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I. STATEMENT OF THE CASE

Filed on September 1, 2010, this petition has been revised several times before proceeding to conclusion on its second major amendment (i.e., the third version of the Petition). Petitioner, Gilmore-Brunett, LLC, seeks a special exception to permit construction of a Child Day Care Center (operated by Childway) to be built on an approximately 37,987 square-foot vacant property zoned R-60 and located at 220 West University Boulevard, Silver Spring, Maryland. The legal description of the subject property is Lot 13, Block P, in the Hendrix Addition, Fairway Section 4 subdivision (Tax Account Number 13-02290484).

Initially, the Petitioner proposed a 6,430-square foot building to accommodate an enrollment of 120 students and 25 staff persons, a surface lot and underground parking garage with 45 spaces. Ex. 47, p. 1. The application required a waiver 183 square feet from of the Zoning Ordinance requirement mandating a minimum lot area of 500 square feet per child. Exhibit 47, p. 1. Both Technical Staff and the Planning Board recommended denial of the original petition because it did not conform to the Master Plan's recommendation that special exceptions in the area be residential in size and scale.¹ Prior to the public hearing before the Hearing Examiner, scheduled for April 15, 2011, the Petitioner amended its application to reduce the size of the structure to 5,469 square-foot facility designed to house 94 pupils and 20 Staff members. Exhibit 61. It also required a waiver of the required 500 square feet lot area per child, although the amount of the waiver needed had been reduced from 183 square feet per child to 96 square feet square feet per child. Because the amended petition had not been reviewed either by Technical Staff or the Planning Board, the Hearing Examiner referred the amended petition to Technical Staff for its review and scheduled another hearing on June 20, 2011. 4/15/2010 T. 301. Both Technical Staff and the Planning Board again recommended denial of the amended petition, once

¹ The differing iterations of this petition are set forth more fully in Section II.D. of this Report (describing the proposed use).

again concluding that it did not comply with the Master Plan and was out of scale with the surrounding neighborhood. Exhibits 89, 94.

The June 20, 2010, hearing proceeded as scheduled; however, the Petitioner requested a postponement of the proceeding to revise the petition again to respond to the recommendations of denial from Technical Staff and the Planning Board. Exhibit 95; 6/20/11 T. 3-6. The Hearing Examiner postponed the hearing until November 10, 2011, and requested that the Petitioner file amended plans no later than September 26, 2011, in order to permit time for those opposing the application to review the plans prior to the public hearing. 6/20/11 T. 24-26.

The Petitioner did file its amended application on September 26, 2011. Exhibit 96. This second (and current) amendment proposes a 4,400 square foot building to accommodate 76 students and 15 staff, no longer requires a waiver of the lot area requirement per child, significantly revises the site layout, and makes several changes to the operations previously proposed. These and other changes to the application are set forth in detail in Section II.D. of this Report.

Technical Staff recommended approval of the third iteration (or second major amendment) of the application but did not refer the case to the Planning Board for a reason not disclosed by the record. The hearing before the Hearing Examiner proceeded as previously scheduled on November 10, 2011, and was continued again to December 9, 2011, and January 12, 2012. The public hearing concluded on January 12, 2012, although the record remained open until January 27, 2012, to provide the opposition with an opportunity to respond to additional revisions to the petition submitted at the public hearing on January 12, 2012 (Exhibit 168), to provide the Petitioner an opportunity to respond to an exhibit submitted by the opposition immediately before the final public hearing (Exhibit 163), to receive any objections to the Petitioner's request to amend the petition on January 12, 2012, and to receive the transcript of the January 12, 2012, public hearing into the record. 1/12/12 T. 169-170. The

record re-opened for the submission of written closing arguments from the parties, which were submitted on February 3, 2012, at which time the record closed a final time. Exhibits 185-188.

The Hearing Examiner concludes that the neighbors have raised some legitimate concerns with regard to the residential size and scale of the amended petition, but these do not warrant denial of the subject petition. They do warrant the imposition of special conditions, including retention of Board jurisdiction to monitor traffic impacts, a requirement for site plan review, additional traffic studies, and a Transportation Management Plan to limit any potentially adverse effects on the community.²

II. FACTUAL BACKGROUND

A. The Subject Property

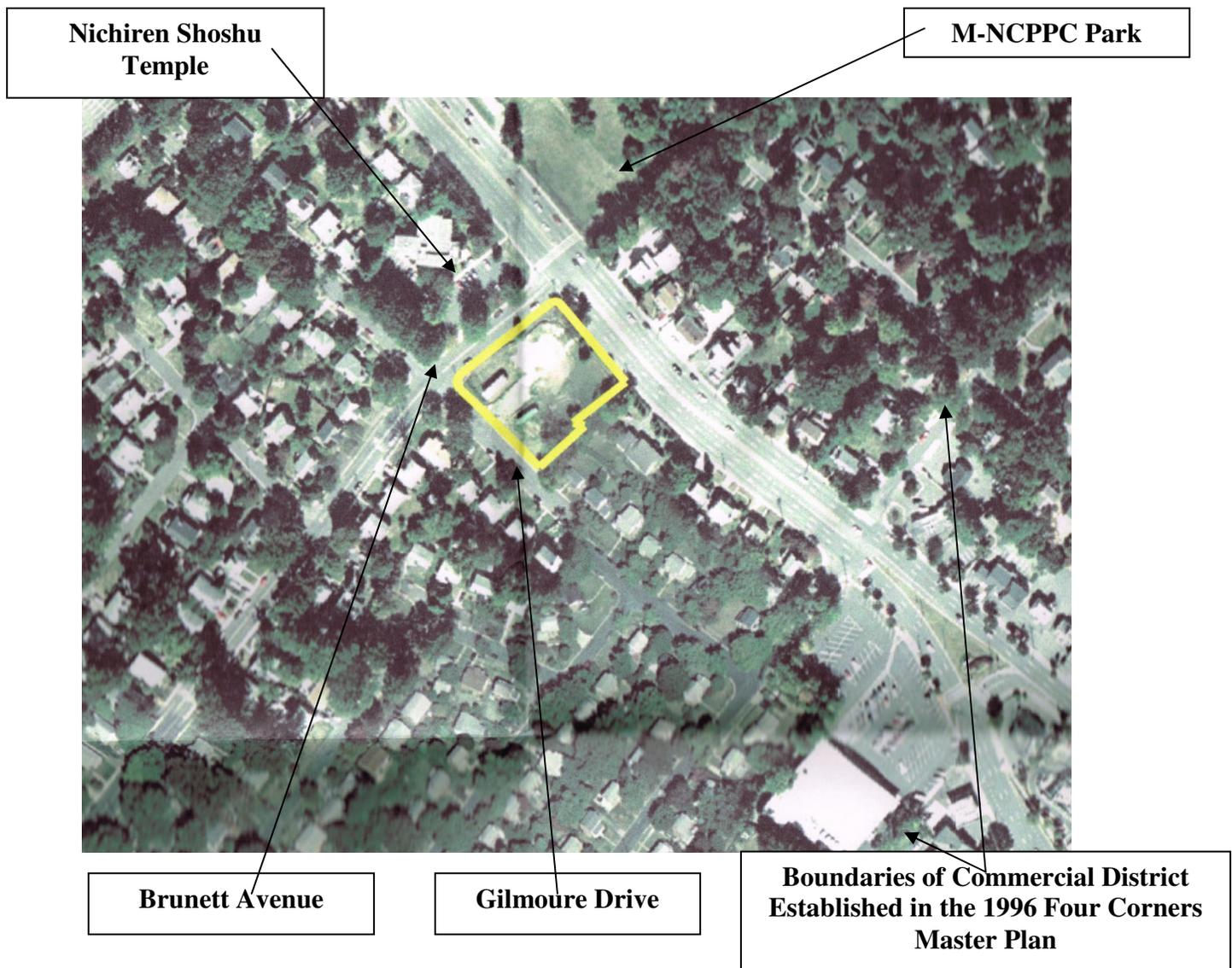
Located approximately one block from the “commercial district” delineated in the 1996 Four Corners Master Plan, the subject property is bordered by University Boulevard to the northeast, Brunett Avenue to the northwest, and Gilmoure Drive to the south. Exhibit 47. The Nichiren Shoshu Temple is located directly confronting the subject property across Brunett Avenue on the same side of University Boulevard, and single-family detached homes stretch to the north, southwest and southeast of the property. Exhibit 47, pp. 2-4; 1/12/12 T. 253. A park owned by the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) is located to the north across University Boulevard. The lot consists of 37,986 square feet (approximately 0.87 acres). Exhibit 47, p. 3. Technical Staff advises that there are no forests, streams, floodplains, wetlands, or environmental buffers on the

² Section 59-G-1.22(a) of the Zoning Ordinance vests in the Hearing Examiner the authority to “supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.” Section 1.22(b) states, “Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if...The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors. The Hearing Examiner does not read §59-G-1.22(b) as a limitation on the broader authority given to the Hearing Examiner to impose conditions on the approval of a special exception set forth in the preceding subsection of the Zoning Ordinance. Given that the Planning Board indicated in its original denial that site plan review was the only condition it could think of to ameliorate the scale of the proposed use, the fact that the scale still remains within the outer boundaries guidance given by the Planning Board in its second denial (Exhibit 89) and the fact that the Planning Board did not review the final version of the petition, the Hearing Examiner believes it fair to say that both prongs of §59-G-1.22 are met.

subject property. Exhibit 47, p. 3. An aerial photograph of the subject property submitted by the Petitioner (Exhibit 9) is shown below. A bus stop is located along the southern side of University Boulevard at its intersection with Brunett Avenue. Exhibit 61(i).

While currently vacant, the property was previously improved with a single-family residential home that also housed a small dentist's office. Exhibit 47. The Petitioner submitted aerial photographs showing the former home/office as well as the subject property after the home was demolished (Exhibit 76), shown on page 6. The size of the former home is a hotly disputed issue in this case because it is used by Petitioner as a benchmark for the residential scale of the project. This is discussed in more detail in Section II.

Aerial Photograph Showing Subject Property (Exhibit 9)





**Aerial Photograph of Former Home/Office
(Ex. 76)**

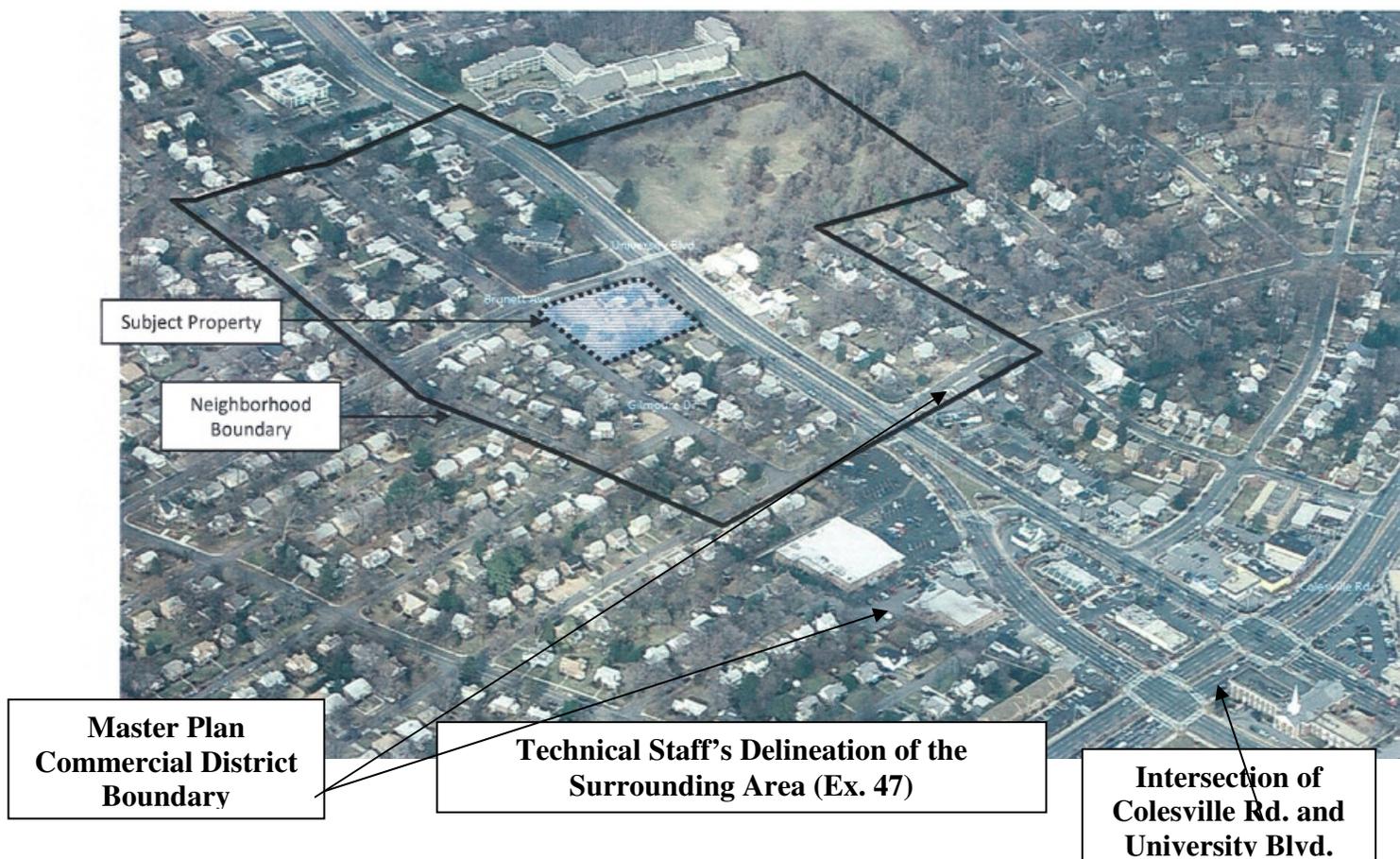


**Aerial View of Subject Property After
Demolition of House/Office (Ex. 76)**

In 2006, the Planning Board approved a preliminary plan for five single-family detached homes. During the approval process for the preliminary plan, the Petitioner demolished the existing structure. 4/15/11 T. 95-96. The preliminary plan showed possible house footprints of between 4,000 and 5,272 square feet. Whether the proposed use is residentially scaled is discussed in more detail in Section II.E of this Report.

B. The Surrounding Area

For the purpose of determining the compatibility of the project, Technical Staff delineated the surrounding area (Exhibit 47, p. 3, shown on the next page) as bounded by Timberwood Avenue to the north, Lorain Avenue to the east, Harding Drive to the south, and by a senior housing complex to the west. Exhibit 47, pp. 3-4. Mr. Sekerek disagreed with Staff's delineation. 4/15/11 T. 200-201. He felt that it was unnecessary to add the second tier of homes north of University Boulevard, although he did agree with Staff that the neighborhood was predominantly characterized by single-



family detached homes. The opposition does not challenge Staff's delineation. Staff felt that the northern tier of these homes may be impacted by the use. Exhibit 47. Because both Staff and the Petitioner admittedly characterize the predominant land use as single-family detached homes, and because those in the second tier of homes may be affected by traffic relating to the day care, the Hearing Examiner accepts the delineation of the surrounding area determined by Technical Staff.

Staff advises that the entire neighborhood is zoned R-60 and comprised almost entirely of single-family detached homes with the exception of three properties—the Nichiren Shoshu Temple confronting the subject property to the east across Brunett Avenue, a local park to the north across University Boulevard, and one special exception (a home occupation flower shop business). Exhibit 47, p. 4. Both the flower shop and the temple existed prior to adoption of the 1996 Four Corners Master Plan. Exhibit 47, p. 4. A street view of the temple directly confronting the property across Brunett Avenue, submitted by the Applicant (Exhibit 53(f)), is shown below:

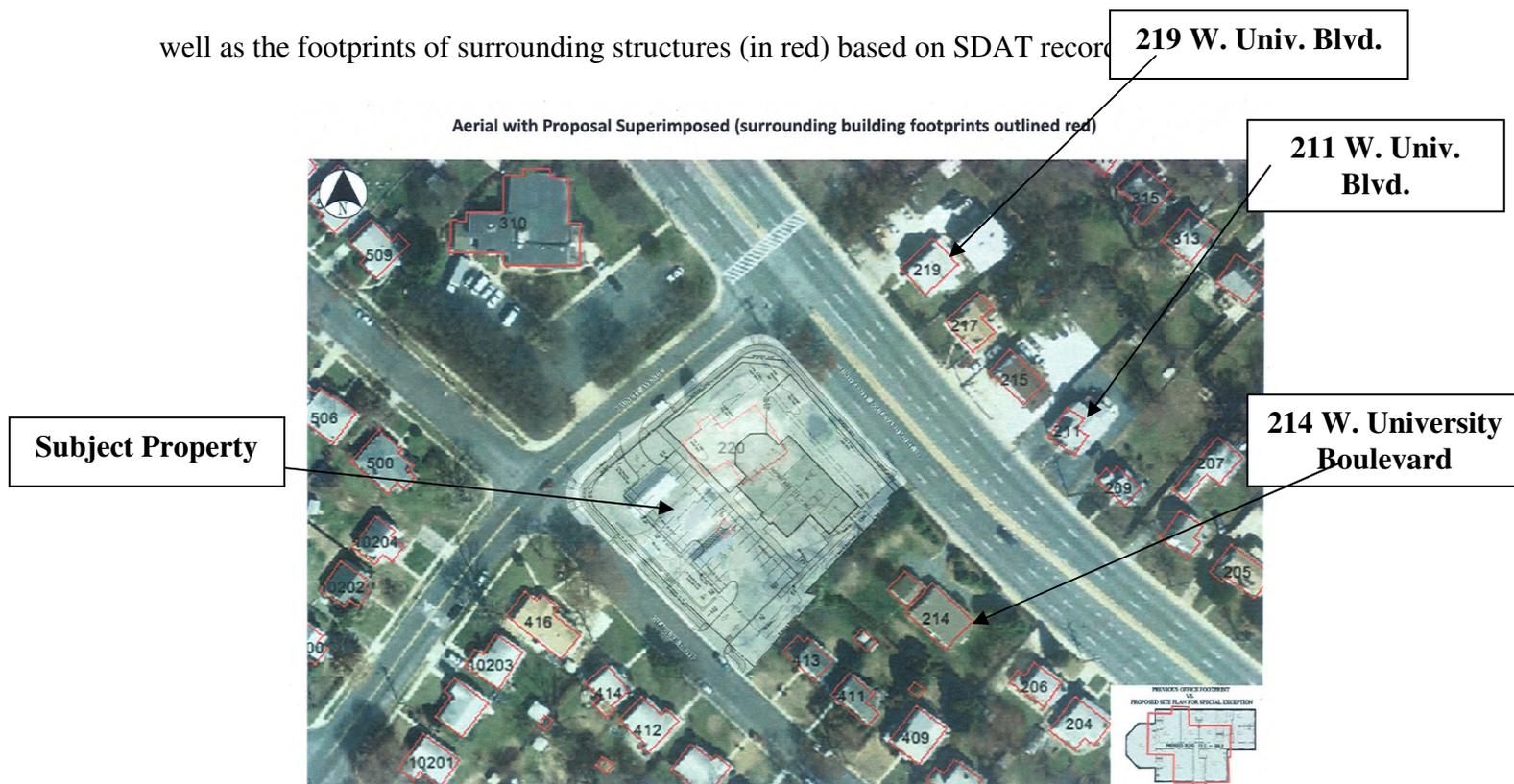


In its second report (again recommending denial), Staff noted that the homes in the surrounding neighborhood averaged approximately 1,296 square feet on lots of approximately 7,000 square feet. Exhibit 89, p. 3. At the public hearing, residents of the neighborhood opposing the

application testified that the single-family homes in the neighborhood were small and located on very small (i.e., 5,000 square-foot) lots. From personal experience, Mr. Glen Richardson, a nearby neighbor who has lived in the community for 26 years, testified that he believed that Technical Staff's estimate of the size of the homes was correct. 11/10/11 T. 185. Based on records of the Maryland State Department of Assessments and Taxation (SDAT), he testified that there were 79 homes in the defined neighborhood. His home, at 409 Gilmore Drive, is the largest home in the neighborhood totaling 2,300 square feet of enclosed area. 11/10/11 T. 184-187. One home immediately adjacent to the subject property has a floor area in excess of 2,000 square feet. Three or four houses are just over 1,900 square feet and fourteen of the 79 homes are less than 1,000 square feet. 11/10/11 T. 185-187. The smallest house in the neighborhood is 807 square feet in area. 11/10/11 T. 187-188. Those opposing the application also state that many of the homes do not have driveways and residents thus must park vehicles on the street.

The Petitioner points to several existing, larger homes along University Boulevard to justify the size of the proposed use. It directs the Examiner's attention 219 W. University Avenue which is improved with two separate structures of 2,232 and 1,786 square feet each for a total area of 4,018 square feet. 11/10/11 T. 19. The larger structure is located in the rear yard of the property. The Applicant also uses this property as a basis to assert that SDAT records are unreliable. 11/10/11 T. 18-22. Evidence presented by the opposition reveals that DPS served several zoning violations on that property for using one of the structures as a restaurant. Exhibits 136-138. This office received a letter from the current tenants stating that the property was formerly used as a restaurant and possibly a brothel. Exhibit 159. The second existing structure submitted by the Petitioner to justify the scale of the use is 214 W. University Boulevard immediately adjacent and in the same block as the subject property. That lot consists of 10,257 square feet and the home, according to Mr. Sekerek, has a footprint of 2,200 square feet. Mr. Sekerek testified that the floor area was somewhat difficult to calculate because of the grade and the fact that the house has a walk-out basement. 11/10/11 T. 201-

202. Mr. Sekerek also used property at 211 W. University Boulevard, which SDAT lists at 1,242 square feet, to demonstrate that SDAT record often under-report the square footage of existing homes. Exhibit 96(h)(1). This property is listed in the SDAT records as being 1,242 square feet of enclosed area, however, when that footprint is overlaid on GIS records, the house is “dramatically shy” of the size of the existing house. Exhibit 96(h)(i). In addition, the Petitioner proffers an existing single-family home on the same block as the subject property, 214 W. University Boulevard, which contains approximately 2,200 square feet of enclosed area, in support of the residential scale of the 4,400 square foot daycare. 11/10/11 T. 201. An aerial photograph included in the second Technical Staff Report (Exhibit 89) shows the then-current site plan superimposed on the subject property as well as the footprints of surrounding structures (in red) based on SDAT records



**Aerial Photograph Showing Subject Property, 219 W. University Boulevard, 211 W. University Blvd. and 214 W. University Boulevard
Ex. 89**

Based on the weight of the evidence presented, the Hearing Examiner finds that the majority of the surrounding area, particularly in the interior of the neighborhood north and south of University

Boulevard, is characterized by small, single-family detached homes containing on the average approximately 1,296 square feet of floor area located on small lots. The isolated examples of possible errors in the SDAT records are insufficient to support a finding that errors in the SDAT records are so systemic as to call into question Technical Staff's finding or the testimony of neighbors who live in the community. This finding is supported by a review of the aerial photograph of the surrounding area included in the first Technical Staff Report (Exhibit 47), the aerial photograph in the second Staff Report (Exhibit 89), outlining the footprints of surrounding homes in red and by Mr. Richardson's testimony.

There are, however, several larger homes along University Boulevard. The weight of evidence does not persuade the Hearing Examiner that *both* structures at 219 W. University Boulevard are characteristic of the neighborhood because of evidence and testimony that the at least one of those structures was constructed illegally to support an illegal use; the Hearing Examiner does find that one of the structures may be relied upon and used for compatibility purposes. In addition to one of these structures, there are two single-family detached located homes located near the subject property at 214 University Boulevard as well as the property at 409 Gilmoure Drive, which is in the same block as the subject property. In addition, the Petitioner presented evidence that another home, located at 211 W. University Boulevard, is significantly larger than footprint based on SDAT records. As a result, the Hearing Examiner concludes neighborhood is characterized by single-family detached homes on the interior of the neighborhood which are on average approximately 1,296 square feet and located on smaller (i.e., 5,000 to 7,000 square foot lots). The Hearing Examiner also finds the neighborhood includes some larger homes (approximately 2,000 square feet) and which are more proximate to University Boulevard.

C. Proposed Use

This is the third iteration of the special exception for a childcare facility proposed by the Applicant. The evolution of the petition will be summarized briefly here because the current

amended petition was not reviewed by the Planning Board and some of its comments in prior petitions remain germane to this petition.

Initially, the Petitioner proposed a 6,430 square foot building designed to house an enrollment of 120 students and 25 staff persons. Ex. 47, p. 1. Parking was to be provided by 25 surface spaces and 20 below-grade spaces. Exhibit 47, p. 2. The petition as originally submitted would have required a waiver of the Zoning Ordinance requirement that the property have 500 square feet for every child. *See, Montgomery County Zoning Ordinance, §59-G-2.13.1.* The Petitioner sought a waiver to reduce the required 500 square feet per child to 316 square feet per child. Exhibit 47.

Technical Staff of the Maryland-National Capital Park and Planning Commission (M-NCPPC) reviewed the petition and recommended denial of the application in a memorandum dated December 6, 2010. Exhibit 47. Staff found that the project was inconsistent with the 1996 Four Corners Master Plan (the “Plan”) because the Plan explicitly (1) discourages special exceptions in residential areas adjacent to the Four Corners commercial district, and particularly along major highways, and (2) recommended that special exceptions (if allowed) be residential in size and scale. Staff concluded that the size of the building and the number of students (requiring a waiver) did not meet these Plan recommendations. Exhibit 47.

The Planning Board agreed with Technical Staff and also recommended denial of the application. While it found that the Master Plan recommendation did not constitute an absolute prohibition on special exceptions at this location, the Board was “strongly of the view” that the proposal was “much too large and out of scale” with the surrounding residential community. The Board further opined:

Typically, when the Planning Board recommends denial of a special exception to the Board of Appeals, the Planning Board will recommend conditions that the Board can adopt to lessen the impact of the proposal on nearby properties if the Board of Appeals ultimately approves the application. In this particular application, the proposal is so out of scale that that the Board cannot draft any conditions to lessen the proposed child daycare center’s impact on nearby properties other than the condition for site plan review under §59-G-1.22(b)(2), as indicated above. Exhibit 60.

Undeterred in its purpose, but attempting to respond to the comments from the Board, the Petitioner amended its application prior to the public hearing before the Hearing Examiner (scheduled for April 15, 2011). Exhibit 61. The amended application reduced the building footprint to 5,608 square feet, the enrollment to 94 students, and the number of staff to 20 employees. Exhibit 61. It still required a waiver of the area requirement lot area per child requirement and also necessitated a waiver of the required number of on-site parking spaces. Because the amended petition had not been reviewed by Technical Staff, the Hearing Examiner referred the case back to Staff for their review. 4/15/11 T. 301.

Technical Staff did review the application and again recommended denial. Exhibit 89. Staff found that the amended size of the facility was still out of scale with the homes in the surrounding area and for that reason the petition did not comply with the Master Plan's guidance that special exceptions be "residential" in size and scale. Exhibit 89, p. 2. As noted, Staff found that the neighborhood consisted of homes which averaged approximately 1,296 square feet. Exhibit 89, p. 3. The Planning Board once again endorsed the Staff's recommendation of denial, agreeing that the scale of the project was too large for the surrounding community. In its recommendation, the Board provided guidance on what it believed would be compatible with the surrounding neighborhood: "Specifically, a proposed structure at this location should be at maximum, no more than twice the size of the surrounding homes and carefully articulated to appear residential in character given the Master Plan guidance." Exhibit 94.

In response to the Planning Board and Technical Staff's second recommendation of denial, Petitioner again reduced the scale of the proposal, this time paring down the square footage of the building to 4,400, the student enrollment to 76 pupils, and staff to 15 employees. Exhibit 96(h). The third iteration of the petition met the requirement for 500 square feet of lot area per child, and did not require a waiver of the number of required on-site parking spaces. According to the Petitioner, other changes were made to the application to reduce its scale, including revisions to the site layout, and the

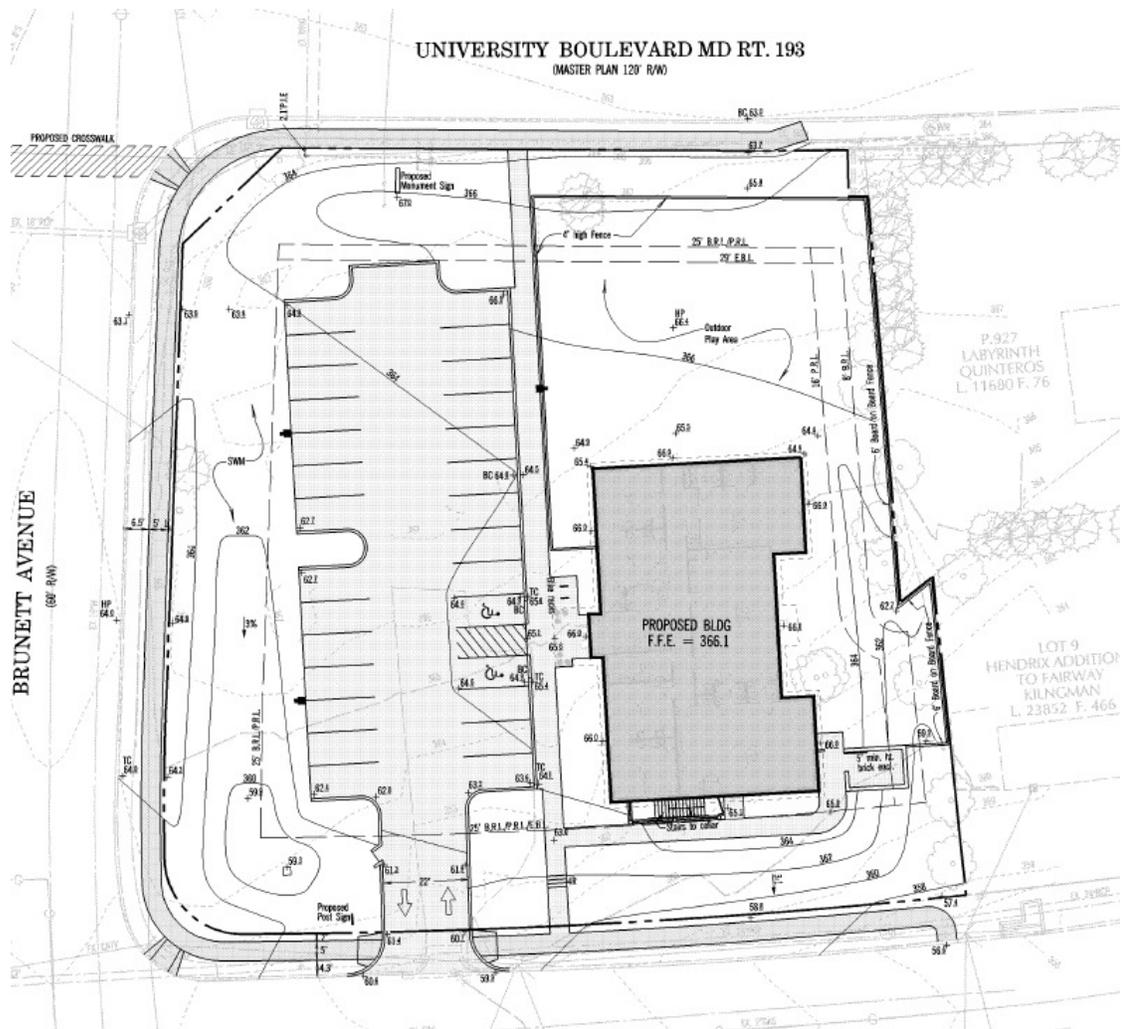
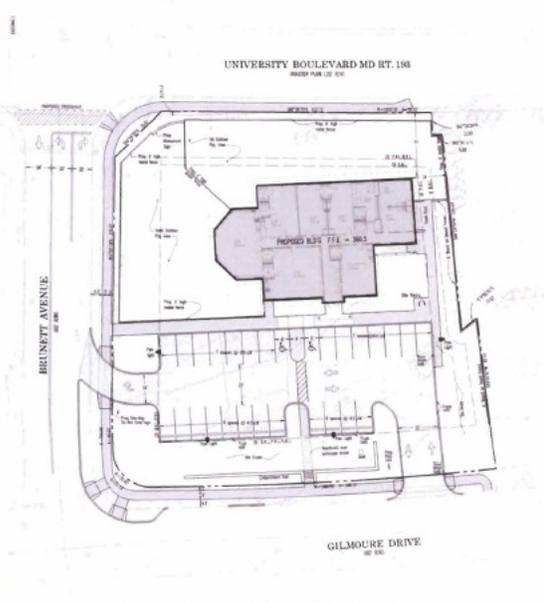
addition of several architectural elements designed to mirror the architecture of the surrounding homes. Exhibit 96. Revisions to the site layout included re-orienting the building to face Brunett Avenue and the temple directly across the street, re-locating the parking area along Brunett Avenue rather than Gilmore Drive (opposite the temple's parking lot), and presenting the smaller (side) façade of the building toward Gilmore Drive. The outdoor play area was moved to the northern portion of the site bordering University Boulevard, using the building to buffer the neighborhood from possible noise. Architectural elements were added to mirror multiple roof lines and to add a faux porch to the smaller façade facing Gilmore Drive. In its final Staff Report, Technical Staff included a table comparing the different amendments of the petition and the different iterations of the site plan (Exhibit 120, pp. 3-4), shown below and on the following pages:

	Initial Proposal	First Iteration	Current Proposal (% Increase/Decrease from Initial Proposal)
Planning Board Hearing	12/16/2010	6/16/2011	n/a
Gross Square Feet of Daycare Facility	6,430 sf	5,469 sf	4,400 sf (-32%)
Number of Children	120	94	76 (-37%)
Number of Employees	25	20	15 (-40%)
Number of Parking Spaces	45	28 (waiver requested)	28 (-38%)
Square feet of lot area per child	317 sf of lot area per child [waiver requested]	404 sf of lot area per child [waiver requested]	500 sf of lot area per child (+37%)

**Chart Summarizing Different
Versions of the Petition
(Exhibit 120, pp. 3-4)**

Initial Special Exception Plan (12/2010)

First Iteration Special Exception Plan (6/2011)



Different Versions of Site Plan (Exhibit 120, p. 4); Current Version Immediately Above

Ms. Jane Nelson, the project architect, testified that architectural features designed to mirror the surrounding homes had been added to the facility. 11/10/11 T. 98-106. These included the addition of multiple rooflines along the Brunett Avenue façade, and a faux porch along the Gilmore Drive façade. Elevations showing these architectural details submitted by the Petitioner (Exhibit 101(3)) are set forth below:

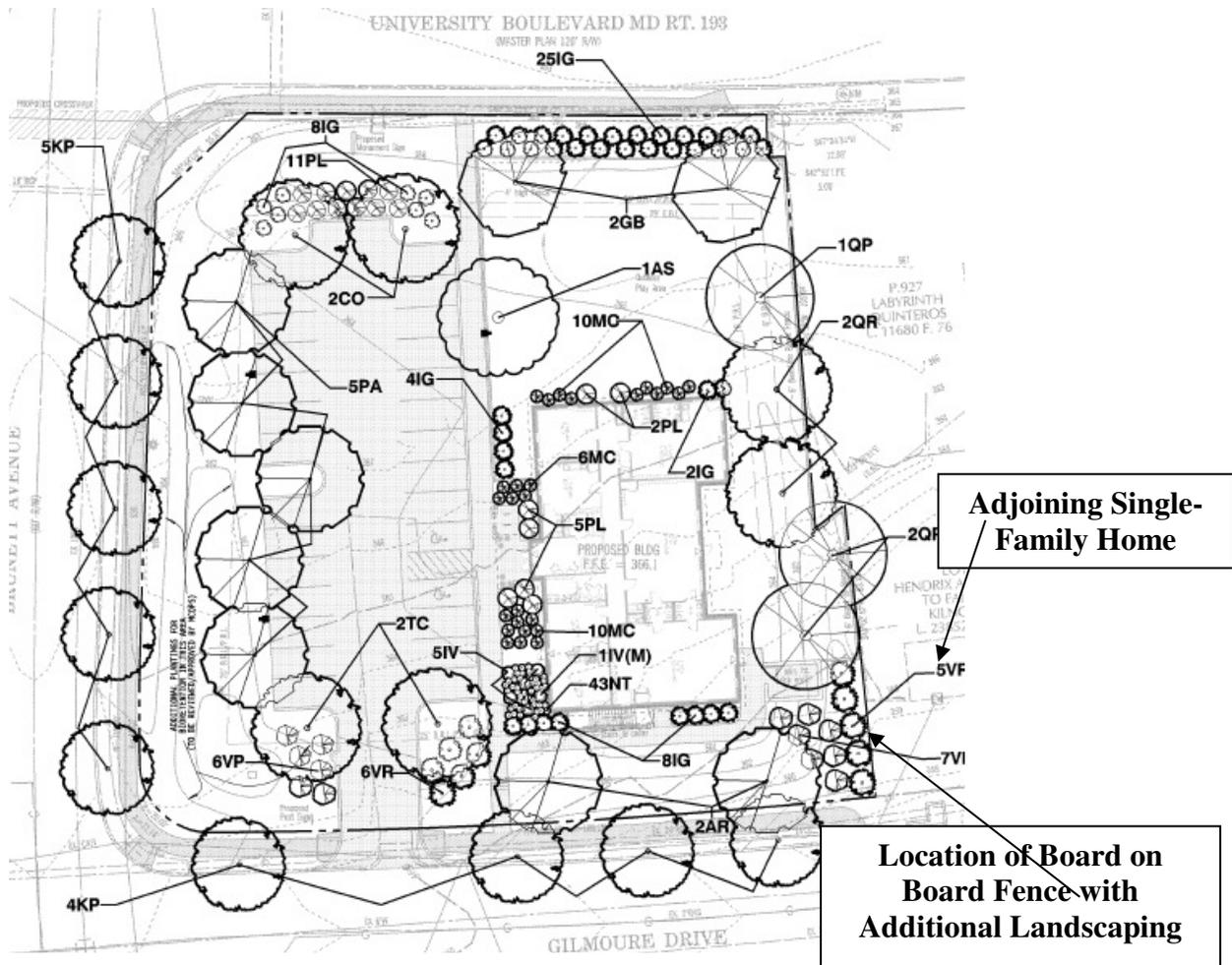


Brunett Avenue Elevation

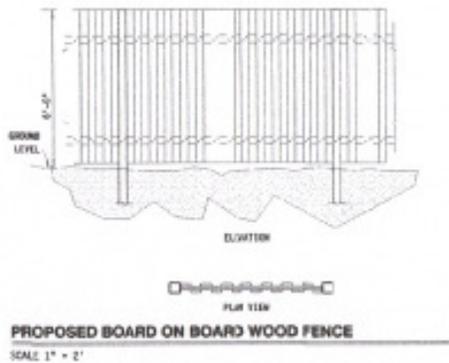


Gilmore Drive Elevation

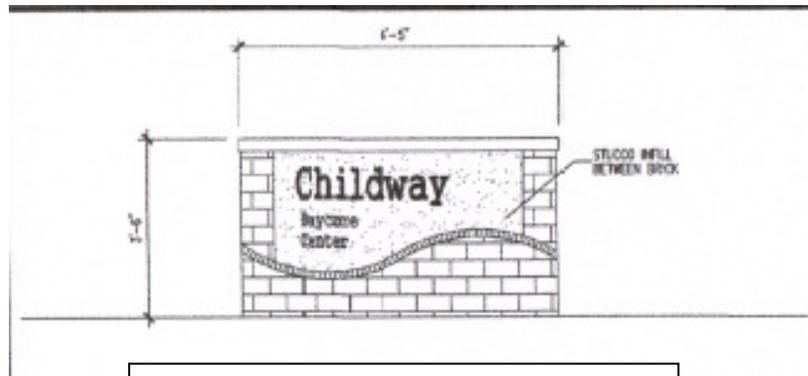
The revised special exception landscape plan (Exhibit 101(5), shown on the next page) proposes a double row of shade trees along Brunett Avenue to screen the facility from the existing neighborhood, and additional landscaping and a wooden board on board fence along the southeastern property line bordering the nearest single-family home.



A detail of the board-on-board wooden fence (Exhibit 101(12)) is shown below:



Petitioner also proposes one sign along University Boulevard as well as one at the entrance along Gilmoure Drive (Exhibit 101(12), shown on the next page).



Monument Sign on University Boulevard (Ex. 101(12))



PROPOSED POST SIGN AT ENTRANCE
SCALE- N.T.S.

Proposed Sign on Gilmoure Drive Exhibit 101(12)

Finally, Petitioner submitted a photometric study (Exhibit 101(11)) demonstrating that lighting from the subject property would not exceed 0.1 foot candles at the property line.

At the public hearing, the Petitioner submitted an elevation view (Exhibit 175) depicting its vision of the facility when the landscaping reaches 10 years of growth, shown on the next page.



ILLUSTRATIVE ELEVATION ALONG GILMOURE DRIVE

Scale 1"=10'

Notes:
 - Tree heights & crowns shown represent approx. 10 year growth characteristics relative to size at installation, species and typical growth rate.
 - Adjacent home depiction estimated from photographs.



PHOTOMONTAGE ALONG GILMOURE DRIVE

**Elevation of Subject Property with
Landscaping at 10-Year Growth
(Ex. 175)**

Ms. Memon, owner of the proposed operator of the day care (Childway), testified as to the proposed operations of the day care facility. She operates other three day care facilities which are located in Burtonsville, College Park, and Beltsville. 4/15/11 T. 34-35. The final amended version eliminates the before and after care programs from the proposed operations. 11/10/11 T. 106-107. The basic operations are summarized in the Petitioner's revised Statement of Operations (January, 2012, Exhibit 168(a)), as follows:

Childway's Enrollment:

The maximum enrollment at the Silver Spring Facility at any one time will be 76 children consisting of the following age groups and number of children:

- Infants – up to 12 children;
- Toddlers – up to 12 children;
- 2-year olds - up to 12 children;
- 3-year olds - up to 20 children; and

- 4-year olds – up to 20 children.

(with minimal variation throughout year as children transfer to next age group)

The minimum age of the children will be 6 weeks old. The maximum age of the children will be 5 years old.

There will be a maximum of 15 staff employed and on site at any one time.

Hours of Operation, Monday through Friday, Year-Round: 7:00 a.m to 6:15 p.m.:

The staff and children will arrive at the Silver Spring Facility in a staggered manner, with the staff arriving between 7:00 a.m. and 9:00 a.m., and the children generally arriving between 7:00 a.m. and 9:15 a.m. Although not every child will stay the full day, the peak period departure time for the children will be generally between 5:00 p.m. and 6:15 p.m. with the latest departure for the children being 6:15 p.m. The latest departure for the staff will be 7:00 p.m. (to accommodate for the late pick-up policy between 6:15 and 7:00 p.m.).

Ms. Memon testified that no cooking will occur on-site, except foods that will be warmed in a microwave. 4/15/11 T. 39. Bulk foods will be delivered to the Burtonsville facility and then transported to this facility. 4/15/11 T. 39-40. Food deliveries will be outside the peak hours. She stated that there will be no more than twenty-five children at one time in the outside play area. 1/12/12 T. 23.

Ms. Memon agreed to the following restrictions on special events held at the site (Exhibit 168(a)):

In addition to the Monday – Friday child day care, development and early education programs, Childway may host several “special events” for parents outside of the regular child care program, such as holiday functions, Mother’s/Father’s Day or graduation ceremony, which will take place during the weekday operating hours. The events will be limited by age group for scheduling throughout the day in order to accommodate the parents to park on-site. The maximum number of special event days would be 8 a year. In addition to these special events for parents during the weekday, Childway may hold staff workshops at the site during the weekday evening hours, a maximum of 3 times a year.

She will announce the special events in advance so that teachers that do drive will use public transportation during those events. If client-parent parking cannot be accommodated at a

special event, they may drive to her Burtonsville facility and her van will transport them to the special event. 1/12/12 T. 32.

Ms. Memon also agreed to abide by the terms of a transportation management plan submitted by the Petitioner to control overflow parking and queuing at the site, which will be managed by a Transportation Coordinator. 1/12/12 T. 52. The details regarding the traffic control measures are discussed more fully in Section II.E.

Technical Staff recommended approval of this version of the petition, finding that the “32 percent decrease in massing, along with the careful architectural considerations previously discussed, now provides an appropriately scaled and designed child daycare at this location.” Exhibit 120, p. 6). Staff determined the application met the Master Plan recommendations relating to character and scale because of the re-orientation of the building and parking lot toward the temple and away from the community and orienting the narrower side façade facing the interior of the neighborhood (Exhibit 120, p. 5):

The building has been reoriented to align the daycare center’s main façade with the existing façade of the religious temple across Brunett Avenue. The building orientation also aligns the side of the daycare center with Gilmore Drive’s building restriction line, giving the daycare center the same relationship to the street as the homes lining Gilmore Drive. Further, the daycare center’s Gilmore Drive elevation, although actually a side of the building, has been designed to appear as a front to a one-family home when viewed from across Gilmore Drive. The Brunett Avenue elevation of the daycare center has been redesigned as well. The Brunett Avenue elevation, the daycare’s main façade, now has a roofline articulation that gives the feel of a series one-family homes along a residential street. The impression of a row of homes should be furthered considering that a traveler along Brunett Avenue will view the building through landscaped screening and an approximate 100 foot setback from Brunett Avenue. The parking lot was also reoriented and aligned to match the location of the religious temple’s parking lot across Brunett Avenue.

The “architectural considerations” to which Staff referred included the addition of multiple roof lines along Brunett Avenue. Staff advised that the Brunett Avenue elevation, “the daycare’s main façade, now has a roofline articulation that gives the feel of a series of one-family homes along a residential street.” Staff found that this impression would be enhanced to those traveling on Brunett Avenue because the building is setback 100 feet from the road and is buffered by screening. In

addition, Staff concluded the Gilmoure Avenue frontage, which included a faux porch, had been designed to mimic the front of a single-family home. The elimination of one access point (on Brunett Avenue) to the parking lot better mirrored the existing driveways in the neighborhood. Exhibit 120, pp. 5-7.

Technical Staff compared the reduced size of the day care to the size of the single-family detached homes which had been shown on a previous preliminary plan approved for the subject property. Exhibit 120, p. 7. At the request of the Hearing Examiner, Technical Staff stated house footprints shown on the preliminary plan are, “1,600 square feet, 1,800 square feet, and 2,109 square feet. If each footprint were constructed at 2 ½ stories as is allowed in the R-60 zone, then the homes would measure 4,000 square feet, 4,500 square feet, and 5,272 square feet, respectively. As stated in the addendum to the staff report, at 4,400 square feet, the child daycare building is well within this range.” Exhibit 128.

With regard to landscaping and screening, Technical Staff determined (Exhibit 120, p. 7):

Lastly, the applicant is providing adequate screening on the premises in the form of fencing and landscaping. A six-foot board-on-board fence is proposed along the site’s eastern property line along with seven shade trees to provide screening of the facility from the residential homes to the east. A four-foot metal fence will be used to enclose the children’s play areas. Ten shade trees will help screen the parking lot from surrounding properties; similarly, a double row of shade trees provided along Brunett Avenue will also help screen the building. Lighting levels meet required standards and will not cause spillover into adjoining properties. The proposed landscaping plan will help integrate the site into the neighborhood and screen the special exception from neighboring properties.

Due to the revisions in the last amendment to the petition, Technical Staff recommended approval for the following reasons:

With the plan revisions, the daycare center’s size has been substantially reduced, operations have been scaled back from the initial proposal, and the site layout has been designed in a way that is compatible with its residential surroundings. Therefore, the application is consistent with the Master Plan’s guidance for a residentially-scaled special exception at this location. The application sufficiently meets all required development standards and zoning requirements necessary for approval. The relevant standards are discussed below.

Technical Staff’s recommendation of approval was subject to the following conditions of approval:

- (1) Enrollment of the daycare facility is limited to 76 children;

- (2) A maximum number of staff employed and on site at any one time is 15;
- (3) No more than 40 children will utilize outdoor play areas at any one time;
- (4) Hours of operation are limited to 7:00 am to 6:15 pm, Monday through Friday, year-round;
- (5) Staff and children should arrive and depart the site in a staggered manner;
- (6) Special events, taking place within normal weekday operating hours, shall be limited to no more than eight (8) events throughout the calendar year;
- (7) Staff workshops, typically held on site during the weekday evening hours, will be limited to three (3) occurrences per calendar year;
- (8) No amplified music or public address system of any kind shall be used outside the interior of the child daycare building;
- (9) Trash and recycling collections will occur after 9:00 am;
- (10) Outdoor lighting shall be limited to the hours of operation (allowing limited security lighting afterhours);
- (11) The proffers of the Revised September 2011 Transportation Management Plan must be satisfied, specifically including managing vehicle queuing as well as parking related to student drop-offs and pick-ups within the site, without any spillover to Gilmoure Drive, Brunett Avenue, and other adjacent local streets;
- (12) The applicant, prior to the release of any building permit associated with the proposed daycare center, must pay \$11,300.00 to Montgomery County Department of Transportation (DOT) to satisfy the Policy Area Mobility Review (PAMR) requirement of the APF test (to mitigate one "new" weekday site-generated peak-hour trip); and
- (13) The applicant must complete all site frontage improvements, including the proposed new sidewalks along Gilmoure Drive, Brunett Avenue, and West University Boulevard, prior to the release of a use and occupancy permit for the proposed daycare center.

The final changes to the application were not submitted to the Planning Board for their review.³

³ Section 59-A-4.48(a) of the Zoning Ordinance does not mandate review by the Planning Board of every amendment to an application. Rather, that section provides that either the Planning Board or Technical Staff may review an application. The decision whether or not to refer the case to the Planning Board in this case was not made by the Hearing Examiner.

D. Community Response

The petition, including the final amendment, is strongly opposed by the community. The three citizen's associations north of the Beltway in the Four Corners area, including the South Four Corners Citizens Association, the North Four Corners – Pinewood Community Association, and Woodmoor-Pinecrest Community Association all presented testimony or evidence opposing the petition. Exhibits 90(a), 119, 146, 156, 185-187. In addition, this office received approximately 74 letters in opposition to the petition. Exhibits 19-22, 24-33, 35, 37-39, 43-56, 49, 87-88, 102, 104, 106-109, 112-114, 116, 121-122, 124-125, 144, 155, 159. Those opposing the petition have remained opposed to all iterations of the petition, for the following reasons: (1) it does not conform with the 1996 Four Corners Master Plan because the Plan “discouraged” special exceptions in areas adjacent to the Four Corners commercial district, (2) the proposed facility fails to meet the Master Plan’s guideline providing that special exceptions should be residential in character and scale, (3) the proposed use will introduce additional cut-through traffic to the neighborhood, (4) the proposed use fails to meet the requirements of Local Area Transportation Review (LATR), and (5) the proposed use will reduce the amount of parking available on residential streets. As to the last item, the opposition presented testimony and evidence that many of the homes in the surrounding area do not have driveways, and therefore the residents rely on on-street parking. 11/10/11 T. 159.

Several members of the Citizens Advisory Committee who participated in drafting the plan testified that the one primary concern of the community was that commercial uses would be allowed to encroach or creep into the surrounding residential neighborhoods and undermine their existing, stable residential character. 12/9/11 T. 41, 64, 74-75. The strong language discouraging special exceptions in areas immediately adjacent to the commercial district was inserted into the plan to address this concern. 12/9/11 T. 74. Mr. Mike Pfetsch, who had been a member of the CAC, testified that the community argued “very, very vigorously” for language prohibiting special

exceptions in the areas immediately adjacent to the commercial district, but were told by Staff they couldn't absolutely prohibit special exceptions. 12/9/11 T. 75. Mr. Pfetsch felt that the main issue surrounding the petition is its location: "...we believe that the daycare isn't the issue. The scale isn't the issue. The real issue is do we want to break the master plan, and we believe this is the kind of activity that should not go on. The property owner demolished a residence and now he wants to build a twohorned [sic] business into the community. It's an inversion and is not in compliant [sic] with the intent of the master plan." 12/9/11 T. 75.

Citizens opposing the special exception also expressed concern regarding the ability to enforce the Petitioner's representations as to the promised operations. According to Mr. Jim Zepp, who had been a member of the CAC, at the time of its special exception application, McDonald's promised the community that it would not be a twenty-four hour operation. After the drive-thru window was installed, McDonald's received an administrative modification to its special exception to permit it to operate on a 24 hour basis. 12/9/11 T. 51-52. He suggested imposing graduated penalties for violation of the special exception conditions, as people were reluctant to impose the most severe penalty at the outset. 12/9/11 T. 52.

E. The Master Plan

Much of the debate in this case centers on whether the petition conforms with the *1996 Four Corners Master Plan*, within which the subject property is located. The Plan's describes its "vision" as keeping the existing residential neighborhoods "stable, enduring, appealing, and livable", while at the same time enhancing the commercial center immediately surrounding the intersection of Colesville Road and University Boulevard. Exhibit 51, p. 16, 19. With regard to the residential neighborhoods, the Plan (Ex. 51, p. 25) states:

This Master Plan recognizes the established compact residential character of Four Corners and the desire of residents to preserve and maintain the integrity of the neighborhoods as the foundation of the entire community...

As a result, the Plan states its objective with respect to residential land uses as follows (Exhibit 51, p. 25):

Preserve and maintain the character and integrity of the existing, well-established Four Corners residential neighborhoods as the foundation of the community by assuring that new development, infill development, and special exception uses are compatible with the existing residential character.

Noting the lack of developable land within the area, and the resulting pressure to develop large sites improved with single-family homes, the Plan recommended the following guidelines on special exception uses:

This Plan discourages special exceptions in residential areas immediately adjacent to the commercial district. Residential neighborhoods immediately adjacent to the Four Corners commercial district are particularly vulnerable to encroachment of non-residential uses, as are single-family homes along the major highways. Several single-family homes along the west side of Colesville Road between the Beltway and University Boulevard have been converted to office use by special exception. This location is suitable for special exception office use; however, residences or other special exception uses are not precluded. Special exception reviews should continue to pay particular attention to the number, type, and intensity of existing special exceptions as currently provided in the Zoning Ordinance.

The Plan recommends reuse of existing structures for special exception uses, where feasible. If a use requires a new building, the Plan encourages designs that are residential in character and scale. Exhibit 51, p. 26.

At the same time, the Plan also explicitly designates day care among those non-residential uses which support and contribute to a neighborhood community. Exhibit 51, p. 12. It describes three tiers of neighborhoods that form the basis of a larger community; the goal of the Plan is to sustain “livable” communities by reinforcing their best attributes. Exhibit 51, p. 12. The Plan describes the “second tier” of community, a “neighborhood”, as follows:

Neighborhoods are the second tier in the community hierarchy and often include several subdivisions. The predominant land use is residential, but other low-density uses such as elderly housing, *day care*, a school or professional offices (such as a doctor or dentist) also may be located within a neighborhood’s boundaries. Residents of the neighborhood can reach these location destinations by walking, biking, or short car trips. Focal points such as a school or local park or recreational facility provide gathering places and an opportunity for social interaction among neighbors. Neighborhoods usually have definable boundaries and often there is some form of homeowners, neighborhood, or civic association. If there is a neighborhood association, residents may identify with the association

and the boundaries it represents. For others, neighborhood boundaries are not fixed, but vary depending on age, lifestyle, daily activities, and personal preference. The neighborhood street network primarily serves the immediate area and connects local residents to major thoroughfares.

Exhibit 51, p. 12 (bold in original; italics added).

While the text of the Master Plan does not refer specifically to the subject property, the Land Use Plan does designate the property as suitable for office use. Exhibit 51, p. 21. A copy of the Land Use Plan, showing the commercial area designated for retail use as well as the site specific recommendation for this property, as shown below:

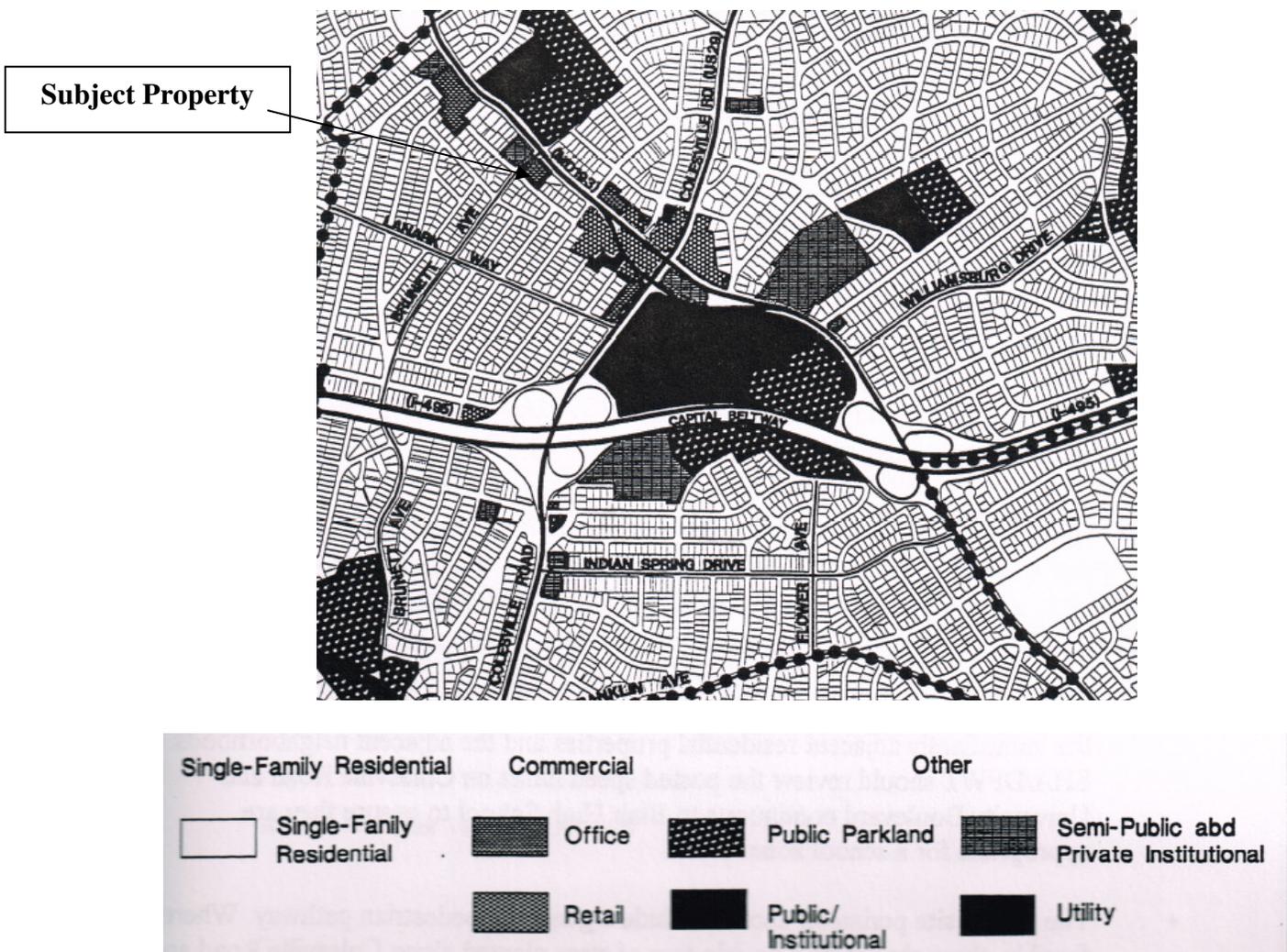


Exhibit 51, p. 21.

As noted, some of those opposing the special exception assert that the language quoted above (i.e., discouraging special exceptions near the commercial district) warrants denial of the petition. 12/9/11 T. 41, 54, 74-75. Opponents cite to the first Technical Staff Report, which reasoned, “the word ‘discourages’...was the strongest statement the plans could make while continuing to respect the special exception approval process.” 12/9/11 T. 84; Exhibit 47, p. 20; Exhibit 185, p. 2. Individuals who had been members of the Citizens Advisory Committee for the 1996 Master Plan testified that the Citizens Advisory Committee had wanted language prohibiting special exceptions near the commercial district, a request which Planning Staff rejected and which was not included in the Plan. 12/9/11 T. 41, 54, 74-75. As noted, the issue relates less to the proposed use and more to the location of the proposed use outside the commercial area designated in the Plan. 12/9/11 T. 76.

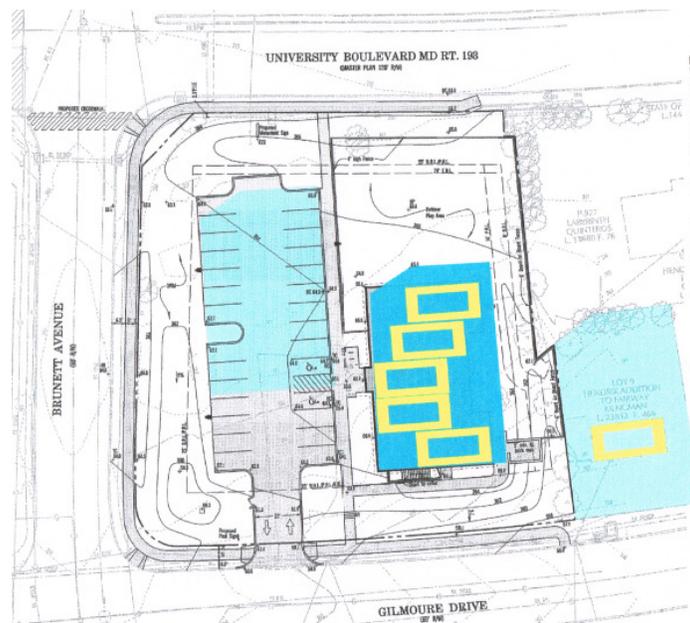
As for Plan’s designation of the subject property for “office” use, those opposing the application asserted that the designation was designed to permit continuation of the dentist practice on the property. 12/9/11 T. 79, 83. The Petitioner refutes that position, arguing that if the Plan had intended to protect only the existing dentist office, it would have shown the property as a residential use on the land use plan. 1/12/12 T. 209. According to Mr. Sekerek, this is because the Master Plan is intended to guide land use long-term (i.e., for a period of 10-20 years). As a result, the Plan would have shown the property as residential if intended the property to revert to residential use. 1/12/12 T. 209.

The Planning Board (when recommending denial of the original petition), determined that the Plan’s language did not *prohibit* a child day care special exception if “designed, scaled and buffered appropriately.” Exhibit 60. Given the Planning Board’s interpretation of the Master Plan, and the testimony from CAC members that Technical Staff refused to include language in the Plan which would have prohibited special exception uses during the adoption of the Plan, the Hearing Examiner agrees with the Planning Board and Technical Staff that the use of the term

“discourages” does not amount to an absolute prohibition of special exceptions in this area, provided that the special exception otherwise meets the guidelines set forth in the Plan.

The primary issue regarding Master Plan compliance, then, is whether the facility, with its attendant impacts, meets the Master Plan’s guidance that special exceptions be “residential in character and scale.”⁴ The parties define how to achieve that scale differently.

The Planning Board (when giving guidance as to scale for the future amendments) explicitly recommended that the building “should be at maximum, no more than twice the size of the surrounding homes and carefully articulated to appear residential in character given the Master Plan guidance.” Exhibit 94. Opponents of the petition adopt this approach, comparing the footprint of the proposed building with the average size of footprints of homes in the surrounding area. 11/10/11 T. 159-161, 205-206. Ms. Karen Klingman, whose home adjoins the subject property, submitted a graphic of the footprint of her home overlaid on the proposed building and the size of her lot overlaid on the proposed parking lot (Exhibit 141), shown below:



⁴ The parties disagreed as to whether the subject property was physically within the area of the Master Plan where special exceptions are to be discouraged. The citizens point to the proximity (approximately one block) from the commercial district. This appears to be at odds with the Master Plan’s recommendation for “office use” on the property which was still recommended for R-60 zoning, as a new office use may have required a special exception. Exhibit 51. The Hearing Examiner finds it unnecessary to resolve the issue, as she agrees with the Planning Board that special exceptions are not prohibited in this area if appropriately scaled.

Ms. Klingman testified that the proposed building is five times the footprint (but not the total floor area) of her house and that the parking lot is larger than her entire lot. Similarly, Mr. Richardson testified that his home, at 409 Gilmoure Drive, is three houses to the east of the subject property. It is the largest home in the neighborhood totaling 2,300 square feet of enclosed area. 11/10/11 T. 185. According to Mr. Richardson, there are 79 homes in the defined neighborhood. Three or four homes are above 1,900 square feet and the majority of homes are between 800 and 1,900 square feet. 11/10/11 T. 185-186. The smallest home is 807 square feet. 11/10/11 T. 187. Technical Staff, when denying the second version of the petition, did so in part by finding that the 5,560 square foot building was out of scale with the surrounding homes, which averaged approximately 1,296 square feet. Exhibit 89.

The Applicant counters these arguments in several ways. First, it asserts that the Master Plan's language as to character and scale does not necessarily require a comparison with the actual size of the existing homes in the surrounding neighborhood. Mr. Sekerek submitted language from other Master Plans (Exhibits 132 through 135), which, in his opinion, explicitly require a comparison of the size of special exception uses to the surrounding community. 11/10/11 T. 44-45. An example of the language which Mr. Sekerek asserts *requires* a comparison with existing homes in the surrounding community is contained in the 1994 Aspen Hill Master Plan (Exhibit 134, p. 80):

Any modification or addition to an existing building to accommodate a special exception use should be compatible with the architecture of adjoining neighborhood and should not be significantly larger than nearby structures.

According to Mr. Sekerek, the Master Plan's recommendation here requiring special exceptions to be "residential in character and scale" does not necessitate an exact comparison to the existing homes in the surrounding community but need only be generally "residentially scaled". 11/10/11 T. 45.

Second, the Applicant directs us to existing structures in the surrounding area which would meet the criteria recommended by the Planning Board. As to existing homes, the Applicant posits a home across University Boulevard (i.e., 219 W. University Blvd.), already described in Section II.B. of this Report, as comparable to the size and scale of the proposed day care building. The Petitioner also proffers the home at 214 W. University Boulevard, with a 2,200 square foot footprint, as being within the range of the Planning Board's guidance.

Petitioner also submits as comparables some homes which do not exist. These comparables included the previously approved preliminary plan for the subject property showing potential house sizes between 4,000 and 5,272 square feet. 11/10/11 T. 24-25. Mr. Sekerek also testified that under the R-60 development standards, one could develop a 30,000 square foot house on the subject property. 11/10/11 T. 36. In his opinion, the former home on the property could also be used as a basis for measuring the scale of the proposed use. He testified that that home had a footprint of 3,325 square feet with a 130-square foot shed attached for a total enclosed area of 3,455 square feet. In his opinion, the home also had a partial second story, which, even assuming it was only approximately one-quarter of the footprint, would have resulted in the same amount of gross floor area as the day care building. 11/10/11 T. 38-39. Those testifying in opposition introduced DPS records of the demolition permit, which listed the area of the structure at 3,404 square feet. Exhibit 140.

Finally, the Petitioner asserts that "residential character and scale" is not simply a matter of comparing the size of the proposed use and surrounding homes; rather, it argues that the scale may be mitigated through the use of land planning techniques, such as site layout, architectural elements, and landscaping. 1/12/12 T. 188-191. Technical Staff, while it did use the size of the building compared to surrounding homes as a basis for its earlier denials, agreed that the final version of the application did meet the Master Plan guidance through the use of these techniques in addition to the reduction in the size of the facility. Exhibit 120.

The Hearing Examiner is not persuaded by Petitioner's argument that the houses sizes shown in the preliminary plan approved for the subject property should be the basis for comparison of "residential size and scale." The Hearing Examiner finds that the potential house sizes shown on the preliminary plan (ranging between 4,000 to a little over 5,000 square feet) are too speculative to be used to compare the residential scale of the proposed use. These homes were never built, and the evidence reveals that the developer marketed the homes with a floor area of significantly less than the sizes shown on the preliminary plan. Exhibit 69. Therefore, it is difficult to say what size these home may have been. Further, even though legislatively these structures would be considered pre-deemed compatible with the surrounding area, the Petitioner's land planner acknowledged that comparison of the proposed special exception with by-right development in the R-60 Zone could yield absurdities, such as a 30,000 square foot home on the lot. 11/10/11 T. 35.

Nor does the Hearing Examiner agree with the Petitioner that the determination of residential scale and character need not be compared to the existing homes in the surrounding area. Even though not explicitly stated in the single sentence relating to character and scale of new construction, the preceding sentence indicates a preference for using existing structures (rather than new construction) for special exception uses. The preference for existing structures, combined with the Plan's acknowledgement that there are few developable sites within the geographic area covered by the Plan, indicate that the scale should not be determined in a vacuum as to what exists surrounding the property.

For the reasons that follow, however, the Hearing Examiner agrees with Technical Staff that the use of site layout, architectural elements, and landscaping combined with the reduced size of the final version of the petition has resulted in a site plan which is "residential in character and scale", thus meeting guidelines of the *1996 Four Corners Master Plan*. Although a close question, this finding is based on the re-orientation of the site layout, the use of architectural

details designed to mirror the characteristics of the smaller homes to the southeast of the property, the landscape buffering provided, and the reduction in the size of the use bringing the facility within the range of being two times the size of the largest structures in the neighborhood.

Although the Hearing Examiner has concluded that the majority of the surrounding homes (primarily in the interior of the neighborhood southeast of the property) have a floor area approximately one-third the size of the proposed building (i.e., close to 1,300 square feet on average), the testimony indicates that there are larger homes in the surrounding area. The largest home in the neighborhood (in the same block as the subject property) is 2,300 square feet, the home adjacent to the subject property is 2,200 square feet in area, and there are several homes close to 2,000 square feet. Even using the opposition's more conservative estimate of the size of the pre-existing home located on the subject property (i.e., 3,404 square feet), the 4,400 square-foot daycare building is approximately equal to or less than twice the size of these homes, the benchmark used by the Planning Board. While the Hearing Examiner finds that the Applicant's reliance on the combined size of the *two* buildings at 219 W. University Boulevard is misplaced because the evidence demonstrates that at least one of the structures was constructed for a business rather than residential use, the proposed special exception facility is within the range of two times that of *one* of those structures. Based on this evidence, the Hearing Examiner finds that the current version of the petition is within the range of the Planning Board's recommendation as to residential scale.

In addition to the reduced size, however, the Hearing Examiner agrees with Technical Staff that the revised site layout and additional architectural elements do much to render the proposal residential in character and scale. The re-orientation of the building to face the temple permits the smaller façade to face the interior of the neighborhood. Mr. Sekerek testified that the Gilmoure Avenue façade is shorter in length than the front façade of the home directly confronting the property across Gilmoure Avenue and has a setback similar to other homes on the street. 11/10/11

T. 45. The faux porch on that façade, combined with the proposed landscaping (depicted on Exhibit 175, reproduced on page 19), support a conclusion that the proposed special exception will not have an adverse visual impact on the community and will not significantly stand out in the neighborhood. The Hearing Examiner also agrees with Technical Staff that the single driveway access, directly across the street from the confronting property's driveway access, better limits the scale of the proposed use than in earlier proposals. The surface parking lot now faces the temple's parking lot rather than the interior of the neighborhood. The Hearing Examiner agrees with Petitioner's assertion that the 100-foot setback from Brunett Avenue, along with the additional landscaping provided, will mitigate the visual impact of the proposed use.

As noted, the scale of the structure is at the outer range of the Planning Board's guideline of two times the size of the homes in the surrounding neighborhood, and in some cases, is more than twice the size of those larger structures. While not dispositive of the residential character of the use, the Hearing Examiner finds it appropriate to mandate site plan review, pursuant to §59-G-1.22 of the Zoning Ordinance, to further protect the surrounding neighborhood from adverse impacts of the use.

Moreover, while the Master Plan discourages special exception uses in areas immediately adjacent to the Master Plan's commercial district, it also recognizes that a day care use is an integral part of a community and a use which typically forms part of and supports that community. As a result, a day care use in this particular area is more consistent with the Master Plan's goal of sustaining a livable community than other, retail commercial uses. For this reason, the Hearing Examiner believes that this recommendation to approve the special exception request should not serve as a precedent for future commercial retail special exceptions within this area.

While it is reasonable to assume that the "office" designation for the subject property intended to preserve the former dentist office use, there is little specific evidence in this case that this was the intent. As a result, the Hearing Examiner finds the evidence too speculative to rely

heavily on the assertion proffered by the opponents indicating that the “office” designation was intended to permit only a very small scale professional office use. Without specific evidence of legislative intent or a statement in the Plan itself, the “office” designation remains, although limited by the Plan’s recommendation for retention of the R-60 Zone, which necessitates a special exception or other approval. The Petitioner provided no specific evidence regarding the intent of the Master Plan at this location, the Hearing Examiner agrees that it did intend some level of non-residential use at this location, limited by the underlying requirements of the R-60 Zone and the special exception standards, but *not* limited to the scope of the former use.

Because the Master Plan in numerous places recommends the elimination of traffic cutting through residential neighborhoods to maintain and preserve the neighborhoods, another aspect of Master Plan compliance and the compatibility of the use is the traffic impact of the proposed special exception. Traffic impacts of the use will be discussed the next Section of this Report.

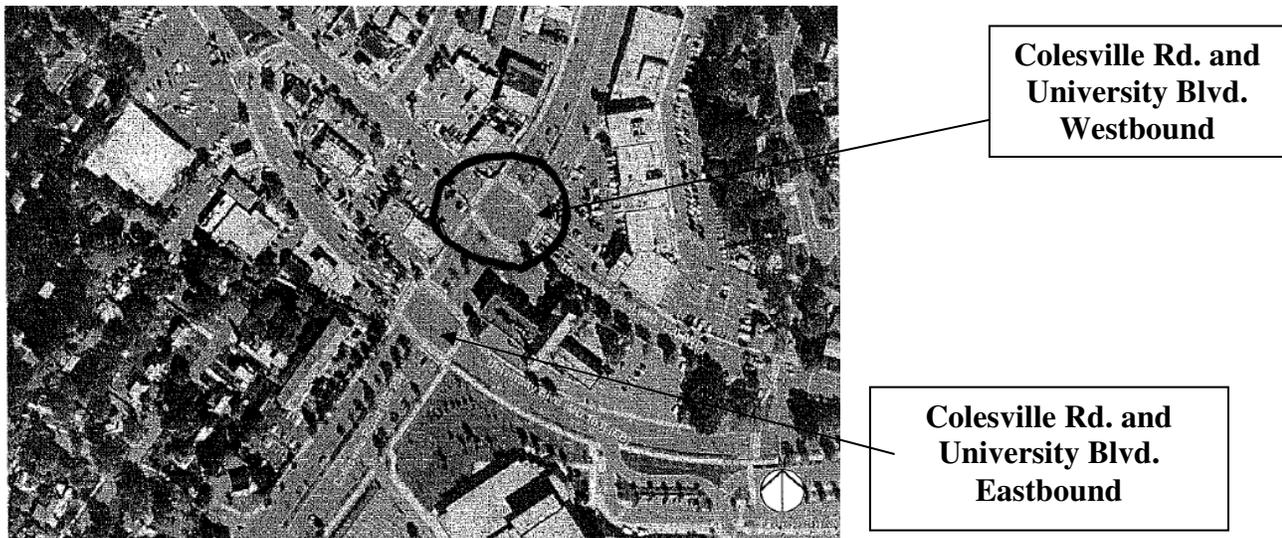
F. Traffic Impacts

1. Local Area Transportation Review/Policy Area Mobility Review

Technical Staff advises that the petition meets the requirements for both Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). Mr. Starkey, an expert in traffic engineering, testified that the subject property is located in the Kensington/Wheaton Policy Area in which the maximum permitted critical lane volume (CLV) at intersections is 1,600 CLV. He further stated that Transportation Planning staff directed the Petitioner to study four intersections—the intersections of Colesville Road and University Boulevard eastbound, Brunett Avenue and University Boulevard, Dennis Avenue and University Boulevard, and Brunett Avenue and Gilmoure Drive. 4/15/11 T. 127; Exhibit 101(7). He opined that utilizing the trip generation rates mandated by LATR guidelines, all of the intersections studied (*with the exception* of University Boulevard and Colesville Road eastbound) operated at level of service A (under 1,000 vehicle trips). 4/15/11 T. 128. The intersection of University

Boulevard eastbound and Colesville Road operated at a critical lane volume of 1,438, still below the 1,600 CLV threshold. 4/15/11 T. 128.

Those opposing the petition asserted that the scope of the traffic study should have included the northern leg of the intersection of University Boulevard and Colesville Road (University Boulevard westbound and Colesville Road). They also felt that the counts submitted by the Petitioner for the southern section were too low and that traffic congestion has been increasing at that intersection. 12/9/11 T. 119-158. A photograph of the intersection in question, with the northern leg circled, is set forth below (Exhibit 152):



Ms. Harriett Quinn, a member of the executive committee of the Woodmoor/Pinecrest Civic Association and chair of the traffic safety committee, testified that the petition did not meet LATR standards. In Ms. Quinn's opinion, had the northern leg of the intersection been included in the traffic study, the project would not have met the LATR standards. In addition, she challenged the accuracy of Petitioner's CLV counts for the southern leg of the intersection. In support of this, she submitted excerpts from several government reports.⁵ Exhibit 150. A June, 2009, Montgomery County Highway Mobility Report published by the M-NCPPC (Exhibit 150(b)) ranks the *southern* portion of the intersection as the twenty-first most congested

⁵ Either the full reports or links to those reports were later submitted into the record (Exhibits 72, 163-167).

intersection in the County, having a critical lane volume (CLV) of 1,680 in the a.m. peak hour (exceeding the 1,600 CLV maximum for the policy area) and 1,434 in the p.m. peak hour. The report lists the northern leg (University Boulevard eastbound) as the 48th most congested intersection, having a CLV of 1,589, just under the maximum limit. Exhibit 150(b), circle 12. The 2009 report also states that north and southbound Colesville Road experiences some of the slowest travel times in the County. Exhibit 150(b), circle 14.

The 2011 Mobility Assessment Report submitted by Ms. Quinn (Exhibits 72, 150(a)) ranks the northern and southern legs of the University Boulevard/Colesville Road intersection as the 19th and 46th most congested intersections, respectively. The CLV counts listed in the 2011 Mobility Assessment are the same as those in the 2009 mobility assessment; the dates of the traffic counts are identical. Exhibit 150(a), circles 4-5. The 2011 report states that University Boulevard experiences “slightly more congested” travel times in the westbound direction and indicates that southbound travel times on Colesville Road (along with Md. Route 355) are the slowest in the County (i.e., in the 95th percentile) of the intersections studied. Exhibit 150(a), circle 6.

Ms. Quinn also submitted excerpts from a “Woodmoor-Pinecrest Community Discussion Paper”, forwarded to Ms. Quinn on September 26, 2011. Exhibits 150(c), 166. The “discussion paper” is one step in the process by which the County’s Department of Transportation develops a “Through Traffic Volume Management Plan” to prevent neighborhood cut-through traffic by designing access restrictions. Exhibit 150(c), circle 16. The Discussion paper lists the level of service (LOS) for each of the University Boulevard/Colesville Road intersections at LOS F. The CLVs listed for the northern (westbound) section are 1,689 in the a.m. peak hour (exceeding the maximum permitted in the policy area) and 1,424 in the p.m. peak hour. Exhibit 150(c), circle 20. The CLVs for the eastbound (southern leg) of the intersection are 1,826 (again exceeding the policy area threshold) and 1,361 for the a.m. and p.m. peak hour, respectively.

In addition, Ms. Quinn submitted a memorandum from Transportation Planning staff relating to a preliminary plan application (Preliminary Plan No. 120060460) filed by Woodmoor Bank of America. Exhibits 150(d), 165. Dated March 3, 2006, the a.m. and p.m. peak hour counts for the northern portion of the Colesville Road/University Boulevard intersection are listed at 1,917 and 1,560 CLV respectively. The southern intersection was not included in that study.

Finally, Ms. Quinn submitted an e-mail from Mr. Cedric Ward of the Maryland State Highway Administration (SHA) indicating that the University Boulevard/Colesville Road intersections were operating “at maximum capacity” and there are no plans for additional improvements at that intersection. Exhibit 150(l). Based upon this evidence, Ms. Quinn testified that congestion at both intersections was increasing over time. 12/9/11 T. 119. A chart summarizing the CLVs for eastbound and westbound University Boulevard and Colesville Road intersections (based on this evidence and Petitioner’s traffic study (Exhibit 42(a)) is set forth below:

University Blvd. Intersection w/Colesville Rd.	Petitioners’ Traffic Study	Discussion Paper	2011 Mobility Report	2009 Mobility Report	2006 Preliminary Plan (Woodmoor BOA)
Eastbound (Southern) a.m. (p.m.)	1,481 (1,355) CLV	1,826 (1,361) CLV	1,680 (1,535) CLV	1,680 (1,535) CLV	Not Studied
Westbound (Northern) a.m. (p.m.)	Not Studied	1,689 (1,424) CLV	1,589 (1,434) CLV	1,589 (1,434) CLV	1,917 (1,560) CLV

The Hearing Examiner referred this evidence to Technical Staff for its review. Exhibits 152, 158. Technical Staff did perform this review and on December 20, 2011, and January 10, 2012, responded to the request. In its first response (Exhibit 154), Technical Staff explained why Staff may have excluded the northern leg of the Colesville Road/University Boulevard

(westbound) intersection.⁶ Exhibit 154. Mr. Cherian Eapen, a transportation planner with M-NCPPC, stated that the LATR guidelines generally base the scope of the traffic study on the number of trips generated by the proposed use. Exhibit 154, pp. 1-2. For developments generating 30-249 trips, the LATR Guidelines recommend including at least one intersection in each direction from the subject property. Exhibit 154; *see also, Local Area Transportation Review and Policy Area Mobility Review Guidelines* (July, 2011) (Guidelines). While the northern leg of the intersection of University Boulevard and Colesville Road is within 1 intersection of the subject property, Mr. Eapen stated that the LATR standards specifically acknowledge that these standards are “generalized guidelines”, and vest in Technical Staff some discretion to determine the scope of the study, quoting:

Transportation Planning staff, in cooperation with the applicant, will use judgment and experience in deciding the significant intersections to be studied within Growth Policy parameters.

Exhibit 154, p. 2 (emphasis in original); *Guidelines*, p. 20. Mr. Eapen also stated that the Guidelines list several factors that should be taken into account when determining which intersections to study. These factors include the nature of the trips generated by the proposed use (i.e., “existing, new, diverted, or pass-by”) as well as the number of trips that would pass through the intersection. The Guidelines provide, “intersections distant enough so that fewer than five peak hour vehicle trips from the site will travel through the intersection need not be included in the traffic study, even if they would otherwise be identified as candidate locations.” Exhibit 154; *Guidelines*, p. 20.

Noting that the northern leg of the intersection would have been included if the study’s scope had been based solely on the number of trips generated by the proposed day care, Mr. Eapen concluded:

⁶ The staff person who originally determined the scope of the traffic study was no longer employed by M-NCPPC at the time of this hearing. Exhibit 154.

[I]t is my opinion that in preparing the January 23, 2009, Transportation Planning staff traffic study scope letter for the Applicant's project (see Attachment No. 1; prepared by Mr. David Paine, who is no longer with the Department), staff must have considered certain relevant factors in determining that only the University Boulevard eastbound and Colesville Road intersection be included in the traffic study.

Exhibit 154. Mr. Cherian advised that the Staff may not have required the northern leg to be included because it was operating *under* the maximum permitted CLV standard and because less than one-third of the traffic generated by day cares are considered “new” trips—the balance being considered either “diverted” or “pass-by” trips. Exhibit 154.

In response to a question from the Hearing Examiner as to whether Staff's initial determination of the scope of the study remained valid under existing conditions (Exhibit 158), Technical Staff stated, “it is my opinion that there is no technical reason to include the US 29/MD 193 (Westbound) intersection in the study”. Exhibit 161 (emphasis in original). Technical Staff based its conclusion on the fact that the traffic counts showing the intersection operating above the maximum CLV of 1,600 were incorrect. Exhibit 161. Mr. Eapen advised that the traffic counts for this intersection contained in the 2009 and 2011 mobility assessments as well as the Discussion paper were from the same 2006 count. Exhibit 161. According to Mr. Eapen, the 2006 study listed the a.m. and p.m. peak hour CLVs for the northern leg at 1,589 and 1,434, respectively. The Discussion Paper, however, lists the a.m. and p.m. peak hour CLVs for the northern part of the intersection as 1,689 and 1,424 respectively. As a result, Staff stated, “it is my conclusion that the summary CLV presented in Table 3 [of the Discussion Paper] for the subject intersection is in error and should have been 1,589 CLV for the AM peak-hour and 1,434 CLV for the PM peak-hour. Thus, Exhibit 150(c) does not present any new information.” Exhibit 158 (emphasis in original).

Mr. Eapen also commented on the memorandum regarding Preliminary Plan No. 120060460 for the Woodmoor Bank of America. He stated that the traffic counts from that application were from 2004, preceding the counts identified in the mobility assessments. Because

the a.m. and p.m. peak hour CLVs in the traffic study for the Bank of America preliminary plan application were 1,917 and 1,560, respectively, he observed that the morning peak hour traffic counts indicated that congestion at the intersection of University Boulevard (westbound) and Colesville Road had *decreased* by 328 CLV (i.e., $1,917 - 1,589 = 328$) between 2004 and 2006. Exhibit 158.

Finally, Technical Staff stated that designation of the intersections as “failing” in the Discussion Paper and “at maximum capacity” in the e-mail from SHA was based on State rather than County standards. According to Mr. Eapen, the State considers LOS D (1,450 CLV) a failing intersection; the County’s LATR standard permits more congestion (i.e., up to 1,600 CLV). The State defers to the County standards for the purpose of local area transportation review. Exhibit 158.

On rebuttal, the Mr. Starkey testified that using the most recent existing information (i.e., from 2006), the northern leg of the intersection of Colesville Road and University Boulevard westbound *would* meet LATR requirements even if it had been included in the traffic study. He submitted an exhibit showing the lane use at the intersection (Exhibit 171) which is included in the mobility assessment report. According to Mr. Starkey, traffic generated by the proposed development would add an additional three trips to the intersection during the peak hour. With three trips added to those volumes (i.e., 1589 in the a.m. peak hour and 1,434 in the p.m. peak hour), the intersection still would operate at a CLV of 1,592 in the a.m. peak hour, under the maximum 1,600 CLV. 1/12/12 T. 79-81.

Mr. Starkey also opined that the intersection counts in the 2009 and 2011 mobility assessments indicating that the southern portion of the intersection operating above the maximum threshold are incorrect. Counts that he conducted for this project in February, 2009, and April, 2010, show that the intersection is actually operating below the threshold. His volume counts eastbound approaching the intersection with Colesville Road were approximately 1,700 vehicles

per hour. These volume counts in those months were within 10% of each other, which is a standard variable in the industry. The volume count in the M-NCPPC database is approximately 2,200 vehicles at that intersection, more than the 10% standard deviation. As a result, in his opinion, the CLV counts in the M-NCPPC database are atypical and could have been caused by a traffic incident the day the count was taken. 1/12/12 T. 83-84. The traffic counts at University Boulevard and Dennis Avenue are consistent with the 2009 and 2010 counts for eastbound University and Colesville Road intersection. 1/12/12 T. 81-84. The fact that PAMR guidelines, which measure congestion in the policy area, have reduced the trip mitigation required from 15% to 10% also indicates that the volume of traffic in the area has decreased. In his opinion, this is an acknowledgement that transit use is becoming more prevalent and that there has been a reduction rather than an increase in congestion in the area. 1/12/12 T. 87.

The Hearing Examiner finds that the weight of evidence in this case demonstrates that the petition does meet the requirements of LATR. The Hearing Examiner agrees with Technical Staff that the scope of the original traffic study was within scope of the LATR guidelines the best evidence before the Hearing Examiner regarding this intersection is the 2006 traffic counts used in the two mobility reports, which list the intersection operating below the maximum threshold, the use would generate only three additional trips at the intersection, and because most of the trips generated will be either diverted or pass-by trips. Because these factors are explicitly list to guide Technical Staff's discretion, the Hearing Examiner finds that Staff's judgment is not unreasonable.

While the mobility assessments and the discussion paper provide cogent evidence that the Four Corners intersection is generally congested, the evidence demonstrates that intersection analyses contained in each document are based on identical counts, thus undermining the higher counts listed in the Discussion Paper and the earlier counts taken for the Woodmoor Bank of America preliminary plan application. This evidence combined with the Petitioner's traffic counts for the southern portion of the intersection, also call into question the assertion that congestion in

the area is decreasing, although the Hearing Examiner need not make a specific finding as to whether this is the case.

2. Master Plan Consistency and Compatibility

In addition to providing guidance on the appropriate scale of new special exceptions, the Master Plan also contained recommendations regarding traffic. Traffic-related goals of the Master Plan include:

Maintain neighborhood character and integrity and improve pedestrian safety by reducing cut-through traffic on residential streets.

* * *

Work with Four Corners neighborhoods to minimize non-local traffic on residential streets through DPWT's Residential Traffic Management Program. These neighborhoods should be reviewed as a network of interconnected streets with traffic control measures that are coordinated accordingly.

Exhibit 51, p. 38. The Plan describes the basis for these goals as follows:

Heavy traffic is inappropriate in residential neighborhoods. Large volumes of vehicular traffic can be disruptive to the peace and serenity of residential areas. Commuters often cut through Four Corners neighborhoods to avoid the congested intersection of Colesville Road and University Boulevard. Such intrusion disrupts one of the most appealing characteristics of this community of neighborhoods – walking to retail and services. Cut-through traffic decreases safety and access, increases noise, and divides neighborhoods. Cut-through traffic also creates a significant pedestrian safety problem, particularly in neighborhoods where there are no sidewalks.

Exhibit 51, p. 40.

Those opposing the application contend that the proposed use will increase cut-through traffic into the neighborhood primarily because the intersection of Brunett Avenue and University Boulevard is heavily congested. At that point, University Boulevard has six lanes divided by a median. Ms. Quinn submitted photographs taken on a single date showing traffic at the intersection (Exhibit 150(h)), shown below and on the next page. 12/9/11 T. 154-155.



Photograph taken from Brunett Avenue Looking at Westbound Traffic on University Blvd. at 7:50 a.m. (Exhibit 150(h))



Photo of Traffic Heading Westbound on University Blvd. Approaching the Left Turn at Intersection with Brunett Ave. (Taken at 7:50 a.m.)

Mr. Glen Richardson testified that traffic on University Boulevard is extremely heavy during most of the day and “extra extremely heavy” during rush hour. According to Mr. Richardson, making a left turn onto University Boulevard from Brunett Avenue during that period takes approximately three minutes--90 seconds to enter the intersection and rest at the median strip

and an additional 90 seconds to proceed left onto University Boulevard from the median strip. At times, generally once during the morning and evening rush hour, the intersection is completely blocked by eastbound traffic. In that situation, one must wait for a clearing in the eastbound traffic to cross University Boulevard to proceed west and it is sometimes impossible even to make a right turn. In his opinion, the intersection of University Boulevard and Brunett Avenue is hazardous most of the time. 11/10/11 T. 190-194. Mr. Richardson stated that Brunett Avenue is a cut-through road and has speed bumps installed to slow traffic. T. 194.

In order to avoid this intersection, he travels through the neighborhood streets to get to the traffic signal at the intersection of Dennis Avenue and University Boulevard. 11/10/11 T. 195. He believes that this is the quickest and safest way to exit the neighborhood. T. 196. Mr. Richardson described Gilmore Drive as a very quiet street with no speed bumps. In his opinion, the former site plan containing a right out only egress onto Brunett would generate fewer trips into the interior of the neighborhood. 11/10/11 T. 198.

Technical Staff concluded that the access and on-site circulation for the site would be safe and adequate. Exhibit 120, Attachment 1, p. 1. Basing its opinion on the “extremely low traffic volumes” on Brunett Avenue and Gilmore Drive, Technical Staff found that, “the operational impact of estimated additional traffic from the day care on both these streets will be minimal.” Exhibit 120, Attachment 1, p. 2.

Mr. Starkey testified that the application will not result either in unacceptable queuing at the intersection of University Boulevard and Brunett Avenue or generate cut-through traffic into the interior of the neighborhood. Although Petitioner did not submit expert evidence of the delay times currently at the intersection of Brunett and University Boulevard (4/15/11 T. 149), it did present evidence that the 90-second delay time testified to by Mr. Richardson would not result in additional queuing at the intersection. Mr. Starkey testified that a 90-second delay is typical of the delay that occurs at many signalized intersections. Because the site is expected to generate 24

evening peak hour trips, a 90-second delay will not increase queuing because the additional trips are entering the intersection at a similar rate. 1/12/12 T. 70-71. He further testified that a 90-second delay is typical of signalized intersections at a side street like Brunett Avenue. 4/15/11 T. 136. Mr. Starkey also stated that a directional sign requiring a right-turn only for traffic exiting the site would help to direct traffic onto Brunett Avenue, which already has speed control devices, rather than Gilmoure Drive. 1/12/12 T. 74.

The Hearing Examiner concludes that a preponderance of the evidence in this case supports a finding that the use will not generate a significant amount of cut through traffic into the interior of the neighborhood. Technical Staff found that the impact would be minimal and Petitioner's traffic expert opined that the trip distribution determined by Technical Staff would result in most of the trips returning to University Boulevard rather than cutting through the neighborhood. The only evidence of amount of delay experienced turning left onto University at the intersection with Brunett Avenue is Mr. Richardson's estimate of 90 seconds to get to the median in the middle of University Boulevard and 90 seconds to enter the eastbound lanes of the intersection. According to Mr. Richardson's estimate, Petitioner's traffic engineering expert indicates that the proposed use will result in no additional delays during the peak hour because traffic will be entering Brunett Avenue at approximately the same rate.

The photographs submitted by Ms. Quinn as well as the opposition's testimony as to the existing community's practice to avoid intersection cutting through interior streets is of significant concern, especially as the Petitioner has not submitted a queuing analysis of its own. Certainly, the photographs demonstrate that there will be times when entering the intersection will be difficult. There is little evidence, other than anecdotal evidence, to establish how often this may occur. As a result, the Hearing Examiner finds that a condition of approval requiring the Petitioner to perform a queuing analysis within one year of commencing operation, and again

within one year of full enrollment, will serve to ameliorate the impact on the community by identifying any problems at this intersection.

Finally, Ms. Quinn submitted a pedestrian safety study that covered the intersection of University Boulevard and Colesville Road for the proposition that pedestrian safety in the area is inadequate. Exhibit 167. The study does not encompass the area surrounding the subject property, and Petitioner's traffic expert testified that there is a cross-walk at the intersection of University Boulevard and Brunett Avenue as well as a signalized cross-walk at the intersection of University Boulevard and Dennis Avenue that will provide safe pedestrian access to the subject property. 1/12/12 T. 77-78. Without more concrete evidence that pedestrian safety is a problem in the area surrounding the site, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will not have an adverse impact on pedestrian safety.

3. Parking and Site Circulation

Individuals opposing the application also raised concerns that parking for the day care would overflow onto neighborhood streets. Several individuals testified that approximately two-thirds of the homes in the neighborhood do not have driveways and therefore rely on on-street parking. There are permit parking restrictions along Gilmore Drive on the block bordering the subject property, however, neighbors testified that these restrictions apply from 9:00 a.m. to 2:00 p.m., outside the peak hours, and that enforcement is sporadic. 11/10/11 T. 200-201.

Ms. Memon testified that, in her experience, parent drop-off and pick-up took between approximately six to ten minutes. 4/15/11 T. 56. Mr. Starkey testified that traffic will not overflow onto neighborhood streets for several reasons. There are 28 parking spaces on-site, 15 of which are allocated to Staff, leaving 13 spaces for parents to drop off and pick up their children. Two studies he conducted for one week at two facilities indicate that it takes parents approximately six to eight minutes to drop off or pick up their children, which means that each

space turns over approximately seven times an hour. 11/10/11 T. 110, 114-116, 122. As a result, the 13 spaces allocated for parents may turn over 91 times during the peak hour. 1/12/12 T. 114-116. Mr. Starkey indicated that this was a conservative number, because in his experience parents' arrival times vary and not all arrive during the same hour, as confirmed by studies of day cares done by Montgomery County and the Institute of Transportation Engineers. 1/12/12 T. 118. It is also conservative because it assumes that every parent will drive a single child and that no parents or staff will take public transportation. Even if all of the parents drove a single child, in his experience parent arrival and departure times vary and do not all occur within the peak hour. 1/12/12 T. 118 – 123.

According to Ms. Memon, staff will arrive at the facility at staggered times. The school will have four different shifts staggered at one-half to one-hour intervals beginning at 7:00 a.m. and continuing until 9:15 a.m. The evening shifts are then staggered at the same intervals beginning at 4:00 p.m. and continuing until 6:00-6:15 p.m. If more children than expected come in before the center is fully staffed, the director will shift staff from one age-group to another to meet that circumstance. It is permissible under the applicable regulations to merge the three and four year-olds together during the peak hours. 1/12/12 T. 22-23.

Ms. Memon testified that a special needs bus may arrive at the site during operating hours. At her other facilities, special needs children do not arrive during the peak time and one staff member is assigned to assist the children leaving and entering the bus. She is required by law to accept special needs children, who are generally transported in a smaller version of a yellow school bus operated by Montgomery County. At this facility, she believes that the bus will be able to unload and load passengers on the sidewalk adjacent to the facility. She couldn't provide information as to exactly where the special needs children will be dropped off, as this is determined by the school system. At this point, she is not able to say how many special needs children there will be—it may be none. 1/12/12 T. 22-24, 44.

Ms. Memon testified that approximately 75-80% of parents take public transportation at her College Park and Beltsville locations because a bus stop is located very near both centers. 4/15/11 T. 43-44. She believes that only two staff persons will be driving to work at this facility. 1/12/12 T. 26. In her experience, most of the staff takes public transportation when it is available, as at her College Park and Beltsville locations. At her Burtonsville location, she uses Childway's van to pick up seven to eight staff members at the Briggs Chaney bus stop. 1/12/12 T. 27.

Because the final version of the petition eliminates the "before and after care" program previously proposed, no buses (other than possibly the special needs bus) will be entering the on-site parking lot.

As further assurance that parking and site circulation will not adversely impact the surrounding neighborhood, Petitioner proposes that a Transportation Management Plan ("TMP") (Exhibit 169(a)) be imposed as a condition of approval. The TMP consists of several components and is administered by a Transportation Coordinator, who in addition to daily monitoring of parking during the peak hours, will also serve as a community liaison regarding traffic issues. Exhibit 169(a). With regard to site access and parking, the TMP states:

1. There are a total of 28 parking spaces on the Property for the use of client-parents to drop off and pick up children enrolled at Childway, visitor parking, and Childway staff parking during the Childway hours of operation. Parents are responsible for escorting children into the building, and for signing children in and out during drop off and pick up.
2. The parking spaces on the Property can be accessed from the Gilmoure Drive driveway. There shall not be any queuing of cars off the Property.
3. During regular hours of operation, the Childway staff that do not walk, bike or take public transportation will primarily utilize the parking spaces opposite the drive aisle from the building to leave the convenient front parking spaces available for client-parents and therefore facilitate the drop off and pick up process.
4. Childway staff and client-parents shall not park on the neighborhood streets to access the Property and shall not block neighborhood driveways (nor turn around in neighborhood driveways) to access the Property. Further, Childway staff

and client-parents shall not park at the property other than for child drop off or pick up or for otherwise visiting or working at the Childway facility (the parking lot is not to be used as a commuter parking lot).

5. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick up.

6. Any parent meetings with staff or new parent tours shall be scheduled outside the Peak Period.

7. All refuse collection and deliveries shall be scheduled to occur outside the Peak Period.

Ms. Memon testified that the Transportation Coordinator will be the director of the facility. According to Ms. Memon, the director's main role will be licensing the center, checking the staff's and children's files, answering the phones, receiving the parents, monitoring the outside parking, and during non-peak hours will serve as a substitute in the classroom during staff breaks. The director will have a desk in the main hallway or lobby which will provide a view of outside parking spaces. The arrangement will be set up so that the director may receive parents, greet children, answer the phones and monitor the outside traffic. 1/12/12 T. 21-22.

The TMP promises that clients of the day care will receive information regarding these policies and will sign an "acknowledgement" that they have received the policy, which will be made part of the contract with the client-parents. Exhibit 169(a). According to Ms. Memon, the contract will be terminated if a parent does not comply with those requirements. 1/12/12 T. 52.

The TMP also imposes some duties relating to communication with the community. It requires the Transportation Coordinator to share her/his contact information with representatives of the SFCCA. Exhibit 169(a), p. 1. It also requires the Coordinator to arrange meetings of a "Community Liaison Committee", including the SFCCA and "interested neighbors", with mandatory invitations to Northwood Four Corners Civic Association (Guidelines) and the Woodmoor-Pinecrest Citizens Association (WPCA). Exhibit 169(a). The TMP also requires

Childway to compile a report to be sent annually to the Board of Appeals including the following information:

1. The current enrollment and number of staff at the site,
2. The current number of staff using public transportation regularly,
3. The number of special events and how parking was handled,
4. A description of any parking and transportation issues, and how addressed, and
5. The CLC (or SFCCA if applicable) meeting notice, agenda and minutes (or written agreement to waive CLC meeting).

The Board of Appeals may extend the time for filing a report by one-year increments if it deems “appropriate”. Exhibit 169 (a), p. 3.

Those opposing the petition react with skepticism regarding the effectiveness of the TMP, noting the number of daily duties assigned to the transportation coordinator and the fact that none of the TMPs approved in other day care cases have actually been implemented. Exhibit 185, p. 10. Mr. Jim Zepp, representing the NFCCA requested that there be graduated penalties, increasing in severity based on the number of violations. He requested that penalties be graduated because in his experience, government agencies are reluctant to impose the most severe penalty, such as rescission of the special exception, based on a single violation. 12/9/11 T. 52.

While the Hearing Examiner shares somewhat the skepticism of those opposing the application that the Transportation Coordinator will be able to monitor the parking status at all times and perform the rest of her duties, testimony from Petitioner’s traffic expert indicates that there will be more parking spaces during the peak hours than needed for client-parents to drop off and pick up children due to use of transit, multiple siblings, and staggered arrival times. As a result, the Hearing Examiner finds by a preponderance of the evidence that the transportation coordinator may be able to monitor traffic and parking during peak hours without having to do so constantly. The only affirmative evidence regarding the length of time parents need to drop-off and pick up children is the testimony of Ms. Memon and Mr. Starkey, both of whom give ranges

between six to ten minutes at the outside. Mr. Starkey's testimony is based on studies he has performed and Ms. Memon's is based on experience. The Hearing Examiner has no affirmative evidence with which to contradict this evidence and therefore finds that parking will be adequate.

The Hearing Examiner also finds, however, a condition requiring compliance with the transportation management plan must be a condition of approval in order to ensure that parking does not have an adverse impact on the community.

F. Environmental Impacts

In its initial Staff Report, Technical Staff advised that there are no environmental issues associated with the site. Exhibit 47, p. 10, Attachment 3. Environmental Planning Staff advises that there are no forests, streams, floodplains, wetlands or environmental buffers on or adjacent to the site. Exhibit 47, Attachment 3.

Ms. Kim Currano, who qualified as an expert in civil engineering, prepared a revised stormwater management concept for the final amendment to the special exception site plan. According to Ms. Currano, a swale along Brunett Avenue provides stormwater management for most of the parking lot and a portion of the rooftop that drains towards Brunett. Drywells will serve the remaining roof area and the southern portion of the site. Two large underground pipes will provide storage near the driveway entrance. She testified that, while this plan has not been approved by the Department of Permitting Services, she believes that it is a minor revision to the previous plan, which was approved. Even though an inlet shown on the plan has been covered by curb, the reduced size of the facility permits more flexibility in design and there are many opportunities to address this issue. 1/12/12 T. 27, 58.

III. SUMMARY OF THE HEARING

The testimony adduced at the public hearing is set forth in this report at relevant points. A complete summary of the testimony is included in an appendix to this report, which attached hereto and incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. 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. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific 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 Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “*the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.*” § 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 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 a child day care use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse

effects. Physical and operational characteristics of the proposed use 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.

In this case, the Technical Staff suggested the following inherent characteristics associated with the child daycare use) based on prior determinations made by this office:

- (1) physical building;
- (2) parking areas;
- (3) lighting;
- (4) noise generated by children;
- (5) drop-off and pick-up areas;
- (6) outdoor play areas;
- (7) long hours of operation;
- (8) employees of the child care facility;
- (9) vehicular trips to and from the site;
- (10) signage;
- (11) delivery and supplies; and
- (12) trash pick-ups.

The Petitioner proposes another inherent characteristic—that day care buildings are inherently large, and larger than single-family homes. Other than that assertion, Petitioner provides no additional evidence that this is normally the case and therefore, the Hearing Examiner does not find there is enough evidence, beyond that already listed, to justify modifying the inherent impacts previously determined to accompany the use.

Initially, Technical Staff found four non-inherent characteristics of the larger building then proposed (Exhibit 47, p. 12):

...[t]he effect of the physical size of the daycare building on surrounding properties, the effect of the large surface parking lot on surrounding properties, a below grade parking facility which permits a larger building and more children onsite. Except for the below grade parking facility, all of the non-inherent adverse effects are inherent characteristics of a typical child daycare that are amplified by locating a child daycare of this degree on a small residential lot.

Technical Staff did not revise its analysis in its final (third) Technical Staff Report, although it did recommend approval of the petition. Exhibit 120. Petitioner has reduced the proposed enrollment from 120 children to 76 on site at any one time, and has reduced the number of proposed full-time-equivalent staff from 25 to 15. In addition, the size of the proposed building has been reduced from 6,430 square feet to 4,400 square feet, and the parking from 45 spaces to 28 spaces. Waivers from the parking requirements and the amount square feet per child are not longer required.

Despite these reductions, the scale of the proposal remains large in relation to the very small size of the homes in the surrounding community, which are on average, approximately one-third of the size of the building on the subject property. For this reason, the Hearing Examiner finds that the size of the building, parking, and population in relation to the size of the property and surrounding homes are non-inherent adverse impacts, but do not justify denial of the petition because those impacts have been mitigated by site layout, landscaping, and architectural elements added to the building.

After carefully reviewing the entire record, the Hearing Examiner finds, as did the Technical Staff, that the requested use, if properly conditioned, will not have undue adverse effects on the neighborhood.

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 documentary 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: Child day care facilities are permitted by special exception in the R-60 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

- (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: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G- 2.13.1, as detailed in Part IV. D. of this report.

- (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 site is located within the area covered by the 1996 Four Corners Master Plan. For all the reasons discussed at length in Part II. C. of this report, the Hearing Examiner finds that the proposed use is consistent with the applicable 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. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff advises it “has worked closely with the applicant on the latest iteration of the plan to attain a size, scale, and bulk of the proposed child daycare center that is compatible and in harmony with the surrounding neighborhood. Further, the proposed operations

have been substantially reduced, and site circulation will be adequate.” Exhibit 120, p. 8. For the reasons set forth in Parts II. C. and D. of this report, the Hearing Examiner agrees with Technical Staff’s conclusion. The evidence also supports the conclusion that public facilities will be available to the site, as discussed in more detail below.

- (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: For the reasons set forth in the previous answer and in Part II. of this report, the evidence supports the conclusion that, with the specified operational limitations and other conditions, the requested use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (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: Technical Staff found that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 120, p. 9. Technical Staff based this conclusion on the reduced number of children at the facility and a condition prohibiting the use of an outdoor amplified address system. As noted in Part III. E. of this report, some noise and physical activity from children is an inherent characteristic of this kind of special exception. The conditions recommended by the Hearing Examiner, along with the relocation of the outdoor play area toward the northern portion of the site along University Boulevard, will ensure that these adverse effects are sufficiently mitigated. The proposed lighting will not exceed 0.1 foot-candles along the side and rear property lines, as shown in the Lighting and Photometric Plans. Exhibit 99. This is in accordance with the lighting standards for residential zones set forth in Zoning Ordinance §59-G-1.23(h). There is no evidence that the proposed use will create any unacceptable vibrations, fumes, odors or dust. Based on this record, the Hearing Examiner finds that the proposed

use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (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: Technical Staff found that “[T]here is one other existing special exception in the defined neighborhood (a home occupation for a flower shop operating out of a single-family detached home). The Hearing Examiner finds that the proposed use will not result in a concentration of special exceptions in the neighborhood.

- (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 summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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.*
- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed*

development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The subject property does not require subdivision; therefore, the Board of Appeals must make the determination whether public facilities are adequate. Technical Staff advises that, “[T]he proposed special exception will be adequately served by existing public services and facilities. Police and fire services, water, and sanitary sewer are already established for the site. The proposal meets both the LATR and PAMR transportation findings. Vehicular and pedestrian circulation systems are adequate.” For the reasons set forth in Section II.E.1., above, the Hearing Examiner agrees with Technical Staff and so finds.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence in this record, as discussed in Part II. D. 5. of this report, the Hearing Examiner concludes that the proposed use, as conditioned, would not reduce the safety of pedestrian or vehicular traffic.

C. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed child day care facility use would be consistent with these specific standards, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*

Conclusion: A site plan (Exhibit 96(a)) has been submitted showing buildings and other facilities, as required.

(2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:

(A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: Zoning Ordinance §59-E-3.7 requires, “*For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this instance, the average drop off and pick up space required is one space for every six children.*” There are no resident staff, therefore, this section requires 15 spaces for each employee and 13 spaces for discharge and pick up of children. The petition provides 28 spaces, the requisite number required by the Zoning Ordinance.

(3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: As discussed in Section II.E.3. above, the Hearing Examiner finds that an adequate area for the discharge and pick up of children has been provided, although with the condition that the applicant comply with the terms of the revised Transportation Management Plan (Exhibit 169) submitted.

(4) *the petitioner submits an affidavit that the petitioner will:*

(A) *comply with all applicable State and County requirements;*

(B) *correct any deficiencies found in any government inspection; and*

(C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Petitioner submitted the required affidavits in Exhibit 3(c).

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: As stated above in Sections II.D and E of this Report, the use, as conditioned, will be compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

(b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

(1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: An appropriate Landscaping Plan was submitted as Exhibit 96(e).

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

(A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*

(B) *the additional density will not adversely affect adjacent properties;*

(C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*

(D) *adequate provisions for drop-off and pick-up of students will be provided.*

The Board may limit the number of students outside at any one time.

Conclusion: Petitioner proposes a maximum student enrollment of 76 on-site at any one time. Since the site contains 37,987 square feet (0.87 acres), it meets the required minimum of 500 square feet per child ($37,987/76 = 499.82$ square feet per child).

(c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*

(1) *a structure owned or leased by a religious organization and used for worship;*

- (2) a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;
- (3) a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or
- (4) a publicly owned building.

Conclusion: This section is not applicable.

D. Other Applicable Standards

Section 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 (shown on the next page) from the Technical Staff Report (Exhibit 120, p. 7), demonstrates compliance with all applicable development standards.

Development Standard	Min/Max Required	Provided	Applicable Zoning Provision
Minimum Lot Area	6,000 sf	37,987 sf (0.87 acres)	§59-C-1.322(a)
Minimum Lot Width at Front Building Line	60 ft	Approx 200 ft	§59-C-1.322(b)
Minimum Lot Width at Street Line	25 ft	Approx 200 ft	§59-C-1.322(b)
Setback from Street	25 ft	Approx 100 ft	§59-C-1.323(a)
Side Setback from Adjoining Lot	8 ft	Approx 20 ft	§59-C-1.323(b)(1)
Rear Yard Setback	20 ft	n/a	§59-C-1.323(b)(2)
Building Height	35 ft	27.5 ft	§59-C-1.327
Building Coverage	35 percent	12 percent	§59-C-1.328
Parking Facility Side Yard Setback for Special Exceptions	Side 16 ft Street 25 ft	Side 92 ft Street 26 ft	§59-E-2.83(b)
Parking Requirements	-1 space per employee = 15 spaces -1 space per every 6 children = 13 28 spaces	28	§59-E-3.7

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

Conclusion: As previously discussed, Petitioner will be in compliance with all applicable parking standards.

(c) Minimum frontage.

* * *

Conclusion: Not applicable, since none of the listed uses are involved and no waiver is being sought.

(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: Because the property is less than 40,000 square feet and there are no champion trees on the site, Technical Staff advises that a Forest Conservation Plan is not required. *Montgomery County Code*, §22A-4; Exhibit 47, Attachment 3. The Petitioner did submit, however, a tree save plan to protect existing trees on surrounding properties and the Hearing Examiner recommends that compliance with the plan be made a condition of approval of the special exception as suggested by Technical Staff:

1. The tree save plan signed by a certified arborist and a registered landscape architect on September 3, 2010 should be incorporated into the special exception and implemented to provide protection for offsite trees on adjoining properties.

(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: Water Quality Plans are used in special protection areas (SPAs), as specified in Zoning Ordinance §59-A-2.1. Technical Staff has advised that there are no special protection areas on the subject property. Exhibit 47, Attachment 3.

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

Conclusion: As discussed in Part II.D. of this report, Petitioner seeks to erect signs for which sign variances and permits will be required. She therefore recommends the following condition in Part V of this report:

No sign may be posted unless and until Petitioner obtains a permit therefor and a sign variance, where required, and a copy of these documents are filed with the Board of Appeals. Signage must be limited to a single monument sign along University Boulevard and a sign at the driveway entrance on Gilmore Drive, as shown on the Site Plan and Site Detail Plan (Exhibit 101(1) and 101(12)). Subject to site plan approval, the Petitioner shall also locate a “right-turn only” directional sign at the egress to the parking lot.

(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: As indicated in Section II.D, Technical Staff found that the site’s re-orientation combined with the architectural elements mirroring the homes in the surrounding community and landscaping rendered the use compatible with the residential character of the surrounding building. For the same reasons that the that the application meets the Master Plan’s guideline that special exceptions be “residential” in character and scale, the Hearing Examiner agrees and finds this standard has been met.

(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 demonstrated in Exhibit 99(a), the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

Section 59-G-1.26. Exterior appearance in residential zones.

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Conclusion: As discussed above, the new structure will be designed to be compatible with its surroundings, and will be appropriately landscaped and screened. It will also have suitable pedestrian circulation.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed use, 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 S-2781, which seeks a special exception for a child day care center on property zoned R-60 located 220 West University Boulevard, Silver Spring, Maryland, described as Lot 13, Block P, in the Hendrix Addition, Fairway Section 4 subdivision, 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. Pursuant to Section 59-G-1.22 of the Zoning Ordinance, Petitioner shall obtain approval of a site plan for the proposed use from the Montgomery County Planning Board.
3. Petitioner must comply with the terms of its revised Site Plan (Exhibit 96(a)), its revised Landscape Plan (Exhibit 96(e); and its Lighting Plan (Exhibit 99(a)). Any amendments to these plans resulting from approval of a site plan by the Montgomery County Planning Board shall be filed with the Board of Appeals.
4. Enrollment of the daycare facility is limited to 76 children;
5. Petitioner may employ a maximum of 15 staff on site at any one time;
6. No more than 25 children will utilize outdoor play areas at any one time;
7. Hours of operation are limited to 7:00 am to 6:15 pm, Monday through Friday, year-round; the latest departure for staff will be 7:00 p.m. to accommodate late pick-ups of children;
8. Staff and children should arrive and depart the site in a staggered manner;
9. Special events, must take place within normal weekday operating hours, shall be limited to no more than eight (8) events throughout the calendar year;
10. Staff workshops must be held on site during the weekday evening hours, will be limited to three (3) occurrences per calendar year;
11. No amplified music or public address system of any kind shall be used outside the interior of the child daycare building;
12. Trash and recycling collections shall occur after 9:00 a.m. and prior to the evening peak period;
13. Outdoor lighting shall be limited to the hours of operation (except that limited security lighting is permitted afterhours);
14. Petitioner must implement the Transportation Management Plan, revised in January, 2012, (Exhibit 169(a)), modified to comply with the following conditions:
 - a. One year after commencing operation, the Petitioner must prepare a traffic study to determine delays and queuing at the intersections of University Boulevard and Brunett Avenue and Gilmoure Drive and Brunett Avenue. The study should include results taken on a minimum of three typical weekdays. The results of the traffic study, which should indicate the number of children in attendance on each studied day, must be shared with members of the Community Liaison Council and filed with the Board of Appeals with a copy to Technical Staff. The Board will thereafter schedule a work session to determine whether conditions are such that enrollment should be decreased from the maximum permitted under this special exception permitted.

- b. The Traffic Coordinator shall provide contact information (including phone number and mailing address) to representatives of the South Four Corners Civic Association (“SFFCA”), the North Four Corners Civic Association (Guidelines) and the Woodmoor-Pinecrest Citizens Association (WPCA) in advance of the opening and occupancy of the Childway Center on the Property.
 - c. No future changes may be made to the TMP without filing a petition for modification of the special exception with the Board of Appeals.
 - d. Compliance with the terms of the TMP shall be made a part of the contract with all clients of the day care.
15. The applicant, prior to the release of any building permit associated with the proposed daycare center, must pay \$11,300.00 to Montgomery County Department of Transportation (DOT) to satisfy the Policy Area Mobility Review (PAMR) requirement of the APF test (to mitigate one "new" weekday site-generated peak-hour trip); and
 16. The applicant must complete all site frontage improvements, including the proposed new sidewalks along Gilmore Drive, Brunett Avenue, and West University Boulevard, prior to the release of a use and occupancy permit for the proposed daycare center.
 17. No sign may be posted unless and until Petitioner obtains a permit therefore and a sign variance, where required, and a copy of these documents are filed with the Board of Appeals. Signage must be limited to a single monument sign along University Boulevard and a sign at the driveway entrance on Gilmore Drive, as shown on the Site Plan and Site Detail Plan (Exhibits 96(a) and 99(b)).). Subject to site plan approval, the Petitioner shall also locate a “right-turn only” directional sign at the egress to the parking lot.
 18. Petitioner must comply with and implement a tree save plan signed by a certified arborist and registered landscape architect on September 3, 2010 and referenced in the Technical Staff Report dated December 6, 2010 (Exhibit 47, Attachment 3).
 19. Petitioner must comply with the stormwater management plan approved by DPS, and must obtain and comply with sediment and erosion control permits.
 20. Petitioner must comply with the terms of its Revised Statement of Operations of April 28, 2010 (Exhibit 168(a)).
 21. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility.
 22. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioner is bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 3(c), certifying that the operator will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception.

23. The Board will retain jurisdiction to monitor impact of operations upon the community for five (5) years. If results of the traffic study required pursuant to Condition No. 14(a) of this Report so warrant, the Board may require additional traffic studies during five years it retains jurisdiction.
24. 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: March 5, 2012

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'L' and 'R' followed by a long horizontal flourish.

Lynn A. Robeson
Hearing Examiner

APPENDIX

SUMMARY OF TESTIMONY

April 15, 2011, Public Hearing

1. Ms. Jane Nelson

Ms. Nelson qualified as an expert in architecture. T. 17. At the beginning of her design process she walked through the neighborhood to get a sense for the style and scale of the architecture. T. 18. Her goal was to design a non-residential building so that it would be highly compatible with the residential neighborhood. T. 20. She determined that there was one style of architecture in the neighborhood, which is single-family detached houses which are primarily box shapes. The homes have gabled or pitched roofs. Some of the homes have variations such as sunrooms or additions on the end. Entries are articulated with a gabled porch supported by columns. If there was an addition to the rectangular box, it would often occur as a wing on one end of the block. T. 20.

Almost 100% of the surrounding homes are dark red brick with articulations in white siding. Articulations in white siding included sunrooms, the end of gables, or a second story of the whole house. All of the roofs are shingled. Windows are typically double-hung and are either individual or grouped in pairs of twos or threes. T. 21.

The Petitioner has located all the mechanical equipment in the basement to accommodate the operational needs for classrooms in the space above grade. T. 21. The design began with a rectangular box. In order to break down the mass of the basic structure, she utilized features such as a sunroom image on one end, and on the east side, she has carved out from the bulk of the box a wing type addition. The entry is articulated by a porch with columns. T. 21.

The design distinguishes itself from being an actual residential house through the use of the water table and having taller windows. T. 22. Wood fascia is used on the columns, and the window frames and sash to bring some liveliness for the children. T. 22.

The Applicant modified the design from what was originally proposed. T. 22. They have eliminated one classroom and made another grade smaller. T. 22. This reduced the size of the sunroom and allowed them to carve away the corner of the opposite side to give a wing addition effect. T. 22. This permits a smaller roof line adjacent to the residential area. T. 22. The building is now 2 feet further from the property to the west and four feet further from Brunett Avenue. T. 23. The roof of the main building is 31 feet tall, the wing is 22 feet tall, and the sunroom is 23 feet above finished grade. T. 23. The roof design compares very similarly with the two-story homes in the neighborhood.

Ms. Nelson testified that, in her expert opinion, the building is compatible in its sighting, scale, bulk, height, and materials and has a residential appearance. T. 24. She opined that the proposed special exception was in harmony with the general character of the neighborhood because the building scale is broken down to fit within the general character of the neighboring homes. The structure as proposed acts as a buffer between the high-paced speed of a major highway and a residential neighborhood. T. 25.

On cross-examination, Ms. Nelson testified that the building is 5,206 square feet. She also stated that while the building compared similarly in height to the two-story homes, it was one-story. T. 25. The height of the eave is similar to other one-story homes in the neighborhood although the height of the ridge is taller. T. 26. It is taller than the one-story buildings in the neighborhood. T. 26. She stated that it is fair to say that about one-half of the homes in the neighborhood are one-story. T. 26. The sunroom is approximately between 750 and 800 square feet and the footprint is approximately $\frac{2}{3}$ the size of the average house in the neighborhood. T.

27-28. She testified that the building could not be made smaller and meet the code requirements for the number of children in the day care. T. 30.

Ms. Nelson testified that the building was not intended to match the size of the homes in the surrounding area. T. 30-31. Rather, architectural elements which she believed were consistent with the neighborhood were incorporated into the larger building. T. 31. She thought that the portion of the building structured to look like an addition was compatible even if there were few additions in the community because neighborhoods generally change over time. T. 33.

2. Ishrat Memon

Ms. Memon testified that she has been providing childcare for over 35 years and described her education and experience. T. 34-35. She now operates four child care facilities under the Childway name. She is director of one which has 275 children. T. 34. She has another center in College Park which has 68 children and one in Beltsville which has a capacity of 48 children. T. 34-35. She proposes to operate this facility. T. 35.

Ms. Memon stated that the center is proposed to serve children ranging in age from infants to school age children. T. 36. If approved, the center will have 12 infants and 18 toddlers at a ratio of 3 staff to 1 child. T. 36. There will be 20 3-year olds at a ratio of 10 to 1, 20 four-year olds at a ratio of 3 to 1, and there will be 12 five to twelve year olds in a room with a ratio of 15 children to 1 staff member. T. 36. There will be 20 staff members working in the center. T. 37. All of the transition between the different age groups occurs in the summer months. She may not have additional children during the summer transition period. T. 38.

Ms. Memon testified that she uses the McGraw-Hill Creative Curriculum. This curriculum uses music and toys to stimulate growth for infants. The curriculum for toddlers teaches skills such as independent feeding and toilet training. For the 3-year olds, they bring in computers and with the children who are 4, they focus on phonics and reading readiness. T. 38-39. They help the

school age children with their homework and also provide activities such as cooking projects and field trips when they are there for a full day. T. 39.

Ms. Memon does not propose to do any cooking on-site. They serve breakfast in the morning which may be different kinds of cereal, or frozen pancakes, or waffles. They warm the food with microwaves. They also serve fresh fruits. The snack provided in the afternoon may be pretzels, cookies, fresh fruits, or the product of a cooking project. T. 39. Bulk foods will be delivered to the Burtonsville center and they will carry the necessary food items to this location. T. 39-40.

Ms. Memon stated that the maximum number of children that would be outside at any one time would be between 20 and 25. T. 40-41. Weather permitting, children are outside during drop-off in the morning for approximately 20-25 minutes. At other times, the children go out by age group for approximately 15 – 20 minutes. T. 40. There are special events such as a spring egg hunt and on Mother's Day. At this site, she proposes to assign each age group a different day for this event in order to handle the parent visitation. T. 41. In addition to those special events, there is a graduation program and a spring program, which will also be different days for different age groups. T. 41. The maximum number of special events will be 8 per year. T. 41-42.

Ms. Memon stated that drop-offs in the morning take approximately 6 – 10 minutes. T. 42. During the "busy time" they have approximately four cars at a time. T. 42. The parents park, walk the children inside and take the children to the classroom. T. 42. In the evening, the parents also have to come inside and staff records their departure. This takes approximately 6 – 10 minutes in the evening; in the morning, the process is quicker. T. 42-43.

She anticipates that one special needs school bus will be dropping children off at this site. She thinks that there will only be one non-special needs bus coming to the site. T. 45-46. She testified that at her Burtonsville facility, most of the children are in by 10:00 a.m. In her other facilities, they are generally in by 9:00 a.m. She anticipates that the peak drop off time for this

center would be between 7:30 a.m. and 8:15 a.m. T. 46. The educational program begins at 9:30 a.m. T. 47. At Burtonsville, the children generally begin coming in at 7:00 a.m. and by 9:20 a.m. most of the enrollment has arrived. T. 47. By 10:00 a.m., all of the children have usually arrived. T. 47.

Ms. Memon described the traffic operations at her Burtonsville site. T. 49. There is no public transportation at Burtonsville, so the parents will drop off and staff will park daily. The staff does carpool and her van picks up sometimes 5 or 6 staff. Approximately 12% of the parents at Burtonsville have siblings enrolled. The van is also used to pick up children at public transportation along Briggs Chaney Road and take them to the Burtonsville facility. T. 50. She testified that approximately 4 cars are parked at one time during the morning and afternoon drop offs. At this facility, she estimates that there will be 4-6 cars in the morning and 6-8 cars in the afternoon. Approximately 90% of her staff takes public transportation at her Maryland Farm and College Park facilities. T. 53. Approximately 50% of the parents take public transportation as well. T. 54.

At the proposed site, Ms. Memon estimated that about 90% of the staff would take public transportation. T. 54. She believes that the number of parking spaces on the site will be sufficient for enrollment of 94 children and 26 staff. She also believed that parents living in the neighborhood would walk to the site. T. 54-55. She agreed to follow the terms of the transportation management plan proposed for the site. T. 55. In her opinion as a childcare operator, she testified that the special exception would be in harmony with the neighborhood and not be detrimental to the peaceful enjoyment, economic value, or development of surrounding properties. T. 56. In her opinion, the childcare would be a plus for the community because children add “sparkle” to the community. T. 57.

On cross-examination, Ms. Memon testified that she has not hired any staff and does not know for certain how many will take public transportation. T. 58. Drop off takes longer in the

evenings because the parents stay to talk. The College Park and Beltsville facilities are inside larger housing developments. T. 65. There may be one school bus at this location that would be either dropping off or picking up kids going to one school in the area. T. 65. The school bus would be a regular sized school bus. T. 65. There may be a small school bus dropping off and/or picking up special needs children, although not at the peak hours. T. 66. The larger school bus will drop off during peak hours. T. 66.

She also testified that children were loud and boisterous on the playground. T. 69. There are 4 other day care facilities in the area. T. 69-70. The public school bus is going to pick-up and drop-off school age children. There is one elementary school which will provide the bus. T. 72-73. The parents will drop off the school age children early and the public school bus will transport them to the school. T. 73. There will be 12 children school age children from the elementary school. T. 71-73. She cannot make a projection as to the number of special education children who will attend. T. 74. She did not know where the public transportation is in relation to the site. T. 75. She believes they are within walking distance. T. 75.

Ms. Memon testified that she felt the 20 parking spaces were sufficient to handle those visiting on special event days. T. 75. Usually, grandparents come with parents in one car. As far as non-peak hour traffic, Ms. Memon testified that the public school bus would drop the school age children off at 3:00 p.m. In Burtonsville, she has two parent pick-ups at this time as well. T. 76.

Ms. Memon testified that after the initial visit each month, the morning drop-offs occur faster because parents do not bring in additional items. They bring diapers, formula and food monthly and store it at the center. T. 77. In the afternoon, they spend more time because they go through a sheet recording the child's activities during the day or spending time with the child on the playground. T. 78.

The Burtonsville site is a business complex and the business use the proximity of the day care to attract new business. T. 78. The special needs children are mostly two or three year olds needed help with verbal development and are included in the number of children permitted for each age. T. 79.

She also testified that the public school bus would pick up children from the center at approximately 8:30 a.m. or quarter to 9:00 a.m. T. 83. Once she is licensed for this location, the bus will drop the children off. T. 84-86.

3. Mr. Craig Kay:

Mr. Kay qualified as an expert in real estate sales and testified that he is a partner in Gilmoure-Brunette, LLC. T. 87-88. His company originally purchased the property to develop 5 single-family homes, but abandoned that plan when the real estate market dropped. T. 89-90. He had researched the possibility of developing the site for a day care and chose Childway. He believed that the site was appropriate for a day care because the property is right on University Boulevard and public transportation is within walking distance. T. 91. It is also central located between Route 97, Georgia Avenue, Route 29, and Poolesville Road. T. 91. His research revealed that there are 31 public schools within 5 miles of the facility. T. 93.

Mr. Kay testified that he has a 15-year lease with Childway, conditioned upon the grant of the special exception. T. 95. Originally, the site was approved for a single-family home used for a dentist's office. T. 95. The house fell into disrepair and was structurally unsound. There was mold, some infestation, and trouble with people breaking in. T. 95. For these reasons, he demolished the house sometime in 2006-2007 during the subdivision process for the single-family homes. T. 96. He met with the community once before filing the application to get the community's input. At a second meeting, they presented conceptual plans to the community and tried to see what they could do to meet the concerns relating to traffic and landscaping. T. 96. They revised the plans, however, the community did not want to meet after that. T. 96-97. He

also met with Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) during that time. T. 97. They were initially supportive of the project, but when the neighborhood objected, their attitude changed. T. 97. They reduced the roof elevation on the east side of the building and eliminated the underground parking. T. 97. Before the Planning Board hearing, the comments from the community were mixed. T. 97. They also reduced the number of children from 120 to 94. T. 99. He waited until after the Planning Board hearing to make the changes because he didn’t have any feedback prior to that time. T. 100.

Mr. Kay testified that, from a real estate sales standpoint, he believes that the custom architecture is residential in appearance and takes a lot of architectural elements from the existing neighborhood. For this reason, it will have a positive impact on the neighborhood. T. 101. He believes that day care is a vital service and the building that existed before was decayed. He believes that it buffers the neighborhood from University Boulevard. T. 101. He thought it would benefit this community because the Four Corners area is moderately priced which should appeal to younger families with children. T. 104.

He did two studies of the impact of day care facilities on residential homes. One of these facilities studied, a day care for 125 children in Gaithersburg, is different because it’s in a commercial area. It is, however, somewhat comparable because it’s located near the residential neighborhoods of Fernshire Farms and Quince Orchard Knolls. T. 105. The homes in those communities were built before the day care. He did a study for resales in both communities and sales prices were all above the sales prices within the same zip code. T. 105. The other facility studied was a special exception for a day care on Decatur in Kensington. This was a smaller facility for 60 children. He was not sure whether the approval was for an addition to an existing structure or whether it was for new construction. T. 114-115. There was sufficient data in MRIS for this study. T. 116. According to Mr. Kay, it was difficult to draw a conclusion for the first year following the approval. The units dropped in value, but significantly less than prices county-

wide. T. 116. After the facility was expanded, the neighborhood experienced an 8.7% drop in the number of sales and a 4.07% drop in sales price from the prior year, which was much less than those figures county-wide. T. 116. His research indicates that resales for the neighborhood were not affected by the facility because the prices didn't decrease, although it's hard to extrapolate from the data due to present economic conditions. T. 106. Homes values in the rest of the County are decreasing at a faster rate. This day care is in the near the subject facility. T. 106. The last example is the day care in the YMCA, near the site in the Indian Springs neighborhood. T. 106. That day care has approximately 100 or 150 children in its program. The day care was expanded in 1994, and they were able to get MRIS records from 1996 and 1997, which was a flat time in the market. The surrounding neighborhood experienced normal appreciation during that period. T. 106.

Mr. Kay testified that, of the three neighborhoods studied, the average number of unit sales dropped 15.87% within the neighborhood as compared to a 2.03% drop during the same period county-wide, but the amount of inventory in the entire county should not be compared to three neighborhoods because there is very little new development in this area. T. 117. His point in presenting the studies is that prices are dropping, but they were dropping for everyone. The Kensington neighborhood didn't drop as much as the rest of the county. T. 119. He did not feel that the special exception, if approved, would be detrimental to the use, peaceful enjoyment economic value or development of surrounding properties. T. 120. The proposed use will provide a buffer that isn't there now, and the architecture and landscaping will be compatible with the neighborhood. T. 120-121.

Mr. Kay testified that the owner would agree to make arrangements for regular trash removal outside of the peak hour. Trash removal would be five times a week. T. 121.

4. Mr. Carl Starkey:

Mr. Carl Starkey qualified as an expert in transportation planning and traffic engineering. T. 124. He prepared the traffic study for the special exception application. T. 125-126. In order to reduce the neighborhood's concerns about speeding, they introduced a "bump-out" as a traffic calming measure. T. 126-127.

Mr. Starkey testified that all secondary roads meet current code standards. T. 128. He also stated that all intersections studied would operate below the current threshold. The critical lane threshold for the policy area is 1600. The maximum value obtained after completion of the project is 1483 (a level of service D) during the morning peak hour at the intersection of Maryland Rt. 193 and U.S. 29. The remaining intersections are all operating at level of service A, below 1,000. T. 128. Technical Staff determined which intersections were to be studied. T. 128-129. Trip generation rates are taken from the Local Area Transportation Review ("LATR") and Policy Area Mobility Review ("PAMR") guidelines published by Montgomery County. T. 129. Public transportation is located in the northwest quadrant of the intersection of Brunett Avenue and University Boulevard in the form of an existing bus stop. T. 130. There are Ride On and WMATA routes servicing the bus stop. T. 130.

Mr. Starkey testified that he reviewed the site circulation to ensure that a school bus would be able to maneuver into the driveway, through the parking area, and to the egress point. T. 130. He found that a bus could maneuver easily through the property. T. 130.

According to Mr. Starkey, the bump-out for traffic calming will be located in the northeast quadrant of the intersection of Brunett Avenue and Gilmoure Drive. The bump-out is not necessary for the special exception but was included to address a citizens concern about speeding. T. 131. He also reviewed proposals to reconstruct the sidewalks along Brunett Avenue and University Boulevard to ensure there is a green buffer between the sidewalks and the road. This buffer enhances pedestrian safety by moving the pedestrian further from the roadway. T. 131.

The Applicant's amendment to the petition lowering class size will reduce traffic in one of the peak hours by 8 vehicles, which is not significant. T. 132. In his opinion, there would be no adverse impact because the site is located in the far north of the community, adjacent to University Boulevard. Even though the site fronts University Boulevard, SHA will not allow direct access from University for any use due to the proximity of Brunett Avenue and an overhead sign for U.S. 29. T. 132.

Mr. Starkey testified that not all of the trips generated by a day care would occur in the peak hour of traffic flow. In addition, not all of the staff and students will be arriving in single-occupant vehicles. Based on Ms. Memon's experience, between 8% and 15% of the parents bring more than one child. Ms. Memon also has the ability to control traffic entering the site by promoting use of transit, so not everyone will be arriving in a single occupant vehicle. T. 133-134. His study concludes that a maximum of 30 trips, or about 1 vehicle every 2 minutes, will occur during the peak one hour of travel with the enrollment of 120 originally proposed. T. 134.

Mr. Starkey also described the northbound turning movements for Brunett Avenue and University Boulevard. Currently, there is a single lane approach as one travels north on Brunett approaching University Boulevard. They propose to stripe separate left and right turn lanes to reduce the critical lane volume and the queuing that would occur along Brunett Avenue. He testified that he had looked at the queuing along Brunett Avenue and determined that it would not block the egress point, but he could not recall the exact numbers. T. 135. The benefit of having the separate left/right lanes is reduced queuing. T. 135. He does not anticipate a queue or significant delay at the intersection of University Boulevard and Gilmoure because the level of service there is LOS A. T. 135-126. Delays of one and one-half minutes raised by the citizens would be typical of signal delays. Montgomery County has set the signal at the intersection of University and Brunett with a 90 second cycle. Mr. Starkey testified that his queuing analysis did not address delays in drop-offs; it was based solely on the volume of traffic entering the

intersection. T. 136-137. Any queuing entering Brunett could be contained on the property. T. 138.

Mr. Starkey testified that the proposed use also met the requirements for Policy Area Mobility Review. The policy area in which this site is included requires a 10% reduction of newly generated trips. In this case, the required reduction is 2 trips. The Applicant is proposing to pay a fee in lieu of trip reduction amounting to a total of \$22,600 to meet PAMR requirements. T. 139. Technical Staff concluded that the traffic would not have any adverse impact on the surrounding area based on the original enrollment of 120 children and 25 staff. T.139.

Mr. Starkey stated that he had reviewed the Transportation Management Plan (“TMP”) submitted by the Applicant. T. 140. In his opinion, it will provide a framework to ensure that patrons of the day care center will not park within the community because it provides information on transit which is plentiful in the area. T. 140. The TMP also will assist in policing the on-site circulation. T. 140. In his opinion, the proposed use would not create a traffic nuisance either on the public streets or internally. T. 140-142. Studies performed by the General Services Administrations and observations he has made at other sites indicated that the average turnover of parking spaces during drop-offs is approximately 7 minutes. T. 142. Therefore, each space could serve 8 individuals in one hour, even if half of those spaces were occupied by staff. T. 142.

On cross-examination, Mr. Starkey testified that traffic along Gilmoure could exit onto University Boulevard from Lorraine Avenue, which was not included in the study. T. 148. He also stated that there is no traffic light at the corner of Brunett and University Boulevard. T. 150. His estimate of a 90-second delay entering University was typical. He personally made that left turn twice around 3:00 p.m. T. 151. Rush hour begins between 3:00 p.m. and 3:30 p.m. in this area. He stated that even though approximately 2/3 of the trips generated by a day care are pass-by trips, they are new trips to this neighborhood. T. 155. He does not believe that traffic in this community will grow at a significant rate because the neighborhood is already built out. T. 155.

He stated that cars could flow past the bus while the bus is parked in the parking lot. T. 157. If the proposed use did not have the number of parking spaces required by the Zoning Ordinance, he still believed that there was sufficient parking based on the ability to turn over eight vehicles an hour for each space. T. 159. There would be some increase in noise on Gilmoure Drive due to the play areas, but the majority of the noise would be toward University because the play area is closer to that. T. 164. There will be increased traffic on Gilmoure Drive. T. 164. Currently, there are approximately 25 vehicles per hour along Gilmoure Drive during peak hour. With the proposed use, it will increase by approximately 30 vehicles during the peak one hour. He determined the intersections studied and the trip distribution used for his report in consultation with Technical Staff. T. 166. Policy Area Mobility Review covers areas within the policy area but outside the local intersections studied and tests both transportation and transit-oriented facilities. T. 167.

5. Kim Currano:

Ms. Currano qualified as an expert in civil engineering. T. 171. She presented the stormwater concept plan for the property. She stated that the subject property is currently vacant. There are existing water and sewer taps for the original home on the north side along University Boulevard. The property slopes to the south. No stormwater facility currently exists at this time. T. 172.

The proposed development will take water and sewer from the existing taps if possible. If the existing taps are not adequate, they may take water from either Brunett Avenue or Gilmoure Drive. Sewer is also available along Gilmoure Drive. T. 172.

Ms. Currano presented a stormwater concept plan approved by Technical Staff. The amendment reducing the number of children and staff reduces the requirement for on-site management. T. 173. If the Applicant proceeds with the same design, the design would overcompensate for stormwater. T. 173. As a result, the special exception will be adequately served for water, sewer and stormwater. T. 174. All the stormwater will be retained on-site. The

site is divided the site into quadrants. The northern quadrant along University Boulevard will handle the storm water from the roof. There will be three dry wells, underground gravel pits that allow water to seep into the subsoil, along the University Boulevard frontage. A portion of the building and most of the parking lot will drain to a bioswale along Gilmoure Drive. The bioswale will clean the water through nutrient uptake and uptake through plants in that area. A small section of the site, primarily the entrance, drains to some underground pipes. T. 174. This is filtered through a cartridge and a vault underground. T. 175. The stormwater concept plan for the day care facility conforms to the new Maryland stormwater management regulations. T. 175.

On cross-examination, Ms. Currano testified that three roof drains will siphon water from a portion of the northern roof of the building. This water goes to the dry wells. A portion of the building and the parking area will go into the bioswale which has a nutrient uptake and the water uptake from the plants. For the balance of the building, water will drain to an underground storm drain inlet. All water will be captured on-site before it enters adjacent residential lots. T. 176-177. In a very large storm, the water could be captured by an inlet along Gilmoure Drive. Therefore, any overflow water would remain on the street. T. 178. The bioswale runs along the residential property and keeps water from entering across the property line. T. 178.

6. John Sekerek, Jr.:

Mr. Sekerak qualified as an expert in landscape architecture and land use planning. T. 183. He was retained to identify what potential uses would be appropriate for the site. He immediately decided that it was an appropriate special exception site because of its frontage on University Boulevard directly across the street from an institutional use and because there were no environmental constraints on the property. T. 183-184. He opined that the subject property's proximity to a large number of homes nearby that would use a day care also made it an appropriate use. T. 184.

The subject property consists of 37, 987 square feet in the R-60 Zone and is square in shape. It has three frontages along University Boulevard, Brunett Avenue to the west and Gilmore Drive to the south. It gently slopes from the northern corner to the south. There is one “specimen tree” on the property, but only due to its size. It is in the northern corner of the site, but is in very poor condition and is underneath power lines, so it’s been severely altered. T. 186-187. There is an existing sidewalk directly abutting the curb along University Boulevard and Brunett Avenue; Gilmore Drive does not have a sidewalk. T. 187.

There is a bus stop across Brunett Avenue where it intersects with University Boulevard. No crosswalk currently exists. There are no confronting properties across Brunett Avenue. To the east, there are adjoining residential properties also in the R-60 zone. To the south across Gilmore, there are additional single-family homes in the R-60 Zone. T. 187. To the west of the property is a place of worship. T. 188. Across University Boulevard there are single-family detached homes also in the R-60 Zone and relatively unimproved park land. T. 188. Further to the east are medical offices and similar uses along the south side of University Boulevard, a senior housing complex to the north side of University Boulevard, and to the east is the Four Corners Commercial District. T. 188.

The building proposed is one-story consisting of 5,600 square feet. It is 18 feet from the nearest point along the eastern property line, approximately 35 feet from the northern property line, and has greater setbacks from Gilmore and Brunett. T. 188. The play areas are oriented away from the nearby residences on the north and west sides of the building and enclosed with fencing. Along the east side, there is a six-foot, board-on-board fence buffering the adjoining residences from the parking compound and the building. T. 189.

The parking area is set back 25 feet from Gilmore Drive and has 28 spaces. A full movement access is on Gilmore Drive and a right-only access is along Brunett. Persons entering the day care must enter from Gilmore and have the option of exiting either from Brunett or

Gilmore. T. 189. Petitioner proposes to reconstruct the sidewalks on University Boulevard and Brunett Avenue to move them further from the curb. The Applicant also proposing to construct a sidewalk along Gilmore Drive as well as a bump out along Brunett Avenue and Gilmore Drive to slow traffic. T. 189.

Under the revised plan, the outdoor activity area is reduced from 4,500 square feet to 3,525 square feet. The Applicant proposes to add shade trees to the property to shade the playground and parking areas. Due to a State Highway Administration sign on the northern corner of the property, the Applicant was not able to landscape in that area. T. 193.

In addition to vehicular access, Mr. Sekerak testified that there will be pedestrian access as well from sidewalks coming from Brunett Avenue and from Gilmore Drive leading to the doors. The also contain bike racks. T. 194.

Mr. Sekerak testified that there will be four pole lights 12 feet in height to preserve a residential appearance. They are located to complement wall-mounted lights on the building itself, which are residential in nature. The wall-mounted lights are located at the doorways on the building and the pole lights are located in the parking area for safety. The lights at the doorways would remain lit for security reasons. T. 196. The photometric analysis shows that the foot candle reading at the ground shows that there will be enough light to enable people to get to their cars and to the building, without over-illuminating the balance of the property. The fixtures are designed to that the light is cast downward. T. 196-197. The lighting meets the requirement that there be 0.1 foot candles or less at a side or rear property line. T. 197.

Mr. Sekerak stated that the property is exempt from Article 2 of Chapter 22(a) because of its size and lack of forest. They did have a tree save plan approved by Technical Staff because of the specimen tree in the northern corner. The Applicant does not, however, propose to save any trees on the site. T. 198.

Mr. Sekerak defined the neighborhood to include those properties across University Boulevard which have a visual relationship to the site. T. 199. He included those single-family homes between a senior housing community to the west and Lorain Avenue to the east because, in his opinion, Lorain is the beginning of the Four Corners Commercial District. T. 199. The Commercial District is the delineating factor to the east. T. 199. The delineating factor to the west is the medical office buildings and similar nearby uses. T. 199. He defined the southern boundary of the neighborhood to include lots fronting on the south side of Harding Avenue. T. 199. Technical Staff did not include the homes on the south side of Harding Drive because they used Harding Drive itself as the delineating factor. T. 200. He believes that the homes on the south side should be included in the neighborhood because Harding Drive is a two-lane residential road. T. 200.

Technical Staff defined the neighborhood to include two, rather than one, tiers of homes rather than solely those fronting on University Boulevard. T. 200. The additional homes included by Technical Staff front on Timberwood. Mr. Sekerak didn't agree with that delineation. He agrees with Technical Staff's conclusion that the neighborhood is predominantly single family, detached homes. T. 200.

Mr. Sekerak testified that the relevant portions of the Master Plan were the recommendations as to commercial office land uses and the reconfirmation of the R-60 Zone which permits child day cares as a special exception. T. 201. The land use plan of the Master Plan recommends the property for commercial office use, but does reconfirm the R-60 Zone for the property. T. 201. The proposed use also furthers the Master Plan goals to improve pedestrian access, circulation and safety through the construction of sidewalks and crosswalks at the bus stop. T. 202. Mr. Sekerak stated that he believes child day care is a needed service in the community and the Master Plan recognizes that. It also recommends that land uses and design of new development should address the noise coming from University Boulevard. T. 202. Even though

the Plan discourages commercial uses outside the Four Corners Commercial District, it does recommend this site for commercial office and is removed from the commercial district only by 500 feet and five residential properties. T. 203. None of the intervening five properties are special exceptions. Child day care is not a commercial use for zoning purposes; rather it is a service use. This petition will remove a commercial land use designation from the property and introduce a service use. T. 204.

Another contributing element in the Master Plan is that the former Yeshiva school across the street from the property included a day care facility. While the Master Plan recommended that the Yeshiva site be used for a park if not rebuilt for a school, it does recognize that a school is appropriate at that location. While the land ultimately became parkland, in Mr. Sekerak's opinion the Master Plan recognized that a school was within the character of the then-existing neighborhood. T. 205. In his opinion, the Master Plan recognized the value of service uses. T. 205.

The Master Plan also recommended reuse of existing buildings for special exceptions or new buildings that are residential in character and scale. T. 206. The then-existing building was razed due to decay. The proposed use is permitted by special exception in the zone. In Mr. Sekerak's opinion, developing a day care for more than 30 children in a single-family home or the pre-existing building is not realistic. T. 206. Day care facilities for this number of children are permitted by special exception in the zone and are inherently of a building mass larger than a single-family home. There is a place of worship across the street in a similarly sized building that is two stories with a flat roof, which is not as residential as the design here. T. 207. He believes that the amended plan reducing the size of the building brings the facility and the architectural details on the building renders it more compatible with the neighborhood. T. 209. It is now 60 feet away from the nearest residence. T. 209.

Mr. Sekerak testified that a composite of aerial photographs demonstrated that the previous house and dentist office was larger than the nearby single-family homes. T. 211. The preliminary plan of subdivision as single-family homes shows that the footprint of those homes could be larger than other homes in the neighborhood. T. 213. Access to University Boulevard was not permitted. T. 215.

Mr. Sekerak testified that an inherent characteristic of a day care facility includes the large mass for the physical building and that they are typically one-story. T. 216. He stated that the Dayhill facility was over 9,000 square feet adjacent to a neighborhood of single-family homes and the Goddard School day care was 20,500 square feet abutting single-family homes. According to Mr. Sekerak, the Planning Board and the hearing examiner found that the pitched roofs, varying textures, and the architecture were residential in character and compatible with the surrounding neighborhood. Replication of a single-family home is not required. T. 218.

Other inherent characteristics of day care facilities are parking areas, including drop-off and pickup areas, lighting, noise from children, outdoor play areas, early and long hours of operation, employees, vehicular trips to and from the site, signage, deliveries, and trash pick-up. In his opinion, the proposed facility does not have any non-inherent characteristics or adverse effects. Examples of non-inherent conditions in other day care special exceptions include the existence of special environmental protection areas, and, in one facility, access through a narrow road that was also the sole access for 108 homes. T. 219. None of these conditions are present on the site. T. 219.

Mr. Sekerak testified that the application complies with all standards and requirements of the R-60 Zone. T. 219. The minimum area required is 250 square feet per child, although they are below the 500 square foot per child threshold. T. 220. The lot size exceeds the minimum requirements for the zone, which is 6,000 square feet. The setback from the street exceeds the minimum required by ten feet. T. 220. The proposed building is 31.3 feet in height, well below

the maximum building height of 35 feet. T. 221. The building covers 15% of the lot, although 35% coverage is permitted within the zone. Parking setbacks for the R-60 Zone are 25 feet from the road and adjoining properties, which are met on the property. The State of Maryland requires a 3,525 square foot outdoor play area, and approximately 6,000 square feet are provided.

The Zoning Ordinance requires 36 spaces and they are providing 28 spaces. Section 59-G of the Zoning Ordinance permits a variance from the full requirement, which they have requested. T. 224. In Mr. Sekerak's opinion, the reduced number of parking spaces has no safety impact because of the staggered arrival and departure times and the fact that one person uses a single parking space only for approximately 7 minutes during drop-off and pick-up. T. 224-225. The federal government's guidelines for this type of facility would require 24 spaces for this facility rather than the 28 spaces provided. T. 225. The close proximity to public transportation and the number of bus lines running to the bus stop decreases the need for parking as well. Some parents will have two siblings enrolled in the day care and some parents from the neighborhood will walk to the facility. T. 225. The Transportation Management Plan precludes parents from parking off-site and requires that a person be designated to be responsible for meeting this requirement. T. 226. In Mr. Sekerek's opinion, there have been other day care operators who believe that the number of spaces required by Section 59-G of the Zoning Ordinance is unnecessary. T. 226. In Board of Appeals Case No. 2759, 89 spaces were required and 60 were provided. T. 226. In his opinion, there are sufficient parking spaces to accommodate drop-offs and pick-ups and still have sufficient spaces for staff. T. 227.

Mr. Sekerak testified that the proposed use is compatible with surrounding properties. It is difficult to achieve compatibility with uses across University Boulevard (park land and single-family homes) because of the intervening roadway. T. 227. West of the property is a place of worship. The proposed facility has a significant setback from Gilmoure Drive and there is a 60-foot separation from the closest homes on the east side. T. 228.

In Mr. Sekerak's opinion, noise from the facility would not adversely impact the neighborhood because the primary noise generator is University Boulevard. Traffic from the facility is below the required LATR standards. In order to avoid any impact from trash removal, the Applicant proposes regular trash pick-up rather than utilizing a dumpster. T. 229. While the Zoning Ordinance generally has an area requirement of 500 square feet of space for each child, a reduction to 250 square feet per child is permitted if adjacent properties are not adversely affected by the additional enrollment. The Applicant is proposing 404 square feet of land area per child, which exceeds the minimum required of 250 feet. The petition meets the standards for the waiver because there are only 12 children between the ages of five to twelve. T. 231. The play area provided is 170% of the minimum of 250 square feet per child permitted with a waiver. T. 232. Because the site has no environmental concerns, they are able to utilize it efficiently. The Applicant had discussed the possibility of limiting to 40 the maximum number of children outside at anyone time. T. 232-233. The play area is well away from nearby neighbors. The reduction in size makes the building more compatible with the surrounding community. T. 233. This is a very efficient site which makes it possible to utilize less space and still be compatible with the neighborhood. T. 234.

The Applicant is proposing two signs at the entrance/exit locations on Gilmoure and Brunett Avenue. Along University Boulevard, the Applicant proposes a sign which fits approximately within the four-foot fence. The sign will not be lit.

In his opinion, the proposed facility is consistent with the land use objectives of the Four Corners Master Plan. It is recommended for non-residential use and is providing a community service use in a structure that is residential in character. According to Mr. Sekerak, the general discouragement of special exceptions adjacent to the commercial area should not be tortuously misinterpreted to apply to this site. T. 237. The proposed special exception will be in harmony with the neighborhood because of its location along a major highway, its relationship with the

transportation network, the institutional use across the street. T. 238. The parking is appropriately sized and it has convenient access. There are pedestrian improvements which will enhance pedestrian safety and it conforms to a specific Master Plan recommendation to have crosswalks for bus stops. T. 239. He does not believe the use will have a detrimental impact on neighboring properties. The day care will not increase the intensity of special exception uses in the area because there is only one other special exception, a flower shop, within the defined neighborhood. T. 250.

On cross-examination, Mr. Sekerak testified that the day care is one block from the Four Corners Commercial District. T. T. 256. He acknowledged that the Four Corners Master Plan discourages special exceptions in residential areas immediately adjacent to the commercial district. T. 256. The subject property is within a residential neighborhood adjacent to the commercial district. T. 257. He also acknowledged that the Master Plan stated that residential neighborhood immediately adjacent to the Four Corners commercial district are particularly vulnerable to encroachment of non-residential uses, as are single-family homes along major highways. T. 260. He also acknowledged that the Master Plan recommends reuse of existing structures for special exceptions if feasible. T. 260. He testified that the nearest residential home is approximately 20' x 25' or 25' x 25' and of the single-family neighborhood homes could fit inside the sunroom portion of the day care. T. 263. He testified that the day care is much larger than the average single-family home in the neighborhood. T. 265.

Mr. Sekerak testified that the parking lot, including the driveway, is approximately 8,584 square feet. T. 269. The parking lot is larger than many of the lots in the neighborhood. T. 269. He did not know whether the non-residential uses along University Boulevard had entrances onto University Boulevard. T. 271. There are no apartments within the neighborhood as there are with some of the other Childway facilities. T. 271. He stated that while there are other day cares in the area, there are no day care facilities in the neighborhood he delineated. T. 272. When the

dentist's office was on the subject property, there was a driveway and limited parking area. T. 274. He also stated that the facility could have a lesser impact on homes outside the neighborhood as he delineated. T. 283.

Mr. Sekerak testified that, because the proposed use had no adverse impact on the defined neighborhood, it would not have an adverse impact on homes outside the neighborhood. T. 284. He opined that the further one goes outside the neighborhood, any impacts would lessen. T. 284.

He testified that the special exception for the Yeshiva School is significant because it demonstrates that the Master Plan felt that private schools were appropriate for the area when the Master Plan was adopted. T. 287. The Master Plan also cites day care facilities as building blocks of the community. T. 289. If this were a single family home, the maximum coverage would be 35% and the proposed coverage is 15%. T. 293. Day care facilities don't typically have second stories, so the larger footprints are inherent attributes of the use. T. 29.

November 10, 2011, Public Hearing

1. Mr. John Sekerak, Jr.:

Mr. Sekerak testified regarding the second amendment to the special exception site plan. T. 13. He testified that the Applicant had worked with Technical Staff to not only increase the amount of square feet per child, but reduce the size and scale of the building in comparison with neighboring structures. T. 10. The building is reduced by 20% from the preceding version and 32% from the original plan to 4,400 square feet. In order to address the scale of the building, they looked at homes in the surrounding area as well as previously approved lots for the same property.

The single-family home immediately to the east of the property is the closest building. The largest home in the surrounding area is directly across University Boulevard. T. 13. He stated that SDAT records are clearly incorrect as far as the square footage of this structure (located at 219 W. University Boulevard). Using Montgomery County's GIS system and aerial photographs, he determined there are two structures on the property both of which have a second

floor. T. 14-16. SDAT records list the total enclosed area as 1610 square feet, but in his opinion, there is obviously a much larger amount on the site. According to Mr. Sekerak, the combined enclosed floor area of both structures is 4,018 square feet. The amount attributable to the second floor is an estimate from viewing the property. T. 18-19. In his experience, it is not uncommon for SDAT to list incorrect information on its website. T. 20. Mr. Sekerak testified that, in his opinion, SDAT's records on another house across University Boulevard, 211 University Boulevard, are also incorrect. T. 22.

In Mr. Sekerak's opinion, the house adjoining the subject property, fronting along Gilmoure Drive (on parcel 927) has an enclosed area of 1,260 square feet, which is not comparable to the house adjacent (again to the east), identified as 413 Gilmoure Drive. T. 23. The house on parcel 927 is two stories; the home at 413 Gilmoure is a combination of one and two stories. T. 23.

He also analyzed the size of the footprints of the homes that could be built on the previously approved preliminary plan. T. 24. Those homes range from 4,000 square feet to 5,272 square feet and four of the homes would have been larger than the proposed day care facility. T. 24.

He reviewed an aerial photograph of the home previously located on the property. Using GIS information and other photographs, he believes that the home had a partial second story. T. 26-27. The second story would have had to be only $\frac{1}{4}$ of the size of the home itself to bring the total enclosed area to that of the proposed child day care building. T. 28. In his estimation, the footprint of the home, including a shed, was 3,455 square feet. T. 38. In addition to the surrounding homes, there is a large religious facility across Brunett Avenue. T. 28. Based on these examples, he believes that the facility is of a residential character and scale as recommended in the Master Plan. T. 29, 38.

While most of the homes within the defined surrounding area are a homogenous composition of single-family detached homes on very small lots, the lots along University Boulevard are larger and have larger structures on them. The proposed facility is larger than twice the size of the smaller homes. T. 28-30.

With regard to the Planning Board's statement that the facility should be limited to twice the size of the homes in the surrounding area, he does not believe that reliance on SDAT data is warranted because of the mistakes in that data. Also, he did not do a purely mathematical analysis of the scale of the building, but included other characteristics such as building orientation, setbacks, and buffering, in determining whether the scale of the facility was compatible. T. 33.

Mr. Sekerak further stated that because the subject property is a corner lot, there is no rear yard setback—the area between the building and the adjoining properties to the east is considered the side yard. At its closest point, the building is setback from the parcel 927 is 22 feet and the setback from the property at 413 Gilmoure is approximately 32 feet. The required setback is 8 feet. T. 37-38.

While the Master Plan language recommends that new buildings housing special exceptions should be residential in character and scale, Mr. Sekerak opined that the Master Plan didn't specify a particular size of structure unlike other master plans which do specifically refer to this. He introduced several excerpts from Master Plans, including the 1990 Bethesda-Chevy Chase Master Plan, the 1992 North Bethesda/Garrett Park Master Plan, the 1994 Aspen Hill Master Plan and the 1997 Cloverly Master Plan, which provided that special exceptions should be compatible with the scale and architecture of the adjoining neighborhood. T. 42-44. He opined that the Planning Board misinterpreted the meaning of the 1996 Four Corners Plan because had it intended to limit special exception uses by specific comparison to homes in the surrounding neighborhood, it could have used the language included in the other plans. T. 45.

Mr. Sekerak testified that the reduced size of the building also enabled them to address the residential scale in other ways to make it more compatible with the surrounding neighborhood. These included re-orienting the building toward Brunett Avenue, facing the religious facility on the other side. The prior plans had parking fronting along Gilmoure toward the neighborhood; now, the narrow side of the building faces Gilmoure and is setback at approximately the same distance as the other homes. T. 46. The façade of the smaller side fronting Gilmoure is 54 feet long; the façade of the house directly confronting the subject property across Gilmoure is 61 feet long. The play area is now located to the north of the building between the structure and University Boulevard. The elimination of the before- and after-care programs also permit a single vehicular access along Gilmoure rather than the two access points (on Brunett and Gilmoure) shown in the prior plans. According to Mr. Sekerak, parents can access the facility from University Boulevard very quickly. The new driveway access also preserves 100% of the existing on-street parking in the neighborhood, which was a major concern of the citizens with whom the developer met before submitting the revised plan. The parking lot now fronts the parking lot of the place of worship across Brunett Avenue, but is small and has more setbacks than that parking lot. The Applicant is no longer seeking a waiver of any parking spaces.

Mr. Sekerak testified that the new special exception layout has a wholly different relationship to the traveling public. The main sign is smaller and is a more conventional freestanding sign. They have eliminated directional signs necessitated by the earlier layout with two access points. T. 48-49.

The landscape treatments also remain generous, Mr. Sekerak stated. T. 50. There are street trees, internal shade trees, and shrub buffers, along with a six-foot board-on-board fence along the eastern property line designed to buffer those adjoining properties. T. 50.

On cross-examination, Mr. Sekerak acknowledged that he had never personally observed the original house located on the subject property and that it could have been designed to have a faux second story.

Mr. Sekerak also stated that the zoning ordinance would permit an accessory structure in the rear yard of 219 W. University Blvd., however, upon questioning from the Hearing Examiner, he testified that the larger structure was located in the rear yard. He also stated that this building could not be broken down into multiple structures on the site. T. 91-93.

2. Ms. Jane Nelson:

Ms. Nelson, qualified as an expert in architecture, testified that the architecture of the building was compatible with the homes in the surrounding neighborhood. Because of the building's reduced size, they were able to re-orient the structure with the narrow side facing the neighborhood and to locate the parking lot facing the place of worship across Brunett. T. 98-100. The reduced enrollment required them to redesign the building very efficiently because State law requires that the day care have 35 net square feet of classroom space per child. T. 100. In order to meet that requirement, they eliminated any administrative offices on the site and administration of the facility will be handled off-site at one of the other day cares. All the utilities have been placed in the basement so that it does not require floor area on the ground level. T. 100.

The Applicant also needed to keep the building to one story because additional means of egress and an elevator would be required, adding to the need for additional square footage. T. 101.

Ms. Nelson testified that the architecture in the neighborhood is characterized by gabled roofs, red brick buildings, and with architectural trim such as double hung windows and sometimes porches designating entry. T. 101. The current proposal incorporates the gabled roof, the porch entry and adds gables on the sides of the building. At the request of the community, she used a Dutch hip roof that is actually a gable angled back in order to reduce the height of the

façade. There is an exterior stair on the side of the building. It was made exterior to reduce the structure's size, but they've added a shed roof which is supported by columns and architectural trim which helps to articulate that façade and make it feel less like the end of a building. T. 102.

At the request of one of the staff, they have added a window to what used to be a blank façade facing University Boulevard. The rear façade incorporates two gables and have the central portion of the wing motif to suggest a shed room. T. 102.

The finishes on the building are red brick with double-hung windows. They've incorporated a water table to add articulation to the red brick, and are willing to add windows to the gables to mimic the look of a two-story building. T. 103.

In her opinion, the revised building is compatible with the residential character and scale of the neighborhood. T. 103. From a massing standpoint, she believes that the multiple roof lines do reduce the sense of having one large building. T. 103.

On cross-examination, Ms. Nelson testified that the basement will contain all of the utilities, including mechanical rooms for heating, air conditioning, the sprinkler, and fire pump room. It will also serve as storage for school supplies and administrative. The basement is climate controlled. T. 105. The 4,400 square foot area is excludes the basement area which is primarily below grade. T. 106.

3. Mr. Carl Starkey:

Mr. Starkey submitted a revised traffic report which reflected the reduced enrollment in the second amendment to the original special exception plan. T. 109. According to Mr. Starkey, the amended application would result in 31 net new diverted trips in the morning peak hour, and 41 in the evening peak hour as compared to 45 and 60 net new diverted trips resulting from the original application. T. 109. His analysis also concluded that the facility would generate 14 new trips, and these conclusions were accepted by Technical Staff. T. 110-111. Based on this, the application continues to meet the LATR guidelines. The Applicant need now mitigate only one

trip to meet the requirements for Policy Area Mobility Review, and proposed to make a payment in lieu of making any transportation improvements. T. 109.

According to Mr. Starkey, the proposed access point meets the County standard, which requires a corner clearance of 50 feet. In his opinion, the circulation within the parking lot will be adequate and they are no longer requesting waivers from the number of required parking spaces. T. 110. In his experience, the time it takes for parents to drop off and pick up children is approximately six to eight minutes; in the course of one hour, each space can turn over seven times. T. 110.

He does not believe that the elimination of the right out onto Brunett will affect parking circulation on the site because that was added primarily to address bus circulation. It was also an attempt to eliminate traffic cutting through the neighborhood, but they had since been informed by the community that this was not necessary. T. 110-111. The proposal will also enhance pedestrian safety in the area because of the proposed improvements to the sidewalks on surrounding streets. On-street parking will not occur due to parking restrictions on the neighboring street. T. 125.

Upon questions from the Hearing Examiner, Mr. Starkey testified that the Transportation Management Plan was authored by Ms. Mead. As for circulation, he advised that the number of parking spaces will be sufficient so that cars do not have to block each other on the site. There will be a staff person standing outside to ensure this doesn't occur. T. 112. Empirical data from Montgomery County indicates that for 15 staff, there will be 23 vehicles entering the site during the peak hour. Fifteen of the spaces will be assigned to Staff, leaving 13 spaces for parent drop-off/pick up. Because in his experience each parent takes between six to eight minutes to drop-off or pick up their children and each space can accommodate seven drop-off/pick-ups during the peak hour, the 13 spaces may accommodate 91 parent drop-off/pick-ups in that hour. T. 114-116. Even if all 76 parents drive separately, in his experience they would not all arrive in the same

hour. It also assumes that no staff will take public transportation. T. 118. Mr. Starkey also testified that staggered arrival/departure times would be implemented by contract with the parents—when they entered into the contract, they would be assigned a specific time. T. 119. In addition, one could assume that arrival and departure times will be staggered due to the parents varied work schedules. T. 120.

His opinion that each parking space may accommodate a pick-up or drop-off every 7 minutes derives from studies he conducted one week at two facilities. That was the week's average during peak hours at each facility. T. 122. Studies that have been done for child day care facilities by Montgomery County and the Institute of Transportation Engineers shown that not all students will arrive during the peak hour. T. 123.

On cross-examination, Mr. Starkey testified that the two studies he had performed measuring the average duration of parent drop-offs and pick-ups included two schools with an enrollment of 15 and 50 students. T. 123. He also acknowledged that Ms. Memon testified that the duration of drop-off and pick-up times were between six and 10 minutes. T. 123. He also stated that he was not aware that the County restrictions on on-street permit only parking lasted only from 9:00 a.m. and 2:00 p.m. T. 125. He did not believe that the elimination of the single, right-only egress onto Brunett would increase cut-through traffic on other streets because the trip distribution ratio which Technical Staff approved was 90% exiting to University and 10% exiting otherwise because people in the community would be using this site. T. 130.

4. Mr. Craig Kay:

Mr. Kay testified on behalf of the Applicant that he agreed to follow the conditions of approval, including the requirement for a transportation management plan and the condition requiring staggering of arrival times. T. 137. He also stated that he owned the property when the original house was still standing and there was a second story to the structure.

On cross-examination, Mr. Kay testified that a promotional flyer he had used to advertise the homes to be developed under the preliminary plan listed them as being at least 3,300 square feet of living space with a two-car garage. T. 142. The flyer listed the prices beginning at approximately \$800,000. There were other houses in the area which had two-car garages, but they were located outside the defined neighborhood. T. 143-144. It was unlikely that there were any homes within the surrounding area at the time these homes were marketed that would have sold for comparable prices; however, there is always a very large differentiation between new construction and existing home prices. T. 147. When he purchased the property, he had no intention of matching the prices of the existing housing stock. T. 148. He wanted to build something bigger and better than the surrounding houses. T. 149. He acknowledged that the demolition permit for the existing house listed the square footage as 3,404 square feet, but stated that this information was generally taken from public records. T. 150.

5. Ms. Karin Klingman

Ms. Klingman testified that she lived in the closest single-family home adjoining the subject property, 413 Gilmoure Drive. She testified that the footprint of her home is approximately 600 square feet and is two stories for a combined total of 1,230 square feet. T. 155. Her lot is slightly bigger than the proposed child day care building. T. 156. Her home was appraised two years ago at \$375,000.

She submitted an exhibit that she had prepared showing the outline of her house within the proposed day care structure. She could easily fit five of her house footprints within the proposed structure with a lot of left over space. T. 157-158. The exhibit also showed the outline of her entire lot overlaid on the parking lot of the subject property, to show that just the parking lot is larger than her entire property. T. 158.

She believes that her house is a fairly averaged-size home compared with the rest of the neighborhood. T. 158. The houses on other cross-streets with Gilmoure are two-story homes or a

single-story cape designed home. T. 158. She testified that the proposed structure is anywhere from four to five times the size of most of the dwellings in the neighborhood because hers is the average size home. T. 159. In addition, she stated that approximately two-thirds of the homes in the neighborhood do not have driveways, and the parking lot is larger than most of the lots in the neighborhood. T. 159. The homes permitted under the preliminary plan would have been much bigger than the homes which currently exist in the neighborhood and would not have conformed to the character of the neighborhood because they were bigger in proportion to their lot size. T. 160.

Ms. Klingman objects to application because the size and appearance are too large to be compatible with the existing homes. She also objects to having cars coming onto Gilmoure in the morning and evening. T. 160. She doesn't think the architecture helps make the building residential in appearance because of its large size. T. 160.

On cross-examination, Ms. Klingman acknowledged that there is a driveway on the property confronting the subject property on Gilmoure Drive. T. 162.

6. Mr. Joseph Kenealy:

Mr. Kenealy testified that he lives on Lorain Avenue, approximately three blocks from the subject property. He has lived in the community for 17 years and was a patient of a dentist formerly practicing at the subject property. T. 169. He recalled that the practice consisted of two dentists and a reception, as well as occasionally a dental assistant. There were two rooms with dental chairs and a reception area. T. 169-170. He estimated the reception area to be approximately 12' x 15' and there were usually one to two patients occupying the reception area. He drove to the practice and parked on Brunett Avenue immediately in front of the office, which faced Brunett Avenue; he was not aware of any parking lot for the office. T. 170-171. In his recollection, the former home/dentist office was one-story. T. 172. He estimated that approximately one-third of the homes in the area bounded by Colesville Road on the east and Dennis Avenue, and the Beltway have driveways. T. 172-174.

7. Mr. Glen Richardson:

Mr. Richardson testified that he lives at 409 Gilmoure Drive, which is the third house to the east of the subject property on the same side of Gilmoure Drive, which is within the defined neighborhood. T. 179. He has resided there for almost 26 years and was familiar with the building that originally existed on the site. T. 179-180. To the best of his recollection, the house only had one story with a home dentist office. T. 180. The dentist office was housed in the structure that used to be his two-car garage. The dental clinic did not have a second story. T. 180. The original home was larger than those in the surrounding neighborhood, consisting of approximately 3,400 square feet or two and one half times the size of the other homes in the neighborhood. T. 183. According to Mr. Richardson, there are 79 homes in the defined area. T. 184. He believed that Technical Staff's calculation of the average size of homes in the surrounding area (i.e., 1,296 square feet) was accurate based on his personal observations. T. 184. He doesn't have any reason to believe that the SDAT records are generally mistaken; SDAT correctly lists the size of his home as being just under 2,300 square feet. He stated that his home is the largest house in the neighborhood. T. 185.

He reviewed the SDAT records for the homes in the surrounding neighborhood. He found that there is only one house that has more than 2,000 square feet of total floor area. Three or four houses are just over 1,900 square feet. Fourteen of the homes are under 1,000 square feet. T. 185-186. He believes that any mistakes in the SDAT records for particular houses are immaterial because for every 1,000 square feet for which SDAT may be mistaken constitutes only less than one percent of the floor area of the homes in the neighborhood. One or two may be measured incorrectly, but overall these mistakes are immaterial. T. 187. The smallest house in the neighborhood is 807 square feet in area. T. 187-188.

In his opinion, the two larger structures across University Boulevard from the subject property are not persuasive when analyzing the compatibility of this use with the surrounding area

because of the size of University Boulevard; at this location, it is six lanes with a median wide enough to accommodate additional left turn lanes. T. 188.

His home is appraised at approximately \$425,000, but was appraised in the low \$500,000's in 2006. The size of the homes that Mr. Kay had marketed were substantially bigger than the existing homes in the surrounding neighborhood and would have had two-car garages. T. 189. Two car garages are very unusual in the neighborhood; he can think of only one or two. They are not typical throughout the South Four Corners area. T. 190. He believes that only approximately 5% of the 1,200 homes in South Four Corners have two-car garages. T. 190.

Mr. Richardson stated that traffic on University Boulevard is extremely heavy during most of the day and "extra extremely heavy" during rush hour. T. 190. It is difficult to turn left onto University from Brunett Avenue during rush hour. If the intersection is not completely blocked by eastbound traffic on University, it may take a minute or a minute and a half to enter the intersection and go halfway before your stuck sitting in the median waiting for westbound traffic to clear. T. 191. It takes approximately another minute and ½ for the traffic to clear and enter the westbound lanes. T. 191. The delay is also partially attributable to times when the median lane is blocked by a car waiting to enter University Boulevard westbound. T. 191. In his opinion, the intersection of University Boulevard and Brunett Avenue is hazardous most of the time. T. 191. He stated that the intersection is also blocked by traffic traveling eastbound on University every morning and evening rush hour. When blocked by eastbound traffic, you wait for a clearing in the eastbound traffic in order to cross University to travel west. T. 192. When eastbound traffic blocks the intersection, it is impossible even to make a right turn onto University Boulevard. T. 192. When the intersection is blocked, it takes about one and one-half minutes per car to reach the intersection. He expects traffic on University Boulevard and in the Four Corners area to get much worse because there is development in all directions. T. 193. He stated that, just to the north of Four Corners the Federal government is redeveloping the former naval base to be occupied by the

FDA. Approximately two miles to the west is downtown Wheaton, which is continuing to be redeveloped for new jobs, and two miles south is downtown Silver Spring, which is being developed as a job center, a new convention center is planned, and entertainment uses. T. 193-194. In his experience, traffic gets worse every year. Traffic on Brunett Avenue is not as bad as that on University Boulevard, but there are still too many cars cutting through the neighborhoods to avoid the Four Corners intersection. T. 194. Brunett Avenue is a major cut through road and has speed bumps installed to slow traffic. T. 194.

In order to avoid having to make the left turn from Brunett onto University, he travels through the neighborhood by going southbound on Brunett, turning right turn onto Lanard, taking a right turn from Lanard onto Dallas, a left onto Proctor, and a right turn onto Dennis Avenue which has a traffic signal at its intersection with University Boulevard. T. 195. He does this because he feels it is the quickest and safest way to access University Boulevard. T. 195. There are other combinations of streets to access University, but those are the two most direct. T. 196. One can also travel further east on Gilmore to Lorain Avenue which also intersects University, but that intersection is more difficult because it is closer to the Four Corners intersection. T. 196.

Presently, Gilmore Drive is a very quiet street with no speed bumps. He is very concerned that the day care will bring traffic from University into the neighborhood. Even though may technically be “pass-by” traffic, it is still going to be diverted from University Boulevard into the neighborhood and impact at least Lorain Avenue, Brunett Avenue and Gilmore Avenue. T. 197. In his opinion, the right-out egress only onto Brunett Avenue is a less intrusive patter to keep traffic off other neighborhood streets. T. 198. He is also concerned that without that exit, all of the stormwater is going to be coming down Gilmore Drive. T. 199.

Mr. Richardson also testified that he is concerned that the development will generate problems with on-street parking; currently 10 of the 13 houses on the 400 block of Gilmore Drive do not have driveways and the owner’s park on the street. The County’s parking restrictions

along that block required permit parking for the hours between 9:00 a.m. and 2:00 p.m.; therefore, they would not apply during the most of the morning or the entire peak hour estimate for the facility. T. 200. In his experience, the residents have the burden of enforcing permit parking—they must call and complain to initiate enforcement. After calling, the County will send enforcement agents out for a day or two, but nothing further happens until the residents call and complain again. T. 201.

Mr. Richardson stated that when the subject property was used as a dental practice, he did not observe a parking lot on the property. Patients parked on Brunett Avenue and there weren't more than two or three cars parked on Brunett at a time. T. 203.

In Mr. Richardson's opinion, the most recent amendment to the special exception plan does not conform to the Planning Board's guidance stated in their review of the first amendment to the application (i.e., that the structure be no more than twice the size of the surrounding homes). T. 205. Technical Staff recommended approval because of the building articulation, but it seems illogical architectural details can compensate for a size that is 70% over twice the size of the surrounding homes. T. 205. He agrees with the Planning Board that the size of the facility does not conform to the master plan's recommendation that special exceptions in new buildings be residential in size and scale. T. 206. Nor does he think that the size of homes that could have been built under a preliminary plan approved five years ago is relevant to the compatibility of a child day care center with the surrounding community that exists today. T. 207. The houses previously approved were a little larger and had more driveways, but they would have been acceptable to the community. T. 208. The houses would not have the impact on parking and traffic that the day care facility will have. T. 208.

On cross-examination, Mr. Richardson acknowledged that the Planning Board's recommendation did not specify which surrounding homes should be used to determine the size of the proposed development. T. 212. He stated that he had used SDAT data to determine the size of

the homes in the neighborhood. T. 214. He also stated that one normally needs to wait 90 seconds to proceed through a signalized intersection, but a non-signalized intersection typically requires less time.

Mr. Richardson testified that he had no reason to believe there were other errors in the SDAT records. T. 226. He has seen 10-12 cars go through the intersection of University Boulevard and Dennis Avenue in 90-second cycle. He does not believe it's possible to proceed through Brunett Avenue's intersection with University at the same rate. T. 226.

December 9, 2011, Public Hearing

1. Mr. James J. Zepp:

Mr. Zepp stated that he is the designated representative for the Northwood-Four Corners Civic Association (Guidelines) and a former president of the Association. He is also a member of the executive committee of the Montgomery County Civic Federation and served as a member of the Four Corners Master Plan Citizens Advisory Committee.

Mr. Zepp testified that the NFCCA opposed the special exception's request for the reasons set forth in the original Technical Staff Report, because it is not consistent with the Master Plan and incompatible with the residences that predominantly characterize the area.

According to Mr. Zepp, the North-Four Corners neighborhood consists of approximately 1,600 homes in the area directly across University Boulevard from the parcel where the proposed childcare center would be located. The residents are racially and ethnically diverse, are well educated, and have a wide range of incomes and occupations. It is a stable and successful, livable community that has attributes which land planners wish to promote.

At the time of the most recent master plan was developed, the area was largely built out with the construction of the Montgomery Blair High School on the Kay tract property. Because of this, the primary planning effort targeted preserving and enhancing the positive qualities

contributing to the community's stability and livability and preventing changes that would cause the deterioration of the areas existing integrity.

Mr. Zepp testified that the citizens on the Four Corners Master Plan Citizens Advisory Committee were concerned that encroachment of commercial establishments into the residential areas would gradually undermine the positive aspects of the existing neighborhoods.

Mr. Zepp stated that the Master Plan discouraged special exceptions "immediately adjacent" to the existing Four Corners commercial area. This site is five homes away from that boundary of the commercial area; he disagrees with the Applicant's argument that, because there are 5 homes between the site and the commercial area, this language does not apply to the subject property. The proposed child care facility does not meet the Master Plan's objective to curtail the spread of commercial structures into residential areas. This location is likely worse, because it bookends a small number of homes between itself and the commercial district.

Another concern among the community is the potential for traffic congestion. Currently, cut-through traffic occurs through neighborhoods adjacent to Four Corners to avoid the traffic at that intersection.

The Master Plan also recommends that special exceptions in new buildings should be residential in character and scale. Despite the amendments downsizing the facility, the community still feels that it doesn't comply with this Master Plan recommendation.

He further testified that the proposed facility doesn't comply with the Master Plan's recommendations prohibiting non-local cut-through traffic. As configured, the proposed facility will result in substantial traffic being drawn into adjacent residential streets during rush hour, encouraging additional cut through traffic in the neighborhoods.

He does not believe that the Four Corners master plan recommends an office for this site. The proposed zoning map shows the property recommended for residential zoning. Instead, the

Master Plan merely recognized the home dentist office as an existing use at the time the document was written.

According to Mr. Zepp, the Master Plan does not recommend a day care or school facility on this site or any nearby properties. The Plan provides that the former Uesheba school may rebuild on a different site, but recommends nothing about these facilities on other properties. The Uesheba School presented a request to the CAC for townhouse rezoning which the CAC did not recommend due to the traffic impact on the area.

He also believes that the home at 219 West University Boulevard should not be used as a comparable. It was constructed for an unlicensed use which has been repeatedly investigated and the structure is atypical of the area.

The CAC members and M-NCPPC Staff worked for three years on the Master Plan, which was ultimately adopted by the Planning Board and the County Council. He believes that the Master Plan's recommendations should be held intact by denial of the application. T. 48.

When asked whether it was the size of the facility that he objected to or the commercial use of the site, he testified it was the size and scale, but particularly the location because it was so close to the commercial area. The community was very concerned about the incremental encroachment of commercial uses outside the Four Corners commercial district. T. 50. Their community has remained healthy and stable while other nearby areas have deteriorated.

Mr. Zepp further stated that he is concerned that simply relying on penalties, such as revocation of the special exception, to ensure compliance with the special exception conditions is not a sufficient means of protecting the neighborhood. This is because, in his experience, government authorities are often reluctant to invoke that penalty except in the most egregious violations, leaving the community to put up with non-performance of the conditions.

On cross-examination, Mr. Zepp stated that M-NCPPC Staff would not let them include language, similar to that in other master plans, limiting the size of special exception uses. He was

aware of language in the Traffic Mitigation Plan for the project which required the Applicant to submit annual reports to the Board of Appeals relating to staff use of public transit and transportation issues, as well as the requirement to meet with a community liaison council. The NFCCA would be interested in participating in the community liaison council.

Mr. Zepp testified that the purpose of inserting the language discouraging special exceptions was to preserve the stability of the neighborhood. The CAC believed that this stability would be undermined if residential properties were converted or subject to pressure to convert to commercial use. The purpose of the language recommending that special exceptions reuse existing structures was again to prevent the area from being radically transformed. The language used was as strongly worded as M-NCPPC would accept. He is also concerned how the TMP would be enforced. He would like the TMP to be expanded to include the NFCCA.

2. Mr. Michael Pfetsch:

Mr. Pfetsch testified as an individual and lives in the Woodmoor Section of the Four Corners master plan area. He also was a member of the CAC that assisted with the development of the Four Corners Master Plan. The major issue in Four Corners is traffic and its impact on the community. Traffic impacts stem from cars both on University Boulevard and Colesville Road and the Beltway. The intent of the master plan was to create an environment for both the citizens and the commercial community so that they could co-exist and operate together. The CAC tried to implement this goal by clearly defining the high impact commercial area and then moving down to residential areas. The CAC understood that the Four Corners intersection was a high impact area. Moving away from the intersection, they then tried to delineate areas of non-high impact commercial business and then residential uses. Zones were recommended based on this delineation of uses with the idea to keep the boundary lines intact between commercial and residential areas.

Since adoption of the Master Plan, the community has defended that demarcation against commercial encroachment into residential areas. There have been several requests for fast food special exceptions which the community vigorously defended against. Another day care facility was proposed along University Boulevard, which the applicant ultimately withdrew. In his opinion, the placement of any potential business near University Boulevard or Colesville Road should be looked at very carefully because of the potential that activity would be stretching the commercial zone into the residential area. He believes that this application breaches the demarcation of commercial and residential uses set forth in the Master Plan. He recalls that there was significant discussion relating to the Plan's language discouraging special exceptions—the CAC's intent was to prohibit them entirely. In this context, the issue is not the scale of the use; the issue is that it breaks the demarcation line intended in the Master Plan.

On cross-examination, Mr. Pfetsch confirmed that the CAC wanted stronger language prohibiting special exceptions in residential areas adjacent to the commercial district, but that was not accepted the Planning Board. He considers an encroachment to mean a new commercial use rather than the continuation of an existing residential use. The line separating commercial uses from residential uses in the Master Plan is the Safeway property; this facility is on the wrong side of the line. To demolish an existing use and establish a much larger use is an encroachment in contravention of the Master Plan recommendation.

3. Ms. Harriet Quinn

Ms. Quinn testified that she is a member of the executive committee of the Woodmoor/Pinecrest Civic Association and chair of the traffic safety committee. She testified as an individual.

Ms. Quinn testified that her community has understood that the Master Plan prohibited non-residential special exceptions adjacent to commercial areas or along highways. Mr. Fred Boyd, a planner involved in development of the Master Plan, testified at the first Planning Board

hearing that the Master Plan intended to discourage special exceptions. He stated that the word “discourage” represented the dilemma faced by planners when considering land uses in the area. He felt that the community had legitimate concerns that the commercial areas could eventually encroach into the residential communities, rendering them less desirable and stable. He also stated that the property was not recommended for commercial use.

Ms. Quinn submitted pictures of areas recommended in the master plan for special exception uses to show an area which was deemed appropriate in the Master Plan for special exception uses. The special exception for professional offices is located immediately adjacent to another property developed with offices, which is zoned CT.

Ms. Quinn testified that, as a member of her community association’s traffic committee for five years, and chair of the committee for three years, she has been involved in multiple meetings with various government entities, including the SHA, the County DOT, and transportation planners at M-NCPPC. She introduced excerpts of a number of studies of the Four Corners area. According to Ms. Quinn, these reports demonstrated a trend of increasing traffic volume at the Four Corners intersection (i.e., Colesville Road and University Boulevard), which already exceeded the maximum critical lane volume. The most current 2011 report showed that the intersection still operated at a level of service (LOS) F and that the critical lane volume had increased since the 2009 study. One study also indicates that the most congested parts of U.S. 29 (in terms of travel time), was the length between Georgia Avenue and the Four Corners intersection through Southwood Avenue. She also submitted a Woodmoor/Pinecrest Community Association discussion paper regarding an ongoing study by the County to determine the impact of cut-through traffic through the neighborhood, which is not counted in the critical lane volumes of the intersections. Their association qualified to participate in the study because of the amount of cut-through traffic passing through their neighborhood, which is estimated at 70% of the neighborhood traffic. Ms. Quinn testified that SHA will not assist the County and the citizens in

finding a solution to the volume of cut-through traffic. This study again shows that the intersection of University Boulevard and U.S. 29 has a failing level of service. She submitted another traffic study for a bank at the Four Corners intersection, which also showed a failing LOS there.

Ms. Quinn then submitted photographs of traffic (both east and west-bound) on University Boulevard at its intersection with Brunett Avenue. Ms. Quinn believes that the pictures demonstrate that the wait times to turn left or right are significant. Some of the pictures depict traffic back-ups on University which prevented right and left turns onto University from Brunett. She testified that the back-ups on eastbound University Boulevard are the result of traffic trying to turn onto Colesville Road at the Four Corners intersection and the Beltway.

In addition to excerpts from the traffic studies and photographs, Ms. Quinn submitted excerpts of a 2010 pedestrian safety audit prepared on behalf of Montgomery County. Exhibit 150(j). According to Ms. Quinn, the report discloses that most of the pedestrian accidents have occurred between the northern and southern leg of the Four Corners intersection. About 50% of the students attending Montgomery Blair High School commute to school using Metro buses. The bus stops are often over-crowded.

Her community has requested SHA to make improvements to the Four Corners intersection to discourage traffic from cutting through the neighborhood, but their request has been denied by SHA. SHA has also confirmed that, although the intersection is currently operating at maximum capacity, there are no plans to add capacity in the near future. If this is the case, she does not feel that anymore traffic should be added to the intersection. She does not agree with the Applicant's conclusion that roads in the vicinity are operating at an acceptable level of service. T. 140.

On cross-examination, Ms. Quinn testified that she did not have the exact dates that the traffic counts in the studies were performed. None of the improvements recommended in the 2006

report were built. She acknowledged that two of the photographs showing traffic at University and Boulevard and Brunett were taken at 7:50 a.m. and 8:00 a.m., outside the peak hour of the traffic study, which is 8:15 a.m. to 9:15 a.m.

Ms. Quinn stated that there were a number of childcare facilities in the area that have sufficient parking and direct access to University Boulevard. T. 158. Because of this, she believes that this use, which requires access from neighborhood streets, contravenes the intent of the master plan1..

January 12, 2012, Public Hearing

1. Ms. Ishrat Memon:

Ms. Memon testified regarding the proposed operations under the revised special exception petition. She confirmed that student enrollment would be limited to 76 students ranging from infants to four-year-olds. Childway would employ a maximum of 15 employees, which will meet the ratios of staff to children required by State law. According to Ms. Memon, the facility will have a “director” whose duties include:

...licensing the center, checking the staffing files, children files, answering the phones, receiving the parents, monitoring the parking place, the parking outside. That is everything comfortable and safe, and during the day, not the peak hours, the director is s also being a substitute in the class room, giving the staff lunch breaks, and maintaining the ratios in the class as to assign herself in the class.

T. 20. The director will be seated at a desk in the main lobby so she can see the outdoor parking lot and monitor the parents to make sure the check their children in and out. T. 20. She believes that the director will have sufficient time to perform these duties because arrival times are staggered throughout the morning and evening beyond the peak hour. In the morning, parents usually arrive between 7:00 a.m. and 10:00 a.m. Staff arrival and departure times are also staggered by one-half hour intervals. The first staff person arrives at 7:00 a.m. and leaves at 4:00 p.m., and then are staggered at one-half hour intervals in the evening until the last person leaves. T. 22.

Ms. Memon also stated that she agreed to have no more than 25 children in the outdoor play area at one time. T. 23. As the before and after care program have been eliminated, there will be no buses arriving at the subject property, although the possibility remains a bus drops off a special needs child during the day. Ms. Memon testified that she is mandated by law to accept special needs children. T. 24. The location where the child is dropped off is determined by the County, and she typically has a staff member meet the bus and escort the child to the facility. T. 24. At present, she has a total of 3 special needs children among 275 enrolled at her three locations. T. 25. Food will be delivered to her Burtonsville location and will be taken by a staff member to the subject property. According to Ms. Memon, deliveries will not occur during the peak period. T. 26.

Ms. Memon stated that she believed that only 2 of the 15 employees at this location would actually park on-site. At her College Park location, all of the staff take transit. At Maryland Farms, two of the employees have cars. At the Beltsville location, her van picks up approximately 7-8 employees from the Briggs Chaney bus stop, but the remaining staff arrive in their own vehicles. T. 27. In her experience, employees prefer to use transit when it is available. T. 27.

Ms. Memon testified that there will be sufficient parking during the peak hour to accommodate all arrivals and departures on site. In her experience, approximately four to six parents arrive at one time, even during the peak hour. T. 27. She agrees to implement the TMP by encouraging staff to use transit. She will include a statement encouraging staff to use transit in her hiring package. T. 29.

Different age groups will hold special events at different times so sufficient parking is available. The transportation coordinate will regulate the number of staff on-site during special events to ensure that there is sufficient parking. T. 30. If parking is insufficient during a special event, parents will be directed to park at her Burtonsville facility and be transported by her van to the subject property. T. 32.

According to Ms. Memon, her contract will require parents to arrive at staggered times, which is something that she already requires in order to determining the level of staffing during arrival and departure periods. T. 33.

On cross-examination, Ms. Memon testified that the director will fill in during lunch hours in the classroom. The director's office will be in the hallway with an open door set up. For meetings with parents, the director may use the kitchen area. T. 38. Private meetings with parents are not scheduled during the peak hours. T. 39-40.

Ms. Memon testified that if staff does not comply with the TMP, they will be transferred to another facility. T. 41. Ms. Memon does not have staff meetings with all of the staff at one time; rather, she visits each classroom during the lunch breaks. Other vendors do not come at peak times either. T. 47-48.

On rebuttal, Ms. Memon confirmed that if a parent refused to comply with the terms of the TMP, she would terminate their enrollment at the center. T. 52.

2. Ms. Kim Currano:

Ms. Currano testified that she prepared a revised stormwater management concept plan for the most recent version of the petition. A large swell along Brunett Avenue will manage stormwater for a portion of the roof and most of the rooftop. Drywells will drain the center portion of the property and the remaining portion of the roof, and there are two large underground pipes to store water. T. 55. While DPS has not approved this version of the stormwater concept plan, Ms. Currano testified that the revisions constitute a minor amendment and it's not industry practice to re-submit to DPS for these types of amendments. T. 55. The stormwater facility will still accommodate more stormwater than is generated by the development and will reduce the amount of stormwater running into an inlet along Gilmoure Drive. T. 56-57. 63.

3. Mr. Carl Starkey:

Mr. Starkey testified that, in his opinion, access to the site from University Boulevard was unnecessary to ensure safe access. T. 67. Because the access on Gilmoure Drive is so close to University Boulevard, he believes that people will turn right onto Gilmoure Drive, right onto Brunett Avenue and then proceed to its intersection with University Boulevard. As a result, people will be able to access the site without having to cut through the neighborhood. If access were from University Boulevard, it would be a right-turn only westbound. T. 67-68. In the original Technical Staff Report, Staff found that site access onto Gilmoure Drive and Brunett Avenue would be safe because existing volumes on those roads are so low. T. 68. Eliminating the access onto Brunett doesn't change his opinion, because it only adds an additional 50-100 feet to the return to University Boulevard. T. 68.

Mr. Starkey opined that the use would not create cut-through traffic in the neighborhood because of its proximity to University Boulevard. Only approximately one-third of the trips generated by this use are new trips; the balance of the trips are pass-by and will be returning to University Boulevard. T. 70. Technical Staff reached the same conclusion. Any trips generated by the neighborhood are not cut-through traffic because they originate within the neighborhood. T. 70. The trip distribution rates required by Technical Staff also reflect that the bulk of trips will be returning to University Boulevard. T. 73.

Mr. Starkey also testified that the proposed use would not generate any additional queuing on Brunett Avenue. Based on Mr. Richardson's estimate that there would be a three-minute wait time to complete a left turn from Brunett Avenue onto University Boulevard (i.e., 90 seconds to get to the median in the middle of University and 90 seconds to enter the eastbound traffic lanes), the number of trips generated during the evening peak hour would enter the intersection at approximately the same rate, or less than one every two minutes. T. 72. It would also assist in ensuring that traffic proceed right onto Brunett Avenue if the Petitioner include a right turn only directional sign at exit to the site along Gilmoure Drive. T. 74. Based on Ms. Memon's testimony

that most of the staff will use transit, he believes that the number of trips he estimates will be generated by the use is conservative. T. 76. He also submitted a supplement to the traffic study reflecting the reduced number of trips reflection the reduction in the number of pupils and staff. T. 76.

With regard to pedestrian safety, Mr. Starkey advised that pedestrian access to the site will be safe and adequate. There is a marked, unsignalized cross-walk at the intersection of University Boulevard and Brunett Avenue. There are also signalized cross-walks at both the eastbound and westbound intersections of University Boulevard and Colesville Road. T. 77-79.

Mr. Starkey testified that the northern leg of the intersection of Colesville Road and University Boulevard (westbound) would meet LATR requirements even if it had been included in the traffic study. According to Mr. Starkey, the proposed use would have added three trips to that intersection. Based on the most recent (2006) data of 1,589 CLV during the p.m. peak hour for the intersection, the CLV would increase only to 1,592, still under the maximum threshold for the policy area. T. 78-81.

In his opinion, the 2009 traffic counts in the M-NCPPC database for the southern portion of the intersection, which indicate that it is operating above the maximum threshold, are an anomaly. He performed traffic counts for this project both in 2009 and 2010, for this intersection which are lower than the threshold. His counts were within 10% of each, which is a standard variation in the industry. The 2009 counts in the M-NCPPC database were well above the 10% standard deviation. In his opinion, some event such as a traffic incident occurred during the 2009 counts from M-NCPPC that resulted in higher CLVs that particular day. This is consistent with the data from the volume counts he took approaching the University Boulevard/Colesville Road intersection eastbound. His counts from 2009 and 2010 both indicated that approximately 1,700 vehicles passed through the intersection in the peak hour. The 2009 count in the M-NCPPC database states that approximately 2,200 vehicles passed through the intersection in one hour. He

also reviewed volume counts at the intersection of University Boulevard and Dennis Avenue from his two prior studies and from the M-NCPPC database. These were all consistent with each other, again suggesting that there was some event generating increased volumes at the intersection of University Boulevard (eastbound) and Colesville Road. T. 81-84. He also submitted a letter from a representative of the State Highway Administration to Transportation Staff stating that they had reviewed his 2010 counts and found them to be consistent. T. 85.

Mr. Starkey stated that the amount of trips that must be mitigated under Policy Area Mobility Review (PAMR) has decreased in the policy area from 15% to 10%, suggesting that congestion in the area has decreased over time. T. 87. He believes that it may continue to decrease as there are a number of studies for additional transit in the area. T. 87-90.

According to Mr. Starkey, parking at the facility would be adequate to accommodate both staff and parent drop off and pick up. He testified that staggered arrival times are typical for day care uses and a trip generation study found that only 2.36 spaces per 1,000 square feet are needed to serve the use. For this facility, that ratio would mean that only 11 rather than 13 spaces would be required assuming that all of the staff parked at the site. T. 92. All other day care special exceptions which he has been involved with have used Transportation Management Plan. According to him, these are typical for a day care use. T. 93.

Mr. Sekerek testified that the Petitioner still agreed to comply with the tree save plan that had previously been approved by Technical Staff. T. 185-186.

With regard to the Master Plan, he did not believe that this property was within the area in which the Master Plan discouraged special exceptions because there is a clear separation between the subject property and the commercial district. In his opinion, the “office” designation in the master plan and the community service use proposed renders the property uniquely suited to preserve the Master Plan’s goals. This property had a non-residential use on it previously and the Master Plan recommended a non-residential use.

According to Mr. Sekerek, the “residential scale” of a proposed use was not determined by the comparative size of the structure. Residential scale in the design profession is determined more by “visual impact” than by comparative scale. In his opinion, residential scale may be achieved by architectural elements such as multiple rooflines and other tools.

While size is not the determining factor in his estimation, he did submit information regarding the size of structures in the surrounding area. Even though not residential, he does not believe that one can ignore the temple confronting the property to the east and the larger single-family homes across University Boulevard and within the same block as the subject property. The property’s location along University Boulevard is a factor that should be considered because it is one of the major reasons why the site is appropriate for a day care facility. It is similar to the Uesheba School and day care. The larger homes across University Boulevard have a direct visual relationship with the subject property and should be considered in determining the residential scale of this use. Mr. Sekerek testified that Staff also found that the revised site layout contributed to the residential scale of the use.

The proposed development is also much smaller in scale in terms of building to lot size. The homes that were marketed by Mr. Kay previously were larger in scale because they were located on smaller lots. Under the revised layout for this use, the smaller side of the building is aligned toward the homes in the interior and shorter than the home directly across Gilmoure Drive.

In Mr. Sekerek’s opinion, landscaping is another tool that may be used to reach a residential scale. The landscaping proposed along Gilmoure Drive will reduce the visual impact and with the added architectural elements, will reduce the scale of the facility. He does not agree that proposed building is five times the size of the home on the adjoining property because that compares only footprints and does not reflect the total floor area of both stories. In order to assess the character and scale of the use, it is necessary to put the building into the context of the entire lot and consider the floor area of the home (the square footage of the home compared to the lot

size). Even though the maximum lot coverage in the R-60 Zone is 35%, their building occupies only 12% of the lot, unlike the homes on surrounding properties.

He also testified that there are larger homes in the surrounding area, including those at 214 W. University Boulevard, has a footprint of 2,200 square feet. Twice the size of the footprint, without estimating the number of stories, would equal 4,400 square feet. The lot coverage for that property is 22%. Another comparable home, in his opinion, is located at 219 W. University Boulevard, which is located on a 9,415 square foot lot. It's located directly across the street and has two large structures. He stated that the proposed building is twice the size of one of the structures on that property. In his opinion, the proposed building is of similar scale to those homes and is smaller in scale in terms of lot coverage.

He is also of the opinion that the proposed facility is in scale with the homes along Gilmore Drive. The building is setback from Gilmore Drive in a manner similar to the setbacks of other homes along that street. That façade is also similar in width to the other homes on the street and is less than the length of the home fronting Gilmore Drive.

In Mr. Sekerek's opinion, the Master Plan does support a non-residential use on the property. Even though residentially zoned, the Plan recommended office use for this particular site. He did not agree that one should interpret this recommendation only as a continuation of the pre-existing dentist office. If the Plan had only intended the existing office use to continue, it would have recommended residential use for the property because the life of the Plan is over 20 years.