

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

IN THE MATTER OF
CREATIVE ARTS & LANGUAGE, INC.

Applicant

For the Application:

Marina Davis
Doug Tilley
Jon Sekerak
Joseph Mehra

Michele Rosenfeld, Esq.
Attorney for the Applicant

In Opposition to the Application:

Paul Horn
Agha Saadat
Vernon Goertz

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OZAH Case No. CU21-09

Before: Derek J. Baumgardner, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On April 20, 2021, Creative Arts & Language School, Inc. (hereinafter “Applicant” or “Creative Arts”) filed an application seeking a conditional use to establish a Day Care Center (over 30 persons) under Section 59-3.4.4.F of the Zoning Ordinance.¹ Exhibit 1. The subject site is located at 6607 Greentree Road, Bethesda, Maryland, 20817, otherwise known as Lot 6, Block B, of the Burning Tree Village Subdivision (Tax Account Number 07- 00421617), and consists of 32,405 square feet of lot area. The property is zoned R-200 and is subject to the 1990 Bethesda-Chevy Chase Master Plan.

On June 24, 2021, the Applicant filed a request to postpone the hearing to address concerns raised by Planning staff. That request was granted.

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, as amended.

On August 25, 2011, the Applicant filed a request to place this matter back on OZAH's calendar and the matter was rescheduled for November 5, 2021. The Applicant requested modification of the subject application by the following: (1) reduced the number of proposed students from 35 to 30; (2) revised the parking plan; (3) secured approval from Fire/Rescue; and (4) prepared a queuing analysis and provided a new traffic analysis using a different methodology. This application was therefore reviewed under Section 59-3.4.4.E of the Zoning Ordinance (Day Care Center for 13-30 persons).

On October 14, 2021, Staff of the Montgomery County Planning Department ("Staff") issued their report recommending approval of the application subject to eight (8) conditions. Exhibit 44, p. 2. Those conditions are:

1. The Day Care Center must be limited to a maximum of thirty (30) children, three (3) resident employees and up to three (3) non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:00 AM to 6:00 PM, which is consistent with the current hours of operation.
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of nine (9) vehicles dropping off or picking up children during any 30-minute period.
4. The Applicant must provide a minimum of eleven (11) parking spaces on-site:
 - a) Two (2) for residential use
 - b) Nine (9) for the day care, which includes four (4) for the employees and five (5) for day care patrons and visitors.
5. Visitors (excluding parents enrolled in the daycare) shall be instructed to visit the Site outside peak travel times, which are as follows:
 - a) 8:00 AM – 9:00 AM
 - b) 5:00 PM – 6:00 PM
6. The Applicant will delineate the parking spaces with signage or with pavement markings to ensure efficient use of the Greentree Road visitor and parent parking facility on-site.
7. The Applicant will install the following screening elements as exhibited in the Landscape Plan between Greentree Road and the existing parking facility to provide screening for the adjacent residential uses and to uphold the residential character of the surrounding neighborhood:
 - a) 4-foot fence along the western and southern side of the parking on Greentree Road
 - b) 1 canopy tree
 - c) 3 understory/evergreen shrubs

8. The Applicant must either remove the sign or submit a sign variance to the Department of Permitting Services (DPS) Sign Review Board for the size of the existing sign along Fernwood Road and comply with any changes that may be required by the Sign Review Board within 30 days of any final Sign Board decision.

In its report dated October 15, 2021, the Planning Board accepted Staff's recommendations and, with making some corrections to the report, recommended approval of the application with the aforementioned conditions. Exhibit 45.

On November 5, 2021, the public hearing on this conditional use application was conducted by Hearing Examiner Derek J. Baumgardner. The following witnesses testified on behalf or in support of the application: Marina Davis (Applicant); Douglas Tilley (civil engineer); John Sekerak (land use planner); and Joe Mehra (transportation engineer/traffic planning). The record contains several letters of concern submitted by community members. Exhibits 42, 43(a)-43(c).

The Hearing Examiner held the record open for 10 business days after the conclusion of the hearing, or until November 15, 2021, for inclusion of the transcribed record in this case and permitted post-hearing submission of written testimony on matters raised at the hearing.

On November 13, 2021, community members Paul Horn, Agha Saadat, Vernon Goertz, and Laura Christian submitted a post-hearing statement summarizing their concerns. Exhibit 48. Over the objection of those in opposition, the record was reopened to allow the Applicant to respond to the community members' post-hearing statement. Exhibit 51. On November 19, 2021, the Applicant filed their post-hearing response. Exhibit 52.

For the reasons that follow, the Hearing Examiner finds that the application meets all Zoning Ordinance requirements for approval of a conditional use for a Day Care Center but limits capacity to twenty-four (24) students for the reasons stated herein, subject to further conditions of approval as listed in Part IV of this Report.

II. FACTUAL BACKGROUND

A. The Subject Property

Staff describes the property in the following manner:

The Subject Property ("Property" or "Site") is 6607 Greentree Road in Bethesda, otherwise known as Lot 6, Block B of the Burning Tree Village Subdivision. It is improved with a detached house (Figure 1) and the Applicant, who resides on the Property, has been operating a twelve-child family day care facility on the premises since June 201[3] for children aged three months to five years. The existing Group Day Care, Creative Arts and Language School, occupies portions of the main entry and basement of the house.

The 32,405 square-foot lot is located at the convergence of Greentree Road and Fernwood Road. The Property has two driveways; one on Fernwood Road, used primarily by the residents and employees and one on Greentree Road used by visitors and patrons of the day care. The outdoor play area is located in the rear yard of the house and is enclosed by wooden vertical board, opaque fencing of varying heights, due to elevation changes on the Property. The height of the fencing varies between 5.25 feet and 5.83 feet, in compliance with the maximum height limits for the R-200 zone.

Exhibit 44, p. 3. Mr. Tilley, the Applicant's land surveyor and civil engineer, testified that the property is developed with a single-family dwelling unit, a pair of parking areas accessible from Greentree Road and Fernwood Road, and two fenced playground areas. T. 111-112. Mr. Tilley further stated that the southern portion of the property is heavily wooded and the northern portion of the lot contains fencing and wooded tree stand area. Staff provided an aerial view of the property, shown below as Figure 1, that outlines the subject property located between Fernwood and Greentree Roads as outlined in red.



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

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 delineates the surrounding neighborhood as bounded by Marywood Road to the north, Bradley Boulevard to the south, Friar Road to the east, and Burdette Road and the Woods Academy to the west. Exhibit 44, p. 4. Staff further indicated that this defined neighborhood is composed primarily of detached residential houses in the R-200 Zone, R-90 Zone, and R-60 Zones and identified four conditional uses/special exceptions: CBA2092 (day care for up to 10 children, CU201607 (day care for up to 15 children), S1804: Accessory Apartment, and S1142 (Accessory Apartment). Exhibit 44, pp. 4-5. Staff further advised that two neighborhood parks and Wyngate Elementary School are located just outside of the staff-defined boundary. *Id.* at 4. The

Staff-defined neighborhood is shown below outlined in red, and marked as Figure 2 on the Staff Report. Exhibit 44, p. 4-5.



**Figure 2: Staff Defined Neighborhood Outlined in Blue
(with subject property outlined in red)**

The Applicant's proposed surrounding neighborhood differs slightly from Staff's recommendation in that the Applicant's delineation largely follows property lines and not public streets, and Staff's recommendation includes The Woods Academy in the neighborhood perimeter while the Applicant's does not, but nonetheless they are in substantial agreement. Further the Applicant concurs with Staff that "the defined neighborhood is exclusively single-family detached homes, all in the R-200, R-90, or R-60 zones." Exhibit 28, p. 4. Mr. Sekerak, the Applicant's land

planner, stated that he would accept Staff's delineation of the surrounding neighborhood and that his review of the application including the evaluations by Mr. Tilley and Mr. Mehra would not change if Staff's delineation were accepted. T. 135-136.

Conclusion: Based on this record, the Hearing Examiner agrees with Staff's delineation of the surrounded neighborhood as detailed above and both Staff's and the Applicant's characterization that the surrounding neighborhood is primarily single-family residential.

C. Proposed Use

The property is currently authorized for use and is operating as a Group Day Care for up to 12 children. Exhibit 44, p. 5; *See also* Exhibit 39 (State of Maryland Department of Education Child Care License). The owner/operator, Ms. Davis, testified that the day care opened in 2013 serving eight (8) students as a home day care and expanded in 2015 to serve up to twelve (12) students as a family day care. T. 18. The Applicant seeks approval to increase the number of children enrolled at Creative Arts to constitute a Day Care Center (13-30 children) under Section 59-3.4.4.E. of the Zoning Ordinance. Exhibit 1 *as modified*. Ms. Davis testified that the day care facility currently has a waiting list of students and the request to expand is intended to meet child care needs in the community. T. 37. Staff notes that the proposed Day Care Center will occupy the same space on the main floor and the basement of the home as the existing Group Day Care and the Applicant is not proposing any changes to the interior or exterior of the building, hours of operation, or programming. Exhibit 44, p. 5. Ms. Davis testified that the children served will range in age from 3 months to 5 years. T. 20. Ms. Davis further stated that the hours of operations are "between 7 a.m. to 6 p.m. with maximum of 6 full-time employees. The staffing hours for the 6 teachers are, approximately, from 7 a.m. to 3 p.m. we'll have 3 staff members, from 8:30 a.m. to

4:30 p.m. we'll have 1 staff member and from 10 a.m. to 6 p.m. we'll have two staff members.” T. 20.

Staff notes that the other changes proposed under this application are the additions of a four-foot fence and plantings to screen the drop-off/pick-up area along Greentree Road. Exhibit 44, p. 5. The Applicant also states that she intends to “provide an ADA compliant parking space and ADA compliant access route from the parking area into the facility.” Exhibit 28, p. 5.

The current and proposed pick-up/drop-off location will be at the day care center's main entrance from the semicircular drive on Greentree Road and staff parking is provided at the rear parking area with access from Fernwood Road. Exhibit 28, p. 4; T. 66. The Applicant states that arrival and departure of students will be staggered to provide minimal queuing of cars on Greentree Road in accordance with the following schedule:

Arrival		Departure	
Time	Estimated number of children	Time	Estimated number of children
7:00 am to 7:30 am	5	3:30 pm to 4:00 pm	5
7:30 am to 8:00 am	5	4:30 pm to 5:00 pm	7
8:00 am to 8:30 am	8	5:00 pm to 5:30 pm	9
8:30 am to 9:00 am	7	5:30 pm to 6:00 pm	9
9:30 am to 10:00 am	5		

Exhibit 27, p. 2; *See also* Exhibit 30, p. 2. The Applicant further asserts that the “staggered arrival and departure of students is anticipated to cause no queuing, as indicated in the August 11, 2021 Traffic Statement prepared by MCV Associates, Inc.” *Id.* The Applicant further states that pick-up/drop-off operations will be monitored by staff to ensure that no queuing occurs onto either Greentree or Fernwood Roads. Exhibit 28, p. 4. The Applicant states that no interior or exterior changes are proposed or needed for the proposed increased capacity and the only exterior

modifications proposed are “necessary improvements for fire protection and ADA accommodations.” Exhibit 28, p. 5. Lastly, the Applicant states that fire protection will be enhanced with the installation of a fire hydrant and minor signage to direct firefighters to the main entrance of the day care center and the location of the expected fire department connection on the face of the home. *Id.*

1. Conditional Use Site Plan

The conditional use site plan illustrates the lot, structure, access, and footprint of the existing single-family dwelling with parking areas. *See* Exhibits 38(a)-(b). The Staff Report provides a clipped excerpt of the Applicant's site plan shown below, and marked as Figure 4. Exhibit 44, p. 6.

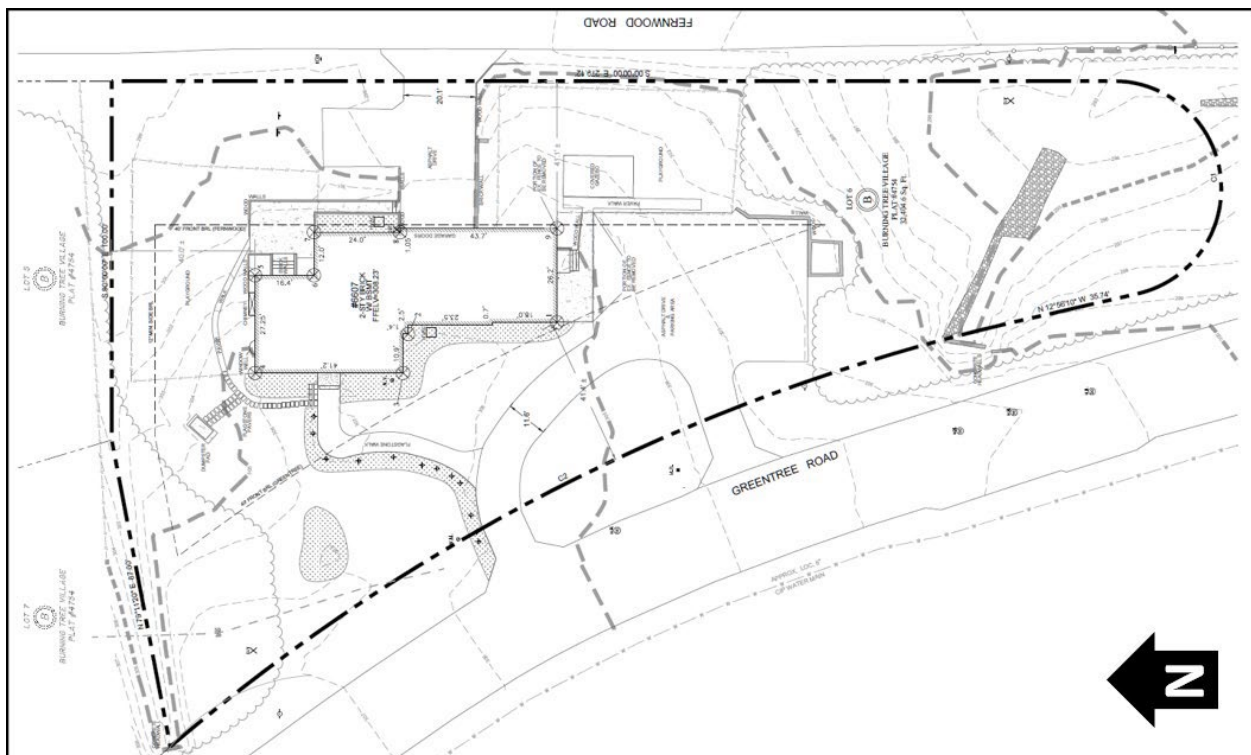


Figure 4: Site Plan

2. Site Landscaping, Screening, Lighting, and Signage

Landscaping & Screening

Staff advises that the Applicant will install additional fencing and vegetative screening of the off-street parking facility on Greentree Road where drop-off/pick-up will occur “to uphold the residential character of the surrounding neighborhood.” Exhibit 44, p. 17. Mr. Tilley, the Applicants civil engineer, testified that while additional screening is not required under this application as the majority of this lot abuts public streets and not residential lots and the north side of the lot is “already screened with fencing and with significant tree stand with understory,” the additional screening is being provided by request. T. 119. Screening of the two play areas is provided by the sight-tight fence consisting of a white vinyl vertical board which provide additional screening. Exhibit 31, p. 6. The fence height follows the topography of the site ranging from 5.25 feet to 5.83 feet and at the edge of the fence screening is continued by a wooded tree stand. *Id.*

Lighting

Staff advises that the existing lighting fixtures are residential in nature and will not intrude on neighboring properties. Exhibit 44, p. 17. Mr. Tilley confirmed that no new or additional exterior lighting is proposed under this application. T. 116.

Signage

The Applicant has an existing sign for the existing group daycare along the Fernwood Road side of the Property. Exhibit 44, p. 6; *See* Exhibit 38(a). Staff advises that the sign complies with the setback requirement but exceeds the allowable size requirements. Exhibit 44, p. 6. Staff recommends as a condition of approval that the Applicant submit an application for a variance to the Department of Permitting Services (DPS) Sign Review Board within 30 days of a final and

favorable OZAH decision and to comply with any changes that may be required by the Sign Review Board. *Id.* Staff further recommends as a condition of approval that the Applicant “delineate the parking spaces with signage or with pavement markings to ensure efficient use of the Greentree Road visitor and parent parking facility on-site.” Exhibit 44, p. 2.

According to Staff the Applicant “proposes new signage in conformance with design and placement standards in the Zoning Ordinance and the Fire Code.” Exhibit 44, p. 17. The two new signs are as follows: (1) one on the face of the building near the main entrance to the day care (shown as “Proposed Sign on Face of Existing Building” on the Site Plan); and (2) new signage near the driveway entrance (requested by Fire/Rescue and shown as “Proposed Identification Sign”). Exhibit 44, p. 6. Neither new sign requires any variances from the requirements of the Zoning Ordinance. Exhibit 44, p. 17.

3. Operations

The proposed conditional use of a Daycare Center (13-30 persons) will operate in a portion of the existing single-family detached home of approximately 2,566 SF. Exhibit 31, p. 2. The proposed operating hours are Monday through Friday, 7:00 am to 6:00 pm, and the facility will serve children between 3 months and 5 years of age. Exhibit 28, p. 4. Staff will consist of six full-time employees with staggered but overlapping shifts, three of which reside in the property as their principal residence. The portion of the property not used for the proposed day care will maintain its separate use as a single-family detached residential home. *Id.*

Most of the proposed day care activities occur indoors including educational instruction, meals and snacks, and naptime. Exhibit 44, p. 6; Exhibit 27, p. 2; T. 26-27. The property is also improved with two fenced playgrounds for outdoor play. Exhibit 27, p. 2. Ms. Davis testified that the children's activities are organized based on their developmental ages, therefore, “children

using the playground will be divided by age between two playgrounds and it will be very unusual that all the children will be outside all the time at the same time.” T. 27. Parent drop-off and pick-up times are staggered from 7:00 AM to 10:00 AM and 3:30 PM to 6:00 PM to minimize the impacts on adjacent residential streets. Exhibit 27, p. 2.

Parking, Access, and Circulation

According to Table 59.6.2.4B of the Zoning Ordinance, day care centers require a minimum of 3 parking spaces per 1,000 square feet of gross floor area. Exhibit 31, p. 4. As the day care portion of the property is 2,819 SF, the minimum number of parking spaces required for the day care portion under the subject application is 9 parking spaces. Under Table 59.6.2.4B, single unit residential dwelling units within the R-200 zone are required to have two (2) dedicated parking spaces. As the remaining portion of the building will remain a single-family dwelling, two (2) spaces are required for the residential portion of the use. Exhibit 31, p. 4. Therefore, a total of 11 defined spaces are required as the minimum number of off-street parking spaces for the subject application. *Id.*

Including the driveway apron, eleven (11) spaces are being provided under this application. Exhibit 44, p. 12. Staff advises that the current driveway configuration will remain for the proposed expansion to 30 students, with residents and staff utilizing the Fernwood Road driveway and parking area, while visitors and student drop-off/pick-up will occur from the driveway and parking area accessed from Greentree Road. Exhibit 44, p. 7. “The overall parking layout on the accompanying site plan shows a total of nine (9) external spaces and two (2) internal spaces, which [d]ay care employees living in at the facility are expected to use the garage parking spaces, as they will be blocked in by stacked cars at the rear of the lot.” Exhibit 31, p. 4. The Applicant submitted a preliminary parking plan as sheet 2 of the Conditional Use Plan, shown below on page 14:



The Fernwood Road parking area for residents and employees is shown below on page 15, marked as Figure 8 in the Staff report. Exhibit 44, p. 8; Exhibit 32(c).



Figure 8: Staff and Resident Parking accessed from Fernwood Road

The Applicant indicates that at least five (5) parking spaces are available for the day care in the Greentree Road parking area while the circular driveway can further accommodate overflow parking. Exhibit 44, p. 7. The parking area off Greentree Road for student pick-up/drop-off and guests is shown below, marked as Figure 7 in the Staff report. Exhibit 44, p. 8; Exhibit 32(e).



Figure 7: Visitor and Patron Parking Accessed from Greentree Road

Staff advises that parking is not permitted on Fernwood Road or Greentree Road and there are no sidewalks or designated bikeways located on either of the property's frontages along Fernwood Road or Greentree Road. Exhibit 44, p. 7. Staff notes that the closest public transportation point is a bus stop served by RideOn Route 47 and is approximately 360 feet north of the subject property. RideOn Route 47 provides service between the Rockville Metro Station and the Bethesda Metro Station. *Id.*

Local Area Transportation Review (LATR)

The Applicant's Traffic Statement asserts that the "proposed expansion of the site to 30 students is expected to generate less than 50 total weekday peak-hour person trips (vehicular, transit, bicycle, and/or pedestrian)" and is therefore exempt from LATR traffic study requirements. Exhibit 30, p. 2. The Applicant states that after incorporating the schedule for staff, a total of 31 trips are estimated in the morning peak hour and 38 trips in the evening peak hour. *Id.* Staff notes that the morning arrival schedule shows up to 15 children dropped off during the peak hour (8:00 AM – 9:00 AM), and the evening schedule shows up to 18 children picked up during the evening peak hour 5:00 PM – 6:00 PM, with the remaining students dropped off or picked up according to a staggered drop-off/pick-up schedule intended to mitigate traffic and parking congestion at the Greentree Road parking area. Exhibit 44, p. 15.

Mr. Mehra, the Applicant's traffic engineer, testified that Planning Board staff requested that the Applicant complete a queuing analysis to determine if queuing would occur on Greentree Road if this application to increase capacity to 30 students were approved. T. 69. Mr. Mehra stated that a study was performed using the current capacity on a given day in which the day care center was operating which showed no queuing occurred on Greentree Road. T. 72. Mr. Mehra further explained that by evaluating dwell times and traffic counts in the Greentree Road parking area he

was able to extrapolate out to the projected capacity of 30 children and, likewise, concluded that queueing would not occur if the subject application were approved. T. 73. Mr. Mehra summarized:

“Now when we sort of project that into the future, again, looking at the staggered arrival, looking at the 5 parking spaces available, there's going to be no cueing at all during the a.m. peak period. During the p.m. in 2 15-minute slots we see that there will be one vehicle that has to wait for a parking space to be vacated, but that vehicle would be waiting on site. Further, there's a circular drive, that circular drive has capacity of parking that can accommodate four more vehicles. So, essentially, there's more than adequate parking available on site, so there will be absolutely no cueing that will extend onto Greentree Road.” T. 72-73.

D. Environmental Issues

Staff advises that the property contains no streams, wetlands, or their buffers, or known habitats of rare, threatened, or endangered species and the Application is exempt from the requirements of Chapter 22A Forest Conservation law (per Section 22-A- 5(q)(1)) because the conditional use is for an existing structure and will not result in clearing of existing forest or trees. Exhibit 44, p. 10.

E. Community Response

Three community members testified in opposition to the application: Mr. Horn, Mr. Saadat, and Mr. Goertz, and the file includes written testimony from each as well as from community member Laura Christian. Their testimony included opposition to the proposed increased capacity to 30 students, operational concerns regarding the current use, traffic safety concerns regarding ingress and egress to the property particularly for the drop-off and pick up of students, and depreciation of neighboring property values because of the commercial nature of the proposed use. Particular points of testimony will be referenced throughout this decision in the following pages. *See generally* Exhibits 42, 43(a)-(c).

F. Modification

The Applicant's original application requested a conditional use for a Day Care Center for *over* 30 persons. The application was modified to reduce the number of children served to a Day Care Center for *up to* 30 persons. *See* Exhibit 1; T. 108-109. The application was further modified to revise the parking plan, secured approval from Fire/Rescue, and a queuing analysis was provided with a new traffic analysis.

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 particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Day Care Center for up to 30 children under Section 59-3.4.4.E. of the Zoning Ordinance. "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, 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 approval, and the Hearing Examiner's findings for each standard, are set forth below.² The major topics of discussion are further divided under the following headings:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

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 property is currently authorized for use as a Group Day Care for 9-12 children. Exhibit 31, p.2. The record does not indicate that any previous approvals are applicable to the requested use or need amendment as the increased capacity to up to 30 children is a stand-alone conditional use under Section 59-3.4.4.E. of the Zoning Ordinance.

Conclusion: The Hearing Examiner concludes that no previous approvals are applicable to this property and therefore this finding is satisfied.

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 requires an analysis of the development standards of the R-200 Zone contained in Article 59-4; the use standards for Day Care Facilities contained in Article 59-3; and

² 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. apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

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).

Conclusion: Based on the analysis contained in the discussions below, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

1. Substantial Conformance with the Master Plan

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

Staff advises that the property is located within the 1990 Bethesda-Chevy Chase Master Plan (Master Plan). Exhibit 44, p. 13. While the Master Plan does not specifically discuss 6607 Greentree Road, a generalized planning recommendation is to “support provisions of both residential and employment-based child care services.” *Id.* (citing page 6 of the Plan). Staff further advises that Section 2.15 Facility and Community Goals and Objectives (page 20), Section 6.1 Public Schools, Libraries, and Other Facilities (page 146), and Section 6.2 People Needs (pages 154-155), all indicate support for residential and employment-based child care services in the Master Plan area. Mr. Sekerak, the Applicant's land planner, testified that the Master Plan “is replete with recommendations for neighborhood serving childcare services, daycare services in general and then there are some even more specific recommendations that strongly encouraging them within single family homes and for very young children.” T. 138; *Also see* Exhibit 28, p. 5-7. Mr. Sekerak further stated that the Master Plan references “[t]he critical need for it. It identifies the scarce supply of centers for children of ages two and under, for all day child daycare center[s]. It goes on to say by utilizing existing dwelling units, they require minimum additional capital to provide the services and the development of centers should be encouraged.” Exhibit 141-142 (referencing page 155 of the Master Plan); *See also* Exhibit 28, p. 7.

Staff opined that “private child care services have been provided at this property for over 18 years, and minor changes to the exterior are proposed so as not to change the character of the neighborhood.” Exhibit 44, p. 13. Staff found that the property is an appropriate location for a day care facility and compatible with the neighborhood and therefore concluded that “the proposal is in substantial conformance with the Master Plan.” *Id.*

Conclusion: The Hearing Examiner agrees with Staff and the Applicant that the proposed use substantially conforms to the Master Plan. The Master Plan calls for child care facilities specifically in existing residential buildings to serve families in residentially zoned neighborhoods. Moreover, day care services have been provided in this property for many years and the continuation of those services comports with the Plan.

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

Conformity to the Master Plan is discussed above. The surrounding community is almost entirely residential within the R-200, R-90, and R-60 zones with mostly large lot single-family detached residential homes. Staff concluded that the proposal is harmonious with and will not alter the residential character of the surrounding neighborhood as “the only physical changes to the outside of the Property include ADA accessibility upgrades and new signage on the building face.” Exhibit 44, p. 14. Staff further opined that the off-street parking facilities provided will include additional fencing and vegetative screening as well as the staggered arrival and dismissal of students will “avoid negative impacts to the adjacent travel network” and will maintain the residential character of the surrounding neighborhood. *Id.* Mr. Sekerak stated that because the building is existing and currently in use for a day care facility, and the changes proposed are

minimal in nature, "not only will it not alter the residential character of the neighborhood, it has been and will be an important contributing element to the character of the neighborhood." T. 144.

Mr. Horn, a community member and neighbor in the immediate vicinity testifying in opposition to the application, stated that the proposed use is inconsistent with the residential uses in the residential neighborhood. T. 97. Mr. Horn further testified that allowing a "school" to operate with 30 children in a residential neighborhood is inappropriate as "it would be the equivalent of if my house was now across the street from an elementary school, to some extent." T. 98. Mr. Goertz, also a neighbor in the immediate vicinity testifying in opposition, echoed this sentiment by stating "...that's why I think that the 12 students is one thing, up to 30 is a whole different structure. It's a whole different idea." T. 100.

Conclusion: The Hearing Examiner finds that the proposed day care facility is harmonious and compatible with surrounding residential uses given the size of the single-family home and property. The application proposes no material exterior or interior changes to the property, all of which remain consistent with the Master Plan to maintain the residential character of the neighborhood. While Mr. Horn's, Mr. Goertz's, and Mr. Saadat's concerns are credible and reasonable, the "commercial" aspect of a day care facility is inherent to the use, and day care facilities of this size and scale are permitted by right or as conditional uses in residential zones, including this R-200 zone. Moreover, day care facilities are specifically highlighted in the Master Plan as a necessary and sought after service in residential districts where child care services are located in close in proximity to the families being served.

Based on this record, the Hearing Examiner finds that the proposed conditional use will not alter the character of the neighborhood in a manner inconsistent with the Master Plan. The specific operation of this conditional use will not interfere with the orderly use, development, and

improvement of surrounding properties and will remain harmonious to the existing single-family detached residential neighborhood providing child care services for residents. No exterior improvements to the existing structure are proposed that would alter the residentially constructed and designed single-family home.

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 advises that four (4) other conditional uses are located within the surrounding neighborhood: (1) CBA2092: Day care for up to 10 children; (2) CU201607: Day care for up to 15 children; (3) S1804: Accessory Apartment; and (4) S1142: Accessory Apartment. Exhibit 44, p. 5. Staff opined that while approval of this application will increase the total number of conditional uses in the surrounding neighborhood, it will not increase the number, intensity, or scope of conditional uses sufficiently to impact the area adversely or alter the predominantly residential nature of the area. Exhibit 44, p. 14. Mr. Sekerak stated that given the few number of other conditional uses in the neighborhood and their small scale, “the proposed use remains residential in character and with it extreme conformity with the recommendations of the Master Plan, it does not change the residential character of the neighborhood.” T. 146.

The existing day care has been in operation since 2013. Exhibit 28, p. 3. Staff concluded that the expansion of the existing day care facility from 12 students to 30 students with no substantive exterior or interior changes to the structure or activities “will not adversely alter the residential nature of the area” and nonetheless “conforms with the applicable master plans.” Exhibit 44, p. 14.

Conclusion: Based on the evidence in this record, the Hearing Examiner finds that proposed use of the premises as a Day Care Center will not adversely affect the area or alter the predominantly residential nature of the area. The existing structure as well as the parking, lighting, and landscaping remain compatible with the surrounding residences, as detailed in Part III.A.4 of this Report. The Day Care Center, as conditioned to limit its size and scale (described further below), will serve this residential neighborhood and maintain its residential character consistent with the Master Plan.

2. Adequate Public Services and Facilities

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

According to Staff, a Preliminary Plan of Subdivision is not required for this application. Exhibit 44, p. 14. Mr. Sekerak agreed with that finding. T. 147. Mr. Tilley testified that the application satisfies fire and rescue services standards through the submission and approval of the fire access plan (Exhibit 33) and the statement of performance-based design (Exhibit 37). T. 120.

“In this particular case a fire fighter or emergency services personnel is able to reach every particular part of the proposed daycare facility within a 200 foot walking path from the proposed location of the truck.” *Id.* Mr. Sekerak confirmed that the property is currently adequately served by police, fire and rescue, water, sewer and storm drain. T. 147. Mr. Sekerak further opined that the additional children requested under this application will not impact area schools because the children served at this facility are non-school age. *Id.*

Staff concluded that Local Area Transportation Review (LATR) for the subject application is satisfied by the Applicant's Traffic Statement. Exhibit 44, p. 15; *See* Exhibit 30. Applicant's traffic engineer, Mr. Mehra, stated that the “proposed expansion of the site to 30 students is expected to generate less than 50 total weekday peak-hour person trips (vehicular, transit, bicycle, and/or pedestrian)” and is therefore exempt from LATR traffic study requirements. Exhibit 31, p. 2. Mr. Mehra did conduct trip generation and queuing analysis based on a survey of existing traffic and parking conditions and then extrapolated those findings to the expanded enrollment of 30 students and concluded that “no queues will extend of[f]-site on to Greentree Road with the expansion to 30 students” and “Ingress/egress to the site will be safe and efficient as in the existing conditions.” Exhibit 31, p. 5. Mr. Mehra further testified that the proposed expansion satisfies the Adequate Public Facilities Ordinance for vehicle, pedestrian, and bicycle trips. T. 73. In general, Staff concluded that there are adequate public services and facilities to serve the proposed use. Exhibit 44, p. 14.

Conclusion: Based on this record, the Hearing Examiner finds that public facilities and services are adequate to support the proposed Day Care Center. Fire protection, water, sanitary sewer, public roads, and storm drainage are adequately addressed, present no impact, or are not triggered by the proposed conditional use. As presented by the Applicant, the traffic generated will be below

the threshold level requiring a full traffic study and off-street parking spaces are provided to satisfy required regulations. The Hearing Examiner further finds that separating the parking areas for student drop-off/pick-up at Greentree Road and Fernwood Road for residents and staff will further ensure traffic safety both on-site and on neighboring public streets.

3. No Undue Harm from Non-Inherent Adverse Effects

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 consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Day Care Center (30 Persons): (1) vehicular trips to and from

the Site; (2) queuing on adjacent roadways; (3) Screening of Visitor/Parent Parking; (4) outdoor play areas; and (5) lighting. Exhibit 44, p. 15.

In response to a traffic operations study performed by Mr. Mehra (Exhibit 30), Staff noted that both dwell time and turnover of parking spaces for the existing day care use, and extrapolating out to the proposed capacity of 30 students, resulted in minimal dwell times, no deficiency in parking, and no queuing on public roads. Exhibit 44, p. 16-17. Mr. Mehra testified that because of the staggered drop-off/pick-up schedule "I think it's, essentially, what's out there today [the current day care], so there's no negative impacts that will happen when the proposed expansion occurs." T. 74. Staff further found that the proposed screening of the Greentree Road parking area was sufficient to mitigate sights and sounds and the two separated outdoor play areas with planned outdoor play schedules for differing age groups were sufficiently designed to minimize their impact to surrounding properties. Exhibit 44, p. 17. Staff concluded that "[b]y continuing similar operations to the daycare that exists today, adding screening to the parking facility on Greentree Road, and by scheduling drop-off and pick-up to avoid queuing on the adjacent residential streets, Staff has determined that the Proposal has accounted for and has sufficiently addressed any non-inherent effects at this location." *Id.*

Mr. Goertz testified that the "overall effect of all of this is the [declining] property value of the neighbors....People who live in residential areas value that quality of having no commercial money making, client driven activity in their neighborhood." T. 100. Mr. Horn, a long-time community member residing in the immediate vicinity, testified that the Fernwood Road parking area is unsafe for vehicles exiting the property. T. 98. Mr. Horn further stated that the proposed drop-off/pick-up schedule was unrealistic in practice as, in his experience, day care users can often come early or late depending upon many factors each morning and afternoon, thereby negating the

benefits of instituting such a schedule as proffered by the Applicant. T. 51. On this last point, the Hearing Examiner agrees and finds that while well-intended, the strict application of such a schedule is problematic and enforceability would be challenging.

Conclusion: For the purpose of analysis of the proposed use of a Day Care Center with a capacity range of 13-30, the Hearing Examiner agrees with Staff and the Applicant and finds that the operational characteristics described under this application are those typically associated with a Day Care Center. The Hearing Examiner finds that there are no inherent or non-inherent adverse effects associated with this application sufficient to warrant a denial of the proposed Conditional Use *in total*, but does find good cause to limit the capacity of the day care center to twenty four (24) children based upon the size of the facility, the size of the lot, the zone, surrounding residential properties, the traffic on Greentree and Fernwood Roads, and given the history of this property as supporting a much smaller day care facilities in what is otherwise a single-family home. Included in this analysis is the fact that the Fernwood Road parking area exists and is currently in use and even if the application were approved for 30 students, the number of vehicles using that parking area would not substantially increase or present a concern for traffic safety, as the Fernwood Road parking area is exclusively used for residents and staff. While the Hearing Examiner acknowledges that capacity for child care centers is controlled by state regulation under the Maryland Department of Education, placing a capacity limit of twenty-four (24) children at this time serves the public interest and mitigates potential adverse impacts of this use on neighboring and nearby properties.

4. Compatibility with the Neighborhood

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.

Both Staff and the Applicant state that no physical alterations to the building or property are proposed under this application, with the exception of ADA compliance measures and additional screening for the Greentree Road parking area.

Conclusion: Based on this record, the Hearing Examiner finds that no exterior or interior alterations are proposed under this application and therefore the application satisfies this requirement.

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: Based on this record, the Hearing Examiner finds that the application satisfies all specific requirements for the conditional use, and with the conditions imposed to mitigate adverse impacts, meets the standards required for approval.

B. Development Standards of the R-200 Zone

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59-4 of the Zoning Ordinance. Table 1, shown below on page 30, provides the general development standards for the R-200 zone with respect to this application:

Section	Development Standard	Required/ Permitted	Proposed
59.4.4.7.B.1	Minimum Lot Area (square feet)	20,000	32,404
59.4.4.7.B.1	Minimum Lot Width at Front Building Line (feet)	100	196
59.4.4.7.B.1	Maximum Density (units/acre)	2.18	1.34
59.4.4.7.B.1	Maximum Lot Coverage (%)	25	11
59.4.4.7.B.1	Minimum Front Setback (feet)	40	41.4 (Greentree) 41.1 (Fernwood)
59.4.4.7.B.1	Minimum Side Setback (feet)	12	40
59.4.4.7.B.1	Minimum Sum of Side Setbacks (feet)	25	40
59.4.4.7.B.1	Minimum Rear Setback (feet)	30	N/A
59.4.4.7.B.1	Maximum Height (feet)	45	<45

Table 1: R-200 Development Standards- Section 59.4.4.7.B

Exhibit 44, p. 11. Staff concluded that all development standards have been satisfied under this application. *Id.* Mr. Tilley, Applicant's land surveyor and civil engineer, found that "the development as put forth within the application is in accordance with the zoning standards for the R200 zone." T. 113.

Conclusion: Based on this evidence, and having no evidence to the contrary, the Hearing Examiner concludes that the use as proposed meets all development standards of the R-200 Zone.

C. Use Standards for Day Care Facility: Day Care Center (13-30 persons)

The specific use standards for approval of a Day Care Center (13-30 persons) are set out in Section 59.3.4.4.e.2. of the Zoning Ordinance:

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

- a. The facility must not be located in a townhouse or duplex building type.**
- b. An adequate area for the discharge and pick up of children is provided.**
- c. The number of parking spaces under Division 6.2 may be reduced if the applicant demonstrates that the full number of spaces is not necessary because:**

- i. existing parking spaces are available on abutting property or on the street abutting the site that will satisfy the number of spaces required; or**
- ii. a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems.**
- d. For a Family Day Care where the provider is not a resident and cannot meet the non-resident provider requirement, screening under Division 6.5 is not required.**
- e. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.**

Staff advises and the Applicant through their civil engineer, Mr. Tilley, concurs that the facility is not located in a townhouse or duplex and the Greentree Road parking area is adequate for discharge and pick-up of children on-site as described in Applicant's traffic statement (Exhibit 30). Exhibit 44, p. 18; T. 122. There is no reduction in the minimum number or size of parking spaces required under the Zoning Ordinance and the Applicant is meeting their parking space requirement under the Zoning Ordinance. Exhibit 44, p. 18; T. 123. The Applicant is the owner of the Day Care Facility and resides on site and the property is not located in the AR Zone. Exhibit 44, p. 18. Mr. Horn noted that Ms. Bautista, and not Ms. Davis, was listed on the state issued child care license as the the operator of the existing and proposed day care facility, but the Hearing Examiner finds that does not have bearing on the requested conditional use for purposes of this hearing. T. 43.

Conclusion: Based upon this record, the Hearing Examiner finds that the use standards for Day Care Facilities have been met in full.

D. General Development Standards (Article 59.6)

Article 59-6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Under the amendments to Section 59-7.3.1.E.1.b. of the new Zoning Ordinance, effective December 21, 2015, the requirements of these sections need be satisfied only

“to the extent the Hearing Examiner finds necessary to ensure compatibility.” The Hearing Examiner will review the following aspects pertinent to this conditional use review: site access, parking, queueing, landscaping, and screening.

1. Site Access

Staff notes that the current driveway configuration will remain for the proposed expansion, with residents and staff utilizing the Fernwood Road driveway and parking area, and the driveway and parking area off Greentree Road will be used for drop-off/pick-up of children and for visitors. Exhibit 44, p. 7. “The conditional use application seeks approval of eleven (11) parking spaces: Five (5) are accessed from Greentree and six (6) (including two internal garage spaces) are accessed from Fernwood.” Exhibit 30, p. 1. The Applicant indicates that at least five (5) parking spaces are available for the day care accessible by the Greentree Road Driveway and the one-way circular driveway on Greentree Road can also accommodate overflow parking if there are unavailable spaces within the designated parking area. Exhibit 44, p. 7. Mr. Horn testified that the Fernwood Road parking area was unsafe for vehicles exiting onto Fernwood Road because of traffic conditions but there was no further evidence offered as any dangerous conditions along this portion of roadway. Moreover, the subject application proposes no changes to this parking area and with the garage spaces accounting for two of the 6 available spaces provided for resident employees, the approval of any increase in capacity does not substantially increase the amount of vehicles that would be using the Fernwood Road parking area. For these reasons the Hearing Examiner finds that site access for this conditional use satisfies General Development Standard requirements.

2. Parking & Queueing

According to Table 59.6.2.4B of the Zoning Ordinance, day care centers require a

minimum of 3 parking spaces per 1,000 square feet of gross floor area. The total amount of gross floor area used by the Applicant for day care purposes is currently approximately 2,819 SF of area for the day care facility. The second floor, a portion of the first floor, and the garage/slab-on-grade portions of the basement will remain in use as a single-family home by staff members of the day care. Exhibit 31, p. 4. In accordance with Table 59.6.2.4B, single unit residential dwelling units within the R-200 zone are required to have two (2) dedicated parking spaces as the baseline minimum. Therefore, a total of 11 defined spaces are required as the minimum number off-street parking spaces. "The conditional use application seeks approval of eleven (11) parking spaces: Five (5) are accessed from Greentree and six (6) (including two internal garage spaces) are accessed from Fernwood." Exhibit 30, p. 1.

There are no marked parking spaces in either the Greentree Road or Fernwood Road parking areas and parking is generally defined by the location of the on-site hardscape and asphalt. Exhibit 31, p. 4. Resident staff members of the day care facility will utilize the two (2) existing garage parking spaces while the remaining residents and staff will parking in the outdoor parking area accessed by Ferndale Road. In total, between the two (2) parking areas, nine (9) external spaces and two (2) internal spaces are provided. "The parking plan includes two (2) compact spaces, a single ADA van accessible space, utilization of internal parking area at the garage doors, and stacked spacing for staff members directly off Fernwood Road." Exhibit 31, p. 4. The Applicant's civil engineer, Mr. Tilley, asserts that "the parking plan takes into account the need for accessibility" including the need a van accessible space to be installed to accommodate accessibility requirements. *Id.*

Mr. Mehra, the Applicant's traffic engineer, concluded that based on the extrapolated traffic study that he conducted on-site, no queuing is expected to occur on either Fernwood Road

or Greentree Road as a result of the expanded day care facility. Exhibit 30. Based on this record, the Hearing Examiner finds that parking and queueing for this conditional use satisfies the General Development Standard requirements.

3. Landscaping

Under Section 6.2.9.B, Parking Lot Requirements for Conditional Uses Requiring 5 to 9 Spaces, the applicant must satisfy the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide; contains a hedge, fence, or wall a minimum of 4 feet high; and has a minimum of 1 understory or evergreen tree planted every 30 feet on center.

The Applicant asserts that this this section of the Zoning Ordinance is not applicable to the underlying application as there are no proposed surface parking areas with more than 10 spaces on this site and there are no structured parking facilities on site. Exhibit 31, p. 6. The Applicant further states that while the parking areas do not abut residential detached properties they nonetheless remain well screened from adjacent properties by “the existing single family dwelling building and/or site fencing...topographic change, well-established understory growth akin to hedging, and a large tree stand that traverses the entire northern property line of the Subject Property.” *Id.* Based on this record, the Hearing Examiner finds that this application satisfies this General Development Standard requirement.

4. Screening

Section 6.5.2.B specifies, 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

The Applicant asserts that screening is not required under this application as the existing building that houses the Day Care facility is a single family detached house. Exhibit 31, p. 6. Notwithstanding this, the property is bounded on three sides by existing roads and significant screening is provided by the sight-tight fence surrounding the playground and continued by a wooded tree stand. *Id.* Moreover, the northern portion of the property is already screened with fencing and with significant tree stand with understory. T. 119. Mr. Tilley testified that the screening proposed under this application satisfies the landscape screening requirements imposed by Section 6.5.2.B. T. 120. Exhibit 23, Fence Detail, shown below, illustrates the location, height, and materials of existing and proposed fencing. Based on this record, the Hearing Examiner finds that this application satisfies this General Development Standard requirement.



Exhibit 23 (Fence Detail)

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 application of Creative Arts for a conditional use under Section 59.3.4.4.E. of the Zoning Ordinance to operate a Day Care Center on the premises located at 6607 Greentree Road in Bethesda, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. Physical improvements to the Subject Property are limited to those shown on the Conditional Use Site Plan submitted in support of this application;
2. The Day Care Center must be *limited to a maximum of twenty-four (24) children*, three (3) resident employees and up to three (3) non-resident employees.
3. The hours of operation are limited to Monday through Friday, 7:00 AM to 6:00 PM, which is consistent with the current hours of operation.
4. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of nine (9) vehicles dropping off or picking up children during any 30-minute period.
5. The Applicant must provide a minimum of eleven (11) parking spaces on-site:
 - a) Two (2) for residential use
 - b) Nine (9) for the day care, which includes four (4) for the employees and five (5) for day care patrons and visitors.
6. Visitors (excluding parents enrolled in the daycare) shall be instructed to visit the Site outside peak travel times, which are as follows:
 - a) 8:00 AM – 9:00 AM
 - b) 5:00 PM – 6:00 PM
7. The Applicant will delineate the parking spaces with signage or with pavement markings to ensure efficient use of the Greentree Road visitor and parent parking facility on-site.
8. The Applicant will install the following screening elements as exhibited in the Landscape Plan between Greentree Road and the existing parking facility to provide screening for the adjacent residential uses and to uphold the residential character of the surrounding neighborhood:
 - a) 4-foot fence along the western and southern side of the parking on Greentree Road
 - b) 1 canopy tree
 - c) 3 understory/evergreen shrubs
9. The Applicant must either remove the sign or submit a sign variance to the Department of Permitting Services (DPS) Sign Review Board for the size of the existing sign along Fernwood Road and comply with any changes that may be required by the Sign Review Board within 30 days of any final Sign Board decision.
10. 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 15th day of December, 2021.



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.

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:

Adjoining property owners