

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

IN THE MATTER OF:
TERESITA C. HERNANDEZ
Applicant

Teresita C. Hernandez
Herson Hernandez
Samantha Hernandez
For the Application

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OZAH Case No. CU 18-10

Aura Rivera
Neighbor with a concern

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Before: Martin L. Grossman, Hearing Examiner
Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On June 25, 2018, the Applicant, Teresita C. Hernandez, filed an application seeking approval of a conditional use to operate a Day Care Center for up to 15 children in her home at 2801 Randolph Road, Silver Spring, Maryland. The Subject Site is Lot 18, Block 16 of the Glenmont Village Subdivision, with Tax ID No. 13-01253464 (Exhibit 12). The Site is zoned R-60, and a conditional use is required for a child care facility of this size in the R-60 Zone. The Applicant co-owns the property with Rafael and Herson Hernandez, both of whom signed an authorization for this application (Exhibit 15). The Applicant has been operating “the Growing Angels Family Day Care” there for 8 children since 2016.

Ms. Hernandez now seeks to expand the number of children in her care to 15, which requires a conditional use for a Day Care Center (13 - 30 Persons) under Section 59.3.4.4.E. of the Zoning Ordinance enacted in 2014.¹ The breakdown of differing day care facilities under the 2014 Zoning Ordinance is similar to that which existed under the old Zoning Ordinance, except the Day Care Center category is now broken down into two categories – one for 13 - 30 Persons (the kind of conditional use sought here) and one for over 30 Persons.²

Three parents of children currently cared for by Ms. Hernandez wrote in support of the application (Exhibit 2(i)). There has been no opposition to this application.

On September 14, 2018, the Office of Zoning and Administrative Hearings issued a notice that the public hearing would be held before the Hearing Examiner on October 26, 2018, at 9:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building (Ex. 25).

The Technical Staff of the Maryland-National Capital Park and Planning Commission

¹ Unless otherwise noted, all citations to the Zoning Ordinance in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

² There are four types of “Day Care Facilities” defined in Zoning Ordinance §59.3.4.4. – “Family Day Cares (Up to 8 Persons)”; “Group Day Cares (9 -12 Persons)”; “Day Care Centers (13-30 Persons)”; and “Day Care Centers (Over 30 Persons).”

(“M-NCPPC”) reviewed the application and, in a report dated October 1, 2018, recommended approval with conditions (Exhibit 26). Staff supplemented its report with a presentation to the Planning Board (Exhibit 29). At its regular meeting on October 11, 2018, the Planning Board voted unanimously (3-0) to recommend approval (Exhibit 28).

The hearing was convened, as scheduled, on October 26, 2018, and testimony was presented in support of the petition by Applicant Teresita C. Hernandez, who appeared *pro se*. She also called her children, Herson Hernandez and Samantha Hernandez, as witnesses. One neighbor, Aura Rivera, testified with a concern about parking on the street, but did not oppose the application, saying she had no quarrel with Ms. Hernandez. Tr. 40-45.

Applicant adopted the findings in the Technical Staff report (Exhibits 26 and 29) and agreed to the conditions suggested by the Hearing Examiner. Tr. 10-12, 14. She also identified her plans and photos of the site (Tr. 19-27), and she submitted an Affidavit of Posting (Exhibit 31). The record was held open until October 31, 2018, to receive a sample of Applicant’s contract language calling for staggered arrivals of children being dropped off or picked up by vehicle.

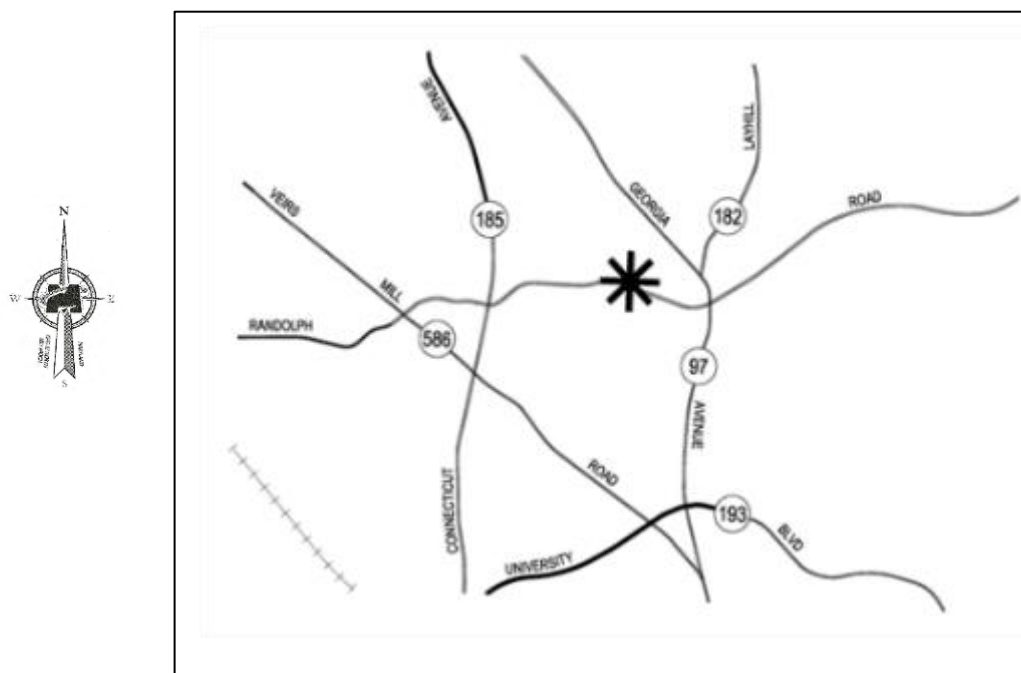
On October 29, 2018, Applicant filed a letter to parents of children in her care, informing them of the location for drop-offs and pickups and asking them to limit their times for that process to no more than 15 minutes each (Exhibit 34). Because that document was not a sufficient contract with individual parents specifying arrival and departure times, in accordance with the Hearing Examiner’s instructions (Tr. 15-16), the Hearing Examiner emailed a sample Parental Agreement Form to the Applicant on October 29, 2018 Exhibits 35-36. The Applicant replied that she would use it with each of the parents (Exhibit 37). The record closed, as planned, on October 31, 2018.

There is no opposition in this case, and the application meets all the standards for approval of the conditional use set forth in the Zoning Ordinance. The Hearing Examiner has therefore granted the application, with the conditions imposed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. Subject Property and Surrounding Neighborhood

The subject site is located at 2801 Randolph Road, Silver Spring, Maryland. The legal description of the property is Lot 18, Block 16 of the Glenmont Village Subdivision, and it is zoned R-60. The location of the property can be seen on the locational map provided by Technical Staff (Exhibit 26, p. 1), and reproduced below:



The property is well described by Technical Staff (Exhibit 26, p. 2):

The Applicant's Property is Lot 18, Block 16 of the Glenmont Village subdivision, located at 2801 Randolph Road, Silver Spring (Property or Site). The Site is a corner lot and contains 10,824-square feet with frontage on the south side of Randolph Road and the southeast side of Terrapin Road. The Property has a two-story detached dwelling that was built in 1950 and that serves as both the Applicant's residence and the location for the Growing Angels Daycare, LLC. The Applicant owns and operates the existing day care for eight children The Applicant's house contains 1,268 square feet of living area above grade and has a basement and does not have a garage or carport. There is a shed in the back yard. An existing asphalt and concrete driveway is located on the southeast side of the house with curb cut access onto Terrapin Road (Figure 3). The driveway was

recently expanded to 61 feet long by 51 feet wide and is double-wide by design. A lead-in sidewalk from Randolph Road connects to the front door of the house.

Parents and children enter and exit the day care through a back door on the north side of the residence facing Terrapin Road (Figure 4). The first floor of the residence is used for the day care. The Applicant and her spouse live on the second floor of the residence. An outdoor play area is located on the west/southwest sides of the Property with dimensions of 45 feet long by 43 feet wide. Most of the outdoor play area is located along the west side of the residence with a portion of it in the front yard at the southwest side, along Randolph Road. The play area is enclosed with an approximately four-foot high, vinyl construction, picket fence.

Along the Property's southwest edge at Randolph Road there is a retaining wall that wraps around the street frontage. The lead-in concrete sidewalk separates the retaining wall into two segments. Three retaining walls and the vinyl-construction picket fence were installed in April 2015. Two of the retaining walls are in the front yard and the third wall is along the Property's north property line and at an edge of the driveway (Attachment 1 [to the Staff Report]). The sidewalk on Randolph Road is at a lower elevation than the area of the front yard behind the retaining wall (an approximately four-foot difference). A street light is in the Randolph Road right-of-way in front of the Applicant's Property. Photos of the Applicant's Property are in Attachment 2 [to the Staff Report].

An aerial photograph of the subject site was also provided by Technical Staff (Exhibit 26, p. 3), and it is reproduced below, followed by pictures of the site attached to the Staff Report:



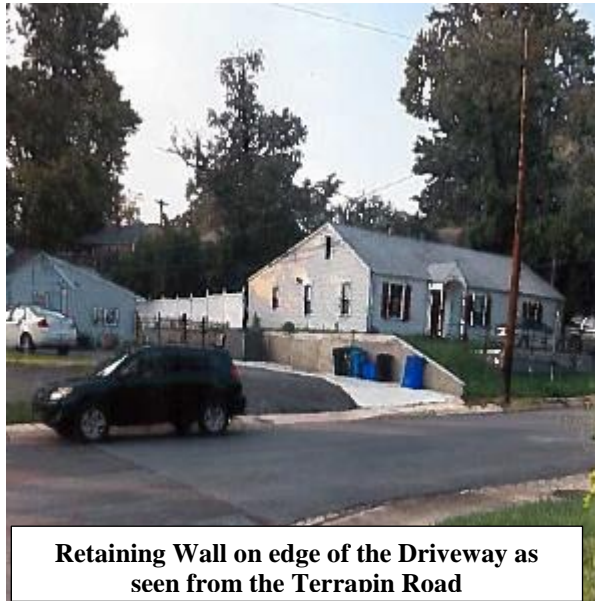
Figure 1: Aerial Photo of the Subject Site



**Front of house, walkway and front yard
(from Randolph Road)**



Fenced-in Outdoor play area



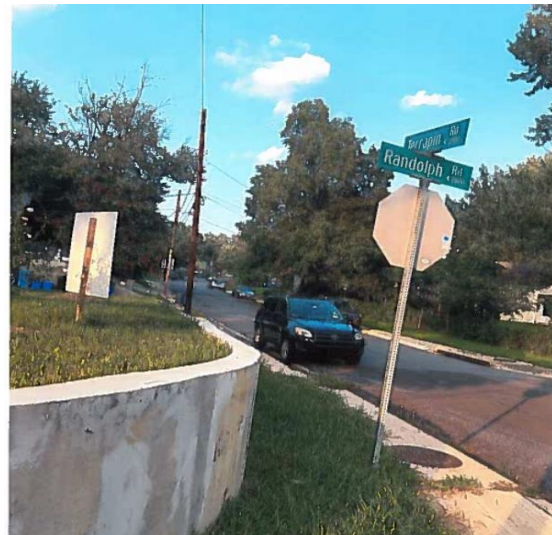
**Retaining Wall on edge of the Driveway as
seen from the Terrapin Road**



**Driveway and Parking Pad accessed
from Terrapin Road**



**Retaining Wall and House as seen from the
Intersection of Randolph and Terrapin Roads**



**Close-up of Retaining Wall as seen from the
Intersection of Randolph and Terrapin Roads**

Technical Staff recommended defining the general neighborhood surrounding the subject property as “generally bounded by Urbana Drive to the north and northwest, Judson Road to the northeast and Newton Street to the south and southwest.” The Hearing Examiner accepts Technical Staff’s recommended definition of the general neighborhood, and it is depicted in an aerial photo map from the Technical Staff report (Exhibit 26, p. 4):

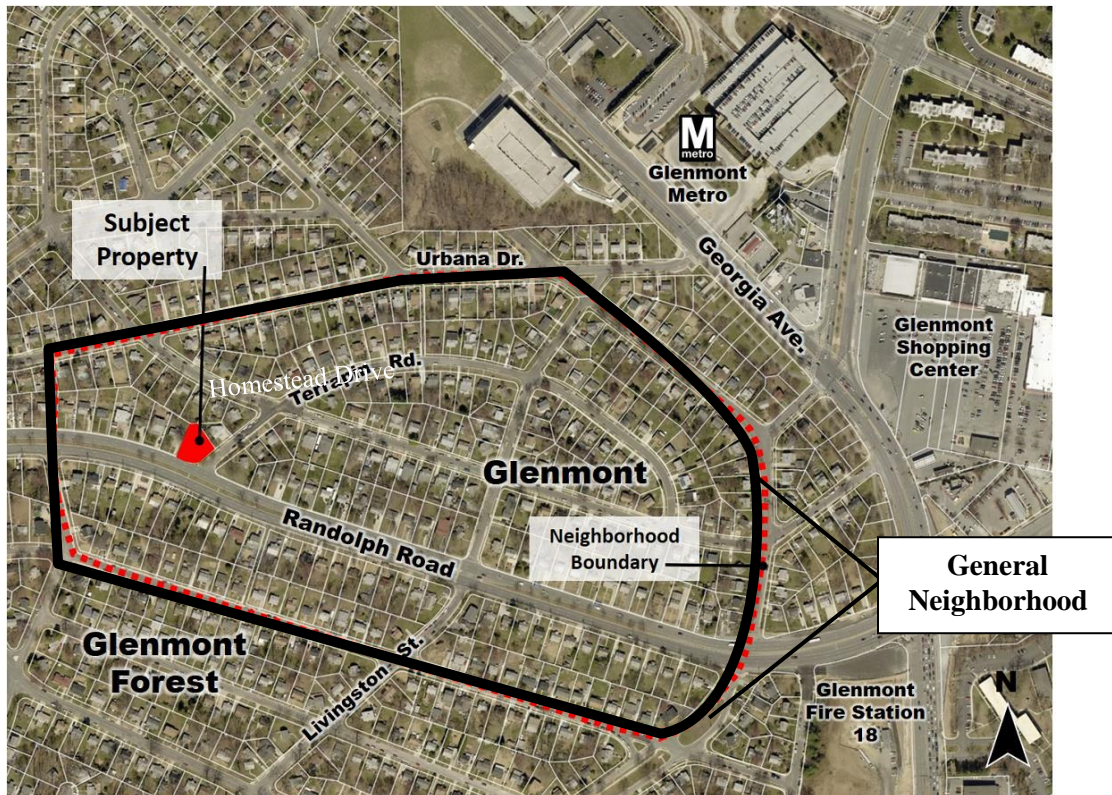


Figure 2: Staff-defined Neighborhood

Technical Staff described the surrounding neighborhood as follows (Exhibit 26, p. 3):

The Glenmont Village subdivision is an established single-unit, detached residential neighborhood with houses mostly build in the 1950’s. The neighborhood is in the R-60 Zone and has a grid pattern street network with mostly four-way stop intersections; no streets terminate in a cul-de-sac by design. . . .

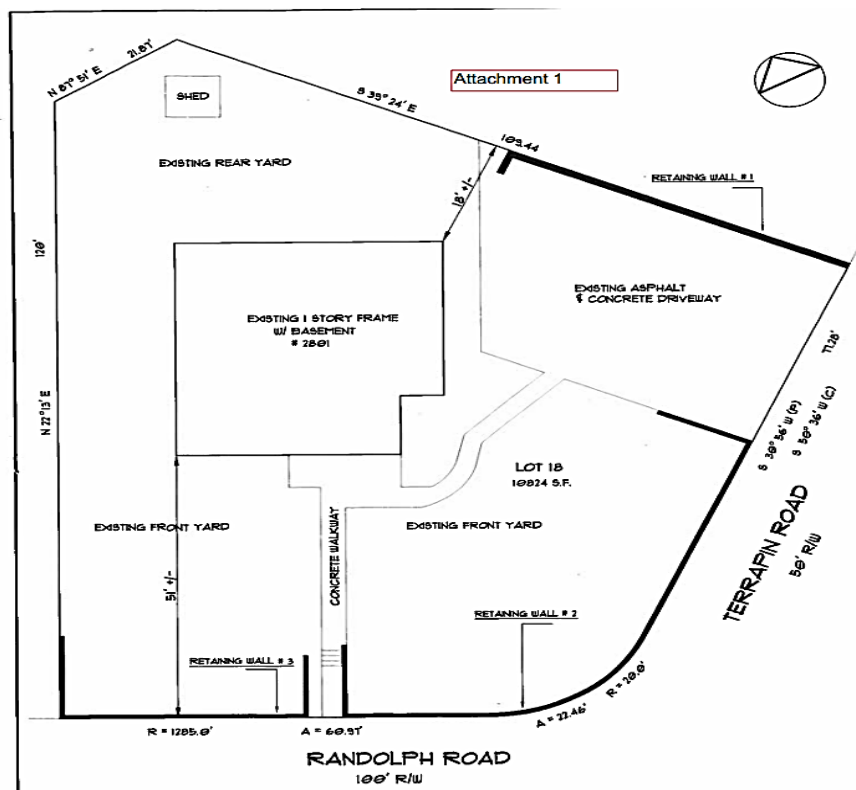
Randolph Road is a six-lane divided major highway with a grass median. Terrapin Road is a tertiary residential street with a 50-foot wide right-of-way. This segment of Randolph Road has a posted speed limit of 35 miles per hour. Motorists travelling west bound on Randolph Road make a right turn on to Terrapin Road and motorists travelling southwest on Terrapin Road make a right-turn only onto Randolph Road. Four-foot wide concrete sidewalks are located on both sides of Randolph Road and Terrapin Road. There is on-street parking on Terrapin Road on

the opposite side of the street from the Property. A stop sign on Terrapin Road is located at the corner of the intersection of Terrapin Road and Randolph Road and is directly in front of the Property.

Staff identified one special exception within the defined neighborhood, approved on November 21, 1987. It is an accessory apartment, S-1500, located at 2507 Randolph Road, 0.4 miles east of the Subject Property.

B. Site Plan, Landscaping, Lighting, Signage and the Proposed Use

The Applicant has been operating “the Growing Angels Family Day Care” on the subject site for 8 children since 2016. Ms. Hernandez now seeks to expand the number of children in her care to 15, which requires a conditional use for a Day Care Center (13 - 30 Persons) under Section 59.3.4.4.E. of the 2014 Zoning Ordinance. Her Site Plan (Exhibit 33, from Attachment 1 to the Staff Report) is shown below:



Applicant's also submitted a Revised Site Plan (Exhibit 33(a), identical to Exhibit 24), which is reproduced on the next page, followed by an annotated version (Exhibit 33(b)):

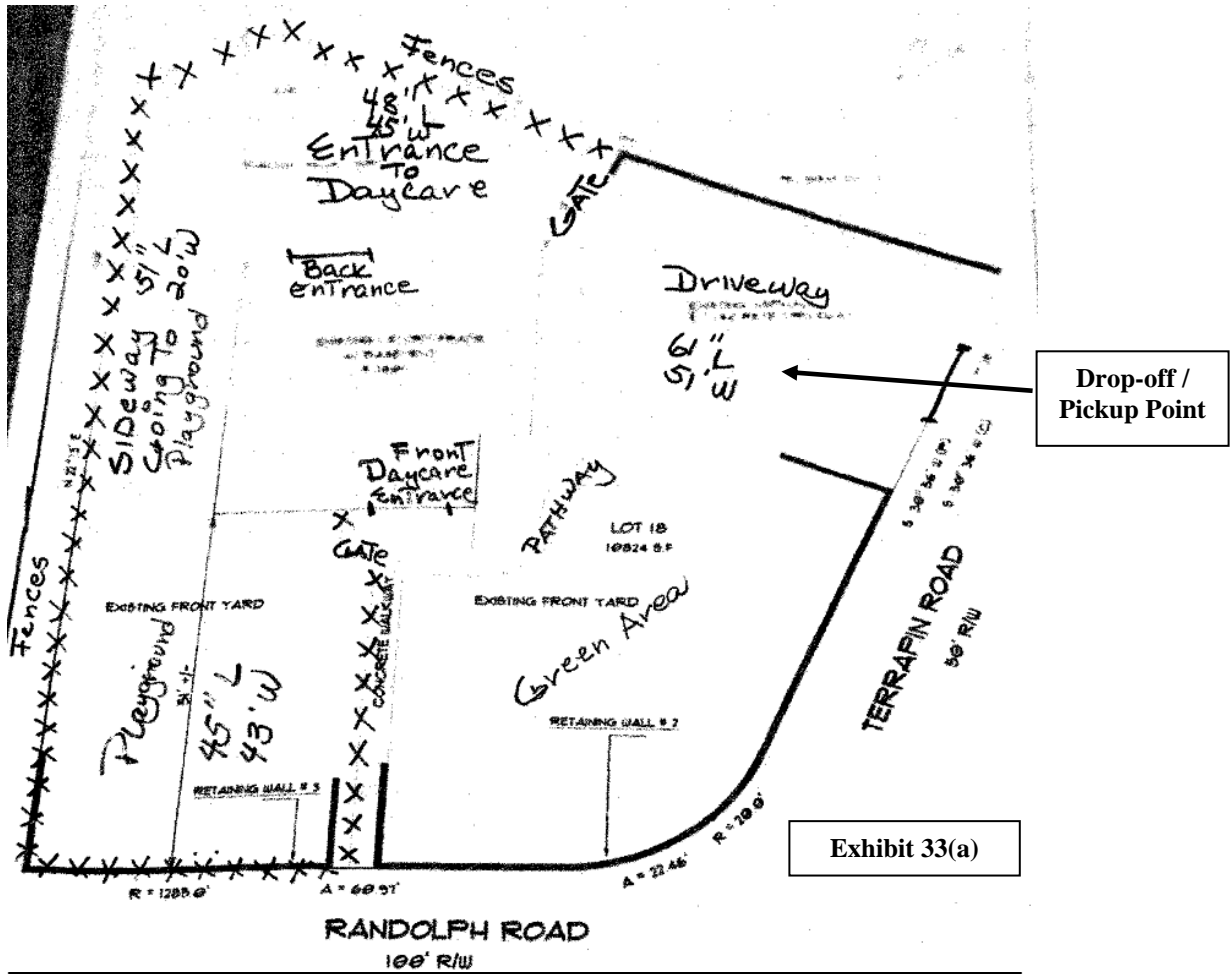


Exhibit 33(a)

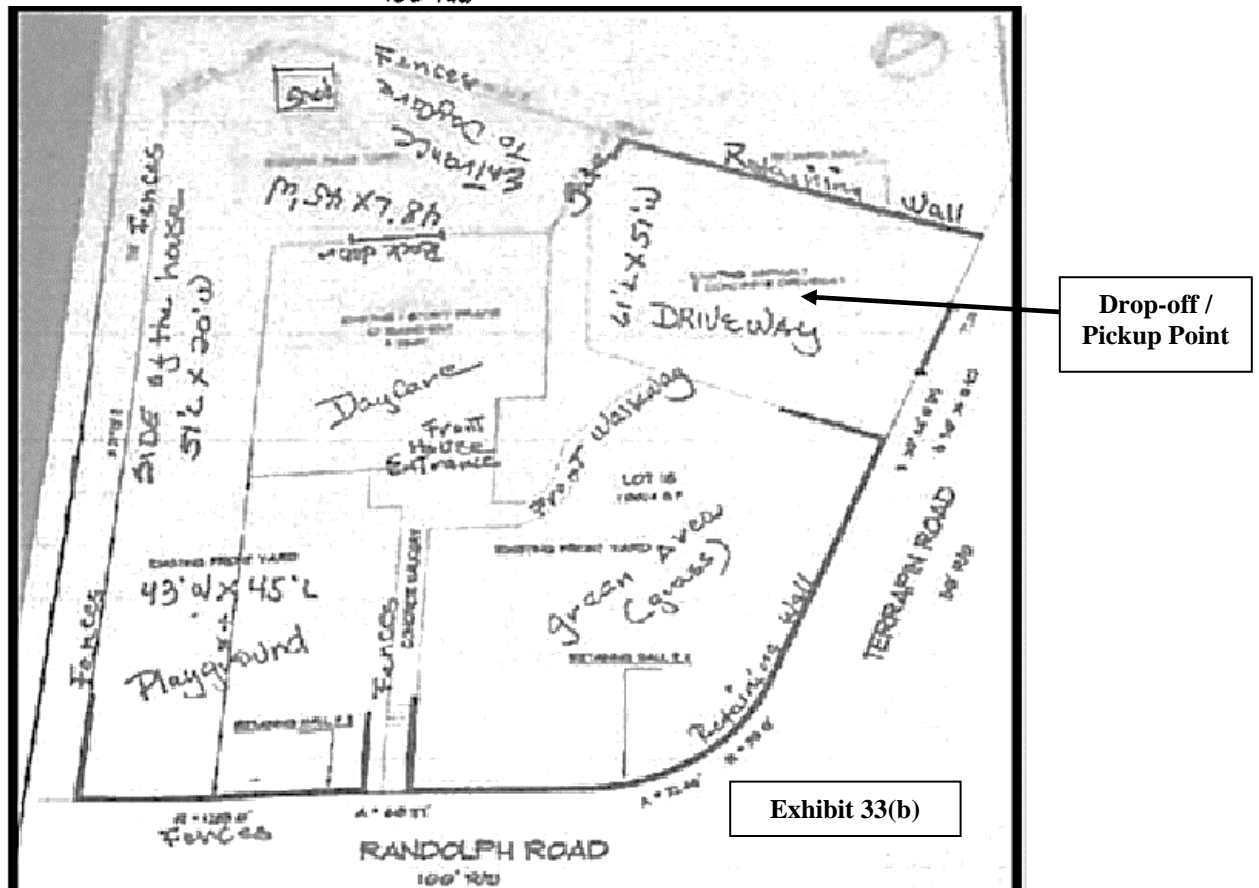


Exhibit 33(b)

There are no plans indicated to change the existing landscaping of the property. Staff reports that the existing vinyl-constructed picket fence is new and screens the use from the surrounding neighborhood and Randolph Road. According to Technical Staff, “Based on the topography of the Property in the front yard where the outdoor play area is located and in relation to the concrete retaining wall parallel to Randolph Road, the existing fence creates a secured outdoor play environment for the children.” Exhibit 26, p. 10. Staff also notes that no signage is proposed and, “No changes are proposed to the exterior lighting, which is residential in character and does not result in excessive illumination onto the neighboring properties.” Exhibit 26, p. 10.

Access, parking and related setback and screening issues will be discussed in Part III. D. of this Report and Decision.

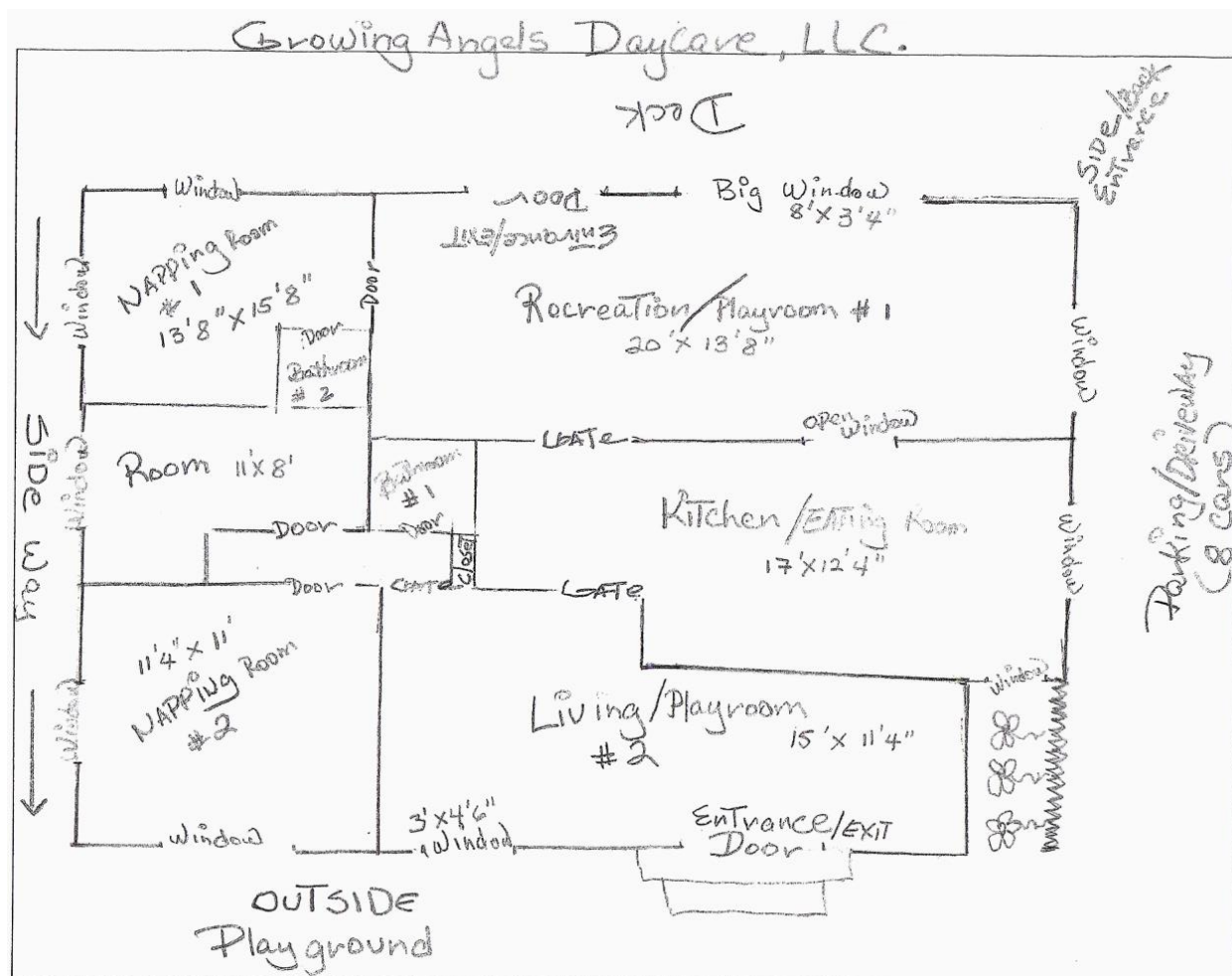
C. Operational Characteristics

Applicant currently runs a family day care in her home for up to eight children. She is licensed by the State Office of Child Care to care for up to 8 children (Exhibit 2(g)). Operations were described by Technical Staff (Exhibit 26, pp. 4-5):

. . . The hours of operation will remain the same as currently operated: 7:00 a.m. to 6:00 p.m., Monday through Friday. No physical alterations are proposed to the exterior of the Applicant’s residence in the expansion request.

The Applicant submitted a staggered schedule for drop-off and pick-up time(s) so parents do not arrive/depart at the same time (Attachment 3 [to the Staff Report]). Photos of the exterior of the Applicant’s residence show the existing parking spaces in the driveway. The outdoor play area and the main entrance to the residence are shown in . . . [the Site Plans above]. Noise from the outdoor play area is anticipated when children use it during two scheduled outdoor play times, weather-permitting. Play times are scheduled from 10:30 a.m. to 11:30 a.m., and 4:00 p.m. to 5:00 p.m., with adult supervision. The Applicant has two non-residential employees and will hire a third non-residential employee after approval of the request.

The Floor Plan for the day care center (Exhibit 2(c)) is reproduced below, followed by photographs of some of the child care rooms (Exhibit (2)(h)):



The Applicant has provided a Transportation Statement (Exhibit 2(a)) showing morning and evening Tables scheduling child drop-offs and pickups, and staff arrivals and departures.

These Tables are reproduced below:

TRANSPORTATION STATEMENT FOR DAY CARE

Morning Peak Period Drop-Off and Staff Arrivals (6:30am-9:30am)		
Time	Children	Staff
6:30-6:45 am		Provider Sign-In (Owner)
6:45-7:00 am	Layla Bryant (Part Time)	Steffany Sign-In (Additional Adult)
7:00-7:15 am	Alexander Lovch	
7:15-7:30 am	Juan Antonio Deras	
7:30-7:45 am	Connor Wyatt Hawley	
7:45-8:00am	Jose Savavia	
8:00-8:15am	Georgia Dorsey	Estela Hidalgo Sign-In (Teacher)
8:15-8:30 am	Kai Hofele	Rosalba Melendez Sign-In (Daycare Helper)
8:30-8:45 am	Samira Akbar	
8:45-9:00 am		

Sign-out
AT 1:00

Evening Peak Period Pick-Up and Staff Departures (4:00pm-7:00PM)		
Time	Children	Staff
4:00-4:15pm		
4:15-4:30pm	Jose Savavia	
4:30-4:45pm	Connor Wyatt Hawley	
4:45-5:00pm	Alexander Lovch	
5:00-5:15pm	Chenesis Larios (After School)	Rosalba Melendez Sign-out
5:15-5:30pm	Layla Bryant Georgia Dorsey	
5:30-5:45pm	Juan Antonio Deras	
5:45-6:00pm	Kai Hofele	Steffany Velasco Sign-out (Additional Adult)
6:00-6:15pm	Samira Akbar	Provider Sign-out (Owner)
6:15-6:30pm		
6:30-6:45pm		
6:45-7:00pm		

How many staff do you expect will take the bus or carpool?
As of now, Two Took Bus To work,
One by her Car.

How many sibling groups do you expect?

They are four families who came
for a Tour visits but didn't enroll
for limited capacity.

In order to ensure that these orderly schedules are followed, the Hearing Examiner has provided the Applicant with a blank form for a parental agreement to abide by the drop-off and pickup schedule (Exhibits 35 and 36). It is reproduced below:

Parental Agreement to Abide by a Schedule of Drop-off and Pick-up Times

I _____, whose child is, or will be, cared for by the Growing Angels Day Care, state that I have been advised and agree that all pick-ups and drop offs of my child/children will be restricted in time so that no more than two vehicles will arrive at the Day Care for drop-offs or pick-ups every 15 minutes. I therefore agree to schedule my vehicular pick-ups and drop-offs of my child/children in accordance with this limitation and according to the attached schedule given by the aforesaid Day Care for this purpose.

Name(s) of my Child/Children _____

Date

Signature of Parent or Guardian

The Applicant has agreed to use this form with each of the parents of children attending her day care facility (Exhibit 37). Combining the use of this form with a condition recommended by Technical Staff, the Hearing Examiner has imposed the following condition in Part IV of this Report and Decision:

Vehicular arrival and departure times for the children must be staggered, through contractual agreements between the operator of the daycare center and the parents, so that a maximum of two vehicles may arrive every 15 minutes to drop-off and pick-up children. A blank form for such contractual agreements is in the record as Exhibit 35. Non-resident Staff may park on the abutting streets, where permitted by law, but drop-off and pickup of children must be done on the existing parking pad for safety. In no event may a child be dropped off before Applicant or a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.

The location for staff parking and drop-off and pickup of children was described in the Staff Report (Exhibit 26, p. 7):

Parent drop-off and pick-up trips are proposed at the existing driveway that accommodates up to eight vehicles. Up to three non-resident staff persons will park on Terrapin Road or on the sides of the driveway, leaving room for 2-3 vehicles to maneuver for drop-off and pick-up. Thus, Staff recommends a condition limiting the number of vehicles that can drop-off or pick-up children to two vehicles every 15- minutes, or up to eight times in one-hour intervals as stated in the Applicant's traffic statement.

Technical Staff concluded that "... the existing parking pad and spaces on the streets abutting the Property provide an adequate area for the discharge and pick up of children." Exhibit 26, p. 9. Given the size of the parking pad and Staff's analysis, the Hearing Examiner's condition quoted above should provide a safe process for dropping off and picking up children without unduly impacting the neighbors.

Per the recommendation of Technical Staff, and with the agreement of the Applicant, outdoor play times have been limited by the following condition:

Outdoor play is limited to two scheduled times daily: 10:30 a.m. to 11:30 a.m., and 4:00 p.m. to 5:00 p.m. All gates or other access to the outside play area must be secured during outdoor play in a manner that will prevent any of the children present from opening such access and wandering off.

This condition, combined with conditions prohibiting a public address system or outdoor amplified music, should provide adequate and safe outdoor play while minimizing adverse impacts on the neighbors.

D. Community Reaction

There was no opposition to the proposed day care center. On the contrary, three letters of support were filed by parents utilizing the existing family day care (Exhibit 2(i)), and the one neighbor who appeared at the hearing, Aura Rivera, testified only about a concern regarding daycare users parking on the street. She did not oppose the application, saying she had no quarrel with Ms. Hernandez and that she is pleased that the Hernandez family bought the property since they are "great people." Tr. 40-45.

E. The Environment

There are no environmental issues because there will be no exterior changes. A Forest Conservation Exemption is in the record as Exhibit 2(b). As stated by Staff (Exhibit 26, p. 7):

The Property contains no forest, streams or their buffers, 100-year floodplains, steep slopes, or known habitats of rare, threatened or endangered species. This application is not subject to Chapter 22A, the Forest Conservation Law as the Site is less than 40,000 square feet in size.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a child day care center for up to 15 children. *Zoning Ordinance* §59.3.4.4.E.

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

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:³

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

E. Necessary Findings

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

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

Conclusion: According to Technical Staff, “There are no applicable previous approvals on the Site.” Exhibit 26, p. 8. Therefore, the Hearing Examiner finds that this provision is satisfied.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;⁴

Conclusion: This subsection requires an analysis of the standards of the R-60 Zone contained in Article 59-4; the use standards for Child Day Care Centers for 13 to 30 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 26, pp. 8-12), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

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

The subject site is within the area covered by the 2013 Glenmont Sector Plan. Technical Staff reports that the Sector Plan does not specifically discuss the subject site, but recommends providing daycare centers in the area. As stated by Staff (Exhibit 26, p. 6):

The Property is inside the 2013 *Glenmont Sector Plan* area. The Sector Plan does not discuss the Property in terms of specific land use recommendations; however, it does have Goals and Guiding Principles, which recommend, “...providing adequate community facilities, such as parks, community spaces, schools, and daycare centers for children and adults” ([Sector Plan] page 18) (Attachment 4 [to the Staff

⁴ The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

Report]). Furthermore, the Sector Plan recommends retaining zoning and preserving the existing neighborhoods surrounding the Glenmont core.

The Applicant's proposal conforms to the general recommendations, goals and guiding principles of the Sector Plan because it represents a continuation of the use of the house as a primary residence, while providing a day care center as a conditional use.

Conclusion: In light of the quoted language from the Sector Plan and Staff's discussion, the Hearing Examiner finds that the proposed use substantially conforms with the objectives and recommendations of the 2013 Glenmont Sector Plan.

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

Conclusion: Technical Staff found that the proposed use meets this standard (Exhibit 26, p. 10):

The proposal is harmonious with and will not alter the character of the surrounding residential neighborhood in a manner inconsistent with the Sector Plan. The Applicant's residence has a well-maintained exterior appearance and the expansion of the day care facility will not detract from the residential character of the neighborhood.

The Hearing Examiner agrees with Technical Staff and concludes that the proposed use "is harmonious with and will not alter the character of the surrounding neighborhood" because it will remain a single-family, detached residence in a neighborhood of single-family, detached residences, and no additional external modifications to the building are planned.

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

Conclusion: According to Technical Staff, the neighborhood contains one other special exception use (S-1500), an accessory apartment special exception located at 2507 Randolph Road, 0.4 miles east of the Subject Property. It was granted in 1987. Exhibit 26, p. 4.

Technical Staff found that “The Applicant’s request will have no bearing on this previously approved special exception.” Exhibit 26, p. 10. The actual question posed by this provision is not whether the proposed use will affect the previously approved special exception (which is what Staff’s answer addresses), but whether the combined effect of the new and old special exceptions will “*affect the area adversely or alter the predominantly residential nature of the area.*” The Hearing Examiner finds that the expansion of the existing day care, housed in an externally unmodified single-family home, will not adversely affect or alter the residential nature of the area. Moreover, the proposed use furthers the goals of the Sector Plan and thus does not alter the nature of the area. In sum, the Hearing Examiner finds that this standard has been met.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or***
- ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; . . .***

Conclusion: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision. Exhibit 26, p. 11. Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities. By its nature, a small child care facility operating within an existing single-family residence will not ordinarily create significant additional burdens for schools, police and fire

protection, water, sanitary sewer and storm drainage. Technical Staff expressly found that “the existing public facilities are sufficient to serve the proposed day care center.” Exhibit 26, p. 11.

Staff also specifically explored the impacts of the proposed use on transportation facilities (Exhibit 26, p. 7):

Parking and Drop-Off/Pick-Up

Parent drop-off and pick-up trips are proposed at the existing driveway that accommodates up to eight vehicles. Up to three non-resident staff persons will park on Terrapin Road or on the sides of the driveway, leaving room for 2-3 vehicles to maneuver for drop-off and pick-up. Thus, Staff recommends a condition limiting the number of vehicles that can drop-off or pick-up children to two vehicles every 15- minutes, or up to eight times in one-hour intervals as stated in the Applicant’s traffic statement.

Local Area Transportation Review

Under the 2016-2020 Subdivision Staging Policy, a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test, because the proposed day care expansion generates fewer than 50 person-trips during the weekday during both the morning and evening peak-hours. Person trips include all travel modes – auto/vehicular, transit, walking and bicycle trips.

As previously noted, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision, consistent with the recommendation of Technical Staff, requiring vehicular arrival and departure times for the children to be staggered, through contractual agreement between the operator of the daycare center and the parents, so that a maximum of two vehicles may arrive every 15 minutes to drop off and pick up children. The Applicant’s Transportation Statement (Exhibit 2(a)) and her agreement with the Hearing Examiner’s condition (Exhibit 37) demonstrates that the Applicant will follow the formula of no more than two vehicles arriving every 15 minutes to drop off and pick up children. In sum, LATR is satisfied in this case, and the evidence supports the conclusion that the proposed use, as conditioned, will not unduly burden the transportation system. Based on this record, the Hearing Examiner concludes that the proposed development will be served by adequate public services and facilities.

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood.

Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59.7.3.1.E.1.g., quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child care facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified **or** adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a child day care facility (Exhibit 26, p. 11):

(1) vehicle trips to and from the site; (2) noise from the outdoor play area; and (3) the drop-off and pick-up area. Staff did not identify any non-inherent adverse effects associated with the proposed conditional use.

Staff analyzed the potential impacts on the neighborhood as follows (Exhibit 26, p. 11):

As described in the transportation analysis of this report, the proposal will not significantly impact traffic in the neighborhood. The existing driveway will provide adequate drop-off and pick-up to the Site. No additional play equipment in the outdoor play area or an expansion of the existing play area is proposed. Outdoor play activity times are scheduled twice a day at 10:30 a.m. - 11:30 a.m., and 4:00 p.m. - 5:00 p.m. Because the outdoor play area is located on a corner lot, only one confronting property (to the northwest) may be impacted by noise generated from the children. Noise generated from outdoor activity times will be limited to two times daily, with adult supervision. No letters in opposition from residents inside the staff-defined neighborhood have been received. The drop-off and pick-up times will be limited and staggered with no more than eight vehicles at the Property in an hour during these designated times, so that parents do not all arrive/depart at the same time.

The Hearing Examiner notes that the use of retaining walls on this corner lot may well be considered an “unusual site condition.” However, it does not appear on this record that this unusual site condition will cause non-inherent adverse effects. The Hearing Examiner therefore agrees with Staff’s conclusion that there are no non-inherent adverse effects at this location. Moreover, the conditions recommended by Technical Staff and adopted, in modified form, by the Hearing Examiner in Part IV of this Report and Decision will help ensure that the facility can operate safely and without causing adverse effects on the neighborhood.

The Hearing Examiner finds that by limiting outdoor play to twice a day, from 10:30 a.m. to 11:30 a.m. and 4:00 p.m. to 5:00 p.m., the resulting noise will cause no significant disruption to the neighborhood. A condition to that effect has been imposed in Part IV of this Report and Decision. As is generally the case with this type of conditional use, other conditions have been imposed to

prohibit the use of a public address system or amplified music outside the building and to require the Applicant to maintain the grounds in a clean condition, free from debris, on a daily basis.

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

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

Conclusion: There are no proposals to construct any new structures on site, nor to alter the exterior of the existing structure on site. Therefore, this provision is satisfied.

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

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

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 Zone. Development standards for the R-60 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by the application in a Table in the Staff Report (Exhibit 26, p. 8), which is reproduced on the next page.

R-60 Zone Standard Method Development	Required/Permitted	Proposed
Minimum Lot Area (Section 59.4.4.9.B.1)	6,000 SF	10,824 SF
Maximum Density (Section 59.4.4.9.B.1)	1.63 units (7.26 d/u per acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.9.B.1)	35 percent	Less than 35%
Minimum Front Setback (Section 59.4.4.9.B.2)	25 feet	50 feet
Minimum Side Street Setback (Section 59.4.4.9.B.2)	25 feet	Greater than 25 ft.
Minimum Side Setback (Section 59.4.4.9.B.2)	8 feet	8 feet
Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)	18 feet	18 feet
Minimum Rear Setback	20 feet	20 feet*
Maximum Height	35 feet	20 feet

* [Staff's footnote originally stated, "Because the lot is a corner lot, where the driveway is located is the rear yard." Staff corrected that footnote in its presentation to the Planning Board (Exhibit 29), observing that the footnote was incorrect "... because the driveway is located in one of two front yards for this corner lot and a rear parking setback is not applicable."]

Conclusion: Technical Staff's Table, reproduced above, indicates that the proposed use meets all the development standards of the current R-60 Zone, as provided in Zoning Ordinance §59.4.4.9.B, However, Technical Staff lists the existing rear building setback as 20 feet (which meets the current Code setback minimum), but the Original Site Plan (Exhibit 33 and Attachment 1 to the Staff Report) shows a rear setback of only 18 feet. In its PowerPoint presentation to the Planning Board (Exhibit 29, p. 6), Staff appears to conflate the rear building setback with the parking lot setback. They are two different issues, and the Hearing Examiner cannot agree with Staff's apparent conclusion that there is no rear building setback requirement because there are "two front yards for this corner lot."

We will address the parking lot setback in the Part III.D. of this Report and Decision. In this section, we are examining only whether the site meets the applicable development standards of the zone where the use will be located, as set forth in Article 59.4 of the Zoning Ordinance. It is clear from the original Site Plan that the site meets all the requirements of the current R-60 Zone except

for the rear building setback minimum of 20 feet. Nevertheless, State Tax records for this site (Exhibit 12) indicate that the main structure was constructed in 1950. At that time, Section 176-3.c.(4) of the 1950 Zoning Ordinance provided that the rear yard had to have only an average minimum depth of 20 feet, but no less than 15 feet at any one point. The Site Plan in Exhibit 33 clearly shows that that standard has been met.

Under 2014 Zoning Ordinance §59.7.7.1.A., the existing home is therefore a legal structure that is “grandfathered” as a conforming structure, and the fact that it does not have a 20-foot rear setback does not disallow this application.

In sum, the Hearing Examiner finds that the subject site conforms to the requirements of Article 59-4 of the 2014 Zoning Ordinance to the extent they are applicable.

C. Use Standards for a Child Day Care Center-13 to 30 Persons (§59.3.4.4.E.2.)

The specific use standards for approval of a Child Day Care Center for 13 to 30 Persons are set out in Section 59.3.4.4.E.2. of the Zoning Ordinance. Standards applicable to this application are:

2. Use Standards

Where a Day Care Center (13-30 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

a. The facility must not be located in a townhouse or duplex building type.

Conclusion: This proposal is for a day care center in a single-family, detached house, and is therefore compliant.

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

Conclusion: As discussed previously, the existing parking pad provides an adequate area for the discharge and pick up of children. Staff notes that “non-resident staff persons will park on Terrapin Road or on the sides of the driveway, leaving room for 2-3 vehicles to maneuver for drop-off and pick-up.” Exhibit 26, p. 7.

The Applicant's Transportation Statement (Exhibit 2(a)) and her statement in Exhibit 37 demonstrate that the Applicant will follow the formula of no more than two vehicles arriving every 15 minutes to drop off and pick up children. With a condition requiring this drop-off/pick-up arrangement, imposed in Part IV of this Report and Decision, the Hearing Examiner finds that the subject site satisfies the Code requirement of an adequate area for the safe discharge and pick-up of children.

- c. The number of parking spaces under Division 6.2 may be reduced if the applicant demonstrates that the full number of spaces is not necessary because:***
- i. existing parking spaces are available on abutting property or on the street abutting the site that will satisfy the number of spaces required; or***
 - ii. a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems.***

Conclusion: Zoning Ordinance §59.6.2.4 requires that a day care center provide three parking spaces for every 1,000 square feet of gross floor area (GFA) devoted to the use, and another two parking spaces for the residence. Based on the Applicant's Floor Plan (Exhibit 2(c)), the floor area devoted to the conditional use is just over 1,000 square feet, which means that 6 parking spaces are required for its operations, plus 2 for the residence. However, Section 59.3.4.4.E.2.c., quoted above, allows the required number of spaces to be provided on the street abutting the site, if parking is available there and would not adversely affect the surrounding area nor create safety problems.

Technical Staff confirmed that 6 vehicle parking spaces were needed for the conditional use and two for the residence. Since Staff indicates that the existing parking pad can hold 8 vehicles, the parking space requirements can be met on the site (Exhibit 26, p. 9). Moreover, Staff recommends that non-resident staff park on the adjacent Terrapin Road.

The photographic evidence reproduced on page 6 of this Decision supports the conclusion that there is ample parking available on Terrapin Road for this purpose. In light of these

circumstances, the Hearing Examiner concludes that the parking spaces for the non-resident employees required by the Zoning Ordinance may be located on the street abutting the site rather than on the site itself, and the conditions imposed herein permit that practice.

Based on this record, the Hearing Examiner finds that the subject site satisfies the Code requirements for parking spaces and that the drop-off/pickup location will provide a safe area for the discharge and pick-up of children accessing the site by automobile.

d. For a Family Day Care where the provider is not a resident and cannot meet the non-resident provider requirement, screening under Division 6.5 is not required.

Conclusion: Not Applicable. The proposal is for a Day Care Center, not a Family Day Care.

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

Conclusion: Not Applicable. The subject site is in the R-60 Zone.

Conclusion: In sum, the application satisfies all of the use standards in Code §59.3.4.4.E.2.

D. General Development Standards (Article 59.6)

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

1. Site Access Standards

Conclusion: Not applicable. Zoning Ordinance Division 59.6.1 governs “Site Access;” however, by its own terms, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-60 Zone involved in this case. Moreover, access to the site for the drop-off and pick up of children has been thoroughly addressed in previous sections.

2. Parking Spaces Required, Parking Setbacks and Parking Lot Screening

a. Parking Space Requirements

Conclusion: The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. The vehicular spaces required by Zoning Ordinance §59.6.2.4.B. are referenced in the Table on page 9 of the Staff report (Exhibit 26). As discussed in connection with the previous section, 6 vehicle parking spaces are required for the operation of the conditional use and 2 are required for the residence. All 8 of these spaces are provided on site on the parking pad.

The Applicant will also comply with Section 59.6.2.4.C. by providing a bicycle parking space. According to the Applicant Statement (Exhibit 2, penultimate page), “There is a space for bicycles and there is also space for indoor bicycle storage. It is located in the backside of the house in a locked shed for safety.” Based on this record, the Hearing Examiner finds that the Applicant will be compliant with the cited sections of the Zoning Ordinance.

b. Parking Setbacks, Screening and Landscaping

Parking lot setbacks for conditional uses in residential zones are specified in Zoning Ordinance §59.6.2.5.K.

K. Facilities for Conditional Uses in Residential Detached Zones

Any off-street parking facility for a conditional use that is located in a Residential Detached zone where 3 or more parking spaces are provided must satisfy the following standards:

1. Location

Each parking facility must be located to maintain a residential character and a pedestrian-friendly street.

2. Setbacks

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

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

* * *

The Hearing Examiner has crossed out the side setback requirement of Section 59.6.2.5.K.2.b.

because an amendment to the Zoning Ordinance,⁵ now codified in §59.6.2.5.A,1., removed the side setback requirement of that Section with regard to detached houses.

Responding to the Hearing Examiner's inquiry about the application of Zoning Ordinance Sections 59.6.2.5.K. and 59.6.2.9.B. to this case (Exhibit 27), Technical Staff indicates in her PowerPoint presentation to the Planning Board (Exhibit 29, p. 6) that "... the parking improvements were recently approved and are located to maintain a residential character and a pedestrian-friendly street." Staff then asserts that "... the driveway is located in one of two front yards for this corner lot and a rear parking setback is not applicable."

Although the Hearing Examiner agrees with Staff's finding that the parking pad arrangement has "maintain[ed] a residential character and a pedestrian-friendly street," in compliance with §59.6.2.5.K.1., he does not agree with Staff's assertion that there is no applicable rear building setback in this case and derivatively, no minimum rear parking setback. As discussed in Part III.B. of this Report and Decision, there is a rear setback requirement for this lot which fronts on Randolph Road, and it is met by being grandfathered into the applicable 1950 zoning requirement of a minimum 15 foot rear setback.

Under the language of Zoning Ordinance §59.6.2.5.K.2.a., the minimum rear parking setback would thus be 15 feet, to equal the minimum rear setback required for the detached house. Since the parking pad fronts on Terrapin Road, the rear of the parking pad abuts the rear yard of the subject lot, and its setback from the property line at the northern corner of that lot clearly exceeds 15 feet. It thus meets the rear parking lot setback required by §59.6.2.5.K.2.a. The parking pad does not have to meet a side setback because, as noted above, §59.6.2.5.K.2.b. no longer applies to detached homes.

⁵ ZTA 16-13, Ord. No. 18-15.

We now turn to the parking lot screening requirements of Zoning Ordinance §59.6.2.9.B., which provides:

Parking Lot Requirements for Conditional Uses Requiring 5 to 9 Spaces

If a property with a conditional use requiring 5 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:

- 1. Satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;*
- 2. Contains a hedge, fence, or wall a minimum of 4 feet high; and*
- 3. Has a minimum of 1 understory or evergreen tree planted every 30 feet on center.*

By its terms, this section applies to “*Conditional Uses Requiring 5 to 9 Spaces.*” Since the subject site’s parking pad contains 8 spaces, this section is applicable.

Technical Staff responded to this Section by including a photograph (labelled No. 8) to its PowerPoint presentation (Exhibit 29, p. 6), and stating:

Photo 8 demonstrates the substantial grade difference, the retaining wall and privacy fence locations between the Property and the adjoining property. Thus, no further screening of the parking area beyond what is at the Property is necessary.

Photograph No. 8 is reproduced below:



It appears from the photograph that the parking pad has a wall and a fence, but has no “perimeter planting area,” nor an “understory or evergreen tree,” both of which are items called for in §59.6.2.9.B.. Staff states that because the site has a “substantial grade difference, the retaining wall and privacy fence . . . , no further screening of the parking area beyond what is at the Property is necessary.” Since the quoted Code provision clearly requires the “perimeter planting area,” and an “understory or evergreen tree” in addition to the wall and fence, the site is not compliant with this provision. Therefore, the Hearing Examiner interprets Staff’s statement that no further screening “is necessary” as a finding that the present arrangement provides sufficient screening to ensure that adequate parking is provided in a safe and efficient manner and that it is compatible with the neighborhood.

The first prong of this interpretation of Staff’s finding satisfies the requirement for a waiver of the requirements of §59.6.2.9.B., per the language of §59.6.2.10:

Section 6.2.10. Parking Waiver

The deciding body may waive any requirement of Division 6.2, . . . if the alternative design satisfies Section 6.2.1. . . .

The referenced Section 6.2.1 provides that “*The intent of the vehicle and bicycle parking, queuing, and loading requirements is to ensure that adequate parking is provided in a safe and efficient manner.*” Thus, Staff’s finding that no further screening “is necessary,” warrants a waiver of the screening requirements of §59.6.2.9.B. The Planning Board reached a similar conclusion, stating that “. . . the typical setbacks and screening are not necessary and should be considered waived per Section 6.2.10.” (Exhibit 28).

Moreover, the Hearing Examiner is empowered by Section 59.7.3.1.E.1.b., to apply the general requirements under Article 59-6 only “*to the extent the Hearing Examiner finds necessary to ensure compatibility. . .*” The Hearing Examiner interprets Staff’s finding that no further screening

“is necessary,” to be tantamount to a finding that no further screening “is necessary” to ensure compatibility with the neighborhood.

Conclusion: Based on this record, the Hearing Examiner concludes that the Applicant’s proposed setbacks for the parking area are compliant with Division 6.2 of the Zoning Ordinance and that the grade difference, retaining wall and fence on the perimeter of the parking pad are sufficient to warrant a waiver of §59.6.2.9.B., and to ensure compatibility with the neighborhood.

3. Site Lighting, Landscaping and Screening

Standards for site lighting and landscaping are set forth in Division 6.4 of the Zoning Ordinance, and the standards for screening are set forth in Division 6.5. The stated intent of Division 6.4 is “*to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.*” §59.6.4.1. The stated intent of Division 6.5 is “*to ensure appropriate screening between different building types and uses.*” Zoning Ordinance §59.6.5.1.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

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

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture. Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture. [Emphasis added.]

Conclusion: Technical Staff states that “No changes are proposed to the exterior lighting, which is residential in character and does not result in excessive illumination onto the neighboring

properties.” Exhibit 26, p. 10. Based on this record, the Hearing Examiner finds that the existing lighting is compliant with the requirements of Division 6.4, regarding lighting.

b. Site Screening and Landscaping

Zoning Ordinance §59.6.5.2.B. provides:

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

Since the proposed use is in a single-family detached house, the specific requirements of Section 6.5.3. do not apply to this case. The single requirement is that “*All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.*” This language is consistent with the terms of Section 59.7.3.1.E.1.b., which specifies that the Hearing Examiner must find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

Technical Staff described the existing screening (Exhibit 26, p. 10):

The existing vinyl-constructed picket fence is new and encloses the use from the surrounding neighborhood and Randolph Road. The existing fence was installed in April 2015 and creates a safe environment for children, although it is transparent. Based on the topography of the Property in the front yard where the outdoor play area is located and in relation to the concrete retaining wall parallel to Randolph Road, the existing fence creates a secured outdoor play environment for the children.

In addition to the retaining wall and privacy fence described elsewhere herein, Staff also observed that “No physical alterations are proposed to the exterior of the Applicant’s residence in the expansion request.” Exhibit 26, p. 4. The Planning Board also concluded, “The existing condition still maintains a residential character and a pedestrian-friendly street, and no further screening of the parking area is necessary.” Exhibit 28.

Conclusion: Based on this record, the Hearing Examiner finds that the existing site is residential in character and is compatible with the neighborhood without the need for further landscaping or screening.

4. Signage

The use of signage is governed by Division 6.7. Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones:

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in a Residential zone is 2 square feet, unless additional area is permitted under Division 6.7.

1. Freestanding Sign

- a. One freestanding sign is allowed.*
- b. The minimum setback for a sign is 5 feet from the property line.*
- c. The maximum height of the sign is 5 feet.*
- d. Illumination is prohibited.*

Conclusion: The Applicant does not currently display any sign regarding the existing Family Day Care use, and she has not proposed any sign for the proposed Day Care Center. As stated by Technical Staff, “No signage is proposed.” Exhibit 26, p. 10. Nevertheless, a condition is imposed in Part IV of this Report and Decision which will require the Applicant to obtain a permit from the Department of Permitting Services (DPS) before erecting any sign. The condition also limits any future sign to no more than two square feet in size and prohibits any lighted sign. With that notation, the Hearing Examiner finds that the proposed use is compliant with all the provisions of Article 59-6 of the Zoning Ordinance, to the extent required by law.

IV. CONCLUSION AND DECISION

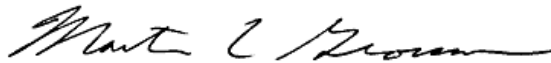
As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Teresita Hernandez (CU 18-10), for a conditional use under Section 59.3.4.4.E. of the Zoning Ordinance, to operate a child day care center for up to 15 children in her home at 2801 Randolph Road, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The day care facility is limited to 15 non-resident children in the Applicant's care at any one time. All children must be under the direct supervision of a staff member at all times. The number of children on site must not exceed the number authorized by State licensing authorities, and the ages of the permitted children will be determined by State licensing authorities.
2. The hours of operation are Monday through Friday from 7:00 a.m. to 6:00 p.m.
3. Outdoor play is limited to two scheduled times daily: 10:30 a.m. to 11:30 a.m., and 4:00 p.m. to 5:00 p.m. All gates or other access to the outside play area must be secured during outdoor play in a manner that will prevent any of the children present from opening such access and wandering off.
4. The Applicant may have up to three non-resident staff members, in addition to herself, on site at any given time.
5. Vehicular arrival and departure times for the children must be staggered, through contractual agreements between the operator of the daycare center and the parents, so that a maximum of two vehicles may arrive every 15 minutes to drop-off and pick-up children. A blank form for such contractual agreements is in the record as Exhibit 35. Non-resident Staff may park on the abutting streets, where permitted by law, but drop-off and pickup of children must be done on the existing parking pad for safety. In no event may a child be dropped off before Applicant or a staff member is present to supervise that child; nor may a child be left alone if a parent is late in making a pick-up.
6. The Applicant must not display a sign for the child care facility unless it is first approved by the Department of Permitting Services (DPS) and a permit is obtained. A sign, if erected, must not exceed two square feet and must not be lighted. A copy of the permit must be filed with OZAH before any sign is posted.
7. Physical improvements are limited to those shown on the amended site plan submitted by the Applicant.
8. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Child Day Care Center, and correct any deficiencies found in any government inspection.

9. Children must be accompanied by an adult to and from the child-care entrance.
10. The Applicant shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building.
11. The Applicant shall maintain the grounds in a clean condition, on a daily basis.
12. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 9th day of November, 2018.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

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

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

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

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

Copies To:

Teresita Hernandez
Herson Hernandez
Samantha Hernandez
Aura Rivera
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Lori Shirley, Planning Department
All parties of record
Ehsan Motazed, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Alexandre A. Espinosa, Director, Finance Department
Charles Frederick, Esquire, Associate County Attorney
Gwen Wright, Director, Planning Department