

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF:	*	
6212 ROCKHURST DRIVE DAY CARE	*	
GROUP DAY CARE	*	
Applicant	*	OZAH Case No. CU 23-08
	*	
Diana Osorio	*	
For the Application	*	
	*	

Before: Andrea LeWinter, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On November 22, 2022, Diana Osorio filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children in the residence that she co-owns with Mr. Edwin Hernandez, at 6212 Rockhurst Road, Bethesda, MD. Exhibit 1. Ms. Osorio provided a Letter of Authorization signed by Mr. Hernandez affirming his ownership of 6212 Rockhurst Road and his consent for Ms. Osorio to operate a Group Day Care on the premises. Exhibit 11.¹ Planning Staff of the Montgomery County Planning Department (“Staff”) confirmed the applicant’s interest in the property through the application intake checklist, Exhibit 2, and also reviewed an SDAT Real Property Search, Exhibit 12, which identifies the property as Lot 15, Block 14 of Subdivision 82. The subject property is in the R-60 zone. Exhibit 15, p. 1. Since April 2014 through the present day, under the name “Kids Town Family Day Care,” the applicant has run a Residential Family Day Care for up to eight (8) children in the home, which is permissible as a matter of right within the R-60 zone. Exhibit 5, p. 1 and Exhibit 15, p. 5; §59-3.1.6.² A conditional use is required for the facility to expand to up to 12 children in the R-60 zone (*i.e.*, a Group Day Care). §59-3.4.4.D (9-12 persons).

The Planning Board did not review this application in accord with recent policy changes that do not require a review if an application is requesting only an expansion.

The Office of Zoning and Administrative Hearings (“OZAH”) scheduled a public hearing for March 17, 2023, by notice issued on February 7, 2023. The public hearing proceeded as scheduled on March 17, 2023. The applicant, Ms. Diana Osorio, testified in support of the application. No one appeared in opposition. The record remained open for ten days following the

¹ Exhibit 11 included an unsigned copy of the letter. Mr. Hernandez’s signed letter was inadvertently uploaded with Exhibit 12.

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.

close of the hearing to allow the preparation of the transcript and was closed on March 27, 2023.
T. 8.

For the reasons set forth in this Decision, the Hearing Examiner approves the conditional use application.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located 400 feet southwest of the intersection of Rockhurst Road and Stoneham Road. *Id.* Staff described the subject property as located at 6212 Rockhurst Drive in Bethesda, MD otherwise known as Lot 15, Block 14, improved with a detached single-family dwelling. Exhibit 15, p. 5. The lot is 8,400 square feet and rectangular, located on the south side of Rockhurst Road. *Id.* The existing Family Day Care operates on the lower level of the house and consists of two main playrooms and a dining area with additional room for programming. *Id.* It is accessed via a door at the west side of the home; the proposed increase in child enrollment will not result in any modifications of the day care space. Exhibit 15, p. 5-6. The rear yard of the property is fully enclosed by a six-foot-tall fence, it contains play equipment and toys and serves as an outdoor play space for the daycare. Exhibit 15, p. 6. The property has a large driveway that can provide parking for up to six (6) vehicles. *Id.* Unrestricted on-street parking is also permissible on both sides of Rockhurst Road adjacent to the property. *Id.* The petition is not subject to Chapter 22A, the Forest Conservation Law and conforms with the Planning Department's environmental guidelines. Exhibit 15, p. 13.

Staff provided the following aerial photograph of the property. Exhibit 15, p. 5 (shown on the next page).



Aerial photograph of the Subject Site (outlined in yellow)

The site is accessed directly from Rockhurst Road. *Id.* Bus transit by WMATA routes J1 and J2 is provided nearby along Old Georgetown Road, approximately a quarter mile away. Exhibit 15, p. 4 and 12.

B. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defined the boundaries of the surrounding neighborhood as “Lone Oak Drive to the north, Montauk Avenue to the west, Old Georgetown Road to the east, and the Capital Beltway, Interstate Route 495 to the South ... [and] composed primarily of small lots with single-family detached houses.” The surrounding area is outlined in the map below by the dotted red line. Exhibit 15, p. 4, on the next page.



Staff Defined Neighborhood with special exceptions highlighted (Ex. 15, p.4)

No objection was raised, and the Hearing Examiner agrees with Staff, as major roads serve as logical boundaries with the rear -- the presumably loudest area of the property because it contains the day care play area – bounded by Interstate Route 495.

This map additionally identifies, in orange, the six approved special exceptions within the neighborhood with the subject property in blue. Exhibit 15, p. 4:

1. CU2021-07: Daycare Center located at 9803 Montauk Avenue;
2. CU2017-05: Daycare Center located at 9828 Belhaven Road;
3. S2162: Accessory apartment located at 9801 Belhaven Road;
4. S1825: Accessory Apartment located at 6208 Rockhurst Road;
5. S1229: Accessory Apartment located at 9829 Belhaven Road;
6. CBA1178: Medical Office at 10010 Old Georgetown Road.

Based on Staff's description, the Hearing Examiner characterizes the surrounding area as primarily residential, single-family homes in the R-60 Zone.

C. Proposed Use

The applicant seeks approval of a conditional use to expand a current Family Day Care for up to 8 children into a Group Day Care for up to 12 children in the residence of 6212 Rockhurst Road, Bethesda. The proposed daycare will occupy the same space in the home as the existing

Family Day Care. *Id.* No alteration of the existing indoor or outdoor physical day care spaces or of the current hours of operation, Monday through Friday from 7:30 a.m. to 5:30 p.m., are proposed. Exhibit 15, p. 6. The proposed 12-child Group Day Care will be operated by two (2) resident-staff and one (1) non-resident staff. *Id.* The non-resident staff will be on site from 6:30 a.m. to 5:30 p.m. *Id.* The driveway of the subject property has the capacity for six (6) cars; the residents have two cars and the non-resident staff parks either in the driveway or on the street, leaving three or more spaces for drop-offs and pick-ups. Parent drop-off and pick-up times are staggered from 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. respectively. The applicant has no existing or proposed signage included as part of this Application.” *Id.* In testimony, the applicant clarified that she and her husband only own one car, T. 16, so that there are actually four or more spaces available for drop off and pick up. Staff provided the following photographs of the front and back of the existing site, Exhibit 15, p. 9 (below and on the following page):



Front view of the subject property looking south



Rear view of the subject property looking northwest

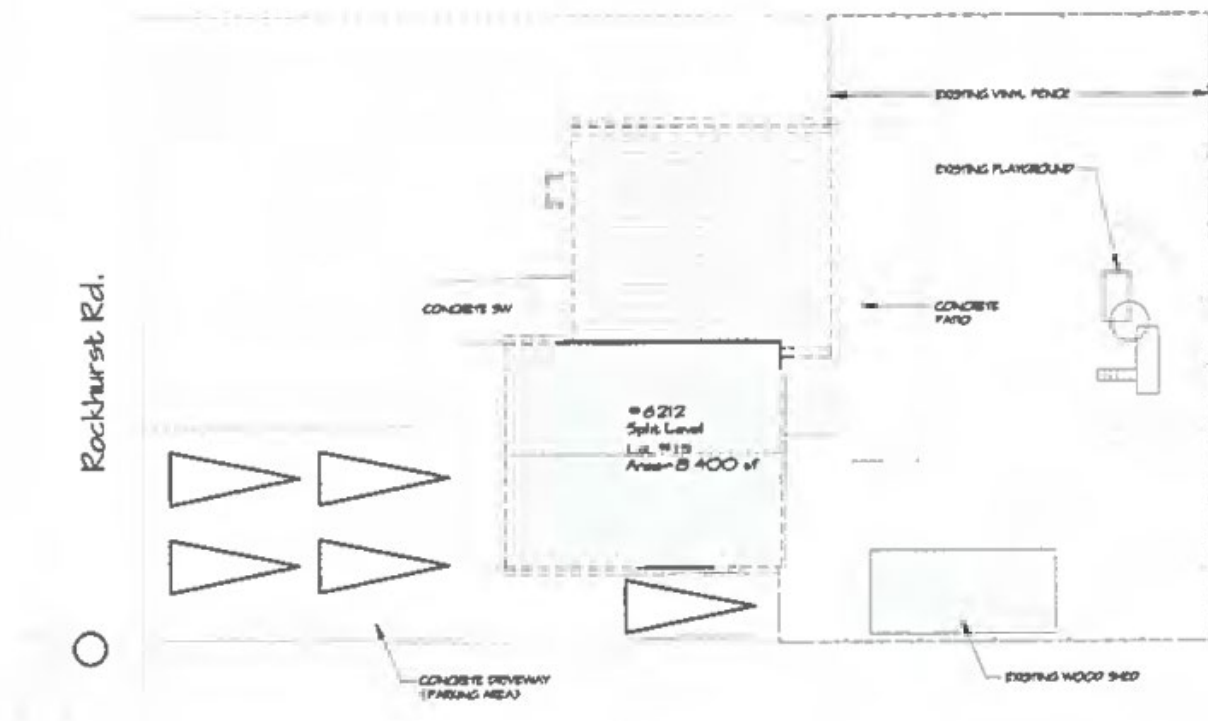
Rockhurst Road is designated as a secondary residential street with two-way vehicular circulation and unrestricted on-street parking along both street frontages. Exhibit 15, p. 11. There are no sidewalks on either side of the street, a condition consistent with properties all along Rockhurst Road and no upgrades to the existing sidewalks are necessary as part of the application. Exhibit 15, p. 12.

1. Site Plan and Landscape (Play Yard Screening) Plan

As stated, the applicant currently runs a residential family day care for up to eight (8) children. The site has already been outfitted to accommodate the children, including with a fenced-in backyard, as documented in the picture on the following page of the proposed conditional use (Exhibit 6, page 8) and testified to by Ms. Osorio, T. 11. A copy of the conditional use site plan (Exhibit 6) is also shown on the next page. According to the Applicant, if the conditional use is granted, the applicant does not propose to make any changes to the residence or the backyard. Exhibit 15, p. 6; T.11.



Photo of Play Area in
Rear Yard (Ex. 15, p. 6)



Conditional Use Site Plan
Exhibit 6

2. Parking for the Residence and the Day Care

The subject site has six on-site parking spaces for resident and employee parking as well as for parents to drop off and pick up children. See Exhibit 15, p. 12; T. 15-16.

3. Site Lighting and Signage

The lighting on the site will remain unchanged if the application is approved. Exhibit 15, p. 6. There is no signage on the site and none has been sought in this application. *Id.*

4. Internal Physical Arrangements for Site Operations

The existing Family Day Care operates within the applicant's home and no change is anticipated with the growth from up to eight (8) to up to 12 children, as depicted in the Floor Plans included in the Staff Report. Exhibit 15, p. 7-8; Exhibit 6.

5. Operations

The hours of operation are proposed to be from Monday through Friday from 6:30 a.m. to 6:00 p.m., with child drop off and pick up staggered so that no more than 2 vehicles are dropping off or picking up children at the same time. Exhibit 15, p. 3. The facility will be operated by two (2) residents and one (1) non-resident staff. Exhibit 15, p. 6.

D. Community Response

This application generated no opposition.

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 will satisfy the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

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

- 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;***

Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 15, p. 4.

Conclusion: Having no evidence to the contrary, 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;*⁴**

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 9-12 children 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,

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

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

respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application meets the requirements of Articles 59-3, 59-4, and Article 59-6.

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

The site is located within the *1992 North Bethesda-Garrett Park Master Plan* (“Master Plan”) area. Exhibit 15, p. 11. Staff advises that the Master Plan does not specifically discuss the subject property but does provide guidance on day cares, including the following recommendations:

- Encourage the provision of child day care facilities at other appropriate locations in the planning area;
- Consider day care centers as an amenity associated with applications for optional zones; and
- Require the provision of day care facilities as part of the redevelopment process in areas where redevelopment occurs. *Id.*

Staff found that the proposal substantially conforms with the Master Plan. *Id.* Because it was established in 2014, it is already part of the existing character of the neighborhood and no exterior changes are proposed. It can provide a needed service in an “appropriate” location.

Conclusion: The Hearing Examiner agrees with Staff that proposed use is in substantial conformance with the applicable master plan because the Plan encourages the provision of child dare care facilities at appropriate locations. As discussed below, the Hearing Examiner finds that this location is compatible with the surrounding area and is therefore “appropriate” as directed by the Plan.

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

Staff determined that as the proposal does not include any physical changes to the site, it will not alter the character of the surrounding neighborhood. Exhibit 15, p. 16.

Conclusion: The existing home has been a Family Daycare since 2014 and is, therefore, part of the existing character of the neighborhood. The home presents as a single-family dwelling in keeping with R-60 Zoning of the area. Because no changes are proposed to the property and no issues of potential nuisance were noted by Staff, reported by the applicant, or raised in opposition, the proposed use meets this standard. Exhibit 15, p. 16; T. 12.

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;

Staff advises that there are six other conditional uses in the defined surrounding area, including two day care centers, three accessory apartments, and one medical office. Exhibit 15, p. 16. Staff concluded that the addition of this conditional use would not alter the residential character of the neighborhood because the existing day care has been operating on the site since 2014, the increase in the number of children being served is modest, and the Applicant is not proposing any physical changes to the Property. *Id.* The applicant testified that no issues of nuisance have been reported, T. 12, and available parking is more than adequate, Exhibit 15, p. 12; T. 15-16

Conclusion: Although granting this petition will extend the number of conditional uses, when evaluated in conjunction with existing and approved conditional uses, the Hearing Examiner finds that the application meets this standard as the proposed conditional use will not adversely affect or alter the neighborhood's predominantly residential nature since the prior use had no negative impact on the neighborhood and the proposed increase in use is modest and involves no physical changes.

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***

According to Staff, the application does not require approval of a preliminary plan of subdivision. Exhibit 15, p. 17. Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities. Staff noted that, by its nature, a small childcare 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 and Staff supports this conclusion. *Id.* Staff also found that under the 2021-24 Growth and Infrastructure Policy, a transportation impact study was not required to satisfy the Local Area Transportation Review (LATR) because the proposed use is estimated to generate fewer than 50 person-trips during the weekday morning and evening peak hours. *Id.*

Conclusion: The Hearing Examiner agrees with Staff that the increased use proposed will not have a significant impact on public facilities or services for the reasons stated and, therefore, meets this standard.

- 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.*

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.

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

Staff found the impact of the inherent effects will be minimal because adequate parking and drop-off/pick-up areas are available on the subject property's driveway; the drop-offs and pick-ups will be limited by the imposition of staggering as a condition of approval; the property's location is adjacent to only two properties rather than three (it backs to I-495), minimizing the impact of noise from day care operations; there will be minimal sound increase in raising the day care capacity from 8 children to 12 children; the outdoor play equipment and lawn area in the backyard are adequate for the number of children proposed to be served; and the day care use is proposed in an area that is already somewhat prone to sound due to the presence of the highway. Exhibit 15, p. 17. Further, Staff found the existing lighting fixtures to be residential in nature and not intrusive on neighboring properties, and that "the proposal will not have any non-inherent effects at this location." Exhibit 15, p. 18.

Conclusion: The Hearing Examiner agrees with Staff's accounting of the inherent impacts of a day care and finds any increase in existing inherent impacts that may result from granting the petition to be minimal at best, considering that, to date, there have been no nuisance complaints or opposition to the existing operation. The Hearing Examiner also finds that this proposal will create no non-inherent impacts. The site contains no unique physical characteristics, and the applicant does not propose any unique operational characteristics; the one notable distinction of the property, its boundary to Interstate 495, actually serves to mitigate the inherent impact of noise generated

by children and so has a positive not an adverse impact. Thus, based on the proposed minimal increase in capacity, without any physical changes, the Hearing Examiner agrees with Staff that neither the inherent nor non-inherent impacts of the proposed use will create undue harm. The Hearing Examiner finds that the petition satisfies this Zoning standard.

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 is not proposing to construct any new or alter any existing structures as part of the conditional use application. Thus, the applicant meets this standard.

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: As detailed, the proposed use does satisfy all specific requirements and, as there are no additional concerns raised by Staff or opposition nor any concerns apparent to the Hearing Examiner, the petition meets this standard.

B. Development Standards of the Zone (Article 59-4)

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 in the application in a Table provided in page 15 of Exhibit 15, which is reproduced below. All measurements reflect existing conditions as no exterior changes are proposed. Exhibit 15, p. 6.

Table 1: R-60 Zone Development Standards - Section 59.4.4.9.B – Requirements of the Zone

Section	Development Standard	Required/ Permitted	Existing
59.4.4.9.B.1	Minimum Lot Area	6,000 square feet	8,400 square feet
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 feet	~70 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 feet	~70 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	~27%
59.4.4.9.B.2	Minimum Front Setback	25 feet	~25 feet
59.4.4.9.B.2	Minimum Side Setback	8 feet	~ 8 feet
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 feet	~18 feet
59.4.4.9.B.2	Minimum Rear Setback	20 feet	~ 55 feet
59.4.4.9.B.3	Maximum Height	35 feet	~55 feet

Conclusion: As the Table sets out, the proposed use more than meets all the development standards of the R-60 Zone, as provided in Zoning Ordinance §59.4.4.9.B. The Hearing Examiner finds that this standard is met.

C. Use Standards for Group Day Care for 9-12 Persons (Article 59-3; Section 59.3.4.4.D.)

The specific use standards for approval of a Group Day Care for 9-12 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 9-12 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 this will be required as a condition of approval. At the hearing, no concerns were raised about Ms. Osorio's ability to comply with State and local regulations. T. 12-17.

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.**

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 use standards for a group day care facility incorporate the limited use standards above. From the Staff Report and photographs, the Hearing Examiner finds that the site is not located in a townhouse or duplex. The Applicant testified that she is the provider and a resident. T. 12. The applicant has agreed that no more than one (1) non-resident staff member will be on-site at any time and this will be mandated by a condition of approval. T. 18. The site is not located in the AR Zone. Exhibit 15, p. 14; T. 12. The Hearing Examiner finds that these standards have been met.

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

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

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 is not required to have a parking facility with five (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.*

Staff concluded that the required total number of parking spaces as established by Zoning Ordinance §59.6.2.4. is three (3) -- two (2) spaces for the single-family dwelling and one (1) for the child-care facility, referenced in the Table below, excerpted from page 15 of the Staff report, Exhibit 15:

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Residential: 2 Group Day Care: 1 (1 space per non-residential employee) Total: 3	2 existing resident spaces on-site 1 non-resident employee space on-street Total: 3

As discussed in Part II.C.2. of this Decision, a proposed Group Day Care also needs an area where parents can safely drop off and pick up children. With the ample driveway parking spaces and staggered drop off and pick up times, Staff determined that the application easily complies with this requirement. Exhibit 15, p. 6, 12; T. 13-14.

Conclusion: The subject property has six spaces, so it more than complies with this requirement. Pick up and drop off will be adequate with the limitation that only two parents drop off at one time. The Hearing Examiner finds that the vehicle parking requirements can easily be met for the subject property residents, the non-resident employee, and for parents dropping off and picking up children enrolled in the day care.

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.

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, no new lighting is planned for this conditional use, and Staff found the existing lighting to be adequate and non-intrusive. Exhibit 15, p. 15. The Hearing Examiner agrees with Staff and concludes that lighting is compliant with this standard.

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. . .”

Staff found the existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes. Exhibit 15, p. 15.

Conclusion: Considering that this a single-family home with a spacious yard that backs to 1-495 and after reviewing the photographs in the Staff report, Exhibit 15, p. 9-10, and the testimony of the applicant that there have been no noise or other complaints, T. 11-12, the Hearing Examiner finds that the proposed site screening will ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

4. Signage

The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones, no sign is proposed for the subject conditional use, Exhibit 15, p. 15, so this standard is not applicable.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all applicable standards of Articles 59-3, 59-4, and Article 59-6.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Diana Osorio (CU 23-08), 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 6212 Rockhurst Road in Bethesda, Maryland, is hereby **GRANTED** pursuant to the conditions set forth in the Staff Report, Exhibit 15, p. 3, specifically:

1. Improvements to the property are limited to those shown on the approved conditional use site plan (Exhibit 6).
2. The Group Day Care facility must be limited to a maximum of twelve (12) children and one (1) non-resident employee.
3. The hours of operation are limited to Monday through Friday, 6:30 a.m. to 6:00 p.m.
4. 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.

5. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
6. 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.
7. 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.
8. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
9. 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 20th day of April, 2023.



Andrea LeWinter
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of 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.

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board's Worksessions can be found on the Board's website and in the Board's office. You can also call or email 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 Worksession.

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

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

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

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

COPIES TO:

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Michael Coveyou, Director, Finance Department
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