

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF JONATHAN EDENBAUM : Case No. S-2879
:
:
: OZAH No. 15-04
:
-----X

A hearing in the above-entitled matter was held on February 27, 2015, commencing at 9:36 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, Rita Davidson Memorial Hearing Room, Rockville, Maryland 20850 before:

Martin L. Grossman
Hearing Examiner

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E X H I B I T S

Exhibit No.		Marked/Received
21	Affidavit of posting	7

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1 MR. EDENBAUM: Jonathan Edenbaum. My home address
2 is 13504 Deerbrook Drive, Potomac, Maryland 20854.
3 MR. GROSSMAN: Okay. And ma'am?
4 MS. MENDOZA: Nevi Majano Mendoza, 9258 Piney
5 Branch Road, apartment 202, Silver Spring, Maryland 20903.
6 MR. GROSSMAN: And would you spell your whole
7 name, please?
8 MS. MENDOZA: N-E-V-I, M-A-J-A-N-O --
9 MR. GROSSMAN: M-A-J-A --
10 MS. MENDOZA: N-O.
11 MR. GROSSMAN: N-O.
12 MS. MENDOZA: M-E --
13 MR. GROSSMAN: And you pronounce that?
14 MS. MENDOZA: Majano.
15 MR. GROSSMAN: Majano, okay.
16 MS. MENDOZA: Mendoza, M-E-N-D-O-Z-A.
17 MR. GROSSMAN: Okay. Ma'am?
18 MS. BLUM: I am Susan Blum, BLUM, and I live at
19 8807 Liberty Lane, Potomac, Maryland.
20 MR. GROSSMAN: Okay. And let me explain a little
21 bit about the nature of these proceedings. They are formal,
22 a combination of formality and informality. They are formal
23 in the sense that they proceed pretty much the way a
24 courtroom would proceed. Witnesses are all sworn in.
25 They're subject to cross-examination where anybody here can

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1 P R O C E E D I N G S
2 MR. GROSSMAN: This is a public hearing in the
3 matter of Edenbaum doing business as Liberty Assisted
4 Living, Inc., Board of Appeals number S-2879, OZAH number
5 15-04, an application for a large group home special
6 exception under code section 59-G-2.26. The special
7 exception is sought to expand a currently functioning small
8 group home with eight residents which is permitted by right
9 into a large group home for up to 10 residents and nine
10 staff members at 8919 Liberty Lane, Potomac, MD. It is
11 located 300 feet east of its intersection with Falls Road
12 and is identified as lot 16, block B, Beverly Farm
13 subdivision, tax account number 04-02409354. The subject
14 site consist of .38 acres in the R-90 zone within the
15 Potomac master plan area.
16 This is a hearing conducted on behalf of the Board
17 of Appeals. My name is Martin Grossman. I'm the hearing
18 examiner which means I will take evidence and write a report
19 and recommendation to the Board of Appeals which will make
20 the decision in this case. All right. And since this
21 application was filed prior to the new zoning ordinance you
22 are governed by the provisions of the old zoning ordinance.
23 All right. Now, let me ask the parties to identify
24 themselves for the record, please. State your full name
25 address, please, sir.

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1 cross-examine you. Everything is taken down by a court
2 reporter. There will be a transcript of these proceedings.
3 The rules of evidence are similar to, although a little bit
4 more relaxed than court rules of evidence. And that's
5 pretty much the idea.
6 This is a special exception petition and a special
7 exception is a bit of a misnomer. In fact, under the new
8 zoning ordinance they call it a conditional use which is
9 really what it is. The term special exception sounds as if
10 it's a variance but it's not. A special exception is a
11 statutorily permitted use if certain conditions are met,
12 conditions that are specified, first of all, general
13 conditions that govern almost all special exception
14 applications. I saw almost all because there is one that
15 for some reason it doesn't govern. And particular ones for
16 this type of special exception, specific provisions. So, if
17 you in fact meet those requirements you are eligible for the
18 special exception, although it's not required but you'd be
19 eligible for it.
20 All right. Let me turn to a few preliminary
21 matters. First of all I mentioned I have a, if this hearing
22 goes on and I believe it probably will, past 10:30 you may
23 hear an alarm ring in my pocket. I have something I have to
24 take care of at 10:30. So, it's not the fire alarm, leave
25 the building. So we'll recess briefly at that time. Okay.

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1 I take it, Mr. Edenbaum your witnesses are yourself and
2 these two ladies?
3 MR. EDENBAUM: Yes. And I have a family member
4 who said she could testify by telephone if you need her.
5 MR. GROSSMAN: Okay. I don't think we'll --
6 MR. EDENBAUM: Okay.
7 MR. GROSSMAN: -- have telephonic --
8 MR. EDENBAUM: Sure, sure.
9 MR. GROSSMAN: We're not really set up for that.
10 MR. EDENBAUM: Yeah, I would just put it on
11 speaker --
12 MR. GROSSMAN: If somebody's not out of the
13 country --
14 MR. EDENBAUM: -- phone. No, she's not out of the
15 country.
16 MR. GROSSMAN: Okay.
17 MR. EDENBAUM: She just couldn't make it.
18 MR. GROSSMAN: Okay.
19 MR. EDENBAUM: The three of us.
20 MR. GROSSMAN: All right. Let's see, affidavit of
21 posting, I see that you have it here. That's required for
22 the record in the case to certify that in fact the property
23 has had the proper zoning notice posted for the required
24 period of time. So that'll be Exhibit 21, affidavit of
25 posting.

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1 (Exhibit No. 21 was received
2 into evidence.)
3 MR. GROSSMAN: All right. I think the best thing
4 to do is let me swear you all in at the same time. Would
5 you all raise your right hands, please?
6 (Witnesses sworn.)
7 MR. GROSSMAN: Okay. Have you all received, or
8 Mr. Edenbaum at least, have you received a copy of the
9 Planning Board's letter --
10 MR. EDENBAUM: Yes.
11 MR. GROSSMAN: -- which is Exhibit -- not just the
12 report of the technical staff but their letter, the letter
13 of the Planning Board, Exhibit No. 19 here which is dated
14 February 4 but actually the formal signed copy just got to
15 our office a couple of days ago, two day ago.
16 MR. EDENBAUM: We didn't get the letter, no.
17 MR. GROSSMAN: Okay. Let me show you, I mean,
18 there's nothing shocking in it. It just fundamentally
19 accepts what the technical staff said. But I'd like to give
20 you a couple of minutes just to --
21 MR. EDENBAUM: Sure.
22 MR. GROSSMAN: -- read it over.
23 MR. EDENBAUM: Thank you.
24 MR. GROSSMAN: This is the file copy.
25 MR. EDENBAUM: Okay.

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1 MR. GROSSMAN: Unfortunately because it's late in
2 getting here, it's supposed to be here at least five
3 business days before the hearing and because it's late in
4 getting here I have to hold the record open for 15 days
5 after the hearing under the Board rules that were in effect
6 when you filed the petition. All right. Thank you, sir.
7 MR. EDENBAUM: Thank you.
8 MR. GROSSMAN: And I take it from your response to
9 my earlier question that you in fact have seen the technical
10 staff report --
11 MR. EDENBAUM: Yes.
12 MR. GROSSMAN: -- which is Exhibit No. 18 in this
13 case. When I refer to technical staff, of course, I'm
14 referring to the technical staff of the Maryland National
15 Capital Park and Planning Commission which is a mouthful.
16 Okay. Do you accept all of the findings and conclusions in
17 the technical staff report, Exhibit No. 18, as part of your
18 evidence in the case?
19 MR. EDENBAUM: Yes, sir.
20 MR. GROSSMAN: Okay. And do you accept all of the
21 conditions that the technical staff of the Planning Board
22 recommended in Exhibit No. 18?
23 MR. EDENBAUM: Yes.
24 MR. GROSSMAN: We usually have some additional
25 conditions, I don't know if you've ever seen one of the

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1 hearing examiner's reports but we usually add a few other
2 general conditions in these cases, nothing particularly
3 onerous, ones that indicate that you're bound by all the
4 representations that you make and also one that indicates
5 that you must follow all applicable regulations and so on.
6 But usually it would incorporate staff recommendations if
7 you receive a recommendation of approval. Okay?
8 MR. EDENBAUM: Yes.
9 MR. GROSSMAN: All right. And you do accept those
10 conditions?
11 MR. EDENBAUM: Yes, sir
12 MR. GROSSMAN: Okay. All right. Are there any
13 other preliminary matters that you want to take up before I
14 allow you to testify as you will? Any procedural matters?
15 None? Okay.
16 MR. EDENBAUM: I think we're good.
17 MR. GROSSMAN: All right. Then let me turn it
18 over to you. And Mr. Edenbaum, what do you wish to testify
19 to in your case?
20 MR. EDENBAUM: I was just going to tell you what
21 we're doing.
22 MR. GROSSMAN: Okay.
23 MR. EDENBAUM: We've been in existence since we
24 opened in 2000 for an eight bed assisted living facility
25 group home license level three. And we're just, what we're

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1 trying to do is convert the office which originally was a
2 bedroom --
3 MR. GROSSMAN: Correct.
4 MR. EDENBAUM: -- back into a bedroom on the main
5 floor, bringing the office to the lower level, the basement.
6 It's a walk-out, finished basement. And also making the
7 master bedroom a double occupancy for a couple. There will
8 be no construction exterior, I mean, there will be a little
9 bit of, maybe a closet, you know, just putting on doors
10 actually, there's already an indent. And of course making
11 sure the home meets the regulations for a large group home.
12 MR. GROSSMAN: Okay.
13 MR. EDENBAUM: From what I understand the major
14 thing is upgrading the fire system. And that was our plan.
15 MR. GROSSMAN: Okay. There will be no external
16 changes to the grounds?
17 MR. EDENBAUM: Nothing
18 MR. GROSSMAN: Okay.
19 MR. EDENBAUM: No.
20 MR. GROSSMAN: All right. Let me briefly go
21 through, first of all the specific plans that you submitted
22 as well as having you identify some photographs.
23 MR. EDENBAUM: Sure.
24 MR. GROSSMAN: Okay. Let's start with the
25 photograph on page 4 of the technical staff report. Do you

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1 have the technical staff report there, do you have a copy
2 there?
3 MR. EDENBAUM: Of technical staff report.
4 MS. MENDOZA: Oh, that was their report.
5 MR. EDENBAUM: Oh.
6 MS. MENDOZA: This is it.
7 MR. EDENBAUM: Page 4? Oh, yes, okay.
8 MR. GROSSMAN: And would you identify the
9 photograph there, please?
10 MR. EDENBAUM: Yes. That is the house on Liberty
11 Lane. That's the picture of the front of the home.
12 MR. GROSSMAN: Okay. And this is the subject site
13 we're talking --
14 MR. EDENBAUM: Yes.
15 MR. GROSSMAN: -- about here?
16 MR. EDENBAUM: Yes, it is.
17 MR. GROSSMAN: And did you take this photograph?
18 MR. EDENBAUM: I did.
19 MR. GROSSMAN: Okay. And about when did you take
20 it approximately?
21 MR. EDENBAUM: It looks like the azaleas are in
22 bloom so I assume it was in the spring.
23 MR. GROSSMAN: All right.
24 MR. EDENBAUM: Probably May of last year, May of
25 '14.

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1 MR. GROSSMAN: Other than the difference between
2 snow on the ground and azaleas blooming does it accurately
3 represent the subject site?
4 MR. EDENBAUM: Yes, it does.
5 MR. GROSSMAN: Okay. All right. The next one on
6 page 5 is an aerial photo, looks like a Google photo but I
7 take it you didn't take that.
8 MR. EDENBAUM: No, I did not.
9 MR. GROSSMAN: You didn't get up on your --
10 MR. EDENBAUM: No, my helicopter --
11 MR. GROSSMAN: -- drone?
12 MR. EDENBAUM: -- was out of business that day.
13 MR. GROSSMAN: All right. Let's see if there's
14 any additional photographs. And there's another aerial
15 photograph in attachments to the staff report, attachment A.
16 I take it you didn't take that one either.
17 MR. EDENBAUM: No.
18 MR. GROSSMAN: Okay. Okay, let's turn to the
19 photographs. There are photographs that are also in
20 attachment A and these look like they were submitted by you.
21 MR. EDENBAUM: Yes.
22 MR. GROSSMAN: And let's see if we have the
23 originals here. Yes, we do, and we'll have you identify
24 them. Now, Exhibit No. 10A, a series of three photographs,
25 and can you tell me what these photographs are depicting?

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1 MR. EDENBAUM: Different angles of the front of
2 the home.
3 MR. GROSSMAN: Okay. And once again do these
4 accurately depict the subject site?
5 MR. EDENBAUM: Yes.
6 MR. GROSSMAN: Okay. And this was taken within
7 the last year?
8 MR. EDENBAUM: Yes.
9 MR. GROSSMAN: All right. And then Exhibit No.
10 10B also has three photographs and these photographs, would
11 you identify those, please?
12 MR. EDENBAUM: Yes. Those are the back deck on
13 the home.
14 MS. MENDOZA: No, the front of the house.
15 MR. GROSSMAN: Oh, that's still the front of the
16 home.
17 MR. GROSSMAN: Yeah, it's different angles I guess
18 of the --
19 MS. MENDOZA: Uh-huh.
20 MR. GROSSMAN: -- front of the home?
21 MR. EDENBAUM: Yes.
22 MR. GROSSMAN: And do they accurately portray the
23 site?
24 MR. EDENBAUM: Yes, they do.
25 MR. GROSSMAN: And 10C?

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1 MS. MENDOZA: That's the deck.
2 MR. EDENBAUM: Okay. That is the deck on the rear
3 of the home.
4 MR. GROSSMAN: All right. And do these
5 photographs accurately portray the site?
6 MR. EDENBAUM: Yes, they do.
7 MR. GROSSMAN: Okay. All right. Now let's turn
8 to plans that you have submitted. We'll start out with
9 Exhibit No. 4B, there should be a 4A in here somewhere but
10 I'm not seeing it. Let's see. Oh, here it is, 4A rather.
11 MS. MENDOZA: Uh-huh.
12 MR. GROSSMAN: We'll start out with 4A and it's
13 entitled in here, plat after addition. Can you identify
14 Exhibit No. 4A?
15 MR. EDENBAUM: Yes, that's, that's correct. It's
16 a drawing of the house, the plat after the addition was made
17 in '99.
18 MR. GROSSMAN: Okay. It's also identify in our
19 record as your site plan. Is this serving as your site plan
20 for the case?
21 MS. MENDOZA: Yes.
22 MR. EDENBAUM: Yes.
23 MR. GROSSMAN: Okay. And --
24 MR. EDENBAUM: She did a lot of the legwork.
25 MR. GROSSMAN: I see. And then 4B indicates

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1 original plat.
2 MR. EDENBAUM: Yes.
3 MR. GROSSMAN: It's identified as survey plat in
4 our record. Was this before the, well --
5 MR. EDENBAUM: Before, before the addition in '99.
6 MR. GROSSMAN: Okay.
7 MR. EDENBAUM: The original house.
8 MS. MENDOZA: Uh-huh.
9 MR. GROSSMAN: All right. And then Exhibit No. 5,
10 would you identify Exhibit No. 5, please? It's identified
11 in our record as your landscape --
12 MR. EDENBAUM: Yes, the landscape of the home.
13 MR. GROSSMAN: -- plan and details.
14 MR. EDENBAUM: Yeah.
15 MR. GROSSMAN: All right.
16 MS. MENDOZA: Jonathan.
17 MR. GROSSMAN: Does that show all landscaping
18 that's on the site?
19 MS. MENDOZA: He should go to the other.
20 MR. EDENBAUM: Pardon?
21 MS. MENDOZA: Can I? When I originally drew this
22 one we were asked to --
23 MR. GROSSMAN: Ms. Mendoza?
24 MS. MENDOZA: Yes.
25 MR. GROSSMAN: I just want the record to reflect

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1 who's speaking.
2 MS. MENDOZA: Okay.
3 MR. GROSSMAN: Yes, go ahead.
4 MS. MENDOZA: We submitted an updated version
5 which we got an architect to do for us.
6 MR. GROSSMAN: Okay.
7 MS. MENDOZA: So, that one goes along with this
8 one. You have it, I'm not sure what exhibit it would be for
9 you.
10 MR. GROSSMAN: Okay.
11 MS. MENDOZA: But it's towards the end.
12 MR. EDENBAUM: It's a little, it's a little more
13 professionally done.
14 MS. MENDOZA: Right.
15 MR. GROSSMAN: All right. Well let's identify
16 this and we'll turn to the other one --
17 MS. MENDOZA: Okay.
18 MR. EDENBAUM: Okay.
19 MR. GROSSMAN: -- in a second. Right now --
20 MS. MENDOZA: Yes.
21 MR. GROSSMAN: -- this one, Exhibit No. 5, it says
22 landscape and it's actually --
23 MS. MENDOZA: And lighting.
24 MR. GROSSMAN: -- it looks like and it's also got
25 lighting --

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1 MS. MENDOZA: Yes.
2 MR. EDENBAUM: Yes.
3 MR. GROSSMAN: -- indicated on it. Is it not as
4 accurate as the one that was later submitted or is it also
5 accurate?
6 MR. EDENBAUM: It's accurate, it's just not
7 professional.
8 MR. GROSSMAN: Okay. All right.
9 MR. EDENBAUM: Yeah.
10 MR. GROSSMAN: Let me see if we can find that.
11 MR. EDENBAUM: Park and Planning wanted us to get
12 an architect to do it so we did.
13 MR. GROSSMAN: Okay. Hold on. Let's see. Oh, I
14 see, 14A --
15 MS. MENDOZA: Uh-huh.
16 MR. GROSSMAN: -- it looks like. Looks like, by
17 the way, you have at Exhibit No. 16, before we get to that,
18 that's a photograph that looks like also the front of the
19 house but this time showing the zoning notice sign --
20 MR. EDENBAUM: Yes.
21 MR. GROSSMAN: -- posted. Okay. And that
22 accurately depicts the site?
23 MR. EDENBAUM: Yes, it does.
24 MR. GROSSMAN: Okay. Okay, 14A, let's see. Here
25 it is. Okay, 14A, can you identify this exhibit, please?

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1 MR. EDENBAUM: Yes. That is the drawing of the
2 lighting and landscape of the home.
3 MR. GROSSMAN: Okay. It's also labeled site plan
4 here but it also shows, it notes trees, bushes and light
5 fixtures. So it serves both purposes I would say.
6 MR. EDENBAUM: Yes, sir.
7 MR. GROSSMAN: Okay. All right. I'm taking this
8 apart so thoroughly that we may never get it back together
9 again. All right. And Exhibit No. 6A which is designated
10 as floor plans, 6A and B, would you identify those, please,
11 sir?
12 MR. EDENBAUM: Yes, those are the floor plans of
13 the main floor and the lower level.
14 MR. GROSSMAN: And do they accurately reflect the
15 floor plans --
16 MR. EDENBAUM: Yes, they do.
17 MR. GROSSMAN: -- that are planned for this --
18 MR. EDENBAUM: Yes.
19 MR. GROSSMAN: -- special exception?
20 MR. EDENBAUM: Uh-huh.
21 MR. GROSSMAN: All right. And Exhibit No. 7,
22 designated parking plan.
23 MR. EDENBAUM: Yes.
24 MR. GROSSMAN: All right. And it shows how many
25 parking spaces that you have?

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1 MR. EDENBAUM: Nine.
2 MR. GROSSMAN: Okay.
3 MR. EDENBAUM: Ten.
4 MR. GROSSMAN: Well, is it --
5 MR. EDENBAUM: Three, six, 10.
6 MR. GROSSMAN: All right.
7 MS. MENDOZA: No, but that one it should be nine
8 because of the measuring.
9 MR. EDENBAUM: Oh.
10 MS. MENDOZA: So, it really, this one --
11 MR. EDENBAUM: Okay. Actually I apologize it's
12 nine and not 10 because we made the ones on the driveway two
13 instead of three.
14 MR. GROSSMAN: Okay. So which are the ones that
15 are on the driveway?
16 MR. EDENBAUM: The two to the, if you're looking
17 at the front of the house the two to the right.
18 MS. MENDOZA: This is Ms. Mendoza again, we're
19 going to go with site plan A on your Exhibit No. 14, site
20 plan A, it depicts parking, the trees, the bushes and the
21 lights.
22 MR. GROSSMAN: Okay.
23 MR. EDENBAUM: Done by the architect.
24 MS. MENDOZA: So it's -- right, right.
25 MR. GROSSMAN: I see.

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1 MS. MENDOZA: Uh-huh.
2 MR. GROSSMAN: So you also have the parking there
3 --
4 MS. MENDOZA: As well, uh-huh.
5 MR. GROSSMAN: -- and I see the one that was
6 eliminated on the right-hand side there --
7 MS. MENDOZA: Correct.
8 MR. GROSSMAN: -- of the 14A.
9 MS. MENDOZA: Uh-huh.
10 MR. GROSSMAN: All right. So, okay. All right.
11 Now, let me go through for a second the requirements for a
12 large group home.
13 MS. MENDOZA: Uh-huh.
14 MR. GROSSMAN: They are contained in 59-G-2.26 and
15 subsection A provides that when allowed in addition to
16 general conditions required in division 59-G-1 a group home
17 may be allowed upon a finding by the Board of Appeals: one,
18 that the property to be used for the group home is of
19 sufficient size to accommodate the proposed number of
20 residents and staff. Do you want to comment on that?
21 MR. EDENBAUM: Yes. We're not, the house, it's
22 almost, it's a 4,600 square foot home roughly. We have
23 plenty of parking and most staff they're 12 hour shifts so
24 there's not a lot of coming and going.
25 MR. GROSSMAN: Right.

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1 MR. EDENBAUM: And most of our staff actually take
2 the bus so they don't even park there. The busses, bus stop
3 is at the end of the street.
4 MR. GROSSMAN: Well, we're talking, I guess the
5 question here is the size, whether the group home is of
6 sufficient size to accommodate the proposed number of
7 residents.
8 MR. EDENBAUM: Oh, yes, yes it is.
9 MR. GROSSMAN: Okay. Two, that the site to be
10 used as a group home for children provides ample outdoor --
11 well, it's not for children so I guess that --
12 MR. EDENBAUM: Right, yeah.
13 MR. GROSSMAN: -- one doesn't apply. Three, that
14 off-street parking must be provided in the amount of one
15 parking space for every two residents and one space for
16 every two employees on the largest work shift. Do you have
17 sufficient parking for that?
18 MR. EDENBAUM: Yes, we do.
19 MR. GROSSMAN: Okay. All right. Now I'm going to
20 turn to the general conditions contained in 59-G-1.21(a).
21 And some of them are somewhat legal questions but you're
22 welcome to state anything you want regarding that section.
23 One, is it a permissible special exception in the zone.
24 MR. EDENBAUM: I guess we'll find that out.
25 MR. GROSSMAN: Well, it means that in -- the

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1 question is whether, in general, these large group homes are
2 permitted in the zone that you occupy, in general, not this
3 particular one.
4 MR. EDENBAUM: Oh, in general, yes.
5 MR. GROSSMAN: Okay. And two, complies with the
6 standards and requirements set forth in 59-G-2 which we just
7 went through.
8 MS. MENDOZA: yes.
9 MR. EDENBAUM: Yes.
10 MR. GROSSMAN: Three, will be consistent with the
11 general plan for the physical development of the district.
12 In other words, is it consistent with the master plan that's
13 applicable?
14 MR. EDENBAUM: Yes.
15 MR. GROSSMAN: Okay. And in this case it's the
16 2002 Potomac master plan.
17 MS. MENDOZA: Right.
18 MR. EDENBAUM: Right.
19 MS. MENDOZA: And we have a copy, too.
20 MR. EDENBAUM: Yeah, we have a copy of that.
21 MR. GROSSMAN: Okay. Four, will be in harmony
22 with the general character and the neighborhood, considering
23 population, density, design, scale, bulk, intensity in
24 character of activity, traffic, parking and so on?
25 MR. EDENBAUM: Yes.

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1 MR. GROSSMAN: Okay. And you can say anything you
2 want in regard to these. I'm not limiting your --
3 MR. EDENBAUM: Oh, okay.
4 MR. GROSSMAN: -- testimony. Five, will not be
5 detrimental to the use, peaceful enjoyment, economic value
6 or development of surrounding properties or the general
7 neighborhood?
8 MR. EDENBAUM: Correct. It will not, it will
9 blend right in, we will, we're not a wild bunch.
10 MR. GROSSMAN: Six, will cause no objectionable
11 noise, vibrations, fumes, odors, dust, illuminations, glare
12 or physical activity at subject site.
13 MR. EDENBAUM: It will not.
14 MR. GROSSMAN: Okay. Seven, will not, when
15 evaluated in conjunction with existing and approved special
16 exceptions in any neighboring one-family residential area,
17 increase the number, intensity or scope of special exception
18 use as sufficiently to affect the area adversely or alter
19 the residential nature of the area.
20 MR. EDENBAUM: No, it won't.
21 MR. GROSSMAN: Okay. Technical staff notes that
22 there are no other special exception uses in the immediate
23 area. Eight, will not adversely affect the health, safety,
24 security, morals or general welfare of residents, visitors
25 or workers in the area.

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1 MR. EDENBAUM: Correct, it won't.
2 MR. GROSSMAN: Nine, will be served by adequate
3 public services and facilities including schools, police,
4 fire protection, water, sanitary, sewer, public roads and
5 storm drains.
6 MR. EDENBAUM: Yes, it will.
7 MR. GROSSMAN: Okay. I don't think you'll need
8 schools --
9 MR. EDENBAUM: No.
10 MR. GROSSMAN: -- in this particular situation.
11 All right.
12 MR. EDENBAUM: Volunteers from the schools.
13 MR. GROSSMAN: Okay. That's always good.
14 MR. EDENBAUM: Yes.
15 MR. GROSSMAN: Okay. Will it affect adversely the
16 safety of vehicular or pedestrian traffic?
17 MR. EDENBAUM: No, it will not.
18 MR. GROSSMAN: Okay.
19 MR. EDENBAUM: All of our parking is in-house so
20 it's on our property so it won't hinder anything on the
21 street.
22 MR. GROSSMAN: Okay. One of the requirements is
23 that you meet certain lighting requirements that no glare
24 goes into the adjoining homes and so on, adjoining
25 properties in a residential area and staff concludes that

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1 it's adequate and consistent with the residential character.
2 I take it you're not adding any additional lighting to that.
3 MR. EDENBAUM: No.
4 MR. GROSSMAN: All right. Your building is not
5 changing so it does have a residential appearance. You
6 don't have a sign, is that correct?
7 MR. EDENBAUM: We do have a sign on the mailbox,
8 just says the name.
9 MR. GROSSMAN: Okay.
10 MR. EDENBAUM: And there's a picture of that. But
11 we can take it off if you'd like us to.
12 MR. GROSSMAN: Well, it's just that it says,
13 currently there is no identification sign placed on the
14 property according to technical staff. The name of the home
15 is written on the mailbox --
16 MS. MENDOZA: Exactly.
17 MR. EDENBAUM: Yes.
18 MR. GROSSMAN: -- by the sidewalk, no
19 identification signs is proposed as part of the special
20 exception.
21 MR. EDENBAUM: Right, no we want to blend in with
22 the neighborhood.
23 MR. GROSSMAN: All right. Is there anything else
24 you want to add before I turn to Ms. Mendoza to see if she
25 has anything to say?

1 MR. EDENBAUM: I mean, we did have, I don't know
 2 if you're going to ask this later but we, you know, we sent
 3 out letters to all of the neighbors --
 4 MR. GROSSMAN: Okay.
 5 MR. EDENBAUM: -- and we had an open house this
 6 past Sunday and we had a few people coming in and everybody
 7 seemed very pleased. So, and actually a number of folks who
 8 had elderly parents who wanted to know options of where they
 9 could place them down the street. So, and we've been there
 10 for 15 years --
 11 MR. GROSSMAN: Right.
 12 MR. EDENBAUM: -- and we've never had any trouble
 13 with the neighborhood.
 14 MR. GROSSMAN: It's always good to let the
 15 neighbors know what's going on.
 16 MR. EDENBAUM: Absolutely.
 17 MR. GROSSMAN: That always helps.
 18 MR. EDENBAUM: Yes.
 19 MR. GROSSMAN: Okay. All right. Now, all right,
 20 Ms. Mendoza, do you wish to add any additional testimony?
 21 MS. MENDOZA: No. Just in addition to what he
 22 said as I was going through the requirements I did do
 23 research to prove that we have enough parking to accommodate
 24 both staff, the few that might drive, in the worst case
 25 scenario, family members. We did, what else, what other

1 report did we do. If you want a traffic statement we have
 2 that. We also did a schedule of operations just for the
 3 purpose of showing that, you know, even with, in the worst
 4 case scenario, with most staff and visitors present, we
 5 would still be able to meet requirements for parking.
 6 MR. GROSSMAN: Okay.
 7 MS. MENDOZA: Other than that I think everything
 8 was said by Mr. Jonathan. The families are happy, the
 9 neighbors are happy and so, I mean, we are looking forward
 10 to this here project.
 11 MR. GROSSMAN: And what's your role in the
 12 operation?
 13 MS. MENDOZA: I am the office manager.
 14 MR. GROSSMAN: Okay. And how long have you served
 15 in that capacity?
 16 MS. MENDOZA: Since August 2011.
 17 MR. GROSSMAN: All right. Ms. Blum, did you wish
 18 to add anything to this testimony?
 19 MS. BLUM: Yes, sure. As I stated earlier, I am a
 20 neighbor. I've been in that neighborhood for over 20 years.
 21 I am also a clinical social worker and a geriatric care
 22 manager with Debra Levy Elder Care Associates. So, I got to
 23 know Jonathan through my affiliation with Debra Levy Elder
 24 care. It's been a little over 10 years. So I did visit the
 25 home when it first opened as part of my interest in knowing

1 about facilities --
 2 MR. GROSSMAN: Right.
 3 MS. BLUM: -- in general but also because it was
 4 in the neighborhood. And over the years I've gotten to know
 5 his homes in general and they are highly regarded in our
 6 field because he provides very good care. And I would say
 7 the word that came to mind as we were listening here is
 8 unobtrusive. I mean, as a neighbor I find I'm hardly aware
 9 that it's there because it does look like most of the other
 10 houses. And there would be no way of knowing there was
 11 something different except you do notice that there are a
 12 few more parking spaces. As far as I know I've not heard
 13 complaints from neighbors, I don't feel that there's
 14 anything that people have objected to in terms of having it
 15 in the neighborhood. Occasionally we've seen residents
 16 walking with a caregiver on the street but not often and now
 17 there's a sidewalk which makes it, I think, better for them.
 18 MR. EDENBAUM: Yes.
 19 MS. BLUM: And I do think that Jonathan has made
 20 an effort to, you know, be friends with the neighborhood so
 21 I think children have gone in and done community service and
 22 projects and you've reached out to the neighborhood as a
 23 whole. So, I don't have any objections to what he's
 24 proposing because it really isn't going to affect the
 25 neighborhood in any way.

1 MR. GROSSMAN: All right. How close do you live
 2 to the home?
 3 MS. BLUM: I live about a block away so I'm not in
 4 the exact same block as the house but I'm on the same side
 5 of the road, a block up.
 6 MR. GROSSMAN: All right.
 7 MS. BLUM: Yeah.
 8 MR. GROSSMAN: Now, you testified about, well in
 9 essence your expert knowledge.
 10 MS. BLUM: Uh-huh.
 11 MR. GROSSMAN: You weren't listed as an expert
 12 witness. Generally speaking for somebody to testify as an
 13 expert witness in the case they have to be, have to go
 14 through a qualification process --
 15 MR. EDENBAUM: Oh.
 16 MR. GROSSMAN: -- that is that they submit a
 17 resume and they're questioned using what's called a voir
 18 dire, an examination --
 19 MS. BLUM: Uh-huh.
 20 MR. GROSSMAN: -- as to their expertise and then
 21 they are accepted or not as an expert in the case. And
 22 experts don't have to necessarily have specific degrees in
 23 things. They just have to be able to offer testimony that
 24 would aid the fact finder beyond the ken of a usual layman.
 25 However, in this case I'm going to take that testimony --

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1 well obviously your testimony as a neighbor is one thing.
2 Your testimony --
3 MS. BLUM: Uh-huh.
4 MR. GROSSMAN: -- as a clinical social worker is
5 something else. I'm going to take that testimony in any
6 event. There's nobody objecting here --
7 MS. BLUM: Uh-huh.
8 MR. GROSSMAN: -- and consider it kind of as
9 learned layman testimony if you will.
10 MS. BLUM: Uh-huh.
11 MR. GROSSMAN: Okay. Anything else you wanted to
12 add?
13 MS. BLUM: No, I don't think so. It's, I'm
14 perfectly, you know, happy with the way things have gone
15 over the years.
16 MR. GROSSMAN: Okay. And Mr. Edenbaum, I take it
17 you don't want to brutalize this witness with cross-
18 examination, do you?
19 MR. EDENBAUM: No, sir.
20 MR. GROSSMAN: Okay. All right. is there
21 anything --
22 MR. EDENBAUM: I'll leave it be.
23 MR. GROSSMAN: Is there anything further that you
24 wanted to add?
25 MR. EDENBAUM: Um --

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1 MR. GROSSMAN: Are there any additional exhibits
2 or anything like that? Right now we have 21 exhibits.
3 MS. MENDOZA: We're not adding to that.
4 MR. GROSSMAN: Okay.
5 MR. EDENBAUM: Oh, no, we're not adding more.
6 Yes.
7 MR. GROSSMAN: And I take it you would like to
8 move all of those exhibits into evidence?
9 MR. EDENBAUM: Yes, sir.
10 MR. GROSSMAN: All right. Then I accept into
11 evidence Exhibits No. 1 through 21 and their subparts. All
12 right. Now, let's talk about the date the record will close
13 and what happens. Anything else, I should ask, anything
14 else you wish to offer? All right. Let me get a calendar
15 out here, because we do have to add, keep the record open
16 for 15 days under the Board rules given the late arrival of
17 the Planning Board letter. Okay. So, today's the 27th and
18 the fifteenth, since we have a short month here, essentially
19 it would be the 14th of March and that's a weekend so we'll
20 say the record will close at close of business on March 16.
21 MR. EDENBAUM: Is that when we would take the sign
22 down?
23 MR. GROSSMAN: No, you have to leave the sign
24 posted --
25 MS. MENDOZA: 30 days.

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1 MR. GROSSMAN: -- until you receive the resolution
2 from the Board of Appeals.
3 MR. EDENBAUM: Okay.
4 MR. GROSSMAN: If there were opposition you'd have
5 to keep it up for another 30 days.
6 MR. EDENBAUM: Okay.
7 MR. GROSSMAN: But there's no opposition in the
8 file.
9 MR. EDENBAUM: Okay.
10 MR. GROSSMAN: So what will happen is, as I say,
11 March 16 is the record close. So if there's any additional
12 comments based on Planning Board letter that can be, they
13 can be received by then. Then I have 30 days to write a
14 report and recommendation and I'm pretty good about sticking
15 to those time limits, although I have the power to extend my
16 time if I need to. And then the Board of Appeals will set
17 up a work session, well they have regular work sessions
18 usually every Wednesday and they'll put this on the calendar
19 at a work session. You have a right to ask for, within 10
20 days after I issue my report and recommendation, any
21 aggrieved party has a right to ask for oral argument before
22 the Board of Appeals. You can't introduce new evidence
23 there but you can argue if a recommendation is not to your
24 liking you can argue about it if the Board allows oral
25 argument. They don't always. But in any event, they will

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1 take it up at a work session. You might want to check with
2 them after you receive a notice of my report. We mail out
3 to all the participants in the hearing, we mail out a notice
4 of the fact that my report has been issued. It will state
5 what the conclusion is and any conditions if there are
6 conditions recommended and it will give you the website
7 address, our website in which the full report will be
8 contained and so you'll be able to read that. And within 10
9 days after that you will have the opportunity to, within 10
10 days after it's issued you'll have the opportunity to
11 request oral argument should you wish to do so. But I would
12 check with, once you get that notice, I would check with the
13 Board of Appeals to find out what day the work session will
14 be held to discuss your case.
15 MR. EDENBAUM: Are we allowed to attend that work
16 session?
17 MR. GROSSMAN: It's a public session.
18 MR. EDENBAUM: Oh.
19 MR. GROSSMAN: You certainly may attend. You
20 won't necessarily be allowed to have oral argument. If you
21 requested it, you could request it, but --
22 MR. EDENBAUM: We can just sit in the back and be
23 quiet.
24 MR. GROSSMAN: You can sit in the back. I don't
25 usually attend those sessions so I don't know how they'll

1 handle it. But I guess if you spoke up and said you wanted
2 to say something they would probably let you say something
3 but I don't know for sure. You can inquire with the Board
4 of Appeals about that, about their procedure on that.

5 MR. EDENBAUM: Okay.

6 MS. MENDOZA: Okay.

7 MR. GROSSMAN: Okay?

8 MS. MENDOZA: Uh-huh.

9 MR. GROSSMAN: I don't think you have a great deal
10 to worry about in this unopposed case. Okay.

11 MR. EDENBAUM: Thank you.

12 MR. GROSSMAN: Is there anything further that
13 anybody wishes to add? Okay. We have the record close
14 date. All the exhibits have been admitted and if there's
15 nothing further we are adjourned.

16 MR. EDENBAUM: All right.

17 MS. MENDOZA: Thank you very much.

18 MR. EDENBAUM: Thank you very much.

19 MR. GROSSMAN: You're welcome very much.

20 (Whereupon, at 10:16 a.m., the hearing was
21 concluded.)

22

23

24

25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
the attached pages represent an accurate transcript of the
electronic sound recording of the proceedings before the
Office of Zoning and Administrative Hearings for Montgomery
County in the matter of:

Petition of Jonathan Edenbaum
Special Exception No. S-2859
OZAH No. 15-04

By:

Brandon Fields, Transcriber

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