

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

**IN THE MATTER OF:** \*  
**CONGRESSIONAL COUNTRY CLUB, INC.** \*  
 Petitioner \*  
 Janice Calomiris \*  
 Hugh Barrett Coyle \*  
 David Ullmann \*  
 Vernon Stricklin \*  
 Michael Devine \*  
 Alfred Blumberg \*  
 George Haskins \*  
 Stephen Petersen \*  
 For the Petitioner \*

Board of Appeals Case Nos. CBA-1206-G  
 (OZAH Case No. 07-05)

Jody S. Kline, Esquire \*  
 Attorney for the Petitioner \*

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Martin Klauber, Esquire, People’s Counsel \*  
 In Support of the Petition \*

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Before: Martin L. Grossman, Hearing Examiner

**HEARING EXAMINER'S REPORT AND RECOMMENDATION**

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## I. STATEMENT OF THE CASE

### A. Procedural Background

The Congressional Country Club is located at 8500 River Road, Potomac, in the RE-2 and R-200 Zones. It operates under numerous Special Exceptions and modifications,<sup>1</sup> the most recent being CBA 1206-F. The property encompasses approximately 358 acres. On August 1, 2006, Petitioner filed an application with the Board of Appeals (CBA 1206-G, Exhibit 1(b)) seeking to modify Special Exception CBA 1206 to permit a variety of renovations and upgraded facilities, and to add 20 employees. Petitioner also seeks a “reinstatement” of the Board’s resolution, effective January 20, 2005, granting modification of the special exception in CBA-1206-F (Exhibit 20(x)). That modification permitted construction of a residence for interns participating in the “greens and grounds” program and addition of a restroom facility to the existing driving range building. It will be discussed in Parts II. D. and E. of this report.

Initially, the hearing in this case was scheduled for December 11, 2006. It was postponed a number of times at Petitioner’s request to permit amendments to the Petition, which were duly noticed. On March 1, 2007, the Office of Zoning and Administrative Hearings issued a notice for a public hearing to be held on April 10, 2007 (Exhibit 24).

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) issued its Report on March 23, 2007 (Exhibit 25), recommending approval, with conditions.<sup>2</sup> On April 5, 2007, the Montgomery County Planning Board voted unanimously to conditionally approve the Final Forest Conservation Plan and to recommend approval of the special exception, with conditions (Exhibit 27).

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<sup>1</sup> CBA-1206; CBA 1206 A-F; BAS-292, 292-A; BAS-349; BAS-530; and BAS-2128.

<sup>2</sup> The Technical Staff report is frequently quoted and paraphrased herein.

A public hearing was convened as scheduled on April 10, 2007, and testimony was presented in support of the petition. There was no opposition. Martin Klauber, People's Counsel for Montgomery County, participated in the hearing and expressed his support for the petition. The record closed on April 17, 2007, following minor revisions to Petitioner's plans as requested by the Hearing Examiner at the hearing (Exhibits 41(a) – (d)).

### **B. Scope of the Hearing**

Zoning Code §59-G-1.3(c)(4) provides that the public hearing on modification applications must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications, and if the total floor area will be expanded by more than 25% or 7,500 square feet, the Board may review “the underlying special exception,” but only to a limited extent, as specified in Zoning Ordinance §59-G-1.3(c)(4)(A). That section provides:

*(A) After the close of the record of the proceedings, the Board must make a determination on the issues presented. The Board may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the special exception. The Board may require the underlying special exception to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if (1) the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and (2) the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. [Emphasis added.]*

In the subject case, Petitioner's attorney concedes that the plan is to expand the floor area in excess of the 7,500 square foot threshold. Tr. 7. Therefore, the Board may require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or

character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

As will appear more fully below, the Hearing Examiner finds that the proposed modifications would not change the nature or character of the special exception, nor are the proposed changes so extensive as to create substantial adverse effects on the surrounding neighborhood.

## **II. FACTUAL BACKGROUND**

### **A. Subject Property and Current Use**

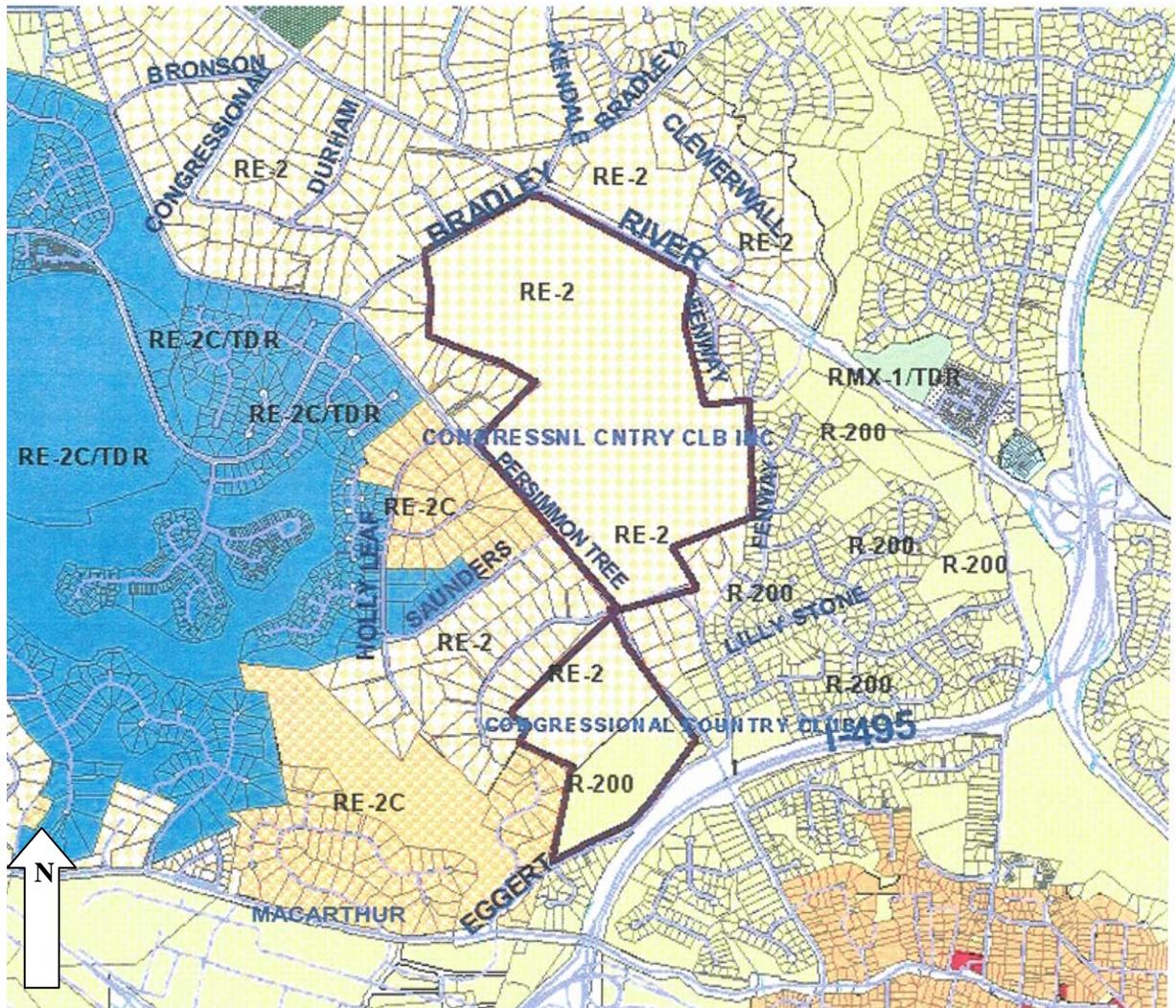
The Congressional Country Club, Inc. operates a golf and country club pursuant to Special Exception CBA-1206, with modifications A through F. Golf and country clubs (Zoning Code §59-G-2.24) are permitted as special exception uses in the RE-2 and R-200 Zones by virtue of Zoning Code §59-C-1.31(c). Congressional has two golf courses, swimming pools, tennis facilities and a large clubhouse complex. The main entrance to the Club is located at 8500 River Road (MD 190), approximately 1,500 feet south of its intersection with Bradley Boulevard. A secondary access for maintenance/emergency use is located on Bradley Boulevard. Congressional has been at the same location since the 1920's.

The Club, which consists of approximately 358 acres, is composed of Parcels 410, 600 and 909. The property is separated into two distinct areas which meet at the intersection of Persimmon Tree Road and Persimmon Tree Lane. The entire site is to the west of River Road, Fenway Drive and Fenway Road, south of Bradley Boulevard and north of Eggert Drive. Persimmon Tree Road forms a diagonal separating the northern and southern portions of the Club, and thus constitutes the western border of the northern section and the eastern border of the southern section. The Club has frontage on River Road, Bradley Boulevard and Persimmon Tree Road.

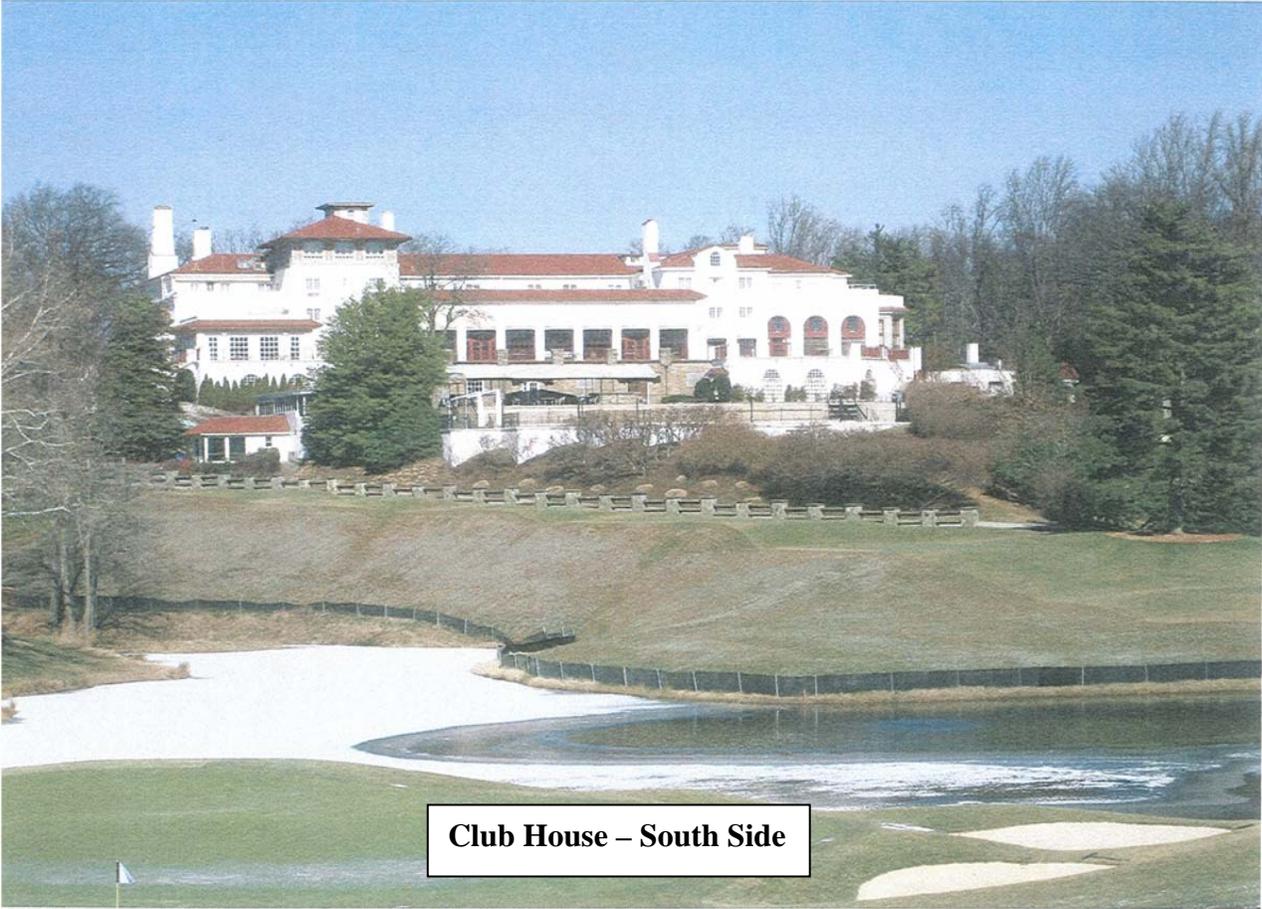
The entire northern portion of the property is zoned RE-2, as is about half of the southern

portion. The other half of the southern portion is zoned R-200. These features can be seen on a copy of the zoning map attached to the Technical Staff report, which is shown below.

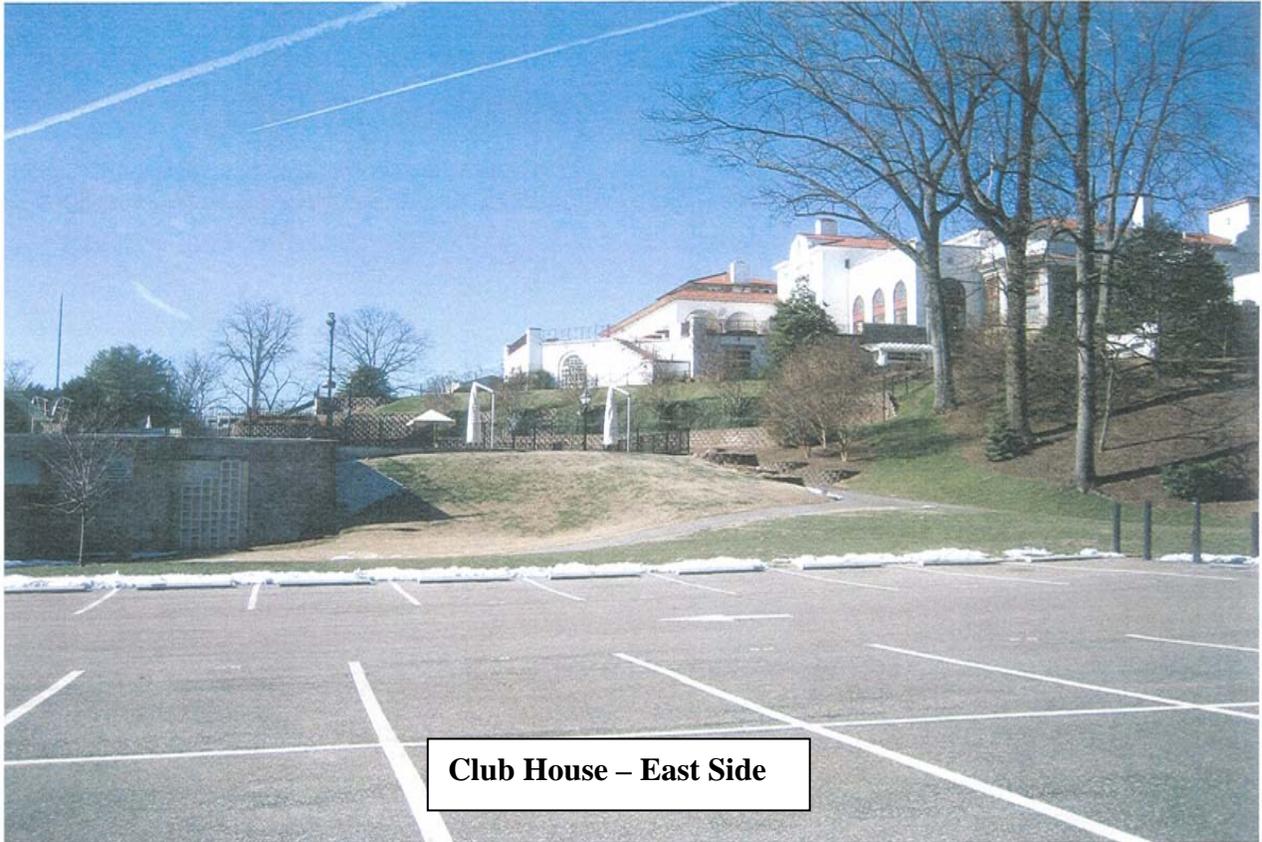
### CBA-1206 G CONGRESSIONAL COUNTRY CLUB



As described by Technical Staff, the site has a rolling terrain, many mature trees and extensive landscaping along its perimeter. There are sidewalks along the north side of River Road and the east side of Bradley Boulevard, with a lead-in sidewalk from River Road. Photographs attached to the Technical Staff report show the existing clubhouse from various angles, and two are reproduced on the following page.



**Club House – South Side**



**Club House – East Side**

## **B. The Neighborhood**

The neighborhood was defined by Technical Staff (Exhibit 25, p. 6) as follows:

Bradley Boulevard (MD 191) to the north, River Road (MD 190) to the east, Seven Locks Road and the Capitol Beltway (I-495) to the south, Rock Run Park and Holly Leaf Lane to the west and Persimmon Tree Road to the northwest.

Staff used a freeway (I-495), a major highway (MD 190), an arterial road (Bradley), a primary residential road (Seven Locks) and a local park to define the neighborhood boundaries. Petitioner's land use planner, Alfred Blumberg, accepted Staff's definition (Tr. 97), as does the Hearing Examiner, although only properties near the northeastern area of the site might be affected by this petition because that is the only area on which Petitioner plans modifications, as will be discussed in Part II.C., below.

The neighborhood, as described by Technical Staff, is predominantly residential, with a few institutional uses. It is within the area of the *Potomac Subregion Master Plan*, approved and adopted in 2002. The properties north and east of the site are zoned RE-2 and are developed with low-density single-family residential homes and private educational institutions. The Norwood School is across River Road and east of the site.<sup>3</sup> The Connelly School for the Holy Child is across Bradley Boulevard and north of the site. The properties west of the site across Persimmon Tree Road are zoned RE-2C and RE-2C/TDR and are developed with low-density residential uses. To the south are located low-density residential homes in the RE-2 and R-200 zones.

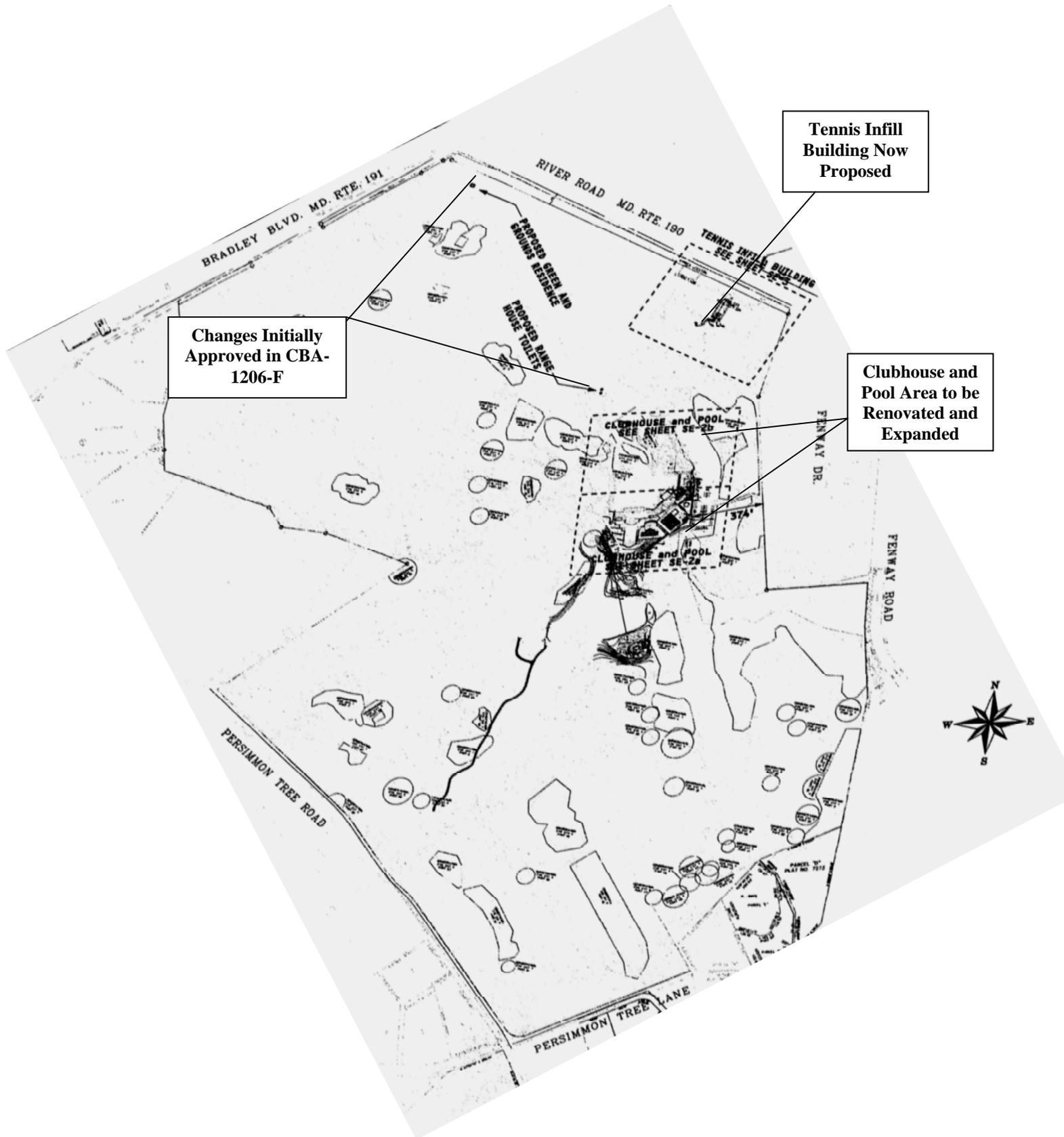
## **C. Proposed Modification**

All of the proposed modifications and renovations will take place in the northern section of

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<sup>3</sup> The hearing Examiner noted for the record that his wife teaches at Norwood School and invited any objections to his sitting on the case. There were no objections. Tr. 29.

the Club, as shown in the portion of the overall Site Plan-SE-1 (Exhibit 20(c)), reproduced below.



*1. The New Modifications:*

Technical Staff charted the newly proposed modifications (Exhibit 25, p. 3), and that summary is reproduced below:

Facilities Proposed for Replacement	Facilities Proposed for Expansion
<ul style="list-style-type: none"> <li>▪ Outdoor Swimming Pool Complex</li> <li>▪ Pavilion (pool snack Bar)</li> <li>▪ Children’s Summer Swim Locker Room</li> </ul>	<ul style="list-style-type: none"> <li>▪ Bar Area</li> <li>▪ Ladies’ Clubhouse Locker Room</li> <li>▪ Indoor Pool Swim Locker Room</li> <li>▪ Fitness Center</li> <li>▪ Teen Center</li> <li>▪ Indoor Tennis Facility</li> <li>▪ Ladies’ Card Room</li> </ul>

Petitioner’s Amended Statement of Operation (Exhibit 20(a), pp. 3-5), provides the following information regarding the proposed modifications:

[T]he Club proposes to replace or expand its facilities in a way that will better serve its current membership. The proposed improvements include the following:

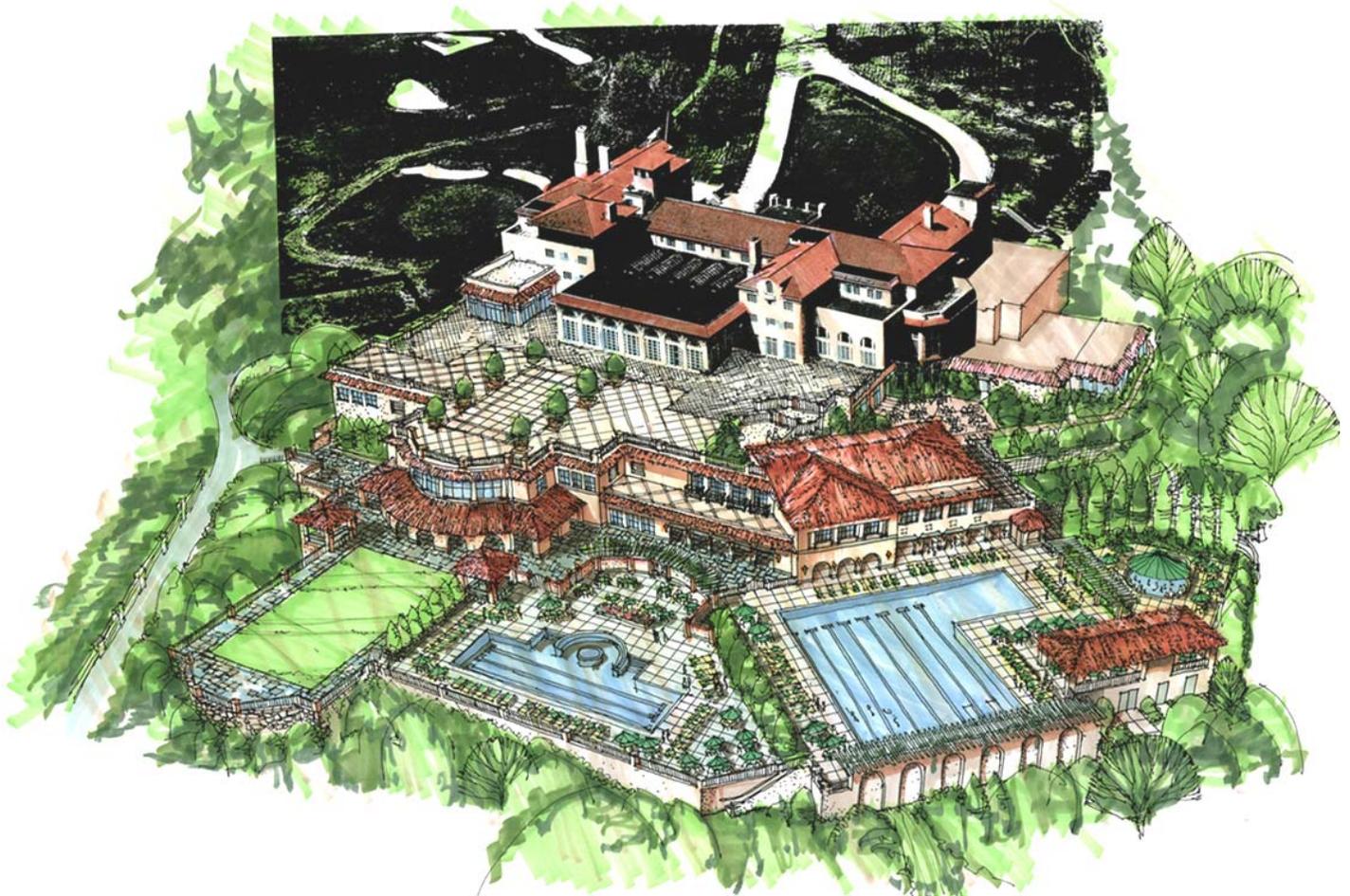
- 1) **New Outdoor Swimming Pool Complex:** The existing pool complex will be demolished, and a new pool complex is proposed, including an eight-lane, twenty five meter competition pool; a diving well; an adult pool for lap swimming and general lounging, with a large wading area, pool-side restrooms, and shade cabana; an area for swimming lessons and wading pools for younger children; a new teen shade pavilion; and two new family changing/rest rooms. In addition, there will be a pool office, first aid room, and lifeguard lounge. A relocated and larger grass terrace convenient to the adult pool is proposed directly south of the clubhouse, and will offer family cook-outs on summer weekends.
  
- 2) **New Pool-Side Snack Bar:** A new snack bar is proposed, with both indoor and outdoor tables. Unlike the current snack bar, where children have to cross the adult pool area to reach the snack bar, the new snack bar will be located adjacent to the children’s pool area. The new snack bar will be approximately the same size as the existing one, and will be designed to serve adults as well as children.
  
- 3) **New Clubhouse Children’s Swim Locker Room:** A new children’s locker room is proposed that will also have a separate area for adults. The new facility will be slightly larger than the existing one, and will have a convenient and controlled entrance from the lower parking lot.

- 4) **Expansion of Main Clubhouse:** A two-story expansion to the south side of the existing clubhouse is proposed in order to provide the following facilities:
- a) **New, larger bar area:** The existing restaurant and small bar area will remain, but will be supplemented by a much larger, main bar on the upper floor of the expanded Clubhouse. This proposed new pub-like facility will offer both inside and outside pub-fare dining, and have panoramic views of both golf courses. This will relieve overcrowding at the current bar, which will become primarily a serving area for customers who are briefly waiting for a table in the restaurant.
  - b) **Expansion of the existing ladies' locker room:** In addition to the new bar, the upper floor of the expanded Clubhouse will also be used to house an expanded ladies' locker room. More lockers will be added in the expanded portion of the Clubhouse in order to eliminate the waiting list problem. A new ladies' card room will also be added to the expanded Clubhouse adjacent to the ladies locker room. There are currently no dedicated ladies' card rooms in the Club, and there is great demand for them.
  - c) **New Fitness Center:** The Fitness Center will be moved from the lower level of the existing Clubhouse to the 2<sup>nd</sup> floor of the expanded Clubhouse, level 001. This relocated and enlarged 7,800 square foot Center, positioned adjacent to the new bar, will be convenient to existing locker rooms with direct exterior access.
  - d) **New Teen Center:** Part of the expanded Clubhouse at the exterior pool level, level 002 will be converted to a teen center. It will provide activities (television, video games, ping pong, etc.) for the older children of members.
- 5) **More Accessible "Casual" Member Entry:** To provide easier member access to the Club from the largest parking lot located twenty to forty feet below basement level, a covered structure with both stairs and an elevator from this parking area is proposed. Members will be able to use either the elevator or stairs to reach a covered walkway leading to the existing grill entrance.
- 6) **New Tennis "In-Fill" Viewing and Storage Area:** It is proposed that a two-story "in-fill" structure be constructed between the two existing indoor tennis facilities that will offer an upper area "function room" to be used for viewing tennis matches and for tennis parties, as well as a lower level area for general Club storage.

All of these additions and improvements are located in the clubhouse/swimming pool area except for the last one, the "New Tennis In-Fill Viewing and Storage Area," which is north of the clubhouse and near River Road, as can be seen on the Site Plan reproduced on page 8 of this report. Although it is expected that the Club will have no swim facilities for one season, tennis and golf

operations will be on-going, and Main Clubhouse activities will be unaffected except for brief disruptions caused by the renovation of the existing fitness center and ladies' locker room.

Petitioner's vision of the renovated clubhouse area is shown in the "illustrative perspective" (Exhibit 31), reproduced below:

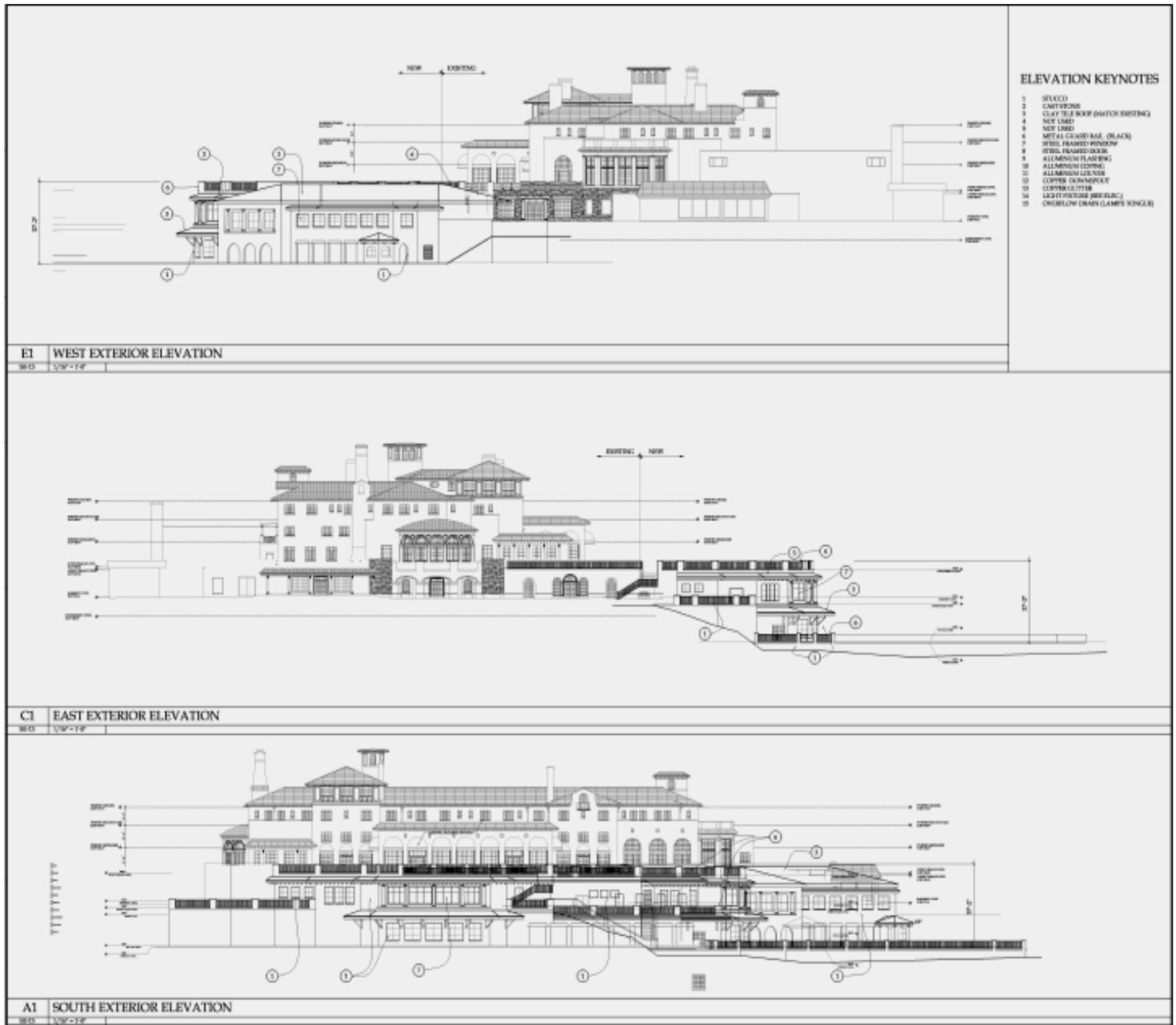


Hugh Barrett Coyle, Petitioner's expert in architecture (with a specialization in golf course and country club design), described the intended improvements to the Club, using Exhibit 31, to show the new features. Mr. Coyle testified that he sought to continue the "Spanish Revival style" of the Club, taking advantage of the topography and spilling down the hillside and terracing to add different functions, yet still getting vistas over the golf course. He did not want to put all of the building on top of the hill, but rather wanted to meld it into the hillside and allow it to spill down, so the scale and the

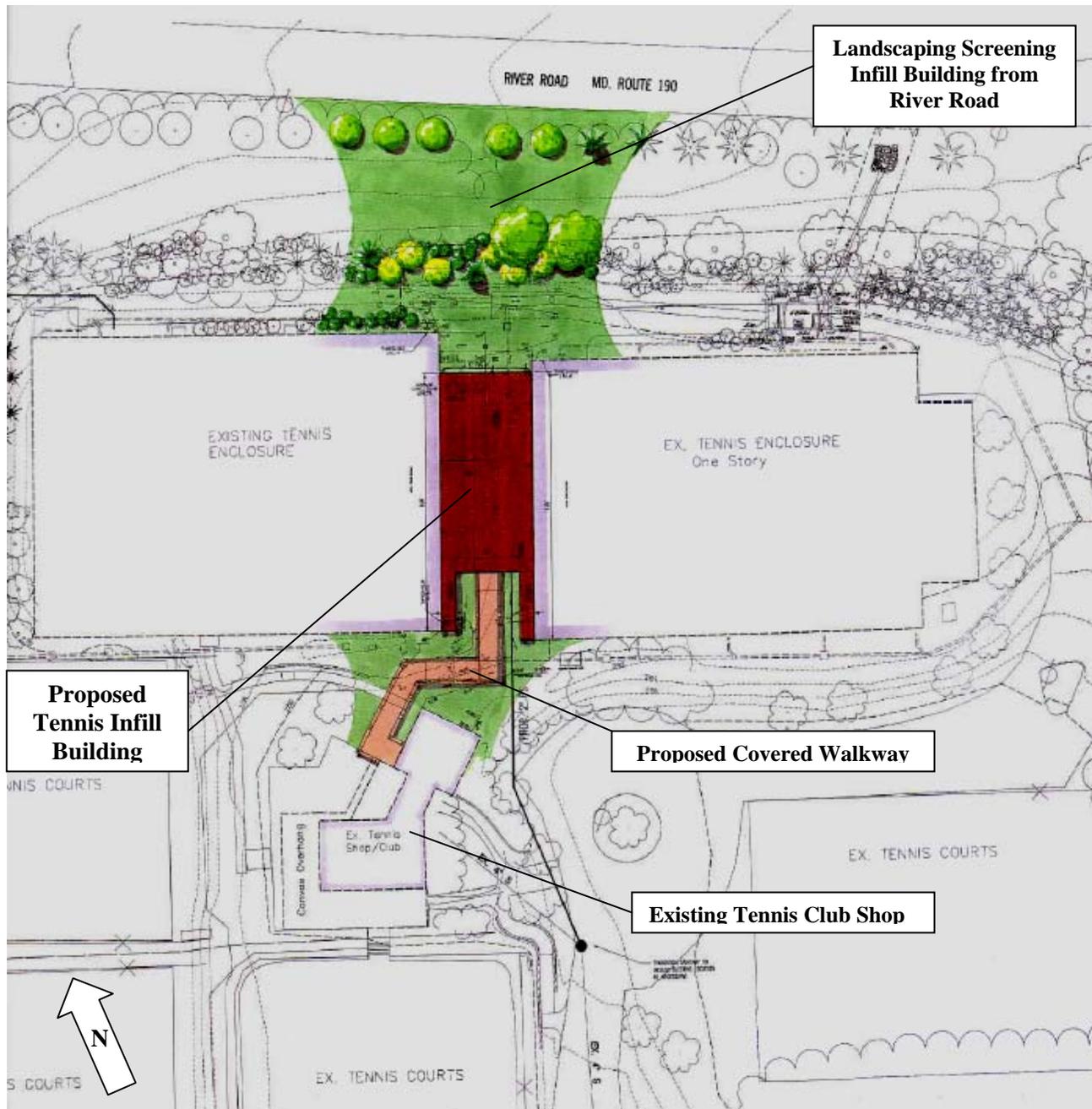
impact of the building are in residential proportions, his intent being to make the structure appear to be a home, or estate. Tr. 41. The area which will be added onto the existing clubhouse is highlighted in Exhibit 29, a color rendering of the Landscape Plan SE-4 for the Clubhouse/Pool area (Exhibit 20(g)):



Elevations of the proposed clubhouse/pool complex, as depicted in Plan SE-13 (Exhibit 20(1)), are shown below:



The proposed tennis infill building would be a very simple structure that spans the space between the two existing, enclosed tennis facilities, as shown on the following page in Exhibit 32, the color rendering of the landscape plan for that area, SE-5 (Exhibit 20(h)):



The structure would actually connect the two tennis enclosures and provide a viewing area each way into those facilities, so that people can see the activity within those enclosures. The space in the infill building would be used as a place for the players to gather after they play their matches. There is also a covered outdoor access that leads from the tennis shop and clubhouse to the tennis infill building.

The tennis enclosures have been in place since around 2000 or 2001. They are prefabricated metal buildings that will remain as they are currently. The only thing being done to them is to place openings in the two existing enclosures so that people in the tennis infill building can view the activity on the courts. Tr. 50-55. Questions relating to the impact, if any, of the proposed infill building will be discussed in Part II.C.4 of this report, in connection with the rear-yard locational requirement for accessory structures.

### 2. Club Membership, Staff and Hours of Operation:

Petitioner represents (Exhibit 20(a), p. 6) that the proposed improvements will not result in an increase in the Club's membership. The membership will remain at the current levels of 1,100 "resident active members" and 150 "social guests." The improvements, however, will result in an increase in the number of employees by twenty (full-time, part-time and seasonal). Currently the Club has a staff of 291 full-time and 179 part time and seasonal employees. With the proposed increase, the total number of employees will increase from 470 to 490.

Petitioner has provided the following information regarding the current hours of operation, which will be unchanged by the subject petition:

Today the Club operates almost 24 hours per day. Members arrive early (as early as 5:30 A.M.) to use the exercise room or to breakfast at the Club, and staff arrive even earlier. Meetings, social functions and receptions extend into the late hours of the evening, particularly on the weekend (Friday/Saturday) evenings, and post-event clean-up keeps staff on-site into the early morning. The Club is most busy during the mid-day and evenings, particularly in the summer when families spend entire days at the Club taking advantage of its numerous activities. But the Club's primary hours of operation are generally between 8:00 A.M. and 8:00 P.M.

### 3. Transportation and Parking:

Petitioner's transportation planner, Stephen Peterson, did a traffic impact study (Exhibit 18(a)) assessing the possible impact of the proposed improvements Congressional Country Club. He stated that there were no problems in terms of the local area transportation review (LATR). Traffic data

were collected to determine existing conditions, both at the intersections specified by Park and Planning staff and on the Club's driveways. This enabled him to determine a pattern of activity in and out of the Club, and to calculate the average peak hour traffic flows in the morning and the evening.

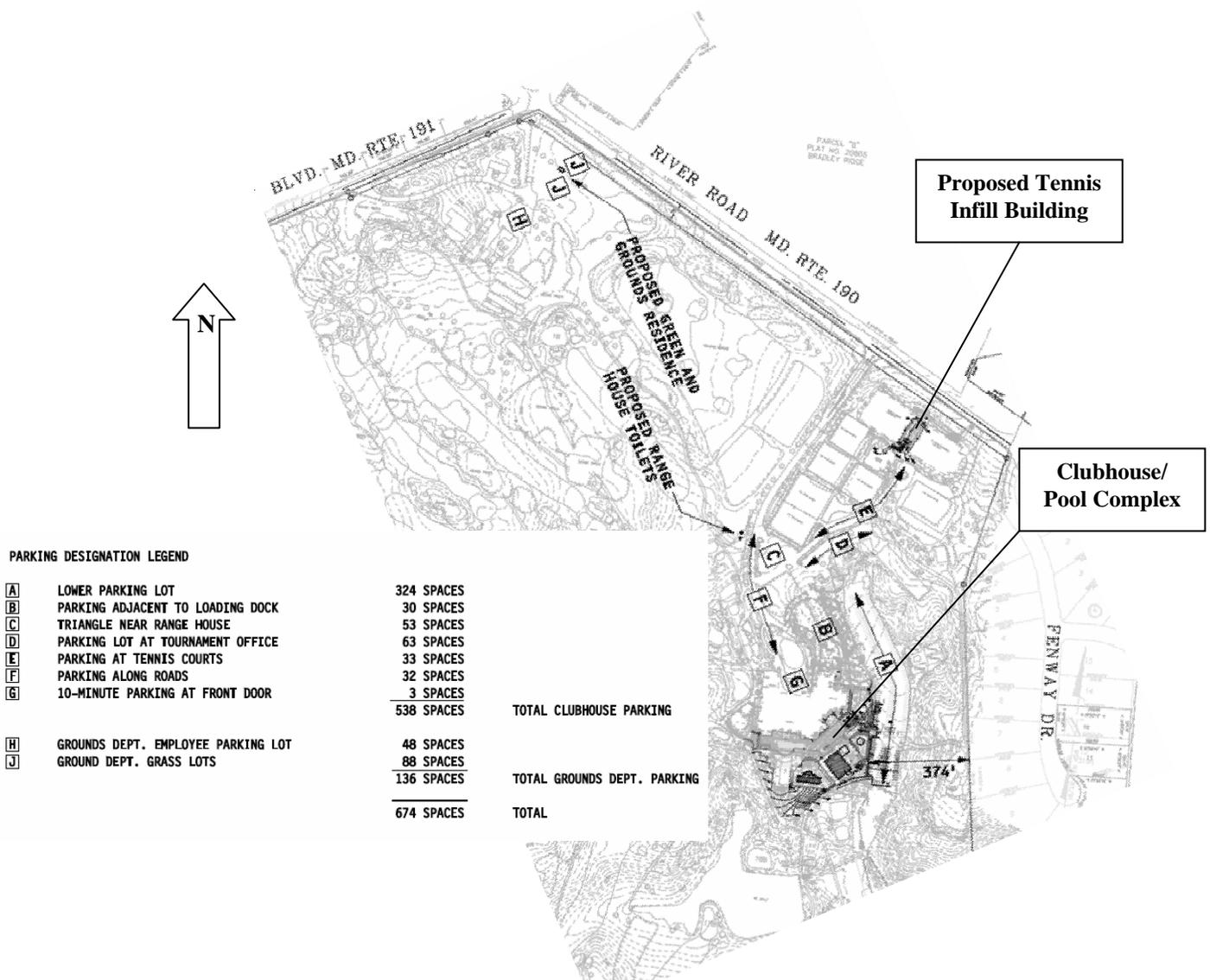
It was determined that the number of trips was under the 250 trip threshold which would have required additional intersections to be counted. The capacity analysis indicated that the three intersections that were analyzed met the congestion standard for the Potomac policy area, which is 1475 critical movements (CLV). The figures for all the studied intersection were in the range of 1021 to 1356 critical movements, substantially below the CLV threshold.

Because of the anticipation of adding 20 staff people, Mr. Petersen determined the number of additional trips that would occur in the peak hours of traffic flow based on those 20 additional staff, and added those trips to the existing conditions. He determined that all intersections still met the congestion standard. There are no background projects in the general vicinity of the site that were identified by Technical Staff, so adding the new traffic to the existing condition yielded a total traffic condition. Mr. Petersen opined that this was a very straightforward analysis, and the proposal meets all the criteria in local area transportation review (LATR). Mr. Petersen also concluded that the surrounding transportation network is adequate to serve the proposed use and that the proposal will not reduce the safety of vehicular or pedestrian traffic. Tr. 117-121.

Technical Staff agreed with Mr. Petersen's conclusions, noting that the site currently generates 131 peak hour trips in the morning and 223 in the evening. By adding 20 employees, the site would generate only 8 additional weekday peak-hour trips. Technical Staff concluded that "existing access to the site and the internal traffic/pedestrian circulation system shown on the site plan are safe and adequate." Transportation Planning staff also opined that "granting of the requested Special Exception to modify the existing facilities and to specify the total number of employee as 490

would not have an adverse effect on the nearby road system.” Exhibit 25, pp. 7-8. Based on this uncontradicted record, the Hearing Examiner finds that the proposed modifications would have no adverse impact on transportation facilities or safety.

Parking on site will be unchanged by the subject petition. There are a total of 674 parking spaces, of which 538 serve the clubhouse, swimming pools and tennis courts, and 136 serve the “Grounds Department,” which includes employee parking and temporary grass lots. Technical Staff found that the number of parking spaces was sufficient, and that the parking facility meets all applicable setback, screening, access, circulation and minimum landscaping requirements. Exhibit 25, p. 12. As a result of questions raised at the hearing, Petitioner filed a revised Site Plan SE-18 (Exhibit 41(d)), showing parking locations and tabulation, and a portion of it is displayed below:



4. Issues Regarding the Location of the Proposed Tennis Infill Building:

There are two issues regarding the location of the proposed tennis infill building – whether it violates the rear-yard location requirement for accessory buildings specified in Zoning Ordinance §59-C-1.326(a) and whether it violates the requirement in Zoning Ordinance §59-G-2.24 (d) that “all major outdoor activity areas . . . be set back at least 100 feet from property lines adjoining a one-family residential use.”

**The Rear-Yard Locational Requirement for Accessory Buildings:**

Zoning Ordinance §59-C-1.326(a) requires that accessory buildings and structures in the R-200 Zone be located in a rear yard. Since the front entrance to Congressional is on River Road, and the proposed tennis infill building will be adjacent to River Road, it would be located in a front yard, contrary to this Code section. Petitioner therefore seeks a waiver of this provision, which the Board is expressly authorized to grant in connection with golf and country clubs, pursuant to Zoning Ordinance §59-G-2.24(b)(3).

Petitioner suggests that Department of Permitting Services (DPS) does not make a distinction between “main” and “accessory” structures for country clubs and golf courses (Exhibit 20(a), pp. 17-18). Nevertheless, Petitioner argues that the waiver permitted by Zoning Ordinance §59-G-2.24(b)(3), should be granted, if one is required. In support of this argument, Petitioner states the following in its Amended Statement of Operations (Exhibit 20(a), pp. 17-18):

1. Existing accessory structures that are located outside of the rear yard of the Clubhouse property include two existing tennis enclosures and an existing tennis shop/club. These features have been in place for many years and represent a fixed feature of the Club’s “landscape” and will not be modified in any meaningful way by the present petition.
2. The proposed tennis “in-fill” building will serve as an enclosed viewing area located between the two existing tennis enclosures. It will be set back

more than 100 feet from River Road<sup>4</sup> and will not be visible from the west or from the residences located to the east since it will not exceed the height of the existing tennis enclosures.<sup>5</sup>

Technical Staff supports this position (Exhibit 25, p. 15), and indicates its agreement with Petitioner's conclusion that the evidence supports the waiver, if one is necessary.

Fortunately, the Hearing Examiner need not decide whether the existing tennis court enclosures and the existing tennis shop/club are accessory structures within the meaning of the Zoning Ordinance, because the Board of Appeals has already reviewed and allowed the existing tennis court enclosures and the existing tennis shop/club under the current special exception. The doctrine of "administrative law of the case" precludes re-examination in a later proceeding of issues earlier decided in the same case by an administrative body acting in a quasi-judicial capacity, absent good cause (*e.g.*, fraud, surprise, mistake, inadvertence or a new or different factual situation). *See, Schultze v. Montgomery County Planning Board*, 230 Md. 76, 185 A.2d 502 (1962) and *Woodlawn Area Citizens Assoc. v. Board of County Comm'rs*, 241 Md. 187, 194-197, 216 A.2d 149 (1966).

The Hearing Examiner finds that the existing tennis court enclosures and the existing tennis shop/club will not be modified in any way material to the locational issue, and therefore the "non-rear-yard" status of these existing structures should not be re-examined. Since Congressional was established prior to May 6, 2002, Zoning Ordinance §59-G-2.24(e) also makes it a conforming use, and the existing tennis court enclosures and the existing tennis shop/club therefore need not be re-evaluated.

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<sup>4</sup> Testimony at the hearing revealed that the site for the new tennis infill building, though over 100 feet from the current location of River Road, will actually be within 100 feet of the right-of-way following 34 feet of dedication. (One of the existing tennis enclosures is currently only 93 feet from River Road, but the Infill building site is 17 feet further back.) Tr. 91-96. Whether or not the proximity to River Road has any effect here will be discussed in the main text in connection with the 100-foot setback provision of Zoning Ordinance §59-G-2.24(d).

<sup>5</sup> The Planning Board noted in its letter recommending approval of the special exception (Exhibit 27) that the proposed infill building will actually be up to 7.5 feet taller than the existing tennis enclosures, and Petitioner mentioned this correction at the hearing. Tr. 54. This fact will also be discussed in connection with the 100-foot setback provision.

On the other hand, the proposed tennis infill building will be new, and if it is an “accessory building or structure,” it must be located in a rear yard, unless that provision is waived. As mentioned, it has been suggested that DPS does not distinguish between “main” and “accessory” structures for country clubs and golf courses. The Hearing Examiner recognizes that some deference must be given to an administrative agency’s interpretation of the statute it administers. As stated in *Watkins v. Secretary, Dept. of Public Safety and Correctional Services*, 377 Md. 34, 46, 831 A.2d 1079, 1086), “We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers.” However, in interpreting the Zoning Ordinance, our goal must always be to give effect to the intent of the Council, the legislative body which enacted it. The applicable rule of statutory construction was set forth by the Maryland Court of Appeals in *Trembow v. Schonfeld*, 393 Md. 327, 336-337, 901 A.2d 825, 831 (2006),

We have stated the rules governing statutory construction so often that only the most cursory repetition is necessary. Our goal is to ascertain and implement the legislative intent, and, if that intent is clear from the language of the statute, giving that language its plain and ordinary meaning, we need go no further. We do not stretch the language used by the Legislature in order to create an ambiguity where none would otherwise exist. If there is some ambiguity in the language of the statute, either inherently or in a particular application, we may then resort to other indicia to determine the likely legislative intent. [Citations omitted.]

While it may be difficult to determine whether some structures in a country club are “main” or “accessory,” it seems rather clear in this case that the clubhouse complex is the main building and the proposed tennis infill building will be accessory. Zoning Ordinance §59-A-2.1 defines “Accessory Building,” in relevant part, as follows:

*A building subordinate, and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part of a common wall or common roof to the main building.*

If the Council had intended the position reportedly taken by DPS (*i.e.*, not distinguishing between “main” and “accessory” structures for country clubs and golf courses), then it would not have needed to include a provision in the golf and country club special exception giving the Board of Appeals the power to waive the rear-yard locational requirement for accessory buildings in appropriate cases. Since it did include such a provision (Zoning Ordinance §59-G-2.24(b)(3)), the Hearing Examiner concludes that the Council did intend to distinguish between “main” and “accessory” buildings for country clubs and golf courses.

Nevertheless, the Hearing Examiner agrees with the conclusion reached by Petitioner and Technical Staff that the Board should grant a waiver for the proposed tennis infill building. Located between the existing tennis enclosures, it will be no more intrusive than the existing tennis facilities, and it will be consistent with the locational decisions the Board has approved in the past for this special exception.

Petitioner’s architect, Hugh Barrett Coyle, testified that the tennis infill building will be set back so that the shading shadow will diminish its impact, and enough landscaping will be provided so that the infill building will not be really seen as an addition. It will look as if it were part of the original construction of these enclosures. In Mr. Coyle’s opinion, the infill building will not have any impact whatsoever on the adjacent community because the peaks of the buildings will not be visible from River Road, and observers “won’t really see anything different than what you see today.” Tr. 50-55.

Given this record, the Hearing Examiner recommends that the Board waive the rear yard locational requirement found in Zoning Ordinance §59-C-1.326(a), as the Board is permitted to do pursuant to Zoning Ordinance §59-G-2.24(b)(3).

**The 100-Foot Setback Provision of Zoning Ordinance §59-G-2.24(d):**

As pointed out by Petitioner, the proposed tennis infill building will be set back more than 100

feet from the current location of River Road; however, it will be within 100 feet of the right-of-way, following 34 feet of dedication. Tr. 91-96. Zoning Ordinance §59-G-2.24 (d) requires that “all major outdoor activity areas . . . be set back at least 100 feet from property lines adjoining a one-family residential use.”

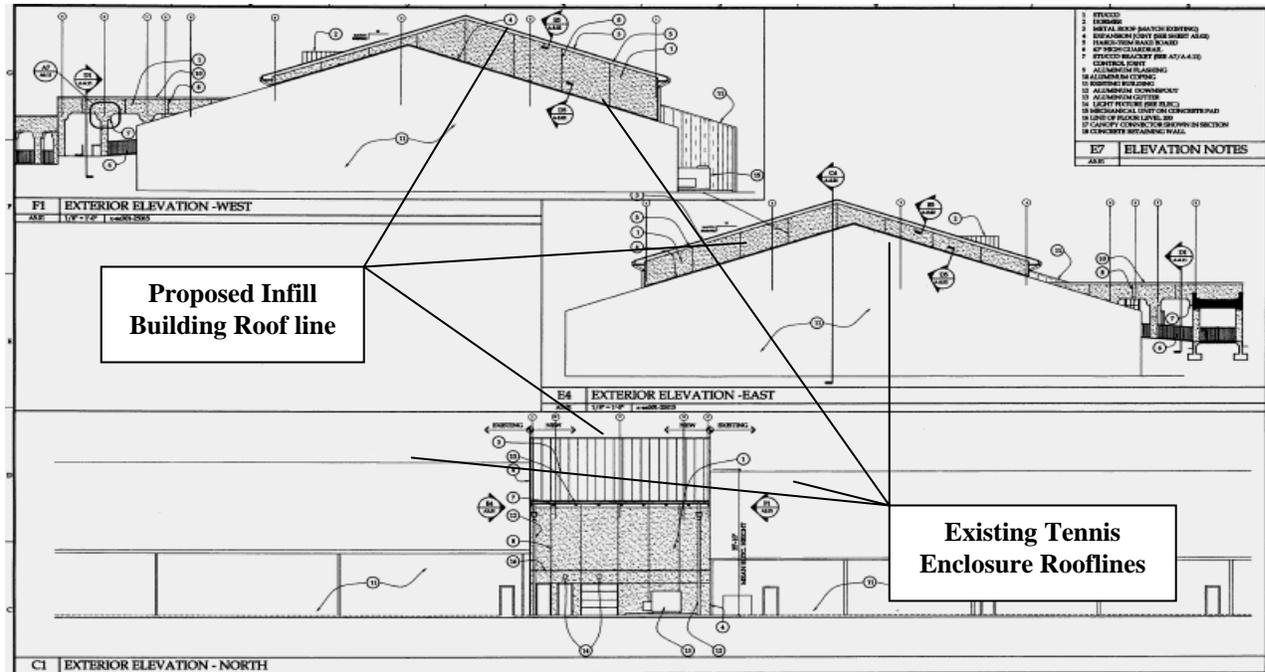
The first observation should be that neither the proposed infill building nor the existing tennis enclosures are “outdoor” activity areas, which is what this provision applies to. They are buildings. Moreover, the Hearing Examiner agrees with Petitioner’s land use planner, Alfred Blumberg, who noted that Zoning Ordinance §59-G-2.24(d) requires 100 feet of separation from “property lines adjoining a one-family residential use,” not from all property lines in a residential zone. The use adjoining the relevant property line is a major roadway. Directly across River Road at this point is an institutional use, Norwood School, and it is far more distant than 100 feet from the tennis enclosures.

The Hearing Examiner notes that *Blacks Law Dictionary* (7<sup>th</sup> Edition, 1999) defines “adjoining” as “touching; sharing a common boundary; contiguous.” In contrast, “adjacent” is defined as lying near or close to, but not necessarily touching.” Applying this definition of “adjoining,” the word used in §59-G-2.24(d), the property line in question is not adjoining a one-family residential use.

The Hearing Examiner concludes that neither the planned infill building nor the existing tennis enclosures violate §59-G-2.24(d). If the Board disagrees, the Hearing Examiner recommends that it reduce the required setback to that which is planned, as it is permitted to do in the same provision, when landscaping, screening and other measures mitigate the adverse effects on any adjoining residential use.

In this regard, the Hearing Examiner notes that the proposed height of the infill building (up to 7.5 feet taller than the existing tennis enclosures) will have little or no impact on adjoining uses. The

Exterior Elevations Plan SE-14 (Exhibit 20(m)), which is reproduced below, shows the relative heights of the proposed infill building (shaded) and the existing structures.



This height difference will not make any material difference in this case because the peaks of the buildings will not be visible from River Road, and observers “won't really see anything different than what you see today,” according to Petitioner’s architect, Hugh Barrett Coyle. Tr. 50-55. It is obvious from the rendered site plan of the proposed infill structure (Exhibit 32), which is shown on page 14 of this report, that the infill building will be very well screened from the roadway.

In sum, the 100-foot setback requirement of Zoning Ordinance §59-G-2.24(d) does not apply to either the existing tennis enclosures or the proposed tennis infill building, and if it does apply, the Board should reduce the required setback to that which is shown in Petitioner’s plans.

#### 5. Lighting and Signage:

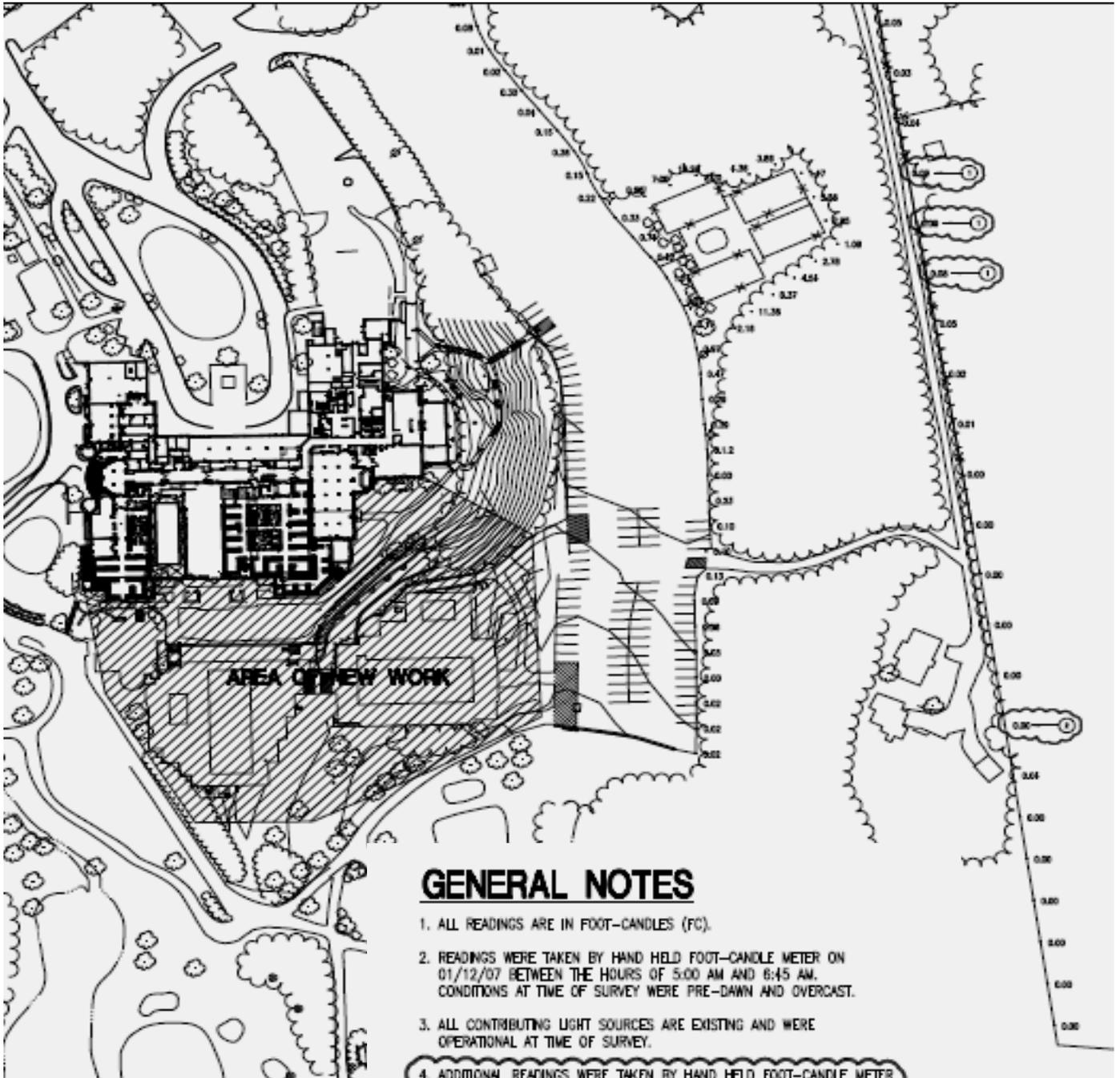
David Ullmann, Petitioner’s lighting design expert, described the lighting fixtures to be added externally during the renovations and stated that the lighting fixtures to be used are all cut-off, light

fixtures designed to direct light down, and not up and out where it might be objectionable. The fixtures are designed to be consistent with the Spanish Revival architectural style of Congressional. The highest fixture that the Club plans to install as part of this renovation would be the wall-mounted Dundee fixture, and that mounting height would be approximately 8 feet. The Club also has some light fixtures mounted in the trees, shining down, but they are directed away from the property lines, so they create a soft illumination across parking areas and some walkways directly outside the club buildings.

Mr. Ullmann stated that the photometric readings indicating light spillage at the side property lines in excess of 0.1 footcandles, as shown in Photometric Plan SE-6c (Exhibit 20(k)), were misleading because they were taken inside of an eight foot fence on the property line. In his opinion, if readings were taken outside of the fence, they would demonstrate that Petitioner meets the County standard of 0.1 foot candles along the perimeter of the property where the Club abuts residential properties. Tr. 59-80.

After the hearing, Petitioner took readings outside the fence and filed a revised Photometric Plan, SE-6c (Exhibit 41(b)) demonstrating that all light readings along the side yard property lines are less than 0.1 footcandles. The readings in excess of 0.1 footcandles shown in Photometric Plan SE-6b (Exhibit 20(j)), are not violative of Zoning Ordinance §59-G-1.23(h)(2) because they are along River Road, which abuts the front yard of the property. Petitioner also submitted a Photometric Plan SE-6d (Exhibit 41(c)), showing the cut sheets for the new fixtures. Portions of these new photometric plans are reproduced on the following pages.

In Mr. Ullmann's opinion, the lighting plan that has been proposed as part of the special exception will not cause any glare or bothersome illumination for any of the properties that abut the Club's property. Tr. 74-75. Technical Staff also indicated that there are no problems with either the newly proposed lighting or the lighting approved in CBA-1206-F. Exhibit 25, p. 13. Based on this record, the Hearing Examiner finds that the proposed lighting is appropriate.



**GENERAL NOTES**

1. ALL READINGS ARE IN FOOT-CANDLES (FC).
2. READINGS WERE TAKEN BY HAND HELD FOOT-CANDLE METER ON 01/12/07 BETWEEN THE HOURS OF 5:00 AM AND 6:45 AM. CONDITIONS AT TIME OF SURVEY WERE PRE-DAWN AND OVERCAST.
3. ALL CONTRIBUTING LIGHT SOURCES ARE EXISTING AND WERE OPERATIONAL AT TIME OF SURVEY.

4. ADDITIONAL READINGS WERE TAKEN BY HAND HELD FOOT-CANDLE METER ON 04/11/07 BETWEEN THE HOURS OF 9:15 PM AND 10:00 PM. CONDITIONS AT TIME OF SURVEY WERE OVERCAST WITH DRIZZLE.

**KEY NOTES**

- ① NEW READING TAKEN ON 04/11/07.
- ② 0.00 FOOT-CANDLE READING TAKEN FROM OTHER SIDE OF 9'-0" TALL WOODEN FENCE AT PROPERTY LINE WITH MOTION ACTIVATED SECURITY LIGHT ON. 0.00 FOOT-CANDLE READING TAKEN ON CLUB SIDE OF FENCE WITH MOTION ACTIVATED SECURITY LIGHT OFF.

**SA**

**OPTION**

Lightly diffused lens to conceal fixture details.

**DIMENSIONS**

**ELEVATED SCALE**

ROAC: 0/20" = 1"	ALN 610	2-ALN 610	ALN 610	2-ALN 610	ALN 610
HEAD	ALN 610	2-ALN 610	ALN 610	2-ALN 610	ALN 610
WBL	2-TWAZL		TWAZL		WMAK
POLE	DD1-4F14	DD1-4F14	DD1-4F14	DD1-4F14	
OPTIONS	SS04-24				

ARCHITECTURAL AREA LIGHTING 3

**SA**

FIGURE	DESCRIPTION	LED	ENK	IP
ALN 610B	clear acrylic lens, type 2 horizontal cutoff reflector	00	2,16	80
ALN 610C	clear acrylic lens, type 3 horizontal cutoff reflector	00	2,16	80
ALN 610D	clear acrylic lens, type 4 horizontal cutoff reflector	00	2,16	80
ALN 610E	clear acrylic lens, type 5 horizontal cutoff reflector	00	2,16	80

**COLORS**

Standard AIA Colors

**OPTIONS**

WDM Future color painted white.

LXM Polycarbonate lens in lieu of acrylic.

LDL Lightly diffused lens to conceal fixture details.

**LIGHT POLLUTION REDUCTION**

**LABOR/INSTALL**

OP	DESCRIPTION
FL37	87 watt compact fluorescent ballast 100 Rev. 2/77 volt. Use a 08-F57Q081 lamp. 0°C minimum start temp.
PL30	70 watt compact fluorescent ballast 100 Rev. 2/77 volt. Use a 08-F70Q081 lamp. 0°C minimum start temp.
80M4	80 watt metal halide 100/277 volt ballast. Use medium base, clear ED-17 lamp.
30M4	70 watt metal halide 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
100M4	100 watt metal halide 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
180M4	180 watt metal halide 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
175M4	175 watt metal halide 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
200P0	70 watt high pressure sodium 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
100P0	100 watt high pressure sodium 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.
180P0	180 watt high pressure sodium 100/270/240/277 volt ballast. Use medium base, clear ED-17 lamp.

**NOTE:** Lamp not included. All fixtures prewired for 277 volts.

ARCHITECTURAL AREA LIGHTING 2

**SC**

**Downtight luminaires**  
- pendant and cable suspended

These luminaires may be fixed for suspension from cable systems using the BEGA #107 cable hanger, or also be produced mounted with "long shank" lenses. These recessed luminaires may be adapted for interior spaces or exterior under canopies, over hanging roofs, in passages or exterior structures where the luminaires must be resistant to corrosion, water, dust and insects.

**Electrical:** H.L.D. low medium base porcelain with nickel plated screw shell. Flux cable (BY) ballasts are available, HPS available in 120V or 277V - 1 phase.

**Finish:** These luminaires are available in five standard BEGA colors: Black (BK), White (WH), Bronze (BRZ), Silver (SL), European (URO). To specify, add appropriate suffix to catalog number. For complete description of BEGA finishing process, refer to technical information section at end of catalog. Custom color supplied on special order.

U.L. listed, suitable for wet locations, Protection class: IP 44, against excessive penetration (resistant) due to wind.

**Note:** Where installed in the open, luminaires must be protected.

Type: BEGA Product #:  
Project:  
Voltage:  
Color:  
Options:  
Modified:

Lamp	Lumen	A	B
RT18	1.50W 8-11 HPS	880	276, 176

**BEGA US** 1000 BEGA Way, Carpinteria, CA 93013 (P) 805-684-0033 (F) 805-684-6882  
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**SD**

**Recessed wall luminaires**

**Housing:** Constructed of die cast and extruded aluminum components with integral wiring compartment. Mounting tabs provided.

**Enclosure:** One piece die cast aluminum housing. Clear tempered glass, 1/8" thick, machined flush to housing surface. Facings are secured by two (2) screws, located inside. Stainless steel captive screws. Provided stainless steel inserts in the housing casting. Continuous high temperature, medical silicone rubber gaskets for weather tight operation.

**Electrical:** Compact fluorescent lamp(s) 25/11, 0-ph, rated 70W, 80/11 ballast. Ballasts, HPS for -18°C starting, universal voltage (120V through 277V).

**Through Wiring:** Maximum four (4) No. 12 AWG conductors (plus ground) suitable for EPC. Two (2) knockouts provided for air circulation.

**Finish:** These luminaires are available in five standard BEGA colors: Black (BK), White (WH), Bronze (BRZ), Silver (SL), European (URO). To specify, add appropriate suffix to catalog number. For complete description of BEGA finishing process, refer to technical information section at end of catalog. Custom colors supplied on special order.

U.L. listed, suitable for wet locations and for installation within 3 feet of ground. Suitable for all types of construction, including poured concrete. Type non-IC. Protection class: IP 65.

Type: BEGA Product #:  
Project:  
Voltage:  
Color:  
Options:  
Modified:

Lamp	Lumen	A	B
223AP Recessed	1.50W CF lamp/8W 1200 13	476, 476	4

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The final item in this section concerns signage. Since there are no new signs proposed in this modification petition, there are no issues in this regard.

6. Environment and the Forest Conservation Plan:

Technical Staff reports that the subject property is not located within a Special Protection Area or Primary Management Area. Stream buffers and wetlands are identified and protected except where the site was developed before the Environmental Guidelines were adopted.

**Stormwater Management:**

Petitioner is proposing to take stormwater runoffs from new and existing impervious areas and convey them to the east of the property, where they will be combined into underground facilities for water quality control. There is an existing, combination stormwater quantity and quality facility which will be replaced with a larger underground storage facility for water quantity (channel protection) purposes, and there will be an outfall in the very same location that is currently being used as an outfall. Recharge will be accomplished throughout the site in five areas where there are stone reservoirs on the grounds that will accept runoff from the roof tops and recharge back into the ground. Tr. 81-86. Petitioner has received approval from the County (Exhibit 35) for its stormwater management concept plan.

**Forest Conservation:**

Technical Staff described the forest conservation issue in its report (Exhibit 25, pp. 8-9):

The Forest Conservation Plan (FCP) submitted with this special exception amends a final FCP, approved on August 8, 2000, by removing a 0.48-acre tree stand to construct a clubhouse addition. The plan, currently in the process of an administrative amendment, also attempts to reconcile unrecorded easements, shown on the previously approved plan, with accurate site conditions. All forest conservation requirements resulting from the changes can be met on site.

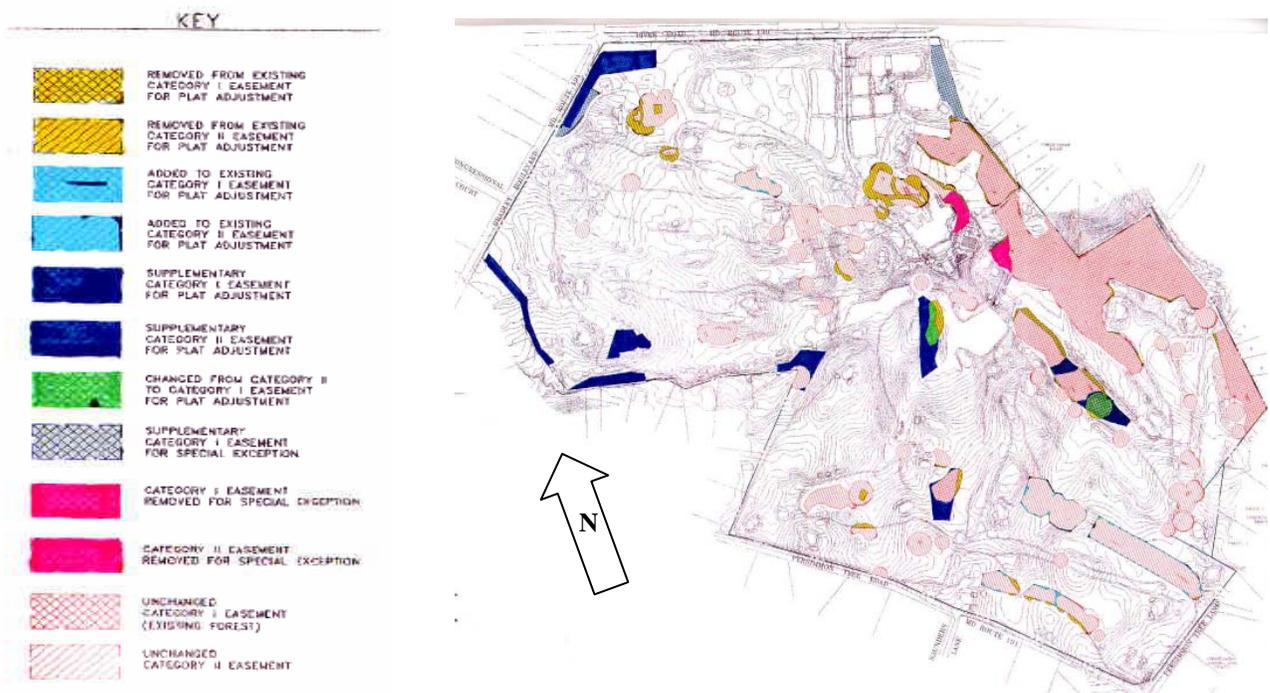
The Final FCP approved in 2000 was revised, but not approved, in 2004 when some of the golf course holes and paths were proposed for renovation. At this time, staff discovered that required Forest Conservation easements were never recorded. Discrepancies between the proposed easements and location of existing forest were also discovered. Since then staff has been working with the applicant to craft a FCP

that can be approved with easements accurate to existing forest conditions. Staff and applicant did reach agreement on the size and location of the new easements, but this special exception was submitted before the plan was formally approved.

\* \* \*

The FCP submitted with this application must now be adjusted to illustrate the initial extent of forest, where reforestation occurred after the 2000 FCP was approved, the easement associated with the 2000 FCP and the newly sized easements.

As mentioned by Petitioner’s attorney at the outset of the hearing, discussions regarding the details of the forest conservation plan have been going on between Petitioner and Technical Staff for some time. The Environment Planning Division of M-NCPPC prefers to have the location of Category 1 and Category 2 forest conservation easements shown on the face of the record plat, and those final details have not yet been approved. Once Park and Planning staff and the Planning Board approve the details, the engineers can prepare the metes and bounds description, which will be put on the face of the plat, and then the plat can be recorded. That is a prerequisite to the issuance of a building permit to implement any of the proposed modifications. Tr. 17-21. To illustrate the current state of the FCP, Petitioner submitted its newly proposed FCP (Exhibits 39(a) and (b)), to which even more detail will be added. Exhibit 39(a), covering the northern section of the Club, is shown below:



The Planning Board conditionally approved the FCP (Exhibit 27), but specified that:

1. The Final Forest Conservation Plan and associated easements must be submitted to and formally approved by M-NCPPC staff for recordation prior to release of the sediment and erosion control permit for the clubhouse addition.
2. Applicant must submit to staff a clear graphic representation of forest differences, easements reconciled to actual site conditions, and a full accounting of required reforestation.

The Hearing Examiner has recommended these two conditions, with one amendment – approval of the FCP by the Planning Board itself is a requirement. This change was suggested at the hearing by the People’s Counsel to insure compliance with Montgomery County Code, Chapter 22A. Petitioner agreed to the change. Tr. 4-7.

#### **D. Proposed “Reinstatement” of the CBA-1206-F Modifications**

As mentioned in the opening paragraphs of this report, in addition to all the newly planned renovations, Petitioner seeks “reinstatement” of the Board’s resolution, effective January 20, 2005, granting modification of the special exception in CBA-1206-F (Exhibit 20(x)). That modification permitted construction of a residence for interns participating in the “greens and grounds” program<sup>6</sup> and addition of a restroom facility to the existing driving range building. Petitioner was unable to commence construction of those changes within two years after the modification was granted, and therefore may not proceed with the modification unless the Board re-authorizes those changes.

Zoning Ordinance §59-A-4.53(b)(2) provides that “A special exception is not valid after 24 months if the use is not established or a building permit is not obtained and construction started within the period.” Section 59-A-4.53(c) permits the Board to extend the validity period for up to 12 months

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<sup>6</sup> Also called the “Turf Management Program” and the “Intern Program.”

at a time upon a showing that planning, preparation “or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity.”

However, Petitioner does not seek such an extension; rather it requests another two-year period of validity. This request creates a novel issue because there is no provision in either the Zoning Ordinance or the Board’s Rules of Procedure addressing requests for “reinstatement” of expired special exceptions or modifications thereof.

After considering this fact, the Hearing Examiner concludes that the problem with the request is semantic, rather than procedural or substantive. If a special exception holder merely seeks an extension pursuant to §59-A-4.53(c), then there is no requirement for the holder to reprove its entitlement to the special exception or modification. Instead, it need address only factors involved in the delay. In contrast, here the Petitioner does not seek to prove the cause of delay, but rather has resubmitted the record of the earlier case (CBA-1206-F) and asked that the Board include the same authorization as part of an expanded modification. Petitioner initially used the shorthand of “reinstatement” to characterize its request, but it is actually seeking a re-approval of CBA 1206-F, based on the record, which has not changed in any material way. Tr. 8. The Hearing Examiner finds nothing in the Zoning Ordinance or the Board’s Rules that prevents such a reauthorization, and he takes official notice of the record in CBA-1206-F, for the purpose of evaluating Petitioner’s re-approval request.

There is nothing in either the CBA-1206-F record, or in the new CBA-1206-G record, indicating any change in relevant circumstances that would lead the Board to reach a different conclusion regarding the CBA-1206-F modifications than it did in January of 2005 when it initially authorized them. Tr. 23-24. In the absence of any such change, the reauthorization should be granted. As mentioned in connection with the rear-yard location issue, the doctrine of “administrative law of the case” precludes re-examination in a later proceeding of issues earlier decided in the same case by an

administrative body acting in a quasi-judicial capacity, absent good cause (*e.g.*, fraud, surprise, mistake, inadvertence or a new or different factual situation). *See, Schultze v. Montgomery County Planning Board, supra*, and *Woodlawn Area Citizens Assoc. v. Board of County Comm'rs, supra*.

Although the Hearing Examiner is recommending reauthorization of CBA-1206-F based on this legal analysis, the factual basis for the CBA-1206-F authorization has been set forth below for the Board's examination, should it wish to reevaluate it in the context of the new modification request.<sup>7</sup>

1. The New Intern Residence:

Petitioner's request to build a new intern residence is explained in CBA 1206-F's application cover letter (Exhibit 20 in CBA 1206-F).

Congressional Country Club is involved in a program with a number of colleges relating to degrees in golf course operation, maintenance and repair. Under this program, students spend a semester or more at Congressional Country Club working on the grounds of the golf course and receiving practical learning experience from Congressional's expert golf course maintenance staff. As Congressional has been the site of many nationally recognized golf tournaments, its courses enjoy "state of the art" maintenance and attention. Therefore, these students receive a very valuable learning experience leading to degrees from their respective collegiate institutions.

Petitioner also explains in this exhibit that it is most efficient to house these program participants on the grounds of the country club because it reduces the students' expenses and allows them to live in close proximity to their outdoor "classroom." The location in the westerly corner of its property, near the intersection of River Road and Bradley Boulevard, was selected for several reasons:

- A. Ready access to the maintenance buildings, equipment storage barns and supervisor's offices of the Club (within 300 feet of the proposed residence).
- B. Close to a little-used access point to public streets (Bradley Boulevard).
- C. Close to the residence of the Club's greenskeeper (200 feet away).

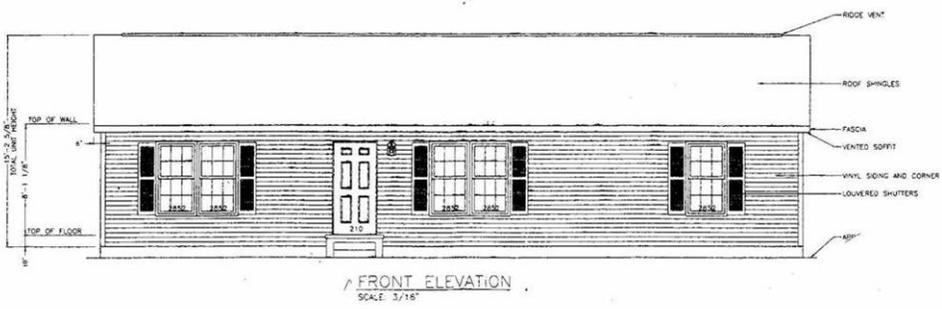
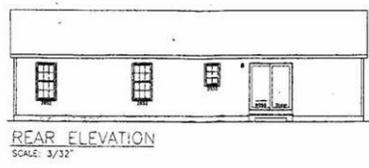
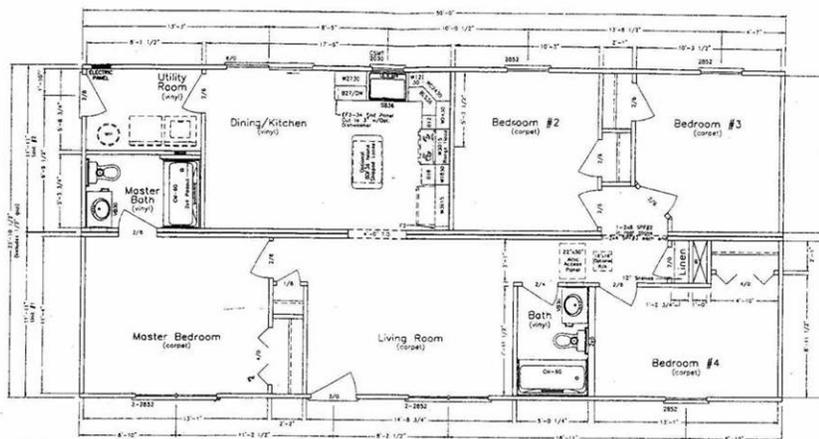
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<sup>7</sup> The factual discussion is reproduced from Part II.C. of the Hearing Examiner's October 18, 2004, report on CBA-1206-F, which is included in this record as Exhibit 20(v)).



It should be noted that the location of the proposed intern residence is 186 feet from the Bradley Boulevard right-of-way and 154 feet from the River Road right-of-way. The closest residence to it would be about 400 feet away, across Bradley Boulevard. CBA 1206-F Tr. 29. The building itself would have approximately 1,200 square feet of floor area and be 15 feet 3 inches tall. Its exterior will be vinyl siding, with asphalt shingles. The lighting on the house will be limited to a porch light on the front, a porch light on the back and a porch light on the side, each with a 100 watt bulb. The floor plans and elevations for this project are shown below (CBA 1206-F Exhibit 26(a)):

CBA-1206-F  
10.29.03 3



**CONGRESSIONAL COUNTRY CLUB  
PROPOSED GREEN AND  
GROUNDS RESIDENCE**

The landscaping which will be used to screen this proposed building from the neighborhood was described by George Haskins, Petitioner's landscape design expert. According to Mr. Haskins, most of the frontage is already well screened. There is already a berm along Bradley Boulevard that provides some screening. Petitioner planned to fill the gaps along Bradley Boulevard and River Road with both high and low elevation evergreens and with some shade trees in character with the neighborhood. The high elevation evergreens would be a double row of Leyland Cypress, and behind them, Petitioner is planning to plant some Spruce trees and tall grass that will grow to five or six feet to complete the screen.

Petitioner will also plant five medium size holly trees and a row of some ornamental grasses that will grow into a very dense, "essentially impenetrable screen" to fill in the gap at the intersection of Bradley Boulevard and River Road. Behind the hollies, there would be five shade trees; red maples and weeping willows.

According to Mr. Haskins, the landscaping Petitioner is proposing along the edge of the existing Bradley Boulevard berm will fill in the gaps that allow visibility of the maintenance area from the road. There will be ornamental grasses along the face of that berm that will fill in rather rapidly. Behind those, some evergreen holly shrubs that will grow approximately the same height as the ornamental grasses, but more slowly, so that over time, they will provide some additional evergreen screening behind the grasses. In addition to those, there would be some additional spruce trees or holly trees on the back end of that berm to screen the greens keeper's house from the street.

In Mr. Haskin's expert opinion, the planting screen that exists, plus the supplements that Petitioner is proposing, provide a more than adequate screen of the uses on the property. The cars parked on the subject site in the area of Bradley Boulevard will also be screened by the planned landscaping.

2. Restroom Facilities To Be Added to the Existing Driving Range Building:

The basis for the second proposed modification and a description of it were provided by Petitioner in the application cover letter (CBA 1206-F Exhibit 20).

Adjacent and south of the golf course driving range there currently exists a small “range house” containing a pick-up window for practice balls, a storage area, and a utility room in which practice range balls are cleaned. Congressional has received requests from its elderly members to install toilets at the driving range house, so that users do not have to walk all the way back to the clubhouse for toilet facilities, or use the bathrooms at the tennis complex.

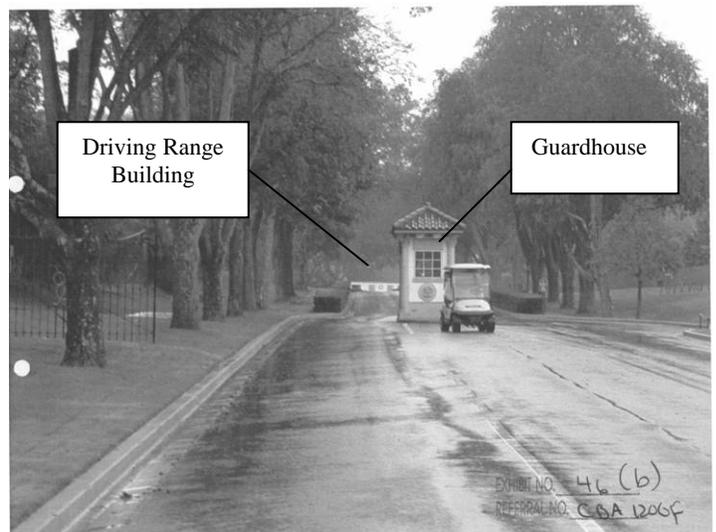
\* \* \*

The addition to the driving range shelter will allow for a single handicapped toilet in the women’s and the men’s bathroom, as well as a sink and clean-up area in each bathroom. Each of the restrooms will be attached to the existing driving range building by a small open air entrance hall that will be screened by a decorative metal grill gate. The restroom areas will be served by both public sewer and water. These bathrooms will provide a convenience to the members and will eliminate the need for them to traverse their club’s property in order to locate bathroom facilities.

The photos shown below depict the driving range building as it currently exists:

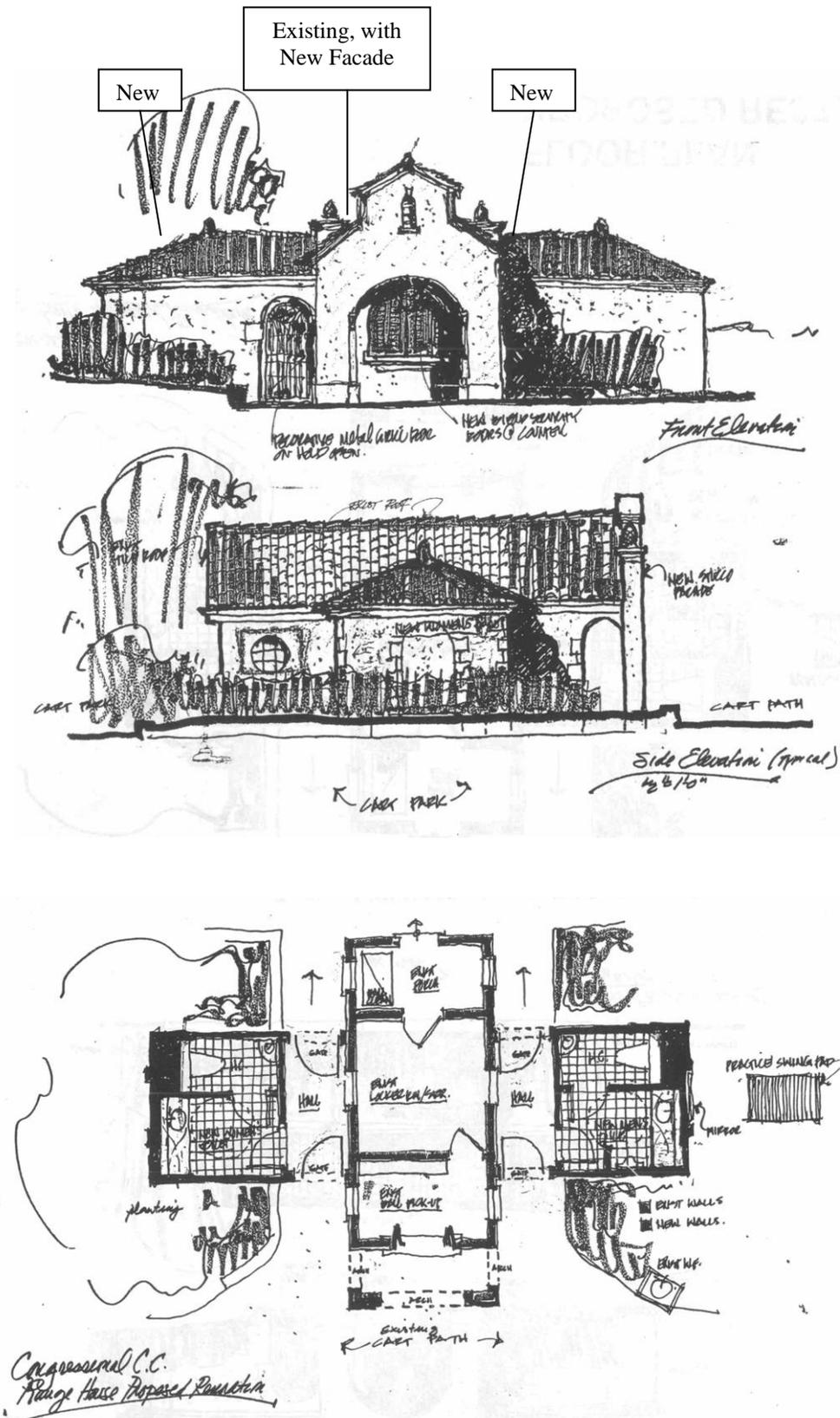


CBA 1206-F Exhibit 43(c), a Close-up of the Eastern Elevation of the Driving Range Building



CBA 1206-F Exhibit 46(b), the Guardhouse and Driving Range Building Shot from River Road

The drawings depicted below, from CBA 1206-F Exhibit 26(c), show the driving range building as it will look following the addition of the restrooms, and the floor plan for the expanded building:



As can be seen from a comparison of the above drawings with the photos of the existing building, a new façade, with a covered ball-pickup area, will be added on the front of the structure in addition to the new restrooms. This change, in addition to a terra cotta roof, are intended to match the range building's architecture to that of the existing clubhouse. Mr. Stricklin described it as a Mediterranean look. Each bathroom will be about 110 square feet, plus there will be about 40 square feet of hallways, for a total addition of approximately 260 square feet. Technical Staff estimated the total area of renovated building at 374 square feet. The bathrooms are being added because the closest restrooms are in the clubhouse, about 600 feet away from the driving range building, and the driving range itself is an additional 600 feet away.

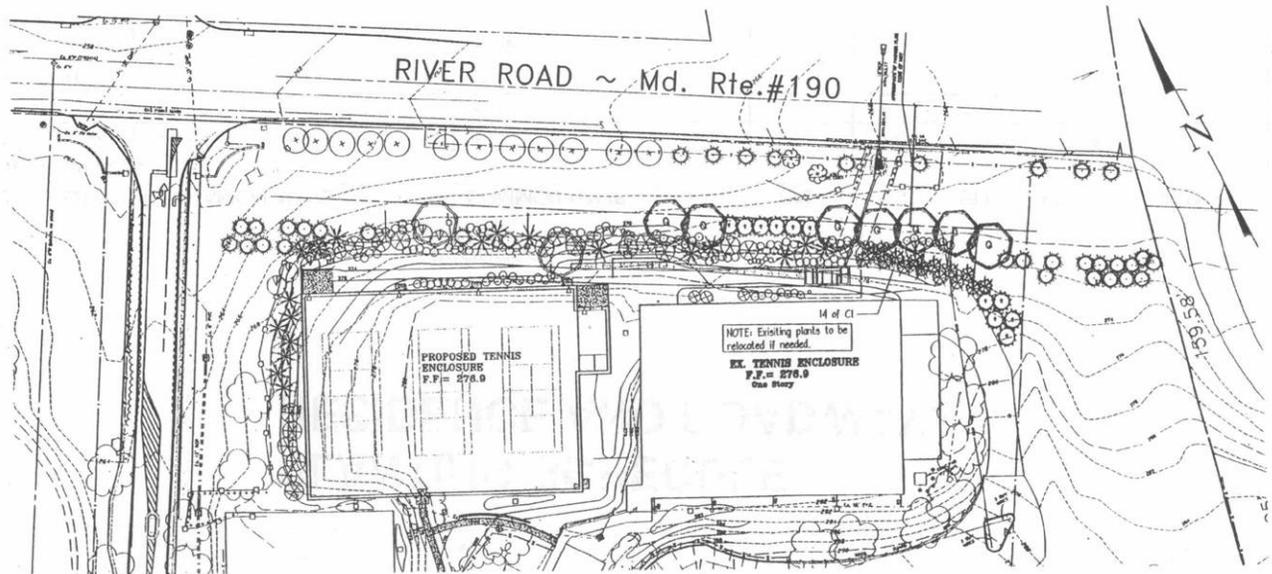
Mr. Haskins testified that in his opinion there was sufficient landscaping around the existing golf range building already in place. In his words, "it was nicely and adequately landscaped." Moreover, according to Mr. Stricklin, the driving range building is about 800 feet from River Road, so it will have little or no visual impact on the neighbors.

### 3. New Landscaping East of the Tennis Enclosures:

In order to satisfy concerns of the neighbors, Petitioner added plantings to the landscaping plan to screen the existing tennis enclosures from River Road. The tennis enclosures themselves are not part of the subject modification request.

Mr. Haskins testified that, at present, there is a gap in the trees along River Road, so that the tennis buildings are fairly open to view. To fill these gaps, Mr. Haskins proposed to plant two kinds of evergreen trees. In an arc around the exposed corner, five spruce trees would be planted, and next to that, a double row of Leyland Cypress, as requested by the PCA. Beyond that, again, a second small row of spruce trees would be planted. The evergreen trees are intended to fill in quickly and to supplement the plantings that are already there to provide a screen of the tennis buildings. In addition

to the evergreen trees, Petitioner would plant seven oak trees that are in keeping with the existing trees in the area of this tennis enclosure. These plantings are depicted on the portion of the landscape plan (CBA 1206-F Exhibit 37(a)) shown below.



- LEGEND
- Proposed Shade Trees
  - Proposed Evergreen Trees
  - Existing Landscape
  - Legend (Existing Landscaping)
  - White Pine
  - Oaks
  - Juniper
  - Evergreen Trees
  - Ornamental Trees
  - Proposed Shrubs

## LANDSCAPE PLAN TENNIS BUILDINGS

### E. Concerns of the Neighbors

There were no letters of opposition in CBA 1206-G, and there were no opposition witnesses at the hearing. However, because Petitioner seeks reauthorization of CBA 1206-F, the Hearing

Examiner sets forth below a description of the citizen concerns expressed by letters in CBA 1206-F.<sup>8</sup>

1. William Dockser:

CBA 1206-F required a hearing because of the November 11, 2003 letter of William Dockser, who lives at 8906 Clewerwall Drive in Bethesda (*i.e.*, just across River Road from Congressional). Mr. Dockser noted in his letter (CBA 1206-F Exhibit 21) that construction on Petitioner's property could have "unforeseen repercussions" affecting the surrounding property. He felt that the "impact on ingress or egress to River Road and Bradley Boulevard" should be examined at a hearing; however, Mr. Dockser formally withdrew his opposition to the proposed modification prior to the hearing (CBA 1206-F Exhibit 41), and did not appear based on Petitioner's agreement to add additional landscaping to buffer the view of the tennis enclosures. CBA 1206-F Tr. 9-10. Nevertheless, the hearing was held because neighboring citizen associations wrote to express their concerns.

2. Potomac Citizens Association (PCA):

Two letters (CBA 1206-F Exhibits 22 and 42) were received from Joyce Doria, President of the Potomac Citizens Association (PCA). Neither Ms. Doria nor any other representative of PCA appeared at the hearing, but at Ms. Doria's written request, the Hearing Examiner will consider the matters raised in her letters. PCA expressed the following concerns:

1. The proposed location for the new intern residence already has several other buildings which are "in plain view from points on River Road and Bradley Boulevard," giving the area a "somewhat industrial appearance."

Two of the four photos attached to CBA 1206-F Exhibit 22 are shown below to demonstrate this point.

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<sup>8</sup> The discussion of the community's concerns is reproduced from Part II.D. of the Hearing Examiner's October 18, 2004, report on CBA-1206-F, which is included in this record as Exhibit 20(v)).



Photograph No. 2: View from River Road



Photograph No. 3: View from Bradley Boulevard

2. The intern residence would be located along River Road, which is the only major road leading directly to the center of Potomac.
3. The proposed one-story, prefabricated residence with a shallow roof might give the appearance of a trailer or other non-residential structure.
4. In addition to the maintenance area, Petitioner's frontage along River Road includes two indoor tennis buildings constructed of corrugated metal with a pale yellow exterior, and they are in plain view of River Road.

PCA fears that the combination of all these structures, including the planned intern residence, would give the area an "industrial" appearance, or "the appearance of a strip of commercial roadway." PCA is also concerned that Petitioner might use the intern residence for employees who are not part of the intern program and that Petitioner might use its special exception to circumvent zoning regulations.

PCA requested that the Petition be granted only if Petitioner is required to:

- a. Screen its maintenance area with "a natural-looking berm" high enough (10 to 12 feet) to hide the structures from the roads and plant two overlapping rows of evergreen trees in the gaps in the current screening;
- b. Paint all surfaces of the tennis court buildings visible from River Road a natural color; and
- c. Install two overlapping rows of evergreen trees in front of the tennis court buildings.

Absent these conditions being met, PCA would raise legal issues and seek additional information about the intern program. The Hearing Examiner is satisfied that the concerns evidenced by these proposed conditions have been fully addressed in an appropriate manner.

3. West Montgomery County Citizens Association (WMCCA):

On June 7, 2004, George A. Barnes, President of the West Montgomery County Citizens Association (WMCCA), wrote to indicate his intent to testify at the hearing (CBA 1206-F Exhibit 30). His letter indicated that WMCCA did not necessarily oppose the modification request, but it did have concerns. However, neither Mr. Barnes nor any other representative of WMCCA appeared at the hearing to state the nature of those concerns, apparently because Petitioner satisfied them by agreeing to a condition that the new intern residence would not be used for anyone other than people involved in the turf management program, without returning to the Board of Appeals for permission.

In sum, all of the community concerns regarding CBA 1206-F were appropriately addressed when that case was initially considered by the Board, and there have been no material changes to that situation evidenced in the record. Tr. 23-24. Therefore, the Hearing Examiner recommends that the Board reauthorize CBA 1206-F in conjunction with granting the petition in CBA 1206-G.

### **III. SUMMARY OF THE HEARING**

#### **A. Petitioner's Case**

Petitioner called eight witnesses at the hearing, Janice Calomiris, Chair of Petitioner's Steering Committee; Hugh Coyle, an architect; David Ullmann, a lighting design expert; Vernon Stricklin, Petitioner's Project Director; Mike Devine, a civil engineer; Alfred Blumberg, a land use planner; George Haskins, a landscape designer; and Stephen Peterson, a transportation planner. At the beginning of the hearing, Petitioner's attorney agreed to all the conditions recommended by the

Planning Board, with one modification suggested by the People's Counsel.<sup>9</sup> Tr. 4-7. Petitioner's attorney also conceded that the plan is to expand the floor area in excess of 7,500 square feet. Tr. 7.

Petitioner's attorney explained what he meant by asking for "reinstatement" of the modification granted in CBA-1206-F; he actually is seeking a re-approval of CBA 1206-F, based on an unchanged record. Tr. 8. All parties agreed that the Hearing Examiner should take official notice of the record in CBA-1206-F, rather than having Petitioner present the evidence again in this hearing. Tr. 8-10.

Petitioner's attorney summarized the status of the "minor subdivision" which will record the plat for the subject site. He noted that Petitioner had reached a compromise with the State Highway Administration and Park and Planning Commission; however, the Environment Planning Division of M-NCPPC prefers to have the location of Category 1 and Category 2 forest conservation easements shown on the face of the record plat, and those details have not yet been worked out. Once Park and Planning staff approves the details, the engineers can prepare the metes and bounds description, which will be put on the face of the plat, and then the plat can be recorded. That is a prerequisite to the issuance of a building permit to implement any of the proposed modifications. According to Petitioner's attorney, golf courses and country clubs are specifically listed as one of the properties eligible for minor subdivisions, which skip through the preliminary plan process and just go straight to the record plat. Tr. 17-21.

1. Janice Calomiris (Tr. 22-31):

Janice Calomiris testified that she is Chair of Petitioner's Steering Committee and is in charge of this project. She is a licensed architect and has been intimately involved in all the improvements associated with the Club. The Club agrees to be bound by the testimony and exhibits, and accepts all the conditions with the modifications.

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<sup>9</sup> That modification is that the final Forest Conservation Plan must be approved by the Planning Board itself, as required by Montgomery County Code, Chapter 22A, not merely by its Technical Staff. The modified condition has been recommended by the Hearing Examiner.

Ms. Calomiris further testified that all of the operating conditions and the physical conditions at the Club are the same today as they were when the earlier modifications (*i.e.*, the bathrooms associated with the driving range shed and the student residence for the greens maintenance program) were originally approved.

The modifications are needed because many of the facilities are at the end of their functional and physical life cycles. The clubhouse that was opened in 1924, and the original pool was built in the 1930's. A pavilion snack bar addition was built in 1960, and a competition pool was built around 1968. Ms. Calomiris described the intended modifications and stated that these changes will not create additional activity. The Club already operates 24/7, 360 days a year, and is most active between 8 a.m. and 8 p.m. The number of employees will increase from 470 to 490, the increase being a combination of part-time, full-time and seasonal employees.

Ms. Calomiris stated that she met with the West Potomac Citizens Group and held an open house for the neighbors to discuss the proposed changes, which were very well received. In her opinion, none of the proposed improvements will cause any condition (noise, light activity or anything else) bothersome to the surrounding properties.

2. Hugh Barrett Coyle (Tr. 31-60):

Hugh Barrett Coyle testified as an expert in architecture, with a specialization in golf course and country club design. He described the intended improvements to the Club, using Exhibit 31, an “illustrative perspective,” to show the new features. Mr. Coyle has sought to continue the “Spanish Revival style,” taking advantage of the topography and spilling down the hillside and terracing to add different functions, yet still getting vistas over the golf course. He did not want to put all of the building on top of the hill, but rather wanted to meld it into the hillside and allow it to spill down so the scale and the impact of the building are in a residential proportion. The whole intent here is that this appear to be a home, or estate. Tr. 41.

In Mr. Coyle's opinion, these improvements will not be clearly visible from any off site location, but even if they were, there would be no negative impact. At most you can get "a filtered view of the clubhouse" in the distance from Persimmon Tree road. The Club will be a compliment to this area, and not a detriment. Using the photos attached to the Technical Staff report, Mr. Coyle explained how the vistas would change with the intended modifications.

Mr. Coyle indicated that if construction proceeded at the same time on all parts of the modifications, then it would probably take 15 to 18 months in construction to complete and occupy everything. However, some phasing of construction will be necessary to keep the Club operational during this process.

The light the fixtures were selected to be consistent with the historic Spanish Revival style of the in the 1600s or the 1500s. Spanish Revival architecture uses red tile, stucco, and some stone, but in a very spare style.

Mr. Coyle further testified that the proposed tennis infill building would be a very simple structure that spans the space between the two existing, enclosed indoor tennis facilities, as shown in Exhibit 32. The structure would actually connect the two tennis enclosures, which are indoor, and provide a viewing area each way into those facilities, so that people can view the activity within those enclosures. The space in the infill building would be used for a gathering that's very common for the players after they play their matches. The infill building basically fills an existing corridor. There is also a covered outdoor access that takes you from the tennis shop and clubhouse to the tennis infill building.

The tennis enclosures have been in place since around 2000 or 2001. They are prefabricated metal buildings that will remain as they are currently. The only thing being done to them is to place openings in the two existing enclosures so that people in the tennis infill building can view the activity on the courts. The building is set back so the shading shadow diminish its impact, and

enough landscaping will be provided so that the infill building will not be really seen as an addition. It will look as if it were part of the original construction of these enclosures. In Mr. Coyle's opinion, the infill building will not have any impact whatsoever on the adjacent community because the peaks of the buildings will not be visible from River Road, and observers "won't really see anything different than what you see today." Tr. 50-55.

Mr. Coyle also opined that the modifications will blend beautifully with the neighborhood and will not have any negative architectural effect at all on any of the areas that surround it. The use of Spanish Revival architecture has been copied by a number of surrounding buildings, including the Norwood School directly across River Road from the Club.

All of the materials that will be used on the renovated clubhouse are very common to individual private homes and to public buildings also, but the scale is what people see. In this case, Mr. Coyle has taken the cues from Spanish Revival architecture in the use of hip roofs, which will be employed to the south of the existing Club in the fitness facility. These are very low pitched, tiled, hip roofs that don't impact the view. They also tend to make the roof feel lower.

Also, to keep the modifications in a residential mode, there are many offsets in the buildings - ins and outs that create shade and shadow. There are arcades or colonnades, loges that are placed with arches which give shade and shadow, and are of a small scale. Whether you are at the pool side, or at the terrace of the club, you are in scale with the building. You don't feel overwhelmed. It is a very residentially scaled building.

The materials, which are stucco, some stone, some tile, some paving stones, the grass, and the "scaping," along with the very residential elements of pergolas, arbors and trellises, impart a residential feel to the entire complex. The whole swimming pool complex, which incorporates the great lawn and the swimming pools, has been lowered to minimize the effect on anyone's view. In Mr. Coyle's opinion, it will have a very inviting and comfortable feel.

3. David Ullmann (Tr. 59-80):

David Ullmann testified as a lighting design expert. He described the lighting fixtures to be added externally during the renovations and stated that the lighting fixtures to be used are all cut-off light fixtures designed to direct light down, and not to direct light up and out where it would be objectionable. The highest fixture that the Club plans to install as part of this renovation would be the wall-mounted Dundee fixture, and that mounting height would be approximately 8 feet.

Mr. Ullmann stated that the photometric readings indicating light spillage at the side property lines in excess of 0.1 footcandles, as shown in Photometric Plan SE-6(c) (Exhibit 20(k)), were misleading because they were taken inside of an eight foot fence on the property line. In his opinion, if readings were taken outside of the fence, they would demonstrate that Petitioner meets the County standard of 0.1 foot candles along the perimeter of the property where the Club abuts residential properties. [Petitioner's attorney indicated that an effort would be made to take readings outside the fence and a revised photometric study would be submitted, along with a plan showing cut sheets for the proposed fixtures.] The readings in excess of 0.1 footcandles shown in Photometric Plan SE-6(b) (Exhibit 20(j)), are along River Road which is the front of the property.

Mr. Ullmann further testified that the Club has some light fixtures mounted in the trees, shining down, but they are directed away from the property lines, so they create a soft illumination across parking areas and some walkways directly outside the club buildings. He believes they do not have any impact on the property line or any surrounding neighbors. In his opinion, the lighting plan that has been proposed as part of the special exception will not cause any glare or bothersome illumination for any of the properties that abut the Club's property.

4. Vernon Stricklin (Tr. 70):

Vernon Stricklin testified that he is the project director at Congressional Country Club. He indicated that the Club's eight foot fence referred to by Mr. Ullmann in his testimony is on the

property line, so he believed there would not be enough space to measure lighting on the outside of the fence without going onto the neighbor's property.

5. Michael Devine (Tr. 81-86):

Michael Devine testified as an expert in civil engineering. He stated that Petitioner has received approval from the County (Exhibit 35) for its stormwater management concept plan. Petitioner is proposing to take runoffs from new and existing impervious areas and convey them to the east of the property and combine them into underground structures under the parking lot for water quality.

There is currently an existing combination storm water quantity and quality facility which will be replaced with a larger underground storage facility for water quantity (channel protection) purposes, and there will be an outfall in the very same location that is currently being used as an outfall. Recharge will be accomplished throughout the site in five areas where there are stone reservoirs in the grounds that will accept runoff from the roof tops and recharge back into the ground.

Mr. Devine indicated that Petitioner will comply with the conditions set up by Mr. Brush in his approval letter of March 21, 2007 (Exhibit 35). He further testified that the subject site has adequate public sewer and water service in categories W-1 and S-1, and the service is adequate to accommodate the proposed improvements. In his professional opinion, the Club will be served by adequate public facilities for the proposed use.

6. Alfred Blumberg (Tr. 86-110):

Alfred Blumberg testified as an expert in a land use planning. He indicated that the Potomac Subregion Master Plan of April 2002 identifies the Congressional Country Club as a private or public recreation area. The Club has been in existence since 1920 and has long been an area of open space and recreation for residents of the Washington metropolitan area. In Mr. Blumberg's opinion,

the expansion and improvements to the Club as proposed are in compliance with the recommendations of the Master Plan, as a continuation of open space and recreation facilities.

Mr. Blumberg further opined that the application meets all the standards of the applicable zone. First of all, the maximum building coverage permitted is three percent. Including the proposed additions to the clubhouse, Petitioner is at 1.1 percent. The minimum setback for a main building is 50 feet. The main building, the clubhouse, is over a thousand feet set back from River Road, and that is the closest road.

Mr. Blumberg testified that the tennis buildings and the proposed tennis infill building could be considered as accessory buildings if you define River Road as the front yard. These buildings would then be technically out of compliance with Section 59-C-1.2, 1.326(a), which prohibits front yard location of accessory buildings. He noted that the Board of Appeals is authorized by §59-G-2.24, to waive provisions of Section 59-C-1.2, 1.326(a) regarding location of accessory buildings, and he asked that the Board do so in this case. He also observed that, according to Technical Staff, DPS does not really look at these setbacks issues for a facility as large as a country club.

Mr. Blumberg further testified that Section G-2.24(d) requires that all major outdoor activity areas such as tennis courts, swimming pools and golf course playing surfaces must be set back at least 100 feet from the property line adjoining a one family residential use. The site for the new tennis infill building, though over 100 feet from the current location of River Road, will actually be within 100 feet of the right-of-way following 34 feet of dedication. One of the existing tennis enclosures is currently only 93 feet from River Road, and following the dedication, it will be 59 feet from the right-of-way. The Infill building site, however, is 17 feet further back. Tr. 91-96. Mr. Blumberg noted that Zoning Ordinance §59-G-2.24 (d) requires 100 feet of separation from “property lines adjoining a one-family residential use,” not from all property lines in a residential zone. He stated that River Road is not a one family residential use. It is a major highway as identified in the Potomac Master

Plan, and it has a 150 foot right of way. Across the street is the Norwood School, also not a residential use.

According to Mr. Blumberg, the tennis buildings were approved back in 1984 per special exception S-292A, and there is a reference in that application indicating that the setback is 98 feet from River Road at that point. River Road has gradually been expanding and widening to what will ultimately be a 150 foot right of way.

In his opinion, these buildings can exist without having any adverse impact because of the extensive landscaping all across the front of River Road, especially in front of these existing buildings. You virtually cannot see the buildings from River Road. So the impact of this on passers by on River Road or adjoining properties on the other side of River Road is negligible. Mr. Blumberg's conclusion is that §59-G-2.24 (d) does not apply here, but if it does, the Board should grant a waiver.

Mr. Blumberg described the surrounding area and indicated that he accepted Technical Staff's definition of the general neighborhood. He stated that the distance of the proposed improvements from the eastern property line (the Margolis property line) is 374 feet, which is the closest residential use.

Mr. Blumberg also opined that the application meets all of the standards and criteria for the proposed modification and amendment to the special exception. The general requirements for the use are also met, and he found no non-inherent adverse impacts of this particular use. The addition of the facilities, replacing existing facilities on site, do not add to any of the adverse impacts of the proposed use. He did not consider scale to be a non-inherent characteristic in this kind of situation because country clubs are typically very large. Moreover, here, the size of the proposed facility is not out of context, given the Potomac estate environment, and there will be no adverse impact.

Mr. Blumberg added that the various general conditions – regarding consistency with the plan, the general character of the neighborhood, the use and peaceful enjoyment and economic value, the question of noise, vibrations, fumes, odors, dust – are all going to be very similar to what has existed on site for many years. In fact, the country club preceded most of the residential development in the surrounding area, and if anything, has enhanced the values and the desirability of locating homes in this vicinity. So it certainly is not going to have any adverse impact.

There are no other special exceptions in the neighborhood as defined by the technical staff, but there is the Norwood School on the other side of River Road.

Mr. Blumberg indicated that the parking facilities on site will not change. There is not going to be any increase in the number of members of the club, and the parking is all located in close proximity to the tennis facilities, to the clubhouse and the swimming facility. Thus, the parking will continue to be adequate and appropriately located. Included in the parking are 88 parking spaces on the grass, which are used when major events require employees to be parked away from the clubhouse area.

The landscaping to be added is intended to soften the retaining walls and edges of the proposed new improvements, which will add to the overall visual effect. Landscaping is reflected in the rendered Exhibit 29, but the details are provided in Exhibit 20(g) for the clubhouse/pool area and in Exhibit 20(h) for the tennis infill building area. These are intended to be the landscaping plan for purposes of future implementation.

7. George Haskins (Tr. 110-117):

George Haskins testified as an expert in landscape architecture. He introduced two diagrams showing proposed revisions to the Forest Conservation Plan for the subject site. Exhibit 39(a) depicts the northern section of the site and Exhibit 39(b), the southern section. They represent essentially what will be presented to Park and Planning, but there will be additional labeling on the plans to help

with identification. Mr. Haskins said that he had presented a tabulation to Technical Staff, but they wanted a diagram for ease of understanding. There is really no dispute, just a clarification issue. The whole discussion is the specification of which areas are going to be within the conservation easement and which are not. Mr. Haskins testified that he is confident that he and the Environmental Planning Division staff at Park and Planning Commission will get to the level of detail necessary to have a final forest conservation plan.

8. Stephen Peterson (Tr. 117-121):

Stephen Peterson testified as an expert in transportation planning and traffic engineering. Mr. Petersen did a traffic impact study (Exhibit 18(a)) assessing the possible impact of the proposed improvements Congressional Country Club. He stated that there were no problems anywhere in terms of the local area transportation review. As usual, traffic data were collected to determine existing conditions, both at the intersections specified by Park and Planning staff and on the driveways. This information was used to determine a pattern of activity in and out of the Club, and to calculate what the average peak hour traffic flows were in the morning and the evening.

In both cases, it was determined that the number of trips was under the 250 trip threshold which would have required additional intersections to be counted. The capacity analysis indicated that the three intersections that were analyzed met the congestion standard for the Potomac policy area, which is 1475 critical movements (CLV). The figures were in the range of 1100 to 1200 critical movements at all those intersections, substantially below the CLV threshold.

Because of the anticipation of adding 20 staff people, Mr. Petersen determined the number of additional trips that could occur in the peak hours of traffic flow based on those 20 additional staff, added those trips to the existing conditions and determined that everything still met the congestion standard. There are no background projects in the general vicinity of the site that were identified by staff, so he went from an existing condition to a total traffic condition, which staff in their report

characterizes as background and total traffic. Mr. Petersen opined that this was a very straightforward analysis, and the proposal meets all the criteria in local area transportation review (LATR).

Mr. Petersen concluded that the surrounding transportation network is adequate to serve the proposed use and that the proposal will not reduce the safety of vehicular or pedestrian traffic.

### **C. People's Counsel**

Martin Klauber, the People's Counsel, participated in the hearing, but did not call any witnesses. He expressed his support for petition:

[T]he Congressional Country Club has been a landmark of Montgomery County for a lot of years. Recent events are going to even make it more so, and [with] the additions . . . [the] beauty of the Club is going to be further enhanced from what it was, which was very substantial. . . . [T]he Office of People's Counsel is in full support of these requested modifications because they are in the public interest of this County. Tr. 122.

## **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. At the beginning of this report, we noted that because the proposed modifications would expand floor area by more than 7,500 square feet, under Zoning

Ordinance §59-G-1.3(c)(4)(A), the Board may require that the underlying special exception be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements of 59-G-1.26, if it finds that the expansion, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. Otherwise, the inquiry must be limited to discussion of those aspects of the special exception use that are directly related to the proposed modifications.

Thus, the threshold issue in this case, established by Zoning Code §59-G-1.3(c)(1), is whether the proposed modifications, when considered in combination with the underlying special exception, changes the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.

The use will, of course, remain a country club and golf course under Zoning Code §59-G-2.24. The overwhelming weight of the evidence supports the testimony of Petitioner's witnesses that the improvements can be implemented without substantially changing the nature, character and intensity of the use of club property, and the Hearing Examiner so finds. As discussed in the following pages, based on the testimony and evidence of record, the Hearing Examiner concludes that the Petitioner will continue to meet both the general requirements for special exceptions and the specific requirements spelled out in Zoning Ordinance §59-G-2.24 for golf and country clubs, as long as Petitioner complies with the conditions set forth in Part V, below.

#### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational

characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff has identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with golf and country clubs. Characteristics of the proposed modifications that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed modifications that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff suggests that the inherent characteristics of a golf and country club include:

the club house, residential dwellings and accessory buildings related to operation of the golf course and country club, golf course indoor and outdoor recreational facilities, parking lots, members, employees and social events. [Exhibit 25, p. 14]

Technical Staff, noting that “the proposed modifications are structural in nature and . . . not likely to result in adverse operational characteristics such as noise or traffic to the site,” concluded that “[t]here are no inherent or non-inherent adverse impacts associated with this application sufficient to warrant a denial of the subject special exception.” Exhibit 25, p. 14.

The Hearing Examiner agrees. In fact, one could go even further in finding that there are no non-inherent adverse effects at all. The size of the site is quite large and the proposed modifications are also large in scale; however, the evidence is that they are not atypical of golf and country clubs in general. Tr. 99-100. There appear to be no other non-inherent characteristics of the site, since the Club has the facilities one might ordinarily expect in a golf and country club. Therefore, there appear to be no non-inherent characteristics of the site, and certainly none which warrant denial of this petition.

### **B. General Standards**

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

#### **Sec. 59-G-1.21. General conditions:**

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

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

Conclusion: Golf and country clubs (Zoning Code §59-G-2.24) are permitted as special exception uses in the R-200 and RE-2 Zones by virtue of Zoning Ordinance §59-C-1.31(e), and the use already exists in this case.

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

Conclusion: As described in Part IV. C., below, the proposed modification would comply with the standards and requirements set forth for the use in Code §59-G-2.24.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property lies within the area analyzed by the *Potomac Subregion Master Plan* (April 2002). Alfred Blumberg, Petitioner's land use planner, noted that the *Potomac Subregion Master Plan* identifies the Congressional Country Club as a private or public recreation area. See Map C, entitled "Land Use Parks And Community Facilities," in the addendum to the Master Plan. In Mr. Blumberg's opinion, the expansion and improvements to the Club, as proposed, are in compliance with the recommendations of the Master Plan, since they represent a continuation of open space and recreational facilities. Tr. 87. About the Master Plan, Technical Staff said only (Exhibit 25, p 6):

The Community Based Planning Staff, in its review of the application, found the proposed special exception modification to be consistent with the Potomac Subregion Master Plan, in harmony with the general character of the neighborhood, and compatible with the adjacent single-family residential development.

It should also be noted that the Master Plan recommends continuation of existing RE-2 and R-200 zoning, and the subject use is permissible by special exception in those zones. See Map B, entitled "Existing and Proposed Zoning," in the addendum to the Master Plan. Congressional Country Club has been on this site for many years, and nothing proposed in this modification petition would affect its consistency with the

Master Plan. The Hearing Examiner agrees with the conclusion of Technical Staff and Mr. Blumberg that the application is in conformance with the *Potomac Subregion Master Plan*.

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

Conclusion: As mentioned above, Zoning and Community-Based Planning staff found the proposed improvements to be “in harmony with the general character of the neighborhood, and compatible with the adjacent single-family residential development.” Exhibit 25, p.6. Traffic will be marginally increased by the addition of 20 new employees, but the increases will not adversely affect the transportation network, according to both Technical Staff and Petitioner’s Transportation Planner, Stephen Petersen. Neither the Club membership nor the operating hours of the club will change. Parking on site also will not be increased, and Technical Staff found it to be sufficient (Exhibit 25, p. 12), as discussed in Part II. C. 3 of this report (pp. 15-17). The large expanse of the Club and the extensive landscaping will prevent any adverse effects on the neighbors from the proposed modifications. Moreover, the major renovation of the clubhouse/pool complex will be consistent with the “Spanish Revival” architecture already present on site and found in much of the surrounding development. The use has co-existed in harmony with the neighborhood for more than 80 years, and the proposed modifications will not change that relationship.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the requested modifications would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, for the reasons stated in response to the previous general condition.

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

Conclusion: The subject property has been improved with this golf and country club since about 1920. There is no evidence that the use has caused objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity in the past. The Hearing Examiner finds that the requested modifications will not change those operational characteristics.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The Hearing Examiner concludes that the proposed modifications will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely. Moreover, as stated above, this special exception use is consistent with the recommendations of the applicable Master Plan, and therefore, under the terms of this provision, it does “not alter the nature of an area.” Technical Staff did not report any other special exceptions in the general neighborhood, although there are a couple of schools just outside of the defined neighborhood (The Norwood School is across River Road and east of the site, and the Connelly School for the Holy Child is across Bradley

Boulevard and north of the site). The modifications to Congressional Country Club will not, by dint of number, scope, or intensity, change the predominantly residential character of the neighborhood or alter it adversely.

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

Conclusion: The evidence supports the conclusion that the proposed modifications would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. The continuation of the golf and country club that has existed for over 80 years at this location will continue to provide service to the community, and will have no adverse effect on any of the listed individuals.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*
- (i) *If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review[LATR] and the Policy Area Transportation Review[PATR],<sup>10</sup> as required in the applicable Annual Growth Policy.*
- (ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.*

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<sup>10</sup> Policy Area Transportation Review (PATR) standards do not apply to this post-July 1, 2004 Petition.

Conclusion: Although a minor subdivision for the subject site is in process, under Montgomery County Code §50-35A(a), it does not require a preliminary plan of subdivision, and the Board of Appeals must therefore determine the adequacy of public facilities. The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities. Public water and sewer serve the site and are adequate. Tr. 84-85. By its nature, the site will require no school services.

A traffic impact study (Exhibit 18(a)) was prepared by Petitioner's transportation planning expert, Stephen Petersen, and reviewed by Transportation Planning Staff. Traffic will be marginally increased by the changes, as discussed in Part II.C.3 (pp. 15-17) of this report. Mr. Petersen opined that this was a very straightforward analysis, and the proposal meets all the criteria in local area transportation review (LATR). Mr. Petersen also concluded that the surrounding transportation network is adequate to serve the proposed use and that the proposal will not reduce the safety of vehicular or pedestrian traffic. Tr. 117-121. Technical Staff agreed with Mr. Petersen's findings.

Technical Staff concluded that "existing access to the site and the internal traffic/pedestrian circulation system shown on the site plan are safe and adequate." Transportation Planning staff also opined that "granting of the requested Special Exception to modify the existing facilities and to specify the total number of employee as 490 would not have an adverse effect on the nearby road system." Exhibit 25, pp. 7-8. Based on this uncontradicted record, the Hearing Examiner finds that the proposed modifications would have no adverse impact on transportation facilities or safety.

### C. Specific Standards: Golf Course and Country Club.

The specific standards for a golf course and country club are found in Zoning Ordinance § 59-G-2.24. The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the proposed modifications would be consistent with these specific standards, as outlined below.

#### Sec. 59-G-2.24. Golf course and country club

*A golf course or country club must adhere to the following standards and requirements:*

(a) *The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.*

Conclusion: Based on the record, the Hearing Examiner finds, as did Technical Staff, that the provision of food, refreshments and entertainment for club or organization members and their guests is not reasonably expected to draw an excessive amount of traffic through local residential streets. This conclusion is amply supported by Mr. Petersen's traffic study (Exhibit 18(a)), as discussed in the previous section.

(b) *All standards of the applicable zones must apply except:*

- (1) *Maximum building coverage - 3%*
- (2) *Minimum setback for a main building - 50 feet*
- (3) *The Board may waive the provisions of Sec. 59-C-1.326(a) regarding the location of accessory buildings.*
- (4) *The site must have a minimum of 200 feet of frontage on a road of arterial or higher classification in a residential zone.*

Conclusion: The maximum building coverage in this case is 1.1 percent, and the main building is set back 1,000 feet. The property has about 2,200 feet of frontage on both River Road and Bradley Boulevard. Exhibit 25, pp. 14-15. Thus, all applicable development standards have been met in this case except for the rear-yard placement requirement for accessory

buildings, which may be waived under item (3) of this section. Petitioner has sought such a waiver, if one is required, but it notes that the Department of Permitting Services does not distinguish between main buildings and accessory structures in golf and country clubs. Technical Staff supports this position (Exhibit 25, p. 15), but indicates that the evidence supports the waiver, if one is necessary. The Hearing Examiner finds that a waiver is necessary with regard to the proposed tennis infill building, and recommends that it be granted for the reasons discussed at length in Part II.C.4 of this report at pp. 18-21.

*(c) All outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into any residential area.*

Conclusion: As discussed in Part II.C.5 of this report, all external lighting for the Club has been examined by Technical Staff and found to be appropriate. Petitioner's revised photometric study, SE-6c (Exhibit 41(b)), demonstrates that all light readings along the side yard property lines are less than 0.1 footcandles. Based on this record, the Hearing Examiner finds that no direct outdoor lighting from the Club intrudes improperly into any residential area.

*(d) All major outdoor activity areas, such as tennis courts, swimming pools, and golf course playing surfaces must be set back at least 100 feet from property lines adjoining a one-family residential use. The Board may reduce this setback where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.*

Conclusion: This issue was discussed at length in Part II.C.4 of this report (pages 22-23). For the reasons set forth therein, the Hearing Examiner finds that this section does not apply to either the existing tennis enclosures or the proposed tennis infill building, and if it does apply, the Board should reduce the required setback to that which is shown in Petitioner's plans.

(e) Any golf course established by special exception before May 6, 2002 is a conforming use and may be modified in accordance with the special exception standards in effect at the time the modification is filed.

Conclusion: The proposal is being reviewed under the special exception standards in effect at the time the modification was filed.

#### D. General Development Standards

In addition to the other general and specific standards set forth above, “Special exceptions are subject [under Code § 59-G-1.23(a)] to the development standards of the applicable zone where the special exception is located [in this case, RE-2 and R-200] except when the standard is specified in Section G-1.23 or in Section G-2.” The following table was provided by Technical Staff demonstrating compliance with applicable development standards (Exhibit 25, pp. 10-11):

Development Standard (in feet)	Required Currently (in feet)		Proposed/Existing (in feet)
	RE-2	R-200	
<b>Minimum Lot Area:</b>	87,120 sq. ft.	20, 000 sq. ft.	358 Acres
<b>Minimum Lot width:</b>			
▪ at street line	25	25	
▪ <b>59-G-2.24 (b)(4)</b>	200	200	2,200
<b>Minimum Building Setback:</b>			
a. From street	50	40	1,000
b. From Adjoining lot			
Side:			
▪ One side	17	12	370
▪ Sum of both sides	35	25	>370
Rear	35	30	>35
<b>Maximum Building Height</b>	50	50	44.5
<b>Maximum Building Coverage</b>			
▪ <b>59-C-1.328</b>	25%	25%	1.1%
▪ <b>59-G-2.24 (b)(1)</b>	3%	3%	1.1%

For this special exception, some development standards were specified in Section 59-G-2.24, and Petitioner is compliant with those, as well as with the R-200 and RE-2 Zone standards, except as discussed above. The Board is empowered by Section 59-G-2.24 to allow the exceptions under the evidence of this case, and that action is recommended by the Hearing Examiner, as discussed above.

The remainder of Zoning Ordinance §59-G-1.23 concerns consistency with the forest conservation and water quality plans, signs that comply with Code § 59-F, compatibility of new or altered structures with the residential zone and limits on leakage of lighting into the neighborhood. All of these issues have been discussed already in this report.

In sum, it is clear from the record that the proposed modifications will not change the nature or character of the special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected. The Hearing Examiner must therefore recommend that the Board of Appeals grant the modification petition and related requests, with the conditions suggested in the final section of this report.

## **V. RECOMMENDATION**

Based on the foregoing analysis and a thorough review of the entire record, I recommend that Petition No. CBA-1206-G for modification of the existing special exception to permit a variety of renovations and upgraded facilities; to add 20 employees; to reinstate the expired modification approval in CBA-1206-F; and for a waiver of the accessory structure-rear yard location requirement specified in Zoning Ordinance §59-C-1.326(a), be GRANTED, with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.
2. All terms and conditions of the approved special exception remain in full force and effect, except as modified in the Board's order granting this modification request.

3. The Final Forest Conservation Plan and associated easements must be submitted to and formally approved by the Planning Board for recordation prior to release of the sediment and erosion control permit for the clubhouse addition.
4. Petitioner must submit to Technical Staff a clear graphic representation of forest differences, easements reconciled to actual site conditions, and a full accounting of required reforestation.
5. The maximum number of employees is limited to 490 and membership may not exceed the present figures of 1,100 “resident active members” and 150 “social guests.”
6. Petitioner’s primary hours of operation are generally between 8:00 A.M. and 8:00 P.M., but the Club operates almost 24 hours per day. Members arrive as early as 5:30 A.M., and staff arrive even earlier. Meetings, social functions and receptions extend into the late hours of the evening, particularly on the weekend (Friday/Saturday) evenings, and post-event clean-up keeps staff on-site into the early morning. These hours are unchanged by the instant modification.
7. The intern residence must be used only to house students involved in the turf management program, unless Petitioner successfully returns to the Board of Appeals for permission to allow others.
8. There must not be more than four residents living in the new intern residence at any one time.
9. Prior to the issuance of any building permit, Petitioner must record a plat in the land record pursuant to Chapter 50 of the Subdivision Regulations.
10. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein.

Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: May 16, 2007

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner