



## I. STATEMENT OF THE CASE

Filed on November 29, 2023, Sadia and Zeshan Naeem (Applicants) seek a conditional use to expand an existing 8-person day care to a Day Care Center (13-30 persons) under Section 59.3.4.4.D.1 of the Montgomery County Zoning Ordinance (2014 as amended) (Zoning Ordinance).<sup>1</sup> The subject property is located at 7404 New Hampshire Avenue, Takoma Park, MD 20912 and is zoned R-60.

On February 23, 2024, the Office of Zoning and Administrative Hearings (OZAH) issued notice of the public hearing scheduled for March 25, 2024. Exhibit 18. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application on February 26, 2024. Their recommendation was subject to five conditions (Exhibit 17, p. 3):

1. The use is limited to a maximum of fourteen (14) children, four (4) resident employees, and one non-resident employee.
2. The hours of operation are limited to Monday through Friday, 7:00 AM to 6:00 PM.
3. The Applicant must provide a minimum of two (2) off-street parking spaces.
4. Visitors (excluding parents enrolled in the daycare) shall be instructed to visit the Site outside peak travel times, which are as follows: 8:00 AM – 9:00 AM and 5:00 PM – 6:00 PM.
5. No more than four vehicles will access the Site at any one time.

The Planning Board issued its recommendation on March 8, 2024, recommending approval for the reasons stated in the Staff Report. Exhibit 19. The public hearing proceeded as scheduled on March 25, 2024. No one appeared in opposition to the proposed use and the Applicants adopted the Staff Report as their own testimony. T. 10. The record was left open until April 4, 2024, to receive the transcript. T. 12. This was received, and the record closed on April 4, 2024.

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<sup>1</sup> Prior to March 4, 2024, daycares with up to 8 children were permitted by right in the R-60 Zone. On February 13, 2024, the Council adopted Zoning Text Amendment (ZTA) 23-11. That ZTA increased the number of children permitted by right to 12. It also created a new category, “Daycare Center (13 – 30 persons). This application is for the latter conditional use.

For the following reasons, the Hearing Examiner finds that the proposed Day Care Center (13-30 persons) meets all criteria for approval in the Zoning Ordinance and will not adversely affect the surrounding area, with the conditions of approval imposed in Part IV of this Report.

## II. FACTUAL BACKGROUND

### A. Subject Property

The subject property consists of one recorded lot that is approximately 5,497 square feet. Exhibit 17, p. 4. It is improved with a single-family detached home. Access is a service road along New Hampshire Avenue. Exhibit 4. According to Staff, two vehicles can fit in the driveway. *Id.* The Applicants already operate a group day care for 8 children (permitted by right in the R-60 Zone). It operates on the two lower floors of the house. An aerial photograph shows the subject property (outlined in red) and the service road (*Id.*, p. 5):



The service road has sidewalks that go in front of the house. These sidewalks connect to the sidewalk system in the interior of the neighborhood. Exhibit 17, p. 8. Photographs of the front

of the house and the rear yard play area (Exhibit 17, p. 6) are below:



### B. Surrounding Area

The compatibility of the proposed use is determined by first delineating the “surrounding area.” The surrounding area is the area directly impacted by the 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 area as “the surrounding R-60 Zone with single-family detached houses” bordered by Kingwood Drive to the north, Baptist Light Church to the south, Sligo Creek to the west, and the New Hampshire Avenue service road to the east. An aerial photograph from the Staff Report shows Staff’s recommended delineation (Exhibit 17, p.



4, below):



Staff described the area as (Exhibit 17, p. 4):

The west side of New Hampshire Avenue is developed with single-family residential homes that back up to Sligo Creek which runs north to the southeast behind the neighborhood. To the north is the major intersection of New Hampshire Avenue and University Boulevard, referred to as Langley Crossroads. To the east of New Hampshire Avenue is predominantly commercial uses such as food markets, hotels and high-rise apartments, and the boundary to Prince George’s County is just beyond these commercial uses to the east.

\* \* \*

While the surrounding neighborhood to the west is predominantly residential in character, the Site exists on the eastern boundary that fronts a major corridor, on a service road that includes two institutional uses.

Immediately north of the Site is a church building used by the congregations of the Amigos de Jesus Seventh-day Adventist and Zion Evangelical Lutheran Church, as well as Meals on Wheels Takoma Park/Silver Spring. The Church frontage is

roughly 370 feet long, which can accommodate approximately 15 parallel parking spaces.

The Hearing Examiner agrees with Staff's delineation of the surrounding area. New Hampshire Avenue is a major road and the impacts of the use across the other side of the road are too attenuated to be considered "direct impacts". For the same reason, she agrees with Staff that Sligo Creek is an appropriate boundary for the western boundary.

The Hearing Examiner also agrees with Staff's characterization of the area. Based on this record, she finds that the area consists primarily of single-family detached homes in the R-60 Zone, with one institutional use (the church) abutting the property.

### **C. Proposed Use**

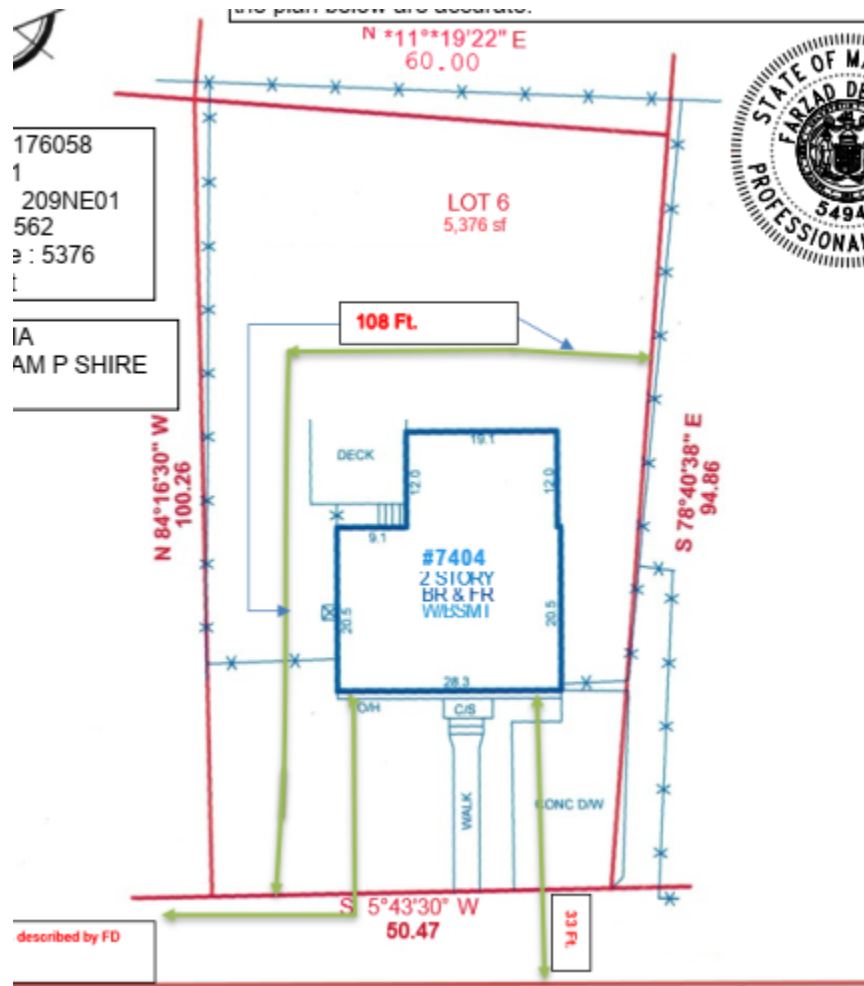
Staff advises that the Applicant has been operating a daycare ("Futurestar Childcare") for up to 8 children at the subject property since 2015. The children's ages are between 4 months and 5 years old. The existing daycare operates on the two lower floors of the house. It is accessed by the front door. The rear yard is fully enclosed on three sides by a six-foot fence. Exhibit 17, p. 4.<sup>2</sup>

The Applicants wish to expand the daycare to a maximum of 14 children, with four resident staff members and 1 non-resident staff member. They propose no physical changes to the exterior or interior areas. Morning drop-off will be staggered between 7:00 a.m. and 9:00 a.m. Evening pick-up will be staggered between 4:00 p.m. and 6:00 p.m. Exhibit 17, pp. 7. The conditional use plan is shown on the next page.

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<sup>2</sup> Staff reports that the small fence in the front yard is merely decorative. The front yard is not used for the daycare. Exhibit 17, p. 7.

Parking for the proposed use will be in the driveway, on the service road abutting the property, and on the service road in front of the Zion Evangelical Church. The existing driveway has two spaces, there is an on-street space on the service road abutting the property, and there are



**Conditional Use Site Plan  
Exhibit 17, Attachment B, p. B-19**

spaces on the service road in front of the church. Staff estimates that there will be approximately 15 spaces available in front of the church for pick-up and drop-off. Exhibit 17, p. 10. At the public hearing, the Applicants agreed to a condition requiring them to keep the driveway open for drop-off and pick-up during peak times. T. 11. The church submitted a letter stating that the on-street parking utilized by the daycare did not interfere with church functions or its congregation’s needs. Exhibit 17, Attachment C. The church went on, “[w]e recognize the value of Futurestar Child

Care in our community and support their efforts to enhance their services.” *Id.* To avoid any queuing, the Applicants propose a staggered pick-up and drop-off schedule so that no more than four cars will access the site at one time. Exhibit 17, p. 10.

#### **D. Community Response**

Several individuals, including neighbors and parents with children enrolled in the daycare, wrote to support the application. Exhibit 16(a) – (i). No one filed any opposition or appeared at the public hearing to oppose the application.

### **III. FINDINGS AND CONCLUSIONS**

A conditional use is a zoning device that authorizes uses if pre-set legislative standards are met. Pre-set legislative standards are both specific to a type of use. Use-specific standards are in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses). General standards are in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Group Day Care for up to 12 children under Section 59-3.4.4.D. of the Zoning Ordinance. The appropriate standard to be used in determining whether a conditional use would have an adverse effect and, therefore, should be denied, is “whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a [conditional use].” *Montgomery County v. Butler*, 417 Md. 271, 275 (2010). Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the conditional use proposed in this application, with the conditions imposed in Part IV of this Report and Decision, would satisfy the specific and general requirements for the use.

#### **A. Necessary Findings (Section 59.7.3.1.E.)**



The general findings necessary to approve all conditional uses are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:<sup>3</sup>

***E. Necessary Findings***

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

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

Conclusion: Staff advises that the property is not subject to any prior approvals because the current group day care (up to 12 persons) is permitted by right in the R-60 Zone. Exhibit 34, p. 12. This standard does not apply to the 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;***<sup>4</sup>

Conclusion: This subsection requires an analysis of the standards of the R-60 Zone contained in Article 59-4; the use standards for Group Day Care for 9 to 12 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

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

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

<sup>4</sup> 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).

Use of the property is guided by the recommendations in the *2012 Takoma/Langley Crossroads Sector Plan* (Sector Plan or Plan). Staff states that the Plan does not contain guidelines for conditional uses, although there “are several references to recommendations that encourage development of and expansion of neighborhood services, and the general need for day care near the future Purple Line.” Exhibit 17, p. 13.

The property is also subject to the *2013 Countywide Transit Corridor Functional Master Plan*. This plan “envisions” bus rapid transit along New Hampshire Avenue, but Staff states “...this recommendation can only become effective upon adoption of a subsequent master plan update that would include recommendations on the right-of-way, and number of travel lanes.” Exhibit 17, p. 13. Another functional master plan, the *2018 Bicycle Master Plan*, calls for separated bike lanes along this roadway. Staff reports that the bikeway in front of the site, planned by the City of Takoma Park, will consist of (Exhibit 17, p. 14):

...a northbound six-foot-wide buffered bike lane with southbound bicycle traffic using a sharrow within the existing travel lane. The bikeway design will maintain the on-street parking and the existing four-foot-wide sidewalk.

Staff concluded that, “[t]he Subject Application will not preclude installation of the bikeways in the future, and the bikeway project will not impact the on-street parking needed for the daycare use.” *Id.*

Conclusion: Staff correctly points out that the Plan encourages childcare facilities near the Purple Line.<sup>5</sup> It also finds that the location of housing proximate to services, including childcare, is a major factor in the quality of life. *Id.*, p. 22. The Hearing Examiner agrees with Staff that a fair reading of the Sector Plan recognizes that childcare is important to the larger community and should

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<sup>5</sup> The exact language encourages childcare with “direct access” to the Purple Line. *Sector Plan*, p. 21.

be encouraged. The Sector Plan does reconfirmed the existing R-60 zoning for the property, which permits childcare for between 13 and 30 persons as a conditional use. *Sector Plan*, pp. 26-28.

Nothing contravenes Staff's conclusion that the bikeway planned by the City of Takoma Park will interfere with the proposed use. Nor will the on-street parking be eliminated. Therefore, the project conforms to the *2018 Bicycle Master Plan*. The Hearing Examiner also agrees with Staff that the general recommendation for a bus rapid transit route contained in the 2013 *Transit Corridor Plan* are too speculative at this point to determine whether the use would preclude implementation.

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

Staff found that the use will not alter the existing character of the neighborhood (Exhibit 17, pp. 14-15):

The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood. No physical changes are proposed on the Property. The parking for the employees and pick-up/drop-offs will be on site and on the street in front of the Property and the neighboring property which is developed as a Church. The day care will be open during normal day care hours and will not intrude on the residential neighborhood. There will be no more than 14 children, ages 0 to 5 years old, and the back yard is fenced for their safety. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood.

Conclusion: The photographs in the record demonstrate that the existing home presents as a single-family detached dwelling and the Applicants propose no changes to the exterior. The 8-person day care has operated at this location since 2015 and is already part of the character of the area. The Hearing Examiner agrees with Staff that the addition of 6 children to the existing operation will not alter the character of the area, given the number of parking spaces available for drop-off and pick-up. By condition of approval, the driveway will be reserved for drop-off and pick-up on days the childcare is open. The adjacent church indicates that the Applicants may use the on-street parking

on-street parking along its frontage and operation of the daycare does not conflict with church activities. While there may be a slight increase in traffic, it can be accommodated in the driveway and on the street. Operational modifications (adding six children) will therefore have a minimal impact on traffic in the surrounding area. The application meets this criterion.

***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 reports that there is only one conditional use, an accessory apartment, in the defined surrounding area. Staff concluded that the addition of this use would not alter the character of the area because there are no physical changes to the property, a daycare has existed at this location since 2015, and an increase of 6 children is “modest”. Exhibit 17, p. 14.

Conclusion: The evidence in this record supports a finding that the addition of six children to the existing daycare operation will not alter the residential character of the surrounding area. The only other conditional use is residential (an accessory apartment), which are now permitted by right in most circumstances. A review of Staff’s delineation of the surrounding area (on page 5 of this Report), indicates that the existing special exception is located relatively far from the subject property. The only change from the proposed use will be a small increase in the number of children attending the daycare, possibly generating a slight increase in traffic. The daycare maintains the appearance of a single-family dwelling and there is ample parking for drop-off and pick-up. This criterion 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 “a 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***

Staff concluded that the proposed use is exempt from review under the Planning Board’s Local Area Transportation Review Guidelines because it’s estimated to generate 29 trips in the morning and evening peak hours. A table from the Staff Report shows the estimated trips (Exhibit 17, p. 16):

*Table 2: Trip Generation for the Proposed Day Care*

<b>Tip Generator</b>	<b>Morning Peak Hour</b>	<b>Evening Peak Hour</b>
Children	28	28
Employees	1	1
<b>Total</b>	<b>29</b>	<b>29</b>

Staff found that other public facilities are adequate to serve the use (*Id.*):

The Subject Application does not proposed any alterations to the existing house, and therefore fire access and stormwater management continue to be sufficient. Schools are not affected by the Subject Application, as no new dwelling units are proposed. The Property is located within water and sewer categories W-1 and S-1 and is serviced by existing water and sewer...Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

Conclusion: The adequacy of roadways and transit is tested under the criteria set in the Planning Board’s Local Area Transportation Review Guidelines (LATR). Projects estimated to generate fewer than 50 “person trips” during the morning and evening peak hours (*i.e.*, 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.) are exempt from LATR Review but must file a Traffic Study Exemption Statement to demonstrate the use will generate fewer than 50 trips. *LATR Guidelines*, p. 7 (July 2021). Nothing in the record contravenes Staff’s analysis and the Hearing Examiner finds that the Applicant is not subject to LATR review. Similarly, nothing in the record contravenes Staff’s conclusion that other public facilities are adequate. The Hearing Examiner finds that these this standard has been met.

***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 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*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. 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.* Non-inherent adverse effects are a

sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, the Hearing Examiner must examine the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use.

Staff identified what would be inherent physical and operational characteristics of the a Day Care Center for 13-30 children: “1) vehicular trips to and from the Site, 2) visual impact of outdoor play areas; 3) noise generated by outdoor play; 4) drop-off and pick-up areas; and 5) lighting. Exhibit 17, p. 17.

Staff concluded that the Day Care Center proposed here did not have any non-inherent impacts (*Id.*):

Adequate parking and drop-off/pick-up areas are available on the adjacent public street in front of the Site. 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 outdoor play equipment and lawn area in the backyard is adequate for the Proposal. The designated hours for outdoor play are not expected to exceed typical noise levels for outdoor activity.

The existing lighting for the front entrance, sidewalk, and rear entrance, along with some landscaping on the Site is adequate for the Proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties.

Conclusion: The Hearing Examiner concurs with Staff’s analysis. Parking is permitted on the street in front of the property during operating hours. The residents of the dwelling will leave the driveway open for parent drop-off and pick-up and there is ample on-street parking. The Hearing Examiner finds that there are no non-inherent adverse impacts that warrant denial of the proposed use.

***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: Staff correctly found that no reconstruction or construction on the site is proposed (Exhibit 17, p. 17). This provision does not apply.

*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)**

The proposed use must also meet the development standards of the Zone in which it's located. The subject property is zoned R-60. Development standards for the R-60 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by the application (Exhibit 17, p. 13, below):



*Table 1: Development and Parking Standards for the R-60 Zone*

<b>Development Standard Section 59.4.4.9</b>	<b>Permitted/ Required</b>	<b>Existing/Proposed<sup>1</sup></b>
Minimum Lot Area	6,000 sf	5,375 sq ft <sup>2</sup>
Minimum Lot Width at Front Building Line	60 ft	60 ft
Minimum Lot Width at Front Lot Line	25 ft	28.3 ft
Maximum Lot Coverage	35%	20%
Minimum Front Setback	25 ft	20 ft <sup>3</sup>
Minimum Side Setback	8 ft	6 ft <sup>3</sup>
Minimum Sum of Side Setbacks	18 ft	12 ft <sup>3</sup>
Minimum Rear Setback	20 ft	20 ft
Maximum Height	35 ft	35 ft
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	Residential Use: 2  Daycare Use: 4 (3 spaces for every 1,000 SF)	Residential: 2 (driveway)  Daycare Use: min. 4 (one on-street space in front of the house and up to 15 in front of the adjacent church)

<sup>1</sup>There is no proposed development with this Application.

<sup>2</sup> Section 59.7.7.1.D.1 allows DPS to issue permits for lots recorded on plats prior to 1958 that without regard to street frontage or lot size minimums.

<sup>3</sup> Section 59.7.7.1.A.1 allows a legal structure that does not meet current zoning standards to remain.

Conclusion: While the table demonstrates that the existing home does not meet all the current standards of the R-60 Zone, Staff correctly points out in the footnotes that the lot size and current improvements are grandfathered under the cited sections of the Zoning Ordinance. The Hearing Examiner finds that the use complies with the required development standards of the R-60 Zone or is grandfathered under Section 59.7.7.1.A of the Zoning Ordinance.

**C. Use Standards for a Day Care Center (13-30 persons) (Section 59.3.4.4.D.)**

The specific use standards for approval of a Day Care Center (13-30 persons) are set out in Section 59.3.4.4.A. and 59.3.4.4.D. of the Zoning Ordinance. The Hearing Examiner finds that the proposed use meets these standards for reasons that follow.

***Section 59.3.3.4.A.1. Defined***

***Day Care Facility means an establishment where care is provided for less than 24 hours a day, for which the provider is paid, for any of the following: children under the age of 17 years; developmentally***

***disabled persons; handicapped individuals; or any elderly individual. Day Care Facility includes accessory preschool and kindergarten educational programs that are accredited by the State.***

***Section 59.3.3.4.D.1. Defined***

***Day Care Center (13-30 Persons) means a Day Care Facility for 13 to 30 people where staffing, operations, and structures satisfy State and local regulations. A Day Care Center (13-30 persons) includes a Family Day Care (Up to 12 Persons) where the provider is not a resident and cannot meet the non-resident provider requirement.***

Conclusion: The proposed use meets the definition of Day Care Facility because it will operate weekdays between 7:00 a.m. and 6:00 p.m. (less than 24 hours) and children's ages will be up to 5 years. These operating hours will be a condition of approval. The use as conditioned complies with the definition of Day Care Facility. A condition of approval will require compliance with State and local regulations. As conditioned, the proposed use meets the definition of Day Care Center (13-30 Persons).

***Section 59.3.3.4.D.2. Use Standards***

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

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

Conclusion: The daycare operates in a single-family detached home, as confirmed by Staff. Exhibit 17, p. 9. This standard is met.

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

Staff provided a detailed analysis on arrangements for discharge and pick up of children (Exhibit 17, p. 10):

There will be an adequate area for the discharge and pick up of children. Two (2) spaces are required for the residential use and four (4) spaces are required for the day care (three (3) for every 1,000 SF of day care use in the building. [Footnote omitted]. The existing concrete driveway in front of the house provides space for

two (2) cars. A space for a third car is available in front of the house on the New Hampshire Avenue service road. During the hours of pick-up and drop-off, on-street parking in front of the Zion Evangelical Lutheran Church (immediately adjacent to the Site) is unrestricted. Per Section 59-6.2.5.E.1 of the Zoning Ordinance, parallel parking requires a minimum of 19.5 linear feet, resulting in at least 15 parking spaces in front of the Church. Included with the Application is a letter from the Church confirming that utilization of the on-street parking by the Daycare's proposed expansion to 14 children will not interfere with the Church's functions or the congregation's needs.

The width of the service road accommodates one row of parallel parking on the west (Site) side and a travel lane on the east side. Given the width of the roadway and the ample on-street parking available, queuing is not anticipated on the frontage road.

Staff also noted that the sidewalk in front of the house connected to the interior of the neighborhood and that (*Id.*):

Therefore, taking into consideration the existing off-street parking spaces in the driveway, the available on-street parking in front of the house and the Church as well as the nearby pedestrian and transit facilities, there will be adequate area for pick up and drop off.

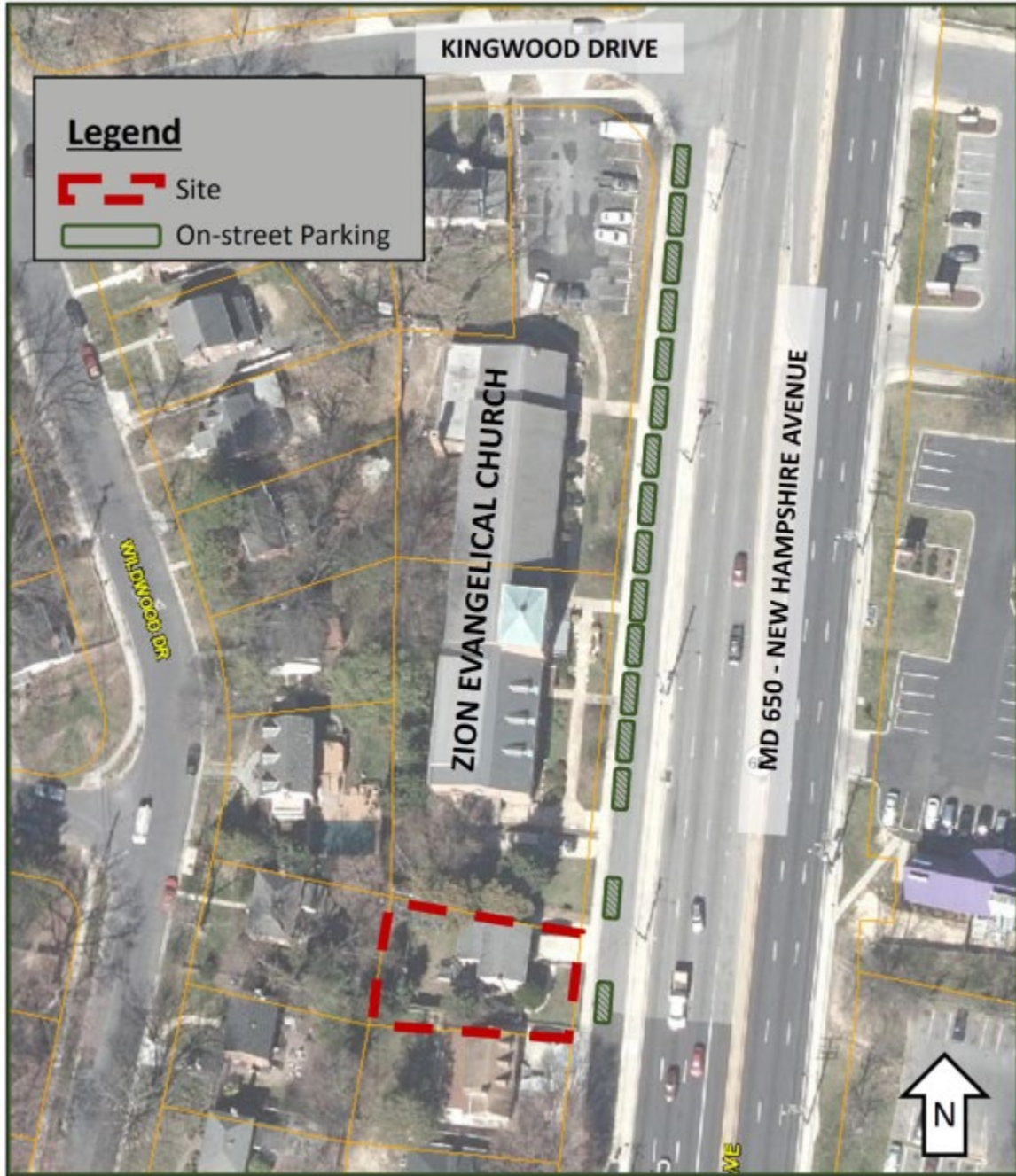
Conclusion: Nothing in the record contravenes Staff thorough analysis that that pedestrian, transit, and parking are adequate to serve the use. The Church has sent a letter confirming that parking for the daycare will not interfere with Church activities. Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

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

Staff states that a reduced number of spaces on-site or on-street abutting the property because the full number is not necessary. This is due to the number of on-street spaces in front of the Church, the use of which does not conflict with Church activities. In its Report, Staff included a diagram depicting the number of spaces available for the daycare use (Exhibit 17, p. 8, on the next page). Staff notes that Meals on Wheels operates from the Church between 9:00 a.m. and 1:00 p.m., outside the drop-off and pick-up period for the daycare.

Conclusion: According to the “On-Street Parking Exhibit” submitted by Staff (Exhibit 17, p. 8, on the next page), there are 15 spaces available for use by the daycare during drop-off and pick-up times. A condition of approval sets the times for drop-off and pick-up and limits the number of vehicles that may drop-off and pick-up to four vehicles every 15 minutes. With these conditions, the reduced number of parking spaces is adequate to serve the use.





On-Street Parking Exhibit  
Exhibit 17, p. 8

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

Conclusion: The Hearing Examiner agrees with Staff (Exhibit 17, p. 11) that this standard does

not apply to the proposed use.

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

Conclusion: The property is zoned R-60 and this provision does not apply.

#### **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. The general standards in Section 7.3.1.E.1.b permits the Hearing Examiner to apply these requirements “to the extent the Hearing Examiner finds necessary to ensure compatibility.”

##### **1. Site Access Standards**

Conclusion: Zoning Ordinance Division 59.6.1 governs “Site Access;” however, by its own terms, it does not apply to development in single-family residential zones, such as the R-60 Zone. *Zoning Ordinance*, Section 59.6.1.2.

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

The standards for the number of parking spaces, parking facility design and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. The table shown on page 16 of this report demonstrates that six on-site spaces are required to serve the use. This number may be reduced under Section 59.3.3.4.D.2.1.i.c and the Hearing Examiner has concluded that the number of unrestricted on-street spaces in front of the property and the Church make it unnecessary to have the full number of on-site spaces. This reduction will not have an impact on the surrounding area with the conditions of approval proposed in Part IV of this Report.

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

Standards for site lighting are set forth in Division 6.4 of the Zoning Ordinance. These

apply only to new lighting. *Zoning Ordinance*, §59.6.4.1. As no new lighting is proposed, these standards do not apply to this proposed use.

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

Conclusion: Although Article 6 of the Zoning Ordinance contains very specific screening requirements, the review of site landscaping and screening for conditional uses in single-family, detached homes is limited to an assessment of compatibility. Section 59.6.5.2.B states:

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

. Section 59.7.3.1.E.1.b. echoes this and permits the Hearing Examiner to apply the standards of Article 6 “to the extent the Hearing Examiner finds necessary to ensure compatibility...”

The Hearing Examiner has already found that the property presents as a single-family home consistent with the character of the surrounding area. This standard is met.

**4. Signage**

Conclusion: The Applicant proposes no signage for this use.

**IV. CONCLUSION AND DECISION**

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Sadia and Zeshan Naeem for a conditional use under Section 59.3.4.4.D. of the Zoning Ordinance, to operate a Day Care Center for up to 14 children in her home at 7404 New Hampshire Avenue, MD 20912, is hereby **GRANTED**, subject to the following conditions:

1. Improvements to the property are limited to those shown on the conditional use site plan (Exhibit 17, Attachment B, p. B-19).
2. The Day Care Center facility must be limited to a maximum of fourteen (14) children, four resident employees, and one (1) non-resident employee.

3. Hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:00 p.m.
4. Hours for drop-off and pick-up are between 7:00 a.m. to 9:00 a.m. and 4:00 p.m. to 6:00 p.m. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of four (4) vehicles dropping off or picking up children at one time.
5. Residents of the home must leave the driveway open during the hours designated for parent drop-off and pick-up.
6. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
7. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Day Care Center (13-30 Persons) for children and must correct any deficiencies found in any government inspection.
8. 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.
9. The Applicant must maintain the grounds in a clean condition, free from debris, daily.
10. 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 5<sup>th</sup> day of April, 2024.



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Lynn Robeson Hannan  
Hearing Examiner

NOTIFICATION OF DECISION SENT TO:

Sadia and Zeshan Naeem  
Applicants  
Barbara Jay, Executive Director

Board of Appeals  
Stephanie Dickel, Planning Department  
Grace Bogden, Planning Department  
Greg Nichols, Manager, Department of Permitting Services  
Victor Salazar, Department of Permitting Services  
Michael Coveyou, Director, Finance Department

### 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 after 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 Worksession 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 240-777-6600, emailing BOA@montgomerycountymd.gov, or visiting the Board's website: <http://www.montgomerycountymd.gov/boa/>.

Additional procedures are specified in Zoning Ordinance §59-7.3.1.f.1. Contact information for the Board is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850  
(240) 777-6600  
<http://www.Montgomerycountymd.gov/boa/>