

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

IN THE MATTER OF:
GETAHUN DAY CARE
2609 BLUERIDGE AVENUE
GROUP DAY CARE

Applicant

Almaz Getahun

For the Application

*
*
*
*
*
*
*
*
*

OZAH Case No. CU 202403

Before: Andrea LeWinter, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE	2
II. FACTUAL BACKGROUND.....	3
A. The Subject Property	3
B. Surrounding Neighborhood	4
2. Parking for the Residence and the Day Care	7
3. Site Lighting and Signage.....	8
4. Internal Physical Arrangements for Site Operations	8
5. Operations	8
D. Community Response.....	8
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW	8
A. Necessary Findings (Section 59.7.3.1.E.).....	9
B. Development Standards of the Zone (Article 59-4).....	14
C. Use Standards for Group Day Care for 9-12 Persons (Article 59-3; Section 59.3.4.4.D.)	15
D. General Development Standards (Article 59-6).....	16
1. Site Access Standards	17
2. Parking Spaces Required, Parking Facility Design, and Parking Lot Screening.....	17
3. Site Landscaping, Screening and Lighting	18
4. Signage.....	19
IV. CONCLUSION AND DECISION	19

I. STATEMENT OF THE CASE

On July 10, 2023, Almaz Getahun and her spouse, Hagos Ahmed, filed an application seeking approval of a conditional use to operate a Group Day Care for up to 12 children in the residence they co-own at 2609 Blueridge Avenue, Silver Spring, MD. Exhibit 1. Planning Staff of the Montgomery County Planning Department (“Staff”) confirmed the applicant’s interest in the property through the application intake checklist. Exhibit 2. The subject property is in the R-60 zone. Exhibit 4. Since 2011 through the present day, under the name “Mimi’s Family Day Care,” the applicant has run a Residential Family Day Care for up to eight (8) children in the subject residence, which is permissible as a matter of right within the R-60 zone. Exhibit 14, p. 5; T.17; §59-3.1.6.¹ The grant of a conditional use is required for the facility to expand to up to 12 children in the R-60 zone (*i.e.*, a Group Day Care). §59-3.4.4.D (9-12 persons).

The Planning Board did not review this application in accord with recent policy changes that do not require a review if an application is requesting only an expansion.

The Office of Zoning and Administrative Hearings (“OZAH”) scheduled a public hearing for October 30, 2023, by notice issued on September 14, 2023. Exhibit 13. The public hearing proceeded as scheduled on October 30, 2023. The applicant, Ms. Almaz Getahun, testified in support of the application. No one appeared in opposition. The record remained open for ten days following the close of the hearing to allow the preparation of the transcript. Three electronic mail messages expressing support for the application were submitted to OZAH after the hearing, prior to the close of the record, two from prior day care clients stating that the applicants had provided quality day care services and a third from someone who did not identify their connection to the applicants but asserted the value the applicants have added to the community by setting a positive

¹ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

role model of enterprise for the immigrant community. Exhibits 15a & 15b. The record was closed on November 9, 2023. See T. 41.

For the reasons set forth in this Decision, the Hearing Examiner approves the conditional use application with conditions.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 2609 Blueridge Avenue, Wheaton, MD, on a 7,097 square foot lot otherwise known as Lot 18, Block 28, improved with a detached single-family dwelling. Exhibit 14, p. 5; T. 14. The existing Family Day Care operates on the ground level of the house and is accessed via a door from the front driveway. Exhibit 14, p. 5; T. 19. It consists of a main playroom and an infant room. *Id.* The rear yard of the property, which serves as the outdoor play space for the daycare, is fully enclosed on all three sides by fencing of four-and-a-half and six feet high and contains play equipment and toys. Exhibit 14, p. 5; T. 29-30. The proposed increase in child enrollment will not result in any modifications of the day care space. Exhibit 14, p. 6; T.20. The property has a large driveway with parking for up to four (4) vehicles. Exhibit 14, p. 5; T.21. Parking on the north side of Blueridge Avenue is restricted to permit holders and the applicants' have one permit. Exhibit 14, p. 5; T. 23. There is no parking permitted directly across from the subject home on the south side of Blueridge Avenue, but further down Blueridge Avenue there is metered parking and, if necessary (currently all non-resident employees commute by bus, T.23), Ms. Getahun will pay the meter fees to have employees park in metered spots. Exhibit 14, p. 5; T. 28. The petition is not subject to Chapter 22A, the Forest Conservation Law and conforms with the Planning Department's environmental guidelines. Exhibit 9.

Staff provided the aerial photograph of the property below. Exhibit 14, p. 5:

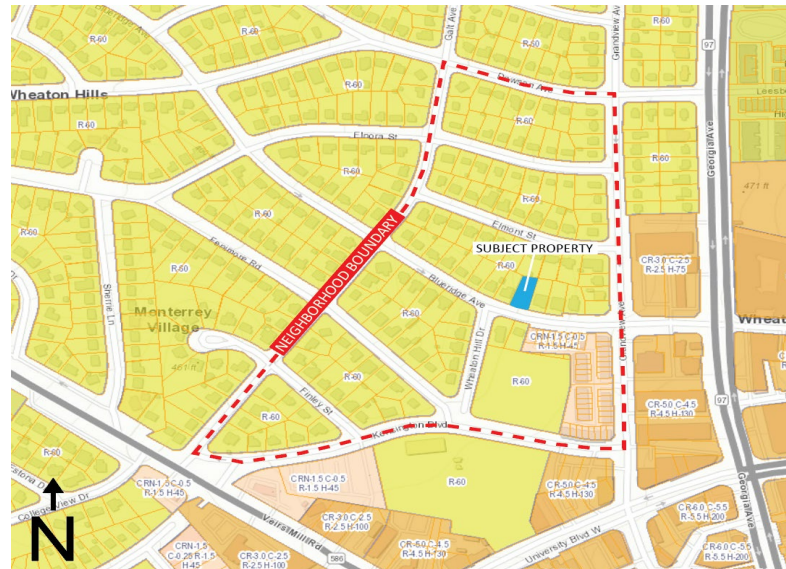


Aerial photograph of the Subject Site (outlined in red)

The site is accessed directly from Blueridge Avenue. *Id.* Bus transit is provided by three different WMATA Y line routes along Georgia Avenue and by three different Ride On routes and five different WMATA C and Q line routes on Viers Mill Road. Exhibit 14, p. 4.

B. Surrounding Neighborhood

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood,” which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character. Staff proposed defining the boundaries of the surrounding neighborhood as “bounded by Dawson Avenue to the north, Galt Avenue to the west, Kensington Boulevard to the south, and Grandview Avenue to the east,” as outlined by the dotted red line on the map on the following page. *Id.*



Staff Defined Neighborhood (Ex. 14, p.4)

Staff described the neighborhood as “composed primarily of small lots with single-family detached houses, with the exception of a townhouse development at the south.” *Id.* Staff found no record of any other conditional uses in the identified area. *Id.*

No objection was raised to the Staff definition of the neighborhood, and the Hearing Examiner agrees with Staff, as the Staff definition is structured around major roads, which serve as logical boundaries.

C. Proposed Use

The applicant seeks approval of a conditional use to expand a current Family Day Care for up to 8 children into a Group Day Care for up to 12 children in the residence of 2609 Blue Ridge Avenue, Wheaton. Staff explained, “The proposed Group Day Care Facility will occupy the same space as the existing Family Day Care. The Applicant is not proposing any physical changes to the indoor or outdoor day care spaces and the current hours of operation, Monday through Friday from 7:30 a.m. to 5:30 p.m., will remain the same.” Exhibit 14, p. 6. The proposed 12-child Group Day Care will be operated by two (2) resident-staff and two (2) non-resident staff. *Id.* The non-resident staff will be on site from 7:30 a.m. to 5:30 p.m. *Id.* The driveway of the subject property

has the capacity for four (4) cars; the residents/applicants have two cars, one of which is regularly parked on the street, T.23, and the non-resident staff currently commute by bus and do not have parking needs, T.23, leaving three spaces in the subject property driveway for drop off and pick up. The applicant submitted a parent drop off/pick up schedule with staggered times from 7:30 a.m. to 9:15 a.m. and 4:30 p.m. to 5:30 p.m. respectively, Exhibit 6, and attested to her commitment to following this schedule as necessary, T.28. Staff provided the following photographs of the front of the existing site and entrance to the day care. Exhibit 14, p. 8:

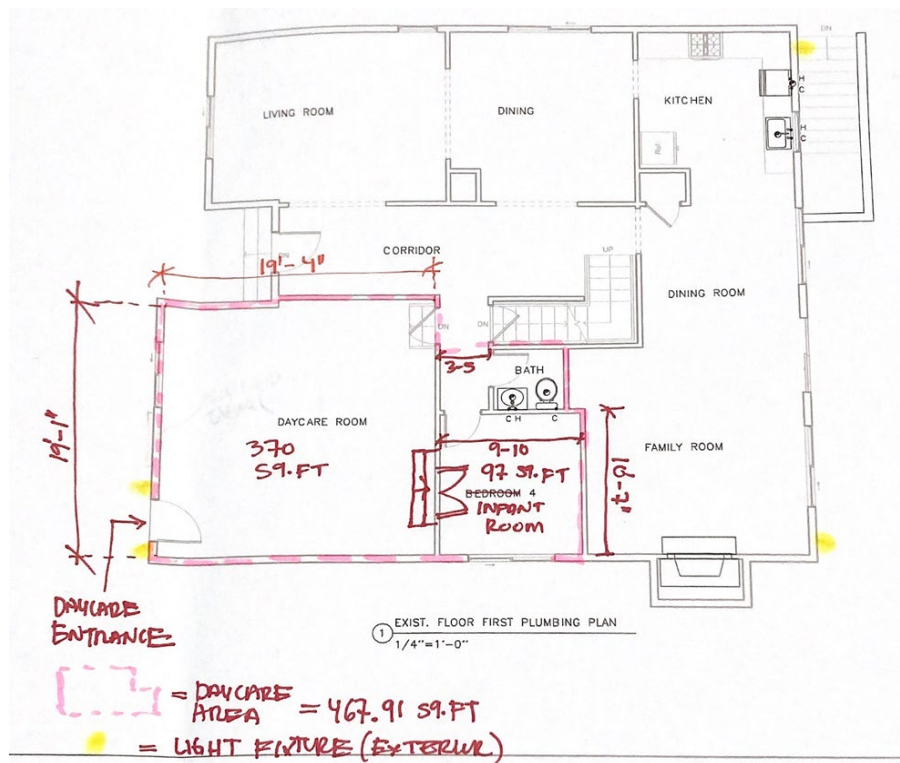


Blueridge Avenue is designated as a Downtown Street with a 50-foot-wide public right-of-way. Exhibit 14, p. 9. The Subject Property is located 350 feet west of the intersection of Blueridge Avenue and Grandview Avenue. *Id.* Vehicular circulation along the street is two-way, with on-street permit parking along the northern street frontage. *Id.* The southern street frontage does not permit parking for a segment of the street; another segment of the southern street frontage is

metered for 9-hour parking from 9 a.m. to 10 p.m. *Id.* There are no existing or planned bikeway facilities along Blueridge Avenue, therefore no implementation participation or right-of-way dedication is required of the applicant as part of the subject Conditional Use Application. *Id.*

1. Site Plan and Landscape (Play Yard Screening) Plan

As stated, the applicant currently runs a residential family day care for up to eight (8) children. The site has already been outfitted to accommodate the children, including with a fenced-in backyard, as documented in the picture of the proposed conditional use, Exhibit 14, p. 8, and testified to by Ms. Getahun, T. 29-30:



As stated, according to Ms. Getahun, if the conditional use is granted, the applicants do not propose to make any changes to the residence or the backyard. Exhibit 14, p. 6; T. 20.

2. Parking for the Residence and the Day Care

The subject site has four (4) on-site parking spaces for resident parking as well as for parents to drop off and pick up children. See Exhibit 14, p. 6; T. 21, 23.

3. Site Lighting and Signage

The lighting on the site will remain unchanged if the application is approved. Exhibit 14, p. 6; T. 35. There is no signage on the site, and none has been sought in this application. Id.

4. Internal Physical Arrangements for Site Operations

The existing Family Day Care operates within the applicants' home and no change is anticipated with the growth from up to eight (8) to up to 12 children, as depicted in the Floor Plan included in the Staff Report, reproduced on page 7 of this Report and Decision. Exhibit 14, p. 8.

5. Operations

The hours of operation are proposed to be from Monday through Friday from 7:30 a.m. to 5:30 p.m., with child drop off and pick up staggered so that no more than two (2) vehicles are dropping off or picking up children at the same time. Exhibit 6. The facility will be operated by two (2) residential and two (2) non-residential staff. Exhibit 14, p. 6.

D. Community Response

This application generated no opposition.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a Group Day Care for up to 12 children. *Zoning Ordinance* §59.3.4.4.D.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that

the conditional use proposed in this application satisfies both the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner's conclusions for each finding, are set forth below:²

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;

Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 14, p. 4.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that this standard is inapplicable to the subject application.

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

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 9-12 children 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 meets the requirements of Articles 59-3, 59-4, and Article 59-6.

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. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

³ 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).

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

The site is located within the *2012 Wheaton CBD and Vicinity Sector Plan* (“Sector Plan”) area. Exhibit 14, p. 9. Staff advises that the Sector Plan does not specifically discuss the subject property but does provide guidance regarding small businesses and residential areas, including the following recommendations:

- Create opportunities to help retain and grow local small businesses;
- Existing single-family residential neighborhoods should be preserved and protected from the adverse impacts of nearby non-residential development. Id.

Conclusion: The proposed use is in substantial conformance with the applicable master plan because the relevant Sector Plan both encourages the development and maintenance of small businesses and the preservation and protection of the residential neighborhoods from the adverse impacts of non-residential development. The Hearing Examiner finds that allowing the existing Family Day Care for eight (8) children to expand to a Group Day Care for 12 children will retain and grow a valuable local small business. The Hearing Examiner also finds that allowing a larger daycare within the residential neighborhood will facilitate preservation and protection of the residential character by providing for a critical neighborhood need without necessitating the construction of new and non-residential facilities, construction that could have an adverse impact.

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

Conclusion: The existing home has been a Family Day Care since 2011 and is, therefore, part of the existing character of the neighborhood. The home presents as a single-family dwelling in keeping with R-60 Zoning of the area. Because no changes are proposed to the property and no issues of potential nuisance were noted by Staff, reported by Ms. Getahun, or raised in opposition, the proposed use meets this standard. Exhibit 14, p. 14, 17; T. 17-18.

- 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;***

As Staff detailed, within the Staff-defined neighborhood there are no other conditional uses in the vicinity. Exhibit 14, p. 4. The proposed site has been an operating day care for 11 years, the increase in the number of children being served is modest, and no physical changes to the property are proposed. Exhibit 14, p. 5. To date, no issues of nuisance have been reported, T. 17-18, and available parking is more than adequate, Exhibit 14, p. 6; T. 23.

Conclusion: Although granting this petition will create a conditional use in this neighborhood, the Hearing Examiner finds that the application meets this standard as the proposed conditional use will not adversely affect or alter the neighborhood's predominantly residential nature since the prior comparable permitted use had no negative impact on the neighborhood and the proposed increase in this prior use is modest and involves no physical changes.

- 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, the application does not require approval of a preliminary plan of subdivision. Exhibit 14, p. 14. Staff also note that since there are no proposed alterations to the existing site, fire access and stormwater management should continue to be sufficient. *Id.* Further, schools should not be impacted because no new dwelling units are proposed. *Id.* The applicant, Ms. Getahun, concurred with Staff's findings. T. 37-39. Under the 2020-24 *Growth and Infrastructure Policy*, a traffic study is not required to satisfy the Local Area Transportation Review (LATR) test because the proposed day care will generate less than 50 net new person-trips during weekday peak hours. Exhibit 14, p. 14.

Conclusion: The Hearing Examiner agrees with Staff that the increased use proposed will not have a significant impact on public facilities or services and, therefore, meets this standard.

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

conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

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

Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Group Day Care facility: (1) vehicular trips to and from the site; (2) visual impact of outdoor play areas; (3) noise generated by outdoor play area; (4) drop off and pick up areas; and (5) lighting. Exhibit 14, p. 15. The Hearing Examiner agrees with this listing of inherent characteristics of a Group Day Care.

Staff found the impact of the inherent effects will be minimal because adequate parking and drop-off/pick-up areas are available on the subject property's driveway; the drop offs and pick ups will be limited by the imposition of staggering as a condition of approval; the outdoor play area and equipment are adequate and fenced and the 11 years of day care operation with eight (8) children have not resulted in any noise complaints or issues with neighbors; and the requested increase will only add up to four additional children. Exhibit 1; Exhibit 14, p. 15; T. 17-18, 30. Further, Staff found the existing lighting fixtures to be residential in nature and not

intrusive on neighboring properties, and “did not identify any non-inherent [effects that will result from granting] the application... [and] there is no harm resulting from non-inherent or inherent characteristics.” Exhibit 14, p. 15.

Conclusion: The Hearing Examiner agrees with Staff regarding the inherent impacts of a day care and also regarding Staff’s finding that any non-inherent impacts will be minimal due to the existing parking and lack of proposed changes to the proposed site. The Hearing Examiner further agrees with Staff that neither the inherent nor non-inherent impacts of the proposed use will create undue harm based on the lack of evidence supporting a negative impact resulting from the existing day care use and the fact that only a minimal increase in capacity, without any physical changes, is requested. The Hearing Examiner finds, therefore, that the petition satisfies this Zoning standard.

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

Conclusion: The applicant is not proposing to construct any new or alter any existing structures as part of the conditional use application. Thus, the applicant meets this standard.

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: As detailed, the proposed use does satisfy all specific requirements and, as there are no additional concerns raised by Staff or opposition nor any concerns apparent to the Hearing Examiner, the petition meets this standard.

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 in §59.4.4.9.B. of the Zoning Ordinance.

Staff compared the minimum development standards of the R-60 Zone to those provided in the application in a Table provided in page 13 of Exhibit 14, which is reproduced below. All measurements reflect existing conditions as no exterior changes are proposed. Exhibit 14, p. 13.

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

Development Standard	Permitted/ Required	Existing*
Section 4.4.9 – R-60 Zone		
Minimum Lot Area	6,000 sq. ft.	7,097 sq. ft.
Minimum Lot Width at Front Building Line	60 feet	±65 feet
Minimum Lot Width at Front Lot Line	25 feet	±65 feet
Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage	35%	±31%
Minimum Front Setback	25 feet	±27 feet
Minimum Side Setback	8 feet	±8 feet
Minimum Sum of Side Setbacks	18 feet	±20 feet
Minimum Rear Setback	20 feet	±45 feet
Maximum Height	35 feet	<35 feet

*There are no proposed changes to the development standards or physical structures on the Subject Property through this Application.

Conclusion: As the Table sets out, the proposed use more than meets all the development standards of the R-60 Zone, as provided in Zoning Ordinance §59.4.4.9.B. The Hearing Examiner finds that this standard is met.

C. Use Standards for Group Day Care for 9-12 Persons (Article 59-3; Section 59.3.4.4.D.)

The specific use standards for approval of a Group Day Care for 9-12 persons are set out in Section 59.3.4.4.D. of the Zoning Ordinance. Standards applicable to this application are:

1. Defined

Group Day Care (9-12 Persons) means a Day Care Facility for 9-12 people where staffing, operations, and structures comply with State and local regulations and the

provider's own children under the age of 6 are counted towards the maximum number of people allowed.

Conclusion: The Applicant will be required to have staffing, operations, and structures compliant with State and local regulations. At the hearing, Ms. Getahun's affirmed the requirement that the day care comply with all State and local regulations. T. 20.

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***
s

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

Conclusion: The use standards for a Group Day Care facility incorporate the limited use standards above. From the Staff Report and photographs, the Hearing Examiner finds that the site is not located in a townhouse or duplex. Ms. Getahun testified that she is a provider and a resident. T. 14-15. Ms. Getahun has agreed that no more than two (2) non-resident staff members will be on-site at any time and the approval of the conditional use will be subject to a condition mandating this requirement. Exhibit 14, p. 3; T. 40. The site is not located in the AR Zone. Exhibit 14, p. 1. Thus, the Hearing Examiner finds that these standards have 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, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-60 Zone involved in this case.

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

The standards for the number of parking spaces required, parking facility design, and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. However, because the subject site is a detached home and is not required to have a parking facility with five (5) or more parking spaces, the Code sections pertaining to parking facility design and screening do not apply in this case. *See Zoning Ordinance §§59.6.2.5.A.1 and 59.6.2.9.A.3.*

The required total number of parking spaces as established by Zoning Ordinance §59.6.2.4. is three (3) -- two (2) spaces for the single-family dwelling and one (1) for the child-care facility, referenced in the Table below and on the following page, excerpted from page 13 of the Staff report, Exhibit 14:

Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 2 (1/per non-resident employee) Residents: 2 Total: 4	2 metered on-street parking spaces for non- resident employees 2 on-street permit parking spaces for residents
---	--	---

As discussed in Part II.C.2. of this Decision, a proposed Group Day Care also needs an area where parents can safely drop off and pick up children. With the ample driveway parking spaces and staggered drop off and pick up times, this proposal easily complies with this requirement. Exhibit 6; Exhibit 14, p. 3; T. 28.

Conclusion: The subject property has four (4) spaces, so it more than complies with this requirement. Pick up and drop off will be adequate with the limitation that only two parents drop off at one time. The Hearing Examiner finds that the vehicle parking requirements can easily be met for the subject property residents, the non-resident employees, and for parents dropping off and picking up children enrolled in the day care.

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), Division 6.4 does not apply to existing, unmodified lighting:

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

Conclusion: As discussed in Part II.C.3. of this Report and Decision, no new lighting is planned for this conditional use, and Staff found the existing lighting to be adequate and non-intrusive. Exhibit 14, p. 13. The Hearing Examiner agrees with Staff and concludes that lighting is compliant with this standard.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain very specific requirements, the review of site landscaping and screening for conditional uses in single-

family, detached homes is limited to an assessment of compatibility. Zoning Ordinance §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b., under which the Hearing Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

Staff found the existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes, Exhibit 14, p. 13, and Ms. Getahun testified as to the fencing and that she has never had any noise complaints from adjacent neighbors, T. 30-31.

Conclusion: Considering that this a single-family home with a sufficient, well-fenced backyard, Exhibit 14, p. 5 (reporting and picture of subject site); T. 30, and the testimony of the applicant that there have been no noise or other complaints, T. 17-18; 30-31, the Hearing Examiner finds that the proposed site screening will ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

4. Signage

Conclusion: The use of signage is governed by Zoning Ordinance Division 6.7. Although Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones, no sign is proposed for the subject conditional use, Exhibit 14, p. 13, so this standard is not applicable.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all applicable standards of Articles 59-3, 59-4, and Article 59-6.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Almaz Getahun and Hagos Ahmed (CU 24-03) for a conditional use under Section 59.3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for up to 12 children

in her home at 2609 Blueridge Avenue in Wheaton, Maryland, is hereby **GRANTED** pursuant to the conditions set forth in the Staff Report, Exhibit 14, p. 3, specifically:

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and of four (4) employees, of which a maximum of two (2) may be non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 5:30 p.m.
3. There must be no more than two (2) cars accessing the site at a time, and the cars must not queue in front of the designated drop off/pick up area in the site driveway.
4. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
5. 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.
6. 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.
7. The Applicant must maintain the grounds in a clean condition, free from debris, on a daily basis.
8. 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.
9. 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 30th day of November, 2023.



Andrea LeWinter
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues 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.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c., as amended by Zoning Text Amendment (ZTA) No. 16-16, adopted on February 7, 2017, by Ordinance No. 18-25, effective February 27, 2017. The procedural amendments to the Zoning Ordinance contained in ZTA No. 16-16 have not yet been codified, but you may view them on the Council's website at http://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2017/20170207_18-25.pdf

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

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/>.

NOTICES TO:

Almaz Getahun, Applicant
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Parker Smith, Planning Department

Matthew Folden, Planning Department
Carrie Sanders, Planning Department
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director of Finance