

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

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PETITION OF MARIANA ILIE *
for a special exception for a child day care *
facility (a group day care home) for up to *
12 children on property located at 9414 *
Balfour Drive, Bethesda, Maryland *

Mariana Ilie *
 Gheorghe Ilie *

Special Exception No. 12-03

For the Petition *

Before: Tammy J. CitaraManis, Hearing Examiner

HEARING EXAMINER'S OPINION AND DECISION

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I. STATEMENT OF THE CASE

Petition S.E. 12-03, filed on February 13, 2012, requests a special exception to operate a “group day care home” for up to 12 children.¹ The day care facility would be located in the lower level of an existing one-family, detached home at 9414 Balfour Drive, Bethesda, Maryland, in the R-60 Zone.

Petitioner and her husband, Gheorghe Ilie (“Mr. Ilie”), own and reside in the home.² Exhibit 15. Petitioner has been operating an existing licensed child care business (*i.e.*, a “family day care home”) for up to 8 children in the walk-out basement of her home since 1995. Exhibits 8 and 9. There is no special exception for the existing family day care home because such a facility is permitted without a special exception in the R-60 Zone; however, a special exception is required to operate a group day care home in the R-60 Zone, pursuant to Zoning Ordinance §59-C-1.31(d). The day care facility is called “International Daycare of Bethesda.” Tr. 13.

Under the provisions of the Zoning Ordinance, §59-G-1.12, the Hearing Examiner is authorized to hear and decide this type of petition. On April 27, 2012, the Office of Zoning and Administrative Hearings (“OZAH”) issued a notice that the public hearing would be held before the Hearing Examiner on Friday, August 3, 2012. Exhibit 16.

¹ A “group day care home” is one of three types of “child day care facilities” defined in Zoning Ordinance §59-A-2.1. The other two are “family day care homes” for up to 8 children and “child day care centers” for 13 or more children. A “group day care home” is defined in §59-A-2.1 as:

A dwelling in which child day care services are provided:

- a. in the home where the licensee is the provider and is a resident;
- b. for 9 but not more than 12 children including the children of the provider, and;
- c. where staffing complies with state and local regulations, but no more than 3 non-resident staff members are on site at any time.

² Mr. Ilie was not included as a co-petitioner on the Petition for Special Exception (Exhibit 1). However, in addition to testifying in support of the petition, he submitted a signed Affidavit of Posting (Exhibit 24) and Affidavit of Compliance with State and County requirements (Exhibit 12).

The Technical Staff of the Maryland-National Capital Park and Planning Commission (“M-NCPPC”) reviewed the petition and in a report dated June 26, 2012, recommended approval with conditions, set forth below (Exhibit 17(a)):³

1. The group day care use must be limited to 12 children ranging from six weeks to six years of age.
2. The group day care will have maximum of two resident staff persons and one non-resident staff person.
3. Permitted hours of operation are Monday through Friday 6:00 AM to 5:30 PM.
4. The applicant must comply with Maryland State and Montgomery County standards for the operation of a child day care facility.

The Montgomery County Planning Board (“Planning Board”), on July 12, 2012, voted (5-0) to endorse the Technical Staff’s recommendation (Exhibit 21(a)).⁴ The Hearing Examiner received two pre-hearing letters of support from individuals who do not live in the neighborhood but appear to be parents of children who attend or attended the International Daycare of Bethesda. Both letters stressed the merits of the existing program and the excellent quality of care provided by the Petitioner. One letter mentioned that the fenced backyard provided a safe location and the driveway and on-street parking on the cul-de-sac provided for easy drop-off and pick-up of the children. Exhibits 11(a)-(b).

The hearing was convened, as scheduled, on August 3, 2012, and testimony was presented in support of the petition by Petitioner, who appeared *pro se*. Mr. Ilie also testified in support of the petition. Both Petitioner and Mr. Ilie adopted the findings and conclusions in the Technical Staff report as a part of their testimony and agreed to the conditions Staff recommended. They also agreed with the Planning Board recommendation of approval as

³ The Technical Staff report is frequently quoted and paraphrased herein.

⁴ There are two letters of recommendation in the file from the Planning Board. The first letter is dated July 25, 2012 (Exhibit 18), and recommends “revising Condition No. 1 in the staff report to allow children up to six years old who do not attend school, rather than excluding a child who turns six but is not yet in kindergarten.” The Planning Board Chair sent a revised letter of recommendation dated July 27, 2012 (Exhibit 21(a)), which omitted the proposed revision of Condition No. 1 and “recommended approval of the proposed group day care as supported by the . . . staff report.” Exhibit 21(a).

supported by the Technical Staff report (Exhibit 21(a)). Tr. 10-13. Both submitted a signed Affidavit of Posting (Exhibit 24) and Affidavit of Compliance with State and County requirements (Exhibit 12). No opposition appeared at the hearing.

At the hearing, the Hearing Examiner requested that Petitioner provide a floor plan of the interior of the daycare and a revised Zoning map. The record was held open until August 13, 2012, to give Petitioner time to submit the requested documents. The record closed on August 13, 2012, with no further documents being received other than the Floor Plan (Exhibit 25) and revised Zoning Map (Exhibit 26). By Order dated September 11, 2012, the Hearing Examiner extended the time to submit this Opinion and Decision from September 12, 2012, to September 26, 2012. Exhibit 27.

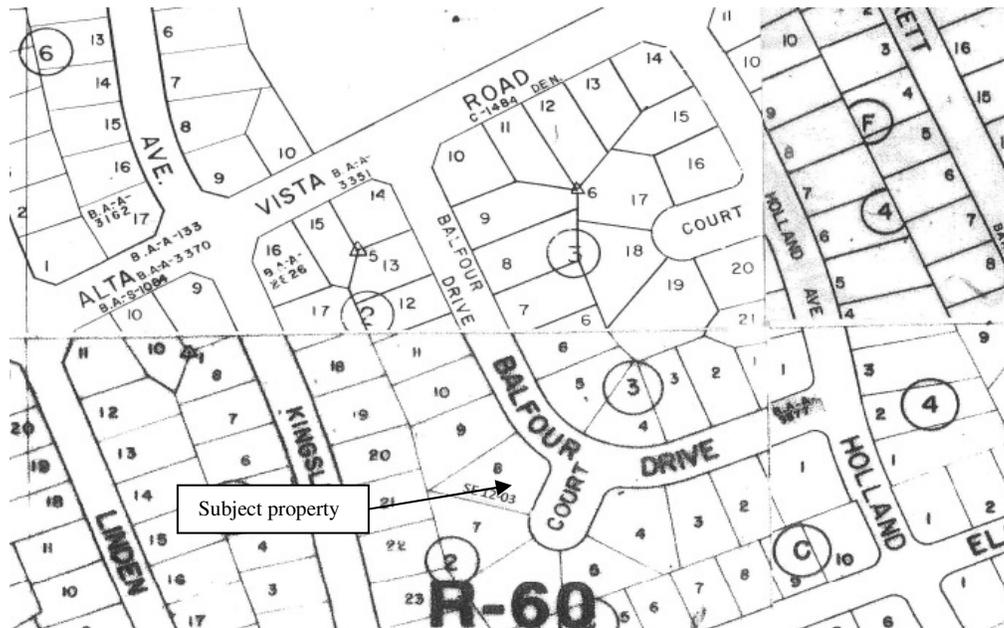
Based on a thorough review of the entire record, the Hearing Examiner concludes that the special exception should be granted, subject to the conditions prescribed herein.

II. FACTUAL BACKGROUND

A. Subject Property

The proposed group day care home would operate in the finished basement of an existing, single-family, two-story, detached home at 9414 Balfour Drive, Bethesda, Maryland. The property's legal description is Lot 8, Block 2, Maplewood Manor subdivision. It is located on the west side of Balfour Drive which extends from Alta Vista Road to the north and Holland Avenue to the east and is southwest of its intersection with Balfour Court. Technical Staff reports: "The property is approximately ¼ mile from the Rockville Pike and Alta Vista Road intersection. The triangular shaped lot is 10,524 square feet in area and has frontage along Balfour Drive and Balfour Court." Exhibit 17(a), p. 2.

The site's location can be seen on the Zoning Map of the area shown below (Exhibit 26):



Transportation Staff reports (Exhibit 17(a), Attachment 1):

Balfour Drive is a 24-foot wide secondary residential street with on-street parking allowed along both sides. Balfour Court is a short stub road (approximately 100 feet) that extends to the southwest from Balfour Drive and is approximately 40 feet wide. Parking is allowed along both sides of Balfour Court. There are no sidewalks along Balfour Drive or Balfour Court.

Access to the property is via a curb-cut and driveway off Balfour Court. Off-street parking for the proposed day care will be provided on the driveway, which could accommodate two-three vehicles.

The one-family detached home was constructed in 1955 and is set back 28 feet from Balfour Drive from the northeast corner of house. The side yard set back of the dwelling from the adjoining property to the north (Balfour Drive) is 14 feet and 24 feet from the adjoining property to the south (Balfour Court). On the south side of the property is a single-car carport, shed and path to the rear yard. Two large Magnolia and Birch trees provide shade for the asphalt driveway which can accommodate two to three vehicles. Access to the main dwelling entrance is via a concrete walkway off Balfour Drive. The front yard gently slopes from south to north and

there are two small apple trees between the walkway and driveway.

The entrance to the main dwelling is landscaped on both sides with evergreen bushes. The front of the home and the streetscape views of Balfour Drive can be seen in the following photographs taken from the Technical Staff report (Exhibit 17(a), p. 3 and 6):



Front view of the subject property showing the primary house entrance and the walkway



Balfour Drive streetscape view looking south

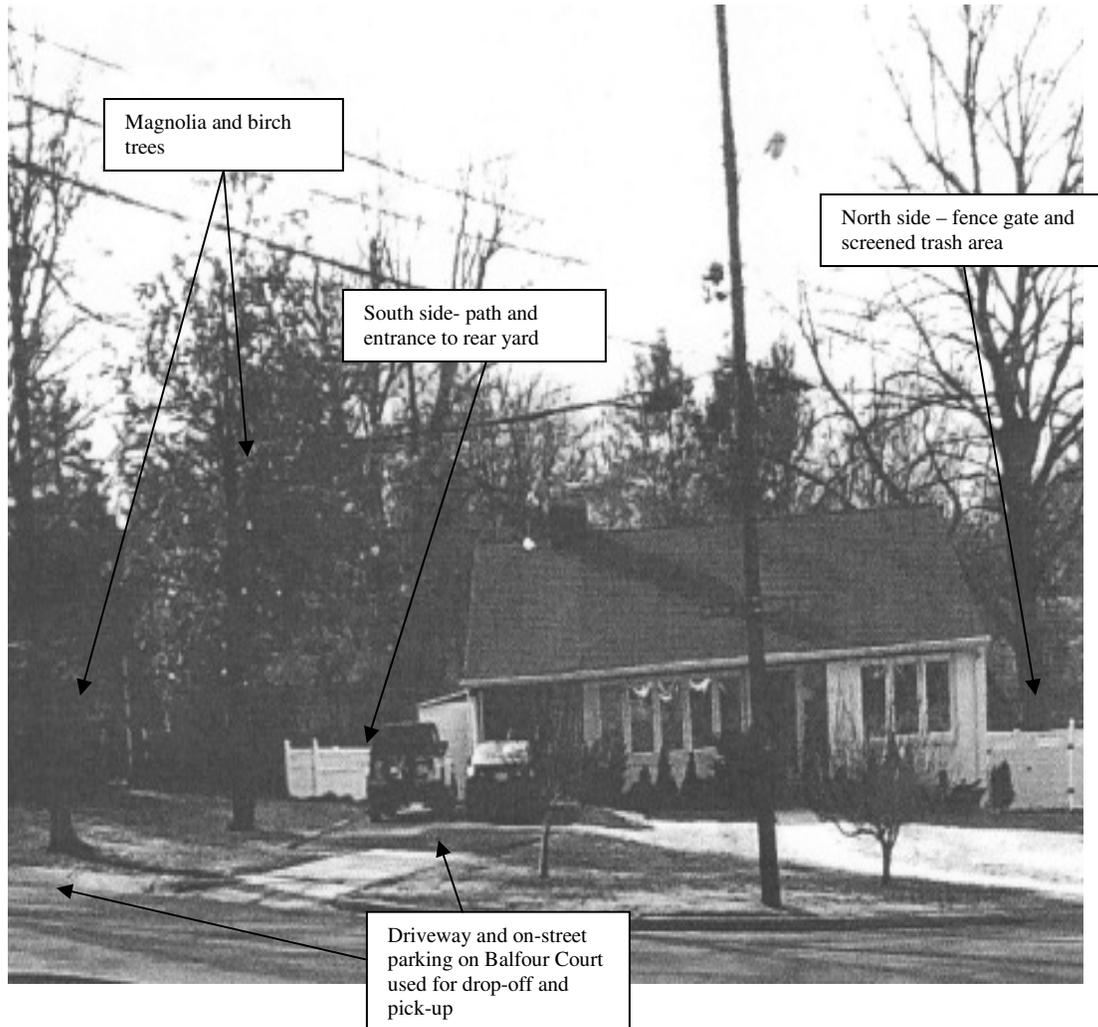


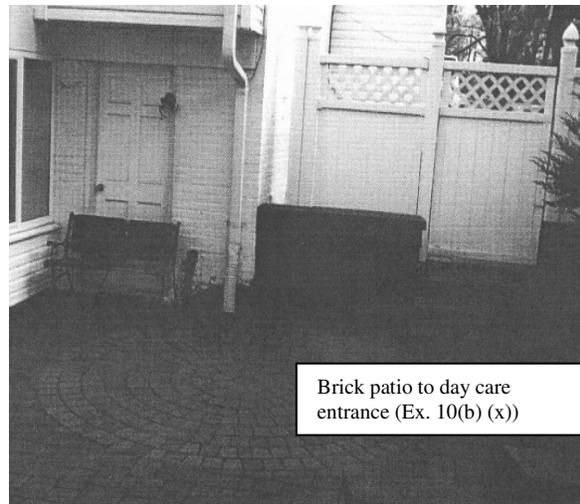
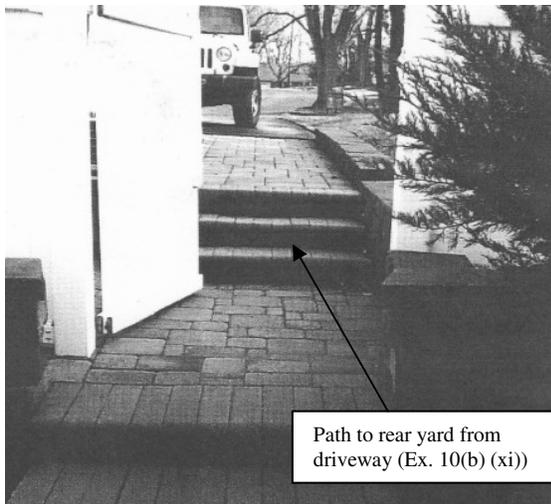
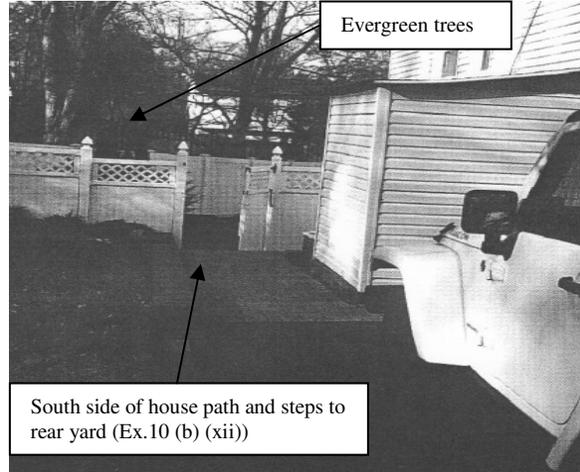
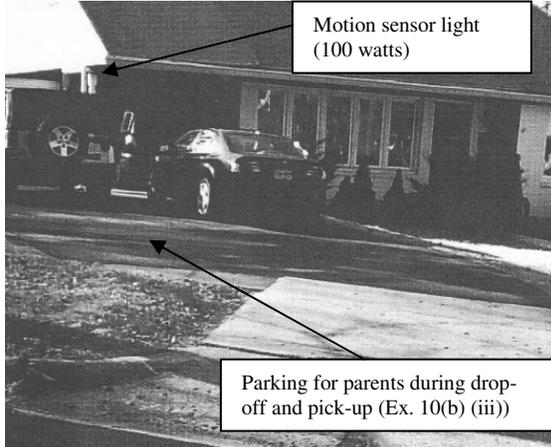
Balfour Drive streetscape view looking north

The backyard, triangular in shape, is enclosed with a six-foot vinyl privacy fence. Access to the backyard is via an asphalt path to brick steps to the fence gate and large brick patio that surrounds the enclosed sunroom attached to the rear of the house. The backyard contains an existing swing set, playhouse, sandbox, slides and a variety of other toys. Access to the day care

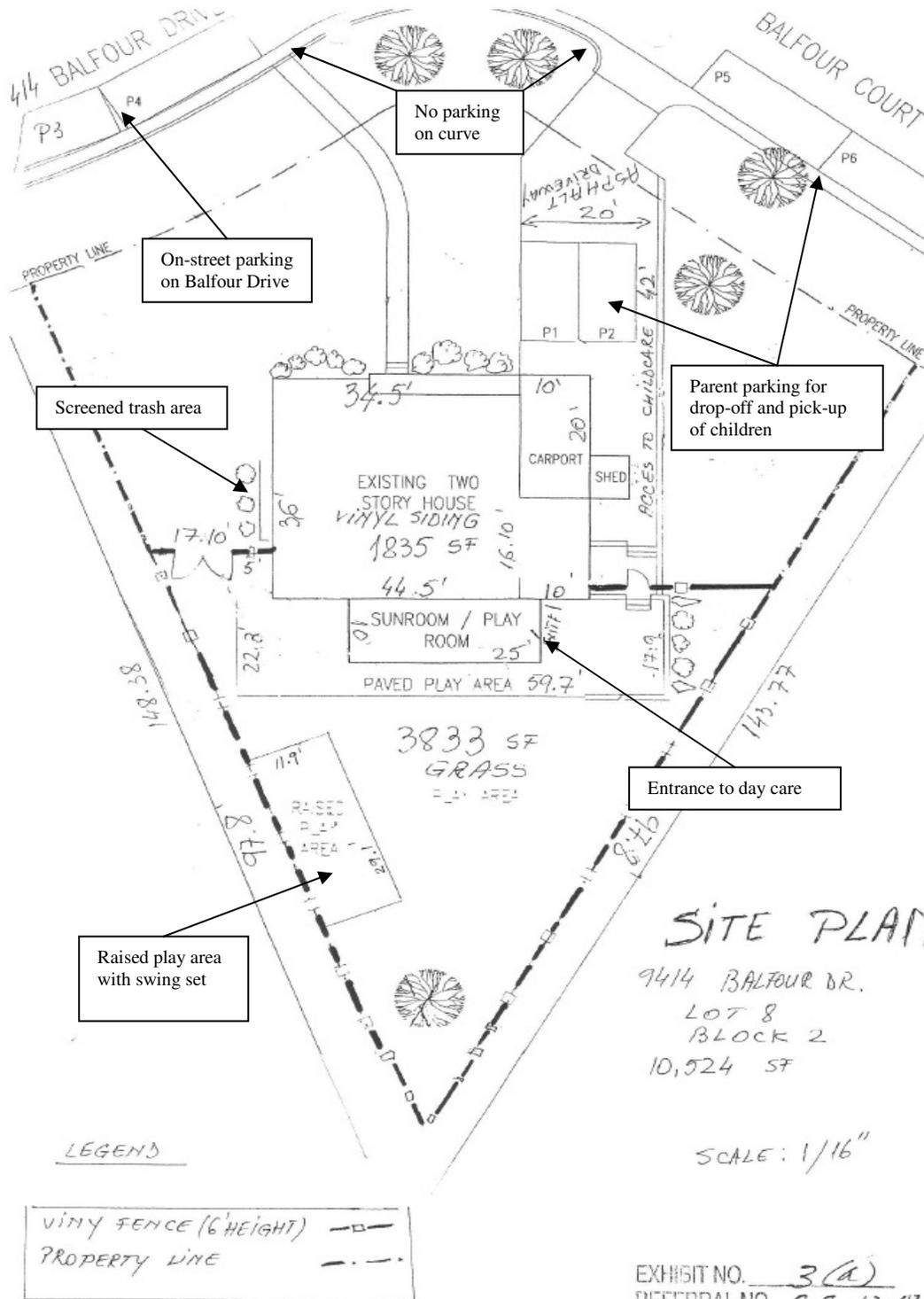
entrance is the exterior door to the enclosed sunroom in the rear of the home. A second gate is located on the north side of the property where the trash cans for the home are stored behind a three-foot fence which is landscaped with evergreen trees.

Photographs of the dwelling, driveway access to the property from Balfour Court, and the path to the backyard and day care entrance taken from the Technical Staff report (Exhibits 17(a), pp. 8 and 9), and submitted by the Petitioner (Exhibits 10(b)(ii)-(iii), and (x)-(xii)) are shown below and on the following page:





The Site Plan for the property is shown below (Exhibit 3(a)):



B. Surrounding Area

Technical Staff defined the general neighborhood surrounding Petitioner’s property by the following boundaries: Alta Vista Road to the north, Holland Avenue to the east, Elsmere Avenue to the south, and Kingsley Avenue to the west. The neighborhood boundary depicted with a solid line on the aerial map shown below has been drawn by Technical Staff to include any nearby properties that may be impacted by the day care operation and the potential increase in traffic (Exhibit 17(a), p. 5):



Technical Staff reports (Exhibit 17(a), p. 5): “The neighborhood primarily has a residential character with one-family detached homes. The entire neighborhood is zoned R-60. Maplewood Alta Vista Park that is owned by the Maryland National Capital Park and Planning

Commission is located at Alta Vista Road approximately 600 ft. north of the subject property.” Technical Staff advised there are no other special exceptions within the defined neighborhood boundary. Having no evidence to the contrary, the Hearing Examiner adopts Technical Staff’s delineation of the neighborhood characterized as residential with one-family detached homes in the R-60 Zone.

C. The Proposed Use

1. The Proposed Use:

Petitioner has been operating a licensed child care business (*i.e.*, a “family day care home”) in the basement of her home for up to 8 children since 1995. Exhibit 9; Tr. 86. Petitioner’s most recent Certificate of Registration (“License”) was issued August 31, 2009, and includes the following restrictions (Exhibit 9):

Napping approved in the recreation and sunrooms. The first (1st) and second (2nd) floors of the home and furnace area are off limits to child care. **Two approved adults must be present at all times and actively supervising children when more than two (2) children under the age of 24 months are in care. The approved additional adult is Gheorghe Ilie.

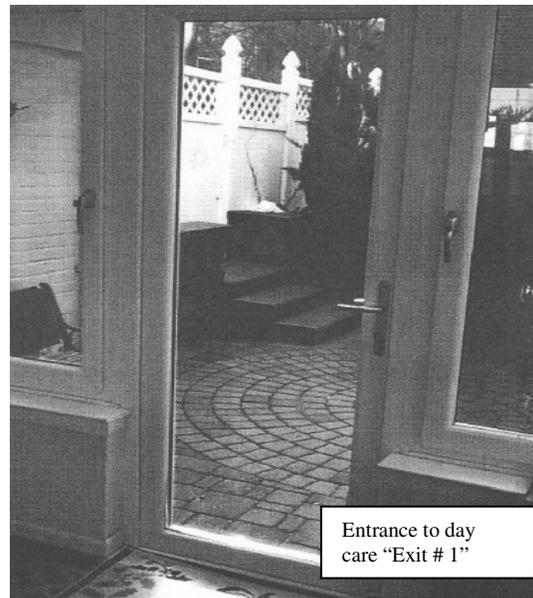
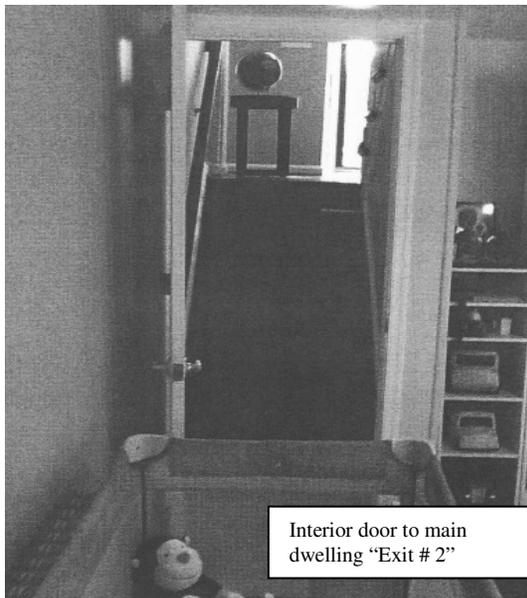
Petitioner is proposing to expand the existing family day care home into a “group day care home” for up to 12 children ranging in age from six weeks to 6 years of age. Exhibit 8. Petitioner will amend her license to permit her to provide day care services for up to twelve children following the granting of this special exception application. As required under Code § 59-G-2.13.1(a)(4), the Petitioner has submitted an affidavit affirming that she will comply with all applicable State and County requirements (Exhibit 12).

Technical Staff advises (Exhibit 17(a), p. 7):

The day care will be operated in the fully finished lower level (basement) of the existing one-family home, with a private entrance located at the rear of the house. Parents and children will use the side walkway to reach the rear entrance of the center. The floor area of the basement is approximately 850 square feet. The applicant is not planning to make any changes to the existing design of the

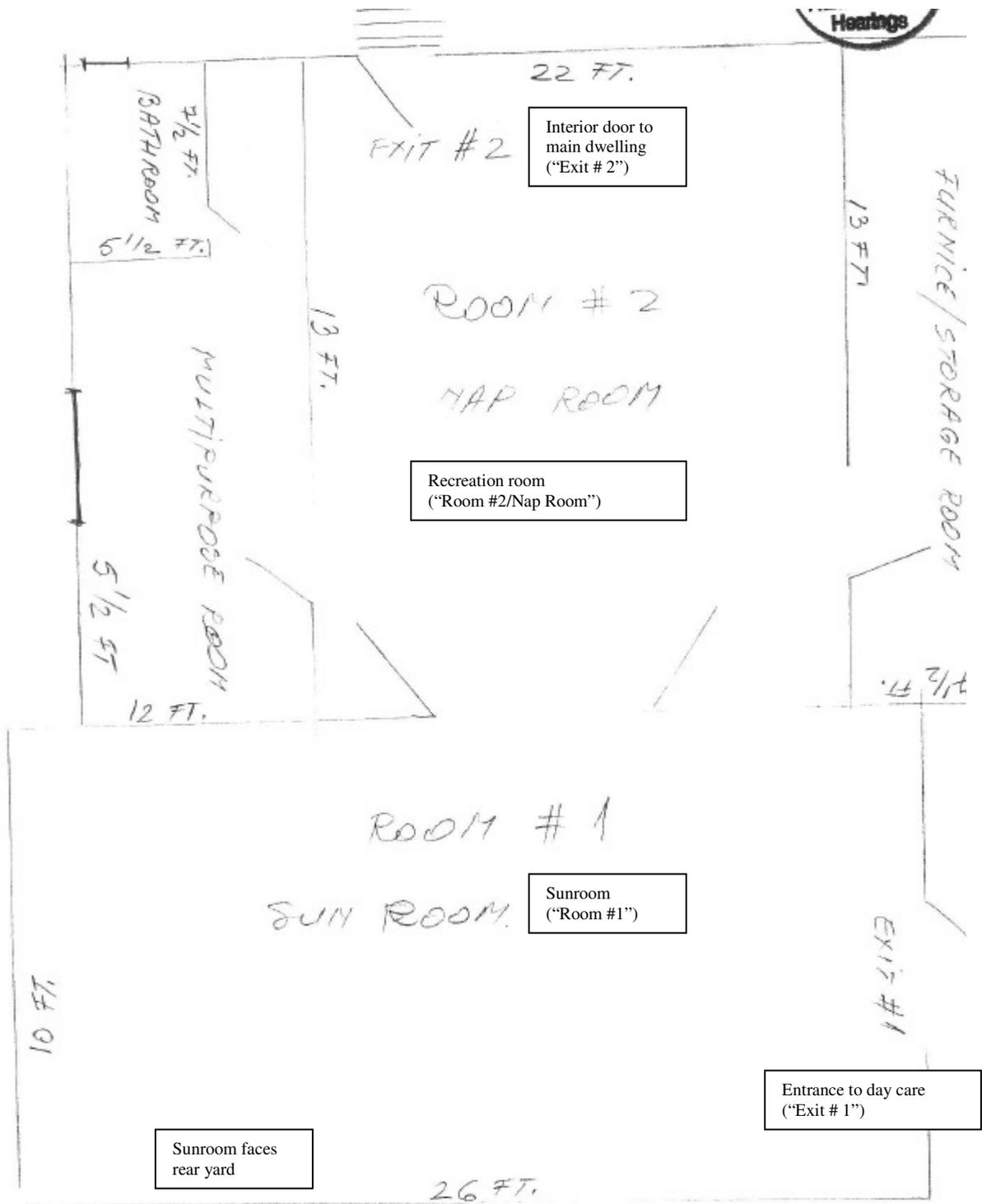
property. The property has a vinyl fence along the entire backyard that will be used as a play area. The entire fence belongs to the homeowner. The children will be divided into two groups, infants and toddlers.

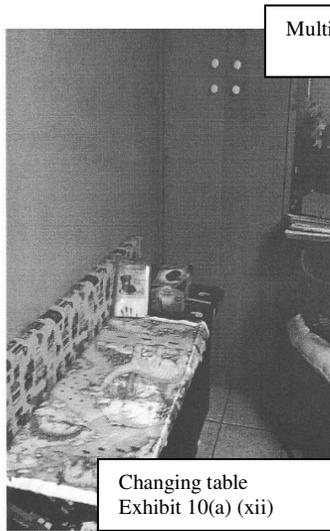
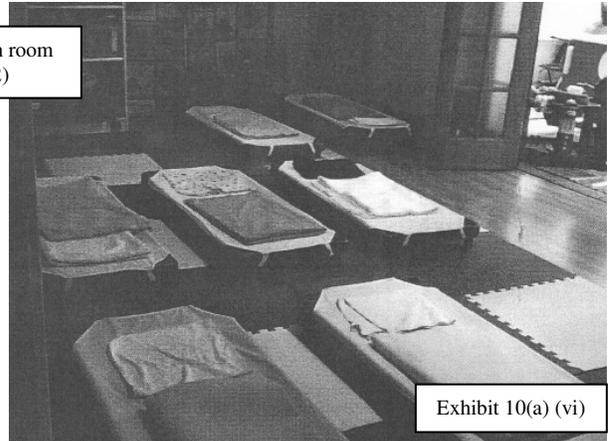
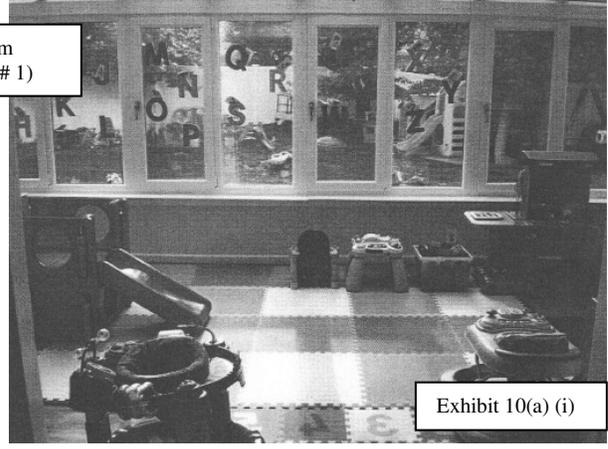
The day care entrance is identified as “exit 1” on the Floor Plan (Exhibit 25), which is shown on the next page. Photographs of the path and entrance to the day care can be seen on page 9 of this Opinion. The interior door off the recreation room to the main dwelling, where Petitioner and Mr. Ilie reside, is identified as “exit 2”.⁵ Petitioner provided up-close photographs (Exhibits 10(a) (xv) and 10(b) (xvi)) of both exits:



The day care Floor Plan (Exhibit 25) and photographs of the day care interior taken from the Technical Staff report (Exhibit 17(a), pp. 7 and 8) and Petitioner’s submissions (Exhibits 10(a)(i), (vi) and (xi)-(xiii)) are shown on the following pages:

⁵ Petitioner identified the recreation room as “Room #2/Nap room” and the enclosed sunroom as “Room # 1/Sunroom” on the Floor Plan (Exhibit 25). Both exits are similarly identified on the Site Plan (Exhibit 3(a)).





Petitioner testified that the enclosed sunroom (room # 1) overlooks the backyard and outdoor play area and includes cubbies for the children to store their belongings, small play equipment, tables chairs and bookshelves. The recreation room (room # 2) includes infant cribs, strollers, additional toys, books and is used for indoor activities and nap time. The multi-purpose room includes a changing table with supplies and a small kitchen area. The kitchen includes a mini-refrigerator, microwave and sink.⁶ Tr. 27-34. Access to the bathroom is through the multi-purpose room. The furnace/storage area is locked.

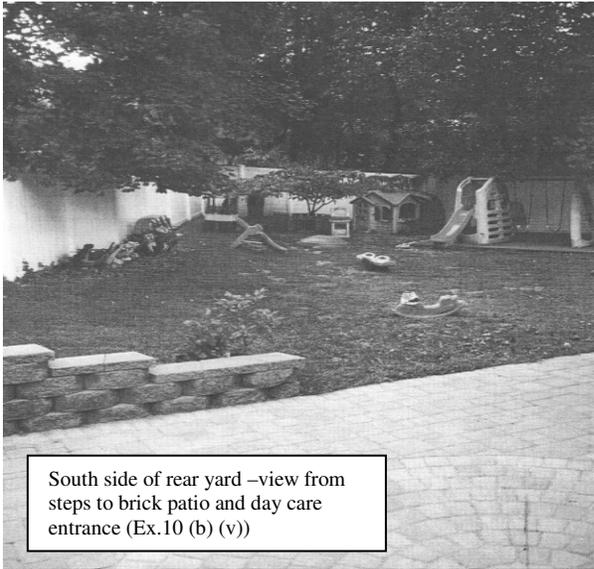
The rear yard is enclosed with a six-foot vinyl privacy fence and includes play equipment (e.g., swing set, playhouse, sandbox, slides and other age appropriate toys) as can be seen in a photograph from the Technical Staff report (Exhibit 17(a), p. 9) shown on page 9 of this Opinion. In the Statement of Operations, Petitioner indicated that the “[t]oys and moveable equipment will be stored immediately after the playtime ends.” Exhibit 8.

Petitioner testified that she has never received any complaints from the neighbors regarding the day care operation or the children playing outside. Technical Staff noted there will be a slight increase in noise generated by the expansion of the day care from eight to twelve children. However, Technical Staff found that “[t]he privacy fence will help mitigate the noise generated in the play area.” Exhibit 17(a), pp. 14-15.⁷ Petitioner indicated that the fence and mature trees along the outside perimeter of the rear yard fence provides a visual barrier between her backyard and the adjoining properties to the north and south. Tr. 56-59.

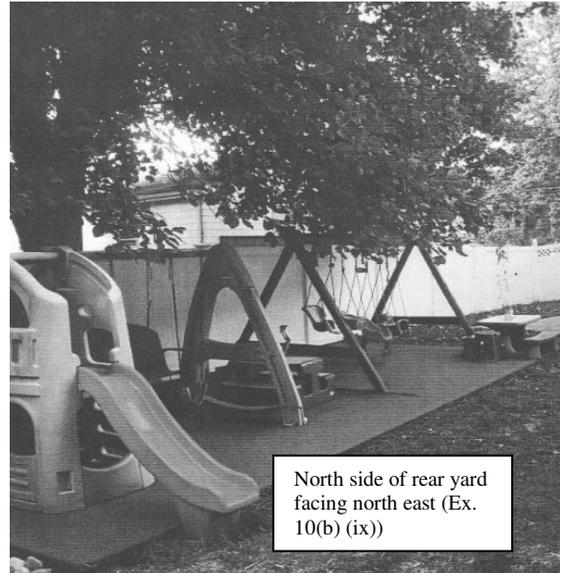
⁶ Petitioner indicated that the parents provide most of the children’s food for the day. On rare occasions when needed, Petitioner will use the stove in the main dwelling. Tr. 34-41.

⁷ Technical Staff advised: “The Staff has not heard from any neighborhood resident about the proposed group day care. . . . There is no evidence of concern or objection from adjoining neighbors regarding the proposed day care.” Exhibit 17 (a), p. 11.

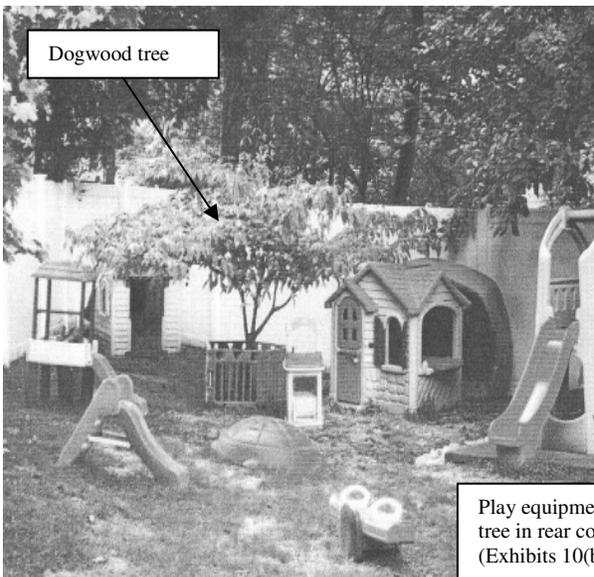
Petitioner provided additional photographs of the outdoor play area and landscaping along the outside perimeter of the fence from adjoining properties to the north and south which are shown below (Exhibits 10(b) (v)-(vii) and (ix)):⁸



South side of rear yard –view from steps to brick patio and day care entrance (Ex.10 (b) (v))

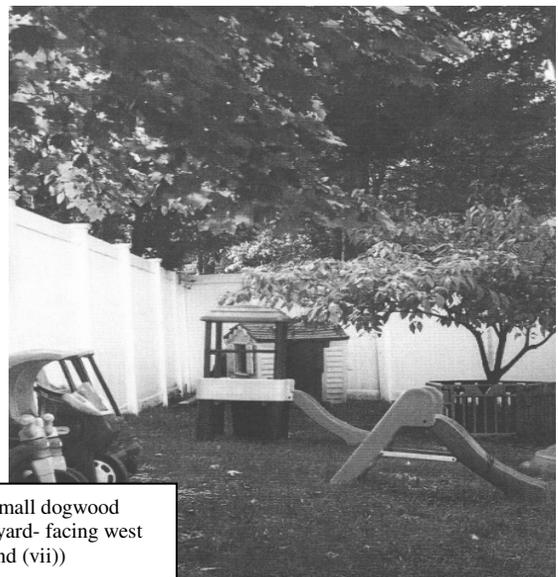


North side of rear yard facing north east (Ex. 10(b) (ix))



Dogwood tree

Play equipment and small dogwood tree in rear corner of yard- facing west (Exhibits 10(b) (vi) and (vii))



⁸ Petitioner testified that the neighbor on the north side recently removed the large tree that hangs over the swing set shown in the above photograph (Exhibit 10(b) (ix)). Tr. 57.

2. Parking:

In addition to Petitioner and her husband, the child care facility will have no more than one non-resident staff member. The number of parking spaces required for this use is determined by Zoning Ordinance § 59-E-3.7, which provides, in relevant part:

***Child day care facility.** For a family day care home or group day care home, one space for every non-resident staff member in addition to the residential parking requirement. The required number of spaces may be allowed on the street abutting the site. . . .*

Based on this provision, Technical Staff calculated that three (3) parking spaces would be required – one (1) space for the non-resident staff member, and two (2) spaces for the resident-staff members. Exhibit 17(a), p. 18.

Technical Staff reports (Exhibit 17(a), p. 11):

Consistent with Zoning Ordinance §59-E-3.7, for a group home one parking space is required for every non-resident staff member in addition to the residential parking requirement. The Zoning Ordinance allows the required parking space to be located on the street abutting the site. The proposed day care will have three off-street parking [spaces] and four on-street parking spaces. Two on-street parking spaces are located on Balfour Drive and two on-street parking spaces are located on Balfour Ct. Two off-street cars can also be parked in the driveway, and one in the carport. The neighborhood has one-family homes with separate driveways and garages. Majority of cars in the neighborhood are parked off-street. The four on-street parking spaces are expected to be used by the non-resident staff person, and for children drop-off and pick-up. (Emphasis added)

The Site Plan (Exhibit 3(a)), previously shown on page 10 of this Opinion, identifies the location of the seven parking spaces for the dwelling and proposed day care.⁹ Petitioner testified that she and her husband park their only vehicle in the carport. Petitioner is proposing to have the one non-resident staff member park in one of the on-street parking spaces in front of her house instead of on the driveway as permitted under the Zoning Ordinance § 59-E-3.7. This will allow sufficient space for parents to park on the existing driveway or on Balfour Court during drop-off

⁹ Photographs showing the available parking on the driveway and in front of Petitioner's house on Balfour Drive can be seen on pages 7 and 9 of the Opinion.

and pick-up of the children. According to Petitioner, this arrangement works well with her current parents because it provides them with easy access to the driveway and path to the day care entrance located in the rear of the home. Tr. 42-47. Petitioner also reported there is little traffic in the neighborhood and the parents do not have any trouble safely pulling into and backing out of the driveway or parking on the cul-de-sac.¹⁰ Tr. 86.

3. Landscaping, Lighting, Signage and Environment:

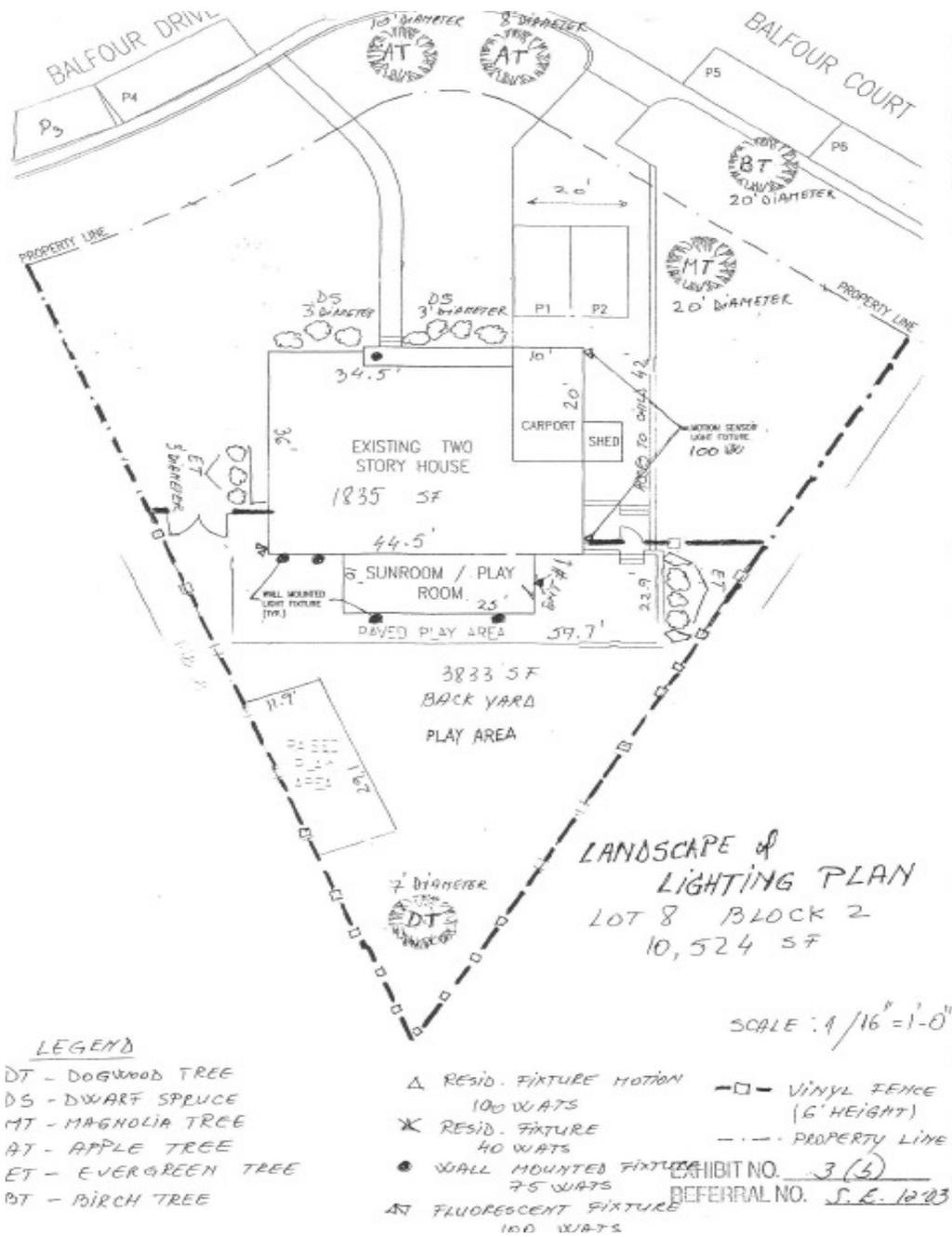
Petitioner provided a Landscape and Lighting Plan (Exhibit 3(b)), shown on the next page, showing the location of existing trees and other vegetation on the property, as well as the location of the existing lighting fixtures on the dwelling.¹¹ Technical Staff advises that Petitioner is not proposing any changes to the existing landscaping or the exterior of the home. Similarly, no new lighting will be added.

There are five (5) trees on the property, four of which are located in the front yard. Specifically, there are two small apple trees between the front walkway and driveway and two large shade trees (e.g., magnolia and birch) on Balfour Court and along the southwest side of the driveway. A small dogwood tree is planted in the rear of the property. There are evergreen trees planted just inside the gate on the south side of the rear yard and on the north side of the dwelling where the trash cans are stored.¹²

¹⁰ In a letter dated January 27, 2012, a parent whose child attended Petitioner's day care stated: "[Petitioner's] location has a safe fenced-in backyard, and has convenient driveway parking as well as easy parking in front and on the cul-de-sac if needed. This makes child drop-offs and pick-ups very easy." Exhibit 11(a).

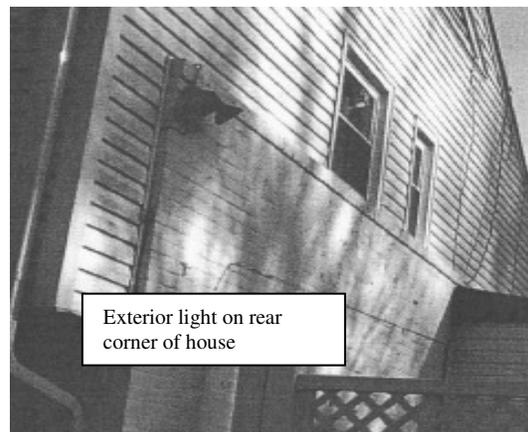
¹¹ Petitioner modified the Landscape and Lighting Plan to identify the exterior entrance to the day care as "exit #1" as shown on the Site Plan (Exhibit 3(a)).

¹² Photographs of the front, side and rear yard landscaping shown on the Landscape and Lighting Plan (Exhibit 3(b)) can be seen on pages 8, 9 and 17 of this Opinion.



Technical Staff advises that “[t]he property does not have any environmental constraints in the form of streams, forests, floodplains, and wetlands.” Exhibit 17(a), p. 2. Staff also advised that the property is exempt from the Forest Conservation Law because the lot size is less than 40,000 square feet. Exhibit 17(a), p. 11.

As shown on the Landscape and Lighting Plan (Exhibit 3(b)) on the previous page, there are five (5) wall-mounted light fixtures (75 watts) located on the front and rear of the dwelling. There is a fluorescent spotlight (100 watts) located on the rear northwest corner of the dwelling. The path from the driveway to the rear yard and day care entrance is illuminated with two (2) motion sensor lights fixtures (100 watts) located on the front and rear corners of the dwelling. There is a porch light (40 watts) above the day care entrance.¹³ Petitioner testified that the two motion sensor lights and one spotlight are angled towards the ground to prevent glare onto the adjoining properties. Tr. 63-68. Photographs of the two motion sensor lights from the Technical Staff report (Exhibit 17(a), p. 9) and provided by Petitioner (Exhibit 10(b) (xiv)), are shown below:



Technical Staff found that “[t]he property will sufficiently be illuminated for the safe drop-off and pick-up for children, but will not be a distraction for neighboring properties.” Exhibit 17(a), p. 14. Because there will be no exterior changes to the existing dwelling, landscaping or exterior lighting Technical Staff found the existing dwelling to be compatible

¹³ A photograph of the exterior light fixtures on the sunroom in the rear of the dwelling (Exhibit 17(a), p. 8) can be seen on page 9 of this Opinion.

with the residential character of the neighborhood. Exhibit 17(a), p. 10. Petitioner does not propose to install a sign for the day care on her property.

4. Operations:

Petitioners' proposal for conducting the group day care home is set forth in her Statement of Operations (Exhibit 8).

a. Staffing:

The proposed group day care home will have a maximum of two resident-staff, and one non-resident staff member. Petitioner and Mr. Ilie will reside in the main dwelling where the group day care is located. The one non-resident staff member will work from 6:00 a.m. to 5:30 p.m.¹⁴ In the Statement of Operations, Petitioner indicated that the children will be divided into two groups, infants and toddlers/preschool and “[a]n appropriated child to staff ratio will be maintained in accordance with the State Licensing Regulations.” Exhibit 8. The maximum staff is set forth as a condition in Part IV of this Opinion and Decision.

b. Hours of Operation:

The day care hours of operation are from 6:00 a.m. to 5:30 p.m., Monday through Friday. Child care will not be provided on weekends or overnight at any time. These hours of operation are also spelled out in a condition in the final part of this Opinion and Decision.

c. Drop-off and Pick-up of Children:

Children will be dropped off between 6:00 a.m. and 8:30 a.m. and will be picked up between the hours of 3:30 p.m. and 5:30 p.m. Parents will escort their children to and from the day care entrance located in the rear of the dwelling. In the Statement of Operations (Exhibit 8) Petitioner indicates that the drop-off and pick-up times will be staggered so that “[n]o more than

¹⁴ In the Statement of Operations, Petitioner indicated that the employees would arrive at work at 5:30 a.m. and the children at 6:00 a.m. Exhibit 8. At the hearing, Petitioner clarified that the non-resident staff member would arrive by 6:00 a.m. Tr. 86.

two to three children would arrive or depart from the center in any half-hour period.” Exhibit 8, p. 2. Petitioner testified that she will modify the contract with the parents to include the proposed staggered drop-off and pick-up schedule which she will enforce. Tr. 20. Parents will primarily use the existing driveway for the drop-off and pick-up of children. However, on-street parking in front of Petitioner’s house may also be used when the driveway is full. The proposed staggered times for drop-off and pick-up of children is set forth as a condition in Part IV of this Opinion and Decision.

d. Outdoor Activities:

Petitioner testified that the children will engage in outdoor activities once, possibly twice a day, weather permitting. These activities will occur in the rear yard which is enclosed with the six-foot vinyl privacy fence. In the Statement of Operations, Petitioner indicated that the children will have the same time for outdoor play, noting that “[o]utdoor play for the infants will be limited to outdoor stroller time.” Exhibit 8.

D. Master Plan

The subject property is located within the geographic area covered by the *Bethesda-Chevy Chase Master Plan* (“Master Plan”), which was approved and adopted in April 1990. The Master Plan reconfirms the R-60 zoning for this area. Exhibit 6, p. 51. Since the R-60 Zone permits group day care homes by special exception, it is fair to say they are consistent with the Master Plan.

There is no site-specific reference to the subject property in the Master Plan, but the Plan does contain general recommendations regarding special exceptions (Exhibit 6, pp. 31-33):

1. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors, especially office uses;

2. Avoid over-concentration of commercial service or office type special exception uses in residential communities;
3. Protect major highway corridors and residential communities from incompatible design of special exception uses and avoid front yard parking unless adequately screened to avoid a commercial appearance;
4. Support special exception uses that contribute to the housing objectives of the Master Plan, such as meeting special population needs (e.g. elderly housing); and
5. Support special exception uses that contribute to the service and health objectives of the Master Plan, such as child day care and elder care. In general the Plan supports child and elder day care appropriately sized to be compatible.

Section 6.22 of the Master Plan specifically addresses “Child Needs,” observing that there is a “scarce supply of centers for children ages two and under and for all-day child care centers.” Exhibit 6, p. 155. More importantly, the Master Plan expressly “supports the location of [child care] centers in both neighborhood/residential and employment settings” when they are compatible, and encourages the development of small centers in residential neighborhoods. Further, the Master Plan specifically noted that “[r]ecent studies of small child care centers serving 7-20 children suggest that these centers have few negative impacts, including traffic and parking, on the surrounding community.” *Id.*

The existing family day care, in operation since 1995, is located in the lower-level of an existing single-family home which will require no exterior modification. Thus, it will retain its residential appearance. There is sufficient off-street parking as well as ample on-street parking in front of Petitioners home to accommodate the main dwelling and proposed special exception. The existing driveway and availability of on-street parking in front of the property provides an adequate and safe parking area for parents when they drop off and pick up their children. There are no other special exceptions in the neighborhood.

The Hearing Examiner concurs with Technical Staff that the expanded day care operation as proposed will have minimal impact on the neighborhood and that it “is compatible with the

surrounding one-family residential neighborhood.” Exhibit 17(a), p. 10. Therefore, the Hearing Examiner concludes, as did Technical Staff, that the proposed special exception is appropriately located and consistent with the recommendations of the *Bethesda-Chevy Chase Master Plan*.

E. Traffic

The property has frontage along Balfour Drive and Balfour Court. Vehicular access to the property is via a curb-cut and driveway off Balfour Court. There are no sidewalks and on-street parking is permitted on both streets. Transportation Planning Staff reviewed Petitioner’s request to increase the number of children from 8 to 12 and found that “[t]he proposed child day care will not have an adverse effect on the transportation network in the immediate area.” Exhibit 17(a) (Attachment 1). Staff also found that the proposed use will not adversely affect pedestrian access or safety in the area.

Transportation Staff reports (Exhibit 17(a), Attachment 1):

With an estimate of approximately 4-6 children to arrive or depart during the peak-hour (a total of 8-12 peak hour trips), and with all of the drop-off’s and pick up’s expected to be “pass-by” or “diverted” trips (which are trips oriented to another primary destination and already on roadways adjacent to site), the proposed day care is estimated to generate no net “new” peak hour drop-off or pick-up trips during the morning and evening peak-hours. With the addition of a new staff person, the day care however is estimated to generate one “new” peak-hour trip during the evening peak period (since the staff person is expected to leave after the closing of the day care at 5:30 p.m., within the evening peak period for 4:00 p.m. – 7:00 p.m.). No morning peak-hour trips will be added by the new staff person since the staff person is expected to arrive at the day care prior to its opening at 6:00 a.m., ahead of the morning peak period start of 6:30 a.m.

Local Area Transportation Review and Policy Area Mobility Review

Since the proposed child day care will not generate 30 or more “total” peak-hour trips during the weekday morning and evening peak periods, a traffic study is not required for the subject petition. With documentation of site trip generation as above, the petition satisfies the LATR requirements of the APF test.

Additionally, since the proposed child day care is estimated to generate three or fewer net “new” peak-hour trips during the morning and evening peak-hours, the

petition is not subject to the PAMR requirements of the APF test (since four or more “new” peak-hour trips is the threshold that require consideration of PAMR mitigation).

There being no evidence to the contrary, the Hearing Examiner accepts these findings. Based on all the evidence, the Hearing Examiner finds that the proposed use provides: 1) safe access to the day care facility; 2) satisfies LATR and is not subject to PAMR; and 3) will not create a nuisance because of traffic.

F. Community Reaction

There was no opposition to the proposed group day care home. Two pre-hearing letters of support were received from current or past users of Petitioner’s day care facility. Exhibits 11(a)-(b).

III. SUMMARY OF TESTIMONY

Testimony presented at the public hearing is set forth herein as relevant. A complete summary of testimony is contained in the Appendix attached hereto and incorporated herein.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that the use is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning ordinance establishes both general and specific standards for special exceptions, and the Petitioner has the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff and the Planning Board concluded that Petitioner will have satisfied all the requirements to obtain the special exception, if she complies with the recommended conditions (Exhibits 17(a) and 21(a)).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Zoning Ordinance § 59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as the Petitioner complies with the conditions set forth in Part IV, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. This provision specifies: “Inherent adverse effects alone are not a sufficient basis for denial of a special exception.” Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a “group day care home” use. Characteristics of the “International Daycare of Bethesda” that are consistent with the “necessarily associated” characteristics of group day care home uses will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with group day care home uses, or that are created by unusual site conditions, will be considered

non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff identified the following inherent characteristics of a group day care home (Exhibit 17(a), p. 13):

- (1) Vehicular trips to and from the site;
- (2) Outdoor play areas;
- (3) Noise generated by children;
- (4) Drop-off and pick-up areas; and
- (5) Lighting.

To this list, the Hearing Examiner would add the need for parking for staff, either on site or on the abutting street, in accordance with Zoning Ordinance §59-E-3.7.

Technical Staff concluded that there are no non-inherent effects of the use. Exhibit 17(a), pp. 13-14. As stated by Staff,

The proposed group day care operation will be run from the fully finished lower level (basement) of the existing one-family home, with a private entrance located at the rear of the house. Parents and children will use the side walkway to reach the rear entrance to the center. The floor area of the basement is approximately 850 square feet. The applicant is not planning to make any changes to the existing design of the property.

As the proposed day care will have the maximum enrollment capacity of 12 children, the inherent effects of the day care use will also be minimal. The property backyard that will be used as a play area has a vinyl privacy fence along its entire length. The privacy fence will help to mitigate the noise generated in the play area. The property will sufficiently be illuminated for safe drop-off and pick-up for children, but will not be a distraction for neighboring properties. Parking for the proposed group day care is sufficient. The proposed day care will have parking for seven cars. As the day care will employ one non-resident staff person, only one long term additional parking space is required. The day care is not expected to receive supply deliveries from commercial vehicles.

The proposed day care will have minimal inherent and non-inherent impacts on the community.

The Hearing Examiner finds that the relevant site and operational characteristics of the proposed use are consistent with the inherent characteristics identified for a group day care home. The building is not of an unusual size or design for the neighborhood, but rather is an existing one-family residence in a residential area; the outdoor play area is enclosed by a six foot vinyl privacy fence; the size of Petitioner's driveway and available on-street parking in front of Petitioner's house provide an adequate area for the discharge and pick-up of children; there is sufficient on-street parking in front of Petitioner's house to accommodate the required parking for the staff; lighting is residential in style and will not be increased for this special exception; the amount of traffic generated would not be unusual (or even sufficient to generate a traffic study under the LATR). Therefore, operations at the group day care home proposed, from a land use perspective, will be consistent with the typical operations of such a facility.

B. Specific Standards

The specific standards for Child Day Care Facilities are found in Code § 59-G-2.13.1. The record in this case provides adequate evidence that the specific standards would be satisfied, as outlined below.

Sec. 59-G-2.13.1. Child day care facility.

(a) *The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:*

(1) *a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas, and other uses on the site;*

Conclusion: The submitted Site Plan (Exhibit 3(a)) and Landscape and Lighting Plan (Exhibit 3(b)) satisfy this requirement.

- (2) *parking is provided in accordance with the parking regulations of article 59-E. The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in section 59-E-3.7 is not necessary because:*
- (A) *existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required;*
or
 - (B) *a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;*

Conclusion: The number of parking spaces required for this use is determined by Zoning Ordinance § 59-E-3.7, which provides, in relevant part:

Child day care facility. *For a family day care home or group day care home, one space for every non-resident staff member in addition to the residential parking requirement. The required number of spaces may be allowed on the street abutting the site.... [Emphasis added.]*

In this case, three (3) parking spaces are required for this use: two (2) for the dwelling and one (1) for the non-resident staff member. The existing driveway and carport can accommodate three (3) vehicles. There are four (4) on-street parking spaces (two on Balfour Court and two on Balfour Drive) in front of Petitioner's home. Technical Staff found the available parking to be sufficient and it meets the requirements set forth above. Exhibit 17(a), p. 18. Petitioner is proposing to have the non-resident staff member park in one of the existing on-street parking spaces located in front of her house as shown on the Site Plan (Exhibit 3(a)) and in photographs of the property (Exhibit 17(a), pp. 3 and 6, and Exhibit 10(b) (ii) previously shown on pages 7 and 8 of this Opinion and Decision). The Hearing Examiner finds that the existing three (3) off-street and four (4) on-parking spaces in front of Petitioner's home is adequate and meets the statutory standard.

- (3) *an adequate area for the discharge and pick up of children is provided;*

Conclusion: For the reasons stated in the previous section, Technical Staff found that the

petition meets this standard. The existing driveway and available on-street parking in front of Petitioner's house, especially on Balfour Court, provides an adequate area for the discharge and pick-up of children. Petitioner will stagger the arrival and departure times by contractual agreement with the parents so that "[n]o more than two to three children would arrive or depart from the center in any half-hour period." Exhibit 8; Tr. 20-21. The non-resident staff member will work from 6:00 a.m. to 5:30 p.m. and will park in one of the existing parking spaces located in front of Petitioner's house as permitted by Zoning Ordinance § 59-E-3.7. Thus, the driveway and additional on-street parking in front of Petitioner's house will provide adequate space for the drop-off and pick-up of children. For these reasons, the Hearing Examiner concurs with Technical Staff and finds that the petition meets this standard.

(4) *the petitioner submits an affidavit that the petitioner will:*

- (A) *comply with all applicable State and County requirements;*
- (B) *correct any deficiencies found in any government inspection; and*
- (C) *be bound by the affidavit as condition of approval for this special exception; and*

Conclusion: The required affidavit has been submitted (Exhibit 12).

(5) *the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surroundings properties from any adverse impacts resulting from the use.*

Conclusion: The Hearing Examiner agrees with Technical Staff that the use will be compatible with the residential neighborhood. Technical Staff found: "Since the applicant is not proposing to alter the existing building or the associated landscaping, the new expanded day care will have minimal impact on the neighborhood. The existing one-family house is also compatible with the one-family residential character of the community." Exhibit 17(a), p. 10.

The home will retain its residential appearance; there is sufficient parking and the

proposed group day care home will be conducted in an existing residence. The operational impacts of the proposed use are those which are inherent in child day care facilities. Moreover, the weight of the evidence in this case supports a finding that the use will not have an adverse impact on existing traffic conditions. Based on these factors, the Hearing Examiner finds that, with the recommended conditions set forth in Part IV of this Opinion and Decision, the use will be compatible with surrounding uses and will not result in nuisance because of traffic, parking, noise or any type of physical activity.

- (b) *A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a) above, and the following additional requirements: . . .*

Conclusion: Not applicable.

- (c) *The requirements of section 59-G-2.13.1 do not apply to a child day care facility operated by a nonprofit organization and located in: . . .*

Conclusion: Not applicable.

C. General Standards

The general standards for a special exception are found in Code § 59-G-1.21(a). The record in this case provides ample evidence that the general standards would be satisfied, as outlined below.

Sec. 59-G-1.21. General conditions.

- (a) *A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

- (1) *Is a permissible special exception in the zone.*

Conclusion: A group day care home use is a permissible special exception in the R-60 Zone, pursuant to Code § 59-C-1.31(d).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.13.1 for a Child Day Care Facility use discussed above.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject site is within the *Bethesda-Chevy Chase Master Plan*, which was approved and adopted in April 1990. For all the reasons set forth in Part II.D. of this Opinion and Decision, the Hearing Examiner finds that the proposed use, a group day care home for up to 12 children in a one-family detached home in the R-60 Zone, is consistent with the goals and recommendations of the *Bethesda-Chevy Chase Master Plan*. As a result, the Hearing Examiner finds that the use will not adversely impact or alter the residential character of the area.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*¹⁵

Conclusion: The proposed group day care home will be in harmony with the general residential character of the neighborhood because it will be housed in an existing single-family home and

¹⁵ This section was amended, as set forth here, by Zoning Text Amendment 10-13 (Ord. No. 17-01, effective 2/28/11).

there will be no external changes to that structure itself. Technical Staff found that “[t]he proposal will only slightly increase the traffic and noise in the neighborhood.” Exhibit 17(a), p. 15. Transportation Planning Staff found that the slight increase in traffic created by the proposed expansion of the use will not create traffic volume or safety problems. The rear yard play area is enclosed with a six-foot vinyl privacy fence which will help mitigate the noise generated in the play area. Exhibit 17(a), p. 14. The parking is adequate and there is sufficient space on the driveway for the drop-off and pick-up of children. Technical Staff advises that there are no other special exception uses in the surrounding area. The proposed use is consistent with the goals and recommendations of the Master Plan which supports and encourages the development of small child care facilities in residential neighborhoods which are compatible. Master Plan, p. 155. As noted in the previous section, the Hearing Examiner found the proposed use is compatible with the residential neighborhood. Based on this evidence, the Hearing Examiner finds that this standard has been met.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found: “As the proposed day care presents only minimal impact to the immediate area, the special exception will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.” Exhibit 17(a), p. 15. As noted above, the proposed use will have only inherent effects on the general neighborhood. The Hearing Examiner concurs with Technical Staff and finds that the proposed use will not be detrimental to the peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Based on the nature of the use, it will not cause objectionable vibrations, fumes, odors and dust. As discussed earlier in this Opinion, the special exception, as conditioned, will cause only such noise and physical activity as is inherent in this type of use, wherever it might be located in this zone. Technical Staff found that “[t]he property will sufficiently be illuminated for the safe drop-off and pick-up for children, but will not be a distraction for neighboring properties.” Exhibit 17(a), p. 14. The existing lighting is residential in character and the three spotlights (two motion sensor) are angled towards the ground to prevent illumination or glare onto the adjacent properties. No new lighting will be added, and operations cease at 5:30 p.m. Thus, the use of the outdoor lighting for the proposed use will be minimal. The Hearing Examiner therefore finds, as did Technical Staff, that there will not be objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site as a result of the special exception.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: Technical Staff found: “There is no existing special exception in the defined neighborhood, the approval of this special exception will not impact the area adversely and will not alter the predominant residential character of the neighborhood.” Exhibit 17(a), p. 16. Having no evidence to the contrary, the Hearing Examiner finds that the group day care home proposed in this case will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the nature of the area. As previously discussed, the proposed use

is consistent with the goals and recommendations of the applicable Master Plan, and therefore, under the terms of this criterion, will not alter the nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed group day care home will not be a danger to public health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Technical Staff found that the access would be safe and adequate. For these reasons, the Hearing Examiner finds that this standard will be met.

- (9) *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.*

Conclusion: Technical Staff advises that: The “proposed special exception will be adequately served by existing public services and facilities. Police and fire services, water, and sanitary sewer are already established for the site.” Exhibit 17(a), p. 17. Therefore, the Hearing Examiner finds that this standard has been met.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception’s impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth*

Policy standards in effect when the application was submitted.

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision and there is no currently valid determination of the adequacy of public facilities for the site taking into account the impact of the proposed special exception. Therefore, the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). Transportation Planning Staff conducted such a review and concluded that both LATR and PAMR are satisfied, as discussed in Part II. D. of this Opinion. For the reasons set forth in Part II. D. of this Opinion and Decision, the Hearing Examiner agrees with their conclusions and so finds.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: Technical Staff found that the use proposed will not have an adverse effect on the transportation network or pedestrian access or safety in the immediate area. Exhibit 17(a), Attachment 1. Based on the evidence in the record, especially the availability of adequate parking, the low number of new trips generated for the proposed use, the proposed staggered drop-off and pick-up of schedule and for the reasons set forth in Part II. D. of this Opinion and Decision, the Hearing Examiner agrees with Technical Staff's finding. Therefore, the Hearing Examiner finds that the proposed use will not adversely affect the safety of vehicular or pedestrian traffic.

D. Additional Applicable Standards

Sec.59-G-1.23. General development standards

(a) ***Development Standards.*** *Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.*

Conclusion: The subject property is located in the R-60 Zone, which permits the proposed use by special exception. Technical Staff found that the proposed use conforms to the development standards of the R-60 Zone. The following table from page 12 of the Staff Report lists the applicable standards and the existing measurements for the subject site.

| Development Standard | Min/ Max Required | Provided | Applicable Zoning Provision |
|---|--|---|------------------------------------|
| Minimum Lot Area | 6,000 sq ft | 10,524 sq ft | §59-C-1.322(a) |
| Minimum Lot Width at Front Building Line | 60 ft | 64' on Balfour Ct. | §59-C-1.322(b) |
| Minimum Lot Width at Street Line | 25 ft | 64' on Balfour Dr., and 72' on Balfour Ct. | §59-C-1.322(b) |
| Setback from Street | 25 ft | 28' | §59-C-1.323(a) |
| Side Setback from adjoining lot | 8 ft | 24' , 14' | §59-C-1.323(b)(1) |
| Rear Yard Setback | 20 ft | N/A | §59-C-1.323(b)(2) |
| Building Height | 35 ft | 20 ft | §59-C-1.327 |
| Building Coverage | 35 percent | 15.45 percent | §59-C-1.328 |
| Parking Facility Side Yard Setback for Special Exceptions in Residential Zone | 16 ft | 32' | §59-E-2.83(b) |
| Parking Requirement | 1 space for employee; 2 spaces for dwelling unit | Total of 7 spaces; 4 on-street parking spaces and 3 spaces off-street | §59-E-3.7 |

(b) ***Parking requirements.*** *Special exceptions are subject to all relevant requirements of Article 59-E.*

Conclusion: The number of parking spaces required for this use is determined by Zoning

Ordinance § 59-E-3.7. As set forth previously, the Zoning Ordinance requires three parking spaces for the proposed use, which the Petitioner will provide. The Hearing Examiner finds that the proposed use complies with the parking requirements contained in the Zoning Ordinance.

- (c) **Minimum frontage.** *In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:*
- (1) *Rifle, pistol and skeet-shooting range, outdoor.*
 - (2) *Sand, gravel or clay pits, rock or stone quarries.*
 - (3) *Sawmill.*
 - (4) *Cemetery, animal.*
 - (5) *Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.*
 - (6) *Riding stables.*
 - (7) *Heliport and helistop.*

Conclusion: This special exception is not included in the above list. Moreover, the proposed use will not result in any change in the site's frontage, which meets required standards.

- (d) **Forest conservation.** *If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.*

Conclusion: Technical Staff determined that this site is exempt from the forest conservation regulations and that "there are no environmental issues or concerns associated with the applicant's proposed day care." Exhibit 17(a), Attachment 2. Further, no trees will be removed and no new plantings or changes to the existing landscaping are proposed.

- (e) **Water quality plan.** *If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.*

Conclusion: Inapplicable. This provision applies only to sites where there will be land disturbance within a Special Protection Area, which is not the case here.

(f) **Signs.** *The display of a sign must comply with Article 59-F.*

Conclusion: No sign is proposed and this provision is inapplicable.

(g) **Building compatibility in residential zones.** *Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.*

Conclusion: There will be no external building modifications, so the building will maintain its residential character.

(h) **Lighting in residential zones.** *All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:*

(1) *Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.*

(2) *Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.*

Conclusion: Technical Staff found that the existing lighting will not be a distraction to the neighboring properties. Petitioner testified that the three (100 watt) spotlights shown on the Landscape and Lighting Plan (Exhibit 3(b)), one fluorescent and two motion sensor light fixtures on the front and rear corners of the dwelling are angled towards the ground with no illumination or glare on the adjacent properties. The remaining wall-mounted light fixtures on the front and rear of the dwelling are either 40 watt or 75 watt. Based on the evidence of record, the Hearing Examiner therefore finds that there will not be objectionable illumination or glare at the site as a result of the special exception.

Based on the testimony and evidence of record, I conclude that the group day care home use proposed by Petitioner, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition should be granted, subject to the conditions set forth in Part IV of this Opinion and Decision.

IV. DECISION

Accordingly, based on the foregoing findings and conclusions, Petition No. S.E. 12-03 for a special exception in the R-60 Zone to operate a group day care home for up to 12 children in an existing single-family detached home, at 9414 Balfour Drive, Bethesda, Maryland, is **GRANTED** subject to the following conditions:

1. The Petitioner, Mariana Ilie, shall be bound by all of her testimony and exhibits of record, and by her representations identified in this Opinion and Decision.
2. In accordance with Code § 59-G-2.13.1(a) (4), the Petitioner shall be bound by the Affidavit of Compliance submitted in connection with this case, Exhibit 12, in which Petitioner certified that she will comply with and satisfy all applicable State and County requirements, correct any deficiencies found in any government inspection, and be bound by the affidavit as a condition of approval for the special exception.
3. The number of children enrolled at the center shall not exceed 12 children, ranging in age from six weeks to less than six years old. In no event shall the number of children exceed the number authorized by State licensing authorities nor shall the ages of the children exceed those mandated by State licensing authorities.
4. The number of staff present at the facility at any one time may not exceed two resident staff and one non-resident staff.
5. The hours of operation will be between 6:00 a.m. and 5:30 p.m., Monday through Friday. Child care shall not be provided on weekends or overnight.
6. Arrival and departure times for the children shall be staggered, through contractual agreements between Petitioner and clients, so that no more than three children would arrive or depart the facility in any half hour period between 6:00 a.m. and 8:30 a.m. during the morning drop off and between 3:30 p.m. and 5:30 p.m. during the afternoon pick up, as set forth in Exhibit 8 (Statement of Operations).
7. In no event may a child be dropped off before Petitioner or a staff member is present to supervise that child; nor may a child be left alone if a parent is late in picking up the child.

8. Children must be accompanied by an adult to and from the child day-care entrance.
9. All children must be under the direct supervision of a staff member at all times, both inside and outside the building. All gates or other access to the outdoor play area must be secured during outdoor play in a manner that will prevent any child from opening such access and wandering off.
10. All day care activities shall be restricted to the lower level of the dwelling or the outdoor play area (rear yard). No more than 12 children are permitted in the outdoor play area at any one time.
11. Petitioner shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building.
12. Petitioner shall maintain the grounds in a clean condition, free of debris, on a daily basis.
13. Petitioner must provide and maintain all the fencing and landscaping depicted on the Landscape and Lighting Plan (Exhibit 3(b)).
14. Petitioner may not display a sign for the child care facility without modifying this special exception approval.
15. Petitioner must comply with Maryland State and Montgomery County licensure requirements and standards for the operation of a child day care facility. Petitioner must also comply with her Statement of Operations (Exhibit 8), but the conditions specified in this Opinion and Decision control in the event of any conflict.
16. Petitioner 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 special exception premises and operate the special exception as granted herein. Petitioner shall at all times ensure that the special exception 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.

Dated: September 26, 2012



Tammy J. CitaraManis
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any person, board, association, corporation or official aggrieved by a decision of the Hearing Examiner may, within ten days after this decision is rendered, appeal the decision to the County Board of Appeals in accordance with the provisions of Section 59-G-1.12(g) of the Zoning Ordinance.

cc: Petitioners
All parties of record
The Planning Board
Department of Finance
All parties entitled to notice of filing

APPENDIX

1. Mariana and Gheorghe Ilie:

Mrs. Ilie testified that she wishes to increase the number of children enrolled in her family day care, International Day Care of Bethesda, from 8 to 12 children. The day care is located in the basement of her home which she owns with her husband, Gheorghe Ilie. She stated that she had read the Technical Staff Report and agreed with its findings and conclusions and agreed to comply with the conditions of approval. She also agreed with the Planning Board's recommendation of approval. She indicated that she would provide a floor plan for the day care and a revised Zoning Map. Tr.10-13.

Mrs. Ilie testified that there will be no exterior changes to the property. She is licensed to care for up to eight (8) children and her husband is listed as an approved staff member on her Certificate of Registration (Exhibit 9). The children are between 18 months and 4 years old which she identified as "pre-school". The proposed hours of operation will be from 6:00 a.m. to 5:30 p.m., Monday thru Friday. The day care is closed nights and weekends. She primarily wants to care for pre-school aged children with the flexibility to take in infants as well. She will hire one non-resident staff member if her special exception request is approved. She initially testified that the non-resident staff member will arrive to work by 8:00 a.m. Tr. 14-16. However, later in the hearing, she testified that the non-resident staff member will work from 6:00 a.m. to 5:30 p.m. as represented in the Statement of Operations (Exhibit 8). Tr. 87.

Mrs. Ilie testified that arrival and departure times for the children are staggered so that no more than two or three children arrive or depart in any one half hour period. The children are dropped off between 6:00 a.m. to 8:30 a.m. in the morning and picked up between 3:30 p.m. and 5:30 p.m. in the afternoon. She does not currently have to enforce the staggered arrival and departure

schedule. However, she agreed to include the staggered arrival and departure schedule in future contracts with the parents. She will renew her day care license once she is approved to increase enrollment from 8 to 12 children. The license will specify the number of infants and children under the age of 6 she will be permitted to take and the number of approved adult staff. Tr. 17- 25.

She identified the photographs in the official record and stated that they fairly and accurately depicted the interior of the day care (Exhibits 10(a) (i)-(xvi)) and exterior of the property (Exhibits 10(b) (i)-(xvii)). Mrs. Ilie testified that the parents and children enter through the exterior door to the enclosed sun room ("Room # 1) located in the rear of the house. The sunroom overlooks the backyard and outdoor play area and includes cubbies for the pre-school aged children to store their belongings, small play equipment, tables, chairs and small bookshelves. Tr. 27-33.

The interior of the basement includes a large open area ("Room # 2) for the infant care, additional indoor activities and nap time. Additional rooms include a multi-purpose room, bathroom and furnace/storage area. Access to the main dwelling is via an interior door off room #2 and identified on the Floor Plan as "exit #2". The multi-purpose room includes a changing table with supplies and a small kitchen area with a mini-refrigerator, microwave and sink. She will use the stove in the main dwelling when needed. However, she indicated that she rarely uses the stove because the parents bring most of the children's food each day. Tr. 34-41.

Mrs. Ilie testified that her house and front walk face Balfour Drive. Access to the property is via a concrete and asphalt driveway off Balfour Court. As shown on the Site Plan (Exhibit 3(a)) Mrs. Ilie has identified four on-street parking spaces (two on Balfour Drive and two on Balfour Court) and a total of three parking spaces on the driveway and carport. No parking is allowed on the curve in front of her house. Mrs. Ilie and her husband have one car which they park in the carport.

Parents park their vehicles on the asphalt driveway or in one of the two parking spaces on Balfour Court when they drop-off and pick-up their children. Tr. 42-47.

The pathway to the rear of the house is along the side of the driveway and is wide enough for two people to walk side by side. There are three steps to the fence gate which is secure. Once inside the gate there are three more steps down to the brick patio which leads to the exterior entrance to the sunroom where the parents drop-off and pick-up their children. Tr. 43-51. The exterior door to the furnace room is locked. Tr. 60.

The backyard is enclosed with a six-foot vinyl fence along the property line. Within the backyard is a large brick patio identified on the Site Plan as a “paved play area” (Exhibit 3(a)) and lawn area with a variety of children’s play equipment (i.e., swing set, sand box, slides, picnic tables, playhouse, etc.). There is a small dogwood tree in the rear corner of the yard. The swing set is along the north side of the backyard on a 4” raised platform made of sand, landscape fabric, pebbles, and covered with outdoor carpet. Mrs. Ilie noted that the large tree shading the swing set is located on the neighbor’s property to the north and has since been removed. She can not see into the neighbor’s backyard because it is at a slightly lower elevation because Balfour Drive slopes north to south towards Alta Vista Drive. Tr. 52-58

She noted that the lot on the south side of the property is at a slightly higher elevation than her property. She cannot see their deck from her house because of the two very large trees located along the property line. She stated that she has never received any complaints from her neighbor. Mr. Ilie testified that they have never received any complaints from anyone in the neighborhood about the day care operation. They would agree to install additional landscaping on the south side of the yard if required as a condition of approval. Tr. 59.

Mrs. Ilie noted the locations of the existing lighting as shown on the Landscape and Lighting Plan (Exhibit 3(b)). On the front and rear corners of the south side of the house are two 100 watt motion sensor light fixtures that illuminate the pathway to the day care door. They are fixed towards the ground and do not shine into the neighbor's property. Additional lighting includes a 40 watt light fixture over the sunroom door, four 75 watt lights fixture along the rear of the house and a 100 watt fluorescent light on the rear north corner of the house. Mr. Ilie indicated that the fluorescent light is fixed towards the ground, is not a motion sensor activated and provides lighting for the path on the north side of the house where the trash cans are located. The trash cans are concealed with a three-foot fence (open on one end) and landscaped with additional evergreens. There is a porch light over the entrance to the main dwelling. The front of the house is landscaped with evergreen plantings. There are two small trees in the front yard facing Balfour Drive. There are two large trees to the left of the driveway. Tr. 62-78.

The interior of the day care is approximately 850 square feet in size. The children play outside once or twice a day weather permitting. Generally all the children of the same age group go outside at the same time. When she is also caring for infants, she or her husband will take the children out when the infants are sleeping and while the other stays inside with the infants. She would agree to a condition of approval to stagger the outdoor play time if required. She suggested she could stagger the time by age groups: 18 month to 2 ½ years old go out first, followed by the remaining toddlers (up to 4 years old). Tr. 82-84.

Mrs. Ilie testified that she would like to have her one non-resident staff member park on the street in front of her house in order to keep the driveway and on-street parking spaces on Balfour Court open for parent parking for drop-off and pick-up. She has been providing day care in her home since 1995 and in that time there has never been a problem with the parents backing out of the

driveway. She indicated there is very little traffic in her neighborhood. The non-resident staff member will work from 6:00 a.m. to 5:30 p.m. Mr. and Mrs. Ilie confirmed signing the Affidavit of Posting and Affidavit of Compliance. Exhibits 12, 13 and 24. Tr. 85-87.