

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

IN THE MATTER OF:
JAWAIRIA IQBAL
Applicant

Jawairia Iqbal
For the Application

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OZAH CASE No. CU 20-04

Before: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On March 6, 2020, the Applicant, Jawairia Iqbal, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children at 108 East Melbourne Avenue, Silver Spring, Maryland (“Subject Property” or “Property”). Exhibit 1. The subject property is described as “Highland View Sec 3 & Adj. Parcel”, Lot 8, Block B. The property is located in the Brookside Forest Subdivision within the geographic area covered by the *2000 East Silver Spring Master Plan* (“Master Plan” or “Plan”). The property is zoned R-60 and the tax account number is 13-01011522. Exhibit 5. The property owners, Fauzia Iqbal and Iqbal Ahmed (“Owners” or “Owner”), submitted letters consenting to the application. Exhibits 4 and 14. The Applicant and the property owners submitted Affidavits of Compliance. Exhibits 23, 24, and 25. Applicant submitted an Affidavit of Posting. Exhibit 21.

Applicant resides on the property and operates the existing eight-child day care with her mother and the property owner, Fauzia Iqbal.¹ The existing day care has been in operation at the property since 2008. Applicant is seeking to expand the existing eight-child day care to a Group Day Care facility for up to 12 children. Child care facilities for up to 12 children must be approved by conditional use under §§59-3.4.4.D and 7.3.1. of the Montgomery County Zoning Ordinance.²

On May 14, 2020, the Office of Zoning and Administrative Hearings (“OZAH”) sent notice of a public hearing to be held on June 29, 2020. Exhibit 17. Technical Staff of the Montgomery County Planning Department (“Technical Staff” or “Staff”) issued a report on May 22, 2020, recommending approval of the application with conditions. Exhibit 15. The Planning Board (“Board”) met on June 4, 2020, and voted unanimously to recommend approval of the conditional

¹ Jawairia Iqbal submitted a copy of her Maryland driver’s license which confirmed she resides at the subject property. Exhibit 22.

² All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

use with the conditions recommended by Staff. Exhibit 16. At the request of the Hearing Examiner in an e-mail dated June 19, 2020, Technical Staff amended the development chart on page 10 of the Staff Report to include the actual site measurements for the property. Exhibits 18-19.

The public hearing proceeded as scheduled on June 29, 2020.³ Jawairia Iqbal appeared *pro se* and testified in support of the conditional use application. Ms. Iqbal adopted the findings and conclusions of the Staff Report as her own testimony and agreed to abide by the conditions of approval recommended by Staff and imposed by the Hearing Examiner. Applicant also identified and confirmed that the site plans and photographs submitted with the application and in the Staff Report accurately represent the condition of the property as it currently exists. Tr. 14. No other witnesses were called and no letters of support or opposition were submitted or received into the record. The record was held open for an additional 10 days to receive the hearing transcript. The transcript, a copy of the current day care license and a proposed parental agreement for staggered drop-off and pick-up times were received and accepted into the record which closed as scheduled on July 13, 2020. Exhibits 27 and 28.

The Hearing Examiner reopened the record on July 21, 2020, to request additional information from Technical Staff regarding a correction to the height of the rear yard fence made during Staff's power-point presentation to the Planning Board that was not corrected in the final Staff Report. Exhibit 29; Tr. 8-10. In an e-mail response dated July 22, 2020, Technical Staff stated that the reported height of the fence of 7 feet in the Staff Report was based on a 'miscommunication and perhaps a rounding error.' Staff confirmed that the error was corrected in

³ Due to the COVID-19 pandemic and the Montgomery County Executive's Orders restricting access to county offices for safety reasons, the public hearing was held remotely via Microsoft Teams. A link and phone number for the public to join the hearing were published on OZAH's website. Hearing exhibits were also published on OZAH's website prior to the hearing to permit the public to participate.

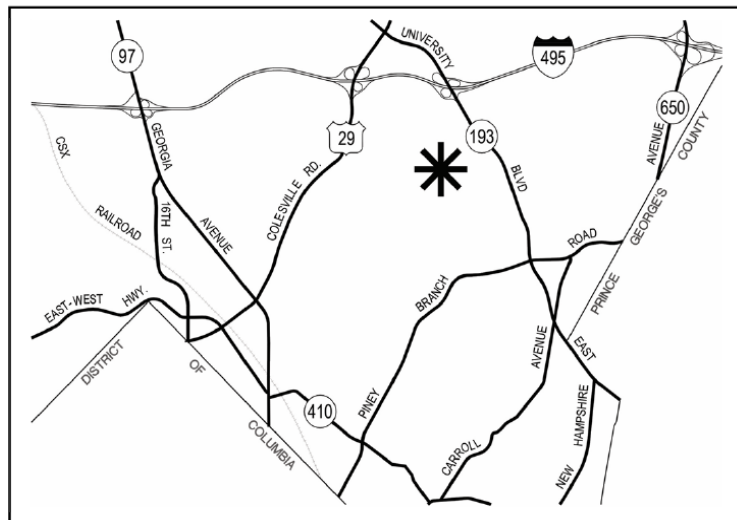
the Staff Report during the presentation before the Board on June 4, 2020. Staff advised the Board that the fence in the rear yard is 6.5 feet in height which is the maximum permitted in a residential zone. As a result, Staff confirmed that Condition of Approval No. 6 addressing the height of the fence is no longer applicable.⁴ Exhibit 31. Staff's July 22, 2020 e-mail amending the development chart (Exhibit 31) was accepted into the record. The record closed on July 22, 2020.

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

II. FACTUAL BACKGROUND

A. The Subject Property and Vicinity

The subject property is in a single-family residential neighborhood located just south of the Capital Beltway (I-495) and west of University Boulevard East (MD 193). The general location of the property is shown below on a map taken from the Staff Report (Exhibit 15, p. 1):



Vicinity Map

⁴ Condition of Approval No. 6 states: "The Applicant will coordinate with the Department of Permitting Services (DPS) to approve a fencing enclosure for the rear yard that is in compliance with applicable County Codes and policies." Exhibit 15, p. 2.

The property is located at 108 East Melbourne Avenue on the northwest corner of the intersection of East Melbourne Avenue and Walden Road. According to the Maryland State Department of Assessment and Taxation (SDAT) property records, the corner lot is 8,494 square feet and improved with a one-story single-family detached dwelling built in 1948. The main level is approximately 1,528 square feet and the finished basement is approximately 579 square feet.

Exhibit 5. Staff reports the lot was recorded in 1940. Exhibit 15, p. 10.

Technical Staff described the property as follows (Exhibit 15, pp. 2-3):

The Property has a driveway that is approximately 25 feet wide and 32 feet long that has space for up to four cars. A concrete walkway connects the entrance of the day care on the east side of the house, accessed from Walden Road. An unenclosed porch covers the entrance on the west side of the house.

Seasonal landscaped beds are located along the walkway to the day care and in front of the house. The house has two residential-type lighting fixtures in the front and a covered unenclosed porch outside the entrance to the day care.

The outdoor play area is located in the rear yard of the house and is enclosed by fencing approximately four and a half feet in height to along the [east] side of the property and approximately [six and a half feet] along the rear and [west] side of the property. A partially enclosed porch also provides screening of the backyard play area from view from East Melbourne Avenue. The majority of the play area surface is mulch and other natural soft surface with a variety of playground equipment installed.⁵

There is a brick retaining wall along the west property line in the front as well as a brick landscaping bed on the east side of the walkway from East Melbourne Avenue to the front door. The enclosed backyard also includes a brick patio and large shed in the northwest corner. The Site Plan for the property (Exhibit 15, Attachment 3) is reproduced below on page 11 of this Report and Decision.

⁵ As previously discussed in Part I of this Report and Decision, Technical Staff corrected the height of the rear fence from 7 feet to 6.5 feet at the June 4, 2020, Planning Board meeting. Exhibit 31. This correction was not made to the Staff Report dated May 22, 2020. However, in response to the Hearing Examiner's request, Technical Staff provided written confirmation of this correction in an e-mail dated July 22, 2020, which was admitted into the record. Exhibit 29.

An aerial photograph of the property taken from the Staff Report (Exhibit 15, p. 2):



Figure 1: Aerial photo of the Subject Site (outlined in red)

Photographs of the property from the Staff Report are reproduced below and on the next page (Exhibit 15, pp. 5-6):

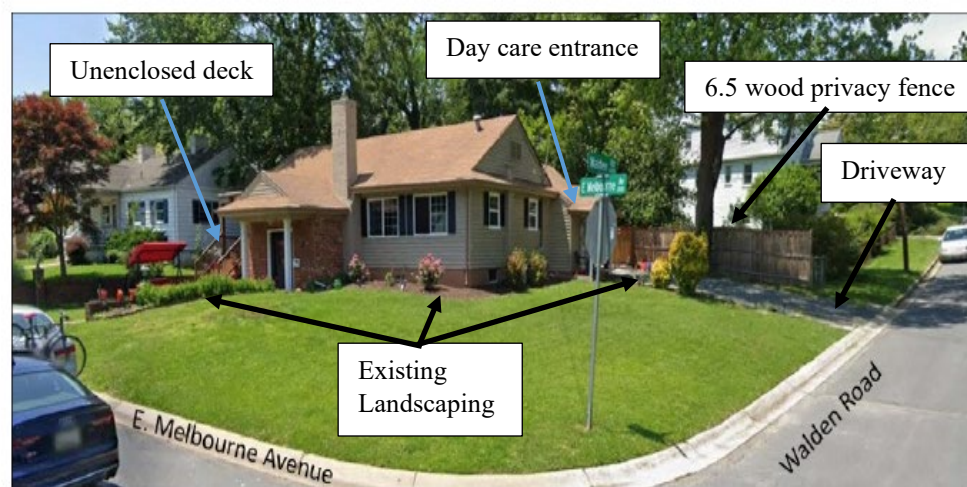


Figure 4: Front view of house facing northwest



Figure 5: Front view of house facing north

The outdoor play area for the day care is located in the backyard which is enclosed with a wood fence that is 6.5 feet in height along the west and north (rear) property lines. The section of fence extending from the northeast corner of the house to the rear property line is 4.5 feet in height. The backyard includes a patio, shed, and a variety of playground equipment and other outdoor toys. Photographs of the outdoor play area from the Staff Report are reproduced below and on the next page (Exhibit 15, pp.6-7):



Figure 6: Rear yard facing east

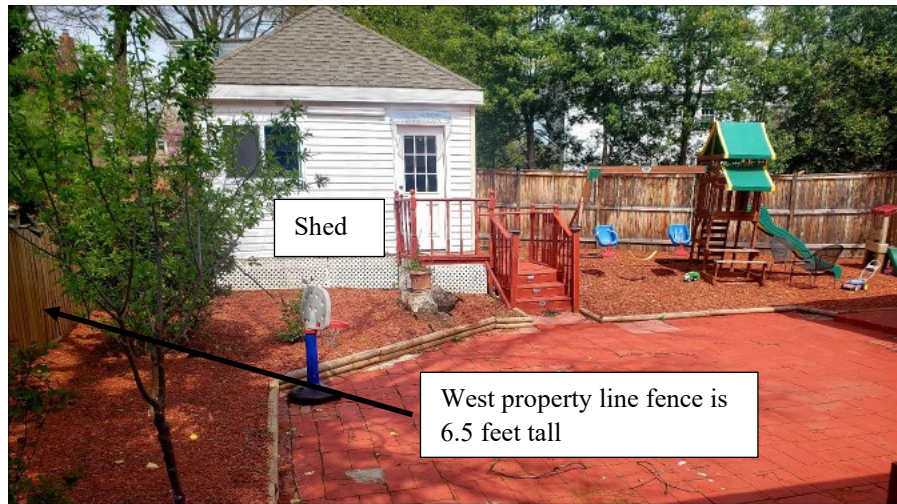


Figure 7: Rear yard facing north

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 defined the boundaries of the surrounding neighborhood as “generally bounded by East Franklin Road to the north; East Schuyler Road to the south; Mintwood Road and Upper Long Branch Neighborhood Park to the east; and by Flower Avenue to the west.” Exhibit 15, p. 3. Staff characterized the defined neighborhood as consisting of single-family detached residential properties in the R-60 Zone. *Id.*

Staff further identified two approved conditional uses/special exceptions located within the defined neighborhood as follows: Home Occupation (CBA-3037) located at 9 Stockton Road and an Accessory Apartment (S1190) located at 9320 Walden Road. An aerial photograph depicting the boundaries of the surrounding neighborhood as defined by Staff is shown on the next page (Exhibit 15, p. 4).



Figure 2: Staff-Defined Neighborhood

The Hearing Examiner agrees with Staff that the neighborhood consists primarily of single-family detached homes in the R-60 Zone.

C. Proposed Use and Floor Plan

Applicant's mother, Fauzia Iqbal, has operated a Family Day Care for up to 8 children under the age of six at her home since 2008. Exhibit 28; Tr. pgs. 16 and 23. Applicant is a resident co-provider seeking approval of a conditional use to expand the existing eight-child Family Day Care operation into a Group Day Care for up to 12 children. Most of the children who attend the day care are siblings and live in the neighborhood. Exhibit 7. The proposed day care will continue to occupy the same space used for the existing day care which includes the playroom, nap room #1 and nap room #2. Exhibit 15, p. 2. Applicant reported that the playroom for the day care was expanded in 2019. Applicant testified that the living room is not used for the day care and the total

square footage of the rooms used for the day care is approximately 750 square feet. Exhibit 7; Tr. 15-16. The day care entrance is located on the east side of the property.

The floor plan for the main level of the house where the day care will be located as well as exterior areas used for outdoor play and access to the day care is reproduced below (Exhibit 15, pg. 5):

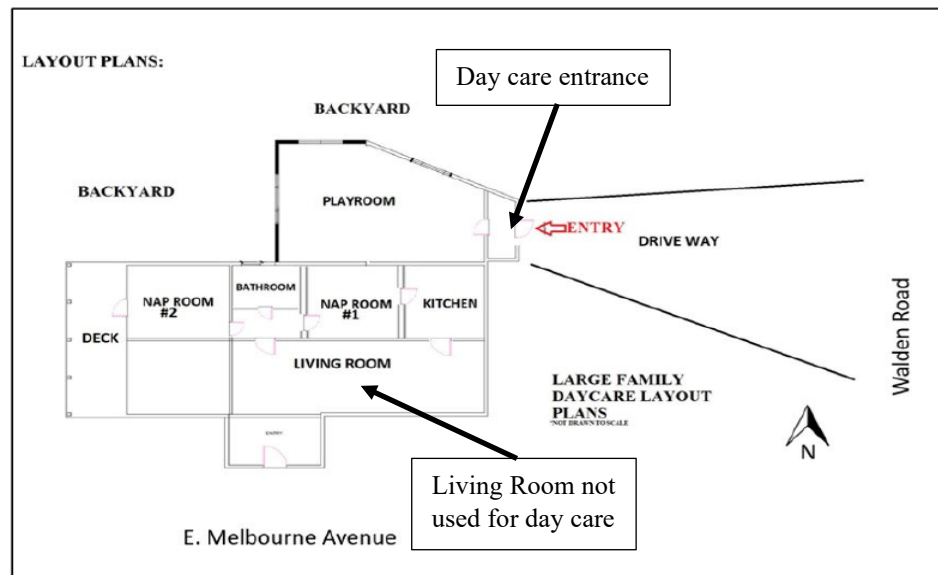
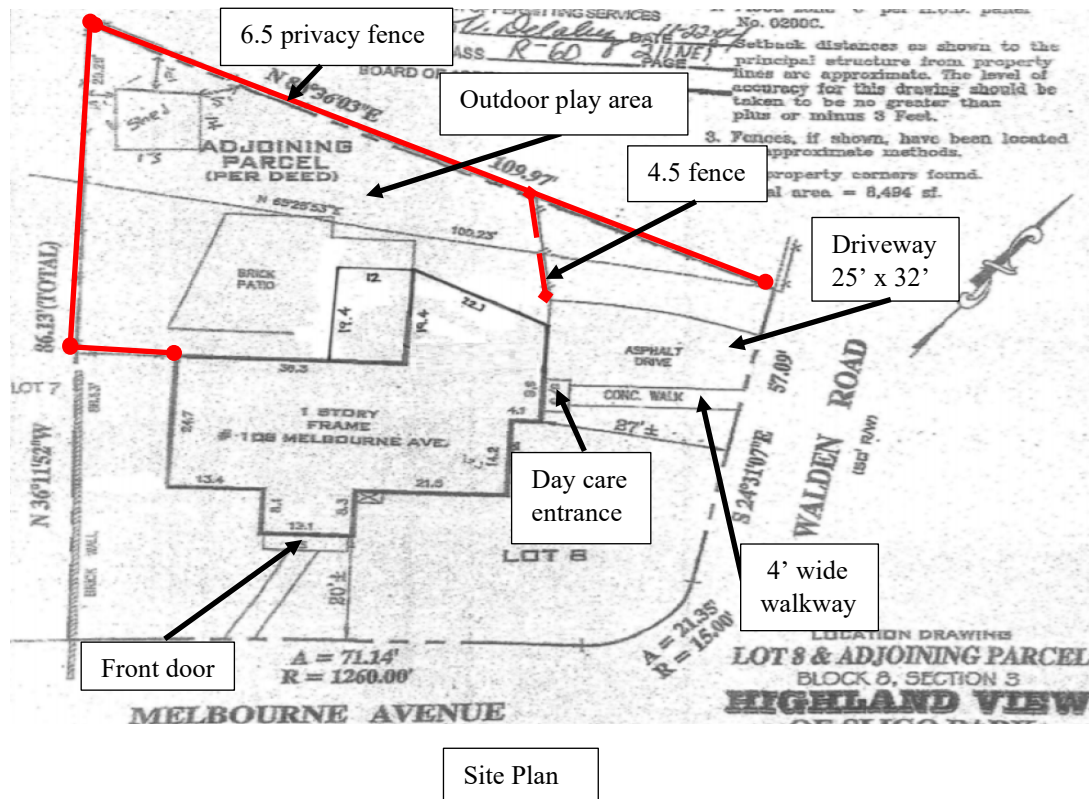


Figure 3: Schematic Floorplan

Other than the addition of four children to the day care roster, Applicant is not proposing any physical expansion or changes to the existing day care space or to the property to accommodate the proposed use.

1. Site Plan, Landscape Plan and Lighting Plan and Signage

The Site Plan for the property is shown on the next page. Exhibit 15, Attachment 3. The Hearing Examiner identified the perimeter of the existing wood fence on the property in red on the Site Plan. The walkway to the day care entrance is 4' wide and the driveway is 25' wide and 32' long. Both are located on the east side of the property and are accessed from the northwest side of Walden Road. Exhibit 15, p. 8.



Applicant did not identify the existing landscaping or exterior lighting for the property on the Site Plan. However, the many photographs of the property previously shown on pages 6-7 in this Report and Decision provides a visual of the existing landscaping on the property.⁶

Specifically, the photographs show a manicured lawn, landscaping beds with a variety of bushes and other plants along the walkways to the front door and day care entrance as well as along the foundation of the house. There is a large tree along the rear property line fence on the north side of the driveway and what appears to be either a bush or small tree along the fence near the shed in the backyard. Exhibit 15, pp. 5-7. Staff reports that there are residential light fixtures

⁶ Applicant testified that the photographs of the property submitted with the application and in the Staff Report accurately represent the condition of the property as it currently exists. Tr. 14-15.

at the front door and day care entrance. Exhibit 15, p. 3. Applicant indicated in her application that the exterior lighting for the backyard includes solar and motion sensor fixtures . Exhibit 7; Tr. 17.

Technical Staff found “[t]he existing lighting and landscaping on the Site are adequate for the proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties.” Exhibit 15, p. 13. Staff found that the existing rear yard fencing and unenclosed porch on the west side of the house provide sufficient screening of the outdoor play area between the adjacent homes and view from East Melbourne Avenue. *Id.*, pp. 3 and 11. Applicant is not proposing any signage for the proposed use.

2. Operations

The day care will operate from Monday through Friday, between 7:30 a.m. and 5:30 p.m. on the main level of the home and within the outdoor play area located in the enclosed rear yard. Applicant and three other family members who reside on the property and one non-resident employee will staff the day care. Children’s ages will range from 4 months to 4 years. Exhibit 7. As a condition of approval, outdoor play may not occur before 9:00 a.m. and no more than eight (8) children may play outside at any one time. Further, outdoor play time is limited to a maximum of one hour in the morning and one hour in the afternoon. Applicant agreed to abide by these operational conditions of approval which are stated in the Staff Report (Exhibit 15, p. 2) and included in Part IV of the Report and Decision. Tr. 11-12.

3. Parking for Employees and Parent Pick-Up and Drop-Off

A total of four spaces are required on-site: two parking spaces for the non-resident full-time employees and two for the residential use. *Zoning Ordinance*, §59-6.2.4. Parking spaces on the street abutting the property may be counted toward the parking requirement. *Id.* §59-6.2.3.A.

Technical Staff confirms there is space on the existing driveway for four vehicles and four on-street parking spaces abutting the property (three along East Melbourne Avenue and one along Walden Road). Exhibit 15, p. 10. Staff summarized the available parking for the proposed use as follows (Exhibit 15, p. 3):

On-street parking is allowed on the north side of East Melbourne Avenue and on Walden Road. Both roadways are [] Secondary Residential Roads and are 26 feet in width. The existing street section provides ample parking capacity for parents dropping-off or picking-up children attending the day care, as well as on-site parking for the proposed one non-resident staff and the members of the household.

Applicant reports there is only one family car on the property and most of the staff will not drive to work because they live on the property. Since most of the children who attend the day care are siblings and live in the neighborhood, many parents walk their child or children to and from the day care. As a result, Applicant advises that there are only 2 or 3 families who drop-off and pick-up their child or children by car. Applicant submitted a photograph, shown below, of the driveway access and on-street parking on Walden Road used for parent drop-off and pick-up (Exhibit 7):



Applicant reported there is never a problem parking on Walden Road because the day care does not face any of her neighbor's homes. As can be seen in the next photograph of the property

(shown below) there are no homes that front Walden Road on the northeast side of the street (Exhibit 7):



Applicant proposed a parent drop-off and pick-up schedule that will be staggered from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 5:30 p.m. which is reproduced below (morning schedule) and on the next page (afternoon schedule) (Exhibit 15, Attachments 4 and 5):

TRANSPORTATION STATEMENT FOR DAY CARE APPLICATIONS		
Morning Peak Period Drop-Off and Staff Arrivals (6:30am-9:30am)		
Time	Number of Children (car or walk)	Number of Staff (car, bus, or walk)
6:30-6:45 am		
6:45-7:00 am		
7:00-7:15 am	1 Child (Walking)	
7:15-7:30 am	1 Child (Car)	
7:30-7:45 am	2 Siblings (Walking)	
7:45-8:00am	1 Child (Walking)	
8:00-8:15am	2 Siblings (Car)	
8:15-8:30 am	2 Children (Walking)	
8:30-8:45 am	1 Child (Car)	
8:45-9:00 am	2 Siblings (Walking)	1 Staff (Car)
9:00-9:15 am		
9:15-9:30 am		
Total		

Evening Peak Period Pick-Up and Staff Departures (4:00pm-7:00PM)		
Time	Number of Children	Number of Staff
4:00-4:15pm	2 Siblings (Walking)	
4:15-4:30pm	1 Child (Car)	
4:30-4:45pm	1 Child (Walking)	1 Staff (Car Parked)
4:45-5:00pm	2 Siblings (Car)	
5:00-5:15pm	2 Children (Walking)	
5:15-5:30pm	2 Children (Walking) 2 Siblings (Car)	
5:30-5:45pm		
5:45-6:00pm		
6:00-6:15pm		
6:15-6:30pm		
6:30-6:45pm		
6:45-7:00pm		
Total		

As a condition of approval, Staff provided that “[t]he 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.” Exhibit 15, p. 2. To ensure compliance with this condition, the Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times that must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period. Applicant provided a sample parent agreement that will be used for this purpose. Exhibit 27. This condition is listed in Part IV of this Report and Decision.

Applicant reports there is space to park a bicycle on the unenclosed covered deck located on the west side of the house. Exhibit 7. Applicant has requested, and Staff supports, a waiver of the design specifications in Section 59.6.2.6.A of the Zoning Ordinance required for long-term bicycle parking. Exhibit 15, p. 11.

D. Community Response

There is no opposition to the conditional use application in the record.

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 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:⁷

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;***

⁷ 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.

Conclusion: Technical Staff advises that there are no applicable previous approvals associated with this site. Exhibit 15, 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 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 agrees with Technical Staff and finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6 with the conditions of approval in Part IV of this Report.

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

Conclusion: The subject property lies within the geographic area covered by the *2000 East Silver Spring Master Plan* (“Master Plan” or “Plan”). Technical Staff discussed the Master Plan, as follows (Exhibit 15, p. 7):

The Site is located within the *2000 East Silver Spring Master Plan* (Master Plan) area. Although the Master Plan does not specifically discuss this Property, one of the generalized planning goals is to “preserve existing residential character, encourage neighborhood reinvestment, and enhance the quality of life throughout East Silver Spring” (page 21).

The Master 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 26).

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

The Hearing Examiner agrees with Technical Staff that the proposed conditional use for a group day care facility is consistent with the objectives of the Master Plan which further provides (Plan p. 26):

The Plan also confirms existing land use patterns, while recommending flexibility for some change.

East Silver Spring is characterized by well-established residential neighborhoods that are compactly developed and generally well maintained. The population of the neighborhoods continues to change as families with young children move into homes formerly inhabited by elderly homeowners. A variety of local services support daily community life: retail and other small businesses, religious institutions, schools, parks and recreation facilities, and gathering places for community activities.

* * *

The intent of this Plan is to sustain a livable community of neighborhoods in East Silver Spring by preserving the positive attribute and guiding change so that it strengthens the function, character, and appearance of the area. This Plan reconfirms the current zoning, which establishes the permitted density. New development, infill development, redevelopment and special exception uses should be compatible with the existing residential character. As a result, the existing land use pattern should remain essentially the same. Non-residential special exceptions are discouraged in predominantly residential areas to maintain the residential character.

The proposed use is allowed by conditional use in the R-60 Zone. The existing eight child day care has been in operation at the property since 2008. The Hearing Examiner agrees with Staff that the proposed expansion of the existing Family Day Care into a Group Day Care is will not alter the residential character of the neighborhood as no physical exterior alterations are proposed or required to accommodate the addition of 4 children to the existing day care roster. Most of the children who attend the day care are siblings and live in the neighborhood. As a result, many of the parents walk their child or children to the day care, thus reducing the number of vehicles to the

site, while providing a valuable local service that supports working families with children who live in the neighborhood. Thus, the dwelling will remain a single-family, detached home consistent with the current R-60 zone.

With the conditions of approval listed in Part IV of this Report, the Hearing Examiner agrees with Technical Staff and finds that the proposed use will substantially conform to the goals and objectives of the *2000 East Silver Spring Master 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 15, p. 11):

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 will not alter the character of the neighborhood.

The existing day care is located in a single-family dwelling that will not be expanded and no alterations to the exterior of the property are proposed or required to accommodate the expansion of the existing Family Day Care to a Group Day Care. The dwelling will remain a single-family detached home with no changes to the existing lighting which Staff found is residential in character with no excessive illumination onto neighboring properties. Staff found “[t]he existing rear yard fencing provides sufficient screening between the proposed use and the adjacent homes.” Exhibit 15, p. 11. Staff further noted that the unenclosed deck on the west side of the house “also provides screening of the backyard play area from view from East Melbourne Avenue.” *Id.*, p. 3. Outdoor play time will be limited to one hour in the morning and one hour in the afternoon with a maximum of eight (8) children outside at any time. There is adequate on-site and on-street parking to accommodate the parking needs for the proposed use. Drop-off and pick-up times will be assigned and staggered by contract with the parents so that a maximum of two

vehicles will enter/exit the site at 15-minute intervals. The only operational change from the activities associated with the existing day care is the addition of 4 children and one non-resident employee.

The Hearing Examiner agrees with Staff and finds, with the conditions listed in Part IV of the Report and Decision, that the proposed use is harmonious with and will not alter the residential character of the surrounding area in a manner inconsistent with the Master 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: Technical Staff reports that there are two approved conditional uses/special exceptions in the neighborhood. They include a Home Occupation located at 9 Stockton Road (CBA-3037) and an accessory apartment located at 9320 Walden Road (S1190). Exhibit 15, p. 4.

Technical Staff found (Exhibit 15, p. 11):

Although approval of this Application will increase the number of conditional uses in the Staff-defined Neighborhood, the proposed day care 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 2008, 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 group day care use for up to 12 children to the neighborhood will not adversely affect or change the residential character of the neighborhood. The existing day care has been operating on the main level of an existing single-family dwelling for over 10 years and no physical changes are proposed or necessary to accommodate the proposed use. Thus, the existing dwelling will remain a single-family detached dwelling. The other special exceptions in the area are residential in nature with

minimal impact. As discussed in the previous sections (above), the Hearing Examiner found that the proposed use substantially conforms with the recommendations of the Master Plan. Thus, the Hearing Examiner finds that the proposed use does not alter the nature of the area and 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: Technical Staff reports that the conditional use application does not require approval of a preliminary plan of subdivision. Exhibit 15, 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. Further, Technical Staff expressly found that that “[t]here are adequate services and facilities to serve the proposed use [.]” *Id.*

Technical Staff also specifically explored the impacts on transportation facilities of the proposed use (Exhibit 15, p. 8):

Parking and Drop-Off/Pick-up

The Site contains three [four] off-street parking spaces, and on-street parking is available on both East Melbourne Avenue and Walden Road. Given the relatively limited on-street parking supply, the scheduled parental drop-off and pick-ups must be limited to two vehicles every 15-minutes.⁸

Local Area Transportation Review

A proposed schedule of drop-off/pick-up and staff arrivals during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and evening peak period (4:00 p.m. to 7:00 p.m.) is included in the Application for Conditional Use. The morning arrival schedule shows up to twelve children dropped off between 7:00 a.m. and 9:30 a.m., and the evening schedule shows up to twelve children picked up between 4:00 [p.m.] and 6:00 [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 [group day care] with 12 students, and the Policy Area mode split estimates, are shown in the table below.

Table 1: Estimated Site Trip Generation

Period	ITE Vehicle Trips	Subdivision Staging Policy Projected Trips			
		Person Trips	Auto Driver Trips	Auto Passenger Trips	Pedestrian Trips*
Morning Peak Hour	16	21	13	2	10
Evening Peak Hour	12	16	10	2	8

ITE Land Use Category: 565 – Day Care Center; pedestrian trips represent all walking, biking, and transit trips

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

Under the *2016-2020 Subdivision Staging Policy*, a transportation study is not required to satisfy the Local Area Transportation Review (LATR) because the proposed group day care generates fewer than 50 person-trips during the weekday a.m. and p.m. peak hours.

Applicant's proposed drop-off and pick-up schedule will be staggered so that a maximum of two vehicles enter/exit the site every 15 minutes. Exhibit 15, Attachment 4. In Part II.C.3The

⁸ Staff previously indicated on pages 3 and 10 of the Staff Report that there are up to 4 spaces on the driveway. Exhibit 15. Staff noted that Applicant indicated there are "four tandem parking spaces [on] the driveway and four on-street spaces along the Property frontages: three on-street spaces in front of the home on East Melbourne and one on Walden Road." *Id.*, p. 4. Staff indicated there were "four parking spaces in the driveway" during the presentation to the Planning Board on June 4, 2020. Exhibit 31(a). Thus, the Hearing Examiner believes this one reference to three instead of four off-street parking spaces for the property was a typographical error that should have been but was not corrected in the Staff Report.

staggered schedule is reproduced above on pages 14-15 of this Report and Decision. To ensure compliance with this condition, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision that the Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times which must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period.

Based on this evidence, the Hearing Examiner finds that the proposed use will be served by adequate public services and facilities. The LATR standards have been met and the addition of four children and one employee to the group day care will not unduly burden the transportation system.

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 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 general 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 uses. Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Group Day Care facility: (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. Exhibit 15, p. 12.

Staff concluded that the conditional use as proposed will have no non-inherent adverse impacts. Staff identified and explained the inherent impacts of the proposed conditional use as follows (Exhibit 15, p. 12-13):

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

Staff has determined that the proposal will not have any non-inherent effects at this location.

The Hearing Examiner agrees with Staff's conclusion that there are no non-inherent effects or site characteristics at this location. Moreover, the conditions recommended by Technical Staff and adopted by the Hearing Examiner in Part IV of this Report and Decision will help ensure that the group day care facility will operate safely without causing adverse effects on the neighborhood.

Based on the entire record, 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 Section §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: The Applicant does not propose any alteration or expansion of the existing structure. The Hearing Examiner finds this standard is not applicable.

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 in §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 18) which is reproduced below⁹:

Section	Development Standard	Required/ Permitted	Proposed
59.4.4.9.B.1	Minimum Lot Area	6,000 sq. ft.	8,494 sq. ft.
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 feet	± 76 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 feet	± 58 feet
59.4.4.9.B.1	Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
59.4.4.9.B.1	Maximum Lot Coverage	35 percent	± 20%
59.4.4.9.B.2	Minimum Front Setback	25 feet	± 20 feet ¹
59.4.4.9.B.2	Minimum Side Setback	8 feet	± 27 feet
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 feet	± 43 feet
59.4.4.9.B.2	Minimum Rear Setback	20 feet	± 22 feet
59.4.4.9.B.3	Maximum Height	30 feet	± 25 feet

¹The lot was recorded in 1940 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 preceding table, the proposed use meets or exceeds the development standards of the R-60 Zone as provided in Zoning Ordinance §59.4.4.9.B. except with regard to the minimum front setback. Under the current Zoning Ordinance, the R-60 Zone

⁹ The Development Chart in the Staff Report (Exhibit 15, p. 10) was amended at the Hearing Examiner's request to include the actual measurements on the property in the last column titled "Proposed". Exhibit 18. The development chart reproduced above is the updated chart.

requires a minimum front setback of 25 feet and the existing property has a 20-foot setback because the roofed brick front door vestibule extends approximately 5 feet into the front setback as shown on the site plan shown on page 11 of this Report and Decision. The SDAT property records demonstrate that the existing one-story single-family dwelling was built in 1948. Exhibit 5. Technical Staff's footnote to its chart (above), provides that "the lot was recorded in 1940 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)."

Section 59-B-5.3 of the 2004 Zoning Code provides in pertinent part:

Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958 is not a nonconforming building. The dwelling may be altered, renovated, enlarged, or replaced by a new dwelling on the single lot, under the development zoning standards in effect when the lot was recorded [.]

Section 59.7.7.1.A.1 provides:

A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased, except as provided for in Section 7.7.1.C for structures in Commercial/Residential, Employment, or industrial zones, or Section 7.7.1.D.5 for structures in Residential Detached zones.

In the application, Applicant reported that the playroom for the day care was expanded in 2019, passing all inspections by the Department of Permitting Services (DPS). Exhibit 7. There is nothing in this record that reflects that the structure had been illegally altered before this time or that it was not considered a legal structure when DPS issued a building permit for the 2019 expansion of the playroom. Absent any evidence to the contrary, the Hearing Examiner finds that under the 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 meet the current 25-foot front setback does not disallow this application.

Based on the record in this case, the Hearing Examiner finds that the subject site conforms to the requirement of Article 59-4 of the 2014 Zoning Ordinance to the extent they are applicable.

C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59.3.4.4.D.2)

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 and has submitted an affidavit attesting to this. Exhibit 23. Applicant testified that there are no children who live at subject property attending the group day care. Tr. 18. The proposed use will allow a maximum of 12 children to attend the group day care.

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: A Group Day Care requires approval of a conditional use in the R-60 Zone. However, the conditional use standards incorporate the limited use requirements, as discussed in the next paragraph.

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 listed in the preceding paragraph 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 two 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 application meets the “necessary findings” required by *Zoning Ordinance*, §59.7.3.1.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Most of these requirements are not applicable to the subject application.

1. Site Access Standards

Conclusion: Zoning Ordinance Division 59.6.1 governs “Site Access.” Section 59.6.1.2 states that access requirements do not apply to development in single-family residential zones, such as the R-60 Zone.

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

Conclusion: The standards for the number of parking spaces required, parking lot design and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. These standards govern the minimum number of spaces, design of on-site parking spaces, parking setbacks, and screening of parking areas. *See, Zoning Ordinance* §§6.2.4, 6.2.5, 6.2.9. The primary parking

requirement applicable to this application is the minimum number of spaces required for the use.¹⁰

The Zoning Ordinance requires a minimum of four parking spaces—one for each non-resident employee and two for the residence itself. *Id.*, 59-6.2.4.B. On-street parking may be counted toward meeting that requirement if parking is permitted on the street and the spaces abut the property. *Id.*, §59-6.2.4.A.5.

The required number of vehicle and bicycle parking spaces is established by Zoning Ordinance §59.6.2.4., as shown below in a chart taken from the Staff Report (Exhibit 15, p. 10):

Table 3: General Development Requirements- Division 59.6

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Group Day Care: 2 (up to 2non-resident employees) Dwelling: 2 Total: 4	4 spaces in driveway Additional parking permitted and available on East Melbourne Avenue (3 spaces) and on Walden Road (1 space) Total: 8
59.6.2.4.C	Bicycle Parking Requirement	Group Day Care: 1 Long-Term	1 space under covered side porch (waiver under Section 59.6.2.10)

As shown in the chart above, the parking requirements for a total of four on-site parking (2 for the single-family dwelling and 2 for the proposed use) are satisfied. Applicant reported that there is only one family car on the property and that she and three resident family members will staff the group day care full-time. Applicant expects to hire one non-resident full-time employee. Exhibit 15, p. 2; Tr. 18. Technical Staff found “[t]he existing street section provides ample parking capacity for parents dropping-off or picking-up children attending the day care, as well as on-site parking for the proposed one non-resident staff and the members of the household.” Exhibit 15, p.

¹⁰ Requirements governing the design of parking spaces and parking setbacks do not apply to this application because these are not applicable to conditional uses in single-family detached structures. *Zoning Ordinance*, §59-6.2.5.A. Requirements for landscaping and screening of parking lots apply to parking lots with five or more spaces. *Id.*, §59-6.2.9. The proposed use requires a minimum of four off-street parking space which are provided on the existing driveway on the property.

3.

Applicant reports there is space to park a bicycle on the unenclosed covered deck located on the west side of the house. Exhibit 7. Applicant requested, and Staff supports, a waiver of the design specifications of Section 59.6.2.6.A of the Zoning Ordinance Exhibit 15, p. 11. In support of the waiver, Staff reports that “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 or on the covered side porch adjacent to the home’s main entrance.” *Id.*, pp. 7-8. Staff found the proposed spaces to park a bicycle “satisfies the intent of Division 6.2 to ensure safe and efficient bicycle parking.” *Id.*, p. 11. The Hearing Examiner agrees with Staff and finds that Applicant’s request for a waiver is appropriate.

Based on the record, the Hearing Examiner agrees with Staff and finds the requirements for the minimum number of required parking spaces for the dwelling and proposed use as well as for a space of a bicycle will be satisfied.

3. Site Landscaping, Screening and Lighting

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.

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: No new lighting is planned for this conditional use. The existing exterior lighting includes light fixtures at the front door to the main dwelling and side door for the day care. Existing exterior lighting includes solar and motion sensor fixtures that provide lighting for the backyard. Staff found the “existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.” Exhibit 15, p. 11. Based on this record, the Hearing Examiner finds that the existing exterior residential lighting is compliant with the requirements of Division 6.4, regarding lighting.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific 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. . . .”

The existing landscaping includes landscaping beds along the walkways to the front door and day care entrance, a variety of plants along the foundation of the house, a small bush or tree in the backyard and a large tree along the rear property line fencing on the north side of the driveway. Exhibit 15, pp. 5-7. Staff found “[t]he existing rear yard fencing provides sufficient screening between the proposed use and the adjacent homes.” Exhibit 15, p. 11. Staff further noted that the unenclosed deck on the west side of the house “also provides screening of the backyard play area from view from East Melbourne Avenue.” *Id.*, p. 3. No changes to the existing landscaping are proposed or required to accommodate the proposed use.

Based on this record, and having no evidence to the contrary, the Hearing Examiner finds that the existing site landscaping and perimeter screening is residential in character and is compatible with the neighborhood.

4. Signage

Conclusion: No sign is proposed for the conditional use so the Zoning Ordinance provisions governing signage do not apply. The Hearing Examiner will include a condition prohibiting signs for the group day care on the property.

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. Adverse effects like noise from outdoor play and traffic related to drop-off and pick-up during the morning and afternoon are inherent for the use. The conditions imposed below (*i.e.*, limited outdoor play time and staggered drop-off and pick up schedule) will minimize the inherent adverse effects of the use.

Based on the foregoing findings and conclusions, the application of Jawairia Iqbal (CU 20-04), 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 at 108 East Melbourne Avenue, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The group day care facility is limited to a maximum of twelve (12) children and up to two non-resident employees.
2. The hours of operation are limited to Monday through Friday from 7:30 a.m. to 5:30 p.m.
3. Outside play time may not occur before 9:00 a.m. and is limited to one hour in the morning and one hour in the afternoon.

4. Outdoor play will be limited to a maximum of eight (8) children at a time.
5. The children must be under the direct supervision of a staff member at all times.
6. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off and picking-up during any 15-minute period. To ensure compliance, Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times that must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period.
7. The Applicant must not erect a sign on the subject site.
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. 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.
10. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
11. 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 11th day of August, 2020.



Tammy J. CitaraManis
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., as amended by Zoning Text Amendment (ZTA) No. 16-16, adopted on February 7, 2017, by Ordinance No. 18-25, effective February 27, 2017. The procedural amendments to the Zoning Ordinance contained in ZTA No. 16-16 have not yet been codified, but you may view them on the Council's website at http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20170207_18-25.pdf

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:

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Director, Department of Permitting Services, Greg Nichols, Manager, SPES at DPS
Michael Coveyou, Director, Finance Department
Barbara Jay, Esquire, Executive Director, Board of Appeals.
Washington Suburban Sanitary Commission
Montgomery County Public Schools