OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

PETITION OF GILMOURE-BRUNETT, LLC, : Case No. S-2781
: OZAH Case No. 11-05

A hearing in the above-entitled matter was held on April 15, 2011, commencing at 9:30 a.m., at the Council Office Building, Rita Davidson Memorial Hearing Room, 2nd Floor, 100 Maryland Avenue, Rockville, Maryland 20850 before:

Lynn A. Robeson, Hearing Examiner

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ON BEHALF OF SOUTH FOUR CORNERS COMMUNITY CITIZENS ASSOCIATION:	
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P R O C E E D I N G S

MS. ROBESON: Good morning.

THE AUDIENCE: Good morning.

MS. ROBESON: Is the court reporter ready?

COURT REPORTER: Yes.

MS. ROBESON: Okay. Are the parties ready?

MS. MEAD: Yes.

MR. LEIBOWITZ: Yes.

MS. ROBESON: Okay. I will call the case. This is a public hearing in the matter of petition, of the petition of Gilmoure-Brunett, LLC, BOA Case No. S-2781, OZAH Case No. 11-05, an application for a special exception to allow a child daycare facility at 220 West University Boulevard, Silver Spring, Maryland, land in the R-60 zone. The property's legal description is Lot 13, Block P.

This hearing is conducted on behalf of the Board of Appeals. I am the hearing examiner, and I am going to be taking testimony and evidence in the case. I write a report and recommendation to the Board of Appeals. The Board of Appeals is going to make the final decision. If I could, could I have the parties identify themselves for the record?

MR. LEIBOWITZ: Good morning. Louis Leibowitz on behalf of the South Four Corners Community Citizens Association.

MS. ROBESON: Okay.

MS. MEAD: Anne Martin Mead with Linowes and Blocher on behalf of Gilmoure-Brunett, LLC.

MR. ROBESON: All right. And is there anyone in the audience that plans to testify that's not represented by either Mr. Leibowitz or Ms. Martin? No? All right. Just for, for those who are not familiar with these proceedings, I, I'm going to just explain a little bit about the process today and what the standards of approval are. This is an informal proceeding, but it does have certain formalities. Your testimony will be under oath. It will be subject to cross-examination. And, which means that people can question you on your testimony, and you have the right to question them on their testimony.

This is an application for a special exception. And the word special exception is a little bit of a misnomer because it's really not an exception. It is permitted if the applicant can meet all the standards that are in the zone. So, your testimony should address whether or not the applicant has met those standards. All right. Now, Ms. Martin, as the applicant, do you have an opening statement?

MS. MEAD: Yes, I do. And I also, for a housekeeping matter, the affidavit of posting --

MS. ROBESON: Okay.

MS. MEAD: -- if we could enter that into the record. I think that's the next exhibit 66.

MS. ROBESON: Okay.

MS. MEAD: Thank you.

MS. ROBESON: Thank you.

(Exhibit 66 was marked for identification.)

MS. MEAD: Thank you. Again, good morning. And again for the record, Anne Martin Mead with the law firm Linowes and Blocher, representing Gilmoure-Brunett, LLC, the applicant in the case today. Beside me is Craig Kay with Gilmoure-Brunett, LLC, the applicant. I wanted to first thank the hearing examiner and the other parties for permitting the extension of the originally-scheduled hearing for the revisions to the plan, which will hopefully, and in our opinion has, addressed some of the concerns raised in the case and particularly those by the Planning Board.

I do have a few, just a few minutes of opening comments to really frame our testimony today and to note a few legal items.

The testimony is going to indicate today, we have had mixed feedback over the past several years, as Mr. Kay has proceeded with the application. You'll hear in the testimony that there was positive feedback from Park and Planning staff on the use, as far as the special exception on the site. There was various concerns expressed from neighbors from meetings that Mr. Kay held with them and that

he tried to address, the ones that were reasonably able to address, such as the speed on the roads, roof reductions, reducing enrollment, which originally started with 150 kids, obviously has gone down over time. We're removing a downstairs garage with the latest revisions.

After the filing, obviously, as noted in the staff report in the exhibits, the staff report had changed their position, and even noted in the report, a lot of the findings are not based on evidence but on letters of objection in the record, which, as the hearing examiner knows, is zoning by plebiscite, not evidence. But we did get some constructive comments both from staff and the Planning Board as far as the scale of the site, and we hope we've addressed those.

As Hearing Examiner noted in the beginning of the case today, one of the hurdles we've had, and that I believe staff has had, is on the misinformation as far as what a special exception is. Unfortunately, there's no people's council anymore to help us with community meetings, as far as an unbiased approach, as far as what a special exception is, and that it's not a -- it's not a rezoning of the site, it's not a commercial use.

We did attempt to meet with the neighbors, both informally, tried to meet with the citizens association, which hopefully will become a process through the TMP. We

did host a community meeting since we couldn't present to their association. Unfortunately, there was misinformation in the record. Exhibit -- I have it as Exhibit 26, it wasn't marked, but it was filed to an adjacent community association, Woodward Pinecrest, that did note that the granting of a special exception results in a permanent zoning change for the subject property, and, once granted, the changes can be made without public notice, and that it runs with the land so the property can be sold and the special exception will move without a public hearing. So, that was one of the hurdles we faced as far as miscommunication that inspired letters of opposition that we are trying to address.

As Hearing Examiner knows, this case is not the case with a special exception. It's not a zoning change. We are not going to -- there is no Plan B, which was asked of Mr. Kay on numerous times, whether it was going to be converted to a 7-11 with a parking lot underneath. So, we have dealt with some of the fears, and then we've eliminated the garage to eliminate that possibility, as infeasible as it would be, totally.

Further, as the Hearing Examiner knows, and as mentioned in the beginning of the case, that the council has allowed a daycare use in the R-60 zone. There is a presumption of some compatibility of the use, although it's

qualified in Montgomery County thanks to the recent Butler case, but there, and there is acknowledgment that this Board has made that there are some inherent daycare characteristics that are acceptable in the R-60 zone on certain properties. And as you'll hear in the testimony today, this property is appropriate for the special exception use as proposed.

You'll hear in the testimony and in the record of the case, even the staff report, and that the Board of Appeals has set forth the inherent criteria that it has set a precedent for the child daycare use as far as what it considers to be inherent, and that you obviously have some of those inherent characteristics. You'll also hear testimony from Childway on that effect, and that there is no non-inherent physical operational characteristics of this site. It's similar to operations of other Childway sites and daycares and other daycares in the county.

Except for the conditions we proffered, it does make it different than a permitted use. We have no dumpster. We have no large deliveries. We have reduced activities. Obviously, we have all these plans that we're committing to stick to through the process, a transportation management plan, and all the conditions that come with that as far as community meetings, Board of Appeals, having a coordinator, encouraging public transit, limited number of

kids at play.

So, it is different from a permitted use, but it's not different from any other special exception use. And it is a custom-built residential-looking building. And it's the same size, as you'll hear in the testimony, of similar size as the homes that were previously proposed on the site.

You'll also hear that there's no adverse effects created by any unusual characteristics. You'll hear testimony from our land planner and engineers that it's a regular shaped lot on the edge of a neighborhood on a major highway. It's not on a cul-de-sac or buried in any neighborhood, and it's accessed one block off that major highway from two egress points. It's a very efficient site. There's no forest or unusual topography, and it has, as you'll hear in the testimony, has two frontages that don't front on single-family homes in the R-60 neighborhood.

What wasn't in the Planning staff report, and as the Planning Board noted that it was omitted, and what you'll hear about today, is the Master Plan recommended this use as office. There had previously been a dental office on the site, which you've heard in all the testimony submitted with the R-60 zoning that was recommended for an office use. And further, you'll hear testimony that this use is reinstating the childcare use that had previously been across the street at the time of the Master Plan.

You will hear, and there is testimony in the record that the Master Plan discourages special exceptions adjacent to commercial areas. But as we'll note, this site is not adjacent to a big commercial area. It is recommended for the office use when other R-60 zoned properties were not that had offices on them. And it does comply with the other Master Plan recommendations for special exceptions which are the same as the Zoning Ordinance having a residential scale and having a landscape plan.

The Planning Board did not find that the Master Plan was a hurdle that, for this site. Again, the concern was about the size of the enrollment and the building size, which we have addressed and which we'll address further in testimony.

You'll hear from our transportation engineer and his finding and those of staff that this use with 120 kids and 25 staff that we've since reduced does not create adverse impacts or compatibility. And you'll also hear from the transportation engineer and Childway on how daycare operates and the nature of the trips for this use, and that there's no unusual characteristic of the access about the streets of Gilmoure and Brunett being adequate, and again adjacent to, approximate to a major highway and convenient for the best options.

You will hear the testimony regarding the Zoning

Ordinance provision that provides for 250 square feet of property area, not determined how it's used, per child under certain conditions, and how 404 square feet of property of this site works for this very efficient site. Staff and the neighbors feel that, neighbors that aren't opposed to the use, feel that 500 square feet is the magic number, which used to be the standard before the council changed it in 2002, but the conditions focus on a play area, parking, and trips, which are more than addressed in other testimony of that fact and besides the significant setbacks we have from the R-60 zone properties.

Lastly, you'll hear about, as I've already mentioned but which is not mentioned by the opposition whatsoever -- was not mentioned, unfortunately, by Planning staff or the Planning Board that does deserve some attention in this case, particularly since it is the hallmark of a special exception of these types of uses -- is a transportation management plan. Because it has some of the most stringent conditions that really differentiate a special exception use and the commercial use feared by the community.

The community noted that they have permit parking on the street because of the postal office and the school nearby. That wouldn't be an issue with the daycare because of the TMP prohibits parking of their staff and their users

on the public street, even though it is a public street. And it has a coordinator to enforce that, and it has mechanisms to meet with the community on a regular basis if the community wants.

They can, we've added a provision that when it's unnecessary that they don't have to. We have added provision for annual reports to the board on the enrollment and any issues that come up, notices to parents and staff on the existence of a TMP that they would sign with their contracts, again, having a contact person and encouraging transit, again, one of the hallmarks of the transportation management plan.

I will finish my closing and start with the witnesses who will give you all this testimony --

MS. ROBESON: Well, I'm going to let --

MS. MEAD: Right. Right.

MS. ROBESON: Mr. Leibowitz --

MS. MEAD: But I do have, just have another housekeeping item. I noted in the response e-mail to, with counsel and the Hearing Examiner, I apologize for the typo in our revised statement of operation where we -- we had changed all the child enrollment numbers but hadn't changed the 120 to 94, obviously consistent with the rest of our records. That was intended to be a 94 for the total enrollment --

MS. ROBESON: All right.

MS. MEAD: -- in the statement of operations.

MS. ROBESON: All right.

MS. MEAD: And we do ask that the Hearing Examiner take administrative notice of some of the special exception cases that will be mentioned in our testimony today. I could give you the numbers now or I can mention them as --

MS. ROBESON: I think we need to do it in the testimony.

MS. MEAD: Okay. We will do that in testimony. Thank you.

MS. ROBESON: Mr. Leibowitz.

MR. LEIBOWITZ: Thank you. I'll be brief. We are asking the Hearing Examiner to continue the recommendations, to adopt the recommendations of both technical staff and of the Planning Board to deny, to recommend denial of this application.

This application is not in compliance with the Master Plan. The Planning Board identified three areas that is not in compliance with the Master Plan. The first is that the Master Plan specifically discourages special exceptions where, that are immediately adjacent to the south, to the Four Corners commercial district. You will hear testimony that this proposed development is one block, it's within one block of commercial establishments, within

one block of the Safeway supermarket. And the applicant argues that because there are three or four houses in between, that doesn't constitute being immediately adjacent. The Planning Board found that to be wrong, and we encourage the Hearing Examiner to adopt opposition as well.

Second, the Master Plan specifically recommends reuse of existing structures if special exceptions are granted. In this case, there was an existing structure. It was a one-family, single-family house. Inside that house, a dentist and his wife lived. They owned the house for decades. And you've heard from Ms. Martin in her opening that there was a dentist office inside. It was a home occupation.

And the applicant is trying to equate the home occupation of a dentist office with daycare in almost a 6,000 square foot building with 94 students and 28 staff members. And truly, those do not equate, and you will hear testimony from a former patient about the operations of that dentist's office, the number of patients that might be there on any, at a given time, the size of that dentist's office and how it dramatically contrasts in a way that the two can't be compared.

That existing structure was knocked down by the applicant. And so, the fact that the Master Plan recommends reusing existing structures, that is no longer possible.

And that's the second reason the Planning Board recommended denial and that that is a problem which the applicant cannot change. It is beyond their ability to fix at this point.

Third, their request in reduction of the 500 square foot per child requirements, what the code requires is that it be not less than 500 square feet unless the facility predominantly served children of an age range that requires limited outdoor activity, that the additional density will not adversely affect adjacent properties, that additional traffic generated by the additional density will not adversely affect surrounding streets, and that there is adequate provisions for drop-off and pickup of students.

We will hear testimony that -- and that the Planning Board debated this at some length at their hearing. You will hear testimony that the facility will serve children that are predominantly of an age to require outdoor space. And so they, on that prong, they cannot meet the exception. You will hear, and the Planning Board also believed this, that the additional density will affect neighboring home owners and that the additional density will generate additional traffic, it will adversely affect the surrounding streets.

In addition, the small reductions that the applicant has made to their proposal don't change any of these failings to comply with the Master Plan. It is still

immediately adjacent to the commercial district, it is still not reusing an existing structure, and cannot, and it is still less than the 500 square foot requirements.

You will hear testimony about how this proposed development will adversely impact both parking and traffic in the neighborhood. And to quote from Ms. Titus' transfer letter, the board is strongly of the view that the size and scale of the proposed daycare center is much too large and out of character with the surrounding residential neighborhood. The proposal is so out of scale, the board cannot draft any conditions to lessen the proposed child daycare center's impact on nearby properties.

The small reduction does not change that. We ask -- it's still out of scale. It still has an adverse impact, and we're asking the Hearing Examiner to recommend denial as the Planning Board and the technical staff did.

MS. ROBESON: Okay. Thank you. Ms. Martin.

MS. MEAD: We would like to start with our first witness, Ms. Jane Nelson.

MS. ROBESON: Would you raise your right hand, please?

(Witness sworn.)

MS. ROBESON: Okay.

DIRECT EXAMINATION

BY MS. MEAD:

Q If you could please state your name and business address for the record, please?

A Jane Nelson, Nelson Architects, 1003 K Street, NW, Washington, D.C.

Q And for the record, I'll note that Ms. Nelson's resume is Exhibit 14(e). So we don't have to read through the whole resume, if you could please describe your occupation and your area of expertise and how long you've been engaged in this application?

A I'm an architect. I've been an -- I've been practicing architecture for 29 years. I am registered to practice architecture in Maryland, the District of Columbia, and Virginia. I have a bachelor of architecture degree from the University of Notre Dame.

MS. ROBESON: Ms. Martin, just to shorten this, what are you attempting to qualify her as an -- exactly what is her expertise?

MS. MEAD: Expert in architecture.

MS. ROBESON: In architecture.

MS. MEAD: As an architect.

MS. ROBESON: Do you have an objection to that?

MR. LEIBOWITZ: No. I agree that she's an architect or expert in architecture.

MS. ROBESON: Okay. Let's proceed.

MS. MEAD: Saved a few minutes. All right.

BY MS. MEAD:

Q Ms. Nelson, are you familiar with and have you visited the property that is the subject of this special exception?

A Yes, I am familiar. As the, at the beginning of the design process and periodically throughout the design process, I went around the neighborhood, took, primarily to get a sense for the style of the architecture, the feel for the neighborhood, and the scale.

Q If you could, and using the exhibits if necessary, others will describe in more detail, but if you could, brief, just frame the property and describe the immediate vicinity to orient us to the site, please?

A Yes.

Q And we'll note which exhibit you're -- these are mounted exhibits that are in the record, for the most part, so we'll note which exhibit so we can --

MS. ROBESON: Okay. All right. Is what in the -- are the exhibits in the record the same scale, the large ones?

MS. MEAD: Yes. The same size.

MS. ROBESON: All right.

MS. MEAD: They were folded in the record. The one on the left, if you are going to be using that, is 4(f). If you want to mark it and the --

MS. ROBESON: If you would be so kind, can you mark them, which exhibits are which? Once in a while, we have people come and want to draw on exhibits. So --

MS. MEAD: Mr. Sekerak is, do you know?

MS. ROBESON: We have surprising artwork here.

MR. LEIBOWITZ: No doubts.

MS. MEAD: And the one in the middle, Mr. Sekerak is 61(i). And the one on the right is 61 -- probably part of F, site elevation or neighborhood contacts.

MS. NELSON: Neighborhood contacts. Yes.

MS. MEAD: 61(g). Sorry, Mr. Sekerak.

MS. ROBESON: All right. Thank you.

MS. MEAD: And we will label the others if you --

MR. SEKERAK: All right.

MS. ROBESON: Thank you.

MS. NELSON: Thanks. Okay. So, I'll start with the sort of the overall, just to orient you with the street, having diagonally across this exhibit is West University Boulevard, Highway Route 193. Going from top to bottom, this is Colesville Road, In here is where we have the Four Corners commercial district. And our site is right here.

To go into the closer view, again, here is our site. University Boulevard is at the north. Brunett Avenue to the West, Gilmoure Drive to the south.

BY MS. MEAD:

Q Thank you. If you could please describe your design process for the proposed structures identified in the application?

A Our primary goal was to design a non-residential building such that it would be compatible, and highly compatible into a residential neighborhood. The, what we discovered from going around that immediate neighborhood is that there was really one style, generally one style of architecture. That is for the single-family, detached houses. They are primarily en massing a block. They have a gabled or a pitched roof.

And variations on that box would occur with a sunroom addition on the -- that's an early work -- a sunroom addition may be on the end. Entries were often articulated with a gabled porch supported by columns. If there was an addition to the rectangular box, it would often occur as a wing onto one end of it.

The materials, again, almost, you know, very, almost a hundred percent, are red brick, dark red brick. The, that red brick then would be articulated by, like, for instance, the sunrooms would have white siding. Oftentimes, the ends of the gables would have white siding. Sometimes the second story of the whole house would be covered in white siding. All the roofs are shingled. Windows are typically double-hung, and they are either individual

arrangement or grouped together in pairs of twos and threes.

When we started -- so, after, after going through the neighborhood, our next step really was to sit down with the Childway and discuss their program, their space requirement, their adjacencies, and how the school operates. From the, each classroom has a requirement of 35 square feet of clear floor space for the children. In our efforts to keep the massing down to its minimum with those requirements, we have located all of the mechanical and utility rooms in a basement, so it doesn't take up space on the ground floor above, above grade.

While our building is not a single-family house, we tried very hard to make it contextual and to be compatible with the residential buildings. And the ways of doing that are really using the elements I described earlier, where the primary structure is a rectangular box. We have broken down the mass by utilizing features that we see in the neighborhood. One classroom at the end of the building is a sunroom image, and the, on the east side, we've carved out the bulk of the box for a wing type addition, and we have articulated the entry with a porch with columns.

Again, not to make it appear that it is a, a house that has been converted into a daycare, it is a, it is being built as a daycare, we made, we've taken other residential

elements to, to accentuate that. And using the water table, a precast water table, and then actually having, certainly, taller windows to represent the fact that this is, is not a house but it is compatible with a house. And then, with the color, we're utilizing the wood fascia, the columns, and then the window frames and sash to bring some liveliness to, for the children basically. So, this is a, this is a daycare.

Q If you could please describe the changes to the design of the structure from the original submission?

A And I will be using this one.

Q The original exhibit is Exhibit 4(a), site plan.

A So originally, again, you know, the general volume of the structure was the box with the articulation of the sunroom to the rest, and then the articulation of the entry with the porch motif. What we have done is, we've accommodated a reduction in the amount of children by a reduction of one classroom, and in making another grade smaller, less children.

So, the result is that the sunroom has actually reduced in size, and then, by reducing, eliminating one classroom, we're able to carve away the corner of the building to then give that wing addition effect that has then also modified by the smaller roof line adjacent to the residential area here. We've focused all of those

reductions, having focused on the residential side, and while University Boulevard does benefit when its adjacent to the residential in the sense that the building does, the roof line does step down significantly.

Before, the space between this property was 16 feet, and we're now at 18 feet. We've pulled the building back. It was pulled back from Brunett Avenue by about four feet.

Q Thank you. You mentioned the roof line. If you could please describe the roof of the building and the building height?

A The top of the pitch of the gable roof, the high point measured from the finished floor elevation is 29 feet. The, from a zoning standpoint, the measuring point is taken on the curb of Brunett Avenue, and that, from that curb elevation to the top, it's 31 feet. The wing, top of pitch above finished floor is 22 feet. And the high point of the sunroom is 23 feet above finished floor.

Q And how does that compare to the existing homes in the neighborhood?

A It, the, it compares very similarly to the two-story houses that are in the neighborhood. But I would like to point out that unlike the two-story houses, as you can see, the volume is really, is, most of it is the masonry facade, and then you have your pitch of the roof. Ours is a

one-story building, and so the majority of that height is actually angling back from the edge of the building.

Q Thank you. In your opinion as an architect, is the proposed building compatible in its sighting, scale, bulk, height, and materials and have a residential appearance?

A In my professional opinion, the proposed building is compatible in its sighting, scale, massing, height, and materials and is compatible with the residential architecture of the neighborhood. As I noted in earlier testimony, I visited the surrounding neighborhood during the design process to understand the feel and look of the neighborhood.

Q Thank you. In your opinion as an architect, would the proposed special exception be in harmony with the general character of the neighborhood, considering the design, scale, and bulk of the proposed structure?

A In my professional opinion, the proposed special exception will be in harmony with the general character of the neighborhood considering the design, scale, and massing. Again, the building scale is broken down, particularly with the revised building, to fit with the general character of the neighborhood. We focused those revisions on the size of the building adjacent to the single-family homes, as opposed to the University Boulevard. This structure actually acts

as a very successful buffer, in my opinion, between the high-paced speed of a major highway and a residential neighborhood.

MS. MEAD: Thank you. I have no further questions from Ms. Nelson.

MS. ROBESON: Mr. Leibowitz.

CROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q Thank you. The current proposed building, is the square footage 5,608 square feet?

A Yes, it is.

Q And is it accurate that about the average square foot of homes in the neighborhood is about 12,096 square feet?

A Are you saying footprint or the total building?

Q Footprint.

A Footprint? Yes.

Q And you said that this, the proposed building compares favorably or similarly to two-story houses in the neighborhood, are you?

A Um-hmm. Yes. In regard to its height.

Q In regard to its height. Right.

A Um-hmm.

Q But it's a one-story building, right?

A That's correct.

Q How does it compare to other one-story houses in the neighborhood?

A The eave, the height of the eave is very similar to where the height of the eave would be at the, for a one-story. The height of the ridge is taller.

Q The height of the ridge?

A Yeah. The top portion of the --

Q Right.

A -- roof.

Q Is taller, right?

A Yes.

Q So, it's taller than one-story houses in the neighborhood?

A That's correct.

Q So, is it fair to say that about half or maybe a little bit more than half of the building, of the houses in the neighborhood are one-story rather than two stories?

A Fair. I didn't count, but visually it seems like that's about right.

Q Okay. Thank you. And the sun -- what you're -- the part of the building that you're, is intended to mimic a sunroom?

A Not mimic but reflect.

Q Reflect a sunroom?

A Um-hmm.

Q Sure. The part of the building that's intended to reflect a sunroom, that's fairly substantial in size also, right?

A Well, it depends on what you say substantial. It is --

Q What's the --

A It's 38 feet in its width, going from here to here.

Q Do you know what the square footage is?

A Boy, let's see. It's 38 feet wide by 24 feet deep, if you want to multiply.

Q So, it's over 800 square feet, the footprint?

A I'll take your word for it, but --

Q Is that -- right, if I multiplied correctly, 803 square feet?

MS. ROBESON: Who has a calculator now?

MS. NELSON: I'm not going on the record on my math.

MR. LEIBOWITZ: I did it the old fashioned way. Is that -- I'm sorry, two, 802 square feet? Is that -- no, I didn't do my math right.

MR. KAY: It's not exactly square.

MS. ROBESON: Right.

MR. KAY: I got 802.

MR. LEIBOWITZ: 802?

MR. KAY: Right.

MS. ROBESON: It's --

BY MR. LEIBOWITZ:

Q At any rate, it's -- let's call it approximately 800 square feet?

A It's probably 750 once you cut out the angles.

Q Right. It's not actually a square. It's --

A Yes.

Q -- the corners are cut off?

A Um-hmm.

Q As Mr. Kay points out correctly. So, the sunroom, the portion that reflects a sunroom alone is about two-thirds the size of an average house in the neighborhood? Is that accurate?

A That sounds about right.

Q Okay. And --

A Again, the footprint. But yes.

Q Okay. The footprint. Right. The footprint. And do you know what the square footage of the parking lot is?

A That I do not --

MS. MEAD: We'll have another --

MS. NELSON: Yes.

MR. LEIBOWITZ: Okay. We can address that one.

MS. NELSON: But I believe it's -- I mean, there's the parking lot across the street as well, so I don't know

what that square footage is.

MR. LEIBOWITZ: I was just asking about the parking lot, but if there's another witness that can address that, we will --

MS. MEAD: Yes.

BY MR. LEIBOWITZ:

Q And when you designed the building, you said that you met with Childway staff, right?

A Well, the --

Q Or the --

A -- yes, the owners of Childway. Um-hmm.

Q And you designed this after discussions with them to fit 94 kids and 20 staff members, right?

A That's correct.

Q Because, so it had to be 35 square feet per classroom?

A Of clear floor space.

Q Of clear floor space, because kids run around, right?

A There's lots of reasons those codes of square footage are made. Some of it is like safety, some is just practicality. It's --

Q Kids, kids need space.

A Um-hmm.

Q Right?

A Well, basically every use has a square footage ideal when you start designing, what's called an occupant load.

Q Okay. And for children, it was 35 square feet of clear --

A Floor space.

Q -- floor space.

A That's right.

Q And so for this, this number of children, the building couldn't really be any smaller and still be up to code?

A That's correct. So when we reduced the massing and the size of the building, we had to reduce the enrollment.

MR. LEIBOWITZ: I have no further questions.

MS. ROBESON: I have one question. I think the Planning Board's issue was scale. Are you saying that by cutting the corner off, you, in your opinion, and reducing the size of the sunroom, that the scale is -- you know, more reflective of the surrounding community?

MS. NELSON: Yes. I mean, in terms, the -- as I described, there --

MS. ROBESON: I guess my question is how -- it does seem, from the pictures, that those houses are much smaller than this facility. So, I guess I'd like to hear

your rationale for saying, you know, based on the Planning Board's report that it, the scale is being addressed.

MS. NELSON: Our building, you know, just from the beginning, is not a single-family, detached house. So, inherently -- it is a school, so inherently there are differences. One of those inherent differences is the size of the building. We are not, as I stated, we are not putting in a daycare facility in the, in a house. It is a building that's built as a daycare.

Our efforts and goal was that while this is not a single-family, detached house of the same size as the houses, that we would be articulating it and modulating the massing such that it would feel compatible with those houses. So, while these -- most of the houses in the neighborhood, as I described, start off as a box, a one or two-story box, as families add on to their houses and they become larger, the ways they do that is by maybe adding a sunroom on one end, adding a wing on another end.

And so, rather than having a flat roofed, you know, box school building, we have tried to be compatible with those single-family houses and inherently smaller structures by using those motifs. So, in response to the Planning Board, by reducing the number of children and in ultimately carving away one of the corners of the building so that sort of primary, if you would, original building

becomes smaller, and then it looks more like it has additions on over time.

MS. ROBESON: Okay. Ms. Mead, and I'll give you a chance to recross solely on my questions. Okay?

MR. LEIBOWITZ: Thank you.

MS. ROBESON: Ms. Mead -- is your -- wait. Is it Anne Martin --

MS. MEAD: I got married in the middle of the process.

MS. ROBESON: Yes. That's why --

MS. MEAD: Sorry.

MS. ROBESON: I just realized I called you two different names. So, which do you prefer?

MS. MEAD: I go by both. My husband would probably prefer, he calls me Mrs. Mead.

MS. ROBESON: Well, you tell me what you prefer.

MS. MEAD: I answer to both.

MS. ROBESON: No, I don't want to get into it.

MS. MEAD: I answer to both. I answer to both. I have forty years with Martin, so I answer to both. I don't have any -- Ms. Nelson addressed any rebuttal question I would have had on the issues.

MS. ROBESON: Okay.

MS. MEAD: And we'll have other witnesses.

MS. ROBESON: Mr. Leibowitz, anything based --

MR. LEIBOWITZ: Just --

MS. ROBESON: -- solely on my questions?

MR. LEIBOWITZ: Just one question based on her answer regarding the additions on the houses. Her answer was that there are additions.

MS. ROBESON: Yes. I -- yes, it did.

BY MR. LEIBOWITZ:

Q And so my question is would you agree that a very small minority of houses in the neighborhood actually have had additions to the original structure?

A Again, I don't know what that quantity is. Quite honestly, I don't think it's, it's relevant. Neighborhoods change over time, expressly homes are, have additions onto them. I think that structures that, even in the houses that do have the additions, they are done in a compatible fashion with the rest of the neighborhood.

MR. LEIBOWITZ: Thank you.

MS. ROBESON: Okay. Your next witness.

MS. MEAD: Next witness. Thank you. My next witness is Ishrat Memon.

MS. ROBESON: Are you ready?

MS. MEAD: Are you ready?

MS. MEMON: Yes, ma'am.

MS. ROBESON: Okay. Please raise your right hand.

(Witness sworn.)

MS. ROBESON: Go ahead, Ms. Martin.

DIRECT EXAMINATION

BY MS. MEAD:

Q Thank you. If you could please state your name and business address for the record, please?

A Ishrat Memon, 4058 Blackburn Lane, Burtonsville, 20866.

Q Thank you. And if you could please briefly describe your experience and background in child daycare? And I will note that Ms. Memon's curriculum vitae is in the record as Exhibit 14(f).

MS. ROBESON: Okay.

MS. MEMON: I've been doing this for 35 years. I came in this country in 1974. I had a Bachelor's in Early Childhood. I did Master's in Education. For a while, I was working for PG public school system as a Kindergarten teacher, and after that, when I was having my own children, I joined childcare.

And since that, I have been in childcare as a teacher's assistant, teacher, director, consultant to Smithsonian Archives. I opened a couple of centers for them as a consultant. Then, I have been running Childway as a director and then I, right now I own four child cares under Childway name. And the center that I am operating right now as a director, that has 275. Then I have another center in

College Park, Childway, for 68 children, another one in Beltsville that has a capacity of 48.

MS. ROBESON: Okay. Ms. Martin, what is her area -- are you attempting to qualify her as an expert?

MS. MEAD: Just as the tenant and operator --

MS. ROBESON: Okay.

MS. MEAD: -- of the proposed child daycare.

MS. ROBESON: So, not a specific expertise?

MS. MEAD: Right. Just --

MS. ROBESON: Okay.

MS. MEAD: -- her expertise for --

MS. ROBESON: Just checking.

MS. MEAD: -- for the credible --

MS. ROBESON: Okay.

MS. MEAD: -- for the weight of the evidence.

BY MS. MEAD:

Q And you just kind of gave the answer, but if you could describe your roll with the special exception today?

A I'm going to be a tenant and childcare operator.

Q Thank you. And I'll, just on that note, I do want to refer to, since it has been a while since you've seen it, Exhibit 3A is affidavit of compliance, do you -- which was signed on June 26 of 2009. Do you agree to run the -- per the affidavit of compliance in the record, do you agree to run the childcare consistent with the state and county

requirements and correct any deficiencies that may be found in any government inspection?

A Yes, ma'am.

Q And are you familiar with the revised special exception application proposed here today on the property location?

A Yes, ma'am.

Q And if you could please describe the new programs and operations plan for this location of Childway, including revised age groups and hours of operation? And I will refer to Exhibit 61(a), which is the statement of operation if you need that to refer to.

A Now that it's revised to have the enrollment of 94, so we are going to be, according to the State of Maryland, the center will have infants, toddlers, twos and threes and fours, and school age children.

So, the infants are going to be enrolled in the center 12, ratio of staff 3 to 1. Toddlers 18, ratio 3 to 1. Two years, 12, ratio 6 to 1. And threes will be at 20 children, ratio 10 to 1. And the fours are going to be still capacity of around 20, and the ratio will be 3 to 1. And then 5 to 12 years old, school age children, are going to be 12 in a room. And ratio is 15 to 1.

Q And what was the ratio for the four-year-old children?

A Ten to one.

Q Ten to one, thank you. I thought I heard 3. And so that would make for a maximum staff number of?

A The staff is going to be 20 staff members working in the center.

Q Thank you. And if you could review how the transition of age groups is handled as far as any overlap if a child turns 3 in the middle of the year?

A Right now, the State of Maryland, it used to be the age cut out used to be in December, December 31st. But now, they have changed to 1st of September, so the transition is going to be hooked with the State of Maryland, their regs, like saying August to August. The child has to finish the school year, school year will be August to August. So, transition is going to be happening in the summer months, the children going to a different age group and the enrollment goes in, the parents come in and meet the teachers and then do the re-registration. But all the transition happens in, in month of, in summer months.

Q But with, with the transition, would you still have (indiscernible) under the maximums as far as each room?

A No, I cannot. I will be keeping my numbers as the classrooms is. I cannot do the over-enrollment in any other, any other room. Any age group, I cannot. If the numbers are down in my toddler room, and if infant is --

every child goes up at a different level. If, because the ratio in infant and toddler is 3 to 1 and the curriculum is more flexible in both age group, even in a two-year age group, so if a parent comes and requests it and if I have an opening and the child in 15 to 16 months is walking, then yes, the child is going to be visiting the toddler room part of the day.

Q Thank you. If you could review the activities that you'll plan to have at the site?

A The special activities or the --

Q Just the day-to-day operations.

A The -- my curriculum is McGraw-Hill Creative Curriculum, and the children, for the infants and toddlers and twos being, to our flexibility, the infants are more towards motivating them by the music and the toys that they can double up their skills, like tummy time or what we do with the babies, we have tummy time. We have story time, we have the toys that motivate their growth.

And for the toddlers, it's more of a matching games, feeding themselves. In the two-year-old, toilet training is the, is the main, main goal for us to achieve with the children. But then, at that time, they go through numbers, letters, through music, through songs. At that time, we do, do the centers with them, seeing dramatic play, block play, signs, arts and craft. And the threes, we bring

a language, we bring computers. With the fours, we bring phonics, reading readiness. With the older, the school age children, we help them with their homework and the days they are with us full time, just like next week, they are going to be full day with us, so we do different activities with them like cooking projects, field trips, stuff like that.

Q Thank you. And how are food and meals handled on the site?

A We do not do any cooking. We do serve breakfast in the morning and a snack in the afternoon. And breakfast include different kind of cereal, pancakes, waffles, which come all frozen from Cisco. And we have freezers that we warm it up in the microwave, toast, fresh fruits. In the evening, also sometime the children do their own experiments like arts and craft and science project, or they do cooking project. That's what I'm going to say. So, they do have that as a snack, or we do provide different kind of pretzels, cookies, again, fresh fruits, things like that.

Q Thank you. And how do you, how do you plan to have bulk foods delivered to the site, such as milk or --

A Because of the way the center is, we are going to be, our main building, which is in Burtonsville, the milk is going to be delivered there, and we are going to carry it to this location.

Q Thank you. If you could please describe how the

outside playtime is regulated in schedules, the maximum number of kids you have outside.

A The playground is, is the age group, the playground is divided according to the age groups. So, threes are going to go separate, fours are going to go separate, and the toddlers and the infants do not use the playground. They do have buggy rides around the center or inside the hallways. But the toddlers is going at different time, twos different time, and then threes and fours are going to be go different time.

Now, in the morning, if the weather is good and the children are kind of mixed, their receiving the parents in the morning, that is also not to -- because it's just for a limited time because the breakfast time is there and then program do start, so it's like for 20, 25 minutes. And other age group, if they go twice a day outside, each age group is there for 15 to 20 minutes as the weather permits.

Q Thank you. And what would be the maximum number of kids you would have outside at any one time?

A If the threes are out, 20. If the fours are out, 20. If the twos are out, 12, and the toddlers, 18.

Q So if, combined, if there's two groups out there at the same time or if it's early in the morning, is there a maximum number of kids?

A It's -- it's, early in the morning, maximum, we

are going to take between 20, 25. Not more than that.

Q Thank you. If you could review the typical special events for your facilities and how you will --

A The --

Q -- do special events at this site.

A The special events are like, well, we are preparing for our spring egg hunt and the Mother's Day is coming in. So, at this site, what we are going to do, we are going to divide the age group different time. Just like we are going to take that week and we are going to have on Monday, the twos are going to do, Tuesday the threes, and then fours, and then the school age. So, it's going to be all at different, different time so that we can handle the parents visitation.

Q Thank you. And is there a maximum of special events that you would limit at this site during the year?

A There is a graduation program, and then there is a spring program. So, that is also going to be at different days for different age groups, so that is going to also -- more comfortable for the center.

Q And then the, referring to the statement of operations noting the types of different events, and the testimony that you just mentioned as far as limiting the age groups to be able to park them, the maximum number would be eight a year, as far as the different events throughout the

year?

A I would say yes.

Q Okay. Thank you. If you could please describe the process for the drop-off and pickup of children at your facilities and for this proposed center?

A In the morning, the parents take, like, six because they are, they have to go back to their work, so six to ten minutes dropping, you know, signing in and dropping the child. And at the busy time, we will have, like, four cars at a time.

In the afternoon, I would say -- it depends on the day. Just like today is Friday and the, so the parents come a little early before the peak time, and the children are going to be picked up, so six at a time, six cars at a time. Is that the question?

Q Yes. And do they, do the parents hand them to you in the car, or do they park the car and come in?

A They, they do park the car and, and walk the children inside and sign in and take the children to their classroom. And evening is the same. They have to sign out, and then they go in the classroom and, and pick up their children. And the teachers have to also make a note on their attendance sheet the child had walked in and the child had walked out. So, they have attendance sheets. So, it's a double, it's done by the, by the office, and it's also

done by the classroom.

Q Okay. And you noted that this process, you said it takes six to ten minutes?

A Six to ten minutes. Yes, ma'am. In the afternoon is like six to ten minutes. In the morning is like drop in and drop out.

Q Quicker in the morning?

A Yes.

Q Will some children arrive by school bus?

A At Burtonsville, I do have many parents doing carpool. They bring their friends' children or some of their family members are, we have family members' children, and at this location, I'm, I have a couple of families that they are, other siblings are with us, or their neighbors are with us or their uncle and aunt are bringing the children. So, there are, like, I would say ten family members that they are having carpooling. Sometimes the friends are calling us and they are on emergency list, they are coming and picking up the children. So, there is a carpooling going on. And the public transportation at this center, I do not have it. But at the --

Q Could you describe what this center means?

A This -- yeah. Burtonsville.

Q Okay.

A But at my College Park and Maryland Farm, yes. My

parents, I would say 75 to 80 percent, they are taking public transportation because bus stops are right there. Burtonsville, no. There are parents coming in and carpooling is also there. My van goes and picks up the children from the -- they drop the children to the schools and pick up the children from the school that, those are older children.

Q You mentioned a van. Is there an actual school bus that would come to this site?

A For this site -- I do have the school bus coming and picking up the children of one center, of one school, Burtonsville Elementary School. But the other schools on 29, just like Fairland, Page, Cloverly, Greencastle, my bus is, my van is going and picking, dropping them and picking them up in the afternoon.

Q So, do you anticipate more than one school bus accessing this site, for instance?

A Right now, the county has given quite a bit of funds to, to the special need children. First it was not like that. In the starting right now, the county had funds. So, there are few children that in my Burtonsville location, they are special needs. So, their bus do come and pick up the children, like 10:30, after the peak time. and they drop them, also, before the peak time. They are smaller buses. They are yellow buses, but smaller buses.

And they come after peak time in the morning and before the peak time because the children do go there only for two hours during and are in the day.

Q Thank you. And what is your --

A That -- I'm sorry. But that, I was talking about my Burtonsville location. As this enrollment go up and, and if a special need children, a few of the children are there in my program, a speech delay or something, then if I, I might be having that kind of enrollment and those, that kind of support from the county. So, the buses might be coming --

Q Right. So, you may have special needs buses coming to this site?

A Yes.

Q Right. And how many regular school buses would you anticipate coming to this site?

A It depends how many, what the county -- the county school which is in the neighborhood comes and pick up my children. It all depends.

Q Is it one school or --

A If I -- if I were --

Q -- how many schools would --

A For the -- I think only one school is going to be coming in.

Q Okay. And what is your experience with the parent

drop-off and pickup times with your other facilities, and what do you anticipate for this facility?

A For Burtonsville, most of my children are in by 10. And at College Park, even before that. Why I say that, because University of Maryland is my -- my clientele is from University of Maryland to College Park location. And those are most of the professors or students, they drop their children more earlier. And so the drop in time is like, everyone is in by 9. And same is in my Maryland Farm location that is in Beltsville. But for Burtonsville, by the max 10 my enrollment is in. For this center, I would say, because the public transportation is so much available there, I would say by 9 everyone should be in.

Q Okay. And is there a peak time that you anticipate?

A The peak time for this center, I would say between 7:30 to 8, 8:15, for the new location.

Q Right, but by 9?

A By 9, yes.

Q And is there a set -- you mentioned the program. Is there any set times that the programs start? Do the children have to be there by a certain time, like by 8:30 to start a program?

A 8:30, 8:30 is the breakfast, and 9:00 -- 8:30 breakfast, 9:00 cleanup, and 9:20, 9:30, the program starts,

the main goal of the teacher is the curriculum, the flow time, it starts at 9:30.

Q Do the parents all come at the same time or do they --

A Parents do, like, 7:00, the children start coming in. And, as I said, by the 9, 9:20, it's all, the enrollment is mostly in. By 10, all the children are in. For, I'm talking about Burtonsville location.

Q And have you and Dr. Memon performed any reviews at the Burtonsville operation to get a view of the enrollment and the cars and the trips in the parking lot? And, I'm referring to, I believe it was mis-labeled in the record that we had submitted in December. This revised list. It's December 8th (indiscernible).

MS. ROBESON: Do you know which exhibit number?

MS. MEAD: I'd seen it on one exhibit list. I don't see it on this exhibit list now, the 12-8 letter from Dr. Memon. But if --

MS. ROBESON: Okay. Well --

MS. MEAD: If not, we'll submit it as --

MS. ROBESON: Yes, I --

MS. MEAD: It might be Exhibit 55, revised traffic impact analysis. It was -- it was not from our traffic engineer, so it's part of No. 55. But I guess we'll just correct it to note that it was a study done by Childway.

MS. ROBESON: Okay. What I -- just so we're all clear, these exhibits have been marked, but they haven't, you know, in the file, but that doesn't mean they've necessarily been admitted. We usually do that at the end of the case. So, as we're going through the exhibits, Mr. Leibowitz, or either of you, if you have any objections, you need to raise them now because it's not a done deal that they are in the record. So, are you saying this is in the record as part of Exhibit 55?

MS. MEAD: Correct. I believe it was just mislabeled as a revised traffic impact analysis.

MS. ROBESON: Okay.

MR. LEIBOWITZ: I don't remember seeing it as part of 55. I may have overlooked it, but I am not going to make an issue of whether it's part of 55 or not.

MS. ROBESON: Just take a minute and see what 55 is. Okay. I don't have that as 55 in the record, so I'm going to give it --

MS. MEAD: Okay.

MS. ROBESON: You know, I can't tell you what exactly happened, but I don't have it. So, what I'm going to do, or I'm not seeing it --

MS. MEAD: You could --

MS. ROBESON: I have a letter from Ms. Martin and Craig Kay's resume.

MS. MEAD: All right.

MS. ROBESON: And that's all I have.

MS. MEAD: Okay. Well --

MS. ROBESON: So --

MS. MEAD: If we could admit it as Exhibit -- 55 mentioned revised traffic impact analysis, but I think it may have been mis -- but we can do it as Exhibit 67 on its own.

MS. ROBESON: I think that we will do that. So, we will call it revised traffic impact analysis?

MS. MEAD: No. It's a December 8th letter to Craig Kay regarding summary of vehicles on Childway letterhead.

MS. ROBESON: Summary of vehicle trips. All right.

MS. MEAD: Thank you.

(Exhibit 67 was marked for identification.)

BY MS. MEAD:

Q Ms. Memon, you've already mentioned a little bit about your typical operation as far as the four cars at a time and the six to ten minutes in your previous testimony, but if you could please describe the December 8th review of the vehicles at the Burtonsville site?

A Well, as Burtonsville do not have any public

transportation, so the parent, the staff will park at daily. And the staff also do the carpooling. I mean, not the carpooling. The staff also help the other staff. So, I have a few staff members coming together in a car, and also my van goes and pick up the staff from one of the public, so staff, right, the school van coming to the center five or six of them, sometimes ten, staff do come together. Parents with two or more care.

Q But those --

A 42, staff will park here. Daily is 20. Staff will ride the public transportation is 10, and then they take my van from the, from the bus stop to the school. Staff will drop off and pick up our five.

Q So, the staff provide the public transportation, the time that they're actually of them getting into your van?

A Yes.

Q Vanpool?

A After my vans are done dropping the children, then they come to one of the bus stop at Briggs Chaney and pick up the children and bring it to the Burtonsville location. But my staff in my College Park and Beltsville, they do take public transportation. I would say 75 to 80 percent, directors and maybe two staff members in each center, they have their personal cars. Mostly it's public transportation

there.

Q And it notes here that parents with two or more in care is 42, but would you -- this is for the Burtonsville site. What would you say your average sibling ratio is in your centers?

A In --

Q Parents who have siblings enrolled.

A In my Burtonsville, I would say 10 of them have siblings, or maybe 12. I would say 12.

Q Percent or --

A 12 percent, yes. Other two location, I'm not sure.

Q All right. And per your testimony earlier, you noted the amount of cars in the parking lot. Could you note that what you had here on this December 8th letter as far as the cars in the parking lot?

A Staff, daily staff parking, daily -- 7 to 10:00, 4 to 6:00 and 4, 4 to -- in the evening 7 to 10:00 is 4 to 6:00, in the evening 4 to 6:00 is 7 to 10:00. I did say 10 in there.

Q Yes. All right. Thank you. And for your other facilities, how many parking spaces do you have at each location?

A For Burtonsville, it's in a business complex, so we do not have any concern there. In my College Park

location, I'm assigned with four parking, but there is no concern because mostly the, that apartment building or that business, that complex mostly are the University of Maryland students and professors, so the parking is all plenty there in the morning and in the evening. For Maryland Farm, I have two parking assigned, two parking spots for the parents.

Q Okay. And how many kids do you have enrolled at the Beltsville one?

A 48.

MR. LEIBOWITZ: I'm sorry. I thought you said 48?

MS. MEMON: Yes, sir.

MS. ROBESON: Is Maryland Farm the Beltsville facility?

MS. MEMON: Beltsville, yes, ma'am. I'm sorry.

BY MS. MEAD:

Q Maryland Farm and Beltsville are the same location.

A Maryland Farm is the complex, the name of the complex.

MS. ROBESON: I understand.

MS. MEMON: And the center inside is separately set off.

MS. ROBESON: Okay.

BY MS. MEAD:

Q And you noted earlier that at Burtonsville, you noted in your testimony that approximately four cars at a time that are parked?

A In the morning, yes.

Q And what would your estimate be for average --

A The --

Q -- morning and afternoon --

A The --

Q -- how many cars would be there at one time doing the drop-off and pickup?

A In the morning, I would say four to six. In the afternoon, I would say eight to ten.

Q And what's the enrollment at the Burtonsville site again?

A Right now it's -- center is of 275. I do have twelve children short, so what's the math?

MR. LEIBOWITZ: 263.

BY MS. MEAD:

Q 263, that was a little easier than the division. Thank you. And we noted the, you talked about the Burtonsville site and the College Park and the Beltsville/Maryland Farm, I think you mentioned it, but the percentage of employees that take public transportation?

A I would say 90 percent, the staff take the public transportation.

Q Staff.

A Yes, staff takes the public transportation at College Park and then Beltsville. And I would say the parents 50-50.

MS. ROBESON: At all three locations, or just Burtonsville?

MS. MEMON: No. At the College Park and Beltsville location. At Burtonsville, the parents do come in their cars.

MS. ROBESON: Okay.

MS. MEMON: And I would say, I would say in the Burtonsville, also, that I have apartment complex and I do have, I would say ten parents walking from there. I do have some walkers from, in Burtonsville, from Country Place Apartments.

BY MS. MEAD:

Q For the proposed site in Four Corners, how much of the staff do you anticipate are going to take public transportation from this site?

A I would say 90 percent because the public transportation is there. And that center is going to be very easy to have the staff, because they always feel comfortable as the gas prices going on to take the public transportation to come over. Yeah.

Q And do you anticipate that the parking on this

site will be adequate for the proposed, the 94 enrollment and the maximum 20 staff with the 26 parking spaces?

A Absolutely.

Q Thank you.

A You're welcome.

Q And this, you mentioned the staff you anticipated to take public transportation. On your experience, would you anticipate that any parents from this neighborhood would walk to this site?

A I would say yes. Because if the younger folks are coming in, that's what, it's going to be an asset to them.

Q Thank you. And are you familiar with the transportation management plan included in this application, Exhibit 61(c), as revised?

A Yes, ma'am.

Q And although you don't have one for your existing sites --

A Yeah.

Q -- since this location is in a neighborhood, do you agree to follow the terms of the TMP, including providing a notice of this TMP to the new parents, the staff, providing a staff person to be a transportation coordinator to ensure the smooth drop-off and pickup, and to be a contact for the community, and to participate with Mr. Kay for Gilmoure-Brunett in community meetings and annual

reports to the Board of Appeals?

A Yes, ma'am.

Q Thank you. And in your opinion as a childcare operator, with your experience, do you believe that this special exception, as proposed, will be in harmony with this particular neighborhood?

A Absolutely.

Q And in your opinion, will the special exception be detrimental to the peaceful enjoyment, economic value, or development of the surrounding properties?

A Of course. The value is going to go up. There is a childcare coming in --

MR. LEIBOWITZ: We would object to that.

MS. MEMON: -- that's close off the property.

BY MS. MEAD:

Q The question was do you find it to be detrimental, but your answer indicated no.

A Oh, on the -- no. It's going to be --

Q It's the wording of the Zoning Ordinance. I didn't --

A I don't know. I'd say that that includes --

MS. ROBESON: Is it going to be bad or good?

MS. MEMON: It's going to be very good.

MS. ROBESON: The property values, that's what she's asking.

MS. MEMON: It's going to be very good and plus.

BY MS. MEAD:

Q And could you explain why you think it would be good?

A There are children there. They are sound. They are coming in. They are happiness. It is going to all sparkle the whole community.

Q In your opinion, will the special exception be bad? Will it cause any objectionable noise or vibrations or fumes, dust or glare from the activity that goes on at your childcare center?

A No.

Q Thank you. And on behalf of Childway, the tenant/operator of the proposed child daycare center, do you agree to be bound by the testimony presented today and the revised application as proposed?

A (No audible response.)

Q If you could say it for the record.

A Yes, ma'am.

Q Thank you. So they can hear you.

MS. ROBESON: All right. Mr. -- are you finished?

MS. MEAD: Those are my questions. Yes, I am.

MS. ROBESON: Mr. Leibowitz.

CROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q Thank you. You haven't hired the staff yet, right, for this proposed facility?

A No, sir.

Q Okay.

A No, sir. But I would say that when you start a new center, you always have, as I'm existing provider, already I have the four centers and I'm working with hundred staff members, and I have opened, I mean, with the consulting and starting a new center, I always do the staff which is existing, promoting them into the new facility and then mixing them with the -- with the new staff. So, older staff, when they come in, they are already trained with their ongoing training, which is the requirement. And when the new staff comes in, then the blending for the new center is very comfortable and, and beautiful.

Q Okay. So --

A So, I have not done any hiring.

Q Okay. Okay, ma'am. Thank you. So, at this, at this moment, you don't know who the staff would be for this proposed center, right?

A No, sir.

Q Okay. And so, when you guess that 90 percent of them will take public transportation, that's a guess because you don't even know who they are yet, right?

A True.

Q Okay. And when you testified that it's 6 to 10 minutes for parents to come and drop off their children, right?

A Yes.

Q And about the same, about six to ten minutes to pick them up?

A Yes. I just wanted to -- if I don't interrupt you, sir, I wanted to say the first question that --

MS. ROBESON: Well --

MS. MEMON: Okay.

MS. ROBESON: I'm sorry. It's your --

MS. MEMON: I'm sorry.

MS. ROBESON: -- turn to answer questions.

MS. MEMON: Okay.

MS. ROBESON: Your attorney will --

MS. MEMON: Okay. Okay.

MS. ROBESON: Okay.

MS. MEAD: I'll get another chance.

MS. MEMON: I'm sorry. Okay.

MS. ROBESON: Just, if you could just limit yourself to --

MS. MEMON: Okay. I'm sorry.

MS. ROBESON: -- answering his questions.

MS. MEMON: Okay. I'm sorry.

BY MR. LEIBOWITZ:

Q Thank you. Okay. And you said that the, and while the parents are in, they are occupying a parking space, right?

A Yes, sir.

Q Okay. And you said they are faster in the morning than in the afternoon.

A Yes, sir.

Q But in the morning, in addition to, you have to get them out of a safety seat, right? The parent has to get their child out of a safety seat or child seat, right?

A Yes.

Q And they have to take them inside?

A Yes.

Q And sign them in by the office, right?

A Yes. They have --

Q And they have to sign them in, right? And then they bring --

A Sign in sheet.

Q Then they bring them to the classroom and sign, check in with the teacher, right?

A Yes.

Q Yes. And then they probably have stuff with them that they have, they have to bring a lunch, right?

A Right.

Q And they have to put their lunch away?

A Right.

Q And there may be other things, diapers or other belongings they have to put away?

A Depending on the age, yes.

Q Depending on the age.

A Yes.

Q Right. And they hand off the child to the teacher.

A Yes.

Q Right? And then, and make sure that they are obviously, that they're settled before they leave the facility, right?

A Yes.

Q So, there is actually some extra steps in there with the dropping off the belongings and food and things that you wouldn't have with the pickup right?

A Yes.

Q So, it probably takes just as long to drop off as, as pick up, because you actually, you have these extra steps?

A In the afternoon, the parents do want to stay for a few minutes --

MS. ROBESON: Okay.

MS. MEMON: -- to ask how it was today.

MS. ROBESON: Okay. You can just answer yes --

MS. MEMON: Yes and no?

MS. ROBESON: Yes.

MS. MEMON: Oh, okay.

BY MR. LEIBOWITZ:

Q And the parents who use daycare are typically working parents, right?

A Yes.

Q That's why they need it, because --

A Yes.

Q -- they're at work.

A Yes. Yes.

Q And so, parents who drive to work would typically drive their children to daycare, right?

A Yes.

Q And maybe parents who use public transportation might use public transportation to take their kids to daycare?

A Yes.

Q And the demographics of the area would impact how many parents drive versus how many parents take public transportation. Is that fair?

A Yeah.

Q Okay. And so, there may be different demographics in College Park or Beltsville versus in --

A Burtonsville.

Q -- the Four Corner -- versus the Four Corners, right?

A Yeah.

Q And you said that there's an apartment building -- I think you said that there's an apartment building near the College Park location? Did I hear you say that right?

A College Park is an apartment building.

Q It's in an apartment building?

A Yes.

Q Oh, it's in an apartment building.

A Yes.

Q Okay. This wouldn't be in an apartment building.

A Yes.

Q But the one that you're -- the one in --

A Burtonsville.

Q -- in Four Corners wouldn't be in an apartment building, right? It's in its own building.

A Yeah.

Q So that's, that's kind of different than the College Park location, is that fair?

A Okay. Yes.

Q And --

MS. ROBESON: Well, wait. You don't have to answer yes. I mean --

MR. LEIBOWITZ: You can say no.

MS. ROBESON: Yeah, you can say no, so, or you can say --

MS. MEMON: I don't know.

MS. ROBESON: -- I don't know. I just want to make that clear.

MS. MEMON: I really don't know, sir.

BY MR. LEIBOWITZ:

Q Okay.

A I don't know what to say but -- but again, my Beltsville is separately situated. My Burtonsville is separately situated. My College Park is an apartment complex, but it is separately situated.

Q Okay. And Beltsville, you said most of the parents drive because it's --

A Burtonsville.

Q I'm sorry. In Burtonsville, right, you said most of the parents drive, right?

A Yes.

Q And in Beltsville, I -- I don't know if I understood this properly or not. Did you say that it was near, that there was an apartment building across the street --

A It's inside the -- the condos, the Beltsville, and so is College Park.

Q Okay. They are both inside --

A Yes.

Q All right. That, I wasn't clear about that. So, both College Park and Beltsville are inside larger housing units, is that, am I correct about that?

A It's a condo building, Seven Spring Village and Maryland Farm.

Q Okay.

A And they are sitting separately, the building is built up as a childcare inside those condo building.

Q I see.

A In 1972.

Q I see. And -- all right. Now, I was also unclear about the school bus. I think maybe we had it ironed out by the end, but just to clarify. For this proposed, for the Silver Spring, the Four Corners location, am I, did I correctly hear that there may be one school bus that would be either dropping off or picking up kids going to one school in the area?

A Yes, sir.

Q Did I hear that --

A Yes, sir.

Q Okay. And that's a regular size, 40-foot school bus, not a smaller one?

A Yes, sir.

Q Okay. I think I also heard, and again correct me

if I'm wrong, that there may be a smaller school bus dropping off and/or picking up special needs children. Did I hear that correctly?

A Yes, at a different, different timings.

Q At a different, but that --

A Not the peak hours.

Q Not the peak, for the smaller not the peak hours, but for the regular school bus, that's during peak hours?

A That is in the morning, 9:00.

Q Okay. And the peak hours are times that parents are going to and from work, right?

A Between 7 and 8:30 at this location. That's what we are --

Q Right.

A -- estimating.

Q Okay. And you'd agree that's what's commonly referred to as rush hour?

A I don't know about that.

Q Okay. And there -- let's just talk about the number of children. The proposal is for 94 children total.

A Yes, sir.

Q Or a maximum of 94 children, right?

A Um-hmm.

Q Now, is it fair to say that five and twelve-year-olds are of an age that need --

A They need before and after care.

Q Give me one second. Five to twelve year olds are of an age that needs outside space?

A Yes.

Q Okay. And --

A They playground.

Q Exactly.

A Playground time.

Q Exactly. On the playground.

A Yes, of course.

Q And that's the same for four-year-olds, right?

A Yes, sir.

Q And three-year-olds?

A Yes, sir.

Q And two-year-olds?

A Yes, sir.

Q And even toddlers kind of --

A Yes.

Q -- run around, probably by, I guess on an average, kids are walking around a year, give or take a couple of months, and maybe running around by those later toddler months?

A Yes.

Q Okay. And it's really the --

A And 18 months is walking. So --

Q Yes --

A -- 18 months do go out of the playground.

Q Okay. It's really the infants who really only need, that they're outside --

A The playground time.

Q Right. The infants are the ones who really only have the limited amount of playground because they, they just get walked around.

A In the stroller.

Q Right, in the strollers because they --

A Yeah.

Q -- they're not even standing probably.

A Yes.

Q Okay. And the infants are --

A Six --

Q -- up to twelve of them, really?

A Yes.

Q Okay.

A Six to eighteen months.

Q And when kids are outside, kids are kids. They play, right?

A Yes, sir.

Q And they yell. Right, they yell?

A They yell. They play.

Q They play. They play. They're loud. They're --

A They're loud.

Q They're boisterous. They have fun, right?

A Yeah.

Q Okay. Now, there's some other daycare providers that are already in the area, right?

A Yes, sir.

Q Okay. Are you familiar with any of those?

A Yes, I know a few centers are there.

Q There's a center at, at the Y, YMCA, right?

A Um-hmm.

Q And there's a Silver Spring Day School?

A Yes, sir.

Q And SSPC Children's Center?

A Yeah.

MS. MEAD: If you know. I do, are these questions or --

MR. LEIBOWITZ: I'm --

MS. ROBESON: Yeah, I think he's, wants to know if she's, you're asking if she's aware of them.

BY MR. LEIBOWITZ:

Q If, are you aware of these?

A Yes, I am.

Q And there's a place called the Silver Spring Childcare Center, are you aware of that?

A Yes. And there's a Quality Time.

Q I didn't hear you.

A There's a Quality Time Early Learning Center also, right on University Boulevard.

Q Okay. And Silver -- Sligo Creek Child --

A Yes.

Q -- Development Center, also --

A Yes.

Q -- also that's pretty close by.

A It's not that close by, but yes.

Q And there's a Boys and Girls Club of America?

A I'm not aware of that.

Q Okay.

A But it could be. I don't know.

Q And then there's, there's some, are you aware that there's some in -- in-home daycare providers that are nearby?

A I'm not, I'm not aware of it, but there can be.

MR. LEIBOWITZ: Okay. I have no further questions.

MS. ROBESON: All right. I do have some questions.

MS. MEAD: Sure.

MS. ROBESON: And maybe they're in your statement of operations, so forgive me if I'm redundant, but I did not get how many five to twelve-year-olds are going to be at the

center.

MS. MEMON: Twelve.

MS. ROBESON: Twelve five to twelve-year-olds. And then how, you said you had before and after care? How does the drop-off and pickup work for, for getting them to school and then from -- I mean to daycare and then from daycare to school and then back again? Is that via your, your bus?

MS. MEMON: My, I have two school vans at Burtonsville location.

MS. ROBESON: Okay. Go ahead.

MS. MEMON: At Burtonsville location, I have two vans that are 17-seaters. And in the morning I do not have that many of school age children. I have six or seven, so one of my van, the driver and the helper, goes and drop them. They come in the morning to us by the parents. They drop them. We do provide breakfast to them. And at 8:30, our school van goes out and drop those children. But in the afternoon, I have 22 children coming in at Burtonsville location. That's the capacity.

MS. ROBESON: Okay. But I, I want to focus on this location --

MS. MEMON: Okay.

MS. ROBESON: -- for a moment --

MS. MEMON: Okay.

MS. ROBESON: -- because this isn't about the Burtonsville location. What, how many do you expect to have enrolled here?

MS. MEMON: Now, the --

MS. ROBESON: And what -- what is your plan for transportation of those kids to and from the -- the 5 to 12-year-old, to and from the site? How are you going to manage that?

MS. MEMON: This school age, in this location is going to be twelve. And I'm going to cover one school, which is the area school. So, their bus is going to come and pick them and drop them. I'm not going to have my van coming at this center because my vans --

MS. ROBESON: Okay. Whose bus is coming to drop them?

MS. MEMON: One of the elementary school which is nearby which is the area elementary school. Which one is that? The name is not coming to me.

MS. MEAD: I think it's Forest Hill.

MS. MEMON: There is one elementary school that area is covering that I can have their bus coming and dropping the children, the school age --

MS. ROBESON: So, that's for the afternoon?

MS. MEMON: Yes, after care.

MS. ROBESON: Okay. How do you get them --

MS. MEMON: Which one is that?

MS. ROBESON: -- from before care to their school?

MS. MEMON: The morning and after care.

MS. ROBESON: Okay. So, the parents are going to drop off, and then one of the schools is going to pick them up from the school in the morning and take them to school, and then the same number, and the same thing in the afternoon.

MS. MEMON: Yes.

MS. ROBESON: It's going to be, how many people do you expect to utilize that bus?

MS. MEMON: The school bus?

MS. ROBESON: How many of your projected enrollment?

MS. MEMON: Twelve. This will be my capacity, and that's all I can have.

MS. ROBESON: So, what you're saying is that they can't come, you can't have -- so you're saying all the children in -- all the 5 to 12 year olds are going to come from that one school?

MS. MEMON: Yes. I am going to be only covering one school that they have the area elementary school who are going to bring the children to my center.

MS. ROBESON: Okay. Now, what is your projection for the special needs children?

MS. MEMON: Right now, I cannot say it. I can only give with the children who I have right now. I can just give with my, with my experience. Otherwise, I cannot project for that area how many special need children I am going to have. Every year is different, so I cannot project that. I can just say what I have at my Burtonsville location. And every year is different because it's about the funding of the county.

MS. ROBESON: The program.

MS. MEMON: Yeah.

MS. ROBESON: Okay. And how, where is the public transportation in relation to this property? Is there a bus stop or -- what is the public transportation that is available to this property?

MS. MEMON: There is a Metro bus right on the University Boulevard?

MS. MEAD: Do you want to use the --

MS. ROBESON: No, you --

MS. MEMON: I'm not --

MS. ROBESON: -- you've got to answer me --

MS. MEMON: I'm not sure that the map --

MS. ROBESON: -- to the best you can.

MS. MEAD: To the best you can.

MS. MEMON: I cannot -- I have seen it, the Metro buses signs there, but I cannot tell --

MS. ROBESON: Do you have any --

MS. MEMON: -- you right now where the --

MS. ROBESON: -- idea how far it is from this property?

MS. MEMON: What -- with my observation, I feel that they are walking distance, but I do not have the street name and all that for you.

MS. ROBESON: Okay. And on the special events, you're bringing back my children's childcare days, you have threes and fours with twenty children.

MS. MEMON: Each, yes.

MS. ROBESON: Each. And it's just my recollection from childcare days that when you have these special events, it's not just the parents, it's the grandparents and, and the -- so, I guess what I'm wondering is, is the 20 spaces sufficient for, to handle those special events without --

MS. MEMON: I am saying yes, and then I'm talking with my experience. Because if the three-year-old is having a special event, the twenty parents sometime the parents do not come. They are busy with their schedule. And if they come with the grandparent or a friend, with my experience and observation at my other location, they come together to, to attend the event.

MS. ROBESON: Okay. And then what about non-peak traffic? In other words, outside the rush hour. The school

bus is going to drop them off at what time, approximately?

MS. MEMON: In the afternoon, 3.

MS. ROBESON: 3 o'clock. Okay. What about, do you have parent pickups at that time as well?

MS. MEMON: Sometime. With this location, sometime yes.

MS. ROBESON: Do you have any estimate as to how many parent pickup --

MS. MEMON: Two. At the center of 275, maybe two.

MS. ROBESON: Okay. So, most of the parents both work at your Burtonsville Center?

MS. MEMON: They come at --

MS. ROBESON: And what about this center do you project?

MS. MEMON: I would say same. That maybe if there is a doctors appointment or something, the center is off 94, maybe two parents come at off the time. Otherwise, they will come in the -- at their regular time in the evening. And if there are doctor's appointments, sometimes parents take it in the morning and drop the child at noon and they go back to their work. Anything can happen.

MS. ROBESON: Okay. All right. Ms. Martin, do you have any questions based on Mr. Leibowitz's and my questions?

MS. MEAD: I have just a --

MS. ROBESON: Mr. Leibowitz?

MS. MEAD: -- just a few questions.

REDIRECT EXAMINATION

BY MS. MEAD:

Q From your experience in your discussion, you had mentioned that the six to ten minute time frame that the parents would be there is usually faster in the morning. Can you explain why it may be faster in the morning, even with the additional steps?

A The additional stuff do not -- once you are in a childcare, the parents do not bring additional stuff every day. Additional stuff comes, like, once a month. Parents do not want to carry all the diapers or food, formula. They do bring once a month, and they have the storage spaces for each and every child separate. They put their formulas and their powder and their cereal in there. They put the diapers. There is a sign, separate places that we put everyone separate.

So, if they are bringing the child, yes, they are going to snap the child from the, from the car seat and bring the child in. And signing in with the office is not, they have to talk to an office barrier. There is a sign in sheet sitting in the office. They put the child's name, sign in time, and they walk with, in the classroom. As the ratio of the classroom is 3 to 1, there are many teachers

available. They hand the child and goodbye.

In the afternoon, they chit chat. They go through the daily sheet. My child slept this time, my child finished the banana, my child -- so they have more kind of things or sometimes they are running with the child with the three and four at the playground and spending some time with the child. So, that's what I meant by that.

Q So, in the afternoon it's closer to the ten minute time --

A Yes. Yes.

Q -- and in the morning it's closer to the six minute --

A Yes.

Q -- time frame for them on the site. You'd also talked about the different sites that you have currently, that two of them are in or proximate to apartment or condo, multi-family complexes. Could you please describe the Burtonsville site, its location?

A Burtonsville is in a business complex. So, and there is new housing coming in there. They have come in and talked to us so that we can put our flyers there because they are very much interested in -- in the childcare. Burtonsville Commerce Center right now is advertising us with their business that there is a childcare there that's a plus to their -- but that is a business complex, and College

Park and Maryland Farm is into a condo complex.

Q But you had noted even though Burtonsville is a business complex --

A Industry park.

Q -- you still have some parents who walk their children there?

A Yeah. The apartment complex, which is a huge, Country Place Apartments, I do have ten parents walking their children down.

Q Thank you. And the special needs children that would have a bus, what age group are they? Are they usually in the school age group? Would they be one of the twelve or are they --

A They are not in the school age. They are mostly twos. Some of the twos, threes. Mostly twos and threes because the special need is more on the verbal scale, that helping them with the speech.

Q So, they would be included in the, in whatever the maximum number is for that age group of the two-year-olds or the three-year-olds or the --

A They will be included into the enrollment, yes.

Q Thank you. And the, you had mentioned that whatever the school is for the area, the elementary school, I believe it's Forest Knolls, but I --

A I have to --

Q I, no. I'm not positive. But whatever the elementary school is --

MS. ROBESON: But I don't want to hear it from you anyway.

BY MS. MEAD:

Q Right. Right. For that block, would it be the same school bus that would be taking children to and from that neighborhood in the morning, or does it make a special trip for Childway?

A I would say the same from the neighborhood. The same bus is going to be covering this school also.

Q Okay. So, it would be the same bus?

A Um-hmm.

Q And we had talked about playground time. Could you repeat again how the outdoor play time is regulated and how you plan on regulating it at this site?

A The outdoor play, each age group goes separate. There is a playground schedule done for the teachers. So, the twos go separate, threes go separate, fours go separate, and school age goes separate, and the toddlers go separate.

Q Thank you. So, there's a limited amount that would be outside at any given time?

A Yes. And again as the weather permits.

Q Thank you. And the Hearing Examiner had asked about special events. Per the statement of operations, and

I believe the TMP, but the statement of operations, are you committing for this site to regulate those by the age group category?

A Um-hmm. Yes, ma'am.

MS. MEAD: Thank you. I have no further questions.

MS. ROBESON: Do you have any recross solely based on my questions?

MR. LEIBOWITZ: Yes, just about the school bus --

MS. ROBESON: Yes.

MR. LEIBOWITZ: -- issue. I still am a little bit confused.

MS. ROBESON: Okay.

RECROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q The five to twelve-year-olds are for an after school program, is that --

A Yes.

Q Is that right? Okay. And you said that there is going to be one school bus for all of those kids because they are all going to the same school?

A They should be, yes.

Q But five to ten or eleven is K, K through 5, right?

A Kindergarten, yes.

Q By 12, aren't you in maybe 6th grade?
A Yes.
Q And maybe even 7th grade?
A 6th grade, elementary.
Q Is the school that we don't know which one it is go up to 6th grade?
A There are elementary schools, they go to 6th, 6th grade.
Q Okay. But my question is, does the school that we don't know what school it is, does that one go up to 6th grade?
A When the parents come with the enrollment, they will only come off that school. I cannot take any outside children from that other school because that's the only transportation convenient I'm giving them.
Q I see. So, if -- if a child is 12 years old and is now in middle school, that child would no longer be able to participate in your --
A Yes, sir.
Q -- daycare?
A Yes, sir.
Q And do you know what time, I was confused a little bit about the time. What time does school start, does that elementary school start?
A Some -- it -- I will just talk about the schools

which are right now, the school starts at 9:00, buses come at 8:30, quarter to 9:00.

Q So, the bus would then be coming --

A Elementary schools start late in the morning.

Q Right. So, the bus -- before I thought you'd said that the bus was coming at 9:00, but if school starts at 9:00, you're saying it would come maybe around 8:30?

A 8:30, quarter to 9:00.

Q Do you know if Montgomery County Public Schools have to agree to this plan about transporting the kids using -- it's a public school bus, right?

A When the center is licensed by the State of Maryland, they certify the room for school age, and when I get that certification and the license, then I will market myself that I have before and after care also. And the parents of the school, the convenient, the transportation is coming to my center, they will only bring those children to us.

Q Okay. My -- the bus that we're talking about, it's a public school bus, right? It's not a privately operated bus, is that correct or no?

A It's a public school bus. Yes.

Q Okay. So, do you have to coordinate with Montgomery County Public Schools regarding this drop off and pick up and all that?

A I do go to the county schools and leave my flyers. And if some parents are interested in us, they will come in and take, get the care from us.

Q Okay. But --

A The area public schools.

Q I guess, let me see if I can ask it differently because I'm not sure you're understanding my question. The kids can -- the parents may be interested in the school and drop off their kids, but how do you get the public school bus to come and get the kids from your facility?

A Right now, the buses are coming at my existing facility, and they are all public school buses. And the schools in the area, they do come and/or call us and say can we put our, your name there, are you covering us as a before and after care. And parents need before and after care. From that school, they, they give us our name that you go to Childway. Childway is covering Burtonsville. Childway is covering Fairland. Childway is covering Cloverly. So, our names are all there because once I get the license, I am certified by the State of Maryland. And once I am state, licensed from State of Maryland, I am certified by the county also.

Q Okay --

MS. ROBESON: I think what he's trying to get at is do you have an existing agreement with the public school

that ensures that the transportation will be from the public school bus?

MS. MEMON: That is, my license is the agreement with the county that I'm licensed to have public school children. Public school --

MS. ROBESON: But what about getting this particular stop on the bus route?

MS. MEMON: Once -- once any center gets a license by the State of Maryland that I can have school age children, that is my certification to get the transportation from the public schools to my center.

MS. ROBESON: Okay.

MS. MEMON: I don't know how to answer that question. This is what I'm doing for 35 years that I do cover nine --

MS. ROBESON: Okay.

MS. MEMON: -- nine county schools.

MS. ROBESON: That's fine. That's fine. Ms. Martin -- or, any more questions?

MR. LEIBOWITZ: No. That's it.

MS. ROBESON: Miss Mead? Mrs. Mead. Ms. Martin.

REDIRECT EXAMINATION

BY MS. MEAD:

Q Maybe I can try and pose the question. What I think they're just trying to confirm is that once you have

this license and the public school knows that you're there, does that confirm that there will actually be school bus availability as well?

A Yes.

Q So --

A That school is going to put us in that, in their route also --

Q They would --

A -- to pick up the children.

Q So, the school will ensure that, once you're certified as a provider of before and after care, the school system, is it correct that the school system will make sure that your facility is on the route?

A Yes. And they will, they will assign the bus driver that this is also on your route. And they will call me and give me the number, that 365 is your bus that these children can come to Glenmore Elementary School.

Q All right. Thank you. I think that covers the school bus question. I have no further --

MS. ROBESON: Okay. All right. Your next witness.

MS. MEAD: You are complete.

MS. MEMON: Okay. Thank you.

MS. MEAD: Thank you. And just in case she needs to leave, I know that she needs to get back to Burtonsville

at some point today, if we could excuse Ms. Memon at some point if all --

MS. ROBESON: Do you have an objection?

MR. LEIBOWITZ: I don't have any objection. She can go now if she --

MS. ROBESON: She can --

MS. MEAD: When you need to.

MS. MEMON: Thank you.

MS. MEAD: Thank you.

MS. ROBESON: Okay. Please raise your right hand.

(Witness sworn.)

MS. ROBESON: Okay.

DIRECT EXAMINATION

BY MS. MEAD:

Q Thank you. If you could please state your name and your business address for the record, please.

A I'm Craig Kay. My business address is 7821 Tuckerman Lane in Potomac, Maryland 20854.

Q Thank you. And what is your occupation and your relationship to this project?

A I am a partner in Gilmoure-Brunett, LLC that is developing the subject property.

Q And in addition to being a partner with Gilmoure-Brunett, LLC, what is your professional and educational background and area of expertise?

A I am, in addition to being a part of the LLC that's developing the property, I am a real estate professional. I've been licensed since 1989, when I was still in college. And I came back home here, and I have been involved with sales and development of homes starting in the early-'90s.

I was a sales manager for various new home subdivisions in Virginia. And I went on to become more sales management along with the development for Richmarr Development Corporation and later took the same role in a firm called Encore Development Corporation. I then, as the workload of sales manager started to decrease, I got into management of existing homes in addition to new homes. So, I licensed myself with various brokerages, Re-Max, Century 21, Long and Foster, now Weichert.

In 2002, I became a partner in K2 Development, Inc., which we developed and built single-family projects in the Maryland area, and I am currently in, I remain active in sales, and I am now the sole owner of K2 Development.

Q Thank you. Are you a member of any real estate professional societies or organizations?

A I am a member of National Association of Realtors, Maryland Association of Realtors, Greater Capital Area Association of Realtors. I graduated the Real Estate Institute, and I'm a certified residential specialist.

MS. MEAD: Thank you. In addition to recognizing Craig Kay as the applicant today, and we will have some testimony as an applicant, per his testimony on his background and, which is reflected in Exhibit 53A in the record, or Exhibit 53A, we'd also like to have Mr. Kay recognized for his real estate sales expertise for the past 20 years.

MR. LEIBOWITZ: No objection.

MS. ROBESON: No objection? All right.

BY MS. MEAD:

Q Mr. Kay, are you familiar with and have you visited the property that is the subject of the special exception today?

A Yes, I have.

Q If you could please describe your ownership history with the property and the background for the special exception?

A Okay. My partnership bought the subject property in 2006. We had intended for this property for five new -- newly built single-family homes, the size of which were approximately three -- starting from 3,000 square feet, and if we finished out all the bump-outs and options and basement, it would, they would cap out at around 5,000 feet.

We did obtain a preliminary plan for subdivision of the property. In 2007, the market blew up, and the

houses that started from 800,000 was not going to be obtainable. And, as I see the market is still kind of reeling from that today, I take a look at MRIS, and there is something very similar to what I was marketing in '07 now being marketed in that same area, the price of which is under $500,000 and still active on the market. That's it.

Q And how did you move forward from the residential to the current special exception today?

A Since my plans to sell $800,000 homes really wasn't an option anymore, I needed to investigate what other permissible uses as long as -- and that would be financially sound, what I could do. I sought the advice of my, my engineer who suggested that his property was a very good site for a special exception for daycare, and I sought that.

Q Did you do any further research on the daycare option?

A I did. I got together with a commercial broker who had an expertise with this type of property and knew a variety of daycare providers. We talked to, you know, three when we were going through this process. I need to know that they were, you know, financially sound. And I, I chose Childway. And I visited their facility. I was very impressed by how they operate, especially on a flex base.

I need to also make sure that my business, my tenant that would be occupying the building could survive in

any economic environment. And I was given some guidelines as to what a daycare would look for in a site like this. And with the various daycare providers, they were all looking to be within a five-mile radius of at least ten public elementary schools. And after I did my research, I found that my site was within five miles of 31 public elementary schools. So, that was a big positive.

Also, the fact that there is, there is a public, there is a bus stop literally right out, within walking distance on University Boulevard. That was key, being on a major route like a state highway, 193, University Boulevard, which we front on. Being between Route 97, Georgia Avenue, and Route 29, Poolesville Road, these are all positives. And we are also equidistant between Silver Spring and Forest Glen metro stops.

Q If you have knowledge of it, could you use the exhibit that's up on the board on -- I can't read the -- 61, the revised site plan, and point out where the bus stop may be, if you know?

MS. ROBESON: Is it 61(f)?

MS. MEAD: I think it's F.

MR. KAY: So, it's right here.

MS. ROBESON: No -- okay.

BY MS. MEAD:

Q If you could use that plan in the middle --

A Oh.

Q -- it's probably more --

A Right here.

MS. ROBESON: Oh, okay. If you --

MS. MEAD: If you could describe here --

MS. ROBESON: Yes.

MS. MEAD: -- please?

MS. ROBESON: You have to --

MR. KAY: I'm sorry. It is literally a block and a half from the front --

MS. ROBESON: Across --

MR. KAY: It is in front of the Buddhist Temple.

MS. ROBESON: To the west across Brunett Avenue?

MR. KAY: West. West.

MS. ROBESON: Well, north is --

MS. MEAD: Yes. Yes.

MS. ROBESON: -- usually straight up.

MS. MEAD: Yes.

MR. KAY: Okay. So it is to --

MS. ROBESON: So, to the west --

MR. KAY: It is to the west of the property, the northwest of the property.

MS. ROBESON: In the first block to the north?

MR. KAY: In the first block, yes.

MS. ROBESON: Okay. To the north and west?

MR. KAY: Thank you.

MS. ROBESON: Yes. Okay.

BY MS. MEAD:

Q And we have other witnesses that can describe that more. I just thought of that. And do you have any of the, the research that you had mentioned you had done on the --

A Yes.

Q -- of the schools surrounding the area?

A Well, like I said, I did a research project on the 31 public schools.

MS. MEAD: Not that need is a criteria, but we'd like to admit for Exhibit 68 per Mr. Kay's testimony regarding the 31 public schools in the area, we'd like to submit a record of the schools that are within five miles of the site.

MS. ROBESON: Well, I guess my question is what is the relevance of it?

MS. MEAD: If you want to --

MS. ROBESON: I'll let it in for -- do you have any objections?

MR. LEIBOWITZ: Other than it's not relevant, I don't have any other objection.

MS. ROBESON: I'll let it in for the weight it deserves. If you --

MS. MEAD: That's all we ask.

MS. ROBESON: So, that would be 68.

MR. LEIBOWITZ: I guess if I could have a copy of that. I haven't seen it yet.

MS. MEAD: I will give you one.

MS. ROBESON: So, this will be map of, is it all schools or elementary schools?

MR. KAY: It's all, just public well --

MS. MEAD: It's your report.

MS. ROBESON: Oh, oh --

MR. KAY: I'm sorry. It's my report. It's --

MS. ROBESON: It's --

MR. KAY: It's the public elementary schools that are within a five mile radius. And I did a Mapquest search.

MS. ROBESON: So, it's a Google, or a Mapquest map?

MR. KAY: Yeah, just so that you can see exactly how many miles it takes you to get from, from the school to our center, proposed center.

MS. ROBESON: Okay.

(Exhibit No. 68 was marked for identification.)

BY MS. MEAD:

Q And again, you did this study --

A I did this prior to even getting a daycare provider. This is so I could attract the right tenant to

the site.

Q And if you could please describe your coordination with the current tenant?

A Okay. I have a 15-year lease with extension options. Of course, it is subject to the rules and obligations of the special exception, if granted.

Q And as mentioned previously during this hearing, there had been, there is testimony regarding an existing structure that had been razed. If you could please explain.

A Yes. We -- the dentist office, when, when we were marketing, or when we were trying to get preliminary plan for the subject site, the existing house was in complete disrepair, structurally unsound. There was a great deal of mold. We did have some infestation as well as some problems with people breaking in. I'd even tried to rent it. It was unsuccessful about it. It was becoming a situation that I was more worried about what if something awful happened, and I needed to raze the structure even before I was building houses.

Q So the, what was the timing when you had the structure demolished?

A The timing, I was, I want to say it was in 2006, maybe 2007. I don't have the exact date in front of me.

Q Okay.

A It was before I got special -- before I got

preliminary plan though.

Q It was during the --

A During the process. Um-hmm.

Q And did you, are you familiar with the special exception that is before the Hearing Examiner today?

A I am.

Q Did you meet with the community before or after filing?

A I met with the community once before filing. The first meeting was even before I got a tenant. I met at one of the neighbor's houses. I just wanted to fill them in on what my, my plan was to be. I wanted to get input from the civic association or whoever was at the house, and each time I would come back to my team with some of their concerns as to traffic and landscaping. And I would, I met with them a total of four times.

The second meeting, I met with my attorney and architect and some conceptual plans. We heard, again, some of their specific objections. We tried to work, work on them with my team afterward, see what could be accomplished to meet the concerns about traffic and, and landscaping. We attempted to come back the next month to present to the civic association and show them some of the changes that we were making along the process. They didn't want to meet at that time.

And then, since the meetings didn't work out with the civic association, we held the last meeting at Blair High School, and we had everybody on the team, including the tenant and my architect and the traffic engineer. The feedback, you know, that I was looking for really, we didn't get any specific feedback other than the letters that obviously appear in the record that they didn't, they weren't in approval with the project.

Q Did you meet with Park and Planning staff during this time?

A Yes. We met before the filing of the application for the use of the site and the concept plan for review. And then after the filing, they were nothing but supportive of this potential special exception. They even said this was an ideal site for what I was trying to do. Really, the only thing that they brought up was the neighborhood. You know, the neighborhood and their attitude towards it.

Q Did you make any changes to the application after filing?

A The comments that we received from staff had been positive until right before we went to the Planning Board. And we did reduce the roof elevation on the east side of the building in response to their comments. Before the Planning Board hearing, the comments from the community were mixed, often seemed that they were really basing everything on --

MS. ROBESON: Well, you know --

MR. LEIBOWITZ: Objection.

MS. ROBESON: Okay. I bet that -- we have informal rules of evidence. We don't have strict rules of evidence. But why don't you stick to what you, your first-hand knowledge and not characterize communications from others.

MR. KAY: Well, we made, we made the changes prior to -- we did change the roof. We did take the underground parking away.

BY MS. MEAD:

Q What were the comments that were made specifically to you --

A From --

Q -- that you were trying to respond to?

MS. ROBESON: From whom?

MR. KAY: I was trying to respond to the impact of traffic. I was trying to respond to the impact of what they regarded as a commercial use of the property. They were worried I was going to build a, you know, a high-rise office building, that I was really going in for a special exception and it wasn't for a daycare, it was for something that I hadn't disclosed where I could build --

MR. LEIBOWITZ: We object to this line. We have a proposal. It is what it is. His listening or not listening

to the concerns of whoever he listened to is sort of besides the point at this point. There's a -- there's a proposal --

MR. KAY: Well, we did make changes.

MS. ROBESON: That -- if you could phrase, phrase your testimony in terms of what changes you made, that's fine.

MR. KAY: After the filing, we changed, we took away the parking garage.

MS. ROBESON: Yes.

MR. KAY: We changed the roof.

MS. ROBESON: Yes.

MR. KAY: I think that's it.

MS. ROBESON: Okay.

MR. KAY: Oh, I'm sorry, we reduced the scope. We reduced the population of the daycare from 120 to 94.

MS. ROBESON: Okay. These were the amendments that came through in March?

MR. KAY: In response to the Planning Board.

MS. ROBESON: Okay.

BY MS. MEAD:

Q And maybe I can phrase the question a little differently as far as, could you explain why you waited until after the Planning Board hearing to make the substantial changes that you made to the application?

A I needed feedback. We didn't have anything,

really, to go by except to disappear. And we needed some guidance from the Planning Board as to what, what was the true objection of what we were proposing since all we had received --

MS. ROBESON: Okay. I understand.

MR. KAY: -- was positive.

MS. MEAD: Thank you. That was the intent. So hopefully my --

MS. ROBESON: No, if you want to add something, you can keep going. Just --

MR. KAY: I'm okay.

MS. MEAD: Okay. We rephrased the question just to get to the intent of --

MS. ROBESON: Yes.

BY MS. MEAD:

Q -- the comments. From a real estate sales standpoint, how would you describe the impact of this on the neighborhood?

A Well, I believe the daycare, especially one that's a build to suit, custom architecture, that is residential in appearance, takes a lot of architectural elements from the existing neighborhood, it's a positive. It's a service to young families now. You can't, you don't know for certain that young families are moving to Four Corners, but the neighborhood, as it stands in MRIS and on the market, it's

affordable. And when young families are looking to move to Montgomery County, which obviously Montgomery County is a highly-sought county, they're going to look for neighborhoods that are accessible to major highways, are, you know, the school system, that's what they're going to choose. That's a personal decision.

The daycare is a vital service. And I know. And I was a sales major in 1992 for Ashburn Village. There are ten different builders in the community. We all have on our community sheets, you know, daycare facility for La Petit, I think it was them. We did some research just now to see if any new home builders are putting that on their community sheets. They are. We did find, I think I gave that to my attorney.

Q For --

A Yeah, I mean, and plus, it's a new construction. And since most of the existing buildings have been in existence in that neighborhood since the '40s and '50s, this helps complete what a neighborhood is going to be. Right now, it's a -- there was a decaying building. It didn't serve as a buffer for those existing houses onto State Highway 193. Now this is, this acts truly as a buffer. It serves the existing homes for the neighborhood. I guarantee you that a lot of the sale, the resale agents that would sell in Four Corners would include that in their to-be-

developed community sheets that this would be in the neighborhood as a benefit.

Q You had mentioned you had looked at other marketing sheets for other neighborhoods. Do you have any examples?

A Yes, I -- Michael Harris Homes at Clarksburg was the one I felt was the most relevant.

Q For, we'd like to submit as Exhibit 69, just a submission from Michael Harris homes. If you could please describe it --

A On the --

Q -- the relevance?

A On this community sheet, this is for the Clarksburg development, they are listing all of the services that would be generated if you bought a home from them in the Clarksburg community. It's public services, hospital, medical facilities, animal care, and daycare is actually broken out as to, you know, it's own separate category.

MS. ROBESON: Okay. Before you get further, Mr. Leibowitz, do you have any objections to this?

MR. LEIBOWITZ: I don't know why this is relevant.

MS. ROBESON: Either you or your attorney can answer.

MR. KAY: Well --

MS. ROBESON: What is the relevance of --

MR. KAY: Obviously, if you are building homes, if you are trying to market either an existing house or a new house, daycare is important. Daycare is a service.

MS. ROBESON: Okay, so you're --

MS. MEAD: That's the only intent.

MS. ROBESON: And what is the relevance of that --

MR. KAY: It's not --

MS. ROBESON: -- Ms. Martin? What is the relevance of --

MS. MEAD: Of a daycare in a neighborhood? That it is part of the marketing tools of services that are provided --

MS. ROBESON: What criteria does it go to meet?

MS. MEAD: I can --

MS. ROBESON: What special exception criteria?

MS. MEAD: The value of the services and some of the Master Plan recommendations that another expert will testify to as far as recommendations for service type uses in this neighborhood.

MS. ROBESON: I can see it going towards economic or adverse economic impact on adjoining properties. I'll let it in, give it the weight it deserves.

(Exhibit No. 69 was marked for identification.)

MS. MEAD: And obviously it's just a -- we're not

trying to advertise for Michael Harris homes. It was just a complete brochure that we're providing.

MS. ROBESON: No, I didn't think that. I just wanted to know, want to make sure we're heading towards something here. Okay. Go ahead.

BY MS. MEAD:

Q And from a real estate sales agent perspective, what do you think the impact of a, of the child daycare will be in this neighborhood, or neighborhoods in general?

A Like I said, Four Corners, right now its price is affordable in terms of single-family detached homes in Montgomery County. Young families are a protected class, so you're never going to be able to know for certain unless you count children walking out of a house, but it's a good assumption that young families would move to something that they could afford, and that daycare would be involved, you know, with young families. That's it.

Q Okay.

A Oh -- oh, I did a couple studies on the impact of daycare in residential areas. One, two of which were special exceptions, one not a special exception. The first is in Gaithersburg in, it's the Kindercare facility. This is 125 children.

MR. LEIBOWITZ: We object to this. I don't know what the relevance is of a study in Gaithersburg.

MR. KAY: I just want --

MS. MEAD: If you could let him --

MS. ROBESON: Well, I --

MS. MEAD: -- continue, he's --

MS. ROBESON: Yes. I think we need to -- I'm going to overrule that and you can continue. If you want to renew your objection once he gives his reason, we can do that.

MR. KAY: Okay. The Kindercare facility is 125 kids. There's two adjoining neighborhoods, well not -- it's in a commercial sector. This is not the same situation as in Four Corners. But there is the neighborhood of Fernshire Farms and Quince Orchard Knolls that were built prior to the facility being built. I think the facility was built in '96. Fernshire Farms was built in the late '90s, Quince Orchard Knolls in the '70s through the early '80s.

I did a study for resales in Fernshire and in Quince Orchard. They are all above what the rest of the zip code for 20878 is currently. So, the impact of the Kindercare, 125 kids, doesn't seem like that's a negative for the resales of those houses.

Now we get into two special exception situations. One was on Decatur in Kensington. This is a smaller facility than what we're proposing. It's for 60 children, and they did an addition to it. The neighborhood -- how do

I say this. The resales for the neighborhood are indicative -- I mean, we did a study when it was granted. You couldn't, it's hard to determine how the resales are -- it's not increasing, an area that's not decreasing any more than anything else in the market right now. So, in fact, the rest of the county is decreasing at a faster rate than those homes adjacent.

This special exception is actually within the neighborhood, very similar to what we're dealing with right now with Four Corners. So, I can't say, I don't think anybody can say for certain that the daycare facility within that neighborhood is actually dragging the resales down any further than the economy that we are experiencing right now.

The best example that I pulled was the YMCA, which is actually near the site. It's actually in the Indian Springs neighborhood. This is for 100, 150 kids in its program. We did a study in, I think that the, it was increased in '94, and we did some studies '96, '97 and we couldn't get any real data from MRIS for 1995. It's incomplete. That's when MRIS was, you know, started keeping their records. But what we found was in 1996 and 1997, which was a flat time in the market. It was still recovering from the bust of the early-'90s.

This neighborhood actually has very similar characteristics to that of Four Corners. The houses were

built in the same time. The architecture is the same. Actually, their prices are compatible right now and they go to the same schools. So, they were experiencing normal appreciation during a flat time in the market, like 2, 2 and a half percent per year. So, 150 child facility in a neighborhood like Indian Spring, that didn't seem to take down the desire for people to buy in there or the appreciation that those families would experience if they owned.

Q Did you prepare any summaries of this, of the center?

A I did.

Q I'd like to admit that as Exhibit 70. And if you could please describe the summary?

A Okay. This is for the YMCA study --

MR. LEIBOWITZ: Before it's admitted, I'd like to be heard on the summary.

MS. ROBESON: Okay. First, why don't we, we're going to identify it as Exhibit 70. Tell us briefly what it is, and then I'm going to hear Mr. Leibowitz's objection.

MR. KAY: Okay. I pulled from MRIS the data --

MS. ROBESON: And MIS is?

MR. KAY: Metropolitan Regional Information Systems. This is the common database used for real estate professionals for for-sale and homes in an area, both new

and used.

MS. ROBESON: Okay.

MR. KAY: Okay. So, I pulled data, sales data from MRIS, as much as I could. Like I said, in 1995, you're not going to have all of the relevant data. But in 1996 and 1997, I pulled all of the sales from Indian Spring. The average sales price in 1996 went up from -- about $5,000 from what it had been in 1995, an increase of 2.82 percent. And in 1997, we experienced more sales, that you can actually count --

MS. ROBESON: Okay.

MR. KAY: -- almost double.

MS. ROBESON: Did you pull this from MRIS yourself?

MR. KAY: Yes.

MS. ROBESON: And prepared this report?

MR. KAY: Yes.

MS. ROBESON: Mr. Leibowitz, what's your objection?

MR. LEIBOWITZ: My objection is that we have a summary without any of, that's coming in today that I've never seen before without any of the data, without any of the other surrounding circumstances. I have no ability to challenge this by looking at the data independently, having another real estate expert look at the data independently.

There's many factors that impact home prices, and we are to believe that the addition of a daycare in an existing YMCA building is to, is responsible for, for these changes. And I don't have any way of challenging that, and look --

MS. ROBESON: So, your objection is that you haven't seen it before the hearing?

MR. LEIBOWITZ: And more so, I don't have the underlying data, to look at the underlying data to determine is this accurate, are there other reasons for it.

MS. ROBESON: Okay. What I'm going to do is this. You can ask those questions on cross-examination. I'm going to let it in. We have to keep the record open anyway because I'm waiting for a supplemental report from Planning staff on the modified special exception. During that time, I will give you an opportunity to submit your comments on this study. All right?

(Exhibit No. 70 was marked for identification.)

MR. LEIBOWITZ: But will I also be given the data that was used to create this summary? Because otherwise, I don't know how I'll be able to --

MS. MEAD: We do have the -- I'll just interject that we do have the data. I only have one copy of it. I can submit another one for the record. It's significant, but we have the backup data.

MS. ROBESON: Why don't we do this? We will, today, submit, if we are going to take a break. How many more witnesses do you have?

MS. MEAD: At least three. I hope I'm not forgetting anybody. Three.

MS. ROBESON: Three more witnesses? How about you, Mr. Leibowitz?

MR. LEIBOWITZ: We have six or seven witnesses.

MS. ROBESON: Okay. What we'll do right now, then, is take a half an hour break for both lunch. You can ask Dawn Minor or Victoria to make a copy of the backup material. How big is it?

MS. MEAD: For Indian Springs. It's probably not that --

MR. KAY: Well, I have the ones I identified today that's also included in that study.

MS. MEAD: Yes, we do have summaries for all the neighborhoods that he mentioned as far as, and again, for, just the part of the testimony that he's speaking to at this point. So, if you'd like it for every summary --

MS. ROBESON: Well, I would like it for every summary.

MS. MEAD: Okay.

MS. ROBESON: Let's see how far we get today. Because if you have six or seven and you have three, that's

nine witnesses by 5, which is when we're going to cut off. I hate to tell you but, and if we need to, we'll get another date. Otherwise, I would like them in the record and to you today --

MR. LEIBOWITZ: Thank you.

MS. ROBESON: -- so I can give you time to respond to them.

MR. LEIBOWITZ: Thank you.

MS. ROBESON: So, let's see how far we get today. We're going to finish Mr. Kay. We will take a half hour lunch break, and we will come back and reconvene then. So, I'm going to, subject to, I'm going to let this in for the time being, subject to further objections once we have time to look at the backup data.

MR. LEIBOWITZ: Thank you.

MS. ROBESON: And that may be something for, instead of excluding the exhibit, it may be something for cross-examination. All right? So, continue, Mr. Kay.

MR. KAY: Okay. Where was I?

MS. ROBESON: You are at YMCA.

MR. KAY: Okay. YMCA.

MS. ROBESON: Nobody sing.

MR. KAY: So, I understand what Mr. Leibowitz is saying that he's not so sure that other things were affecting the positive change --

MS. ROBESON: Well, let him raise that. You tell me about this chart.

MR. KAY: All I can tell you is I based this to show that a daycare facility, which I've been told is detrimental to the economic impact of the neighborhood. I haven't built a daycare facility yet, but based upon everything that I know as a sales professional -- I specialize in down-county properties, although I'm licensed in Maryland and Virginia.

I'm looking at the data to see how some of these neighborhoods behave in, in various environments, in a commercial, with a commercial daycare facility built proximate, a smaller special exception that had a minor increase in Kensington. And then lastly, in this -- pretty adjacent to this neighborhood, there is a very, a large facility, a larger facility than I am proposing to build. That it may not have had a positive impact, but one can't say that it had a negative impact because the sales were rising at a time when we hadn't experienced the Dot-Com boom yet, and the market was flat everywhere.

So, 2.5 percent appreciation average, that's normal appreciation. The houses were built of the same time period. The architecture is similar. The lot size is similar. The schools are the same. The proximate distance to major arteries similar. It's a comp, in real estate

terms. So, that's my point. That's why I did the study.

MS. ROBESON: Okay. Mr. Leibowitz, do you wish to reserve your cross-examination until you've had a chance to --

MR. LEIBOWITZ: Yes.

MS. ROBESON: Okay. Let's see where we are at the end of the day with 9 or 10 more witnesses to get through. And there may be, you know, an opportunity if we have to continue this for you to look at the information and bring Mr. Kay back for cross-examination.

MR. LEIBOWITZ: And if we get to the end of the day and we have time, I could cross-examine him on other areas. Rather than dividing it up and doing some now and maybe some later --

MS. ROBESON: You want to do the whole thing.

MR. LEIBOWITZ: -- I would rather do it all together. But if we --

MS. ROBESON: That's fine.

MR. LEIBOWITZ: If we're at a point where we've gone through all the witnesses, we can address that and --

MS. ROBESON: Okay. All right. So, for now, if you have no further questions of Mr. Kay, we're going to take a --

MS. MEAD: Oh, actually I do.

MS. ROBESON: Oh, you do?

MS. MEAD: Yes.

MS. ROBESON: I thought you had finished. I'm sorry.

MS. MEAD: No. Sorry.

MS. ROBESON: Go ahead.

BY MS. MEAD:

Q Not to repeat the same incident we just went to, but Mr. Kay, did you prepare a similar summary for the Kensington neighborhood?

A Yes.

MS. MEAD: I'd like to -- under the same circumstances as Exhibit 70, we'd like to submit Exhibit 71 --

MS. ROBESON: Okay.

MS. MEAD: -- with the same caveats.

MR. LEIBOWITZ: Same objection.

(Exhibit No. 71 was marked for identification.)

BY MS. MEAD:

Q And you had, for the purposes of why you're admitting it to the record, if you could please summarize the summary of your testimony that you had noted on the Kensington neighborhood?

A Okay this, this property, once again, it's a special exception that was an addition to a property that

was already existing. This facility is 60 children. I -- let's see. The facility was -- I've pulled data from before the facility was built, or not built, but the amendment to add on to it. During the time period that the news was out to the neighborhood that this was going to be approved and then most importantly afterward, the after-effects of -- I don't know that there was a building permit issued. I'd have to check into that.

MS. ROBESON: Well, wait. Was it there already when these --

MR. KAY: It was an existing structure, and then they added on. They got an approval to add onto the structure.

MS. ROBESON: Okay. And when was the approval to add onto the structure?

MR. KAY: It was in January '08.

MS. MEAD: And if the Hearing Examiner would take administrative notice of CVA-470-A is the, the approval for that addition.

MR. LEIBOWITZ: What did you say? CVA-470-A?

MS. MEAD: 470-A.

MR. LEIBOWITZ: All right.

MS. MEAD: And I can make a copy of that during the break.

MS. ROBESON: Yes. I would prefer that we have it

in the record rather than simply hoping that it's somewhere at the Board of Appeals.

MS. MEAD: And the same for the -- sorry to interrupt testimony, but the same for Case, for the YMCA that was referenced relative to Exhibit 70 and Mr. Kay's testimony, S-1931-A. I know I have copies of that today, and we'll submit with Mr. Leibowitz and the record --

MS. ROBESON: Okay.

MS. MEAD: -- and the Hearing Examiner copies of those.

MS. ROBESON: All right.

MR. KAY: Okay. There is sufficient data in MRIS for these years, both before, during, and afterward, Going back to the YMCA study, I would have liked to have compared it versus the entire county, however the data was not available for those years, but it was available for this, this study.

My summary is, the results aren't clear with respect to the impact, positive or negative for the special exception within the first year of the approval of the amount sales within the subject neighborhoods dropped, dropped significantly, over 22 percent, but with an, only an average drop in average price of 3.35 percent, as compared with the entire county, Montgomery County had experienced in the exact same period a 17.73 drop in units, so, but

experienced a much deeper drop in average selling price of 13.86 percent. So, the units dropped, but the sales price within this area wasn't as deep as the rest of the county.

After the facility was expanded, the amount of sales within the subject neighborhood dropped 8.77 percent from the previous year and had a drop in average sales price from the previous year of 4.07 percent, but when compared from the rest of the results from the entire Montgomery County area that experienced the exact same period an increase in units sold of 21.8 percent but had a drop in average sales price of 13.86 percent. Once again, the market is bad for everybody. But, the market within this neighborhood, as compared with the rest of the county, not as bad in terms of average sales price.

The average for the subject neighborhood was a drop in units sold of 15.87 percent, versus a 2.03 percent increase during the same time period as the entire Montgomery County -- in the entire Montgomery County area. The amount of inventory in only three neighborhoods versus the entire Montgomery County isn't comparable as there is essentially no new development in the three subject neighborhoods and the amount of properties in this area is essentially a fixed number from which to choose.

MR. LEIBOWITZ: If I -- I'm sorry to interrupt. We're not challenging the impact on the property values. We

haven't in our written submissions and we don't have any witnesses, we weren't planning on bringing any witnesses in regards to that. So, I don't know if, sort of as I'm sitting here listening to all the testimony, I don't, I don't know if --

MS. MEAD: We're --

MR. LEIBOWITZ: I --

MS. MEAD: If I may submit, we're doing this also for the record and for the Hearing Examiner, not necessarily in regard --

MS. ROBESON: There is a standard --

MR. LEIBOWITZ: I understand.

MS. ROBESON: -- about economic value. And I do note, just looking at this chart, that before the bubble burst, it had a greater depreciation rate than -- now, after the bubble burst, as you said, just based on this, it is less depreciation. I'm not sure what, exactly --

MR. KAY: Well the --

MS. ROBESON: -- that says, but I -- I would like to hear it. I understand that you don't challenge it, but it is a criteria that they have to prove. So, I'm going to let him continue.

MR. LEIBOWITZ: That's fine. I just --

MS. ROBESON: I understand. Your objection -- well, let's finish -- before you give up on this, okay?

Let's let him finish, and you can cogitate on it at lunch, okay?

MR. LEIBOWITZ: Okay.

MS. ROBESON: About how you want to handle it. Okay. Keep going, Mr. Kay.

MR. KAY: Okay. I guess I'm, I'm done. My point is, the prices are dropping, but they were dropping for everybody. And they, in, I think, all of the neighborhood, in this specific neighborhood in Kensington didn't drop as much as the rest of the county. So, obviously other factors were in play, you know, other than the special exception caused this, you know, downturn in prices. So, I guess that's the relevant, relevance of this study is that --

MS. ROBESON: But the settlement dates for the -- the average is county-wide.

MR. KAY: Yes.

MS. ROBESON: So that could apply to million dollar homes as well as --

MR. KAY: Well --

MS. ROBESON: -- affordable homes.

MR. KAY: Right.

MS. ROBESON: Yes.

MR. KAY: It's all mixed in. But it's -- right. But these houses are, you know, they're a mixed bag of houses in this neighborhood, both, you know, renovations or,

you know, older houses.

MS. ROBESON: In the Kensington area?

MR. KAY: In the Kensington area. I'm not questioning the average sales price as compared with the county. That I -- I'm just looking in the decrease in the percentage.

MS. ROBESON: Right.

MR. KAY: Because you obviously can't compare apples with oranges.

MS. ROBESON: Right.

BY MS. MEAD:

Q Thank you. In your opinion, with your background in residential real estate, will the proposed special exception be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties in this, in the neighborhood of this site?

A It most definitely won't be detrimental.

Q If you could please explain your answer?

A Hold on for a second. I lost my place. The architecture is, has been custom designed to be residential in character. Neighborhoods need services such as daycare for young families. It will affect the neighborhood, but it will affect it in a positive way. We'll now have a buffer that isn't in existence right now. Specifically designed with a lot of input, landscaping, architecture.

MS. ROBESON: Okay.

BY MS. MEAD:

Q Thank you. And in your opinion, will the proposed special exception alter the residential nature of the area?

A It will affect it in a positive way. Like I said, it's residential in character. The architecture -- neighborhoods need services like this. And it's a buffer, so it won't -- it won't alter the -- it won't alter the neighborhood in a bad way. It will alter it in a good way.

Q And with your applicant hat on and the property owner, going back to the statement of operations, 61(a), do you agree to make arrangements for regular trash removal from the site outside the peak hour?

A I do.

Q We had noted in the statement of operations that it would be five times a week. Is that the amount of times that you will be doing --

A That's what I'm aware of, yes.

Q Thank you. And as the applicant and property owner and the landlord for the proposed child daycare, do you agree to abide by the terms and conditions proposed, the testimony of your representatives here today, and to work with Childway once implemented, if implemented, as noted in the transportation management plan?

A I do.

MS. MEAD: Thank you. We have no further questions.

MS. ROBESON: Okay. And Mr. Leibowitz, I take it you want to reserve?

MR. LEIBOWITZ: I'll reserve my cross-examination.

MS. ROBESON: Fine. With that, we are going to take a half hour lunch break, so we should be back here at 12:45. Thank you. We'll go off the record.

(At 12:16 p.m. a luncheon recess was taken.)

AFTERNOON SESSION

12:51 P.M.

MS. ROBESON: Okay. Are the parties ready?

MR. LEIBOWITZ: Yes.

MS. ROBESON: Are you ready? Okay. We are back on the record. It is 1:52, and we left off with -- or 12:52. We left off with Mr. Kay. I believe we finished with Mr. Kay, and you're calling your next witness.

MS. MEAD: Yes.

MS. ROBESON: Now, just before we begin, I did check other dates. And the next date I have is June 2nd. So, think about that. There's a possibility I could squeeze it in earlier, but right -- that depends on another case. So, that's where we are. Okay. Do you want to raise your right hand, please?

(Witness sworn.)

MS. MEAD: Thank you. And just before I start with Mr. Starkey, since we have a few questions, I just wanted to confirm that we could excuse Ms. Nelson, our architect expert who testified earlier.

MS. ROBESON: Do you have an objection?

MR. LEIBOWITZ: No objection.

MS. ROBESON: That's fine.

MR. LEIBOWITZ: Have a good weekend.

MS. MEAD: When you're ready. Also, on another housekeeping matter. I'm sorry to break the flow, but considering the two reams of paper that would have needed to be copied --

MS. ROBESON: Oh.

MS. MEAD: -- I suggested to your office that we could have it delivered to you on Monday, and we could give this copy to Mr. Leibowitz today.

MS. ROBESON: That's fine.

MS. MEAD: That's why I had, that's why we had the summaries made.

MR. LEIBOWITZ: Oh, good. Thank you.

MS. ROBESON: All right.

MS. MEAD: All right. Sorry for the housekeeping items.

DIRECT EXAMINATION

BY MS. MEAD:

Q If you could please state your name and business address for the record, please?

A Carl. Carl Starkey. I'm a senior transportation engineer with the firm of Street Traffic Studies, with offices located at 400 Crain Highway, N.W., in Glen Burnie, Maryland 21061.

Q And your area of expertise?

A Transportation planning and traffic engineering.

Q And have you testified as a transportation planning and engineering expert before?

A Yes, on numerous cases, most recently in a child care case for the Goddard School, Special Exception Case No. 2759.

MS. ROBESON: And that was before Montgomery County Board of Appeals?

MR. STARKEY: That was before Mr. Grossman. Yes.

MS. ROBESON: I recognize you from some cases in Anne Arundel.

MR. STARKEY: Okay.

MS. ROBESON: Mr. Leibowitz, do you have any objections?

MR. LEIBOWITZ: To him --

MS. ROBESON: Being qualified --

MR. LEIBOWITZ: -- being qualified as an expert?

MS. ROBESON: -- as an expert --

MR. LEIBOWITZ: No objection.

MS. ROBESON: -- in traffic engineering?

MR. LEIBOWITZ: No objection.

MS. ROBESON: All right. Continue.

MS. MEAD: Thank you. Saved some questions. And his resume is Exhibit 14(d) in the record.

MS. ROBESON: Right.

BY MS. MEAD:

Q Mr. Starkey, are you familiar with the property which is the subject of this special exception?

A Yes.

Q Are you familiar with the nearby road network?

A Yes, I made personal inspection of the property and the surrounding network.

Q And are you familiar with the county's, I guess we don't call it growth policy anymore, the subdivision staging policy?

A Yes. Specifically, the -- the LATR commonly referred to, the Local Area Transportation Review, and PAMR, or Policy Area Mobility Review.

Q Thank you. And what were your duties and responsibilities with respect to the traffic study for this special exception application?

A An inspection of the site, review of the surrounding road network, contact with transportation staff

and Park and Planning to arrive at a scope of work to be completed for the analysis, that would include the intersections to be analyzed. Going out and conducting turning number counts at those intersections, obtaining information on background developments with Park and Planning, and then preparing the study in building block fashion, beginning with existing traffic, adding onto that any traffic which would be generated by background sites, and then lastly adding traffic which would be generated by the proposal.

Q And did you prepare a study with your analysis?

A Yes. We prepared a study, and the conclusions of that study, that the critical intersections analyzed and identified by transportation staff would be operating at acceptable levels for the policy area.

Q Thank you. And your study is in the record as Exhibit 12(b) and C, your report and your addendum, Exhibit 61(b). If you could briefly describe your analysis?

A Once again, the, when I collected the existing information, existing traffic data, review of the surrounding road network, analyze the impact of the proposed project on those intersections, and in addition we provided information on what the reduced student population would be. We also tried to address some citizen concerns, one of those things being the proposal to provide a bump-out at the

intersection of Brunett Avenue and Gilmoure Drive in the northeast corner. There was concern about speeding along Brunett Avenue. And this type of treatment has been used throughout the county as a traffic calming measure, and so we proposed to do it at this location.

Q Thank you.

MS. ROBESON: Okay.

BY MS. MEAD:

Q If you could describe your report as far as any traffic counts you did in preparation of your analysis.

A We collected existing traffic data in April of 2010. And at the intersections of University Boulevard and Brunett Avenue, University Boulevard and U.S. 29 southbound, University Boulevard and Dennis Avenue, and lastly at Brunett Avenue and Gilmoure Drive.

Q Thank you. And if you need to use any of the exhibits for your testimony, please feel free. We have the selection there that are in the record. If you could please describe these surrounding streets and intersections that you analyzed.

A Okay. Utilizing Exhibit 61(i), we have, assuming University Boulevard is east-west, and north is to the top of the exhibit, University Boulevard is a six-land, divided highway, major highway, used as a commuter route in this part of the county. It has three lanes, three travel lanes

in each direction. Brunett Avenue is a 36-foot wide secondary road, as well as Gilmoure Drive is also a 36-foot wide secondary road.

Important to note that each of these roadways are a bit wider than the majority of the roads in the neighborhood, and they meet the current standards for secondary roads as identified in a recent book of codes.

Q Thank you. In addition to looking at the street network, did you review the surface levels of those streets with the proposed special exception?

A Yes. Once again, all the intersections would operate below the current threshold. Specifically, the critical lane volume threshold for this policy area is 1600. The maximum value obtained after completion of the project is a value of 1483 during the morning peak hour at the intersection of Maryland 193 and U.S. 29. The remaining intersections are all operating -- that would be considered level service D/E. The three other intersections analyzed would all operate at a level service A, with (indiscernible) below 1,000.

MS. ROBESON: Okay. I'm sorry. Which intersection was the D/E?

MR. STARKEY: Maryland 193 and --

MS. ROBESON: Yes.

MR. STARKEY: -- U.S. 29.

MS. ROBESON: Okay. Oh, okay.

BY MS. MEAD:

Q And where did you get the list of intersections that you were analyzing for this traffic study?

A They were provided by transportation staff in a memo -- let's see. Memo dated January 23rd, 2009 received from Transportation staff.

Q Which is part of your traffic study?

A That's correct. It's included in Appendix A of Exhibit 12(d).

Q And where did you get the trip generation rates to use for the proposed child daycare?

A From the local area transportation review and policy mobility guidelines as produced by Transportation staff and adopted by the county council.

Q And since it's been asked earlier in the record, would you be able to identify, and is it identified in your traffic study, any transit options near the site?

A Yes. There is transit available -- excuse me -- along University Boulevard and along U.S. 29. There is a stop located in the --

Q If you want to go to the --

A Well, I was just going to --

Q -- since you're the first witness --

MS. ROBESON: It's better to say it.

MR. STARKEY: Right. In the northwest quadrant of the intersection of Brunett Avenue and University Boulevard, as you can see, identified on Exhibit 61(i), the existing bus stop is located here.

MS. ROBESON: Okay. Is that -- I'm sorry, is that labeled on there?

MR. STARKEY: That is labeled on the exhibit.

MS. ROBESON: Okay.

MR. STARKEY: Presently, there are Ride On routes and WMATA routes. They have direct connections to both the Silver Spring and Wheaton metro rail stations, and the average headways in the area are eight to thirty minutes.

BY MS. MEAD:

Q Did you review any of the plans for the site as part of your analysis and traffic study?

A Yes. We looked at the circulation and the driveway access and egress points. We also wanted to ensure that a school, if a school bus did have to visit the site, that it would be able to maneuver and do that. And included in Exhibit 12(b), Exhibit 6, is an illustration of a school bus driving through the center. And you can, as shown in Exhibit 6 of Exhibit 12(b), the bus can easily maneuver through the property.

Q And did, you had mentioned previously a bump out that was proposed to reduce speed. Can you point to that,

maybe, on the exhibit and the --

A It is located within the northeast quadrant of the intersection of Brunett Avenue and Gilmoure Drive. And it's shown graphically in Exhibit 61(i).

Q And is that bump out necessary for the proposed special exception?

A No. Again, once again, that was proposed in an effort to address a citizen concern about speeding.

MS. ROBESON: Is that bump out in the right of way or is it on the property? It's in the right of way?

MR. STARKEY: It is in the public right of way. We had conversations with DOT to determine if there would be -- if this would cause an adverse impact, and they said they did not see one.

BY MS. MEAD:

Q Did you review any other pedestrian improvements --

A Yes. We reviewed the proposals to reconstruct the sidewalks along Brunett Avenue and University Boulevard to ensure that there is a green buffer between them. Currently, the sidewalk is at the back of the curb. By implementing a buffer, you enhance pedestrian safety by putting the pedestrian further away from the traveling motorists. In addition, we would be installing new sidewalk along the frontage of Gilmoure Drive.

Q And did your analysis address the reduced enrollment and staff proposed?

A Yes. Exhibit 61(b), the addendum, reviewed the reduction in student population and staff. And based on that -- excuse me while I get those numbers. I want to use this. I'm sorry. And I, I have that specifically noted here. It was a reduction of about eight vehicles in the peak one hour, so though it's not a significant reduction, but there was a reduction.

Q Thank you. What conclusions did you reach regarding the traffic impact of the proposed special exception?

A That there would be no adverse traffic impact. The site is located in the far north of the community. It is adjacent to University Boulevard. While it has frontage along University Boulevard, it still would not allow access due to the proximity of Brunett Avenue, and also the proximity of an overhead sign for U.S. 29. It is right at the property, eastern property limit.

Q To your knowledge, would they allow access for any use on this property?

A No.

MR. LEIBOWITZ: I didn't hear the question. I'm sorry.

BY MS. MEAD:

Q To his knowledge, would State Highway allow access for any use on the property. If you could describe how you came to your conclusions in your traffic study?

A Once again, just following the guidelines and applying the trips generated by the site to the road network, analyzing them, and determining whether or not they would exceed the policy or the thresholds. It's important to note that daycare centers by their nature generally generate about two-thirds of the trips, driveway trips, from the passing driving stream that is either diverted from a nearby network or passing directly by. And the trip rates generated by Montgomery County document this with empirical data from sites within and throughout the county for daycare uses of any size.

Q Thank you. And you had noted the intersections that you had analyzed, and it's been brought up about the existing trips on Gilmoure Avenue and the concern that will bring 94 parent cars plus 20 staff cars. Can you please address this concern?

A Yes. As noted earlier by Ms. Memon and as identified in trip rates, not all of those trips are occurring in the peak one hour of traffic flow. Ms. Memon expressed that there was a two to two-and-a-half hour period where you have arrivals of both staff and parents. Based upon her experience at her other facilities, between eight

and fifteen percent of the parents are bringing more than one child in their vehicle. And with the transit opportunities available around this particular site, and with the fact that she would be using some of her existing staff to open the center, she does have some control over the ability to promote the transit use for people here so not everyone will be in a single occupant vehicle. And based upon, again, based upon the rates, we would have adequate parking and limited impact to the local network.

Q According to your traffic study, what is the number of trips that will be added to the Gilmoure Drive during the peak one hour of arrival?

A So, Gilmoure Drive, that number -- a maximum of 30 in either peak hour, or about one vehicle every two minutes.

Q Is that with the 120 enrollment or the --

A Actually, and that was with the 120 enrollment, so those numbers would actually be slightly lower. I was utilizing the traffic study just to get a quick look at those numbers.

Q Thank you. For Brunett and University Boulevard and the northwest corner of the site, could you please explain how the northbound turning movements will function with the proposed use and changes proposed?

A Presently, there is a signal lane approach from Brunett Avenue as you go northward and approaching the

intersection with University Boulevard. We are proposing to stripe separate left and right turn lanes. That would help the traffic. It would, one, reduce it to critical lane volume, and two, reduce the queuing that would occur along Brunett Avenue.

MS. ROBESON: Well, I -- I did have a question about the queuing. Did you, as part of your analysis, did you take a look at what the queuing would be out of, on Gilmoure, I guess they come in Gilmoure and out Brunett. Did you look at the queuing in the peak hour?

MR. STARKEY: I can state that --

MS. ROBESON: I know it's not part of the --

MR. STARKEY: Right. It's not -- it's not standard application, but I did do it, yet I don't have the number off the top of my head. But we did ensure that the queues would not come down to the egress point. One of the benefits of having the separate lanes is you reduce that queue. So, we actually would be --

MS. ROBESON: Oh. Oh, I see what you're saying.

MR. STARKEY: Right. Since you would have two approach lanes.

MS. ROBESON: That's why you have the right out.

MR. STARKEY: Right. That's why we have right out.

MS. ROBESON: But that's not part of your traffic

report?

MR. STARKEY: The number or the distance of queue?

MS. ROBESON: Yeah, distance --

MR. STARKEY: No, it's not. No, it's not.

BY MS. MEAD:

Q With the anticipated egress trips during the peak hour for this use, do you anticipate a queue or significant delay at the University Boulevard and the Gilmoure and the Brunett intersection?

A No, I do not. Once again, it would be a level service A operation. And levels of service are similar to grade scale. They go from A to F, with A being most optimum.

Q The testimony recently submitted by the neighbors commented on a minute and a half delay at University currently to turn left during the rush hour. Can you please address this comment?

A Well, that actually would be typical of nearby signal light intersections. The county runs -- the current signals run in cycles. And they vary from 60 seconds up to 180 seconds. And the side street in this case, Brunett Avenue, typically has the longer delays, and a 90 second delay would be typical of the signal light intersection in the nearby community.

MS. ROBESON: Okay. When you did, when you looked

at queuing, did you base queuing sole -- was any part of the basis of your queuing the amount of drop-off time, or was it solely based on --

MR. STARKEY: No, it's based upon the volume approaching the intersection.

MS. ROBESON: Okay. From the -- okay.

MR. STARKEY: Yes. And that would include, not only traffic leaving the center, but the existing traffic that was already on Brunett Avenue.

MS. ROBESON: Oh, yeah. Okay.

BY MS. MEAD:

Q So, to summarize, your conclusion is that with the existing traffic, the background traffic, and the added use, that there won't be additional significant queuing off the property on --

A Any queuing for site trips would be contained within the site so that --

MS. ROBESON: You mean --

MR. STARKEY: -- any --

MS. ROBESON: -- there wouldn't be any queuing --

MR. STARKEY: No. I'm saying that --

MS. ROBESON: -- Gilmore and --

MR. STARKEY: -- traffic leaving the site would add to any queue on Brunett Avenue, but it would not be such that it would spill, additional traffic spill because it

could be contained from the site and wait and allow itself to enter the queuing along Brunett Avenue.

MS. ROBESON: Okay.

MR. STARKEY: Typically, that issue addresses whether -- so, for example, you have a left turn bay. If it's not long enough, it spills out into the through lane. Okay? In this case, if there wasn't sufficient queue space, the people would stay on site. They wouldn't, they wouldn't have to be added if they could stay on the site until a gap was available.

BY MS. MEAD:

Q Do you anticipate that there will be, based on the use proposed, that there will be backups on the site with cars?

A No, I do not.

Q In your report, did you address the on-site circulation in the drop-off and pickup areas?

A Yes. Again, we -- the largest vehicle that would enter would be a school bus. We ensured that that could circulate freely. And the layout meets county code and is, it would be sufficient. And pedestrians, again, pedestrians will -- improvements were made to the sidewalks surrounding the property. We've proposed a marked crosswalk on the northbound approach of Brunett Avenue at University Boulevard. And if the bump out were to remain as part of

this proposal, it reduces the crossing distance that you would have to cross Brunett Avenue.

Q Okay. Thank you. You mentioned that you also included the policy area mobility review. Do you address your findings on that requirement for this traffic study?

A Yes. This site is in a policy area that requires a ten percent reduction of the newly generated trips. In this case, that would be two trips. And the applicant has proposed to pay a fee in lieu of $11,300 per trip, for a total of $22,600 to satisfy the travel mitigation, and that was accepted by staff.

Q Thank you. Did Park and Planning staff have any other recommendations on the traffic study?

A Staff came to the conclusions that the site would not have an adverse traffic impact. They went further to address some of the citizens' concerns indicating they did not perceive that there would be excessive queuing generated by the site and that circulation would be adequate.

Q Thank you. And was their conclusion, which we will note is Exhibit 47 in the record, pages 21 to 26, did they, was this conclusion based on the current proposed enrollment or the previous?

A It was based on the previous enrollment of 120 students and 25 staff.

Q Thank you. Have you reviewed the transportation

management plan proposed for this use?

A Yes, I have.

Q And do you think it will address concerns raised, such as parking and trip circulation?

A Yes. The TMP will provide a framework to ensure that patrons of the daycare center will not park within the community. It will provide information on the available transit, which is numerous throughout the area. And it will help to police the on-site circulation.

Q Thank you. In your opinion, will the proposed special exception at this location create a traffic hazard or traffic nuisance because of the traffic generated?

A No. Once again, all the intersections will operate adequately, and the surrounding roadways have reserved capacity as identified by Transportation staff and the LATR guidelines.

Q And do you believe it would create a nuisance based on the number of children enrolled, the current 94 and the 20 staff?

A No. There would be a total -- total number of trips would be 45 in the morning peak hour and 49 in PM peak hour of the new proposal. And this, these trips, that's occurring in the peak one hour, but this is not a significant addition to the traffic on the surrounding roadways.

Q And in your opinion, would it create a traffic nuisance because of the noise generated by the traffic?

A Noise is inherent to the use. And the traffic noise, for example, along Gilmoure Drive, is based upon 22 to 25 vehicles in the peak hour, and on University Boulevard, three to 4,000 cars an hour. So, in relation to the major highway, there is very little noise that will be generated by this property.

Q In your opinion, would it create a nuisance or adverse impact based on the increased traffic on Gilmoure Drive and Brunett Avenue?

A Again, as I stated earlier, we are talking about adding a maximum of one vehicle every two minutes. That's not a significant number. And the roadway is adequate to serve the property. Once again, it meets the secondary standards. And circulation within the site not creating additional problems along Gilmore or Brunett Avenues -- Gilmoure Drive or Brunett Avenue.

Q Thank you. And in your opinion, will the special exception create a nuisance because of the circulation internal to the site?

A No. Again, it would be safe and adequate.

Q Would it create a nuisance for pedestrians?

A No. Once again, we have enhanced the pedestrian experience by the creation of buffers and the addition of

sidewalk along Gilmoure Drive.

Q And in your experience and based on the record, do you find that the parking will be an adverse impact or create a nuisance?

A No. Studies conducted by the General Services Administration and observations that I have made at other daycare centers, the average turnover is about seven minutes for a daycare center. If, from that average of seven minutes, each space could serve up to eight vehicles in an hour. If you do the math, that says that you could serve 224 cars in an hour. Even if half of those spaces were occupied by staff, it still is more than adequate to serve the parents who arrive to drop off their children.

Q Thank you. Will there be any impact on the neighborhood parking based on the proposal?

A No. Once again, we will have a transportation management plan which will in cord -- excuse me, include a coordinator to ensure that no parents park on the streets. In addition, along Gilmoure Drive, it is residential permit parking, so you don't have the ability to park there.

Q Thank you. And with the proposed special exception, will the vehicular and pedestrian circulation and points external to the site for the access be safe, adequate, and efficient?

A Yes. The driveway has been designed according to

standards, and again, we have added the additional egress on Brunett Avenue to help distribute traffic off the site.

Q Thank you. And based on the location and the anticipated peak hour trip generation, is it your opinion that the 28 parking spaces will be sufficient?

A Yes. Again, given a seven-minute turnover, you can serve up to eight vehicles per space. And once again, there would be adequate parking.

MS. MEAD: Thank you. I believe that's all the --

MS. ROBESON: Okay. Mr. Leibowitz.

CROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q Thank you. Mr. Starkey, you said you -- you did analyze the intersections at University and Dennis, right?

A Correct.

Q And University and Brunett?

A Correct.

Q And University East --

A East --

Q Eastbound --

A Correct.

Q -- at Colesville, right?

A That's correct.

Q Now, at eastbound at Colesville, those would be cars that are heading away from the proposed site, right?

A That's correct.

Q You did not analyze the intersection at, say, Colesville south headed to University west, right?

A That is correct.

Q Those would be cars that would be coming towards the proposed development?

A That's correct.

Q And so, nor did you analyze, for that matter, any of the other points of that intersection other than east, University East --

A If I could point out, I'm not sure where you're going with that, but I would like to state --

Q Well, I'm just asking you a question.

MS. ROBESON: Yes --

MR. STARKEY: I want to answer the question. I'm saying that what I analyzed is what I was directed to analyze as, sort of to guidelines. I do not determine what intersections to study --

MS. ROBESON: Okay. So, the answer is, to this particular --

MR. STARKEY: No. The answer is no.

BY MR. LEIBOWITZ:

Q Okay. Now, and the critical lane volume standard for this area is 1600.

A Yes.

Q Right? And Park and Planning has analyzed other portions of that intersection, right?

A Park and Planning would only analyze those intersections as part of a Master Plan process. Typically, they rely on consultant studies.

Q Okay. Are you familiar with the Maryland National Capital Park and Planning Commission and Highway Mobility Report?

A Yes. It comes out, I believe, biannually.

Q Okay. And are you aware they did one in June of 2009?

A Sounds correct.

MR. LEIBOWITZ: Okay. What exhibit are we up to, 72?

MS. ROBESON: This would be 72.

(Exhibit No. 72 was marked for identification.)

MS. ROBESON: Any objection, Ms. Mead?

MS. MEAD: If I could preserve. I'm not sure what the question is going to be.

MS. ROBESON: Okay.

BY MR. LEIBOWITZ:

Q If you look at page 15. And this is that report, right? This is the June 2009 Highway Mobility Report?

A That's what it's labeled as.

Q Okay. And not only labeled, but, in fact, it is that report, right?

A I will take your word for it. You just provided this to me.

Q All right. Do you want to take a moment to look at it and see if it is, in fact, that --

A It's a public document. I don't know that there would be any reason to fabricate it.

Q Okay, so do you --

MS. ROBESON: I'm going to let it in.

MR. LEIBOWITZ: Okay.

MS. ROBESON: Okay? He doesn't have to -- we'll let it in, and you can bring it up on cross-exam if you don't think that it's the real thing.

MR. LEIBOWITZ: Okay.

MS. ROBESON: But the witness -- but, you know, I wouldn't know if this was the -- go ahead.

BY MR. LEIBOWITZ:

Q Okay. If you look at page 15, the Table 2.3, there is a list of intersections and there, there's CLV ranking. Do you see that?

MS. ROBESON: I'm sorry, what page are you on?

MR. LEIBOWITZ: Page 15.

MS. ROBESON: Okay. Go ahead.

MR. STARKEY: I'm following you.

BY MR. LEIBOWITZ:

Q Okay. And if you look down at number, the one that's ranked 21.

A Um-hmm.

Q Colesville Road at University Boulevard South.

A Um-hmm.

Q And those would be, and that would be the same intersection we're talking about but a different portion of the intersection, right?

A I'm not certain which portion of the intersection --

Q We're talking about the --

A I know. I know what you're saying. What I'm saying, I'm not certain which intersection point this is identifying.

Q Okay. Do you agree that this report counted the CLV at 1680?

A That's what's stated here, yes.

Q Okay. And that would be greater than the standard. That would make it a failing intersection?

A That's correct.

Q Okay. Now, there are other ways out of the neighborhood other than at Brunett and University or Dennis and University, right?

A Yes. Okay.

Q And if parents felt that the queuing was too lengthy at those intersections, they might try to look for those other egresses from the neighborhood?

A Given the location of the property and its proximity to University Boulevard, it's a direct -- Brunett Avenue is a direct link. Any other means, you would have to be familiar with this neighborhood.

Q Okay.

A So, if somebody else used a different route, I would assume that they were residents of the neighborhood.

Q Well, looking at the property, which is at the corner of Brunett and Gilmoure, right?

A Yes.

Q If you went east on Gilmoure, there's another road there, correct? It's Lorraine Avenue?

A That's correct.

Q Okay. And so, and Lorraine Avenue intersects with University Boulevard, correct?

A Yes, it does.

Q All right. So, and every single car that comes, or vehicle for that matter, that comes to this proposed development would have to come onto Gilmoure Drive, right?

A Yes.

Q Because the only entrance is on Gilmoure Drive.

A Yes.

Q And if that car proceeded another half a block, they would find Lorraine Avenue, right?

A If they were doing that for some other purpose, yes.

Q You didn't study the impact of the traffic on Lorraine the intersection with Lorraine and University Boulevard, right?

A No, I did not.

Q Okay. Let's talk about the queuing for a minute. You didn't analyze or estimate the amount of time that cars would wait at the intersection of Brunett Avenue and University Boulevard in order to turn either right or left, right?

A No, I did not.

Q Okay. And you said that you weren't surprised -- a minute and a half delay wasn't -- I don't want to, I don't remember exact words, but you compare that to the typical delay from, at a traffic light.

A At nearby intersections.

Q At nearby intersections. And the way traffic lights work, of course, is that when the light turns green, the cars in other directions are stopped, and so numerous cars can go through the intersection, right?

A The way a traffic signal operates is there are phases, which each phase allows certain movements and other

movements are restricted, yes.

Q Right. And so, it's not one car at a time. There are a number of cars that can go through the intersection in each phase, right?

A Yes.

Q Okay. There isn't a traffic light at that intersection, right?

A Correct.

MS. ROBESON: What is that intersection?

MR. LEIBOWITZ: I'm sorry. The intersection of Brunett Avenue and University Boulevard.

MS. ROBESON: Okay.

BY MR. LEIBOWITZ:

Q There is no traffic signal at that intersection, right?

A That is correct.

Q So, if it took a minute and a half for each car to make a left turn, that would be, if there were four cars queuing, that would be substantially longer than if there were a traffic light?

A No. The way I understood the delay to be interpreted is that it can take up to that long. And I'm saying that that is typical of a signal light intersection.

Q So, if it took each car one and a half minutes and there were four cars, that would take six minutes, the

fourth car would be queuing for six minutes. Is that, was my math correct?

A I do not know that that would be the case. What you're saying to me is that you only, the gaps are -- my observations in that area are that the gaps are more frequent than that. And all I'm saying to you is that when you talk about average delay, that is an average. It is not the delay that's observed by every vehicle. When you receive a gap in traffic flow, more than -- in most instances more than one vehicle can proceed.

Q Have you personally ever made that left turn?

A Yes.

Q How many times have you done that?

A Two times.

Q What time of day was it?

A Around 3 p.m.

Q Okay. So, you've never done it during rush hour?

A Rush hour typically starts 3 or 3:30 in this area. The rush hour is not an hour anymore. It is actually a rush period.

Q Okay.

A I mean, not -- if the --

Q I guess I was using colloquy.

A Okay.

Q But yes, the rush hour is not one anymore. It's

several. I agree it's (indiscernible) now. Now, the we know that every vehicle has to go, has to travel onto Gilmoure Drive because that's the only entrance, right?

A Yes.

Q Okay. And you had said that typically two-thirds of the trips are either pass-by or diverted trips for a daycare?

A At the driveway, yes. Of the total number at the driveway.

Q Right. Okay.

A Right.

Q And by diverted trips, that may mean, for example, if I live on Lanark Way, which is, what, three blocks away, perhaps?

A I am not certain.

Q Okay. If I live three blocks away, and I might, maybe I'm headed out, normally I would have been headed out to the beltway. So, I wouldn't have gone out Brunett, you know, turned right on Gilmoure and then turned left into the proposed development. That's how, That's how I get to the development now, right? Maybe before I went some other direction. Diverted means now I --

A If I could give you an example?

Q Sure. Give me --

A Be easier --

Q -- an example of diverted.

A A diverted trip for -- looking at Exhibit 4(f). Say I'm going, I work in Silver Spring. So I, and I live to the north. And I presently travel southbound on --

Q On 29.

A -- 29. A diverted trip would be that I would change my trip, I would divert my -- I would turn right onto University Boulevard into the site, come back out, and then continue back on 29.

Q Okay.

A So, I'm already part of the traffic stream.

Q Okay. That's --

A Okay? Or I --

Q Let me stop you there, and I'm going --

A Okay.

Q -- to ask you about that. Because that's a great example. So, so first of all, that trip is one that wasn't actually studied in part of your traffic study, right?

A Yes, it was.

Q You didn't study the intersection at 29 South and --

A I didn't study where the trip came from, but the trips are incorporated in the traffic study.

Q But you didn't study the traffic at 29 South and University West. You already --

A No, I did not.

Q Okay. So that, that car, that car going through that intersection, that wasn't studied.

A But that car is already in -- that's already part of the existing traffic flow.

Q Right. And so by diverted, I guess my point is, that car would never have been on Brunett Avenue otherwise, right?

A Right.

Q And that car wouldn't have been on Gilmoure Drive otherwise?

A Correct.

Q And so, the impact on whether is already in -- it's already traveling on the roads of Montgomery County, it wasn't traveling into the neighborhood before.

A But my study included those trips along those two roadways.

Q Right. But that, my question is that car was on the roads of Montgomery County already, but it wasn't in this neighborhood, yes?

A Correct.

Q Okay. And so, the pass by and diverted traffic is having a direct impact on the neighborhood, although it may not be having an impact on the greater traffic flow area.

A As I --

Q Is that --

A As I testified to earlier, I incorporated all of that information, and the result of my analysis said that there is no adverse impact on those two roadways.

Q Okay. But I'm not asking what your opinion about the adverse impact or not. I'm asking you whether it's now having -- before it didn't have any impact --

A It is adding to the rides along those roads, yes.

Q Yes. Thank you. Is it fair to say that over time the volume of cars on the road increases?

A This community is built out. Typically the things that make traffic increase along the road are development. There aren't any parcels available to be developed. If there's redevelopment, once again, you would be counting existing traffic and then you'd be reassigned to a new use. So, I don't see that this community, that the traffic in this community would be growing at any great rate.

Q So, your testimony is that ten years from now or fifteen years from now, there won't be any more traffic on the road than there is today?

A Not without something to generate that traffic. And I -- unless you can identify to me where that traffic would come from, I couldn't speculate that that potential exists.

Q So, just to be clear, your testimony is, is that

in your expert opinion, there won't be any greater amount of cars on the road ten or fifteen years from now than there are right now at this moment?

A Not along the roadways internal to this community, no.

Q Okay. Now, you had studied or looked at whether a bus, a 40-foot bus could enter and exit the parking lot successfully, right?

A That's correct.

Q Now, while the, the bus, of course, has to stop, right?

A Yes.

Q And let out the 12 students who were going to some elementary school nearby, right?

A Yes.

Q And while the students are getting on or off the bus, those twelve students, that's going to take some period of time.

A I don't know what your average boarding and alighting is for a school bus.

Q I wasn't asking you what the average time was. I just asked you that's going to take some period of time, right?

A That's correct.

Q Okay. And while the bus is stopped there for that

period of time, whatever it is, no other cars can enter the parking lot.

A Why not?

Q Well there's, can they drive -- well, let me ask it this way. Can cars drive past the bus while cars are --

A Yes.

Q -- the bus is parked?

A Yes.

Q Is that illegal?

A No, not -- what you're asking, you're asking a different question. Okay? What you're asking me is when a bus is stopped to board students along a residential street and they put out the stop sign can a vehicle pass? No. When a bus is stopped in this manner, it would be just like it went into a parking space. So a vehicle could go around it because you're in a parking lot, not a street.

Q Okay. So that, so cars, so we would expect cars to be passing the bus while it's stopped letting children on or off the bus, is that --

A The operation from a parking lot here would be no different, regardless of the type of vehicle or size of vehicle being used. You, as a driver, respect the rights of pedestrians within a parking area. The same thing would be true in this parking area.

Q I guess I'm not sure, I don't understand your

answer. Let me ask the question again.

A I think what you're, you're trying to tell me that it's impossible for somebody to bypass a stopped vehicle, and I'm saying that's not true. The parking lot is sufficient to allow that.

Q All right. I'm not going to argue with you. Are you familiar with the regulations -- you had testified that the parking was adequate for this facility, right?

A Yes.

Q Are you familiar that there are certain regulations, certain codes regarding calculating how many parking spaces are necessary?

A There are -- yes. There are parking regulations in the County Code, yes.

Q Okay. And based on the County Code, are there an adequate number of parking spots?

A I would have to defer that question to a different witness.

MS. ROBESON: Do you have another --

MS. MEAD: We have a different witness talking about the zoning code requirements.

BY MR. LEIBOWITZ:

Q Okay. If you were to learn that under the code there weren't an adequate number of spots, would that change your opinion?

A Once again, based upon the ability to turn over eight vehicles an hour for each space, I believe that the parking that's being provided will be adequate.

Q Okay. And when you, when you figured out the trip distributions, that was based on -- you had to make certain assumptions in order to do that, right?

A It's based upon the information provided in the guidelines prepared by Park and Planning. For each policy area, there are trip tables. They note the origin and the destination of trips to and from a particular zone from every area of the county, and that's what you use as a basis for trip distribution. That distribution is reviewed and concurred to by Transportation staff.

Q Okay. So, you wrote in your report, the trip distribution for the subject site was derived through a review of the office trip distribution for the Kensington-Washington Super District 5 and discussions with staff.

A Yes.

Q Assumed distribution is shown below. Right?

A Yes.

Q Okay. So, you made some assumptions, right?

A Yes.

Q And that was based on, and when you say discussions with staff, you mean the staff for who?

A The Transportation staff for the Maryland-National

Capital Park and Planning Commission.

Q Okay. And so that information was -- those, that data is only as good as the discussions that they have with you --

A No. Once again, the data was evolved from the trip tables contained in the guidelines for this policy area.

Q And, again, when you did the distribution, it was only for certain intersections?

A No. Distribution is for directions, is ordinate. It's not for an intersection. It is for a direction of travel.

Q Okay. So you -- there is no distribution for west on Maryland 193, right?

A The first line, northwest on Maryland 193.

Q Northwest --

A Well, well, it's called East and West University Boulevard.

Q I see.

A There's a particular point where it begins to turn north. That's what that northwest is indicating.

Q I understand.

A It's going west on that, in that direction.

Q And south on Brunett is actually going away from University, right?

A Correct.

Q But there is no north on Brunett.

A Because there's a T intersection. There is no north to go to. There is no --

Q If someone lived south of the proposed site --

A Then they would be part of that number that's at the bottom that says south on Brunett Avenue. That's a to and from direction.

Q I understand. Okay. That was unclear. Now, when you calculate the number of trips, again, you're looking at certain tables, right?

A Specifically Table A9 of the guidelines.

Q And when you do this calculation, is it really just adding in some other, some data that somebody else generated and putting it into a formula? Or is there some --

A There were empirical studies, meaning that --

Q I --

A -- actual sites within the county were identified. Trip generation information -- trips to and from those sites in the peak hours were tabulated. And based upon that data for sites throughout the entire county, they were produced and put in this document. It is not a single observation. It is not my observation. It was done by Transportation staff --

Q Okay.

A -- by the County Commission and published to be used by all consultants doing studies in the county.

Q All right. Let me ask the question differently. When you calculate, for example, the trips, you go to a table, right? You go to a table to get some data, right?

A That is -- what I did was I utilized the established rates for this type of use.

Q Okay. You go to some place and get data that's been created somehow. I don't need -- I'm not asking how it was created. Is that -- that's sort of step one, right, is you go and get the data from some source?

MS. ROBESON: Okay. I -- what data are you thinking to elicit?

MR. STARKEY: Right, I'm not --

MR. LEIBOWITZ: I guess I'm -- what I'm --

MS. ROBESON: He uses guidelines --

MR. LEIBOWITZ: I --

MS. ROBESON: -- that have specific, they are specific assumptions. I guess my question is, are you saying that the guideline assumptions are incorrect as far as this property goes or --

MR. LEIBOWITZ: I guess what I'm asking is are there -- is what he did, could -- I don't want to say could anybody have done it. I don't know how to do it. But is,

do you basically, you take the guideline assumptions, you stick them in a formula, it puts out your total trips in this instance, and that's all there is to it.

MS. ROBESON: So, is your -- your question is, is there any actual, like, traffic count at this location --

BY MR. LEIBOWITZ:

Q I guess my question is, is there some analysis that was done? Is there some -- is there something more than putting numbers into a formula and then getting an answer?

A Are you talking about the derivation of the formula or --

Q No.

A -- just getting the answer?

Q Just getting the answer. Not the derivation of the formula or the source of the data.

A No. That's, that is how you calculate the trips.

Q You just, right, you get the data from the guidelines --

A Yes.

Q -- you stick it in the formula --

A In fact, the guidelines --

Q -- and then you punch out an answer?

A The guidelines indicate you are required to do that. So not just I, but any consultant, any land use for

this property, that's the procedure you would follow.

Q Okay. That's all I was asking. I wasn't, wasn't trying to have, argue with you about it.

MS. ROBESON: Oh, no. I didn't think that.

BY MR. LEIBOWITZ:

Q You were asked about inherent noise, that would this increase the -- you were asked about would this increase the noise on the street or out, for those nearby residences, and you said something like noise is inherent to the use, and then there is a major highway nearby so no. But it would -- the -- there would be an increase in the noise on Gilmoure Drive, right?

A There would be some increase on Gilmoure Drive given that the play areas are situated closer to University Boulevard, the majority of noise would be in that direction. There would -- I mean, I'm not a --

Q But you --

A -- a sound --

Q We're talking about traffic. We're not talking about the playing right now, right? You're not testifying about the kids. You're testifying about the cars, right?

A Well, with respect to vehicular traffic, there will be traffic along Gilmoure Drive, yes.

Q Okay. And increased traffic?

A Yes, there will be increased traffic.

Q And just so we're clear on what the increase, what, what's the current amount of traffic on Gilmoure Drive?

A In the order of 25 vehicles an hour.

Q Currently there is 25 vehicles an hour?

A Yes.

MS. ROBESON: During peak hours.

MR. STARKEY: During the peak one hour.

BY MR. LEIBOWITZ:

Q During peak hours. And you expect that to increase by 30?

A Correct.

Q So, doubled. More than doubled.

A It is a doubling, yes. However --

MR. LEIBOWITZ: I have no more questions.

MR. STARKEY: Okay.

MS. ROBESON: Any redirect?

REDIRECT EXAMINATION

BY MS. MEAD:

Q Yes. Just a few questions. That you may have already addressed in my testimony, but just to confirm, the -- you were provided with the intersections and trip distribution from Park and Planning staff?

A I was provided with the intersections from Park and Planning staff. I developed the trip distribution, and

then actually in consultation with staff, it was modified to include traffic along Brunett Avenue to the south.

Q Thank you. And did, and Park and Planning staff reviewed your report?

A Yes, they did.

Q And did they approve the methodology used?

A Yes, they did.

Q Did the Park and Planning staff report, again, Exhibit, I believe, 47, pages 21 to 26, did they recommend approval and find adequate public facilities in that area?

A Yes, they did.

Q Did the Park and Planning staff report review any of the community concerns in their report?

A Yes. They indicated that it would not be an adverse impact on traffic. Excuse me. They indicated in their opinion that the proposed daycare would not produce notable cut-through traffic in the community and that they on-site circulation was sufficient.

Q Did they address any issues regarding any deficiencies claimed to be in the traffic study?

A No. It's stated that the study was in conformance with the guidelines, and it followed the scope as provided by them.

Q Thank you. Mr. Leibowitz brought up the Highway Mobility report and an intersection that was outside the

scope of your report. Do either of the methods, LATR or Policy Area, address intersections that may be in the area but not necessarily in the local scope?

A I'm not sure I understand the question. Could you restate that?

Q Would the Policy Area Mobility Review cover anything that's outside the local areas that you --

A Outside the --

Q -- analyzed?

A Outside the intersections I reviewed? Yes. The Policy Area Mobility is a test of the entire area with respect to transportation and transit-oriented facilities. So, in keeping with the overall area, that's what the purpose of the planner review is for. And that's why you have to mitigate some of your new trips. And we're meeting that standard.

Q In theory, could the county use the $22,600 that this applicant will pay for Policy Area Mobility Review, in theory, could they use that to fix an intersection that wasn't in the local scope but may have been in the policy area?

A Yes.

Q Thank you. Part of the diverted trips that you noted that was part of the analysis, you had provided one example of coming south down University, just a traveler

that would normally be on University and would divert to drop off their child and get back to University. Could there theoretically be, also be any trips that would be distributed that would come from the neighborhood itself?

A Yes.

Q Thank you. And in your experience and with your knowledge of the site, would you anticipate that any trips would be generated from within the neighborhood or within the vicinity, not necessarily all coming down from the major arteries?

A As testified earlier, earlier by Mr. Kay, this community has potential for affordable housing and young families. So, I would anticipate, as turnover is natural to communities, that there will be the opportunity for parents to use this center.

Q Thank you. And your comment regarding no increase in traffic over the next ten to fifteen years, that's based on your lack of knowledge about any new developments that would be occurring to generate such traffic, correct?

A That's correct.

MS. MEAD: Thank you. And I believe that's all the rebuttal questions. I think the --

MS. ROBESON: Okay.

MS. MEAD: -- Hearing Examiner addressed the other one.

MS. ROBESON: All right. Mr. Leibowitz, do you have any objection to excusing --

MR. LEIBOWITZ: I don't have an objection to excusing him.

MS. ROBESON: Mr. Starkey, okay. You can be excused.

MR. STARKEY: (Indiscernible.)

MS. ROBESON: If you want to be excused. You don't have to be excused.

MR. STARKEY: No, no, yes. It's just, if needed, I can hang out for another hour. I appreciate you don't have any questions.

MS. MEAD: Is she still here? Kim Currano.

MS. ROBESON: Just a second, please.

(Discussion off the record.)

MS. ROBESON: Why don't we do this? Why don't we take a five minute break, and when we come back -- the other thing is, before we go off the record, we're having some cross talk here that apparently the reporter is having trouble picking up. So, if we can, when we're testifying and asking questions, it may be me, too, let the other person finish. All right. We'll take a five minute recess.

MR. LEIBOWITZ: Thank you.

MS. MEAD: Thank you.

(Brief recess.)

MS. ROBESON: Okay. Are the parties ready? Are you ready? Court reporter? Okay. We're back on the record. Two o'clock. And Ms. Mead, your -- Mrs. Mead, your next witness.

MS. MEAD: Ms. Currano. If you could swear her in as a witness?

MS. ROBESON: Okay.

(Witness sworn.)

MS. ROBESON: Thank you.

DIRECT EXAMINATION

BY MS. MEAD:

Q If you could please state your name and business address for the record, please?

A Yes. My name is Kim Currano. I work for Greenhorne & O'Mara, which the address is 2041 Century Boulevard, Suite 200, in Germantown, Maryland 20874.

Q And what is your position and occupation?

A I'm an Engineer III for mainly dealing with sediment control, storm water management.

Q And how long have you been engaged in this occupation?

A I've been working for ten years.

Q Thank you. And what is your educational background, and do you hold any licenses or certifications?

A Yes. I have a B.S. in Civil Engineering from

University of Maryland, and my P.E. was awarded in June of 2005.

Q Thank you. And if you could review some of your work experience in the fields of engineering and in Montgomery County in particular?

MS. ROBESON: Can you -- do you mind just giving me a head's up about what you're going to qualify her -- I can't remember from your statement.

MS. MEAD: Oh, right. It's, her resume is Exhibit 14(b). It's going to be in the field of Civil Engineering.

MS. ROBESON: Okay. Do you have an objection to admitting her as the expert in civil engineering?

MR. LEIBOWITZ: No, I don't.

MS. ROBESON: Okay. Go ahead.

BY MS. MEAD:

Q And have you been admitted as an expert before in civil engineering?

A Yes, I have. Yes.

Q Thank you. Are you familiar with the Special Exception Case 2781 before us today?

A Yes. Yes, I am.

Q Are you familiar with the area surrounding the property and the zoning and the requirements of the code with respect to this use?

A With respect to sediment control and storm water

management, yes. That's where my expertise lies.

Q Thank you. And if you could please describe the site plan and the existing proposed public facilities?

A Yes. I have in front of us Exhibit 11, which is the storm water management concept plan. I'm going to be gesturing towards that.

Okay. This is the existing property. It's currently vacant. To the north side along University Boulevard, there are existing water and sewer taps or services that were for the original home that was there. And this property slopes towards the south, towards Gilmoure Drive. Also, the topography slopes towards the south. There is no storm water management existing outside at this time.

Q Thank you. And if you could please describe the impact of the proposed development on public facilities?

A Yes. The proposed development -- I'll go, I'll get back up. The proposed development will take water and sewer, if they can, from the existing taps. If it's deemed that it is not adequate, they will take water from either Brunett Avenue or Gilmoure Drive. There is water located on both of those roads. If the sewer tap that's existing is also considered inadequate, we will take sewer from Gilmoure Drive.

Q Thank you. And did you prepare a storm water

management concept plan for the application?

A We did. Actually, this is Exhibit 11, and it is approved. We do have the approval letter from Montgomery County TPS.

MS. MEAD: Which I would like to admit as Exhibit 73, please.

MS. ROBESON: Any objection, Mr. Leibowitz?

MR. LEIBOWITZ: No objection.

(Exhibit No. 73 was marked for identification.)

BY MS. MEAD:

Q And this approval for the plan that was submitted as Exhibit 11, it was for the larger building.

A Correct. Yes. This was approval done in January 2011. It was done before the building was reduced in size and scope. I do have an e-mail from the reviewer stating that the current approval stands with us with the reduced size of the building.

Q Does the reduced size of the building have any impact, positive or negative?

A It actually reduces the requirement on site of storm water management. So, what we would be doing is if we continue with same design, we would be overcompensating. We would have additional -- additional volume provided.

Q Okay. In your opinion as an engineer familiar

with the proposed development, will the special exception be adequately served by those facilities and services that you've mentioned?

A Correct. Yes. On-site, we have adequate water and sewer available, and we are proposing all of our storm water will be contained on-site, all of the requirements for this site will be fulfilled on-site, and we will not have any adverse impacts to the outside, surrounding community for any utilities.

Q Could you describe what some of the facilities that are being used for the storm water management?

A Yes. I divided the property into several quadrants, the northern quadrant, which goes towards University Boulevard, that will be mainly this roof area. The storm management for this area is these three dry wells which I'm indicating along the University Boulevard frontage, the underground, underground gravel pits that allow water to infiltrate or seep into the subsoil and provides cleaning for that area.

Most of the parking lot here and the portion of the building will come to a bioswale or a landscape swale along the Gilmoure Drive frontage, and that cleans the water through nutrient uptake and uptake through the plants and through that area. And a small section, which mainly the entrance, goes to some underground pipes and the underground

filtration which is filtered through a cartridge and a vault underground.

Q And are any of the areas landscaped where you are proposing the facilities?

A That's correct. This bioswale has landscaping that are water-loving plants that like to take up all that water and, and they are inundated from time to time.

Q Thank you. Is the approval and the concept plan, Exhibit 11, is that pursuant to the new Maryland Storm Water Management regulations?

A It is. That follows the brand new storm water regulations.

Q Thank you. In your opinion as an engineer, will the special exception be detrimental to the development use or peaceful enjoyment of the surrounding properties or adversely affect their general welfare?

A Based on utilities, not detrimental. Not detrimental.

MS. MEAD: Thank you. That's all the questions we have for Ms. Currano.

MS. ROBESON: Okay. Mr. Leibowitz.

CROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q Just briefly. The property right now you said is vacant, right? And, for the record, you just have to say

yes.

A Oh, I'm sorry. Yes. Yes, you're correct.

Q And prior to this, there was a single-family home there, right?

A You are correct.

Q Okay. And so for most of its history, there hasn't been very, there haven't been very -- it's been relatively unimproved as far as its surface area?

A Correct. There's been less -- or the impervious was less than what's shown currently.

Q Okay. So, that was kind of my next question, which is now there's a lot more impervious surface.

A You are correct.

Q Where will the water go?

A For this north part of the building, these are three roof drains which takes all the water from the roof. It goes to these dry wells, which are underground gravel areas that hold the water and slowly allow it to sub-seep by going to the subsurface, these areas. That's the north part.

Most of this area goes into this swale, this bioswale here which has the nutrient uptake and all of the water uptake from the plants. There is a, if you will, inlet, or a way that the water will get into this underground storm drain system from this inlet in that

direction.

Q Is there any concern about runoff heading east towards the neighboring residence?

A Everything is captured prior to it entering into any of the neighboring, adjacent residential lots.

Q Even if we have, it was a year or two ago when we had those torrential rains sort of unlike what the area has seen in quite some time. Even in rains like that, would you expect there not to be runoff towards the --

A That's correct.

Q -- neighboring residence?

A If -- let's say everything, we have a huge storm. Everything is clogged. Pretty much everything would run down towards Gilmoure drive and into an existing inlet located right, right adjacent to our property on Gilmoure Drive.

Q An inlet, by inlet you mean there's a storm drain there?

A Correct. Correct. That's a throated inlet on a curb.

Q And are there ever sometimes -- by anecdotal observation, sometimes the storm drains will even overflow.

A That's correct. This one is not in a -- it's called a sump. It's not a low point. So, I think that -- let's say this inlet is clogged, it continues down Gilmoure

Drive to the next adjacent inlet, which is further down Gilmoure.

Q And so they would, those -- the overflow water would always remain in the street?

A Correct. Correct. It stays in the street frontage area, always continuing down. There's no chance of, if you will, a large amount of ponding because it always slopes down. It's not in a if you will, sump area or a low area.

Q Is there any grading on the property that keeps the, that directs the water either towards the street or elsewhere for that matter?

A Correct. Yeah, we do have a swale on this east side, runs along the residential property. That keeps all this water from entering into across the property line. If you see, it goes straight down, down, down, down, down, right to Gilmoure Drive.

Q Okay.

A In addition, the same, same swale going this way keeps everything inside this grassy area so that way it can get treated prior to being discharged to the on-site storm drain system.

Q Treated for what?

A If it has -- sediments would be filtered out, or nutrients or pollutants would be filtered out prior to it

going into the storm drain system.

MR. LEIBOWITZ: I have no more questions. Thank you.

MS. ROBESON: Is this treated, or did the regulations, is it for a hundred year storm?

MS. CURRANO: Right now these are designed for ten year storm.

MS. ROBESON: Okay. All right. Do you have any followup?

MS. MEAD: I have no further questions. Thank you.

MS. CURRANO: May I be excused?

MS. ROBESON: Mr. Leibowitz, do you have an objection?

MR. LEIBOWITZ: No objection.

MS. ROBESON: Okay. You can be excused.

MS. MEAD: And we have one more witness. It will be a long one. I had mentioned to Mr. Leibowitz before hand if he knows of any conflicts on June 2nd, we'd be happy, for his witnesses, we'd be happy to have them go or I don't know if you want the break from Mr. Sekerak's testimony over two days. But it, but we're happy to --

MS. ROBESON: Mr. Leibowitz?

MR. LEIBOWITZ: How long do you think it will be?

MS. MEAD: I could see it taking an hour and a

half to two hours. That they meet the Zoning Ordinance and all the repetitive conditions.

MR. LEIBOWITZ: If I can just take a moment to check with my witnesses?

MS. ROBESON: Certainly. I don't think -- I'm not sure we would get through today anyway.

MR. LEIBOWITZ: No.

MS. ROBESON: I don't know how long your -- how long were your witnesses going to be?

MR. LEIBOWITZ: I had estimated an hour and a half. I guess it could be --

MS. ROBESON: Well, it's up --

MR. LEIBOWITZ: -- slightly more than that.

MS. ROBESON: Why don't you consult with them, then, and see what you want. Let's go off the record for five minutes again and --

(Brief recess.)

MS. ROBESON: Okay. We're back on the record. Is there an agreement?

MR. LEIBOWITZ: There's an agreement that we need to look at what the addition, what the -- it's clear that we're not going to finish today.

MS. ROBESON: Yes.

MR. LEIBOWITZ: And June 2nd isn't good for a couple of my witnesses.

MS. ROBESON: Okay. Do you need additional dates?

MR. LEIBOWITZ: So, we need additional dates, and that will impact whether or not I need to put on one of my witnesses today.

MS. ROBESON: Okay.

MR. LEIBOWITZ: His best days are Mondays and Fridays.

MS. ROBESON: Okay Let me see if I have any alternative dates.

MS. MEAD: Okay.

MS. ROBESON: What I'd like to do is if we can start with this witness, and then I will, after we finish with this witness then -- is this your last witness?

MS. MEAD: Yes.

MS. ROBESON: Okay. We'll finish --

LEIBOWITZ: Sweet and short.

MS. MEAD: No, I just -- it will be a longer one.

MS. ROBESON: Yes. We'll finish with this witness, and then we can decide, I can get some additional dates. The calendar person isn't here in the office right now, so I can't get them now.

MS. MEAD: I guess my only request would be that, to have it not go later than June 2nd. So, if we could have some of his witnesses go today, I would prefer that than to stretch it out additional months.

MS. ROBESON: So, you want a date before --

MS. MEAD: If it's going to have to be on a Monday or Friday.

MS. ROBESON: Okay, let me do -- okay. Let's -- I want to finish this witness. Let's finish this witness.

MR. LEIBOWITZ: Okay.

MS. ROBESON: And at the end of this witness, we'll take a break and I'll see what dates are available if we have dates in May. We have cell tower cases that we have to decide in 150 days. So, that's even -- it seems like a long time out, but that sometimes drives our calendar. I will check alternate dates in May if that's acceptable to you. And for now, let's move on with this witness.

MS. MEAD: Okay.

MR. LEIBOWITZ: Thank you.

MS. ROBESON: Raise your right hand.

(Witness sworn.)

MS. ROBESON: Okay.

DIRECT EXAMINATION

BY MS. MEAD:

Q Right. If you could please state your name and business address for the record, please?

A Good afternoon. I'm John Sekerak, Jr. I'm with Greenhorne & O'Mara at 20410 Century Boulevard in Germantown, Maryland. I'm a land use planner and landscape

architect.

Q Thank you. And referring to your resume in the record as Exhibit 14(a), taking cues from earlier testimonies, have you ever been qualified as an expert in the field of landscape architecture and land use planning in Montgomery County?

A Yes, I have. Many times.

Q Any in the past two years?

A Yes.

MS. MEAD: We'd like to submit Mr. Sekerak as --

MR. LEIBOWITZ: Stipulate.

MS. MEAD: All right. Thank you.

MS. ROBESON: Okay. Got that taken care of.

MS. MEAD: All right.

MS. ROBESON: Okay.

BY MS. MEAD:

Q Mr. Sekerak, if you could please explain your role with the child daycare special exception and the proposed site plan before the Hearing Examiner today?

A You heard alluded to it by Mr. Kay had asked for alternative uses for the site. I did an initial analysis to identify what potential uses would be appropriate for the site. I immediately recognized it as a potential for a special exception site that, it's location on a major highway, across the street from existing institutional use,

it -- a contiguous square piece of recorded property.

There were existing utilities, and infrastructure already exists. No environmental constraints that, that would be harmed. No special protection area, et cetera. And so, that's what really intrigued me as it being a, you know, as a special exception site.

Being familiar with special exceptions, I know how Master Plan dependent and reliant that type of thing is, so I then analyzed the Master Plan, and that's when I further researched, you know, confirmed it was a great site that, and also the, you know, understanding it is as a very recently as an office use and other approvals in the area that this site had been approved for five, five additional homes on the property, and other approvals in the area, and I'll get into those later.

But again, identifying the site's physical characteristics, it's on a major highway, proximity to a number of residents that could use a childcare. That was the basis of my recommendation to Mr. Kay.

Q And did you work on the special exception application that's before the hearing examiner today?

A Yes. With, along with the rest of the project team, we developed the plan into a layout study, sized the building, and went through the design process for the building, the parking, the access, the circulation, the play

areas, the number of children, et cetera. And we developed concept plan. We had discussions with Park and Planning staff. We were very encouraged from those discussions. And it eventually evolved to creating all the components of the special exception application we have here.

Q Thank you. Are you familiar with the property and the surrounding area?

A Very. The site itself, and I visited the surrounding area many, many times during the course of the work on this project.

Q Thank you. Are you familiar with the R-60 zoning classification, the requirements of the Zoning Ordinance with respect to the zone and the child daycare use?

A Yes. Yes. Particularly those applicable sections 59-C, 59-E, 59-F, and 59-G.

Q Thank you. Are you familiar with the -- you referenced it earlier, but the Four Corners Master Plan?

A Yeah. From the very initial investigation on through the detailed analysis that I did in order to prepare the land use planning report that was part of the special exception application. It includes a detailed analysis of the Master Plan.

Q Thank you. If you could please describe the surrounding, the property and its surrounding area. I know we had a brief description before to orient us, but if you

could give us a more detailed description?

A I'll start with the site itself. Exhibit 8 is the natural resource inventory, the first baseline of what we study when we're dealing with a property. It's a detailed (indiscernible). It is zoned R-60. It's 37,987 square feet. It's rather square. I'm very thrilled to work on the efficiently-shaped site. It has three frontages, as many of the previous witnesses had indicated, University Boulevard, also being Maryland Route 193, to the north, Brunett Avenue to the west, and Gilmoure Avenue to the south. So, three frontages, and the remaining side of the square abuts to lots with single-family residences on it.

It slopes from the north corner of the property down to the south. And unfortunately, the property is at a diagonal, but I will follow the previous witness' lead in indicating University to the north and Gilmoure to the south, et cetera. But the, you know, the slopes are reasonable, gentle. There are no severe slopes, nor are there any other environmental constraints, such as wetlands, flood plain, forest, special protection area, et cetera.

The natural resource inventory does identify one tree on the property as a, and I'll use air quotes, "specimen tree." But it's only due to the, to its size. It's up near the very northern corner of the site. It's a 42-inch maple. It's in very poor condition. It's right

underneath power lines, so it's been severely altered. And it's right next to the existing sidewalk, which it's on the, abutting the curb there.

So that's -- other aspects of the property, regarding the sidewalks. Along University Boulevard, there is an existing concrete sidewalk directly abutting the back of the curb. The same is true along Brunett Avenue and along Gilmoure Avenue there is no sidewalk currently. There are overhead lines along all three frontages.

The northeast corner of the property has a large, green State Highway Administration highway sign. So, between the State Highway Administration and PEPCO, that has those power lines, those two agencies would be very pleased to see that tree being removed. The -- and this natural resource inventory has been reviewed and approved by the Maryland-National Capital Park and Planning Commission.

Bus stops. They had been currently identified, you know, the bus stop across Brunett Avenue at the very same intersection with University Boulevard as this site, so very convenient access to the bus stop. There is no crosswalk currently exists, so. There are no confronting properties at this point. To the east, I did identify the adjoining residential properties also in the R-60 zone to the east. To the south across Gilmoure, there are additional single-family homes in the R-60 zone. No

sidewalk in front of that property either.

To the west is a place of worship site. You can see it on the in-the-air photo. It's part of Exhibit 4(f) with its wrapped parking lot that wraps around its frontage with Gilmoure and Brunett Avenue. Oh, across the street, University Boulevard, there are single-family detached homes, also in the R-60 zone. And what's currently park land, relatively unimproved park land at this point, but park land nonetheless.

Further out, and again, I'll allude to Exhibit 4(f), further to the east, there are medical office and similar type of uses along the south side of University Boulevard, a senior housing complex to the north side of University Boulevard, and then to the east, down the road at the intersection of Route 29 and University Boulevard, Route 193, is the Four Corners Commercial District.

Q Thank you. If you could, please describe the revised site plan.

A The site plan is Exhibit 61(i). There's been a lot of testimony. I won't go over too much of it. But you can see the location of the proposed building. The building is one story. It's 5,600 square feet. Again, all in one story. It's located 18 feet from the nearest point along the eastern property line, approximately 35 feet from the University Boulevard frontage property line, that setback,

and further setbacks from Brunett Avenue, and obviously a considerable setback from Gilmoure.

The -- you see that the shape of the footprint, and I'll get into the architecture later on in the testimony. The play areas are oriented away from the nearby residences, so they are on the north and west side of the building, enclosed with fencing. Along the east side, we do have a six-foot, board-on-board fence buffering the adjoining residences from the, both use and the parking compound.

To the south of the building, along Gilmoure Avenue, that's set back 25 feet from Gilmoure Avenue, is the parking area. 28 spaces. There's a full movement access at Gilmoure Drive and a right out access at Brunett. So, anybody entering the site would enter from Gilmoure. Anybody exiting the site would have the option to Gilmoure or Brunett Avenue.

Sidewalks. We are reconstructing the sidewalks on University Boulevard and Brunett Avenue to move them back from the, back from the back of the curb. There's a green strip there for pedestrian comfort and safety. And we are proposing construction of a sidewalk along Gilmoure Drive where none currently exists. Mr. Starkey discussed the bump out that we were proposing along the Brunett Avenue and Gilmoure Drive intersection. Ms. Currano had described the

storm water management. I won't go into that anymore what that, the -- what that would provide so that we're not impacting the neighbors for, with any water quality or quantity degrading, so then it is cleaned up and put into the public storm drains. 28 spaces. I mentioned --

Q If you could describe the landscape plan?

A All right. I'll move onto that.

Q Using either the landscape plan, which is Exhibit 61(j) in the record, or the illustrative to your right, which is 61(k), but I do want to note on this illustrative layout, the one that's in the record as 61(k) actually didn't have all of the background information.

MS. ROBESON: Well let's -- let's make that a new -- if it's not --

MS. MEAD: Okay.

MS. ROBESON: -- what's in the record, then we'll make that a new exhibit. I think we're up to -- can you cross out what you just --

MS. MEAD: Oh that, on the illustrative.

MR. SEKERAK: Yes.

MS. MEAD: It will be 74.

MS. ROBESON: 74. And that will be a revised rendered site plan.

(Exhibit 74 was marked for identification.)

MS. ROBESON: Or is that a landscape plan?

MS. MEAD: It's illustrative layout.

MS. ROBESON: Okay.

MS. MEAD: It's the same as 61(k) and --

MS. ROBESON: Okay, a revised --

MS. MEAD: -- 4(c).

MS. ROBESON: Okay. A revised illustrative layout. Any objection to admitting those --

MR. LEIBOWITZ: No.

MS. ROBESON: -- Mr. Leibowitz?

MR. LEIBOWITZ: No.

MS. ROBESON: Okay.

(Exhibit 74 was received in evidence.)

MR. SEKERAK: If I could -- that had reminded me, if I could return quickly to Exhibit 61(i), the site plan for special exception, similarly to what Anne had said regarding the statement of operations or whatever regarding the missing the revision of the number of 120 down to 94 regarding the number of people. I similarly had done that on the site plan for special exception.

MS. ROBESON: So, that's correct that this one --

MR. SEKERAK: This is not, and I'd be happy to do that in pen.

MS. ROBESON: Why don't we re-number that, then,

75, and you said as revised special exception site plan.

(Exhibit No. 75 was marked for identification.)

MR. SEKERAK: And I'll make that revision in red pen on the face of the plan?

MS. ROBESON: That's fine.

MR. SEKERAK: All right. I'm crossing out -- and it's just at one location. Under the development standards table, the last development standard regarding outdoor activity area, I'm crossing out the 94, writing in -- I'm crossing out 120 --

MS. ROBESON: Okay.

MR. SEKERAK: -- writing in 94.

MS. ROBESON: I was like don't cross out --

MR. SEKERAK: Yeah.

MR. LEIBOWITZ: Writing in 200.

MR. SEKERAK: And I will cross out the 4,500, because that computation now comes out to 3,525.

MS. ROBESON: What computation is that?

MR. SEKERAK: Where the 4,500 figure is.

MS. ROBESON: What is four thousand -- I can't see, the glare --

MS. MEAD: If you could just describe what the standard is that --

MR. SEKERAK: Yes.

MS. ROBESON: Just tell me what -- no, I don't need to see it.

MR. SEKERAK: All right.

MS. ROBESON: Just tell me what the 4,500 is measuring.

MR. SEKERAK: The recorded amount of outdoor activity area is a function of the number of children.

MS. ROBESON: Okay.

MR. SEKERAK: So, for the same formula that we used for 120, I needed to recalculate that for 94 --

MS. ROBESON: Okay, fine.

MR. SEKERAK: -- children. And that calculation reduces the amount of outdoor activity area from 4,500 to 3,525 --

MS. ROBESON: Okay.

MR. SEKERAK: -- square feet. All right. In Exhibit 61(j), there is the landscape planning for special exception. It shows in detail all of the trees and shrubs proposed for the site, all the plant materials. It's, we are adding street trees where none currently exist. We are adding shade trees generously planted on the property, providing shade to both the play area and the parking facility and -- and general enhancement of the property, providing buffering from, you know, views outside, outside the property. Because of the nature of the State Highway

Administration sign, not a lot of shade trees, you know, we had to pull those back from the, from the University Boulevard entrance. And I won't go into the details of the plant selection unless you are so interested.

MS. ROBESON: Mr. Leibowitz?

MR. LEIBOWITZ: Not on the record I'm not.

MS. ROBESON: Okay.

MR. SEKERAK: And let me, a couple of items, not plant-related, access to the site. I discussed the vehicular access, but in addition to that, we have pedestrian, you know, lead walks coming from both Brunett Avenue and from Gilmoure Drive leading to the doors. We're trying to encourage the pedestrian activity, making it as easy as possible for residents of the area to choose a mode of transportation other than vehicle. We also included bike racks on the site for the same purposes. Another non-plant element is, and I had already discussed the six-foot, board-on-board fence along the eastern property.

BY MS. MEAD:

Q If you could please describe the lighting plan for the property, Exhibit 64(a)?

A Existing -- Exhibit 64(a) is the lighting plan. The locations of the proposed lights are indicated on the site plan also. We're proposing four pole lights, only twelve feet in height. So, we're not talking the, you know,

tall, commercial, and they're, we kept them lower and provided more of them, for a more residential appearance. They are attractively selected and strategically located to complement those wall-mounted lights on the building itself. Those wall-mounted lights are the, again, a residential appearance stock so like you would see next to any front door at a residence.

So, those wall-mounted lights are located at the doorways on the building itself that provides the way-finding in terms of folks finding their way to the -- to the doors, you know, in safety. and the pole lights in the parking lot complement the primarily daytime use of the building. There's not a lot of -- it's just those winter hours where the days are shorter, so in the morning and in the evening when --

MS. ROBESON: Are they going to keep the lights on for security, the parking light --

MR. SEKERAK: I would recommend that. That hasn't -- we haven't proposed any, you know, like timer or anything like that. But for, you know, once the last person leaves and --

MS. ROBESON: Okay.

MR. SEKERAK: -- I would recommend that they -- they save on their electric bills if they turn them off.

MS. MEAD: I'll note the statement of operations

notes that there will be limited security lighting for after hours.

MS. ROBESON: But we don't know exactly what that is right now.

MS. MEAD: We haven't --

MR. SEKERAK: What --

MS. ROBESON: Okay. That's fine.

MR. SEKERAK: Those at the doorways would be --

MS. MEAD: Right.

MR. SEKERAK: -- remain on.

MS. ROBESON: Okay. And where are the locations of the lights mounted on the building?

MR. SEKERAK: At each of the doorways.

MS. ROBESON: I see. Okay.

MR. SEKERAK: So, you see that, one on each side of the main entrance --

MS. ROBESON: Yes.

MR. SEKERAK: -- I believe just one at each of the other doorways. Again, lighted very subtly. This is not a Sheetz station, not a gas station or anything like that. This is very subtle. The photometric analysis, which shows the foot candle reading, anticipated foot candle reading at the ground shows that we're providing enough light for folks to be able to get to the car and to the building and back again, but not overly illuminating the balance of the other

property, no hot spots. It's designed so the light is cast downward. It will cause no glare and (indiscernible) and it also demonstrates the special exception requirement that 0.1 foot candles or less at a side or rear property line. We only have one side yard for this three frontage property, so that's easily accomplished with this lighting plan also.

BY MS. MEAD:

Q Thank you. Does the proposed plan comply with the forest conservation law?

A Quickly reviewing my notes. One last thing regarding lighting.

Q Oh, okay.

A Sorry.

Q Keep in mind the context of the surrounding three frontages, there are street lights out there also. So, again, the need for a great amount of illumination here is already accomplished, the perimeter anyway, by the public streets.

MS. ROBESON: Is there any on Gilmoure?

MR. SEKERAK: Yes. I don't have the information exactly --

MS. ROBESON: That's fine.

MR. SEKERAK: -- where, but --

MS. ROBESON: And what -- I'm sorry to keep breaking in.

MS. MEAD: No, no, no.

MS. ROBESON: I'm messing up the order, but what are the foot candles along Gilmoure?

MR. SEKERAK: Either 0.0 or 0.1 at the right of way lines.

MS. ROBESON: Okay.

MR. SEKERAK: Where were we? Forest conservation. Forest conservation. The site is exempt from Article 2 of Chapter 22(a) because of the size and lack of any forest on the property. Because the site does contain that, air quote, "specimen tree" that I referred to earlier, that did kick in a requirement for a tree save plan. So, we have prepared that, and that has been approved by Maryland-National Capital Park and Planning Commission.

Now, it's a little bit of a misnomer. We are saving no trees. There are no trees on the site worthy of saving. But it does indicate how we're protecting those trees that are on the adjacent properties.

BY MS. MEAD:

Q Okay. Thank you. If you could please describe the planning neighborhood for the special exception purposes?

A That would be, I'll refer again to Exhibit 4(f). And as I was trying to analyze the surrounding area and determine what would be the applicable neighborhood for the

purposes of comparing character and compatibility and such, the first thing that strikes you is University Boulevard. Route 193 is a six-lane, major highway directly on the, abutting the property. Something like that usually is a delineating element, where we would stop the neighborhood. But since the subject property is directly on that property, I did include those properties across University Boulevard that would have a visual relationship with the site.

So, I included those single-family homes down east to Lorain and then I continued west to that senior housing community that I mentioned earlier on the north side of University Boulevard. To the east, the Four Corners commercial district is so distinct. Once you hit that point at Lorain, you know you've left a residential neighborhood and you've entered into the Four Corners. So, that was one delineating factor to the east.

To a lesser extent but similarly, to the west, once you get to the medical office buildings and those uses to the west, that was that delineating factor. To the south, there are -- they have much less vague cues in terms of where to strike that line. It's such a large, homogenous area of single-family detached homes, it really was a judgment, and ends up with, on judgment and that of staff, we're very close, but the line did include those lots fronting on the south side of Harding Drive.

Q And you mentioned Park and Planning staff. What was their neighborhood delineation?

A Again, very similar. They did not include the lot on Harding Drive. They chose to use Harding Drive itself as the delineating factor to the south. It's only a two-lane, residential road. I felt those lots fronting on it should be included, and it should be -- the line should be the back of those lots. It was virtually identical to the west, and similarly to the south, or, I'm sorry, to the east, they did not include the lots fronting on Lorain, just three single-family lots fronting on Lorain, so it's a very subtle difference there.

More significantly, across University Boulevard, they included the next tier of residents, not just those fronting on University Boulevard and having a visual relationship to the site but also those lots fronting on Timberwood. So, oriented away from the site, you know, another tier of homes removed on the other side of the six-lane highway. I don't agree with that in terms of those being included in the -- and we both include various amounts of the parkland across the street.

It's an inexact line there. Just, you know, that property is part of the neighborhood because it's directly, you know, across the street. Whether it follows the extension of the line (indiscernible) or follows a partial

line, I wouldn't quibble about that. But, so I do disagree with the neighborhood in that context. However, I don't disagree with their conclusion and mine that it's a predominantly single-family, detached character to the neighborhood.

Q Thank you. If you could please describe the Master Plan recommendations specific to the property?

A The two items that were really specific to it is the commercial office land use recommendation on page 21 and the R-60 zoning on page 27 because we established the permits, child daycare as special exception.

Q It should be in Exhibit 7 of the, which is the Master Plan. If you could please describe those?

A On page 21, you can see the square outline of the subject property on the corner of Brunett and Route 193. And key down to legend below, it's considered commercial office under the land use plan. And there are similarly designated properties also identified on that same land use plan. The zoning map, residential zoning plan -- I'm sorry -- is on page 28. 27 is the existing residential zoning, and 28 is the residential zoning plan. It does not change it's recommendation for the subject property. So, the master plan identifies this property as appropriate for commercial office, yet still kept it in the R-60 zone.

Q If you could please describe the general master

plan recommendations applicable?

A On that, you can obviously see why we were, we can give such a strong recommendation that this would be appropriate for a special exception use. A number of other items, improve pedestrian access, circulation and safety through construction of sidewalks and crosswalks and provide crosswalks at bus stops. And that would be on page 47, objectives, all of which indicating that, describing the plan we are doing.

The Master Plan, in a number of locations, but, you know, page 55 at the top is the -- is the, probably the most one to the point. Child daycare is a use that is a building block of the community to provide service needs. There are a number of points in the Master Plan where it recognizes that residential communities are not just single-family detached homes. They need to include quite a number of services, and child daycare is included in that specific list of those services.

It recommended noise compatible land uses to and site design to address noise source, the noise source of University Boulevard itself. That is on page 72. And it recommended confronting -- another thing that relates to the site, recommended the site across the street which is now park land, that was the site of the former Yeshiva, it was a private educational institution and daycare center, and it

was with, by special exception. So, this daycare, our proposed daycare use will reestablish that community-serving use in this neighborhood.

Q If you could please describe, are there any Master Plan recommendations specific to special exception uses?

A As was noted, it does discourage special exception to immediately adjacent areas to the commercial district. This does not apply to this particular site per staff. The property is recommended for office in the Master Plan and is 500 feet and five residential properties removed from the commercial district.

Within those five intervening properties, there are no special exceptions. So, even though we're taking from office and we are providing a service use, not a commercial use but a service use, I'm not sure -- the distinction is important to -- I understand that commercial uses is sometimes referred to for daycare, but it technically, when it comes to the code and the Zoning Ordinance and recommended use, it is a service use not a commercial use.

If you look in the list of services uses, the first one is ambulance. In commercial uses, the first one is adult book store or something like that. Just to give a -- you know, not that -- just giving an indication that they are distinct terms. But I have no objection if people just

anecdotally refer to the daycare as a commercial use. Just let's keep that distinction in mind.

So, anyway, we're taking out former office use and we're providing a service use on the same property, and so there is no creep of commercial uses from the commercial district to the west along University Boulevard.

MS. ROBESON: Can I stop you for one second?

MR. SEKERAK: Sure.

MS. ROBESON: I am having trouble finding where on these maps the office use designation or the commercial office use designation is.

MR. SEKERAK: Page 21.

MS. ROBESON: Oh, here.

MR. SEKERAK: So, that would be the site.

MS. ROBESON: Okay. I see.

MR. SEKERAK: And that's the legend --

MS. ROBESON: Okay.

MR. SEKERAK: -- that identifies it as commercial office.

MS. ROBESON: Is that the existing land use plan, or is that the proposed?

MR. SEKERAK: That's the land use plan. Yes. I'm sorry.

MS. ROBESON: I'm sorry to interrupt.

MR. SEKERAK: And also regarding the nature of

the, the concern for the possible creep of special exception or commercial or non-residential, whatever you want. You know, they're trying to keep the Four Corners commercial district distinct, as it is now. Another contributing element in the Master Plan is that the former Yeshiva school, and had a significant daycare facility component to it. So, it had gone through a number of special exceptions altering, for the approval of the private educational institution, the number of students, et cetera, and to include a daycare component, much larger than what we are proposing with this application. It, so that, that was in play at the time of the Master Plan.

The quote on page 25 of the Master Plan, it does recommend the site for park use if not rebuilt as a school, which it goes on to say which is appropriate. So, the Master Plan was recognizing that at this intersection there can be a daycare center and a school. Not on the subject property, but at this same intersection. That has, Yeshiva did not rebuild the school. It did become park land. But again, an indication that we are re-establishing the character of the neighborhood at the time of the Master Plan.

And again, the Master Plan recognized the value of service uses, like daycare, and it specifically brings up daycare, in a healthy neighborhood. So, it's obviously the

intent was not to revert preexisting non-residential uses so that this neighborhood would eventually become a homogenous, single-family detached on every property.

BY MS. MEAD:

Q Did the Master Plan have other recommendations with regard to special exceptions?

A Oh, yeah. It does recommend reuse of existing structures for special exceptions or new buildings that are residential in character and scale. Very important either way. The building was, you know, previously razed. And Mr. Kay, you know, had indicated decay and mold. And the proposed use is permitted in, by special exception in this zone.

Important to note that the special exceptions for a daycare center of children, more than 30 children in the facility. More than 30 children in a facility in one of these, you know, homes or previously existing residence on this property is just not realistic. So, obviously, to provide this use permitted by special exception, within this area would necessarily need to be in a new building, and that's why we would have a residential -- a daycare center designed in mind with the residential context.

MS. ROBESON: Well, I understand what you're saying about daycare. I think what Mr. De Novo -- I mean, I'm sorry, Mr. Leibowitz in his opposition and the Planning

Board said it's not necessarily the use but the scale of the use. Are you saying -- and can you address that vis-a-vis the surrounding neighborhood here?

MR. SEKERAK: Well, sure.

MS. ROBESON: I mean, there can be -- there can be big daycare.

MR. SEKERAK: Yes.

MS. ROBESON: There can be little daycare. So, what is your position on that?

MR. SEKERAK: Well, daycare buildings of the type that this special exception is applying, which is approved, which is permitted by special exception in the zone are inherently of a building mass larger than a single-family home. We're not trying to replicate a single-family home here, but, so we designed with that in mind. Keep in mind also that the place of worship right across the street is a similarly sized building, two stories, flat roof. Not nearly as residential as what we're --

MS. ROBESON: Similarly sized as your structure?

MR. SEKERAK: Yes.

MS. ROBESON: Okay.

MR. SEKERAK: I have not analyzed its size. I suspect it's larger. but, and taller. Certainly more floor area and the flat roof.

MS. ROBESON: Well, floor area would include the

second floor.

MR. SEKERAK: Second floor. Correct. Regarding (indiscernible), Ms. Nelson's, one of Ms. Nelson's exhibits, elevations does not have --

MS. MEAD: 61(e) provides elevation plan for size and elevation. It's 61(e) or 61(f).

MS. ROBESON: Well, let's --

MS. MEAD: 61(f). It's in color.

MS. ROBESON: Okay.

MR. SEKERAK: Her elevations, and Jane did a much better job -- Jane Nelson, the architect, did a much better job describing this than I would, but I whole-heartedly agree with the process that she went through in terms of choosing the forms, the materials, and the treatments she did. Especially when we're talking about the amendment that reduced the enrollment from 120, a maximum of 120 to a maximum of 94, and decreased the size of the building.

BY MS. MEAD:

Q It's underneath you.

A It got (indiscernible) I lost track of it.

Q The site plan is behind the summary.

A Behind the summary?

Q You have three up there.

A Ah. I put up Exhibit 4(a), which was the original site plan, and Exhibit 75. And you can tell just in plain

view of it, this building got noticeably smaller, and mostly accomplished by removing a corner at the southern, southeastern part of that. And I think, more than just quantitatively, with that reduction in footprint, I mean it really comes home when you look at the Gilmoure Drive elevation from Ms. Nelson's office. It shows that the articulation along that side, it allows for a reduction in the height of the -- the peak of the roof at that end of the building.

You've got the main part of the building. You've got the front portico at the front door, which you see in common residential treatment, the sunroom treatment that she described. So, extremely residential in its design and appearance. Again, inherently it's larger than a single-family home. But it's not -- but it's treated so well and oriented on the site, again, more than 60 feet away from the nearest residence. Where that, where they chose to reduce the footprint was that area closest to those nearest residences.

So, it further removes and it provides an attractive view from Gilmoure Drive. Everything is related to making this an attractive building with minimal impact onto the resident neighborhood. And I -- we've heard the referral to the existing, the previous building on there being, you know, a cute little doctor's office. The aerial

photographs show that it was the largest footprint in the area.

Q Could you please show the aerial photographs you are referring to? And this is a -- I don't think this is in the record. It would be --

A This has not been --

MS. MEAD: We would like to submit it as Exhibit 75, aerial photos.

MS. ROBESON: I'm on 76 because we --

MS. MEAD: Oh, yeah.

MS. ROBESON: -- brought in both, two revised plans.

MS. MEAD: That's right. 76.

MS. ROBESON: Mr. Leibowitz, do you have an objection?

MR. LEIBOWITZ: I'd just like to look at it.

MS. ROBESON: Okay.

MR. LEIBOWITZ: No objection.

MS. ROBESON: Okay.

(Exhibit No. 76 was marked for identification and received in evidence.)

BY MS. MEAD:

Q If you can please describe what the aerial photographs --

A It's a composite of aerial photographs of the site taken from four different angles. Not directly overhead, but (indiscernible). And curiously enough, those photographs were obviously taken at different times. As you can see, the site conditions are not the same in all but two of them. So, in one of those, it does show the, that the previously existing house and dentist office and its proximity to Brunett Avenue, University Boulevard, and you can get a visual idea of its scale relative to nearby single-family homes. And it is larger than even the largest of the nearby single-family homes.

Q Regarding the changes made that you were describing on Exhibit 75, were there other changes to the site other than the building footprint and roof and elevations itself that were made with the revisions?

A We did eliminate the underground parking and the ramp to that. Other than that, it's very similar. The minor adjustments that effectuated that, that change. But I did want to bring out the elevation and compare the footprints because I don't think that they were characterized. And just taking a corner out of a building is, doesn't do it justice because I do believe Jane has done a wonderful job of taking already good architecture and modifying it to where it really, really goes to where the, what the Planning Board was making recommendation. They'd

be pleased.

Q Regarding the footprint, it's been mentioned before, both by Mr. Leibowitz and the, and in the record and by Mr. Kay regarding the previous residential subdivision. Do you have a copy of that approved subdivision plan for those homes?

A Yes, I do.

Q It's down here.

A You seem to have a better feel for where my exhibits are. And this wouldn't have been previously considered or --

MS. MEAD: I'd like to admit as Exhibit 77 the, as mentioned, the previously approved residential subdivision plan for the property.

MS. ROBESON: Mr. Leibowitz.

MR. LEIBOWITZ: I haven't seen it, but I'm sure I won't have an objection.

MS. ROBESON: Take your time.

BY MS. MEAD:

Q And could you -- Mr. Kay referenced it in his testimony, and it's in some of the record, actually, the record reflects some of the marketing materials from the time, but could you describe the nature of those single-family lots and homes that were proposed?

A This is the preliminary plan that was originally

approved by Maryland, or by the Planning Board. It shows the subject property subdivided into five lots. It graphically shows five homes on here, simple forms to express what, you know, approximately what --

MS. ROBESON: That's not what's actually going to be built there.

MR. SEKERAK: Exactly.

MS. ROBESON: Yes.

MR. SEKERAK: It is a preliminary plan of subdivision. The footprint of the homes could actually be larger up to whatever the maximum coverage is, or 35 percent of each of these individual lots. So this is just a, you know, just alluding to the homes but permitted homes could be even larger than that. Presumably all two-story, but again, not determined by, you know, approved by preliminary plan of subdivision but --

MR. LEIBOWITZ: I object to the relevance of what could have been built, the size of what Mr. Kay decided not to build could have been. I don't know what the relevance --

MS. ROBESON: Ms. Mead?

MR. LEIBOWITZ: -- of that is.

MS. MEAD: It's in the opposition's testimony about the, or there is continual references to the residential subdivision that was approved before, and the

plan of the testimony and the questions has been on the residential size and scale of the homes. This is showing the residential, what could have been approved. And Mr. Kay's testimony was three level homes, three to 5,000 square feet.

MS. ROBESON: What year was that?

MR. KAY: They'll be --

MS. ROBESON: No, no, no. Not you. Ask -- I'm sorry --

MR. SEKERAK: 2006.

MS. ROBESON: -- I looked at you.

MR. SEKERAK: Approved in 2006.

MR. LEIBOWITZ: My objection isn't to the description of Exhibit 77 but the testimony about that the, what could have been on -- Exhibit 77 could have been larger.

MS. ROBESON: I -- okay. I'm going to overrule your objection. I'm going to let it in. I do understand, though, and I'm sure Ms. Mead does, that a comparison between what could have been there by right in 2006 is not a legal standard that is applicable to a special exception. So, I'll let it in if you could -- you know, I'm --

MR. SEKERAK: Understood.

MS. ROBESON: -- making clear that if you're going to testify to it, it isn't a legal standard, it's --

MR. SEKERAK: I understand. I understand. It shows five single-family homes, and also there has been a discussion regarding access, and access to Maryland 193 is just not permitted, appropriate, applicable, safe for any use on this property, including single-family detached homes. You see all the homes are accessed onto Gilmoure Drive. You see three, four individual driveways, one of which is a long driveway shared by the other two, two remaining homes.

(Exhibit 77 was marked for identification.)

BY MS. MEAD:

Q Thank you. Mr. Sekerak, are you familiar with Section 59-21.21 of the Zoning Ordinance?

A Yes, I am, and I'm finding my notes. Oh, I'm sorry. Yes. Regarding the inherent and non-inherent. That section refers to the premise that there are inherent adverse effects with special exception uses necessarily associated with the use. And counsel knew that when they agreed for the uses to be appropriate yet conditional in the zone. Therefore, these inherent adverse effects alone do not warrant denial of the special exception.

Q Are there inherent facts that the Board of Appeals have associated with a child daycare use?

A Yes. We've already discussed it with the, what's

separate --

MS. ROBESON: Well, let's go over it again so --

MR. SEKERAK: Okay. The size of the -- the inherently large building mass for the physical building. And it's, and they are typically one story. So, a smaller footprint --

MS. ROBESON: I haven't seen the opinions. Is that what the opinions identify as inherent, or is that what you're saying is inherent?

MR. SEKERAK: It --

MS. MEAD: I'll note that in the staff report Exhibit 47, the Planning staff notes cases. And we would also like to note for the administrative, per administrative notice of those --

MS. ROBESON: Or official notice.

MS. MEAD: The official notices of the Case No. 2759, the Goddard Daycare recently approved in the fall, and Case No. 2710, Dayhill, also recently approved, a January opinion for child daycare.

MS. ROBESON: Okay. And you're going to submit those into the record?

MS. MEAD: I can submit the opinions into the record. And I have the YMCA --

MS. ROBESON: That way we can all see them.

MR. SEKERAK: You're right. They --

MS. ROBESON: I don't want to take official notice of what the inherent adverse impacts are based on an opinion that neither Mr. Leibowitz nor I have seen. So --

BY MS. MEAD:

Q Okay. As referenced in the staff report, which is in the record, have there been descriptions of characteristics that are necessarily associated with a child daycare use?

A Yes. Large building mass for the physical building, and, again, typically one story for a daycare use. And to go over the examples of Dayhill, S-2710, it's a 9,000 square foot -- over 9,000 square foot building adjacent to residential neighborhood of single-family homes. And, you know, similarly, the opinions considered the structure residential because it had brick facade, residential windows and roof, and even though it's inherently larger than single-family homes in the area.

Similarly for the Goddard School, 20,500 square feet of building for a daycare, with abutting single-family homes right next door. And the hearing examiner and the Planning Board staff found that the pitched roofs, varying textures, the architecture was residential in character and scale with the surrounding one-family dwellings, even though it was many times, you know, the footprint of the residential homes. Replication of a single-family home is

not the standard. It's compatibility and residential in appearance.

Other inherent uses are the parking areas, drop off and -- and has evolved to be, you know, to include drop-off and pickup areas, lighting, noise from children, outdoor play areas, early and long hours of operation, employees, vehicular trips to and from the site, signage, deliveries, and trash pickup. All of these have been -- you're right. It's not codified, but have been accepted through the number of special exceptions that have gone through since the inherent/non-inherent was introduced into the code, whatever that number of years ago.

Q Thank you. Does this proposed child daycare use or property have any non-inherent characteristics or adverse effects?

A No. It used to have an underground garage that is non-inherent to this use. Not uncommon amongst single-family homes, but that was non-inherent to this use. But that has been removed from the application. There was some concern that it wasn't compatible, underground and out of sight, but we don't need to discuss that, and it's not in the revised plan.

Q Can you provide any examples the Board of Appeals has found in the two cases referenced of non-inherent characteristics or adverse effects with this use?

A Yeah. Goddard School had two. The site was in a special protection environmental area. I don't know if you are familiar with special protection areas in the county. I don't need to go into that. And so it had that and other environment constraints on the property. But the one that was really brought out as non-inherent was that that it was within a special protection area, obviously not, not a concern on this site with no environmental constraints. And it also had a nearby intersection that exceeded CLB threshold (indiscernible) another thing that does not apply to this. All of our intersections meet all CLB standards.

For the Dayhill site, the hearing examiner found that the access was through a driveway solely on a narrow road that was the sole access for 108 homes. And that was a concern of the neighbors and unusual, I guess. Obviously not a concern here also. We've got frontage on three streets, access to two of them. The entire neighborhood is more of the classic grid that we're trying to achieve in new land planning and design these days.

Q Does the project comply with the standards and requirements of the R-60 zone? If you could go through them, please?

A Yeah. The, all of the applicable development standards are listed and tabulated on Exhibit 75, the site plan for special exception. In terms of lot area, it

greatly exceeds the minimum lot area. The lot area for children of -- we exceed the 250 square feet per child minimum. We are below the 500 square foot per child threshold, and we'll discuss that in more detail --

MS. ROBESON: Okay.

MR. SEKERAK: -- later. Lot width. What we have is a recorded lot near that -- obviously it far exceeds the development standards for the R-60 zone, which is typically a 6,000-square foot minimum lot and relative frontages. The setback from street is 25 feet minimum. We are at 35 feet minimum at the closest being at University Boulevard. We further exceed that for the other two frontages. Setback from adjoining lot. In the sole side yard that we have, the minimum is eight feet, and we are setting it back 18 feet, so well over twice the minimum setback.

Building height, we are well below the maximum building height, no matter how you calculate. And if you've been through calculations of building height, it's never easy, in the R-60 zone, or especially when you're talking about a house with, or a building on three frontages. We've figured it out --

MS. ROBESON: What is the height?

MR. SEKERAK: Well, the maximum height to the peak --

MS. ROBESON: They moved it (indiscernible).

MR. SEKERAK: The maximum height to the peak requirement is 35 feet max. We are proposing 31.3 feet. Another way of calculating it is the mean between eave and the peak, that is a 30 foot maximum, and we are at 22.8 feet.

MS. ROBESON: And what is, what's your basis for calculating the first number, the 31-point something?

MR. SEKERAK: That --

MS. ROBESON: How did you figure that? Is that literally to the peak?

MR. SEKERAK: Yes, but where you measure it from is --

MS. ROBESON: Is grade?

MR. SEKERAK: Well, there are different ways of doing it. For the purposes of that one, it's the curb elevation directly in front of Brunett. So, you can pick any street, just -- or do the average elevation. So, again, we --

MS. ROBESON: Well, aside from the standards of the R-60 zone, is it relatively flat grade? Do you know? How high is it above grade at the building edge?

MR. SEKERAK: Oh, from, from the finished floor --

MS. MEAD: I believe Ms. Nelson had testified --

MR. SEKERAK: Yes.

MS. MEAD: -- to the finished floor height,

which --

MS. ROBESON: Well, that's --

MR. SEKERAK: All right --

MS. ROBESON: -- okay, then. If she --

MS. MEAD: Which I believe is on her --

MS. ROBESON: -- did, it's in the record.

MR. SEKERAK: The finished floor is 65, I think.

MS. MEAD: Was it on her unmarked exhibit, which is 61(e) shows a 29 --

MR. SEKERAK: 29 feet, yes.

MS. ROBESON: Okay.

MR. SEKERAK: So, measured that way, in terms of how --

MS. ROBESON: Yes.

MR. SEKERAK: -- tall the building is itself from the, say the threshold of the doorway to the peak, it's only 29 feet in height.

MS. ROBESON: Okay.

BY MS. MEAD:

Q And is that height for the entire building?

A No, that's just the worst case scenario. To do the height of the building, you find the highest peak and do that, and (indiscernible) from the elevations, you can see that certainly drops down substantially for the, what the, what Ms. Nelson referred to as the addition and the sunroom

and the portico over the front door.

Q Thank you.

A It's just that portion of the critical, main part of the building. That was building height. Building coverage. Building coverage can be 35 percent max over net lot area, and that would have been the case for the single-family homes. They could build a house on there up to 35 percent of the entire net lot areas. And it could be a huge footprint, cumulative footprint on there. We are only at 15 percent, so well below half of the maximum coverage allowed in the R-60 zone.

Q Parking setbacks. We meet the applicable parking setbacks of 25 feet from the road and setbacks from the adjoining properties, which it's a little skewed because we have an odd little juke in the property line there that, so we are set back more than what you would typically see in this type of application.

And outdoor activity area, we had previously discussed when I noted the error on this site plan. That the State requires 75 feet, square feet, per half of the maximum capacity. So, that would result in a 3,525 foot, square foot minimum outdoor play area, and we have approximately 6,000 square feet on this site plan.

MR. LEIBOWITZ: I didn't hear the number.

MR. SEKERAK: Required 3,525 square feet minimum.

Provided 6,000. I've got that right in the revised land use report. I missed it on the site plan.

Oh, parking tabulations, which is also on here. That might be in a different -- but while we're discussing the tabulations of the basic plan, 20 staff at one space for every non-resident and 94 children at one space for every six children would come up with typically required 36 spaces, and this is according to Section 59-E, and 28 spaces are provided. And as been discussed earlier, 59-G allows a variance and to reduce that under certain conditions.

MS. ROBESON: And is that coming, what your basis --

MS. MEAD: Actually, why don't we just --

MS. ROBESON: -- for that is?

BY MS. MEAD:

Q Why don't we just go into that next while you're standing up. Does a reduction of the parking spaces by eight spaces, or 22 percent, is that sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems?

A Yes. There's certainly no safety problems. Carl did a wonderful job of discussing the staggered nature of arrivals and departures, that they're only there for an average of seven minutes. Ms. Memon described her extensive empirical experience at this type of thing. We, you know,

we agree that a good number of spaces here, additional spaces, would be unnecessary, and unwanted and don't want to over -- the days of providing extraneous parking are over. We need to be more careful with how we use our impervious areas.

And looking at GSA standards and guidelines, General Services Administration, when they do daycare facilities for their federal facilities, their guidelines would require even than what we are providing. 24 spaces if you use their calculations, as opposed to our 28. We are providing 28 --yes, we're using less than 59-E, but considering the nature of the close proximity to -- very close proximity to public transportation, the wealth in number of bus lines right out the front door of this facility, and the nature of the siblings, you know, attending siblings.

We've got a wonderful neighborhood within walking distance of this that we're expecting to evolve to more -- to a family makeup that would need daycare. And we think this will be a wonderful opportunity for them to walk their child to daycare. All those components, the very few staff that drive their own cars and the transportation options, the 28 spaces is very adequate for the proposed use.

Q Are there any commitments by the applicant regarding parking off site?

A And we're not just relying on Ms. Memon's experience. This is written out on the TMP. It's not left to chance. The oversight that the transportation, I believe the person responsible for transportation will see that the on-street spaces are not used. You can note there the public roads and public spaces, those aren't used, that the facility, those utilizing the facility will use the 28 spaces on the lot.

Q To your knowledge or in your experience, do other daycare, child daycare uses have less than the code required in spaces on site?

A Excuse me. Yes -- I lost my way in my notes, but yes. There have been other daycare centers that have had -- those that have long experience with daycare uses and providing daycare services, that the typical 59-E requirement are overkill, that those spaces will be unnecessary. So, I think the industry is moving towards providing a more surgical number, of the number of spaces.

Q And we note that Case No. 2759 is one of the cases that we've asked to be in the record. In your opinion is --

A Bear with me for a moment. Was that -- I'm sorry, 2759? Yeah, that's a very good and very recent example where 89 spaces required and 60 were provided. So, a 33 percent reduction.

Q In your opinion, is there adequate area or spaces

for the drop-off and pickup of children?

A Yes. I --

Q In the amount as provided?

A Yes. The curbside drop-off is not an option in, for daycare providers now. The parent or the caregiver drives onto the site, parks in a parking spot, takes the child in, transfers the responsibility for that child to the daycare provider, gets back in the car, and leaves. And Ms. Memon had gone over, you know, what happens during that time, but a seven-minute average. And what these children arriving -- and the opposite happens in the afternoon. And with the children arriving and departing over the varied times, we've got a lot of spaces directly along the sidewalk that would get them directly to the daycare center. They don't even need to cross over, you know, the travel path of vehicular, for the vehicles. And the remaining spaces are more than what, for what's anticipated by Ms. Memon for her staff.

Q Thank you. In your opinion, is the proposed use compatible with the surrounding uses?

A Yes. The park land, well, confronting properties across University Boulevard, single-family detached homes and the park land, but it has University Boulevard as an intervening use. Compatibility is not typical to achieve in that context. To the west, we have a place of worship. I

described that building a bit earlier with its -- so you've got Brunett Avenue, the church's parking lot, and then the church building itself.

The daycare center is set back a large number of feet from Gilmoure Drive and then you have the single-family homes on the other side of Gilmoure Drive. And to the east, where the closest single-family homes are, you have a total of 60 feet separation of the buildings. There's a six-foot, board-on-board fence. The landscape materials that you can see on the illustrative plan, it's all generously buffered. There is no looming of the building over, or crowding of the building. It sits very comfortably on this site.

Q Thank you. And your opinion, will it result in a nuisance because of traffic or parking or noise or other physical activity?

A Noise, obviously University Boulevard, Route 193, is the primary noise generator here. So, in that context, even the laughter of children in these play areas, as they are strategically located, is not a concern. Let's see. Traffic. Again, Mr. Starkey has gone over that very thoroughly regarding the minimum number of trips impacts to the surrounding neighborhood. Everything is operating under acceptable CLB and approved by Transportation planning staff.

Q Thanks. Just on noise. You heard Mr. Kay's

testimony regarding the trash removal. How is that planned, and how is it different from --

A Very good point. We, again, as a sensitivity to the context of being near this, you know, the nearby residences, a typical and could be inherent, would be a dumpster type of method for solid waste removal for most daycare centers. In order to avoid that, we are making pickup regular, daily or every other day or whatever, in residential sized bins, much like what you would pull out to the end of your driveway on trash day. And those would be picked up very regularly in order to avoid having to have the feature of a dumpster on this site, or to have the additional pavement necessary for the movements of a truck that could handle a dumpster and the noise that occurs when the dumpster is being emptied. So, this is, but it might be trash removal might be an inherent characteristic. That's how, another example -- thank you for reminding me -- of why this is a sensitive site design.

Q We mentioned it earlier and said we'd come back to it, but are you familiar with Section 59-G-2.131(b)(ii) of the Zoning Ordinance regarding property size for this use?

A Right. That section is generally -- concerning child daycare, they generally have 500 square feet of property area per child. The Council specifically changed that back in 2002 with the recommendations by the Planning

Board, Council staff, and the PHED committee to allow a reduction to a minimum of 250 square feet if there is adequate play area for the, relative to the age of the children, if adjacent properties aren't adversely affected by the additional enrollment, the traffic doesn't adversely affect the surrounding streets, that there's adequate drop-off and pickup. And the Board can limit the number of children that play outside at any one time if -- if that was felt necessary to ameliorate that reduction.

So, we are proposing 404 square feet of property area per child. And it far exceeds those minimum requirements of 250. So, what we're looking for is a 96 square foot reduction, which is, you know, 19 percent of the 500 threshold. Or put it another way, it's 162 percent of the 200 square foot minimum. So, keep in mind the --

MS. ROBESON: Well, as I read it, there is a 500 square foot minimum, but I -- you know, I will take your --

MR. SEKERAK: Humor me?

MS. ROBESON: -- opinion under advisement.

MR. SEKERAK: Okay.

MS. ROBESON: So, what is your basis for meeting the criteria of that waiver provision?

MR. SEKERAK: Well, I --

MS. ROBESON: How will it not -- you don't think it adversely impacts the neighborhood?

BY MS. MEAD:

Q Go through each of the criteria --

A Sure. Sure.

Q -- if you would.

A Well, this daycare center, which is a nice, has nice characteristics, that it's endearing to our pregnant attorney here, it does take infants.

MS. ROBESON: Wait. She's not part of the evidence. So.

MS. MEAD: I'm not testifying on the need for childcare.

MR. LEIBOWITZ: Does she live in the neighborhood?

MR. SEKERAK: Yeah, I'm sorry. This attorney now. They obviously utilize no outdoor play area. Toddlers, very few. I mean, once they are walking, there aren't necessarily --

MS. ROBESON: But I think the testimony was that there are five to twelve-year-olds and fours and all the way down to 18 months, I think, are --

MR. SEKERAK: Right.

MS. ROBESON: -- going to need a play area.

MR. SEKERAK: So, in that realm of, you know, 500 or 250, yes, we do have some that -- there are only 12 in the five to twelve -- 12 children in the five to twelve range. So, that's just a very small portion of the thing.

Infants, obviously, never. Toddlers rarely. You know, twos and threes, you know, limited. Once you get into fours, threes and fours, that's when you really start needing that outdoor play area. And that's just, again, just a small portion of our enrollment.

And we are providing a play area that is 170 percent of the minimum. We're providing a 6,000 square foot area. So, we're easily accommodating that concern. Some of these other daycare centers have, are able to meet that, but they have environmental constraints, you know, forest conservation areas or wetland, et cetera. What the two cases that we had previously indicated, they serve no purpose for the child daycare use, but it helps them meet that, that goal.

This site has no environmental constraints. It's an extremely efficient site. It's a square. We're able to utilize the site very well, as well you should, a R-60 zoned property in the down-county. So, when it comes to single-family homes, it's a very intense single-family zone.

Again, 6,000 square feet, providing all the -- 170 percent of the minimum daycare area, and we are certainly willing to commit to a, I believe we had agreed -- we had discussed a 40-child maximum number of children out at one place. She doesn't really anticipate having that many out there at one time, but that will easily accommodate --

MS. ROBESON: You mean on the playground?

MR. SEKERAK: Yeah, out --

MS. ROBESON: Or outside.

MR. SEKERAK: Outdoor play at any one time. Only 40 children.

MS. MEAD: I'll refer to the statement of operations on page 3 that has noted that the maximum number of children utilizing outdoor play area would be limited to less than half of the enrollment, which I think half is 47, but I think we had noted, it might have been the Planning Board got 40. Since the Board is entitled to limit children outside at play, that is a limitation that has already been proffered.

MS. ROBESON: Okay.

MR. SEKERAK: Regarding the enrollment not adversely affecting residential properties, you know, the play area is obviously well away from the nearby play areas -- or nearby neighbors. The residential character and scale of the reduced-size building, we've discussed. It was accomplished strategically so that the reduction most benefits the adjoining, nearby residences. And a very limited building coverage. We're at only 15 percent of our net lot area. There's a 35 percent maximum. Again, the reduction in square foot per child is appropriately allocated. We don't have an oversize building. We don't

have extraneous parking. We don't have unusable portions of the land. It's all going to good use, and especially in terms of the play area.

Traffic not adversely affecting the surrounding streets was obviously demonstrated by Mr. Starkey and that it can easily accommodate a daycare center for 94 children. The difference in trips between, you know, 94 and what a, what 500 would equate to would be 75 children. That difference in trips is absolutely negligible. And it has, you know, the adequate drop-off and pickup like we've discussed. There's no queuing out in the street. So, the additional, providing additional area on a per-square-foot, or additional square feet per child would serve no purpose for this program, if all works, for 94 kids.

It's just a very efficient site. And this may have been what the Council had been in mind when they, and the staff when they made that amendment to reduce it down to 250 may have been a site just like this that didn't need to unnecessarily meet a threshold.

MS. ROBESON: Okay.

BY MS. MEAD:

Q Thank you. If you could please describe the proposed signage for the child daycare use, using Exhibit -- this is one of the earlier ones.

A Site details for special exception. Yeah, I'm

pleased, is unchanged.

Q Site details, 4(b).

A Exhibit 4(b) is site details for special exception. It shows the fencing that we're proposing and the four-foot along the -- the frontage because it's pedestrian scale. There are the four feet, four-foot height fences common in the neighborhood. Not as attractively designed, but again, a common cue from the neighborhood.

It also shows the six-foot board-on-board fence that we're proposing on the eastern, along the eastern property line, where it directly abuts the residences for much of that length of -- we didn't take it all the way out to Gilmoure Drive because a six-foot fence all the way out to the frontage is not characteristic of the residential fences in the neighborhood. So, we end it at appropriate locations for that character.

The point regarding the signs. Again, the property has three frontages, which, and so, and signage for daycare is one of those inherent characteristics that we had discussed previously. So, in order to provide proper frontage, or proper signage for this, we need to provide the wayfinding. Typical standard would be two-square feet for a sign. We are providing that for the entrance along Gilmoure and along Brunett, simply for wayfinding and addressing so that, you know, people can make sure they know, you know,

this is an entrance to this facility and the address.

University Boulevard, obviously a two-square foot sign would be ineffective, to say the least. So, we have designed an attractive -- again, it fits right in with the four-foot fence. It forms an arc for a small portion at the intersection of Brunett Avenue and University Boulevard. So, the traveling public on University Boulevard, there's six lanes of traffic, and at any travel speeds they're doing, they will be able to identify this site. It needs some identification. It's not a -- again, it's only four feet, four-and-a-half feet high, attractively prepared, a gentle arc for just a small portion of that frontage, and so that's it.

Q Is there any lighting proposed for the sign?

A No. No lighting.

Q In your opinion, is the proposed special exception consistent with the -- and to summarize your testimony from earlier -- the land use objectives of the Four Corners Master Plan?

A Yes. Pages 11 through 15 in my land use report go into a long discussion of that. But, in summary, the Master Plan recognizing, one, the previous non-residential use and recommended this site as a non-residential use. It also recognized we're providing a community-serving use in a structure that is residential in character and has a

landscape plan, which this has accomplished. An attractive, a generous landscape plan. We have an attractively-designed building-designed specifically for the context of the residential neighborhood.

The general discouragement of special exceptions adjacent to the commercial area should not be tortuously misinterpreted to apply to this site. That may have applied to those properties along this stretch that do not have an office designation. And this area had a much more intense daycare center and school use contemplated at the time of the Master Plan.

And the Planning Board did note that the design scale and buffering of the special exception is more relevant here than the general discouragement of special exceptions near the commercial area. And we have taken that in advisement, revised the plans, and have addressed that, and I think quite, quite nicely.

MS. ROBESON: Okay.

BY MS. MEAD:

Q I'll note Exhibit 60 is the Planning Board's recommendation to that effect. In your opinion, will the proposed special exception be in harmony with the general character of the neighborhood --

MS. ROBESON: I'm sorry. One second. Did you have an objection, Mr. Leibowitz?

MR. LEIBOWITZ: No.

MS. ROBESON: Okay. I'm sorry. Go ahead.

BY MS. MEAD:

Q Will the proposed special exception be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of the new proposed structure, intensity of the character of the activity, traffic, parking, similar uses in the area?

A Yes, it will be in harmony. It's a very appropriate site for this special exception, given its location, a major highway, the size, its relationship to the transportation network, the institutional use across the street, et cetera. The revised plans, they reduced the building size, it's even more residential in character. It does not have the underground garage and ramp entrance. There's a 22 percent reduction in enrollment. And it increases the setbacks because of the reduced size.

The parking lot is appropriately sized for this use and this number of patrons. It's got convenient access. The pedestrian improvements -- and I probably haven't stressed that enough, that we've got, you know, a couple of concrete sidewalks right on the back of the curbs. People are walking right next to the travel lanes on two of these streets, and another one of these streets has no sidewalk. So, we are improving the pedestrian access on all three

frontages. And the bump out, in addition, there is traffic calming that will reduce the travel distance and time for pedestrians crossing Brunett Avenue.

Also, their specific recommendation in the Master Plan is to have crosswalks for bus stops. And there is none. None currently exist along Brunett Avenue, and we're providing that. So, I failed to stress the pedestrian enhancements that we're doing for this thing. And again, hopefully that will result in a lot of residents being able to utilize this facility for their needs by simply, you know, conveniently walking their child to the place.

You know, and in terms of the reintroducing this pre-established use in this immediate neighborhood. I, I'm sorry, I forget the number of children that was approved for the Yeshiva daycare or the number of students. It varied widely, but it was much more intense. I'm probably not stressing that enough. I wish I had the numbers, but it was a far greater number.

Q Your report.

A What? I had it in my report? And again, it was quite a moving target, but -- 225 -- wait a minute. No, that was the school, and the number of children in the daycare. 225 children in the daycare, and the school, it was what had the enrollment that varied a lot. But again, the chronology and description of that is in the land use

report.

Q Thank you. You had described the -- you had previously described the neighborhood before and the predominantly residential neighborhood. Do you have any other exhibits showing the University Boulevard side of the property?

A Exhibit number --

Q This is Exhibit No. 78. It's a photo montage exhibit, University Boulevard. We had, I think we presented it to the Planning Board. I'm not sure if we have time, but it's not in this current record.

A (Indiscernible.)

(Exhibit No. 78 was marked for identification.)

MS. ROBESON: While you're doing that, Mr. Leibowitz, I am going to check dates.

MR. LEIBOWITZ: Great.

MS. ROBESON: Okay? So, I'm going to take a, we're going to recess for five minutes. You review the exhibit, and I'm going to go check dates for another hearing.

MR. LEIBOWITZ: Thank you.

(Brief recess.)

MS. ROBESON: Okay. We're back on the record. So the parties can begin checking, I have two different dates,

both on a Monday. May 23rd and June 20th is the best I can do for the Monday and Friday, so. Do you want a moment? I know there's seven of you, or six of you, so.

MR. LEIBOWITZ: One of our witnesses is in the restroom.

MS. ROBESON: Oh. Well, we can further -- is it okay with the rest of your witnesses?

MR. RICHARDSON: The June 20th day matches all of our --

MR. LEIBOWITZ: All but one.

MS. ROBESON: All but one.

MS. MEAD: What about the May --

MR. RICHARDSON: (Indiscernible.)

MS. MEAD: What about the May 23rd?

MR. RICHARDSON: Several people out of town, out of state.

MS. ROBESON: Wait, I -- I don't understand.

MR. LEIBOWITZ: The June 20th is best for all -- good for all but one. The May 23rd, there are two or more witnesses who would be out of town.

MS. ROBESON: Okay.

MR. RICHARDSON: (Indiscernible.)

MS. ROBESON: Is this one of your, the missing witness?

MS. MEAD: Could we have those folks go now so we

don't have to wait until June 20th, and either go on the 23rd or the 2nd to continue the rest?

MS. ROBESON: How many witnesses can't do the May 23rd? Three?

MR. LEIBOWITZ: Three.

MS. ROBESON: Okay.

MR. LEIBOWITZ: If I started now, we wouldn't be done with them by --

MS. ROBESON: Three of them.

MR. LEIBOWITZ: -- 5, I don't think.

MS. ROBESON: Yes. We can do the June 20th.

MS. MEAD: Okay. What was the issue with the June 2nd? Did you only have one person who couldn't make it? Because we could --

MR. LEIBOWITZ: We have --

MS. MEAD: If the --

MR. LEIBOWITZ: -- two (indiscernible) couldn't do it on June 2nd.

MS. MEAD: Well, could we do two of them now and then go the rest on the 2nd?

MS. ROBESON: Well, he has -- Mr. Leibowitz hasn't even started his cross-examination of the land use planning expert. Now, I understand --

MR. SEKERAK: We'll never get that done anyway.

MS. ROBESON: -- where you're going. Are you

willing to do your cross-examination of, I'm sorry, your name is --

MR. SEKERAK: John.

MS. MEAD: Sekerak.

MR. SEKERAK: Sekerak.

MR. LEIBOWITZ: Sekerak.

MS. ROBESON: Sekerak. Are you willing to do the cross examination of Mr. Sekerak? We can take the two people, your witnesses who can't be here on June 2nd now, today, and do the cross-examination of Mr. Sekerak at the next hearing.

MS. MEAD: Yeah, I --

MS. ROBESON: No, I --

MR. LEIBOWITZ: I guess I -- I'd rather not. The hearing has already been continued one time, and so what's another less than three weeks?

MS. ROBESON: Well, what's your reason for not wanting to take up cross-examination later?

MR. LEIBOWITZ: Because I'd prefer to cross-examine him today. But if --

MS. ROBESON: Okay --

MS. MEAD: I don't know if that's going to actually happen today anyway. Because we -- that's why we wanted to have your speakers go before Mr. Sekerak, because we don't know if we're going to even finish him up today.

MS. ROBESON: Well, I -- what I will do today is stay late enough for you to finish your cross-examination. All right? Because I don't know how long his two witnesses are going to take. So, we will finish your cross-examination up, and then we're going to have to go with the June 20th date.

MS. MEAD: I'm just making sure I'm available on the 20th.

MR. LEIBOWITZ: And Mr. Kay is also going to be around? Because I will still have to cross-examine him --

MS. ROBESON: That's right.

MR. LEIBOWITZ: -- on the 20th also.

MR. KAY: I'm making myself available.

MR. LEIBOWITZ: Thank you.

MR. KAY: You got it.

MS. ROBESON: All right.

MS. MEAD: All right. We were --

MS. ROBESON: On the photo montage.

BY MS. MEAD:

Q We were with the new exhibit 78. If you could describe the surrounding University Boulevard character, as well as you've covered the residential properties to the south and east.

A This will capture the character of the entire Route 193 character for the immediate area around the site,

plus the defined neighborhood and those areas outside of it. And I'll probably bring it closer so you can see each of the individual pictures. But it does characterize it in a couple of ways.

It does characterize how distinct the neighborhood is in terms of that delineation of the Four Corners commercial area from those residential neighborhoods, and similarly to the west, going to the senior housing facility and the commercial, or, I'm sorry, the medical offices, It's another obvious demarcation. I was trying to capture that with photographs showing those land uses in that area and of the vacant site and of the, some of the residences directly across the street, and, you know, and at those threshold locations at, at those two edges.

I can bring that over to you so you can see this better. Not a parkway setting. It is a four, you know, a six-lane, major highway. There are some uses along there that would not be considered attributes to the visual character of it. And I did want to make a distinction between those and what we're proposing, a residentially designed daycare center with, you know, much greater setbacks, much more generous landscape treatments, et cetera. And how it sits on the land relative to the traveling public.

MS. ROBESON: Okay.

BY MS. MEAD:

Q Since we've covered the whole neighbor, all the neighbors, in your opinion, will the proposed special exception be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties and the general neighborhood of the subject site?

A It will not be detrimental. Again, I think it will be an attribute in oh so many ways, including providing that service to the immediate residents of the neighborhood. It will be a visual enhancement, as I just kind of was pointing out regarding the corridor that this is going on. Regarding the economic value, I'm no expert in real estate sales, but by, what resonated with me from Mr. Kay's testimony was --

MR. LEIBOWITZ: Objection. What resonated with him from Mr. Kay's testimony is not proper for his --

MS. ROBESON: Just speak from our own --

MS. MEAD: From the land planning --

MS. ROBESON: -- experience.

MR. SEKERAK: That real estate agents in the neighborhood of, in the areas surrounding daycare centers are including that as an attribute in terms of --

MS. ROBESON: I understand.

MR. SEKERAK: -- for those potential sales. So, as a land planner, when I'm opining regarding economic

value, that is the type of resource I need to use in order to make that finding.

MS. ROBESON: Okay.

BY MS. MEAD:

Q Thank you. In your opinion, will the proposed use cause any objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the site, irrespective of the adverse use it might have established elsewhere in the zone?

A No. It's a daycare. It's not known for its vibrations or dust. We have no dumpsters to generate for either noise or odor for those characteristics. So, a common accommodation that this property is doing relative to other daycare centers, there is no outdoor amplified music loudspeakers, and that is not going to be part of the program, so you won't be hearing music. You know, the noise will be the laughter of children, I guess is how I would like to limit the noise generation from this use.

The play area is designed to be away from the homes and the building will buffer that noise. But also, it will help buffer the noise and visual impact of University Boulevard from the residential neighborhood, those living there and traveling along Gilmoure and Brunett. Let me pull up another exhibit here. Has this been entered?

Q I thought so. Is this illustrative elevation?

A Elevation exhibit.

MS. ROBESON: What number?

MR. SEKERAK: That's what we're --

BY MS. MEAD:

Q I'm trying to see if it's -- I think it's 61(e). I believe it is. Yes. The top, illustrative elevation. It's 61(h).

A What this is showing is a photo montage along the bottom of the Exhibit 61(h) taken from across Gilmoure Drive towards the site. A panoramic view, it includes the house just to, along Gilmoure just to the east of the subject property and pans over to the left side of the photo is the Brunett Avenue. It doesn't go any further to show the place of worship parking lot or the place of worship building itself. But it shows the unimproved nature of the site now. You can see the old driveway to the dentist's office, but the structure was gone at that point. And the utility poles and the scrubby plant materials, Sumac and et cetera on the site.

You see the telephone poles. You can't see the highway sign from this particular view, but the telephone poles along University Boulevard. So, that's the context for this illustrative elevation that's along the top of the exhibit similarly shows the two-story building to the, you know, to the visual right of the, from that view. It shows

the daycare center with its, again, articulated roof line and facade treatments. The six-foot fence between the first two uses and similarly the generous amount of plant materials that will buffer not only this site but University Boulevard and beyond.

Again, this is not a, you know, a visual simulation or even perspective drawing of it. It's an elevation. It shows that the two buildings, being the proposed daycare center and the two-story residence appear to be the same, but keep in mind, visually, that the daycare center is set back much further. We just haven't done the reduction that you would accomplish with a perspective as the sight lines depart.

Again that -- that was prepared to show what we're contributing in terms of not only is this site providing the use, but it is also providing that buffer from the residential neighborhood to Maryland Route 198.

Q Did the Planning staff make any findings regarding whether the use would cause any objectionable noise, vibrations, fumes, odors, dust, illumination, or glare at the site?

A Yeah. Their staff report, which --

Q Exhibit 47.

A Exhibit 47, I think page 28 did make that finding, that there is no objection. And the other element to the

list regarding (indiscernible) I forgot to mention this, the lighting carefully designed to minimum necessary for day finding, for it is primarily of a daytime use, and it avoids glare impact to the surrounding neighborhoods. But in, keep in mind that we're on a state highway and street lights on the residential streets.

Q Thank you. In your opinion, will the proposed special exception increase the number of or intensity of scope of special exception uses in the area to alter a predominantly residential nature?

A No. Absolutely not. Within the defined neighborhood, there is only one other, an approved special exception in the area. It's a -- I believe it is a flower shop across University Boulevard and to the east a bit. This neighborhood had the special exception uses of the Yeshiva school and daycare, and it had the office use of the dentist's office. And so this will actually, again, return a measure of this and will help re-establish, you know, that character of the neighborhood at the time of the Master Plan, and it will, you know, obviously certainly remain predominantly residential in nature.

Q Thank you. And in your opinion, will the proposed special exception adversely affect the health, safety, security, morals, or general welfare of the residents, visitors, or workers in the area?

A No. just the opposite. It will provide a positive effect aesthetically and providing a positive, important, local service to this particular neighborhood.

MS. MEAD: Thank you. Those are all the questions we have for Mr. Sekerak.

MS. ROBESON: Okay. Mr. Leibowitz. You've been patient.

MR. LEIBOWITZ: Thank you.

MS. ROBESON: Waiting to cross-examine someone.

MR. LEIBOWITZ: It's true. Get Mr. Starkey to come back.

MS. ROBESON: It's true.

CROSS-EXAMINATION

BY MR. LEIBOWITZ:

Q Let's talk about the Master Plan. You testified that there is, that the commercial district is very distinct, right?

A Yes. Yes.

Q Where are you going? I just started.

A Not far. Not far.

MS. MEAD: Do you need the Master Plan?

MR. SEKERAK: My apologies.

BY MR. LEIBOWITZ:

Q That's okay. And you would agree that the Safeway is part of that commercial district, right?

A Yes. There's like a, the neighborhood exhibit --

Q All right. Let me ask you another question.

A All right.

Q And the Safeway also abuts West University Boulevard, right?

A The -- yes.

Q The Safeway property.

A Yes.

Q Not the building itself, but the Safeway property.

A And I don't mean to be hesitant. Just, the Safeway is split-zoned. It's got commercial zone for the building itself. It also has some residential zone in front of it used for the parking lot, which is, that was -- my understanding is that was their method of containing the scale of the Safeway. So --

Q Well, let's --

A So you're absolutely that I would consider the Safeway, including its parking lot, part of the Four Corners commercial district, regardless of its zone.

Q Okay. Let's talk about that zoning for a moment. I'm happy that you brought that up. There's a substantial parking lot, at least for the neighborhood --

A It's a small parking lot for grocery store standards, but --

Q Would you agree that the Safeway parking lot is

the largest parking lot in the south Four Corners commercial district -- or, I'm sorry, the Four Corners commercial district?

A Well, I would put Blair High School at least well above that.

Q Does that make it the second largest after Blair High School?

MS. MEAD: If you --

MR. SEKERAK: I'm referring to an air photo. Should we identify this?

MS. ROBESON: Oh, that? Okay. Yes. Can you describe --

MS. MEAD: Exhibit 9?

MS. ROBESON: Is it Exhibit 9?

MR. SEKERAK: It's simply an aerial photo.

MS. MEAD: Exhibit 9.

MR. RICHARDSON: Exhibit 4(l).

MS. MEAD: Yes. 4(f) is --

MS. ROBESON: Are we sure it --

MS. MEAD: -- the neighborhood delineation map.

MR. SEKERAK: The neighborhood delineation is Exhibit 4(f).

MS. MEAD: Right. And this is the aerial, which is Exhibit 9.

BY MR. LEIBOWITZ:

Q Okay. So, looking at Exhibit 9, why don't you put that up on the board so everybody can see? Could you -- would you point out the Safeway for us?

A Sure. The Safeway, the building is here, the parking is this area.

MS. ROBESON: Okay. So, the building is the white --

MR. SEKERAK: Is a white square, yes.

MS. ROBESON: -- structure to the west of, is that Colesville Road going down there?

MR. LEIBOWITZ: Correct.

MR. SEKERAK: Yes. Yes.

MS. ROBESON: And the --

MR. SEKERAK: And other properties from Colesville Road.

MS. ROBESON: And the parking area is just to the northeast of the structure?

MR. SEKERAK: Yes.

MS. ROBESON: Okay.

MR. SEKERAK: With frontage on --

MS. ROBESON: University.

MR. LEIBOWITZ: University Boulevard.

MR. SEKERAK: -- University Boulevard, where it splits.

MS. ROBESON: Okay.

MR. SEKERAK: Right between the --

BY MR. LEIBOWITZ:

Q All right. And --

A -- two directions.

Q And Let's talk about that location a little bit more. Between the -- and that the yellow box represents the proposed development site. That's the --

A (Indiscernible.)

Q -- property that we're talking about today, correct?

A Yes.

Q Okay. Between the yellow box, the proposed development site, and the Safeway parking lot, are there any streets?

A One street.

Q And that is Lorain?

A Yes.

Q And it's the parking lot, the Safeway parking lot is essentially at the corner of Lorain and University Boulevard, correct?

A Yes. Yes.

Q Okay.

A And because of its residential zoning --

Q Just let, just --

A -- there's --

Q One question at a time.
A Okay.
Q My question was it's at the corner of Lorain and University. You said yes.
A Yes.
Q Okay. So, is it fair to say that the proposed development is one block, the block between Brunett and Lorain, one block from the Four Corners commercial district?
A Yes. The parking lot is here at -- at the east side of Lorain along University Boulevard. The subject property is on the east side of Brunett Avenue along University Boulevard.
Q Which makes it one block from the Four Corners commercial district.
A Yes.
Q Okay. And you had noted in your direct testimony that the Four Corners Master Plan states, and I'll read from it and you tell me if this is not accurate. This plan discourages special exceptions in residential areas immediately adjacent to the commercial district. Is that --
A Yes.
Q I read that accurately?
A I -- that is ringing very familiar to me.
Q Okay. And that's on page 26 of the Master Plan. And you stated that it wasn't immediately adjacent because

it's 500 feet away. That's your position?

A It is 500 feet and five properties.

Q And five properties.

A Five, intervening properties.

Q Okay. And before Mr. Kay bought this property, there was a single-family home on that property, right?

A Yes. A single-family home and dentist office, yes.

Q And we already established that University Boulevard is a major highway, right?

A Correct.

Q The next sentence in the Master Plan reads residential neighborhoods immediately adjacent to the Four Corners commercial district. And would you agree that what we're talking about is a residential neighborhood that's immediately adjacent to the Four Corners district?

A I'm not certain how large a neighborhood that the Master Plan was envisioning when it said that, but yes. I mean, there are residential neighborhoods --

Q Well I --

A -- that all adjoin it, yes.

Q All right. Well, let's talk about the neighborhood that you defined for this special exception application. That neighborhood is defined by the red line on Exhibit -- I can't, whatever --

A 4(f).

Q Exhibit 4(f).

A Sorry about my penmanship.

Q Okay. Well, it's more about my eyesight. You agree that the red line on Exhibit 4(f) delineates the neighborhood that you've personally --

A Yes.

Q -- defined for the special exception, is that correct?

A Yes.

Q And the southeast border of the neighborhood that you defined touches the Safeway property.

A Correct.

Q Could anything be more immediately adjacent than it touching?

A Well, the property itself could be more immediately adjacent, but I --

Q No --

A -- I agree with what you said. And --

Q You agree that nothing could be more immediately adjacent than touching, right?

A Well, nothing could be -- if the property was immediately adjacent, it would be --

Q I'm not talking about the property. I'm talking about just generally. If things are touching, they are

immediately adjacent, is that right?

A Sounds -- sounds, yes.

Q Okay. So, it's fair to say that that neighborhood that you defined is immediately adjacent to the commercial district?

A Yes.

Q Okay. And that neighborhood is a residential neighborhood.

A Predominantly residential neighborhood, yes.

Q In fact, you described it as a homogeneously --

A No, no, no. Not this neighborhood. No.

Q Well I --

A I was describing the --

Q The neighborhood that's south of --

A Yes, that's right. I described all the -- all the uses and areas within the neighborhood. And no, the immediate neighborhood is not homogeneously single-family.

Q The neighborhood that's the area that's south of University Boulevard is a residential neighborhood, correct?

A The staff and I agreed that both of our neighborhoods are predominantly residential in nature.

Q Okay.

A Is -- but not exclusively.

Q So, it is a residential neighborhood that's immediately adjacent to the Four Corners commercial district

that we're talking about, right?

A Yes.

Q And the Master Plan, page 26, says residential neighborhoods immediately adjacent to the Four Corners commercial district are particularly vulnerable to encroachment of non-residential uses, as are single-family homes along major highways. You agree it says that?

A Absolutely.

Q And you agree that there was a single-family home on that property that was along a major highway?

A Single-family home and dentist office, yes.

Q Okay. And it was along a major highway, University Boulevard.

A Yes.

Q Now, that single-family home doesn't exist anymore, right?

A Nor does the dentist office.

Q The whole structure doesn't exist.

A The structure is -- no longer exists, correct.

Q Because it was knocked down.

A It was razed, yes.

Q And you also agree that the, that the Master Plan encourages special exceptions to the plan -- not encourages. The plan recommends reuse of existing structures for special exceptions, where feasible.

A And I think it would be fair if you put it in context with the remainder of that recommendation.

Q Well, do you --

MS. ROBESON: Well, it's your time to --

MR. SEKERAK: Oh, I --

MS. ROBESON: You can't ask him questions. He's asking you questions.

MR. SEKERAK: Okay. I'm sorry. Could you restate that?

BY MR. LEIBOWITZ:

Q You agree that the Master Plan states verbatim the plan recommends reuse of existing structures for special exception uses where feasible.

A That rings true. I can't say that verbatim, but it rings true, yes.

Q Okay.

A That rings familiar.

Q And that's no longer possible on this lot because there, the existing structure was razed.

A There is no single -- there is no -- no structure on this property, correct.

Q Right. Okay. And --

(Discussion off the record.)

BY MR. LEIBOWITZ:

Q Now, that brings us to the issue of whether or not

the new, the proposed structure would be residential in character and scale, right?

A Yes.

Q Okay. Would it be fair, there is a house immediately to the east of the proposed development, right?

A Yes. There are two houses.

Q Well, there's one house immediately to the east, and then there's more houses after that, right? Right?

A So, there are two --

Q Right --

A -- properties abutting ours.

Q Yes.

A Each has a single-family home on it.

Q Okay. Thank you. The one that's on Gilmoure that you, we can see in some of the photographs, some of the exhibits, would you agree that the footprint of that house is maybe 20-by-25 or 25-by-25?

MS. MEAD: If you know. I would just add that he hasn't testified to --

MS. ROBESON: Well --

MS. MEAD: -- knowing that area of the --

MS. ROBESON: -- if you know.

MR. SEKERAK: Yeah. I do not know the area footprint. I'm trying -- but I've been to the site many times and have got photographs here.

MS. ROBESON: Well, is it -- it's not noted on the, is that the special exception site plan?

MR. SEKERAK: Correct. So, I'm trying to think, from my recollection and familiarity with single-family homes, that sounds a little small, but let's not quibble about the number of feet.

BY MR. LEIBOWITZ:

Q And if that's the case, that would fit inside the part, even a part of this, the proposed structure that's supposed to reflect a sunroom, which we heard was 38 by 25, something like that?

A Again, not rectangular but --

Q 38-by-24?

A I -- I was -- yes. I mean, absent the corners.

MS. ROBESON: I understand.

MR. LEIBOWITZ: Okay.

MS. ROBESON: Roughly.

MR. SEKERAK: Roughly. Yes. Thank you. Thank you.

BY MR. LEIBOWITZ:

Q So, as compared to the, its immediate neighbor, it's a much greater size and scale?

A It is larger. Yes, it is larger.

Q Larger maybe by a factor of five or six?

A I'm not going there. It's -- it's a, comparing a

two-story house to the daycare center, inherently larger and quite a distance away.

MS. ROBESON: Well --

MR. SEKERAK: It is larger.

MS. ROBESON: You can answer the question if you know, because I think the test is whether it's residential in scale and character. So, I think that is, you know, relevant. So, do you want to ask the question again?

BY MR. LEIBOWITZ:

Q Yes. So, in size and scale, the proposed structure, the proposed building is five or six times greater than its immediate neighbor.

MS. MEAD: Object to that. That's two different questions. You asked in size, and then you asked in scale. It's not the same word, and it's different words than in the Zoning Ordinance.

MS. ROBESON: Do you want to rephrase it, Mr. --

BY MR. LEIBOWITZ:

Q In size.

A I -- it certainly is much larger. Regarding the number of times, I don't want to go there because I -- I'm just not prepared to do a quantitative comparison of a two-story, single-family home and the one-story daycare. But I will agree that the daycare is much larger than that single-family home.

Q In fact, it's much larger than maybe every, but certainly the average single-family home in the defined neighborhood, right?

MS. MEAD: Again, objection. By larger, are you talking about footprint or are you talking about FAR density of the homes? I mean, Mr. Sekerak has continually answered that he can't answer to the second story or additional stories of the home.

BY MR. LEIBOWITZ:

Q Certainly footprints.

A The property that's giving me pause is one right across University Boulevard, also within the defined neighborhood, identified on the site map illustration Exhibit 35 as lot P17. It has a single-family home on it that has a large number of additions. It -- it's very deep. It's a couple of stories. It may be competitive with this daycare center in terms of whole area. So, that, that's the one. Other than that, those further back in the south Four Corners area, those homes do have some variation in size, but I don't think any of them approaches the size of the proposed daycare center.

Q In fact, I think according to the technical report, the average house size in the defined area was 1,296 square feet. Do you remember that?

A I don't have a specific recollection of that, and

I don't know if they were talking about floor area or footprint.

Q This proposed building is 5,608 square feet. Is that right?

A Yes.

Q So, whether they're talking about floor area or footprint, floor area could be greater than footprint if it's a two-story house, right?

A Yes.

Q But it's never going to --

A Yes.

Q Floor area is never going to be less than the footprint?

A Correct.

Q So whether they're talking about floor area or footprints, the proposed building is at least two and a half times the average house in the defined area, defined neighborhood. Is that right?

A I have not analyzed the floor area of those homes. But I -- I do agree that this will have a larger floor area or footprint than the average home, than the average home within the defined neighborhood, yes.

Q And I'm looking on page 9 of the Planning Board's, of the technical staff report, which reads on average, neighborhood homes measure 1,296 square feet of gross floor

area.

MS. MEAD: I'm just going to object because Planning staff isn't here to, and the Planning staff report doesn't note where those average home sizes came from. If they're from the tax records, they are certainly not going to be accurate as far as any improvements that have been made in this neighborhood.

MS. ROBESON: What is your question, Mr. Leibowitz? What are you trying to ascertain?

MR. LEIBOWITZ: The difference in size -- I'm trying to demonstrate --

MS. ROBESON: Between the average house?

MR. LEIBOWITZ: Right. Between the average house, that the size is dramatically larger.

MS. ROBESON: Well, you can ask him hypothetically if it --

BY MR. LEIBOWITZ:

Q Okay. Hypothetically, if the floor, if the gross floor area is 1,296 square feet, then --

A Then this --

Q Then the --

A Then this building would be larger, yes.

Q In fact, it would be over four times as large, right?

MS. ROBESON: Well, I think the sizes are a

calculation. So, let's --

MR. SEKERAK: I do have a calculator. I can take the floor area --

MS. ROBESON: No, I --

MR. SEKERAK: -- divided by the floor and tell him how --

MS. ROBESON: No, I -- I think we can --

MR. SEKERAK: Right.

MS. ROBESON: -- do the calculations.

BY MR. LEIBOWITZ:

Q Now, the only entrance to this -- let me strike that. I'll come back to that. What's the square footage of the parking lot?

A I don't know the square footage. It's 28 spaces.

Q Okay. Do you have an estimate of what the square footage is?

A I can -- and how would like it defined? I mean, it's obvious at this point, but do you include the driveway or --

Q You don't need to include the driveway if it, that makes it easier.

A Actually, it makes it harder.

Q Then do include it.

A Okay. If I took a --

Q If you just took the rectangle, just give me an

estimate.

A Okay. Okay.

Q Right.

A 8,584 square feet.

Q 8,548?

A 84 square feet.

Q And 84 square feet. And this is an R-60 zone, right?

A Yes.

Q So, an R-60 zone, a lot is, can be roughly 6,000 square feet?

A Code minimum is 6,000 square feet. So, not roughly, but so, that would be the code minimum.

Q So, the parking lot alone is larger than many people's whole lots?

A Yes. In this neighborhood, yes. And the minimum --

Q And --

A And the minimum size of a lot in the R-60 zone.

Q Right. We're only talking about in this neighborhood. In Potomac or someplace else, it may be different.

A Not a lot of R-60 there.

Q No. Now, exhibit -- is it Exhibit 78 has the photos and the lines going to different spots, is that

right?

A Yes.

Q So, Exhibit 78 showed a number of non-residential buildings in the area, is that right?

A Yes.

Q Do you know if any of those buildings that have entrances on streets other than University Boulevard?

A I certainly don't know that off the top of my head. The place of worship is the first one that comes to mind.

Q Other than that?

A It doesn't -- you know, so the first one I looked at is right across the street from the subject property and it does not have an entrance on University Boulevard.

Q Any of the commercial establishments? You want to go around the horn or just --

A I'm not sure. I can't tell if the funeral home -- it's similarly on a corner. I don't know if its driveway is --

Q The funeral home has a driveway on University.

A Oh, on University.

MS. MEAD: Are you answering your own question --

MS. ROBESON: Okay. I -- this is your turn to ask questions.

MS. MEAD: If you don't know, I think it might

help speed things along.

MR. SEKERAK: Okay. I don't know, not readily able to ascertain from, from these, but I guess I've identified one, and it's the closest one to the subject property.

BY MR. LEIBOWITZ:

Q Okay. The woman from Childway identified an apartment building and a condo that were closely associated with those other childcare facilities. Other than the senior, the senior apartments -- you would agree that senior apartments probably don't have a lot of kids, right?

A I think it unlikely, but it's probably a special exception for --

MS. ROBESON: If you know. If you know.

MR. SEKERAK: -- for housing for senior adults and those with disabilities. So, it could, but I would be surprised if it has any.

BY MR. LEIBOWITZ:

Q Okay. Other than that apartment building, is there another apartment building that's within the neighborhood as you've defined it?

A Oh, within -- okay. No. No apartment buildings within the defined neighborhood.

Q Okay. Now, you had testified that daycare is something that one might look for when selling property or

the developer might look at, or you might, when you're opining about -- I don't remember your exact words, but when you were opining about the benefit of some property, you might say that's a -- a nearby daycare was an attribute, is that basically your testimony? I don't have it verbatim, but is that the gist of it?

A That real estate professionals would advertise daycare as -- in their marketing materials for selling residences, indicated to me that the professionals in that field felt it was an attribute, yes.

Q Okay. And --

A For the purposes -- I mean, I have my own opinions on it, but that, I was using that for the purposes of my findings regarding value.

Q Okay. Well, let's -- we'll just stick -- based on what you just said, are you, you're aware that there are numerous existing daycares within one or two miles of the proposed location already, right?

A It certainly would not surprise me. I am anecdotally aware of some in the, in the church in the Four Corners commercial district. I am aware that there are none within the defined neighborhood that I analyzed more thoroughly.

Q Which you defined?

A Yes.

Q You said that there will be 12 foot tall light poles on the property to create a residential, help create the residential appearance?

A I want to say that when we're lighting, which is an inherent attribute for daycare centers, when providing the lighting, we limited the height of the poles to twelve feet because that is more residential than a typical parking lot light.

Q Do you know of any residences in the defined neighborhood that have 12 foot lighting poles on them?

A Not that I'm aware of. I have not looked at the neighborhood for that.

Q Let's talk about the dentist's office for a minute, all right? Do you have any reason to believe that there were 20 employees coming to the dentist's office on any given day?

A I have no idea how many employees, but I wouldn't think that a dentist's office would have 20.

Q And it didn't have a parking lot on it, on the property at the time, right?

A It depends upon your --

MS. ROBESON: Mr. Kay, let him -- let him answer, okay? Let the witness answer. If he knows.

MR. SEKERAK: I have been by the property a number of times, but I was not familiar with the property --

MS. MEAD: If you can tell by looking at your --

MS. ROBESON: Aerial photograph.

MR. SEKERAK: At the time of the -- at the time that the building was there --

BY MR. LEIBOWITZ:

Q If you could just identify the exhibit that you're looking at for the rest of us?

A Exhibit 76. But between the topographic surveys that we received from the surveyors provided and this aerial photograph. There is a driveway with, and it's kind of in the shadow here. And again, I recognize this from both the photograph and being familiar with the topographic surveys. There was some area there for limited parking.

Q Which you just described as a driveway.

A Well, there's a driveway and an area for limited parking.

Q So you're (indiscernible).

A So, the driveway comes from Gilmoure. There's an area here that widens far more than what you would need for the driveway.

Q And that's, and you're referring to, on Exhibit 76, the top left-hand corner of the photograph?

A Correct. Correct. Thank you.

Q And that's what you're describing as a parking lot?

A Yes.

Q Okay. And you don't have any reason to believe that there were 94 patients that visited the dentist's office on any given day, right?

A I'm not aware of the number of patients that the, or --

MS. ROBESON: Okay, Mr. --

MR. SEKERAK: -- the number of his staff.

MS. MEAD: We're not proposing that -- I would imagine they would have a visit from the inspector --

MR. LEIBOWITZ: Were there --

MS. MEAD: -- but we're not, we haven't purported that there were 94 or 120 or 150 patients at the dentist's office every day.

MS. ROBESON: All right.

MR. LEIBOWITZ: They're comparing the dentist's office to the daycare implicitly, and so it's important --

MS. ROBESON: I'm not sure that's the case.

MR. SEKERAK: I can (indiscernible) my next question.

MS. MEAD: I object that we have not compared the dentist's office. We have merely referred to a Master Plan recommendation --

MS. ROBESON: Yes, I --

MS. MEAD: -- regarding the office use.

MS. ROBESON: I agree. I think that -- I'm sorry. One minute.

MR. LEIBOWITZ: Sure.

MS. ROBESON: I don't think that they are comparing, trying to compare the daycare to the dentist's office. I think that they are trying to establish that it's residential in scale, but not necessarily identical to the dentist's office.

BY MR. LEIBOWITZ:

Q Now, you are comparing it to the former Yeshiva, right?

A I am identifying that there was a former daycare and school use in the immediate neighborhood.

Q Do you know when that daycare stopped functioning?

A Exactly when, no. I know the special exception was still in place at the time of the Master Plan.

MS. ROBESON: And when was that?

BY MR. LEIBOWITZ:

Q 1996?

A Yes.

Q But you don't know whether the daycare was functioning in 1996 or not?

A I don't know when the facility stopped operating, correct.

Q Prior to there being a daycare operating on that,

the site of the former Yeshiva, was there -- there was already a school at that location, right?

A Yes.

Q And the daycare operated in the existing buildings of the school, right?

A I am not aware.

Q Okay.

MS. ROBESON: You mean you don't know the --

MR. SEKERAK: I don't know the physical location of the two uses and how they --

MS. ROBESON: Okay.

MR. SEKERAK: -- related to the structures on --

MS. ROBESON: I understand.

MR. SEKERAK: -- on the site at that time.

MS. ROBESON: All right.

MR. SEKERAK: There was a school use and a daycare use approved on that site.

MS. ROBESON: Okay.

BY MR. LEIBOWITZ:

Q But you don't know when either of them was operating in relation to one another or what buildings?

A Only what I can derive from the, within the special exception opinions.

Q Okay. You had mentioned some other -- anecdotally that you knew of some other daycares were, that had fewer

parking spots than the code required, right?

A I referred to that, the Dayhill, I think it -- the most recent approval they do would be the Dayhill. It's the most, most recent and, again, I read the special exception approval.

Q Other than -- I'll come back to that in a second. But other than the Dayhill example, were there other examples that you referred to, or is that the only one?

A I cannot -- I have been aware of it in dealing with site design for daycare centers and reviewing others. I just, I don't remember what specific ones.

Q Okay. Then we're going to confine to just the Dayhill because we, we can --

A Because I cannot cite the others --

Q We can't cite to the other ones, so I don't think it would be fair for me to ask you questions about the other ones.

A Right.

Q The Dayhill example is recent, correct?

A Yes, it is.

Q And so, there isn't any track record yet for us to determine whether or not the reduced number of spaces has caused a problem or not caused a problem yet.

A For the Dayhill? Correct.

Q For Dayhill. Okay.

MS. MEAD: I'll, I just -- just to interject. The case number you had mentioned is actually Goddard. So, I just wanted to correct the record since we keep saying Dayhill. It's --

MS. ROBESON: Is Dayhill not -- Dayhill is in the record, though, right?

MS. MEAD: Dayhill and Goddard.

MR. SEKERAK: Correct. Them both, yes.

MS. MEAD: But Mr. Sekerak had referred to Goddard as far as the parking --

MS. ROBESON: Yes. Okay.

MR. SEKERAK: The parking reduction.

MS. ROBESON: That's fine.

MS. MEAD: So, I just wanted to correct the --

MR. SEKERAK: Right. Yeah. My bad.

MR. LEIBOWITZ: Sure.

MS. MEAD: Correct the name. Sorry.

MR. LEIBOWITZ: So, Goddard is the one with the fewer spaces?

MS. MEAD: Yes.

MR. LEIBOWITZ: Okay. So, your --

MS. MEAD: You're indicating there is no track record.

BY MR. LEIBOWITZ:

Q Okay. So, the answer is the same if we call it --

A Correct.

Q -- Goddard.

A Correct.

Q Okay. Thank you. You cited on page 28 in the Master Plan to demonstrate, I guess, that the proposed site, I guess I don't know what you're saying about it, but on page 28 in the Master Plan, the proposed site is in white, isn't it?

A It's a black and white drawing.

Q Okay. So --

A And --

Q That's --

A So, the proposed site is surrounded with a black line.

Q There are properties that are blacked out.

A All right. I see your point, yes.

Q Correct?

A Yes.

Q And the key at the bottom says commercial zoning?

A Correct. You're referred to another page to see the particulars of those commercial zones.

Q Well, right. So, you specifically cite page 28 and --

A Um-hmm.

Q -- so I'm asking about page 28. So, on this, this

figure, Figure 14 -- I'm sorry, Figure 12, it's just shown as a residential lot.

A It's shown as recommended for the R-60 zone.

Q But it's just shown as a residential lot just like hundreds of other residential lots on this drawing.

A Well, it's a zoning plan, so it -- its land use is not germane to this particular exhibit. There are other exhibits for that. This, this is a zoning plan, so the only thing that we really should derive from this is what the recommended zone is.

Q I'm just asking you about it because you brought it up on direct.

MS. ROBESON: If you can just answer his question. Do you understand the question? Is it -- I think what he's asking, and correct me if I'm wrong, is this zoned residential? Is it shown as for residential zoning on page 28?

MR. SEKERAK: Oh, yes.

BY MR. LEIBOWITZ:

Q Thank you. Now, when you defined the neighborhood, but that exhibit is, I guess, covered up now, but when you defined --

A Should I put it back up?

Q Wait a minute. Sure. And that just tells, that's Exhibit 4 --

A F.

Q F. Okay. Would you agree that there are homes or there are places outside of the defined neighborhood that may be impacted by the neighborhood, by -- by the proposed development that aren't within the defined neighborhood? Did you understand my question? Let me ask it again. Would you agree that there are homes or residents that may be impacted by the proposed developments that are outside of the defined neighborhood?

A Yes. To a lesser degree, but yes, than those inside. Um-hmm.

Q And simply because as you move farther away from the proposed site, the impact is smaller, right?

A Somebody from Indiana might drive by here and --

Q Well, let's talk a little bit closer.

A Okay.

Q Somebody who lives in south Four Corners, those people might be impacted, right?

A Yes.

Q Even if they live outside of the red line?

A Yes. Yes.

Q As, as you've shown on 4(i).

A F.

Q F. And it's somewhat arbitrary, the southwestern -- by southwestern border, do you know which border I'm

referring to?

A Yeah. Because of the diagonal nature of it, I think we were referring to it as the southern border during that, during the testimony.

Q Okay. So, on the southern border, it could go another block further south?

A Some other professional may go further south. The staff -- I went further south than the staff did, but someone could be of a different opinion.

Q Sure. And that wouldn't be an unreasonable position?

A Depends how far south. I'd have to re-analyze that --

Q Sure. To go one block or two blocks wouldn't be --

A Well, I would -- I would, you know, insult the effort to wanting, wanting to define it to say that it's -- I certainly wouldn't call it arbitrary. But I could certainly understand if another professional took it even further south than I have.

MR. LEIBOWITZ: I have no further questions.

MS. ROBESON: Okay. Ms. Mead?

MS. MEAD: You want me to do my rebuttal?

MS. ROBESON: Redirect.

MS. MEAD: Redirect. Sorry. Redirect.

MS. ROBESON: It's been a long day. Right.

MS. MEAD: Yes.

REDIRECT EXAMINATION

BY MS. MEAD:

Q I'll try to go in backwards order so that we are still fresh. You had just noted that to a lesser degree there may be impacts outside the defined neighborhood. Were those impacts necessarily adverse or could you describe what impacts may be to a lesser degree?

A My opinion is that those within the neighborhood are not adverse, so any impacts as you get further removed from the subject property would continue to decrease.

Q Thank you. We had talked about other examples of daycare that had less spaces and discussed Goddard. Were you present for the testimony of the Childway representatives regarding their parking on their sites?

A Yes. Ms. Memon stated her experience operating a number of child daycare facilities over a number of years. It was telling.

Q Were the sites discussed both in residential areas with multi-family homes and in commercial areas?

A Yes.

Q And did her testimony indicate that even in the commercial area, there were still some pedestrians?

A Absolutely. Yes. Even in the context of flex

space, the nearest residents still would walk their children there.

Q With your knowledge of the area surrounding this property, would you, taking that testimony, would you estimate that some neighbors in this neighborhood would walk to the site?

A This is so much more conducive to a parent walking their child to this facility at this location than would be in the, what she referred to as the Burtonsville facility.

Q And does the transportation management plan in this case provide for any followup on parking or any issues that may arise with the case, such as was done with the Goddard case?

A Absolutely. This is not left to chance. It is spelled out in the TMP and by the special exception. Be incorporated into a form signed by the, the folks when they enter into a contract to send their child here. So, again, not left to happenstance in the future, maybe it will maybe it won't. It would be enforced.

Q Thank you. In your land planning report, you had noted in the discussion about the Yeshiva child daycare special exception that had been across the street, did you note in the record -- you had said in your testimony that it was still existing as approved as of the 1996 Master Plan. Did you note in your record when it was revoked?

A No. Well, I noted that it's -- let me quote from it. The formal disposition of the PEI, private educational institute, use approval is not clear due to the former ownership by a parochial school, Yeshiva, parenthetically, and the subsequent acquisition of the site by M-NCPPC for park use. So, I don't know if -- I didn't take the trouble to find out if there is a relocation.

MS. ROBESON: Somewhere I thought I read in the report --

MS. MEAD: Yes.

MS. ROBESON: -- that they did relocate.

MS. MEAD: I'm putting --

MR. SEKERAK: Oh, okay --

MS. ROBESON: No -- okay.

MR. SEKERAK: I'll agree now to that. That was the -- that was the discussion regarding the private educational institution. There was a section in here regarding the, similarly addressing the childcare. And I apologize. I did this research a while back at this point.

MS. ROBESON: It's -- yes. And when was it terminated?

MR. SEKERAK: The Board of Appeals revoked the child daycare special exception use in 2001 due -- due to the use being abandoned. 2001.

MS. ROBESON: So, what you're saying is that

because it was part of the neighborhood when the Master Plan came out, the Master Plan found that daycares were compatible with the neighborhood? Is that what you're saying?

MR. SEKERAK: Appropriate -- I'm trying to recall. Yeah, that the -- the reintroduction of the school would be appropriate for the Yeshiva site.

MS. ROBESON: Ms. Martin --

MR. SEKERAK: And I'll quote from page 25. The property owner may rebuild a school on this site --

MR. LEIBOWITZ: I object to the --

MS. ROBESON: Mrs. Mead --

MS. MEAD: He was just saying he didn't remember the exact language.

MS. ROBESON: I know. But --

MS. MEAD: Okay.

MS. ROBESON: -- you know, he can say he doesn't remember. You don't have to keep prattling along.

MR. SEKERAK: Or I'd be happy to --

BY MS. MEAD:

Q (Indiscernible) just answer my question.

A I'll be happy to go through, to the trouble of, if you'd like to --

MS. ROBESON: No, I just --

MR. SEKERAK: I can find it in my own copy of the

Master Plan --

MS. ROBESON: No. I just --

MR. SEKERAK: Okay.

MS. ROBESON: That's fine.

BY MS. MEAD:

Q You had mentioned that the lighting poles on this site were twelve feet instead of the typical height of light poles. Could you explain what the typical height of a light pole would be --

A Well --

Q -- for daycare use or for --

A Well it certainly, you know, commercial use, such as the Safeway thing, those are probably 30-foot poles, for example.

Q Thank you. You had testified that there is no daycares in the -- in your defined neighborhood, was there any daycares in the staff-defined neighborhood as well --

A I --

Q -- to your knowledge?

A To my knowledge, I don't recall them identifying any.

Q And in your testimony, in the rebuttal, the discussion regarding your calling daycare an attribute to the site, to your knowledge, does the Master Plan have any recommendations regarding daycares being attributes in a

neighborhood setting?

A Absolutely. I think the quote is building block, one of the building blocks of a, you know, vibrant, full neighborhood setting and community. And there are other references in the Master Plan in addition to that, that one where it recognized that residential neighborhoods are not made up entirely of single-family, detached residences. They did recognize many of the other services. And it, again, specifically called out daycare as one of those contributing elements to a good neighborhood.

Q Thank you. And is that contained in your land use report as well as far as the specific --

A Absolutely.

Q -- Master Plan references?

A Um-hmm.

Q Thank you. And you had noted that there are no apartment buildings in the defined neighborhood. But would your testimony be that there would, users for this daycare use that would come from outside the red boundary?

A I certainly hope so. By, not only by vehicle, but there are many residents within walking distance.

Q Thank you. And there had been discussion about the minimum size of an R-60 lot being 6,000. Could you remind us what the size of this site, which has been zoned R-60, as noted in the plan, before the plan and after the

1996 plan, what the size of this R-60 zone lot is?

A This R-60 zone lot, and it's a recorded lot in land records, is 37,987 square feet.

Q And you had noted in the development table and in discussion in rebuttal as far as the size and the coverage, could you note what the building coverage is for this site compared to what is permitted for a house that would be on this size lot?

A The --

MR. LEIBOWITZ: Objection. Isn't this just a rehash of the direct?

MS. MEAD: This is answering your questions. You had talked about the coverage and the size of the home.

MS. ROBESON: Well, to the extent he's going back through his report, I have read -- we don't need to repeat what's already in his report.

MS. MEAD: It goes to the footprint, which was discussed at length. I mean, footprint is coverage.

MS. ROBESON: Oh. Okay.

MS. MEAD: It's just a more R-60 zone standard type word for footprint of a home. There's a standard regarding what your buildable footprint can be on an R-60 lot.

MS. ROBESON: Well, he already testified that it's in compliance with the standards of the R-60 zone. I think

he did. Correct?

MS. MEAD: But this was, the questions were in comparison to the other lots in the neighborhood, which is what my redirect is --

MS. ROBESON: Okay.

MR. SEKERAK: This has considerably less coverage than what could, is, could be done with single-family homes on this lot or percentage of the other lots in the area. 35 percent is allowed. This is under 15 percent.

MS. ROBESON: Okay. And that, but that's building coverage, right? It doesn't include --

MR. SEKERAK: Correct.

MS. ROBESON: -- impervious area.

MR. SEKERAK: The definition is coverage for the purposes of --

MS. ROBESON: Okay. Just checking.

MR. SEKERAK: -- that standard is for the building.

MS. ROBESON: I understand.

BY MS. MEAD:

Q And if the staff report on the same page 9 that Mr. Leibowitz was talking from noted a 16 to 17 percent coverage footprint and lot coverage, could you describe what our building coverage is?

MR. LEIBOWITZ: Object. The applicant objected to

my use of this testimony, my use of the statistics from the report. So, how can they then ask questions --

MS. ROBESON: I don't recall them -- what are you getting at, Ms. Mead?

MS. MEAD: Just the average footprint of the homes in the community versus the average percentage of footprint of our building.

MS. ROBESON: And, but we already established, he answered what -- ask your question, and then -- he already established that he didn't know if 1,295 or 1,296, whatever it is, is the actual footprint. So, are you trying to get him to say that or --

MS. MEAD: No. This is percentages of homes, this is an R-60 zone lot which has a certain footprint or coverage. There's been testimony that the structure is larger than the other homes, but this goes to this lot, the size of the structure.

MS. ROBESON: So, you're looking at percentages rather than actual square footage.

MS. MEAD: Correct.

MS. ROBESON: Okay. Go ahead.

MR. LEIBOWITZ: But he answered on cross, I can't answer that because I don't have the information, et cetera.

MS. ROBESON: Well, that's something that goes to his credibility. I mean, he can answer. When you asked

him, he didn't know. And she -- so I am going to allow it in. Go ahead.

BY MS. MEAD:

Q So if --

A I --

Q Assuming that the --

A I do not know --

Q -- the staff report is --

A I do not know the coverages for the individual lots within the neighborhood. However, it's obvious, you know, the size of those lots, the size of the homes on there, their coverage would be much higher than our 15 percent, the coverage that we have on our property.

Q And what is the maximum coverage we could have, whether this was a daycare or if this was a single-family home?

A 35 percent.

Q Thank you.

MS. ROBESON: And how big would -- if it were 35 percent, how big would that building be?

MR. SEKERAK: Really big.

MS. ROBESON: So, are you saying that if I used percentages, that makes it compatible with other --

MR. SEKERAK: That it is proportional. Again, daycare centers are inherently --

MS. ROBESON: Big.

MR. SEKERAK: -- in a larger structure than a typical single-family home. It's an inherent characteristic of the use. So, to compare this structure with a structure next door is -- doesn't inform the decision makers. Proportionately, yeah, I would -- because we are larger. We are larger than the single-family, detached house next door. But proportionately to -- we're also on a much larger lot. So the -- and distance. And set back from street. So, you've got to take that area of the inherently larger structure and put it in context spatially.

MS. ROBESON: Well, I just, I guess my question is how big would it be, if it's 35 percent, if the footprint is 35 percent of the lot, would that structure be compatible -- in your opinion would that structure be compatible with the other houses in the zone?

MR. SEKERAK: In my opinion, it would be very difficult to have architectural treatments, landscape treatments, et cetera, the design solutions of making a building that size compatible. It would be very difficult. But you can't -- I mean, compatibility is not a numerical exercise. There are design solutions, such as what Jane has -- Ms. Nelson has done with the site and we've done with the landscape treatments and the setbacks are. It's just not a plug into a calculator and, boom, it's compatible. You've

got to consider the whole context, and I think that's what the question is going to.

MS. ROBESON: I'm sorry, Ms. Mead, but --

MS. MEAD: Oh, thank you.

MS. ROBESON: -- continue.

BY MS. MEAD:

Q And Mr. Sekerak, you noted that the footprint of the daycares are inherently larger. Do they have second stories?

A Almost --

Q To your knowledge?

A To my knowledge, no. I'm having trouble thinking -- it would not be impossible. And maybe in a CDD, type of urban context -- I just can't think of any daycare centers more than one story. So, it would be, it does seem to be an inherent characteristic of the use.

MS. ROBESON: Well, I guess it's -- it's really the scale issue, isn't it? I mean, and if -- we can all say they are inherently larger. I guess the question is what's the scale. How large is too large?

MR. SEKERAK: But since we're, we seem to be fixating on the footprint, it is important to note that going multi-story is really not a practical thing. So when the counsel said that, you know, this is a permitted use, special exception use in a residential zone, and they are

inherently larger, yes, that means it will have a larger footprint.

MS. ROBESON: Okay. It has a -- right. I understand what you're saying. I guess what I'm trying to get at is, say for whatever reason, I haven't read those opinions, so I'm just accepting your testimony as true that one story requires daycare to be larger, have a larger footprint.

MR. SEKERAK: Footprint. Right. It's inherently larger, regardless.

MS. ROBESON: That's right. But I think, the questions in the case go down to scale. It's inherently larger, but how much larger? You could do anything, and that's -- that's what I'm getting at. You could do anything on this site from 50 children to, you know -- so I guess the question is at what point does it become incompatible? Do you follow what I'm saying?

MR. SEKERAK: Yes. And again, it's not a computation. It's the context, the design, treatments. A poorly designed building of this size maybe incompatible. But this building of this size, with those architectural treatments, the setbacks, the proximity to transportation corridors, streets, landscape treatments, fences, you know --

MS. ROBESON: Okay.

MR. SEKERAK: The list goes on and on, as we've spent our day --

MS. ROBESON: Okay. I understand your point.

MR. SEKERAK: -- and it's my professional opinion that this is easily compatible. And certainly when you consider it in context with these recent decisions.

MS. ROBESON: Okay. I understand your point.

BY MS. MEAD:

Q Thank you. And a question had been asked regarding the size of the parking lot. Is the parking area proposed, is it smaller than what would be proposed if we were providing 34 parking spaces on the site?

A Yes. Yes. So, the attribute, parking reduction is less impervious area, more ability for landscape treatments. So, yes, it's an efficient parking lot, simply formed, efficiently done, and it's certainly smaller than the parking lot right across the street from there.

Q Thank you. The language Mr. Leibowitz had read from page 26 of the Master Plan noted that residential neighborhoods immediately adjacent to Four Corners commercial district are particularly vulnerable to encroachment of non-residential uses, as are single-family homes along major highways. Was this -- did this property have a non-residential use at the time of the Master Plan?

A Yes, it did.

Q Would that be considered an encroachment?

A No. It would be a different use going from office to daycare, as a service, daycare would be a different use. But no further encroachment.

Q And the same Master Plan that discouraged special exceptions in residential areas immediately adjacent to the commercial district, did it find that it would be appropriate for a daycare use in this vicinity?

A Yes. Yes. Being the Yeshiva School right across the street.

Q And if we step back, if we did assume that we were in a residential area immediately adjacent to the commercial district, does the Master Plan language, and Mr. Leibowitz didn't read in that same paragraph, does it preclude special exception uses?

A No. It certainly allows them if -- with -- I'll --

Q You can read from your report plan if --

A Yeah. Page 26. It says using existing structure or new buildings that are residential in character and scale.

Q And does it also address whether special exception uses are precluded in areas adjacent to the commercial district?

A Special exception review should continue to pay

particular attention to the number, type, intensity of existing special exceptions as currently provided in the Zoning Ordinance. Got common elements of -- of the recommendation of the Master Plan, and obviously also included in the Zoning Ordinance that part of the findings are not to have a proliferation or over-saturation or over-concentration of special exception uses.

Q And to your knowledge, did the Planning Board find that there was a prohibition on special exception use on this property?

A No. No. Their concern was the intensity of the use. They disagreed with staff who -- they had indicated that there was, that there was no prohibition of special exception uses on this property. So we -- so that's why we addressed their concerns of the scale.

Q Thanks. I just have one, last question. With regards to the, being a block away from the commercial district, could you, using the exhibits, could you describe the other blocks in the neighborhood, as opposed to this 500-foot block?

MR. LEIBOWITZ: I'm not sure I understood the question.

MS. ROBESON: Well, let's see if he did, to be fair.

MR. SEKERAK: There's a number of street grids

along here. We've got some very long and narrow blocks. So, the cadence of blocks can be anywhere from 200 -- from center of road to center of road, 225 feet to over a thousand feet in length. So blocks are -- blocks are varying size, scale, length.

BY MS. MEAD:

Q What is the typical east-west block, similar to the block of Lorain and Brunett Avenue that Mr. Leibowitz had you --

A The Lorain to Brunett is 650 feet. The Brunett to Dennis is 1,500 feet. And that's it -

Q And what about in the residential neighborhood that you've been describing?

A Not along University?

Q Right. The other blocks that are --

A Well, for instance, along Harding. Those blocks are, you know, again, about that 225 feet cadence.

Q So there are varying block sizes within the neighborhood that --

A Very much so.

Q -- you described?

A Yes. North-south, there are some very long blocks.

MS. MEAD: Thank you. I have no further questions.

MS. ROBESON: Okay. Mr. Leibowitz, do you have any questions for, solely based on my questions?

MR. LEIBOWITZ: No.

MS. ROBESON: Okay. Then what we're going to do is, we are going -- a couple of housekeeping items. We are going to get -- still outstanding is a supplemental staff report based on the revised plan. That, I believe that may come next week, but I can't guarantee it. So, I'm just telling you so you can continue to check the file and make sure that you know when it came in. And we are going to continue this case with Mr. Kay's cross-examination, correct?

MR. LEIBOWITZ: Yes.

MS. ROBESON: And so we're going to continue this case to June 20th at 9:30. Any other housekeeping matters?

MS. MEAD: And we will submit the --

MS. ROBESON: The two decisions.

MS. MEAD: -- the summaries and the decisions --

MS. ROBESON: And the summaries.

MS. MEAD: -- of --

MS. ROBESON: Yeah, the two special exception decisions and the summaries supporting Mr. Kay's real estate summary.

MS. MEAD: Right. I have a copy of those two right now for, and one of them for Mr. Leibowitz, and we'll

forward the other two more recent ones mentioned for the record, mentioned in Mr. Sekerak's testimony as well.

MS. ROBESON: Okay. Anything else, Mr. Leibowitz?

MR. LEIBOWITZ: I don't think. I just want to clarify, so this --

MS. MEAD: YMCA, Kensington Nursery, the ones referred to in Mr. Kay's testimony just to talk about --

MR. LEIBOWITZ: And then there were --

MS. MEAD: -- tables.

MR. LEIBOWITZ: And then there were the two decisions that we just talked about --

MS. MEAD: Yes, I --

MR. LEIBOWITZ: The Goddard --

MS. MEAD: I don't have copies of --

MR. SEKERAK: Goddard and Dayhill.

MS. MEAD: -- of them to --

MS. ROBESON: Goddard and Dayhill?

MR. LEIBOWITZ: Dayhill. That's what, that's outstanding.

MS. MEAD: Yes. I will get you -- I don't have additional copies of those. They are very recent. They are very fresh. They are online, and I can get them to you immediately.

MS. ROBESON: Okay. So, we will continue this case to Monday, June 20th at 9:30, and we are adjourned.

(Whereupon, at 5:39 p.m., the hearing was concluded.)

MR

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 Gilmoure-Brunett, LLC

Special Exception No. S-2781

OZAH Case No. 11-05

By:

Mary Rettig

Mary Rettig, Transcriber