

ATTACHMENT 1

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
LAYHILL PROPERTY, LLC,
T/A PRIMROSE SCHOOL,

Applicant

Mathew Taylor

Scott Wolford

Eduardo Intriago

Glenn Cook

James Kassay

Mrugesh and Jasmili Majmudar

Jody S. Kline, Esquire

Attorney for the Applicant

For the Application

Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

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OZAH Case No. CU 17-16

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

This case involves an application for a conditional use to operate a child Day Care Center for over 30 persons (up to 200 in this case) pursuant to Zoning Ordinance §59-3.4.4.F.¹ The subject property is Parcel A, Block B, “Layhill Village East” and parts of Lots 5 and 6, Block B, Atwood Knolls, located at 14041 Layhill Road, Silver Spring, Maryland (Tax Account Numbers 13-02740216, 13-03615983, and 13-03615994). The property is owned by the Applicant, Layhill Property, LLC.

The subject site is in the R-200 Zone, and a conditional use is required for a child daycare facility for 30 or more children in that zone. “Primrose Schools” is a nationally known early education and child care organization in existence since 1982, with over 300 Primrose day care facilities across the country. Exhibit 43(a).

The application in this case was initially filed on May 11, 2017, and a hearing was scheduled for September 8, 2017. Exhibit 2. On August 28, 2017, Applicant’s attorney wrote to request that the hearing be postponed, and the Hearing Examiner responded that the request would be granted, postponing the hearing until December 1, 2017. Exhibits 24 and 25.

On October 11, 2017, Applicant’s attorney requested that the hearing be further postponed because the Planning Department still had problems with Applicant’s revised submissions. The Hearing Examiner agreed. Exhibits 29 and 30.

On January 26, 2018, the Applicant’s attorney agreed to a hearing date of March 16, 2018 (Exhibit 35); however, on February 13, 2018, the Applicant’s attorney wrote to request a hearing date of May 4, 2018, so that issues with the Planning Department could be resolved. Exhibit 41.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

On March 13, 2018, the Applicant filed amended versions of its conditional use plans and supporting documents (Exhibits 43 and 43(a) through 43(f)).

On March 20, 2018, the Office of Zoning and Administrative Hearings (OZAH) issued a notice of the proposed amendments to the application and of the public hearing to be held on May 4, 2018, (Exhibit 46). No opposition to the motion to amend was received by March 30, 2018, so the motion to amend the application has been granted.

On April 2, 2018, OZAH received an opposition letter from neighbors Roland and Jacquelyn Shaw, neighbors at 14101 Layhill Road, based on traffic volume and safety considerations. Exhibit 50.

The Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report on April 2, 2018, recommending approval of the application, subject to 13 recommended conditions. Exhibit 53.

The Planning Board met on April 12, 2018, and those present voted unanimously (4-0) to recommend approval of the conditional use. The Board's recommendation was forwarded to the Hearing Examiner on April 25, 2018, in a letter from its Chair (Exhibit 60). The Planning Board also approved the Forest Conservation Plan CU 201716 and an included tree variance, as reflected in the Board's Resolution No. 18-030, dated April 18, 2018 (Exhibit 59).

On April 13, 2018, the Applicant filed a further amendment request (Exhibits 55 and 56) to modify its traffic statement by substituting a corrected page (Exhibit 47(a)) in its previously filed traffic statement (Exhibit 15) and to add resumes of its experts (Exhibits 56(a), (b) and (c)). This new motion to amend was noticed on April 18, 2018 (Exhibit 58). No opposition to the amendment was filed, and that amendment has therefore been granted.

The public hearing proceeded as scheduled on May 4, 2018. The Applicant's attorney indicated that the Applicant accepted the findings of Technical Staff and the 13 conditions

recommended by Technical Staff and the Planning Board. Tr. 7-8. Applicant's affidavit of posting was filed as Exhibit 61.

Seven witnesses testified for the Applicant, Matthew Taylor, an official of the franchisor, Primrose Schools; Scott Wolford, a land Planner; Eduardo Intriago, a civil engineer; Glenn Cook, a Transportation Planner; James Kassay, the architect who designed the building; and Mrugesh and Jasmili Majmudar, who own Layhill Property, LLC and will be the franchisee at the subject site. There were no opposition witnesses, and there were no significant changes in the plans; however the Applicant did submit a revised signage plan (Sheet SK 5.0-Exhibit 63), per Technical Staff's recommended Condition 13; a rendered elevations plan (Exhibit 65); and a second page of the corrected traffic analysis (Exhibit 67). Therefore, the record was held open until May 15, 2018, to give Technical Staff and the public an opportunity for comment. Tr. 126-127.

There was no additional public commentary, and Technical Staff indicated by email dated May 9, 2018, that it had "no comments on the modifications." Exhibit 69. The record closed, as scheduled, on May 15, 2018.

For the reasons set forth at length in this Report and Decision, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

As mentioned above, the address of the subject property is 14041 Layhill Road, Silver Spring, Maryland. It is located at the southeast corner of the intersection of Layhill Road (MD 182) and Queensguard Road, about a quarter of a mile south of Bel Pre Road. It can be seen on the aerial photo map supplied by the Technical Staff (Exhibit 51, p. 3):



Technical Staff described the site (Exhibit 51, p. 3) as,

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 largely unimproved, except for a concrete driveway apron and asphalt on Lot 5. It contains two wetlands and an ephemeral stream. The majority of Parcel A is forested. A Category I Forest Conservation Easement covers part of Lots 5 and 6, although only a portion of the easement contains forest. The Property slopes down from both road frontages towards a low point on the southeast corner.

Staff also notes (Exhibit 53, pp. 4-5) that there were previous plans for this site that never came to fruition:

Two previous Special Exceptions were approved, but never implemented, on the Property. In 1981, the County's Board of Appeals (BOA) approved BAS-781 [Exhibit 62(a)] to permit a private club (the Wheaton Boy's Club) on the Property. The proposed use included the construction of a two-story club headquarters and off-street parking for 118 automobiles and 12 two-wheel vehicles. In 1986, the BOA approved BAS-1307 [Exhibit 62(b)] to permit the construction and operation of a child day care center for up to 136 children from toddlers to age 12. That day care facility was to be a single-story building with over 4,200 square feet of play area. Because the approvals were never implemented, both special exception approvals were revoked by the Board of Appeals in 2004.

A plat (No. 16672) was recorded in 1987 for Parcel A, but Staff could not locate an associated Preliminary Plan. On November 6, 2000, the Planning Board approved Preliminary Plan No. 120010140, to create one lot on Parcel A for a 300 seat House of Worship (with no weekday child day care or school). However, a plat was not recorded and the facility was never constructed.

On April 8, 2003, the Planning Board approved Preliminary Plan No. 120030440 for two lots to allow construction of two detached houses on the southern portion of the Property (Lots 5 and 6). At the time, there was a house on Lot 5 that has since been razed. Lots 5 and 6 were platted (Plat No. 23706) in 2007, but no houses have been constructed.

Access to the site is depicted on the Site Plan (Exhibit 43(d)), reproduced in Part II.C. of this Report, below.

B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the "surrounding neighborhood" (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as "generally defined by Bel Pre Road and Bonifant Road to the north, Alderton Road to the east, Matthew Henson Park to the south, and Northgate Drive to the west.." It is depicted below in a map from the Staff report (Exhibit 53, p. 4):



The Hearing Examiner accepts Staff's definition of the surrounding neighborhood, which is similar to that proposed by the Applicant (Exhibit 43(a), pp. 2-3). Applicant's land planner, Scott Wolford, adopted it as well. Tr. 33. As indicated by Staff (Exhibit 53, p. 4),

... The Neighborhood is primarily residential in character, with detached houses and townhouses in the R-200, R-60, and PD zones, but it contains a few other uses as well. The Mid-County Community Recreation Center abuts the Property to the east. A small commercial property with a bank (zoned CRN) and Argyle Magnet Middle School are located on the north side of the Neighborhood, and the southern portion of the Neighborhood contains M-NCPPC parkland.

The Staff report specified that, "With the exception of the commercially zoned properties at the corner of Layhill Road and Bel Pre Road, there are no existing special exceptions or nonresidential uses along this portion of Layhill Road." Exhibit 53, p. 11. We learned from the

April 25, 2018 letter of the Planning Board (Exhibit 60) that there are also two approved special exceptions for accessory apartments in the Staff-Defined Neighborhood – 2005 Queensguard Rd (BAS 1635 approved in 1989) and 1909 Queensguard Rd (BAS 2005 approved in 1993).

C. Proposed Use

The Applicant seeks approval of a conditional use to construct and operate a Child Day Care Center for up to 200 children at 14041 Layhill Road, Silver Spring, in the R-200 Zone.

As explained in Applicant's Amended Statement (Exhibit 43(a), pp. 2-3):

Petitioner intends to operate a Primrose School franchise at this 14041 Layhill Road location. Primrose Schools is a nationally known early education and child care school in existence since 1982. Across the country, there are over 300 Primrose day care facilities.

The Primrose educational program focuses on a "Balanced Learning" approach to development which includes both purposeful play and instruction time. The program includes reading and writing readiness, STEM, math development, creative arts, music, Spanish, physical and character development, and life skills. A full Primrose "Balanced Learning" development program lasts from infancy through childhood, with infancy care, preschool through kindergarten day care, and afterschool programs through elementary school.

At the subject site, Petitioner proposes to construct an approximately 12,634 square foot [one-story] building. The facility would house and allow for the operation of an eleven (11) classroom Primrose School for up to a maximum of 200 students. The attendees will be children from six (6) weeks old to pre-Kindergarten age. The school will operate from 6:00 am to 6:30 pm. Up to six (6) evening events will be held throughout the year, for social events or employee training sessions. Any evening events will not extend past 9:00 pm.

There will be a maximum of 30 staff members and 2 administrators at any one time. On-site staff training and organizational meetings will typically be held during regular business hours.

There will be 13,000 +/- square feet of enclosed outdoor play area. The play area will be divided into distinct play areas: one for infants, two for early preschool aged, and one for preschool aged children. Each playground area will have its own age-appropriate equipment. Each playground will be fenced and gated.

Technical Staff noted (Exhibit 53, p. 5) that the Applicant's initial submission "showed significant impacts to the wetland buffers, and the proposed building was sited at an awkward angle on the Property . . ." Staff reports that it "worked extensively with the Applicant to improve the layout of the proposed use [and its architecture] while minimizing impacts to environmental features." The Applicant's land planner, Scott Wolford, its civil engineer, Eduardo Intriago, and its architect, James Kassay, testified to the extensive efforts they made to avoid the wetland buffers, while simultaneously maintaining a building and site that would be compatible with the neighbors. As stated by Mr. Wolford (Tr. 43),

this building was specifically designed to fit exactly on this site. So it's in an L shape, which fits around the cul-de-sac drop off area and circulation place, then allows the playground to be wrapped around the back of the building. So it fit very well on the site. It also is depressed slightly, so it's not seen from the neighbors across the street. It's a one-story building with a gabled roof, it kind of fits into the residential character of the neighborhood.

According to Mr. Intriago, there were multiple constraints, including onsite wetlands, onsite forests, a Category I Forest Conservation Easement, significant differences in elevations on the site, the need to have a roundabout for fire department vehicles, the effort to align the site's access driveway on Queensguard Road to be directly across from the confronting Punch Street, and the need to avoid visual and noise impacts on the neighbors. Through the use of retaining walls, grading, heavy landscaping, fencing and careful location and design of the building and the access driveway, the Applicant was able to overcome these difficulties. Tr. 57-64.

Mr. Intriago further testified that 25 of the parking spaces on site will be devoted to the drop-off and pickup of children, and those spaces will be appropriately signed, as shown in the revised Signage Plan (Exhibit 63). Tr. 67-72. Mr. Intriago noted that in order to avoid significant intrusion into the wetland buffer, the Applicant needed a waiver of the 24-foot side parking setback required by Zoning Ordinance §59.6.2.5.K.2.b., reducing the setback to 8.38 feet. Tr.

73-75. Since the parking in that area abuts the existing parking lot at the Mid-County Recreation Center, the waiver will not reduce compatibility, and the Technical Staff therefore supports the waiver request (Exhibit 53, p. 19), as does the Hearing Examiner.

Mr. Intriago also testified that the proposed stormwater management system will be 100 percent compliant with environmental site design requirements. Tr. 77-79.

The Applicant's architect, James Kassay, testified that the proposed building is custom designed in shape, location and finishing to be compatible with the neighborhood. Tr. 87-93.

The Staff report (Exhibit 53, pp. 5-6) contains a thorough description of the Applicant's current proposal:

Subsequent to conditional use approval, the Applicant plans to subdivide the Property into two lots. The proposed Primrose School will occupy Lot 1, and Lot 2 will be a 30,999-square foot residual lot. The two wetlands (and their buffers) largely dictate the proposed site design, which attempts to minimize impacts on these environmental features.

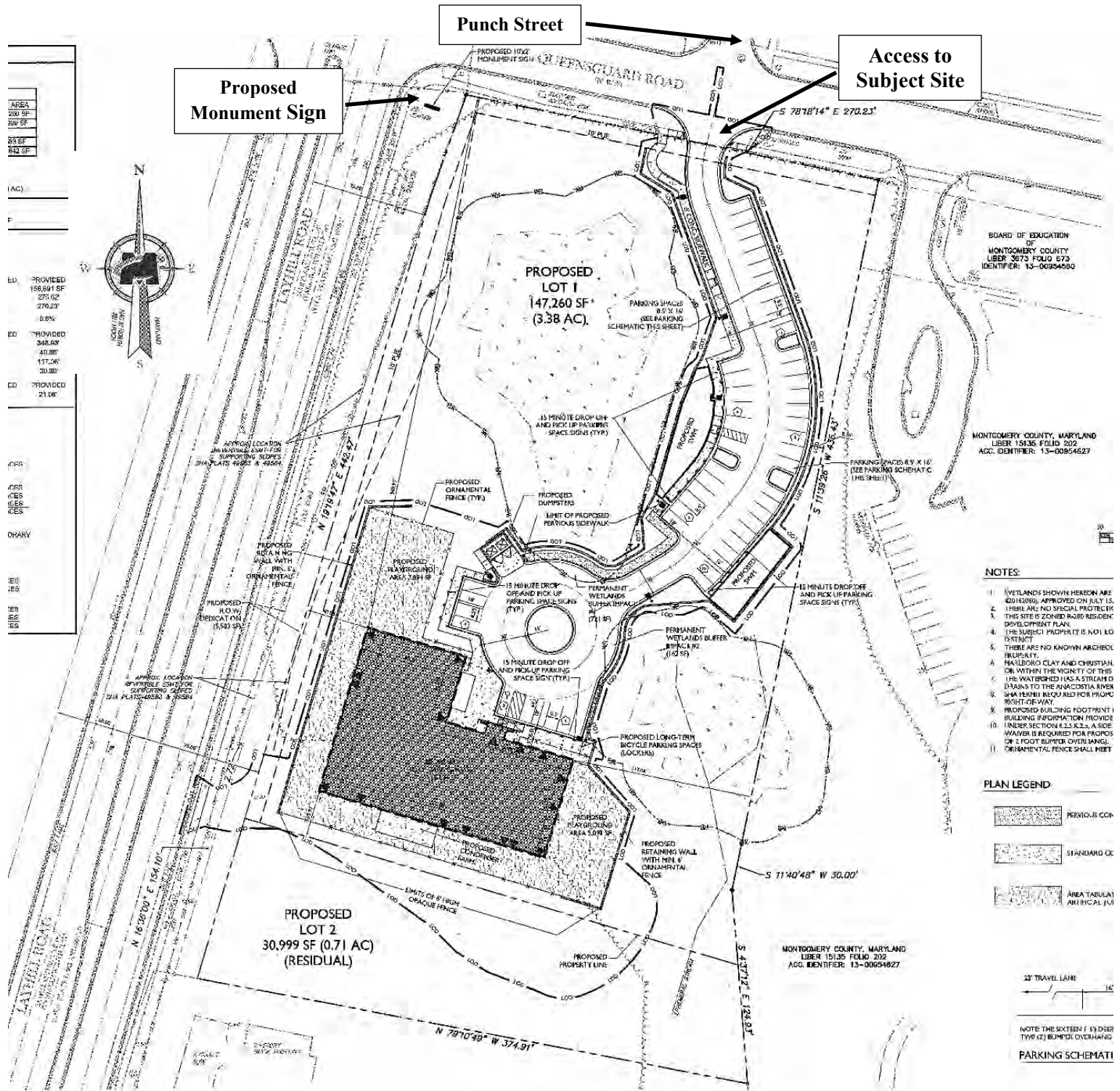
The Applicant plans to remove the existing asphalt and concrete apron on existing Lot 5 and create a new access point for pedestrians and vehicles from Queensguard Road. The proposed driveway from Queensguard Road leads directly into a parking lot. A drive aisle through the parking lot leads to a circular 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 fifty-two 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.

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. Permeable pavement is proposed for the portion of the sidewalk that traverses the wetland buffer.

Due to the Property's topography, the proposed building will sit at a lower elevation than Layhill Road As a result, the roof will be the most prominent building feature when viewed from Layhill Road. The proposed building is oriented so that its longer wing does not directly face Layhill Road. An entry feature typical of the Primrose School franchise highlights the front door of the building that faces Queensguard Road. The building is designed to be residential in character with sloping roofs, a stone and brick façade, and windows with mullions

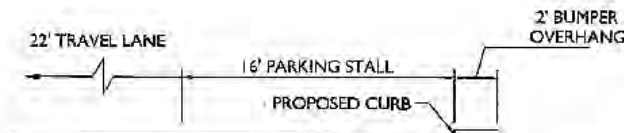
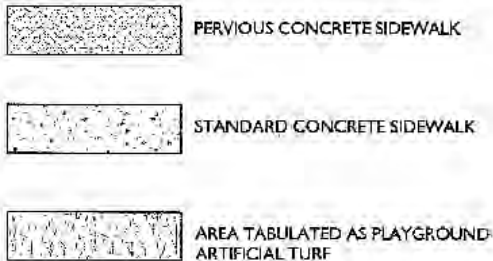
1. Site Plan, Access, On-Site Parking and Areas for Drop-off and Pickup of Children

The Applicant's final site plan for the conditional use (Exhibit 43(d)) is set forth below:

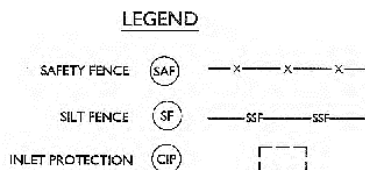


NOTES:

1. WETLANDS SHOWN HEREON ARE FROM AN APPROVED NRI/FSD STUDY (NO. 420162060), APPROVED ON JULY 15, 2016.
2. THERE ARE NO SPECIAL PROTECTION AREAS (SPA) ASSOCIATED WITH THIS PLAN.
3. THIS SITE IS ZONED R-200 RESIDENTIAL AS DEFINED IN THE GENERAL DEVELOPMENT PLAN.
4. THE SUBJECT PROPERTY IS NOT LOCATED WITHIN A REGISTERED HISTORIC DISTRICT.
5. THERE ARE NO KNOWN ARCHEOLOGICAL SITES LOCATED ON THE SUBJECT PROPERTY.
6. MARLBORO CLAY AND CHRISTIANA COMPLEX ARE NOT FOUND TO OCCUR ON OR WITHIN THE VICINITY OF THIS PROPERTY.
7. THE WATERSHED HAS A STREAM DESIGNATION USE OF IV AND EVENTUALLY DRAINS TO THE ANACOSTIA RIVER.
8. SHA PERMIT REQUIRED FOR PROPOSED MONUMENT SIGN WITHIN RIGHT-OF-WAY.
9. PROPOSED BUILDING FOOTPRINT IS CONCEPTUAL AND SUBJECT TO CHANGE. BUILDING INFORMATION PROVIDED BY ADA ARCHITECTS, INC. DATED 09/28/2017.
10. UNDER SECTION 6.2.5.K.2.b, A SIDE PARKING LOT SETBACK OF 24' IS REQUIRED. A WAIVER IS REQUIRED FOR PROPOSED PARKING LOT SETBACK OF 8.38' (TO LIMITS OF 2 FOOT BUMPER OVERHANG).
11. ORNAMENTAL FENCE SHALL MEET SAFETY FENCE REQUIREMENTS.

PLAN LEGEND

NOTE: THE SIXTEEN (16') DEEP PARKING STALLS RELY ON A CLEAR TWO (2') BUMPER OVERHANG FOR STANDARD STALL DEPTH PROVISIONS.

PARKING SCHEMATIC**PROJECT DATA****SITE DATA:**

EXISTING		PROPOSED	
ACCOUNT #	LOT AREA	ACCOUNT #	LOT AREA
13-02740216	131,113 SF	LOT 1*	147,260 SF
13-03815983	20,012 SF	LOT 2**	30,999 SF
13-03815994	32,717 SF		
		DEDICATION	5,583 SF
TOTAL AREA	183,842 SF	TOTAL AREA	183,842 SF

*LOT FOR CONDITIONAL USE REVIEW

**NOTE: RESIDUAL LOT

LIMITS OF DISTURBANCE: 82,111 S.F. (1.89 AC)

BUILDING:

PRIMROSE SCHOOL (DAY CARE) +12,634 SF

BULK ZONING INFORMATION:

ZONE: R-200

LOT (MIN)	REQUIRED/ALLOWED	PROVIDED
LOT AREA	20,000 SF	156,681 SF
LOT WIDTH AT FRONT BUILDING LINE	100'	275.62'
LOT WIDTH AT FRONT LOT LINE	25'	270.23'
LOT COVERAGE (MAX)	25%	3.6%
PRINCIPAL BUILDING SETBACKS	REQUIRED/ALLOWED	PROVIDED
FRONT (QUEENSGUARD RD.)	40'	348.93'
SIDE - STREET ROW (LAYHILL RD.)	40'	40.88'
SIDE	12'	117.06'
REAR	30'	30.90'
MAX BUILDING HEIGHT	REQUIRED/ALLOWED	PROVIDED
LOT IS ≥ 40,000 SF	50'	21.08'

PARKING DATA:**JURISDICTIONAL PARKING****REQUIRED:**

DAY CARE CENTER:
3/1000 S.F. OF FLOOR AREA: 38 SPACES

PROPOSED:

8.5' x 16' SPACES* 30 SPACES
8.5' x 16' SPACES** 20 SPACES
ADA SPACES 2 SPACES
TOTAL 52 SPACES

*8.5' x 16' SPACES TO HAVE A 2' OVERHANG

**THESE 20 SPACES ARE FOR 15 MINUTE TEMPORARY PARKING ONLY.

BICYCLE PARKING**REQUIRED:**

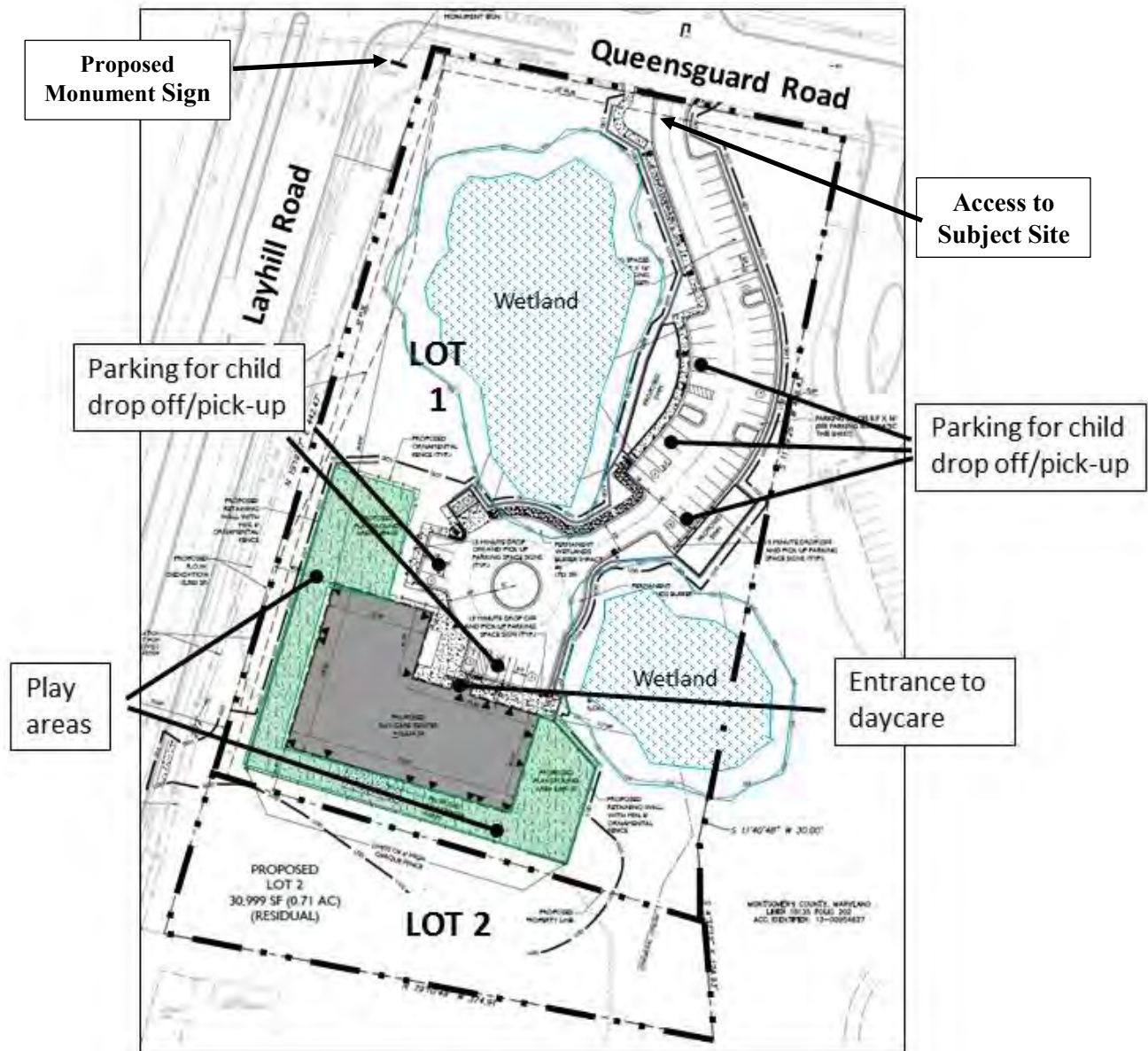
DAY CARE CENTER:
1/5000 S.F. OF FLOOR AREA: 3 SPACES
LONG TERM (85%): 3 SPACES

PROPOSED:

SHORT TERM: 0 SPACES
LONG TERM: 3 SPACES
TOTAL: 3 SPACES

The portion of the site that will be devoted to the child care facility (*i.e.*, Lot 1) measures 147,260 square feet.

The proposed drop/off and pickup areas, parking, daycare entrance and play areas are denoted on a rendered Site Plan from the Staff Report (Exhibit 53, p. 6):

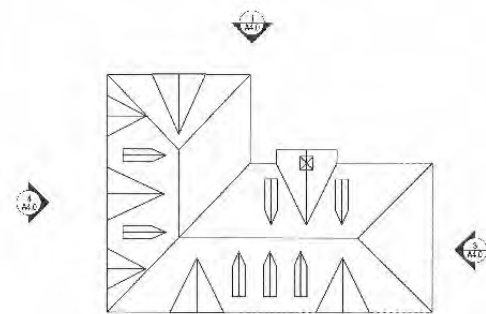


Technical Staff describes the proposed play areas as follows (Exhibit 53, p. 8):

The Applicant proposes 13,000 square feet of fenced outdoor play area, covered with artificial turf. Distinct outdoor play areas will be provided for different age groups. One outdoor play area will be for infants, two for early preschool-age, and one for preschool aged children. A 6-foot-tall decorative iron fence will surround the west, east, and north sides of the play area. The play area on the south side of the building that faces the adjacent residential property will be enclosed by a semi-opaque vinyl fence. Retaining walls border most of the proposed parking and play areas.

2. Elevations, Site Section and Floor Plan

The Exterior Elevations (Exhibit 65), Site Section (Exhibit 43(p)) and Floor Plan (Exhibit 43(n)) are shown below:



4
A-4.0
WEST
EXTERIOR ELEVATION
SCALE: 1/8"=1'-0"



3
A-4.0
EAST
EXTERIOR ELEVATION
SCALE: 1/8"=1'-0"



2
A-4.0
SOUTH
EXTERIOR ELEVATION
SCALE: 1/8"=1'-0"

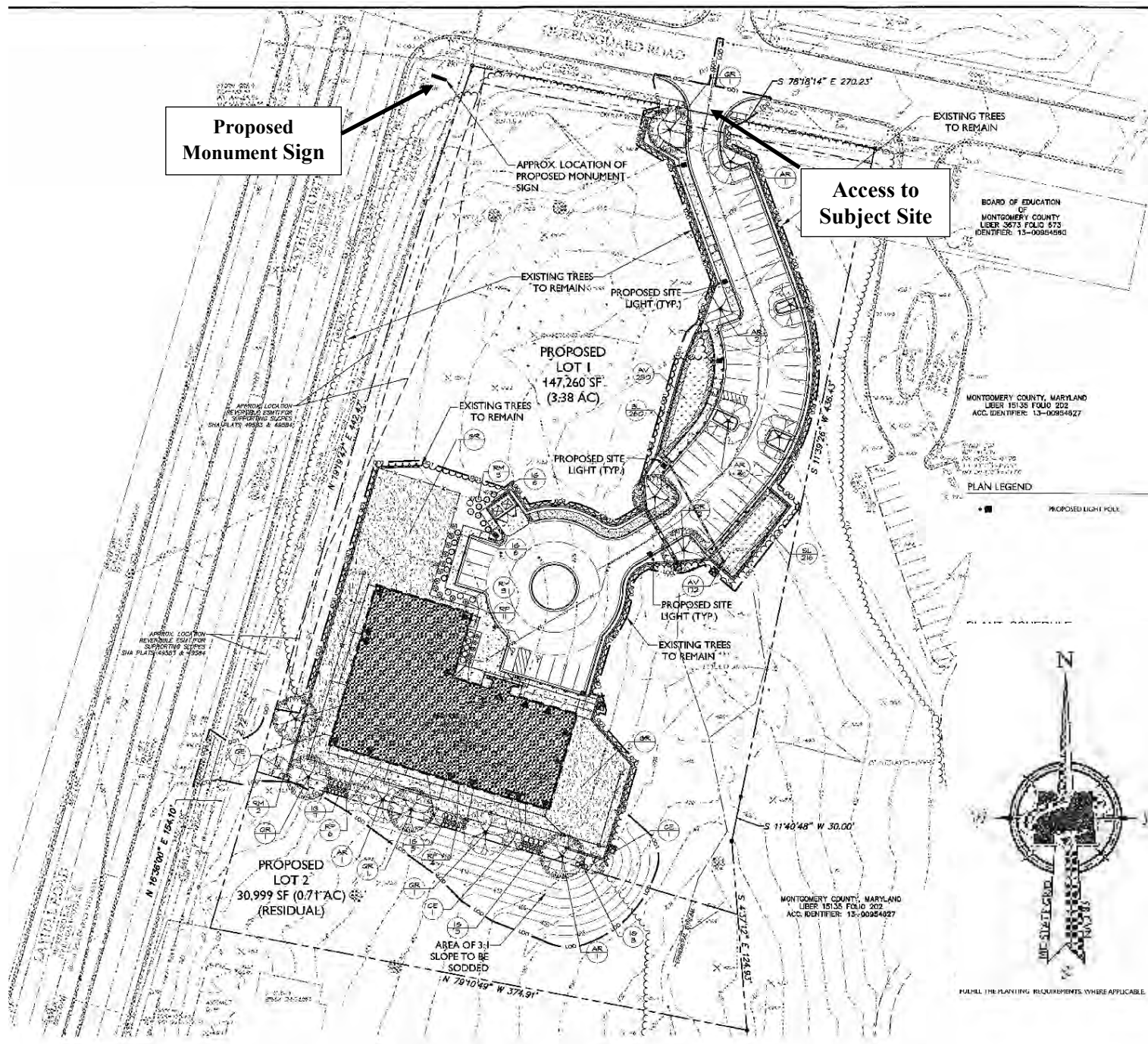


1
A-4.0
NORTH
EXTERIOR ELEVATION
SCALE: 1/8"=1'-0"










3. Site Landscaping, Lighting and Signage

The Applicant's Landscaping and Lighting Plan (Exhibits 43(h) and (i)) shows existing and planned landscaping and lighting. It is reproduced below:

a. Landscaping



PLANT SCHEDULE

DECIDUOUS TREES	CODE	QTY	BOTANICAL NAME / COMMON NAME	SIZE
	AR	7	ACER RUBRUM / RED MAPLE	2 1/2-3" CAL.
	QR	7	QUERCUS RUBRA / RED OAK	2 1/2-3" CAL.
FLOWERING TREES	CODE	QTY	BOTANICAL NAME / COMMON NAME	
	CE	5	CERCIS CANADENSIS / EASTERN REDBUD MULTI-TRUNK	2-2 1/2" CAL.
SHRUBS	CODE	QTY	BOTANICAL NAME / COMMON NAME	
	IG	35	ILEX GLABRA 'COMPACTA' / COMPACT INKBERRY HOLLY	24-30"
	RP	36	TAXUS FPP / YEW	24-30"
	RM	23	RHODODENDRON MAXIMUM / ROSE BAY	24-30"
GROUND COVERS	CODE	QTY	BOTANICAL NAME / COMMON NAME	
	AV	402	ANDROPOGON VIRGINICUS / BROOMSEDGE BLUESTEM	1 GAL. CONT.
	SL	476	SCHIZACHARIUM SCOPARIUS / LITTLE BLUESTEM	1 GAL. CONT.
	GR		PLAYGROUND AREA TO BE ARTIFICIAL TURF	

EXISTING TREE LINE: ALL EXISTING TREES LOCATED OUTSIDE OF THE LIMITS OF DISTURBANCE (L.O.D.) WILL REMAIN ON SITE, PENDING FURTHER IDENTIFICATION. EXISTING TREES MAY BE UTILIZED TO FULFILL THE PLANTING REQUIREMENTS, WHERE APPLICABLE.

COMPLIANCE CHART

MONTGOMERY COUNTY, MARYLAND ZONING - CHAPTER 59

DIVISION 6.2 PARKING, QUEUING, AND LOADING

C. PARKING LOT REQUIREMENTS FOR 10 OR MORE SPACES

1. LANDSCAPE AREA

A. A SURFACE PARKING LOT MUST HAVE LANDSCAPED ISLANDS THAT ARE A MINIMUM OF 100 CONTIGUOUS SQUARE FEET EACH COMPRISING A MINIMUM OF 5% OF THE TOTAL AREA OF THE SURFACE PARKING LOT.

REQUIRED:
AREA OF PARKING LOT - 21,956 S.F. X (5%) = 1,098 S.F.

PROVIDED:
1,975 S.F. (9.0%)

2. TREE CANOPY
EACH PARKING LOT MUST MAINTAIN A MINIMUM TREE CANOPY OF 25% COVERAGE AT 20 YEARS GROWTH, AS DEFINED BY THE TREES TECHNICAL MANUAL.

REQUIRED:
AREA OF PARKING LOT - 21,956 S.F. X (25%) = 5,489 S.F.

PROVIDED:
FIVE (5) TREES WITH A 40' MATURE DIAMETER (1,256 S.F. EA) = 6,280 S.F. (28%)

3. PERIMETER PLANTING

A. THE PERIMETER PLANTING AREA FOR A PROPERTY THAT ABUTS A RURAL RESIDENTIAL ZONED PROPERTY THAT IS VACANT MUST:

- BE A MINIMUM OF TEN (10') FEET WIDE;
- CONTAIN A HEDGE, FENCE, OR WALL A MINIMUM OF SIX (6') FEET HIGH;
- MINIMUM OF ONE UNDERSTORY OR EVERGREEN EVERY FIFTY (50) FEET; AND
- HAVE SIX (6) LARGE SHRUBS, EIGHT (8) MEDIUM SHRUBS, AND EIGHT (8) SMALL SHRUBS EVERY HUNDRED (100) FEET

REQUIRED: (ADJACENT TO PROPOSED LOT 2)
SOUTH PROPERTY LINE - 330 LF (240 PLANTING LENGTH, 90 CONSERVATION EASEMENT)
PER SECTION 6.5.3.C.7

PROVIDED:

- WALL & FENCE COMBINATION
- SOUTHERN PROPERTY LINE - 330 LF; 90 LF OF CONSERVATION EASEMENT, 240 LF REQUIRED/PROVIDED
- SCREENING LENGTH
 - (240/100) x 2 = 5 CANOPY TREES
 - (240/100) x 2 = 5 UNDERSTORY TREES
 - (240/100) x 6 = 15 LARGE
 - (240/100) x 8 = 20 MEDIUM
 - (240/100) x 8 = 20 SMALL

SOUTH EAST PROPERTY LINE - 475 L.F. / 30 = 15.8 OR 16 TREES (CONSERVATION EASEMENT)

B. THE PERIMETER PLANTING AREA FOR A PROPERTY THAT ABUTS ANY OTHER ZONED PROPERTY, RIGHT-OF-WAY, OR AN AGRICULTURAL, RURAL RESIDENTIAL, OR RESIDENTIAL DETACHED ZONED PROPERTY THAT IS IMPROVED WITH A COMMERCIAL USE MUST:

- BE A MINIMUM OF 6 FEET WIDE;
- CONTAIN A HEDGE OR LOW WALL A MINIMUM OF 3 FEET HIGH; AND
- HAVE A CANOPY TREE PLANTED EVERY 30 FEET ON CENTER; UNLESS
- THE PROPERTY ABUTS ANOTHER PARKING LOT, IN WHICH CASE A PERIMETER PLANTING AREA IS NOT REQUIRED.

REQUIRED:
LAYHILL ROAD - 472 L.F. / 30 = 16 TREES

EXISTING VEGETATION TO BE PRESERVED. PRESERVED VEGETATION TO BE ALLOCATED TOWARDS MEETING THE PERIMETER PLANTING REQUIREMENTS. APPROXIMATELY 50 FEET OF LAYHILL FRONTAGE TO BE PLANTED. 50 L.F. / 30 = 1.6 = 2 TREES

QUEENSGUARD ROAD - 240 L.F. / 30 = 8 TREES

EXISTING VEGETATION TO BE PRESERVED. PRESERVED VEGETATION TO BE ALLOCATED TOWARDS MEETING THE PERIMETER PLANTING REQUIREMENTS.

EAST PROPERTY LINE - 560 L.F. / 30 = 18.6 OR 19 TREES
PROPERTY LINE ABUTS PARKING LOT -

EXISTING VEGETATION TO BE PRESERVED. PRESERVED VEGETATION TO BE ALLOCATED TOWARDS MEETING THE PERIMETER PLANTING REQUIREMENTS.

Technical Staff notes that a significant number of existing trees will be retained, as shown on the above landscape plan. These trees will be supplemented with additional trees and landscaping, as set forth in the above schedule. As stated by Staff (Exhibit 53, p. 8), a Category I Forest Conservation Easement will protect the wetlands:

The landscape plan shows trees planted within the parking lot, and shrubs planted along a portion of the building and play area facing the parking lot. Trees and shrubs are proposed between Lots 1 and 2 along the fenced play area. The forested wetlands will be protected within Category I Forest Conservation Easements, and other forested areas outside of the LOD will be retained . . .

In addition, the Applicant has indicated that it intends to subdivide the Property in the future, creating a new Lot 2, on the site, which is depicted on the Site Plan reproduced on Page 11 of this Report and Decision and on the Landscape Plan reproduced on Page 16, above. Therefore, additional screening is required between Lots 1 and 2, as depicted by Staff in a diagram in the Staff Report (Exhibit 53, p. 20):



Screening between the proposed conditional use and proposed Lot 2

Technical Staff described the screening requirements (Exhibit 53, pp. 19-20):

In Residential Detached zones,. . . [Zoning Ordinance Section 59.] 6.5.2.b requires a conditional use in a “general” building type to provide screening under Section 6.5.3 if the subject lot abuts property in a Residential Detached zone that is vacant or improved with a residential use. Further, conditional uses must have screening that ensures compatibility with the surrounding neighborhood. Since the Applicant intends to subdivide the Property and the future use of residual Lot 2 is unknown at this time, screening is required between proposed Lots 1 and 2. The Applicant proposes a 6’ fence and an eight-foot planting bed to satisfy the screening requirement under Section 6.5.3.C.7 (option A) along the majority of the lot line . . . A forest conservation easement will also serve as screening of the use and the parking lot along approximately 85 feet of the shared lot line. Staff finds that the proposed screening ensures compatibility with the surrounding neighborhood.

b. Lighting

All sides of the building will have wall mounted lighting, and lights on 20-foot poles will be distributed around the parking lot. Exhibit 53, p. 9. Charts depicting and describing the proposed lighting are contained in Exhibits 43(s) and (t):

[illegible]

XSP Series

XSP™ (LED Wall Mount) Luminaires

Type C, 60 to 6 foot
above grade

Product Description

The XSP™ LED wall mount luminaire is a wall mounting luminaire designed for outdoor use. It is available in 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 15, 20, 25, 30, 35, 40, 45, 50, 60, 70, 80, 90, 100, 120, 150, 200, 250, 300, 350, 400, 450, 500, 600, 700, 800, 900, 1000, 1200, 1500, 2000, 2500, 3000, 3500, 4000, 4500, 5000, 6000, 7000, 8000, 9000, 10000, 12000, 15000, 20000, 25000, 30000, 35000, 40000, 45000, 50000, 60000, 70000, 80000, 90000, 100000, 120000, 150000, 200000, 250000, 300000, 350000, 400000, 450000, 500000, 600000, 700000, 800000, 900000, 1000000, 1200000, 1500000, 2000000, 2500000, 3000000, 3500000, 4000000, 4500000, 5000000, 6000000, 7000000, 8000000, 9000000, 10000000, 12000000, 15000000, 20000000, 25000000, 30000000, 35000000, 40000000, 45000000, 50000000, 60000000, 70000000, 80000000, 90000000, 100000000, 120000000, 150000000, 200000000, 250000000, 300000000, 350000000, 400000000, 450000000, 500000000, 600000000, 700000000, 800000000, 900000000, 1000000000, 1200000000, 1500000000, 2000000000, 2500000000, 3000000000, 3500000000, 4000000000, 4500000000, 5000000000, 6000000000, 7000000000, 8000000000, 9000000000, 10000000000, 12000000000, 15000000000, 20000000000, 25000000000, 30000000000, 35000000000, 40000000000, 45000000000, 50000000000, 60000000000, 70000000000, 80000000000, 90000000000, 100000000000, 120000000000, 150000000000, 200000000000, 250000000000, 300000000000, 350000000000, 400000000000, 450000000000, 500000000000, 600000000000, 700000000000, 800000000000, 900000000000, 1000000000000, 1200000000000, 1500000000000, 2000000000000, 2500000000000, 3000000000000, 3500000000000, 4000000000000, 4500000000000, 5000000000000, 6000000000000, 7000000000000, 8000000000000, 9000000000000, 10000000000000, 12000000000000, 15000000000000, 20000000000000, 25000000000000, 30000000000000, 35000000000000, 40000000000000, 45000000000000, 50000000000000, 60000000000000, 70000000000000, 80000000000000, 90000000000000, 100000000000000, 120000000000000, 150000000000000, 200000000000000, 250000000000000, 300000000000000, 350000000000000, 400000000000000, 450000000000000, 500000000000000, 600000000000000, 700000000000000, 800000000000000, 900000000000000, 1000000000000000, 1200000000000000, 1500000000000000, 2000000000000000, 2500000000000000, 3000000000000000, 3500000000000000, 4000000000000000, 4500000000000000, 5000000000000000, 6000000000000000, 7000000000000000, 8000000000000000, 9000000000000000, 10000000000000000, 12000000000000000, 15000000000000000, 20000000000000000, 25000000000000000, 30000000000000000, 35000000000000000, 40000000000000000, 45000000000000000, 50000000000000000, 60000000000000000, 70000000000000000, 80000000000000000, 90000000000000000, 100000000000000000, 120000000000000000, 150000000000000000, 200000000000000000, 250000000000000000, 300000000000000000, 350000000000000000, 400000000000000000, 450000000000000000, 500000000000000000, 600000000000000000, 700000000000000000, 800000000000000000, 900000000000000000, 1000000000000000000, 1200000000000000000, 1500000000000000000, 2000000000000000000, 2500000000000000000, 3000000000000000000, 3500000000000000000, 4000000000000000000, 4500000000000000000, 5000000000000000000, 6000000000000000000, 7000000000000000000, 8000000000000000000, 9000000000000000000, 10000000000000000000, 12000000000000000000, 15000000000000000000, 20000000000000000000, 25000000000000000000, 30000000000000000000, 35000000000000000000, 40000000000000000000, 45000000000000000000, 50000000000000000000, 60000000000000000000, 70000000000000000000, 80000000000000000000, 90000000000000000000, 100000000000000000000, 120000000000000000000, 150000000000000000000, 200000000000000000000, 250000000000000000000, 300000000000000000000, 350000000000000000000, 400000000000000000000, 450000000000000000000, 500000000000000000000, 600000000000000000000, 700000000000000000000, 800000000000000000000, 900000000000000000000, 1000000000000000000000, 1200000000000000000000, 150000000000000

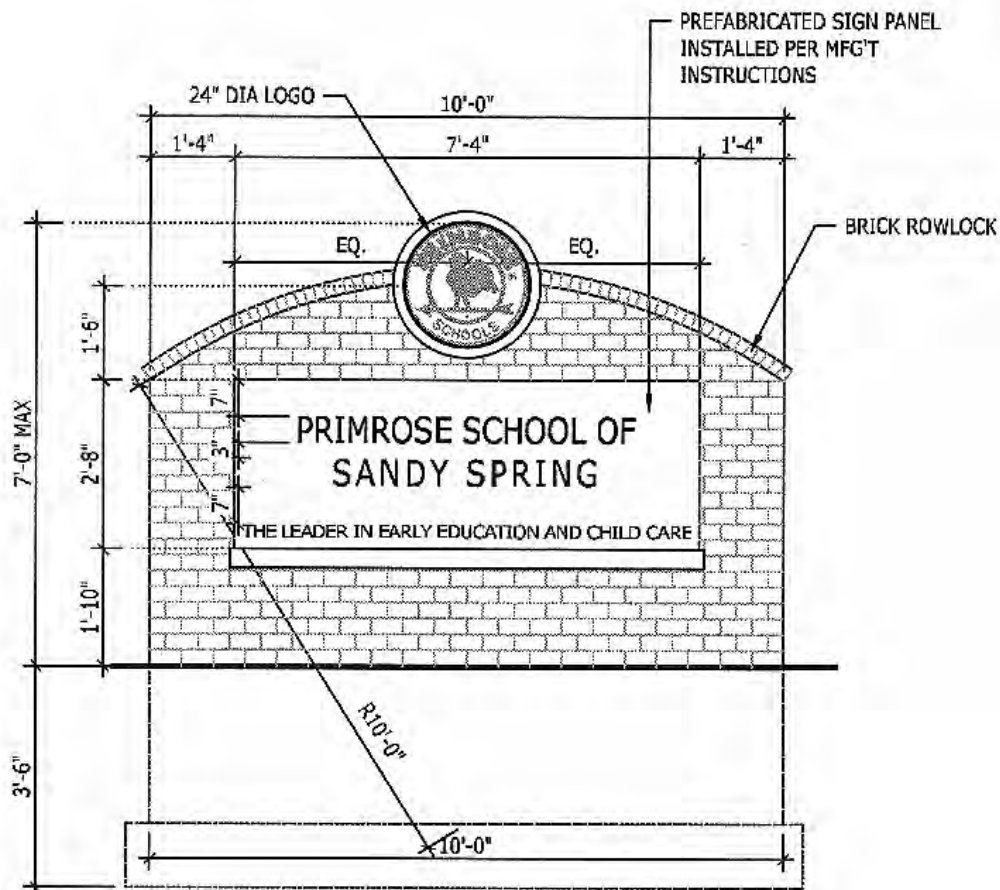
LIGHT FIXTURE SCHEDULE						
TYPE	DESCRIPTION	MANUFACTURER	LAMPS	VOLT	WATTS	REMARKS
T3	POLE MOUNTED EXTERIOR FIXTURE	CREEN ARE-ECG-240W-1254L-025	LED	120/277	222	POLE MOUNTED LIGHT FIXTURE WITH TYPE 3 DISTRIBUTION MOUNTED ON 20' STRAIGHT STEEL POLE.
T4	POLE MOUNTED EXTERIOR FIXTURE	ORSEP ARE-TYCAN-24-1254L-025	LED	120/277	200	POLE MOUNTED LIGHT FIXTURE WITH TYPE 4 DISTRIBUTION MOUNTED ON 20' STRAIGHT STEEL POLE.
C	WALL MOUNTED EXTERIOR FIXTURE	CREEN XSPW-400-5-F-E-U	LED	120/277	35	WALL MOUNTED AT 8'4" ABOVE FINISHED GRADE

Technical Staff describes the proposed lighting in its report (Exhibit 53, p. 19):

Outdoor lighting is generally limited to 0.5 footcandles at the lot line, and 0.1 footcandles at a shared lot line between a conditional use and a detached house under Section 6.4.4.E. The photometric plan indicates that the illumination will be 0.1 footcandles or less at the proposed lot line between the Lot 1 (daycare site) and proposed Lot 2 (residual lot), and at the lot line between proposed Lot 2 and the lot with the detached house to the south. The illumination at all other lot lines is 0.5 footcandles or less.

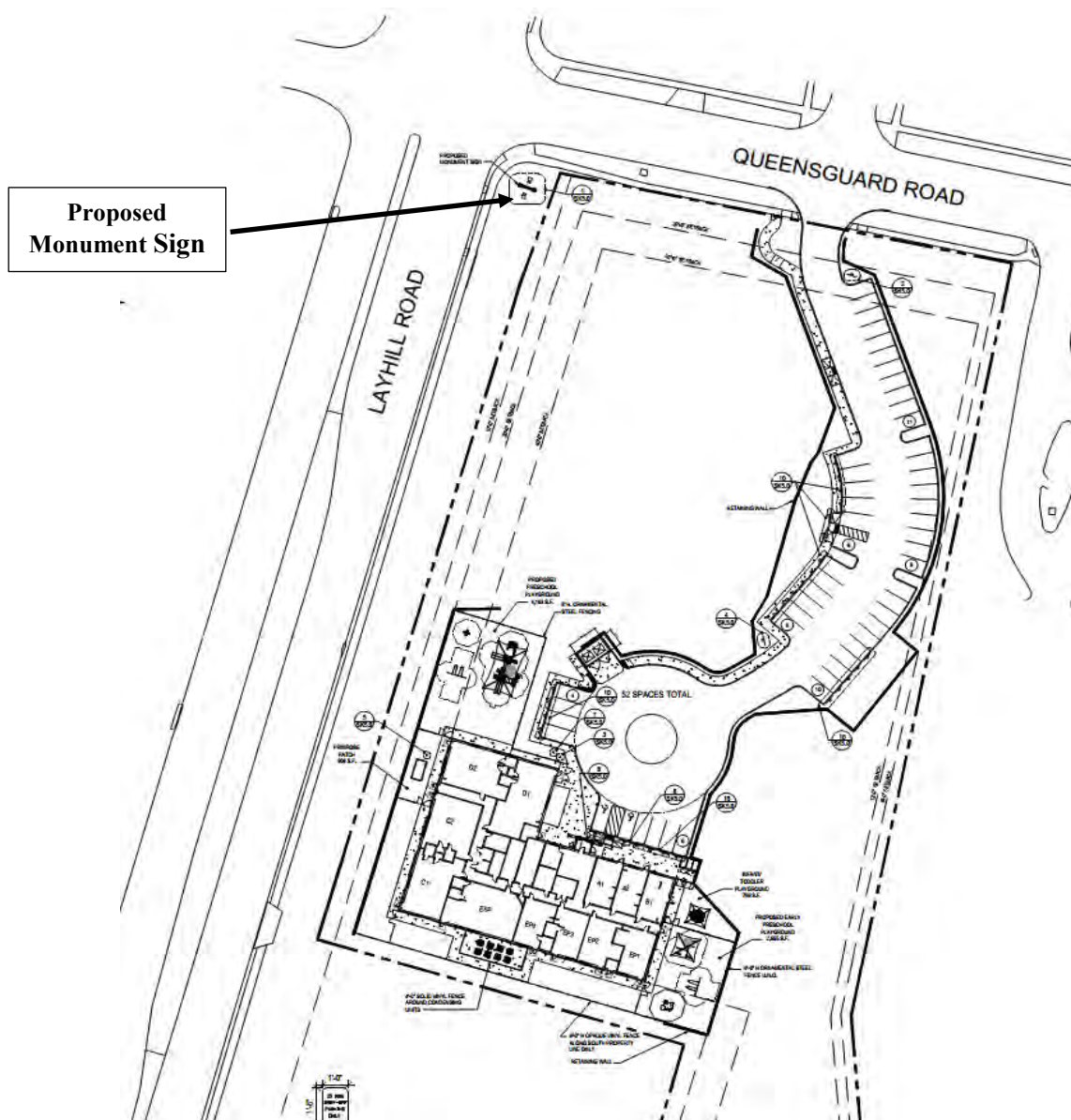
c. Signage

The Applicant proposes a number of signs for the site, the most significant of which is a proposed monument sign depicted below from the revised signage plan (Exhibit 63):



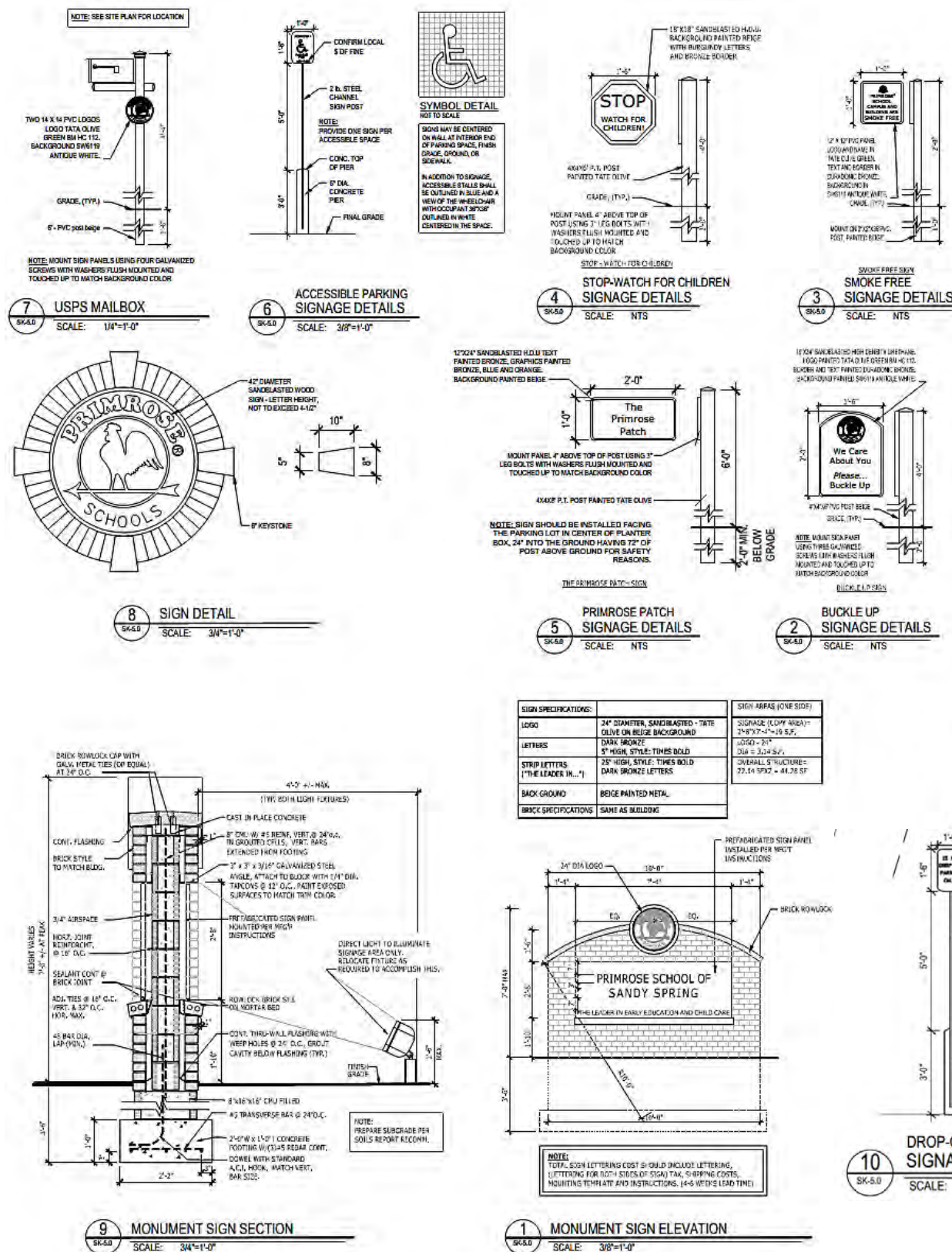
SIGN SPECIFICATIONS:		SIGN AREAS (ONE SIDE)
LOGO	24" DIAMETER, SANDBLASTED - TATE OLIVE ON BEIGE BACKGROUND	SIGNAGE (COPY AREA)= 2'-8"x7'-4"=19 S.F.
LETTERS	DARK BRONZE 5" HIGH, STYLE: TIMES BOLD	LOGO - 24" DIA = 3.14 S.F.
STRIP LETTERS ("THE LEADER IN...")	25" HIGH, STYLE: TIMES BOLD DARK BRONZE LETTERS	OVERALL STRUCTURE= 22.14 SFX2 = 44.28 SF
BACK GROUND	BEIGE PAINTED METAL	
BRICK SPECIFICATIONS	SAME AS BUILDING	

The monument sign is to be placed along the northwestern edge of the property, adjacent to the intersection of Layhill and Queensguard Roads, as shown below in the revised Signage Plan (Exhibit 63):



The other sign details are depicted below from the revised Signage Plan Sheet SK-5.0

(Exhibit 63) filed at the hearing:



Permanent signs are subject to the sign permitting process. The sign and the monument it is mounted on, as depicted in the Applicant's plans, measure 10 feet across and 7 feet high. As discussed in Part III of this Report and Decision, signs must be in compliance with the Zoning Ordinance, or be exempted by the Sign Review Board of the Department of Permitting Services. As noted by Technical Staff (Exhibit 53, p. 20):

Under [Zoning Ordinance] Section 6.7.8, one freestanding sign is allowed, and it must be setback five feet from the property line. The sign can be up two square feet in area and it must be less than five feet tall. Any deviation from these requirements requires approval from the County Sign Review Board. The Applicant proposes to construct a sign substantially larger than two square feet within the State Highway Administration (SHA) right-of-way, so the Applicant will need to seek a sign variance from the Sign Review Board and permission from SHA.

A condition is imposed in Part IV of this Report and Decision requiring such an application to the Sign Review Board and the State Highway Administration.

4. Operations

Proposed operations were summarized by Technical Staff (Exhibit 53, pp. 9-10):

The proposed day care facility accommodates up to 200 children. However, Primrose's experience and expectation is that there would typically be fewer children, likely close to 180, in attendance at any one time due to absenteeism. The proposed facility will operate Monday to Friday from 6:00 am to 6:30 pm and the school will offer a varied program of full and part time enrollment as well as before and after school programs for elementary school students ages 5-12. Up to six evening events will be held throughout the year, for social events or employee training, and such events will end by 9:00 pm.

For drop-off and pick-up, parents are required to park their vehicles and physically walk children into or out of the facility and sign them in or out with the appropriate teacher. The Applicant indicates that a drop-off or pick-up event takes between eight and ten minutes, and the signs limiting parking to 15 minutes will discourage any loitering within the school building and will maximize the use of the designated parking spaces.

The Applicant proposes a maximum of 30 staff members and two administrators on site at any one time. The Applicant anticipates that staff members will be scheduled according to the following shifts:

- Open-12 pm
- Open-2 pm

- 11 am-close
- 1 pm-close

Onsite staff training and organization meetings will typically be held during regular business hours.

Trash pick-up will occur two to three times per week and recycling will likely be picked up once per week. The Applicant plans to schedule these pick-ups to occur between 10 am and 3 pm during the weekdays.

To avoid any traffic impacts, 25 parking spaces are designated for parents dropping-off and picking-up the children, and the number of cars dropping of or picking up children will be limited to no more than 25 cars within any 15 minute period.

The Applicant expanded on this formula in its Amended Statement (Ex. 43(a), pp. 9-11):

A Primrose School does not operate like a private educational institution, or even like other day care centers, where children are dropped off and picked up from vehicles circulating in drive lanes in front of a main entrance. At a Primrose School, parents are required to park their vehicle and physically walk the children into the facility, sign them in with their teacher and then return to their car and depart. At departure time, the parent arrives, parks his or her car, walks to the appropriate classroom, signs the child out, returns to the parked vehicle and departs. Due to this type of operation, there is no need for a generously sized drop off and pick up area, with bypass lanes, in close proximity to the front door.

Secondly, Staff may have been concerned about the drop off and pick up activities associated with a facility with up to 200 children in attendance. But as a practical matter, there are never 200 children on the site at the same time. Absenteeism reduces the number of daily attendees to less than the maximum permitted enrollment.

More particularly, however, this Primrose School will offer a varied program of full and part time enrollment as well as after school programs for children. Since the School's hours are from 6:00 AM until 6:30 PM, a Primrose facility does not experience heavy flow of vehicles because it does not have set "start" and "end of school day" times. Children are delivered to or picked up at the facility at times that are convenient for the parent rather than at time prescribed by the School. Therefore, a Primrose School does not experience the "peak hour" drop offs or pickups common to a public elementary school.

Due to these factors, Primrose's experience and expectation is that there would normally be an on-site student population not exceeding 180+/- children at any one time and they would have arrived, and departed, over a three hour period in both the morning and afternoon/evening.

Looking at the most current Conditional Use Plan, there are six spaces (four regular, two handicapped) located within very close proximity to the front door of the facility. Staff will note that the Applicant has added four additional regular parking spaces to be located just north of the School building. All of these spaces, plus seventeen other parent parking spaces (25 total), are connected by a protected sidewalk connecting to the School building or are in close proximity to the building.

The amount of parking shown on the Conditional Use Plan is more than Primrose feels is necessary to provide convenient and efficient drop off and pick up of children. Looking at this activity, Primrose expects that the length of a drop off or pick up event will vary depending on the age of the child (or the number of children to be picked up).

* * *

In summary, the operations of the proposed Primrose School do not require a large drop off or pick up area with multiple traffic lanes. Furthermore, utilization of parking spaces for drop off and pick up activities, as described above, and the number of readily accessible parking spaces, is more than adequate to handle arrivals and departures of students at this facility.

The normal attendance ratio at Primrose facilities and the drop-off and pickup practices explained in the above-quoted Amended Statement (Exhibit 43(a)), were confirmed by the testimony of Matthew Taylor, a representative of the franchisor, Primrose Schools. Tr. 14-27. In addition, Mr. Taylor described the handling of outdoor play (Tr. 21):

The playgrounds are typically rotated with age groups. They are set up with younger to older age groups around the perimeter of the building. Then they are adjacent to the appropriate age classrooms. But never are they going to be 180 kids in the play area at one time. They rotate in 15, 20 kids at a time. So the noise factor is pretty low.

Mr. Taylor also noted that although the franchisor does not own the property, it has “full reign over the operation of the business” and works “closely on a daily basis throughout their operation.” Tr. 14-15.

The Applicant’s owners, Mrugesh and Jasmili Majmudar, testified that they will hire a school director and assistant director to run the facility, and that they will comply with all applicable state and local regulations. Tr. 122-124.

In addition, conditions are specified by the Hearing Examiner in Part IV of this Report and Decision to control operations so as to limit potential disruption of the neighbors. These

restrictions limit the hours of operation, the number of staff, the number of children, and the use of noise amplification outdoors.

D. Environmental Issues

There are some environmental issues in this case since there are wetlands totaling about a half an acre that could be impacted, and there are 3.12 acres of forested area, as well as specimen trees. However, the site is not in a Special Protection Area or Primary Management Area.

Technical Staff discussed the environmental issues (Exhibit 53, p. 16):

A Natural Resources Inventory/Forest Stand Delineation was approved for this Property on July 15, 2016 (NRI/FSD No. 420162060). The Property 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 totaling 0.49 acres, which require a 25-foot regulatory buffer. The Conditional Use plan shows a very small area of encroachment into the 25-foot 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. There is an existing forested area of 3.12 acres and 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 is in conformance with the *Environmental Guidelines*.

Forest Conservation

A Preliminary Forest Conservation Plan (PFCP), No. CU2017-16, and associated variance request was submitted with the Conditional Use application. A separate Staff report for this PFCP has been prepared for the Planning Board's review and action. Approval of the PFCP will demonstrate compliance with the requirements of Chapter 22A, Forest Conservation.

In fact, the Planning Board approved the Forest Conservation Plan CU 201716 and an included tree variance, as reflected in the Board's Resolution No. 18-030, dated April 18, 2018 (Exhibit 59). As explained in the Planning Board's Resolution (Exhibit 59, pp. 2-3):

The Board finds that as conditioned, the Forest Conservation Plan complies with the requirements of the Forest Conservation Law.

6,602 square feet of 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 Cat. I easement being removed, for a total of 64,101.2 square feet required. The area being provided in Cat. 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.

As to the tree variance, the Planning Board noted (Exhibit 59, p. 3), that “The Protected Tree requested for removal is not located in an environmental buffer or special protection area [and] [t]he tree being removed will be mitigated by the planting of 3 replacement trees.”

Moreover, as previously mentioned, the Applicant’s civil engineer, Eduardo Intriago, testified that the proposed stormwater management system will be 100 percent compliant with environmental site design requirements. Tr. 77-79.

Given Mr. Intriago’s testimony, as well as Technical Staff’s finding that the conditional use plan “is in conformance with the *Environmental Guidelines*” (Exhibit 53, p. 16), and the Planning Board’s approval of the Applicant’s Forest Conservation Plan (Exhibit 59), the undisputed evidence in this case establishes that the proposed conditional use will not unduly harm the environment.

E. Community Response

No opposition witnesses appeared at the hearing, but there was one opposition letter filed with OZAH (Exhibit 50). In that letter, neighbors Roland and Jacquelyn Shaw, who live at 14101 Layhill Road, objected to the conditional use based on traffic volume and safety considerations. The expert evidence in this case, both from the Applicant’s transportation planner, Glenn Cook (Exhibits 15, 47(a) and 67; Tr. 104-119) and from Technical Staff (Exhibit 53, p. 12-16 and 22) indicates that even with the proposed day care center operating at full capacity, traffic volume will remain within County standards and traffic safety will not be impinged. As stated by Staff (Exhibit 53, p. 22),

. . . there are no adverse traffic impacts that will result from the proposed conditional use. Access to the proposed facility will not require vehicles to travel deeply through residential neighborhoods as they will likely use Layhill Road, an established north-south corridor route.

The Property will have adequate parking to accommodate child drop-off and pick-up and provide parking for staff. Twenty[-five]² parking spaces will be designated for 15-minute parent drop off and pick up, and the number of cars dropping off and picking up children at any one time will be limited to avoid queuing on Queensguard Road and safety issues within the parking lot. . . .

According to Mr. Cook, consideration is still being given to restricting parking along Queensguard Road between Layhill Road and the proposed access to the site, in order to reduce queuing on Queensguard and improve sight lines. However, Mr. Cook opined that even without any new parking restriction there, the access to the site will be safe. Tr. 118. Moreover, all intersections potentially impacted by this conditional use will continue to operate within assigned capacities. Tr. 119. In sum, the evidence is unrebutted that the traffic volume and safety concerns raised by the Shaws will not actually materialize in this case.

The Planning Board Chair reported in his letter of April 25, 2018 (Exhibit 60) that another community member appeared before the Planning Board and testified in opposition:

The community member that testified in opposition to the Application was concerned about noticing of the application, parking overflow from the proposed daycare onto Layhill Road, staffing of the daycare, trash collection, traffic congestion, impacts to a nearby pond, and competition with an afterschool program at the adjacent Mid-County Recreation Center.

As noted in the Planning Board letter, Staff explained that the proposed amount of parking at the site was in excess of the amount required for the use and would be adequate to accommodate parking needs.

² Although this page of the Staff report (p. 22) refers to “Twenty” spaces reserved for drop-off and pick-up of children, the correct figure is actually 25, as indicated in the text on page 5 and the chart on page 18 of the Staff report (Exhibit 53). The figure of 20 reserved spaces for pick-up and drop-off comes from an earlier version of the proposal. The same mistake was also made in the text on pages 12 and 18 of the Staff report.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a child Day Care Center for over 30 children. *Zoning Ordinance* §59.3.4.4.F.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:³

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

The Applicant described the history on this site (Applicant’s Amended Statement, Exhibit 43(a), pp. 3-4.):

As historical background, there have actually been two previous Special Exceptions approved on the subject property. However, neither was implemented. In 1981 the County’s Board of Appeals (“Board”) approved BAS-781 to permit a private club (the Wheaton Boy’s Club) on the site. The proposed use included the construction of a two-story club headquarters and off-street parking for 118 automobiles and 12

³ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

two-wheel vehicles. That use was revoked in 2004 because it was never implemented. In 1986, the Board granted BAS-1307 to permit the construction and operation of a child day care center for up to 136 children from toddlers to age 12. The operation of that care facility was to be a single story building and over 4,200 square feet of play area. This special exception also was never implemented and therefore the Board of Appeals revoked the zoning approval in May of 2004.

Similar language is reflected in the Technical Staff report (Exhibit 53, pp. 4-5), which is quoted on Page 6 of this Report and Decision. As also noted there,

A plat (No. 16672) was recorded in 1987 for Parcel A, but Staff could not locate an associated Preliminary Plan. On November 6, 2000, the Planning Board approved Preliminary Plan No. 120010140, to create one lot on Parcel A for a 300 seat House of Worship (with no weekday child day care or school). However, a plat was not recorded and the facility was never constructed.

On April 8, 2003, the Planning Board approved Preliminary Plan No. 120030440 for two lots to allow construction of two detached houses on the southern portion of the Property (Lots 5 and 6). At the time, there was a house on Lot 5 that has since been razed. Lots 5 and 6 were platted (Plat No. 23706) in 2007, but no houses have been constructed.

Technical Staff observed (Exhibit 53, p. 17) that the special exceptions previously approved on the subject site were revoked in 2004, “so they are no longer applicable.” Staff also specified that if the conditional use is approved, a new preliminary plan will be required that covers the entire Property.

Conclusion: Given the revocations of the previous special exceptions on this site and the need for a new preliminary plan, the Hearing Examiner finds that the application does not have to satisfy any previous approvals, and it is therefore in compliance with this standard.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

Conclusion: This subsection requires an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for Child Day Care Centers for over 30 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these

Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on that analysis, the Hearing Examiner finds, as did Technical Staff (Exhibit 53, p. 23), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

c. substantially conforms with the recommendations of the applicable master plan;

The subject property lies within the geographic area covered by the 1994 Aspen Hill Master Plan (“the Master Plan”). As observed by Technical Staff, the Master Plan does not have any specific language regarding the subject site, but it provides pertinent recommendations about child day care facilities, special exceptions/conditional uses, and environmental features within the plan area. Staff’s excellent discussion of the Master Plan is reproduced below in its entirety (Exhibit 53, pp. 10-12):

Child Day Care Facilities

The Master Plan provides a general recommendation to support various types of child day care facilities within the planning area, and it includes an in-depth analysis of the area’s child care needs (pgs. 177, 195-198). According to data at the time, a larger percentage of women with children under the age of six worked either full- or part-time in Aspen Hill than County-wide. This suggested that the need for child day care was somewhat greater in Aspen Hill than County-wide. The data also showed that Aspen Hill households used day care centers rather than home-based care to a much greater degree than County households in general. At the time, the area was particularly in need of care for infants. The Master Plan encourages the development of child care facilities with the following relevant attributes (page 196):

1. Sufficient open space to provide adequate access to sunlight and suitable play areas, taking into consideration the size of the facility.
2. Location and design to protect children from excessive exposure to noise, air pollutants and other environmental factors potentially injurious to health or welfare.
3. Location and design to ensure safe and convenient access. This includes appropriate parking areas and safe and effective on-site circulation of automobiles and pedestrians.
4. Location and design to avoid creating undesirable traffic, noise and other impacts upon the surrounding community.

The proposed day care center will fulfill many of the child care needs and recommendations described in the Master Plan. The facility will provide care for infants, and children will have access to large play areas. Play areas will be set back

at least 50 feet from Layhill Road and they will be surrounded by a secure fence. Retained trees will surround portions of the play areas.

The proposed facility fronts on Layhill Road, with access from Queensguard Road, close to its intersection with Layhill Road. The location of the facility will not encourage additional traffic within the adjacent residential neighborhood. The proposed parking lot is designed to ensure safe and convenient access. A limitation on the number of cars dropping off and picking up children at any one time will further ensure safe on-site circulation.

Special Exceptions/Conditional Uses

The Master Plan has specific recommendations regarding special exceptions/conditional uses that are relevant to the subject application (p. 80):

1. Avoid excessive concentration of special exception and other nonresidential land uses along major transportation corridors.
2. Protect major transportation corridors and residential communities from incompatible design of special exception uses.
 - a. Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of the adjoining neighborhood and should not be significantly larger than nearby structures.
 - b. Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard parking is not available, front yard parking should be allowed only if it can be adequately landscaped and screened.
 - c. Close scrutiny should be given to replacing or enhancing the screening and buffering as viewed from the abutting residential areas and along the major roadways.

With the exception of the commercially zoned properties at the corner of Layhill Road and Bel Pre Road, there are no existing special exceptions⁴ or nonresidential uses along this portion of Layhill Road. Therefore, the addition of this use will not create an excessive concentration. The design of the proposed facility, with its sloped roofs, stone and brick façade, and windows with mullions, echoes the nearby residential architecture. The size of the proposed building is consistent with the adjacent Mid-County Recreation Center building. While the proposed parking for the day care is between the front of the building and Queensguard Road, it will be screened by the retained trees.

Views of the proposed day care facility and play area are well screened based on retained forest and topography from the north, east, and west. A fence, trees, and shrubs will screen the proposed day care from the residential properties to the south and from Layhill Road.

⁴ As noted on Pages 7-8 of this Report and Decision, there are also two accessory apartment special exceptions in the area. These are residential uses, and their presence has no impact on the conclusion that there is not an excessive concentration of special exceptions in the area.

Environment

The Master Plan discusses the protection of wetland areas, and the buffers around them, because they provide habitat for many plant and animal communities and aid in flood control and pollution reduction (p. 130). The Conditional Use Plan has been designed to preserve and protect the onsite wetlands within Category I Forest Conservation Easements. The Conditional Use plan shows a very small area of encroachment into the 25-foot 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.

Finally, the Master Plan recommends that properties should maintain and add to existing forest cover in accordance with the County's Forest Conservation law. As demonstrated in the report for Preliminary Forest Conservation Plan CU2017-16, submitted to the Planning Board concurrently with this report, the proposed project is in compliance with the Forest Conservation Law.

Technical Staff concluded (Exhibit 53, p. 12), "As conditioned, the proposed use substantially conforms with the recommendations of the Master Plan." The Applicant's land planner, Scott Welford, testified to the same effect, noting that the Master Plan "has some very strong language that supports daycare, specifically for the Aspen Hill area," and it "support[s] this type of facility." Tr. 44-45.

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds that the proposed conditional use substantially conforms with the recommendations of the applicable master plan.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

Technical Staff found that the proposed use meets this standard (Exhibit 53, p. 21):

The proposed site design of the Property, the architecture of the building, and operational limitations included as conditions of approval will ensure that the daycare center will not alter the character of the surrounding neighborhood in a manner inconsistent with the Plan. Because the Property sits several feet below Layhill Road, the perceived scale of the building and play areas will be minimized. Views of the building and parking area will be sufficiently screened from the surrounding neighborhoods by the retained forest and landscaping along the Property's southern lot line. The dumpster will be located within an enclosure and buffered from the nearest residence by the building.

The building is designed to be residential in character with sloping roofs, a stone and brick veneer façade, and windows with mullions. Further, the Property is adjacent to the Mid-County Recreation Center, which is a building of comparable scale to the proposed building.

Staff recommends limiting the number of cars that can drop-off and pick-up children at any one time to avoid queuing and undue impact to Queensguard Road. In addition, Staff recommends limiting waste pick up to weekdays between 9 am and 7 pm.

Technical Staff's findings are buttressed by the testimony of Applicant's land planner, Scott Wolford, and its architect, James Kassay. As stated by Mr. Wolford (Tr. 43),

this building was specifically designed to fit exactly on this site. So it's in an L shape, which fits around the cul-de-sac drop off area and circulation place, then allows the playground to be wrapped around the back of the building. So it fit very well on the site. It also is depressed slightly, so it's not seen from the neighbors across the street. It's a one-story building with a gabled roof, it kind of fits into the residential character of the neighborhood.

Mr. Wolford explicitly testified that the building design would be harmonious with the character of the surrounding neighborhood, and the proposed use would not alter its character. Tr. 49.

Also, the intensity of the use would be compatible with the surrounding neighborhood. Tr. 50-51.

Mr. Kassay testified that the proposed building is custom designed in shape, location and finishing to be compatible with the neighborhood. He introduced a board (Exhibit 66) containing materials he used to give the building more of a residential appearance than an institutional one. As described by Mr. Kassay (Tr. 92-93):

We started with elements and features of the prototypical building to kind of maintain some of the brand awareness and consistency. And then we made some adjustments. We worked quite extensively with . . . [Technical Staff] to make adjustments to this. We've added some additional gables with some stone features. We've reduced the pitch of the roof to a lower pitch. The roof is not as dominant a feature. We've added some dormers to three of the elevations to the west, to the south and the north elevations. We have added some architectural brackets to the gable elements, to the gable element at the entrance and to the awnings on the south and west elevations. The materials are prototypical materials. The brick is a prototypical material and the stone and we felt, and Emily agreed, that the materials are consistent with what's in the area. The shingled roofs, the profile of the building has a very residential feel.

Conclusion: The Hearing Examiner concludes that the proposed use “*is harmonious with and will not alter the character of the surrounding neighborhood*” because its architecture is designed to be compatible with the surroundings and its operations will be controlled by conditions which will minimize any impacts on the surrounding neighborhood.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: As previously noted, the Staff report (Exhibit 53, p. 11) indicated that, “With the exception of the commercially zoned properties at the corner of Layhill Road and Bel Pre Road, there are no existing special exceptions or nonresidential uses along this portion of Layhill Road.” However, the April 25, 2018 letter of the Planning Board (Exhibit 60) notes that, at the Planning Board review, Staff informed the Planning Board about two approved special exceptions for accessory apartments in the Staff-Defined Neighborhood that were not discussed in the staff report:

- 2005 Queensguard Rd (BAS 1635 approved in 1989)
- 1909 Queensguard Rd (BAS 2005 approved in 1993)

The Hearing Examiner finds that the proximity of two accessory apartment special exceptions will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely. Moreover, a special exception for a large child day care center (BAS-1307) was previously approved for this site, though never implemented. In addition, Technical Staff observed that the building’s one-story design, residential materials and orientation with the long side facing away from Layhill Road will minimize its impact on the neighborhood.

The Hearing Examiner agrees. Moreover, the provision in question also provides that “*a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area,*” and as noted above, the proposed use is consistent with the Master Plan. Thus, the Hearing Examiner finds that this standard has been met.

f. 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. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: As previously mentioned, Technical Staff indicates that the application would require approval of a new preliminary plan of subdivision (Exhibit 53, pp. 17 and 22). Therefore, the Planning Board, and not the Hearing Examiner, must determine whether the proposed development will be served by adequate public services and facilities.

Nevertheless, the Hearing Examiner observes that the traffic study (Exhibit 15, as corrected in Exhibits 47(a) and 67) prepared by Applicant’s Transportation Planner, Glenn Cook, using Critical Lane volume (CLV) and Highway Capacity Manual (HCM) analysis, found that, all of the study-area intersections are projected to operate at satisfactory levels of service under total

traffic conditions. Therefore, Technical Staff concluded that “no intersection improvements are required to satisfy the [Local Area Transportation Review] LATR test.” Exhibit 53, p. 16.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

This standard 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 “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59.7.3.1.E.1.g., quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child Day Care Center for more than 30 children. 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 identified ***or*** adverse effects

created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a large child Day Care center (Exhibit 53, p. 22): (1) vehicular trips to and from the Property; (2) drop-off and pick-up areas; (3) parking for staff; (4) outdoor play areas; (5) noise generated by children; and (6) lighting.

Staff found that the wetlands and their buffers, which occupy a significant portion of the Property, represent a non-inherent characteristic unique to this Property, and the wetlands create a significant constraint to the Property's site design, especially considering the scale of the proposed use. "However, the Applicant has designed the project to avoid and preserve the wetlands; therefore, there are not any non-inherent adverse impacts." Exhibit 53, pp. 22-23.

Staff analyzed other potential impacts on the neighborhood as follows (Exhibit 53, pp. 22):

As described in the analysis section of the report, there are no adverse traffic impacts that will result from the proposed conditional use. Access to the proposed facility will not require vehicles to travel deeply through residential neighborhoods as they will likely use Layhill Road, an established north-south corridor route.

The Property will have adequate parking to accommodate child drop-off and pick-up and provide parking for staff. Twenty[-five]⁵ parking spaces will be designated for 15-minute parent drop off and pick up, and the number of cars dropping off and picking up children at any one time will be limited to avoid queuing on Queensguard Road and safety issues within the parking lot. The parking lot will be screened from the adjacent roads by the retained forest.

The outdoor play areas are over 130 feet from the nearest residence and screened by a 6-foot high fence and landscaping, thus minimizing disruption to neighboring properties. Noise generated by the children will be well away from nearby residential properties and is unlikely to be a nuisance. The lighting on the Property, as

⁵ See footnote 2, above.

conditioned, will provide the appropriate illumination onsite, but will be minimized at the property lines to prevent glare onto nearby properties.

Technical Staff concluded (Exhibit 53, p. 23):

There is no expected undue harm to the neighborhood either as a result of any non-inherent adverse effect, or a combination of inherent or non-inherent adverse effects.

Conclusion: The Hearing Examiner agrees with Staff's analysis. While the environmental issues on the site do constitute an unusual site condition, they should not result in any non-inherent adverse impacts on the neighbors, given the planned design of the facility. Moreover, the conditions imposed in Part IV of this Report and Decision will keep the noise from outside play to a minimum and will ensure that there will not be an excessive burden placed on the neighboring roads and parking areas. They will also help to ensure that the facility can operate without causing any adverse effects on the neighborhood, undue or otherwise.

Based on the entire record, the Hearing Examiner finds that, with the conditions imposed in Part IV of this Report and Decision, the proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone, or in combination with inherent adverse effects, in any of the categories listed in §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Technical Staff observed (Exhibit 53, p. 23),

The proposed building will be compatible with the character of the surrounding residential neighborhood. The building is designed to be residential in character with sloping roofs, a stone and brick veneer façade, and windows with mullions.

Further, views of the building and parking area will be sufficiently screened from the surrounding neighborhoods by the retained forest and landscaping along the Property's southern lot line. The dumpster will be located within an enclosure and buffered from the nearest residence by the proposed building.

Staff's finding is supported by the testimony of Applicant's land planner, Scott Wolford, and its architect, James Kassay, both of whom testified that the proposed building would be architecturally compatible with the residential character of the neighborhood. Their testimony (Tr. 43, 49, 50-51 and 92-93) is referenced above in connection with the standards of Zoning Ordinance §59.7.3.1.E.1.d.

Conclusion: Based on this undisputed evidence, the Hearing Examiner finds and concludes that the proposed building will be compatible with the character of the surrounding residential neighborhood.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

B. Development Standards of the Zone (Article 59.4)

Conclusion: In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-200 Zone. Development standards for the R-200 Zone are contained §59.4.4.7.B. of the Zoning Ordinance, which Technical Staff summarized in a chart on page 17 of the Staff Report (Exhibit 53), reproduced on the next page.

Table 5: Development Standards for a Building with a Conditional Use Allowed in the R-200 Zone

Development Standard	Required/Permitted	Proposed Lot 1 (for conditional use)
Minimum Lot Area (Section 4.4.7.B.1)	20,000 sq. ft.	147,260 sq. ft.
Minimum Lot Width at Front Building Line (Section 4.4.7.B.1)	100 ft.	275.62 ft.
Minimum Lot Width at Front Lot Line (Section 4.4.7.B.1)	25 ft.	270.23 ft.
Maximum Lot Coverage (Section 4.4.7.B.1)	25%	8.6%
Minimum Front Setback- Queensguard Rd. (Section 4.4.7.B.2)	40 ft.	348.93 ft.
Minimum Side Street Setback- Layhill Rd. (Section 4.4.7.B.2)	40 ft.	40.88 ft.
Minimum Side Setback (Section 4.4.7.B.2)	12 ft.	117.06 ft.
Minimum Rear Setback (Section 4.4.7.B.2)	30 ft.	30.90 ft.
Maximum Height; Lot > 40,000 SF (Section 4.4.7.B.3)	50 ft	21.08 ft.

Based on this record, the Hearing Examiner finds and concludes that the propped use will meet the development standards of the R-200 Zone, as prescribed by the 2014 Zoning Ordinance.

C. Use Standards for a Child Day Care Center for Over 30 Persons (Section 59.3.4.4.F.2.)

The specific use standards for approval of a Child Day Care Center for over 30 Persons are set out in Section 59.3.4.4.F. of the Zoning Ordinance. Standards applicable to this application are:

F. Day Care Center (Over 30 Persons)

1. Defined

Day Care Center (Over 30 Persons) means a Day Care Facility for over 30 people where staffing, operations, and structures comply with State and local regulations and is not located in a townhouse or duplex building type.

Conclusion: Compliance with all applicable state and local regulations is a condition imposed in Part IV of this Report and Decision. The proposed conditional use will not be located in a townhouse or duplex building type. The application is therefore compliant with this provision.

2. Use Standards

a. Where a Day Care Center (Over 30 Persons) is allowed as a limited use, and the subject lot abuts or confronts property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section 7.3.4.

Conclusion: This section is not applicable because the proposed Day Care Center is not allowed as a limited use in the R-200 Zone. It is allowed as a conditional use, as discussed below.

b. Where a Day Care Center (Over 30 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

i. All required parking must be behind the front building line; however, required parking may be located between the structure and the street where the Hearing Examiner finds that such parking is safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties.

Conclusion: Technical Staff reported that the proposed parking is located between the front building line and Queensguard Road. “However, the proposed parking is safe and screened from the neighborhood by existing trees. It is easily accessible from Queensguard Road and compatible with the surrounding properties, especially since the abutting property to the east is the Mid-County Recreational Center with a parking lot of similar size. . . .The parking lot will also be screened from Layhill Road by the existing trees that will be preserved in a forest conservation easement.” Exhibit 53, p. 18.

Given this evidence, the Hearing Examiner finds that the proposed parking would be safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties. It is therefore compliant with this subsection.

ii. An adequate area for the discharge and pick up of children is provided.

Conclusion: According to Technical Staff's report (Exhibit 53, p. 9),

For drop-off and pick-up, parents are required to park their vehicles and physically walk children into or out of the facility and sign them in or out with the appropriate teacher. The Applicant indicates that a drop-off or pick-up event takes between eight and ten minutes, and the signs limiting parking to 15 minutes will discourage any loitering within the school building and will maximize the use of the designated parking spaces.

Staff indicates that 25 of the proposed parking spaces will be designated for 15-minute drop-off and pick-up spaces.⁶ Exhibit 53, pp. 5 and 18. The Hearing Examiner has followed Staff's recommendation and imposed a condition in Part IV of this Report and Decision requiring that the Applicant schedule no more than 25 cars to pick-up or drop-off children within any 15-minute period. Given that 25 parking spaces will be available for pick-up and drop-off children, the Hearing Examiner finds that an adequate area and for drop-off and pick-up of children will be provided.

iii. The Hearing Examiner may limit the number of children outside at any one time.

Conclusion: Technical Staff has not recommended imposing a limit on the number of children outside at any one time, stating (Exhibit 53, p. 18), "Since the nearest residence is over 130 feet away from the play area, and buffered by a fence and landscaping, Staff does not recommend a limitation on the number of children outside at any one time." The Hearing Examiner agrees, and has further reduced the likelihood of noise disturbing the neighbors by adding a condition in Part IV of this Report and Decision prohibiting the Applicant from using a public address system of any kind outside the building, or playing any amplified music outside the building. With these protections, the Hearing Examiner finds it unnecessary to limit the number of children outside the facility at any one time.

⁶ See footnote 2, above.

iv. In the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones, the Day Care Center (Over 30 Persons) must be located on a site containing a minimum of 500 square feet of land area per person. The Hearing Examiner may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per person where it finds that:

(a) the facility will predominately serve persons of an age range that requires limited outdoor activity space;

(b) the additional density will not adversely affect adjacent properties; and

(c) additional traffic generated by the additional density will not adversely affect the surrounding streets.

Conclusion: The portion of the site that will be devoted to the child care facility (*i.e.*, Lot 1) measures 147,260 square feet. With 200 children present, the land area per child would be 736 square feet (147,260 / 200). It thus more than meets the 500-square-foot minimum land area requirement of this provision.

v. The Hearing Examiner may limit the number of people allowed for overnight care.

Conclusion: This provision is not applicable because the proposed use does not include any overnight care.

vi. In the AR zone, this use may be prohibited Section 3.1.5, Transferable Development Rights.

Conclusion: This provision is not applicable because the site is not located in the AR Zone.

Conclusion: In sum, the application satisfies all of the use standards in Code §59.3.4.4.F.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

1. Site Access Standards

Zoning Ordinance Division 59.6.1. governs “Site Access.” Section 59.6.1.2. provides:

Division 6.1 applies to development in the Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones if:

- A. an apartment, multi use, or general building type is proposed; and*
- B. a site plan or conditional use approval is required.*

Conclusion: By its own terms, Division 59.6.1 does not apply to development in single-family residential zones, such as the R-200 Zone involved in this case. Moreover, no site access issues have been raised in this matter. Nevertheless, Technical Staff notes the following (Exhibit 53, p. 10):

The proposed facility fronts on Layhill Road, with access from Queensguard Road, close to its intersection with Layhill Road. The location of the facility will not encourage additional traffic within the adjacent residential neighborhood. The proposed parking lot is designed to ensure safe and convenient access.

There is no contrary evidence in the record, and the Hearing Examiner therefore finds that the present proposal provides for safe and convenient access. This finding is subject to revision depending on any changes in the plans at subdivision.

2. Parking Spaces Required, Parking Setbacks, Parking Lot Screening and Waivers

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance.

a. Number of Parking Spaces Required by Section 59.6.2.4

The required number of parking spaces for vehicles and bicycles, as specified in Section 59.6.2.4 for this use, are referenced in the Table on page 18 of the Staff report (Exhibit 53):

Parking Requirements	Required	Proposed
Vehicle Parking Requirement (Section 6.2.4.B)	38 (3 spaces per 1,000 sf of GFA)	52 (Includes 25 spaces for drop-off and pick-up of children)
Bicycle Parking Requirement (Section 6.2.4.C)	3 long term spaces	3 long term spaces

As can be seen from the above table, Technical Staff calculated that 38 automobile parking spaces would be required for the proposed Day Care Center pursuant to Zoning Ordinance §59.6.2.4.B. Under that section, a Day Care Center requires 3 spaces per 1,000 square feet of gross floor area dedicated to the use. In this case, the gross floor area of the proposed facility is 12,634 square feet, according to the Conditional Use Plan (Exhibit 43(d)). Dividing that by 1,000, gives us a multiplier of 12.634, which when multiplied by 3, results in a requirement for 38 (*i.e.*, 37.9 rounded up) vehicle parking spaces, as indicated in the table in the Staff report (Exhibit 53, p. 18). Since 52 parking spaces are planned, the application more than meets the minimum vehicle parking space standard.

Three bicycle parking space must also be provided per §59.6.2.4.C, since that section calls for one bicycle space for every 5,000 square feet of gross floor area. A condition is imposed, as recommended by Technical Staff, requiring the Applicant to provide three long term bicycle parking spaces near the main entrance to the building bicycle rack.

Conclusion: Based on this evidence, the Hearing Examiner finds that the Applicant's proposal satisfies the parking space requirements of the Zoning Ordinance.

b. Parking Setbacks, Screening and Landscaping

Technical Staff discusses the various setback, screening and landscaping requirements for conditional use parking lots in residential zones and the manner in which the Applicant satisfies those requirements. The discussion also includes one parking setback waiver request and Technical Staff's justification for granting it (Exhibit 53, p. 19).

Section 6.2.5.K applies to parking lots for conditional uses that are located in a Residential Detached zone where 3 or more parking spaces are provided. Under Section 6.2.5.K.1, "each parking facility must be located to maintain a residential character and a pedestrian-friendly street." The parking lot will be screened from the abutting roads by the existing trees that will be preserved in a forest conservation easement. The location of the parking lot in relation to the mature trees will ensure that a residential character and pedestrian-friendly street is maintained.

Section 6.2.5.K.2.a. requires that “the minimum rear parking setback equals the minimum rear setback required for the detached house” in the zone. For the R-200 Zone, the minimum rear setback for a detached house is 30 feet. This requirement is satisfied because all of the proposed parking is in front of the building and setback over 100 feet from the rear lot line.

Section 6.2.5.K.2.b requires that “the minimum side parking setback equals 2 times the minimum side setback required for the detached house.” In the R-200 Zone, the side setback requirement for a detached house is 12 feet, so the minimum side parking setback is 24 feet. The Applicant requests a parking waiver, under Section 6.2.10, to reduce the 24-foot minimum side parking setback requirement to 8.38 feet. Staff supports this waiver because the east side of the proposed parking lot abuts the existing parking lot at the Mid-County Recreation Center. The relatively large side parking setback typically required serves to buffer a single-family residence that may be located adjacent to a parking lot associated with a conditional use. Since the property to the east is institutional in nature and developed with a similar parking lot, the 24-foot parking setback is not necessary. The alternative design meets the intent of Section 6.2.1 to ensure that adequate parking is provided in a safe and efficient manner.

The parking lot landscaping requirements, under Section 6.2.9.C, apply to parking lots for 10 or more spaces. As demonstrated by the landscaping plan, the proposed project satisfies the parking lot landscaped area and tree canopy requirements. The retained trees will satisfy the perimeter planting requirement under 6.2.9.C.3.b on the north and west sides of the parking lot. No perimeter planting is required on the east side of the parking lot because it abuts another parking lot.

Conclusion: Based on this evidence, the Hearing Examiner finds that the Applicant’s proposal satisfies the conditional use parking lot setback, screening and landscaping requirements of the Zoning Ordinance for parking lots in residential zones, except for the minimum side parking lot setback. As to that setback, Technical Staff correctly points out that, absent a waiver, a 24-foot side lot setback from the parking lot would be required by Zoning Ordinance §59.6.2.5.K.2.b. The Applicant has requested a waiver of the side-lot parking setback, reducing the setback to 8.38 feet. Such a waiver is authorized by Zoning Ordinance §59.6.2.10, which provides:

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. Any request for a waiver of the vehicle parking space

requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D.

The intent of the parking regulations, as stated in Section 6.2.1, is “to ensure that adequate parking is provided in a safe and efficient manner.” The Hearing Examiner agrees with Technical Staff that granting the requested side lot parking setback waiver would not undercut that intent because the east side of the proposed parking lot abuts the existing parking lot at the Mid-County Recreation Center, which need not be buffered in the same way that single-family residences must be buffered to ensure compatibility.

Therefore, the Hearing Examiner hereby grants a waiver, pursuant to Zoning Ordinance §59.6.2.10, reducing the side parking setback from the 24 feet required by Zoning Ordinance §59.6.2.5.K.2.b. in the R-200 Zone to 8 feet.⁷

The Hearing Examiner finds, per his authority under Section 59.7.3.1.E.1.b., that the parking arrangement, as provided in this proposal, is sufficient to ensure compatibility with the surrounding neighborhood.

3. Site Landscaping, Screening and Lighting

Standards for site landscaping and lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for screening are set forth in Division 6.5. The stated intent of Division 6.4 is “*to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.*” §59.6.4.1. The stated intent of Division 6.5 is “*to ensure appropriate screening between different building types and uses.*” Zoning Ordinance §59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

⁷ While the requested setback waiver seeks only a reduction to 8.38 feet, the Hearing Examiner rounded that figure down to 8 feet, since the extra 0.38 of a foot setback is inconsequential to compatibility and will give the Applicant a bit of desirable flexibility. Tr. 75.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture. Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture. [Emphasis added.]

Conclusion: As discussed in Part II.C.3.b. of this Report and Decision, all sides of the building will have wall-mounted lighting, and lights on 20-foot poles will be distributed around the parking lot. Exhibit 53, p. 9.

Technical Staff describes the proposed lighting in its report (Exhibit 53, p. 19):

Outdoor lighting is generally limited to 0.5 footcandles at the lot line, and 0.1 footcandles at a shared lot line between a conditional use and a detached house under Section 6.4.4.E. The photometric plan indicates that the illumination will be 0.1 footcandles or less at the proposed lot line between the Lot 1 (daycare site) and proposed Lot 2 (residual lot), and at the lot line between proposed Lot 2 and the lot with the detached house to the south. The illumination at all other lot lines is 0.5 footcandles or less.

Based on this evidence, the Hearing Examiner finds that the proposed lighting complies with the requirements of Zoning Ordinance §59.6.4.4.E., and will be compatible with the surrounding neighborhood.

b. Site Screening and Landscaping

Division 6.4 of the Zoning Ordinance sets minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 59.6.5.3.A.1. provides that “Screening is

required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.”

The provisions of Division 6.4 are mostly general and definitional; however, the provisions of Division 6.5 are very specific. Zoning Ordinance §59.6.5.3.C.7. provides:

C. Screening Requirements by Building Type

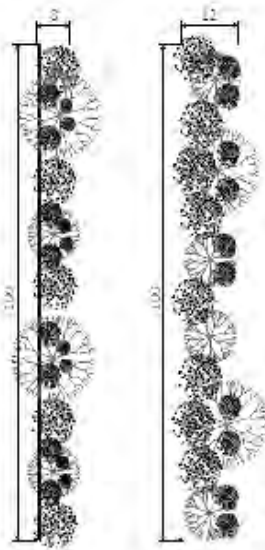
1. Screening is determined by the proposed building type, unless otherwise stated. The minimum screening requirements for each building type are in Section 6.5.3.C.4 through Section 6.5.3.C.8.
2. Plant materials are specified for each 100 linear feet of screening area. Any fractional requirement must be rounded up to the next higher whole number.
3. The applicant may choose any option for the applicable building type or use.

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7. General Building with a Non-Industrial Use; Conditional Use in the Agricultural, Rural Residential, or Residential Detached Zones; and Conditional Use in a Duplex in Any Other Zone



	Option A	Option B
Dimensions (min)		
Depth	8'	12'
Planting and Screening Requirements		
Trees (minimum per 100')		
Canopy	2	2
Understory or Evergreen	2	4
Shrubs (minimum per 100')		
Large	6	8
Medium	8	12
Small	8	--
Wall, Fence or Berm (min)	4' fence or wall	--

Technical Staff analyzed the adequacy of the planned landscaping and screening for the site as follows (Exhibit 53, pp. 19-20):

In Residential Detached zones, Section 6.5.2.b requires a conditional use in a “general” building type to provide screening under Section 6.5.3 if the subject lot abuts property in a Residential Detached zone that is vacant or improved with a residential use. Further, conditional uses must have screening that ensures compatibility with the surrounding neighborhood. Since the Applicant intends to subdivide the Property and the future use of residual Lot 2 is unknown at this time, screening is required between proposed Lots 1 and 2. The Applicant proposes a 6’ fence and an eight-foot planting bed to satisfy the screening requirement under Section 6.5.3.C.7 (option A) along the majority of the lot line (Figure 8). A forest conservation easement will also serve as screening of the use and the parking lot along approximately 85 feet of the shared lot line. Staff finds that the proposed screening ensures compatibility with the surrounding neighborhood.

This arrangement is portrayed in a rendered plan in the Staff report (Exhibit 53, p. 20), which is reproduced on Page 18 of this Report and Decision.

Conclusion: Based on this evidence, the Hearing Examiner finds that the Applicant’s proposal is consistent with the site landscaping and screening provisions of the Zoning Ordinance, and will provide screening and buffering sufficient to ensure compatibility with the neighborhood.

4. Signage

The use of signage in residential zones is governed by Division 6.7. Zoning Ordinance §59.6.7.8.A.1 sets the general standards for signs in Residential Zones:

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in a Residential zone is 2 square feet, unless additional area is permitted under Division 6.7.

1. Freestanding Sign

- a. One freestanding sign is allowed.*
- b. The minimum setback for a sign is 5 feet from the property line.*
- c. The maximum height of the sign is 5 feet.*
- d. Illumination is prohibited.*

Additional signage area is allowed for subdivisions and multiunit developments, as specified in Zoning Ordinance §59.6.7.8.B.1.:

B. Additional Sign Area**1. Subdivision and Multi-Unit Development Location Sign**

Additional sign area is allowed for a permanent location sign erected at any entrance to a subdivision or Multi-Unit development if the sign is a ground sign or wall sign located at an entrance to the subdivision or building.

a. 2 signs are allowed for each entrance.

b. The maximum sign area is 40 square feet per sign.

c. If the driveway entrance to the subdivision or development is located in the right-of-way, a revocable permit issued jointly by the Sign Review Board and the appropriate transportation jurisdiction must be obtained to erect the sign.

d. The maximum height of a sign is 26 feet.

e. The sign may be illuminated (see Section 6.7.6.E).

Conclusion: The signage proposed by the Applicant was described and depicted in Part II.C.3.c.

of this Report and Decision. As stated there, the Applicant proposes a monument sign for the subject site, to be placed along the northwestern edge of the property, adjacent to the intersection of Layhill and Queensguard Roads, as shown in Exhibit 63. Technical Staff points out that the monument sign proposed by the Applicant would be “substantially larger than two square feet [and] within the State Highway Administration (SHA) right-of-way, so the Applicant will need to seek a sign variance from the Sign Review Board and permission from SHA.” Exhibit 53, p. 20.

Whether or not Zoning Ordinance §59.6.7.8.B.1. can be applied in this case will be up to the Department of Permitting Services and the Sign Review Board. The Applicant will also need approval from SHA, as Technical Staff noted. A condition is imposed in Part IV of this Report and Decision ensuring compliance with the Zoning Ordinance and permitting requirements for signs. If permits are obtained, the Applicant should file copies of the permits with OZAH.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the applicable standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Layhill Property, LLC, t/a Primrose School, for a conditional use under Section 59.3.4.4.F. of the Zoning Ordinance, to operate a child Day Care Center for up to 200 children at 14041 Layhill Road, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The day care facility is limited to 200 children.
2. A maximum of 32 employees may work on site at any one time.
3. The Applicant must reserve 25 parking spaces for the pick-up and drop-off of children, and must schedule no more than 25 cars to pick-up or drop-off children within any 15-minute period.
4. Waste must be picked up on weekdays only, between 9 AM and 5 PM.
5. The hours of operation are limited to 6:00 AM through 6:30 PM, Monday through Friday, except that a maximum of six after-hours events are allowed per year, and such events must end by 9:00 PM.
6. Children may not play outside prior to 8:00 AM.
7. All outdoor lighting fixtures must be full or partial cutoff fixtures.
8. Prior to issuance of any building permit, the Applicant must obtain approval of a Preliminary Plan of Subdivision and a Record Plat per Chapter 50 of the Montgomery County Code. Any resulting changes in the Conditional Use Plans must be filed with the Hearing Examiner with a request for modification of the conditional use.
9. Prior to the installation of the proposed monument sign, the Applicant must obtain approval for the proposed sign by the County Sign Review Board and the Maryland State Highway Administration (SHA). The Applicant must file a copies of all sign permits with OZAH.
10. The Applicant must provide at least three long-term bicycle parking spaces near the main entrance to the building.
11. The building must be consistent with the approved Conditional Use Plans and Elevations.
12. At Preliminary Plan, the Applicant must:
 - a. Provide a queuing analysis for Queensguard Road. Additional improvements, including a left and right turn lane on Queensguard Road, may be required to provide for adequate queuing;

- b. Address the Draft Bicycle Master Plan's recommendation for a side path on the east side of Layhill Road.
 - c. Dedicate frontage along Layhill Road for a total of 75 feet from the centerline; and
 - d. Provide a Final Forest Conservation Plan (FFCP) that substantially conforms to the PFCP.
13. The Applicant shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building.
14. The Applicant must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child Day Care Center, and must correct any deficiencies found in any government inspection.
15. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
16. All children must be under the direct supervision of a staff member at all times, both inside and outside the building.
17. The Applicant shall maintain the grounds in a clean condition, free from debris, on a daily basis.
18. In light of the evidence in this case, the Hearing Examiner hereby grants a waiver, pursuant to Zoning Ordinance §59.6.2.10, reducing the side parking setback from the 24 feet required by Zoning Ordinance §59.6.2.5.K.2.b. in the R-200 Zone to 8 feet.
19. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 18th day of May, 2018.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTICES TO:

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Alexandre A. Espinosa, Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney
Gwen Wright, Director, Planning Department