

7404 NEW HAMPSHIRE AVENUE

CONDITIONAL USE NO. CU2024012

Request for Conditional Use approval to increase the maximum number of children at an existing 8-child daycare to a Day Care Center with up to 14 children.

No. CU202412

Completed: 02-26-2024

MCPB

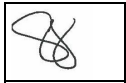
Item No. 5
March 7, 2024

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7404 New Hampshire Avenue, CU202412

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LOCATION/ADDRESS

Located at 7404 New Hampshire Avenue, approximately 150 feet north of Merwood Drive

MASTER PLAN

2011 Takoma/Langley Crossroads Sector Plan

ZONE

R-60

PROPERTY SIZE

5,497 square feet

APPLICANT

Sadia and Zeshan Naeem, Futurestar Childcare LLC

ACCEPTANCE DATE

November 29, 2023

REVIEW BASIS

Chapter 59

HEARING EXAMINER PUBLIC HEARING

March 25, 2024

Summary:

- Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.
- Futurestar Childcare LLC, a by-right family daycare for up to 8 children, has operated on the Subject Property since 2015. The Applicant wishes to expand from a family daycare to a group facility daycare for up to 14 children.
- Staff has received many letters of support from the neighborhood, see Section 4 for further details.
- The Property is within the City of Takoma Park, the City Council declined to weigh in on the Application.

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SECTION 1: RECOMMENDATIONS AND CONDITIONS

CONDITIONAL USE NO. CU202412

Staff recommends approval of 7404 New Hampshire Avenue, Conditional Use No. CU202412, for a Day Care Center for up to fourteen (14) children, subject to the following conditions:

1. The use is limited to a maximum of fourteen (14) children, four (4) resident employees and up to one (1) non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:00 AM to 6:00 PM.
3. The Applicant must provide a minimum of two (2) off-street parking spaces.
4. Visitors (excluding parents enrolled in the daycare) shall be instructed to visit the Site outside peak travel times, which are as follows: 8:00 AM – 9:00 AM and 5:00 PM – 6:00 PM.
5. No more than four vehicles will access the Site at any one time.

SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

VICINITY/NEIGHBORHOOD

The Subject Site is located on the west side of New Hampshire Avenue and is accessed from a service road confronting the Property. The west side of New Hampshire Avenue is developed with single family residential homes that back up to Sligo Creek which runs north to the southeast behind the neighborhood. To the north is the major intersection of New Hampshire Avenue and University Boulevard, referred to as Langley Crossroads. To the east of New Hampshire Avenue is predominantly commercial uses such as food markets, hotels and high-rise apartments, and the boundary to Prince George's County is just beyond these commercial uses to the east.

Staff defined the surrounding neighborhood as the surrounding R-60 zone with single family detached houses, with Kingwood Drive to the north as a boundary, and Baptist Light Church to the south at Glenside Drive, Sligo Creek to the west and New Hampshire Avenue Frontage Road to the east (Figure 1). While the surrounding neighborhood to the west is predominantly residential in character, the Site exists on the eastern boundary that fronts on a major corridor, on a service road that includes two institutional uses.

Immediately north of the Site is a church building used by the congregations of the Amigos de Jesus Seventh-day Adventist and Zion Evangelical Lutheran Church, as well as Meals on Wheels Takoma Park/Silver Spring. The Church frontage is roughly 370 feet long, which can accommodate approximately 15 parallel parking spaces.



Figure 1: Vicinity Map with Staff-defined neighborhood highlighted in black

Staff identified one existing, approved special exception within the defined neighborhood, S2414 shown in Figure 1 above at the western boundary, which was approved in 2002 to allow for an accessory apartment.

PROPERTY DESCRIPTION

The Property is comprised of one recorded lot totaling 5,497 square feet known as Block 2, Lot 11 originally created by the New Hampshire Ave Highlands subdivision recorded in Plat Book 7, Page No. 72 in Prince George County records. The area, including this Property, was annexed into Montgomery County in 1997.

The Property is developed with a single-family house with a driveway that can accommodate up to two vehicles. The Applicant has been operating Futurestar Childcare LLC, for up to eight (8) children with ages ranging from infants through pre-K (4 months - 5 years old), on the Subject Property since 2015. The existing Family Day Care is a permitted use in the R-60 zone per Section 59.3.1.6 of the Zoning Ordinance. The existing Family Day Care is operating on the lower two floors of the house and is accessed via the front door of the home. The rear yard of the house/outdoor play area is fully enclosed on all three sides with a six-foot wood fence.

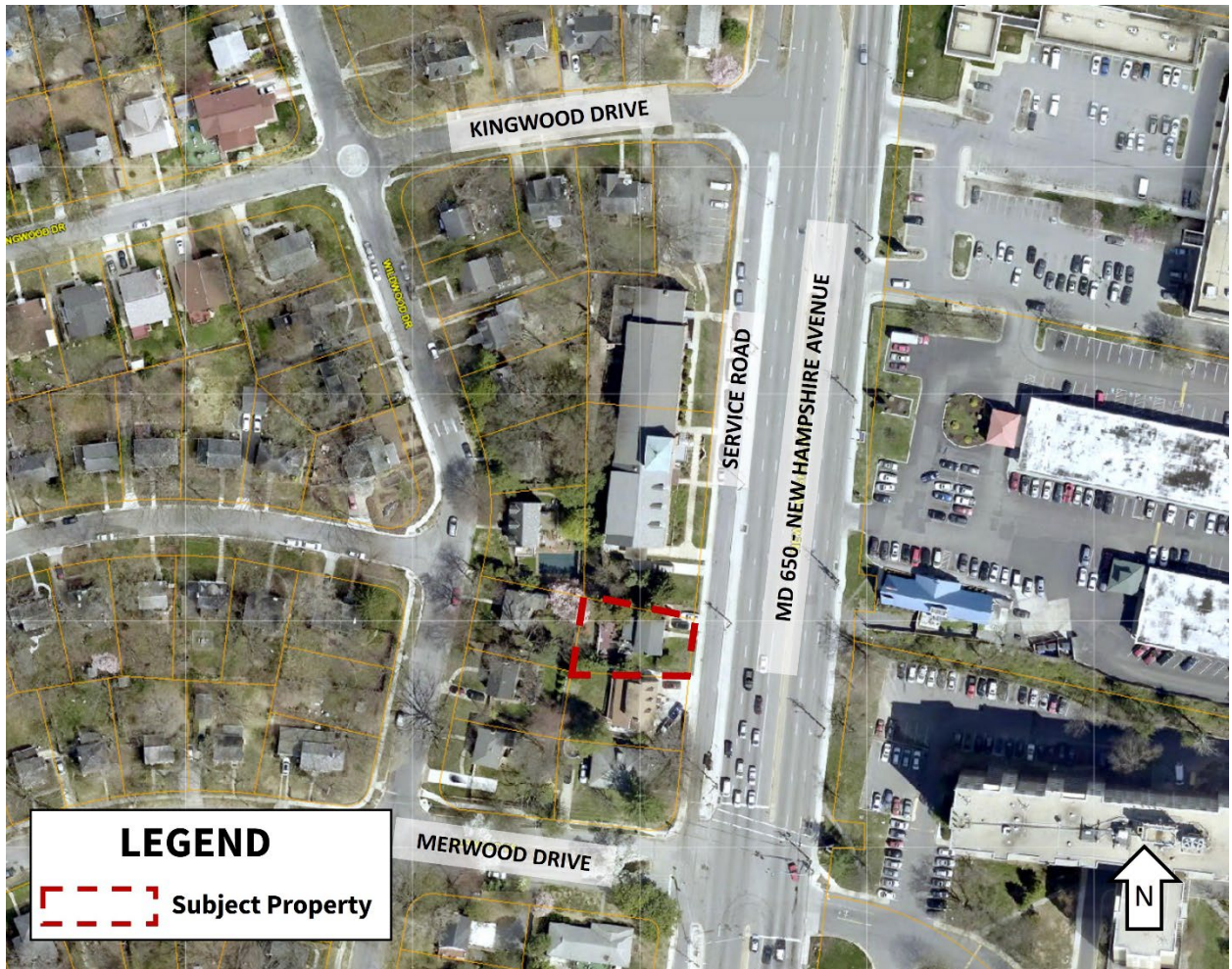


Figure 2 - Subject Property



Figure 3 – View of Property from service road

The Site contains no streams or stream buffers, wetlands or wetland buffers, 100-year floodplains, hydraulically-adjacent steep slopes, or known occurrences of Rare, Threatened and Endangered species. The Site is in the Sligo Creek watershed, which is a Use I¹ watershed. The Site is not within a Special Protection Area.

¹ Use I-P: WATER CONTACT RECREATION & PROTECTION OF AQUATIC LIFE Waters that are suitable for: water contact sports: play and leisure time activities where the human body may come in direct contact with the surface water; fishing; the growth and propagation of fish (other than trout); other aquatic life, and wildlife; agricultural water supply, and industrial water supply.

SECTION 3: PROJECT DESCRIPTION

PROPOSAL

The Applicant proposes to increase the maximum capacity of the existing by-right 8-child daycare to a group daycare facility for up to fourteen (14) children. The current hours of operation, Monday through Friday from 7 a.m. to 6 p.m., will also remain the same. The Applicant proposes to have four (4) resident staff members and one (1) non-resident staff member. The backyard is utilized for outdoor play and fully enclosed with a six-foot fence. The front yard contains a low, decorative fence to maintain the residential character of the neighborhood; however, it is not used by the daycare for playtime. Parents drop off their children at the front door to the house, and there is an entrance to the rear yard through a gate to the left of the front door. The Applicant is not proposing any expansion or change to the indoor or outdoor day care spaces.

Pick-up and drop-off will be staggered between 7 AM and 9 AM and between 4 PM and 6 PM. No more than four vehicles are expected to be present at the Site within a 15-minute period, but there are as many as 15 on-street parking spaces that will be available for pick-up and drop-off activities. Furthermore, many of the families patronizing the daycare live within the neighborhood, and often travel to the Site by walking. However, the Applicant has demonstrated that even if every child is driven to and from the Site separately (assuming no siblings), there is sufficient space for pick-up and drop-off.

All travel modes will continue to access the Site from the New Hampshire Avenue Frontage Road. The Site benefits from very near access to New Hampshire Avenue, but reduced conflicts via the frontage road which is approximately 16 feet in width. The road provides room for both on-street parking in front of the homes and the adjacent church, as well as an adjacent travel lane. The street operates one-way southbound.

The Applicant has coordinated with the Church and has confirmed in-writing (Attachment C) that use of on-street parking in front of the church building will not interfere with the church's daily functions or programs. It is important to note, the on-street parking is reserved for Meals on Wheels loading between 9 AM and 1 PM Monday through Friday. Additionally, the Service Road requires a permit to park between 7 PM and 7 AM. Both of these timeframes occur outside the drop-off/pick-up periods, which means that Applicant can use the on-street parking in front of the church for overflow parking when parents are dropping off and picking-up their children.

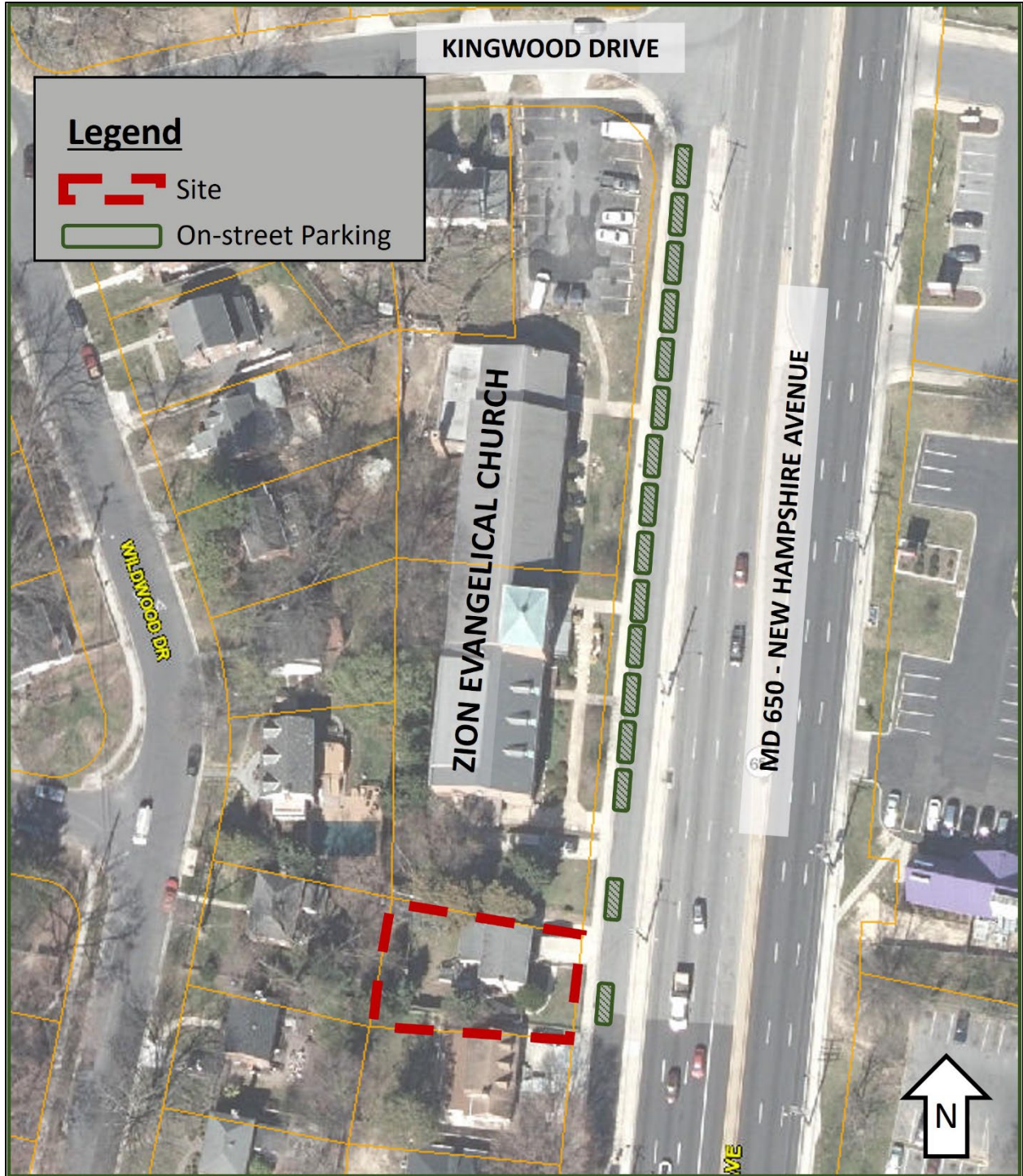


Figure 4 – On-street Parking Exhibit

Sidewalks are present along the Site frontage, and they connect to the established sidewalk network within the single-family residential neighborhood immediately east of the Site.

A bus shelter is located approximately 130 feet south of the Site at New Hampshire Avenue and Merwood Drive. It is served by Ride On route 16, providing service all days between Silver Spring and Takoma Metro Stations and Metrobus route K 6 providing service all days between Fort Totten Metro Station and Lockwood Drive in White Oak Shopping Center.

FOREST CONSERVATION

As indicated in Attachment A, this Project is not subject to Chapter 22A (Forest Conservation) because (1) the application applies to a property of less than 40,000 square feet, (2) the property is not subject to a previously approved Forest Conservation Plan, and (3) the Conditional Use/Special Exception proposal will not impact any champion tree as defined by the Montgomery County Forestry Board.

SECTION 4: COMMUNITY CORRESPONDENCE

As part of the application, the Applicant has provided several letters of support from the neighborhood, including both of the adjacent property owners (4702 New Hampshire Avenue and the Zion Evangelical Church) included as Attachment C. No other letters of concern have been received.

SECTION 5: ANALYSIS AND FINDINGS

CONDITIONAL USE NO. CU202412

- 1. Per Section 59.7.3.1.E., 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.**

There are no applicable previous approvals on the Site. The existing Family Day Care (up to 8 person) is allowed by right in the R-60 zone.
 - 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;**
 - i. Use Standards for Day Care Center (13-30 persons) per Section 59.3.4.4.E.2: Where a Day Care Center (13-30 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:**
 - a. The facility must not be located in a townhouse or duplex building type.**

The facility is not located in a townhouse or duplex building type.

b. *An adequate area for the discharge and pick up of children is provided.*

There will be an adequate area for the discharge and pick up of children. Two (2) spaces are required for the residential use and four (4) spaces are required for the day care (three (3) for every 1,000 SF of day care use in the building)². The existing concrete driveway in front of the house provides space for two (2) cars. A space for a third car is available in front of the house on the New Hampshire Avenue service road. During the hours of pick-up and drop-off, on-street parking in front of the Zion Evangelical Lutheran Church (immediately adjacent to the Site) is unrestricted. Per Section 59-6.2.5.E.1 of the Zoning Ordinance, parallel parking requires a minimum of 19.5 linear feet, resulting in at least 15 parking spaces in front of the Church. Included with the Application is a letter from the Church confirming that utilization of the on-street parking by the Daycare's proposed expansion to 14 children will not interfere with the Church's functions or the congregation's needs.

The width of the service road accommodates one row of parallel parking on the west (Site) side and a travel lane on the east side. Given the width of the roadway and the ample on-street parking available, queuing is not anticipated on the frontage road.

To be conservative and reduce the impacts to the existing residential character of the surrounding neighborhood the daycare will implement a staggered drop-off/pick-up schedule. No more than four (4) cars will access the Site at any one time.

Pedestrian Facilities

As previously mentioned, sidewalks are present along the Site frontage and extend into the residential neighborhood to the west of the Site. They are four feet (4 ft) in width and are buffered from traffic by on-street parking. The City of Takoma Park has plans to improve the ADA accessibility of the sidewalks by periodically widening the sidewalk to five feet in width to allow for passing zone, consistent with ADA design standards.

² Section 6.2.5.K, Facilities for Conditional Uses, which requires additional side setbacks for any off-street parking facility for a conditional use that is located within a Residential Detached zone where three or more parking spaces are provided, does not apply in this case. Although more than 3 spaces are required for the day care use, the existing parking facility is a residential concrete driveway. The look and capacity (two spaces) are residential in character and mimic the neighboring properties to the south. The additional two spaces required for the daycare will be accommodated by the existing on-street parking spaces. Furthermore, the adjacent property to the north of the Site is a church and not a residential detached house.

Transit Service

A bus shelter is located approximately 130 feet south of the Site at New Hampshire Avenue and Merwood Drive. It is served by Ride On route 16, providing service all days between Silver Spring and Takoma Metro Stations and Metrobus route K 6 providing service all days between Fort Totten Metro Station and Lockwood Drive in White Oak Shopping Center.

Therefore, taking into consideration the existing off-street parking spaces in the driveway, the available on-street parking in front of the house and the Church as well as the nearby pedestrian and transit facilities, there will be adequate area for pick up and drop off.

- c. The number of parking spaces under Division 6.2 may be reduced if the applicant demonstrates that the full number of spaces is not necessary because:**
- i. existing parking spaces are available on abutting property or on the street abutting the site that will satisfy the number of spaces required; or**
 - ii. a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems.**

The reduced number of spaces are sufficient to accommodate the proposed use without adversely affecting the surrounding area. As previously stated in Finding 1.b.ii.b above, the residential driveway can accommodate two cars, however the remaining required spaces (4) will be available offsite, on the service road fronting New Hampshire Avenue. One space is available directly in front of the Site and the remaining spaces are available in front of the neighboring Church, which has provided a letter endorsing the Daycare's proposed expansion stating that the utilization of these spaces by the Daycare would not interfere with the Church's daily functions or congregation needs. Given that there is an existing sidewalk on the Service Road that will provide adequate pedestrian access from the on-street parking to the Site, this will not create safety problems.

- d. For a Family Day Care where the provider is not a resident and cannot meet the non-resident provider requirement, screening under Division 6.5 is not required.**

Not applicable.

- e. **In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.**

Not applicable.

ii. Development Standards

Table 1: Development and Parking Standards for the R-60 Zone

Development Standard Section 59.4.4.9	Permitted/ Required	Existing/Proposed¹
Minimum Lot Area	6,000 sf	5,375 sq ft ²
Minimum Lot Width at Front Building Line	60 ft	60 ft
Minimum Lot Width at Front Lot Line	25 ft	28.3 ft
Maximum Lot Coverage	35%	20%
Minimum Front Setback	25 ft	20 ft ³
Minimum Side Setback	8 ft	6 ft ³
Minimum Sum of Side Setbacks	18 ft	12 ft ³
Minimum Rear Setback	20 ft	20 ft
Maximum Height	35 ft	35 ft
Vehicle Parking Requirement (Section 59.6.2.4.B)	Residential Use: 2 Daycare Use: 4 (3 spaces for every 1,000 SF)	Residential: 2 (driveway) Daycare Use: min. 4 (one on-street space in front of the house and up to 15 in front of the adjacent church)

¹There is no proposed development with this Application.

² Section 59.7.7.1.D.1 allows DPS to issue permits for lots recorded on plats prior to 1958 that without regard to street frontage or lot size minimums.

³ Section 59.7.7.1.A.1 allows a legal structure that does not meet current zoning standards to remain.

i. General Requirements –

(1) Access

All access to the building will be from the New Hampshire Avenue Service Road. The road operates in a one-way southbound direction and provides parking on the west (Site side of the street). Pedestrians will continue to access the day care from the existing sidewalk along New Hampshire Avenue. These sidewalks link to the established, well-connected sidewalk network within the surrounding residential neighborhood.

(2) Parking, Queuing and Loading

As previously described in Finding 1.B.ii.b, there will be adequate parking, queuing and loading for the proposed conditional use.

(3) Lighting

The existing lighting is residential in nature and will not cause any unreasonable glare on neighboring properties.

(4) Screening

Per Section 59.6.5.2.B, conditional uses within a single-family detached house do not need to provide screening. Regardless, 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 eastern property lines.

(5) Signage

There is no existing signage, and no new signage is proposed as part of this Application. Any signage added in the future must satisfy Division 59.6.7 of the Zoning Ordinance.

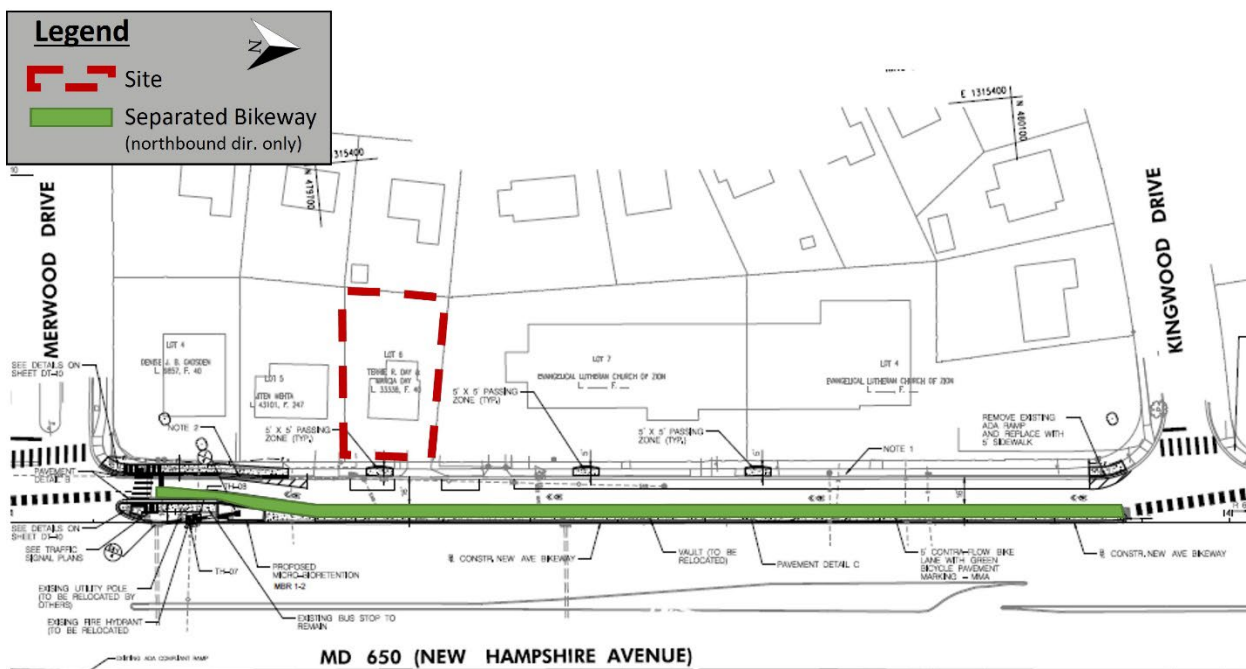
c) *substantially conforms with the recommendations of the applicable master plan;*

The Site is located within the 2012 *Takoma/Langley Crossroads Sector Plan* (Sector Plan) area, specifically within the New Hampshire Avenue Corridor which reconfirmed the R-60 residential zoning for this portion of the residential on the west side of New Hampshire Avenue. The Sector Plan does not mention restrictions or recommendations related to conditional uses/special exceptions, however there are several references to recommendations that encourage development of and expansion of neighborhood services, and the general need for day care near the Future Purple Line. This Proposal will modestly expand an existing day care within a neighborhood that has directly benefited from their services, that is also located within 130 feet of a Ride On bus stop.

i. *Master-Planned Roadways and Bikeway*

The Site is located on the west side of New Hampshire Avenue and is accessed by the one-way (southbound) frontage road. The 2013 *Countywide Transit Corridor Functional Master Plan* envisions a bus rapid transit route along the Site frontage. It recommends dedicated bus lanes, but this recommendation can only become effective upon adoption of a subsequent master plan update that would include recommendations on the right-of-way, and number of travel lanes. Additionally, the 2018 *Bicycle Master Plan* envisions separated bike lanes on New Hampshire

Avenue. The City of Takoma Park has plans to design and construct bicycle improvements along New Hampshire Avenue between Auburn Avenue and Holton Lane (New Ave Bikeway Section A, City of Takoma Park Mandatory Referral, MR 2021007, February 18, 2021). In front of the Site, the bikeway will consist of a northbound six-foot-wide buffered bike lane with southbound bicycle traffic using a sharrow within the existing travel lane. The bikeway design will maintain the on-street parking and the existing four-foot-wide sidewalk. The project includes the installation of periodic five-foot-wide passing zones to meet ADA design standards. The northbound bike lane will be installed within the footprint of the existing concrete buffer. No additional right-of-way dedication is needed. Furthermore, as the day care expansion does not include any changes to the existing building and will not generate 50 or more person trips, the Applicant is not required to participate in frontage improvements. The Subject Application will not



preclude the installation of the bikeway facilities in the future, and the bikeway project will not impact the on-street parking needed for the day care use.

Figure 5 – “New Ave Bikeway” Roadway Plan 60% Design, Sheet 25, May 2020

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

The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood. No physical changes are proposed on the Property. The parking for the employees and pick-up/drop-offs will be on site and on the street in front of the

Property and the neighboring property which is developed as a Church. The day care will be open during normal day care hours and will not intrude on the residential neighborhood. There will be no more than 14 children, ages 0 to 5 years old, and the back yard is fenced for their safety. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood.

- 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 use/special exception within the defined neighborhood: Special Exception No. 2414 to permit an accessory apartment. Although approval of this Application will add one conditional use in the Staff-defined Neighborhood, the proposed day care expansion will not affect the area adversely or alter the area's predominantly residential nature. The existing day care has been in operation since 2015, the increase in day care capacity of six children is modest, and the Applicant is not proposing any physical changes to the Property.

- 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. ***A Preliminary Plan of Subdivision is not required, and Staff has determined that there are adequate public services and facilities to serve the proposed use as described below.***

Local Area Transportation Review

The Subject Application estimates that a total of 29 trips will be generated in either the morning or evening peak hour. This assumes that all children are driven separately (no siblings) to and from the Site and the one non-resident employee will arrive at the Site during the morning peak hour and leave during the evening peak hour and will park onsite all day. As the day care use will generate fewer than 50 peak hour person trips, the Subject Application is exempt from providing a transportation impact analysis.

Table 2: Trip Generation for the Proposed Day Care

Tip Generator	Morning Peak Hour	Evening Peak Hour
Children	28	28
Employees	1	1
Total	29	29

Other Public Facilities

The Subject Application does not propose any alterations to the existing house, and therefore fire access and stormwater management continue to be sufficient. Schools are not affected by the Subject Application, as no new dwelling units are proposed. The Property is located within water and sewer categories W-1 and S-1 and is serviced by existing water and sewer. Water and sewer needs are expected to be met by the Washington Suburban Sanitary Commission (“WSSC”) through connection to the existing water and sewer lines. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

- 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, residents, visitors, or employees.**

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “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.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “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.” 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, Staff examines the size, scale, scope, light, noise, traffic and environmental effects of the proposed use.

The inherent physical and operational characteristics associated with a Group Day Care facility include the following key issues: 1) vehicular trips to and from the Site; 2) visual impact of outdoor play areas; 3) noise generated by outdoor play; 4) drop-off and pick-up areas; and 5) lighting.

Adequate parking and drop-off/pick-up areas are available between the Subject Property’s driveway and the Service Frontage Road. The drop-offs and pick-ups will be staggered to a maximum of four vehicles at a time.

The outdoor play equipment and lawn area in the backyard are adequate for the Proposal, and the activity of six additional children ages 0 through 5 playing will not adversely impact the neighborhood. Given the proximity of the Site to the New Hampshire Avenue corridor, any minimal noise from outdoor play will not significantly impact the neighborhood above the existing ambient noise from the major corridor.

The existing lighting fixtures are residential in nature and will not intrude on neighboring properties. There is no odor or dust from the use.

Accordingly, the inherent aspects of a day care will not produce adverse effects on the neighborhood. Further, the Property and building, as designed and located in the neighborhood, does not create any non-inherent adverse effects. Planning Staff did not identify any non-inherent characteristics with the application Therefore there is no harm resulting from non-inherent or inherent characteristics.

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.

The proposal is for the expansion of an existing day care facility in an existing house; no construction, reconstruction or alteration of any structure is proposed.

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 is not sufficient to require conditional use approval.

The proposed use will be compatible with the nearby residential properties and Staff recommends approval with conditions.

SECTION 6: CONCLUSION

The proposed conditional use complies with the findings required for approval of a day care center for up to 14 children, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 2012 *Takoma/Langley Crossroads Sector Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.

ATTACHMENTS

- Attachment A: Forest Conservation Plan Exemption
- Attachment B: Application Materials
- Attachment C: Letter of Support from Zion Evangelical Lutheran Church
- Attachment D: Letters of Support submitted by the Applicant
- Attachment E: Subdivision Plat