



## I. STATEMENT OF THE CASE

On October 14, 2009, Petitioner, Darnestown Development, LLC t/a Goddard School, filed Petition S-2759 for a special exception to permit construction and operation of a Child Day Care Center (the Goddard School) to be built on a five-acre tract of R-200 zoned land. The subject property is composed of Lots 9 and 10, Block A, Musgrove's Addition Subdivision, located at 22010, 22014 Frederick Road, Clarksburg, Maryland (Tax Account Numbers 02-02741836 and 02-02741825).

Petitioner, the contract purchaser of the subject site (Exhibit 10), proposes to construct a 13,000 square foot child daycare center, and a 7,500 square foot annex to house an after-care program. These buildings would accommodate 163 day-care children and 120 school-aged children in the after-school or the summer camp program, for a maximum of 283 children on-site at any one time. They would be supervised by 41 staff members on-site at any one time.

On May 28, 2010, the Technical Staff of the Maryland-National Capital Park and Planning Commission filed its Report (Exhibit 40)<sup>1</sup>, which recommended approval of the petition, with conditions, and approval of a waiver, requested by Petitioner, regarding the number of required parking spaces. The Montgomery County Planning Board reviewed this case on June 10, 2010, and in a memorandum dated June 11, 2010 (Exhibit 41), unanimously recommended approval of the petition, with the conditions recommended by Technical Staff.

Thirteen letters were filed by members of the community in support of the petition. Exhibits 18-30. There were no opposition letters.

A public hearing before the Hearing Examiner was noticed for March 8, 2010 (Exhibit 13), but it was postponed at the Petitioner's request. It was subsequently duly noticed for June 21, 2010 (Exhibit 37), and the hearing proceeded as scheduled on that date. No opposition appeared at the

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<sup>1</sup> The Technical Staff Report is frequently quoted and paraphrased herein.

hearing. The record was held open until July 1, 2010, for additional filings by Petitioner.

The record closed as scheduled, but on July 21, 2010, Petitioner filed a letter (Exhibit 53) requesting that the record be reopened to receive a revised site plan (Exhibit 53(a)); a revised landscape plan (Exhibit 53(b)); and a disc containing electronic copies of the revised plans. The only change in the plans is that a higher chain-link fence (6 feet tall) will be installed along the side and rear property lines for safety and security (instead of the 4-foot fence that had been planned).

A copy of the revised plans was sent to Technical Staff of the Maryland-National Capital Park and Planning Commission for their review and the record was reopened for 10 days to receive comments from Staff or other interested parties. Order of July 26, 2010 (Exhibit 54). No additional comments were received, and the record closed again on August 5, 2010.

Based on a review of the entire record, as will appear more fully below, the Hearing Examiner concludes that both the petition and the requested parking waiver should be granted, subject to the conditions recommended in Part V of this report. Filed coincident with this report is an Order extending the Hearing Examiner's time to file his report until this filing date.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

The subject site is located on the west side of Frederick Road (MD 355) about a quarter of a mile north of West Old Baltimore Road and an equal distance south of Newcut Road, in Clarksburg. Petitioner's land planner, Victoria Bryant, noted that the site is about a mile and a half south of the Clarksburg Town Center. Tr. 16.

Petitioner describes the property as consisting of "two unimproved, wooded lots." Revised Statement in Support (Exhibit 34(a), p. 2). Technical Staff reports that the topography of the site is relatively shallow, with the high point located in the eastern corner of the site, including a small ridge running east to west from that point. The site gently slopes at approximately an 8% to 9% slope from

the ridge to both the northern and southern corners of the site. Exhibit 40, p. 4. This property is located within the Clarksburg Special Protection Area, but there are no streams or environmental buffers on the site. The vegetation on the subject property consists of 4.21 acres of mature forest. Exhibit 40, p. 6.

The site is depicted below in an annotated aerial photograph from Attachment 6 to the Technical Staff report:

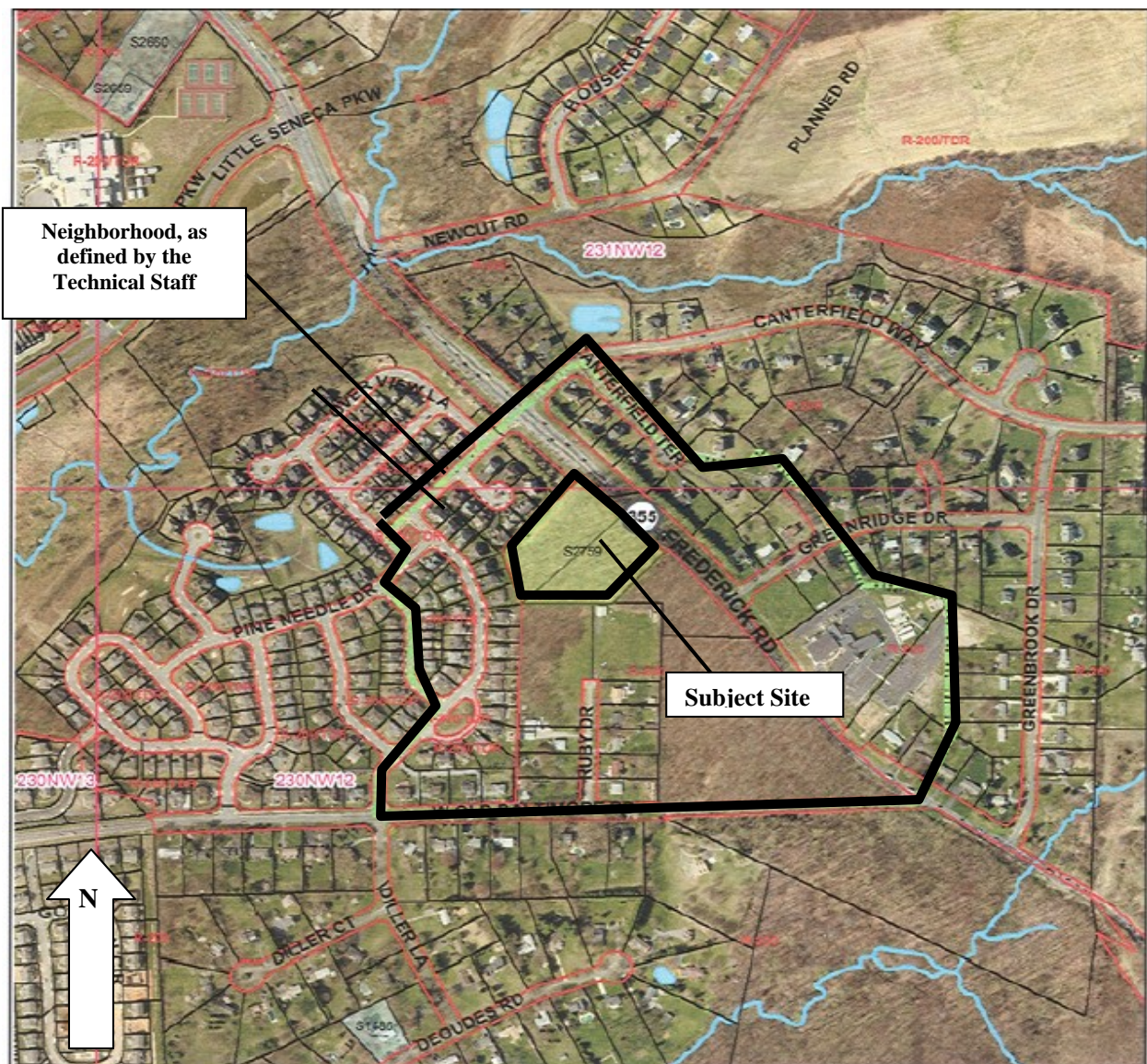


Technical Staff notes:

The property was formerly part of approved Preliminary Plan 120050950, known as the “Tapestry” subdivision, which included seventy-eight lots for sixty-six, one-family detached dwelling units and twelve, one-family semi-detached dwelling units. A site plan application was subsequently filed; but action was deferred by the Planning Board. A new preliminary plan of subdivision will need to be filed for the proposed child care facility to consolidate the lots and address necessary dedications.

**B. The Neighborhood**

Technical Staff proposed to define the neighborhood (Exhibit 40, p. 4), as bordered on the north by Rose Crest Drive and Canterfield Way; on the east by Canterfield Terrace; on the south by West Old Baltimore Road; and on the west by Diller Lane. This area is shown in a “General Location and Neighborhood Conditions Map” appended as Attachment 1 to the Staff Report:



Petitioner did not disagree with Technical Staff, and the Hearing Examiner accepts this definition of the neighborhood.

Staff reports that properties within the neighborhood are zoned R-200 (residential, one-family) and R-200/TDR (residential, transferable development rights). There are no special exceptions within the defined neighborhood, and the subject site is surrounded primarily by one-family detached residential homes. Exhibit 40, p. 4. Petitioner was more specific in its Revised Statement in Support (Exhibit 34(a), p. 3), “The Property is surrounded by a mix of residential uses including to the west “Musgrove’s Addition to Neelsville” (R-200) and “Clarksburg Heights” (R-200/TDR), to the north and east “Greenridge Acres” (R-200), to the southwest “Beau Monde Estates” (R-200), and single-family residences (R-200) confronting the Property on Frederick Road.”

At the hearing, Petitioner’s land planner, Ms. Bryant, described the surrounding uses: To the north and west of the site is a newer development of single family homes. They are typically two stories with an integral garage. To the south of the site is an older subdivision with ranch style and split foyer type single family homes. On the east side of MD 355 is a mix of older, single family homes that are ranches and single split foyer; plus newer single family homes that are two stories with integral garage, and the Green Ridge Baptist Church. The closest home is about 200 feet from the proposed buildings on the site. Tr. 17-18.

### **C. The Master Plan**

The subject site is located within the area covered by the 1994 Clarksburg Master Plan and Hyattstown Special Study Area. Technical Staff concludes that “The proposed use conforms to the land use objectives of the 1994 Clarksburg Master Plan.” Exhibit 40, p. 2. Staff’s analysis of the Master Plan is contained on page 5 of its report (Exhibit 40):

This site is located within the “Brink Road Transition Area” of the 1994 Clarksburg Master Plan. There are no specific recommendations for this site. The Master Plan’s general land use provisions applicable to the overall “Brink Road Transition

Area,” emphasize the planned character of the area. The Master Plan designates this area a transition area between Germantown and Clarksburg, characterized by low density residential development that is sensitive to (nearby) greenways and parkland. (See Circle Pages 6- 11 [attached to the Staff Report].)

Vision staff supports the proposed special exception, stating that it is a compatible use in its immediate neighborhood and consistent with the land use provisions of the Brink Road Transition Area. Additionally, the Master Plan specifically addresses the need for daycare uses associated with the planned growth of Clarksburg. Further, while the intention of the Master Plan is to provide for the full complement of community facilities which are accessible by transit, the Plan states also that facilities including child dare [*sic*] care should be provided throughout the Master Plan area. (See Circle Page 6-11 [attached to the Staff Report].)

Staff’s Vision Division noted that the Master Plan’s discussion of “Community Facilities” at pages 166-167, observes, “As the Clarksburg Mater Plan Area and Hyattstown Special Study Area grow, the demand on social services, including child day care, will increase.” In a listing of “Community Facilities Recommendations,” (page 167 of the Plan), the Master Plan recommends that Child Day Care be “Dispersed throughout the Study Area with concentration near transit, employment areas, and concentrations of housing.”

Petitioner’s land planner, Ms. Bryant, opined that Petitioner’s proposal meets the latter of that requirement, proximity to a concentration of housing. Tr. 21. The Vision Division notes that the proposed facility will also have excellent access to transit with frontage along Frederick Road. Vision Division supports the proposed special exception because of the large number of residential units planned for the area “and [because] there is already an existing lack of child daycare facilities.” Vision Division memorandum of April 6, 2010, Attachment 4 to Exhibit 40, at p.3.

Based on this record, the Hearing Examiner concludes that the proposed use, as conditioned, is consistent with the 1994 Clarksburg Master Plan.

#### **D. Proposed Use**

##### **1. Petitioner’s Vision of the Proposed Use:**

Petitioner proposes to construct and operate a child daycare center for up to 283 children (on site at any one time), supervised by 41 employees. The enrollment would consist of a maximum of 163 daycare children and 120 school-aged children in the after-school or the summer program. Petitioner proposes to construct a 13,000 square foot child daycare center, and a 7,500 square foot annex to house the after-care program. The two one-story buildings will be connected by a covered breezeway. Petitioner’s vision for the proposed buildings is depicted in the following color renderings (Exhibit 34(h)):



3 Bird's Eye View



1 Perspective - Northwest





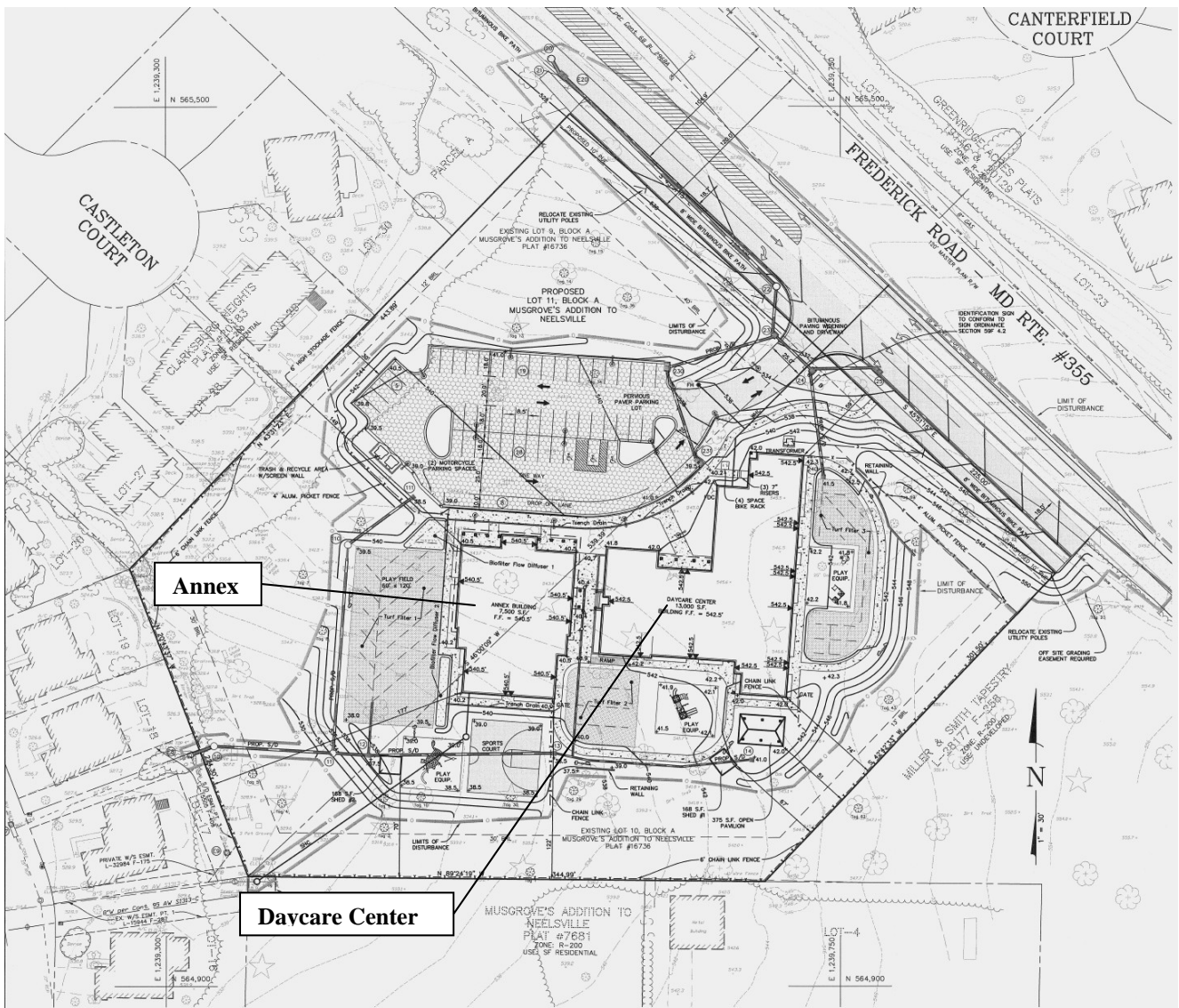
4 Site Plan

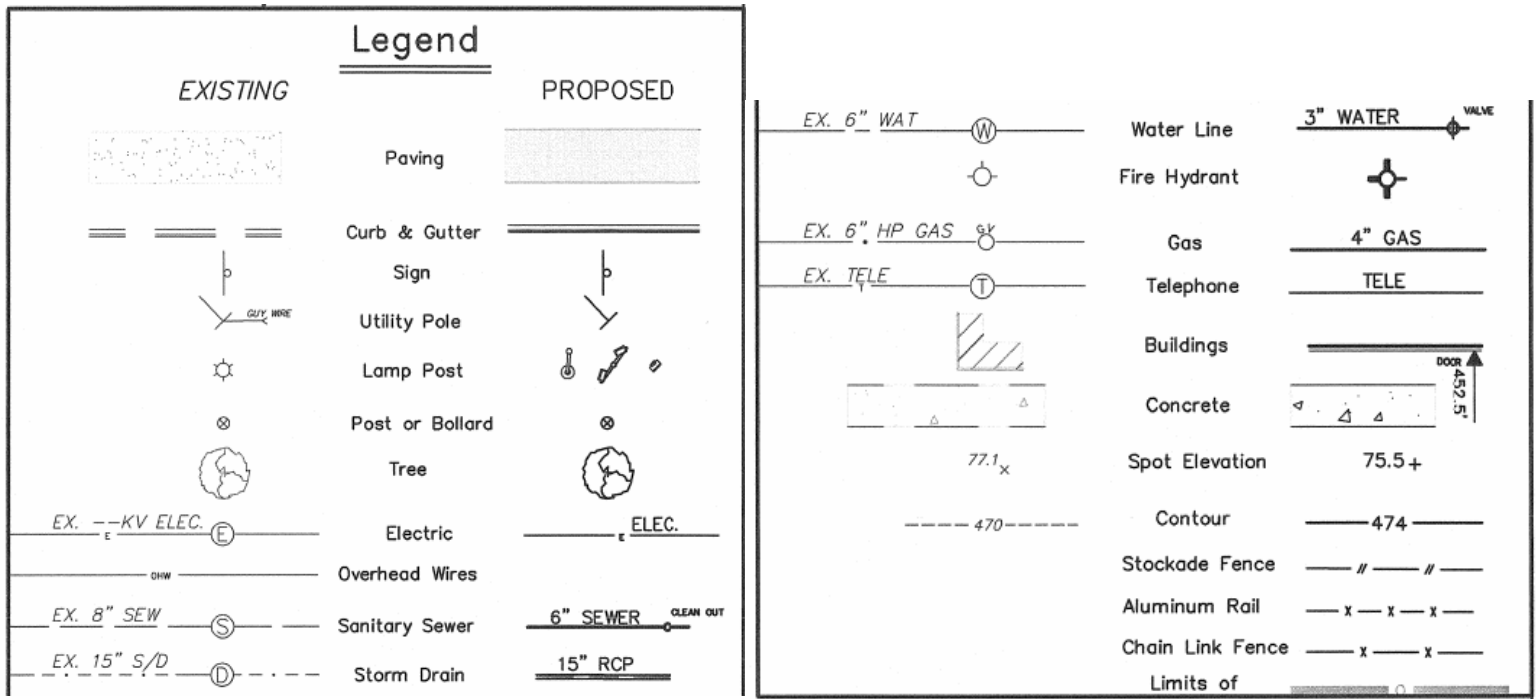
Petitioner’s architect, Allen Mushinsky, described the buildings, parking and play areas, which will be completely fenced in. The building is broken up into a series of different pitched roofs and into two basic buildings connected by a breezeway, with a covered roof structure. It is a one-story building, with cupolas and architectural treatments that are more like farmland in an up-county

Montgomery County style of architecture. The buildings will be constructed of all wood frame, wood roof trusses. The siding will be a synthetic material, cement board, that looks like wood siding painted. All the windows will look like wood windows, so the buildings will have a very residential character, with broad overhangs at the front entrance of both buildings. The larger building, the 13,000 square foot building, has its own entrance and area where parents can drop off and bring their children into its own controlled area for preschool and infants. The annex also has its own entrance with its own control area, and school buses may drop off children there. Tr. 39-56.

2. Revised Site Plan:

The revised Special Exception Site Plan (Exhibits 53(a) and 34(c)), is reproduced below and on the following pages, followed by a close-up of the site layout.





**SITE DATA**

**SUBJECT PROPERTY:** LOTS 9 & 10, BLOCK A, PLAT 16736, MUSGROVE'S ADDITION TO NEELSVILLE

**LOT AREA:** GROSS = 217,795 S.F. or 5,000 AC.  
EX. DEDICATION = 12,979 S.F. or 0,299 AC.  
PROPOSED DEDICATION = 7,093 S.F. or 0.163 AC.  
NET = 197,723 S.F. or 4.539 AC.

**ZONING CLASSIFICATION:** R-200 (RESIDENTIAL)  
CLARKSBURG SPECIAL PROTECTION AREA  
CLARKSBURG 1994 MASTER PLAN, BRINK ROAD TRANSITION AREA

**PROPERTY ADDRESS:** FREDERICK ROAD, CLARKSBURG, MARYLAND

**PROPOSED USE:** CHILD DAYCARE – 283 STUDENTS  
REQUIRES SPECIAL EXCEPTION 56-G-2.13.1

**DEVELOPMENT STANDARDS**

	<u>(REQUIRED)/ALLOWED</u>	<u>PROPOSED</u>
<b>NET TRACT AREA (59-G-2.13.1(b)(2))</b>	500 S.F./CHILD = 141,500 S.F.	197,723 S.F. or 4.539 AC.
<b>BUILDING SETBACK REQUIREMENTS</b>		
<b>DAYCARE &amp; ANNEX BUILDINGS (59-C-1.323)</b>		
PUBLIC R/W (NE)	40'	59'
SIDE R-200 ZONE (SE)	12' MIN/SUM 25'	74'
SIDE R-200 ZONE (SW)	12' MIN/SUM 25'	177'
SIDE R-200 ZONE (NW)	12' MIN/SUM 25'	149'
REAR R-200 ZONE (S)	30'	122'
<b>ACCESSORY BUILDINGS (59-C-1.326(a)(3))</b>		
PAVILION (ACCESSORY BLDG.)		
SIDE R-200 ZONE (SE)	12'	51'
PUBLIC R/W (NE)	65'	189'
SHED #1 (ACCESSORY BLDG.)		
SIDE R-200 ZONE (SOUTH)	12'	69'
SHED #2 (ACCESSORY BLDG.)		
SIDE R-200 ZONE (SOUTH)	12'	70'
<b>BUILDING HEIGHT (59-C-1.327)</b>		
DAYCARE & ANNEX BUILDINGS	50'	24' (1)
PAVILION (ACCESSORY BLDG.)	NONE SPECIFIED	16' (1)
SHEDS (ACCESSORY BLDG.)	NONE SPECIFIED	8' (1)
<b>BUILDING COVERAGE (59-C-1.328)</b>	25% or 49,430 S.F.	10.7% or 21,211 S.F.
<b>BUILDING AREA</b>	NONE SPECIFIED	21,211 S.F.
<b>SITE GREEN AREA</b>	NONE SPECIFIED	146,000 S.F.
<b>PARKING SETBACK REQUIREMENTS (59-E-2.81)(59-E-2.83(b))</b>		
PUBLIC R/W (NE)	10'	75'
SIDE R-200 ZONE (SE)	24'	222'
SIDE R-200 ZONE (SW)	24'	103'
SIDE R-200 ZONE (NW)	24'	30'
REAR R-200 ZONE (S)	30'	229'

**OFF STREET PARKING AND LOADING**

	<u>(REQUIRED)/ALLOWED</u>	<u>PROPOSED</u>
<b>SURFACE PARKING FACILITY AREA</b>	NONE SPECIFIED	25,350 S.F.
<b>INTERNAL LANDSCAPING (59-E-2.74)</b>	5% of 20,800 S.F. PARKING LOT 1,040 S.F.	5.38% 1,120 S.F.
<b>PARKING (59-E) (283 Children 41 Staff)</b>	1/6 Children +1/Staff = 89	60 (2)
STANDARD AUTOMOBILE		49
DROP OFF	5	8
RESERVED FOR THE H/C (59-E-2.23)	3	3
BIKE PARKING SPACES (59-E-2.3)	1/20 = 4	1 RACK of 4
MOTORCYCLE (59-E-2.3)	2% = 2	2

**NOTES:**

- BUILDING AREAS & HEIGHT PROVIDED BY PROJECT ARCHITECT.
- A PARKING WAIVER OF 29 SPACES IS REQUESTED (59-G-2.13.1(a)(2)(B))

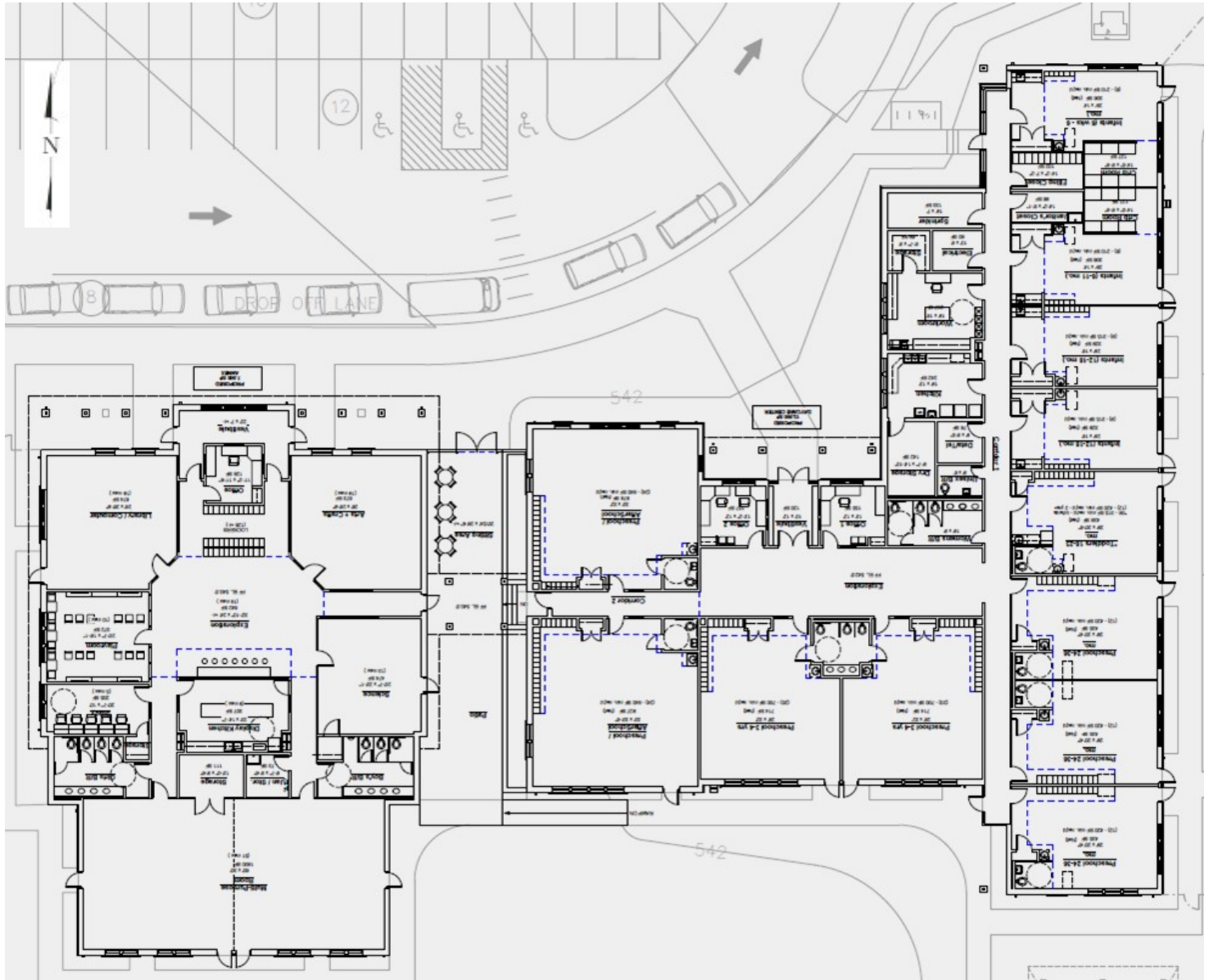


Below are Exterior Elevations for the site (Exhibit 34(i)):



There will be outdoor play areas, which include separate areas for infants, toddler and school-aged children, and a basketball court and playing field. Petitioner proposes to have 60 parking spaces for parents, visitors and employees, which include 8 drop-off spaces, 2 motorcycle spaces, and 3 handicapped spaces. There will be two outdoor storage sheds and one open pavilion, as well as an outdoor trash enclosure to screen the trash and recycling bins. A “trike trail” is planned around the infant and toddler outdoor play areas.

An illustrative floor plan (Exhibit 6(b)), is shown below:<sup>2</sup>



### 3. Landscaping, Lighting and Signs:










Landscaping on the site is depicted on the next page in the revised landscape plan (Exhibits 53(b) and 34(f)), and a rendered version (Exhibit 46), admitted at the hearing. The plan includes a plant list and other details.

<sup>2</sup> The Hearing Examiner has flipped the plan so that the north-south orientation is maintained consistent with the other plans.





### LEGEND

-  PROPOSED SHADE TREES
-  PROPOSED ORNAMENTAL TREES
-  PROPOSED EVERGREEN TREES
-  PROPOSED DECIDUOUS SHRUBS
-  PROPOSED EVERGREEN SHRUBS
-  PROPOSED ORNAMENTAL GRASSES
-  PROPOSED PERENNIAL/GROUND COVER
-  PROPOSED TREE CANOPY
-  EXISTING SIGNIFICANT TREES

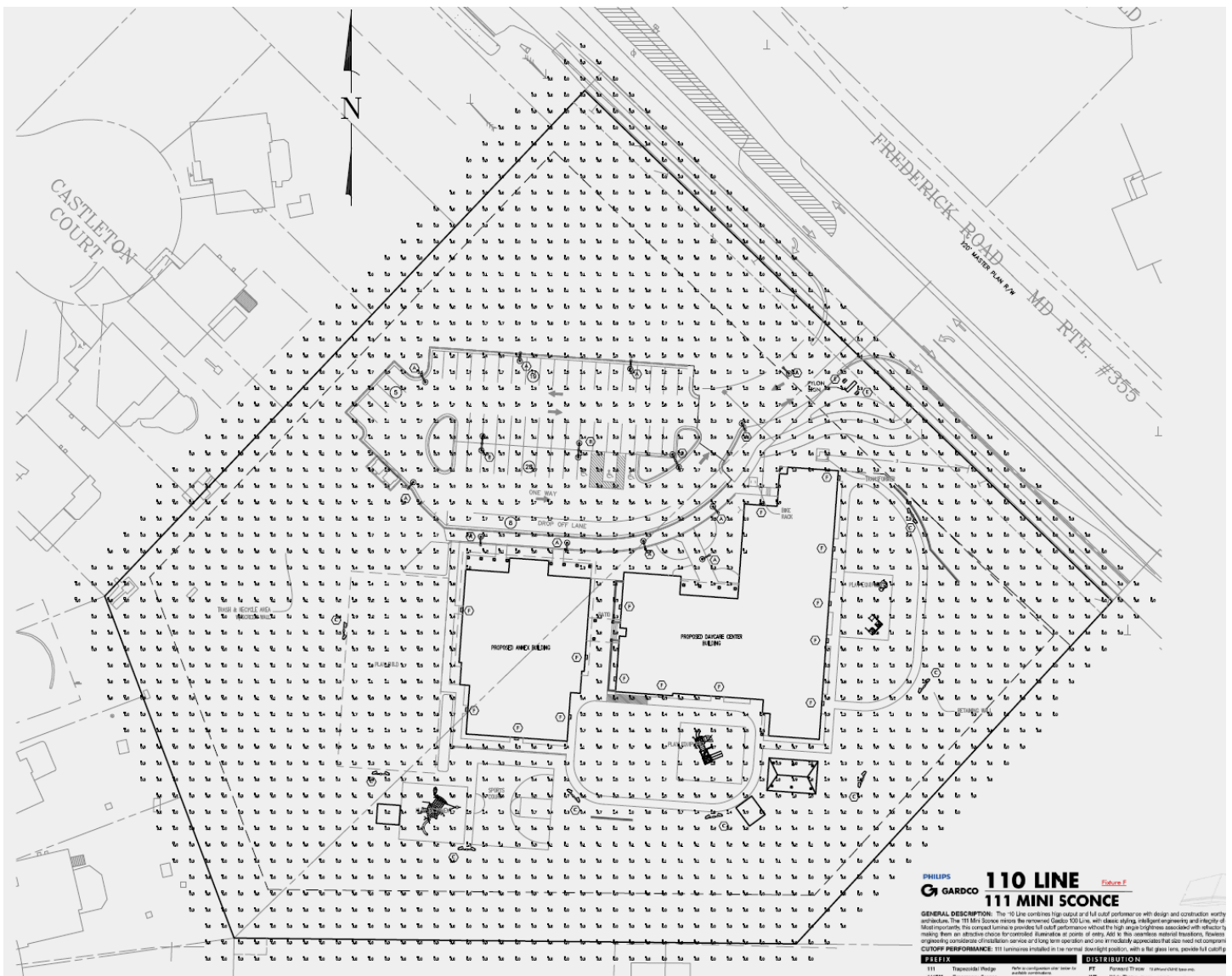
### LANDSCAPE PLANT LIST

KEY	QTY	BOTANICAL NAME	COMMON NAME	CAL	HGT	SPD	ROOT	SPACING
<b>SHADE TREES</b>								
AB	1	Acer buergerianum	Tribent Maple		2 1/2 -3"		B4B	
AS	9	Acer saccharum 'Legacy'	Legacy Sugar Maple		2 1/2 -3"		B4B	
NS	3	Nyssa sylvatica	Black Gum		2 1/2 -3"		B4B	
QA	3	Quercus alba	White Oak		2 1/2 -3"		B4B	
QC	3	Quercus coccinea	Scarlet Oak		2 1/2 -3"		B4B	
QR	3	Quercus rubra	Red Oak		2 1/2 -3"		B4B	
UP	4	Ulmus parvifolia 'Alicia'	Alice Lacebark Elm		2 1/2 -3"		B4B	
<b>EVERGREEN TREES</b>								
IO	3	Ilex opaca	American Holly		7-8'		B4B	
IF	2	Ilex x attenuata 'Foster'	Foster's Holly		5-6'		B4B	
PF	5	Pinus flexilis 'Vanderwolf Pyramid'	Vanderwolf Pyramid Lumber Pine		7-8'		B4B	
PO	2	Picea orientalis	Oriental Spruce		7-8'		B4B	
TO	1	Thuja occidentalis 'Nigra'	Dark American Arborvitae		5-6'		Cont.	
<b>ORNAMENTAL TREES</b>								
AG	4	Amelanchier x grandiflora 'Autumn Brilliance'	Autumn Brilliance Serviceberry		7-8'		B4B	
CC	3	Cercis canadensis	Eastern Redbud		7-8'		B4B	
CX	3	Cornus x 'Constellation' ('Rutcan')	Constellation Dogwood		7-8'		B4B	
KD	2	Cornus kousa	Kousa Dogwood		7-8'		B4B	
LI	3	'Muskogee'	Muskogee Crapemyrtle		5-6'		B4B	
MV	2	Magnolia virginiana	Sweetbay Magnolia		7-8'		B4B	
SR	3	Syringa reticulata 'Ivory Silk'	Ivory Silk Tree Lilac		7-8'		B4B	
<b>DECIDUOUS SHRUBS</b>								
AE	24	Abelia x 'Edward Goucher'	Edward Goucher Abelia		24-30"		Cont.	30" o.c.
CA	1	Clethra alnifolia 'Hummingbird'	Summersweet		24-30"		Cont.	36" o.c.
FG	30	Fothergilla gardenii	Dwarf Fothergilla		18-24"		Cont.	30" o.c.
HQ	5	Hydrangea quercifolia 'Snow Queen'	Snow Queen Oakleaf Hydrangea		30-36"		Cont.	48" o.c.
IV	30	Ilex virginica 'Little Henry'	Little Henry Sweetspire		18-24"		Cont.	30" o.c.
SN	12	Spiraea nipponica 'Snowmound'	Snowmound Spiraea		24-30"		Cont.	36" o.c.
VJ	2	Viburnum x juddii	Judd Viburnum		30-36"		Cont.	60" o.c.
<b>EVERGREEN SHRUBS</b>								
AZ	6	Azalea satsuki 'Gumpo White'	Gumpo White Azalea			18-24"	Cont.	30" o.c.
	6	Azalea 'Mothers Day'	Mothers Day Azalea				Cont.	48" o.c.
IC	21	Ilex crenata 'Compacta'	Compact Japanese Holly		36-42"		Cont.	48" o.c.
KG	11	Ilex crenata 'Green Lustre'	Green Lustre Japanese Holly		18-24"		Cont.	36" o.c.
IM	1	Ilex x meserveae 'China Boy'	China Boy Holly		36-42"		Cont.	60" o.c.
	1	Ilex x meserveae 'China Girl'	China Girl Holly				Cont.	60" o.c.
JG	13	Juniperus virginiana 'Grey Owl'	Grey Owl Juniper			24-30"	Cont.	60" o.c.
ND	65	Nandina domestica 'Harbor Dwarf'	Harbor Dwarf Nandina				#3 Cont.	24" o.c.
VC	18	Viburnum x burkwoods 'Conoy'	Conoy Viburnum			30-36"	Cont.	48" o.c.
<b>ORNAMENTAL GRASSES &amp; GROUNDCOVERS</b>								
CK	53	Calamagrostis x acutiflora 'Karl Foerster'	Feather Reed Grass				#2 Cont.	24" o.c.
LM	345	Liriope muscari 'Big Blue'	Big Blue Lilyturf				4" Pots	12" o.c.
PV	12	Panicum virgatum 'Cloud Nine'	Cloud Nine Switch Grass				#2 Cont.	30" o.c.
RA	12	Rhus aromatica 'Gro-low'	Fragrant Sumac				#2 Cont.	24" o.c.



Technical Staff noted that Petitioner had submitted a landscape plan depicting the location, height and species of plant material. Exhibit 40, pp. 18-19. Several types of oak and maple trees are proposed, as well as several species of evergreen trees, which will be planted along the periphery of the parking area, and will provide good shade for the parking areas. Petitioner also proposes to install multiple types of shrubs and other ornamental trees as groundcover. Staff concluded that the proposal will be compatible in part because Petitioner will retain 1.2 acres of forested area and will provide additional landscaping to buffer the parking areas. Exhibit 40, p. 16. Based on this record, the Hearing Examiner agrees with Staff’s conclusion.

Lighting proposed for the site and related photometrics are displayed in the “Proposed Site Lighting” plan (Exhibit 34(k)):



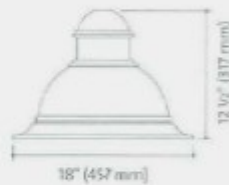
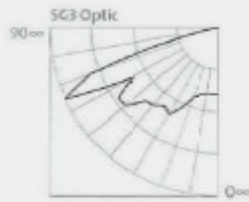
## DOMUS SMALL (DOS)

ON DBA MOUNTING

### DOS-DBA

#### Characteristics

- > Pedestrian scale
- > Respectful of the environment by offering full cut-off optics
- > Manufactured from die-cast aluminum components
- > Tool free access to lamp
- > Clear glass: tempered flat lens on a hinged frame
- > Multi-faceted anodized aluminum reflector
- > Utilized removable ballast tray with quick disconnect
- > Available with metal halide (MH), high pressure sodium (HPS) and compact fluorescent lamp (CF)

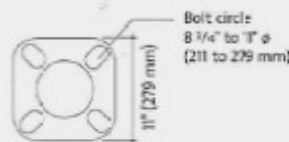
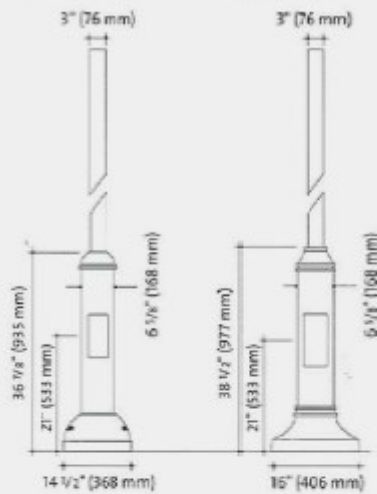


#### > Pole Information

\* 20' High Pole

DA63 (aluminum)  
DS63 (steel)

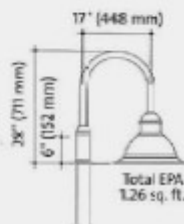
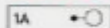
AM63 (aluminum)  
SM63 (steel)



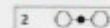
These poles can accommodate up to 2 ballasts.

#### > Mounting Information

##### Fixture A



##### Fixture B



#### DBA

Features one or two 1.66" (41 mm) round aluminum tubes welded to a cast pole adaptor (or wall mounting box) and one or two cast suspension rings.

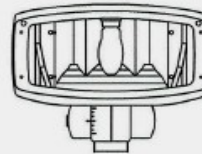
> Slip-fit: over 3" OD pole by 6"



# DESIGNER FLOOD

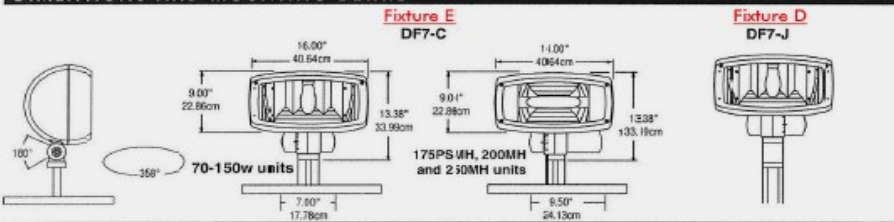
## DF7 - 7" DIAMETER

**GENERAL DESCRIPTION:** The Gardco DF7 is a flood luminaire with a choice of (5) precision faceted optical systems. Each is designed to provide a specific distribution and sharp cutoff of stray light. The contemporary soft form diecast housing is available in a variety of finishes creating compatibility with most architectural and landscape elements. The high strength diecast aluminum knuckle features an integral splice compartment eliminating the need for a supplementary junction box and thereby permitting closer to grade mounting.



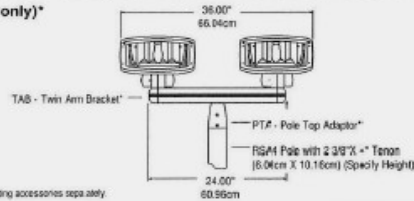
FINISH		WATTAGE				VOLTAGE	
BRP	Bronze Paint	Pulse Start MH Magnetic Ballast	70MH	150MH	203MH ①	120	
BLP	Black Paint		100MH	175PSMH <sup>1,2</sup> ②		208	
WP	White Paint	Standard MH Magnetic Ballast*	175MH*	250MH <sup>1,2</sup>		240	
NP	Natural Aluminum Paint					277	
BGP	Beige Paint	Compact Fluorescent Electronic Ballast	25QF <sup>1,2</sup>	42TRF <sup>1,2</sup>	70CF <sup>1,2</sup>	347	
VP	Verde Green Paint	High Pressure Sodium Magnetic Ballast	70HPS	100HPS	153HPS	UNIV <sup>1</sup>	
OC	Optional Color Paint Specify RAL designation ex: OC-RAL7024.	* 175MH and 250MH not available for sale in the United States.					
SC	Special Color Paint Specify. Must supply color chip.						

### DIMENSIONS AND MOUNTING DETAIL



(2) DF7 (Luminaires only)\*

#### Fixture C

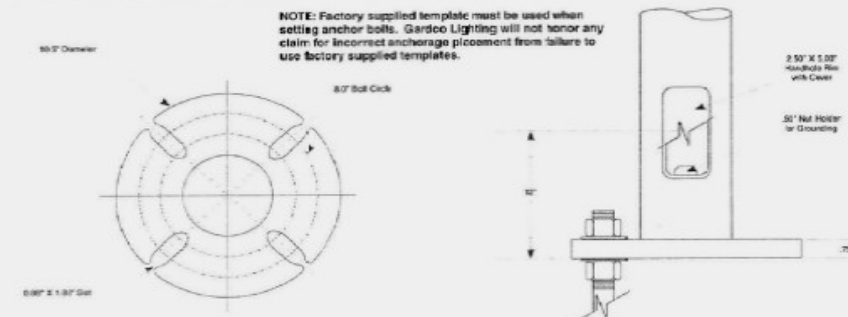


\* Order mounting accessories separately.

## EMCO LIGHTING POLES STRAIGHT ROUND STEEL

**GENERAL DESCRIPTION:** The Gardco/Emco Lighting SRS straight round steel pole consists of a one-section design fabricated steel tubing circumferentially welded to a structural quality hot rolled carbon steel plate. The poles are finished with an electrostatically applied, thermally cured TGIC polyester powdercoat. All poles include anchor bolts, full base cover, hand hole, ground leg and top cap.

### DIMENSIONS



**NOTE:** Factory supplied template must be used when setting anchor bolts. Gardco Lighting will not honor any claim for incorrect anchorage placement from failure to use factory supplied templates.

**NOTE:** Factory supplied template must be used when setting anchor bolts. Gardco Lighting will not honor any claim for incorrect anchorage placement from failure to use factory supplied templates.

FINISH		OPTIONS	
PP	Prime Painted	FES <sup>1</sup>	Fasten Outlet
BRP	Bronze Paint	AH <sup>1</sup>	Additional Hand Hole
BLP	Black Paint	CL <sup>1,2</sup>	Coupling - Internal Thread
WP	White Paint	GDR <sup>1</sup>	Provision for Gardco/Demand Response System
NP	Natural Aluminum Paint		
GV	Galvanized (No Paint)		
FPGV	Finished Paint over Galvanized (specify color)		
OC	Optional Color Paint Specify RAL designation ex: OC-RAL7024.		
SC	Special Color Paint Specify. Must supply color chip.		
			Side Mount Bullhorn Brackets GM-060 <sup>1</sup> Single Side Mount Bullhorn Bracket 1.401" x 1.18" for 1.5" GD or 1.24" for 1.4" GD. Refer to Accessory sheet 75413-26 for details.

### POLE DATA

CATALOG NUMBER	POLE SIZE		MAXIMUM LUMINAIRE LOADING <sup>a</sup>			ANCHOR BOLT DATA <sup>a</sup>	
	ACTUAL HEIGHT	POLE SHAFT SIZE	100 MPH EPA-FT <sup>1</sup>	50 MPH EPA-FT <sup>2</sup>	30 MPH EPA-FT <sup>3</sup>	BOLT SIZE (inches)	BOLT CIRCLE (inches)
→ SRS-20-4.0	20'	4" x 20'	3.5	4.4	6.0	3/4 x 17 x 3	8.0



# 110 LINE

## 111 MINI SCONCE

Fixture F



**GENERAL DESCRIPTION:** The 110 Line combines high output and full cutoff performance with design and construction worthy of landmark architecture. The 111 Mini Sconce mirrors the renowned Gardco 100 Line, with classic styling, intelligent engineering and integrity of construction. Most importantly, this compact luminaire provides full cutoff performance without the high angle brightness associated with refractor type products, making them an attractive choice for controlled illumination at points of entry. Add to this seamless material transitions, flawless finishes and engineering consideration of installation service and long term operation and one immediately appreciates that size need not compromise quality.

**CUTOFF PERFORMANCE:** 111 luminaires installed in the normal downlight position, with a flat glass lens, provide full cutoff performance.

### PREFIX

111	Trapezoidal Wedge	Refer to configuration chart below for available combinations.
111EM	Emergency Sconce	
111EMC	Emergency Sconce Cold Temperature	
111EMR	Remote Emergency Sconce	

### DISTRIBUTION

FT	Forward Throw	10 MH and CMHE types only.
WT	Wide Throw	70MH and 42TRF types only.
MT	Medium Throw	Fluorescent and E-17 lamp only.

### WATTAGE AND VOLTAGE

LAMP / VOLTAGE CHART - 111

E17 - WIC	Voltage					
	120	208	250	277	347	480
50MH	•	•	•	•	•	•
70MH	•	•	•	•	•	•
35HPS	•	•	•	•	•	•
50HPS	•	•	•	•	•	•
70HPS	•	•	•	•	•	•
<b>Fluorescent</b>						
26QF		UNIV		•		
32TRF		UNIV		•		
42TRF		UNIV		•		
<b>Incandescent</b>						
INC	•					

Combinations marked with a dot or asterisk with "UNIV" are available for ordering.

MH Metal Halide  
 CMHE Ceramic Metal Halide with Electronic Ballast  
 HPS High Pressure Sodium  
 QF Quad Tube Fluorescent  
 TRF Triple Tube Fluorescent

LAMP / VOLTAGE CHART - 111

E17 Lamps (Substituted by Gardco)	Voltage					
	120	208	250	277	347	480
T39MH	•	•	•	•	•	•
T70MH	•	•	•	•	•	•
T39CMHE				UNIV		
T70CMHE				UNIV		

CONFIGURATION CHART - 111EM, 111EMC, OR 111EMR

Fluorescent	Distribution			Voltage					
	FT	WT	MT	120	208	250	277	347	480
26QF		•	•				•		
32TRF		•	•				•		
42TRF		•	•				•		

1. Fluorescent and CMHE luminaires feature electronic ballasts that accept 120V through 277V, 50Hz to 60Hz input. Specify "UNIV" voltage for 120V through 277V.  
 2. Not available in 111EM or 111EMC.

### FINISH

BFP	Bronze Paint
BLP	Black Paint
WP	White Paint
NP	Natural Aluminum Paint
BGP	Beige Paint
OC	Optional Color Paint Specify Optional Color or RAL ex: OC-LGP or OC-RAL7024.
SC	Special Color Paint Specify. Must supply color chip.

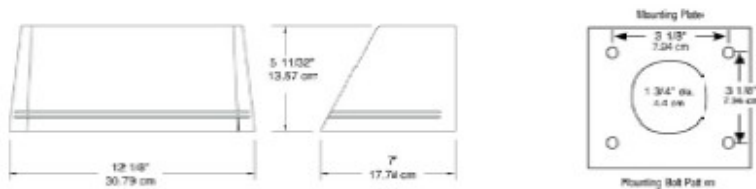
### OPTIONS

F	Fusing 120V through 277V only. N/A with incandescent.
PCB	Button Type Photocontrol. Not available with 111EMC.
SL	SoLite® Diffusing Lens
WLU	Wet Location Dcor for Inverted Mounting. Not available with WG option.
WG	Wire Guard. Not available with WLU option.
WS	Wall Mounted Box for Surface Conduit. Rear entry permitted.

### EMR Luminaires Only:

BB4CG	Bodine Emergency Battery Pack. Emergency Battery Packs for EMR types MUST be ordered with luminaire and supplied by Gardco.
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### DIMENSIONS



Note: Mounting plate center is located in the center of the luminaire width and 2.38" (6.05cm) above the luminaire bottom (lens down position). Splices must be made in the J-box (by others). Mounting plate must be secured by max. 5/16" (7.94cm) diameter bolts (by others) structurally to the wall.

The photometric study reproduced above shows that light leakage at the side and rear lot lines does not exceed the 0.1 footcandle standard established for residential areas by Zoning Ordinance §59-G-1.23(h). In fact, it appears that the photometric readings are 0.0 footcandles at the side and rear lot lines. Moreover, the hours of lighting are restricted in the statement of operations (Exhibit

34(b)), which provides that “Outdoor lighting will be controlled by a timer that will turn off lights automatically at 9:30 p.m., daily.”

Technical Staff summarized lighting on the site as follows (Exhibit 40, p. 17):

The applicants are proposing six different types of light fixtures within the site. Staff notes that the proposed light fixtures in the parking area are similar to street lamps that are pedestrian in scale and incorporate shields to direct light onto the parking areas. (See Circle Page 30.) The light fixtures can be adjusted on an angle to minimize the glare. The lighting levels along the side and rear lot lines do not exceed 0.1 foot-candles; therefore, the proposed lighting and photometrics are in compliance with §59-G-1.23(h). Other lighting on-site consists of wall-mounted light fixtures, which provide lighting for safety around the entrances and exits to the buildings.

Based on this record, the Hearing Examiner finds that site lighting will be adequate and compliant with applicable restrictions in this residential zone.

Petitioner seeks permission to provide a monument sign, 6 feet in height, sitting on a base that is 12 feet wide. It is depicted on the site plan, and is reproduced on page 11 of this report. Technical Staff made the following statement regarding the proposed sign (Exhibit 40, p. 16):

The applicant is proposing one monument sign at the subject site’s entrance, which is similar in stature to a monument sign in a residential area. §59-F-4.2(a) allows two entrance signs and the area for each sign may not exceed forty square feet. The applicant meets the requirements with regards to the sign area allowed in the zone.

This conclusion is clearly based on the Code language allowing such signage at the entry to a subdivision. If that language does not apply to this case, Zoning Ordinance §59-F-4.2 provides that, “the total area of all permanent signs on a lot or parcel in a residential zone must not exceed 2 square feet, unless additional area is permitted pursuant to this ordinance.” Petitioner would thus require a sign variance from the Department of Permitting Services (DPS) in order to post the desired signage, pursuant to Zoning Ordinance §59-F-12.1. That section prohibits DPS from approving a sign less restrictive than provided in the Board of Appeals’ conditions, although it may approve greater restrictions.

The Hearing Examiner does not find the proposed monument sign to be inappropriate, given the size of the subject site and placement of the sign along Frederick Road, a major state roadway. However, DPS will have to determine whether a variance is required before issuing a permit. No sign may be posted unless and until Petitioner obtains a permit therefor and a sign variance, if required, and copies of these documents are filed with the Board of Appeals. A condition is proposed to this effect in Part V of this report.

#### 4. Operations and Staffing:

Operations on the site will be governed by the conditions imposed by the Board; by Petitioner's Statement of Operations (Exhibit 34(b)); and by Petitioner's Transportation Management Plan, also known as the TMP (Exhibit 36(a)). The TMP will be discussed in the next section of this report. The Statement of Operations provides:

##### **Maximum number of children and staff:**

- 283 children on-site at any one time (with maximum of 120 after-school children and 163 day care children)
- 41 employees on-site at any one time

##### **Hours of Operation, Monday through Friday, year-round:**

- Staff earliest arrival – 6:30 a.m.
- Children earliest arrival – 7:00 a.m.
- Staff - latest departure – 7:00 p.m. (except evening events and cleaning crew)
- Children - latest departure – 6:30 p.m. (except evening events)

##### **Programs Offered:**

- Child day care
- Pre-school
- Pre-Kindergarten
- Before and/or after school day care
- After-school program
- Summer day care program

**Deliveries (weekdays):**

- Trash pick up – after 9 a.m. maximum twice per week
- Recycling pick up – after 9 a.m. maximum once per week
- Office/School/Food Service Supplies – after 9:00 a.m. maximum 4 times per month

**Lawn Maintenance:**

- Saturdays and/or Sundays after 9 a.m.

**Special Events**

Recurring events are limited to:

• Back to School	Weekday Evenings	max 4/year	75 people max
• Open houses	Weekday Evenings	max-1/month	75 people max
• Staff meetings	Weekday Evenings	max-1/month	50 people max
• Halloween Party	Weekday Evenings	max-1/year per class	50 people max
• Thanksgiving Party	Weekday Evenings	max-1/year per class	50 people max
• Holiday Party	Weekday Evenings	max-1/year per class	50 people max
• Graduation	Weekday Evenings	max-1/year	100 people max

- No more than a total of 3 Weekday Evening events in any one-week period shall be held.
- All evening events shall be concluded by 9:00 p.m.

**Miscellaneous Items**

- Outdoor lighting will be controlled by a timer that will turn off lights automatically at 9:30 p.m., daily.
- A cleaning crew shall visit the Property each weekday from 6:30 p.m. until 9:00 p.m.

Petitioner's principal owner, Ross Flax, testified that the 41 staff will consist of 10 part-timers, 28 full-timers, and three full-time managers. There will be staff on site who are "senior staff qualified." Petitioner looks for teachers that have gotten a four-year degree in early childhood education or elementary education. The student/teacher ratios will be three to one for infants, who are defined as children under the age of two; six to one for children that are toddlers, considered age 24 to 36 months; 10 to one for children who are three and four; and the after school program is 15 to one. Tr. 119



5. Traffic, Parking, Pick-up and Drop-off:

The adequacy of transportation facilities will ultimately be determined by the Planning Board at subdivision, which is required in this case; however, there do not appear to be any insurmountable transportation problems related to the proposed special exception. Petitioner's transportation planner, Carl Starkey, testified (Tr. 57-83) that he collected transportation data at the two locations specified by Technical Staff, Maryland 355 at West Old Baltimore Road, and Maryland 355 at Little Seneca Parkway. To that existing data, he added traffic from eight approved background developments, as provided by Technical Staff. Mr. Starkey then determined trip generation for the site, and added those trips to the network to prepare his analysis.

The trips associated with the site are identified on page 18 of Exhibit 9. And as indicated there, there are three types of trips to a child care facility, new trips, diverted trips and pass-by trips. Pass-by trips are trips which are already on the road that are passing immediately adjacent to the site and will stop into the site. Diverted trips are trips that are also already on the local road network, but may make an additional turn to access the property.

According to Mr. Starkey, this site would generate a maximum of 65 new trips to the network, both in and out during the morning peak hour. In the evening peak hour, 52 new trips would be added. When the projected site-generated trips were added in, Mr. Starkey found that, at the intersection of Frederick Road and Little Seneca Parkway it was 1380 during the morning peak hour and 1251 during the evening peak hour. At the intersection of Frederick Road and West Old Baltimore Road, under the total conditions, the critical lane volumes (CLVs) were projected at 1639 in the morning peak hour, and 1741 in the evening peak hour. *See* Exhibit 9, Table 7 at p. 22.

Thus, the intersection of Frederick Road and West Old Baltimore Road, unless improved, will exceed the 1425 CLV threshold for the area, both with the background conditions, and with the total conditions. With respect to traffic impact of the proposed use, Mr. Starkey testified while there is an

impact at one of the critical intersections, it is important to note that that impact is a minimal addition to what has already been determined through the background development. The intersection was operating adequately under existing conditions, but went to a failing level of service when the eight background sites were added in.

Although the proposed use added little to the numbers, to meet the local area transportation review (LATR) guidelines, Petitioner proposed to participate in improvements at the intersection of Frederick Road and West Old Baltimore Road. Those improvements include the addition of a northbound left turn lane, a southbound right turn lane, and the creation of separate left and right turn lanes on the eastbound approach of West Old Baltimore Road. There are two other subdivisions which currently have those improvements as conditions of approval. The first is the Linthicum West Subdivision, preliminary plan I-05003, and the second is the Cabin Branch preliminary plan number 1-03110. These improvements were also reviewed by and concurred in by the Maryland State Highway Administration.

With the proposed improvements, the CLV counts at the intersection of Frederick Road and West Old Baltimore Road will be significantly reduced to 1437 in the evening peak hour, better than with just the background conditions, and the morning peak will remain at 1570 (*i.e.*, background levels). These figures are reflected in Table 1 from the Technical Staff report (Exhibit 40, p. 5), reproduced below:

Intersection	Weekday Peak Hour	Traffic Condition		
		Existing	Background	Total*
Frederick Rd (MD355) & Little Seneca Pkwy	A.M.	1,159	1,366	1,380
	P.M.	908	1,233	1,251
Frederick Rd (MD355) & W. Old Baltimore Rd	A.M.	1,363	1,570	1,570
	P.M.	1,365	1,677	1,437

Table 1: Calculated Critical Lane Volumes

**\*Note- Total development conditions with proposed intersection improvements.**

Mr. Starkey also addressed access to the site and traffic circulation within the site. Traffic will enter at a single access point off of Frederick Road and circulate in a counter-clockwise direction. Parents will come in, park their vehicles, and walk their children into the building. There is also a drop-off isle on the north face of the buildings, which would allow someone to park temporarily, run in, come back out. That would also be used for drop-off in the afternoon by school buses.

There will be access point improvements – the addition of a left turn lane into the site, a southbound deceleration lane approaching the site, and a southbound acceleration lane as people exit the site to merge into MD 355. These site access improvements will be the sole responsibility of the Petitioner. The access point was located to maximize the sight distance for traffic entering and exiting onto MD 355. There is a sight-distance certification plan, which indicates that Petitioner met the AASHTO (American Association of State Highway Transportation Officials) standards.

Also, as part of the policy area mobility review (PAMR), Petitioner proposes to implement an additional 1,400 feet of bike path along MD 355, in addition to an eight-foot shared use path along the site frontage. In the Clarksburg s policy area, developers are required to mitigate 10 percent of new trips. Ten percent of the 65 new trips is 6.5, rounded up to 7, so Petitioner is required to mitigate 7 trips. Credit of half a trip reduction is given for each 100 linear feet of bike path, so 1,400 linear feet of bike path would be needed to satisfy Petitioner’s PAMR mitigation requirement.

Both Technical Staff (Exhibit 40) and SHA (Exhibit 49) concurred with Mr. Starkey’s findings. As stated by Technical Staff (Exhibit 40, p. 6):

Based on the review of the proposed plan and traffic analysis submitted by the applicant, transportation planning staff concluded that with the proposed improvements, the applicant’s proposal satisfies both LATR and PAMR requirements. . . . However, this will be reviewed again at preliminary plan.

In Mr. Starkey's opinion, the planned site traffic circulation (a counter-clockwise one way flow) is adequate, safe and efficient. There is also sufficient parking to accommodate parents dropping off and picking up children. Moreover, the special exception would not reduce the safety of pedestrian or vehicular traffic in any way. Transportation Planning Staff agreed, stating (Exhibit 40, Attachment 5, p. 3):

Staff finds . . . the proposed access point to be adequate to accommodate the site-generated traffic. Staff has also reviewed the proposed internal traffic/pedestrian circulation system[s] shown on the site plan and finds them to be adequate.

According to Mr. Starkey, from a traffic expertise point of view, there will be no impacts that are detrimental to the surrounding area.

Parking, drop-off and pick-up are discussed in the proposed transportation management plan (TMP). The TMP (Exhibit 36(a)) provides, *inter alia*:

Parking, drop-off and pick-up

Goddard staff shall be required to park in the areas of the parking lot which are furthest from the entry doors, during regular hours of operation, Monday through Friday, 6:30 a.m. to 6:30 p.m. Parents are responsible for escorting children into the building, and for signing children in and out during drop off and pick up, so the parking spaces closest to the buildings shall be open and available to facilitate that process. If children arrive by bus, a staff member shall escort children into the building from the drop-off area where buses stop.

\* \* \*

It is not anticipated that any of . . . [the special] events will generate more attendees than the parking facilities can manage because most events only serve a limited number of attendees, and other events will be held on a classroom or age group basis. However, if any event does generate more attendees than the available parking on-site will allow, arrangements will be made by the Transportation Coordinator or his/her designee to direct attendees to satellite parking, and Goddard will provide a shuttle service for those guests. The Transportation Coordinator shall monitor parking at all evening and special events to insure that overflow parking does not impact the nearby neighborhoods.

Technical Staff did not comment directly upon the proposed TMP, but did find:

. . . that adequate parking would be available for parents and employees under the special exception proposal. The proposed traffic/pedestrian circulation is adequate, safe, and efficient. [Exhibit 40, p. 8.]

The Hearing Examiner concludes, based on his review of the entire record, that transportation, safety and parking considerations have been appropriately addressed, subject to review at subdivision.

6. Waiver Regarding the Number of Parking Spaces:

Zoning Ordinance §59-E-3.7 requires one parking space for each non-resident staff member and 1 parking space for each 6 children served at the facility. Technical Staff calculated the required parking for the proposed child care facility is as follows (Exhibit 40, p.13):

Non-Resident Employees:	41 parking spaces
Students:	48 parking spaces
Residents:	<u>0 parking spaces</u>
Total:	89 spaces (required)

Petitioner requests a waiver to allow the number of parking spaces to be reduced from the 89 parking spaces which would ordinarily be required to 60 parking spaces, which include 8 drop-off spaces, 2 motorcycle spaces, and 3 handicapped spaces.

Petitioner's principal owner, Ross Flax, testified that, based on his experience in running Goddard schools, 89 parking spaces for the school would be unnecessary and would create "a lot of wasted asphalt." Tr. 122-123. Having operated two schools for combined 21 years, he is very comfortable that with 60 parking spaces, he can operate the school without any issue. Under the transportation management plan, if any event does generate more attendees than the parking available on site would allow, arrangements will be made by the transportation coordinator to direct attendees to satellite parking.

Technical Staff agreed with Petitioner that a parking waiver is justified since approximately 30% of the clientele pick-up and drop-off more than one child per visit, and there are staggered drop-off and pick-up times throughout the day, which is not typical of a standard school setting. In addition, the site is within the Clarksburg Special Protection Area (SPA). Environmental guidelines

for SPAs require consideration of various tools designed to minimize stormwater run-off and site imperviousness, and reducing the number of parking spaces would help in that regard. Therefore, Staff is in support of the waiver. Exhibit 40, p. 14.

Zoning Ordinance §§59-E-4.2 and 4.3 provide that parking facility objectives must be met for a parking waiver. Mr. Starkey testified that Petitioner will meet those objectives. The waiver would provide adequate parking for the use, would reduce the impervious surface, provide adequate circulation, and give appropriate sight distances, landscaping and channelization. Tr. 82-83.

Technical Staff agreed (Exhibit 40, p. 14):

The proposed special exception complies with the parking and loading standards for a special exception in a residential zone, subject to a waiver granted by the Board of Appeals. Appropriate screening is being provided by the applicant, utilizing an existing forested area and fortifying these areas with additional trees and shrubbery. Where the parking facility is closest to the residential homes, additional low-lying shrubs and evergreens are being used to further block any obtrusive light that may occur with a parking vehicle. The applicant is also proposing a 6-foot stockade fence along the entire boundary, with the exception of the front yard, where an aluminum picket fence is proposed. (See Circle Page 4.) The applicant satisfies the shading and paving requirements of §59-G-2.83(d).

Based on this record, the Hearing Examiner finds that Petitioner has satisfied the requirements for a waiver of standards for the number of required parking spaces, and should be allowed to provide only 60 parking spaces for the proposed facility.

A condition approving the requested waiver has been recommended in Part V of this report.

#### 7. Environment:

Technical Staff reports that the subject site is located within the Clarksburg Special Protection Area (SPA). Although there are no streams or environmental buffers on the subject property, this site

is subject to the forest conservation law and special protection area water quality plan review. Exhibit 40, pp. 6-7.

A Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) for the site was approved by Environmental Planning Staff in August 2009. Exhibit 7(c). A revised preliminary forest conservation plan (PFCP), Exhibit 48, calls for the removal of 3.03 acres of forest and the preservation of 1.20 acres of forest. All retained forest and plants will be protected in a category I forest conservation easement (FCE). Additionally, this project has a reforestation requirement of 0.62 acres to be met with 0.54 acres of on-site plantings and 0.08 acres of landscape credit. The PFCP was approved by the Planning Board, subject to additional conditions, as evidenced in a letter from Technical Staff dated June 16, 2010 (Exhibit 44).

As required in an SPA, Petitioner also submitted a Preliminary Water Quality Plan (PWQP) Exhibit 7(c). It was also approved by the Planning Board, with conditions set forth in the June 16, 2010, letter. Exhibit 44.

Adherence to the conditions imposed by the Planning Board regarding the PFCP and the PWQP is recommended in conditions contained in Part V of this report. Given the approvals by the Planning Board, there are no environmental issues raised in this case that would prevent approval of the special exception petition.

#### **E. Community Response**

As mentioned at the outset of this report, there have been a number of letters filed expressing support in the community for this project. Exhibits 18-30. There has been no opposition. However, correspondence from Joe Wolski, on behalf of the Summerfield Crossing HOA Board of Directors (Exhibit 33), while stating that the project would be “a huge plus for our community,” also raised concerns about traffic congestion and requested improvements at relevant intersections.

The Hearing Examiner is satisfied that the traffic congestion concerns have been addressed with proposed road improvements, as indicated in Part II. D. 5 of this report.

In addition, the Hearing Examiner has recommended a condition to prohibit the use of sound amplification equipment outdoors to protect the neighbors from noise, with the exception that Petitioner may use electronic voice amplification for its outdoor puppet show. While this step may not eliminate all noise from the proposed facility, a certain amount of noise must be considered inherent in the operation of any day care. The recommended conditions should reduce any such problems to reasonable proportions so that they will not adversely affect the neighbors.

In sum, there are no issues in this record that would warrant denial of the subject petition. They do warrant the imposition of special conditions which have been discussed in order to limit any potentially adverse consequences.

### **III. SUMMARY OF THE HEARING**

The hearing was held on June 29, 2010. Petitioner called five witnesses: Ross Flax, the principal owner of Darnestown Development, LLC; Victoria Bryant, landscape Architect and land planner; Scott Roser, a civil engineer; Carl Starkey, a traffic engineer; and Allen Mushinsky, an architect. There were no other witnesses at the hearing.

1. Victoria Bryant (Tr. 13-38 and 135-136):

Victoria Bryant testified as an expert in landscape architecture and land planning. Ms. Bryant testified that the subject property is located off of Frederick Road just north of West Old Baltimore. The site is a mile and a half south of the Clarksburg Town Center.

To the north and west of the site is a newer development of single family homes. They are typically two stories with an integral garage. To the south of the site is a larger lot, older subdivision with ranch style, split foyer type single family homes. On the east side of MD 355 is a mix of older, single family homes that are ranches and single split foyer homes; newer single family homes that are



two stories with integral garages, and the Green Ridge Baptist Church. The closest home is about 200 feet from the proposed buildings on the site (*i.e.*, from the northwest corner of the proposed annex building to adjoining lots 28 and 29). It is about 140 feet from the nearest play area (just west of the Annex building) to the nearest lot (Lot 27 on Castleton Court). Tr. 17-19.

In Ms. Bryant's professional opinion, the proposed special exception will be compatible with the neighborhood. The buildings and structures to be erected on site will be of bulk and mass similar in terms of height and materials to the single family homes that area adjacent to the site. She noted that the 1994 Clarksburg Master Plan (at pages 166 and 167) recommends daycare facilities in the Master Plan area. It does not specify any specific locations in the Clarksburg master plan, but it does say, distributed throughout the master plan area. Tr. 20-21. It specifies that child care facilities should be disbursed throughout the study area, with a concentration near transit employment areas, and concentrations of housing. Ms. Bryant opined that Petitioner's proposal meets the latter of that requirement, concentration of housing.

Ms. Bryant testified that the proposal would not cause detrimental impacts to any of the surrounding uses. Tr. 22. Ms. Bryant described the site plan and landscaping, including planned dedication and a deceleration lane to ease entry onto the site, playgrounds, and fencing. 1.82 acres will be conserved in forest conservation area, and the remainder will be used for improvements on the site. Tr. 22-26.

Ms. Bryant testified that after dedication, 4.53 acres will remain, which makes it a 197,723 square foot site. There is a requirement of 500 square feet per child in the zoning ordinance for a daycare facility. According to Ms. Bryant, the site will provide 769 square feet per child.<sup>3</sup> Tr. 27.

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<sup>3</sup> By the Hearing Examiner's calculations, the site will provide 769 square feet per child prior to dedication (217,795 square feet / 283 children). After dedication, using Ms. Bryant's figure of 197,723 square feet, the site would provide about 698 square feet per child, still well over the 500 square foot per child standard.

Two primary buildings (the daycare center building and the annex connected to it) will be the primary buildings. There will also be three accessory buildings on site, a pavilion and two sheds. Tr. 28-29.

The preliminary forest conservation plan calls for retaining 1.2 acres of forest, and reforestation of .26 acres. 0.8 acres of that is being met through the landscape credits, and 0.54 acres is being met through on-site forest plantings. Tr. 32-33.

A tree variance was not required because their application preceded the applicable date of the new regulation, but staff recommended approval of it, anyway. Because the arborist indicated that the regulation didn't apply, the Planning Board did not actually vote to approve a tree variance. They did vote to approve the water quality and the forest conservation plan. Tr. 34.

Ms. Bryant testified that there would be no non-inherent adverse effects as a result of this special exception, and that it met all the Zoning Ordinance standards. Tr. 35-38.

Finally, Ms. Bryant testified that the public facilities and services will be adequate for this site. The use will not generate any school children, and therefore the schools are not an issue. A traffic study has been submitted to Park and Planning, and their transportation planning department has determined that the information was sufficient to be addressed at the time of preliminary plan. Adequate water and sewer will be provided to the site, in the right categories. The other utilities are present, including gas and electric. Tr. 135-136.

2. Allen Mushinsky (Tr. 39-56):

Allen Mushinsky testified as an expert in architecture. He designed the attached buildings proposed for the site. The orientation of the buildings had multiple purposes. One is to save trees. Two is to keep it away from the neighbors as much as possible. The children are going to be outside in the play areas. And three was to not put it along 355, so it was just another building sitting right up on the property line. The intent was for people to drive into the site, and then to drive to the building.

Mr. Mushinsky described the buildings, parking and play areas, which will be completely fenced in. The building is broken up into a series of different pitched roofs and into two basic buildings connected by a breezeway, and a covered roof structure. It is a one-story building, with cupolas and architectural treatments that are more like farmland in an up-county Montgomery County style of architecture.

The buildings will be constructed of all wood frame, wood roof trusses. The siding will be a synthetic material, cement board, that looks like wood siding painted. All the windows will look like wood windows. They may not be, but they will look like it, so it will have a very residential character, with broad overhangs at the front entrance of both buildings. The larger building, the 13,000 square foot building, has its own entrance and area where parents can drop off and bring their children into its own controlled area for preschool and infants. At the annex, probably buses will be bringing and dropping off after-school children, and it has its own entrance with its own control area.

Parents actually have to park and bring children inside. The parking along the face of the building allows parents to quickly park their car, bring the child in, and leave again. The space also allows buses to pull up and let the children out and then drive on.

The site lighting is predominantly 20-foot high poles in the entrance drive and in the parking area. In Mr. Mushinsky's opinion, 20-foot poles with the type of lamp proposed is the best compromise of look and safety for this site. The entire site lighting is based on zero light from any light source along the entire perimeter. The lighting is concentrated in the parking area, and the lights he selected are strictly down lighting. Some lighting on posts will shine on the play areas because it gets dark in the wintertime at 3:30-4:00. All those lights are aimed back towards the building. No lights shine away from the building, and they shine strictly down. Lighting will be on both time clocks and photo cells.

In Mr. Mushinsky's opinion, the project will be compatible with the other existing uses, architecturally, that surround the property. It will be the same scale and height, texture and form, as the adjacent residential. It was designed with a very careful eye towards what the character of this daycare would be in the neighborhood and making the least amount of impact to the neighborhood.

3. Carl Starkey (Tr. 57-83):

Carl Starkey testified as an expert in traffic engineering and transportation planning. He described the traffic study he did in this case. Mr. Starkey contacted transportation staff at Park and Planning, obtained a scope of work direction, did field reconnaissance, and collected transportation data at two locations, Maryland 355 at West Old Baltimore Road, and Maryland 355 at Little Seneca Parkway. To that existing data, he added traffic from eight approved background developments, as provided by Technical Staff. Mr. Starkey then determined trip generation for the site, and added those trips to the network to prepare his analysis.

The trips associated with the site are identified on page 18 of Exhibit 9. And as indicated there, there are three types of trips to a child care facility, new trips, diverted trips and pass-by trips, which are trips which are already on the road that are passing immediately adjacent to the site and will stop into the site. Diverted trips are trips that are also already on the local road network, but may make an additional turn to access the property.

According to Mr. Starkey, this site would generate a maximum of 65 new trips to the network, both in and out during the morning peak hour. In the evening peak hour, 52 new trips would be added.

When the projected site-generated trips were added in, Mr. Starkey found that, for the intersection of Frederick Road and West Old Baltimore Road, under the total conditions, the critical lane volumes (CLVs) were 1639 in the morning peak hour, and 1741 in the evening peak hour. At

the intersection of Frederick Road and Little Seneca Parkway it was 1380 during the morning peak hour and 12:51 during the evening peak hour.

Thus, the intersection of Frederick Road and West Old Baltimore Road exceeded the 1425 CLV threshold for the area, both with the background conditions, and with the total conditions. With respect to traffic impact of the proposed use, Mr. Starkey testified while there is an impact at one of the critical intersections, it's important to note that that impact is a minimal addition to what's already been determined through the background development. The intersection was operating adequately under existing conditions, but went to a failing level of service when the eight background sites were added in.

Although the proposed use added little to the numbers, to meet the local area transportation review (LATR) guidelines, Petitioner proposed to participate in improvements at the intersection of Frederick Road and West Old Baltimore Road. Those improvements include the addition of a northbound left turn lane, a southbound right turn lane, and the creation of separate left and right turn lanes on the eastbound approach of West Old Baltimore Road. There are two other subdivisions which currently have those improvements as conditions of approval. The first is the Linthicum West Subdivision, preliminary plan I-05003, and the second is the Cabin Branch preliminary plan number 1-03110. These improvements were also reviewed by and concurred in by the Maryland State Highway Administration.

Mr. Starkey explained that the site access point is identified as on Exhibit 34(h), is the access point for the property. As you are headed northbound on Frederick Road, you would turn left into the property, and circulate in a counter clockwise direction. As indicated before, parents will come in, park their vehicles, and walk their children into the building, and there is also a drop-off isle on the north face of the buildings, which would allow someone to park temporarily, run in, and come back out. That would also be used for drop-off in the afternoon by school buses.

There will be access point improvements, the addition of a left turn lane into the site, a southbound deceleration lane approaching the site, and a southbound acceleration lane as you exit, leaving the site to merge into MD 355. The access point was located to maximize the sight distance for traffic entering and exiting onto Maryland 355. There is a sight distance certification plan as part of the staff report, which indicates that Petitioner met the AASHTO (American Association of State Highway Transportation Officials) standards. These site access improvements will be the sole responsibility of the Petitioner.

Also, as part of the policy area mobility review (PAMR), Petitioner proposes to implement an additional 1,400 feet of bike path along Maryland 355, in addition to an eight-foot shared use path along the site frontage. In the Clarksburg policy area, developers are required to mitigate 10 percent of new trips. Ten percent of the 65 new trips is 6.5, rounded up to 7, so Petitioner is required to mitigate 7 trips. You get a credit of half a trip per 100 lineal feet, so that math equates to 1,400 linear feet of bike path.

Both Technical Staff (Exhibit 40) and SHA (Exhibit 49) concurred with Mr. Starkey's findings with regard to access, circulation, traffic effects of the property and the proposed improvements..

In Mr. Starkey's opinion, the planned site traffic circulation (a counter-clockwise one way flow) is adequate, safe and efficient. There is also sufficient parking to accommodate parents dropping off and picking. Moreover, the special exception would not reduce the safety of pedestrian or vehicular traffic in any way. According to Mr. Starkey, from a traffic expertise point of view, there will be no impacts that are detrimental to the surrounding area.

Petitioner has asked for a parking waiver. Based upon the parking requirements for parking that's in place at the two other facilities that Mr. Flax operates in King Farm and in Columbia, they have parking ratios between .21 and .29, per student. This site would fall in the middle of that, with a

ratio of approximately .26. Based upon the experience at the other facilities, Mr. Starkey believes that there will be adequate parking if the waiver is granted.

The parking waiver would reduce the amount of impervious area on a site in a special protection area. Zoning Ordinance §59-E-4.2, parking facilities, provides that objectives must be met for a parking waiver. Mr. Starkey testified that Petitioner will be meeting those objectives. The waiver would provide adequate parking for the use, would reduce the impervious surface, provide adequate circulation, and give appropriate sight distances, landscaping and channelization, as shown on Exhibit 46.

[Petitioner's counsel does not believe that a sign variance will be needed for the signs planned for the site, including a monument sign. He suggested a condition that Petitioner would obtain a permit and sign variance, if necessary. A lighted sign is proposed because there is an after-school program and it gets dark early in the winter.]

4. Scott Roser (Tr. 83-99 and 136-139):

Scott Roser testified as an expert in a civil engineering and water resources. Mr. Roser described the locations of the existing water and sewer lines that will be accessed for this project. He opined that all the utilities are present and adequate to serve the subject property.

Mr. Roser prepared plans for the site and worked with the architect to try to minimize the disturbance to the site, as well as the disturbance to trees. There will be grading on site, cuts and fills, generally, to level out the building.

Mr. Roser indicated the site will be designed to comply with the new stormwater management regulations that have gone into effect. They require the runoff post-development condition to mimic that of a woods in good condition, which is actually the existing condition that exists on the site now. In addition, they also require one to look at small scale and integrated types of storm water management devices, as well as open space preservation and minimization of impervious

area. It is referred to as environmental site design, this means you design the whole site to integrate the storm water management within the fabric of that site.

Also, this site is in a special protection area. The Clarksburg special protection area was put in place to ensure a higher level of storm water management in the Clarksburg area. There is a two-step process. There's a preliminary water quality plan, which has been approved. There's also a final water quality plan, for which Petitioner is in the process of applying.

Representatives of the Montgomery County Department of Permitting Services, the Department of Environmental Protection, and Park and Planning laid goals for this particular project, including peak runoff control, nutrient control, control of sediment during construction, and control of any nutrients or pesticides that might be used on the grass areas. Mr. Roser submitted a storm water management plan in accordance with that. In addition, in special protection areas, the government requires monitoring of the project from a water quality standpoint both at the preconstruction stage and the post-construction stage. Pervious concrete, which lets the water soak through, may be used.

Although this site is designed to get most of the water infiltrated into the ground, any excess water will also be collected by a storm drain system and tied into the existing systems. So, he does not anticipate any impact of water runoff onto the adjacent properties. In Mr. Roser's opinion, the situation for the neighbors, in terms of water runoff, will not be any worse than it is now.

Petitioner will be dedicating a little over 7,000 square feet all along the frontage on Frederick Road. An NRI/FSD plan has been approved, and a forest conservation plan was submitted and has been preliminary approved.

If the Board approves the maximum of 283 children, that will conform to and exceed the requirements of 500 square feet per child, and no more than 87 pupils per acre.



5. Ross Flax (Tr. 99-135):

Ross Flax testified that he is the principal owner of the Petitioner, Darnestown Development, LLC. Darnestown Development is a company that develops real estate to operate schools. It runs other Goddard schools, and wants to add this Goddard school in Clarksburg. Goddard School is a nationwide chain of private preschools. There are about 400 schools that exist across the country. They operate schools from infants through kindergarten, and certain schools will offer before and after school programs, depending on the need in the community. It is a franchising arrangement.

Mr. Flax discussed his reasons for becoming involved in this area, and described the enriched programs offered. [Petitioner's counsel noted that this is a daycare facility, not a school, even though it is an enriched program.]

Mr. Flax reviewed the history of the application and contacts with the community, noting supporting letters that had been filed. He investigated the likely demand for the service by estimating the number of children in a five-mile radius and found that there would be strong demand. There also weren't a lot of after school programs in the County for children up through lower school. He estimated that about 30 percent of the school's population are typically siblings.

Mr. Flax also discussed operations. Parents that will drop their children off in their classrooms, which means parking their cars and coming into the building. They'll sign in at the front entranceway. Everybody coming through the building is videotaped. Children are signed into the classroom by using the teacher sign-in books, and then parents are free to leave at that point in time. Exactly the same process is used for pickup.

Mr. Flax met with Montgomery County Public School transportation officials. There is a handful of schools which are within about a five-mile or a five-minute drive to the site. Those students can be bussed through the County School System transportation department. So that is the method for how children will actually get to the facility for the after school program. Staff will go

outside and greet the children and bring them in the building, and then parents would retrieve them at the end of the day.

There will be 41 staff, consisting of 10 part-timers, 28 full-timers, and three full-time managers. There will be staff who are “senior staff qualified.” Petitioner looks for teachers that have gotten a four-year degree in early childhood education or elementary education. Those are traditionally going to be for teachers teaching preschool, ages three through five. The student/teacher ratios will be three to one for infants, which are defined as children under the age of two; six to one for children that are toddlers, considered age 24 to 36 months; 10 to one for children who are three and four; and the after school program is 15 to one.

The hours of operation will be 7:00 a.m. through 6:30 p.m., Monday through Friday, no weekends. The facility operates year round, but will be closed the week between Christmas and New Year's every year. The hours do not change in the summer.

Petitioner does not let outside programs or groups rent the facility. Petitioner does have, on occasion, events going on in the school. There is a year end party every year from 4:00 to 7:00 p.m. They also have puppet shows.

Lights on the timer are on for the safety of the cleaning crew, but they are normally off by 9:30-10:00 p.m.

Mr. Flax looked at the number of parking spaces that the facility actually needed and determined that 89 parking spaces for the school would have been unnecessary and “a lot of wasted asphalt.” Tr. 122-123. Having operated two schools for combined 21 years between both schools, he has a very good idea as to how many parking spaces are really needed. He is very comfortable that with 60 parking spaces, he can operate the school without any issue. Under the transportation management plan, if any event does generate more attendees than the available on site will allow, arrangements will be made by the transportation coordinator to direct attendees to satellite parking.

Mr. Flax feels that this use will be in harmony with the general character of the surrounding neighborhood and will have no unusual detrimental impact to the peaceful enjoyment or the economic value of developments that surround this property. Actually, just the opposite. It will give parents a lot more peace of mind who know they have a place that's safe in their community to leave their child, rather than taking them down I-270 to the degree that they may today. Nothing about the operation would cause unusual or objectionable noise, vibrations or odors. Arrivals for drop off and pickup times will be staggered by contract, but there is often some variance.

The requirement for 500 square feet per child is met over the entire site, including the forested area; however, the facility will have free and clear reign to be able to access into those forested areas. The fencing would be on the outside of it. Mr. Flax noted that the facility will be still utilizing and experiencing the area. No children would be unsupervised if they are in any of the outside areas.

Moreover, from a safety standpoint, the facility will not allow all three preschool classrooms outside all at one time. It's more difficult to keep children healthy and safe if you have that many children outside. So traditionally, one's in, one's out. The classrooms are given specific time frames to have their children outside.

Mr. Flax described emergency procedures for the facility. One hundred percent of the staff is first aid and CPR trained. The State only requires one for every 20 employees. Teachers who need to have an EpiPen ( a device for administering epinephrine for children that have severe allergies) in their classes would additionally receive training in using EpiPens. Petitioner has a consulting doctor who donates his time to the school, should there be a medical issue. Parents must give Petitioner full authority and permission to transport their child should there be an accident or a reason to transport a child to the emergency room.

#### IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioner complies with the conditions set forth in Part V, below.

##### A. Standard for Evaluation

The standard for evaluation prescribed in Zoning Ordinance § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “*the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.*” § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “*physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.*” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child day care use. Characteristics of the proposed

use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In this case, the Technical Staff suggested the following inherent characteristics associated with the child daycare use (Exhibit 40, p. 8):

- (1) buildings and structures, as well as outdoor areas for the children to play;
- (2) early and long hours of operation;
- (3) traffic to and from the site by the staff and parents;
- (4) deliveries of supplies and trash pick-up;
- (5) drop-off and pick-up areas for the students who attend after-school and the summer camp programs; and
- (6) noise from the children playing in the play areas.

To this list of inherent characteristics, the Hearing Examiner would add parking areas, lighting and signage.

Technical Staff found no non-inherent characteristics of the proposed use (Exhibit 40, p. 8):

There are no non-inherent adverse effects likely to result from the physical changes and activities associated with the application. Staff finds that adequate parking would be available for parents and employees under the special exception proposal. The proposed traffic/pedestrian circulation is adequate, safe, and efficient. The architecture and scale of the proposed buildings are in keeping with the surrounding, one-family dwellings.

The Hearing Examiner finds that there are two non-inherent conditions – the fact that the subject site is in a special protection area and the fact that traffic volume at a nearby intersection, Frederick Road and West Old Baltimore Road, will exceed the 1425 CLV threshold for the area, both under the background conditions, and under the total conditions.

As discussed in Part II. D. 7. of this report, environmental considerations relating to the location of the site in an SPA are being appropriately addressed. The traffic situation, discussed in Part II.D. 5. of this report, is also being properly managed with proposed road improvements. Thus, the Hearing Examiner finds that the non-inherent conditions do not warrant denial of this petition either alone or in conjunction with the inherent conditions.

### **B. General Standards**

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's documentary evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

#### **Sec. 59-G-1.21. General conditions:**

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*
- (1) *Is a permissible special exception in the zone.*

Conclusion: Child day care facilities are permitted by special exception in the R-200 Zone pursuant to Zoning Ordinance §59-C-1.31(d).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use would comply with the standards and requirements set forth for in Zoning Ordinance §59-G- 2.13.1, as detailed in Part IV. C. of this report.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the*

*Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site is located within the area covered by the 1994 Clarksburg Master Plan and Hyattstown Special Study Area. The Master Plan expressly recommends more child day care facilities to be dispersed throughout the Study Area. For all the reasons discussed at length in Part II. C. of this report, the Hearing Examiner finds that the proposed use is consistent with the applicable Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: Technical Staff concluded that the proposed special exception, as conditioned, will be in harmony with the general character of the neighborhood. Exhibit 40, p. 9. The Hearing Examiner agrees. As noted by Staff, the student density will be below that which is permitted on site. Adequate space is being provided for the students, both indoors and out, and the character of the activities is inherent to the daycare and after-school/summer programs. Staff also found the proposed parking area to be adequately screened and set back from the surrounding homes. Moreover, the proposed building is architecturally in scale with the adjacent homes, utilizing pitched roofs and varying textures giving the appearance of a residential house. The evidence also supports the conclusion that public facilities and services will be adequate to serve the use, although that evaluation will be made by the Planning Board at subdivision.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in the previous answer and in Parts II. D. and E. of this report, the evidence supports the conclusion that, with the specified operational limitations and other conditions, the requested new use would not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties in the general neighborhood of the subject site. As noted by Staff, the site is located along a major transportation route, which provides the only access points to the site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, noting that the daycare center will be used primarily during the day-time hours, Monday through Friday, and the majority of activity will be within the building. Play areas located along the southern side of the proposed building are screened by a forest conservation area. Exhibit 40, p. 10. As noted in Part II. E. of this report, some noise and physical activity from children is an inherent characteristic of this kind of special exception. The screening of the site and the conditions recommended by the Hearing Examiner will ensure that these adverse effects are sufficiently mitigated. The proposed lighting will not exceed 0.1 foot-candles along the side and rear property lines, as shown in the Lighting and Photometric Plans. This is in accordance with the lighting standards for residential zones set forth in Zoning Ordinance §59-G-1.23(h). There is no evidence that the proposed use will create any unacceptable vibrations,



fumes, odors or dust. Based on this record, the Hearing Examiner finds that the proposed use will not cause any unacceptable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff found that the special exception will not unduly increase the number, intensity or scope of special exceptions uses, since there are no other special exceptions within the general neighborhood; nor will it alter the predominantly residential nature of the area. Exhibit 40, p.11. The Hearing Examiner agrees. Moreover, by definition, “*Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*” As previously stated, the proposed use is consistent with the recommendations of the Master Plan.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence summarized above supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. In fact, the addition of needed child care capacity is beneficial to the general welfare of the area.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its*

*subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*

- (B) *If the special exception does not require approval of a preliminary plan of subdivision, by the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.*

Conclusion: As determined by Technical Staff (Exhibit 40, p.12), the special exception sought in this case would require approval of a preliminary plan of subdivision. Therefore, the public facilities review will be done by the Planning Board at subdivision, and approval of the Preliminary Plan will be a condition of this special exception. Nevertheless, Petitioner's traffic engineer, Carl Starkey, did do a traffic analysis and found that the Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR) would be met. These findings were confirmed by Technical Staff, as discussed in Part II. D. 5 of this report.

Moreover, Petitioner's land planner, Victoria Bryant testified that the public facilities and services will be adequate for this site. The use will not generate any school children, and therefore the schools are not an issue. Adequate water and sewer will be provided to the site, in the right categories. The other utilities are present, including gas and electric. Tr. 135-136.

Based on this record, the Hearing Examiner finds that Petitioner has made a sufficient showing at this stage that public facilities will be adequate.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence in this record, as discussed in Part II. D. 5. of this report, the Hearing Examiner concludes that the proposed use, as conditioned, would not reduce the safety of pedestrian or vehicular traffic.

### C. Specific Standards: Child Day Care Facility

The specific standards for a child day care facility are found in Code § 59-G-2.13.1. The Technical Staff report and the evidence of record in this case provide sufficient evidence that the proposed child day care facility use would be consistent with these specific standards, as outlined below.

#### Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site;*

Conclusion: A site plan (Exhibits 53(a) and 34(c)) has been submitted showing buildings and other facilities, as required.

(2) *parking is provided in accordance with the Parking Regulations of Article 59-E.*

*The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because:*

(A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or*

(B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: Zoning Ordinance §59-E-3.7 requires, “For a child day care center, one space for every non-resident staff member in addition to the residential parking requirement if applicable and adequate parking for discharge and pick up of children. In this

*instance, the average drop off and pick up space required is one space for every six children.”* Technical Staff determined that, to comply with Zoning Ordinance Article 59-E, 89 parking spaces were required. Exhibit 40, p. 13. As discussed in Part II. D. of this report, Petitioner’s site plan provides for the 60 spaces, and Petitioner requests a waiver of the 29 space shortfall. For the reasons discussed in Part II. D. 6. of this report, that waiver request, which is supported by Technical Staff, should be granted.

(3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: As discussed above, an adequate area for the discharge and pick up of children has been provided, although the daycare provider requires that all parents park their vehicles in the parking area and walk their children to and from the building. Pursuant to the TMP (Exhibit 36(a)), the aftercare children bused in by the County will be met by a Staff member at the bus, which will make a drop-off on the subject site, next to the Annex Building.

(4) *the petitioner submits an affidavit that the petitioner will:*

- (A) *comply with all applicable State and County requirements;*
- (B) *correct any deficiencies found in any government inspection; and*
- (C) *be bound by the affidavit as a condition of approval for this special exception; and*

Conclusion: Petitioner submitted the required affidavit in Exhibit 11.

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use.*

Conclusion: As stated above in the discussion regarding the general standards for a special exception, the use, as conditioned, will be compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

(b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:*

(1) *a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and*

Conclusion: An appropriate Landscaping Plan was submitted as Exhibits 53 (b) and 34(f).

(2) *in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that:*

(A) *the facility will predominantly serve children of an age range that require limited outdoor activity space;*

(B) *the additional density will not adversely affect adjacent properties;*

(C) *additional traffic generated by the additional density will not adversely affect the surrounding streets; and*

(D) *adequate provisions for drop-off and pick-up of students will be provided.*

*The Board may limit the number of students outside at any one time.*

Conclusion: Petitioner proposes a maximum student enrollment of 283 on campus at any one time. Since the site contains 217,795 square feet (5 acres), it more than meets the required minimum of 500 square feet per child ( $217,795 / 283 = 769$  square feet per child, prior to dedication). After dedication, using Ms. Bryant's figure of 197,723 square feet, the site would provide about 698 square feet per child, still well over the 500 square foot per child standard.

(c) *The requirements of Section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in:*

\* \* \*

Conclusion: This section is not applicable.

## D. Other Applicable Standards

### Section 59-G-1.23. General development standards.

(a) *Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The following chart from the Technical Staff Report (Exhibit 40, p. 13), demonstrates compliance with all applicable development standards:

Development Standards	Requirement	Provided		
Minimum Tract Area (§59-C-1.321(a))	Not applicable	217,795 sq. ft.		
Lot Area (§59-C-1.322(a))	20,000 sq. ft.	217,795 sq. ft.		
Lot Width (§59-C-1.322(b)): @ Front of Bldg Line @ Street	100-ft 25-ft	±450 ft. ± 447 ft.		
Yard Requirements (main building): From Street (§59-C-1.323(a)) From Adjoining Lot Side Yards (§59-G-2.37(b)(3))  Rear Yard (§59-C-1.323(b))	30-ft  12-ft (one side) 25-ft (both sides) 30-ft	59 ft  74 ft 221 ft 122 ft		
Yard Requirements (accessory building) (§59-C-1.326): From Street From Rear Lot Line From Side Lot Line	65-ft 7-ft 12-ft	Pavilion 189 ft	Shed (1) 242 ft	Shed (2) 395 ft
Building Height (maximum) (§59-C-1.237)	50 ft.	±24 ft		
Coverage (maximum net lot area) (§59-C-1.328)	30%	10.7 %		
Parking Facility Setbacks (§ 59-E-2.83) Front Yard Side Yard Rear Yard	30-ft 24-ft 30-ft	75 ft. 30 ft. – 222 ft (left/right) 229 ft		
Density Requirements (total students per acre and sq. ft.) §59-G-2.13.1(b)(1)	1 student per 500 sf	217,795 sf or 1 child per 769 sf <sup>4</sup>		

(b) *Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.*

<sup>4</sup> Technical Staff indicated that this calculation would yield a figure of 960 square feet per child. By the Hearing Examiner's calculations, the site will provide 769 square feet per child prior to dedication (217,795 square feet / 283 children). That figure has been substituted in the Table for Staff's figure.

Conclusion: As previously discussed, Petitioner is requesting a parking waiver allowing it to provide 60 parking spaces instead of the 89 that would be required by Code.

Petitioner will be in compliance with all other applicable parking standards. For the reasons discussed, the Hearing Examiner recommends granting the requested parking waiver, as did Technical Staff.

(c) *Minimum frontage* \* \* \*

Conclusion: Not applicable, since none of the listed uses are involved.

(d) *Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: The Planning Board approved Petitioner's Preliminary Forest Conservation Plan (PFCP). Exhibit 44. Since this case must go through subdivision, the Planning Board will review the final forest conservation plan at that time. The following condition has been recommended in Part V of this report:

Petitioner must comply with the conditions of the revised Preliminary Forest Conservation Plan, Exhibit 48, until approval of the Final Forest Conservation Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.

(e) *Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: The subject site is in the Clarksburg SPA, and Petitioner has filed a Preliminary Water Quality Plans (Exhibit 7(c)), as required. The PWQP was approved by the Planning

Board (Exhibit 44), and the Hearing Examiner has recommended a condition requiring compliance therewith and with any final water quality plan.

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

Conclusion: As discussed in Part II.D. of this report, Petitioner seeks to erect a sign for which a permit and possibly a sign variance may be required. The Hearing Examiner therefore recommends the following condition in Part V of this report:

No sign may be posted unless and until Petitioner obtains a permit therefor and a sign variance, if required, and copies of these documents are filed with the Board of Appeals.

(g) *Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: As noted by Technical Staff (Exhibit 40, p. 16),

The proposed child daycare building is being constructed to have a similar bulk, height, materials and textures as the surrounding residential structures. The building proposed is divided into distinctive planes and offsets that make the building appear smaller than actually provided. Additionally, the applicant will retain 1.2 acres of forested area and provide additional landscaping to buffer the parking areas.

The hearing Examiner agrees with Technical Staff's finding that the design, height and bulk of the proposed buildings will be compatible with the neighborhood.

(h) *Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*



Conclusion: As discussed elsewhere in this report, the lighting will not cause glare on adjoining properties, nor exceed the 0.1 foot-candle standard at the side and rear property lines.

**Section 59-G-1.26. Exterior appearance in residential zones.**

*A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.*

Conclusion: As discussed above, the new structures will be designed to be compatible with their surroundings, and will be appropriately landscaped and screened. There will also be suitable pedestrian circulation.

Based on the testimony and evidence of record, I conclude that, with the recommended conditions, the plans proposed by Petitioner meet the specific and general requirements for the proposed use, and that the Petition should be granted, with the conditions recommended in the final section of this report.

**V. RECOMMENDATIONS**

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition S-2759, which seeks a special exception for a child day care center on property located at 22010, 22014 Frederick Road, Clarksburg, Maryland, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, and by the testimony of its witnesses and representations of counsel identified in this report.

2. Petitioner is granted a waiver to allow the number of parking spaces on site to be reduced from the 89 parking spaces which would ordinarily be required to 60 parking spaces.
3. Since the proposed use will require subdivision, in accordance with Zoning Ordinance §59-G-1.21(a)(9), approval of this special exception is conditioned upon approval of a preliminary plan of subdivision by the Planning Board. If changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must request modification of these special exceptions from the Board of Appeals.
4. Petitioner must comply with the terms of its revised Site Plan (Exhibit 53(a) and 34(c)); its Landscape Plans (Exhibits 53(b) and 34 (f)); and its Lighting and Photometric Plan (Exhibit 34(k)).
5. The operation of the child daycare facility is limited to the following:
  - (a) 163 day-care children and 120 school-aged children in the after-school or the summer camp program, for a maximum of 283 children on-site at any one time;
  - (b) 41 staff members on-site at any one time;
  - (c) Hours of operation to be Monday through Friday, 7 A.M. until 6:30 P.M.; and
  - (d) Other activities permitted in its Statement of Operations (Exhibit 34(b)).
6. Petitioner must comply with the terms of its Statement of Operations (Exhibit 34(b)).
7. Petitioner must comply with its Transportation Management Plan (Exhibit 36(a)). If changes in the TMP are made at subdivision, Petitioner must request a modification of this special exception from the Board of Appeals to so reflect.
8. No sign may be posted unless and until Petitioner obtains a permit therefor and a sign variance, if required, and copies of these documents are filed with the Board of Appeals.
9. Petitioner must comply with the conditions of the revised Preliminary Forest Conservation Plan, Exhibit 48, until approval of the Final Forest Conservation Plan by the Planning

- Board, after which time Petitioner must comply with the terms of the Final Forest Conservation Plan.
10. Petitioner must comply with the conditions of the Preliminary Water Quality Plan, Exhibit 7(c), until approval of the Final Water Quality Plan by the Planning Board, after which time Petitioner must comply with the terms of the Final Water Quality Plan.
  11. Petitioner must comply with the stormwater management plan ultimately approved by DPS and adopted at subdivision, and must obtain and comply with sediment and erosion control permits.
  12. Petitioner must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility.
  13. In accordance with Code § 59-G-2.13.1(a)(4), the Petitioner is bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 11, in which Petitioner certified that it will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavits as a condition of approval for the special exception.
  14. In no event may a child be dropped off before a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
  15. All children must be under the direct supervision of a staff member at all times, both inside and outside the building.
  16. The Petitioner shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building, with the exception that Petitioner may use electronic voice amplification for its outdoor puppet show.
  17. The Petitioner shall maintain the grounds in a clean condition, free from debris, on a daily basis.

18. Petitioner must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: November 2, 2010

Respectfully submitted,

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Martin L. Grossman  
Hearing Examiner