

Case No. DSP-87115/09
Advantage Care Daycare Center

Applicant: Harold H. Shin

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

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, that the decision of the Planning Board in PGCPB No. 12-117, to approve with conditions a detailed site plan, DSP-87115/09, for approval of a 2,600-square-foot daycare center for 44 children in an existing shopping center in the C-S-C Zone, located within an existing shopping center known as Woodberry Square Shopping Center, which is on the north side of Allentown Road, in the northeast quadrant of its intersection with Temple Hill Road, in Planning Area 76B, Council District 8, is:

REVERSED and DENIED pursuant to §§ 27-132, 27-290 of the Zoning Ordinance, and § 25-210 of the Land Use Article, Md. Ann. Code (2013), for the reasons stated in Attachment A, which pursuant to § 27-141 of the Zoning Ordinance, the District Council adopts as its findings of basic facts and conclusions in this case.

ORDERED this 13th day of May, 2013, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Olson and Turner.

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: _____
Andrea C. Harrison, Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

ATTACHMENT A

ORDER OF DENIAL FOR DSP-87115/09

FINDINGS OF BASIC FACTS AND CONCLUSIONS

A. Subject Property

The subject property is an existing shopping center, constructed in the late 1980s, known as Woodberry Square Shopping Center, which is on the north side of Allentown Road, in the northeast quadrant of its intersection with Temple Hill Road, in Planning Area 76B, Council District 8 and the Developing Tier. The property is bounded on the south by the right-of-way of Allentown Road, to the west by the right-of-way of Temple Hill Road, to the north by existing subdivisions in the R-80 (One-family Detached Residential) Zone and to the east by properties in the C-S-C Zone. The Woodberry Square Shopping Center has an irregular linear shape with its long side fronting on Allentown Road. The site has been improved with an existing shopping center consisting of four buildings. The proposed daycare center will be located in the middle of the large long main building of the site, which occupies most of the linear site, and three small buildings located on the two ends of the larger building. The site has two access drives off Allentown Road and a third access off Temple Hill Road.

The Woodberry Square Shopping Center has a previously approved Preliminary Plan of Subdivision 4-87107 and a Detailed Site Plan DSP-87115. The DSP was subsequently revised eight times. The most recent revision, (DSP-87115-08), was approved administratively by the Planning Director on March 26, 2012, to add a concrete walkway behind the existing building and a dumpster enclosure. The location of the proposed daycare center is within one unit, in the middle of the large long main building of the site. There is also a proposed enclosed 1,920-square-foot outdoor play area, which will be located between the recently added concrete

walkway behind the existing building and the rear property line of the existing shopping center. To access the outdoor play area, the children will have to exit the rear of the building into the alley way, cross over the concrete walkway, and enter the enclosed play area through a 3-foot wooden gate. PGCPB No. 12-117, 1-2, Technical Staff Report, 3-4, Detailed Site Plan, September 26, 2012.

B. Application for a Detailed Site Plan

The applicant, H. Harold Shin, the project manager for Advantage Care Daycare Center, filed this detailed site plan, DSP-87115/09, with the Development Review Division of the Maryland-National Capital Park and Planning Commission (Planning Board) on or about September 26, 2012. The purpose of the application is to obtain approval to operate a 2,600 square-foot daycare center for 44 children with a 1,920 square-foot outdoor play area in an integrated and existing shopping center. Application Form, August 10, 2012, Technical Staff Report, 1-5, Tr. 12/06/12, 3-4, 20.

C. Planning Board Hearings

Planning Board conducted two hearings. The first hearing began on December 6, 2012, and concluded on December 20, 2012. Tr. 12/06/12 and Tr. 12/20/12. At the December 6, 2012 hearing, the applicant, Mr. Shin, testified in support of the application, and two area residents, Ms. Wilmarie McKoy and Ms. Valarie Fitzgerald testified in opposition to the application. Ms. McKoy submitted a photograph of the proposed outdoor play area for the record. Tr. 12/06/12, 20, 29, 30, 35. During the December 20, 2012 hearing, Mr. Shin provided additional testimony in support of the application. Also during this hearing, Ms. Annie Elder, the proposed operator of Advantage Care Daycare Center, testified in support of the application. Ms. McKoy, Ms. Fitzgerald, and Ms. Arlene Wilson also provided additional testimony in opposition of the

application. Ms. McKoy provided 22 additional photographs of the subject property and its surroundings. Tr. 12/20/12, 13, 16, 24, 35, 36, 45. After the December 20, 2012 hearing Planning Board approved this application with conditions, and subsequently adopted its approval in PGCPB Resolution No. 12-117 on January 10, 2013. On February 8, 2013, Ms. Teresa A. Bowie, a person of record, filed an appeal to the Planning Board's decision and requested oral argument before the District Council.

D. District Council Proceedings

On February 11, 2013, the District Council, pursuant to § 27-290 of the Zoning Ordinance and the Land Use Article § 25-210, elected to review DSP 87115/09. Oral argument was held on March 25, 2013. The applicant did not appear at oral argument. Ms. Bowie and Ms. Fitzgerald testified in opposition to the application. After oral argument, the District Council voted, 9-0, to deny the application.

E. Applicable Law

The Maryland General Assembly, by the Act, 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.

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.

Sec. 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.)

Sec. 27-282. Submittal requirements.

(a) The Detailed Site Plan shall be submitted to the Planning Board by the owner of the property or his authorized representative.

(b) The Detailed Site Plan shall be prepared by an engineer, architect, landscape architect, or urban planner.

(c) Upon filing the Plan, the applicant shall pay to the Planning Board a fee to help defray the costs related to processing the Plan. The scale of fees shall be determined by the Planning Board, except that the filing fee for a day care center for children shall not exceed the Special Exception filing fee for a day care center for children as set forth in Section 27-297(b)(1.1). A fee may be reduced by the Planning Board if it finds that payment of the full amount will cause an undue hardship upon the applicant.

(d) If more than one (1) drawing is used, all drawings shall be at the same scale (where feasible).

(e) A Detailed Site Plan shall include the following:

- (1) Location map, north arrow, and scale;
- (2) Boundaries of the property, using bearings and distances (in feet); and either the subdivision lot and block, or liber and folio numbers;
- (3) Zoning categories of the subject property and all adjacent properties;
- (4) Locations and types of major improvements that are within fifty (50) feet of the subject property and all land uses on adjacent properties;
- (5) An approved Natural Resource Inventory;
- (6) Street names, right-of-way and pavement widths of existing streets and interchanges within and adjacent to the site;
- (7) Existing rights-of-way and easements (such as railroad, utility, water, sewer, access, and storm drainage);
- (8) Existing site and environmental features as shown on an approved NRI;
- (9) A Type 2 Tree Conservation Plan prepared in conformance with Division 2 of Subtitle 25 and The Woodland and Wildlife Habitat Conservation Technical Manual or a Standard Letter of Exemption;
- (10) A statement of justification describing how the proposed design preserves and restores the regulated environmental features to the fullest extent possible;
- (11) **An approved stormwater management concept plan;**
- (12) Proposed system of internal streets including right-of-way widths;

(13) Proposed lot lines and the dimensions (including bearings and distances, in feet) and the area of each lot;

(14) Exact location and size of all buildings, structures, sidewalks, paved areas, parking lots (including striping) and designation of waste collection storage areas and the use of all buildings, structures, and land;

(15) Proposed grading, using one (1) or two (2) foot contour intervals, and any spot elevations that are necessary to describe high and low points, steps, retaining wall heights, and swales;

(16) A landscape plan prepared in accordance with the provisions of the Landscape Manual showing the exact location and description of all plants and other landscaping materials, including size (at time of planting), spacing, botanical and common names (including description of any plants that are not typical of the species), and planting method;

(17) Exact location, size, type, and layout of all recreation facilities;

(18) Exact location and type of such accessory facilities as paths, walks, walls, fences (including widths or height, as appropriate), entrance features, and gateway signs (in accordance with Section 27-626 of this Subtitle);

(19) A detailed statement indicating the manner in which any land intended for public use, but not proposed to be in public ownership, will be held, owned, and maintained for the indicated purpose (including any proposed covenants or other documents);

(20) Description of the physical appearance of proposed buildings (where specifically required), through the use of architectural elevations of facades (seen from public areas), or through other illustrative drawings, photographs, or renderings deemed appropriate by the Planning Board; and

(21) Any other pertinent information.

(f) The submittal requirements in (e) may be modified in accordance with Section 27-286.

(Emphasis added.)

Sec. 27-284. Referral.

(a) **Prior to taking action on the Detailed Site Plan**, the Planning Board shall refer the plan to the Historic Preservation Commission (Part 14), when appropriate, and to all agencies which the Planning Board deems appropriate for review and comment. The agencies shall include all of those whose action is likely to have a substantive effect on the plan under review. The Planning Board shall maintain a list of referral agencies. **The plan shall also be referred to:**

(1) the Prince George's County Police Department for review and comment at the time of Subdivision and Development Review Committee. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED); and

(2) the Prince George's County Health Department at the time of the Subdivision and Development Review Committee. The Health Department shall perform a health impact assessment review of the proposed development identifying the potential effects on the health of the population, and the distribution of those effects within the population, including recommendations for design components to increase positive health outcomes and minimize adverse health outcomes on the community.
(Emphasis added.)

Sec. 27-285. Planning Board procedures.

(a) General.

(1) Prior to the issuance of any grading, building, or use and occupancy permit for the development or use of any land for which a Detailed Site Plan is required, the applicant shall obtain approval of a Detailed Site Plan from the Planning Board.

(2) The Planning Board shall review the Detailed Site Plan for compliance with this Division.

(3) The Planning Board shall give due consideration to all comments received from other agencies.

(4) The Planning Board shall only consider the plan at a regularly scheduled meeting of the Planning Board after a duly advertised public hearing.

(5) The Planning Board shall approve, approve with modification, or disapprove the Detailed Site Plan, and shall state its reasons for the action.

(6) The Planning Board's decision shall be embodied in a resolution adopted at a regularly scheduled public meeting, a copy of which shall be sent to all persons of record (in the Detailed Site Plan approval process) and the District Council.

(b) Required findings.

(1) The Planning Board may approve a Detailed Site Plan if it finds that the plan represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use. If it cannot make these findings, the Planning Board may disapprove the Plan.

(2) The Planning Board shall also find that the Detailed Site Plan is in general conformance with the approved Conceptual Site Plan (if one was required).

(3) The Planning Board may approve a Detailed Site Plan for Infrastructure if it finds that the plan satisfies the site design guidelines as contained in Section 27-274, prevents offsite property damage, and prevents environmental degradation to safeguard the public's health, safety, welfare, and economic well-being for grading, reforestation, woodland conservation, drainage, erosion, and pollution discharge.

(4) The Planning Board may approve a Detailed Site Plan if it finds that the regulated environmental features have been preserved and/or restored in a

natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

(c) Time limits for action.

(1) The Planning Board shall take action on the Detailed Site Plan within seventy (70) days of its submittal. The month of August and the period between and inclusive of December 20 and January 3 shall not be included in calculating this seventy (70) day period.

(2) If no action is taken within seventy (70) days, the Detailed Site Plan shall be deemed to have been approved. The applicant may (in writing) waive the seventy (70) day requirement to provide for some longer specified review period.

(3) A decision to approve a zoning case or subdivision plat subject to a condition requiring site plan approval may include a reduction in the time limit for action on the site plan, but may not include an increase in this time period.

(d) Notification of applicant.

(1) If a Detailed Site Plan is not approved, the Planning Board shall notify the applicant (in writing), stating what changes are required for approval. (Emphasis added.)

Sec. 27-290. Appeal of Planning Board's decision.

(a) The Planning Board's decision on a Detailed Site Plan may be appealed to the District Council upon petition by any person of record. The petition shall specify the error which is claimed to have been committed by the Planning Board and shall also specify those portions of the record relied upon to support the error alleged. The petition shall be filed with the Clerk of the Council within thirty (30) days after the date of the notice of the Planning Board's decision. The District Council may vote to review the Planning Board's decision on its own motion within thirty (30) days after the date of the notice. A copy of the petition shall be sent by the submitter to all persons of record (by regular mail), and a certificate of service shall accompany the submission to the Clerk.

(b) The Clerk of the Council shall notify the Planning Board of any appeal or review decision. Within seven (7) calendar days after receiving this notice, the Planning Board shall transmit to the District Council a copy of the Detailed Site Plan, all written evidence and materials submitted for consideration by the Planning Board, a transcript of the public hearing on the Plan, and any additional information or explanatory material deemed appropriate.

(c) The District Council shall schedule a public hearing on the appeal or review.

(d) Within sixty (60) days after the close of the Council's hearing, the Council shall affirm, reverse, or modify the decision of the Planning Board, or return the Detailed Site Plan to the Planning Board to take further testimony or reconsider its decision. Where the Council approves a Detailed Site Plan, it shall make the same findings which are required to be made by the Planning Board. If the Council fails to act within the specified time, the Planning Board's decision is automatically affirmed.

(e) The Council shall give its decision in writing, stating the reasons for its action. Copies of the decision shall be sent to all persons of record, and the Planning Board.
(Emphasis added.)

Because the proposed daycare 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.

Sec. 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.

Sec. 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.

Sec. 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.

F. The Daycare Center

The child daycare center proposes to accommodate 44 children from infants to 12 year olds. Tr. 12/20/12, 19. In the event of a fire, the fire evacuation plan is to gather all the children, line them up and take them outside to a designated meeting place, where there will be a parked van at all times, possibly two vans and personal cars to transport the children from the fire emergency. Tr. 12/06/12, 20-21. Neither the applicant, Mr. Shin, nor the prospective daycare center operator, Ms. Elder, provided any testimony on a fire evacuation plan for the children in the fenced outdoor play area in the rear alley of the integrated shopping center. The only entrance and exit to the four sided fenced in outdoor play area is a 3-foot wood gate. Tr. 12/06/12, 8, 9, 10. More importantly, if there is a fire in the indoor daycare unit, there is no evacuation plan, nor could there be, for the children to exit the outdoor play area to re-enter the building from the rear to follow the evacuation plan proposed. Leaving children in the fenced outdoor play area, in the event of a fire, without an evacuation plan, would significantly affect the health, safety, and welfare of the general public. § 27-281 (a)(1).

The detailed site plan gives no consideration to the use as a daycare center in its calculation of parking spaces, especially handicap parking spaces. The calculation was limited to, and based on a previously approved integrated shopping center, Tr. 12/06/12, 14-16, which include a Family Dollar Store, a Bank of America, a Beauty Shop, a Barber Shop, a Clothing Store, an Auto Zone, Midas Muffler, a Little Caesars, a Dental Store, a Pharmacy Store, and a Chinese Food Restaurant. Tr. 12/06/12, 23, 34, 36, Tr. 12/20/12, 36, Ex. Opp. #2, photographs. The site plan for a 44 children daycare center only provides a designated six parking spaces, including one handicap space. Tr. 12/20/12, 10. This parking proposal is at odds with the proposed fire evacuation plan because the designated vans, and/or personal cars at ready for a fire evacuation plan will severely compromise day to day parking for the daycare center. Ms. Fitzgerald, a Camp Springs resident for 30 years, testified that the integrated shopping center is very small to add a daycare center for 44 children because exiting conditions make it impossible to get in and out of the parking lot. Ms. Arlene Wilson, another area resident, also testified that parking is insufficient. Tr. 12/06/12, 36, Tr. 12/20/12, 36. Ms. McKoy also testified and provided pictures of cars being repaired in the parking lot, which is shared by an Auto Zone and Midas Muffler auto repair stores. Tr. 12/20/12, 22, 23. We find, in light of the stores that occupy this integrated shopping center, that this site plan does not promote the specific purpose of the C-S-C Zone to provide locations for *compatible* institutional, recreational, and services uses. § 27-454 (a)(1)(B).

A floor plan was not submitted for this site plan. Planning Staff testified that the interior space of the building was not considered because it was not within the purview of an application for a detailed site plan. Tr. 12/20/12, 37, 38. We disagree. A *specific purpose* of a detailed site plan is to show the location and delineation of buildings and structures, parking facilities, streets,

green areas, **and other physical features and land uses proposed for the site.** § 27-281 (c)(1)(A). (Emphasis added.) And a submittal requirement of a detailed site plan shall include **“Any other pertinent information.”** § 27-282 (e)(21). A floor plan would be pertinent information to consider when evaluating the physical features and characteristics of a proposed 44 children daycare center, which will include infants through 12 year olds. This information may have also proved useful to the Child Care Licensing Office of Maryland Department of Human Resources in order to provide meaningful review and comment. PGCPB No. 12-117, 7, Technical Staff Report, 9.

The Prince George’s County Health Department provided the following comments on this site plan:

- The proposed site is located at the intersection of a major collector roadway and an arterial roadway where high traffic volumes can be expected. 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.
- The proposed site is located at the intersection of a major collector roadway and an arterial roadway where high traffic volumes can be expected. There is an emerging body of scientific evidence indicating that exposure to traffic-related fine particulate air pollution is a cause of and trigger for asthma; and living, working or going to school near a busy roadway or freeway increases the severity of asthma symptoms, especially in children.

See Prince George’s County Health Department Memorandum, November 5, 2012, PGCPB No. 12-117, 6-7, Technical Staff Report, 8-9. The Planning Board found that the Zoning Ordinance requirements for a daycare center located in a shopping center do not provide any mechanism for taking the comments above from the Health Department into account in the evaluation of the application. We disagree. The Zoning Ordinance does provide a mechanism to incorporate the Health Department comments into the evaluation of the site plan application. Pursuant to § 27-

285 (a)(1)(3) of the Zoning Ordinance, Planning Board **shall give due consideration to all comments received from other agencies.** (Emphasis added.) No consideration was given by Planning Board and Staff, much less due consideration to the well reasoned findings and comments of the Prince George's County Health Department before a required finding that this site plan represents a reasonable alternative for satisfying the design site guideline of the Zoning Ordinance. § 27-285 (b)(1). *See also* § 27-281 (a)(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).

G. The Outdoor Play Area

The proposed outdoor play area is behind the linear integrated shopping center and behind the play area is a vacant residential lot. Tr. 12/06/12, 8, 17. The play area will also expand beyond the actual daycare in the rear and encroach the rear curtilage of other tenants of the integrated shopping center. Tr. 12/20/12, 9, 18. Specifically, the play area will be located between the recently added concrete walkway behind the existing building and the rear property line of the existing shopping center. To access the outdoor play area, at any given time, the children will have to exit the daycare center from the rear of the building into the alley way, cross over the concrete walkway, and enter the enclosed play area through a 3-foot wooden gate. No other entrance or exit has been on the site plan application. PGCPB No. 12-117, 1-2, Technical Staff Report, 3-4, Detailed Site Plan, September 26, 2012, Tr. 12/06/12, 20. According to the applicant, Mr. Shin, the back of the shopping center and sidewalk is used mainly for other tenants-Family Dollar Store, Bank of America, Beauty Shop, Barber Shop, Clothing Store, Auto

Zone, Midas Muffler, Little Caesars, Dental Store, Pharmacy Store, Chinese Food Restaurant-to bring in their inventory. Tr. 12/20/12, 13. We find that this commercial traffic will significantly affect the health, safety, and welfare of any of the 44 children, at any given time, because the children will be subject to inventory delivery of several businesses at any given time when they are existing the daycare 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 daycare center.

Additionally, other dangers lurk in the rear alley of the integrated shopping center. Ms. McKoy, a camp spring resident for 36 years, testified on behalf of the Camp Springs Civic Association that prior to the installation of the concrete sidewalk in early 2012, the alley way of the integrated shopping center where the play area is proposed was prone to flooding. According to the applicant, Mr. Shin, certain parts of the alley way is prone to flooding and the sidewalk was installed to prevent people from walking in wet soil. Ms. McKoy testified that she has witnessed tenants of the integrated shopping center place trash outside of the rear doors to their respective units, and wait until the end of the day to take the trash to the dumpster, which are at the end of the alley way. Ms. McKoy provided pictures of containers in the alley way of the proposed outdoor play area, which she believes contain toxic waste from the Midas Muffler auto repair store. Tr. 12/06/12, 30, 31, 32, 33, 39, 40, 41, 42, Tr. 12/20/12, 24, Ex. Opp. #2, photographs. We also find, based on the above, that the detailed site plan does not represent a reasonable alternative for satisfying the site design guidelines because the plan significantly affects the health, safety, and welfare of the general public.

Furthermore, the proposed play area is on a hill which has a significant drop and slope. To construct the play area, three pine trees must be removed, which will have an impact on shading for the play area, and the area must be graded to ensure construction and proper

drainage. Tr. 12/06/12, 44, 45, 46, Tr. 12/20/12, 4, 23, 24, 25, 39, 40, 41, 42, 43, 44, 54, 55, 57.

Although a trellis is proposed to provide shade for the children during the summer months, the trellis will not block the sun coming from the south of the property, leaving only the building itself to block a lot of the sun during the summer months. Tr. 12/6/12, 13-14. This site plan is subject to CR-100-1984, Subregion VII Sectional Map Amendment, which, in relevant part, provides:

Ensuring that commercial development will be compatible with existing planned single family residential development along the northern boundary. The adequacy of buffering techniques utilized (such as setbacks, walls, vegetation, planting strips, earth berms, topography, etc.) should be measured by their ability to perform the buffering function. Further, it is reasonable to expect that such techniques will exceed the minimal requirements of the Zoning Ordinance in order to minimize negative impacts on residential areas.

CR-100-1984, 5-6.

We find that the removal of three pine trees and the proposed play area extending further into the R-80 residential zone is contrary to the Subregion VII Sectional Map Amendment and Adopted Master Plan because it does not exceed the minimal requirements of the Zoning Ordinance in order to minimize the negative impacts on that residential area, which is directly behind the proposed play area. We also find that the removal of the three white pine trees coupled with the proposed trellis, which will not block the sun coming from the south of the property, leaving only the building itself to block a lot of the sun during the summer months, does not meet the requirements of a daycare center to provide sufficient shade during the warmer months to afford the 22 children protection from the sun. § 27-464.02(a)(1)(A)(v).

Pursuant to § 27-142 of the Zoning Ordinance, the burden of proof in any zoning case shall be the applicant's. We are not persuaded that the applicant has met its burden. The

applicant did not provide an approved stormwater management concept plan with this site plan. PGCPB No. 12-117, 2, Technical Staff Report, 4. The submittal of a detailed site plan **shall** include an approved stormwater management concept plan. § 27-282 (e)(11). *See* § 27-108.01 (a)(19) ((19) (The words “shall,” “must,” “may only” or “may not” are always mandatory and not discretionary. The word “may” is permissive.) We find that the applicant’s failure to submit an approved stormwater management concept plan has significantly impaired our review of the proposed outdoor play area due to its location on a hill with a significant drop and slope, and the real potential of flooding of the outdoor play area after grading. Because the application failed to comply with the Zoning Ordinance submittal requirements, we find that the applicant has failed to meet its burden, and this detailed site plan does not represent a reasonable alternative for satisfying the site design guidelines.

The detailed site plan also did not comply with the referral requirements of the Zoning Ordinance and site guidelines. Pursuant to § 27-284 of the Zoning Ordinance, **prior to taking action on the detailed site plan, Planning Board shall** refer the plan to the Prince George’s County Police Department for review and comment at the time of Subdivision and Development Review Committee. The Police Department may comment on issues relevant to their mission, including opportunities to implement crime-prevention measures, and to enhance the safety and security of residents, employees and other users of a project through implementation of the principles of Crime Prevention Through Environmental Design (CPTED). § 27-284 (a)(1) (Emphasis added.) Because the application failed to comply with the Zoning Ordinance submittal requirements, we find that the detailed site plan does not represent a reasonable alternative for satisfying the site design guidelines.

We find this non-referral to be a significant defect in the site plan application because for

a daycare center to be permitted in the C-S-C Zone sufficient light shall be provided on the play area if it is used before or after daylight hours to insure safe operation of the area. § 27-464.02 (a)(1)(iv). (Emphasis added.) The applicant has proposed that the outdoor play area will not be used after daylight hours, but the applicant, Mr. Shin, is not the operator of the daycare center. Ms. Elder, who is the prospective lessee of the proposed site, is. Based on the applicant's representation, and without any enforcement mechanism, Planning Board imposed a condition that the outdoor play area shall be limited to the hours between 7 a.m. and 9 p.m., but shall in no event be allowed after daylight hours. PGCPB No. 12-117, 8, Technical Staff Report, 7. Our view and interpretation of this condition does not insure the safe operation of the outdoor play area *after daylight hours*. To the contrary, it insures that the play area, between the hours of 7 a.m. and 9 p.m., *will not have sufficient lighting* as daylight hours vary greatly from summer to winter in this area. Because this site plan significantly affects the health, safety, and welfare of the general public, including the 44 children of the proposed daycare center, we find that the detailed site plan does not represent a reasonable alternative for satisfying the site design guidelines of a detail site plan.

H. Conclusion

For the reasons stated above, Planning Board's approval of DSP-87115/09 is REVERSED.