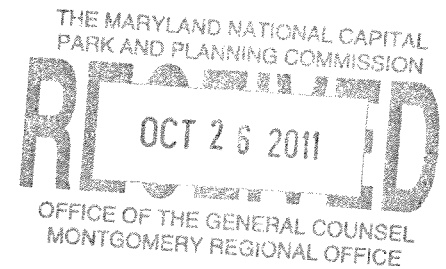


LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW



October 26, 2011

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Via Hand-Delivery

Rollin Stanley, Planning Director
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Darnestown Development, LLC d/b/a Goddard School (“Goddard” or the “Applicant”)
Preliminary Plan Application No. 120110020 (the “Preliminary Plan”)
Request for Reconsideration – Additional Information and Request for Planning Board
Hearing Date

Dear Mr. Stanley:

We are writing to you on behalf of the Applicant in the above-referenced matter regarding the request for reconsideration that we filed on March 10, 2011 and re-submitted on May 13, 2011. As you know, the Montgomery County Council (the “Council”) introduced a proposed “Amendment to the County Subdivision Staging Policy regarding child day care centers” which would, if adopted, exempt child day care centers from the requirements of Policy Area Mobility Review (PAMR) and Local Area Transportation Review (LATR). The Public Hearing was held on this legislation on July 12, 2011 (the “Public Hearing”), during which the Planning Board Chair, Francoise Carrier, delivered testimony.

At the Public Hearing Ms. Carrier indicated that various alternatives should be considered including CIP placeholders or a congestion bank, both of which would allow an applicant to contribute a pro-rata share to a fund, allowing each participant to move forward.¹ In addition, Bob Harris testified on behalf of Winchester Homes (“Winchester”), which has a

¹ A copy Ms. Carrier’s testimony is attached hereto as Exhibit “A”.

Rollin Stanley, Planning Director
October 26, 2011
Page 2

project in the vicinity of the Goddard property.² Mr. Harris indicated that Winchester had been negotiating a road club agreement with Miller and Smith to coordinate construction of the road improvements which are, or will be, required of all of the developments near the intersection. Mr. Harris opposed the Subdivision Staging Policy Amendment for day care centers, and instead offered to include Goddard in the Road Club Agreement. After the Public Hearing, Council staff indicated that we should work with the other developers and M-NCPPC to attempt to resolve the issue without an amendment to the Subdivision Staging Policy.

Goddard is opposed to the conditions as they currently appear in the Opinion requiring construction of the entire road improvement as a pre-condition to fully enrolling the facility for a number of reasons. Two nearby residential developments have been granted approved preliminary plans, and an additional development will be subject to approvals, conditioned upon the same intersection improvements required in this case; therefore Goddard's share of the intersection improvement is just 20% of the total. The approved residential developments which make up the background development for purposes of LATR calculations, have been on hold, understandably, because of the economic recession and it remains unclear when these projects will move forward. Currently the intersection *does not* fail the test for Critical Land Volume, but the intersection fails when the background development is factored in. See, Page 8, Preliminary Plan Staff Report. Goddard should not be required to construct the entire intersection merely because it is a non-residential development which is ready to move forward immediately, as opposed to the residential developments which may take many years to commence construction.

As a result of working with the developers of nearby residential developments, Goddard is now in the position to offer a number of alternatives to the current language contained the conditions of the Preliminary Plan approval.

New Condition #1. Development allowed by this preliminary plan is limited to a daycare facility for a maximum of 283 children (163 day care children and 120 afterschool students), subject to the conditions herein.

Strike Condition #2.

² A copy of Mr. Harris' testimony is attached hereto as Exhibit "B".

Rollin Stanley, Planning Director

October 26, 2011

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Alternative #1: New Condition #3. Applicant must contribute to a private escrow account, governed by an escrow agreement approved by Planning Staff, a pro rata share of capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements consist of the construction of a southbound right-turn lane and east-bound right-turn lane and a north-bound left-turn lane at the intersection of MD355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR).

Alternative #2: New Condition #3. Applicant must execute a road club agreement to contribute a pro rata share of capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements consist of the construction of a southbound right-turn lane and east-bound right-turn lane and a north-bound left-turn lane at the intersection of MD355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR).

Alternative #3: New Condition #3. Applicant must contribute to M-NCPPC a pro rata share of capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements consist of the construction of a southbound right-turn lane and east-bound right-turn lane and a north-bound left-turn lane at the intersection of MD355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR).

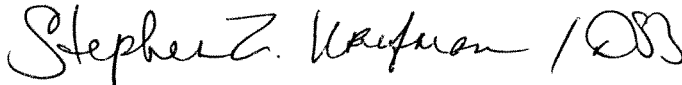
Re-number each subsequent condition accordingly.

Rollin Stanley, Planning Director
October 26, 2011
Page 4

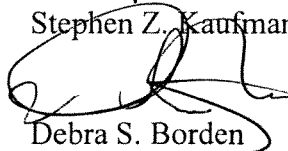
We respectfully request that the staff and Planning Board consider the information contained herein and this proposal, and place this matter on the Planning Board agenda as soon as possible. Please contact us if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP

Handwritten signature of Stephen Z. Kaufman in black ink, including the year 1003.

Stephen Z. Kaufman

Handwritten signature of Debra S. Borden in black ink.

Debra S. Borden

cc: Christina Sorrento, Esq.
Rose Krasnow
Patrick Butler
Ross Flax

**L&B 1666193v1/10430.0005

Remarks on Proposed Resolution to amend the Policy Area Mobility Review and Local Area
Transportation Review requirements

Francoise Carrier on behalf of the Montgomery County Planning Board

County Council Public Hearing – July 12, 2011

The Planning Board has considered the proposed resolution, which would exclude day care centers (as defined in Chapter 59) from the need to comply with the Policy Area Mobility Review and Local Area Transportation Review requirements of the Subdivision Staging Policy. While we understand the objective, we believe a more equitable approach to the issue is possible. We have looked at outcomes, and the way the draft is worded, it could impose on other property owners and developers the exact situation the legislation is intended to avoid for day care centers. Day care uses are both beneficial and desirable, but many of them are quite large and generate a significant number of peak hour trips, which, depending on location, can cause nearby intersections to fail. In our view, this amendment would have the following undesirable effects:

- Add peak hour trips to existing congestion without mitigation
- Open the door for applicants who are pursuing a variety of other worthwhile land uses to argue that they should be excluded from LATR and PAMR requirements as well
- Delay necessary infrastructure improvements or require government action to bring them about
- Burden other projects with an increase in their percentage cost for intersection improvements

I'd like to give you an idea of how this might play out. Suppose that both a day care and a school for autistic children plan to build near a congested intersection. Since the day care would be excluded from doing anything about the failing intersection, it would be up to the school to move forward with the road improvements. Moreover, while they might be able to collect pro-rata shares of the cost from other nearby projects, they would not collect anything from the day care center, so the share paid by each of the remaining participants would be higher. Why should the day care use be excluded, but not the school? There are many other uses, particularly non-profits, that would appear to be at least as deserving of this exception as a day care center.

At some point the County made a decision that road improvements should both be paid for and constructed by land developers whose projects cause one or more intersections to fail. Instead of adopting this resolution, which arbitrarily exempts one particular use, the Planning Board suggests the following:

- Issues faced by specific day care facilities can be addressed by the Planning Board through our regular process

Exhibit "A"

- If there is a concern that certain uses or groups of uses should be excluded from PAMR or LATR requirements, the Council should direct the Planning Board to study in a systematic way which uses should benefit from such a revised policy and what the effect would be on the County's long range infrastructure requirements
- The County Council should ask the Executive to consider using "placeholders" in the CIP for transportation projects that are anticipated to be funded through LATR requirements. Each development identified for participation in such a project could then contribute a pro-rata share to a fund for the applicable CIP project, in an amount that could be determined with certainty at the time of plan approval and would allow each participant to move forward.
- Consider developing a "congestion bank" that would require every project to contribute funds toward particular intersection improvements, even before such intersections fail. This would ensure that funds would be available when improvements are needed and would more fairly assess every development that is adding trips to an intersection, rather than just the development that happens to tip the balance from non-congested to congested status.

The Planning Board fully understands why the Council is looking for ways to ease the burdens that applicants are asked to assume when they undertake the development of a piece of property, particularly when the use is one that provides a public good. But the Board strongly feels that this amendment to the Subdivision Staging Policy would have impacts far beyond those intended and asks the Council to reject it. Thank you.

JULY 12, 2011

TESTIMONY BEFORE THE COUNTY COUNCIL
SUBDIVISION STAGING POLICY AMENDMENT

Good afternoon. For the record, my name is Bob Harris of Holland & Knight. We represent Cabin Branch Management, the developer of the Cabin Branch project on the west side of I-270. Cabin Branch Management is one of the parties required to participate in improvements to the West Old Baltimore Road/MD 355 intersection that is the basis for the request before you today. Previously, both Cabin Branch Management and Miller & Smith, through its Tapestry subdivision project at the intersection of 355 and West Old Baltimore Road, were the primary participants in this road improvement. The Goddard School has just purchased a portion of the Tapestry property from Miller & Smith and the subdivision approval it obtained this spring requires Goddard School to participate in that intersection improvement as well.

In anticipation of the participatory obligations of both Miller & Smith and Cabin Branch Management, and now Goddard School, Cabin Branch prepared a Memorandum of Understanding that would set forth the obligations of the various parties involved in this intersection improvement. Given that the Tapestry subdivision approval has been deferred, and Cabin Branch was not ready to proceed with construction, that MOU has not been signed. It does, however, spell out the respective obligations of Miller & Smith and Cabin Branch and it could be modified to include the Goddard School. Significantly, given the location of the improvements on the Tapestry property, the MOU provides for Miller & Smith to dedicate the

right-of-way necessary for the intersection improvements which is a prerequisite for any construction to proceed, and for costs to be shared pro rata.

Cabin Branch Management is fully supportive of adding daycare to the Clarksburg community. At the same time, however, we want to make sure that the intersection improvements required for the various projects, will be able to proceed in a timely manner and with each participant paying its fair share. We would have no problem with the Planning Board granting relief to the Goddard School as far as the Goddard School's actual construction of the intersection, leaving that instead to Cabin Branch and Miller & Smith. In order to ensure that the intersection improvements are funded, that the right-of-way exists and that the intersection can be constructed in a timely manner, however, we suggest that a prerequisite to any relief for the Goddard School be the execution of the MOU by all three parties.

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June 15, 2011

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Via Hand-Delivery

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Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Darnestown Development, LLC d/b/a Goddard School (“Goddard” or the “Applicant”)
Preliminary Plan Application No. 120110020 (the “Preliminary Plan”)
Request for Reconsideration – Additional Information

Dear Mr. Stanley:

We are writing to you on behalf of the Applicant in the above-referenced matter regarding the request for reconsideration that we filed on March 10, 2011 and re-submitted on May 13, 2011. Since our request was re-submitted, the Montgomery County Council (the “Council”) has introduced a proposed “Amendment to the County Subdivision Staging Policy regarding child day care centers”¹ which would, if adopted, exempt child day care centers from the requirements of Policy Area Mobility Review (PAMR) and Local Area Transportation Review (LATR).

In the event that the Council adopts the proposed amendment, and assuming the amendment applies to Goddard, the Request for Reconsideration would be rendered moot in large part. The Applicant would simply request revision of the language in Conditions #1 through #4 in the following manner:

¹ The proposed Amendment has been scheduled for a public hearing before the Council on July 12, 2011 at 1:30 p.m. A copy of the proposed legislation is attached hereto as Exhibit “A”.

Rollin Stanley, Planning Director
June 15, 2011
Page 2

New Condition #1. Development allowed by this preliminary plan is limited to a daycare facility for a maximum of 283 children (163 day care children and 120 afterschool students), subject to the conditions herein.

Strike Condition #2.

Strike Condition #3.

Strike Condition #4.

Re-number each subsequent condition accordingly.

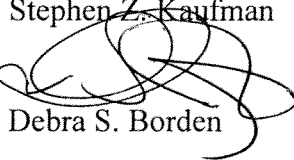
We respectfully request that the staff and Planning Board consider the information contained herein and this proposal. Please contact us if you have any questions.

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman



Debra S. Borden

cc: Franciose Carrier
Carole Rubin, Esq.
Rose Krasnow
Rose Krasnow
Patrick Butler
Ki Kim
Ross Flax

MAY 3 2011



MONTGOMERY COUNTY PLANNING BOARD

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB No. 11-22
Preliminary Plan No. 120110020
Goddard School - Clarksburg
Date of Hearing: March 3, 2011

MONTGOMERY COUNTY PLANNING BOARD

RESOLUTION

WHEREAS, pursuant to Montgomery County Code Chapter 50, the Montgomery County Planning Board ("Planning Board" or "Board") is vested with the authority to review preliminary plan applications; and

WHEREAS, on September 1, 2010, Darnestown Development LLC ("Applicant"), filed an application for approval of a preliminary plan, subsequent to the approval of Special Exception Case number S-2759 by the Montgomery County Board of Appeals for a child daycare, to consolidate two recorded lots (Lots 9 and 10, Block A, of Musgrove's Addition to Neelsville) into one lot approximately 5.0 acres in size, to construct a 13,000 square foot child daycare center, and a connected 7,500 square foot annex to house an after-school program, in the R-200 Zone on a property located on the south side of Frederick Road (MD 355) approximately 1300 feet northwest of the intersection with Old Baltimore Road, ("Property" or "Subject Property"), within the Clarksburg Master Plan Area ("Sector Plan"); and

WHEREAS, Applicant's preliminary plan application was designated Preliminary Plan No. 120110020, Goddard School - Clarksburg ("Preliminary Plan" or "Application"); and

WHEREAS, Applicant's final water quality plan was designated Water Quality Plan No. 120110020 ("Water Quality Plan"); and

WHEREAS, Staff issued a memorandum to the Planning Board, dated February 21, 2011, setting forth its analysis, and recommendation for approval, of the Application subject to certain conditions ("Staff Report"); and

WHEREAS, following review and analysis of the Application by Planning Board staff ("Staff") and the staff of other governmental agencies, on March 3, 2011, the Planning Board held a public hearing on the Application (the "Hearing"); and

Approved as to
Legal Sufficiency:

Christina Sorensen 4/28/11

8787 Georgia Avenue, Clarksburg, MD 20740-1010 Chairman's Office: 301.495.4605 Fax: 301.495.1320

www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on March 3, 2011, the Planning Board voted to approve the Final Water Quality Plan, on motion of Commissioner Wells-Harley; seconded by Commissioner Alfandre; with a vote of 3-0, Commissioners Alfandre, Carrier, and Wells-Harley voting in favor, with Commissioners Dreyfuss and Presley absent; and

WHEREAS, on March 3, 2011, the Planning Board voted to approve the Application subject to certain conditions, on motion of Commissioner Alfandre; seconded by Commissioner Wells-Harley; with a vote of 3-0, Commissioners Alfandre, Carrier, and Wells-Harley voting in favor, with Commissioners Dreyfuss and Presley absent.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board approves Preliminary Plan No. 120110020 to consolidate two recorded lots (Lots 9 and 10, Block A, of Musgrove's Addition to Neelsville) into one lot approximately 5.0 acres in size, to construct a 13,000 square foot child daycare center, and a connected 7,500 square foot annex to house an after-school program, in the R-200 Zone on a property located on the south side of Frederick Road (MD 355) approximately 1300 feet northwest of the intersection with Old Baltimore Road, ("Property" or "Subject Property"), within the Clarksburg Master Plan Area ("Sector Plan"); subject to the following conditions:

- 1) Development allowed by this Preliminary Plan is limited to a daycare facility for a maximum of 141 students until construction of the intersection improvements required by Condition No. 3 herein have been completed and accepted by the Maryland State Highway Administration (MDSHA). After the completion of such intersection improvements, the total enrollment allowed by this Preliminary Plan will be increased to a maximum of 283 students (163 daycare children and 120 students for the after school program) without the need for an amendment to the Preliminary Plan.
- 2) Prior to filing for a building permit, the Applicant must request an Administrative Modification to the Special Exception from the Board of Appeals reflecting the limit in the number of students pending construction of the road improvements as reflected in Condition No. 1 herein.
- 3) Prior to accepting any more than 141 students the Applicant must construct, with approval from the MDSHA, capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements include the construction of a southbound right-turn lane, an eastbound right-turn lane, and a northbound left-turn lane at the intersection of MD 355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR). The Applicant may arrange for other funding sources,

including participation from applicants of other development projects to fulfill this condition.

- 4) Prior to issuance of the Use and Occupancy Permit, the Applicant must re-stripe the southbound approach of MD 355 at its intersection with Little Seneca Parkway to provide an additional thru lane.
- 5) The Applicant must construct an 8-foot-wide bituminous bike path along the entire property frontage as shown on the Preliminary Plan.
- 6) The Applicant must comply with the conditions of approval for the preliminary forest conservation plan prior to recording of a plat(s) or Montgomery County Department of Permitting Services (MCDPS) issuance of sediment and erosion control permit, as applicable.
- 7) The Applicant must obtain Staff approval of the final forest conservation plan in accordance with Forest Conservation Regulations, Section 22A.00.01.09B prior to any land clearing activities.
- 8) Impervious surface is limited to no more than 1.40 acres as shown on the Impervious Area Exhibit Plan dated December 17, 2010.
- 9) The record plat must reflect creation of a Category I conservation easement over all forest conservation buffer areas as shown on the Preliminary Plan.
- 10) Applicant to record a Category I Forest Conservation Easement(s) over all areas of retained and planted forest prior to any land clearing activities occurring on-site.
- 11) Applicant to install the required reforestation material by the first planting season following the release of the first grading permit.
- 12) Applicant to install the required landscape planting material being used for reforestation credit by first growing season following building completion.
- 13) Applicant to remove all existing structures, fencing, play equipment and debris from the proposed Category I Forest Conservation Easements.
- 14) The Applicant must comply with the conditions of the MCDPS stormwater management concept and final water quality plan approval dated January 20, 2011. These conditions may be amended by MCDPS, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 15) The record plat must provide for dedication along the entire property frontage on Frederick Road (MD 355) of 60 feet from centerline for a total of 120 feet from the opposite right-of-way line as indicated on the Preliminary Plan.
- 16) The Applicant must comply with the Maryland State Highway Administration (MDSHA) letter dated November 23, 2010. These conditions may be amended by MDSHA, as long as the amendments do not conflict with other conditions of the Preliminary Plan approval.
- 17) The Applicant must satisfy provisions for access and improvements as required by MDSHA prior to issuance of an access permit.
- 18) The record plat must show other necessary easements.

- 19) The Adequate Public Facility (APF) review for the Preliminary Plan will remain valid for eighty-five (85) months from the date of mailing of the Planning Board Resolution.

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff as presented at the Hearing and set forth in the Staff Report, which the Board hereby adopts and incorporates by reference and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *The Preliminary Plan substantially conforms to the Master Plan.*

This site is located within the 860 acre "Brink Road Transition Area" of the 1994 Clarksburg Master Plan, which is in the southeast corner of the Master Plan Area. Most of the land has been developed or is committed to development. There are no specific recommendations for this site; however, the Master Plan's general land use provisions applicable to the overall "Brink Road Transition Area," emphasize the planned character of the area.

The Planning Board considered the general plan objectives of the Brink Road Transition Area before recommending approval of the special exception application for this site. The findings from that analysis are summarized below:

"Create a transition from Germantown to Clarksburg that helps reinforce each community's identity (page 75)."

This Master Plan proposes the entry to Clarksburg to be characterized by low-density development and be supportive of the existing residential land use pattern along MD 355. The Board finds that the physical and functional characteristics of the use at the proposed site will fit the immediate neighborhood and this designated low density transition area. The forest conservation plan helps demonstrate the Applicant's intent to maintain the existing forest onsite, which will provide a wooded buffer that nearly surrounds the proposed development and follows the perimeter of the property line boundaries. These wooded and landscaped areas, together with the proposed six-foot stockade fence at the parking lot will provide significant screening of the facility and parking on this site, which will limit the impact on the surrounding residential land use pattern along MD 355.

"Continue the residential character of MD 355 (page 75)."

MD 355 is a major highway and will be six lanes in Germantown. A key land use concern is that MD 355 as it traverses this portion of Clarksburg should be of a

scale and character which supports the continuation of the traditional land use pattern in this area: residential uses fronting the road. The Master Plan anticipates the widening of MD 355 in this area to four lanes but endorses a cross-section design that will allow historical land use patterns to continue. The Board finds the perceived massing and vertical profile of the building will be mitigated by aspects of its design including:

1. The configuration of the facility and its central location on the site;
2. The resulting setbacks of the building from the property lines, adjacent houses, and the MD 355 frontage;
3. Sensitive site placement of the building with only one corner relatively near the MD 355 frontage. The wooded southeastern MD 355 frontage and planned forest conservation area on the adjacent Tapestry site will provide a well screened view of the facility from northbound vehicles; and
4. The segmented building plan, limited to one floor plus the roof, together with the sloped roof lines, the understated cupolas and gable end features, will be architecturally compatible with the roof lines of the adjacent houses.

Based on the design aspects listed above, the Board finds the proposed structure maintains the rural residential character of MD 355.

“Reinforce the North Germantown greenbelt concept (page 76).”

The open space pattern in this area is created by stream valley buffers and parks. Pedestrian connections to the Little Seneca Creek Greenway will be encouraged as development proceeds. The Preliminary Plan provides for the extension of the established pedestrian and bicycle linkages that ultimately connect to the North Germantown Special Park so current and future residents of Clarksburg have access to outdoor experiences. The Board finds the proposed connections reinforce the North Germantown greenbelt concept.

In the Public Facilities section, Chapter Seven of the Master Plan, the Master Plan recognizes that demand for certain social services will increase as development occurs in Clarksburg and Hyattstown. Specifically, the Master Plan states, “As the Clarksburg Master Plan Area and Hyattstown Special Study Area grow, the demand on social services, including child day care, will increase (page 166).” This recommendation is accompanied by “Table 15 (page 167)” in the Master Plan, which outlines location criteria to be considered for certain facilities. Child daycare is one of the facilities identified, and the Master Plan recommends that child daycares be,

“dispersed throughout the Study Area with concentrations near transit, employment areas, and concentrations of housing.”

The Board supported the special exception, in part, because the Master Plan recommends approximately 15,000 residential units for the build out of Clarksburg, and the community has expressed concern to Staff that there is a lack of child daycare facilities in the Clarksburg area. The proposed facility will have vehicular and bicycle access with frontage along Frederick Road (MD 355). The Subject Property is also in close proximity to employment areas along I-270 to the south, and is centrally located to concentrations of housing.

The Preliminary Plan will be consistent with the approved special exception once it is amended per condition 2, and therefore, as outlined in the analysis above, the Board finds the Preliminary Plan is in substantial conformance with the Clarksburg Master Plan and Hyattstown Special Study Area.

2. *Public facilities will be adequate to support and service the area of the proposed subdivision.*

Local Area Transportation Review (LATR)

Two intersections were identified as critical intersections affected by the proposed child daycare facility and were examined in the traffic study to determine whether they meet the applicable congestion standard for this area. The congestion standard in the Clarksburg Policy Area is 1,425 Critical Lane Volume (CLV). The result of the CLV analysis is summarized in Table 1.

Table 1: Calculated Critical Lane Volume Values at Studied Intersections

| Intersection | Weekday Peak Hour | Traffic Condition | | | |
|---|-------------------|-------------------|------------|--------|----------|
| | | Existing | Background | Total* | Total ** |
| Frederick Road (MD 355) & Little Seneca Parkway | Morning | 1,224 | 1,431 | 1,445 | 912 |
| | Evening | 1,017 | 1,329 | 1,347 | 1,347 |
| Frederick Road (MD 355) & W. Old Baltimore Road | Morning | 1,385 | 1,592 | 1,661 | 1,471 |
| | Evening | 1,404 | 1,716 | 1,780 | 1,512 |

- *Total development conditions without proposed intersection improvements
- ** Total development conditions with proposed intersection improvements

As shown in the above table, all intersections are currently operating at an acceptable CLV level of 1,425 or lower. Under the background development (the existing traffic plus traffic from the approved/unbuilt developments), both intersections are projected to operate at unacceptable CLV levels during both the weekday AM and PM peak hours. Under the total future development (background traffic, traffic from the proposed development, and including the proposed intersection improvements) both intersections would operate at an unacceptable level of service. Because the background traffic conditions are unacceptable, the Applicant must provide improvements that mitigate a number of trips equal to 150 percent of the CLV impact attributable to the development during both the weekday AM and PM peak hours. In order to mitigate the unacceptable CLV levels at the intersection of Little Seneca Parkway and MD 355, the Applicant must re-stripe the southbound approach of MD 355 at its intersection with Little Seneca Parkway to provide an additional thru lane.

In order to mitigate the unacceptable CLV levels at the intersection of West Old Baltimore Road and MD 355, the Applicant must construct, with approval from the Maryland State Highway Administration (MDSHA), required frontage and access improvements along Frederick Road (MD 355), as well as capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements include the construction of a southbound right-turn lane, an eastbound right-turn lane, and a northbound left-turn lane at the intersection of MD 355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR).

The Board finds with the recommended conditions for these improvements, this Preliminary Plan meets the LATR requirements of the Adequate Public Facilities (APF) review.

Policy Area Mobility Review (PAMR)

The site is located within the Clarksburg Policy Area where there is no PAMR requirement according to the current Growth Policy. Therefore, the subject preliminary plan is not subject to PAMR mitigation.

Site Access and Vehicular/Pedestrian Circulation

Frederick Road (MD 355) is a major highway, requiring 120 feet of right-of-way. The Applicant must dedicate approximately 7,093SF of property (sixty feet from centerline) to create a 120-foot-wide right-of-way along the property frontage of Frederick Road. The Applicant proposes to construct a 25-foot-wide private driveway from Frederick Road to access the proposed parking lot for the school for vehicular

access. The Applicant will construct an 8-foot-wide bituminous bike path along the entire property frontage as shown on the Preliminary Plan, and the Applicant is proposing to construct a 5-foot-wide sidewalk from Frederick Road to provide pedestrian access throughout the Subject Property. The Board finds the vehicular and pedestrian access proposed by the Applicant are consistent with the requirements of the code, therefore, the proposed vehicular access for the subdivision will be safe and adequate.

Other Public Facilities and Services

Public facilities and services are available and will be adequate to serve the proposed development. The Property will be served by public water and sewer systems. The Application has been reviewed by the Montgomery County Fire and Rescue Service who have determined that the Property has appropriate access for fire and rescue vehicles. Other public facilities and services, such as schools, police stations, firehouses and health services are operating according to the Growth Policy resolution currently in effect and will be adequate to serve the Property. Electrical and telecommunications services are also available to serve the Property.

Parking Waiver

The Applicant was required to provide 89 parking spaces per the Montgomery County Zoning Ordinance. The Planning Board previously heard the Applicant's request for a parking waiver of 29 spaces and recommended approval of the parking waiver to the Board of Appeals. The Board of Appeals considered and approved the Applicant's request for a waiver of 29 parking spaces as part of S-2759. The Board supported the waiver based on documentation and testimony provided by the Applicant. The Applicant believes a parking waiver is justified since approximately 30% of the clientele pick-up and drop-off more than one child per visit, and there are staggered drop-off and pick-up times throughout the day, which is not typical of a standard school setting. According to the Applicant's representative, Mr. Ross Flax, 60 parking spaces will be sufficient for this school. Having run two other schools for a combined 21 years, he believes there will not be a need for overflow parking. However, a Transportation Management Plan (TMP) was agreed upon and conditioned as part of the Special Exception approval from the Board of Appeals, and the TMP states that if any event does generate more attendees than the parking available on site would allow, arrangements will be made by the transportation coordinator to direct attendees to satellite parking. According to the TMP, the Applicant intends to use off-site satellite parking at churches and schools when needed for special events. In addition, the site is in the Clarksburg Special Protection Area (SPA), therefore excess parking and imperviousness should be avoided when possible.

3. *The size, width, shape, and orientation of the proposed lots are appropriate for the location of the subdivision.*

This Application has been reviewed for compliance with the Montgomery County Code, Chapter 50, the Subdivision Regulations. The proposed size, width, shape and orientation of the lot is appropriate for the location of the subdivision. The lot was reviewed for compliance with the dimensional requirements for the R-200 Zone as specified in the Zoning Ordinance. The proposed lot meets the dimensional requirements for area, frontage, width, and setbacks in that zone. The Application has been reviewed by other applicable county agencies, all of which have recommended approval of the Preliminary Plan. Therefore, the Planning Board finds that the size, shape, width, and area of the lot is appropriate for the location within the subdivision.

4. *The Application satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A.*

Environmental Guidelines

An NRI/FSD was approved in August 2009 as part of the previous Special Exception S-2759. Except for forest, there are no environmentally sensitive features, such as streams, wetlands, floodplains and their associated buffers on the Subject Property and therefore special protection measures are not necessary.

Forest Conservation

The Planning Board previously approved a preliminary forest conservation plan, with conditions, when it recommended approval of Special Exception S-2759. Planning Board Resolution 10-80 was mailed on October 18, 2010. Since the approval of that forest conservation plan the Applicant realized, that as part of the purchase agreement, they were required to provide a sewer connection serving the adjacent and unbuilt property. The sewer connection would have initially removed all forest on the south side of the Property. The revised preliminary forest conservation plan shows only 0.01 acres of new forest removal because of the Applicant's creativity in minimizing forest loss. Moving the majority of the sewer line outside the proposed easement area and saving more forest along MD 355 almost completely offsets the additional forest clearing that was required to make the sewer connection to the adjoining property. The Applicant will still meet all forest conservation requirements onsite.

The Property contains 4.24-acres of existing forest. There are also two rare, threatened and endangered species of American Chestnut (*Castanea dentata*) located on the Property. The applicant is proposing to hand remove the American Chestnuts and donate them to the American Chestnut Society.

There are sixty-eight (68) trees 24" DBH or greater in size identified on the NRI/FSD with twenty-three (23) of these trees 30" DBH or greater. These trees are about evenly scattered throughout the site. Fifty-four (54) of these trees (sixteen (16) of which are 30" DBH and greater) lie within the limits of disturbance (LOD) of the project and are proposed to be removed.

The revised preliminary forest conservation plan indicates the removal of 3.04 acres of forest and the preservation of 1.20 acres of forest which generates a reforestation requirement of 0.62 acres. This requirement shall be met onsite with 0.56 acres of on-site forest planting and 0.06 acres of landscape credit.

Forest Conservation Variance

The Planning Board approved a tree variance with the initial preliminary forest conservation plan associated with S-2759. There is no additional impact to trees greater than 30 inches in diameter and a revised variance was not necessary with the revised preliminary forest conservation plan.

Therefore, the Board finds that the Application satisfies the Forest Conservation Law and the Environmental Guidelines.

5. *The Application meets all applicable stormwater management requirements and will provide adequate control of stormwater runoff from the site. This finding is based on the determination by the Montgomery County Department of Permitting Services ("MCDPS") that the Stormwater Management Concept Plan approval meets MCDPS' standards.*

The Montgomery County Department of Permitting Services (MCDPS) Stormwater Management Section approved the stormwater management concept for the project on January 20, 2011. The stormwater management concept consists of on-site water quality control and onsite recharge via a combination of biofilter flow diffusers, turf filters, porous pavement, and bioswales. Each turf filter will be designed with an infiltration reservoir below the organic and sand filter that will be sized for full treatment, thereby providing redundancy for water quality.

6. *The preliminary/final Water Quality Plan is approved by the Planning Board.*

The Applicant has submitted a final water quality plan for review by both Montgomery County Department of Permitting Services (DPS) and M-NCPPC. DPS has reviewed and conditionally approved the elements of the final water quality plan under its purview. The Planning Board previously approved a preliminary water quality plan, with conditions, when it recommended approval of Special Exception S-2759. Planning

Board resolution 10-79 was mailed on October 18, 2010. The Board approves the final water quality plan for the reasons stated below.

Site Imperviousness

There is no overlay zone or Master Plan recommendation that sets an impervious cap for developments in this portion of the Clarksburg Special Protection Area. However, Section 19-63(a)(4) of the County SPA Law requires the water quality plan to minimize impervious area for a proposed project.

Planning Board Resolution 10-79 indicated that "no more than 1.40 acres" of impervious surfaces could be installed onsite. The Applicant's final water quality plan shows less than 1.40 acres of impervious surfaces on site.

Forest Conservation

Parts of the existing forest have been protected, and reforestation/landscaping will be planted on the site to meet all forest conservation requirements onsite. Reforestation areas will be protected by an onsite Category I conservation easement. Expanded and accelerated forest conservation is required per the Environmental Guidelines for SPAs, and is reflected in the conditions.

For the reasons discussed above and as conditioned by this Resolution, the Board approves the Preliminary/Final Water Quality Plan.

BE IT FURTHER RESOLVED, that this Preliminary Plan will remain valid for 60 months from its Initiation Date (as defined in Montgomery County Code Section 50-35(h), as amended) and that prior to the expiration of this validity period, a final record plat for all property delineated on the approved Preliminary Plan must be recorded among the Montgomery County Land Records or a request for an extension must be filed; and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Planning Board, and that the date of this Resolution is MAY 3 2011 (which is the date that this Resolution is mailed to all parties of record); and

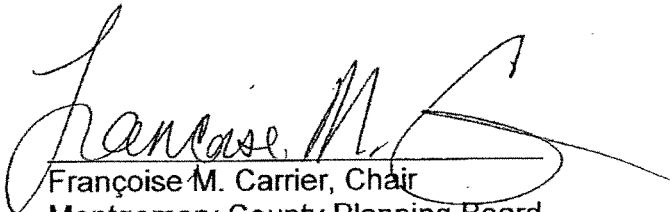
BE IT FURTHER RESOLVED, that any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this

Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

* * * * *

CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Vice Chair Wells-Harley, with Chair Carrier, Vice Chair Wells-Harley, and Commissioner Presley present and voting in favor of the motion, Commissioner Dreyfuss temporarily absent, and Commissioner Alfandre absent, at its regular meeting held on Thursday, April 28, 2011, in Silver Spring, Maryland.


Françoise M. Carrier, Chair
Montgomery County Planning Board

Resolution No. _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Floreen

SUBJECT: Amendment to County Subdivision Staging Policy regarding child day care centers

BACKGROUND

1. Under County Code §33A-15(h), the County Council may amend an adopted County Subdivision Staging Policy by resolution after notifying certain agencies and holding a public hearing.
2. A public hearing was held on this resolution on (date).
3. This amendment is necessary to encourage the provision of child day care in the County by removing certain disincentives to opening new child day care centers..

ACTION

The County Council for Montgomery County, Maryland approves the following resolution:

The 2009-2011 County Subdivision Staging Policy (formerly the County Growth Policy), as adopted by Resolution 16-1187, is amended as follows:

* * *

Guidelines for Transportation Facilities

* * *

TP2.2.2 Determination of Adequacy

* * *

An applicant for a preliminary plan of subdivision need not take any action under TP Policy Area Mobility Review if the proposed development will generate 3 or fewer peak-hour trips, or if the development will consist only of a child day care center, as defined in Chapter 59.

* * *

TL Local Area Transportation Review (LATR)

Exhibit A

TL1 Standards and Procedures

* * *

Local area transportation review must be completed for any subdivision that would generate 30 or more peak-hour automobile trips unless that subdivision consists only of a child day care center, as defined in Chapter 59. For any subdivision that would generate 30-49 peak-hour automobile trips, the Planning Board after receiving a traffic study must require that either:

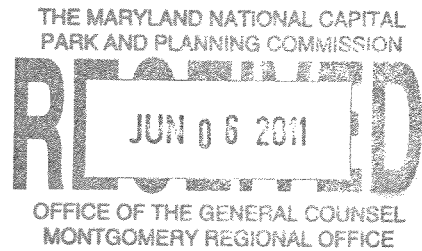
* * *

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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LINOWES
AND BLOCHER LLP
ATTORNEYS AT LAW



March 10, 2011

Stephen Z. Kaufman
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SKaufman@Linowes-law.com

Debra S. Borden
301.961.5250
DBorden@Linowes-law.com

Via Hand-Delivery

Françoise Carrier, Chair
Montgomery County Planning Board
Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Darnestown Development, LLC d/b/a Goddard School (“Goddard” or the “Applicant”)
Preliminary Plan Application No. 120110020 (the “Preliminary Plan”)
Request for Reconsideration

Dear Ms. Carrier:

We are writing to you on behalf of the Applicant in the above-referenced matter regarding the conditions of the Preliminary Plan approved by the Planning Board at a hearing on March 3, 2011. Since the hearing, the Applicant has presented the conditions of approval to the Applicant’s lender, and the lender’s appraiser, who have raised serious concerns about Condition #3 which deals with the cost and timing of LATR intersection improvements.

As amended, condition number three in the motion for approval states, “[p]rior to accepting any more than 141 students, the Applicant must construct, with approval from MDSHA, capacity improvements at the MD 355 intersection with West Old Baltimore Road.” The capacity improvements at MD 355 and West Old Baltimore Road include the construction of a southbound right-turn lane, an eastbound right-turn lane, and a northbound left-turn lane (the “intersection improvements”). This condition was discussed at length at the hearing and the Applicant indicated that even the compromise language allowing him to enroll half of the total number of students authorized by the Special Exception approval was potentially problematic.

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Françoise Carrier, Chair
March 10, 2011
Page 2

After consulting with the lender, the property appraiser and the seller, the Applicant has found that the value of the property will not support the full cost of the intersection improvements, approximately \$400,000. The addition of \$400,000 to the loan increases the debt without increasing the underlying property value, which means the bank will not allow this cost to be included in the loan. The Applicant's lender is, however, willing to include Goddard's share of the intersection improvements, \$72,000, in the loan.

The Applicant has also gathered additional information on the status of the background development affecting the intersection, specifically a list of units that have and have not yet been built.¹ It is apparent that Goddard could fully enroll the total number of children authorized in the Special Exception without causing the intersection to fail, See attached Exhibit "A". The major approved developments in the area of the intersection, and specifically Cabin Branch, are not yet under construction and may not be fully developed for a decade. The LATR Guidelines are intended to provide "a near-term 'snapshot in time' of estimated future traffic conditions and to present a reasonable estimate of traffic conditions at the time of development. They are not intended to establish delay-free conditions." LATR Guidelines, p. 9. In this case, the traffic levels at the time of Goddard's development in 2012 will be for all practical purposes, the same as existing conditions, meaning that Goddard will not cause the intersection to fail.

Additionally, in the time since the Planning Board hearing on the Preliminary Plan, the County has requested an electronic file depicting the intersection, which we believe means that MCDOT has been asked to consider including the intersection improvements in the County CIP, enabling Goddard to submit its share of the improvements into an escrow fund. See email attached as Exhibit "B". In accordance with the LATR Guidelines, the Planning Board may accept a payment in lieu of the construction of the improvement if the improvement can be implemented by a public agency within 6 years of subdivision approval. LATR Guidelines, p. 34.

Accordingly, on behalf of Goddard, we request a modification of the subject condition to allow Goddard the option to pay its share of the intersection improvements into a CIP escrow fund established for improvements at MD 355 and West Old Baltimore Road in the event that the County Council amends the CIP to include this intersection and to strike condition number two requiring an administrative modification of the Special Exception. We suggest the following revisions of the conditions of approval:

¹ Updated development pipeline information has only recently been made available.

Françoise Carrier, Chair
March 10, 2011
Page 3

New Condition #1. Development allowed by this preliminary plan is limited to a daycare facility for a maximum of 283 children (163 day care children and 120 afterschool students), subject to the conditions herein.

Strike Condition #2.

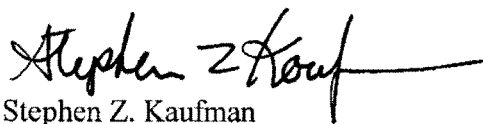
New Condition #2. The Applicant must participate in road capacity improvements at the MD 355 intersection with West Old Baltimore Road. Capacity improvements include the construction of a southbound right-turn lane, and eastbound right-turn lane, and a northbound left-turn lane at the intersection of MD 355 and West Old Baltimore Road to satisfy the requirements of Local Area Transportation Review (LATR). In the event the intersection improvements have been included in the County's Capital Budget prior to the issuance of a Use and Occupancy Permit, the Applicant may satisfy this condition by participating in the project and submitting payment of its share of the improvements to MCDOT. Alternatively, if the intersection improvements have not be included in an approved CIP at such time when the Applicant has enrolled 141 children, and if the other projects which are required to contribute to the intersection improvements have not begun construction of the improvements, then the Applicant shall pay into an escrow account established by MCDOT, or the Planning Commission if MCDOT is not prepared to accept the funds, its share of the intersection improvements.

We respectfully request that the staff and Planning Board consider the information contained herein and this proposal. Please contact us if you have any questions.

Françoise Carrier, Chair
March 10, 2011
Page 4

Sincerely,

LINOWES AND BLOCHER LLP



Stephen Z. Kaufman

Debra S. Borden

cc: Marye Wells-Harley
Joe Alfandre
Amy Presley
Norman Dreyfuss
Rose Krasnow
Patrick Butler
Ki Kim
Ross Flax
Alan Mushinsky

Clarksburg Master Plan
 Pipeline of Development Activity
 February 16, 2011

| Application # | Project Name | Year Approved | Approved | | Built | | Pipeline | |
|---------------|--------------------------------|---------------|-------------------|--------------------|-------------------|--------------------|-------------------|--------------------|
| | | | Residential Units | Commercial Sq. Ft. | Residential Units | Commercial Sq. Ft. | Residential Units | Commercial Sq. Ft. |
| 119870410 | Gateway 270 Corporate Park | 1989 | 0 | 1,000,000 | 0 | 559,979 | 0 | 440,021 |
| 119882440 | Comsat Property | 1989 | 0 | 8,400 | 0 | 0 | 0 | 8,400 |
| 120020480 | Gateway Commons | 2002 | 292 | 0 | 153 | 0 | 139 | 0 |
| 120020420 | Arora Hills (Greenway Village) | 2002 | 1,330 | 91,000 | 1,066 | 0 | 264 | 91,000 |
| * 120031100 | Cabin Branch | 2004 | 2,386 | 2,420,000 | 0 | 0 | 2,386 | 2,420,000 |
| * 120010300 | Clarksburg Village | 2004 | 2,753 | 109,000 | 832 | 0 | 1,921 | 109,000 |
| 119970980 | Thompson Farm | 2004 | 17 | 0 | 0 | 0 | 17 | 0 |
| * 120050030 | Linticum West Property | 2005 | 253 | 0 | 0 | 0 | 253 | 0 |
| 120051010 | Gallery Park (Eastside) | 2006 | 256 | 0 | 1 | 0 | 255 | 0 |
| 120060780 | Shiloh Farms | 2006 | 1 | 0 | 0 | 0 | 1 | 0 |
| 120060740 | Clement East Property | 2007 | 18 | 0 | 2 | 0 | 16 | 0 |
| 120060750 | Clement West Property | 2007 | 9 | 0 | 0 | 0 | 9 | 0 |
| 120061130 | Nehouse Property | 2007 | 8 | 0 | 1 | 0 | 7 | 0 |
| 119950420 | Clarksburg Town Center | 2008 | 1,207 | 194,720 | 717 | 0 | 490 | 194,720 |
| 120070570 | Snow Hill Farm | 2010 | 0 | 25,923 | 0 | 0 | 0 | 25,923 |
| 120090310 | Buffington Building II | 2010 | 0 | 14,288 | 0 | 0 | 0 | 14,288 |
| 120090330 | Piedmont Road | 2010 | 4 | 0 | 1 | 0 | 3 | 0 |
| Total | | | 8,534 | 3,863,331 | 2,773 | 559,979 | 5,761 | 3,303,352 |

* These projects impact the intersection of 355 and W. Old Baltimore Rd. The third project, Tapestry, is not yet approved.

-----Original Message-----

From: Orlin, Glenn

Sent: Wednesday, March 09, 2011 11:34 AM

To: Henline, Maria

Subject: PDF-level information for two potential CIP amendments

Maria,

A Councilmember is considering introducing one or both of the following CIP amendments:

(1) The reconstruction of Stringtown Road to a 4-lane [divided] highway from east of MD 355 to Snowden Farm Parkway in Clarksburg.

(2) An improvement to the MD 355/West Old Baltimore Road intersection in Clarksburg. This improvement would consist of adding a northbound left-turn lane, an eastbound right-turn lane, and a southbound right-turn lane. [Is any right-of-way required?]

For each project I need an expenditure schedule as it would show on a PDF, i.e., the cost by fiscal year (Year 1, Year 2, etc.) and cost element (PDS, Construction, etc.). Don't be concerned with generating a funding schedule or any PDF text, except for perhaps a one-sentence description for the Stringtown Road project.

We need this information no later than Monday, March 28. If you have any questions, please don't hesitate to contact me.

Thanks.

-- Glenn

Exhibit "B"