

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

Stella B. Werner Council Office Building

Rockville, Maryland 20850

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www.montgomerycountymd.gov/ozah

IN THE MATTER OF:

Marlen Zelaya

Applicant

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OZAH Case No. CU 23-09

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

Filed on December 28, 2023, Marlen Zelaya, d/b/a Growing Stars FCC (Applicant or Growing Stars) seeks a conditional use to expand an existing 8-person day care to a group day care with up to 12 children under Section 59.3.4.4.D of the Montgomery County Zoning Ordinance (2014 as amended) (Zoning Ordinance). The subject property is Lot 1, Block 68, Subdivision 0089, located at 13101 Superior Street, Rockville, Maryland 20853, in the RE-60 Zone (Tax Account Number 13-01306962). Exhibit 1.

On March 10, 2023, the Office of Zoning and Administrative Hearings (OZAH) issued notice of the public hearing scheduled for April 24, 2023. Exhibit 20. On March 21, 2023, Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval subject to the following five conditions (Exhibit 21, p. 4):

1. The Group Day Care facility must be limited to a maximum of twelve (12) children and one (1) non-resident employee.
2. The hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:00 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.
4. On-street parking along the Property's Superior and Federal Street frontages must not block the required 25 feet setback from the intersection to allow for adequate sight distance at the intersection.

OZAH's public hearing proceeded as scheduled on April 24, 2023.¹ No one appeared in opposition to the application. The Applicant agreed to all conditions of approval recommended by Staff and additional conditions typically imposed by OZAH on group day care facilities. She testified that the photographs submitted fairly and accurately depicted the subject property and agreed with the facts, findings, and conclusions of the Staff Report. T. 9-11. Ms. Zelaya also clarified that the driveway, which has room for three cars, will be used for parent drop-off and

¹ The Planning Board did not review the application. This review is not required. *Zoning Ordinance*, §59.7.3.1.D.2.

pick-up and employees will park on Federal Street. T. 11-12. Parking on Federal Street is unrestricted. T. 11. The Hearing Examiner left the record open for 10 days to incorporate the transcript. This was received and the record closed on May 4, 2023.

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 consists of approximately 7,392 square feet of land in the R-60 Zone located on the northeast corner of Superior and Federal Streets in Rockville, Maryland. It is improved with a single-family structure and concrete parking pad. An aerial photograph of the property from the Staff Report is shown below (Exhibit 21, p. 9):



The home has two entrances. Both front on Superior Street. One is used for occupants of the main dwelling. The second entrance serves the daycare. A concrete pad fronting Superior

Street can accommodate three vehicles. Exhibit 21, p. 8. A play area extends from southern side of the home. The Applicant submitted a photograph of the home from Superior Street, showing the parking area and the play area (Exhibit 7, below):



B. Surrounding Area

To determine the compatibility of the proposed use with the surrounding area, it is necessary to delineate the “surrounding neighborhood”, which is the area that will be most directly impacted by the proposed use. Once delineated, the Hearing Examiner must assess the character of the neighborhood and determine whether the impacts of the proposed conditional use will adversely affect that character.

Staff defined the boundaries and characterized the surrounding area as follows (Exhibit 21, p. 5):

The Staff-defined Neighborhood (Figure 1) consists of similar uses within a walkable area bounded by roadways, parks, or other distinctive/defining features. It is bounded by Parkland Drive to the west, Grenoble Drive to the southwest, the Matthew Henson State Park to the southeast, and Connecticut Avenue (MD 185) to the east. The Neighborhood is composed primarily of small lots with single-family detached homes. The greater neighborhood is served by various civic and institutional uses and parks located outside of the boundary including the Wheaton Woods Elementary School, Wheaton Woods Park, and the Matthew Henson State Park.

Staff's defined boundaries are shown in a graphic from the Staff Report (Exhibit 21, p. 6):



According to Staff, records show that there are 11 existing special exceptions/conditional uses in the neighborhood. *Id.*, p. 7.² Five of the conditional uses are accessory dwelling units, one is a community swimming pool, three are home-based businesses (a beauty shop, dentist office, and antique restorations). Rentals of light vehicles and a service station is located at 4100 Aspen Hill Road along the northeastern boundary of the surrounding area. The locations of the

² Staff could find no records for one case denoted in the area. *Id.*

conditional uses are shown in the graphic from the Staff Report (above). Exhibit 8. The light vehicle sales and rental use is marked as No. 11 on the graphic. *Id.*

The Hearing Examiner finds that the basis of Staff's delineation (*i.e.*, a walkable area defined by significant features such as parks and major roadways) to be reasonable and accepts those boundaries as the "surrounding area" for this case. Based on her review of the map, she finds that the character of the area is primarily single-family detached homes in the R-60 Zone, with small, home-based conditional uses within the area and one commercial use on the edge.

C. Proposed Use

Ms. Zelaya proposes to expand an existing family day care (up to eight persons) to a group day care (up to 12 persons). She does not propose any changes to the interior or exterior of the dwelling. Nor does she propose any changes to operating hours, which will be Monday through Friday, 7:00 a.m. to 6:00 p.m. Exhibit 21, p. 10. There are two resident employees of the day care; Ms. Zelaya proposes to add one non-resident employee for the expansion. *Id.*

Outdoor play will occur two times a day for all age groups; typically, these are from 10:10 a.m. to 11:00 a.m. and 4:10 p.m. to 5:00 p.m., weather permitting. Parent drop-off takes place between 7:30 a.m. to 9:00 a.m. Pick-up will occur between 4:00 p.m. and 5:30 p.m. Both drop-off and pick-up will be limited to 2 vehicles every 15 minutes. Exhibit 21, p. 10. Residents of the home park in two of the front parking spaces; a third space is open for parents to drop-off and pick-up. *Id.*, p. 10. Staff advises that there a total of two on-street parking spaces next to the property (one on Superior and one on Federal Street) that may also be used for employee parking or drop-off and pick-up. *Id.*

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, 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

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;

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.

Conclusion: Staff advises that there are no previous approvals that apply to this property. Exhibit 21, p. 20. Having no contravening evidence, the Hearing Examiner finds that this standard is inapplicable.

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

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

The property is located within the area covered by the *1994 Aspen Hill Master Plan* (Master Plan or Plan). Staff concluded that the project substantially conforms to the Plan because the Plan encouraged day care facilities as “inherently beneficial uses in the community.” According to Staff, subsequent amendments to the Zoning Ordinance after the Plan was adopted permitted day care facilities by special exception.

Conclusion: In the early 1990’s, the Plan predicted a growing need for child care in the Aspen Hill area and included guidelines for approval of these facilities. These Guidelines state (*Plan*, p. 190):

Child care facilities should be encouraged to meet the needs of the residents of Aspen Hill. To the extent possible, they should consistently provide the following:

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).

- Sufficient open space to provide adequate access to sunlight and suitable play areas, taking into the 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 and safe and effective on-site circulation of automobiles and pedestrians.

A review of this record demonstrates that the proposed day care meets these guidelines. The increase in the number of students is very modest (4 children) and there is no evidence that the play area will be inadequate. The facility is located at the corner of two residential streets with a driveway that can accommodate resident and employee parking with enough space for drop-off and pick up. Two additional spaces are located on Superior and Federal Streets. A condition limits drop-off and pick-ups to two vehicles every 15 minutes to minimize impact on the neighborhood. Based on these facts, the Hearing Examiner finds that the proposed expansion of the existing day care substantially conforms to the Master Plan.

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. Staff found that the use will not alter the existing character of the area because no modifications to the property's exterior are proposed, and the property maintains a residential appearance. Exhibit 21, p. 22-23.

Conclusion: The Hearing Examiner agrees with Staff that the property presents as a single-family home, even with the second front entrance. Adding four children to the existing daycare will result in only a slight increase in traffic. There is ample parking to accommodate parent drop-off and pick-up and employee parking without disruption to neighbors. 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 day care has existed since 2017, no exterior changes will be made, and the operational changes are modest. Exhibit 21, p. 23.

Conclusion: The evidence in this record supports Staff's conclusion. Most of the existing special exceptions/conditional uses are accessory apartments, which are generally permitted by right in the R-60 Zone and are necessarily residential in character. A community swimming pool is often found in residential areas and most of the remaining businesses are located within dwellings. The only use that appears non-residential is the gas station/truck rental use, which is on the cusp of the neighborhood adjacent to a major road. 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 trips. The Applicant filed a Traffic Statement, summarized in the Staff Report (Exhibit 21, p. 19, below):

Table 2: Trip Generation for the Proposed Use

	Morning Peak Hour Trips			Evening Peak Hour		
	In	Out	Total	In	Out	Total
Staff	1	0	1	0	1	1
Parents/Children	12	12	24	12	12	24
Total			25			25

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

Conclusion: Nothing in the record contravenes Staff's analysis and the Hearing Examiner finds that the Applicant need not submit a full Traffic Study under the LATR Guidelines. Staff does not report on other public facilities, such as water and sewer, however, the fact that the use has existed since 2017 supports a finding that these facilities are available to the subject property.

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, the Hearing Examiner must examine the size, scale, scope, light, noise, traffic and environmental effects of the proposed use.

Staff identified the following physical and operational characteristics necessarily associated with (*i.e.*, inherent to) a Group Day Care: (1) vehicular trips to and from the site; (2) outdoor play areas; (3) noise generated by children; (4) areas for parent drop-off and pick-up and (5) lighting, and (6) screening. Exhibit 21, p. . To this list, the Hearing Examiner would add parking for residents and employees.

Staff concluded that the Group Day Care use proposed here did not have any non-inherent impacts (Exhibit 21, p. 24):

There are no unique circumstances that exacerbate the inherent impacts on this Property compared to other daycares of this size or nature within a single-family home. Five (5) additional vehicle trips will be generated which is not excessive and remains under the substantially below [sic] threshold for a required traffic study. Adequate parking and drop-off/pick-up areas are available on the two adjacent public streets along the front and side of the Site. The drop-offs and pick-ups will be limited by the conditions of approval of the proposed use to minimize impacts to the neighborhood.

The outdoor play equipment and lawn area in the side yard is adequate for the Proposal, including access to adequate sunlight and air. The morning and afternoon designated hours for outdoor play are not expected to exceed typical noise levels for outdoor activity. Additionally, there is no anticipation of commercial-level noise from the proposed use.

The existing lighting for the front entrance and side/rear backyard is adequate for the Proposal. The existing lighting fixtures are residential in nature and do not intrude on neighboring properties.

Conclusion: The Hearing Examiner agrees with Staff that there are no non-inherent physical or operational characteristics of the proposed use. There is sufficient room on the street and in the parking pad to accommodate drop-off/pick-up and non-resident employee parking. The small amount of increased enrollment will not significantly impact the play area, and the residential appearance will remain. This standard has been met.

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 21, p. 24), therefore, this provision does not apply. The Hearing Examiner agrees and so finds.

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

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

B. Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 Zone. Development standards for the R-60 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-60 Zone to those provided by the application (Exhibit 21, p. 21, below). The table demonstrates that improvements meet all Zoning Ordinance requirements.

Development Standard Section 4.4.9	Permitted/ Required	Existing*
Principal Building Setbacks		
Minimum Lot Area	6,000 sq. ft.	7,393.2 ft.
Minimum Lot Width at Front Building Line	60 feet	±90 feet
Minimum Lot Width at Front Lot Line	25 feet	±70 feet
Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage	35%	±23%
Minimum Front Setback	25 feet	±35 feet
Minimum Side Setback	8 feet	±22 feet
Minimum Sum of Side Setbacks	18 feet	±44 feet
Minimum Rear Setback	20 feet	20 feet
Maximum Height	35 feet	±28 feet
Accessory Structure Setbacks		
Front Setback	60 feet	60 feet
Side Street Setback	25 feet	70 feet
Side Setback	5 feet	5 feet
Rear Setback	5 feet	5 feet

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

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

1. Defined

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

Conclusion: A condition of approval will require the Applicant to conform with all State and local regulations governing the use and Ms. Zelaya testified that she would comply with those regulations. T. 10. 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.

Staff concluded that the proposed use meets these standards (Exhibit 21, p. 20):

The Site is not located in a townhouse or duplex and the Applicant is the provider and a resident. As conditioned, no more than one (1) non-resident staff member will be on-site at any time. The Site is not located in the AR Zone.

Conclusion: At the public hearing, Ms. Zelaya agreed with the findings and conclusions of the Staff Report, specifying the number of employees and operations. T. 9. The Hearing Examiner finds that this criterion has been met.

D. General Development Standards (Article 59.6)

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

1. Site Access Standards

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

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

The standards for the number of parking spaces, parking facility design and parking facility screening are governed by Division 6.2 of the Zoning Ordinance. A table from the Staff Report confirms that the proposed use meets the minimum number of required spaces (Exhibit 21, p. 20):

Vehicle Parking Requirement (Section 59.6.2.4.B)	Group Day Care: 1 (1/ non-resident employee) Dwelling: 2 Total: 3	3 spaces on-site
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Conclusion: The photographs of the site and testimony of the Applicant demonstrate that there is a large parking pad at the front of the property. The Hearing Examiner agrees that there is sufficient on-site parking, as well as on-street parking for employees or parents.

3. Site Landscaping, Screening and Lighting

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

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

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

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

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

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

b. Site Screening and Landscaping

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

Staff concluded that the proposed use is appropriately screened because the play area is of “ordinary and incidental” scale to any residential use. Staff also advises that front yard parking is a “defining characteristic” of adjoining and neighboring properties. Exhibit 21, p. 16.

Conclusion: The Hearing Examiner agrees with Staff that there is no need for additional landscaping for compatibility. The use has existed since 2017 on a slightly smaller scale and maintains the appearance of a single-family dwelling with a well-kept lawn and play yard. The play yard is not of such a scale that it stands out from the surrounding residential uses and Staff advises that front yard parking is typical of the neighborhood. The Hearing Examiner finds that the existing landscaping adequately screens the proposed use.

4. Signage

Conclusion: The Applicant proposes no signage for this use. New signage would require an amendment to this application.

IV. CONCLUSION AND DECISION

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Marlen Zelaya 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, 13101 Superior Street, 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 12).
2. The proposed Group Day Care must be limited to 12 children and one non-resident employee.
3. The hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:00 p.m.
4. The Applicant must schedule staggered drop-off and pick-up with no more than two vehicles dropping off or picking up children during any fifteen-minute period.
5. On-street parking along the Property's Superior and Federal Street frontages must not block the required 25 feet setback from the intersection to allow for adequate site distance at the intersection.
6. The Applicant must not erect a sign on the subject site without first modifying this conditional use.
7. 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.
8. 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.
9. The Applicant must maintain the grounds in a clean condition, free from debris.
10. 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 10th day of May, 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 work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217

Rockville, MD 20850
(240) 777-6600
<http://www.montgomerycountymd.gov/boa/>

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

NOTIFICATION OF DECISION TO BE SENT TO:

Marlen Zelaya, Applicant
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Matt Folden, Planning Department
Tamika Graham, Planning Department
Greg Nichols, Manager, Department of Permitting Services
Victor Salazar, Department of Permitting Services
Michael Coveyou, Director, Finance Department
Cliff Royalty, Esquire