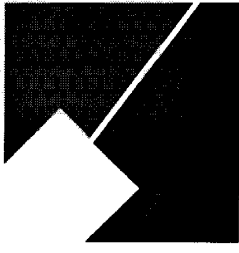


M-NCPPC



MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING

THE MARYLAND-NATIONAL CAPITAL
PARK AND PLANNING COMMISSION

8787 Georgia Avenue
Silver Spring, Maryland 20910-3760
301-495-4500, www.mncppc.org

MCPB
Item# 5
5/19/05

MEMORANDUM:

DATE: May 13, 2005

TO: Montgomery County Board of Appeals

VIA: Rose Krasnow, Chief, Development Review Division *RK*
Carlton W. Gilbert, Zoning Supervisor, Development Review *CWG*
Division

FROM: Elsabett Tesfaye, Senior Planner, Development Review Division *ET*
(301) 495-1301

SUBJECT: **Special Exception SE-05-2: Pathway Child Development Center** Request for approval of a special exception for a Child Day Care Center for up to 30 children at 4419 Muncaster Mill Road Margareta General, applicant
1.03 acres, RE-1 Zone
2005 Olney Master Plan

FILING DATE: November 8, 2004

PLANNING BOARD HEARING May 19, 2005
PUBLIC HEARING: May 23, 2005

RECOMMENDATION: Approval with the following conditions:

1. The applicant is bound to comply with all submitted statements and plans.
2. The child day care use shall be limited to 30 children up to 6 years of age and up to 6 full-time equivalent staff.
3. Hours of operation for the day care center shall be between 7:00 a.m. through 6:30 p.m. Monday through Friday.

4. No more than 10 children shall be permitted to play outdoors at any one time.
5. The landscape plan shall incorporate the following elements:
 - a. A six-foot-high board on board fence along the eastern property line.
 - b. A row of Leland Cypress trees (a minimum of 12 trees-4'-6' ht. at installment) along the eastern property line, in front of the six-foot-high fence, on either sides of the existing shed.
 - c. A six-foot high board on board fence along the western property line, similar to the one proposed for the eastern property line.
 - d. A minimum of 13 Leland Cypress trees along the northern property line.
 - e. Perimeter landscaping (evergreen shrubs 5'-6' ht) and 3 October Glory Red Maple Trees for the parking lot.
 - f. Three October Glory Red Maple trees on the east (two) and west side of the play area.
6. The proposed 15 square-foot, 6-foot high sign shall be a ground or monumental sign with brick material or a simple wooden sign with no lights or illumination.
7. The site and landscape plans shall be revised to show access improvement as specified by SHA.
8. The applicant shall comply with the Montgomery County noise Ordinance Chapter 31B: Noise Control.
9. The applicant shall obtain the necessary review of the parking layout with the Montgomery County Department of Permitting Services (DPS) prior to use and occupancy permit
10. The applicant must comply with Department of Permitting Services regulations for storm water management and sediment and erosion control.

PROJECT SUMMARY

The applicant proposes to expand the existing day care by increasing the number of children from 12 to 30. The proposed facility will be housed in an existing, two-story, single-family dwelling, which is currently being used as a day care and a residence.

With the proposed expansion, the residential use in the existing dwelling will be eliminated. The proposal also includes modification of the existing parking lot and an increase in the number of parking spaces to accommodate the proposed increase in the facility's enrollment. The day care will have 8 full and part time employees. The property is located in the RE-1 Zone which permits the proposed special exception. No external alteration or modification to the existing 2,212-square-foot house is proposed.

A. Neighborhood Description

The neighborhood in which the subject site is located is generally defined by Pinetree Road to the north, Emory Lane to the west, Property owned by State of Maryland (PL 9317 PAR A Relocation of Route 115) to the south and Norbeck Road to the southeast Georgia Avenue and Thistle bridge Drive to the east. The immediate neighborhood is a mixture of residential and institutional uses in the RE-1, R-200 and RE-1/TDR (the State of Maryland Property) Zones. The Norbeck Center Shopping Center and the Norbeck-Muncaster Mill Park are located on the eastern edge of the neighborhood at the northwest corner of the intersection of Georgia Avenue and Norbeck Road. The subject property abuts single-family dwellings on large lots to the north and west in the RE-1 Zone and a group residential facility for Alzheimer's patients (SE-2166) to the east also in the RE-1 Zone. The area across Muncaster Mill Road (south) is developed with a mixture of institutional (churches) and residential uses in the R-200 and RE-1 Zones.

B. Site Description

The subject property is located on the north side of Muncaster Mill Road, approximately 2,400 feet west of Norbeck Road and approximately 1,350 feet East of Sycamore Lane. The property, which is identified as lot 3, block A within the Sycamore Acres Subdivision, is rectangular in shape and comprises approximately 1.03 acres of land. It is improved with a 2,212 square-foot, two-story, brick and siding structure. The property has approximately 150 feet of frontage on Muncaster Mill Road from which it is accessed.

The front yard is lightly landscaped with few ornamental trees and shrubs planted very close to the building. Much of the front and the rear yards are landscaped with grass. The front yard and the front portion of the side yard also contain a 150-foot-long driveway, which provide access to the two-car garage attached to the house and to the rear yard of the house. The driveway, which widens from 16 foot to approximately 38 feet as it traverses deeper into the front yard, provides parking spaces for up to eight cars. The rear yard contains a play area, four mature trees and a small shed. A site inspection by staff reveals that the property is properly posted with a sign notifying people of the pending special exception application.

C. Elements of Proposal

The applicant proposes to expand an existing day care center by increasing the number of children from 12 to 30. The existing day care is housed in a portion of the single-family dwelling. The applicant currently resides in the remaining portion of the dwelling.

The interior of the structure will be modified to accommodate the proposed increase in the number of children and the existing residential use will be eliminated. The applicant has submitted a floor plan for the proposed facility. The proposed use is subject to licensing and certification by the State of Maryland Department of Human Resources Child Care Administration. No exterior modification or addition to the existing structure is proposed.

The applicant indicated that children will play outdoors in small groups of no more than ten children at one time and playtime will be carefully supervised by staff. The infants' playtime is limited to outdoor stroller time.

The arrival and pick-up times for children will be staggered over the course of several hours during the morning drop-off (generally between 7:00 a.m. and 9:30 a.m.) and evening pick-up time (generally between 4:30 p.m. to 6:30 p.m.). The staff arrival and departure time is also staggered with the highest number of staff (6) present at the facility between 9:30 and 1:00 p.m., after most of the children are dropped-off and before children pick up time.

The applicant anticipates arrival and departure times for children and staff and the teacher/child ratio at the facility in the following manner:

Time	Children Present	Total Children	Staff Present
7 – 7:30 a.m.	1 infant	1	2 staff
7:30 – 9:30	9 infants 1 toddler 5 two yr. olds 6 preschoolers	21	5 staff
9:30 – 1:00 p.m.	12 infants 6 two yr. olds 9 preschoolers	27	6 staff
1:00 – 3:00 NAPTIME (fewer staff required)	Some part-time children arrive/depart	28	5 staff Some part-time staff arrive/depart
3:00 – 4:30		28	6 staff

4:30 – 5:00		25	5 staff
5:00 – 6:00		13	3 staff
6:00 – 6:30	Remaining children and staff depart		

Notes:

1. Number of staff on site will never exceed 6, but some are part-time so it is indicated that a maximum of 8 staff employed.
2. Since some spaces will be for children who are present only part-time, schedules are set up so that there are sufficient number of staff to be present if there is any overlap in part-time hours.
3. During early morning and late afternoon hours different age groups may be combined.
4. Fewer staff are required during naptime. When naptime is over, a teaching assistant arrives.

The proposed day care will have a maximum enrollment of 30 children and a full and part time staff of 8 with not more than 6 staff being on the site at any given time during working hours. A total of 11 parking spaces are required. Eleven parking spaces, including one van-accessible space for the physically handicapped and two garage spaces (existing), are provided. The parking area will be located in the front yard. The existing parking area and driveway will be modified to accommodate the required parking spaces. The driveway and the parking area will be within 8 feet of the western property line and within 42 feet of the front property line thereby, encroaching into both the front and the side yards and failing to meet the 34-foot side yard setback and the 50-foot front yard setback required for the proposed improvement (Parking facility/driveway). The applicant is requesting a waiver of setback requirements.

The applicant indicated that an 8-foot-high, decorative residential post light will be located adjacent to the proposed walkway at the front of the proposed child daycare facility and two wall-mounted lights will be located on either side of the garage entrance. The applicant further indicated that the proposed lighting will be designed and installed to ensure that there is no adverse impact to surrounding properties caused by glare.

The applicant's site plan shows a sign located on the southwest corner of the property 20 feet from the front property line. The applicant statement of operation indicates that a 15 square-foot sign, mounted between two 6.0-foot high poles, is proposed. The sign will be illuminated with two battery operated or solar powered lights affixed to the ground. The applicant further indicated that any necessary approval of the sign would be sought from the Sign Review Board (See condition No. 6).

D. ANALYSIS

Master Plan

There are no major Master Plan concerns that are associated with this application. The 2005 Olney Master Plan is silent on child day care centers and/or other special exception uses in the subject area.

Upon reviewing the proposal for Master Plan consistency, the Community Based Planning Division has offered the following comments:

The Plan does not have any specific guidance regarding child day care centers or this location. General language in the Master Plan (pages 41 and 42) states that special exception projects "should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impacts of the structures and parking." The Plan recommends minimizing "the negative impacts of special exception uses such as non-residential character, visibility of parking lots, excessive size, height and scale of buildings and intrusive lighting."

Transportation

The Transportation Planning staff finds that the proposed special exception use satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or pedestrian facilities. The Transportation Planning Staff has also offered the following comments:

The vehicular access point into the on-site parking area would be from the existing driveway off Muncaster Mill Road. Two garage spaces are available for long-term parking by the director and the 7:00 a.m. arrival of a senior staff person. The existing paved carport in front of the house is to be modified and delineated for nine surface parking spaces that include one handicapped space. The nine surface parking spaces would adequately accommodate the short-term parking needs to drop-off and pick-up children and the longer-term needs for the four other staff persons and other visitors.

A sidewalk is proposed to connect the on-site parking area to the front door. The existing off-site pedestrian facilities are substandard with no sidewalks along the segment of Muncaster Mill Road near the site. Besides this proposed special exception use, other off-site pedestrian origins and destinations along Muncaster Mill Road between Sycamore Lane and Norbeck Road (MD 28) include the Norbeck Baptist Church, Rockville Church of the Nazarene, Chinese Bible School, Norbeck Shopping Center, and Saint Patrick's Catholic Church. However,

pedestrian activity generated by this proposed special exception use would be nominal, if any, as to not affect the existing off-site pedestrian environment given the following:

1. The children would arrive and depart by vehicles because the function of a day care center is to care for children between the time their parents drive to work on a weekday morning and back home that evening.
2. Employees could not easily use transit because on this segment of Muncaster Mill Road only Ride On Route 52 is available (i.e., with a 35-minute headway between buses connecting the Rockville Metrorail Station with Montgomery General Hospital in Olney).

According to the *Olney Master Plan*, Muncaster Mill Road is designated as a two-lane arterial, A-93, with an 80-foot right-of-way and bike lanes, BL-35. The Intercounty Connector (designated as a freeway, F-9) has a master-planned alignment that crosses Muncaster Mill Road north of the site and would not impact this site.

A child day care center with six or fewer staff persons working on a shift at one time would generate fewer than 30 peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) Therefore, a traffic study is not required to satisfy Local Area Transportation Review under the *FY 2005 Annual Growth Policy*. Under the *FY 2005 Annual Growth Policy*, the Policy Area Transportation Review is no longer considered in the APF review.

Transportation Planning has recommended the following conditions:

1. Limit the special exception use to a child day care center with up to 30 children and up to six employees.
2. Obtain the necessary review of the parking layout with the Montgomery County Department of Permitting Services (DPS) prior to use and occupancy permit.
3. Contact Maryland State Highway Administration (SHA) regarding:
 - a. The necessary access permit for a commercial curbscut from Muncaster Mill Road (MD 115), given the close proximity to the commercial driveway for the adjoining special exception use to the south.

- b. Coordination with SHA's Project No. MO9105171, Muncaster Mill Road Improvement Project, now under design.

In response to the applicant submission of the site plan to the State Highway Administration for access permit, an e-mail communication (official letters to follow) from SHA staff making the following recommendation was submitted (by the applicant):

1. SHA would like for the Pathway Child Development Center to create an entranceway similar to that of the Assisted Living facility.
2. The acceleration lane needs to be extended from the assisted Living Facility to the entrance for the Pathway Child Development Center.

The applicant's site and landscape plans must be revised to show the access improvement as specified by SHA

Environment

The Environmental Planning Section has offered the following Comments

The project is exempt from Forest Conservation (Exemption # 4-05006E issued September 22, 2004). There are two significant trees on the property (25-inch Maple, 29-inch Tulip-poplar) both of which will be saved. A Tree Save plan is not required.

This site is not located within a Special Protection Area. There are no wetlands, streams or stream valley buffers within the property.

The property is in the Manor Run subwatershed of the Upper Rock Creek watershed. The *Countywide Stream Protection Strategy* (CSPS, 1998) lists both subwatershed/stream and habitat conditions in Manor Run as 'Poor' based on problems observed with in-stream habitat. CSPS has designated the area a Watershed Restoration Area. This designation is common in areas of the County that were developed prior to the establishment of comprehensive environmental regulations. In such areas, streams have been degraded to varying degrees, mainly through the effects of uncontrolled runoff, and Watershed Restoration tools are necessary to stop further degradation and improve 'fair' or 'poor' stream conditions.

The applicant must comply with Department of Permitting Services regulations for storm water management and sediment and erosion control.

Development Standards

The subject property is located in the RE-1 Zone which permits the proposed special exception. There are no other approved special exception uses in the immediate neighborhood.

The proposal conforms to all applicable current development standards of the RE-1 Zone. The following table summarizes the relevant development standards for the RE-1 Zone that are applicable to the proposed special exception request:

Current Development Standards	Required/Allowed	Proposed/Existing
Minimum Lot Area	40,000 SF	44,867
Minimum Lot width: at front building line at street line	125 FT 25	150 FT 150 FT
Minimum Building Setback: Front Yard	50 FT	42 FT.(a waiver requested for parking lot setback))
Rear Yard	35 FT	165 FT
Side Yards: One side	17 FT(34FT for Parking)	6 FT (a waiver requested for parking lot setback)
Sum of both sides	35 FT (residential)	31 (special exception use)
Maximum Building Height	50 ft	Approx 16.5
Maximum Building Coverage	15%	5%
Parking Spaces:		
1 space/ employee	6	6
1 space / 6 students	5	5

- E. Community Concerns:** the owners and operators of the group home (for Alzheimer's patients) facility that is located on the adjoining property to the east (4413 Muncaster Hill Road), met with staff twice and voiced their opposition and concerns regarding the potential adverse effect of the proposed child care facility

for 30 children. The group home was the subject of special exception No. S-2166 that was approved in 1995.

By a letter dated May 6, 2005, the attorney for the group home facility stated the concerns of his clients regarding the potential impacts of noise generated by children noise from the proposed day care and their strong opposition to the proposed special exception request (See attached letter from Norman G. Knopf). Issues raised in the above referenced letter are addressed throughout this report in the findings made for both the general (59-G-1.21) and specific (Section 59-G-2.13.1) requirements of the zoning Regulations.

F. Inherent and Non-Inherent Adverse Effects

Standard for Evaluation: Section 59-G-1.2.1 of the Zoning Ordinance specifies that a special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. 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 inherent adverse effects, are a sufficient basis to deny a special exception.

As established in previous special exception cases, seven criteria are used to identify the physical and operational characteristics of a use. Those criteria are size, scale, scope, lighting, noise, traffic, and the environment.

The inherent, generic physical and operational characteristics associated with a child day care use include outdoor play areas, parking facilities, lighting, noise generated by children and vehicular trips to and from the site. There are no significant transportation impacts that would result from the proposed Special Exception. The Transportation Planning staff finds that the proposed special exception use satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or pedestrian facilities.

Adequate parking and a drop-off/pick-up area are provided on the front portion of the property, based on a maximum enrollment of 30 children and a staff of six. The applicant has revised the originally submitted site plan to redesign the parking area in a manner that would best maintain the residential character of the property and provides a more practical access to the day care facility. As such

the proposed parking area involves a minor modification of the existing parking area as opposed to a new construction that requires extensive paving and excessive encroachment into the side yard.

The proposed use will not affect the preservation of the existing residential character of the block and the immediate neighborhood.

With respect to noise, the proposed play area is located at the northern portion of the subject property, approximately 106 feet from the northern property line, 29 feet from the western property line and 71 feet from the eastern property line. The play area is located approximately 63 feet from the residential dwelling to the west, approximately 260 feet from the residential dwelling to the north and approximately 86 feet from the group home facility building to the east. The play area will be enclosed by a four-foot-high chain-link fence. Three additional maple trees (two on the east side and one on the west side) will be planted adjacent to the play area. In addition, the applicant proposes a board on board fence along the eastern property line for a distance of 260 feet and a row of 12 Leland Cypress trees in front of the six-foot-high fence. Staff is recommending similar type of fencing to be installed along the western property line and a row of 13 Leland Cypress trees to be planted along the northern property line.

The applicant indicated that children will play outdoors in small groups of no more than 10 children at one time and that the children will be carefully supervised. The infants' playtime is limited to outdoor stroller time. There is no regulatory control on potential noise impact from a day care use to adjacent properties and uses.

With regard to on site circulation and potential noise and traffic congestion, staff is of the opinion that adverse impact from pick-up and drop-off of children would be minimal. The arrival and pick-up times for children will be staggered over the course of several hours during the morning drop-off (generally between 7:00 a.m. and 9:30 a.m.) and evening pick-up time (generally between 4:30 p.m. to 6:30 p.m.). Moreover, the staff arrival and departure time is also staggered with the highest number of staff (6) present at the facility being between 9:30 and 1:00 p.m. after most of the children are dropped-off and before children pick up time. The transportation planning analysis indicates that the proposed use would generate fewer than 30 peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.). A 4-foot-wide sidewalk provides access from the parking lot to the front entrance of the center. The parking area will be accessed from Muncaster Mill Road through a driveway 20 feet wide and 40 feet long driveway. The application is subject to access improvement per SHA requirements.

To ensure that the adjoining residentially zoned properties are sufficiently screened from the proposed facility and to mitigate potential noise intrusion to the adjoining properties, in particular the group home facility for Alzheimer's patients,

staff recommends that the applicant provide the following additional landscaping and fence treatment:

1. A six-foot high board on board fence along the western property line similar to the one proposed for the eastern property line.
2. A row of Leland Cypress trees (a minimum of 12 trees), to complement the five trees on the adjoining property, along the eastern property line, in front of the six-foot-high fence, on either sides of the existing shed.
3. A minimum of 13 Leland Cypress tree along the northern property line.
4. Perimeter landscaping (evergreen shrubs 5'-6' ht) and 3 October Glory Red Maple Trees for the parking lot.

There is a non-inherent factor in that the proposed parking area and driveway do not meet the required side yard and front yard setbacks for parking facilities on a residential. However, it should be noted that the proposed parking lot would be replacing the already existing parking area, resulting only in minor modifications to the existing impervious surface. In addition, its location on the property is the most practical and appropriate relative to the proposed use. The parking lot will be adequately landscaped to provide the required shading of the required 30 percent or more of the paved area. Furthermore, landscaping and shrubbery will be provided around the perimeter of the parking lot to screen the parking area from the adjoining street. Therefore, the non-inherent effect in this instance is not an adverse effect. In conjunction with the special exception application, the applicant is requesting a waiver of the parking setback standard provisions (See item I of this report).

G. Specific Special Exception Requirements: A special exception may be granted for a child day care facility in the RE-1. **Section 59-G-2.13.1** sets forth the specific requirements:

- (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 site and landscape plans that generally satisfy these requirements. However staff recommends that the plans be revised to reflect the recommended changes, in terms of landscaping and fencing, as noted in this report.

- (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;

Eleven parking spaces (6 for staff and 5 for the pick up and drop off of children) are required for the proposed use. A total of 11 parking spaces, including six spaces designated for staff, one van accessible handicap space and four regular spaces for drop of and pick up of children, are provided. Two of the staff parking spaces are located in a garage attached to the existing house.

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

Adequate discharge and pick up area is provided.

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

The applicant has submitted such an affidavit, dated September 30, 2004, stating compliance with the above-cited conditions.

- (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.

With the recommended conditions, the use will be compatible with surrounding uses and will not result in nuisance because of traffic, parking, noise or type of physical activity. The use will provide childcare services to the nearby community and will operate within the regulations of the Zoning Ordinance. It will function in an unobtrusive fashion, and with the recommended screening of the facility and its parking lot, it will not be detrimental to surrounding properties or the general neighborhood. The applicant has submitted a landscape plan showing the location, height or caliper, and species of all plant materials.

The proposed facility is located on 1.03 acres of land (1,496 acre per child). The play area and the day care building itself are substantially set back and adequately screened from the residential and institutional uses on the adjoining properties. In consideration of the concerns voiced from the group home facility to the east, various measures have been taken both in the operation of the day care center (staggering of play time and minimizing the number of children playing outside) and screening. Measures taken to minimize any potential impact to the group home and the other adjoining uses include:

1. A six-foot-high board on board fence along the eastern property line.
2. A row of Leland Cypress trees (a minimum of 12 trees-4'-6' ht. at installment) along the eastern property line, in front of the six-foot-high fence, on either side of the existing shed.
3. A six-foot high board on board fence along the western property lines (similar to the one proposed for the eastern property line.)
4. A minimum of 13 Leland Cypress tree along the northern property line.
5. Perimeter landscaping (evergreen shrubs 5'-6' ht) and 3 October Glory Red Maple Trees for the parking lot
6. Three October Glory Red Maple trees on the east (two) and west side of the play area.
7. Staggering of children play time so that not more than 10 children will play outside at any given time with careful supervision by staff at all times.

It should be noted that the applicant currently provides a childcare for up to 12 children on the subject property. It should also be noted that approximately 40 percent of the children will be infants and their outdoor playtime is generally

limited to out door "stroller time". As such, the number of children that could be in the out door play area at any one time does not exceed the existing day care population. Any potential impact resulting from the increased play time due to the staggering will be substantially minimized by the proposed screening and buffering as well as the substantial distance between the play area and the adjoining properties.

The Development Review Division recognizes and is appreciative of the valuable service that the group home on the adjoining property is providing to the community and the difficulties of dealing with Alzheimer's for both the patients and the caregiver. As a result, serious consideration was given to the concerns of the opposition. Staff has looked into available information, albeit unsuccessfully, in search of clear guide lines, policies or studies on Alzheimer's Disease concerning the effect of noise, which is inherent to uses such as child day care centers, on Alzheimer's patients. Moreover, there is no regulatory control on potential noise impact from a day care use to adjacent properties. Regardless, to the extent that it is applicable, the applicant must adhere to the Montgomery County noise Ordinance Chapter 31B Noise Control. The recommended conditions for screening and mitigating potential noise impacts were the result of careful analysis of available and applicable information on regulatory noise controls at the state and local level.

H. 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 located in the RE-1 Zone, which permits the proposed special exception.

(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.

With the proposed conditions the proposal is in compliance with the specific special exception requirements of Section 59.G-2.13.1 for a child day care facility.

(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.

There are no major Master Plan concerns that are associated with this application. As noted, the 2005 Olney Master Plan does not have any specific guidance regarding child day care centers or this location. The Plan states that special exception projects should be compatible with the development pattern of the adjoining uses in terms of height, size, scale, traffic and visual impacts of the structures and parking. The Plan recommends minimizing the negative impacts of special exception uses such as, visibility of parking lots, excessive size, height and scale of buildings and intrusive lighting.

The existing two-story house with two-car garage is larger than the residential dwelling to the west by approximately 610 square feet, smaller than the adjoining Alzheimer's patients facility building to the east by approximately 4,390 square feet and larger than the adjoining residential dwelling to the north by approximately 490 square feet. Moreover, a 3.94-acre property that is improved with the Chinese Bible Church of Maryland with an associated parking lot for 204 cars is located directly across the subject site on the south side of Muncaster Mill Road. In view of this, staff is of the opinion that the proposed project is compatible with the existing development pattern of the adjoining uses as well as the immediate neighborhood, in terms of height, size, scale, traffic and visual impacts of the structures and parking.

- (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.**

As indicated, no modification or addition to the existing residential structure is proposed. As such, the proposed facility will be housed in an existing residential dwelling. As indicated, the immediate neighborhood consists of residential and institutional uses with varying size, height and scale of buildings and parking lots and associated features such as signs and lightings. The proposed use will be in harmony with the character of the neighborhood, which is a mixture of institutional and residential uses. To further ensure that the existing residential character and the visual and environmental quality of the of the property is maintained, staff

recommends that the propose 15 square-foot, 6-foot high sign would be a ground or monumental sign with brick material or a simple wooden sign with no lights or illumination.

It is unlikely that the proposed use would generate a level of traffic or noise that would cause concern about congestion in the neighborhood.

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

There is no indication that the proposed development would be detrimental to the use, peaceful enjoyment, economic value or development of adjacent properties or the general neighborhood, provided that the applicant complies with all of the conditions of approval of this application. As noted, the owners and operators of the group residential facility on the adjoining property to the east have voiced opposition to the proposed day care facility expressing concern that the residents of the group home would be affected by noise from children attending the proposed day care. As discussed earlier, various measures are taken to address the concerns of the owners of the group home. These measures include, landscaping, fencing, staggering of playtime, and locating the parking area away from the group home. There is a distance of 86 feet between the proposed children's play area and the building that is housing the group home.

Both the proposed child care facility and the adjoining group home facility are located across a 3.94 property improved with approximately 68,000 square feet church building (the Chinese Bible Church of Maryland) and its associated parking lot for 204 cars, 11 bicycles and 5 motorcycles. The Church of the Nazarene, which also includes a Montessori School (Norbeck Montessori Center) for pre- Kindergarten to Kindergarten age children is located adjacent the Chinese Bible church, in a very close proximity to both the Group home and the proposed day care facility. In addition, the neighborhood contains one other religious institution, the Rockville Korean Baptist Church, which is located approximately 1,300 feet west of the subject site at the intersection of Muncaster Mill Road and Sycamore Lane.

Given the existing residential and institutional nature of the immediate area, the established pattern of activities on the neighboring properties and on the street, as well as the level of noise generated by these activities, it is very unlikely that the level of noise from the proposed day care would result in a notable adverse impact that would increase the intensity of existing conditions, in terms of noise and traffic.

- (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.**

It is unlikely that the use would cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site. The play area and the building itself are adequately set back from the adjoining properties and the adjacent road. Sufficient screening is provided in the form of landscaping and fences. Off street parking and the internal circulation pattern are designed to provide adequate parking accommodation and orderly circulation on the subject property in a manner that would not result in a traffic spill over onto the adjacent road. Interior lay out of the facility is designed in accordance with the licensing agency's requirements. The applicant has submitted a floor plan into the record of this application.

- (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 proposed use will not exacerbate the concentration of child day care centers in the area. Currently, there are no child day care centers, permitted by special exception, in the immediate neighborhood. Records show that special exception for a childcare facility (S-1393) was approved in 1987 at 4500 Muncaster Mill Road; however, the special exception has never been implemented. Records show that in 1999 a revocation hearing for the special exception S-1392 was initiated. No further information is available. Other approved special exception uses in the area include, BAS-641 at 3245 Muncaster Mill Road that was approved in August of 1978 for an Antique Shop use, S-743 at 4529 Muncaster Mill Road approved in July of 1980 for commercial riding stable, and S-2166 at 4413 Muncaster Mill Road (the group home next to the subject property) which was approved in March of 1996. The proposed use in conjunction with these special exceptions, some of which may or may not currently exist, will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential and institutional nature of the 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**

The proposed use will not adversely affect the health, safety security, morals or welfare of residents, visitors or workers in the area.

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

According to the Transportation Planning Section staff, the proposed child day care center with 3 fewer than six staff persons working on a shift at one time would generate fewer than 30 peak-hour trips during the weekday morning peak period (6:30 to 9:30 a.m.) and the evening peak period (4:00 to 7:00 p.m.) Therefore, a traffic study is not required to satisfy Local Area Transportation Review. Moreover, the proposed use is not likely to negatively impact the safety of vehicular or pedestrian traffic.

As noted, SHA has made specific recommendation for access improvement at and near the entrance to the subject property. The necessary access improvement will be implemented per SHA specifications.

I. Request for a Waiver:

Pursuant to Section 59-E-2.83 (b), each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

The proposed parking area and driveway do not meet the required side yard and front yard setbacks for parking facilities for special exception uses in the residential zone. The applicant is requesting a waiver of 28 feet along the western side of the proposed parking lot and a waiver of 8 feet from the front yard setback requirement from the parking facilities provisions.

Section 59-E-4.5 provides in pertinent part that “[t]he Director, Planning Board, or Board of Appeals may waive any requirement in this article not necessary to accomplish the objectives in Section 59-E-4.2 and in conjunction with reductions may adopt reasonable requirements above the minimum standards.” The objectives of Section 59-E-4.2 include:

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

The applicant submitted the following justification for the requested waiver:

“We believe a waiver of the setback requirements is appropriate for the following reasons. First, there is only one new parking space being added to the subject property outside the parking restriction line that does not already exist. As illustrated by the dashed line contained on the Site Plan,

the existing parking area used in connection with the existing family daycare will be reduced in size to accommodate the five westernmost spaces. The new parking lot will not encroach any further into the side yard setback than the lot that exists today. Although four new spaces will be created on the eastern side of the proposed parking area, only one of these spaces extends beyond the parking restriction line into the front yard setback. The proposed parking area will require a waiver of 28' along the western side of the proposed parking lot and a waiver of 8' from the front yard setback requirement for a parking facility.

Since the arrival and pick-up times for children will be staggered over the course of several hours during the morning drop-off and evening pick-up time, there will be limited vehicular activity on the site. The driveway is designed to be 20' in width to allow two-way vehicular movement and to ensure the optimum safe circulation of traffic. A proposed 4' wide sidewalk from the parking lot to the front entrance of the center will be provided for the safety of the parents and children entering and exiting the center. As described above, the parking area in the front yard will be in keeping with the front yard parking arrangement for the adjacent group residential facility.

In summary, we believe that the proposed child daycare center will be in harmony with the general character of the neighborhood and will satisfy the general and specific criteria for approval of a child daycare facility for up to thirty children."

Staff agrees with the applicant's reasoning and conclusion regarding the requested waiver. As previously indicated, the proposed parking lot would be replacing the already existing parking area resulting only with minor modifications to the existing parking lot. In addition, its location on the property is the most practical and appropriate relative to the proposed use. The parking lot will be adequately landscaped to provide the required shading of 30 percent of the paved area. In addition landscaping and shrubbery will be provided around the perimeter of the parking lot to screen the parking area from the adjoining street. The requested waiver of the required setbacks for the side and front yards is not likely to adversely impact the nearby residential uses or the area's transportation system. The proposed parking lot will provide safe and adequate parking accommodation to serve the day care center. Therefore, staff recommends approval of the requested waiver.

Conclusion

With the recommended conditions, the proposed use conforms to all applicable requirements and regulations of the special exception provisions as specified in the Montgomery County Zoning Ordinance. There are no facts and circumstances to show that the proposed day care center at the subject location would have any adverse

effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. Staff is of the opinion that the applicant, in this case, has met the burden of proof by showing that the proposed day care would be operated without a real detriment to the neighborhood and would not actually adversely affect the public interest. Moreover, the proposed use is consistent with the recommendations of the 2005 Olney Master Plan. Based on the foregoing analysis, staff recommends approval of the subject application subject to the conditions found at the beginning of the technical staff report.