

**DISTRICT COUNCIL FOR PRINCE GEORGE’S COUNTY, MARYLAND  
OFFICE OF ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION  
2022-012**

**DECISION**

Application:	Day Care Center for 40 Children
Applicant:	LOL Enterprises, LLC (t/a LOL Childcare Stations)
Opposition:	None
Hearing Dates:	May 22, 2024 and June 26, 2024 <sup>1</sup>
Decision Date:	September 12, 2024
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

**NATURE OF REQUEST**

(1) Special Exception 2022-012 is a request to use approximately 2,100 square feet of a 700,000-square-foot existing shopping center (“Beltway Plaza Mall”) on approximately 53.88 acres for a Day Care Center for up to forty (40) Children. The Day Care Center is proposed to be operated within the Beltway Plaza Mall site, located at 6000 Greenbelt Road<sup>2</sup>, Greenbelt, Maryland, within the municipal boundaries of the City of Greenbelt.

( ) The Technical Staff recommended approval of the request with conditions. (Exhibit 2)

(3) No one appeared in opposition at the hearing held by this Examiner.

(4) After the second hearing, the record was left open to allow the submission of additional items. The last of these was received on August 1, 2024, and the record was closed at that time.<sup>3</sup>

**FINDINGS OF FACT**

**Subject Property**

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<sup>1</sup> The first hearing was continued without any evidence taken because the Owner of Beltway Plaza Mall wanted to participate.

<sup>2</sup> The site is identified elsewhere in the record as 6250 Greenbelt Road. (Exhibits 12 and 34)

<sup>3</sup> The record consists of the transcript from the actual hearing and 42 Exhibits.

(1) Applicant wishes to open a Day Care Center for Children adjacent to LOL Stations, an existing family fun center (also referred to as an indoor entertainment center) located in the Beltway Plaza Mall. The Beltway Plaza Mall has been the subject of several approvals over the years, and the Technical Staff provided a complete discussion of those that have occurred since 1989. (Exhibit 2, p. 6) The most recent approvals were discussed as follows:

The Planning Board approved Preliminary Plan of Subdivision (PPS) 4-19023 on March 12, 2020 (PBCPB Resolution No. 2020-26) , subject to 18 conditions. The PPS approved development of up to 2,500 multifamily dwelling units and up to 700,000 square feet of commercial space on 55 parcels at the Beltway Plaza site. The approved development concept included a reduction in commercial area on-site, to be achieved in phases by razing sections of the existing mall building and replacing it with mixed-use buildings. Additional residential and mixed-use buildings are to be located at the core of the development, as well as in outlying areas of the site. While the mix of residential unit types changed from the CSP with the approval of this PPS, the number of allowable units is within the maximum units that were permitted by the CSP. The PPS further found that while the Greenbelt Metro area and MD 193 Corridor Sector Plan and SMA includes recommendations for a mix of housing types to be included in the redevelopment of the Plaza, it also provides flexibility for design to respond to market conditions.

On September 9, 2021, the Planning Board approved Detailed Site Plan DSP-20020 ... subject to five conditions. The DSP approved Phase 1 of the redevelopment of Beltway Plaza, which includes the area of this SPE, to include 750 multifamily residential dwelling units, a hotel, [a] recreation center, and limited streetscape improvements.

On November 29, 2021, the Prince George's County District Council approved ... the Countywide Sectional Map Amendment, which reclassified the subject property from the M-U-I Zone to the CGO Zone, effective April 1, 2022.

No development has occurred to date, as approved by DSP-20020. Per Section 27-3604(a) of the Zoning Ordinance, [Special Exception] applications are reviewed to ensure they are appropriate for the location and zone where they are proposed. There is currently no timeline on when the mall will begin redevelopment. If the [proposed day care] is relocated to a different location, a new [Special Exception] will be required....

(Exhibit 6, p. 7)

(2) The Special Exception property is not subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance due to there being less than 5, 000 square feet of disturbance. (Exhibit 2, p. 17) The entire Beltway Plaza Mall has a previously approved Tree Conservation Plan (TCP 2-030-00-01). No changes to the TCP 2 are needed since no grading permit will be required and the scope of the limits of disturbance for the instant request falls within the limits of disturbance approved in the TCP 2. (Exhibit 2, p 16) The requirements of Section 25-127(a) of the Tree Canopy Coverage Ordinance are inapplicable because the request proposes less than 5,000 square feet of disturbance. The Department of Permitting, Inspections and Enforcement ("DPIE") issued a Stormwater Management Concept Plan approval (38318-2020-00) for the overall site

associated with DSP-20020 that includes the subject property. It expired in April, 2024, as discussed more fully below.

(3) The property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Exhibit 34, p. 12) The Historic Preservation Section has noted that the site does not contain, and is not adjacent to, any designated Prince George's Historic Sites or resources. (Exhibit 10)

### **Surrounding Property/Neighborhood**

(4) The neighborhood is defined by the following boundaries:

- North – Capital Beltway (I-95/495)
- South – Greenbelt Road (MD 193)
- East – Cherrywood Lane
- West – Kenilworth Avenue (MD )

(5) The following uses surround the subject property:

- North – Breezewood Drive, and multifamily residential development in the RTO-L (Regional Transit-Oriented, Low-Intensity-Edge) Zone beyond.
- South – Commercial development in the CGO (Commercial, General, Office) Zone, and Greenbelt Road beyond.
- East – land in the AG (Agriculture and Preservation) Zone developed with the Greenbelt Middle School, athletic fields, and a school bus parking facility.
- West – Cherrywood Lane, with commercial developed land and undeveloped woodland in the CGO Zone beyond.

### **Sector Plan/Functional Master Plans /General Plan**

(6) The subject property lies within an area governed by the 2013 Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment .The Sector Plan designated the Beltway Plaza Mall site for “Mixed Use” future land use. The Functional Master Plans will not be impacted by the use for reasons noted by Applicant’s expert land planner (discussed below).

(7) The 2014 General Plan (“Plan Prince George’s 2035”), placed the property in the Established Communities. The vision for the Established Communities encourages “context-sensitive infill and low-to medium-density development”. (2014 General Plan, Prince George’s 2035, p.16) The General Plan also placed the site within the “Employment Areas” growth policy area, and the Generalized Future Land Use Map identifies it for “Mixed Use” land use.

## Applicant's Request

(8) The Applicant, LOL Enterprises, LLC is certified by the State Department of Assessments and Taxation to conduct business within Maryland. (Exhibit 20) GB Mall LP, the owner of Beltway Plaza Mall, has also been certified to conduct business within Maryland. (Exhibit 32)

(9) Applicant is requesting permission to operate a Day Care Center for up to forty (40) children. Ms. Regina Bethea, the founding member for LOL Enterprises, LLC, explained that Applicant currently operates Laugh Out Loud Stations Mega Fun Center, an indoor entertainment center on the upper deck of Beltway Plaza in the rear. (T. 18-20) This entertainment center offers a variety of activities, such as laser tag, roller skating, indoor rides (including bumper cars and a mini rollercoaster), video games, children's theater, and similar activities. (T. 16, 19) The Applicant wishes to operate the Day Care Center in an adjacent unit and believes that both units can coexist successfully at the location:

There's very little overlap between the fun center and the daycare. The fun center is open Saturdays and Sundays, and in the summer, we are open Fridays, Friday afternoons, and we open for private events. The daycare would only operate Monday through Friday, and there's a totally separate entrance... [and] it's two distinct programs that will offer the Fun Center and the childcare. And they're essentially in the same building. But the childcare station is in the walled-off space. It's nearly 2,000 square feet in the walled-off space, with a separate entrance and facilities... (T. 23)

(10) The parents can enter the Daycare Center from the parking deck, which has 154 parking spaces, five (5) of which will be dedicated to the proposed use (Exhibits 26 and 34; T. 29-32). Once inside, there is a designated corridor that leads directly to the Daycare Center. The applicant provided a floor plan that shows the different classroom areas based on the children's age ranges, from infancy to five years old.<sup>4</sup> (Exhibit 27, T. 35-38) Ms. Bethea stated there will be approximately nine caretakers for the forty children, as well as a director and administrative staff, for a total of twelve employees. She would "give preference to local Greenbelt residents" since she has found that "[t]he closer ... a person works to where they live makes them more reliable and flexible." (T. 40)

(11) Ms. Bethea provided the following description of the outdoor play area:

And so what we're going to do is we are going to put the -- the daycare right really close with about six feet from the entrance. It's going to be fenced in. Six-foot-high vinyl fencing

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<sup>4</sup> The State of Maryland requires a certain square footage of indoor space per child, regardless of age, and differing numbers of caretakers depending on the children's ages. Applicant is therefore asking for permission to have forty children and their ages may change from those discussed at the hearing and in the Exhibits.

is going to go around that -- that rectangle where you see playground area -- playground area, the words .... That's the playground. So notice that there's a rectangle that goes completely around and it's butting up against the side of the building.

So kids will -- kids always are going to be escorted by a childcare professional. They'll walk out the front entrance. They'll be on the sidewalk, they make a left turn on the sidewalk. So they never go into the street.... And there'll be the gate that will open into the playground. And then they go into the playground, and the playground is going to be surrounded by fifty-five-gallon water drums, water barriers to serve as a traffic protection. And the traffic will be ... rerouted so that the kids will not be able to -- so traffic won't, you know, be able to come in through the playground....

And there'll be a swing, a slide, little climbing things, you know, typical -- typical playground. There'll also be smaller little play structures for when we bring out the, you know, two-year-olds, one year olds that can't -- they can't climb up there yet. So there'll be a few little smaller play structures with this big playground. And we'll also have other little play equipment like, you know, bikes, skates, balls, basketball hoops, ropes, things like that...the intention is to shade off a portion of the area. We [are] going to do whatever the State of Maryland Office of Child Care tells us that we must do. One of the things is kids have to have natural light, right? Not every day is going to be hot and sunny. So we - - we will have shade, a shade space, and then we'll have an open air space. So they could look at the sky and play. When the temperatures are when the sun is hot and temperatures are excessive, we'll -- we're planning on having a retractable shade that can go over the play area, and when it's not needed, we can -- we will close it and let the kids see the sky and play out in the, you know, just like any park.

(T. 43-46)

(12) Mark Ferguson, accepted as an expert in land use planning, prepared a Land Planning Analysis that discussed compliance with applicable provisions of the Zoning Ordinance. (Exhibit 34) Mr. Ferguson found that the use met all germane purposes found in the Zoning Ordinance, reasoning as follows:

The Zoning Ordinance has a hierarchy of Purposes, for the Ordinance as a whole, for Nonresidential Base Zones generally, and for the CGO Zone in specific. Each of these series of purposes is addressed, following.

The eighteen purposes of the Zoning Ordinance are laid out in section 27-1300. The harmony of the subject project with these purposes is as follows:

(a) *Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

The harmony of the proposed day care center for children with the Zoning Ordinance's Purpose of protecting and promoting the health, safety, morals, comfort, convenience and welfare of the present and future inhabitants of the County is provided for through its conformance to the required Special Exception approval finding of 27-3604(e)(1)(D), which will be discussed at length below.

- (b) *Implement the General Plan, Area Master Plans, Sector Plans, and Functional Master Plans;*

The harmony of the proposed day care center for children with the General Plan, the Master Plan and the Functional Master Plans is provided for through its conformance to the required Special Exception approval finding of 27-3604(e)(1)(C), which will be discussed at length below.

- (c) *Promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

This proposed Day Care Center for Children will occupy a tract of land which was previously tested for the adequacy of public facilities.

- (d) *Guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;*

Approval of the subject day care center for children would provide for the orderly growth and development of the County by providing a needed use to serve the child care needs of the both the regional housing stock, and also of the many employees of the businesses at Beltway Plaza Mall.

- (e) *Support pedestrian-friendly, higher-intensity, mixed-use development in the appropriate locations, including support and emphasis upon a framework for multi-modal forms of mobility for pedestrians, bicyclists, transit users, and motorists;*

The subject property is in a location designated for mixed-use development, and which has been approved for a redevelopment with mixed uses.

- (f) *Support redevelopment and infill development within established areas of the County;*

As the proposed day care center for children will be a redevelopment of a portion of an existing structure in an established area of the County, it will be in harmony with this Purpose of the Zoning Ordinance.

- (g) *Provide adequate light, air, and privacy;*

The proposed day care center for children will be in harmony with this Purpose as it will be developed in a building which was constructed in conformance with the provisions [of] the Zoning Ordinance which were established to ensure the provision of adequate light, air and privacy, both for the proposed use at the subject property and for its neighbors. Those regulations include limitations on height, minimum frontage and setbacks.

- (h) *Encourage economic development activities that provide desirable employment and a broad, protected tax base;*

The proposed use will encourage economic development activity by creating a needed convenient service for nearby residents and particularly for employees of the businesses

at Beltway Plaza Mall, making the area more attractive for economic development activity.

- (i) *Ensure a high level of quality development in general, for the benefit of all citizens and residents, throughout the County;*

The proposed day care center for children will be in harmony with this Purpose as it will be developed in conformance with the provisions of the Zoning Ordinance including the Additional Requirements of 27-5402(x) which collectively ensure a high level of quality development.

- (j) *Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

This day care center for children would be in harmony with this Purpose of the Zoning Ordinance as it will be developed in accordance with the various principles that have been codified in the Zoning Ordinance and other County laws to promote the beneficial relationships between land and buildings. These principles include the tables of permitted uses for the various zones as laid out in the Zoning Ordinance, [and] by virtue of its being a redevelopment of a portion of an existing building and thereby not creating adverse impacts including more stormwater runoff, sedimentation and other environmental concerns, and will not change the existing impact of the Mall on its surroundings.

- (k) *Protect the established character of residential communities and neighborhoods;*

The approval of the instant application would be in harmony with this Purpose of the Zoning Ordinance because it will be a redevelopment of a portion of an existing building and will therefore not change the established character of the Mall and its surrounding residential communities beyond the limits of the neighborhood.

- (l) *Protect the County from fire, flood, panic, and other dangers;*

The approval of the subject application would be in harmony with this Purpose of the Zoning Ordinance as it will be developed in conformance with regulations established in the body of the ordinance and other County laws, which are intended to protect from fire, flood, panic and other dangers, namely: the floodplain regulations, the fire prevention code, the building code, and the tables of permitted uses for the various zones.

- (m) *Provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

Because the proposed day care center for children is commercial in nature this Purpose is not directly applicable to the instant Application. Because the proposed use will be a redevelopment of a portion of an existing building and will therefore not change the established character of the Mall, the approval of this Application will maintain the environment for the housing which does exist beyond the limits of the neighborhood.

- (n) *Prevent the overcrowding of land;*

The approval of the subject day care center for children would be in harmony with this Purpose as it will conform to the provisions of the Ordinance which were codified to ensure the prevention of overcrowding, including height limits and setbacks.

(o) *Protect the rural character of the County in designated, appropriate locations;*

Because the proposed day care center for children is not located in the County's Rural and Agricultural Areas, this Purpose is not directly applicable to the instant Application.

(p) *Ensure the provision of open space to protect scenic beauty and the natural features of the County, as well as provide adequate recreational space;*

Because the proposed day care center for children is a redevelopment of a portion of an existing building, this Purpose of the Zoning Ordinance is not strictly applicable, except that the play area requirement of Section 27-5402(x) will be fulfilled.

(q) *Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features; and*

Because the proposed day care center for children is a redevelopment of a portion of an existing building, it will generate no new air or water pollution, and will disturb no stream valleys, steep slopes, lands of natural beauty, large areas of dense forest, scenic vistas or other similar features.

(r) *Protect and conserve the agricultural industry and natural resources.*

The approval of this proposed day care center for children would be in harmony with this Purpose of the Ordinance because ... no regulated natural features are present[on] the subject property, and the subject property is not located in an agricultural area.

In addition to the purposes of the broader Ordinance, there are seven general Purposes for Nonresidential Base Zones which are laid out in Section 27-4203(a), as follows:

(1) *Provide appropriately located lands for the full range of business uses needed by the County's residents, businesses, and workers, consistent with the goals and policies of the General Plan and the applicable Area Master Plan or Sector Plan to support quality economic growth;*

Because the instant Application proposes a use which is context-sensitive infill in accordance with the General Plan's intent for Established Communities, and is consistent with the land use recommendation of the Master Plan, its approval would be in harmony with this Purpose of Nonresidential Base Zones.

(2) *Strengthen the County's economic base, and provide employment opportunities close to home for County residents;*

Echoing the general purpose of 27-1300(h), the proposed use will generate additional tax base for the County, and as a commercial use will provide employment opportunities for County residents. As such, this Application's approval will be in harmony with this Purpose.



- (3) *Create suitable environments for various types of businesses, and protect them from the adverse effects of incompatible development;*

Because of the subject property's location in an elevated corner of regional mall which will provide a substantive part of the customer base for the proposed day care center, the approval of this Application will be in harmony with this Purpose of creating a suitable, protected environment for the proposed business.

- (4) *Create suitable environments for various types of mixed-use development, where business, office, retail, and residential development is designed and integrated in compatible ways;*

As with Purpose 27-4203(a)(3), because of the subject property's location in an elevated corner of regional mall which will provide a substantive part of the customer base for the proposed day care center, the approval of this Application will be in harmony with this Purpose of creating a suitable, integrated environment for mixed-use development.

- (5) *Accommodate new infill development and redevelopment that is consistent with the context and the character of the nonresidential zone in which it is located;*

Echoing the general purpose of 27-1300(f), the proposed day care center for children will be consistent with the context of the Mall, and as such will be appropriate infill development consistent with the context and character of the nonresidential zone in which it is located.

- (6) *Ensure nonresidential development is located and designed to protect and preserve the character of existing single-family zones and neighborhoods; and*

There are no existing single-family zones within the neighborhood of the proposed use or even of the entire Mall as proposed by the Technical Staff.

- (7) *Promote sustainable development that conserves energy and is energy-efficient, reduces the emission of greenhouse gases, provides physical and economic access to nutritious foods, employs sustainably-sourced and recycled materials, and meets similar sustainability goals.*

Because the proposed day care center for children is a redevelopment of a portion of an existing building, it will conserve energy through avoiding the need for new building construction and new land development.

There are also [three] purposes for the CGO (Commercial, General and Office) Zone specifically, which are laid out in Section 27-4203(d)(1), as follows:

- (A) *To provide lands for a diverse range of business, civic, and mixed-use development, typically at or near major intersections where visibility and good access are important, in a form that supports connections and a balance between automobile access and pedestrian-friendliness;*

Because the proposed use is compatible with the existing business and planned mixed-use development, [and] is located within a Mall which is near a major intersection [,] the

approval of the instant Application would be in harmony with this Purpose of the CGO Zone.

(B) *To incorporate development with multiple uses, shared parking, and coordinated signage and landscaping; and*

Because the proposed use is for a redevelopment of a portion of an existing building which contains multiple uses, shared parking and coordinated signage, the approval of the instant Application would be in harmony with this Purpose of the CGO Zone.

(C) *To accommodate higher-density residential uses as part of vertically or horizontally mixed-use development.*

Because the proposed use is for a redevelopment of a portion of an existing building which will be a part of a mixed-use redevelopment including higher-density residential uses, the approval of the instant Application would be in harmony with this Purpose of the CGO Zone.

(Exhibit 34, pp. 4-9)

(13) Since the Application satisfied all applicable purposes of the Zoning Ordinance, for reasons noted above, Mr. Ferguson found compliance with Section 27-3604 (e)(1)(A) of the Zoning Ordinance. He next addressed compliance with Section 27-3604(e)(1)(B)-(G):

Based upon an inspection of the proposed Special Exception Site Plan, and taking note of its exemption from requirements for an NRI and from the provisions of the Landscape Manual, and of the existing Type 2 Tree Conservation Plan (TCP 2-030-00-01) for Beltway Plaza, this planner opines that to the best of his professional knowledge, information and belief, that the proposed use will be in conformance with all of the applicable requirements and regulations of the Zoning Ordinance....

The relevant plans which apply to this site are the 2014 General Plan, the 2013 *Approved Greenbelt Metro Area and MD193 Corridor Sector Plan and Sectional Map Amendment*, and a number of Functional Master Plans, including the Resource Conservation Plan (which includes the Green Infrastructure Plan), the County Master Plan of Transportation, the Public Safety Facilities Master Plan,[t]he Historic Sites and Districts Plan, and the Water Resources Functional Master Plan....

[T]he General Plan classified the subject [site] in its Growth Policy Map [footnote omitted] in the Employment Areas component. Both the printed Generalized Future Land Use Map [footnote omitted] and the Generalized Future Land Use layer on the PGAtlas GIS site indicate Mixed-Use land use.

“Employment Areas” are described ... as "areas commanding the highest concentrations of economic activity in four targeted industry clusters - healthcare and life sciences; business services; information, communication, and electronics; and the Federal Government,"... and recommends that, "Plan 2035 ... continu[es] to support business grown in these geographic areas, in ... particular in the targeted industry clusters -

concentrating new business development near transit where possible, improving transportation access and connectivity, and creating opportunities for synergies....”

It is this planner's opinion that because of its location in Beltway Plaza Mall, the approval of the subject application would ... create opportunities for synergy by supporting business through providing convenient child care for the mall's employees as well as the broader area's residents, and that the proposed use is consistent with the General Plan....

As noted above, the applicable Plan is the 2013 *Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment*. Map 16, "Approved Land Use," recommends the subject property, part of Beltway Plaza, contain...Residential; Commercial (Office and Retail); and, Park and Open Space. The proposed day care center for children is compatible with that land use vision, both for the Mall as it now exists, and for its future planned redevelopment.

The Land Use and Urban Design Element of the Sector Plan includes a number of Policies and Strategies for the evolving redevelopment of the Mall, including an illustrative phasing plan which shows how the overall Mall property could gradually transform into the Sector Plan's ultimate vision. The near-term and the medium-term phasing illustrations propose new development (in the near-term illustration) along Breezewood Drive and (in the medium-term illustration) along Greenbelt Road. The area of the proposed day care center would remain in both of these time frames. Only in the longest, buildout condition would the Special Exception area potentially be impacted, though even here, the illustrative plan suggests that the mall's largest tenants (including the structure occupied by the proposed day care center) would continue to anchor the site....

There are no regulated natural features on the subject property, and the proposed development will be exempt from the requirement for a Type 2 Tree Conservation Plan . As such, the instant Application does not impair the Green Infrastructure Plan.

With regard to the Historic Sites and Districts Plan, no historic sites or resources abut the subject property. The Greenbelt National Register Historic District abuts the Mall property approximately six hundred feet to the east, but... the bulk of the building will screen the play area from the view from the Historic District.... As such, the approval of the subject application will not have an adverse impact on that site or this Functional Master Plan.

The Water Resources Functional Master Plan addresses broad regulatory policy and large-scale watershed planning, and as such makes no recommendations which are directly applicable to the subject application.

No proposed sites for Public Safety facilities are in the area affected by the subject application.

The 2009 Countywide Master Plan of Transportation classifies Greenbelt Road (Maryland Route 193) as an arterial roadway (A-16) with 4-6 lanes in a 120'-

200' right-of-way. Cherrywood Lane is classified as a Collector Road (C-207) in an 80'-100' right-of-way. The rights-of-ways for this roadway also exists.

In conclusion, because the proposed day care center for children is in keeping with the General Plan's broad land use policies for the Employment Areas component, is compatible with the Sector Plan's recommendations for the ultimate redevelopment of Beltway Plaza, and is in harmony with the applicable Functional Master Plans, approval of the subject application will be in harmony with the Ordinance's purpose of implementing those plans....

The proposed day care center will be a convenient low-intensity use built out in accordance with modern development regulations. It will have its access at a safe point on the second level of a lightly-used parking deck and will have a play area for the outdoor activities for its students, will promote the health and safety of the present and future inhabitants of the County....

From a planning perspective, the term "neighborhood" describes the extent of area which would be meaningfully impacted by the proposed use. The principal impact of the proposed use will be felt only on the mall property itself, where it will support the use of the surrounding businesses by providing a convenient opportunity for child area for the mall businesses' employees as well as the residents of the broader area beyond the defined neighborhood....

The proposed Special Exception Site Plan is in conformance with approved Tree Conservation Plan (TCP2-030-00-01) ....

The subject property does not contain any areas of regulated natural features.

Finally, this planner notes that because the site is not located within the Chesapeake Bay Critical Area, the provisions of §27-3604(2) are not applicable. In summary, this planner believes that the general findings discussed above which are required for approval of a Special Exception are met.

Section 27-5401, General Special Exception Standards, contains two additional stipulations regarding setbacks being measured from the limit of the Special Exception, and noting that additional landscaping may be required by the District Council if the landscaping required by the Landscape Manual is deemed to be insufficient. These stipulations are noted but do not require further comment in this case....

(Exhibit 34, pp.9-12)

(14) Mr. Ferguson also opined that the request meets specific criteria for a Day Care Center for forty (40) children found in Section 27-5402 (x) of the Zoning Ordinance since:

- The Special Exception Site Plan indicates the proposed number of children to be accommodated, if the request is approved.

- The outdoor play area is 2,308 square feet in area, sufficient to accommodate 30 or 75% of the proposed students, providing 75 square feet of play area per child.
- No dwellings adjoin the Special Exception area, and a six-foot-tall vinyl fence will enclose the play area.
- No off-premises play areas are proposed. and no street or driveway is crossed to access the play area.
- The Applicant has agreed that the play area will only be used during daylight hours.
- Once the conditions are met, the Day Care Center should not be adversely impacted by existing development or uses in the neighborhood given its isolated location to the rear and on the top parking deck of the Beltway Plaza Mall.
- The Special Exception Site Plan shows the proposed enrollment of 40 children, the location and use of all buildings on adjoining lots, and the location and size of the outdoor play area.

(Exhibit 34, pp. 12-14)

(15) Mike Lenhart of Lenhart Traffic Consulting, Inc.<sup>5</sup> prepared a “Beltway Plaza-Trip Generation Analysis” for the Application, which discussed the instant request’s conformance with applicable conditions imposed by the Planning Board in its approval of Preliminary Plan of Subdivision (“PPS”) 4-19023. Mr. Lenhart found that the use would not exceed the trip cap approved by the Planning Board:

Per Resolution 2020-26, the Prince George’s County Planning Board approved PPS 4-19023 with [a condition that] [t]otal development within the subject property ... be limited to uses that would generate no more than 1,703 AM and 2,882 PM peak-hour vehicle trips....

Since the approval of PPS 4-19023, a Detailed Site Plan has been approved (DSP-20020). DSP-20020 included 750 multifamily units, a 92-room hotel, and a reduction in the overall square footage of the existing mall to accommodate the relocation of Road A. Specifically, the existing mall had an original gross leasable area of 807,234 square feet and was approved to be reduced to a total of 787,695 square feet in DSP-20020....

[A] trip generation analysis has been conducted for the 750 multifamily units, 92-room hotel, and remaining 787,695 square feet of shopping center plus a 40-child daycare for the LOL Childcare station. The trip generation calculations include pass-by reductions and internal capture between the proposed uses.... Based on the trip generation analysis for DSP-20020, the proposed site will generate a total of 866 AM and 2,127 PM peak-hour

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<sup>5</sup> Mr. Lenhart has been accepted in the past as an expert in Transportation Planning. However, he did not testify at the hearing held on the Application but submitted the Analysis.

vehicle trips. Given the site has a previously approved trip cap of 1,703 AM and 2,882 PM peak-hour vehicle trips, the approval of the LOL Childcare Station ... will not have a substantial impact and will not cause the overall development to exceed the established trip cap....

(Exhibit 24)

(16) The owner of Beltway Plaza, GB Mall Limited Partnership, submitted written testimony explaining its request that a condition be added if the Application is approved. (Exhibit 28) Its request provided, in pertinent part, as follows:

[P]rior to the filing of this application by the applicant, the owner [of Beltway Plaza] obtained several entitlements to ultimately accommodate the future redevelopment of Beltway Plaza.... [T]he Planning Board approved Conceptual Site Plan CSP-18010... for redevelopment of Beltway Plaza. The CSP provided for a five-phased redevelopment of the site, to consist of up to 250 two-family and/or single-family attached dwelling units, and up to 2,250 multifamily units (for a maximum of 2,500 total residential units), as well as a range of 435,000 to 700,000 square feet of commercial development.... Phase I, as described in the CSP, is for development of a residential transition zone on the north side of the Beltway Plaza site.... The Planning Board then approved Preliminary Plan of Subdivision (PPS) 4-19023 on March 12, 2020.... The PPS approved development ...[and] [t]he approved development concept included a reduction in commercial area on-site, to be achieved in phases by razing sections of the existing mall building and replacing it with mixed-use buildings. Additional residential and mixed-use buildings are to be located at the core of the development, as well as in outlying areas of the site.... [T]he Planning board [has] approved Detailed Site Plan DSP -20020.... The DSP approved Phase I of the redevelopment of Beltway Plaza, which includes the area of this special exception, to include 750 multifamily residential dwelling units, a hotel, recreation center, and limited streetscape improvements. The owner has obtained permits to begin construction of a portion of this first phase and has commenced with a portion of said construction. The recently commenced construction of a portion of Phase I will vest DSP-20020. Consequently, and given the entitlements that have been obtained, vested, and that are under permit (or construction) by the owner, it is critically important that notwithstanding the approval of SE-2022-012, which the owner has no objection to based on the request herein, that SE-2022-012 not, in any way, impact or restrict the prior entitlements obtained by the owner for the ultimate redevelopment of Beltway Plaza....

(Exhibit 28)

After the hearing, the owner and the Applicant submitted the following condition for consideration if the request is approved:

1.f .... Provide Traffic Barricades around three (3) sides of the outdoor playground area as shown on the Special Exception [Site] Plan, except where modifications are required by the Department of Permitting, Inspections and Enforcement and/or the Maryland Office of Child Care....

1.g. ... Provide shade canopy structure over portion of outdoor playground and affixed to the vinyl fence as shown on the Special Exception [Site] Plan, except where modifications are required by the Department of Permitting, Inspections and Enforcement and/or the Maryland Office of Child Care.

(Exhibit 39)

(17) Mr. David Sullivan, a representative of GB Mall Limited Partnership, adopted as his testimony the letter submitted by the Owner's attorney and added to the record as Exhibit 28. He also agreed to the language change to the owner's proffered condition of approval that was suggested by People's Zoning Counsel. (T. 62) Mr. Sullivan also stated that there will be no problem with the load of any shade structure provided for the outdoor play area:

[M]y understanding is the State requires a shade structure of some sort...[a]nd [Ms. Bethea is] planning to work with the State regulators on what exactly she needs to have installed here. The ... load that's going to be imposed by this structure and the kids are less than the cars that would be parked on the structure [under] ... normal condition[s]....

The only issue is going to be the point loads, where any potential mounting columns that may have to be placed on the deck itself will need to be addressed.... Ms. Bethea ... [is] going to have an engineer look at that and make sure that whatever she does is ... designed by a structural engineer and will be permitted by DPIE....

(T. 62-63)

### **Municipal, Technical Staff and Other Agency Comment**

(18) The City of Greenbelt noted its support of the application with conditions:

We are writing to express support for SPE-2022-012, which City Council voted five (5) to one (1) to support on January 22, 2024, with the conditions below.

Greenbelt Planning Staff has worked with the applicant to address the review comments supplied to M-NCPPC staff during the Subdivision and Development Review Committee (SDRC) process. The Applicant and property owner have agreed to the following conditions:

- The property owner agrees to install at least two (2) bike racks under the existing building awning.
- The Applicant agrees to fill the barrels with water to add mass and install the barrels with no more than 8 feet of spacing between each barrel.
- The Applicant must obtain all relevant permits for construction from the Prince George's County Permitting, Inspections, and Enforcement (DPEI).
- The Applicant agrees that the large shade canopy will meet all County permitting requirements, and erecting this structure may require a building permit from the Prince George's County DPIE.

- All play equipment must meet the standards of the State of Maryland for a childcare center.
- The Applicant agrees to update their submittal to include ITE Land Use classifications and peak hour trip generation.

The City views this application as a needed land use in this part of Greenbelt....

(Exhibit 5)

(19) The Department of Permitting, Inspections and Enforcement (“DPIE”) noted that it had no objection to the instant request. (Exhibit 12)

(20) The MNCPPC Transportation Planning Section provided the following comment:

The subject Special Exception ... proposes the development of a day care facility inside an existing amusement center operation. The property is located within the Beltway Plaza Mall along Greenbelt Road. The [Special Exception] application is subject to and was reviewed using the standards of ... the current Zoning Ordinance....

The subject site has several prior approvals. However, there are no prior conditions of approval applicable for this application ....

The site is subject to the 2009 *Countywide Master Plan of Transportation (MPOT)* and 2013 *Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan*. The site is located on the second story at the rear of the Beltway Plaza Mall. This portion of the Beltway Plaza Mall property fronts Breezewood Drive ....

There is no right-of-way designation for Breezewood Drive ....

The 2013 *Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan* recommends a shared roadway along the property’s frontage on Breezewood Drive....

The plan proposes provisions for the safe movement of pedestrians and bicyclists upon entering the parking lot. The applicant has proposed a 5-foot-wide sidewalk along the front of the building that continues down the parking lot ramp with 2 U-shaped bicycle racks provided at the entrance. Staff also recommend the addition of pedestrian crosswalks from the drive aisles to the facility entrance....

The applicant is proposing the renovation of an existing amusement center operation to accommodate a child daycare facility during weekdays. The expansion of this use into a childcare facility has required the applicant to construct a play area on the second story parking lot adjacent to the facility. The applicant is proposing a single access point to the site from an existing internal parking lot ramp. Additionally, directional arrows are proposed throughout the parking lot to direct vehicle circulation on site. This use has the potential to support the planned residential growth for the area. Staff finds that the proposed plan does not impair the ability to make transportation-related recommendations that are supported by an approved Master Plan or Functional Master Plan....



[S]taff concludes that the vehicular, pedestrian, and bicycle access and circulation for this plan is acceptable, consistent with the site design guidelines pursuant to Section 27 and meets the findings for pedestrian and bicycle transportation purposes if [p]rior to the acceptance of the Special Exception, the applicant, and the applicant's heirs, successors, and/or assigns shall...[p]rovide pedestrian crosswalks from the drive aisles to the facility entrance.

(Exhibit 7)

(21) The MNCPPC Community Planning Division opined that the request is consistent with the 2014 General Plan and the *2013 Approved Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment*. Consistency with the General Plan exists "because the application provides context-sensitive expansion of an existing business to serve the existing residential neighborhood and thus is consistent with the Established Communities as designated by the Prince George's County Growth Policy Map. (Map 1, page 18-20)" The 2013 Sector Plan recommends Mixed Use Commercial land use on the property, described as "properties that contain a mix of uses which are predominantly non-residential, including commerce, office, institutional, civic, and recreational uses" and the Application comports with these recommended land uses. The Community Planning Division also noted that the Sector Plan included policies and strategies that addressed the phased, comprehensive redevelopment of Beltway Plaza, and believes that "adding a new service to an existing use" would further these policies/strategies. (Exhibit 6)

(22) The MNCPPC Environmental Planning Section...provided the following comment on the instant request:

The current application is for a special exception to allow the use of a day care center for children within an existing shopping center. The proposed alterations are confined to an existing building and parking garage. No grading permit will be required with this project....

Th proposed day care center will be within a portion of one of the buildings on-site and on the top deck of an existing parking garage.The property is comprised of 17 parcels, and id within the Commercial, General and Office (CGO) Zone. The site is currently fully developed as a shopping center...in the approved sector plan, the Beltway Plaza section and the Environmental Infrastructure section contains goals, policies and strategies. [The current request addresses each, as follows:]....

An updated final stormwater design plan may be required by [DPIE] prior to permit issuance that will evaluate water quality of runoff proposed to discharge off-site due to the garage rooftop alterations. The site is located outside of the designated floodplain....

The site was previously developed with a shopping mall with multiple buildings and associated parking. Only the eastern edge of the site is wooded and has been preserved...

Although the northwestern corner of the overall site is mapped within an Evaluation Area, this area is fully developed and isolated from regulated portions of the network by Cherrywood Lane to the west and Breezewood Drive to the north. No regulated environmental features (REF) are associated with this mapped evaluation area.

No green infrastructure elements mapped on the subject site will be directly impacted with this special exception. The overall site has been graded under previous approvals and the design of the site meets the zoning requirements and the intent of the growth pattern established in the [2014 General Plan]....

An approved NRI-156-2018-01 was submitted with the application which expires on April 5, 2024. This site is not associated with any regulated environmental features (REFs), such as streams, wetlands, or associated buffers. No 100-year regulated County floodplain is mapped on-site. No primary management area (PMA), which is composed of REFs, 100-year floodplain, and any adjacent steep slopes, is mapped on-site. This site is not within a Tier II catchment area.... [T]here are no records for rare, threatened, or endangered species mapped on-site. No woodlands, specimen, champion, or historic trees exist on-site....

An approved Type 2 Tree Conservation Plan (TCP2 – 030-00-01) was submitted with the [SE] application....

A SWM Concept Approval Letter and associated plan, were not submitted with the application for this site, however DPIE issued a prior approval (#38318-2020-00) for the overall site associated with DSP-20020 which expires on April 27, 2024.... DPIE reserves the right to impose restrictions, if necessary, prior to permit....

According to available information, no Marlboro clay exists on-site; however, unsafe soils containing Christiana complexes are mapped on this property. Christiana complexes are considered unsafe soils.... The area of proposed development has already been previously graded and developed. No steep slopes are identified on areas where structures are proposed ....

(Exhibit 8)

(23) The MNCPPC Subdivision Section offered the following comment on the request:

The subject property is part of the existing developed Beltway Plaza Mall site. The property is subject to Preliminary Plan of Subdivision (PPS) 4-19023, approved on March 12, 2020. The PPS approved 55 parcels for mixed-use development of the site including 2,500 dwelling units and 700,000 square feet of commercial development on the overall 53.88-acre property of the Beltway Plaza Mall.

Detailed Site Plan DSP-20020 was approved on September 21, 2021, for Phase 1 of the new development and some lots and parcels, including Parcels 4,6, B, and G (portions of which are included in this subject [SE]), were recorded in accordance with these approvals. Redevelopment has not yet proceeded in accordance with PPS 4-19023 and DSP-20020 ....

Preliminary Plan of Subdivision 4-19023 also includes the area of Parcel PP, which is recorded on a final plat approved in accordance with Section 24-108 (a)(3) of the prior Subdivision Regulations, and is a result of adjustment of common boundary lines between parcels recorded on a plat which was approved prior to October 27, 1970. However, at this time, the final plat for this area has not been recorded in accordance with 4-19023. Therefore, any development on Parcel PP is subject to the current plat for the parcel (Plat Book ME260, Plat No. 10) and as allowed under Section 24-3402 (b)(1) of the Subdivision Regulations. For the subject [Application], the existing structure located on Parcel PP, which was constructed around 1988 per available state tax records and aerial imagery will continue to be used for commercial use, and no additional gross floor area is proposed. The applicant submitted a trip generation analysis, dated January 30, 2024, for the proposed use. The analysis demonstrates that the trips generated by the day care center will be a total of 23 trips. Therefore, in accordance with Section 24-3402(b)(1)(C), the proposed development within the area of Parcel PP does not require the approval of a PPS prior to the issuance of a building permit....

Parcel B is to be conveyed to the business owner's association ... and developed as a private street to provide access to proposed multifamily development after partial demolition of the building adjacent to the parking deck. However, the existing building is proposed to be used as a day care center for children until such time that construction proceeds in accordance with the current approvals for the subject site.... The Zoning Section and Urban Design Section should evaluate whether this [Special Exception] will be the governing site plan... [or] whether this [Special Exception], once approved, will supersede DSP-20020 for the subject site area and/or whether the appropriate application for consideration of this interim site area....<sup>6</sup>

(Exhibit 9)

(24) The Technical Staff determined that the request need only satisfy Sections 27-6300 Off-Street Parking and Loading, 27-6600 Fences and Walls , 27-61200 Neighborhood Compatibility Standards, and 27-61500 Signage of the Development Standards found in Part 6 of the Zoning Ordinance. (Exhibit 2, pp. 15-16) Staff opined that all of these Sections were satisfied since:

- A Day Care Center for 40 children requires 1.0 parking spaces per child, and Applicant is proposing to add five parking spaces dedicated to the day

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<sup>6</sup> This Examiner would note that Section 27-3604 (b) of the Zoning Ordinance expressly provides that “development for which a special exception is approved ... is not required to have a site plan reviewed and approved in accordance with Section 27-3605, Detailed Site Plan, since a site plan for the proposed development is reviewed and approved as part of the special exception application.” Accordingly, the Special Exception Site Plan will govern the area of the Day Care Center, the outdoor play area, and association parking if the request is approved.

care center, remove 25 spaces near the entrance to provide the outdoor play area and safe access thereto, and the mall will still have a surplus of over 600 parking spaces. (Section 27-6300)

- The Site Plan includes a 6-foot-high white vinyl fence to enclose the outdoor play area. The fence will be erected to meet the location, height, and materials requirements. (Section 27-6600)
- Since the request involves a use that will be located inside of the existing Beltway Plaza Mall and will not change the exterior except to provide a small outdoor play area, the character of the neighborhood will not be impacted. (Section 27-61200)
- The three signs (one caution and two reserve parking) are shown on the Special Exception Site Plan. (Section 27-61500)

(24) Staff ultimately recommended approval of the request, with conditions, after its review of the Applicant's Statement of Justification, all referral comments<sup>7</sup>, and other materials in the record, opining that the request "satisfies the requirements for approval, and that the application will be in conformance with the Prince George's County Zoning Ordinance requirements." (Exhibit 2, p. 19-20)

## APPLICABLE LAW

(1) The instant request must satisfy the criteria set forth in Sections 27-3604 (e) and 27-5402(x) of the Zoning Ordinance. These Sections provide as follows:

### **27-3604. Special Exception**

#### **(e) Required Findings**

(1) A special exception may only be approved if:

(A) The proposed use and site plan are in harmony with the purposes of this Subtitle;

(B) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

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<sup>7</sup> Staff noted that it had not received any correspondence from the surrounding community as of the time it wrote the Technical Staff Report. (Exhibit 2, p. 19)

(C) The proposed use shall be consistent with the General Plan and shall conform with the relevant goals, policies, and strategies of the applicable Area Master Plan, Sector Plan, or Functional Master Plan for the subject property and its surrounding area;

(D) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(E) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(F) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and

(G) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirements of Subtitle 24:Subdivision Regulations.

(2) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay (CBCAO) Zone, a special exception shall not be granted:

(A) Where the existing lot coverage in the CBCAO exceeds that allowed by this Subtitle, or

(B) Where granting the special exception would result in a net increase in the existing lot coverage in the CBCAO.

#### **Section 27-5402. Additional Requirements for Specific Special Exception Uses**

##### **(x) Day Care Center for Children**

(1) A day care center for children may be permitted, subject to the following:

(A) The District Council may specify the maximum number of children to be enrolled, which may not be increased by State or local health, education, or fire regulations;

(B) An ample outdoor play or activity area shall be provided, in accordance with the following:

(i) All outdoor play areas shall have at least seventy-five (75) square feet of play space per child for fifty percent (50%) of the licensed capacity or seventy-five (75) square feet per child for the total number of children to use the play area at one (1) time, whichever is greater;

(ii) All outdoor play areas shall be located at least twenty-five (25) feet from any dwelling on an adjoining lot, and shall be enclosed by a substantial wall or fence at least four (4) feet in height;

- (iii) A greater set back from adjacent properties or uses or a higher fence may be required by the District Council if it determines that it is needed to protect the health and safety of the children utilizing the play area;
  - (iv) Any off-premises outdoor play or activity area shall be located in proximity to the day care center, and shall be safely accessible without crossing (at grade) any hazardous area, such as a street or driveway;
  - (v) The play area shall contain sufficient shade during the warmer months to afford protection from the sun;
  - (vi) Sufficient lighting shall be provided on the play area if it is used before or after daylight hours to [ensure] safe operation of the area; and
  - (vii) Outdoor play shall be limited to the hours between 7 a.m. and 9 p.m.;
- (C) In the CGO, CS, IE, and IH zones, a special exception for a day care center for children shall be allowed only if the Council finds that existing development and uses in the neighborhood (particularly on adjacent properties) will not adversely affect the proposed use.
- (2) In addition to the requirements of Section 27-3604(c), Special Exception Submittal Requirements, the site plan shall show:
    - (A) The proposed enrollment;
    - (B) The location and use of all buildings located on adjoining lots; and
    - (C) The location and size of outdoor play or activity areas.
  - (3) Any day care center for children which has, on or before the effective date of this Ordinance, fully complied with the provisions of this Subtitle in effect at the time the use commenced shall not be required to meet the requirements of this Section, provided that the use has not been expanded or changed since that time. Any expansion or change shall be governed by the provisions of this Section, or of Section 27-5102(d)(2)(A), Day Care Center for Children.
  - (4) For the purposes of this Section, enrollment shall mean the largest number of children enrolled in the center in any one (1) session.

(2) The Special Exception Site Plan must measure all setbacks from the boundary lines of the Special Exception and satisfy all applicable provisions of the Landscape Manual. (Sections 27-5401 (b) and (c)) Relevant portions of Section 27-3604(c)(5)(F) require the Special Exception Site Plan to include a Type 2 Tree Conservation Plan and an approved stormwater management concept plan, provide a Landscape Plan, provide a noise study, provide a signage plan, provide a parking and circulation plan, and note how the property preserves and restores any regulated environmental features. Finally, the request must satisfy development standards in Part 6 of the Zoning Ordinance pertaining to off-street parking and loading, landscaping, fencing and walls, neighborhood compatibility, and signage.

(3) The request must also satisfy the purposes of all zoning found in Section 27-1300, as well as the purposes of the Nonresidential Base Zones, in general, and the CGO Zone, in particular, found in Sections 27-4203(a) and (d)(1):

#### **SEC. 27-1300 GENERAL PURPOSE AND INTENT**

[(1)] The purposes of the Zoning Ordinance are to:

(a) *Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County;*

(b) *Implement the General Plan, Area Master Plans, Sector Plans, and Functional Master Plans;*

(c) *Promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services;*

(d) *Guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business;*

(e) *Support pedestrian-friendly, higher-intensity, mixed-use development in the appropriate locations, including support and emphasis upon a framework for multi-modal forms of mobility for pedestrians, bicyclists, transit users, and motorists;*

(f) *Support redevelopment and infill development within established areas of the County;*

(g) *Provide adequate light, air, and privacy;*

(h) *Encourage economic development activities that provide desirable employment and a broad, protected tax base;*

(i) *Ensure a high level of quality development in general, for the benefit of all citizens and residents, throughout the County;*

(j) *Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

(k) *Protect the established character of residential communities and neighborhoods;*

(l) *Protect the County from fire, flood, panic, and other dangers;*

(m) *Provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

(n) *Prevent the overcrowding of land;*

(o) *Protect the rural character of the County in designated, appropriate locations;*

(p) *Ensure the provision of open space to protect scenic beauty and the natural features of the County, as well as provide adequate recreational space;*

(q) *Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features; and*

(r) *Protect and conserve the agricultural industry and natural resources.*

### **27-4203. Nonresidential Base Zones**

#### **(a) General Purposes of Nonresidential Base Zones**

The Nonresidential base zones are established for the general purpose of ensuring there are lands in the County that provide a wide range of retail, office, service, employment, light industrial, heavy industrial, and related uses to meet the needs of County residents and the region, and more specifically to:

1. Provide appropriately located lands for the full range of business uses needed by the County's residents, businesses, and workers, consistent with the goals and policies of the General Plan and the applicable Area Master Plan or Sector Plan to support quality economic growth;
2. Strengthen the County's economic base, and provide employment opportunities close to home for County residents;
3. Create suitable environments for various types of businesses, and protect them from the adverse effects of incompatible development;
4. Create suitable environments for various types of mixed-use development, where business, office, retail, and residential development is designed and integrated in compatible ways;
5. Accommodate new infill development and redevelopment that is consistent with the context and the character of the nonresidential zone in which it is located;
6. Ensure nonresidential development is located and designed to protect and preserve the character of existing single-family zones and neighborhoods; and
7. Promote sustainable development that conserves energy and is energy-efficient, reduces the emission of greenhouse gases, provides physical and economic access to nutritious foods, employs sustainably-sourced and recycled materials, and meets similar sustainability goals.

#### **(d) Commercial, General and Office (CGO) Zone**

##### **(1) Purposes**

The purposes of the Commercial, General and Office (CGO) Zone are:

- (A) *To provide lands for a diverse range of business, civic, and mixed-use development, typically at or near major intersections where visibility and good access are important, in a form that supports connections and a balance between automobile access and pedestrian-friendliness;*



- (B) *To incorporate development with multiple uses, shared parking, and coordinated signage and landscaping; and*
- (C) *To accommodate higher-density residential uses as part of vertically or horizontally mixed-use development.*

## Special Exceptions

(4) The Supreme Court of Maryland (formerly the “Court of Appeals”) provided the standard to be applied in the review of a special exception application in Schultz v. Pritts, 291 Md 1,11-12, 432 A2d 1319, 1325 (1981):

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . . But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

(5) The test in Schultz has been applied over the decades, but there has been clarification as to what was meant by “the neighborhood,” as noted in Attar v. DMS Tollgate, LLC, 451 Md. 272, 280 (2017):

[Under the County’s law], a special exception use is prohibited if it is ‘detrimental to the health, safety or general welfare of the locality involved.’ In Schultz v. Pritts, we held that an applicant for a special exception ‘does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood ... he has met his burden.’ 291 Md. 1, 11, 432 A. 2d 1319, 1325 (1981).

We further held in Montgomery County v. Butler, “the phrase ‘detriment to the neighborhood’ implies necessarily that the Board’s task is to determine if there is or likely will be a detriment to the *surrounding properties*.” 417 Md. 271, 305, 9 A. 3d 824, 844 (2010) (emphasis added). Thus, we held that, within the context of a special exception, the ‘neighborhood’ means ‘the surrounding properties’” ....

(6) Finally, absent language in the Code to the contrary, the special exception use is “conceptually ... compatible in the particular zone with otherwise permitted uses and with surrounding zones and uses already in place, provided that, at a given location, adduced evidence does not convince the body to whom the power to grant or deny individual applications is given that actual incompatibility would occur.” People’s Counsel for Baltimore County v. Loyola College Md., 406 Md. 54, 106 (2008)

## CONCLUSIONS OF LAW

(1) The general purposes of the Zoning Ordinance are found in Section 27-1300. The instant Application satisfies the following purposes for the reasons provided:

(a) *Protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County*

The use will provide a much-needed service for parents or guardians of small children, and will do so in a safe, controlled environment, protected from other visitors to the Beltway Plaza Mall.

(b) *Implement the General Plan, Area Master Plans, Sector Plans, and Functional Master Plans*

The Technical Staff and Applicant's expert witness noted in detail how the request implements the applicable plans, and I adopt their reasoning. I would restate that the subject property lies within the Established Communities Growth Policy Area discussed in the 2014 General Plan, which lauded context-sensitive infill and low- to medium-density development. The instant request is both and will be developed in a manner that will not negatively impact the other Mall businesses or the surrounding community. The 2013 Sector Plan envisions a transformation of the Beltway Plaza Mall in phases to a truly mixed-use development (to include multifamily dwellings) and the Day Care Center would be a use that would promote this vision.

(c) *Promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities and services*

The Day Care Center is part of the Beltway Plaza Mall, and its relatively small size and the few vehicular trips that it is anticipated to create will not affect the Planning Board's finding of adequacy, nor the traffic caps it imposed.

(d) *Guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business*

This use satisfies this purpose as it will provide much-needed childcare to the homeowners near the Beltway Plaza Mall and/or those employed by businesses within or near the Mall.

(e) *Support pedestrian-friendly, higher-intensity, mixed-use development in the appropriate locations, including support and emphasis upon a framework for multi-modal forms of mobility for pedestrians, bicyclists, transit users, and motorists;*

This use is located within a development already approved for mixed-use development, which addresses the need for multi-modal forms of mobility.

*(f) Support redevelopment and infill development within established areas of the County;*

The requested use will be a redevelopment of an existing portion of the Beltway Plaza Mall, thereby furthering this purpose.

*(g) Provide adequate light, air, and privacy;*

This redevelopment within an existing Mall meets this purpose since the Mall was constructed in accordance with provisions of the County Code that ensure adequate light, air, and privacy.

*(h) Encourage economic development activities that provide desirable employment and a broad, protected tax base;*

This purpose will be met since the use encourages parents/guardians to visit the Mall reassured that their young children will be safely cared for and because it will provide employment opportunities.

*(i) Ensure a high level of quality development in general, for the benefit of all citizens and residents, throughout the County;*

The use must satisfy applicable provisions of the Zoning Ordinance and Building Code, thereby satisfying this purpose.

*(j) Promote the most beneficial relationship between the uses of land and buildings and protect landowners from adverse impacts of adjoining development;*

Again, the use must satisfy all applicable Zoning Ordinance provisions and the remainder of the County Code. It is also a relatively limited redevelopment within the mall and its parking area, which is far from adjacent uses or development and is unlikely to adversely impact them.

*(k) Protect the established character of residential communities and neighborhoods;*

As a small internal redevelopment in the Beltway Plaza Mall and a portion of its parking area, the use should not impact the character of the residential neighborhoods near the Mall.

*(l) Protect the County from fire, flood, panic, and other dangers;*

The Day Care Center will minimally impact an existing parking area and an existing area within the mall and will be required to follow all applicable regulations in the Zoning Ordinance or other Prince George's County laws. Accordingly, this purpose will be met.

*(m) Provide sound, sanitary housing in a suitable and healthy living environment within the economic reach of all County residents;*

This purpose is not applicable.

*(n) Prevent the overcrowding of land;*

The location of the use and its minimal size will prevent the overcrowding of land.

*(o) Protect the rural character of the County in designated, appropriate locations;*

This purpose is not applicable.

*(p) Ensure the provision of open space to protect scenic beauty and the natural features of the County, as well as provide adequate recreational space;*

The play area will provide adequate recreational space for the children. The remainder of this purpose is inapplicable.

*(q) Protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features; and*

The Day Care Center will minimally impact an existing parking area and an existing area within the mall and will be required to follow all applicable regulations in the Zoning Ordinance or other County laws. Accordingly, this purpose will be met.

*(r) Protect and conserve the agricultural industry and natural resources.*

No regulated features are present on the site, and the remainder of this purpose is not applicable.

(Section 27-1300)

(2) The Application satisfies the applicable purposes of the non-residential base zones, in general, and the CGO Zone, in particular, for the following reasons:

- Since the request is context-sensitive infill development, providing a needed use for residents, businesses, and workers in the area, and is consistent with the

Sector Plan's policy of mixed-use development for the Beltway Plaza Mall, it meets the purpose of providing appropriately located land for a range of business uses consistent with the goals/policies of the General Plan and Sector Plan.

(Section 27-4203 (a)(1))

- The use will require the hiring of approximately twelve (12) employees and generate additional taxes for the County. (Section 27-4203 (a)(2))
  - The location of the day care center on the top floor of the mall, which has limited access by other mall visitors and is close to associated parking and the outdoor play area, will create a suitable, protected environment for the use, once a condition concerning noise is addressed. (Section 27-4203 (a)(3))
  - The location will also help to create a suitable environment for the Day Care Center and the other businesses within the mall. (Section 27-4203(4))
  - The Day Care Center's location and limited hours of operation will ensure that this development is consistent with the context and character of the CGO Zone, and there are no single-family residential zones or neighborhoods near the Beltway Plaza Mall. (Sections 27-4203(a)(5) and (6))
  - The use is a redevelopment of a small portion of the existing mall -as such it will conserve energy by avoiding new building construction or new land development. (Section 27-4203(a)(7))
  - The use will be within a mixed-use development mall located near a major intersection where there is a connection and balance between automobile access and pedestrian-friendliness. (Section 3-4203(d)(1)(A))
  - This portion of the mall where the use will be located incorporates multiple uses, shared parking, and coordinated signage. (Section 27-4203(d)(1)(B))
  - The redevelopment of the mall will incorporate higher-density residential uses. (Section 27-4203(d)(1)(C))
- (3) The use meets the requirements of Section 27-3604(e) for reasons noted below:
- The proposed use and Special Exception Site Plan are in harmony with the purposes of the Zoning Ordinance for the reasons noted above and in Exhibits 2 and 34. (Section 27-3604 (e)(1)(A))
  - Once the conditions are addressed, the use will satisfy all applicable requirements in the Zoning Ordinance without the need for a variance or departure. (Section 27-3604(e)(1)(B))

- As noted above and in Exhibits 2 and 34, the request is consistent with the General Plan's vision for development within the Established Communities and with its Generalized Future Land Use vision of mixed-use development. It also conforms with the relevant goals/policies/strategies of the 2013 Greenbelt Metro Area and MD 193 Corridor Sector Plan and Sectional Map Amendment since that plan recommends residential/commercial (office and retail)/Park and Open Space use of the Beltway Plaza Mall property. (Section 27-3604(e)(1)(C))
- The Application generally complies with all applicable provisions of the Prince George's County Code, no one opposed the request, and the City of Greenbelt noted its support. Accordingly, the use can be found not to adversely affect the health, safety, or welfare of residents/workers in the area. (Section 27-3604(e)(1)(D))
- Given the location of the use and associated parking at the top level and to the rear of the Mall, and the Application's compliance with all applicable provisions of the Prince George's County Code, it will not be detrimental to the use or development of adjacent properties or the general neighborhood. (Section 27-3604(e)(1)(E))
- The proposed Special Exception will be developed in compliance with the approved Tree Conservation Plan (TCP2-030-00-01). (Section 27-3604(e)(1)(F))
- The subject property does not contain any areas of regulated natural features. (Section 27-3604(e)(1)(G))
- Finally, the subject property does not lie within any Chesapeake Bay Critical Area Overlay Zone. (Section 27-3604(e)(2))

(4) The request must satisfy the specific criteria for a special exception to operate a Day Care Center, found in Sections 27-5401 and 27-5402(x) of the Zoning Ordinance. The request does satisfy these Sections for the reasons noted below:

- All setbacks shown on the Special Exception Site Plan are measured from the boundary lines of the requested Special Exception, and the development is not subject to the requirements of the Landscape Manual because it will not required a grading permit or a building permit, and because the use is not a higher intensity use than the existing Beltway Plaza Mall. (Section 27-5401)
- A maximum of forty children will be permitted. (Section 27-5402(x)(1)(A))
- An outdoor play area of 46.17 X 50 (approximately 2,300) square feet will be provided, greater than 75 square feet of play space for 50% of the licensed capacity. (Section 27-5402(x)(1)(B)(1))

- There are no dwellings adjoining the Special Exception Area, and a surface parking area and Breezewood Drive to the north separates the Beltway Plaza Mall from the multifamily development across Breezewood Drive. There appear to be more than 25 feet between the play area and Breezewood Drive, but the Site Plan should be revised to add a note that provides the exact distance. The outdoor play area will be surrounded by a vinyl fence six feet in height, and I find that should be sufficient. (Sections 27-5402(x)(1)(B)(ii) and (iii))
  - There will not be any off-premises outdoor play area. (Section 27-5402(x)(1)(B)(iv))
  - The Applicant is proposing a retractable shade attached to a portion of a pergola. This proposal will have to be approved by DPIE and the State licensing agency to ensure safety. (Section 27-5402(x)(1)(B)(v))
  - The Applicant's Statement of Justification notes that the outdoor play area will only be used between the hours of 7:00 a.m. to 9:00 p.m. A condition has been added to limit the use of the outdoor play area to daylight hours. (Section 27-5402(x)(1)(B)(vi) and (vii))
  - The location of the use in the rear of the Beltway Plaza Mall and close to the external second-floor parking deck separates the use from traffic and most other existing uses and their possible adverse impact. Applicant's testimony noted the existence of several noisy rides or activities occurring on the other side of a shared wall with its requested Day Care Center. Although it proffered that the two uses would not operate simultaneously, there is nothing to prevent it. I have, therefore, added a condition to address this concern. A condition will address this possible impact. (Section 27-5402(x)(1)(C))
  - The Special Exception Site Plan includes the proposed enrollment of forty (40) children, the location and use of all adjacent buildings on the lots within the Beltway Plaza Mall area, and the location and size of the outdoor play area. (Section 27-5402(x)(2))
  - The request is for a new use, and a note shall be added that states enrollment shall mean the largest number of children enrolled in the center in any one (1) session. (Section 27-5402(x)(3) and (4))
- (5) Pursuant to Section 27-3402, the instant request must address certain development standards found in Part 6 of the Zoning Ordinance. Section 27-6204 requires that the site plan include a circulation plan, and Section 27-6303 requires a parking plan. The Special Exception Site Plan submitted for the instant request, as part of the larger Beltway Plaza Mall, includes both. Section 27-6305 requires one space per

10 children, and five are provided. Part 3 of the Zoning Ordinance requires adherence to the Landscape Manual, and the proposed use is exempt from the requirements of the Landscape Manual and from having to provide an NRI. The fence around the play area, as depicted on the Site Plan, satisfies the applicable fencing requirements set forth in Section 27-6600, et.seq., relating to location, height, materials used, and gating. Neighborhood compatibility standards outlined in Section 27-61200 are not applicable given the limited area to be used within an existing mall, the need for child care, the limited enrollment, and the limited hours. The signage is also limited and satisfies the provisions in Section 27-61500.

(6) The record does not indicate that the use at this location in the CGO Zone will adversely impact the residents or workers in the area in a manner greater than it would elsewhere within the neighborhood on similarly zoned property. Accordingly, this Examiner finds that the Application can be granted once the conditions noted below are met.

### **DISPOSITION**

Special Exception 2022-012 is Approved, subject to the following conditions:

Prior to certification of the Special Exception Site Plan, or the issuance of permits (if noted), the following revisions shall be made, or information shall be provided, and a full-sized hard copy of the revised Site Plan and Detail submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record:

- (1) Revise the Special Exception Site Plan to label the parcels with their plat recording reference.
- (2) Revise the Special Exception Site Plan to label the parcel boundaries with their bearings and distances in accordance with their record plats.
- (3) Revise the Special Exception Site Plan to provide building setback distances from the area of the Special Exception to the north and east property boundaries.
- (4) Revise the Special Exception Site Plan Playground Area Note 3 to state the correct play area square footage and dimensions of 46.17 feet by 50 feet, as shown on the Site Plan.
- (5) Revise the Special Exception Site Plan to add a Note that states that enrollment shall mean the largest number of children enrolled in the center in any one (1) session.
- (6) Revise the Special Exception Site Plan to add a Note that the outdoor play area will only be used during daylight hours.
- (7) Revise the Special Exception Site Plan to add a Note that states that the Day Care Center will not operate at the same time as the adjacent indoor entertainment center or



submit a noise study demonstrating compliance with Section 27-6810 of the Prince George's County Zoning Ordinance.

(8) Revise the Special Exception Site Plan to add the following Note:

Should the property owner (its successors or assigns) ever elect to proceed with the redevelopment of Beltway Plaza under the approved Detailed Site Plan (DSP-20020) (or any other entitlement) where such development will impact the Special Exception area or said Special Exception will cause an adverse impact upon the ability to redevelop Beltway Plaza pursuant to DSP-20020 (or any other entitlement), the owner and/or the applicant (their successors or assigns) shall request revocation or modification of SE-2022-012 to ensure that SE-2022-012 has no impact or limitations on the redevelopment of Beltway Plaza, DSP-20020, or any other entitlement.

(9) Revise the Special Exception Site Plan to provide a minimum of two pedestrian crosswalks from the drive aisles to the facility entrance.

(10) Revise Exhibit 37 to rename the first page from the "Parking Plan and Overall Site Plan" to the "Special Exception Site Plan SE-2022-012", and revise the second page Exhibit 37 to the "Special Exception Site Plan Detail SE-2022-012".

(11) The revised Special Exception Detail (Exhibit 37) concerning the traffic bollards around three sides of the outdoor play area shall be approved by the Department of Permitting, Inspections and Enforcement ("DPIE"). Any resulting change to Exhibit 37 concerning the traffic bollards required by DPIE shall be submitted to the Office of the Zoning Hearing Examiner for inclusion in the record prior to the issuance of permits.

(12) The revised Special Exception Detail (Exhibit 37) concerning the shade canopy structure and its affixation to the vinyl fence, shall be approved by DPIE. If modifications are required by DPIE, a detail of the approved shade structure shall be submitted to the Office of the Zoning Hearing Examiner for inclusion in the record prior to the issuance of permits.

(13) Prior to the issuance of permits, submit proof of the environmental assessment inspection required by the Prince George's County Health Department Division of Environmental Engineering and Policy Program.

(14) Prior to the issuance of permits, DPIE reserves the right to impose restrictions concerning stormwater. Should that occur, Applicant shall submit any updated Stormwater Management Concept approval for inclusion in the record.

**[NOTE: The Special Exception Site Plan Special Exception Site Plan Detail is Exhibit 37]**