

STAFF FINDINGS  
August 17, 2010

AGENDA ITEM # 1  
PROJECT #10-00000264

A request by Yanet Fernandez for a Special Use Permit to operate a social service organization (child and adolescent day treatment facility) at 2115 Forest Hills Road, W Suite A in a B-4 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 2115 Forest Hills Road, W Suite A in Wilson County, North Carolina.
- FACT 2: The property is also known as 3712-01-7864.000 (PIN).
- FACT 3: The property is zoned O&R-1, the “office and residential-urban” district. The surrounding properties are zoned and used as follows:
- NORTH – Commercial (B-4)
  - SOUTH – Commercial (B-4)
  - EAST – Commercial (B-4)
  - WEST – Multi-Family Residential – Under Development (RA-8)
- FACT 4: There is no listing for a child and adolescent day treatment facility in the Zoning Ordinance. Therefore, staff placed them in the closest appropriate zoning classification, which is social service organization. This is also the classification that we placed Hope Station (homeless shelter) and the previous day treatment facilities.
- FACT 5: Section 8.2.A of the City of Wilson Zoning Ordinance includes a “Table of Permitted Uses” for office & residential districts. That table lists a “social service organization, subject to a special use permit, as a use permitted in the B-4 zone. There are no special requirements for social service organizations.
- FACT 6: The proposed use is a Day Treatment Facility. The State of North Carolina define this as “a structured treatment service program that

builds on the strengths and addresses the identified functional problems associated with the complex conditions of each individual child or adolescent and family. These interventions are designed to support symptom reduction and/or sustain symptom stability at lowest possible levels, increase the individual's ability to cope and relate to others, support and sustain recovery, and enhance the child's capacity to function in an inclusive setting or to be maintained in community based services. It is available for children 3 to 17 years of age (20 or younger for those who are eligible for Medicaid).

FACT 7: The Land Development Coordinator recommends approval. Construction Standards recommends approval, subject to meeting all codes for education of school age children. The Fire Department recommends approval, subject to the following conditions; a fire alarm system is required and the building must comply with the NC Building Code.

FACT 8: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
  - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
  - (b) the application is incomplete, or
  - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the board of adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (a) will materially endanger the public health or safety, or
- (b) will substantially injure the value of adjoining or abutting property, or
- (c) will not be in harmony with the area in which it is to be located, or
- (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 8.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-8 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
  1. that the requested permit is within the jurisdiction of the Board to issue;
  2. that the application is complete; and
  3. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
  1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
  2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
  3. The Special Use Permit is granted for a child and adolescent day treatment facility, ONLY.
  4. That the applicant complies with all NC Building Codes and Fire Codes including, but not limited, to meeting all codes for education of school age children and a fire alarm system is required.

STAFF FINDINGS  
AUGUST 17, 2010

AGENDA ITEM # 2  
PROJECT #10-00000263

A request by Crystal Taylor Collins for a Special Use Permit to operate a Child Day Care Home – Small at 3106 Westshire Drive, N in a RA-8S zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 3106 Westshire Drive, N in Wilson County, North Carolina.
- FACT 2: The property is also known as 3713-85-0423.000 (PIN).
- FACT 3: The property is zoned RA-8S, a “single-family residential” district. The surrounding properties are zoned as RA-8S.
- FACT 4: Section 8.2.A of the City of Wilson Zoning Ordinance includes a “Table of Permitted Uses” for residential districts. That table lists a “child day care home - small, subject to a special use permit, and subject to the requirements of Section 19.10(C) as a use permitted in the RA-8S zone.
- FACT 5: Section 3.1 of the City of Wilson Zoning Ordinance is entitled “Definitions.” It includes the following definitions for “child day care” and “child day care home - small”:

*“Child day care.* Any child care arrangement wherein three (3) or more children less than thirteen (13) years of age receive care away from their primary residence by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child’s primary residence where other unrelated children are in care. Care is provided on a regular basis of at least once per week for more than four (4) hours per day.”

*“Child day care home - small.* A child day care in which day care is provided for three (3) to five (5) pre-school children, plus up to three additional school age children. Child day care operations permitted as a “child day care home” prior to January 4, 1996, shall be considered a “child day care home – small” and may continue to operate as a conforming use under the terms of their existing permit.”

FACT 6: Section 19.10(C) of the City of Wilson Zoning Ordinance lists the conditions for a “child day care home – small” as follows:

1. *As an accessory use.* Permitted as an accessory use operated by a church or religious institution on the same zoning lot and within buildings also used for religious activities.
2. *As a principal use.* Permitted only in a private residence occupied by the authorized operator.
3. *Indoor space.* At least twenty-five (25) square feet of inside space shall be provided for each child enrolled.
4. *Outdoor space.* Outdoor play area of one hundred (100) square feet for each child enrolled, with an eight hundred (800) square-foot minimum, shall be provided. Such outdoor play area shall be enclosed by a minimum four-foot tall security fence. Outdoor activities shall be limited to the fenced area, and may occur only between 8:00 a.m. and 8:00 p.m.
5. *Registration.* Registration with the state is required.
6. *In single-wide manufactured homes:* A single-wide manufactured may be used to provide care for not more than three (3) preschool-aged children, no more than two (2) of which can be of age two (2) years or less; plus an additional two (2) school-aged children (for a total of five (5) children, maximum).
7. *Location:* Except for any child day care home - small existing on January 4, 1996, no child day care home - small in the RA-6S, RA-8S, RA-10S, RA-12S and RA-15S districts shall be located closer than five hundred (500) feet to another child day care home - small.

- FACT 7: Paragraph “1” of Section 19.10(C) does not apply to this request.
- FACT 8: Paragraph “2” of Section 19.10(C) applies to this request. This premise was observed by the City Staff to be a private residence. The applicant resides on the premises.
- FACT 9: Paragraph “3” of Section 19.10(C) applies to this request. To meet the minimum requirement of paragraph “3”, this use at the maximum capacity (8 children) would require the residence to have a minimum of 200 square feet. According to the sketch plan the applicant submitted, with just the two rooms they plan to occupy for their daycare, they have 244 square feet, which is more than enough for the maximum number of children allowed.
- FACT 10: Paragraph “4” of Section 19.10(C) applies to this request. The applicant plans to use their rear yard that is in excess of the 800 square feet, for the outdoor play area. Prior to the preparation of these findings, City staff visited the site and observed that at least a four foot tall security fence would be needed for compliance.
- FACT 11: Paragraph “5” of Section 19.10(C) applies to this request. Approval will have to be subject to state registration.
- FACT 12: Paragraph “6” of Section 19.10(C) is not applicable to this request.
- FACT 13: Paragraph “7” of Section 19.10(C) applies to this request. According to city staff research and information we have available, it appears that the proposed location is greater than the 500-foot minimum separation from other day care homes.
- FACT 14: According to the Section 5.5.B one (1) space is required per 10 licensed attendees plus one (1) space per employee for a child day care home. If the applicant maximizes the number of children she can have as a child day care home – small a total of eight children will be allowed. In addition according to the applicant, she may acquire one nonresident employee in the future. Based on this information, two parking spaces will be required for the daycare, in addition to the two spaces required for the residence. As a result of a recent inspection, city staff noted that there is enough parking for two parking spaces for the daycare in addition to the two for the residence.
- FACT 15: The Land Development Coordinator recommends approval regarding his area of concern and made the following comments:

1. Must comply with all applicable federal, state and local rules, codes and ordinances;
2. Parking for four is available in the driveway;
3. Daycare will utilize two 10' by 11' rooms and a small bathroom;
4. Children will eat in the kitchen;
5. Applicant will install fence in the rear yard when the permit is approved.

FACT 16: The Fire Department recommends approval.

FACT 17: The Construction Standards recommends approval regarding their area of concern and made the following comment:

1. Must be for residential childcare and must meet the residential building code

FACT 18: According to the North Carolina Sex Offender and Public Protection Registry, on the day of the preparation of this report, the nearest registered sexual offender lives approximately 5,800 feet away in the 3300-block of Christopher Drive.

FACT 19: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
  - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
  - (b) the application is incomplete, or
  - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the board of adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and

information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (a) will materially endanger the public health or safety, or
- (b) will substantially injure the value of adjoining or abutting property, or
- (c) will not be in harmony with the area in which it is to be located, or
- (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 19.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-19 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
  - 4. that the requested permit is within the jurisdiction of the Board to issue;
  - 5. that the application is complete; and
  - 6. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
  - 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
  - 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
  - 3. The Special Use Permit is granted for a Child Day Care Home - Small, ONLY.

4. A security fence of at least four (4) feet in height shall be installed and maintained to completely enclose an outdoor play area of at least eight hundred (800) square feet in area, outdoor activities shall be limited to the fenced area, and they shall be limited to between the hours of 8:00 a.m. and 8:00 p.m. This fence shall be in place prior to opening for business. The security fence must be installed on the applicant's property.
5. Registration for operation at this location with the State shall be must be accomplished prior to the commencement of the business and shall be maintained.
6. A City Privilege License shall be obtained prior to opening for business and maintained or this Special Use Permit shall become void and of no effect.
7. Any signs displayed concerning this use shall meet all requirements of the Zoning Ordinance.
8. The applicant shall reside on this premises during the operation of this use or the permit shall be considered void and of no effect.
9. All yard trash and debris shall be removed prior to opening for business and be maintained in such fashion for the duration of the business.
10. The applicant must comply with all the recommendations of the Land Development Coordinator (as noted in FACT 15) prior to the commencement of the business.
12. The applicant must comply with the recommendations of Construction Standards (as noted in FACT 17) prior to the commencement of the business.
13. The residence must be inspected by the Fire Department, Construction Standards and the Health Department prior to the commencement of the business.

STAFF FINDINGS  
August 17, 2010

AGENDA ITEM # 3  
PROJECT # 10-00000020

A request by Jessie L. Adams for a Variance from Section 5.5 of the Zoning Ordinance to allow the applicant to operate at church that will not meet the parking requirements (25 parking spaces are required, the applicant is requesting no spaces) at 214 Walnut Street, W. in a RA-6 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

FACT 1: The property in question is located at 214 Walnut Street, W. in Wilson County, North Carolina.

FACT 2: The property is also known as 3722-00-5402.000 (PIN).

FACT 3: The property is zoned RA-6, a multi-family residential district. The surrounding properties are zoned as follows:

NORTH	- Industrial (I-1)
SOUTH	- Multi-family Residential (RA-6)
EAST	- Single-family Residential (RA-6)
WEST	- Industrial (I-1)

FACT 4: Section 5.5 of the City of Wilson Zoning Ordinance includes the parking requirements for church. The number of parking spaces required for a church is one (1) space per four (4) seats in the sanctuary. The applicant has stated that he would like to have 100 seats in the sanctuary. This would require 25 parking spaces.

FACT 5: Section 5.5 of the Zoning Ordinance also includes the parking requirements for various uses for the property.

FACT 6: On December 1, 2009, the applicant purchased the property. On January 5, 2010, the applicant meet with the Technical Review Committee to discuss what was needed to convert the existing warehouse space into a church. He was informed that a Variance

would be needed for the parking. The applicant applied for the Variance on January 19, 2010.

FACT 7: The applicant has stated that he has made arrangements for parking with the owner of the property at 113 Spruce Street, W. As of the date of the writing of these findings, staff has not seen any documentation of this agreement. This property is 260 feet from the applicant's property.

FACT 8: Section 5.2 of the Zoning Ordinance states that "the required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that one-half of the parking spaces required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays." Therefore, based on the 25 spaces required (see FACT 4), 12 spaces could be assigned to another lot. This would still required 13 spaces to be located on the applicant's lot.

FACT 9: Section 20.11(c) lists the conditions necessary for the granting of a Variance and the conditions are listed as follows.  
"To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship and so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.

No change in permitted uses may be authorized by variance. In considering all proposed variances to this ordinance, the board shall first find that all of the following conditions exist in each individual case:

- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the spirit of this ordinance because:
  - i. If the applicant complies with the provisions of this ordinance, the property owner cannot secure a reasonable return from, or make any reasonable use of, his property;  
and
  - ii. The hardship results from the application of this ordinance;  
and
  - iii. The hardship is suffered by the applicant's property; and
  - iv. The hardship is not the result of the applicant's own action;  
and

- v. The hardship is peculiar to the applicant's property and is due to the particular characteristics of the property because of its size, shape or topography that are not applicable to other lands or structures in the same neighborhood which may reflect an undue stringency of the Zoning Ordinance itself.
- (2) A variance will be in harmony with the general purpose and intent of this ordinance, will preserve its spirit and will do substantial justice. (Variances which change the district boundaries shown on the official zoning map, or which expand or extend a nonconforming use, or which permit a use forbidden by this ordinance, conflict with the "spirit" of this ordinance.)
  - (3) A variance will not impair an adequate supply of light and air to adjacent properties; will not materially increase the public danger of fire and safety; will not materially diminish or impair established property values within the surrounding area; and will not otherwise impair the public health, safety or general welfare.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

A hardship peculiar to the applicant as distinguished from others affected by the general rule must be shown. The fact that property may be utilized more profitably will not be considered adequate grounds to justify the board granting a variance.

The board may grant the minimum reasonable variance required to continue a use, either a nonconforming or conforming one, which has been rendered unusable by virtue of the widening of a public street.

The board is not a legislative body and has no power to rewrite the provisions of this ordinance. It may, however, vary the application of this ordinance in particular cases when the conditions enumerated above are found to exist. The power to grant variances is to be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature and with due regard to the main purpose of this ordinance to preserve the property rights of others."

PROCEDURE: The Board must proceed in accordance with Section 20.11(c) as quoted in FACT 9.

**RECOMMENDATION: Staff would like the opportunity to meet with the applicant and his designer to discuss possible parking options for this site. We feel this would be in the best interest of Mr. Adams and the City due to the unique topography of the site and the location of the existing structure. After this meeting, staff feels we will be able to make a recommendation to the Board. Otherwise, staff recommends you proceed as follows:**

- Move that Facts 1-9 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude (first option if the motion is to grant the variance, second option if the motion is to deny the variance):
  1. There **are/are not** practical difficulties or unnecessary hardships in the way of carrying out the spirit of this ordinance because:
    - i. If the applicant complies with the provisions of this ordinance, the property owner **cannot/can** secure a reasonable return from, or make any reasonable use of, his property; and
    - ii. The hardship **results/does not result** from the application of this ordinance; and
    - iii. The hardship **is/is not** suffered by the applicant's property; and
    - iv. The hardship **is not/is** the result of the applicant's own action; and
    - v. The hardship **is/is not** peculiar to the applicant's property and **is/is not** due to the particular characteristics of the property because of its size, shape or topography that are not applicable to other lands or structures in the same neighborhood which may reflect an undue stringency of the Zoning Ordinance itself.
  - (3) A variance **will/will not** be in harmony with the general purpose and intent of this ordinance, **will/will not** preserve its spirit and **will/will not** do substantial justice.
  - (3) A variance **will not/will** impair an adequate supply of light and air to adjacent properties; **will not/will** materially increase the public danger of fire and safety; **will not/will** materially diminish or impair established property values within the surrounding area; and **will not/will** otherwise impair the public health, safety or general welfare.