

Case No. ROSP S.E. 4388/01

Applicant: Kreative Kids Child Care Center  
Monika and Jalindar Mahabare

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 Zoning Hearing Examiner in Revision of Site Plan Special Exception 4388-01 and Alternative Compliance 11031 for permission to revise Special Exception 4388 (Day Care Center for Children) by increasing enrollment from 32 to 62 children, and requesting alternative compliance to the provisions of the Landscape Manual (AC-11031) for the portions of three parking spaces that lie within the required landscape strip, located on 0.2707 acre (11,789 square feet) of R-R (Rural Residential) zoned land located on the northeast corner of Collier Road and Cherry Hill Road, identified as 3400 Collier Road, Beltsville, Maryland, is:

REVERSED, pursuant to §§27-131, 27-132, 27-312 of the Zoning Ordinance for the reasons stated in Attachment A of this Order of Denial, which, pursuant to §27-141 of the Zoning Ordinance, and §25-204 of the Land Use Article, Md. Ann. Code (2013 Supp.), the District Council adopts as its findings of facts and conclusions in this case.

ORDERED this 27<sup>th</sup> day of January, 2014, by the following vote:

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

Opposed:

Abstained:

Absent: Council Members Harrison and Toles.

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

**ATTACHMENT A**

**ORDER OF DENIAL FOR ROSP S.E. 4388/01**

**FINDINGS OF FACTS AND CONCLUSIONS**

**A. Procedural History**

On or about December 1, 2011, the Development Review Division of the Prince George's County Planning Board accepted Applicants Monika and Jalindar Mahabare application for a major revision to a previously approved special exception, S.E.-4388,<sup>1</sup> to increase the child enrollment from 32 children to 62 children. Applicants also requested alternative compliance from Section 4.2 of the Landscape Manual.

On or about September 24, 2012, Development Review Division Technical Staff (Technical Staff) completed its report, and recommended approval of the application, with conditions.

Subsequently in November 2012, the Prince George's County Planning Board elected not to schedule a hearing on Applicants request and adopted Technical Staff's recommendation as its own.

On December 5, 2012, the Zoning Hearing Examiner (ZHE) held a public hearing to consider evidence in support of Applicants request. At the close of the hearing, the ZHE kept the record open to afford the Applicants an opportunity to submit 1) a floor plan and 2) an updated letter of exemption from the requirements of the Woodland and Wildlife Habitat Conservation

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<sup>1</sup> On July 27, 2001, the ZHE filed its Notice of Decision with the District Council which approved S.E. 4388, a request, by applicant Anjanette Manette-Blue, for permission to use the subject property, 3400 Collier Road, Beltsville, Maryland, 20705, for a Day Care Center for 32 children. The District Council elected not to review the ZHE's decision which became final on or about August 27, 2001. *See* Zon. Ord. §27-141 (...The Council may take judicial notice of any evidence contained in the record of any earlier phase of the approval process relating to all or a portion of the same property, including the approval of a preliminary plat of subdivision.)

Ordinance and additional information in accordance with conditions 1(a) through (g) of the Technical Staff Report.

On or about May 21, 2013, over five (5) months later, Applicants submitted a floor plan, one of the items, requested by the ZHE.

On or about June 28, 2013, the ZHE filed its Notice of Decision with the District Council.<sup>2</sup>

On or about July 15, 2013, the District Council elected, 9-0, to make the final decision and conduct oral arguments in this matter.<sup>3</sup>

On or about November 4, 2013, the District Council held oral arguments. At the close of oral arguments, the District Council took this matter under advisement.<sup>4</sup>

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<sup>2</sup> All statutory references herein, unless otherwise indicated, are to the Prince George's County Code, Subtitle 27, Zoning Ordinance, (2008-09 ed., as amended) and will be referred to hereinafter as "§27- \_\_\_\_."

After a case is transmitted from the ZHE, the Clerk of the Council and the District Council, pursuant to §27-131, must allow 30 days for statutory appeals.

<sup>3</sup> Pursuant to §27-125.04, notice of public hearings must be mailed at least 30 days prior to the hearing.

<sup>4</sup> §27-132. District Council hearing procedures.

(d) Time limits on final action.

(A) In a zoning case not finally decided by the Zoning Examiner, the Council shall make its decision finally disposing of the application within one hundred twenty (120) days after the Zoning Hearing Examiner files his decision with the Clerk of the Council, or within one hundred fifty (150) days if oral argument is requested. (Emphasis added.)

(f) Jurisdiction.

(1) In deciding an appeal to the District Council, or Council election to review a decision made by the Zoning Hearing Examiner or the Planning Board, the Council shall exercise original jurisdiction.

(2) For any appeal or review of a decision made by the Zoning Hearing Examiner or the Planning Board, the Council may, based on the record, approve, approve with conditions, remand, or deny the application.

On or about January 13, 2014, the District Council referred this matter to staff for the preparation of an order of denial.<sup>5</sup>

**B. The Subject Property**

The subject site is a rectangular-shaped parcel improved with a one-story 2,630 square-foot, single-family dwelling unit constructed in 1964. The building is made of brick and siding, and has a split-foyer entrance and a walk-out basement. (Exhibit 16(a)) The building has a circular asphalt driveway, accessible from both Cherry Hill Road and Collier Road, a parking area for five vehicles on the northwest side of the building, a covered handicap ramp, and a fenced play area with play equipment in the rear and side yards.

The request is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because the property is less than 40,000 square feet and has no prior TCP approvals. A letter of exemption, valid for two years, was issued to the Applicants on October 26, 2010 and expired on October 26, 2012. The record contains no updated or renewed letter of exemption. (Exhibits 7 and 11) The site does not contain any regulated environmental features. (Exhibit 11, p. 9)

The neighborhood boundaries and surroundings of the subject property are as follows:

- North - Powder Mill Road (MD 212);
- South - the Capital Beltway (I-95/495);
- East - Evans Trail; and
- West – Cherry Hill Road

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<sup>5</sup> See §27-291 which prohibits the District Council from taking any action during the months of August and December. §27-291. Postponement of Council actions.

(a) Whenever the District Council is required to take action on or has the option to review a matter within a time limit specified in this Subtitle, the calculation of the time limit shall be postponed during the period that the Council is prohibited from taking action pursuant to the provisions of Article 28, Section 8-104(a), of the Annotated Code of Maryland, and the months of August and December when the Council is in recess; or in the event the Council fails or is unable to meet due to the cancellation of a scheduled Council session due to a weather emergency, or other declared state of emergency, in which event the time shall be extended to the next regularly scheduled date on which the Council meets.

- North - single-family detached dwellings in the R-R Zone
- South – Collier Road and, on the other side, a single-family detached dwelling in the R-R Zone
- East – single-family detached dwellings in the R-R Zone
- West – Cherry Hill Road and, on the other side, a family day care business in a single-family detached dwelling in the R-R Zone.

One of the Applicants, Monika Mahabare, with an address of 3911 Arbor Crest Lane, Rockville, Maryland 20853, testified under oath that she is the second owner of the day care located at 3400 Collier Road, the address of the subject property. And that she is currently licensed to operate day care centers by the State of Maryland and Prince George's County. And further that she is in full compliance with the licensing requirements. (12/5/12 ZHE Tr. 20)

According to the Maryland State Department of Education Office of Child Care Compliance Record Search, the entity requesting a major revision to S.E.-4388, Kreative Kids Child Care Center, (12/5/12 ZHE Tr. 3, Technical Staff Report, 9/24/12 at 1), or Kreative Kids Child Day Care Center (Statement of Justification, at 1), does not possess a valid license to operate a day care center at 3400 Collier Road, Beltsville, Maryland 20705.<sup>6</sup> Nor does either

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<sup>6</sup> See RULES OF PROCEDURE FOR THE PRINCE GEORGE'S COUNTY DISTRICT COUNCIL (Adopted by CR-5-1993 and Amended by CR-2-1994, CR-2-1995 and CR-74-1995)

Rule 6: Oral Argument and Evidentiary Hearings:

(f) The District Council may take administrative notice of facts of general knowledge, technical or scientific facts, laws, ordinances and regulations. It shall give effect to the rules of privileges recognized by law. The District Council may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence.

*See*

<http://checkcmd.org/SearchResults.aspx?ft=&fn=kreative%20kids%20child%20care%20center&sn=&z=20705&c=Beltsville&co=Prince%20George's%20County> and  
<http://checkcmd.org/SearchResults.aspx?ft=&fn=kreative%20kids%20child%20day%20care%20center&sn=&z=20705&c=Beltsville&co=Prince%20George's%20County>

Also according to the Prince George's County Division of Child Care, 807 Brightseat Road, Landover, Maryland 20785, (301) 333-6940, Kreative Kids Child Care Center/Kreative Kids Child Day Care Center license was revoked on July 24, 2007.

entity registered as a business with the Maryland State Department of Assessment and Taxation.<sup>7</sup>

According to the same Compliance Record Search, the entity with a license operating at the subject property address of 3400 Collier Road, Beltsville, Maryland 20705, is ABC Learning Center, operated by Applicant Monika Mahabare.<sup>8</sup> ABC Learning Center program details are as follows:

Facility Name: ABC Learning Center  
 License #: 150574  
 County: Prince George's County  
 Provider Status: Open

Phone: (301) 931-3222  
 E-mail: monikamahabare@yahoo.com  
 Approved For: Monday-Friday  
 6:30 AM - 6:30 PM  
 January-December

Capacity: 32  
 6 weeks through 17 months  
 18 months through 23 months  
 2 years  
 3 years  
 4 years  
 5 years  
 5 years to 15 years

Approved Education Program: No  
 Accreditation: NA

And ABC Learning Center Inspection information is as follows:

Date	Regulations	Finding	Date Corrected
02/20/2013	13A.16.04.01B	The center exceeded the maximum approved child capacity.	02/20/2013
02/20/2013	13A.16.09.02B	The center did not have a written individualized activity plan for each infant and toddler.	02/25/2013
02/03/2012		No Noncompliances Found	

<sup>7</sup>

*See*

<http://sdatcert3.resiusa.org/ucc-charter/noRecords.asp?EntityName=kreative%20kids%20child%20care%20center&domain=Charter> and  
<http://sdatcert3.resiusa.org/ucc-charter/noRecords.asp?EntityName=kreative%20kids%20child%20day%20care%20center&domain=Charter>

<sup>8</sup>

*See*

<http://checkcmd.org/FacilityDetail.aspx?ft=&fn=abc%20learning%20center&sn=&z=20705&c=&co=Prince%20George's%20County&fi=130742>

According to the Maryland State Department of Assessment and Taxation however, ABC Learning Center is registered as follows:<sup>9</sup>

Entity Name: ABC LEARNING CENTER  
Dept ID #: T00335018

Owner (Primary): MONIKA MAHABARE  
15010 LAYHILL RD  
SILVER SPRING, MD 209061225  
Location: ABC LEARNING CENTER  
15010 LAYHILL ROAD  
SILVER SPRING, MD 20906  
Renewal Notice Date: N/A  
Expiration Date: 09/22/2016

The Applicants, for the entity, Kreative Kids Child Care Center, (12/5/12 ZHE Tr. 3, Technical Staff Report, 9/24/12 at 1), or Kreative Kids Child Day Care Center (Statement of Justification, at 1), which does not possess a valid license to operate a day care center at 3400 Collier Road, Beltsville, Maryland 20705, are seeking permission for a major revision to SE-4388 by expanding the number of children from 32 to 62. Based on testimony before the ZHE, the Applicants propose no expansion to the existing square footage which was previously approved for 32 children. (12/5/12 ZHE Tr. 7, 13) According to the Applicants Floor Plan (Exhibit 23(b)) the subject property consists of a main floor and a basement floor.

The main floor plan, which only has one exit door, proposes:

- 10 four year old students and 1 staff in a 350 square foot room
- 15 five year old students and 1 staff in a 560 square foot room and
- 10 three year old students and 1 staff.

The basement floor plan, which consists of two utility closets and a mechanical room,

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<sup>9</sup> See  
[http://sdatcert3.resiusa.org/ucc-charter/DisplayEntity\\_b.aspx?EntityID=T00335018&EntityName=ABC+LEARNING+CENTER+++++&TabNum=1](http://sdatcert3.resiusa.org/ucc-charter/DisplayEntity_b.aspx?EntityID=T00335018&EntityName=ABC+LEARNING+CENTER+++++&TabNum=1)

proposes:

- 12 two year old students and 2 staff
- 6 infants and 2 staff and
- 9 toddlers and 3 staff.

At current capacity of 32 children, the subject property also has 6 existing staff members for a total of 38 occupants daily. At the proposed capacity of 62 children, *i.e.*, an additional 30 children and 11 additional staff members, at any given time, the Applicants propose to have approximately 79 occupants reside daily in a net total floor space of 2,280 square-feet. (Exhibit 23(b))

### C. 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 Supp.), 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).

A major revision of an approved special exception for a day care center must meet, in addition to other requirements of the Zoning Ordinance, the requirements of §27-102, §27-317, and §27-348.01.

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.

A special exception may be approved, pursuant to §27-317(a), if:<sup>10</sup>

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
- (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
- (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
- (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

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<sup>10</sup> §27-108.01. Interpretations and rules of construction.

(19) The words “shall,” “must,” “may only” or “may not” are always mandatory and not discretionary. **The word “may” is permissive.** (Emphasis added.)

(7) 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 requirement of Subtitle 24-130 (b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
- (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

A day care for children may be permitted, pursuant to §27-348.01(a), subject to the following:

(1) The District Council may specify the maximum number of children to be enrolled, which may not be increased by State or local health, education, or fire regulations;

(2) An ample outdoor play or activity area shall be provided, in accordance with the following:

(A) 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;

(B) 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;

(C) 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;

(D) 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;

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

(F) 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

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

(3) In the C-W, C-M, I-1, I-2, and I-4 Zones, a Special Exception for a day care center for children shall be allowed only if the Council finds that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed use.

(b) In addition to the requirements of Section 27-296(c), the site plan shall show:

- (1) The proposed enrollment;
  - (2) The location and use of all buildings located on adjoining lots; and
  - (3) The location and size of outdoor play or activity areas.
- (c) Any day care center for children which has, on or before the effective date of this Ordinance, fully complied with the provisions of this Subtitle in effect at the time the use commenced shall not be required to meet the requirements of this Section, provided that the use has not been expanded or changed since that time. Any expansion or change shall be governed by the provisions of this Section, or of Sections 27-445.03, 27-464.02, 27-475.02, or 27-541.02.
- (d) For the purposes of this Section, enrollment shall mean the largest number of children enrolled in the center in any one (1) session.

**D. Enrollment**

Based on our review of the documents in the record, including but not limited to the floor plans, and the testimony from Applicant Monika Mahabare, we are not persuaded that the evidence presented in support of a major revision to S.E.-4388 warrants our discretionary approval to increase enrollment of children from 32 to 62 at Kreative Kids Child Care Center, (12/5/12 ZHE Tr. 3, Technical Staff Report, 9/24/12 at 1), or Kreative Kids Child Day Care Center (Statement of Justification, at 1).

Applicants proposed special exception use to increase enrollment from 32 to 62 children, with 11 additional staff members, for a total of 79 occupants, in a usable floor area of 2,280 square feet in a single family residential dwelling constructed in 1964 are not in harmony with the purposes of the Zoning Ordinance of the County. The basement floor plan, which only has one direct exist to the outside of the dwelling, two utility closets and a mechanical room, illustrate that the proposed increase enrollment will include the least mobile of the children, *i.e.*, infants, toddlers, and two year olds. The proposed classroom for the infants and toddlers is located in part of the basement with only 1 window, and is furthest away from the exit of the dwelling. Our review of the basement floor plan demonstrate that the proposed increase enrollment will, at any given time, have 34 occupants, 29 of which are infants, toddlers, and 2

year olds, and there is only 1 door exit directly out of the basement in the case of a fire or other emergency.

The main floor plan is no different. The proposed increase in enrollment for classrooms on the main level are also furthest from the main exist of the dwelling and the square footage of the classrooms are, in our view, quite small to accommodate the increase in enrollment. Like the basement floor plan, the main floor plan also has only 1 door to serve as an exit directly out of the main level in the case of a fire or other emergency.

Based on our review of the proposed increase in enrollment from 32 to 62 children, accompanied with an increase in staff members, without significant change in usable square footage floor space for the previously approved 32 children, we find that Applicants request for a major revision of S.E.-4388 will not protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County because the proposed floor plans are inadequate to accommodate the proposed increase in enrollment of children and staff members. §27-102.

For the same reasons, we also find that the proposed floor plans and proposed increase in enrollment of children and staff, a total of 79 occupants at any given time, will not promote the purposes of the Zoning Ordinance to protect the County from fire, flood, panic, and other dangers nor will 79 occupants in a usable space of 2,280 square footage will provide sound, sanitary housing in a suitable and healthy living environment. §27-102.

**E. Outdoor Play Area**

Applicants propose a 2,400 square feet play area, which only meets the requirements of the Zoning Ordinance if only half of the proposed enrolled children, *i.e.*, 31, are allowed in the play area at any given time. In our view however, this is not the end of the analysis regarding

whether the proposed outdoor play area, as a component of the request for a major revision of S.E.-4388, to increase enrollment of children from 32 to 62, not inclusive of staff members, will promote the purposes of the Zoning Ordinance.

The evidence submitted before the ZHE and Technical Staff indicate that the entire outdoor play area will be surfaced with woodchips. (12/5/12 ZHE Tr. 19-20) According to the Applicants expert land planner, woodchips are very safe when new but the problem with woodchips is that they age down. (12/5/12 ZHE Tr. 19-20) According to Applicant Monika Mahabare, at current capacity of 32 children, no more than 12 to 15 children are allowed in the play area at any given time and play time is limited to twice a day. And each group of children, at current capacity, goes out to the play area at different times. (12/5/12 ZHE Tr. 22, 25) Technical Staff also noted that day care staff will supervise the children during outdoor play periods.<sup>11</sup> (Technical Staff Report, 9/24/12 at 9)

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<sup>11</sup> We reject Technical Staff finding that because S.E.-4388 was previously approved in 2001 that an expansion of the day car today “will not cause an impact to the children any differently than already experienced.” (technical Staff Report, 9/24/12 at 5) *See Richmond Corp. v. Board of County Commissioners*, 254 Md. 244, 255 A.2d 398, 408 (1969) (An administrative decision is not controlling upon the reviewing board. The Court of Appeals stated:

Even if the Planning Commission and the Department of Inspection and Permits *had* rendered an opinion that the uses, or any of them, were in harmony with the purpose and intent of the General Plan, the District Council would not have been bound by such opinions.

Similarly in *City of Baltimore v. Muller*, 242 Md. 269, 279, 219 A.2d 91, 97 (1966), the Court of Appeals discussed the effect that favorable reports of other agencies have upon the Baltimore Board of Municipal and Zoning Appeals. The Court stated:

We have also held that the favorable reports of the Fire Commissioners, the Commissioner of Health and the Department of Transit and Traffic are not controlling.

*Cf. Shell Oil Co. v. City of Baltimore*, 225 Md. 463, 472, 171 A.2d 234, 238 (1961).

Our review of the photograph slides 16, 17, 18, 19, and 20, which depict the outdoor play area of the subject property, is persuasive evidence that an increase enrollment of children with staff supervision during play time will “age down” more rapidly and will pose a health risk to an increase number of children. We are convinced that the proposed increase in enrollment from 32 to 62 children, accompanied with an increase in staff members, without any improvement of the surface of the outdoor play area will not protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County because woodchips age down. (12/5/12 ZHE Tr. 19-20), §27-102. We are not convinced by the testimony of Applicant Monika Mahabare that replacement of the woodchips twice a year is dispositive of the safety concerns or quality of the outdoor surface of the play area we discern from photograph slides 16, 17, 18, 19, and 20. In fact, People’s Zoning Counsel during his questioning and observation of the same evidence concluded that the woodchips look like they have been compressed with all the kids playing. (12/5/12 ZHE Tr. 19-20) We are persuaded by the observation of People’s Zoning Counsel of the evidence because the compressed woodchips are a result of current capacity of 32 children, all of which are not out on the outdoor play area at the same time, and compression of the woodchips are also a result of less supervisory staff on the play area at the same time.

For the same reasons, we also find that the Applicants request for a major revision of S.E.-4388, which includes the proposed outdoor play area, will not promote the purposes of the Zoning Ordinance to protect the County from other dangers due to an increase enrollment of children on an outdoor play area comprised of woodchips which “age down” nor will the request provide sound, sanitary housing in a suitable and healthy living environment. §27-102.

Pursuant to §27-348.01 of the Zoning Ordinance, an outdoor play area shall contain sufficient shade during the warmer months to afford protection from the sun and 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. Technical Staff found that the majority of the play area is located on the northeast side of the property, which itself will provide some shade. And that the site plan shows some existing and proposed vegetation throughout the property including 2 shade trees. (Technical Staff Report, 9/24/12 at 5) The proposed outdoor play area is 2,400 square feet. Based on our review of the photograph slides 16, 17, 18, 19, and 20, which depict the 2,400 square feet outdoor play area of the subject property, illustrate insufficient shade. We find that the proposed vegetation and location of the 2 proposed shade trees will not provide sufficient shade during the warmer months to afford a proposed increase enrollment of 30 children protection from the sun,

**F. Two-Way Traffic Driveway**

The Applicants request for a major revision to S.E.-4388 also includes a proposal to expand the existing one-way circular driveway to two-way traffic, to add 4 new parking spaces for a total of 8 parking spaces, to build a new handicap-accessible walkway, to validate the existing handicapped ramp and level roof cover to the access the lower level of the building.

According to Transportation Planning Section, Countywide Planning Division, the subject property has frontage on Cherry Hill Road, which is a master plan collector facility within a planned 80-foot right-of way. Transportation Planning Section also found that the proposed increased enrollment will likely produce an additional 25 trips per hour during peak hours using the un-signalized Cherry Hill Road/Collier Road intersections. (Transportation Planning Section Memorandum, January 17, 2012)

The subject property is bounded to the north and east by single-family homes and to

the south and west by public rights-of-way in the rural residential zone. The neighborhood is primarily residential in nature and includes the Frances Fuchs Special Education Center to the south and High Point High School to the north. The neighborhood boundaries are as follows:

- North - Powder Mill Road (MD 212);
- South - the Capital Beltway (I-95/495);
- East - Evans Trail; and
- West – Cherry Hill Road

This request for a major revision of S.E.-4388 is subject to the *2010 Approved Subregion 1 Master Plan and Sectional Map Amendment*. One of the purposes of the Zoning Ordinance is to implement the General Plan, Area Master Plans, and Functional Master Plans, and a required finding before a special exception may be approved is that the proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or in the absence of a Master Plan or Functional Master Plan, the General Plan. *See* §27-102(a)(2) and §27-317(a)(3). When statutes link planning and zoning, Master Plans are elevated to the level of true regulatory devices. Plans that are not in conformance with a Master Plan must be rejected. *HNS Dev., LLC v. People’s Counsel for Balt. County*, 425 Md. 436, 42 A.3d 12 (2012).

A major issue and concern of the residents of the Calverton Living Area include but are not limited to 1) a need for traffic calming along Powder Mill Road and Cherry Hill Road, 2) install traffic-calming improvements along Powder Mill Road and Cherry Hill Road, and 3) to see all major open spaces in the area remain public and protected from development and an increase in pedestrian access and trail connectivity throughout the living area. (*2010 Approved Subregion 1 Master Plan and Sectional Map Amendment*, at 117)

In analyzing the above information, and our review of photograph slides 9 of 20 (Intersection of Cherry Hill Road and Collier Road), 11 of 20 (Existing Parking Lot to the North), 13 of 20 (Cherry Hill Road North View), 14 of 20 (Entrance from Collier Road), and 15

of 20 (Entrance from Cherry Hill Road), we find that the proposed major revision of S.E.-4388 to increase enrollment from 32 to 62 children and additional staff will substantially impair the integrity of the *2010 Approved Subregion 1 Master Plan and Sectional Map Amendment*. We find that the request for a major revision of S.E.-4388 will produce an additional 25 trips per hour during peak hours using the un-signalized Cherry Hill Road/Collier Road intersections and thus the proposal will not promote the purposes of the Zoning Ordinance. The projected increase in traffic trips generated by the proposed increase in enrollment necessitating a two-way traffic circular driveway will not implement or address the concerns raised by residents of the Calverton Living Area in the *2010 Approved Subregion 1 Master Plan and Sectional Map Amendment*. The projected increase in traffic trips and the proposed two-way traffic circular driveway will also not protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County because a major issue and concern of the residents of the Calverton Living Area include but are not limited to 1) a need for traffic calming along Powder Mill Road and Cherry Hill Road, 2) install traffic-calming improvements along Powder Mill Road and Cherry Hill Road, and 3) to see all major open spaces in the area remain public and protected from development and an increase in pedestrian access and trail connectivity throughout the living area. (*2010 Approved Subregion 1 Master Plan and Sectional Map Amendment*, at 117)

**G.     Parking**

Applicants request for a major revision to S.E.-4388 to increase enrollment from 32 to 62 children will require 1 parking space for every 8 children pursuant to §27-568. Technical Staff concluded that Applicants will provide exactly 8 parking spaces, including one van-accessible space for the physically handicapped. (Technical Staff Report, 9/24/12 at 6)

At current capacity of 32 children, the subject property also has 6 existing staff members. At the proposed capacity of 62 children, *i.e.*, an additional 30 children, the major revision to S.E.-4388 will require 11 additional staff members. (Exhibit 23(b)) While we concur with Technical Staff that §27-568 requires 1 parking space for every 8 children, but the proposed major revision of S.E.-4388 will also necessitate parking for the additional 11 new staff members, which is completely lacking from the Applicants proposal.

Pursuant to §27-142 of the Zoning Ordinance, the burden of proof in any zoning case shall be the applicant's. Based on our review of the Applicants request and the evidence in the record, we are not persuaded that the Applicants met their burden to warrant our discretionary approval, pursuant to §27-317 and §27-348.01, for a major revision of S.E.-4388 to increase enrollment from 32 to 62 children.

#### **H. Conclusion**

For the reasons stated above, the decision of the Zoning Hearing Examiner is REVERSED.