



Special Exception Request SE-13-02, Kids Love Child Care



Renée M. Kamen, AICP, Senior Planner, Area 2 Division, renee.kamen@montgomeryplanning.org, 301.495.4723



Khalid Afzal, Planner Supervisor, Area 2 Division, khalid.afzal@montgomeryplanning.org, 301.495.4650



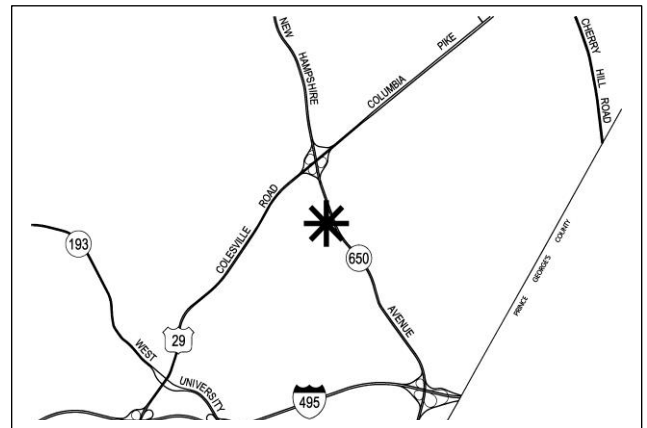
Glenn Kreger, Chief, Area 2 Division, glenn.kreger@montgomeryplanning.org

Completed 11/21/2013

Notice Dates—not applicable

Description

- 921 Northwest Drive, Silver Spring (Lot P11);
- R-90 Zone, 1997 *White Oak Master Plan*;
- Approximately 12,445-square-foot lot area;
- Applicants request a special exception for a child daycare use for up to 30 children, under §59-G-2.13.1;
- No exterior building modifications are proposed; however, installation of parking facility and landscaping is proposed.



The public hearing by the Hearing Examiner is scheduled for December 19, 2013.

Summary

- Staff recommends approval, with conditions.
- Staff recommends a reduction from 30 to 24 children and from 4 to 3 employees.
- The Applicants are requesting a waiver by the Hearing Examiner for the setback requirements of the eastern parking facility. Staff does not support the Applicants’ waiver request, but recommends and supports a reduced waiver that will provide a consistent, more compatible 10-foot wide green panel.

Conditions of Approval

Staff recommends the following conditions of approval:

1. The Applicants must revise the site/landscape plan prior to the Hearing Examiner's close of record as follows:
 - a. Modify the proposed western driveway as shown on Attachment 6 to show a consistent, 10-foot wide green panel.
 - b. Include pavement markings or sign (no larger than 2 feet by 2 feet) indicating that parking space #5, as noted on Site Plan stamped September 2013, is for 10-minute parking only.
 - c. Parking space four is for staff parking only. Parking spaces one, two, three and five are for drop-offs and pick-ups only.
2. The daycare use is limited to 24 children (between two and five years old) and 3 non-resident employees, including the Director.
3. The hours of operation must be limited to 6:30 a.m. until 6:30 p.m., with the first employee arriving at 6:30 a.m., and the last employee leaving no later than 6:45 p.m., Monday through Friday. No weekend or overnight daycare is permitted.
4. The Applicants must provide parental agreements to the Hearing Examiner, indicating that the drop-off and pick-up times of all children attending the daycare will be limited to no more than 3 vehicles at any one time.
5. Outdoor play times must be staggered and may not start prior to 9:00 a.m. No more than eight children are permitted to play outdoors at any one time.
6. The Applicants must modify and seek a parking setback waiver for a maximum of 6 feet along the western driveway.

i. Project Description

The Applicants, Dereje Zewdu and Fekerte Desalegn, are requesting a special exception for a child daycare center of up to 30 children. The Applicants are proposing to use all levels of the existing house for the daycare, and upon approval of the special exception request, no longer use the home as a residence. The house, currently used as a residence (and not occupied by the Applicants), is a split-level home, with three levels. No child daycare currently exists in the home. The main floor will be modified to include one bathroom, a reception area, and one classroom space (see Attachment 1). The upper level of the home will include two bathrooms, two classrooms and a napping room. The lower level of the house will contain the kitchen, bathrooms and a fourth classroom. The main entrance will be through the front door, illuminated with standard residential-type lighting (see Attachment 1).

The proposed hours of operation are Monday through Friday, 6:30 a.m. – 6:30 p.m. No weekend or overnight hours are proposed. The drop-off and pick-up times will be staggered in 30-minute increments and will be staggered between 6:30 a.m. – 9:30 a.m. and 3:00 p.m. – 6:30 p.m., respectively. The existing driveway will be modified (see Figure 2 below), and the Applicants propose an additional parking area along the Property's New Hampshire Avenue frontage. Drop-offs and pick-ups are planned to occur in a new parking area (see Figure 1). The Property is accessible by multiple Metrobus and Ride-On bus routes, which run along New Hampshire Avenue.

The Applicants are requesting up to 30 children, ranging in age from two to five years, divided into three mixed-age groups. The Applicants propose three full-time and one part-time staff, one of which is the owner of the Property and another is an educational director.

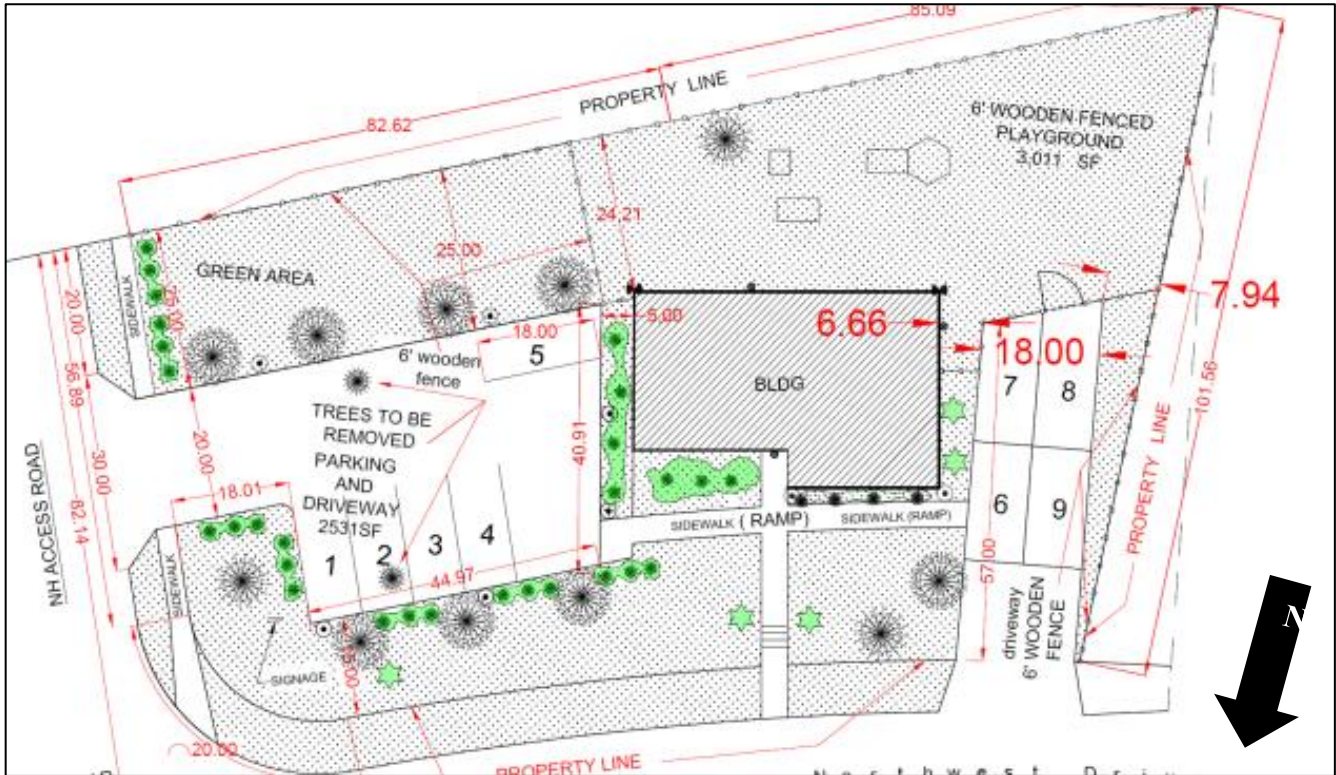


Figure 1: Proposed Special Exception Site Plan

The Applicants propose to construct a 40-foot by 45-foot parking area on the east side of the property (eastern parking area) for on-site parking of up to 5 cars. The eastern parking area will maintain the front, side and rear yards setbacks, and will have plantings to shade and screen the parking area from both frontages. The parking area allows for the minimum driveway and turning radii for vehicles that will utilize this site and maintain vehicular and pedestrian safety.

Also included is the reconstruction and relocation of the existing driveway (western parking area) on the west side of the house (see Figure 2). The driveway is being moved ten feet east of its current location because portions of the driveway are located on the neighboring property (Pt. Lot 10). The Applicants propose a six-foot board fence along the western property line. The western parking area requires, and the Applicants are requesting, a waiver of the minimum side yard setback, under §59-E-4.5 of the Zoning Ordinance to accommodate the western parking area (see Figure 2). The Zoning Ordinance (§59-E-2.83(b)) requires any parking facility used for a special exception within a residential zone to maintain double the minimum required

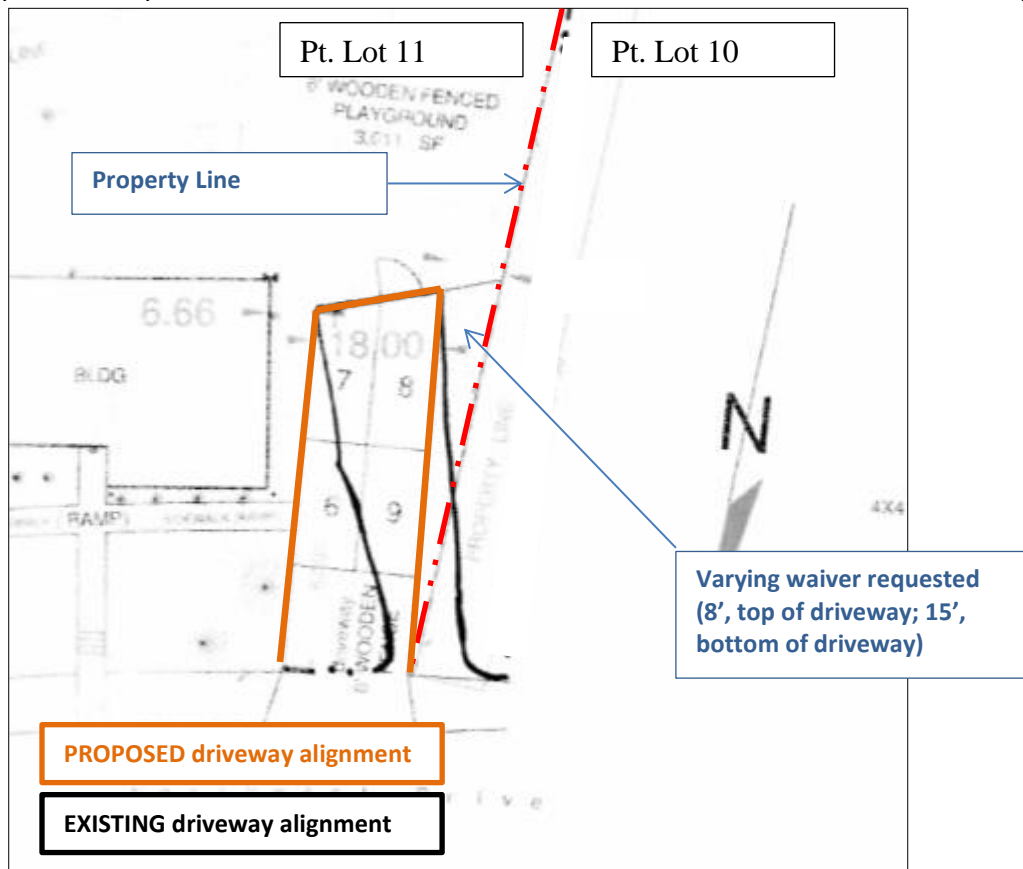


Figure 2: Western Parking Area

side yard setbacks. The side yard setback for the R-90 Zone is 8 feet. Therefore, the western parking facility would need to be 16 feet from the common boundary with Lot P10. The proposed driveway is located between one foot and eight feet from the property line. Therefore, requiring a waiver of between 15 feet, to 8 feet, (see Figure 2).

ii. Issues

Several issues exist with this special exception, and are fully discussed below:

1. Intensity of the use;
2. Relocation of driveway and subsequent waiver of the double side yard setback; and
3. Compatibility and consistency with the Master Plan.

iii. Site and Neighborhood Description

The Property, located at the southwest corner of New Hampshire Avenue Service Road and Northwest Drive, is described as Part of Lot 11, Block A, of the Burnt Mills Estates Subdivision. Except for the approximately four to six feet of rise from the New Hampshire Avenue Service Road and Northwest Drive, the Property is relatively flat. Multiple shrubs and shade trees are scattered along the front and sides of the property (see Attachment 2). The rear yard is flat and enclosed with a board fence. There are no sidewalks along Northwest Drive. There is a sidewalk along the New Hampshire Avenue Service Road. Currently, vehicular access to the site is via Northwest Drive (see Figure 3). No parking is allowed along Northwest Drive, and New Hampshire Avenue Service Road parking is limited to 2 hours from 8:00 a.m. – 5:00 p.m., Monday through Saturday. Pedestrian access to the daycare will be by a concrete walkway from Northwest Drive and the proposed parking areas. There are no forests, streams, floodplains, wetlands or environmental buffers on the property.



Figure 3: Site Aerial

The staff defined neighborhood is generally bounded by Lockwood Drive to the north and west, McCeney Avenue and Burnt Mills Avenue to the south and the Food and Drug Administration to the east. The area consists of residential dwellings zoned R-90 and RE-2, retail services in the C-2 Zone and professional services and offices, such as doctors, in the C-O Zone (see Figure 4). Several special exceptions were granted within the staff-defined neighborhood and include multiple medical practitioner offices, a drive-in restaurant, an automobile filling station and off-street parking in connection with commercial/office uses (see Figure 4).

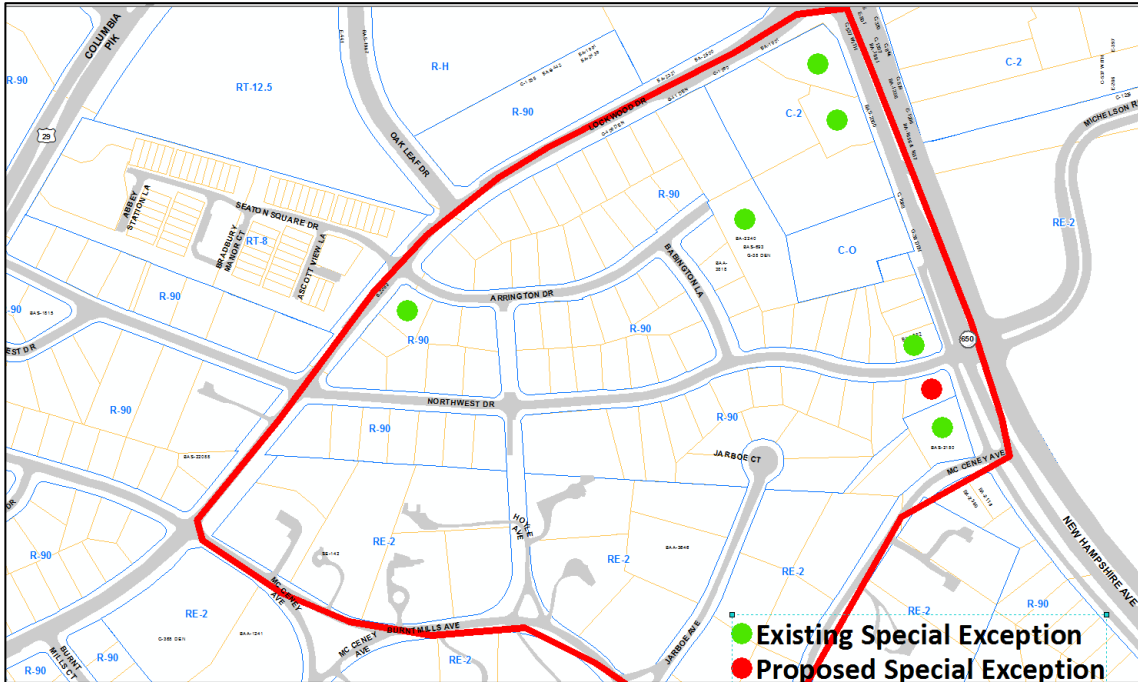


Figure 4: Staff Defined Neighborhood

iv. Master Plan Conformance

This Property is located within the boundaries of the 1997 *White Oak Master Plan* (Master Plan), and the pending *White Oak Science Gateway Master Plan*. Neither Master Plan contains specific recommendations for this property or the neighborhood. The 1997 *Master Plan* envisioned the area outside of the identified commercial centers to remain residential in nature and recommended that infill developments follow the established residential pattern. In keeping with this vision, the Master Plan further recommended that “the land use and zoning goal in the White Oak Master Plan area is to ensure livable communities for the future by protecting and strengthening their positive attributes and encouraging development that will enhance the communities’ functions, sense of plan and identity.” (pg. 16)

The Master Plan recognized that special exception uses may be approved by the Board of Appeals if they meet the standards, requirements, and the general conditions set forth in the Zoning Ordinance, but may be denied if there is an excessive concentration of such uses in an area or if the uses are inconsistent with the Master Plan recommendations.

The Master Plan recommends that “excessive concentration of special exception uses and non-residential uses along major transportation corridors should be avoided (pg. 24).” Specifically, the Master Plan recommends the following when evaluating special exception uses and their impact on the character and nature of the residential neighborhoods in which they are proposed (pg. 24):

- Requiring new requests for special exception uses along major transportation corridors and in residential communities to be compatible with their surroundings. Front yard setback should be maintained.

- Avoiding front yard parking because of its commercial appearance. Side and rear parking should be screened from view of surrounding neighborhoods.
- Requiring new buildings or any modification or additions to existing buildings to be compatible with the character and scale of the adjoining neighborhood.
- Avoiding placing large impervious areas in the Paint Branch watershed due to its environmental sensitivity.

The Master Plan recognized the importance of providing daycare options within the Plan's area, stating that parents look for daycare facilities close to places of employment or near easily accessible transit. The Plan recommends encouraging the provision of child daycare facilities at appropriate locations in the planning area and the co-location of child care and adult daycare facilities (pg. 67). This Property is situated near several employment areas that include the Food and Drug Administration and the White Oak Shopping Center, and is served by Metrobus and RideOn bus routes and can therefore be considered as a good location for daycare.

These basic tenants listed in the 1997 Master Plan do not change in the September 2013 Planning Board Draft of the *White Oak Science Gateway Master Plan*.

With regards to the above location and design considerations, three of the four recommendations of the Master Plan are applicable to this Property: compatibility, front yard parking and impervious surfaces with respect to the western and eastern parking areas. Adding parking to this site is constrained due to its lot size, location, existing layout and the intensity of the proposed use. The Property is a corner lot, and contains two fronts: New Hampshire Avenue Service Road and Northwest Drive. In evaluating this special exception request, staff analyzed both frontages for front yard settings impacts. The front yard along the New Hampshire Avenue Service Road is commercial and non-residential in appearance and function, while the frontage along Northwest Drive consists of well-maintained one-family residential dwellings. Staff believes it is acceptable to provide an eastern parking area, as it will be well-screened and have adequate setbacks. Staff is concerned with the western parking area, and recommends changes, as discussed in Section viii and ix, below.

Staff does not believe this to be an overconcentration of special exception uses along New Hampshire, for two reasons: 1) the Master Plan refers to a larger area, not the staff defined neighborhood; and 2) one cannot compare the commercial center special exceptions (e.g., gas station and drive through) located in commercial zones as they do not have the same character issues as the proposed use in a residential setting.

The Applicants are not proposing any exterior changes to the home, and the design, bulk, and scale of the structure will be maintained. From both streets, the house will continue to appear as a single-family residence with play structures for children. The play areas are contained within a six-foot high board fence. From the New Hampshire Avenue street view, one will see a driveway leading into the site and the evergreens along the rest of the lot frontage. Lights from parking cars will minimally spill onto the adjacent properties, as the parking area is proposed to be screened with trees, and a six-foot board-on-board fence. The property across Northwest Drive is an existing non-residential special exception and will not be directly impacted by

headlights. The proposed western parking area as modified by staff will be adequately screened from the adjacent properties. Therefore, both parking facilities will be consistent with the Master Plan goals, if approved as conditioned by the staff recommendation.

v. Transportation Planning

The proposed development will increase the pedestrian and vehicular traffic in and around the Property, but it will not adversely impact the existing traffic conditions.

Master/Sector Planned Roadways and Bikeways

In accordance with the 1997 *White Oak Master Plan* and the approved and adopted *Countywide Bikeways Functional Master Plan*, the nearby classified roadways and bikeways are as follows:

1. New Hampshire Avenue, MD 650, from the Capital Beltway to the Intercounty Connector (ICC), is designated as a six-lane, divided 120-foot right-of-way.
2. Lockwood Drive (A-286), 400 feet west of New Hampshire Avenue to the east side of the White Oak Shopping Center is designated as a two lane arterial with 80 feet of minimal right-of-way. A Class II Bikeway is planned along Lockwood Drive to connect with Stewart Lane, PB-27.

Northwest Drive is not a Master Planned roadway; however, it is a signalized intersection at New Hampshire Avenue.

Available Transit Service

Transit service is available to the site and bus stops are located approximately 200 feet from the Site. Metrobus routes include C8, K6, Z2, Z6, and Z8 and Ride-On routes 20, 21 and 22 are nearby as well.

Local Area Transportation Review (LATR)

According to the 2012 LATR Guidelines, a traffic study is not needed to satisfy LATR for day care facilities with fewer than six employees and in such cases the applicant “may proffer a specific schedule of the arrival and departure of staff arriving during weekday peak periods specified in the special exception statement of operation.” A traffic study is not required for child daycare centers with six or fewer employees since child daycare centers with six or fewer employees typically generate fewer than 30 peak-hour trips and therefore are exempt from submitting a traffic study to satisfy LATR.

The applicant has submitted a traffic statement which explains the schedule of drop-offs and pick-ups for both children and employees (see Table 1, below). The proposed hours of operation, from 6:30 a.m. to 6:30 p.m., overlap the weekday morning peak period (6:30 to 9:30 a.m.) and evening peak period (4:00 to 6:00 p.m.).

Based on the 2013 LATR Guidelines and the 2012-2016 Subdivision Staging Policy, the daycare center satisfies the LATR test because it will generate fewer than 30 peak-hour trips.

Transportation Policy Area Review (TPAR)

The existing daycare center is located in the Fairland/White Oak Policy Area. According to the 2012-2016 Subdivision Staging Policy, the Fairland/White Oak Policy Area is inadequate under the roadway test, but adequate under the transit test. However, since the building is not increasing in square footage, no Transportation Impact Tax would be assessed. Therefore no TPAR payment will be required.

Table 1: Applicant’s Proposed Drop-offs and Pick-ups Anticipated with Staff Arrival and Departure (submitted, September 2013)¹

	Time	No. of Children	No. of Employees	
a.m. arrival	6:30	4	2	
	7:00	5	0	
	7:30	4	0	
	8:00	4	0	
	8:30	4	1	
	9:00	5	0	
	9:30	4	1 (part-time)	
	10:00			
	10:30			
	11:00			
	11:30			
	NOON			
	12:30			
	1:00			
	1:30			
	2:00			
	2:30			
	3:00			
	p.m. departure	3:30	4	1 (part-time)
		4:00	4	0
		4:30	4	1
5:00		4	0	
5:30		4	0	
6:00		5	0	
6:30		5	2	

vi. Environmental Planning

The site contains no forest, streams, wetlands, or environmental buffers and is located in both the Northwest Branch and Paint Branch watersheds; a Use I watershed. The proposed project is in compliance with the Environmental Guidelines. Additionally, this Property is not subject to Chapter 22A, Montgomery County Forest Conservation Law as it is less than 40,000 square feet in size (see Attachment 3).

¹ This table was submitted as part of the Applicant’s proposal. Staff is recommending a reduction of children and employees. Therefore this table will change slightly, if approved per staff recommendation that no more than three drop-offs/pick-ups may occur during any 30-minute period.

vii. Community Comment

Staff has received one letter in opposition to this special exception request, which states that “placing a major child day care facility on a residential street would alter the nature of an area.” It states that the proposed ingress and egress at the intersection of Northwest Drive and New Hampshire Avenue, and paving a major portion of the side/front yard to provide parking would definitely alter the predominantly residential nature of the area (see Attachment 4). The Applicants have since changed the proposed layout, addressing some of these concerns and the analysis in this report is based on the most recently revised plans (see Attachment 1).

viii. Standards for Evaluation

The Zoning Ordinance specifies standards for evaluating compliance with general and specific conditions that require an analysis of inherent and non-inherent adverse effects. The first step in analyzing the inherent and non-inherent adverse effects of a special exception is to define the boundaries of the surrounding neighborhood, outlined in Section III.

An analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. Every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or would create adverse impacts sufficient to result in denial. To that end, inherent effects associated with the use must be determined. In addition, non-inherent effects must be determined as these effects may, by themselves, or in conjunction with inherent effects, form a sufficient basis to deny a special exception.

The inherent physical and operational characteristics necessarily associated with a child daycare include: (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting.

There will be no significant traffic impacts from the proposed special exception. Outdoor play areas are adequate, and the proposed use will generate limited additional noise. Further, all the children would not be outside at once, and will be staggered throughout the day after 9:00 a.m. The lighting on the Property is adequate and consistent with the residential character of the neighborhood. The site is well landscaped and a 6-foot high board fence surrounds the play area.

Staff identified certain physical and operational aspects of the Property that are non-inherent characteristics. These include: 1) the Property’s location (corner lot, signalized intersection at service road); 2) parking restrictions along both frontages and 3) intensity of the proposed use.

Lot Location

The Property is located on a corner and has two fronts, along the New Hampshire Avenue Service Road and Northwest Drive (see Figure 5). While there are many corner lots within the staff defined neighborhood, this particular location is constrained because of the existing house location on the Property, the on-street parking restrictions, and not enough queuing distance from the signalized intersection along Northwest Drive.

Because of these conditions, the site is limited in locating any large parking area to serve the proposed intensity.



Figure 5: Property Aerial

Parking Restrictions/Site Distance

Due to the parking restrictions and site distance requirements on Northwest Drive, the Property is severely restricted in locating additional driveway access without disrupting traffic circulation between eastbound vehicles queuing on Northwest Drive at the traffic signal, and westbound vehicles trying to access the Property.

Intensity of Use

While the Master Plan is supportive of daycare uses in general, it discourages front yard parking because of its commercial appearance. Staff supports a daycare use at this location, but believes that the intensity of the proposed use (e.g., number of children and staff) is too high for this location.

In considering the eastern parking area, staff evaluated the proposed Plan against the recommendations of the Master Plan and finds the setbacks to be adequate, and the parking area properly landscaped and lit. The proposed layout and size of the western parking area has raised concerns. As proposed, it will be too close to the western property line and the parking area will create a non-residential appearance. Additionally, as discussed below, it will reduce the safety of the pedestrians and vehicles that utilize Northwest Drive.

As discussed below, staff further recommends alterations to the proposed western driveway in order to maintain compatibility with the residential surroundings.

Staff finds that the scope of the request (30 children and four staff) is too large for this property and will have adverse impacts due to the non-inherent characteristics of the Property. However, rather than recommend a denial of the proposed use, staff recommends significant reduction in the number of children and staff on-site, and a reduction in the size of the western parking area.

ix. Conditions for Granting a Special Exception

a. §59-G-1.2.1 General Conditions

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

Staff Analysis: A child daycare use is a permissible special exception in the R-90 Zone.

(2) Complies with the standards and requirements set forth for the use in §59-G-2.

Staff Analysis: As conditioned above, the proposed use would comply with the standards and requirements of §59-G-2, subject to the Applicants receiving a waiver of the side yard setback for the western driveway, as required by §59-E-2.83(b). As discussed in the parking section within Section ix(b) of this report, staff recommends a reduction in the proposed daycare operations and the associated reduction in required parking spaces.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Staff Analysis: The Property is located within the boundaries of the 1997 *White Oak Master Plan*. The Master Plan does not specifically address this Property, but it envisioned the area outside of the identified commercial centers to remain residential in nature and recommended infill development to follow the established

residential pattern. The Master Plan acknowledges the need for special exceptions and contains specific recommendations regarding the review of new special exception requests. Staff does not believe that this request will conflict with any land use goals of the master plan; however, as explained in Sections iv and viii of this report, staff is concerned with the intensity of the proposed use given the physical constraints and location of the Property. With the staff's recommended conditions of approval, the special exception will be consistent with the Master Plan goals and recommendations, as discussed in more detail in the Master Plan Compliance Section of this report.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.*

Staff Analysis: The existing single-family house will not undergo external alterations and will continue to be in harmony with the typical homes of the surrounding neighborhood. The intensity of activity, traffic, and parking conditions, as recommended by staff, will not alter the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Staff Analysis: With the recommended conditions of approval, the proposed daycare will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood as it does not create any objectionable adverse impacts.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Staff Analysis: The proposed use will not cause any objectionable adverse effects. There are no exterior renovations proposed. The children will take turns playing outdoors and the outside play area is buffered from the adjoining properties utilizing a fence and landscaping.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Staff Analysis: Staff identified six special exceptions within the staff-defined neighborhood. The addition of the proposed special exception will not result in an excessive concentration of special exception uses in general, or daycare uses in particular. Some of the special exceptions are located in the White Oak commercial area to the north near the intersection of New Hampshire Avenue and Lockwood Drive. More specifically, one of these uses required special exceptions for locating parking in the residential portions of their lots. With the recommended conditions of approval, the proposed daycare will not adversely affect the area or alter its residential character.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Staff Analysis: With the recommended conditions of approval, the proposed daycare use will cause only a marginal increase in activity in the neighborhood, and therefore will not have any adverse effects on residents, visitors, or workers in the area.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

- A. If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*
- B. If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Management Policy standards in effect when the application was submitted.*
- C. With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Staff Analysis: This Property is not subject to a Preliminary Plan of Subdivision and therefore, this special exception is reviewed under B, above. The available public facilities are adequate to serve the proposed use. With the recommended conditions of approval, the proposal will not reduce the safety of vehicular or pedestrian traffic as described below.

b. §59-G-1.23 General Development Standards (applicable subsections only)

(a) **Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.21 or in Section G-2.*

Staff Analysis: This Property is located in the R-90 Zone. A comparison of the R-90 Zone standards with the Applicants’ proposal is in Table 2. Staff finds that the proposed special exception application meets the required development standards of the zone, except for the parking requirement discussed below.

Table 2: Applicable Development Standards – R-90 Zone

Development Standards	Required	Provided
Maximum Building Height:	3 stories or 40 feet if approved by the Planning Board	<40 ft.
Minimum Lot Area	9,000 sq. ft.	12,445 sq. ft.
Minimum Width at Proposed Street Line:	25 ft.	± 80 ft.
Minimum Street Setback ² :	15 ft.	±26 ft.
Minimum Side Yard Setback:	8 ft. 25 ft. (sum of both)	±27 ft. ±27 ft.
Minimum Rear Yard Setback:	25 ft.	±25 ft.
Parking Facility Side Yard Setback for Special Exceptions in a Residential Zone (§59-E-2.83)	16	±1 ft. (bottom of driveway) ±8 ft. (top of driveway) ³
Parking Requirement (§59-E-3.7)	1 space/staff; 1 space/6 students (4 + 5 = 9)	9

(b) **Parking Requirements.** *Special Exceptions are subject to all relevant requirements of Article 59-E.*

Staff Analysis: The Applicants are proposing two parking areas: a proposed eastern parking area along the New Hampshire Avenue Service Road and a western parking area (driveway) on Northwest Drive. The proposed eastern parking area meets the parking setback requirements of Article 59-E; however,

² In the case of a corner lot, if the adjoining lot on one of the streets either does not front on that street or is in a nonresidential zone, the setback from that street line must be at least 15-feet.

³ Requires a waiver from 59-E-2.83(b), Setbacks. See Parking Section below for a full description.

the western parking area does not meet the setback standards under §59-E-2.83(b), which requires parking facilities to be setback twice the standard side yard setback for special exception uses in a residential zone. Therefore, a minimum setback of 16 feet (2' X 8') is required for the parking facility along the side yard line. The proposed parking facility's side yard setback from the adjoining lot is one foot; the Applicants are proposing to relocate the existing driveway and widen it to be 18 feet wide.

The Applicants are seeking a maximum 15-foot waiver (see Figure 2) of the side yard setback requirement for parking facilities in accordance with §59-E-4.5, which allows a waiver by the Board of Appeals or Hearing Examiner of any requirement in Article 59-E that is not necessary to accomplish the objectives of Section 59-E-4.2, Parking Facilities Plans Objectives. The objectives of Parking Facilities Plans are as follows:

- (a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.
- (b) The safety of pedestrians and motorists within a parking facility.
- (c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.
- (d) The provision of appropriate lighting, if the parking is to be used after dark.

Staff supports the relocation of the driveway, but disagrees with granting the full requested waiver of 15 feet. Staff believes that reducing the intensity of the use is necessary to ensure the overall compatibility with the surrounding neighborhood. Staff disagrees with the Applicants' reliance on the neighboring property's 16 feet of side yard for compatibility. Further, Staff disagrees with the Applicants' justification of hardship: "the removing and replacing the driveway has caused a hardship." (See Attachment 5.) Financial hardship is not a consideration for determining a waiver from Code requirements; size, shape, and topography of a site are. Staff believes that the hardship is due to the Property's shape, since approximately 900 square feet of land was previously deeded to the adjacent property to the east (Lot P10) which placed the current driveway on the neighbor's property. The driveway needs to be relocated. Staff has determined that it would not be reasonable to propose a parking facility of

this size so close to the side yard, and relying on the adjacent property to provide the appropriate buffer as the Applicants’ proposal suggests, even with a six-foot fence.

The Applicants are relying on the installation of a six-foot fence to mitigate any impacts of locating the driveway between one-foot and eight feet from the western property line. Staff believes that the safety of those who use the street, as well as those who use the driveway will be reduced by the proposed location of the driveway. There is minimum circulation and therefore the drivers need to reverse onto Northwest Drive and the proposed fence interferes with the drivers’ ability to adequately see pedestrians and on-coming vehicles traveling eastbound towards New Hampshire Avenue, thus violating the objectives of a safe parking facility.

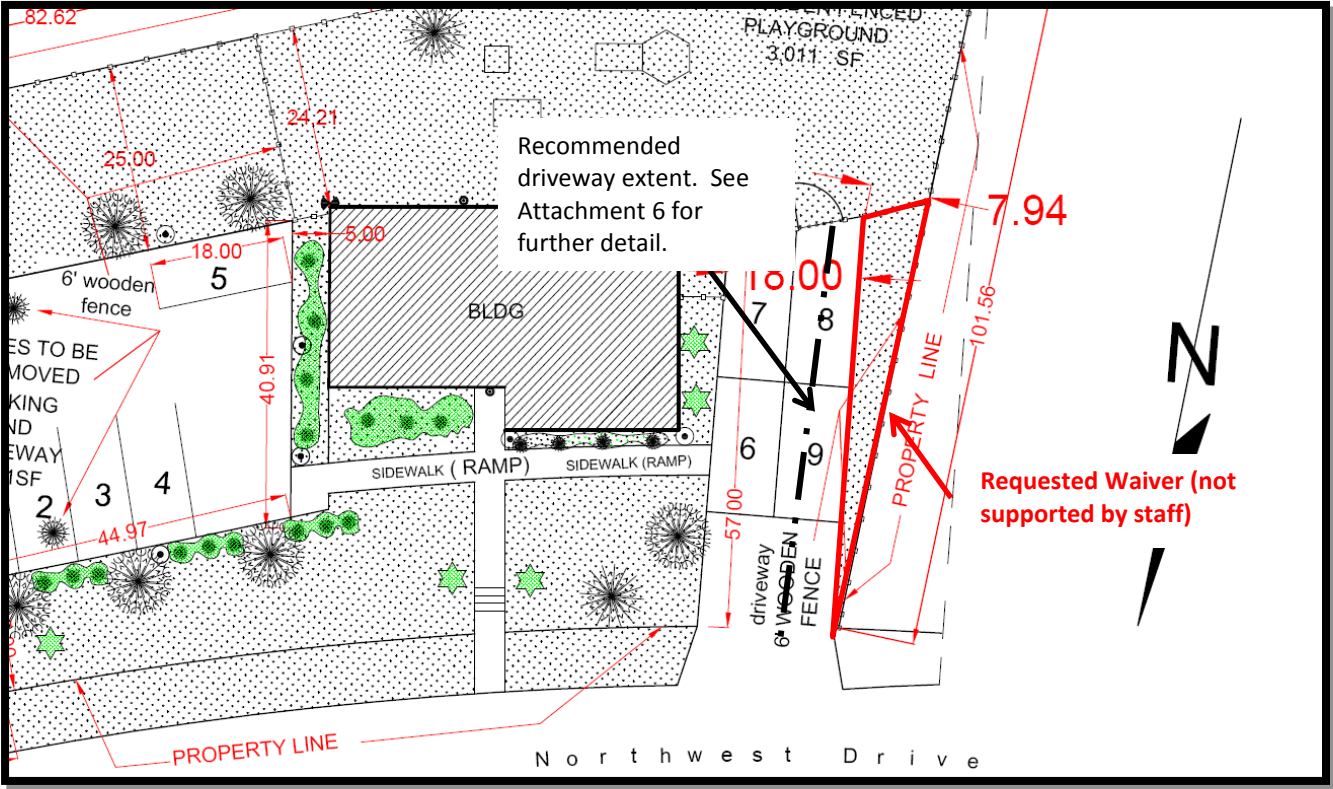


Figure 6: Western Parking Area, as proposed by Staff and Associated Waiver Request

Staff recommends a reduction in the number of children and employees proposed by the Applicants and a redesign of the proposed western parking facility to reduce its size as follows (see Attachment 6):

- realignment of the driveway to allow for a 10-foot wide green panel along the western edge of the property;
- reduce the proposed western paved parking area from four to two vehicles;

- reduce the length of the proposed six-foot fence along western property line; or remove the proposed fence; and provide additional Arborvitae and/or Japanese Holly along the western property line; and
- provide a sixth parking space in the proposed eastern parking area.

These changes will enhance the appearance of the residential setting. With a consistent 10-foot green panel, the requested waiver of the double side yard setback is six feet, rather than a range between eight and 15 feet. The Applicants' proposed design also leaves no room for planting along the property line near the street. Staff supports this as the minimum waiver needed to both support the use and sustain compatibility with the neighborhood.

Therefore, Staff recommends reducing the number of students to 24, and employees to three, which will reduce the number of parking spaces to seven (four drop-off/pick-up, and 3 staff). Five spaces will be located in the eastern parking facility and the remaining two will be located in the western driveway.

*(c) **Minimum Frontage.** For the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of Section 59-G-1.21:*

- (1) Rifle, pistol and skeet-shooting range, outdoor;
- (2) Sand, gravel, or clay pits, rock or stone quarries;
- (3) Sawmill;
- (4) Cemetery, animal;
- (5) Public utility buildings and public utility structures, including radio and TV broadcasting stations and telecommunication facilities;
- (6) Equestrian facility;
- (7) Heliport and helistop.

Staff Analysis: Not applicable, since the proposed use is for a child daycare. The application satisfies the minimum frontage requirements of the R-90 Zone.

*(d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Staff Analysis: This Property is not subject to Chapter 22A, Montgomery County Forest Conservation Law, as the subject site is less than 40,000 square feet in size.

*(e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the Applicants, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special*

exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Staff Analysis: Not applicable; submission of a water quality plan is required in a Special Protection Area (SPA), only. This Property is not within an SPA.

*(f) **Signs.** The display of a sign must comply with Article 59-F.*

Staff Analysis: The Applicants are proposing a one-foot by 2-foot sign indicating the name of the daycare and the center's telephone number.

*(g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk height, materials and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Staff Analysis: Not applicable. The proposed daycare is located in an existing structure and does not require any exterior building modifications.

*(h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

- (1) Luminaries must incorporate a glare and spill light control device to minimize glare and light trespass.*
- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot-candles.*

Staff Analysis: The Applicants are proposing eight additional light poles, 6 ½ feet from the base to the bottom of the lamp (see Attachment 7). The light fixture will emit up to 180 watts per light. The proposed lantern-style lights are typical with residential developments. With the exception of the existing motion sensor lights for safety, no lights will be on after the close of the daycare. All lights will have full cut-off shields to prevent light from spilling onto adjacent properties.

x. Conditions for Granting Child Day Care Facility (§59-G-2.13.1)

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site.*

Staff Analysis: The Applicants have submitted a site plan that satisfies these requirements (see Attachment 1); however, staff recommends the site plan be modified as discussed in Section ix of this report (Attachment 6).

(2) *Parking is provided in accordance with the Parking Regulations of Article 59-E. The number of parking spaces may be reduced by the Hearing Examiner if the Applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:*

(A) *Existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *A reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Staff Analysis: As discussed in (b) Parking Requirements, under Conditions for Granting a Special Exception Section (ix) and Master Plan Conformance Section (iv), staff is recommending a reduction in the number of children and employees, thus reducing the number of parking spaces required. Adequate parking is available in the proposed eastern parking area. Staff recommends that the western parking area be further modified to create a consistent 10-foot green panel along the property line. This change will also reduce the required waiver of the side yard to six feet and increase compatibility of the proposed use. This change would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating a safety problem.

(3) *An adequate area for the discharge and pick up of children is provided;*

Staff Analysis: Based on the number of parking spaces necessary for the expanded child daycare facility, pick-ups and drop-offs should be limited to no more than three at a time. Please see discussion on pages 17 and 18 and staff's recommended modifications to the site plan on Attachment 6.

(4) *The petitioner submits an affidavit that the petitioner will:*

(A) *comply with all applicable State and County requirements;*

(B) *correct any deficiencies found in any government inspection; and*

(C) be bound by the affidavit as a condition of approval for this special exception

Staff Analysis: The Applicants have supplied an affidavit with the application materials (see Attachment 8).

- (5) *The use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The Hearing Examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Staff Analysis: As previously stated in the General Conditions section, staff believes that with the proposed modifications to the site plan and reduction in the number of children and employees, the proposal will be compatible with the surrounding neighborhood.

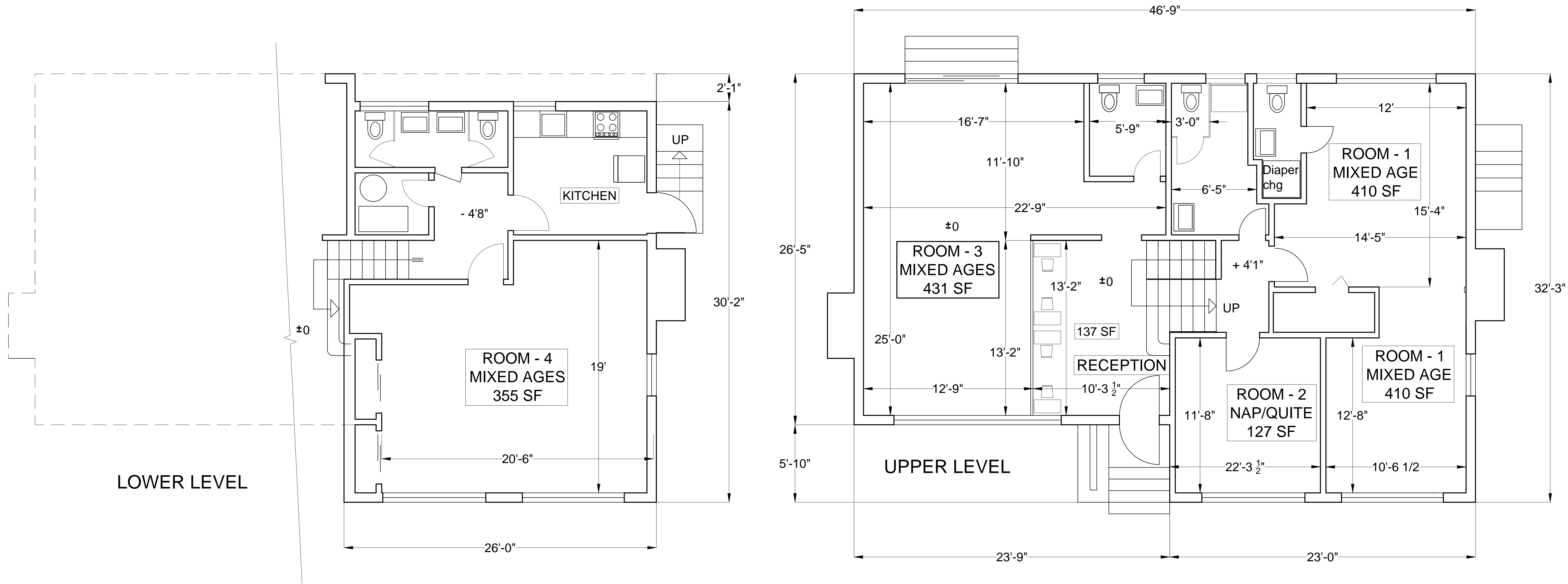
xi. Conclusion

Staff recommends approval of the proposed child daycare for up to 24 children, subject to the conditions of approval at the beginning of this report. Staff also supports a waiver of the required side yard setback per §59-E-2.83(b) with the staff recommended changes and conditions of approval. The proposed daycare will not have any significant traffic impacts. Outdoor play areas are adequate and the site is landscaped and buffered from the adjacent properties. The playtimes will be staggered throughout the day. The proposed lighting is consistent with the residential character of the neighborhood. Recommended revisions to the western parking area will reduce the commercial appearance, which is consistent with the Master Plan recommendations.

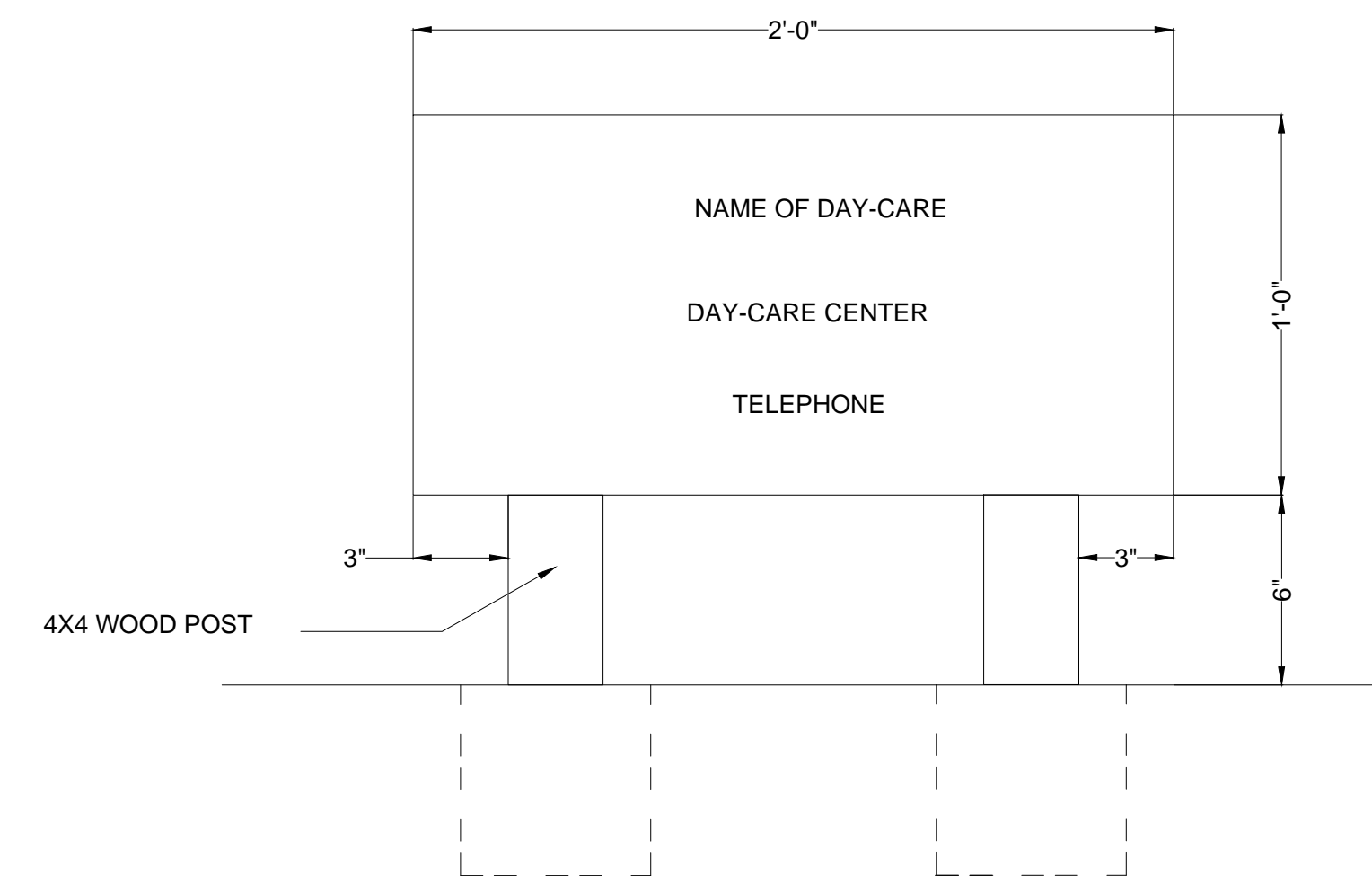
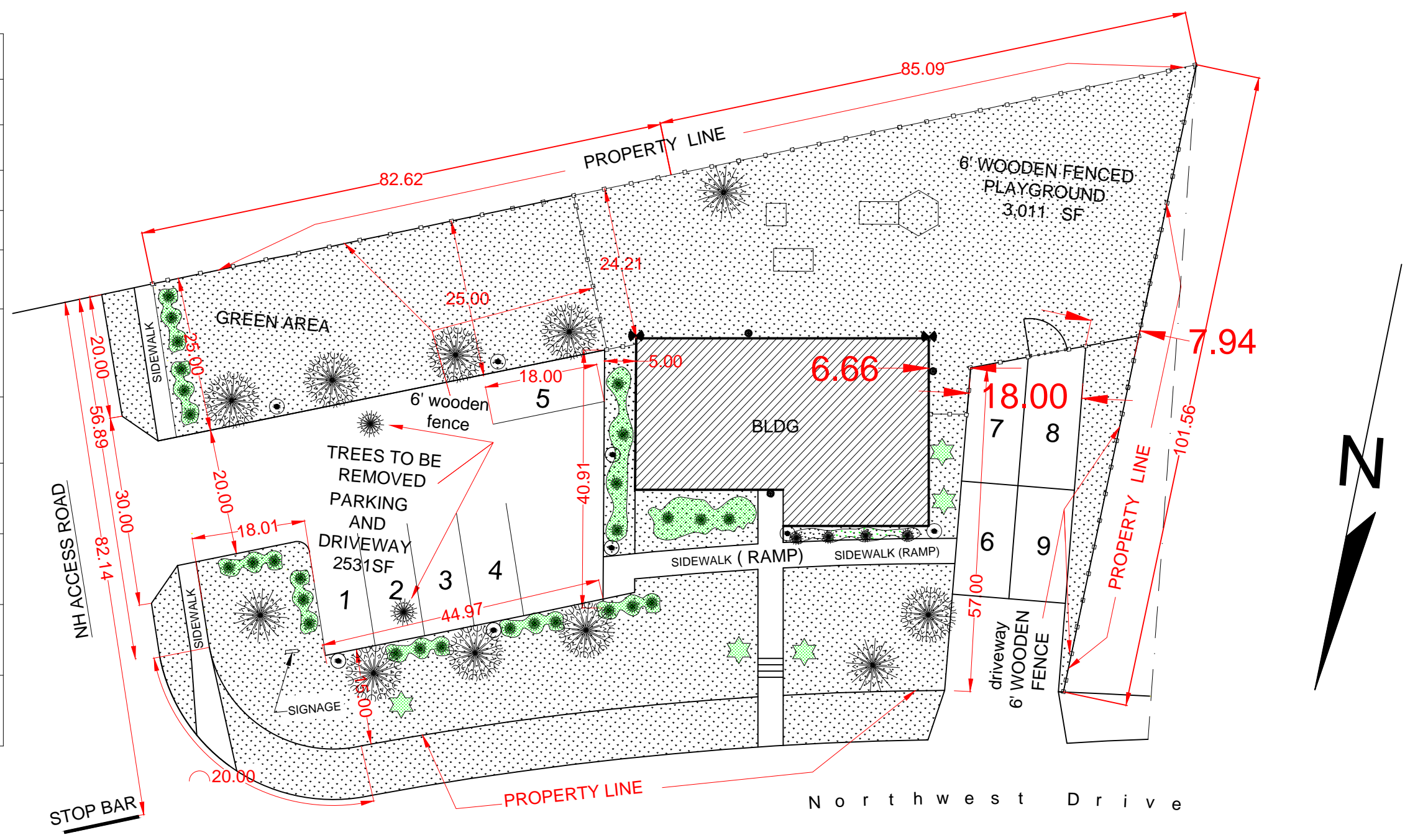
Attachments:

- Attachment 1-** Floor Plan and Landscape/Lighting Plan
- Attachment 2-** General Site Photographs
- Attachment 3-** Forest Conservation Applicability for Special Exceptions
- Attachment 4-** Citizen Correspondence
- Attachment 5-** Applicants' Waiver Justification
- Attachment 6-** Staff's Recommended Site Plan Modifications
- Attachment 7-** Light Fixtures
- Attachment 8-** Affidavit of Compliance

RMK:ha: o:\area2 division\Regulatory\Special Exceptions\SE 13-02 (Kids Love Childcare)\SE 13-02 (Kids Love Child Care Staff Report Final.docx



LEGEND	
•	EXISTING WALL MOUNTED EXTL LIGHTS
⊙	PROPOSED EXTL. LIGHTS ON POLES (100 W)
□	PLAYING EQUIPMENT
□	PLAYING EQUIPMENT
□	PLAYING EQUIPMENT
🌿	PROPOSED EVERGREEN SHRUBS (GREEN GIANT & UPRIGHT JAPANESE HOLLY)
🌳	EXIST. TREES (EVERGREEN)
🌳	TREES TO BE REMOVED
🌿	EXISTING EVERGREEN SHRUBS
⚡	MOTION SAFETY LIGHT
🌳	PROPOSED TREES (Sweetgum)



DESIGNED		DATE		REFERENCE DRAWINGS		REVISIONS	
NUMBER	DESCRIPTION	DATE	BY	DATE	DESCRIPTION	DATE	BY

AMMKA, INC. CONTRACTORS & ARCH/ENG. SERVICES
 7600 GEORGIA AVE. NW, SUITE 304 WASHINGTON, DC 20012 - 1614

APPROVED _____ SUBMITTED _____
 PROJECT MANAGER

921 Northwest Drive, Silver Spring MD20901
 PROPOSED DAY-CARE CENTER

SCALE: 1/4"=1'-0", 1:20 DRAWING NO. 100 1 OF 1

ATTACHMENT 2



Figure 1: Property's Frontage



Figure 2: Northwest Drive (looking west)



Figure 3: Northwest Drive (looking east)



Figure 4: Existing Driveway and 6-foot picket fence



Figure 5: New Hampshire Avenue Service Road (@ signaled intersection)

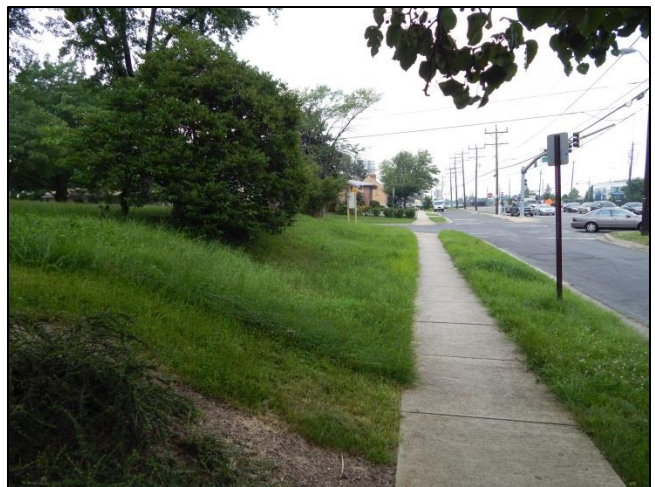


Figure 6: New Hampshire Avenue Service Road (looking north)

ATTACHMENT 3

Office of Zoning and Administrative Hearings
MAY 03 2013

13-02

Environmental Planning Division

Effective 1/08

Montgomery County Park & Planning Dept. ♦ 8787 Georgia Ave., Silver Spring, MD 20910 ♦ 301-495-4540, fax: 301-495-1303

APPLICATION

Forest Conservation Applicability* for Special Exceptions

PROPERTY LOCATION

Street Address: 921 Northwest Drive, Silver Spring, MD 20901

Subdivision: Burnt Mills Estate Parcel(s) # _____ Lot #(s): 11 Block(s): A

Property Tax Identification Number: _____

Applicant (Owner or Contract Purchaser):

Dereje G. Zewdu
Name

13117 Broadmore Road, Silver Spring, MD 20904
Street Address

City _____ State _____ Zip Code _____

(301) 384-1712 Phone No. _____ Fax No. _____

TOTAL AREA OF PROPERTY: _____ acres 13,147 square feet

APPLICANT ATTESTS THAT THE FOLLOWING STATEMENTS APPLY TO THE SUBJECT SPECIAL EXCEPTION APPLICATION:

- The application applies to a special exception on a property of less than 40,000 square feet.
- ~~No forest or individual trees will be disturbed.~~ Candy Bunnay 5/3/13
- The property is not subject to a previously approved Forest Conservation Plan.
- The special exception proposal will not impact any champion tree as defined by the Montgomery County Forestry Advisory Board.

Signature of applicant (Owner or Contract Purchaser):

[Signature]
Signature

5/02/2013
Date

M-NCPPC acknowledges that the special exception for the above property is not subject to the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code.

Signature of M-NCPPC Environmental Planning staff reviewer:

Candy Bunnay
Signature

5/3/13
Date

*This form may be used only if the property is less than 40,000 square feet in total area.

EXHIBIT NO. 9
REFERRAL NO. S.E. 13-02

ATTACHMENT 4

ELEANOR JENKINS LAUDERDALE, ESQUIRE
901 Northwest Drive
Silver Spring, Maryland 20901
(301) 593-4850
(D.C. Bar License # 933994)

Office of Zoning and
MAY 29 2013
Administrative Hearings

May 24, 2013

Ellen Forbes
Office of Zoning and
Administrative Hearings
100 Maryland Avenue
Suite 200
Rockville, Maryland 20850

Re: Special Exception (Case No. S.E. 13-2)

Dear Ms. Forbes:

This letter pertains to the above-referenced Special Exception which is pending for the establishment of a day care facility at 821 Northwest Drive, Silver Spring, MD 20901. I am vehemently opposed to such a special exception being made. My standing to challenge the exception derives from the fact that I live at 901 Northwest Drive.

Pursuant to Montgomery County Ordinance No. 59-G-1.2.1, when considering an application for a special exception the Board of Appeals, Hearing Examiner, or District Council...

must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone.

Generally, it is inexplicable as to why the application for a special exception to establish a thirty-one child day care facility in a residential home, on a residential street, was not summarily rejected. It is incomprehensible how anyone would even contemplate turning a four-bedroom, split-level home into a child care facility. This would completely alter the physical nature, community character, and economic value of the residential homes on Northwest Drive as well as those in the Burnt Mills community at large.

There are numerous "adverse effects" that the granting of a special exception in this case would have on the neighborhood, to wit:

1. Ever since the current occupants of the home moved in, their corner lot has looked like a vacant, rundown property. They are already bad neighbors. The grass is rarely cut, and the lawn is regularly littered with trash. On trash day (Wednesday) should the collectors spill any trash on the lawn or the curb, it is left there in perpetuity. When they want to get rid of anything (and I mean anything-

EXHIBIT NO. _____
REFERRAL NO. _____

furniture, trash, carpeting, etc.), they do not wait until Tuesday night to put it out like everyone else, they just as soon put it out on Thursday and await the next week's collection. The property is filthy!

2. When my husband and I purchased our home in 1983, Northwest Drive was a strictly residential, one family per home neighborhood. It has changed. There are people who have made their basements into apartments. This may be because the costs of the homes have more than quadrupled since that time, and people cannot otherwise afford the homes. This has already brought down property values. We do not need to add yet another equity deflating circumstance to our situation. The residential nature of the community cannot be maintained if there is a day care facility on the corner lot. The exception would allow for the altering of a residential home into a quasi-commercial facility. This is unconscionable on a residential street. What next – a house converted into a McDonald's?

The commercialization of the community would naturally bring unwanted traffic into the community. Northwest Drive has already been bombarded by traffic flowing to and from the new FDA facility on New Hampshire Ave. The street cannot sustain more traffic without being turned into a highway.

3. I have been in a dialogue for over three years with the county about the people at 808 Northwest Drive maintaining a car repair business on the street. The county has done a precursory investigation of this matter and allowed it to persist. I have been speaking with Ben Fulton of Councilwoman Ervin's office and with Mr. Frank Delange of the State Highway Administration, to no avail. This site is an eyesore that is already tainting the community, and no one in county government will do anything about it. Instead of truly investigating the matter, the county investigators have merely asked the occupants at 808 Northwest Drive whether they are running an unlicensed, unauthorized car repair. The occupants have simply replied "no." So, people have to erect barriers in front of their homes to stop the culprits from parking junk cars in front of (and sometimes mounted on) their lawns. This situation is abominable; why should we have to deal with yet another commercial enterprise on our street?
4. Pursuant to Montgomery County Ordinance No. 59-G-1.21(a)(7), a special exception will be granted *only* if it

[w]ill not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan *do not alter the nature of an area*.


(*Emphasis added*). Clearly, placing a major child day care facility on a residential street would *alter the nature of an area*. The extent to which it would alter the

nature of the area is remarkable. Currently, there are difficult access and egress problems at Northwest Drive and New Hampshire Ave. There is no space for a parking lot, unless they anticipate grading and concreting the front lawn, which has happened at other houses in the area that have been granted special exceptions. As noted above, the house seeking the special exception is already not kept to any standard of cleanliness. More often than not, the lawn is overgrown, and the adjacent sidewalk lawn is never cut. Currently, it is about two feet high. Further, as noted the lawn is always littered; a day care would certainly add to the litter on the lawn, causing the house to be more of an eyesore than it is now. Inasmuch as the day care facility would be a business, it goes without saying that it would definitely "alter the predominantly [in our case "totally"] residential nature of the area."

Finally, I cannot state sufficiently here my opposition to the pending Special Exception. I would like the opportunity to further expound on this matter, and therefore, I am asking that I be informed of any hearings or other proceedings relating to this matter.

Thank you for your attention to my concerns.

Sincerely,


Eleanor Lauderdale

ATTACHMENT 5

**BEFORE THE OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS FOR
MONTGOMERY COUNTY, MARYLAND**

In the Matter of the Petition :
of Dereje G. Zewdu and Fekerte :
Desalegn, T/A Kid’s Love :
Child Care, LLC, for a : **Case No. SE-13-02**
Special Exception for a :
Child Day Care Center :

REQUEST FOR WAIVER OF PARKING STANDARDS
(REDUCTION OF SIDE YARD SET BACK)

The Petitioners, Dereje G. Zewdu and Fekerte Desalegn , are filing this request for a waiver of the parking standards set forth in Section 59-E-2.83; namely, to waive the requirement that the relocated driveway on the western side of the property comply with the set back requirements contained in the zoning ordinance. In support, the Petitioners state the following:

SET BACK REQUIREMENTS

Under Section 59-E-2.83 (b) the following setback requirements apply to any parking facility for special exceptions in a residential zone:

Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

The property involved in this application is located in the R-90 zone, which has a set back requirement of 8 feet under the requirements of Section 59-C-1.322 of the Zoning Ordinance, which is therefore doubled to 16 feet under the provisions of Section 59-E-2.83 (b). This requirement can be waived under the provisions of Section 59-E-4.5 of the Zoning Ordinance, which provides:

When approving an application, the Director, Planning Board, Board of Appeals, or Hearing Examiner may waive any requirement in this Article not necessary to accomplish the objectives in Section 59-E-42.2, and in conjunction with reductions may adopt reasonable requirements above the minimum standards.

The objectives for a parking facilities plan, as set forth in Section 59-E-42.2 are the following:

a) *The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.*

b) *The safety of pedestrians and motorists within a parking facility.*

c) *The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.*

d) *The provision of appropriate lighting, if the parking is to be used after dark.*

REASONS FOR REQUEST

In this case, the site involved has an existing driveway which is located approximately 15 feet on the adjoining property at 917 Northwest Drive. This was not discovered until the application in this case was submitted. As a result, the driveway will need to be relocated approximately 15 feet from its current location, to a location closer to the existing home. When that is done, the new driveway will be located between 16 and 23 feet from where the former property line was located.

The applicants do not know how this occurred, but it appears that there is parcel called a "portion of lot 10" shown on the Burnt Mills Estate Plat which is approximately 15 feet wide and has been utilized by the owners of the subject property, which is known as lot 11 of the Burnt Mills Estates subdivision. The adjoining property located at 917 Northwest Drive is lot 10. As a result, the applicants are going to remove and relocate the existing driveway approximately 15 feet so that it is located entirely on their property.

When the driveway is relocated, it will be located between 16 and 23 feet from what was previously considered the border of the two properties. While the 15 foot strip of land on which the existing driveway is located is actually the neighbor's property, this strip was formerly understood to be the applicants' property. Therefore, when the driveway is removed from this strip, it will provide a buffer to the applicants' driveway that was not present before. Therefore, the neighbor will effectively have a 15 foot side yard buffer from the applicants' driveway that was not present when the applicants' first purchased the property. When this is added to the buffer being provided on the applicants' site, which ranges from 1 to 8 feet, the neighbor will have a buffer of between 16 and 23 feet to the proposed driveway.

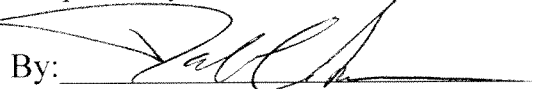
The applicants did not know this when they purchased the property because they assumed that the driveway was on their land, and the house location survey they obtained at settlement did not show the encroachment. Removing and replacing the driveway has caused a hardship to the applicants which they propose to resolve by relocating the driveway and restoring the property on which the existing driveway is located to grass, and returning it to the owner of 917 Northwest Drive.

Because of this, the applicants cannot meet the 16 foot side yard requirement in this case, which they could have met before learning of the encroachment. This has created a hardship for which they seek a waiver of the parking facility set back requirements. This waiver will not violate any of the objectives for a parking facility set forth in Section 59-E-4.2 of the Zoning Ordinance because the applicants will install a six foot privacy fence alongside their new driveway to shield it from the view of 917 Northwest Drive. This is the only property affected by the requested waiver, and the property will have more side yard than it previously had after the side yard utilized by the owners of 921 Northwest Drive return it to them.

CONCLUSION

After discovering that the existing driveway is located on 917 Northwest Drive, the applicants intend to remove and relocate the existing driveway so that it is located entirely on their property. This has created a hardship which can only be remedied by waiving the set back requirements and allowing the applicants to relocate the driveway onto their property, where it will be located between 1 and 8 feet from the property line. It will then be shielded from the view of the neighbor by a six foot privacy fence. Granting a waiver of the parking facility set back requirements in this case does not violate any of the objectives of Section 59-E-42 of the Zoning Ordinance because it will only impact the neighbor located at 917 Northwest Drive.

Respectfully submitted,

By: 

David C. Gardner, Esquire

Gardner Law Firm, P.C.

600 Jefferson Plaza, Suite 308

Rockville, Maryland 20852

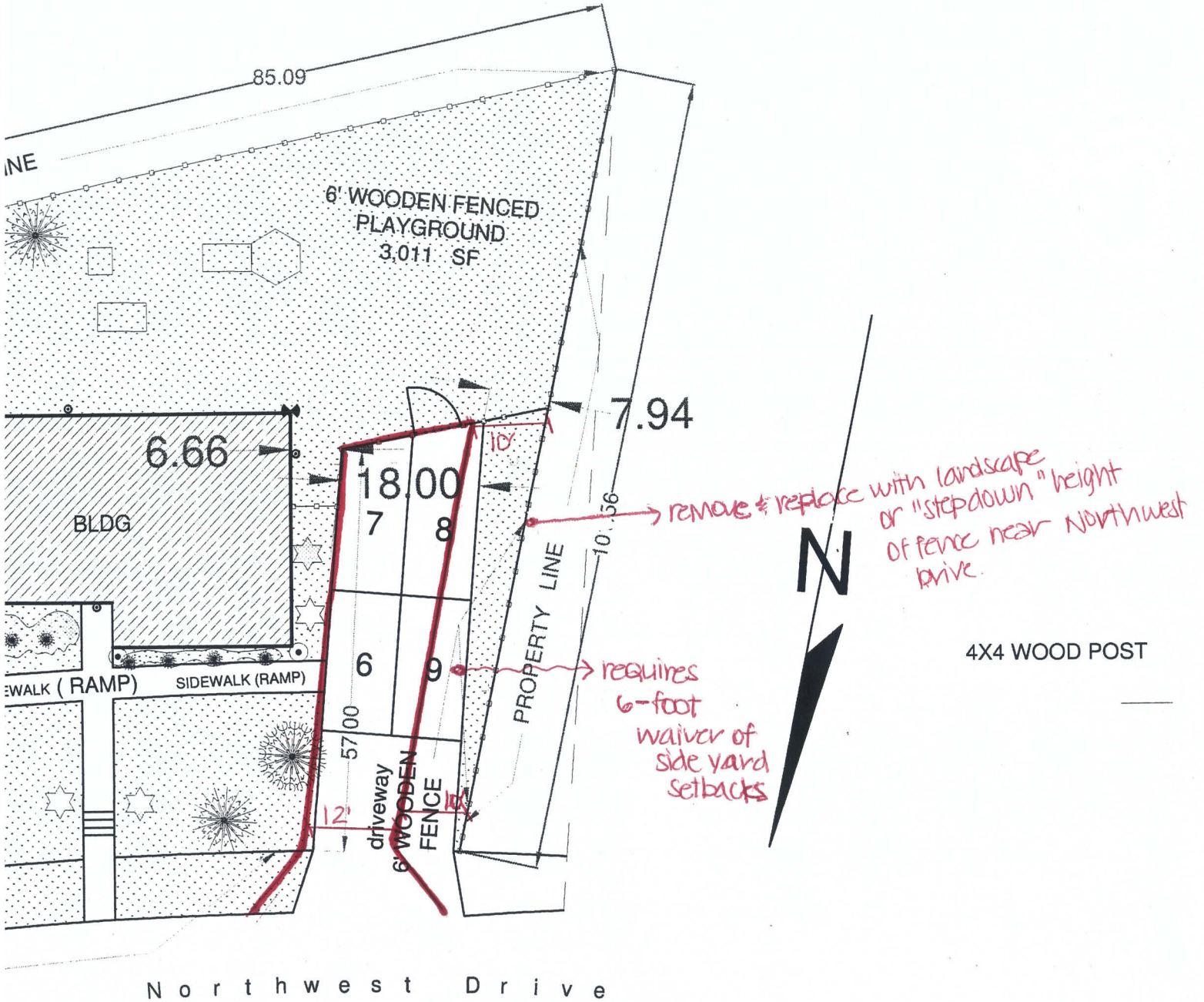
(301) 762-8475

dgardner@davidgardnerlaw.com

Counsel for Petitioner

ATTACHMENT 6

23'-9"



KA, INC. CONTRACTORS & ARCH/ENG. SERVICES
GEORGIA AVE. NW, SUITE 304 WASHINGTON, DC 20012 - 1614

ATTACHMENT 7



HAMPTON BAY

HOLDS 3 BULBS, EACH 60 WATTS (Total 180 watts)

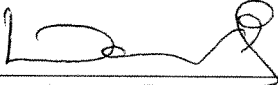
ATTACHMENT 8

Office of Zoning and
MAY 02 2013
Administrative Hearings

AFFIDAVIT OF COMPLIANCE

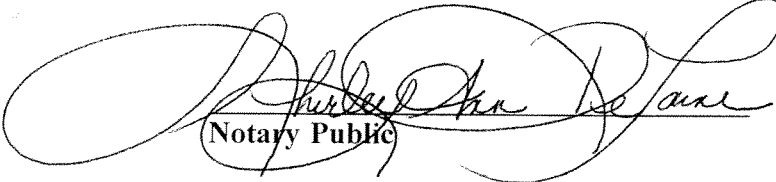
I HEREBY CERTIFY that I will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by this affidavit as a condition of approval for the special exception.

I understand that if I fail to meet State or County requirements, this special exception may be declared invalid.



Petitioner

Subscribed and sworn to me, a Notary Public for Montgomery County, Maryland, this 2nd day of MAY, 20 13.


Notary Public

My Commission Expires: _____

SHIRLEY ANN DELAINE
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES 01-28-2017

EXHIBIT NO. 15(a)
REFERRAL NO. J. E. 1302


ATTACHMENT 8

Office of Zoning and
MAY 03 2013
Administrative Hearings

AFFIDAVIT OF COMPLIANCE

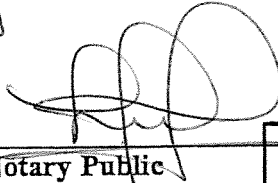
I HEREBY CERTIFY that I will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by this affidavit as a condition of approval for the special exception.

I understand that if I fail to meet State or County requirements, this special exception may be declared invalid.



Petitioner

Subscribed and sworn to me, a Notary Public for Montgomery County, Maryland, this 3rd day of May, 20 13.



Notary Public

My Commission Expires:

MARY D. KING
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES FEB. 9, 2015



EXHIBIT NO. 15(6)
REFERRAL NO. S.E.13-02