

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

IN THE MATTER OF: *

HANNAH WEISER *

Applicant *

Hannah Weiser *

For the Application *

Leah Hanlon *

Robin Rice *

Supporting the Application¹ *

OZAH Case No. CU 16-07

Before: Martin L. Grossman, Hearing Examiner
 Director, Office of Zoning and Administrative Hearings

HEARING EXAMINER’S REPORT AND DECISION

TABLE OF CONTENTS

I. STATEMENT OF THE CASE 2

II. FACTUAL BACKGROUND 4

A. The Subject Property 4

B. Surrounding Neighborhood 7

C. Proposed Use 9

1. Site Plan, Access, On-Site Parking and Areas for Drop-off and Pickup of Children 10

2. Parking Facility Waivers Proposed by the Applicant 11

3. Site Landscaping, Lighting and Signage 12

4. Internal Physical Arrangements for Site Operations 15

5. Operations 17

D. Community Response 19

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW 22

A. Necessary Findings (Section 59.7.3.1.E.) 23

B. Development Standards of the Zone (Article 59.4) 34

C. Use Standards for a Child Day Care Center for 13 to 30 Persons (Section 59.3.4.4.E.2.) 35

D. General Development Standards (Article 59.6) 37

1. Site Access Standards 37

2. Parking Spaces Required, Parking Setbacks and Parking Lot Screening 38

3. Site Landscaping, Screening and Lighting 42

4. Signage 46

IV. CONCLUSION AND DECISION 48

¹ Although one neighbor, Eric Reed, wrote a letter in opposition (Exhibit 41), only persons who testify at the hearing or who are designated as parties of record are included in the caption. His concerns are addressed in Part II.D., of this Report and Decision.

I. STATEMENT OF THE CASE

On November 13, 2015, the Applicant, Hannah Weiser, filed an application seeking approval of a conditional use to operate a Child Day Care Center for up to 15 children in her home at 9205 Fernwood Road in Bethesda. Her joint ownership of the property with her husband, Christopher Weiser, is established by Maryland Real Property Records (Exhibit 10) as SDAT Tax Account No. 07-00659466. Mr. Weiser filed a notarized letter consenting to this application (Exhibit 46). The Applicant is an attorney and an inactive member of the Bar.

The Subject Site is Lot 1, Block 8 of the Green Tree Manor Subdivision, and it is zoned R-90,² as evidenced by the official zoning map of the area (Exhibit 3). A conditional use is required for a child care facility for 9 or more children in the R-90 Zone, and additional requirements are specified when the number of children will exceed 12, pursuant to Zoning Ordinance §59-3.4.4.E (13-30 persons).³

The Office of Zoning and Administrative Hearings (OZAH) initially scheduled a public hearing to be held on February 26, 2016 (Exhibit 17), but at the request of the Applicant (Exhibits 20(a), 29 and 35), the hearing was first postponed indefinitely on February 2, 2016 (Exhibit 30), and then rescheduled to June 3, 2016, with a notice of a motion to amend the application dated April 25, 2016. Exhibit 39.

The Applicant's proposed amendments included a revised Conditional Use Statement (Exhibit 35(a)), which contained a Statement of Operations, parking descriptions, a traffic statement, a drop-off and pick-up schedule and diagrams and photographs of planned exterior changes.

² The application (Exhibit 1) incorrectly lists the Zone as R-60, which led the Hearing Examiner to mischaracterize the Zone as R-60 at the inception of the hearing. Tr. 3. The subject site is actually in the R-90 Zone.

³ All citations in this Decision are to the 2014 Zoning Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended.

The application is opposed by Ms. Weiser's adjoining neighbor to the north, Eric Reed. Mr. Reed wrote a letter stating his opposition to both the amendment of the application and the application itself (Exhibit 41), but he did not appear at the hearing. His opposition letter will be discussed in Part II. D. of this Report and Decision.

The Technical Staff of the Montgomery County Planning Department (Technical Staff or Staff) issued a report on April 29, 2016, documenting revisions to the application based on Staff's review, and recommending approval of the application, subject to fourteen conditions. Exhibit 40. The Planning Board met on May 12, 2016, and voted unanimously to recommend approval with the conditions recommended by Staff, with minor modifications, as indicated in the Chair's letter of May 17, 2016. Exhibit 42. The Planning Board also "requested that the Hearing Examiner determine if the required striping and marking for onsite parking spaces could be installed in a manner that provides a more aesthetically pleasing residential appearance."

The public hearing proceeded as scheduled on June 3, 2016. The Applicant testified, as did her sister, Leah Hanlon, who runs her own daycare in North Bethesda. Also supporting the application at the hearing was Robin Rice, a long-time day care operator in the County, who provided a number of suggestions. No opposition witnesses appeared at the hearing.

At the beginning of the hearing, the Applicant indicated that she accepted the findings of Technical Staff (Tr. 6), but she has issues with some of the conditions recommended by Technical Staff and the Planning Board. Her concerns included Staff's proposed Condition 7 which called for a bicycle parking space; proposed Condition 12.d, which called for striping parking spaces (Tr. 6); and the proposed condition Staff added on June 1, 2016 (Exhibit 44(a)), which called for an erosion, sediment control and stormwater management permit. Tr. 7. At the conclusion of the hearing, the record was left open for the Applicant to file, by June 8, 2016, a

revised site plan, a revised landscaping and lighting plan and a written objection to some of Technical Staff's proposed conditions. Staff was given until June 17 to respond, and the Applicant was given until June 22, 2016 to reply, with the record to close on that date. Tr. 58-59 and Exhibit 48.

While the record was open following the hearing, the Applicant timely filed the revised site plan and landscaping plan discussed at the hearing, stated her points of concern with Technical Staff's proposed conditions and exchanged emails with the Hearing Examiner (Exhibits 50 through 56). Technical Staff responded on June 17, 2016 with a supplemental memorandum (Exhibit 57(a)), and the Hearing Examiner forwarded that memorandum to the Applicant and other parties of record (Exhibit 58), indicating his likely approach to the issue of whether the Applicant was required to obtain an erosion, sediment control and stormwater management permit. There were no further filings, and the record closed, as scheduled, on June 22, 2016.

For the reasons set forth at length in this Report and Decision, the Hearing Examiner approves the conditional use application, subject to the conditions listed in Part IV.

II. FACTUAL BACKGROUND

A. The Subject Property

As observed by Technical Staff (Exhibit 40, p. 3), the subject property is located on the east side of Fernwood Road approximately 150 feet northeast of its intersection with Greentree Road in Bethesda. It is described as Lot 1, Block 8, Green Tree Manor Subdivision, and has a lot size of 10,000 square feet, in the R-90 Zone. The property is rectangular in shape with 100 feet of frontage on Fernwood Road. It is developed with a 2-story, one-family detached dwelling and an attached two car garage. An aerial photo showing the location of the home and a photo of the home on Fernwood Road are reproduced on the next page (Exhibit 40, pp. 3-4).



Subject Property

Intersection Fernwood and Greentree Roads



View of Site from Fernwood Road, (looking east)

As can be seen in the above photo, the property is served by a semi-circular driveway with two access points on Fernwood Road. Technical Staff further describes the property (Exhibit 40, pp. 3-4):

The area between the two access points contains a planting strip approximately 13 feet in width and 37 feet in length, containing evergreen and deciduous trees. The planting strip is completely within the right-of-way for Fernwood Road. . . . Significant landscaping and foundation plantings are located along the front of the dwelling unit. Mature and healthy evergreen landscaping is located along the southern lot line and a portion of the front yard at the southernmost driveway entrance. A hedge and ornamental plantings are located along the northern lot line. The rear yard of the site is enclosed with a 6-foot high board on board wooden fence.”

The rear yard play area and fence can be seen below in a photograph supplied by the Applicant (Exhibit 13(a)):



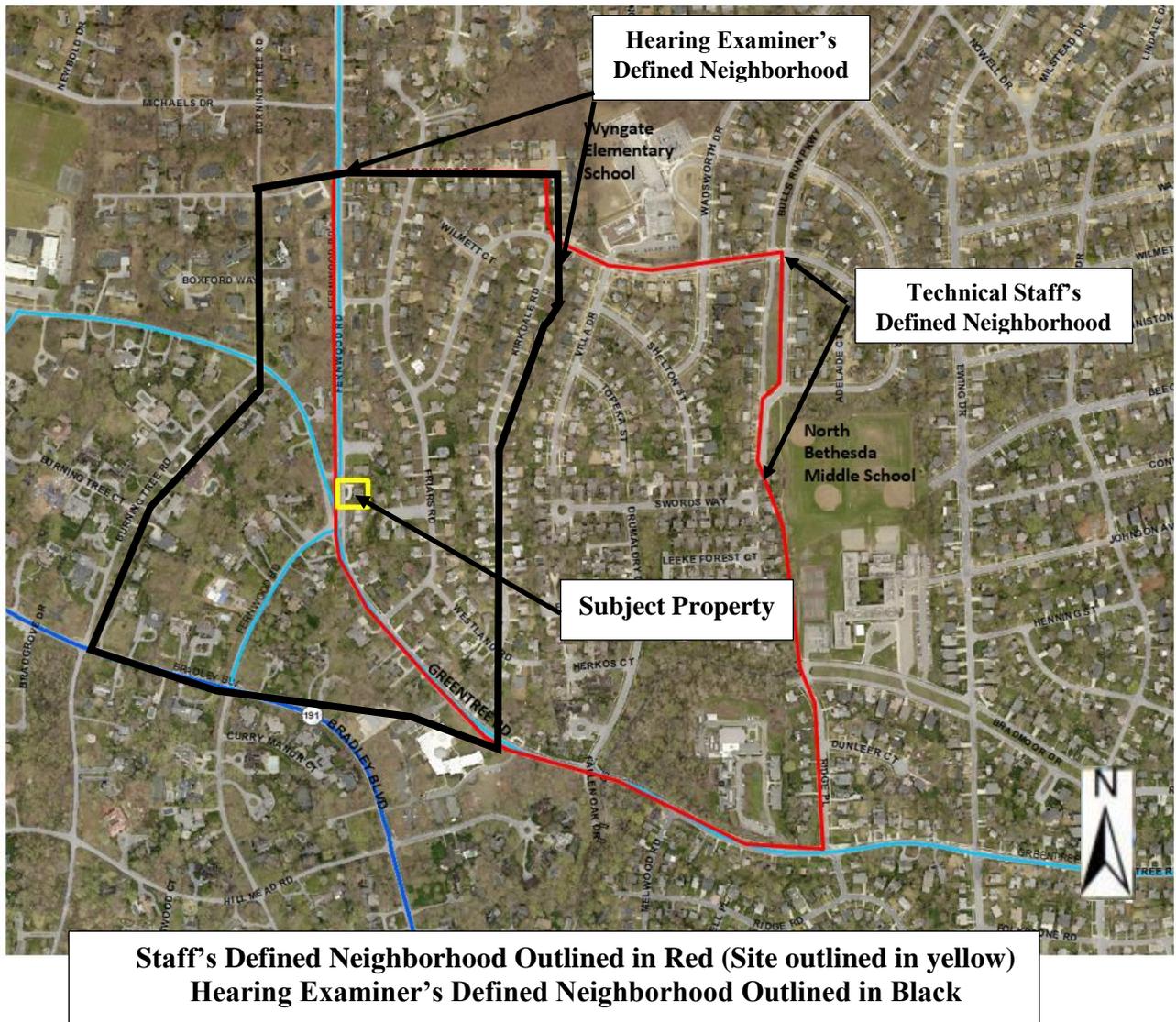
Staff also observed that Fernwood Road is classified as a primary residential roadway. “The intersection of Fernwood and Greentree Roads is a four-way stop with a northbound yield lane for Fernwood Road. The northbound lane of Fernwood Road contains a raised median with traffic flex poles along the majority of the site’s frontage.” Exhibit 40, p. 3. The raised median can be seen below in a photograph supplied by Technical Staff (Exhibit 40, p. 4):



B. Surrounding Neighborhood

For the purpose of determining the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as “bounded by Marywood and Wilmett Roads to the north, Bulls Run Parkway and Ridge Place to the east; Greentree Road to the south and Fernwood Road to the west,” and it is depicted on the next page in a map from the Staff report (Exhibit 40, p. 5). The Hearing Examiner feels that Technical Staff has defined the neighborhood a bit too broadly on the east and a bit too narrowly on the west because the area likely to be most impacted from this small child care facility probably does not extend all the way to Bulls Run Parkway and Ridge Place to the

east, and it probably will have some impact on traffic on Greentree Road servicing properties to the west, not included in Technical Staff's proposed boundaries. On the other hand, the extended area to the west also is developed with one-family detached residential uses in the R-200 Zone (Exhibit 3), so the distinction is not material to the outcome of this case. The Hearing Examiner's defined neighborhood has been superimposed in black on Technical Staff's map, below. The Hearing Examiner's defined neighborhood is generally bounded by Marywood Road to the north, Kirkdale Road to the east; Greentree Road and Bradley Boulevard to the south and Burning Tree Road to the west.



The neighborhood outlined by Technical Staff is developed with one-family detached residential uses in the R-60 and R-90 zones. As mentioned above, the Hearing Examiner's extended area to the west is developed with one-family detached residential uses in the R-200 Zone. Staff notes that two schools, Wyngate Elementary on Wadsworth Drive and North Bethesda Middle School on Broadmoor Drive, are located immediately adjoining the northern and eastern boundaries of its defined neighborhood; however, North Bethesda Middle School is quite distant from the eastern boundary of the Hearing Examiner's defined neighborhood. Approved conditional uses located in the defined neighborhood are as follows:

- S-1804 located at 9204 Fernwood Road approved for an accessory apartment on October 3, 1990; and
- S-24 located at 6301 Greentree Road approved for a charitable and philanthropic institution (the National Center for Families and Children) . . .

C. Proposed Use

The Applicant seeks approval of a conditional use to operate a Child Day Care Center for up to 15 children in her home at 9205 Fernwood Road in Bethesda. As she explained in Applicant's Amended Statement (Exhibit 35(a)(i), p. 1):

. . . I have a large walk out basement (1136 square feet) that is ground level. In accordance with Title 13A State Board of Education, . . . I will have no more than fifteen children in the day care with no more than four [non-resident] employees, depending on capacity. This limit complies with the 35 square feet per child regulation. I will serve as the owner. I would like my operating hours to be between 7:00 am and 7:00 pm. I believe that these hours would best meet the needs of the teachers in the area as well as the needs of my clients who are generally working professionals. . . . [B]oth staffing patterns and the child pick-ups and drop offs will be staggered. . . .

Technical Staff noted that the day care center will operate Monday through Friday, and the ages of the children will range from infant through pre-school. The applicant proposes to have no more than 10 children in the rear yard at any one time. Exhibit 40, p. 6.

1. Site Plan, Access, On-Site Parking and Areas for Drop-off and Pickup of Children

The Applicant had numerous discussions with Technical Staff to work out a safe and workable arrangement for site access, parking, circulation and the drop off and pick up of children, as outlined in the Staff report (Exhibit 40, pp. 6-8). The Planning Board also requested that the Hearing Examiner determine the best way to demarcate onsite parking spaces while maintaining a residential appearance, an issue which was discussed at the hearing. At the suggestion of the Hearing Examiner, the Applicant agreed to demarcate the parking spaces with corner markings, rather than full striping. Tr. 30-32. The final site plan, reproduced below (Exhibit 55(a)) shows the details of the proposed use, including the proposed site access, parking (with corner demarcations), a pedestrian path and the location for drop off and pick up (designated “Loading”) of children. The back yard, which is also part of the conditional use site is displayed in the Revised Landscape and Lighting Plan (Exhibit 51(a)(ii)), on page 13 below.



Technical Staff approved the final site plan in a supplemental report (Exhibit 57(a), p. 3) and explained the redesign of the site to accomplish the safe and efficient operation of the facility (Exhibit 40, pp. 8-9):

As shown in . . . [the final Site Plan], the semi-circular driveway and access points will be widened to accommodate on-site vehicular parking and circulation patterns. The semi-circular driveway will be signed for one-way traffic movement. Vehicles will enter the southern access point and exit at the northern access point. Four non-resident employee parking spaces are proposed on-site. [The final site plan] . . . shows employee parking in front of the garage and along the inner lane of the semi-circular driveway closest to the dwelling unit. Pick up and drop off areas for children will occur along the outer lane of the semi-circular driveway, closest to the road, shown in dark blue on . . . [the final Site Plan]. This outer lane will also serve as short-term parking for parents to the site.

* * *

The applicant will construct a path from the front yard adjacent to the parking facility. This path will connect to a new gate in the existing fence and continue into the enclosed rear yard which leads to the proposed use's entrance at the rear of the dwelling unit. Entrance to the proposed use consists of a set of at-grade double doors.

There will be no physical changes to the residence. The following changes are proposed to the site's design:

- Widen both driveway access points to 20 feet in width;
- Widen drive aisle by a minimum of 2 feet along the front property line;
- Widen the existing driveway by a maximum of 5 feet along the northern edge;
- Construct a hard-surface path from the semi-circular driveway in the front yard to connect to the rear yard; and
- Add a gate to the existing fence leading from the new path.

2. Parking Facility Waivers Proposed by the Applicant

In order to redesign the parking and loading area in a manner that will ensure safe and efficient operations, the Applicant has requested several parking facility waivers under Section 59.6.2.10 of the Zoning Ordinance. Section 6.2.10 provides:

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design

satisfies Section 6.2.1. Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D.

The Applicant did not request a waiver of the number of vehicle parking spaces required because she will have the required 4 spaces for the child care facility and two spaces (in the garage) for the residence, as will be discussed in Part III of this Report and Decision. Therefore, no additional notice is required in this case. The parking facility waivers she is requesting are:

- from Section 59.6.2.5.D.1 for striping and marking of off-street parking spaces;
- from Section 59.6.2.5 K 2.b. for the minimum side yard setback along the northern lot line for the parking facility; and
- from Section 59.6.2.9.B.1.a., b., and c. for parking lot landscaping for conditional uses.

Technical Staff supported all the waiver requests except the Applicant's proposal to forgo striping and marking off-street parking spaces. Exhibit 40, p. 9. On the other hand, Staff accepted the modified corner striping of parking spaces shown in the final site plan. Exhibit 57(a), p. 3. The Applicant's proposal to deal with parking lot setbacks and landscaping will be discussed below.

3. Site Landscaping, Lighting and Signage

The Applicant proposes to supplement the existing landscaping along the northern lot line with additional landscaping. Technical Staff characterizes the existing lighting as "residential in nature," (Exhibit 40, p. 9) and it will remain unchanged, except that the Applicant will install low-level solar powered lighting along the new pedestrian path to ensure safe pedestrian movements on the site.

The Applicant's Landscaping and Lighting Plan (Exhibit 51(a)(ii)) is reproduced on the next page, followed by photographs of landscaping along the northern and southern property lines.

Revised Landscaping and Lighting Plan

ED BY:



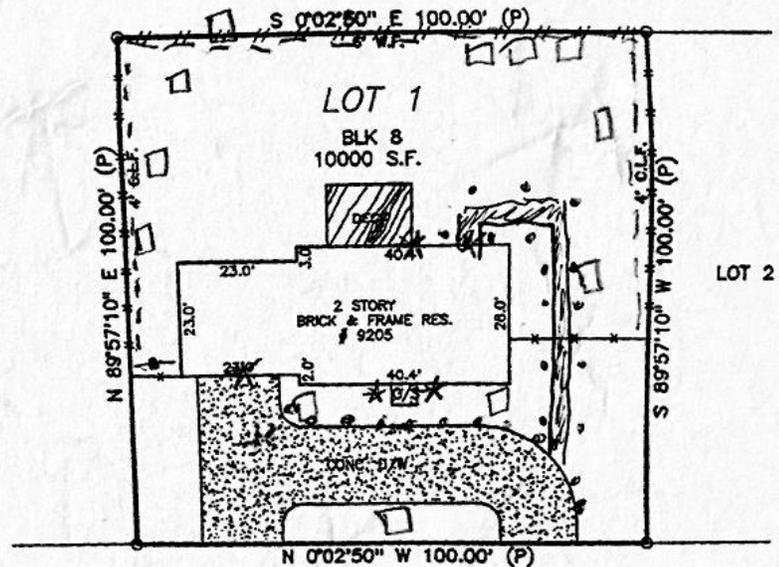


Maryland | 410.252.5535

PROPERTY ADDRESS: 9205 FERNWOOD ROAD BETHESDA, MARYLAND 20817 SURVEY NUMBER: MD1510.0441

WORK DATE: 10/27/2015 REVISION HISTORY: REV.1 10/27/2015

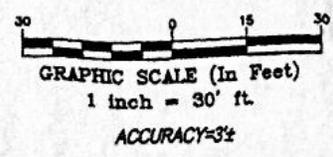
MD1510.0441
 LOCATION DRAWING
 LOT 1, BLOCK 8
 GREEN TREE MANOR,
 MONTGOMERY COUNTY, MARYLAND
 10-27-2015 SCALE 1"=30'



PLEASE NOTE
 This House Location Drawing is for informational purposes only. Per Maryland State Code it may not be relied upon to determine property boundaries and may not be used for building permits.



William J. Kelly
 EXPIRES 1-15-2017



- — — Fence
- * light
- tree
- Gate
-  proposed pedestrian path
- solar lights

The following photographs are from the Staff Report (Exhibit 40, p. 18):



Existing Landscaping Along the Northern Lot Line



Existing Landscaping Along the Southern Lot Line

In her Amended Statement (Exhibit 35(a)(i), p. 1), the Applicant describes the existing lighting on the site:

There is lighting in the front of the house near the driveway on both sides of the front entrance and in front of the garage, and lining the outside perimeter of the driveway. There is a light on the back end of the house over the deck in the back of the house where the yard is. There is also lighting at the doorway to the lower level where the daycare entrance will be. All lighting is standard 60 watt light bulbs.

The only signage proposed by the Applicant is a freestanding, unilluminated sign to be located in front of the house within the perimeter planting area between the two existing access points. Technical Staff describes the proposed sign as having two faces, with each face measuring 2 feet by 2 feet. To the Hearing Examiner, it appears that each face of the proposed sign is only 1 foot by 2 feet. The sign would be mounted to a wooden post at most 4 feet in height. The Applicant included an example of what she intends in her Amended Statement (Exhibit 35(a)(i), p. 5), and it is reproduced below:



4. Internal Physical Arrangements for Site Operations

The child care facility will operate in the walkout, finished basement of the Applicant's home, and in her back yard. Sample photos of that area from Exhibit 14 are shown below:



Grade Level Entry to Child Care from Back of House (Exhibit 14(b))

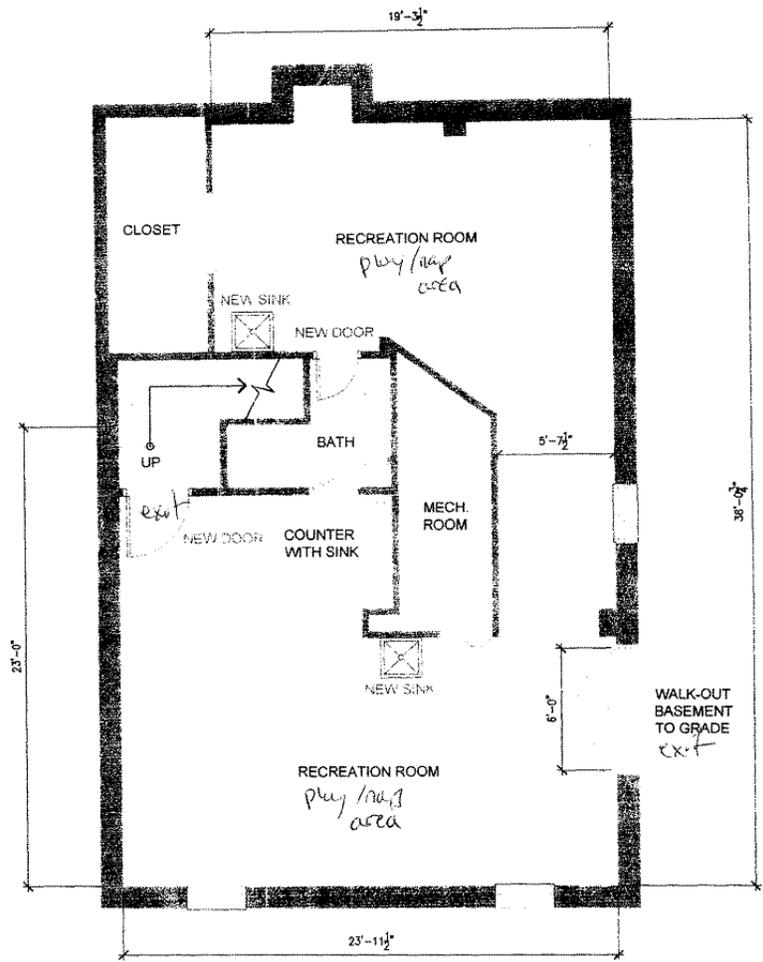


Bathroom, Sink and Exit Stairs (Exhibit 14(g))



Play Area, Sink and Ground Level Exit to Rear of Home (Exhibit 14(a))

The Floor Plan for the 1136 square foot child care area in the home (*i.e.*, the walkout basement) is reproduced below (Exhibit 47(a)):



BASEMENT FLOOR PLAN 9205 FERNWOOD ROAD BETHESDA
SCALE: 1/4" = 1'-0"

5. Operations

Proposed operations were summarized by Technical Staff (Exhibit 40, p. 8):

Arrival times for staff and children will occur between 7:00 a.m. and 10:00 a.m., while departure times will occur between 4:15 p.m. and 7:00 p.m. There will be no more than two parents on-site to either drop off or pick up children during any 15- minute period. There will be no more than two vehicles entering or exiting the property during any 15-minute time period.

The Applicant expanded on this formula in her Amended Statement (Exhibit 35(a)(i), pp. 9-11):

To maintain safety and limit disruption to the traffic pattern for the Home, I plan to have staggered pickups and drop offs and to utilize the entrance to the driveway entering from the South from the intersection and yield sign for ingress and exiting to the north. This one way format will allow the best safety and maneuverability of vehicles as recommended in an email received on February 2, 2016 from a representative, Mr. Leck, from the Maryland Department of Transportation. Parents will be responsible for loading and unloading children and walking them through the pathway and gated privacy fence of the Home to the rear entrance, the main entrance to the Day Care Center. In general, parents stay about five minutes but do not stay more than 15 minutes at pick up or drop off. I am requesting a capacity of up to 15 persons. Not more than two children will be dropped off or picked up within the same 15-minute window. as seen in *Figure 1. Parking*. I plan to have four staff, who will also arrive and leave staggered. All staff will park on site.

The Applicant indicated that she would follow a Drop-off and Pickup schedule developed for her by Technical Staff, which is set forth below:

Morning Arrival/ Departure Operations

Arrival/ Departure Window		Parent Trips			Staff Trips			Total Site Trips			Parked Vehicles	Total Cars in	Notes	
		In	Out	Total	In	Out	Total	In	Out	Total				
Group A	7:00 AM	7:15 AM	0	0	0	1	0	1	1	0	1	1	2	Staff 1 Arrives
	7:15 AM	7:30 AM	1	1	2	0	0	0	1	1	2	1	2	First Parent Arrives
	7:30 AM	7:45 AM	1	1	2	1	0	1	2	1	3	1	2	Parent 2 Arrives
	7:45 AM	8:00 AM	1	1	2	1	0	1	2	1	3	2	3	Staff 2 Arrives
	8:00 AM	8:15 AM	2	2	4	0	0	0	2	2	4	2	4	Parents 3 & 4 Arrive
Group B	8:15 AM	8:30 AM	1	1	2	0	0	0	1	1	2	2	3	Parent 5 Arrives
	8:30 AM	8:45 AM	2	2	4	0	0	0	2	2	4	2	4	Parents 6 & 7 Arrive
	8:45 AM	9:00 AM	1	1	2	1	0	1	2	1	3	3	4	Parent 8 & Staff 3 Arrive
	9:00 AM	9:15 AM	2	2	4	0	0	0	2	2	4	3	5	Parents 9 and 10 Arrive
Group C	9:15 AM	9:30 AM	2	2	4	0	0	0	2	2	4	3	5	Parents 11 & 12 Arrive
	9:30 AM	9:45 AM	2	2	4	1	0	1	3	2	5	4	6	Parents 13 and 14 Arrive; Staff 4 Arrives
	9:45 AM	10:00 AM	1	1	2	0	0	0	1	1	2	4	5	Parent 15 Arrives
Cumulative Total			15	15	30	4	0	4	19	15	34			

1) The cumulative total reflects the entire morning operation period and does not indicate "peak hour" trip generation.

2) Morning drop-off may extend after 10:00 AM but must not begin before 7:00 AM.

Evening Arrival/ Departure Operations

Arrival/ Departure Window		Parent Trips			Staff Trips			Total Site Trips			Parked Vehicles	Total Cars in	Notes	
		In	Out	Total	In	Out	Total	In	Out	Total				
Group A	4:15 PM	4:30 PM	1	1	2	0	0	0	1	1	2	4	5	First Parent Arrives
	4:30 PM	4:45 PM	1	1	2	0	0	0	1	1	2	4	5	Second Parent Arrives
	4:45 PM	5:00 PM	2	2	4	0	0	0	2	2	4	4	6	Parents 3 & 4 Arrive
Group B	5:00 PM	5:15 PM	1	1	2	0	1	1	1	2	3	3	4	Parents 5 Arrives; Staff 1 Departs
	5:15 PM	5:30 PM	2	2	4	0	0	0	2	2	4	3	5	Parents 6 & 7 Arrive
	5:30 PM	5:45 PM	2	2	4	0	1	1	2	3	5	2	4	Parents 8 & 9 Arrive; Staff 2 Departs
	5:45 PM	6:00 PM	2	2	4	0	0	0	2	2	4	2	4	Parents 10 & 11 Arrive
Group C	6:00 PM	6:15 PM	2	2	4	0	0	0	2	2	4	2	4	Parents 12 & 13 Arrive
	6:15 PM	6:30 PM	1	1	2	0	0	0	1	1	2	2	3	Parent 14 Arrives
	6:30 PM	6:45 PM	1	1	2	0	1	1	1	2	3	1	2	Parent 15 & Staff 3 Depart
	6:45 PM	7:00 PM	0	0	0	0	1	1	0	1	1	1	1	Staff 4 Departs
Cumulative Total			15	15	30	0	4	4	15	19	34			

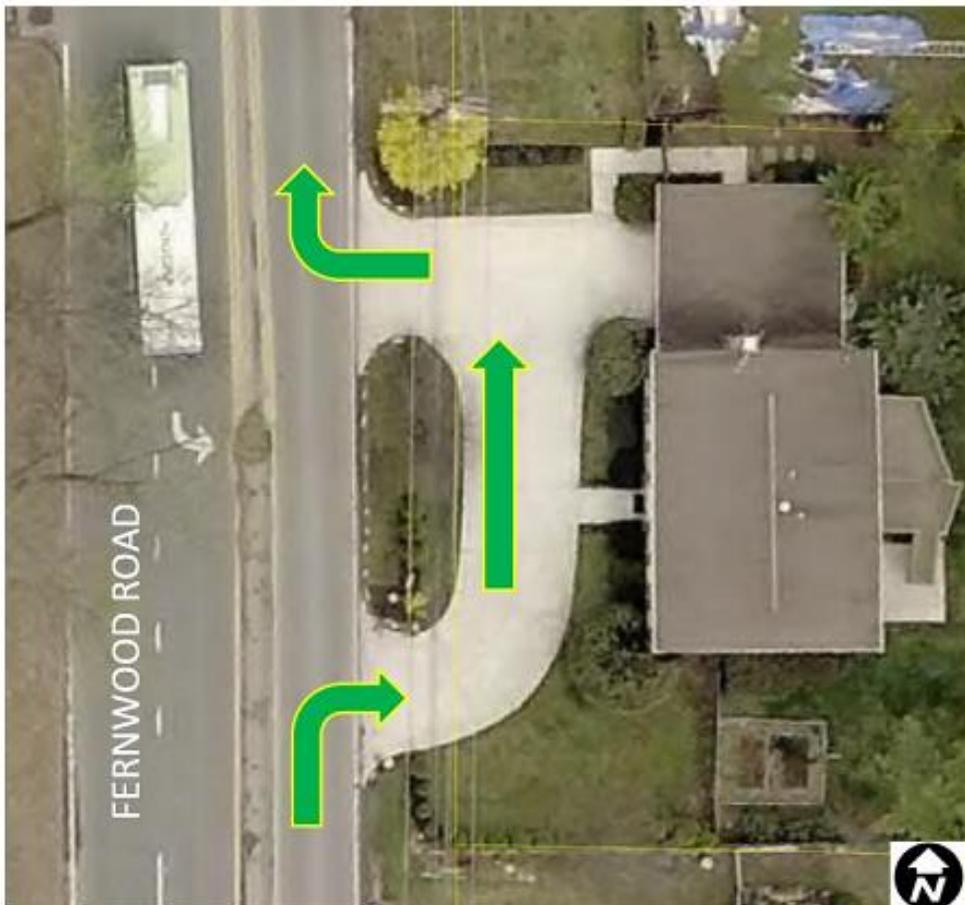
1) The cumulative total reflects the entire evening operation period and does not indicate "peak hour" trip generation.

2) Evening pick-up may begin before 4:15 PM but must not extend beyond 7:00 PM.

As explained by the Applicant Exhibit 35(a)(i), p. 9),

. . . there will not be more than six parked cars in the driveway at any given time. There are also parking spaces for all four employees. Parents driving heading South towards Bethesda will complete a U-turn at Fernwood Road and its intersection and enter the driveway by taking a right turn from the South entrance. Parents driving North away from Bethesda will turn right into the driveway in the Southern entrance. Everyone will exit on the northern entrance so it is a one way pattern. With a one way for ingress and egress and additional room beyond the designated parking spots, the minimal expansion in the driveway will allow for safe maneuverability. . . . As stated, there is only one 15 minute window during pick ups or drop offs where there would be a maximum of six cars parked in the driveway. This means that even if someone stays longer or arrives early or late, there will always be space. As mentioned previously, the typical drop off or pick up only lasts about five minutes. By using 15 minute windows, there is ample time for parents to stay a few minutes or if someone arrives before or after the specified time.

The one-way pattern for use of the driveway is shown below in a diagram from the Technical Staff report (Exhibit 40, p. 13):



The Applicant also set forth other operational features in her Amended Statement (Exhibit 35(a)(i), p. 11):

Outdoor play will not be before nine am or after five pm to limit noise to the neighboring properties. There will not be more than ten children outside at one time. Parents will park and enter the Day Care Center through a proposed pathway on the front right side of the house starting at the driveway going through a privacy fence, where I will add a gated door . . . leading to the rear entrance of the Home. This entrance is a separate entrance of the Home solely for the use of the Day Care Center as a walkout basement entrance that is ground level and has a double door. I plan to add a pathway from the parking area, through the gate, to these double doors . . .

The potential impacts of the proposed operations on the neighborhood and the transportation system will be discussed in the next section and in Part III of this Report and Decision.

D. Community Response

The application is supported by two other child day care operators, Leah Hanlon (the Applicant's sister) and Robin Rice, both of whom testified at the hearing.

Ms. Hanlon testified (Tr. 34-35) that she had been operating her small child care facility in North Bethesda for over seven years.

. . . In that time, there's been an extreme demand for infants. I constantly have a waitlist and the people sit on it for usually at least a year to two years. By the time a spot opens up, they've typically found care either from a nanny or a center, or some other option. I'm well aware the county has been starting to strike down more on unlicensed childcare. We are a licensed childcare that has had a very good track record. I employ staff. I have people from Montgomery College come in as volunteers to get experience. Many of the children who come to my daycare live in the neighborhood, which happens to abut her [*i.e.*, the Applicant's] neighborhood. So it's the same group of children. Pretty much everyone on my waitlist would be willing to go to her location, and I have 30 people. . . . These people pay to get on the list in hopes that a spot will open up, because they really want this care. So, I think to be able to offer the type of care that they're looking for versus yes, the centers have two year long waitlists also, but a lot of the parents coming to my daycare and that would be going to her daycare, are looking for a more intimate personalized experience, and that's why these smaller daycares I really think are a benefit to the community. But there's also something to be said versus a nanny,

because it's a more professional daycare where the state licenses it, make sure you have certain requirements met. So I really think this would be a great addition to the community. I think neighbors would appreciate it. And it's on -- the way her house goes is actually a great way for commuting into Bethesda, near NIH, and all these different places, so. I just want to say I support this and I've been helping with it, and I think it would be a great addition to the community.

Robin Rice also supported Ms. Weiser's application, and she offered a number of suggestions (Tr. 36-54):

- a. The condition limiting the number of children should make clear that it is referring only to client children, not the Applicant's children or visiting children not in the care of the Applicant;
- b. The condition limiting non-resident staff should apply only to non-resident staff on site at one time;
- c. A five-minute overlap should be allowed in the non-resident staff condition so that children are always attended while new staff arrives, per state regulations;
- d. Additional nonresident staff who do not arrive or leave in vehicles should be allowed because they add no burden to the roads or the neighborhood;
- e. The limit of 10 children outdoors at any one time should make an exception for fire drills (although the Hearing Examiner notes that Technical Staff proposed condition 3 references outdoor "play," not just being outdoors, so fire drills for all would not be prohibited, nor should they be);
- f. She suggested a limit on time of outdoor play rather than on the number of children in outdoor play because it might be less of an imposition on the neighborhood to have less total outdoor play time (*i.e.*, one larger group with one time period) rather than two separate groups for two time periods. She also felt that allowing siblings to play together outside would be facilitated (The Hearing Examiner notes that the Applicant expressed a preference for a limit on the number of children in outdoor play at any one time, rather than a limit on the time of outdoor play. Tr. 57 and Exhibit 50) ; and
- g. She would allow professional or educational activities to occur on site.

A number of these suggestions have been incorporated into the conditions imposed by the Hearing Examiner in Part IV of this Report and Decision.

There were no opposition witnesses at the hearing; however, Applicant's abutting neighbor to the north, Eric Reed, who lives at 9207 Fernwood Road, wrote to say that he opposed the application and the amendment of the application (Exhibit 41). His stated concerns are:

I am concerned about a business operating in a residential area and the significant, negative impacts on this community. These notable concerns include, but are not limited to the following:

- 1- Increased vehicle traffic. Fernwood Road is already a main road that runs through the community and currently experiences a heavy flow of vehicle traffic and volume.
- 2 - Increased neighborhood noise.
- 3- Close proximity to another day care facility. The day care facility located across the street at 6607 Greentree Road is less than 500 feet from the proposed permit location. There is no demand for an additional child care facility in this neighborhood.
- 4 - Location does not allow for the safety and welfare of children given the close proximity to the street.

At the hearing, the Hearing Examiner noted that Mr. Reed's concerns actually went to the merits of the application, not to the propriety of allowing the application to be amended, and the Hearing Examiner therefore granted the motion to amend and invited the Applicant to address Mr. Reed's concerns regarding the merits of the application. Tr. 5.

First, as to Mr. Reed's unnumbered concern about "a business operating in a residential area," the Hearing Examiner finds that the Zoning Ordinance expressly permits child care facilities such as the one proposed in residential areas if they can satisfy the conditional use requirements, and the 1990 Bethesda Chevy Chase Master Plan expressly supports small day care centers in residential areas where they are compatible with the community. Plan p. 252.⁴ The Hearing Examiner agrees with Ms. Weiser's testimony (Tr. 11), "that it's a very positive impact for the community in that we offer jobs and childcare for those who are very much in need."

With regard to each of Mr. Reed's enumerated concerns:

1. The Technical Staff analyzed the amount of additional traffic that will be generated and found that it would be approximately 19 new AM peak hour trips and 19 PM peak hour trips (Ex. 40, p. 15), far below the level of 30 trips at which a Local Area Transportation Review (LATR) study would be required. Nevertheless, the Applicant will be required to stagger arrivals and departures so as to avoid excessive traffic at any time and stacking of cars.
2. Noise from the facility will be reduced by placing a limit on the number of children allowed in outdoor play at any one time (10) and by prohibiting use of a public address system of any

⁴ The Master Plan page reference is erroneously cited in the Technical Staff report as p. 155. The same citation error exists in Applicant's Amended Statement (Exhibit 35(a)(i)), apparently resulting from use of an on-line version.

kind or any amplified music outside the building.

3. The Applicant addressed the question of proximity of another day care in her testimony, as well as the other concerns raised by Mr. Reed (Tr. 9-16). As to the proximity issue, Ms. Weiser testified (Tr. 9-10):

There's another daycare provider across the street. They generally, you'll notice on the sign, appeal for two to five year olds, so they don't help infants, which is where the significant demand is. They also don't have any current openings, and they will not actually accept waitlist members. That was as of a couple of days ago when we contacted them. My sister's daycare she owns a couple miles by has 30 current people on the waitlist waiting for daycare, and there's another property being built about a mile down the road at Bethesda, Montgomery Row is the name, where we expect to have additional needs for care. There's two elementary schools near my home both Ashburton and Wingate, as well as a middle school. And, there's also a high school nearby. So there's a big need and we expect it to increase.

In addition, Ms. Hanlon, in the testimony quoted above, also observed that there is great demand in the area for the day care services to be provided by the proposed use.

4. Safety concerns were thoroughly analyzed by Technical Staff, and the Hearing Examiner finds that the reconfiguration of the access, the driveway, the parking, and the flow direction of the on-site traffic, in addition to the staggered arrivals and the addition of a pedestrian path, will provide a safe environment for the children, as Technical Staff concluded (Exhibit 40, pp. 11-14). There is no contrary evidence in the record.

In sum, the evidence is overwhelming that the proposed use, as conditioned by the Hearing Examiner, will fully address the concerns expressed by Mr. Reed and will result in a conditional use that will be consistent with the Zoning Ordinance and the goals of the applicable Master Plan.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a child day care center for up to 15 children. *Zoning Ordinance* §59.3.4.4.E.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application, as governed by the conditions imposed in Part IV of this Report and Decision, would satisfy all of the specific and general requirements for the use.

A. Necessary Findings (Section 59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the Zoning Ordinance. Standards pertinent to this review, and the Hearing Examiner’s conclusions for each finding, are set forth below:⁵

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;

Conclusion: Technical Staff advises that there are no previously approved conditional uses associated with this site. Exhibit 40, p. 24. Therefore, the Hearing Examiner finds that this standard is inapplicable to the subject application.

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;⁶

Conclusion: This subsection requires an analysis of the standards of the R-90 Zone contained in Article 59-4; the use standards for Child Day Care Centers for 13 to 30 Persons contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these

⁵ Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

⁶ The underlined language was added by the Council when the 2014 Zoning Ordinance was amended effective December 21, 2015, in ZTA 15-09 (Ordinance No. 18-08, adopted December 1, 2015).

Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 40, pp. 24-29), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

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

The subject property lies within the geographic area covered by the 1990 Approved and Adopted Bethesda-Chevy Chase Master Plan. As noted by Technical Staff (Exhibit 40, pp. 10-11), the Master Plan does not specifically discuss the subject site, but it supports having more child day care centers in the area. The proposed use satisfies the five guidelines for special exceptions specified in the Master Plan (pp. 53-54):

1. Avoid excessive concentration of special exception and other nonresidential land uses along major highway corridors. . . .
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. . . .
4. Support special exception uses that contribute to the housing objectives of The Master Plan. . . .
5. Support special exception uses that contribute to the service and health objectives of the Master Plan.

The needs and objectives related to child day care and the elderly are discussed in Section 6.2. **In general, the Plan endorses provision of child day care**, group homes, elder day care, and nursing homes. . . . [Emphasis added.]

There is one area of concern raised by the Master Plan affecting this proposal – front yard parking. The Master Plan (at pp. 53-54) recommends that “Front yard parking should be avoided because of its commercial appearance; however, in situations where side or rear yard

parking is not available, front yard parking should only be allowed if it can be landscaped and screened adequately.”

As noted by Technical Staff (Exhibit 40, p. 11),

. . . The existing semi-circular driveway is located in the front yard and cannot be relocated to the side or rear yards due to property constraints and without significantly altering the residential appearance of the property. The driveway and associated access points will be minimally widened to accommodate vehicular trips made to the property. The property will be adequately landscaped and screened along all property lines. As conditioned, the proposed landscaping along the northern lot line will further the Plan’s guidelines for landscaping and screening of new conditional uses. . . .

The Hearing Examiner finds that the landscaping and screening to be provided will be adequate to preserve the residential appearance of the property, especially since the parking spaces will be marked only in the corners and in a color that will be visible to the parkers, but will generally blend with the surrounding surfaces.

The Master Plan actually encourages small child care centers in residential neighborhoods, such as the one proposed here (Plan p. 252):

Family day care homes and small centers provide accessible child care services through residential neighborhoods within B-CC. By utilizing existing dwelling units, they require minimal additional capital investment while providing services. The family day care homes are currently permitted and **the development of small centers should be encouraged. . . . Recent 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. . . .** [Emphasis added.]

Technical Staff concluded that “. . . the proposed use substantially conforms with the recommendations addressing social needs of the community by providing child day care facilities and by encouraging conditional uses to maintain the residential character of an area through appropriate landscaping and screening.” Exhibit 40, pp. 25-26.

Conclusion: Given this record, the Hearing Examiner finds that the proposed conditional use substantially conforms with the recommendations of the applicable master plan.

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

Conclusion: Technical Staff found that the proposed use meets this standard (Exhibit 40, p. 26):

The proposed use will be harmonious with the character of the surrounding one-family neighborhood. There are no new structures proposed by this conditional use nor will the scale or design of the existing residential use increase in size. Additional landscaping along a portion of the northern lot line will maintain the property's residential appearance. The activities and traffic conditions associated with the use will be limited to specific hours of operation and days of the week, as stated in the recommended conditions of approval. Therefore, the proposed use will not alter the character of the surrounding neighborhood in a manner inconsistent with the Master Plan.

The Hearing Examiner concludes that the proposed use “*is harmonious with and will not alter the character of the surrounding neighborhood*” because it will remain a single-family, detached residence in a neighborhood of single-family, detached residences, and no external modifications to the structure are planned.

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;

Conclusion: According to Technical Staff, the neighborhood, as defined by Staff, “contains two conditional uses: an accessory apartment; and a charitable and philanthropic use.” Exhibit 40, p. 26. However, the Applicant's neighbor, Eric Reed, mentions another childcare facility at 6607 Greentree Road, less than 500 feet from the subject site. The Applicant testified that this other facility “across the street” does not cater to infants, and they don't have any openings. Tr. 9-10. There is no other information about this other facility in the record of this case; nor do

OZAH's records reveal an existing child care facility at that location. Assuming that one is still functioning there, it may not have a sufficient number of children to warrant a conditional use.

Whether it does or not, the existence of one other childcare facility in proximity to the subject site in no way establishes that adding the proposed conditional use would "increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the

predominantly residential nature of the area." Technical Staff found that "The requested use does not significantly increase the number of conditional uses in a manner that would affect the area adversely or alter its residential nature." The Hearing Examiner agrees. Moreover, the

provision in question also provides that "*a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area,*" and

as noted above, the proposed use is consistent with the Master Plan. Thus, the Hearing Examiner finds that this standard has been met.

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

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

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: According to Technical Staff, the application does not require approval of a preliminary plan of subdivision. Exhibit 40, p. 27. Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities. By its nature, a small child care facility operating within an existing single-family residence will not ordinarily create significant additional burdens for schools, police and fire protection, water, sanitary sewer and storm drainage. In this case, two matters regarding public facilities require further discussion – the possible need for an erosion, sediment control and stormwater management permit to reduce the environmental impact of modifications to the driveway; and the increased demand on transportation facilities.

1. Whether the proposed driveway changes require an erosion, sediment control and stormwater management permit:

Responding to an inquiry from the Hearing Examiner, Technical Staff indicated that because the Applicant must disturb the land to widen the driveway, and the conditional use would change this from a residential use, the Department of Permitting Services (DPS) may require the Applicant to file an application for an erosion, sediment control and stormwater management permit pursuant to Montgomery County Code Section 19-2. Exhibit 44(a). The Applicant objected to this additional requirement, arguing that the requirement is inapplicable and that it would be unduly burdensome for the small changes intended. Exhibit 51(a). Technical Staff responded that it was not within the Planning Department's authority to waive this provision, and the question was up to DPS. Exhibit 57(a).

Code Section 19-2 provides:

Permits required.

- (a) *Except as provided in this Chapter, a person must not engage in any land-disturbing activity without first obtaining a permit.*
- (b) *A permit is not required under this Chapter for:*
 - (1) *any minor land-disturbing activity that:*

- (A) *is not associated with construction of a new residential or commercial building;*
- (B) *involves less than 100 cubic yards of earth movement;*
- (C) *disturbs less than 5,000 square feet of surface area;*
- (D) *is not associated with a change of use from residential to any other use; and*
- (E) *is promptly stabilized to prevent erosion and sedimentation;*

* * *

Conclusion: It is clear that the provision exempts minor land-disturbing activities such as the one contemplated here, but the exemption may not apply if the land disturbance is “*associated with a change of use from residential to any other use.*” The Hearing Examiner questions whether the addition of an in-home activity such a small child care center, in which the structure itself will not be externally modified and in which the residential use will continue as before, constitutes “*a change of use from residential to any other use.*” The residential use is not actually being changed to another use; rather, an additional use is being added to an ongoing residential use. On the other hand, Technical Staff is correct in noting that the interpretation of this provision is up to DPS in the first instance. Therefore, the Hearing Examiner will impose the following condition in Part IV of this Report and Decision:

The Applicant must make written inquiry to the Department of Permitting Services (DPS) as to whether DPS requires a permit for erosion, sediment control and stormwater management for the type of land disturbance activity proposed for this conditional use. If DPS indicates that such a permit is required, the Applicant must obtain such a permit prior to conducting the land disturbing activity.

The Hearing Examiner notes that there are no other environmental issues in this case.

According to Technical Staff (Exhibit 40, p. 24):

There are no champion trees on or near the property. The Forest Conservation Law does not apply to the requested conditional use, because the property is less than 40,000 square feet. A non-applicability form was signed by Staff on November 3, 2015 and was included in the submittal package. Therefore, no forest conservation or environment issues are associated with this proposed use.

2. The increased demand on transportation facilities:

The Applicant addressed the impact on transportation facilities in her Amended Statement (Exhibit 35(a)(i)). As discussed in Part II.C.5 of this Report and Decision, and as required by conditions imposed in Part IV, she will have contractual arrangements with her clients to ensure staggered arrivals and pick-up times, which will reduce any additional burdens on the transportation system.

Technical Staff analyzed that impact in accordance with Local Area Transportation Review (LATR) and Transportation Policy Area Review (TPAR), as set forth in Exhibit 40, p. 15 and in Attachment B:

The proposed use is estimated to generate less than 30 peak-hour trips during the typical weekday morning (6:30 a.m. – 9:30 a.m.) and evening (4:00 p.m. – 7:00 p.m.) peak periods. Since the four employees are below the minimum number specified in the Local Area Transportation Review (LATR) Guidelines, Staff applied the Institute of Transportation Engineers' (ITE) Trip Generation Manual, 9th Edition (Land Use Code 565: Day Care Center) to determine site generated peak hour trips. The ITE rate estimates a total of 19 new peak-hour trips during the weekday morning peak period and 19 new peak-hour trips during the weekday evening peak period. Thus, the proposed conditional use satisfies the Local Area Transportation Review without further analysis. The proposed use is exempt from the Transportation Policy Area Review (TPAR) as no new square footage will be added to the existing dwelling unit. The requested conditional use will have no adverse impacts to existing roadway conditions or pedestrian facilities and is therefore recommended for approval.

Conclusion: Staff notes that “while conditions on Fernwood Road may cause some delay for patrons exiting the site, the conditional use will not adversely impact the adjacent street traffic.”

Exhibit 40, pp. 12-13. Technical Staff concluded that “The property is served by adequate public services and facilities.” Exhibit 40, p. 27. There is no evidence in the record to dispute that conclusion. In sum, both LATR and TAPR are satisfied in this case, and the Hearing Examiner finds that the proposed development will be served by adequate public services and facilities.

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

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

Conclusion: This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. *Inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Zoning Ordinance, §59.1.4.2. *Non-inherent adverse effects* are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* As specified in §59.7.3.1.E.1.g., quoted above, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a child care facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified **or** adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must

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 have determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a child day care facility (Exhibit 40. p. 27): (1) vehicular trips to and from the site; (2) drop-off and pick-up areas (3) outdoor play areas; (4) noise generated by children; and (5) lighting.

Staff analyzed the potential impacts on the neighborhood as follows (Ex. 40, pp. 27-28):

With the development conditions as proposed by staff, there are no adverse traffic impacts that would result from the proposed conditional use. The applicant will use the existing semi-circular driveway along Fernwood Road for staff parking and drop-off and pick-up of children. A path will be constructed in the front yard that will lead to the entrance of the day care at the rear of the residence. The path will be lit to ensure safe access for parents, children and staff. The applicant will limit the number of children outside at any one time to 10. Outdoor play will not begin before 9:00 a.m. and no outdoor play is permitted after 5:00 p.m. as recommended by staff. Existing lighting on the property will be modified to include foot lighting standards along the new path. All lighting is adequate and consistent with the residential character of the neighborhood. The site is well landscaped and a six-foot high fence surrounds the entire rear yard.

Non-inherent characteristics associated with this proposed conditional use include the median on Fernwood Road along the site's frontage, and the existing semi-circular driveway. The median on Fernwood Road restricts vehicular turning movements into and out the site. The semi-circular driveway limits vehicular circulation movements on-site. With the recommended conditions of approval, vehicular movements into and out of the site and circulation movements for traffic to the site, will be acceptable and would not create adverse impacts sufficient to result in denial of this conditional use.

The Hearing Examiner agrees with Staff's conclusion that the only non-inherent effects or site characteristics at this location consist of the driveway configuration and the median on Fernwood Road, both of which restrict vehicular movements to some extent. However, the existence of non-inherent characteristics does not mean that the conditional use must be denied. On the contrary, the conditions recommended by Technical Staff and adopted by the Hearing

Examiner in Part IV of this Report and Decision will help ensure that the facility can operate safely and without causing adverse effects on the neighborhood, undue or otherwise.

Based on the entire record, the Hearing Examiner finds that, with the conditions imposed in Part IV of this Report and Decision, the proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects, in any of the categories listed in §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Conclusion: As observed by Technical Staff (Exhibit 40, p. 28), “Site design alterations proposed by this conditional use include: widening the semi-circular driveway and driveway access points, constructing a pathway with ample foot lighting from the front yard to the rear yard and adding a new gate to the existing fence. These physical alterations are not excessive in nature and will be compatible with character of the residential neighborhood.” The proposal is for a day care center in an existing house; it will not construct, reconstruct, or alter the outside appearance of the house. The expansion of the basement for the day care center also will not change the building footprint of the house. The Hearing Examiner therefore agrees with Staff’s conclusion that the proposed alterations to the site will be compatible with the neighborhood.

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

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

B. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-90 Zone. Development standards for the R-90 Zone are contained §59.4.4.9.B. of the Zoning Ordinance. Staff compared the minimum development standards of the R-90 Zone to those provided by the application in a Table included in the Staff Report (Exhibit 40, p. 10), and reproduced below. Only the portion of the Table that pertains to the standards of the R-90 Zone under Article 59-4 is reproduced in this section. The remainder of the Table concerns development standards set forth in Article 59-6, and those standards will be discussed in Section III.D. of this Report and Decision.

Table 1 Development Standards

Development Standards	Required	Proposed
Minimum Lot Area (59.4.4.8.B.1)-	9,000 sf	10,000 sf
Minimum Lot Width (59.4.4.8.B.1) <ul style="list-style-type: none"> • At front building line • At front lot line 	75 ft. 25 ft.	100 ft. 100 ft.
Maximum Lot Coverage	30%	21%
Minimum Building Setback (59.4.4.8.B.2) <ul style="list-style-type: none"> • Front • Side • Rear 	30 ft.* 8/25 ft. 25 ft.	26 ft.* 12/25 ft. 28 ft.
Maximum Building Height (59.4.4.8.B.3).	35 ft.	30 ft.

*The property was subdivided in 1954; under the 1955 Zoning Ordinance front yard setback was 25 feet.

Conclusion: As can be seen from the above Table, the proposed use more than meets all the development standards of the R-90 Zone, as provided in Zoning Ordinance §59.4.4.9.B., except with regard to the front setback. Under the current Zoning Ordinance, the R-90 Zone requires a 30 foot setback, and the present site has only a 26 foot setback. Technical Staff correctly points out in a footnote to its Table, that the existing front setback of 26 feet was lawful in the R-90 Zone under the 1955 Zoning Ordinance; however, since this site was platted in 1954 (Exhibit 4),

we must look to the Zoning Ordinance in effect on that date, which was the 1950 Zoning Ordinance. The 1950 Zoning Ordinance did not have an R-90 zone, but it did designate three residential zones, “A”, “B” and “C.” In each of those residential zones, only a 25 foot front yard setback was required for single-family residences. *1950 Zoning Ordinance §§176.3, 176.4 and 176.5*. Therefore the building on the site is a legal structure, and under Section 59-7.7.1.A.1 of the 2014 Zoning Ordinance, it is defined as “conforming.”

Based on these factors, the Hearing Examiner finds that the application meets the development standards of the R-90 Zone, contained in Article 59.4 of the Zoning Ordinance, to the extent required by the 2014 Zoning Ordinance.

C. Use Standards for a Child Day Care Center for 13 to 30 Persons (Section 59.3.4.4.E.2.)

The specific use standards for approval of a Child Day Care Center for 13 to 30 Persons are set out in Section 59.3.4.4.E.2. of the Zoning Ordinance. Standards applicable to this application are:

2. Use Standards

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.

Conclusion: This proposal is for a day care center in a single-family, detached house, and is therefore compliant.

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

Conclusion: Technical Staff addressed this point in its report (Exhibit 40, p. 25):

The drive aisle is sufficient in depth to accommodate an adequate area for discharge and pick-up of children. The recommended development conditions that: restrict onsite vehicular circulation patterns; limit the number of vehicles on-site during any

15-minute period; and require the marking of off-street parking spaces ensure that an adequate area for discharge and pick up of children will be maintained during the use's hours of operation. Furthermore, the discharge and pickup area will not create unsafe vehicular or pedestrian conditions on the property.

The Hearing Examiner has adopted the relevant conditions recommended by Technical Staff, as modified by the Planning Board (Exhibit 42). The "striping condition" recommended by the Staff as Condition 12.d. has been changed, based on the evidence at the hearing, to:

12. d. Mark each individual parking and loading space to provide for orderly and safe on-site vehicular movements. Full striping of the spaces is not required in order to maintain a residential appearance. A pavement marking color similar to the driveway color may be used, as long as it is clearly visible to the person parking in the space and to others viewing it next to the space.

A review of Staff's adherence to the full striping requirement was suggested by the Applicant and the Planning Board to maintain a residential appearance (Exhibit 42, p. 2). The compromise of corner markings for the spaces was shown in the final Site Plan (Exhibit 55(a)), and approved by Technical Staff (Exhibit 57(a)).

In sum, the Hearing Examiner finds that the Applicant has provided an adequate area for the discharge and pick up of children, which will be safe and efficient as long as there is compliance with the conditions imposed in Part IV of this Report and Decision.

- 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.***

Conclusion: Not Applicable. The proposal does not request a reduction in the four parking spaces required for the conditional use, and in addition, provides the two spaces required for the residence, in the garage.

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.

Conclusion: Not Applicable. The proposal is for a Day Care Center, not a Family Day Care.

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

Conclusion: Not Applicable. The subject site is in the R-90 Zone.

Conclusion: In sum, the application satisfies all of the use standards in Code §59.3.4.4.E.2.

D. General Development Standards (Article 59.6)

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

1. Site Access Standards

Conclusion: Zoning Ordinance Division 59.6.1 governs “Site Access;” however, by its own terms, as stated in §59.6.1.2., Division 59.6.1 does not apply to development in single-family residential zones, such as the R-90 Zone involved in this case. Nevertheless, site access is a significant safety issue in this case, so it was discussed and depicted on page 18 of this Report and Decision. As described by Technical Staff (Ex. 40, p. 13), site access would be restricted:

As a result of the site’s proximity to the Fernwood Road/ Greentree Road intersection, Staff recommends that the driveway be restricted to one-way (counter-clockwise) movement as shown in Figure 10. This configuration requires all traffic to enter the site via the southern driveway entrance as an inbound right-turn only and exit the site via the northern driveway entrance as a right-turn movement. This configuration restricts all inbound site access at the northern driveway apron and effectively prohibits southbound left-turns from Fernwood Road into the site because of the existing median along this roadway. The access restriction and one-way internal driveway operation are necessary to mitigate the constrained nature of the site and respond to the traffic volume on Fernwood Road. Specifically, the recommended operations address the following:

- require all traffic to enter and exit the site “head-first,” thus eliminating backing maneuvers onto Fernwood Road;

- eliminate potential conflicting maneuvers, at the northern access point, between entering and exiting vehicles;
- accommodate on-site parking; and promote safe on-site circulation.

To accomplish the safe access, the modifications to the driveway shown in the final site plan (Ex. 55(a)), reproduced on page 10 of this Report and Decision and discussed on page 11, must be made. These changes are required by the conditions imposed in Part IV of this Report and Decision.

2. Parking Spaces Required, Parking Setbacks and Parking Lot Screening

The standards for the number of parking spaces required, parking setbacks and parking lot screening are governed by Division 6.2 of the Zoning Ordinance. The required spaces and setback standards are referenced in the Table and notes on page 10 of the Staff report (Ex. 40):

Parking Requirements (59.6.2.4)	4 spaces [for CU]	6 spaces [for CU + Residence]*
Minimum parking setback (59.6.2.5.K.2)		
• Sides	16 ft.	16 ft. [south] / 7 ft.[north]**
• Rear	25 ft.	NA

*Three parking spaces per 1,000 square feet of gross floor area (GFA) are required for a day care facility. The proposed use will have 1,136 square feet GFA, thus 4 parking spaces are required for this use. The Applicant is providing 4 on-site parking spaces for the proposed use and also providing two parking spaces for the residential use in the attached garage.

**The required side yard setback for a parking facility is two times the minimum 8 foot required setback. The proposed parking facility will be sited 16 feet from the southern side yard and can meet this setback requirement. Along the northern side yard, a 16-foot setback would also be required for the parking facility. The existing driveway is located 8 feet from this side yard. The Applicant is requesting a maximum 9-foot waiver from the 16-foot side yard setback requirement for the parking facility to increase the driveway width and access points. Staff supports the waiver request.

a. Number of Parking Spaces Required by Section 59.6.2.4

As can be seen from the above Table, Section 59.6.2.4 of the Zoning Ordinance requires a total of 6 parking spaces for the subject site (2 spaces for the single-family dwelling unit and 4 for the child-care facility). The parking for a Day Care Center is calculated by applying the specified baseline minimum of 3 spaces per 1,000 square feet of gross floor area to the actual gross floor area planned for the use.

Conclusion: The Applicant's basement floor area where the child daycare center will be located, has a gross floor area of 1,136 square feet (Exhibit 35(a)(i), p. 1). Applying the baseline minimum to this area calls for a total of 3.41 parking spaces, which rounds up to 4 spaces. The Applicant complies by providing 4 on-site parking spaces for the conditional use and 2 for the residence. According to Technical Staff, the surface parking to be provided is compliant with the size limitations found in Section 59.6.2.5.M, and will be of sufficient size to comply with the Queuing Design Standards of Section 59.6.2.7.B (Exhibit 40, p. 19). The Applicant will also comply with Section 59.6.2.6.A. by providing a bicycle parking space within their garage. Based on this record, the Hearing Examiner finds that the Applicant will be compliant with the cited sections of the Zoning Ordinance.

b. Parking Setbacks, Screening and Landscaping

Applicable parking lot setbacks are specified in Zoning Ordinance §59.6.2.5.K.2. Those requirements and Applicant's compliance are referenced in the table set forth on the previous page. As can be seen there, the Applicant meets the side parking facility setback of 16 feet on the south, but is requesting a 9-foot waiver of the northern side yard setback because after widening the driveway, as recommended by Technical Staff, it will be set back only 7 feet from the northern lot line.

Parking facility waivers are permitted under Section 59.6.2.10 of the Zoning Ordinance.

Section 6.2.10 provides:

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D.

Technical Staff supports the side-yard parking facility setback waiver request (Exhibit 40, pp. 16-17):

The applicant is widening the driveway to safely accommodate 2 side by side parked vehicles associated with the proposed use. The driveway will be widened from 2 feet in some areas up to 5 feet in other areas. Given the existing driveway's configuration, the full 16-foot setback could not be met without removing all the existing landscaping along northern property line and thereby changing the property's residential appearance. Thus, the applicant is requesting a maximum waiver of 9 feet from the 16-foot setback requirement along the northern property line. Figure 11 shows the driveway along the northern lot line.



Staff supports this waiver request as the increased driveway width is minimal and it will not substantially alter the character of the existing residential neighborhood. The applicant will also be supplementing the existing hedge and plantings along northern lot line with additional plantings. The new landscaping will continue to maintain the residential character of the area.

Conclusion: The Hearing Examiner agrees with Technical Staff's analysis and conclusion, and hereby finds that a 9-foot parking facility setback waiver under Zoning Ordinance §59.6.2.10. is appropriate on the northern side of the driveway for the reasons stated by Staff and quoted above. Based on that analysis, the Hearing Examiner finds that Applicant's proposed setbacks for the parking area are compliant with Division 6.2 of the Zoning Ordinance.

Landscaping required for the parking facility is set forth in Zoning Ordinance §59.6.2.9.B:

B. Parking Lot Requirements for Conditional Uses Requiring 3 to 9 Spaces

1. *If a property with a conditional use requiring 3 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:

 - a. *satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;*
 - b. *contains a hedge, fence, or wall a minimum of 4 feet high; and*
 - c. *has a minimum of 1 understory or evergreen tree planted every 30 feet on center.**
2. *The Hearing Examiner may increase the perimeter planting requirements for a conditional use application under Section 7.3.1.*

The application of this section to this case is discussed in the Staff Report (Ex. 40, pp. 17-18):

The parking facility is located in the front yard. Under the R-90 Zone, there is no minimum specified parking setback for the front yard, thus an 8-foot wide planting area is required. A planting area is located between the two existing access points. This planting area is approximately 13 feet wide and 37 feet long, and contains several deciduous and evergreen trees ranging in height from 4 feet to 9 feet. See Figure 12. This planting strip lies entirely in the right-of-way for Fernwood Road, which is maintained by MCDOT.



**Perimeter Planting Area along Fernwood Road
(looking east into the Subject Site)**

Because the perimeter planting area is owned by a government agency, requiring the applicant to supplement this planting area which they do not own appears infeasible. The applicant has requested a waiver from this requirement. Existing landscaping in the planting strip is healthy and appears to be well maintained. With continued maintenance from the applicant, this planting area should continue to flourish until that time MCDOT seeks to change its appearance. Staff supports this

waiver request for the perimeter planting area requirement along this portion of the parking lot.

Along the southern property line, the parking facility does not meet the 8-foot planting area requirement. Presently, evergreen trees greater than 10 feet in height are planted for a length of 41 feet along this property line. Although the perimeter planting area is not 8 feet wide, the existing evergreens provide an adequate and effective screening for the abutting residential use

The 8-foot wide perimeter planting area cannot be met along the northern property line. Presently, a hedge, less than 8 feet wide is planted along the property line. . . . The applicant proposes to supplement this hedge with additional landscape materials. The supplemental landscaping is adequate to screen the proposed use from the adjacent residential use to the north.

Conclusion: The Hearing Examiner agrees with Technical Staff's analysis and conclusion, and hereby finds that a parking facility landscaping waiver under Zoning Ordinance §59.6.2.10. is appropriate regarding the perimeter parking facility landscaping required by Zoning Ordinance §59.6.2.9.B for the reasons stated by Staff and quoted above. In fact, it is not clear how one could apply the perimeter landscaping requirements to land owned by a public entity; nor is it clear that this section was intended to apply to driveway landscaping located in front of someone's single-family home. Based on that analysis, the Hearing Examiner finds that Applicant's proposed parking facility landscaping is sufficient to screen the parking activity, while maintaining compliance, under the waiver, with Division 6.2 of the Zoning Ordinance.

3. Site Landscaping, Screening and Lighting

Standards for site landscaping and lighting are set forth in Division 6.4 of the Zoning Ordinance, and the standards for screening are set forth in Division 6.5. The stated intent of Division 6.4 is "*to preserve property values, preserve and strengthen the character of communities, and improve water and air quality.*" §59.6.4.1. The stated intent of Division 6.5 is "*to ensure appropriate screening between different building types and uses.*" Zoning Ordinance

§59.6.5.1. These site screening and landscaping requirements are in addition to those that apply to screening and landscaping of parking facilities discussed above.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

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

By its own terms (in §59.6.4.2), Division 6.4 does not apply to existing, unmodified lighting:

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

Conclusion: As previously discussed, the only new lighting or modified lighting on the subject site will be the addition of low level lighting along the new pedestrian walkway, as required by Technical Staff's recommendation and the Hearing Examiner's conditions. The Applicant indicates that the new lights will be ground solar lighting so as to not disturb the neighbors. Tr.

28. Technical Staff reports that (Exhibit 40, pp. 19-20):

The existing lighting located above the garage door, adjacent to the front door and rear doors will remain. The existing lighting is residential in nature and will not create a problem with illumination on abutting properties. The applicant is proposing a new path leading from the parking area in the front yard through the rear yard and to the entrance of the child day care facility. Staff recommends a development condition that ample low-level lighting be installed along this path to provide safe pedestrian access to the child day care facility for parents, children and employees.

Based on this record, the Hearing Examiner finds that the existing and proposed lighting are compliant with the requirements of Division 6.4, regarding lighting.

b. Site Screening and Landscaping

The issues of site landscaping and screening are more complicated than the lighting issues. The provisions of Division 6.4 are mostly general and definitional; however, the provisions of Division 6.5 are very specific. Zoning Ordinance §59.6.5.2.B. provides:

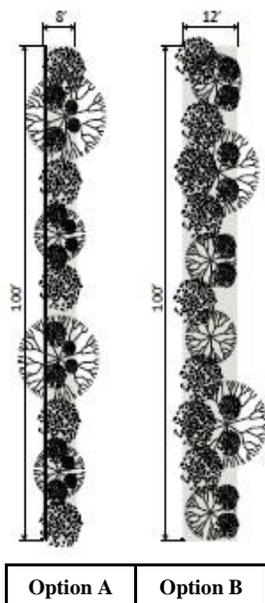
In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type must provide screening under Section 6.5.3 if the subject lot abuts property in an Agricultural, Rural Residential, or Residential Detached zone that is vacant or improved with an agricultural or residential use.

1. The conditional use standards under Article 59-3 may exempt the development from this requirement.

2. The Hearing Examiner may increase the amount of screening required for conditional use approval under Section 7.3.1. [Emphasis added.]

Turning to the requirements of Section 6.5.3., referenced in the above-quoted section, the subject site is covered by Subsection 6.5.3.C.7., which provides:

7. General Building with a Non-Industrial Use; Conditional Use in the Agricultural, Rural Residential, or Residential Detached Zones; and Conditional Use in a Detached House or Duplex in Any Other Zone



	Option A	Option B
Dimensions (min)		
Depth	8'	12'
Planting and Screening Requirements		
Trees (minimum per 100')		
Canopy	2	2
Understory or Evergreen	2	4
Shrubs (minimum per 100')		
Large	6	8
Medium	8	12
Small	8	--
Wall, Fence or Berm (min)	4' fence or wall	--

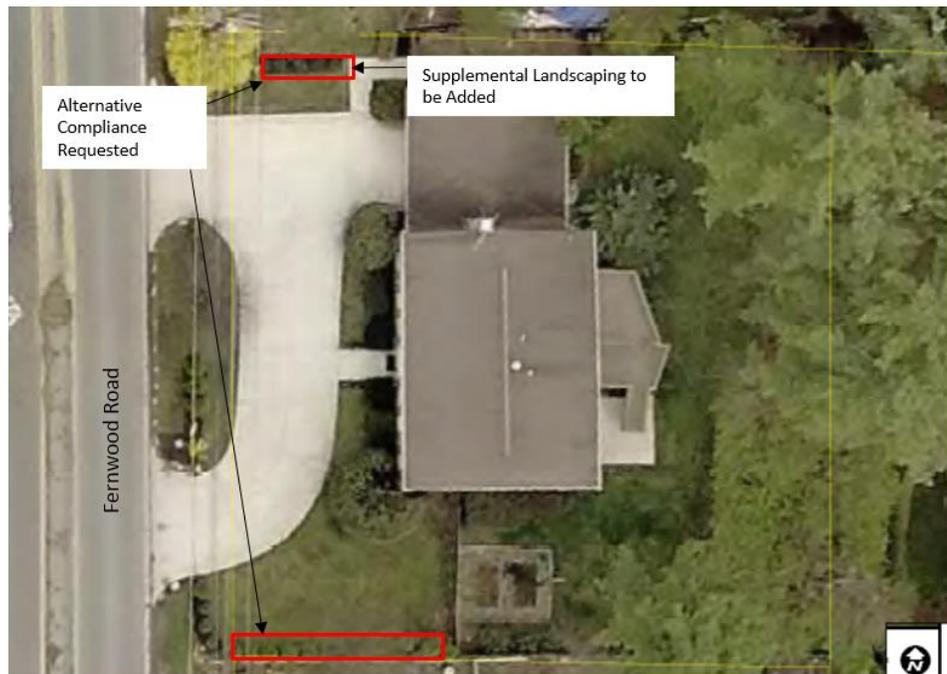
As is apparent, Section 6.5.3.C.7. gives two options, but within those options, the minimums are strictly prescribed by numbers and sizes of trees and shrubs. Because of the

difficulties in meeting the minimum requirements, the Applicant requested that the landscaping and screening be evaluated under the “Alternative Compliance” provision (§59.6.8.1). Technical Staff did so, and observed (Exhibit 40, p. 20-21):

The rear property line and portions of the side property lines are enclosed with six-foot high board-on-board fence. Aerial photos of the property show healthy landscaping inside the rear yard and along all fence lines. The screening requirement has been satisfied for the rear property line and portions of the side property line.

However, the conditional use does not meet the minimum depth for planting requirements of Section 6.5.3.C.7, along the remaining portions of northern and southern (side) property lines. Therefore, Alternative Compliance is needed along these property lines.

The existing landscaping on the site and the areas suggested for Alternative Compliance are shown below in an aerial photograph of the site provided by Staff (Exhibit 40, p. 22).



Technical Staff further described the areas where Alternative Compliance was called for (Exhibit 40, pp. 21-22):

Along the southern lot line, landscaping of evergreen trees in excess of 10 feet high are planted. Although, the planting strip is not the required 8-foot depth, this existing landscaping more than adequately screens the conditional use from the residential property to the south. Thus, Staff supports the Alternative Compliance request for not meeting the full 8-foot planting strip along this southern lot line.

A planting strip of 8 feet in width is required along the northern lot line. Presently, there exists a hedge . . . less than 8 feet wide in this location. The applicant is requesting Alternative Compliance to meet this screening requirement and proposes to supplement the existing landscaping with three additional shrubs. Since the entire driveway, access points and drive aisles will be widened to accommodate safer on-site vehicular and pedestrian movements for the conditional use, the full 8-foot planting strip along the northern lot line could adversely affect vehicular and pedestrian movements. Staff supports the Applicant's proposal for supplemental landscaping and Alternative Compliance in this location.

Alternative Compliance under Section 59.6.8.1 appears to be amply warranted; however, the Hearing Examiner need not reach that issue because it is clear from Technical Staff findings and from the extensive screening demonstrated on the above aerial photograph of the site that strict compliance with the landscaping provisions of Section 6.5.3.C.7 is not needed to ensure compatibility with the surrounding neighborhood. Under the terms of Section 59.7.3.1.E.1.b., the Hearing Examiner need only find that the proposed use meets applicable general requirements under Article 59-6 "to the extent the Hearing Examiner finds necessary to ensure compatibility. . ."

The Hearing Examiner finds that the site landscaping and screening, which includes existing trees, shrubs and an existing six-foot tall board-on-board fence, as well as additional landscaping to be provided by the Applicant, will ensure compatibility with the surrounding neighborhood and thus will meet the requirements of the Zoning Ordinance.

4. Signage

The use of signage is governed by Division 6.7. Zoning Ordinance §59.6.7.8.A.1 sets the standards for signs in Residential Zones:

A. Base Sign Area

The maximum total area of all permanent signs on a lot or parcel in a Residential zone is 2 square feet, unless additional area is permitted under Division 6.7.

1. Freestanding Sign

- a. One freestanding sign is allowed.*
- b. The minimum setback for a sign is 5 feet from the property line.*
- c. The maximum height of the sign is 5 feet.*
- d. Illumination is prohibited.*

Conclusion: The Applicant proposed a freestanding, unilluminated sign to be located in front of the house within the perimeter planting area between the two existing access points. The sign would have two faces, and each face would be about 1 foot by 2 feet. The sign would be mounted to a wooden post at most 4 feet in height. The Applicant included an example of what she intends in her Amended Statement (Exhibit 35(a)(i), p. 5), and it is reproduced on page 15 of this Report and Decision.

The signage issue in this case is somewhat unusual in that the Applicant proposes to place the sign within the perimeter planting area, which Technical Staff reports is entirely contained in the Fernwood Road right-of-way (*i.e.*, on public land, not on the Applicant's property). Exhibit 40, p. 23. Signs in the Public right-of-way are governed by Zoning Ordinance §59.6.7.4.F., which provides:

F. Sign in the Public Right-of-Way *A sign in the right-of-way is prohibited, except for the following:*

* * *

- 3. A permanent sign allowed to be located in the public right-of-way in Division [6.7](#), if:*
 - a. the sign is approved by the Sign Review Board; and*
 - b. the appropriate transportation jurisdiction issues a permit after approving the structural adequacy, physical location, sight distance, pedestrian access, and other safety characteristics of the sign.*

Thus, before the Applicant can obtain a sign permit, she will have to get approval from the Sign Review Board and “*the appropriate transportation jurisdiction,*” which in this case is presumably the Montgomery County Department of Transportation (MCDOT). As to the fitness of the sign to be in a residential neighborhood, the Hearing Examiner finds that the size and description of the proposed sign is compatible with the neighborhood, though the total surface area of the two-sided sign would appear to exceed the area limitations of the Zoning Ordinance for signs in residential zones. A condition is imposed in Part IV of this Report and Decision which will require the Applicant to obtain approval from MCDOT and the Sign Review Board of the Department of Permitting Services (DPS) in order to get a sign permit. If a permit is obtained, the Applicant should file a copy of the permit with OZAH.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

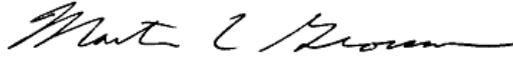
Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Hannah Weiser (CU 16-07), for a conditional use under Section 59.3.4.4.E. of the Zoning Ordinance, to operate a child day care center for up to 15 children in her home at 9205 Fernwood Road in Bethesda, Maryland, is hereby **GRANTED**, subject to the following conditions:

1. The day care facility is limited to 15 non-resident children in the Applicant’s care and 4 non-resident employees on site at any one time. A five-minute overlap is allowed in staff presence on the site so that children are always fully attended when there is a changeover in staff. All children must be under the direct supervision of a staff member at all times.
2. The hours of operation are Monday through Friday from 7:00 a.m. to 7:00 p.m.
3. No more than 10 children are permitted to play outdoors at any one time.

4. Outside play time may not start prior to 9:00 a.m. and may not extend beyond 5:00 p.m.
5. Four on-site parking spaces must be provided for non-resident employees.
6. The Applicant must supplement the existing landscaping along the northern lot line in the front yard with three additional shrubs.
7. The applicant must provide one long-term weather-protected bicycle parking space on site. The bicycle parking space may be located in Applicant's garage.
8. The applicant shall enter into an agreement with each parent to specify an assigned arrival and departure time for each child so that no more than two vehicles are:
 - a. arriving within any 15-minute time period between 7:00 a.m. and 10:00 a.m., or
 - b. departing within any 15-minute time period between 4:15 p.m. and 7:00 p.m.The agreement shall also require that all vehicles exiting the site are limited to a right turn only onto Fernwood Road during the hours of operation for the child day care facility.
9. The Applicant must construct and maintain a hard surface pedestrian path between the parking area and the entrance to the child day care center located at the rear of the existing dwelling unit, as shown on the final site plan.
10. The Applicant must install low-level lighting along the new pedestrian path to ensure safe pedestrian movements on site.
11. The Applicant must install a gate in the existing fence to connect the proposed pedestrian path to the entrance of the conditional use.
12. The Applicant must upgrade the existing driveway as follows:
 - a. Widen both driveway access points to a standard 20-foot width.
 - b. Widen the driveway, between the northern driveway access point and garage, to a minimum width of 18 feet to accommodate two standard (8.5' x 18') parking spaces.
 - c. Widen the semi-circular portion of the driveway to a minimum width of 18 feet to accommodate two seven-foot wide parallel parking spaces along the east side of the circular driveway and one 10-foot wide travel/ loading lane along western side of the driveway.
 - d. Mark each individual parking and loading space to provide for orderly and safe on-site vehicular movements. Full striping of the spaces is not required in order to maintain a residential appearance. A pavement marking color similar to the driveway color may be used, as long as it is clearly visible to the person parking in the space and to others viewing it next to the space.
13. The existing driveway must be signed and restricted to one-way (counter-clockwise movement) operation where traffic enters the site via the southern driveway entrance (inbound right-turn only) and exits the site via the northern driveway entrance (outbound right turn only). Driveway signage must be approved by the Montgomery County Department of Permitting Services.

14. Before erecting any permanent sign, the Applicant must obtain approval from the Montgomery County Department of Transportation (MCDOT) and the Sign Review Board of the Department of Permitting Services (DPS) in order to get a sign permit. If a permit is obtained, the Applicant must file a copy of the permit with OZAH.
15. The Applicant must make written inquiry to the Department of Permitting Services (DPS) as to whether DPS requires a permit for erosion, sediment control and stormwater management for the type of land disturbance activity proposed for this conditional use. If DPS indicates that such a permit is required, the Applicant must obtain such a permit prior to conducting the land-disturbing activity.
16. The Applicant must comply with and satisfy all applicable State and County requirements for operating a Child Day Care Center, and correct any deficiencies found in any government inspection.
17. Children must be accompanied by an adult to and from the child-care entrance.
18. The Applicant shall not use a public address system of any kind outside the building, nor shall any amplified music be played outside the building.
19. The Applicant shall maintain the grounds in a clean condition, free from debris, on a daily basis.
20. The Applicant must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicant shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.
21. Waivers of the following provisions of Division 6.2 are hereby granted pursuant to Zoning Ordinance §59.6.2.10:
 - from Section 59.6.2.5.D.1, modifying the requirement for striping and marking of off-street parking spaces to instead require marking in accordance with Condition No. 12.d, above;
 - from Section 59.6.2.5 K 2.b. reducing the minimum side yard setback along the northern lot line for the parking facility to 7 feet, instead of 16 feet; and
 - from Section 59.6.2.9.B.1.a., b., and c., allowing the parking lot landscaping to be in accordance with the revised landscape and lighting plan (Exhibit 48(b)).
22. The Applicant shall be bound by all of her testimony and exhibits of record, and by the testimony of her witnesses identified in this Report and Decision.

Issued this 8th day of July, 2016.



Martin L. Grossman
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals, in writing, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

NOTICES TO:

Hannah Weiser
Leah Hanlon
Robin Rice
Barbara Jay, Executive Director
Montgomery County Board of Appeals
Kathleen Reilly, Planning Department