



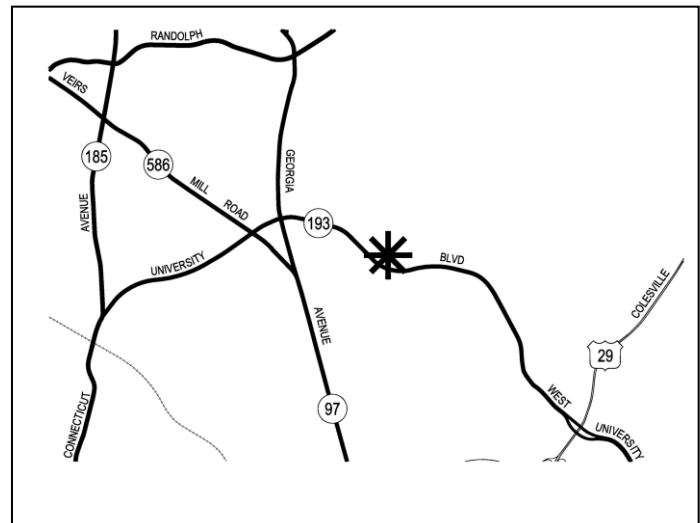
11009 Nicholas Drive, Conditional Use, CU 17-11 Group Day Care

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Completed: 03/02/17

Description

- Request for a conditional use to expand an existing daycare of seven children to a group daycare for up to 12 children;
- The Applicant's residence is an approximately 9,900-square-foot lot, zoned R-90, located at 11009 Nicholas Drive, Silver Spring;
- 1989 *Master Plan for the Communities of Kensington-Wheaton*;
- The public hearing by the Hearing Examiner is scheduled for 4/3/17;
- Applicant: Namalie Bentota;
- Filing date: 12/16/16.



Summary

- Staff recommends approval with conditions.
- The Applicant's request is exempt from Chapter 22A Forest Conservation Law; it is in general conformance with the Master Plan and it meets the development standards of the R-90 Zone.

Conditions of Approval

Staff recommends the following conditions of approval:

1. The proposed group day care must be limited to 12 children and up to three non-resident staff.
2. The Applicant must schedule staggered drop-off and pick-up of children with no more than four vehicles entering and exiting the site in any 30-minute period.
3. The hours of operation are limited to Monday through Friday, 7:00 a.m. to 6:30 p.m.
4. Outdoor play time may not start before 10:00 a.m., and must end by 5:00 p.m.

Site and Neighborhood Description

Site Description

The Site is Lot 2, Block 4 of the Parkway subdivision, located at 11009 Nicholas Drive, Silver Spring. It is a 9,900-square-foot lot with frontage on the south side of Constance Street and the east side of Nicholas Drive. The lot contains a one-story, detached house built in 1958, that serves as both a residence and the location for the PlayPen 4 Kids Day Care, an existing day care for seven children (Figure 1). The house does not have a garage.

The Site has an existing double-wide concrete driveway on Nicholas Drive; the front of the house is oriented to this street. The existing driveway is 20-feet in length by 21-feet wide. The main entrance into the residence is from a four-foot wide sidewalk on Nicholas Drive and the driveway. The main entrance into the day care facility is from a four-foot wide concrete sidewalk on Constance Street that connects with a concrete sidewalk at the rear (south) side of the house.

An outdoor play area is located in the northeast corner of the Site, and is enclosed by an existing six-foot-high, board-on-board wood fence.

Figure 1. Subject Site Aerial Photo



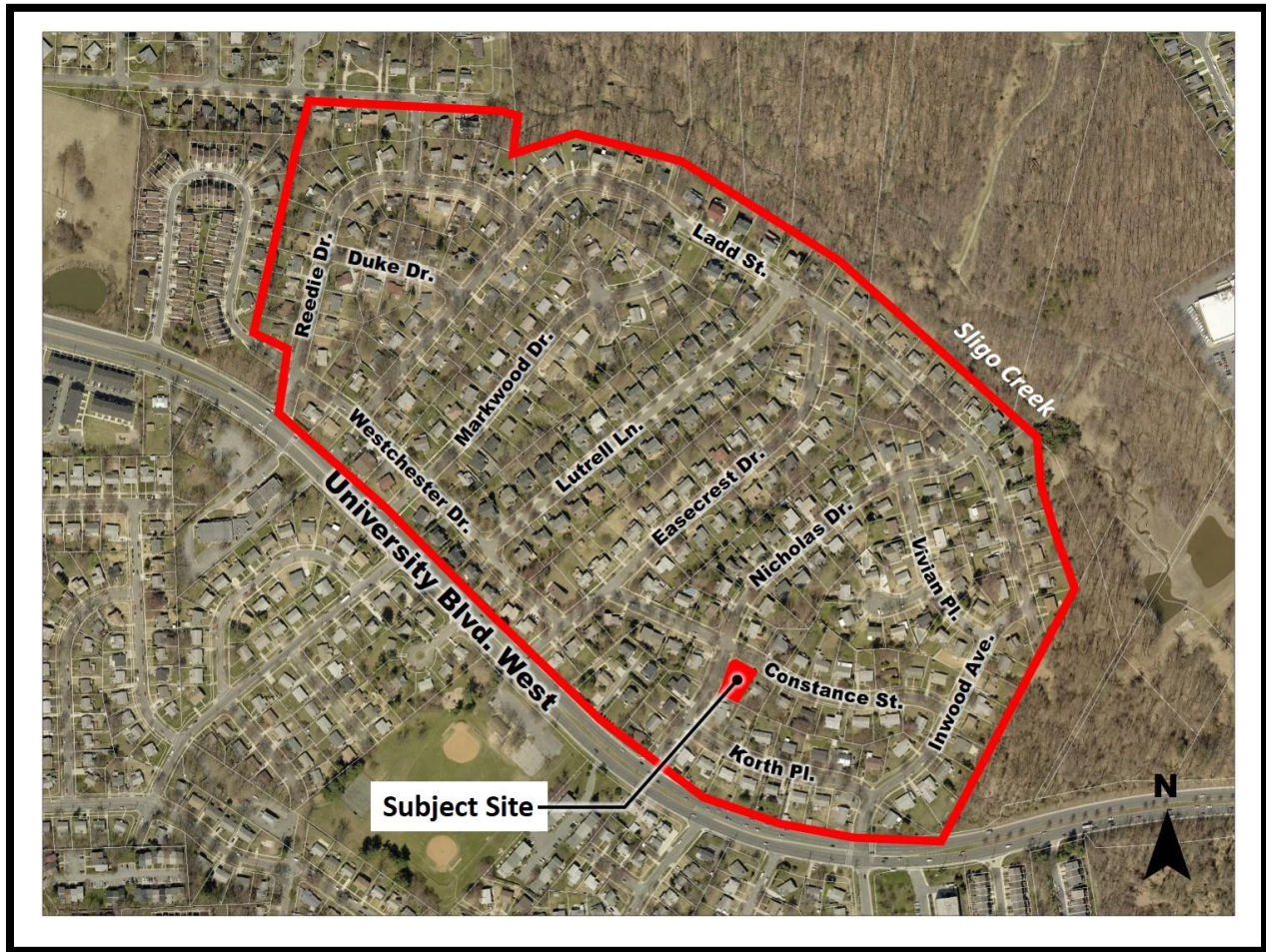
Neighborhood Description

The Parkway Subdivision is an established single-unit, detached residential neighborhood with houses mostly built in the late 1950's and early 1960's. The Staff-defined neighborhood is generally bounded by other single-unit houses on Ladd Street to the north, Inwood Avenue to the east, University Boulevard West to the south and Reedie Drive to the west (Figure 2). University Boulevard West is a major highway corridor that transverses the residential communities in the area. The neighborhood comprises R-90 zoned single-unit detached houses; some are single-story construction without garages and some are two-story units with an attached garage. The following two existing and approved special exceptions are located inside the Staff-designated neighborhood as:

- S1966MO located at the northeast end of Nicholas Drive for an existing accessory apartment. There are no available records regarding the approval date of this request; and
- S2856 located at the northeast end of Vivian Place also for an accessory apartment. The request was approved on 7/29/12.

Nicholas Street is a two-way residential street with on-street parking on both sides. Constance Street is a two-way residential street with on-street parking on both sides.

Figure 2. Staff-defined Neighborhood



Project Description

The Applicant, Namalie Bentota, has operated the existing, seven-child day care facility at her home since 2015, and requests approval for a group day care facility for up to 12 children. Currently, children enrolled at the day care are all under four-years of age. The existing day care facility is located in the finished basement of the Applicant's house. The Applicant and one non-resident employee staff the existing day care. If the conditional use is approved, Ms. Bentota will likely hire a second non-resident employee. The proposed hours of operation will remain the same as the operating hours of the existing day care: Monday through Friday from 7:00 a.m. to 6:30 p.m. No physical alterations or renovations are proposed to the existing house or outdoor play area.

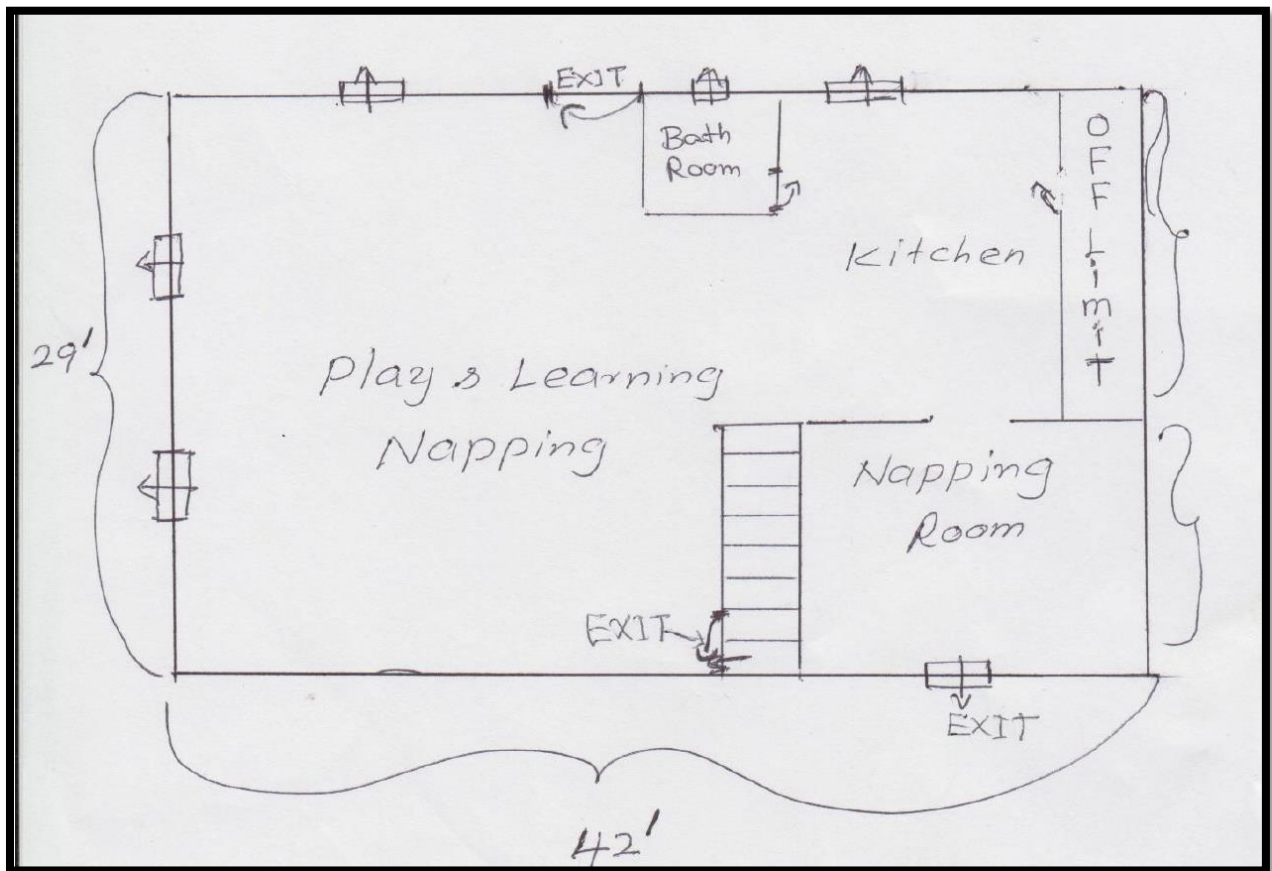
The Applicant currently parks her vehicle in the driveway and the one non-resident employee uses public transportation to commute. The Applicant proposes to continue this parking arrangement as part of the conditional use, and she anticipates that when a second non-resident employee is hired, one of the employees will be able to park in the driveway at the front of the house, if needed. The existing driveway from Nicholas Drive can park two vehicles. Six vehicles can park on the street abutting the Site along Nicholas Drive and Constance Street. On-street parking may be limited at the Nicholas Drive/Constance Street intersection corner due to County sight-distance requirements. A minimum of

one long-term bike parking space is required on-site; however, the Applicant submitted a written request to waive this requirement because, she believes a long-term bicycle parking space will not be needed by future non-resident employees.

The Applicant submitted a staggered schedule for drop-off and pick-up times (Attachment 1). Photos of the exterior of the Applicant's residence show the driveway and the main entrance to the residence (Attachment 2). All parents use the Constance Street access as the main entrance to the day care and park on Constance Street for both drop-off and pick-up.

An outdoor play area is located at the east/southeast corner of the Site and it is enclosed with a six-foot high wood fence. Outdoor play activities are scheduled twice a day from 10:30 a.m. to 12:00 noon and 3:00 p.m. to 5:00 p.m., weather-permitting. For approximately 30-minutes during each of these timeframes, two groups, with a maximum of six children each, will be in the outdoor play area at a time, with adult supervision.

Figure 3. Site Plan



Analysis

Master Plan Conformance

The Site falls within the 1989 *Communities of Kensington-Wheaton Master Plan* (Master Plan). The Master Plan does not discuss the Site in terms of specific land use recommendations, but does have two main objectives related to the Plan's residential areas:

- (1) to protect and stabilize the extent, location, and character of existing residential and commercial land uses; and
- (2) to maintain the well-established low-to-medium-density residential character which prevails over most of the planning area (page 40).

The Master Plan has a Child Day Care Facilities section (pages 137-140) that identifies a need for additional child day care facilities in the Plan area. One of the Master Plan's objectives is "to promote greater day care opportunities through appropriate land use recommendations and associated policies" (page 139). The Plan includes a policy to: "Support efforts to utilize County zoning and development plan review processes to promote greater day care opportunities" (page 139).

The Applicant's proposal conforms to the general recommendations, objectives and policies of the Master Plan because it will be a continuation of the use of the house as a primary residence with a conditional use for a group day care facility. The Applicant's request for an expansion of the existing day care facility will augment the Plan's stated policy of promoting day care uses in the area.

Transportation Planning

Site Location, Access and Circulation

The Site is located on the southeast corner of the Nicholas Drive and Constance Street intersection. An existing driveway has vehicular access from Nicholas Drive. The entrance to the day care has a sidewalk from Constance Street.

Master-Planned Roadway and Bikeways

Nicholas Drive and Constance Street are secondary residential streets with 60-foot-wide rights-of-way. On Nicholas Drive, north of Constance Street, there is a shared-roadway, identified as PB-15 in the Plan. Nicholas Drive connects to University Boulevard (MD 193) as a right-in/right out movement only due to a median on University Boulevard.

Nearby master-planned bikeways are along University Boulevard, a roadway designated as a major highway, M-19. In accordance with the 2005 *Countywide Bikeways Functional Master Plan*, the dual bikeway, DB-5, is designated along University Boulevard with bike lanes on both sides and a shared-use path on the west side from the Capital Beltway to Georgia Avenue (MD 97).

Pedestrian Facilities

Four-foot-wide sidewalks with approximately 12-foot-wide green panels exist on Nicholas Drive and Constance Street. Handicap ramps exist at this intersection, although there are no pedestrian crosswalks. The sidewalk along Nicholas Drive connects to University Boulevard West.

Transit Service

There is no transit service along Nicholas Drive or Constance Street. However, the following bus routes are available along nearby University Boulevard:

1. Ride On Route 7 operates with 30-minute headways between the Wheaton Metrorail Station and the Forest Glen Metrorail Station on weekdays only.
2. Ride On Route 8 operates with 30-minute headways between the Wheaton Metrorail Station and the Forest Glen Metrorail Station and the Mid County Regional/Paul S. Sarbanes Center (on Veirs Mill Road) on weekdays and Saturdays.
3. Metrobus Route C2 and C4 operate with 30-minute headways between the Greenbelt Metrorail Station and the Twinbrook Metrorail Station on weekdays and weekends.

The nearest bus stop at the intersection of University Boulevard and Nicholas Drive is approximately 400 feet southwest of the Subject Site.

Local Area Transportation Review

The existing child day care facility of seven children generates only three-parent trips because some of the parents live nearby and walk to the Subject Site. The proposed day care facility of up to 12 children with three non-resident staff employees is projected to generate up to five new and eight total peak-hour trips during the weekday morning and evening peak-periods of 6:30 to 9:30 a.m., and 4:00 to 7:00 p.m., respectively.

A traffic study was not required to satisfy the Local Area Transportation Review (LATR) test because the proposed group day care facility generates fewer than 30 total peak-hour trips within the weekday peak periods.

Transportation Policy Area Review

The Applicant is subject to the 2012-2016 Subdivision Staging Policy because the application was filed before January 1, 2017. The Transportation Policy Area Review (TPAR) test would typically be satisfied by paying 25 percent of the transportation impact tax for the additional square footage located in the Kensington-Wheaton Policy Area. For the current TPAR test, the roadway test for this policy area is adequate, and the transit test is inadequate. However, a TPAR payment of the transportation impact tax will not be required because the square footage of the existing house will not be expanded to accommodate the proposed increase in the number of children.

Environment

The Site 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 the Forest Conservation Law as defined in Chapter 22A of the Montgomery County Code. Staff finds that the Conditional Use complies with all applicable environmental guidelines and regulations as recommended.

Community Comment

Staff has not received any comments from the surrounding community.

Conditions for Granting a Conditional Use

Section 7.3.1.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.*

There are no applicable previous approvals on the Site.

- 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;*

The proposal satisfies the requirements of the R-90 Zone and Child Day Care Use Standards as follows:

Zone Requirement

R-90 Zone, Standard Method Development Standards (Section 4.4.8.)

Development Standards	Required/Permitted	Proposed
Minimum Lot Area: (Section 59.4.4.8.B.1)	9,000 sq. ft.	9,900 sq. ft.
Maximum Lot Coverage (Sec. 59.4.4.8.B.1)	30 percent	Less than 30%
Minimum Front Setback (Sec. 59.4.4.8.B.2)	30 feet	Greater than 30 feet
Minimum Side Street Setback (Sec. 59.4.4.8.B.2)	30 feet	Greater than 25 feet
Minimum Side Setback (Sec. 59.4.4.8.B.2)	8 feet	8 feet
Minimum Sum of Side Setbacks (Sec. 59.4.4.8.B.2)	25 feet	25 feet
Minimum Rear Setbacks (Sec. 59.4.4.8.B.2)	25 feet	25 feet
Maximum Height (Sec. 59.4.4.8.B.3)	35 feet	18 feet
Vehicle and Bicycle Parking Spaces (Section 59.6.2.4)	Vehicles at Group Day Care: 2 (1 per non-resident employee) Dwelling: 2 Bikes: 1	Day care: 2 Dwelling: 2 Waiver ¹

¹The Applicant submitted a waiver request pursuant to Zoning Ordinance Section 6.2.10 Parking Waiver, for relief from this requirement.

The Applicant is not proposing any alteration, addition or expansion to the exterior of the existing residence and outdoor play area. On February 24, 2017, a site visit was conducted and Staff made several observations of the exterior of the Site. There is an existing outdoor light fixture at the main entrance to the house and a second light fixture at the entrance to the day care. The Site is well-maintained with several mature street trees along Nicholas Drive and Constance Street and landscaping around the exterior of the house. The existing six-foot-high wood fence around the outdoor play area is in good condition and is adequate to screen the use from the surrounding neighborhood. Because the fence is not transparent, it creates a private, safe and secure environment for the children in the play area. The parking requirement is satisfied by the existing driveway that accommodates two parked vehicles and there is additional on-street parking on Nicholas Drive and Constance Street. Staff supports the Applicant's waiver request to not provide the one long-term bike parking space because it's unlikely this type of space is necessary based on the nature of the conditional use and the low number of non-resident employees commuting to work. The fence segment oriented to Nicholas Street has a banner sign with the day care's name and age-range of the children that can be accommodated there (from six-weeks to 12-years old).

Division 6.5 Screening Requirements

The existing six-foot high wood fence adequately screens the outdoor play area and ensures compatibility with the surrounding neighborhood.

Use Standards

Group Day Care (9-12 Persons) (Section 3.4.4.D)

2. *Use Standards*

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.*

This proposal is for an expanded day care facility in an existing single-unit detached house built in the 1958.

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).*

This standard is met because the Applicant is the provider and a resident of the location of the requested Group Day Care facility.

iii. *In a detached house, no more than 3 non-resident staff members are on-site at any time.*

Currently there is one non-resident staff member, and the Applicant intends to hire one other non-resident staff member for the additional children.

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

Not applicable; the Site is not 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.*

This Application satisfies all the limited and conditional use standards as described in this report.

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

The Applicant's request conforms to the *Kensington-Wheaton Master Plan* as stated in the Master Plan Conformance section of the report.

- 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 residential neighborhood in a manner inconsistent with the Master Plan. The Applicant's residence has a well-maintained appearance and the expansion of the day care facility will not detract from the residential character of the neighborhood. The existing outdoor play area will not be expanded and it is enclosed by a safe and secure wood fence that creates a private and safe play area for the children. The existing fence screens views of the play area from surrounding properties.

- 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 the area;*

Two other approved special exception uses have been identified in the Staff-defined neighborhood. Both special exceptions were for accessory use apartments. The expansion of the existing seven-child day care to a proposed 12-child day care will not result in an over-concentration of conditional uses in the area. The application substantially conforms with the recommendations of the Master Plan and the expanded day care use will not alter the nature of the predominantly residential character of the area.

- 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 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 plan of subdivision 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*

The Site is served by adequate public services and facilities. A Preliminary Plan of subdivision is not 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, visitors or employees.*

The first step in an analysis of the inherent and non-inherent adverse effects of a conditional use is to define the boundaries of the surrounding neighborhood. See the Staff-defined Neighborhood Description section above for the Subject Site.

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

All day care uses have inherent impacts such as: (1) vehicular trips to and from the site; (2) noise generated by children in outdoor play areas; (3) noise generated by children; (4) drop-off and pick-up areas; and (5) lighting. As discussed in the transportation analysis on pages 5 and 6 of this report, the proposal will not significantly impact traffic in the neighborhood. The Applicant has proffered a staggered drop-off and pick-up schedule to mitigate transportation impacts. The existing fence sufficiently screens the outdoor play area and is compatible with the residential character of the well-established neighborhood.

No non-inherent effects from this proposal have been identified.

3. *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.*

No renovation or addition to the existing residence is proposed; the existing structure will continue to be compatible with the character of the surrounding neighborhood.

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.*

The proposal satisfies all specific requirements and, as conditioned, the use will continue to be compatible with nearby properties.

5. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringent as if it were abutting a Residential Zone.*

Not applicable; the application is not for an agricultural use.

6. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:*
- a. *Filling Station*
 - b. *Light Vehicle Sales and Rental (Outdoor)*
 - c. *Swimming Pool (Community); and*
 - d. *the following Recreation and Entertainment Facility use: swimming pool, commercial.*

Not applicable; the application is for an expansion of an existing day care facility for seven children to a Group Day Care for 9-12 persons.

7. *The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:*
- a. *Funeral Home; Undertaker*
 - b. *Hotel, Motel*
 - c. *Shooting Range (Outdoor)*
 - d. *Drive-Thru*
 - e. *Landfill, Incinerator, or Transfer Station; and*
 - f. *A Public Use Helipad, Heliport or a Public Use Helistop.*

Not applicable: the proposal will expand a seven-child existing day care facility to a Group Day Care (9-12 Persons).

Conclusion

The proposed conditional use complies with the general conditions and standards for approval of a conditional use Group Day Care (9-12 Persons), subject to the recommended conditions of approval. The proposed conditional use is consistent with the objectives and recommendations of the Master Plan, it 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:

- 1. Applicant's drop-off schedule
- 2. Photos of the Site

Attachment 1

Following is the list of ages and the dropping off and picking up times for each child:

Age	Drop off time	Pick up time
2 y 8 m	10 am	6.30 pm
1 y 9 m	7 am	6.00 pm
1 y 11 m	8.30 am	6.30 pm
3 y	8.30 am	6.30 pm
2 y 9 m	9 am	6.00 pm
1 y 9 m	9 am	5.00 pm
1 y 6 m	9.00 am	5.15 pm

Employee comes for work at 9 am and leaves at 6.00 pm.

Also when the parents drop off and pick up the children, they will be parking on the Constance Street adjacent to the entrance to the daycare. This usually does not take more than five minutes. The entrance to the daycare is on the Constance Street and there is a concrete walkway all the way to the daycare entrance at the basement of the house.

Attachment 2

