

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

**IN THE MATTER OF:**  
**Guidepost A Montessori, LLC**  
**c/o Higher Ground Education**

Applicant

For the application:

Gay Barnett  
Kevin Foster  
Anne Randall

Stacy Silber, Esq.  
Attorney for the Applicant

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Before: Derek J. Baumgardner, Hearing Examiner

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OZAH Case No. (referral) S-2345-B

**HEARING EXAMINER’S REPORT AND RECOMMENDATION**

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## **I. STATEMENT OF THE CASE**

On September 29, 2021, the Applicant, Guidepost A Montessori, LLC, c/o Higher Ground Education (“Applicant” or “Guidepost”) filed the above-captioned petition to OZAH for a major amendment to a special exception for a private education institution, pursuant to 59-A-4.22 of the Zoning Ordinance (2004), as made applicable by Section 59-7.7.1.B.1 of the Zoning Ordinance (2014), for a public hearing and written recommendation. Exhibit 1.

The application states that the Private Education Institution use will remain unchanged, but the Applicant is seeking to substitute the special exception holder (operator), extend the approved hours of operation, modify the age range for children attending the school (6 weeks to 13 years old), and reduce the maximum student enrollment capacity previously approved. Exhibit 2, p. 1. The property is located at 7108 Bradley Boulevard, Bethesda, Maryland. Pursuant to Section 7.7.1.B.1 and Section 7.7.1.B.3.c of the Montgomery County Zoning Ordinance, this Special Exception modification will be reviewed under the standards and procedures of the zoning ordinance in effect prior to October 29, 2014.

On January 12, 2022, OZAH issued a Notice of Public Hearing scheduling this case for a hearing on February 11, 2022. Exhibit 23.

On January 14, 2022, Planning Staff issued its report recommending approval of the application with conditions. Exhibit 24(a). A revised report was subsequently issued. Exhibit 24(i).

On January 28, 2022, the Planning Board issued its report affirming the findings and

recommended conditions of Staff with clarifications as to several items. Exhibit 24(b). Those conditions are as follows:

1. The Private Educational Institution must be limited to a maximum of 180 students and 25 employees (including teachers, administrators, and other staff).
2. The hours of operation are limited to Monday through Friday, 7:00 AM to 7:00 PM.
3. The Applicant must provide a minimum of 78 parking spaces on-site:
  - a. 25 for employees
  - b. 53 for drop-off/pick-up activities, visitors, and deliveries.
4. Use of the outdoor playground and recreational facilities will be staggered during the conditioned hours of operation.
5. Prior to issuance of the use and occupancy permit, the Applicant must submit the permit application for construction of a 5-foot sidewalk, with a 6-foot buffer on the southern side of Bradley Boulevard connecting the Site to the RideOn bus stop at Oak Forest Lane, east of the Site. The Applicant must reasonably pursue the issuance of the permit, and the sidewalk must be constructed and accepted by the Maryland Department of Transportation (MCDOT SHA) no later than two (2) years from issuance of the use and occupancy permit.
6. Prior to issuance of the use and occupancy permit, the Applicant must submit the permit application for the construction of a 5-foot by 12-foot bus shelter, real time transit display, and an ADA accessible pad at the existing bus stop located at the northwestern corner of Bradley Boulevard and Oak Forest Lane. The Applicant must reasonably pursue the issuance of the permit, and the bus shelter, real time transit display and ADA accessible pad must be constructed and accepted by the Montgomery County Department of Transportation (MCDOT) and MDOT SHA no later than two (2) years from issuance of the use and occupancy permit.
7. Construction must conform to the submitted Special Exception Amendment Site Plan (Sheet 2, July 2021), or as amended by the Board of Appeals.

The public hearing proceeded as scheduled on February 11, 2022. The following individuals testified in support of the application: Guy Barnett (on behalf of the Applicant), Kevin Foster (civil engineer), and Anne M. Randall (traffic and transportation engineer). No members of the public testified and the hearing was uncontested. The record was left open for ten (10) days following the conclusion of testimony, or until February 21, 2022, for the inclusion of the transcript, the posting affidavit, or any other post hearing submittals. T. 105.

After a thorough review of the record in this case, including all documents and testimony, the Hearing Examiner **RECOMMENDS APPROVAL** of the requested major amendment to the

special exception for a private educational institution, pursuant to Section 59-G-1.3(c) of the 2004 Zoning Ordinance, with the conditions included in Part IV of this Report, for the following reasons.

## **II. FACTUAL BACKGROUND**

### **A. Prior History**

The Applicant states that the existing building was built circa 1961 as a fire station, and thereafter operated as a church with a Montessori school. Exhibit 2, p.3. In 1998, the building was converted into a Private Education Institution for the Rochambeau French International School (the "French International School") through Special Exception No. S-2345. *Id.*

### **B. The Subject Property**

Technical Staff ("Staff") provided the following description of the property:

The Subject Property ("Property" or "Site") is 7108 Bradley Boulevard in Bethesda, otherwise known as Lot 3, Block 3 of the Kefauver Tract - Bradley Hills Subdivision, as recorded among the Land Records of Montgomery County, Maryland at Plat No. 201; an approximately 5,500 square foot area that was mistakenly excluded from Lot 3 but is being incorporated through a concurrent minor plat of consolidation; and part of Lot 15, Block 3 in the "Kefauver Tract - Bradley Hills" subdivision, recorded at Plat 4112, which is subject to a perpetual easement recorded at Liber 16499, Folio 28 for the benefit of Lot 3. (Collectively, the "Property"). It is improved with a long-standing structure measuring 16,181 square feet, that was originally built as a fire station, then later used as a church with a Montessori school, and most recently converted exclusively into a Private Education Institution for the Rochambeau French International School.

Exhibit 24(i), p. 4. The property is 2.41 acres in size and is located on Bradley Boulevard between the Capital Beltway and Burdette Road zoned R-200. The Property has a single, full-movement driveway on Bradley Boulevard with parking at the rear. *Id.*



**Figure 1: Aerial Photo of Subject Site (outlined in red)**

### **C. Surrounding Neighborhood**

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood,” which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defines the neighborhood as generally bounded by Armat Drive to the north; Arrowwood Road to the south; Burdette Road to the east; and Redwood Avenue to the west. Exhibit 24(i), p. 5-6. The neighborhood is composed primarily of detached houses in the R-200 Zone. *Id.*



There are no other schools, day care centers or other special exceptions/conditional uses on-record located within the neighborhood boundary. *Id.* Although the surrounding neighborhood is predominately characterized by single-family residential uses, there are several other neighborhood-serving commercial and institutional uses in the immediate vicinity, including the Bradley Hills Animal Hospital and Our Lady of Bethesda Retreat Center. Exhibit 15(o), p. 2. “[T]he character is really single-family detached residential use by and large on small to mid-size lots.” T. 53. The Hearing Examiner agrees with Staff and Mr. Foster that the surrounding neighboring is single-family detached residential on small to mid-size lots.



**Figure 2 – Staff-Defined Neighborhood**

#### **D. Master Plan**

The subject property is subject to conformance with the 1990 Bethesda Chevy Chase Master Plan, which identifies the need for child day care uses throughout the plan area on pages

6, 20, and 33. Exhibit 24(i), p. 12. Staff concluded that the proposed application will “further the goals and objectives of the Master Plan, by providing additional early childhood education services to support the existing and future residents within the Planning Area.” Exhibit 24(i), p. 12. The Applicant's land planner, Kevin Foster, testified:

“The master plan specifically encourages additional child daycare services in both the neighborhood and employment settings, but does recognize the challenges associated with creating new freestanding centers given that prohibitive costs, scarcity of vacant sites, and the significant capital and operating cost. This project clearly supports these objectives and continues the early childhood education services on the property. You know, in fact, the proposed modifications, including extended hours of operations, will support this even further with the availability of these services to a broader range of the community.” T. 55.

### **E. Proposed Use & Operations**

Under this application, Guidepost A, LLC C/O Higher Ground Education (“Applicant” or “Guidepost”) is the proposed operator of the Montessori school on the property, constituting a Private Education Institution under the Zoning Ordinance, including daycare and nursery instruction. *See* T. 51-52. Guy Barnett, VP of Development for Guidepost's parent company, Higher Ground Education, testified that the Montessori model of education is focused on empowering children to gain the knowledge they need to foster their independence with classroom environments that are very specialized and carefully designed to ensure that materials are accessible and set up in an orderly way so that they're enticing to the students. T. 19.

The property is currently authorized for use as a Private Educational Institution and the proposed modifications to the existing Special Exception include a reduction in enrollment, expansion of the hours of operation, modification of the ages of children served, and minor upgrades to existing facilities. Specifically, the Applicant seeks approval for an enrollment of up to 180 students, aged 6-weeks to 13 years, with hours of operation from 7:00 AM to 7:00 PM. Exhibit 22, p. 2. Interior renovations are proposed to accommodate the programmatic needs of the

Montessori school but no changes are proposed to the existing square footage, footprint, or height, and exterior modifications are limited primarily to those required to accommodate ADA access. Exhibit 41(i), p. 11; T. 48. Other minor modifications are limited to those required as part of the routine maintenance of the building and recreational facilities (e.g., replacement of playground equipment, repainting the exterior of the building, new signage to reflect the change in ownership etc.). Exhibit 2, p. 5. No material changes are proposed to any existing buildings or structures on the property. T. 48.

### **1. Site Plan**

The Applicant's site plan is marked as Exhibit 19(j) in the record. The Site Plan illustrates the existing building, parking area, loading and drop off zones, roadways, sidewalks, vehicular circulation via drive aisles, the location of recreation and playground equipment, location of new signage, fencing, and neighboring lots and surrounding improvements. The application does not contain any major structural or physical improvements to the existing building or major changes to the site, and the Site Plan does not show any major structural or physical improvements to the property.

### **2. Signage**

No new or expanded signage is proposed, and existing signage will only be updated to reflect the new operator or name of the Private Education Institution. Exhibit 24(i), p. 25.

### **3. Access, Circulation, LATR, and Parking**

#### *a. Access & Circulation*

The application does not propose any changes to the existing driveway and parking lot. Access to the property is provided from Bradley Boulevard along a 380-foot drive aisle to the parking lot located at the rear of the property. Exhibit 2, p. 5. Figure 4, shown below, shows the



property's entrance and frontage from Bradley Boulevard. Exhibit 24(i), p. 9. The parking lot consists of six (6) rows of parking spaces totaling 78 spaces (including four (4) ADA accessible spaces). Exhibit 24(i), p. 8. The school will employ approximately 25 teachers and administrative staff. Exhibit 2, p. 7. Staff advises that the existing parking meets the requirements for a Private Education Institution facility under the 2004 Zoning Ordinance, with 53 additional spaces for parents to use when dropping off and picking up their children. Exhibit 24(i), p. 8. Additionally, the property is serviced by public bus RideOn Route 36 (loop), which connects the Bethesda Metrorail Station to surrounding neighborhoods, located approximately 175 feet to the east of the Site at Oak Forest Lane. *Id.* Staff advises that there are no public sidewalks on either side of Bradley Boulevard adjacent or abutting the subject property. *Id.*



**Figure 4: Front view of the Site from Bradley Boulevard**

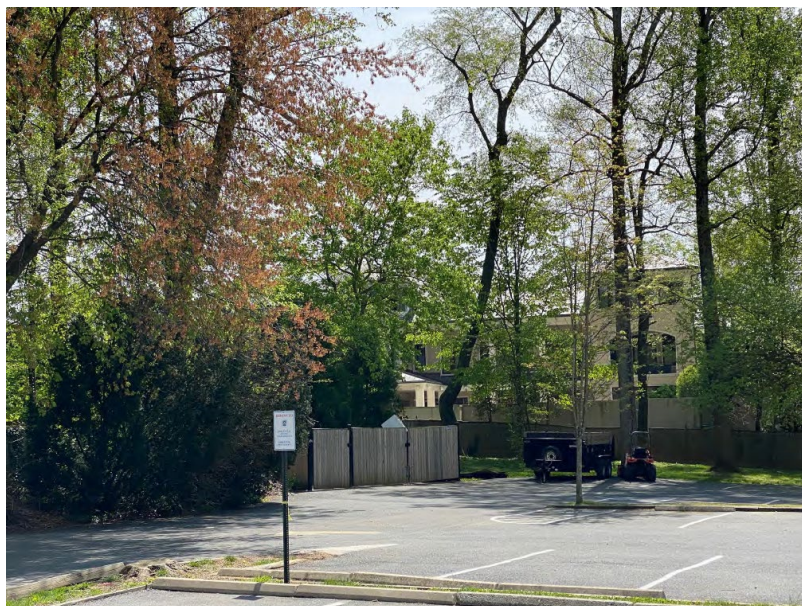
*b. Local Area Transportation Review (LATR)*

The Applicant submitted a traffic study in compliance with the 2021 LATR requirements in accordance with the Maryland-National Capital Park and Planning Commission (M-NCPPC) guidelines, conducted and prepared by Ms. Nancy Randall. *See* Exhibit 3. From the results of the study, Ms. Randall concluded that each of the study intersections would continue to operate within the applicable congestion threshold under total future conditions and each of the study intersections would operate within the applicable congestion standard, thus passing the motor vehicle adequacy test. Exhibit 3, p. 25. The study further found that, if approved, the modifications proposed under the subject application would result in a traffic impact that would be expected to result in 156 new AM person trips and 187 new PM person trips resulting in approximately 94 new AM auto driver (vehicle) trips and 113 new PM auto driver (vehicle) trips, 20 new AM peak hour and 24 new PM peak hour transit trips, 15 new AM peak hour and 19 new PM peak hour non-motorized (bicycle) trips, and 35 new AM peak hour and 43 new PM peak hour pedestrian trips. Exhibit 3, p. 45. The study further found that “AM and PM peak vehicle delays and/or CLVs at the study intersections operate well within the Bethesda/Chevy Chase Policy Area congestion standard of 80.0 seconds/vehicle and Potomac Policy Area CLV congestion, under existing, background and total future conditions. The study concluded that no mitigation was required by this application to pass the motor vehicle adequacy test. The study also found that the site as proposed under this application does not pass the Bicycle System Adequacy Test and a “shared use path for both bicyclists and pedestrians is recommended for the north side of Bradley Boulevard from Redwood Avenue to Oak Forest Lane.” *Id.* The study noted that there are no existing ADA ramps or sidewalks within the required study area and therefore concluded that no ADA corrective measures are needed. *Id.* Lastly, the study noted that the site is served by RideOn bus service (Routes 36)

with two (2) bus stops that lack adequate bus shelters, and pursuant to the Bus Transit Adequacy Test recommended the installation of two bus shelters. Exhibit 3, p. 45. Ms. Randall explained that the total future condition analyzes the impact of the repurposing of the existing school facilities under this application with the modification to hours of operation in combination with the future background conditions. *Id.*

*c. Parking*

The existing parking lot is located at the rear of the building and no major changes are proposed under this application. *See* Exhibit 19(j). Figure 6, shown below, shows a portion of the parking area and the existing trash enclosure which will remain. Exhibit 41(i), p. 10. Staff opined that the application, if approved with recommended conditions, will improve both pedestrian and transit circulation to the site as the Applicant has agreed to construct a new sidewalk along the south side of Bradley Boulevard between the school and Oak Forest Lane and a new bus shelter at the existing stop on the northwest corner of Oak Forest Lane and Bradley Boulevard. Exhibit 41(i), p. 23.



**Figure 6: Parking lot and trash enclosure in the rear of the Site**

#### **4. Landscaping and Lighting**

##### *a. Landscape Plan*

The property currently enjoys perimeter plantings of trees and landscaped screening for the primary school building, the parking area, and the outdoor recreation area. *See* Exhibit 15(c). The subject application does not propose any major modifications to landscaping or screening throughout the property, other than standard maintenance.

##### *b. Lighting*

The subject application does not propose any modifications to the existing building's exterior lighting or parking lot lighting. Exhibit 2, p. 5. Staff advised that no significant changes to the existing lighting are proposed and the photometric plan demonstrates that the existing lighting levels do not exceed 0.1 foot candles along the side and rear lot lines. Exhibit 24(i), p. 25; *See* Exhibits 15(a), 15(c), and 19(n).

#### **D. Environmental Issues**

The subject property contains no streams, wetlands, buffers, or known habitats of rare, threatened, or endangered species, and is therefore in conformance with Environmental Guidelines. Exhibit 24(i), p. 10. Staff advised that this application is exempt from the requirements of Chapter 22A Forest Conservation Law (per Section 22-A-5(q)), because the total disturbance for the proposed use will not exceed a total of 5,000 square feet of forest or include any specimen or champion tree. *Id.* Forest Conservation Exemption, No. 42021230E was confirmed by Planning Department Staff on June 14, 2021. *Id.*

#### **F. Community Response**

Staff advised that a community meeting was held virtually on Wednesday, June 23, 2021 at 6:30pm through the Go-To Meeting platform with an optional dial-in number, and one

community member attended the meeting. Exhibit 24(i), p. 30. Staff did not receive any further comments from the public. *Id.* No members of the public testified at the hearing or submitted written comments to OZAH preceding the hearing.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context because there may be locations where it is not appropriate. "The appropriate standard to be used in determining whether a requested special exception would have an adverse effect and, therefore, should be denied, is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception." *Montgomery County v. Butler*, 417 Md. 271, 275 (2010).

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a use.

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

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects 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." Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for

denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For this application, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with the proposed Private Educational Institution. 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 in the context of the subject property and the general neighborhood to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff has identified the inherent physical and operational characteristics associated with a Private Education Institution use: (1) vehicular trips to and from the Site; (2) queuing on adjacent roadways; (3) Screening of Visitor/Parent Parking; (4) outdoor play areas; and (5) lighting. Exhibit 24(i), p. 11. As the subject application merely modifies the operator, hours of operation, ages of children, and enrollment of the existing special exception use, this analysis examines how those modifications may impact the inherent and any non-inherent physical and operational characteristics associated with a Private Education Institution.



The Applicant's traffic study concluded that vehicular trips to and from the site are compatible with surrounding roadways and that intersection delays are within acceptable limits. Exhibit 3. For vehicular analysis, the study found that "each of the study intersections would continue to operate within the applicable congestion threshold under total future conditions. In addition to this, each of the study intersections will operate within the applicable congestion standard, the proposed application passes the motor vehicle adequacy test." Exhibit 3, p. 25. The property is improved with an approximately 380-foot drive aisle, which Staff found would "ensure[s] there will be no queuing on adjacent streets." Exhibit 24(i), p. 8. The parking area is located at the rear of the property and is screened from neighboring lots by vegetation and a wooden fence. Exhibit 2, pp. 5, 9. The primary outdoor playground area is located at the northeast portion of the property and is "adequately buffered from the adjacent single-family homes by landscaping and a privacy fence" and existing playground equipment will be replaced, given its current age and condition. Exhibit 2, p. 12. No changes are proposed to the existing lighting on the main school building and the parking area. Exhibit 24(i). p. 8.

Conclusion: Based on the evidence in the record as summarized above, the Hearing Examiner finds that the proposed modifications to the existing special exception use are inherent effects that are minimal in nature and do not create adverse impacts to the subject property or to adjacent properties sufficient to warrant denial of the application. The Hearing Examiner further finds that there no evidence in the record to indicate any non-inherent effects of the proposed modifications to the existing special exception.

## **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 Petitioners' written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

**(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.**

A Private Educational Institution is permitted as a special exception in the R-200 zone per Zoning Ordinance Section 59-C-1.31(D). Exhibit 24(i), p. 11. This property was previously approved for a Private Educational Institution on October 23, 1998 (Case No. S-2345), and later approved for an amendment on April 19, 2000 to modify the hours of operation (Case No. S-2345A). *Id.* The Petitioner is seeking to continue the approved Private Educational Institution use (with daycare and nursery instruction) with modifications to the hours of operation (7:00am-7:00pm), ages of children served (6 weeks to 13 years of age), and maximum student enrollment (decrease to 180 students), with minor physical improvements to the premises. Exhibit 2.

Conclusion: The Hearing Examiner finds that the application satisfies this standard as the proposed use constitutes a Private Educational Institution which is a permissible special exception in this R-200 zone.

**(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.**

The application proposes minor changes to the exterior of the property for necessary maintenance and upgrades to playground and recreation equipment, as well as changes necessary

to accommodate ADA access, while exterior lighting of the building and parking area will remain unchanged. Mr. Foster stated that "Now, the existing structure on the property has served the students for many years and demonstrated its compatibility with the surrounding neighborhood...The special exception modification will not modify the exterior facades of the structure in the existing building, except for those minor ADA improvements that are being proposed." T. 65.

Conclusion: The Hearing Examiner finds that the proposed use as a Private Educational Institution complies with the standards and requirements set forth for the use in Code §59-G-2 and the development standards of the R-200 zone as detailed in Part III.C, below.

**(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.**

Staff opined that the existing and proposed amendment to the Private Educational Institution use is subject to conformance with the 1990 Bethesda Chevy Chase Master Plan, which identifies the need for child day care uses throughout the plan area (pages 6, 20, and 33). Exhibit 24(i), p. 12. Staff further found that the proposed expansion (both in terms of hours of operation and ages of children served) will further the goals and objectives of the Master Plan, by providing additional early childhood education services to support the existing and future residents within the Planning Area. *Id.* Mr. Foster further reiterated the application's compliance and consistency

with the Plan in furtherance of its goals to provide education and childcare services to families in the surrounding neighborhood. T. 55.

Conclusion: The Hearing Examiner finds that the proposed use as a Private Educational Institution under this application will be consistent with the Master Plan, as did Technical Staff and the Planning Board, for the reasons set forth in Part II.D. of this Report. The existing special exception is being modified only to expand the school's hours of operation (7:00am-7:00pm), modify the ages of children served (6 weeks through age 13), and decrease total enrollment (180 total enrollment), all consistent with the goals contained in the Plan to maintain this property and its grounds under the current use.

**(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 existing special exception is being modified only to expand the school's hours of operation, ages of children served, and decrease total enrollment. As such, the special exception will continue to be in harmony with the character of the surrounding neighborhood and importantly, will continue to provide necessary early childhood education services to support the surrounding residential community.

Conclusion: The Hearing Examiner finds that the application satisfies these criteria. Based the evidence in this record and having no contrary evidence to rebut the evidence and testimony, the Hearing Examiner finds that the proposed modifications to hours of operations and total enrollment remains compatible and in harmony with the general character of the surrounding community.

**(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.**

The existing special exception is being modified only to expand the school's hours of operation and decrease total enrollment. The expanded hours of 7:00am-7:00pm are customary for routine school operations and the decrease in overall enrollment will help mitigate any impacts on peak a.m. and peak p.m. traffic.

Conclusion: The evidence supports the conclusion that the proposed 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. The Hearing Examiner finds that that the application satisfies this standard.

**(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.**

There is nothing in the record to indicate that the proposed modifications to the existing Private Educational Institution will cause objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the property. The proposed minor site improvements and use will remain largely unchanged from its existing state, except for expanded hours of operation, upgrading playground facilities, and customary maintenance including minor improvements for ADA compliance. No significant changes to the existing lighting are proposed and the photometric plan demonstrates that the existing lighting does not exceed the maximum standards for Special Exceptions within residential zones, in compliance with Section 59-G-1.23 as lighting levels will not extend beyond 0.1-foot candles along the side and rear lot lines.

Conclusion: The Hearing Examiner finds that this standard has been satisfied.

**(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.**

The Applicant is seeking to modify an existing Special Exception on the property and therefore will not result in an increase in the number, intensity or scope of Special Exceptions in the surrounding neighborhood. Although the Applicant is seeking to extend the hours of operation, the Applicant is decreasing total enrollment which will likely mitigate any negative impacts on peak a.m. and peak p.m. traffic congestion. Moreover, the Applicant's traffic study indicates that all the study intersections will operate within the standards for traffic adequacy as outlined in the 2021-2024 Growth and Infrastructure Policy. Further, the application does not propose any exterior modifications or expansion to the existing building or grounds sufficient to alter the residential character of the neighborhood.

Conclusion: Based on this record, the Hearing Examiner finds that the underlying application will not 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.

**(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.**

The subject application proposes to continue the existing Private Education Institution use on the property but to modify the hours of operation and total enrollment. Early childhood education and day care services are specifically listed in the Master Plan as necessary to support the existing residential community and will provide needed services in the community.

Conclusion: The evidence 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. Of these, the factors most relevant to this application concern traffic and noise. The Hearing Examiner finds that the expanded hours coupled with a decrease in total enrollment will have no adverse impacts to the community.



**(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 a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Review, as required in the applicable Annual Growth Policy.**

The proposed modifications to the existing use will have no adverse impact on public services and facilities. There is no evidence in the record to indicate or suggest that public services or facilities were inadequate since 1998 when the property was originally approved as a school and the proposed increased hours of operation and decrease in enrollment will have no such impact under this application. The traffic study concluded that intersections will operate according to reasonable capacity, that further mitigation measures were not required, but did offer bike and sidewalk improvements that may increase bike and walkability standards along this corridor.

Conclusion: The Hearing Examiner finds that the property and use will be served by adequate public services and facilities. The property and use are already served by adequate services and facilities and the proposed modifications do not overly burden these services and facilities and the changes proposed do not increase the intensity of use or capacity of services.

**(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.**

The application proposes modifications to the internal circulation of vehicles and pedestrians through new internal road and sidewalks linking up academic buildings, athletic facilities, recreational and arts buildings, with a new campus quad. Staff advises that "The School's

Campus Master Plan envisions consolidating the internal roadway network such that forms an outer ring road around the buildings, in a one-way operation, significantly reduces potential conflicts with both pedestrians and other vehicles. The Transportation Impact Study determined the new internal roadway configuration will not result in queuing on the adjacent roadway networks.” Exhibit 41(a), p. 46.; *See also* Exhibits 54 & 56.

Conclusion: Based on a thorough review of this record, the Hearing Examiner finds that the proposal will not reduce the safety of vehicular or pedestrian traffic.

### C. Specific Standards

The specific standards for a Private Educational Institutions are found in §59-G-2.19. The relevant provisions of this section and the Hearing Examiner's findings for each are as follows:

- (a) Generally. A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:**
- (1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood;**

The application proposes a decrease in overall student enrollment from 200 students to 180 students and the activities associated with the proposed Montessori school will be similar to those that have existed on the property under the prior operator, the French International School. While certain improvements are proposed like the replacement and upgrading of playground equipment, Guidepost is not proposing modifications to the outdoor playground location or overall area, or any other structural or building improvements. Guideposts states that they “will closely coordinate the number of children/classrooms outside at any given time.” Exhibit 2, p. 10. The Traffic Impact Analysis prepared by traffic consultant Wells & Associates was submitted into the record and “demonstrates that the proposed expansion of hours will not have any adverse impacts on the surrounding roadway network.” *Id.* For these reasons, the Hearing Examiner finds that the

proposed Special Exception modification will not have adverse impacts on the surrounding neighborhood.

**(2) except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood;**

“The existing building has existed, largely in its current condition, since 1961.” Exhibit 2, p.11. The application proposes no changes to the existing building square footage, footprint or height and exterior modifications are limited to those necessary to accommodate ADA access. *Id.* For these reasons, the Hearing Examiner finds that the existing building was constructed prior to April 2, 2022, and therefore while this provision does not strictly apply, the building will continue to be compatible with the surrounding neighborhood under this modification.

**(3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and**

Guidepost proposes to maintain the existing Private Educational Institution use of the property with limited operational modifications including expanded hours of operation, modification of the ages of children served, and decreased student enrollment. These modifications will not change the nature or character of the property or surrounding neighborhood. As the application proposes to maintain the existing use with no physical changes to buildings or structures, the Hearing Examiner finds that this standard is satisfied.

**(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:**

**a. Density—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors:**

**1. Traffic patterns, including:**

- a) Impact of increased traffic on residential streets;**
- b) Proximity to arterial roads and major highways;**
- c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;**
- d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and**

**2. Noise or type of physical activity;**

**3. Character, percentage, and density of existing development and zoning in the community;**

**4. Topography of the land to be used for the special exception; and**

**5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets.**

**b. Buffer—All outdoor sports and recreation facilities must be located, landscaped, or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls. As shown on the site plan the existing and proposed locations of athletic facilities are well set back from the property lines. Further, as shown on the Landscape Plan, adequate buffers will be provided where athletic facilities may be visible to adjacent residential properties. A 6-foot fence is proposed, surrounding the property which also helps to provide screening of activities on school grounds from the adjacent properties.**

Guidepost proposes to reduce the maximum enrollment capacity from 200 students to 180 students. The existing parking area provides an excess of the required parking spaces for the proposed use with an extended drive-aisle with more than adequate distance to accommodate safe

pick-up and drop off of children. “[N]o changes are proposed to the vehicular access or on-site circulation – the current configuration provides more than adequate stacking area on-site (which can accommodate up to 32 cars), which will ensure no cars spill onto the adjacent roadway.” Exhibit 2, p. 11. Guidepost proposes staggered pick-up and drop-off of students with an average pick-up and drop-off time of 10-15 minutes. *Id.* “The proposed Special Exception will have a maximum of 75 students per acre, well within the 87 pupils per acre permitted by Section 59-G-2.19(a)(5).” *Id.*

The application proposes minor upgrades to the existing outdoor play area located in the northeast portion of the property, which will remain largely unchanged. Exhibit 2, p. 12. The existing conditions plan shows the primary outdoor playground area is adequately buffered from the adjacent single-family homes by landscaping and a privacy fence. Exhibit 24(i), p. 12; *See* Exhibit 15(f). Mr. Foster testified that “The outdoor play area/playground areas located in the northeast portion of the property were significantly buffered with an existing six-foot fence and landscaping, and the interior courtyard, which is buffered by the existing building, will also continue to be used. In this case, we are also adding a fence to meet license requirements.” T. 67-68. For these reasons, the Hearing Examiner finds that the outdoor play area will not have objectionable impacts on the adjacent residential neighbors, satisfying this provision.

#### **D. Development Standards**

In addition to the general and specific special exception standards, special exception uses must also meet all requirements of the underlying zone, in this case, the R-200 Zone, as required by Section 59-G-1.23. These standards, along with the Hearing Examiner's findings on each standard, are set forth below:

##### **(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 [private educational institutions].**

Staff found that the proposed modifications to the existing special exception comply with the development standards of the R-200 zone. Exhibit 24(i), p. 21. The subject application does not modify any existing conditions or propose any additions, expansions, or alterations to existing structures. Table 4, shown below, details the various development standards and the application's compliance with those standards.

| <b>Table 4: R-200 Zone Data Table<sup>1</sup></b>      |                           |                                       |
|--|---------------------------|---------------------------------------|
|  | <b>Required/ Approved</b> | <b>Proposed/Existing</b>              |
| <b>Lot Area (square feet/acres)</b>                    | No minimum                | 104,979.6 square feet<br>(2.41 acres) |
| <b>Minimum Lot Width (feet)</b>                        | 25 feet                   | 160.5 feet                            |
| <b>Maximum Lot Coverage</b>                            | 26,300 square feet<br>25% | 161,181 square feet<br>15%            |
| <b>Building Setback Requirements, min.<sup>1</sup></b> |                           |                                       |
| Front  | 40 feet                   | 85 feet                               |
| Side   | 12 feet                   | 12 feet                               |
| Sum of both Sides                                      | 25 feet                   | 49 feet                               |
| Rear   | 30 feet                   | 230 feet                              |
| <b>Building Height, max.</b>                           | 50 feet                   | 30 feet                               |
| <b>Lot Coverage, Front Yard max.</b>                   | 30%                       | 30%                                   |
| <b>Parking<sup>2</sup></b>                             |                           |                                       |
| <b>Vehicle</b>   |                           |                                       |
| Employees  | 25 spaces <sup>3</sup>    | 25 spaces                             |
| Visitors   |                           | 53 spaces                             |
| Total  |                           | 78 total spaces <sup>4</sup>          |
| <b>Bicycle</b>   | 3 spaces <sup>5</sup>     | 4 spaces                              |
| <b>Motorcycle</b>                                      | 1 space <sup>6</sup>      | 2 space                               |
| <b>Parking Setbacks minimum<sup>7</sup></b>            |                           |                                       |
| Front  | 40 feet                   | 269 feet                              |
| Side   | 24 feet                   | 20.2 feet <sup>8</sup>                |
| Rear   | 30 feet                   | 45 feet                               |
| <b>Shading of Parking Areas (min)</b>                  | 30%                       | 33.8%                                 |

<sup>1</sup> Section 59-C-1.32 Development Standards

<sup>2</sup> Section 59-E-3.7

<sup>3</sup> 1 space for each staff member including teachers and administrators and additional spaces needed for adequate pick-up and drop-off of students.

<sup>4</sup> This includes a total of 4 ADA spaces.

<sup>5</sup> Section 59-E-2.3.(a) requires 1 bicycle parking space for every 20 spaces within a parking lot of 50 or more vehicle parking spaces. No more than 20 spaces are required,

<sup>6</sup> Section 59-E-2.3(d) requires all parking facilities with 50 or more parking spaces to provide motorcycle parking equal to 2 percent of the total number of vehicle parking spaces. No more than 10 shall be required on any one lot.

<sup>7</sup> Section 59-E-2.83 Parking and Loading facilities for special exception uses in a residential zone.

<sup>8</sup> Section 59-E. 2.8.3.(e) Any existing surface parking facility included as part of a special exception granted before May 6, 2002 is a conforming use. Special Exception S-2345 for the Site was first granted in 1998.



**(b) Parking requirements.**

**Special exceptions are subject to all relevant requirements of Section 59-E 2.83 and 59-E 2.81 of the Zoning Ordinance.**

The provisions of Section 59-E-2.83 state:

**Parking and Loading facility standards apply to an off-street parking facility for a special exception use that is located in a one-family residential zone if 3 or more parking spaces are provided. These standards are intended to mitigate potential adverse visual, noise, and environmental impacts of parking facilities on adjacent properties. In addition, these requirements improve the compatibility and attractiveness of parking facilities, promote pedestrian-friendly streets, and provide relief from unshaded paved areas. These provisions are as follows:**

**Location. Parking facilities must be located to maintain a residential character and a pedestrian-friendly street orientation.**

The existing parking lot is located at the rear of the building and no major changes are proposed to the design and circulation of the parking lot. Staff found that, as conditioned, the application will “improve both pedestrian and transit circulation to the Site with a new sidewalk along the south side of Bradley Boulevard between the Site and Oak Forest Lane and a new bus shelter at the existing stop on the northwest corner of Oak Forest Lane and Bradley Boulevard.”

Exhibit 24(i), p. 23. The Hearing Examiner finds that this standard is satisfied.

**Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.**

According to Staff, all development standards, including setbacks, meet or exceed ordinance requirements under this application. Exhibit 24(i), p. 21. *See* Table 4 above, on page 28 (Exhibit 24(i), p. 22). Mr. Foster noted that the site meets all of the front and rear parking setbacks, except that the side yard setback for parking is required to be twice the building side yard which in this R-200 zone would be 12 feet, requiring a side yard of 24 feet. T. 60. The subject property has a driveway and parking area reduced down to 4.8 feet and 15 feet. *Id.* However, 59-E-2.83

includes an exception that surface parking facilities included as part of the special exception granted before May 6th, 2002 are considered conforming uses. *Id.* As the previously approved special exception was approved prior to 2002, this setback is deemed conforming, and Mr. Foster testified that Planning Staff and Planning Board agreed with this determination. T. 61. Based on the evidence in this record, the Hearing Examiner finds that this standard is satisfied.

**Screening. Each parking and loading facility, including driveway and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be at least 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of them. Along all street rights-of-way, screening of any parking and loading facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence, or masonry wall.**

The parking lot is located at the rear of the lot and is effectively screened and buffered from adjacent residential lots with a wooden fence as well as existing trees, hedges, and other plantings. *See* Exhibits 15(c) and 15(f). The Hearing Examiner finds that this standard is satisfied.

**Shading of paved areas. Trees must be planted and maintained throughout the parking facility to ensure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.**

The Applicant's landscape plan demonstrates that 33.8% of the paved areas are and will continue to be shaded. Exhibit 24(i), p. 24; *See* Exhibit 15(c). The Hearing Examiner finds that this standard is satisfied.

**Compliance Requirement. For any cumulative enlargement of a surface parking facility that is greater than 50% of the total parking area approved before May 6, 2002, the entire off-street parking facility must be brought into conformance with this Section. An existing surface parking facility included as part of a special exception granted before May 6, 2001 is a conforming use.**

The Applicant proposes minor changes to the parking layout such that it can accommodate four (4) ADA accessible parking spaces. These changes will not expand the existing footprint of the parking lot. Exhibit 41(i), p. 24. Therefore, this provision is not applicable to this application.

**(c) Minimum frontage. “In the following special exceptions, the Board may waive the requirements for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21: (1) Rifle, pistol and skeet-shooting range, outdoor...”**

This provision is not applicable to the proposed special exception use.

**(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.**

According to Staff, the subject application is exempt from the requirements of Chapter 22A Forest Conservation Law (per Section 22-A-5(q)), because the total disturbance for the proposed use will not exceed a total of 5,000 square feet of forest or include any specimen or champion tree. Exhibit 24(i), p. 10. Forest Conservation Exemption No. 42021230E was confirmed by Planning Department Staff on approved by MNCPPC on June 14, 2021. *Id. at 17*. Further, the applicant's existing conditions plan demonstrates that there are no forested areas on-site. *Id*; See Exhibit 15(f). The Hearing Examiner finds that this standard is satisfied.

**(e) Water quality plan.**

Staff advises that a water quality plan is not required as part of the subject application Exhibit 24(i), p. 25. There is no evidence in the record to indicate any use or change in use that might trigger the requirement and review of a water quality plan. As such, the Hearing Examiner finds that this standard is satisfied.

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

The Applicant proposes to update signs to reflect the new operator of the Private Education Institution, but will not increase in size, number, or change in location. Exhibit 24(i), p. 25; *See* Exhibit 15(e). The Hearing Examiner finds that this standard is satisfied.

**(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.**

The application does not propose any construction, reconstruction, or alteration to the existing one-story structure. Exhibit 24(i), p. 25; *See* generally Exhibits 2, 15(a), 19(c), and 22. The Hearing Examiner finds that this standard is satisfied.

**(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.**

No significant changes to the existing lighting are proposed under this application. The photometric plan demonstrates that the existing lighting does not exceed the maximum standards of 0.1 foot candles along the side and rear lot lines pursuant to Section 59-G-1.23. Exhibit 24(i), p. 25; *See* Exhibit 19(n). Based on this record and as conditioned below, the Hearing Examiner finds that this standard is satisfied.

#### **IV. Conclusion and Recommendation**

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that the requested modification to S-2345-B, which requests a change in the holder of an existing special exception and modifications to the school's hours of operation and total enrollment of students, for a Private Educational Institution located at 7108

Bradley Boulevard, Bethesda, Maryland, in the R-200 Zone, be **granted with the following conditions:**

1. The Private Educational Institution must be limited to a maximum of 180 students and 25 employees (including teachers, administrators, and other staff);
2. The hours of operation are limited to Monday through Friday, 7:00 AM to 7:00 PM;
3. The Applicant must provide a minimum of 78 parking spaces on-site:
  - a. 25 for employees;
  - b. 53 for drop-off/pick-up activities, visitors, and deliveries;
4. Use of the outdoor playground and recreational facilities will be staggered during the conditioned hours of operation;
5. Prior to issuance of the use and occupancy permit, the Applicant must submit the permit application for construction of a 5-foot sidewalk, with a 6-foot buffer on the southern side of Bradley Boulevard connecting the Site to the RideOn bus stop at Oak Forest Lane, east of the Site. The Applicant must reasonably pursue the issuance of the permit, and the sidewalk must be constructed and accepted by the Maryland Department of Transportation (MCDOT SHA) no later than two (2) years from issuance of the use and occupancy permit;
6. Prior to issuance of the use and occupancy permit, the Applicant must submit the permit application for the construction of a 5-foot by 12-foot bus shelter, real time transit display, and an ADA accessible pad at the existing bus stop located at the northwestern corner of Bradley Boulevard and Oak Forest Lane. The Applicant must reasonably pursue the issuance of the permit, and the bus shelter, real time transit display and ADA accessible pad must be constructed and accepted by the Montgomery County Department of Transportation (MCDOT) and MDOT SHA no later than two (2) years from issuance of the use and occupancy permit;
7. Construction must conform to the submitted Special Exception Amendment Site Plan (Sheet 2, July 2021), or as amended by the Board of Appeals; and
8. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant and any successors in interest shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 25<sup>th</sup> day of March 2022.



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Derek J. Baumgardner, Hearing Examiner