

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:	*	
	*	
AUDUBON NATURALIST SOCIETY	*	
	*	
Applicant	*	
	*	BOA Case No. CBA-2643-A
Lisa Alexander	*	
Alison Pearce	*	
Alice Sturm	*	
Nicole White	*	
Amy Ritsko-Warren	*	
	*	
<u>Jody Kline, Esq.</u>	*	
Attorney for the Applicant	*	
	*	
Supporting the Application	*	
*****	*	
	*	
Robert Rutsch, Trustee for	*	
Janet Rutsch	*	
Kathleen Rosenberg	*	
Janice Nelson-Drake	*	
	*	
Concerned Residents	*	

Before: Lynn Robeson Hannan, Hearing Examiner		

HEARING EXAMINER’S REPORT AND RECOMMENDATION ON REMAND

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I. STATEMENT OF THE CASE

The Petitioner in this case, the Audubon Naturalist Society (Audubon or Petitioner), seeks a major modification to its existing special exception for a charitable and philanthropic institution.¹ The modification requests the addition of a 24,485 square foot "Nature Play Space" to "provide stimulating outdoor recreational opportunities while at the same time enhancing children's social, emotional and cognitive development through the experience of outdoor learning." Exhibit 47, p. 3. The request also includes a parking area containing 18 spaces to support use of the play space.

The property is zoned R-90 and is located at 8940 Jones Mill Road, in Chevy Chase, Maryland, and is further identified as Parcel 744, Map HP 561 (Tax Account No. 05-30233715). On September 30, 2021, the Hearing Examiner for the Office of Zoning and Administrative Hearings (OZAH), Mr. Derek Baumgardner, issued a Report and Recommendation (HE Report) recommending approval of the application subject to four conditions.²

The Board of Appeals granted the special exception modification on November 10, 2021. After it did so, several individuals requested reconsideration before the Board of Appeals, alleging that they failed to receive notice of the initial hearing and did not have an opportunity to voice their concerns. Exhibit 55, p. 2. Concerns expressed to the Board included whether the traffic study accurately reflected traffic due to the COVID pandemic, whether the number of parking spaces had been increased, whether the number of spaces on the lot should be a maximum to 18, and problems caused by event-related parking on Brierly Road. *Id.*

The Board of Appeals concluded that a mistake had occurred in noticing that prevented

¹ Major modifications of special exceptions are evaluated and processed under the *2004 Montgomery County Zoning Ordinance*. *2014 Zoning Ordinance*,

²Mr. Baumgardner has since left employment with Montgomery County before OZAH's public hearing on remand could occur. For this reason, the undersigned Hearing Examiner conducted the public hearing on remand and issues this revised recommendation.

individuals from testifying at the September 2021 OZAH hearing. The Board suspended its earlier approval of the special exception and remanded the case back to OZAH to (Exhibit 55):

...hold a new hearing on this major modification, to ensure that proper Notice is provided to all persons who contacted the Board regarding its November 10, 2021, Opinion, and to ensure that any issues that were not addressed, or that were not fully addressed, at the August 23, 2021 hearing can be fully and fairly considered. The Board requests that Mr. Kline [attorney for Audubon] and any necessary representatives of the Audubon Naturalist Society meet, prior to the new hearing, with Ms. Rutsch, Ms. Rosenberg, Ms. McNeill, Ms. Nelson-Drake, and any other persons expressing an interest in participation, including but not limited to Mr. Robert Rutsch, to collectively determine and stipulate for the Hearing Examiner to any aspects of the requested modification and existing Report and Recommendation that are uncontested, and as a result to generate a list of issues remaining, in the hopes of avoiding the need for the Petitioner and Hearing Examiner to revisit all aspects of the requested major modification during the new hearing.³

Pursuant to the Board's instructions, Audubon met with the concerned citizens in February 2022, and submitted minutes of the meeting included in a PowerPoint presentation that had been used to guide the meeting and identify community concerns. Exhibit 36(a). The PowerPoint also listed resolved and unresolved issues raised during the meeting. Areas of consensus included (*Id.*):

- ANS agrees to request that the Hearing Examiner change the wording in the opinion to specify that the parking area will contain no more than 18 parking spots.
- The Traffic Impact Study was conducted in October 2019 before the COVID pandemic affected traffic counts.
- The operating hours in the major modification refer only to the Nature Play Space and not to the entire sanctuary. The accessible trail will still be accessible when the Play Space is closed.

Unresolved issues were listed as:

- Special event parking along Brierly and various solutions.
- Are 18 parking spots the appropriate number for the proposed new parking? What are the hours of operation for the new proposed parking and possible barriers so people cannot park there after dark?

³ Planning Staff felt it unnecessary to review the petition again on remand because the Audubon proposed no changes to the original use. Exhibit 65. As the public hearing focused on both clarifying the original approval and addressing concerns of those in attendance, the Hearing Examiner agrees with this approach.

- Do we want an additional Traffic study to look at traffic holistically for the entire neighborhood?

OZAH issued notice of a remand hearing to be held on April 22, 2022. Exhibit 56. Five witnesses appeared on behalf of Audubon. Residents who testified included Mr. Robert Rutsch, Ms. Janice Nelson-Drake, and Ms. Kathleen Rosenberg. The hearing proceeded as scheduled. The record was left open until May 2, 2022, to receive photographs presented at the public hearing by Mr. Rutsch. Exhibit 63. Ms. Rosenberg submitted minutes of a Community Liaison Meeting. Exhibit 64. Because Mr. Rutsch's post-hearing email contained information not presented at the public hearing, the Hearing Examiner permitted Audubon to file a response on May 3, 2022. Exhibit 66. On May 24, 2022, the Hearing Examiner requested permission from Ms. Rosenberg to access the Google Drive link in which she shared the CLC Minutes, which she did. Exhibit 68. By Order attached to this Report, the Hearing Examiner re-opens and closes the record solely to admit these items. Exhibit 69.

During the public hearing, Audubon reiterated its proffer to modify Condition No. 4 of the Board's original decision to clarify that the number of parking spaces will be capped at 18. T. 18. It also agreed to a condition modifying Condition No. 1 of the Board's decision to clarify that the sanctuary and accessible trail will remain open during normal operations when the Play Scape is closed. Finally, Audubon proffered two conditions relating to use of the Play Space and Parking Area. Exhibit 61. The Hearing Examiner adds one more standard condition limiting improvements to the Nature Play Space and Parking Area to those shown on the special exception Site Plan and Planting Plan.

Upon review of the concerns raised and Audubon's responses, the Hearing Examiner recommends approval of the petition, *with* the revised conditions recommended.

Because the issues on remand are limited, this Report does not follow the standard format of OZAH's reports. To the extent the Hearing Examiner adds to or revises some of the findings of fact and basis for approval, these are set out individually with revised findings of fact, conclusions, and conditions of approval. Unmodified findings remain the same.

II. FACTUAL BACKGROUND

The factual background in this case (*i.e.*, property description, location, surrounding area, and proposed use) were in the initial Hearing Examiner's Report and are not repeated here. Audubon seeks a major amendment to its existing special exception to add an outdoor nature play space with associated parking. For the Board's convenience on remand, the Hearing Examiner includes a graphic from the Hearing Examiner's Report (Hearing Examiner's Report, p. 7) showing the surrounding area (below) and the proposed special exception plan (Exhibit 8, on the following pages).

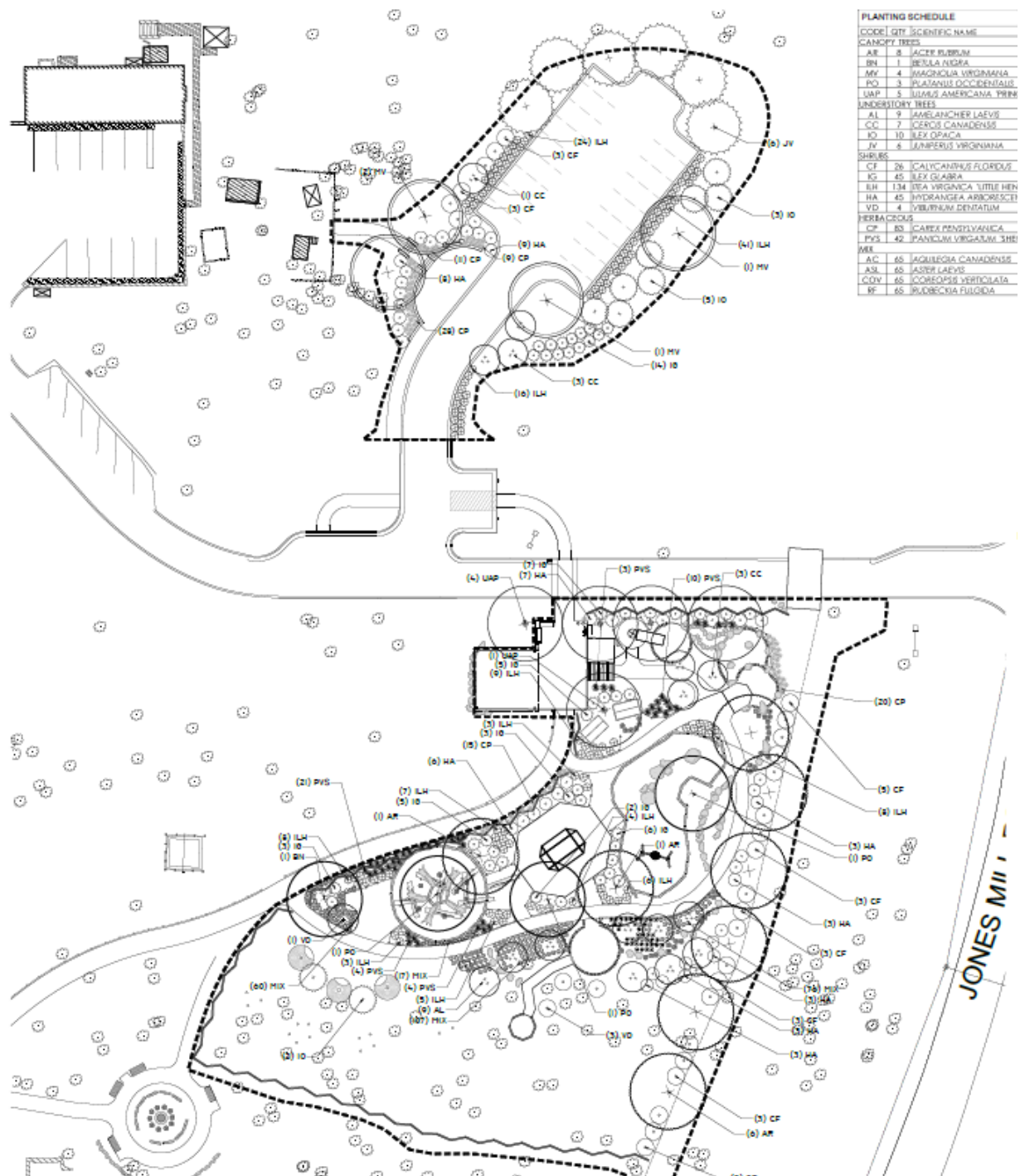


III. CITIZEN CONCERNS RAISED ON REMAND

A. Clarification of Condition No. 2 (maximum rather than minimum parking spaces)

Ms. Lisa Alexander, Executive Director of Audubon, testified that Condition No. 4 of the original approval, requiring “at least” 18 spaces, raised concerns that more spaces could be added to the parking lot. Ms. Alexander clarified that number was the maximum number of spaces that would be in the





parking area. *Id.* Audubon has agreed to a revised condition as follows (Exhibit 61):

The Applicant [Petitioner] ~~must~~ will provide ~~at least~~ not more than 18 vehicle parking spaces on-site. Members and guests shall not park on nearby public streets.

B. Parking on Brierly Road

1. Resident Concerns

Ms. Nelson-Drake, who lives on Brierly Road, testified that persons attending events at the property parked on both sides of Brierly Road. T. 14. She brought this up at the community meeting in February 2022. T. 65. She was initially encouraged because Condition No. 2 of the Board's November 2021 decision prohibited parking on neighborhood streets.⁴ Ms. Nelson Drake testified that she raised the issue because it wasn't clear whether the condition applied only to the play area or to all Audubon's operations. She was very encouraged at first by that, but the wording was not clear. T. 79.

Ms. Nelson-Drake submitted a photograph (included in the Petitioner's PowerPoint presentation at the February 2022 community meeting,) demonstrating these the parking on Brierly during events (Exhibit 36(a), on the next page). The photograph was taken prior to Audubon's operational changes that are described in the next subsection.

In response to operational changes proposed by Audubon to address concerns about parking on Brierly Road, Ms. Kathleen Rosenberg asked whether Audubon should put together a layout of where the 60 parking spaces are for renters to use during events. She believes that this should be provided to renters to they know they cannot park by the playground and will know where the parking spaces assigned to them should be. T.80.

2. Petitioner's Response

In response to the concerns raised, Ms. Ritsko-Warren, Audubon's Deputy Director of

⁴ Condition No. 2 of the Board's November 2021 decision states: "No vehicles may queue within the public right-of-way on Jones Mill Road or Brierly Road while accessing the Site."



Exhibit 36(a)
Parking on Brierly Road

Administration, testified that Audubon has made several operational changes to make sure that everyone coming to Audubon parks on the property rather than neighborhood streets. T. 64-65. In the past, they have asked vendors and staff servicing events to park on Brierly to ensure that guests have parking spots on-site. Since the beginning of this season, they have instructed vendors to park on the subject property and not on neighborhood streets. T. 65-66. For every event, they have hired three parking attendants who are at the sanctuary an hour before the vendors arrive before the event starts, and an hour after the guests have arrived. The attendants direct cars to parking areas on-site so the onsite lots are used efficiently and there aren't any open spaces. T. 66.

They have also striped parking spaces on a gravel strip to ensure that parking is maximized. Before, individuals would park in ways that wasn't the most efficient use of space. T. 66-67. Audubon is also looking at other ways to get more parking on the site without building another lot. They may use

some of their grassy areas for extra parking when needed. They typically have not used a parking area near the Teale Center, which is part of the original historic site, for events. It has about 12 spaces, and they are now asking their parking attendants to direct traffic to that lot when necessary. They have also considered entering into agreements with the North Chevy Chase Pool, which is just down the street. If they can come to agreement, that would be available as well, although they haven't needed that yet. T. 68. In addition, they are finding from the parking attendants that many guests use Uber to get to events, particularly if they are staying out of town. These do not require a parking space. T. 69.

Ms. Ritsko-Warren testified that they have had six events on the site this spring, and there has not been parking on Brierly Road. T. 67. She believes that the measures taken address the community's concerns. *Id.*

Ms. Nelson-Drake testified that there has been one event in the last few months where people parked on both sides of Brierly Road. She knew they were attending an event because they had out-of-state license plates and they all disappeared when the event was over. But she's encouraged by the steps Audubon is taking, particularly trying to get an agreement with the pool. In the past years when there were large events, people would park as far away as the pool. The other thing Audubon did in the past was to give out tape to the neighbors to put in front of their houses so that people could not park there. She encourages the adjoining school to think about doing that again. T. 75-76. Ms. Ritsko-Warren invited Ms. Nelson-Drake to send an e-mail letting her know when parking on Brierly occurs, so they can make sure they make sure communications with guests and the neighborhood are up to date.

Ms. Ritsko-Warren does not believe it necessary to supply maps of permitted parking areas to renters because the three attendants on-site will direct traffic. She clarified that Audubon hires parking attendants for all the weekend events because they don't know how much parking assistance they will need. They are going to continue to monitor when attendants are needed, but right now, they are hired at every event. T. 82. If Audubon ceases to hire attendants, they will "definitely" provide maps to renters.

Right now, the parking attendants stand at the Brierly exit, the lower area by Teal, and one at the mansion.

T. 81.

C. Concerns about the Traffic Study

Ms. Nicole White, Audubon's expert in traffic engineering, performed the traffic study for the proposed project. She testified that the traffic counts used in the study were submitted in October 2019, pre-COVID. T. 28.

Ms. Rosenberg asked whether a traffic study should be conducted for times outside the peak periods. She believes that the traffic study should include use in the evening, during school hours and use by other schools. She doesn't think it needs to be done now, but if they have bike lanes on Jones Mill Road, she thinks it could be an accident waiting to happen. T. 31.

Ms. White testified that the period studied is consistent with the required methodology for traffic impact studies under the Local Area Transportation Review Guidelines. The addition of the play space was such a low trip generator that a traffic study wasn't warranted because this is below the threshold for when Traffic Impact Studies are required. Audubon wanted to "go the extra mile" to address community concerns. T. 39. She believes that the scope the study conducted is appropriate to determine whether traffic exceeds policy standards set by the County Council in the County's Subdivision Staging Policy (now Growth and Infrastructure Policy). T. 32.

Ms. White explained how the scope of the traffic study was determined. The Planning Department requested that Audubon study five intersections in the surrounding area. The study looks at the combined impact from existing traffic, estimated traffic from approved but unbuilt projects, and traffic from the proposed use. The entrance at Jones Mill Road and at Brierly Road were included in the study. T.33-34.

Traffic studies generally look at peak traffic periods, which are weekdays between 6:00 a.m. and 9:00 p.m. and 4:00 p.m. to 7:00 p.m. The only time one would study weekend traffic is if there is a heavy retail/commercial development that was a high traffic generator on the weekend. T. 36.

During the weekday peak periods, they must look at the highest level of traffic during to determine the morning and evening peak hour. The use proposed does not generate any traffic in the morning peak hour, so they focused on the evening peak hour. The evening peak hour generated trips because of the aftercare program in the play space. T. 35-36.

Ms. White explained that traffic studies focus on the peak periods because if you understand operations when the largest amount of traffic is on the road, then the assumption is that operations would be better than at other times. T. 37.

D. Hours of Operation of the Sanctuary

Condition No. 1 of the November 2021 Board of Appeals condition had different hours of operation for different components of the programs. While the nature play space will be closed periodically for brief periods of time for programming with schools, some in the community thought that it meant that the entire sanctuary, including the accessible trail, would also be closed during those times. Ms. Alexander clarified that it is only the play space would be closed for school field trips. The rest of the sanctuary and the accessible trail will be open to the public as they always are during regular operating hours. T. 19. Ms. Alexander testified that she would agree to a condition of approval clarifying that. Ms. Nelson-Drake supported such a condition. T. 20.

E. Testimony regarding Future Plans, Operation of the Community Liaison Committee, and Petitioner's Response

Mr. Robert Rutsch, trustee for his mother Janet Rutsch's residence abutting the subject property to the north, testified about general and specific concerns associated with the playground and in particular the parking area. His concerns are set forth below as well as Audubon's responses. Mr. Rutsch has four

issues: the first is prior assurances that they have received about what would happen on the property in the future. The second is the location of the parking area. The third is the size and necessity for the parking lot, and the fourth is use of the lot other than for stated purposes. T. 107. An overall concern is his belief that the parking lot is a precursor for an education building that is shown on Audubon's 50-year plan.

1. Precursor to Future Development

a. Past Assurances from Audubon/Operation of Community Liaison Committee

i. Resident Testimony

One of Mr. Rutsch's broad concerns stems from his belief that the parking area is simply a precursor to building an "education center" shown on Audubon's 50-year plan near his mother's property. She will be 90 years old this year. She has lived at the property since 1972 and has watched as the sanctuary has slowly gone from being a primarily quiet place for bird watching into a variety of other uses, some of which have been part of modifications to the special exception, such as the school and camp. He and his mother do not object to the play area. They have concerns about the parking area.

He previously worked with Audubon on a special exception modification request for a deer fence on the northern boundary of the property. He worked with them to reduce the size of the fence surrounding the property to allow them to keep deer out but not impact the neighbors. They ended up with a compromise. At the end of that hearing in 2016, he testified about the 50-year long range plan that the Audubon Society published. The 50-year plan included an education center and parking lot directly behind his mother's house, essentially in the same location as the parking area proposed here, only a different size. At the end of that meeting, Lisa Alexander specifically stopped him and said that they had no plans to propose the building or parking area at that time. T. 108.

In 2017, at a Community Liaison Committee meeting, Ms. Alexander stated that increasing parking was not in the plans for "this minute." T. 108. Less than one month later, also at a CLC meeting, he

pointed out that in their plan, the education center and parking lot is "in his mother's back yard." An Audubon representative stated to him that those buildings and parking won't happen. T. 109.

Then on July 13, 2017, he received an email thread in which one of their neighbors asked about the education center and parking. Ms. Alexander replied that the building and parking near his mother's property line is not on the drawing board for the foreseeable future. T. 110.

Right after this response, the Audubon Society applied to the Historic Preservation Commission (HPC) for a work permit to construct the parking lot for the play space. The initial proposal, which would have been more acceptable to him, created 15 spaces that were angled from along the entrance drive. That proposal was not acceptable to the HPC because of the impact on the historic viewscape. Unfortunately, because no notification was given to the community of the HPC meeting and Audubon failed to contact him about it, he and his mother did not have the opportunity to encourage the HPC to reconsider their position. T. 111. He is frustrated because he asked both Audubon and the HPC to reopen the hearing, but both have refused. T. 158-159.

Once the parking area was moved to the current location, it increased from 10 spaces to 18 spaces. From the transcript and information from HPC, they were anticipating 16 spaces, and somewhere along the line it became 18. T. 111.

The Board of Appeals requested that Audubon communicate with the CLC, and in the end they failed to notify the CLC of their intentions. He thinks that's been true throughout the process and the CLC is not working in the manner intended by the Board of Appeals. T. 112.

Mr. Rutsch believes that Audubon is piecemealing its long-term plan for the education center with by getting incremental approvals of different components. This was part of the record in the appeals of the modification permitting restrooms. T. 112. He also believes that the location of the parking lot foreshadows construction of the education center, which is next door to it on the school's 50-year plan. T. 117. There is no indication that they will not continue to develop, and he believes that the parking

area aids the development process in terms of adding additional parking for preschools and campers. T. 117.

Mr. Rutsch does not believe they get anything from the CLC except presentations from Audubon. They do not get any response or acknowledgement of their concerns. They have asked for signage limiting the use of the parking area, without response. He has seen some changes recently. When the community complained about the parking on Brierly, they felt there was some effort to control them. But he would like more communication from Audubon about what their plans are. He believes that at some point, the education building will be built. T. 120. Despite denials about construction of the education building, they have constructed a parking lot. T. 120. He mentioned this in 2016 when the fence was before the Board of Appeals. By pushing the fence up against the lot line, it allowed development of the education building and parking spaces. T. 121. Each time he brings this up to the Board, the Board of Appeals tells him that it is not a consideration of that hearing. But each time he's says it, it is implicated at the following hearing. T. 121.

Ms. Kathleen Rosenberg would like a stipulation that members of the CLC can ask for meetings outside the two meetings per year. That was in the original agreement. That way, if problems arise, anybody can ask for a meeting at any time. After the public hearing adjourned, she submitted the minutes of the 2017 CLC meeting establishing procedures for notice to the community. It also states that neighbors may request a meeting with Audubon by email or in writing. Exhibit 64.

ii. Audubon Response

As described more fully, below, Ms. Ritsko-Warren testified that the parking configuration shown on the current special exception plan has been the same that has been presented at least eight times to the CLC since February 2018, before Audubon submitted their work permit application to the HPC. The configuration described by Mr. Rutsch was presented to the HPC before applying for a historic work permit. T. 130. The HPC rejected that proposal, and afterwards Audubon shared the current plan at the

CLC as described. The initial parking plan that Audubon shared with the HPC is described in Part III.E.2 of this Report below.

She also testified that they have changed the CLC meeting format in 2018 or 2019 to respond to Mr. Rutsch's concerns. The CLC meetings are held for 90 minutes. They now limit their presentations to 30-45 minutes and leave open the last 30-45 minutes for community questions. It is an open Q&A session, which is reflected in the minutes of all the meetings. The questions and answers are then circulated to the community. T. 130-131. Ms. Alexander testified that the parking area design does not lend itself to being a precursor to the educational building. This parking area will not be illuminated and will be very dark after dark. It would not be desirable for anything happening in the evening at the headquarters. She confirmed that the relationship and operation of the play space is the exclusive driving force for the location/size of the parking lot. T. 137.

b. Parking Lot for Play Scape is in Restored Meadow

i. Mr. Rutsch's Testimony

Perhaps as a subset of Mr. Rutsch's belief that Audubon has been less than forthcoming about its development plans, Mr. Rutsch asserts that the parking lot proposed for the play scape is within a recently established restored meadow. According to him, the Audubon Society has created an hour-long presentation film that they've posted online entitled "The Land of Woodend." T. 114. In the first minute of the film, you hear the voice of Lisa Alexander where she states she's entering the restored meadow, but he believes she is standing directly where the parking lot will be located. T. 114. The meadow was key to justifying a previous modification for a deer fence. The deer fence has been effective at keeping deer out of the Audubon property, but his mother has had deer jump into her property. T. 115. The concern to surrounding neighbors was that they would have a 10-foot fence, which was reduced to 8 feet. The neighbors argued that the primary source of deer was Rock Creek Park and the 10-foot fence along Rock Creek Park has substantially reduced that. His belief is based on a screenshot (on the next page)

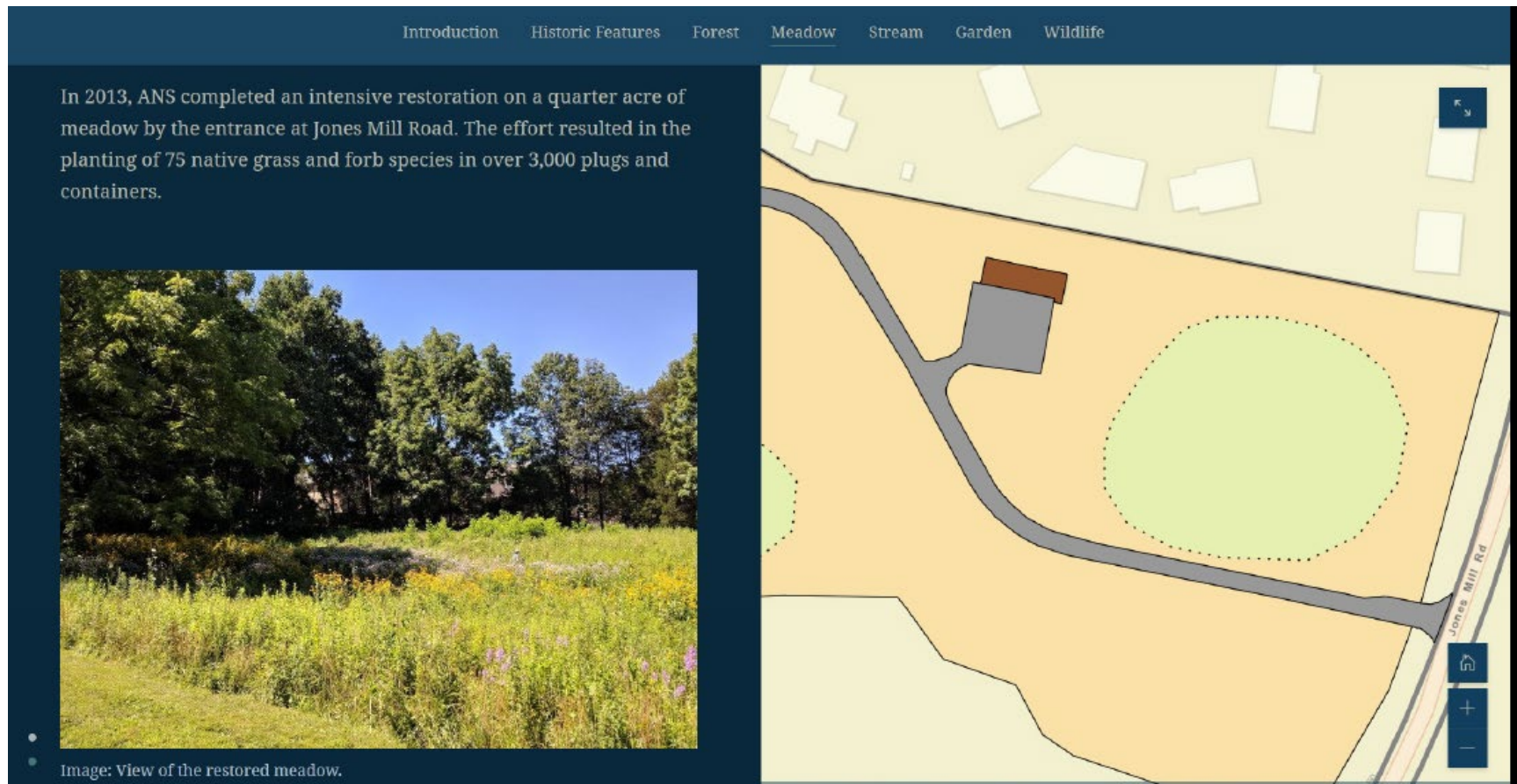


Exhibit 63(c)
Screen Shot from Audubon's Website with Picture of Meadow and Locational Graphic

from Audubon's website. According to Mr. Rutsch (Exhibit 63):

The image and the page displaying image indicate it is the location of the meadow restored in 2013. To the right in the second screen shot is a map locating [sic] of the meadow. Our home is depicted in white along the northern property line as the second house to the west from the northeast corner of the ANS Property line. Our house is visible through the trees in the picture of the meadow.

The caption by ANS above the image states: 'In 2013, ANS completed an intensive restoration on a quarter acre of meadow by the entrance at Jones Mill Road. The effort resulted in the planting of 76 native grass and forb species in over 3,000 plugs and containers.'

I note that this is virtually the same view that Ms. Strum depicted for the proposed parking lot with our house in the same location.

ii. Audubon's Response

Ms. Pearce, and Ms. Alexander testified that the parking lot is not within the restored meadow. Ms. Pearce described the restoration project. Before restoration, this area of the property was in old agricultural fields that were no longer farmed. On some of them, Audubon mowed annually and allowed the vegetation to grow. The vegetation on these is a mix of non-native and native vegetation. T. 95-96. On the quarter acre, they removed the existing vegetation and replanted entirely with native plant species of grasses and wildflowers. T. 96.

Ms. Alexander testified that the proposed parking area avoids the restored meadow entirely. She was one of the people who planted those 3,000 meadow plants that went into the restored meadow. The entire field now is about cut in half. Half was not restored and left in poor habitat, post-agricultural land, and half the field nearest to the driveway, is restored. So, she had a personal vested interest in making sure that they did not disturb those 3,000 native plants that she helped put in the ground herself. And the parking lot does completely avoid the restored portion of that field. T. 134.

After Mr. Rutsch submitted his images of the meadow's location post-hearing, Audubon submitted a rendering showing the parking lot in relation to the restored and unrestored meadows (Exhibit 66(a), on the next page).



**Graphic Submitted by Audubon
Showing Location of Restored and Unrestored Meadows
Exhibit 66**

2. Location of the Parking Area

a. Mr. Rutsch's Testimony

Mr. Rutsch supported the parking plan initially presented to the HPC. It created 15 spaces that were angled along the entrance driveway from Jones Mill Road. Mr. Rutsch submitted a graphic showing the original plan presented to the HPC (Exhibit 63(a), on the next page).

Mr. Rutsch testified that the HPC rejected this proposal because it would impact the historic viewshed. Unfortunately, because no notification was given to the community of the HPC meeting and the Audubon Society failed to contact them about it, they did not have the opportunity to encourage the HPC to reconsider their position. T. 111. Once the parking area was moved to the current location,

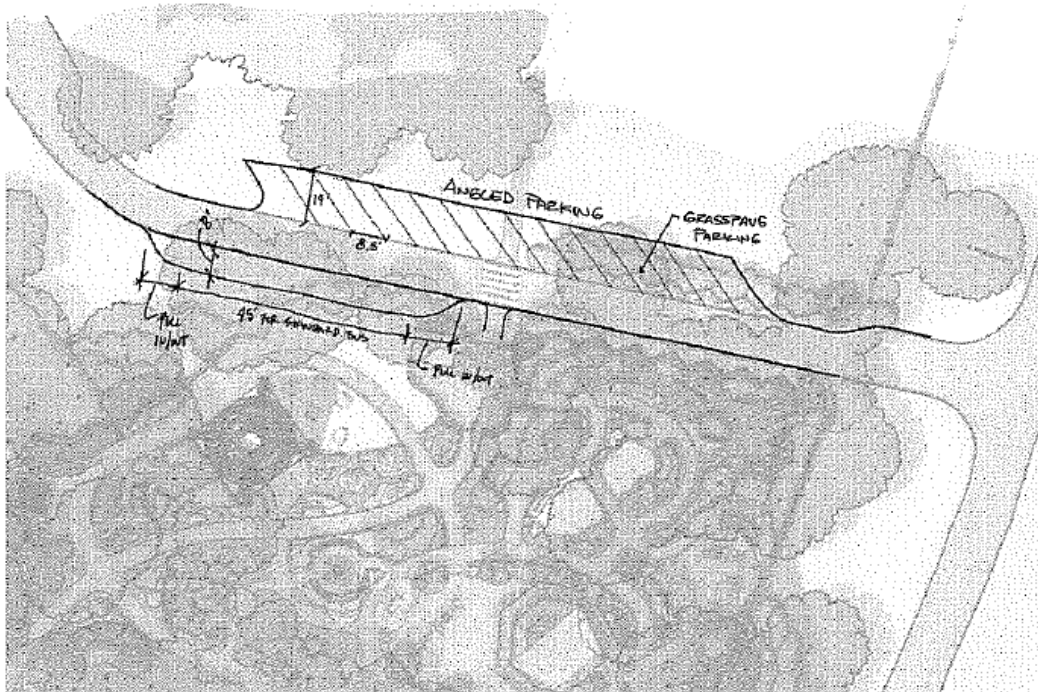


Exhibit 63(a)

it increased to 18 spaces. T. 111.

Mr. Rutsch would like to see parking for the play space near Old Georgetown Road rather than the northern end of the property. He believes that if the Old Georgetown Road were developed with sidewalks, it would be reasonable that the sidewalks would enter the two gates from that side. There are already people who have worn a path from Jones Bridge Road from houses in that direction and then back towards Woodhollow Road to the north. The path goes through grass to the gates that are there for pedestrian access. T. 97. Mr. Rutsch believes that with a sidewalk on Old Georgetown Road, people could pull-off and park beside the road and still have easy access to the play area. Or at least as close access to the playscape through one of the pedestrian gates at a similar distance to the proposed parking lot.

b. Audubon's Response

Ms. Pearce testified that the location of the parking was driven in part by comments from the Historic Preservation Commission (HPC). Because they are a historic property, they initially had to get approval for changes from the HPC. The HPC was particularly interested in sight lines and views, especially on arrival at the property. This is because the property was designed by John Russell Pope, who was the preeminent architect in the early 20th century. T. 95.

Ms. Ritsko-Warren testified that the current parking proposal was presented to the CLC February, 2018, before it was presented to the HPC. They presented the current proposal at a pre-consultation meeting with the HPC in March 2018. When the HPC supported this configuration, they applied for the historic work permit in May, 2018. T. 130. Over the last four years, there have been eight meetings since that first presentation that have included the current proposed configuration. T. 130.

Ms. Alexander testified that the proposed location of the parking area is the result of three factors: (1) the Historic Preservation Commission rejected the driveway parking Audubon initially presented to them, (2) they wanted to protect the restored meadow from disturbance, and (3) they did not want to remove existing mature trees to add parking. T. 154. She believes that Mr. Rutsch's testimony that the "community" opposes the location of the parking area mischaracterizes the feelings of the community about the parking lot. Only 3 out of a total of 19 adjoining and confronting neighbors have objected to the location of the parking. T. 155.

She reiterated that the general location of the parking area was determined by proximity to the nature play space. That's why they first proposed parking right along the driveway because they would be near the play space. When the HPC rejected that proposal, they wanted to protect the restored meadow and at the same time keep the parking close to the play space. T. 132-133. Ms. Pearce testified that they could not allow parking on-site nearer Jones Bridge Road because that area is in a forest conservation easement. T. 101.

According to Ms. Alexander, the area to be dedicated abutting Jones Mill Road is not part of the modification application. Audubon is only dedicating the land for the right-of-way. Future improvements would be determined by the County rather than Audubon. T. 103.

Mr. Kline proffered the events that led to the condition of approval requiring the dedication along Jones Mill Road. Condition No. 3 of the Board of Appeals decision required Audubon to dedicate 70 feet of public right-of-way to achieve a full master plan right of way width along Jones Mill Road. T. 83. The Audubon property is not subdivided and not platted in the land records of Montgomery County. Under the subdivision regulations, one cannot get a building permit to construct on a piece of property unless it's a subdivided. The scope of the improvements in the play area, except for one, would not normally need a building permit. However, when the Planning Department received the application, they saw an opportunity to require dedication of the right-of-way. At some point, there was a recommended condition that Audubon go through the subdivision process, dedicate the right-of-way, and build a walkway or bike path along Jones Mill Road and some shoulder improvements to the road itself.

The cost for that was more than a million dollars and would have made the play space unfeasible. Audubon went back to the Planning Department and told them they weren't required to do this and couldn't afford to do it. Eventually, they worked out a compromise where they would volunteer to record a plat of dedication for the master-planned right of way. They agreed with the Montgomery County Department of Transportation that they would go back and subdivide if they ever did need a building permit. The compromise was a win-win from the public sector side because they got control of the land area, but Audubon does not have to spend the money until it can receive income to do the improvements. T. 83-86.

3. Size of the Parking Area

a. Mr. Rutsch's Testimony

Mr. Rutsch does not believe that the proposed parking area needs to be as large as it is. The Play

Scape for which the parking lot is proposed is limited to academic programming during the day, 8:30 a.m. to 2:00 p.m. during the school year and 9:00 a.m. to 4:00 p.m. for camp and activities during the summer months. The public has access to this parking lot and the playscape from dawn to 8:30 a.m. and after 2:00 p.m. during the school year. During summer months, the public may enter before 10:00 a.m. and after 4:00 p.m. T. 116.

During the day when school and camp are in session, school kids get dropped off at preschool, campers get dropped off at camp, and there's no particular need to have anyone parking to go to school, go to camp or use the playscape. He believes that this parking lot will either be empty or used for another purpose. T. 116.

He is increasingly frustrated. His mother is 89 years old. After looking at the plantings shown on the landscape plan, he believes his mother will be looking at a parking lot where for 50 years she's been looking at a meadow. As he is speaking, he can view the trees that were required for the fence proposal. What is there now if four scruffy plants that are approximately five feet tall and don't do anything to hide the fence. T. 122.

b. Audubon's Response

Ms. Alexander testified that, when they first began planning the play space, they consulted with the Planning Department to see if there was a standard number of parking spaces for play areas. The County told them the only standard was for recreational fields like soccer fields and baseball diamonds. When they looked at how many were required for those fields, it seemed "entirely too many" for their needs. They worked with Planning Staff to find the number of spaces that would accommodate the use but not be as many as the 45 required for recreational fields. The number of spaces has been the same since they first submitted their application to the HPC. T. 134-135. Ms. Ritsko-Warren testified that the number of parking spaces has remained the same since February 2018, when it was presented to the CLC. T. 130.

4. Impact of the Parking Lot on the Rutsch Dwelling

a. Mr. Rutsch's Testimony

Mr. Rutsch believes that his mother will have a view of the parking lot area. Her property is higher than the subject property, so he's "concerned" that even with plantings the parking lot will not be shielded from her view and that noises and sound from it will project into her yard. He believes that changing what has been for 50 years a restored or unrestored meadow is clearly an inappropriate change in the nature, character, and intensity of the use. T. 113.

Mr. Rutsch made several suggestions to limit the use of the parking area. These included limiting parking to two hours, that some type of barrier be erected, and that signage be placed limiting use of the area to the play space only.

b. Audubon's Response

Ms. Alice Sturm is a licensed landscape architecture and serves as an in-house landscape architect and garden program manager. She qualified as an expert in landscape architecture. T. 46. At its closest point, the parking lot is located 36 feet from the property line. The closest point is near the turnaround T that has a parking spot. There are two trees on either side. T. 49. Ms. Rutsch's house is north and slightly west of the parking area. She does not know the exact setback of the Rutsch house from the property line. T. 50.

The parking lot itself will be permeable Gravel-Lok parking. It is west of the restored native meadow and to the east of an existing wooded area. The goal of the landscaping is to provide planting that screens the parking in a manner consistent with the predominantly native woodland that is immediately adjacent to it. T. 51.

The larger evergreen species clustered to the north are intended to screen the parking area year-round where it is closer to the property line. There are large evergreens where the parking area is within 75 feet of the property line. T. 51.

The area further than 75 feet is screened with a variety of deciduous shrubs and flowering trees of various sizes. This is in addition to the existing 25 trees that are along the property line near the Rutsch house. These will not be impacted by the proposed use. Of the 25 trees, 17 are evergreen and mature. T. 51.

That is the existing context that would buffer neighbors from the proposed parking. However, in 2019-2020, they have been supplementing their wooded areas and have planted an additional 32 evergreens, which are a mix of native species such as holly, pine, and cedar. They have also planted 25 shrubs during the same period. With these, the screening is a combination of the supplement planting, existing large trees, and distance from the neighboring properties. T. 52.

The parking lot was sited to avoid impacting any of the existing trees as well as the Audubon's restored meadow. They are currently adding restorative plantings to the meadow. T. 52. The landscape plan shows the most proximal level of screening, focused on mature evergreens nearest to the property line, and a combination of evergreens and flowering species where it is further from the property line. T. 52.

The intent of the landscape plans is to make an attractive experience for people using the nature play area, but also to screen the play area from other areas of the sanctuary, from neighbors, and from Jones Mill Road. To screen the Nature Play Space, they've used a combination of evergreens, shade trees, and a ground-plane level of shrubs and smaller trees so it will appear largely wooded and naturally landscaped to both individuals using the play area and those driving past. T. 53. The size of the symbols on the landscape plan for the existing vegetation do not reflect the size of the mature vegetation. It is also not a complete representation of all the vegetation that exists because it only shows the largest trees. T. 53. There are many of these are north of the parking area. T. 54.

Ms. Storm presented a photomontage of depictions of the landscaping at installation and five years (Exhibit 58, on the following pages). T. 54. The first montage shows existing landscaping and cars

in parking area, without the landscaping shown on the proposed landscape plan (Exhibit 58). It is a photograph layered onto a photograph, without all the proximal screening. If on the site today, we would see this without the cars. T. 55.

The second montage represents what the landscaping would look like immediately after installation at the installation size. T. 56. The third montage represents what would be seen at five years after planting. Ms. Sturm testified that the exhibit does not contain a representation from the Rutsch's perspective because they wanted a defined point that would be identifiable on a survey. The view was taken from the existing large black walnut tree shown on the survey immediately north of the existing driveway entrance. T. 57. To better demonstrate the landscaping proposed on the north side of the parking lot (between the parking lot and the Rutsch property), she created a fourth montage (Exhibit 59) that removes the proposed landscaping on the south side of the parking area so one can see the landscaping proposed on the north side. T. 57-58.

To mitigate concerns expressed by Mr. Rutsch to limit use of the parking lot, Audubon agreed to a condition of approval stating, "ANS will post signs at the Nature Play Space parking area that say 'Parking for Nature Play Space Only. Parking Area Closes at Dusk'." Exhibit 61.

F. Use of Parking Area and Play Scape for Birthday Parties

Ms. Rosenberg questioned whether the play space would be reserved for birthday parties. Ms. Alexander testified that the play space would not be rented out for birthday parties. Audubon uses the enclosed historic parking at the Teale Center for birthday parties. Birthday parties will not be renting out the play space, although some children may visit the space after a party ends. The birthday party package is a visit to the Teale Center, which is a nature classroom, and a naturalist who takes the party on a hike. T. 142. Ms. Alexander agreed to a condition prohibiting Audubon from renting the play space for birthday parties, although individuals from birthday parties may wander to the playground afterwards. T. 162.



Montgage Showing Existing Conditions with Parking Area Added

Exhibit 58



Montage Showing Proposed Landscaping at Installation

Exhibit 58

Montage Showing Proposed Landscaping at 5 years

Exhibit 58





Montage Showing Plantings on Rutsch Side of the Parking Area at installation (without showing planting proposed on south side of the parking area)

Exhibit 59

III. FINDINGS AND CONCLUSIONS

Upon review of the original Hearing Examiner's Report and the testimony and evidence presented on remand, the Hearing Examiner concludes that additional findings are appropriate given the issues raised on remand and several conditions should be modified or added. She also finds that some of the issues raised on remand are beyond the scope of review permitted under the 2004 Zoning Ordinance. Section 59-G-1.3(c)(4) states, "[T]he public hearing must be limited to consideration of the proposed modifications noted in the Board's notice of public hearing and to (1) discussion of those aspects of the special exception use that are directly related to those proposals..."

Due to the limited issues raised on remand, this Report does not set forth every finding required to approve a special exception. The Hearing Examiner specifically finds that original findings and conclusions of the Hearing Examiner's Report dated September, 2021 should remain unchanged unless specifically modified herein. The Hearing Examiner's revised findings are listed below.

A. Location, Size, and Scale of Parking Area

The major issue on remand related to the major modification is the compatibility of the parking area with surrounding properties and specifically Ms. Rutsch's. The other issue relates to the adequacy of the traffic study and compatibility of traffic in the surrounding area.

Several standards of approval in the 2004 Zoning Ordinance are designed to ensure that special exceptions are compatible with surrounding properties. The Hearing Examiner concludes that issues raised on remand fall within the scope of the findings required in Section 59-G-1.21(a)(4), (5), (6) and (9) of the 2004 Zoning Ordinance. Findings in the original Hearing Examiner's Report remain unchanged except as provided here.

59-G-1.2 (a)

(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.

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

Conclusion: The Hearing Examiner's report dated September 2021 characterized the proposed *Play Scape* as a "nominal addition" to the existing special exception due to the large size of the property. *HE Report*, p. 22. The testimony of Mr. Rutsch persuades this Hearing Examiner that the impact of the parking area on Ms. Rutsch's home is an issue that that should not be so easily dismissed. Nevertheless, the weight of evidence on the location, size, and scale of the parking lot, *combined* with new conditions limiting its use (in Part IV of this Report), sufficiently address the compatibility of the proposed parking area.

The major issue discussed during remand was the location of the parking area. The Hearing Examiner does not make a finding on the *process* by which the parking lot was located, as she must address the location proposed in the modification. The Hearing Examiner has no reason to doubt Audubon's representations that the Historic Preservation Commission rejected parking along the driveway from Jones Mill Road; Mr. Rutsch also appears to acknowledge that is what happened, although he complains that he was not involved in that proceeding. She found credible Ms. Alexander's and Ms. Sturm's testimony that the location of the parking lot was chosen in part to avoid impacting existing mature trees because of the angled configuration. Mr. Rutsch poses alternate locations for the parking, such as the dedicated right-of-way from Jones Mill Road. Ms. Alexander correctly responded that whatever happens in the dedicated right-of-way will be determined by Montgomery County sometime in the future, if and when the right-of-way is ever developed. She correctly states the on-site area closest to Jones Mill Road is within a Forest Conservation Easement. Exhibit 10(a).

1. Size and Scale

Ms. Alexander testified at length that the size of the parking lot was developed in conjunction professional staff at the Planning Department. The goal of on-site parking is to provide enough spaces so that visitors do not park on the street and at the same time minimize the impact on the both the subject property and surrounding properties. The record here supports a finding that the lot will be compatible in terms of location, size, and screening with the added conditions of approval

Rather than use the standard number of spaces for recreational fields, which arguably could have been applied, Audubon and Planning Staff chose a number that is less than half what would be required for recreational fields. While Mr. Rutsch believes that the number chosen is too large, he gives no specifics to support this testimony other than assuming low use from hours of operation and use by buses. His testimony does not account for use by the public either. The Hearing Examiner finds that the more considered determination of Audubon, who is familiar with the detailed operation of the Play Space, and Planning Staff, have more weight than Mr. Rutsch's assertion. Added Condition 1 (restricting improvements to those shown on the Special Exception Site Plan) and the revised Condition No. 2 limits the size of the parking area to its current configuration, limit Audubon's ability to change the parking area with additional review.

The Hearing Examiner agrees with Mr. Rutsch that conditions limiting the scale of activity in the parking lot are appropriate to ensure that it will be compatible with the surrounding properties. The Hearing Examiner finds from Ms. Nelson-Drake's testimony that activities generated by parking for weekend events can be robust. Given the proximity of this parking area to the property line bordering Ms. Rutsch's property, the Hearing Examiner finds that event parking could bring too much activity to this location to be compatible. She finds that the condition proposed by Audubon, which not only restricts the use of the parking, but the time it will be open, will protect this parking area from the level of activity experienced in other on-site lots during events.

The second condition proposed by Audubon, which prohibits rental of the play space for birthday parties, has the same effect of limiting activity on the lot just to its intended purpose—to support the play space as described in this major modification. The Hearing Examiner finds that the weight of the evidence supports a finding that the parking lot is compatibly sized, with the landscaping and conditions agreed to by Audubon.

The Hearing Examiner does not find that a condition limiting parking to two hours (suggested by Mr. Rutsch) is necessary and could be counterproductive. The two-hour minimum could create more activity in the lot while cars leave and depart during the day. It could also create traffic congestion at the entrance to the parking area.

2. Screening and Location

Another issue on remand is whether the parking lot for the Nature Play Space will have sufficient screening to be compatible with abutting properties, including Ms. Rutsch's house. The lot is 36 feet from the property line at its closest point but is separated by 75 feet containing mature evergreens at other points.⁵

Upon review of the testimony and evidence on remand, this Hearing Examiner finds that the screening and location will be compatible with Ms. Rutsch's home and neighboring properties. The photomontage introduced by Audubon shows multi-tiered landscaping at many levels, including tall, mature evergreen trees (that are being supplemented by Audubon) nearer the border of Ms. Rutsch's property and lower tiers of evergreens and flowering species closer to the parking lot to mitigate views. The montages demonstrate that even at installation, ground level views will be at a minimum heavily filtered. The montages suggest that there may be views of the parking lot from Ms. Rutsch's second story at installation, but the montages show existing landscaping that will filter these views, which will decrease as the new landscaping grow. A close review of the landscape plan and photomontage submitted

⁵ There is nothing in the record listing the distance from Ms. Rutsch's dwelling to the parking lot.

supports a finding that the height of the existing mature evergreens, plus the tiered levels of landscaping will, at a minimum, filter views of the parking area significantly enough to be compatible. With the proposed landscaping and revised conditions of approval, the Hearing Examiner finds that these standards have been met.

(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: Key to the Hearing Examiner's findings that the parking area for the Play Scape will be compatible with neighboring properties is Ms. Alexander's testimony that it will not be lit, so no overhead lights could cause glare on neighboring properties or be seen through the trees.⁶ Also of importance is the tiered landscaping shown on Exhibit 59. That landscaping at installation creates tiers that exceed the height of headlights. While the lot closes at dusk, avoiding the need for headlights, the landscaping pictured would still screen headlights if for some reason headlights lights are used in the parking area.

She agrees with Mr. Rutsch that limitations on the use of the parking lot are appropriate to ensure that the level of activity there will be compatible with Ms. Rutsch's home. The condition proposed by Audubon not only limits the number of people that can be use the parking area, but also clarifies that it closes at dusk. While not necessarily triggered by Mr. Rutsch's concerns, the condition prohibiting Audubon from renting out the play space also yields the limited usage of the parking area.

B. Restored Meadow

To the extent relevant to this case, the Hearing Examiner does *not* find that the parking area encroaches on the restored meadow, but instead narrowly avoids it. The Hearing Examiner understands why Mr. Rutsch would make that assumption based on the screen shots from Audubon's website. Comparing the screenshots with the more detailed graphic submitted by Audubon, the "meadow" shown

⁶ Audubon would need to modify its special exception approval to add lighting to the parking lot.

on the screen shot is a larger "blob" that could include both the restored meadow and unrestored meadow. These are separately delineated on the more detailed graphic submitted by Audubon. Anyone standing at several locations along the parking area (but not in the meadow) could have a very similar view of the Rutsch house as that pictured on the website. The Hearing Examiner finds that the first-hand testimony of Ms. Alexander, who helped plant the meadow, to be of more weight than the screen shots from the website relied upon by Mr. Rutsch. The Hearing Examiner finds that the screening and location of the parking area will meet the above standards for approval.

C. Traffic Impact Study/Need for a "Holistic" Study of Area Traffic

Section 59-G-1.2(a)(9) of the 2004 Zoning Ordinance provide the following standard for approval:

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of granting the special exception. If the special exception does not require approval of preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Review, as required in the applicable Annual Growth Policy.

Conclusion: The adequacy of multi-modal traffic (*i.e.*, pedestrian, transit, and vehicular) is tested under the Planning Board's Local Area Transportation Review (LATR) Guidelines and the 2020 – 2024 Growth and Infrastructure Policy adopted by the County Council. The Hearing Examiner finds from the testimony on remand that the traffic study was performed in compliance with the Guidelines and no change is needed to the Hearing Examiner's original finding that this standard had been met. Ms. Nicole White,

Audubon's expert in transportation engineering, testified that the traffic counts were taken in October 2019, before the pandemic began.

Nor does the Hearing Examiner find it appropriate to conduct a "holistic" review of traffic in the neighborhood, although she understands resident's concern. Conditions are imposed on the grant of a special exception to mitigate negative impacts of a proposed use *J. Roland Dashiell Realty Co. v. Wicomico Cty.*, 122 Md. App. 239, 245-46 (1998). Here, the Zoning Ordinance limits review of a major modification to the modifications proposed, which is the Nature Play Space and associated parking. The evidence in this record indicates that the Nature Play Space did not generate enough traffic to warrant a Traffic Impact Study under the LATR Guidelines, although Audubon prepared one to be responsive to the community. The record reflects that the traffic study conformed to the scope agreed upon with the Planning Department, which was determined using the procedures in the Guidelines. Ms. White explained that the traffic study focuses on peak periods because that is the time that most congestion is on the road; time periods outside of peak hours will not capture "worse case" background conditions. Ms. White also clarified that the site entrances were included in the study.

General congestion in the area may be the result of many things, including the congestion standards set by the County Council for each policy area defined in the 2020-2024 Growth and Infrastructure Policy. Nothing in this record indicates that the impacts of the Play Space warrant a "holistic" approach to congestion in the larger area as the traffic impact was so minimal as not to require a traffic study. These may be issues for the CLC, but not for this major modification.

D. Sanctuary Hours of Operation

To clarify the conditions of approval in the original decision on the major modification, Ms. Alexander testified that she would agree to a condition stating that the sanctuary will remain open to the public during normal operating hours. The Hearing Examiner recommends altering the language of Condition No. 1 as follows:

1. Hours of operation for the ~~Subject Special Exception Amendment use~~ Nature Play Space will be limited as follows:
 - a. Academic Programming
 - i. Convene from 8:30AM to 2PM
 - ii. During weekdays only
 - iii. During the months of September through May
 - b. Summer Camp/Activities Programming
 - i. Convene from 9AM to 4PM
 - ii. During weekdays only
 - iii. Months of June through August
 - c. General Public Visitation
 - i. School Year Visitation – weekdays are permitted from dawn to 10AM and from 2PM to dusk, September through May.
 - ii. Summer Visitation – weekdays permitted from dawn to 8AM and from 4PM to dusk during the summer (June through August).
 - iii. Year-round visitation is permitted for the general public confined to the aforementioned hours.
 - iv. Weekend Visitation - Dawn to dusk year-round, unless reserved for special programming or closed due to weather related events.

E. Issues Outside the Scope of the Special Exception Modification

As noted, the 2004 Zoning Ordinance limits the Hearing Examiner's consideration to the impacts caused by the addition of the Nature Play Scape. Several issues raised at the remand hearing are not directly related to the Play Scape or the associated parking.

One of these issues was event parking on Brierly Road, raised by Ms. Nelson-Drake. The parking on Brierly Road described by Ms. Nelson-Drake does not stem from use of the play scape area; Audubon acknowledges that the parking on Brierly Road occurred because Audubon instructed weekend event vendors to park there as "overflow" parking. This is further borne out by the fact that the Play Scape does not yet exist and therefore, cannot have caused parking congestion. Although left as a matter for the Hearing Examiner to resolve, it is beyond the scope of the major modification. Given the limit of review provided by the Zoning Ordinance, the condition restricting parking on neighborhood streets contained in the Board of Appeals November 2021 decision must be interpreted to apply only to use of the play scape. Because that condition remains, however, parking from the Play Scape Area should not impact conditions on Brierly Road.

On the positive side, it appears that Audubon has taken significant steps to alleviate the conditions described by Ms. Nelson-Drake with some success. Ms. Rosenberg helpfully supplied CLC minutes that list procedures for communications between CLC and Audubon. Exhibit 64(a). These make apparent that residents may request meetings with Audubon when congestion occurs on Brierly Road. The Hearing Examiner encourages all parties to continue their work to resolve any future problems caused by event parking.

This leads to another area of testimony at the remand hearing: the level of communication between Audubon and the community. This concern was primarily expressed by Mr. Rutsch. Ms. Alexander testified that they have changed the format of the meetings to enhance citizen participation in response to Mr. Rutsch's concerns. Again, the minutes supplied by Ms. Rosenberg appear to state that residents may take a proactive approach to requesting CLC meetings.

Similarly, the allegation that Audubon is "piecemealing" smaller proposals with an ultimate eye to building the education center is not within the scope of the modification request. The revised and new conditions (1) capping parking at 18 spaces, (2) requiring signage limiting the parking area to use by Play Space visitors, and (3) setting hours from dawn to dusk may assuage some these concerns, but the Hearing Examiner has no authority to condition special exceptions on the mere possibility that future uses will occur. *Miller v. Kiwanis Club of Loch Raven, Inc.*, 29 Md. App. 285, 296, 347 A.2d 572, 579 (1975). Nevertheless, the Hearing Examiner recommends an additional condition typically included for special exceptions that limits development to the improvements shown on the approved special exception site plan. This at a minimum clarifies that any further development will be subject to scrutiny under the modification process.

IV. Conclusion

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the requested modification to CBA-2643-A, which requests modification to the

special exception (Charitable and Philanthropic Institution) held by The Audubon Naturalist Society located at 8940 Jones Mill Road, Chevy Chase, Maryland, in the R-90 Zone, be **GRANTED**, and that the **CONDITIONS** recommended in the Hearing Examiner's Report dated September 30, 2021, be revised or retained as follows:

1. Hours of operation for the Nature Play Space will be limited as follows:
 - a. Academic Programming
 - i. Convene from 8:30AM to 2PM
 - ii. During weekdays only
 - iii. During the months of September through May
 - b. Summer Camp/Activities Programming
 - i. Convene from 9AM to 4PM
 - ii. During weekdays only
 - iii. Months of June through August
 - c. General Public Visitation
 - i. School Year Visitation – weekdays are permitted from dawn to 10AM and from 2PM to dusk, September through May.
 - ii. Summer Visitation – weekdays permitted from dawn to 8AM and from 4PM to dusk during the summer (June through August).
 - iii. Year-round visitation is permitted for the general public confined to the aforementioned hours.
 - iv. Weekend Visitation - Dawn to dusk year-round, unless reserved for special programming or closed due to weather related events.
2. No vehicles may queue within the public right-of-way on Jones Mill Road or Brierly Road while accessing the Site.
3. The Applicant must dedicate 70 feet of public right-of-way to achieve the full master-planned right-of-way width to the Montgomery County Department (MCDOT) of Transportation via deed or a form acceptable to MCDOT along the Site's Jones Mill Road frontages within sixty (60) days of approval of the Modification to Special Exception Amendment No. CBA-2643-A.
4. The Petitioner must provide a maximum 18 vehicle parking spaces on-site. Members and guests shall not park on nearby public streets.
5. The Petitioner will post signs at the Nature Play Space parking area that say "Parking for Nature Play Space Only. Parking Area Closes at Dusk."
6. The Petitioner will not reserve the Nature Play Space area for birthday parties.

7. All improvements to the Nature Play Scape and associated parking are limited to those shown on the special exception site plan and planting plan (Exhibit 8).

Report issued this 1st day of June, 2022.

Respectfully submitted,



Lynn Robeson Hannan
Hearing Examiner

Notifications to:

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Ms. Janet Rutsch
Ms. Janice Nelson-Drake
Ms. Kathleen Rosenberg
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