

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:
FOUNDATION FOR ADVANCED
EDUCATION IN THE SCIENCES (FAES),

Applicant

Christina Farias
Kevin Foster
David Konapelsky
Nick Driban

Patrick O'Neil, Esq.
Attorney for the Applicant

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CBA-916-A

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On September 23, 2020, the Board of Appeals referred the above-captioned petition for a major amendment to a special exception for a private club, pursuant to 59.G.2.42 of the 2004 Zoning Ordinance, to OZAH for a public hearing and written recommendation. Exhibits 2 & 3.

On October 9, 2020, Foundation for Advanced Education in the Sciences (“FAES” or “Applicant”) filed an application seeking to modify a previously approved special exception by renovating and expanding the structure housing a private club (S-615), pursuant to 59.G.2.19 of the 2004 Zoning Ordinance. Exhibit 1.

The property is located at 9101 Old Georgetown Road in Bethesda, Maryland. Pursuant to Section 7.7.1.B.1 and Section 7.7.1.B.3.c of the Montgomery County Zoning Ordinance, the Special Exception Modification will be reviewed under the standards and procedures of the zoning ordinance in effect prior to October 29, 2014.

On January 27, 2021, OZAH issued an Order Granting the Request to Postpone and Notice of Rescheduled Public Hearing setting this matter for a hearing on May 7, 2021.

On April 9, 2021, Planning Staff issued its report recommending approval of the application with conditions. Exhibit 58. On April 26, 2021, the Planning Board issued its report

(Exhibit 59) affirming the findings and recommended conditions of Staff. Those conditions are as follows:

1. The Private Club and Service Organization special exception use is granted to the Foundation for Advanced Education in the Sciences, Inc. ("FAES" or the "Applicant") only and does not run with the land.
2. The Private Club and Service Organization is limited to the following:
 - a. a maximum total gross floor area of 9,264 square feet;
 - b. a maximum capacity of 145 participants and staff on-site at any one time;
 - c. the sale of alcohol to members and guests is permitted (subject to liquor license); and
 - d. rental of the facilities for private parties, social events, and exhibitions shall only be available to FAES members or guests who are sponsored by FAES members.
3. Hours of operation for the Subject Special Exception Amendment use will be limited as follows:
 - a. Catering/ special event services shall be conducted within the established hours of operation and in a manner that respects the surrounding residential community.
 - b. Sunday through Thursday
 - i. Indoor activities must conclude by 11:00 PM, noting that typical operations are from 9:00 AM to 9:00 PM;
 - ii. Outdoor activities and alcoholic beverage service must conclude by 9:00 PM;
 - iii. Premises and parking lot vacated by 11:00 PM;
 - c. Weekend Operations (Friday and Saturday):
 - i. Indoor activities must conclude by 12:00 AM/ midnight;
 - ii. Outdoor activities and alcoholic beverage service must be stopped by 11:00 PM; and
 - iii. Premises and parking lot vacated by 1:00 AM;
4. Traffic flow into the Site will be conducted to minimize vehicle queuing on the adjacent public street(s).
5. Parking:
 - a. The Applicant must provide at least 24 vehicle parking spaces and a maximum of 51 vehicle parking spaces on-site, including 2 motorcycle parking spaces.
 - b. The Applicant must provide 2 short-term bicycle parking spaces on-site in compliance with the Montgomery County Bicycle Parking Design Guidelines.
 - c. Members and guests shall not park on nearby public streets.
 - d. Prior to the issuance of any use and occupancy certificate for the proposed building addition on the Site, the Applicant must discontinue the practice of reserving 25 vehicular parking spaces for NIH employees by extinguishing the shared parking agreement.
6. Landscaping and Screening
Site landscaping and perimeter screening must be provided in accordance with the Special Exception Landscape Plan.
7. Lighting

- a. All on-site exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
 - b. All on-site down-lights must have full cut-off or BUG-equivalent fixtures.
 - c. Deflectors will be installed on all fixtures to prevent excess illumination and glare.
 - d. Illumination levels generated from on-site lighting must not exceed 0.1 footcandles (fc) at the lot line, excluding areas impacted by street lights within the right-of-way.
8. The Applicant must comply with all tree-protection and tree-save measures shown on the approved Tree Save Plan. Tree-save measures not specified on the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
 9. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the required mitigation plantings consisting of native canopy trees, with a minimum size of 3 caliper inches as shown on the Tree Save Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
 - a. All trees credited towards mitigation requirements must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
 - b. The Applicant must submit financial surety, in a form approved by the M-NCPPC Office of General Counsel, to the Montgomery County Planning Department for the mitigation plantings required per the approved Tree Save Plan. The financial surety must be provided for a period of 5 years which may be reduced to 3 years upon request by the Applicant and approval by M-NCPPC Forest Conservation Inspector.
 10. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the Tree Save Plan. The time period for the MMA will adhere to the requirements in place when the MMA is approved.
 11. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
 12. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the Subject Application.

The public hearing proceeded as scheduled on May 7, 2021. Testifying in support of the application included: Christina Farias (on behalf of the Applicant), Kevin Foster, David Konapelsky, and Nick Driban. There were no members of the general public that testified and the

hearing was uncontested. The record was left open for ten (10) days following the conclusion of testimony for the inclusion of the transcript in this case, and no further comments were received. T. 109.

After a thorough review of the record in this case, including all documents and testimony, the Hearing Examiner **recommends approval** of the requested major amendment to the special exception for a private club, pursuant to 59.G.2.42 of the 2004 Zoning Ordinance, with the conditions included in Part IV of this Report, for the following reasons.

II. FACTUAL BACKGROUND

A. Prior History

On May 12, 1960, the Board of Appeals granted Case No. CBA-916 to the United States Public Health Service Commissioned Officers Club, Inc., to operate a private club. Exhibit 58, p. 3. On August 2, 1978, the Board of Appeals granted a modification to Case No. S-615, titled CBA-916, to change the holder of the special exception to include the Foundation for Advanced Education in the Sciences, Inc. (FAES) and to allow the sale of alcoholic beverages. *Id.* By subsequent resolutions dated September 26, 1985, October 5, 1988, March 2, 2004, and March 18, 2013, the Board of Appeals granted modifications to CBA-916 to: permit construction of a small powder room, to permit leasing of 20 parking spaces to Suburban Hospital, to change the lessee of the parking spaces to the National Institutes of Health (NIH), and to increase the number of parking spaces leased to NIH from 20 to 25, respectively. *Id.* This subject modification seeks to renovate and expand the existing private club to accommodate more classroom and event space and to otherwise expand the facility for increased capacity.

B. The Subject Property

Technical Staff ("Staff") provided the following description of the property:

The subject site ("Subject Property" or "Property") is located in the northeast quadrant of the intersection of West Cedar Lane and Old Georgetown Road, at 9101 Old Georgetown Road (MD 187). The Property, recorded as Parcel P497 (Tax Account No. 07-00437247), consists of approximately 1.57 acres (68,504 square feet) and has frontage on both Old Georgetown Road and West Cedar Lane. The Property is adjacent to residentially zoned properties along its northern and western property lines, confronts residential properties across Old Georgetown Road, and confronts both the National Institutes of Health Campus and the Bethesda Fire Department, across West Cedar Lane, to the south. The Site is immediately adjacent to a Special Exception, Case No. CBA143A, for the Knights of Columbus Private Club and Service Organization (also known as the Rock Creek Mansion) at 5417 West Cedar Lane. The Property is within the area encompassed by the 1990 Bethesda – Chevy Chase Master Plan (Master Plan). Exhibit 58, p. 8

The property is zoned R-60 with a TDR 8.0 overlay and is currently improved by a 3,279 square foot residential-styled building, currently operating as a Private Club by special exception, which will be retained and expanded under this application. *Id.* Mr. Konapelsky, the project's architect, testified that the original building with the proposed expansion will include "five classrooms between the -- can handle between 18 to 24 people. And then, there's an auditorium at the other left corner of floor plan. Their [sic] space is the bathrooms. There is a small catering kitchen which will just be for catering and miscellaneous coffee and serving functions." T. 100. Mr. Konapelsky further testified that "[on] the second floor, there is an elevator so the building is completely handicapped accessible. And the second floor currently is a series of rooms and the space will be cleaned out a bit and is intended to function as an office gathering space for a breakout area and discussions, and also individual study..." *Id.*

The property is also improved by an existing 54-space surface parking lot that will be shifted "back, [to] provide the landscaping around the frontage, provide public utility easements, provide additional landscaping for the Old Georgetown Greenway corridor, provide upgrades to the Bethesda Trolley Trail, road dedications to meet the master plan requirements and to do those

road improvements.” T. 49. Mr. Foster testified that as a result of the project “we will be dedicating 15 feet along the frontage of Old Georgetown Road so that Old Georgetown Road can get to its maximum right-of-way recommended within the Master Plan of 130 feet.” T. 62. The site is currently served by two curb cuts: a “right-in/ right-out” driveway on Old Georgetown Road and an “exit only” driveway on West Cedar Lane. Exhibit 58, p. 8.

C. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the neighborhood as bordered by West Cedar Lane and Oak Place to the south, Locust Avenue to the east, Alta Vista Road to the north, and Johnson Avenue to the west, shown below as Figure 5, from the Staff Report. Exhibit 58, p. 10. Staff characterizes the neighborhood as “developed primarily with single family detached residential dwellings to the north and west in the R-60 zone and with a Private Club and Service Organization special exception use to the east.” *Id.* Staff further notes that there are eight known existing special exceptions and conditional uses within the neighborhood (shown in Figure 5 from the Staff Report below on page 9), five of which are small, home-based uses with minimal impacts (Nos. 1, 2, 6, 7, and 8), with the remaining three being institutional uses (No 1. scientific society office; No. 2. private club; and, No 3. medical clinic). Exhibit 58, p. 11. “The surrounding properties are more particularly described as follows: 1) abutting the Property to the north is a new single family home community known as Bethesda Mews in the R-60 zone; 2) abutting the Property to the east is the Rock Creek Mansion (also known

as the Knights of Columbus), an event facility in the R-60 zone; 3) to the south and across West Cedar Lane from the Property are the Bethesda Fire Department and the NIH campus in the R-60 zone; 3) to the west and across Old Georgetown Road from the Property is a single family house in the R-60 zone.” Exhibit 36, p. 3.

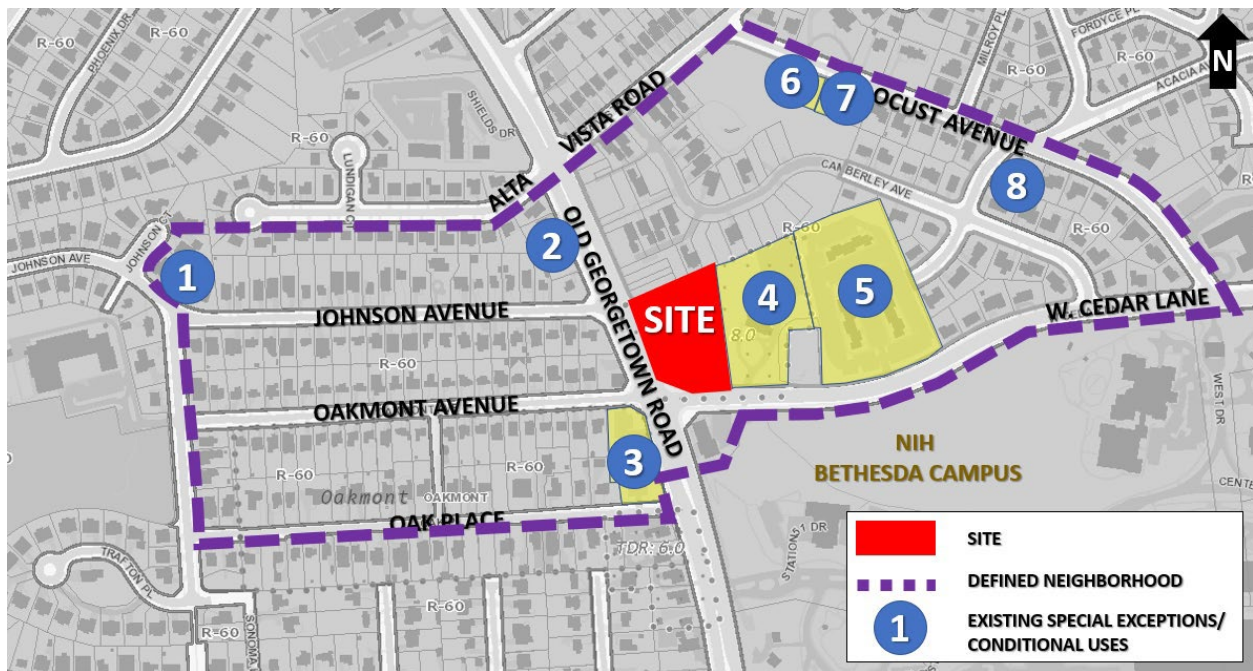


Figure 5 – Zoning Map with Defined Neighborhood (outlined in purple)

D. Master Plan

Staff states that the property is located within the Old Georgetown Road Corridor of the Mid-Bethesda/ Northern BCC area of the 1990 Bethesda-Chevy Chase Master Plan (Plan). Exhibit 58, p. 21. Staff found that while the Master Plan limits special exceptions along this corridor, as this application does not propose a new special exception in the district, but rather expands an existing special exception, that the application remains consistent with the recommendations of the Master Plan. *See Plan at p. 31; Exhibit 58, p. 21.* Staff advises that the area land use guidelines state that each parcel should be evaluated in the overall context of the Master Plan objectives, and compatibility with the surrounding community in terms of the height and bulk of the structures,

buffering by vegetation, topography, and visibility of the use, highway access and buffering, proximity to public or quasi-public uses, proximity to community services or transit, and the comparative density of nearby properties. Exhibit 58, p. 21. Mr. Foster testified that the Master Plan contains "specific recommendations in the master plan for certain properties; this one as well. This one was specifically called out for townhouses as a possible site for a future townhouse development." T. 71. The Applicant further noted that "The Master Plan seeks to mitigate noise through design, construction and landscaping, and to maintain the residential use and scale along Old Georgetown Road." Exhibit 36, p. 3.

Staff concluded that the "proposed [modification] is consistent with the Master Plan, in terms of the nature and the appropriateness of the use, and it will be compatible with other adjacent uses" as the proposed expansion maintains the residential character of the site. Exhibit 58, p. 21. Staff further concludes that the use meets Master Plan objectives as the private club is intended to serve the professional/ scientific community at the nearby National Institutes of Health, enhances the existing vegetation located along Old Georgetown Road – a stated goal in the Master Plan - and helps screen the special exception use from the adjacent Bethesda Mews residential neighborhood and reinforces the "green corridor" character of Old Georgetown Road. Exhibit 58, p. 21. Mr. Foster concluded that the modified special exception will be consistent with the Master Plan. T. 69. As stated previously, the Master Plan recommends a right-of-way on Old Georgetown Road of 130 feet, and the underlying application proposes dedicating 15 feet along the frontage of the property for that purpose. T. 62. Mr. Foster further testified that "The Montgomery County Bikeways Master Plan recommends the Bethesda Trolley Trail to actually be 16 feet wide along this frontage and that's called a breezeway." T. 59.

E. Proposed Use & Operations

The application proposes to modify Special Exception CBA-916-A, as amended several times before, to renovate and expand the existing Private Club and Service Organization from its existing footprint of approximately 3,279 square feet to a maximum square footage of 9,264 square feet. Exhibit 58, p. 12. The existing (and continuing) special exception holder, Foundation for Advanced Education in the Sciences (FAES), hosts seminars, business events, social events, and meetings for both the nearby National Institutes of Health (NIH) and FAES club members including catering and limited alcohol service pursuant to a valid liquor license. T. 27. "FAES is a non-profit membership organization associated with the National Institutes of Health ("NIH"). It conducts advanced educational programs and supporting activities to facilitate a collegial environment and provide educational activities and professional services to the scientific community." Exhibit 36, p. 1.

The underlying modification proposal includes constructing additional meeting space and facilities to FAES's Social and Academic Center to enable FAES to schedule multiple meetings, courses, and business events simultaneously, and begin offering more extensive conferences. Exhibit 36, p. 1. The Application also proposes site improvements for landscaping, lighting, parking, and implementation of stormwater management facilities, and updates to previously approved conditions of approval pertaining to the club's operations, including an increase in maximum occupancy from 100 people to a proposed maximum occupancy of 145 people, including event staff. *Id.* Ms. Farias, the current Director of FAES, testified that current hours of operation are generally Monday through Thursday, 9:00am – 9:00pm, with most courses offered in the early evening hours, and weekend hours operating similarly to weekday operations but concluding by 11:00pm. T. 26. Staff provided the following summary of hours of operation for the underlying modification, which Ms. Farias consented to as conditions of approval:

- a. weekday operations on the Site must conclude no later than 11:00 PM;
- b. weekday outdoor activities must conclude by 9:00 PM;
- c. Weekend operations are defined as Friday and Saturday between 9:00 AM and 12:00 midnight and the property must be vacated by 1:00 AM; and
- d. weekend outdoor activities must conclude by 11:00 PM.

Exhibit 58, p. 17; T. 34. Ms. Farias testified that one dedicated staff member is on site regularly, and between 2-5 staff persons would be present for events depending upon the size of the meeting, event, or conference. T. 26.

1. Site Plan

An excerpt or portion of Applicant's site plan is shown below on page 12 of this Report, showing the general contours and boundaries of the property, entrance and exit, neighboring lots, the existing structure, the proposed expansion, and general features of the property including stormwater management. *See* Exhibit 63 for full Site Plan. In addition to the expansion and continued use of the premises as a Private Club, Mr. Foster testified that "part of our redevelopment will be to move the parking lot back, provide the landscaping around the frontage, provide public utility easements, provide additional landscaping for the Old Georgetown Greenway corridor, provide upgrades to the Bethesda Trolley Trail, road dedications to meet the master plan requirements and to do those road improvements." T. 49.



Two signs are proposed along the property's frontages: one non-illuminated entrance sign on Old Georgetown Road will be 5 feet or less in height, and one non-illuminated freestanding sign on West Cedar Lane will be 3 feet or less in height, for a total square footage not to exceed 14 square feet. Staff advises that these signs are "proposed in accordance with the standards set forth in Section 59-F-4.2.(a), and are consistent with the expanded special exception use." Exhibit 58, p. 15. Staff opines that the signs qualify as "Place of Assembly Location Signs" pursuant to Section 59-F-4.2(a)(3)(B) of the Zoning Ordinance in effect on October 29, 2014. *Id.* Staff further advises that each sign will be located a minimum of 5 feet away from the right-of-way dedication

line. *Id.* Figures 11 and 12 below, reproduced from page 16 of the Staff Report, show the proposed location of the two signs and a graphic representation of both.

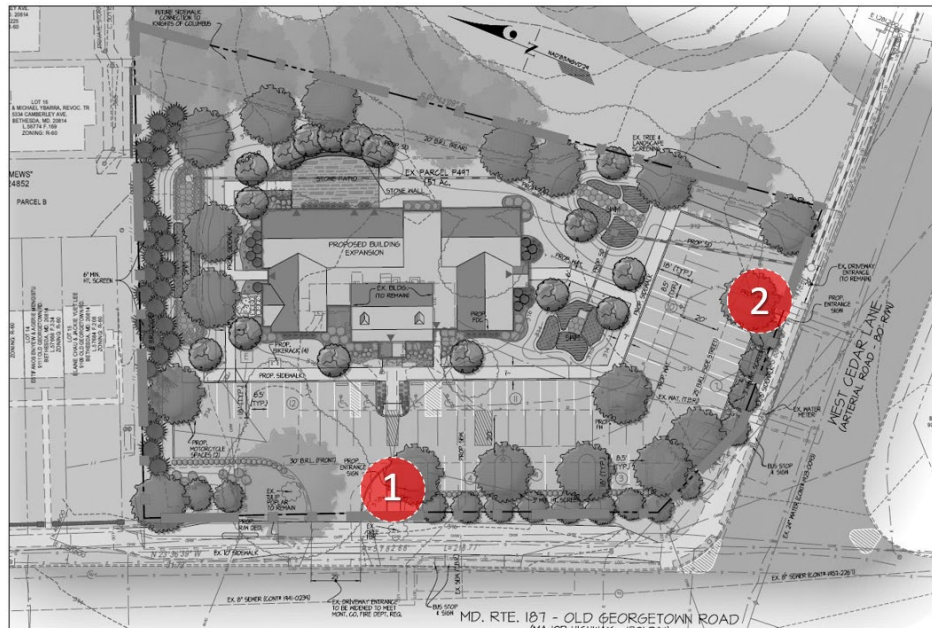


Figure 11 – Proposed Sign Locations

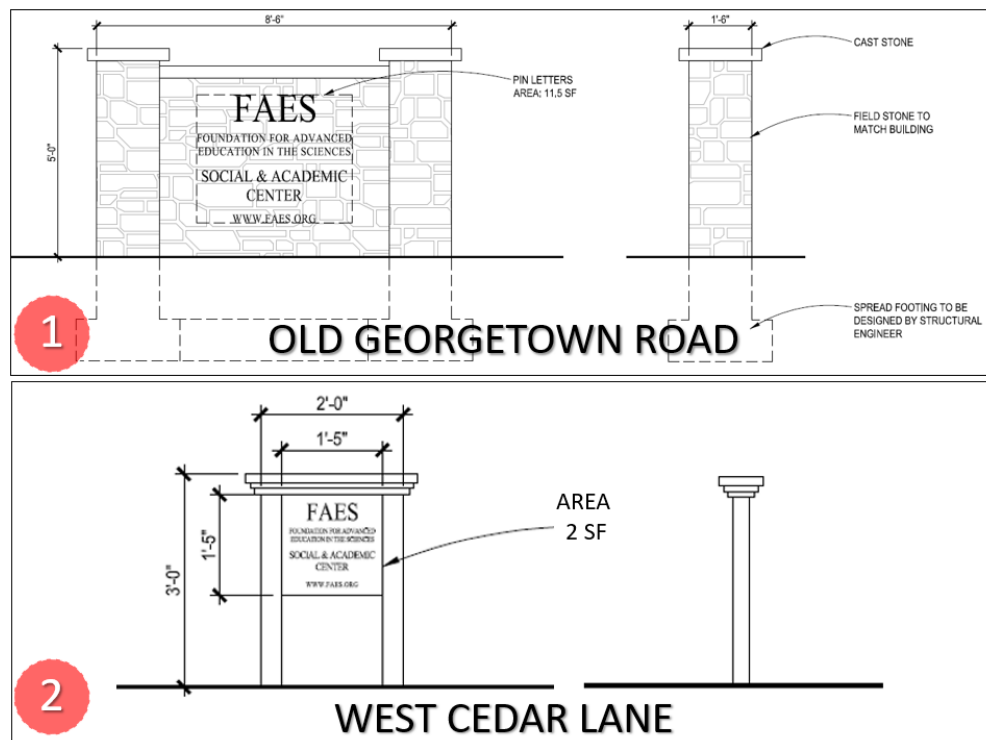


Figure 12 – Proposed sign details (renderings)

3. Transportation, Parking, and LATR

The property currently supports one driveway on Old Georgetown Road and one driveway on West Cedar Lane which will remain in their current locations and will operate in the same manner as the existing condition, with a “right-in/right-out” driveway on Old Georgetown Road and “exit-only” driveway on West Cedar Lane. Exhibit 58, p. 17. The Old Georgetown Road driveway will be widened to a width of 25 feet, in accordance with County Code Chapter 22 Fire Safety Code. *Id.*; T. 62. Staff advises that the Applicant conducted a supplemental traffic analysis rashintersection of West Cedar Lane and Old Georgetown Road. *Id.* Staff advises that this supplemental analysis received approval from MCDOT in its agency letter dated February 10, 2021 and MCDOT approved continued egress onto West Cedar Lane. *Id.* Figure 13 from the Staff Report, shown below, illustrates vehicular and pedestrian access to the property. Exhibit 58, p. 18.

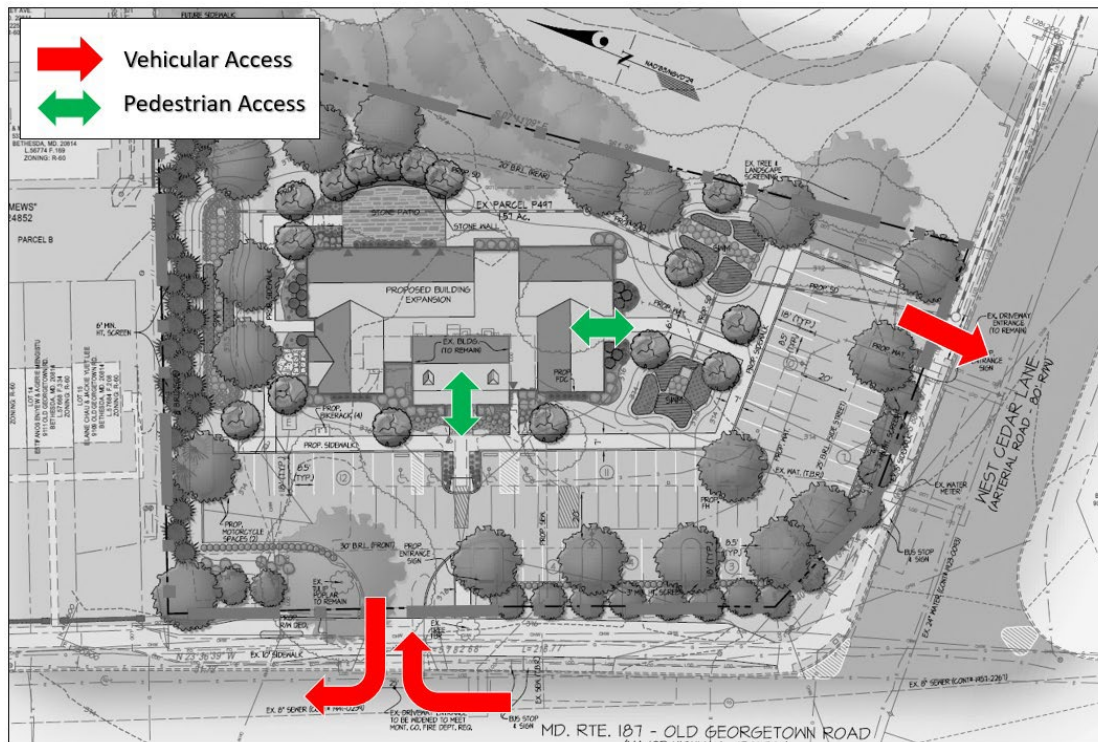


Figure 13 – Access and Circulation

The parking area will remain materially consistent with its present condition. Staff advises that minor modifications to the parking facility include “moving it away from Old Georgetown Road and West Cedar Lane to allow for additional landscape screening and widening of the Bethesda Trolley Trail.” Exhibit 58, p. 18. Mr. Foster testified that “the whole parking lot was shifted back and rearranged to provide all of the required elements. We've added a significant amount of internal green space to provide the trees along Old Georgetown Road in the landscaping and the buffer strip.” T. 50-51. Once completed, the parking area will be expanded from approximately 15,600 square feet to approximately 16,957 square feet, providing 51 vehicular parking spaces (including two motorcycle spaces) and 4 bicycle parking spaces, with approximately 10,967 square feet of canopy coverage representing a shaded area of 63%. Exhibit 58, p. 18. The parking modification plan is shown below, marked as Figure 14 on page 19 of the Staff Report.

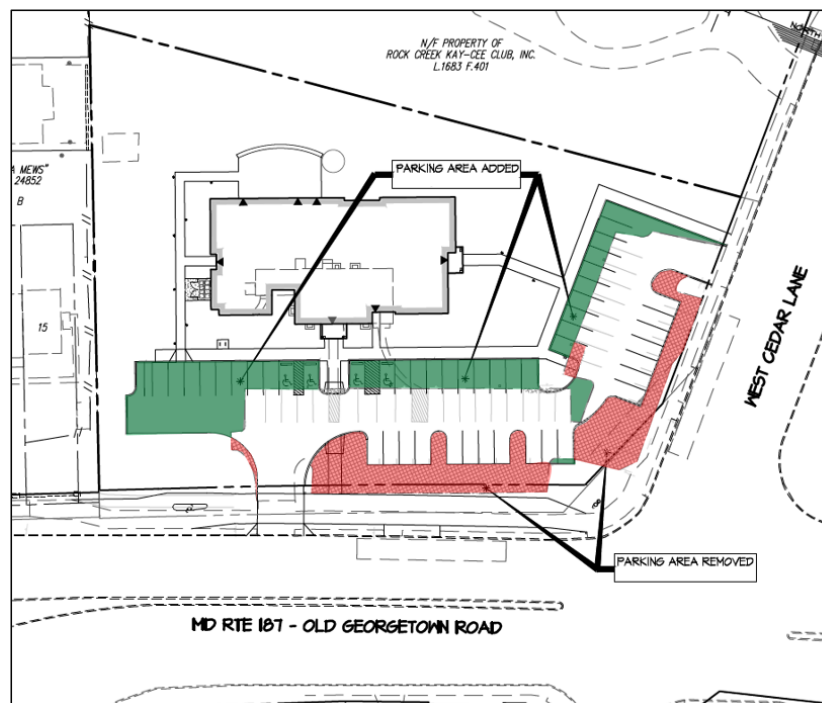


Figure 14 – Parking Modifications

Staff advises that the LATR requirement is satisfied through the Applicant's exemption statement, rather than a transportation study, because the renovation and expansion does not generate 50 or more net new peak hour person trips. Exhibit 58, p. 22. As stated in the Applicant's Traffic Statement: "...the proposed expansion will result in approximately the same net traffic that is currently experienced at the site and, as such, no Traffic Impact Study should be required." Exhibit 69, p.1. For purposes of traffic calculations, Staff permitted the Applicant to take a trip credit for the discontinuation of a practice that permitted NIH employees to use 25 parking spaces. With this credit, the proposed expansion of the special exception use is estimated to reduce morning peak hour person trips by 10 and generate a maximum of 26 net new person trips in the evening peak hour. Exhibit 58, p. 22. The Applicant's Traffic Statement concludes: "For typical weekday operations, expansion of the FAES site would lead to a decrease in person trips compared to existing conditions during the AM peak hour and a minimal increase in person trips during the PM peak hour. The change in trip totals is -10 AM peak hour person trips and +26 PM peak hour person trips." Exhibit 69, p. 6. As this application, if granted, would also increase the capacity of the building for special events and conferences where attendees and staff could total 145 persons, the Applicant's Traffic Statement recommends limiting capacity to 145 persons as a condition of approval: "With this condition, even if all attendees were to arrive during the same peak hour, the 50 peak hour person trip threshold for a traffic impact study would not be triggered." Exhibit 69, p. 6.

4. Landscaping and Lighting

a. Landscape Plan

Staff states that landscaping modifications will "further the site's compatibility with the adjacent Bethesda Mews residential neighborhood by adding extensive evergreen screening along

the northern property line.” Exhibit 58, p. 19. Landscaping is also proposed within the stormwater management facilities and around the building and patio area. *Id.* See Exhibit 63 on page 19 below for Applicant’s revised Landscape Plan. See also Exhibit 67, Applicant’s color rendering of the Landscape Plan, shown below:

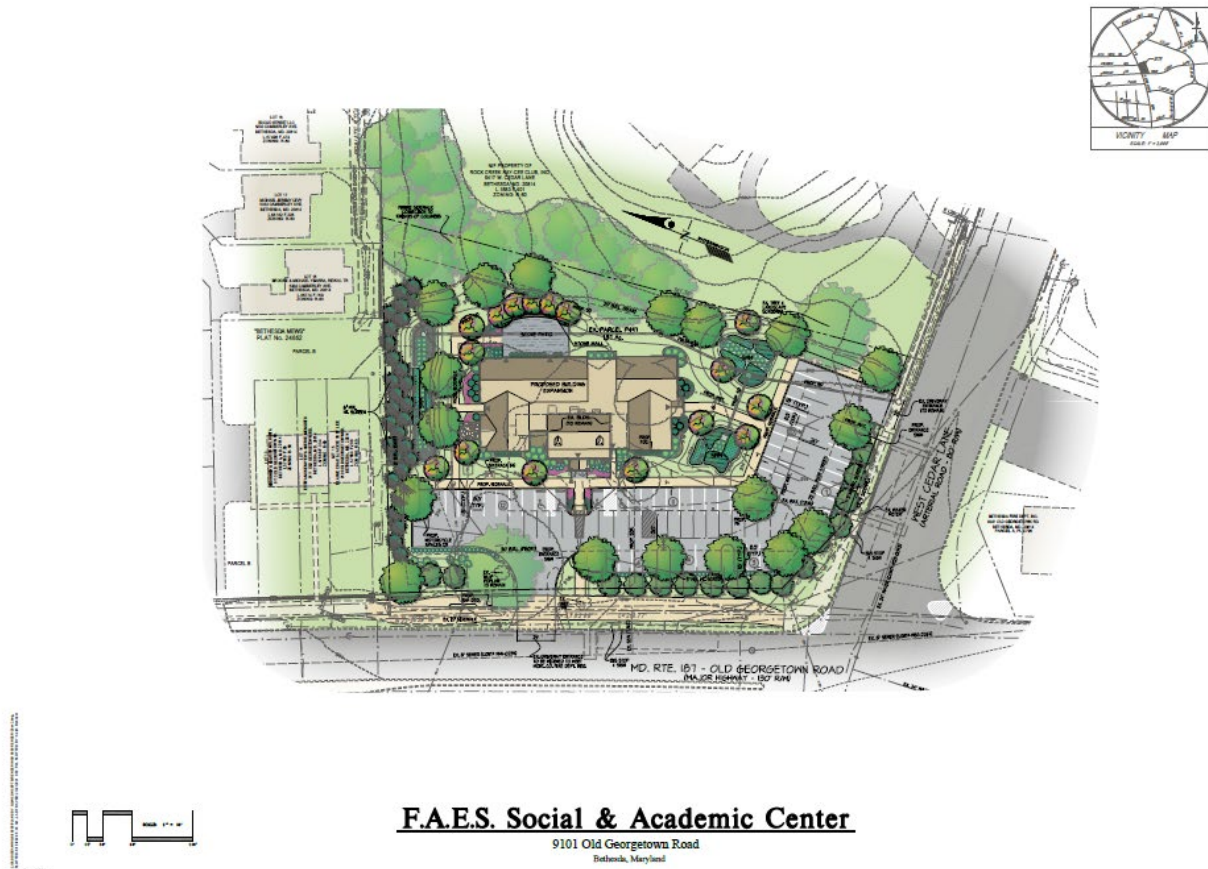
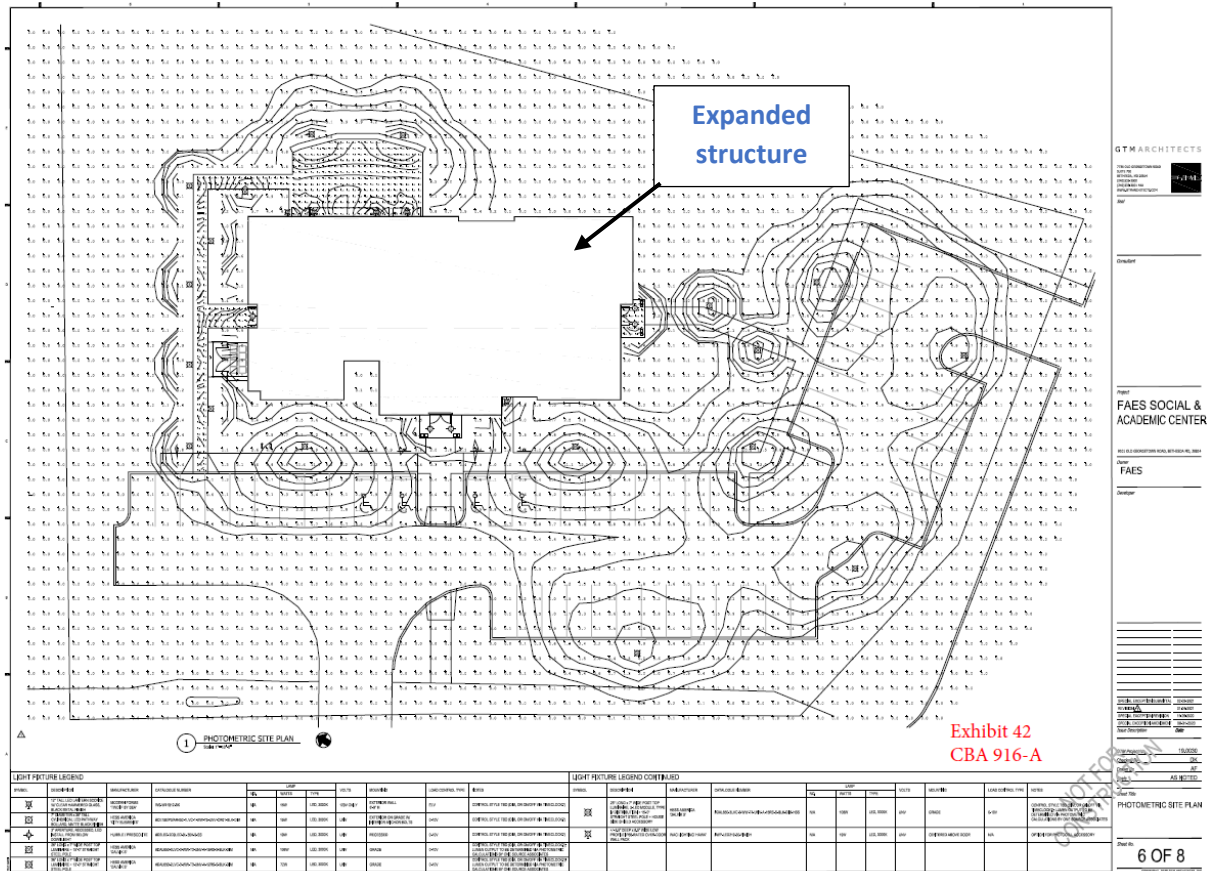


Exhibit 67 – Color Rendering of Landscape Plan

b. Lighting

Staff notes that the application includes new LED parking lot lights, lighting at the rear patio, exterior wall mounted sconces, and walkway path lighting placed to provide safe egress paths from the building and a safe parking lot with light coverages that meet applicable County site lighting requirements. Exhibit 58, p. 34. The Photometric Plan, marked as Exhibit 42 and

shown below, indicates that lighting levels will not exceed 0.1 footcandles at the property line in accordance with Section 59-G-1.23(h) of the 2004 Zoning Ordinance.



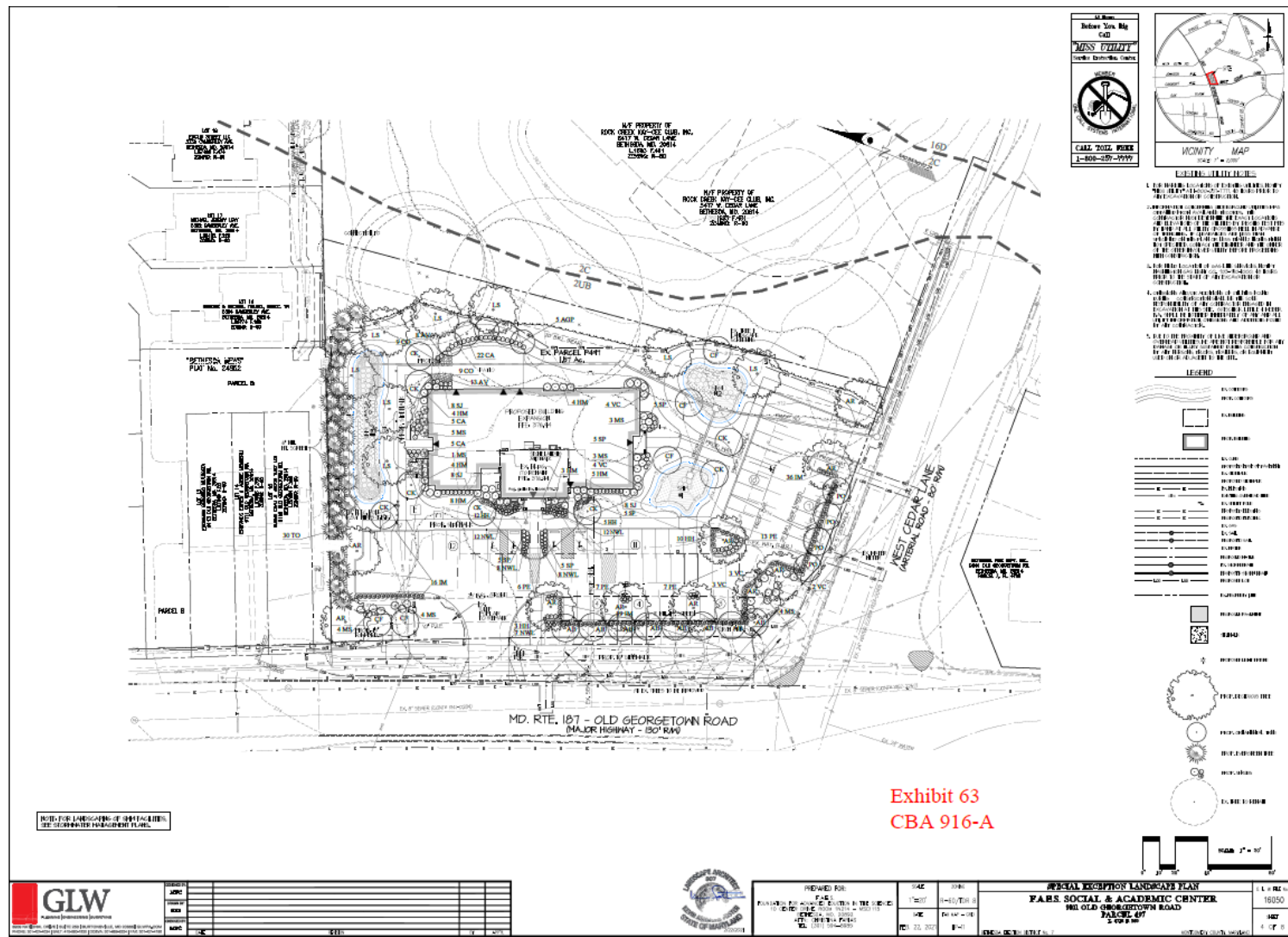


Exhibit 63 – Revised Landscape Plan

D. Environmental Issues

The Applicant submitted a simplified Natural Resources Inventory in support of Forest Conservation Exemption Request No. 42020192E. *See* Exhibit 23. On May 1, 2020, that exception request was approved. *See* Exhibit 18. Staff advises that while this Application is subject to Chapter 22A Forest Conservation Law, it is exempt from the requirement to submit a Forest Conservation Plan under Section 22A-5(q)(2) for modification to an existing special exception approved before July 1, 1991.¹ Staff advises that no forest or champion trees will be impacted by the project but five (5) specimen trees are proposed to be removed. Exhibit 58, p. 20. Accordingly, a Tree Save Plan was submitted and approved as a part of this application. *See* Exhibits 18(a) & (b). The Tree Save Plan includes the planting of eight (8) native canopy trees, with a size of at least 3" in caliper, "as mitigation for the proposed removal of 93" DBH of specimen trees." Exhibit 58, p. 20. Along with mitigation plantings and retention of mature trees, the Applicant also proposes extensive planting of additional landscape trees along Old Georgetown Road which will help reinforce the Green Corridor character of the roadway. *Id.* Staff concluded that, as conditioned, "this Application satisfies all requirements of Chapter 22A, Forest Conservation Law." *Id.*

The site does not currently support any stormwater management facilities. Mr. Foster testified that stormwater management will be added to the site including three micro-bioretenion facilities around the perimeter of the property in compliance new state and county standards. T. 51. DPS approved Applicant's stormwater management concept plans on June 26, 2020. Exhibit 17. Staff found that the proposed stormwater management facilities complied "with the requirements of Chapter 19 of the County Code." Exhibit 58, p. 20.

¹ Staff notes that previous Special Exceptions CBA-916 and S-615 were approved for the Property in 1960. Exhibit 58, p. 20.

E. Community Response

Staff advised that the Applicant held community meetings with the Alta Vista Community Association on Wednesday, August 6, 2020, and the Bethesda Mews Homeowners Association of Monday, August 10, 2020, to discuss this project. Exhibit 58, p. 35. Ms. Farias testified that FAES reached out and had multiple discussion with various stakeholders regarding this application and did not indicate she received any opposition to the proposed expansion. T. 36-37. Staff has not received any community correspondence and no member of the community testified at the hearing.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A special exception 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. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. "The appropriate standard to be used in determining whether a requested special exception would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception." *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

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

Staff identified the following inherent physical characteristics associated with a Private Club and Service Organization:

“a building of sufficient size and design to provide services, activities and operations for the private club use, architectural treatments that are residential in character, sufficient

parking and lighting to accommodate the use, hours of operation to serve the intended use and associated traffic, and required services such as trash and delivery.” Exhibit 58, p. 24.

Staff also identified the following inherent operational characteristics of a Private Club and Service Organization:

“hosting lectures, conferences, classes, seminars and business events, which typically occur during the day, and social events, meetings for the nearby National Institutes of Health (NIH), and meetings for the FAES club members, which typically occur in the evenings and on weekends. The Private Club and Service Organization will be housed within an expanded building, of up to 9,264 square feet, on the Subject Property. The Subject Property itself will also be modified to include enhanced landscaping, screening, frontage improvements and stormwater management.” Exhibit 58, p. 24.

Staff found that “the proposed use satisfies the Local Area Transportation Review Guidelines [LATR] and will have no adverse effect on nearby roadway conditions or pedestrian/ bicycle facilities, after considering the frontage improvements required by MDOT SHA and MCDOT.” Exhibit 58, p. 24. Staff further found that “adequate parking is provided to accommodate the parking needs of the facility and there would be no negative impacts on the adjoining residential community.” *Id.* at 25. Staff noted that the expanded building will be adequately distanced and screened from the nearest residences, parking and drive aisles on-site will exceed the minimum tree canopy requirement (63%), trash will be collected in a small outdoor enclosure along the north side of the building and collection will occur on the surface parking lot “within the established hours of operation and in a manner that respects the surrounding residential community to limit disruptions to both the adjacent properties and the public street network.” Exhibit 58, p. 25.

Conclusion: The Hearing Examiner finds that the proposed scale and size of the building, ingress/egress, the internal vehicular circulation system, and the on-site parking areas shown on the site plan are operational characteristics typically associated with a Private Club and Service Organization. Based on the transportation exemption statement and supplemental traffic

operations analysis, vehicular, pedestrian, and bicycle travel will be safe, adequate, and efficient. The lighting concept, as depicted on the lighting plan, demonstrates that lighting levels the lighting levels will not exceed 0.1 footcandles at the property line in accordance with Section 59-G-1.23(h) of the 2004 Zoning Ordinance. The Hearing Examiner concludes that the proposed Private Club and Service Organization special exception use is consistent with all applicable standards of the R-60/TDR 8.0 Zone and satisfies all applicable special exception requirements.

B. General Standards

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

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

Conclusion: Under the 2004 Zoning Ordinance, the proposed use as a Private Club and Service Organization is listed as being permitted by special exception in the R-60/TDR 8.0 overlay zone.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

Conclusion: The proposed use as a Private Club and Service Organization complies with the standards and requirements set forth for the use in Code §59-G-2.42, as detailed in Part III.C, below.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the

appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The Hearing Examiner finds that the proposed use as a Private Club and Service Organization will be consistent with the Master Plan, as did Technical Staff and the Planning Board, for the reasons set forth in Part II.D. of this Report. The existing special exception is being expanded under this application, but will be consistent with Plan goals and the resulting improvement to the landscaping along this corridor along with right-of-way dedications conform to the Plan.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The evidence indicates that the expansion of the existing structure will utilize residential architectural elements to maintain the general character of the neighborhood. Staff found that "the design, scale and bulk of the proposed building expansion will be compatible with the surrounding neighborhood by maintaining the Site's residential character through the use of exterior building materials consistent with residential construction, including fiber cement siding, hardwood trim details, standing seam metal porch roofs, residential-type windows, and asphalt shingle roofing." Exhibit 57, p. 27. Mr. Konapelsky testified that the signage, site lighting, and architectural plans are "very much in keeping with the function of the existing building and their design, the scale and the bulk of the structure is very compatible with the neighborhood and the existing building and the site." T. 106. Mr. Foster testified:

"...this use is very compatible with the neighborhood and creates very little disturbance given the hours and the real level of activity here. Even though that's the case, we went

kind of above and beyond and really created what we think is going to be a really nice landscape buffer along the edge with evergreens kind of planted naturally and a combination of those evergreens, the landscaping in the stormwater facility and deciduous trees to really enhance and buffer -- to really enhance the buffer between those two facilities.”

T. 57. Staff further advised that the resulting expanded building will remain separated from the adjoining residential use to the north by a minimum 60-foot setback and will include appropriate screening. Exhibit 58, p. 27.

Conclusion: The use and operation of the existing Private Club will remain unchanged except that the expanded space will accommodate more capacity and FAES will be able to offer expanded programming. Exhibit 36, p. 12. The types of programs offered will not materially differ from what is provided now, with conferences being offered with multiple rooms serving the club's needs instead of confined to the limited space as currently exists. *Id.*

With an increase in capacity from 100 persons to 145 persons, sufficient parking is provided on site to accommodate members and guests, as the 51 spaces provided significantly exceeds the 24 spaces required for the use. Adequate and safe ingress and egress is provided as well as an appropriate circulation pattern with traffic entering the site from Old Georgetown Road and exiting either onto West Cedar Lane or Old Georgetown Road (right only). The application satisfies LATR requirements and Staff found that “adequate public transportation facilities exist to serve the Site.” Exhibit 58, p. 27.

Several similar uses and institutional uses exist along this corridor, including the Bethesda Fire Department, which are compatible with properties located in close proximity to the National Institutes of Health (NIH) campus. As such, the expansion of FAES under this application remains in harmony with the general character of the neighborhood.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the

subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Staff found that the use, as conditioned, will not cause detrimental impacts to the surrounding properties or the general neighborhood. Exhibit 58, p. 28. The Applicant states that as a result of the proposed expansion "[t]here will be no net new increase in activity at the Property and the current operating hours will not change." Exhibit 36, p. 11.

Conclusion: Due to the limited increased capacity on site, neighboring institutional uses, and the screening, landscaping, stormwater management, and other site elements proposed as evaluated throughout this Report, the evidence supports the conclusion that the proposed use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: With site design elements including enhanced screening and landscaping, as well as improved stormwater management and alteration of the existing parking area with enhanced screening, the proposed expansion will cause no objectionable impacts. In addition to these site design elements, Staff also noted that HVAC condensing units will be placed in the middle of the roof area behind gable roof features to mitigate exterior noise, and outdoor activities will be limited to 9:00 PM on weekdays and 11:00 PM on weekends in recognition of the adjacent residential community. Exhibit 58, p. 28. With the site enhancements and hours of operation restrictions imposed by condition below, the Hearing Examiner finds that this standard has been met.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The existing special exception has operated on this site since 1960. This application proposes expanding that use to increase capacity and programming. Staff noted that “of the eight (8) special exceptions in the neighborhood, five (5) are small, home based uses with minimal impacts.” Exhibit 58, p. 28. Staff found that the residential neighborhood has not been altered in its residential nature by any of the existing special exceptions, and opines that the expansion of the existing Private Club under this application will not alter its character. *Id.* Staff further opined that the proposed use and site elements are consistent with the recommendations of the 1990 Bethesda-Chevy Chase Master Plan as detailed in Part II.D. of this Report, reiterating this special exception’s compatibility with neighboring uses. *Id.*

Conclusion: Based on this record, the Hearing Examiner finds that this standard has been satisfied.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Of these, the factors most relevant to this application concern parking, traffic, trash, and environmental quality. The evidence supports the finding that the on-site parking area is sufficient to meet the proposed increase in capacity and traffic circulation including ingress/egress satisfy LATR standards. With respect to trash, Mr. Konapelsky stated the following:

“[t]he trash enclosure was added to the north side of the building and intentionally because that is the functional side of the building for bringing goods into the catering kitchen and also it's a point of egress on the north side of the building. The trash enclosure is 6 feet, it's solid in nature, of residential quality also, which is probably like a wood type product the full height. The trash is not a dumpster. It would be more residential type trash carts with wheels so that kind of leads into the

understanding of how much intensity would be at the facility which is good that it's not a big dumpster.”

T. 103. Staff also found that “[t]he proposed modifications to the Site will improve environmental quality by adding stormwater management facilities and will improve the Site’s frontage to accommodate higher-quality pedestrian and bicycle connections than what is available in the existing condition.” Exhibit 58, p. 29. For these reasons, concerns regarding parking, traffic, trash, and environmental quality are addressed under this application or are mitigated through the conditions already placed on the existing special exception, or the conditions applied under this application, provided below. For these reasons, the Hearing Examiner finds that this standard has been met.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Review, as required in the applicable Annual Growth Policy.

Staff advises that this application is subject to approval of a future Preliminary Plan of Subdivision, and the adequacy of public facilities will be determined by the Planning Board at that time. Exhibit 58, p. 29. Nonetheless, the Hearing Examiner makes the following findings of fact with respect to adequate public services and facilities, concluding that they are sufficient to serve the proposed use.

As the proposed use is a non-residential use, there will be no impact on local schools. Mr. Foster testified that “[t]he property is currently served by water and -- public water and sewer and

the fire station is right across the street from the site. Also in close proximity to police services.”

T. 76. ² The Applicant's revised Traffic Statement (Exhibit 69), Traffic Response Gap Study (Exhibit 51), and testimony from Mr. Driban, the Applicant's transportation planner (T. 84-96), conclude that LATR guidelines are satisfied and that the impact of the proposed expansion of this special exception “from a traffic perspective on the surrounding transportation network is essentially *de minimus* or negligible.” T. 84. Based upon the traffic analysis submitted with application, Staff found that “the Applicant has demonstrated that sufficient transportation capacity exists to serve the proposed Special Exception use.” Exhibit 58, p. 29. Staff also advised that the application has been deemed adequate by the Montgomery County Fire and Rescue Service, including for emergency vehicle access. *Id.* Under the current special exception, the site does not currently have stormwater management in place. Under this application, stormwater management will be implemented to address potential runoff from the increased impervious surface added as a result of the expansion. *See* Exhibits 17a, 28, 49, and 50.

Conclusion: As this property is an unrecorded plat, the Special Exception is subject to approval of a future Preliminary Plan of Subdivision, and the adequacy of public facilities will be determined by the Planning Board at that time. Nonetheless, the Hearing Examiner finds that public services and facilities will be adequate to serve the use.

(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

Mr. Foster testified that site improvements include shifting the existing surface parking lot “back, [to] provide the landscaping around the frontage, provide public utility easements, provide

² Staff advises that the 2nd District Police Station is located on Rugby Avenue in the Woodmont Triangle. Exhibit 58, p. 29.

additional landscaping for the Old Georgetown Greenway corridor, provide upgrades to the Bethesda Trolley Trail, road dedications to meet the master plan requirements and to do those road improvements.” T. 49. MCDOT requested that FAES perform a gap study which resulted in positive findings that: (1) the number of available gaps (more than 80) is nearly ten times the number required (9 left-turning vehicles); (2) the sight-distance evaluation form shows that site distance is adequate for the site; and (3) the results of the Synchro/SimTraffic analyses “demonstrate that the site access points operates with minimal delay, well within County standards, and that queuing for the southbound left turn movement is negligible.” Exhibit 51, p. 1. Mr. Driban testified that the proposed modification will “improve the safety of vehicular [and] pedestrian traffic” on the site and that the “widening of the Bethesda Trolley Trail as part of this project will provide a safer, more comfortable facilities for the numerous bicycles -- bicyclists and pedestrians in the area.” T. 95. Mr. Driban further testified that “having a 16 foot wide path running along the site frontage will help to sort of bring attention to that facility for vehicles exiting our site on to Old Georgetown Road.” *Id.*

Conclusion: Based on a thorough review of this record, the Hearing Examiner finds that the proposal will not reduce the safety of vehicular or pedestrian traffic.

C. Specific Standards

The specific standards for a Private Club and Service Organization are found in §59-G-2.42. The provisions of this section and the Hearing Examiner's findings for each are as follows:

A private club or service organization, including a community building, must meet the following standards:

(a) Lot size: Twice the minimum required in the zone, up to a maximum of 3 acres.

Staff advises that this special exception in the R-60 zone requires a minimum lot size of 6,000 square feet and a maximum lot size of 3 acres. Exhibit 58, p. 35. After public right of way dedication, the property will be approximately 64,634 square feet (1.48 acres) and therefore satisfies these requirements.

(b) Maximum building coverage: 15% up to a maximum building coverage, including accessory buildings, of 20,000 square feet.

Staff advises that the existing building housing FAES is approximately 3,279 square feet, with a proposed expansion to 9,264 square feet under this application, which equals 14.3% of building coverage. Exhibit 58, p. 35. This requirement, therefore, is satisfied.

(c) Green area: 50%

The Applicant submitted a Greenspace Plan submitted into the record as Exhibit 45. Staff advises that the green area proposed under this application is approximately 34,426 square feet, or 53% of the lot, which will be predominantly located in the rear yard, around the periphery of the site, and throughout the parking lot fronting along Old Georgetown Road and West Cedar Lane. Exhibit 58, p. 35. The landscaping will include ornamental, evergreen, and deciduous trees, shrubbery and groundcover to screen the surface parking from neighboring lots. *Id.*; See Exhibit 63. The Hearing Examiner finds that this standard is satisfied.

(d) Frontage: Twice the minimum required in the zone.

Staff advises that this special exception in the R-60 zone requires a minimum of 25 feet of frontage. Exhibit 58, p. 35. The subject property contains approximately 248 feet of frontage along Old Georgetown Road and 197 feet of frontage along West Cedar Lane, satisfying this requirement. *Id.*

(e) Parking: 2.5 spaces per each 1,000 square feet of floor area.

The total proposed building area under this application is 9,264 square feet, resulting in a parking requirement of 24 spaces. As the Applicant proposes 54 total vehicular parking spaces on-site³, the parking area satisfies this requirement.

Conclusion: The Hearing Examiner finds that the application satisfies the specific standards (a) through (e) as evaluated above. Based upon the uncontested record in this case, the requirements of this multi-part provision have been met.

D. Development Standards

In addition to the general and specific special exception standards, special exception uses must also meet all requirements of the underlying zone, in this case, the R-60 Zone, as required by Section 59-G-1.23. These standards, along with the Hearing Examiner's findings on each standard, are set forth below:

(a) Development Standards.

Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.42 (Private Club and Service Organization).

Staff found that the proposed modification to the existing special exception use meets the Development Standards for the R-60/TD 8.0 overlay zone. Mr. Foster confirmed that the application complies with all development standards for the R-60 zone with respect to Private Clubs. T. 66-68. The following table, marked as Table 4 in the Technical Staff Report, summarizes development standards for the proposed use and development.

³ The Technical Staff Report indicates that 51 spaces are being provided. However, Mr. Foster testified that the parking area supported 54 vehicular spaces including one handicapped space. The updated Site Plan shows 54 parking spaces with up to 4 handicapped accessible spaces. Exhibit 38. The Applicant's Revised Statement also states that 54 spaces are to be provided. Exhibit 68. Under any of these figures, the spaces provided satisfy the parking requirements under §59-G-2.42.

| Table 4: Special Exception Data Table for R-60/ TDR 8.0 Zone¹ | | |
|---|--|--|
| | Required/ Approved | Proposed |
| Tract Area (SF/ Acres) | n/a | 68,504 SF (1.57 Acres) |
| Proposed Dedication | n/a | 3,870 sf (0.09) |
| Site Area (SF/Acres) | 12,000 SF (0.28 Acres) ² | 64,634 SF (1.48 Acres) |
| Setback Requirements | | |
| Front (Old Georgetown Road) | 25 feet (min.) | 91.8 feet |
| Front (West Cedar Lane) | 25 feet (min.) | 120.8 feet |
| Side (Bethesda Mews) | 8 feet (min) | 63 feet |
| Rear (Knights of Columbus) | 20 feet (min.) | 40.7 feet |
| Parking Setback Requirements | | |
| Front (Old Georgetown Road) | 30 feet | n/a ³ |
| Front (West Cedar Lane) | 30 feet | n/a ³ |
| Side (Bethesda Mews) | 16 feet ⁴ | 16 feet |
| Rear (Knights of Columbus) | 20 feet | 20 feet |
| Frontage | 50 feet ⁵ | 248 feet Old Georgetown Road 197 feet West Cedar Lane |
| Building Height | 35 feet (max.) | 23' 10" (existing) |
| Building Coverage | 15% (max.) up to 20,000 square feet | 14.3% 9,264 square feet |
| Green Area | 50% (32,317 square feet) | 53% (34,426 square feet) |
| Paved Areas | n/a | 16,957 square feet |
| Shading of Paved Areas | 30% (5,087 square feet) | 63% (10,697 square feet) |
| Parking | | |
| Vehicle | 24 spaces (min) ⁶ | 51 spaces |
| Motorcycle | 2 Spaces | 2 Spaces |
| Bicycle | 2 spaces | 4 spaces |
| Loading | 0 | 0 |

¹ The Property is zoned R-60 with a TDR-8.0 overlay zone for potential increase in the maximum residential density. The Application does not seek to increase residential density; therefore the data table reflects standards and conformance with the R-60 zone.

² 59-G-2.42 requires the minimum lot size to be twice the standard set forth in the zone. In this case, the R-60 Zone minimum of 6,000 square feet has been increased to 12,000 square feet.

³ An existing surface parking facility included as part of a special exception granted before May 6, 2002, is a conforming use.

⁴ 59-E-2.83 requires that the side yard setback for a special exception parking facility be twice the minimum. In this case, the side yard has been increased to 16 feet.

⁵ 59-G-2.42 requires the minimum frontage to be twice the standard set forth in the zone. In this case, the R-60 Zone minimum of 25 feet has been increased to 50 feet

⁶ 2.5 spaces for every 1,000 Square Feet;

(b) Parking requirements.

Special exceptions are subject to all relevant requirements of Section 59-E 2.83 and 59-E 2.81 of the Zoning Ordinance.

The provisions of Section 59-E-2.83 state:

Parking and Loading facility standards apply to an off-street parking facility for a special exception use that is located in a one-family residential zone if 3 or more parking spaces are provided. These standards are intended to mitigate potential adverse visual, noise, and environmental impacts of parking facilities on adjacent properties. In addition, these requirements improve the compatibility and attractiveness of parking facilities, promote pedestrian-friendly streets, and provide relief from unshaded paved areas.

Staff advises that the Applicant will decrease the total parking available on-site by one space, leaving 51 parking spaces available for the use, to meet the 2004 Zoning Ordinance requirements for screening and landscaping. Exhibit 58, p. 32. The parking area will remain located in front of the building, along the property's street frontages on Old Georgetown Road and West Cedar Lane. "As required by the Zoning Ordinance, the parking will be screened by a minimum 10-foot deep landscaped panel." *Id.* The Hearing Examiner finds that this standard is satisfied.

Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

See Table 4 above. No loading facilities are required or proposed on site. The parking area will remain located entirely within the existing surface parking lot fronting Old Georgetown Road and West Cedar Lane. The Hearing Examiner finds that this standard is satisfied.

Screening. Each parking and loading facility, including driveway and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be at least 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of them. Along all street rights-of-way, screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence, or masonry wall.

The parking area will be screened by a minimum 10-foot deep landscaped panel. Exhibit 58, p. 22. Staff advises that the parking area has been sited away from the street right-of-way and designed to be effectively screened from abutting lots through the use of a mix of ornamental, evergreen and shade trees, and shrubs, and perennials. Exhibit 58, p. 32. A trash enclosure will be added on the north side of the property and will be a solid, wood-type enclosure, 6-feet in height, and residential in character, housing trash receptacles and not a commercial dumpster. T. 103; *See* Exhibit 66. The Hearing Examiner finds that this standard is satisfied.

Shading of paved areas. Trees must be planted and maintained throughout the parking facility to ensure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.

See Table 4 above. Staff advises that the Zoning Ordinance requires a minimum of 30% of the paved area be shaded. The Applicant proposes exceeding this requirement with 63% shading. Exhibit 58, p. 32; *See* Exhibit 63. The Hearing Examiner finds that this standard is satisfied.

Compliance Requirement. For any cumulative enlargement of a surface parking facility that is greater than 50% of the total parking area approved before May 6, 2002, the entire off-street parking facility must be brought into conformance with this Section. An existing surface parking facility included as part of a special exception granted before May 6, 2001 is a conforming use.

This provision is not applicable to the proposed special exception use as the parking area associated with this special exception is existing and the minor modifications proposed will not enlarge the existing surface parking area.

(c) Minimum frontage. "In the following special exceptions, the Board may waive the requirements for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21: (1) Rifle, pistol and skeet-shooting range, outdoor..."

This provision is not applicable to the proposed special exception use.

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

A simplified Natural Resources Inventory (NRI/FSD) and Forest Conservation Exemption was approved by Planning Staff on May 1, 2020 under plan number 42020192E. Exhibit 58, p. 32; *See* Exhibit 23 (Natural Resources Inventory); *See also* Exhibit 18 (Forest Conservation Exemption Request and Tree Save Plan). With this exemption approval, the application was found to be exempt the requirement to submit a Forest Conservation Plan under Forest Conservation

Law, Section 22A-5(q)(2), for modification to an existing special exception approved before July 1, 1991. Exhibit 58, p. 32. As stated previously, Special Exceptions CBA-916 and S-615 were approved for this property in 1960 and no prior Forest Conservation Plan exists for the Property. The Hearing Examiner finds that this standard is satisfied.

(e) Water quality plan.

Staff advises that this provision is not applicable to this application, as the property is not in a Special Protection Area (SPA). Exhibit 58, p. 32.

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

Two signs are proposed along the property's frontages: one non-illuminated entrance sign on Old Georgetown Road will be 5 feet or less in height, and one non-illuminated freestanding sign on West Cedar Lane will be 3 feet or less in height, for a total square footage not to exceed 14 square feet. T. 103-104; *See* Exhibit 66. Staff advises that these signs are "proposed in accordance with the standards set forth in Section 59-F-4.2.(a), and are consistent with the expanded special exception use." Exhibit 58, p. 15. Staff opines that the signs qualify as "Place of Assembly Location Signs" pursuant to Section 59-F-4.2(a)(3)(B) of the Zoning Ordinance in effect on October 29, 2014. *Id.* Staff further advises that each sign will be located a minimum of 5 feet away from the right-of-way dedication line. *Id.* *See* Figure 12 on page 12 of this Report for an illustration of the proposed signs. The Hearing Examiner finds that this standard is satisfied.

Lastly, Staff notes that if the Board of Appeals determines that the proposed signage does not qualify as Place of Assembly location signs, but rather is subject to Section 59-F-4.2(a)(1) of the Prior Zoning Ordinance regarding freestanding signs in residential zones, the Applicant will seek variances from the applicable sign restrictions. Exhibit 58, p. 33.

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

Staff found that the expanded building will remain compatible with the adjacent residential zones. Exhibit 58, p. 34. "The proposed building addition will wrap the existing stone structure on the north, east, and south sides, allowing the existing stone structure to remain prominent as the central piece of the composition. This approach allows the location of the existing main entrance to be maintained at the center of the Site." *Id.* The resulting structure totaling 9,264 square feet will continue to have a residential appearance by retaining the existing residential façade as "exterior building materials are consistent with residential construction, including fiber cement siding, hardwood trim details, standing seam metal porch roofs, residential-type windows, and asphalt shingle roofing." *Id.* Staff found that "the design, scale and bulk of the proposed building expansion will be compatible with the surrounding neighborhood by maintaining the Site's residential character through the use of exterior building materials consistent with residential construction, including fiber cement siding, hardwood trim details, standing seam metal porch roofs, residential-type windows, and asphalt shingle roofing." Exhibit 58, p. 27.

The Applicant stated that "Following the modifications, the structure will retain a residential appearance. The existing residential façade facing Old Georgetown Road will be retained. The materials and articulation used for the proposed addition to the existing structure will also contribute to the residential appearance of the structure." Exhibit 68, p. 5. Mr. Konapelsky testified that the signage, site lighting, and architectural plans are "very much in keeping with the function of the existing building and their design, the scale and the bulk of the structure is very compatible with the neighborhood and the existing building and the site." T. 106. Staff further

noted that HVAC condensing units will be located on a flat roof area to the rear of the building with noise mitigated by the surrounding gable roof areas and their significant distance from neighboring lots. Exhibit 58, p.34. Staff concluded that the “architectural design of the Project is residential in nature and will contribute to the residential character of the Old Georgetown Road Corridor, as described in the 1990 Bethesda-Chevy Chase Master Plan.” *Id.* Based on this record and as conditioned below, the Hearing Examiner finds that this standard is satisfied.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety: (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass; (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Staff notes that the application includes new LED parking lot lights, lighting at the rear patio, exterior wall mounted sconces, and walkway path lighting placed to provide safe egress paths from the building and a safe parking lot with light coverages that meet applicable County site lighting requirements. Exhibit 58, p. 34. Applicant's Photometric Plan, marked as Exhibit 42, and shown above on page 17 on this Report, indicates that lighting levels will not exceed 0.1 footcandles at all property lines in accordance with this requirement. Based on this record and as conditioned below, the Hearing Examiner finds that this standard is satisfied.

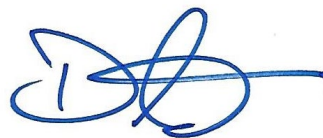
IV. Conclusion and Recommendation

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the requested modification to CBA 916-A, which requests the renovation and expansion of a special exception (Private Club) held by The Foundation for Advanced Education in the Sciences (FAES) located at 9101 Old Georgetown Road, Bethesda, Maryland, in the R-60 Zone, be **granted with the following conditions:**

1. The Private Club and Service Organization special exception use is granted to the Foundation for Advanced Education in the Sciences, Inc. ("FAES" or the "Applicant") only and does not run with the land.
2. The Private Club and Service Organization is limited to the following:
 - a. a maximum total gross floor area of 9,264 square feet;
 - b. a maximum capacity of 145 participants and staff on-site at any one time;
 - c. the sale of alcohol to members and guests is permitted (subject to liquor license); and
 - d. rental of the facilities for private parties, social events, and exhibitions shall only be available to FAES members or guests who are sponsored by FAES members.
3. Hours of operation for the Subject Special Exception Amendment use will be limited as follows:
 - a. Catering/ special event services shall be conducted within the established hours of operation and in a manner that respects the surrounding residential community.
 - b. Sunday through Thursday
 - i. Indoor activities must conclude by 11:00 PM, noting that typical operations are from 9:00 AM to 9:00 PM;
 - ii. Outdoor activities and alcoholic beverage service must conclude by 9:00 PM;
 - iii. Premises and parking lot vacated by 11:00 PM;
 - c. Weekend Operations (Friday and Saturday):
 - i. Indoor activities must conclude by 12:00 AM/ midnight;
 - ii. Outdoor activities and alcoholic beverage service must be stopped by 11:00 PM; and
 - iii. Premises and parking lot vacated by 1:00 AM;
4. Traffic flow into the Site will be conducted to minimize vehicle queuing on the adjacent public street(s).
5. Parking:
 - a. The Applicant must provide at least 24 vehicle parking spaces and a maximum of 51 vehicle parking spaces on-site, including 2 motorcycle parking spaces.
 - b. The Applicant must provide 2 short-term bicycle parking spaces on-site in compliance with the Montgomery County Bicycle Parking Design Guidelines.
 - c. Members and guests shall not park on nearby public streets.
 - d. Prior to the issuance of any use and occupancy certificate for the proposed building addition on the Site, the Applicant must discontinue the practice of reserving 25 vehicular parking spaces for NIH employees by extinguishing the shared parking agreement.
6. Landscaping and Screening
Site landscaping and perimeter screening must be provided in accordance with the Special Exception Landscape Plan.
7. Lighting
 - a. All on-site exterior area lighting must be in accordance with the latest IESNA outdoor lighting recommendations (Model Lighting Ordinance-MLO: June 15, 2011, or as superseded).
 - b. All on-site down-lights must have full cut-off or BUG-equivalent fixtures.

- c. Deflectors will be installed on all fixtures to prevent excess illumination and glare.
 - d. Illumination levels generated from on-site lighting must not exceed 0.1 footcandles (fc) at the lot line, excluding areas impacted by street lights within the right-of-way.
8. The Applicant must comply with all tree-protection and tree-save measures shown on the approved Tree Save Plan. Tree-save measures not specified on the Tree Save Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
9. Within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff, the Applicant must install the required mitigation plantings consisting of native canopy trees, with a minimum size of 3 caliper inches as shown on the Tree Save Plan. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
- a. All trees credited towards mitigation requirements must be at least five (5) feet away from any structures, stormwater management facilities, PIEs, PUEs, ROWs, utility lines, and/or their associated easements.
 - b. The Applicant must submit financial surety, in a form approved by the M-NCPPC Office of General Counsel, to the Montgomery County Planning Department for the mitigation plantings required per the approved Tree Save Plan. The financial surety must be provided for a period of 5 years which may be reduced to 3 years upon request by the Applicant and approval by M-NCPPC Forest Conservation Inspector.
10. Prior to any demolition, clearing, grading or construction for this development Application, the Applicant must submit a Maintenance and Management Agreement ("MMA") in a form approved by the M-NCPPC Office of General Counsel. The MMA is required for all forest planting areas and landscape plantings credited toward meeting the requirements of the Tree Save Plan. The time period for the MMA will adhere to the requirements in place when the MMA is approved.
11. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
12. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Board of Appeals on the Subject Application.

Issued this 23rd day of June 2021.



Derek J. Baumgardner
Hearing Examiner