

MCPB  
Item # 5  
12/2/2004**MEMORANDUM**

**DATE:** November 24, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** Carlton Gilbert, Zoning Supervisor *CG*  
Development Review Division  
**FROM:** Frederick Vernon Boyd, Community Planner *FVB*  
Community-Based Planning Division  
**SUBJECT:** Special Exception CBA-470-A  
Kensington Nursery School  
**FILING DATE:** June 25, 2004  
**PUBLIC HEARING:** December 10, 2004

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**RECOMMENDATION:** Approval with conditions

1. Subdivision of the property is required.

**PROJECT SUMMARY**

The Kensington Nursery School proposes to modify an existing special exception to add a multi-purpose room to its existing building at 3202 Decatur Avenue in Kensington. The room would be used as a children's play area during bad weather and as a meeting room for parent education sessions and other school-wide events. The addition will include an area for storage and administrative activities as well as a restroom accessible to the handicapped.

The Kensington Nursery School is a non-profit, parent-owned cooperative, established in 1957 at the Decatur Avenue location. It serves no more than 65 students each year with a staff of two part-time teachers, a school director/teacher and a part-time extended day aide. As part of the cooperative arrangement, parents serve as aides in each of the school's four classes.

The school divides its classes by age; a group of four-year-olds attends each weekday from 9 am to 11:30 am; a group of two-year-olds attends from 9 am to 11:30 am on Tuesdays and Thursdays; a group of three-year-olds attends from 9 am to 11:30 am on Mondays, Wednesdays and Fridays. A mixed group of three- and four-year-olds attends from noon to 2:30 pm on Mondays, Wednesdays and Fridays. The maximum number of students on campus at any time is 29. The school is not proposing to increase its enrollment or change its hours of operation.

## **THE SITE**

The Kensington Nursery School is located in Kensington Heights. It is located in the interior of its community on a one-block portion of Decatur Avenue. Access to Decatur Avenue in this area is from McComas Avenue and Pearson Street. There are eight single-family homes on the block; four more homes share a common driveway that is reached from Pearson Street at its intersection with Decatur. The school's property consists of two recorded lots in the R-60 Zone that total 31,513 square feet.

## **THE NEIGHBORHOOD**

The Kensington Heights community is dominated by single-family homes. To the west of the school, at the end of this portion of Decatur Avenue, is Kensington Heights Neighborhood Park, a four-acre park with basketball courts, a playground and an exercise course. To the east are single-family homes.

## **ANALYSIS**

### Master Plan

The 1990 *Master Plan for the Communities of Kensington-Wheaton* evaluated the area between Decatur and McComas avenues but did not recommend changes to the existing zone or land uses. The Plan includes a section on child day care facilities and includes the Kensington Nursery School on a map of group child day care facilities. The focus of the section is on creating additional opportunities to establish day care facilities on public property and the Plan makes no policy or land use recommendations for existing nursery schools or day care facilities.

### Development Standards

The school's building is required to meet development standards for the R-60 Zone. That zone requires a 30-foot minimum setback from the street; a 20-foot setback from the rear lot line; and a minimum setback of 8 feet from any side lot line. The sum of the side yard setbacks must be at least 18 feet. With the proposed addition, the school building will be 33 feet from the street; 95 feet from

the rear lot line; and 45 feet from the eastern lot line. The sum of the side yard setbacks will be 66 feet.

The school's building covers 11 percent of the 31,500 square feet, well within the 35 percent maximum building coverage standard for the zone.

### Transportation

Transportation Planning staff have reviewed the proposed modification and recommend its approval. The staff's analysis concludes that no increases in vehicular traffic will result from the proposal and that the proposal meets the adequate public facilities test for transportation. The school generates fewer than 50 morning or evening peak period trips and does not require a traffic study to satisfy the requirements of Local Area Transportation Review.

The school estimates that about a third of its parents live within walking distance of the school; others participate in carpools. Space for about 13 cars is available in a paved area along the front of the school; the Zoning Ordinance requires one pick-up/drop-off space for every six children, or five spaces for the approximately 30 children on campus at any one time. The school has separate designated parking areas for school staff in the existing driveway; there is a designated space for handicapped drivers as well.

While there are no sidewalks on Decatur Avenue, the street does not accommodate through traffic and provides access for a total of 14 properties, including the school's two lots. Many of these properties have sufficient driveway space for several cars. With few cars parked on the street and with no through traffic, pedestrian access using Decatur Street is adequate.

Because a number of parents walk to school or participate in carpools, the school's arrival and departure procedures do not burden the existing street system, even though Decatur Avenue is not a through street. Parents park their cars in a designated area in front of the school, walk their children to the school's playground gate or front door, then return to their cars, exit the school's parking area and leave via Decatur Avenue and Pearson Street. The 13 available spaces reduce the chance of queuing on Decatur Avenue and enable that street to remain clear.

The full memorandum from Transportation Planning is attached.

### Environment

*Forest Conservation*—This project qualifies for an exemption to the Forest Conservation Law because the activity is occurring on a property smaller than one acre; it will not result in the clearing of more than 30,000 square feet of

existing forest and any reforestation requirements would be less than 10,000 square feet. No tree save plan is required.

*Stormwater Management*—The project can be accommodated by the existing stormwater management systems.

#### Landscaping and Lighting

The proposed addition will include exterior lights at the corners. An existing garden will be removed as part of the proposed modification, as will two trees. No other changes are proposed to the existing landscaping, which consists of trees along the side and rear property lines.

#### Additional Review

The main building straddles the existing property line for the school's two recorded lots. Because the Department of Permitting Services will not issue a building permit for buildings constructed on common lot lines, a subdivision will be required.

#### Inherent and Non-inherent Effects

The proposed modification has no non-inherent adverse effects sufficient to warrant denial of the petition.

Section 59-G-1.21 of the Zoning Ordinance describes inherent and non-inherent adverse effects of a proposed use and requires the Board of Appeals to consider these effects in determining whether that use adheres to the requirements of the Zoning Ordinance. Inherent adverse effects "are the physical and operational characteristics necessarily associated with the particular use, regardless of the physical size or scale of operations." Alone, these effects are not a sufficient basis for denial of a petition. Non-inherent adverse impacts "are the physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site."

Inherent adverse effects of a private educational institution include sufficient space for the student body—classrooms and activity areas inside and outdoor space for play. Noise associated with children playing outdoors at recess is considered such an impact as well. In the case of a school such as this one, which is located in a residential neighborhood, traffic generation beyond that normally expected from the two single-family homes that would be at this location should also be considered an inherent adverse effect. The primary non-inherent adverse impact associated with the nursery school is its access. The school's interior location in its community and the fact that it is located on a street with two dead ends complicate access to the school.

The school's organizational structure works to minimize both its inherent and non-inherent impacts; because only about half of the enrollment is at school at any given time, potentially damaging effects, such as noisy outdoor play, are reduced. In addition, the school's local focus allows more students to walk to school and its encouragement of carpooling reduces the number of cars that must be accommodated at pick-up and drop-off times. Finally, the school has provided a better-than-adequate number of spaces for pick-up and drop-off, which reduces queuing on Decatur Avenue. These efforts reduce the adverse impacts of the school on its neighbors to a level that enables approval on this basis.

## **COMMUNITY CONCERNS**

Representatives of the nursery school met with the school's neighbors on September 8, 2004 to discuss the proposed project. No issues had been raised by local residents prior to completion of this technical staff report.

## **CONCLUSION**

The proposed modification meets the general conditions for the granting of special exceptions and the specific conditions put forth for private educational institutions. The proposed addition meets the development standards of the R-60 Zone. Public facilities are adequate to support the proposal, and it meets applicable environmental laws. Staff recommends approval of the petition, with the condition that a preliminary plan of subdivision be approved for the property.

### **Attachments**

Annotated excerpt from Zoning Ordinance—General Conditions  
Annotated excerpt from Zoning Ordinance—Specific Conditions  
Location map  
Site Plan  
Existing Floor Plan  
Proposed Addition Floor Plan  
Transportation Planning Memorandum

**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.

*Private educational institutions are permitted by special exception in the R-60 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.

*As noted below, the proposed modification complies with the standards and requirements of Section 59-G-2.19.*

- (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 proposed modification is consistent with recommendations for child day care facilities in the 1990 Master Plan for the Communities of Kensington-Wheaton.*

- (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 proposed building addition maintains the scale and design of the existing school building; the school is proposing no additional enrollment, and its organizational structure is designed so that only about half of the enrolled students are on campus at any one time, which reduces the intensity of the activity to some extent; with no added enrollment, there is no additional traffic generated by this proposal, and no changes are proposed to traffic patterns or parking. The school provides adequate pick-*

*up and drop-off areas, which lessens the impact of the school on the neighborhood street network.*

- (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 school is most active on weekdays before noon; its afternoon sessions are held three days a week from noon until 2:30 and include about a quarter of the student body. Its activities generally occur during work hours, which reduces the number of neighbors who would be affected.*

- (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.

*Much of the school's activities occur indoors; they do not involve activities that produce vibrations, fumes, odors, dust, illumination or glare. When children are outdoors at play, there is a slightly elevated level of noise and physical activity, but, because enrollment is not increasing, those levels are not expected to increase as a result of the approval of this petition.*

- (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.

*A single special exception—an accessory apartment—has been granted in the immediate vicinity of the nursery school. The residential nature of an accessory apartment, and the small scale and intensity of the nursery school will not, taken together, affect the residential character of this portion of Kensington Heights.*

- (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 activities of the school have no impact on these factors.*

- (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.

- (i) 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. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

*Subdivision of the property is a condition of this petition's approval.*

- (ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

*About a third of the students walk to school; a number of families carpool as well. The relatively small number of parents who arrive by car, and the adequacy of the school's pick-up and drop-off spaces, ameliorates the impact of the school's location on the neighborhood street network and enable vehicular and pedestrian safety to be maintained.*

(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-2.19. Educational institutions, private.**

(a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

(1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;

*The Kensington Nursery School has operated under a special exception at this location since 1957. The proposed modification does not propose to increase enrollment, and the school currently accommodates no more than 29 students at any one time. The school estimates that as many as two-thirds of its students walk or carpool and it provides adequate areas in front of its property for pick-up and drop-off activities, which do not, as the analysis above notes, impede traffic or burden the local road network. The school is proposing no changes to its operations and does not propose activities that will result in more noise and physical activity than occurs under the already-approved special exception.*

(2) except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;

*The Kensington Nursery School is located in a building whose scale and exterior architecture are in keeping with those of the surrounding community.*

(3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and

*The modifications proposed by this petition do not result in increased enrollment or changes in access and circulation systems; the design and scale of the proposed addition maintains the integrity of the existing school and does not alter the generally residential character of this part of Kensington Heights.*

(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:

1. Traffic patterns, including:

- a) Impact of increased traffic on residential streets;
- b) Proximity to arterial roads and major highways;
- c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;
- d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and

*The terms of the school's original 1956 approval allowed it a maximum of 40 students on campus at any one time; the school currently has no more than 29 students on campus at any time. The school is not proposing to increase enrollment as part of this petition, and there will therefore be no increase in traffic on residential streets. While the school is not near arterial or major highways, its small enrollment, coupled with significant percentages of walking students and carpoolers, reduces the impact on the residential street network and eliminates the need for transportation management measures. As noted in the analysis, the school provides more than the required amount of parking space in front of its building for pick-up and drop-off activities. With the relatively modest numbers of driving parents, and the adequate space, little or no queuing occurs on Decatur Avenue during pick-up and drop-off times.*

2. Noise or type of physical activity;

*No increased physical activity is proposed by this modification. With no change in enrollment or any other element of the school's operations, the proposed modification does not increase noise or physical activity at this location beyond that expected as a result of the original special exception.*

3. Character, percentage, and density of existing development and zoning in the community;

*The Kensington Heights community is an established residential neighborhood that is dominated by single-family houses in the R-60 Zone. The school's original approval allowed it as many as 40 students on campus at any time; it currently accommodates fewer. The school is proposing no increase in enrollment, so its current density is in keeping with the character of its neighborhood.*

4. Topography of the land to be used for the special exception; and

*The flat and open nature of the school's recorded lots makes them suitable for a small nursery school.*

5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.

*The school does not propose to increase its density per acre.*

- b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

*The school is proposing no additional outdoor recreation areas.*

(b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

*The Kensington Nursery School is not proposing these activities.*

(c) Programs Existing before April 22, 2002.

(1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

*The school is not proposing these activities.*

(d) **Site plan.**

(1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.

(2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

*The petitioner has provided the necessary drawings.*

(e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.

*This section does not apply.*

(f) **Nonconforming uses.** Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.

(g) **Public Buildings.**

(1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County.

(2) However, site plan review under Division 59-D-3 is required for:

(i) construction of a private educational institution on vacant land owned or leased by Montgomery County; or

(ii) any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.

(h) **Applications filed before May 6, 2002.** Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.

*These sections do not apply.*