

**MEMORANDUM: SPECIAL EXCEPTION**

DATE: April 30, 2004

TO: Montgomery County Board of Appeals

VIA: Carlton W. Gilbert, Zoning Supervisor *CWG*
Development Review Division

William Barron, Eastern County Team Leader
Community-Based Planning Division

FROM: Calvin Nelson, Jr., Planning Coordinator, Eastern County Team *CN*
Community-Based Planning Division (301-495-4619)

SUBJECT: **Board of Appeals Petition No. S.E. 03-4 (Special Exception)**
Kamini Wayal – Child Day Care Facility – 11628 Lockwood Drive,
Unit #T-2, Silver Spring, R-20 Zone – White Oak Master Plan

FILING DATE: January 2, 2004
PUBLIC HEARING: May 24, 2004

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. The use is limited to 20 children between the ages of four and twelve, and three staff.
3. Permitted hours of operation are Monday thru Friday only, 6:30 a.m. to 6:30 p.m.
4. Designate two parking spaces for drop off and pick up.
5. That the Hearing Examiner reduce the number of required parking spaces, by four spaces.
6. Extend the existing fenced ABC Scholar Day Care Center play area to the rear entrance of the subject unit as shown on the Landscape Plan.
7. A staff member(s) must be present to supervise children at all times, inside as well as outside the building.
8. Must comply with Maryland State and Montgomery County standards for the operation of a child day care center.

Background

The applicant, Kamini Wayal, has requested a special exception to permit a full-time child day care center for 20 children at 11628 Lockwood Drive in Silver Spring in the R-20 Zone. The proposed "Before and After School Child Day Care Center", would be located within an existing two-bedroom apartment (Unit T-2), in the White Oak Gardens Apartments.

Ms. Wayal also currently owns and operates ABC Scholar Day Care Center (ABCS Day Care Center), a full-time day care center for up to 60 students, located within the adjacent apartment building, at 11624 Lockwood Drive. Enrollment currently averages between 30 to 40 children, of which 50% have a White Oak Gardens Apartments address and 50% having addresses for surrounding neighborhood apartment complexes. The Center has two designated parking spaces for parent drop off and pick up. A child day care center has been in operation at this location under various owners since 1968.

Site Description

The 160-unit, three-story White Oak Gardens Apartments are sited on a 7.6 acre, triangular-shaped lot, located on the north side of Lockwood Drive, about 2,500 feet east of New Hampshire Avenue in the White Oak Master Plan area. Access to the site is from two points along Lockwood Drive and speed humps are featured in the drive lanes of the parking areas. The site is fairly level, however there is a drop in grade along the northern property boundary. Because of this drop in grade, the ABCS Day Care Center has a series of steps that lead down to its main entrance.

Neighborhood Description

The neighborhood is described as the 12 apartment buildings located within the White Oak Gardens Apartments complex. The subject site and the adjacent and confronting properties are zoned R-20 and are developed with multi-family garden-style apartment buildings. On the north side of Lockwood Road, the Montgomery White Oak Apartments are located to the north and west, and the Yorkshire Apartments are located to the east. Across Lockwood Drive to the south are the Woodleaf Apartments, the Villa Nova Apartments, the White Oak apartments, and another section of the White Oak Gardens Apartments. The White Oak Shopping Center is located further to the west at the intersection of Lockwood Drive and New Hampshire Avenue.

Three of the special exceptions noted in the neighborhood – BA-2315, BA-2710, and BAS-82, are all special exceptions for the same child day center at 11624 Lockwood Drive - the current location of ABC Scholar Daycare Center. A special exception for a horticultural nursery and commercial greenhouse (S-897), was granted in 1960, but that site is now developed with apartments.

Elements of Proposal

The applicant proposes to remodel the interior of an existing two-bedroom apartment unit (Unit T-2) at 11628 Lockwood Drive for a full-time child day care center, subject to the following:

- (a) Maximum capacity of 20 children, between the ages four thru twelve.
- (b) Hours of operation between 6:30 a.m. and 6:30 p.m.
- (c) Three staff persons.
- (d) Provide for six parking spaces.

In support of the special exception, the following information was provided by the applicant and is summarized below:

- The applicant indicates that there is a need for expanded childcare services, to include Before and After School Child Day Care services, due to inquiries from the area and other area centers have existing waiting list for nearby residents due to new growth in the Fairland/White Oak and surrounding communities.
- Several outdoor play activity areas already exist. There is a play area for the ABCS Child Day Care Center adjacent to the proposed unit as shown on the site plan, that is enclosed with a metal fence and shrubbery.
- There is ample on-site paved parking spaces during daytime hours when many residents are away to accommodate staff, parents drop-off, and handicapped parking. There are 111 parking spaces in the vicinity of the proposed special exception unit, (a total of six parking spaces required, property manager would provide for needed additional spaces).
- There is also adequate circulation (two-lane driveways for easy vehicular circulation) for on-site queuing, safe ingress and egress of vehicles to minimize impact on the current traffic flow.
- There would be no new signage on the existing property.
- The proposed hours of operation would be from 6:30 a.m. to 6:30 p.m, Monday thru Friday. The children would be transported to the facility by parents between the hours of 7:00 a.m. and 9:00 a.m., and they would leave at various times during the day, including emergency trips by parents, up to 6:30 p.m.
- The children attending the child care center would be supervised at all times, inside as well as outside the building. The children will bring their lunch; snacks would be provided.
- Students will attend school all day excluding holidays, school staff days, vacations, and school cancellations.

ANALYSIS

Master Plan

The White Oak Master Plan, approved and adopted in 1997 supports the existing R-20 Zone for multi-family use. Child Day Care facilities are allowed by special exception in this Zone. An objective of the Plan is to evaluate new requests for special exception uses and their impact on the character and nature of the residential neighborhoods in which they are proposed. Following are special exception recommendations noted in the Plan:

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

The Master Plan does not specifically address special exceptions for the subject site.

Staff finds that subject special exception is consistent with the above noted White Oak Master Plan recommendations. The proposed Before and After School Child Day Care Center does not involve any changes which would negatively impact on the character and nature of the existing residential neighborhood.

Development Standards

Except for parking (which is discussed below), this special exception is in compliance with the development standards of the R-20 zone. The proposed child care center would be located in an existing two bedroom apartment unit. The adjacent ABCS Child Day Care Center play area will be extended to the rear entrance of the subject unit, but no external building modifications are proposed.

Parking Requirement

Staff has determined from a site plan submitted in 1967 with special exception case BA-2315, (the child care center located at 11624 Lockwood Drive in the adjacent building) that there are 240 parking spaces required and 240 parking spaces provided, for the 7.6 acre White Oak Gardens Apartments site (see ②)

The parking requirement was based on:

- 160 apartment units x 1.5 parking spaces/unit = 240 required parking spaces.

The subject application for 20 children requires a total of six parking spaces - three parking spaces for staff, and three parking spaces for drop off and pick up. However, since the child day care center is taking the place of a two-bedroom apartment that has a parking requirement of 1.5 parking spaces, the parking requirement for this special exception would be reduced to 4.5 (5) parking spaces. To be in compliance with Section 59-E (Parking) of the Zoning Ordinance, the applicant has provided a letter from the property manager designating two parking spaces for drop off and pick up (see ⑥). The applicant has also provided a letter to the Hearing Examiner that requests a reduction of four parking spaces in accordance with Sec. 59-G-2.13.1.(a)(2)(B). (see ⑦).

The applicant's statement of operation concluded that an ample amount of parking spaces were available during the daytime hours when many of the residents are away, to accommodate staff, parent drop-off, and handicapped parking. Staff contacted the property manager of the apartments who indicated that there have been no complaints from residents in the subject area in regards to parking. On several site visits in the morning, mid-afternoon, and early evening, staff also observed that parking spaces were available in the subject area.

Waivers, variances, and reductions for parking are allowed in accordance with the Zoning Ordinance. Based on observations noted above, staff supports the assignment of two parking spaces for drop off and pick up, and also supports the Hearing Examiner reducing the parking requirement by four spaces.

Transportation

The Transportation Planning staff recommends the following condition as part of the transportation-related requirements to grant this petition:

- Limit the hours of operation, and the number of students, employees and vehicles at the proposed facility to that described in the Applicant's Statement of Proposed Development and Operation, dated December 22, 2003.

Site Location, Access, Pedestrian Facilities, Parking and Public Transportation

The proposed "before and after school" child day care center will be located within an existing two-bedroom apartment at White Oak Gardens Apartments, located along the north side and within the 11600 block of Lockwood Drive, approximately 2,500 feet east of the Lockwood Drive intersection with New Hampshire Avenue (MD 650).

Further east/northeast, Lockwood Drive becomes Stewart Lane, which connects to Columbia Pike (US 29).

Lockwood Drive is a closed-section arterial within the White Oak Master Plan area, and is approximately 50 feet wide. A 5-foot sidewalk and a Class II (signed on-road) bikeway are provided along both sides of Lockwood Drive. Sections of Lockwood Drive also provide for on-road parking along both sides of the roadway. Vehicular access to and from the apartment proposed for the day care center will be through two existing driveways to the apartment community off Lockwood Drive. Lockwood Drive has a posted speed limit of 30 mph.

The interior apartment complex driveway intersections with Lockwood Drive are STOP sign controlled. Pedestrian facilities within the apartment complex are limited, with sidewalks adjacent to curb in front of only the section of buildings that face Lockwood Drive. A paved path is provided from the parking lot to the existing day care facility, which has a separate entrance. The building that will house the proposed day care also has a paved walkway from the parking lot to the building entrance. Staff finds that the proposed Special Exception use will not have an adverse effect on pedestrian access or safety in the area.

Metrobus routes Z4, Z8, K6, and Ride-On route 10 serves Lockwood Drive, with bus stops along Lockwood Drive to the front of the apartment complex.

The day care facility is proposed to have approximately 20 students of ages four through twelve, and three staff members. It is proposed to operate between 6:30 a.m. to 6:30 p.m., Monday through Friday. Parents are anticipated to drop off their children in the morning generally between the hours of 7:00 a.m. and 9:00 a.m., and pick up children at various times during the day, including emergency trips, up to 6:30 p.m. Parking needs of the day care facility are proposed to be met through using existing paved parking available to the front of the apartment buildings since residents of the apartments will be generally away during the daytime hours. The children at the day care, who will attend local elementary and middle schools, will be picked up by the Montgomery County Public School buses within the apartment complex or along Lockwood Drive.

The applicant for the child day care facility is also the holder of Special Exception No. S-82 to operate a day care center at the adjacent building at 11624 Lockwood Drive within apartments T-1, T-2, and T-3. This Special Exception permits operation of a full-time child day care center within these apartments with no more than 60 students, and was originally approved in 1968 as Special Exception Case No. 2315.

Master Plan Roadways, Pedestrian/Bicycle Facilities

The proposed child day care center will be located along Lockwood Drive, an east-west arterial with an 80-foot right-of-way to the front of White Oak Gardens

Apartments. The 1997 Approved and Adopted White Oak Master Plan recommends two travel lanes for this section of Lockwood Drive (A-286) between the east side of White Oak Shopping Center and Lockwood Drive Extended. A Class I or II bikeway (PB-27) is also recommended along Lockwood Drive between the White Oak Shopping Center and US 29, and is currently built as a Class II bikeway.

Local Area Transportation Review

The staff has reviewed the current Special Exception proposal together with the adjoining Special Exception held by the applicant and determined that the combined uses will not require a traffic study since they will not generate 50 or more peak-hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. The combined staffing level of both Special Exceptions will be 13, and per Local Area Transportation Review (LATR) Guidelines, the combined day care facility was estimated to generate 40 and 43 peak-hour trips during the weekday morning and evening peak periods, respectively. Staff also considered the relative proximity of the residences of the children who currently attend the existing facility. Approximately 80 percent of the children live in the immediate vicinity of the existing/proposed child day care facilities. Therefore, the Special Exception use satisfies the LATR requirements.

Policy Area Transportation Review/Staging Ceiling

Under the FY 2004 Annual Growth Policy, as of March 31, 2004, the Fairland/White Oak Policy Area has remaining staging ceiling capacity for 1,914 additional jobs. The proposed child day care facility, with an anticipated staff of three, therefore passes the Policy Area Transportation Review test.

Environmental Analysis

There are no environmental issues with this application. This special exception is exempt from forest conservation law as the proposed use will not result in clearing of existing forest or trees.

Landscaping and Lighting

The existing landscaping for the areas around the apartment building and within the apartment complex is adequate. The Landscape Plan shows a substantial buffer of mature evergreen and deciduous trees along the north side and rear of the subject apartment building at the property boundary. Mature trees and shrubs are located in the lawn areas between the front of the apartment building and the sidewalk in front of the parking lot.

The existing lighting for the apartment building and grounds is adequate. The Lighting Plan shows light fixtures mounted on the front, sides, and rear of the apartment building,

augmented by 10 feet high pole-mounted lamps located near the parking lot along the entrance walks to the apartment building. There are no major visual obstructions to block the view between the drop off/pick up area and the apartment building's entrance.

Community Concerns

Staff has not received any calls or letters from the community expressing concerns about the proposed special exception. Staff discussed the existing ABCS Child Day Care Center and the proposed child day care center with property manager of White Oak Gardens Apartments. The property manager recalled that there had been one complaint in the past from an upstairs neighbor of ABCS Child Day Care Center, regarding noise from children playing outside in the play area. The applicant stated to staff that the children are let out to play in age groups, to avoid having a large group of kids in the play area at one time.

Inherent and Non-inherent Effects

The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the R-20 zone.

Section 59-G-1.21. of the Zoning Ordinance states in part:

Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics are not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

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 analysis is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined.

Applying the above analysis to this case, the staff finds:

The general neighborhood affected by the proposed special exception is the 7.6 acre, White Oak Gardens Apartment site. The neighborhood includes the ABCS Child Day Care Center that is located adjacent to the proposed special exception. The existing

and proposed child day care centers are located on the ground level of a three-story, garden-style apartment building of brick construction.

The proposed Before and After School Day Care Center is limited to 20 children between the ages of four and twelve. After arrival at the Center, a number of these children will later board a school bus from a designated location in the parking lot, and return later in the afternoon. On days when schools are not in session, the children could be at the Center for the day.

Inherent physical and operational characteristics with the Before and After School Child Care Center are the additional vehicular traffic which would come into the area, the availability of parking, and the additional noise created by children at play. From an operational perspective, the operations and traffic associated with transporting children and staff do not overburden the transportation network. The proposed special exception is consistent with most child day care centers with respect to the number of children enrolled, hours of operation, and facilities provided.

This facility for up to 20 children, would be located adjacent to the building that houses the ABCS Day Care Center and permits up to 60 children. The fenced, outdoor play area will be located directly at the rear entrance to the building, and combined with the existing ABCS Day Care Center play area. Perhaps a non-inherent characteristic would be having ABCS Day Care Center facility and the proposed Before and After School Child Care Center, operating within adjacent apartment buildings. Staff finds that the operational characteristics of the proposed child day care center would not significantly impact the neighborhood.

CONCLUSION

Staff recommends approval of the Before and After Day Care Center, subject to the conditions noted on the first page of this report.

APPENDICES

Excerpt from the Montgomery County Zoning Ordinance (Chapter 59 of the Montgomery County Code) *with staff annotation*

- ① Vicinity Map
- ② BA-2315 Site Plan
- ③ S.E. 03-4 Site Plan
- ④ S.E. 03-4 Landscape Plan
- ⑤ S.E. 03-4 Lighting Plan
- ⑥ Letter from Case Management dated 4/29/04
- ⑦ Letter to Hearing Examiner Requesting Parking Reduction dated 4/29/04

Montgomery County Zoning Ordinance

59-G-1.21. 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.

The subject property is zoned R-20. A child day care facility is an allowed special exception in the R-20 Zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The use complies with the standards and requirements set forth the use in Division 59-G-2,(if the Hearing Examiner reduce the number of required parking spaces by four 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.

The special exception will be in conformance with the recommendations of the 1997 White Oak Master Plan.

(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.

The use will be in harmony with the general character of the neighborhood when considering this criteria. No changes are being proposed for the exterior of the building.

- (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.

The use will not have a detrimental effect for any of these reasons. The impacts of the use are inherent.

- (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.

The use will not have a detrimental effect for any of these reasons.

- (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.

The use will not adversely effect or alter the surrounding multi-family area.

- (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.

The use will not adversely effect the safety of area residents.

- (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.

The proposed use is served by adequate public services and facilities.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.
- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Sec. 59-G-2.13.1. Child day care facility.

- (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;

The applicant has submitted such a plan.

- (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;

To be in compliance with Section 59-E (Parking) of the Zoning Ordinance, the applicant has provided a letter from the property manager designating two parking spaces for

drop off and pick up (see ⑥). The applicant has also provided a letter to the Hearing Examiner that requests a reduction of four parking spaces in accordance with Sec. 59-G-2.13.1.(a)(2)(B). (see ⑦).

The applicant's statement of operation concluded that an ample amount of parking spaces were available during the daytime hours when many of the residents are away, to accommodate staff, parent drop-off, and handicapped parking. Staff contacted the resident manager of the apartments who indicated that there have been no complaints from residents in the subject area in regards to parking. On several site visits in the morning, mid-afternoon, and early evening, staff also observed that parking spaces were available in the subject area.

Waivers and variances are allowed in accordance with the Zoning Ordinance. Based on observations noted above, staff supports the assignment of two parking spaces for drop off and pick up, and also supports the Hearing Examiner reducing the parking requirement by four spaces.

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

Two designated parking spaces are proposed for the drop off and pick up of children. Typically there are also other parking spaces available because many residents have left for work in the morning, or not have returned home from work in the evening. There is also an area in the parking lot for the school bus to pick up and drop off children.

- (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; and

This is a condition of approval.

- (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.

The special exception use will be compatible with the surrounding uses and will not result in a nuisance due to traffic, noise or types of physical activity.

(b) A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:

- (1) a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and
- (2) in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:
 - (A) the facility will predominantly serve children of an age range that require limited outdoor activity space;
 - (B) the additional density will not adversely affect adjacent properties;
 - (C) additional traffic generated by the additional density will not adversely affect the surrounding streets; and
 - (D) adequate provisions for drop-off and pick-up of students will be provided.

The Board may limit the number of students outside at any one time.

Not applicable.

(c) The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:

- (1) a structure owned or leased by a religious organization and used for worship;
- (2) a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;
- (3) a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or
- (4) a publicly owned building.

Not applicable.