

IN THE MATTER OF : BEFORE THE
GLOBAL CHILDREN, INC., : HOWARD COUNTY
T/A GLOBAL CHILDREN MONTESSORI : BOARD OF APPEALS
SCHOOL :
Petitioner : HEARING EXAMINER
 : BA Case No. 10-031C

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DECISION AND ORDER

On January 24, 2011, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Global Children, Inc., t/a Global Children Montessori School, for a child day care center and nursery schools conditional use an R-20 (Residential: Single) zoning district, pursuant to Section 131.N.13 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Sang Oh, Esquire, represented the Petitioner. Robert Vogel and Padma Venkatraman testified on behalf of the Petitioner. No one appeared in opposition to the petition.

The Petitioner introduced into the record the exhibits as follows.

- Exhibit 1. Layout Plan, Worthington Fields, Phase 6 August 2009
- Exhibit 2. Site Development Plan, Claremont Overlook. June 2010,
- Exhibit 3. Whitetail Woods II, February 2006
- Exhibit 4. Site Development Plan Dennis Preserve, February 2006

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Exhibit 5. Site Development Plan, Schaffner, February 1999

Exhibit 6. Three photographs of corner dwellings with access on one street and house oriented on another

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located in the 2nd Election District on the northeast side of MD 103 (Montgomery Road) and the west side of Baugher Farm Road. The Property is referenced as Tax Map 31, Grid 7, Parcel 415, Lot 1 and is also known as 4821 Montgomery Road (the "Property").

2. Property Description. The 40,510-square foot, irregularly shaped Property is Lot 1 of the five-lot Russell H. Baugher subdivision recorded in April 1959. It is about 110 feet in length along MD 103 and 175 feet along Baugher Farm Road. The Property is improved by a one-story, 1,572+ square foot dwelling built around 1949. The dwelling front is oriented towards and is situated about 53 feet from MD 103.

The Property is currently accessed from MD 103 by a driveway in the southwest property corner. The driveway leads to a paved parking area and a two-car garage on the dwelling's north side. A four-six foot retaining wall separates the lower elevation of the paved area from the lawn. There is a well in the northwest corner and a metal shed in the rear yard. A metal fence encloses most of the Property and a split rail fence runs along the driveway's west side.

The Site is generally level along the driveway, and then increases in elevation to the Property's northerly side. The topography also rises significantly from the west to the east along MD 103, and north to south along the Baugher Farm Road.

3. Vicinal Properties. To the west is the unimproved R-20 (Residential: Single Family) zoned Russell H. Baugher Subdivision Lot 5. Further west Lots 2, 3, and 4 of this subdivision are each improved with a single-family detached dwelling. Across Baugher Farm Road to the east, the 13-acre R-20 (Residential: Single Family) zoned Parcel 800 is improved with a residence and various outbuildings situated in the site's south, central area. To the northwest is a farm stand. Parcel 10, Lot 4 is an R-20, 15 acre parcel, the site of the Glen Mar United Methodist Church, a ball field and a large, paved parking lot.

4. Roads. MD 103 here has two travel lanes with a center turning lane with a 60-foot right-of-way (ROW) and a posted speed limit of 40 MPH. Baugher Farm Road along the Property frontage is a one-lane, open section road cut into the hillside. Past the northerly lot line, multiple "DO NOT ENTER" prohibit southbound traffic on Baugher Farm Road. Beyond these signs, Baugher Farm Road has two travel lanes, a 30-foot ROW width and the posted speed limit is 30 MPH.

5. Water and Sewer Service. The Property is served by public water and sewer facilities.

6. The General Plan. Policies Map 2000-2020 of the 2000 General Plan designates the Property as a "Residential Area" land use. Transportation Map 2000-2020 of the 2000 General

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Plan depicts MD 103 as a Minor Collector.

7. The Proposal. Petitioner Global Children, Inc., t/a Global Children Montessori School proposes to operate a child day care center and nursery school with a maximum enrollment of 55 children. The Petitioner is proposing to construct a 1,870 square foot addition on the west side of the existing structure. The addition would be situated about 53 feet from the southerly lot line along MD 103, 26 feet at its closest point from the westerly lot line, 80+ feet from the northerly lot line and 50+ feet from the easterly Baugher Farm Road lot line.

The existing parking area, retaining wall and wood deck on the north, rear side of the dwelling will be removed, as will an existing well, portions of a metal fence, and a metal shed.

The October 2010 conditional use plan eliminates the MD 103 access and replaces it with a 25-foot wide driveway entrance on Baugher Farm Road sited about 30 feet from the Property's northeast corner. The new driveway provides access to a paved parking area with six parking spaces on each side and one disabled parking space on the north side. A new five-foot wide sidewalk and retaining wall would be constructed along the parking spaces on the north side, along the rear façade of the existing dwelling.

The Conditional Use Plan depicts a six-foot screening fence along a portion of the Property's west side. A fenced play outdoor play area is proposed in the west portion of the Property, next to and in front of the proposed addition and extending to the 20-foot use setback line from MD 103 and Baugher Farm Road. The TSR notes the Petitioner does not specify the type of fencing on the Conditional Use Plan and recommends that approval be conditioned on a six-foot privacy fence for the play area.

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A Type A landscape buffer is proposed along the north property lines, a Type B buffer along the south and east property lines, a Type C buffer along the west property line.

8. Padma Venkatraman testified that the proposed use is a Montessori school with before and after school programs. It would operate from 7:00 a.m. to 7:00 p.m. (No days were specified). The school would employ five employees. Children would play outside in the playground ½ hour a day. No food would be prepared because children would bring their own lunch. No dumpster is needed. The school wants to expand to this site because Global Children Montessori School has outgrown its Columbia school and many children attending that school live in the area of the proposed school.

9. Robert Vogel testified that the existing dwelling is oriented toward MD 103 and accessed from MD 103. According to the Conditional Use Plan, the Petitioner is retaining the original front setback orientation toward MD 103, even with the proposed addition and the new access off Baugher Farm Road. It is also his professional experience, and based on good engineering practice, that the SHA would want the access to be located off Baugher Farm Road.

10. Robert Vogel disagreed with the TSR conclusions about the designation of MD 103 as the public street ROW for setting the front setback. He initially pointed out the TSR's incomplete quote of the definition of a site's front setback set forth in HCZR Section 103.A.173. On Page 6, the TSR states, "[a]ccording to Sec. 103.A.173 of the HCZR, the defined front setback 'extends across the full width of the lot, between the front public street right-of way or front lot line and the nearest line of the structure or enclosed portion thereof: a. For lots that front directly on a public street, the front setback is measured from the ultimate public street ROW

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providing access to the lot . . ." He then read the full two-part definition, which provides in pertinent part as follows.

173. Setback, Front: Extends across the full width of the lot, between the front public street right-of way or front lot line and the nearest line of the structure or enclosed portion thereof:

a. For lots that front directly on a public street, the front setback is measured from the ultimate public street right-of-way providing access to the lot and towards which the front of the house or structure is to be oriented. The ultimate right-of-way of the public road is determined by the Howard County Design Manual or the State Highway Administration, Highway Needs Inventory. [Council Bill 3-2009 (ZRA 104) Effective 4/9/09]

11. Mr. Vogel opined that in his considerable experience, the County routinely allows persons to choose the orientation of a house on a corner lot for the purposes of setting the front setback, regardless of the access driveway's location. In support of this claim, he introduced into evidence Exhibits 1-6, which depicts multiple dwellings on corner lots. These exhibits show that the access and the actual front façade of a dwelling do does not always dictate the orientation of a dwelling's front setback.

CONCLUSIONS OF LAW

As a rule, the Hearing Examiner first evaluates a conditional use petition for compliance with the general Section 131.B criteria for approving a conditional use, then for compliance for the specific criteria of the specific Section 131.N.13 conditional use category. I have reversed this order when clarity necessitates it. This case prompts me to take a third tack, resolving certain background issues prior to making the necessary evaluations required by Sections 131.B and 131.N.13.

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I. BACKGROUND ISSUES**A. The Nature of the Proposed Use**

The petition describes the conditional use category requested as a child day care center and nursery school with fenced playground to accommodate a maximum of 55 students. The Petitioner is Global Children, Inc., t/a Global Montessori School. Padma Venkatraman testified that the proposed use is a Montessori school with before and after school programs. She further testified the proposed school wants to expand to this site because Global Children Montessori School has outgrown its Columbia school.

The Hearing Examiner has some concern about whether the proposed "school" will be limited to child day and nursery uses, or include a kindergarten. Montessori schools commonly include a kindergarten. If the Petitioner intends to include a kindergarten, then the use is an "academic school" as defined by HCZR 103.A.170, and the Petitioner would be required to withdraw the petition and apply for a private academic schools, colleges, and universities conditional use per Section 131.N.48.¹

B. The Front Setback Issue

The Hearing Examiner's decision in this case hinges on the orientation of the front setback on the site, which determines the requisite setback of the conditional use structure from the westerly lot line, the common lot line of an adjoining residentially zoned property.

¹ An "academic school" is "[a]n institution which offers an academic course of instruction operated either by an established religious organization or under a certificate of approval issued by the Maryland State Department of Education. The Maryland State Board of Education certifies nursery schools. It also certifies private schools, including Montessori schools, with kindergartens and grades 1-12.

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The minimum setback regulations for the RC-20 district are set forth in HCZR Section

108.4. These are as follows.

4. Minimum setback requirements

a. From arterial or collector public street right-of-way

(1) Structures

(a) Front or side

(i) Lots recorded after October 18, 1993 that do not have frontage on a public street constructed before that date, or an extension of such a street 40 feet

(ii) All other lots 50 feet

(b) Rear

(i) Principal structure 50 feet

(ii) Accessory structure 10 feet

(2) Uses (other than structures) in all development projects except single-family detached 20 feet

b. From other public street right-of-way

(1) Structures

(a) Front or side

(i) Lots recorded after October 18, 1993, that do not have frontage on a public street constructed before that date, or an extension of such a street 30 feet

(ii) All other lots 50 feet

(b) Rear

(i) Principal structure 30 feet

(ii) Accessory structure 10 feet

(2) Uses (other than structures) in all development projects except single-family detached 20 feet

c. From lot lines

(1) Structures

(a) Front 20 feet
except pipestem lots facing the project boundary 30 feet

(b) Side 10 feet

(c) Rear

(i) Principal structure 30 feet

(ii) Accessory structure 10 feet

(2) Uses (other than structures) in all development projects except single-family detached 20 feet

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The Petitioner determined the setbacks for the conditional use structure with the addition by maintaining the site's front orientation on MD 103. Because MD 103 is a Minor Arterial, the applicable front setback is 50 feet and the conditional use plan notes the structure is set back about 53 feet from the MD 103 ROW. With the front of the site oriented toward MD 103, the structure is subject to a 10-foot side setback from the westerly lot line and the conditional use plan notes the structure is 26 feet from this lot line.

The TSR disagrees with the orientation of the site as fronting on MD. The TSR reasons the change in access from MD 103 to Baugher Farm Road reorients the site, shifting the front setback from MD 103 to Baugher Farm Road. With the site now oriented toward Baugher Farm Road, the conditional use structure is subject to a 30-foot rear setback from the westerly lot line, not a 10-foot side setback.

As the TSR further explains, this reorientation of front, rear and side setbacks and the commensurate change in setback distances activates one of the specific criteria of the child day care center and nursery school conditional use category. Pursuant to HCZR Section 131.N.13.g.(2), all buildings, parking areas and outdoor activity areas must be set back 50 feet from adjoining residentially-zoned properties other than public road ROWs. As DPZ orients the conditional use site, the location of the conditional use structure 26 feet from the westerly adjoining R-20 zoned property runs afoul of the 50-foot setback. The TSR further reasons the petition may be eligible for a reduced setback as the Hearing Authority may permit pursuant to HCZR Section 131.N.13.g.(2)(a), but concludes a variance is necessary. The TSR recommends the petition be denied unless the Petitioner successfully petitions for the requisite variance.

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Discussion

HCZR Section 103.A.173 defines a "front setback" as "[e]xtend[ing] across the full width of the lot, between the front public street right-of way or front lot line and the nearest line of the structure or enclosed portion thereof." Section 103.A.173.a prescribes (in pertinent part) how the front setback between the public street right-of way or front lot line and the nearest line of the structure or enclosed portion is to be measured for the purposes of the HCZR: "[f]or lots that front directly on a public street, the front setback is measured from the ultimate public street right-of-way providing access to the lot and towards which the front of the house or structure is to be oriented."

In support of the site orientation and setbacks depicted on the conditional use plan, the Petitioner argues, through Mr. Vogel's testimony, bolstered by six exhibits, that DPZ routinely allows the front setbacks of houses on corner lots (or with frontage on a road and a pipestem driveway) to be measured off a non-access road, with the consequence that the front setback may not coincide with the ultimate public street ROW providing access to the lot.

At first blush, we might agree with extending this logic to the conditional use site. The Hearing Examiner noted during the proceeding that she occasionally sees residential plans and variance petitions where the front setback is taken off a row other than the street providing ultimate access to the site. However, the plausibility of this logic fails when we consider that the structures referenced in the exhibits are dwellings in subdivisions. Although the Petitioner's witness consistently referred to the conditional use structure as a house, it ceases to be a single-family residential dwelling when put to use as a nursery/daycare center. This change in

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use is reflected in the Department of Inspections, Licenses, and Permits comments attached to the TSR. These comments advise the Petitioner a change in occupancy from a single-family dwelling to a day care center will require the building to be protected by an automatic sprinkler system.

The Hearing Examiner finds the Petitioner's effort to defeat the TSR front setback argument for failing to consider the regulatory language about the orientation of the structure to be unavailing for three reasons. First, the construction of the addition on the former front façade of the existing structure negates any claim to the structure retaining a front orientation toward MD 103. Second, the conditional use plan provides sufficient information to allow the Hearing Examiner to conclude the conditional use structure is oriented toward Baugher Farm Road, albeit at an angle. Vehicles access the site from Baugher Farm Road and there is a direct view of the front entrance to the structure from the parking area.

Additionally, the "liberal" policy guiding the orientation and setbacks of lots in a residential development or area pertains to like land uses. The policy considerations for the prescribed setbacks of a conditional use category, though, are intended to ensure compatibility between the conditional use category and *unlike* adjoining land uses. In this case, the nursery school and daycare center conditional use category requires the conditional use structure to be set back 50 feet from a residentially zoned property to ensure compatibility between the uses. Section 131.N.13.g.(2). The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, subject to certain

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conditions. HCZR Section 131.N.13.g.(2)(a). In this case, the minimum reduced setback required by the zoning district is the 30-foot rear setback.²

It would be contrary to the goals and objectives of the HCZR for conditional uses to supplant the regulatory land use policy inhering in these setback requirements with that favored by the Petitioner, especially when we consider the numerous and varied types of conditional use categories with minimum setbacks requirements.³ It may be DPZ policy to relax front setback determinations on a residential dwelling site to permit those denoted in the Petitioner's exhibits, but the Hearing Examiner declines to extend this policy to any conditional use category, which would effectively eviscerate the land use policy inhering in these setbacks.

Since the structure is 26 feet at its closest point to the rear lot line, the TSR alternatively recommends approval of the petition if the Petitioner successfully applies for a variance to reduce the 30-foot minimum setback to 26 feet. But the HCZR prohibits this. "[] [N]o variance [shall] be granted to the minimum criteria established in Section 131 for conditional uses, except where specifically provided therein or in an historic district. Nothing herein shall be construed to prevent the granting of variances in any zoning district other than to the minimum criteria established in Section 131 except as provided therein." HCZR Section 130.B.2.a.(5). In

² The Hearing Examiner takes notice that multiple conditional use categories permit the Hearing Authority to reduce minimum setbacks attached to the use subject to certain conditions. A policy that allows these setbacks to be disrupted by simply reorienting the conditional use site would wholly defeat the underlying land use policies guiding the location of these uses.

³ In a bench conference with counsel, the Hearing Examiner took notice that location of the "front setback" had not arisen in any other conditional use petition she could recall because the orientation of the structure and ultimate access from a public street right-of way was never at issue.

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this case, the minimum reduced setback permitted is the 30-foot rear setback and Section 130.B.2.a.(5) bars the Petitioners from applying for a variance to reduce it to 26 feet.

II. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and

b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

General Plan Policies. The Howard County General Plan designates the area in which the Property is located as a "Residential" land use. Day care centers and nursery schools are commonly found in residential areas.

The Nature and Intensity of the Use. The Petitioner is proposing a nursery school and day care center, which are relatively low intensity uses. They are principally indoor uses. The outdoor play area will be fenced and not used continuously. With no kindergarten use, the nature and intensity of the proposed use is appropriate.

The Size of the Site in Relation to the Use. The conditional use site is .93 acres in size. The site cannot accommodate the requisite structure setback from the adjoining residentially

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zoned property. The Hearing Examiner concludes the site will not adequately support the conditional use.

The Location of the Site With Respect to Streets Giving Access to the Site. A dedicated left-bound turning lane on MD 103 provides access to Baugher Farm Road for motorists traveling east on Montgomery Road. Baugher Farm Road between MD 103 and about the area of the farm stand is a one-lane open section road. "Do Not Enter" signs prohibit motorists traveling south on Baugher Farm Road from accessing MD 103. There is no one-way sign prohibiting the drivers of attendees from making a right on Baugher Farm to access MD 103. In the absence of adequate information about sight distance, and the reasons for the limited access, the Hearing Examiner is unable to evaluate the petition for compliance with this standard.

The Appropriateness of the Conditional Use in Combination with a Permitted Use on the Site. This section does not apply.

B. Adverse Impacts.

Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

Inherent in the assessment of a proposed conditional use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the

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zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed uses would have adverse effects in an RC district. The proper question is whether there are facts and circumstances showing that the particular uses proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. People's Counsel for Baltimore County v. Loyola College in Maryland, 406 Md. 54, 956 A.2d 166 (2008); Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981); Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Hearing Examiner concludes the Petitioner has not met its burden of presenting sufficient evidence under HCZR Section 131.B.2 to establish the proposed uses will not have adverse effects on vicinal properties beyond those ordinarily associated with a nursery/day care center in the R-20 district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The proposed Conditional Use will be conducted largely indoors. The playground will be fenced and not used continuously. The Petitioners did not agree to install a 6-foot privacy fence around the fence, per DPZ's recommendation, which would effectively minimize any noise in a rather open area of the site. Without the privacy fence, the Hearing Examiner is not persuaded that the location of the playground use in a 2,194 square-foot area so close to MD 103 will not generate atypical noise detectable in the neighborhood. No significant outdoor lighting, or

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other physical effects, including dust, fumes, odors, glare, vibrations, or hazards, will be detectable within the neighborhood.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Because the structure would be sited less than the 30 foot reduced setback permitted by Section 131.N.13.g.(2)(a), the proposed use will hinder or discourage the development and use of adjacent property more at the subject site than it would generally in the zone or applicable other zones.

Without a six-foot privacy fence, the Hearing Examiner concludes the Type C landscape buffer proposed along the west property line will inadequately screen the play area from adjacent residential properties. The findings of record concerning the new retaining wall are limited only to its depiction on the conditional use plan. Without additional information, the Hearing Examiner is unable to evaluate it for compliance with this standard.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The conditional use plan notes the use requires three parking spaces for 1,000 square feet of use. Based on a total square footage of 3,442 square feet, 11 spaces are required and 12 are provided, including one disabled space. No loading area or dumpster is shown on the plan.

d. **Access.** The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

Because the record is devoid of any information about adequate sight distance at the corner site, and considering the highly unusual "DO NOT ENTER" signs on Baugher Farm Road, the Hearing Examiner is unable to evaluate it for compliance with this standard. I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.d.

III. Specific Criteria for Child Day Care Centers and Nursery Schools, Day Treatment and Care Facilities (Section 131.N.13)

a. **On-site circulation and parking areas shall be designed to minimize vehicular/pedestrian conflicts and to provide safe areas for dropping off and picking up passengers.**

The October 2010 Conditional Use Plan depicts 6 parking spaces on either side of the parking area. The persons who park in one of the spaces closest to the nursery/day care center have safe access to the building from the adjacent sidewalk. Others will have to park in one of the six spaces on the other side of the parking area and traverse the drive aisle to reach the entrance. There is no specific drop off area directly in front of the entrance. While it is likely that not all 55 attendees will be dropped off or picked up at the same time, the Hearing Examiner is not persuaded the proposed arrangement provide a safe area for dropping off and picking up passengers, in the absence specific drop off area at the entrance to the center.⁴ The

⁴ The Hearing Examiner notes the Maryland State Board of Education certifies day care centers and nurseries. A safe access area is one the criteria the Board uses in the certification process.

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Hearing Examiner is therefore not persuaded the parking area will provide safe vehicular and pedestrian circulation patterns, in accordance with Section 131.N.13.a.

b. For child day care centers or nursery schools in industrial or commercial districts, outdoor play areas shall be fenced, screened and located to minimize exposure to noise and other emissions from roads, parking areas, and industrial activities.

This section does not apply.

c. The minimum lot size for child day care centers shall be 500 gross square feet of lot area per child.

The 40,150 square-foot lot exceeds the minimum requirements of 500 gross feet per child, based on a maximum enrollment of 55 children ($55 \times 500 = 27,500$ square feet), in accordance Section 131.N. 13.c.

d. Outdoor play areas or activity areas shall be fenced, located to the side or rear of the principal structure, and buffered from adjoining residential properties by landscaping or adequate distance or both.

With the site oriented toward Baugher Farm Road, the play area is located in the southerly portion of the site. Part of the area lies on the side of the structure, but a triangular section will be impermissibly situated within the front setback. The petition does not accord with Section 131.N. 13.d.

e. Parking areas shall be located and landscaped to minimize their visibility from roads and adjacent residential properties.

HCZR Section 108.4 requires the parking use to be set back 20 feet from a public street and lot line. The conditional use plan depicts the parking area as 20+ feet from Baugher Farm Road. A Type A buffer is proposed along the northerly lot line and a Type B buffer along

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Baughner Farm Road lot line. Additionally, the conditional use plan depicts a Type C landscape buffer and six-foot high privacy fence along the westerly lot line.

However, as the Hearing Examiner reads the Landscape Manual, Table 2 (Page 18), a Type E landscape edge is required when the parking is adjacent to a roadway and only a Type B edge is proposed. The petition does not accord with Section 131.N.13.e.

f. The design and massing of proposed structures or additions to existing structures shall be generally compatible in scale and character with residential properties in the vicinity of the site, as demonstrated by architectural elevations or renderings submitted with the petition. Additional setbacks from property lines and landscape buffering shall be required if necessary to make the appearance of the site compatible with surrounding residential properties.

The evidence of record contains no information about the design and massing of the proposed addition to the existing structure other than its square footage. Absent any architectural elevations or renderings, the Hearing Examiner is unable to evaluate the petition for compliance with this standard.

g. For facilities in residential districts with a capacity of more than 30 children or adult clients at one time, the following standards apply:

(1) The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a conditional use that was approved prior to the effective date of Council Bill No. 11-2001 are permitted.

A maximum of 55 children will attend the facility. The proposed use has frontage on MD 102, Minor Arterial, in accordance with Section 131.N.13.g.(1).

(2) Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than public road right-of-ways.

The Hearing Authority may reduce this setback to no less than 20 feet or the

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minimum setback required by the zoning district, whichever is greater, if:

(a) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or (b) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combination, that presents an attractive and effective buffer for neighboring residential properties.

The outdoor activity area is not subject to the 50-foot setback because it is sited near the intersection of MD 103 and Baugher Farm Road. The parking area is located 20 feet from the northerly and northerly lot lines. The parking use setback in the district is 20 feet, so the use is eligible for a 20-foot reduced setback. The petition depicts a Type C landscape buffer and a six-foot high screening fence along the westerly lot line, and a Type A buffer along the northerly lot, which adjoins a long-term institutional use, a religious facility. The Hearing Examiner concludes a 20-foot reduced setback is appropriate.

As discussed above in Part I, the maximum reduced setback the Hearing Examiner may approve for the structure setback from the westerly lot line is 30 feet and the structure is 26 feet. Because Section 130.B.2.a.(5) prohibits any variance from the 30 foot setback, the Hearing Examiner concludes the petition does not accord with Section 131.N.13.g.(1).

(3) At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.

The petition states that about 37.4 percent (3,478 square feet of the 9,881 square foot area within the structure setback) will be used as green space, in accordance with Section 131.N.13.g.(3).

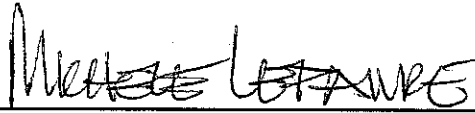
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ORDER

Based upon the foregoing, it is this 14th day of February 2011, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**: That the request of Global Children, Inc., t/a Global Children Montessori School for a child day care center and nursery school conditional use in an R-20 (Residential-Single) Zoning is hereby **DENIED**.

HOWARD COUNTY BOARD OF APPEALS

HEARING EXAMINER



Michele L. LeFavre

Date Mailed: 2/15/11

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.