

9000 16TH STREET GROUP DAY CARE, 9000 16TH STREET,  
SILVER SPRING, CONDITIONAL USE NO. CU202202

Description

Request to increase the maximum number of children at an existing eight-child Family Day Care use to a Group Day Care use with up to twelve children.

PLAN TYPE: CONDITIONAL USE  
NO. CU202202  
COMPLETED: 11.22.21

MCPB  
Item No.  
December 2, 2021

2425 Reddie Drive  
Floor 14  
Wheaton, MD 20902



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**LOCATION:**

9000 16<sup>th</sup> Street, Silver Spring

**PROPERTY SIZE**

7,179 square feet

**MASTER PLAN ZONE**

R-60

**APPLICANT**

Vladimir Gurevich

**ACCEPTANCE DATE:**

August 17, 2021

**REVIEW BASIS:**

Chapter 59



**Summary**

- Staff recommends approval with conditions.
- The Site was previously occupied by an approved Special Exception for a non-profit office space that ceased operation as early as 2012.
- A variance was granted on November 28, 1998 for an existing masonry wall on-site located within the public right-of-way.
- At the time of posting the Staff Report no comments in opposition of the project have been received.
- Hearing Examiner Public Hearing: December 17, 2021

## Staff Recommendation

Staff recommends approval of Conditional Use No. CU202202 subject to the following conditions:

1. The Group Day Care must be limited to a maximum of 12 children and up to two (2) non-resident employees.
2. The hours of operation are limited to Monday through Friday, 7:30 a.m. to 6:30 p.m.
3. The Applicant must schedule staggered drop-off and pick-up of children with a maximum of six (6) vehicles dropping off or picking up children during any 30-minute period.
4. Visitors (excluding parents enrolled in the daycare) shall be instructed to visit the Site outside peak travel times, which are as follows:
  - a) 7:00 AM – 8:30 AM
  - b) 5:00 PM – 6:30 PM
5. No vehicular queuing can occur on adjacent roadways.

## Site and Neighborhood Description

### Site Description

The Subject Property (“Property” or “Site”) is located at 9000 16th Street in Silver Spring, otherwise known as Lot 12, Block 15 of the B.F. Leightons Addition to Woodside Subdivision. The Site is improved with a detached house (Figures 1 and 2) and the Applicant has been operating an eight-child Family Day Care on the premises since 2020. The existing Family Day Care is open to children 18 months to six (6) years in age. Inside the home the day care operates out of two (2) playrooms, a single locker/check-in room, and a kitchen/dining area for the children. There is a large outdoor play area with structured play equipment, enclosed by a 6-foot-tall fence along the west, north and eastern sides, and a 3-foot-tall fence bordering the parking area on-site. The lot is densely vegetated and well-screened from the adjacent properties and roadways.

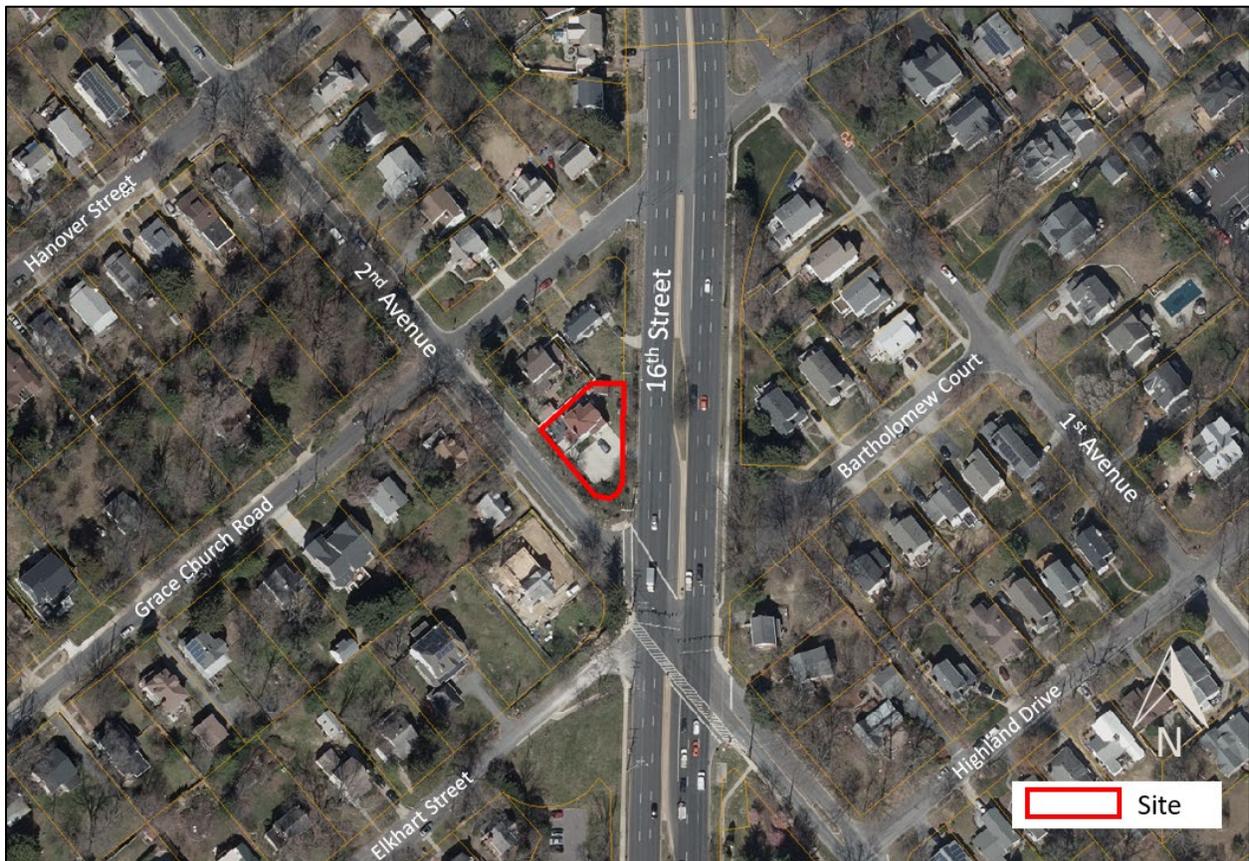


Figure 1: Neighborhood Vicinity Surrounding the Site



Figure 2: Aerial photo of the Subject Site (outlined in red)

The 7,179 square-foot triangular lot is located on the northwest corner of the intersection of 16th Street and Second Avenue. The Property has a driveway opening that is approximately 24 feet wide. In front of the house is a parking area measuring approximately 51.5 feet by 38.5 feet, which can accommodate at least four (4) cars at a time.

The outdoor play area is located in the rear/side yard of the house and is enclosed by fencing approximately six (6) feet in height along the north, east, and west (rear and both sides) sides of the Property and approximately three (3) feet in height along the south/front side of the Property.

#### Neighborhood Description

The Staff-defined Neighborhood (outlined in blue in Figure 3) is generally bounded by Glen Ross Road to the north; Elkhart Street to the south; 16<sup>th</sup> Street to the east; and by the Metrorail and CSX tracks to the west.

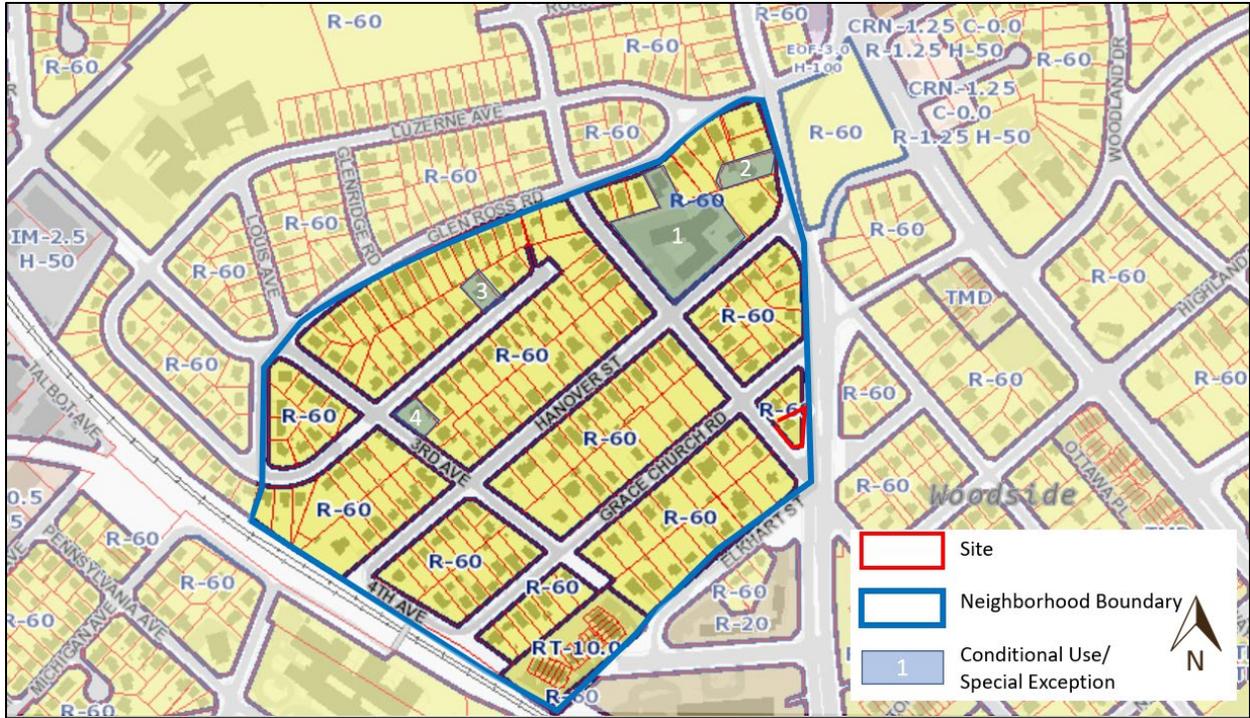


Figure 3: Staff-Defined Neighborhood

The Neighborhood is composed of detached houses in the R-60 and RT-10.0 Zones. Staff identified four approved conditional uses/special exceptions within the defined neighborhood:

1. CBA2668: senior nursing facility
2. S1171: accessory apartment located at 9206 16th Street
3. S1071: accessory apartment located at 2015 Lanier Drive
4. S1680: accessory apartment located at 2030 Lanier Drive

## Project Description

### Prior Approvals

On March 18, and September 1, of 1998 the Board of Appeals held public hearings on Case S-2294 for a special exception for a non-profit corporation in the R-60 zone<sup>1</sup> and Case A-4880 for the application of a 13-foot variance from the required 15-foot setback<sup>2</sup>. The cases were considered together because they are pertinent to the same site (the Subject Site).

The Applicant for both cases was Trees for the Future. Both cases were granted with an effective date of November 23, 1998. Case S-2994 Special Exception was granted with conditions that were specific to the operations of the Trees for the Future non-profit and therefore do not apply to the Subject Application. While there is not an official abandonment filed for the special exception on the Site, the non-profit was no longer operational on the Site as far back as 2012.

The reason for requesting the variance for the setback requirement was for an existing masonry wall within the Maryland Department of Transportation State Highway Administration (“MDOT SHA”) right-of-way on 16<sup>th</sup> Street. During review of the requested variance, MDOT SHA issued a letter dated March 17, 1998 acknowledging that the wall is within the public right-of-way and consenting to it remaining with the stipulation that if the roadway is widened, the wall would be removed. The Applicant of the Subject Application is aware of this letter and does not object to MDOT SHA’s stipulation regarding the future of the wall. The Applicant does not propose any changes to the wall as part of this Application.

Previous uses of the Site have included a medical practitioner’s offices, a basement apartment, a home-based telemarketing facility, offices for certified public accountants, parking for used cars, and bedrooms for unrelated persons. This information was included in testimony provided to the Hearing Examiner in 1998 but specific case files for the uses were not identified.

All of the previous conditional uses have ceased to exist on the Site. The existing Family Day Care has been in operation on the Site since July of 2020.

### Proposal

The Applicant is requesting to expand the existing Family Day Care to become a Group Day Care for a maximum of 12 children. The proposed Group Day Care will occupy the same space in the home as the existing Family Day Care. The Applicant is not proposing any expansion or change to the indoor or outdoor day care space. The current hours of operation, Monday through Friday from 7:30 a.m. to 6:30 p.m., will also remain the same. The Applicant lives on the Property and has two-additional non-residents that staff the existing day care.

Parent drop-off and pick-up times are staggered from 7:30 a.m. to 8:30 a.m. and 5:00 p.m. to 6:30 p.m. No changes to the exterior of the Site are proposed as part of the Subject Application. The Applicant has no existing or proposed signage included as part of this Application.

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<sup>1</sup> Section 59-G-2.21 Charitable or Philanthropic Institution

<sup>2</sup> Section 59-C-1.323(a) and Section 59-E-2.81(a)





Figure 5: Front view of the Site looking northwest from 16th Street



Figure 6: Outdoor play area looking east



Figure 7: Rear yard facing north

### Access and Circulation

All access to and from the Site occurs from the existing driveway on 16<sup>th</sup> Street. There are no sidewalks along the Site's frontages on 16<sup>th</sup> Street and 2<sup>nd</sup> Avenue. Two-way separated bike lanes are planned on 16<sup>th</sup> Street on the east side, opposite the Site. Conventional striped bike lanes are planned on both sides of 2<sup>nd</sup> Avenue.

There is a total of four (4) vehicle parking spaces available for the day care, all on-site. Two (2) spaces will be occupied by the employees and two (2) remain for residential use. As stated previously in this report, parking is not permitted on either 2<sup>nd</sup> Avenue or 16<sup>th</sup> Street but is available on adjacent neighborhood streets such as Elkhart Street and Grace Church Road.

The Site is located within approximately 135 feet of a pair of bus stops serviced by RideOn Routes 4 and 5 on 2<sup>nd</sup> Avenue. RideOn Route 4 provides service on weekdays between the Silver Spring Transit Station and Kensington. RideOn Route 5 provides service all days between the Silver Spring Transit Station and the Twinbrook Metrorail station.

### Environment

The Site contains no streams, wetlands, or their buffers, or known habitats of rare, threatened, or endangered species; thus, the project is in conformance with the *Environmental Guidelines*. On August 16, 2021 Planning Staff confirmed that this application is not subject to Chapter 22A of the Forest Conservation Law because the Property is less than 40,000 square feet in size, is not subject to a previously approved Forest Conservation Plan, and this Application will not impact any champion tree.

## Findings

Conditions for Granting a Conditional Use- Section 59.7.3.1.E. Necessary Findings<sup>3</sup>

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.*

The Board of Appeals granted approval for a special exception on the site in 1998 (S-2294). The special exception was granted for a charitable or philanthropic institution, recorded in the Montgomery County Land Records at Liber 16775, Folio 726-740. The non-profit on the Site was in operation until approximately 2012.

The existing eight-child Family Day Care is allowed by right.

The Board of Appeals approved a variance for an existing masonry wall located on the Site within the public-right-of-way (A-4880) in 1998. This approval is still in effect and the Applicant does not propose any changes to the wall with the Subject Application. The Applicant is aware that MDOT SHA will remove the wall when and if 16<sup>th</sup> Street is widened in the future.

- 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;*

### Use Standards for Group Day Care- Section 59.3.4.4.D.2

- a. Where a Group Day Care (9-12 Persons) is allowed as a limited use, it must satisfy the following standards:
- i. *The facility must not be located in a townhouse or duplex building type.*
  - ii. *In a detached house, the registrant is the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (See Section 3.4.4.E)*
  - iii. *In a detached house, no more than 3 non-resident staff members are on-site at any time*
  - iv. *In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

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<sup>3</sup> Findings 59-7.3.1.E.5 and 59-7.3.1.E.6 are not applicable to this Application because the application is for a day care use and not community swimming pool, filing station, etc.

The facility is not located in a townhouse or duplex and the Applicant is the provider and a resident on-site. No more than two (2) non-resident staff members will be on-site at any time. The Site is not located in the AR Zone

- b. *Where a Group Day Care (9-12 Persons) is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use;*

**Table 1: R-60 Zone Development Standards- Section 59.4.4.9.B**

<b>Section</b>	<b>Development Standard</b>	<b>Required/ Permitted</b>	<b>Existing<sup>1</sup></b>
59.4.4.9.B.1	Minimum Lot Area	6,000 square feet	7,179 square feet
59.4.4.9.B.1	Minimum Lot Width at Front Building Line	60 feet	100 feet
59.4.4.9.B.1	Minimum Lot Width at Front Lot Line	25 feet	94.3 ft (2 <sup>nd</sup> Avenue)
59.4.4.9.B.1	Maximum Density	1 unit (7.26 dwelling units/acre)	1 unit
59.4.4.9.B.1	Maximum Lot Coverage	35 percent	1,005 square feet 14.08 percent
59.4.4.9.B.2	Minimum Front Setback	25 feet	16 feet <sup>2</sup>
59.4.4.9.B.2	Minimum Side Street Setback	15 feet	15 feet (16 <sup>th</sup> Street)
59.4.4.9.B.2	Minimum Side Setback	7 feet (prior to January 1, 1954)	N/A <sup>3</sup>
59.4.4.9.B.2	Minimum Rear Setback	20 feet	34 feet
59.4.4.9.B.3	Maximum Height	30 feet	Existing home is 2 stories tall and is not more than 30 feet in height.

<sup>1</sup>No exterior changes are proposed with the Subject Application. All measurements reflect existing conditions.

<sup>2</sup>The lot was recorded in 1939 and is conforming under Section 59.7.7.1.A. (pursuant to Section 59.B-5.3 in the Zoning Ordinance in effect prior to October 30, 2014).

<sup>3</sup>The triangular shape of the lot is such that there is only one side yard, which is 16th Street

Table 2: General Development Requirements- Division 59.6

<b>Section</b>	<b>Parking</b>	<b>Required Spaces</b>	<b>Proposed</b>
59.6.2.4.B	Vehicle Parking Requirement	Group Day Care: 2  (up to 2 non-resident employees)  Dwelling: 2  <b>Total: 4</b>	4 spaces in driveway       <b>Total: 4</b>

*Screening*

The existing fencing in the rear and side yard provide sufficient screening between the proposed use and the adjacent homes. Furthermore, two brick walls that are covered in vegetation along the Site frontages further obscure view of the day care use and the existing structure from the street.

*Lighting*

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

*Signage*

No signage is proposed as part of this Application, but any signage added in the future must satisfy Section 59- 6.7.

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

Master Plan

The Site is located within the 2000 *North and West Silver Spring Master Plan* (“Master Plan”) area. The Master Plan does not specifically mention the Subject Property; however, it does provide guidance for the implementation of future special exceptions (now called “conditional uses”). The Master Plan recognizes the need for new, resident-operated special exceptions (such as home offices and day-cares) but emphasizes the need to preserve the existing character of the residential neighborhoods. On page 55, the Master Plan recommends that special exception uses be located along major highways, and minimize non-residential appearance, size and number of signs, visibility of parking, traffic generation and intrusive lighting.

Although the existing eight-child Family Day Care has been on the Site for just over a year, the Site was previously approved for a special exception which was in operation until approximately 2012 (Trees for the Future, S-2994). The Site and proposal meet all the evaluation criteria listed within the Master Plan. It is accessed from 16<sup>th</sup> Street, which is classified as a Major Highway. The day-care use is located within a single-family home, which is screened from all sides using fencing and

dense vegetation. The staggered arrival and dismissal schedule will minimize traffic generation and is not expected to result in queuing on 16<sup>th</sup> Street. All parking can be accommodated on-site, and the parking facilities are not visible from either of the Site frontages. No construction or changes to the exterior of the Site are proposed. No signage or lighting is proposed, either.

The proposal is a modest expansion from eight (8) children to 12 children, which will not change the character of the neighborhood. The Subject Site is an appropriate location for a Group Day Care and compatible with the neighborhood. Therefore, the proposal is in substantial conformance with the Master Plan.

#### Transportation

##### *Master-Planned Roadways and Bikeway*

Sixteenth Street is a Major Highway with a 120-foot-wide right-of-way. A two-way separated bikeway is master-planned on the east side of the street, opposite the Site. Second Avenue is designated as a secondary residential street with a 60-foot-wide right of way. Conventional, one-way bike lanes are master-planned on either side of the street.

##### *Pedestrian Facilities*

No sidewalks are present on either of the Site's frontages on 16<sup>th</sup> Street or 2<sup>nd</sup> Avenue. Buffered sidewalks are present, opposite the Site on 2<sup>nd</sup> Avenue, but they do not connect to a pedestrian pathway at the Site entrance on 16<sup>th</sup> Street. For these reasons, no walking trips are estimated to and from the site by staff or patrons of the proposed expanded day care use.

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

The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood. No physical changes are proposed on the Property. Therefore, the proposed expansion of the existing day care use will not alter the character of the neighborhood.

- e. *will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

Staff identified four (4) approved conditional uses/special exceptions within the Staff-defined neighborhood, a nursing care facility and three (3) accessory apartments. Although approval of this Application will increase the number of conditional uses/special exceptions in the Staff-defined Neighborhood, the proposed day care expansion will not affect the area adversely or alter the area's predominantly residential nature. The existing day care has been operating on the Site since 2020 and was previously occupied by a special exception which was in operation until approximately 2012. The increase in the number of children being served is modest, and the Applicant is not proposing any physical changes to the Property. The entire Site is densely vegetated and screened from the Site frontages

and abutting property to the north. Therefore, approval of the conditional use will not alter the predominantly residential nature of the area. In addition, the proposed use substantially conforms with the Master Plan as discussed above.

- 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*

*Local Area Transportation Review*

The Applicant estimated the greatest number of trips that could be generated by the use during the morning and evening peak hours. The transportation analysis assumed both non-resident employees will arrive/leave the Site during the peak hour, and all 12 children will arrive and leave the Site within the peak morning and evening hours. The analysis also assumed that each child would be driven individually. Based on these assumptions, the highest trip estimate for both peak hours would be a total of 26 trips to and from the Site. These results are summarized in Table 3 below.

Table 3: Estimated Site Trip Generation

	Morning Peak Hour			Evening Peak Hour		
	In	Out	Total	In	Out	Total
Staff	2	0	2	0	2	2
Parents/ Children	12	12	24	12	12	24
<b>Total</b>			<b>26</b>			<b>26</b>

Under the 2021-2024 Growth and Infrastructure Policy, a transportation impact study is not required to satisfy the Local Area Transportation Review (LATR) because the proposed Group Day Care is estimated to generate fewer than 50 person-trips during the weekday morning and evening peak hours. Therefore, no further analysis is required.

- g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
  - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood.*
  - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
  - iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees*

An analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic, and environment. Every conditional use has some or all of these effects in varying degrees. Thus, inherent effects associated with the use have to be determined. In addition, non-inherent effects have to be determined as these effects may, by themselves, or in conjunction with inherent effects, form a sufficient basis to deny a conditional use. It must be determined during the course of review whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff has identified the following inherent impacts of the proposal:

The inherent physical and operational characteristics necessarily associated with a Group Day Care include: (1) vehicular trips to and from the Site; (2) outdoor play areas; (3) noise generated by children; and (4) lighting.

As addressed in the previous finding, the total number of trips that will be generated by the use during the morning and/or evening peak hours is 26, which is significantly fewer than threshold for requiring a transportation impact study. Therefore, in accordance with the 2021-2024 GIP and the 2021 LATR, no further transportation analysis is required.

The play area is adequate, in accordance with the noise ordinance.

The existing lighting and landscaping on the Site are adequate for the proposal. The existing lighting fixtures are residential in nature and will not intrude on neighboring properties. There are no proposed changes to the existing lighting and landscaping on the Site.

Staff has determined that the proposal will not have any non-inherent effects at this location and that the health, safety and welfare of neighboring residents, visitors and employees is adequately protected.

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

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

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

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

## **Conclusion**

The proposed conditional use complies with the general conditions and standards of a Group Day Care, subject to the recommended conditions of approval. The proposed use meets the required findings set forth in Section 59.7.3.1.E. of the Zoning Ordinance, is consistent with the goals and recommendations of the 2000 *North and West Silver Spring Master Plan*, will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. Staff recommends approval with conditions.

## **Attachments:**

Attachment 1: Forest Conservation Applicability for Conditional Uses/Special Exceptions

Attachment 2: Lot Diagram

Attachment 4: Applicant drop-off and pick-up schedule

Attachment 5: Approved Variance S-2294 of the required setback