

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

IN THE MATTER OF:

NORMA and JOSE CACERES

Applicants

Jose Caceres

Bryan Caceres (Translator)

For the Application

*
*
*
*
*
*
*
*

OZAH CASE No. CU 19-02

Before: Lynn A. Robeson, Hearing Examiner

Report and Decision: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	3
II. FACTUAL BACKGROUND	4
A. The Subject Property and Vicinity	4
B. Surrounding Neighborhood	7
C. Proposed Use	8
1. Site Plan, Landscape Plan and Lighting Plan	8
2. Operations	12
3. Parking for Employees and Parent Pick-Up and Drop-Off	13
D. Community Response	14
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW	15
A. Necessary Findings (Section 59.7.3.1.E.)	15
B. Development Standards of the Zone (Article 59.4)	23
C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59.3.4.4.D.2)	24

D. General Development Standards (Article 59.6)	25
1. Site Access Standards	25
2. Parking Spaces Required, Parking Facility Design and Parking Lot Screening	25
3. Site Landscaping, Screening and Lighting	27
4. Signage	29
IV. CONCLUSION AND DECISION	29

I. STATEMENT OF THE CASE

On September 7, 2018, the Applicants, Norma and Jose Caceres, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children at 10712 Douglas Avenue, Silver Spring, MD. The subject property is described as Lot 22 in the Stephen Knolls Subdivision and is zoned R-60. Applicants co-own the property with Juan Caceres. Exhibit 8. Ms. Caceres (resident provider) currently operates a Family Day Care for up to 8 children from the home with her husband, Jose Caceres (resident co-provider). Applicants are seeking to expand the existing Family Day Care to a Group Day Care for up to 12 children. Exhibit 2, p. 2. Child care facilities up to 12 individuals must be approved by conditional use under §59-3.4.4.D and §7.3.1. of the Montgomery County Zoning Ordinance.¹ Jose and Juan Caceres signed a letter dated September 6, 2018, authorizing Norma Caceres to operate the Group Day Care at the property. Exhibit 11.

On December 5, 2018, the Office of Zoning and Administrative Hearings (OZAH) sent notice of a public hearing to be held on January 7, 2019. Exhibit 15. Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report on December 13, 2018, recommending approval of the application with conditions (Exhibit 16).

The Planning Board met on December 13, 2018. Technical Staff supplemented its report with a presentation to the Planning Board and included the following clarification (Exhibit 21(a)):

Per Section 7.3.1.E.1.b of the Zoning Ordinance, in addition to the use standards under Article 59-3, the Application meets applicable general requirements under Article 59-6. The standards are met by the perimeter screening being consistent with the neighborhood character and the long-term bicycle parking space within the rear shed to the rear of the property.

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

The Planning Board voted unanimously to recommend approval of the conditional use with the conditions recommended by Staff. *Id.*

The public hearing proceeded as scheduled on January 7, 2019. Mr. Caceres appeared with a translator, Bryan Caceres, in support of the application. Tr. 7-8. Mr. Caceres adopted the findings and conclusions of the Staff Report as his own testimony and agreed to abide by the conditions of approval recommended by Staff and imposed by the Hearing Examiner. He also identified and confirmed that the site plans and photographs submitted with the application accurately represent the property as it currently exists. Tr. 9-11. No other witnesses were called and no letters of support or opposition were submitted or received into the record.

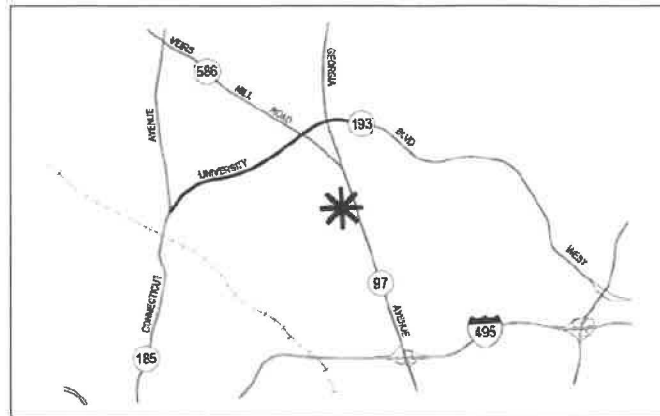
The record was held open until January 17, 2019, to receive the hearing transcript. Although the record timely closed as originally scheduled, the Hearing Examiner reopened and closed the record on January 23, 2019, to receive the Affidavit of Posting. Exhibit 22.

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 located at 10712 Douglas Avenue, Silver Spring, MD. The legal description of the property is Lot 22, Block E of the Stephen Knolls subdivision. It is in the R-60 zone and located within the geographic area covered by the *1989 Master Plan for the Communities of Kensington-Wheaton* (Master Plan or Plan). According to Staff, the property is located within a low-density residential neighborhood that is just south of Westfield Wheaton Mall, west of Georgia Avenue and north of Plyers Mill Road (Exhibit 16, p. 6). A vicinity map from the Staff Report reproduced below shows the general location of the property (Exhibit 16, p. 1):



The property is located mid-block along the west side of Douglas Avenue, which Staff advises is a primary road with a 70-foot right-of-way. An aerial photograph of the property taken from the Staff Report is shown below (Exhibit 16, p. 3):



Figure 1: Subject Property location

The subject property is a rectangular lot that contains approximately 6,531 square-feet. It is improved with a one-story single-family detached dwelling built in 1951. Exhibit 10. Staff reports that the main level of the house is 1,040 square feet. The finished basement is 750 square feet with exterior access from the rear of the dwelling. The driveway with a wide apron provides

space for four vehicles to park on the property. Brick steps and a concrete walkway from the sidewalk on Douglas Avenue provide access to the front porch and door to the main level of the house. The rear yard is enclosed with a four-foot chain link fence. Gates and walkway on both sides of the house connect with a large patio off the rear of the house where the exterior steps to the basement and rear door from the main level are located. A small circular patio and walkway are located mid-yard along the south property line.

There is a large exterior outdoor play area, shed and retaining wall along the rear property line. Staff reports that the outdoor play area is approximately 25'x 23' in size and is located on the southwest corner of the rear yard. The 11' x 14' shed is located on the northwest rear corner. The 2' white concrete retaining wall along the rear property line was installed to prevent water-run off from the property to the west which sits at a slightly higher elevation and slopes down towards the subject property. A medium size deciduous tree is located between the outdoor play area and shed. There is a small garden bed along a portion of the chain link fence on the north side. The 6' wood stockade privacy fence on the adjoining property to the south provides screening of the outdoor play along the southwest property line.

Photographs of the property taken from the Staff Report are shown below (Exhibit 16):



Figure 6: Views of the Subject Property.

The Site Plan is reproduced below in Part II.C.1 of the Report and Decision.

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 “bounded by Plyers Mill Road to the south, [the east side of] Douglas Avenue to the east, Kimberly Street to the north, and Brunswick Avenue to the west.” Exhibit 16, p. 6.

Staff characterized the defined neighborhood as consisting of single-family detached residential properties in the R-60 Zone. *Id.* Staff advises that there are “no other known conditional uses in the Staff-defined neighborhood.” Exhibit 16, p. 13. An aerial photograph depicting the boundaries of the surrounding neighborhood as defined by Staff is shown below (Exhibit 16, p. 7):

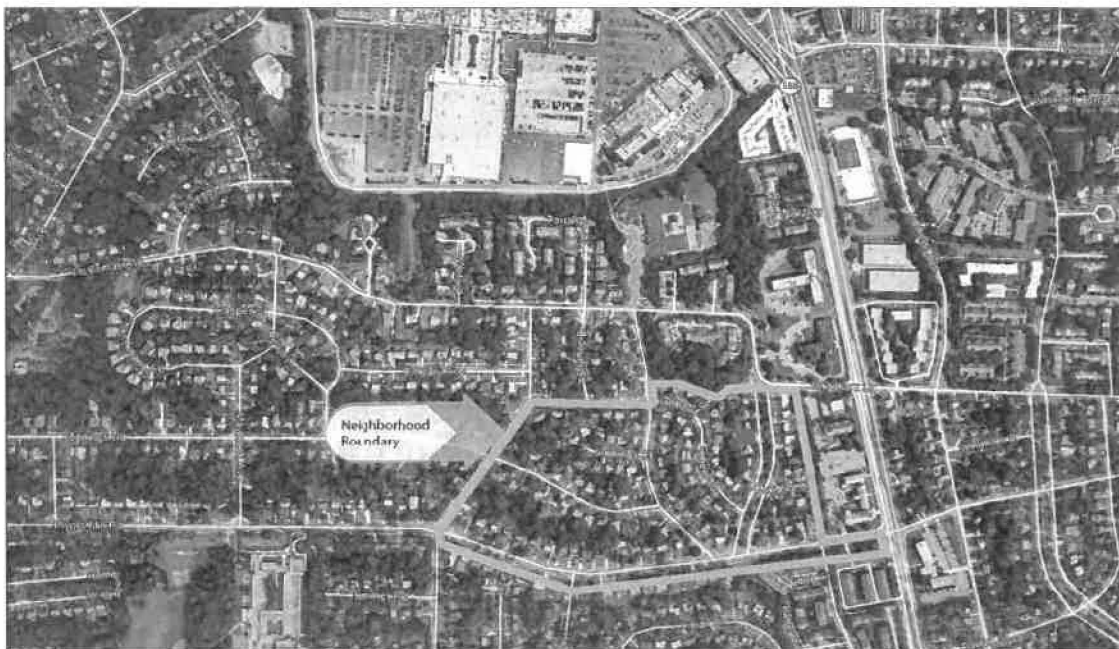


Figure 5: The staff-outlined neighborhood boundary and the location of the Subject Property.

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

C. Proposed Use

Ms. Caceres has operated a Family Day Care for up to 8 children under the age of six at her home since January 2010. She is seeking approval of a conditional use to expand the existing Family Day Care operation into a Group Day Care for up to 12 children. In support of her request, Applicant provides the following information (Exhibit 2, p. 2):

The proposed group day care will be located on the main floor of the house, which is where the existing day care is currently located. The Applicant will continue to use the basement as [her] personal residence. The main floor of 1,700 square feet contains a kitchen, bathroom, eating and activities room, nap/quiet area room, a second nap room, and an indoor play area. Entrance to the day care is through the [front door to the house]. There is an entrance to the kitchen and entrance to the basement in the rear of the house.

I am currently licensed by the Office of Child Care in operation since 01/25/10, to take care of 8 children under the age of 6 years [in my home] located at 10712 Douglas Avenue, Silver Spring MD, 20901. The Child Care currently counts 3 staff members including myself and my husband [Jose Caceres] who is my co-provider and an extra staff member who lives [within] walking distance from the day care. With the growing need and demand for high quality child care in my neighborhood, I am considering the expansion of my Home daycare to be able to serve more families in need of quality day care. I am participating [in] programs [] Maryland Excels published at level 5, Maryland Child Care Credential at level 4+, and the program has been NAFCC accredited for the past four years.

1. Site Plan, Landscape Plan and Lighting Plan

Technical Staff reports (Exhibit 16, p. 8):

The Applicant is not proposing any alteration, addition or expansion to the exterior of the existing residence or outdoor play area. On October 19, 2018, a site visit was conducted where Staff made several observations and completed a photo inventory of the existing conditions of the Subject Property.

- The existing chain link fence is adequate to secure the use from the surrounding neighborhood; especially in relation to the neighbors of the Property.

- There is an existing concrete block retaining wall painted white that the Applicant installed to prevent water runoff from the neighboring property. It is also preventing invasive plant material to impact the play area. The retaining wall is about two feet in height and does not act as a visual barrier to adjacent properties.
- The parking requirement is satisfied by the existing driveway that accommodates four parked vehicles. Additional on-street parking is available on Douglas Avenue.
- The side yard to the north of the Property provides access, but is restricted with gates on both ends to the front and to the rear [of the dwelling] in order to section off the scooter and bike are.
- The Applicant constructed all hardscape improvements to the Property to ensure the safety and security of the children during the hours of outdoor play. This includes a brick patio, an entrance walkway feature, a small planting bed, and retaining wall to the rear of the property.

The Applicants' conditional use Site Plan (Exhibit 16, p. 5), taken from the Staff Report, is reproduced below:

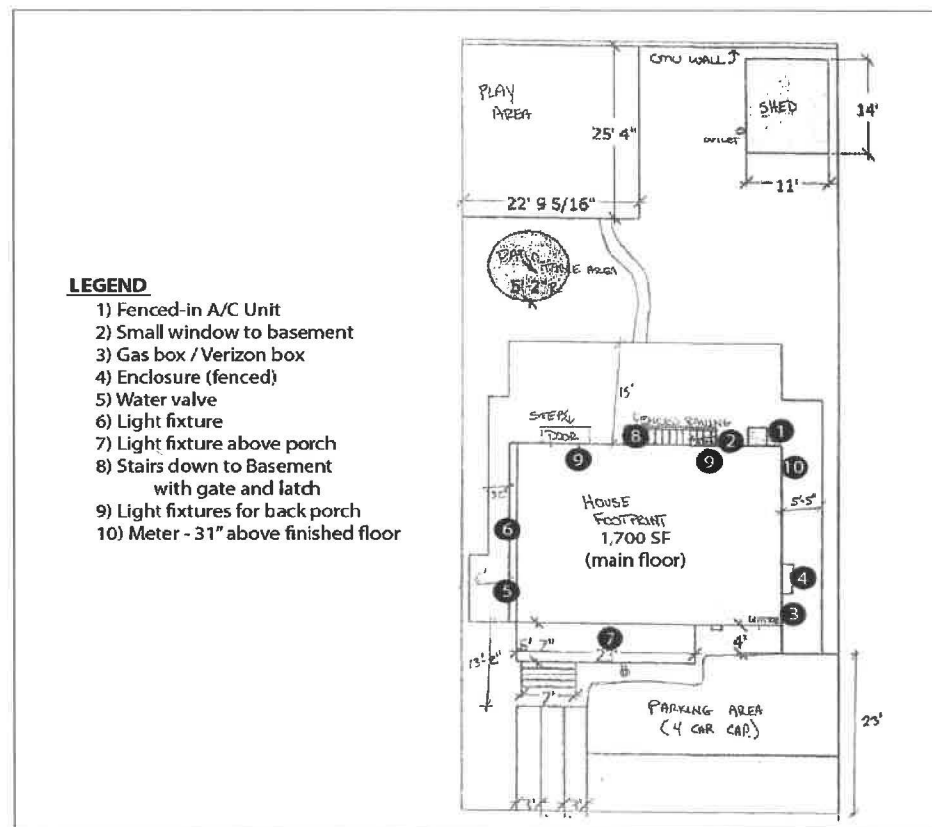


Figure 3: Plan view of the Subject Property

The Applicants propose no changes to the existing light fixtures identified on the Site Plan reproduced on page the previous page (Exhibit 16, p. 5). In addition to the light fixtures at the front and rear doors, wall-mounted light fixtures on the house illuminate the side-yard walkways, rear patio and exterior steps to the basement. Staff found that the existing exterior lighting “is residential in character and does not result in excessive illumination onto the neighboring properties.” Exhibit 16, p. 13 . Applicants do not propose any signage for the day care. Exhibit 16, p. 13.

Applicants did not provide a separate landscape plan or identify the existing landscaping on the conditional use Site Plan (Exhibit 16, p. 5). However, Applicant stated in the application that “[t]he property is well landscaped with trees, shrubs, flowers, manicured lawn and outdoor décor/furnishings.” Exhibit 2, p. 11. Staff conducted a site visit on October 19, 2018, and found that the property is well maintained and “expansion of the day care facility will not detract from the residential character of the neighborhood.” Exhibit 16, p. 13.

The existing landscape and fencing on the property are shown below and on the following pages in photographs taken by Staff (Exhibit 16, Attachment 6):



View of the property fronting Douglas Avenue



Backyard view from play area



Outdoor Play area view from patio



Outdoor Play area view from shed

As shown in the photographs on the previous page, mature deciduous trees located on properties abutting the rear property line provides shade and partial screening of the outdoor play area. Additional screening is provided by the 6' wood privacy on the adjacent property along the property line to the south. Staff found that the perimeter screening is "consistent with the neighborhood character". Exhibit 21 (a).

2. Operations

The day care will operate from Monday through Friday, between 7:00 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. In addition to herself, Applicant expects to have two full-time staff members at the property. Children's ages will range from infant to pre-school. Exhibit 2. Staff confirmed no physical alterations are proposed or required because "the current condition of the residence will support the expansion of additional children." Exhibit 16, p. 7.

Operations were described by Technical Staff (Exhibit 16, p. 7):

The Applicant submitted a staggered schedule for drop-off and pick-up time(s) so parents do not arrive/depart at the same time. Photos of the exterior of the Applicant's residence show the existing parking spaces in the driveway, the outdoor play area and the main entrance to the residence in Figure 6. Noise from the outdoor play area is anticipated when children use it during two scheduled outdoor play times when weather permits outdoor activities. Play times are scheduled during the morning schedule, as well as the afternoon schedule with adult supervision. The Applicant has two non-residential employees and will hire a third non-residential employee if granted approval of the request.²

² Applicant (resident provider) operates the existing day care with her husband (resident co-provider) and one non-resident employee who lives within walking distance to the day care. With the expansion, Applicant "will need to hire 1 additional staff member." Exhibit 2, pp 2-3. Based on the information provided in the application, and having no evidence to the contrary, Applicant is proposing to operate the Group Day Care with a total of two non-residential employees. *Id.*, p. 6.

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.* §5-6.2.1.A. Technical Staff confirmed that there is sufficient on-site parking to accommodate four vehicles. There is also available on-street parking in front of the house. Exhibit 16, p. 8. Staff provided the following photographs shown on the following page of the driveway and available on-street parking in front of the house (Exhibit 16):



Driveway and on-street parking
on Douglas Avenue

The on-site and on-street parking is available for parent drop-off and pick-up. Applicant provided additional details and a proposed parent drop-off and pick-up schedule that will be staggered from 7:10 a.m. to 9:00 a.m. and 4:20 p.m. to 5:30 p.m. which is reproduced on the following page (Exhibit 16, pp. 6-7):

PROPOSED DROPP OFF AND PICK UP

Number of residents in household: 3 Adults, 1 child 13 years old.
 Planned Number of Employee: Provider (resident), 2 Staff Member (40 hours).
 Planned Number of Children Licensed: 12 children.
 Planned Number of Children enrolled: 12 children.
 Planned Hours of operation: 7:00 AM to 5:30 PM, Monday Through Friday.
 Planned Age of children Spots available.
 4 Infants.
 4 Toddlers.
 4 Pre-School ages

Planned Drop-off and Pick up Schedule:

7:00 Owner/provider Clock in.
 7:10 AM Child 1, DROP-OFF.
 7:20 AM Child 2, DROP-OFF.
 7:30 AM Child 3, DROP-OFF.
 7:30 AM Staff Member 1 Clock in.
 7:40 AM Child 4, DROP-OFF.
 7:45 AM Child 5, DROP-OFF.
 8:00 AM Child 6 and 7, DROP-OFFS.
 8:00 AM Child 8, DROP-OFF.
 8:00 AM Staff Member 2 Clock in.
 8:05 AM Child 9, DROP-OFF.
 8:10 AM Child 10, DROP-OFF.
 8:15 AM Child 11, DROP-OFF.
 8:20 AM Child 12, DROP-OFF.

 4:20 PM Child 1, PICK UP.
 4:30 PM Child 2, PICK UP.
 4:40 PM Child 3, PICK UP.
 4:50 PM Child 4, PICK UP.
 4:45 PM Child 5, PICK UP.
 5:00 PM Child 6 and 7, PICK UP.
 5:00 PM Staff member 1 Clock out
 5:20 PM Child 8, PICK UP.
 5:25 PM Child 9 & 10, PICK UP.
 5:30 PM Child 11 & 12, PICK UP.
 5:45 PM Provider and Staff Member 2 Clock out.

As a condition of approval, Staff provided that “the scheduled drop-off and pick-ups must be limited to two [vehicles] per every 15- minute period, as opposed to the four proposed in the Transportation Statement.” Exhibit 16, p. 10. Applicant expects two families with siblings for a total of 4 children will enroll in the day care and that none of the staff will take a bus or carpool. *Id.*

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. This condition is listed in Part IV of this Report and Decision.

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:³

E. Necessary Findings

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

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

Conclusion: Technical Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 16, p. 11. 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*

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.

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 to 12 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 16, pp. 11-15; Exhibit 21(a)), 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 *1989 Master Plan for the Communities of Kensington-Wheaton* (Master Plan or Plan). The Master Plan does not specifically discuss the subject site, but an objective noted in the Community Facilities section of the Plan is “[t]o promote greater child day care . . . opportunities through appropriate land use recommendations and policies.” (*Plan*, p. 36). As explained by Technical Staff (Exhibit 16, p. 9):

The Master Plan describes that the majority of child day care services are provided by private family day care providers and group day care center operators. One of the Master Plan’s policies is to “Support efforts to utilize County zoning and development plan review processes to promote greater day care opportunities.” (p. 139). Furthermore, the Master Plan cites a 1987 Montgomery County Planning Board study which, “... suggested that none of the small-child care centers serving 7-20 children that were studied had a significant negative impact on the surrounding residential community” (p. 139).

Based on the language in the Master Plan, Staff believes that the proposed Group Day Care facility is consistent with the objectives of the Master Plan since it will

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).

increase the number of child day care facilities near major employment and commercial developments in the area.

The Master Plan also recommends the continuation of the R-60 Zone for the subject site (Plan, p. 69), which permits group day care centers by conditional use. Technical Staff explains (Exhibit 16, p. 9):

The Subject Property is [located] within a predominately low-density residential development, but the neighborhoods surrounding the Metro core are a mixture of residential of varying types which include single-family detached units and townhouses. The Plan recommends retaining the current zoning and preserving the [residential character of the neighborhoods] while strengthening them as desirable places to live.

The Applicant's proposal conforms to the general recommendations, goals and highlights of the Master Plan because it represents a continuation of the use of the house as a primary residence with a conditional use for a day care center.

The Hearing Examiner agrees with Staff that the proposed conditional use for a group day care facility is consistent with the objectives of the Master Plan since it will increase the number of child day care facilities near major employment and commercial developments in the plan area. Further, the proposed expansion of the existing Family Day Care into a Group Day Care 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 day care roster. 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 *1989 Master Plan for the Communities of Kensington-Wheaton*.

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 16, p. 13):

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

The existing day care is located in an existing 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. It 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 the perimeter screening, which includes a 4' chain link fence, a 2' concrete retaining wall along the rear property line, and existing landscaping (i.e., trees, shrubs, flowers, and plants), is consistent with the residential character of the neighborhood. The 6' wood stockade fence on the property along the south property line provides partial screening of the outdoor play area. Outdoor play time will be limited to one hour in the morning and one hour in the afternoon. 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 employee.

The Hearing Examiner agrees with Staff, and with the conditions listed in Part IV of the Report and Decision, the Hearing Examiner finds that the proposed use is harmonious with and does not alter the residential character of the surrounding area.

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: Staff reports that “[t]here are no other known conditional uses in the Staff-defined neighborhood.” Exhibit 16, p. 13. As previously 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.

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 16, p. 13. 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 the subject property “is served by adequate public services and facilities....” *Id.*

Based on a review of Applicant’s Transportation Statement (Exhibit 2(f)), Technical Staff did not find the proposed use would have significant impacts on the transportation facilities. Technical Staff explained (Exhibit 16, p. 10):

Parking and Drop-Off/Pick-up

Parent drop-off and pick-up schedule is proposed to operate at the existing driveway and on-street parking spaces. The scheduled parental drop-off and pick-ups must be limited to two per every 15-minute period as opposed to the four proposed in the Transportation Statement. As previously stated, the Property contains four off-street parking spaces, and additional parking is permitted and available on Douglas Avenue.

Local Area Transportation Review

Under the 2016-2020 Subdivision Staging Policy, a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the proposed day care center generates fewer than 50 person-trips during the weekday both AM and PM peak hours of the adjacent street. The LATR test parameter is total peak-hour person trips and not vehicular peak-hour trips. Person trips include all travel modes – vehicular, transit, walking, and bicycle trips.

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 16, p. 2. 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 that 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 is not subject to LATR Review.

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.

Technical 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) drop-off and pick-up areas; (3) outdoor play areas; (4) noise generated by children; (5) the parking area on Douglas Avenue; and (6) lighting. Exhibit 16, p. 14.

Staff concluded that the conditional use as proposed will have no non-inherent adverse impacts. Staff explained the inherent impacts of the proposed conditional use as follows (Exhibit 16, p. 14):

As described in the transportation analysis of this report, the proposal will not significantly impact traffic in the neighborhood. The existing driveway and on-street parking spaces will provide adequate drop-off and pick-up opportunities to the Site. No additional play equipment in the outdoor play area or an expansion of the existing play area is proposed. Outdoor play activity times are scheduled twice a day with one outdoor activity time scheduled for the morning, and another for the afternoon. Noise generated from the outdoor activity times will be limited to two times daily, with adult supervision. No letters of opposition from residents inside the Staff-defined neighborhood have been received. The drop-off and pick-up times will be limited and staggered with no more than two vehicles at the Property in a fifteen-minute interval during these designated times, so that parents do not all arrive/depart at the same time. The existing lighting will not be altered and is appropriate for a residential use and day care facility of this size.

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 can operate safely and 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 §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 which is reproduced on the following page (Exhibit 16, p. 11):

Development Standards	Required/Permitted	Proposed
Minimum Lot Area: (Section 59.4.4.9.B.1)	6,000 SF	6,531 SF
Maximum Density (Section 59.4.4.9.B.1)	1.63 units (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.9.B.1)	35 percent	Less than 35 percent

Minimum Front Setback (Section 59.4.4.9.B.2)	25 feet	50 feet
Minimum Side Street Setback (Section 59.4.4.9.B.2)	25 feet	Greater than 25 feet
Minimum Side Setback (Section 59.4.4.9.B.2)	8 feet	8 feet
Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)	18 feet	18 feet
Minimum Rear Setbacks	20 feet	20 feet
Maximum Height	35 feet	20 feet

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.

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 has one child living in the home who is 13 years old. Accordingly, Applicant's child will not be counted towards the maximum of 12 children allowed for the proposed 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 a townhouse or duplex; it is a detached, single-family home;
- ii) The Applicant is the provider and a resident;
- iii) No more than three non-resident staff members will be on-site at any time; and
- iv) The subject site is not located in the AR Zone.

Furthermore, as discussed in Part III.A., above, the 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.⁵

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:

Development Standards	Required/Permitted	Proposed
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 2 (2 non-resident employees) Dwelling: 2 On-street parking allowed	Day care: 2 Dwelling: 2 (4 spaces on driveway)
Bicycle Parking Requirement (Section 59.6.2.4.C)	Group Day Care: 1 Long-term	Group Day Care: 1 (in rear shed)

Applicant expects to hire two full-time employees. Exhibit 2(f). Staff advises that parking requirements for the proposed use are satisfied because the “[p]roperty contains four off-street parking spaces, and additional on-street parking is permitted and available on Douglas Avenue.” Exhibit 16, pp. 8, 10. Staff further found “[t]he existing driveway and on-street parking spaces will provide adequate drop-off and pick-up opportunities to the site.” Exhibit 16, p. 14. There is

⁵ 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.

adequate space in the existing shed located in the rear yard to accommodate long-term storage for one bicycle.

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 long-term bicycle storage, 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 and rear doors and wall-mounted exterior lights on both sides and rear of the house. Staff found the existing lighting “is residential in character and does not cause result in excessive illumination onto the neighboring properties.” Exhibit 16, p. 13. Based on this record, the Hearing Examiner finds that the existing lighting is compliant with the requirements of Division 6.4, regarding lighting.

b. Site Screening and Landscaping

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. . .”

Based on a site visit to the property, Staff found “[t]he Applicant’s residence has a well-maintained exterior appearance and the expansion of the day care facility will not detract from the residential character of the neighborhood.” Exhibit 16, p. 13. Staff further found “the perimeter screening [is] consistent with the [residential] neighborhood character.” Exhibit 21(a). No exterior alterations are proposed.

As shown in the photographs taken by Staff and reproduced in Part II.C.1 of this Report and Decision, the Hearing Examiner agrees with Staff that the existing landscaping and the perimeter screening for the property is compatible with the residential character of the neighborhood. The front and rear yards are attractively landscaped with trees, shrubs, flowers and plants. Exhibit 21 (a). The rear yard is enclosed with a 4’ chain link fence and a 2’ retaining wall along the rear property line. The outdoor play area is located in the southwest rear corner of the property which is at a slightly lower elevation than the properties to the rear. The mature deciduous trees on the properties to the rear provide shade and partial screening of the play area. The 6’ wood stockade privacy located on the neighboring property to the south provides additional screening of the outdoor play area.

Based on this record, the Hearing Examiner finds that the 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


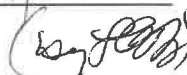
As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance. This is not an application to establish a new child care facility on the subject site; rather, it is an application to add 4 children to an already functioning child 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 Norma and Jose Caceres (CU 19-02), 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 their home at 10712 Douglas Avenue, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The day care facility is limited to up to twelve children, two resident employees, and two non-resident employees.
2. The hours of operation are limited to Monday through Friday from 7:00 a.m. to 5:30 p.m.
3. Outside play time may is limited to one hour in the morning, no earlier than 9:00 a.m., and one hour in the afternoon.

4. 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.
5. The Applicant must not erect a sign on the subject site.
6. The Applicant must provide one long-term bicycle storage space on site.
7. 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.
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, on a daily basis.
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 31st day of January 2019.


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:

Norma and Jose Caceres, Applicants
Charles Frederick, Esquire, Associate County Attorney
Barbara Jay, Executive Director Montgomery County Board of Appeals
Garry Meus, Planning Department
Diane Schwartz-Jones, Director, Department of Permitting Services
Greg Nichols, Manager, SPES at DPS
Lori Shirley, Planning Department
Alexandre Espinosa, Director, Finance Department
Washington Suburban Sanitary Commission
State Highway Administration
Montgomery County Public Schools
Abutting and Confronting Property Owners
(or a condominium's council of unit owners or renters, if applicable)
Civic Renters' and Homeowners' Associations within a half mile of the site

Any Municipality within a half mile of the site
Ehsan Motazed, Department of Permitting Services