

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

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IN THE MATTER OF:

Linda Gallegos

Applicant

Linda Gallegos

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OZAH Case No. CU 22-03

Before: Lynn Robeson Hannan

Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on October 27, 2022, Linda Gallegos (Applicant) 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 4804 Levada Terrace, Rockville, MD 20853 and is further identified as Lot 18, Block 3, as shown on Plat No. 7352. Exhibit 1. The property is zoned R-90 (Residential Detached). *Id.*

The Office of Zoning and Administrative Hearings (OZAH) issued notice of the public hearing, scheduling it for February 24, 2023. Exhibit 18. Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval on January 23, 2023, subject to these conditions (Exhibit 19, p. 3):

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

The public hearing proceeded as scheduled on February 24, 2023. Ms. Gallegos agreed with all findings of the Staff Report and adopted it as her own testimony. T. 8. She also agreed with the conditions recommended by Staff. *Id.* Ms. Gallegos testified that non-resident employees park on the opposite side of Levada Terrace, leaving the spaces in front of the house for parent drop-off and pick-up. T. 12. The record was left open until Monday, March 6, 2023, to receive the transcript. This was received on March 14, 2023, and the record closed on that date.

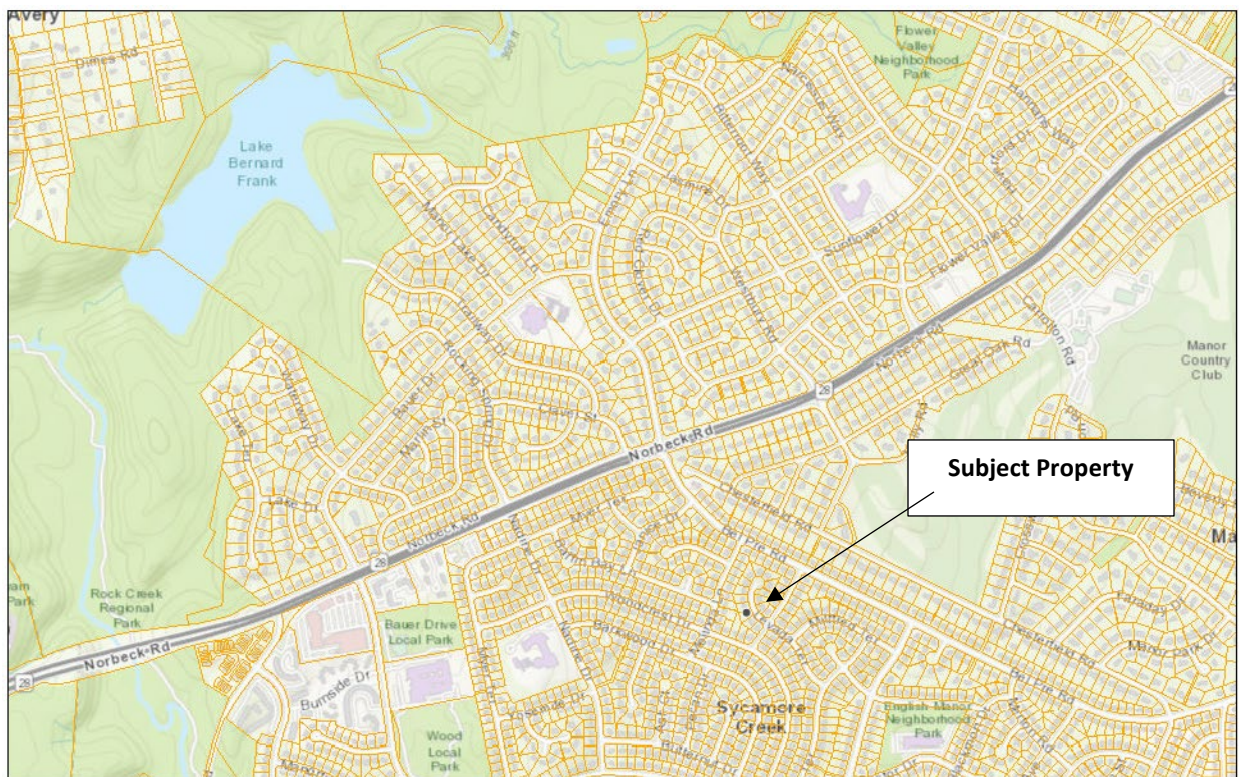
For the following reasons, the Hearing Examiner finds that the proposed group day care meets all criteria for approval in the Zoning Ordinance and will not adversely affect the

community, with the conditions of approval imposed in Part IV of this Report.

II. FACTUAL BACKGROUND

A. Subject Property

The subject property is located southwest of the intersection of Norbeck and Bel Pre Roads, approximately 1,750 feet east of Lucy V. Barnsley Elementary School and approximately 1,750 feet northwest of English Manor Neighborhood Park (Exhibit 19, p. 4: MCAtlas (4804 Levada Terrace)):



Staff advises that the Twinbrook, Rockville, and Glenmont Metro Stations are within three miles of the subject property. Consisting of 10,844 square feet, the property is improved with a single-family detached home and a drive that can hold one car. Exhibit 19, p. 6. An aerial photograph in the Staff Report shows the subject property (*Id.*, on the next page).



Figure 2: Subject Property (outlined in red)

**Aerial View of Subject Property (in red)
Exhibit 19, p. 6.**

The Applicant submitted photographs of the home's exterior (Exhibit 12, on the next 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 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



Front (above) and Rear (below) views of
Subject Property
Exhibit 12

adversely affect that character.

Staff defined the boundaries of the surrounding area as Arctic Avenue to the east, Bel Pre Road to the northeast, Norbeck Road to the northwest, Nadine Drive to the west, and Bauer Drive to the south, shown in the graphic below (*Id.*, p. 5):



Three special exceptions/conditional uses have been approved in the area.¹ Two are accessory apartments (S-1154 and S-2493) and one is a day care center (over 30 persons) in the northern corner of the neighborhood (labeled as CU 202110 on the graphic above). Staff

¹ The 2014 Zoning Ordinance eliminated the use of the term “special exception” and substituted “conditional use”. They have the same meaning. *Zoning Ordinance*, §1.4.

characterized the neighborhood as “composed primarily of small lots with single-family detached homes.” *Id.*

Having no evidence to contradict Staff’s findings, which are reasonable, the Hearing Examiner agrees with Staff as to the boundaries of the surrounding area. She characterizes the area as primarily single-family residential lots in the R-90 Zone, with some small residential special exceptions (the accessory apartments), and one larger day care center.

C. Proposed Use

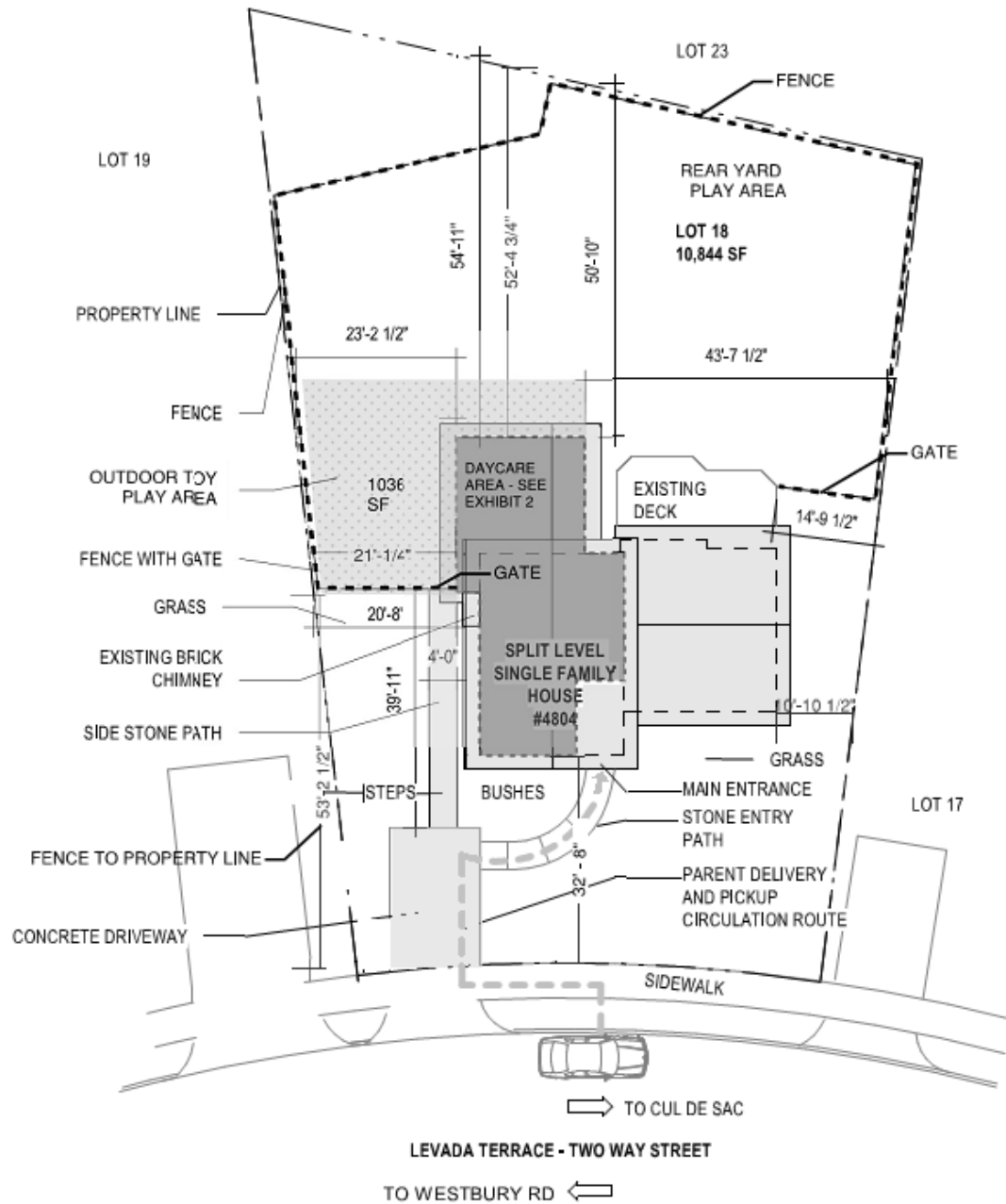
Staff advises that Ms. Gallegos has been operating Bun Bun Bunny Family Day Care (up to 8 children) since 2019.² The children range from infants to 5 years old. The existing day care operates on the lower level of the split-level house. Parents and employees access the operation through the rear door of the house. The day care area consists of two main rooms and a kitchen with additional room for programming. Staff reports that (Exhibit 19, p. 6-7):

Parents and/or guardians dropping off children may park on the street and walk with their child up the driveway, or park in the driveway itself and use a concrete path on the southern side leading to the rear of the Property. There is lighting at the front door, along the sidewalk, and at the rear entry door. The rear yard of the house is fully enclosed on all three sides by fencing. The backyard includes an outdoor play area that is located on the southern portion of the rear yard and separated from adjoining properties by wood fencing. Unrestricted on-street parking is allowed on both sides of Levada Terrace and Westbury Road, both two-way streets, and one parking space is provided on the Subject Property.

Except for adding four children to the existing eight, Ms. Gallegos does not propose any changes to the existing operations or the property’s exterior. Operating hours will continue to be 7:30 a.m. to 5:30 p.m. Ms. Gallegos’ mother will be the primary caregiver, who will be assisted by two other non-resident caregivers between 6:30 a.m. and 6:15 p.m. Residents of the dwelling typically park on the street to leave the driveway open for parent drop-off and pick-up. Exhibit

² A family day care for up to eight children is a permitted use in the R-90 Zone. *See, Montgomery County Zoning Ordinance*, §59.3.1.6.

19, p. 8; T. 12. The conditional use site plan depicts both areas on the interior and exterior of the daycare (Exhibit 11, below):



Conditional Use Site Plan (Ex. 11)

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:³

E. Necessary Findings

³ 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.

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 there are no previous approvals applicable to this use because the existing family day care is permitted by right in the R-90 Zone. The Hearing Examiner agrees and finds that this standard is not applicable.

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;⁴

Conclusion: This subsection requires an analysis of the standards of the R-90 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 is in the area covered by the *1994 Aspen Hill Master Plan* (Master Plan or Plan). According to Staff, a primary goal of the Plan was to reinforce the area's suburban residential character. Exhibit 19, p. 12. While recognizing that day care facilities exist in the area, Staff states (Exhibit 19, p. 12):

The Master Plan recognized that there were a variety of child day care resources available in Aspen Hill; however, one area of need is care for infants. Furthermore, the Master Plan indicates that based on demographic trends the need for childcare

⁴ 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).

in Aspen Hill will increase over the next 20 years (page 295). While the Master Plan does not specifically identify the Site, it does include guidance about day cares, special exceptions/conditional uses, and residential areas. The Master Plan includes the following language:

According to the Master Plan, childcare facilities should be encouraged to meet the needs of the residents of Aspen Hill. To the extent possible, they should consistently provide the following:

- Sufficient open space to provide adequate access to sunlight and suitable play areas, taking into consideration the size of the facility.
- Location and design to protect children from excessive exposure to noise, air pollutants and other environmental factors potentially injurious to health or welfare.
- Location and design to ensure safe and convenient access. This includes appropriate parking areas and safe and effective on-site circulation of automobiles and pedestrians.
- Location and design to avoid creating undesirable traffic, noise and other impacts upon the surrounding community.
- Consideration should be given to locations in employment centers to provide locations convenient to workplaces. However, these locations should make provisions for a safe and healthful environment in accord with the criteria listed above. (Pages 190-193)

Ultimately, Staff determined that the proposed use meets these guidelines because there are no exterior changes to the residential character of the property and the proposal is only a modest increase in size. Staff also concluded that the location is appropriate for a day care and the use would be compatible with the surrounding area. *Id.*, pp. 12-13.

Conclusion: There is no evidence in the record contrary to Staff's findings on this issue. Reviewing the site photographs in this record, the Hearing Examiner finds that the daycare presents as a single-family home. A condition of approval will require the arrival and departure of children to be staggered during peak drop-off and pick-up and there is unrestricted parking on both sides of Levada Terrace. Ms. Gallegos testified that the two non-resident employees will park on the far

side of the street, leaving the sidewalk adjacent for parent drop-off and pick-up. 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. 17.

Conclusion: The Hearing Examiner agrees with Staff that the property with the play area for eight children is now part of the existing character of the area. Even without this, the site improvements, including the play area, remain residential in scale. The increase in traffic estimated by the Applicant and Staff remains minimal and will be spaced to ensure space for drop-off and pick-up without disruption to the neighborhood. Operational modifications (adding four children) will have minimal impacts 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 existing day care has been operating on the site since 2019 and the Applicant proposes only a moderate expansion. Exhibit 19, p. 17.

Conclusion: The evidence in this record supports Staff's conclusion. The only impact on the surrounding area will be a small increase in the number of children attending the school, possibly

generating a slight increase in traffic. Two of the existing special exceptions in the area are accessory apartments, which are generally permitted by right in the R-90 Zone and are necessarily residential in character themselves. There will be no exterior modifications, and the day care presents as a single-family detached home characteristic of the area. The application meets this standard.

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 person trips.

Staff determined that the proposed day care would generate 26 person trips, under the 50-trip threshold requiring a full traffic study (Exhibit 19, p. 14):

The Applicant estimated the greatest number of trips that could be generated by the use during the morning and evening peak hours. The transportation analysis assumed both non-resident employees will arrive/leave the Site during the peak hour, and all 12 children will arrive and leave the Site within the peak morning and evening hours. The analysis also assumed that each child would be driven individually. Based on these assumptions, the highest trip estimate for both peak hours would be a total of 26 trips to and from the Site. These results are summarized in Table 1 below.

Table 1: Trip Generation for the Proposed Use

	Morning Peak Hour Trips			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

The Applicant's Traffic Exemption Statement notes that some younger children leave outside of the evening peak hour (*i.e.*, at 3:45 p.m.) Exhibit 6. Ms. Gallegos testified that she would ask parents to abide by the condition of approval requiring her to limit parent drop-off and pick-up to two vehicles every 15 minutes. T. 9.

Staff also determined that remaining public facilities were adequate, as the dwelling is already served by water, sewer and utilities and there is no change to the existing structure. Schools are not affected because the application does not propose additional dwelling units. Exhibit 19, p. 18.

Conclusion: Nothing in the record contravenes Staff's analysis or Ms. Gallegos testimony. According to Ms. Gallegos, the traffic estimate is conservative because smaller children may be picked up before the evening peak period begins. Given this record, the Hearing Examiner finds that this application is exempt from LATR Review. The uncontroverted evidence demonstrates that other public facilities, such as water and sewer, are adequate because the use has existed in the same building since 2019. The application meets this criterion.

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; 4) drop-off and pick-up areas; and 5) lighting. Exhibit 19, p. 18. To this, the Hearing Examiner would add parking for non-resident employees.

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 drop-offs and pick-ups will be staggered.

The outdoor play equipment and lawn area in the backyard are adequate for the Proposal, and the activity of children playing will not adversely impact the neighborhood.

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: Nothing in this record contravenes Staff's determination and Ms. Gallegos testified that on-street spaces that can be used for parent drop-off and pick-up about the property. There are additional spaces on the far side of the street available for employee parking.

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. 19), 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-90 Zone. Development standards for the R-90 Zone are contained §59.4.4.8.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-90 Zone to those provided by the application (Exhibit 19, p. 16, below):

Table 2: Conditional Use Development and Parking Standards (R-90 Zone)

Development Standard Section 4.4.9	Permitted/ Required	Existing*
Minimum Lot Area	9,000 sq. ft.	10,844 sq. ft.
Minimum Lot Width at Front Building Line	75 feet	±75 feet
Minimum Lot Width at Front Lot Line	25 feet	±70 feet
Maximum Density	1 unit (4.84 dwelling units/acre)	1 unit
Maximum Lot Coverage	30%	±16%
Minimum Front Setback	30 feet	±28 feet
Minimum Side Setback	8 feet	±9 feet
Minimum Sum of Side Setbacks	25 feet	±21.5 feet
Minimum Rear Setback	25 feet	±40.5 feet
Maximum Height	35 feet	±28 feet
Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 2 (1/per non-resident employee) Dwelling: 2 Total: 4	1 space on-site 3 spaces on- street**

*There are no proposed changes to the development standards with this Application.

**Parking Table in Section 59.6.2.4.B states "Required spaces may be allowed on the street abutting the site"

The table demonstrates that the application meets most of the development standards of the zone. It does not meet the current requirements for minimum front setback and the sum of side setbacks. However, Section 7.7.1.A.1 of the Zoning Ordinance permits existing "legal structures" to continue even if no longer meeting the current development standards in the Zoning Ordinance. Nothing in this record suggests that the existing dwelling was constructed illegally, and the Hearing Examiner finds that the use meets the Zoning Ordinance requirements.

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

in Section 59.3.4.4.D. of the Zoning Ordinance. The Hearing Examiner finds these standards have been met as follows:

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 Ms. Gallegos has submitted an affidavit confirming that. Exhibit 14. 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 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, Ms. Gallegos adopted the Planning Staff Report, specifying the number of employees and operations, as her own testimony. Ms. Zelenca, who will be the provider,

confirmed that there would be only two non-resident employees. 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-90 Zone involved in this case. *Zoning Ordinance*, Section 59.6.1.2.

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

Staff concluded that a total of four parking spaces are required for the site. The Zoning Ordinance permits these spaces to be located adjacent to the property on the street. Staff determined that there are three on-street spaces and one space in an existing driveway, as demonstrated in the table on page 17 of this Report.

Conclusion: Having no evidence to the contrary, the Hearing Examiner finds that this standard has been met.

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:

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 for some developments, 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.

Staff concluded that (Exhibit 19, p. 16):

The existing fencing in the rear yard provides sufficient screening between the proposed use and the adjacent homes. The rear yard of the house is enclosed by perimeter fencing along the northern, western, and southern property lines.

Conclusion: The Hearing Examiner finds the site perimeter landscaping screening adequate to be compatible with the surrounding area, given that fencing in the rear yard screens most of the daycare 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 she 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 Linda Gallegos 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 4804 Levada Terrace, Rockville, 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 11).
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 5:30 p.m.
4. 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.
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 or 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 15thth day of March, 2023.



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 Worksession. Agendas for the Board's Worksessions can be found on the Board's website and in the Board's office. You can also call or email 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 Worksession.

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. 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/>

NOTIFICATION OF DECISION TO BE SENT TO:

Linda Gallegos, Applicant

Barbara Jay, Executive Director, Montgomery County Board of Appeals

Stephanie Dickel, Planning Department

Parker Smith, Planning Department

Greg Nichols, Manager, Department of Permitting Services

Victor Salazar, Department of Permitting Services

Michael Coveyou, Director, Finance Department

Cliff Royalty, Esquire