

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. S-2467

PETITION OF HOLTON ARMS SCHOOL, INC.

OPINION OF THE BOARD

(Public Hearing Held June 12, 2002)
(Effective Date of Opinion: August 8, 2002)

Case No. S-2467 is an application by the Holton Arms School, Inc. for a special exception pursuant to Section 59-G-2.13.1 (Child Day Care Facility) of the Montgomery County Zoning Ordinance to permit the expansion and relocation of the existing child day care facility for a maximum of 15 children. Pursuant to the provisions of Section 59-A-4.11 of the Zoning Ordinance, on June 12, 2002, the Board of Appeals held a public hearing on the application. Jody S. Kline, Esquire, appeared on behalf of the Holton Arms School. He called as witnesses Diana Coulton Beebe, Head of School at Holton Arms, and Leah Brixey, Director of the Lower School at Holton Arms. Martin Klauber, Esquire, Peoples' Counsel for Montgomery County also appeared. The Board received no correspondence or testimony in opposition to the application.

Decision of the Board: Special Exception **Granted**, subject to conditions enumerated below.

EVIDENCE PRESENTED

1. Holton Arms seeks permission to operate its on-site day care facility for a maximum of 15 children in the "Brown House", which is located south of the Lower School wing adjacent to the site of a proposed recreation hall and activities building. The main floor of the building and the play area will be devoted to the day care use. The lower level of the house is an apartment for the school's security guard. [Exhibit Nos. 5, 17].
2. Enrollment in the day care program is limited to children of Holton Arms faculty and staff. The facility will operate with 4-5 staff members, and possibly some volunteers from among Holton Arms' students. [Exhibit No. 17(b)].

3. The facility will operate only during the months that school is in session. Hours of operation will be from 7:30 a.m. to 5:00 p.m. Monday – Thursday and from 7:30 a.m. to 4:00 p.m. on Friday. [Exhibit No. 3].

4. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff evaluated the special exception request and recommend approval. Staff finds the proposed use consistent with the 1990 Bethesda Chevy Chase Master Plan. Staff notes that because the childcare facility will serve faculty and staff of the school, it will generate no additional traffic. Staff also analyzed the inherent and non-inherent adverse effects of the proposed use and find that all of its adverse effects will be inherent. [Exhibit No. 25].

FINDINGS OF THE BOARD

Sec. 59-G-1.2. Conditions for granting a special exception.

59-G-1.2.1. Standard for evaluation. A special exception must not be granted absent 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 the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis. The Board must:

(1) Make a determination as to the general neighborhood affected by the proposed use.

(2) Establish those inherent, generic physical and operational characteristics associated with a given use, in this case a child daycare facility, to create an evaluation standard. The evaluation standard does not include the actual physical size and scale of operations of the use proposed.

(3) Determine separately the physical and operational characteristics of the use proposed, in this case operation of an on-site child daycare facility for

the children of faculty and staff of Holton Arms School.

(4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those caused by characteristics of the use proposed consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those caused by characteristics of the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board find as follows:

(1) The General Neighborhood

The Board adopts the definition of the neighborhood as adopted in the MNCPPC staff report. [Exhibit No. 9 and Exhibit No. 25, p. 3].

(2) Evaluation Standard - Physical and Operational Characteristics

The Board recognizes that Planning Board staff has, in previous cases, offered seven criteria to be used to establish the physical and operational characteristics of a use. Those are size, scale, scope, lighting, noise, traffic, and environment.

The Board finds that typical of a childcare facility in Montgomery County are outdoor play areas, parking and lighting. The Board finds that a certain degree of lighting for safety and security, traffic associated with drop off and pick up, and noise from children playing are to be expected. Hours of operation would generally be between 7 a.m. and 7 p.m. Finally, impacts on the environment, such as runoff from the building and the parking facility, may occur.

(3) Proposed Use Physical and Operational Characteristics.

The proposed childcare facility will serve children of faculty and staff of the school, and thus will generate no additional traffic. Enrollment is limited to fifteen children, creating moderate on-site activity or noise, which is buffered from neighboring properties by generous setbacks and vegetation. The nearest adjacent residence is approximately 200 feet away. [Exhibit No. 5.].

(4) Comparison of Characteristics.

(1) Inherent Adverse Effects.

After considering the generic characteristics of the use and comparing them with the physical and operational characteristics of the proposed

use, the Board finds that, all of the physical and operational characteristics of the as proposed will be inherent adverse effects.

(2) Non-Inherent Adverse Effects.

The Board finds that there are no non-inherent adverse effects associated with the proposal.

GENERAL STANDARDS

Section 59-G-1.21.

(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.*

Pursuant to Section 59-C-1.31 of the Zoning Ordinance, a Child Day Care Facility is permitted by special exception in the R-90 and R-200 Zones.

(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 detailed below, the use will be in compliance with the standards in Section 59-G-2.13.1.

(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 special exception must be consistent with any recommendation in an approved and adopted 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 Board adopts MNCPPC staff's finding that the proposed Child Day Care Facility is consistent with the Bethesda Chevy Chase 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 proposed special exception will be in harmony with the general character of the neighborhood. Located on the campus of the existing school, it is well buffered from surrounding properties and will have a staff of no more than five, and an enrollment of no more than 15 children. It will generate no new traffic. No new structures are proposed.

- (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.*

Due to its setting and modest scope, the requested child care facility will have little impact on surrounding properties, and will not be detrimental to their use, peaceful enjoyment, economic value or development.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The child care facility will have none of these adverse effects.

- (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 recommendation of a master or sector plan do not alter the nature of an area.*

The child care facility will be located on the campus of and will be well subordinate to the existing private educational institution which exists by special exception.

- (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 Board finds that the proposed child day care facility will have none of these adverse effects.

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

The subject site is served by adequate 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.*

No preliminary plan of subdivision is required.

- (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 have no detrimental effect on the safety of vehicular or pedestrian traffic.*

The requested special exception will rely on existing and proposed access road, drives and sidewalks connected with the school. It will introduce no new traffic and will have no detrimental effect on the safety of vehicular or pedestrian traffic.

SPECIFIC STANDARDS

Section 59-G-2.13.1 Child day care facility

- (a) *The Hearing examiner may approve a child day care facility for a maximum of 30 children if:*
- (1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*

The applicant has submitted a site plan showing all of the required information. [Exhibit No. 5].

(2) parking is provided in accordance with the Parking Regulations of Article 59-E

The Board adopts staff's findings that based upon the proposed size of the facility and number of staff, the required number of parking spaces is eight, and that a total of 20 spaces are available in the immediate vicinity of the proposed use [Exhibit No. 25, p. 8, Exhibit No. 5].

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;*

Not applicable.

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

The Board finds that the area for discharge and pick up of children is adequate [Exhibit Nos. 5, 24(a)-(g)].

(4) the petitioner submits an affidavit that the petitioner will:

- (A) comply with all applicable State and County requirements;*
- (B) correct any deficiencies found in any government inspection;*
and
- (C) be bound by the affidavit as a condition of approval for this special exception; and*

The applicant has submitted the required Affidavit of Compliance [Exhibit No. 8].

(5) the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic

barrier to protect surrounding properties from any adverse impacts resulting from the use.

The Board finds that the requested childcare facility will be compatible with surrounding uses. It will be located on the campus of the long-established Holton Arms School and buffered from surrounding uses by generous setbacks and mature vegetation. As discussed above, because it serves only faculty and staff of the school, the childcare facility will generate no additional *traffic*.

Therefore, based upon the foregoing, the Board finds that the requested special exception for a childcare facility can be granted, subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.

2. Enrollment in the childcare facility will be limited to 15 children.

3. There will be a total of five staff members at the childcare facility.

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of August, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.