



Clarksburg Childcare: Preliminary Plan No. 120140050 with Final Water Quality Plan

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Staff Report Date: 7/7/17

Description

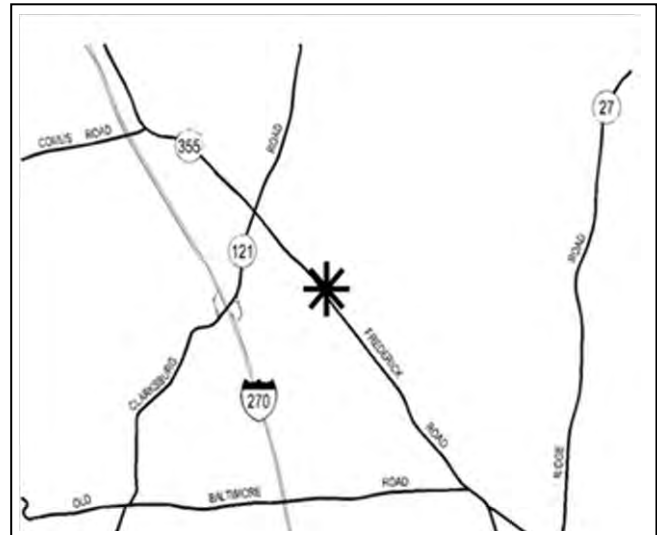
Request to convert an existing parcel to a lot to accommodate an approved special exception (S-2850) for a child daycare facility with no more than 52 children and 6 staff persons; Located on Frederick Road (MD 355), approximately 440 feet southeast of Suncrest Avenue; 1.05 acres; R-200 Zone; 1994 Clarksburg Master Plan & Hyattstown Special Study Area.

Application Acceptance date: 11/13/2013

Applicant: Michael and Shirley Vesper

Review Basis: Chapters 50 and 22A

Staff Recommendation: Approval with Conditions



Summary

- The Application was reviewed under the 2012-2016 Subdivision Staging Policy since it was accepted prior to January 1, 2017.
- The Application was filed before October 30, 2014 and was reviewed under the standards and procedures of the Property's zoning on October 29, 2014 (Old Code).
- The Application was accepted prior to February 12, 2017 and is therefore being reviewed under the old subdivision regulations.
- The Application is consistent with the recommendations of the 1994 Clarksburg Master Plan & Hyattstown Special Study Area.
- The Property is within the Clarksburg Special Protection Area.
- The Application includes a Final Water Quality Plan.
- The proposed lot meets the R-200 development standards.
- The Property is exempt from submitting a Forest Conservation Plan and does not require a Tree Save Plan under Chapter 22A.
- *Staff has not received any citizen correspondence on the Application.*

SECTION 1 – RECOMMENDATION AND CONDITIONS

Preliminary Plan No. 120140050: Staff recommends approval of the Preliminary Plan and associated Water Quality Plan, subject to the following conditions:

1. This Preliminary Plan is limited to one lot for a childcare facility with up to 52 children and 6 staff members.
2. The Applicant must comply with conditions of approval of the Montgomery County Board of Appeals Opinion dated April 26, 2013 for Special Exception S-2850.
3. Prior to record plat, amended plans for S-2850 that are consistent with the approved Preliminary Plan must be submitted to the Hearing Examiner.
4. The impervious surfaces on the Subject Property are limited to no more than 30.0 percent within the Special Protection Area (“SPA”), excluding any additional improvements within the right-of-way.
5. The Planning Board accepts the recommendations of the Montgomery County Department of Permitting Services (“MCDPS”) - Water Resources Section in its Combined Preliminary/Final Water Quality Plan/Site Development Stormwater Management Plan letter dated May 25, 2017, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDPS – Water Resources Section, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
6. The Planning Board accepts the recommendations of the Montgomery County Department of Transportation (“MCDOT”) in its letter dated February 11, 2014, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by MCDOT, provided the amendments do not conflict with other conditions of the Preliminary Plan approval.
7. The Planning Board accepts the recommendations of the State Highway Administration (SHA) in its letter dated October 12, 2016, and hereby incorporates them as conditions of the Preliminary Plan approval. The Applicant must comply with each of the recommendations as set forth in the letter, which may be amended by SHA, provided that the amendments do not conflict with other conditions of the Preliminary Plan approval.
8. Prior to issuance of access permits, the Applicant must satisfy the provisions for access and improvements as required by SHA.
9. The Planning Board accepts the recommendations of the MCDPS - Fire Department Access and Water Supply Section in its letter dated September 19, 2016, and hereby incorporates them as conditions of approval. The Applicant must comply with each of the recommendations as set forth in the letter, which MCDPS may amend if the amendments do not conflict with other conditions of Preliminary Plan approval.

10. The Applicant must dedicate and show on the record plat a dedication of 30 feet to ensure a total of 60 feet of right-of-way from the centerline of Frederick Road (MD 355) as shown on the Preliminary Plan.
11. The Certified Preliminary Plan must contain the following note:

“Unless specifically noted on this plan drawing or in the Planning Board conditions of approval, the building footprints, building heights, on-site parking, site circulation, and sidewalks shown on the Preliminary Plan are illustrative. The final locations of buildings, structures and hardscape will be determined at the time of issuance of building permit(s). Please refer to the zoning data table for development standards such as setbacks, building restriction lines, building height, and lot coverage for each lot. Other limitations for site development may also be included in the conditions of the Planning Board’s approval.”
12. The record plat must show necessary easements.
13. The Adequate Public Facility (“APF”) review for the Preliminary Plan will remain valid for sixty-one (61) months from the date of mailing of the Planning Board Resolution.

SECTION 2 – PROPERTY LOCATION AND DESCRIPTION

The subject property is located on the east side of Frederick Road (22929 Frederick Road), approximately 1,300 feet northeast of the intersection with Shawnee Lane. The Property is approximately 1.05 acre (45,665 square feet) in the R-200 zone (“Subject Property” or “Property”). The Subject Property is within the Transit Corridor District identified in the 1994 Clarksburg Master Plan & Hyattstown Special Study Area (“Master Plan”).

The Subject Property is adjacent to one-family detached dwellings zoned R-200 on the north, south and east. Frederick Road (MD 355) is adjoining to the west. The land west of MD 355 is “Dowden’s Station” a recently approved PD-4 Zone development. The Subject Property is improved with a ranch style single-family detached home, and an asphalt driveway with direct access to MD 355. The house is centrally located on the Property, approximately 100 feet from MD 355 and approximately 53 feet from the proposed Property line. The front and rear yards are predominately maintained as open lawn. The Property slopes down from the western corner to the eastern corner. The house is served by public water and a septic system. The septic field is located in the rear yard.



Figure 1 – Aerial View

The Property is located within the Clarksburg Special Protection Area and the Little Seneca Creek watershed, a Use Class IV-P watershed. The Countywide Stream Protection Strategy rates streams in this watershed as good. There are no streams, wetlands, 100-year floodplains, or environmental buffers located on or adjacent to the Property. Nor are there any steep slopes, highly erodible soils, or forests on the Property.

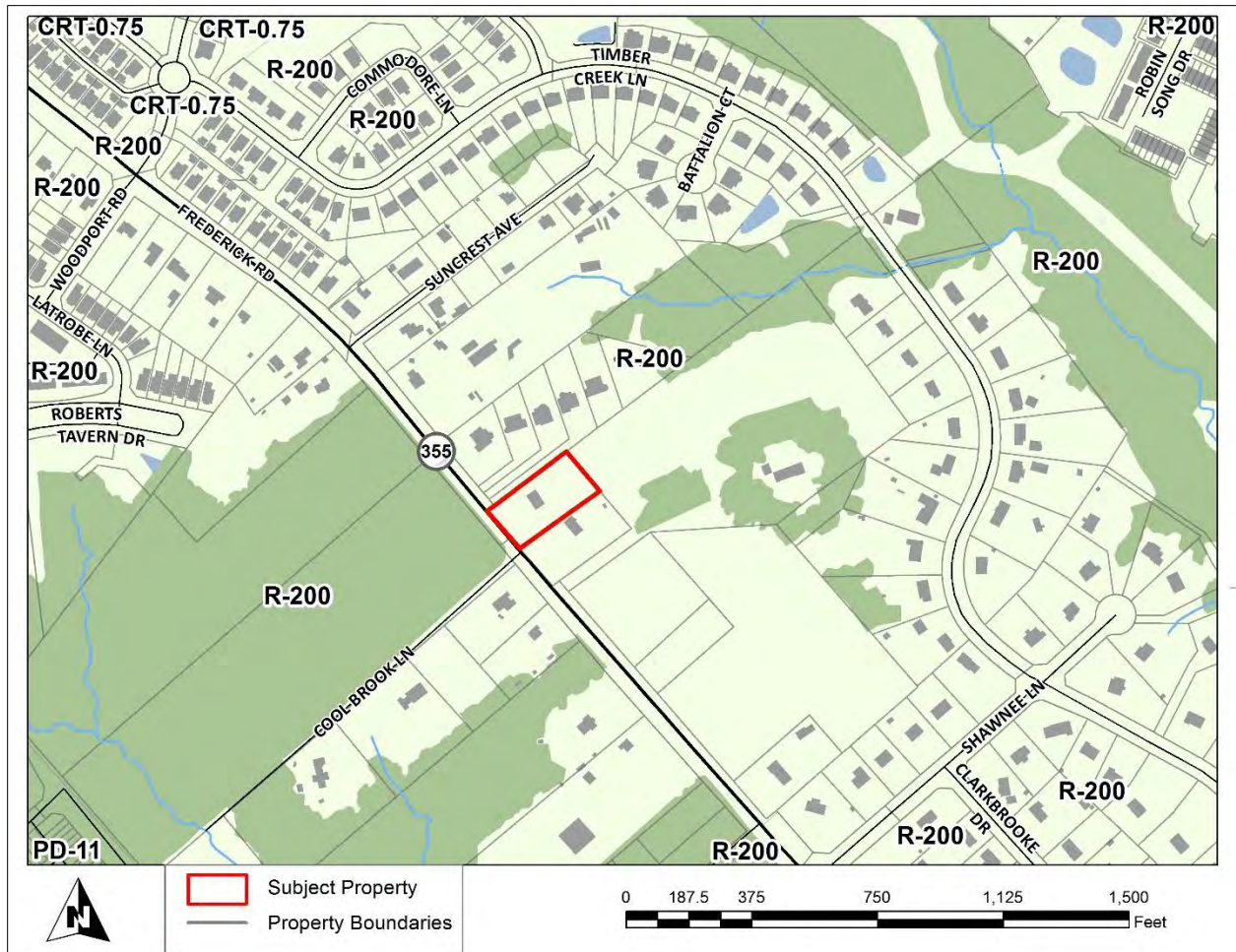


Figure 2 – Vicinity Map

SECTION 3 – PROPOSAL

Proposal

Preliminary Plan Application No. 120140050, Clarksburg Childcare Center (“Application” or “Preliminary Plan”) proposes to create one lot for a childcare center with up to 52 children and six staff. The center has an approved Special Exception Plan, No. S-2850. The Applicant is dedicating 4,659 square feet (0.107 acres) along the Property’s frontage on Frederick Road (MD 355) (Figure 3). The Applicant is installing a deceleration lane and access to the Property will be limited to right in and right out only. To accommodate the childcare center needs, the Applicant is improving the Property with a 1,150-square foot addition on the east side of the house and adding a 1,975-square foot outdoor play area. A parking area with 15 spaces will be constructed on the northside of the house, parallel to the Property line. The existing waterline will be upgraded by the Applicant and the Property will continue to be served by an on-site septic system. The required stormwater management and water quality plan goals will be met via a combination of micro biofiltration planter boxes, drywells and a bio swale. This Application is exempt from forest conservation under the small property exemption.



Figure 3 – Preliminary Plan

COMPLIANCE WITH PREVIOUS APPROVALS

The Montgomery County Board of Appeals granted approval of Special Exception S-2850, with conditions, pursuant to Section 59-G-2.13.1 of the Zoning Ordinance, to build and operate a childcare facility with up to 52 children and 6 staff members (“Special Exception”) (Attachment A, B, C & D). Landscape and Lighting plans were approved as part of the Special Exception application. To address SHA and M-NCPPC comments, minor changes to the approved Special Exception were necessary. The modifications include an increase in impervious surface, reconfiguration of the driveway apron, and limited changes to

landscaping and stormwater management, primarily resulting from changes required by SHA. The Application remains substantially unchanged from what was approved by the Hearing Examiner. As conditioned, the Preliminary Plan will comply with the conditions of the Special Exception approval. Prior to recordation of the plat, the Applicant is required to file an amendment with the Hearing Examiner which reflects the changes mentioned above.

SECTION 4 - ANALYSIS AND FINDINGS

A. Conformance to the Master Plan

The Montgomery County Board of Appeals found that Special Exception S-2850 substantially conformed with the 1994 Clarksburg Master Plan and Hyattstown Special Study Area ("Master Plan"). The proposed Preliminary Plan does not include any substantial changes to the layout, lot configuration and statement of operations that were included in the record of the Special Exception application. Therefore, this Application is also in substantial conformance with the Master Plan.

As discussed at the time of the Special Exception review, the Master Plan recognizes that as the Clarksburg Master Plan Area and Hyattstown Special Study Area grow, the demand for social services, including child care will increase. The Master Plan also states that "[h]uman services such as elderly day care, teen programs, child day care, and recreation, should be provided throughout the Clarksburg Master Plan Area and Hyattstown Special Study Area" (p.166). The proposed childcare facility will help accommodate the growing need for childcare in the Clarksburg area as envisioned by the Master Plan.

Master-Planned Roadway and Bikeway

In accordance with the 1994 *Clarksburg Master Plan* and the 2005 *Countywide Bikeways Functional Master Plan*, Frederick Road is designated as a four-lane divided arterial, A-251, with a 120-foot wide right-of-way. Frederick Road is also designated to have a shared use path, SP-72, on the opposite side of the road from the Subject Property (west side). The existing right-of-way is approximately 46 feet in front of the Subject Property and there are no bicycle facilities on either side of the road.

The Applicant is dedicating approximately 30 feet of right-of-way (0.107 acres) along the Property's frontage on Frederick Road (MD 355) to achieve the full master planned right-of-way width required for MD 355.

B. Adequate Public Facilities Review (APF)

Access and Parking

The Property currently has one existing access point on Frederick Road. Because the Property has inadequate site distance according to the Maryland State Highway Administration (SHA) standards, the Applicant has worked with SHA to design a right-in, right-out controlled access point on Frederick Road. Planning Staff defers to SHA on the final layout of this access point (Attachment E). The Applicant proposes a total of 15 parking spaces on the Property, including 1 van accessible handicap space. This provision meets the zoning requirement of 15 parking spaces (1 per non-resident employee and 1 per six students), consistent with the special exception approval.

A sidewalk is not proposed along the frontage of the Property pursuant to coordination between M-MCDOT and SHA staff during the review of the special exception in 2013. MCDOT deferred the decision to locate a sidewalk to SHA since MD 355 is a state highway. A sidewalk would be in the proposed state right-of-way and SHA's initial review of the project did not include a requirement for a sidewalk along the frontage of the Property.

Local Area Transportation Review (LATR)

The transportation Adequate Public Facilities-Policy Area Review test is under the old 2012-2016 Subdivision Staging Policy because the Preliminary Plan was filed before January 1, 2017. The Applicant submitted a traffic statement to show that a traffic study is not required to satisfy the LATR under the 2012-2016 Subdivision Staging Policy because the land use generates fewer than 30 total vehicular peak-hour trips within the weekday morning and evening peak periods.

The peak-hour trip generation estimated for the proposed development was based on trip generation rates established by M-NCPPC for daycare centers. Trip generation rates were calculated based on the number of staff as shown in the below table. The Subject Property is proposed to generate a total of 28 morning and 28 evening driveway trips before pass-by trips are considered. Since the proposed use will accommodate the daycare services of occupants of some vehicles that are already on the road traveling past the Subject Property and would access the Subject Property as a "pass-by" on their way to their destination, the overall driveway trips were reduced to account for these pass-by trips that were already on the road. When reducing the trips to account for pass-by trips, the net new trips added to the adjacent road network are 20 during the morning weekday and 24 during the evening weekday peak periods. Therefore, the Application satisfies the LATR requirements with their submitted traffic statement.

Table 1: Trip Generation Calculations

Development Calculation	Size & Unit or Adjustment Factor	Total Peak Hour Trips	
		AM Peak Hour	PM Peak Hour
Day Care Center	6 staff	28	28
Trips (Montgomery County Rate)		= 1.75 X Staff + 17	= 2.06 X Staff + 16
Pass-by Trip Reduction	AM: 27%, PM: 12%	- 8	- 4
Total Vehicle Trips to Adjacent Street		20	24

Transportation Impact Tax and Transportation Policy Area Review (TPAR)

The Subject Property is located in the Clarksburg Policy Area, which, according to the 2012-2016 Subdivision Staging Policy, is adequate under the roadway test but inadequate under the transit test; therefore, a 25% TPAR payment would have been required. However, as of March 1, 2017, MCDPS no longer collects TPAR payments and instead collects a new increased general impact tax for all building permit applications. Therefore, the Applicant will be required to pay the updated General District Transportation Impact Tax to MCDPS in lieu of the TPAR payment.

The Preliminary Plan has been evaluated by M-NCPPC Staff ("Staff") and the Montgomery County Department of Transportation, which supports the transportation elements of the Preliminary Plan as indicated in a letter dated February 11, 2014 (Attachment F). The proposed access to the Subject Property, as shown on the Preliminary Plan, is adequate to serve the development.

Other Public Facilities and Services

The Property is currently served by public water and an on-site septic system. The Property is located within the W-1 and S-3 water and sewer categories, which permit use of public water and sewer connections. Public sewer is not available at this time, but the Applicant will connect to sewer when it becomes available, consistent with the S-3 designation. For the time being, the Department of Environmental Protection's Water and Wastewater Policy Group has granted an exception for the use of an interim permit septic system (Attachment G). MCDPS Well & Septic Section has also reviewed and approved the proposed septic system. The house is currently connected to a 16-inch water main in Frederick Road via a ¾ inch copper water line. The Applicant proposes to replace the existing water line with a 2-inch waterline that will support the childcare center. The application has been reviewed by the Washington Suburban Sanitarian Commission, which determined that the existing water main is adequately sized and can serve the Property as proposed.

The Application has been reviewed by the MCDPS Fire Code Enforcement Section, which determined that the Property has adequate access for fire and rescue vehicles by transmittal dated September 19, 2016. (Attachment H).

C. Compliance with the Subdivision Regulations and Zoning Ordinance

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations that were in effect prior to February 13, 2017. As part of the Special Exception review, the Hearing Examiner granted an 18-foot side setbacks waiver for the parking facility, reducing the required setback from the property to the north from 24 feet to 6 feet. The lot size, width, shape and orientation are appropriate for the location of the subdivision, considering the approved parking setback waiver. The approved use of the proposed lot as a childcare center with up to 52 children and 6 staff includes a modest addition, parking lot with 15 parking spaces, outdoor play area, and septic field requires a larger lot size than the minimum required for the R-200 zone. The lot size and dimension are consistent with other lots in the area that also require large areas for septic fields. The rectangular shape and width of the lot can accommodate the approved lot layout and other site elements of the approved childcare facility when considering the necessary width at front building line, the setbacks of the zone and the

approved setback waiver. The Application also meets all other applicable requirements of the Subdivision Regulations including conformance with the Master Plan.

Table 2: Preliminary Plan Data Table – R-200 Zone Standard Method of Development (59-C-1.32)

Data Table	Zoning Ordinance Development Standard	Proposed for Approval by the Preliminary Plan
Minimum net lot area	20,000 SF min.	41,006 SF min.
Density (units/acre)	2.18 units/ 1 acre max.	Childcare Center with 52 children and 6 staff max.
Lot width at building line	100 ft. min.	150.4 feet
Lot width at street line	25 ft. min.	150.4 feet
Setbacks		
– Front	40 ft. min.	53 ft. min.
– Side	12 ft. min./ 25 ft. total min.	42 ft. / 92 ft. total min.
– Rear	30 ft. min.	161 ft. min.
Lot coverage	25 % max. / 10,251 sq. ft.	5.5% / 2,248 sq. ft. max.
Building height	50 ft. max.	18 ft. max.
Parking facilities adjoining residential zone (59-E-2.8)		
Parking Setback	2 x R-200 side yard setback = 24 feet	6 ft. ¹
Parking	9 spaces (1 sp. per 6 students) 6 spaces (1 sp. per employee)	15 spaces

¹Waiver granted by Hearing Examiner

The lot was reviewed for compliance with the dimensional requirements for the R-200 zone as specified in the Zoning Ordinance. A summary of this review is included in Table 2. The application has been reviewed by other applicable county agencies, all of whom have recommended approval of the plan.

D. Environment

SPA WATER QUALITY PLAN

This Application is within the Clarksburg SPA and was the subject of a Special Exception application and now is subject to a Preliminary Plan of subdivision. It is required to obtain approval of a water quality plan under section 19-62 of the Montgomery County Code. This section of the code states:

(b) Privately owned property. Except as otherwise expressly provided in this Chapter, the requirements for a water quality inventory and a preliminary and final water quality plan apply in any area designated as a special protection area to a person proposing a land disturbing activity on privately owned property:

(1) who is required by law to obtain approval of a development plan, diagrammatic plan, schematic development plan, project plan, special exception, preliminary plan of subdivision, or site plan;

Section 19-65(b) of the Montgomery County Code further notes, if the development proposal requires more than one of the approvals listed in paragraph (1), the applicant must submit a preliminary water quality plan to the Planning Director in conjunction with the first approval and a final water quality plan in conjunction with the last approval.

The Applicant previously submitted a Preliminary Water Quality Plan with the Special Exception application (S-2850) which was approved with conditions by the Planning Board on November 29, 2012 (Attachment I & J). The Applicant has now submitted a Final Water Quality Plan for review in conjunction with the Preliminary plan of Subdivision.

Review for Conformance to the Special Protection Area Requirements

Under the provisions of the law, the Montgomery County Department of Permitting Services and the Planning Board have different responsibilities in the review of a water quality plan. MCDPS has reviewed and conditionally approved the elements of the Final Water Quality Plan under its purview. The Planning Board's responsibility is to determine conformity with all policies in the Planning Board's Environmental Guidelines that apply to special protection areas; conformity with any policy or requirement for special protection areas, including limits on impervious area; and any other element of the plan for which the Planning Board has primary lead agency review responsibility, such as forest conservation.

MCDPS Special Protection Area Review Elements

MCDPS has reviewed and conditionally approved the elements of the SPA final water quality plan under its purview with a synopsis provided below (Attachment K).

Site Performance Goals

As part of the preliminary/final water quality plan, the following performance goals were established for the site:

1. Minimize storm flow run off increases
2. Minimize sediment loading
3. Maximize infiltration and recharge

Stormwater Management

The stormwater management concept proposes to meet the required stormwater management goals via installation of a combination of micro-bioretenion planter boxes, dry wells, and a bio-swale.

Sediment and Erosion Control

Silt fence alone will not be allowed as a perimeter control. The use of a super silt fence will be required as a minimum for sediment control with emphasis on immediate stabilization of disturbed areas.

Monitoring of Best Management Practices

Monitoring of BMPs is not required for the proposed Property improvements. Payment of the stream monitoring fee is required prior to the approval of the Sediment Control Plan. The stream monitoring fee computation is to be submitted for verification during the stormwater management/sediment control review process.

Planning Board Special Protection Area Review Elements

Environmental Guidelines

The Property is located within the Clarksburg Special Protection Area and the Little Seneca Creek watershed, a Use Class IV-P watershed. The Countywide Stream Protection Strategy rates streams in this watershed as good. There are no streams, floodplains, wetlands, or environmental buffers on or affecting the site. The Application is in compliance with the environmental guidelines.

Imperviousness

A main goal for new development in all SPAs is to reduce the amount of impervious surface. The Clarksburg SPA, which was created following approval of the Clarksburg Master Plan and subsequently amended, specifies no maximum imperviousness cap in this portion of the SPA.

The Property is zoned R-200. Impervious surface rates across the county for the R-200 zone are generally between 15.4% and 19.0%. There is no imperviousness cap within this portion of the Clarksburg SPA so Staff uses the general county average for the zone as a goal. At 29.2% the proposed project is higher than the upper goal of 19.0%. The Applicant had minimized usage of all impervious surfaces to the greatest extent possible while achieving the goals of the use and meeting all other county regulations (parking and ADA compliance).

At time of the Special Exception, the PWQP proposed a project with a post development condition of 10,300 square feet, or 22.6% impervious surface area on the 45,665-square foot Property and was included as a condition of approval of the PWQP.

The PWQP was submitted in conjunction with the Special Exception application, while the Final Water Quality Plan (FWQP) is submitted in conjunction with the Preliminary Plan. The FWQP (Attachment L & M) shows an increase in impervious surface. The Applicant, in response to agency comments, has increased the impervious surface on the site by 4,925 square feet and increased the gross tract area by 6,556 square feet; this would bring the overall project imperviousness to 29.2%.

The Applicant, in a Water Quality Plan Statement of Justification dated March 30, 2017 (Attachment N), describes the impervious surface increases and provides some explanations to why the impervious surface area has increased from the Preliminary Water Quality Plan. For the most part, the increase is due to refinement of the plan and additional requirements by various agencies.

The proposed plan shows increases in impervious surfaces in several areas, including State Highway Administration required roadway improvements, storm drain improvements, and Fire and Rescue Access Improvements. Some of these improvements include a widened driveway to meet SHA standards, which increased the driveway width from 20 feet to 22 feet, design and construction of a new partial deceleration lane, impervious surface hardscape to make the entrance a right-in right-out only access

point, replacement of the culvert under MD 355 and associated outfall improvements. These required elements were addressed by the Applicant with the intent of minimizing the amount of imperviousness needed to achieve the goals.

The regulatory design change elements fit within the “*minimize impervious*” requirement of the Clarksburg SPA.

Staff finds that the Applicant has reduced imperviousness while accommodating the program requirements and meets the impervious requirements of the Clarksburg SPA.

Staff recommends that the Planning Board agree to increase the amount of impervious surface being used and that the previously approved impervious cap be raised to 30% (29.2% as shown on the Final Water Quality Plan plus a margin of error for final design).

Forest Conservation

This project is subject to the Montgomery County Forest Conservation law (Chapter 22A of the County code) under section 22A-4(b) “a person required by law to obtain Special Exception approval or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a);” The site is 1.05 acres in size and contains no forest.

The Property was granted a forest conservation plan exemption (#42011129E) on March 17, 2011, under 22A-5(s)(1)¹ the small property exemption (Attachment O). Therefore, a forest conservation plan for the Property is not required.

The submitted plan meets all applicable requirements of the Chapter 22A of the Montgomery County Code (Forest Conservation Law).

E. Citizen Correspondence and Issues

The Application was submitted and noticed in accordance with all required procedures. Application signs were posted along the Property’s frontage on Frederick Road. The Applicant held a pre-submission meeting with the citizens at 7:00 p.m. on August 13, 2013 at Clarksburg Cottage on Stringtown Road.

Two community members attended the meeting where the Applicant presented the Preliminary Plan and answered questions regarding the proposed subdivision and its relation to the approved Special Exception. To date, Staff has not received any community inquiries or correspondence regarding this Application.

CONCLUSION

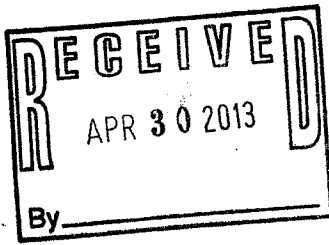
The proposed lot meets all requirements established in the Subdivision Regulations and the Zoning Ordinance and substantially conform to the recommendations of the *1994 Clarksburg Master Plan & Hyattstown Special Study Area*. Access and public facilities will be adequate to serve the proposed lot. The Application has been reviewed by other applicable county agencies, all of which have recommended

¹ 22A-5(s) (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet.

approval of the plan. Therefore, Staff recommends approval of the Application with the conditions as specified above.

Attachments

A, B, C & D – Special Exception S-2850
E – SHA Letter
F – MCDOT Letter
G – DEP Memo
H – MCDPS Fire Plans
I – Preliminary Water Quality Plan
J – MCDPS Preliminary Water Quality Plan Letter
K – Combined Stormwater Management Letter
L – Final Water Quality Plan
M – Final Water Quality Plan
N – Justification
O – FCP Exemption



**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**CORRECTED RESOLUTION
CONDITIONS OF APPROVAL**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2850

**PETITION OF SHIRLEY AND MICHAEL VESPER AND
CREATING MEMORIES CHILDREN'S LEARNING CENTER**

OPINION OF THE BOARD

(Opinion Adopted April 3, 2013)

(Effective Date of Opinion: April 26, 2013)

Case No. S-2850 is an application for a special exception, under Section 59-G-2.13.1 of the Zoning Ordinance, to permit a child daycare facility. The subject property is Parcel 696, located at 22929 Frederick Road, Clarksburg Maryland, 20871 in the R-200 Zone.

The Hearing Examiner for Montgomery County held a hearing on the application on January 25, 2013, closed the record in the case on March 18, 2013, and on that date issued a Report and Recommendation for approval of the special exception. On March 22, 2013, the Hearing Examiner issued an Errata Statement revising recommended Condition Nos. 2 and 3. On March 28, 2013, the Board received a letter from Casey L. Cirner, Esquire, on behalf of the Petitioners. Ms. Cirner submits a revised Landscape Plan in accordance with Condition No. 2, as revised in the Hearing Examiner's Errata Statement.

Decision of the Board:

Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation, together with the Errata Statement and the correspondence from Ms. Cirner, at its Worksession on April 3, 2013. After careful consideration and review, the Board adopts the Report and Recommendation, with Condition Nos. 2 and 3 as revised, opens the record to accept Ms. Cirner's letter of March 28, 2013, with the enclosed Revised Landscape Plan, and adopts the special exception subject to the following conditions:

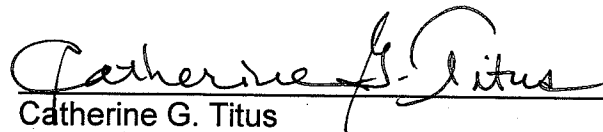
1. The Petitioner shall be bound by all of its testimony and exhibits of record, including its revised Statement of Operations (Exhibit 21(a)) and by the testimony of its witnesses and representations of counsel identified in the Hearing Examiner's Report and Recommendation and in this Opinion;
2. Petitioner shall submit to the Board of Appeals a revised landscape plan for inclusion in the record prior to a decision in this case that conforms in all respects to the Landscape Plan (Exhibit 20) submitted, except that it shall show an additional evergreen hedge or retaining wall a minimum of 3 feet high along the southern border of the upper parking area. Petitioner shall comply with all terms of the landscape plan as approved by the Board of Appeals.
3. Petitioner must comply with the terms of its revised Site Plan (Exhibit 18(b)), and its Lighting Plan (Exhibit 17(g)).
4. No more than 52 children and 6 staff members may be present on the site at one time;
5. Petitioners shall install a 6-foot Trex or other noise attenuation sight tight fence, with a minimum sound rating of Sound Transmission Class 19, on the south side of the outdoor play area;
6. All child drop-off and pick-up shall occur on-site; except for those children picked up or dropped off by public transportation;
7. All parking for special events held on the subject property shall occur within the parking area shown on the site plan (Exhibit 18(b));
8. No more than 25 children shall utilize outdoor play areas at one time;
9. Hours of operation are limited to 6:30 am to 6:30 pm, Monday through Friday, year-round;
10. No amplified sound or public address system of any kind shall be used outside of the building;
11. The facility must utilize residential trash service;
12. The exterior pole lights in the parking area shall be turned on only during the hours of operation;
13. The Petitioners must obtain approval of a Preliminary Plan per Chapter 50 of the Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the Petitioners

must file a copy of the revised site and related plans with the Board of Appeals;

14. No sign may be posted on the subject property unless and until Petitioner obtains a modification of this special exception approval, unless the sign (1) meets all standards for signs on residentially zoned property, (2) receives all necessary approvals from the Department of Permitting Services, and (3) is placed at the location shown on the approved site plan (Exhibit 18(b));
15. Petitioner must comply with all the conditions of approval of the water quality plan approved by the Planning Board and the Department of Permitting Services (Exhibit 11(a));
16. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility;
17. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioners are bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 1(c) and (d), certifying that the operator will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception;
18. 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. Petitioner 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, Vice-Chair, seconded by Carolyn J. Shawaker, with Stanley B. Boyd, John H. Pentecost and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

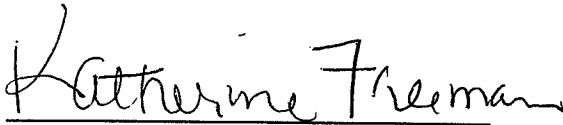
BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



Catherine G. Titus

Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
This 26th day of April, 2013.



Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

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.

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

**IN THE MATTER OF SHIRLEY AND
MICHAEL VESPER AND CREATING
MEMORIES CHILDREN'S LEARNING
CENTER, INC.**

Petitioners

Shirley Vesper
Victoria Bryant
Stephen E. Crum
Richard Washburn
Carl Wilson

For the Petitioner

Stephen Orens, Esquire

Casey Cirner, Esquire

Attorneys for the Petitioner

Philip Winter
Gloria Winter

Opposing the Petition

Before: Lynn A. Robeson, Hearing Examiner

Board of Appeals No. S-2850
(OZAH Referral No. 12-40)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. STATEMENT OF THE CASE

Filed on June 12, 2012, Petitioners, Shirley and Michael Vesper and Creative Memories Children's Learning Center, Inc., seek a special exception to permit construction of a child daycare facility pursuant to §59-G-2.13.1 of the Zoning Ordinance on property located at 22929 Frederick Road, Clarksburg, Maryland.

Technical Staff recommended approval of the application in a report dated November 16, 2012. Exhibit 19. The public hearing, scheduled for December 14, 2012 (Exhibit 15) was convened, but only to postpone the case to January 25, 2013, with the consent of the Petitioners, because the Hearing Examiner had not received the recommendation of the Planning Board. Exhibits 25 and 26. The Hearing Examiner received the Planning Board's recommendation to approve the special exception on December 20, 2012, subject to conditions and the recommendation that the Petitioners provide additional traffic and noise studies for the public hearing before the Hearing Examiner. Exhibit 27. The Petitioners submitted both studies prior to the public hearing. Exhibits 28(a) and 47.

The January 25, 2013, public hearing proceeded as scheduled. At the public hearing, the Petitioners' attorney reported that the sign posting the property had been removed within the last two weeks. The record was held open until February 11, 2013, to permit additional time for posting the sign and to permit those opposing the application, Mr. and Mrs. Philip Winter, an opportunity to respond to the traffic and noise studies and, if they wished, to request cross-examination of Petitioners' noise expert. 1/25/13 T. 229-230.¹ Mr. and Mrs. Winter had until February 7, 2013, to request cross-examination or provide a further response on the Petitioners' sound study.

The Petitioners submitted an amended Affidavit of Posting stating that the sign had been continuously posted from the day of the public hearing. Exhibit 49. The Hearing Examiner did not

¹ The remainders of the transcript citations in this report are to the January 25, 2013, public hearing transcript.

receive a request for cross-examination or a direct response from the Winter's to the noise study submitted at the public hearing. Through the Petitioners' attorney, however, she did receive questions posed to the sound consultant by Mr. Andy Roy, Mr. and Mrs. Winter's son-in-law and resident of the property immediately to the south. Mr. Roy submitted these questions directly to Petitioners' sound consultant on February 7, 2013, but did not submit them to the Hearing Examiner. Rather, Mr. Roy's questions were included in a submission from the Petitioners (dated February 12, 2013 (Exhibit 50(a)), along with the consultant's responses to Mr. Roy's questions (Exhibit 50(b)). While the consultant's responses were dated February 11, 2013, however, they were not submitted to the Hearing Examiner until February 12, 2013 (Exhibit 50). Receiving no objection to these submittals and because the discrepancy was minor, the Hearing Examiner issued an order dated March 18, 2013, re-opening the record solely to admit Exhibit 50 and the March 18th order. Exhibit 52. The Hearing Examiner further extended the time to submit her report (Exhibit 51) and the record closed on March 18, 2013.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property, zoned R-200, is located on the east side of Md. Route 355 (also called Frederick Road) approximately 2,300 feet south of Stringtown Road in Clarksburg, Maryland. Consisting of 1.05 acres, it is improved with a 2,780 square foot, one-story single family detached dwelling with an asphalt driveway on the north side of the property. A photograph submitted by the Petitioners (Exhibit 41(a), shown on the following page) shows the existing home.

Technical Staff reports, and the Petitioners' expert civil engineer confirms, that the property slopes gradually downward from the south and east to west and north, becoming



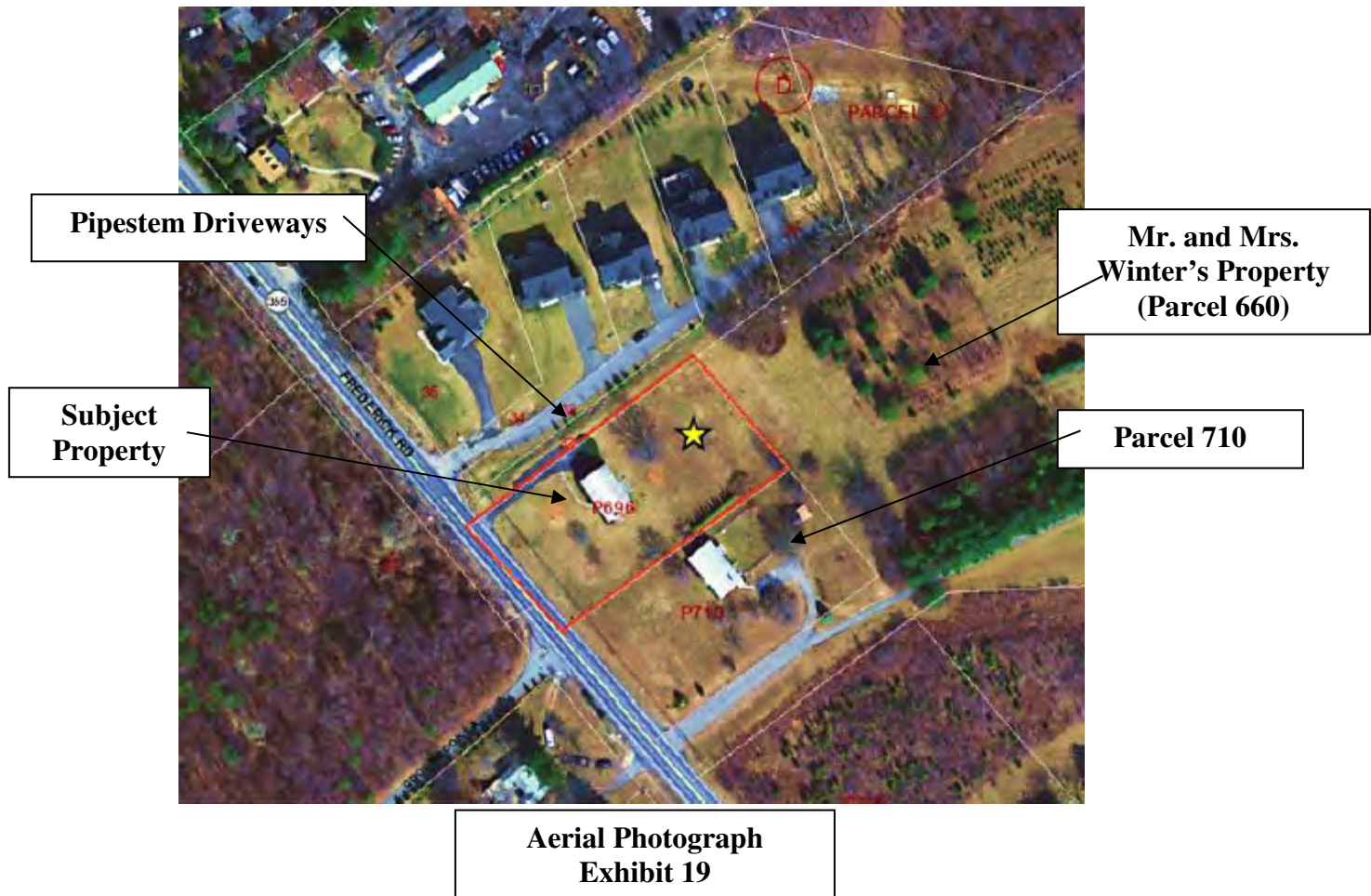
Exhibit 41(a)

steeper as it approaches the north and west property lines. Exhibit 19, p. 4; T. 110. The properties adjacent to the north are improved with five single-family homes each accessed by pipestem driveways. The driveways are adjacent to the property line; the homes themselves are approximately 75 feet from the subject property. Adjacent to the eastern property line is a 10-acre parcel (designated as Parcel 660 on the tax map) owned by Mr. and Mrs. Winter. To the south, the Winter's daughter and her husband own a one-acre parcel (Parcel 710 on the tax map).² An aerial photograph depicting the subject property and immediately surrounding uses, included in the Technical Staff Report (Exhibit 19, p. 4) is shown on the next page.

B. The Surrounding Area

For the purpose of determining the compatibility of the project, Technical Staff delineated the surrounding area to include the residential developments known as Gateway Commons, Garnkirk Farms and Clarksbrook Estates.

² In this Report, Mr. and Mrs. Winter's property will be referred to as Parcel 660 or "Winter's property" and their daughter's property as Parcel 710.



Staff characterizes the neighborhood as consisting primarily of single family residential dwellings and undeveloped parcels in the R-200 Zone “with the exception of a small area of RMX Zoned properties along Stringtown Road.” *Id.* A map from the Technical Staff Report, showing the border of Staff’s neighborhood in red, is on the next page.

The Petitioners delineate a smaller neighborhood that includes the surrounding properties zoned R-200, but excludes the RMX developments to the north, also shown on the following page. (Exhibit 22(a), Attachment B). Ms. Victoria Bryant, the Petitioners’ expert land planner, testified that the northern border of the neighborhood as she defines it runs along properties to the north of Suncrest Avenue along Timber Creek Lane to the east, Shawnee Lane to the south, and generally to the rear property lines of properties fronting Md. Route 355 to the west. T. 27-28. While acknowledging that the neighborhood she delineates is smaller than that defined by



Staff Delineation of Neighborhood (Ex. 19, above)



**Petitioners' Delineation of Neighborhood
(Exhibit 22(a), above)**

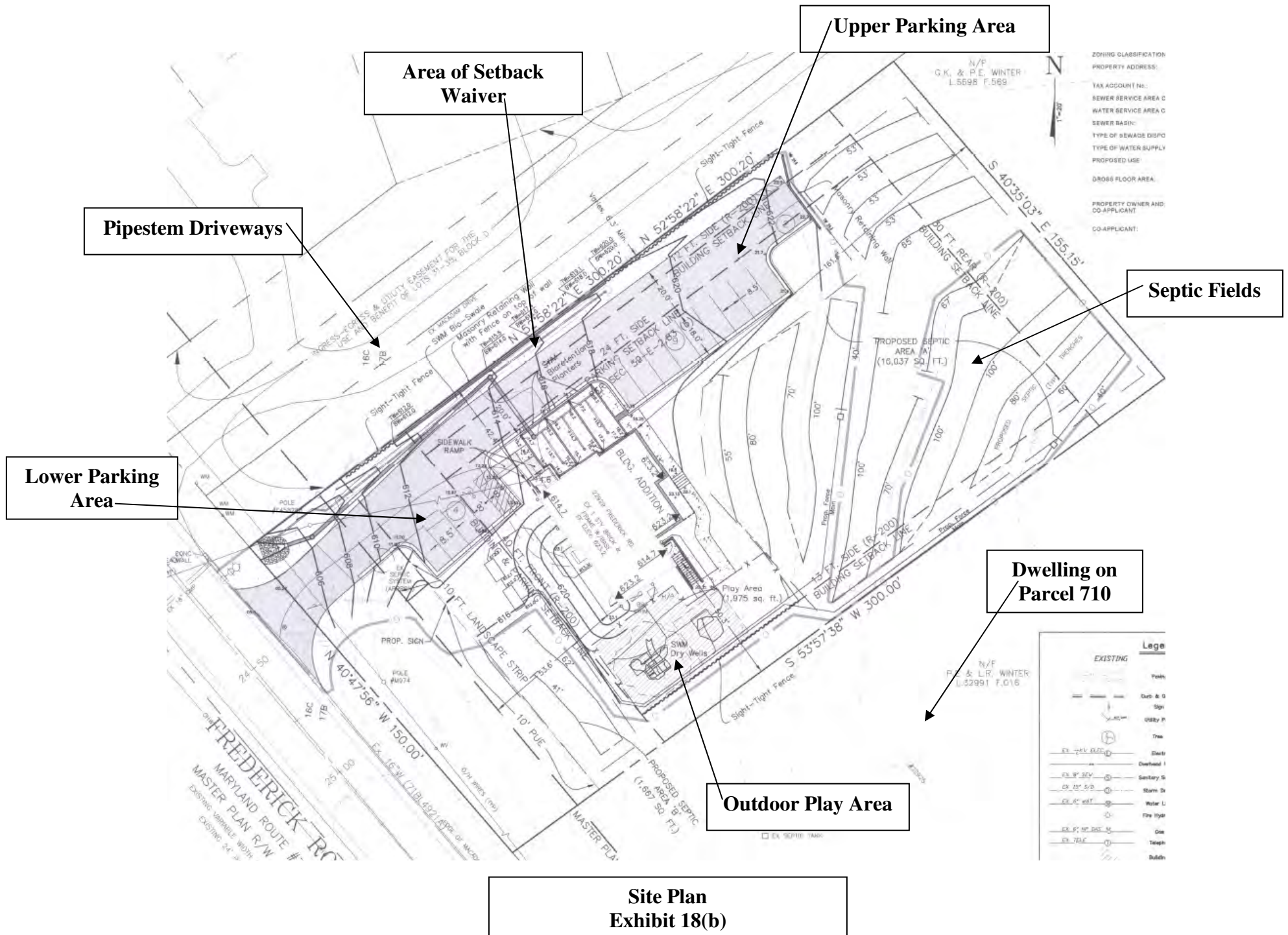
Technical Staff, Ms. Bryant believes that there is no significant difference between the two. She used the smaller neighborhood boundaries to follow those properties identified in the Master Plan as being in the "Transit Corridor". The properties included by Staff to the north are in the RMX Zone, which are single-family detached homes, although more compactly developed. She believes that both delineations are characterized by properties with a variety of sizes and shapes; addition of the RMX development just adds to the diversity. T. 28.

The Hearing Examiner agrees with Staff's larger delineation of the neighborhood. Neighborhoods generally include those properties which will be impacted by the proposed development. Because of the proximity of these homes to the subject property, the fact that they may utilize the daycare use, and the fact that both are located proximate to Frederick Road, the Hearing Examiner finds that the larger delineation is appropriate here.

At the same time, the Hearing Examiner agrees with Petitioners' expert that the larger delineation does not significantly change the character of the neighbor because she agrees that the addition of the RMX-zoned properties only changes the compactness of development, but does not change the single-family detached character of the neighborhood.

C. Proposed Use

Petitioners propose to modify the existing dwelling on the property for use as a daycare facility. These modifications are both exterior and interior and include a 1,150 square foot addition on the rear of the existing structure. Technical Staff and the Petitioners agree that the total size of the daycare will be 3,930 square feet on two levels of 1,965 square feet each. Exhibit 19 and 21(a), p. 6. Exterior modifications to the existing improvements include widening the driveway to meet commercial standards, creating a parking area to the north with 15 spaces, and adding a 1,975 square foot outdoor play area on the southern side of the building. A site plan submitted by the Petitioners (Exhibit 18(b)) is reproduced on the following page.



In order to upgrade the driveway to commercial standards and create the parking area, Petitioners' are requesting an 18-foot waiver of the minimum setback for parking facilities set forth in §59-E-2.81 of the Zoning Ordinance, which requires a setback equal to the building setback in the underlying zone.³ According to Technical Staff, the driveway/parking is set back approximately 6 to 7.7 feet from the northern property line and the required setback in the R-200 Zone is 24 feet, as discussed more fully below. Exhibit 19, p. 10.

1. Site Plan and Exterior Modifications

Ms. Bryant described the site plan (Exhibit 18(b), shown on page 9) and exterior site modifications. The existing driveway will be widened to 20 feet. Upon entering the driveway, there will be 4 parking spaces on the right side (referred to as the "lower" parking area) with an ADA accessible van space. The site plan proposes two entrances; the handicapped space will be close to an entrance on the northern side of the property through a covered porch. People parking in the lower level may enter there or by following a sidewalk leading to the basement. An additional 11 parking spaces are located to the rear of the building (the "upper" parking area). A path along the rear of the property leads to the outdoor play area. The play area may also be accessed from the lower level through a staircase and the upper level through a sidewalk. T. 34-35. The addition extends from the rear of the dwelling toward the eastern property line. Septic fields are located in an open area on the southeast portion of the property. T. 113-114.

According to Ms. Bryant, the outdoor play area will have Little Tykes play equipment with an engineered wood surface, examples of which are shown on the site plan detail (Exhibit 17(e), on the next page). T. 45.

The northern, eastern and western sides of the playground will be enclosed by a black vinyl chain link fence. The vinyl coating reduces the visibility of the fence. A Trex sight-tight

³ This waiver applies only to the parking facility. No setback variance is required for the building itself. T. 59.



PLAY SURFACE
NOT TO SCALE

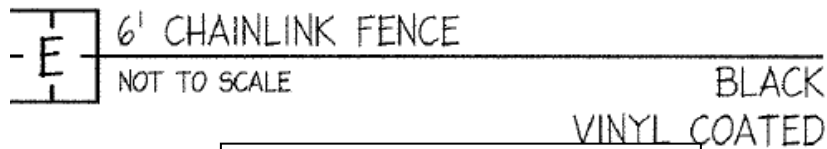
SYSTEM 1
ENGINEERED WOOD FIBER

**Playground Materials and Equipment
Exhibit 17(e)**

fence will screen the playground from the Winter's property along the southern boundary. The fence is setback 13 feet from the property line. Examples of the sight tight fence and the black vinyl chain link fence, are shown on Petitioners' Exhibit 17(b), below and on the following page:



SIGHT TIGHT FENCE
NOT TO SCALE



**Site Plan Detail
Exhibit 17(b)**

According to Ms. Bryant, the Trex sight tight fence has some sound attenuation qualities. T. 46. She submitted a report from Mr. George Spano, a senior consultant with Polysonics, an acoustics and technology consulting firm, concluding that noise levels at the property southern property line (with the Trex fence) will reach a peak of between 60 and 63 dBAs and average 60 dBAs. T. 52; Exhibit 47. This is discussed more fully in Section II.F.1 of this report.

The Petitioners' expert architect, Mr. Richard Washburn, testified that many of the existing exterior materials will be retained to enhance the residential appearance of the building. Petitioners submitted rendered elevations of the facility, shown on the next page. While the roof will have a higher pitch, the eave height will remain the same. Petitioners propose to add dormers to the roof to provide natural light and space for the classrooms. T. 142, 151. The



REAR ELEVATION



LEFT SIDE ELEVATION



RIGHT SIDE ELEVATION



FRONT ELEVATION

Rendered Elevations
Exhibit 40

existing front door, which is now on the left side of the front window, will be located on the right side and will serve as an exit door for a classroom. Petitioners propose to keep the exterior brick façade and will continue to use shutters around the windows.

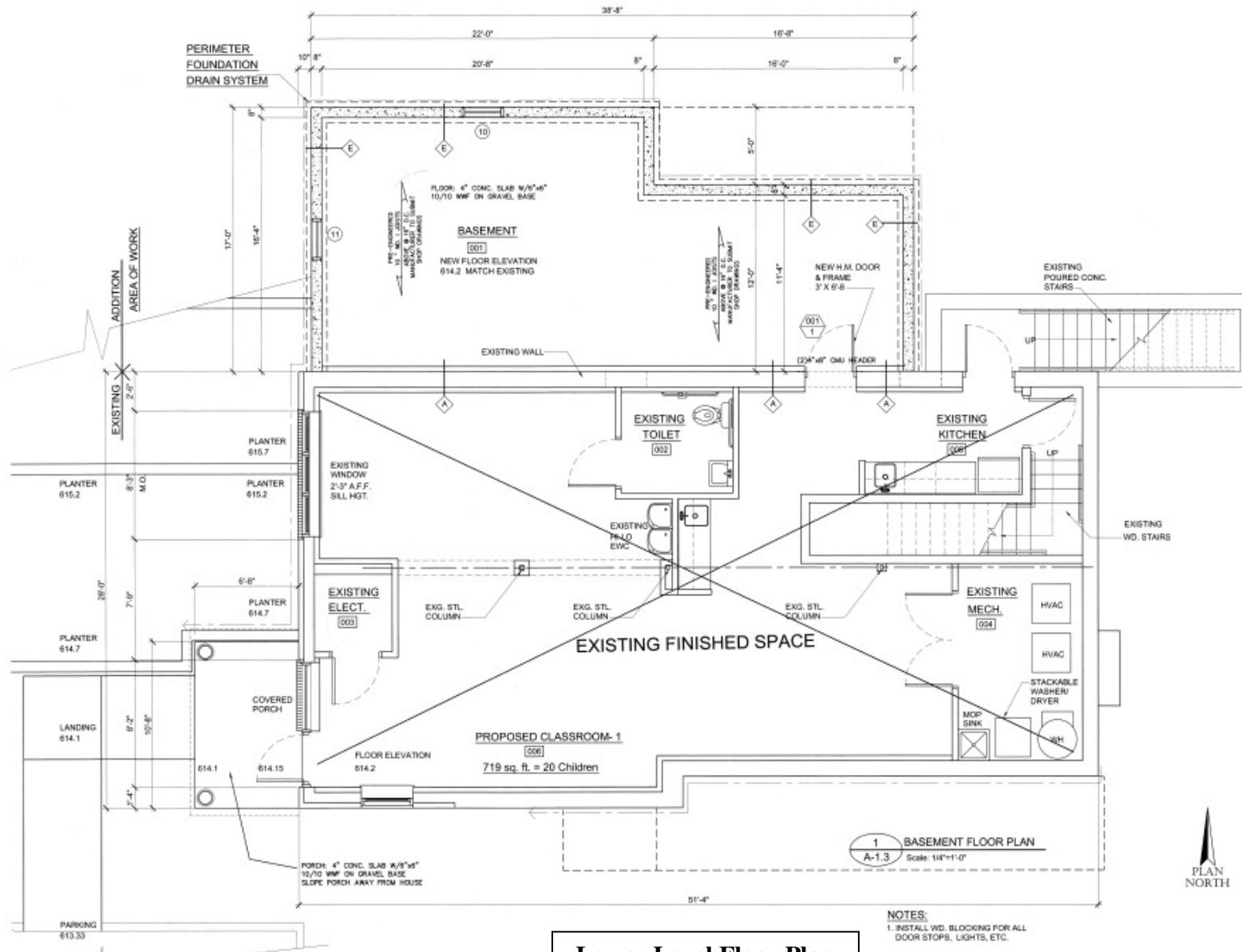
The addition is located on the rear (or east side) of the building. Mr. Washburn testified that he used a reverse gable roof to prevent the addition from being visible from the front of the property. There will be another entrance to rear of the building, and the addition will have hardy-board siding. T. 144. Mr. Washburn opined that the proposed building will be consistent with the residential character of the neighborhood. The addition will look like a bedroom or kitchen that has been added to the home. T. 145. From the front of the property along Frederick Road, the addition will not be visible. T. 146.

Few changes to the façade of the southern side are proposed. It will still have a chimney, shingle roof, and an eight-foot eave height. The overall height of the building will be 24 – 25 feet at the ridge. T. 143.

Mr. Washburn also described the floor plan of the modified structure. The building's interior will consist of a basement and first floor. The dormers are used to provide space and light; they are not a second story. T. 147.

The lower level has an ADA compliant entrance from the front (lower) parking lot where the handicapped space is located. It houses a classroom, utility spaces, a handicapped accessible bathroom, and a storage area. The storage area has high windows, and has not been designed for classroom space. T. 148. There is a second exit to the rear of the building and one to the play area. T. 148. An interior stairway leads to the upper level, which contains a small kitchen, office, restroom, and four classrooms. T. 149. Each classroom has an exterior exit, which is a code requirement. T. 150. Floor plans for each level (Exhibits 42 and 43), are shown on the next pages.

S-2850, Creating Memories Children's Learning Center
and Shirley and Michael Vesper



**Lower Level Floor Plan
Exhibit 42**



2. Operations

Ms. Vesper testified that the daycare will offer a full-time program for infants and children up to five years of age and a before and after care program for children between six and 12 years old. T. 190. It will operate between the hours of 6:30 a.m. to 6:30 p.m., Monday through Friday. Staff will arrive and depart 10-15 minutes before and after the operating hours. Ms. Vesper testified that there will be a maximum of 52 pupils and 6 staff members on site at one time. More than 52 students may be enrolled because some students are part time and two children may share one spot. T. 189. Staff and children will arrive and depart at staggered intervals. According to Petitioners' Statement of Operation, children will begin to depart between 4:00 p.m. and 5:30 p.m., by which time approximately 60% of the children will have left the facility. Exhibit 28(b), p. 5.

According to Ms. Vesper, two classes will be in the outdoor play area with a maximum number of 25 children at one time, although they generally average about 20 children. Children will be in the playground between the hours of 9:00 a.m. to 12:00 p.m. and 2:30 p.m. to 6:30 p.m. In cold weather, children are generally out for 15 minutes at a time, although on nice days they may be out for as much as 25 minutes. Two teachers are out on the play area with the children at all times. T. 197. They usually begin taking children out between 9:00 a.m. and 9:30 a.m. and they are usually back inside the daycare by 11:30 a.m. The center will typically have a "quiet time" between 12:30 p.m. and 2:30 p.m. They begin phasing the children back out to the playground at approximately 3:00 p.m. and stay there until 5:00 p.m. depending on weather conditions. T. 198.

Petitioners propose three special events during the year: a Christmas celebration, graduation, and possibly one for the school's anniversary. T. 190. The celebrations are held in the evenings and are done one class at a time with 15-minute breaks between; the facility will

close early the day of the celebration. The maximum number of children permitted in each class will be 15 students. The graduation is limited to 4-5 year olds. Therefore, other students will be vacating the building while the event begins. In her experience, the 15 parking spaces will be adequate for special events. T. 192-193.

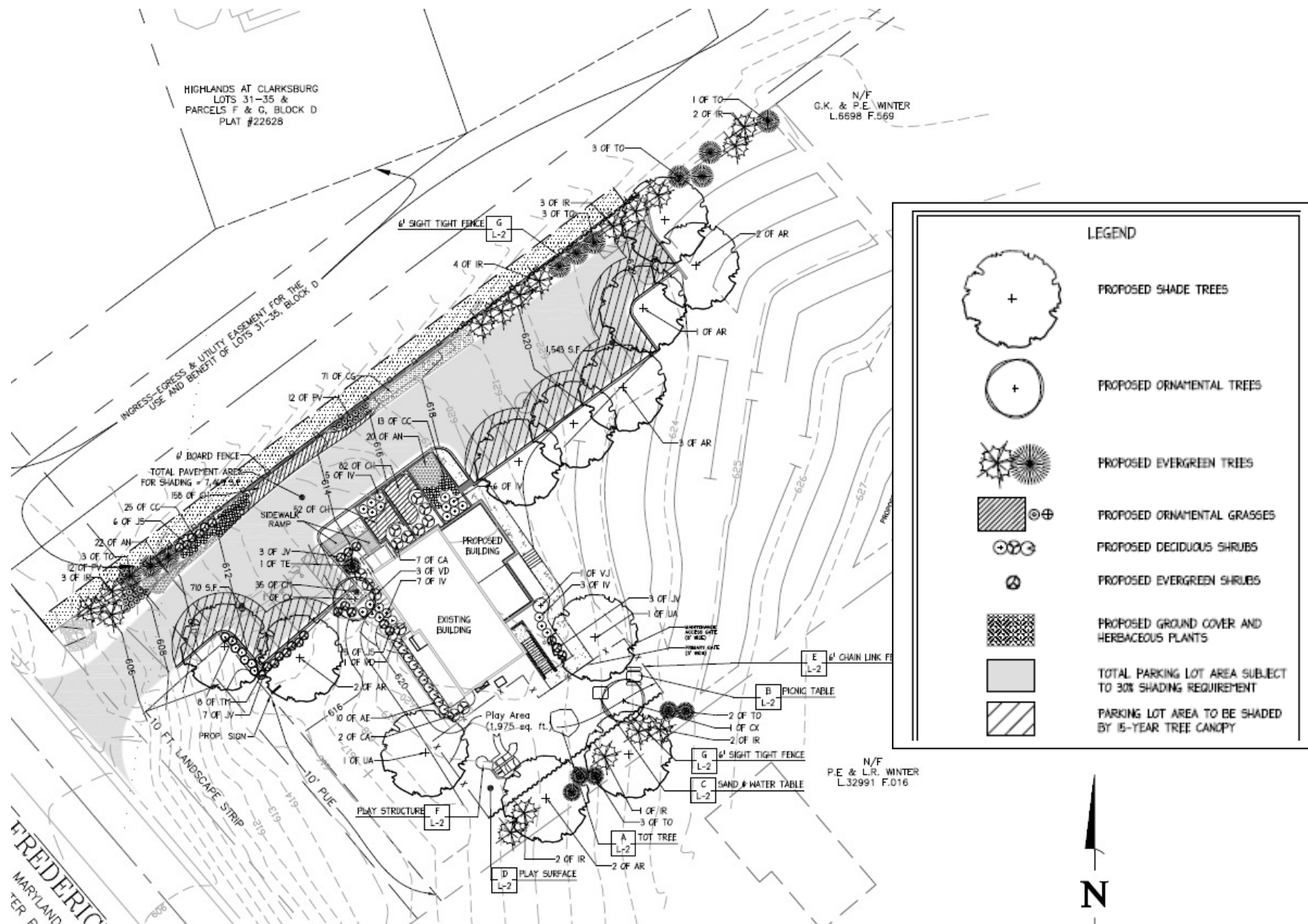
The facility will be served by residential trash service; no dumpsters are proposed for the site. Exhibit 21(a), p. 7; T. 202. According to Ms. Vesper, no food will be delivered to the facility because the daycare only provides snacks to the children, which are purchased off-site. T. 201. The Petitioners' amended statement of operations provides that curriculum supplies will be delivered approximately 4 to 6 times a year because most of these are also purchased by the teachers off-site. Exhibit 21(a), p. 8.

3. Landscaping

A rendered version of the site plan for the entire site (Exhibit 31) is reproduced below and a detailed version is shown on the following page.



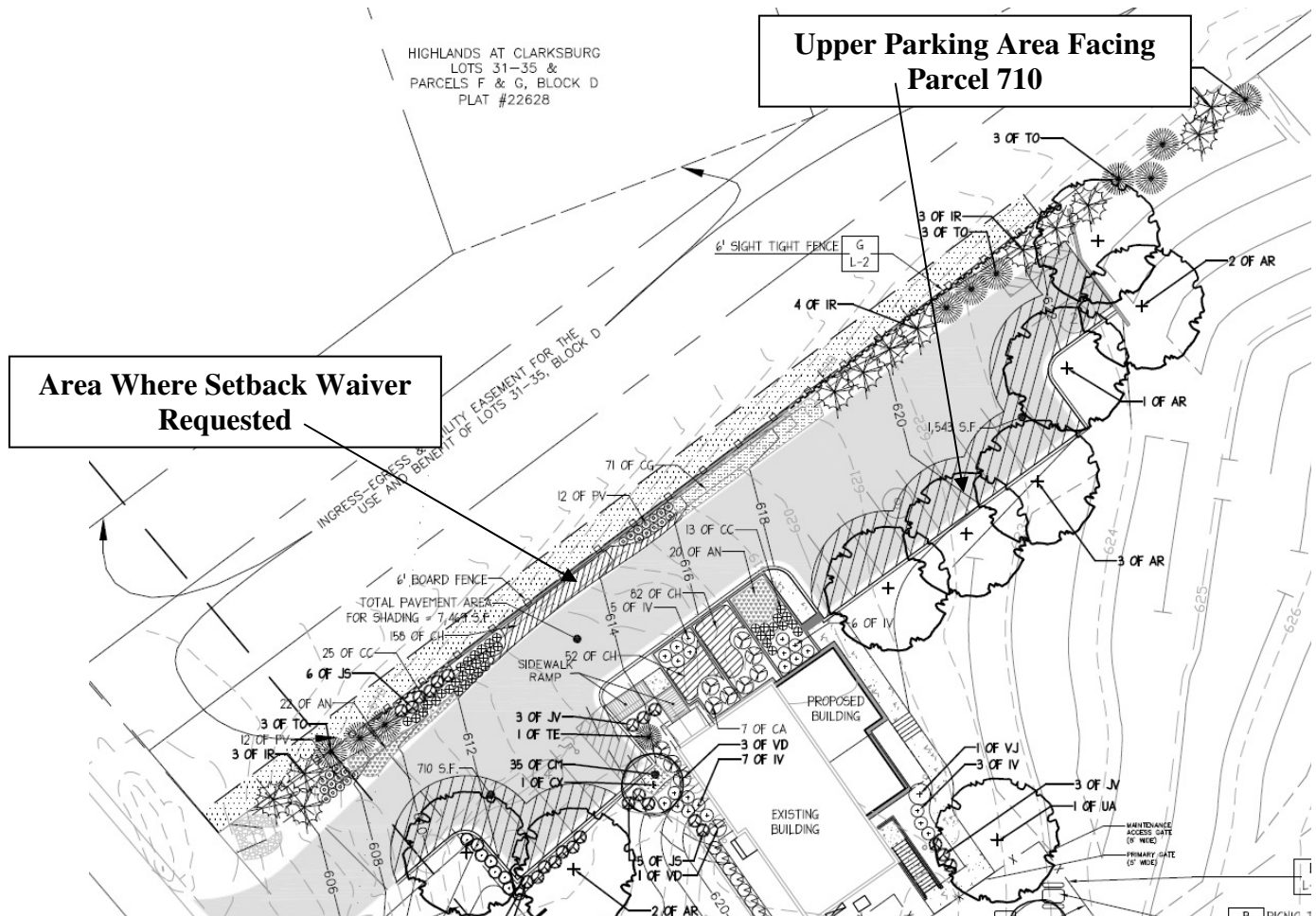
S-2850, Creating Memories Children's Learning Center
and Shirley and Michael Vesper



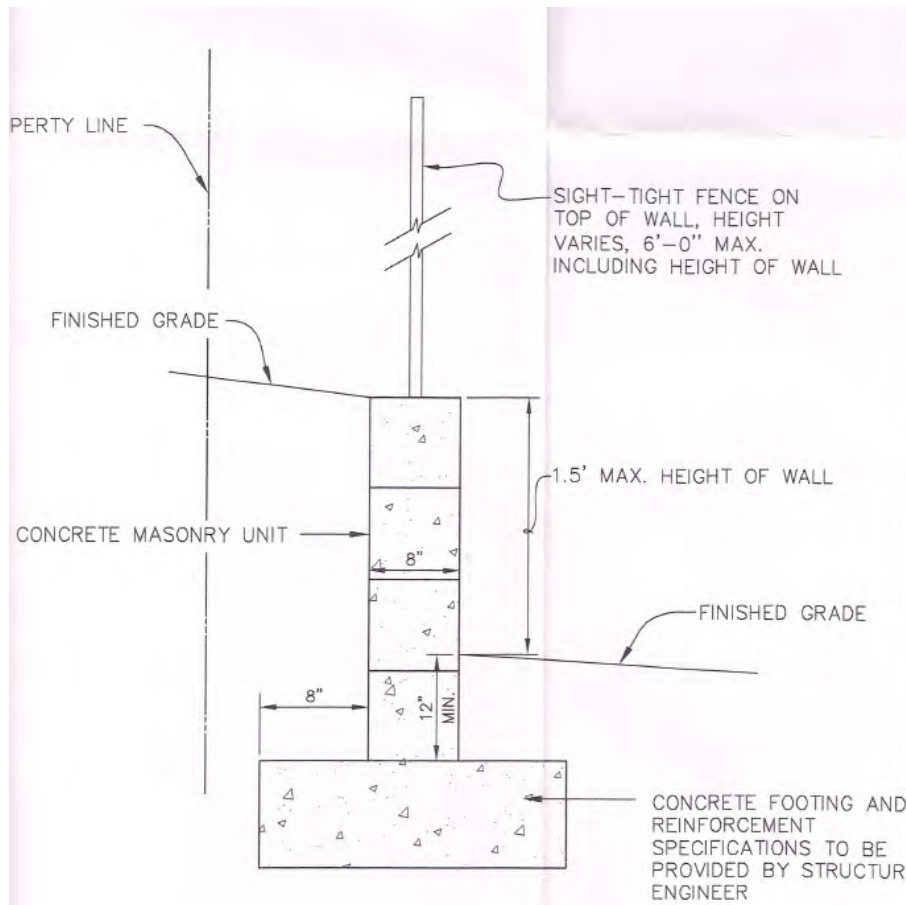
Landscape Plan
Exhibit 20

Landscaping in three areas was described in detail at the public hearing: (1) the northern property line where the setback waiver has been requested, (2) the southern boundary of the upper parking area, and (3) the southern property line adjacent Parcel 710. For ease of reference, larger details of these individual areas are also included here.

a. Northern side of parking facility: Ms. Bryant testified that the landscaping along the northern property line (shown below) is designed to shield the parking area from the adjacent single-family homes. T. 34. Landscaping here will include arborvitae, hollies, and low-growing shrubs. T. 39. A retaining wall and a 6-foot high sight tight fence provide additional screening along the property's northern border. T. 39. A detail of the retaining wall (Exhibit 17(c)) is shown on page 21.



Landscape Plan (Ex. 20) Excerpt Showing Parking Area



Retaining Wall Detail (Northern Edge of Parking Area)
Exhibit 17(c)

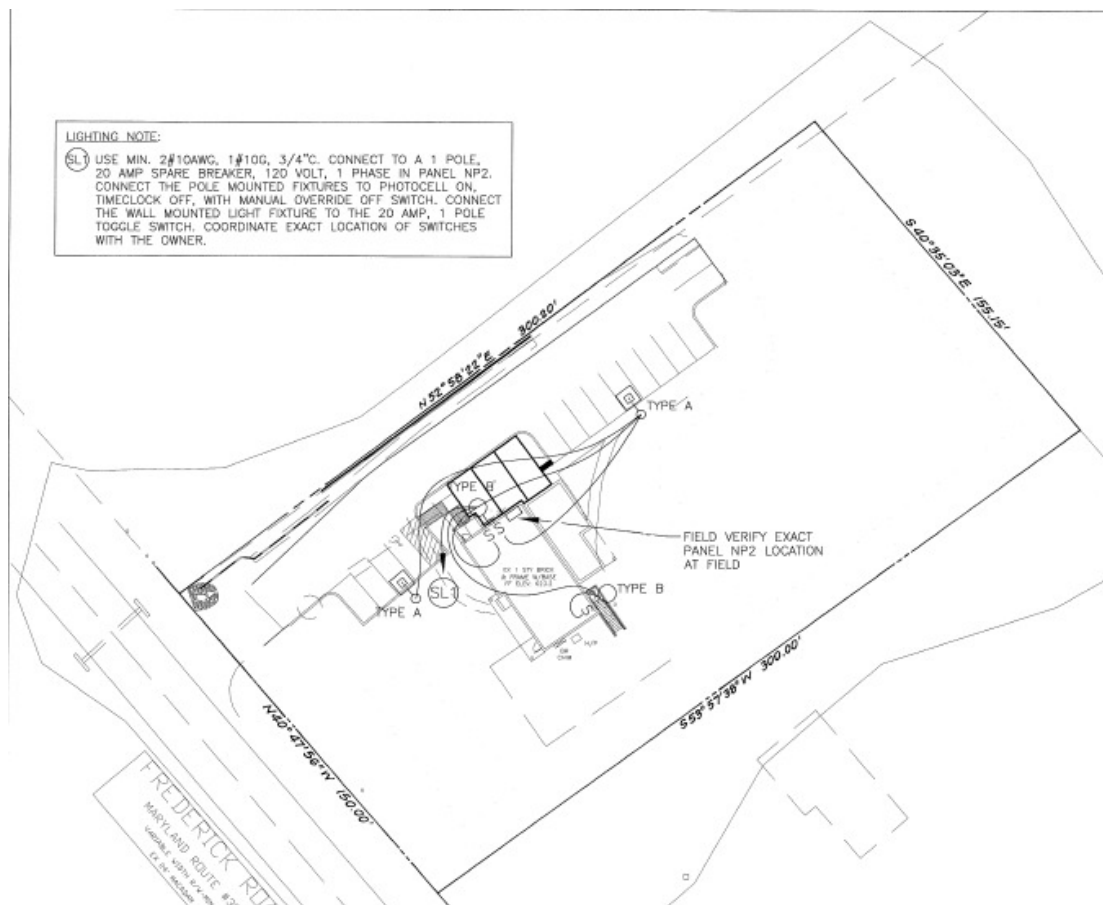
b. Landscaping on the southern edge of the upper parking area: Ms. Bryant also described the landscaping along the southern edge of the parking area. She stated that the upper parking area will be landscaped with shade trees (red maples) providing sufficient canopy to reduce the temperature of the parking lot. She also described the location of the parking area in relation to the Winter's property. The southern boundary of the parking area is 105 feet from the southern property line. There is an additional 30 feet between the property line and the Winter's home, for a total distance of 135 feet. The grade slopes approximately four to five feet down from the Winter's home to the parking area and is generally gradual but which steepens as it approaches the parking area. The existing grade will screen approximately one foot of the parked cars. There is sufficient room to permit an additional three-foot hedge or low wall on the

c. Landscaping along southern property line: A 6-foot high Trex sight-type fence, setback 13 feet from the property line, will screen the playground from the Winter's property along the southern boundary. In addition to the fence, the Petitioners are evergreen and shade trees. According to Ms. Bryant, the shade trees will eventually grow to approximately 50-60 feet and the evergreens will grow to between 10 and 15 feet. T. 93. The landscaping proposed between the outdoor play area and Parcel 710 is shown below (Exhibit 20(a)):



d. Lighting: According to Ms. Bryant, lighting for the daycare includes two 12-foot high poles with “shoebox” light fixtures, which is a square-shaped fixture at the top of the pole. One

of the pole lights is located in the lower parking area in front of the building and one is located in the upper parking area. In addition to the pole lights, there are two “type B” fixtures called “wall packs”, which are little square boxes that are located next to the entrances. Each of the fixtures are full cut-off fixtures, which directs the light downward rather than to the sides of the fixture. The lights will be turned off a few minutes after 6:30 p.m. each weekday when staff leaves. T. 62-64. The lighting plan is reproduced below (Exhibit 17(g)):



The Petitioners also submitted a photometric study of the proposed lighting. According to Ms. Bryant, the photometric plan (Exhibit 17(f)) shows that there will be no light spillage onto adjacent property; the study shows that there will be 0 foot candles at the property line and the

County standard requires a minimum of 0.1 foot candles there. T. 62-63.

4. **Signage**

Petitioners propose a single three- by five-foot sign, five feet in height, in front of the subject property. T. 54. Despite the Planning Board's recommendation that the size of the sign be reduced, Ms. Bryant opined that the sign is appropriate and residentially scaled for the property:

...we are dedicating approximately 30 feet of dedication to 355. And so that puts this sign about 60 feet back from the actual edge of the asphalt on 355. So we feel like it's actually perfectly scaled and won't actually be very large, considering the speed at which cars are driving by, and the distance from the road to the sign itself. And the engineer will talk a little bit more about the improvements to 355. But they're not any time in the near future. T. 55.

The location of the sign is shown on the excerpt from the site plan (Exhibit 18(b), on the following page) and a photograph a similar sign (from Petitioners' facility in Frederick County) is shown on a site plan detail (Exhibit 17(c)), on the same page.

At the public hearing, the Petitioners' expert in traffic engineering testified that the size of the sign was not necessary for traffic safety. When asked whether the larger sign would adversely impact traffic along Frederick Road, he replied:

Not in my opinion. What's going to happen is that since you have such a distance from where that sign is located, the driver is going to be pulling up far in front of that sign. So in terms of the sight triangle that driver is going to have, that's going to be well behind their field of vision when they're looking onto Frederick Road. So that sign is set so far back that it's not going to be an issue. T. 173-174.

He did not, however, state that the sign was necessary to make the entrance *safer* (i.e., it would enable those passing to identify the location more easily).

S-2850, Creating Memories Children's Learning Center
and Shirley and Michael Vesper



**Site Plan Excerpt Showing Sign
Location (Ex. 18(b))**



**Sign Detail
Exhibit 17(c)**

Technical Staff recommended approval of the petition, including both the waiver from the setback to the parking facility and the variance from the sign standards, subject to the following conditions:

1. The Child Care Center is limited to a maximum of 52 children and 6 employees on site at one time.
2. Hours of operation shall be limited to 6:30 a.m. to 6:30 p.m. Monday through Friday, 12 months a year.
3. All children drop-off and pick-ups shall occur on site.
4. The number of children playing outside in the play area at one time must not exceed 25.
5. The petitioners must obtain approval of a Preliminary Plan per Chapter 50 of Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the petitioners must file a copy of the revised site and related plans with the Board of Appeals.
6. The petitioners must obtain a sign permit for the proposed freestanding sign from the Department of Permitting Services (DPS). If DPS requires the requested variance, the petitioners must obtain a sign variance or adjust the design of the proposed sign to conform to all applicable regulations. A copy of the approved sign permit along with any revised drawing related to the sign must be submitted to the Board of Appeals before the sign is posted. Exhibit 19, p. 2

Staff recommended approval of the waiver of the setback for the parking facility for the following reason (Exhibit 19, p. 10):

In response to staff's comments, the applicants have revised the site and landscape plans. The revised plans generally are adequate in terms of layout, landscaping and lighting. Review of the applicants' revised landscape plan reveals that most of the issues and concerns raised have been addressed and deemed acceptable by staff.

Staff also recommended approval of the proposed sign (Exhibit 19, p. 11):

Staff finds the proposed sign to be appropriate and compatible with the neighborhood. The increased area is needed to give adequate identification to the proposed use so that it would be visible to drivers looking for the facility from the road. Any potential aesthetical adverse impact from the increased sign area will be minimized with the fact that the sign would be set back from the property line by more than double the required minimum 5-foot distance

The applicants must obtain a sign variance and a sign permit for the proposed free standing sign. A copy of the sign permit obtained from DPS must be submitted to the Board of Appeals before the sign is posted on the property.

The Planning Board recommended approval of the petition, but opined that additional evidence was needed to make certain of the required findings. Exhibit 27. Expressing concern that queuing of cars turning into and exiting the site could create delays or safety issues, the Board recommended that Petitioners submit a delay or queuing analysis to the Hearing Examiner. *Id.*, pp. 1-2. The Board also mentioned that Staff had been of the understanding that Petitioners would be monitoring traffic circulation within the site on a daily basis. When it understood that this would be implemented on an "as needed" basis, the Board reported that, "Staff maintained that it is imperative to implement the ... safety measures as part of the permanent and daily practice of the facility." *Id.*, p. 2. The Planning Board further recommended that the Petitioners submit additional information on the status of an approved special exception for the Avalon School, located immediately south of Mr. Winter's property, expressing concern that the traffic from the school would increase congestion on Frederick Road. Exhibit 27.

With regard to the waiver of the setback for the parking facility, the Board found that:

...because the adjacent houses sit lower than the proposed parking lot, the proposed retaining wall and evergreens will create an effective screen and serve the purposes of a typical parking lot setback. This conclusion was buttressed by recognizing that side setbacks are established with the general expectation that houses face the street and sit relatively close to their side lot lines. Here, the adjacent homes face the subject site and are separated from it by their front yards (which are fairly large), a shared driveway and a buffer strip. The board also recognized that the front orientation of the homes increases their exposure to the parking lot proposed on the subject site, but found that on balance, the distance and topography make the setback waiver acceptable. Exhibit 27, p. 4.

The Planning Board disagreed with Staff's conclusion that the proposed sign was compatible with the community, finding that the 15 square foot sign is "excessive in height and area" and out of character with the residential character of the neighborhood. Exhibit 27, p. 3.

Finally, the Board disagreed with Staff that there was sufficient information to determine that the use would not create objectionable noise due to the proximity of the play area to Parcel 710. It recommended that Petitioners (1) submit a noise study measuring the noise levels and (2) install a noise attenuation fence along the south side of the play area. *Id.*, p. 3. The Board the conditions of approval proposed by Staff as follows (Exhibit 27,.pp. 3-4):

1. The Child Care Center is limited to a maximum of 52 children and 6 employees on site at one time.
2. Hours of operation shall be limited to 6:30 a.m. and 6:30 p.m. Monday through Friday, 12 months a year.
3. All child drop-offs and pick-ups shall occur on site, except for the drop-off and pick-up of children by public transportation.
4. The petitioners shall make a good faith offer to the adjoining neighbors to plant additional trees in the easement between the proposed parking lot and the pipe-stem lots.
5. Activities in the outdoor play area must not commence before 9:00 a.m.
6. The petitioners shall install a six-foot-tall noise attenuation fence on the south side of the outdoor play area. The Applicants shall submit the details of the fence to staff prior to the conclusion of the public hearing.
7. The petitioners must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of Montgomery County Code [sic]. If changes to the site plan or other related plans required at subdivision, the petitioners must file a copy of the revised site and related plans with the Board of Appeals.
8. Before the Hearing Examiner's hearing in this matter or at a minimum before the record closes, the Applicants must propose a sign design that is smaller in area and height than the proposal reviewed by the Planning Board and its Staff, and more in keeping with the residential character of the neighborhood. If the sign and the special exception are approved, the Applicants must obtain a sign permit for the proposed freestanding sign from the Department of Permitting Services (DPS). If DPS requires a variance, the petitioners must obtain a sign variance or adjust the design of the proposed sign to conform to all applicable regulations. A copy of the approved sign permit, along with any revised drawing related to the sign, must be submitted to the Board of Appeals before the sign is posted.

D. Community Response

Mr. and Mrs. Philip Winter appeared in opposition to the petition. They expressed concerns regarding the impact of noise from the playground on their daughter's property (Parcel 710). Mrs. Winter is not sure that the 6-foot fence will be sufficient to address noise issues. T. 211. Both she and her daughter live on a high ridge. In her experience, she can hear sounds from as far as a mile away that are generated in lower areas, such as a football game at Clarksburg High School. T. 214.

Mrs. Winter testified that she had lived on the property all of her life and there were quite a few traffic accidents where her driveway intersects with Frederick Road. She stated that there are frequently traffic backups at that location during rush hour, especially if an accident has blocked traffic on I-270. T. 214-270.

Mr. Winter, a real estate appraiser by profession (T. 221), testified he is primarily concerned about the impact on the value of his daughter's property (i.e., Parcel 710), but was unsure whether the proposed daycare "effects the value of the property adversely or not." T. 223.

Mr. Winter echoed his wife's concerns about traffic. He testified that his daughter works at the Pentagon and her husband works in Annapolis and both have to turn right onto Frederick Road on their way to work between 7:00 a.m. and 8:00 a.m. in the morning. They then take Springtown Road to I-270. He thinks, however, that this may have more to do with the buses from the high school. T. 220. Mr. Winter was also concerned about the possibility that the Avalon School would move forward—it is located immediately south of his property. T. 101.

His son-in-law is an engineer in sound communication and asked Mr. Winter to get answers to several questions on the expert's sound report. His daughter is convinced that this will affect the value of her property. T. 221. He is a professional appraiser and he is unsure whether it will devalue her property or not. He believes that the use is legitimate. T. 223. He is

skeptical of zoning because of Clarksburg's checkered past. He assumed the whole property would be fenced, although not having the fence is not a "big thing" to him. He does want adequate buffers and wants to make sure that the leach field will not encroach onto his property or his daughter's property. T. 223-224.

E. The Master Plan

The subject property is within the area covered by the *1994 Clarksburg Master Plan and Hyattstown Special Study Area* (Master Plan or Plan). Technical Staff advises the Plan confirmed the R-200 zoning for the property, but did not contain specific recommendations for the subject property. Staff advises that the Plan stressed the need for daycare facilities due to the planned population growth in Clarksburg, and states that "child care should be dispersed throughout the study area with concentrations near transit, employment areas, and concentration of housing." Exhibit 19, p. 5 (quoting page 167 of the Plan). Staff found the petition consistent with the Plan because it fulfilled this identified need. *Id.*

The Hearing Examiner finds the proposed use consistent with the Master Plan for this and one additional reason. The Land Use Plan includes the subject property within the Transit Corridor District. The Plan's describes this District as follows (*Plan*, p. 54):

The Transit Corridor District includes properties fronting MD 355 which have developed over many decades in accord with traditional patterns found elsewhere in the "Up-County": single-family detached lots fronting the road. The most significant planning challenge here is to maintain and continue this residential character while addressing the need for increased traffic capacity along MD 355.

The Plan articulates the following objectives for the Transit Corridor District (*Plan*, p. 56):

- **Continue the present residential character along MD 355.**

The predominant pattern of development along MD 355 in this district is residential, with a majority of the homes fronting MD 355. To help reinforce the existing residential character along MD 355, this Plan recommends densities ranging from two to four units per acre.

Because the Hearing Examiner finds that the proposed use does not alter the existing residential character of the neighborhood (with the exception of the proposed sign) and because it fulfills a need identified in the Plan, she agrees with Technical Staff and the Planning Board that the petition is consistent with the Plan.

F. Traffic Impacts

1. Access and On-Site Circulation

The Petitioners' expert in traffic engineering, Mr. Carl Wilson, described the site circulation of the proposed use. T. 163. Teachers will park at the rear of the parking lot; spaces closer to the building will be used for parent drop-off and pick-up. The driveway will be two lanes, one lane in and one out. There is sufficient throat area in the driveway to provide storage for two vehicles waiting to exit the property at the same time. T. 163. Widening of the existing driveway will be on the south and an east side of the existing drive, as it is as close to the northern property line as it can be. T. 164.

a. Delay/Gap Study

Mr. Wilson testified that his firm had traffic analysis recommended by the Planning Board. He stated that vehicles entering and exiting the driveway from both directions will have adequate time to make a left-hand turn. T. 165. To determine this, he performed an analysis utilizing the methodology in the Highway Capacity Manual, which examines the delay times in the operation of an intersection, rather than simply measuring critical movements. They assumed conservatively that 75% of the traffic would enter the site from the north. Their study indicated that the morning southbound traffic will have a delay time of 8 seconds, or Level of Service A. Left turns exiting the site in the morning will experience a 13.1 second delay. In the evenings, he found that left turns into the site would experience a 10.9 second delay, or Level of Service B. Based on his study, left turns exiting the site will experience a 24-second delay, or

Level of Service C. All of these levels of service are acceptable. In his opinion, the available storage at the driveway throat is adequate because there will only be 14 trips leaving during the peak hour. There is sufficient space to permit cars to back out and stack further toward the rear of the parking area as well. T. 165-167.

Mr. Wilson also testified that his firm prepared a gap study at the request of the Planning Board. To prepare the gap study, his firm videotaped traffic along Frederick Road during the morning and evening peak hours. Software applied to the video can measure the actual time between cars as they pass the property. The "gap" is the amount of time between cars passing through the intersection of Frederick Road and the driveway. AASHTO, or the American Association of Safe Highway Transportation Officials, sets the standards for the gap times which should be available to different roads. For a left turn from a minor street, which is the driveway entrance, the gap must be 7 seconds. For a right turn, a gap of 6 ½ seconds is required. A left turn from a major road requires 5 ½ seconds. These gaps apply regardless of the speed limit. T. 168-170.

Their study found the smallest number of gaps occurred in the left turn movement exiting the site in the morning peak hour. During this time, there were 52 gaps available to cars making a left turn from the driveway onto Frederick Road. As there will be only 14 trips exiting the site during the peak period, 52 gaps are sufficient to accommodate this movement. Some of the gaps are as large as 16 to 18 seconds, which may permit more than one car to exit during a single gap. This result is consistent with the HCM analysis performed for the site, which indicates that delays will be minimal. T. 170-171.

In addition to the gap study, Mr. Wilson's firm pulled crash data available from the State Highway Administration. According to Mr. Wilson, the accident activity at this location is minimal. These records are kept only for accidents where the car is not drivable from the scene

or there is personal injury. He stated that there is no way to obtain records tracking fender benders. T. 171-172. Mr. Wilson testified that even though the gap study had been based on traffic from a single weekday, the results were consistent with other data, including SHA volume counts and a speed study that was performed. The delays shown in the HCM analysis were also consistent with both the gap study and the SHA volume counts. T. 182-183.

b. Site Distance

In addition to adding width to the driveway, the Petitioners propose to raise the driveway by three inches in order to ensure adequate sight distance along Frederick Road. SHA requires a minimum sight distance of 325 feet. Currently, there is a vertical curve along Frederick Road that restricts sight distance to 315 feet. The additional height of the driveway will add 10 feet to the existing sight distance, thus meeting SHA standards. T. 164. Technical Staff reviewed the site distance analysis submitted and "found that the sight distance on MD 355 is met when looking both sides from the site." Exhibit 19, p. 35.

2. Local Area Transportation Review/Transportation Policy Area Review

Because this property still requires preliminary plan approval, the Planning Board will make the determination that public transportation facilities will be adequate. Nevertheless, Petitioners presented testimony that the petition is able to meet the current test for adequate public facilities. Mr. Wilson testified that the former Policy Area Mobility Review test has been replaced by a Transportation Policy Area Review (TPAR) test. According to Mr. Wilson, the TPAR still divides the County into policy areas, and the subject property is in the Clarksburg Policy Area. T. 158. Under the new policy, there is sufficient capacity in the Clarksburg Policy Area to accommodate the use, although this will be reviewed again during preliminary plan approval. T. 160. The new test requires review of both highway and transit capacity. Available transit capacity is measured by the amount of time between bus trips. This area is considered

mostly rural and the transit capacity here is not sufficient. As a result, according to Mr. Wilson, the Planning Board and MCDOT are working on a mitigation program to permit projects to proceed by paying a fee at preliminary plan approval. T. 160-161.

According to Mr. Wilson, Local Area Transportation Review (LATR) still applies under the new adequate public facilities test. He opined that the daycare facility will generate 28 peak hour trips in the morning and the evening. As this is less than the 30 trips necessary to trigger the requirement for a traffic study, he submitted a "transportation statement" to Technical Staff. T. 159. He found that half of the trips will be entering the facility and half will be leaving the facility during the peak hours, which is consistent with parent drop-off and pick-up. T. 159. These numbers are based on a student enrollment of 52 and six teachers employed at the facility. T. 160. Technical Staff reviewed the traffic statement and agreed with its findings. T. 162; Exhibit 19.

Technical Staff provided the following comment on the adequacy of transportation facilities:

The site is located in the Clarksburg Policy Area where there is a 10 percent Policy Area Mobility Review (PAMR) trip mitigation requirement according to the County's Growth Policy. The current PAMR requirement and the new proposed Transportation Policy Area Review (TPAR) is to be discussed and approved by the County Council in the next several months. The applicants must address either the current PAMR requirement or the new TPAR requirement.

Ms. Bryant testified that she researched the status of the special exception approved for the Avalon. She stated that the school would have been large, having been approved for a total of 283 children and 41 staff members. T. 70. She spoke with Katherine Freeman of the Board of Appeals, who informed her that the special exception had expired in October, 2011, and no extension had been requested. Nor did she find any record of a building permit for the school. T. 70-71.

G. Environmental Impacts

1. Noise

In response to the Planning Board's recommendation that Petitioners provide additional evidence on the impact of noise levels from the outdoor play area, the Petitioners submitted a sound study performed by Mr. George Spano, a senior consultant with Polysonics, an acoustics and technology consulting firm. Exhibit 47. Mr. Spano stated that the firm conducted "precision sound surveys" at the Petitioners' existing facility in Adamstown Maryland and at the subject property. Specifically, the study evaluated sound propagation from the outdoor play area at Petitioners' Adamstown outdoor play area, which enclosed with a chain link fence with no noise attenuation properties. Exhibit 47, p. 1. Mr. Spano's firm also performed tests of the ambient noise levels at the subject property, and then applied the propagated noise from the Adamstown facility to the ambient noise at the subject property. *Id.*

The study reported that the noise levels of 25 children the Adamstown outdoor play area measured 13 feet from the chain link fence averaged between 60 and 63 dBA, with the sound mostly within the 60- to 65-dBA range. The study states that, occasionally, noise levels reached 70 dBA, primarily when several girls screamed at the same time.

The study also compared ambient noise levels at both facilities. At the Adamstown daycare, cars generated noise levels of between 50-60 dBA and trains running approximately every 20 minutes generated noise levels of 75 dBA. The road is approximately 20 feet from the play area with a speed limit of 25 miles per hour. The train ran a "few hundred" feet away. The study reported that a neighbor lives approximately 50 feet from the facility and there have been no sound issues at that location. *Id.*

Ambient noise levels at the subject property are generated by traffic on Frederick Road, which is approximately 100 feet from the play area. Noise levels equaled 50 dBA, except when a truck passed at which time it increased 65 dBA.

The Polysonics study also states that the Trex fence has a sound rating of "Sound Transmission Class 19 or -19 dBAs". This will result in a sound reduction of approximately 5 – 10 dBAs at the subject property. According to the report, use of the Trex fence along the southern property line will reduce maximum sound levels to 65 dBA and average sound levels to 60 dBA or less. Exhibit 47, p. 2.

The Winters testified that their son-in-law, Mr. Andy Roy, is a sound engineer. T. 221. Via e-mail, Mr. Roy posited several questions on Mr. Spano's report (Exhibit 50(a)):

1. How many recording locations at the existing site were surveyed to ensure results were not skewed by different propagation paths?
2. What is the approximate spectral composition of the measured noise from the existing nursery?
3. Was the sound intensity level measured the peak value, or an average (and if so, how was it weighted)?
4. Were there any adjacent barriers providing signal reflections at the surveyed site, and what is the estimate of the adjacent walls for the proposed location?
5. What mechanism is providing the estimated signal attenuation from the proposed fence (absorption, reflection, etc)?
6. What is the anticipated attenuation of the noise by the proposed tree types and placement?

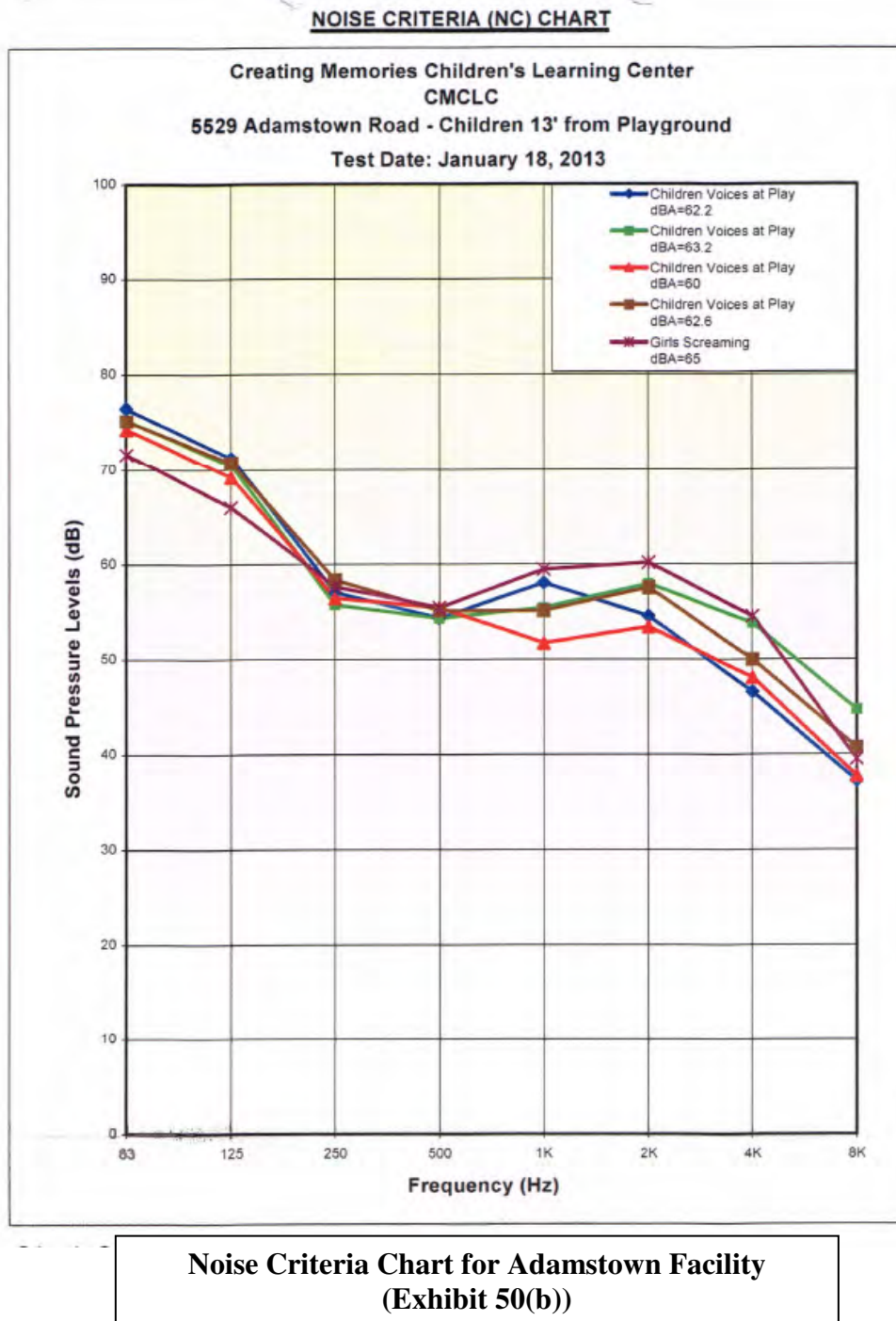
Polysonics submitted a supplement report responding to these questions and providing two charts, one showing sound measurements of truck and automobile traffic at the subject site and the second summarizing the noise levels of children at play at the Adamstown facility. Exhibit 50(b).

With regard to the subject property, the supplement report states that the test shows two curves of noise from "routine" car traffic on Frederick Road measured from the play ground area and a 5-second sample of a medium delivery truck passing, which occurs about every minute during the day. Using a slow meter response (a 1 second average), the maximum dBA of the truck traffic was measured at 65 dBA. Automobile traffic was measured over a 30-second interval. Exhibit 59(b), p. 1.

With regard to the Adamstown facility, the supplemental report advised that the children's voices were largely "omnidirectional" and therefore, do not exhibit a directional pattern. The chart submitted for the Adamstown facility has five curves indicating that the noise levels were fairly constant at between 60-63 dBA. Tests were not done past the pine trees at the Adamstown site, so these were not factored into the test results. Mr. Spano reported that his firm had performed similar tests for other clients and the results were consistent with these other findings. Exhibit 50(b), p. 2. The chart summarizing the sound tests performed at the Adamstown property is reproduced on the following page.

The report also explained the method of calculating the sound attenuation impact of the Trex fence (*Id.*, p. 2.):

The noise attenuation of the solid Trex fence proposed for the Clarksburg location is calculated by using a diffraction formula with the girl's voice at 4' above the ground and the listener at 5' about the ground with the intervening fence at 6' high. Since the screaming girls voices are primarily in the 1kilohertz to 4 kilohertz frequency range, the reduction in level due to diffraction is calculated to be at least 5dB at 1 kHz and 10dB at 4kHz. We have typically observed and measured barriers that block the line of sight in the voice frequencies and they provide at least 5 dBA of reduction. We also noted that the Trex fence is good at noise reduction and is sound tested at 19 Sound Transmission Class.



2. Water Quality Plan

As noted, the property is within a special protection area designated by the Clarksburg Master Plan. Mr. Stephen Crum, Petitioners' expert in civil engineering, explained the purpose of the special protection areas. These were established to protect areas with high quality streams. Instead of submitting a stormwater management concept plan, the Petitioners are required to

submit a water quality plan (Exhibit 11(a)). These are reviewed by various County agencies, including the Planning Board. The Petitioners have submitted a water quality plan, which was approved by the Planning Board for those matters within their jurisdiction. Exhibit 27; T. 116-118. DPS has approved the preliminary water quality plan for matters within its jurisdiction as well. T. 120.

In a report dated November 29, 2012, Technical Staff recommended approval of those matters within the Planning Board's jurisdiction over water quality plans with two conditions (Exhibit 38):

- Conformance to the conditions as stated in the Montgomery County Department of Permitting Services (DPS) Preliminary/Final water quality plan approval letter dated June 4, 2012 (Attachment A).
- The impervious surfaces on the subject property are limited to no more than 22.6 percent within the SPA as shown on the Impervious Surface Plan Portion of the Preliminary/Final Water Quality Plan.

The Planning Board's recommendation on the special exception notes that it approved Petitioners' water quality plan at the same hearing. Exhibit 27. At the public hearing on the special exception, Mr. Crum testified that the impervious area shown on the site plan was limited to 22.6% of the total area. T. 86.

H. Other Public Facilities and Septic System

Mr. Crum testified that utilities on the site include public water, electricity and telephone. The property is not served by public sewer. Mr. Crum testified that the property will not be served by public sewer. The public sewer line runs behind the dwellings north of the pipestem driveways. In order to reach the subject property, Petitioners would have to obtain an easement from the property owners of those lots and install a fairly sizeable extension. In addition, the extension would have to be pressurized, which the WSSC does not favor. T. 112.

Mr. Crum stated that he researched the WSSC records, which listed the property's sewer category as S-0, which does not exist. He believes that the category is actually S-6. T. 113. There is an existing septic system in the front of the property which is not sufficient to serve the daycare. It consists of two seepage pits, the methodology used in the 1960's. In order to serve the daycare, the Petitioners propose to locate a new septic field in the rear (southeastern portion) of the property, eliminate the seepage pits in front and install a new septic tank and pump chamber there. Effluent will then be pumped to the fields in the rear for treatment. T. 114. The rear field contains trenches which are approximately two feet wide and four feet high filled with aggregate and perforated pipe. Montgomery County has issued a permit to the Petitioners to install the new system that remains valid. T. 116. The septic field on the plan is large because the County requires installation of replacement trenches. T. 116.

The relatively large area of the lot needed for the septic field dictates the location of the outdoor play area on the property. The play area may not be over the septic field because the County does not permit grading over the septic areas. In addition, the play equipment is anchored on foundations, which are also not permitted in septic fields. T. 116-117.

III. SUMMARY OF THE HEARING

The testimony adduced at the public hearing is set forth in this report at relevant points. A complete summary of the testimony is included in an appendix to this report, which is attached hereto and incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the

Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “*the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.*” § 59-G-1.2.1. 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.*” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child day care use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must

be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the child daycare use) based on prior determinations made by this office (Exhibit 19, pp. 12-13):

- (1) buildings and related outdoor child care equipment;
- (2) parking areas;
- (3) lighting;
- (4) noise generated by children;
- (5) drop-off and pick-up areas;
- (6) outdoor play areas;
- (7) long hours of operation;
- (8) employees of the child care facility.

In addition to those inherent characteristics listed by Staff, this office has included vehicular trips to and from the site by parents and employees and (possibly) commercial trash pick-up.

Technical Staff determined that the waiver of setbacks for the driveway and parking facility is a non-inherent impact of the proposed use, but found that (Exhibit 19, p. 13):

...any adverse effect that might have been created has been mitigated by distance, additional screening and buffering provided by the proposal and the abutting unbuildable pipe-stem driveways that are improved with common driveways with egress and egress easements. In recommending that the intent of the waiver from the parking facility standards...staff finds that the intent of the setback requirement is met.

The Petitioners disagree that the setback waiver is a non-inherent impact of a daycare facility. Ms. Bryant testified that the landscaping and sight tight fence more than adequately screen the parking facility from the adjacent properties, especially considering that the homes are approximately 75 feet from the property line. T. 29, 58.

The Hearing Examiner agrees with Technical Staff that the parking waiver is a non-inherent impact of the use, but finds that the impact has been satisfactorily mitigated by the

landscaping proposed, change in grade, and the distance of the dwellings to the northern property line. As a result, the Hearing Examiner finds, as did Technical Staff, that this non-inherent impact does not warrant denial of the petition.

After carefully reviewing the entire record, the Hearing Examiner finds that Petitioners have provided adequate evidence, including a noise study and delay/gap analysis, to make the requisite findings in this case. She recommends approval of the petition subject to the conditions set forth in Section V. of this Report, with the exception of the proposed sign for the property.

B. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioners' documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 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.*

Conclusion: Child day care facilities are permitted by special exception in the R-200 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

(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.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G- 2.13.1, as detailed in Part IV. D of this report.

- (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.*

Conclusion: The subject site is located within the area covered by the 1994 Clarksburg Master Plan and Hyattstown Special Study Area. As discussed earlier, because the Hearing Examiner finds that the proposed use (with exception of the sign) maintains the residential character of the neighborhood and daycare facilities are identified as a need in the Plan, the Hearing Examiner finds that this petition is consistent with 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. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff concluded that the proposed daycare would be in harmony with the general character of the neighborhood because traffic will not be a significant impact on the residential neighborhood or the roads and adequate off-street parking is provided. Exhibit 19, p. 15.

The Hearing Examiner agrees with Technical Staff's conclusions, but for somewhat different reasons. She finds that the exterior modifications to the existing house do much to retain the property's existing residential scale. Locating the addition to the rear of the existing single family dwelling, so that its roof is not directly visible from the front, reduces the visual

impact of the expansion. While vehicular access was a significant issue before the Planning Board, the Petitioners have submitted the additional traffic information and expert testimony (i.e., the delay gap study and HCM analysis) requested by the Planning Board. This evidence demonstrates that employees and parents dropping and picking up children will be able to circulate safely in the parking area because of the available stacking and projected peak hour trips. In addition, the gap study demonstrates that there is sufficient time for vehicles to enter and exit the site without extensive queuing.

The Planning Board indicated the need for Petitioners to monitor on-site circulation at all times. The Board, however, did not have the benefit of the additional studies and information provided by the Petitioners' traffic expert. Based on the latter information, the Hearing Examiner finds that there is no need to provide full-time monitoring of site circulation; rather, the Petitioners may monitor traffic circulation on an as-needed basis as proposed.

At the Planning Board's request, the Petitioners did provide information that the special exception for the Avalon School has expired and therefore, will not increase traffic on Frederick Road near the site. Having no evidence to the contrary, the Hearing Examiner finds that vehicles from the school will not worsen traffic activity surrounding the property.

The Hearing Examiner agrees with the Planning Board, however, that the size of the proposed sign is excessive and far above the sign area permitted in residential zones, even with the setback from the street. The Petitioners' expert traffic engineer testified that the size of the sign is not necessary for safety reasons because it is setback so far from the road. As a result, the Hearing Examiner does not recommend approval of the sign as approved even subject to the requirement to obtain a variance. Should the Petitioners desire an identification sign, they may request a modification of the special exception and propose a smaller sign or install a sign meeting residential standards at the location shown on the site plan.

Based on this evidence, the Hearing Examiner finds that the daycare facility proposed meets this standard, with the exception of the proposed sign.

- (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.*

Conclusion: Technical Staff concluded that the facility would not be detrimental to other properties because trip generation and intersection capacity were within acceptable limits, landscaping adequately screened the use, and “efficient on and near site circulation patterns” provided adequate buffering from adjoining properties and the roads. Exhibit 19, p. 15. While the Planning Board recommended approval of the petition, it did not feel there was evidence to determine whether noise levels from children in the outdoor play area would meet residential noise standards and thus negatively impact the peaceful enjoyment of Parcel 710. To address this concern, the Petitioners submitted a noise study demonstrating that with the installation of a Trex sight tight fence, noise levels would average 60 dBAs or less with a maximum noise level of 65 dBAs, meeting the County's residential noise levels.

The Hearing Examiner finds persuasive the Petitioners' noise study, and the sound consulting firm's supplemental report, which are the only technical evidence on the matter in the record. As the noise study demonstrates that noise levels will meet County residential standards and on average will fall below those levels, the Hearing Examiner finds that daycare facility will not adversely impact the peaceful enjoyment of those inhabiting Parcel 710. While Petitioner did not propose any outdoor amplified sounds, there is nothing in the record explicitly prohibiting them. As a result, the Hearing Examiner recommends a condition specifically prohibiting amplified noise, which is typical in other special exceptions for daycare facilities. In addition, the Hearing Examiner endorses the condition recommended by Technical Staff and the Planning Board limiting the

number of children that may be in the play area at one time and limiting the times they may use the outdoor play area.

Both Technical Staff and the Planning Board found that the waiver of the setback for the parking facility would not negatively impact the neighbors to the north of the property. The Planning Board found that because "the adjacent houses sit lower than the proposed parking lot, the proposed retaining wall and evergreens will create an effective screen and serve the purposes of a typical parking lot setback." The Board also noted that the side setbacks usually relate to the side yards of both houses; here, the houses to the north face the pipestem driveways and are separated from the parking facility by "fairly large" yards, the shared driveway, and a buffer strip. Exhibit 27, p. 2. While finding the setback waiver acceptable, it recommended the following condition of approval:

The petitioners shall make a good faith offer to the adjoining neighbors to plant additional trees in the easement between the proposed parking lot and the pipestem lots.

With regard to the parking facility waiver, the Hearing Examiner agrees with both the Planning Board and Technical Staff that the landscaping proposed on the northern property line sufficiently screens the parking facility from the homes to the north. Because of the orientation of those homes (with large yards facing the property's northern boundary) and the level of landscaping, this area may have more buffering than situations in which no setback waiver is required.

The Hearing Examiner does not find it necessary to impose a condition requiring the Petitioners to make a good faith offer to the adjoining neighbors to plant additional trees on property not owned by the Petitioners. The Hearing Examiner has no evidence in the record, other than the Planning Board's conclusion, that this would be possible, desirable or necessary. As a result, she does not recommend including this as a condition of approval.

- (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.*

Conclusion: For the reasons set forth above, the Hearing Examiner finds that the use will not generate noise above County residential noise levels. The Petitioners' photometric study demonstrates there will be no light spillage onto adjoining residential properties and Ms. Vesper testified that lights will be turned off manually in the morning and evening when staff open and close the facility.

Ms. Bryant testified that the southern border of the upper parking area is approximately 135 feet from the dwelling on Parcel 710. According to her, the existing grade would shield approximately one foot of each parked car from the dwelling. She stated that there is sufficient room to plant a 3-foot high evergreen hedge along the southern portion of the upper parking lot to provide further screening from car headlights. While there is nothing in the record indicating that car headlights will extend the 135 feet from the upper parking area to the dwelling, this possibility has not been definitively excluded. As a result, the Hearing Examiner finds that planting of an evergreen hedge or low wall along the southern border of the parking area is appropriate to ensure that this does not happen and recommends a condition to this effect, set forth in Section V of this Report.

- (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.*

Conclusion: Technical Staff found that the proposed use will not increase the intensity of special exceptions to an extent that they would change the residential character of the

neighborhood. Staff noted that there are two special exceptions within the neighborhood: a 5-acre horticultural nursery and commercial green house approved in 1976 and "S-2685, a Private Educational Institution approved in 2007 but has not yet been constructed."

Mr. Winter testified that the latter special exception was for a private school known as the Avalon School and would have been located adjacent to his southern boundary line. T. 101. Ms. Bryant testified that the school would have been large, approved for 283 children with 163 daycare, 120 school-age children, and 41 staff. T. 70. At the Planning Board's request, Ms. Bryant researched the status of the special exception and found that it had expired in October, 2011 without an extension request. Nor did she find any record of a building permit for the school. T. 70-71.

Based on this evidence, the Hearing Examiner finds that the only two special exceptions in the surrounding area are the horticultural nursery and greenhouse and this proposed daycare. As a result, she concludes that approval of this special exception will not change the existing single-family detached character of the neighborhood.

- (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.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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.*

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board*

must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: The subject property does require subdivision; therefore, the Planning Board will make the determination whether public facilities are adequate at the time of preliminary plan review. Nevertheless, the Petitioners did submit evidence that the petition would be able to meet the requirements of both LATR and TPAP, as described in Section II.F.2 of this Report. For these reasons, the Hearing Examiner finds that this standard has been met.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Technical Staff found that “[t]he proposed access point and on-site vehicular and pedestrian circulation system shown on the site plan are adequate”, focusing primarily on the site distance evaluation criteria. Exhibit 19, p. 17. Site access was of significant concern, however, to the Planning Board who recommended submission of a delay or queuing study to determine the impact of the use on Frederick Road and whether site circulation was safe. Exhibit 27. The results of the study have been previously described and the Hearing Examiner finds that, based on this evidence, the proposed facility will not reduce the safety of vehicular traffic on the public roads.

C. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed child day care facility use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*⁴

Conclusion: A site plan (Exhibit 18(b)) has been submitted showing buildings and other facilities, as required.

(2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:

(A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: Zoning Ordinance §59-E-3.7 requires, “For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the average drop off and pick up space required is one space for every six children.” There are no resident staff, therefore,

⁴ Section 59-G-2.13.1(b) of the Zoning Ordinance makes the requirements of §59-G-2.13.1(a) also applicable to daycare facilities with more than 30 children, which are approved by the Board of Appeals.

this section requires 6 spaces for each employee and 9 spaces for discharge and pick up of children. The petition provides 15 spaces, the requisite number required by the Zoning Ordinance $((52/6) + (6 \times 1) = 14.66)$.

(3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: While Technical Staff found that on-site circulation was adequate, the Planning Board expressed concern that there was inadequate circulation because of stacking that may occur if cars had difficulty exiting the property. Petitioners provided a delay study which demonstrated that there were 14 gaps of sufficient length for vehicles to exit the property during the peak hour, which would accommodate peak hour vehicles. It also provided information that there was sufficient room in the lower driveway to permit at least two cars to queue, and additional information that more car storage was available in the upper parking lot. The Hearing Examiner finds from this evidence that there is an adequate area for discharge and pick-up of children.

(4) *the petitioner submits an affidavit that the petitioner will:*

- (A) *comply with all applicable State and County requirements;*
- (B) *correct any deficiencies found in any government inspection; and*
- (C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Petitioners have submitted the required affidavits in Exhibits 1(c) and (d).

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: Technical Staff found that the use, as conditioned, would be compatible with surrounding uses and that traffic, parking and noise would not result in a nuisance. Both Technical Staff and the Planning Board found that the landscaping, sight tight fence, and retaining wall sufficiently screened the reduced setback on the northern property line (discussed in more detail in

the next section of this Report) from the dwellings immediately to the north. The Hearing Examiner agrees and finds that the Petitioners have created a significant landscaped buffer to screen the parking facility, which in combination with the distance from the dwellings north of the property, is more than adequate to mitigate the reduced setback.

The Hearing Examiner, however, does not believe it necessary to impose a condition requiring the Petitioners to make a good faith offer to the adjoining neighbors to plant additional trees on property not owned by the Petitioners. The Hearing Examiner has absolutely no evidence in the record, other than the Planning Board's conclusion, that this would be possible, desirable or necessary.

(b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

(1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: An appropriate Landscaping Plan was submitted as Exhibit 20.

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

- (A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*
- (B) *the additional density will not adversely affect adjacent properties;*
- (C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*
- (D) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board may limit the number of students outside at any one time.

Conclusion: The subject property comprises 41,006 square feet and Petitioners propose a maximum of 52 students on-site at one time. Thus, the use as proposed will house 788 square feet per child. Exhibit 19, p. 21; T.98. This requirement has been met without the need for a waiver.

- (c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*
- (1) *a structure owned or leased by a religious organization and used for worship;*
 - (2) *a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;*
 - (3) *a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or*
 - (4) *a publicly owned building.*

Conclusion: This section is not applicable.

D. Other Applicable Standards

Section 59-G-1.23. General development standards.

- (a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following from the Technical Staff Report (Exhibit 19, p. 9), demonstrates compliance with all applicable development standards:

Current Development Standard: R-200	Standard	Proposed
Minimum Lot Area	20,000 sf	41,006 sf
Minimum Lot width:		
• @ Front building line	100 ft	150.4 ft
• @ Street line	25 ft	150.0 ft
Minimum Building Setback:		
Front	40 ft (EBL)	53 ft
Side		
▪ One side	12 ft	42 ft
▪ Sum of both sides	25 ft	92 ft
▪ Rear	30 ft	161 ft
Maximum Building Height	50 ft	17.85
Maximum Building Coverage	25% (10,251 sf)	5.5% (2248 sf)
Maximum Front yard surface cover	30% (2752 sf)	24% (2,199 sf)

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: As previously discussed, Petitioner has provided the requisite number of parking spaces required by §59-E-3.7 of the Zoning Ordinance, but requests a reduction of the minimum setback for a parking facility established in §59-E-2.83(b). That section provides:

(b) Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and *twice the building side yard required in the zone*. The following additional setbacks must be provided for each parking facility:

- (1) if 150 to 199 parking spaces are provided, the required side and rear parking facility setbacks must be increased by 5 feet;
- (2) if 200 or more parking spaces are provided, the required side and rear parking facility setbacks must be increased by 10 feet. (emphasis supplied).

According to Technical Staff, the minimum required side yard setback in the R-200 Zone is 24 feet. The northern edge of the parking facility is within 6.6 and 7 feet of the side property line, necessitating a waiver of approximately 18 feet from the setback requirement.⁵ Exhibit 19, p. 10.

Section 59-E-4.5 of the Zoning Ordinance authorizes the Board of Appeals to waive of any of the parking standards in Article 59-E, if the waiver is “not necessary to accomplish the objectives in Section 59-E-4.2.” These objectives are:

(a) The protection of the health, safety and welfare of those who use any adjoining land or public road that abuts a parking facility. Such protection shall include, but shall not be limited to, the reasonable control of noise, glare or reflection from automobiles, automobile lights, parking lot lighting and automobile fumes by use of perimeter landscaping, planting, walls, fences or other natural features or improvements.

(b) The safety of pedestrians and motorists within a parking facility.

⁵ Petitioners do not need a waiver of the setback requirements for the area within the right of way for Frederick Road because the right of way is 120 feet in width. *Zoning Ordinance*, §59-E-2.81(b)(1).

(c) The optimum safe circulation of traffic within the parking facility and the proper location of entrances and exits to public roads so as to reduce or prevent traffic congestion.

(d) The provision of appropriate lighting, if the parking is to be used after dark.

As already described, the Petitioners propose to mitigate the reduced setback by installing a retaining wall, site tight fence, and significant landscaping along the northern property line. Nothing in the record indicates that this will be insufficient to screen the facility from the neighbors to the north. According to Ms. Bryant, the parking area has been designed so that no headlights will point toward the northern properties, as cars will be parking facing south. T. 19. In addition, the dwellings are located a significant distance from the facility (approximately 75 feet), and the photometric study shows that there is no light spillage beyond the northern property line. Based on this evidence, the Hearing Examiner finds that a waiver is warranted under §59-E-4.5, and will not have an adverse impact on adjoining residences.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: Technical Staff advises that a forest conservation plan exemption (42011129E) was confirmed for the subject property on March 17, 2011. Thus, no Preliminary Forest Conservation is required.

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: This property is within a special protection area designated by the Clarksburg Master Plan. The Petitioners have received approval of the water quality plan submitted into the record of this case that has been approved by both the Planning Board and the Department of Permitting Services. The Hearing Examiner finds that this standard has been met and will make compliance with the conditions of approval imposed by the Planning Board a condition of this special exception.

(f) *Signs. The display of a sign must comply with Article 59-F.*

Conclusion: As discussed in Part II.D. of this report, Petitioner seeks to erect a sign that significantly exceeds the size permitted in residential zones. As stated earlier, the Hearing Examiner does not find that the 15 square foot sign is in keeping with the single-family residential character of the neighborhood, and therefore, does not recommend approval of the proposed sign.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: The Hearing Examiner finds that Petitioners have met this standard. The building orientation does not change and the addition has been located in the rear of the property so it is not visible from the front. She agrees with Petitioners' architect that the addition will look more like a bedroom or kitchen addition to the existing single-family home. This is reinforced by the fact that Petitioners propose to retain many of the exterior materials and architectural features of the existing dwelling with only some modifications necessary to adapt the building to the proposed use. Based on the evidence before her, the Hearing Examiner finds that the daycare facility will be compatible with surrounding residences.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: As demonstrated in Exhibit 17(f), the Petitioners' photometric study, the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the modified structure will be designed to be compatible with its surroundings, and will be appropriately landscaped and screened. Adequate noise attenuation will be provided by the Trex fencing at the southern end of the playground. It will also have suitable pedestrian circulation.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed use, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATION

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-2850, which seeks a special exception for a child day care center on property zoned R-200 located at 22929 Frederick Road, Clarksburg, Maryland, described as Parcel 696 (Tax Account No. 0017853), be ***granted*** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, including its revised Statement of Operations (Exhibit 21(a)) and by the testimony of its witnesses and representations of counsel identified in this report;
2. Pursuant to Section 59-G-1.22 of the Zoning Ordinance, Petitioner shall obtain approval of a site plan for the proposed use from the Montgomery County Planning Board;
3. Petitioner must comply with the terms of its revised Site Plan (Exhibit 18(b)), its revised Landscape Plan (Exhibit 20), and its Lighting Plan (Exhibit 17(g)), except that Petitioner shall include a 3-foot high evergreen hedge or retaining wall at the southern border of the parking area to the rear of the structure at the time of site plan review. All amendments to these plans resulting from approval of a site plan by the Montgomery County Planning Board shall be filed with the Board of Appeals;
4. No more than 52 children and 6 staff members may be present on the site at one time;
5. Petitioners shall install a 6-foot Trex or other noise attenuation sight tight fence, with a minimum sound rating of Sound Transmission Class 19, on the south side of the outdoor play area;
6. All child drop-off and pick-up shall occur on-site; except for those children picked up or dropped off by public transportation;
7. All parking for special events held on the subject property shall occur within the parking area shown on the site plan (Exhibit 18(b));
8. No more than 25 children shall utilize outdoor play areas at one time;
9. Hours of operation are limited to 6:30 am to 6:30 pm, Monday through Friday, year-round;
10. No amplified sound or public address system of any kind shall be used outside of the building;

11. The facility must utilize residential trash service;
12. The exterior pole lights in the parking area shall be turned on only during the hours of operation;
13. The Petitioners must obtain approval of a Preliminary Plan per Chapter 50 of the Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the Petitioners must file a copy of the revised site and related plans with the Board of Appeals;
14. No sign may be posted on the subject property unless and until Petitioner obtains a modification of this special exception approval, unless the sign (1) meets all standards for signs on residentially zoned property, (2) receives all necessary approvals from the Department of Permitting Services, and (3) is placed at the location shown on the approved site plan (Exhibit 18(b));
15. Petitioner must comply with all the conditions of approval of the water quality plan approved by the Planning Board and the Department of Permitting Services (Exhibit 11(a));
16. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility;
17. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioners are bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 1(c) and (d), certifying that the operator will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception;
18. 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. Petitioner 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.

Dated: March 18, 2013

Respectfully submitted,



Lynn A. Robeson
Hearing Examiner

APPENDIX

1. Ms. Victoria Bryant:

Ms. Bryant qualified as an expert in land planning and landscape architecture. She testified that the subject property is zoned R-200, which permits daycare facilities as a special exception use. T. 25-26. She delineated the neighborhood as including surrounding properties that are within the R-200 Zone. The northern border of the neighborhood as she defines it runs along properties to the north of Suncrest Avenue along Timber Creek Lane to the east, Shawnee Lane to the south, and generally to the rear property lines of properties fronting Md. Route 355 to the west. T. 27-28. While the neighborhood she delineates is smaller than that defined by Technical Staff, Ms. Bryant believes that there is no significant difference between the two. She used the smaller neighborhood boundaries to follow those properties identified in the Master Plan as being in the "Transit Corridor". The properties included by Staff to the north are in the RMX Zone, which is single-family although more compactly developed. She believes that both delineations are characterized by properties with a variety of sizes and shapes; addition of the RMX development just adds to the diversity. T. 28.

Ms. Bryant opined that the intensity of special exception uses does not change under either neighborhood delineation. There is one special exception, a landscape nursery that is approximately 4 properties distant from the subject property and is within both neighborhoods. The next nearest special exception use lies outside both neighborhoods. T. 30-31.

Immediately adjacent properties include single-family detached dwellings to the south, a 10-acre residential property to the east, a five-lot subdivision (with panhandle lots) to the north, and large tracts of undeveloped forest to the west across Md. Route 355. Further away, there are some single-family detached homes along Coolbrook Lane to the south, a church facility to the southwest across Rt. 355, and single-family homes lining Timber Creek Lane to the north and east. T. 32.

Currently, the subject property is improved with a one-story single-family home with a walk-out entrance on the northern side yard, according to Ms. Bryant. The property slopes downward from east to west; the slope is gradual until approximately 10 feet in front of the building when it becomes steep. There are no significant environmental features on the site. The proposed development is exempt from the County's Forest Conservation Law. T. 32-33.

Ms. Bryant described the proposed use. The existing driveway will be widened to 20 feet. Upon entering the driveway, there will be 4 parking spaces on the right side with an ADA accessible van space. T. 34. A stormwater management feature will also be located on the northern side of the building. An additional 11 parking spaces are located to the rear of the building. T. 34. The large open area on the southeast of the building houses the septic field. T. 35-36.

There are two entrances to the building. People parking in the lower level may enter via a sidewalk leading to the basement. If parking on the lower level, people may enter through a porch on the back of the building. T. 34.

Landscaping along the northern property line is designed to shield the parking area from the adjacent single-family homes. T. 34. Landscaping along this boundary will include arborvitaes, hollies, and low-growing shrubs. T. 39. A retaining wall and a 6-foot high sight type fence provides additional screening. T. 39. The parking area will be landscaped with shade trees providing sufficient canopy to reduce the temperature of the parking lot. T. 34. An evergreen hedge screens the southwest edge of the parking area from Route 355. T. 39. The western border of the building is landscaped with plant materials supporting the stormwater management facility.

A path along the rear of the property leads to the outdoor play area. The play area may also be accessed from the lower level through a staircase and the upper level through a sidewalk. T. 34-35.

Ms. Bryant described the location of the parking area in relation to the Winter's property. The southern boundary of the parking area is 105 feet from the southern property line. There is an additional 30 feet between the property line and the Winter's home, for a total distance of 135 feet. T. 37. The current plan shows large red maple shade trees screening the parking area. The grade gradually slopes approximately four to five feet down from the Winter's home to the parking area. The gradual grade steepens as it approaches the parking area. T. 43-44. The existing grade will screen approximately one foot of the parked cars. T. 44. There is sufficient room to permit an additional three-foot hedge or low wall on the southern side of the parking area. The Petitioner would agree to a condition requiring a hedge or low wall along the southern boundary of the parking area to provide additional screening from car headlights. T. 43.

According to Ms. Bryant, the outdoor play area will house a play area, Little Tykes play equipment, and have an engineered wood surface. T. 45. Three black-vinyl coated chain link fences along the northern, eastern and western sides of the playground. The vinyl coating reduces the visibility of the fence.

A Trex sight-type fence will screen the playground from the Winter's property along the southern boundary. According to Ms. Bryant, the Trex fence has some sound attenuation qualities. T. 46. She submitted a report from an acoustical engineer, Mr. George Spano, concluding that noise levels at the outdoor play area at Petitioners' Adamstown facility reaches approximately 65 dba at times. The report concludes that the Trex fence will reduce that level by 5-10 dbas, resulting in peak noise levels between 60 and 63 dbas. T. 52.

Ms. Bryant described the proposed sign. The Petitioners propose one three by five-foot rectangular sign totaling 15 square feet. The sign will not be illuminated. Because the sign exceeds the maximum area permitted, the proposed sign will need a variance approved by the Sign Review Board. The Petitioners do not oppose a condition on this special exception approval requiring the variance. Ms. Bryant disagreed with the Planning Board's finding that the sign was too large because it is setback from the paved road by approximately 60 feet and from the right-of-way by 30 feet. In her opinion, the sign will not be out of scale considering the speed of traffic and the distance from the road. T. 54-56.

In Ms. Bryant's opinion, the inherent characteristics of a special exception for a daycare facility include the building and outdoor play area, the parking lot, additional lighting, noise from the children in the outdoor play area, longer hours of operation, and traffic impact from employees and parent drop-off and pick-up. T. 58. She disagrees with Staff's finding that the waiver of the setbacks for a parking facility is non-inherent to the use. In her opinion, the waiver does not adversely impact the adjacent property owners to the north due to the sight type fence, retaining wall, and landscaping. The grade change between the driveway and the adjoining property in that area also helps to screen the driveway. T. 58. The adjacent homes are also buffered because each is setback approximately 75 feet due to the pipestem driveways. T. 29.

She testified that a waiver of the setback requirements for a parking facility meets the standards for approval in the Zoning Ordinance because it will not adversely impact the health, welfare and safety of the adjacent uses, traffic on either the public road or vehicle circulation within the site. Ms. Bryant believes that the additional buffering along the northern edge of the drive aisle more than compensates for the additional 10 feet of setback because the driveway has been so effectively screened from the north. T. 60. Properties to the north will not experience the shine from headlights because the cars will enter pointing east, pull in facing south, reverse

and pull forward facing the southwest. T. 58-59. She opined that a waiver will not impact pedestrian safety because all of the parking is located on the same side of the building, reducing pedestrian conflicts within the parking lot. T. 59-60. Site circulation is adequate and they have both widened the driveway to 20 feet and raised it by 3 inches at the access to Route 355 to increase existing sight distance. T. 61.

The photometric plan for the property, in her opinion, shows that the use will not have an adverse impact on adjoining properties because it demonstrates there will be no light spillage onto adjacent property; there are 0 footcandles at the property line and the County standard requires a minimum of 0.1 footcandles there. Lighting includes two 12-foot high poles with a "shoebox" light fixture, which is a square-shaped fixture at the top of the pole. One of the pole lights is located in the lower parking area in front of the building and one is located in the upper parking area. In addition to the pole lights, there are two "type B" fixtures called "wall packs", which are little square boxes that are located next to the entrances. T. 62. Each of the fixtures are full cut-off fixtures, which directs the light downward rather than to the sides of the fixture. T. 64. The lights will be turned off a few minutes after 6:30 p.m. each weekday when staff leaves. T. 63.

According to Ms. Bryant, the use complies with the Clarksburg Master Plan. It is within the Hyattstown special study area. While the Plan makes no specific recommendation about the site, the use is permitted by special exception under the R-200 Zone. T. 65-66. The Plan also forecasts a "profound" need for daycare facilities because of the number of dwellings planned for the area. The Plan recommends that these facilities be located near transit, housing and employment. In her opinion, the facility is close to the new housing located to the north and to the Town Center in addition to the existing homes in the immediate area. The property is located

within the transit corridor identified in the Plan; a transit stop is planned near the intersection of Shawnee and Observatory Drive, and one a little further north on Route 355. T. 65-66.

In Ms. Bryant's opinion, the use is in keeping with the size and scale of the surrounding community, another goal of the Master Plan. T. 66. It is a brick rancher-style home consistent with the existing 15- 20-year old homes in the immediate area. With the addition in the rear, the building's footprint is typical of the homes in the area. T. 66-67. The proposal serves as an appropriate transition between the existing older neighborhood to the south and the more modern homes which are larger. T. 66.

She testified that the daycare is able to comply with the County's noise standards. The limitations on play times and the number of children that may be outside at one time will serve to ensure that these standards will be met. T. 68.

Ms. Bryant also concluded that the facility will maintain the existing residential character of the neighborhood because, from the public road, it will be difficult to determine whether this is a residential or commercial use. T. 69. Nor does she think that the daycare will intensify the impact of special exceptions in the area. There is only one existing special exception, the Green Gardens horticultural nursery and commercial greenhouse, which has been in operation since 1976 or 1979. It is not a retail use; everything is picked up from the nursery and unloaded into people's yards. T. 69. There are no other special exceptions in the defined neighborhood, although there is another daycare facility located at Old Baltimore Road and Md. Route 355. T. 69-70. It is approved for a maximum of 283 students, 163 of which will be pre-school and 120 of which are of school age. It has a staff of 41 employees. T. 70. She researched the status of the Avalon School, located to the south of the Winter's property. According to Ms. Bryant, the school had obtained an extension of time to implement its approval until October, 2011, and have not reapplied for a new special exception. T. 70. Nor have any building permits been

pulled for construction. As a result, she believes that the special exception has expired. T. 70-71.

She does not believe that the use will be detrimental to the use and enjoyment of other properties. The scale of the building is residential and the hours of operation are primarily during the day when individuals are at work. The building itself meets all setback requirements. The minimum building setback is 12 feet on one side and 25 feet total. The building is set back 12 feet from the northern property line and 13 feet from the southern property line. The height of the building, 17.85 feet, is well under the 50-foot maximum height for the R-200 Zone. As a result, she concluded that the structure will meet all of the development standards in the zone. T. 74.

Ms. Bryant further observed that the facility will not cause any objectionable noise, fumes odor or dust because it will use only residential trash pick-up (i.e., no dumpsters) and there is no on-site transformer. T. 75. Nor will food be delivered to the site. T. 76.

Ms. Bryant believes that there is adequate parking for the facility. The Zoning Ordinance requires one space for every staff member and one for every six children. This results in a requirement of 15 spaces, which is what the special exception plan proposes. T. 77.

On cross-examination, Ms. Bryant testified that 22.6% of the site is impervious, but is not within the area of the Master Plan recommended for caps on impervious area. T. 87. According to her, Technical Staff's environmental review applies a percentage of impervious area that is considered typical of the particular zone. She believes that Staff uses 16-19% impervious area as typical for the R-200 Zone. As the daycare's impervious area is 22.6%, environmental staff recommended approval of the petition. T. 87.

She also testified that the tot lot cannot be moved to another area of the property. This is because the driveway and parking had to be located on the northern side, the building already

exists and the balance of the rear of the lot is primarily septic field. T. 89. She did consider the difference in grade between the Winter's property and the subject property when evaluating the site. T. 91. The topography lines show a difference of two feet between the Winter's property (that is higher) and the subject property across the mid point. If one assumes that the Winter's home is elevated approximately three feet, the difference would be five feet. T. 91-92. The Petitioners are proposing a six-foot fence and some evergreen and shade trees. The shade trees will eventually grow to approximately 50-60 feet and the evergreens will grow to between 10 and 15 feet. T. 93.

2. Mr. Stephen Crum:

Mr. Crum testified as an expert in civil engineering. T. 109. He described the physical characteristics of the property. The property slopes upward from Route 355 to the east. The grade toward the rear is gently than the grade nearer the road. The dwelling on the Winter property is slightly higher than the building on the subject property. The existing driveway is residential; Petitioners will improve the driveway to State commercial standards, including widening it to 20 feet. T. 111. Existing utilities include a fire hydrant in front of the property, public water, electricity and telephone.

Mr. Crum testified that the property will not be served by public sewer. The public sewer line runs behind the dwellings to the north. In order to reach the subject property, Petitioners would have to obtain an easement from the property owners of the pipestem lots and install a fairly sizeable extension. In addition, the extension would have to be pressurized, which the WSSC does not favor. T. 112.

Mr. Crum stated that he researched the WSSC records, which listed the property's sewer category as S-0, which does not exist. He believes that the category is actually S-6. T. 113. There is an existing septic system in the front of the property which is not sufficient to serve the

daycare. It consists of two seepage pits, methodology used in the 1960's. The Petitioners propose to locate a new septic field in the rear (eastern side) of the property. Petitioners propose to eliminate the seepage pits in front and install a new septic tank and pump chamber there.

Effluent will then be pumped to the fields in the rear for treatment. T. 114. The rear field contains trenches which are approximately two feet wide and four feet high filled with aggregate and perforated pipe. Montgomery County has issued a permit to the Petitioners to install the new system that remains valid. T. 116. The septic field on the plan is large because the County requires installation of replacement trenches. T. 116. The tot lot may not be over the septic field because the County does not permit grading over the septic areas. In addition, the play equipment is anchored on foundations, which are also not permitted in septic fields. T. 116-117.

Mr. Crum also explained the purpose of the special protection areas. These were established to protect areas in which there are high quality streams. Instead of submitting a stormwater management concept plan, the Petitioners are required to submit a water quality plan. These are reviewed by various County agencies, including the Planning Board. The Petitioners submitted a water quality plan, which was approved by the Planning Board for those matters within their jurisdiction. T. 116-118. DPS has approved the preliminary water quality plan as well. T. 120.

Mr. Crum stated that the property still has to undergo preliminary plan approval and he does not know any obstacles preventing that approval. He stated that one tree will encroach into a public utility easement, but they will install underground cable in the event that utilities every need to be placed underground. This will eliminate the need to excavate the easement if the utilities ever decide to install the utilities underground. T. 124.

On cross-examination, Mr. Crum testified that the septic will be of adequate size to serve the proposed number of students and staff and that it will not adversely impact Mr. Winter's property. T. 135-137.

3. Mr. Richard Washburn:

Mr. Washburn qualified as an expert in architecture. T. 140. He described the existing structure as a three-bedroom single-family dwelling on one level with a basement. There is a walk-out exit, which is the garage overhead door on the northern side of the property. The exterior is brick on all four sides with a shingled roof, standard windows and a chimney. T. 141-142.

According to Mr. Washburn, the Petitioners plan several modifications to the existing building. The roof will have a higher pitch and they will add dormers to the roof. The existing door, which is now on the left side of the front entrance, will be located on the right side and will serve as an exit door for a classroom. The brick will be retained, but re-painted. T. 142.

The north side of the building will have an entrance to the lower level where the existing garage walk-out is located. That side will not have many changes except the higher roof pitch and dormer windows. T. 142.

The addition is located on the rear (or east side) of the building. He used a reverse gable roof to prevent the addition from being seen from the front of the property. Another entrance is located to the side and rear of the building. T. 143.

Few changes to the façade of the southern side are proposed. It will still have a chimney, shingle roof, and an eight-foot eave height. The overall height of the building will be 24 – 25 feet at the ridge. T. 143.

Mr. Washburn testified that the building is designed to maintain its residential appearance. He accomplished this by retaining the exterior residential materials and the large-

paneled glass windows, T. 143-144. The rear addition will have hardy-board siding. T. 144. Mr. Washburn stated that both the interior and exterior are designed to be ADA compliant.

Mr. Washburn opined that the proposed building will be consistent with the residential character of the neighborhood. The addition will look like a bedroom or kitchen that has been added to the home. T. 145. From the front of the property along Frederick Road, the addition will not be visible. T. 146.

The building's interior will consist of a basement and first floor. The dormers are used to provide space and light; they are not a second story. T. 147.

The lower level has an ADA compliant entrance from the front (lower) parking lot where the handicapped space is located. It houses a classroom, utility spaces, a handicapped accessible bathroom, and a storage area. The storage area has high windows, and has not been designed for classroom space. T. 148. There is a second exit to the rear of the building and one to the play area. T. 148. An interior stairway leads to the upper level, which contains a small kitchen, office, restroom, and three classrooms. T. 149. Each classroom has an exterior exit, which is a code requirement. T. 150.

In Mr. Washburn's opinion, the design of the building meets the requirements of Section 59-C-1.23(g) of the Zoning Ordinance. The siting of the building remains unchanged. The existing footprint of the building is approximately 1,300 to 1,400 square feet; the footprint of the addition is less than half of that, or 600 square feet. T. 151. In addition, he did not change the existing eave height—only the roof pitch has been raised. All of the exterior materials are residential in nature. T. 151.

4. Mr. Carl Wilson:

Mr. Wilson qualified as an expert in transportation planning and traffic engineering. T. 154. This use will primarily impact Frederick Road, as most of the trips are pass-by trips. T.

155-156. Currently, Frederick Road at this location is a two-lane undivided road with a 3-5 foot shoulder on each side of the road. The Master Plan right of way is 120 feet. No significant improvements are planned for Frederick Road, which is a State road. T. 153-156.

The new TPAR policy, rather than the former Policy Area Mobility Review (PAMR) applies to this application. The TPAR still divides the County into policy areas, and the subject property is in the Clarksburg Policy Area. T. 158. Under the TPAR, there is sufficient capacity in the Policy Area to accommodate the use, although this will be reviewed again during preliminary plan approval. T. 160. The new test requires review of both highway and transit capacity. Available transit capacity is measured by the amount of time between bus trips. This area is considered mostly rural and the transit capacity here is not sufficient. As a result, according to Mr. Wilson, the Planning Board and MCDOT are working on a mitigation program to permit projects to proceed by paying a fee at preliminary plan approval. T. 160-161.

Local Area Transportation Review (LATR) still applies under the new adequate public facilities test. According to Mr. Wilson, the daycare facility will generate 28 peak hour trips in the morning and the evening. As this is less than 30 trips necessary to trigger a requirement for a traffic study, he submitted a "transportation statement" to Technical Staff. T. 159. He found that half of the trips will be entering the facility and half will be leaving the facility during the peak hours, which is consistent with parent drop-off and pick-up. T. 159. These numbers are based on a student enrollment of 59 and six teachers employed at the facility. T. 160. Technical Staff reviewed the traffic statement and agreed with its findings. T. 162.

Mr. Wilson described the site circulation of the proposed use. T. 163. Teachers will park at the rear of the parking lot; spaces closer to the building will be used for parent drop-off and pick-up. The driveway will be two lanes, one lane in and one out. There is sufficient throat area in the driveway to provide storage for two vehicles waiting to exit the property at the same time.

T. 163. Widening of the existing driveway will be on the south and east sides, as it is as close to the northern property line as it can be. T. 164.

In addition to adding width to the driveway, the Petitioners propose to raise the driveway by three inches in order to ensure adequate sight distance along Frederick Road. SHA requires a minimum sight distance of 325 feet. Currently, there is a vertical curve along Frederick Road that restricts sight distance to 315 feet. The additional height of the driveway will add 10 feet to the existing sight distance, thus meeting SHA standards. T. 164.

Mr. Wilson also testified that vehicles entering and exiting the driveway from both directions will have adequate time to make the turn. T. 165. To determine this, they used the analysis methods in the Highway Capacity Manual, which analyzes the actual operation of the intersection, rather than simply measuring critical movements. They assumed conservatively that 75% of the traffic would enter the site from the north. Their study indicated that the morning southbound traffic will have a delay time of 8 seconds, or Level of Service A. Left turns exiting the site in the morning will experience a 13.1 second delay. In the evenings, he found that left turns into the site would experience a 10.9 second delay, or Level of Service B. Based on his study, left turns exiting the site will experience a 24-second delay, or Level of Service C. All of these levels of service are acceptable. In his opinion, the available storage at the driveway throat is adequate because there will only be 14 trips leaving during the peak hour. There is sufficient space to permit cars to back out and stack further toward the rear of the parking area as well. T. 165-167.

Mr. Wilson also stated that his firm prepared a gap study at the request of the Planning Board. To prepare the gap study, his firm videotaped traffic along Frederick Road during the morning and evening peak hours. Software applied to the video can measure the actual time between cars as they pass the property. The "gap" is the amount of time between cars passing

through the intersection of Frederick Road and the driveway. AASHTO, or the American Association of Safe Highway Transportation Officials, sets the standards for the gap times which should be available to different roads. For a left turn from a minor street, which is the driveway entrance, the gap must be 7 seconds. For a right turn, a gap of 6 ½ seconds is required. A left turn from a major road requires 5 ½ seconds. These gaps apply regardless of the speed limit. T. 168-170.

Their study found the smallest number of gaps occurred in the left turn movement exiting the site in the morning peak hour. During this time, there were 52 gaps available to cars making a left turn from the driveway onto Frederick Road . As there will be only 14 trips exiting the site, there are sufficient gaps to accommodate this movement. Some of the gaps are as large as 16 to 18 seconds, which may permit more than one car to exit during a single gap. This result is consistent with the HCM analysis performed for the site, which indicates that delays will be minimal. T. 170-171.

In addition to the gap study, Mr. Wilson's firm pulled crash data available from the State Highway Administration. According to Mr. Wilson, the accident activity at this location is minimal. These records are kept only for accidents where the car is not drivable from the scene or there is personal injury. He stated that there is no way to obtain records tracking fender benders. T. 171-172.

Mr. Wilson testified that cars may not park along the shoulder of Frederick Road because it is only 3-5 feet in width. He had not studied how parking for special events at the school would be handled. T. 175.

On cross-examination, Mr. Wilson testified that even though the gap study had been based on traffic from a single weekday, the results were consistent with other data, including

SHA volume counts and a speed study that was performed. The delays shown in the HCM analysis were also consistent with both the gap study and the SHA volume counts. T. 182-183.

5. Ms. Shirley Vesper:

Ms. Vesper testified that she is the Director and a teacher at the Creative Memories Early Learning Center in Adamstown, Maryland, and that she and Michael Vesper, as well as the Creative Memories Early Learning Center Incorporated, are co-applicants. She and Mr. Vesper are acting on behalf of themselves and the corporation. T. 184-185. She understands that she will be bound by all conditions imposed by the Board of Appeals if the special exception is approved. T. 188.

Ms. Vesper described the proposed operation of the daycare facility. The maximum number of individuals on-site will be 52 students and six teachers. There may be more individuals enrolled because some students are part time and two children share one spot. She has been director of the Adamstown facility for five years and has been working in daycare for eight years. In her experience, the children do not all arrive at the same time. Rather, arrival times are staggered between 6:30 a.m. and 10:00 a.m. Several families will have siblings enrolled. The facility will operate only on Mondays through Fridays; it has no weekend operations. Staff members will arrive approximately 10 or 15 minutes before the 6:30 a.m. opening time and leave 10 or 15 minutes after the 6:30 p.m. closing time. T. 189.

Lights will be turned on when staff members arrive and will be turned off when they leave during those parts of the year when daylight is not available. They are not motion sensor lights and will be turned on and off manually. T. 190.

The daycare will offer a full-time program for infants and children up to five years of age. A before and after care program will be offered for children between six and 12 years old. T. 190.

According to Ms. Vesper, there will be three special events during the year: one at Christmas, one at graduation, and possibly one for the school's anniversary. T. 190. The celebrations are done one class at a time with 15-minute breaks between in the evenings; the facility will close early the day of the celebration. The maximum number of children permitted in each class will be 15 students. At the existing facility, one of the celebrations occurs off-site and the graduation is limited to 4-5 year olds. Therefore, other students will be vacating the building while the event begins. In her experience, the 15 parking spaces will be adequate for special events. T. 192-193.

One of the teachers will also serve as director of the school, Ms. Vesper stated. The director is in charge of staffing, scheduling, and making sure that the school stays in compliance with all State regulations. T. 194. There would be a staff person available to assist parents if they observed any congestion in the parking lot. In her eight years at the Adamstown facility, they have never had to designate an employee to monitor the parking lot full time. T. 194.

Ms. Vesper reiterated that the storage area in the basement of the building will not be used for a classroom. Parents whose children are in the basement classroom will enter from the lower level and sign their children in with the teacher. Parents of children who are in upper floor classrooms will enter into an area with an office, and proceed to the classroom to sign children in. T. 194.

Weather conditions permitting, two classes will be in the outdoor play area with a maximum number of 25 children at one time, although they generally average about 20 children. In cold weather, children are generally out for 15 minutes at a time, although on nice days they may be out for as much as 25 minutes. Two teachers are out on the play area with the children at all times. T. 197. They usually begin taking children out between 9:00 a.m. and 9:30 a.m. and they are usually back inside the daycare by 11:30 a.m. Quiet time is approximately between

Noon and 2:30 p.m., at which time the children have a snack. They begin phasing the children back out to the playground at approximately 3:00 p.m. and stay there until 5:00 p.m. depending on weather conditions. T. 198.

Based on her experience, the children do not make a lot of noise while they are playing. Generally, they are louder when they first enter the playground, but settle down once the teachers begin sending them to different play stations. She would not prefer to have a sight type fence surrounding the entire playground because she prefers the area to feel more open. She agrees to provide the sight-type Trex fence near the southern property line to reduce noise from the play area. T. 198-199.

Ms. Vesper testified that there will be a morning and afternoon snack served at the facility, but lunches are provided by parents. They obtain the snacks by driving to Costco; she does not expect large truck deliveries, except for occasional Fedex deliveries, at the property. T. 201. Trash service is residential; there are no dumpsters on the premises. There is a school bus stop located at the end of the shared driveways just to the north of the property. She would like to utilize that stop for children in the before and aftercare program, although she has yet to arrange that with the public schools. T. 202.

On cross-examination, Ms. Vesper stated that only the play area would be fenced for the security of the children. The remaining property will not be fenced. One hundred percent of the parking is on-site at the Adamstown property; there is no off-site parking. She could not say how many 5-12 year olds would be in the outdoor play area; that depends on staffing and annual enrollment. Before and after care activities are structured, including specific times in the outdoor play area. In her five years as Director of the Adamstown facility, she has received no complaints or zoning violations.

6. Mrs. Gloria Winter:

Mrs. Winter testified that she has lived on her property her entire life. The subject property, her daughter's property and her property were all part of a 200-acre farm owned by her grandparents. She and her husband own the 10-acre property adjacent to the east. Her daughter owns the property immediately to the south of the subject property. She believes that the building design is attractive and the daycare is a positive use for the community: Her main concern is that the noise generated by children in the outdoor play area will negatively impact her daughter. She is not sure that the 6-foot fence will be sufficient to address noise issues. T. 211.

Both she and her daughter live on a high ridge. In her experience, she can hear sounds from as far as a mile away that are generated in lower areas, such as a football game at Clarksburg High School. T. 214.

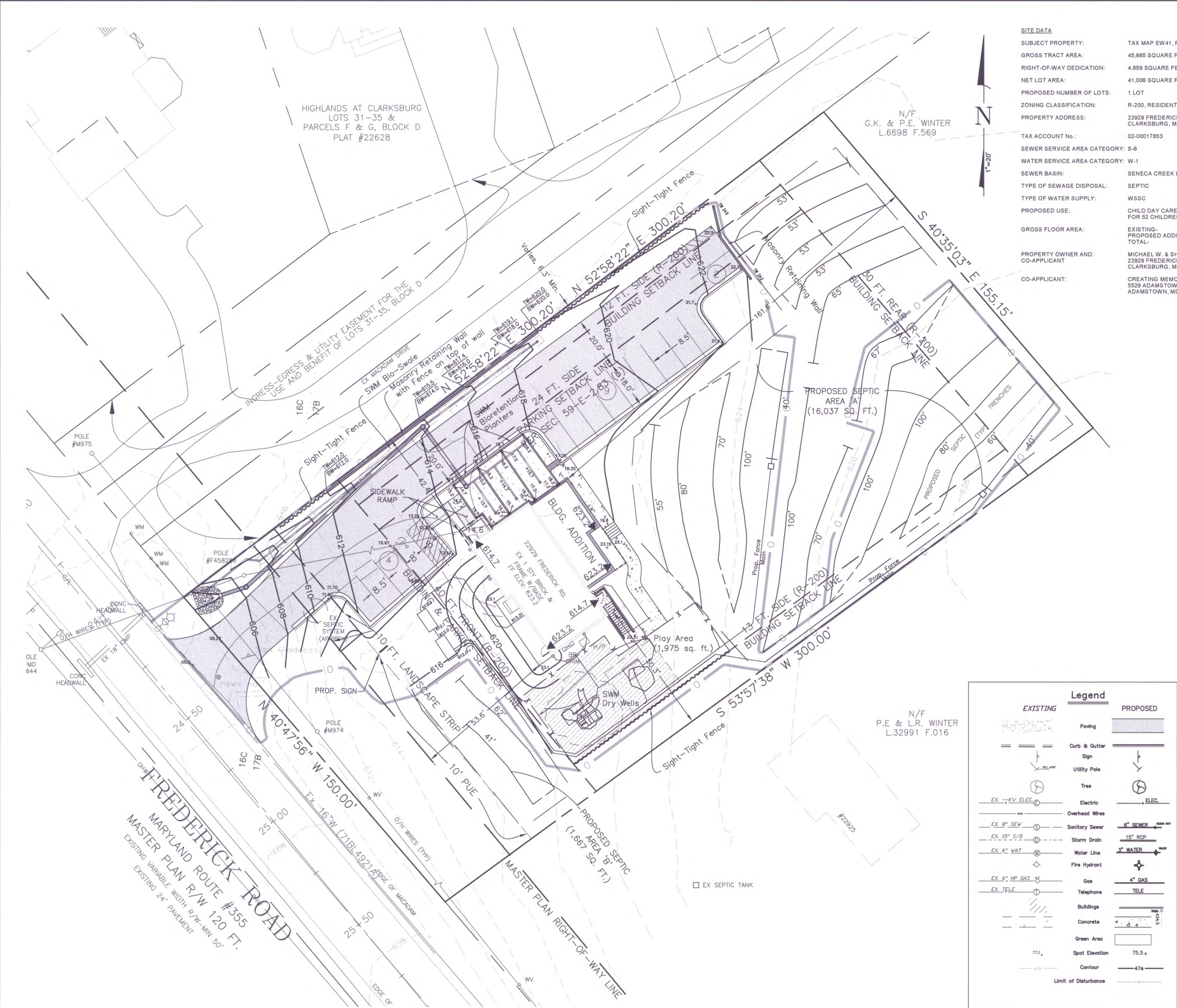
Her other concern is traffic. In her estimation, traffic is at a standstill on Frederick Road most days and she has seen many fender benders. T. 214-220.

7. Mr. Philip Winter:

Mr. Winter echoed his wife's concerns about traffic. He testified that his daughter works at the Pentagon and her husband works in Annapolis and both have to turn right onto Frederick Road on their way to work between 7:00 a.m. and 8:00 a.m. in the morning. They then take Springtown Road to I-270. He thinks, however, that this may have more to do with the buses from the high school. T. 220. Mr. Winter was also concerned about the possibility that the Avalon School would move forward—it is located immediately south of his property. T. 101.

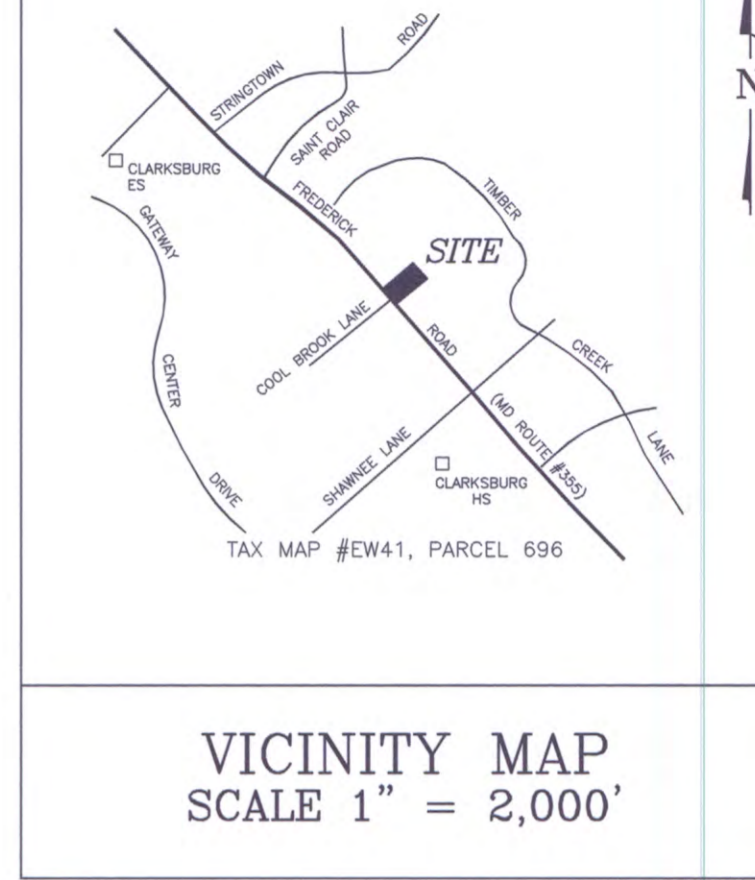
His son-in-law is an engineer in sound communication and asked Mr. Winter to get answers to several questions on the expert's sound report. His daughter is convinced that this will affect the value of her property. T. 221. He is a professional appraiser and he is unsure

whether it will devalue her property or not. He believes that the use is legitimate. T. 223. He is skeptical of zoning because of Clarksburg's checkered past. He assumed the whole property would be fenced, although not having the fence is not a "big thing" to him. He does want adequate buffers and wants to make sure that the leach field will not encroach onto his property or his daughter's property. T. 223-224.



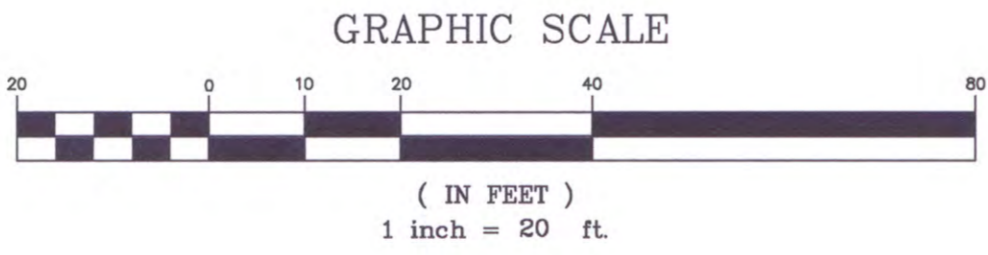
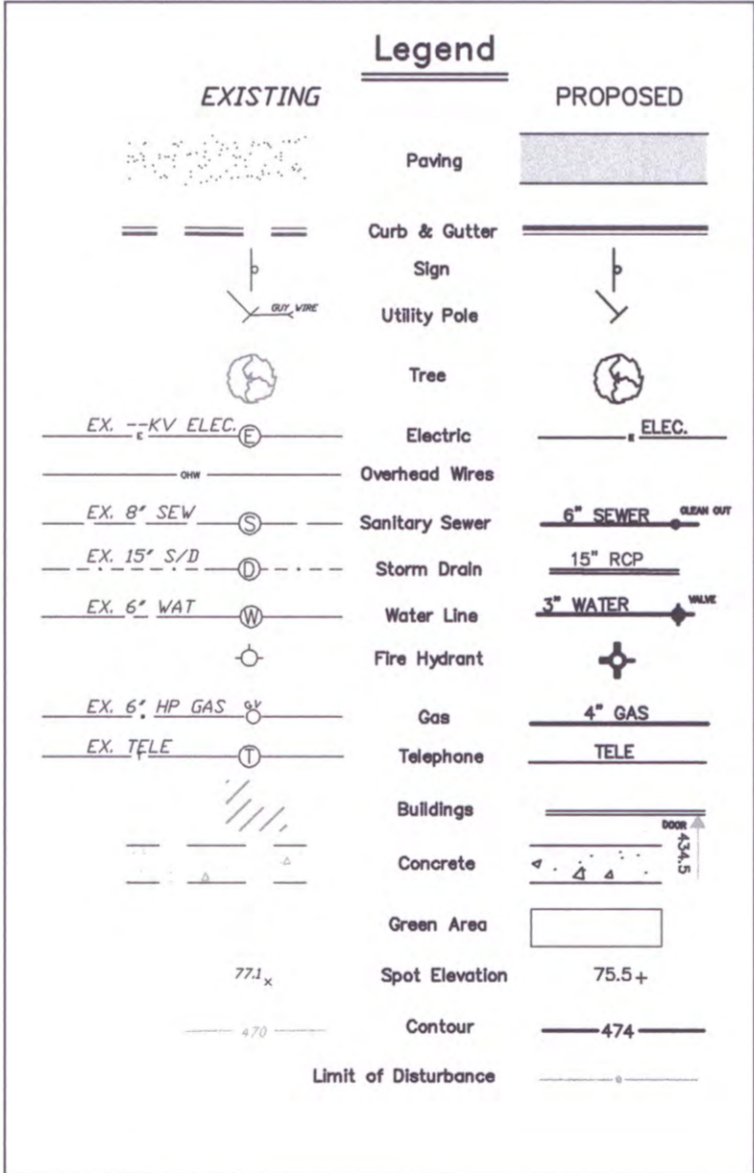
SITE DATA
SUBJECT PROPERTY: TAX MAP EW41, PARCEL P696
GROSS TRACT AREA: 45,665 SQUARE FEET or 1.04832 ACRES
RIGHT-OF-WAY DEDICATION: 4,659 SQUARE FEET or 0.10696 ACRES
NET LOT AREA: 41,006 SQUARE FEET or 0.94136 ACRES
PROPOSED NUMBER OF LOTS: 1 LOT
ZONING CLASSIFICATION: R-200, RESIDENTIAL, ONE-FAMILY
PROPERTY ADDRESS: 22929 FREDERICK ROAD CLARKSBURG, MD 20871
TAX ACCOUNT No.: 02-00017853
SEWER SERVICE AREA CATEGORY: S-6
WATER SERVICE AREA CATEGORY: W-1
SEWER BASIN: SENECA CREEK BASIN
TYPE OF SEWAGE DISPOSAL: SEPTIC
TYPE OF WATER SUPPLY: WSSC
PROPOSED USE: CHILD DAY CARE FACILITY FOR 52 CHILDREN
GROSS FLOOR AREA: EXISTING- 2780 SQ. FT.
PROPOSED ADDITION- 1150 SQ. FT.
TOTAL- 3930 SQ. FT.
PROPERTY OWNER AND CO-APPLICANT: MICHAEL W. A. SHIRLEY M. VESPER 22929 FREDERICK ROAD CLARKSBURG, MD 20871-8431
CO-APPLICANT: CREATING MEMORIES CHILDREN'S LEARNING CENTER 5529 ADAMSTOWN ROAD ADAMSTOWN, MD 21710

DEVELOPMENT STANDARDS		REQUIRED/ALLOWED		PROVIDED	
TRACT AREA AND DENSITY (59-C-1.321)		None Specified		N/A	
(a) Minimum tract area (square feet). No development shall be located on a tract.					
(b) Maximum density of development (dwelling units per acre of useable area) as defined in section 59-C-1.523:		None Specified		N/A	
LOT AREA AND WIDTH (59-C-1.322)					
(a) Minimum net lot area for a main building together with its accessory buildings (in square feet). For one-family detached dwellings:		20,000 SQ. FT.		41,006 SQ. FT.	
(b) Minimum lot width (in feet). At front building line. For one-family detached dwellings:		100 FT.		150.4 FT.	
At existing or proposed street line:		25 FT.		150.0 FT.	
YARD REQUIREMENTS FOR A MAIN BUILDING (59-C-1.323)					
(a) Minimum setback from street. A main building must not be nearer to any street line than the distance shown:		40 FT. (6)		53 FT.	
(b) Setback from adjoining lot. A main building must not be nearer to any lot line than the following:					
(1) Side:		12 FT.		42 FT.	
One side:		25 FT.		92 FT.	
Sum of both sides:		30 FT.		161 FT.	
(2) Rear:					
MAXIMUM BUILDING HEIGHT (in feet) (59-C-1.327.) For any building in these zones:		50 FT. (11)		17.85 FT.	
BUILDING HEIGHT COMPUTATION First Floor Elevation: Distance from FT Elev. to Mid-Point of Roof Average Elevation of Finished Ground Surface Along Front of the Building				623.20 + 14.21 FT. = 619.56	
Building Height				17.85 FT.	
COVERAGE (59-C-1.328) Maximum percentage of net lot area That may be covered by buildings, including accessory buildings:		25% (12) or 10,251 SQ. FT.		2,248 SQ. FT. or 5.5%	
-In the zones indicated, the maximum percentage of the area of the front yard that can be covered by surfaced area, excluding the surfaced area in a driveway or a pipestem or flag shaped lot:		30% (13) or 2,752 SQ. FT.		2,199 SQ. FT. or 24.0%	
ADDITIONAL DEVELOPMENT REQUIREMENTS (59-G-1.329)		Not Applicable to This Application			
DEVELOPMENT STANDARDS CHILD DAY CARE FACILITY (59-G-2.13.1)		REQUIRED/ALLOWED		PROVIDED	
A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection 59-G-2.13.1 (a), and the following additional requirements:					
(1) a landscaping plan must be submitted showing the location, height, or caliper, and species of all plant materials; and					
(2) in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child.		26,000 SQ. FT.		41,006 SQ. FT.	



OFF STREET PARKING AND LOADING (59-E)		REQUIRED/ALLOWED		PROVIDED	
SURFACE PARKING FACILITY AREA- 5,962 SQ. FT.					
SURFACE PARKING FACILITY AREA, INCLUDING DRIVEWAYS 7,495 SQ. FT.					
RESIDENT STAFF NONE					
NON-RESIDENT STAFF 6 PERSONS					
CHILDREN 52 PERSONS					
LANDSCAPING (59-E-2.7)					
LANDSCAPE STRIP AREA ADJACENT TO A STREET RIGHT-OF-WAY (59-E-2.7.1) Parking facilities located adjacent to a street right-of-way shall provide a landscaping strip at least 10 feet in width.		10 FT.		10 FT.	
INTERNAL LANDSCAPING (59-E-2.7.3) 5% or 298.1 SQ. FT.				407.7 SQ. FT. or 6.8%	
PARKING AND LOADING FACILITIES FOR SPECIAL EXCEPTION USES IN RESIDENTIAL ZONES (59-E-2.13.3)					
(a) LOCATION. Parking facilities must be located to maintain a residential character and a pedestrian-friendly street orientation.					
(b) SETBACKS. Each parking and loading facility, including each entrance and exit driveway, must be set back not less than the applicable building front and rear yard and twice the side yard required in the zone.					
Front yard 40 FT.				13.5 FT. (1)	
Rear Yard 30 FT.				59 FT. (1)	
Double Side Yard 24 FT.				6 FT. (1)	
(c) SCREENING. Each parking and loading facility, including driveway and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be at least 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of them. Along all street rights-of-way screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence, or masonry wall.					
(d) SHADING OF PAVED AREAS. Trees must be planted and maintained throughout the parking facility to assure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after that parking facility is built.					
		REQUIRED 30% or 2,248 SQ. FT.		PROVIDED 2,444 SQ. FT. or 33%	
NUMBER OF SPACES REQUIRED (59-E-3) Child Day Care Facility: For a child day center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the average drop off and pick up space required is one space for every six children. Valuers and variance are allowed in accordance with the Zoning Ordinance. Therefore: 5 Staff / 10 spaces = 52 Children / 6 Spaces =		6.0 SPACES 8.7 SPACES			
TOTAL REQUIRED 14.7 or 15 SPACES				15 SPACES	
(1) Waiver requested.					

- (6) Subject to an established building line in accordance with Sec. 59-A-5.33, if applicable.
- (11) If the lot is the site of a building permit application filed after April 28, 2008, then the maximum allowable building height is determined by either of two methods and varies with the lot area as follows: (Table Follows in Code) Note, the subject property exceeds the maximum lot area subject to these provisions.
- (12) If the building on a lot is infill development, then the maximum area that may be covered by any building including accessory building and any weatherproofed floor area above a porch, but not including any bay window, chimney, porch, or up to 240 square feet of a detached garage, if the garage is less than 350 square feet of floor area and less than 20 feet in height, must vary with the lot area as follows: (Table Follows in Code) Note, the subject property does not meet the definition of infill development.
- (13)
- (a) Any surfaced area existing before October 26, 2010 is not limited by the provision if it is not increased in area.
- (b) Surfaced area may be a maximum of 50 percent of the front yard of a tract that has its primary access from a primary residential street, minor arterial road, major highway of arterial, or State road.
- (c) Surfaced area consisting of 2 parking spaces can exceed the limits of this provision if it is no larger than 320 square feet in total area.
- (d) No more than one vehicle may be parked for every 160 square feet of surfaced area.
- (e) The limit on surfaced area does not apply to stone or rock quarries in the R-200 zone.
- (f) The Department of Permitting Services may grant a waiver to these surfaced area limits as necessary to protect public safety.
- (g) Parking in a front yard on a non-surfaced area or parking on less than 160 square feet of surfaced area for each vehicle must cease after October 24, 2011.



Call "Miss Utility" at 1-800-257-7777, 48 hours prior to the start of work. The excavator must notify all public utility companies with under ground facilities in the area of proposed excavation and have those facilities located by utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter 36A of the Montgomery County Code.

NO.	DATE	DESCRIPTION	BY
2	11-07-12	Revised per MNCPPC Comments	SEC
1	10-10-12	Revised per MNCPPC Comments	SEC

Professional Certification

I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed Professional Engineer under the Laws of the State of Maryland License No. 16905, Expiration Date: 04/21/2014

TAX MAP EW 341 WSSC 232 NW 13

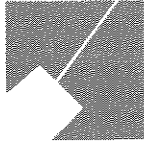
SITE DEVELOPMENT PLAN FOR SPECIAL EXCEPTION
PARCEL P696
CLARKSBURG CHILDCARE CENTER
L. 3507 F.64
2ND ELECTION DISTRICT - MONTGOMERY COUNTY - MARYLAND

MHG Macris, Hendricks & Glascock, P.A.
Engineers ■ Planners
Landscape Architects ■ Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone :301.670.0840
Fax :301.948.0693
www.mhgpa.com

Proj. Mgr. SEC	Designer MWP
Date 06-15-12	Scale 1"=20'
Project No. 2010.147.11	Sheet 1 of 1



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

December 19, 2012

Ms. Catherine G. Titus, Chair
Montgomery County Board of Appeals
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Re: **Board of Appeals No. S-2850: Clarksburg Child Care Center:** a Child Day Care Facility for 52 children and 6 staff members, 22929 Frederick Road, 2,300 feet south of Stringtown Road, R-200 Zone, Clarksburg Master Plan and Hyattstown Special Study Area

Dear Ms. Titus:

At our regular meeting on November 29, 2012, the Montgomery County Planning Board reviewed a special exception request submitted by the Applicants, Creating Memories Children's Learning Center, owned by Shirley Vesper and Michael Vesper, to operate a Child Day Care Facility for 52 children and 6 staff members. The facility is proposed to provide care for infants through preschool age children (4-5-year-old) as well as for older children for after-school care. Hours of operation for the facility will be Monday to Friday from 6:30 a.m. to 6:30 p.m. Employees will arrive before 6:30 a.m. and depart shortly after 6:30 p.m.

In a report dated November 16, 2012, technical staff recommended approval of the special exception with conditions. Based on additional information received later, technical staff amended the original conditions of approval by revising condition No. 3. Staff also amended the language *on page 19, the 7th and 8th lines of the second paragraph, changing the time reference from 5:00 p.m. to 4:00 p.m.*

The Planning Board conducted a lengthy discussion of this application. Our recommendations are set forth below under subject areas for ease of reference.

Vehicular Access

The issue of access safety was the subject of considerable discussion during the Planning Board hearing. Vehicles making a left turn from the southbound lane of MD 355 to enter the facility and those exiting the facility making a left turn onto the southbound lane of MD 355 are of particular concern to the Planning Board, due to the potential hazardous traffic

Ms. Catherine G. Titus
December 19, 2012
Page Four

conditions that could be created. At this location, Route 355 is a two-lane road, so any queuing of cars to turn into the site could create delays and/or safety issues. Similarly, cars trying to make a difficult left with a small parking lot backing up behind them could jeopardize roadway safety. The Planning Board recommended that the Applicants submit a delay/queuing analysis to the Hearing Examiner so that the Examiner will have the benefit of the information at the public hearing (recognizing that it is at the Hearing Examiner's discretion to allow submission of this information after the hearing, before the record closes). The Board also requested that the Applicants provide information to the Hearing Examiner regarding the status of the Avalon School, an approved special exception located near the subject site, out of concern that if the Avalon School goes forward, traffic conditions on Route 355 will become even more difficult.

The Applicants' submissions included a letter dated October 10, 2012 that made the following representation concerning their plan to avoid adverse impacts on traffic on Route 355:

The Director of the child care center or a designee will direct the flow of traffic within the parking facility and assure that cars entering the facility proceed to the first available parking space to avoid queuing along Maryland Route 355. The Applicant will also install signage within the parking facility that states "please proceed to the first available parking space."

The Applicants disclosed at the hearing that these measures are to be employed on an "as needed" basis, rather than as part of the daily operation of the facility. Staff stated that they had understood that this was to be a permanent safety measure, to be employed as a daily routine. Staff maintained that it is imperative to implement the above quoted safety measures as part of the permanent and daily practice of the facility.

Parking Waiver

With respect to the Applicants' request for a waiver to allow an eight-foot side setback for the parking lot instead of the 24 feet required under applicable standards, the Board had a lengthy discussion with staff and the applicant about the topography between the proposed parking lot and the adjoining houses. The discussion persuaded the Planning Board that because the adjacent houses sit lower than the proposed parking lot, the proposed retaining wall and evergreens will create an effective screen and serve the purposes of a typical parking lot setback. This conclusion was buttressed by recognizing that side setbacks are established with the general expectation that houses face the street and sit relatively close to their side lot lines. Here, the adjacent homes face the subject site and are separated from it by their front yards (which are fairly large), a shared driveway and a buffer strip. The board also recognized that the front orientation of the homes increases their exposure to the parking lot proposed on the subject site, but found that on balance, the distance and topography make the setback waiver acceptable.

Ms. Catherine G. Titus
December 19, 2012
Page Three

Signage

The Planning Board disagrees with Staff's and the Applicants' conclusion that the requested variance should be granted as proposed. The Planning Board believes that the proposed 15-square-foot sign is excessive in height and area, and recommends a sign with reduced dimensions and a design that is more complementary to the residential character of the area.

Outdoor Play Area Noise

The Planning Board disagrees with Staff's and the Applicants' conclusion that the Board of Appeals can make a finding of "no objectionable noise" based on the information presented thus far. The Planning Board recommends that the Hearing Examiner require the Applicants to demonstrate that having 25 children in the outdoor play area at any one time would not imposed an unacceptable noise impact on the adjoining neighbor. In addition, the Board recommends that a noise attenuation fence be required along the south side of the play area to minimize the potential noise impact from the outdoor play area on the adjacent residence to the south. The Planning Board recommends requiring a noise study to determine what decibel of noise can be anticipated from 25 children playing in an outdoor area that is fenced only on one side. In the Board's view, it is not enough to say that the Applicants will comply with the County's Noise Ordinance, because the Noise Ordinance does not apply to the unamplified sound of the human voice.

On a motion by Commissioner Casey Anderson and seconded by Vice-Chair Mary Wells-Harley, with Chair Françoise Carrier and Commissioners Norman Dreyfuss and Amy Presley in agreement, the Planning Board, by a vote of 5 to 0, recommended that Special Exception S-2850 be approved with the conditions listed in the staff report and amended herein, provided that the Hearing Examiner finds that the information submitted in the recommended traffic and noise reports supports approval:

1. The Child Care Center is limited to a maximum of 52 children and 6 employees on site at one time.
2. Hours of operation shall be limited to 6:30 a.m. to 6:30 p.m. Monday through Friday, 12 months a year.
3. All child drop-offs and pick-ups shall occur on site, except for the drop-off and pick-up of children by public transportation.
4. The petitioners shall make a good faith offer to the adjoining neighbors to plant additional trees in the easement between the proposed parking lot and the pipe-stem lots.
5. Activities in the outdoor play area must not commence before 9:00 a.m.

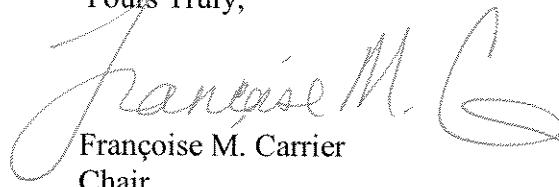
Ms. Catherine G. Titus
December 19, 2012
Page Four

6. The petitioners shall install a six-foot-tall noise attenuation fence on the south side of the outdoor play area. The Applicants shall submit the details of the fence to staff prior to the conclusion of the public hearing.
7. The petitioners must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of Montgomery County Code. If changes to the site plan or other related plans are required at subdivision, the petitioners must file a copy of the revised site and related plans with the Board of Appeals.
8. Before the Hearing Examiner's hearing in this matter or at a minimum before the record closes, the Applicants must propose a sign design that is smaller in area and height than the proposal reviewed by the Planning Board and its Staff, and more in keeping with the residential character of the neighborhood. If the sign and the special exception are approved, the Applicants must obtain a sign permit for the proposed freestanding sign from the Department of Permitting Services (DPS). If DPS requires a variance, the petitioners must obtain a sign variance or adjust the design of the proposed sign to conform to all applicable regulations. A copy of the approved sign permit, along with any revised drawing related to the sign, must be submitted to the Board of Appeals before the sign is posted.

The Planning Board also unanimously approved, with conditions, the associated Preliminary Water Quality Plan.

We hope these recommendations are helpful to the hearing Examiner and Board of Appeals.

Yours Truly,

A handwritten signature in cursive script, appearing to read "Françoise M. Carrier".

Françoise M. Carrier
Chair

cc: Martin L. Grossman, Director, Office of Zoning and Administrative Hearings

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

September 12, 2016

Mr. John Wysong
Macris, Hendricks, & Glascock, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, MD 20886

Dear Mr. Wysong:

Thank you for the opportunity to review the plan submittal for the proposed **Clarksburg Childcare Center – SHA Tracking No.: 13APMO054XX** located on MD 355, Mile Point: 22.2, in Montgomery County. The State Highway Administration (SHA) has reviewed the plans and is pleased to respond.

Based on the information provided, please address the following comments in a point-by-point response:

District 3 Traffic Comments (Mr. Zuxuan Deng):

1. Sheet 5: R3-5R sign shall not be used on the median island. It should be replaced by R4-7 (24"x30") and OM1-3 (18"x18").
2. Sight Distance Exhibit: Refer to above comment for Sheet 5.

District 3 Utility Comments (Mr. Sigismond Aiegwu):

1. Project will require public outreach to select delegates, citizens, and Montgomery County local government regarding lane closure.
2. Provide note on Staging Area/Stockpile location. Additionally, please provide a list of stockpile equipment and materials.

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

Mr. John Wysong
SHA Tracking No.: 13APMO054XX
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Highway Hydraulics Division (HHD) Comments (Ms. Shandale Forbes):

1. Once obtained please provide documentation of the local agency's review and approval of both the stormwater management and erosion/sediment control plans. We note one (1) bio-swale ESD facility, two (2) dry wells, and one (1) bio-retention planter facility on the plans, none of which treat runoff from SHA impervious areas.
2. With regard to the storm drain system analysis and design, we have the following comments:
 - a. Inlet Spacing (2-year design): As previously requested, please provide inlet spacing analysis along MD 355 demonstrating that the 2-year design flow across the site entrance does not exceed 1.0 cfs.
 - b. Pipe Profiles (10-year design):
 - i. Please show Q_{10} and V_{10} for all storm pipe runs in the SHA right-of-way.
 - ii. Please show and label the limits of the SHA right-of-way in the proposed culvert profile.
 - iii. Please provide computations demonstrating that the 10-year head above the grates of I-1 and I-2 are a minimum of 9 inches below the edge of MD 355 and that the 50-year head on I-2 is not higher than the edge of MD 355.
 - iv. Culvert Analysis and Design (Based on roadway classification): Please provide culvert design computations for the proposed 24" culvert across MD 355 and for the existing 15" x 21" CMPA driveway culvert parallel to MD 355. The 50-yr headwater elevation for either culvert should not be higher than the pavement edge of MD 355.
3. Although we defer to the Montgomery County for Stormwater Management approval, due to the possible impacts to SHA right-of-way we have the following comments:
 - a. Stormwater Management Plan/Report
 - i. Please provide a SWM Report with DA mapping for the project with the next submittal.

Mr. John Wyson
 SHA Tracking No.: 13APMO054XX
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- ii. Please provide a breakdown of existing and new impervious area within the SHA right-of-way. Note that any new impervious area within SHA right-of-way (like the proposed entrance pavement shown on sheet 2 of 6) must be directly treated in a SWM facility. As an alternative, an equivalent amount of existing, untreated SHA impervious area may be directly treated in a SWM facility. However, the required SHA impervious treatment may **not** be claimed by overcompensating in an onsite facility. Provide plans and computations as necessary.
- 4. Although we defer to the Montgomery County SCD for Erosion and Sediment Control approval, due to the possible impacts to SHA right-of-way we have the following comments:
 - a. As previously requested, please provide Erosion and Sediment Control plans for the subject site.

Further review of this project will be withheld until the above comments have been addressed. We may provide additional comments once all design data including calculations have been included in the next submittal. On the submission CD, please include an electronic copy of all hydraulic reports, plans, and computations in PDF format. For clarification of any hydraulic comments, please contact Ms. Shandale Forbes of SHA's Highway Hydraulics Division at 410-545-8413 or sforbes@sha.state.md.us.

Office of Environmental Design (OED) Comments (Mr. John Krouse):

- 1. **Conditional Approval:** Except as noted in comments 3 and 4, the design of this project is acceptable and OED recommends permit approval. Please work directly with the applicant to resolve the concerns of comments 3 and 4. No further review by OED is requested.
- 2. **Landscape Guidance Documents:** OED last reviewed this project in July, 2014. Please refer to revised versions of 'SHA Environmental Guide for Access and District Permit Applicants', 'SHA Landscape Estimating Manual', and other landscape guidance documents at <http://www.roads.maryland.gov/index.aspx?PageId=25>.
- 3. **SHA Landscape Notes:**
 - a. Only Notes of pertinent Chapters of the 'Environmental Guide' shall be reproduced. Please verify the selection of Notes; please ensure that the current approved text is reproduced; and please delete any Notes that are not actually required for construction.
 - b. The Note per Chapter 7.10 does not appear to be necessary since the Note per Chapter 7.9 specifies the installation of sod in all locations, and there is also a callout note for sod.

Mr. John Wysong
SHA Tracking No.: 13APMO054XX
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- c. The Note per Chapter 7.13 is included, but delineation of TOCF as required by this Note and Chapter 5.3 is not shown.
- d. The Note per Chapter 7.21 is included, but the text of this Note does not seem to be related to any proposed construction of this project.
- e. The Note per Chapter 7.22 is included, but delineation of root pruning as required by this Note and Chapter 5.3 is not shown.
- f. The Note per Chapter 7.23 is included, but delineation of tree fertilizing as required by this Note and Chapter 5.3 is not shown.
- g. The Note per Chapter 7.24 is included, but the text of this Note does not seem to be related to any proposed construction of this project.

4. Engineer's Estimate:

- a. An estimate was not provided for review. Please refer to the 'Estimating Manual' and develop the estimate to include quantities and costs of all necessary landscape items.
- b. Based upon our understanding of this project, the following items appear to be necessary and should be included in the estimate: Temporary Orange Construction Fence LF; Placing Furnished Subsoil 12 in. Depth; Placing Furnished Topsoil 4 in. Depth SY; Temporary Mulch SY; Turfgrass Sod Establishment SY; Tree, Shrub and Perennials Installation and Establishment LS (with breakdown list for all plant materials included in plant schedules);
- c. Please review the finalized Table of SHA Landscape Notes and include quantity and cost of any other items which may be necessary for this project e.g. Tree Branch Pruning, Tree Root Pruning, etc.

- 5. Assistance:** Please contact Joe Vervier by phone at 410-545-8590 or by email at jvervier@sha.state.md.us if you have questions about these comments.

Mr. John Wysong
SHA Tracking No.: 13APMO054XX
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District 3 Access Management Comments (Mr. Nour Khudr):

1. Please ensure the provided legend contains all line types and shadings reflected on the plan sheets.
2. The State Highway Administration requires that any right-of-way or easement donation (dedication) be platted to SHA standards. These standards may be found at <http://www.roads.maryland.gov>; - Business Center; - Surveyors Center; then follow the link to Developer Donation Plat Standards. Please contact Ms. Jane Heming, Chief, Records & Research Section, Office of Real Estate at 410-545-2829 or jheming@sha.state.md.us for existing right-of-way information. Note that any plats produced for the SHA shall be on NAD83/91 datum. Please contact Mr. Jeff Bonnerwith, Assistant Division Chief, Plats and Surveys Division at 410-545-8950 or jbonnerwith@sha.state.md.us for SHA-GPS control location and information. All plats must be submitted in hard copy format for review, checking and final issuance. All subdivision plats that will be showing donated area must be approved by PSD prior to recordation at the County level. The first plat submission shall come through District 3 Access Management directly to Mr. Brian Young, attention of Pranoy Choudhury. Subsequent plat submissions may be made directly to the Plats and Surveys Division. Please contact Mr. Gregory F. Cooke, Donation Plat Coordinator, Plats and Surveys Division at 410-545-5602 or gcooke@sha.state.md.us for additional information about the Donation Plat review process. Additionally, contact Jon Wedemeyer, Chief, District 3 Right-of-Way at 301-513-7470 or jwedemeyer@sha.state.md.us for information about the Donation Deed requirements and procedures.
3. Please provide callouts for different type curb and gutter on plans, specifically at connecting portions. Additionally, please provide curb radii labels where applicable.
4. Please note, a minimum of 4 foot width is required for proper subgrade compaction at all full depth asphalt locations. If this minimum width cannot be achieved, the following note must be provided on the appropriate plans: "If a minimum 4 foot width of full depth pavement cannot be achieved, the 6-inch sub-grade hot mix asphalt (HMA) course shall be replaced with 6-inches of Modified Mix #6 Concrete."
5. Please provide a cost estimate for all work within the SHA right-of-way. Estimate quantities and values must be based on SHA Category Code Book and SHA Price Index.

Mr. John Wysong
SHA Tracking No.: 13APMO054XX
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Further plan submittals should reflect the above comments. Please submit a CD containing the plans and all supporting documentation in PDF format, including a point-by-point response to reflect the comments noted above directly to Mr. Brian Young at 9300 Kenilworth Avenue, Greenbelt, MD 20770, attention of Mr. Pranoy Choudhury. Please reference the SHA tracking number on future submissions. Please keep in mind that you can view the reviewer and project status via the SHA Access Management web page at <http://www.roads.maryland.gov/pages/amd.aspx>. If you have any questions or require additional information please contact Mr. Pranoy Choudhury at 301-531-7325, by using our toll free number (in Maryland only) at 1-800-749-0737 (x7325), or via email at pchoudhury@sha.state.md.us

Sincerely,



Brian W. Young
District Engineer

BWY/nk

cc: Mr. Sigismond Ajegwu, District 3 Utilities
Mr. Zuxuan Deng, SHA District 3 Traffic
Mr. Jason Ferner, SHA HHD
Ms. Shandale Forbes, SHA HHD
Mr. David Murnan, SHA District 3 Traffic
Mr. John Krouse, SHA OED
Mr. Joe Vervier, SHA OED



DEPARTMENT OF TRANSPORTATION

Isiah Leggett
County Executive

Arthur Holmes, Jr.
Director

February 11, 2014

Ms. Elsabet Tefaye, Planner Coordinator
Area 3 Planning Division
The Maryland-National Capital
Park & Planning Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

RE: Preliminary Plan No. 120140050
Clarksburg Childcare Center

Elsabet Tefaye:
Dear Ms. Tefaye:

We have completed our review of the preliminary plan dated October 17, 2013. This plan was reviewed by the Development Review Committee at its meeting on December 16, 2013. We recommend approval of the plan subject to the following comments:

All Planning Board Opinions relating to this plan or any subsequent revision, project plans or site plans should be submitted to the Department of Permitting Services in the package for record plats, storm drain, grading or paving plans, or application for access permit. Include this letter and all other correspondence from this department.

1. Show all existing planimetric and topographic details (paving, storm drainage, driveways adjacent and opposite the site, sidewalks and/or bikeways, bus stops, utilities, etc.) as well as existing rights of way and easements on the preliminary plan. Specifically, the plan view should show the intersection of Frederick Road (MD 355) and Cool Brook Lane with respect to the site.
2. Necessary dedication for future widening of Frederick Road (MD 355) in accordance with the master plan.
3. Grant necessary slope and drainage easements. Slope easements are to be determined by study or set at the building restriction line.
4. Size storm drain easement(s) prior to record plat. No fences will be allowed within the storm drain easement(s) without a revocable permit from the Department of Permitting Services and a recorded Maintenance and Liability Agreement.
5. The parking layout plan will be reviewed by the Department of Permitting Services at the site plan or building permit stage, whichever comes first. To facilitate their review, that plan should delineate and dimension the proposed on-site travel lanes, parking spaces, curb radii, handicap parking spaces and access facilities, and sidewalks. The applicant may wish to contact Mr. Sam Farhadi of that Department at (240) 777-6333 to discuss the parking lot design.

Division of Traffic Engineering and Operations

100 Edison Park Drive, 4th Floor • Gaithersburg, Maryland 20878
Main Office 240-777-2190 • TTY 240-777-6013 • FAX 240-777-2080
trafficops@montgomerycountymd.gov


Ms. Elabett Tesfaye
Preliminary Plan No. 120140050
February 11, 2014
Page 2

6. If perpendicular parking spaces border a sidewalk, a two (2) foot vehicle overhang is assumed. The applicant should either provide a seven (7) foot wide sidewalk or wheelstops within those parking spaces.
7. Relocation of utilities along existing roads to accommodate the required roadway improvements shall be the responsibility of the applicant.
8. Access and improvements along Frederick Road (MD 355) as required by the Maryland State Highway Administration.

Since access is proposed along a State roadway, the driveway must adhere to the SHA sight distance requirements.

Thank you for the opportunity to review this preliminary plan. If you have any questions or comments regarding this letter, please contact Monet L. Lea, our Development Review Area Engineer for this project at monet.lea@montgomerycountymd.gov or (240) 777-2197.

Sincerely,



Gregory M. Leck, Manager
Development Review Team

m:/correspondence\FY14\Traffic\Active\120140050, Clarksburg Childcare Center, MCDOT plan review ltr-FINAL.doc

cc: Michael & Shirley Vesper
Lauren Ireland; Macris, Hendricks & Glascock
Casey Cirner; Miles & Stockbridge
Scott Newill; MSHA AMD
Katherine Holt; M-NCPPC Area 3
Preliminary Plan folder
Preliminary Plan letters notebook

cc-e: Catherine Conlon; M-NCPPC DARC
Atiq Panjshiri; MCDPS RWPR
Sam Farhadi; MCDPS RWPR
Henry Emery; MCDPS RWPR
Greg Hwang; MCDOT DTE
Monet Lea; MCDOT DTEO

Cirner, Casey L.

From: Soukup, Alan <Alan.Soukup@montgomerycountymd.gov>
Sent: Wednesday, June 18, 2014 10:08 AM
To: von Gunten, Gene
Cc: Tapia, Luis; david.shen@wsscwater.com; Dolan, Mary; mdavesper@aol.com; svesper@aol.com; Cirner, Casey L.; Orens, Stephen J.
Subject: S-3 Septic System Exception - 22929 Frederick Rd.
Attachments: frederick-rd-22929--s3-xptn--2014-0618.pdf

6/18/14

Good morning Gene –

Attached for your reference is a memo allowing an exception for a septic system for a property designated as category S-3, 22929 Frederick Rd. in Clarksburg. If you have any questions concerning this action, please feel free to contact me.

Thanks - Alan

Alan Soukup, Sr. Planner

Water & Wastewater Policy Group - Director's Office

Montgomery Co. Dept. of Environmental Protection

Suite 120, 255 Rockville Pike

Rockville MD 20850-4166

240-777-7716 - fax: 240-777-7715

alan.soukup@montgomerycountymd.gov

www.montgomerycountymd.gov/waterworks



DEPARTMENT OF ENVIRONMENTAL PROTECTION

Isiah Leggett
County Executive

Robert Hoyt
Director

MEMORANDUM

June 18, 2014

TO: Gene Von Gunten, Manager, Well and Septic Section
Department of Permitting Services

FROM: Alan Soukup, Senior Planner, Water and Wastewater Policy Group
Department of Environmental Protection *ALS*

SUBJECT: On-Site Systems for Properties Designated as Service Area Categories 1 or 3

Our office has received a request to allow the use of a private, on-site sanitary system for the following property designated as service area category 1 or 3 in the County's Water and Sewer Plan:

Address: 22929 Frederick Road, Clarksburg

Request for:	<input type="checkbox"/> Existing Well	<input type="checkbox"/> Existing Septic System
	<input type="checkbox"/> New or Repair/Replacement Well	<input checked="" type="checkbox"/> New or Repair/Replacement Septic System
	<input type="checkbox"/> Non-Potable Well (Including Irrigation Wells)	
Property I.D.:	Parcel P696, Garnkirk; acct. no. 00017853 (SDAT: EW41; WSSC: 232NW13)	
Owner:	Michael and Shirley Vesper	Service Areas: W-1 and S-3
Zoning:	R-200	Property Size: 44, 431 sq. ft. (1.02 ac.)
Planning Area:	Clarksburg	Watershed: Little Seneca Creek

Properties designated as categories 1 or 3 are generally expected to use public (community) water and sewerage systems. This office has reviewed the preceding request and has made the following finding(s):

- ☐ DPS can pursue the use of an **interim permit well** for the subject property
- ☒ DPS can pursue the use of an **interim permit septic system** for the subject property
- ☒ Public service is not available to the site at this time; the cost and/or timing of extending public service to the property favors the temporary use of an on-site system.
- ☐ Although public service is available to this site, the cost of providing service at this time is restrictive.
- ☒ The Water and Sewer Plan currently designates the property as category S-3, under which, its service policies do allow for the use of interim on-site systems.
- ☐ DPS can pursue the use of a **well permit for non-potable uses only** for the subject property.

Gene Von Gunten
June 18, 2014

Page 2

- ☐ DPS **cannot** pursue the use of an interim permit well for the subject property; public water service is available.
- ☐ DPS **cannot** pursue the use of a non-potable well for the subject property; public water service is available.
- ☐ DPS **cannot** pursue the use of an interim permit septic system for the subject property; public sewer service is available.
- ☒ Other findings:

On-site systems permit approvals: DEP advises the property owner that concurrence with this request to pursue the use of the on-site system proposed does not constitute the County's approval of that system. That responsibility resides with the Department of Permitting Services.

Future public service connection: Note that interim, on-site system permits require the property owners to connect to public sanitary systems within one year of the time that the public service becomes available, as specified in the County's Water and Sewer Plan.

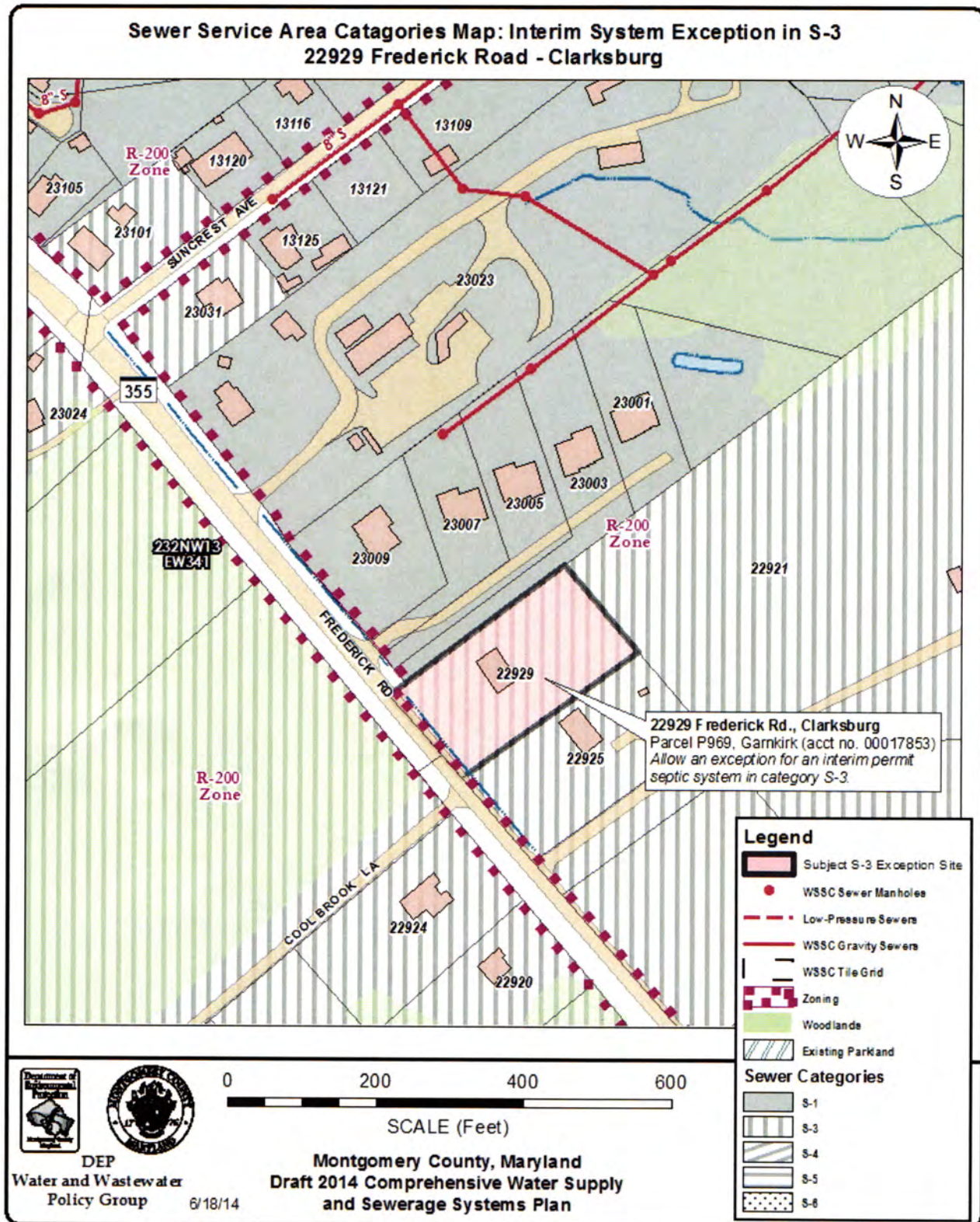
The DPS Well and Septic Section will need to notify DEP-WWPG when the interim, on-site system permit for this project is approved for tracking purposes as part of the Water and Sewer Plan. If you have any questions concerning this case, please contact me either at alan.soukup@montgomerycountymd.gov or at 240-777-7716.

Map Attachment: See page 3

ADS:ads/

R:\Programs\Water_and_Sewer\well-septic\exceptions\alpha-street\F\frederick-rd-22929\frederick-rd-22929--s3-xptn--2014-0618.doc

cc: Dave Lake, Manager, Water and Wastewater Policy Section, DEP
Luis Tapia, Unit Coordinator, Permit Services Unit, WSSC
Dave Shen, Development Services Group, WSSC
Mary Dolan, Functional Planning Team, M-NCPPC
Michael and Shirley Vesper
Casey Cimer and Stephen Orens, Miles and Stockbridge



Technical drawing of a truck chassis showing dimensions: 47.00 (total length), 7.00 (wheelbase), and 21.75 (distance from front axle to rear axle).

INDICATES FIRE LANE

20.0' FIRE ACCESS DIMENSIONS

LAURA REBECCA
WINTER
L.43183 F.046
R-200

BY: 542 FM: 43 DATE: 7/19/10

Proj. Mgr. LEW	Designer LEW
Date 09-13-16	Scale 1"=20'
Project No. 2010.147.12	Sheet 1 of 2

The excavator must notify all public utility companies with under ground facilities in the area of proposed excavation and have those facilities located by utility companies prior to commencing excavation. The excavator is responsible for compliance with requirements of Chapter 36A of the Montgomery County Code.

(IN FEET)
1 inch = 20 ft.

NO.	DATE	DESCRIPTION	BY



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 12-134

Water Quality Plan No. S-2850

Clarksburg Childcare Center

Date of Hearing: November 29, 2012

APR 15 2013

RESOLUTION

WHEREAS, under Montgomery County Code Chapter 19, Article V, Water Quality Review in Special Protection Areas, must be done in conjunction with the review of a development plan, diagrammatic plan, schematic development plan, project plan, preliminary plan of subdivision, site plan, mandatory referral or special exception; and

WHEREAS, to avoid duplication of effort, the Montgomery County Department of Permitting Services ("DPS") and the Montgomery County Planning Board each have responsibility for review and approval of different elements of water quality plan applications; and

WHEREAS, the Planning Board is responsible to review water quality plan applications to determine if environmental buffer protection, forest conservation and planting requirements, and site impervious limits have been satisfied; and

WHEREAS, in cooperation with DPS' review and approval of those elements of the water quality plan for which DPS is authorized, the Planning Board is authorized to take final action on the water quality plan; and

WHEREAS, on June 21, 2012, Michael and Shirley Vesper ("Applicant"), filed an application for approval of a water quality plan on approximately 1.05 acres of R200 zoned property located at 22929 Frederick road ("Subject Property") in the Clarksburg Special Protection Area ("SPA") within the Clarksburg Master Plan ("Master Plan") area; and

WHEREAS, Applicant's water quality plan application was designated Water Quality Plan No. S-2850, Clarksburg Childcare Center ("Preliminary Water Quality Plan" or "Application"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and other governmental agencies, Staff issued a memorandum to the Planning Board, setting forth its analysis and recommendation for approval of the Application, subject to certain conditions ("Staff Report"); and

Approved as to
Legal Sufficiency:

Ameyll 3/28/13
8787 Georgia Avenue, Silver Spring, Maryland 20910 Phone: 301.495.4605 Fax: 301.495.1320
M-NCPPC Legal Department
www.montgomeryplanningboard.org E-Mail: mcp-chair@mncppc-mc.org

MCPB No. 12-134
Water Quality Plan NoS-2850
Clarksburg Childcare Center
Page 2

WHEREAS, the Staff Report included a copy of a letter dated June 4, 2012 from DPS conditionally approving the elements of the Preliminary Water Quality Plan under its purview; and

WHEREAS, on November 29, 2012, the Planning Board held a public hearing on the Application, and at the hearing the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, at the hearing, the Planning Board approved the Application subject to certain conditions, by the vote as certified below.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board APPROVES Preliminary Water Quality Plan No. S-2850, Clarksburg Childcare Center on the Property, subject to the following conditions:

1. The Applicant must conform to the conditions as stated in DPS Preliminary Water Quality Plan approval letter dated June 4, 2012.
2. The impervious surfaces on the Subject Property are limited to no more than 22.6 percent within the SPA as shown on the Impervious Surface Plan Portion of the Preliminary Water Quality Plan.

BE IT FURTHER RESOLVED, that having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and as set forth in the Staff Report, which the Board hereby adopts and incorporates by reference (except as modified herein), and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

The Application satisfies all the applicable requirements of Montgomery County Code, Chapter 19, Article V – Water Quality Review in Special Protection Areas.

There are no streams, floodplains, wetlands, or environmental buffers on or affecting the site.

The property is zoned R-200. Impervious surface rates across the county for the R-200 zone are generally between 15.4% and 19.0%. There is no imperviousness cap within this portion of the Clarksburg SPA so we use the general county average for the zone as a goal. At 22.6% the imperviousness for this project is slightly higher than the upper goal of 19.0%. The Applicant has minimized usage of all impervious surfaces to the greatest extent possible while achieving the goals of the use and meeting all other county regulations (parking and ADA compliance).

MCPB No. 12-134
 Water Quality Plan NoS-2850
 Clarksburg Childcare Center
 Page 3

The Subject Property was granted a forest conservation plan exemption (42011129E) on March 17, 2011, under 22A-5(s)(1)¹ the small property exemption. Therefore, a forest conservation plan for the property is not required.

The stormwater management plan, sediment and erosion control plan, and the water quality monitoring component have been reviewed and conditionally approved by DPS, in coordination with the Montgomery County Department of Environmental Protection, as the lead agencies for these components of the Water Quality Plan review. Therefore, the Application satisfies all the elements of the Preliminary Water Quality Plan under DPS' purview.

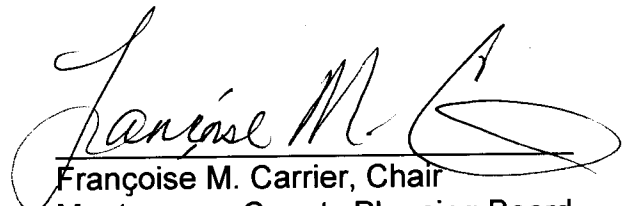
BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter, and the date of this Resolution is APR 15 2013 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

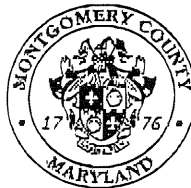
* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Dreyfuss, with Chair Carrier, Vice Chair Wells-Harley, and Commissioners Anderson, Dreyfuss, and Presley voting in favor at its regular meeting held on Thursday, April 4, 2013, in Silver Spring, Maryland.


 Françoise M. Carrier, Chair
 Montgomery County Planning Board

¹ 22A-5(s) (1) an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

June 4, 2012

Diane R. Schwartz Jones
Director

Mr. Pearce Wroe
Macris Hendricks and Glascock, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, Maryland 20886

Re: **Preliminary/Final Water Quality Plan**
for Clarksburg Childcare Center
SM File #: 242178
Tract Size/Zone: 1.02 acres/R-200
Watershed: Little Seneca Creek

SPECIAL PROTECTION AREA

Dear Mr. Wroe:

Based on a review by the Department of Permitting Services, the Preliminary/Final Water Quality Plan (P/FWQP) for the above mentioned site is conditionally approved. This approval is for the elements of the Water Quality Plan of which DPS has lead agency responsibility, and does not include limits on imperviousness or stream buffer encroachments.

Site Description: The proposal is to provide parking and building additions to meet the requirements for daycare use on a 1.02 acre property located on MD Route 355. This is located within the portion of the Little Seneca Creek watershed which is in the Clarksburg Special Protection Area.

Stormwater Management: The stormwater management concept proposes to meet required stormwater management goals via installation of a combination of Micro-Bioretenention Planter Boxes, Dry Wells and a Bio Swale.

Sediment Control: Silt fence alone will not be allowed as a perimeter control. The use of super silt fence will be required as a minimum for sediment control with emphasis on immediate stabilization of disturbed areas.

Performance Goals: The performance goals that were established at the pre-application meeting still apply. The performance goals are as follows:

1. Minimize storm flow run off increases.
2. Minimize sediment loading.
3. Maximize infiltration and recharge.

Pearce Wroe
June 4, 2012
Page 2

Monitoring: Monitoring of BMP's is not required for the proposed property improvements. Payment of the stream monitoring fee is required prior to the approval of the sediment control plan. The stream monitoring fee computation is to be submitted for verification during the stormwater management/sediment control review process.

Conditions of Approval: The following **items and conditions** will need to be addressed during the detailed sediment control/stormwater management plan stage. This list may not be all-inclusive and may change based on available information at the time:

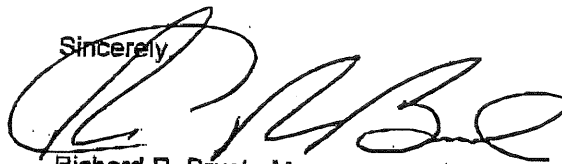
1. Provide documentation that the existing 18" culvert under MD Route 355 has the capacity to handle the developed 10-year storm flow and that MSHA will allow the proposed Bio Swale to outfall at the proposed location.
2. A detailed review of the stormwater management computations will occur at the time of detailed plan review. The stormwater facilities must be designed per MCDPS design requirements.
3. Safe conveyance of the developed 10-year storm through the Bio Swale and Micro Bioretention Planter Boxes must be demonstrated.
4. Prior to permanent vegetative stabilization, all disturbed areas must be topsoiled per the latest Montgomery County Standards and Specifications for Topsoiling.

Payment of a stormwater management contribution in accordance with Section 2 of the Stormwater Management Regulation 4-90 is **not required**.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate Water Quality Plan request shall be required.

If you have any questions regarding these actions, please feel free to contact Leo Galanko at (240) 777-6242.

Sincerely,



Richard R. Brush, Manager
Water Resources Section
Division of Land Development Services

RRB: lmg:CN242178

cc:

C. Conlon (MNCPPC-DR) ✓
J. Penn (MNCPPC-ER) ✓
L. Galanko



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive

Diane R. Schwartz Jones
Director

May 25, 2017

Mr. Dylan Macro
Macris, Hendricks & Glascock, P.A.
9220 Wightman Road, Suite 120
Montgomery Village, Maryland 20886

Re: **COMBINED PRELIMINARY/FINAL WATER
QUALITY PLAN/SITE DEVELOPMENT
STORMWATER MANAGEMENT PLAN** for
Clarksburg Childcare Center
Preliminary Plan #: 120140050
SM File #: 242178
Tract Size/Zone: 1.02 acres/R-200
Total Concept Area: 1.02 acres
Lots/Block: N/A
Parcel(s): 696
Watershed: Little Seneca Creek

Dear Mr. Macro:

Based on a review by the Department of Permitting Services Review Staff, the Preliminary/Final Water Quality Plan for the above mentioned site is **acceptable**. The goals of the Water Quality Plans are to minimize storm flow runoff increases and to minimize sediment loading. The Water Quality Plans propose to meet the required goals via a combination of micro biofiltration planter boxes, dry wells and a bio swale. ESD volume compensation is to be provide for the area of imperviousness in the MSHA right-of-way that will not drain to the structures on-site. Sediment control will be addressed during the detailed review of the sediment control/stormwater management plans.

The following items will need to be addressed during the detailed sediment control/stormwater management plan stage:

1. A detailed review of the stormwater management computations will occur at the time of detailed plan review.
2. An engineered sediment control plan must be submitted for this development.

This list may not be all-inclusive and may change based on available information at the time. Payment of the Special Protection Area Stream monitoring and the BMP monitoring fees are required.

This letter must appear on the sediment control/stormwater management plan at its initial submittal. The concept approval is based on all stormwater management structures being located outside of the Public Utility Easement, the Public Improvement Easement, and the Public Right of Way unless specifically approved on the concept plan. Any divergence from the information provided to this office; or additional information received during the development process; or a change in an applicable Executive Regulation may constitute grounds to rescind or amend any approval actions taken, and to reevaluate the site for additional or amended stormwater management requirements. If there are subsequent additions or modifications to the development, a separate Preliminary/Final Water Quality Plan request shall be required.

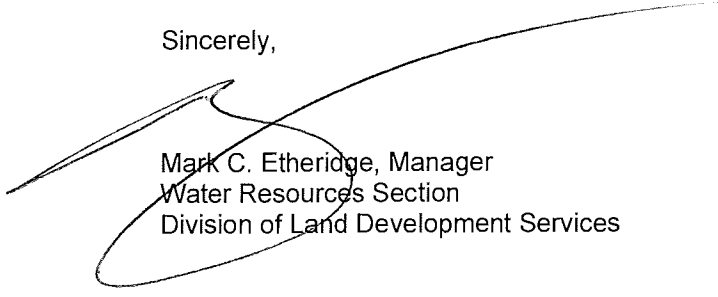


255 Rockville Pike, 2nd Floor, Rockville, Maryland 20850 | 240-777-0311
www.montgomerycountymd.gov/permittingservices

Mr. Dylan Macro
May 25, 2017
Page 2 of 2

If you have any questions regarding these actions, please feel free to contact Leo Galanko at 240-777-6242.

Sincerely,

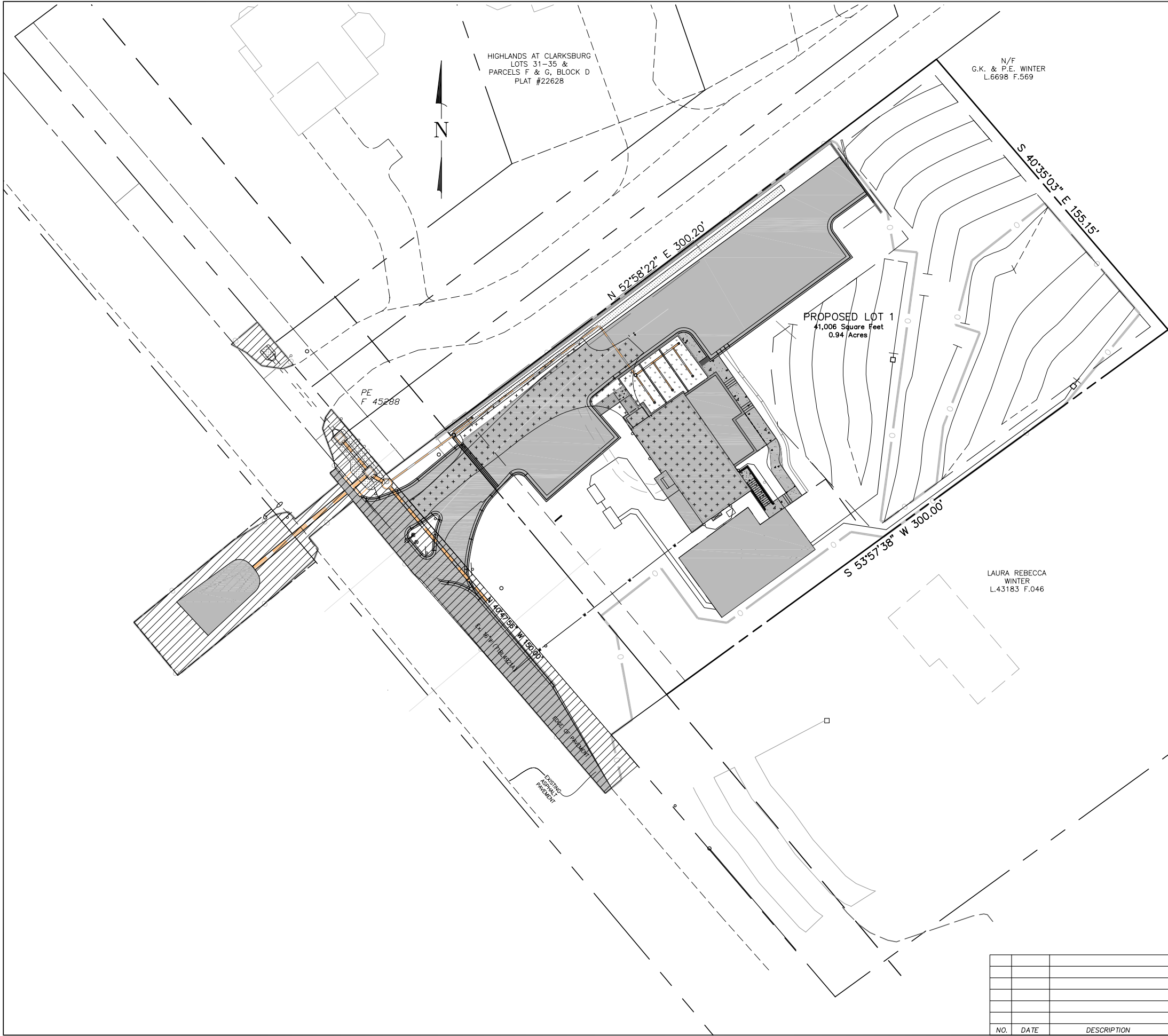


Mark C. Etheridge, Manager
Water Resources Section
Division of Land Development Services

MCE: me lmg

cc: C. Conlon
J. St. John (MCDEP)
SM File # 242178

ESD Acres:	1.02
STRUCTURAL Acres:	0
WAIVED Acres:	0



LEGEND

—○— Limits of Disturbance

Existing Impervious Area
On-site Imperv. = 3,655 SF
Gross Tract Area = 45,665 SF
% Impervious = 3,655 ÷ 45,665 = 8.0%

Previously approved Impervious Area
On-site Imperv. = 10,300 SF
Gross Tract Area = 45,665 SF
% Impervious = 10,300 ÷ 45,665 = 22.6%

Proposed Impervious Area: On-site only
On-site Imperv. = 12,375 SF
Gross Tract Area = 45,665 S.F.
% Impervious = 12,375 ÷ 45,665 = 27.1%

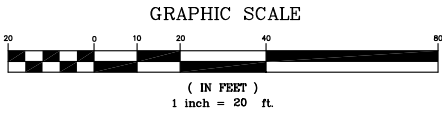
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Proposed Impervious Area: Includes off-site improvements
Total Imperv. = 15,225 SF
Gross Tract Area = 52,221 SF
(includes offsite disturbance)
% Impervious = 15,225 ÷ 52,221 = 29.2%

Off-site Area included in the Gross Tract Area

TAX MAP #EW41, PARCEL 696

VICINITY MAP
SCALE 1" = 2,000'



TAX MAP EW 341 WSSC 232 NW 13

IMPERVIOUS AREA EXHIBIT
PARCEL 696
CLARKSBURG CHILDCARE CENTER
L. 3507 F.64
2ND ELECTION DISTRICT — MONTGOMERY COUNTY — MARYLAND

NO.	DATE	DESCRIPTION	BY

MHG Macris, Hendricks & Glascock, P.A.
Engineers ■ Planners
Landscape Architects ■ Surveyors

9220 Wightman Road, Suite 120
Montgomery Village, Maryland
20886-1279

Phone 301.670.0840
Fax 301.948.0693
www.mhgpa.com

Proj. Mgr. LEW	Designer LEW
Date 05/11/17	Scale 1"=20'
Project No. 2010.147	Sheet 1 of 1

STORMWATER MANAGEMENT SUMMARY

Project: Clarksburg Childcare Center
MHG Proj. No.: 2010.147
SM File #: 242178
Date: March 2017

OVERALL SITE INFORMATION

Background

The subject property is located at 22929 Frederick Road and consists of Parcel 696, Liber 3507, Folio 64. The total site area is 1.05 acres and is zoned R-200. The site is currently developed and contains a 1 story brick house and associated driveway. Proposed development is for a building addition to create a childcare facility, surface parking lots, and other associated site improvements to serve the childcare facility.

Drainage

The entire site drains to Little Seneca Creek and is within the Clarksburg Special Protection Area. This portion of the Little Seneca Creek Watershed is designated as class IV-P waters by the State of Maryland. The majority of the site generally drains toward the Frederick Road right-of-way where runoff crosses through an existing 18" culvert. A small portion of the site drains to a different unnamed tributary of Little Seneca Creek to the northeast of the property.

STORMWATER MANAGEMENT

Special Protection Area

Because the site is located within the Clarksburg Special Protection Area, certain performance and site layout goals have been noted. These goals and a discussion of how this plan addresses each goal are as follows:

Minimize storm flow runoff increases: Stormwater management is proposed for the site in conformance with the latest State and County regulations, which emphasis storm flow runoff management. The stormwater concept for this project is designed to meet the full management requirement onsite using best management practices that temporarily detain, filter, and infiltrate water in order to reduce the runoff volumes and peak flow rates.

Minimize sediment loading: Sediment control is proposed for the site in conformance with the latest State and County regulations. Super Silt fence is proposed as a perimeter control and a stabilized construction entrance is proposed

to reduce sediment losses via construction traffic. Rapid stabilization techniques and proper construction sequencing are also proposed to reduce the opportunity for sediment loss.

Maximize infiltration and recharge: Where possible the proposed stormwater management techniques have a groundwater recharge component. The majority of the groundwater recharge is proposed in two dry wells. Additional groundwater recharge is provided in the Bio-Swale below the proposed under drain. Due to the proximity of the bioretention facility to the building, infiltration could not be proposed as a component in that facility. Additionally, the presence of septic fields limits the use of infiltrating best management practices around the site.

Minimize Impervious Area: Impervious area has been limited to what is necessary to meet program needs. Overall the proposed onsite site imperviousness is 24.2%, which is mostly a result of the proposed parking area. The parking requirement for the site is 15 spaces; however, the proposed plan includes only 14 spaces and a request for a waiver due to the shortfall. Other impervious areas onsite include necessary walkways to access the building and the daycare building itself. In addition to the impervious areas onsite, a portion of the proposed construction includes a new entrance which will require new improvements in the SHA right-of-way. The proposed improvements include a net increase of 491 square feet of new impervious area within the right-of-way, resulting in 101 cubic feet of additional required ESD treatment volume. The combined total ESD treatment volume for new impervious areas onsite as well as within the SHA Right-of-way is 1,495 cubic feet. Direct treatment of the new impervious area within the SHA right-of-way is infeasible due to a combination of limited green space, steep lateral slopes and the existing topography along Frederick Road. As a result, additional ESD treatment volume has been provided onsite to compensate for the untreated new impervious area within the right-of-way. The total ESD treatment volume provided onsite is 1,766 cubic feet, which exceeds the combined required ESD treatment volume of 1,495 cubic feet.

ESD^{MEP}

Stormwater management for the proposed site is designed such that environmental site design (ESD) techniques have been integrated to the maximum extent practicable (MEP). Groundwater recharge for the site and partial ESD treatment for the building is provided in dry wells. The remainder of the site is managed using micro-bioretention and a bio-swale. The proposed ESD techniques are described in more detail as follows:

Planter Box Micro-Bioretention: Stormwater management for a portion of the site is proposed using a series of planter box micro-bioretention facilities. Stormwater management storage volume is attained in temporary surface ponding (up to 12" in depth) and in the filter media (up to 48" in depth @ 40% porosity).

The facility will drain via under drain pipes to an existing public storm drain system. Due to the proximity to the building and the severe grade change across the stormwater management area, the bioretention facility is enclosed in a terraced concrete structure.

Dry Wells: Dry wells are proposed to promote groundwater recharge and provide partial ESDv treatment for the building. Each dry well is designed to manage a maximum of 1,000 sf of rooftop area and treat at least 1.0" of rainfall. Overflow water from the dry wells will spill at grade.

Bio-Swale: A bio-swale is proposed to manage the majority of the proposed parking area and drive aisle. The swale is designed with a flat bottom and a typical bioretention cross section including planting media and a drainage layer. Because the slopes through the swale are steeper than typically allowed, check dams or similar flow control devices will be incorporated to maintain reasonable velocities and promote temporary ponding.

SUMMARY OF ESD PRACTICES

Green Roof: Green roof technology was not proposed because the majority of the building is an existing peaked roof structure and the proposed addition will be wood frame construction, which would require substantial redesign in order to support green roof technology. Additionally, full stormwater management can be provided in other ESD practices that are better suited to achieve the SPA performance goal of groundwater infiltration.

Pervious Pavement: Pervious pavement was explored but not proposed because other lower maintenance ESD practices are proposed and can manage the entire ESDv requirement.

Reinforced Turf: Reinforced turf was not explored because all surface paving is expected to be too heavily used to be practical.

Disconnection of Rooftop Runoff: Disconnection of impervious surfaces was not proposed because the existing slopes are too steep to provide effective disconnection.

Disconnection of Non-Rooftop Runoff: Disconnection of impervious surfaces was not proposed because the existing slopes are too steep to provide effective disconnection.

Sheetflow to a Conservation Area: Sheetflow to a conservation area was not proposed because no conservation areas exist on the subject property.

Rainwater Harvesting: Rainwater harvesting was not explored because year-round demand cannot be practically provided and alternative ESD measures are proposed to manage the entire site.

Submerged Gravel Wetland: Due to the limited size of the site, sufficient drainage is not anticipated for support of a permanent pool of water that would be necessary to support a wetland environment.

Landscape Infiltration: Landscape infiltration is not proposed because the only suitable areas for infiltration are designated for dry wells. Offsets from the building and septic fields make the remainder of the site impractical for an infiltration facility.

Infiltration Berms: Infiltration Berms are not proposed because full ESDv management can be provided using other ESD practices that are more reliably constructible.

Dry Wells: Dry wells are proposed to manage a portion of the building.

Micro-Bioretenention: Micro-bioretenention is proposed in a planter box design and provides temporary runoff storage in a combination of surface ponding and subsurface retention in the soil media voids.

Rain Gardens: Rain gardens were not proposed because alternative ESD practices were used to meet the entire stormwater management requirement.

Swales: A bio-swale is proposed, but will require additional flow control design to address the steeper slopes of the site.

Area III Division
Montgomery County Planning Department
The Maryland National Capital Park & Planning Commission

**STATEMENT OF JUSTIFICATION IN SUPPORT OF
INCREASE OF IMPERVIOUS SURFACE**

Preliminary Plan: 120140050 - Clarksburg Childcare Center
Property: Parcel 696 - Tax Map EW41
Address: 22929 Frederick Road, Clarksburg, MD
Applicants: Shirley Vesper and Michael Vesper

The Applicants, Shirley Vesper and Michael Vesper, submit this Statement of Justification in support of a 2.9% increase of impervious surface for the Subject Property, located in the Clarksburg Special Protection Area, and in support thereof state as follows:

I. INTRODUCTION

This Statement of Justification sets forth the facts and details supporting approval of an increase in imperviousness for the Subject Property (defined below) from 22.6% to 25.5% and a subsequent finding by the Planning Board of the Maryland-National Capital Park and Planning Commission (the "Planning Board") that the proposed child daycare facility remains an appropriate use for the Subject Property under §50-29 of the Montgomery County Code¹.

The 2.9% increase in impervious surface at the Subject Property is attributed to: (i) off-site access improvements that the Maryland State Highway Administration ("SHA") is requiring the Applicants to construct as part of access permitting; (ii) access improvements required by the Montgomery County Department of Fire and Rescue Services ("MCFRS") as a result of the SHA access improvements; and (iii) requests from the Maryland-National Capital Park and Planning Commission ("M-NCPPC") Staff to include as impervious surface, elements of the approved child daycare facility for the Subject Property previously reviewed by M-NCPPC. Since the additional impervious improvements result from safety measures imposed through subsequent agency reviews related to Special Exception S-2850 for the Subject Property and the Applicants have minimized the additional imperviousness in accordance with §19-64(a)(3) of the Montgomery County Code, the 2.9% increase in impervious surface does not render the child daycare facility use inappropriate for the Subject Property under §50-29 of the Montgomery County Code and should be approved.

II. BACKGROUND

The property is a tax parcel, Parcel 696, located at 22929 Frederick Road (Maryland Route 355) (hereinafter "355") in Clarksburg (the "Subject Property"). The Subject Property fronts on and has access to and from 355, is approximately 1.04832 acres in size and is improved with a single-family dwelling.

¹ Section 5 of Subdivision Regulations Amendment No. 16-01, effective February 13, 2017, provides that "any preliminary plan application filed and certified as complete before the effective date of this amendment may, at the applicant's option, be reviewed under the Subdivision Regulations in effect when the application was submitted." Accordingly, the Applicants elect to proceed under the prior Subdivision Regulations.

The Subject Property is classified in the R-200, Residential, one family zone and located within the boundaries of the 1994 Approved and Adopted Clarksburg Master Plan & Hyattstown Special Study Area (the "Master Plan") and Clarksburg Special Protection Area (the "Clarksburg SPA"), which seeks to minimize the amount of imperviousness without imposing a specific percentage cap.

On April 26, 2013², the Montgomery County Board of Appeals approved, with conditions, Special Exception S-2850 for a child daycare facility for no more than fifty-two (52) children and six (6) staff persons at the Subject Property at any one time. Special Exception S-2850 provides for interior and exterior modifications to the existing single-family dwelling to convert it to a child daycare facility, including, without limitation, construction of a modest addition to the rear of the existing structure, ADA improvements, the addition of fifteen (15) off-street parking spaces, play equipment, a fence for screening, a new septic system and stormwater management facilities.

Special Exception S-2850 was reviewed by the Planning Board on November 29, 2012. The Planning Board recommended approval of Special Exception S-2850 with conditions. The Planning Board's review also included approval of a Preliminary Water Quality Plan and Impervious Area Exhibit because the Subject Property is located within the Clarksburg SPA.

Pursuant to §19-60, *et seq.* of the Montgomery County Code, a Preliminary/Final Water Quality Plan for the Subject Property was approved by the Department of Permitting Services on June 4, 2012. *See also*, 19.67.01, *et seq.*, *Code of Montgomery County Regulations*. The Planning Board's subsequent approval of the same on November 29, 2012, included a finding that the Applicants had minimized imperviousness. The Preliminary Water Quality Plan and Impervious Area Exhibit were approved at 22.6% imperviousness. While M-NCPPC Staff identified in its Staff Report that the "average" amount of impervious surface for properties in the R-200 zone is between 15%-19%, Staff did recommend approval of 22.6%. *See*, p. 4, *Clarksburg Childcare Center, Preliminary Water Quality Plan, S-2850*, November 29, 2011.

As M-NCPPC Staff explained in its Staff Report, in the absence of a cap on impervious surfaces, M-NCPPC Staff applies its own policy to determine the amount of impervious surface appropriate for a property. *See*, p. 4, *Clarksburg Childcare Center, Preliminary Water Quality Plan, S-2850*, November 29, 2011. There is no cap on impervious surface for new development imposed upon the Subject Property by the Master Plan and the Subject Property is not within the boundaries of the Ten Mile Creek Master Plan or subject to the associated overlay zones, which cap the allowable percentage of impervious surface. Thus, the Staff's policy compares the percentage of proposed impervious surface for the project under review against the "average" percentage of impervious surface derived from properties across the County and classified in the same zone. *Id.* This "average" is a goal. *Id.* But, the average or the goal are not legal requirements. Further, a "goal" indicates that there is flexibility for consideration of other project aspects when approving the level of imperviousness for a property.

On or about September 11, 2013, the Applicants filed this preliminary plan to convert the Subject Property into a single record lot in order to obtain building permits for the approved child daycare facility. No changes to the child daycare facility are being proposed by the Applicants as part of the preliminary

² As of the date of this Statement of Justification, Special Exception S-2850 remains valid as a result of the Montgomery County Board of Appeals granting two (2) one (1) year extensions of the special exception validity period.

plan, except a modification to the approved landscape plan to accommodate SHA's and MCFRS' widening of the driveway apron.

The Applicants also began working through the SHA access permitting process³ after filing the preliminary plan and consensus was reached with SHA approximately three years later, on or about April 13, 2016, as to the extent of improvements the Applicants will be required to construct as a condition of access permitting. As a result, the right-of-way improvements will increase the impervious surface for the Subject Property above the approved 22.6% to 25.5% and increase the gross tract area to off-set some of the requisite impervious surfaces. M-NCPPC Staff has requested that the Applicants submit this statement to justify the 2.9% increase in impervious surface and to confirm that the child daycare facility remains an appropriate use for the Subject Property under §50-29 of the Montgomery County Code.

III. JUSTIFICATION

The child daycare facility is an appropriate use for the Subject Property under §50-29 of the Montgomery County Code regardless of the 2.9% increase in imperviousness, which is predominantly attributable to safety improvements requested by SHA and MCFRS.

The Applicants submit this Statement of Justification in response to M-NCPPC Staff's concerns that the child daycare facility is no longer an appropriate use for the Subject Property under §50-29 of the Montgomery County Code. MNCPPC Staff is concerned that the 2.9% increase in impervious surface resulting from the required right-of-way improvements and the inclusion of previously approved elements of the child daycare facility as impervious surface, increases the imperviousness for the Subject Property beyond the 22.6% previously approved for the Subject Property and the alleged countywide "average" (15-19%) for R-200 zoned properties and thereby, renders the child daycare facility an inappropriate use for the Subject Property.

§50-29 of the Montgomery County Code states in pertinent part:

"Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the subdivision taking into account the recommendations included in the applicable master plan, and for the type of development or use contemplated in order to be approved by the board."

For the following reasons, each of which is discussed more fully below, the child daycare facility is an appropriate use for the Subject Property under §50-29 of the Montgomery County Code regardless of the 2.9% increase in imperviousness: (i) the increase in impervious surface is attributable to safety improvements imposed by governmental agencies as part of permitting and to no fault of the Applicants; (ii) the increase in impervious surface is attributable to M-NCPPC Staff's request to include previously approved elements of the child daycare facility in the impervious surface calculation; (iii) the Applicants

³ Typically, SHA access permits are required as a condition of preliminary plan approval and obtained during or after record plat approval, but prior to construction. The Applicants pursued access permitting simultaneously with preliminary plan review to ensure that the costs of any road improvements required as a condition of access permitting did not frustrate the implementation of the approved child daycare facility and in an attempt to avoid the Planning Board having to review for a third time the Preliminary/Final Water Quality Plan and the Impervious Area Exhibit for the Subject Property.

have minimized the amount of impervious surface attributable to the right-of-way improvements requested by SHA and MCFRS and through the use of certain pervious elements; (iv) the impervious surface for the Subject Property was originally approved in excess of the 15-19% "average", which appears to be one of at least three "averages" applied to R-200 properties; (v) that the "average" is a flexible goal determined on a case-by-case basis and the compliance with which is not required by law; (vi) that the approved childcare center use is more intense than the residential use that the R-200 zone impervious surface "average" is modeled after and is, therefore, expected to have a greater amount of impervious surface; (vii) the Planning Board, the Hearing Examiner and the Montgomery County Board of Appeals previously determined that the child daycare facility use is appropriate for the Subject Property; and (viii) the Planning Board has approved increases in imperviousness based on similar factual circumstances presented by the Applicants.

A. The Increase in Impervious Surface at the Subject Property is a Direct Result of Safety Improvements.

The Applicants must obtain an SHA access permit for the approved child daycare facility at the Subject Property. Access permits are reviewed and issued by SHA for properties operating a commercial use along State roads and are a function of assuring safe turning movements in and out of a property.

About three out of the six years that the Applicants have been working on this project were dedicated to achieving consensus with SHA as to the extent of the on and off-site right-of-way/access improvements required for the issuance of an access permit. After three years, SHA has agreed upon the following improvements as a condition of the Subject Property's access permit:

- Widened Driveway
 - Increasing the driveway width from 20 feet to 22 feet to meet SHA standards.
- Partial Deceleration Lane
 - The construction of an additional paved and tapered deceleration lane along the frontage of the Subject Property for use by northbound traffic on 355 accessing the Subject Property. In addition to adding new pavement, construction of the deceleration lane requires disturbance to 355 to tie in the improvements with existing pavement. Disturbances to existing pavement are also considered by M-NCPPC Staff as additional imperviousness.
- Limited Turning Movements
 - Turning movements from the Subject Property's driveway are limited to right-in, right out turning movements via the addition of a pork chop in the driveway apron.
- New Culvert
 - Replacement of the culvert under 355 and installation of the culvert outfall on the confronting dedicated right-of-way for the Dowden's Station property is required to capture water run-off.

Since SHA limited the turning movements at the Subject Property with a pork chop (Item 3 above), MCFRS conducted a subsequent life safety review. To retain fire truck access at the Subject Property, MCFRS requested that the radii of the driveway apron be widened from 25 feet to 30 feet, then widened

Page 5

an additional 12 feet and then an another approximate 5 feet, adding more pavement to the apron. Otherwise, MCFRS fire trucks could not enter the Subject Property to access the child daycare facility in case of an emergency.

The SHA and MCFRS improvements result in approximately an additional approximate 1,650 square feet of impervious surface, but are required to address agency comments and comply with SHA and MCFRS requirements for fire truck access and safe access by parents, children and employees to the site. It is unfathomable and contrary to public policy to interpret the SPA law as preventing increases in imperviousness for safety improvements. The additional impervious surface should not prevent the Applicants from moving forward with implementation of the child daycare facility and it is fundamentally unfair for M-NCPPC Staff to negatively interpret the increase in imperviousness from these agencies against the Applicants.

The inclusion of right-of-way frontage improvements, such as the SHA improvements, in the impervious surface calculation was requested by M-NCPPC Staff. However, the Environmental Guidelines provide for the inclusion of frontage improvements only in areas where there is an impervious surface cap. See, p. 26, *The Guidelines for Environmental Management of Development in Montgomery County*, 2000 (the "Environmental Guidelines"). Since there is no impervious surface cap applicable to the Subject Property, these improvements should not be counted as impervious surface.

B. The Increase in Impervious Surface also Results from the Inclusion of Previously Approved Project Elements in the Impervious Surface Calculation.

During this preliminary plan review, M-NCPPC Staff requests the Applicants include as impervious surface: (i) the portion of the driveway apron in the right-of-way (approximately 1,185 square feet of imperviousness); and (ii) the playground surface, or in the alternative, the footprints of the playground structures if the playground surface is pervious. These elements were depicted on the Special Exception S-2850 site plan, landscape plan and the Impervious Area Exhibit approved by the Planning Board on November 29, 2012. However, M-NCPPC is just now requesting these elements be included as impervious surface. Although adding additional gross tract area for the driveway apron may reduce the amount of imperviousness attributed to that element, M-NCPPC Staff is using the inclusion of previously approved project elements as a means to increase the imperviousness, and then assert that the increased imperviousness may render the child daycare use inappropriate for the Subject Property under § 50-29 of the Montgomery County Code. This is a position that is fundamentally unfair to the Applicants.

C. The Additional Impervious Improvements Have Been Minimized by the Applicants.

Section 19-64(a)(3) of the Montgomery County Code requires the Applicants to minimize impervious surfaces depicted on water quality plans and preliminary plans in special protection areas absent a cap on imperviousness. The Applicants have minimized the new right-of-way improvements and continue to refute Staff's assertion that certain elements depicted on the Impervious Area Exhibit are impervious.

The imperviousness resulting from SHA's requested access permit improvements was minimized by the Applicants and SHA as follows:

- Deceleration Lane
 - Initially SHA requested an approximate 10 foot x 235 foot deceleration lane along the entire frontage of both the Subject Property and the adjoining property to the south located at 22925 Frederick Road ("Adjoining Property"), totaling approximately 2,350 square feet of imperviousness.
 - However, the Applicants were able to reduce the length and width of the deceleration lane to total approximately 850 square feet.
 - The deceleration lane is now only approximately 105 feet long and almost completely limited to the frontage of the Subject Property.
 - The 10 foot width of the deceleration lane is also reduced by tapering the lane for approximately 50 feet.
- Driveway
 - The Applicants are unable to reduce the driveway width, but were able to convince SHA to retain a 25 foot radii for the driveway apron. However, the radii was increased at the request of MCFRS.
- Sidewalk
 - The final consensus between SHA and the Applicants on right-of-way improvements does not include a sidewalk or shared-use path along the frontage of the Subject Property and therefore, the Applicants have removed the additional imperviousness included for a potential sidewalk. It appears that a shared use path will be installed by Montgomery County Department of Transportation on the west side of 355. *See, M-NCPCP Staff Report, Frederick Road Bike Path, Mandatory Referral, MR2015025: Preliminary/Final Water Quality Plan, June 5, 2015.* Limiting sidewalks to one side of the street is recognized in the Environmental Guidelines (p. 25) as a means of minimizing impervious surfaces.
- Retaining Wall
 - SHA initially requested that the Applicants grade the front of the Adjoining Property for installation of the deceleration lane. Because the proposed grading on the Adjoining Property would impact its septic system, SHA requested a retaining wall along the frontage of the Adjoining Property.
 - However, the tapered partial deceleration lane eliminated the need for the retaining wall.
- Limited Turning Movements
 - SHA requested the Applicants install a pork chop to limit turning movements at the Subject Property to right-in and right-out.
 - Applicants were able to reduce the size of the pork chop and use a pork chop that contains open green space in the middle, rather than solid cement.

- Replacement of Culvert
 - The Applicants conducted a culvert study along 355 to determine if there were other locations for water run-off to be captured and eliminate the need to replace the existing culvert under 355.
 - The study confirmed that replacement of the culvert is necessary and therefore, SHA is requiring its replacement as part of access permitting. Unfortunately, this improvement cannot be minimized, but the Applicants attempted to do so by conducting the study. However, M-NCPPC does not consider the portion of the 355 pavement disturbed for installation of the culvert as impervious surface.
- Culvert Rip Rap
 - The culvert outfalls on the confronting property, the Dowden's Station property, right-of-way.
 - The Applicants minimized the imperviousness associated with the culvert by using pervious outfall rip rap in the culvert design, rather than impervious imbricated or grouted rip rap. This is explained in more detail below.

Where possible, the Applicants minimized the impervious surfaces for the remainder of the requested improvements, as follows:

The Applicants object to the application of the 2014 Zoning Ordinance⁴ to this preliminary plan and, in the alternative, continue to refute M-NCPPC Staff's assertion that the rip rap and playground surface are impervious under the definition of impervious surface. The definition of "impervious surface" relied upon by M-NCPPC Staff is set forth in §1.4.1 of the Zoning Ordinance, 2014, as amended, as:

"Impervious Surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment regardless of surface type or material, any road, driveway, or parking area."

Contrary to M-NCPPC Staff's assertion and despite the Applicants' objection to the application of the 2014 Zoning Ordinance to this application (see footnote 4), the proposed culvert rip rap and playground surface are not "impervious surface" under the above definition. M-NCPPC Staff asserts that the rip rap is an impervious surface because the subgrade is compacted before installation. However, the rip rap detail, attached hereto and incorporated herein as **Exhibit A**, clearly shows an uncompacted subgrade prior to the rip rap being laid upon filter fabric and therefore, the infiltration of water into the underlying soil is

⁴ The Applicants object to the application of the 2014 Zoning Ordinance to the preliminary water quality plan and preliminary plan review for the Subject Property pursuant to Section 7.7.1.B.1 of the Zoning Ordinance, which states in pertinent part "Any...preliminary plan...filed or approved before October 30, 2014 must be reviewed under the standards and procedures of the property's zoning on October 29, 2014, unless an applicant elects to be reviewed under the property's current zoning....The approval of any of these applicants....under Section 7.7.1.B.1 will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014..."

not impeded. The detail also includes the rip rap stone size and reflects the prescribed void spaces in the rip rap that allows for water infiltration and vegetation growth. Thus, trees and grass grow up through the rip rap and infiltration is still achieved. The Applicants are not proposing to use grout or imbricated rip rap, which fills the void spaces, preventing water infiltration, but have chosen to use pervious materials.

M-NCPPC Staff also asserts that the proposed playground surface is impervious because the resilient drainage pad placed under the Woodcarpet® is impervious. This project element was previously proposed and reviewed as part of Special Exception S-2850 and it should still be considered pervious. The Play Area Surfacing Detail for the playground surface, attached hereto and incorporated herein as **Exhibit B**, depicts the Woodcarpet®, which M-NCPPC Staff agrees is pervious, placed on top of the resilient drainage pad (a/k/a Woodcarpet® Geotextile Fabric) that sits on the subsurface and also wraps the foam drain. The Product Guide Specifications, attached hereto and incorporated herein as **Exhibit C**, indicate in item 1.3.B a flow rate of 38 gallons/minutes per square foot for the foam drain (a/k/a Resilient Foam Drainage: Duradrain®). Thus, the resilient drainage pad is pervious or there would be no way for the water to enter the foam drain pipe that is wrapped in the resilient drainage pad and produce an associated flow rate. If the resilient drainage pad was impervious, there would be no associated flow rate for the foam drain.

Although the imperviousness resulting from the SHA right-of-way improvements was minimized by the Applicants as set forth above, the MCFRS right-of-way improvements and inclusion of the driveway located in the right-of-way cannot be minimized. But, the Environmental Guidelines recommend such improvements be included in the impervious surface calculation only in areas where there is an impervious surface cap. *See*, p. 26, Environmental Guidelines. However, the Applicants were able to further minimize on-site impervious surface by reminding M-NCPPC Staff, after submission of the preliminary plan, that a parking facility sidewalk, which was not requested by the Board of Appeals or Hearing Examiner as part of Special Exception S-2850, will only increase the impervious surface in the Clarksburg SPA and impact the proposed septic field. The Applicants are also proposing the minimum number of parking spaces required for the use, which is a minimization technique suggested by the Environmental Guidelines. *See*, p. 25, Environmental Guidelines.

The Applicants will also be providing additional on-site stormwater management facilities to compensate for any water-runoff into the 355 right-of-way, as the study also revealed there is no room in the right-of-way to treat such run-off. This will increase infiltration at the Subject Property, another minimization technique proposed in the Environmental Guidelines. *See*, p. 26, Environmental Guidelines.

Accordingly, the Applicants have satisfied the requirement of §19-64(a)(3), Montgomery County Code, by working with SHA to minimize the access permit improvements and providing M-NCPPC Staff all of the necessary information to confirm that the rip rap and playground surfaces are pervious.

D. The Same Impervious Surface “Average” Applied to the Goddard School Should be Applied to this Child Daycare Facility.

M-NCPPC Staff is applying to the Subject Property the countywide R-200 zone “average” of 15.4% - 19% imperviousness. The Planning Board’s November 29, 2012 approval of the Preliminary Water Quality Plan for the Subject Property applied that same “average.” M-NCPPC Staff stated in its November 29, 2012 Staff Report for the Subject Property that:

The property is zoned R-200. **Impervious surface rates across the county for the R-200 zone are generally between 15.4% and 19.0%.** There is no impervious cap within this portion of the Clarksburg SPA so **we use the general county average for the zone** as a goal.

However, M-NCPPC Staff (a different reviewer) used a different “average” for R-200 zoned property in the Clarksburg SPA when it recommended approval of the preliminary water quality plan and impervious area exhibit for Goddard School’s Special Exception S-2759. In Attachment 6 to its report dated June 10, 2010, Staff stated as follows:

According to the Preliminary Water Quality Plan dated December 18, 2009 and the Impervious Area Exhibit Plan dated February 16, 2010, the applicant proposes approximately 1.49 acres of impervious surface on the 5.30 acre property which incorporates the original 4.70 acre site plus 0.60 acres of off-site improvements. This represents a proposed total impervious surface coverage of approximately 28.1 percent (1.49 acres/5.30 acres) for the site. **The R-200 zone has a countywide average of 22 percent to 29 percent impervious surface.** This project falls within the countywide average.

M-NCPPC applied the 22%-29% countywide average again when it recommended approval of an increase in the imperviousness for the Goddard School from 30.6% to 31.9%. In its report for Preliminary Plan Amendment 12011002A dated February 24, 2012, Staff stated as follows:

Within this section of the Clarksburg Special Protection Area (SPA) there is no impervious surface cap or limit. However, a main goal of all SPA’s is to reduce the overall impervious footprint of new development within SPA boundaries (the impervious footprint includes roads, sidewalks, buildings, parking lots, etc.)...For this project, the goal was established at **22 to 29 percent which Staff suggested is the County average for the R-200 zone.**

In its report dated October 28, 2011, Ridgeview Estates, Preliminary Plan No. 120080150, M-NCPPC Staff (a different reviewer) compared the “standard R-200 zoning” impervious surface “average” to the “average” impervious surface for property zoned R-200/TDR-3 located within the Clarksburg SPA. M-NCPPC Staff stated:

The Ridgeview Estates project proposes 0.54 acres (23,321 square feet) of impervious surface area on 2.53 acres of land which results in 20.11% imperviousness. The 20.11% imperviousness level is much lower than the average (35% impervious) for developments using the optional R-200/TDR-3 zone method and **consistent with standard R-200 zoning (20%-22%).**

These Staff reports represent three different impervious surface countywide “averages” for R-200 property in the Clarksburg SPA by three different reviewers. There is no express language in the Staff Reports identifying other property characteristics that may have contributed to the different countywide R-200 averages. The Environmental Guidelines provide some (but little) insight into such determinations, indicating that “the achievement of zoning densities” is a consideration for minimizing imperviousness and that “the increase in intensity or imperviousness associated with a proposed land use change is a

factor that may be considered in the environmental review of..." certain processes, such as special exceptions (*ie.* the amount of imperviousness is increased as the intensity of the zoning classification or use increases). *See*, p. 24 and 26, Environmental Guidelines. The increased imperviousness for more intense zones appears to be reflected in the chart attached hereto and incorporated herein as **Exhibit D**. However, we submit, that the countywide impervious averages for more intense zones also fluctuate within those zones.

Since the Ridgeview Estates project identified above is the only application that is not a special exception, but has a higher R-200 imperviousness average than applied to the Subject Property, there must be other property characteristics that were considered in determining the "average" for each of the three R-200 properties. Accordingly, the impervious surface average/goal for the R-200 (and other) zones must be determined on a case-by-case basis and more flexible than the 15.4% - 19% R-200 average applied to the Subject Property. Thus, the Applicants should be given the same benefit of a case-by-case determination for the impervious surface average/goal that considers other property characteristics, as well as, the purpose and source of the additional imperviousness, as set forth herein. Based on the property characteristics, the impervious average/goal applied to the Goddard School should be applied to the Subject Property.

Because of the similar characteristics between Goddard School and the Subject Property, the R-200 zone average imperviousness applied to the Goddard School should be applied to the Subject Property. For example, Goddard School is a special exception, a more intense use, allowing and requiring additional imperviousness. The Environmental Guidelines provide that "the increase in intensity or imperviousness associated with a proposed land use change is a factor that may be considered in environmental review of the above referenced processes [special exception] for changing land use." *See*, p. 26, Environmental Guidelines. The Goddard School and Ridgeview Estates are both served by public sewer, also allowing for a more intense use of the property. However, in the M-NCPPC Staff report dated November 4, 2016, Avalon at Clarksburg, Local Map Amendment H-115, it is noted that R-200 zone (on sewer) typical impervious cover is 25.9%, which again, is a different average for the R-200 zone. Further, the Goddard School also utilized pervious materials in its design (some parking spaces), which may have generated flexibility from M-NCPPC.

In comparison to the above, the Clarksburg Childcare Facility is classified in the R-200 zone, is a special exception and utilizes pervious surfaces (rip rap and playground surface) in its design. The Subject Property is not currently served by sewer, but it is classified in the S-3 sewer category and will be served by sewer once it is available to the Subject Property. A septic system is proposed for the Subject Property under an interim use permit issued by the Department of Environmental Protection because sewer service is not yet located in a place where it can be extended to the Subject Property. However sewer service will be available in the future. Thus, the 22-29% impervious surface R-200 average applied to the Goddard School should be applied to the Subject Property because of all the similar characteristics. Accordingly, the additional imperviousness, totaling 25.5%, at the Subject Property does not exceed the county-wide average of 22-29% for the R-200 zone.

E. The Planning Board Approved Increased Imperviousness Based on Similar Circumstances Applicable to the Subject Property.

The Planning Board has approved an increase in imperviousness based on the following similar factual circumstances presented by the Applicants:

- Operational Characteristics
 - Consideration was given to a landscape contractor's operational characteristics in approving the 36.1% imperviousness for a special exception located on property classified in the R-200 zone and subject to a water quality plan, but grandfathered from the application of the Environmental Overlay Zone impervious surface cap. *See*, p. 21, *Special Exception S-2807 and SPA Preliminary Final Water Quality Plan, J.B.Kline, Jr. Landscaping and Lawn Maintenance, Inc.*, September 15, 2011. The specific operational considerations included employee parking, parking areas for trucks and equipment, bulk material staging, safe truck/vehicular circulation, pick-up and delivery of materials, office space and indoor storage. Based on these factors, M-NCPPC Staff made a determination as to how much of the existing imperviousness had to be removed, reducing the site to 36.1% imperviousness in the R-200 zone.
 - Consideration was given to Goddard School's operational characteristics when the gymnasium expansion was approved to provide an adequate play area and to meet after-school care licensing requirements. *See*, p. 9, *Preliminary Plan Amendment, 12011002A, Goddard School*, February 24, 2012.
- Safety
 - Consideration was given to safety when an increase in imperviousness was approved for the Goddard School to accommodate MCFRS' requested revised walkway for fire code access and ADA compliance. MCFRS' review comments were received after preliminary plan approval. *See*, p. 6, *Preliminary Plan Amendment, 12011002A, Goddard School*, February 24, 2012.
- Subsequent Regulatory Review
 - Subsequent agency comments on design requirements received as part of site plan review, including, sidewalks on both sides of the street, on-street parking and trail connections, increased the amount of imperviousness at the Courts at Clarksburg. *See*, p. 37, *The Courts at Clarksburg: Preliminary Plan No. 120150060 and Site Plan No. 820150030*, July 17, 2015.

As a result, the Planning Board must consider in making its preliminary plan findings that the imperviousness at the Subject Property is increasing: (i) to accommodate access to the Subject Property, which is a major operational characteristic; (ii) to provide safety improvements to the proposed access at the Subject Property; and (iii) because of agency comments that are of no fault of the Applicants.

F. Additional Paved Width of 355 is Anticipated.

The additional imperviousness proposed in the 355 right-of-way for the deceleration lane is already contemplated by the Master Plan and therefore, should not be counted against the Applicants. The Master Plan recommends widening 355 from 2 lanes to 4 lanes. The proposed Preliminary Plan will dedicate 4,659 square feet of frontage for 355 road improvements. The section of 355 along the frontage of the Subject Property is currently 2 lanes and proposed to be widened to a 4 lane divided arterial highway with a 120 foot right of way. *See*, p. 115 *Master Plan*. Thus, the additional pavement for the deceleration lane will eventually become the second northbound lane for 355, is recommended by the Master Plan and should not negatively impact the Applicants' Preliminary Water Quality Plan or Impervious Area Exhibit.

G. The Child Daycare Facility Use was Already Determined to be an Appropriate Use for the Subject Property.

The Montgomery County Board of Appeals, Hearing Examiner and the Planning Board have determined that a child daycare facility is an appropriate use for the Subject Property. Special exceptions (now conditional uses) are deemed as uses “presumptively compatible” with the other uses permitted by right in the applicable zone. *Montgomery County v. Butler*, 417 Md. 271, 293 – 294, 9 A.3d 824, 837 (2010); *also citing, Mossburg v. Montgomery County*, 107 Md. App. 1, 7-8, 666 A.2d 1253 (1995). Thus, child daycare facilities, which are permitted as special exceptions in the R-200 zone, are compatible with the other uses permitted by right in the R-200 zone, such as single-family homes.

Special exception review is subject to general and specific standards for the proposed use and determining whether there are any non-inherent adverse impacts to the neighborhood surrounding the subject property. See, §§59-G-1.2.1; 59-G-1.21; 59-G-2.13.1(b)(2), Montgomery County Zoning Ordinance, 2004⁵. The special exception standards specific to child daycare facilities with over 30 children require 500 square feet of land per child. In other words, if the lot contains 500 square feet of land per child, the lot is an appropriate size for the child daycare use. §59-G-2.13.1(b)(2), Montgomery County Zoning Ordinance, 2004.

M-NCPPC Technical Staff determined in its November 16, 2012 Staff Report for Special Exception S-2850 that the proposed child daycare facility complies with the property size requirement set forth in §59-G-2.13.1(b)(2), Montgomery County Zoning Ordinance, 2004. Technical Staff noted that the Subject Property is 41,006 square feet of land, providing approximately 788.58 square feet per child. In its December 19, 2012 letter to the Montgomery County Board of Appeals (the “Board of Appeals”), the Planning Board of the M-NCPPC recommended approval of S-2850 subject to certain conditions set forth in that letter, none of which contradicted or changed Technical Staff’s determination that the size of the Subject Property was appropriate for the proposed child daycare facility use. Thus, the Planning Board has already determined that the Subject Property is an appropriate size for the child daycare facility as part of the special exception review.

Further, the Montgomery County Board of Appeals adopted the Hearing Examiner’s Report and Recommendation, which found that the size of the Subject Property was appropriate for the use because it did not present any non-inherent adverse effects and provided 788 square feet of land per child. See, *Opinion of the Board, S-2850*, April 26, 2013; p. 41-43, 53, *Hearing Examiner Report and Recommendation, S-2850*.

⁵ The Montgomery Zoning Ordinance, 2004, applies to Special Exception S-2850 pursuant to Section 7.7.1.B.1 of the Zoning Ordinance, which states in pertinent part “Any...special exception...filed or approved before October 30, 2014 must be reviewed under the standards and procedures of the property’s zoning on October 29, 2014, unless an applicant elects to be reviewed under the property’s current zoning....The approval of any of these applicants....under Section 7.7.1.B.1 will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of the Zoning Ordinance in effect on October 29, 2014...”

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IV. CONCLUSION

For all of the foregoing reasons, the Applicants submit that 25.5% of imperviousness is not excessive for the Subject Property, has been minimized and that the increase in imperviousness does not render the Subject Property inappropriate for a child daycare facility use. Thus, on behalf of the Applicants, the undersigned certifies that the information set forth in this statement of justification is true, complete, and correct to the best of her knowledge, information, and belief as of the date set forth below.

Respectfully submitted,

Miles & Stockbridge P.C.


Casey L. Cirner

3/28/17
Date



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

March 17, 2011

Michael and Shirley Vesper
5615 Haddington Drive
Adamstown, MD 21710

Re: Forest Conservation Exemption Number: 42011129E
Name of Plan: Clarksburg Childcare Center

Dear Michael and Shirley:

This letter is to inform you that your request for an exemption from submitting a forest conservation plan 42011129E, Clarksburg Childcare Center, is **confirmed**. This plan approved on March 17, 2011 is in compliance with Chapter 22A-5.(s)(1) of the Forest Conservation Law. This exemption covers an activity occurring on a tract of land less than 1.5 acres with no existing forest, or existing specimen or champion tree, and the afforestation requirements would not exceed 10,000 square feet

Any changes from the approved exemption request may constitute grounds to rescind or amend any approval actions taken and to take appropriate enforcement actions. If there are any subsequent modifications planned to the approved plan, a separate amendment must be submitted to M-NCPPC for review and approval prior to those activities occurring.

If you have any questions regarding these actions, please feel free to contact me at (301) 495-4546 or at Joshua.Penn@montgomeryplanning.org

Sincerely,

Joshua Penn
Senior Planner
Area 3
M-NCPPC

Cc: NRI/FSD 42011129E
Frank Johnson

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