



NORTH CAROLINA
PLANNING & INSPECTIONS

PLANNING STAFF REPORT
SPECIAL USE CASE # BOA-2023-0005
Board of Adjustment Meeting: May 18, 2023

Location: 1391 Sand Hill Road
Jurisdiction: County-Unincorporated

EXPLANATION OF THE REQUEST

Special Use – Daycare in an A1 District

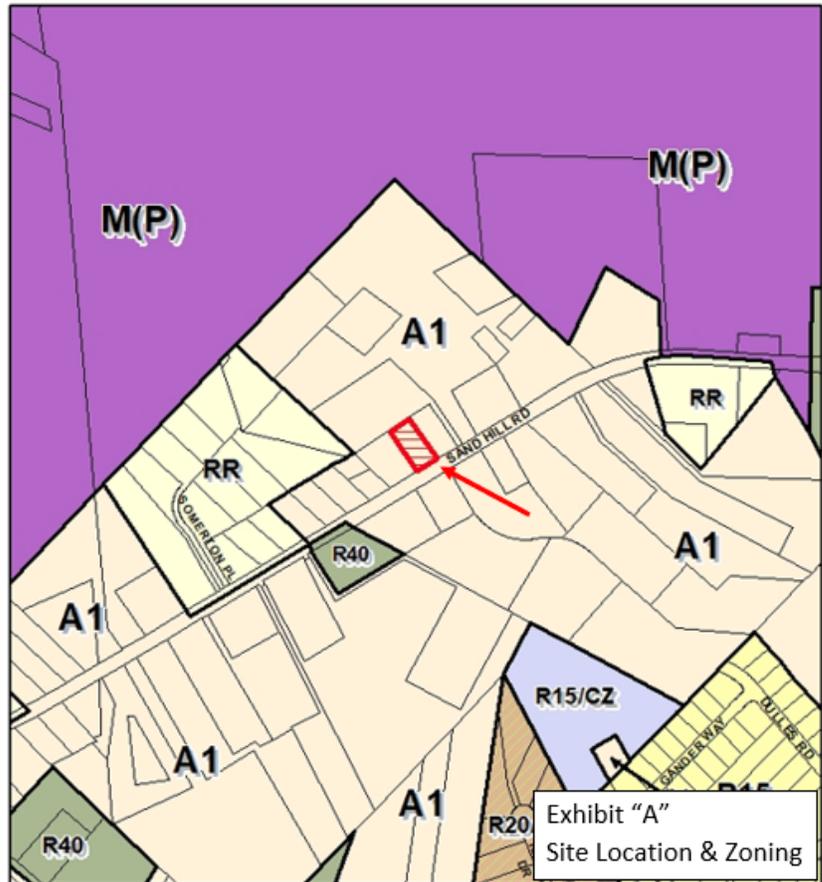
Property Owner requests the BOA grant a Special Use Permit for a day care facility at a location illustrated on Exhibit "A" and as delineated within the Special Use Site Plan (Exhibit "D"). The proposed site is owned by Gray's Creek Learning Academy Properties, LLC and is located on approximately 0.47 +/- acres. The property is located at 1391 Sand Hill Road.

A daycare facility within an A1 zoning district must obtain a Special Use approval from the Board of Adjustment, per Section 403, County Zoning Code, as shown in Exhibit "B" (attached). A daycare in an A1 zoning district must comply with the development standards and requirements set forth in Section 906 of the Zoning Code, including submittal of a site plan. Refer to Exhibit "C" (attached) for the development standards and requirements set forth in Section 906.

The property currently has a building that previously was occupied by Pamper, Hugs, & Luv's After School facility. This day care business closed and ceased operation at the start of 2020, and the owner now desires to re-open the day care.

County records indicate that a special use permit was never obtained in the past for a day care use at this property, making the previous day care business a legal, non-conforming use when it was in operation. As the day care business ceased operation for more than one continuous year, the once legal, non-conforming use automatically becomes a non-conforming use that cannot occur in the A1 zoning district until a Special Use Permit is issued by the BOA.

- Exhibits
- A. Site Location/Zoning
 - B. Use Matrix, Sec. 403, Zoning Code
 - C. Section 906
 - D. Special Use Site Plan
 - E. Existing and Adjacent Uses
 - F. Soil and Utilities
 - G. Special Use Permit Conditions
 - H. Sec. 1606 Applicant Response
- Attachment: Mailing list
Application



PROPERTY INFORMATION

OWNER/APPLICANT: Gray's Creek Learning Academy Properties, LLC, Owner; Eric McAllister, Agent

ADDRESS/LOCATION: 1391 Sand Hill Road REID: 0433310905000

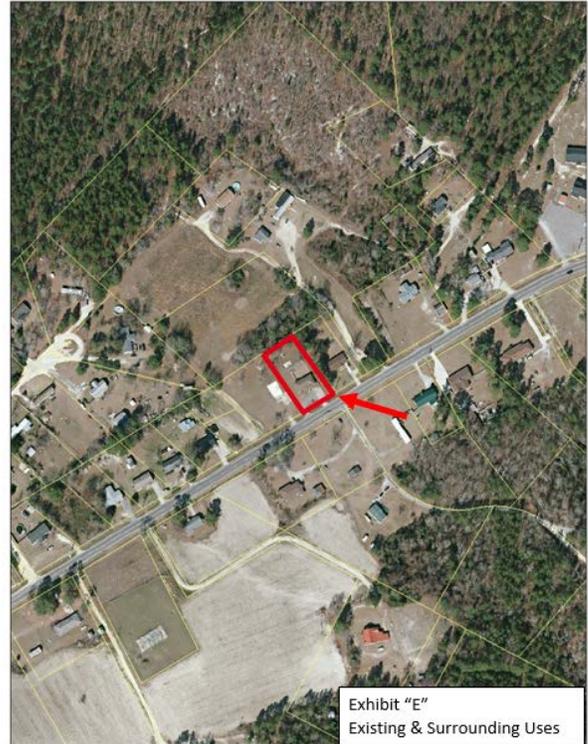
SIZE: 0.47 +/- acres

ROAD FRONTAGE: Road frontage along Sand Hill Road is 100 +/- linear feet.

EXISTING LAND USE: The property currently has a building that previously operated as "Pamper, Hugs, & Luv's After School" day care facility. The property is shown in Exhibit "D" (site plan) and "E" (existing use and surrounding uses.)

PROPOSED LAND USE: Day care business that will serve up to thirty to forty children and have two to three employees.

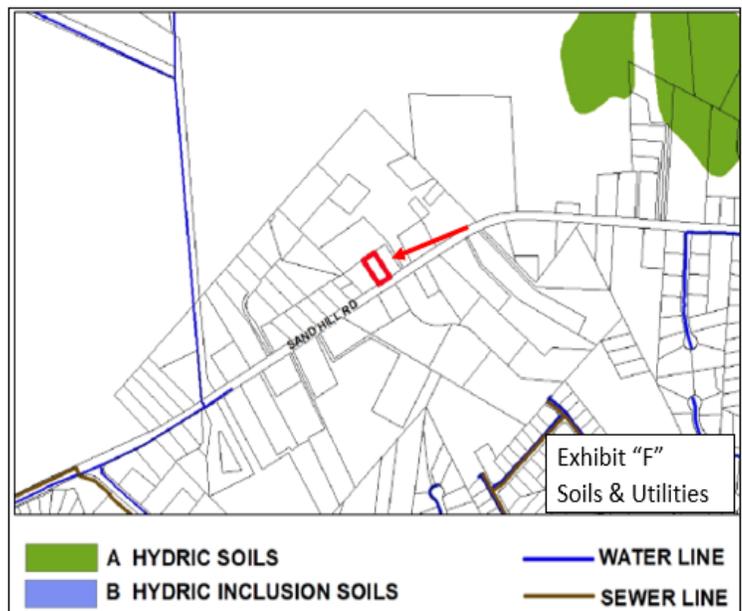
SURROUNDING LAND USE: Predominant uses in the surrounding area and adjacent properties comprise of single-family residential homes. Surrounding uses are shown on Exhibit "E".



OTHER SITE CHARACTERISTICS: The property is not located within a 100-Year Flood Zone nor situated within a watershed. There are no hydric or hydric inclusion soils on the property, as shown on Exhibit "F".

MINIMUM YARD SETBACKS: The proposed daycare would meet or exceed the minimum required setbacks as set forth in Section 906, County Zoning Code -- front yard 30 ft., rear 35 ft., and side 20 ft.

DEVELOPMENT REQUIREMENTS: If a special use permit is approved by the BOA, before the property owner can use the property for a Day Care facility, all applicable permits must be obtained from the Department of Health as well as other state agencies. Development conditions are provided in the attached draft special use permit. If changes are made to the interior of the building, building permits may be necessary.



IMPACTS ON LOCAL INFRASTRUCTURE

TRAFFIC: The subject property sits at Sand Hill Road and it is identified as a local road in the Metropolitan Transportation Plan. There are no roadway construction improvement projects planned and will have no significant impact on the Transportation Improvement Program. In addition, Sand Hills Rd has no 2021 AADT and no available road capacity data. Due to lack of data and the small scale, the new development request does not demand a trip generation. The new development should not generate enough traffic to significantly impact Sand Hills Road.

UTILITIES: Water and sewer lines are not available near the subject property. It is the applicant's responsibility to determine if this utility provider will serve their development. Utilities for water and sewer are shown on Exhibit "F". Well and septic will be required if public water and sewer lines are not available at the time of development.

ECONOMIC DEVELOPMENT: The staff from the Fayetteville Economic Development Commission have not identified any concerns.

EMERGENCY SERVICES: Cumberland County Fire Marshal's office has reviewed the request and stated that this location is already being inspected by their office as an educational/day care facility. Any new additions or renovations to the building or additions/modifications to the fire safety equipment are required to be permitted.

SPECIAL DISTRICTS: The subject property is not located within five miles of Fort Bragg Military base and is not located within or near the Fayetteville Regional Airport Overlay District.

APPLICABLE CODES

Use and development of the subject site must occur consistent with Section 906 of the Zoning Code, Case No. BOA-2023-0005 Site Plan (Exhibit "D"), and Special Use Conditions (Exhibit "G")

Special Use Key Conditions

Development and use of the property must occur consistent with the special use conditions of approval. Key conditions include the following:

1. Paved parking and a drive aisle must be constructed prior to operating the daycare facility.
2. All necessary permits, as applicable, must be obtained from the Health Department and any other state agencies prior to operating the daycare.
3. A more detailed site plan must be prepared consistent with the special use permit and submitted to the Current Planning Section of the Planning & Inspection Department for review.
4. The special use permit expires two years from the date of BOA approval unless the owner has obtained site plan approval from Current Planning Section. If the site plan expires, the special use permit will expire.

FINDINGS OF FACT

The proposed Special Use Permit is provided in Exhibit "G".

Pursuant to Section 1606.C. Special Use Permits, Consideration of Application, the Board of Adjustment must establish a finding of fact for the following criteria to approve the special use:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended.
2. The use meets all required conditions and specifications.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan.

Applicant's response to each of these criteria are provided within Exhibit "H".

MOTION

The BOA is requested to take action/motion based on the findings of fact, as supported by the Special Use Site Plan (Exhibit "D") and Special Use Condition (Exhibit "G"). Any motion to approve the special use includes approval of the Special Use Permit conditions and the Special Use Site Plan.

If a motion is made to approve the Special Use, then the below recommendation can be considered:

Motion to **approve** the Special Use for a day care subject to the conditions of approval in the Special Use Permit subject to the conditions set forth in the Special Use Permit and find that the special use:

- will not materially endanger the public health or safety if located according to the plan submitted and recommended,
- meets all required conditions and specifications,
- will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
- The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan.

The findings are based on facts supported by information in the Staff Report and Exhibit "H" applicant response.

If a motion is made to deny the Special Use, then the below recommendation can be considered:

Motion to **deny** the Special Use for a daycare because the use (at least one of the following must be included in the motion to deny)

- will materially endanger the public health or safety if located according to the plan submitted and recommended for the following reason ---
- will not meet all required conditions and specifications for the following reason ---
- will not maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity for the following reason ---
- The location and character of the use, if developed according to the plan as submitted and recommended, will not be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan for the following reason --.

EXHIBIT "C"
SECTION 906, INDIVIDUAL USES, ZONING CODE

SECTION 906 DAY CARE FACILITIES

A. For day care facilities located within any residential or agricultural zoning district, the following provisions must be complied with:

1. Minimum lot size shall be 20,000 square feet.
2. The required minimum setbacks shall be as follows:
 - a. Front yard: 30 feet from any public or private street;
 - b. Rear yard setback: 35 feet;
 - c. Side yard setbacks: 20 feet; and
 - d. Corner lots: shall provide a minimum of 30 feet from both streets.
3. Subject property must abut and have direct access to a major or minor thoroughfare or higher street classification, as identified in the Highway Plan, for all day care facilities located in residential districts.

B. Day care facilities allowed in zoning districts other than residential districts shall comply with the district dimensional requirements of the zoning district.

C. Minimum of two off-street parking spaces, plus one off-street parking space for each employee, shall be provided. Off-street parking shall be provided in accordance with the standards of Article XII.

D. There shall be sufficient paved driveway to accommodate at least two motor vehicles at one time for the purpose of loading and unloading passengers in addition to any off-street parking area.

E. All children's outside play areas shall be enclosed with at least a four-foot high fence and located only within the side and/or rear yards, provided the yards are not adjacent to a street. The horizontal/vertical spacing in the fence shall be a maximum of four inches and at a minimum the fence must comply with the guard opening limitations for spacing established in the most currently adopted North Carolina State Building Code.

Site Plan EXISTING LOT LAYOUT

1391 SAND HILL RD, FAYETTEVILLE NC October 21, 2022

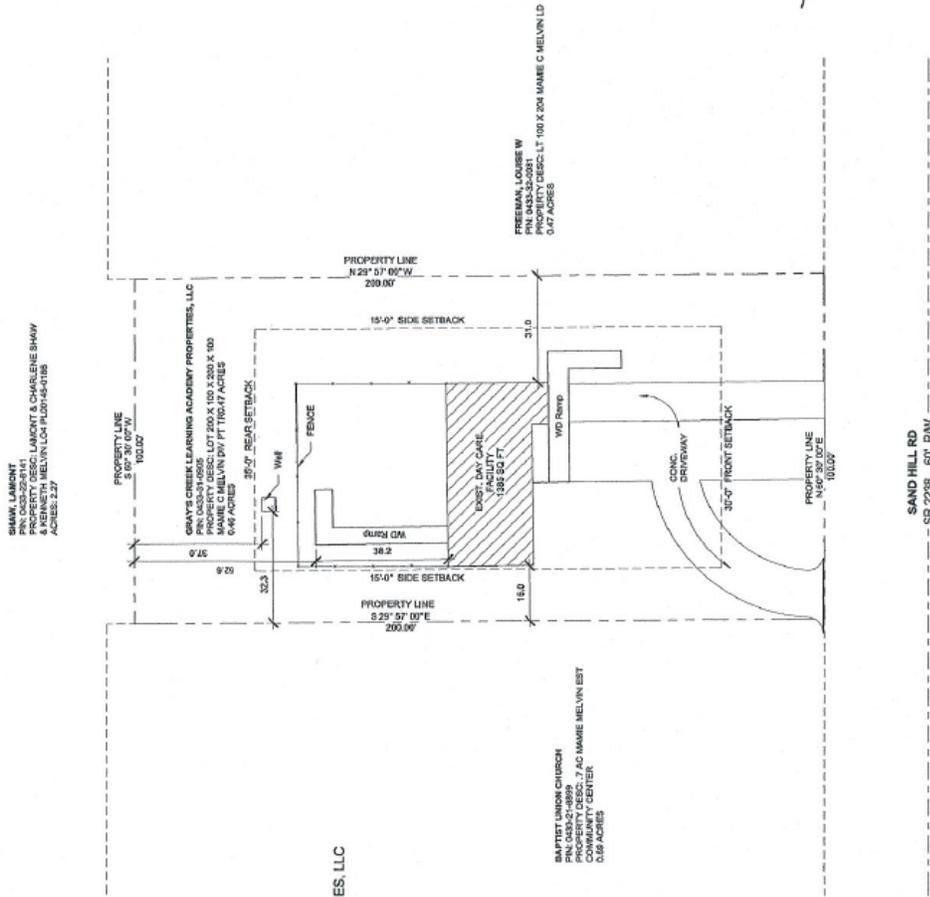


GENERAL NOTES:

1. This plan is a plan for record of existing site conditions. It is not intended to serve any official construction or regulatory permitting/approval processes.
2. Boundary, parcel information, existing site features indicated on this plan were obtained from Cumberland County GIS data, field data, and survey data submitted by Roy Haddock, Surveyor, P.C. (July 7, 1994). No survey of the subject property or surrounding tracts have been completed at this time. All dimensional data on this plan shall be considered approximate.

PROPERTY / PROJECT INFORMATION:
 PIN #: 0433-31-09005
 Deed Book / Page: 10672 / 0233
 Plat Book / Page: n/a
 Total Property Area (Acres): 0.47
 Property Area of Focus (Acres): ~0.47
 Property Address: 1391 Sand Hill Rd Fayetteville NC
 Owner Name: GRAY'S CREEK LEARNING ACADEMY PROPERTIES, LLC
 Current Zoning (Cumb. Co.): A1

- The layout of this site plan is based on existing conditions and does not provide information to approve future construction. This site plan is a record of existing site features/conditions and should only be used for reporting and planning purposes.



① Site Plan
 1" = 20'-0"

EXHIBIT "D" SPECIAL USE SITE PLAN

EXHIBIT "G"

SPECIAL USE PERMIT NO. BOA-2023-0005
Board of Adjustment Final Order
(Day Care Use in a R6A Residential Zoning District)

General Address: 1391 Sand Hill Road	Acres: 0.47 +/-
REID: 0433310905000 (May j2023)	Approval Date: May 18, 2023
Issued to: Gray's Creek Learning Academy Properties, LLC, Owner; Eric McAllister, Agent	Effective Date: May 18, 2023

Application Title: BOA-2023-0005: Consideration of a Special Use Permit to allow a Day Care Facility in an A1 Agricultural District on 0.47 +/- acres, located at 1391 Sand Hill Road; submitted by Eric McAllister (applicant) on behalf of Gray's Creek Learning Academy Properties, LLC (owners).

Conditions of Approval

The Board of Adjustment for County of Cumberland, having held a public hearing on Thursday, May18, 2023 and approved Special Use Permit No. BOA-2023-0005 to allow a day care within the 0.47 +/- acre parcel located at 1391 Sand Hill Road, subject to the special use site plan appearing in Exhibit "A" and the conditions of approval set forth herein.

Effective Date: May 18, 2023

Applicable Property: This special use permit is applicable to the property delineated within Exhibit "A" attached.

A. **Use Limitation:** The Special Use allows a day care to operate at the property identified in Exhibit "A" subject to compliance with the standards and conditions set forth herein this Special Use Permit. All day care uses of the property shall occur consistent with the Special Use Site Plan appearing within Exhibit "A," and consistent with County Subdivision and Zoning Ordinances for the R6A zoning district, including Section 916 of the Zoning Ordinance. If a conflict occurs among the Special Use Permit and the County Zoning Ordinance, the Special Use Permit shall supersede.

B. **Development Standards:**

1. All dimensional standards, setbacks and other related regulations shall occur consistent with the Cumberland County Zoning Ordinance. If a conflict occurs between standards set forth in the Special Use Permit and the Zoning Ordinance, the Special Use Permit shall supersede.

2. For day care facilities located within any residential zoning district (which this day care is), the following provisions must be complied with:

(1) Minimum lot size shall be 20,000 square feet.

(2) The required minimum setbacks shall be as follows:

- a. Front yard: 30 feet from any public or private street;
- b. Rear yard setback: 35 feet;
- c. Side yard setbacks: 20 feet; and
- d. Corner lots: shall provide a minimum of 30 feet from both streets.

3. Minimum of two off-street parking spaces, plus one off-street parking space for each employee, shall be provided. Off-street parking shall be provided in accordance with the standards of Article XII, Zoning Ordinance. There shall be sufficient paved driveway to accommodate at least two motor vehicles at one time for the purpose of loading and unloading passengers in addition to any off-street parking area.

4. All children's outside play areas shall be enclosed with at least a four-foot high fence and located only within the side and/or rear yards, provided the yards are not adjacent to a street. The horizontal/vertical spacing in the fence shall be a maximum of four inches and at a minimum the fence must comply with the guard opening limitations for spacing established in the most currently adopted North Carolina State Building Code.

5. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306.C, County Subdivision Ord.)

C. **Development Review Process:**

1. A final site plan with a landscape plan consistent with the County Zoning Code, including Section 1102.G, and this Special Use Permit, must be submitted to and approved by the Current Planning Section prior to any clearing, grading or construction activity, or any use of the site for a day care. Note: a special use site plan is not a final site plan. Any building permit application must also be submitted to the County Fire Marshal.

2. All applicable State agency permits to operate a day care, including septic system permits, must be obtained from the Department of Health and other applicable state agencies prior to commencing operation of the day care, and prior to any clearing or grading activities for any associated construction activity.

3. When applying for building permits for any proposed structure on this site, provide a copy of the approved final site plan and Special Use Permit. and approval prior to permit application to The Code Enforcement Section.

4. The owner/developer(s) of this property must obtain detailed instructions from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street on provisions of the County Zoning Ordinance and any permits that may be required to place any structure within this development or to commence any use of the subject property. For additional information, the developer should contact a Code Enforcement Officer. (Chpt. 4, County Code & Sec. 107, County Zoning Ord.)

5. This special use permit is contingent upon continued compliance with the Cumberland County Zoning and Subdivision Ordinances conditions set forth herein. Any modifications to the approved site plan shall require a revised site plan to be submitted to Current Planning Section for review and approval in accordance with the Zoning, Subdivision, and Watershed Protection Ordinances

D. **Expiration of Permit:** The special use permit expires two years from the date of BOA approval unless the owner has obtained site plan approval from Current Planning Section prior to the expiration date. If the site plan expires, this special use permit will expire.

E. **Advisories:**

1. Because the day care ceased for more than a year, the owner is advised to contact a licensed architect and the County Code Enforcement Division to determine if the existing building meets North Carolina Building Codes for a day care facility. Interior improvements may be required by the North Carolina Building Code.

Clarence G. Grier
County Manager

Sally Shutt
Assistant County Manager



Rawls Howard
Director

David Moon
Deputy Director

5. This special use permit is contingent upon continued compliance with the Cumberland County Zoning and Subdivision Ordinances conditions set forth herein. Any modifications to the approved site plan shall require a revised site plan to be submitted to Current Planning Section for review and approval in accordance with the Zoning, Subdivision, and Watershed Protection Ordinances

D. **Expiration of Permit:** The special use permit expires two (2) years from the date of BOA approval unless the owner has obtained site plan approval from Current Planning Section before the expiration date. If the site plan expires, this special use permit will expire.

E. **Advisories:**

1. Because the day care ceased for more than a year, the owner is advised to contact a licensed architect and the County Code Enforcement Division to determine if the existing building meets North Carolina Building Codes for a day care facility. Interior improvements may be required by the North Carolina Building Code.
2. This conditional approval is not to be construed as all-encompassing of the applicable rules, regulations, etc. which must be complied with for any development. Other regulations, such as building, environmental, health and so forth, may govern the specific development. The developer is the responsible party to ensure full compliance with all applicable Federal, State, and local regulations.
3. This conditional approval is contingent upon continued compliance with the Cumberland County Zoning and Subdivision Ordinances conditions set forth herein. Any modifications to the approved site plan shall require a revised site plan to be submitted to the Current Planning Section for review and approval in accordance with the Zoning and Subdivision Ordinances.

Issued by:

David B. Moon, AICP, NC-CZO

Date

The above Special Use Conditions are accepted by:



Eric McAllister, Agent for Gray's Creek Learning Academy Properties, LLC

5/12/23
Date

EXHIBIT "H"
APPLICANT'S RESPONSE TO SPECIAL USE CRITERIA AND APPLICATION
(Section 1606.C. Special Use Permits)

APPLICANT'S RESPONSE TO THE FOUR SPECIAL USE PERMIT CRITERIA
Section 1606, County Zoning Ordinance

(Instructions: applicant will respond to each of the four hardship criteria listed below and submit the report with the Variance Application.)

Section 1606. Special Use Permit

Consideration of Application. The Board of Adjustment shall consider the application, site plan and any other evidence presented in accordance with this article and may grant or deny the Special Use Permit requested. In granting a Special Use Permit, the Board shall find that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and proposed;

Applicant's Response:

No, the use of the property will not endanger the public health and safety of the community.

2. The use meets all required conditions and specifications;

Applicant's Response:

Yes, the use of this property will meet all the required conditions and specifications as outlined.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

Applicant's Response:

The use will maintain or enhance value of adjoining property and is a public necessity by providing child care services to a growing community.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan, either comprehensive or a detailed area plan.

Applicant's Response:

Yes, the location and character of use will be in harmony with the area it is located and provide a valuable service to the community.

ATTACHMENT: NOTIFICATION LIST

BAPTIST UNION CHURCH
PO BOX 250
HOPE MILLS, NC 28348

RAYE, TOWANDA J
1422 SAND HILL RD
HOPE MILLS, NC 28348

SANSBURY, IRENE LIFE ESTATE
1376 SAND HILL RD
HOPE MILLS, NC 28348

SHAW, LAMONT
1451 SAND HILL RD
HOPE MILLS, NC 28348

SANSBURY, IRENE LIFE ESTATE
1376 SAND HILL RD
HOPE MILLS, NC 28348

FREEMAN, LOUISE W
1401 SAND HILL RD
HOPE MILLS, NC 28348

GRAY'S CREEK LEARNING ACADEMY
PROPERTIES, LLC
PO BOX 294
ST PAULS, NC 28384

ATTACHMENT: APPLICATION