

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

IN THE MATTER OF:
ISAAC M. LOPEZ

Applicant

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OZAH Case No. 21-02

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On July 28, 2020, Isaac M. Lopez ("Lopez" or "Applicant") filed an application seeking a conditional use to establish a Group Daycare for up to 12 children under section 59.3.4.4.D of the Zoning Ordinance. The application proposes to increase the capacity of the existing Family Daycare (up to 8 persons) to a Group Daycare (9-12 persons). The property is located at 12917 Parkland Drive, in Rockville, Maryland, and is zoned R-60.

On October 13, 2020, OZAH issued a Notice of Public Hearing scheduling this matter for a hearing on November 20, 2020.

On October 26, 2020, Planning Staff issued its report recommending approval of the application with conditions. Exhibit 26. The Planning Board subsequently approved the project by unanimous vote on November 5, 2020. The conditions recommended by Planning Staff and affirmed by the Board were as follows (Exhibit 26, p. 2):

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees;
2. The hours of operation are limited to Monday through Friday, 7:00 A.M. to 6:00 P.M.;
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period;
4. No more than eight (8) children may play outside at any one time;
5. Outside play time may not occur prior to 9:00 A.M.;
6. Signage must comply with Section 59-6.7.8. or the Applicant must gain approval of a Sign Variance.

The public hearing proceeded as scheduled on November 20, 2020. The applicant, Mr. Isaac M. Lopez, his wife, Ms. Sandra Medrano, the operator of the proposed Group Daycare, testified in support of the application with the support of a certified Spanish language interpreter, Mr. Mario Panameno. The record was left open for ten (10) days following the conclusion of testimony and no further comments were received.

After a thorough review of the record in this case, including all documents and testimony, the Hearing Examiner approves the conditional use with the conditions included in Part IV of this Report for the following reasons.

II. FACTUAL BACKGROUND

A. The Subject Property

Technical Staff ("Staff") provided the following description of the subject property in their report on page 2:

"The Subject Property (Property or Site) is located at 12917 Parkland Drive in Rockville, otherwise known as Lot 13, Block 10 of the Wheaton Woods Subdivision. The Property contains a detached house (Figures 1-3) in which the Applicant resides and operates an eight-child day care facility known as Solecitos Montessori Education at Home Spanish Program. The daycare has been in operation since May 2017 and enrolls children from 3 months to five years old. Presently, the Applicant's two-year old son is one of the eight children that attend the day care. The 6,264-square-foot lot is located on the east side of Parkland Drive. The Property has a driveway that is approximately 10 feet wide and 36 feet and 10 inches long that has space to park two cars. A sidewalk connects the front door of the house/daycare entrance to Parkland Drive. The house has one LED motion sensor security light next to the front door. The outdoor play area is located in the front yard of the house and is enclosed by a four-foot galvanized steel chain link fence. The play area has an artificial surface with a variety of play equipment. Unrestricted on-street parking is allowed along the east side of Parkland Drive in the vicinity of the Property. On-street parking is prohibited along the west side of Parkland Drive opposite the Property on school days between 8:00 a.m. and 4:00 p.m." Exhibit 26, p. 2.

Figures 1 & 2, depicting the aerial view of the property and showing the front of the existing house with front yard play area, respectively, are shown below on page 5 of this report:

[THIS SPACE IS LEFT BLANK TO ACCOMMODATE FIGURES 1 & 2 BELOW]



Figure 1 – Aerial view of the subject Property



*Figure 2 – Existing conditions of the subject property,
front view and play area*

B. Surrounding Neighborhood

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

Staff defines the neighborhood as being bounded by Grenoble Drive to the north and east; Turkey Branch Parkway and Falcon Street to the south; and Parkland Drive to the west. The entire neighborhood is comprised of detached houses in the R-60 Zone. Staff did not identify any existing, approved conditional uses within this neighborhood. Wheaton Woods Elementary School is located directly across Parkland Drive from this site; however, it is unlikely to be impacted by the proposed daycare expansion. The surrounding neighborhood is shown on Figure 3, below. Exhibit 26, p. 4.

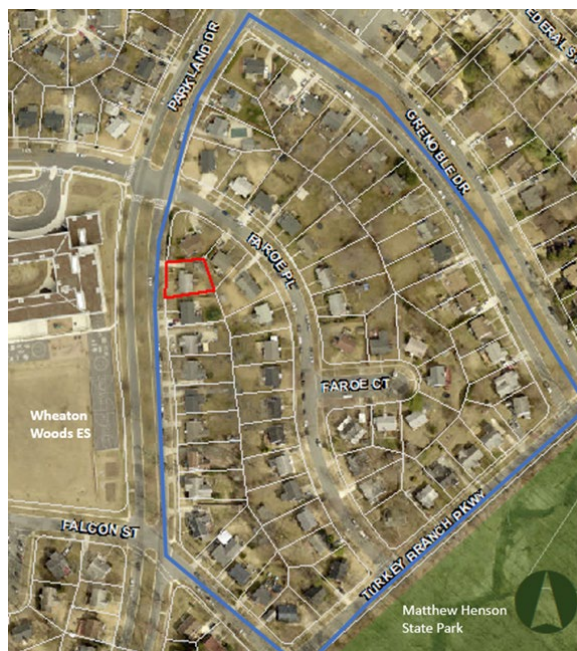


Figure 3 – Surrounding Neighborhood with subject property outlined in red

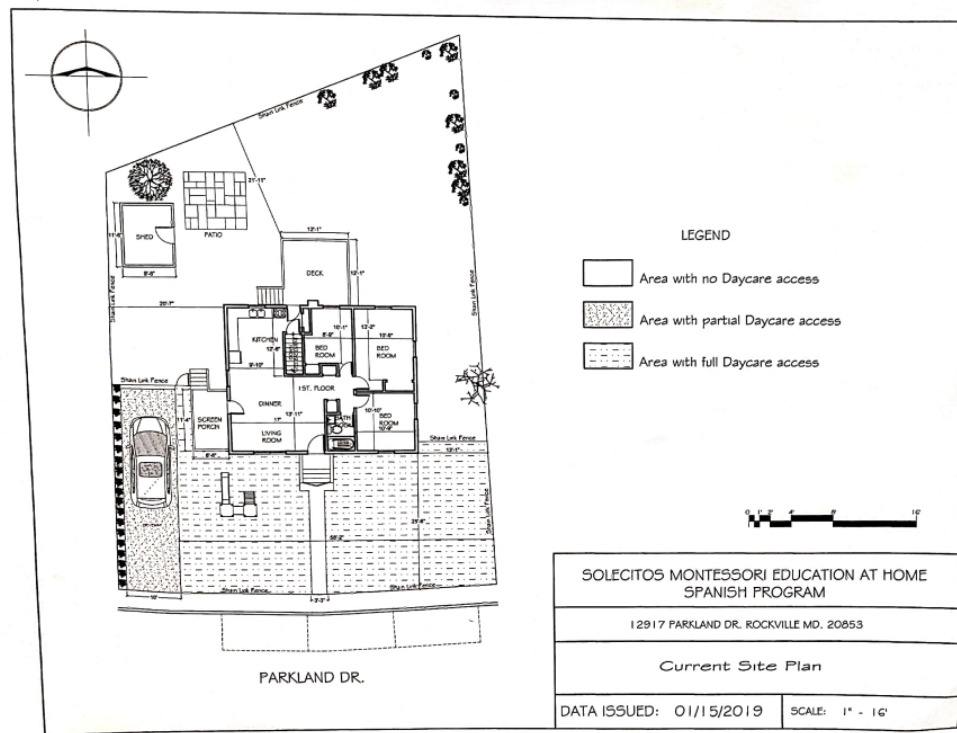
C. Proposed Use

Applicant proposes to expand the existing Family Daycare (up to 8 persons)¹ to a Group Daycare (9-12 persons), serving children ages three months to five years old. There are no structural alterations proposed under this application for the interior or exterior of the building, but space will be made available inside to accommodate the increased capacity. Currently, the majority of the first floor of the premises is used for the daycare operation, while the remaining floors continue as a single-family home. The existing Family Daycare is staffed by the Applicant, his wife, and one non-resident employee. One additional staff person will be hired to accommodate the increased capacity. The hours and pick-up/drop-off times for children will not be altered from current operation; children usually arrive before 9:00 a.m. and are picked-up between 4:45 p.m. and 6:00 p.m. The front yard play area is used for outdoor recreational activities. Morning outdoor time is generally from 11:00 a.m. to 12:00 p.m. and afternoon outdoor time is generally 4:30 p.m. to 5:30 p.m. The proposed parking for this use includes two tandem spaces in the driveway, two on-street spaces along the property frontage, and two on-street spaces in front of the adjacent corner property. Exhibit 5; Exhibit 26, p. 6.

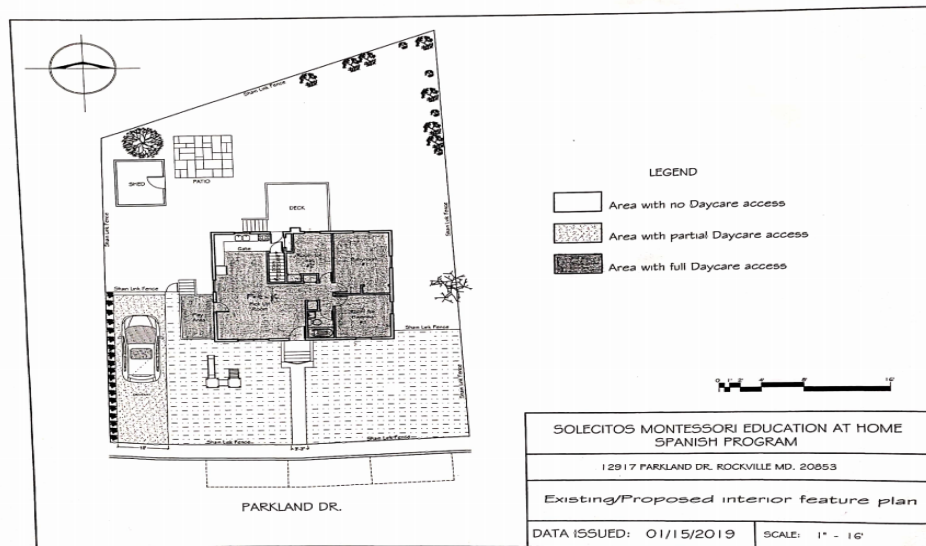
1. Conditional Use Site Plan

The conditional use site plan on page 8 below shows both floors of the existing building with areas indicating where daycare operations will occur.

¹ See Exhibit 16, Certificate of Registration



Conditional Use Site Plan, 1st Floor – Exhibit 28



Conditional Use Site Plan, 2nd Floor – Exhibit 28

2. Operations

a. Staffing.

The Applicant together with his wife and one non-resident staff member currently operate the existing authorized Family Day Care. The Applicant states that one more non-resident staff person will be hired to assist in the operation of the Group Day Care if this application is approved.

b. Amenities.

The existing family day care consists of indoor space within the home for the routine care of young children as well as an outdoor play area in the front yard of the premises, and other outdoor play areas nearby that will be utilized by children and staff.

3. Transportation and Parking

a. Parking & Pick-Up/Droff-Off

Staff opines that Zoning Ordinance 59.6.2.4.B requires that the applicant provide four (4) parking spaces for this conditional use. Applicant is providing four (4) spaces for this use. The existing single-family house has an approximately 40-foot long driveway that can accommodate approximately two-full size vehicles. Exhibit 28. Staff notes that “the existing chain link fence provides a visual cue to parking vehicles about how far one must pull in to avoid obstructing the sidewalk.” Exhibit 26, p. 7. In addition to one vehicle owned by the family residing in the home, one additional vehicle can park in the driveway for pickup/dropoff for the day care operation. *See* parking table on page 10 below:

	Required Spaces	Proposed Spaces
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 2 (1/ non-resident employee) + Dwelling: 2 Total: 4	2 in driveway + 2 spaces along property frontage Total: 4

Parking Table, Exhibit 26, p. 11

The Applicant's unloading and loading statement proposes staggered drop-off and pick-up periods for the two-non-resident staff and 11 non-resident children to reduce parking impacts along neighborhood streets. The proposal follows:

Arrival

- 7:30am – Three (3) children are dropped off
- 8:00am – One (1) staff arrives; two (2) children are dropped off
- 8:30am – Four (4) children are dropped off
- 9:00am – One (1) staff arrives; two (2) children are dropped off

Departure

- 4:45pm – Two (2) children picked up
- 5:00pm – Two (2) children picked up; one (1) staff departs
- 5:30pm – Four (4) children picked up
- 6:00pm – Three (3) children picked-up; one (1) staff departs

Under this schedule, the proposed site will generate 35 morning and evening trips, as shown in

Tables 1 and 2 below:

Person Trips – 35 Total Arrivals						
Time	Child Trip Arrive	Child Trip Depart	Parent Trip Arrive	Parent Trip Depart	Staff Arrive	Staff Depart
7:00am	0	0	0	0	0	0
7:30am	3	0	3	3	0	0
8:00am	2	0	2	2	1	0
8:30am	4	0	4	4	0	0
9:00am	2	0	2	2	1	0
Total	11	0	11	11	2	0

Table 1 – Person Trip Site Arrivals

Exhibit 28, p. 8

Person Trips – 35 Total Departures						
Time	Child Trip Arrive	Child Trip Depart	Parent Trip Arrive	Parent Trip Depart	Staff Arrive	Staff Depart
4:45pm	0	2	2	2	0	0
5:00pm	0	2	2	2	0	1
5:30pm	0	4	4	4	0	0
6:00pm	0	3	3	3	0	1
Total	0	11	11	11	0	2

Table 2 – Person Trip Site Departures

Exhibit 28, p. 8

b. Public Transit Service

Staff notes that the site is within a half mile walk of the Ride On 48 line and the Washington Metropolitan Area Transportation Authority's (WMATA) Q Metrobus series. Exhibit 28, p. 8. The Q Metrobus series traveling primarily on Veirs Mill Road also provides connections between WMATA's Shady Grove Road Metrorail and Silver Spring Metrorail stations. *Id.*

c. Local Area Transportation Review

Staff notes that the Planning Department's Local Area Transportation Review (LATR) Guidelines dictate that a study must be undertaken if a proposal exceeds 49 peak-period weekday trips in either the morning and/or evening. Staff opines that the proposed use does not meet this threshold and therefore no study is required. Additionally, the Applicant notes that some of the existing staff do not use personal vehicles to travel to and from the site, further reducing impacts to the neighborhood.

4. Landscaping and Lighting

a. Landscape Plan

No additional landscaping or screening is proposed under this application. The existing outdoor play area in the property's front yard is bordered with a 4-foot chain link fence, which is similar to fencing in other front and rear yards in the neighborhood. Exhibit 26, p. 11. Wheaton Woods Elementary School is directly across Parkland Drive from the subject property that includes unscreened play areas facing the street

b. Lighting

No additional lighting is proposed under this application. The property maintains residential lighting and there is no indication that lighting will be altered, modified, or enhanced under this conditional use.

D. Environmental Issues

Staff states that the site contains no streams, wetlands or their buffers, or known habitats of rare, threatened, or endangered species. Exhibit 28, p. 8. This application is not subject to Chapter 22A, the Forest Conservation Law, because no clearing or grading activities are proposed on or near the property². *Id.* For these reasons, Staff opines that the proposed Group Day Care is in conformance with Environmental Guidelines.

E. Community Response

OZAH received one letter from a community member in opposition to the requested use. Exhibit 25. That letter indicates concerns regarding trash and property maintenance. The Applicant

² See Exhibit 15, FCP Exemption

responded to those concerns and the Hearing Examiner does not find them relevant to this conditional use review. *See* Exhibits 27(b) – (e).

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 to a use (in Article 59.3 of the Zoning Ordinance) and general (*i.e.*, applicable to all conditional uses, in Division 59.7.3 of the Zoning Ordinance). The specific standards applied in this case are those for a residential care facility for more than sixteen (16) persons. *Montgomery County Zoning Ordinance*, §59.3.3.2.E.2.c. “The appropriate standard to be used in determining whether a requested [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, satisfies all of the specific and general requirements for the use and does not present any adverse effects above and beyond those inherently associated with such a 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 approval, and the Hearing Examiner's findings for each standard, are set forth below.

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;

The proposed conditional use will supersede the existing use of a Family Day Care, a use permitted by right in this R-60 zone. Staff indicate that no previous approvals are relevant to this proposed use, and that no amendments are required. Exhibit 26.

Conclusion:

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;

This subsection reviews the following: (1) development standards of the R-60 Zone (Article 59.4); (2) the specific use standards for a Group Day Care (up to 12 children) (Article 59.3.4.4.D.2); and (3) the development standards for all uses (Article 59.6). The Hearing Examiner addresses these standards in Part III.C, D, and E of this Report.

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

The subject property is located within the 1994 Aspen Hill Master Plan area. The Master Plan does not contain any specific recommendations for this property or use but includes general recommendations that apply to this property including the overall vision of the Master Plan to reinforce the primarily suburban, residential character of the area by retaining residential zoning while seeking to increase opportunities for community interaction (*See Master Plan, p. 1*). Exhibit 26, p. 6. Staff opines that the proposed use is consistent with the general vision of the plan “since it is conducted within a detached house and the existing family day care is already integrated into the neighborhood.” Exhibit 26, p. 6. Staff further states that “The Master Plan supports various

types of childcare facilities within the planning area, particularly facilities that provide care to the youngest children (Master Plan, pp. 171, 193). *Id.* The Master Plan includes guidance with regards to the siting of conditional uses including the following: avoiding excessive concentration of [special exception] conditional uses and other nonresidential land uses along major transportation corridors; protecting major transportation corridors and residential communities from incompatible design of [special exception] conditional uses. Exhibit 26, p. 6.

Staff notes that Parkland Drive is a residential street and not considered a major transportation corridor and this conditional use Group Day Care would be the only conditional use on Parkland Drive within the defined neighborhood. Exhibit 26, p. 7. From the plans submitted, the detached house will retain its residential appearance and exterior elements including the fence and play area are consistent with neighboring properties. Staff opines that the property is an appropriate location for a day care facility and compatible with the neighborhood and, therefore, the proposal is in substantial conformance with the Master Plan.

Conclusion: The Hearing Examiner agrees with Staff that the proposed use substantially conforms to the Plan. The 1994 Aspen Hill Master Plan does not prohibit or otherwise proscribe the use and the proposed conditional use maintains the residential character of both structure and use in compliance with the Plan by providing day care services in the community. Moreover, the use and operation follow the guidance provided under the Master Plan. In sum, the expansion from Family Day Care to Group Day Care will not change the character of the neighborhood and substantially conforms to the recommendations of the 1994 Aspen Hill Master Plan.

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

Conclusion: The Hearing Examiner finds that the proposed use as a Group Day Care will not alter the character of the surrounding neighborhood in a manner inconsistent with the Plan. The structure will maintain its residential character with few to any interior modifications and no proposed modifications to the exterior of the building. The property will be in full conformance to parking standards and other relevant development standards and will have no discernable impact on the character of this residential neighborhood.

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 notes that no other active conditional uses or special exceptions exist in the defined neighborhood. Increasing the number of conditional uses to one – the proposed Group Day Care – will not affect the area adversely or alter the predominantly residential nature of the area.

Conclusion: The Hearing Examiner concurs with Staff approval of this conditional uses does not sufficiently affect the area adversely or alter the predominantly residential 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

The subject property is currently used as a Family Day Care for up to 8 persons and the proposed Group Day Care will increase capacity for up to 12 persons. Staff opines and the Hearing Examiner concurs that this negligible increase in capacity will have no impact on public facilities to service the use or limit adequate public facilities for neighboring properties. *See Exhibit 28, p. 13.*

Conclusion: The Hearing Examiner finds that the use and structure will be served by adequate public services and facilities with no detrimental impact to surrounding properties.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

ii. traffic, noise, odors, dust, illumination, or a lack of parking; or

iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

This standard requires the Hearing Examiner to identify inherent and non-inherent adverse effects of the proposed use on nearby properties and the surrounding area. 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 enough to deny 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.* A conditional use may be denied if it will have non-inherent adverse effects, alone or in combination with inherent effects, that cause “undue” harm to the surrounding neighborhood.

Staff notes the inherent physical and operational characteristics of a Group Day Care facility include the following: (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting. Exhibit 26, p. 13. Adequate parking and drop-off/pick-up areas are available on site and adjacent to the property.

The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use to minimize impacts to the neighborhood. The play area is adequate, and the number of children outside at one time will be limited to no more than eight, with outside play time prohibited prior to 9:00 a.m. The existing lighting on the Site is adequate for the proposal. The existing fixtures are residential in nature and will not intrude on neighboring properties. Staff has determined that the proposal will not have any non-inherent effects at this location. Exhibit 28, p. 13.

Conclusion: The Hearing Examiner finds that the proposed use will not cause undue harm to the character of the surrounding area due to any non-inherent adverse effects, alone or in combination with any inherent effects. This application and the testimony provided at the hearing did not provide any facts to cause the Hearing Examiner to conclude the Group Day Care proposed would have any material adverse impact on the property or neighboring properties. Several conditions of approval stated at the conclusion of this report and recommendation are intended to mitigate the inherent adverse impacts of this use in the community.

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.

The application does not propose any interior or exterior modifications to the existing single-family home.

Conclusion: The Hearing Examiner finds the proposed structure to be compatible with the character of this residential neighborhood and will maintain the residential nature of the community.

B. Development Standards of the Zone (R-60)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-60 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff notes in Figure 3 below the development standards in the R-60 zone. Exhibit 26, p. 10.

Development Standard	Required/ Permitted	Proposed
Minimum Lot Area: (Section 59.4.4.9.B.1)	6,000 sq. ft.	6,264 sq. ft.
Minimum Lot Width at Front Building Line (Section 59.4.4.9.B.1)	60 feet	±68 feet
Minimum Lot Width at Front Lot Line (Section 59.4.4.9.B.1)	25 feet	±68 feet
Maximum Density (Section 59.4.4.9.B.1)	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.9.B.1)	35 percent	±15%
Minimum Front Setback (Section 59.4.4.9.B.2)	25 feet	±25.5 feet
Minimum Side Setback (Section 59.4.4.9.B.2)	8 feet	±13 feet
Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)	18 feet	±33.7 feet
Minimum Rear Setback (Section 59.4.4.9.B.2)	20 feet	±34 feet
Maximum Height (Section 59.4.4.9.B.3)	30 feet	±15 feet

**Table 3: Standard
Method Development
Standards in the R-60
Zone**

Staff opines that all development standards have been met or exceeded. *Id.*

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds based on this record that all development standards required in the R-60 zone have been satisfied.

C. Use Standards for Group Day Care (Section 59.3.4.4.D.2)

The specific use standards for approval of a residential care facility, generally, are set out in Section 59.3.4.4.D of the Zoning Ordinance:

- 1. Defined. Group Day Care (9-12) persons mean a Day Care Facility for 9-12 people where staffing, operations, and structures comply with State and local regulations and the provider's own children under the age of 6 are counted towards the maximum number of people allowed**
- 2. Use Standards**
 - a. Where a Group Day Care is allowed as a limited use, it must satisfy the following criteria:**
 - i. The facility must not be located in a townhouse or duplex building type.**
 - ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (See Section 3.4.4.E)**
 - iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.**
 - iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.**

Conclusion: The Hearing Examiner finds that the proposed use as conditioned meets this definition. A condition of approval will require that all operations and personnel must meet and maintain all Federal, State, and County certificates, licensure, and regulatory requirements. Based upon the uncontested record in this case, all other definitional requirements of this provision have been met. The Hearing Examiner further finds as this use is not a limited use in this R-60 zoning district; therefore, the use standards contained under section 59.3.4.4.D.2.a. do not apply.

D. General Development Standards (Article 59.6)

Article 59.6 sets the general requirements for site access, parking, screening, parking lot landscaping, lighting, and signs. The requirements of these sections need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b.

1. Parking Standards

Calculating from Section 59.6.2.4.B of the Zoning Ordinance, the Applicant is required to provide four (4) parking spaces for this conditional use. Applicant is providing four (4) spaces for this use: two (2) in the driveway, and two (2) along the property frontage on Parkland Road. The Hearing Examiner finds that this standard has been satisfied.

2. Site Perimeter Landscaping and Screening

Division 6.4 and 6.5 of the Zoning Ordinance set minimum standards for site landscaping, which are intended to “preserve property values, preserve and strengthen the character of communities, and improve water and air quality.” §59.6.4.1. Section 6.5.2. excludes single-family detached homes from the technical screening requirements of the Zoning Ordinance, provided that the use is compatible with the neighborhood:

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 59.6.5.3.A.1 states that:

Screening is required along a lot line shared with an abutting property that is vacant or improved with an agricultural or residential use.

Section 6.5.3.C.7 sets out specific landscape requirements for conditional uses in Residential Detached Zones. The subject property is within a Residential Detached Zone, R-60, and abuts other properties within the same zone that are improved with residential uses. In its report, Staff does not indicate the need for additional landscaping or screening of this property. Exhibit 26. The Staff Report contains photographs of the property which shows existing landscaping and plantings along three of the property's four boundaries. *Id.* at 3. The Site Plan also indicates plantings on the northern, southern, and eastern property lines. Exhibit 28.

Conclusion: The Hearing Examiner concludes that the screening along property boundaries is compatible with the surrounding area and sufficient screening to mitigate any impact to adjacent lots.

3. Outdoor Lighting

While no additional lighting is proposed under this application, Zoning Ordinance 59.6.4.4.E. requires that:

“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.”

Staff does not indicate that lighting on the property exceeds residential lighting standards and there is no evidence in the record to indicate that additional lighting would be required or beneficial to this property or adjacent lots. The operation of the Group Day Care occurs only during daytime hours when exterior lighting would not be necessary.

Conclusion: From this evidence, the Hearing Examiner finds that the lighting on the property will be at residential levels compatible with the surrounding residential area and adjacent uses.

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. Based on the foregoing findings and conclusions, the Hearing Examiner hereby **GRANTS** the Applicant's request for a conditional use under section 59.3.4.4.D of the Zoning Ordinance to use the subject property as a Group Daycare for up to 12 children at 12917 Parkland Drive in Rockville, Maryland, subject to the following conditions:

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees;
2. The hours of operation are limited to Monday through Friday, 7:00 A.M. to 6:00 P.M.;
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period;
4. No more than eight (8) children may play outside at any one time;
5. Outside play time may not occur prior to 9:00 A.M.;
6. Signage must comply with Section 59-6.7.8. or the Applicant must gain approval of a Sign Variance; and
7. The Applicant and any successors in interest must obtain and satisfy the requirements of all Federal, State, and County licenses, regulations, 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 and any successors in interest 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 29th day of December 2020.



Derek J. Baumgardner
Hearing Examiner

RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

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

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

PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS DURING THE COVID-19 PANDEMIC:

The Board of Appeals website sets forth these procedures for filing documents with the Board:

Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to BOA@montgomerycountymd.gov, and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.

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If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

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/>.

Notification of Decision sent to:

Isaac M. Lopez
Emily Tettelbaum
Barbara Jay, Executive Director, Board of Appeals
James Babb, Treasury Division
Adjoining property owners