

A M E N D E D R E S O L U T I O N

WHEREAS, the Prince George's County Planning Board is charged with the approval of Detailed Site Plans pursuant to Part 3, Division 9 of the Zoning Ordinance of the Prince George's County Code; and

WHEREAS, *[in consideration of] evidence *was presented at a public hearing on March 6, 2003, regarding Detailed Site Plan DSP-87153/08 for Belle Point (Little Learners Playhouse, Inc.)*[,the Planning Board finds:] and

*WHEREAS, the District Council elected to review Detailed Site Plan DSP-87153/08 for Belle Point (Little Learner's Playhouse, Inc.) on April 21, 2003; and

WHEREAS, the District Council remanded the case to the Planning Board on June 9, 2003 for additional information relating to proper legal authorization, noise and other issues; and

WHEREAS, the Planning Board in consideration of evidence presented at another hearing on the case held on January 29, 2004, having evaluated the issues contained in the Order of Remand, finds:

1. The Detailed Site Plan is proposing a day care center for 40 children. The site is located on Belle Point Drive northeast of I-95, north of American Legion Drive. The site consists of 7.38 acres in the C-O Zone. The day care center is located in units within two adjacent, existing two-story brick buildings. The day care center will occupy the first floors of Units 18 (in Building 4) and 19 (in Building 5).

2. **Development Data Summary**

	EXISTING	PROPOSED
*Zone(s)	C-O and R-T	C-O and R-T
Use(s)	Office/Condominiums	Office/Condominiums/Day Care
Acreage	C-O Zone 7.38 acres R-T Zone 12.21 acres	C-O Zone 7.38 acres R-T Zone 12.21 acres
Lots	C-O Zone 1 Lot (45 Office Condominiums) R-T Zone 97 lots	C-O Zone 1 Lot (45 Office Condominiums) R-T Zone 97 lots

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Other Development Data for the C-O Zone portion only

Enrollment	40 children
Parking (required)	238 spaces
Office Condominiums	233 spaces
Day care	5 spaces
Parking (provided)	352 spaces
Office Condominiums	347 spaces
Day care	5 spaces
229 Standard Spaces	
115 Compact Spaces	
8 Handicapped Spaces	
Play area (required)	1,500 square feet
**Play area (provided)	1,780 square feet

*The subject application is entirely within the C-O Zone and does not impact the R-T Zone with regard to parking calculations, conformance to the *Landscape Manual*, or the Zoning Ordinance.

**Air-conditioning units encumber the subject play area, which reduces the amount of play area the applicant is proposing. A sight-tight fence should enclose these air conditioning units.

3. The subject application indicates that the applicant proposes to install outdoor play equipment for the children to utilize while at the day care. The plans should be revised to indicate that the proposed play equipment is being installed in accordance with the Consumer Product Safety Commission's Handbook for Public Playground Safety (pub. #325). Special attention should be given to the required fall zones, which vary depending on the equipment, but are generally six feet wide and follow the contours of the piece of play equipment. No piece of equipment should intrude into another piece of equipment's fall zone. The applicant should provide proper fall zones and resilient surface material for areas where play equipment is installed.
4. The Permit Section had numerous comments, which have been addressed in the Recommendation section below.
5. The Environmental Planning Section, in a memorandum dated February 10, 2003 (Ingrum to Whitmore), offered the following comments:

“The Environmental Planning Section has previously reviewed this site as DSP-87153, which was approved for development of office buildings and residential townhouses. A number of minor revisions to the original Detailed Site Plan (DSP) were subsequently approved. The current application is for the addition of a childcare center to buildings 18 and 19. The childcare center will also contain an outdoor play area.

“This 29.59-acre, C-O- and R-T-zoned property is located on Belle Point Drive just north of

Interstate 95. A review of the information available indicates that wetlands, streams, 100-year floodplain, and steep and severe slopes are not found to occur on the property. The predominant soils found to occur according to the Prince George's County Soil Survey include soils in the Christiana and Sunnyside series. The Christiana soils have limitations of high shrink-swell potential and instability. The Sunnyside series do not pose any difficulties for development. According to available information, Marlboro clay is not found to occur on this property. The sewer and water service categories are S-3 and W-3 according to information obtained from the Department of Environmental Resources dated November 1, 2001. According to information obtained from the Maryland Department of Natural Resources, Natural Heritage Program, publication titled 'Ecologically Significant Areas in Anne Arundel and Prince George's Counties,' December 1997, there are no rare, threatened, or endangered species found to occur in the vicinity of this property. Transportation-related noise impacts have been found to impact this property. There are no scenic or historic roads in the vicinity of this property. This property is located in the Indian Creek watershed of the Anacostia River basin and in the Developing Tier as reflected in the adopted *Biennial Growth Policy Plan*.

"Environmental Review

"This activity is not subject to the provisions of the Woodland Conservation Ordinance because less than 5,000 square feet of woodland will be disturbed. The Environmental Planning Section issued a numbered letter of exemption on March 29, 2002, for the proposed day care center. This Letter of Exemption is valid until March 29, 2004.

"The proposed child care center will be located approximately 200 feet from Interstate 95, which is currently an eight-lane divided expressway. The 65 dBA Ldn noise contour must be shown on the DSP and has not been shown on the submitted plan. The Environmental Planning Section's noise model estimated, conservatively, that the 65 dBA Ldn noise contour is located 1,181 feet from the centerline of the expressway. A Phase I Noise Study can be submitted or the Environmental Planning Section's location of the 65 dBA Ldn noise contour may be shown on the DSP. If a Phase I Noise Study is conducted, the noise contour may be based on the number of operating hours for the proposed use.

"In addition, a Phase II Noise Study is needed to determine appropriate noise mitigation measures to reduce noise in the outdoor activity areas to 65 dBA Ldn or less. The location and design of mitigation measures and the mitigated 65 dBA must be shown on the DSP. It should be noted that during the first review of DSP-87153 the Environmental Planning Section recommended that acoustical design techniques be incorporated into the residential structures to mitigate noise levels. Therefore, acoustical design techniques should be used during the future building construction to mitigate indoor noise levels."

Comment: *[The above-referenced concerns have been addressed in the Recommendation section below.] It should be noted that the building permits for the townhouse office complex

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have been released and the complex is near completion. *In addition, a revised referral from the Environmental Planning Section (dated January 22, 2004) based on new information regarding the environmental noise study completed for the project indicated that since the 65dBA line does not cross the subject property it need not be shown and a Phase II noise study need not be completed. The revised referral states the following:

1. The proposed child care center will be located approximately 200 feet from Interstate 95, which is currently an eight lane, divided expressway. Condition 1.i. of PGCPB Resolution No. 03-40 states: "The plans shall be revised to show the 65 dBA noise contour that is based on the Environmental Planning Section's noise model or a Phase I Noise Study."

Using the Environmental Planning Section noise model, staff estimated the noise contour to be 1,181 feet from the centerline of I-95. This model does not consider topography or any barriers that might exist on the site. The location of the modeled 65 dBA Ldn noise contour includes the subject property and includes a projection of noise to include increased traffic levels for the next 10 years.

A Phase I Noise Study has been conducted and was recently submitted for review. It consists of the measurement of noise levels on the subject property. Staff reviewed the study and found that it was properly conducted according to industry standards. The noise levels recorded in the outdoor activity area (located in the rear of the building) are reduced from noise levels without mitigation by the existing buildings and a fence, factors that are not part of the noise model calculations conducted by staff. The noise study states that the noise levels in the outdoor activity area are between 60 and 61 dBA Ldn, which is below the state standard of 65 dBA Ldn.

The noise study does not contain a projection of noise levels 10 years in the future, as is the standard procedure for noise evaluations. However, even if traffic levels were doubled on I-95, the resultant noise levels would not increase by more than 3 dBA, and, in fact, would likely be less because of congestion and lower vehicle speeds.

The study also does not contain an approximation of the location of the 65 dBA Ldn noise contour; however, it does verify that the subject property is beyond the limits of the 65 dBA noise levels emanating from I-95. As a result of this analysis, staff recommends that the Planning Board find that the previous condition of requiring the location of the 65 dBA Ldn to be shown on the plan is now moot because the outdoor activity area is beyond the area where noise levels are above the state standard.

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Recommended Finding: Staff recommends that the Planning Board find that the noise study prepared by Miller, Beam & Paganelli, Inc., dated July 14, 2003, correctly states that the noise levels within the outdoor activity area on the subject property are below the state standard of 65 dBA Ldn and that the placement of the 65 dBA Ldn noise contour on the Detailed Site Plan is no longer necessary.

2. The second noise-related condition of PGCPB Resolution No. 03-40 states: “The applicant shall provide a Phase II Noise Study and the detailed site plan shall be revised to show the mitigated 65 dBA noise contour and mitigation measures acceptable to the Environmental Planning Section.”

The noise study provided concludes that the subject property is outside of the 65 dBA Ldn noise contour for I-95. The buildings and fencing that exists provides sufficient noise mitigation on-site, based on actual measurements of existing noise levels. Even if traffic levels are projected 10 years in the future, the resultant noise levels would not be above the state standard of 65 dBA Ldn. A Phase II Noise Study addresses mitigation measures that are required if outdoor activity areas are above the state standard. Because the outdoor activity areas on the subject property are not above the state standard, a Phase II Noise Study is not necessary.

Recommended Finding: Staff recommends that the Planning Board find that the noise study submitted sufficiently addresses the issue of noise levels in the outdoor activity area and that the provision of a Phase II Noise Study is no longer necessary.

6. The Transportation Planning Section, in a memorandum dated December 31, 2002 (Masog to Whitmore), offered the following comments:

“This site gains its access through an adjacent property, and staff is concerned about approving a use that would increase the trip generation of Units 18 and 19 from 6 trips to 34 trips. However, this is a small part of a commercial complex. Therefore, staff deems the traffic impact to be relatively minor. If the enrollment were to be increased, a new traffic study should be submitted.”

7. The Trails Coordinator of The Transportation Planning Section, in a memorandum dated January 23, 2003 (Shaffer to Whitmore), offered the following comments:

“There are no master plan trail issues identified in the Adopted and Approved Langley Park-College Park-Greenbelt Master Plan. The State Highway Administration is addressing bicycle and pedestrian facilities along MD 193 comprehensively. The existing sidewalks safely accommodate pedestrians within the proposed development.

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“Specifically regarding the portion of the subject site within the limits of work, it is recommended that the ‘pedestrian access’ path be a minimum of six feet wide and asphalt to ensure accessibility for all users. The pedestrian connections between the day care facilities (between Lots 18 and 19) and the playgrounds should also be a minimum of six feet wide and asphalt.”

Comment: The sidewalks referred to above are existing and are six feet wide.

8. The Department of Environmental Resources has found the subject application in conformance with the approved stormwater management concept plan (#8001350-1988-01).
9. At the time of the writing of the staff report, the Office of Childcare Licensing had not responded to the referral request.
10. The State Highway Administration has found the subject application acceptable as submitted. The Department of Public Works and Transportation indicates that coordination with the City of Greenbelt is required.
11. The subject site is located within the City of Greenbelt. [At the time of the writing of the staff report, the City of Greenbelt had not responded to the referral request.] *In a letter dated February 26, 2003, The City of Greenbelt recommended that the Planning Board deny approval of the detailed site plan because of likely impacts the day care center would have on adjacent property owners.
12. *[The Detailed Site Plan represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George’s County Code without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.] *Staff has evaluated the application for Belle Point DSP-87153/08 (Little Learners Playhouse, Inc.) for conformance with the remand order issued by District Council on June 9, 2003. Each item addressed in the remand order is bolded below, followed by staff’s comments.

A. Authorization: At oral argument, questions were raised about use of part of the common area in this condominium office park for a playground, the play area for the proposed day care center. It was stated that the playground and day care center were approved by the board of the condominium association, but the record does not include the association’s covenants, and it is not clear whether the unit owners are entitled to vote on the playground proposal. The Planning Board apparently decided that it should not (or could not) determine whether the playground and center were authorized by the appropriate persons or entities in the condominium association.

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On remand, the Planning Board must make that determination, and it must decide whether the proposed site plan was in fact fully authorized by the proper parties, as to all parts of the office complex to be used. The Board cannot approve a site plan application which is not authorized by the owner. If the applicant owns office units but not the playground area, and if the playground area is not authorized for day care center use by the correct parties – the unit owners, or the board of the condominium association, or perhaps both, or some other entity – then the application cannot be approved.

As to this issue, the burden is on the applicant to produce evidence and prove that the proposal is authorized. The burden cannot be shifted to opposition parties, or the Planning Board or its staff.

Comment:

Mr. Amjad Khan submitted documents to prove that Mr. Kurt Blorstad was Secretary of Belle Point Office Park Condominium II, Inc., on December 3, 2002, the date on which Mr. Blorstad authenticated a Board of Directors Resolution granting permission for the applicants in the above-mentioned case to access common areas of the subject property in association with their proposed use. Specifically, Mr. Khan asserts in a September 10, 2003, notarized document written to Steve Adams, Urban Design Supervisor, that Mr. Blorstad was Secretary on December 3, 2002. He also supplements his September 10 correspondence with a May 8, 2001, document, “Minutes of Special Meeting by the Board of Directors of Belle Point Office Park Condominium II,” signed by Mr. Blorstad as Secretary.

Legal staff has reviewed the documents and in a memorandum from George Johnson to Steve Adams, dated September 30, 2003, expressed the belief that the September 10, 2003, and May 8, 2001, documents together provide adequate evidence that Mr. Blorstad was Secretary on December 3, 2002. Legal staff quotes Article VI (“Officers”), Section 6, of the By-Laws of the Council of Unit Owners of the Belle Point Office Park Condominium II, Inc. (“By-Laws”), as stating that the Secretary “keep(s) the minutes of all meetings of the Board of Directors,” and has “charge...of books and papers as the Board of Directors may direct and he shall, in general, perform all of the duties incident to the Office of Secretary.” Article V (“Directors”) of the By-Laws, in turn, grants authority to the Board of Directors “to lease, grant licenses, easements, right(s)-of-way and other rights of use in all or any part of the common elements of the condominium...” Legal staff concluded then that Mr. Blorstad, as Secretary, validated the December 3, 2002, resolution by which the Board of Directors properly authorized the applicant’s proposed use of the common areas of the subject property.

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- B.** **Health Care Facility: The record indicates that the proposed day care center will occupy two units in a two-building office complex subject to a condominium regime. At oral argument, questions were raised about the relation between this use and another in the office complex, a health care facility for patients with psychiatric disorders. On remand, the Planning Board should decide whether the health care facility is still in operation in the office complex. If it is, the Board should determine where it is located, with respect to the proposed day care center and playground, and whether the health care facility and the day care center may function within close proximity of each other.**

Comment:

Staff was informed by Amjad Kahn, President of the condominium association for Belle Point Office Park Condominium II, that the health care facility for patients with psychiatric disorders was no longer operating in the adjoining unit on Lot 17 and so will not pose any conflicts. Testimony from another tenant of the office complex, however, indicated that a psychiatric practice was still in operation at that location. The Planning Board, in their discussion on the case, noted that both the health care facility and the proposed use are permitted uses in the C-O Zone. Since proximity of the two uses was presumably contemplated in the Zoning Ordinance list of permitted uses, it was determined not to be within the Planning Board's legal authority to determine whether the health care facility and the day care center may function within close proximity of each other.

- C.** **Other Office Units: The record does not reflect a finding by the Planning Board that the proposed plan, under Section 27-285(b) of the Zoning Ordinance, "represents a reasonable alternative for satisfying the site design guidelines, without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for its intended use." That is, the record and resolution do not seem to include a review of the consequences of placing a 40-student day care facility in an office complex with other office tenants. If the application is approved, the Board's resolution should include a finding that the day care center use shown in the site plan will not detract substantially from the reasonable use of the rest of the office complex.**

Comment:

Staff has evaluated the effects of the proposed 40-child day care on the surrounding office complex and other office tenants and found traffic and noise from the play area to be of most concern. With respect to traffic, the Transportation Section noted that, although they had some concerns regarding an increase in trip generation on the site, the proposed project is a small part of a commercial complex. Therefore, they deemed the traffic impact of the proposed project to be relatively minor. In regard to noise from the play area, information from the applicant indicated that only 20 children will be permitted in the play area at a time and that play is limited to two 45-minute periods. While these

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arrangements may still constitute a minor intrusion in the existing office environment in the opinion of some tenants, they cannot be reasonably regarded as a major disruption if limited in duration as represented by the applicant. Therefore, the day care center, as shown on the site plan, and with the limitation on outdoor play proposed by the applicant and shown in the proposed conditions below, will not detract substantially from the reasonable use of the rest of the office complex.

D. Noise Study: The record also indicated that a noise study was proposed and that the Planning Board imposed a condition that a Phase II noise study be completed. The study shall be completed prior to the hearing on remand, and a revised DSP showing the 65 dBA contour must be filed in the record, together with the review comments of the Environmental Planning Section.

Comment:

As mentioned in Finding 5, a revised referral from the Environmental Planning Section based on new information regarding the environmental noise study completed for the project indicated that since the 65 dBA line does not cross the subject property, it need not be shown and the Phase II noise study need not be completed.

13. For the reasons outlined above, and especially for the reasons stated in Finding 12.c., the Planning Board concludes that the subject detailed site plan represents a reasonable alternative for satisfying the site design guidelines of Subtitle 27, Part 3, Division 9, of the Prince George's County Code without requiring unreasonable cost and without detracting substantially from the utility of the proposed development for its intended use.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to Subtitle 27 of the Prince George's County Code, the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission adopted the findings contained herein and APPROVED the Detailed Site Plan DSP-87153/08, subject to the following conditions:

1. Prior to certificate approval, the following revisions and/or notes shall be made or added to the Detailed Site Plan:
 - a. The height of all fences and walls within the play area shall be provided.
 - b. The surface of the play area shall be identified.
 - c. The plans shall be revised to include three shade trees within the play area. These trees shall be Quercus phellos (Willow Oaks) and shall be at least 2 ½–3-inch caliper. The appropriate Landscape Schedule shall be included on the plans. One tree shall be a minor shade tree, Ostrya Virginiana (Ironwood) and shall be at least 2 ½ - 3 inch caliper to be located behind Lot No. 19.

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- d. The plans shall be revised to provide sufficient lighting for the play area if it is to be used after dark. If the play area is not to be utilized after dark, a note shall be placed on the plans indicating that the play area shall only be used during daylight hours.
- e. The plans shall be revised to indicate that the proposed play equipment is being installed in accordance with the Consumer Product Safety Commission's Handbook for Public Playground Safety (pub. #325). Special attention shall be given to the required fall zones, which vary depending on the equipment, but are generally six feet wide and follow the contours of the piece of play equipment. No piece of equipment shall intrude into another piece of equipment's fall zone. The applicant shall provide proper fall zones and resilient surface material for areas where play equipment is installed.
- f. The plan shall be revised to indicate that the temporary fence at the rear of Lot 19 is to remain. The height and type of the fence shall be supplied.
- g. The parking schedule shall be revised to include the individual uses for each building. One van-accessible parking space for the physically handicapped shall be supplied.
- h. The height of the proposed toy storage shed shall be provided.
- *[i. The plans shall be revised to show the 65 dBA noise contour that is based on the Environmental Planning Section's noise model or a Phase I Noise Study.
- j. The applicant shall provide a Phase II Noise Study and the detailed site plan shall be revised to show the mitigated 65 dBA noise contour and mitigation measures acceptable to the Environmental Planning Section.]
- *[k]i. A note shall be placed on the plan indicating that if the enrollment of the day care exceeds 40 children, the applicant shall submit a revised plan with an accompanying traffic study to determine the sufficiency of the egress/ingress to the site.
- *[l]j. The area in which the storage shed is located shall be removed from the usable play area calculations. The plans shall provide at a minimum 1,500 square feet of play area. The air conditioning units located within the play area shall be enclosed with a sight-tight fence.
- *[m]k. The applicant shall provide a 20-scale plan of the play area and Buildings 18 and 19 on a plan sheet that is 24" x 36". This sheet shall also include the notes on Attachment "A."
- *l. A note shall be added to the plans that only 20 children shall be permitted in the play area at a time and that play shall be limited to two 45-minute periods.

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*[n]m. The applicant draft and submit to the City of Greenbelt a parking plan/policy to avoid internal circulation congestion at Belle Point during peak pick up and drop off times.

BE IT FURTHER RESOLVED, that an appeal of the Planning Board's action must be filed with the District Council of Prince George's County within thirty (30) days following the final notice of the Planning Board's decision.

* * * * *

This is to certify that the foregoing is a true and correct copy of the action taken by the Prince George's County Planning Board of The Maryland-National Capital Park and Planning Commission on the motion of Commissioner Eley, seconded by Commissioner Squire, with Commissioners Eley, Squire, Vaughns and Hewlett voting in favor of the motion, and with Commissioner Harley absent at its regular meeting held on Thursday, January 29, 2004, in Upper Marlboro, Maryland.

Adopted by the Prince George's County Planning Board this 19th day of February 2004.

Trudye Morgan Johnson
Executive Director

By Frances J. Guertin
Planning Board Administrator

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