

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
<http://www.montgomerycountymd.gov/boa/>

(240) 777-6600

**Case No. CU 16-03**

**AMBOR PRIMM**

**OPINION OF THE BOARD**

(Oral argument held: March 9, 2016)  
(Effective Date of Opinion: April 4, 2016)

Case No. CU 16-03 CU 16-03 is an application for a conditional use to allow a group day care facility at 14227 Woodcrest Drive, in Rockville, Maryland. On January 4, 2016, the Hearing Examiner for Montgomery County issued a Report and Decision for approval of the conditional use, with conditions. The Board of Appeals has received a timely request for oral argument on the Report and Decision from Ms. Ambor Primm. Pursuant to Section 59-7.3.1.F.1.c of the Montgomery County Zoning Ordinance, such a request transfers jurisdiction over this matter to the Board of Appeals. The Board granted oral argument, which was heard on March 9, 2016. Ms. Primm appeared and gave argument, as did her architect/consultant, Mr. Mark North.

The subject property is Lot 1, Block 1, B.F. Manor Woods Subdivision, 14227 Woodcrest Drive, Rockville, Maryland, 20853 in the R-90 Zone.

Decision of the Board:

Conditional Use **Granted** Subject to  
the Conditions Enumerated Below.

The Board heard oral argument on a condition initially proposed by Technical Staff of the Montgomery County Planning Department, and adopted by the Hearing Examiner in her Report and Decision, which would limit the proposed group day care to 12 children, ranging in age from 6 weeks to five years, except that the Applicant's own children may be up to 12 years of age. Ms. Primm states in her request for oral argument that under her current license, she is permitted to have eight (8) children ranging in age from six weeks to 12 years old, and that she does not desire to enroll more than eight (8) children older than six years of age, stating that her program "already limits the older children they care for to the families currently enrolled with younger siblings and does not solicit or plan

to fill child care spots with school age children only.” Her request for oral argument further states that the proposed condition may affect the rights of those parents who decide to hold their child back if the child is not ready to enter kindergarten, or misses the MCPS birth date cutoff. She states that children need full time child care until the age of six, and that a limitation to age five would directly impact those children who enter kindergarten later than their peers. See Exhibit 49.

The Hearing Examiner’s Report and Decision notes, in discussing the permissible ages of children, that “Staff advised that the age of the children could be raised to 12-years, but only to accommodate the Applicant’s own children. Staff stated that ‘[I]f too many 12-year old children are concentrated in the home and/or outside it may affect the use and peaceful enjoyment of the neighboring properties.’ Ex. 44(a).” It further notes Ms. Primm’s assertion that she doesn’t anticipate that all 12 children enrolled would be 12 years of age, and that Ms. Primm asks to “maintain flexibility afforded by State licensing to allow a mixed age group so that the Applicant’s children will be allowed to continue to remain in our care as they grow up. Limitations on the allowable age group would directly affect the families (including the Applicant’s own family) who would like to keep their siblings, friends and participating Program children together as they grow up.” See January 4, 2016, Hearing Examiner Report and Decision (HERD), page 17.

Mr. North provided the Board with some background on this matter, explaining that Ms. Primm applied for a conditional use for a group day care facility so that she could increase the number of children she cares from the current eight (8) to a new cap of 12, an increase of four (4) children.<sup>1</sup> Mr. North stated that Ms. Primm is prepared to abide by all of the conditions proposed by Technical Staff and adopted by the Hearing Examiner except Condition No. 2, which limits the proposed group day care to “12 children, ranging in age from 6 weeks to 5 years, except that [Ms. Primm’s] own children may be up to 12 years of age.”

Ms. Primm stated that she currently operates a family day care.<sup>2</sup> She read extensive excerpts from her request for oral argument, in the record at Exhibit 49, explaining that her business model focuses on keeping the children in the families she cares for together from infancy through elementary school, in a home-based setting. She stated that she currently has two children of her own, ages five and two, and that she is expecting a third child. She stated that she wants her children to be surrounded by their friends, whom she will also care for, as they grow. She argued that limiting children’s ages in accordance with Condition No. 2 would impact her business and the families currently using her business. Ms. Primm explained that her current license allows her to care for up to eight (8) children, ages six weeks to 12 years, and thus would allow all eight (8) children in her care to be between six and 12 years old. She requested that Condition No. 2 be revised to allow her to care for eight (8) children ages six weeks to 12 years (in

---

<sup>1</sup> A group day care is a day care facility for between 9 and 12 people, in accordance with Section 3.4.4.D of the Montgomery County Zoning Ordinance. A group day care is allowed as a conditional use in the R-90 zone.

<sup>2</sup> Family day care is a permitted use in all residential zones.

accordance with her current license), and four additional children ages six weeks to six years.

Ms. Primm read that portion of her request for oral argument which addresses traffic noise on Bauer Drive to the Board, and stated that the noise is so loud that it wakes her family up on a daily basis. She explained that the fenced-in outdoor play area on her property is positioned adjacent to Bauer Drive and away from her neighbors. She indicated that this area will not be used for free play when all 12 children are present, adding that she generally walks the children to neighboring parks, pools and schools for free play.

Ms. Primm stated that at present, she cares for the children of four (4) families (including her own), with the following ages: four (4) two-year-olds, one (1) three-year-old, one (1) four-year-old, and two (2) five-year-olds. She stated that she originally sought this conditional use because one of her client families is expecting another child, and that since that time, a second client family has announced that they are also expecting, as is she.

Ms. Primm noted that her child care operation has received no complaints to date, and that the record contains many letters of support, including one from the Aspen Hill Civic Association. She confirmed her desire to offer child care to a mix of ages. She reiterated that her current license would allow her to care for eight (8) twelve-year-olds if she so chose, and that she would never need more than eight (8) slots for children above six years of age.

In response to Board questioning, Ms. Primm stated that her current family day care is licensed through the State of Maryland, and that her license is non-expiring. She noted that her current license actually allows her to care for children up to age 21 if they are disabled. When told that Technical Staff had referred to documents she submitted in crafting the age limitation they proposed for her conditional use, Ms. Primm stated that Staff had asked for information about what her proposed use would look like, and that she had provided information to them which described what the operation would look like when it opened, adding that she assumed that Staff would realize that the children she cared for when the use opens will get older with time.

Section 59-3.4.4.D of the Zoning Ordinance sets forth the criteria specific to a group day care for nine (9) to 12 persons, and does not limit the ages of the persons who may be cared for. The age limitation proposed by Technical Staff and adopted by the Hearing Examiner was grounded in a desire to protect the neighborhood from excessive noise. See HERD, pages 17 and 23.<sup>3</sup> The Board finds that Ms. Primm is currently allowed to have as many as eight (8) 12-year olds in her care, and that the proposed age limitation would be a significant change to her present, by-right operation with respect to eight (8) of the requested 12 child care slots. The Board further finds that the proposed age

---

<sup>3</sup> Technical Staff, in evaluating whether the ages of children allowed could be raised to 12, stated that "[I]f too many 12-year old children are concentrated in the home and/or outside it may affect the use and peaceful enjoyment of the neighboring properties." Exhibit 44(a). See HERD, page 17.

limitation would necessitate a change to Ms. Primm's business model. The Board notes that Ms. Primm has received no complaints about her operation, and that she has agreed to a condition (condition #7) which would restrict the number of children allowed to play outside at one time to eight (8), except in the case of structured learning activities. Thus the Board finds that Ms. Primm's request to allow as many as eight (8) of the children in her care to be up to 12 years old does not change what Ms. Primm would be allowed without the grant of this conditional use, and is reasonable. The Board further finds that the limitation on the number of children allowed to play outside at one time will serve to limit noise. Finally, the Board notes Ms. Primm's statement in her request for oral argument that "[t]he A Mum's Touch program already limits the older children they care for to the families currently enrolled with younger siblings and does not solicit or plan to fill child care spots with school age children only." See Exhibit 49.

With respect to the remaining four slots in this group day care, the Board is persuaded by Ms. Primm's argument that the age restriction on those slots should be raised from five to six years old, to accommodate those children who start kindergarten after the age of five.

Therefore, on a motion by Stanley B. Boyd, seconded by Bruce Goldensohn, with Carolyn J. Shawaker, Chair, John H. Pentecost, Vice Chair, and Edwin S. Rosado in agreement, the Board adopts the Hearing Examiner's Report and Decision with the exception of Condition No. 2, which it adopts in revised form as set forth below, and grants the special exception subject to the following conditions:

1. The Applicant shall be bound by all of her testimony and exhibits of record, and by the testimony of her witnesses identified in this Report and Decision.
2. The proposed group day care must be limited to 12 children, as follows: eight (8) children ranging in age from 6 weeks to 12 years, and four (4) children ranging in age from 6 weeks to 6 years.
3. The hours of operation must be limited to 7:30 a.m. until 5:30 p.m., Monday through Friday. No weekend or overnight day care is permitted.
4. The Applicant may employ up to 2 full-time non-resident staff members and one part-time non-resident staff member, in addition to herself. Non-resident staff members must not report to the site before 7:30 a.m. and leave no later than 5:30 p.m.
5. All physical improvements to the property are limited to those shown on the site plan (Exhibit 6) and the Landscape Plan (Exhibit 34(a)).
6. Employees for the child day care facility must park off-site on nearby streets where on-street parking is allowed.
7. All children must be under the direct supervision of a staff member at all times. No more than 8 children shall be permitted to play outdoors at any one time, except for two structured

learning activities in the morning and two in the afternoon. Structured learning activities may not exceed 20 minutes in length. Outdoor play times must not start before 8:30 AM.

8. The Applicant shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building.

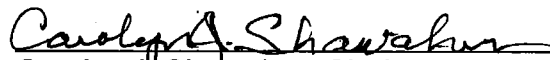
9. Vehicular arrival and departure times for the children must be staggered, through contractual agreements between the Applicant and the parents, so that no more than two vehicles visit the site within any 15-minute period to drop off or pick up children.

10. All gates or other access to the outside play area must be secured during outdoor play in a manner that will prevent any of the children present from opening such access and wandering off.

11. The Applicant must comply with and satisfy all applicable State and County requirements for operating a group day care, and correct any deficiencies found in any government inspection.

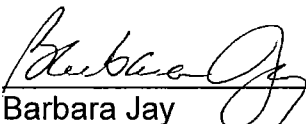
12. The Applicant shall maintain the grounds in a clean condition, free from debris, on a daily basis.

13. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.



Carolyn J. Shawaker, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 4<sup>th</sup> day of April, 2016.



Barbara Jay  
Executive Director

**NOTE:**

See Section 59-7.3.1.1.1 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Hearing Examiner or the Board must be exercised.

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. 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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.