

MEMORANDUM

DATE: April 30, 2003
TO: Montgomery County Board of Appeals
VIA: John Carter, Chief, Community-Based Planning Division *JK*
Glenn Kreger, Team Leader, Takoma Park – Silver Spring *JK*
FROM: Joel A. Gallihue, Community-Based Planning Division *JG*

REVIEW TYPE: Special Exception Modification
APPLYING FOR: Private Educational Institution
APPLICANT: National Children's Center
CASE NUMBER: S-763-B

ZONE: R-60
LOCATION: 410 West University Boulevard
MASTER PLAN: Four Corners Master Plan
PUBLIC HEARING: May 8, 2003

STAFF RECOMMENDATION: Approval with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioners.
2. All previously approved special exception conditions and modifications shall remain in full force and effect, except as modified by this petition.

Project Description:

The proposal seeks to add a Private Educational Institution (PEI) use to the site. The site is already permitted for a service organization special exception and a subsequent modification that allowed operation of a training program for adults diagnosed with mental retardation. While a new use is proposed, the actual operation will only vary slightly from the approved modification. The number of teachers will be increased from eight to twenty-two. The students are now proposed to be youth diagnosed with mental retardation and other developmental disabilities, rather than adults. The number of students will remain fifty. Students will continue to be bussed to the site. The hours of

operation will remain the same. This petition is predicated by a denial of a proposed administrative modification to allow these changes. There are no outstanding issues.

Site and Neighborhood Description

The subject property is located at 410 West University Boulevard in the Dawn Village subdivision in the Four Corners area. The property is located southeast of the intersection of University Boulevard and Dennis Avenue. It is recorded as Lot 33, Block B and zoned R-60. The property is approximately 38,621 square feet (0.88 acres) in size and is comprised of one two-story brick building with eight parking spaces in the front, and forty parking spaces in the rear. University Boulevard is a six-lane, median-divided road, which is classified as a major highway with a recommended 120-foot right-of-way. Dennis Avenue is classified as an arterial roadway with a recommended 80-foot right-of-way.

Adjacent and to the north of the property are two residential lots that front West University. One other lot and one parcel are adjacent to the north west of the property and front on Dennis Avenue. (Across Dennis Avenue is the Collins Funeral home, which is on property in the R-150 zone.) Adjacent to the rear of the property is a residential lot that fronts on Dallas Avenue. Adjacent to the south and east of the property are two out-lots, which were formerly dedicated Dallas Avenue right-of-way. Confronting the subject property across University Boulevard are residential lots in the Northwood Knolls subdivision.

In the vicinity of the site, retail commercial uses are focused near the intersection of University Boulevard and Colesville Road. A mixture of residences and businesses are located on University Boulevard in the immediate vicinity. This transitions primarily to single family residential away from University Boulevard. This pattern continues into Wheaton.

Case History

On January 21, 1981, the Board of Appeals approved a special exception petition (S-763) for a service organization on property in the R-60 zone. The site is located at 410 West University between Four Corners and Wheaton. The approval permitted a two-story building with front and rear parking. In 1985 a modification (S-763A) was approved to permit the service organization to lease their ground floor to National Children's Center to run a day training program for 50 adults diagnosed with mental retardation. This program operated on the first floor weekdays 8:00 AM – 6:00 PM (school hours from 9:00 AM to 3:00 PM). The program operated until about a year ago. The National Children's Center subsequently found they could restart the program by working with Montgomery and Prince Georges County Schools if they would take children instead of adults. In the process of obtaining various permits, they were told they needed a PEI special exception use.

The proposal for the new program was initially filed as an administrative modification to the Service Organization special exception (S-763, S-763A) but the Board of Appeals

denied the request finding that the proposal represented a substantial change to the nature of the use. Section 59-G-1.3.c allows the Board to approve a modification administratively, provided the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effects on traffic or on the immediate neighborhood. The applicant subsequently filed S-763B, a petition for a Private Education Institution.

The proposed PEI is essentially the same school as previously approved under S-763A with two exceptions: 1.) The age of the clients will be between twelve and twenty-one, and 2.) The staff will be increased from eight to twenty-two. No new construction is proposed. No paving or grading is proposed. No use of equipment outdoors is proposed. New plantings will occur to replace screening plantings that are now deceased.

Elements of the Proposal -

Building

A two-story brick structure exists on the site. This building has been subdivided into a two-unit condominium. The National Children's Center is the owner of the first floor unit. The Masons¹ retain ownership of the second floor where the original Service Organization special exception continues to operate. No new development of the building or site is proposed.

Operations

Operations will essentially remain the same. The school will operate from 8:00 AM to 6:00 PM, Monday through Friday. The actual school session will be from 9:00 AM to 3:00 PM. The number of employees will be increased from eight to twenty-two. The age of students will be between twelve and twenty-one. Students will be bussed to the site. Employees will drive and park in the amply sized parking lot. The Service Organization and proposed PEI special exceptions will continue to have complementary schedules where peak activities are at different times of the week. This allows for shared use of the parking without conflict.

Landscaping

Staff observed that some specimens required by the original landscaping plan had died and were not replaced. A screening fence has also been erected on the site. Staff required the applicant to provide a revised landscaping plan to show the new fence, replacement plantings and additional plantings.

Master Plan

The subject property is located within the master plan area of the 1996 Approved and Adopted Four Corners Master Plan. The property is zoned R-60 as recommended by the plan. The proposed special exception is permissible in this zone. The Land Use Plan identifies the use of this property as "Semi-Public and Private Institutional." Staff

¹ Silver Spring Temple and Library Association, Inc.

has found that the proposed special exception is consistent with a Master Plan objective of “enabling neighborhoods to absorb special exception uses without diminishing residential character.” This is because reuse of an existing structure for a special exception is proposed with no new construction.

Transportation

Transportation staff has reviewed the proposed use and recommends approval provided that the PEI is limited to the operations stipulated in the submitted petition. Staff is recommending that the petitioner be bound to all statements and submission and conditions of approval. Staff has found that the modification will result in such minor changes that traffic patterns will remain much the same. Staff has also found that the existing road network can accommodate this proposal. (See attached memorandum for detail.)

Environmental

The Environmental Planning Unit has reviewed this application and notes the special exception application is for an existing structure, which will not result in clearing of existing forest or trees. Staff determined that the petition qualified for a Forest Conservation Plan exemption.

Inherent/Non-Inherent Adverse Effects- The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the R-60 zone.

Section 59-G-1.2.1 of the Zoning Ordinance states

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.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. Every special exception has some or all of these effects in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined. The inherent aspects of a private education institution are daytime weekday school operations, which include arrival and departure of staff and students. Indoor training and occasional outdoor activities like recess are also inherent aspects of a PEI. A non-inherent adverse effect could occur if the school were of an excessive scale or combined other uses such that the combined effect is incompatible.

This proposal will remain fifty students, the same size as has successfully operated since 1985. The number of staff will increase but given the parking and the fact that students are bussed, the effect is negligible. The combination of the PEI as proposed with the existing Service Organization will be compatible because the uses are not active at the same times.

Montgomery County Zoning Ordinance Compliance with Specific and General Special Exception Provisions

Sec. 59-G-2.19. Educational institutions, private.

(a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

- (1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;

Operations of school under previous modification has not demonstrated nuisance for any of these factors. New proposal virtually the same.

- (2) except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;

No new development proposed.

- (3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and

The school or combination with service organization will not adversely affect present character. Essentially the same school proposed.

- (4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:

1. Traffic patterns, including:

a) Impact of increased traffic on residential streets;

Impact negligible. School has been operating.

b) Proximity to arterial roads and major highways;

Located on major highway.

c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;

Students are bussed.

d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and

The parking lot and entrance have adequate space for drop-off and pick-up.

2. Noise or type of physical activity;

Operations will not vary from previous approval.

3. Character, percentage, and density of existing development and zoning in the community;

No new development is proposed.

4. Topography of the land to be used for the special exception; and

No new development is proposed. Property slopes from rear to West University

5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.

A density of 56 students per acre is proposed.

- b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls.

The facility is fenced and landscaped to provide such a buffer. Outdoor activities relating to the PEI will be during the day.

- (b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.

The Board may limit the number of participants and frequency of events authorized in this section.

No such programs are listed in the instant petition. None have been proposed. A separate modification would be required to permit any such activities. At such time this finding would be made.

- (c) Programs Existing before April 22, 2002.

- (1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

Not applicable.

- (2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

Not applicable.

(d) **Site plan.**

- (1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.

Features are shown on submitted plans.

- (2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.

- (e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued.

Not applicable.

- (f) **Nonconforming uses.** Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the

effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.

Not applicable.

(g) **Public Buildings.**

(1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County. etc...

Not applicable.

(h) **Applications filed before May 6, 2002.** Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of Article 59-G and Article 59-E in effect at the time the special exception was filed.

Not applicable.

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 use is permissible in the R-60 Zone.

(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.

The proposed Private Education Institution complies with the standards and requirements set forth in Division 59-G-2.

(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 subject property is covered by the Approved and Adopted 1996 Four Corners Master Plan. Staff finds that the proposed school is consistent with the recommendations in the approved and adopted 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.

Staff finds that the proposed use is in harmony with the general character of the neighborhood given that the number of students will remain the same and no new development is 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.

The modification will not result in the use being detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (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 proposed use will not cause objectionable noise, vibrations, fumes, odors or dust. No changes to lighting are proposed. A lighting plan has been submitted, as required. Photometric light distribution measurements are shown on the plan. Directed Shielded fixtures are specified to limit glare. Physical activity on the site will remain at the same minimal level. No changes to the exterior of the site are proposed.

- (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.

A school has been operating by special exception at this location through a modification to the existing Service Organization use. The proposed special exception essentially substitutes for this modification. Consequently although a new use is requested (PEI) there is no effective increase in the number of special exception uses in 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 established elsewhere in the zone.

The proposed special exception will not cause any of these 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.

- (1) 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.

Subdivision approval is not required since the lots are recorded.

- (2) 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.

No change in access or traffic operations is proposed.

Attachments

1. Vicinity Map
2. Subdivision Map
3. Site Plan and Photometric plan
4. Landscape Plan
5. Transportation Referral
6. Master Plan Referral