

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

**SPECIAL EXCEPTION  
4624**

**DECISION**

Application:	Day Care Center for Children
Applicant:	Ajia and Robert M. Cooper, Jr. (Project Name: Lil People U Day Care Center)
Opposition:	None
Hearing Date:	December 15, 2008
Hearing Examiner:	Joyce B. Nichols
Disposition:	Approval

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4624 is a request for a Day Care Center for 20 Children on approximately 0.3074 acres of land in the R-55 (One-Family Detached Residential) Zone, located on the north side of Oxon Run Parkway, approximately 315 feet east of its intersection with Scott Key Drive, also identified as 5910 Oxon Run Parkway, District Heights, Maryland.
- (2) The Planning Board did not elect to consider the instant Application (Exhibit 15) and the Technical Staff recommended approval of the Special Exception with conditions. (Exhibit 9)
- (3) At the conclusion of the evidentiary hearing the record was kept open for a Revised Site Plan, upon receipt of which the record was closed on January 7, 2009.

**Subject Property**

- (1) The subject property is a rectangular shaped lot which is improved with a one (1) story, 1,514 square foot brick single family detached dwelling, a shed, a carport, an above ground pool and a 19 feet by 15 feet concrete slab located adjacent to the driveway. A four (4) foot in height chain link fence is located along the northern and eastern property boundaries, separating the subject property from the adjacent school to the west. Access is provided via a 10 (ten) foot wide driveway from Oxon Run Parkway.

**Master Plan and Sectional Map Amendment**

- (2) The instant Application conforms to the land use recommendations of the 1986 Master Plan and Sectional Map Amendment for Suitland-District Height and Vicinity. The subject property is located within the Developing Tier and the vision for the Developing Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium to high-density neighborhoods.
- (3) The 1986 Sectional Map Amendment for Suitland-District Heights and Vicinity retained the

subject property in the R-55 Zone.

### **Neighborhood and Surrounding Uses**

(4) The neighborhood is bounded on the north by Walker Mill Road, on the south by Marlboro Pike, on the east by Silver Hill Road and on the west by Weber Drive.

(5) The neighborhood is residential in nature with single family homes in the R-55 Zone adjacent to the subject property to the north and east and across Oxon Run Parkway to the south. Frances Scott Key Elementary School (R-55 Zone) is adjacent to the west of the subject property. Along the portion of Marlboro Pike within the neighborhood are single family homes along the north and commercial uses along the south.

### **Applicants' Proposal**

(6) The Applicants are proposing the conversion of a 1,514 square foot single family residence into a Day Care Center for 20 Children. The Applicants proposal includes the expansion of the existing 10-foot-wide driveway into a 22 foot wide driveway with the addition of a van-accessible handicap parking space. No additions to the main structure are proposed.

### **APPLICABLE LAW**

(1) The instant Application for a Day Care Center for 20 Children is permitted in the R-55 Zone by Special Exception in accordance with the requirements of §27-348.01 and §27-317 of the Zoning Ordinance.

(2) Section 27-348.01 of the Zoning Ordinance 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.

(3) Section 27-317 requires that the following findings be made prior to the grant of any Special Exception:

(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.

(4) A Special Exception use should be approved unless it can be demonstrated that “there are facts and circumstances that show what the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Special Exception use irrespective of its location within the zone.” Schultz v. Pritts, 291 Md. App. 1, 432 A.2d 1319, 1331 (1981); *See also*, Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253(1995).

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- (1) Based on a proposed enrollment of 20 children, a total of 1,500 square feet for the play area is required to accommodate the full enrollment at one time. A play area of 1,775 square feet is provided. (Exhibit 29) §27-348.01(a)(2)(A)
- (2) The play area is located 35 feet from the nearest dwelling, which is located on the adjoining lot to the east. The play area will be enclosed by a four (4) foot high black, vinyl-clad chain link fence. (Exhibit 29, Note 18) §27-348.01(a)(2)(B)
- (3) The Technical Staff finds that the existing setbacks are adequate given the nature of the surrounding uses. Oxon Hill Parkway is a short, secondary stub street that serves seven (7) single family dwelling. There is no vehicular access from Oxon Run Parkway to the adjacent Frances Scott Key Elementary School. All of the uses surrounding the subject property are residential. §27-348.01(a)(2)(C)
- (4) The Applicants do not propose the use of an off-premise play area. §27-348.01(a)(2)(D)
- (5) The Revised Site Plan, Exhibit 29, includes four (4) mature trees located in the rear yard, including one (1) in the proposed play area which will provide sufficient shade during the summer to afford protection from the sun. §27-348.01(a)(2)(E)
- (6) The Applicants are providing building-mounted 150 watt floodlights (existing) to illuminate the parking area and play area. (Exhibit 29) §27-348.02(a)(2)(F)
- (7) Note 5, on the Revised Site Plan, Exhibit 29, states in part “Play Area use shall be from 8:30 AM to 4:30 PM.” §27-348.01(a)(2)(G)
- (8) The proposed use and Site Plan are in harmony with the general purposes of the Zoning Ordinance, §27-102, as follows:

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

The provision of daytime child care services is an increasingly important part of modern society. The creation of a new center for these services, in conformance with the regulations that have been established to protect the public from adverse effects of development, will be in harmony with the purpose of protecting and promoting the public health, safety, morals, convenience and welfare of the inhabitants of the County.

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

Two of the goals of the General Plan for the Developed Tier are to strengthen existing neighborhoods and to encourage appropriate infill; by allowing the creation of a small-scaled facility in an existing single-family dwelling, in an existing single-family neighborhood, this proposal would be in harmony with these goals.

The proposed Day Care Center for 20 Children will be located in an existing house in a neighborhood of single-family residences, in accordance with the land use recommendations of the Master Plan. The Goal of the “Living Areas” component of the Master Plan is, “To protect and improve the quality of all living areas.” Further, an Objective of the “Living Areas” component of the Master Plan is, “To stress the need to upgrade the quality of existing and developing neighborhoods with assets and amenities that will ensure stability and provide a sound basis for the protection and enhancement of homeowner equities”.

By providing a needed service that will be used by the residents of the immediately surrounding neighborhood, with a physical character that integrates into the existing neighborhood character (thus protecting the character of the existing neighborhood), this proposed Day Care Center for 20 Children will be in harmony with this Purpose of the Ordinance.

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

As noted above, the development of the proposed Day Care Center for 20 Children will be in an existing structure. The existing structure is located on an existing subdivided lot that will not require resubdivision because of the small scale of the proposed use. While the trip generation suggested by Planning Staff looks curiously high for a Day Care Center with a capacity of only twenty children, the Staff nevertheless determined that the creation of the Day Care Center “would not create significant increase in vehicular conflicts or a decrease in safety.” The capacity of the schools would not be affected by the subject proposal.

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

As noted in the discussion of the Master Plan implementation, above, approval of the subject Application would recognize the needs of the County’s residents by allowing a needed land use, in an existing structure in an existing neighborhood, and so would abet the orderly growth and development of the County, making the subject Application in harmony with this Purpose of the Ordinance.

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

The subject Day Care Center for 20 Children would be in harmony with this Purpose because it is in conformance with the various regulations in the Zoning Ordinance which ensure the provision

of adequate light, air and privacy, both for the occupants of the subject site and for its neighbors. These principles include the provision of sufficient distance between the proposed use and neighboring uses, and conformance with height limitations in order to allow for access to light and air, and the provision of an adequately-sized and protected play area for the children served by the facility.

- (6) *To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;***

The subject Day Care Center for 20 Children would be in harmony with this Purpose because it will be developed in accordance with the various principles that have been codified in the Zoning Ordinance to promote the beneficial relationships between land and buildings, including conformance with the Tables of Permitted Uses for the various zones as laid out in the Ordinance.

- (7) *To protect the County from fire, flood, panic, and other dangers;***

The subject Day Care Center for 20 Children would be in harmony with this Purpose because it is in conformance with regulations established in the body of the Zoning Ordinance, as well as other County Ordinances, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, the fire prevention code, the Building Code, and the Tables of Permitted Uses for the various zones.

- (8) *To provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;***

Because the subject use is institutional or quasi-commercial in nature, this Purpose is not directly applicable to this Application; it is to be noted however that this Application would be a compatible, low-impact use in a residential area which will thus not act unduly to diminish the existing suitable and healthy living environment it will be a part of.

- (9) *To encourage economic development activities that provide desirable employment and a broad, protected tax base;***

The subject Day Care Center for 20 Children would be in harmony with this Purpose because it would be a local business operated principally for the benefit of residents of Prince George's County. The business would contribute to the tax base of the County directly and through the employment provided to its workers.

- (10) *To prevent the overcrowding of land;***

The subject Day Care Center for 20 Children would be in harmony with this Purpose because it would be developed in accordance with various principles that have been codified in the Ordinance to ensure the prevention of overcrowding, including the provisions of the Table of Uses that provides for the compatibility of uses in the same zoning district, and provisions in the Regulations which

restrict the amount of land that can be occupied by buildings and vehicular circulation areas.

- (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;***

As noted above, the Planning Staff determined in its review of the project that the Day Care Center for 20 Children “would not create significant increase in vehicular conflicts or a decrease in safety,” and so the subject Day Care Center for 20 Children would be in harmony with this Purpose.

- (12) To insure the social and economic stability of all parts of the County;***

As the Zoning Ordinance is the principal tool for the implementation of the planning process by enacting legal requirements which implement the planning goals that strive to maintain the social and economic stability of the County, conformance with the requirements and regulations of the Zoning Ordinance is prima facie evidence of the Application’s harmony with this purpose.

Beyond that, however, the subject Day Care Center would promote the economic and social stability of the County by contributing to the tax base, by providing a needed service to the surrounding community, and by virtue of its location in the midst of a neighborhood of compatible uses.

- (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;***

Because the subject Day Care Center would be located on a developed site, it will have no additional impact to the natural features in the County. The use will not itself generate noise or air pollution, and the use will be in compliance with the County’s Woodland Conservation policies in that it is exempt from the requirement for approval of a Tree Conservation Plan because there is no existing woodland on the site. By conformance to these principles and regulations, the approval of this Day Care Center would be in harmony with this Purpose.

The final two Purposes,

- (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.***

are not directly applicable to the approval of this Day Care Center for 20 Children, except that approval of this use in an existing, developed location will lessen in a small way the pressure for sprawling development onto undeveloped agricultural lands that form a great part of the scenic beauty

of the County. §27-317(a)(1)

(9) The proposed use and Site Plan are in harmony with the specific purposes of the R-55 Zone, §27-430(a), as follows.

- (A) *To provide for and encourage variation in the size, shape, and width of one-family detached residential subdivision lots, in order to better utilize the natural terrain;*
- (B) *To facilitate the planning of higher density one-family residential developments with small lots and dwellings of various sizes and styles;*

As the proposed Day Care Center for 20 Children is to be located in the midst of an already-developed area, these purposes are not applicable to the subject Application.

- (C) *To encourage the preservation of trees and open spaces; and*
- (D) *To prevent soil erosion and stream valley flooding.*

As noted above, because the proposed Day Care Center for 20 Children is to be located on a developed site, it will have no additional adverse impact on the woodlands or watersheds in the County, and therefore is in harmony with this Purpose. §27-317(a)(1)

(10) The proposed use is in compliance with all applicable requirements and regulations of the Zoning Ordinance and no various, waivers or departures are required. §27-317(a)(2)

(11) The subject property is located in the R-55 Zone (a maximum of 4.7 d.u.a.) within the Developing Tier and the proposed Day Care Center for 20 Children is compatible with the R-55 Zone and with the Master Plan recommendations of a medium suburban land use. Thus, this proposed Application will not substantially impair the 1986 Master Plan and Sectional Map Amendment for Suitland-District Heights and Vicinity and indeed will complement and support the needs of the existing community and afford parents in the area with a conveniently available source of day care for their children. §27-317(a)(3)

(12) The proposed Day Care Center for 20 Children will not adversely affect the health, safety or welfare of residents or workers in the area. §27-317(a)(4)

(13) The proposed Day Care Center for 20 Children will not pose unanticipated capacity or safety issues on adjacent roadways or any other properties or the general neighborhood. §27-317(a)(5)

(14) The subject property is exempt from the provisions of the Prince George's County Woodland Conservation and Tree Preservation Ordinance because the subject site is less than 40,000 square feet in area and contains less than 10,000 square feet of woodland. A letter of exemption, Exhibit 7, dated July, 2008 is valid until 2010. §27-317(a)(6)



### **Landscape Manual**

(15) The proposed use is exempt from the Landscape Manual per §27-328.02 of the Zoning Ordinance which states that uses which do not require the construction, enlargement or extension of a building, are not subject to the requirements of the Landscape Manual. The Applicants' proposal does not request the construction, enlargement or extension of a building.

### **Sign Ordinance**

(16) No freestanding signage is proposed.

### **Parking and Loading Standards**

(17) Section 27-568 of the Zoning Ordinance requires a total of three (3) spaces for the proposed use, one (1) for every eight (8) children. Three parking spaces, including one (1) handicap van accessible space, are provided. (Exhibit 29) The driveway can also accommodate an additional two (2) parking spaces.

(18) The proposed use is exempt from loading requirements.

## **DISPOSITION**

Special Exception 4624 is **APPROVED**

The Approved Site Plan is Exhibit 29.