

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case Nos. CU 19-04 and A-6575**

**PETITION OF FM GROUP INC., d/b/a FRANCISCO LANDSCAPING**

**OPINION OF THE BOARD**

(Oral argument held: January 15, 2020)  
(Effective Date of Opinion: January 30, 2020)

Case No. CU 19-04 is an application for a conditional use pursuant to Section 59-3.5.5 of the Zoning Ordinance, to allow operation of a landscape contractor conditional use at 15400 Holly Grove Road, Silver Spring, Maryland, in the RE-2C Zone. This case was consolidated with Board of Appeals' Case No. A-6575, in which the Petitioner sought a variance from the 50-foot setback requirement for landscape contractors set forth in Section 59-3.5.5.B.2 of the Zoning Ordinance.

On July 18, 2019, the Hearing Examiner for Montgomery County issued a combined Report and Decision on Conditional Use and Report and Recommendation on Variance (the "combined Report"), which denied the proposed conditional use and recommended that the Board deny the associated variance. The Board received a request for oral argument regarding the combined Report on behalf of the Petitioner from Jody S. Kline, Esquire, and Sean P. Hughes, Esquire, as well as opposition to that request from Patricia Thomas, Judy Mauldin, Mary Hemingway, and Quentin Remein. On September 25, 2019, the Board of Appeals issued an Opinion denying Petitioner's request for oral argument, and denying the underlying conditional use and variance.

On October 10, 2019, the Board received a timely request from Jody S. Kline, Esquire, on behalf of the Petitioner, for reconsideration of its September 25, 2019, Opinion, as well as a request to stay the time for appeal to Circuit Court. On October 18, 2019, Mr. Kline submitted a Memorandum of Law in support of his position. In response to Mr. Kline's request, the Board also received timely letters of opposition from Patricia Thomas, Judy Mauldin, Quentin Remein, Mary Hemingway, and Michele Albornoz. On October 24, 2019, the Board of Appeals issued a Resolution staying the time for appeal until the Board could act on the reconsideration request. On November 14, 2019, the Board issued a Resolution granting Mr. Kline's request for reconsideration; this Resolution suspended the Board's September 25, 2019, Opinion pending oral argument and the subsequent issuance of a written decision. As made clear in the Notice of Oral

Argument, also issued on November 14, 2019, the scope of oral argument was limited to issues pertaining to the width of Holly Grove Road.

On December 17, 2019, David W. Brown, Esquire, sent the Board a letter entering his appearance on behalf of Judy Mauldin, Patricia Thomas, Quentin Remein, Mary Hemingway, and Michele Albornoz,<sup>1</sup> and on January 6, 2020, he submitted a Memorandum Supporting Denial of the Conditional Use. Oral argument was held on January 15, 2020. Jody S. Kline, Esquire, appeared on behalf of the Petitioner, and David W. Brown, Esquire, appeared on behalf of his clients.

The subject property is 6.18 acres in size, is unplatted, and is identified as Parcel P066 of the Snowden's Manor Subdivision on Tax Map JS41, located at 15400 Holly Grove Road, Silver Spring, Maryland in the RE-2C Zone.

Decision of the Board: Conditional Use and Variance **DENIED**.

## **FINDINGS OF FACT**

1. In its Opinion dated September 25, 2019, the Board found that the record compiled by the Hearing Examiner in his combined July 18, 2019, Report and Decision on Conditional Use and Report and Recommendation on Variance contained clear and detailed reasons for the denial of both the conditional use and the variance. Thus the Board's September 25, 2019, Opinion denied both the conditional use and variance for the reasons set forth in the Hearing Examiner's July 18, 2019, combined Report. It also denied Petitioner's request for oral argument. See Exhibit 136.
2. The Hearing Examiner's July 18, 2019, combined Report concluded that the "most significant problem with the proposed [conditional use] application is the fact that the site must be accessed only from the very narrow (14-foot wide for long stretches) Holly Grove Road." The Hearing Examiner addresses the "Narrowness of Holly Grove Road and Traffic Safety" at length in Part II.E.3 of his combined Report. See Exhibit 122, pages 36-47.
3. In its Resolution dated November 14, 2019, the Board granted the Petitioner's request for reconsideration of the Board's September 25, 2019, Opinion, and suspended that Opinion pending oral argument and the subsequent issuance of a written decision. See Exhibit 147. As stated in the Board's Notice of Oral Argument, issued November 14, 2019, oral argument was limited to "issues pertaining to the width of Holly Grove Road." See Exhibit 148.

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<sup>1</sup> At its Worksession on January 8, 2020, on a motion by John H. Pentecost, Chair, seconded by Bruce Goldensohn, Vice Chair, the Board voted unanimously to open the record in this matter to accept Mr. Brown's letter of December 17, 2019, and a response to that letter filed by Mr. Kline and dated December 27, 2019. See Exhibits 149 and 150.

4. In their July 26, 2019, letter requesting for oral argument, Mr. Kline and Mr. Hughes note that the combined Report is “contrary to the recommendations contained in two Technical Staff Reports recommending approval of Case No. CU 19-04 and Case No. A-6575,” and “contrary to the recommendation of the Montgomery County Planning Board which unanimously (4-0) recommended approval of Case No. 19-04 and Case No. A-6575.” See Exhibit 124. Among other things, their letter states the following:

The Applicant wishes to present to the Board of Appeals information from the record compiled by the Hearing Examiner related to a) the transportation network that serves the proposed landscape contractor use, b) the details of the operations that will occur on the site and which will use said transportation network and c) the effects of said operations on the surrounding transportation network and on surrounding properties. The Appellant also wishes to present oral argument on the quantum and quality of evidence on which the Hearing Examiner relied in reaching his decision.

5. Mr. Kline’s letter of October 10, 2019, makes clear with respect to his request to present oral argument that “the Applicant desires to argue not the facts of the case but the legal aspects of the case.” See Exhibit 137. His letter proceeds to describe “one of the legal deficiencies that the Applicant wishes to present in oral argument to the Board,” namely the consideration given by the Hearing Examiner to the road width set forth on a “drawing dated August 3, 1987 entitled ‘Location of House’” that was submitted by Ms. Mauldin, and is in the record at Exhibit 121. Mr. Kline asserts that “[i]t is a significant legal error to consider the ‘Location of House’ document to be a ‘plat,’” and that “[t]he only reliability that this document is entitled to is the location of the residence and the site features within the boundary lines of the lot.” Mr. Kline states that the Hearing Examiner’s “incorrect legal interpretation and significance of the ‘Location of House’ drawing became important in his weighing of evidence in the case,” and that “the assumption that Holly Grove Road was a ‘14’ Asph Road’ became a ‘given’ in his analysis.” See Exhibit 137. Mr. Kline’s letter explains why he reached this conclusion, and then states that the record also contains evidence to contradict this from staff at the Planning Department. Mr. Kline contends in his letter that “the Hearing Examiner discounted, if not discredited the detailed research conducted by MNCPPC staff on the actual width of Holly Grove Road,” concluding that:

The Applicant’s position is that the Hearing Examiner made a legal error in the interpretation and reliability of a document (that the Applicant did not have a chance to comment on) and that the Hearing Examiner relied heavily on the ostensible evidence provided by that document over more credible evidence in the record from the Applicant’s traffic engineer and from the Staff of MNCPPC to the detriment of the Applicant’s interests.

See Exhibit 137. The letter then reiterates that this is just one of the legal arguments that the Petitioner wishes to present at oral argument.

6. The Memorandum of Law that Mr. Kline submitted in support of the Petitioner's request for reconsideration sets forth additional arguments relating to the legal foundation of the Hearing Examiner's combined Report. The Memorandum asserts that the Hearing Examiner "mistakenly relied on opinion evidence of a lay witness, which included a misrepresentation of a document that purported to be a legal Plat to show the width of the subject road (Holly Grove Road)," and "did not give proper credence to the County's and Applicant's expert witnesses, as well as the wealth of evidence, that far exceeded the preponderance of the evidence standards, supporting the request." The Memorandum then cites three Maryland cases to support this assertion.

Petitioner's Memorandum states that "the sole reason for the denial of the application [was] the unusual narrowness of Holly Grove Road," states that the opposition relied on speculation (as opposed to direct evidence) that the road width would present an issue, and furthermore states that the opposition relied on "claimed road width measurements without any scientific, professional credentials or explanation to support them." The Memorandum states that "the Applicant's case relied upon substantial, credible and significant evidence," and that "[t]his evidence supported the fact that the road width had not and would not be an issue rising to the level requiring denial of a use deemed appropriate and permitted in the zone by County Council legislation." The Memorandum recites evidence of record which indicates that the road width varies and does not pose a safety problem. See Exhibit 141.

7. Respondents' Memorandum in Support of Conditional Use Denial, submitted by Mr. Brown, outlines the Respondents' position "on the facts and the law pertinent to the oral argument issues...." See Exhibit 152. Respondents' Memorandum first recounts some of the evidence in the record pertaining to the width of the road, including evidence indicating that the road has a general width of 14 feet, and evidence that it is wider than 14 feet in places. Respondents' Memorandum also restates some of the evidence related to the existence or non-existence of emergency pull-off areas/shoulders, noting conflicts between the Petitioner's transportation expert and the testimony of Respondents Thomas and Mauldin, observes that the Hearing Examiner "took note" of deed research undertaken by Technical Staff and Ms. Mauldin, and indicates that the Hearing Examiner examined evidence regarding potential conflicts between neighborhood traffic and traffic generated by the Petitioner. Respondents' Memorandum notes that the Hearing Examiner ultimately "made no further mention of any deed-based width of the Road and discounted the 'emergency pull-off' areas" to find

that the narrowness of Holly Grove Road is a non-inherent adverse site condition that poses a significant potential danger to the Applicant's neighbors, as well as an undue burden upon their use of the roadway.

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It is not sufficient that there may be some grassy areas or driveway aprons along Holly Grove Road that can be used as emergency pull-offs. If a neighbor's car does not have one of those areas readily available when it encounters the Applicant's trucks going in the opposite direction on Holly Grove Road, there is a

potential danger and certainly there is a legitimate cause for apprehension. Based on these findings, the Hearing Examiner denies the subject application.

See Exhibit 152, quoting page 46 of the combined Report (Exhibit 122).

Respondents' Memorandum proceeds to outline Respondents' arguments, as follows: (1) Reconsideration of Denial of Oral Argument is Merely a Grant of Oral Argument; (2) The Applicant's Claim is Not One of Legal Error; (3) The Applicant Has Not Even Shown That the Road Width Information in Plat 15520 Was Erroneous in Fact; and (4) Claims of Road Width Beyond the Paved Area Are Irrelevant. Under this last heading, counsel for the Respondents addresses prescriptive rights-of-way, stating the following:

The extent of the public's prescriptive right-of-way rights is governed by the Maryland law of prescriptive easements. That law provides that "the character and extent of the use permissible are commensurate with and determined by the character and extent of the use during the prescriptive period." *Bishields v. Campbell*, 200 Md. 622, 625, 91 A.2d 922, 923 (1952); *Hoffman v. United Iron & Metal Co.*, 108 Md. App. 117, 142, 671 A.2d 55, 68 (1995). As applied here, this means that the government, having done nothing to control and maintain any private property outside the paved area that it maintains, has no prescriptive property rights outside the paved area. Any use of "emergency pull-outs," lawns or driveway aprons, therefore, would be trespassing.

The Memorandum then notes that trespassing "cannot be a factor in evaluating the suitability of the Road for the conditional use." It concludes by asserting that Section 59-7.3.1.E.1.f of the Zoning Ordinance requires that the use be served by "adequate ... public roads," and that this road does not meet that requirement. See Exhibit 152.

8. At the outset of oral argument on January 15, 2020, Mr. Brown indicated that he interprets the intended scope of oral argument more narrowly than Mr. Kline does, and he noted a standing objection to the breadth of Mr. Kline's presentation.

9. Mr. Kline appeared at oral argument on behalf of the Petitioner. He first addressed legal issues related to Exhibit 121 (the Location of House document), stating that the combined Report references the "inherent reliability" of this document, which is referred to in the combined Report as a "plat," but which Mr. Kline stated is not a plat. He argued that this document is intended to show the location of the house on the property, and is not reliable with respect to the width of the road. Mr. Kline stated that this shows one of the misassumptions in the combined Report, and while he noted that it is possible that the paved portion of Holly Grove Road is only 14 feet wide at this location, he stated that this document is not what the Hearing Examiner should be relying on to make this determination. Mr. Kline stated that Exhibit 82, which shows the paved right-of-way along Holly Grove Road at various points and was prepared by Petitioner's expert traffic engineer and land planner, should have been relied on, and that it shows that the width of Holly Grove Road varies between 14 and 24 feet. Mr. Kline argued that the Hearing Examiner's assumption that the road is only 14 feet wide understates the evidence and

exaggerates its narrowness. He noted that while the Hearing Examiner and Technical Staff both say that this stretch of Holly Grove Road is 2,350 feet long, the actual distance from Norwood Road to the subject property is only 1,250 feet, and accordingly that this was the only portion of Holly Grove Road along which a driver might have to deal with conflicts. He noted that there might be trucks further down Holly Grove Road, but that those would come from the paving company.

Mr. Kline argued that while there are places that Holly Grove Road is only 14 feet wide, he does not believe that the evidence shows that "most" of the road is that wide. He stated that the question of road width has two components: first, the width of the actual paving and its ability to handle traffic, and second, the width of the road when legally usable unpaved areas are included. Mr. Kline argued that the Hearing Examiner made an incorrect conclusion with respect to the ability of drivers to use unpaved pull-off areas, and asserted that the evidence of record shows that there are areas along this road that are unpaved but that also do not belong to the owner of the abutting residential property, and that could be used without trespassing. He called the Board's attention to Exhibit 111, in which Richard Weaver, who is Chief of the Area 3 Planning Team with the Planning Department, stated that he had "reviewed a sampling of the deeds for some of the properties that front on to Holly Grove Road and without exception, all of the deeds referenced that the individual properties front property line went either to the 'edge' of the 20-foot wide 'Holly Grove Road' or to the 'centerline' of the 20-foot wide Holly Grove Road." Thus Mr. Kline argued that while some abutting properties extend under the road to its center, others only extend to the edge of the 20-foot wide area reserved for the road, and that on those properties, the unpaved area not belonging to the abutting property owner could potentially be used as a pull-off. He argued that the Hearing Examiner misunderstood this when he stated, referring to Exhibit 111, that "[d]eeds examined by Staff of some properties along Holly Grove Road indicate that Holly Grove Road is 20 feet wide (thought obviously it is not paved along the entire width)." See Exhibit 122, page 38.

Mr. Kline stated that when his client purchased the subject property, Holly Grove Road was a gravel road. He stated that the road was paved by the County in approximately 2008, and later repaved, again by the County. Mr. Kline argued that if the County believed that the road was unsafe, it could have widened the road under the prescriptive right-of-way. He stated that there are properties where the right-of-way exists that could be paved and would not constitute a trespass.

Regarding the safety of Holly Grove Road, Mr. Kline argued that the Petitioner has been operating on the subject property for 13 or 14 years, and that there is no evidence of accidents or problems. He stated that the Petitioner had operated for ten or more years without complaint before the complaint that started this process was filed. He stated that, as recounted by Technical Staff, "driver courtesy" exists and works along Holly Grove Road. Mr. Kline argued that while the record reflects the perceptions of some residents that they are not comfortable driving on the road, the record is devoid of any factual evidence that would support a conclusion that this road is unsafe. He testified that the morning traffic generated by the Petitioner has limited potential to cause conflicts, noting

that employees arrive in normal cars, and leave before 7 a.m. in up to 10 trucks. Mr. Kline stated that those trucks return to the property between 4 p.m. and 7 p.m., and that while this could potentially cause conflicts, both the Petitioner's expert traffic engineer and staff from the Planning Department stated that they did not see disturbances in the grass along the sides of the paved roadway which would indicate frequent pull-offs. Mr. Kline then stated that if the conditional use were approved, the number of trucks would remain at its current level. He concluded that the record in this case does not support a finding of traffic or safety problems.

In closing, Mr. Kline argued that the Hearing Examiner did not give appropriate weight to the evidence presented by the Petitioner's expert traffic engineer and land planner, and that the neighbors opposing the application did not present any evidence other than their "gut" feelings. He argued that the combined Report is based on incorrect and faulty assumptions regarding prescriptive easements and the evidence from the Planning Department because there are places along Holly Grove Road where a driver could pull off the road legally. He suggested that the Board consider remanding the matter to the Hearing Examiner for the filing of a new plan that would address the right-of-way issues. He stated that subsequent to the hearing, he had compiled a library of all the deeds along Holly Grove Road and their history, and that they have a surveying firm that will put together a drawing that identifies places where Holly Grove Road could be widened to address any perceived problems. He stated that his client would pay for this work, and that he has consulted with the County to confirm that there is a way to do this. Mr. Kline stated that this alternative would make things better for all parties involved, and that they would welcome assistance from the community if the community would like to help.

10. Mr. Brown appeared at oral argument on behalf of Patricia Thomas, Judy Mauldin, Quentin Remein, Mary Hemingway, and Michele Albornoz, all of whom oppose this application. His clients displayed enlargements of photographs in the record at Exhibit 97, depicting Holly Grove Road. Mr. Brown noted that a picture is worth a thousand words, and stated that the Hearing Examiner took these photographs into account as he evaluated the situation along this road.

Mr. Brown catalogued some of the findings of the Hearing Examiner, including that the 1997 Cloverly Master Plan refers to this portion of Holly Grove Road as a "narrow (14 feet) asphalt road," and that there are stretches of this road that are wider than 14 feet. With respect to the wider points, Mr. Brown stated that while Technical Staff at the Planning Department had stated that some areas are wider than 14 feet, Ms. Mauldin had testified that most of the road is 14 feet wide.

Regarding the "plat" at Exhibit 121, Mr. Brown argued that the Board is being asked to consider whether the Hearing Examiner committed an error. He then stressed that the Hearing Examiner has the discretion to determine how much weight should be given to the evidence of record, and stated that the possibility that this plat substantially influenced the Hearing Examiner's findings is remote.

Regarding the existence of pull-offs along Holly Grove Road, Mr. Brown stated that, as noted in the combined Report, those in opposition to this application “hotly disputed” the existence of pull-offs, and stated that these areas are people’s lawns or driveways.

Regarding Exhibit 111, Mr. Brown noted that Mr. Weaver had reviewed a “sampling” of deeds. He argued that despite stating that he was staying away from legal analysis, Mr. Weaver had engaged in legal analysis when he stated in his email that “...without a significant amount of survey work it is just not possible to tell where all of the property lines actually are with respect to the pavement and where the drainageways are located with respect to the 20-foot wide road. Hence, it is difficult to determine if by driving on the grassed edges that a motorist is violating someone’s property rights by being outside of the prescriptive easement.” Mr. Brown stated that he disagrees with this analysis; he referred the Board to his Memorandum at Exhibit 152, and then proceeded to set out what he believed the analysis should have been. Mr. Brown stated that formal acceptance of a roadway by the County is quite different from this process of prescriptive rights, and that because this roadway does not conform to the standards set out in the County Code, it could not be formally accepted under the law. He stated that although this road had been accepted by the County for maintenance, it is not a dedicated road. Mr. Brown argued that assuming the County can claim prescriptive rights, those rights are no greater than those of an easement holder, and that while the County has paved certain portions of this road, the unpaved portions belong to private property owners. Mr. Brown thus argued that the road could not be extended without the consent of these owners. Regarding the number of deeds that might not go to the centerline of the road, Mr. Brown referred the Board to the testimony of Judy Mauldin, in the record at Exhibit 121, which stated that she had performed an “exhaustive” search of these records. He argued that it is by no means clear that there is any potential for widening Holly Grove Road, and that any prospective use of this road, other than the existing paved area, is irrelevant. He emphasized that the ability to trespass onto other people’s property cannot be a factor in evaluating the feasibility of using a roadway for a conditional use, and offered that just as the Hearing Examiner had rejected “driver courtesy” as an option, so should the Board.

Mr. Brown noted that the Hearing Examiner found that “the available transportation facilities are not adequate in this case due to the narrowness of Holly Grove Road and the fact that it is a dead end road that must be used by all the residents of Holly Grove Road and Awkard Lane south of Norwood Road in order to access their residences.” See Exhibit 122, page 54. He quoted Exhibit 107, stating that all other landscape contractors on residentially-zoned properties are located on main roads, not narrow roads. Mr. Brown argued that granting this conditional use at this location would therefore conflict with precedent and with the public road requirement. He stated that his clients are seeking to maintain Holly Grove Road as it is, and argued that the Petitioner’s history of illegally operating without incident at this location is not relevant to whether to approve the conditional use now, and should be given no weight.

11. In response to the argument presented by Mr. Brown, Mr. Kline stated that the Cloverly Master Plan referenced by Mr. Brown and in the combined Report dates to 1997, and that Holly Grove Road has been paved two times since the adoption of that Master Plan. In response to assertions that granting this conditional use would make things worse along this road, Mr. Kline stated that it would not, noting that this was an existing use with a 13 year history of operating safely. Finally, Mr. Kline argued that the issues surrounding what is (and is not) available for use along the sides of this road is a good reason to remand this matter to the Hearing Examiner for the taking of additional evidence.

12. In response to a question from the Board, Mr. Brown stated that while his clients agree that the County has earned a prescriptive easement for the paved area of Holly Grove Road, the County would be trespassing if it increased the width of the pavement. He then stated that the County would need 20 more years for these non-paved areas to become prescriptive or County property. Mr. Kline then argued that this is a road by public user, and that the County has the right to increase its width if necessary to make it safe. Mr. Brown responded that as indicated on page 6 of his Memorandum [quoting the Technical Staff report], the County understands that it does not own this land.

## **CONCLUSIONS OF LAW**

1. Section 59-7.3.1.F.1.c of the Zoning Ordinance states that the filing of a written request to present oral argument “transfers jurisdiction over the matter while on appeal from the Hearing Examiner to the Board of Appeals,” that the Board has the discretion to grant or deny an oral argument request, and that “[r]egardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must, under Section 7.3.1.F.2, approve or deny the appealed conditional use application or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.”
2. Section 59-7.3.1.F.2.b states that “All matters decided under Section 7.3.1.F.2 must be decided on the basis of the evidence of record, but the Board of Appeals may decide any matter heard by the Hearing Examiner and presented to the Board of Appeals for decision solely on the basis of the Hearing Examiner’s report and decision.”
3. Section 59-7.3.1.F.2.a.i states, in part, that “An affirmative vote of 4 members of the Board of Appeals is required to approve a conditional use when 5 members are present, otherwise an affirmative vote of 3 members is required.”
4. The Board of Appeals has carefully considered the evidence of record in this case, and has reviewed the combined Report which denied the conditional use and recommended denial of the associated variance. In addition, the Board has carefully considered the oral argument presented before it on January 15, 2020, and recounted herein, as well as the written submissions received from the parties following the request for oral argument. The Board acknowledges, as did the Hearing Examiner in his combined Report, that the record contains testimony and evidence to show that Holly Grove Road is wider than 14 feet in places, and that expert evidence in the record

indicates that the conditional use could operate safely on the existing road. That said, the Board agrees with the findings of the Hearing Examiner set forth in the combined Report, which credit the Cloverly Master Plan and the testimony of residents who live on Holly Grove Road, as buttressed by ample photographic evidence, in concluding, contrary to the expert evidence, that “the narrowness of Holly Grove Road is a non-inherent adverse site condition that poses significant potential danger to the Applicant’s neighbors, as well as an undue burden upon their use of the roadway,” and that Petitioner’s application must be denied. See Exhibit 122, page 46.

In their deliberations regarding this matter, two of the Board members voiced support for a remand of this matter to the Hearing Examiner for the taking of additional evidence to determine if and where Holly Grove Road might be widened, but no motion to that effect was made, and no further action regarding a remand was taken. The remaining Board members noted that granting a conditional use for a landscape contractor at this location would pose an unfair burden on the residents of this community because of the narrowness of Holly Grove Road. They noted that the fact that there had been no accidents on this stretch of road was not determinative as to safety, and that even if the road were wider in places, the places where it is only 14 feet wide would still pose a problem. The Board members questioned whether it was appropriate to consider historical evidence regarding accidents since the Board was evaluating this as a “new” conditional use, which needs to be compatible with the neighborhood. Finally, the Chair questioned whether the use would be served by adequate public roads, as required by Section 59-7.3.1.E.1.f of the Zoning Ordinance.

Therefore, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Jon W. Cook in agreement, and with Bruce Goldensohn, Vice Chair, and Mary Gonzales not in agreement, the Board voted 3 to 2 to adopt the Hearing Examiner’s July 18, 2019, combined Report and Decision on Conditional Use and Report and Recommendation on Variance for the reasons set forth therein and in this Opinion, and to deny the conditional use and associated variance.

  
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John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 30th day of January, 2020.

  
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Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.