

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION  
REVISION OF SITE PLAN  
3473/01**

**ALTERNATIVE COMPLIANCE  
12017**

**VARIANCE  
3473**

**DECISION**

Application: Revision of Site Plan for Day Care Center for Children  
And Convent  
Applicant: Little Workers of Sacred Hearts Nursery  
Opposition: Robert Hopkins and Patricia Jennings Hopkins  
Hearing Dates: April 17, 2013 and May 23, 2013  
Hearing Examiner: Maurene Epps Webb  
Disposition: Approval with Conditions

**NATURE OF PROCEEDINGS**

(1) Special Exception 3473/01 is a request to revise Special Exception 3473 (Day Care Center for Children and Convent), approved in 1984 by the District Council, by increasing enrollment from 25<sup>1</sup> to 30 children, constructing an addition to the building to provide a separate entrance to the Day Care Center, and adding a semi-circular driveway. AC-12017 is a request for Alternative Compliance to Sections 4.3, 4.7 and 4.9 of the Landscape Manual to allow a reduced bufferyard. A variance is also requested from the front yard setback requirements for the existing building. The subject property is located on 0.44 acre of R-55 (One-Family Detached Residential) zoned land located on the south side of Queensbury Road, west of 49<sup>th</sup> Avenue and identified as 4805 Queensbury Road, Riverdale Park, Maryland.

(2) The Technical Staff recommended approval with conditions. (Exhibit 15) The Planning Board chose not to schedule a hearing on the request and adopted the Technical Staff's recommendation as its own. (Exhibit 24)

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<sup>1</sup> Although the District Council approval allowed Applicant to serve 25 children its State license has only allowed it to serve 20.

(3) Mr. and Mrs. Hopkins appeared in opposition to the request. The property is located within the municipal boundaries of the Town of Riverdale Park. The Town indicated its support of the request. (Exhibit 15, pp. 46-47)

(4) The record was closed on June 14, 2013, upon receipt of additional Technical Staff comment.

## **FINDINGS OF FACT**

### **Subject Property**

(1) The subject property is known as Lots 3 through 5, and part of Lot 2 Block 42, Section 1 of Riverdale Park Subdivision. It is an irregularly-shaped parcel improved with a two-story, detached single-family dwelling unit constructed in 1910 that is currently used as a convent with a private chapel, and a day care center. It has a macadam driveway which also serves as the parking area and a detached two-car garage.

(2) The property is part of the Riverdale Park National Register Historic District. However, Staff points out that the property has not been designated as a historic site or a historic resource. (Exhibit 15, p. 5) Staff provided a detailed description of the zoning history for the property. (Exhibit 15, pp. 6-7)

(3) The request is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance because the property is less than 40,000 square feet in size and has no prior Tree Conservation Plan approvals. (Exhibit 15, p. 61)

### **Surrounding Area; Neighborhood**

(4) The subject property is surrounded by detached single-family dwellings in the R-55 Zone.

(5) The neighborhood is defined by the following boundaries:

- North – East-West Highway (MD 410)
- South – The Riverdale Mansion and the Riverdale Park and Edmonston municipal boundary
- East – the Northeast Branch and Kenilworth Avenue (MD 201)
- West – B&O railroad tracks and Baltimore Avenue (US 1)

### **Master Plan/General Plan**

(6) The property is located within Planning Area 68, an area discussed in the 1994 Master Plan and Sectional Map Amendment (“SMA”) for Planning Area 68. The Master

Plan recommends a single-family detached land use for the property. The SMA retained the R-55 zoning for the property.

(7) The 2002 General Plan placed the subject property within the Developed Tier. The General Plan's "vision for the Developed Tier is a network of sustainable, transit-supporting, mixed-use, pedestrian-oriented, medium-to high-density neighborhoods." (2002 General Plan, p. 31)

### **Applicant's Proposal**

(8) The subject property is improved with a dwelling constructed approximately 100 years ago. (T. 27) A Day Care Center was first approved for the site in 1956. (Exhibit 14, p.4) A chapel was added when the day care was expanded in 1983. Since 1984 Applicant has operated a Day Care Center on site, pursuant to SE-3473. The Applicant is seeking permission to revise SE-3473 by expanding the number of children from 25 to 30 and by adding a 752-square foot addition to accommodate the additional children.<sup>2</sup> The entrance to the Day Care Center currently goes through the convent. A 752-square foot addition, to be constructed to the rear of the chapel, will provide a separate entrance and privacy for those residing in the convent. (T. 46) It will also allow the construction of a handicap-accessible restroom. Applicant submitted a floor plan for the addition. (Exhibit 31)

(9) There is currently a paved driveway to the west of the building that leads to a detached one story garage. Applicant also proposes to add a semi-circular driveway along the southeastern side of the property to be used as a student drop-off area and to add a van-accessible parking space and wheelchair lift in order to bring the property into compliance with current Americans with Disabilities Act ("ADA") requirements. The new driveway will be one-way in and out. Four parking spaces are required for the day care center (one (1) for every eight (8) children) and five (5) are provided (including two (2) within the existing garage). (Exhibit 34(a)) An existing four-foot high chain-link fence located along the southeastern side of the building will be removed and a five-foot high fence (made of material that would resemble wrought iron) will be added around the perimeter of the new semi-circular driveway. There is a six-foot tall stockade type fence on the eastern and southern boundaries located on the adjacent properties. (Exhibit 34(a))

(10) The Zoning Ordinance requires a play area of 1,125 square feet for half of the children enrolled. Applicant is providing a play area of 2,125 square foot that is enclosed by a four-foot tall fence. The play area is in excess of 40 feet from the closest dwelling located on a neighboring property. (Exhibit 34(a); T. 34) The play area is northeast of the existing structure. The building and two (2) shade trees will provide sufficient shade during the warmer months.

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<sup>2</sup> Applicant submitted architectural elevations and a rendering of these changes. (Exhibit 15, pp. 34-36, Exhibit 27, and Exhibit 28 (a) and (c))

(11) Several parents testified in favor of the Application. They praised the reasonable price (\$100 weekly), the hearty meals, and the teaching provided by the Sisters. (T. 6 - 15) They noted that the new circular driveway would make it far safer to drop the children off, since they currently must park in the narrow street and often block traffic. (T. 12)

(12) The Mother Superior of the Little Workers of Sacred Hearts' Convent testified that she and three (3) other Sisters reside at the subject property and work at the Day Care Center. (T.22) There is always a waiting list so they wish to expand the Center in order to help more families. (T. 17) She also stated there have been near accidents with the current drop off situation since some parents pull into the driveway and have difficulty backing out into the adjoining street. (T. 18)

### **Landscaping/Alternative Compliance**

(13) The Application includes a request to enlarge the existing building; accordingly it must satisfy Section 4.2 (Requirements for Landscaped Strips along Streets), Section 4.7 (Buffering Incompatible Uses) and Section 4.9 (Sustainable Landscaping Requirements) of the Landscape Manual. Applicant has requested alternative compliance to Section 4.2 for the landscape strips adjacent to Queensbury Road, and from Section 4.7 for the existing garage and driveway on the western side of the property. Applicant notes that it will be providing a greater number of planting units and there is an existing fencing and an attractive wall, rendering its proposal equal to or better than, normal compliance.

(14) The Planning Director and her Department's Alternative Compliance Committee have recommended approval of the request for Alternative Compliance. They offered the following comments in support of the recommendation:

The applicant is requesting Alternative Compliance from Section 4.2 ... of the *Landscape Manual* along the frontage of Queensbury Road. The site's frontage is divided into two sections. Along the eastern portion of the frontage, a minimum ten-foot-wide landscape yard exists. The landscape plan, as designed, does not strictly meet the requirements of the ... *Landscape Manual*; however, the existing stone wall contributes greatly to enhance the appearance of the property.

Along the eastern portion of the frontage, the applicant has chosen Option 1 for the Section 4.2 landscape strip. Alternative Compliance has been requested to locate one of the required shade trees an additional ten feet behind the street line in order to maintain clearer sight lines from the proposed driveway apron to the street. The Alternative Compliance Committee believes this aspect of the request is justified. The applicant also requests a reduction in the shrub requirement in order to allow the nuns who live in the convent to continue the tradition of

planting the frontage with annual flowers and other herbaceous ornamentals of their choice. An existing prayer garden is located in front of the convent. The applicant is concerned that if the number of shrubs were provided, this would reduce the area the nuns currently use for gardening. The Alternative Compliance Committee believes the proposed alternative will beautify the site frontage and be equally effective as normal compliance with Section 4.2 of the ... *Landscape Manual*.

The western portion of the site frontage is defined by an existing 30-inch-tall decorative stone wall, which is to remain. The wall is located within a one-foot distance of the existing sidewalk along Queensbury Road, and there is no place to locate plant material between the wall and the right-of-way, which is the Option 4 requirement. One existing Willow Oak tree is located within a landscaped strip in the street right-of-way, which serves to meet the intent of Section 4.2 of the ... *Landscape Manual*. The only space for planting without removing existing paving on the site is within the existing landscape strips within the right-of-way.

The Alternative Compliance Committee believes that the request to eliminate the tree requirement and reduce the shrub requirement should be approved. The existing stone wall is attractive, durable, and adds to the character of the residential street, while partially screening the existing parking. There is no room for additional trees or shrubs and, if provided, they would only screen the attractive wall. The committee notes that some frontage improvements may be required for the companion special exception.... If additional trees were required within the public right-of-way by the Department of Public Works and Transportation, this would further meet the intent of Section 4.2. The Alternative Compliance Committee finds that the proposed alternative would be equally effective as normal compliance with Section 4.2 of the ... *Landscape Manual*.

The applicant is requesting Alternative Compliance from Section 4.7, Buffering Incompatible Uses, of the ... *Landscape Manual*. A Section 4.7 Type 'B' bufferyard, which requires a 30-foot building setback and a 20-foot landscape yard, is required along all property lines adjacent to a minimum five-foot building setback in the area where the existing garage is located and a variable zero to +20-foot-wide landscape yard, which is at its narrowest in the western portion of the property where the existing parking areas are located....

The Alternative Compliance Committee believes the request is justified. The request is largely due to existing conditions on the site, which are little affected by the subject application for this building expansion. There is a slight encroachment of the proposed driveway and walkway in the northeast portion of the site; however, this encroachment is necessary for pedestrian connectivity and has negligible impact on the required landscape yards. The landscape schedule indicates that 220 plant units are proposed, and this includes a number of mature trees and shrubs on the property that create well developed landscape yards along the eastern and southern property lines. Furthermore, existing fencing on adjacent properties will provide a thorough screen. The Alternative Compliance Committee finds the applicant's proposed alternative compliance to be equally effective as normal compliance with Section 4.7 of the ... *Landscape Manual*....

The Alternative Compliance Committee recommends APPROVAL of Alternative Compliance for Section 4.2, Requirements for Landscape Strips along Streets, and APPROVAL of

Alternative Compliance from Section 4.7, Buffering Incompatible Uses, along the eastern, western, and southern property lines.

(Exhibit 15, p. 4-5)

## Variance

(15) Applicant requested a 12 ½ foot variance from the 25 foot front yard setback requirement to validate portions of the existing chapel that was constructed flush with the convent and 12 ½ feet too close to the property line<sup>3</sup>. Mark Ferguson, accepted as an expert in the area of land use planning, testified that the variance request satisfied the strictures of the Zoning Ordinance, reasoning as follows:

*A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;*

The subject property is affected by the extraordinary situation of the conditions of its development. The lots of the general neighborhood were created in 1889. A subsequent plat of the neighborhood which incorporated a number of subsequent revisions ... with a 1904 date shows the main body of the existing house as already being in existence. This was long before the arrival of the Maryland-Washington Regional District and the earliest imposition of zoning in 1928. The main body of the house was set back only 15 feet from the street (with a covered porch extending to within 12.5 feet of the street). ...

So, the adoption of Zoning Ordinances which established setback lines of 25 feet entailed that when the chapel was added in 1983, a variance was required. While Variance 6835 was approved in 1983 to permit the construction of a chapel addition to within 15' of the street line, the chapel was constructed such that its front wall was flush with the projecting covered porch.

*The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and*

The strict application of this subtitle would result in exceptional or undue hardship upon the owner of the property as compliance would putatively require the demolition of a part of the existing chapel. This planner would draw the examiner's attention to the provision of Md. Courts and Judicial Proceedings Code Ann, [Section] 5-114(b)(2), which states that ,  
 "A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed ... under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit."

It seems that this provision of State law could bar the County from strictly applying the provisions of Zoning Ordinance [Section] 27-442 to the existing chapel because of the lapse of thirty years since its construction under permit #3225-1984-CGU.

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<sup>3</sup> The Technical Staff report provides an excellent history of the prior variances granted for the site. (Exhibit 15)

*The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.*

Because the existing chapel (as an accessory to a convent) is a permitted use in the R-55 Zone (the implementation zone for the planned Single-Family Detached land use [ ]), and does not encroach on any planned roadway or other public facility, the approval of the requested variance will not impair the purpose, intent or integrity of the General Plan or Master Plan.

(Exhibit 26, pp. 12-13)

### **Opposition's Comment**

(16) Robert Hopkins and his wife, Patricia Jennings Hopkins, are opposed to the instant request. They believe that the aesthetics of the circular driveway will adversely impact them and reduce their property value. (Exhibit 15, pp. 50-51) The Hopkins' pool is adjacent to the subject property to the south, and they will be able to see the vehicles entering/exiting the circular driveway. (Exhibit 29) Unfortunately, there is no other area on Applicant's property to provide the requested drop-off area.

### **Agency Comment**

(17) Staff recommended approval with several conditions, and Applicant noted its concurrence with said conditions. (T. 9) In reaching its recommendation, Staff offered the following comment:

A day care center has been in operation on this property since February 15, 1956, when Special Exception SE-272 was first approved for the property. Both the original special exception application and the subsequent revision in 1984 were found to be in harmony with the purpose of this Subtitle. With the approval of the requested variance application, which would validate an existing setback from the front street line for an older portion of the building, the site plan will meet all of the requirements of the R-55 Zone. The use and site plan proposed in this application, with the recommended conditions in place, are in harmony with the purposes of Subtitle 27....

The additional parking requirements and play area requirements that are needed in order to increase the enrollment from 25 to 30 children have been properly reflected on the submitted site plan. For the first time since the use was initially established on the site in 1956, the property is now subject to the requirements of the 2010 *Prince George's County Landscape Manual*. The use was also required to demonstrate compliance with the tree canopy coverage requirements that are now applicable to the property in accordance with Section 25-127(a)(1) of the County Code....

A van-accessible parking space will now be provided on the property and a wheelchair lift will be installed as a part of the new building addition in order to insure that access to the interior of the building is being provided for the physically handicapped. Through this revision, the

property will now be in substantial compliance with current ADA regulations. Per General Note 14 on the submitted site plan, the application is exempt from the requirement to obtain approval of a stormwater management concept plan. However, the site plan demonstrates that the downspouts along the southeastern and southwestern sides of the structure are proposed to be routed into two new drywells in order to help reduce surface runoff.

The use and site plan are in compliance with the specific special exception requirements contained in Section 27-348.01 of the Zoning Ordinance for day care centers, and not variances from those requirements have been requested by the applicant.

In adopting the Zoning Hearing Examiner's final decision for SE-3473 on March 14, 1984, the District Council found that the use and the site plan satisfied all of the provisions of Section 27-317. It is, therefore, reasonable to conclude that the proposed use will continue to be in harmony with the purposes of the Zoning Ordinance and that all of the criteria set forth in Section 27-317 are satisfied.

(Exhibit 15, p. 16)

(18) Staff also recommended that the Variance be approved, reasoning as follows:

The current site plans demonstrate that the eastern side of the existing building was constructed approximately 2.5 feet closer to Queensbury Road than what was previously authorized by the Board of Zoning Appeals during the prior variance request, resulting in the need for a new variance request to now be approved. An exceptional or undue hardship would result if the current variance request were not granted. Granting the applicant's variance request would validate a mistake that occurred approximately 30 years ago by a contractor who was hired in good faith by the applicant to construct a 500-square-foot building addition in accordance with the prior approved site plans ...

(Exhibit 15, p. 9)

### **LAW APPLICABLE**

(1) A major revision of the approved Special Exception Site Plan for a Day Care Center must meet the requirements of Sections 27-317 and 27-348.01 of the Zoning Ordinance.

(2) Section 27-317 states as follows:

(a) A Special Exception may be approved if:

- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
- (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;



(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-348.01 states as follows:

(a) A day care center for children may be permitted, subject to the following:

(1) The District Council may specify the maximum number of children to be enrolled, which may not be increased by State or local health, education, or fire regulations;

(2) An ample outdoor play or activity area shall be provided, in accordance with the following:

(A) All outdoor play areas shall have at least seventy-five (75) square feet of play space per child for fifty percent (50%) of the licensed capacity or seventy-five (75) square feet per child for the total number of children to use the play area at one (1) time, whichever is greater;

(B) All outdoor play areas shall be located at least twenty-five (25) feet from any dwelling on an adjoining lot, and shall be enclosed by a substantial wall or fence at least four (4) feet in height;

(C) A greater set back from adjacent properties or uses or a higher fence may be required by the District Council if it determines that it is needed to protect the health and safety of the children utilizing the play area;

(D) Any off-premises outdoor play or activity area shall be located in proximity to the day care center, and shall be safely accessible without crossing (at grade) any hazardous area, such as a street or driveway;

(E) The play area shall contain sufficient shade during the warmer months to afford protection from the sun;

(F) Sufficient lighting shall be provided on the play area if it is used before or after daylight hours to insure safe operation of the area; and

(G) Outdoor play shall be limited to the hours between 7 A.M. and 9 P.M.;

(3) In the C-W, C-M, I-1, I-2, and I-4 Zones, a Special Exception for a day care center for children shall be allowed only if the Council finds that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed use.

(b) In addition to the requirements of Section 27-296(c), the site plan shall show:

(1) The proposed enrollment;

(2) The location and use of all buildings located on adjoining lots; and

(3) The location and size of outdoor play or activity areas.

(c) Any day care center for children which has, on or before the effective date of this Ordinance, fully complied with the provisions of this Subtitle in effect at the time the use commenced shall not be required to meet the requirements of this Section, provided that the use has not been expanded or changed since that time. Any expansion or change shall be governed by the provisions of this Section, or of Sections 27-445.03, 27-464.02, 27-475.02, or 27-541.02.

(d) For the purposes of this Section, enrollment shall mean the largest number of children enrolled in the center in any one (1) session.

(4) The request for Alternative Compliance must satisfy Section 1.3 of the Landscape Manual. That section provides, in pertinent part, as follows:

a. The standards contained in this manual are intended to encourage development which is economically viable and environmentally sound. The standards are not intended to be arbitrary or to inhibit creative solutions. Project conditions may justify approval of alternative methods of compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the purposes of this manual can only be obtained through alternative compliance. Requests for alternative compliance may be approved for any application to which the requirements of this manual apply, when one or more of the following conditions are present:

- (1) Topography, soil, vegetation or other site conditions are such that full compliance with the requirements of this manual is impossible or impractical; or improved environmental quality would result from the alternative compliance.
- (2) Space limitations, unusually shaped lots, prevailing practices in the surrounding neighborhood, in-fill sites, and for improvements and redevelopment in older communities.
- (3) Change of use on an existing site increases the buffer required by Section 4.7, Buffering Incompatible Uses, of this manual, more than it is feasible to provide.
- (4) Safety considerations make alternative compliance necessary.
- (5) An alternative compliance proposal is equal or better than normal compliance in its ability to fulfill the design criteria in Section 3, Landscape Elements and Design Criteria, of this manual.

(5) A variance may be granted if it satisfies the following provisions of Section 27-230 (a) of the Zoning Ordinance:

(a) A variance may only be granted when the District Council, Zoning Hearing Examiner, Board of Appeals, or the Planning Board as applicable, finds that:

- (1) A specific parcel of land has exceptional narrowness, shallowness, or shape, exceptional topographic conditions, or other extraordinary situations or conditions;
- (2) The strict application of this Subtitle will result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of the property; and
- (3) The variance will not substantially impair the intent, purpose, or integrity of the General Plan or Master Plan.

(6) The Court of Appeals provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

The record in this case reveals “no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan”. It would, therefore, be proper to grant the request, once the conditions addressed below are satisfied.

### **CONCLUSIONS OF LAW**

(1) The purposes of the Zoning Ordinance are listed in Section 27-102(a). Fifteen purposes are enumerated. This Examiner finds that the proposed use will specifically promote the following purposes:

*To protect and promote the health, safety, morals comfort, convenience, and welfare of the present and future inhabitants of the County;*

This purpose is furthered since the Applicants are providing a needed service by offering reasonable child care to those who reside and/or work in the area.

*To implement the General Plan, Area Master Plans, and Functional Master Plans;*

The request implements the purposes of these plans since it is a use that will not change the residential character of the neighborhood and it is one that the District Council has deemed acceptable in residential zones.

*To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

The proposed use will not place any additional burden upon the public facilities in the area since the traffic impact for five additional students is de minimis. Accordingly, this purpose of the Zoning Ordinance is met.

*To provide adequate light, air, and privacy;*

The variance request is to validate the front of the convent (adjacent to Queensbury Road) that was constructed prior to the existence of zoning regulations and an addition that was constructed flush with the front of the convent several years ago. The remainder of the property is not affected. Accordingly, this purpose is met.

*To promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

*To lessen the danger and congestion of traffic on the streets, and to insure the continued usefulness of all elements of the transportation system for their planned functions;*

Although the opposition had concerns about a diminution in value that may result from having a circular driveway visible from their property, the driveway decreases the possibility of conflict on Queensbury Road. Moreover, there is no other place on the site to construct the driveway. Thus, on balance, the request satisfies these purposes.

*To insure the social and economic stability of all parts of the County*

This purpose is also furthered by the instant Application since the Applicant will provide a needed use to parents and/or guardians in the area.

*To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features;*

Since the use is located on a developed site there will be no impact on the natural features in the area. The use will not exceed the lot coverage requirements of the zone; the tree canopy coverage requirements have been met; the Landscape Manual requirements are satisfied (if alternative compliance is granted); and the site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance. Accordingly, this purpose is furthered.

(Section 27-317(a)(1)).

(2) The Special Exception Site Plan shows the proposed enrollment, location, and use of buildings located on adjoining lots, and location and size of proposed play areas, as required by Section 27- 348.01(b).

(3) The subject proposal is required to have approximately 1,125 square feet of play area for a maximum enrollment of 30 children and provides 2,125 square feet. The play area is surrounded by an existing four-foot tall chain link fence. There will be no off-premises outdoor play or activity area, nor will the play area be used before or after daylight hours, thereby minimizing any adverse impact that children at play may have upon neighboring properties. The outdoor play area is at least 40 feet from any dwelling on an adjacent lot. The play area does contain sufficient shade during warmer months, with the addition of the trees in the manner proffered by Applicant. (Section 27-348.01(a)).

(4) The proposed use does require the grant of a very small variance to validate existing structures; once granted it will be in conformance with all applicable regulations. (Section 27-317(a)(2)). The variance can be granted since the subject property was developed, in part, long before the existence of zoning in the Regional District; the chapel was also constructed approximately thirty years ago adjacent to the convent; and these are extraordinary circumstances. It would result in peculiar and practical difficulties to ask this Applicant to tear down this building, that does not detract from the residential character of the neighborhood. The variance does not substantially impair the intent of the Master Plan or General Plan since these plans recognize the residential nature of the property and, again, the building does not detract from the residential character. (Section 27-230(a))

(5) The proposed use will not substantially impair the integrity of the Master Plan for Planning Area 68, nor adversely affect the health, safety, or welfare of, residents in the area. The Master Plan calls for this area to remain residential in character, and the instant application will not alter said character. (Section 27-317(a)(3)).

(6) Additionally, the fencing of the play area, and limited hours of its use lessen the impact of noise on adjacent properties, thereby insuring that the special exception will not be detrimental to the use or development of said properties. For the same reasons it will not adversely affect the health, safety or welfare of residents or workers in the area. (Section 27-317(a)(4) and (5)).

(7) The Application is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance. (Section 27-317(a)(6)). The site does not contain any regulated environmental features. (Section 27-317 (a)(7)) The property does not lie within the Chesapeake Bay Critical Area Overlay Zone. (Section 27-317 (b))

(8) Finally, the request for Alternative Compliance should be granted. The request for the frontage along Queensbury Road is necessary in order to retain the existing decorative stone wall located within one-foot of the existing sidewalk. There is no additional area there to place plant materials. I agree with Staff that, given the space limitation on site, the existing wall is equally effective as normal compliance. Applicant also requests Alternative Compliance for the bufferyard near the existing garage since

that area varies in width, especially where the required parking is located. In exchange, Applicant has proffered additional plant units. Again, I agree with Staff that, given the space limitations on site, this will be as equally effective as normal compliance. (Landscape Manual, Section 1.3)

### **DISPOSITION**

Approval of SE-3473-01, Variance 3473 and Alternative Compliance 12017, subject to the following conditions:

1. Prior to the issuance of any permits Applicant shall revise the Special Exception Site Plan and/or Landscape Plan as follows:
  - a. The plan shall be signed and sealed by a qualified professional.
  - b. Show the boundary limits of Lots 3, 4, and 5 and part of Lot 2.
  - c. Label the height and type of all fences and walls and provide a symbol for the proposed fence along the semi-circular driveway.
  - d. Show the limits of the existing four-foot-high chain-link fence along Queensbury Road and label the fence as "To be Removed."
  - e. Provide the legal description of the property in the title block.
  - f. Remove the reference to the prior approved variance along the front of the building, and provide a note stating that a new variance is requested to waive 12.5 feet of the required 25-foot setback from the front line.
  - g. Correctly label the applicable Section 4.2 schedules of the Landscape Plan for the different lengths of frontage on Queensbury Road.
  - h. Correct the numbers of plants in the Section 4.9 landscape schedule on the Landscape Plan to be consistent with the Schedule of Planting.
  - i. Provide an exhibit on the Landscape Plan showing how the area of existing trees was determined in meeting the tree canopy coverage requirement.
2. Prior to the issuance of any permits Applicant shall submit the revised Special Exception and Landscape Plans to the Office of the Zoning Hearing Examiner for review, approval and inclusion in the record.

[Note: The Special Exception Site Plan and Landscape Plan are Exhibits 34 (a) & (b).]