

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT FOR March 28 2019 @ 7pm**

Case Number:

**B-19-10**

Applicant:

**LAM Properties, LLC**  
**10059 Old National Pike, Ijamsville, MD 21754**

Appeal:

**Requesting Special Exception allow a Child Care Center/Nursery School in the R1 zoning district**

Location:

**Property located along Old National Pike  
Tax Map 79, Parcel 95, Tax ID #09-235531**

Planning Region:

**New Market**

Zoning District:

**Low Density Residential**

Comp. Plan Designation:

**Low Density Residential**

Applicable Ordinances:

**Sec. 1-19-3.210 Special Exceptions**  
**Sec. 1-19-8.329 Child Care Center/Nursery School**  
**in the R1 zoning District**  
**Sec 1-19-11.100 Definitions**

Background:

The subject Property is zoned Low Density Residential and contains approximately 3.79 acres.

The Property is currently improved with a single family dwelling and several accessory structures.

Proposal:

The applicant is proposing to operate a Child Care facility in accordance with the below definition on lands zoned R-1 in accordance with Section 1-19-8.329.

**CHILD CARE CENTER/NURSERY SCHOOL.** The use of property which is licensed by the State of Maryland, as a child care center or nursery school pursuant to COMAR 13A.09.09.10B, as amended.

## **General Criteria – Special Exception:**

Under the provisions of Section 1-19-3.210 of the County Zoning Ordinance:

(A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

The Applicant has stated that they are the Contract Purchaser of the Property. The contract of sale has been submitted as required.

(B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

(1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter;

The proposed use is consistent with the purpose and intent of the Comprehensive Plan and the Zoning Ordinance. As noted above, the request is for a child care center use in the R-1 zone. The surrounding development, as supported by the Comprehensive Development Plan includes uses with needs for a residential environment. These uses include schools, churches, libraries and other institutions vested with a community or public nature, such as a child care center. The special exception will allow for the continued provision of community services and facilities in an efficient manner.

(2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located;

The proposed child care center is ideally located within the overall emergence of planned neighborhood developments along Old National Pike. This neighborhood development includes three schools, thousands of new residences, rental living units, and commercial retail of all types. With direct access to Old National Pike, the proposed use is an appropriate and orderly development of the property, and will provide a much needed component in today's neighborhoods with working families. The size, nature and intensity of the operations of the proposed facility will meet a growing demand while providing convenience to facilities within the neighborhood.

(3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district;

Operation of the child care center and activities wing will not have an adverse effect on nearby properties by reason of noise, fumes, vibration or other characteristics above and beyond those inherently associated with the use at any other location in the R-1 residential zoning district. Child care centers have proven to be compatible within residential neighborhoods for numerous years. When incorporated into emergent planned neighborhood developments, the proposed use can fit seamlessly into the characteristics of the surrounding neighborhood with no adverse

effects. In fact, this use may serve as a transition buffer between the more intense retail uses within the neighborhood and adjoining residential development.

- (4) Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

As more fully shown and described on the plan, the application meets these requirements. Adequate screened parking will be provided, and entrance and exit drives shall be located to achieve maximum safe sight distance for ingress to, and egress from the property.

Staff notes that this use is a permitted use that requires Special Exception and Site Plan approval. During the Site Plan approval process Staff will ensure that adequate parking and landscaping is provided in accordance with 1-19-6.220 and 1-19-6.400, respectively.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

As shown on the accompanying Plan, the subject parcel has direct access to Old National Pike, a Comprehensive Plan designated minor arterial highway. This road system is more than adequate to serve the site for the intended use.

Staff notes that during the Site Plan approval process Transportation Engineering Staff will ensure the adequacy of the road system.

#### **1-19-8.329. CHILD CARE CENTERS OR NURSERY SCHOOLS IN R-1, R-3, R-5, R-8, AND LI DISTRICTS.**

The following provisions shall apply to child care centers or nursery schools in R-1, R-3, R-5, R-8, and LI Districts.

- (A) Child care centers or nursery schools which are operated by a nonprofit organization in buildings or structures on premises which are owned or leased by a religious organization and which premises are regularly used as a place of worship, or are located on premises owned or leased by a religious organization adjacent to premises regularly used as a place of worship, or are used for private parochial educational purposes, are a permitted use not requiring grant of special exception approval.
- (B) Special exception child care center or nursery school requires a minimum lot area of 12,000 square feet with minimum lot width of 100 feet except in the LI District which requires a minimum lot area of 20,000 square feet with a minimum lot width of 200 feet.
  - A. Special exception child care center or nursery school requires a minimum lot area of 12,000 square feet with minimum lot width of 100 feet.
- (C) Yard setback requirement is 25 feet from all property lines except in the LI District which requires a yard setback requirement of 40 feet.

As shown on the accompanying plan, the proposed structure is set back a minimum of 25 feet from all property lines

(D) The maximum attendance at a child care center or nursery school at any 1 time shall be as follows:

- (1) One pupil per 1,000 square feet of lot area in R-1, R-3 residential zoning;
- (2) One pupil per 500 square feet of lot area in R-5, R-8 residential zoning;
- (3) The minimum size of a child care center or nursery school in the LI District shall be determined based on the amount of square footage required under the State of Maryland Code of Regulations 10.05.01.

The parcel lot area is 165,179 square feet. Based on 1 pupil/1,000 SF, the maximum number of pupils allowed is  $165,179/1,000 = 165$  pupils. If approved by the Board, the proposed use will be limited to a maximum attendance at any 1 time of 165 pupils.

(E) All recreational and open space shall be in accordance with state regulations. Play areas provided must be fully fenced.

All recreational and open space areas will comply with State regulations. As shown on the accompanying Plan, the proposed play areas are fully fenced.

(F) The subject property must have frontage and access on a paved public road.

The parcel has direct frontage and access to Old National Pike, a Comprehensive Plan designated minor arterial highway.

(G) In the LI District, the maximum allowable height for a child care center shall be 30 feet.

(Ord. 77-1-78, § 40-72(A-12), 1-24-1977; Ord. 82-19-263, 9-7-1982; Ord. 89-51-582, 8-15-1989; Ord. 95-02-126, 3-2-1995; Ord. 08-26-502, 10-14-2008; Ord. 09-21-525, 6-4-2009; Ord. 14-23-678, 11-13-2014)

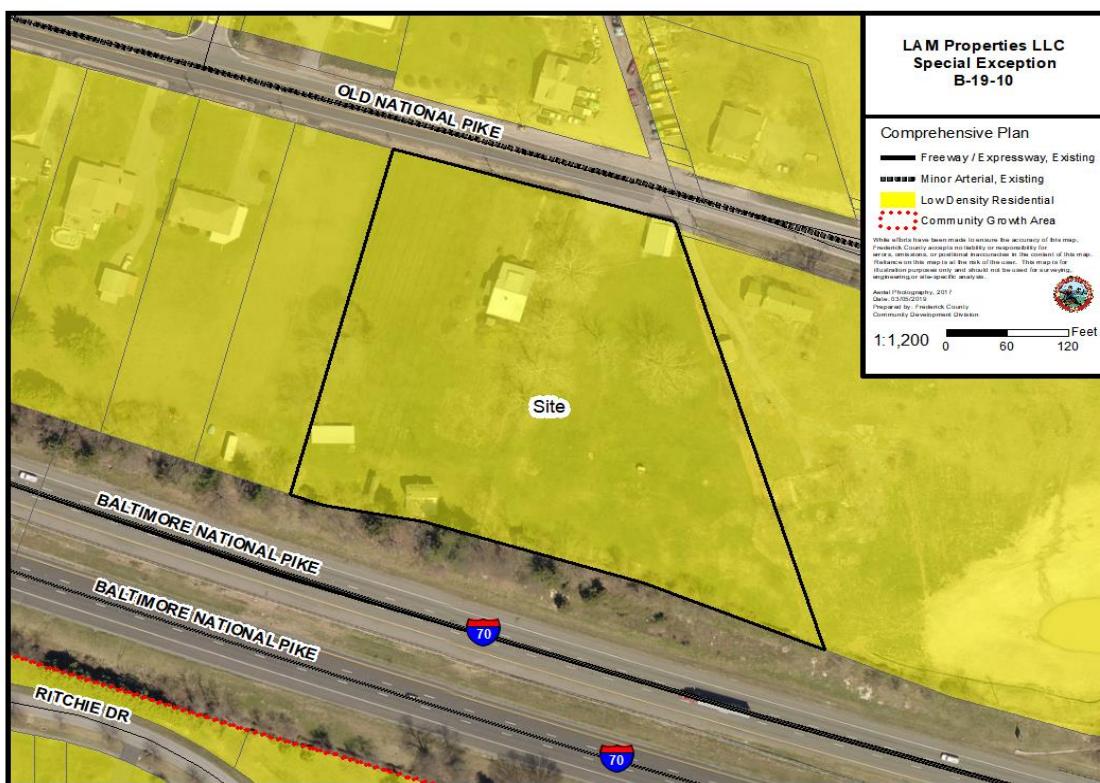
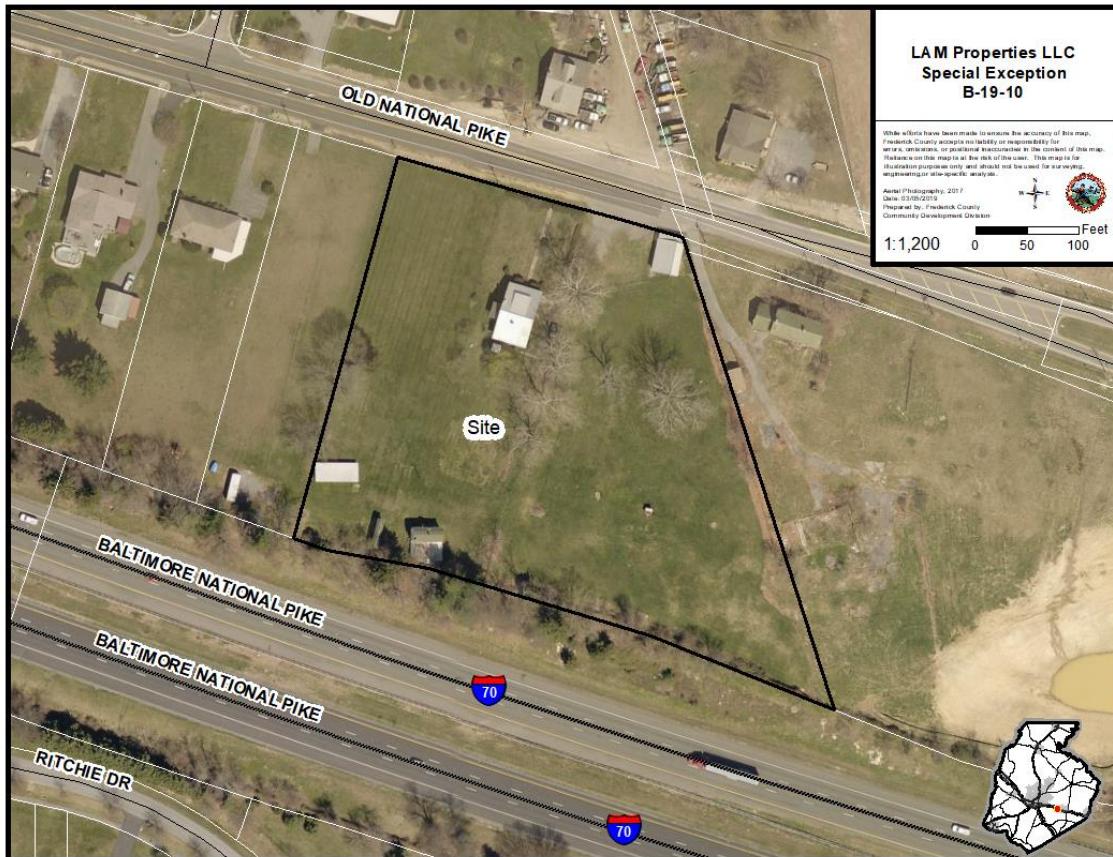
**Action Needed:**

Staff requests that the Board review the request for Special Exception as per Sections 1-19-3.210 (*Special Exceptions*) and 1-19-8.329 (*Child Care Center...*) and render a decision on the Applicant's request.

**Staff Conditions of Approval:**

In accordance with 1-19-5.310 Child Care Center/Nursery School is a principal permitted use as a special exception with site development approval. The Applicant will have to receive site plan approval in accordance with 1-19-3.300 prior to establishing this use.

## Site Maps:



## Site Maps (con't)

