

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

**IN THE MATTER OF:**  
**GABRIELA GUEORGUIEVA**

Applicant

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OZAH Case No. 21-10

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Before:       Derek J. Baumgardner, Hearing Examiner

**HEARING EXAMINER'S REPORT AND DECISION**

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## **I. STATEMENT OF THE CASE**

On June 17, 2022, Gabriela Gueorguieva (“Ms. Gueorguieva” 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. Exhibit 1. 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 14731 Myer Terrace, in Rockville, Maryland, and is located in an R-90 zone.

On September 7, 2021, OZAH issued a Notice of Public Hearing scheduling this matter for a hearing on October 11, 2021. Exhibit 15.

On September 16, 2021, Planning Staff issued its report recommending approval of the application with conditions. Exhibit 17. The Planning Board subsequently recommended approval of the application by unanimous vote on September 30, 2021, and issued a letter recommending same on October 5, 2021. The conditions recommended by Planning Staff and affirmed by the Planning Board were as follows (Exhibit 17, 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, 7:30 a.m. to 5:30 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.

The public hearing proceeded as scheduled on October 11, 2021. The applicant, Ms. Gueorguieva, testified in support of the application. The record was left open for ten (10) days following the conclusion of testimony. T. 23. 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 3:

The Subject Property (Property or Site) is 14731 Myer Terrace, Rockville, otherwise known as Lot 25, Block 19, (Plat #7622, 1964). It is improved with a detached house (Figure 1) and three-car driveway. The Applicant has been operating a Family Day Care (up to 8 persons), for two-year-old children through five-year-old children, for approximately two years. The existing Family Day Care (up to 8 children) use occupies the lower level of the house and is a permitted use in the R-90 zone. The 10,558-square foot lot is located on the northeastern terminal cul- de-sac of Myer Terrace.

The existing Family Day Care is accessed via the rear door of the house that opens into the daycare area. People dropping off children may park on the street and walk with their child up the driveway, or park on the driveway itself and use a path leading to the rear of the property.

The rear yard of the house is partially enclosed by a combination of fencing and landscaping. There is fencing along the eastern and southern property lines and heavy landscaping along the western property line. The outdoor play area is located in the rear yard and separated from adjoining properties by landscaping and fencing.

Unrestricted on-street parking is allowed on both sides of Myer Terrace and three parking spaces are provided on the Subject Property.

Figures 1, shown below, depicts an aerial view of the property. Exhibit 17, p. 3.

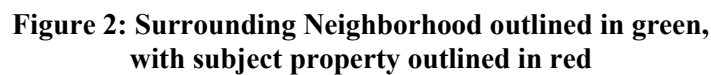


**Figure 1: Aerial view of the subject Property**

## **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 Norbeck Road (MD 28) to the north, Bel Pre Road to the northeast, Arctic Avenue to the southeast, Bauer Drive to the south, and Nadine Drive to the west. Exhibit 17, p. 4. The surrounding neighborhood is comprised entirely of single-family detached residential houses with one approved special exception (No. S1154) located at 5000 Norbeck Road (accessory apartment). *Id.* Staff notes that the neighborhood is bordered by Lucy Barnsley Elementary School to the west. *Id.* Staff provided Figure 2, shown below on page 5, illustrating the delineated surrounding neighborhood:



### C. Proposed Use

Applicant proposes to expand the existing Family Daycare (up to 8 persons), which has operated on the property since July 15, 2019, to a Group Daycare (9-12 persons), serving children ages two to five years old. Exhibit 4, p. 2. The Applicant states that “the daycare will be located in the basement and will consist of 1,200 square feet.” Exhibit 5. The hours of operation will be 7:30 am to 5:30 pm, Monday through Friday, “with no more than 6 children in the rear yard at any one time.” *Id.* The indoor space includes a large activity room, bathroom, and a small study room and storage room. Exhibit 4, p. 2. The outdoor space for children is located in the rear yard and includes age-appropriate toys and activities including a swing set, gym, climbing equipment, a mud kitchen, water tables, and other toys and play activities. Exhibit 4, p. 2; T. 21-22. The rear yard is

surrounded by a “partial fence, and small bushes and trees.” Exhibit 4, p. 2. No signs are proposed for the current or requested use and the Applicant describes the exterior lighting of the property is limited to “[o]ne light on the side of the house, lighting the stairs to the daycare, [and] two lights lighting the backyard.” Exhibit 4, p. 1.

The property is owned by the Applicant's sister with owner authorization for the current and proposed use submitted as Exhibit 3. There are no structural alterations proposed under this application for the interior or exterior of the building. Exhibit 4, p. 1. The existing Family Daycare is staffed by the Applicant and one non-resident employee. *Id.* If approved and at capacity, the Applicant will likely hire another staff person, for no more than two non-resident staff persons on-site at any one time. T. 11.

The Applicant describes the daily routine for the children as follows:

7:30 am to 8:30 am arrival and self-selected play  
8:30 am to 9:00 am morning story time  
9:00 am to 9:30 am breakfast  
9:30 am to 10:00 am adult directed activity  
10:00 am to 11:00 am outdoor play (weather permitted)  
11:00 am to 12:00 lessons  
12:00 pm to 12:30 pm lunch  
12:30 pm to 1:00 pm story time  
1:00 pm to 3:00 pm resting or napping  
3:00 pm to 3:30 pm snack  
3:30 pm to 4:00 pm art  
4:00 pm to 4:30 pm outdoor play (weather permitted)



4:30 pm to 5:30 pm cycle time & favorite quiet games

5:30 pm departure

Exhibit 4, p. 2.

The proposed parking for this use includes three tandem spaces in the existing driveway and on-street parking along Myer Terrace. Exhibit 4, p. 2. Staff advises that unrestricted on-street parking is available on both sides of Myer Terrace. Exhibit 17, pp. 3, 6; *Also see* Exhibit 4, p. 3.

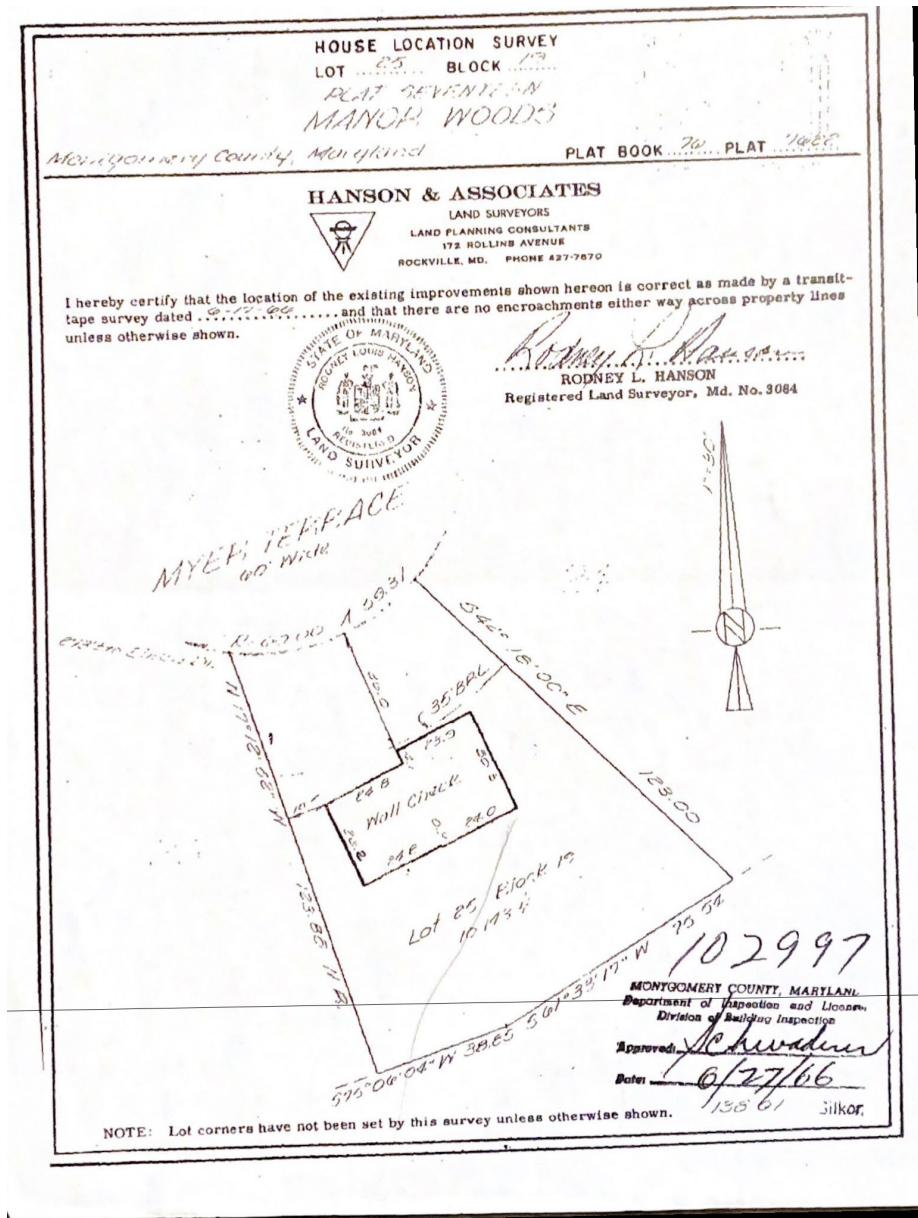
Staff provided the following street view photograph of the subject property, marked as Figure 3 in their Report. Exhibit 17, p. 5.



**Figure 3: Subject Property, as viewed from Myer Terrace, looking south**

## **1. Conditional Use Site Plan**

The property survey shown below submitted by the Applicant will serve as a conditional use site plan for purposes of this hearing. Exhibit 10. The survey indicates the dimensions of the existing structure and subject lot.



## 2. Operations



*a. Staffing.*

The existing Family Daycare is staffed by the Applicant and one non-resident employee. Exhibit 17, p. 5. If approved and at capacity, the Applicant will likely hire another staff person, for no more than two non-resident staff persons on-site at any one time. T. 11.

*b. Amenities.*

The indoor portion of the Group Day Care space includes a large activity room, bathroom, and a small study room and storage room. Exhibit 4, p. 2. The outdoor space for children is located in the rear yard and includes age-appropriate toys and activities including a swing set, gym, climbing equipment, a mud kitchen, water tables, and other toys and play activities. Exhibit 4, p. 2; T. 21-22. The rear yard is surrounded by a “partial fence, and small bushes and trees.” Exhibit 4, p. 2.

### **3. Transportation and Parking**

*a. Parking & Pick-Up/Droff-Off*

Under Section 59.6.2.4.B of the Zoning Ordinance, the Applicant is required to provide three (3) parking spaces for this conditional use. The proposed parking for this use includes three tandem spaces in the driveway and available on-street parking along Myer Terrace. Exhibit 4, p. 2. Staff advises that unrestricted on-street parking is available on both sides of Myer Terrace. Exhibit 17, pp. 3, 6; Also see Exhibit 4, p. 3. The Applicant states that pick-up/drop-off will occur at the front of the property either in the existing driveway or along the property's Myer Terrace frontage, with the entrance to the Group Day Care located at the rear of the property. Exhibit 4, p. 3. Staff provided the following summary (Table 3), shown below, on page 9 of their Report:

Table 3: Conditional Use Parking Requirements		
	Required Spaces	Proposed
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 1 (1/ non-resident employee) <sup>1</sup> Dwelling: 2 <b>Total: 3</b>	3 spaces on-site

Staff advises that transit service within a quarter-mile of this property includes Ride On Bus Routes 49 and 52, which run along Norbeck Road and Bel Pre Road, providing access to Aspen Hill, downtown Rockville, Olney town center, and the Rockville and Glenmont Metrorail stations. Exhibit 17, p. 7.

*c. Local Area Transportation Review*

Staff advises that this application is subject to the 2020-2024 Growth and Infrastructure Policy and that a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the proposed day care center generates fewer than 50 person-trips during each weekday AM and PM peak hour. Exhibit 17, p. 7. For the proposed use, there is a total of 14 person-trips in both the AM and PM peak hours, to include both children served by the use and staff provided day care services. Staff provided Table 1, shown below, to illustrate the projected peak-hour morning and evening trips based on the Institute of Transportation Engineers' (ITE) trip generation rates for a day care center, as well as Policy Area mode split assumptions:

Table 1: Trip Generation					
Period	ITE Vehicle Trips	Growth and Infrastructure Policy Projected Trips			
		Person Trips	Auto Driver Trips	Auto Passenger Trips	Pedestrian Trips*
<b>Morning Peak Hour</b>	11	14	9	3	2
<b>Evening Peak Hour</b>	11.12	14	9	3	2

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 daycare.

The Applicant submitted a proposed drop-off and pick-up schedule. Exhibit 8. The morning arrival schedule shows up to twelve children dropped off between 7:30 a.m. and 8:30 a.m., and the evening schedule shows up to twelve children picked-up between 4:30 and 5:30 p.m.

#### **4. Landscaping and Lighting**

##### *a. Landscape Plan*

No additional landscaping or screening is proposed under this application. The rear yard is surrounded by a “partial fence, and small bushes and trees.” Exhibit 4, p. 2. Staff found that “the existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes” and that “[t]he rear yard of the house is partially enclosed by a combination of fencing and landscaping.” Exhibit 17, p. 10. Staff further advises that the property is improved by fencing along the eastern and southern property lines and heavy landscaping along the western property line. *Id.*

##### *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. The Applicant describes the exterior lighting of the property as limited to “[o]ne light on the side of the house, lighting the stairs to the daycare, [and] two lights lighting the backyard.” Exhibit 4, p. 1.

#### **D. Environmental Issues**

Staff advises that the property contains no streams, wetlands or their buffers, or known habitats of rare, threatened, or endangered species. Exhibit 17, p. 7. Staff concluded that the property and proposed use are in conformance with Environmental Guidelines and is not subject

to Chapter 22A, the Forest Conservation Law, as no disturbance is proposed and the property is less than 40,000 square feet in size. *Id.*

### **E. Community Response**

Staff advises that no correspondence was received from community members with respect to this application. Exhibit 17, p. 8. No correspondence or communication was received by OZAH with respect to this application.

### **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 Group Day Care (9-12 persons). *Montgomery County Zoning Ordinance*, §59.3.4.4.D.2. “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-90 zone. Staff indicate that no previous approvals are relevant to this proposed use, and that no amendments are required. Exhibit 17, p. 8.

Conclusion: Based on this record, the Hearing Examiner finds that no previous approvals apply, and therefore, this application satisfies this standard.

***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-90 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;***

Staff advises that the subject property is located within the 1994 Aspen Hill Master Plan (Master Plan) area. Exhibit 17, p. 6. The Master Plan does not specifically discuss this property

but it does include guidance about day care facilities, special exceptions/conditional uses, and residential areas. The Master Plan includes the following language on page 193:

Child care facilities should be encouraged to meet the needs of the residents of Aspen Hill. To the extent possible, they should consistently provide the following:

- Sufficient open space to provide adequate access to sunlight and suitable play areas, taking into consideration the size of the facility.
- Location and design to protect children from excessive exposure to noise, air pollutants and other environmental factors potentially injurious to health or welfare.
- Location and design to ensure safe and convenient access. This includes appropriate parking areas and safe and effective on-site circulation of automobiles and pedestrians.
- Location and design to avoid creating undesirable traffic, noise and other impacts upon the surrounding community.
- Consideration should be given to locations in employment centers to provide locations convenient to workplaces. However, these locations should make provisions for a safe and healthful environment in accord with the criteria listed above.

Exhibit 17, p. 6, citing the Aspen Hill Master Plan, pp. 190-193.

Staff further notes that the Master Plan provides:

This Plan supports various types of child day care facilities within the planning area, particularly those providing care to the youngest children. Day care (for any age group) may be an appropriate use for some Parks Department buildings in the planning area.

Exhibit 17, p. 6, citing the Aspen Hill Master Plan, p. 193

Staff opined that “the existing Family Day Care (up to 8 persons) has been operating on the Site for two years, and the proposal is a modest expansion of the maximum enrollment which will not change the character of the neighborhood.” Exhibit 17, p. 6. Staff further found that “the Subject Site is an appropriate location for a Group Day Care Facility (9-12 Persons) and is compatible with the neighborhood” concluding that “proposal is in substantial conformance with the Master Plan.” *Id.*

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.***

Staff concluded that the proposal is harmonious with, and will not alter the character of, the surrounding neighborhood as “no physical changes are proposed on the Property.” Exhibit 17, p. 10.

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 no interior or exterior modifications to the property. 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 identified one approved conditional use within the Staff-defined neighborhood, an existing Accessory Apartment in a private dwelling at 5000 Norbeck Road. Exhibit 17, p. 10. Staff opined that the proposed daycare expansion will not affect the area adversely or alter the

area's predominantly residential nature as the proposed increase of up to 4 children is modest, and the Applicant is not proposing any physical changes to the property. *Id.*

Conclusion: The Hearing Examiner concurs with Staff that 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.

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 17, p. 11.

Staff advises that adequate parking and drop-off/pick-up areas are available on the adjacent public street in front of the property; drop-off/pick-up of children can be conditioned to minimize impacts to the neighborhood; and the play area is adequate for the size of the lot and the scale of the proposed use. Exhibit 17, p. 11. Staff further found that the existing lighting and landscaping on the property is adequate for the proposed use and the “existing lighting fixtures are residential

in nature and will not intrude on neighboring properties.” *Id.* For these reasons, Staff determined that the proposal will not have any non-inherent effects at this location. *Id.*

Conclusion: The Hearing Examiner concurs with Staff and 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. The 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 Table 2, shown below, the development standards in the R-60 zone. Exhibit 17, p. 9.

Table 2: Conditional Use Data Table (R-90 Zone)		
Development Standard	Required/Permitted	Provided*
Minimum Lot Area: (Section 59.4.4.8.B.1)	9,000 sq. ft.	10,558 sq. ft.
Minimum Lot Width at Front Building Line (Section 59.4.4.8.B.1)	75 feet	±75 feet
Minimum Lot Width at Front Lot Line (Section 59.4.4.8.B.1)	25 feet	±55 feet
Maximum Density (Section 59.4.4.8.B.1)	1 unit (4.84 dwelling units/acre)	1 unit
Maximum Lot Coverage (Section 59.4.4.8.B.1)	30%	±16%
Minimum Front Setback (Section 59.4.4.8.B.2)	30 feet	±35 feet
Minimum Side Setback (Section 59.4.4.8.B.2)	8 feet	±12 feet
Minimum Sum of Side Setbacks (Section 59.4.4.8.B.2)	25 feet	±25 feet
Minimum Rear Setback (Section 59.4.4.8.B.2)	25 feet	±55 feet
Maximum Height (Section 59.4.4.9.B.3)	35 feet	±28 feet

According to Staff, all development standards have been met or exceeded under this application. Exhibit 17, p. 9.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds based on this record that all development standards required in the R-90 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-90 zoning district.

#### **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 three (3) parking spaces for this conditional use. Applicant is providing three (3) spaces for this use in the existing driveway and stated that additional public and unrestricted spaces are available along the property's frontage with, and nearby to, Myer Terrace. The Hearing Examiner finds that this standard has been satisfied. *See also* Section II.C.3. above.

##### **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-90, 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 17. The Staff Report further details the existing landscaping and screening to include fencing in the rear yard and along the eastern and southern property lines and heavy landscaping along the western property line. *Id.* at 10.

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 use.

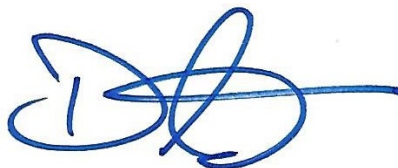
### IV. Conclusion and Decision

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 14731 Myer Terrace 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, 7:30 a.m. to 5:30 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. 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 25<sup>th</sup> day of October 2021.



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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:

Gabriele Gueorguieva  
Amy Lindsey, Planning  
Barbara Jay, Executive Director, Board of Appeals  
James Babb, Treasury Division  
Adjoining property owners