

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS**  
**Stella B. Werner Council Office Building**  
**Rockville, Maryland 20850**  
**(240) 777-6660**

**IN THE MATTER OF:**  
**MARTHA B. GUDELSKY CHILD**  
**DEVELOPMENT CENTER, INC.**

Applicant

Rita Regino  
Myrna Peralta  
Bradford Fox  
Federico Olivera-Sala  
Trini Rodriguez  
Anne M. (Nancy) Randall

For the Application

Patricia Harris, Esquire  
Elizabeth C. Rogers, Esquire  
Attorneys for the Applicant

For the Application

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Before: Lynn Robeson Hannan, Hearing Examiner

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OZAH Case No. CU 20-08

**HEARING EXAMINER'S REPORT AND DECISION**

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## **I. STATEMENT OF THE CASE**

Filed on May 29, 2020, the Applicant in this case, Martha B. Gudelsky Child Development Center, Inc. (Applicant or MBGCDC) seeks a conditional use to operate a child day care center on properties located at 8901 and 8907 Colesville Road, Silver Spring, Maryland. These properties are more particularly described as Parcels P959 and P953 in Subdivision 0001 and 0051 (Tax Account Nos. 13-00971462 and 13-00972821) and are zoned R-60.

On September 1, 2020, OZAH issued a Notice of Hearing announcing an October 5, 2020 hearing date. Exhibit 32. The Applicant filed its Pre-Hearing Statement on September 4, 2020. Shortly after, the Hearing Examiner advised the Applicant to send out notice of a proposed parking waiver to all those entitled to a public hearing. The Applicant did so on September 8, 2020. Exhibits 32-35. On September 10, 2020, MBGCDC submitted a request to postpone OZAH's public hearing by one week to October 12, 2020. The Hearing Examiner granted the postponement, issued notice of the new hearing date, and provided additional notice of the parking waiver requested. Exhibit 36.

Staff of the Planning Department issued its recommendation to approve the application subject to seventeen (17) conditions (Exhibit 38, pp. 2-3):

1. The Group Day Care must be limited to a maximum total GFA of 31,000 square feet, a maximum of 180 children at any one time and a maximum of 60 staff persons at any one time.
2. The hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:00 p.m.
3. The Applicant must schedule staggered drop-off and pick-up of children as follows:
  - a. No more than 72 students must be dropped off between the hour of 7:00 a.m. and 8:00 a.m.;
  - b. No more than 108 must be dropped off after 8:00 a.m.;
  - c. No more than 36 students must be picked up prior to 4:00 p.m.;
  - d. No more than 72 students must be picked up between 4:00 p.m. and 5:00 p.m.; and
  - e. No more than 72 students must be picked up after 5:00 p.m.

4. No vehicles may queue within the public right-of-way on Colesville Road while accessing the Site.
5. The Applicant must participate financially for the approved traffic signal redesign at Colesville Road and Dale Drive, as determined by MCDOT's letter dated August 31, 2020.
6. The Applicant must provide bicycle parking spaces in the following configuration:
  - a. Four short-term spaces will be accommodated by inverted-U racks to be distributed evenly near the main building entrances.
  - b. Five long-term bicycle parking spaces will be provided inside the building at the ground floor in a secured room.
7. Trash pick-up will be limited to the hours of 9:00 a.m. and 3:00 p.m. to limit disruptions to the school operations and student safety as well as minimize noise impacts to the surrounding neighborhood.
8. The Applicant may at its discretion allow limited public or community use of portions of the facility provided it does not conflict with any conditions of approval or operations of the Day Care Center.
9. At the time of Preliminary Plan, the Applicant must dedicate right-of-way necessary to provide 60 feet from the right-of-way centerline along the Site's Colesville Road frontage.
10. The Applicant must install five-foot-wide sidewalks along the Site's Ellsworth Drive frontage. The Applicant will plant a minimum of two (2) three-inch native ornamental or shade trees along this frontage.
11. The Applicant must widen the existing sidewalk, as necessary, along the Site's Colesville Road frontage to achieve minimum width of five feet.
12. The Applicant must comply with the Zoning Ordinance, Section 59.6.2.3.D for Car Share Spaces.
13. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Hearing Examiner on the subject application.
14. At time of Preliminary Plan review, the Applicant must provide a revised landscape, lighting and parking facilities plan for Staff review and approval.
15. A minimum of 12 assigned parking spaces must be made available for use by the adjacent Ellsworth Urban Park during non-drop-off and pick-up hours and holidays by the Subject Group Day Care facility use. The time periods and usage of the shared parking spaces as a

formal agreement shall be agreed by M-NCPPC Montgomery County Parks Department and the Applicant.

16. Remove non-native invasive vegetation that could be a safety or health concern.

17. Impacts to Park Trees caused by Applicant's construction will require a Park Permit approval by the Dept of Parks, which may also include replacement of park trees.

The Planning Board held its public meeting on the application on September 24, 2020. The Planning Board modified Condition Nos. 2, 3, 6.a., 7 and 11 (Exhibit 37):

Condition No. 2: The general hours of operation are ~~limited to~~ Monday through Friday, 7:00 a.m. to 7:00 p.m. However, these hours may be extended to 11 p.m. and may also include Saturdays 7:00 a.m. to 11 p.m., without further approval.

Condition No. 6.a: Four short-term [bicycle]spaces will be accommodated by inverted-U ~~to be or~~ Planning Staff approved equivalent to be distributed evenly near the main building entrance.

Condition No. 7: Trash pick-up will be limited to the hours ~~of between~~ 9:00 a.m. and 3:00 p.m. to limit disruptions to school operations and student safety as well as minimize noise impacts to the surrounding neighborhood.

Condition No. 11: The Applicant must widen the existing sidewalk, as necessary, along the Site's Colesville Road frontage to achieve minimum width of five feet, without removal or relocation of the existing utility pole.

MBGCDC filed amendments to its application to reflect comments from the Planning Board hearing on September 30, 2020. OZAH issued a Notice of Motion to Amend on October 2, 2020. Exhibit 53.

The October 12<sup>th</sup> public hearing proceeded as scheduled. MBGCDC presented six witnesses for the application; no one appeared in opposition. At the public hearing, MBGCDC requested revisions to the following conditions recommended by the Planning Board (Exhibit 66):

2. The Group Day Care must be limited to a maximum total GFA of 31,000 square feet, a maximum of 180 children at any one time and a maximum of 60 staff persons at any one time.

3. The ~~general~~ hours of operation childcare are limited to Monday through Friday, 7:00 a.m. to 6:00 p.m. ~~However, these hours may be extended to 11 p.m. and may also include Saturdays 7:00 a.m. to 11 p.m. without further approval~~The hours for community, parental engagement and teacher training activities are limited to Monday through Friday 6:00 p.m. to 9:00 pm. And Saturday 10:00 a.m. to 4:00 p.m.
4. The Applicant must schedule staggered drop-off and pick-up of children ~~as follows:~~ In any given one hour period, the maximum number of vehicles dropping-off children in the morning and picking-up children in the afternoon/evening shall not exceed 70. The Applicant must maintain daily records of the number of vehicles/children picked-up and dropped-off during each hour. The Applicant shall make these records available to the Department of Permitting Services upon request.
  - a. ~~No more than 72 students must be dropped off between the hour of 7:00 a.m. and 8:00 a.m.;~~
  - b. ~~No more than 108 must be dropped off after 8:00 a.m.;~~
  - c. ~~No more than 36 students must be picked up prior to 4:00 p.m.~~
  - d. ~~No more than 72 students must be picked up between 4:00 p.m. and 5:00 p.m.; and~~
  - e. ~~No more than 72 students may be picked up after 5:00 p.m.~~

\* \* \*

13. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code after the final decision of the Hearing Examiner on the subject application; if material changes to the site plan or other plans filed in this case are required at subdivision, Petitioner must file a copy of the revised site and related plans with the Office of Zoning and Administrative Hearings.
14. At the time of Preliminary Plan review, the Applicant must provide a revised landscape, lighting and parking facilities plan for Staff review and approval. After review by the Planning Board, the Applicant must file a copy of the revised plans with the Office of Zoning and Administrative Hearings.

\* \* \*

15. A minimum of 12 assigned parking spaces must be made available for use by the adjacent Ellsworth Urban Park during non-drop-off and pick-up hours and holidays by the Subject Group Day Care facility use. ~~The time periods and usage of the shared parking spaces as a formal agreement shall be agreed by M-NCPPC Montgomery County Parks Department and the Applicant.~~

The Hearing Examiner referred these and other revisions suggested during the hearing to Planning Staff and the Applicant for comment and left the record open until October 23, 2020 to receive comments. Exhibits 71-84. These comments were timely submitted and the record closed on October 23, 2020.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, governed by the conditions imposed in Part IV of this Report and Decision, satisfies all of the criteria for approval in the Zoning Ordinance.

## **II. FACTUAL BACKGROUND**

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

The subject property is located on the east side of Colesville Road (Md. Rte. 29) just north of its intersection with Spring Street. Staff advises that the property consists of approximately 2.02 acres and is improved with the former Silver Spring Library and associated parking. Exhibit 38, p. 3. The site has one access point from Colesville Road, which is a one-way drive aisle across the entire southern portion of the property to Ellsworth Drive. There is a full-movement access from Ellsworth Drive into an existing parking area on the northern end of the site. *Id.* The western border of the property (along Colesville Road) consists of a large lawn and landscaping, which connects to the adjacent Ellsworth Urban Park (owned by the Maryland-National Capital Park and Planning Commission) to the north. According to Staff, in the past, thirty parking spaces in the existing parking area have informally been reserved for users of the Ellsworth Park. *Id.*

A view of the existing building (from Colesville Road) and an aerial view of the property (included in the Staff Report) are shown on the following page. Exhibit 38, pp. 4-5.



View from Colesville Road (Exhibit 38, p. 5)



Aerial View of Subject Property  
Exhibit 38, p. 4



## B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and then characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). The proposed use is then assessed to determine if it is compatible with this character.

Staff and the Applicant agree on both the boundaries and character of the surrounding neighborhood (*Id.*, pp. 5-6, shown in blue below):

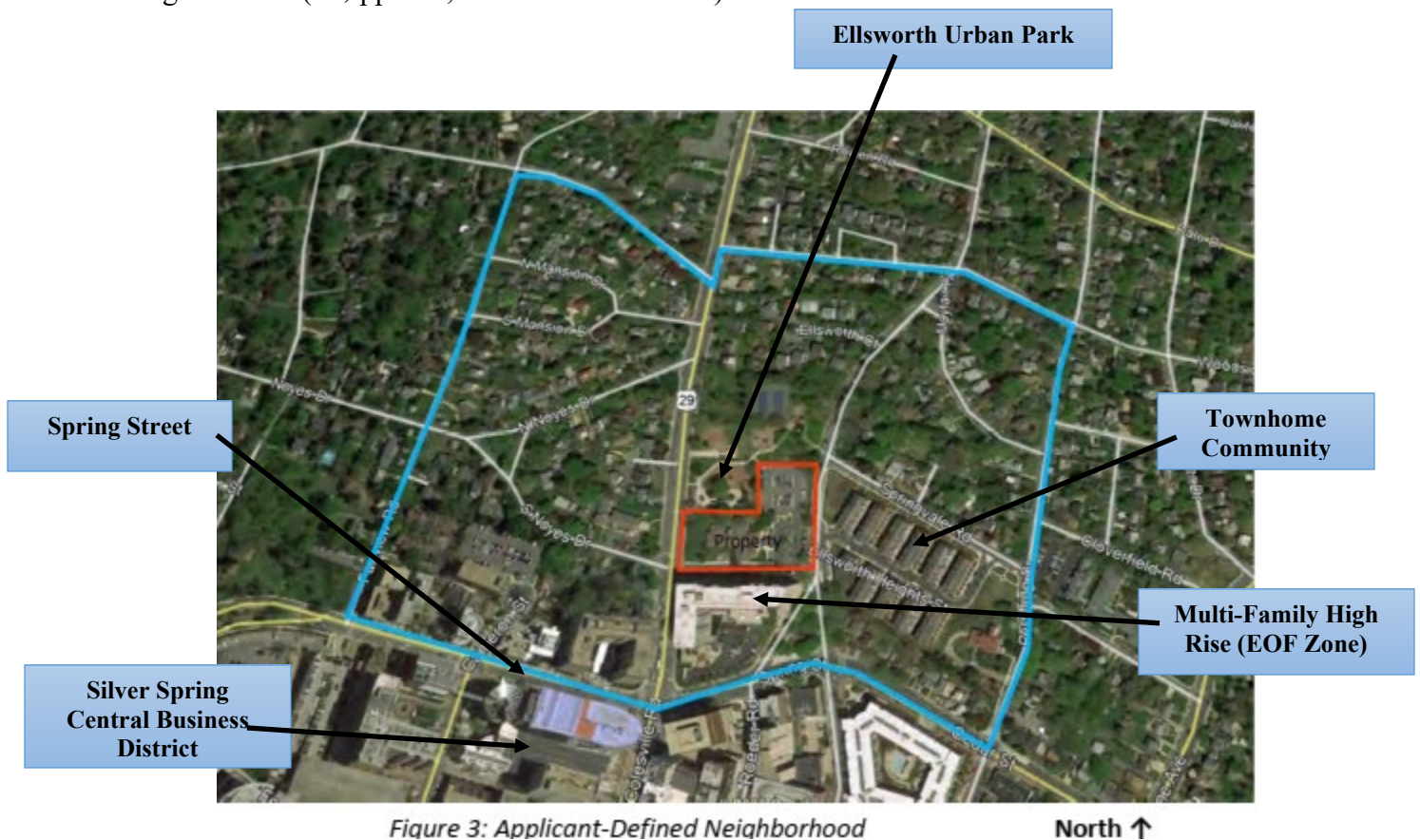


Figure 3: Applicant-Defined Neighborhood

North ↑

Staff advises (*Id.*, p. 5):

The Applicant-defined Neighborhood ... which is supported by Staff, is generally bounded by Woodside Parkway to the north, Spring Street to the south, Pershing Drive to the east, and Fairview Road to the west. The Neighborhood is composed of a mix of detached houses in the R-60 Zone, a recent townhome community in the RT-12.5 Zone, a series of high-rise apartment buildings and mid-rise commercial buildings, including a portion of the United Therapeutics campus in

the EOF-3.0 H-100 Zone. The Silver Spring Central Business District (CBD) is located just south of the defined boundary.

Staff reports that there are several conditional uses (formerly special exceptions) in the surrounding area. Staff distinguished these from the proposed use because it found that most of those in the area were professional and medical offices rather than daycare facilities. (*Id.*, p. 6.) The conditional uses include (*Id.*):

- CBA1589; 8807 Colesville Road; Apartment Hotel.
- S712; 1000 Noyes Drive, Non-residential professional office (attorneys and public accountant).
- S249; 8915 Colesville Road, Operation of a boarding house.
- CBA2925; Boarding House.
- S2366; 8808 Colesville Road, Office, professional, non-residential
- S988, 8615 Springvale Road, continued use of an existing Accessory Apartment in a private dwelling.
- CBA2164; Off-street parking in connection with a commercial use.
- S1065; 8613 Cedar Street, Non-residential professional office (law office).
- CBA2949; Medical Practice Office.
- S2621; 8607 Cedar Lane, Use of a non-residential home for psychologist offices.
- S2673; 8603 Cedar Street, Non-Resident Professional Office (Attorney).
- S441; 1020 Noyes Drive, Use of a residence for a home occupation (clock repair).
- S808; 717 Pershing Drive; Non-resident professional office (medical practitioner).
- S1376; 8935 Colesville Road, Medical Practitioners' Office for use of other than a resident of the building (dental). Case was revoked by the Board of Appeals on March 13, 2017 but was reconsidered and rescinded on May 8, 2017 due to there being a new owner of the property (successfully transferred).
- S2655; 1111 Spring Street; Retail establishment in an office building (Independent Drug Store - Service Pharmacy).

The Hearing Examiner agrees with the delineation and characterization of the surrounding area offered by the Applicant and Staff. The use has a visual impact on properties to the rear and across Colesville Road, and a traffic impact on the homes who must use Colesville Road within the boundaries shown. The character of the neighborhood is clearly somewhat eclectic, with single-family detached homes in the northern portions, transitioning to townhomes and a multi-family high-rise approaching Spring Street and the Silver Spring Central Business District. The conditional uses listed are primarily home-based or small professional practices or residential uses.

### **C. Proposed Use**

Ms. Rita Regino testified that she is the President of the Martha B. Gudelsky Child Development Center (MBGCDC). T. 21. The Gudelsky children chose this project to honor their mother because she lived her entire adult life only blocks away on Colesville Road. All children in her family attended the local public schools. T. 23. In 2005, Mrs. Gudelsky requested that the family identify a site for a childcare center in Silver Spring. She had long been part of the community and knew of the need for affordable childcare in the area. When the County requested Requests for Proposals (RFP) for the site of the old Silver Spring library, the family believed it was perfect for the childcare center, as it would preserve the existing building (designed in the 1950's), with which they were all familiar. T. 23-24.

MBGCDC proposes to adapt the existing building for a child day care center with up to 180 children and 60 staff. It plans to construct a 12,090 square-foot addition on the eastern side of the existing building (fronting Ellsworth Drive), bringing the total floor area of the center to 30,671 square feet. A 6,752 square-foot play area will be located northwest of the existing building and the proposed addition, adjacent to the Ellsworth Urban Park. MBGCDC provided architectural perspectives that show the building from Colesville Road (Exhibit 38(g)) and from Ellsworth Drive, (Exhibit 38(h), both on the next page).

#### **1. Conditional Use Site Plan**

An excerpt from the conditional use site plan (Exhibit 68(a)) is reproduced on page 13 and summarized in this Part.

##### **a. Access and Circulation**

*i. In General.* MBGCDC's expert in transportation planning, Ms. Nancy Randall, described the site circulation. When the library was in operation, there was one ingress-only access from

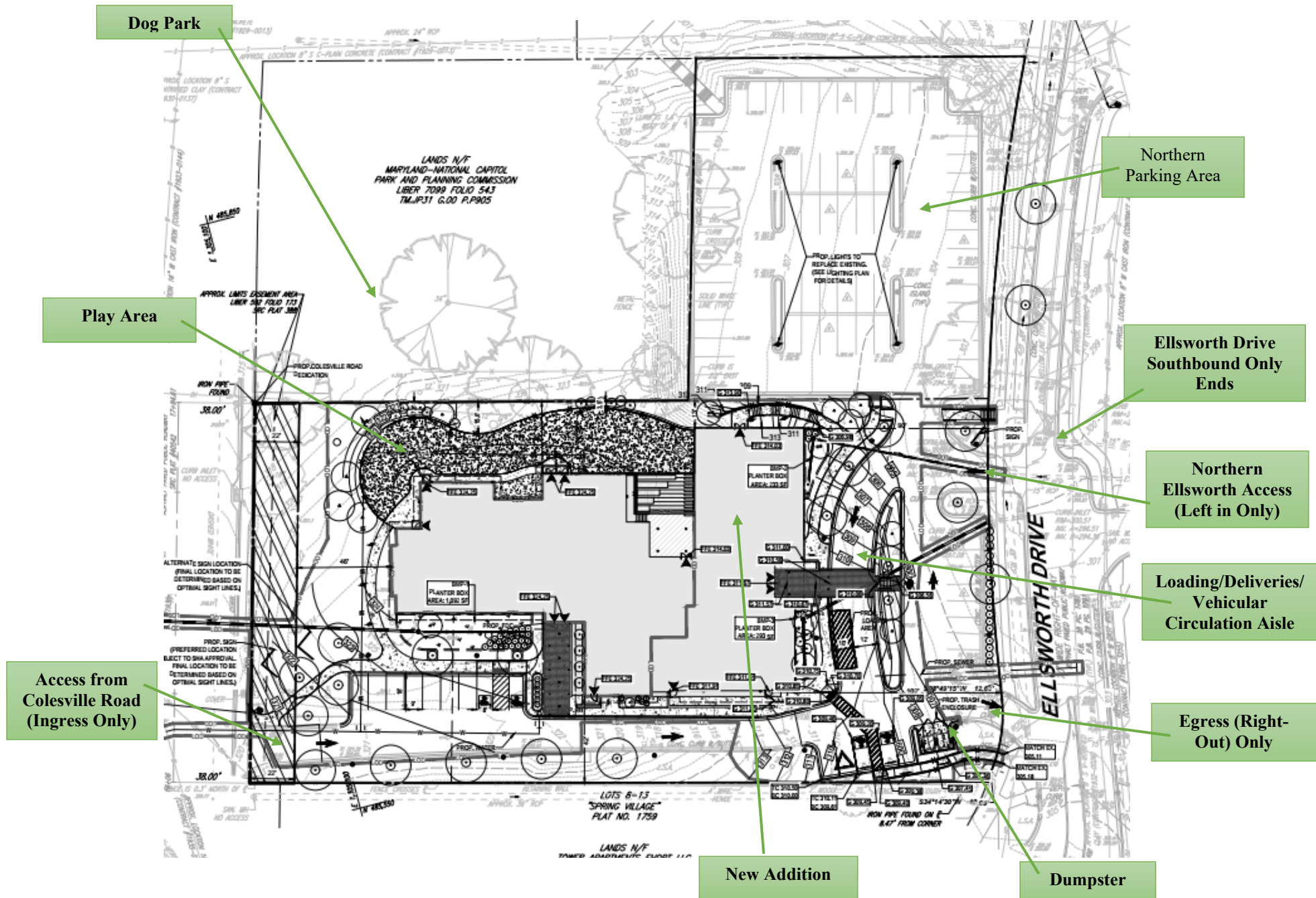


**Perspective from Colesville Road  
Exhibit 38(g)**



**View from Ellsworth Drive  
Exhibit 38(g)**





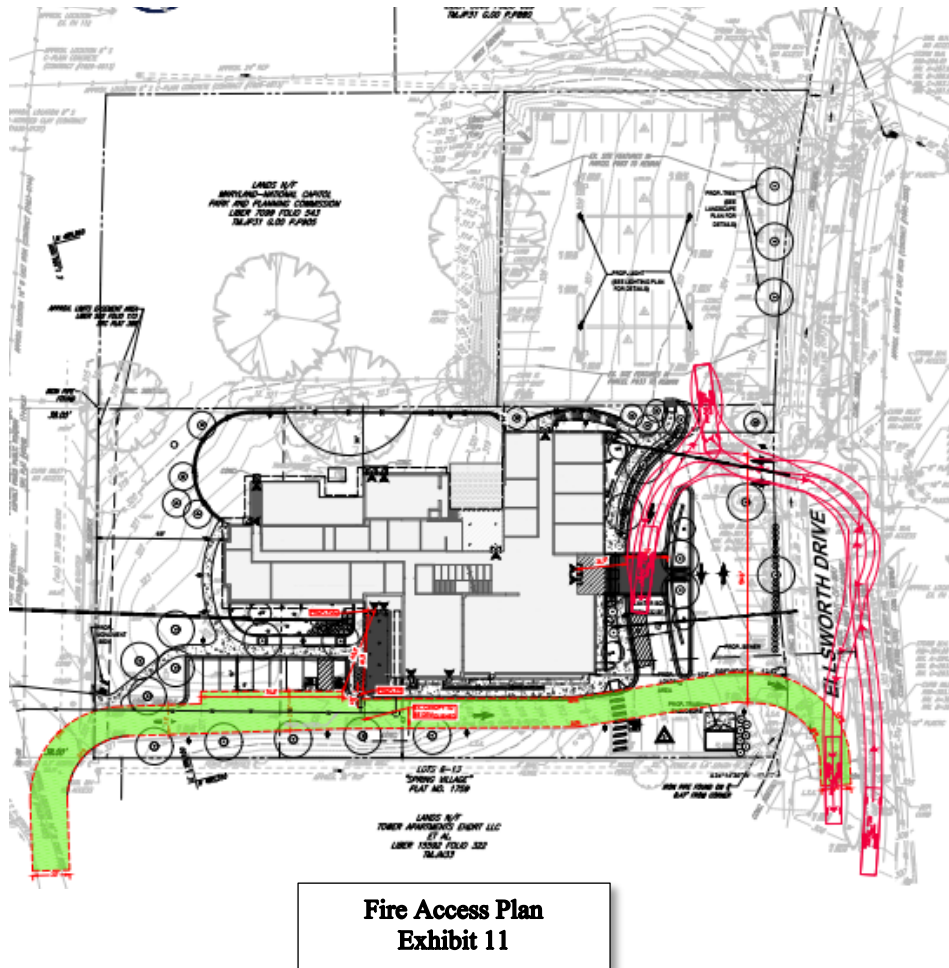
Colesville Road. The northern access on Ellsworth Drive was full movement, or inbound and outbound. North of this access, Ellsworth Drive is southbound only. Access to the townhomes across Ellsworth Drive is restricted to residents only. For library visitors, the full movement access along Ellsworth Drive did not make sense because left turns onto Ellsworth cannot be made and access to the townhome community is prohibited. T. 153-158. The Applicant proposes to make the northern access point on Ellsworth left-in only for northbound vehicles. This will prevent day care patrons from cutting through the adjacent community. T. 155-156. The southern egress on Ellsworth Drive will be right-turn out of the site only. Parking closest to Colesville Road will be reserved for teachers and visitors so it does not reduce the amount of space available for queuing on the property. T. 157.

*b. Fire Access.*

Mr. Bradford Fox, the Applicant's expert in civil engineering, described fire department access to the site. The primary fire access will be from Colesville Road. The Applicant will remove an existing canopy that overhangs the drive aisle connecting the Colesville access and Ellsworth Drive egress points. Fire trucks can enter from Ellsworth and proceed towards Ellsworth Drive. The secondary fire access is from Ellsworth Drive. A fire truck may move directly from the access point into the drive-through area. The truck must back up to exit the site from that location. The need to back-up to exit is a common scenario and was not an issue because this is the secondary fire access. T. 76-78. MBGCDC submitted the fire access plan (Exhibit 11, on the following page).

*c. Pedestrian Circulation.*

Staff advises that the sidewalks along Colesville Road and Ellsworth Drive are substandard widths. Both are a width of four feet; the sidewalk along Colesville Road has no buffer between the sidewalk and the road. Exhibit 38, p. 11. There is a 9-foot buffer between the sidewalk on the



east side of the property and Ellsworth Drive. *Id.* Staff and the Planning Board recommend a condition of approval that requires the Applicant to widen both sidewalks to five feet and plant two additional trees along Ellsworth Drive. *Id.* After the public hearing, the Landscape Plan was revised to locate these trees on-site (Exhibit 84).

*d. Deliveries, Loading and Trash Pick-Up.*

Mr. Fox testified that there will be one loading space in the through lane adjacent to the entrance on the Ellsworth side of the building. The lane is wide enough to permit a vehicle to pass around a truck when it is unloading or loading at that location. They found that the best location for the dumpster access was in the southeast corner of the site. T. 85.

## 2. Parking and Parking Waivers

MBGCDC intends to “retain and reconfigure” portions of the existing parking area fronting

Ellsworth Drive. Exhibit 38, p. 9. Fifteen spaces will be lost due to the new building addition, dumpster, and pedestrian walkways. Seven new spaces will be added in the southwest corner of the site. When the new spaces are factored with the displaced spaces, the total on-site parking is 89 spaces. Exhibit 38, p. 12.

Staff recommended a condition of approval requiring MBGCDC to set aside at least 12 spaces for the dog park users at times to be determined. Staff explains (*Id.* at 12):

When the Site served as the Silver Spring Branch of the Montgomery County Library System, it also provided parking for the adjacent Ellsworth Urban Park. For a period of approximately 30 years, the public was provided free parking through an agreement with Montgomery County Libraries and M-NCPPC. As conditioned, a minimum of 12 assigned parking spaces must be made available for use by the adjacent Ellsworth Urban Park during non-drop-off and pick-up hours and holidays by the Subject Group Day Care facility use. The time periods and usage of the shared parking spaces as a formal agreement shall be agreed by M-NCPPC Montgomery County Parks Department and the Applicant. The assigned spaces will be clearly marked with signage that indicates when these spaces can be used by patrons of the park.

The Applicant proposes to provide nine bicycle parking spaces on the property. Four will be short-term spaces located at the entrances; the balance will be five long-term spaces inside a secure room in the building. *Id.*

#### **a. Waiver of Minimum Number of Spaces**

Staff calculated that the Zoning Ordinance requires 93 automobile parking spaces for a day care center of this size. Zoning Ordinance §59.6.2.4.B. The site will have 89 spaces, four spaces under the required amount. Exhibit 38, p. 12. MBGCDC seeks a waiver of four spaces from number of on-site spaces required. Exhibit 69.

#### **b. Parking Lot Landscaping Requirements**

The Applicant also seeks three waivers from the landscaping requirements for conditional use parking facilities contained in Section 59.6.2.9.C, which governs conditional use parking lots with more than ten spaces. The three requested waivers are from (Exhibit 65):



1. The requirement that a minimum of 5% of the parking area must be covered with landscaped islands consisting of at least 100 square feet each (Section 59.6.2.9.C.1);
2. The requirement that at least 25% of the parking area be covered by tree canopy after 20 years growth (Section 59.6.2.9.C.2);
3. The requirement that the parking be screened by a 6-foot wide perimeter landscaping including a 3-foot hedge and canopy trees planted every 30 feet.

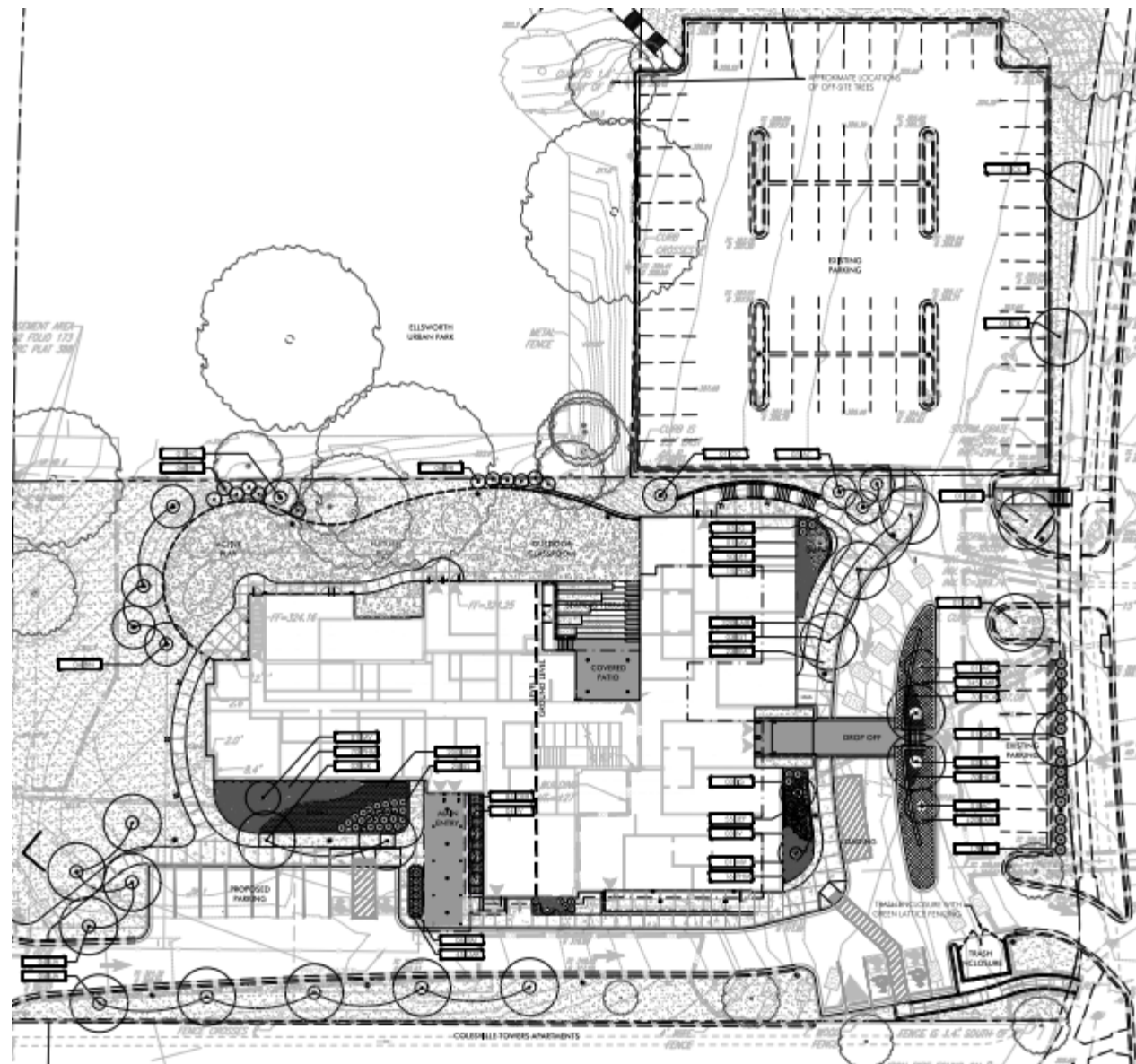
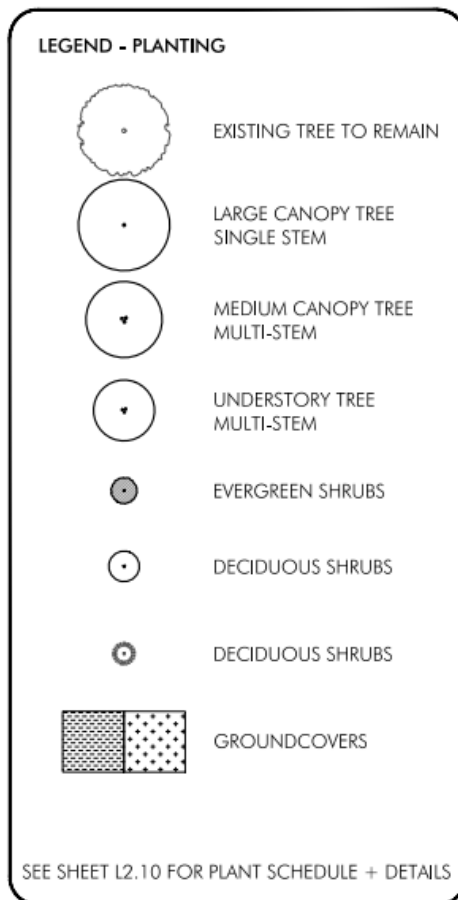
### **c. Minimum Parking Setback**

The Zoning Ordinance requires that the minimum side parking setback equal the minimum rear setback required for the detached house in the relevant zone. For this property, the minimum parking setback is 16 feet. Exhibit 38, p. 23; *Zoning Ordinance*, §59.6.2.5.K.2.b. The two side yards of this property are the north and south sides, neither of which meet the 16-foot setback. Exhibit 65. Staff advises that there is no change from the existing parking setbacks along these sides. Exhibit 38, p. 23.

### **3. Perimeter Site Landscaping, Lighting and Signage**

MBGCDC proposes to retain and enhance existing landscaping on the property. An excerpt from the Landscape Plan (Exhibit 84) is shown on the next page. The Applicant's expert in landscape architecture, Ms. Trini. Rodriguez, testified that the project's overall goal is to meet the programmatic needs of the day care center while maintaining the existing character of the site, the surrounding community, and the adjacent parks as well as meet the requirements of current regulations such as forest conservation and the Zoning Ordinance. T. 128.

According to Ms. Rodriguez, the landscaping is designed to enhance the existing building and its adaptive reuse. One characteristic they wanted to maintain is the large lawn area along Colesville Road. While they had to add parking spaces in the southwestern corner of the site, they have "bookended" the building with additional plantings to screen the parking spaces in the southwest corner and the playground on the northern portion of the site. T. 129-130. This frames the building façade as the centerpiece of the view from Colesville Road. T. 130.



Excerpts from Landscape Plan  
Exhibit 84

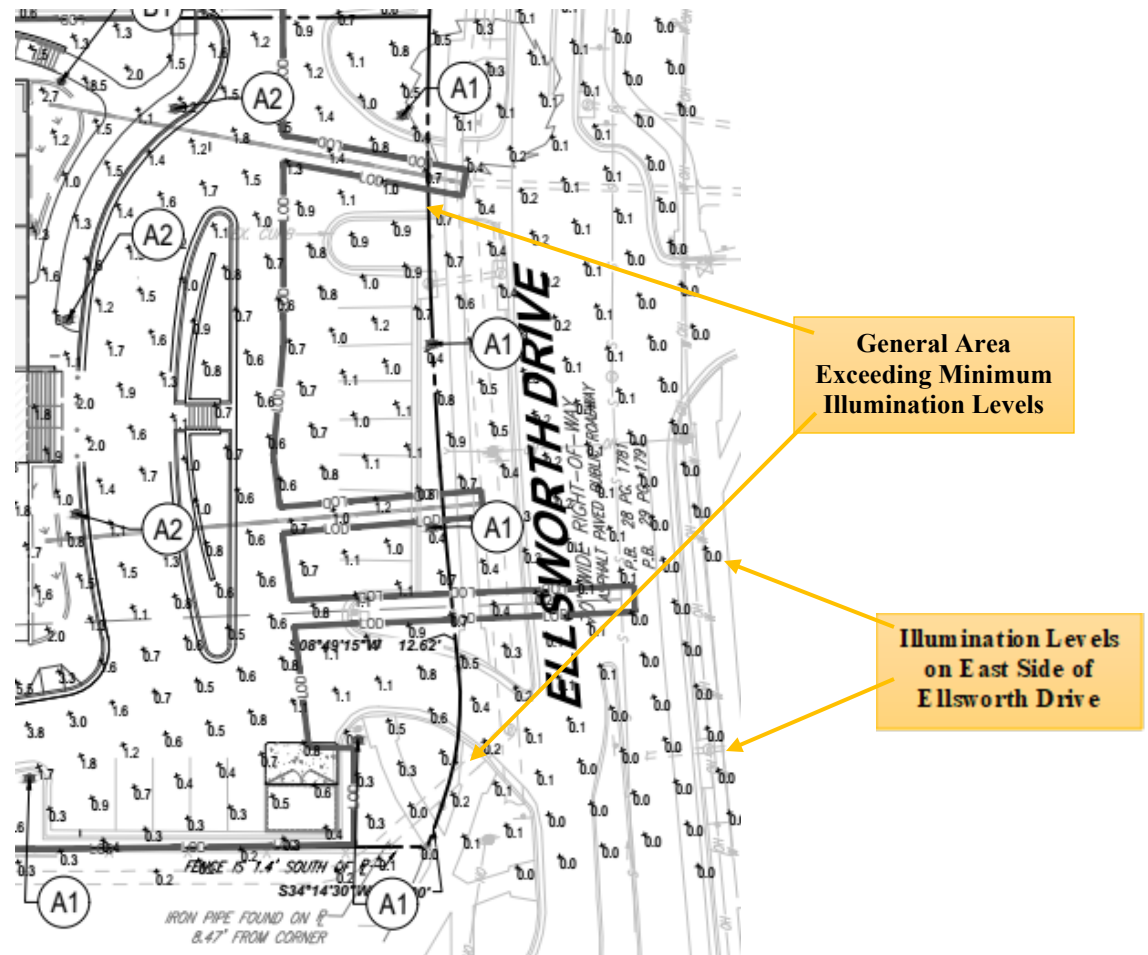
The Applicant also proposes additional planting along the southern property line and Ellsworth Drive. New trees will be planted along the southern drive aisle and landscaping is added along the along Ellsworth Drive, with canopy trees along the northeastern edge of the parking area. In her opinion, the new landscaping enhances what exists today.

*b. Lighting and Waiver from Illumination Levels.*

Proposed lighting for the facility includes nineteen 16-foot high pole lights along the perimeter and within the parking area, six 3.5-foot high bollard lights along pedestrian walkways, and eight wall-mounted lights on the building perimeter. Exhibit 44. It will necessitate a waiver of the illumination levels permitted by the Zoning Ordinance, which caps on-site illumination for this property at 0.1 footcandles at the property line. *See, Zoning Ordinance, §59.6.4.4.D.* The photometric study (Exhibit 16, excerpt shown on the following page) shows illumination levels along a portion Ellsworth Drive are 0.7 - 0.8 footcandles.

*c. Signage*

MBGCDC proposes two monument signs—one fronting Colesville Road and one along Ellsworth Drive. MBGCDC's expert in architecture, Mr. Frederico Olivera-Sala, testified that the sign along Colesville Road will be V-shaped. The one along Ellsworth Drive is a flat version of the V-shaped sign. There will be additional signage on both the Ellsworth Drive and Colesville Road facades that will consist of channel pin lettering. T. 122. If the State Highway Administration does not approve their preferred location of the monument sign along Colesville Road, the Applicant has shown an alternative location just inside the dedication line along Colesville Road. T. 123. MBGCDC submitted details of the monument signs, shown on pages 20 and 21.



Photometric Study (Above)  
Exhibit 16



Sign Perspective from  
Colesville Road  
Exhibit 68(b)





**Sign Perspective from Ellsworth Road  
(Ex. 68(b))**

#### **4. Operations**

The daycare center will operate between the hours of 7:00 a.m. and 6:00 p.m.<sup>1</sup> Exhibit 74. Ms. Peralta explained that staffing is based on the parent's arrival times, which they won't know enrollment. T. 54. In the evening, Ms. Peralta testified that 20% of the children have left by 4:00 p.m. and 40-50% have gone by 5:00 p.m. At that time, they consolidate classes so they can release teachers. T. 52. At the public hearing, Ms. Peralta requested that they have the flexibility to enroll children at age six weeks, rather than at 3 months old as stated in the application. T. 27.

In addition to day care, CentroNia operates non-day care support services in the evening. These include parent engagement, education, and activities as well as teacher training. The center will remain open for parental education, teacher training, and community activities from 6:00 p.m. to 9:00 p.m., Monday through Friday, and 10:00 a.m. to 4:00 p.m. on Saturdays. She clarified that 30-40 percent of their parents attend these activities. T. 39. According to Ms. Peralta, that would

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<sup>1</sup> Initially at the public hearing, the Applicant requested the flexibility to provide day care until 11:00 p.m. T. 33-38. It later withdrew that request. T. 198.

translate into approximately 70 to 75 people attending these activities. T. 39. Parent meetings and Staff meetings are each approximately two to three times per month. They also get requests from the community to use the facility for community activities. T. 40. Use of the facility by the community incorporates their mission to engage the community and is part of their childcare licensing requirement. T. 41

#### **D. Environmental Issues**

Staff advises that there are generally no environmentally sensitive resources on the subject property, including endangered species, wetlands, or stream buffers. Exhibit 38, p. 3.

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

No one in opposition to this case appeared at the public hearing. After the hearing concluded, OZAH received a letter from the Seven Oaks Evanswood Community Association (SOECA) asserting that the Applicant should pay for traffic calming devices on Ellsworth Drive (Exhibit 77):

Unfortunately many drivers use Ellsworth Drive, a wide four-lane equivalent, straight stretch of road as a speedway as they try to avoid Colesville Rd. Traffic. In spite of increasing development in and near downtown Silver Spring and Ellsworth Dr.'s status as a bicycle route, this secondary residential street has never been treated with traffic calming measures.

SOECA believes that the conditional use would be a "major commuting route for a significant number of staff" associated with the daycare center. As a result, SOECA requests the Applicant contribute to traffic calming devices along Ellsworth Drive in coordination with the Montgomery County Department of Transportation (MCDOT). *Id.*

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General

standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a child Day Care Center for over 30 children. *Zoning Ordinance* §59.3.4.4.F. These findings, and the Hearing Examiner's analysis of whether they have been met, are stated below.

#### **A. Necessary Findings (Section 59.7.3.1.E.)**

Section 59.7.3.1.E contains the general findings for approval of a conditional use. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:<sup>2</sup>

##### ***E. Necessary Findings***

##### ***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

##### ***a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

Conclusion: Staff and the Applicant agree that there are no previous approvals applicable to the subject property. Having no evidence to the contrary, the Hearing Examiner so finds. Therefore, this standard is inapplicable to this application.

##### ***b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;***

Conclusion: This subsection requires an analysis of the development standards of the R-60 Zone contained in Article 59-4; the specific use standards for Child Day Care Centers for over 30 Persons contained in Article 59-3; and the development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B,

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<sup>2</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

C, and D, respectively). Based on that analysis, the Hearing Examiner finds, as did Staff (Ex. 38, pp. 17-24), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

***c. substantially conforms with the recommendations of the applicable master plan;***

Staff advises that the *2000 North and West Silver Spring Master Plan* guides development of this property (Master Plan or Plan). Exhibit 38, p. 9. They advise that there are no site-specific recommendations for this property in the Plan, although it does provide guidelines for conditional uses (formerly special exceptions), particularly for highly visible sites. Staff concluded that it met the guidelines in the Plan (Exhibit 38, p. 10):

The former library building, and the accompanying addition have a one- to two-story residential scale. The addition extends the craftsman/sonian architectural character of the original building, with stone and brick walls, floor-to-ceiling windows, and deep hipped-roof overhangs.

The landscape and lighting design will remain in keeping with the existing character of the site, with new screening for the parking lot, which will be reconfigured internally to accommodate the addition, and not expanded. The application proposes one sign near the main site entrance on Colesville Road, which is the opposite side of the site from the neighborhood to the east.

The Applicant has designed the site circulation to retain a minimal traffic impact on the adjacent single-family neighborhood across Ellsworth Drive.

The Master Plan also recommends “community facilities to meet the human service, recreation, security, educational, and other needs of the diverse community” (p. 4) The proposed Group Day Care facility will provide a much-needed use for Montgomery County residents, including residents and workers in the nearby Central Business District and surrounding neighborhoods.

Ms. Trini Rodriguez, the Applicant’s expert in land planning, agreed that there are no site specific recommendations in the Plan, but noted that the Plan identified it as an institutional use. T. 134. According to her, the Master Plan characterizes the neighborhood as “[A] variety of local services support daily community life: retail and other small businesses, religious institutions, schools, parks and recreation facilities, and gathering places for community activities.” T. 134;



*Master Plan*, p. 15. She opined that the proposed use fits within this description. In her opinion, the proposed use will stabilize the existing residential character of the area because having an empty facility is never good for a community. The project retains the existing building and the proposed additions have been designed to maintain the scale and character of the existing building. T. 135. The new development will improve environmental conditions by adding stormwater management for the addition. It also retains the existing transitions to the park areas to the north. Because this is an adaptive reuse, they will not add street tree planting, but they are adding trees recommended by Staff along Ellsworth Drive. T. 135.

Conclusion: The Plan describes the character of north and west Silver Spring as compactly developed, well maintained, and well-established residential neighborhoods. *Plan*, p. 15. The overarching goal of the Plan is to preserve this residential character by reinforcing its “livable qualities”, including stability, scale, convenience, and nearby natural resources, while at the same time adapting to changes that could enhance those qualities. *Id.*, pp. 15-16. Among the more targeted goals, the Plan called for protecting residential neighborhoods from commercial and through traffic and enhancing pedestrian access to shopping, transit, and services. *Id.*, p. 4. Guidelines for conditional uses include (1) increased scrutiny on highly visible sites such as major arterial roads, (2) maintain a residential appearance to the extent feasible, and (3) minimizing non-residential characteristics, including size and number of signs, visibility and amount of parking, traffic generation and intrusive lighting. *Id.*, p. 43.

The Hearing Examiner agrees with Staff and the Applicant that the proposed day care center substantially conforms to the recommendations of the Master Plan. The proposal does an excellent job preserving the existing character of the building by nestling the addition into the grade along Ellsworth Avenue. Thus, the addition along Ellsworth Drive is not visible from the

most “highly visible” perspective from Colesville Road. The addition uses materials mirroring those of the original building. While a small amount of parking has been added along Colesville Road, the Applicant has used landscaping to screen that and the play area, while maintaining much of the large lawn. Testimony from the Applicant’s transportation planner indicates that the parking provided is more than adequate to handle parent drop-off and pick-up, as well as Staff parking. Thus, loading, fire access, and drop-off and pick-up can occur on the site without spilling over into the residential neighborhood. Finally, the Applicant has greatly reduced the possibility of cut-through traffic in the confronting townhome community by making the northern entrance on Ellsworth Avenue left-in only. For these reasons, the Hearing Examiner finds that the application meets the principal and specific goals for the Master Plan and the guidelines for conditional uses.

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;***

Staff concluded that the proposed day care center meets this standard (Exhibit 38, p. 25):

The existing building has always contained a non-residential use and physical changes to the outside of the Property include appropriately styled architecture and materials. The Master Plan includes recommendations to provide community facilities to meet the human service...educational and other needs of the diverse community. Furthermore, as conditioned, the application also provides additional plantings to help improve the screening of the existing parking lots. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood.

Ms. Rodriguez testified that the use is compatible with the character of the area’s transition from residential homes to the Silver Spring Central Business District. T. 133. Mr. Olivera-Sala testified that he wanted to enhance “glory” of the building’s original architecture in a new form in 2020, using a “seamless” transition to the new addition. T. 111. The articulation and fenestration of the new addition is designed to do this. T. 114-115. The Applicant has used materials of stone and brick, so the building reads horizontally like a ranch house. They’ve used the same technique

for the Ellsworth Drive frontage, again to create the appearance of an extended low structure. T. 116-118.

Ms. Randall opined that traffic and circulation would be compatible with the surrounding area. In her expert opinion, the parking area has enough capacity to accommodate parent drop-offs and pick-ups during the peak hour on-site without impacting adjacent roads. When determining the number of drop-offs and pick-ups the site could handle, Ms. Randall used a conservative estimate of a 20 minutes turn-around time for a parent to park, enter the facility, drop off their child, return to their vehicles and exit the property. Forty spaces are reserved for Staff, as typically 20% of the Staff use public transportation. Based on the 20-minute turn-around time, Ms. Randall opined that the remaining 49 spaces can turn over three times in one hour. In her opinion, parking capacity for the property is approximately 150 spaces in one hour. T. 160-162.

According to Ms. Randall, the best evidence of the number of trips that will visit the site in the morning and evening peak hours is the Table of Auto Driver Trips in the Traffic Study (Exhibit 26) . This table separates the vehicle trips from the transit trips and assigns them to the road network. It shows that 63 vehicles will enter the site and 55 vehicles will exit the site during the morning peak hour. During the evening peak hour, 56 will enter and 63 will exit the property. T. 170-176.

At the public hearing, MBGCDC proposed a condition limiting parent drop-offs and pick-ups to 70 vehicles per hour. In Ms. Randall's opinion, this will more than serve the population. This proposed condition limits the number of vehicles per hour to half that capacity. T. 161-163. Ms. Randall clarified that the condition applies to 70 vehicles on the site at one time, but not a limit on the number of inbound trips in the morning and outbound trips in the evening. T. 187-188. From a transportation perspective, it is better to limit pick-up and drop-off by the number

of vehicles rather than the number of children in each vehicle. T. 159-160. Staff found MBGCDC's "augmented" condition to be acceptable, and it is made a condition of approval, as modified slightly during review, in Part IV of this Report. Exhibit 80.

Ms. Randall also opined that queuing during parent drop-offs and pick-ups would be accommodated on-site and would not spill over onto adjacent roads. To ensure the free flow of vehicles entering from the Colesville Road access, the spaces in front of the building on that side will be reserved for teachers and visitors so they will not be backing out during peak drop-off times. The distance between the access point from Colesville Road and the eastern edge of the proposed building is approximately 250 feet. That distance provides stacking for 10-12 spaces along this drive aisle. T. 158. Once vehicles reach the eastern edge of the building, there is free movement to the drop-off area in front of the Ellsworth side or into the northern parking area. T. 159.

In Ms. Randall's opinion, access to the site from Colesville Road would be safe and vehicles on southbound Colesville Road will not need to queue to make a left turn into the site in the morning. She provided supplemental information on queuing at the site driveway and Colesville and Noyes Roads. Exhibit 62. There is very little northbound traffic during the peak hour that would prevent southbound cars from turning left into the site. In the morning, the leftmost southbound lane on Colesville essentially becomes a left turn lane for the Spring Street intersection. There is a queue there, but it is not long and permits southbound traffic to turn left into the site driveway. T. 190. If there is a delay in site circulation, there is enough space for cars to stack on the site without overflowing onto Colesville Road. T. 190-191.

Ms. Randall also summarized the accident history for the site access. In 2017 through August 2020, there have been four accidents near the driveway access. There is a residential

driveway near the existing access to this site. In some cases, Ms. Randall was unable to determine whether the accident involved the site access or the other residential access. None of the accident history reveals a trend of conditions that cause accidents to occur. T. 192-193.

The Hearing Examiner referred SOECA's request for traffic calming on Ellsworth Drive to both the Applicant and Planning Staff for comment. Staff responded that the Montgomery County Department of Transportation (MCDOT) requires a speed study be performed prior to approval of traffic calming measures on County streets and that the issue would be addressed during review of the preliminary plan. Exhibit 80. The Applicant disagreed that the day care center would add additional traffic along Ellsworth Drive:

The SOECA letter states that the Ellsworth Drive will be "a major vehicular travel route for parents and caregivers dropping off and picking up" children from the child care center. This is not correct. As the Wells Traffic Report indicates (page 27, Figure 3-4), in connection with both the morning drop-offs and evening pick-ups, no trips were assigned to southbound Ellsworth Avenue north of the site. This distribution, as well as the trip assignment, were reviewed and approved by MNCPPC Staff, MC-DOT Staff and SHA. In addition, the existing volume of traffic on southbound Ellsworth Avenue is minimal, as indicated by the attached Existing Traffic Count exhibit (found in the Appendix to the Traffic Report) showing a total of 37 southbound trips on Ellsworth Avenue during the morning peak hour.

SOECA's contention that the center will contribute to additional traffic on Ellsworth Avenue is speculative and without any basis in evidence.

Conclusion: Many of the guidelines for conditional uses in the Master Plan are intended to ensure compatibility with the surrounding residential character of the area. For the same reasons that the proposed use complies with the Master Plan, the Hearing Examiner finds that it will be harmonious with the neighborhood "in a manner consistent with the Plan." In addition to the factors in Master Plan conformance, the Hearing Examiner agrees that additional compliance with current stormwater management standards will reduce any negative impact from the existing use.

The enhanced landscaping better screens the existing parking area, and the widened sidewalks will improve pedestrian safety and access.

Under the Master Plan guidelines for conditional uses, and for the purpose of assessing compatibility in general, traffic impacts of a proposed use on the surrounding area must be examined. From this record, the Hearing Examiner finds that traffic generated by the day care center will not have an adverse impact on the area or alter its existing residential character. MBGCDC presented expert testimony that traffic during peak operations may be accommodated on-site and will not impact neighboring residential streets or cause queuing problems on Colesville Road. The accident history of the intersection of Colesville Road and Noyes Drive supports this finding.

The Hearing Examiner agrees with the MGBCCDC that there is little to support SOECA's position that traffic from the day care center will exacerbate speeding on Ellsworth Drive. The trip distribution in the traffic study support a finding that it is a major commuter route and the testimony at the public hearing contemplated that traffic entering the site would be northbound on Ellsworth Drive and make a left turn into the center. The northern Ellsworth access has been made inbound only to prevent traffic cutting through the confronting townhome community. From this record, the Hearing Examiner finds that SOECA's assertion is too speculative to be addressed in this proceeding.

At the public hearing, Ms. Peralta requested that the Applicant be allowed to enroll children beginning at 6 weeks old rather than at three months of age as stated in their original application. The Hearing Examiner agrees that the age of the children enrolled will not change the operation of the facility and finds that the use with children 6 weeks of age will be compatible with the neighboring area. With the conditions imposed in Part IV of this Report, the Hearing Examiner

finds that the proposed use will be compatible with the surrounding area in a manner consistent with the Master Plan.

***e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;***

Staff concluded that the application meets this requirement:

Although approval of this Application will increase the number of conditional uses in the study area, the proposed day care will not affect the area adversely or alter the area's predominantly residential nature. The day care will replace the former library use which previously functioned with a relatively similar level of use. Furthermore, ... the Master Plan includes recommendations to provide community facilities to meet the human service...educational and other needs of the diverse community.

Conclusion: The 15 conditional uses in the surrounding area are listed in Part II.B of this Report.

The Hearing Examiner agrees with Staff that the proposed facility is more in the nature of a replacement of a conditional use rather than adding to the existing concentration of uses in the area. The institutional use of the library, when in operation, may easily have had equal or more impact on the surrounding area, as it was not subject to conditions of approval. This criterion for approval has been met.

***f. 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. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:***

***i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities,***

*including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

*ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

Staff advises that its preliminary analysis indicates that public facilities will be adequate to serve the site and the adequacy of facilities will be finally approved by the Planning Board. Exhibit 38. The Applicant submitted a traffic study under the Local Area Transportation Review (LATR) Guidelines. Exhibit 26. Ms. Randall testified that, while doing the traffic study, MCDOT and the State Highway Administration asked the Applicant to expand the scope of the study to determine delays through the entire Colesville corridor. T. 193. The traffic study evaluated eight intersections, including the site driveway and as far north as the intersection Dale Drive and Colesville Road. Exhibit 26, p. 14. The intersections studied are shown below (*Id.*):





The Traffic Study demonstrated that all intersections met the vehicle congestion standards for the policy area except the intersection of Dale Drive and Colesville Road (labelled Intersection No. 1 in the graphic on page 32.) This property is within an Orange Policy Area where acceptable vehicular congestion is capped at 80-second delays. A table from the Staff Report shows the results for each intersection (Exhibit 38, p. 15, below):

**Table 3: Intersection Level of Service**

Intersection	Congestion Standard	Existing		Background		Total Future	
		AM	PM	AM	PM	AM	PM
1. Colesville Road and Dale Drive	80 seconds	119	59	165	68	167	69
2. Colesville Road and Site Access	80 seconds	1	1	2	1	3	1
3. Colesville Road and Spring Street	80 seconds	27	40	30	42	31	44
4. Roder Road/Ellsworth Drive/ Spring Street	80 seconds	2	2	2	2	3	4
5. Ellsworth Drive and Cedar Street/ Spring Street	80 seconds	8	13	8	13	8	13
6. Pershing Drive and Cedar Street	80 seconds	35	57	35	57	33	65
7. Ellsworth Drive and Site Access Driveway	80 seconds	7	7	7	7	7	7
8. Ellsworth Drive and Springvale Road	80 seconds	7	7	7	7	7	7

*Source: Wells & Associates Transportation Study dated February 24, 2020 and revised August 2020*

Staff reports that MBGCDC worked closely with MDOT and SHA to mitigate the day care center's impact the intersection of Dale Drive and Colesville Road without sacrificing other County goals, such as pedestrian safety. *Id.*, p. 15. Ultimately, MBGCDC submitted a Design Request for a traffic signal modification at the intersection of Colesville Road and Dale Drive to the MDOT/SHA. The modification will lower the delay from 167 seconds in the morning to 87 seconds (*Id.*):

**Table 4: Proposed Mitigation Results at Colesville Road and Dale Drive**

Intersection	Congestion Standard	Existing		Background		Total Future		Proposed Mitigation	
		AM	PM	AM	PM	AM	PM	AM	PM
1. Colesville Road and Dale Drive	80 seconds	119	59	165	68	167	69	87	N/A

Staff, working with the State agencies, found this mitigation to be acceptable given that the day care center only added 2 seconds to the existing delay at the intersection. *Id.* Ms. Randall testified that, while the Dale Drive intersection will continue to fail, the Applicant's only requirement is to make future conditions better than background traffic. T. 193. She opined that the traffic impact of this project can be fully mitigated, and the transportation system is adequate to serve the proposed use. T. 195.

Mr. Fox testified that other public facilities are adequate to serve the use. Water and sewer, gas and electric utilities are available to the site. The property has been assigned a water and sewer category of W-1, S-1. A hydraulic planning analysis will happen with WSSC during the preliminary plan. Police, fire, and healthcare services are all located near the property and are adequate. T. 105. A stormwater management concept plan is under final review by DPS. Currently there is no stormwater management on the property; they will provide stormwater management for the area of disturbance. As this site is not in a special protection area, no additional water quality treatment is required. T. 94. The new stormwater management measures are expected to considerably improve the onsite treatment of runoff. Exhibit 38, pp. 16-17.

Conclusion: The uncontroverted testimony demonstrates that public facilities will be adequate to serve the use. While the intersection of Dale Drive and Colesville Road will still fail the congestion standards for the policy area, the design modification to the traffic signal there will reduce delays by significantly more than the delay caused by the proposed use. All other intersections meet the vehicular congestion levels for the policy area. Expert testimony demonstrates that stormwater management is in the final design review stages, and the record is devoid of any evidence that stormwater management cannot be installed on the site. Similarly, uncontroverted evidence and

expert testimony indicates that other facilities, including fire, police, and utilities, will be available.

The Hearing Examiner finds that public facilities are adequate to support the use.

***g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:***

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

This standard 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 “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* The Hearing Examiner may deny a conditional use where the combination of inherent and non-inherent impacts causes undue adverse impact on the surrounding area.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child Day Care Center for more than 30 children. 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 identified ***or*** adverse effects created by unusual site conditions, will be considered non-inherent adverse effects.

Planning Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a child Day Care center (Exhibit 38, p. 26): (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting.

Staff determined that the proposed use at this location had no non-inherent adverse impacts (*Id.*):

Adequate parking and drop-off/pick-up areas are available on site. The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use to minimize impacts to the neighborhood. In keeping with the general circulation of the existing site, most of the vehicle trips will enter from Colesville Rd, a Major Highway and result in little discernable impact on neighborhood based on the above considerations.

Potential noise issues associated with use are addressed by strategic placement of the play area, which is adjacent to the dog park and also located behind the building where it is shielded from the adjacent residents to the south and east. Furthermore, trash pick-up will be limited to the hours of 9:00 a.m. and 3:00 p.m. to limit disruptions to the school operations and student safety as well as noise impacts to the surrounding neighborhood.

The existing lighting and landscaping on the Site will be modified under the proposal and further enhanced by the conditions of approval to address the associated Master Plan and zoning requirements to the extent practicable. A waiver to allow increased lighting level along the Ellsworth Drive Frontage has been requested and is supported by Staff as discussed herein. As conditioned, the proposal is consistent with the residential character of the neighborhood and the proposal will not have any non-inherent effects at this location.

At the public hearing, Mr. Fox opined that the distance and intervening building will attenuate noise from the playground. He testified that the play area is shielded from Ellsworth Drive by the new addition. T. 100-101. According to Mr. Fox, the playground will be approximately 200 feet from the townhomes across Ellsworth Drive. Because the playground is “tucked away” behind the building and the dog park, and due to the distance to the nearest homes, noise impacts from the playground will be so minimal that no limit on the number of children that

may be outside at one time is necessary. T. 103.

Conclusion: While repurposing the existing building and site necessitates several waivers, the Hearing Examiner agrees with Staff that there are no non-inherent adverse impacts associated with this use as conditioned. Described above, uncontroverted expert testimony establishes that the parking area and drive aisle along the southern part of the site are large enough to accommodate peak drop-off and pick-up hours without causing queues or impacting neighborhood streets. Based on Staff's review and Mr. Fox's testimony, noise from the play area will be attenuated by the building addition and distance from neighboring residential homes. To further reduce noise, MBGCDC will limit the hours that waste may be picked up to between 9:00 a.m. and 3:00 p.m. Ms. Rodriguez opined that the additional landscaping will screen the play area from Colesville Road. Lighting meets Zoning Ordinance requirements except in one relatively small area along Ellsworth Drive and mirrors existing conditions. Lighting levels on the east side of Colesville Road are at 0.0 footcandles.

Based on the entire record, the Hearing Examiner finds that, with the conditions imposed in Part IV of this Report and Decision, the proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone, or in combination with inherent adverse effects, in any of the categories listed in §59.7.3.1.E.1.g.

***2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.***

Conclusion: This criterion requires that a conditional use in a Residential Detached zone, such as the R-60 Zone, be compatible with the character of the neighborhood separate from the recommendations of the Master Plan. In this case, however, the goal of the Master Plan, which is to preserve the existing residential neighborhoods, essentially equates to this standard. For the

reasons the application complies with the Master Plan, the Hearing Examiner finds that the proposed day care center will be compatible with the existing character of the surrounding area.

***3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

**B. Development Standards of the Zone (Article 59.4)**

The development standards for the R-60 Zone are set out in Section 59.4.4.9 of the Zoning Ordinance. Planning Staff determined that the application meets the development standards of the R-60 Zones, as demonstrated in a chart from the Staff Report (Exhibit 38, p. 18, on the next page).

Conclusion: No evidence in the record contradicts Planning Staff's determination that the application meets the development standards of the R-60 Zone. Based on this record, the Hearing Examiner finds that the proposed day care meets the applicable development standards of the R-60 Zone.

**C. Use Standards for a Child Day Care Center for Over 30 Persons (Section 59.3.4.4.C.1.)**

A Day Care Center is a subset of the class of uses titled "Day Care Facility". *Zoning Ordinance*, §59.3.4.4. A Day Care Facility means:

***A. Defined, In General***

***Day Care Facility means an establishment where care is provided for less than 24 hours a day, for which the provider is paid, for any of the following: children under the age of 17 years; developmentally disabled persons; handicapped individual; or any elderly individual. Day Care Facility includes accessory preschool and kindergarten educational programs that are accredited by the State.***

Section	Development Standard	Required/ Permitted	Proposed
59.4.4.9.B.1	Minimum Lot Area	6,000 square feet	91,755 square feet (after dedication)
59.4.4.9.B.1	Minimum Lot Width at Front Building Line		
	Colesville Road	60 feet	180 feet (approx.)
	Ellsworth Road	60 feet	350 feet (approx.)
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line		
	Colesville Road	25 feet	180 feet (approx.)
	Ellsworth Road	25 feet	350 feet (approx.)
59.4.4.9.B.1	Maximum Density (units/acre)	7.26 units	N/A
59.4.4.9.B.1	Maximum Lot Coverage	35% (32,114 SF)	20 % (18,351 SF)
59.4.4.9.B.2	Minimum Front Setback		
	Colesville Road	25 feet	47' (after dedication)
	Ellsworth Road	25 feet	91'
59.4.4.9.B.2	Minimum Side Setback	8 feet	14 feet (south side)
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 feet	57 feet
59.4.4.9.B.2	Minimum Rear Setback	20 feet	N/A
59.4.4.9.B.3	Maximum Height	35'	35'

**Table Comparing Development Standards of R-60 Zone  
with the Proposed Development  
Exhibit 38, p. 18**

Day Care Centers, the use applied for here, is further defined as:

***F. Day Care Center (Over 30 Persons)***

***1. Defined***

***Day Care Center (Over 30 Persons) means a Day Care Facility for over 30 people where staffing, operations, and structures comply with State and local regulations and is not located in a townhouse or duplex building type.***

Conclusion: The day care center proposed will provide day care for children between six weeks and 5 years old from 7:00 a.m. to 6:00 p.m. and after care for children between 5 and 13 years old between the same times, less than a full day. The center repurposes a former library with a new addition, which is not a townhouse or duplex building type. By condition, the center will be required to meet all applicable State and local regulations. The use proposed meets the definition of day care facility.

***b. Where a Day Care Center (Over 30 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:***

***i. All required parking must be behind the front building line; however, required parking may be located between the structure and the street where the Hearing Examiner finds that such parking is safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties***

Planning Staff concluded that the location of parking between the building and Ellsworth Drive is safe and compatible with the area because the property has two frontages and it is an existing condition. Exhibit 38, pp. 18-19. The Applicant's expert in landscape planning, Ms. Trini Rodriguez, testified that additional landscaping will screen the parking between the building and both Colesville Road and Ellsworth Drive. T. 129-130.

Conclusion: The Hearing Examiner agrees with Planning Staff that location of parking between Ellsworth Drive and the building does not impact the character of the neighborhood because it has been a characteristic of the area for many years. MBGCDC is providing additional landscaping to screen this parking area on Ellsworth and Colesville to enhance the current conditions. The screening of the parking spaces in the southwestern portion of the property is carefully coordinated with other landscaping to bookend and highlight the existing building. The Hearing Examiner finds that the parking will be safe and compatible with the surrounding area.



***ii. An adequate area for the discharge and pick up of children is provided.***

Based on the original conditions of approval, which limited drop-offs by the number of children, Staff concluded that “the staggered pickup and drop off schedule associated with the proposed layout will provide adequate area for the discharge and pick up of children.” Exhibit 38, p. 19. At the public hearing, the Applicant presented a proposed condition based on the number of vehicles rather than the number of children, which was acceptable to Planning Staff.

Conclusion: The testimony and evidence relating to on-site circulation during peak periods of drop-off and pick-up has already been extensively discussed. The Hearing Examiner agrees that, from a transportation perspective, limits on staggered drop-off/pick-up should be based on vehicles rather than the number of children. The evidence supports a finding that drop-off and pick-up will be accommodated within the property and will not cause congestion on neighboring streets. This application meets this standard.

***iii. The Hearing Examiner may limit the number of children outside at any one time.***

Staff did not recommend “any particular” limitations on the number of children outside during play times. Exhibit 38, p. 19. The Applicant’s expert in civil engineering testified that location of the play area behind the new addition and the distance from nearby residences would mitigate noise impacts from the use. Ms. Peralta testified that approximately 30% or between 40 and 48 children are under one year old. Outdoor play for them is usually some type of walk in a stroller or buggy. Approximately 20-27% are toddlers and approximately 35% are pre-schoolers. T. 63. She estimates that they will have no more than 60 children outside at any one time, which includes 2 – 3 infant classrooms. T. 65.

Conclusion: Mr. Fox’s testimony that noise from the play area will not have an adverse impact on

neighboring residential properties is supported by Ms. Peralta's testimony that the number of children outside will likely be no more than sixty, some of which are infants. The Hearing Examiner finds from this record that no limit is necessary on the number of children outdoors at one time.

***iv. In the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones, the Day Care Center (Over 30 Persons) must be located on a site containing a minimum of 500 square feet of land area per person. The Hearing Examiner may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per person where it finds that:***

- (a) the facility will predominately serve persons of an age range that requires limited outdoor activity space;***
- (b) the additional density will not adversely affect adjacent properties; and***
- (c) additional traffic generated by the additional density will not adversely affect the surrounding streets.***

Staff and the Applicant agree that the size of the property and the maximum number of students meet the requirement for 500 square feet of land per person. Staff concluded: "Based on a maximum of 180 children at any one time, a minimum land area of 90,000 square feet would be required, whereas 91,755 square feet is provided after the future dedication of right-of-way for the Colesville Road frontage." *Id.*, p. 19.

Conclusion: This property is zoned R-60, so this provision applies. The uncontroverted evidence demonstrates that there is sufficient land area to support a maximum of 180 children.

***v. The Hearing Examiner may limit the number of people allowed for overnight care.***

Conclusion: This provision is not applicable because the proposed use does not include any overnight care.

***vi. In the AR zone, this use may be prohibited Section 3.1.5, Transferable Development Rights.***

Conclusion: This provision is not applicable because the site is not located in the AR Zone.

## **D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

### **1. Site Access Standards**

Zoning Ordinance Division 59.6.1. governs “Site Access.” Section 59.6.1.2. provides:

*Division 6.1 applies to development in the Residential Multi-Unit, Commercial/Residential, Employment, Industrial, and Floating zones if:*

- A. an apartment, multi use, or general building type is proposed; and*
- B. a site plan or conditional use approval is required.*

Conclusion: The subject site is zoned R-60, which is a Residential Detached zone. Therefore, the access requirements do not apply to this application.

### **2. Parking Standards and Waivers (§59.6.2)**

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. The Applicant seeks waivers from four of the parking standards relating to number of spaces, setbacks of the parking area, and certain requirements for landscape islands, tree canopy, and perimeter plantings. The Zoning Ordinance authorizes a waiver of these provisions if the applicant demonstrates that they will fulfill the intent of the parking requirements, which is to “ensure that adequate parking is provided in a safe and efficient manner.” *Zoning Ordinance*, §§59.6.2.10, 59.6.2.1. Compliance with the parking regulations and each of the waivers is discussed below.

#### ***a. Minimum Number of Parking Spaces (§59.6.2.4)***

A table from the Staff Report (Exhibit 38, p. 20, below) shows the number of spaces required by the Zoning Ordinance for the proposed facility:

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Day Care: Min. 3 spaces/1000 SF of GFA <b>Total: 93</b>	<b>Total: 89<sup>3</sup></b> (86 standard 3 ADA)
59.6.2.4.C	Bicycle Parking Requirement	Day Care: Min. 1/5000 sf of GFA <b>Total: 5</b>	4 short term; 5 long term

The Applicant seeks to provide four fewer vehicle spaces than the 93 that are called by the Zoning Ordinance. Staff recommended approval of the waiver “[G]iven the proximity to the Silver Spring Transit Center, proximity to local bus stops, and the well-connected sidewalk network connecting the Site to the surrounding neighborhoods.” Exhibit 38, p. 20. Staff further determined that reduction of the parking area furthers the Master Plan’s goal to minimize the commercial appearance of conditional uses. *Id.* Ms. Peralta testified that, based on her experience with CentroNia’s other facilities, about 20 – 30% of the families will use public transportation. That ratio could be larger in this instance because Silver Spring is a transportation hub. At their Takoma facility, which is not within walking distance of Metro, about 20-30% of the staff use public transportation. In their D.C. facilities, which are closer to Metro, it tends to be about 30%. T. 57.

Ms. Peralta also testified that parking area could accommodate parking for most special events such as holidays. CentroNia generally requests that parents attending these at the day care center use nearby public parking garages, which are readily available in Silver Spring. T. 58-59. Events are staggered by age levels, reducing the amount of parents visiting at one time. Pre-school graduations, which have the most family members attending, are held off-site. *Id.*

Conclusion: The Hearing Examiner agrees with MBGCDC and by Planning Staff. There was extensive testimony at the public hearing, already described, that parking can be accommodated on-site even with a conservative estimate of the time needed for drop-off and pick-up. Special events, such as holidays, are limited by age level and the Applicant has represented that pre-school

graduations will be held off-site. Public parking is available in numerous locations within walking distance. The Hearing Examiner finds that the waiver requested will fulfill the intent of the Zoning Ordinance parking regulations and provide parking in a safe and efficient manner.

***b. Parking Setbacks, Screening, and Landscaping***

***i. Parking Setback Waiver***

Section 59.6.2.5.K.2 of the Zoning Ordinance requires the following parking setbacks for conditional uses in Residential Detached zones:

***2. Setbacks***

***a. The minimum rear parking setback equals the minimum rear setback required for the detached house.***

***b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house.***

Staff advises that the required side yard setback for this property is 16 feet. The property is a through lot, and therefore has two front yards (facing Ellsworth Drive and Colesville Road) and two side yards along the north and south property lines. The existing side setback along the north and south property boundaries is less than 16 feet, and MBGCDC seeks a waiver of this requirement. Staff recommended approval of the waiver (Exhibit 38, p. 23):

...the Petitioner is not proposing any changes to these areas of the parking lot and is seeking approval of this waiver to allow the existing parking setbacks to remain unchanged. Notably, neither setback area is adjacent to a detached residential use; the southern portion of the parking lot is adjacent to the EOF zone improved with a high-rise multi-family building and the northern portion of the parking lot is adjacent to the Ellsworth Urban Park. As conditioned, the project will satisfy the intent of this section, which is to maintain a residential character and a pedestrian-friendly street. The setbacks from which the Petitioner is seeking a waiver are along internal, side lot lines (not from the street). The waiver generally seeks to conform the existing, long-standing condition of the Property and as such, will not adversely affect the surrounding neighborhood.

Mr. Fox similarly opined that the lesser setback will not adversely affect the area given that neither side abuts a single-family detached residential use. The northern side borders the Ellsworth

Urban Park and the southern side confronts Colesville Towers, a 12-story multi-family building in the EOF Zone. The full setback along Ellsworth Drive will be provided. T. 84-85.

Conclusion: Based on the evidence, the Hearing Examiner grants the requested waiver from the parking side yard setbacks. The existing setbacks have been a part of the character of the area for many years and abut only a park and the multi-family high-rise building to the south. Retention of the existing parking area ensures that there are enough spaces to accommodate peak operations in a safe and efficient manner and meets the intent of the parking regulations.

*ii. Parking Lot Landscaping Waivers.*

Both Staff and the Applicant agree that the proposed use will require waivers from three screening and landscaping requirements for parking areas. Section 59.6.2.9.C. contains the following requirements:

***1. Landscaped Area***

- a. A surface parking lot must have landscaped islands that are a minimum of 100 contiguous square feet each comprising a minimum of 5% of the total area of the surface parking lot. Where possible, any existing tree must be protected and incorporated into the design of the parking lot.***
- b. A maximum of 20 parking spaces may be located between islands.***
- c. A landscaped area may be used for a stormwater management ESD facility.***

***2. Tree Canopy***

***Each parking lot must maintain a minimum tree canopy of 25% coverage at 20 years of growth, as defined by the Planning Board's Trees Technical Manual, as amended.***

\* \* \*

***b. The perimeter planting area for a property that abuts any other zoned property, right-of-way, or an Agricultural, Rural Residential, or Residential Detached zoned property that is improved with a civic and institutional, commercial, industrial, or miscellaneous use must:***

- i. be a minimum of 6 feet wide;***
- ii. contain a hedge or low wall a minimum of 3 feet high; and***

- iii. have a canopy tree planted every 30 feet on center; unless*
- iv. the property abuts another parking lot, in which case a perimeter planting area is not required.*

With respect to the requirement for landscaped islands, Staff writes (Exhibit 38, p.

Specifically, based on the size of the northern parking area, Section 59.6.2.9.C.1 would require a minimum of 1,120 square feet of internal landscaped islands. The Petitioner is not proposing to reconfigure the existing parking lot layout and the existing, internal concrete islands which are too narrow to support plantings (each is less than the 100 square foot minimum required). The Petitioner has proposed two landscaped areas in the northeast and northwest corners of the parking lot, which provide a total of approximately 480 square feet of landscaped area.

Staff approved of the request to waive the tree canopy requirements (Exhibit 38, p. 22):

Section 6.2.9.C.2 of the Zoning Ordinance would require a total of approximately 5,598 square feet of canopy cover or eight (8) large canopy trees (i.e. eight trees with a 30' diameter at 20-year growth). As previously mentioned, the existing parking islands are too narrow to accommodate canopy tree plantings. However, to provide some canopy cover, while simultaneously working within the constraints of the existing parking conditions, in addition to the proposed three canopy trees in the northeast corner of the site, Staff has recommended conditions of approval to increase the proposed landscape which also helps serve to address the overlapping general recommendations of the Master Plan for buffering/screening of parking and applying urban forestry practices which the use of native species and planting a mixture of overstory trees and understory trees and shrubs.

Finally, Planning Staff also recommended approval of the Applicant's request to waive the requirements of the landscaping for parking areas (Exhibit 38, p. 23):

- i. Is a minimum of 6 feet wide;*

The northern parking facility meets this requirement on three of the four sides (i.e. the north, east and southern sides). The Petitioner is seeking a waiver of this requirement along the western side of the parking facility, which is at some points is very close to the property boundary. However, this façade abuts the existing Ellsworth Drive Urban Park. There is currently a planted buffer area separating the parking facility on the Property and the dog park and the slope along a portion of the parking lot's Ellsworth frontage, as conditioned will be further enhanced with new trees and shrubs, to help mitigate the lack of trees and landscaping internal to the parking lot.

- ii. Contains a hedge or low-wall that is a minimum of 3 feet high; and*



The Petitioner is seeking a waiver of this requirement along all three external boundaries. However, as shown the landscape plan, the Petitioner has proposed shrubs along the eastern perimeter. These shrubs, along with the supplemental plantings as conditioned, will serve to provide a natural buffer of the existing parking facility from Ellsworth Drive. Additionally, the northern and western boundaries, which abut the Ellsworth Drive Urban Park, will be buffered by the landscaping and grade change on the Park property. The southern perimeter will also have plantings that will further soften this edge of the parking facility. Furthermore, the recommended conditions of approval regarding additional tree plantings along with the street trees will help towards the intent of standard perimeter planting requirements.

*iii. Have a canopy tree planted every 30 feet on center, unless the property abuts another parking lot, in which case a perimeter planting area is not required.*

The Petitioner is requesting a waiver from this requirement for all three external boundaries. As discussed above, the parking lot edge is near the western property boundary, somewhat limits the canopy trees that can be planted in this location. However, as conditioned the additional planting along with existing slopes on the adjacent Park property serve to provide a natural buffer of the existing parking facility on the Property. The proposed three trees in the northeast corner of the Property in addition to the supplemental plantings along the Ellsworth frontage will provide some additional, desired canopy coverage while also helping to address the Master Plan recommendations (on page 92) for “identifying locations for improved street tree planting” and “planting a mixture of overstory trees and understory trees and shrubs”.

The proposed waiver from the landscaping and tree canopy requirements will further the intent of the Zoning Ordinance. Retrofitting the existing parking lot to fully meet the landscape area and tree canopy requirements of Sections 6.2.9.C.1 and 6.2.9.C.2 would result in a loss of additional parking spaces and thus, result in the need for a waiver of a greater number of parking spaces. Providing adequate parking and queuing area on-site is critical to ensuring that the proposed childcare use will have no adverse impacts on the surrounding community. Importantly, the parking lot has functioned as is for many years and served the prior library use without issue. Moreover, the existing/proposed trees and the slope along a portion of the parking lot’s Ellsworth frontage, which as conditioned will help to mitigate the lack of trees and landscaping internal to the parking lot.

Conclusion: The Hearing Examiner considers these waivers together because all have a similar justification. That is that the existing parking area has been part of the character of the community for many years, the landscaping required would significantly reduce the amount of on-site parking, and the Applicant will provide additional landscaping to better screen existing conditions. The

Hearing Examiner grants the waivers for the reasons stated by Staff. The Applicant proposes additional landscaping along the western, southern, and eastern boundaries at key locations to screen the parking, particularly along Ellsworth Drive. The northern property boundary is adjacent to the park, which according to Staff is buffered by a grade change. The Hearing Examiner agrees that it is critical to ensure that vehicular traffic can be accommodated on-site and avoid queuing on Ellsworth Drive and Colesville Road and that the additional plantings will improve existing conditions. For these reasons, the Hearing Examiner finds that the additional landscaping proposed by the Applicant to ensure compatibility, along with the grant of these waivers, will ensure safe and efficient circulation on the property.

### **3. Perimeter Site Landscaping, Screening and Lighting Waiver**

Divisions 59.6.4 and 59.6.5 proscribe requirements landscaping, screening and lighting requirements for the perimeter of the entire property, as opposed to the parking area. The stated intent of Division 6.4 is *“to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.”* §59.6.4.1. The stated intent of Division 6.5 is *“to ensure appropriate screening between different building types and uses.”* Zoning Ordinance §59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

MBGCDC seeks a waiver of this of the maximum illumination levels for conditional uses under §59.6.4.4.E., which states:

#### ***E. Conditional Uses***

*Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.*

Illumination levels along Ellsworth Drive are between 0.7 – 0.8 footcandles at the property line. Any waiver of this requirement may be reviewed under the standards of Section 59.6.8.1, which governs alternative methods of compliance with the Zoning Ordinance.<sup>3</sup> Under that Section, a waiver may be granted when:

***...there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The applicable deciding body must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:***

- A. satisfy the intent of the applicable Division;***
- B. modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;***
- C. provide necessary mitigation alleviating any adverse impacts; and***
- D. be in the public interest.***

Zoning Ordinance, §59.6.8.1. Staff recommended approval of this waiver as well (Exhibit 38, p. 24):

Satisfy the intent of the applicable Division;

The intent of Division 59.6.4 is to preserve property values, preserve and strengthen the character of communities, and improve water and air quality. The proposed alternative compliance generally seeks to preserve the existing, long-standing site conditions. Adequate lighting is needed to ensure safety of visitors and guests within and around the parking facilities. However, the lighting has been designed to ensure there will be no adverse impacts to property values and the character of the community.

Modify the applicable functional results or performance standards the minimal amount necessary to accommodate the constraints;

The existing lighting levels at the property boundary are driven in large part by the need to provide adequate lighting in the parking facilities, to ensure the safety of employees, visitors and guests. Given the existing, reduced parking setbacks, these results in slightly higher lighting levels at the Property boundary. As a result, the only way to meet this standard, without compromising safety, is to remove a significant amount of the existing parking provided on-site (thereby allowing

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<sup>3</sup> The Hearing Examiner is also permitted to waive the requirements of Article 59.6 to “the extent the Hearing Examiner finds necessary to ensure compatibility.” Zoning Ordinance, §59.7.3.1.E.1.b. In this Report, Hearing Examiner employs the standard addressed by Staff.

parking facility lighting to be pulled further into the site). The further reduction of parking on-site would have a greater impact on the surrounding neighborhood (as compared to the modest increase in lighting levels), as it would impact the Center's ability to meet its parking demands on-site.

Provide necessary mitigation, alleviating any adverse impacts; and

The proposed condition has existed on the Property for quite some time. Only the eastern property boundary will not comply with this standard. Given that this property boundary abuts the 70' wide Ellsworth Drive right-of-way, and the minor deviation requested, this will not have an adverse impact on the confronting residential homes. Furthermore, the additional tree plantings, as conditioned, will help mitigation of the excessive lighting.

Be in the public interest.

The proposed alternative compliance will facilitate the redevelopment of the Property with a childcare Center. This Project serves an important public need, by providing additional, affordable childcare services to residents and workers in the County. Additionally, the Project adaptively re-uses the existing, vacant building, restoring its long-standing civic/institutional use and providing substantial improvements to the site (such as stormwater management, landscaping etc.).

At the public hearing, Mr. Fox testified that areas along the Ellsworth Drive property line are between 0.7 – 0.8 footcandles. Because Ellsworth Drive is a 70-foot wide public right-of-way, the light dies down on the other side. Illumination levels along the east side of Ellsworth Drive are 0.0 footcandles. T. 85-88. In his opinion, site constraints included the need to maintain the existing site layout, including pole locations, so there wasn't a lot of flexibility to place new lighting. In addition, because the use is a daycare, the Applicant wanted to ensure that it had enough lighting for the safety of parents and children during the morning and evenings. T. 88.

Conclusion: The alternative compliance standards first require a finding that the site is unique. The Hearing Examiner finds that this site is unique because the Applicant seeks to repurpose and adapt an existing site using much of the existing infrastructure. Therefore, the Hearing Examiner must balance whether higher illumination levels on a portion of the Ellsworth Drive frontage outweighs the safety of those using the facility and the need to have enough parking on-site to

accommodate peak circulation. She agrees with Staff that employee/student safety, and safety of the community members visiting the facility, outweighs adverse impacts from the relatively small portion of the boundary that exceeds the illumination requirements, particularly given that illumination levels along the eastern side of Ellsworth Drive are 0.0 footcandles.

***b. Site Screening and Landscaping***

The provisions of Division 6.4 and 6.5 address perimeter screening for the entire property. Zoning Ordinance §59.6.5.2.B. provides:

***B. Agricultural, Rural Residential, and Residential Detached Zones***

***In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.***

Conclusion: Staff did not address this section and the Hearing Examiner finds that it does not apply because the public park to the north is an institutional use, the townhomes do not “abut” the property, and the apartments to the south are in the EOF Zone. The Hearing Examiner has already found that the existing and proposed landscaping will be compatible with the surrounding area.

**4. Signage**

Signage is governed by Division 6.7 of the Zoning Ordinance. In Residential Detached zones, the maximum area allowed is two square feet. The Applicant proposes two monument signs along each frontage and channel pin lettering on the southern and eastern building façades, which obviously exceed the maximum permitted area. Thus, the Applicant will need to obtain a variance of these requirements from the Sign Review Board. As part of the conditional use, however, the Hearing Examiner may make a finding that the signs proposed are compatible with the surrounding

area. Section 7.6.2.C.6 of the Zoning Ordinance states:

***6. The Sign Review Board may approve a variance for a sign on property with a conditional use approval if the Hearing Examiner or Board of Appeals, as applicable, has approved the sign. Nothing in Section 7.4.2 prevents the Sign Review Board from imposing more restrictive conditions than the Hearing Examiner or Board of Appeals, but the Sign Review Board must not approve a sign variance that is less restrictive than any condition set by the Hearing Examiner or Board of Appeals.***

MBGCDC, through its architect Mr. Olivera-Sala, presented expert testimony that the signage proposed is compatible with the surrounding area and the minimum necessary to provide readable signage. If the State Highway Administration does not approve their preferred location of the monument sign along Colesville Road, the Applicant has shown an alternative location just inside the dedication line along Colesville Road. T. 123. In Mr. Olivera-Sala's opinion, the signage will be compatible with the surrounding area. The Applicant did a visual survey of the existing signage along Colesville Road, and the signs proposed are of similar size and configuration. T. 124.

Conclusion: Based on this record, and the signage plans submitted into the record, the Hearing Examiner finds that the signage proposed is compatible with the surrounding area, including the alternative location on Colesville Road. Colesville Road is a major commuting route and the two-sided monument sign is appropriate to identify the property readily from both directions without causing traffic to slow significantly. Because traffic on Ellsworth Drive will be primarily northbound to enter the site, a single sided sign minimizes any impact on the surrounding community and reduces non-residential appearance. Nothing in the record contradicts Mr. Olivera-Sala's testimony that the signs are reminiscent of the size and configuration of other signs in the area. The channel pin lettering on the side of the building will again assist in orienting

visitors within the property. By condition of approval, the Applicant will be required to obtain a variance with the sign review board and file the approved sign permit with OZAH.

#### IV. CONCLUSION AND DECISION

Based on the findings and conclusions above and a thorough review of the entire record, the application of Martha B. Gudelsky Child Development Center, Inc. (CU 20-08), for a conditional use under Section 59.3.4.4.F. of the Zoning Ordinance, to operate a child Day Care Center for up to 180 children at 8901 and 8907 Colesville Road, Silver Spring, Maryland, is hereby **GRANTED**, along with the following waivers and subject to the following conditions:

##### Waivers

1. For the reasons stated herein, the Hearing Examiner hereby grants the following parking waivers under Section 6.2.10 of the Zoning Ordinance:
  - a. A waiver reducing the number of on-site parking spaces required by §59.6.2.4 from 93 to 89;
  - b. A waiver reducing the minimum side setbacks for a parking area required by §59.6.2.5.K.2 to the extent shown on the Conditional Use Plan (Exhibit 68(a));
  - c. A waiver from the requirement of §59.6.2.9.C.1 to have landscaped islands in the parking area to the extent shown on the on the Conditional Use Plan (Exhibit 68(a)) and Landscape Plan (Exhibit 84);
  - d. A waiver from the required tree canopy in a parking area under §59.6.2.9.C.2 to the extent shown on the Conditional Use Plan (Exhibit 68(a)) and Landscape Plan (Exhibit 84);
  - e. A waiver from the parking lot screening requirements of §59.6.2.9.C.3 to the extent shown on the Conditional Use Plan (Exhibit 68(a)) and Landscape Plan (Exhibit 84).
2. For the reasons stated herein, the Hearing Examiner grants the following waivers under the standards of §59.6.8.1 of the Zoning Ordinance (alternative compliance):
  - a. A waiver from the maximum illumination levels required by §59.6.4.4.E of the Zoning Ordinance.

### Conditions of Approval

1. Physical improvements to the subject property are limited to those shown on the Applicant's Conditional Use Site Plan (Exhibit 68(a)), Landscape Plan (Exhibit 84), and Lighting Plan (Exhibit 16).
2. The Group Day Care must be limited to a maximum total GFA of 31,000 square feet, a maximum of 180 children at any one time and a maximum of 60 staff persons at any one time.
3. The hours of operation for child day care are limited to 7:00 a.m. to 6:00 p.m. (exclusive of staff/teacher arrival before 7:00 a.m.) Hours for community, parental engagement, and teacher training activities are limited to Monday through Friday from 6:00 p.m. to 9:00 p.m. and Saturday from 10:00 a.m. to 4:00 p.m.
4. Drop-off and pick-ups between 7:00 a.m. and 10:00 a.m. and 4:00 p.m. to 6:00 p.m. are limited to 70 vehicles in any one hour. The Applicant must maintain records of the number of vehicles and children dropped off during each hour. The Applicant must make these records available to the Department of Permitting Services upon request.
5. The parking area closest to Colesville Road (in the southwestern portion of the property) must be reserved for visitors and teachers.
6. No vehicles may queue within the public right-of-way on Colesville Road while accessing the subject property.
7. The Applicant must participate financially for the approved traffic signal redesign at Colesville Road and Dale Drive, as determined by MCDOT's letter dated August 31, 2020.
8. The Applicant must provide bicycle parking spaces in the following configuration:
  - a. Four short-term spaces will be inverted-U racks or equivalent to be disturbed evenly near the main building entrances.
  - b. Five long-term spaces must be provided inside the building at the ground floor in a secured room.
9. Trash pick-up must be limited to the hours between 9:00 a.m. and 3:00 p.m.;
10. The Applicant may allow limited public or community use of portions of the facility when it does not conflict with any conditions of approval or operation of the day care center.
11. The Applicant must install five-foot wide sidewalks along the Ellsworth Drive frontage.
12. The Applicant must widen the existing sidewalk where necessary along the Colesville Road frontage to achieve a minimum width of five feet, without removal or relocation of the existing utility pole.



13. The Applicant must comply with Section 69.6.2.3.D of the Zoning Ordinance for Car Share Spaces.
14. The Applicant must obtain approval of a Preliminary Plan of Subdivision per Chapter 50 of the Montgomery County Code.
15. The Applicant must make available a minimum of 12 assigned parking spaces for use by the adjacent Ellsworth Urban Park during non-drop-off and pick-up hours and holidays.
16. Non-native invasive vegetation that could be a health or safety concern must be removed prior to commencement of operation of the day care center.
17. The Applicant must obtain a Park Permit for impacts to Park Trees caused by the Applicant's construction.
18. The Applicant must comply with all Maryland State and Montgomery County licensure requirements and standards for the operation of a Day Care Center and must correct any deficiencies found in any government inspection.
19. The Applicant shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the buildings.
20. The Applicant must submit applications to the Department of Permitting Services (DPS) and obtain a variance from the Sign Review Board where necessary, for approval of all proposed signs for the day care center. The Applicant must file a copy of all sign permits with OZAH.
21. The Applicant 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 conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 24th day of November 2020.



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Lynn Robeson Hannan  
Hearing Examiner

### NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.montgomerycountymd.gov/boa/>

### **PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:**

**The Board of Appeals website sets forth these procedures for filing documents:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to [BOA@montgomerycountymd.gov](mailto:BOA@montgomerycountymd.gov), and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.**

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION OF DECISION TO BE SENT TO:

Patricia A. Harris, Esquire

Elizabeth C. Rogers

Attorneys for the Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

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