

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.*