

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2471

PETITION OF KIDS 'N CARE LEARNING CENTER

OPINION OF THE BOARD
(Opinion Adopted June 18, 2008)
(Effective Date of Opinion: July 15, 2008)

Case No. S-2471 requests a special exception to permit the construction and operation of a child day care facility pursuant to the provisions of Section 59-G-2.13.1 of the Montgomery County Zoning Ordinance. The Hearing Examiner for Montgomery County held public hearings on the application and on January 23, 2004, issued a Report and Recommendation for denial of the special exception. The Board of Appeals denied Case No. S-2471 in an opinion dated March 4, 2004. Petitioner appealed the Board's decision to the Circuit Court for Montgomery County on March 19, 2004, and appealed the Circuit Court's affirmation of the Board's decision to the Court of Special Appeals.

On June 1, 2007, the Board of Appeals received an Order to Remand Judgment from the Circuit Court for Montgomery County. The Order remands the captioned case to the Board, and directs the Board to "decide the merits of appellant's application for Special Exception S-2471 in conformity with the opinion of the Court of Special Appeals" filed on July 18, 2006. The Board of Appeals considered the remanded case, and requested supplemental information from the Petitioner at Worksessions on June 13, 2007, September 5, 2007, November 14, 2007, December 12, 2007, May 21, 2008 and June 18, 2008.

The subject property is Lot 4, Block A, Mateney Subdivision, located at 19002 Mateney Hill Road, Germantown, Maryland, in the R-200 Zone.

Decision of the Board: Special Exception **Granted** Subject
To Conditions Enumerated Below.

After careful consideration and review of the record in the case, the Board adopts the factual findings in the Hearing Examiner's Report and Recommendation, and finds that the special exception can be granted subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report, including the final Landscape and Lighting Plan, Exhibit 226(e), and the final First Floor Plan, Ex. 186.
2. The Petitioner must implement and adhere to the Revised Traffic and Parking Management Plan submitted as Exhibit 226(b), with the addition of the following as item 15:
 15. Each parent enrolling a child at the day care center must sign a contract that states a specific drop-off and pick-up time frame for each child. No more than 10 parents may be permitted to drop off or pick up a child during each half-hour of the morning and afternoon peak period.
3. Hours of operation are limited to: Monday through Friday from 6:30 a.m. to 7:00 p.m.
4. No more than 40 children shall be permitted on site at any time.
5. The subject day care center must be operated in compliance with applicable standards established by the State of Maryland and Montgomery County.
6. The subject property may be used only for child day care services. The building must not be leased, rented to the public or put to any other use.
7. Outdoor play activities must be staggered during scheduled hours, and no more than 15 students may be in the outdoor play area at any time. Soft materials, such as wood chips, should be utilized for the outdoor play area's surface.
8. During the first two weeks that the day care center is open, the Petitioner must fully assess and document on-site and off-site peak hour vehicular operations to assure compliance with the Traffic and Parking Management Plan. The Petitioner must undertake additional management and operational steps as needed to assure compliance with the TMP, including, as necessary:
 - (a) Additional use of on-site staff to manage traffic during morning and afternoon peak periods.
 - (b) Changes in arrival and dismissal times, including staggering student arrivals and departures.
9. The Petitioner must coordinate with the Department of Public Works and Transportation ("DPWT") and the Department of Permitting Services ("DPS") to comply with required improvements to Mateny Hill Road, including widening the road to a minimum width of 13 feet from the centerline of the road to the property line of the subject property for the full length of its Mateny Hill Road frontage, and constructing a sidewalk, with street trees and lights within the right-of-way as provided for on the Landscape and Lighting Plan. Construction of these

improvements must be complete before Petitioner may apply for a Certificate of Occupancy for the special exception use.

10. The Petitioner must comply with DPS requirements for stormwater management and erosion control.
11. The day care center must adhere to the Montgomery County Noise Ordinance.
12. The day care center must adhere to Montgomery County Sign Standards as established by Section 59-F of the Zoning Ordinance.
13. The day care center is limited to six employees on site at any one time. Employee shift changes shall be limited to no more than two employees per change, with a maximum of four shift changes per day and no shift changes during peak pick up and drop off periods.
14. Petitioner must comply with the Montgomery County requirements for roadway sight distances from the vehicular entrance to the property.
15. Enrollment contracts must explicitly provide that parents are entirely responsible for arranging the transfer of school-age children from the day care center to school and/or from school to the day care center. The enrollment contracts must state that the center will provide no transportation for students to and from school and no adult supervision for students off of the center's property.
16. Trash pick-up from the dumpster using mechanical equipment is limited to one pick-up per week, on a weekday during daytime hours, but not during peak pick up and drop off periods.
17. Petitioner 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 special exception premises and operate the special exception as granted herein, and shall at all times ensure that the special exception 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.

On a motion by David K. Perdue, seconded by Wendell M. Holloway, with Catherine G. Titus, Vice Chair and Allison Ishihara Fultz, Chair, 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 petition.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 15th day of July, 2008.

Katherine Freeman
Executive Director

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. 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.