

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

**IN THE MATTER OF:**

**Vladimir Gurevich .**

Applicant

Vladimir Gurevich

For the Application

David Brown, Esquire

Attorney for the Applicant

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Before: Lynn A. Robeson, Hearing Examiner

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OZAH Case No. CU 22-02

**HEARING EXAMINER'S REPORT AND DECISION**

**Table of Contents**

<b>I. STATEMENT OF THE CASE.....</b>	<b>3</b>
<b>II. FACTUAL BACKGROUND.....</b>	<b>4</b>
<b>A. Subject Property .....</b>	<b>4</b>
<b>B. Surrounding Area .....</b>	<b>5</b>
<b>C. Proposed Use .....</b>	<b>7</b>
<b>D. Community Response .....</b>	<b>9</b>
<b>A. Necessary Findings (Section 59.7.3.1.E.).....</b>	<b>9</b>
<b>B. Development Standards of the Zone (Article 59.4).....</b>	<b>19</b>
<b>C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59.3.4.4.D.)</b> <b>.....</b>	<b>19</b>
<b>D. General Development Standards (Article 59.6) .....</b>	<b>21</b>
<b>1. Site Access Standards.....</b>	<b>21</b>
<b>2. Parking Spaces Required, Parking Facility Design and Parking Lot</b> <b>Screening.....</b>	<b>21</b>
<b>3. Site Landscaping, Screening and Lighting .....</b>	<b>23</b>
<b>4. Signage .....</b>	<b>24</b>

**IV. CONCLUSION AND DECISION ..... 24**

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

Filed on August 18, 2021, Vladimir Gurevich seeks a conditional use to expand an existing 8-person day care to a group day care with up to 12 children under Section 59.3.4.4.D of the Montgomery County Zoning Ordinance (2014 as amended) (Zoning Ordinance). The subject property is Lot 12, Block 15, B.F. Leightons Add to Woodside Subdivision, located at 9000 16<sup>th</sup> Street, Silver Spring, Maryland 20910, in the RE-60 Zone (Tax Account Number 13-01089336).

On November 8, 2021, the Office of Zoning and Administrative Hearings (OZAH) issued notice of the public hearing, scheduled for December 17, 2021. Exhibit 18. On November 22, 2021, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval subject to the following five conditions (Exhibit 19, p. 2):

1. The Group Day Care must be limited to a maximum of 12 children and up to two (2) non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:30 p.m.
3. The Applicant must schedule staggered drop-off and pick-up with no more than six vehicles dropping off or picking up children during any thirty-minute period.
4. Visitors (excluding parents) shall be instructed to visit the site outside peak travel times, which are:
  - a. 7:00 AM – 8:30 AM
  - b. 5:00 PM – 6:30 PM
5. No vehicular queuing may occur on adjacent roadways.

In its recommendation dated December 3, 2021, (Exhibit 20), the Planning Board recommended approval for the reasons stated by Staff. The public hearing proceeded as scheduled on December 17, 2021. The record was left open until December 27, 2021,

to submit two plats of the property and the transcript. Exhibit 28, T. 26. These documents were timely submitted, and the record closed on December 27, 2021.

For the following reasons, the Hearing Examiner finds that the proposed group day care meets all criteria for approval in the Zoning Ordinance and will not adversely affect the community, with the conditions of approval imposed in Part IV of this Report.

## II. FACTUAL BACKGROUND

### A. Subject Property

The subject property is an irregular, triangular lot at the intersection of Second Avenue and Sixteenth Street in Silver Spring. Improved with a single-family structure and associated concrete parking area, there is a large play area on the western and northern sides enclosed by a 6-foot fence. An aerial photograph of the property from the Staff Report is shown below (Exhibit 19, p. 3):



In 1998, the Board of Appeals granted a special exception for a non-profit headquarters on the property, which was abandoned in 2012. Exhibit 19, p. 1, Attachment 4. The Board of Appeals approved a variance with the special exception to permit parking within the setback along Second Avenue and a masonry wall within the right-of-way. *Id.* The Maryland State Highway Association consented to the wall's location, subject to the stipulation that it would be removed if the street was widened. The front of the property is shown in a photograph from the Staff Report (Exhibit 19, p. 7, below):



The view from Sixteenth Street is shown on the following page.

### **B. Surrounding Area**

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

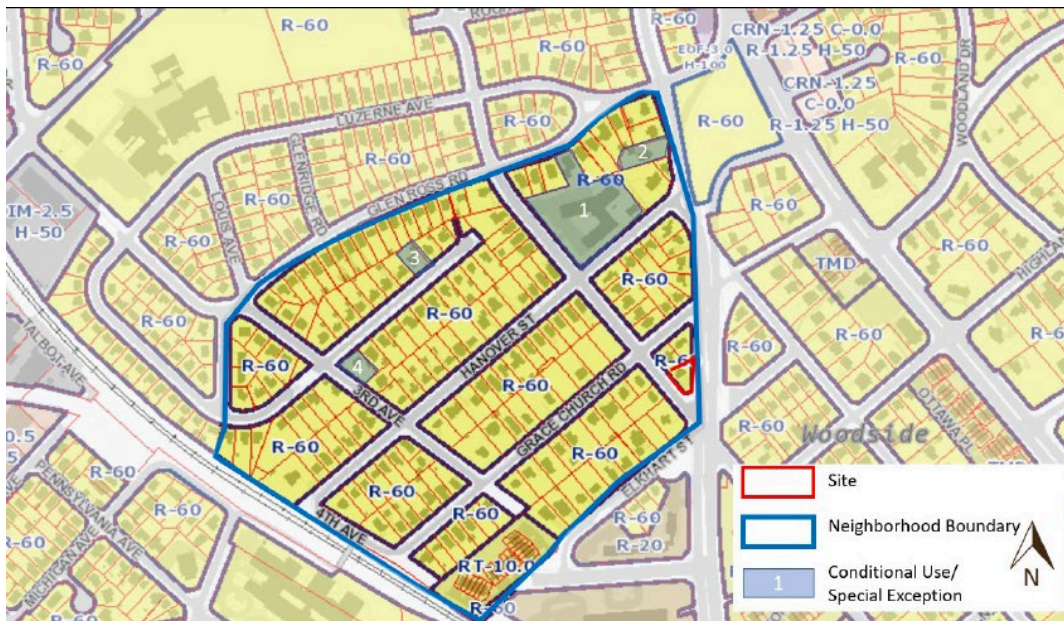




**View of Subject Property from 16<sup>th</sup> Street**  
Exhibit 19, p. 8

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 defined the boundaries of the surrounding area as Glen Ross Road to the north, Elkhart Street to the south; Sixteenth Street to the east, and the Metrorail and CSX tracks to the west, shown below (Exhibit 19, p. 5):



There are four special exceptions in the area, three of which are accessory apartments. The other is a nursing home. *Id.* Staff characterized the neighborhood as single-family detached homes in the R-60 Zone, and development in the R-10 Zone. *Id.*

Having no evidence to contradict Staff's findings, which are reasonable, the Hearing Examiner agrees with Staff as to the boundaries and character of the surrounding area.

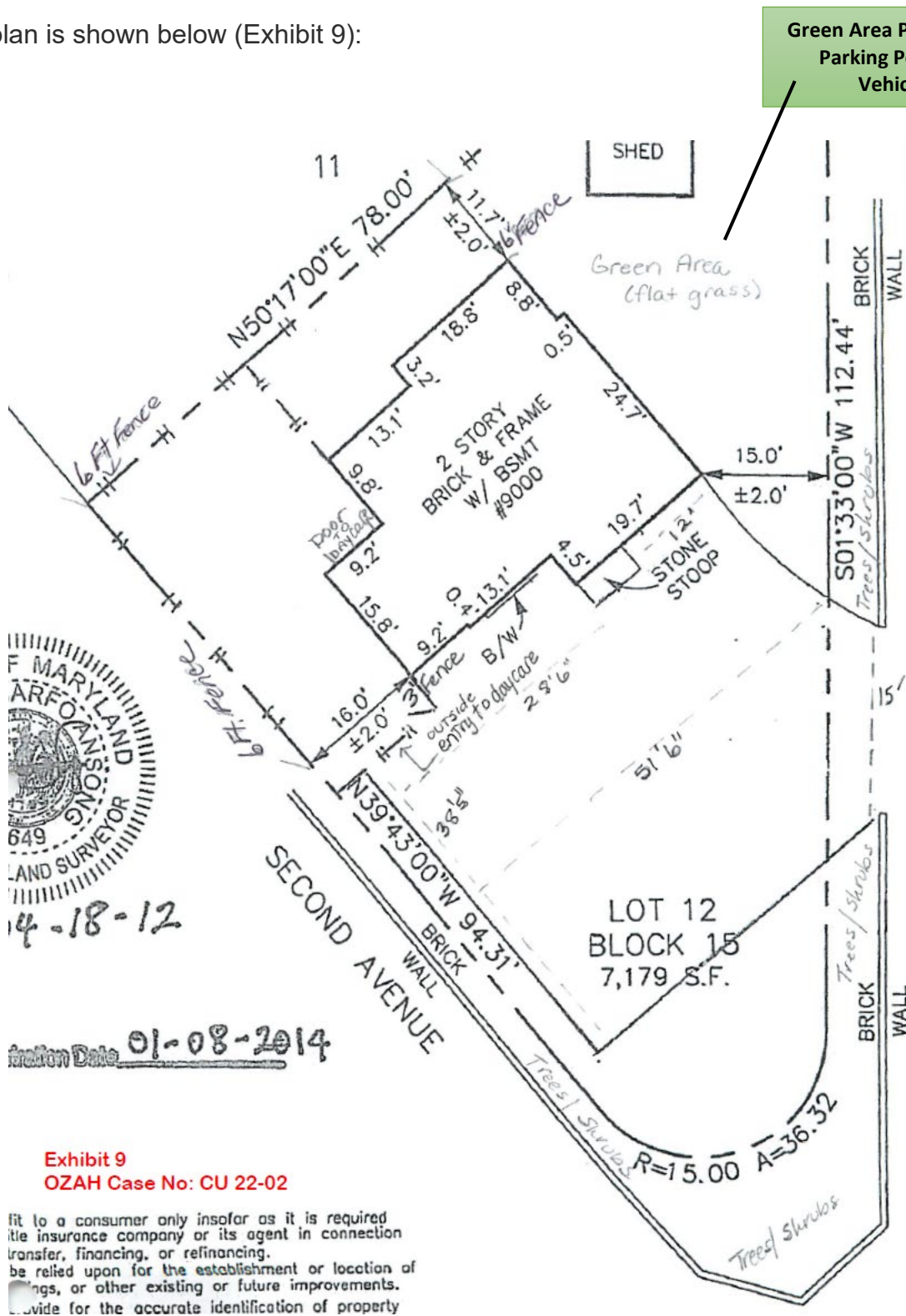
### **C. Proposed Use**

Mr. Gurevich testified that he has operated a daycare for eight children since 2002 and has been at this location since 2010. T. 7-8. The program is a Russian immersion program that includes children up to five years old. Graduates of the program are fluent in Russian. T. 8.

Except for adding four children to the existing eight, Mr. Gurevich does not propose changes in the existing operations or the property's exterior. He lives in the home and employs two non-resident staff. Exhibit 19, p. 2. The daycare consists of two playrooms, a locker/check-in room, and a kitchen/dining area inside the home. *Id.* Operating hours are Monday – Friday, 7:30 a.m. to 6:30 p.m. *Id.*, p.6.

Parking for the daycare will occur on the parking pad in front of the existing structure. Mr. Gurevich parks his personal vehicle in the "green area" marked on the conditional use plan. Exhibit 9. While Staff concluded that there are four vehicle spaces in the front yard concrete parking area, he believes there is additional space there as well. T. 21. Staff advises that the parking area measures 51.5 x 38.5 feet, or approximately 1,637 square feet. Exhibit 19, p. 2. Mr. Gurevich believes that there will

be no more than four cars in the parking area at any one time. T. 21. The conditional use plan is shown below (Exhibit 9):





### **D. Community Response**

Neither OZAH nor the Planning Department received any community response regarding this conditional use application.

## **III. FINDINGS AND CONCLUSIONS**

A conditional use is a zoning device that authorizes certain uses if pre-set legislative standards are met. Pre-set legislative standards are both specific to a particular type of use, listed in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), listed in Division 59.7.3 of the Zoning Ordinance. The specific standards applied in this case are those for a Group Day Care for up to 12 children under Section 59-3.4.4.D. of the Zoning Ordinance. The appropriate standard to be used in determining whether a 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 the specific and general requirements for the 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 review, and the Hearing

Examiner's conclusions for each finding, are set forth below:<sup>1</sup>

***E. Necessary Findings***

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

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

Conclusion: The special exception originally approved by the Board of Appeals has been abandoned, and therefore no longer applies to this site. There is no evidence in this record that the proposed use contravenes any prior approval.

***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;***<sup>2</sup>

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

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

The property falls within the area covered by the *2000 North and West Silver*

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

<sup>2</sup> The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

*Spring Master Plan* (Master Plan or Plan). Staff summarized the goals of the Plan applicable to this property (Exhibit 19, p. 12):

The Site is located within the 2000 *North and West Silver Spring Master Plan*...area. The Master Plan does not specifically mention the Subject Property; however, it does provide guidance for the implementation of future special exceptions (now called “conditional uses”). The Master Plan recognizes the need for new, resident-operated special exceptions (such as home office and day-cares) but recognizes the need to preserve the existing character of the neighborhood. On page 55, the Master Plan recommends that special exception uses be located along major highways, and minimize non-residential appearance, size and the number of signs, visibility of parking, traffic generation and intrusive lighting.

Staff determined that the proposed use meets the guidelines for conditional uses in the Master Plan. The driveway enters from Sixteenth Street, which is classified as a major roadway. It is heavily screened on all sides by dense landscaping and a masonry wall. Staff found that these will screen the use from both Sixteenth Street and Second Avenue. Staff further concluded that the use has a minimal traffic impact and has little impact on the existing neighborhood because it was home to a former special exception (a non-profit organization).

Conclusion: There is no evidence in the record contrary to Technical Staff’s findings on this issue. Reviewing the site photographs in this record, the dense landscaping and screening are readily visible. A condition of approval will require the arrival and departure of children to be staggered during peak drop-off and pick-up, and Mr. Gurevich has agreed to a condition of approval limiting parking in the front to four vehicles. With this, the Hearing Examiner agrees with Staff that the use furthers the Plan’s goals to provide this public service while at the same time protecting the residential character of the neighborhood.

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

The Hearing Examiner already found that this application conforms to the Master Plan. Planning Staff found that the use will not alter the existing character of the area because no modifications to the property's exterior are proposed. Exhibit 19, p. 13.

Conclusion: The Hearing Examiner agrees with Staff that the existing landscaping and structures, that have existed at least since 1999, are now part of the existing character of the area. Even if not, the dense landscaping and masonry wall hide the non-residential aspects of the use, such as the parking pad and parked cars, and larger play area. A six-foot high fence screens the side and rear of the play area. Operational modifications (adding four children) will have a minimal impact on traffic in the surrounding area. The application meets this criterion.

***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 determined that the addition of this conditional use will not adversely change the residential character of the surrounding area because the operational changes are modest, the property is well-screened from the exterior, and a special exception has been located there from 1999 to 2012. Exhibit 19, pp. 13-14.

Conclusion: As this is replacing a prior special exception, approval of this application will not add to the existing conditional uses in the surrounding area. Three of the existing special exceptions are accessory apartments, which are now mostly permitted by right in the R-60 Zone and are necessarily residential in character themselves. The application

meets this standard. The other conditional use, a nursing home, is located relatively far from this property, and does not result in an “overconcentration” that changes the character of the neighborhood.

***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 “a 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 adequacy of roadways and transit is tested under the criteria set in the Planning Board’s Local Area Transportation Review Guidelines (LATR). Projects estimated to generate fewer than 50 “person trips” during the morning and evening peak hours (*i.e.*, 6:30 a.m. to 9:30 a.m. and 4:00 p.m. to 7:00 p.m.) are exempt from LATR Review but must file a Traffic Statement to demonstrate the use will generate fewer than 50 trips. The Applicant filed a Traffic Statement, summarized in the Staff Report (Exhibit 19, p. 14, below).



Table 3: Estimated Site Trip Generation

	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
Staff	2	0	2	0	2	2
Parents/ Children	12	12	24	12	12	24
Total			26			26

Staff reports that the Traffic Statement is conservative because it assumes that every child will arrive and depart in a separate vehicle. Upon review of the Applicant's Traffic Statement, Staff found that "no further analysis is required." Exhibit 19, p. 14.

Conclusion: Nothing in the record contravenes Staff's analysis and the Hearing Examiner finds that the Applicant need not undergo LATR Review. Staff does not report on other public facilities, such as water and sewer, however, the fact that the use has existed since 2002 supports a finding that these facilities are available to the subject property.

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

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use 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. When analyzing whether impacts are inherent or non-inherent, the Hearing Examiner must examine the size, scale, scope, light, noise, traffic and environmental effects of the proposed use.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Group Day Care: (1) vehicular trips to and from the Site; (2) outdoor play areas; (3) noise generated by children; and (4) lighting. Exhibit 19, p. 15. To this list, the Hearing Examiner adds parking for residents, employees and parent drop-off and pick-up.

Staff concluded that the Group Day Care use proposed here did not have any non-inherent impacts (Exhibit 19, p. 15):

The play area is adequate, in accordance with the noise ordinance.

The existing lighting and landscaping on the Site are adequate for the proposal. The existing lighting features are residential in nature and will not intrude on neighboring properties. There are no proposed changes to the existing lighting and landscaping on the site.

Staff has determined that the proposal will not have any non-inherent effects at this location and that the health, safety and welfare of the neighboring residents, visitors, and employees is adequately protected.

Conclusion: While reviewing this case, the Hearing Examiner expressed concern that the on-site parking would not be adequate to support the required parking for employees and residents and still provide enough space for parent drop-off and pick-up. While the Zoning Ordinance permits on-street parking adjacent to the property to be counted toward the minimum requirement, Staff advises that on-street parking is not permitted on either Second Avenue or Sixteenth Street. Staff found that there was parking on nearby neighborhood streets. Exhibit 19, p. However, there are no sidewalks leading from those streets to the subject property. Photographs of the property confirm that perimeter landscaping is quite dense, and parents may not be able to safely traverse the distance from the neighborhood street to the daycare without entering abutting roads. If all required parking is located on the concrete pad, then there would be no spaces for drop-off and pick-up. The Hearing Examiner finds the location of the property, the triangular shape of the lot, the prohibition of on-street parking on both abutting roads, and the lack of sidewalks, to be non-inherent physical and operational characteristics of the property for this use.

Nevertheless, this does not require denial of the application. In response to the Hearing Examiner's concern, Mr. Gurevich submitted a Supplemental Traffic Statement proposing to park his personal vehicles on the "green area" shown on the conditional use plan. Exhibit 23. This area is shown in a photograph submitted by Mr. Gurevich (Exhibit 23(b), on the next page).

The Hearing Examiner asked the Department of Permitting Services whether parking on the grass is permitted under the Zoning Ordinance. Exhibit 26. DPS responded (Exhibit 26):



Exhibit 23(b)

The ZO [Zoning Ordinance] does not provide the property owner at the subject property permission to utilize any unsurfaced area between the lot line and front building line to meet its parking requirements. However, the ZO is silent as to whether unsurfaced areas on the side and rear yard can serve as a parking area for vehicles. Historically, in cases where constituent complaints have been referred to DPS for cars parked on non-surfaced areas on the side or rear yard no enforcement action has been taken since no prohibition is stated in the ZO. Additionally, in cases where property owners were remanded to remove a car parked on non-surfaced areas in the front lawn (front building line to lot line) DPS has opined violators to be in compliant with the ZO if the car was moved to the rear or side yard. (Underlining and italics in original).

Given the triangular shape of the property, the next question is whether the “green area” shown on the conditional use plan is a side or rear yard. The Zoning Ordinance defines a “corner lot” as “[a] lot abutting 2 or more streets at their intersection where the interior angle of the intersection does not exceed 135 degrees.” *Zoning Ordinance*, §1.41. It then defines a “front lot line” on a corner lot as “A lot line abutting a right-of-way or

common open space. On a corner lot, the owner must elect which lot line is the front lot line.” *Id.*

As the angle created by the intersection of Sixteenth Street and Second Avenue is clearly less than 135 degrees, the Hearing Examiner finds that it is a corner lot. At the public hearing, Mr. Gurevich elected the Second Avenue frontage as the front lot line, which leaves the “green area” marked on the conditional use site plan in the side yard.

T. 15.

Due to the fencing and heavy landscaping surrounding the perimeter of the property, the Hearing Examiner finds that parking in the “green area” shown on the conditional use site plan does not warrant denial of the conditional use, and in fact, permits the use to operate more safely.

The Hearing Examiner agrees with Staff that other physical and operational characteristics are inherent to a Group Day Care and finds that the application meets this criterion.

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

Conclusion: Staff correctly found that no reconstruction or construction on the site is proposed (Exhibit 19, p. 15), therefore, this provision does not apply. The Hearing Examiner agrees and so finds.

***3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***



Conclusion: The application satisfies all specific requirements for the conditional use, and as discussed above, the proposed use will be compatible with the neighborhood. The Hearing Examiner concludes that, with the conditions imposed in Part IV of this Report and Decision, the conditional use should be approved.

### **B. Development Standards of the Zone (Article 59.4)**

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 Zone. Development standards for the R-60 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by the application (Exhibit 19, p. 11, on the next page). The table demonstrates that improvements meet all Zoning Ordinance requirements except for front and side yard setbacks. As already discussed, these intrusions were approved by variance and are grandfathered as “existing site design.” Thus, they may be permitted to continue.

### **C. Use Standards for a Group Day Care for 9 to 12 Persons (Section 59.3.4.4.D.)**

The specific use standards for approval of a Group Day Care for 9 to 12 Persons are set out in Section 59.3.4.4.D. of the Zoning Ordinance. The Hearing Examiner finds that the proposed use meets these standards for reasons that follow.

#### **1. Defined**

***Group Day Care (9-12 Persons) means a Day Care Facility for 9 to 12 people where staffing, operations, and structures comply with State and local regulations and the provider’s own children under the age of 6 are counted towards the maximum number of people allowed.***

Conclusion: A condition of approval will require the Applicant to conform with all State and local regulations governing the use and he has submitted an affidavit confirming that

Section	Development Standard	Required/ Permitted	Existing <sup>1</sup>
59.4.4.9.B.1	Minimum Lot Area	6,000 square feet	7,179 square feet
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 feet	100 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 feet	94.3 ft (2 <sup>nd</sup> Avenue)
59.4.4.9.B.1	Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
59.4.4.9.B.1	Maximum Lot Coverage	35 percent	1,005 square feet 14.08 percent
59.4.4.9.B.2	Minimum Front Setback	25 feet	16 feet <sup>2</sup>
59.4.4.9.B.2	Minimum Side Street Setback	15 feet	15 feet (16 <sup>th</sup> Street)
59.4.4.9.B.2	Minimum Side Setback	7 feet (prior to January 1, 1954)	N/A <sup>3</sup>
59.4.4.9.B.2	Minimum Rear Setback	20 feet	34 feet
59.4.4.9.B.3	Maximum Height	30 feet	Existing home is 2 stories tall and is not more than 30 feet in height.

<sup>1</sup> No exterior changes are proposed with the Subject Application. All measurements reflect existing conditions.

<sup>2</sup> The lot was recorded in 1939 and is conforming under Section 59.7.7.1.A. (pursuant to Section 59.B-5.3 in the Zoning Ordinance in effect prior to October 30, 2014).

<sup>3</sup> The triangular shape of the lot is such that there is only one side yard, which is 16th Street

**Table Comparing Development  
Standards Proposed and Required  
Exhibit 19, p. 11**

he will comply. As conditioned, the use meets this requirement.

## **2. Use Standards**

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

***i. The facility must not be located in a townhouse or duplex building type.***

***ii. In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may***

***file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.E).***

***iii. In a detached house, no more than 3 non-resident staff members are on-site at any time.***

***iv. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.***

Conclusion: Section 59.3.4.4.D.2.b requires a conditional use to meet all limited use standards in the section above and the general standards in Section 59.7.3.1.E.

(already discussed). Staff concluded that the proposed use meets these specific standards (Exhibit 19, p. 11):

The facility is not located in a townhouse or duplex and the Applicant is the provider and a resident on-site. No more than two (2) non-resident staff members will be on-site at any time. The site is not located in the AR Zone.

Staff's finding is consistent with the applicant's testimony at the public hearing. At the public hearing, Mr. Gurevich adopted the Planning Staff Report, specifying the number of employees and operations, as his own testimony. T. 24. The Hearing Examiner finds that this criterion has been met.

#### **D. General Development Standards (Article 59.6)**

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. The applicable requirements, and whether the use meets these requirements, are discussed below.

##### **1. Site Access Standards**

Zoning Ordinance Division 59.6.1 governs "Site Access;" however, by its own terms, it does not apply to development in single-family residential zones, such as the R-60 Zone involved in this case. *Zoning Ordinance*, Section 59.6.1.2.

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

The standards for the number of parking spaces, parking facility design and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. A table from the Staff Report confirms that the proposed use meets the minimum number of required spaces (Exhibit 19, p. 12):

Section	Parking	Required Spaces	Proposed
59.6.2.4.B	Vehicle Parking Requirement	Group Day Care: 2 (up to 2 non-resident employees)  Dwelling: 2  <b>Total: 4</b>	4 spaces in driveway     <b>Total: 4</b>

While not required, the two parking spaces in the “green area” will permit on-site drop-off and pick-up of children, enhancing the safety of the operation.

Conditional uses in residential zones requiring five or more parking spaces have specific screening requirements. As discussed, parking for this use requires only four spaces, but an additional two spaces are provided on the green area for the owner’s personal vehicles to accommodate parent drop-off and pick-up. Because the required number of spaces is only four, however, the screening requirements arguably do not apply.

The Hearing Examiner need not decide the issue. Even were the technical screening requirements applicable, Section 7.3.1.E.1.b of the Zoning Ordinance permits the Hearing Examiner to consider compliance with Article 6 “to the extent needed to ensure compatibility.” The very dense vegetation evident around both the side and front yard parking areas is obviously so extensive that it completely blocks the view of the parking area. For this reason, the Hearing Examiner finds that the Applicant need not

require technical compliance with the provisions of Section 59.6.2 of the Zoning Ordinance, as the existing landscaping is compatible with the neighborhood.

### **3. Site Landscaping, Screening and Lighting**

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

#### ***a. Lighting***

Zoning Ordinance §59.6.4.4.E. provides:

##### ***E. Conditional Uses***

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

By its own terms (in §59.6.4.2), this does not apply to existing lighting.

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

Conclusion: The Applicant proposes no changes to the existing lighting; therefore, this section does not apply.

#### ***b. Site Screening and Landscaping***

Conclusion: Although Article 6 of the Zoning Ordinance contains very specific screening requirements, the review of site landscaping and screening for conditional uses in single-family, detached homes is limited to an assessment of compatibility. Zoning Ordinance §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b. cited above.

The Hearing Examiner finds the site perimeter landscaping screening more than adequate to be compatible with the surrounding area, given that views of the property



are virtually blocked on three sides and there is a six-foot fence screening the playground to the rear.

#### 4. Signage

Conclusion: The Applicant proposes no signage for this use. If he wishes to add a sign in the future, he must modify this conditional use.

### IV. CONCLUSION AND DECISION

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Vladimir Gurevich for a conditional use under Section 59.3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for up to 12 children in his home at 9000 Sixteenth Street, Silver Spring, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. Improvements to the property are limited to those shown on the conditional use site plan (Exhibit 9).
2. The proposed Group Day Care must be limited to 12 children and two non-residential staff.
3. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:30 p.m.
4. The Applicant must schedule staggered drop-off and pick-up with no more than six vehicles dropping off or picking up children during any thirty-minute period.
5. Visitors (excluding parents) shall be instructed to visit the site outside peak travel times, which are:
  - a. 7:00 AM – 8:30 AM
  - b. 5:00 PM – 6:30 PM
6. No vehicular queuing may occur on adjacent roadways.
7. No more than four vehicles may be parked on the concrete parking pad at one time.

8. No more than two vehicles may be parked in the “green area” labeled on the conditional use site plan (Exhibit 9).
9. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
10. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Group Day Care for children and must correct any deficiencies found in any government inspection.
11. The Applicant must not use a public address system of any kind outside the building and must not allow any amplified music to be played outside the building.
12. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
13. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 25<sup>th</sup> day of January, 2022.



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Lynn Robeson Hannan  
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

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/>.

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 CHECK THE BOARD'S WEBSITE FOR HOURS OF OPERATION AND FILING PROCEDURES DURING THE COVID PANDEMIC.

NOTIFICATION OF DECISION TO BE SENT TO:

Vladimir Gurevich, Applicant  
David Brown, Esquire  
Attorney for the Applicant  
Barbara Jay, Executive Director, Montgomery County Board of Appeals  
Stephanie Dickel, Planning Department  
Kate Mencarini, Planning Department  
Greg Nichols, Manager, Department of Permitting Services  
Victor Salazar, Department of Permitting Services  
Michael Coveyou, Director, Finance Department

Cliff Royalty, Esquire