

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:
POTOMAC MMA, LLC
Applicant

Todd Margolis
Chris Kabat
Douglas Tilley

For the Application

Michele Rosenfeld, Esquire
Attorney for the Applicant

Michael Kerrigan
Michael Northridge

In Opposition

Before: Kathleen Byrne, Hearing Examiner

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OZAH Case No. CU 24-18

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on July 17, 2024, Potomac MMA, LLC (hereinafter “Applicant”) applied for a conditional use for Home Occupation (Major Impact) pursuant to 59.3.3.3.H.5 of the Zoning Ordinance. The subject property is identified as, 8400 Postoak Road, Tax Account number 04-00104621 located in Potomac, Maryland 20854 (“property”). Exhibit 1. The property is zoned R-90. *Id.* On January 28, 2025, OZAH issued a Corrected Notice of Hearing and Motion to Amend scheduling the public hearing for Thursday, February 13, 2024. Exhibit 37.

Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report recommending approval of the conditional use application dated January 24, 2025, subject to the following conditions of approval (Exhibit 38, pg. 3):

1. The use is limited to the Home Occupation (Major Impact) per Section 59.3.3.3.H.5.b.
2. All staff must reside onsite.
3. No queuing on Postoak Road is permitted.
4. Hours of operation are limited to 9:00 AM – 9:00 PM, Monday through Saturday.
 - a. No more than five (5) classes can be scheduled within a single day.

- b. Weekday classes cannot be scheduled to begin before 10:00 AM.
- c. Class start times will be staggered by fifteen (15) minutes to facilitate pick-up and drop-off and reduce queuing on Postoak Road.
- 5. Class sizes are limited to a maximum of twelve (12) students per hour.
- 6. Deliveries are limited to standard USPS mail or other residential neighborhood commercial carriers.
- 7. To screen the onsite parking spaces, a six-foot tall fence must be maintained along the southeastern Property line.
- 8. Adult students will be directed to park on Postoak Road in front of the Pepco Power lines, if there is no available parking on the site or in front of the site.
- 9. The Applicant will plant understory trees and three new trees as shown on the Parking Layout Plan in accordance with Section 59-6.2.9.B. prior to the issuance of the Home Occupation permit with the Department of Permitting Services.
- 10. Maximum of two weeks of summer camp, each being five days. Hours of operation are limited to 9:00 AM – 4:00 PM, Monday through Friday, with a maximum of 12 students.

The public hearing proceeded in a hybrid format as scheduled on February 13, 2025. The Applicant presented three witnesses: Todd Margolis, Chris Kabat and Douglas Tilly. T. 15-16. Michael Kerrigan and Michael Northridge testified in opposition to the Application. T. 57 and T. 76. Marsha Hopp testified “generally in support” but wanted more details. T. 80. Antonella Sassano, Brian Hazel, Andrew O’Lone, Izaak Bozof, Nick Dourian, and Kenneth Beale testified individually in support of the Application. T. 102, 86, 88, 88, 92, and 98. The record was left open for 10 additional business days to allow for a transcript of the proceedings to be generated. T. 112.

A. Post-Hearing Evidence Motion

On Friday, March 7, 2025, Mr. Northridge submitted an email to the OZAH general mailbox submitting new information he received concerning the proposed use at the property. Exhibit 40. Mr. Northridge contacted Ms. Rosenfeld with this new information asking if her client wished to supplement his testimony in light of this new information. *Id.* Ms. Rosenfeld after consulting her client indicated that no correction of the testimony was required based on the

information received by Mr. Northridge. *Id.* The Hearing Examiner forwarded the email to Ms. Rosenfeld and asked her to respond to the email before making a decision on its acceptance. *Id.*

Ms. Rosenfeld responded by letter on March 10, 2025 objecting to the Hearing Examiner opening the record to receive this email as new evidence. T. 41. Stating further, that nothing in the post-record email from Mr. Northridge is inconsistent with the hearing testimony by Mr. Margolis. *Id.* Additionally, Ms. Rosenfeld argued accepting the email after the record closed would be prejudicial to her client, cause unnecessary delay and expense.

The Hearing Examiner agrees with Ms. Rosenfeld that nothing in Mr. Margolis's testimony is inconsistent with the information relayed by Mr. Northridge's email. Additionally, the Hearing Examiner agrees with Mr. Northridge that the assertions made in the email directly support the concerns he raised regarding limiting the number of individuals on the property at any given time. Given the fact that nothing in the email from Mr. Northridge changes the testimony at the hearing, the Hearing Examiner finds it not to be prejudicial to the Applicant and admits Mr. Northridge's email, Exhibit 40 and Ms. Rosenfeld's response, Exhibit 41, into evidence.

II. FACTUAL BACKGROUND

A. The Subject Property

The property commonly known as 8400 Postoak Road, Potomac, Maryland is located on Lot 1, Block D of Section 2 of the Regency Estates subdivision, as recorded on Plat No. 8405, and on Tax Map 04-00104621. Exhibit 38, pp. 5. Consisting of 13,483 square feet, the property contains an existing two-story house, detached two-story garage and associated driveway, and parking area. *Id.* The Applicant resides in the house with his family and operates an existing

Home Occupation (Low Impact) for Potomac Mixed Martial Arts (MMA) studio from the detached garage. *Id.* The one-way circular driveway has access onto Postoak Road

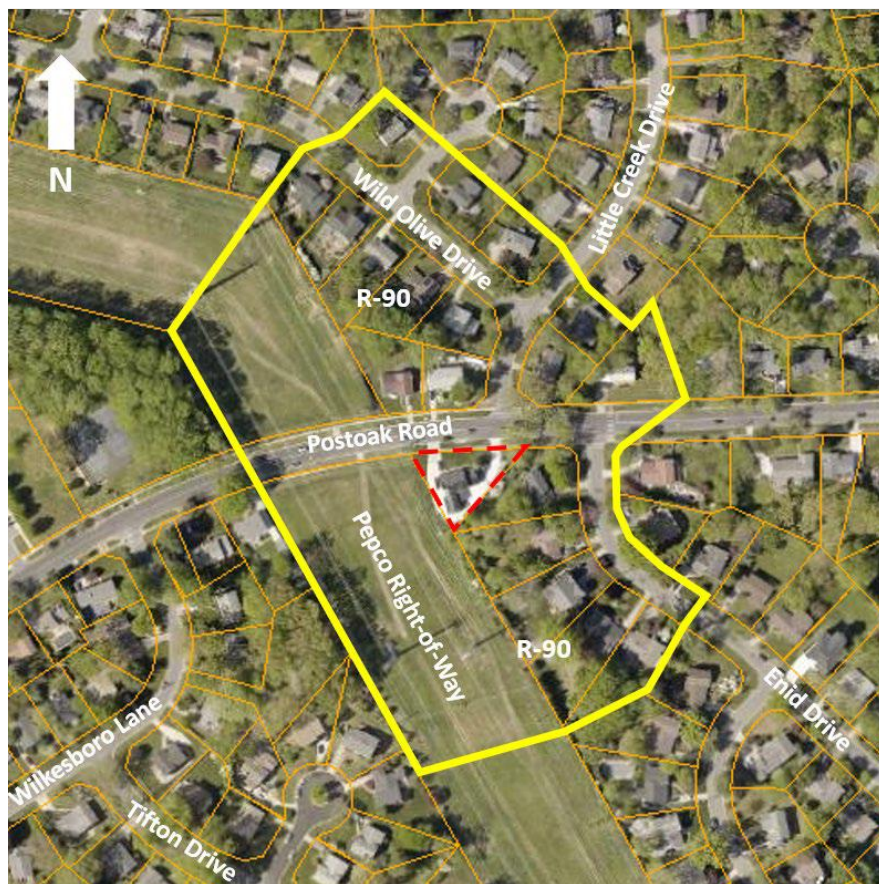


Property Aerial Photo
Staff Report - Exhibit 38, pg. 5

B. Surrounding Neighborhood

The property is located within the 2002 *Potomac Subregion Master Plan*. *Id.* at 4. Staff defined a neighborhood to analyze this Conditional Use and its possible impacts on the character of the surrounding area and determined the neighborhood boundaries shown on the vicinity map below to include those properties that the Conditional Use would most impact. *Id.* The defined neighborhood comprises moderate-density residential development and a PEPCO right-of-way.

Id. The properties surrounding the subject property are all zoned R-90 most lots consisting of single family detached homes, while the properties to the northwest and southwest consist of a Pepco right-of-way. *Id.* Staff identified no existing, approved conditional uses or special exceptions within the defined neighborhood, but did note the existence of an approved special exception, S1270, for an accessory apartment at 8504 Wilkesboro Lane, which is west of the subject property. *Id.* at 5. The Staff defined the neighborhood/vicinity is outlined in yellow below.



Vicinity Map in Yellow Outline
Staff Report – Exhibit 38, pg. 4.

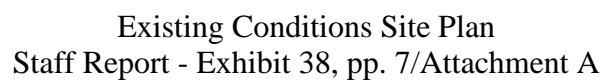
C. Proposed Use

Currently, the Applicant operates a Home Occupation (Low Impact), allowed as a Limited Use under the Zoning Ordinance.¹ Since 2018, the Applicant has been teaching mixed martial arts (“MMA”) to youth and adults in the Potomac area, including members of the Churchill High School, Hoover Middle School, and St. Andrew’s Episcopal School wrestling team members. *Id.* at 6. For the current Home Occupation (Low Impact) use, the Applicant constructed a training studio in the detached garage on the property which includes padded floors and limited workout equipment such as handheld free weights. *Id.* With the request to change the current operation, to a Home Occupation (Major Impact), the Applicant will continue to reside in the single-family detached house, does not propose any additional improvements to the property, besides additional tree plantings and will add no new pavement or lighting. *Id.*

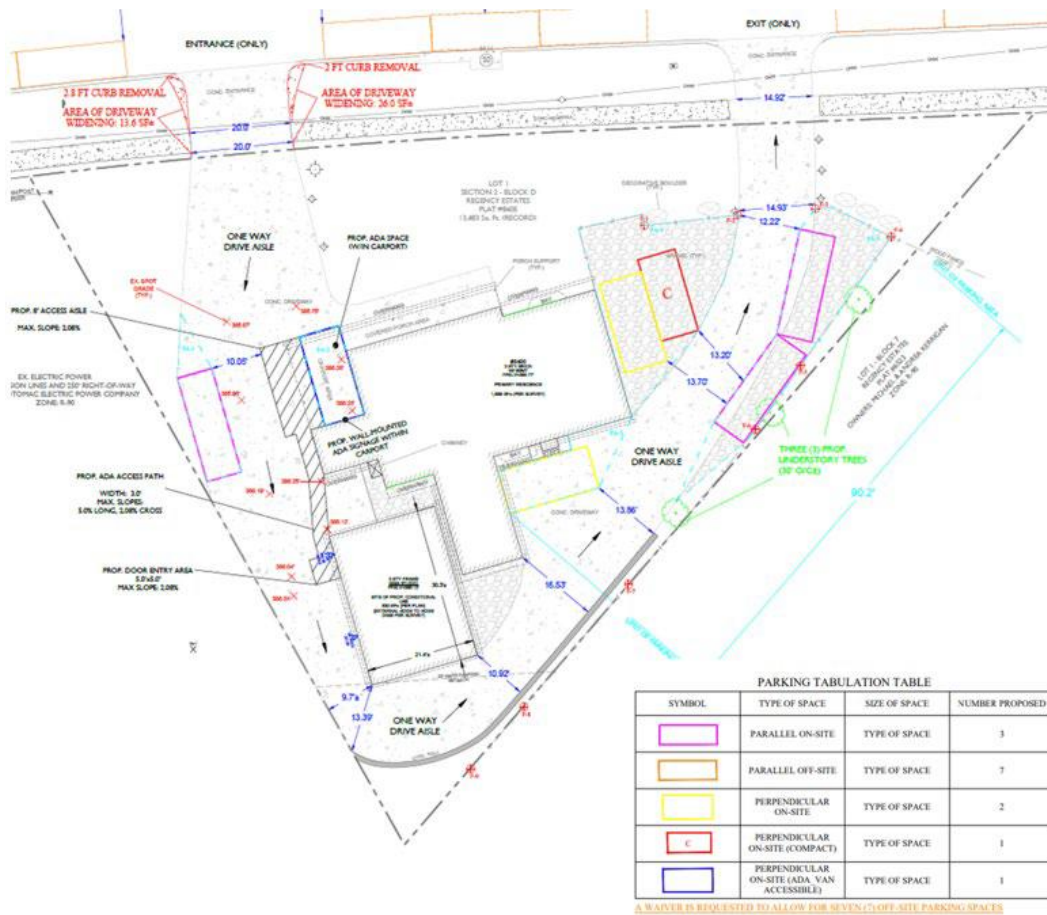
1. Site Plan

The existing site plan will remain unchanged except for additional tree plantings. Exhibit 38, pp. 6. The property fronts Postoak Road and is accessed via a one-way circular driveway that wraps around the rear of the house. Exhibit 38, Attachment A. Image on next page.

¹ See 59.3.3.3.H.4.



See proposed site conditions next page.



Proposed Conditions Site Plan
Staff Report - Exhibit 38, pp. 8/Attachment A

The Applicant proposes vehicular access to the property via the existing one-way circular driveway that wraps around the rear of the house. *Id.* at 8. Mr. Tilley, the Applicant's expert described the proposed site condition plan identifying the single-family detached house in the center with the detached garage used for the home occupation behind the house, the "triangle shapes" indicate the location of the concrete driveway, while the hatching that looks like gravel is the gravel or riprap parking area. T. 36-38. Mr. Tilley further explained that the triangular

shaped “phantom line type, long dash, and then two short dashes” represents the property line for the site and the colored boxes indicate the types of parking spaces on the site. T. 37-38.

2. *Landscape, Lighting, and Signage*

The Applicant proposes no changes to existing lighting and no signage will be installed. This Project is not subject to Forest Conservation “because (1) the Application applies to a property of less than 40,000 square feet, (2) The Property is not subject to a previously approved Forest Conservation Plan, and (3) the Conditional Use proposal will not impact any champion tree, as defined by the Montgomery County Forestry Board.” Exhibit 38, pp. 9. The Applicant, as shown on the proposed site plan, will be adding 3 understory trees along the property line that borders the Kerrigan property as required by the Zoning Ordinance. *Id.* at 22 and Attachment A. Additionally, the Applicant has an existing six-foot high fence along the southeastern property line. *Id.* at 21.

3. *Parking and Waivers*

Regarding the required parking and associated waivers, Staff determined as follows:

A total of 14 parking off-street parking spaces are required for the Project and the existing single-family dwelling unit. Seven spaces will be provided on-site, and seven on-street spaces are proposed. The proposed vehicle parking spaces meet the minimum dimensions as required by Section 59-6.2. of the Zoning Ordinance, which are 8.5 feet in width and 18 feet in length for a standard perpendicular space and 7 feet in width and 21 feet in length for a parallel parking space.

A six-foot tall wooden, sight-tight fence provides screening for five of the seven spaces along the front of the property and around the sides and rear. Two parking spaces are visible from the street (one in the driveway and one within the existing carport), which is typical and within the established character of a residential property.

The area along the length the property line where parking is approximately 90 feet in length. The Applicant is committed to planting understory trees in accordance with the Zoning Ordinance requirement. The overall length of the "parking line" requires a total of three new trees to meet this ordinance requirement. The locations of these three trees are shown on the Parking Layout Plan (Figure 10). As conditioned, all final tree species and size selections shall meet the requirements noted in Section 59-6.4.3.B of the Zoning Ordinance and other relevant manuals.

The Applicant's expert, Mr. Tilley, identified four waivers during his testimony and as documented in Exhibit 35. Section 59.6.2.10 states the "deciding body" may waive the requirements of Section 59.6.2 if the alternative design satisfies Section 59.6.2.1. The requested "Waiver #1 and Waiver #2" work "hand in hand." The Application as presented provides the require 14 spaces to accommodate the use, but 7 of those spaces are "off site". *Id.* The Applicant requests via Waiver #1 and Waiver #2 since all spaces will not fit on site that the 7 off site spaces be approved. T. 46-47. The Applicant's expert testified that adequate off-site parking that will not impact roadway operations exists right on Postoak Road in front of the property and also in front of the PEPCO Right-of-Way. Exhibit 35, pp. 17.

Regarding Waiver #3, the Applicant proposes parking along a side lot line requiring a waiver to Section 59.6.2.5.K.2.b of the side setback. *Id.* Mr. Tilley testified that this waiver is necessary to promote effective operation by maximizing the number of on-site parking while maintaining suitable queuing and turn around path improving on-site and Postoak Road Operations. T. 48-49. Mr. Tilley opines that Waiver #4 also works with Waiver #3. T. 49. Section 59.6.2.9.B.1 requires a permitter planting area that "1. satisfies the minimum specified parking set back... if not specified, is a minimum of 8 feet wide, 2. contains a hedge, fence or wall minimum of 4 feet high, and 3. has a

Staff determined that the property can accommodate 7 on-site spaces and that ample off-street parking exists on Postoak Road both in front of the property and in front of the PEPCO property. Exhibit 38, pp. 16. Staff also note the section of Postoak Road from Enid Drive along Postoak Road to the edge of the PEPCO right-of-way would safely accommodate 12 cars, more than the 7 required/requested by the Applicant for off-site parking. *Id.*

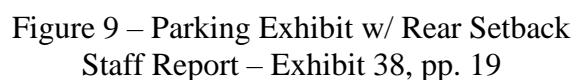




Figure 8 – On-street Parking
Staff Report - Exhibit 38, pp. 17

4. *Operations*

The Applicant proposes the following features with this Application for a Home Occupation (Major Impact):

1. Hours of operation limited to 9:00 AM – 9:00 PM Monday through Saturday, with a maximum of five classes/day, 45 minutes with the final class of the day up to 60 minutes, with a minimum 15-minute break between the end of one class and the start of the next.
2. Maximum of 12 students/class.
3. A maximum of two weeks of summer camp, no more than five consecutive calendar days between 9:00 AM and 4:00 PM, with a maximum of 12/students per day each day of camp.
4. A maximum of one resident employee.

Exhibit 16.

Mr. Margolis testified to the business operation stating martial arts classes are taught to children and adults in the freestanding garage at 8400 Postoak Road. T. 17. The business operates from 9:00 am to 9:00 pm Monday through Saturday with class lengths running 45 minutes, but the 8:00 pm to 9:00 pm class runs for a full hour. T. 18. The 15-minute break between classes allows for student turnover. Exhibit 5, pp. 1. Mr. Margolis notes that he has not held a morning class in a long time. T. 18. Mr. Margolis holds a camp for two weeks during the summer 5 days a week from 9:00 am to 4:00 pm with a maximum of 12 students. T. 19. Further Mr. Margolis stated he has students that help out, but that he is the sole employee for the business. T. 19-20. The Applicant proposes no physical or functional changes to the property's existing residential use.

D. Environmental Issues

Staff found no significant environmental features on the property, "such as wetlands, streams, seeps, erodible soils or forests" and that the use created no environmental impact. Exhibit 39, pp. 31, 33. Additionally, Staff determined that this Project is not subject to Chapter 22A (Forest Conservation). *Id.* at 9.

E. Community Response

Per the Staff Report, Staff did not receive any correspondence from the Community regarding the conditional use application. OZAH received 46 letters in support of the Application and included in the record as Exhibit 17. Further the following individuals testified during the hearing in support of the Application: Antonella Sassano, Brian Hazel, Andrew O'Lone, Izaak Bozof, Nick Dourian, and Kenneth Beale testified individually in support of the

Application. T. 102, 86, 88, 88, 92, and 98. Much of the correspondence in support of the Application noted that the business is an asset to the community, providing benefits to residents and their children. Additionally, those in support noted no impact with parking or traffic with the current operation. Exhibit 17. A neighbor directly across the street noted no impact from the business on her lifestyle. *Id.*

During the hearing, Mr. Hazel testified that he felt it was a “net positive” for the neighborhood and has referred parents and kids to the business. T. 87. Mr. O’Lone noted that not everyone can play a varsity sport in their high school, but if they are involved in something that builds confidence it leads to a better life. T. 88. Mr. O’Lone also suggested a “pedestrian cross” sign for caution. T. 88. Mr. Bozof testified that he lives around the corner and he values the walkability to a facility in his neighborhood and having a business like this in the neighborhood to be a “Godsend”. T. 90. His son walked to classes at the property and he knew of at least one other child who walked to classes. T. 91. Mr. Dourian testified he has lived in the neighborhood for 20 years and it is a very “tight” neighborhood. T. 94. He stated he is not a “close friend” of the Applicant, but supports the business. T.95 He stated that Todd is an honest guy trying to make an honest living and his “skill sets are and providing a tremendous value to the neighborhood.” T. 96. Mr. Dourian testified that he drives a full-sized pickup truck and can navigate the driveway without backing up. T. 97. Mr. Beale also testified in support noting he is not a neighbor, but a parent of a child who was born with gross motor challenges who benefited greatly from training with Mr. Margolis at the facility. T. 99. Mr. Beale commented that his experience with “Todd has been lifechanging.” T. 100. Mr. Beale also noted in all the years of attending classes at the property he has never observed “cars stacked up” and has never

seen “18 cars”. T. 101. Ms. Sassano testified in support describing the experiences of her son training with Mr. Margolis. T. 103. She testified she only sees positive things about the business in the neighborhood and also appreciates the fact that you don't have to drive your child far way for this experience. T. 104 Ms. Sassano further stated that the entire Margolis family are amazing people. T. 104.

Mr. Michael Kerrigan and Mr. Michael Northridge both neighbors indicated at the start of the hearing they were in opposition to the Application. T. 9. Ms. Marsha Hopp appeared virtually and stated she was generally in support of the Application, but wanted to hear details. T. 7. Ms. Hopp expressed concern that if the conditional use is granted that it may impact the power line trail that is proposed to come through the easement adjacent to Mr. Margolis property. T. 82. The Hearing Examiner explained that there the two sides of Planning (Planning and Development) and they do work together. T. 85.

Mr. Kerrigan testified that his property borders the Margolis property along the “right” side of the site plan. T. 61. Mr. Kerrigan stated he is not generally against this proposal, but he has an issue with one of the proposed parking spaces located next to the house on the east side.² T. 62. He explained the issue with this space is that the sound from the cars parked in this location bounces off the house and creates a noise nuisance at his property. T. 63. Mr. Margolis indicated that space is used for his personal vehicles. T. 64. Mr. Kerrigan indicated he was agreeable to no student parking in that space during operating hours. T. 65. Mr. Margolis also agreed to install a small sign indicating “no student parking” for this particular parking space. T.

² Mr. Tilley indicated that the space in question is #5 on page 9 of the Staff Report. T. 66.

67. Mr. Margolis agreed to install a sign at the end of the fence alerting students to use caution and look for pedestrians when they exit the property. T. 70.

Mr. Kerrigan expressed concern about reduced sightlines for cars leaving the driveway to see pedestrians. T. 68. He asked if there was some way to remind students to stop and look before exiting the property. T. 68. When Mr. Kerrigan asked about enforcement of conditional uses, the Hearing Examiner explained enforcement falls on the Department of Permitting Services (DPS). She further explained that DPS is a complaint driven agency and any complaint received regarding a conditional use is investigated by DPS. T. 71. When Mr. Kerrigan asked about further expansion of the use at the property, the Hearing Examiner explained that any modification of an issued conditional use would require an application to be submitted by the Applicant to OZAH for review and determination as to whether the modification was major or minor and that generally any intensification in a use is treated as a major modification. T. 72. She further explained that a major modification would require the same process, a full public hearing. T. 72.

Mr. Northridge in his testimony noted that in Staff's condition number 8 to confusing or contradictory, that after all on-site parking is full that students use the Postoak Road Street spaces in front of the house before parking in front of the power line, but the Staff Report also shows spaces in front of the power lines. T. 77. In his view as a neighbor, Mr. Northridge believed that recommendation number 8 should be changed to require parking in front of the powerlines after on-site parking is full to eliminate the slight line issue raised by Mr. Kerrigan with cars leaving the property. T. 77. Mr. Northridge expressed general concern overall with the enforceability of the conditions. T. 78. Specifically, questioning how enforceable the order

of parking to be or “no additional employees” or no more than “X” number of classes per day.

T. 78-79. Mr. Northridge also expressed concern with how much bigger the use will be in this residential neighborhood. T. 79.

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 standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards applied for a Home Occupation (Major Impact) are in Section 59.3.3.3.H.5 of the Zoning Ordinance. The general standards (termed “Necessary Findings” in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

A. Necessary Findings (General Standards, Section 59.7.3.1.E)

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.³ For discussion purposes, the general standards may be grouped into four main areas:

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

E. Necessary Findings

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

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

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

Conclusion: Staff note no prior approvals exist on the subject property.⁴ Exhibit 38, pp. 14. The Applicant identified the only prior approvals governing the site is the “Record Plat #8405” and further notes the Application complies with the required lot parameters established by the Record Plat. Exhibit 5. The Hearing Examiner finds that this condition 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;

Conclusion: This subsection requires review of the development standards of the R-90 Zone contained in Article 59.4; the use standards for a Home Occupation (Major Impact) contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

1. Substantial Conformance with the Master Plan

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

The property is located within the 2002 *Potomac Subregion* Master Plan area (“Plan”). Exhibit 38, pp. 25. The Plan recommends maintaining the residential character of the neighborhood. *Id.* The Applicant will continue to reside in the detached residential house and the conditional use will take place in the accessory structure to the rear of the Property keeping the

⁴ The current Home Occupation (Low Impact) is permitted as a limited use.

residential nature of the property while operating the "Home Occupation". *Id.* Staff note, that the house, accessory structure, driveway, fence, and landscaping are compatible with the rest of the neighborhood and surrounding areas.

Staff identified that the existing frontage improvements substantially conform to the 2024 *Complete Streets Design Guide* and the 2018 *Bicycle Master Plan*. *Id.* Further the Applicant's notes in the Amended Statement of Justification that the use is compatible with the Plan for the following reasons: 1) there is not a concentration of special exceptions or uses in the area, 2) the studio use is minimally visible to traffic on Postoak Road, 3) the use will be contained within the garage structure, 4) the exterior appearance of the garage is compatible with the residential architecture. Exhibit 5.

Conclusion: Based on this record, the Hearing Examiner agrees with Staff and the Applicant that the proposed use will substantially conform to the recommendations of the Plan. The Hearing Examiner finds that no modifications to the buildings, no signage, the continued residential use of the property and the consistent architectural design all to be in keeping with the Plan recommendations.

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

Conclusion: The Hearing Examiner finds there are no recorded conditional uses in the neighborhood defined for this petition. Further the Hearing Examiner agrees that the proposed conditional use to be in conformance with the Zoning Code and will not change the residential

character of the property. She has already found that the project conforms to the Plan. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the project will be compatible with the surrounding area.

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

Conclusion: No preliminary subdivision plan is required. Regarding the adequacy of public services and facilities in this case the Hearing Examiner agrees with Staff and the Applicant's Statement of Justification and finds that there are adequate public services and facilities to serve the proposed use. Exhibit 38, pp. 25 and Exhibit 5. The Hearing Examiner agrees with the Applicant's traffic expert that no traffic study is required and traffic generated by the use will be *de minimus*. Exhibit 7. The Hearing Examiner finds that the property contains an existing residential use, and the proposed use will not cause any increase in services or impact existing

public services such as schools, water, sewer, electric, telecommunications, police, fire and health services. Because no improvements to the property are proposed the frontage improvements are not triggered. The Hearing Examiner also agrees with Staff's determination that transportation is adequate. *Id.* at 26-29.

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 the surrounding area. 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, do not justify the 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 may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to this Home Occupation (Major Impact) (Exhibit 38, pp. 29):

- Vehicle trips;
- Parking areas; and
- Hours of Operation.

The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use.

Staff determined the following:

These inherent aspects of this Home Occupation (Major Impact) for a martial arts school are limited by the design of the existing site, which allows for vehicle queuing onsite and will prevent queuing and spillback on Postoak Road. Also, the parking areas are screened onsite by fencing and proposed landscaping to minimize visibility from the road and neighbors. There is ample parking on the street in front of the property, as well as in front of the Pepco right-of-way. The hours of operation are limited to weekdays and Saturdays and only five classes per day. The number of students and non-resident employees are also limited with this Application.

Staff did not identify any non-inherent characteristics of the proposed use or the Property. To the contrary, the Property is triangular in shape and bounded on one side by a large PEPCO transmission line and on another by a road. Its physical characteristics will provide an appropriate setting for the use, and there are no light, noise, traffic or environmental concerns. Accordingly, the proposed use will not cause undue harm to the neighborhood due to non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

Those who testified in opposition to the Application, raised issues related to vehicle trips and parking. T. 57-79. Both parking and vehicle trips are identified as inherent adverse characteristics of the use. As noted above, inherent adverse effects alone do not justify the denial of a conditional use.

Conclusion: The Hearing Examiner agrees with Staff that there are no non-inherent adverse effects from the proposed development and concludes that use and proposed development will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

4. Compatibility with the Neighborhood

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

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

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

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.

Staff concluded that the proposed conditional use will not change the existing residential character of the property or the neighborhood. Exhibit 38, pp. 24. Staff note that the Applicant is not proposing any physical changes, all exterior improvements are compatible with the surrounding neighborhood, will still reside in the single-family detached house, and the conditional use will take place in the accessory structure to the rear of the property. *Id.* Further Staff determined the Applicant's proposal to "limiting the operation to weekdays and Saturdays, limiting the hours of operation, and limiting the number of classes and students to ensure the Home Occupation (Major Impact) remains the accessory use for the Property." *Id.* at 25.

The Applicant states that many students walk to the studio from nearby schools and that the amount of traffic generated will be *de minimus*, in comparison with existing traffic on Postoak Road. Exhibit 5. *See also* Exhibit 7, Transportation Study of Traffic. The Applicant further points to the location of the property abutting the PEPCO right-of-way on one side of the property

and the sight-tight fencing on the other with the installation of 3 additional trees as further providing screening and compatibility with the neighborhood. *Id.*

Conclusion: Section 59.7.3.1.E.2.d examines whether the Plans goals are achieved in a manner compatible with the area. Section 59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located, regardless of the goals of the Plan.

The Hearing Examiner has adopted Staff's characterization of the existing neighborhood and has already found that the use fulfills the goals of the Plan. She further finds that it does so in a manner that is compatible with the surrounding area. Key to this finding are the following factors: 1) The use itself will be contained to inside the garage structure, 2) the Application proposes no physical or functional changes to the existing residential use, 3) the studio hours fall generally outside the morning and afternoon school arrival and departure times, and 4) the location of the use adjacent to the PEPCO right-of-way provides additional opportunity for street parking and screening the use from neighbors.

For these reasons, the Hearing Examiner finds that the use is compatible with the surrounding neighborhood in a manner consistent with the Plan and will not adversely affect the character of the surrounding area.

Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

B. Development Standards of the Zone (Article 59-4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-90 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff included a table (Exhibit 38, pp. 15, shown on the following page) in its report comparing the minimum development standards of the R-90 Zone to what is proposed in this application.

Conclusion: Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the standards of the R-90 Zone.

Table 1: Development and Parking Standards (R-90)

Development Standard Section 59.4.4.B	Permitted/ Required	Existing/Proposed*
Minimum Lot Area	9,000 sq. ft.	13,483 sq. ft.
Minimum Lot Width at Front Building Line	75 ft.	155 ft.
Minimum Lot Width at Front Lot Line	25 ft.	192 ft.
Maximum Density	1 dwelling unit/lot	1 dwelling/lot
Maximum Lot Coverage	30%	24.9%
Minimum Front Setback	30 ft.	31 ft.
Minimum Side Setback	8 ft.	18 ft. & 20 ft.
Minimum Sum of Side Setbacks	25 ft.	38 ft.
Minimum Rear Setback	25 ft.	25 ft.
Accessory Structure Side Setback	5 ft.	9 ft.
Accessory Structure Rear Setback	5 ft.	10 ft.
Maximum Height	30 ft. mean or 35 ft. peak	23 ft. mean & 26 ft. peak (est.)
Vehicle Parking Requirement (Section 59.6.2.4.B)	Residence: 2 1 Per student allowed per hour: 12 Total: 14	On-site: 7 On-street: 7**

*There is no proposed development with this Application.

** Parking along Postoak Rod is allowed and unrestricted. This application is subject to approval of a waiver from Zoning Code § 59.6.2.4.B to allow seven vehicles to be parked along Postoak Road.

C. Use Standards for Home Occupation (§59-3.3.3.H.)

The specific use standards for approval of all Home Occupations are set out in Section 59.3.3.3.H.2 and the standards for a Home Occupation (Major Impact) are set out in Section 59.3.3.3.H.5, of the Zoning Ordinance. The Hearing Examiner basis her conclusions below upon review of the testimony, Staff Report and submitted exhibits.

Zoning Ordinance §59.3.3.3.H.1. Home Occupation

1. Defined

Home Occupation means any occupation that provides a service or product and is conducted within a dwelling unit by a resident of the dwelling unit. Home Occupation does not include Home Health Practitioner (see Section 3.3.3.G, Home Health Practitioner), Bed and Breakfast (see Section 3.5.6.B, Bed and Breakfast), Day Care Facility (see Section 3.4.4, Day Care Facility), display of furniture not made in the home for sale in the home or at an off-site location, Landscape Contractor (see Section 3.5.5, Landscape Contractor), or Educational Institution (Private) (see Section 3.4.5, Educational Institution (Private)).

Conclusion: Based on the testimony provided by Mr. Margolis, the Hearing Examiner finds that the use proposed meets this definition.

2. Use Standards for all Home Occupations

- a. Screening under Division 6.5 is not required.*

Conclusion: No analysis of screening under 6.5 is required by the Hearing Examiner.

- b. To maintain the residential character of the dwelling:*
i. The use must be conducted by an individual or individuals residing in the dwelling unit.

Conclusion: The Hearing Examiner finds based on the evidence presented that the Applicant resides in the property and is the sole operator of the business.

- ii. The use must be conducted within the dwelling unit or any accessory building and not in any open yard area. The use must be subordinate to the use of the dwelling for residential purposes and require no external modifications that detract from the residential appearance of the dwelling unit.*

Conclusion: The Hearing Examiner finds based on the evidence presented that the Applicant operates the MMA Studio business out of the garage located adjacent to the dwelling on the property. Further the Hearing Examiner finds that the proposed MMA Studio use is subordinate to the primary use as a residence used by the Margolis family. Additionally, the Hearing Examiner finds that no exterior modifications are required, and the property will maintain its

residential appearance.

iii. Exterior storage of goods or equipment is prohibited.

Conclusion: The Applicant is not proposing any exterior storage, and the Hearing Examiner finds this standard is satisfied.

iv. The maximum amount of floor area used for the Home Occupation must not exceed 33% of the total eligible area of the dwelling unit and any existing accessory building on the same lot, or 1,500 square feet, whichever is less.

Conclusion: Staff identified the square footage of the garage structure as being 700 sq. ft and the combined square footage of the house and garage to be 2,990 sq. feet resulting in a initial area for the proposed conditional use to be less than 33% of the total area and less than 1,500 sq. ft. Having no evidence to the contrary, the Hearing Examiner finds this standard is satisfied.

v. An existing accessory building may be used for the Home Occupation, but external evidence of such use is prohibited. Only one accessory building may be used and it must be an eligible area.

Conclusion: The Applicant does not propose using any area other than the garage for the proposed use. The Hearing Examiner finds this standard to be satisfied.

vi. Equipment or facilities are limited to:
(a) domestic or household equipment;
(b) office equipment; or
(c) any equipment reasonably necessary for art production, handcrafts, or making beer or wine.

Conclusion: The Applicant does not propose to use any commercial equipment nor use the space for an office or the production of any art, handcrafts, or to make beer or wine. The Hearing Examiner finds section to be inapplicable.

- vii. Any equipment or process that creates a nuisance or violates any law is prohibited in the operation of a Home Occupation.*

Conclusion: Since the applicant does not propose using any equipment with this use the Hearing Examiner finds this section to be inapplicable.

- viii. A Home Occupation is prohibited to use, store, or dispose of:*
(a) a quantity of a petroleum product sufficient to require a special license or permit from The Fire Marshal; or
(b) any material defined as hazardous or required to have a special handling license under State and County law.

Conclusion: Since the Applicant does not propose using or storing any petroleum products or hazardous materials, the Hearing Examiner finds this section to be inapplicable.

- ix. Truck deliveries are prohibited, except for parcels delivered by public or private parcel services that customarily make residential deliveries.*

Conclusion: Since the Applicant does not propose or require parcel delivery to the property for the proposed use, only normal residential deliveries will be permitted. The Hearing Examiner finds that this standard is satisfied.

- x. Display or storage of merchandise to be delivered must not be visible outside of the residence and must be contained within the maximum floor area available for the Home Occupation.*

Conclusion: Since the Applicant does not propose to store or display merchandise with this use, the Hearing Examiner finds this standard to be satisfied.

- xi. The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.*

Conclusion: No employees, equipment or merchandise are proposed for this use. The Hearing

Examiner finds this standard to be satisfied.

- xii. A second kitchen in the home for catering or making food for off-site delivery or sales is prohibited.*

Conclusion: The Application does not propose a second kitchen nor operates a catering/food making business. The Hearing Examiner finds this standard to be satisfied.

- xiii. The maintenance or repair of motor vehicles for compensation is prohibited.*

Conclusion: The Application does not propose the maintenance or repair of motor vehicles. The Hearing Examiner finds this standard to be satisfied.

5. Home Occupation (Major Impact)

b. Use Standards

- ii. Where a Home Occupation (Major Impact) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section [7.3.1](#), Conditional Use, and the following standards:*
- (a) The maximum number of visits and deliveries is determined by the Hearing Examiner.*

Conclusion: Based on the proposal, the recommendation of Staff and the testimony heard, the Hearing Examiner finds that Applicant is limited to holding up to 5 classes a day with a maximum of 12 students including student teachers per class with no more than 60 students or student teachers onsite on any single day.

- (b) An indoor waiting room must be provided.*

Conclusion: The Hearing Examiner finds adequate waiting room area inside the garage.

- (c) In-person sale of goods is limited to:*

- (1) the products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or hand-crafts performed by a resident of the dwelling; and*
- (2) a maximum of 5 sales per month of items ordered for delivery at a later date to customers at other locations (delivery of goods must occur off-site).*

Conclusion: The Hearing Examiner finds the Applicant proposes no sale of goods identified in this subsection and that this standard is in applicable.

- (d) Display or storage of goods is limited to:*
 - (1) the products listed in Section [3.3.3.H.5.b.iii.\(a\)](#); and*
 - (2) samples of merchandise that may be ordered by customers for delivery at other locations.*

Conclusion: The Hearing Examiner finds the Applicant proposes no display of products or merchandise and that this standard is inapplicable.

- (e) Display or storage of merchandise to be delivered must not be visible outside of the residence and must be contained within the maximum floor area available for the Home Occupation.*

Conclusion: The Hearing Examiner finds that the Applicant proposes no outdoor display or storage and finds that this standard is inapplicable.

- (f) The Hearing Examiner may grant a conditional use for a Home Occupation (Major Impact) on the same site as a Home Occupation (Low Impact), a Home Occupation (No Impact), or a Home Health Practitioner if the Hearing Examiner finds that both together can be operated in a manner that satisfies Section 3.3.3.H.5 and Section [7.3.1](#), Conditional Use.*

Conclusion: The Hearing Examiner finds only the existing MMA Studio home occupation currently in operation on the property, which is being replaced by the Application received for a Home Occupation (Major Impact) as conditioned in this Report and Decision. With only one

remaining home occupation on the property, the Hearing Examiner finds this standard to be satisfied.

- (g) *The Hearing Examiner must not grant a conditional use for a Home Occupation (Major Impact) where the site is already approved for any other conditional use under Section [7.3.1](#), Conditional Use.*

Conclusion: As stated previously, only the Home Occupation (Major Impact) will be granted and remain in operation on the property. The Hearing Examiner finds this standard to be satisfied.

- (h) *The applicant must provide valid proof of home address as established by Executive regulations under Method 2 of Chapter 2 (Section 2A-15).*

Conclusion: The Applicant provided proof of a ownership via a recorded deed, documented as Attachment D in Exhibit 38. The Hearing Examiner finds this standard to be satisfied.

- (i) *Screening under Division 6.5 is not required.*

Conclusion: The Hearing Examiner finds that screening is not required, but notes the existence of the fence and addition of 3 understory trees along the southeast property line. The Hearing Examiner finds this standard to be satisfied.

- (j) *In the AR zone, this use may be prohibited under Section [3.1.5](#), Transferable Development Rights.*

Conclusion: The property is not in the AR Zone. The Hearing Examiner finds this section to be inapplicable.

D. General Development Standards (Article 59-6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. The applicable requirements, and whether the use meets these requirements, are discussed below. The proposed use and Zone do not require the review of Division 6.3 for Open Space and Recreation, or Division 6.6 for Outdoor Storage. The property is in a R-90 zone which allows for Home Occupation (Major Impact) as a conditional use and the Hearing Examiner finds project complies with all the standard method developments of the zone.

Staff included in its development chart citing the required and proposed development standards per Section 59-6, which is show above. *See* Table 1: Development and Parking Standards (R-90). Exhibit 38. Staff further discussed the general requirements for access, parking, queuing, loading and the requested parking waivers on pages 19- 22 of the Staff Report.

1. Access, Parking, Queuing and Loading

Vehicular access to the property will follow the existing one-way circular driveway that wraps around the rear of the house. Exhibit 38, pp. 15-16. The one-way in and out creates an easy efficient students’ drop-off and pick-up system and will prevent queuing on Postoak Road. *Id.* Pedestrian will access to the property via the existing buffered sidewalks on either side of Postoak Road with access to the buildings is provided via the existing driveway. *Id.*

A minimum of 14 parking spaces are required for both the single-family dwelling use and the proposed home occupation pursuant to Table 6.2.4B of the Zoning Ordinance.⁵ The

⁵ The residence requires 2 on-site parking spaces, while the home occupation requires 12 on-site parking spaces.

Application proposes one ADA parking space within the existing carport and 6 additional spaces available on-site. *Id.* at 16. The Applicant requires a waiver to provide the remaining seven spaces on the street. *Id.* Staff determined that loading is not required nor necessary for the use. *Id.* The Applicant's expert testified to the traffic flow through the property using the one-way driveway, the configuration of the on-site and off-site parking spaces and opined the plan provided sufficient access, maneuverability and parking. T. 25-30.

Conclusion: The Hearing Examiner finds the testimony of the Applicant's expert persuasive and finds that the configuration of the lot with the existing ingress/egress pattern to be a safe efficient means of ingress/egress. Further Hearing Examiner finds the location and plan for on-site parking to be sufficient. The Hearing Examiner will address the parking waivers below.

2. Parking Waivers & Requirements

As discussed above, the Applicant seeks four parking waivers, but Waiver request #1 and #2 are linked together as are Waiver requests #3 and #4. For purposes of this Report and Decision, the Hearing Examiner will treat requests #1 and #2 together as one request and requests #3 and #4 together as one request. Section 59.6.2.10 states that “[t]he deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.0, if the alternative design satisfies Section 6.2.1, which provides that the ‘intent of the vehicle and bicycle parking, queuing, and loading requirements is to ensure that adequate parking is provided in a safe and efficient manner’”. The Applicant seeks a waiver to provide 7 off-street parking spaces in lieu the Zoning Ordinance requirement that all spaces be on-site. Staff note that there is ample parking available on Postoak Road immediately adjacent to

the property and in front of the PEPCO right-of-way. See Figure 8, Exhibit 38. Staff provided the following table detailing parking analysis.

Parking Location	Number of spaces
Onsite	7
On street, front of house	2
On street, east of house	2
On street, west of house	8
Total spaces	19

Staff Report – Exhibit 38, pp. 18 – Parking Capacity Table

Conclusion: The Hearing Examiner agrees with Staff and the Applicant's expert and finds safe, sufficient parking available off-site to satisfy the intent of Section 59.6.2.1 and grants the Applicant's waiver request to provide 7 off-site parking spaces.

Further Section 59.6.2.5.K requires the following facilities for conditional uses in Residential Detached zones for where 3 or more parking spaces are provided:

1. Location

Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.

2. Setbacks

a. The minimum rear parking setback equals the minimum rear setback required for the detached house.

b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house. detached house.

c. In addition to the required setbacks for each parking facility:

i. the required side and rear parking setbacks must be increased by 5 feet for a parking facility with 150 to 199 parking spaces; and

ii. the required side and rear parking setbacks must be increased by 10 feet for a parking facility with more than 199 parking spaces.

Conclusion: The Hearing Examiner agrees with the determinations made by Staff on pages 18-20 of the Staff report and finds that the location of the parking on the site to be in keeping with the residential character and pedestrian friendly street. Further the Hearing Examiner finds that all 7 on-site parking spaces are outside the 25-foot rear setback line. The Hearing Examiner finds that a waiver to the side setback requirements for the west side of the property to meet the intent of Section 59.6.2.1 because this portion of the property abuts the PEPCO right-of-way with no residential improvements. Further, the Hearing Examiner finds that the waiver to the side setback requirement for the east side of the property to meet the intent of Section 59.6.2.1 because this portion of the property is fully screened by a sight-tight 6-foot-tall fence and safe parking can be provided in both of these locations. Additionally, the Hearing Examiner notes that Mr. Kerrigan the neighbor to the immediate east side of the property heard noises from cars parked adjacent to residence, not abutting the fence. The Hearing Examiner grants the setback waivers requested. The Hearing Examiner finds subsection 2(c) above inapplicable.

Section 59-6.2.5.M. provides criteria for Surface Parking in R-90 Zone as follows:.

- 1. Parking for any vehicle or trailer in the area between the lot line and the front or side street building line must be on a surfaced parking area.***
 - a. The maximum surfaced parking area between the lot line and the front or side street building line . . . is in the R-200 and R-90 zones, 30% or 320 square feet, whichever is greater.***

Conclusion: The Hearing Examiner agrees with the determinations made by Staff and adopts as her findings the following. 1. The approximate area between the right-of-way and front building line (house) is 5,272 square feet. 2) Thirty percent of 5,272 square feet is 1,581.6 square feet. 3) Between Postoak Road and the front of the existing house, there is approximately 388 square feet of surfaced parking area. 4) This potential parking area is well below the 1,581.6 square foot

limit; therefore, this condition is met. 5) There are no side street setback requirements for this Property.

- 3. A surfaced parking area may exceed the size limits in Section 6.2.5.M.2 if:***
- a. the surfaced parking area existed before October 26, 2010 and is not increased in size;***
 - b. the property has primary access from a primary residential street, minor arterial road, major highway, arterial, or any state road, and is equal to or less than 50% of the area between the lot line and the front or side street building line;***
 - c. the property is a stone or rock quarry in the R-200 zone; or***
 - d. DPS grants a waiver to protect public safety.***

Conclusion: The Hearing Examiner finds the surface parking area does not need to exceed the permissible amount and that this standard is inapplicable.

- 4. Parking a vehicle in the area between the lot line and front or side street building line on a non-surfaced parking area or on less than 160 square feet of surfaced parking area for each vehicle is prohibited.***

Conclusion: The Hearing Examiner finds all parking spaces provided onsite are aligned with the front of the building or are located completely behind the building, that all spaces are on hardscape (pavement) surfaces and that this standard is satisfied.

- 5. One vehicle may be parked for every 160 square feet of surfaced parking area.***

Conclusion: The Hearing Examiner finds that all onsite parking spaces meet the minimum size for a standard parking space per the Zoning Ordinance and that this standard is satisfied.

- 6. Temporary parking for visitors, loading, or unloading is permitted on any area for a maximum of 12 days per year. Temporary parking may also be permitted for cleaning vehicles and trailers if the vehicles are not heavy commercial vehicles.***

Conclusion: The Hearing Examiner finds that the Applicant is not proposing any temporary parking areas with this Application and this standard is inapplicable.

7. Servicing a heavy commercial vehicle is prohibited.

Conclusion: The Hearing Examiner finds that the Applicant is not proposing servicing of heavy commercial vehicles with this Application and this standard is inapplicable.

Section 59-6.2.9.B of the Zoning Ordinance governs Parking Lot Landscaping and Outdoor Lighting and specifically provides as follows:

If a property with a conditional use requiring 5 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:

- 1. satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;***
- 2. contains a hedge, fence, or wall a minimum of 4 feet high; and***
- 3. has a minimum of 1 understory or evergreen tree planted every 30 feet on center.***

Conclusion: As the Hearing Examiner discussed above, a waiver to this setback described in subsection 1 has been previously granted. The Hearing Examiner finds subsection 2 to be satisfied because of the existing six-foot high fence along the southeastern property line, and this subsection to be inapplicable on the western property line because it abuts a public utility use. Further the Hearing Examiner finds that subsection 3 is satisfied by the proposal to plant three understory trees along the 90 foot length property line to the east shown on the Parking Layout Plan satisfying the Zoning Ordinance requirement.

3. Site Landscaping, Screening, Lighting and Signage

As previously stated, nothing on the site will change – no new buildings, lighting, or sign. The Applicant intends to add three understory trees along the eastern side of the property line. See Exhibit 38, Attachment A. Per the Staff Report, testimony and the statement of justification, no new lighting is being proposed and as such Section 6.4 is inapplicable. Exhibit 38, pp. 23.

Screening requirements are not applicable. *Id.* Property is landscaped and screened by fence. *Id.* at 24.

Conclusion: The Hearing Examiner finds screening is not applicable, no sign or lighting will be installed and the use will have no outdoor display or storage. The Hearing Examiner finds that the Application either meets the development standards for site landscaping, screening, lighting and signage or is considered conforming with Sections 59.6.4, 59.6.5, 59.6.6 and 59.6.7

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 and a thorough review of the entire record, the application of Potomac MMA, LLC (CU24-18) for a conditional use under Section 59.3.3.3.H.5 of the Zoning Ordinance to operate a Home Occupation (Major Impact) at 8400 Postoak Road which is located in Potomac, Maryland, is hereby ***GRANTED along with the requested parking waivers detailed above***, subject to the following conditions:

1. The use is limited to the Home Occupation (Major Impact) per Section 59.3.3.3.H.5.b.
2. All staff must reside onsite.
3. No queuing on Postoak Road is permitted.
4. Hours of operation are limited to 9:00 AM – 9:00 PM, Monday through Saturday.
 - a. No more than five (5) classes can be scheduled within a single day.
 - b. Weekday classes cannot be scheduled to begin before 10:00 AM.
 - c. Class start times will be staggered by fifteen (15) minutes to facilitate pick-up and drop-off and reduce queuing on Postoak Road.

5. Class sizes are limited to a maximum of twelve (12) students, including any student teachers, per hour.
6. Deliveries are limited to standard USPS mail or other residential neighborhood commercial carriers.
7. To screen the onsite parking spaces, a six-foot tall fence must be maintained along the southeastern Property line.
8. Adult students will be directed to park first on-site, and if parking is no longer available on-site to then park on Postoak Road in front of the Pepco Power lines, and to park in front of the site as the last parking option.
9. The Applicant shall post a caution sign on or about the fence near the exit advising drivers exiting the property to look for pedestrians.
10. The Applicant shall post a sign at parking space #5, reserving that space for resident parking only.
11. The Applicant will plant understory trees and three new trees as shown on the Parking Layout Plan in accordance with Section 59-6.2.9.B. prior to the issuance of the Home Occupation permit with the Department of Permitting Services.
12. Maximum of two weeks of summer camp, each being five days. Hours of operation are limited to 9:00 AM – 4:00 PM, Monday through Friday, with a maximum of 12 students including student teachers in each class.

Issued this 27th day of March 2025.



Kathleen E. Byrne
Hearing Examiner

NOTICE OF 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:

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

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 TO BE SENT TO:

Michele Rosenfeld, Esquire

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