

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

**IN THE MATTER OF:** \*  
**CINDY AGUILAR PALACIOS d/b/a** \*  
**Ariana's Learning and Play Family Child Care\***  
Applicant \*  
Cindy Aguilar Palacios \*  
For the Application \*  
\*\*\*\*\*  
Donald B. McClure, Jr. \*  
Nearby Neighbor \*  
Supporting the Application \*  
\*\*\*\*\*

OZAH Case No. CU 19-05

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 October 23, 2018, the Applicant, Cindy Yamileth Aguilar Palacios, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children in her home at 2506 Hayden Drive in Silver Spring. Her joint ownership of the property with Josue Manuel Aguilar and others, is established by the Maryland Real Property Records (Exhibit 25), showing an SDAT Tax Account Number of 13-01125652. Co-owners Josue Manuel Aguilar and Jenny Roxana Granados filed a letter consenting to this application (Exhibit 29). The Applicant currently runs a Family Day Care (Ariana's Learning and Play Family Child Care) for up to eight children in her home, and wishes to expand to a 12-child Group Day Care.

The Subject Site is Lot 10, Block K of the McKenney Hills Subdivision, and it is zoned R-60, as evidenced by the official zoning map of the area (Exhibit 15). A conditional use is required for a child care facility for 9 to 12 children in the R-60 Zone (*i.e.*, a Group Day Care), pursuant to Zoning Ordinance §59.3.4.4.D (9-12 persons).

The Office of Zoning and Administrative Hearings (OZAH) scheduled a public hearing to be held on February 15, 2019, by notice issued on January 8, 2019 (Exhibit 35). The Technical Staff of the County's Planning Department (Technical Staff or Staff) issued a report on January 18, 2019, recommending approval of the application, subject to five conditions. Exhibit 36.

The Planning Board met on January 31, 2019, and voted unanimously (4-0) to recommend approval with the conditions recommended by Staff, but with the addition of a new Condition 6 governing any signage, and a change to recommended Condition 2 to extend the limit on hours of operation to 6:30 PM, instead of the 5:30 PM limit proposed by Staff. These recommendations are contained in the Chair's letter of February 4, 2019. Exhibit 38. Technical Staff's report was supplemented in an email exchange on January 31 and February 1, 2019, with responses from Staff to some questions raised by the Hearing Examiner. Exhibit 37.

The application is supported by letters from parents of six children currently using the day care (Exhibits 22(a)-(f)) and one from Paulina Alvarado, the Quality Enhancement Coordinator of the Montgomery Child Care Resource and Referral Center (Exhibit 22(g)). There were no letters filed in opposition.

The public hearing proceeded as scheduled on February 15, 2019. The Applicant testified, and she was the only witness called by the Applicant. At the hearing, the Applicant indicated that she accepted the findings of Technical Staff report (Exhibit 36) as part of her evidence in the case and accepted the conditions proposed by Technical Staff, as amended by the Planning Board. Tr. 9-10. She also agreed to the conditions that the Hearing Examiner indicated he would likely impose if he granted the conditional use (Exhibit 40 and Tr. 13-14). There was no opposition testimony, but a nearby neighbor, Donald McClure, testified in support of the application. Tr. 19-21. The record was scheduled to close on February 20, 2019, upon receipt of the hearing transcript. No additional filings were made, except for the transcript, and the record closed, as scheduled, on February 20, 2019.

For the reasons set forth in this Report and Decision, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV, below.

## **II. FACTUAL BACKGROUND**

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

The subject site is located in Silver Spring about a half mile north of the Capital Beltway (I-495) and a half mile west of Georgia Avenue (MD 97). Technical Staff described the subject site as follows (Exhibit 36, p. 2):

The Subject Property (Property or Site) is 2506 Hayden Drive in Silver Spring, otherwise known as Lot 10, Block K of the McKenney Hills Subdivision. It is improved with a detached house . . . and the Applicant has been operating an eight-child day care facility on the premise since June 2013 for newborns through five-

year-old children. The existing daycare occupies three rooms in the basement of the house.

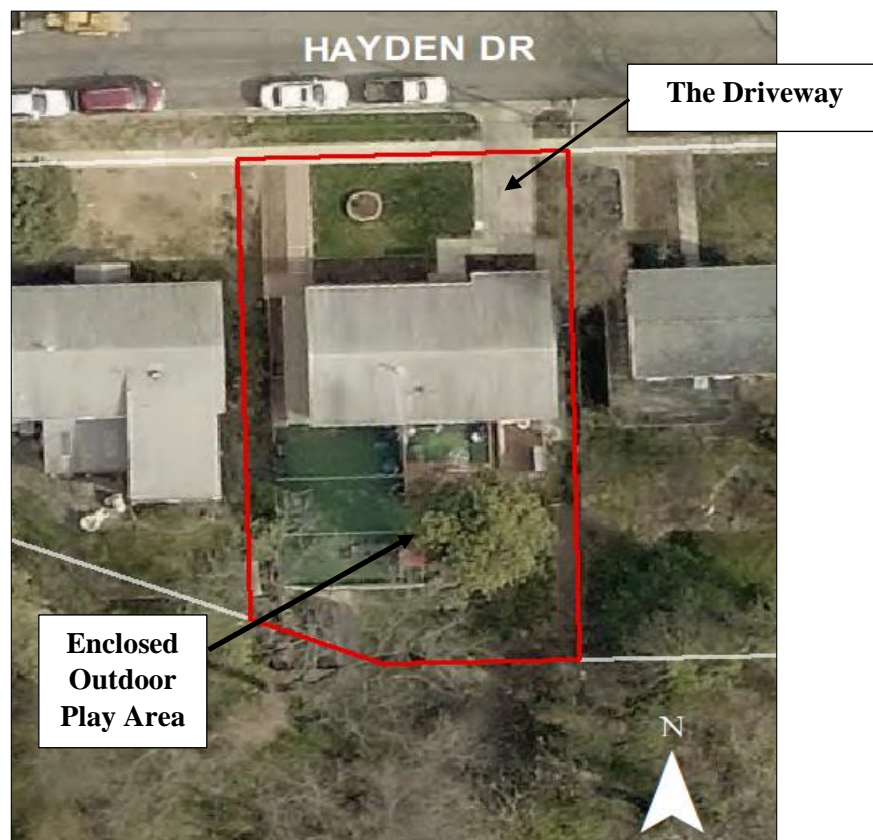
The 5,987 square foot lot is located mid-block on the south side of Hayden Drive. The Property has a driveway that is approximately 23 feet wide and 18 feet long that has space to park three cars. A walkway connects the entrance of the daycare on the west side of the house to the sidewalk on Hayden Drive along the Property frontage. An unenclosed porch covers the walkway along the west side of the house.

Seasonal garden beds are located along the walkway and in front of the house. The house has two residential type lighting fixtures in the front and a ceiling light on the covered walkway outside the entrance to the daycare.

The outdoor play area is located in the rear yard of the house and is enclosed by fencing of varying heights. The fencing on the west side of the play area is approximately five-feet-high and to the south and east it is approximately three-feet-high. Fencing within the play area separates the outdoor play space for infants from the play space for older children. The play area for older children has an artificial surface with a variety of playground equipment.

Unrestricted on-street parking is allowed on the south side of Hayden Drive in the vicinity of the Property. On-street parking is prohibited along the north side of Hayden Drive opposite the Property.

Staff provided an aerial photograph of the site (Exhibit 36, p. 3):



The Applicant has also provided numerous photographs of the exterior of her home (Exhibits 11(a)–(g)), samples of which are reproduced below:







**Path to Childcare Entrance**

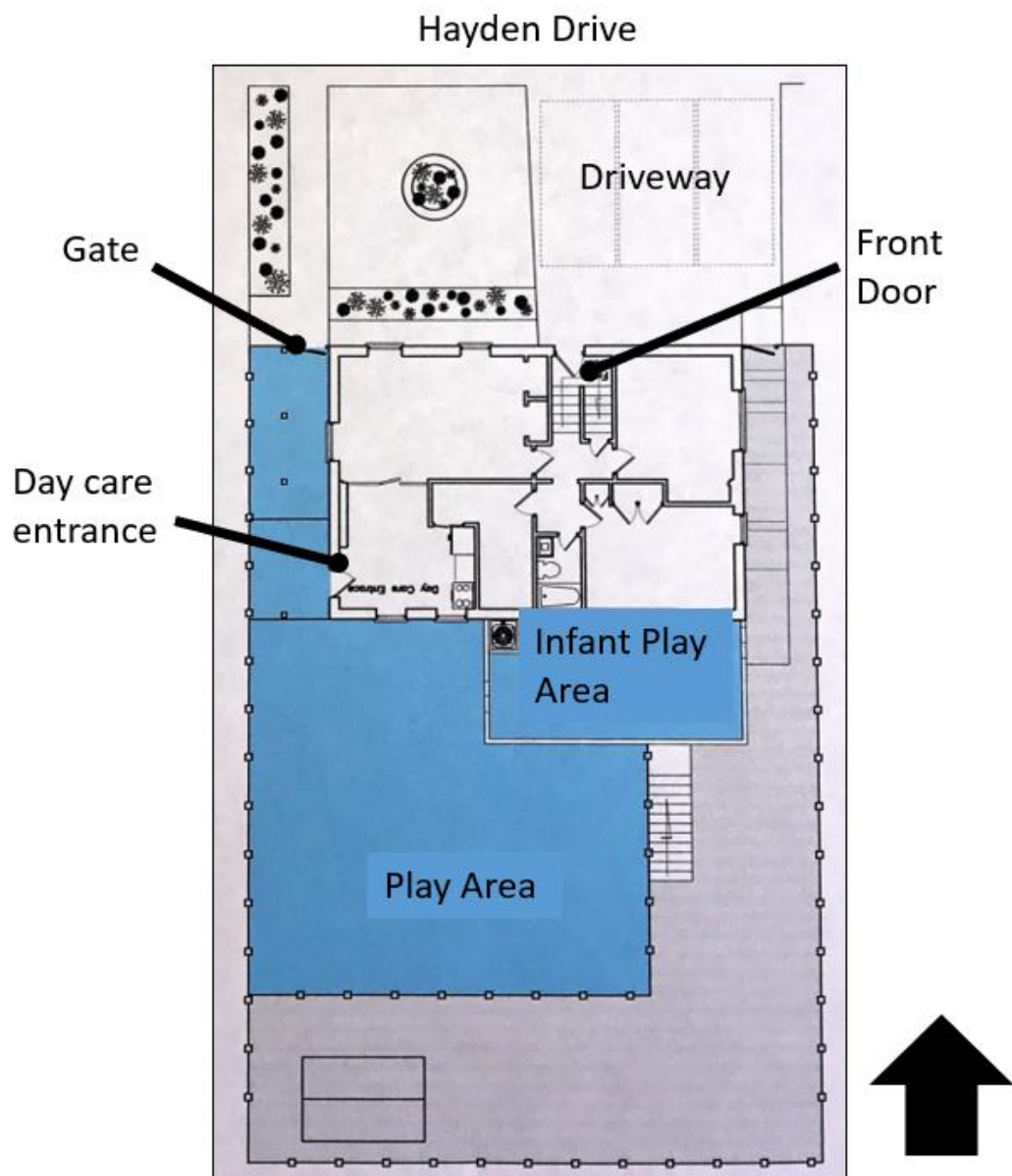


**Door where  
children enter.**



**Enclosed Rear Outdoor Play Area**

Technical Staff also provided a clear diagram of the site (Exhibit 36, p. 5):



## B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “generally bounded by Churchill Road to the north; the Glenwood Pool and



Flora Elementary School to the south; Gardiner Avenue to the east; and by Flora Singer Elementary School/M-NCPPC parkland to the west.” Exhibit 36, p. 3. It is depicted in an aerial photograph provided by Technical Staff (Exhibit 36, p. 4):



While Staff could have defined the neighborhood more narrowly, the Hearing Examiner accepts Technical Staff definition of the neighborhood. As can be seen in the above aerial photograph and noted by Staff, the neighborhood “is composed of detached houses in the R-60 Zone, the Glenwood Pool, and Flora Singer Elementary School.” Exhibit 36, p. 3. Staff identified two approved conditional uses/special exceptions in the neighborhood:

- S-1079: Accessory Apartment, at 10103 Leder Road
- CBA-794: Glenwood Recreation Club (Glenwood Pool), at 10012 Gardiner Avenue



### **C. Proposed Use**

The Applicant seeks approval of a conditional use to expand her current Family Day Care for up to 8 children into a Group Day Care for up to 12 children in her home at 2506 Hayden Drive in Silver Spring. As explained in Applicant's supporting information (Exhibits 5 and 6):

I, Cindy Aguilar, am a resident child care provider and one of the owners of Ariana's Learning and Play Family Child Care, a licensed family child care business located in a single family detached home at 2506 Hayden Drive, Silver Spring, MD 20902. My co-provider and additional adult is Teresa Palacios de Aguilar who is also co-owner of this daycare. We have operated our licensed family child care since June 7, 2013. we are open Monday through Friday from 7:30 am to 5:30 pm. We have the capacity of eight children with ages ranging from infants though Pre-K (0 to 5 years old). The child care is currently operated on the basement of the house. We use three rooms. The first room is the main play area for toddlers and preschoolers, where also we do circle time and activities. Basement room one is for the infants. Basement room two is for sleeping. We as a child care offer an education program with a weekly lesson which includes a lot of learning activities inside and outside. We believe that every child is unique and we are aware and responsive to the social, emotional, intellectual and physical needs of all our children. We as a family child care high-quality program has very growing demand in our area, and this is the reason why Ariana's Learning & Play Family Child Care would like to expand our capacity to serve more families. Although we have been operating the daycare for more than 5 years and we have been always full. Day by day we receive calls and emails from customers from current clients that referent them to our daycare, parents who recognize the high-quality education program that we offer them.

\*

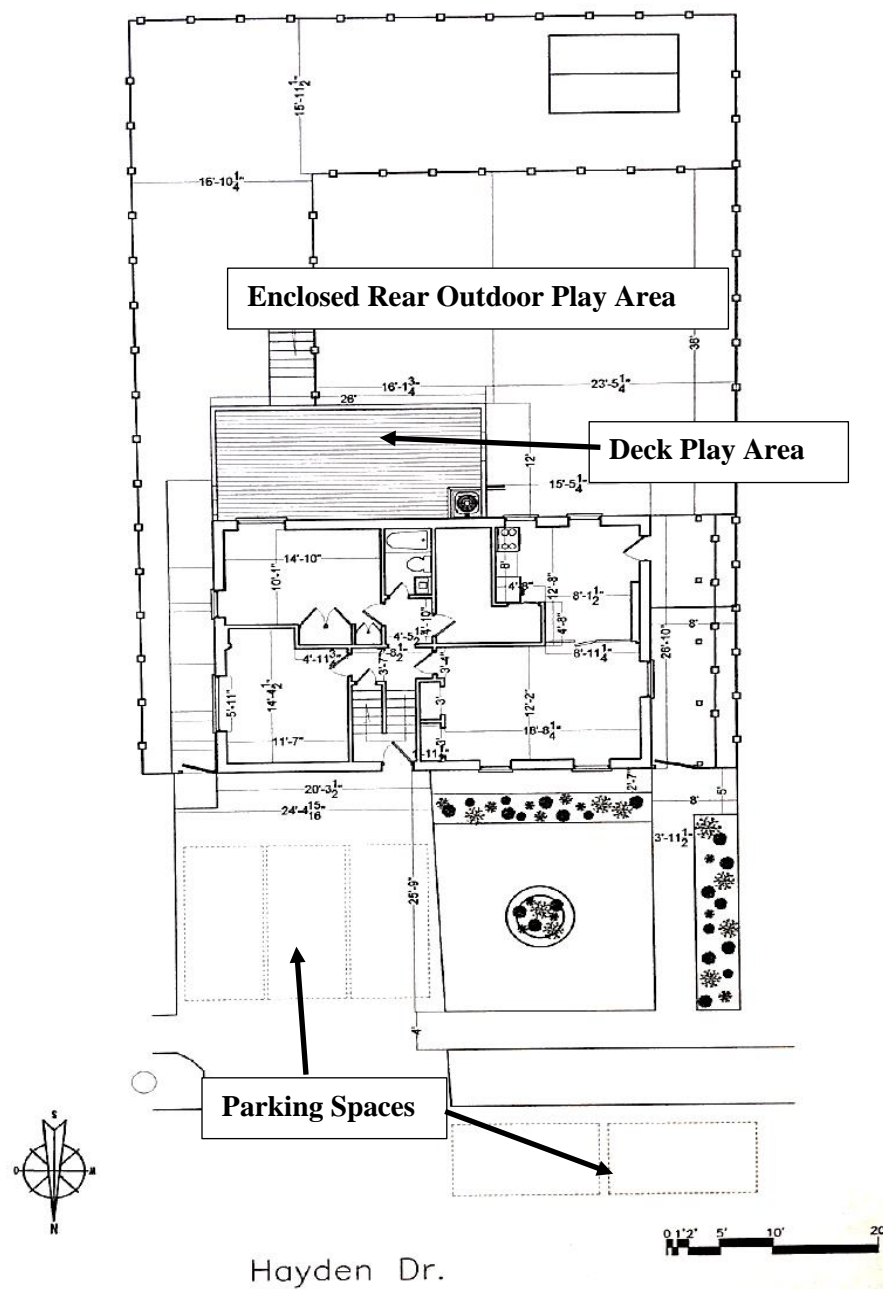
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\*

Ariana's Learning and Play Family Child Care is an accredited program through the National Association of Family Child Care – NAFCC. I am credentialed by the Maryland Child Care Credentialing program at level four plus and my program participates in the Maryland's quality rating and improvement system -QRIS, EXCELS published at level 5 and Regulated by the State of Maryland Department of Education, OCC. We have more than 12 years of child care experience with 0 to 5-year-old children, extensive training (CPR, First Aid, SIDS prevention, emergency preparedness, medication administration training) and CDA (Child Development Associate) credentials.

## 1. Site Plan

The Applicant’s Conditional Use Site Plan (Exhibit 14) is reproduced below:



As can be seen, the above Conditional Use Site Plan also shows the floor plan for the Group Day Care, as well as the fenced-in outdoor play area on the south (rear) side of the site,

the expanded driveway for 3 cars on the north (front) side of the site, and two parking spaces in front of the home. Technical Staff notes that “The Applicant is not proposing any expansion or change to the indoor or outdoor daycare space.” Exhibit 36, p. 4.

## **2. Parking for the Residence and the Day Care**

The Applicant plans only one non-resident employee, and thus Zoning Ordinance §59.6.2.4.B. requires a total of three parking spaces (one for the non-resident employee and two for the residence); however, the provision also specifies that “Required spaces may be allowed on the street abutting the site.” Staff observed (Exhibit 36, p. 5), “The Applicant indicates that a total of seven parking spaces are available for the day care, including three spaces in the driveway, two on-street spaces along the Property frontage, and two on-street spaces [next door] in front of 2504 Hayden Drive.”

As noted previously, unrestricted on-street parking is allowed on the south side of Hayden Drive in the vicinity of the subject site, but on-street parking is prohibited along the north side of Hayden Drive opposite the site. Technical Staff concluded (Exhibit 36, p. 13), “Adequate parking and drop-off/pick-up areas are available on site and adjacent to the Property.” The Hearing Examiner agrees, but since some drop-offs and pick-ups may occur on the street, he has imposed an additional condition for safety, requiring that:

Children must be accompanied by an adult to and from the child-care entrance, and when drop-offs or pickups are made by vehicle outside of the Applicant’s driveway, children must embark or disembark the vehicle from the curb side.

Finally, Technical Staff noted (Exhibit 36, p. 7):

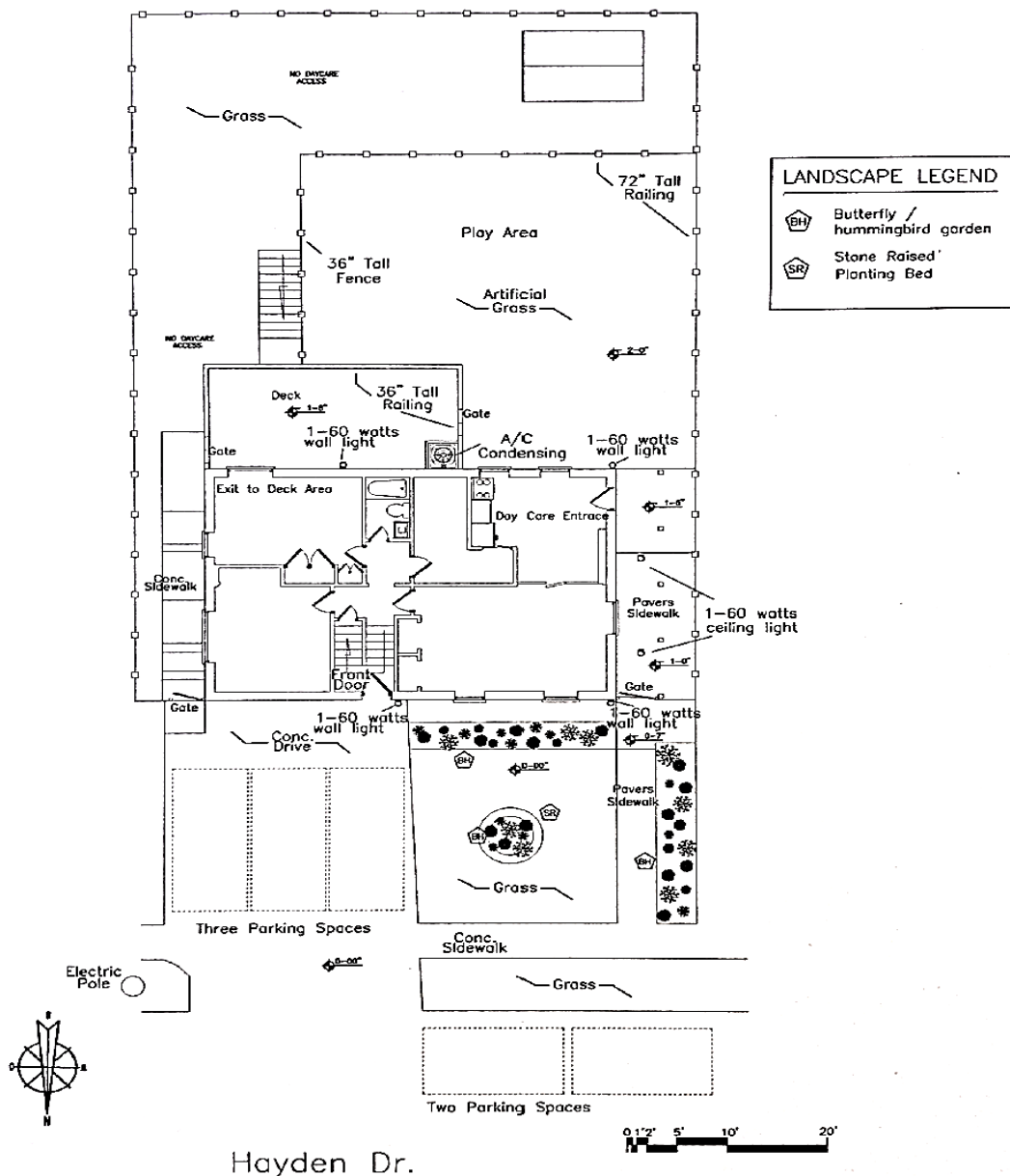
. . . One long-term bicycle parking space is required; however, Staff supports a waiver to deviate from the design specifications in Section 59-6.2.6.A. Although a bicycle parking space will not be provided within a building, covered parking garage, or bicycle locker as specified in Section 59-6.2.6.A, bicycles can be parked within the fenced side yard under the covered porch adjacent to the daycare entrance.



Based on this evidence, the Hearing Examiner finds that there is sufficient room for parking on the driveway and in the immediate neighborhood of the subject site to accommodate both the non-resident employee and the drop-off and pickup operations of the proposed Group Day Care.

### 3. Site Landscaping, Lighting and Signage

The landscaping and lighting on the site will remain unchanged if the application is approved. Tr. 18-19. They are shown below in the Applicant's Landscape and Lighting Plan (Exhibit 21):



The house has two residential type lighting fixtures in the front and a ceiling light on the covered walkway outside the entrance to the daycare. Exhibit 36, p. 2. The landscaping and lighting were further described by Technical Staff (Exhibit 36, p. 11):

*Screening*

The existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes, particularly since these properties back up to the Glenwood Community Pool, which has noise and visual impacts that far exceed those of a twelve-child day care.

*Lighting*

The existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.

Staff concluded (Exhibit 36, p. 13), that “The existing lighting and landscaping on the Site is adequate for the proposal.” The Hearing Examiner agrees.

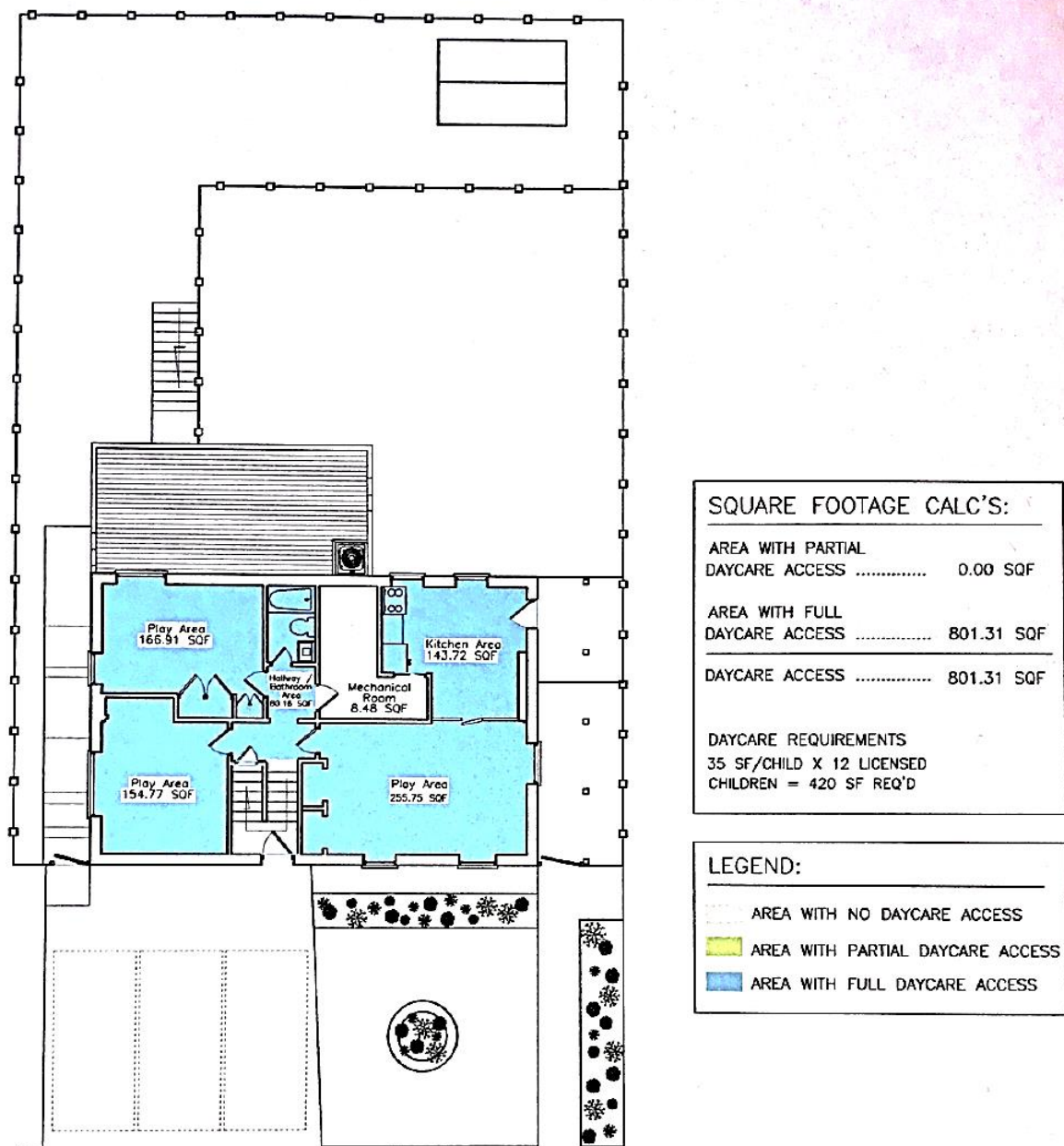
The Applicant has not proposed any signage for the site (Exhibit 36, p. 11), but the Planning Board recommended a condition requiring that any sign conform to the Code or be approved by the Sign Review Board. Exhibit 38. The Hearing Examiner imposed a condition in Part IV of this Report and Decision requiring any signage to comport with the Code restrictions, without an option for a sign variance from the Sign Review Board. This change is intended to ensure compatibility with the surrounding residential neighborhood.

#### **4. Internal Physical Arrangements for Site Operations**

The existing Family Day Care operates in the basement of the Applicant’s home, and will continue to do so when expanded into a Group Day Care. According to Technical Staff (Exhibit 36, p. 4), “The Applicant is not proposing any expansion or change to the indoor or outdoor daycare space . . .”

The Applicant has provided an extensive Interior Features Plan (Exhibit 17), which reproduced on the next page, and numerous photographs of the existing Day Care interior, which will continue to be used for the expanded Group Day Care.

Applicant's "Existing/Proposed Interior Features Plan" (Exhibit 17) is shown below:



Existing /Proposed Interior Features Plan



Hayden Dr.

0 1/2' 5' 10' 20'



The Applicant’s photos of the day care entrance (Exhibit 12(a)) and some of the interior day care areas (Exhibits 12(c) and (d)) are reproduced below:



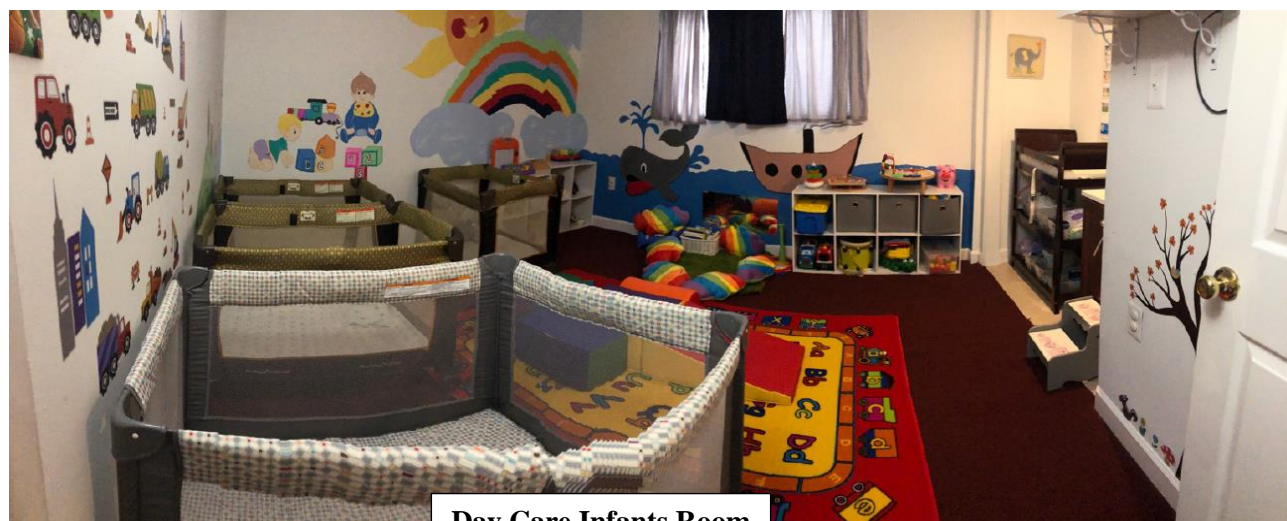
**Day Care Entrance**



**Day Care Sleeping Room**



**Day Care Toddlers and Preschoolers Room**



**Day Care Infants Room**

## 5. Operations

Proposed operations were summarized by Technical Staff (Exhibit 36, pp. 4-5):

The Applicant is requesting to expand the existing day care facility from a facility that cares for up to eight children to a Group Day Care for a maximum of 12 children. The proposed facility will occupy the same space in the basement as the existing day care. The Applicant is not proposing any expansion or change to the indoor or outdoor daycare space and the current hours of operation, Monday through Friday, from 7:30 a.m. to 5:30 p.m., will remain the same. The Applicant and her mother live on the Property and staff the existing day care. One non-resident employee will be hired for the proposed daycare expansion.

Weather pending, the children will play outside for up to an hour in the morning and the afternoon, similarly to the current operation. Parent drop-off and pick-up times are staggered from 7:30 A.M. to 9:40 A.M. and 4:40 P.M. to 5:30 P.M. . . .

It should be noted that the Planning Board recommended expanding the operating hours until 6:30 p.m., and the Hearing Examiner has adopted that recommendation. This change is just to give more flexibility in departure times, in case parents are a little late in picking up children.

Tr. 10-11. The Applicant also provided a schedule for the parent drop-off and pick-up process with 12 children in her supporting information (Exhibit 33(a)):

### **Proposed Future Un-Loading and Loading Schedule**

If we are approved for twelve children, we will have one more employee. Our daily schedule will be the same as we had before from 7:30am to 5:30pm.

#### **Un-Loading**

7:30 am - Owner, co-provider additional adult clock in.

7:40 am - Child 1,2 and 3 drop off.

8:00 am - Child 4,5, 6 drop off.

8:30 am - Assistant. Child 7, 8 drop off

9:15 am - Child 9, 10 drop off.

9:30 am - Child 11,12 drop off.

Note: Owner and Co-provider additional adult live at the property, so they don't need parking spot. child 1 came to our daycare walking they live few blocks down from our location so they are not going to use any parking spot. Child 2,3 are sibling and some days if the weather allows them they come walking too. Child 4,5 are sibling also and somedays the ride bicycle they not going to use parking spot always. Child 7,8 are sibling so they need only one parking spot. Also our current assistant use public transportation so she don't need parking spot.

### **Loading**

4:40 pm - Child 1 picked up.  
4:50 pm - Child 2, 3 picked up.  
5:05 pm - Child 4, 5, 6 picked up.  
5:15 pm - Child 7, 8, 9 picked up.  
5:30 pm - Child 10, 11, 12 picked up. Also assistant, owner, co-provider and additional adult clock out.

To minimize impacts on the neighbors, Technical Staff proposed a condition specifying staggered arrivals (Exhibit 36, p. 2):

The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period.

The Hearing Examiner adopted that condition, but added the proviso that “The Applicant must require written parental agreements so indicating for all children arriving by vehicle.”

The potential impacts of the proposed operations on the neighborhood and the transportation system will be further discussed in Part III of this Report and Decision.

### **D. Community Response**

The application is supported by letters from parents of six children currently using the day care (Exhibits 22(a)-(f)) and one from Paulina Alvarado, the Quality Enhancement Coordinator of the Montgomery Child Care Resource and Referral Center (Exhibit 22(g)). There were no letters in opposition filed with OZAH or the Planning Department (Exhibit 36, p. 8), nor was there any opposition testimony at the hearing. A nearby neighbor, Donald B. McClure, Jr., who lives at 2502 Hayden Drive, testified in support of the application. Mr. McClure noted that he is the President of the McKenney Hills - Carroll Knolls Civic Association, but he was testifying on his own behalf. He stated that he has been a neighbor for quite a few years and had witnessed the drop off and pickups. In his opinion, expanding the operations wouldn’t be a problem in the neighborhood. Tr. 19-21.



### 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 Group Day Care for up to 12 children. *Zoning Ordinance* §59.3.4.4.D.

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:<sup>1</sup>

##### *E. Necessary Findings*

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

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

Conclusion: Technical Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 36, p. 9. Therefore, the Hearing Examiner finds that this standard is inapplicable to the subject application.

##### *b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds*

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

***necessary to ensure compatibility, meets applicable general requirements under Article 59-6;***

Conclusion: This subsection requires an analysis of the standards of the R-60 Zone contained in Article 59-4; the use standards for Group Day Care for 9 to 12 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 36, p. 14), 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 property lies within the geographic area covered by the 1982 *Capitol View & Vicinity Sector Plan*. The Sector Plan does not specifically discuss the subject site, but it recognizes that some special exception uses within the area may not be strictly residential, and yet remain compatible with the predominant R-60 Zone (Sector Plan, p. 66). As explained by Technical Staff (Exhibit 36, pp. 6-7):

The Site is located within the 1985 *Capitol View & Vicinity Sector Plan* (Sector Plan).<sup>2</sup> Although the Sector Plan does not specifically discuss this Property, one of the generalized planning goals is “To preserve and protect the Capitol View ‘community’ as a stable, predominantly single-family residential community. The Plan should reflect a recognition of the permanence of the existing residential character” (page 31).<sup>2</sup>

The Plan recommends retention of R-60 zoning for the majority of the plan area, while recognizing that the Zone allows certain uses in addition to single-family residential that may be non-residential but are considered compatible (page 66).

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<sup>2</sup> The version of the *Capitol View & Vicinity Sector Plan* the Hearing Examiner located on the Planning Department’s website indicates that it was adopted in 1982, not 1985, as stated in the Technical Staff Report. Perhaps, Staff found an amended version because they also list the page number of their quotation of the Plan’s goal as page 31, while the Hearing Examiner located that quote on page 32 of the Sector Plan. Nevertheless, the language is as quoted.

The existing eight-child day care has been on the Site for over five years, and the proposal is a modest expansion which will not change the character of the neighborhood. The Subject Site is an appropriate location for a day care facility and compatible with the neighborhood. Therefore, the proposal is in substantial conformance with the Sector Plan.

Conclusion: There is no evidence in the record contrary to Technical Staff’s findings on this issue. Based on that fact and the language of the Sector Plan, the Hearing Examiner concludes that the proposed conditional use substantially conforms with the recommendations of the applicable 1982 *Capitol View & Vicinity Sector Plan*, which recognizes the compatibility of some special exception uses that are not strictly residential.

***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 36, p. 12):

The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood. No physical changes are proposed on the Property. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood.

The Hearing Examiner 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 external modifications to the home are planned. As noted above, it is consistent with the applicable Sector Plan.

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

Conclusion: According to Technical Staff, the defined neighborhood contains two other special exceptions/conditional uses – a community pool and an accessory apartments. As stated by Staff (Exhibit 36, p. 12):



Staff identified two approved conditional uses within the Staff-defined neighborhood, the Glenwood Pool and an accessory apartment. Although approval of this Application will increase the number of conditional uses in the Staff-defined Neighborhood, the proposed daycare expansion will not affect the area adversely or alter the area’s predominantly residential nature. The existing day care has been operating on the Site since 2013, the increase in the number of children being served is modest, and the Applicant is not proposing any physical changes to the Property.

The Hearing Examiner agrees with Technical Staff that the addition of the proposed 12-child Group Day Care will not result in an overconcentration of day care facilities (or other conditional uses) in the area. The proposed expansion of the existing Family Day Care into a Group Day care will not alter the residential nature of the area. A day care facility already exists in the home, and it will remain a single-family, detached home. Moreover, the provision in question also specifies that “*a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area,*” and as noted above, the proposed use is consistent with the Sector Plan. Thus, 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; and***

Conclusion: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision. Exhibit 36, p. 12. 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.

Moreover, the expert analysis by Technical Staff did not find significant impacts on transportation facilities from the proposed conditional use. Technical Staff analyzed that impact in accordance with Local Area Transportation Review (LATR), as set forth in Exhibit 36, p. 8:

Local Area Transportation Review

A proposed schedule of drop-off/pick-up and staff arrivals during the weekday morning peak period (6:30 to 9:30 a.m.) and evening peak period (4:00 to 7:00 pm) is included in the Application for Conditional Use. The morning arrival schedule shows up to twelve children dropped off between 7:30 and 9:40 a.m., and the evening schedule shows up to twelve children picked-up between 4:40 and 5:30 p.m. Sibling groups will likely reduce the total number of projected vehicle trips. The projected peak-hour morning and evening trips based on the Institute of Transportation Engineers’ (ITE) trip generation rates for a day care center, and the Policy Area mode split assumptions, are shown below:

Period	ITE Vehicle Trips	Subdivision Staging Policy Projected Trips			
		Person Trips	Auto Driver Trips	Auto Passenger Trips	Pedestrian Trips
<b>Morning Peak Hour</b>	14	19	13	3	3
<b>Evening Peak Hour</b>	14	19	13	3	3

Note that pedestrian trips are the projected sum of transit riders walking to/from their bus stop, bicyclists, and other students expected to walk to the daycare.

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 center generates fewer than 50 person-trips during the weekday both AM and PM peak hours of the adjacent street. The LATR test parameter is total peak-hour person trips and not vehicular peak-hour trips. Person trips include all travel modes - vehicular, transit, walking, and bicycle trips.

The Applicant also addressed the impact on transportation facilities in her supporting information, where she provided a schedule for drop-offs and pickups of children (Exhibit 33(a)). That schedule is reproduced on pages 16-17 of this Report and Decision. As discussed in Part II.C.5 of this Report and Decision, and as required by a conditions imposed in Part IV, she will have contractual arrangements with her clients to ensure staggered arrivals and pick-up times, which will reduce any additional burdens on the transportation system.

With regard to environmental facilities, Technical Staff found that “The site contains no streams, wetlands or their buffers, or known habitats of rare, threatened, or endangered species; thus, the project is in conformance with the *Environmental Guidelines*.” Exhibit 36, p. 8.

Technical Staff concluded that “There are adequate public services and facilities to serve the proposed use.” Exhibit 36, p. 12. Based on this record, the Hearing Examiner finds that the proposed development will be served by adequate public services and facilities. LATR standards have been met, and the addition of four children and one employee to the facility will not unduly burden local 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, inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. However, 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. Nevertheless, the existence of a non-inherent adverse effect does not mean that an application for a conditional use must be denied. Rather, it means that it can result in denial if the Hearing Examiner finds that such a non-inherent adverse effect, either alone or in combination with inherent adverse effects, creates “undue harm to the neighborhood” in any of the categories listed in Zoning Ordinance §59.7.3.1.E.1.g.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a Group Day 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 surrounding neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In analyzing potential adverse effects, Technical Staff considered the size, scale, scope, light, noise, traffic and environmental effects of the proposed use. Staff determined that the



following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Group Day Care facility (Exhibit 36, p. 13): (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting.

The Hearing Examiner agrees with that listing of inherent characteristics of a Group Day Care.

Staff then examined the characteristics of the proposed use (Exhibit 36, p. 13):

Adequate parking and drop-off/pick-up areas are available on site and adjacent to the Property. The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use to minimize impacts to the neighborhood.

The play area is adequate, and the number of children outside at one time will be limited to no more than eight, with outside play time prohibited prior to 9:00 a.m.

The existing lighting and landscaping on the Site is adequate for the proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties.

Staff concluded, “Staff has determined that the proposal will not have any non-inherent effects at this location.” Exhibit 36, p. 13.

The Hearing Examiner agrees with Staff’s conclusion in this regard. While any Group Day Care may have some adverse effects on the neighbors (*e.g.*, from the noise of outdoor play and additional traffic), there is no characteristic of the proposed use or the site that would differentiate the effects of this proposed Group Day Care from any other such facility. Thus, the Hearing Examiner finds no non-inherent adverse effects.

Moreover, there have been no concerns raised by the neighbors, and the Hearing Examiner has imposed conditions in Part IV of this Report and Decision that should minimize any adverse effects.

The Hearing Examiner finds that the proposed Group Day Care for no more than 12 children, as limited by the conditions imposed in Part IV of this Report and Decision, will not cause undue harm to the neighborhood as a result of 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: As observed by Technical Staff (Exhibit 36, p. 13), “The proposal is for the expansion of an existing day care facility in an existing house; no construction, reconstruction or alteration of any structure is proposed.” The Hearing Examiner agrees with Staff’s conclusion that the site will continue to be compatible with the neighborhood.

- 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 included in the Staff Report (Exhibit 36, p. 10), and reproduced below. As Staff notes in its Table, the lot width and the side setbacks do not meet minimums specified in §59.4.4.9.B. of the 2014 Zoning Ordinance; however, the home is defined as conforming under Zoning Ordinance Section 59.7.7.1.A. because it was a legal structure on its lot when it was recorded in 1951.

**Development Standards- Section 59.4.4.9.B****R-60 Zone Standard Method**

<b>Development Standard</b>	<b>Required/ Permitted</b>	<b>Proposed</b>
Minimum Lot Area: (Section 59.4.4.9.B.1)	6,000 sq. ft.	5,987 sq. ft.*
Minimum Lot Width at Front Building Line (Section 59.4.4.9.B.1)	60 feet	±58 feet*
Minimum Lot Width at Front Lot Line (Section 59.4.4.9.B.1)	25 feet	±58 feet
Maximum Density (Section 59.4.4.9.B.1)	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.9.B.1)	35 percent	±19%
Minimum Front Setback (Section 59.4.4.9.B.2)	25 feet	±26 feet
Minimum Side Setback (Section 59.4.4.9.B.2)	8 feet	±7 feet*
Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)	18 feet	±16 feet*
Minimum Rear Setback (Section 59.4.4.9.B.2)	20 feet	±40 feet
Maximum Height (Section 59.4.4.9.B.3)	30 feet	±25 feet

\* The lot was recorded in 1951 and is conforming under Section 59-7.7.1.A. (pursuant to Section 59-B-5.3 in the Zoning Ordinance in effect prior to October 30, 2014)

**Conclusion:** As can be seen from the above Table, the existing structure meets all the development standards of the R-60 Zone, as provided in Zoning Ordinance §59.4.4.9.B., except to the extent that exceptions are grandfathered by the Zoning Ordinance. The Hearing Examiner so finds.

**C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59.3.4.4.D.)**

The specific use standards for approval of a Group Day Care for 9 to 12 Persons are set out in Section 59.3.4.4.D. of the Zoning Ordinance. Standards applicable to this application are:

**1. Defined**

***Group Day Care (9-12 Persons) means a Day Care Facility for 9 to 12 people where staffing, operations, and structures comply with State and local regulations and the provider’s own children under the age of 6 are counted towards the maximum number of people allowed.***

Conclusion: The Applicant will be required to have staffing, operations, and structures compliant with State and local regulations.

**2. Use Standards**

***a. Where a Group Day Care (9-12 Persons) is allowed as a limited use, it must satisfy the following standards:***

- i. The facility must not be located in a townhouse or duplex building type.***
- ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.E).***
- iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.***
- iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.***

Conclusion: The proposed Group Day Care may only be allowed as a conditional use, not a limited use, in the R-60 Zone, so the limited use provision is not applicable.

***b. Where a Group Day Care (9-12 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use.***

Conclusion: The Hearing Examiner finds that all of the limited use standards, incorporated into the conditional use standards, are satisfied in this case, in that:

- i) The facility is not located in a townhouse or duplex; it is in a detached, single-family home;
- ii) The Applicant is the provider and a resident;
- iii) No more than three non-resident staff members will be on-site at any time; and
- iv) The Subject Site is not located in the AR Zone.

Furthermore, as discussed in Part III.A., above, the general Conditional Use standards contained Zoning Ordinance §59.7.3.1 have been satisfied. In sum, the Hearing Examiner finds that the application satisfies all of the use standards in Zoning Ordinance §59.3.4.4.D.



### **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: 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.

#### **2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening**

Conclusion: The standards for the number of parking spaces required, parking facility design and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. However, because the subject site is a detached home and does not have an on-site parking facility for 5 or more parking spaces, the Code sections pertaining to parking facility design and screening do not apply in this case. *See Zoning Ordinance §§59.6.2.5.A.1 and 59.6.2.9.A.3.*

The required number of parking spaces is established by Zoning Ordinance §59.6.2.4., as summarized below in a chart from the Staff Report (Exhibit 36, p. 11):

#### ***Parking***

	<b>Required Spaces</b>	<b>Proposed</b>
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 1 (1/ non-resident employee) Dwelling: 2 <b>Total: 3</b>	3 spaces in driveway
Bicycle Parking Requirement (Section 59.6.2.4.C)	Group Day Care: 1 Long-Term	1 space under covered walkway (waiver under Section 59-6.2.10)

As can be seen from the above Table, Section 59.6.2.4 of the Zoning Ordinance requires a total of 3 vehicle parking spaces for the subject site (2 spaces for the single-family dwelling and 1 for the child-care facility’s non-resident employee), but Zoning Ordinance §59.6.2.4.B. expressly permits parking spaces for Group Day Care to be provided on the street abutting the site to satisfy this requirement. As discussed in Part II.C.2. of this Report and Decision, the proposed Group Day Care also needs an area where parents can safely drop off and pick up children.

The subject site has three parking spaces in its widened driveway. There are also two spaces available in front of the Applicant’s home on the south side of Hayden Drive, and according to the Applicant, two additional spaces are available in front of her next-door neighbor at 2504 Hayden Drive (also on the south side, where parking is permitted). Technical Staff recommended requiring staggered drop-offs and pickups, and concluded (Exhibit 36, p. 13), “Adequate parking and drop-off/pick-up areas are available on site and adjacent to the Property.” The Hearing Examiner agrees, but since some drop-offs and pick-ups may occur on the street, he has imposed an additional condition for safety, requiring that:

Children must be accompanied by an adult to and from the child-care entrance, and when drop-offs or pickups are made by vehicle outside of the Applicant’s driveway, children must embark or disembark the vehicle from the curb side.

One additional Code section does apply to a vehicle parking facility such as this one – parking lot standards for 3 or more vehicles in Zoning Ordinance §§59.6.2.5.K.1. and K.2.a.<sup>3</sup>

***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***

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<sup>3</sup> The side setback requirement of Section 59.6.2.5.K.2.b. has been crossed out because §59.6.2.5.A.1., removed the side setback requirement of that Section with regard to detached houses.

***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.~~***

\* \* \*

Since compliance with Zoning Ordinance §59.6.2.5.K. was not addressed in the Staff Report (Exhibit 36), the Hearing Examiner inquired as to whether Technical Staff found compliance with these requirements. Technical Staff indicated that Applicant’s 3-car parking facility did comply with the section (Exhibit 37). Since there is no contrary evidence in the record, the Hearing Examiner so finds.

As shown in the above chart from the Staff report, Zoning Ordinance §59. 6.2.4.C. requires one long-term bicycle parking space for this use. The Applicant complies by allowing a bicycle to be parked under the covered porch adjacent to the daycare entrance (Exhibit 36, p. 11). Remarkably, the Zoning Ordinance also provides design standards for such bicycle spaces in Section 59.6.2.6.A. Technical Staff recommends that those design standards be waived in this case (Exhibit 36, p. 11):

Staff recommends approval of a waiver, under Section 59-6.2.10, from the design specifications of Section 59-6.2.6.A for a long-term bicycle parking space. Secure, weather protected space to park a bicycle is available under the covered porch on the west side of the house close to the entrance to the daycare. The proposed space satisfies the intent of Division 6.2 to ensure safe and efficient bicycle parking.

The Hearing Examiner agrees with Technical Staff’s recommendation, and hereby grants a waiver of the bicycle parking space design standards of Section 59.6.2.6.A.

Based on this record, the Hearing Examiner finds that there is sufficient room for parking on the driveway and on the street abutting the subject site to accommodate the resident’s parking,

the non-resident employee parking and the drop-off and pickup operations of the proposed Group Day Care. All other applicable requirements have either been met or waived.

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

Standards for site lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for landscaping and screening are mainly set forth in Division 6.5.

#### ***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: As discussed in Part II.C.3. of this Report and Decision, the house has two residential type lighting fixtures in the front and a ceiling light on the covered walkway outside the entrance to the daycare. Exhibit 36, p. 2. No new lighting is planned for this conditional use, and therefore the Hearing Examiner finds that the requirements of Division 6.4, regarding lighting, do not apply. Nevertheless, as observed by Technical Staff, “The existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.” Exhibit 36, p. 11.

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

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific screening requirements, the review of site landscaping and screening for conditional uses



in single-family, detached homes is limited to an assessment of compatibility. Zoning Ordinance §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b., under which the Hearing Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

According to Technical Staff (Exhibit 36, p. 11),

The existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes, particularly since these properties back up to the Glenwood Community Pool, which has noise and visual impacts that far exceed those of a twelve-child day care.

There is no evidence to the contrary in this record, and the Hearing Examiner therefore finds that the existing site landscaping, fencing and screening will ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

#### **4. Signage**

Conclusion: The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59.6.7.8.A. sets the standards for signs in Residential Zones, no sign has been proposed for the subject conditional use.

Although the Applicant has not proposed any signage for the site (Exhibit 36, p. 11), the Planning Board recommended a condition requiring that any sign conform to the Code or be approved by the Sign Review Board. Exhibit 38. The Hearing Examiner imposed a condition in Part IV of this Report and Decision requiring any signage to comport with the Code restrictions, without an option for a sign variance from the Sign Review Board. This change is intended to ensure compatibility with the surrounding residential neighborhood. The Hearing Examiner’s condition also prohibits the Applicant from posting a sign on the property unless it is first approved by the Department of Permitting Services (DPS) and a permit is obtained. Any sign must comport with the requirements of Zoning Ordinance §59.6.7.8.A.

#### 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. This is not an application to establish a new child care facility on the subject site; rather, it is an application to add 4 children to an already functioning child care facility on the site. While any daycare may have some adverse effects on the immediate neighbors in terms of noise and commotion during outdoor play, and traffic on arrival and pickup, those effects are inherent in the use.

As stated by Technical Staff (Exhibit 36, p. 14):

The proposed conditional use complies with the general conditions and standards of a Group Day Care Facility, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 1982 *Capitol View and Vicinity Sector Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval with conditions.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Cindy Yamileth Aguilar Palacios (CU 19-05), for a conditional use under Section 59.3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for up to 12 children in her home at 2506 Hayden Drive, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The proposed Group Day Care must be limited to 12 children and one non-residential staff.
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:30 p.m.
3. The Applicant must schedule staggered drop-off and pick-up of children with no more than two vehicles entering and exiting the site every 15 minutes during these designated times. The Applicant must require written parental agreements so indicating for all children arriving by vehicle.
4. No more than eight (8) children may play outside at any one time.

5. Outdoor play time must not occur prior to 9:00 a.m.
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. Pursuant to Zoning Ordinance §59.6.7.8.A, 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. All children must be under the direct supervision of a staff member at all times.
8. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Group Day Care for children, and must correct any deficiencies found in any government inspection.
9. Children must be accompanied by an adult to and from the child-care entrance, and when drop-offs or pickups are made by vehicle outside of the Applicant's driveway, children must embark or disembark the vehicle from the curb side.
10. The Applicant must not use a public address system of any kind outside the building, and must not allow any amplified music to be played outside the building.
11. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
12. The requirements of Zoning Ordinance §59.6.2.6. for design of a long-term bicycle parking space are hereby waived pursuant to Zoning Ordinance §59.6.2.10, in accordance with the recommendation of the Technical Staff.
13. 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 21<sup>st</sup> day of February, 2019.



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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/>.

### NOTICES TO:

Cindy Yamileth Aguilar Palacios, Applicant  
Josue Manuel Aguilar and Jenny Roxanna Granados, Co-owners  
Donald B. McClure, Jr., Neighbor in Support  
Barbara Jay, Executive Director, Montgomery County Board of Appeals  
Gwen Wright, Director, Planning Department  
Emily Tettelbaum, Planning Department  
Ehsan Motazedi, Department of Permitting Services  
Greg Nichols, Manager, SPES at DPS  
Alexandre A. Espinosa, Director, Finance Department  
Charles Frederick, Esquire, Associate County Attorney