



MEMORANDUM

Clarke Caton Hintz

Architecture
Planning
Landscape Architecture

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To: Montgomery Township Zoning Board of Adjustment

From: Michael Sullivan, ASLA, AICP
James Clavelli, PP, AICP

Re: **The Malvern School Properties, LP**
Height Variance, Preliminary Site Plan and Bulk Variances
Variance Review 2
982 Georgetown-Franklin Turnpike
Block 28010, Lots 57 & 58
H-C Highway Commercial Zone

Date: May 17, 2023, Amended May 23rd

1. Project & Site Description

- 1.1. Project Description:** The applicant is requesting preliminary site plan approval, - d(6) variance relief for an oversized building and a bulk variance for an undersized lot relating to the development of a childcare center and a medical office on two (2) lots. The applicant intends to consolidate the two (2) lots.

The proposed childcare center contains 8,640 sf. of floor area and is 37.17 feet in height. The variance plan indicates that the child care center will employ 20 individuals and will have 120 children attending the center. The proposed medical office contains 4,000 sf. of floor area.

In addition to the two (2) principal buildings, the applicant is also proposing 55 parking spaces, one (1) driveway entrance, one (1) reinforced emergency access lane, sidewalks, outdoor play equipment, fencing, a “shade structure”, stormwater infrastructure, plantings, one (1) freestanding sign, two (2) building mounted signs and directional/vehicular signs.

- 1.2. Lot Consolidation as Condition of Approval:** The existing site is composed of two (2) separate lots. The applicant indicates in their correspondence that they intend to consolidate the lots. This report analyzes the site as one (1) combined lot, rather than two (2) separate lots. Consolidation of the lots should be a condition of variance approval if the Board looks favorably upon the application.

John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP
Michael Hanrahan, AIA
Mary Beth Lonergan, AICP



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- 1.3. **Additional Relief Required:** In addition to the height variances and lot size variance requested by the applicant, additional relief is also required. A comprehensive list of necessary relief can be found in section 19.
- 1.4. **Existing Conditions:** The existing site is 2.046 acres (89,128 sf.). Existing improvements consist of a one (1) story single frame dwelling, a driveway leading from Georgetown-Franklin Turnpike (Country Road 519) to the front of the dwelling, an attached canopy, concrete patio and concrete walkway. There are several trees of various sizes found on the site, including a 38-inch DBH tree located near the property frontage and a 36-inch DBH tree found in the rear of the site. Steep slopes are found on the site. There is a paper street called Brecknell Way, a planned municipal street to bypass the intersection of U.S. Route 206 and Country Route 518, that wraps around the site and would be fully developed as part of the second half of the bifurcated application if approved. The lot contains frontage on one (1) street, however, the development of Brecknell way, which will wrap around the property, will leave the property with three (3) front yards.





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- 1.5. **Site Context:** The site is located on County Road 518 near the intersection with U.S. Route 206. The property to the west contains a single-family dwelling. The property to the east contains a vacant commercial use. To the rear is a townhouse neighborhood. An ATV dealer is located across the street. The Tiger's Tale Grill is located just down the street at the intersection with U.S. Route 206.



View of Site from Route 518

2. Use & Bulk Standards

- 2.1. **Permitted Principal Use(s):** The plan complies. Pursuant to §16-4.12k, a child care center may be developed within a second building on a lot within the HC Highway Commercial zoning district pursuant to several conditions relating to bulk standard which are articulated Table 1. Thus, the child care center complies, and having two (2) uses on one (1) lot complies.

- 2.1.1. **Permitted Principal Use. Medical Office:** Pursuant to §16-4.12.a.1. medical offices are a permitted use in the HC zone, as they have been determined to be a “service” use. Per the above comment, they are permitted in conjunction with a second permitted use in the HC zone, which in this case is a child care center. The plan complies.



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- 2.2. **Accessory Permitted Uses:** The plan complies. §16-4.12b permits several accessory structures such as parking lots, signs and fencing, all of which are proposed by the applicant. Additional structures that are accessory to the proposed child care facility, including play equipment and a shade structure, are also proposed. **The application should indicate whether the proposed accessory structures are to be affixed to the ground.**
- 2.3. **Height: A variance is required:** §16-4.12c states “no principal building shall exceed 30 feet and two and one-half stories in height...” The proposed child care facility is proposed to be 37.17 feet, which requires variance relief. The proposed medical office height is less than 30 feet, which conforms.
- 2.3.1. **Conditions for Exceptions for HVAC Equipment not Met:** Pursuant to §16-6.2b, buildings are permitted to exceed maximum height limitations to house HVAC and other related equipment, which the applicant is proposing in the nonconforming portion of the building. However, the same regulation states that if the portion of the building housing said equipment exceeds maximum height limits by 20% then a variance is required. The proposed height is greater than 20% of what is permitted. The exception does not apply.
- 2.4. **Height of Medical Building:** The plan indicates that the proposed height of the medical building is < 30 feet. While this complies, the plan should be updated to state the proposed height of the building.
- 2.5. **Area & Yard Requirements. Variance relief is required:** §16-4.12d identifies area and yard requirements for all uses, while §16-4.12k identifies additional standards for lots with two (2) principal uses where one (1) of which is a child care center. Variance relief is required for minimum lot size and setbacks related to accessory structures. Due to the lot containing three (3) front yards and one (1) rear yard, standards for side yards are not included in the zoning table. Conformance with the zoning standards is indicated in the following table.



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Table 1: Area & Yard Requirements in the HC Zone ~ §16-4.12d/k					
	Required	Existing	Proposed Childcare Center	Proposed Medical Office	Complies?
Principal Building(s)					
Lot Area (acres)	3(1)	2.046	No change	No change	No (V)
Distance between principal buildings (feet)	50	NA	~87	~87	Yes
Lot frontage (feet)	150	242.7	No change	No change	Yes
Lot width (feet)	150	304.5	No change	No change	Yes
Lot depth (feet)	150	267.5	No change	No change	Yes
Front yard for CR 518 (feet)	50	187.8	50	209	Yes
Front yard for Brecknell North (feet)	50	NA	185	50	Yes
Front yard for Brecknell West (feet)	50	NA	139	164.4	Yes
Rear yard (feet)	50	129.2	66.4	53.3	Yes
Floor area ratio (FAR)	20%	3%	14%		Yes
Lot coverage	55%	6.6%	50.6%		Yes
Accessory Structures					
Distance to rear lot line (feet)	20	-	-	-	-
▪ Shade Structure	20	NA	20	-	Yes
▪ Infant Play Eq.	20	NA	93.9	-	Yes
▪ Play Eq. 1	20	NA	77.7	-	Yes
▪ Play Eq. 2	20	NA	42.1	-	Yes
▪ Hot Box	20	NA	120'	-	Yes
Distance to other building (feet)	20	-	-	-	-
▪ Shade Structure	20	NA	32' 4"	-	Yes
▪ Infant Play Eq.	20	NA	13.4	-	No (V)
▪ Play Eq. 1	20	NA	14.9	-	No (V)
▪ Play Eq. 2	20	NA	11' 7"	-	No (V)
▪ Hot Box	20	NA	37'	-	Yes
Front yard setback (2) (feet)	50	-	-	-	-
▪ Shade Structure	50	NA	50'	-	Yes
▪ Infant Play Eq.	50	NA	53' 6"	-	Yes
▪ Hot Box	50	NA	25'		No(V)
(1) Pursuant to §16-4.12k.1, when containing two uses, one of which being a child care center, a lot shall be at least three acres, three times greater than typically required in the HC zone. (2) Pursuant to §16-5.1.e, on a corner lot an accessory building shall be set back from the side street to comply with the setback line applying to the principal building for that side street.					



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- 2.6. **Minimum Lot Size: Variance relief is required.** Per §16-4.12k(1), when two (2) principal buildings are located on the same lot in the HC zone, and one (1) of the uses is a child care facility, a minimum lot size of three (3) acres is required. The lot is 2.046 acres. **A variance is required.**
- 2.7. **Accessory Structure Distance to Other Building: Infant Play Equipment. Variance relief is required.** Per §16-4.12d, accessory structures are required to be at least 20 feet from other buildings on the lot. The proposed infant play equipment is located 13.4 feet from the principal building. **A variance is required.**
- 2.8. **Accessory Structure Distance to Other Building. Play Equipment 1: Variance relief is required.** Per §16-4.12d, accessory structures are required to be at least 20 feet from other buildings on the lot. The proposed play equipment 1 is located 14.9 feet from the principal building. **A variance is required.**
- 2.9. **Accessory Structure Distance to Other Building. Play Equipment 2: Variance relief is required.** Per §16-4.12d, accessory structures are required to be at least 20 feet from other buildings on the lot. The proposed play equipment 2 is located 11 feet and seven (7) inches from the principal building. **A variance is required.**
- 2.10. **Accessory Structure Front Yard Setback. Hot Box: Variance relief is required.** Per §16-4.12d, accessory structures on corner lots are required to have the same setback to a side street as the principal building. In this case the requirement is 50 feet. The proposed hotbox has a setback to CR 518 of 25 feet. **A variance is required.**

3. General Requirements for the HC District

- 3.1. **Driveways:** Pursuant to §16-4.12f.1, where feasible driveways providing vehicular access between adjacent properties shall be permitted and required, with appropriate cross easements, and the on-site circulation systems and parking areas shall be designed to accommodate such interconnections between adjacent lots.
- 3.2. **Outdoor Equipment: Variance relief may be required.** Pursuant to §16-4.12f.2, no merchandise, products, equipment or similar material and objects shall be displayed or stored outside. The play equipment appears to fall in this category, all of which is stored outside. **A variance may be required.**



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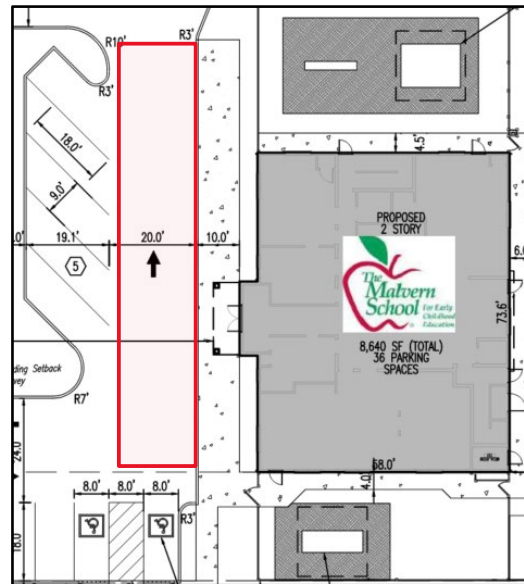
- 3.3. Planting Requirement:** The plan complies. Pursuant to §16-4.12f.3, all portions of a lot not covered by buildings or structures (e.g., parking lots, parking spaces, loading areas, access aisles, driveways, sidewalks, walkways, curbs, trash enclosures, etc.) shall be suitably landscaped with grass, shrubs, and trees and shall be maintained in good condition. In any case, no less than 45% of the area of any lot or tract shall be so landscaped, and the landscaped area may include approved detention and/or retention basin. The planting plan provided indicates proposed plantings and “lawn area(s)” are labeled in three (3) areas on the plan. Note 17B on sheet 4 of the plan indicates that 49.4% of the site will be so landscaped. The plan complies.
- 3.4. Parking Areas in Side and Rear Yards:** The plan complies. Per §16-4.12f.4, structures such as parking areas, loading areas, driveways or other structures in side and rear yards that share a common property line with a residential zoning district are not permitted. The property contains three (3) front yards and one (1) rear yard. While the rear yard borders the Mixed-Use Overlay Zone, none of the uses prohibited in this regulation are proposed in the rear yard.
- 3.5. Parking and Loading Areas, Driveway and other Structure Distance:** The plan complies. Per §16-4.12f.5, within the HC zone, no parking area, loading area, driveway, or other structure (except for approved access ways, signs and fencing) shall be permitted within the first 25 feet adjacent to any street line nor within the first 15 feet adjacent to any other property line. The plan complies.
- 3.5.1. Lawn Area Within Buffer.** The plan complies. Per §16-4.12f.5 (the same regulation indicated in the preceding comment), the required distance between structures and the street line and adjacent property lines shall be planted and maintained with lawn or ground cover and trees and shrubbery as approved by the Board. The space between the parking area(s) and street contains lawn and plantings. The plan complies.

4. Off-Street Parking, Circulation and Trash Removal

- 4.1. Off-Street Parking for Medical Office:** The plan complies. Pursuant to §16-4.12g.1, *retail sales and service uses, banks and offices shall provide parking at the ratio of one parking space per 200 square feet of gross floor area or part thereof.* The proposed medical office is 4,000 sf., requiring 20 parking spaces. 20 are proposed. The plan complies.

4.2. Off-Street Parking for Child Care Center: The plan complies. Pursuant to §16-4.12g.5, *child care centers shall provide parking at the ratio of one parking space per employee plus one additional parking space for every eight children.* The plan indicates that the child care center will employ 20 individuals and at maximum contain 120 children/students. This equates to a required 20 parking spaces for the employees and 15 for the students ($120/8 = 15$), or a total of 35 spaces. 35 are proposed. The plan complies.

4.3. **Off-Street Loading Area for Children Attending the Child Care Center:** *Additional information is required.* Pursuant to §16-4.12g.5, adequate area shall be provided for the loading and unloading of children, which shall take place on site and not in the public right-of-way. The image to the right (the red rectangle was included by this office) indicates a 20-foot wide drive aisle which may be the proposed loading area for child drop off, however, it is not indicated on the plan. **The applicant should testify as to whether this is the “loading area” as required in the ordinance, and if so, it should be labeled on the plan.**



4.4. Off-Street Loading – General: *Variance relief is required.* Per 16-4.12h.1, any building or group of buildings within the HC zone is required to have one (1) loading space at the side, rear or within the proposed building. The applicant has not proposed a loading area, though they have requested a variance from the requirement. The applicant should discuss the proposed operations for the medical office, as supply and equipment delivery and maintenance are common in medical offices. The extent of such deliveries should be testified to by the applicants, as should a description of the type of vehicles expected for such deliveries. As the proposed medical office is located on the same lot where children will be attending a child care facility, and the applicant intends outdoor use of the property by the children, the delivery and movement of goods to and from the medical office is of particular importance as regards the safety of the child care facility.



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As regards the child care facility and loading for that use, the applicant should testify as to the number and type of deliveries expected to the site, as well as any large vehicle pickup and drop-off of students. **A variance is required.**

- 4.5. **EV Parking Requirement:** The plan complies. Pursuant to §16-5.21.d2(b), applications involving a parking lot with 51-75 spaces not covered in the previous subsection (daycare and medical uses are not covered in the previous subsection) require the preparation as “make-ready” parking spaces at least two (2) of the required off-street parking spaces. EVSE spaces are permitted in lieu of “make-ready” spaces. The applicant is proposing two (2) EVSE spaces. The plan complies.
- 4.6. **Pedestrian Circulation:** Pedestrian circulation is proposed within the site. A 10-foot wide sidewalk is proposed in front of the child care center. A six-foot wide sidewalk is proposed around the remainder of the building, and along the southern and southwestern portion of the lot. The medical office contains one (1) six-foot wide sidewalk along the proposed building frontage along the parking area. A sidewalk connects to either of the above sidewalks which wraps around the site’s three (3) frontages, excepting the northeast portion of the site and the southeastern portion of the site.



Brecknell Road currently being developed (View from Route 518)



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- 4.7. **Sidewalks:** *A design exception is required.* §16-5.14C.1(d) requires “sidewalks shall be provided along all existing streets upon which all residential and nonresidential development abuts, unless specifically waived in certain locations by the reviewing municipal agency based upon good cause shown by the applicant” A sidewalk does not currently exist along the frontage of the property on Georgetown-Franklin Turnpike. A sidewalk is proposed along the majority of the property frontage, but not in the northeastern and southeastern portions of the property. **A design exception is required.**
- 4.8. **Sidewalk Design for Nonresidential Uses:** Pursuant to §16-5.14C.1(c), sidewalks within all nonresidential development shall be provided on-site for safe pedestrian movement between parking areas and entrances to the principal building(s) and between the principal building(s) and any existing, required or proposed sidewalk along a street. Sidewalks connect much of the site. The largest sidewalk is in an oval shape and connects frontages along Brecknell Way and CR 518 and wraps into the site, connecting in the deepest portion of the front yard setback. There is sidewalk that is adjacent to the northern parking area to the south and east, and to the southern parking area to the east and south. A painted crosswalk indicates a crossing area in front of the childcare facility, connecting the front entrance to the two (2) barrier free spaces. The portion of each parking area to the west has limited pedestrian connectivity and does not connect in anyway to the larger sidewalk network. Additionally, the sidewalks near the western driveway entrance do not connect to either building with pedestrian access, such that pedestrians are unable to safely walk into the site from the western entrance. **The applicant should connect those parking spaces to the larger sidewalk network and create pedestrian connectivity between the sidewalk at the western entrance and rest of the site. The northernmost sidewalk connecting Brecknell Way to the medical building should be widened, such that it is clearly indicated that it is a “main” entrance for pedestrians coming to the site from the north.**
- 4.9. **Curbing:** The plan complies. Pursuant to §16-5.8.3, all paved parking and loading areas and access drives shall be curbed. All paved parking and loading areas contain curbing. The plan complies.
- 4.10. **Parking Lot Wayfinding:** Pursuant to §16-5.8.4, all off-street parking lots shall have adequate designations to indicate traffic flow and parking spaces. The parking area contains arrows indicating the appropriate driving direction, signage indicating barrier free spaces and EVSE spaces. The driveway exit



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contains a stop sign. **The plan appears to comply, though this office defers to the Board's traffic expert as to whether the wayfinding is sufficient.**

4.11. Bicycle Rack: A bicycle rack is indicated to the north of the medical office. No detail of the rack is provided. A detail should be provided, and it is recommended that the bicycle rack contain covering for inclement weather.

4.12. Trash and Garbage Pickup: The plan complies. Pursuant to §16-4.12h.2, there shall be at least one trash and garbage pick-up location within convenient access to the building being served, including provisions for the separation and collection of recyclable materials in accordance with the recycling requirements of Somerset County. One (1) trash and garbage pick-up location is proposed on the plan. It includes two (2) dumpsters and are shared between the two (2) buildings. The enclosure is proposed in close proximity to the northern concrete walk in front of the child care center and southern concrete walk with access to the medical building. The applicant also indicates in note 15.A of their variance plan on Sheet 3 that the collection of recyclable materials is in accordance with the recycling requirements of the County.

4.12.1. Trash Enclosure Requirement: Pursuant to §16-4.12h.2(c), trash and garbage located outside of a building requires a steel-like, enclosed trash and garbage contained located in a manner obscured from view by a fence, wall, planting or combination of all three.

- The plan indicates in note 15.C that the trash enclosure is made of steel or similar material.
- A planting screen is proposed on the northern side of the enclosure. This office defers to the Board Landscape Architect in determining the efficacy of the selected plantings.
- A 10-foot trash enclosure is proposed around the trash receptacles which serves as an effective screen from all directions, and the plan indicates that the enclosure contains a gate to block the front from view.

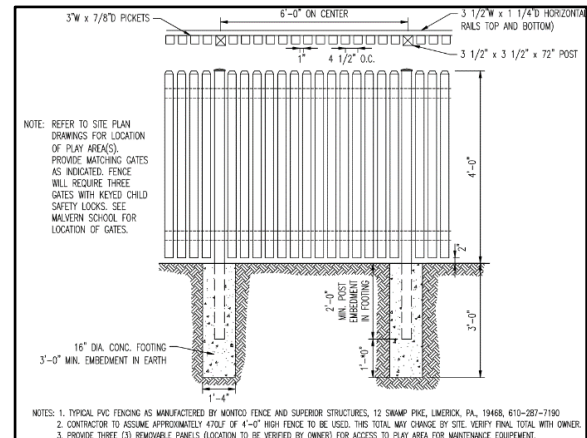


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5. Fences

5.1. **Childcare Center Fence:** The plan indicates a fence around the childcare center. Per the detail provided (shown to the right), the fence is a vinyl board-on-board fence with child safety locks. No fence color is indicated.



5.2. **Childcare Center Fence Height:**

Per §16-5.3b, fences shall not be erected that are higher than four (4) feet. The childcare center fence, which wraps around the two (2) sides and rear of the building, is four (4) feet in height. The plan complies.

5.3. **Trash Enclosure Fence Height:** *Variance relief is required.* Per §16-5.3b, fences shall not be erected that are higher than four (4) feet. The proposed trash enclosure fence, which is located in a front yard, is 10 feet in height. While a variance is required, it is noted that for the purposes of screening, an opaque fence is more effective for screening trash than plantings alone. Plantings may soften the appearance of the fence, though this office defers to the Board Landscape Architect in that regards. **A variance is required.**

5.4. **Retaining Wall Height:** *Variance relief is required.* Per §16-5.3b, walls shall not be erected that are higher than four (4) feet. The retaining wall proposed behind the childcare center is approximately eight (8) feet tall at its highest point. **A variance is required.**

5.5. **Basin Wall height:** *Variance relief is required.* Per §16-5.3b, walls shall not be erected that are higher than four (4) feet. The wall surrounding the proposed basin is 12 feet in height at its tallest point. **A variance is required.**

6. Natural Features

6.1. **Preservation of Natural Features:** Per §16-5.6a, natural features such as trees, hilltops and views, natural terrain, open waters, riparian areas, critical areas and natural drainage ridge lines shall be preserved to the maximum extent reasonably possible in designing any development containing such features. The development of the site will result in the removal of trees and the grading of land



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and natural terrain. **The applicant should testify as to the extent of disturbance and as to whether a less disruptive alternative means of development is possible.**

6.2. Topsoil Removal: Per §16-5.6b, no top soil shall be removed from areas intended for lawn and open space. Top soil moved during the course of construction shall be redistributed on the lot so as to provide at least four inches of cover to all areas, which cover shall be stabilized by approved seeding and/or planting. **The applicant should testify as whether soil will be removed from the site. This office defers to the Board Engineer as to whether the soil erosion and sediment control plan is sufficient.**

6.3. Off-Site Soil removal: Per §16-5.6b, no soil shall be removed from or be imported to any site in excess of 20 cubic yards per year without the prior approval of the Planning Board. For this purpose, a plan shall be submitted showing how the soil is to be distributed and stabilized including grading contours. If the soil is to be imported, a plan shall be submitted describing methodology and frequency of testing the soil to ensure its safe quality. Finally, the plan shall describe the size and number of vehicles that are proposed for hauling the removed or imported soil together with the hauling route. **The applicant should testify as whether soil will be removed from the site. This office defers to the Board Engineer as to whether the soil erosion and sediment control plan is sufficient.**

7. Lighting

7.1. Proposed Lighting: The plan indicates 14 proposed lights. Four (4) of the lights are single-pole mounted lights. Seven (7) are back-to-back mounted pole mounted lights. The final three (3) are building mounted lights.

7.2. Error in Lighting Description: The lighting luminaire schedule on sheet 9 of the plan indicates that all three (3) light types are “Medium Type 4 Wall Mounted Lights” under the “Description” column. This seems counter to the symbol and arrangement tabs, as well as where lights A1 and B2B are located on the plan. **The plan should be corrected.**

7.3. Street Lighting Requirement: Per §16-5.4a.1, street lighting shall be provided at all street intersections. Brecknell Way is a new municipal street which as of now does not contain lighting. This office defers to the Municipality, Board and Municipal Engineers regarding street lighting.



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- 7.4. Lighting of Parking and Walking Areas:** *Additional information is required.* Pursuant to §16-5.4b.1, all parking areas and walkways shall be adequately illuminated for security and safety. The Ordinance does not specify standards as to what constitutes safe and secure. It is recommended that the applicant testify as to the adequacy of the proposed lighting as related to security and safety onsite. A comparison to relevant industry standards such as Illuminating Engineering Society (IES) may be beneficial to the Board.
- 7.5. Lighting Height of Pole Mounted Lights:** *Additional information is required.* Pursuant to §16-5.4b.2(a), lighting fixtures are not to exceed 20-feet or the height of the closest major building, whichever is less. The proposed lights are 18 feet in height. While this appears to comply, as indicated in 2.4, the height of the medical building has not been provided. If the medical building is less than 18 feet in height, relief would be required.
- 7.6. Lighting Height of Building Mounted Lights:** The plan complies. Pursuant to §16-5.4b.2(a), lighting fixtures are not to exceed 20-feet or the height of the closest major building, whichever is less. The proposed lights are 14 feet in height. This complies, and as the light is wall mounted, presumably the light cannot be higher than the building, as is the case with the pole mounted lights. .
- 7.7. Required Lighting Specifications:** *Additional information is required.* Pursuant to §16-5.4b.2(b), lighting fixtures are to include non-glare lights with recessed lenses focused downward and with cut-off shields as appropriate in order to mitigate against adverse impacts upon adjacent and nearby properties, the safety of traffic along adjacent roadways and overhead skyglow. Sheet 15 of the plan includes a manufacturer's cut sheet of "Streetworks Epic Medium LED" fixtures. These lights are downward focused and contain recessed lighting. **The applicant should indicate whether these apply to all of the proposed lighting types as indicated above (pole mounted and wall mounted, single- and double). Additionally, the applicant should provide testimony as to any possible glare associated with the proposed lighting.**
- 7.8. Site Lighting at Ground Level:** The plan complies. Pursuant to §16-5.4b.2(c), light intensity at ground level shall average a minimum of 0.3 footcandles, though not more than 1.0 footcandle. The statistical area summary provided on Sheet 9 indicates an average of 1.0 footcandles for the pavement area. The plan complies.
- 7.9. Site Lighting at Ground Level - Intersections:** The plan complies. Pursuant to §16-5.4b.2(c), light intensity at intersections shall average a minimum of 0.5



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footcandles, though not more than 1.0 footcandle. The statistical area summary provided on Sheet 9 indicates an average of 1.0 footcandles for the intersections. The plan complies.

- 7.10. **Circuit Timers:** *Additional information is required.* Pursuant to §16-5.4b.2(d), excepting any lighting determined by the Planning Board to be necessary and/or advisable for security purposes, all other lighting is to be controlled by circuit timers so that the lights are automatically turned off after business hours. There does not appear to be any notation on the plan regarding hours of operation for lighting. **The applicant should testify as to the hours of operation of the proposed lighting and add a note to the plan that indicates that information.**

8. Landscape Design & Plantings

This office defers to the Board Landscape Architect regarding the planting selection. This review only relates to quantifiable standards found within the ordinance.

- 8.1. **Trees:** The plan complies. Per §16-5.6d.3, a minimum of 14 trees per acre of gross tract shall be planted throughout the tract in the case of nonresidential or multifamily development. At 2.046 acres, the plan requires 29 trees. 111 trees are proposed. The plan complies.
- 8.2. **Street Trees:** The plan complies. §16-5.6d.15 requires street trees at 50 foot intervals. With 834 feet of total frontage, the applicant is required to have 17 street trees ($834 / 50 = 16.68$ trees). The applicant is proposing more than 16 trees along the property frontage. The plan complies.

9. Steep Slopes

- 9.1. **Steep Slopes:** *Variance relief is required.* The applicant is proposing to disturb steep slopes. An analysis provided by the applicant indicates that steep slopes between 15% and 19.99%, 20% and 24.99% and greater than 25% are found on the property. All of the steep slopes found on the property will be disturbed by the proposed development. §16-6.4e.1 states that steep slopes shall not be disturbed *except as follows in specific situations where it is determined by the Board that soil erosion, land disturbance and other environmental concerns have been adequately addressed by the developer. An isolated area or a narrow band of steep slopes may be disturbed on a lot for good cause shown by the developer, when approved by the*



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Board. . Variance relief is required. Testimony should be provided as to what purpose the disturbance of steep slopes serves to the overall project.

9.2. Performance Standards for Granting Steep Slope Variance: §16-6.4e.3(a)-(g) contains guidelines that should be considered by the Board in considering a variance for disturbance of steep slopes. These are included below for the Board's benefit. **The applicant should testify to these guidelines:**

9.2.1. The developer shall demonstrate that the disturbance of the critical steep slope area is necessary for the proposed development of the subject tract, indicating that such development can be in accordance with Sections 16-4 and 16-6 of this chapter.

9.2.2. The developer shall demonstrate that the proposed development has utilized the noncritical areas of the tract as reasonably practicable and has attempted to minimize the disturbance of the critical steep slope areas by limiting development to either isolated area(s) of steep slopes and/or those slopes with less of a steep grade prior to the disturbance of more environmentally sensitive critical areas.

9.2.3. Appropriate revegetation and landscaping of the disturbed steep slope areas shall be provided to adequately stabilize the slopes and enhance the attractiveness of the site, if necessary, and shall be in accordance with accepted soil conservation and stormwater management techniques as promulgated by the Soil Conservation District and the Township Engineer.

9.2.4. The provisions of Subsection 16-5.2 shall be adequately addressed to the satisfaction of the Board and specifically the provisions of Subsection 16-5.2s of this chapter.

9.2.5. The proposed disturbance of the steep slope area should minimize the impairment of the visual quality of the site. Moreover, the higher elevations along ridge and mountain tops which present visual amenities should be protected, where possible.

9.2.6. The environmental impacts shall be satisfactorily controlled by the development proposal in a manner acceptable to the Township Engineer so that soil erosion, excess stormwater, runoff, degradation of water quality, concentration of stormwater and water flow, and flooding do not occur.

9.2.7. The developer also shall demonstrate that:



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- 9.2.7.1. *Unless an EIS is otherwise required, endangered or threatened plants and wildlife shall not be harmed;*
- 9.2.7.2. *The geologic disturbance, including blasting, cutting or excavating, resulting from the development of any critical steep slope area shall be satisfactorily mitigated; and*
- 9.2.7.3. *The cost of providing and maintaining public facilities and services to those areas where critical steep slopes may be disturbed shall not be substantially increased as a result of such disturbance.*

10. Architecture

10.1. Solar Access: Per §16-5.5e, all lots and/or buildings on lots shall be oriented for solar energy access where possible and desirable. The childcare facility and medical building are south facing, however, the childcare facility roof as described may not be ideal for solar energy access. **The applicant should testify as to whether the roof can be used for solar energy access, though this office notes that ordinance states “where possible and desirable”, which is a determination that is made by the Board.**

10.2. Architectural and Building Standards in the HC District: §16-4.12e contains requirements for all buildings and sites within the HC district.



10.3. Description of Proposed Childcare Facility: As indicated in the preceding image, the overall building design contains a neo-traditional colonial style. The building



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contains a hipped-pyramid roof, six over six detailed paned windows, a faux brick façade at the base and center of building, and six panel double doors beneath a porte cochère. The entranceway contains a more elaborate, arched window, and a triangular pediment. Lintel are located above the windows. Columns support the overhang which resides over the front double doors.

10.4. Description of Proposed Medical Facility: *Additional information is required.* No architectural plans or elevations for the proposed medical facility have been provided. As such, the applicant does not meet the requirements of any of the subsequent architectural requirements at this time. The following standards will only discuss the childcare facility; however, relief is required for the medical building unless supplemental architectural information or testimony is provided.

10.5. Building Exteriors: *Additional information is required.* §16-4.12e.1(a) requires that building exteriors in the HC District including any accessory buildings, shall be architecturally compatible and shall be constructed of complementary materials. The application packet only contains architectural drawings/elevations of the proposed childcare facility, not the proposed medical facility. It is not possible to determine if the building exteriors are consistent at this time. **The applicant should provide testimony as to the design of the medical facility and whether it complements the proposed childcare facility.**

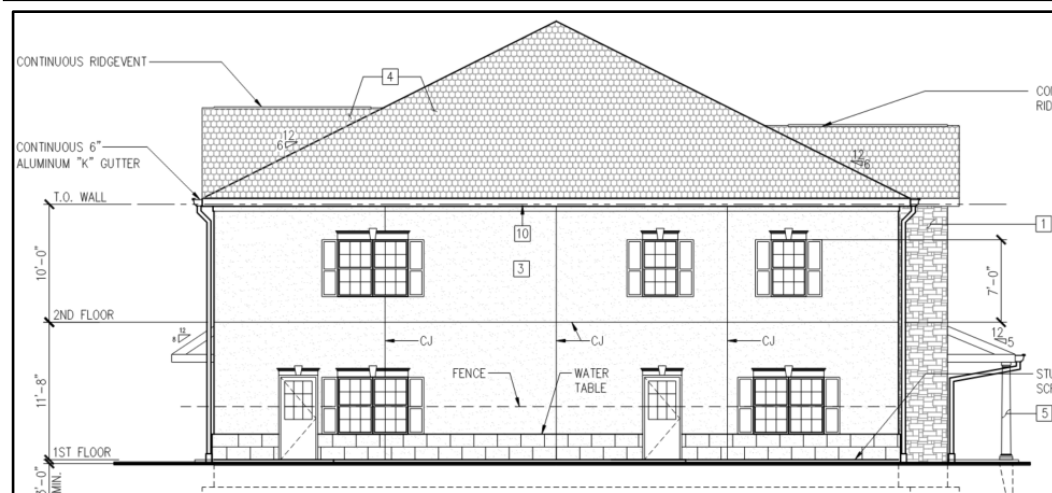
10.6. Pedestrian Scale: §16-4.12e.1(b) requires that architectural details, style, color, proportion and massing shall create a pedestrian scale development. The front entrance of the childcare facility front entrance is of a pedestrian scale, as are the heights of the habitable stories of the building. The size and proportions of the windows and the doors are at a pedestrian scale. The canopy overhang is pedestrian friendly as it provides protection from the elements.

10.7. Building Entrances: §16-4.12e.4(a) requires that all entrances to a building shall be articulated utilizing architectural elements such as lintels, pediments, pilasters, columns, porticoes, porches, or overhangs. Such elements shall be architecturally compatible with the overall building. As indicated in 10.3, the design of the childcare facility does comply. However, no architectural details are provided for the medical building.



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10.8. Visual Breaks: *Variance relief is required.* §16-4.12e.5(a) requires that building exteriors shall have vertical and/or horizontal offsets to create visual breaks along each facade. Long, monotonous, uninterrupted walls are not permitted. While the front and rear façade of the building contain visual breaks, the sides, as indicated in the image above, do not. **Variance relief is required.**

10.9. Wall Offsets: *Additional information is required.* §16-4.12e.5(b) requires that to the extent appropriate to the architectural design, building wall offsets, including projections such as balconies and canopies, recesses, and changes in floor levels shall be used to add architectural interest and variety and to mitigate the visual appearance of a simple, long wall. Building wall offsets are found on the front and rear facades, including a canopy in the front and protruding fascia in the rear. **While the sides do not include such offsets, the requirement states “to the extent appropriate”, as such the applicant should testify as to whether such offsets on the side wall are appropriate.**

10.10. Buildings Facing More Than One Street: *Variance relief is required.* §16-4.12e.5(c) requires that buildings with more than one street frontage shall be designed to have a front facade facing each frontage, and where a building faces a driveway, the building also shall have a front facade facing the driveway. The childcare facility is on a corner lot and faces two (2) street frontages. Only one (1) front façade facing the future Brecknell Way is proposed. **Variance relief is required.**

10.11. Façade Consistency: *Additional information is required.* §16-4.12e.5(d) requires that the architectural treatment of the front facade(s) shall be continued in its



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major features around all visibly exposed sides of a building. The windows are similar on all four (4) sides of the building, however, the brick veneer along the bottom of the building appears to be slightly different in the front than on the other three (3) sides of the building. **The applicant should testify as to whether there is an architectural reasoning behind this design.**

- 10.12. Building Side Consistency:** The plan complies. §16-4.12e.5(e) requires that all sides of a building shall be architecturally designed to be consistent regarding style, materials, colors and details. The front of the building is the most elaborate, however, the other three (3) sides are architecturally compatible in that they all indicate a neocolonial style. The plan complies.
- 10.13. Natural materials:** *Additional testimony is required.* §16-4.12e.5(f) states that materials such as wood and masonry are recommended. High quality man-made materials also are permitted. Stucco may be used only as an accent in limited areas. **The applicant should testify as to the choice of materials used to construct the building. This office notes that stucco is indicated on the exterior wall sill detail on sheet 3 of the architectural plans.**
- 10.14. Façade Features:** The plan complies. §16-4.12e.5(g) requires that dormers, gables, windows and other similar design features shall be provided across a building facade. Dormers, windows and other similar design features are provided along the front and rear building façade. Windows are proposed on the sides of the building. The plan complies.
- 10.15. Roofline Compatibility:** *Additional information is required.* §16-4.12e.6(a) requires that the design of all buildings within a development shall include rooflines that are architecturally compatible or in context with existing buildings in the vicinity of the subject building. Within this context, rooflines that mix flat and pitched components are encouraged. To determine compatibility, information about the roof of the medical building is required.
- 10.16. Pitched Roof:** The plan complies. §16-4.12e.6(b) requires that pitched roofs shall have a minimum five to twelve-foot pitch, are required except where otherwise approved by the Planning Board or Zoning Board. Both gable and hipped roofs shall provide overhanging eaves that extend a minimum of one foot beyond the building wall along all sides of the building. The roof has an 8 to 12 pitch, which conforms. The eaves also extend about 18 inches off of the roof on all sides. The plan complies.



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- 10.17. Flat Roof:** §16-4.12e.6(c) requires that flat roofs shall provide that all visibly exposed walls have an articulated cornice that projects horizontally from the vertical wall in order to create the appearance of a 1 1/2 to 2 1/2 story facade. This does not apply to the proposed childcare facility, but may apply to the medical building.
- 10.18. Window Proportion:** The plan complies. §16-4.12e.7(a) requires that windows be appropriately proportioned to the building. The proportion of the windows is appropriate to the building. The plan complies.
- 10.19. Retail/Office Window Requirement: Additional information is required.** Per §16-4.12e.7(b), first story facade of retail, office and restaurant buildings which faces a street and/or has a pedestrian access shall have large pane display windows which occupy at least 75% of the first story facade. As this pertains to the medical office, architectural details of the building are required to determine conformity.
- 10.20. Outdoor Furniture Consistency: Additional information is required.** Per §16-4.12e.8(a), all lighting, benches, trash receptacles and signage shall be designed to be compatible with the architecture of the building(s). No details have been provided for the play equipment. **This information should be provided in addition to the lighting details, signage and fencing information that has been submitted so that consistency can be determined.**
- 10.21. Mechanical Building Screening:** The plan complies. Per §16-4.12e.8(b), mechanical equipment serving the building(s) shall be screened from public view by the design of the building and/or by landscaping features integrated with the overall design of the building(s). The mechanicals are proposed within the building. The plan complies.
- 10.22. Consistency of Pavement Material: Additional information is required.** Per §16-4.12e.8(c), the materials used for all internal sidewalks and pathways connecting buildings, parking areas and public areas to sidewalks along the street(s) and to the Township's pathway network shall be chosen to enhance the architecture of the building(s) and the attractiveness of the site development. **The applicant should testify as to how the proposed pavement material for sidewalks and pathways is consistent with the overall building design. This would also require that the applicant submit architectural drawings and elevations for the proposed medical building.**



11. Signs

- 11.1. Proposed Signs:** One (1) freestanding sign is proposed at the western entrance to the site from Brecknell Way. Two (2) building mounted signs are proposed on the childcare facility, one (1) on the west side and one (1) on the south side. No sign is proposed on the medical building. Additional signs include directional signs, signs relating to parking and signs relating to EVSE spaces.
- 11.2. Attached Signs for Childcare Facility:** *Variance relief is required.* Pursuant to §16-4.12i(c), on corner lots, one additional (two total) attached sign is permitted for a principal use within the building which faces the additional street, provided that the sign shall not exceed 1/2 square foot of sign area per one linear foot of building facade fronting on said street, but in no case shall the size of the sign exceed 20 square feet in area. Both of the attached signs proposed on the western and southern facades are 24.84 sf. **A variance is required.**
- 11.3. Attached Building Sign Height:** Pursuant to §16-5.13d.4, no attached sign shall be higher than 20 feet, measured to the top of the sign from the grade beneath the sign, except that no sign shall exceed any lesser height specifically set forth elsewhere in the subsection. Both signs are less than 20 feet from the ground, measured from the top of the sign. The plan complies.
- 11.4. Freestanding Sign Area.** The plan complies. Pursuant to §16-4.12i(a), freestanding signs shall not exceed 75 square feet in area or 5% of the front façade of the principal building. The proposed sign is 23 sf., considerably less than 5% of the front façade or 75 sf. The plan complies.
- 11.5. Freestanding Sign Height.** The plan complies. Pursuant to §16-4.12i(a), freestanding signs shall not exceed eight (8) feet in height. The proposed freestanding sign is six (6) feet above grade, which complies. The freestanding sign detail on the right of sheet 14 of the plan indicates that the sign is 108", or nine (9) feet, however the lower three (3) feet appear to be below grade. The plan complies.
- 11.6. Freestanding Sign Setback.** The plan complies. Pursuant to §16-4.12f.5, for Freestanding Sign Setback. Pursuant to §16-4.12i(a), less than 35 sf. shall be setback at least 10 feet from any street right-of-way. The proposed freestanding sign is 10 feet from the right of way on the western side of the property to the south of the driveway entrance. The plan complies.



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11.7. Area of Logo: The plan complies. Pursuant §16-5.13d.11, no more than 25% of the sign area of any permitted sign shall include a logo, symbol, design, and/or picture; the remainder of the sign area shall contain words, numbers and/or background area only. The proposed sign is 23 sf., while the “Malvern School” logo is approximately 5.21 sf, which is less than 25% of the total area. The plan complies.

12. Miscellaneous

12.1. Development Fee for Affordable Housing: *Condition of Approval.* The applicant is required to comply with the nonresidential development fee ordinance consistent with §15-24.

13. Consideration of the Height Variance

13.1. Consideration of the Height Variance. The “d(6)” designation is related to its codification in the NJ Municipal Land Use Law (NJ MLUL) at 40:55D-70.d(6). The applicant bears the burden of proof in the justification of the variance to exceed by 10 feet or 10% the maximum height permitted in the ordinance. A zoning board of adjustment can grant variance relief for exceeding the permitted height in a zone by 10 feet or 10% “in particular cases and for special reasons”.

13.2. Positive Criteria: The applicant should demonstrate that the proposed height in excess of the height permitted in the zone district provides a benefit to the general welfare, and that the site is suitable for a building with such a non-conforming height. Additionally, similar to the testimony required for a d(3), d(4), or d(5) variance, the applicant must demonstrate that the site can accommodate the problems associated with deviating from the height standard.

13.3. Negative Criteria: The negative criteria must be met by demonstrating to the Board an “enhanced quality of proof” that exceeding the permitted height will not cause substantial impairment of the intent and purpose of the zoning ordinance and Master Plan.

14. Consideration of the “C” Variances

14.1. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria; this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the



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burden of proof, which is divided into two parts, in the justification of the “c” variance.

14.2. Positive Criteria: The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the “c” variance. To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:

- By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

14.3. Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:

14.3.1.1. Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

14.4. Negative Criteria: Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

- Negative Criteria: Impact to the public health, safety and welfare. Impact to the public, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. Substantial detriments are usually nuisance related such as noise, dust, trash, parking, traffic, visual distraction, light, runoff, vegetation removal and aesthetics that cannot be adequately mitigated. The applicant should



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address any impacts to the character of the neighborhood resulting from the proposed position of the swimming pool and related structures.

- Negative Criteria: Impact to the zone plan. The applicant must show that the relief can be granted without substantially impairing the zone plan and zoning ordinance. In evaluating the negative criteria as it relates to the zoning ordinance and zone plan, the Board should consider the manner in which this application could impact the overall fulfillment of the AR zone.

The applicant should provide testimony in support of the variance, and be prepared to discuss any potential negative impacts on neighboring properties and the zone plan.

15. Design Exceptions

The proposal includes design exceptions. The Municipal Land Use Law at N.J.S.A. 40:55D-51.b discusses the criteria for the granting of exceptions. While the burden of proof is lower than that of variances, the statute does provide a framework for decisions:

The planning board when acting upon applications for preliminary site plan approval shall have the power to grant such exceptions from the requirements for site plan approval as may be reasonable and within the general purpose and intent of the provisions for site plan review and approval of an ordinance adopted pursuant to this article, if the literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question.

16. Relevant Policy

16.1. Master Plan Goals. The Township Master Plan includes several goals which are relevant to the Board's consideration of this application. The following goals can be found on pages 6 through 8 of the 2017 Master Plan Reexamination Report:

2. *The identity of the Township as a totality and the integrity of individual neighborhood areas should be preserved, enhanced and created to the maximum extent possible.*



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As the zone does permit both of the uses being proposed, and permits more than one (1) use per lot, the proposal does generally comply with the intended purpose of the zone, and thus the neighborhood as envisioned in the master plan.

4. *The Development Plan should strive to prevent the homogenous spread of suburban development throughout the municipality. Specific areas of the Township should be designated for specific types of residential and non-residential development. The rural and country atmosphere which prevails throughout most of the municipality should be maintained.*

The proposed use does introduce uses unique to the immediate area, and as stated earlier, both proposed uses are permitted in the zone. Permitting such development in this zone should limit attempts at its development in those rural and country regions of the Township.

17. Materials Reviewed

- 17.1. *Montgomery Zoning Board of Adjustment Application*, dated April 27, 2023.
- 17.2. *Steep Slope Analysis*, 1 sheet, prepared by Jeffrey Haberman, PE and Jacquelyn Giordano, PE, Dynamic Engineering, dated December 9, 2022.
- 17.3. *Preliminary Site Plan for Malvern School Properties, LP*, 22 sheets, prepared by Jeffrey Haberman, PE and Jacquelyn Giordano, PE, Dynamic Engineering, dated April 28, 2023.
- 17.4. *Traffic & Parking Assessment*, prepared by Nick Verderese, PE and Kevin Savage, PE, PTOE, Dynamic Traffic, dated December 15, 2022, revised to May 1, 2023.
- 17.5. *Environmental Impact Statement for The Malvern School Properties*, prepared by Jeffrey Haberman, PE, Dynamic Engineering, dated December, 2022.
- 17.6. *Stormwater Management Plan*, prepared by Jeffrey Haberman, PE, Dynamic Engineering, dated April, 2023.
- 17.7. *The Malvern School Architectural Drawings*, 3 sheets, prepared by Raymond Klumb Architect, dated December 9, 2022.
- 17.8. *ALTA/NSPS Land Title Survey*, 1 sheet, prepared by Craig Black, PE, PLS, Dynamic Survey, dated August 26, 2022.



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18. Applicant / Owner / Professionals

- 18.1. **Owner/Applicant:** The Malvern School Properties, LP, 20 Creek Road, Glen Mills, PA 19342.
- 18.2. **Attorney:** Frank Petrino, Esq., Princeton Pike Corporate Center, 2000 Lenox Drive, Suite 203, Lawrence, NJ. Telephone: 609.989.5029.
- 18.3. **Engineer:** Jeffrey Haberman, PE, PP, Dynamic Engineering, 1904 Main Street, Lake Como, NJ 07719. Telephone: 732.974.0198.
- 18.4. **Architect:** Ray Klumb, 571 North Frontage Road, Pearce, AZ 85628. Telephone: 520.826.5352.

19. Summary

- 19.1. The applicant is seeking a “d(6)” height variance, preliminary site plan approval and bulk variances relating to the development of a child care center and medical office in the HC District. Architectural drawings were not submitted for the medical building. As such, additional relief relating to the medical building may be required.

The following variances and design exceptions are required (additional variances and design exceptions may be identified by other Board professionals):

- a) Variances
- §16-4.12c Height variance
 - §16-4.12k(1) Minimum lot size
 - §16-4.12d Infant play equipment distance to other structure
 - §16-4.12d Play 1 equipment distance to other structure
 - §16-4.12d Play 2 equipment distance to other structure
 - §16-4.12d Hotbox front yard setback
 - §16-4.12f.2 Play equipment stored outside
 - Per 16-4.12h.1 Required loading space
 - §16-6.4e.1 Development in area with steep slopes
 - §16-5.3b Trash enclosure fence height
 - §16-5.3b Retaining wall height
 - §16-5.3b Basin wall height



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§16-4.12e.5(a) Visual breaks in building design
§16-4.12e.5(c) Front facades on corner lots
§16-4.12i(c) Sign area of attached signs

b) Design Exceptions
§16-5.14c.1(d) Sidewalks

Please contact this office with any questions you may have.

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