

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

**SPECIAL EXCEPTION  
4358**

**DECISION**

Application:	Day Care Center for Children
Applicant:	Ernesto and Elaine Tuzon, Debra Jones
Opposition:	Freddie Dawkins, et al.
Hearing Dates:	April 26, 2000 and June 16, 2000
Hearing Examiner:	Maurene Epps Webb
Disposition:	Denial

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4358 is a request for permission to use approximately 2.59 acres of R-55 zoned land, for a day care center for 70 children. The subject property is located at 7210 Walker Mill Road, approximately 300 feet west of its intersection with Shady Glen Drive, in Capital Heights, Maryland.
- (2) The Technical Staff recommended approval with conditions. (Exhibit 20) The Planning Board chose not to review the application. (Exhibit 21)
- (3) The hearing scheduled for April 26, 2000 was continued until June 16, 2000, at the request of the Applicant, to address certain issues raised by the local community/civic association. At the June 16<sup>th</sup> hearing, Freddie Dawkins, President of the Melwood-Waterford Civic Association, Thelma Taylor, President of the Fairfield Manor Civic Association, and several residents appeared in opposition to the requested use. Ms. Ghana Kelly appeared in support of the request.
- (4) The hearing record was left open, to allow the Applicant to submit a revised Site Plan and comments from the Board of Education. The revised Site Plan was never submitted and comments provided by the Board of Education raised concerns about the adequacy of the access to the site. On April 15, 2003 Applicant requested additional time, noting that it was no longer represented by counsel, and that other revisions to the Site Plan were requested by the Department of Public Works and Transportation. (Exhibit 38) On September 4, 2008, Applicant was advised that the matter would be dismissed for failure to prosecute the case. (Exhibit 39) No response was received.

## **FINDINGS OF FACT**

### **Subject Property**

(1) The subject property is a 2.5855 acre parcel improved with a one-story 2,725 square foot single-family residence and a shed. (Exhibit 20; T. 9) Approximately 30% of the site is wooded. (June 16, 2000 T. 5) There is an 11-foot wide asphalt drive which bisects the property, running from Walker Mill Road to Ogle Lane. (Exhibit 3)

(2) At the time of the hearings held by this Examiner, the subject property was being used as a single-family residence and a family day care facility for eight (8) children. The day care facility began operation in 1994. (Exhibit 5; June 16, 2000 T. 10)

### **Surrounding Property/ Neighborhood**

(3) The subject property is surrounded by single-family dwellings on the north and south and Walker Mill Road to the east. To the west the subject site abuts Ogle Lane, a private driveway ostensibly owned by the Prince George's County Board of Education. (Exhibits 3 and 20) Beyond Ogle Lane is the John H. Bayne Elementary School.

(4) The neighborhood is generally residential in character. It is defined by Shady Glen Drive to the northeast, Walker Mill Middle School to the northwest, Karen Boulevard to the west and Walker Mill Road to the south and east. The area across Walker Mill Drive, as well as the areas to the northeast and southeast, are developed with single-family dwellings in the R-80 and R-55 Zones. The area to the west consists of a middle school and elementary school in the R-55 Zone and townhouses and garden apartments in the R-T and R-18 Zones.

### **Master Plan**

(5) The 1985 Master Plan for Suitland-District Heights and Vicinity recommends medium-suburban density of 3.6 to 5.7 dwelling units per acre for the subject property. The 1986 Sectional Map Amendment for Suitland-District Heights and Vicinity retained the R-55 zoning for the property.

### **Applicant's Proposal**

(6) Applicant proposes to expand an existing day care center by increasing the number of children from eight (8) to seventy (70). Although the interior of the existing residence will be renovated, no significant external changes to the dwelling are proposed. (June 16, 2000 T. 9)

(7) Applicant proposes a 16,500 square foot play area at the southwestern corner of the property. This area is to be enclosed with a 4-foot high chain link fence. (Exhibit 3; June 16, 2000 T. 13) The closest residence on an adjoining lot is 72 feet to the south of the play area.

(8) The existing gravel driveway will be relocated in part and reconfigured as a one-way driveway that will facilitate a safe arrival/departure for the enrollees. (Exhibit 3). Ingress will be from Ogle Lane and egress to Walker Mill Road. There will be no off-premises outdoor play area.

(9) There was discussion at the hearing as to the addition of an outdoor arena to stage plays and similar activity. However, the arena was not shown on the site plan nor reviewed by the Technical Staff. (June 16, 2000 T. 14-15)

(10) The Applicants agreed to revise their site plan to address all conditions recommended by Staff. (June 16, 2000 T. 8)

(11) The play area will be used between the hours of 7:00 a.m. and 7:00 p.m. (June 16, 2000 T. 18) Outdoor lighting was proposed in the form of two building-oriented, motion-sensitive lights.

(12) Because the application does not involve the construction, enlargement or extension of a building it is exempt from the requirements of the Landscape Manual. (Exhibit 20)

### **Opposition Testimony**

(13) Freddie Dawkins testified that there is no need for an additional day care center in the immediate neighborhood for use by neighbors. He also expressed concern that the proposed use would alter the residential character of the neighborhood, since Applicants intended to erect a 4' by 6' sign, and erect an amphitheater. Other residents were opposed due to traffic concerns that would be exacerbated since Applicants would be servicing children that do not reside in the area, and the belief that the use would lead to the commercialization of the residential community. (June 16, 2000 T. 40-51)

### **LAW APPLICABLE**

(1) Day Care Centers for children are permitted in the R-R Zone upon grant of a special exception in accordance with the requirements of Section 27-317 and 27-348.01, which provide as follows:

Sec. 27-317. Required findings.

(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 Tree Conservation Plan.

#### Sec. 27-348.01. Day care center for children.

(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.

(2) 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.

### **CONCLUSIONS OF LAW**

The Applicants bear the burden of proof in this matter. (Schultz, supra; Prince George’s County Zoning Ordinance, Section 27-142)I don’t believe their burden has been satisfied since they were requested to provide revisions to the Site Plan concerning the access owned by the Prince George’s County Board of Education, conditions recommended by Staff, and to show the proposed amphitheater (that was a matter of concern to the opposition). None of the requested information has ever been provided and Applicants have not responded to the “reminder” forwarded by this Office several months ago. I cannot approve the Application without reviewing the requested additional information. Accordingly, I must deny the Application.

### **DISPOSITION**

Special Exception 4358 is Denied.