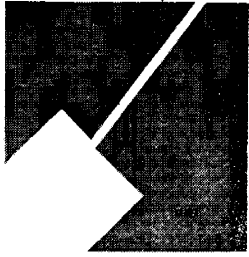


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK & PLANNING

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

8787 Georgia Avenue  
Silver Spring, Maryland 20910-3760


MCPB  
Item # 3  
1/13/05

**MEMORANDUM: SPECIAL EXCEPTION**

**DATE:** January 7, 2005

**TO:** Montgomery County Planning Board

**VIA:** Rose Krasnow, Development Review Chief  
Carlton Gilbert, Zoning Supervisor

**FROM:** Joel A. Gallihue, AICP 

**SUBJECT:** Special Exception No. SE-05-1: Child Day Care Facility for up to  
thirty children at 13300 Sherwood Forest Drive.

**ZONE:** R-200

**MASTER PLAN:** White Oak

**FILING DATE:** October 6, 2004

**PUBLIC HEARING:** January 21, 2005

---

**STAFF RECOMMENDATION: APPROVAL** with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioners.
2. The use is limited to 30 children up to 5 years of age and 5 staff.
3. Applicant shall submit an affidavit per Sec. 59G 2.13.I. (a)(4) prior to release of occupancy permits.
4. The hours of operation are restricted to 6:30 a.m. through 6:30 p.m. Monday through Friday.
5. Prior to approval of a building permit, applicant must comply with Department of Permitting Services regulations for storm water management and sediment and erosion control.
6. The applicant shall install a six – foot fence on the north side of the parking lot to screen the lot abutting to the north.
7. No more than twelve children are permitted to play outdoors at any one time.

**Project Summary** - The applicants, Jane and Agnes Ndungu, are requesting special exception approval to modify an existing residence for a child day care center for up to thirty children at 13300 Sherwood Forest Drive in the White Oak area in the R-200 Zone. The property is on the northwest corner of the intersection of Randolph Road and Sherwood Forest Drive. The property is zoned R-200 and improved with an existing home which will remain and be remodeled for the requested use. A new driveway, parking lot and fenced play area are proposed. White Oak Master Plan.

**Site and Neighborhood Description** - The site is located on the north side of Randolph Road and the west side of Sherwood Forest Drive. The site is in a residential land use context. One lot is the subject of the petition, Lot 1, Block A, of the Sherwood Forest Manor Subdivision. The property is approximately 21,996 square feet in area and improved with a 1,722 square foot single-family detached residence. One other similar special exception (SE 02-2) exists in the area at 170 Randolph Road which was also limited to thirty children.

**Elements of the Proposal** -

The day care facility will serve up to 30 children (between ages two to five) on weekdays from 6:30 a.m. to 6:30 p.m. There will be up to five staff at any one time. The statement of operations does not anticipate any future modification to increase operations; any expansion would require approval by the Board of Appeals<sup>1</sup>.

Structure

The existing residential structure will receive interior modifications to prepare the facility for operation as a day care center. The existing enclosed porch will be demolished to allow for the parking and drop-off area. No building addition is proposed. No residential occupancy is proposed subsequent to approval of the use and renovations.

The entire interior of the home is proposed for renovations. Floor plans prepared by Architect Robert Hurst indicate the area and intended programming for various rooms in the structure. There is no zoning requirement regulating interior space for childcare facilities. There is a regulation, not applicable in this case<sup>2</sup> that links lot size to number of children, presumably to ensure compatibility. The State of Maryland regulates interior space and other aspects of Child Care facilities. As questions have come up regarding this in the past, staff notes that the applicant has submitted an affidavit that they will comply with state regulations, as required by the zoning ordinance and that the proposed floor plans appear to meet the state floor area requirements<sup>3</sup>.

---

<sup>1</sup> 59-G-2.13.1 (b)

<sup>2</sup> 59-G-2.13.1(b)(2) does regulate Child Care facilities over 30 children in single-family zones by requiring the lot to be 500 sq.ft. /child.

<sup>3</sup> The Code of Maryland Regulations (COMAR) requires 35 sq.ft. /child. Only areas actively used by children may be counted. This proposal appears to exceed this requirement based upon the Architect's submission.

### Parking

Vehicular access will be from a driveway entrance on Randolph Road. The driveway is being relocated to accommodate the setback requirement<sup>4</sup> for special exceptions in a residential zone. Parking *and driveways* for special exceptions in residential zones must be set back by the applicable building front and rear yard and *twice* the building side yard required in the zone. Based upon this requirement, the parking area and driveway must be set back from the side twenty-six feet.<sup>5</sup> The existing driveway is on the property line. Staff confirms that the proposed driveway and parking area meet the setback requirements for special exceptions in a residential zone.

The parking lot is screened from abutting lots with a combination of evergreen trees and fencing. Staff asked the applicant to revise the height of the fenced in play area from four feet to six feet in adjacent to the north end of the proposed parking to meet the screening requirement. The applicant should revise the Special Exception Plan to note the taller fence. Apparently the applicant is agreeable but not able to revise the plan prior to the preparation of this report. Presently, staff is recommending a condition of approval (number six), which requires a six-foot fence in this area but this condition not be necessary if the Plan is revised. At the street, the driveway is screened with shrubs. Shade trees that were already required by environmental planning staff for tree replacement are shown adjacent to the parking lot and are situated to provide shade to the parking lot. The landscape plan demonstrates that the shading requirement has been met.<sup>6</sup>

### Lighting

Two residential (8') pole lights, six (2') residential path lights, and six wall mounted residential lights are proposed. The majority of the proposed lighting is for pedestrian access to the front door and consequently away from abutting lots. Screening for the parking lot, fencing for the play area, and the building itself screen adjacent lots from the path lighting and the two post lamps. Some of the wall fixtures are on sides of the building that face abutting lots. Because the applicant has not at this time submitted a photometric plan with depictions of the proposed light fixtures, staff cannot conclude that they are of a design that directs light downward. At a minimum, staff recommends that the cut sheets for light fixtures be depicted on the Landscape Plan. This will provide clear documentation for approval and any future zoning enforcement of this special exception. The applicant is agreeable but not able to revise the plan prior to the preparation of this report.

### Sign

A wooden sign (3' x 4') lit by spotlight is proposed. This sign would require approval by

---

4 59-E-2.83(b)

5 Moving the driveway does have the drawback of making the entrance approximately fifteen feet closer to the intersection of Randolph Road and Sherwood Forest Drive but county staff has confirmed with that this entrance will be acceptable.

6 59-E-2.83(d)

the Sign Review Board. Given the hours of operation, the residential setting, and the fact that visitors to the use are typically well aware of the location, staff recommends against approval of a lighted sign. Staff is not persuaded anything larger than the permitted (2 sq. ft.) residential sign is necessary and recommends the plan be revised.

#### Fenced Play Area

The fenced play area will be used between 10:00 a.m. and 6:00 p.m. with a break when the children will be indoors for lunch. Only twelve children will play outdoors at any one time. Movable play equipment will be used in the play area. Most of the fencing will be four feet in height but will be six feet in height where necessary to screen parking.

### **ANALYSIS**

**Master Plan** - There are no master plan issues associated with this modification application. The White Oak Master Plan supports the existing R-200 zoning and allows special exceptions, such as the proposed use, in the zone. The Plan encourages the provision of child daycare facilities at appropriate locations in the planning area. This location is appropriate as access can be made to Randolph Road so as not to be a disturbance to the neighborhood of Sherwood Forest Drive. The weekday hours, enclosed play area, and screened parking facility improve compatibility of the use at this site. Staff notes that the White Oak Master Plan also happens to encourage co-location of childcare and adult daycare facilities. Such an operation is not proposed in this application. It is likely that a combined facility would be difficult to accommodate on this site and therefore not encouraged for this specific location.

**Transportation** - The Transportation Planning staff recommends the following condition as part of the Adequate Public Facilities (APF) test for transportation requirements related to this special exception modification:

1. Limit the hours of operation, the number of students, and employees at the proposed facility to that described in the applicant's Statement of Operations.
2. Meet parking requirements for the proposed Special Exception use on-site, as described in applicant's Statement of Operations.
3. Remove existing gravel parking area to the east side of the property along Sherwood Forest Drive per Special Exception Plan revision dated December 23, 2004.

The proposed day care facility will not require a traffic study since it will not generate 30 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 Special Exception use, therefore,

satisfies the LATR requirements. Staff has also reviewed the Traffic Statement submitted by the Applicant's consultant dated August 16, 2004, and concurs with the findings and recommendations in the Traffic Statement.

The proposed child day care facility will be located along Randolph Road, which is classified in the 1997 Approved and Adopted White Oak Master Plan as an east-west six-lane divided Major Highway (M-17) between MD 650 to the east and Northwest Branch to the west, with a 120-foot right-of-way. A Class I bikeway (EB-5) currently exist along the north side of Randolph Road between Fairland Road to the east and Northwest Branch to the west.

**Environmental** –Upon review of the NRI/FSD, staff finds this project is exempt from the forest conservation regulations. However, the applicant will be responsible for submitting a tree save plan for review and approval prior to the release of sediment and erosion control or building permit, as appropriate.

Staff evaluated the proposal and determined that three shade trees should be incorporated into the proposal to replace trees removed to accommodate the new driveway and parking area. The applicant revised the landscape plan to include three red maple trees adjacent to the parking lot.

The applicant may be exempt from storm water management. However, sediment and erosion control shall be required. Staff advised the applicant to contact the Department of Permitting Services regarding the paved parking area. DPS has indicated that waivers may be allowed, depending upon materials and techniques incorporated on site. Condition number five is included to ensure this dialogue continues through its resolution and is keyed to a stage that is required by the renovation.

**Development Standards-** The special exception modification is in compliance with the development standards for the R-200 Zone. Conformance to relevant development is summarized in Table 1 on the following page.

<b>Table 1 – Conformance with Applicable Development Standards SE-05-1</b>		
<b>Development Standard</b>	<b>Requirement</b>	<b>Proposal</b>
Front Yard Setback	40'	73'
Side Yard Setback	12'	34'
Sum of Both Sides	25'	84'
Rear Yard Setback	30'	48'
Lot Area	9,000 sq.ft.	21,996 sq. ft
Lot Width @ Street	25'	161'
Lot Width @ Front Bldg Line	100	161'
Building Height	50'	1.5 story (≈20 ft.)
Building Coverage	25% or 5,499 sq.ft.	7.8% or 1,722 sq. ft.
Parking	1/employee + 1/ 6 students = 10	9

**Inherent/Non-Inherent Adverse 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-90 zone.

Section 59-G-1.2.1 of the Zoning Ordinance states

*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 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. It is understood that 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 will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. In the case of a day care center, the inherent adverse effects include areas for outdoor play and parking facilities. From an operational perspective, there are daily operations and traffic associated with transporting students and staff.

The proposed special exception is consistent with most daycare centers with respect to daily traffic associated with transporting students. The applicant is able to meet

setbacks and is providing fencing and screening hedges. Staff concludes that there are no non-inherent adverse effects associated with this application that warrant denial.

**Compliance with General and Specific Special Exception Provisions** - Staff has reviewed the application for compliance with all applicable special exception provisions and finds the following:

**Sec. 59-G-2.13.I. 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;

*According to the Sect. 59-E-3.7 of the Zoning Ordinance, the use will require ten parking spaces. The submitted site plan shows nine parking spaces. Staff believes that the Hearing Examiner may reduce the number of required parking spaces by one because anyone (probably staff) can legally park on Sherwood Forest Drive and safely walk to entrance via a sidewalk on Randolph Road and the staggered staffing schedule and student/teacher ratio ensure that pick-up and drop-off of students will be distributed over periods where no more than six students would arrive at any one time.*

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

*The Site Plan parking provides an adequate pick-up and discharge area. The parking area is set back from the street with a driveway permitting some queuing of cars, if necessary.<sup>7</sup> Parents can park in the lot and walk children through the gate and into the building.*

- (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 condition of approval for this special exception; and

*This is a condition of approval. The applicants included a copy of the affidavit of compliance, dated August 23, 2004, with their petition.*

- (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 surroundings properties from any adverse impacts resulting from the use.

*This 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) above, 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

---

<sup>7</sup> Given the required ratio of students to teachers and the staggered staffing schedule, it is unlikely this operation could accommodate teachers meeting students at the gate as they discharge from a standing vehicle. If it were to occasionally occur, the driveway can allow one car to pull off Randolph Road, behind a vehicle standing at the gate.



- (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.

*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; or
- (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; or
- (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.*

## **Sec. 59-G-1.2. Conditions for granting.**

### **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 use is allowed in the R-200 zone.*

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

*The use complies with these standards.*

- (3) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the Commission.

*The subject property is covered by the White Oak Master Plan. Staff finds that the proposed special exception is consistent with the recommendations in the approved and adopted 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 neighborhood when considering these criteria.*

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

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

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

*The proposed use when evaluated in conjunction with other existing and approved special exceptions in the area will not affect area adversely or alter its residential character. The only other special exceptions in the immediate vicinity consist of two accessory apartments.*

- (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area;

*The use will not adversely affect the safety of area residents.*

- (8) 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. If the special exception use requires approval of a preliminary plan of subdivision in accordance with chapter 50 of this Code, title "Subdivision of Land," the adequacy of public facilities will be determined by the

Planning Board at the time of subdivision approval. In that case, the Board of Appeals must include such Planning Board approval as a condition of the grant of the special exception.

*Not applicable.*

### **COMMUNITY CONCERNS**

Greater Colesville Civic Association (GCCA) has contacted staff regarding this application. There is concern regarding the number of day care facilities currently in their area. At the writing of this report staff is not aware of specific opposition from adjacent property owners. GCCA is developing a position letter to be submitted to the Planning Board and Hearing Examiner.

### **CONCLUSIONS**

Upon reviewing the petition and visiting the subject property, staff recommends approval of the special exception modification application subject to the conditions found on pages one and two of this report.

### **ATTACHMENTS:**

1. Vicinity Map
2. Special Exception Plan
3. Landscape Plan
4. Architectural Plans
5. Environmental Planning
6. Transportation Planning