

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

**SPECIAL EXCEPTION
3697/02
REVISION OF SITE PLAN
DECISION**

Application:	Day Care Center for Children
Applicant:	Great Commission Global Ministries, Inc./Ideal Child Care Center
Opposition:	None
Hearing Date:	October 6, 2010
Hearing Examiner:	Maurene Epps Webb
Recommendation:	Approval with Conditions

NATURE OF REQUEST

(1) Special Exception 3697/02 is a request for permission to revise the Special Exception for a Day Care Center and Private School approved by the District Council in 1987 for property zoned R-55 (One-Family Detached Residential), located on the south side of District Heights Parkway, east of Breton Drive, and identified as 6809 District Heights Parkway, District Heights, Maryland.¹

(2) The Technical Staff recommended approval with conditions. (Exhibit 15) The Planning Board chose not to schedule a hearing and accepted the Technical Staff's recommendation as its own. (Exhibit 17)

(3) No one appeared in opposition to the request at the hearing held by this Examiner.

(4) At the close of the hearing the record was left open to allow the Applicant to submit several items, and to grant Staff the opportunity to review the revised Site Plan. The last of these items was received on January 28, 2011, and the record was closed at that time.

¹ Applicant did not request any amendment concerning the private school on site and indicated that it might be "phased out". (T. 7) As a result, the evidence submitted and gleaned from the hearing all addresses the proposed increase in students for the day care center.

FINDINGS OF FACT

Subject Property

(1) The subject property is an irregular-shaped parcel, improved with a 7,610 square foot brick structure that houses a Church, School and Day Care Center for 62 children. As noted *supra*, the District Council originally approved S.E. 3697 in 1986, thereby permitting a day care center and private school on site. (Exhibits 9(a) and (b)) Subsequent approvals amended a condition concerning types of pavement used, and increased the enrollment at the day care center to 62 children. (Exhibits 10 (a), 10 (b), 11(a) and 11(b)) The Planning Board approved a Departure from Design Standards (DDS-292) and a Departure from Parking and Loading Standards (DPLS-48) for the landscaping and parking on site. (See, Exhibit 12(a))

(2) The site has less than 10,000 square feet of existing woodlands, is less than 40,000 square feet in size and is not subject to a previously approved Tree Conservation Plan. It is, therefore, exempt from the provisions of the Woodland Conservation and Tree Preservation Ordinance. (Exhibit 25)

Surrounding Property and Neighborhood

(3) The subject property is surrounded by the following uses:

- North – District Heights Parkway and multifamily dwellings in the R-18 Zone
- West – former church parsonage, then Breton Drive, in the R-55 Zone
- South – Single-family residences in the R-55 Zone
- East – Potomac Electric Power Company (PEPCO) transmission line and property in the R-55 Zone

(4) The neighborhood boundaries are as follows:

- North – District Heights Parkway
- South – Single-family residences in the R-55 Zone
- East – (PEPCO) transmission line
- West – County Road

Master Plan/Zoning

(5) The subject property lies within an area governed by the 2009 Subregion 4 Master Plan and Sectional Map Amendment. The subject property is located in Living Area E (Zone 3). The Master Plan noted an increase of households in Living Area E, and recommended the preservation of existing older neighborhoods and the development of more single family homes and townhouses. (2009 Subregion 4 Master Plan, pp. 113, 118) The Sectional Map Amendment retained the property in the R-55 Zone.

(6) The 2002 General Plan placed the property within the Developing Tier. The vision for this Tier is to maintain a pattern of low to moderate density suburban residential communities, distinct commercial centers, and employment areas that are transit serviceable.

Applicant's Proposal

(7) The Applicant is Great Commission Global Ministry, LLC, owner of the subject property. Applicant operates a certified non-conforming Church on site. (Exhibit 22; T. 7) Applicant has a business relationship with Legacy International Zion Ministries to operate its day care facility (t/a Ideal Child Care Center). Applicant wishes to expand its current day care operation from 64 to 164 children in response to "a huge request for students to come to be a part of [the] program." (T. 9) Applicant also proposes to increase the parking on site to add eight (8) new parking spaces and modify the play area. There are no changes proposed for the special exception boundaries or to the existing structures; however, the request is a major revision to the prior approval since it is an enlargement of the prior use. (Prince George's County Code, Section 27-324)

(8) Applicant currently has 10 employees for the day care. It expects to hire an additional 5-10 employees if the instant request is approved. (T. 8)

(9) Applicant indicates that the hours of operation will be from 6:00 A.M. to 7:00 P.M., Monday thru Friday, although Note 6 of the Site Plan appears to counter this language. (Exhibit 25(b): T. 8) The play area required to serve 50% of the 164 children is 6,150 square feet (75 square feet X 164 children/2). The site plan shows a play area of 6,200 square feet, enclosed by a four-foot tall chain link fence. The play area will only be used during daylight hours, and will not be illuminated. There are trees on the southwestern boundary of the play area that will provide shade. No off-premises play area is proposed. The Site Plan reveals that the play area is more than 75 feet from the closest dwelling on an adjacent lot, and all adjacent lots are buffered from the subject property by some physical obstruction (such as a right-of-way, hillside or vegetation). (Exhibit 15, p. 4; Exhibit 25(b)) The Site Plan also shows the location and use of all buildings located on adjoining lots and, the proposed enrollment. A prior approval permitted joint use of the play area by the private school and the day care center.

(10) All development will be well within the applicable setback requirements of the Zoning Ordinance, and no variances are requested.

(11) Section 27-568(a)(6) of the Zoning Ordinance requires one (1) parking space for every four (4) seats in the Church; one (1) parking space for every eight (8) children in day care; and one (1) parking space for every six (6) children in the private school. The church seats 224 members, the private school is approved for 38 students, and the day care will have a proposed enrollment of 164 children. Thus, 82 parking spaces are required. However, the Planning Board approved departures for 27 of these spaces. Moreover, Section 27-572 of the Zoning Ordinance allows joint use of the parking lot,

thereby reducing the parking by an additional 20% for the private school and the day care center. Accordingly 50 spaces are required and 51 are provided. (Exhibit 25(b))

(12) Previous approvals granted waivers from certain requirements of the Landscape Manual. (Exhibit 12(b))

Agency Comment

(13) The Transportation Planning Section of the Technical Staff explained that the Application will only result in an additional 70 vehicular trips (both in and out of the site) during the A.M. peak hours, and an additional 121 vehicular trips (both in and out) during the P.M. peak hours. (Attachment to Exhibit 15, July 9, 2010, letter from Masog to Thompson). The Community Planning Division opined that the request is consistent with the General Plan's development pattern policies for the Developed Tier, and with the recommendations of the Subregion 4 Master Plan. (Attachment to Exhibit 15, June 25, 2010, letter from Wooden to Thompson)

(14) After reviewing the request and the referrals, the Technical Staff recommended approval with certain conditions concerning the Site Plan. In doing so, it reasoned as follows:

The day care center (and private school) have existed at the subject site since 1987 and have not been shown to adversely affect the health, safety, or welfare of residents or workers in the area or to be detrimental to the use or development of adjacent properties or the general neighborhood. Tree conservation plan requirements do not apply to the subject application since the special exception was approved prior to November 21, 1989 (November 14, 1986). The increase in the day care enrollment will occur within the existing church education building....

It is recognized that a portion of trips entering and leaving the site are the result of pass-by traffic (traffic that is already using the adjacent roadway). While a maximum of 65 percent pass-by has been assumed for facilities along major roadways, given the location of this facility, few trips are pass-by, and most trips would be diverted from other roadways in the vicinity. [Accordingly, we assumed] a pass-by of ten percent, which is reasonable given its location.... The critical intersection for this site is the intersection of District Heights Parkway and Breton Drive. That intersection is controlled by a roundabout that appears to have been installed about seven years ago. No recent traffic counts are available at that location. The portion of District Heights Parkway in front of the subject site is one-way eastbound; while traffic operations introduce circuitous travel for day care patrons, there are no apparent safety issues that would result from the expansion. It is important to remember that adequacy of transportation facilities is not an issue in the review of this use; review is strictly within the required findings of health, safety, and welfare.

The site is not within or adjacent to any master plan transportation facilities. There are no outstanding transportation conditions associated with the site, and the expansion of the use would not violate any outstanding trip caps. The revision application poses no issue regarding the original special exception finding for the original application, as the finding relates to transportation.

(Exhibit 15, pp. 7-9) All conditions proposed by Staff were addressed by Applicant in its revised Site Plan. (Exhibit 25(b))

(15) The Technical Staff noted that the Town of Capitol Heights and the City of District Heights had no comment on the Application. (Exhibit 15, p. 9)

APPLICABLE LAW

(1) Day Care Centers for Children are permitted in the R-55 Zone upon grant of a Special Exception in accordance with the requirements of Sections 27-317 and 27-348.01.

(2) Section 27-317 provides as follows:

- (a) A Special Exception may be approved if:
 - (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
 - (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.
- (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.

(3) Section 27-348.01 provides as follows:

- (a) A day care center for children may be permitted, 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.

(4) The use should satisfy the purposes of the R-55 Zone, set forth in Section 27-430 (a) of the Zoning Ordinance, since it is a use that the District Council has sanctioned in said zone by Special Exception and the request will encourage the preservation of trees and open space.

(5) In Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981), the Court of Appeals provided the following standard to be applied in the review of a special exception application:

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once conditions, noted below, are met.

CONCLUSIONS OF LAW

(1) The purposes of the Zoning Ordinance are listed in Section 27-102. Fifteen purposes are enumerated. This Examiner finds that the proposed use will specifically promote the following purposes:

To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County

This purpose is furthered since the Applicants are providing a needed service by offering child care to the population in the District Heights area.

To implement the General Plan, Area Master Plans, and Functional Master Plans

The Master Plan recommended continued residential use of the property. The requested use is one that supports this goal by providing a service that homeowners would provide in their own homes if they did not need to work outside the home and is, therefore, a residential use.

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

The proposed use will not place any additional burden upon the public facilities in the area since additional vehicular trips expected if the request is approved are relatively low. Accordingly, this purpose of the Zoning Ordinance is met.

To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining property

The Application does not alter the residential character of the neighborhood and will be conducted in a manner that will shield adjoining properties from adverse impact, given the landscaping, the setback of the play area from adjacent houses, and the hours of operation. Thus, this purpose is accomplished.

To insure the social and economic stability of all parts of the County

This purpose is also furthered by the instant Application since the Applicant will add to the County tax base and provide a needed use to parents and/or guardians in the area.

(Section 27-317(a)(1)).

(2) The Special Exception Site Plan shows the proposed enrollment, the location and use of buildings located on adjoining lots, and the location/size of the outdoor play area. (Section 27-348.01(b))

(3) The subject proposal is required to have at least 75 square feet of play space per child for 50% of the licensed capacity or 75 square feet per child for the total number of children to use the play area at one time. The Site Plan indicates that the total enrollment is 164 children and that there will be 6,200 square feet of play area – slightly in excess of the amount required for 50% of the licensed capacity. There will be no off-premises outdoor play or activity area, nor will the play area be used before or after daylight hours, thereby minimizing any adverse impact that children at play may have upon neighboring properties. The outdoor play area is more than 75 feet from any dwelling on an adjacent lot. The play area does contain sufficient shade during warmer months since there are shade trees to the east. (Section 27-348.01(a))

(4) The District Council has made a legislative determination that this use satisfies the purposes of the R-55 Zone, if it meets the provisions of Sections 27-317 and 27-348.01. Nonetheless, there is sufficient evidence in the record to find that the request will satisfy the purposes of the R-55 Zone since open spaces and trees will be preserved. (Section 27-317 (a)(1)) The proposed use conforms to all applicable requirements of the Zoning Ordinance and does not require the grant of a variance. (Section 27-317(a)(2))

(5) The proposed use will not substantially impair the integrity of the Master Plan for Subregion 4. The Master Plan classified the area as one residential in nature and the instant Application will not alter said character, since day care centers and private schools are typically found in residential areas. (Section 27-317(a)(3))

(6) Additionally, the fencing of the play area, limited hours of its use, landscaping provided, and the reasonable hours of operation for the school and day care center lessen any adverse impact on adjacent properties, thereby insuring that the Special Exception will not be detrimental to the use or development of said properties. For the same reasons the use can be found to not adversely affect the health, safety or welfare of residents or workers in the area. (Section 27-317(a)(4) and (5))

(7) The Application is exempt from the requirements of the Woodland Conservation and Tree Preservation Ordinance. (Section 27-317(a)(6))

(8) No changes are being made to the structures or the exterior grounds. Accordingly, the environmental features of the site are being preserved in a natural state to the fullest extent possible. (Section 27-317(a)(7))

RECOMMENDATION

Approval of Special Exception 3697/02, subject to the following conditions:

1. The maximum number of students to be enrolled in the private school is 38. The maximum number of students to be enrolled in the day care center is 164.
2. No more than 82 students shall utilize the play area at one time.
3. Prior to the issuance of a permit, the Special Exception Site Plan shall be revised to outline the boundaries of the subject property in red, and to delete Note 6 in its entirety. The revised Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for review and inclusion in the record.

[Note: The Special Exception Site Plan and Landscape Plan is Exhibit 25(b).]