

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

IN THE MATTER OF:
RAMINDER KAUR
Applicant

Raminder Kaur
Manpreet Rosy Sodhi
For the Application

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OZAH CASE No. CU 20-03

Before: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On March 10, 2020, the Applicant, Raminder Kaur, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children at 501 Silver Spring Avenue, Silver Spring, Maryland (“Subject Property” or “Property”). Exhibit 1. The subject property is described as Lot 17, Block D of the Blair-Takoma Section Two Subdivision. The property is zoned R-60 and the tax account number is 13-02977061. Exhibit 5. The property is located within the geographic area covered by the *2000 East Silver Spring Master Plan* (“Master Plan” or “Plan”). Applicant co-owns the property with her husband, Singh Gurdarshan (“Owners” or “Owner”). Exhibit 5. Mr. Gurdarshan submitted a letter dated March 3, 2020, consenting to the application and an Affidavit of Compliance dated July 20, 2020. Exhibits 4 and 42.¹ Applicant submitted an Affidavit of Posting dated July 2, 2020.² Exhibit 34.

Applicant is seeking to expand the existing eight-child day care known as “Vibrantots Daycare”, in operation at the property since 2003, to a Group Day Care facility for up to 12 children. Child care facilities for up to 12 children must be approved by conditional use under §59-3.4.4.D and §59-7.3.1. of the Montgomery County Zoning Ordinance.³

On May 20, 2020, the Office of Zoning and Administrative Hearings (“OZAH”) sent notice of a public hearing to be held on July 6, 2020. Exhibit 25. Technical Staff of the Montgomery County Planning Department (“Technical Staff” or “Staff”) issued a report on May 22, 2020, recommending approval of the application with conditions. Exhibit 28. The Planning Board

¹ Mr. Gurdarshan signed and dated both the letter consenting to the application and Affidavit of Compliance, neither of which are notarized. During the hearing Applicant advised that Mr. Gurdarshan was recovering from COVID-19 at home and unable to leave to have the Affidavit of Compliance notarized. Under these circumstances, the Hearing Examiner accepted a copy of Mr. Gurdarshan’s Maryland Driver’s License which was timely received before the record closed on July 24, 2020. Exhibit 42.

² Applicant submitted a copy of her Maryland Driver’s License confirming her residency at the subject property.

³ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

(“Board”) met on June 4, 2020, and voted unanimously to recommend approval of the conditional use with the conditions recommended by Staff. Exhibit 29. At the request of the Hearing Examiner in an e-mail dated June 19, 2020, Technical Staff amended the development chart on page 9 of the Staff Report to include the actual site measurements for the property. Exhibits 31 and 32.

The public hearing proceeded as scheduled on July 6, 2020.⁴ Raminder Kaur appeared *pro se* and testified in support of the conditional use application. Applicant appeared with her daughter and Director of the day care, Manpreet Rosy Sodhi, testified on the Applicant’s behalf in support of the application.⁵ Applicant adopted the findings and conclusions of the Staff Report as her own testimony and agreed to abide by the conditions of approval recommended by Staff and imposed by the Hearing Examiner. Tr. 15. Ms. Sodhi identified and confirmed that the site plans and photographs submitted with the application accurately represent the condition of the property as it currently exists. Tr. 11-17. No other witnesses were called. Applicant submitted two letters of support from existing day care clients with the application. Exhibits 18(a)-(b). No other letters of support or opposition were submitted or received into the record.

Ms. Sodhi testified that Applicant is proposing to expand the existing fence to enclose the yard surrounding the house instead of just the front yard as depicted in the hand-drawn site plan submitted with the application (Exhibit 14). Since the hearing was held remotely, Applicant timely submitted a hand-drawn amended site plan showing the location of the proposed expansion of the existing fence on the property (Exhibit 41(a)). The expanded fence will be the same height and

⁴ Due to the COVID-19 pandemic and the Montgomery County Executive’s Orders restricting access to county offices for safety reasons, the public hearing was held remotely via Microsoft Teams. A link and phone number for the public to join the hearing were published on OZAH’s website. Hearing exhibits were also published on OZAH’s website prior to the hearing to permit the public to participate.

⁵ Ms. Sodhi does not reside on the property. Tr. 28. Applicant confirmed that Ms. Sodhi completed the application and took the photographs of the property. Applicant deferred to and agreed with Ms. Sodhi’s testimony regarding the details of the application. Tr. 17.

material as the tallest section of the existing fence along the front (south) and side (west) property lines. Tr. 29-34. Technical Staff reviewed and approved the amended site plan as proposed and advised that the condition of approval (no. 6) related to the existing front yard fence remains applicable to the proposed expansion of the existing fence for the property.⁶ Exhibit 43.

The record was held open for an additional 18 days at the Applicant's request to allow Applicant sufficient time to submit the amended site plan and additional information, documentation and photographs the Hearing Examiner requested at the hearing.⁷ The transcript and the additional documents and photographs requested at the hearing as described below in footnote 6, were timely received and accepted into the record which closed as scheduled on July 24, 2020. Exhibits 36, 37(a)-(c), 38, 39, 40, 41 and 42.

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.

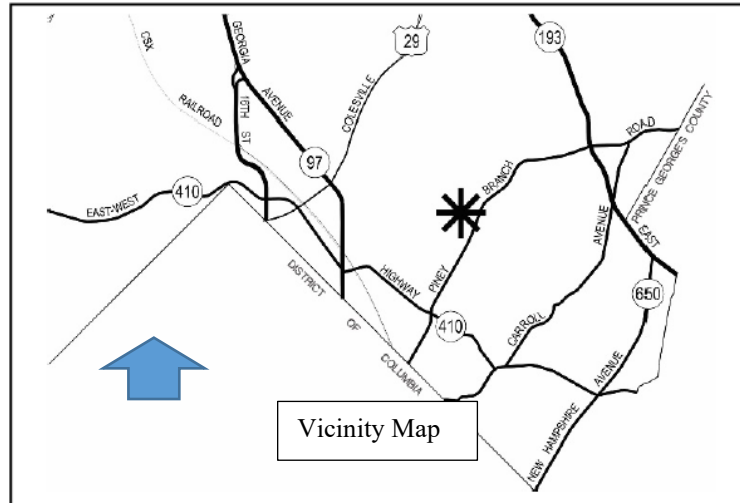
II. FACTUAL BACKGROUND

A. The Subject Property and Vicinity

The subject property is located mid-block on the north side of Silver Spring Avenue which is northwest of the intersection of Silver Spring Avenue and Hartford Avenue to the south in Silver Spring. The general location of the property is shown on the next page on a map taken from the Staff Report (Exhibit 28, p. 1).

⁶ The specific terms of condition of approval no. 6 as stated in the Staff Report (Exhibit 28, p. 2) is stated below on page 14 of this Report and Decision. However, the Hearing Examiner modified the condition of approval to require the expanded fence must match and be the same style, height and material as the existing fence which is discussed in Part II.C.1 and the modified condition of approval is listed in Part IV of this Report and Decision.

⁷ The documents requested included an amended site plan, photographs of the exterior steps to the day care entrance, photographs and dimensions of the interior of the day care, an Affidavit of Compliance from the property co-owner, Singh Gurdarshan, a copy of Applicant's day care license, and a proposed parental agreement for staggered drop-off and pick-up times.



Technical Staff described the property as follows (Exhibit 28, pp. 2-3):

The Subject Property (“Property” or “Site”) is 501 Silver Spring Avenue in Silver Spring, otherwise known as Lot 17, Block D of the Blair-Takoma Two Subdivision. It is improved with a detached house (Figure 1) and the Applicant, who resides on the property, has been operating an eight-child family day care facility on the premises since June 2003 for children aged 18 months to five years. The existing family day care, Vibrantots, occupies the majority of the basement of the house.

The 8,127 square-foot lot is located mid-block on the north side of Silver Spring Avenue. The Property has a driveway that is approximately 16 feet wide and 38 feet long that has space for two cars. A four-foot sidewalk runs along the entire Property frontage on Silver Spring Avenue. A paved walkway connects the front of the home to the day care entrance in the rear of the Property. Immediately adjacent to the house (east side) is a paved, shared-use path that connects Silver Spring Avenue to Thayer Avenue.

The outdoor play area is located in the front yard of the house and is enclosed by fencing of varying heights. The fencing on the west side of the play area is approximately five-and-one-half feet high and to the south and east it is approximately two-and-one-half feet high. The applicant has agreed to obtain a permit for the fence, and to replace the shorter fence segments with panels that match the taller fence in material and height. The enclosed play area is approximately 16 feet wide and 12 feet deep.

Unrestricted on-street parking is allowed on both sides of Silver Spring Avenue in the vicinity of the Property.

Below is an aerial photograph of the property taken from the Staff Report (Exhibit 28, p. 2):

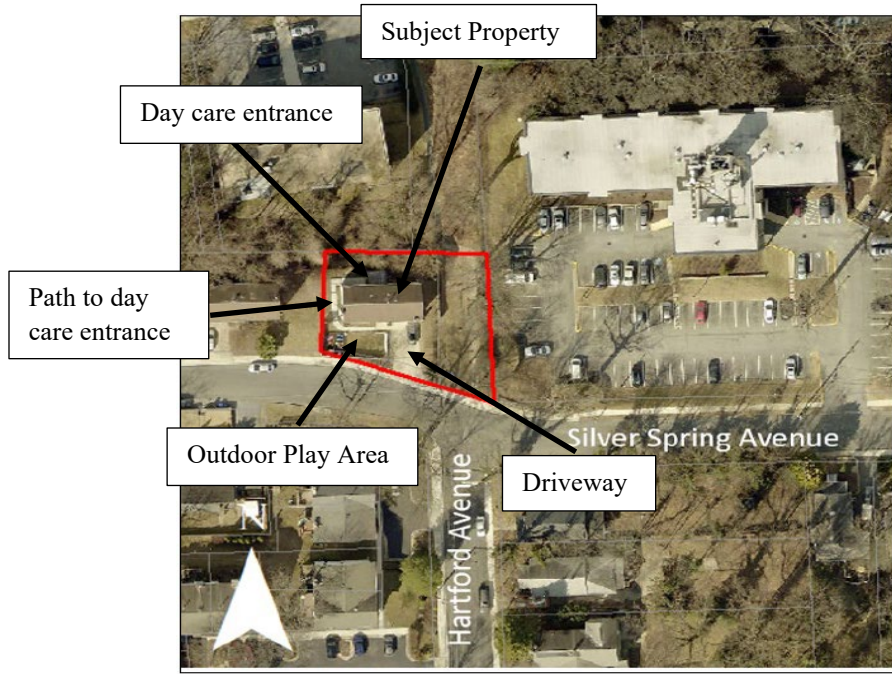


Figure 1: Aerial photo of the Subject Site (outlined in red)

Staff reports that there are five-foot-wide sidewalks on Silver Spring Avenue and along both sides of Hartford Avenue. Both streets are “designated as secondary residential streets with 40-foot wide rights-of-way.” Exhibit 28, p. 6. According to the Maryland State Department of Assessment and Taxation (SDAT) property records, the two-story single-family detached dwelling with an attached garage was built in 1997. The above-grade living area is approximately 1,872 square feet and the finished basement is approximately 650 square feet. Exhibit 5. The lot is relatively flat in the front and slopes down towards the rear property line. The property is located in the R-60 Zone.

The outdoor play area for the day care is located in the front yard which is enclosed with a fence of varying heights and materials and two metal gates. The first gate is located just past the

front door steps and the second gate is at the top of the steps on the northwest corner of the house. The front yard is landscaped with seasonal flower beds and bushes along the front of the house and fence. There is a small tree and a stone path with ground solar lights along the west side of the driveway. There are evergreen bushes along the east side of the driveway and a wood fence installed along the rear (north) property line which extends along the east side of the house. There is porch light at the front door and at the day care entrance. Ms. Sodhi reports that there are solar exterior lights on the west side of the house and on the fence in the rear. Tr. 25.

Photographs of the property from the Staff Report showing front views looking north and west from Silver Spring Avenue are reproduced below (Exhibit 28, pp. 5-6):

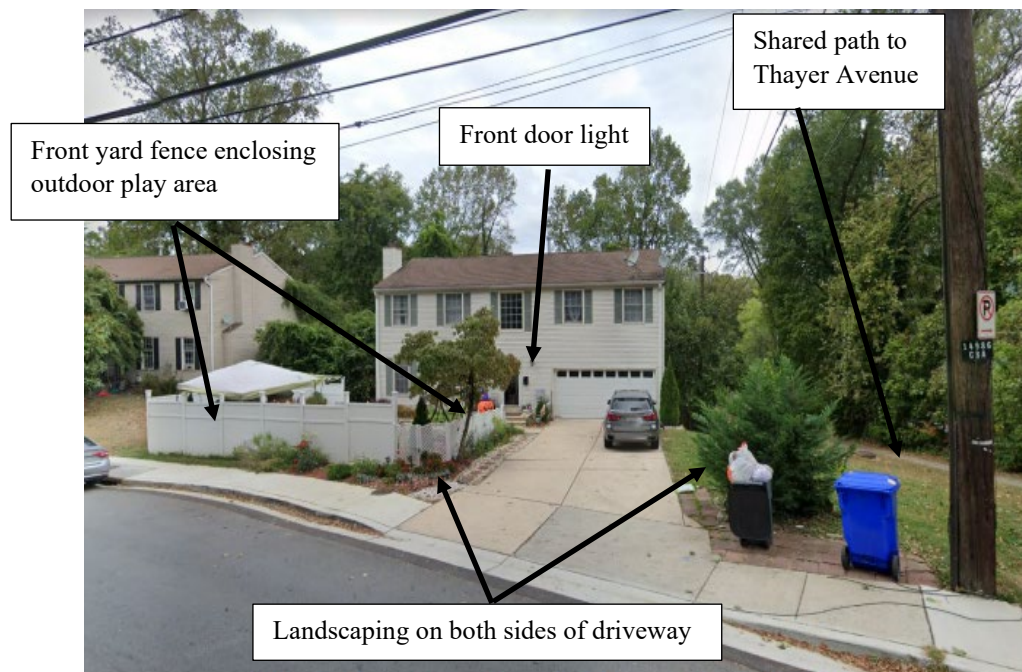


Figure 3: Front view of house, looking north from Silver Spring Avenue

Applicant provided photographs of the concrete steps along the west side of the house (Exhibit 37(a)) and the walkway to the day care entrance located at the rear of the house (Exhibit 37(b)). These photographs are shown on the next page.



The Site Plan for the property (Exhibit 28, Attachment 3) is reproduced below on page of 12 this 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 provided the following description of the neighborhood surrounding the property (Exhibit 28, p. 3):

Neighborhood Description

The Staff defined Neighborhood (outlined in blue in Figure 2) is generally bounded by Thayer Avenue to north; the Sligo Avenue to the south; Piney Branch Road to the east; and by Schrider Street and East Silver Spring Elementary School to the west. The neighborhood is composed of detached houses in the R-60 Zone, mid-rise apartment buildings, neighborhood retail establishments. East Silver Spring Elementary School is located just west of the staff-defined neighborhood.

In addition to this description, the Hearing Examiner notes that mid-rise apartments are located east, north, west and southwest of the property and are zoned R-10 and R-20. Further, to the south of the property along Hartford Avenue to Sligo Avenue is a mix of residential uses including single-family dwellings zoned R-60 on the east side of the street and townhouses zoned RT-12.5 on the west side of the street. The neighborhood retail establishments are located northeast of the property on Piney Branch Road and southwest on Sligo Avenue.

Staff further identified three approved conditional uses/special exceptions located within the defined neighborhood as follows: 1. Charitable Institution (Adventist Community Services) (S692), located at 501 Sligo Avenue; 2. Accessory Apartment (S1288), located at 8119 Hartford Avenue; and 3. Construction and operation of a fast-food restaurant (S1219), located at 8120 Piney Branch Road.

An aerial photograph depicting the boundaries of the surrounding neighborhood (outlined in blue) as defined by Staff is reproduced below. *Id.*

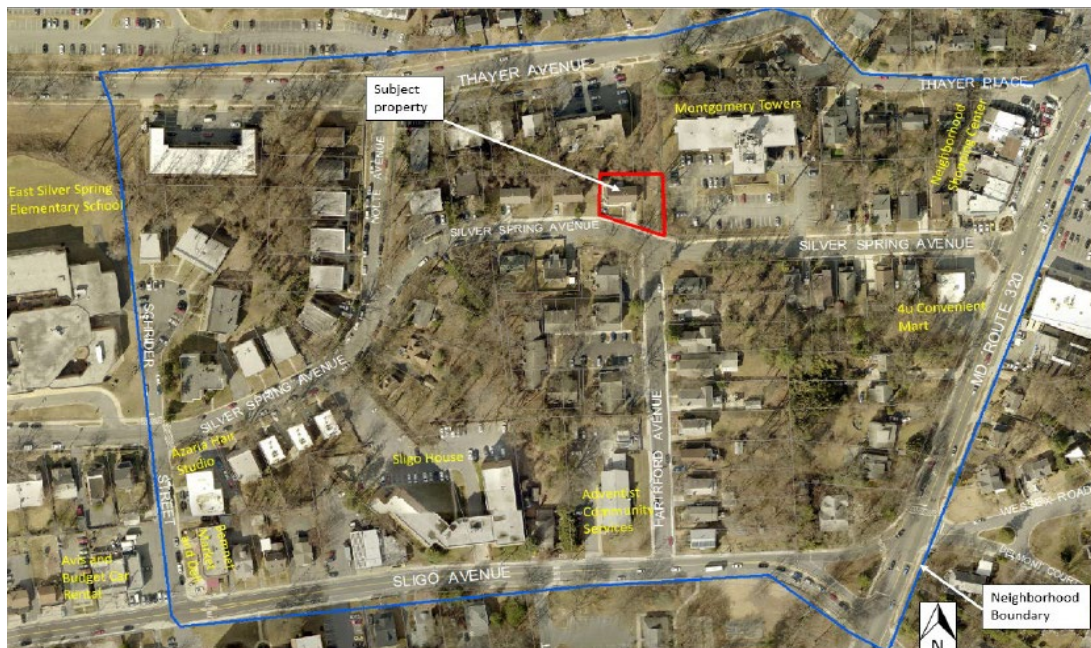


Figure 2: Staff-Defined Neighborhood

The Hearing Examiner agrees with Technical Staff's delineation of the boundaries of the surrounding area as well as its description of the character as a mix of residential and local neighborhood land uses, including single-family detached homes in the R-60 Zone.

C. Proposed Use

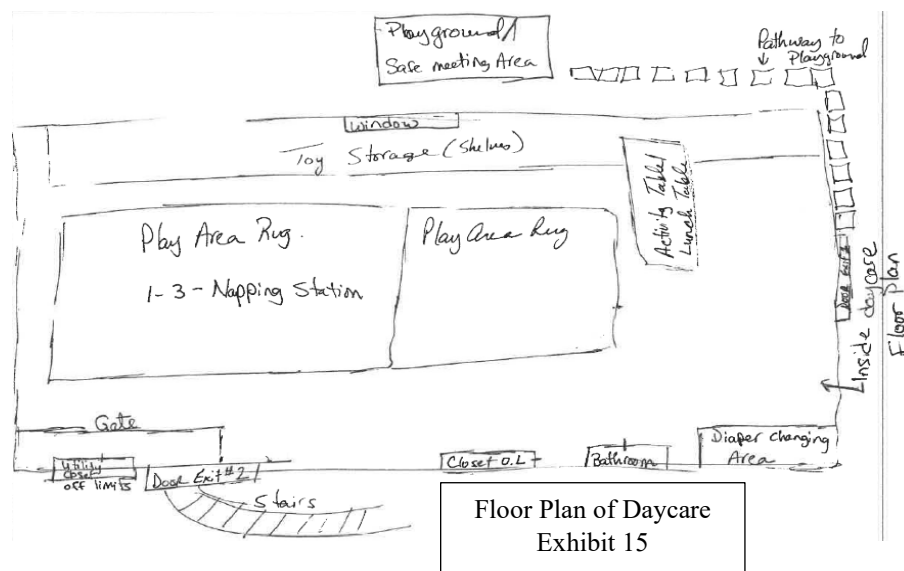
Applicant has operated a licensed Family Day Care known as "Vibrantots Daycare" for up to 8 children under the age of six at her home since 2003. Exhibit 36. The existing day care is

also a part of the Maryland Excels program. Exhibit 7. Applicant is seeking approval of a conditional use to expand the existing eight-child Family Day Care operation into a Group Day Care for up to 12 children. Exhibit 6; Tr. 10. In support of her request, Applicant provided the following information with the application (Exhibit 6):

I, Raminder Kaur, am a resident childcare provider and the owner of Vibrantots Daycare, a licensed family childcare business in a single-family detached home at 501 Silver Spring Ave. Silver Spring, MD 20910. My Additional Adult is Manpreet Sodhi who is the Director of this daycare. We have operated our licensed family childcare since September 2003. We are open Monday through Friday from 7:30 am to 6:00 pm. We have the capacity for eight children whose ages range from 18 months through 5 years old. The childcare is currently operated on the bottom level of the home, in the basement. There is a large space, in which we have areas for children to be able to have story time, playtime, lunch and nap. There is also an attached bathroom for easy access for the kids and teachers.

With the growing demand for high-quality early childhood education day care programs in our immediate area, Vibrantots Daycare would like to expand its capacity to serve more families, or the needs of our existing families. We have received requests and support for increasing our capacity. We have a waitlist with ten families awaiting a response. We continually receive calls and emails from parents requesting for childcare in the area, in addition to inquiries based on recommendations from our current clients who recognize the high-quality educational program we offer.

Applicant provided a hand-drawn floor plan (Exhibit 15):



The Applicant also provided a photograph of the interior of the day care (Exhibit 40)):



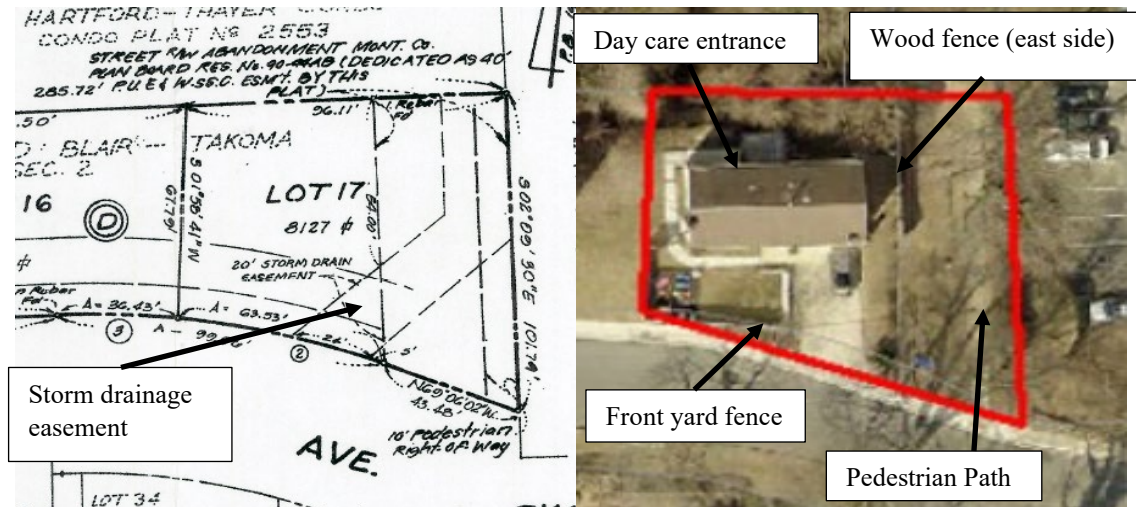
Ms. Sodhi testified that while she did not have the exact measurements for the basement where the day care space is located, she believes it “is well beyond 900 square feet.”⁸ Tr. 21. Pursuant to the Hearing Examiner’s request, Ms. Sodhi stated in an e-mail dated July 8, 2020, that the open space of the day care, not including the bathroom or closet area, is approximately 485.64 square feet. Exhibit 38; Tr. 21-22. Other than the addition of four children to the day care roster, Applicant is not proposing any physical expansion or changes to the interior of the existing day care space. The only physical change to the exterior of the property is the expansion of the existing fence which is fully discussed in the next section.

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

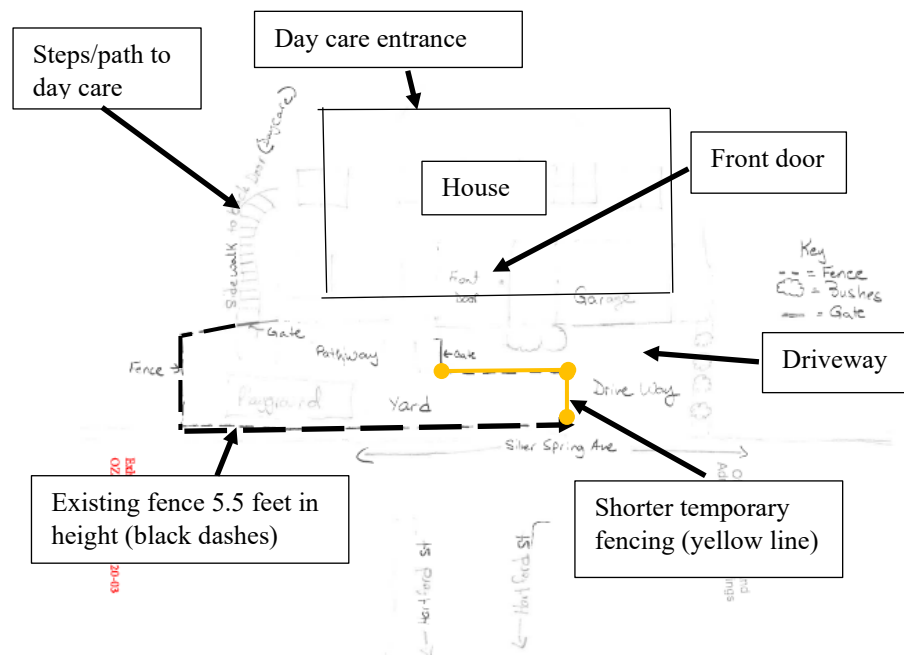
Staff reports that the Applicant was unable to locate the site survey for the property. Exhibit 24. However, the original Site Plan for the lot recorded in 1992 is reproduced on the next page (left photograph). Exhibit 28, Attachment 3. In order to provide a visual of the approximate location of the house, fencing and driveway, the Hearing Examiner cropped the aerial photograph

⁸ The SDAT property records indicate that the finished basement is approximately 650 square feet. Exhibit 5.

of the property (outlined in red) from the Staff Report which is the photograph on the right and shown below (Exhibit 28, p. 2).



Applicant provided a hand-drawn site plan of the property as it currently exists showing the front yard fence enclosing the outdoor play area (reproduced below) (Exhibit 14)⁹:



⁹ The Hearing Examiner outlined the perimeter of the house with a solid black line because the copy of the original hand-drawn site plan was faint. Exhibit 14. Staff reports the fence is located with the storm drainage easement located on the property in the front yard. Exhibit 28, p. 4.

A photograph taken from the Staff Report of the front yard fence of varying heights and materials enclosing the outdoor play area is reproduced below (Exhibit 28, p.5). The existing fence along the front (south) and west side property lines is 5.5 feet in height. The fence along the west side of the driveway is 3.5 feet in height. The gate and section of fence along the front walkway are 2.5 feet in height.

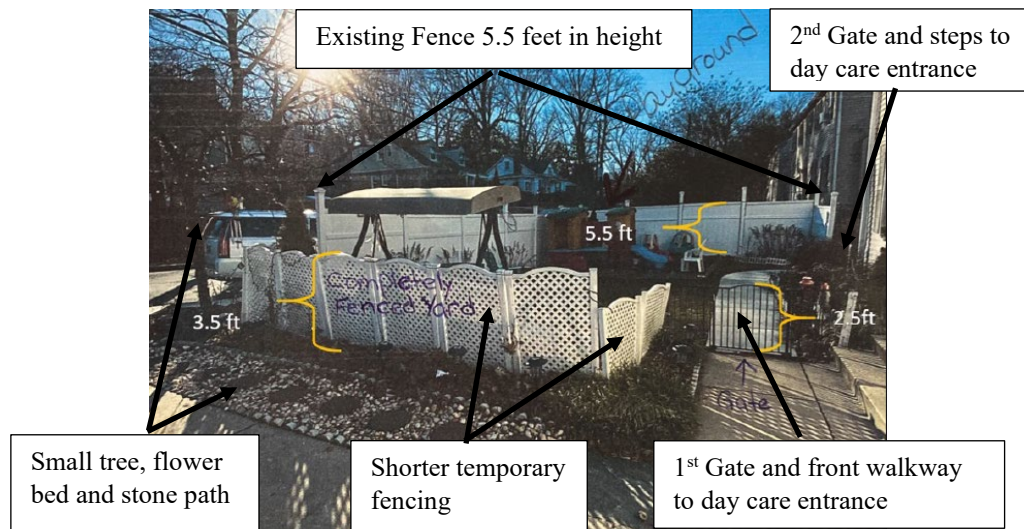


Figure 4: Play Area, looking west

A photograph of the second gate enclosing the front yard fence at the top of the steps on the northwest corner of the house is shown below (Exhibit 17 (d)):

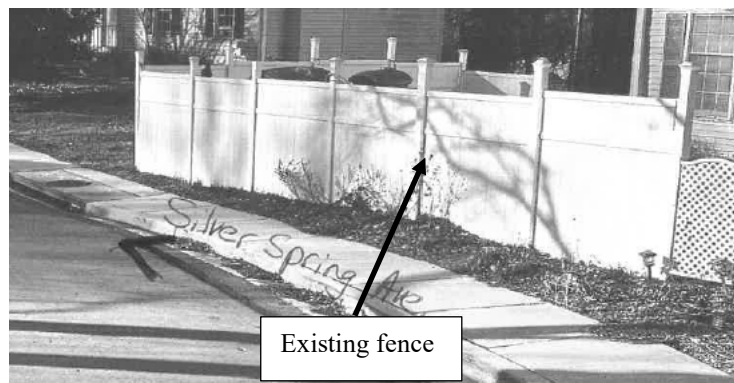


Ms. Sodhi identified the taller sections of the front yard fence that are 5.5 feet in height and located along the front (south) and west side property lines as the “existing fence” which was

installed with an approved fence permit several years ago. Tr. 29-30. Applicant agreed to Staff's condition of approval no. 6 which states (Exhibit 28, p. 2):

The Applicant must obtain a fence permit from the Department of Permitting Services (DPS) for the fence in the front yard. The fence must be consistent in height and material and must meet the Zoning Ordinance design standards for a fence within a residential zone. Due to the location of an existing storm drainage easement in the front yard, the applicant will also need to enter [into] a Revocable Agreement with the County to replace and/or improve the fence in its current location.

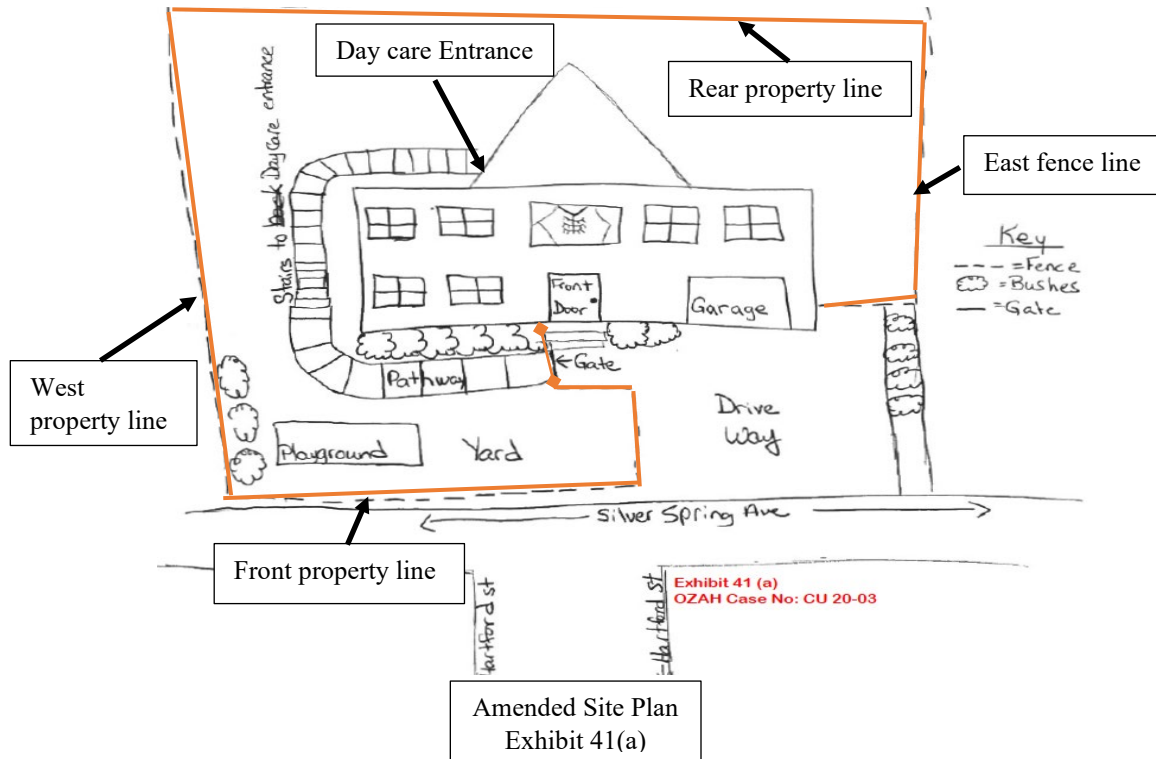
Ms. Sodhi testified that she understood this condition to require the replacement of the shorter sections of fence on the west side of the driveway and along the front walkway with the same type of fence that matches the existing fence. That is, the expanded fence must be the same style, height and material as the existing fence. Tr. 30-31. A photograph of the existing fence along the front and west side property lines submitted with the application is shown below (Exhibit 17(f)):



Staff advised that “[t]he existing fencing in the front yard provides screening between the proposed use and the adjacent homes[.]” Exhibit 28, p. 10. Staff also commented that “[a]n improved fence enclosing the existing play area in the front yard will provide screening and an enhanced aesthetic that will uphold the residential character of the neighborhood.” *Id.*, p. 12.

At the hearing, Ms. Sodhi testified that Applicant is proposing to expand the existing fence to enclose the entire yard surrounding the house instead of just the front yard as originally planned and as described above. Exhibit 14. Applicant submitted an amended hand-drawn site plan

showing the expansion of the existing fence to enclose the yard surrounding the house is shown below (Exhibit 41(a)):



The Hearing Examiner outlined the perimeter of the fence as drawn on the amended site plan with a solid orange line. The fence gate located on the west side of the front door steps is identified with two diamond shapes extending across the pathway to the day care entrance. As drawn, the expanded existing fence appears to follow the property line on all sides except to the east where it appears to be in the same location as the existing wood fence and extends to the northeast corner of the house.¹⁰

Ms. Sodhi testified that the expanded fence will match and be the same height and material as the existing fence previously shown in photographs of the property on page 14 of this Report and Decision. She also testified that the new gate just past the front door steps will be the same

¹⁰ The wood fence can be seen photographs of the property shown above on page 12 (aerial photograph) and below on page 18 (front view of property) of this Report and Decision.

material as the existing fence but may be shorter if permitted by DPS. The existing second fence gate and segment of fence extending to the west property line fence at the top of the steps as well as the shorter sections of fence on the west side of the driveway and along the front walkway will be removed when the existing fence is expanded as proposed. Tr. 29-34.

Technical Staff reviewed and approved the amended site plan as proposed and advised that the condition of approval (no. 6) related to the existing front yard fence remains applicable to the proposed expansion of the existing fence for the property. Exhibit 43. However, in order to ensure the expanded existing fence matches the existing fence as proposed, the Hearing Examiner will modify Staff's condition of approval no. 6 to clearly state that the expanded existing fence as proposed in the amended site plan (Exhibit 41(a)) must match and be the same style, height and material as the existing fence. This condition is listed in Part IV of this Report and Decision.

Applicant did not provide a separate landscaping or lighting plan. However, Applicant identified the location of existing bushes along the front of the house on the east side of the driveway and along the inside of the fence on northwest corner of the front yard near the playground on the amended site plan previously shown on page 15 of this Report and Decision. Photographs of the property, previously reproduced on pages 7 and 13 of this Report and Decision, show a small tree, flower bed and stone pathway on the west side of the driveway and exterior lights at the front door and day care entrance. Ms. Sodhi testified that solar lights on the west side of the house and on the rear fence provide lighting for the concrete steps and walkway to the day care entrance. Tr. 25. No changes to the existing landscape and exterior lighting are proposed.

Technical Staff found that "[t]he existing lighting and landscaping on the Site are adequate for the proposal. The existing lighting fixtures are residential in nature and will not intrude on

neighboring properties.” Exhibit 28, p. 12. Applicant is not proposing any signage for the proposed use.

2. Operations

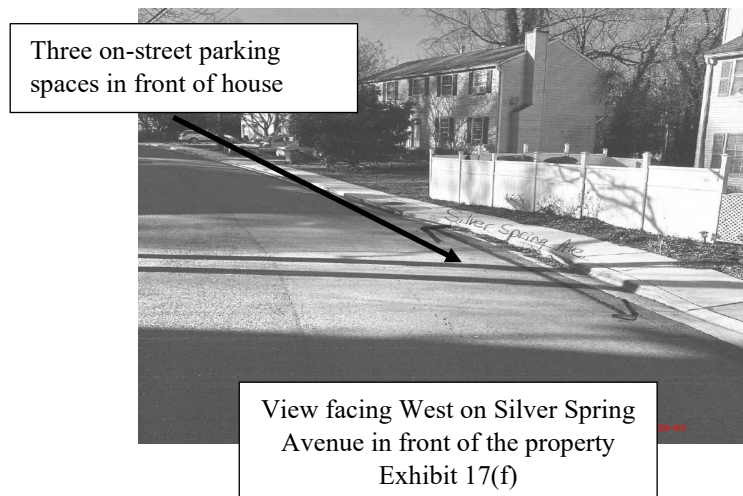
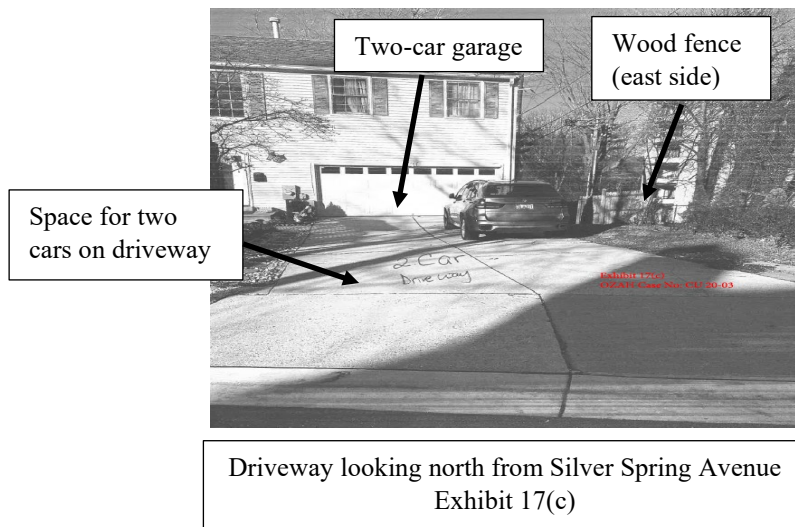
The day care will operate from Monday through Friday, between 7:00 a.m. and 6:00 p.m. on the lower level of the home in the basement and within the outdoor play area located in the front yard of the property. In addition to herself and her daughter, Ms. Sodhi, Applicant expects to hire an additional non-resident employee to staff the day care. Ms. Sodhi does not live on the property. Tr. 28. Children’s ages will range from 18 months to 5 years. Exhibits 6-7. As a condition of approval, outdoor play may not occur before 9:00 a.m. and no more than eight (8) children may play outside at any one time. Further, outdoor play time is limited to a maximum of one hour in the morning and one hour in the afternoon. Applicant agreed to abide by these operational conditions of approval which are stated in the Staff Report (Exhibit 28, p. 2) and included in Part IV of this Report and Decision. Tr. 11 and 14.

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

A total of four spaces are required on-site: two parking spaces for the non-resident full-time employees and two for the residential use. *Zoning Ordinance*, §59-6.2.4. Parking spaces on the street abutting the property may be counted toward the parking requirement. *Id.* §59-6.2.3.A. The property has a two-car garage and a 16’ x 38’ driveway. Technical Staff confirms there is space on the driveway for two vehicles and three on-street parking spaces in front of the property on Silver Spring Avenue. Exhibit 28, p. 9. In the application, Applicant indicated that her husband parks his car in the garage and that the Director of the day care, Ms. Sodhi, will park her car in the

garage as well.¹¹ Exhibit 9. The parents will use the two spaces on the driveway and one of the three on-street parking spaces in front of the house on Silver Spring Avenue for drop-off and pick-up. There is adequate on-street parking in front of the house for the additional one non-resident employee Applicant expects to hire.

Applicant submitted photographs of the driveway (Exhibit 17(c)) and available on-street parking in front of the property on Silver Spring Avenue (Exhibit 17(f)):



¹¹ During the hearing Ms. Sodhi confirmed that she will park her car in the two-car garage. Tr. 28. There is nothing in the record to indicate the Applicant and her husband have more than one car on the premises.

Applicant proposed a parent drop-off and pick-up schedule that will be staggered from 7:00 a.m. to 9:30 a.m. and 4:00 p.m. to 6:00 p.m. which is reproduced on the below (Exhibit 28, Attachment 4).

Proposed Drop-Off AND Pick-Up Schedule

If we are approved for twelve children, my part-time employee (Director) will become full-time and we will hire a teachers Aid. Our daily schedule will continue to be from 7:00 am to 6:00 pm.

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FEB 25 2020

Drop-Off at the center

7:00 am- Owner Clocks in

7:00 am – Director Clocks in

7:00 am to 7:30 am -3 children dropped off

7:30 am – 8:15 am -3 children dropped off

8:30 am – 9:00 am -3 children dropped off

9:00 am –9:30 am -3 Children dropped off

NOTE: Owner will be at home and will not use a parking spot. Owner's husband uses the garage to park his car and the director will use garage upon arrival as well.

Pick-ups

4:00 pm – 3 children picked up

4:30 pm – 3 children picked up

5:00 pm – 3 children picked up

5:30 pm – 6:00 pm 3 children picked up

6:00 pm – owner director clock out

As a condition of approval, Staff provided that “[t]he Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15) minute period.” Exhibit 28, p. 2. To ensure compliance with this condition, the Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times that must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period. Applicant provided a sample parent agreement that will

be used for this purpose. Exhibit 41(b). This condition is listed in Part IV of this Report and Decision.

Applicant has requested, and Staff supports, a waiver of the design specifications in Section 59.6.2.6.A of the Zoning Ordinance required for long-term bicycle parking. Exhibit 28, p. 6. Staff reports that a bicycle can be parked within the fenced yard. *Id.*

D. Community Response

Applicant submitted two letters from parents with children enrolled in the existing day care who fully support the application for a Group Day Care. Both letters cite the excellent quality of care and education provided the children and a desire to be able to enroll their younger children to attend the day care as well. Exhibit 18(a)-(b). 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:¹²

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 applicable previous approvals associated with this site. Exhibit 28, p. 8. Therefore, the Hearing Examiner finds that this standard is inapplicable to the subject application.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;

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

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

¹² Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

Conclusion: The subject property lies within the geographic area covered by the *2000 East Silver Spring Master Plan* (“Master Plan” or “Plan”). Technical Staff discussed the Master Plan, as follows (Exhibit 28, p. 6):

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

The Master Plan recommends retention of R-60 zoning for the majority of the plan area, while recognizing that the Zone allows certain uses in addition to single-family residential that may be non-residential but are considered compatible (page 26).

The existing eight-child family day care has been on the Site for over 15 years, and the proposal is a modest increase for 3 [4] additional children which will not change the character of the neighborhood. The Subject Site is an appropriate location for a day care facility and compatible with the neighborhood. Therefore, the proposal is in substantial conformance with the Master Plan.¹³

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

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

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

* * *

The intent of this Plan is to sustain a livable community of neighborhoods in East Silver Spring by preserving the positive attribute and guiding change so that it strengthens the function, character, and appearance of the area. This Plan

¹³ Applicant is seeking to expand the existing eight-child day care to a Group Day Care for up to 12 children. Exhibit 1.

reconfirms the current zoning, which establishes the permitted density. New development, infill development, redevelopment and special exception uses should be compatible with the existing residential character. As a result, the existing land use pattern should remain essentially the same. Non-residential special exceptions are discouraged in predominantly residential areas to maintain the residential character.

The proposed use is allowed by conditional use in the R-60 Zone. The existing eight child day care has been in operation at the property since 2003 and the Applicant seeks “to expand its capacity to serve more families, or the needs of our existing families.” Exhibit 6. The Hearing Examiner agrees with Staff that the location of the proposed use is compatible with the neighborhood and the addition of 4 children to the existing day care roster will not alter the residential character of the neighborhood. No physical changes to the structure or the interior of the day care are proposed. The only physical change to the property is to expand the existing fence to enclose the yard surrounding the house which is permitted in a residential neighborhood and the expanded fence will match and be the same height and material as the existing fence.

Applicant maintains a waitlist of families seeking to enroll their child or children to attend Vibrantots Day Care. Given that the day care has successfully operated in the same location for the last 15 years, the proposed Group Day Care will continue to provide a valuable local service that supports working families with children who live in the neighborhood. Thus, even with the modest expansion of the day care roster and proposed expansion of the existing fence to enclose the yard surrounding the house, the dwelling will remain a single-family, detached home consistent with the current R-60 zone.

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

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

Conclusion: Technical Staff found that the proposed use meets this standard (Exhibit 28, p. 10):

The proposal is harmonious with, and will not alter the character of the surrounding neighborhood. The only physical changes to the outside of the Property will be a new and improved fence, enclosing the [yard surrounding the house]. Therefore, the proposed expansion of the existing day care will not alter the character of the neighborhood.¹⁴

For the reasons stated in the previous section above, the Hearing Examiner agrees with Staff and finds that the proposed Group Day Care is harmonious with and will not alter the residential character of the neighborhood in a manner inconsistent with the Master Plan. There are no changes proposed to the structure which will remain a single-family detached home. There are no changes proposed to the existing exterior lighting which Staff found is residential in character with no excessive illumination onto neighboring properties.

As previously discussed, the only change proposed to the property is the expansion of the existing fence enclosing the yard surrounding the house. The existing fence was installed with an approved fence permit several years ago. Tr. 29. Staff found the existing fence provides screening of the outdoor play area from the adjacent homes and is residential in character. As a condition of approval, the expanded existing fence as proposed must match and be the same height and material as the existing fence. This condition of approval is listed in Part IV.

Outdoor play time will be limited to one hour in the morning and one hour in the afternoon with a maximum of eight (8) children outside at any time. There is adequate on-site and on-street parking to accommodate the parking needs for the proposed use. Drop-off and pick-up times will

¹⁴ Staff reviewed and approved the amended site plan showing the expansion of the front yard fence to enclose the yard surrounding the house. The amended site plan (Exhibit 41(a)) is shown on page 15 of this Report and Decision.

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 up to two non-resident employees.

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

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;

Conclusion: The existing day care has been operating in an existing single-family dwelling for over 15 years. Technical Staff reports that there are three approved conditional uses/special exceptions located within the Staff-defined neighborhood. They include an accessory apartment, a charitable institution (Adventist Community Services) and fast-food restaurant.

The Hearing Examiner agrees with Technical Staff that “[a]lthough approval of this Application will increase the number of conditional uses in the Staff-defined neighborhood, the proposed day care expansion will not affect the area adversely or alter the area’s predominately residential nature.” Exhibit 28, p. 10. The accessory apartment is a permitted residential use with minimal impact on the neighborhood. Similarly, the other approved conditional uses are located on the outer perimeter of the Staff-defined boundaries along Piney Branch Road (fast-food restaurant) and Sligo Avenue (Adventist Community Services) where other local neighborhood retail and community services are located. The existing dwelling will remain a single-family detached dwelling.

The Hearing Examiner agrees with Staff and finds that the modest expansion of the existing day care to add 4 children to the day care roster will not increase the intensity or scope of conditional uses so as to adversely affect or alter the residential character of the neighborhood. Further, as previously discussed, the Hearing Examiner has found that the proposed use substantially conforms with the recommendations of the Master Plan. Therefore, the Hearing Examiner finds that the proposed use does not alter or adversely affect the residential nature of the area and this standard has been met.

f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Technical Staff reports that the conditional use application does not require approval of a preliminary plan of subdivision. Exhibit 28, p. 11. Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities. By its nature, a small child care facility operating within an existing single-family residence will not ordinarily create significant additional burdens for schools, police and fire

protection, water, sanitary sewer and storm drainage. Further, Technical Staff expressly found that that “[t]here are adequate public services and facilities to serve the proposed use [.]” *Id.*

Technical Staff also explored the impacts on transportation facilities of the proposed use (Exhibit 28, p. 6-7):

Pedestrian Facilities

Five-foot-wide sidewalks connect the Site to both the west and east on Silver Spring Avenue. Five-foot-wide sidewalks are also present on both sides of Hartford Avenue. A few children are expected to be walked to the day care based on the Site’s location within the surrounding residential neighborhood and the Applicant’s past experience with the family day care facility. Immediately east of the house is a three-foot-wide shared-use-path that connects Silver Spring Avenue to Thayer Avenue.

Transit Service

Although no public transit routes operate on Silver Spring Avenue within the vicinity of the Site, four Ride On routes operate on Piney Branch Road (routes 14, 16, 20 and 24), one on Schrider Street (route 20) and one on Thayer Avenue (route 20). Service is available Monday through Friday from 5:00 AM to 1:00 AM Monday through Friday with headways between 15 and 30 minutes. The service hours and headways are similar on Saturdays and Sundays. The bus stop on the south side of Thayer Avenue is easily accessible to the Property via the shared use path connecting Thayer Avenue and Silver Spring Avenue immediately east of the Property.

Local Area Transportation Review

A proposed schedule of drop-off/pick-up and staff arrivals during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and evening peak period (4:00 p.m. to 7:00 p.m.) is included in the Application for Conditional Use. The morning arrival schedule shows up to twelve children dropped off between 7:00 a.m. and 9:30 a.m., and the evening schedule shows up to twelve children picked up between 4:00 [p.m.] and 6:00 [p.m.] Sibling groups will likely reduce the total number of projected vehicle trips. The projected peak-hour morning and evening trips based on the Institute of Transportation Engineers’(ITE) trip generation rates for a group day care with 12 students, and the Policy Area mode split assumptions, are shown in the table below.

Table 1: Estimated Site Trip Generation

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

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

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

Under the *2016-2020 Subdivision Staging Policy*, a transportation study is not required to satisfy the Local Area Transportation Review (LATR) because the proposed group day care generates fewer than 50 person-trips during the weekday 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 28, Attachment 4. The proposed staggered schedule is shown on page 19 of this Report and Decision. To ensure compliance with this condition, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision that the Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times which must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period.

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

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

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

- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use at the proposed location on nearby properties and the general neighborhood. *Inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59.7.3.1.E.1.g. quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a Group Day Care facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed in the context of the subject property and the general neighborhood to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In analyzing potential adverse effects, Technical Staff considered the size, scale, scope, light, noise, traffic and environmental effects of the proposed uses. Staff determined that the

following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Group Day Care facility: (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting. Exhibit 28, p. 11.

Staff concluded that the conditional use as proposed will have no non-inherent adverse impacts. Staff identified and explained the inherent impacts of the proposed conditional use as follows (Exhibit 28, p. 1-12):

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. By limiting the number of children outside at any one time to 8, the expanded daycare will maintain the current operations and will minimize the impact to the surrounding neighborhood.

The existing lighting and landscaping on the Site are adequate for the proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties. The existing fence will be replaced with one that is consistent in height and material. To obtain the necessary fence permits, the applicant will install a fence that is compliant with the Zoning Ordinance, and will reach a Revocable Agreement with the County, as necessary, to be in compliance with all applicable County codes and policies.

By continuing similar operations to the daycare that exists today, scheduling drop-off and pick-up to reduce the impact on the adjacent residential streets, and providing screening of the front outdoor play area that is consistent with the residential character of the neighborhood, staff has determined that the proposal will not have any non-inherent effects at this location.

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

Based on the entire record, the Hearing Examiner finds that the proposed Group Day Care for no more than 12 children, as limited by the conditions imposed in Part IV of this Report and Decision, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in Section §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: The Applicant does not propose any alteration or expansion of the existing structure. The Hearing Examiner finds this standard is not applicable because no construction, reconstruction or alteration to the existing single-family dwelling is proposed.

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 which in this case is the R-60 Zone. Development standards for the R-60 Zone are contained in §59.4.4.9.B of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by in the application in a table included in the Staff Report as amended (Exhibit 32)¹⁵:

¹⁵ The Development Chart in the Staff Report (Exhibit 28, p. 9) was amended at the Hearing Examiner's request to include the actual measurements on the property in the last column titled "Proposed". Exhibit 32. The development chart reproduced on the next page is the updated chart.

Section	Development Standard	Required/ Permitted	Proposed
59.4.4.9.B.1	Minimum Lot Area	6,000 sq. ft.	8,127 sq. ft.
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 feet	± 100 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 feet	± 100 feet
59.4.4.9.B.1	Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
59.4.4.9.B.1	Maximum Lot Coverage	35 percent	± 14%
59.4.4.9.B.2	Minimum Front Setback	25 feet	± 25 feet
59.4.4.9.B.2	Minimum Side Setback	8 feet	± 10 feet
59.4.4.9.B.2	Minimum Sum of Side Setbacks	18 feet	± 50 feet
59.4.4.9.B.2	Minimum Rear Setback	20 feet	± 25 feet
59.4.4.9.B.3	Maximum Height	30 feet	± 28 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 will be required to have staffing, operations, and structures compliant with State and local regulations. By her own testimony, Applicant agreed to abide by the conditions of approval recommended by Staff and imposed by the Hearing Examiner. Tr. 15. The proposed use will allow a maximum of 12 children to attend the group day care.

2. Use Standards

a. Where a Group Day Care (9-12 Persons) is allowed as a limited use, it must satisfy the following standards:

- i. The facility must not be located in a townhouse or duplex building type.*
- ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.E).*
- iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.*
- iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

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

b. Where a Group Day Care (9-12 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use.

Conclusion: The Hearing Examiner finds that all of the limited use standards listed in the preceding paragraph are satisfied in this case, in that:

- i) The facility is not located in a townhouse or duplex; it is in a detached, single-family home;
- ii) The Applicant is the provider and a resident;
- iii) No more than two non-resident staff members will be on-site at any time; and
- iv) The subject site is not located in the AR Zone.

Furthermore, as discussed in Part III.A., above, the application meets the “necessary findings” required by *Zoning Ordinance*, §59.7.3.1.

D. General Development Standards (Article 59.6)

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

1. Site Access Standards

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

60 Zone.

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

Conclusion: The standards for the number of parking spaces required, parking lot design and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. These standards govern the minimum number of spaces, design of on-site parking spaces, parking setbacks, and screening of parking areas. *See, Zoning Ordinance §§6.2.4, 6.2.5, 6.2.9.* The primary parking requirement applicable to this application is the minimum number of spaces required for the use.¹⁶

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., and shown in a chart taken from the Staff Report reproduced on the next page (Exhibit 28, p. 9). Missing from the chart is the additional on-site parking located within the two-car garage. Technical Staff confirms there is space on the 16' x 38' driveway for two vehicles and three on-street parking spaces in front of the property on Silver Spring Avenue. Exhibit 28, p. 9. In the Application, Applicant indicated that her husband parks their car in the garage and leaves for work at 10:30 a.m. Exhibit 9. There is nothing in this record to indicate that there is more than one family car on the property. Ms. Sodhi, the non-resident Director of the day care, testified that

¹⁶ 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 spaces which are provided on the existing driveway and within the two-car garage on the property.

she will park her car in the garage when she is working at the day care. Applicant expects to hire a second non-resident employee. Exhibits 9 and 10; Tr. 28.

Table 3: General Development Requirements- Division 59.6

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Group Day Care: 2 (up to two non-resident employees) Dwelling: 2 Total: 4	2 spaces in driveway 3 spaces along Site frontage on Silver Spring Avenue Total: 5
59.6.2.4.C	Bicycle Parking Requirement	Group Day Care: 1 Long-Term	1 space in fenced front yard (waiver under Section 59.6.2.10)

The Applicant requested a waiver, under Section 59.6.2.10, from the design specifications of Section 59.6.2.6.A for a long-term bicycle parking space which specifies a U-rack under a covered space or a locker or secured room. Secure space to park a bicycle is available in the fenced portion of the west side of the house close to the entrance to the day care. The proposed space, while uncovered and without a permanent U-rack, satisfies the intent of Division 6.2 to ensure safe and efficient bicycle parking. Staff recommends approval of a waiver.

The Hearing Examiner agrees with Staff that there is “[a]dequate parking and drop-off/pick-up areas available on site and adjacent to the Property.” Exhibit 28, p. 11. Considering the two on-site parking spaces within the garage and the two spaces on the driveway, the Hearing Examiner finds that the parking requirements for a total of four on-site parking (2 for the single-family dwelling and 2 for the proposed use) are satisfied.

Applicant requested, and Staff supports, a waiver of the design specifications of Section 59.6.2.6.A of the Zoning Ordinance. Exhibit 28, p. 9. In support of the waiver, Staff advises that there is secure space within the fenced yard to park a bicycle. *Id.* The Hearing Examiner agrees with Staff and finds that Applicant’s request for a waiver is appropriate.

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

3. Site Landscaping, Screening and Lighting

Standards for site lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for landscaping and screening are mainly set forth in Division 6.5.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

Outdoor lighting for a conditional use must be directed, shielded, or screened to ensure that the illumination is 0.1 footcandles or less at any lot line that abuts a lot with a detached house building type, not located in a Commercial/Residential or Employment zone.

Division 6.4 does not apply to existing, unmodified lighting:

Division 6.4 applies to landscaping required under this Chapter, the installation of any new outdoor lighting fixture, and the replacement of any existing outdoor fixture. Replacement of a fixture means to change the fixture type or to change the mounting height or location of the fixture. [Emphasis added.]

Conclusion: No new lighting is planned for this conditional use. The existing exterior lighting includes light fixtures at the front door to the main dwelling and rear door for the day care. Solar lights on the west side of the house and on the rear fence provide lighting for the steps and walkway to the day care entrance. Staff found the “existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.” Exhibit 28, p. 10.

Based on this record, the Hearing Examiner finds that the existing exterior residential lighting is compliant with the requirements of Division 6.4 regarding lighting.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific requirements, the review of site landscaping and screening for conditional uses in single-family detached homes is limited to an assessment of compatibility. Zoning Ordinance §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b., under which the Hearing

Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . . .”

The front yard is landscaped with seasonal flower beds and bushes along the front of the house and inside the fence on the west property line. There is a flower bed, small tree and stone path with ground solar lights along the west side of the driveway and a row of evergreen bushes along the east side of the driveway. No changes to the existing landscaping are proposed or required to accommodate the proposed use. Staff found the existing landscaping adequate for the proposal. Exhibit 28, p. 12.

As previously described in detail in Part II.C.1 of this Report and Decision, Applicant will expand the existing front yard fence to enclose the yard surrounding the house. As a condition of approval, the Applicant must obtain a fence permit from DPS for the expanded existing fence which must match and be the same material and height the existing fence. The expanded existing fence is shown on Applicant’s amended the site plan previously shown on page 14 of this Report and Decision. Ms. Sodhi confirmed that the single-gate on the west side of the front door steps will be the same material as the expanded fence but may be shorter if permitted by DPS. Tr. 29-34. In addition to obtaining the necessary fence permit, the Applicant must enter into a Revocable Agreement with the County before expanding the existing fence as proposed in the amended site plan because the existing fence is located within a storm drainage easement located in the front yard. Exhibit 28, p.2. Applicant must file a copy of the executed Revocable Agreement with the County with OZAH to be included in the official record for CU 20-03. These conditions of approval will be included in Part IV of the Report and Decision.

The Hearing Examiner agrees with Staff that the improved fence “will provide screening and an enhanced aesthetic that will uphold the residential character of the neighborhood.” Exhibit

28, p. 12. The Hearing Examiner finds that with the conditions imposed in Part IV of this Report and Decision, the existing site landscaping and expanded existing fence to be installed as proposed in the amended site plan is residential in character and 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 Raminder Kaur (CU 20-03), for a conditional use under Section 59.3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for up to 12 children at 501 Silver Spring Avenue, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The group day care facility is limited to a maximum of twelve (12) children and up to two non-resident employees.
2. The hours of operation are limited to Monday through Friday from 7:00 a.m. to 6:00 p.m.
3. Outside play time may not occur before 9:00 a.m. and is limited to one hour in the morning and one hour in the afternoon.

4. Outdoor play will be limited to a maximum of eight (8) children at a time.
5. The children must be under the direct supervision of a staff member at all times.
6. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off and picking-up during any 15-minute period. To ensure compliance, Applicant must enter into a written agreement with each parent to specify assigned arrival and departure times that must be staggered so that a maximum of two vehicles enter and exit the site during any 15-minute period.
7. The Applicant must not erect a sign on the subject site.
8. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Group Day Care for children, and must correct any deficiencies found in any government inspection.
9. The Applicant must not use a public address system of any kind outside the building and must not allow any amplified music to be played outside the building.
10. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
11. The Applicant must obtain a fence permit from the Department of Permitting Services (DPS) to expand the existing fence to enclose the yard around the house as proposed in the amended site plan (Exhibit 41(a)). The expanded existing fence must match and be the same style, height and material as the existing fence currently installed on the front (south) and side (west) property lines and must meet the Zoning Ordinance design standards for a fence within a residential zone. Due to the location of an existing storm drainage easement in the front yard, the Applicant will also need to enter into a Revocable Agreement with the County to expand the existing fence in its current location. Applicant must file a copy of the executed Revocable Agreement with the County with the Office of Zoning and Administrative Hearings to be included in the official record for CU 20-03.
12. 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 24th day of August, 2020.



Tammy J. CitaraManis
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

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:

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.

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 TO BE SENT TO:

Raminder Kaur, Applicant

Katherine Mencarini, MNCPPC

Charles Frederick, Esquire, Associate County Attorney

Director, Department of Permitting Services, Greg Nichols, Manager, SPES at DPS

Michael Coveyou, Director, Finance Department

Barbara Jay, Executive Director, Board of Appeals

Washington Suburban Sanitary Commission

Montgomery County Public Schools