

I. STATEMENT OF THE CASE

On September 24, 2004, Petitioner, Old Farm Swim Club, Inc,¹ filed an application to modify specified site conditions in order to bring the existing Community Swimming Pool special exception into compliance with the terms and conditions that govern it. No new construction is proposed. The subject site is located at 6900 Montrose Road, in Rockville, Maryland, and it is zoned R-90.

The subject property, which is owned by the Old Farm Swim Club, Inc, is approximately 3.32 acres in area (143,748 square feet) and is known as Parcel A, Old Farm Subdivision in Rockville. R-90 is a single family zone which permits a community swimming pool under Zoning Ordinance §59-G-2.56, as a special exception.

The Old Farm Swim Club has existed for approximately 42 years, and it operates under special exception CBA-1495, granted by the Board on January 7, 1964. On July 27, 1971, the Board granted the Swim Club another special exception, CBA-3061 (and a variance, CBA-3060) to allow the addition of paddle tennis courts and the relocation of some on-site parking. About eight years ago, Petitioner added a basketball court, a volleyball court, a speaker system and some additional lighting, and relocated the existing paddle tennis courts. On November 18, 2002, Petitioner was cited with multiple violations for implementing these changes without approval of a modification to the existing special exceptions. Exhibit 22. Actually, the Board had voted on February 19, 1997, to approve the movement of the paddle tennis courts by administrative modification (*See* Board Minutes for that date in Exhibit 21, and the Hearing Examiner's letter to Petitioner in Exhibit 24), but somehow, that vote never got included in a Board resolution.

On June 27, 2003, the Board denied Petitioner's letter request for an administrative

¹ Petitioner is also referred to herein as "Old Farm Swim and Paddle Tennis Club, Inc., "Old Farm," the "Swim Club" and the "Club."

modification to sanction all the existing upgrades.² Petitioner therefore filed the subject petition to modify its special exception to permit the additions to its recreational facilities, as well as changes to the driveway access and internal circulation pattern and landscaping that were necessitated by the Montrose Parkway construction currently underway near the subject property.

The Board of Appeals issued a notice on October 29, 2004, scheduling the hearing for Friday, February 14, 2005, at 9:30 a.m., in the Stella B. Werner Council Office Building (Exhibit 12). At the request of the Petitioner (Exhibits 14, 16, 23 and 25), the hearing was postponed until June 6, 2005 (Exhibit 15), then to October 14, 2005 (Exhibit 17), and ultimately to February 13, 2006 (Exhibit 26). These delays resulted, in part, from the construction of the Montrose Road, which required changes in Petitioner's frontage and circulation system.

On February 8, 2006, the Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) filed its Report (Exhibit 32),³ which recommended approval of the Petition, with conditions. The hearing took place as scheduled on February 13, 2006. At the request of the Petitioner, the record was held open until March 15, 2006, to allow the filing and review by Technical Staff of revised plans (Exhibits 48 (a) –(d)). The plans were filed on March 7, 2006, but had to further revised in response to comments from Technical Staff (Exhibit 49). At Petitioner's request, the record was held open till March 22, 2006, and Petitioner filed final revised plans (Exhibits 52 (a) –(d)) on that date, which were approved by Technical Staff on April 5, 2006 (Exhibit 53).⁴ The record was re-opened on April 10, 2006 to receive these technical changes and closed immediately.

The appropriate scope of the hearing on a petition for modification of a special exception is spelled out in Zoning Ordinance § 59-G-1.3(c)(4). That subsection provides:

² The record does not indicate whether the Board realized, at the time, that it had voted six years earlier to grant an administrative modification approving the relocated paddle tennis courts.

³ The Technical Staff Report is frequently quoted and paraphrased herein.

⁴ Petitioner made one final change to the proposed lighting, substituting a less expensive full cut-off fixture in its Type B lights, as reflected in Ex. 55(a), filed April 7, 2006. This change was pre-approved by Technical Staff in ¶ 1 of Ex. 53.

The public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals, and (2) as limited by paragraph (a) below, the underlying special exception, if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less.

* * *

The public notice in this case (Exhibit 26) specified all the modifications proposed by Petitioner, as set forth in Part II.C, below. Petitioner's plans do not include expansion of any floor space. Because the proposed expansion does not exceed the statutory threshold of 7,500 square feet or 25%, the scope of the hearing includes just the matters related directly to the proposed changes, and their impact upon the surrounding neighborhood.

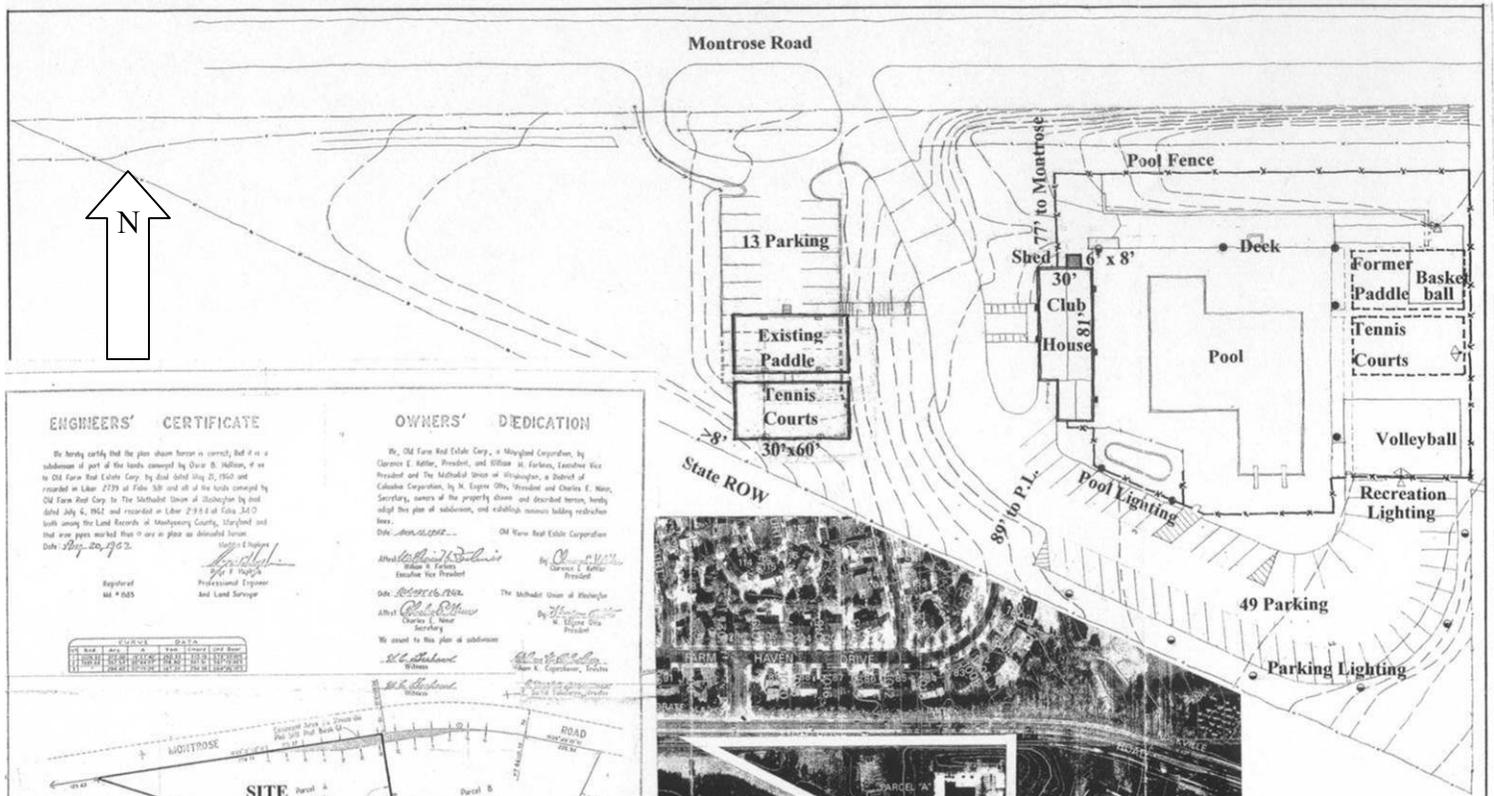
There is no opposition in this case, and as will be seen below, the Hearing Examiner concludes that the requested modifications, as shown in the revised plans and as properly conditioned, will have no non-inherent adverse effects warranting denial of the petition.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 6900 Montrose Road, on its southern side, between Tilden Wood Drive on the east and Old Bridge Road on the west. It is triangular in shape and comprises approximately 3.32 acres of land. As described by Technical Staff, the property is improved with a community swimming pool, two paddle tennis courts, a paved basketball court, a sand volleyball court and a club house. A small storage shed that had been erected on the property will be removed (Tr. 46) because of setback problems identified by Technical Staff, and it no longer appears on the site plan (Exhibit 52(d)). On-site parking, which Technical Staff lists as 65 spaces, will be increased to 70 spaces.

The subject site has approximately 779 feet of frontage on Montrose Road, which runs along the property's northern property line. Prior to the construction of the Montrose Parkway, which began in November of 2005, the access point to the property was from Montrose Road, as can be seen on the following site plan from April 2004 (Exhibit 46):



The following photos (from Exhibits 43, 44, 42 and 42(a)) show the clubhouse, part of the swimming pool and some of the heavy vegetation surrounding the property:





From across Montrose toward parking and tennis courts



From tennis courts toward Montrose Road



From Pool to Clubhouse. Shed on right end of building

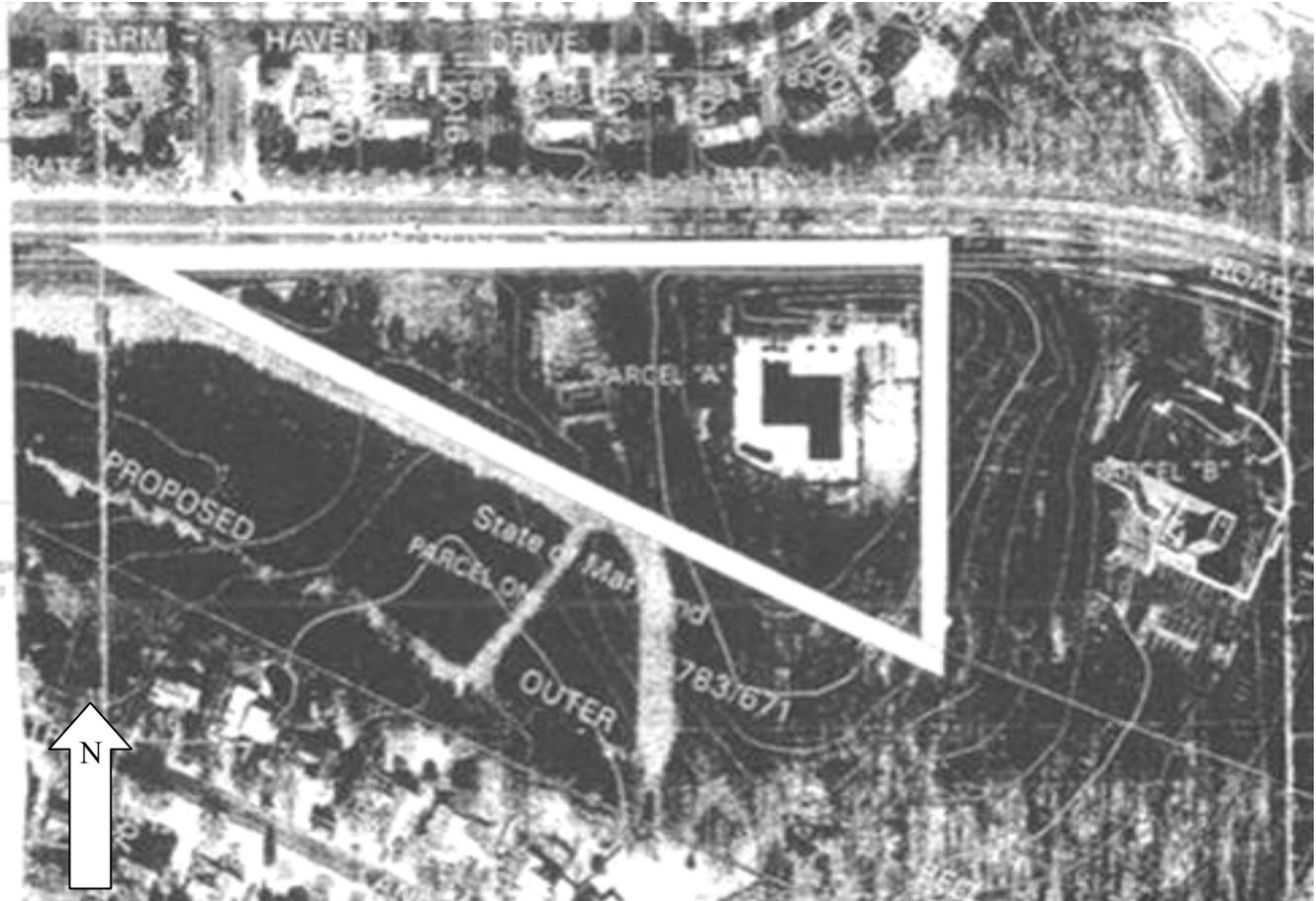


From pool parking lot through White Pines to tennis courts



From tennis courts

The aerial photo from the April 2004 Site Plan (Exhibit 46) also shows the vegetative buffer surrounding the entire site, except for the portion adjacent to Montrose Road.:

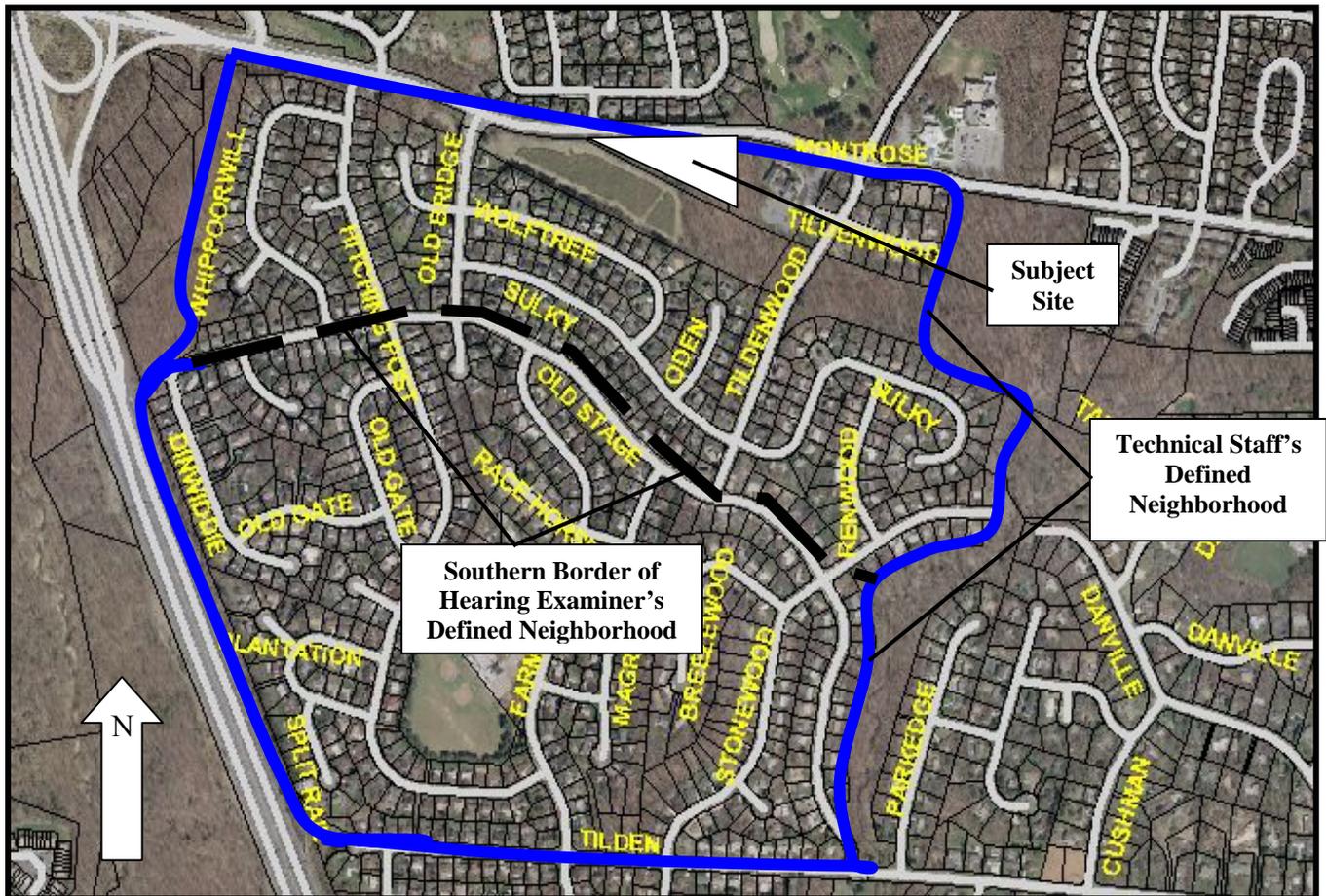


According to Technical Staff, the Montrose Parkway construction plan calls for building a road west of the subject site, which swings south of the site to provide access to the subject property. The road construction has also required changes to landscaping, traffic circulation and parking on the property.

B. The Surrounding Neighborhood

Technical Staff recommended defining the general neighborhood within which the subject site is located as bounded by Montrose Road to the north, Cabin John Regional Park and I-270 to the west, Tilden Lane to the south, and Tilden Woods (local park) to the east. The defined neighborhood, as

proposed by Technical Staff is shown on the following map from the Technical Staff report (p.3):



The Hearing Examiner accepts Technical Staff's definition to the north, east and west, but believes that it extends the general neighborhood too far to the south for purposes of analyzing the impact of this modification petition. None of the proposed changes is likely to produce any effects outside the immediate area of the club. No addition to membership is being proposed, and according to Transportation Planning Staff (attached to Exhibit 32), the new access road will not adversely impact the neighbors. There will also be no increase in activity over what presently exists, and both light spillage and noise will be more stringently regulated to prevent adverse effects off site. In light of these factors, the Hearing Examiner would define the southern border of the general neighborhood as Old Stage Road, which is marked on the above map with a dashed line.

The neighborhood is predominantly residential in the R-90 Zone. The subject property abuts Faith United Methodist Church, to the east and undeveloped land owned by the State of Maryland (Proposed Outer Belt) to the west and south. To the north, the property abuts Montrose Road. Across Montrose Road are located the Woodmont Country Club and R-90 zoned residential properties within the boundaries of the City of Rockville. The Farmland Elementary School is located south of the defined neighborhood, on Old Gate Road.

C. Proposed Use

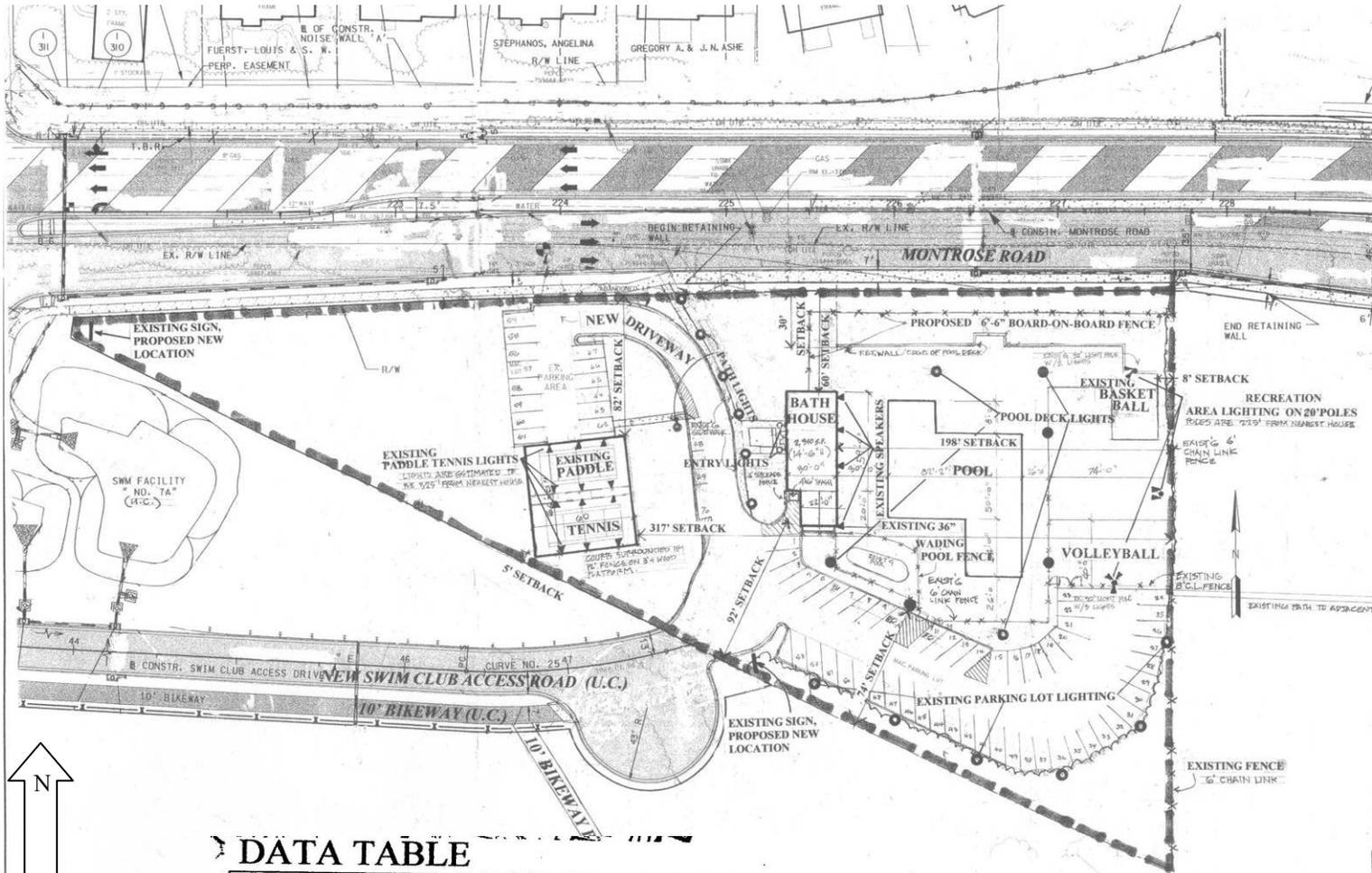
Petitioner seeks a major modification to its special exceptions to sanction changes which were made in 1997 to the subject site and additional changes which must be made as a result of the expansion of adjacent Montrose Road. Those changes include:

1. Relocation of two paddle tennis courts and attached lights (relocated in 1997).
2. Addition of a basketball court and a volleyball court (added 1997).
3. Addition of 3 light poles (added in 1997).
4. {Addition of a storage shed had been listed by Technical Staff, but Petitioner has elected to remove the shed, which had setback problems. Tr. 46.}
5. Modification to landscaping (needed because of the Montrose Road expansion)
6. Modification of parking lot and number of parking spaces.
7. Addition and relocation of outdoor speakers.
8. Relocation of access to the property and modification of internal circulation (as a result of Montrose Parkway construction).

Petitioner indicates, in its Statement, Exhibit 3, that membership in the club has been substantially reduced through the years, from the originally approved 400 to the current 245 members. Moreover, the various facilities of the club operate at different times of the year— the swim activities occur during the summer months, between Memorial Day and Labor Day, and the paddle tennis activities occur during the fall and winter seasons, generally from November through March. Therefore, the swim and paddle tennis operations do not overlap. The club is closed during several months of the year, generally April, May, September and October.

The new configuration of the Swim Club can be seen on the revised site plan (Exhibit 52(d)),

which is shown below:



DATA TABLE

59-E-2.56: Community Pool	Req'd	Provided
2.56a Setback (ft)	25	55
2.56b Water Supply?	Yes	Yes
2.56c Screening	Yes	Yes
59-C-1: R-90 Zone		
59-C-1.321:		
Maximum Density	NA	NA
Lot Area (s.f.)	9000	143,748
59-C-1.322: Lot Width (ft)	90	778.74
Lot width at Street Line (ft)	25	778.74
59-C-1.323: Street Setback (bldg) (ft)	30	53 (bldg) 30 (deck)
Side Setback (ft)	8	198 (bldg) 8 (deck)
Rear Setback (ft)	25	92 (bldg) 74 (deck)
59-C-1.326: Street Setback (accessory) (ft) *	60	82
Side Setback (accessory) (ft) *	5	317
Rear Setback (accessory) (ft) *	5	8
Building Height (floors)	2.5	1
Building Height (accessory) (ft)	25	15
Building Coverage (% of site)	30	0.016
59-E: Parking: Community Swimming Pool		
Deep area: 1155sf @ 1space/15sf= 77 swimmers		
Shallow: 4604sf @ 1space/12sf=383 swimmers		
Wading: 384sf@ 1space/12sf= 32 swimmers		
492 swimmers/7 spaces per swimmer=	70	70

* = PADDLE TENNIS

Proposed Changes 1 & 2, The Paddle Tennis, Basketball and Volleyball Courts:

The Petitioner's statement (Exhibit 3) indicates that in 1997, the club disassembled and relocated the two existing paddle tennis courts, which had been approved by special exception in 1971. The paddle tennis courts and attached lights were moved to the south central portion of the Property and were placed in an adjoining configuration, resulting in one court fronting on Montrose Road. According to Petitioner, the courts were to be sited in a staggered, horizontal configuration, but due to the elevation of the property, this plan was not feasible and their location was changed. Both courts were placed over a previously paved surface. Significant setbacks from neighborhood houses and mature trees along Montrose Road provide a substantial visual buffer for the courts.

Also in 1997, Petitioner established a "half basketball court" and a volleyball court on the paved surface area where the paddle tennis courts were originally located. The half basketball court has one pole and a hoop. The sand volleyball court was placed on top of compacted dirt, and contains a net and two end posts. The volleyball court replaced a previously paved, impervious surface, thereby resulting in a net decrease in impervious surface on the subject site. The courts and associated paved walkways collectively occupy approximately 3,200 square feet within an approximately 8,500 square foot portion of the club (*i.e.*, the area previously occupied by the paddle tennis courts and asphalt paving from 1971 to 1997). The remainder of this part of the club consists of trees, landscaping, grass and walkways.

Petitioner notes in its Statement (Exhibit 3) that the basketball and volleyball courts are visibly buffered from Montrose Road by a hillside planted on both sides with mature trees, and from the Faith Methodist Church to the east by an onsite buffer planted with evergreen trees, beyond which sits a heavily forested hillside situated on the adjoining church property. The courts, which sit lower than the two elevated paddle tennis courts that had previously occupied the same area, are not visible from

Montrose Road, the church or any houses. These courts are only used when the swim club portion of the pool is in operation and provide an alternative recreational activity for club members when they are not swimming.

As noted on page 2 of this report, the Board of Appeals had actually voted to approve the relocation of the paddle tennis courts in a work session on February 17, 1997 (Exhibit 21), but that vote apparently never found its way into a Board resolution. The establishment of the basketball and volleyball courts was not submitted to the Board until the current filing. Nevertheless, neither the new location of the paddle tennis courts, nor the establishment of the basketball and volleyball courts, has any adverse impact on the general neighborhood, and there is no reason to deny approval of these courts at this time. As stated by Technical Staff (Exhibit 32, p.12),

The location of the subject 3.32-acre property relative to the surrounding neighborhood is such that it is isolated from the nearest residential properties and the adjoining church to the east by undeveloped heavily wooded land, roads, and screening and buffering in the form of matured trees and vegetation. As such, the size, scale and scope of the subject use with the proposed modifications, are not likely to result in any noise related problems, traffic disruption, light intrusion or any other environmental impact.

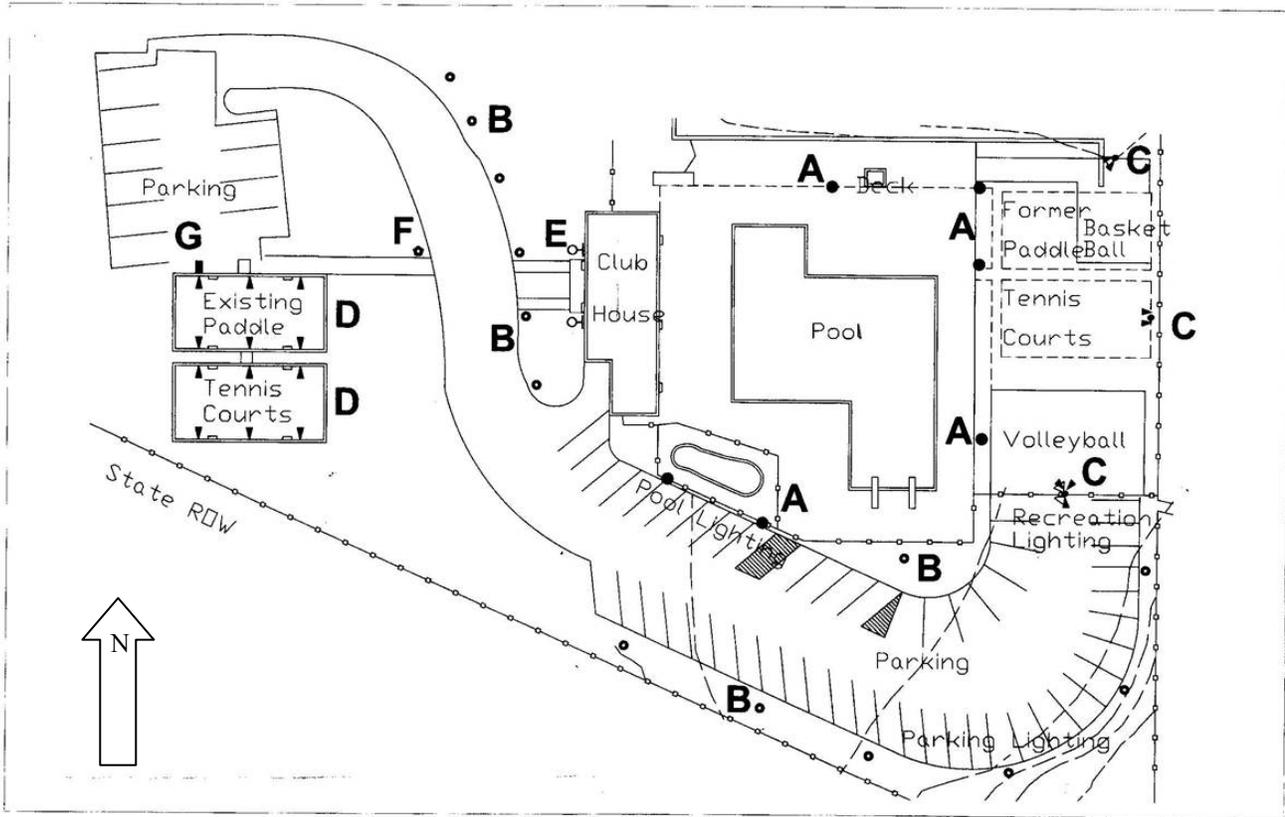
Proposed Change 3, The New Light Fixtures:

There are seven different types of lights utilized by Petitioner (Types A, through G on the Revised Lighting Plan, Exhibit 55(a)), and this revised lighting plan was approved by Technical Staff in its e-mail of April 5, 2006 (Exhibit 53). The lighting for the paddle tennis courts is labeled “Type D” on the revised Lighting Plan, Exhibit 55(a), and the lighting for the basketball and volleyball courts, consisting of the three new pole lights that Petitioner added on the eastern side of its campus, is labeled “Type C” on the Lighting Plan, Exhibit 55(a).

The location and description of all the lighting fixtures can be seen in the revised Lighting Plan, Exhibit 55(a), reproduced on the following page.

Old Farm Swim Club

Lighting Plan & Fixture



Legend

- A*: 100W Incandescent Globe Mounted To 8' Pole
- B: 75W Incandescent Full Cut-off Post Top Mounted To 8' Pole
- ▲ C: 300W PAR56 Flood Luminaire Mounted To Existing Pole Locations
- ▲ D: 1500W Adjustable Quartz Flood Luminaire Mounted To 25' Pole (Measured From Ground)
- E*: Wall Mounted Decorative Incandescent
- ◊ F*: Incandescent Shielded Post Top On 7' Pole
- G: 250W MH Full Cut-off Luminaire Mtd. to Type D Pole to Face Parking Lot

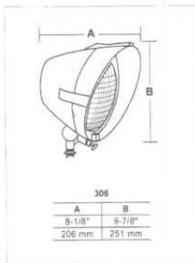
*Light Level 0.1 Footcandles Measured In Field At Base Of Fixture



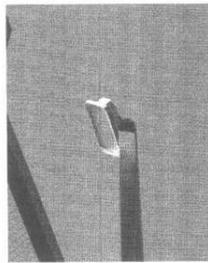
Type A



Type B



Type C



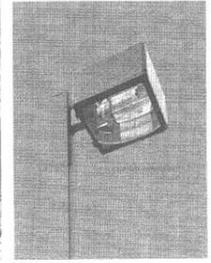
Type D



Type E



Type F



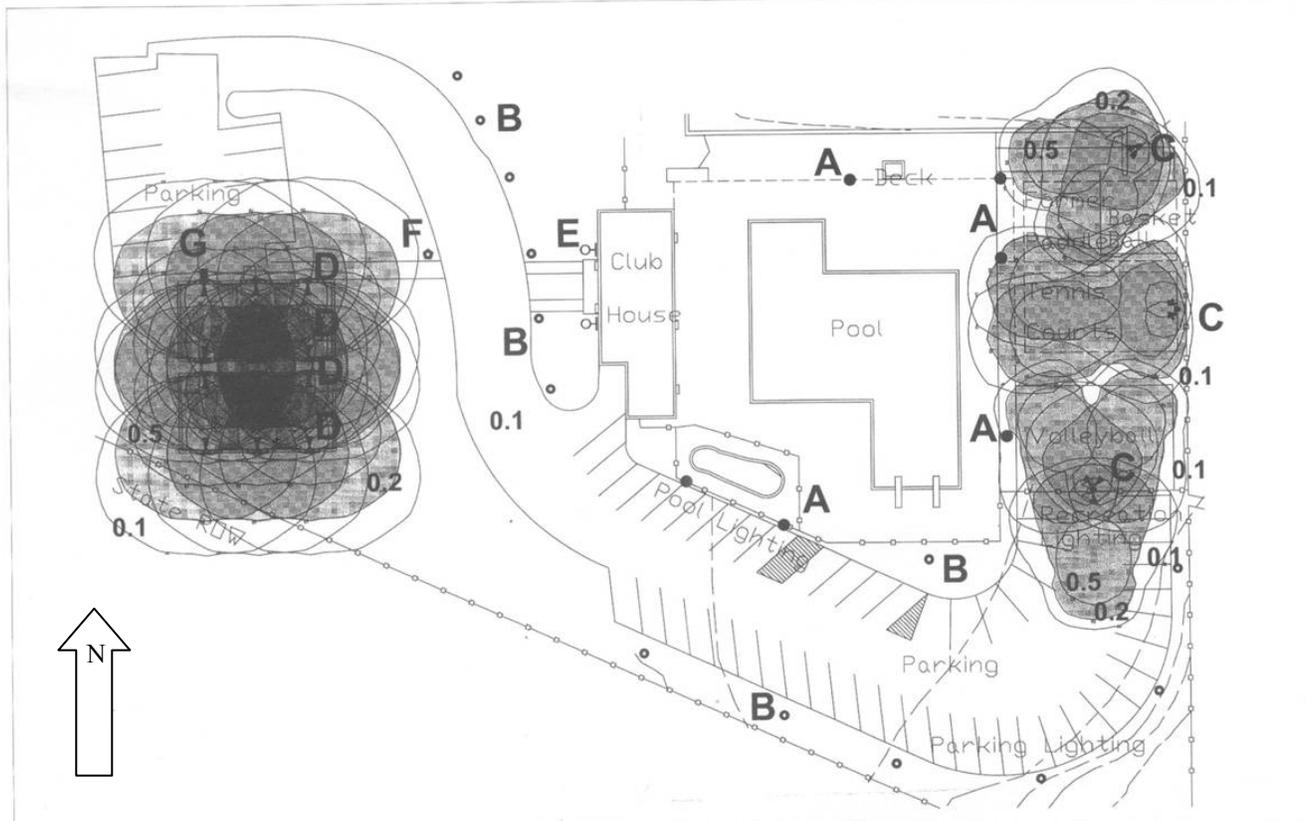
Type G

EXHIBIT NO. CC-6
 REFERRAL NO. 044-1495-A

The lighting fixtures for the basketball and volleyball courts had been a concern addressed at the hearing because a photometric study (Exhibit 6) had revealed that light was leaking over the property line at far above the 0.1 foot-candle level permitted in a residential zone. At the request of the Hearing Examiner, Petitioner altered the light fixtures and did a new photometric study (Exhibit 52(b)), which demonstrates that light does not exceed 0.1 footcandles at the property line. It is shown below:

Old Farm Swim Club

Isocandela Lighting



Technical Staff indicated its approval of the photometric study in Exhibit 49.

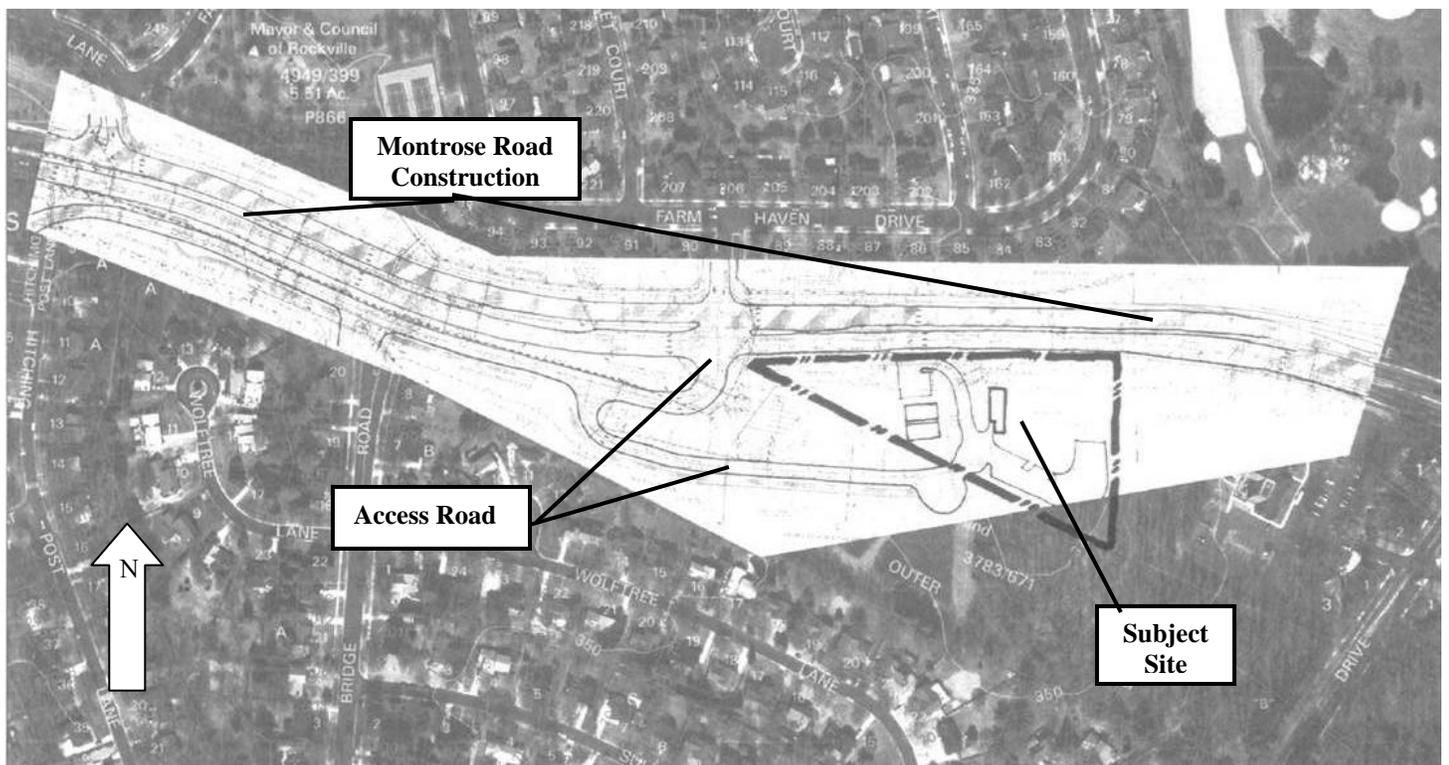
Proposed Change 4, the Wooden Storage Shed:

Petitioner had sought authorization to keep a wooden storage shed it had added to the site without Board approval. Technical Staff, however, concluded that the shed did not meet setback and rear yard location requirements of Zoning Ordinance §59-C-1.32. Petitioner has elected to remove

the shed, and so indicated at the hearing. Tr. 46. The shed therefore does not appear on the revised site plan, and will not be discussed further in this report.

Proposed Changes 5, 6, and 8, The Landscaping, Parking, Access and Circulation:

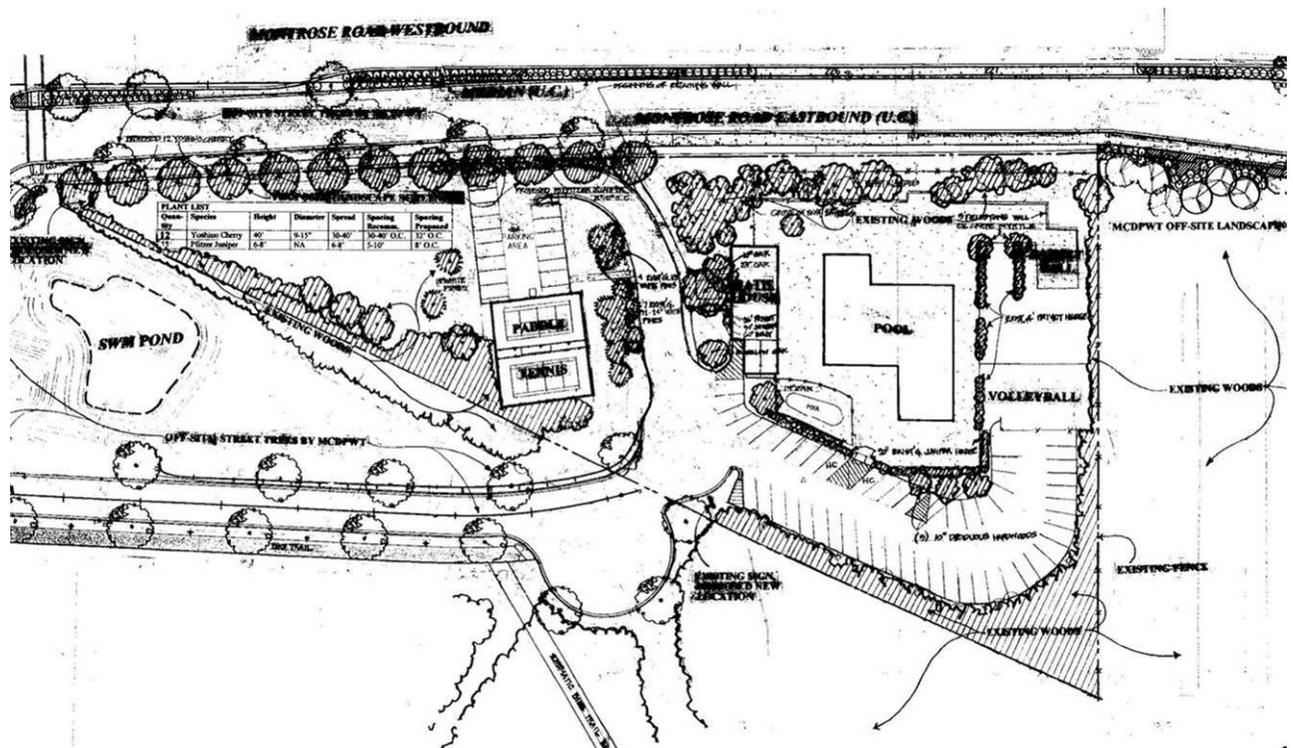
The enlargement of Montrose Road took part of Petitioner's property and resulted in a need to modify the landscaping, parking, access and circulation system for the subject site. With the construction of the Montrose Parkway, which began in November of 2005, the access point to the property has been relocated to the south side of the property. The Montrose Parkway construction plan calls for building an access road from the parkway for the use of the subject property. The planned access road can be seen on Exhibit 41, which superimposes the DOT Construction Plan and the subject site's outline on an aerial photo:



The heavy vegetation surrounding the club can be seen both in the photos on page six of this report and in the following aerial photo from page 11 of the Technical Staff report, reproduced below:

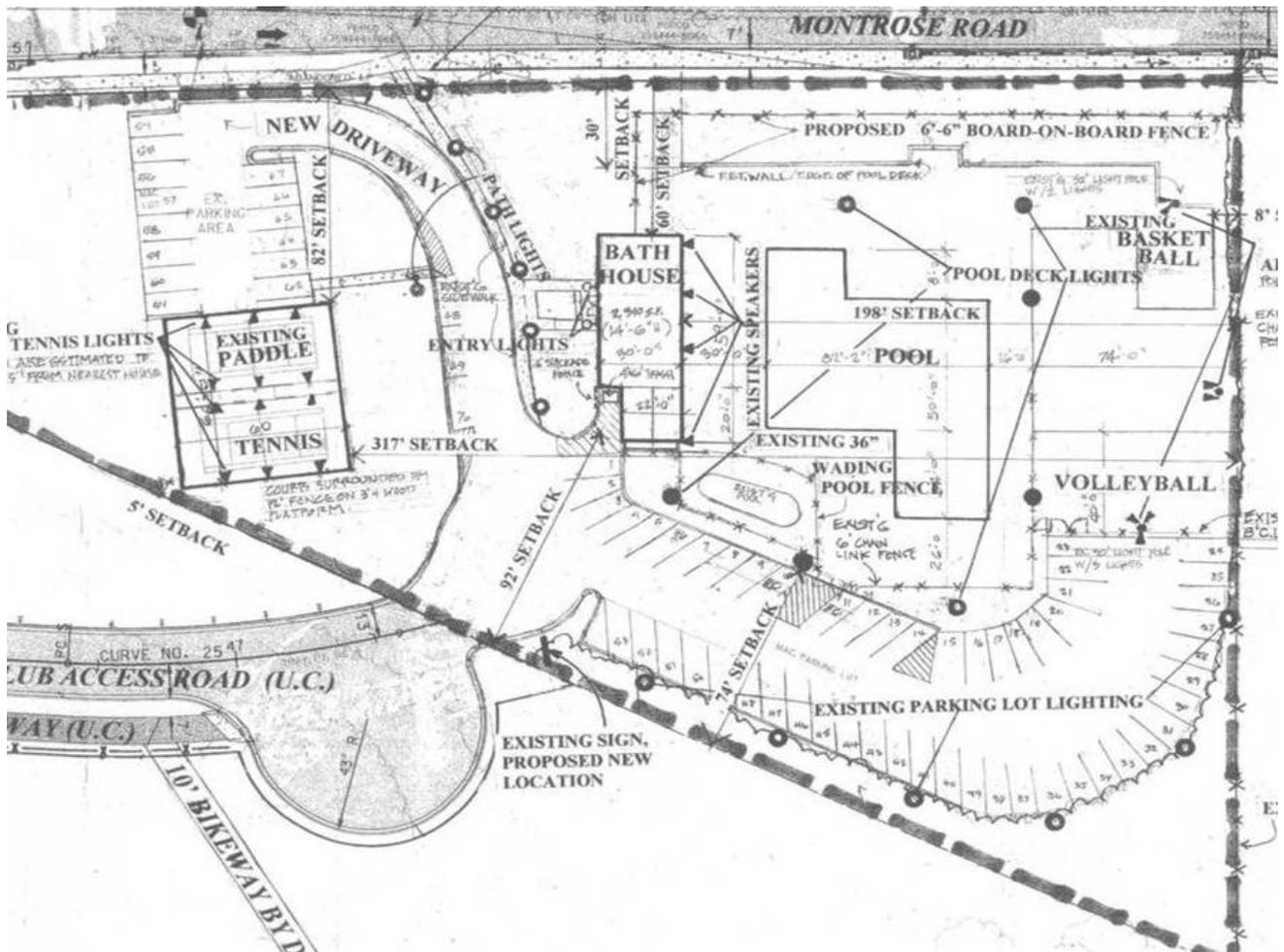


In order to replace the vegetation lost during the road construction on the northern property line, Petitioner proposes to plant 12 Yoshino Cherry trees and 15 Pfitzer Junipers along the northwest side of its property. On the northeast side of the property, existing groves of trees remain, and Petitioner plans to add a six foot six inch board on board fence, all of which can be seen below on the revised Landscape Plan (Exhibit 52(c)), which has been approved by Technical Staff:



Given the existing screening surrounding the club, the plantings proposed for the northern property line should be adequate to replace the screening lost to the Montrose Road construction.

Because of the changes necessitated by the road construction, Petitioner has had to locate additional on-site parking to meet statutory requirements. Based on the size of the existing pool, the capacity is rated at 492.⁵ Under Zoning Ordinance §59-E-3.7, one parking space is required for every 7 persons lawfully permitted in the pool at one time. Thus, 70 parking spaces would be required for this pool. As shown on the expanded view of the site plan's parking area, Petitioner can comply with this provision:



⁵ Under COMAR §10.17.01.19, in calculating the capacity of the pool, one person is allowed for every 15 square feet with over 5 feet of water depth, and one person is allowed for every 12 square feet with under 5 feet of water depth. In this case, the math yields a capacity of 492, as shown on the revised site plan's data table, on page 10 of this report.

None of the proposed modifications would affect the volume of traffic produced by the club, and according to Larry Ponsford, Petitioner's expert on site design and urban design, the access and circulation system for the club is safe and efficient, and clearly safer than it was when traffic had to access and exit to and from high-speed Montrose Road. Tr. 65.

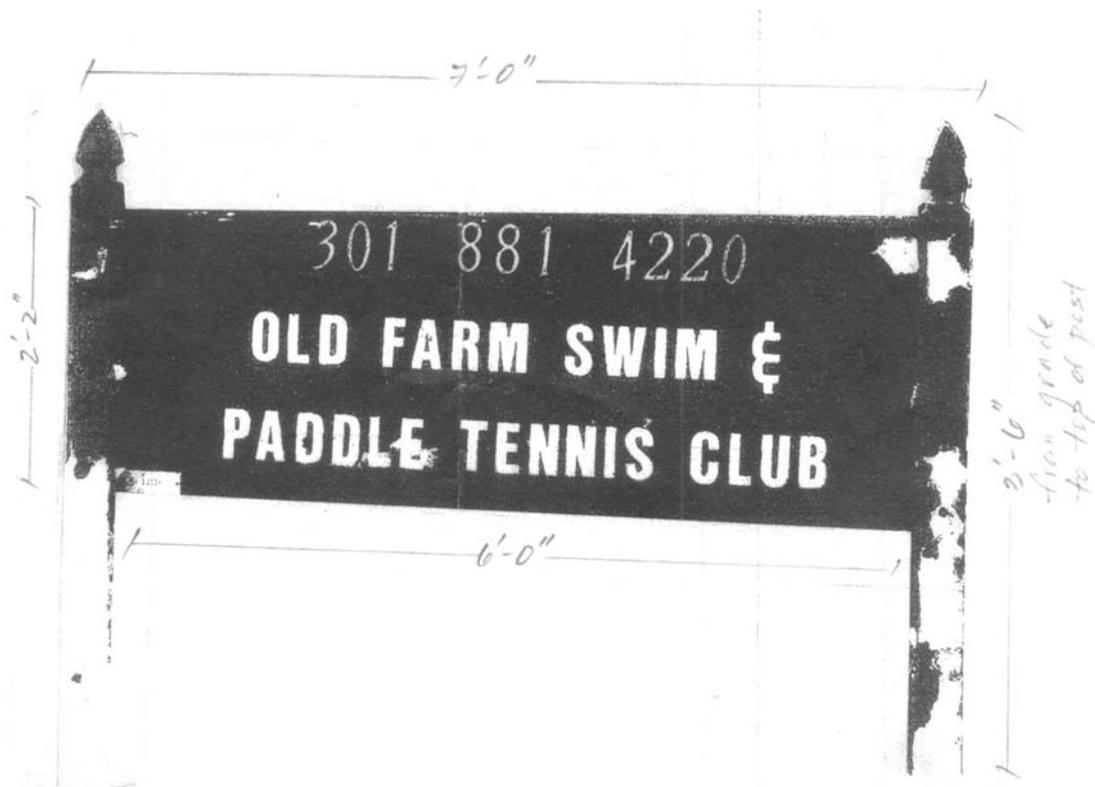
Proposed Change 7, the Speaker System:

Petitioner has mounted four speakers on the bath house, facing the swimming pool. Technical Staff initially held the mistaken belief that these speakers were being removed; however, Staff subsequently approved a revised site plan clearly showing the speakers. In its statement supporting the modification petition, Petitioner indicated that the speakers are used to play background music for the members seated between the bathhouse and the pool. "The system has a maximum volume of fifty watts and there is no microphone or public address system. Music from the system cannot be heard offsite and no complaints have been registered by neighbors." Exhibit 3, p. 5.

It is 210 feet from the speakers to the nearest residence in their path. Tr. 57. Bruce Kay, the President of the Old Farm Swim and Paddle Tennis Club, testified that "Those speakers couldn't play loud enough to get to the houses." Tr. 56. According to site designer, Larry Ponsford, "the noise from Montrose Road itself probably greatly exceeds the noise from the speakers . . ." Tr. 58. It is true that there are a significant distance and a great deal of vegetation between the speakers and the nearest property. Nevertheless, the Hearing Examiner has proposed a condition in Part V of this report which specifies that "the volume of amplified music or other noise from Petitioner's sound system must be kept sufficiently low so as not to disturb the neighbors, and in no event may such amplified music exceed County noise standards at the property line." If testing by the County reveals a problem, then a remedy can be ordered.

Signs:

Although not mentioned in the Petition as a modification, Petitioner clearly stated its intent at the hearing and thereafter to post entrance signs to inform people of the club's location. Technical Staff asserted that "signs placed on the property shall meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area." In supplemental reports, Technical Staff opined that the proposed sign did not meet the statutory requirements "in terms of area." Exhibits 53 and 54. Petitioner's counsel responded that a Department of Permitting Services (DPS) official indicated that "the Club would likely qualify as a 'place of assembly' under Section 59-F-4.2(a)(3)(B) and, therefore, a total sign area requirement of 'not to exceed 40 square feet' would apply." Petitioner's existing sign, shown below from the revised landscape plan, has a sign area of about 13 square feet (6 feet by 2 feet, 2 inches).



EXISTING CLUB SIGN

Given the relocation of the access to the Club, it makes sense to have signage which will properly direct people to the new entrance. The signs should be large enough to be easily seen from the roadway so as to avoid a safety hazard. If DPS concludes that the Club constitutes a “place of assembly” as suggested by Petitioner, then signs larger than standard residential 2 square feet would be in order. Rather than requiring Petitioner to use only a 2 square foot sign, the Hearing Examiner recommends the following condition in Part V of this report:

Petitioner may not post a permanent entry sign or signs without obtaining a permit from the Department of Permitting Services and filing a copy with the Board of Appeals. Up to two signs may be erected if permits are obtained for both.

The Hearing Examiner believes a second sign may be needed because the access road forks after leaving Montrose Road. *See* exhibit on page 15 of this report.

D. The Master Plan

The subject site is located within the planning area of the *North Bethesda/Garrett Park Master Plan*, approved and adopted in 1992. Technical Staff concluded that the Master Plan continues to support the R-90 zoning for this area, and “the special exception is in compliance with the 1992 North Bethesda/Garrett Park Master Plan.” Exhibit 32, pp. 5-6. In Technical Staff’s opinion, the new access road from Montrose Parkway will meet the Master Plan’s objective to “protect and reinforce the integrity of existing residential neighborhoods” (Master Plan, p. 33) because the new access road off Montrose Parkway West will allow the Tildenwood and Luxmanor subdivisions to remain isolated from the Club. The proposed modifications “are less of a nuisance to the surrounding communities as the site is well buffered from residential areas by a Parkway, a ROW, and a church.” Exhibit 32, p. 6. The Hearing Examiner agrees, finding that the proposed changes are not inconsistent with the applicable Master Plan.

E. The Environment,

The subject site is not located within a Special Protection Area or Primary Management Area, nor is subject to a tree save plan. It has been granted an exemption from having a Forest Conservation Plan (FCP) because the modification is to an existing special exception that was approved prior to July 1, 1991, and the revision will not result in the cumulative clearing of more than 5000 additional square feet of forest. The exemption letter # 4-04361E (Exhibit 7) was issued by the Environmental Planning Division on August 5, 2004. Technical Staff also notes that there are no streams, floodplains, steep slopes, wetlands or environmental buffers encumbering the site. Exhibit 32, p.8. Based on this record, the Hearing Examiner finds that the proposed modifications pose no environmental problems.

F. Community Concerns

There has been no community opposition to the special exception modification sought by Petitioner, and the People's Counsel supports the petition, as conditioned. Tr. 84.

III. SUMMARY OF THE HEARING

The hearing took place on February 13, 2006, as scheduled. Petitioner called two witnesses, Bruce Kay, President of the Old Farm Swim and Paddle Tennis Club, and Larry Ponsford, who testified as an expert in site design and urban design. Martin Klauber, the People's Counsel, participated, but did not call any witnesses. At the conclusion of the hearing, he stated "With the conditions, changes discussed on the site plan the Office of the People's Counsel supports the requested modification." Tr. 84.

1. Bruce Kay (Tr. 13-48):

Bruce Kay testified that he is the President of the Old Farm Swim and Paddle Tennis Club. He stated that the pool has approximately 245 families that are members, and the pool operates

primarily from Memorial Day to Labor Day. In the wintertime, it is open from mid-November to mid-March for operation of the paddle tennis facility.

According to Mr. Kay, club operations normally run: Saturday 11:00 a.m. to 10:00 p.m. and Sunday 11:00 a.m. to 9:00 p.m. Weekdays, the club opens at 11:00 a.m., except for swim team practices, which are held from 9:00 a.m. to 10:30 a.m. , Monday through Friday. The pool closes at 9:00 p.m. on weekday nights and Sundays. Friday and Saturday nights, it closes at 10:00 p.m. None of that time conflicts with rush hour since the pool generally doesn't open until 11:00 a.m. on weekdays. The exception is two to four home swim meets a season, when the pool opens at 9:00 a.m.

Mr. Kay further testified that Paddle tennis is generally played from November 1st to March 30th. It's a cold weather sport played outside on the paddle tennis courts. Games are predominantly played on Saturdays and Sundays and on Monday and Wednesday weeknights, under lighting provided at the paddle tennis courts. The Paddle tennis court is an outside court, much smaller than a standard tennis court, probably the size of a racquetball room. It is played on a platform in a 15 foot tall chain-linked enclosure.

Mr. Kay testified that the issues that were addressed as part of the special exception include the relocation of the two paddle tennis courts and the attached lights that were in fact relocated in 1997. With the movement of the paddle tennis court it allowed the club to build on the location of the current site, a basketball court and a volleyball court. Three light poles were added in 1997 for use along the basketball court and volleyball courts. (According to Mr. Kay, these lights are only on for about an hour a day, Friday and Saturday nights from the end of May until the first week in September, "so it's about ten times a year that the lights are on for about an hour." Tr. 70). A storage shed was added and modifications made to the landscaping. The parking lot was also

modified, and there are currently 63 spaces. Four speakers were added and they are located on the east side of the pool building facing into the pool deck area. (According to Mr. Kay, the speakers couldn't play loud enough to get to the nearest houses. Tr. 56. "Beyond 50 feet, when you're out at the basketball courts chances are you're not going to hear the speakers." Tr. 60.) Finally, the access to the property and the internal circulation were modified as a result of the Montrose Parkway construction.

According to Mr. Kay, because it is a community pool, many of members walk to the pool or ride their bikes. So, even with the current membership of 245 families, the parking lot is full but it's not over-capacity. In addition to that, the club has an agreement with the Faith Methodist Church located adjacent to our property for use of their parking lot when the club parking lot is full, and the reciprocal agreement is they have access and use of club parking lot when their church services on Sunday mornings exceed their parking lot.

Mr. Kay testified that the club sign is approximately six feet long and stands about six feet high. When it's in the ground it's probably 3-1/2 feet high and 12 inches thick. The wood face is 6 feet long by probably 2-1/2 feet. The sign will probably be relocated to the top of the new access road, where it enters the club. The new access road will only be used for entrance and exiting the pool, and the club will lose its current entrance on Montrose Road.

According to Mr. Kay, the County's road expansion took about .44 acres of club land, removing the trees from the northern property line. Their plan is to actually have the construction of the new access road complete probably in late 2006. The whole Montrose Road construction project around the pool is supposed to be done in 2007. The new access road will include a traffic circle, and the access road is wide enough to include a 10 foot bicycle path and allow cars to come up, drop off, and then either park or exit. "We've also been told this road is wide enough if necessary to

allow parallel parking on one side,” giving the club an additional significant number of parking spaces just off the property on a road exclusively used to access the club.

Mr. Kay further testified that the speakers all face into the pool and are used during the normal swim hours of 11:00 a.m. to 9:00 p.m., and Friday and Saturday nights until 10:00 p.m. Generally speaking, people bring in CD's or will listen to some of the local radio stations just to provide some music background.

[Petitioner's counsel interjected that, based on the size of the existing pool, the capacity is rated at 492.⁶ The parking requirement for a pool with a capacity of 492 is 70 parking spaces, “[a]nd we can meet the 70 on site.” Petitioner will adopt the Technical Staff report except condition 1(c) regarding the crosswalk, which is off the club's property; the third bullet of condition 2, to the extent it implies a need to produce an NRI/FSD, from which Petitioner is exempted (Exhibit 7); and the statement on page 5 of the report, item number 3, which incorrectly indicates that the three light poles were added in 1971, when they were in fact added in 1997. Tr. 38-44]

A small storage shed that had been erected on the property will be removed (Tr. 46) because of setback problems identified by Technical Staff. The pool complex (not the paddle tennis courts) is surrounded by a chain link fence. There is a grass buffer between the end of the basketball court and the fence which is on the property line that is easily five or six feet wide.

2. Larry Ponsford (Tr. 49-80):

Larry Ponsford testified as an expert in site design and urban design. He stated that the entry drive as it approaches the main parking lot widens out as it approaches the clubhouse frontage. See Exhibit 39. Because of this widening, people can park along that edge of that street right now in

⁶ Under COMAR §10.17.01.19, in calculating the capacity of the pool, one person is allowed for every 15 square feet with over 5 feet of water depth, and one person is allowed for every 12 square feet with under 5 feet of water depth. In this case, the math yields a capacity of 492, as shown on the revised site plan (Exhibit 52(d)). Under Zoning Ordinance §59-E-3.7, one parking space is required for every 7 persons lawfully permitted in the pool at one time. Thus 70 parking spaces would be required for this pool.

unmarked parking spaces, and the reason that it was built wider like this was so people could park along there. So, Petitioner plans to add seven spaces along that western edge of the entrance drive. Extra spaces will also be added on the property to bring the on-site total up to 70. A couple of the spaces may not be available during the paddle-tennis season, but since the seasons are different for the pool, there's never an occasion when there's a conflict between swimming pool users and paddle tennis users.

As to the speaker system, Mr. Ponsford testified that it is 210 feet from the nearest speaker directed towards nearest residence. He opined that the noise from Montrose Road itself probably greatly exceeds the noise from the speakers that you hear in the backyard, and suggested that the Petitioner would accept a condition that says it may not exceed the allowable noise level at the boundary of the site on each side.

Mr. Ponsford further testified that under the current circulation plan, pre-construction, you enter the pool at the western edge of the circular driveway and either park in the lower parking lot, or you continue up to the upper (southeast) parking lot. This road is wide enough for two-way traffic. If the upper lot is full, you can return back down and then to the lower lot. If both of these lots are full, you exit and these are clearly marked entrance and exit and then you travel down the road about 150 feet to the church parking lot and then park there. When the Montrose Road construction project is complete, the club will lose the direct access to and from Montrose Road. People living or traveling into the Old Farm community will enter from Montrose Road onto a road to the west of the site, to be called Hitching Post Lane. It will have a stoplight at it and then they can either travel west back into the community or take a sharp turn to the east and enter this access road, and, again, this is two-way, designed for two-way traffic, and then they'll come up to a turnabout where people can either drop off their swimmers and exit or enter into the parking lots, either the upper lot or the lower

lot depending on how full the parking lots are at the time. In Mr. Ponsford's opinion, the road flow will be as good as it is now, and the circulation plan is safe and efficient.

[Petitioner's counsel agreed to a condition that Petitioner must get a sign permit, and a variance if necessary, and file it with the Board following receipt of the permit. Tr. 66.]

Mr. Ponsford then identified the location of the three 30 foot tall pole lights that illuminate the basketball and volleyball courts. He testified that it was possible to eliminate the light spillage onto the neighboring property by properly directing and shielding the lights.

[Petitioner's counsel argued that Petitioner does not have to establish financial responsibility or community need because nothing in the modification petition bears on those issues. Tr. 72]

Mr. Ponsford further testified that the club is buffered by a 120 foot right-of-way and backyards on the north and by a 300 foot right-of-way on the south and by 200 foot woods and a little bit more clear space on the east. He concluded that Petitioner has a setback table added to the drawing which shows that it has complied with all the setback requirements in the zone. In Mr. Ponsford's opinion, the club also complies with Zoning Ordinance §59-G-2.56, the specific requirements for a community swimming pool. Some of the trees being planned may be planted by Department of Public Works and Transportation.

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 most special

exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. However, in the case of the Community Swimming Pool special exception, Zoning Ordinance §59-G-2.56 provides that the general standards, which are contained in Zoning Ordinance §59-G-1.21(a), do not apply. The General Development Standards contained in §59-G-123 apply to modification petitions only insofar as there are changes which impact upon those standards. The Neighborhood Need Standard contained in §59-G-1.24 applies to original applications for community swimming pools, but is not an issue in this modification petition because the facility already exists.

Petitions to modify the terms or conditions of a special exception are authorized by §59-G-1.3(c)(4) of the Zoning Ordinance. As mentioned in Part I of this report, because Petitioner is proposing to increase total floor area by less than 7,500 square feet, we must limit our inquiry “to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals.” Section 59-G-1.3(c)(4). As demonstrated below, the record in this case establishes that the proposed modifications, when properly conditioned, would neither change the nature or character of the special exception nor adversely affect the surrounding neighborhood.

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard, the Hearing Examiner concludes that the proposed modifications will successfully avoid any adverse effects on the community and will meet the statutory requirements for the proposed use, 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 modifications 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-1.21. 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 have 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 community swimming pools. 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 community swimming pool include “vehicular trips to and from the site by members, staff, and visitors to the club; noise associated with the various activities on the site; and lighting.” The Hearing Examiner would add to that list the visual disturbance that would normally be created by operation of a swimming pool, and the vehicular and pedestrian traffic and parking it would generate, all of which is inherent in the operation of a swimming pool. The layout of the site, the size of the membership, the number of

classes or meets and the existence of additional activities such as basketball and paddle tennis would be non-inherent characteristics. We must now analyze the subject modifications to determine whether they will produce any non-inherent adverse effects warranting denial of the Petition.

B. Applying the Standard to the Requested Use

Technical Staff observed that “the location of the subject 3.32-acre property relative to the surrounding neighborhood is such that it is isolated from the nearest residential properties and the adjoining church to the east by undeveloped heavily wooded land, roads, and screening and buffering in the form of matured trees and vegetation. As such, the size, scale and scope of the subject use with the proposed modifications, are not likely to result in any noise related problems, traffic disruption, light intrusion or any other environmental impact.” Exhibit 32, p. 12.

Technical Staff also opined that “there are no significant transportation impacts that would result from the proposed modification. The Transportation Planning staff finds that the subject use with the proposed modifications satisfies the Local Area Transportation Review test and will have no adverse effect on nearby roadway conditions or nearby pedestrian facilities. There are no discernible noise-related impacts associated with the proposed use.” Exhibit 32, p.12. The issue of possible noise, in conjunction with the Club’s new speaker system, was discussed above on page 18 of this report. As noted there, the Hearing Examiner has proposed a condition in Part V of this report which specifies that “the volume of amplified music or other noise from Petitioner’s sound system must be kept sufficiently low so as not to disturb the neighbors, and in no event may such amplified music exceed County noise standards at the property line.” This condition should avoid noise disturbing the neighbors.

As to new lighting, the fixtures on the three 30-foot high, freestanding light poles Petitioner installed will be changed to eliminate light spillover into the neighboring properties, and Technical

Staff approved the final revised lighting plan and photometric study (Exhibits 55(a) and 52(b)) in an e-mailed supplemental report (Exhibit 53). Petitioner has indicated that the days and hours during which the lights are in operation would be from dusk to 10:00 p.m. on Friday and Saturday evenings, and until 9:00 p.m. on weekdays. Exhibit 3, p. 4.

The paddle tennis courts, a basketball court and associated lighting and speakers have existed on the property for eight years with no record of objections or complaints from the residents of the neighborhood. Moreover, as noted by Technical Staff, the membership in the club has been substantially reduced through the years, from the originally approved 400 to the current 245 members. The applicant also indicated that the various facilities of the club operate at different times of the year — the swim activities occur during the summer months, between Memorial Day and Labor Day, and the paddle tennis activities occur during the fall and winter seasons, generally from November through March. Therefore, the swim and paddle tennis operations do not overlap. The club is closed during several months of the year, generally April, May, September and October.

The relocation of the paddle tennis court, the addition of the basketball and volleyball courts, the alteration of the interior driveway and the removal of trees by the Montrose Road project have brought about changes to the landscaping that had been approved for the subject property by the two previous Special Exceptions. The current revised landscape plan shows retention of much of the landscape approved previously. However, to ensure adequacy of screening from Montrose Road, Technical Staff recommended additional planting materials along the northern property line, and Staff approved Petitioner's revised landscape plan (Exhibit 52(c)) showing these additions to the screening.

Technical Staff concluded that “the subject facility, with all improvements that are the subject of this application and its placement and operation on the 3.32-acre property, would not

have a detrimental impact on the use or/and development of adjacent properties or the neighborhood. There are no non-inherent impacts associated with the subject proposal that warrant denial.” Exhibit 32, p.12. The Hearing Examiner agrees. There appears to be nothing atypical about the proposed community swimming pool that would create non-inherent adverse effects. Its size and bulk do not seem excessive for the area, and it is in fact buffered by substantial setbacks and mature landscaping. Moreover, there is no evidence in the record that this use, which has existed for many years, has had any adverse effects on its neighbors, inherent or non-inherent.

After carefully reviewing the entire record, the Hearing Examiner is convinced, as was the Technical Staff, that the proposed modifications will have no significant adverse effects, inherent or non-inherent, on the general neighborhood.

C. General Standards

As mentioned above, the general standards for special exceptions found in Zoning Code Section 59-G-1.21(a) do not apply to Community Swimming Pool Special Exceptions, as provided in §59-G-2.56.

D. Specific Standards: Swimming Pools, Community

The specific standards for Community Swimming Pools are found in Code § 59-G-2.56. The Technical Staff report and the Petitioner’s exhibits and testimony provide sufficient evidence that the proposed modifications would be consistent with the specific standards, as outlined below.

Sec. 59-G-2.56. Swimming pools, community

The provisions of subsection 59-G-1.21(a) do not apply to this section. In any zone, a community swimming pool may be allowed provided that such use of land will conform to the following minimum requirements:

(a) The swimming pool, including the apron and any buildings, must not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone such pool may be constructed not less than 25 feet at any point from such railroad right-of-way, publicly owned land or commercial or industrial

zone. Any buildings erected on the site of any such pool must comply with the yard requirements of the zone in which the pool is located.

Conclusion: The location and size of the existing swimming pool and bathhouse were approved in the original Special Exception that was granted in 1964. Since no modification is proposed to either the swimming pool or the bathhouse at this time, their location is not an issue in this modification petition. Nevertheless, they do comply with the setbacks specified in this provision. The subject lot abuts the publicly owned Montrose Road, and therefore a 25 foot setback from Montrose Road applies under this provision. The swimming pool is approximately 65 feet from the northern property line (as modified by the Montrose Road construction), and the existing bathhouse is approximately 60 feet from the same northern property line, which adjoins Montrose Road. Both the Bath house and the swimming pool are also well within the R-90 Zone requirement of 30 feet for a building setback in the front yard. According to Technical Staff, they are located at least 180 feet from the nearest residential dwellings, thereby exceeding the 125 setback called for in this section.

(b) A public water supply must be available and must be used for the pool or use of a private supply of water for the pool will not have an adverse affect on the water supply of the community.

Conclusion: Technical Staff reports that the pool is on public water, and Petitioner's site design expert so testified. Tr. 76. The Hearing Examiner so finds.

(c) When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery must be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone.

Conclusion: As stated in the Technical Staff report (Exhibit 32, p. 13):

There are extensive barriers, natural and man-made, in the form of topography, easements, landscaping and building setbacks, between the nearest residential properties and the proposed use. Landscaping (existing and recommended), setbacks in excess of the minimum requirements, and location of the existing building and pool on the 3.32-acre property will provide adequate screening and buffering of the proposed use from nearby residential properties.

The Hearing Examiner so finds.

(d) The following additional requirements must also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the Board as requisite to the grant of a special exception. Financial responsibility must not be construed to mean a showing of a 100 percent cash position at the time of application but is construed to mean at least 60 percent.

Conclusion: Technical staff considered the parking, fencing, landscaping, setbacks, and lighting, as set forth in the revised site, landscaping and lighting plans, and found them to be appropriate. Exhibits 49 and 53. The Hearing Examiner agrees that the revised special exception site plan (Exhibit 52(d)), Landscape Plan (Exhibit 52(c)) and Lighting Plan (Exhibit 55(a)) sufficiently protect the community. The neighbors are also protected from excessive noise by a proposed condition discussed on page 18 of this report and recommended in Part V, below. Petitioner need not demonstrate its financial responsibility because the Swim Club is an ongoing operation under an existing special exception, and none of the proposed modifications impact upon financial responsibility of the Club.

E. Additional Applicable Standards

59-G § 1.23. General development standards

- (a) **Development Standards.** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from Exhibit 32, pp. 8-9, demonstrates Petitioner’s compliance with all development standards for the R-90 Zone:⁷

Current Development Standards	Required/Allowed	Proposed/Existing
Minimum Lot Area	9,000 sf	143,748 sf
Minimum Lot width: @ Front building line @ Street line	75 ft 25 ft	778.74 ft 778.74 ft
Minimum Building Setback: Front Yards Side Yards One side Sum of both sides Rear	30 ft 8 ft 25 ft 30 ft	60 ft 198 ft +421 ft 92 ft
Maximum Building Height	2 ½ Stories or 35 ft	1 story
Maximum Building Coverage Including accessory building	30%	0.016%
Parking Spaces: 1 Space/every 7 persons of pool capacity (Pool Capacity = 492)	70 spaces	70 spaces

- (b) **Parking requirements.** *Special exceptions are subject to all relevant requirements of Article 59-E.*

⁷ The Hearing Examiner modified the chart to comport with evidence produced at the hearing. That evidence included the removal of the wood shed, thereby eliminating the need for discussion of accessory building setbacks, and recalculation of the parking requirements and the amount of parking to be provided.

Conclusion: Parking requirements were discussed in Part II. C, on page 17 of this report. As noted there, Petitioner meets all parking requirements. The pool's capacity is 492 people, which would require 70 parking spaces under Article 59-E, and 70 are supplied. The Hearing Examiner so finds.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
 - (2) *Sand, gravel or clay pits, rock or stone quarries.*
 - (3) *Sawmill.*
 - (4) *Cemetery, animal.*
 - (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
 - (6) *Riding stables.*
 - (7) *Heliport and helistop.*

Conclusion: The minimum lot width at the street line is 25 feet in the R-90 Zone. The subject site is approximately 779 feet in width at the street line, according to Technical Staff.

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

Conclusion: As stated in Part II.E. of this report, the property is exempt from Forest Conservation requirements.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be*

considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: No “land disturbance activities” are planned by Petitioner, nor is there any evidence that this petition is inconsistent with an approved preliminary water quality plan.

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

Conclusion: The issue of signs was discussed in Part II. C. on pages 19-20 of this report. Given the relocation of the access to the Club, it makes sense to have signage which will properly direct people to the new entrance. The signs should be large enough to be easily seen from the roadway so as to avoid a safety hazard. Technical Staff asserted that “signs placed on the property shall meet the requirements of Section 59-F-4.2 (a) in terms of number, location and area.” If DPS concludes that the Club constitutes a “place of assembly” pursuant to Zoning Ordinance §59-F-4.2(a)(3)(B), as suggested by Petitioner, then signs larger than standard residential 2 square feet would be in order. Rather than requiring Petitioner to use only a 2 square foot sign, the Hearing Examiner recommends the following condition in Part V of this report:

Petitioner may not post a permanent entry sign or signs without obtaining a permit from the Department of Permitting Services and filing a copy with the Board of Appeals. Up to two signs may be erected if permits are obtained for both.

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

Conclusion: This section's heading refers to "Building compatibility," but its text refers to structures, which subsumes more than just buildings. Petitioner did erect three new light fixtures to illuminate the basketball and volleyball courts. The new light fixtures have been discussed extensively in Part II.C. of this report, and based on Technical Staff's evaluation, the Hearing Examiner finds that they will be compatible with a residential zone in terms of the avoidance of light spillage. Although 30 foot light poles are not desirable in a residential neighborhood, given the nature of the use and the extensive screening, the Hearing Examiner finds that they do not destroy the residential character of the neighborhood. No additional new construction or reconstruction is planned.

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

Conclusion: As discussed in Part II. C. of this report, Petitioner's lighting will not create excessive glare outside the subject site. Lighting levels at the property lines do not exceed the specified maximum of 0.1 foot-candles.

59-G-1.24. Neighborhood need.

In addition to the findings and requirements of Article 59-G, the following special exceptions may only 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 a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

* * *

(5) *Swimming pool, community.*

* * *

Conclusion: Neighborhood need for this pool is not an issue in this case because the facility has already been approved for this site by the Board of Appeals through Special Exception CBA-1495, and none of the proposed modifications impact upon the issue of community need.

Based on the testimony and evidence of record, I conclude that the modifications proposed by Petitioner meet the specific and general requirements for the special exception, and that the Petition should be granted, with the conditions recommended in the final section of this report.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition numbered CBA-1495-A, in which Old Farm Swim and Paddle Tennis Club, Inc seeks to modify a special exception to continue operation of a community swimming pool at 6900 Montrose Road, in Rockville, Maryland, 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 (CBA-1495, CBA-3060 and CBA-3061) shall remain in full force and effect, except as modified by the Board as a result of this Modification Petition.
3. No more than four hundred family memberships are permitted.
4. No more than 492 persons are permitted in the swimming pool or on its deck at one time, unless a different capacity is determined by State licensing authorities.
5. Petitioner may not reduce the number of on-site parking spaces, as shown in the revised site plan, below 70 without permission of the Board of Appeals.

6. Hours of operation for the club shall be limited to Sunday through Saturday from 8:00 a.m. to 10:00 p.m., with the following specifications:
 - a. The pool shall operate from Memorial Day through Labor Day, each season.
 - b. Normal swim hours shall be from 11:00 a.m. to 9:00 p.m., Sunday through Thursday, and 11:00 a.m. to 10:00 p.m. on Fridays and Saturdays. Swim team practices may be held from 9:00 a.m. to 10:30 a.m., Monday through Friday. Up to four times a season, the pool may open at 9:00 a.m. for swim meets.
 - c. The paddle tennis facility shall operate during the period from November 1st to March 30, each season.
 - d. Evening activities at the basketball, volleyball and paddle tennis courts shall end, and lighting shall be turned off no later than 10:00 p.m.
7. Petitioner shall coordinate the site access, parking and circulation with the Montgomery County Department of Public Works' current plans for Capital Improvements Program (CIP) Project No. 500311, Montrose Parkway West.
8. 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.
9. Petitioner may not post a permanent entry sign or signs without obtaining a permit from the Department of Permitting Services and filing a copy with the Board of Appeals. Up to two signs may be erected if permits are obtained for both.
10. Lighting on site is restricted to the lighting portrayed on the revised Lighting Plan and Petitioner must add the vegetation specified in the revised Landscape Plan.
11. The volume of amplified music or other noise from Petitioner's sound system must be kept sufficiently low so as not to disturb the neighbors, and in no event may such amplified music or noise exceed County noise standards at the property line.

Dated: April 18, 2006

Respectfully submitted,

Martin L. Grossman
Hearing Examiner