

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

**IN THE MATTER OF**  
**JAYANTHI BABU**  
**(D/B/A LOVEDALE MONTESSORI)**  
Applicant

Witnesses for the applicant:

Jayanthi Babu  
Geoff Ciniero  
Joe Caloggero  
Dennis DeLizzio

For the Application:  
Sean Hughes, Esq.  
Attorney for the Applicant

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OZAH Case No. 21-05

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Before: Derek J. Baumgardner, Hearing Examiner

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**HEARING EXAMINER'S REPORT AND DECISION**

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## **I. STATEMENT OF THE CASE**

On December 22, 2020, Jayanthi Babyu d/b/a Lovedale Montessori (hereinafter “Applicant” or “Ms. Babu”) filed an application seeking a conditional use to establish a Day Care Center (over 30 persons) under Section 59-3.4.4.F of the Zoning Ordinance.<sup>1</sup> Exhibit 1. The subject site is located at 23126 Frederick Road, Clarksburg, Maryland 20871 (Tax Account Number 02-00028982), and consists of 0.685 acres. The property is zoned R-200 and is subject to the 1994 Clarksburg Master Plan.

On January 26, 2021, the Applicant filed a request to amend the application by updating the previously submitted conditional use site plan, traffic report, DPS Fire Access and Water Plan memo, and further clarifying remarks. Exhibit 25. OZAH issued a Notice of Motion to Amend on February 16, 2020, and no objections were received. Exhibit 28. On March 26, 2021, Staff of the Montgomery County Planning Department (“Staff”) issued their report (Exhibit 37(a)) recommending approval of the application subject to seven (7) conditions:

1. The proposed Day Care Center (Over 30 Persons) use is limited to a 42-child day care center and 5 employees.
2. No more than 4 employees and 1 administrator should be on site at any one time.
3. Prior to the public hearing with the Hearing Examiner, illustrate on the Conditional Use Plan the location of 1 long-term, secure and weather protected bike parking space.
4. The hours of operation are 7:30 am to 6:30 pm, Monday through Friday.
5. Special events and periodic staff training activities associated with the Day Care Center (Over 30 Persons) use must not exceed six events per calendar year and such events may not extend beyond 9:00 p.m.
6. Outdoor play is limited to 8 am to 6:30 p.m.
7. Landscaping must be in accordance with the Landscape Plan submitted on February 11, 2021.

In its report dated April 12, 2021, the Planning Board accepted Staff's recommendations and recommended approval of the application with conditions. Exhibit 37(b).

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<sup>1</sup> All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, as amended.

On April 19, 2021, the public hearing on this conditional use application was conducted by Hearing Examiner Derek J. Baumgardner. The following witnesses testified on behalf or in support of the application: Jayanthi Babu (Applicant); Geoff Ciniero (civil engineer); Joe Caloggero (traffic engineer/transportation planner); Dennis DeLizzio (architect). There was no testimony in opposition to this application and the Applicant submitted several letters from community members in support of the application (Exhibit 8).

The Hearing Examiner held the record open for 10 business days after the conclusion of the hearing, or until May 29, 2021, for inclusion of the transcribed record in this case. The Applicant requested three modifications to the application at the hearing detailed further in section II. F. below. These requests were forwarded to Planning Staff for comment. Exhibit 38. Planning Staff did not object to the requested modifications. *Id.*

For the reasons that follow, the Hearing Examiner finds that the application meets all Zoning Ordinance requirements for approval of a conditional use for a Day Care Center (over 30 persons), subject to the conditions of approval listed in Part IV of this Report.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The subject property is located on Frederick Road at the southeast corner of the intersection of Frederick Road and Woodport Road, identified as Lot PS, Hammer Hill Subdivision, in the R-200 Zone. Exhibit 37(a), p. 3. The property is generally flat, rectangular in shape, and is improved with a 2,134 square-foot single family detached dwelling. *Id.* It has approximately 295 feet of frontage along Woodport Road and 100 feet of frontage along Frederick Road. *Id.* Figure 1 from the Staff Report (Exhibit 37(a), p. 3) shows an aerial image with the property's general location below:



**Figure 1: Aerial photo of the Site (outlined in yellow)**

## **B. Surrounding Neighborhood**



*West: Garnkirk Farms and Gateway Commons Boundaries*

[illegible]

### Figure 2: Staff Defined Neighborhood

Staff notes that the character of the neighborhood is generally single-family detached residential with increased density in the TOR overlay areas to the south and west. Exhibit 37(a), p. 4. The subject property is situated in the center of the neighborhood all within the R-200 zone. *Id.* Staff advises that the only other special exception in the surrounding neighborhood is located south of the subject property at 23023 Frederick Road and was approved as a horticultural nursery and commercial greenhouse on December 23, 1976, and remains active under a new conditional use holder as of April 10, 2019. *Id.* at 6. The Applicant agrees with Staff's delineation of the neighborhood and its characterization as single-family residential. Exhibit 7, p. 5.

Conclusion: Based on this record, the Hearing Examiner accepts Staff's and the Applicant's agreed to delineation of the surrounding neighborhood for the purposes of evaluating this proposed conditional use. The Hearing Examiner further finds that the surrounding neighborhood includes low, moderate, and high density areas all within the R-200 Zone that is small to medium lot single-family detached residential in character.

### **C. Proposed Use**

The Applicant seeks approval to use the premises as Day Care Center (over 30 persons) under Section 59-3.4.4.F of the Zoning Ordinance. Exhibit 1. The Applicant, Ms. Babu, testified regarding her background, education, and professional experience in the field of early childhood education. T. 19. Ms. Babu described the proposed use as a Montessori early childhood education center with up to 42 children and 5 staff including one administrator. T. 20. Hours of operation are between 7:30am and 6:00pm which includes before and after-care services for students. *Id.* Students served by this conditional use will be children ages 3 to prekindergarten. Exhibit 7, p. 4. The Applicant's original application proposed utilizing the existing 2,134 square foot building with minimal alterations to the existing building or site. Exhibit 7, p. 4. The Applicant modified

her application at the hearing to also request a small rear addition to accommodate the addition of an interior rear stairwell. T. 14, 37, 47, 66; *See* Exhibit 32. The remaining alterations to the property include a play area for the children in the rear of the property, which is fenced and heavily screened by existing landscaping, a deck to the rear of the structure, and modifications to the existing parking area to accommodate access onto the property from Woodport Road and right turn exit only onto Frederick Road. Exhibit 7, p. 4; Exhibit 37(a), p. 8-9. The Applicant also requested a modification or clarification on proposed condition numbers 4-5 offered by Planning Staff, permitting up to six special events per year, for these special events to be permitted during weekend hours T. 28-29. The Applicant also confirmed compliance with Planning Staff's condition number 3, requiring the illustration on the Applicant's Conditional Use Plan the location of one long-term, secure and weather protected bike parking space. *See* Exhibit 36(a).

### **1. Conditional Use Site Plan**

The revised conditional use site plan illustrates the lot, structure, access, and footprint of the existing single-family dwelling with rear addition and parking area. *See* Exhibit 36(a) [Appendix A].

### **2. Site Landscaping, Screening, Lighting, and Signage**

The Applicant's revised Landscape Plan shows substantial landscaping on the eastern, wester, and southern portions of the property. Exhibit 26(a) and (b). Staff advises this will help to screen the outdoor play area from neighboring properties and Woodside Road. Exhibit 37(a), p. 8. Further landscaping and screening will be added to the front yard to screen the parking area from neighboring properties and Frederick Road. *See* Exhibit 26(a) [Appendix B].



The Applicant's lighting plan shows illumination of the site entrance and exit, lighting in the employee parking area, lighting near the front of the structure, and small wall-mounted light fixture on the rear of the building. *See* Exhibit 13; *Also see* Exhibit 37(a), p. 18. The Lighting Plan further shows measured lighting intensity across the area adjacent to the existing structure in foot-candles, the locations of lighting fixtures, and the manufacturer's specifications on the proposed lighting fixtures indicating that the lighting will not cause glare on adjoining properties or exceed the 0.1 foot-candle standard at the side and rear property lines. Exhibit 13. Planning Staff concluded that the proposed lighting will not have a negative impact on neighboring properties and is adequate and safe for vehicular and pedestrian movement and does not unreasonably spill onto adjacent properties. Exhibit 37(a), p. 18.

The property does not currently have any signage and no signage is proposed under this application. Exhibit 37(a), p. 19. The Applicant's engineer confirmed at the hearing that no signage was proposed at this time. T. 41.

### **3. Operations**

The proposed conditional use of a Daycare Center (over 30 persons) will operate throughout the existing single-family detached home of approximately 2,134 sq. ft. Exhibit 7, p. 4. The Applicant, Ms. Babu, stated that "The educational focus for Lovedale Montessori is derived from the Montessori Method of instruction." *Id.* at 2. Ms. Babu further explains that, "Each Primary classroom will be equipped with materials in the four curricular areas: Practical Life, Language, Sensorial and Mathematics. It will also include Cultural and Creative Activities within their folds as well. The child spends three years in the same classroom, navigating through the

various areas, and developing a strong personal foundation of knowledge and confidence, necessary for a lifetime love of learning.” *Id.*

Hours of operation will be 7:30am to 6:30pm, Monday through Friday, with before-care and after-care services provided, and will include up to six (6) special events throughout the year extending until 9:00pm when necessary, which may include weekends. Exhibit 7, p. 4; T. 29. The Applicant proposes a maximum of 42 students between the ages of 3 to pre-kindergarten age, with four (4) staff persons and one (1) administrator on-site at any given time. *Exhibit 7, p. 3-4.* The rear of the property will be used as an outdoor play area for students and will remain fully fenced at all times. *Id.* Ms. Babu concluded her testimony by stating, “I just want to say that this is a passion. It's taken me two and a half years to find the right property, and I'm looking forward to opening it.” T. 30.

#### Parking

Under Article 59-6, three (3) vehicle parking spaces per 1,000 square feet of building are required for Daycare uses. For the proposed 2,134 square foot structure, 6 vehicle spaces would be required under this application. Seven (7) vehicle parking spaces are illustrated on Applicant's conditional use site plan satisfying this requirement. *See Exhibit 36(a).* Staff concludes that the application meets the applicable requirements under Article 59-6 for the proposed use. Exhibit 37(a), p. 13. Table 4 below shows the tabulation for required and provided parking (including bicycle parking).

<b>Section 59.6.2.4 Parking</b>	Required	Provided
<b>Vehicle spaces 3 spaced /1,000 s.f. (Day Care)</b>	6 Spaces	7 Spaces
Bicycle parking 1/5,000SF, 85% long term	1 long term space	1 long term space, as conditioned

**Table 4: Parking Requirements- Division 59.6.2.4**

### Local Area Transportation Review (LATR)

Staff notes that the proposed 42-student Day Care Center (Over 30 Persons) use will generate an estimated 43 AM and 43 PM peak hour person trips using the 2017 LATR guidelines, referencing the Applicant's Traffic Statement (Exhibit 20). Exhibit 37(a), p. 12. Staff advises that the total number of trips falls below the threshold to warrant a full transportation study. *Id.* Staff concluded that "[t]he existing road network is adequate to serve the traffic generated by the proposed use. The internal pedestrian circulation and walkways will provide adequate movement of pedestrian and bicycle traffic. The proposed use, as conditioned, is consistent with the 1994 Clarksburg Area Master Plan, the 2018 Master Plan of Highways and Transitways, and the 2018 Bicycle Master Plan." Exhibit 37(a), p. 13.

### **D. Environmental Issues**

Staff advises that this site is located within the Clarksburg Special Protection Area (SPA) and the Little Seneca Creek watershed (use Class IV-P watershed). Exhibit 37(a), p. 19. Staff notes that there are no streams, floodplains, wetlands, or environmental buffers on or affecting the site but that it is subject to approval of a Preliminary Water Quality Plan (WQP) and a Sediment Control Concept Plan. *Id.* Mr. Ciniero confirmed that there are no sensitive environmental features like streams, floodplains, wetlands, or environmental buffers on this site. T. 41. Staff recommends approval of the PWQP, with conditions. Exhibit 37(e). DPS conceptually approved the Applicant's Preliminary Water Quality Plan, with conditions, on January 15, 2021. Exhibit 25(e). Applicant's Forest Conservation Plan Exemption was granted by Planning on November 10, 2020. Exhibit 15.

The Application includes a Tree Save Plan which will be implemented through the permit process to preserve critical root structures. T. 42; Exhibit 5 37(a), p. 20; *See* Exhibit 6.

### **E. Community Response**

The record contains six letters from community members in support of the proposed conditional use. Exhibits 8(a) – 8(f). There was no community member testimony offered at the hearing.

### **F. Modifications**

The Applicant requested three modifications or clarifications from the underlying application at the hearing: (1) The addition of one bicycle space to site plan; (2) A request to allow special events to occur during extended evening and weekend hours; and (3) A proposed rear addition to the existing structure to hold an interior stairwell and provide additional space for the proposed daycare. The Hearing Examiner confirms that the revised site plan (Exhibit 36(a)) illustrates the added bicycle parking space as requested by Planning Staff; the clarification as to extended or weekend hours for special events is addressed in Section IV below (in required conditions); and the rear addition is incorporated into the analysis of this conditional use, as the Hearing Examiner finds it to be a minor amendment to the underlying application.

## **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 to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a residential care facility for more than 16 persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. “The appropriate standard to be used in determining

whether a requested [conditional use] 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 [conditional use].” *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with 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 approval, and the Hearing Examiner’s findings for each standard, are set forth below.<sup>2</sup> The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

***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;***

Staff advises that there are no prior special exceptions, conditional uses, or previous approvals for the subject property. Exhibit 37(a), p. 20.

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<sup>2</sup> 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. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: The Hearing Examiner concludes that no previous approvals are applicable to this property and therefore this finding is satisfied.

***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;***

This subsection requires an analysis of the development standards of the R-200 Zone contained in Article 59-4; the use standards for Day Care Facilities 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).

Conclusion: Based on the analysis contained in those discussions below, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

### **1. Substantial Conformance with the Master Plan**

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

The subject property is within the area covered by the 1994 Clarksburg Master Plan, Hyattstown Special Study Area, and Transit Corridor District. Exhibit 37(a), p. 9. Staff highlights that two objectives of the Master Plan for the Transit Corridor District are to "continue the present residential character along MD 355" and to "balance the need for increased carrying capacity along portions of MD 355 with the desire to retain a residential character along MD 355." Exhibit 37(a), p. 9; *See Plan*, p. 54. Staff further opines that these objectives stress the importance of maintaining the "pleasant residential character" created by the "traditional patterns found elsewhere in the 'Up-County': single-family detached lots fronting the road." *Id.*; *See Plan*, p. 54. The Applicant states that "the plan is silent with regards to this site, except to recommend a medium density of 7-9 dwelling units" and avers that "[w]hile the Master Plan does not specifically recommend service



uses along the transit corridor, it does recommend increase of housing, employment and retail along that corridor. Service uses are a reasonable addition to that list of uses for a higher density transit area.” Exhibit 7(a), p. 6.

Staff concludes that the proposed daycare is to be located within an existing detached single-family house that matches the residential character of the surrounding area as contemplated by the Master Plan. Exhibit 37(a), p. 9. While the parking area located in the front yard is not the traditional pattern of development for single-family detached houses along this segment of MD 355, the parking area is an existing condition of the lot and has been in place for many years. *Id.* With proper screening, Staff concluded that the front yard parking area was acceptable “given the constraints of attempting to add a new parking lot behind the building.” *Id.*

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed use substantially conforms to the Master Plan. There is a minor rear addition proposed to the existing structure but the structure will maintain its residential character. The rear addition proposed will likewise match the existing structure and will not give a commercial or otherwise nonresidential appearance. The Hearing Examiner further finds that the facility is compatible with surrounding residential uses especially as the property is located along a major roadway, as set forth in detail in Part III.A.4 of this Report.

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.***

Conformity to the Master Plan is discussed above. The surrounding community includes low, moderate, and high density areas all within the R-200 Zone that is small to medium lot single-family detached residential in character. Staff advises that the proposed Day Care Center, as conditioned, will be in harmony with the general character of the neighborhood as the site plan

indicates landscaping, lighting, and adequate setbacks to maintain the residential nature of the existing building. Exhibit 37(a), p. 22. Mr. DeLizzio, the project's architect, testified that the changes to the existing building are minor and will maintain the residential character of the building including the rear addition "with even the proposed ramp and deck [will be] built with typical residential materials like wood structure and vinyl railings." T. 64.

Conclusion: Based on this record, the Hearing Examiner finds that the proposed conditional use will not alter the character of the neighborhood in a manner inconsistent with the Master Plan. The specific operation of this conditional use will not interfere with the orderly use, development, and improvement of surrounding properties and will remain harmonious to this mixed density single-family detached residential neighborhood providing a child care service for residents that is both walkable and proximate to a main roadway. Further, the minor improvements to the existing structure will maintain the residential character of this building in this predominantly residential 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;***

Staff advises that only one other property in the delineated surrounding neighborhood holds a special exception: 23023 Frederick Road was approved as a horticultural nursery and commercial greenhouse in 1976. Exhibit 37(a), p. 5. Staff concludes that approval of this application will not increase the number, intensity, or scope of conditional uses sufficiently to impact the area adversely or alter the predominantly residential nature of the area.

**Conclusion:** Based on the evidence in this record, the proposed use of the premises for a Day Care Center will not adversely affect the area or alter the predominantly residential nature of the area. The existing structure with improvements as well as the parking, lighting, and landscaping remain compatible with the surrounding residences, as detailed in Part III.A.4 of this Report. The Day Care Center, as conditioned to limit its size and scale, will serve the residential neighborhood and maintain the residential character of the neighborhood consistent with the Master Plan.

## **2. Adequate Public Services and Facilities**

***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***

Staff advises that the subject property is a platted lot that is currently served by public water and sewer service. Exhibit 37(a), p. 23. Mr. Ciniero confirmed that the property is served by public water and sewer, has fire and police stations nearby, and is served by a fire hydrant within 400 feet. T. 45. Applicant's Fire Access Plan was approved by DPS on December 5, 2020. Exhibit 14. The Planning Board approved Applicant's SPA Water Quality Plan on January 15, 2021, which

proposes meeting stormwater management requirements by the installation of micro-bioretenion ponds and dry wells. Exhibit 37(e). The site does not currently enjoy any stormwater management which will be added as a result of this development. T. 49.

Staff concludes that Local Area Transportation Review (LATR) for the subject property is satisfied by the Applicant's Traffic Statement. Exhibit 37(a), p. 23-24; *See* Exhibit 20. Both Staff and the Applicant's traffic engineer, Mr. Caloggero, agree that a full traffic study is not required under this application as the trips generated do not rise above the threshold level of 50 under the 2017 LATR guidelines. *Id.*; T. 55. Staff concluded that "the proposed access to the site [is] adequate to serve the traffic generated by the development. The internal circulation and walkways, with the recommended conditions, will provide adequate movement of pedestrian traffic." *Id.* at 4. Mr. Caloggero testified that the surrounding transportation network would not be negatively impacted in any material way by this proposed use. T. 56. Mr. Caloggero also testified that extensive queueing would be unlikely on either Woodport or Frederick Road. T. 60. Lastly, the Applicant states that the property "will have minimal impact on public services and facilities and will be adequately served by them." Exhibit 7, p. 9.

Conclusion: Based on this record, the Hearing Examiner finds that public facilities and services are adequate to support the proposed Day Care Center. Fire protection, water, sanitary sewer, public roads, and storm drainage are adequately addressed, present no impact, or are not triggered by the proposed conditional use. As presented by the Applicant, the traffic generated will be below the threshold level requiring a full traffic study and off-street parking spaces are provided to satisfy required regulations. Moreover, access to the site from Woodport Road and a right-only-exit from Frederick Road will increase circulation and public safety.

### **3. No Undue Harm from Non-Inherent Adverse Effects**

***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 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*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. 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.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Day Care Center (Over 30 Persons): (1) buildings and related outdoor child care equipment (2) parking areas, (3) lighting, (4) noise generated by children (5) drop-off and pick-up areas, (6) outdoor play areas (7) long hours of operation (8) employees of the Day Care Center (Over 30 Persons) facility (9) and vehicular trips to and from the site. Exhibit 37(a), p. 24. Under this application, Staff opines that the scale of the proposed Day Care Center

building, the proposed access point, the internal vehicular circulation system and the onsite parking area are operational characteristics typically associated with a Day Care Center (Over 30 Persons) operation. *Id.* The Hearing Examiner notes that noise, lighting, the proposed outdoor play space in the rear yard, staffing, and vehicular trips into and out of the site are of an ordinary scope and scale associated with a Day Care Center. The Applicant states that the proposed use does not have any non-inherent adverse effects associated with this particular site. Exhibit 7, p. 10. The Applicant further states that inherent aspects of a day care facility like traffic and noise are mitigated by the site's location along a major roadway instead of being located on a tertiary road within a protected neighborhood, and that one-way access to the site from Woodport Road and one-way egress onto Frederick Road will facilitate safe and efficient traffic flow. *Id.* Staff concluded that the proposal is consistent with the residential character of the neighborhood and will not have any non-inherent effects at the site. *Id.* The Hearing Examiner agrees.

Conclusion: Based on this record, the Hearing Examiner finds that there are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use.

#### **4. Compatibility with the Neighborhood**

***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.***

The Applicant proposes a minor rear addition of approximately 135 sq. ft. to the existing single-family residential structure to provide a deck, house an internal fire stair, and to "allow a little more functionality inside for the children in the daycare." T. 14. Mr. DeLizzio testified that the fire stair is necessary as the building will be occupied for an educational use, necessitating the rear addition, but decreasing the size of the planned rear deck. T. 66. Planning Staff had no



objection to the proposed rear addition as the addition remained “consistent with prior findings.” Exhibit 38. The rear addition will add 135 sq. ft. of impervious surface to the overall project, changing the percentage of impervious surface on the site from 18.7 to 19.11. *Id.* Staff notes that the R-200 Zone, in general, has a typical impervious level of 19 percent. Exhibit 37(a), p. 9. Mr. DeLizzio testified that there would be no changes to the residential character of the building and that “it will continue to conform to the residential character of the surrounding neighborhood.” T. 63-64.

Conclusion: Based on this record, the Hearing Examiner finds that while no full structures are being constructed or reconstructed under this application, the Applicant does propose a minor rear addition to the existing structure. The Hearing Examiner finds that the proposed rear addition is reasonable in size, scope, and scale, and is compatible with the character of the residential neighborhood as it will match the building’s residential character and will not be visible from Frederick Road and likely not visible from Woodport Road.

***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: Based on this record, the Hearing Examiner finds that the application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

## **B. Development Standards of the R-200 Zone**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59-4 of the Zoning Ordinance. *See* Appendix C (Table 1), for a summary of the development standards as they pertain

to this application in the R-200 Zone. Staff concluded that all development standards have been satisfied under this application. Exhibit 37(a). p. 11. Mr. Ciniero, Applicant's civil engineer, also testified that all development standards for the R-200 Zoning were satisfied under this application. T. 39; *See* Exhibit 36(a).

Conclusion: Based on this evidence, and having no evidence to the contrary, the Hearing Examiner concludes that the use as proposed meets all development standards of the R-200 Zone.

### **C. Use Standards for Day Care Facility: Day Care Center (over 30 persons)**

The specific use standards for approval of a Day Care Center (over 30 persons) are set out in Section 59.3.4.4.f. of the Zoning Ordinance:

#### **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.**

#### **2. Use Standards**

**a. [not applicable to this application]**

**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 59.7.3.1, 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.**
- ii. An adequate area for the discharge and pick-up of children is provided.**
- iii. The Hearing Examiner may limit the number of children outside at any one time.**
- 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.**
  - a. [not applicable to this application]**
  - b. [not applicable to this application]**
  - c. [not applicable to this application]**
- v. [not applicable to this application]**
- vi. [not applicable to this application]**

The proposed Montessori School will operate as a Day Care Center for children ages 3 through pre-kindergarten. T. 23. Staff noted that the existing parking is located in the front of the property and the noted that a key environmental champion tree is located in the side rear yard of the property and should be preserved, thereby limiting where parking access might be added. Exhibit 37(a), p. 21. Therefore, Staff concluded that the proposed parking area provides for “appropriate and safe circulation and parking that will remain compatible with the surrounding properties and thus not be detrimental to the neighborhood.” *Id.* Staff advises that the proposed schedule of drop-off and pick-up times for children, staff assistance at drop-off and pick-up, projected walking families, families with multiple students, carpooling, and the utilization of parking spaces when necessary is adequate for the discharge and pick-up of children at the property. Exhibit 37(a), p. 21. The Applicant, Ms. Babu, testified regarding the schedule of drop-off and pick-up times as 15-minute intervals to facilitate the efficient and safe drop-off and pick-up of children and to alleviate any traffic congestion. T. 23; *See* Exhibit 7(b).

Ms. Babu also testified that she “expected families to come walking because we are primarily inside a community. And we are expecting children to be carpooled as well by families which have multiple children or with neighbors. And we have enough parking space, and there is a flow of traffic coming in and out of the property. I think all of those will help with the area for discharge and pickup.” T. 24. Staff advises that the play area is setback a significant distance away from other homes for this area and has extensive screening and some elevation change to mitigate sound, and does not recommend limiting the size or timing of outdoor activities at the school. Exhibit 37(a), p. 22. Staff also notes that per the calculation under Section 59.3.4.4.f.2.b.iv, the property will contain 678 Square feet of area for each of the proposed 42 children, therefore, satisfying the 500 sq. ft. requirement.

Conclusion: Based upon this record, the Hearing Examiner finds that the use standards for Day Care Facilities have been met in full. The proposed Montessori School meets the definition of a Day Care Center (over 30 persons) under the Ordinance, will be required to be fully licensed childcare facility, and is located in a single-family home and not in a townhouse or duplex. The Hearing Examiner finds the proposed parking beyond the front building line to be safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties as the redesigned parking area will occupy the same area as the previous parking area with direct access to Frederick Road. The Hearing Examiner finds the area and schedule to be used for drop-off and pick-up of children to be adequate and safe for children, pedestrians, traffic, and the general public. Because of the size of the lot and its location and rear yard screening, the Hearing Examiner does not find it necessary to limit the number of children permitted outside at any given time under proper supervision. Lastly, the Hearing Examiner agrees with Staff's calculation and conclusion that the 500 ft. rule under Section 59.3.4.4.f.2.b.iv is satisfied at 42 children.

#### **D. General Development Standards (Article 59.6)**

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59-7.3.1.E.1.b. of the new Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only "to the extent the Hearing Examiner finds necessary to ensure compatibility." The Hearing Examiner will review the following aspects pertinent to this conditional use review: site access, parking, queueing, and loading, landscaping, lighting, and screening.

##### **1. Site Access**

Staff notes that "Vehicular circulation will be one-way from the entrance, immediately connecting to a small parking lot in front of the building, with a right-turn only exit point provided

onto Frederick Road. A lead-in walkway will run parallel to the driveway and connect to the existing sidewalk on Woodport Road.” Exhibit 37(a), p. 11. Mr. Callogero confirmed this traffic circulation pattern during his testimony. T. 62. The Applicant states that “access to the site from an adjacent public street, which will provide safe and convenient bicycle and pedestrian circulation.” Exhibit 7, p. 14. The Hearing Examiner finds that site access for this conditional use satisfies General Development Standard requirements.

## **2. Parking, Queueing, and Loading**

Under Section 59.6.2.4, six (6) off-street vehicle parking spaces are required under this application. Exhibit 37(a), p. 13. The Applicant is providing seven (7) spaces for this use as illustrated under the submitted Conditional Use Site Plan. Exhibit 36(a). Staff concludes that “as conditioned, the application provides adequate vehicle and bike parking for the proposed use” and also complies with the proximity and access requirements for parking areas under Section 6.2.5.B and Section 6.2.5.C. Exhibit 37(a), p. 13. Staff also advised that the Applicant performed a signal warrant analysis of the currently unsignalized intersection of Woodport Road and Frederick Road based on future assumed traffic volumes, but Mr. Callogero found that signalization was not required to ensure traffic and pedestrian safety. Exhibit 37(a), p. 12; T. 56. Mr. Callogero also testified that extensive queueing would be unlikely on either Woodport or Frederick Road. T. 60. The Hearing Examiner finds that parking and queueing for this conditional use satisfies General Development Standard requirements.

## **3. Landscaping**

Under Section 6.2.9.B, Parking Lot Requirements for Conditional Uses Requiring 5 to 9 Spaces, the applicant must satisfy the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide; contains a hedge, fence, or wall a minimum of 4 feet

high; and has a minimum of 1 understory or evergreen tree planted every 30 feet on center. Staff advises that "The parking area is set back approximately 25-feet from the western property line, approximately 30-feet from the northern property line and 12-feet from the eastern property line." Exhibit 37(a), p. 14. The revised Landscape Plan shows a 5-foot wide landscape buffer 118 feet long between the parking stalls and western, northern and eastern property lines. *Id.*; *See* Exhibit 26(a) and (b). Staff notes that "The buffer contains 2 overstory and 4 understory trees, and a hedge at least 4-feet in height satisfying Section 6.2.9.B." *Id.* Staff further advises that the revised landscaping plan also satisfies the General Landscape Requirements specified under Section 59-6.4.3. Mr. Ciniero also testified that all landscaping requirements have been met under this application. T. 40. The Hearing Examiner finds that landscaping for this conditional use satisfies General Development Standard requirements.

#### **4. Screening**

Section 6.5.2.B specifies, in the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.

As the subject property is located in the R-200 Residential Detached Zone, Staff advises that the Applicant "must ensure adequate screening since there are abutting properties improved with residential uses to the east and south of the subject property." Exhibit 37(a), p. 15. Mr. Ciniero testified that all landscaping requirements have been met under this application. T. 40. Staff concludes that the screening proposed on Applicant's revised Landscape Plan meets the



requirements under this Section in the following manner:

*Along the eastern property line...The landscaping is placed between the lot line and the subject structure extending for the full length of the structure plus an additional 50% in length in each direction beyond the structure. The landscape planting area 92-feet long and 12-foot wide containing 2 canopy trees, 4 understory and evergreen trees, 8 large shrubs and 22 medium shrubs. Exhibit 37(a), p. 15.*

...

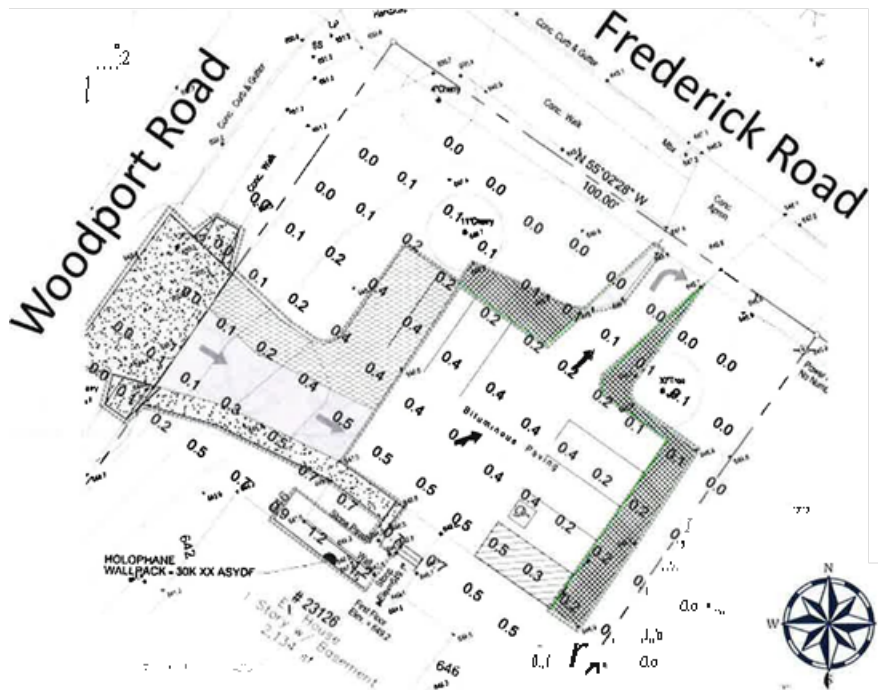
*Along the southern property line...There is a distance of 175-feet between the existing structure on the subject property and the residential structures to the south. There is existing screening along the southern property line along with an open grassed area. The existing screening along the south property line is comprised of 5 overstory canopy trees and 8 evergreen trees. The Applicant is also proposing to install 8 large shrubs and 15 medium shrubs along the property line. In addition to the existing and proposed vegetation, the Applicant will be installing one overstory tree, one understory tree, three large shrubs, thirteen medium shrubs, twenty-one small shrubs and groundcover grouped around a SWM micro bio-retention facility within this area adjacent to the southern property line. Exhibit 37(a), p. 17.*

The Hearing Examiner finds that screening for this conditional use satisfies General Development Standards requirements.

## **5. Lighting**

Pursuant to Section 59 6.4.4.E, outdoor lighting for Conditional Uses must be directed, shielded or screened to ensure that the illumination is 0.1 foot-candles 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. Staff concludes that the Applicant's Lighting Plan (Exhibit 13, Appendix ) "is adequate and safe for vehicular and pedestrian movement and does not unreasonably spill onto adjacent properties." Exhibit 37(a), p. 18. The proposed lighting provides illumination of the site entrance, visibility lighting in the employee parking area, and lighting near the front of the structure. Staff notes that a photometric study submitted as part of the Lighting Plan, shown below, shows measured lighting intensity across the area adjacent to the existing structure in foot-candles,

the locations of lighting fixtures, and the manufacturer's specifications on the proposed lighting fixtures. Staff concludes that the Photometric Plan shows that the lighting will not cause glare on adjoining properties and will not exceed the 0.1 foot-candle standard at the side and rear property lines and will have no negative impact on neighboring properties. *Id.* Mr. Ciniero testified that, “The Lighting Plan was designed to actually beef up the existing lighting, which was really just made for a porch light, so that it was adequate and safe for the vehicular and pedestrian movement. And it doesn't create any -- any unreasonable spillage over into the neighboring lots and/or the roadways.” T. 40.



### **Photometric Study (excerpt from Exhibit 13, Lighting Plan)**

The Hearing Examiner finds that the proposed lighting complies with this standard and does not adversely impact the surrounding neighborhood. There is no evidence in this record to suggest that the lighting will have a negative impact on neighboring properties as the property currently maintains standard residential lighting and there is no evidence to suggest that direct light

or light glare emanates onto neighboring properties.

#### IV. CONCLUSION AND DECISION

As set forth above, the application meets all the 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, the application of Jayanthi Babu (d/b/a Lovedale Montessori) for a conditional use under Section 59.3.4.4.F of the Zoning Ordinance to operate a Day Care Center (over 30 persons) on the premises located at 23126 Frederick Road, Clarksburg, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan, Landscape Plan, and Lighting Plan submitted in support of this application;
2. The proposed Day Care Center (Over 30 Persons) use is limited to a 42-child day care center and 5 employees;
3. No more than 4 employees and 1 administrator should be on site at any one time;
4. The regular hours of operation are 7:30 am to 6:30 pm, Monday through Friday;
5. Special events and periodic staff training activities associated with the Day Care Center (Over 30 Persons) use must not exceed six events per calendar year, such events may not extend beyond 9:00 p.m., **but may occur during weekdays or weekends at the discretion of the applicant;**
6. Outdoor play is limited to 8 am to 6:30 p.m.;
7. Landscaping must be in accordance with the revised Landscape Plan (Exhibit 26a-b);
8. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, 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 and any successors in interest 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 27<sup>th</sup> day of May, 2021.



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Derek J. Baumgardner  
Hearing Examiner

### RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of 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.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

### **PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:**

**The Board of Appeals website sets forth these procedures for filing documents with the Board:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to**

**BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request, and will contact you regarding scheduling.**

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

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/>.

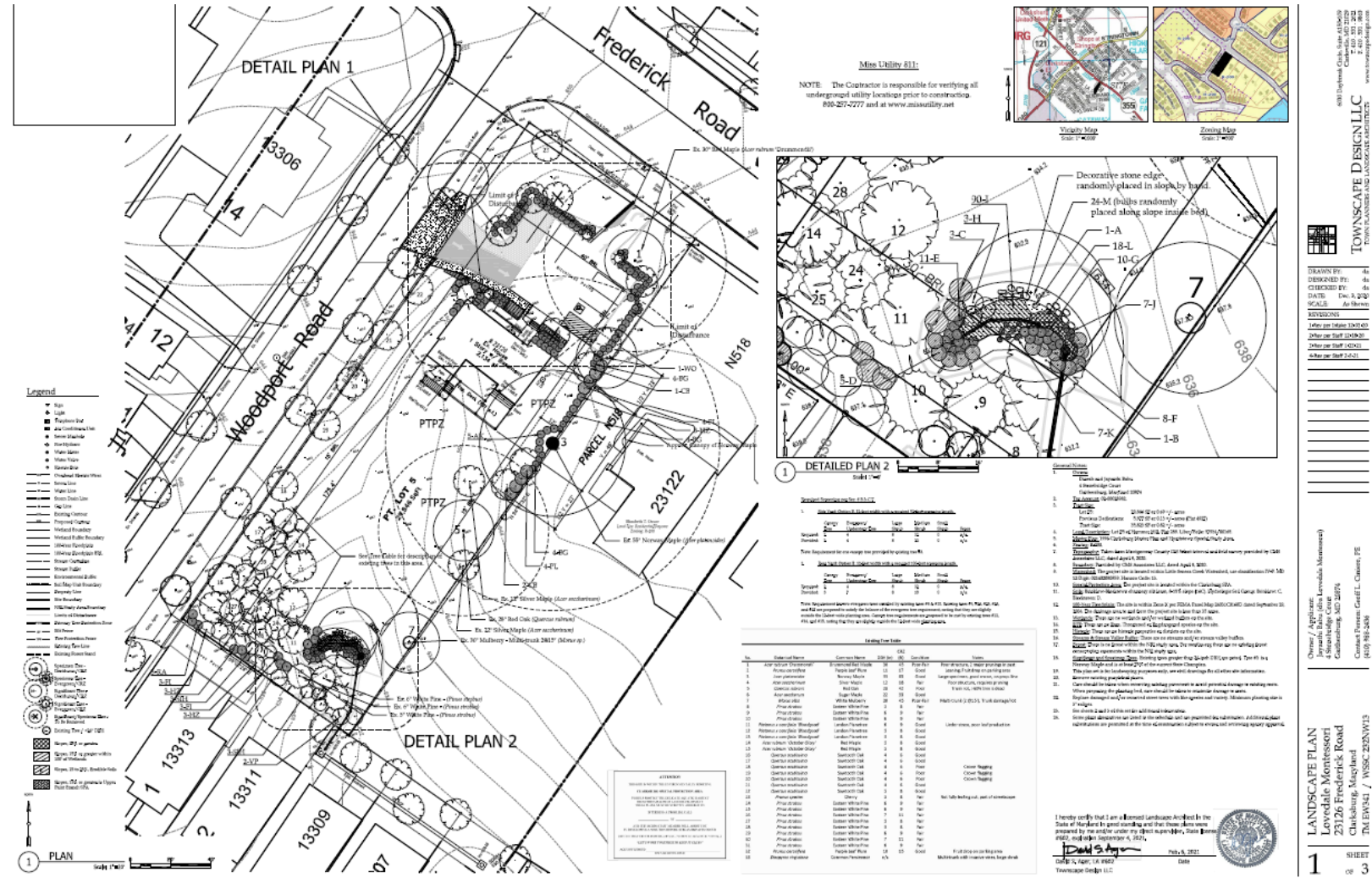
Notification of Decision sent to:

Adjoining property owners

## Appendix A



## Appendix B



## Exhibit 26(a) – Landscape Plan



**Appendix C**

<b>R-200 Zone Development Standards</b>	<b>Zoning Ordinance 59-4.4.7.B</b>	<b>Proposed</b>
<b>Minimum Lot Area</b>	20,000 SF	29,846 SF (0.65 ac)
<b>Minimum Lot width:</b> <ul style="list-style-type: none"> <li>■ at building line</li> <li>■ at front lot line</li> </ul>	100 ft. 25 ft.	100 ft. 100 ft.
<b>Maximum lot Coverage</b>	25 percent	18.7 percent
<b>Minimum Building Setback</b> Principal <b>Building:</b> <ul style="list-style-type: none"> <li>• front</li> <li>• side street (Frederick Rd)</li> <li>• side</li> <li>• rear yard</li> </ul>	40 ft. 40 ft. 12 ft. 30 ft.	82 ft. 82 ft. 24.9 ft. 175.4 ft.
<b>Maximum Building Height</b>	45 ft.	25 ft.
<b>Parking: 59-6.2.4</b>		
<b>Min. Vehicle Parking spaces</b> Day Care 3/1000 GFA	5 spaces	7 spaces

**Exhibit 37(a) – Table 1: Development Standards for the R-200 Zone**