

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:

Teresita C. Hernandez

Applicant

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OZAH Case No. CU 24-16

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Before: Khandikile Mvunga Sokoni, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On May 22, 2024 the Applicant, Teresita C. Hernandez, filed an application seeking approval of a conditional use to operate a Child Care Center for up to 30 children in her home at 2801 Randolph Road, Silver Spring, Maryland. Ms. Hernandez subsequently amended her application to reduce the number of children from 30 to 18. The Subject Site is Lot 18, Block 16 of the Glenmont Village Subdivision, with Tax ID No. 13-01253464 (Exhibit 1). The Site is zoned R-60, and a conditional use is required for a childcare facility of this size in the R-60 Zone. The Applicant co-owns the property with Rafael D. Hernandez. (Exhibit 4). The Applicant has been operating “the Growing Angels Family Day Care” since 2016.

Ms. Hernandez started out with 8 children in her day care but in 2018, she sought to expand the number of children in her care from 8 to 15, pursuant to conditional use Case Number 18-10, for a Day Care Center (13 - 30 Persons) under Section 59.3.4.4.E. of the Zoning Ordinance¹. The breakdown of differing day care facilities under the 2014 Zoning Ordinance is similar to that which existed under the old Zoning Ordinance, except the Day Care Center category is now broken down into two categories – one for 13 - 30 Persons (the kind of conditional use sought here) and one for over 30 Persons. Although the prior Conditional Use authorized up to 15 children, she was only licensed for 12. (Exhibit 22 p.9).

Ms. Hernandez now seeks to further increase the number of children allowed in her daycare to 18.² The record contains six letters of support: Two are from neighbors who both described the daycare as a positive and valuable part of their neighborhood, and four letters are from parents whose children attend or have attended the daycare. (Exhibits 4 and 26). There has been no opposition to this application. The Applicant provided an affidavit of posting confirming that a notice had been and remains posted on the property alerting the public about this pending application. (Exhibit 25).

On September 3, 2024, the Office of Zoning and Administrative Hearings (OZAH) issued a notice that the public hearing would be held before the Hearing Examiner on October 17, 2024, at 9:30 a.m., in the Second Floor Hearing Room of the Stella B. Werner Council Office Building (Ex. 15). That public hearing was rescheduled at Applicant’s request. On October 1, 2024 OZAH received an email communication from Planning Staff explaining that the Applicant was requesting an extension in order to address additional technical issues and to continue coordinating with Planning. (Exhibit 16). This was followed by an email from Mr. Pablo Barrios of Harvest Title and Escrow LLC who was assisting Ms. Hernandez with the application explaining that she needed a two-month postponement of the hearing for the reasons explained by Planning and also requesting to amend the application to reduce the number of children from 30 to 18. (Exhibit 17). OZAH issued a Notice of Rescheduled Hearing (Exhibit 18) setting a new hearing date for January 9, 2025, and a Notice of Motion to Amend (Exhibit 19). An additional Notice of Motion to Amend

¹ Unless otherwise noted, all citations to the Zoning Ordinance in this Decision are to the 2014 Zoning

² Ordinance for Montgomery County, adopted September 30, 2014 (Ordinance No. 17-52), as amended. There are four types of “Day Care Facilities” defined in Zoning Ordinance §59.3.4.4. – “Family Day Cares (Up to 12 Persons)”; “Day Care Center (13-30 Persons)”; and “Day Care Centers (Over 30 Persons).”

was issued on December 10, 2024 to include Applicant's request for a parking waiver. (Exhibit 21). The virtual public hearing was held via Teams on January 9, 2025.

The Technical Staff of the Maryland-National Capital Park and Planning Commission ("Technical Staff" or "Staff") reviewed the application and, in a report dated December 19, 2024, recommended approval with conditions (Exhibit 22). Additionally, the Staff also recommended approval of a parking waiver.

At the hearing on January 9, 2025, present were the Applicant Teresita C. Hernandez, who appeared *pro se*, her husband Rafael D. Hernandez and Mr. Pablo Barrios. Although Mr. Hernandez did not testify under oath he expressed support for his wife's application. Ms. Hernandez testified in support of her application and explained that since she started her day care she has seen an increase in demand for her services hence her desire to expand. T.18.³ She also explained how the staggered drop off and pick up schedules works to mitigate congestion. (T. 23, 24 and Exhibit 7).

Applicant effectively agreed with and adopted the findings in the Technical Staff report (Exhibits 22 and 24) and agreed to the conditions suggested by the Hearing Examiner⁴, and she submitted an Affidavit of Posting (Exhibit 25). The record was held open until January 23, 2025, to receive the Transcript of the hearing and letters of support from neighbors that Applicant believed she had submitted but were not in the Record.

There is no opposition in this case, and the application meets all the standards for approval of the conditional use set forth in the Zoning Ordinance. The Hearing Examiner has therefore granted the application, with the conditions imposed in Part IV of this Report and Decision.

II. FACTUAL BACKGROUND

A. SUBJECT PROPERTY AND SURROUNDING NEIGHBORHOOD

The subject site is located at 2801 Randolph Road, Silver Spring, Maryland. The legal description of the property is Lot 18, Block 16 of the Glenmont Village Subdivision, and it is zoned R-60. The location of the property can be seen on the on an aerial depiction provided by Technical Staff (Exhibit 22, p. 8), and reproduced below:

³ In this Report and Decision references to the Transcript are denoted with T.__(page number)



Figure 3: Subject Property (outlined in red)

The property is well described by Technical Staff (Exhibit 22, p. 7):

The Applicant's Property is Lot 18, Block 16 of the Glenmont Village subdivision, located at 2801 Randolph Road, Silver Spring (Property or Site). The Site is a corner lot. The Petitioner's house originally contained 1,268 square feet of living area above grade but is currently 2,034 square feet from a past expansion. The Subject Property has a basement and attic storage but does not have a garage or carport. There is a shed in the back yard. An existing asphalt and concrete driveway is located on the southeast side of the house with curb cut access onto Terrapin Road (Figure 2). The driveway is approximately 52 feet long by 47 feet wide and is double-wide by design. Parking spaces are striped with one (1) ADA space and six (6) angled spaces. These parking spaces are used by both the residents and the daycare patrons. A lead-in sidewalk from Randolph Road connects to the front door of the house. (*Id.*)

Along the Property's southwest edge at Randolph Road there is a retaining wall that wraps around the street frontage. The lead-in concrete sidewalk separates the retaining wall into two segments. Along the top of the wall on Randolph Road, there is a vinyl picket fence that encloses the outdoor play area. In all, there are three (3) retaining walls on the Subject Property. Two of the retaining walls are in the front yard and the third wall is along the Property's north property line and at an edge of the driveway. The sidewalk on Randolph Road is at a lower elevation than the area of the front yard behind the retaining wall (an approximately four-foot difference). A street light is in the Randolph Road right-of-way in front of the Petitioner's Property. (*Id.* p 7).

In response to an inquiry for clarification from the Hearing Examiner on the exact square footage of the subject premises and what portion is dedicated to the daycare use, Applicant's architect provided to Staff on January 7, 2025 a clarification that the total gross floor area for the Property is 2,667.15 square feet of which 1,917.15 square feet are dedicated to the daycare use. (Exhibit 24).

According to the Staff report, during the review of the 2018 Conditional Use Application (No. CU201810) Staff identified one special exception approval within the Staff-defined neighborhood, an accessory apartment, S1500 located at 2507 Randolph Road, (0.4 miles east of the Subject Property) which was approved on November 21, 1987. There are two additional Conditional Uses within the boundaries of the modified Staff-defined Neighborhood – these include an accessory apartment and a home day care. No new conditional uses have been approved within the modified neighborhood boundary since the Petitioner's prior application in 2018.



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

Above is the staff-delineated neighborhood as determined Technical Staff in the present Application CU 24-16. It is to be expanded from the previous staff-delineated neighborhood in the prior Application CU 18-10 which is shown below:



Figure 2: Staff-defined Neighborhood

The Property is located at the intersection of Randolph Road and Terrapin Road. Randolph Road is a six-lane divided major highway with a grass median. Terrapin Road is a tertiary residential street with a 50-foot wide right-of-way. This segment of Randolph Road has a posted speed limit of 35 miles per hour. Motorists travelling west bound on Randolph Road make a right turn on to Terrapin Road and motorists travelling southwest on Terrapin Road make a right-turn only onto Randolph Road. Four-foot wide concrete sidewalks are located on both sides of Randolph Road and Terrapin Road. There is on-street parking on Terrapin Road on the opposite side of the street from the Property. A stop sign on Terrapin Road is located at the corner of the intersection of Terrapin Road and Randolph Road and is directly in front of the Property.

To determine the compatibility of the proposed use with the surrounding area, Staff delineated the neighborhood area that will be most directly impacted by the proposed use. Since the 2018 Conditional Use application (No. CU201810), the Staff-defined Neighborhood has been moderately expanded to include additional portions of Glenmont Village along major defining features. The new Staff-defined Neighborhood is generally bounded by Urbana Drive to the north and northwest, Lindell Road to the south, and Georgia Avenue to the east (Figure 1). The southern boundary has been redefined as Lindell Road because it aligns with the boundaries identified as the Glenmont core in the Sector Plan and areas north of Lindell Road encompass the Glenmont Village neighborhood. Areas south of Lindell Road are associated with the abutting Weisman subdivision. The new Staff-defined Neighborhood now includes the row of single-family detached homes to the east that are within a block of Georgia Avenue (MD 97) and the Glenmont Greenway Urban Park. As a major road, Georgia Avenue serves as the eastern boundary for the neighborhood. Urbana Drive remains the northern boundary as areas further north are recognized as Glenmont

Hills. The updated Staff-defined Neighborhood has similar defining features and captures nearby neighborhood-serving uses such as the above noted Urban Park and the Glenmont Fire Station. The Neighborhood is composed primarily of small lots with single-family detached homes. The greater neighborhood is served by various civic and institutional uses and parks located outside of the boundary including the Glenmont Local Park, Wheaton High School, Thomas Edison High School of Technology, and the Weller Road Elementary School. (Exhibit 22 p. 5).

B. SITE PLAN, LANDSCAPING, LIGHTING, SIGNAGE AND PROPOSE USE

The Applicant and her spouse live on the Property but the majority of the residence is used for the day care center. Parents and children enter and exit the day care center through a back door on the north side of the residence facing Terrapin Road. An outdoor play area is located on the west/southwest sides of the Property with approximate dimensions of 45 feet long by 43 feet wide. Most of the outdoor play area is located along the west side of the residence with a portion of it in the front yard at the southwest side, along Randolph Road. The play area is enclosed with an approximately four-foot high, vinyl picket fence.

The Site does not contain any protected environmental features and is not within a Special Protection Area.

Applicant submitted a Location Drawing (Exhibit 10)⁵ and photographic images of the street-view of the Subject Premises (Exhibit 22, p.14, 15) which are reproduced on the next pages:

⁵ There was no separate exhibit in this record identified as a site plan. However, the Hearing Examiner is treating this Exhibit as depicting a site plan for purposes of this application.





Figure 7: Front View of the Subject Property⁵ (from Randolph Road)



Figure 8: Side View of the Subject Property⁶ (from Terrapin Road)

According to the Staff Report the Applicant removed the gazebo in the front yard shown in Figure 7 during the review of this Application to address comments by the Department of Permitting Services (DPS), and she also removed this front yard landscaping shown in Figure 8 that is located atop the retaining wall during the review of this Application to address DPS comments. (Exhibit 22 p. 14). With the exception of a front porch addition, the Petitioner is not proposing any changes to the building footprint, landscape/screening, or the existing daycare signage that is located in the front yard.



Figure 9: View of on-site parking in the driveway (from Terrapin Road)

As shown in Figure 4 in the Staff Report, except for upgrading the existing covered front entrance with a new porch (approximately 4 feet by 22 feet), the Applicant is not proposing any physical changes to the footprint of the home or the outdoor recreation space. (Exhibit 22 p. 10). The Applicant proposes interior modifications to the first floor of the home that will optimize the space and enhance the proposed day care expansion by removing and/or adjusting interior walls (as shown in Figure 6). These interior modifications are not part of the subject Conditional Use application and will require review by both the Department of Permitting Services and applicable State of Maryland licensing agencies. (*Id.*)

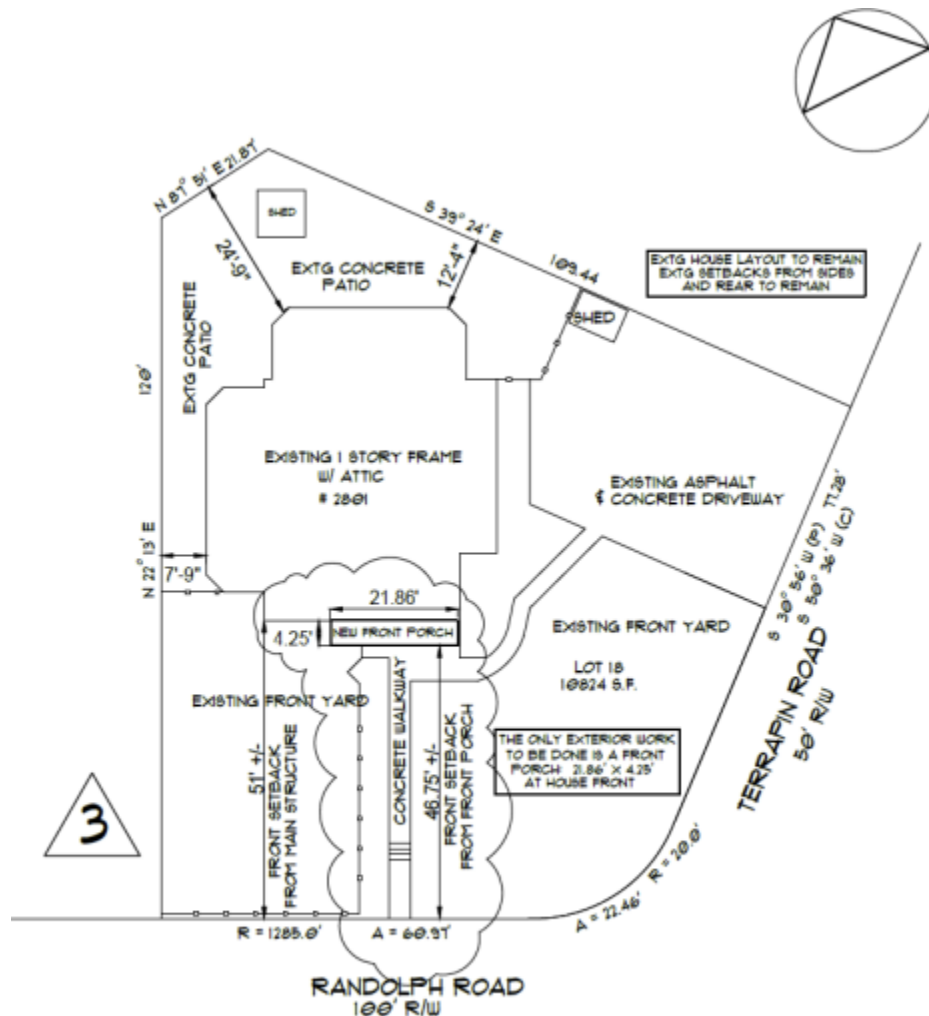


Figure 4: Existing Site Conditions with Proposed Porch Conversion

C. OPERATIONAL CHARACTERISTICS

To assist with the additional children, the Applicant proposes a total of five (5) employees (including the Owner(s)/Director(s)). She proposes that the employees will use a variety of transportation options to commute to the property including transit services, on-street parking along Terrapin Road and Sheraton Street, and the Glenmont Metro parking garage on the west side of Georgia Avenue. While running the existing 12-person daycare center, the home occupants currently use the off-street parking in the driveway.

Weather permitting, the children will play outside during designated outdoor play hours, which will typically occur from 9:00 a.m. to 10:00 a.m. and from 3:30 p.m. to 5:00 p.m. daily for all age groups - infants, toddlers, and preschoolers, and school aged children. (Exhibit 9). The prior approval of Conditional Use CU 18-10 had a condition that restricted outdoor play time to a specific window of time. This Hearing Examiner asked Staff how they viewed setting a condition

for specific hours of outdoor play time for the children of the day care. Staff responded that in the past, the Planning Department has provided a standard recommendation to limit outside playtime hours and that Staff's current practice has moved away from recommending limits on outdoor activities for children due to the importance of time outside and the inflexibility imposed on lesson planning. (Exhibit 24).

The current hours of operation, Monday through Friday, from 7:00 a.m. to 6:00 p.m., will remain the same under the proposed Conditional Use. Parent and/or guardian drop-offs will take place in a staggered pattern between the hours of 7:00 a.m. and 9:00 a.m. and pick-up will typically occur between 4:00 p.m. and 6:00 p.m. As conditioned in the Petitioner's prior Conditional Use Application No. CU201810, parent and/or guardian drop-offs are not permitted to use Randolph Road due to its "no parking" restrictions. There is on-street parking available further along Terrapin Road, where there are no parking restrictions, to serve the expanded Conditional Use. There is off-street parking on the Property's driveway. A discussion of parking count is provided below in the Analysis section.

The Applicant proposes to continue her use of a parental agreement (Attachment E) for new families enrolling in the day care center, which directs patrons to access the Site by traveling eastbound on Sheraton Street and then turning southbound onto Terrapin Road. Although Terrapin Road is two-way, patrons are discouraged from approaching the Site from Randolph Road. Current families enrolled in the existing day care have each signed this agreement. The Planning Department and the Montgomery County Department of Transportation (MCDOT) note some concerns about parking, circulation, and queueing of vehicles, which is further discussed under the Findings & Analysis section of the report.

While parents are welcome to talk to her any time over the phone or by text or email, Ms. Hernandez explained that she has policy that requires parents to make an after-hours appointment if they wish to have an in-person meeting with her for non-emergency matters in order to minimize traffic and parking congestion that might be caused by impromptu pop-ins by parents. (T.37).

The Applicant uses a staggered schedule for drop-off and pick-up time(s) so parents do not arrive/depart at the same time T. 38. Photos of the exterior of the Applicant's residence show the existing parking spaces in the driveway. The outdoor play area and the main entrance to the residence are shown in existing conditions diagrams above. Noise from the outdoor play area is anticipated when children use it during two scheduled outdoor play times, weather-permitting. Play times are scheduled from 10:30 a.m. to 11:30 a.m., and 4:00 p.m. to 5:00 p.m., with adult supervision. (Exhibit 9). The Applicant has two non-residential employees and will hire a third non-residential employee after approval of the request.

Ms. Hernandez submitted both an existing floor plan (Exhibit 11) and a proposed floor plan (Exhibit 12).

Transportation Statement for Day Care

The parking configuration proposed by Staff is shown below:



Figure 11: Planning Staff's Proposed Parking Arrangement

Ms. Hernandez submitted a Transportation Statement for Day Care Applications showing the number of children and non-resident staff that are scheduled to arrive during the morning peak hours (6:30 AM to 9:30 AM)⁶ broken down in 15-minute segments.

The Hearing Examiner has imposed the following condition in Part IV of this Report and Decision:

- “6. The Applicant must schedule staggered employee arrivals and staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period.
- “8. The Applicant must issue a Parental Agreement to all enrollees that provides details for parking, the preferred circulation route to the day care center, and requirement for staggered arrivals and departures per fifteen (15)-minute intervals.”

Staff opined that the current striping with seven (7) spaces is undersized to function safely and efficiently for non-residential operations and the ADA space designated by the Petitioner does not meet accessibility standards. As conditioned, the Applicant must, within twelve months of the approval, remove the existing non-Code compliant paint striping for the vehicle parking spaces in the driveway.

⁶ As noted earlier Ms. Hernandez's hours of operation are 7:00 AM to 6:00 PM)

Another consideration for reevaluating the vehicle parking count is that the previous Conditional Use Application No. CU201810 certified that the driveway was larger at 61 feet long by 51 feet wide (3,111 sq. ft.). This driveway figure has been revised in the Applicant's current application statement and Staff through measuring concurs with the smaller driveway dimension of approximately 52 feet long by approximately 47 feet wide (2,444 sq. ft.). Therefore, only six (6) of the required parking spaces can be accommodated within the Property's existing driveway. Some of the parking spaces for the day care use and all of the non-resident employees will need to be accommodated on-street along the abutting or surrounding roads (not including Randolph Road) or reduced due to transit usage. (Exhibit 22, p. 20-21).

This readjustment or re-determination of the existing on-site vehicle parking creates necessary space for children and other pedestrians to walk safely from each parking space to the building entrance, as shown in Figure 11 with Planning Staff's recommended parking arrangement.

The Hearing Examiner agrees with this recommendation and has imposed the following condition:

- "3. The Applicant must, within 12 months of this approval, remove the existing non-code compliant paint striping for vehicle parking spaces in the driveway."

These conditions should enhance safe ingress and egress for families dropping off and picking up their children, while minimizing adverse impacts on the neighbors.

According to Staff, the Applicant proposes to continue her use of a parental agreement for new families enrolling in the day care center, which directs patrons to access the Site by traveling eastbound on Sheraton Street and then turn southbound onto Terrapin Road. (*Id.* Attachment E). Although Terrapin Road is two-way, patrons are discouraged from approaching the Site from Randolph Road. Current families enrolled in the existing day care have each signed this agreement.

D. COMMUNITY REACTION

There has been no opposition to the present conditional use application. On the contrary, as noted earlier in this Report and Decision, the record contains six letters of support: Two are from neighbors who both described the daycare as a positive and valuable part of their neighborhood, and four letters are from parents whose children attend or have attended the daycare. (Exhibits 4 and 26).

E. The Environment

There are no environmental issues because there will be no exterior changes. A Forest Conservation Exemption is in the record as Exhibit 6. As stated by Staff (Exhibit 22, p. 7):

The Property contains no forest, streams or their buffers, 100-year floodplains, steep slopes, or known habitats of rare, threatened or endangered species. This application is not subject to Chapter 22A, the Forest Conservation Law as the Site is less than 40,000 square feet in size.

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 18 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 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 below⁷:

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: The Hearing Examiner is satisfied that the Applicant is currently in compliance with the prior existing Conditional Use CU 18-10. Technical Staff recommended a condition that if this conditional use is approved, Applicant must abandon the prior Conditional Use approved under Case CU 18-10. The Hearing Examiner is imposing a condition that in connection with this approval the prior approval of Conditional Use CU 28-10 must be abandoned by Applicant. Therefore, the Hearing Examiner finds that this provision is satisfied.

*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;*⁸

Conclusion: This subsection requires an analysis of the standards of the R-60 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 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,

⁷ 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.

⁸ 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).

as did Technical Staff (Exhibit 22, pp. 8-12), 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 site is within the area covered by the 2013 Glenmont Sector Plan. Technical Staff reports that the Sector Plan does not specifically discuss the subject site but recommends providing daycare centers in the area. As stated by Staff (Exhibit 22, pp. 26, 27):

The Property is inside the 2013 Glenmont Sector Plan area. The Sector Plan does not discuss the Property in terms of specific land use recommendations; however, it does have Goals and Guiding Principles, which recommend, "...providing adequate community facilities, such as parks, community spaces, schools, and daycare centers for children and adults" (Sector Plan page 18). Furthermore, the Sector Plan recommends retaining zoning and preserving the existing neighborhoods surrounding the Glenmont core.

The Applicant's proposal conforms to the general recommendations, goals and guiding principles of the Sector Plan because it represents a continuation of the use of the house as a primary residence, while providing a day care center as a conditional use.

One of the principles stated in the Sector Plan is to:

"Maintain and support a wide choice of housing types and neighborhoods by providing adequate community facilities, such as parks, community spaces, schools, and daycare centers for children and adults." Another guiding principle states to "Improve connectivity by balancing the Community's desire for creating a place for local residents with the needs of through traffic" (page 18). Additionally, the Sector Plan recommends retaining zoning and preserving the existing neighborhoods surrounding the Glenmont core which centers on the Metro station.

The Property will retain its single-family residential zoning and its residential character. It is not undergoing any substantial exterior changes that would indicate a change in enrollment. With respect to transportation goals, the agency recommendations for this Proposal prioritizes the circulation needs of the community by minimizing any adverse traffic conditions on or nearby Randolph Road. Recognizing Randolph Road as a major transportation corridor through the plan area, the conditions of approval will help alleviate any backups onto this roadway and comply with parking restrictions.

Continuance of the staggered drop-offs and enforcement of the Parental Agreements contribute to the day care traffic patterns operating in a way that respects the residential nature of the community and the nearby parking restrictions, as envisioned by the Sector Plan. The Petitioner's Proposal addresses the general recommendations, goals and guiding principles and is therefore in substantial conformance with the Plan.

Conclusion: Considering the quoted language from the Sector Plan and Staff's discussion, the Hearing Examiner finds that the proposed use substantially conforms with the objectives and recommendations of the 2013 Glenmont Sector 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 22, p. 26):

No physical changes are proposed on the Property except for the front porch reconstruction. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood. The Hearing Examiner agrees with Technical Staff and 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 except for the reconstruction of the front porch, no additional external modifications to the building 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;

According to Technical Staff, in addition to the Subject Property, there are three (3) previously approved conditional uses, dating back many years, within the Staff-defined Neighborhood, as outlined in Table 1. The Subject Application is not adding a new use and will not increase the number of conditional uses in the Staff-defined Neighborhood. The existing day care center has been operating on the Property since 2018 and the recommended increase in six (6) additional persons/children is appropriate and reasonable considering the site limitations and surrounding context and to ensure compatibility with the neighborhood. The Applicant is not proposing any physical changes to the Property beyond a small front porch renovation. The proposed day care center expansion, although intensifying the previously approved conditional use, will not adversely affect the area adversely or alter the neighborhood’s predominantly residential nature.

Conclusion: The Hearing Examiner agrees with Technical Staff and 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 additional external modifications to the building are planned except for the minor alteration to the front porch which does not alter the character of the neighborhood.

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; . . .

According to Technical Staff, the application does not require approval of a preliminary plan of subdivision. (Exhibit 22). Therefore, the Hearing Examiner must determine whether the proposed development will be served by adequate public services and facilities. By its nature, a small childcare 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. Technical Staff expressly found that the Subject Property is currently served by public water and sewer, dry utilities including gas, electricity, and telephone, and designed to accommodate fire access. Existing access to the Site is provided via a driveway on Terrapin Road, which will remain and is adequate to accommodate vehicular traffic anticipated by the Day Care Center. The Property is currently served by sidewalks along the frontages of Randolph Road and Terrapin Road. There are adequate public services and facilities to serve the proposed use, and a Preliminary Plan of Subdivision is not required. (*Id.* p. 28)

The Staff Report outlines that there is adequate transit service in close proximity to the property. Two public transit routes operate along the Property's Randolph Road frontage. Ride On route 10 operates along Randolph Road between the Twinbrook Metrorail Station and the Hillandale Station (i.e., at New Hampshire and Powder Mill Road). Metrobus route C8 operates along Randolph Road between the North Bethesda Metrorail Station and the College Park-University of Maryland Metrorail Station. The Glenmont Metrorail Station is approximately 2,400 feet walking distance to the northeast of the Property. (*Id.* p. 29).

The Property is not subject to the Annual Schools Test. The Applicant is not proposing any new residential units with the day care center expansion.

The Property is located within water and sewer categories W-1 and S-1 and is serviced by existing water and sewer. Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted. *Id.* 30).

Parking and Drop-Off/Pick-Up

Per the Parking Table in Section 6.2.4.B of the Zoning Code, the Petitioner is required to provide three (3) spaces per 1,000 square feet of gross floor area (GFA), which equates to six (6) required spaces for the day care use on the Subject Property. The Property contains a driveway, accessed from Terrapin Road with capacity for up to six (6) parked vehicles (as redetermined by Planning Staff in this current Application). Four (4) of the spaces for the day care center and two (2) parking spaces for the resident employees are recommend to be provided in the Subject Property's driveway, as previously illustrated in Figure 11. (*Id.* p. 29)

The parent and/or guardian drop-offs take place in a staggered pattern between the hours of 7:00 a.m. and 9:00 a.m. and pick-up will typically occur between 4:00 p.m. and 6:00 p.m. As previously conditioned by the Hearing Examiner, the existing day care center is limited to scheduling parental drop-off and pick-up to two (2) vehicles every 15-minutes. To minimize impacts to the neighborhood, Planning Staff supports a maximum during scheduled parental drop-off and pick-up to two (2) vehicles every 15-minutes. (*Id.*)

Staff explained in the Technical Report that there is no available space along the Property's dual frontage due to the parking restriction along Randolph Road. Additionally, based on the linear footage of the Terrapin Road frontage and the amount of space needed to accommodate parking and circulation, no parking space can be accommodated at that specific location. There is not enough linear footage to provide a minimum of five feet of clearance on either side of the Terrapin Road driveway, and a minimum of 22 feet for the parallel parking space, and the required minimum of 25 feet from an intersection for safety and clear sightlines.

However, there is adequate, unrestricted on-street parking along surrounding roads on both sides of the street to serve the expanded Conditional Use. Parking accommodation from surrounding roads was previously found acceptable for all non-resident employees by the Hearing Examiner when the use was classified as a Family Day Care. This current Day Care Center application requests the approval of a parking waiver for the two (2) day care spaces that cannot be accommodated on-site. The typical staggered arrangement of the proposed pick-ups/drop-offs with the proposed addition of six (6) persons/children will not demand all six (6) parking spaces at once, based on the Petitioner's revised transportation statement. The provision of four (4) designated day care parking spaces within the driveway can accommodate the Petitioner's expected parking demand and turnover needs.

Ms. Hernandez testified in confirmation of the staff's assessment of parking at and around the premises. T. 37, 38.

Conclusion: The Hearing Examiner agrees with Staff that this finding is satisfied and as discussed further later in this Report and Decision, on this record approval of the parking waiver requested is warranted, and therefore, approved.

Parking and Drop-Off/Pick-Up

Parent drop-off and pick-up trips are proposed at the existing driveway that accommodates up to eight vehicles. Up to three non-resident staff persons will park on Terrapin Road or on the sides of the driveway, leaving room for 2-3 vehicles to maneuver for drop-off and pick-up. Thus, Staff recommends a condition limiting the number of vehicles that can drop-off or pick-up children to two vehicles every 15- minutes, or up to eight times in one-hour intervals as stated in the Applicant's traffic statement.

Local Area Transportation Review (LATR)

The County's 2020-2024 Growth and Infrastructure Policy and the 2023 Local Area Transportation Review (LATR) Guidelines states a transportation study is not required to satisfy the local Area

Transportation Review because the proposed day care center generates fewer than 50 person-trips during the weekday morning or evening peak hours. (Exhibit 22 p. 30).

As previously noted, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision, consistent with the recommendation of Technical Staff⁹, requiring vehicular arrival and departure times for the children to be staggered, through contractual agreement between the operator of the daycare center and the parents, so that a maximum of two vehicles may arrive every 15 minutes to drop off and pick up children. The LATR is satisfied in this case, and the evidence supports the conclusion that the proposed use, as conditioned, will not unduly burden the transportation system. Based on this record, the Hearing Examiner concludes 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 childcare 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 determined that the following physical and operational characteristics are necessarily associated with (i.e., are inherent in) a child day care facility (Exhibit 26, p. 11): (1)

⁹ A similar condition was attached to Conditional Use 18-10 by the Hearing Examiner in that case.

vehicle trips to and from the site; (2) noise from the outdoor play area; and (3) the drop-off and pick-up area. Staff did not identify any non-inherent adverse effects associated with the proposed conditional use.

Staff analyzed the potential impacts on the neighborhood as follows (Exhibit 22, p. 31): Staff determined that the inherent physical and operational characteristics associated with a Day Care Center facility (13-30 persons) include the following key issues when they exceed existing conditions or typical conditions or something is unique about the Property that causes additional impacts: 1) additional vehicular trips to and from the Site; 2) outdoor play areas; 3) noise generated by children; 4) a need for drop-off and pick-up areas; 5) lighting; and 6) screening.

There are no unique circumstances that exacerbate the inherent impacts on this Property compared to other daycares of this size or nature within a single-family home. As previously noted in the preceding LATR section, the trip generation with additional children will remain under the threshold required for a traffic study. While parking is not available along the Property's dual frontage on Randolph and Terrapin Roads due to existing parking restrictions, there is on-street parking along other surrounding adjacent public streets and off-street within the Site's driveway. The contractually-required drop-offs and pick-ups are limited to two (2) vehicles per 15-minute intervals by the conditions of approval to minimize impacts to the neighborhood.

The outdoor play equipment and lawn area in the front yard is adequate for the Proposal, including access to adequate sunlight and air. The morning and afternoon hours designated for outdoor play are not expected to exceed the typical noise levels for outdoor activity. Additionally, the Property has a small portion of the western side yard that can be utilized for small groups to play. There is no anticipation of noise from the proposed use that would be out of character for a residential neighborhood or that would exceed the existing noise generated from Randolph Road.

The existing lighting for both the front and side entrances, front yard, and walkway is adequate for the Proposal. The existing lighting fixtures are residential in nature and do not intrude on neighboring properties.

The Staff Report outlines various screening components that exist on the Property. (*Id.* p. 32). There is an existing wooden fence that rests on top of various retaining walls along the dual frontage and side yards. However, due to the Property's situation as a corner lot there are some limitations to landscape screening for visibility purposes. The outdoor play equipment from this frontage is largely in view from the public. Nevertheless, the outdoor play equipment is of a similar scale for a single-family residence and therefore in keeping with the neighborhood character. Overall, Staff determined that the Proposal is not expected to have inherent effects at this location that exceed typical conditions if the proposal is allowed to increase by six (6) additional persons/children for enrollment, as requested by the Petitioner.

Beyond the inherent impacts, the non-inherent impacts that are not typical but unique is that the Subject Property is situated on a corner lot that fronts onto a 6-lane-wide roadway with no on-street parking. The proximity of the Property's driveway to Randolph Road results in the need to avoid traffic queuing onto Randolph Road. This non-inherent issue is sufficiently addressed through the unique circulation to the Site (as conditioned by the Hearing Examiner in the 2018

application) which requests that patrons do not enter the Property's driveway on Terrapin Street directly from Randolph Road. Further, the inability to park on Randolph Road creates a greater need for off-street parking. According to Staff, this is sufficiently addressed through the Property's sizable driveway that can accommodate up to six (6) vehicles which is atypical in comparison to surrounding properties in the defined neighborhood. Most properties within the neighborhood can only accommodate two (2) off-street parking spaces, which makes the Subject Property uniquely suited for a non-residential use with more vehicle trips and parking needs. Furthermore, one of the Property's non-inherent characteristics, the location along a busy highway, makes it uniquely suited to a more intense daycare use. Overall, Staff determined that these property characteristics and non-inherent impacts justify support for only up to six (6) additional children, which can be safely and reasonably accommodated within the existing circulation protocol and the parking setting for pick-ups and drop-offs.

The Hearing Examiner agrees with Staff's analysis on this finding.

As described in the transportation analysis of this report, the proposal will not significantly impact traffic in the neighborhood. The existing driveway will provide adequate drop-off and pick-up to the Site. No additional play equipment in the outdoor play area or an expansion of the existing play area is proposed. Although the outdoor play activity times that were previously prescribed in CU 18-10 have been dropped as a condition in this Decision, because the outdoor play area is located on a corner lot, only one confronting property (to the northwest) may be impacted by noise generated from the children. No letters in opposition from residents inside the staff-defined neighborhood have been received. The drop-off and pick-up times will be limited and staggered with no more than eight vehicles at the Property in an hour during these designated times, so that parents do not all arrive/depart at the same time. Applicant testified that her policy regarding meetings with parents is that they can reach her via phone call, text or email any time of the day. However, non-emergency in-person meetings need to be scheduled in advance and will occur after hours to avoid congestion from impromptu parent drop ins.

The Hearing Examiner notes that the use of retaining walls on this corner lot may well be considered an "unusual site condition." However, it does not appear on this record that this unusual site condition will cause non-inherent adverse effects. The Hearing Examiner therefore agrees with Staff's conclusion that there are no non-inherent adverse effects at this location. Moreover, the conditions recommended by Technical Staff and adopted, in modified form, 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.

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: There are no proposals to construct any new structures on site, nor to alter the exterior of the existing structure on site. Therefore, this provision is satisfied.

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)

The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval. Per Section 59.3.4.4.D.2. of the Zoning Code, 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. The Application meets all of the requirements for a conditional use with respect to compliance with development standards of the zoning district, Master Plan conformance, adequate public facilities, sufficient parking, and an adequate area for the safe discharge and pick up of children.

Furthermore, the Site is particularly suited for the day care center expansion with respect to the physical attributes of the Property and the surrounding setting. The Property is a detached single-family residence on a corner lot and a large driveway to provide off-street parking for its existing and proposed patrons.

The Property can accommodate four (4) out of six (6) of the required off-street parking spaces specifically for the day care center and two (2) spaces for resident employees. The Property has a dual pedestrian entryway that provides adequate ingress and egress to access the use efficiently. There are no structural elements or design features, existing or proposed, that would detract from a desirable visual environment or would alter the existing aesthetics of the Property and therefore impact the broader aesthetics of the community. The Applicant's proposed reconstruction of the existing covered entryway into a small porch is consistent with architectural features of surrounding properties and customary for residential buildings.

Therefore, consideration of a minimal increase in enrollment would be in alignment with the Site's parking and queuing limitations and is appropriate for safe and efficient movement, but also to maintain the residential character of the Property. As recommended by Staff, the Hearing Examiner is adopting the recommendation to condition approval on Applicant's undertaking to remove the existing angled parking space paint striping.¹⁰ Not only is the existing spacing inadequate for maneuvering, but the parking lot striping detracts from maintaining the residential

¹⁰ As noted earlier the Hearing Examiner has set a time frame of 12 month within which this condition must be met.

character of the lot. Additionally, the paint striping was not a prior condition of approval imposed on the Applicant.

The Hearing Examiner agrees with Staff's opinion that a moderate expansion of the day care center, consistent with Petitioner request for 18 persons, would continue to satisfy requirements for adequate light, air, and open space. Adequate open space is available to disperse outdoor activities and noise typical of such use. Some visual buffering is provided through the existing retaining walls and fences on the Property which provides separation of the proposed expanded educational activities from the abutting and confronting properties. (*Id.* p. 33).

Consistent with Staff's analysis, the Hearing Examiner agrees that the Day Care Center use will not impair the purposes of the R-60 zoning district and will remain compatible with the surrounding residential properties and that approval with conditions for up to 18 people/children in total is justified.

PARKING WAIVER REQUEST

The Staff Report extensively discusses the parking configuration on the property. (Exhibit 22 p. 20). With regard to Parking, Queuing and Loading (59-6.2) Under Division 59.6.2, any change in floor area, capacity, use, or parking design requires recalculation of the parking requirement. There is a requirement for two (2) parking spaces for a single-unit living dwelling unit. Section 59.6.2.4 of the Zoning Ordinance requires Day Care Centers (15-30 persons) to provide three (3) off-street parking spaces per 1,000 square feet of gross floor area. The Property contains approximately 2,000 square feet of living area above grade.

The required parking breakdown is shown in Table 2 in the Staff Report and is reproduced below:

Day Care Center = 6 spaces

Dwelling Unit = 2 spaces

Total On-Site Spaces Required= 8 spaces

In the 2018 Conditional Use application, a total of six (6) vehicle parking spaces were required for the operation of the conditional use and two (2) were required for the residence. All eight (8) of these spaces were allowed to be provided within the driveway. At the time of the prior application, the Applicant did not have the spaces marked and Planning Staff did not require dimensions to illustrate how these eight spaces would be arranged. At that time, the Petitioner stated that two (2) parking spaces for the resident employees would be reserved along the edge of the driveway. Recently, the Petitioner had the driveway striped to clearly delineate each space. According to the Petitioner's submission materials (Figure 10), the Property is said to yield a total of seven (7) spaces, one of which is an ADA space.

Although parking space striping is not required in single-family residential zoning districts¹⁰, it is recognized that the new striping was added by the Petitioner with the intent to provide a visual aid for how the parking and flow of pick-ups and drop-offs would operate. However, based on this new drawing and the request for an increased enrollment, Planning Staff

has determined that the size of the spaces is not functional to support seven (7) parking spaces for needs of pick-up and drop-off.

Upon reviewing the Petitioner's existing angled parking configuration and striping, MCDOT also expressed concerns regarding the lack of space for a drop-off location and the safety of the children and parents walking to the building after patron's park if all seven (7) cars were parked at once (as suggested by the Petitioner). The current striping with seven (7) spaces is undersized to function safely and efficiently for non-residential operations and the ADA space designated by the Petitioner does not meet accessibility standards. As conditioned, the Petitioner must remove the existing non-Code compliant paint striping for the vehicle parking spaces in the driveway.

As discussed above in the section about the section about the Transportation Statement for Day Care, Staff opined that another consideration for reevaluating the vehicle parking count is that the previous Conditional Use Application No. CU201810 certified that the driveway was larger at 61 feet long by 51 feet wide (3,111 sq. ft.). The driveway figure has been revised in the Applicant's current application statement and Staff through measuring concurs with the smaller driveway dimension of approximately 52 feet long by approximately 47 feet wide (2,444 sq. ft.). (Exhibit 22 p).

Therefore, six (6) of the required parking spaces can be accommodated within the Property's existing driveway. Some of the parking spaces for the day care use and all of the non-resident employees will need to be accommodated on-street along the abutting or surrounding roads (not including Randolph Road) or reduced due to transit usage. This readjustment or re-determination of the existing on-site vehicle parking creates necessary space for children and other pedestrians to walk safely from each parking space to the building entrance, as shown in Figure 11 with Planning Staff's recommended parking arrangement, which depiction is reproduced below:



Figure 11: Planning Staff's Proposed Parking Arrangement

The Hearing Examiner agrees that on this record there is adequate alternative off street parking to warrant approval of the parking waiver request presented by the Applicant in support of this Conditional Use.

R-60 Zone Required/Permitted Proposed Standard Method Development

Minimum Lot Area (Section 59.4.4.9.B.1)

6,000 SF

10,824 SF

Maximum Density (Section 59.4.4.9.B.1)

1.63 units (7.26 d/u per acre)

1 unit

Maximum Lot Coverage (Section 59.4.4.9.B.1)

35 percent

Less than 35%

Minimum Front Setback (Section 59.4.4.9.B.2)

25 feet

50 feet

Minimum Side Street Setback (Section 59.4.4.9.B.2)

25 feet

Greater than 25 ft.

Minimum Side Setback (Section 59.4.4.9.B.2)

8 feet

8 feet

Minimum Sum of Side Setbacks (Section 59.4.4.9.B.2)

18 feet

18 feet

Minimum Rear Setback

20 feet

20 feet

**C. USE STANDARDS FOR A CHILD CARE CENTER – 13 TO 30 PERSONS
(§59.3.4.4.D.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.D.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 standards¹¹:

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.

¹¹ ZTA 23-11 enacted some changes to the Day Care Center provisions in the Zoning Ordinance since the last Conditional Use 18-10 was decided.

Conclusion: As discussed previously, the existing parking pad provides an adequate area for the discharge and pick up of children.

Applicant's architect confirmed that based on the definition of Gross Floor Area (GFA), the total gross floor area for the property is 2,667.15 square feet, of which 1,917.15 square feet are dedicated to the daycare use. (Exhibit 24 p. 7).

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: Not applicable. 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-60 Zone involved in this case. Moreover, access to the site for the drop-off and pick up of children has been thoroughly addressed in previous sections.

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

a. Parking Space Requirements

Conclusion: Under Division 59.6.2, any change in floor area, capacity, use, or parking design requires recalculation of the parking requirement. There is a requirement for two (2) parking spaces for a single-unit living dwelling unit. Section 59.6.2.4 of the Zoning Ordinance requires Day Care Centers (15-30 persons) to provide three (3) off-street parking spaces per 1,000 square feet of gross floor area. The Property contains approximately 2,000 square feet of living area above grade.

The required parking breakdown is shown in Table 2 of the Staff Report and is summarized below:

Day Care Center = 6 spaces

Dwelling Unit = 2 spaces

Total On-Site Spaces Required= 8 spaces

According to Staff, in the 2018 Conditional Use application, a total of six (6) vehicle parking spaces were required for the operation of the conditional use and two (2) were required for the residence. All eight (8) of these spaces were allowed to be provided within the driveway. At the time of the prior application, the Petitioner did not have the spaces marked and Planning Staff did not require dimensions to illustrate how these eight spaces would be arranged. At that time, the Petitioner stated that two (2) parking spaces for the resident employees would be reserved along the edge of the driveway.

Recently, the Petitioner had the driveway striped to clearly delineate each space. According to the Petitioner's submission materials (Figure 10), the Property is said to yield a total of seven (7) spaces, one of which is an ADA space.

Although parking space striping is not required in single-family residential zoning districts¹⁰, it is recognized that the new striping was added by the Petitioner with the intent to provide a visual aid for how the parking and flow of pick-ups and drop-offs would operate. However, based on this new drawing and the request for an increased enrollment, Planning Staff has determined that the size of the spaces is not functional to support seven (7) parking spaces for needs of pick-up and drop-off.

Staff reported that upon reviewing the Petitioner's existing angled parking configuration and striping, MCDOT also expressed concerns regarding the lack of space for a drop-off. The Applicant will also comply with Section 59.6.2.4.C. by providing a bicycle parking space. According to the Applicant Statement (Exhibit 2, penultimate page), "There is a space for bicycles and there is also space for indoor bicycle storage. It is located in the backside of the house in a locked shed for safety." Based on this record, the Hearing Examiner finds that the Applicant will be compliant with the cited sections of the Zoning Ordinance.

Pursuant to §59.6.2.5 the vehicle parking design standards under Section 6.2.5.D, Section 6.2.5.F through Section 6.2.5.H, and Section 6.2.5.K.2.b do not apply to a detached house which the subject property is. The Staff Report contains the following chart:

Table 2: Development and Parking Standards (R-60 Zone)

Development Standard Section 59.4.4.9.B	Permitted/ Required	Existing/Proposed*
Principal Building Setbacks		
Minimum Lot Area	6,000 sq. ft.	10,824 sq. ft.
Minimum Lot Width at Front Building Line	60 ft.	>60 ft.
Minimum Lot Width at Front Lot Line	25 ft.	>75 ft.
Maximum Density	1.63 units (7.26 dwelling units/acre)	1 unit
Maximum Lot Coverage	35%	<35 % ⁷
Minimum Front Setback	25 ft.	46.75 ft. (to reconfigured porch)
Minimum Side Setback	8 ft.	8 ft.
Minimum Sum of Side Setbacks	18 ft.	18 ft.
Minimum Rear Setback	20 ft.	20 ft.
Maximum Height	35 ft.	20 ft.
Vehicle Parking (Section 59.6.2.4.B) (Day care center - 3 per 1,000 SF of GFA ⁸) (Single unit living - 2 per dwelling)	Daycare: 6 spaces Dwelling: 2 spaces Total: 8 spaces	6 spaces ⁹
Bicycle Parking (1 per 5,000 SF of GFA) (Section 59.6.2.4.C)	1	1

2. Setbacks

Pursuant to §59.6.2.5.A,1 of the Zoning Ordinance there is no side setback requirement of that Section with regard to detached houses.

According to the Staff Report, Setbacks:

a. The minimum rear parking setback equals the minimum rear setback required for the detached house; and

b. The minimum side parking setback equals 2 times the minimum side setback required for the detached house. (Exhibit 22 p. 23). The report goes on to explain that in terms of appropriate location, the off-street parking is located on the lower classification and volume roadway of the Property's dual frontage. With the Planning Staff's determination of six (6) spaces on-site, the proposed parking arrangement allows visibility of the entrance and does not impair pedestrian circulation along the abutting sidewalk. The parking is an existing condition, and the Petitioner is not constructing a new off-street parking facility.

The Subject Property is also subject to Section 59.6.2.5.M of the Zoning Ordinance regarding surface parking in the R-60 zoning district. Parking for any vehicle or trailer in the area between the lot line and the front or side street building line must be on a surfaced parking area. The Application complies for the location of a surfaced parking area. Further, except as provided in Section 59.6.2.5.M.3, the maximum surfaced parking area between the lot line and the front or side street building line, excluding the surfaced parking area in a driveway on a pipestem or flag-shaped lot, is 35% or 320 square feet, whichever is greater, in the R-60 zone. The driveway is approximately 52 feet long by approximately 47 feet wide, which is approximately 34% coverage and does not exceed the 35% maximum permitted.

3. Site Lighting, Landscaping and Screening

Standards for site lighting and landscaping 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.

a. Lighting

Zoning Ordinance §59.6.4.4.E. provides:

E. Conditional Uses

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

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

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

Conclusion: Technical Staff states that “(3) Lighting No new lighting is proposed with this Application. There is existing lighting at the various entryways and along the entire walkway from the driveway to the main door. The existing lighting is residential in nature and does not cause any unreasonable glare on neighboring properties. (Exhibit 22, p. 25).

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

b. Site Screening and Landscaping

Zoning Ordinance §59.6.5.2.B. provides:

B. Agricultural, Rural Residential, and Residential Detached Zones

In the Agricultural, Rural Residential, and Residential Detached zones, a conditional use in any building type, except a single-family detached house, 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. All conditional uses must have screening that ensures compatibility with the surrounding neighborhood. [Emphasis added.]

Since the proposed use is in a single-family detached house, the specific requirements of Section 6.5.3. do not apply to this case. The single requirement is that “All conditional uses must have screening that ensures compatibility with the surrounding neighborhood.” This language is consistent with the terms of Section 59.7.3.1.E.1.b., which specifies that the Hearing Examiner must find that the proposed use meets applicable general requirements under Article 59-6 “to the extent the Hearing Examiner finds necessary to ensure compatibility. . .”

Conclusion: Based on this record, similar to the finding on this point in CU 18-10, the Hearing Examiner finds that the existing site is residential in character and is compatible with the neighborhood without the need for further landscaping or screening. There are no significant changes to the configuration of the site that warrant a different conclusion with regard to setbacks, lighting, screening and landscaping from the decision in CU 18-10.

4. Signage

The use of signage is governed by Division 6.7. Zoning Ordinance.

Conclusion: The Applicant does not currently display any sign regarding the existing Family Day Care use, and she has not proposed any sign for the proposed Day Care Center. The Hearing Examiner does not find a need in this case to address what steps the applicant must take if she decides in the future to erect a sign. Suffice it to say that if and when the Applicant ever decides to erect a sign in connection with this use, it will need to be done in accordance with the requirements of the Zoning Ordinance.

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 Teresita Hernandez (CU 24-16), for a conditional use under Section 59.3.4.4.D of the Zoning Ordinance, to operate a Day Care Center for up to 15 children in her home at 2801 Randolph Road, Silver Spring, Maryland, is hereby GRANTED, subject to the following conditions¹²:

1. The Day Care Center facility must be limited to a maximum of eighteen (18) persons/children and five (5) employees, including the Director(s)/Owner(s), at any one time on the Property. All children must be under the direct supervision of a staff member at all times. The number of children on site must not exceed the number authorized by State

¹² The conditions that have been attached to this Conditional Use for the most part track the ones recommended by Staff. (Exhibit 22 p.3). In Condition #3 the Hearing Examiner has added a timeframe (12 months) within which this condition must be met.

licensing authorities, and the ages of the permitted children will be determined by State licensing authorities.

2. The hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:00 p.m.
3. The Applicant must, within 12 months of this approval, remove the existing non-code compliant paint striping for vehicle parking spaces in the driveway.
4. No more than six (6) parking spaces within the Property's driveway shall be occupied at once.
5. All parking for patrons of the day care center should occur on the Property. No tandem parking spaces within the driveway shall be assigned for the day care center.
6. The Applicant must schedule staggered employee arrivals and staggered drop-off and pick-up of children with a maximum of two (2) vehicles dropping off or picking up children during any fifteen (15)-minute period.
7. Non-resident employees must park on-street along surrounding roads where there are no parking restrictions.
8. The Applicant must issue a Parental Agreement to all enrollees that provides details for parking, the preferred circulation route to the day care center, and requirement for staggered arrivals and departures per fifteen (15)-minute intervals.
9. The Applicant must provide one (1) long-term bicycle parking space on-site for employee use.
10. The Petitioner must abandon the existing approval for Conditional Use No. CU201810.
11. The Subject Property is currently a principal dwelling unit with an accessory institutional use. If the Petitioner vacates the property as a resident, a minor Amendment is required to address all pertinent requirements for an institution as the principal use within a general building type, including parking.

Issued this 24th day of February, 2025.

Office of Zoning and Administrative Hearings



Khandikile Mvunga Sokoni
Hearing Examiner

NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

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.

The Board of Appeals may be contacted at:

Montgomery County Board of Appeals

100 Maryland Avenue, Room 217

Rockville, MD 20850

(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

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

Copies To:

Teresita Hernandez, Applicant

Pablo Barrios, Harvest Title & Escrow, LLC

Barbara Jay, Executive Director

Montgomery County Board of Appeals

Tamika Graham, MNCPPC

Matthew Folden, MNCPPC

Department of Permitting Services Greg Nichols, Manager, SPES at DPS

James Babb, Division Chief, Treasury Division

Michael Coveyou, Director, Finance Department

Washington Suburban Sanitary Commission Montgomery County Public Schools

Abutting and Confronting Property Owners (or a condominium's council of unit owners or renters, if applicable)

Civic, Renters' and Homeowners' Associations within a half mile of the site and Any

Municipality within a half mile of the site.