

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND
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**SPECIAL EXCEPTION OF SHANTI AND SONA VAIDYA
CASE NO. S.E. 08-01**

ORDER OF REVOCATION

Background

On March 19, 2008, the Hearing Examiner granted Special Exception 08-01 to Shanti and Sona Vaidya to permit the operation of a Group Day Care of up to 12 children, on property located at 9201 Bardon Road, Bethesda, Maryland, in the R-60 Zone. The Special Exception was modified on December 19, 2008.

On July 10, 2023, the Department of Permitting Services (DPS) notified the Office of Zoning and Administrative Hearings that the special exception holders had voluntarily closed the group day care as of February 28, 2023, and requested that the special exception be abandoned.

In support of her request, Ms. Vaidya provided a letter from the Maryland State Department of Education acknowledging that the day care had been closed and a copy of records from the Maryland State Department of Assessments and Taxation showing that she and Mr. Vaidya still own the property.

Opinion

Special exceptions approved before October 30, 2014 must be reviewed under the standards of the Zoning Ordinance in effect on October 29, 2014 (*i.e.*, the 2004 Zoning Ordinance).

The 2004 Zoning Ordinance defines the “property owner” as “[a]ny person or persons who, as of the date of the Board's notice, is recorded in the record of assessments of real property maintained by the Montgomery County Department of Finance as the party chargeable for the payment of taxes on any assessment upon the property.” The term “abandoned” is defined as “[t]he cessation of use of the special exception or the cessation of activity necessary to the operation of the special exception use for a period of at least 6 months' duration.” That same section goes on to state:

- (1) If, after making an inspection of a property governed by special exception, the Department finds that the special exception use as granted has been abandoned, it must forward written notice of its findings to the last recorded holder of the special exception and to the property owner, advising of the Department's finding and directing that they forward to the Department, within 60 days from the date of mailing of the notice, a written statement confirming the Department's finding*

that the special exception has been abandoned or challenging said finding and requesting that said special exception be continued.

- (2) If the Department receives a written response from the special exception holder and the property owner acknowledges that the special exception has been abandoned, the Department must notify the Board of its findings, and the Board¹, upon receipt of such notice, must adopt and issue a written resolution finding the special exception to have been abandoned and ordering the special exception revoked.*
- (3) If within the provided 60-day period, the Department receives a written statement from either the special exception holder or the property owner challenging the Department's findings and requesting that the special exception be continued, the Department must notify the Board, and the Board must convene a public hearing, in accordance with the provisions of subsection (e) of this section, to determine whether or not the special exception was abandoned and whether or not the special exception should be revoked.*
- (4) If after 60 days from the date of mailing of the Department's notice, the Department has received no response from either the special exception holder or the property owner, the Department must notify the Board of its findings, and the Board must issue to the special exception holder and the property owner an order to appear before the Board to show cause why the special exception should not be revoked.*
- (5) If neither the special exception holder nor the property owner appears before the Board to show cause why the special exception should not be revoked, the Board must adopt and issue a resolution finding the special exception to have been abandoned and ordering the special exception revoked. . . .*

The facts of this case fall within paragraph (2) quoted above. The current property owners are also the special exception holders and acknowledge that the special exception has been abandoned. They have submitted documentation of this to DPS. Therefore, the Hearing Examiner must find the special exception to have been abandoned and order it revoked.

ORDER

Based on this record, the Hearing Examiner hereby finds that the special exception granted in the above-captioned case has been abandoned. Accordingly, pursuant to Sections 59-G-1.3(d)(2) and 59-G-1.3(f) of the 2004 Zoning Ordinance, Special Exception No. S.E. 08-01 is hereby REVOKED.

¹ Although this section refers to the "Board," meaning the Board of Appeals, the Hearing Examiner is authorized by Section 59-G-1.3(f) of the old Zoning Ordinance to conduct the same proceedings for special exceptions, such as this one, that it has issued.

Dated: July 24, 2023



Lynn Robeson Hannan
Hearing Examiner
Office of Zoning and Administrative Hearings

cc: Shanti and Sona Vaidya
Barbara Cox, Department of Permitting Services
Victor Salazar, Department of Permitting Services
Barbara Jay, Executive Director
Board of Appeals