

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

IN THE MATTER OF: *

ROSSANA ESPINOZA-THORNDahl *
Applicant * CU23-04

Rossana Espinoza-Thorndahl *
For the Application *

Before: Kathleen Byrne, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On November 8, 2022, the Applicant, Rossana Espinoza-Thorndahl filed an application seeking approval of a conditional use to operate a Group Day Care for 9 to 12 children at 17621 Buehler Road, Olney MD 20832 ("Subject Property" or "Property").

Exhibit 1. The subject property is identified as Lot 2, Block 3, The Highlands of Olney recorded as Plat No. 10030. The property is located in the The Highlands of Olney subdivision within the geographic area covered by the 2005 Olney Master Plan ("Master Plan" or "Plan"). The property is zoned R-90 and the tax account number is 08-01485818). Exhibit 12. The Applicant is a joint owner in the property with Reed Thorndale, ("Owners" or "Owner"). Exhibit 1. The Applicant submitted an Affidavit of Posting. Exhibit 14.

Applicant resides on the property and operates the existing eight-child day care. A day care has been operated at the subject property since 2010.¹ Exhibit 8. On November 8, 2022, the Applicant filed an application with the Planning Department to expand the existing-by right Family Day care use for up to eight (8) children at the subject property to a Group Day Care use for up to 12 persons. Exhibit 1. A Group Day Care Center for between 9 and 12 children must be approved as a conditional use under §§59-3.4.4.D and 7.3.1 of the Montgomery County Zoning Ordinance. On January 20, 2023, the Office of Zoning and

¹ A Family Day Care (up to 8 persons) is a permitted use in the R-90 Zone. See 59.1.6 (Table of Uses) referencing 59.3.4.4.C.

Administrative Hearings (“OZAH”) issued a Notice of Public Hearing scheduling the hearing for Monday, March 6, 2023. Exhibit 12. On February 6, 2023, the staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report recommending approval of the proposed conditional use expanding the existing child day care subject to certain conditions. Exhibit 13.

The public hearing proceeded as scheduled on Monday, March 6, 2023.² The Applicant, Rossana Espinoza-Thorndahl, appeared *pro se* and testified in support of her application. Ms. Espinoza-Thorndahl’s husband and co-property owner, Reed Thorndahl, signed into the virtual hearing but did not testify. No additional witnesses appeared at the hearing to testify either in support or in opposition of the conditional use application. After hearing the evidence presented, the Hearing Officer held the record open for a period of 10 days to receive the transcript. OZAH received the transcript on March 14, 2023 and the Hearing Officer closed the record on March 14, 2023.

For the following reasons, the Hearing Examiner approves the conditional use application subject to the conditions listed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. The Subject Property

The subject property is located at 17621 Buehler Road, Olney, otherwise known as Lot 2, Block 3 of the The Highlands of Olney Subdivision. Exhibit 13, pg. 5. The Staff Report describes the property as follows:

² Due to the COVID-19 pandemic and restricted access to county offices for safety reasons, the public hearing was held remotely via Microsoft Teams. A link and phone number for the public to join the hearing were published on OZAH's website. Hearing exhibits were also published on OZAH's website prior to the hearing to permit the public to participate.

The Property consists of an existing single-family detached house with an existing double car wide driveway with direct access to Buehler Road. There is also an existing shed located in the backyard and the backyard is surrounded by a fence made up of both split-rail fencing down the sides of the property and privacy fencing across the back of the property and coming off of each side of the back of the house towards the side lot lines.

Exhibit 13, pg. 5.

The backyard contains the outdoor play area enclosed in the front by a 6 foot tall privacy fence, in the rear by a 5 foot tall privacy fence and along the two sides a 4 and half foot tall split-rail mesh fence. A Single floodlamp illuminates the back yard in the evenings and a motion activated light that illuminates the driveway after dark. Four cars can be parked in the driveway.

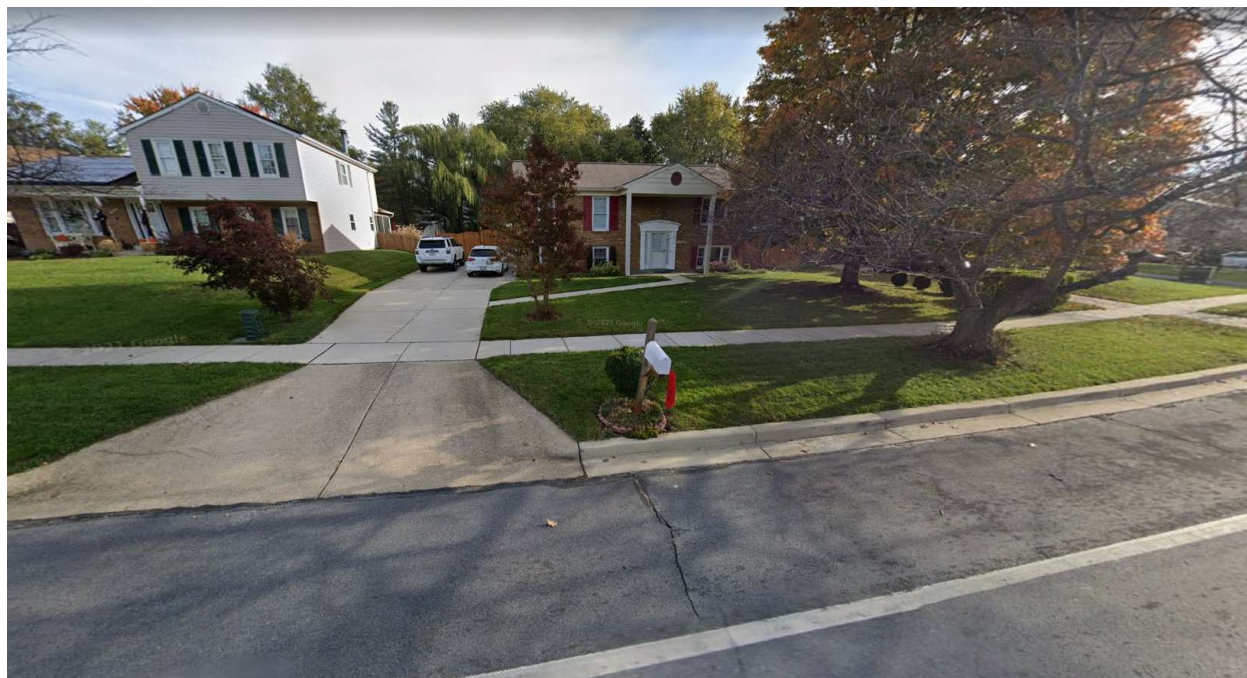
Exhibit 8, pg. 1-2.

The Applicant proposes no changes to the existing conditions. No changes results in no impacts to any environmental features. The Staff Report states the Project is not subject to the Forest Conservation Law because the application is on a property less than 40,000 square feet and is not covered by a previous Forest Conservation Plan. The Project will not impact any champion tree. Exhibit 13, pg. 8.

See various photographs of the property from the Staff Report on the following pages.



Staff Report – Aerial Photograph
Exhibit 13 – pg. 6



Staff Report – Front View
Exhibit 13, pg. 8



Staff Report – Rear Yard/Playground
Exhibit 13, pg. 8

B. Surrounding Neighborhood

The Staff determined the subject property's Neighborhood is comprised of moderate-density residential development with single-family detached and townhouses. Exhibit 13, pg. 4. The property to the north is zoned RT-12.5 and consists of townhouses. The properties to the east, south, west, and northwest are all zoned R-90 and consist of single-family detached houses. *Id.*

Staff defined the neighborhood as the area being most affected by this application. The Neighborhood is shown below with a northern border at the start of the commercial uses within Olney, a western boarder at Georgia Avenue, the church and park border to the south and the eastern border where the adjacent neighborhood was developed under a TDR overlay using optional method of development over 15 years after the neighborhood where the subject property exists was completed. *Id.* Aerial photo/map of the neighborhood shown on the following page.



Staff Report – Neighborhood
Exhibit 13, pg 5.

C. Proposed Use

The Applicant proposing expansion of the existing day care for up to 8 children to a Group Day Care for between 9 and 12 children. Exhibit 1. The day care has been operating on the main level of the existing home since 2010. Exhibit 8, pg. 1; Exhibit 7.

1. *Site, Parking, Landscape, and Lighting Plans and Signage.*

The Applicant does not propose any modifications to the indoor or outdoor day care space. The day care will be staffed by two resident employees and one nonresident employee. Exhibit 13, pg. 7. The existing day care occupies two (2) rooms in the basement of the house (approximately 572 square feet). Exhibit 8 at pg. 1; Exhibit 7. See floor plan on next page.

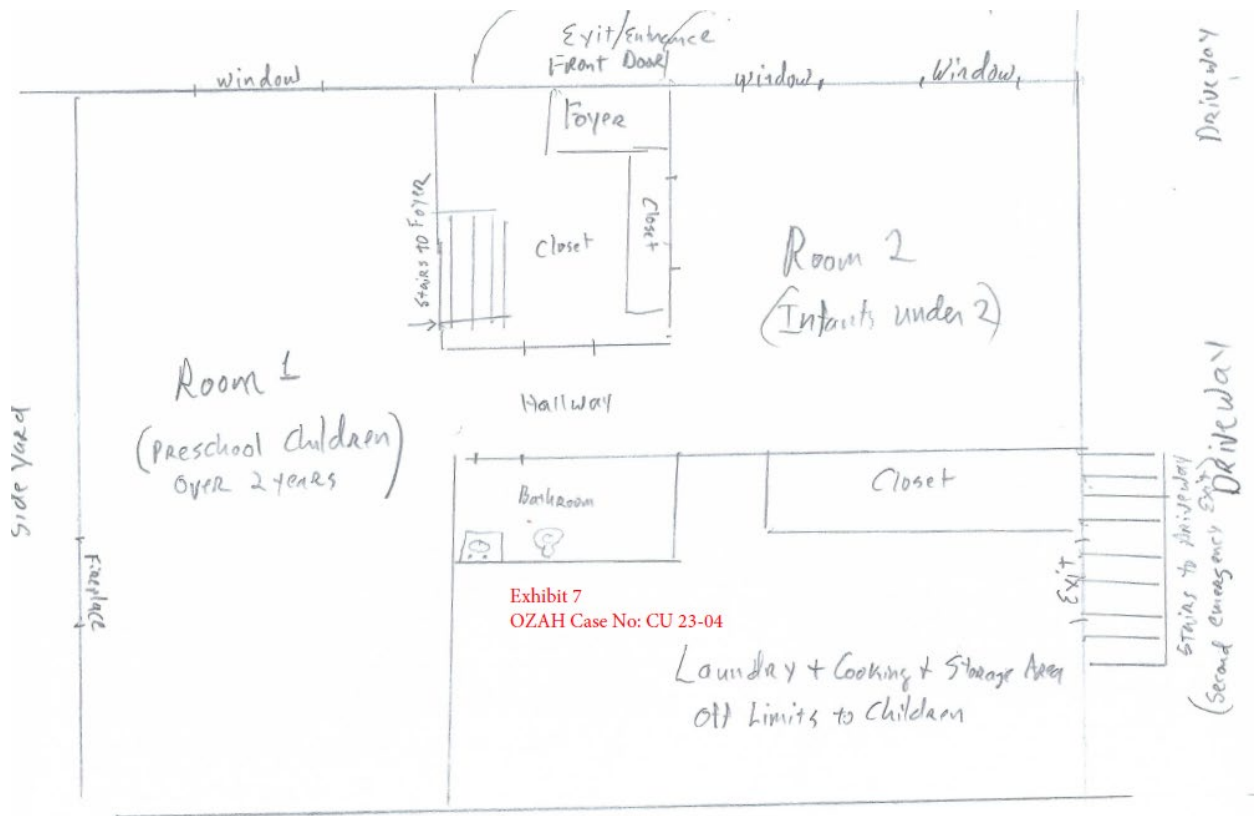


Exhibit 7 – Floor Plan

There are a total of seven (7) parking spaces available for the location. This includes four (4) parking spaces in the existing driveway and up to three (3) on-street spaces are available along the front of the home. Exhibit 13, pg. 7.

This Project is not subject to the requirement to submit a Forest Conservation Plan nor impacts any “champion trees”, no changes to the existing landscape are proposed. Exhibit 13, pg. 8. As no exterior changes are proposed, no lighting plan was submitted for consideration, nor is one required. No existing or proposed signage was included as part of this Application. *Id.* at 10.

2. *Operations & Drop-off/Pick-up*

The day care will continue the same operating hours of Monday through Friday from 7:30 am to 5:30 pm and continue to care for children ages 3 months up to 4 and half years with a staff of up to 3 individuals, 2 of which will live on site. Exhibit 8, pg. 2. The day care follows a regular daily scheduling including breakfast, indoor activity time, teacher lead activities, outside time, lunch, nap time, quiet time, and group activities. Exhibit 8, pgs. 4-7.

One child is walked to the day care and rest are driven. Exhibit 6. Parents' cars will be parked in the driveway or on the street. *Id.* The drop-off and pick-up times are staggered at 15-minute intervals between 7:30 am and 9:00 am and then again at a similar interval in the evening with one or two children being picked up or dropped off at a time. *Id.* Due to the closures of many large day care centers parents are having difficulty finding childcare. Currently, six siblings attend the day care, and five children are on the waiting list including two infants and additional siblings. T. 10-11.

D. Community Response

There is no opposition to the conditional use application in the record. No letters of support or opposition were received by Planning or OZAH Staff. No individuals appeared during the hearing to testify in opposition of the proposed conditional use.

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 for the particular use requested, in this case, a Group Day Care for between 9 and 12 children. Zoning Ordinance §59-3.4.4.D. An applicant must prove that the

use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

A. Necessary Findings (§59-7.3.1. E)

The relevant standards and the Hearing Examiner's findings for each standard are discussed below.³ For discussion purposes, the general standards may be grouped into four main areas:

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

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: No prior approvals were granted for the subject property. Nothing in the testimony or the record disputes this fact. This section does not apply.

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

Conclusion: This subsection requires review of the development standards of the R-90 Zone contained in Article 59.4; the use standards for a Day Care Facility contained in Article 59.3; and the applicable development standards contained in Article 59.6. Each of these Articles is discussed below in Parts III.B, C, and D, of this Report, respectively. For the reasons explained there, the Hearing Examiner finds that the application satisfies these requirements.

1. Substantial Conformance with the Master Plan

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

The Property is located within the boundary of the 2005 Olney Master Plan (Master Plan) and overall, the Application is in conformance with the Master Plan. Exhibit 13, pg. 10. The Master Plan does not specifically address the Property. *Id.* Specifically, the Master Plan provides that conditional use “projects should be compatible with the development pattern of the adjoining uses in terms of height, size, scale traffic and visual impact of the structures and parking lots.” *Id.* In addition, the Master Plan states the uses should not be large and should not change the residential character of the neighborhood. *Id. quoting pg. 42 of the Master Plan.* The proposed use does not change the exterior or interior of the subject property. Staff concluded that the proposed modest expansion of the existing day care is small scale in nature compatible with the neighborhood, and therefore in substantial conformance with the Master Plan. *Id.*

Conclusion: Based on this record, the Hearing Examiner agrees that the Group Day Care for up to 12 children substantially conforms to the recommendations of the Master Plan. The underlying day care use will continue and will add only an additional 4 children to the existing operation. The use preserves the residential character of the neighborhood and provides a much-needed service to parents in the area that is compatible with the neighborhood.

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

The property is developed with a single-family detached home with a yard, fence and driveway. Staff determined that the property was “developed at the same time as the rest of the subdivision in the 1970’s and therefore fits in with the character of the surrounding neighborhood.” Exhibit 13, pg. 11. As previously stated no physical changes or major modifications to the indoor or outdoor day care space are planned and the hours of operation will remain the same. *Id.* at. 7. In addition, the Applicant testified that the day care at this location has been in existence since 2010 and she agreed with Staff’s conclusions T. 13.

Conclusion: Based on this record, the Hearing Examiner agrees with Staff and the Applicant and finds that the proposed day care use for up to 12 children is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the Master Plan.

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 identified one approved conditional uses within the neighborhood, a Medical Office-Dental. Staff determined that the proposed day care use will not affect the area adversely or alter the area’s predominantly residential nature. Exhibit 13, pg. 11. As stated previously in this report and decision both the Staff Report and the Applicant’s testimony identify the fact that the existing day care has been operating on the Site since 2010 and that the site can accommodation

adding 4 additional children. T. 9-11. In addition, the Applicant is not proposing any physical changes to the building.

Conclusion: The Hearing Examiner agrees that the proposed conditional use will not increase intensity or scope of conditional uses sufficiently to affect the area adversely. She has already found that the project conforms to the Master Plan. The exterior of the building remains unchanged and the conditional use does not alter the nature of single-family residential uses in the area. For reasons stated in Part III.A.4 of this Report below, she agrees with Staff that the project will be compatible with the surrounding area.

2. Adequate Public Services and Facilities

f) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or**
- ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and**

The Staff Report states that there are adequate public services and facilities to serve the proposed use schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

Exhibit 13, pg. 12.

Conclusion: The Hearing Examiner is not required to make a finding regarding the adequacy of public services and facilities in this case because a Preliminary Plan of Subdivision is not

required for this conditional use due to the fact that the site is already a recorded lot. With that said, the Staff reviewed the transportation plan for the area and the traffic impacts of the proposed Application. The Staff Report stated as follows:

The driveway currently includes four (4) existing parking spaces for residential and non-residential staff. The proposed day care facility will generate ten (10) peak-hour person trips (approximately nine children and one staff member). As a result, the Applicant is exempt from providing a Transportation Impact Study as it is estimated to generate fewer than 50 weekday net new peak-hour person trips per LATR Guidelines...There will be no significant impact on local transportation, and no mitigation is required.

The 2020-2024 Growth and Infrastructure Policy states a transportation study is not required to satisfy the local Area Transportation Review because the proposed day care center generates fewer than 50 person-trips during the weekday morning or evening peak hours. *Id.*

3. No Undue Harm from Non-Inherent Adverse Effects

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on the surrounding area. 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, do not justify the 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 may be a basis to deny a conditional use, alone or in combination with inherent effects, if they cause “undue” harm to properties in the surrounding area.

Staff concluded that the following physical and operational characteristics are inherent to a Group Day Care Center 1) existing house and shed, 2) parking areas, 3) noise generated by children, 4) drop-off/pickup area, 5) hours of operation, 6) employees of the group day care, and 7) vehicular trips to and from the site. Exhibit 13, pg. 12. The Hearing Examiner agrees with Staff's list of inherent adverse characteristic of this use. Staff determined Applicant's plan for drop-off/pickup and outdoor play will minimize the noise. Staff also found residential character of the neighborhood will remain consistent. *Id.* The applicant testified that she agreed with Staff's assessment of her proposed use. T. 13. The Hearing Examiner agrees with Staff and testimony presented by the witness that the project does not result in undue adverse effects requiring denial of this application.

As stated above non-inherent adverse effects may result from the “physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site”. Staff did not identify non-inherent adverse effects associated with the use. The Hearing Officer finds there are no non-inherent adverse effects from the proposed use. Therefore, the Hearing Officer concludes the use will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

4. Compatibility with the Neighborhood

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

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

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

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 does not propose any alteration or expansion of the existing structure with this application. Because no construction is proposed with the application, the Hearing Examiner finds this standard is not applicable.

Section 59.7.3.1.E.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 with the conditions imposed, meets the standards required for approval.

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 R-90 Zone, contained in Article 59.4 of the Zoning Ordinance. Staff found that the subject property will continue to comply with the development standards for the R-90 Zone in place when the dwelling was constructed. Exhibit 13, pg. 10. Staff included

the Table below in the Staff Report, which provides a summary of the required development standards.

Table 1: Conditional Use Development and Parking Standards (R-90)

Development Standard Section 59.4.4.B	Permitted/ Required	Existing*
Minimum Lot Area	9,000 sq. ft.	10,620 sq. ft.
Minimum Lot Width at Front Building Line	75'	78'
Minimum Lot Width at Front Lot Line	25'	81.80'
Maximum Density	1 dwelling/lot	1 dwelling
Maximum Lot Coverage	30%	14%
Minimum Front Setback	30'	33.7'
Minimum Side Setback	8'	18' left/9.3' right
Minimum Sum of Side Setbacks	25'	27.3'
Minimum Rear Setback	25'	80'
Maximum Height	30' mean or 35' peak	18' mean & 22' peak (est.)
Vehicle Parking Requirement (Section 59.6.2.4.B)	Resident use- 2 spaces Non-Resident Employee- 1 space Total- 3 spaces	Driveway- 4 spaces On Street- 3 spaces** Total- 7 spaces

*There is no proposed development with this Application.

**Section 59.6.2.4.B- Required spaces may be allowed on the street abutting the site.

Exhibit 13, pg. 10.

The property was developed with the single-family house in the 1970s. *Id.* at 11. “A legal structure or site design existing on October 30, 2014 that does not meet the zoning standards on or after October 30, 2014 is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure are not increased...”; which means the existing condition of the lot is in conformance with the Zoning Ordinance. *See*, MONTGOMERY COUNTY ZONING CODE, ZONING ORDINANCE, §59.7.7.1.A.1.

Conclusion: Nothing contradicts Staff’s assessment of the subject property’s compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the standards of the R-90 Zone.

C. Use Standards for a Group Day Care for 9 to 12 Persons (§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 §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 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 compliance with the State and local regulations regarding staffing, operations, and structures for Day Care Facilities for 9 to 12 people as stated above. The use as proposed and conditioned meets these requirements.

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.*
- 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 Hearing Examiner finds that all of the limited use standards listed in the preceding paragraph are satisfied in this case, in that:

- i. The property is not located in a townhouse or duplex.*
- ii. The registrant is the provider who owns and resides in the property.*

iii. Only one non-resident staff member is proposed for the day care.

iv. The property is not located in the AR zone.

Furthermore, as discussed immediately above and in Part III.A., the limited use standards have been met and the application meets the "necessary findings" required by §59-7.3.1

D. General Development Standards (Article 59-6)

Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. These requirements need be satisfied only “to the extent the Hearing Examiner finds necessary to ensure compatibility.” *Zoning Ordinance*, §59.7.3.1.E.1.b. However, most of these requirements do not apply to the Application for the subject property.

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-90 Zone involved in this case.

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

Conclusion: The standards for the number of required parking spaces, 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 does not have an on-site parking facility for 5 or more parking spaces, the Code sections pertaining to parking facility design and screening do not apply in this case. *See* MONTGOMERY COUNTY CODE, ZONING ORDINANCE §§59.6.2.5.A.1 and 59.6.2.9.A.3.

The required number of vehicular parking spaces is established by Zoning Ordinance §59.6.2.4. and is summarized in the last line and the footnote of Staff Table 1 (Exhibit 13, p. 10). It is reproduced on Page 18 of this Report and Decision.

Per Table 1, Section 59.6.2.4 of the Zoning Ordinance requires a total of 7 vehicle parking spaces for the subject site (2 spaces for the single-family dwelling and 4 for the day care), but Zoning Ordinance §59.6.2.4.B. expressly permits parking spaces for Day Care Center to be provided on the street abutting the site to satisfy this requirement. As discussed in Part II.C.2. of this Report and Decision, the proposed Group Day Care also needs an area where parents can safely drop off and pick up children. The subject site has four parking spaces in its driveway. There are also three street spaces available in front of the Applicant's home. A total of 7 parking spaces is available at the subject property. The Applicant proposed requiring staggered drop-offs and pickups. Staff concluded that the existing parking to be provided would be adequate for the use.

Zoning Ordinance §59. 6.2.4.C identifies uses required to provide bicycle parking. Per this section, only Day Care Centers greater than 5,000 square feet GFA are required to provide a certain amount of bicycle parking. The portion of the property used for the Day Care Center is 572 square feet, well below the 5,000 square foot requirement for bicycle parking. No bicycle parking is required for the proposed use.

Based on this record, the Hearing Examiner finds that there is sufficient room for parking on the driveway and on the street abutting the subject site to accommodate the resident's parking and the drop-off and pickup operations of the proposed Group 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.

Conclusion: As discussed in Part II.C.3. of this Report and Decision, the house has residential type exterior lighting. No new lighting is planned for this conditional use, and therefore the Hearing Examiner finds that the requirements of Division 6.4, regarding lighting, do not apply.

b. Site Screening and Landscaping

Conclusion: Although some provisions in this portion of the Zoning Ordinance contain 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.

MONTGOMERY COUNTY CODE, ZONING ORDINANCE §59.6.5.2.B. This language is reinforced by Section 59.7.3.1.E.1.b. of the Zoning Ordinance, 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...”.

With no evidence to the contrary, the Hearing Examiner finds that the existing landscaping will be adequate to ensure compatibility with the 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. Zoning Ordinance §59.6.7.8.A sets the standards for signs in Residential Zones. No sign has been proposed for the subject conditional use. Exhibit 13, pg. 10. Although the Applicant has not proposed any signage for the site, the Hearing Examiner imposed a condition in Part IV of this Report and Decision requiring any future signage to comport with the requirements of Zoning Ordinance §59.6.7.8.A and prohibits the Applicant from posting a sign on the property unless it is first approved by the Department of Permitting Services (DPS) and a permit is obtained.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance. Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Rossana Espinoza-Thorndahl (CU2023-04), for a conditional use under §59-3.4.4.D. of the Zoning Ordinance, to operate a Group Day Care for between 9 and 12 children at 17621 Buehler Road, Olney, Maryland, tax account number is 08-01485818, is hereby *GRANTED*, subject to the following conditions:

1. The use is limited to a Day Care Center with up to 12 children and one (1) non-resident employee.
2. The hours of operation are limited to Monday through Friday, 7:30 AM to 5:30 PM, which is consistent with the current hours of operation.
3. Outdoor play hours in the rear yard are limited to:

- a. Children under two years of age will play outdoors from 10:15 am until 11:00 am.
 - b. Children over two years of age will play outdoors from 11:20 am until 12:00 pm and again from 4:30 pm to 5:00 pm.
4. Prior to issuance of the use and occupancy permit the Applicant must receive approval from the Department of Permitting Services Fire and Rescue on required plans and interior modifications, as needed.
5. Any future signage installed by the Applicant must comport with the requirements of Zoning Ordinance §59.6.7.8.A. The Applicant is prohibited from posting a sign on the property unless it is first approved by the Department of Permitting Services (DPS) and a permit is obtained.
6. Applicant must comply with all local and State laws and regulations regarding staffing, operations and structures for Day Care Facilities for 9 to 12 people.

Issued this 20th day of March 2023.



Kathleen E. Byrne
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-<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/>
BOA@montgomerycountymd.gov

NOTIFICATION OF DECISION TO BE SENT TO:

Rossana Espinoza-Thorndahl, Applicant
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Robert Kronenberg, Deputy Director, Planning Department
Mark Beall, Planning Department
Greg Nichols, Manager, Department of Permitting Services
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department
Clifford Royalty, Esquire, Chief, Division of Zoning, Land Use & Economic Development