aerial photo and show only the road map with names of the roads and the site location identified.
  - (8) Show the previous TCP approval and add "01" to the approval block.
  - (9) Revise the woodland worksheet as necessary.
  - (10) Have the revised plan signed and dated by the qualified professional preparing the plan.
- i. The plat reference (PM 224-55) and "Lots 4 and 5" shall be added to the notes and DSP.

- j. The preliminary plan number and approval date shall be added to the notes.
  - k. The platted ten-foot-wide public utility easement (PUE) shall be indicated along both rights-of-way and the lot lines, and bearings and distances shall be corrected on the DSP.
  - l. Striped crosswalks shall be provided at the site's ingress and egress point along Old Silver Hill Road, and the access to the adjacent bank to Silver Hill Road (MD 458), unless modified by the Maryland State Highway Administration (SHA).
  - m. The prior approved landscape plan for the site which reflects conformance to the approval of Alternative Compliance AC-06016 shall be updated also to reflect the outdoor play area approved as part of the subject project and submitted to become part of the certified plan set for the subject approval. Any plant material shown on the previously approved landscape plan not currently installed shall be so installed.
  - n. The applicant shall add the Parcel number, owner's name, Liber and Folio and zoning of the small strip of land along the subject site's northern property line extending between the right-of-way of Silver Hill Road (MD 458) and the subject property.
  - o. The plans for the project shall be revised to clearly indicate the limits of the DSP, and portions not included therein shall be clearly marked "not included in this DSP."
5. Prior to issuance of a use and occupancy permit for the day care center, the applicant shall present to the Planning Board or its designee a receipt indicating payment of the required fee-in-lieu of \$784.08 in compensation for the clearing of .05 acres of woodland conservation on the site for provision of the required outdoor play area for the day care center for children.

\*Denotes Amendment

Underlining indicates new language

[Brackets] and ~~strikethrough~~ indicate deleted language

Ordered this 11<sup>th</sup> day of February, 2014, by the following vote:

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

and Turner.

Opposed:

Abstained:

Absent: Council Members Harrison and Lehman.

Vote: 7-0

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: \_\_\_\_\_  
Mel Franklin, Chairman

ATTEST:

\_\_\_\_\_  
Redis C. Floyd  
Clerk of the Council