

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-666**

IN THE MATTER OF:	*	
Jennifer C. Rodriguez Aguilar	*	
	*	
Applicant	*	
	*	
Jennifer C. Rodriguez-Aguilar	*	OZAH Case No. CU 22-05
	*	
For the Application	*	

Before: Lynn Robeson Hannan, Hearing Examiner		

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on October 8, 2021, Jennifer Rodriguez-Aguilar (Applicant or Ms. Rodriguez-Aguilar, 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 located at 13011 Freeland Road, Rockville, MD 20853 and is zoned R-60.

On December 20, 2021, the Office of Zoning and Administrative Hearings (OZAH) issued notice of the public hearing, scheduled for February 4, 2022. Exhibit 32. On January 6, 2022, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval subject to the following three conditions (Exhibit 34, p. 2):

1. The Group Day Care Facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 5:30 p.m.
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two vehicles dropping off or picking up children during any 15 minute period.

The Planning Board issued its written recommendation of approval on January 21, 2022. The recommendation also clarified the number and type of conditional uses in the surrounding neighborhood. Exhibit 33. The public hearing proceeded as scheduled on February 4, 2022. No one appeared in opposition to the proposed use. The record was left open until February 4, 2022 to receive the transcript. T. 12. This was received, and the record closed on February 15, 2022.

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 located along Freeland Road in Rockville, approximately 500 feet north of the Wheaton Woods Elementary School. Exhibit 34, p. 4. The lot consists of approximately 0.14 acres (6,100 square feet) and is improved with a single-family home and two-car driveway. An aerial photograph from the Staff Report shows these improvements (*Id.*, p. 5):



Figure 2: Subject Property (outlined in red)

Other photographs from the Staff Report show the front and rear of the property (*Id.*, p. 8, on the next page).



Photographs from Staff Report of
Front and Rear of Subject Property
Exhibit 34, p. 8

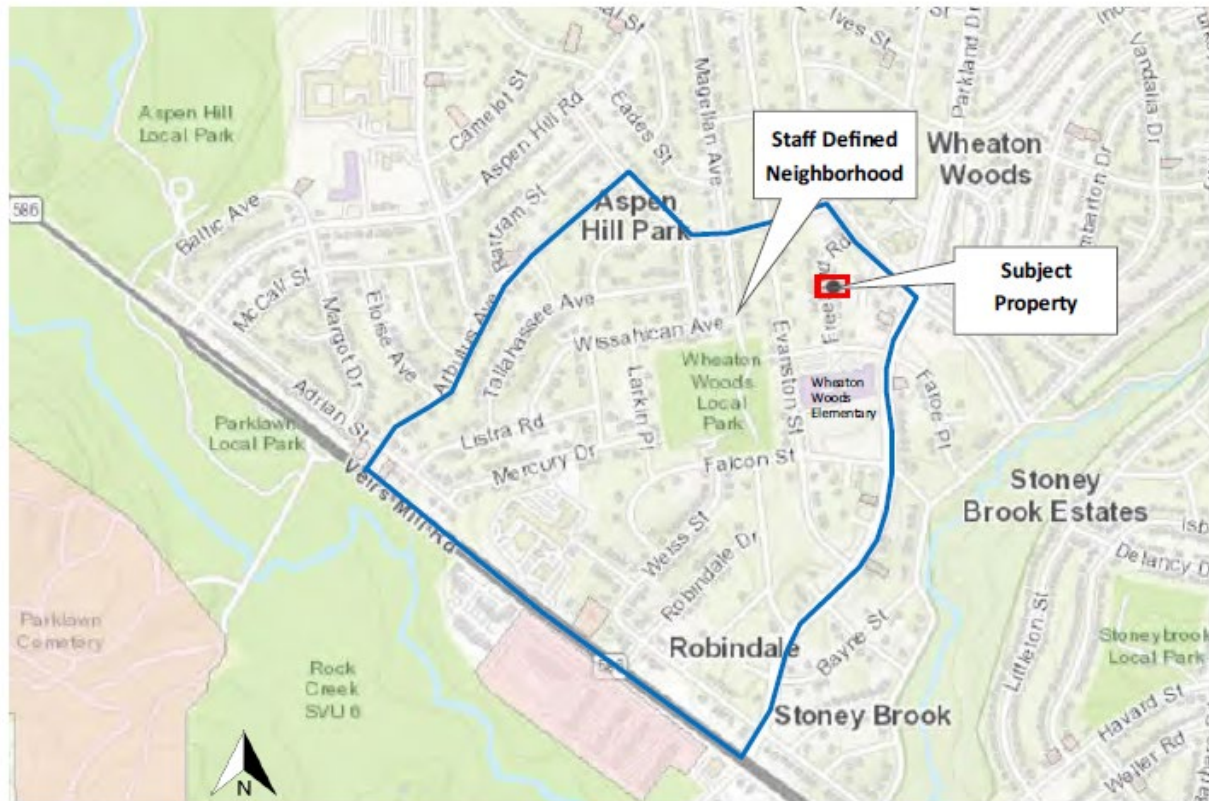


Photograph of Play Area in Rear
Yard (Ex. 34, p. 8)

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 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 Arbutus Avenue to the northwest, Parkland Drive to the southeast, and Veirs Mill Road (MD 586) to the southwest, depicted on a map from the Staff Report (Exhibit 34, p. 4, on the next page).



Surrounding Area
Exhibit 34, p. 4

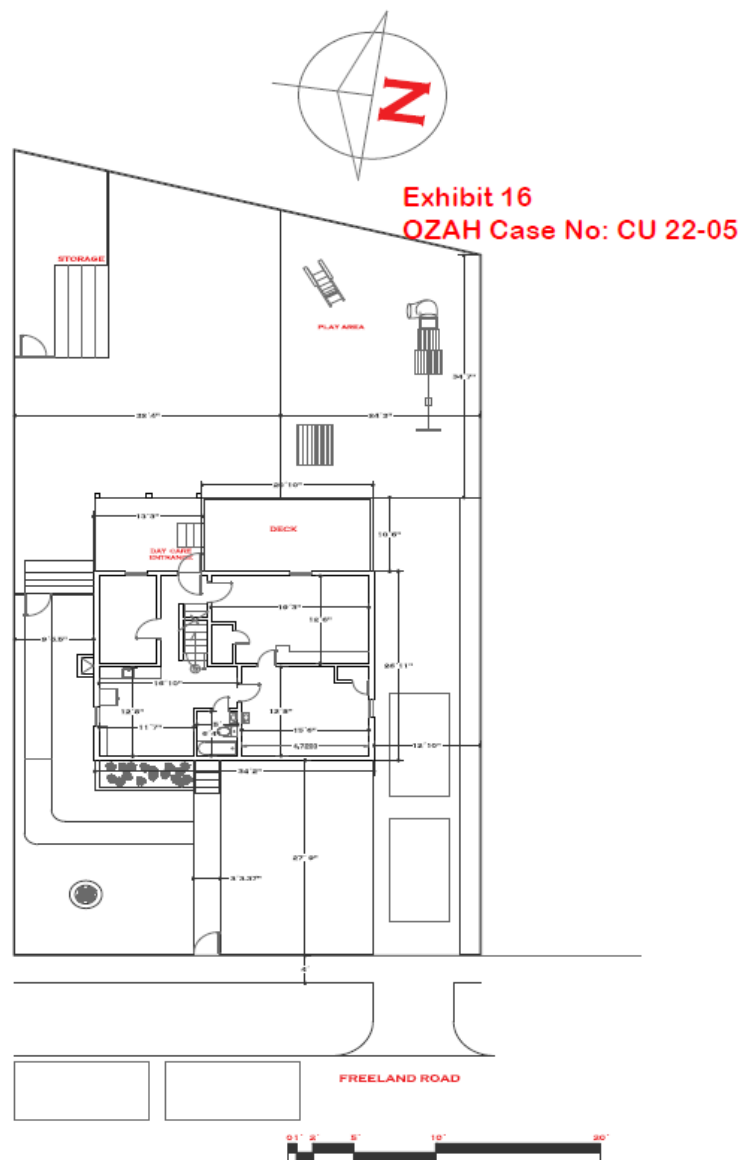
Staff advises that the area is composed primarily of small lots with single-family detached homes and several religious institutions. *Id.* The Planning Board clarified that there is one special exception for a home beauty parlor near the subject property (at 13004 Freeland Road), and two other special exceptions, an accessory apartment and non-resident medical practitioner's office. Exhibit 33.

At the public hearing, Ms. Aguilar-Rodriguez testified that she agreed with the finding and conclusions of the Staff Report. T. 9. 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

Staff advises that the Applicant has been operating a daycare for up to 8 children,

doing business as Ariana's Little Star Family Day Care, since 2016. Exhibit 34, p. 5. It operates from the basement of the home and contains two main rooms and a kitchen that has room for programming as well. The rear of the home contains a play area fenced on three sides. The Applicant (who resides in the property) proposes to use the on-street spaces abutting the property to park their cars during the day. This will leave the two-car driveway open for parent drop-off and pick-up. The conditional use site plan showing the improvements to the property is reproduced below (Exhibit 16):



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 uses if 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 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:¹

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: Staff advises that the property is not subject to any prior approvals. Exhibit 34, p. 12. This standard does not apply to the application.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;²

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 *1994 Aspen Hill Master Plan* (Master Plan or Plan). Staff found that the following language articulated the Plan's

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

² 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).

overall vision (Exhibit 34, p. 9; *Plan*, p. 1):

The Plan reinforces the primarily suburban and residential character of the Aspen Hill area...The Plan seeks to increase opportunities for community interaction. It looks to reduce the social and sometimes physical isolation of various neighbors...The Plan seeks to increase the recreational and transportation options in the Aspen Hill Planning Area in a manner that improves the overall environment and the quality of life of residents and workers...

According to Staff, the Plan foresaw a need for daycare in the area based in demographic trends. The Plan cites the following guidelines for childcare facilities (Exhibit 34, p. 9; *Plan*, pp. 190-191):

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

Staff concluded that the proposed use conforms to the above guidelines because there will be only a modest increase to the existing use. *Id.*

The Plan also contains guidelines for siting of conditional uses (formerly special exceptions). Staff determined that the proposed use meets these guidelines (Exhibit 37):

- The Aspen Hill Master Plan highlights a concern for special exceptions/conditional uses that have the propensity to change the surrounding neighborhood character. In response to controlling scale and use compatibility, the Plan dissuades special exceptions/conditional uses that are excessive in concentration. Further, the Plan specifically identifies large-scale institutional uses as a particular concern. At least 4 previously

approved special exceptions/conditional uses are within the staff-defined neighborhood, but none of which are family or group daycare facilities. The Subject Application to expand existing care service for up to 4 additional persons does not contribute to an excessive amount of non-residential conditional uses in the neighborhood. The proposed expansion is consistent with the pressing need for childcare in Aspen Hill as identified on page 295 of the Master Plan.

- The Master Plan also prioritizes the protection of major transportation corridors. The Site is not positioned at a major community gateway for the broader Aspen Hill Plan area and is not located along a major thoroughfare within the CU neighborhood boundary. The traffic generation rates (page 11 of the Staff Report) for the use demonstrate minimal vehicle trips are anticipated to occur.

- The Master Plan also emphasizes compatible design with surrounding properties through architecture, parking, and screening and buffering. The Subject Property is a single-family detached dwelling on a small lot surrounded by similar dwellings on comparable lots. There are no proposed exterior changes, no increase in building square footage, and no changes to existing outdoor play areas that would alter the appearance of the Property, and in effect, modify the character of the street or neighborhood. From the street-level perspective, the Subject Property remains indistinguishable from the adjacent single-family homes in terms of bulk, height, and fenestration. No new accessory structures are proposed.

- The Master Plan notes that front yard parking should be avoided because of its commercial appearance, or it should be adequately landscaped. In this case, the Site has available side yard parking and on-street parking which is a defining character trait of the adjacent properties and the neighborhood. As previously noted in the Staff Report, the proposed expansion will rely on some abutting on-street parking, which is permissible. This parking arrangement is consistent with the Plan and does not affect the appropriateness of the Site for the use. Ingress and egress to the main daycare service area and the ordinary activities associated with the use, such as outdoor playtime, both occur at the rear of the residential dwelling. Activities are limited from view from the abutting residences and the abutting local road and other surrounding major roadways. The existing rear lawn and play area is fenced from the abutting properties and therefore meets the screening intent of the Master Plan.

- The Master Plan does not articulate specific requirements related to properties along Freeland Avenue, but the Subject Site does meet the recommendations for group daycare use, is compliant with development standards of the zone and the general requirements for the conditional use. Therefore, for the reasons stated in the Staff Report and as enumerated

above, the Application is in substantial conformance with the Master Plan guidelines for conditional uses, along with the general requirements of the Zoning Code.

Conclusion: The Hearing Examiner agrees with Staff that the proposed daycare meets the Master Plan's guidelines for location of daycare facilities. It is located on a residential street inside the neighborhood away from pollutants and noise caused by traffic congestion. The photographs demonstrate that there is a large play area in the rear yard surrounded by a board-on-board fence to protect the children and screen the use. The uncontroverted evidence (from the Staff report) supports a finding that parking and circulation are adequate to serve the modest increase in the number of children.

Staff's findings on compliance with the Plan's goals for conditional uses are supported by the photographs in the record, which demonstrate that the use has the appearance of a single-family dwelling, and the proposed use only a modest increase in traffic. No exterior changes to the existing home are proposed and access to the daycare is in the rear of the property. The Hearing Examiner agrees with Staff that the use is consistent with the Master Plan's goals to increase the availability of childcare in the area and to mitigate commercial aspects of conditional uses.

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 neighborhood because no exterior changes are proposed.

Conclusion: The photographs in the record demonstrate that the existing home presents as a single-family detached dwelling with little exterior commercial appearance. There will

be no changes to the exterior. While there may be a slight increase in traffic, it can be accommodated in the driveway and on the street. Operational modifications (adding four children) will therefore 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;

The Planning Board clarified that there are three conditional uses in the surrounding area: a home occupation (beauty parlor), an accessory apartment, and a non-resident medical practitioner's office. Exhibit 33.

Conclusion: The evidence in this record supports a finding that the addition of this conditional use will not alter the residential character of the surrounding area. The only change will be a small increase in the number of children attending the daycare, possibly generating a slight increase in traffic. The daycare maintains the appearance of a single-family dwelling. Two of the other conditional uses in the neighborhood (*i.e.*, the accessory apartment and the home-occupation) are necessarily housed in single-family dwellings. accessory apartments now may be permitted by right in the R-60 Zone and are residential in character themselves. The Hearing Examiner finds that the proposed daycare meets this criterion for approval.

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, on the next page).

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 concluded (Exhibit 34, p. 11):

The Subject Application was submitted in October of 2021 and is therefore subject to the 2020-2024 Growth and Infrastructure Policy, which took effect on January 1, 2021. Under the 2020-2024 Growth and Infrastructure Policy,

Table 1: Trip Generation for the Proposed Use

Period	ITE Vehicle Trips	Growth and Infrastructure Policy			
		Yellow Policy Area Projected Trips			
		Person Trips	Auto Driver Trips	Auto Passenger Trips	Pedestrian Trips*
Morning Peak Hour	11	14	9	3	2
Evening Peak Hour	11	14	9	3	2

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

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

Trip Generation Table
Exhibit 34, p. 11

a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the proposed day care center generates fewer than 50 person-trips during each weekday AM and PM peak hour. The LATR test parameter is in the form of total peak-hour person trips, not vehicular peak-hour trips. Person trips include all travel modes – vehicular, transit, walking, and bicycle trips, and this total is 14 person-trips in both the AM and PM peak hours.

Staff also concluded that other public facilities were available to the site. *Id.*, p. 14.

Conclusion: Nothing in the record contravenes Staff's analysis and the Hearing Examiner finds that the Applicant need not undergo LATR Review. It is obvious from the record that other public facilities are available to the property, as the existing day care is already operational.

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 what would be non-inherent physical and operational characteristics of the site: 1) excessive vehicular trips to and from the Site; 2) inadequate outdoor play areas; 3) excessive noise generated by children; 4) inadequate drop-off and pick-up areas; and 5) excessive lighting. Exhibit 34, p. 15.³ To this list, the Hearing Examiner adds parking for residents and employees.

³ Typically, Staff identifies the *inherent* impacts of a use and compares them in size, scale and intensity to the use as proposed. Nevertheless, the inherent characteristics are identified here by removing the term “excessive” and “inadequate” to find the inherent aspect of the proposed use.

Staff concluded that the Group Day Care use proposed here did not have any non-inherent impacts (*Id.*):

Adequate parking and drop-off/pick-up areas are available on the adjacent public street in front of the Site. The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use to minimize impacts to the neighborhood.

The outdoor play equipment and lawn area in the backyard is adequate for the Proposal. The designated hours for outdoor play are not expected to exceed typical noise levels for outdoor activity.

The existing lighting for the front entrance, sidewalk, and rear entrance, along with some landscaping on the Site is adequate for the Proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties.

Conclusion: The Hearing Examiner concurs with Staff's analysis. Parking is permitted on the street in front of the property. The residents of the dwelling will park there to leave the driveway open for parent drop-off and pick-up. The Hearing Examiner finds that there are no non-inherent adverse impacts that warrant denial of the proposed use.

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 34, p. 15). Therefore, this provision does not apply.

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 34, p. 13, below):

Table 2: Conditional Use Development and Parking Standards (R-60 Zone)

Development Standard Section 4.4.9	Permitted/ Required	Existing*
Minimum Lot Area	6,000 sq. ft.	6,128 sq. ft.
Minimum Lot Width at Front Building Line	60 feet	±57 feet
Minimum Lot Width at Front Lot Line	25 feet	±55 feet
Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage	35%	±16%
Minimum Front Setback	25 feet	±28 feet
Minimum Side Setback	8 feet	±9 feet
Minimum Sum of Side Setbacks	18 feet	±21.5 feet
Minimum Rear Setback	20 feet	±40.5 feet
Maximum Height	35 feet	±28 feet

Although the lot has slightly less than the minimum lot width currently required in the R-60 Zone, Section 59.7.7.1.D.2.a permits homes on pre-1958 lots to be reconstructed “under its current zoning without regard to the minimum lot width at the front lot line and front building line...” As the State Department of Assessments and Taxation records reveal the home was built in 1952, it would be subject to this provision. Therefore, the Hearing Examiner finds that the proposed use meets all of the applicable development standards in Article 59.4.

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 he will comply. As conditioned, the use will meet 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. Staff concluded that the proposed use meets these standards (Exhibit 19, p. 11):

The Site is not located in a townhouse or duplex and the Applicant is the provider and a resident. As condition, no more than two non-resident staff members will be on-site at any time. The site is not located in the AR Zone.

At the public hearing, Ms. Aguilar-Rodriguez agreed that the Planning Staff Report accurately reported the number of employees and operations. T. 9. 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

Conclusion: 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 34, p. 13):

Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 1 (1/ non-resident employee) Dwelling: 2 Total: 3	2 spaces on-site 1 space on-street
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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 is compatible with the surrounding area. Because it is in a single-family detached dwelling, it presents as a residence with only minor commercial characteristics, such as the drop-off and pick-up of children.

4. Signage

Conclusion: The Applicant proposes no signage for this use. If she wishes to add a sign in the future, she 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 Jennifer Rodriguez-Aguilar 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 her home at 13011 Freeland Road, Rockville, MD 20853, 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 16).
2. The Group Day Care facility must be limited to a maximum of twelve (12) children and two (2) non-resident employees.
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period.
4. Residents of the home must park their vehicles on the street during parent drop-off and pick-up periods.
5. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
6. 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.
7. 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.
8. The Applicant must maintain the grounds in a clean condition, free from debris, daily.
9. 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 16th day of February, 2022.

A handwritten signature in dark ink, appearing to read 'LRH', with a long horizontal flourish extending to the right.

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:

Jennifer Rodriguez-Aguilar, Applicant
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Matt Folden, Planning Department
Tamika Graham, Planning Department

Greg Nichols, Manager, Department of Permitting Services
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department
Cliff Royalty, Esquire