



Layhill Primrose, Preliminary Forest Conservation Plan for Conditional Use No. CU 17-16

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- ☒ PB Patrick Butler, Acting Supervisor, Area 2 Division, patrick.butler@montgomeryplanning.org, 301-495-4561
- ☒ CS Carrie Sanders, Chief, Area 2 Division, carrie.sanders@montgomeryplanning.org, 301-495-4653

Staff Report Completed: 4-2-18

Description

Preliminary Forest Conservation Plan accompanying a Conditional Use application for a private day care facility.

Location: 14041 Layhill Road, southeast corner of the intersection of Layhill Road and Queensguard Road;

Zone: R-200;

Master Plan: *1994 Aspen Hill Master Plan*;

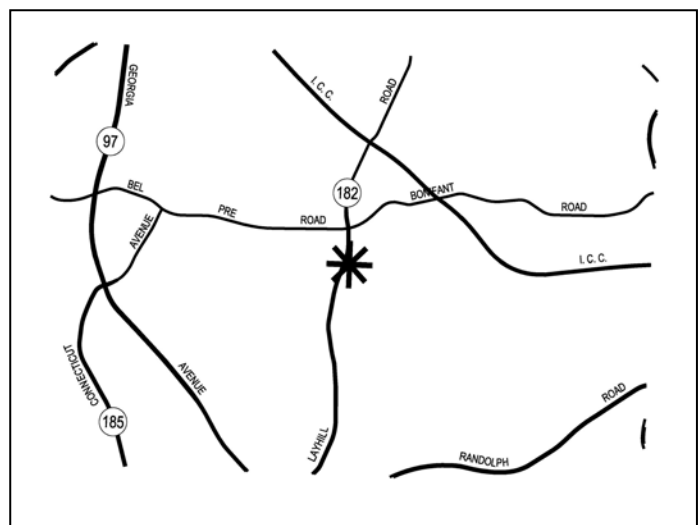
Property Size: 4.22 acres;

Application Accepted: May 2, 2017;

Applicant: Layhill Property, LLC, t/a Primrose School;

Review Basis: Chapter 22A, Forest Conservation Law;

Hearing Examiner Public Hearing: May 4, 2018.



Summary

- Staff recommends approval with conditions.
- Proposes clearing of 1.80 acres of forest, and retention of 1.32 acres.
- Includes a variance request.
- Includes abandonment of 6,602 s.f. of existing Category I easement.
- Includes retention of 20,463 s.f. of existing Category I easement and establishment of 44,428 s.f. of new Category I easement.
- Contingent on approval of Conditional Use CU2017-16.
- Final Forest Conservation Plan will be required at Preliminary Plan.

SECTION 1: STAFF RECOMMENDATION AND CONDITIONS

Staff recommends approval of the Preliminary Forest Conservation Plan and associated variance, subject to the following conditions:

1. A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be submitted and approved with a future Preliminary Plan.
2. Forest retention and forest planting areas must be placed in a Category I Forest Conservation Easement.
3. The Category I easements must be shown on the FFCP and must be recorded in the County Land Records by deed. The recorded conservation easement must be referenced on the record plat.
4. The Final Forest Conservation Plan must show the planting of three native shade trees, of at least three inches caliper each, to mitigate for the removal of one specimen tree on the site. The trees must be planted within one year of construction completion.
5. The Applicant must submit a forest conservation maintenance and management agreement as part of the Final Forest Conservation Plan.
6. This PFCP approval is contingent on approval by the Hearing Examiner of Conditional Use No. CU2017-16.

SECTION 2: SITE AND PROJECT DESCRIPTION

Site Description

The Subject Property ("Property") is located at the southeast corner of the intersection of Layhill Road and Queensguard Road in the 1994 *Aspen Hill Master Plan* area (Figure 1). It is a 4.22-acre assemblage of properties that includes Parcel A, Block B, Layhill Village East and Lots 5 and 6, Block B, Atwood Knolls. The Property is within the R-200 Zone and is largely unimproved, except for a concrete driveway apron and some asphalt on Lot 5. A Category I Conservation Easement exists on Lots 5 and 6, Block B, Atwood Knolls. This easement was placed on the property as a result of subdivision 120030440, which was approved by the Planning Board in 2003.



Figure 1: Aerial photo, property outlined in red

Project Description

The Applicant intends to construct and operate a Primrose School franchise on the Property (Figure 2). Primrose Schools focus on early education and care. The company has approximately 350 daycares nationwide. The proposed Primrose School will serve up to 200 children from six-weeks old to pre-Kindergarten age in a 12,634 -square foot, one-story building with 11 classrooms. The facility will also offer before and after school programs for elementary school students ages 5-12. Subsequent to conditional use approval, the Applicant is required to submit a preliminary plan of subdivision to create 2 lots from the 2 lots that currently exist and the one parcel. The proposed Primrose School will occupy proposed Lot 1, and proposed Lot 2 will be a residual lot of approximately 31,000 square feet.

Two wetlands (and their buffers) largely dictate the proposed site design, which attempts to minimize impacts on these environmental features.

The Applicant plans to remove the existing asphalt and concrete apron on existing Lot 5 and create a new access point for pedestrians and vehicles from Queensguard Road. The proposed driveway from Queensguard Road leads directly into a parking lot. A drive aisle through the parking lot leads to a circular driveway, located directly in front of the proposed building, that contains additional vehicle parking spaces (including two ADA accessible spaces). Twenty-five of the proposed parking spaces on the Property will be reserved for 15-minute parking for child drop-off and pick-up. The remainder of the parking spaces on the lot are intended to be used by staff of the facility.

Permeable pavement is proposed for the portion of the sidewalk that traverses the wetland buffer. A six-foot wide lead-in sidewalk connects to the sidewalk along Queensguard Road and provides pedestrian access to the proposed building from the Ride On bus stop located at the corner of Layhill Road and Queensguard Road.

SECTION 3: ANALYSIS AND FINDINGS

Natural Resource Inventory/Forest Stand Delineation

A Natural Resources Inventory/Forest Stand Delineation was approved for this Property on July 15, 2016 (NRI/FSD No. 420162060). The site contains ephemeral streams that do not require a regulatory buffer. There are no steep slopes associated with a stream buffer, or known habitats of rare, threatened or endangered species. There are two wetlands delineated on the Property, totaling 0.49 acres. Each wetland receives a 25-foot regulatory buffer. The Conditional Use plan shows a very small area of encroachment into the wetland buffer, but not into the wetland itself. The wetland buffer encroachment results from a requirement to have a vehicle turn-around sufficient to accommodate fire and rescue access and pedestrian access. The pedestrian access in this area will use pervious pavement to minimize wetland buffer impacts. The Subject Property includes 3.12 acres of forest. The site also contains several specimen-size trees. The Property drains to the Northwest Branch watershed, and is not in a Special Protection Area or Primary Management Area. The plan as submitted is in conformance with the *Environmental Guidelines*.

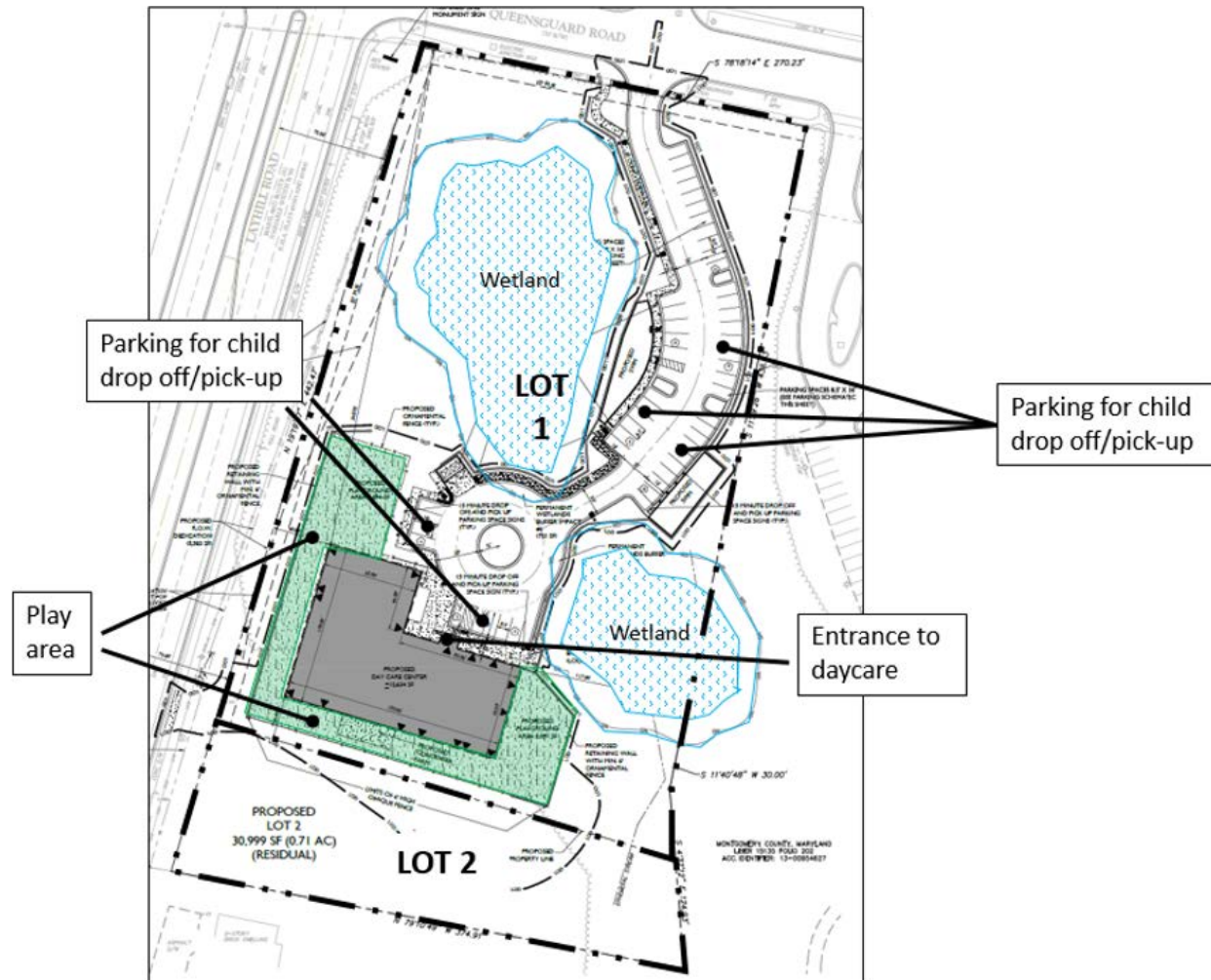


Figure 2: Proposed development

Forest Conservation

The submitted Preliminary Forest Conservation Plan (PFCP – Figure 3 – Attachment 1) proposes to clear 1.80 acres of forest and to retain 1.32 acres of forest. There is an existing Category I Forest Conservation Easement of 26,075 square feet on the southern end of the Property. The Conditional Use plan proposes to site the school building in a portion of this area, requiring abandonment of 6,602 square feet of the existing easement. The remainder of the existing easement will be retained. Part of the easement area to be retained is currently unforested. The Forest Conservation Plan permits temporary grading needed for creating the building site in this unforested area. The area will be reforested following construction of the school building.

The 6,602 square feet of existing Category I easement being removed will be replaced on site within the new Category I easement being created on the Property. The total area required to be in easement to fulfill the forest conservation requirements is 1.32 acres (57499.2 square feet) to satisfy the forest retention requirement, plus 6,602 square feet to replace the existing Category I easement being removed, for a total of 64,101.2 square feet required. The area being provided in Category I easement

is 20,463 square feet of retained easement, plus 44,428 square feet of new easement, for a total of 64,891 square feet.

A Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP must be submitted and approved with a future Preliminary Plan of subdivision.

Forest Conservation Variance

Section 22A-12(b) (3) of County Code identifies certain individual trees as high priority for retention and protection. Any impact to these trees, including removal of the subject tree or any impact to the tree requires a variance. An application for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County code. The code requires no impact to trees that: measure 30 inches or greater, dbh; are part of a historic site or designated with a historic structure; are designated as a national, State, or County champion tree; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species.

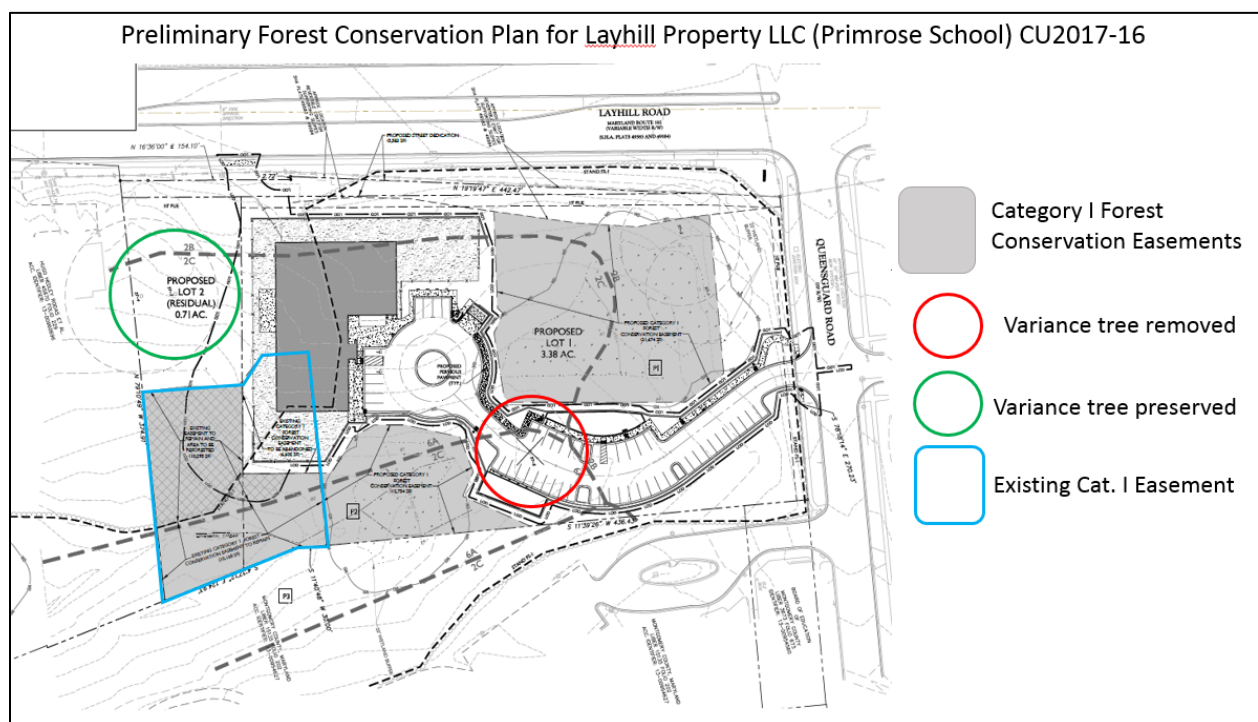


Figure 3: Preliminary Forest Conservation Plan

Variance Request

The Applicant submitted a variance request on October 26, 2017, because the plan would impact the Critical Root Zone (CRZ) of two trees that are considered high priority for retention under Section 22A-12(b) of the County code. The variance request seeks approval to remove one tree and preserve the second tree. A copy of the variance request letter is appended to this staff report (Attachment 2).

The site is currently undeveloped. A significant portion of the site is constrained by the presence of wetlands. Access to the site by vehicle will only be permitted from Queensguard Road. The shape of the lot, position of the wetlands and requirement to access the site from Queensguard Road severely limit options for placing a building on the site. Furthermore, minimum access requirements for fire and rescue services, the need for parking and traffic queueing, and stormwater management facilities dictate much of the design for access and building placement. The specimen tree being removed is located in the middle of the logical site access point.

Staff therefore believes that denial of the variance would constitute a hardship to the Applicant. This finding must be met when determining whether or not to consider a variance for the project. Based on this finding, Staff finds that a variance can be considered.

Section 22A-21 of the County code sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, in order for a variance to be granted. Staff has made the following determinations, as the Director's designee, that granting the requested variance:

1. *Will not confer on the applicant a special privilege that would be denied to other applicants.*

Of the five specimen trees on the property, only two will be impacted. The others are not affected. Due to the location of one specimen tree on the site in the only feasible access route, along with other site constraints and development requirements, Staff has determined that the impact to the tree subject to the variance requirement cannot be avoided. The CRZ of the second tree will receive minor impacts, but the tree will be saved. Therefore, staff finds that the granting of this variance is not a special privilege that would be denied to other applicants.

2. *Is not based on conditions or circumstances which are the result of the actions by the applicant.*

The requested variance is not based on conditions or circumstances which are the result of actions by the applicant, but on environmental, engineering and site constraints.

3. *Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.*

The requested variance is not a result of land or building use on a neighboring property.

4. *Will not violate State water quality standards or cause measurable degradation in water quality.*

The tree being removed will be mitigated by the planting of 3 replacement trees of at least 3 inches caliper, each. These replacement trees will, in time, replace the lost water quality functions of the removed tree. The tree being preserved will continue to provide water quality benefits as before. Therefore, the project will not violate State water quality standards or cause a measurable degradation in water quality.

County Arborist's Recommendation on the Variance

In accordance with Montgomery County Code Section 22A-21(c), on March 5, 2018, the Planning Department referred a copy of the variance request to the County Arborist in the Montgomery County Department of Environmental Protection for a recommendation prior to acting on the request. As of the date of the posting of this report, a response has not been received.

Variance Recommendation

Staff recommends approval of the variance.

SECTION 4: CONCLUSION

Staff recommends approval of the Preliminary Forest Conservation Plan, subject to the conditions of approval and findings contained in this report.

ATTACHMENTS

1. Preliminary Forest Conservation Plan
2. Forest Conservation, Tree Variance Request

LAYHILL VILLAGE EAST, BLOCK B, PARCEL A
ATWOOD KNOLLS, BLOCK B, LOTS 5 AND 6
MONTGOMERY COUNTY
MARYLAND

NOTES:

OWNER'S DEVELOPER'S CERTIFICATION

Signature _____ Date _____

Printed Name and Title _____

MASER CONSULTING P.A.
22375 BRODERICK DRIVE, SUITE 110
STERLING, VA 20166
ATTN: IVAN MOODY
(703) 430-4330

The logo for 811, featuring the number '811' in a large, bold, black font. Below the number is a black silhouette of a shovel. To the right of the number is a registered trademark symbol (®). Below the logo, the text 'Know what's below. Call before you dig.' is written in a serif font. To the right of this text, the text 'STATE REQUIRED FILE NUMBER' is written in a bold, sans-serif font. Below this, the text 'FOR STATE SPECIFIC DIRECT PHONE NUMBERS VISIT:' is written in a bold, sans-serif font, followed by the website address 'WWW.CALL811.COM' in a bold, sans-serif font.

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PRELIMINARY FOREST
CONSERVATION PLAN

FOR

PRIMROSE SCHOOL
BLOCK B, PARCEL A
AND
ATWOOD KNOLLS
LOT 5 & 6, BLOCK B
DISTRICT 13

MONTGOMERY COUNTY
MARYLAND



STERLING OFFICE
 22375 Broderick Drive
 Suite 110
 Sterling, VA 20166

Phone: 703.430.4330
 Fax: 703.430.4339

SCALE: AS SHOWN	DATE: 11/13/17	DRAWN BY: CME	CHECKED BY: EJI
PROJECT NUMBER: 16001174A		DRAWING NAME: C-FCPA	

COVER SHEET

SHEET NUMBER:

CI



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

ATTACHMENT 2

22375 Broderick Drive, Suite 110
Sterling, VA 20166
T: 703.430.4330
F: 703.430.4339
www.maserconsulting.com

February 15, 2018

Mr. Steve Findley
Maryland National Capital Park and
Planning Commission (M-NCPPC)
8787 Georgia Avenue
Silver Spring, MD 20910

**Re: Request for Tree Variance
Primrose School
MNCPPC NRI-FSD # 420162060**

Dear Ms. Kishter:

On behalf of Layhill Property, LLC and pursuant to Section 22A-21(b) Variance provisions of the Montgomery County Forest Conservation Ordinance and recent revisions to the State Forest Conservation Act enacted by Senate Bill 666, Maser Consulting, P.A. (Maser) is requesting a variance to allow impacts to or the removal of the following trees identified on the approved Natural Resource Inventory/Forest Stand Delineation and proposed Preliminary Forest Conservation Plan for the above-named County construction project:

Project Description

The proposed Primrose Layhill site, a proposed day care center is located at the southeast quadrant of the intersection of Layhill Road (MD Route 182) and Queensguard Road, in Montgomery County, Maryland. The subject site is approximately 4.22 acres, and is comprised of three (3) parcels, identified as follows:

Layhill Village East
Block B, Parcel A
Area: 3.01 Acres

Atwood Knolls
Block B, Lot 5
Area: 0.46 Acres

and

Atwood Knolls
Block B, Lot 6
Area: 0.75 Acres



The subject property is comprised of mature-growth woodlands and jurisdictional wetlands. Approximately 3.12 acres is comprised of lowland, mid-successional forest. Forest vegetation consists primarily of mid-successional, mixed hardwoods (i.e. poplars, maples, and oaks), and herbaceous understory. Site topography drains to the southeast property corner. Drainage is conveyed from the northerly and westerly property lines to a well pronounced swale near the easterly property line. In addition to the afore-mentioned site characteristics, there are also two substantial areas of wetlands and associated wetland buffers.

Proposed construction consists of an approximate 12,650 square foot day care center, pedestrian and vehicular circulation and parking, and proposed storm-water management facilities.

Requirements for Justification of Variance

Section 22A-21(b) Application requirements states that the applicant must:

- Describe the special conditions peculiar to the property, which would cause the unwarranted hardship.
- Describe how enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas.
- Verify that State water quality standards will not be violated and that a measurable degradation in water quality will not occur resulting from the granting of the variance.
- Provide any other information appropriate to support the request.

Justification of Variance

1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;

Response: The developer desires to build a Day Care Center with an approximate building footprint of 12,650 square feet. The associated on-site facilities that are required to support the Day Care facility are vehicular access and parking, fire access, and playground area. Due to site geometry, the location(s) of the wetland features, and the building geometry, the only practical area to site the proposed building is at the southerly area of the site. Vehicular access is routed from Queensguard Road, between the two wetland areas, and to the building, with a turnaround provided at the southerly terminus to accommodate fire and rescue apparatus. Further, the topographic site restrictions require extensive retaining walls to achieve vehicular and ADA access. With this preferred access alignment, which avoids impact to the wetlands and minimizes impact to the wetland buffer, Specimen Tree #5 will require removal. In addition, approximately 10% the Critical Root Zone of ST-3 will be impacted due to grading (fill) operations.



It should be noted that several options were studied in arriving at the current site layout, including minimizing the effective building area, which resulted in a more preferred site layout with the playground and vehicular access.

Further reduction in building size would not allow a day care Center with the preferred operational characteristics.

2. Describe how enforcement of Chapter 22A will deprive the landowner of rights commonly enjoyed by others in similar areas.

Response: As previously noted, it is the developer's desire to build a Day Care Center. Due to the challenges presented by the site topography and wetland areas, several options were explored in arriving at the current building size and site layout. Further reduction in building size would make the building, and therefore the entire site, operationally undesirable.

3. Verify that State water quality standards will not be violated, or that a measurable degradation in water quality will not occur, resulting from the granting of the variance.

Response: While developing the site layout and evaluating various site constraints and/or environmental features, State water quality standards have continued to be one of the primary considerations. As such, based on preliminary Water quality computations, it is our belief that water quality standards can be met with the two micro-bioretenion facilities indicated. Due to the tight restraints on this site, it will be necessary to install planter structures to meet the required water quality treatment without impacting the wetlands or further impacting the wetland buffers.

4. Provide any other information appropriate to support the request.

Response: It is the developer's belief that the addition of a day care facility in this location provide bring a needed service to the surrounding community.

Additional Criteria Considered

As further basis for this variance request, the applicant can demonstrate that the request meets the minimum criteria, as set forth in Section 22A-21(d), which states that a variance must not be granted if granting the request:

- Will confer on the applicant a special privilege that would be denied to other applicants;

Response: Granting this variance will not confer on the applicant a special privilege that would be denied to other applicants. As previously stated, the applicant has made several adjustments to the ultimate yield (building square footage/possible number of occupants) during the development of the current site plan configuration.



Mr. Steve Findley
Maryland National Capital Park
and Planning Commission
MC Project No.: 16001174A
February 15, 2018
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- Is based on conditions or circumstances which result from the actions by the applicant;

Response: Layhill Properties, L.L.C. has not taken any actions which have led to the conditions or circumstances that result in the need for this variance. Several restrictive conditions, topography, wetlands, geometry, etc. are the natural state of this site.

- Is based on a condition relating to land or building use, either permitted or nonconforming, on a neighboring property;

Response: The surrounding land uses do not have any inherent characteristics or conditions that have created, or contributed to the need for a variance.

- Or will violate State water quality standards or cause measurable degradation in water quality.

Response: The current layout, as proposed, addresses the required State water quality standards. Granting this variance request will not violate State water quality standards or cause measurable degradation in water quality.

Should you have any questions or require any additional information please do not hesitate to contact our office.

Very truly yours,

MASER CONSULTING P.A.

A blue ink signature of Jonathan M. Jolley, PLA, written over the company name.

Jonathan M. Jolley, PLA
Principal Associate