BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:	*	
PETITION OF LITTLE FALLS	*	
SWIM AND TENNIS CLUB	*	
	*	
Petitioner	*	
	*	
Mary Becker	*	
Kevin Hearle	*	Board of Appeals Case No. S-289-B
Melinda Robbins	*	(OZAH Referral No. 04-43)
	*	
Norman Knopf, Esq.	*	
For the Petitioner	*	
* *		
	*	
Stanley Garber, Department of Permitting Services	*	
Martin Klauber, People's Counsel	*	
	*	
Neither in Support of Nor in Opposition To Petitioner's Requests	*	
* *		
	*	
Karen Blechman	*	
Susan Hostetler	*	
Catherine Stocker	*	
John Wileman	*	
Fran Vernosky	*	
	*	
Community Participants	*	
	*	
William Chen, Esq.	*	
For Karen Blechman	*	
* *		

Before: Françoise M. Carrier, Hearing Examiner

FOURTH SUPPLEMENTAL HEARING EXAMINER'S REPORT AND RECOMMENDATION

I. STATEMENT OF THE CASE

The Board of Appeals ("Board") issued an Opinion in Case No. S-289-B on May 18, 2005, effective June 8, 2005, which granted the requested modification in part, denied it in part, and imposed a series of conditions. Condition No. 14 directed the Hearing Examiner to conduct a public hearing in mid-November, 2005, to check the swim club's progress on the following matters:

a. Volume reduction for starter system.
b. Building permit for shed.
c. Implementation of Landscape Plan per approved phasing.
d. Implementation of Lighting Plan.
e. Results of surprise noise inspection.
f. Elimination of on-street parking by swim club members due to implementation of parking policy and parking enforcement procedures.
g. Meetings of Community Liaison Council.

Pursuant to this condition, the Hearing Examiner conducted a public hearing on November 18, 2005 to address the specified issues. Evidence was presented by Swim Club representatives, members of the community, a representative of the Department of Permitting Services ("DPS") and the People's Counsel, Martin Klauber.

At the close of the hearing, the record was held open for an extended period to allow for a site inspection and written report by Technical Staff at the Maryland-National Capital Park and Planning Commission ("MNCCPC"), as well as responsive submissions by the other parties. With regard to all issues except the Lighting Plan, the record closed on February 20, 2006. The Hearing Examiner submitted a Third Supplemental Report and Recommendation on March 22, 2006, which addressed all issues except the Lighting Plan. The record was held open for an additional period to allow the Community Liaison Council ("CLC") and the Swim Club to work on a new Lighting Plan. The Board of Appeals issued a resolution effective May 3, 2006, which affirmed that that Swim Club had satisfied most of the conditions of approval, directed the Swim Club to submit a revised Landscape Plan for final approval, and added two additional conditions related to use of the tennis facilities. *See* Ex. 226. It is the Hearing Examiner's understanding that the Swim Club has not submitted a revised Landscape Plan for final approval, preferring to wait for the Board's consideration of the Lighting Plan.

Two community members expressed concerns about the submitted Lighting Plan at the November 18 hearing. Subsequently, the community representatives on the Swim Club's Community Liaison Committee requested time to develop an alternative Lighting Plan and present it to the Swim Club. Two extensions of time were granted, based on evidence of ongoing, good faith efforts and the fact that the pole light in the pool area, which neighbors found the most objectionable, is not in use. The current proposed Lighting Plan was submitted on June 26, 2006, and supporting documentation followed on July 20, 2006. *See* Exs. 227 – 228. On July 25, 2006, Technical Staff provided a brief comment indicating that the lighting plan shows no light spillage beyond the easement/alley between the Swim Club property and private backyards, and recommending approval of the plan. *See* Ex. 229. The record was held open for a public comment period and closed on August 25, 2006. No comments were received.

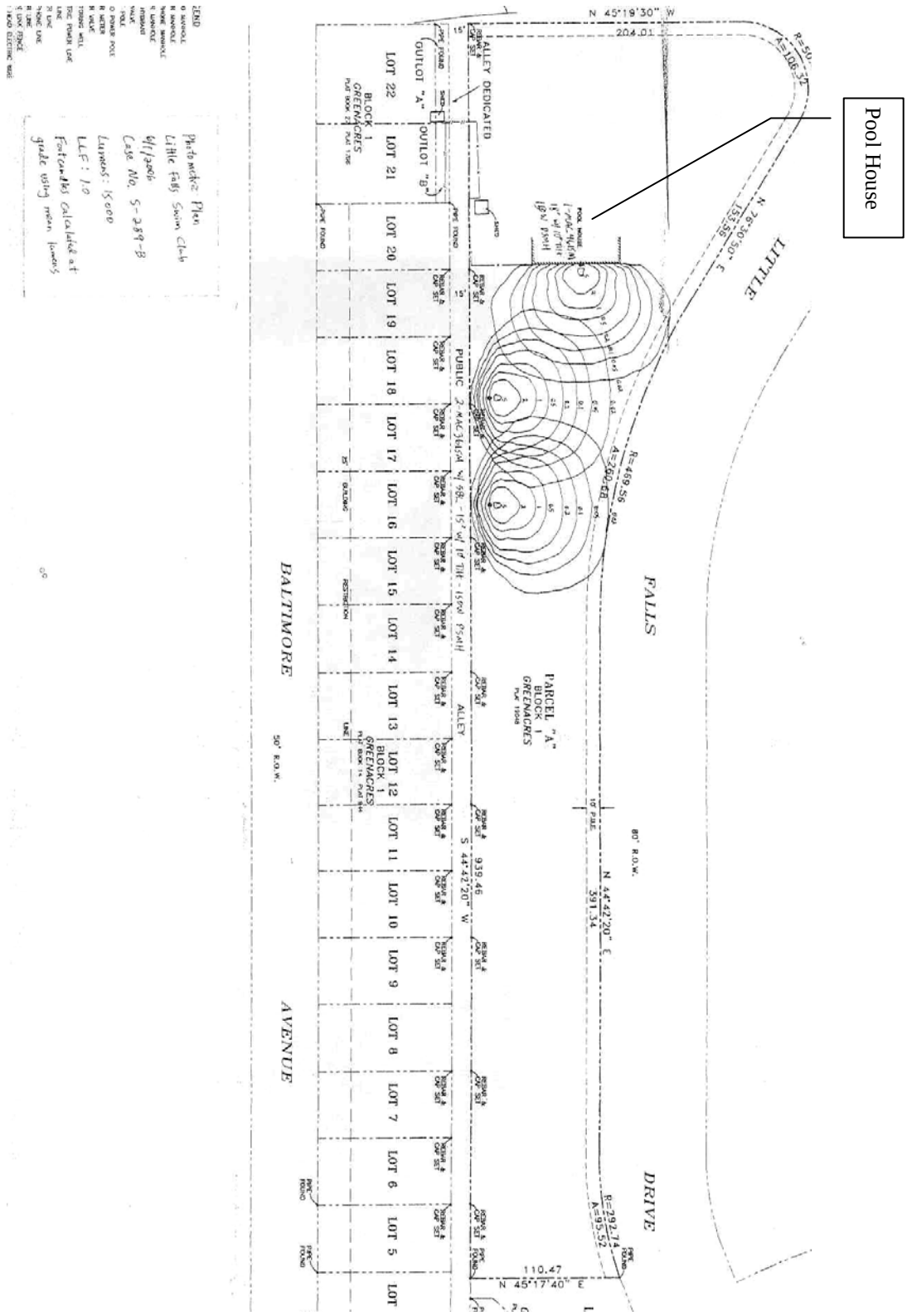
II. EVIDENCE AND CONCLUSIONS

The Board's June 8, 2005 Opinion denied a requested modification to approve two 30-foot light poles that were installed, without permission, during the 1980s. One of the poles is located in the parking lot and one is in the pool area. Testimony during the multi-day 2004 hearing indicated that some neighbors were annoyed by the lights shining into their homes, but most wanted to maintain some lighting, at least in the parking lot, to deter burglars and other unwanted late night activity.

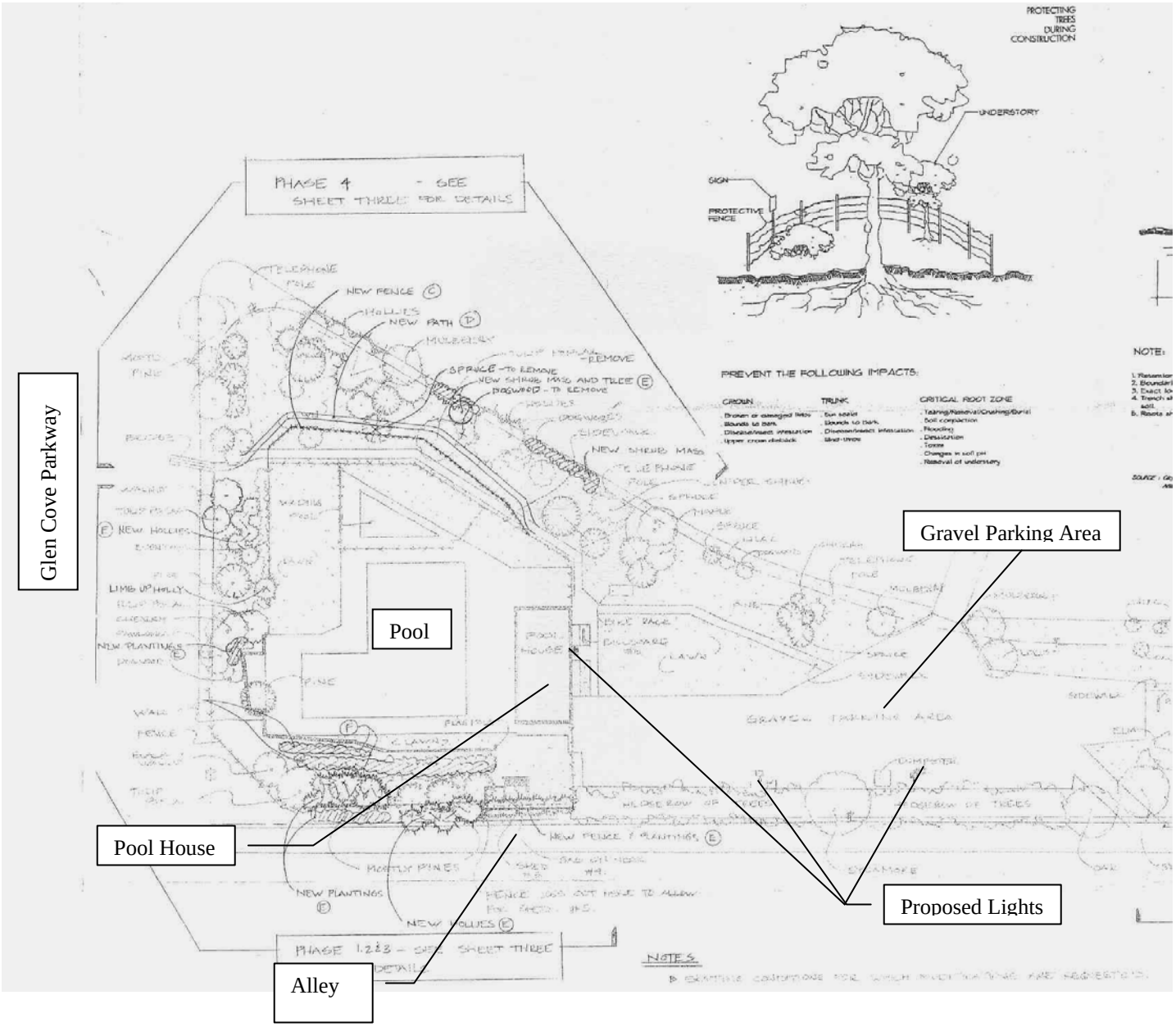
The proposed Lighting Plan, Exhibit 228(a) (which is labeled "photometric plan," but serves as a lighting plan as well), calls for two pole lights in the parking lot, each with a total height of 15 feet, including the base, plus one light fixture mounted on a bracket at the apex of the front of the pool house. All three fixtures would use 150-watt lights, tilted and with cut-off features to direct the illumination into the parking lot and away from the property lines. Based on the specifications submitted for the light fixtures and a quote from an electrician, the lights would be the same on all three fixtures, except for their method of mounting (wall-mounted v. pole-mounted). The relevant portion of the Lighting Plan/Photometric is reproduced on the next page, followed by the relevant portion of Page

One of the Landscape Plan, which the Swim Club has revised to show the proposed lighting locations. Specifications for the light fixtures are show on pages six and seven.

Lighting Plan/Photometric Plan, Ex. 228(a)



Excerpt from Page One of Landscape Plan Showing Proposed Lighting Locations, from Exhibit 228(b)

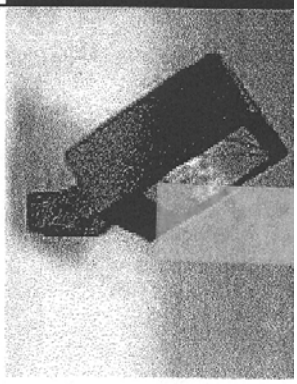


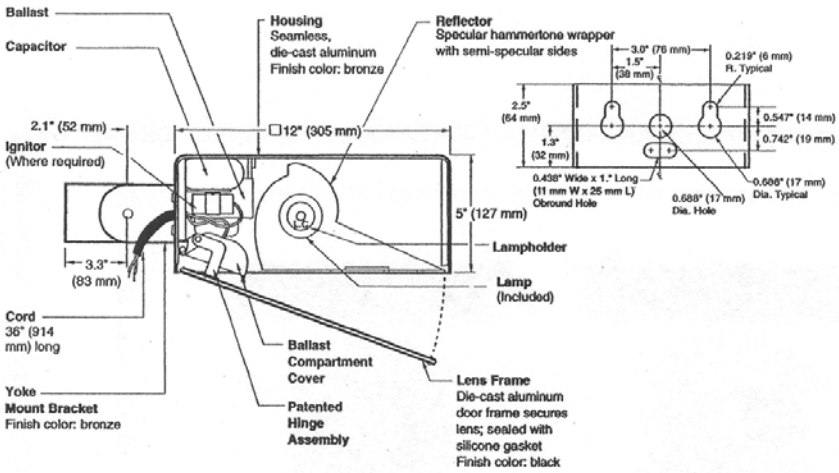
Specifications for Wall-Mounted Fixture, from Ex. 227

YOKE MOUNT

12" (305 mm) AREA CUTOFF LIGHT

AC4-12 SERIES





Notes

SPEC #	WATTAGE	CATALOG #
PULSE START METAL HALIDE		
SPEC #	125W PSMH	MAC4612-(a)(b)
SPEC #	150W PSMH	MAC4615-(a)(b)
METAL HALIDE		
SPEC #	50W MH	MAC4405-(a)(b)
SPEC #	70W MH	MAC4407-(a)(b)
SPEC #	100W MH	MAC4410-(a)(b)
SPEC #	175W MH	MAC4417-(a)(b)
HIGH PRESSURE SODIUM		
SPEC #	35W HPS	MAC4503-(a)(b)
SPEC #	50W HPS	MAC4505-(a)(b)
SPEC #	70W HPS	MAC4507-(a)(b)
SPEC #	100W HPS	MAC4510-(a)(b)
SPEC #	150W HPS	MAC4515-(a)(b)

Specify (a) Voltage & (b) Options.

(a) VOLTAGE SUFFIX KEY	
D	120/277V (Standard: 125W PSMH; 50 – 100W MH; 50W HPS)
M	120/208/240/277V (Standard: 150W PSMH; 175W MH; 70 – 150W HPS)
T	120/277/347V (Canada Only) (Standard: 150W PSMH; 70 – 175W MH; 70 – 150W HPS)
1	120V (Standard: 35W HPS)
2	277V
27	277V Reactor (150W PSMH Only)
3	208V
4	240V
5	480V (175W MH; 70 – 150W HPS)
6	347V (Canada Only)

For voltage availability outside the US and Canada, see Bulletin TD-9 or contact your Ruud Lighting authorized International Distributor.

(b) OPTIONS (factory-installed)	
-(a)F	Fusing
-(a)P	Button Photocell
-5P	External Photocell (for 480V)
Q	Quartz Standby (includes 100W quartz lamp) (N/A on 277V Reactor)

Specify (a) Single Voltage — See Voltage Suffix Key

GENERAL DESCRIPTION

60° forward throw sharp cutoff luminaire for HID lamp, totally enclosed. Housing is seamless, die-cast aluminum. Yoke mounting is a hinged steel bracket measuring 5" (127 mm) wide by 2.5" (64 mm) high, which allows vertical tilt of fixture and double locks in 5° increments from 0° to 90° above horizontal. Bracket attaches to housing with two 5/16" black stainless-steel bolts. Bracket bolts are supplied with sealing washer to prevent water leakage. A 36" (914 mm) flexible cord is provided for electrical connection. Lens assembly consists of rigid aluminum frame and high-impact, clear-tempered glass.

ELECTRICAL

Fixture includes clear, medium-base lamp. Pulse-rated porcelain enclosed, 4kv-rated screw-shell-type lampholder. Lamp ignitor included where required. All ballast assemblies are high-power factor and use the following circuit types:

Reactor (277V PSMH)
150W PSMH

Reactor
120V: 35 – 150W HPS

HX — High Reactance
50 – 100W MH; 50 – 150W HPS

CWA — Constant Wattage Autotransformer
125 & 150W PSMH; 175W MH

PATENT

US 4,689,729

LABELS

ANSI lamp wattage label supplied, visible during relamping. UL Listed in US and Canada for wet locations and enclosure classified IP65 per IEC 529 and IEC 598.

FINISH

Exclusive DeltaGuard® finish features an E-coat epoxy finish with medium bronze ultra-durable powder topcoat, providing excellent resistance to corrosion, ultraviolet degradation and abrasion. The finish is covered by our seven-year limited warranty.

ACCESSORIES

FWG-12	Wire Guard
SBL-12	Backlight Shield

9201 Washington Avenue Racine, Wisconsin 53406-3772 USA PHONE (262) 886-1900 FAX (262) 884-3309

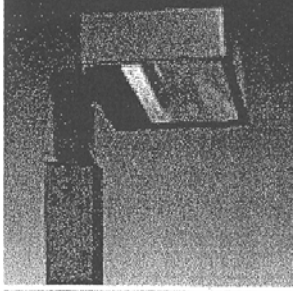
RUUD LIGHTING

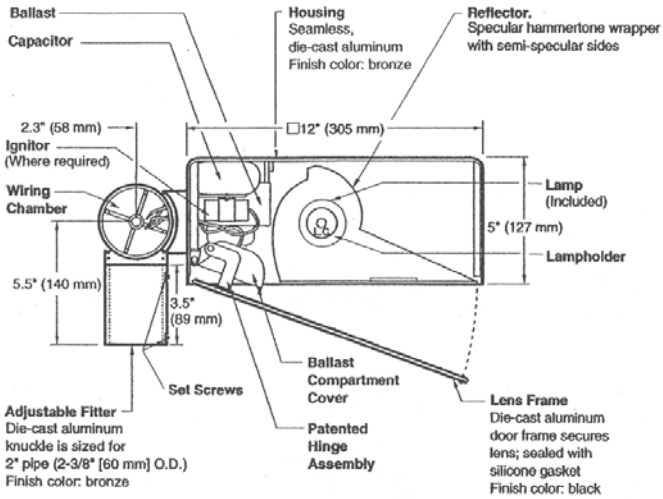
Specifications for Pole-Mounted Fixture, from Ex. 227

2" ADJUSTABLE FITTER

12" (305 mm) AREA CUTOFF LIGHT

AC3-12 SERIES





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SPEC #	70W MH	MAC3407-(a)(b)
SPEC #	100W MH	MAC3410-(a)(b)
SPEC #	175W MH	MAC3417-(a)(b)
HIGH PRESSURE SODIUM		
SPEC #	35W HPS	MAC3503-(a)(b)
SPEC #	50W HPS	MAC3505-(a)(b)
SPEC #	70W HPS	MAC3507-(a)(b)
SPEC #	100W HPS	MAC3510-(a)(b)
SPEC #	150W HPS	MAC3515-(a)(b)

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For voltage availability outside the US and Canada, see Bulletin TD-9 or contact your Ruud Lighting authorized International Distributor.

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-5P	External Photocell (for 480V)
Q	Quartz Standby (includes 100W quartz lamp) (N/A on 277V Reactor)

Specify (a) Single Voltage — See Voltage Suffix Key

GENERAL DESCRIPTION

60° forward throw sharp cutoff luminaire for HID lamp, totally enclosed. Housing is seamless, die-cast aluminum. Aluminum die-cast adjustable fitter mounting is sized for 2" pipe (2-3/8" [60 mm] O.D.). Allows for directional aiming as well as 2-1/2° incremental vertical adjustment. Contains integral wiring compartment. Two stainless-steel set screws provide clamping to vertical tenons. Lens assembly consists of rigid aluminum frame and high-impact, clear-tempered glass.

PATENT

US 4,689,729

ELECTRICAL

Fixture includes clear, medium-base lamp. Pulse-rated porcelain enclosed, 4kv-rated screw-shell-type lampholder. Lamp ignitor included where required. All ballast assemblies are high-power factor and use the following circuit types:

Reactor (277V PSMH)
150W PSMH

Reactor
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125 & 150W PSMH; 175W MH

LABELS

ANSI lamp wattage label supplied, visible during relamping. UL Listed in US and Canada for wet locations and enclosure classified IP65 per IEC 529 and IEC 598.

FINISH

Exclusive DeltaGuard® finish features an E-coat epoxy primer with medium bronze ultra-durable powder topcoat, providing excellent resistance to corrosion, ultraviolet degradation and abrasion. The finish is covered by our seven-year limited warranty.

ACCESSORIES

FWG-12	Wire Guard
PC-1	Button Photocell (for fixtures set to 120V)
PC*6	Button Photocell (for fixtures set to 347V)
PC-2	Button Photocell (for fixtures set to 208, 240, 277V)
PGM-1	Ground Mount Post
SBL-12	Backlight Shield

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RUUD LIGHTING

The Lighting Plan/Photometric Plan submitted by the Swim Club was prepared by John Wileman, a community representative on the Community Liaison Committee whose backyard abuts the alley, directly across from the location proposed for one of the new pole lights. The photometric plan is accompanied by a brief written explanation of how Mr. Wileman, who is a cartographer by profession, prepared the plan. He obtained photometric data for the appropriate light fixtures from the lighting vendor's web site and used a software application called Photometric Viewer v3.0.04 to generate a plot showing the expected illumination. The Swim Club supplied Mr. Wileman with a scaled, digital survey of the subject property, which was commissioned by the Swim Club in March 2005. Using this survey as a base map, Mr. Wileman overlaid the illumination plan on the base map, at the same scale, to produce the final product. It is certainly unorthodox for a community member who has no professional lighting experience to prepare a photometric plan. However, the description of Mr. Wileman methodology suggests a logical and careful approach. Moreover, his training as a cartographer undoubtedly assisted him in producing an accurate plan, and the proximity of his residence to one of the proposed poles gives him a strong incentive to accurately assess the lighting impacts. Technical Staff did not comment on Mr. Wileman's methodology, and no comments were received from the community. Under the totality of the circumstances, the Hearing Examiner is willing to accept the Lighting Plan/Photometric Plan submitted as substantial, probative evidence of the illumination that the proposed lighting fixtures would generate.

The Lighting Plan/Photometric Plan indicates that the maximum level of illumination along the rear property line, abutting the alley, would be 0.02 foot-candles. This represents a very low level of illumination, well below the maximum of 0.1 foot-candles established in the Zoning Ordinance as permissible along a rear property line for a special exception in a residential zone. *See* Code § 59-G-1.23(h). At a height of 15 feet, the proposed pole lights would be much less obtrusive than the existing 30-foot poles. The fixture proposed for the pool house would be mounted at a height of 18 feet, which is also much less obtrusive than the current poles. Moreover, the pool house fixture would be a greater distance from the alley property line than the pole fixtures, resulting in no illumination from

the pool house fixture at the property line. Moreover, the pool house fixture would shed no light towards Glen Cove Parkway, because the building itself would block light in that direction.

Based on the Swim Club's written submissions, Technical Staff's favorable review, and the total absence of comments from the community – in a community that has been very forthcoming with comments in earlier stages of this case – the Hearing Examiner concludes that the proposed Lighting Plan would have no adverse effects on the immediate neighbors or the general neighborhood, and should be approved. Specifically, the Hearing Examiner recommends approval of Exhibit 228(a), which is a full-size survey of the subject property with handwritten depictions of the proposed light fixture locations and photometrics. It is labeled "Survey of Mark Property on Both Sides of Public Alley" in the bottom right corner, and is labeled "Photometric Plan," by hand, in the lower left corner. The Hearing Examiner further recommends that if Exhibit 228(a) is approved as a Lighting Plan, the Swim Club should be required to submit for the Board's approval a final Landscape Plan that depicts the light fixtures shown on Exhibit 228(a). Should the Board wish the Hearing Examiner to review the final Landscape Plan prior to its consideration by the Board, I will be happy to do so.

The recommendations below also include a condition requiring proper permits and inspections in connection with the new lighting. This condition was recommended by Stan Garber of DPS at the November 18, 2005 hearing.

III. RECOMMENDATIONS

Based on a full review of the evidence of record, the Hearing Examiner makes the following recommendations for action by the Board:

1. Approve Exhibit 228(a) as the final Lighting Plan, and require that the Swim Club either affix a label to that plan re-naming it "Lighting Plan," or submit a new copy of the plan with "Lighting Plan" as its title.
2. Direct the Little Falls Swim Club to submit for approval a revised Landscape Plan, with all three sheets, as required by the Board's Resolution in this matter effective May 3, 2006, showing the locations of the lighting fixtures depicted on Exhibit 228(a).

3. Modify the terms and conditions of the special exception to require that the Swim Club (i) obtain any permits required for installation of the new lights, including an electrical permit, and (ii) ensure that the site is properly inspected before backfilling covers up the wiring.

Dated: September 21, 2006

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner