

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF LAYHILL LEARNING : Case No.: S-2857
CENTER, INC., D/B/A ABC LEARNING :
CENTER :
:
-----X

A hearing in the above-entitled matter was held on
February 1, 2013, commencing at 9:36 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Lutz Alexander Prager, Hearing Examiner

A P P E A R A N C E S

ON BEHALF OF THE APPLICANT:

Rebecca Danielle Walker, Esq.
Miles & Stockbridge, P.C.
11 North Washington Street, Suite 700
Rockville, Maryland 20850-4229

ON BEHALF OF THE GREATER COLESVILLE CITIZENS ASSOCIATION:

Dan Wilhelm, President
904 Cannon Road
Silver Spring, Maryland 20904

WITNESSES:

Rebecca E. Schreiber, in support 16-20
11735 Lovejoy Street
Silver Spring, Maryland 20902

Keisha Hines-Harris, in support 21-26
1531 Heather Hollow Circle
Silver Spring, Maryland 20904

Alam Degefa, in support 27-30
14947 Dinsdale Drive
Silver Spring, Maryland 20906

Leslie Powell, Expert in Land Planning & Landscape 31-120
Engineering
Charles P. Johnson & Associates
1751 Elton Road
Silver Spring, Maryland 20903

Mike Lenhart, Expert in Transportation Planning & 121-211
Traffic Engineering
Lenhart Traffic Consulting
331 Redwood Grove Court
Millersville, Maryland 21108

Norman Howell, Expert in Residential Architecture 214-263
5801 Nixon Lane, Suite 1033
North Bethesda, Maryland 20852

ALSO PRESENT:

Monika Mahabare, Applicant
Janet MacNab
Ronald MacNab
Juan Rufino
D. Wasantha Kolasinghu

E X H I B I T S

		Marked	Received
Exhibit No. 5A	Enlarged Elevations	213	--
Exhibit No. 5B	Floor Plans	217	--
Exhibit No. 5C	Floor Plans and Chart	218	--

E X H I B I T S (Continued)

		Marked	Received
Exhibit No. 44	Rendered version of Ex. 22H	11	--
Exhibit No. 45	Affidavit of Posting	30	--
Exhibit No. 46	Aerial Photographs	39	--
Exhibit No. 47	Alternative Parking Layout	65	--
Exhibit No. 48	Rendered Zoning Vicinity Map	54	54
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Exhibit No. 50B	Photos of Intersection	136	--

P R O C E E D I N G S

1 MR. PRAGER: Good morning. This is a hearing of
2 the petition by Layhill Learning Center doing business as ABC
3 Learning Center for a special exception to allow it to
4 expand an existing child daycare center at 170 Randolph Road
5 in Silver Spring to care for up to 62 children with a staff
6 of 11. Currently, Layhill is allowed to have up to 30
7 children and staff of six. The petition has been given the
8 number S-2857. Layhill also requests a waiver of the 24-
9 foot setback requirement for parking that would allow it to
10 add parking spaces that are only 12 feet from the eastern
11 property line.

12 Under the Montgomery County Zoning Ordinance,
13 petitions to operate child daycare facilities for more than
14 eight children must meet certain standards and must receive
15 a hearing such as this where the applicant must show the
16 proposed use satisfies all applicable zoning standards.

17 I'm Lutz Alexander Prager, the Hearing Examiner
18 assigned responsibility for conducting this hearing and
19 making recommendations to the Board of Appeals as to whether
20 the petition and setback waiver should be granted and if so,
21 under what conditions, if any. This will be the only
22 opportunity that Layhill and its opponents have to create
23 the factual record that will guide my recommendation and
24 that will be before the Board when it makes its decision.

1 Since the petition was filed last July, 11 letters
2 have been filed urging denial of the petition including one
3 by the Greater Colesville Citizens Association. Two of the
4 letters combined have, two of the letters in opposition have
5 a combined number -- let me start all over again. Two of
6 the letters of opposition combined have 56 signatories by my
7 count. Fifteen letters have also been received in support
8 of the petition.

9 Both the Montgomery County Planning Commission and
10 the staff for the Montgomery County Planning Department have
11 recommended authorizing the special exception subject to
12 certain conditions. They also recommended that the setback
13 waiver be granted.

14 Now, having said all that, I ask the parties to
15 identify themselves. When you do, please speak loudly
16 because the proceeding is being recorded. First, Layhill is
17 represented by Counsel. Counsel, please stand and identify
18 yourself.

19 MS. WALKER: Good morning. My name is Rebecca
20 Walker. I'm at the law firm of Miles & Stockbridge. I'm
21 representing the applicant, Layhill Learning Center doing
22 business as ABC Learning Center. To my right is Monika
23 Mahabare, who is the applicant, and to my left is our land
24 planner, Les Powell.

25 MR. PRAGER: All right. And are all of your

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1 witnesses here?
2 MS. WALKER: Yes, they are.
3 MR. PRAGER: Is there anyone in opposition to, to
4 the granting of this petition? Yes. Please identify
5 yourself.
6 MR. WILHELM: Yes. My name is Dan Wilhelm. I'm
7 President of the Greater Colesville Citizens Association.
8 MR. PRAGER: All right. And what is your address,
9 please?
10 MR. WILHELM: I live at 904 Cannon Road which is
11 south of the post office if you know the area.
12 MR. PRAGER: All right. Have a seat, please.
13 Yes, please.
14 MS. MacNAB: I'm Janet DeLac MacNab.
15 MR. PRAGER: Come closer because, make sure that
16 we can hear you.
17 MS. MacNAB: I'm Janet DeLac MacNab and I live in
18 Meadowood and I live three blocks from where the daycare
19 center is going to be.
20 MR. PRAGER: All right. And would you spell your
21 last name, please?
22 MS. MacNAB: It's M-A-C-N-A-B.
23 MR. PRAGER: Okay. Is there anyone else in
24 opposition? All right. The Layhill Corporation, as the
25 petitioner, bears the burden of proof. That means that the

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1 corporation must show by a preponderance of the evidence
2 that the expanded operation satisfies all relevant standards
3 of the Zoning Ordinance.
4 It must also show that the waiver of the parking
5 setback will not adversely affect the, quote, health, safety
6 and welfare of those who use any adjoining land or public
7 road that abuts the parking facility. Among the
8 considerations as to whether or not it will adversely affect
9 the health and safety and welfare are noise, lighting and
10 glare, automobile fumes and safety within the parking area.
11 This proceeding is governed by the rules of
12 procedure in the Zoning Ordinance as supplemented by the
13 procedural rules adopted by the Board of Appeals and by the
14 Office of Zoning and Administrative Hearings. We're going
15 to proceed sequentially but first, I want to ask if there
16 are any objections or procedural objections, legal
17 objections or procedural objections to this case going
18 forward.
19 MS. WALKER: None for the applicant.
20 MR. WILHELM: None here.
21 MR. PRAGER: All right. Ms. MacNab? All right.
22 So there are no objections. First, then after that, Layhill
23 will be permitted to make its factual presentation to meet
24 its burden of proof. All testimony will be under oath and
25 subject to the penalty of perjury.

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1 When counsel for Layhill finishes questioning each
2 of its witnesses, I'll provide an opportunity for each
3 opponent to cross-examine. Cross-examination means
4 witnesses to the, questions to the witnesses, not speeches
5 about the merits of the project. In order to avoid
6 repetition and confusion, I'll designate the representative
7 of the Greater Colesville Citizens Association to be the
8 prime questioner but, Ms. MacNab, you will also have an
9 opportunity to question after Mr. Wilhelm finishes.
10 I can, I may also question the witnesses whenever
11 I believe that there are matters that I think require
12 elaboration. My questions will not necessarily indicate
13 what I believe the merits of the testimony to be.
14 After Layhill has finished presenting its case,
15 each opponent will have an opportunity to testify as to why
16 the petition and/or the waiver of the setback requirement
17 should be denied in whole or in part. You will also have
18 the opportunity to recommend conditions if you wish. Anyone
19 testifying will be subject to cross-examination by counsel
20 for Layhill's attorney. I may also ask questions. After
21 all opponents have finished testifying, Layhill is entitled
22 to present a rebuttal case addressing issues raised by the
23 witnesses. If it does, Layhill's witnesses will again be
24 subject to cross-examination. There may also be an
25 opportunity for surrebuttal by the opponents if necessary.

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1 Even though these administrative procedures are
2 informal, I frown on leading questions on direct
3 examination, and that includes leading questions of experts.
4 I may interrupt the questioning to require questions to be
5 reformulated. I will not allow repetitious questioning or
6 testimony or badgering the witnesses. With that, having
7 read all that, we're ready to proceed. Ms. Walker?
8 MS. WALKER: Good morning. If I could just
9 briefly --
10 MR. PRAGER: You may stay seated at counsel table.
11 MS. WALKER: Okay. I was actually going to refer
12 to some of the exhibits in my opening if that's okay just to
13 show what we intend to prove.
14 MR. PRAGER: All right. Have a seat. We'll go
15 off the record for a moment.
16 (Discussion off the record.)
17 MR. PRAGER: Ms. Walker, please proceed.
18 MS. WALKER: Thank you. Good morning again.
19 Rebecca Walker with the law firm of Miles & Stockbridge
20 representing the applicant which are the operators of
21 Layhill Learning Center doing business as ABC Learning
22 Center which is located at 170 Randolph Road in Silver
23 Spring. There is a previous special exception that was
24 approved for ABC Learning Center. That was approved in 2002
25 by the Zoning Hearing Examiner to operate a center for 30

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1 children or fewer.
2 We are here before you today to request
3 permission, in essence, to expand the existing childcare
4 facility from 30 children in attendance at one time to 62
5 children with the corresponding increase in staff for the
6 six present staff to 11, inclusive of the director of the
7 center. This application to expand the existing center is,
8 pursuant to the Zoning Ordinance, is treated as a new
9 special exception application despite the fact that it's
10 existing and that it does have a current special exception
11 approval.
12 The proposal to enlarge the facility results in no
13 exterior changes to the outside of the existing one-family
14 dwelling that's currently located on the property at 170
15 Randolph Road. Rather, all of the changes are to the
16 interior of the structure which will include reconfiguration
17 of the main floor and basement facilities to essentially
18 create an open plan. You'll hear our testify, our architect
19 testify to that, that there will rooming and walls,
20 reconfiguring some mechanical equipment within the basement
21 in order to create a more open space for the children.
22 The modifications also include redesigning of the
23 existing parking facility to add 11 more parking spaces, and
24 just referencing our Exhibit SP-1, this is a rendered
25 version of what is already in evidence and this, and I'll

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1 mark it for the Examiner if you would like as a new exhibit
2 since it is rendered.
3 MR. PRAGER: Before you do that --
4 MS. WALKER: Yes.
5 MR. PRAGER: -- could you tell me what exhibit
6 number it was given in the exhibit list?
7 MS. WALKER: Yes.
8 MR. PRAGER: Which I assume you have a copy of.
9 MS. WALKER: Yes, I do. Thank you. Just bear
10 with me one moment while I locate it. This is Exhibit 22H
11 which is listed as existing conditions and proposed site
12 plan. And if the Examiner will permit, I will mark the
13 rendered version of this as Exhibit 44. Would you like me
14 to physically mark it on the exhibit?
15 MR. PRAGER: No. That will be marked. You can,
16 you can pencil it in.
17 MS. WALKER: I have a pen, is that all right?
18 I'll just write it very small.
19 (Exhibit No. 44 was marked
20 for identification.)
21 MS. WALKER: Thank you.
22 MR. PRAGER: And will you provide a second copy of
23 that to the Office of Zoning and Administrative Hearings?
24 MS. WALKER: Yes. We'll provide an electronic
25 copy as well as a physical hard copy to the office --

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1 MR. PRAGER: Two.
2 MS. WALKER: -- for your use.
3 MR. PRAGER: Two copies.
4 MS. WALKER: Yes. Absolutely. The existing
5 parking facility setback, which is shown, the existing
6 parking facility I should say is shown in front of the gray
7 shaded area on what I am pointing to you as Exhibit 44, and
8 the existing parking facility is set back from the side
9 yard, again, from the adjoining lot with part of lot 1 which
10 is owned by Mr. Manning who submitted a letter to the record
11 in this matter in support of the special exception proposal
12 and in support of the parking waiver being requested.
13 The parking waiver is currently set back 12 feet
14 from that common side yard with Mr. Manning's property. At
15 the time that this was originally approved in 2002, that was
16 the necessary setback for the side yard for a parking
17 facility. Since the initial approval of this application,
18 that side yard has been changed in the Zoning Ordinance to
19 now require twice the side yard setback which is now 24 feet
20 instead of the original 12.
21 Part of this application is to request a parking
22 waiver for this side yard to allow what is the existing
23 parking facility to remain. The waiver, which only deals
24 with the side yard again, is only for really four spaces
25 that are located in the side yard. The remainder of the

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1 parking that's proposed is located in the rear yard of the
2 property, and those would be parking setbacks that are
3 required.
4 As you know, Park and Planning's Commission Staff,
5 as well as the Planning Board, reviewed the application and
6 the Board recommended, unanimously, approval of the special
7 exception. We believe that the expansion of the daycare
8 center to accommodate additional children will be an asset
9 to this community. The current operator maintains a wait
10 list for children to enter her facility and these parents
11 are eager to bring their children to this center, and many
12 of those parents include parents who have children already
13 enrolled so there are siblings that are waiting to try to
14 get a spot at this facility.
15 With regard to the law on special exceptions,
16 we're still under the Schultz v. Pritts and I would urge the
17 Hearing Examiner to note the language that says that we now
18 hold the appropriate standard to be used in determining
19 whether a requested special exception use would have an
20 adverse effect and therefore, should be denied is whether
21 there are facts and circumstances that show that the
22 particular use proposed at the particular location proposed
23 would have any adverse effects above and beyond those
24 inherently associated with such a special exception
25 irrespective of its location within the zone.

1 Again, looking at non-inherent versus inherent
2 adverse effects, and we submit that this application, which
3 we will prove to you today, does not have any non-inherent
4 adverse effects but simply has what I'll call the normal
5 ones as far as parents picking up and dropping off children,
6 staff coming and going and the like. We submit that the
7 request for a daycare center for more than 30 children,
8 which is how the Zoning Ordinance phrases it, in this case,
9 62, at this location does not present any of the non-
10 inherent adverse effects and we hope that you will agree and
11 recommend approval of the application.

12 Just as a procedural matter, we do have several
13 parents who have their children in attendance at the center
14 who have come to offer their support to the application but
15 many of them do need to get to work. Some of them have
16 submitted letters into the record already, so I'm not sure
17 if the Hearing Examiner would be willing to entertain our
18 request to take them out of turn or if there would be any
19 opposition to that so that these folks can say what they
20 need to say and then be able to be dismissed to go to work
21 for today.

22 MR. PRAGER: Well, you're presenting your case so
23 you can present your witnesses in any order you wish.

24 MS. WALKER: Okay. Well, these are not witnesses
25 that I'm calling.

1 MR. PRAGER: Well, you're either --

2 MS. WALKER: But they're --

3 MR. PRAGER: You're either calling them or you're
4 not calling them.

5 MS. WALKER: Okay. We'll call them. That's fine.

6 MR. PRAGER: If you're not calling them, then
7 they're not going to testify.

8 MS. WALKER: Okay. We'll call them then as part
9 of our case in chief. That's not a problem. If I could
10 first call Rebecca, I believe it's Schreiber?

11 MS. SCHREIBER: Uh-huh.

12 MS. WALKER: And actually, if the Hearing
13 Examiner, do you want to swear the witnesses in prior to?

14 MR. PRAGER: They'll be sworn in individually.

15 MS. WALKER: Okay.

16 MR. PRAGER: All right. Would you take a seat up
17 here?

18 (Witness sworn.)

19 MR. PRAGER: Would you please state your full name
20 and your address?

21 THE WITNESS: Rebecca Esther Schreiber, 11735
22 Lovejoy Street, Silver Spring, Maryland 20902.

23 MR. PRAGER: And, Ms. Schreiber, would you spell
24 your last name?

25 THE WITNESS: Certainly. S-C-H-R-E-I-B as in boy

1 E-R.

2 MR. PRAGER: All right. Ms. Schreiber? Ms.
3 Walker?

4 MS. WALKER: Yes, thank you.

5 DIRECT EXAMINATION

6 BY MS. WALKER:

7 Q Thank you, Ms. Schreiber, for coming in today. I
8 just wanted to give you the opportunity, I understand you're
9 here to make some statements with regard to ABC daycare.

10 A Uh-huh.

11 Q Do you currently have a child who is enrolled at
12 the center?

13 A I don't. Our two-year-old, we just moved over in
14 September to another facility just because we're Orthodox
15 Jews and it's an Orthodox Jewish program so.

16 Q Okay.

17 A And I could have moved him earlier but I chose to
18 keep him there as long as I could because he was having such
19 a good time.

20 Q Okay. So he was previously enrolled as --

21 A Yes. As was our --

22 Q -- a student at the center.

23 A -- older child.

24 Q Okay. All right. Excellent. And have you had a
25 good experience with this daycare center?

1 A We've had an excellent experience. And there's
2 one thing that I particularly wanted to note is actually,
3 right before we were moving our two-year-old, not only have
4 they had such quality positive experiences and safe
5 experiences there, I think it was just a few days before we
6 were planning on moving him over, we had given our two-year-
7 old something we didn't know he was allergic to that morning
8 at breakfast and he actually had an anaphylactic shock. He
9 went into anaphylactic shock at the daycare and they saved
10 his life. They took their experience and their judgment and
11 they did what they needed to do, and they administered some
12 medication and they called an ambulance and by the time the
13 ambulance got there, they didn't actually have to do
14 anything to him. So that's, that's the experience I am
15 taking away from this.

16 And I'm actually expecting another child in July
17 and my plan is to have them there as well because we just
18 feel so good, and we've had, we've recommended it to friends
19 and we have other members in our community who have also
20 sent their children there, who are there now who are having
21 very positive experiences. So we're hoping that the ABC
22 Learning Center will become more of a fixture in our
23 community.

24 Q And have you had the opportunity to drop off
25 and/or pick up your children from the center --

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1 A Yes.

2 Q -- in the time that they were there?

3 A Uh-huh.

4 Q And have you had any issues or safety concerns

5 with regard to doing so?

6 A No.

7 Q Any issues with regard to availability of parking

8 at the time of pick-up or drop-off?

9 A There are busy times. It gets congested but

10 there's always a spot and it's never unsafe.

11 Q Okay. Wonderful. That's all the questions I have

12 for this witness.

13 MR. PRAGER: Mr. Wilhelm?

14 MR. WILHELM: I have no questions.

15 MR. PRAGER: Ms. MacNab?

16 MS. MACNAB: No.

17 MR. PRAGER: I have a question. I have several

18 questions. First of all, how far do you live away from the,

19 from the center?

20 THE WITNESS: I'm not sure distance-wise. It's

21 about an eight minute drive. You go up Kemp Mill Road and

22 then make a left onto Hermleigh, so it's physically not far.

23 It's more a matter of driving the roads.

24 MR. PRAGER: But you don't live in the immediate

25 community, is that correct?

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1 THE WITNESS: I guess -- I live in the adjoining

2 zip code. I live in 20902. They're 20904.

3 MR. PRAGER: All right. And do you have a

4 contract with, with the daycare as to when you may pick up,

5 when you may bring your child and when you may pick it up?

6 THE WITNESS: We arrange for a certain number of

7 hours per day, like a certain schedule that the child will

8 be at daycare, so we drop them off anywhere from that time.

9 I believe it starts at like 7:30 in the morning, we can go

10 until 6:00 at night, so we usually tend to drop off around

11 7:30 and pick up around 5:00. So we have --

12 MR. PRAGER: I understand. My question was do you

13 have a contract which specifies what time of the day you may

14 bring your child to the daycare center and what time of day

15 you may pick up the child?

16 THE WITNESS: I'm not sure how to answer.

17 They're --

18 MR. PRAGER: Well, you either have the contract or

19 you don't.

20 THE WITNESS: I guess I would say not.

21 MR. PRAGER: All right. Thank you. And how many

22 years have you been at the daycare, has your child been at

23 the daycare center?

24 THE WITNESS: Our two children were at the daycare

25 cumulative three years.

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1 MR. PRAGER: All right. And when, I didn't quite

2 understand though you may have already testified as to this,

3 when did you remove your child from the daycare center?

4 THE WITNESS: Just in September. This past

5 September.

6 MR. PRAGER: All right. Thank you. Ms. Walker?

7 MS. WALKER: Nothing further.

8 MR. PRAGER: All right. You're excused.

9 THE WITNESS: Thank you.

10 MR. PRAGER: Thank you.

11 MS. WALKER: I could call my next witness?

12 MR. PRAGER: Yes, please.

13 MS. WALKER: That will be Ms. Keisha, I hope I'm

14 pronouncing this right, Harris.

15 MS. HINES-HARRIS: Yes. That's right.

16 MS. WALKER: Great. Can you please take a seat?

17 MR. PRAGER: Would you please raise your, your

18 hand?

19 (Witness sworn.)

20 MR. PRAGER: Would you please state your full

21 name?

22 THE WITNESS: Keisha Nicole Hines-Harris. Keisha

23 Nicole Hines-Harris.

24 MR. PRAGER: All right. Would you spell your last

25 name?

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1 THE WITNESS: Hines-Harris, H-I-N-E-S dash Harris,

2 H-A-R-R-I-S.

3 MR. PRAGER: And what's your address, please?

4 THE WITNESS: 1531 Heather Hollow Circle, Silver

5 Spring, Maryland 20904.

6 MR. PRAGER: MS. Walker?

7 DIRECT EXAMINATION

8 BY MS. WALKER:

9 Q Thank you, Ms. Harris, for being here today.

10 A Welcome.

11 Q I just have a few questions.

12 MS. WALKER: And actually, just as a procedural

13 matter, I just wanted to let the record reflect that Ms.

14 Hines-Harris has submitted a letter in support. It's

15 Exhibit 43B in the Hearing Examiner files.

16 BY MS. WALKER:

17 Q So I will just ask did you indeed submit that

18 letter --

19 A Yes.

20 Q -- to the Office of Zoning and Administrative

21 Hearings?

22 A I did.

23 Q And why are you here today?

24 A I'm in here in support of ABC Learning Center. I

25 have two children that currently attend the center and when

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1 I was told by Ms. Monika that they were trying to expand and
2 improve, I was all for that because I really, we've enjoyed
3 it thus far with both our kids attending the center.
4 Q And when did you, when was your first child
5 enrolled? How long have you --
6 A Both the kids were enrolled at the same time in
7 August of 2012.
8 Q And are you aware as to whether or not you have a
9 contract with the learning center?
10 A We do.
11 Q Do you know whether or not that contract specifies
12 pick up and drop off times for the children?
13 A The pickup is as early as 7:00. Oh, drop off, I'm
14 sorry. As early as 7:00. They open at 7:00. And pick up
15 no later than 6:00 p.m.
16 Q And what happens if you're not able to pick up by
17 6:00 p.m.? Are you aware per that contract?
18 A They charge. They charge you a fee per every five
19 minutes I believe. I don't be late that often so I honestly
20 can't remember off the top of my head.
21 Q Okay. And have you done both the pick-up and
22 drop-off for your children?
23 A Yeah. I primarily, I'm the person that picks up
24 and drop off primarily.
25 Q Okay. Have you had any safety concerns in doing

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1 so?
2 A I haven't thus far. I -- not at all. As the
3 other woman stated, it is kind of crowded typically around
4 pick-up time but all the parents know that children are
5 coming and going so kind of, you know, I've never waited
6 longer than a couple of minutes for someone to pull out and
7 then I pull in. Not a big deal.
8 Q Okay.
9 MS. WALKER: I have no further questions.
10 MR. PRAGER: Mr. Wilhelm?
11 MR. WILHELM: Yes. I have question.
12 CROSS-EXAMINATION BY MR. WILHELM
13 BY MR. WILHELM:
14 Q Can you describe where you live relative to this
15 facility?
16 A I live in White Oak right of Lockwood and New
17 Hampshire. It's about a mile, 1.3 miles away from ABC
18 Learning Center.
19 Q Lockwood.
20 A I'm not sure -- Sears is up that way. I'm not
21 sure if you know.
22 MR. PRAGER: Any other questions?
23 MR. WILHELM: No, sir.
24 MR. PRAGER: Ms. MacNab, do you have any
25 questions?

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1 CROSS-EXAMINATION BY MS. MacNAB
2 BY MS. MACNAB:
3 Q Your pick-up time is anywhere from 7:00, 8:00 or
4 9:00 or 10:00 or 11:00.
5 A No. You drop off. They like you to be there --
6 it opens at 7:00 so you can drop them off as early as 7:00
7 but no later than 9:00 because they start like school and
8 the circle time starts at 9:00 a.m.
9 Q So that's a large window between 7:00 and 9:00.
10 A Uh-huh.
11 MR. PRAGER: Excuse me. We'll go off the record
12 for a moment.
13 (Discussion off the record.)
14 MR. PRAGER: Go ahead, Ms. MacNab.
15 BY MS. MACNAB:
16 Q My concern was when you were actually able to drop
17 off the child. So the drop-off time is between 7:00 and
18 9:00. That's a fairly large window.
19 A I don't think so. I think for most -- we have
20 some kids that get there probably around 7:00 but it's a
21 few. I generally get there around 8:00 and I think that's
22 when most kids, between 8:00/8:15 I see most days that the
23 kids are there, and then they start circle time and like
24 class time around 9:00. So I think they're just
25 accommodating the kids that, the parents that need to get

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1 there earlier who may live farther away or either attend
2 work farther away. But I've been there a few times at 7:00
3 a.m. and it's only a few kids, but they accommodate the
4 early parents which most of the places in the area, because
5 before I put my kids in ABC Learning Center, I checked every
6 daycare and school in the area and they all are open around
7 that time so it's pretty comparable to other schools and
8 centers in the area.
9 Q Thank you.
10 A Uh-huh.
11 MR. PRAGER: Ms. Hines-Harris, you testified that
12 there was a contract. Does it specify what hours you, you
13 can bring your child? Not the range of hours but is there a
14 particular time that you, that you may bring your child in
15 the morning?
16 THE WITNESS: A specific time?
17 MR. PRAGER: Yes.
18 THE WITNESS: No. It just says, you know, as
19 early as 7:00 and, for drop-off and no later than 6:00 to
20 pick up.
21 MR. PRAGER: So --
22 THE WITNESS: I think it's just understood that
23 most parents, because they start school at 9:00, it's less
24 disruptive if they get them there before 9:00.
25 MR. PRAGER: So as far as you understand, there's

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1 a two hour window in the morning and --
2 THE WITNESS: Yes.
3 MR. PRAGER: -- a two hour window, roughly, in the
4 evening, is --
5 THE WITNESS: In the evening. Yes.
6 MR. PRAGER: -- that correct?
7 THE WITNESS: Yes. Exactly.
8 MR. PRAGER: And how long does it take you to
9 drive to the center in the morning?
10 THE WITNESS: Ten minutes.
11 MR. PRAGER: And in the evening?
12 THE WITNESS: Coming from work? I work out here
13 so about 40 minutes to get there. So I get there, try to
14 get there by 5:15 at the latest.
15 MR. PRAGER: All right. I have no further
16 questions. Ms. Walker?
17 MS. WALKER: Nothing further. Thank you.
18 THE WITNESS: Thank you.
19 MS. WALKER: Thank you very much. Okay. All
20 right. I'd also like to call, I'm awful with names again,
21 but Alem, is it Degefa?
22 MS. DEGAFA: Alem Degefa.
23 MS. WALKER: Perfect. Please come up. Thank you.
24 (Witness sworn.)
25 MR. PRAGER: And state your full name, please.

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1 THE WITNESS: My name is Alem. Last name is
2 Degefa, D-E-G-E-F-A. And my address, 14947 Dinsdale Drive,
3 Silver Spring, Maryland 20906.
4 MR. PRAGER: All right. I didn't catch your first
5 name.
6 THE WITNESS: Alem, A-L-E-M.
7 MS. WALKER: A-L-E-M.
8 MS. MACNAB: May I ask to have your address again?
9 THE WITNESS: 14947 Dinsdale Drive, D-I-N-S-D-A-L-
10 E Drive. Dinsdale.
11 MR. PRAGER: All right. Ms. Walker?
12 MS. WALKER: Did you want to swear the witness in?
13 MR. PRAGER: She's been sworn.
14 MS. WALKER: Oh, I'm sorry. I must have missed
15 that. I apologize.
16 DIRECT EXAMINATION
17 BY MS. WALKER:
18 Q Thank you again for coming in today, and do you
19 presently have children enrolled in the center?
20 A Yes, I do.
21 Q How many children?
22 A One.
23 Q And how long has your child been at the center?
24 A Since my, 2009.
25 Q 2009, okay. And same questions as the prior

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1 witness. Do you pick up and drop off?
2 A Yes. Sometimes my husband, sometimes it's me.
3 Q Okay. And have you had any issues with regard to
4 getting in and out of the driveway or locating parking
5 spaces?
6 A Not really. I don't.
7 Q No issues?
8 A No.
9 Q Okay. And are you aware if you have a contract
10 with the center?
11 A Yes.
12 Q And does it specify any pick-up or drop-off times
13 that you're aware?
14 A Yes. I drop 7:00, pick up before 6:00.
15 MS. WALKER: No further questions.
16 MR. PRAGER: Mr. Wilhelm?
17 MR. WILHELM: Yes.
18 CROSS-EXAMINATION BY MR. WILHELM
19 BY MR. WILHELM:
20 Q Could you explain where you live relative to this
21 property? I don't know the --
22 A Layhill Road.
23 Q Layhill Road.
24 A Layhill Road, yeah.
25 Q Which part of Layhill Road? Is it near Glenmont

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1 or --
2 A It's past Bel Pre.
3 Q Bel Pre.
4 A Yeah.
5 Q Thank you. That's all.
6 MR. WILHELM: No more questions.
7 MR. PRAGER: No more questions. All right. Ms.
8 MacNab?
9 MS. MACNAB: No questions.
10 MR. PRAGER: No questions. All right. And just
11 to, to clarify, you said that there was a contract that
12 specifies when children could be picked up. Could you
13 elucidate and tell me precisely what it says as to when your
14 child can be dropped off in the morning and when it can be
15 picked up in the evening?
16 THE WITNESS: I drop off in the morning sometimes
17 8:00, sometimes 7:00. It depend when I work. I go work and
18 I pick up before 6:00. Me or my husband.
19 MR. PRAGER: Right. But the question Ms. Walker
20 asked is whether or not there's a contract that specifies
21 when you can bring your child and the contract also
22 specifies when you can pick up your child. Do you have such
23 a specific time in your contract?
24 THE WITNESS: Yeah, 7 -- in the morning, 7:00. In
25 the night, 6:00, the last.

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1 MR. PRAGER: That's the last you can pick up.
2 THE WITNESS: 6:00, yes.
3 MR. PRAGER: And the earliest.
4 THE WITNESS: Yeah.
5 MR. PRAGER: But it doesn't say whether or not you
6 can bring your child at 8:30 or 8:45 or you can pick up your
7 child at 5:15, does it?
8 THE WITNESS: No.
9 MR. PRAGER: All right. Thank you.
10 MS. WALKER: Nothing further.
11 MR. PRAGER: Ms. Walker. Thank you very much.
12 THE WITNESS: You're welcome. Thank you.
13 MS. WALKER: If I could, just as a matter of
14 housekeeping, I do have the Affidavit of Posting that I'd
15 like to put into the record that's signed by the applicant.
16 We could mark this as Exhibit 45.
17 (Exhibit No. 45 was marked
18 for identification.)
19 MS. WALKER: And I'd like to call at this time --
20 MR. PRAGER: Just a moment, please. Would you,
21 Ms. Walker --
22 MS. WALKER: Oh, sorry.
23 MR. PRAGER: Would you please show this to Mr.
24 Wilhelm? Ms. MacNab.
25 MS. WALKER: For the record, what I'm showing the

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1 opponents to this case is a copy of the Office of Zoning and
2 Administrative Hearings standard form for an Affidavit of
3 Posting indicating and signed by Monika Mahabare as the
4 applicant that she has indeed posted the property with her
5 sign advertising a special exception is pending and that she
6 will continue to keep it on the property as required by the
7 County Code.
8 MR. PRAGER: All right. Thank you.
9 MS. WALKER: If I could call at this time our land
10 planner, Les Powell.
11 MR. PRAGER: Have a seat, Ms. Walker. All right,
12 Mr. Powell. Would you raise your right hand?
13 (Witness sworn.)
14 MR. PRAGER: All right. Would you state your full
15 name, please?
16 THE WITNESS: For the record, my name is Leslie
17 William Powell. I work for Charles P. Johnson & Associates
18 at 1751 Elton Road in Silver Spring, Maryland 20903.
19 MR. PRAGER: All right. Ms. Walker, go ahead.
20 MS. WALKER: Thank you.
21 DIRECT EXAMINATION
22 BY MS. WALKER:
23 Q Mr. Powell, I'm just going to hand you a copy of
24 your resume which is in the exhibits for this case as
25 Exhibit No. 22M. And I'm also going to hand you a copy of

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1 your land planning report which is also in this case as
2 Exhibit 22S.
3 MS. WALKER: And let the reflect I am also handing
4 a copy to the opponents to this case.
5 BY MS. WALKER:
6 Q Thank you, Mr. Powell. All right. If you could
7 please state --
8 MR. PRAGER: If you, just a moment. Bear with me
9 while I dig out Mr. Powell's resume. What was that other
10 exhibit that you referenced?
11 MS. WALKER: I just provided him a copy of his
12 land planning report which is Exhibit 22S, as in Sam, in
13 this case.
14 MR. PRAGER: All right, Ms. Walker.
15 MS. WALKER: Thank you.
16 BY MS. WALKER:
17 Q Mr. Powell, if you could please for the record,
18 please state your occupation.
19 A I'm a landscape architect and land planner from
20 Charles P. Johnson Associates.
21 Q And have you previously testified before the
22 Hearing Examiner in Montgomery County as an expert in land
23 planning and landscape architecture?
24 A Yes, I have.
25 Q And if I could just walk you briefly through your

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1 resume, you can refer to it if need be, how long have you
2 been a practicing land planner and landscape architect?
3 A I graduated in 1979 and I received my registration
4 in 1983.
5 Q And you've worked that entire time as a
6 landscape --
7 A Yes, I have.
8 Q Okay. And can you please describe your
9 educational background briefly?
10 A I have a bachelor's of landscape architecture from
11 Virginia Tech. I graduated in 1979.
12 Q And do you hold any certifications relating to
13 your occupation?
14 A Yes. My registration for landscape architecture
15 is No. 596.
16 Q And are you familiar with the Montgomery County
17 regulations including the Montgomery County Zoning
18 Ordinance?
19 A Yes.
20 Q And are you familiar with the standards and/or
21 requirements for special exceptions in Montgomery County?
22 A Yes.
23 Q Okay. And have you previously testified before
24 other government bodies as an expert in land planning and
25 landscape architecture?

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1 A Yes, I have.
2 Q Which bodies are those?
3 A I've testified before the Montgomery County
4 Planning Board numerous times and before the Hearing
5 Examiner and Board of Appeals.
6 Q Okay. So I'm sorry.
7 MS. WALKER: Did you hear that? It was the Board
8 of Appeals --
9 MR. PRAGER: I heard it but if you would please
10 keep your voice up --
11 THE WITNESS: Yes, sir.
12 MR. PRAGER: -- so we make sure that it, all of
13 your words are recorded.
14 THE WITNESS: Yes, sir.
15 BY MS. WALKER:
16 Q They want to hear all the important things you're
17 going to say, Mr. Powell. If the --
18 MS. WALKER: I'd like to move at this time that
19 Mr. Powell be admitted as an expert in land planning and
20 landscape architecture in this case.
21 MR. PRAGER: All right. Have a seat, please. Ms.
22 Walker, you can actually ask your questions from, from
23 counsel table. You don't have to approach the witness.
24 MS. WALKER: I'm sorry. I'm a walker. Sorry.
25 MR. PRAGER: All right. Do you have any questions

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1 for Mr. Powell as to his expert qualifications?
2 MR. WILHELM: Not with his expert qualifications
3 but I think the references in exhibits doesn't match at
4 least the sheet that was outside. I don't object to him.
5 I'm just making sure the references are in the right place.
6 MR. PRAGER: All right. Well, we'll get to that
7 afterwards. You have no questions about his --
8 MR. WILHELM: Qualifications.
9 MR. PRAGER: -- qualifications. Ms. MacNab, do
10 you have any questions about Mr. Powell's qualifications?
11 MS. MACNAB: No. He seems aptly qualified.
12 MR. PRAGER: I'm sorry. You may have been picked
13 up by the --
14 MS. MACNAB: He seems qualified to me.
15 MR. PRAGER: All right. And what is it exactly,
16 Ms. Walker, that he has his expertise in that you want him
17 to be known as an expert for this?
18 MS. WALKER: Land planning and landscape
19 architecture.
20 MR. PRAGER: Okay. And land planning means what
21 to you?
22 MS. WALKER: To me, it means that he's competent
23 to testify regarding the requirements of the Zoning
24 Ordinance with regard to special exceptions. He has a
25 knowledge regarding the surrounding area, the vicinity of

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1 the property as well as the master plan, the general plan as
2 well as the specific site conditions in regard to landscape
3 plantings, layout of the property, the Montgomery County
4 standards as they relate to zoning setbacks, building
5 setbacks, those sorts of matters.
6 MR. PRAGER: All right.
7 MS. WALKER: The general and specific
8 requirements, if you will, found in 59-G for the approval of
9 a special exception.
10 MR. PRAGER: All right. Except for the
11 proposition that he can make conclusions as to whether or
12 not, ultimate conclusions as to whether or not this proposal
13 meets all the standards, you will be accepted as an expert.
14 MS. WALKER: Thank you. Mr. Powell is going to
15 refer in his testimony to several exhibits again that are in
16 evidence but we have made them larger I'll say or mounted
17 them on boards for the purposes of ease of reference so if
18 the Hearing Examiner would like, I could mark those exhibits
19 at this time so that he can flow through his testimony a
20 little easier.
21 MR. PRAGER: All right. Let -- with respect to
22 each of them, as you get to them, identify the exhibit
23 that's been previously submitted and then we'll determine
24 what the number is for the new exhibits.
25 MS. WALKER: Okay. Certainly. There is, I would

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1 just ask that there is one additional exhibit which is the
2 aerial photograph that is being displayed currently that was
3 not previously submitted and we would like to have admitted
4 into evidence. I believe it would be Exhibit 46.
5 MR. PRAGER: And why was this not submitted
6 previously?
7 MS. WALKER: Typically, we use these just as a
8 demonstrative, it's a large scale exhibit, and so in my
9 experience and practice, we have been able to bring them to
10 the hearing strictly for the purposes of establishing the
11 area and allowing the Hearing Examiner and the opposition
12 the opportunity to view things more completely in terms of
13 the scope of the neighborhood. There is a vicinity map
14 that's submitted in the staff report for the Maryland-
15 National Capital Park and Planning Commission but we think
16 that this exhibit does a better job and is easier for all of
17 the parties to be able to use in referring to the
18 neighborhood.
19 MR. PRAGER: All right. Well, when we get to it,
20 we will see whether or not Mr. Wilhelm and Ms. MacNab have
21 any objection to it.
22 MS. WALKER: We're going to actually get to that
23 as the first line of questioning so.
24 MR. PRAGER: Right. Well, why don't you reveal
25 it.

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1 MS. WALKER: Certainly.
2 BY MS. WALKER:
3 Q Mr. Powell, are you familiar with the subject
4 property at 170 Randolph Road and the surrounding area?
5 A Yes, I am.
6 Q And did you prepare this aerial exhibit that I
7 would like to enter as Exhibit 46 today?
8 A Yes, I did.
9 Q And are you aware of when that photograph was
10 taken?
11 A October 2012.
12 Q Okay. And if you could, I'm going to remove the
13 exhibit that's currently in front of it, do you know where
14 this photograph was obtained from? I assume you did not
15 take it yourself.
16 A No. It was from Google Earth.
17 Q Okay.
18 MS. WALKER: We'd like to offer this into evidence
19 so Mr. Powell could testify to it with regard to the road
20 network surrounding the vicinity of the area, and you'll
21 note that the subject property has been marked in red.
22 MR. PRAGER: Mr. Wilhelm, do you have any
23 objection to the acceptance of this, this exhibit?
24 MR. WILHELM: No. No objection.
25 MR. PRAGER: Ms. MacNab?

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1 MS. MACNAB: No. It's our area.
2 MR. PRAGER: All right.
3 MS. WALKER: Would the Hearing Examiner --
4 MR. PRAGER: Would you mark this then as
5 Exhibit --
6 MS. WALKER: No. 46?
7 MR. PRAGER: No. 46. That's correct.
8 (Exhibit No. 46 was marked
9 for identification.)
10 MS. WALKER: Thank you.
11 BY MS. WALKER:
12 Q Mr. Powell --
13 MR. PRAGER: And --
14 MS. WALKER: Sorry.
15 MR. PRAGER: Will you have both, an additional
16 copy of the large scale and a reduced copy available --
17 MS. WALKER: Certainly.
18 MR. PRAGER: -- for the record?
19 MS. WALKER: Certainly. We'll submit it prior to
20 the close of the record.
21 MR. PRAGER: All right.
22 BY MS. WALKER:
23 Q Mr. Powell, have you personally visited the site
24 and the surrounding area?
25 A Yes, I have.

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1 Q And when did you most recently do that?
2 A Most recently was this past Wednesday.
3 Q And did you prepare a planning report in
4 connection with this application?
5 A Yes, I did.
6 Q And did I previously hand you a copy of what is
7 Hearing Examiner's Exhibit 22S?
8 A Yes, you did.
9 Q Can you please, for the Hearing Examiner, identify
10 and describe the subject property and its surroundings using
11 the aerial Exhibit 46?
12 A The subject property, which is outlined in red on
13 the Exhibit 46, is a property that consists of a little over
14 39,000 square feet. It's directly fronting onto Randolph
15 Road and to the, both to the east, the south and the west
16 are R-200 lots of approximately one acre in size.
17 Q And is the subject property classified in that
18 same zone?
19 A Yes, it is.
20 Q Can you please briefly, and I'll put back up this
21 other exhibit, this is Exhibit 44 and this is a rendering of
22 the site. Did you prepare this exhibit, Mr. Powell?
23 A Yes, I did.
24 Q Okay. And I'm just going to have you refer to it.
25 If you could briefly describe the existing improvements and

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1 physical characteristics of the subject property.
2 MR. PRAGER: Before you do, before you do, you
3 have to tell me again what exhibit that was before it was
4 rendered.
5 MS. WALKER: Oh. That is Exhibit 22.
6 MS. MACNAB: It says here it's Exhibit 44.
7 MS. WALKER: Right. It's a new exhibit. Just if
8 I could clarify for the record.
9 THE WITNESS: She said before, it was rendered.
10 MS. WALKER: It is a previously submitted exhibit
11 that has been rendered. The previously submitted exhibit
12 number is 22H showing as existing conditions of proposed
13 site plan, and this new exhibit's in solely for the purposes
14 that it's now rendered has been identified as Exhibit No.
15 44.
16 MR. PRAGER: Just a moment. All right.
17 MS. WALKER: Thank you.
18 BY MS. WALKER:
19 Q I'll restate the question. Please describe the
20 existing improvements and the physical character of the
21 subject property referring to Exhibit 44 if necessary.
22 A The subject property consists of a, what is viewed
23 as a typical single-family residence in the area. The house
24 itself sits about 10 feet up above Randolph Road. There is
25 a 20-foot wide concrete drive that turns up into the site

1 that leads to a flat existing parking lot that serves the
2 existing daycare. To the rear of the property is a large
3 flat lawn area that is currently being used for a play area
4 for the children. There are numerous trees throughout the
5 site, mainly hard woods. To the west of the house, the lot
6 is sloping, and it is completely fenced in on three sides,
7 those sides being the northwest side, the southerly side and
8 the side adjacent to the paper road known as Gaffney Road.

9 Q And are you aware as to whether this property is
10 served by any public facilities?

11 A It's served by public water and sewer.

12 Q And can you please briefly describe the special
13 exception request, paying attention to Exhibit 44, including
14 the site plan for this proposal?

15 A Yes. The site plan, the special exception is for
16 increasing the number of daycare students from, from the
17 current 30 up to 62 and increasing staff to 11. There are
18 going to be no physical changes to the exterior of the
19 existing building. There will just be parking that will tie
20 into the existing parking that currently exists on the
21 northwesterly side of the house and, but the majority of the
22 parking will be towards the rear of the house or the south
23 side of the house.

24 Q And do you know whether there is any limitation on
25 the use of the spaces that are proposed for the site?

1 A The, there are no real limitations for the uses of
2 the site. There's, like I said, the large flat area at the
3 back where the parking could be expanded and there's still
4 ample room for the required play area.

5 Q And with regard to the parking facility, where
6 there be spaces assigned for drop-off and pick-up and
7 different spaces assigned for staff of the facility?

8 A Yes. The staff spaces are located all the way
9 towards the back and there are drop-off spaces towards the
10 front that are closest to the entry door to the daycare
11 center.

12 Q And to discuss in depth the parking facility,
13 currently, are there, does the parking facility, as
14 designed, meet all of the applicable building codes for the
15 Montgomery County Zoning Ordinance or is there a question
16 with regard to the layout of the facility?

17 A There is a question because of the exist, there
18 are some compact spaces shown and we're not sure whether the
19 Department of Permitting Services will allow those parking
20 spaces or not. They may have to be designed as full-size
21 spaces. There's some unclear language within the Zoning
22 Ordinance concerning that.

23 Q And would that be 59-E-2.22 of the Zoning
24 Ordinance that you're referring to?

25 A Yes, it is.

1 Q Okay. Have you prepared an alternate parking
2 layout in the event that the Department of Permitting
3 Services would prefer to not see compact spaces but instead,
4 see full-size spaces located on site?

5 A Yes, I have.

6 Q Okay.

7 MS. WALKER: And if I could ask Mr. Powell to put
8 that exhibit up and we will delineate the differences
9 between that and the current proposal. Just have the
10 Examiner's indulgence for a moment.

11 THE WITNESS: The only real difference --

12 MR. PRAGER: Wait, wait. Have a seat.

13 THE WITNESS: Oh, my mic.

14 MR. PRAGER: Ms. Walker, is this also a new
15 exhibit?

16 MS. WALKER: Yes, Mr. Examiner, it is.

17 MR. PRAGER: And this has not been shown to any of
18 the opponents, has not been able, no one has been able to
19 comment on it thus far.

20 MS. WALKER: That would be correct, yes.

21 MR. PRAGER: All right.

22 MS. WALKER: If you'd like, I will proffer what
23 the differences are for ease of moving things along and
24 explaining.

25 MR. PRAGER: Well, your --

1 MS. WALKER: And then my expert will obviously
2 testify to it, or if you'd like to go off the record to let
3 them review.

4 MR. PRAGER: Why don't you let Mr. Wilhelm and Ms.
5 MacNab take a look at those.

6 MR. WILHELM: Well, if you could explain the
7 differences, it would be helpful.

8 MR. PRAGER: He'll be, he'll have that opportunity
9 in a minute but if you wanted to take a closer look at it
10 first.

11 MS. WALKER: So this is the new and this is the
12 already in evidence exhibit.

13 MR. PRAGER: We'll go off the record for a moment.

14 MS. WALKER: Thank you.

15 (Discussion off the record.)

16 MR. PRAGER: We're back on the record.

17 MS. WALKER: Thank you.

18 BY MS. WALKER:

19 Q Mr. Powell, for the record, you have posted a new
20 rendered version of the site.

21 A Yes.

22 Q And I believe you testified that this was an
23 alternative parking layout, is that correct?

24 A That is correct.

25 Q And you believe that this alternative parking

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1 layout addresses some unclear language in 59-E-2.22, is that
2 correct?
3 A Yes. It gives the option that if the Department
4 of Permitting Services does not accept the compact spaces,
5 that we have an alternate that has very little effect in the
6 overall design of the parking lot.
7 Q If you could please articulate for the Hearing
8 Examiner what are the changes between the new exhibit that
9 we are offering and the current Exhibit 44 in the record.
10 A Yes. The existing spaces that are along the
11 northwest property line, the paving had to be extended
12 approximately five feet because of the difference in size
13 from going from a compact space size to a full-size space
14 and in doing so, the spaces that are along the southerly
15 property line would have extended too far into the required
16 restriction line from the lot to the south so I dropped one
17 of those spaces there and I put it adjacent to the only
18 other parallel space on the site which is next to the entry
19 door of the daycare center.
20 Q And with regard to this alternative layout for
21 parking, do you know who approves parking facility plans for
22 Montgomery County?
23 A Department of Permitting Services.
24 Q And did this issue come up before the Planning
25 Board? Were you present at the Planning Board hearing,

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1 excuse me, on January 17th?
2 A I was present at the Planning Board.
3 Q And did you have the opportunity to observe their
4 deliberations of this case?
5 A I did.
6 Q And did you review the staff report that the
7 technical staff prepared in connection?
8 A I did.
9 Q And was there any discussion in either of those
10 documents or during that hearing of this parking issue?
11 A No. None whatsoever.
12 Q Is this something that you have discovered and
13 that you brought to the applicant's attention?
14 A Yes.
15 Q Okay. Do you believe that this alternative
16 parking design that includes one additional parallel space
17 is a safe means of providing parking for this site?
18 A Yes, I do.
19 Q And does it meet, as laid out, the applicable
20 setbacks and design standards absent the waiver which we're
21 going to discuss in a moment for the side yard setback?
22 A Yes, it does.
23 Q And are you familiar with the distinction between
24 inherent and non-inherent adverse effects with regard to
25 special exceptions in Montgomery County?

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1 A Yes.
2 Q And are you familiar with the general standards
3 for granting a special exception in the County?
4 A Yes.
5 Q And have you had the opportunity also to review
6 the specific special exception standards for child daycare
7 facilities found in 59-G-1. -- excuse me. Let me make sure
8 I have the correct -- found in 59-G-2.13.1.
9 A Yes.
10 Q Does the Zoning Ordinance for Montgomery County
11 define what a daycare center is?
12 A Yes, it does.
13 Q Could you please summarize for us the applicable
14 parts of that definition?
15 A Yes. Here are my notes.
16 Q For the record, are you going to be referring to
17 Section 59-A --
18 A A-1, yes. Child daycare center is a dwelling in
19 which child daycare services are provided and the provider
20 is not a resident and does not meet the requirements for a
21 nonresident provider of a family daycare home, or a group
22 daycare home, or a building in which child daycare services
23 are provided for 13 or more children, or which exceed the
24 staffing limits of a family daycare home or a group daycare
25 home, or for 24 hours a day provided that they are in

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1 conformance with state and local regulations. Preschool and
2 kindergarten educational programs subject to accreditation
3 by the state are permitted as an accessory use in all
4 childcare facilities.
5 Q And do you know whether anyone resides at the 170
6 Randolph Road property or whether it's just operated as a
7 business?
8 A It is just operated as business.
9 Q And are daycare centers a permissible special
10 exception use in the R-200 Zone?
11 A Yes, they are.
12 Q And can you please identify the applicable master
13 plan for the subject property?
14 A It's the 1997 White Oak Master Plan.
15 Q And does that master plan contain any site
16 specific recommendations for the property?
17 A No, it does not.
18 Q Are there any guidelines for special exception
19 uses in the master plan?
20 A There are guidelines, yes.
21 Q Can you please discuss? If you'd like, you can
22 make reference to your planning report which is again
23 Exhibit 22S.
24 A Yes. The guidelines that they speak about in the
25 White Oak Master Plan are to, they are trying to avoid

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1 excessive special exceptions along major transportation
2 corridors including New Hampshire Avenue, Randolph Road and
3 Powder Mill Road, and they require new special exceptions
4 along major transportation corridors in residential
5 communities to be compatible with their surroundings and
6 that front yard setbacks should be maintained.
7 They also want you to avoid front yard parking
8 because it's, because of its commercial appearance. Side
9 and rear parking should be screened from the view of
10 surrounding neighborhoods. They require any buildings or
11 modification or additions to existing buildings to be
12 compatible with the character and scale of the adjoining
13 neighborhood and they want you to avoid placing large
14 impervious areas within the Paint Branch Watershed due to
15 its environmental sensitivity.
16 Q Now, we're going to discuss each one of these
17 points in more detail but I'll just hit the last one first.
18 The discussion about avoiding placing impervious area in the
19 Paint Branch Watershed, is that applicable to this
20 application?
21 A No, it is not. This is within the Northwest
22 Branch Watershed.
23 Q And in going back to the first section where I
24 believe you talked about avoiding excessive special
25 exception uses, and it does site in the master plan

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1 particularly of concern along New Hampshire, Randolph and
2 Powder Mill. Can you discuss why you feel that this
3 application is still compliant with that recommendation in
4 the master plan?
5 A This is an existing special exception use and all
6 we are doing is amending it to include the extra students
7 and staff members.
8 Q And do you believe that there is an over-
9 concentration of special exceptions along Randolph?
10 A No, I do not.
11 Q With regard to requests for new special exceptions
12 along these main corridors being found to be compatible as
13 you indicated was the language in the master plan, there was
14 a reference to front yard parking, setbacks being
15 maintained, does this proposal meet that language?
16 A Yes, it does.
17 Q And is side and rear parking screened for this
18 proposal as indicated in the master plan?
19 A Yes, it is. There's a six-foot high fence that
20 goes along the northwestern, south and, I'm sorry,
21 northeastern, south and the western property line.
22 Q And what is, I'm sorry, you said it was a six-
23 foot, what type of fence?
24 A Board fence.
25 Q Board on board fence.

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1 A Board on board.
2 Q Solid fence.
3 A Yes.
4 Q Okay. And with regard to the language in the
5 master plan about requiring new buildings or any
6 modifications or additions, is this property application
7 proposing any modifications or additions to the building?
8 A Not to the exterior of the building, no.
9 Q Okay. So do you feel, in light of that, the
10 language in the master plan and what you have reviewed, in
11 your expert opinion, that this proposal is consistent with
12 the White Oak Master Plan?
13 A Yes, it is.
14 Q And substantially in conformance with that master
15 plan.
16 A Yes, it is.
17 Q If you could briefly, using your aerial photograph
18 if you would like, which is Exhibit No. 46, please describe
19 the boundaries of the neighborhood in which the proposed
20 special exception is to be evaluated.
21 A For the boundaries of this neighborhood, we have
22 Randolph Road to the north, because of its, the size of it
23 and also, the fact that the neighborhood on the northern
24 side of Randolph is of a completely different character.
25 Q I'm sorry. If you could just clarify what makes

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1 it a different character.
2 A The lot sizes are much smaller. The, to the east,
3 the boundary would be New Hampshire Avenue, Route 650, again
4 because of its, the physical constraint. To the south, it
5 is actually down to Taylor Court and Norcross Way. There is
6 a park then that separates that from adjacent neighbors.
7 And then to the west, it's actually prior to Kemp Mill Road,
8 there is the northwest branch which becomes a greenway with
9 a very large physical separation between the next
10 neighborhood.
11 Q Okay. And are there any existing or approved
12 special exceptions in the neighborhood that you have defined
13 that remain valid?
14 A Yes, there are.
15 MS. WALKER: And if I could ask, I believe Mr.
16 Powell has an exhibit that's going to highlight for the
17 Hearing Examiner where those are. He's used the zoning map
18 which is exhibit, he has used the zoning vicinity map which
19 is Exhibit 13, and he has rendered it so if you would like,
20 we could request that this be admitted as a new exhibit
21 since it does have the rendering on there for the purpose of
22 locating adjoining special exceptions in the neighborhood.
23 It should be, I believe, Exhibit 48. And we will provide a
24 copy if it is accepted into the record for the Hearing
25 Examiner's office.

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1 (Exhibit No. 48 was marked
2 for identification.)
3 MR. PRAGER: All right. Are there any objections
4 to the --
5 MR. WILHELM: No, sir.
6 MR. PRAGER: -- admission of this exhibit?
7 MS. MACNAB: Are they going to tell us what is
8 this and what is this?
9 MS. WALKER: Yes. We'll go through that with Mr.
10 Powell.
11 MR. PRAGER: Well, you can ask. You can ask that
12 later. At the moment, did I hear no objections? So it will
13 be accepted as Exhibit No. 48.
14 MS. WALKER: Thank you.
15 (Exhibit No. 48 was
16 received into evidence.)
17 BY MS. WALKER:
18 Q If you would, Mr. Powell, did you prepare Exhibit
19 No. 48 or at least be, I should -- let me clarify that. Did
20 you prepare the rendering on Exhibit No. 48?
21 A I did.
22 Q Okay. And did you use as the base for that
23 drawing the Montgomery County zoning, excuse me, Montgomery
24 County zoning maps that are available at the Park and
25 Planning Commission?

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1 A Yes, I did.
2 Q Okay. And can you please describe, again, looking
3 at the boundaries of the neighborhood which you just
4 testified to, where there are existing special exceptions
5 within the vicinity of the subject property?
6 A Yes, there are. I've highlighted pink the special
7 exceptions that were given to us by Park and Planning in
8 list form but they're also noted on the actual zoning map
9 itself. I have highlighted in yellow the subject property
10 of 170 Randolph Road and as you can see, there are five
11 special exceptions within the defined neighborhood.
12 Q And do you know what these are for?
13 A No, I don't. Park and Planning did not give me a
14 list of the actual uses but I --
15 Q Have you visited any of these properties?
16 A I have driven past them and it is very hard to
17 tell, other than perhaps a parking lot along New Hampshire
18 Avenue, that these are used for anything other than homes.
19 Q And do you feel that five special exception uses
20 in the neighborhood that you've defined is an excessive
21 number?
22 A No, I do not.
23 Q And will approval of this special exception
24 increase the number, density or scope of special exception
25 uses to be inconsistent with the master plan or adversely

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1 affect the residential nature of the area?
2 A No, it will not.
3 Q And again, that language comes from 59-G-
4 1.21(a)(7).
5 A Right.
6 Q Is that correct?
7 A Yes.
8 Q Okay. In your opinion and based on your
9 testimony, will the proposed expansion of enrollment be
10 detrimental to the use, peaceful enjoyment, economic value
11 or development of surrounding properties or the general
12 neighborhood irrespective of adverse effects that use might
13 have if established elsewhere in the zone? Again, referring
14 to 59-G-1.21(a)(5).
15 A No. It should not. The play areas are phased so
16 that they'll have no more children out there than there are
17 currently out there at this time and the, the drop-off will
18 also be phased.
19 Q Do you know how many children are outside or are
20 allowed outside at any one time?
21 A I believe it's 15.
22 Q And is that a condition that's been recommended by
23 the Montgomery County Planning Board in their review of
24 this?
25 A Yes. It was discussed at the Planning Board.

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1 Q And do you know whether the applicant was
2 agreeable to that?
3 A Yes, they were.
4 Q And if you could please briefly describe the
5 existing improvements on the property, the building. Please
6 walk me through the development standards for the R-200 Zone
7 and how that building complies.
8 A If you don't mind, I'm going to refer once again
9 to my report which is Exhibit 22S. Exhibit B in the back
10 has the, a table giving all of the setback requirements.
11 Q And just for the record, is this the same table
12 and information that is listed on the site plan, the
13 applicable site plan in this case which is also Exhibit 44?
14 A Yes. The houses have a required setback in the R-
15 200 zone of 40 feet from the front property line and we are
16 55.1 feet. The side setback is 12 feet or 13 feet with a
17 total of those two side yards being 25 feet, and the rear
18 setback is 30 feet and currently, our rear setback is 190
19 feet and the side setbacks are both 56 feet from the western
20 side and 67 from the eastern side.
21 Q So do these setbacks comply with the Zoning
22 Ordinance requirements for a main building in an R-200 Zone?
23 A Yes, they do.
24 Q Okay. And are there any proposed modifications to
25 that building as part of this application?

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1 A Not on the exterior.
2 Q Okay. So will the building continue to be in
3 conformity with the general character of the neighborhood
4 considering --
5 A Yes, it will.
6 Q Let me finish my question, Mr. Powell.
7 Considering population density, design, scale and bulk of
8 the proposed building, traffic and parking conditions?
9 Again, this is language from 59-G-1.21(a)(4).
10 A Yes. It will still be in conformity.
11 Q And are you aware of what the proposed lot
12 coverage is for this site?
13 A The maximum lot coverage is 25 percent which would
14 be 9,961 square feet, and we are at 1,850 square feet which
15 is less than five percent.
16 Q And looking to 59-G-1.21(a)(6), in your expert
17 opinion, will the proposed additional enrollment at this
18 site cause any objectionable noise, vibration, fumes, odor,
19 dust, illumination glare, physical activity at the subject
20 site?
21 A No, because as I stated earlier, there will be a
22 phasing of the amount of children allowed out at any one
23 time as there is right now.
24 Q And with regard to illumination as articulated in
25 that standard, have you had the opportunity to review a

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1 photometric plan that was submitted?
2 A Yes. I have had the opportunity to review that
3 photometric plan.
4 Q And are you familiar with the lighting that's
5 proposed for this plan?
6 A Yes, I am.
7 Q Okay. And if I could just hand you a copy, bear
8 with me.
9 MS. WALKER: Hearing Examiner's indulgence for
10 just one moment.
11 BY MS. WALKER:
12 Q This is Exhibit 43H that I'm going to hand you.
13 MS. WALKER: And a copy was previously provided to
14 Mr. Wilhelm and I will now provide one as well. Both of the
15 opponents have been provided a copy, let the record note, of
16 the Exhibit 43H in the record and I'm now providing a copy
17 of that to Mr. Powell.
18 BY MS. WALKER:
19 Q Can you please describe for me what that is that I
20 handed you?
21 A It is your standard colonial residential light.
22 Q And is that the light that's proposed for us at
23 this site?
24 A Yes, it is.
25 Q Could you characterize that light? Is that a

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1 commercial, residential, agricultural?
2 A It's residential and it's very in keeping with the
3 neighborhood.
4 Q And you testified previously that you were present
5 at the Planning Board hearing on January 17th.
6 A Yes, I was.
7 Q And did you observe a discussion of the Planning
8 Board regarding a concern over the height of the poles on
9 these proposed residential character light fixtures?
10 A Yes, I did.
11 Q And --
12 A They were concerned that the 14-foot height that
13 was shown on the poles was too high for a residential area.
14 Q And what is a standard pole height for a
15 residential area would you say?
16 A Twelve feet would be standard. I mean, there's,
17 it varies. There's no typical answer that you can get. It
18 just, it would vary.
19 Q So one of the concerns, if you were present at the
20 Board then you recall, articulated by the Planning Board
21 with regard to this was if you had a six-foot fence
22 surrounding the property as we do here, how would you
23 accommodate, would you be able to see the light fixtures
24 above that six-foot fence. Did you hear that discussion
25 before the Board?

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1 A Yes, I did.
2 Q And do you have a response to that?
3 A Yes, I do. Well, first of all, your neighbor next
4 to you most likely, if they have a door on the side of their
5 house, they're going to have a light adjacent to that door
6 which is going to have, be at a height that is going to be
7 probably, at a minimum, eight feet off the ground if not
8 higher if that house is raised off the ground, and that
9 would be a direct, what I would call a direct glaring light
10 that would not have any shield.
11 Q That would be on the neighboring property.
12 A Yes. And --
13 Q A spotlight if you will or something of that
14 nature for security.
15 A Well, the spotlights are actually even higher.
16 They would be up in the 20-foot high range.
17 Q Okay. And are you, looking at somebody else's
18 residential house we're referring again. The proposed
19 fixture for this site that you --
20 A Yes.
21 Q -- have reviewed, does that have any glare factors
22 associated with it?
23 A No. There have been cut-off shields provided on
24 these light specs so that it does not go into the
25 neighbor's, adjacent neighbor's. As a matter of fact, I've

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1 reviewed the photometric plan and it shows that there are
 2 zero foot candles at the property line as required by Park
 3 and Planning.
 4 Q And do you know whether the lights on this site
 5 will be operated with a timer?
 6 A Yes. They will be.
 7 Q And do you know when that timer will cut off the
 8 light in the evening?
 9 A I believe it was originally 7:00, and I believe
 10 the end was that they modified it to 6:30.
 11 Q Okay. And do you feel that in reviewing the
 12 photometric plan and the cut sheet that's been provided to
 13 you for the fixtures, that with that fixture being modified
 14 to something in the neighborhood of 12 feet as you testified
 15 would be acceptable for a residential area, that there would
 16 be any light spillover to adjoining properties?
 17 A No. In fact there would be less than before
 18 because the pole would be two feet shorter than the prior
 19 pole that had been chosen.
 20 Q And referring to 59-G-1.21(a)(8), will there, in
 21 your expert opinion, will the proposed child daycare center
 22 adversely affect the health, safety, security, morals or
 23 general welfare of residents, visitors or workers in the
 24 area of the subject site irrespective of any adverse effect
 25 the use might have if established elsewhere in the zone?

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1 A No.
 2 Q And will the proposed facility, do you know
 3 whether it will be served by adequate public facilities
 4 including police, fire protection, public roads and other
 5 facilities?
 6 A Yes.
 7 Q Okay. And does this special exception
 8 modification require approval of a preliminary plan of
 9 subdivision?
 10 A No, it does not.
 11 Q And why is that?
 12 A Because we are not changing the boundary of the
 13 subdivision.
 14 Q And you previously indicated that you are familiar
 15 with the Zoning Ordinance requirements for approval of a
 16 child daycare center.
 17 A Yes.
 18 Q Does the proposed child daycare center require
 19 approval by the Board of Appeals in this case?
 20 A Yes.
 21 Q And is that because it's for 31 or more children?
 22 A That is correct.
 23 Q Okay. And again, referring to 59-G-2 and the
 24 standards that are found there, has there been a landscaping
 25 plan submitted that shows the height, caliper, location and

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1 species of all plant material?
 2 A Yes, there have.
 3 Q Okay. And does the lot contain at least 500
 4 square feet per child as required in the Zoning Ordinance?
 5 A Yes, it does.
 6 Q And does the facility, recognizing that the
 7 applicant has limited herself to infant to eight years old,
 8 predominantly serve children of an age range that require
 9 limited outdoor activity space?
 10 A Yes.
 11 Q And do you believe that the additional density
 12 will not adversely affect adjacent properties?
 13 A No. Once again, the --
 14 Q Or the surrounding streets.
 15 A No, it will not.
 16 Q Okay. And do you feel there's adequate provision
 17 for pick-up and drop-off of students on this site as part of
 18 this proposal?
 19 A Yes, I do.
 20 Q And you're aware of what the off-street parking
 21 requirements are for a child daycare center?
 22 A Yes.
 23 Q Can you please tell the Hearing Examiner what they
 24 are?
 25 A They are one parking space for each of the staff

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1 members.
 2 Q And how many staff members are proposed here?
 3 A Eleven.
 4 Q Okay. And then additionally, there should be an
 5 adequate area for discharge and --
 6 A Yes.
 7 Q -- pick-up of children, is that correct?
 8 A That's correct.
 9 Q Okay. And do you feel that the facility, as
 10 designed, provides that?
 11 A Yes, it does.
 12 Q Okay. We're going to talk about the outdoor
 13 recreational space at this time and then as well, the
 14 parking waiver, but could you please identify the outdoor
 15 play area for the Hearing Examiner? If you'd like to, we
 16 could put back up exhibit, I believe it's 44.
 17 A Forty-four.
 18 Q The rendering.
 19 A Yes. The rendering.
 20 MS. WALKER: I'm actually going to have Mr. Powell
 21 refer to Exhibit 44 as well as -- Hearing Examiner's
 22 indulgence. Let me mark this one, 47.
 23 (Exhibit No. 47 was marked
 24 for identification.)
 25 BY MS. WALKER:

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1 Q If you could, Mr. Powell, referring to Exhibit 44
2 and Exhibit 47, locate the outdoor recreational play space
3 for the children.
4 A The outdoor recreational play space --
5 MR. PRAGER: Mr. Powell, would you stand up and,
6 while the record won't reveal exactly what you're talking
7 about, it will help me and perhaps it will help Ms. MacNab
8 and Mr. Walker.
9 THE WITNESS: The area directly behind --
10 MR. PRAGER: Mr. Wilhelm rather.
11 THE WITNESS: -- at the rear of the house going
12 out to the proposed parking around to the side of the
13 proposed parking and then back to the house is a really nice
14 flat area that has been fenced in for the children to play.
15 And there is additionally a float barrier off to the side.
16 BY MS. WALKER:
17 Q And do you know whether or not the area --
18 MR. PRAGER: Excuse me. You just said, Mr.
19 Powell, to the side, and to the side would be --
20 THE WITNESS: That would be to the --
21 MR. PRAGER: -- to the western side.
22 THE WITNESS: -- to the western side. That is
23 correct, sir.
24 BY MS. WALKER:
25 Q If I could refer now, Mr. Powell, to Exhibit 10H.

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1 These are some photographs that the applicant submitted into
2 the record for this matter. Give the Hearing Examiner a
3 moment to find them.
4 MS. WALKER: Or I would be happy to provide you
5 with a copy if that's easier. Let the record reflect I have
6 provide a copy to the opponents. I could provide the
7 Hearing Examiner with a colored version. It might be -- I
8 think yours is black and white.
9 MR. PRAGER: Do you have colored copies for the
10 opponents?
11 MS. WALKER: Yes. They've already received one.
12 MR. PRAGER: All right.
13 BY MS. WALKER:
14 Q If I could, Mr. Powell, just call your attention
15 to Exhibit 10H.
16 A Yes.
17 Q Is that the current play area for the site?
18 A Yes, it is.
19 Q And can you locate on the drawing where the
20 current play area is?
21 A The current play area is to the south part,
22 portion of the house behind the existing paving, and it is
23 more adjacent to the eastern property line, and it takes up
24 a very large area of the backyard. It's quite attractive
25 and well-used.

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1 Q And is that area where it is currently, where the
2 play area is currently located proposed to be used for the
3 new parking facility, expansion of the parking facility on
4 site?
5 A Yes, it is.
6 Q So that area, the play area is being relocated as
7 part of this proposal for a special exception.
8 A That's correct.
9 Q Okay. And again referring to Exhibit 10H, the
10 sort of flat open green area in the foreground of that
11 photo, is that the area where, which will be the new play
12 area?
13 A Yes, it will be.
14 Q And I believe you testified that the area was
15 currently fenced, the play area, to keep the children away
16 from the parking.
17 A That is correct.
18 Q Is that also the same under the new proposal?
19 A Yes. Some fencing will be removed in order to
20 construct the parking lot and then additional fencing will
21 be put in to enclose the new play area.
22 Q And just to show what is the current condition, if
23 you could turn to picture 10, Exhibit 10I which is the next
24 one, flip back, that chain link fencing there, I believe
25 that, does that show the boundaries of the current play area

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1 and also, you'll see in relation to this photograph the car
2 in the current parking area?
3 A That's correct.
4 Q Are you aware of the square footage that's been
5 allocated to the outdoor, the new outdoor recreational play
6 area?
7 A Yes. It's over 3900 square feet up to the area
8 that I just proposed but the overall enclosed area back
9 there for them is 8,945 square feet.
10 Q And are you aware of whether or not this meets the
11 state standards for outdoor space for child daycare centers?
12 A Yes, it does.
13 Q Do you feel that that will be a safe area for the
14 children to play in?
15 A Yes. It will be.
16 MS. WALKER: Hearing Examiner's indulgence for
17 just one moment.
18 BY MS. WALKER:
19 Q Okay. I'm going to turn your attention, Mr.
20 Powell, now to the parking facility that's proposed for this
21 project.
22 A Yes.
23 Q And are you familiar with the requirements for
24 off-street parking found in the Montgomery County Zoning
25 Ordinance?

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1 A Yes.

2 Q Okay. I think you already testified to that

3 but --

4 A Yes, I did.

5 Q Are the provisions set forth in 59-E-2.83

6 applicable to this modification or new application, excuse

7 me?

8 A Yes.

9 MS. WALKER: And those are titled, for the record,

10 59-E-2.83, as Parking and Loading Facilities for Special

11 Exceptions in Residential Zones.

12 BY MS. WALKER:

13 Q You have reviewed that section, Mr. Powell, in

14 preparation for your testimony today?

15 A Yes, I did.

16 Q Okay. Can you just briefly walk the Hearing

17 Examiner through what those sections are under 59-E-2.83?

18 A Yes. It applies to off-street parking facility

19 for special exception that is located in the one-family

20 residential zone if three or more parking spaces are

21 provided.

22 Q And is that the case here?

23 A Yes, it is.

24 Q Okay. And just for ease, if the Hearing Examiner

25 will allow me to sort of guide you through. There are

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1 subsections A through E in this section of 59-E-2.83.

2 A Correct.

3 Q And looking in particular to section A which is

4 titled as Location, it indicates that a parking facility

5 must be located to maintain a residential character and a

6 pedestrian-friendly street orientation.

7 A Yes.

8 Q Do you believe that this proposal does that?

9 A Yes, it does. We do have the property parking

10 area setback. There's also a very large existing hedge that

11 is blocking it and there is also the grade --

12 Q If you could point out for the Hearing Examiner

13 where that hedge is that you're referring to?

14 A The hedge is along the northern property line or

15 the northern yard area parallel to Randolph Road and it

16 completely screens the parking but in addition to that,

17 there's also the grade change of about 10 feet that has a

18 huge impact on blocking that parking.

19 Q And the parking facility, to be clear, is 10 feet

20 higher --

21 A Higher than the --

22 Q -- than the grade of Randolph Road.

23 A Than Randolph Road. That is correct.

24 Q So if one were to be standing or walking down

25 Randolph Road and look into this property, would you see the

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1 improvements that are being proposed, primarily for the rear

2 yard?

3 A No, you would not. If you're right in front of

4 that parking lot, you cannot see it at all.

5 Q And with regard to the other sides of the parking

6 facility, are they screened?

7 A Yes, they are with that six-foot high board on

8 board fence.

9 Q Okay. And that will, is not proposed to change as

10 a result of this application?

11 A No. The fence stays. It's very attractive.

12 Q Okay. And again going back to 2.83(b) entitled

13 Setbacks, it indicates a parking facility and loading area

14 must be set back not less than the applicable front, rear

15 and twice the side building setback in the zone. Putting

16 aside the side yard which we'll get to in a minute about the

17 waiver, does this meet the front and rear setbacks as

18 articulated in the zone?

19 A It meets the rear setback. The front setback it

20 meets because it's adjacent to a 120-foot wide right-of-way.

21 Q Okay. And what, briefly describe for the Hearing

22 Examiner, and I believe you're quoting from 59-E-2.91(f).

23 Can you just briefly describe what you mean when you say it

24 meets the front setback?

25 A It states a parking facility adjoins an existing

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1 public right-of-way that is 120 feet or more in width. The

2 provision for a landscape strip, as stated in Section 59-E-

3 2.71 applies to the property line abutting the right-of-way

4 in lieu of a provision of paragraphs A through E above.

5 Q So again, that --

6 MR. PRAGER: I'm sorry. What were you just

7 reading from?

8 THE WITNESS: 59-E-2.9(f).

9 MS. WALKER: Which is entitled Screening from Land

10 and Residential Zone or Institutional Property. It's the

11 screening required for a parking facility. And rather than

12 a front yard side back, rather than a front yard setback,

13 Mr. Powell's indicated that we are able to not apply that

14 and instead, have screening that's required under the Zoning

15 Ordinance and that it meets the standards since Randolph

16 Road is a 120-foot right-of-way, major highway you'll hear

17 later from our traffic expert.

18 BY MS. WALKER:

19 Q So the screening as proposed for the front yard is

20 compliant with the Zoning Ordinance then presently.

21 A Yes.

22 Q And do you believe it will continue to do so?

23 A Yes. Actually, when I was out there Wednesday, I

24 noted that the, they have already planted the proposed

25 shrubs that are shown on the landscape plan.

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1 Q And again, that's just to shield the headlights
2 from --
3 A That's correct.
4 Q Okay. From Randolph Road for those exiting the
5 parking facility.
6 A That's correct.
7 Q Okay. And do you believe that the screening
8 provided is compatible with the area's residential
9 character?
10 A Yes.
11 Q And that it meets the requirements of 59-E-
12 2.83(c)?
13 A Yes, it does.
14 Q 59-E-2.83(d) refers to shading of paved areas.
15 A Yes.
16 Q And trees being planted in such a way as to assure
17 that 30 percent of the paved area are shaded.
18 A Yes.
19 Q Does this proposal meet that standard?
20 A Yes, it does.
21 Q Okay. And looking at 59-E-2.83(e), because we are
22 enlarging this parking facility --
23 A Yes.
24 Q -- are you aware as to whether the new part has to
25 be compliant with the zone or whether the entire parking

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1 facility needs to be compliant.
2 A The entire parking facility needs to be.
3 Q And why is that?
4 A Because they're looking at it as a new facility.
5 Q Okay. And are you aware of how much of the, is
6 existing as far as the parking facility square foot?
7 A Yes. The existing is 5779 square feet and we're
8 adding 3352 square feet.
9 Q So by my math, 3352 is --
10 A Yes.
11 Q -- more than 50 percent?
12 A Yes.
13 Q Okay. And therefore, you're bringing the existing
14 facility into compliance.
15 A That's correct.
16 Q Now, if the Department of Permitting Services were
17 to require a plan to be submitted that does not include
18 compact spaces and is consistent with the drawing that you
19 have submitted as Exhibit 47, does that change any of the
20 opinions that you've already expressed in this case?
21 A No, it does not. I kept those in mind while I was
22 designing it.
23 Q Okay. And has the applicant requested any waivers
24 for off-street parking in connection with this application?
25 A Yes.

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1 Q And what are they?
2 A Requested a waiver of the side yard setback of 12
3 feet.
4 Q Okay. And what is required in order for the Board
5 of Appeals or the Department of Permitting Services to
6 approve such a waiver? Are you aware of those standards?
7 A Yes. It needs to find that it's not affecting
8 adjoining property owners.
9 MR. PRAGER: What are you referring to?
10 THE WITNESS: The waiver.
11 MR. PRAGER: Right, but you were reading from
12 something.
13 THE WITNESS: I am reading from some of my notes.
14 BY MS. WALKER:
15 Q If I will, the Zoning Ordinance requires, under
16 59-E-4.5, waivers that the Director of Planning Board, Board
17 of Appeals or Hearing Examiner may waive any requirement of
18 the article not necessary to accomplish the objectives of
19 59-E-4.2 which are the parking facility standards that we've
20 already gone through. Is it your position that this zoning
21 Hearing Examiner should grant such a waiver as not --
22 A Yes.
23 Q -- being inconsistent with the goals of 59-E, let
24 me state the right section, 4.2?
25 A Yes.

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1 Q Okay. Can you please describe the requested side
2 yard setback requirements and the requested waiver to make
3 sure we all understand the area that we're talking about?
4 A The requirement is that the setback be two times
5 the side yard setback which is 12 feet which would be a 24-
6 foot setback. We have a, currently have a 12-foot setback
7 so we're requiring a 12-foot waiver.
8 Q Okay. And the current parking facility you said
9 is set back 12 feet from the property line?
10 A It is. The proposed one is also set back at 12
11 feet.
12 Q And this is only affecting the side yard, is that
13 correct?
14 A That is correct.
15 Q How many spaces are in the side yard?
16 A It's affecting four of the new spaces.
17 Q And you testified previously you're familiar with
18 the Planning Board technical staff Staff Report as well as
19 the deliberations before the Planning Board.
20 A Yes.
21 Q Are you aware as to how, as to whether or not they
22 made a recommendation on this issue of the parking waiver
23 setback?
24 A Yes. They did make that. They agreed to the
25 waiver.

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1 Q And in your opinion as a land planner, are the
2 recommended conditions of approval appropriate in this case?
3 A Yes.
4 Q Okay. And with regard to forest conservation,
5 were the necessary plans required for a special exception
6 submitted in this case?
7 A This plan was exempt from the forest conservation
8 because it is less than 40,000 square feet and so a waiver
9 was granted for that.
10 Q But there are, there was a landscape plan
11 submitted --
12 A That's correct.
13 Q -- and there will be plantings as a result of
14 this.
15 A Yes.
16 Q Can you please walk through what those plantings
17 are?
18 A Certainly.
19 MR. PRAGER: Mr. Powell, what exhibit are you
20 displaying?
21 THE WITNESS: This is the tree save and landscape
22 plan.
23 MS. WALKER: For the Hearing Examiner's record,
24 that's Exhibit 22I.
25 BY MS. WALKER:

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1 Q You can mark that, Mr. Powell. This is a
2 duplicate copy and has not been altered at all from what's
3 already in the record.
4 MR. PRAGER: All right. Ms. Walker, hold on a
5 moment, please. All right.
6 THE WITNESS: Currently, there is a hedge, a
7 photinia hedge that runs along the Randolph Road right-of-
8 way, and they are proposing to add six more photinia to fill
9 in any of the little gaps that exist there. For the trees
10 that are being used to provide the shade adjacent to the
11 parking facility, they're using two willow oaks and one
12 scarlet oak. And there are existing trees, in this case, a
13 black locust, which is also providing shade to the facility.
14 BY MS. WALKER:
15 Q And those are new plantings to supplement the
16 existing screenings that are on site, correct?
17 A That is correct.
18 Q And canopy on site?
19 A (No verbal response.)
20 Q And do you know whether the Park and Planning
21 Commission has reviewed this drawing?
22 A Yes, they have.
23 Q This landscape plan and tree save plan?
24 A Yes, they have.
25 Q And whether they have issued any comments

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1 regarding it?
2 A They have issued, issued a letter of approval.
3 Q Okay. I just want to call your attention one more
4 time to the parking waiver and just make sure we get all the
5 standards in there if I could. You were referring in your
6 testimony to the objectives of 59-E-4.2 and that the Hearing
7 Examiner or Board could waive any of those. So quoting from
8 59-E-4.2, which is Parking Facility Plan Objectives, they
9 are A, the protection of the health, safety and welfare of
10 those who use any adjoining land or public road that abuts a
11 parking facility. Do you believe that this proposal, as
12 laid out under either alternative of compact and non-compact
13 spaces, meets that requirement?
14 A Yes, it does.
15 Q And the safety of pedestrian and motorists within
16 a parking facility, that it meets that objective with the
17 design you have laid out?
18 A Yes. It meets all those requirements.
19 Q And the optimal safe circulation of parking within
20 the parking facility and proper location of entrances and
21 exits to public roads so as to reduce and prevent traffic
22 congestion?
23 A Yes.
24 Q And appropriate lighting if it's to be used after
25 dark.

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1 A Yes.
2 Q Do you believe that this meets that standard?
3 A (No audible response.)
4 Q Okay. Mr. Powell, in your opinion as an expert,
5 as a land planner and expert witness, will the approval of
6 the requested special exception comply with all of the
7 standards and requirements of the Zoning Ordinance and be
8 consistent with the white oak master plan?
9 A Yes, it will.
10 MS. WALKER: Okay. That's all I have for this
11 witness.
12 MR. PRAGER: Mr. Wilhelm, do you have any
13 questions for this witness?
14 MR. WILHELM: Yes, I have.
15 CROSS-EXAMINATION BY MR. WILHELM
16 BY MR. WILHELM:
17 Q On the play area, maybe you said this but I wasn't
18 clear, I guess I was looking at the diagrams, anyway,
19 there's an existing I think you described it as Exhibit H,
20 10H, a nice play area.
21 A Yes.
22 Q Is that being relocated?
23 A Yes, it will be.
24 Q And where will that be?
25 A It's if you look at the grassy area just in front

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1 of that, it's being moved over to that area which is the
2 area that is in between the rear of the house and the new
3 parking facility.
4 Q So what's there will basically remain, just be
5 relocated.
6 A Yes.
7 Q Okay. Because I agree. That is a nice facility.
8 Okay. You testified, I'm going to probably jump around a
9 little bit, on the lighting, the original proposal was 14
10 feet poles.
11 A That's correct.
12 Q What lights exist out, exterior lights exist
13 today?
14 A They have existing lights on the building that
15 they have out there, and I think you can see them on the
16 drawing. I -- these are actually, they're only showing the
17 proposed ones there but there are existing lights out there
18 on the building currently.
19 Q But there's none -- because I understand where
20 you're proposing the new lights to go is kind of between the
21 fence and the parking.
22 A That's correct. And they have cut-off shields so
23 the adjacent neighbor doesn't get any spillover or spillage
24 from the lights. It's all directed towards the parking lot.
25 It's called a cut-off. We're require to meet, have zero

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1 foot candles at that property line and the photometric study
2 shows that there are zero foot candles at that property.
3 Q So they're pointed away from the property line --
4 A Yes.
5 Q -- is what I'm hearing you say.
6 A Yes.
7 Q How tall is the pole that you're proposing?
8 A Twelve feet.
9 Q Twelve feet. I guess I'm wondering if a
10 neighbor's looking out of his house, even if there's zero
11 light at the property line, couldn't he still see light at a
12 distance?
13 A He could. Just as he could if it were your house
14 and you had a carport there and you had the light on your
15 carport. I mean, it's a fact of life that there is going to
16 be some light at some point, but those lights are also cut
17 off at 6:30 is the agreement which is very early.
18 Q Yes. I'm wondering if -- well, say the, if the
19 light poles were reduced down to six feet, would that, can
20 they be configured in such a way that, still with the same
21 lighting fixtures you have that --
22 A You would have more poles and what you'd end up
23 with is the guy looking at the backs of a bunch of heads of
24 lights and if it were me, I would have, prefer to have fewer
25 poles that I'm looking at than I would a whole bunch of them

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1 there.
2 Q Well, I'm thinking if they're six feet, under six
3 feet there, the fence is going to block the visibility.
4 A Well, you know what? You're going to have light
5 if it's a, if it's a residence or if it's a business, you
6 know. Everybody has flood lights on the corners of their
7 houses. Everybody has, if you've got a side door, you're
8 going to have a light that you turn on to see who your
9 visitors are. And those are all above the six feet, the
10 six-foot high fence.
11 Q Okay. On the parking, the, with the standard --
12 maybe if you could clarify for all of us what the difference
13 in width of a standard parking spot and a compact is.
14 A A standard spot in Montgomery County is eight and
15 a half feet and the compact, I never use it, I think it's
16 six and a half feet. Seven and a half.
17 Q So if I understood you correctly, what you, the
18 Permitting Services requires you go to the standard. You're
19 going to take one space along the eastern side and make it
20 more up towards the house?
21 A No. It's actually the southern side.
22 Q Could you clarify where that is?
23 A Yes. I would be happy to. I would be removing
24 this last space because this, the whole parking lot would
25 shift back about five feet, and I have to remove that one

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1 space because of our setback requirement from the southern
2 property line. And so what I've done is there are now two
3 parallel spaces up here adjacent to the house, not just one.
4 Q And assuming there's cars parked in those two
5 parallel spaces --
6 A Uh-huh.
7 Q -- what's the distance between the back of the
8 cars and the --
9 A Twenty feet, the requirement that Montgomery
10 County has.
11 Q Okay. So there would not -- I guess what I was
12 wondering is there a problem with people backing out and
13 there wouldn't be not 20 feet.
14 A No. The 20 feet is what's required for a parking
15 lot.
16 Q That's standard parking lot design.
17 A Yes.
18 MR. WILHELM: See. Can I show him a diagram and
19 ask him to comment on it, or is that not appropriate at this
20 time?
21 MR. PRAGER: Yes. You can ask him. Show it to
22 Counsel first.
23 MR. WILHELM: Unfortunately, I only made -- I
24 don't have a lot of copies so. Do you have a problem with
25 showing this?

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1 MS. WALKER: I'm just having the opportunity to
2 review it.
3 MR. WILHELM: Well --
4 MR. PRAGER: Show it to miss --
5 MS. WALKER: You can show it to the witness
6 certainly and to --
7 MR. PRAGER: Show it to the witness and Ms.
8 MacNab. Show it to Ms. MacNab first so she knows what
9 you're talking about.
10 BY MR. WILHELM:
11 Q This is a --
12 MR. PRAGER: Just a moment.
13 THE WITNESS: Oh, I know where we are.
14 MS. WALKER: I'm just trying to orient myself.
15 Could he maybe aid us to --
16 MR. PRAGER: Just a moment.
17 MR. WILHELM: This is --
18 MR. PRAGER: I said just a moment.
19 MR. WILHELM: Yes, sir.
20 MR. PRAGER: Has everybody had a chance to look at
21 this except me. Well, now I'd like to take a look at it.
22 MR. WILHELM: I'm giving away all my copies.
23 MR. PRAGER: Just a moment, please. All right,
24 Mr. Wilhelm.
25 THE WITNESS: Do you want to use my copy?

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1 MR. WILHELM: If could come over and look at
2 Counsel's. I only made two copies. This is a drawing I
3 got, had copied from Park and Planning. At the top it says
4 where it came from. It's an aerial view. It's in their
5 computer. And it shows the, kind of the fence line between
6 the subject property, 170 and the next door neighbor. And
7 what I'm interested in at this time, it shows the, what I
8 think is the existing parking, the way it's laid out.
9 MR. PRAGER: Uh-huh. All right. You can ask a
10 question of the witness.
11 MR. WILHELM: Okay.
12 BY MR. WILHELM:
13 Q Anyway, I haven't been to the property so it looks
14 like from this thing that the parking, cars are parked
15 differently than they will be with your new plan. Is
16 that --
17 A That is correct.
18 Q Is this representing the way it is out there
19 today?
20 A Yes.
21 Q My point is to the Hearing Examiner is the
22 orientation of the cars will change with the new plan.
23 A Yes.
24 Q So that's my only point.
25 MR. PRAGER: Okay. Why don't we use this as an

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1 exhibit. Ms. Walker, do you have any objection to the
2 introduction of this exhibit?
3 MS. WALKER: No. I would just like to note the
4 language on the bottom, that it says it may not reflect the
5 most accurate conditions and I don't know what the printing
6 on date is of this, but I don't have any objection to it
7 being offered.
8 MR. PRAGER: All right. Hold on a minute, please.
9 MR. WILHELM: Maybe, sir, if --
10 MR. PRAGER: Wait. Just hold --
11 MR. WILHELM: -- we could switch --
12 MR. PRAGER: When I say hold on, I mean hold on.
13 Just things will work a lot more smoothly if you wait until
14 I catch up with you because otherwise, I won't know what
15 you're talking about. So this will be Exhibit 49 and we'll
16 call it Planning Department aerial view.
17 (Exhibit No. 49 was marked
18 for identification.)
19 MR. PRAGER: All right, Mr. Wilhelm. Go ahead.
20 MR. WILHELM: To answer the counsel's question, I
21 had this printed the day of the Planning Board hearing on
22 this thing so.
23 MS. WALKER: I wasn't asking the day you received
24 it, just for clarification, I was just asking the date it
25 was taken.

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1 MR. WILHELM: I don't know the answer to that
2 question.
3 MS. WALKER: Okay. No objection.
4 MR. WILHELM: But the, your expert witness
5 testified that this is, represents the way it is today so.
6 BY MR. WILHELM:
7 Q Did the, Mr. Powell, did you look at what would be
8 the parking lot design if the 24 feet requirement was
9 required to be met?
10 A No, I did not. I didn't do the initial design for
11 this facility. It was done years ago by whoever did the
12 original special exception. And for, I did not -- when I
13 came up with the thing, with the issue about the compact
14 spaces, I was just looking at addressing the compact spaces.
15 Q So you were just basically expanding over what's
16 there.
17 A Yes.
18 Q I don't think I have any questions, more
19 questions. Thank you.
20 MR. PRAGER: Ms. MacNab?
21 MS. MACNAB: I do, but I --
22 CROSS-EXAMINATION BY MS. MacNAB
23 BY MS. MACNAB:
24 Q First of all, the actual play area is going to be
25 moved to the chain link area, am I correct?

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1 A Well, it's already within a chain link area.
2 The --
3 Q Where is it going to actually be moved? Where --
4 A To the area --
5 Q -- is the play area?
6 A -- between the house and the proposed parking.
7 Q So it's going to be moved closer to the house.
8 A Yes. It will be.
9 Q I don't understand how you can start off with a
10 smaller, it says here that currently, you have 9,189 square
11 feet for play area and you're going to 3,864 square feet and
12 suddenly you tell me you have 8,000 square feet --
13 A Well, there's --
14 Q -- play area.
15 A As I --
16 MR. PRAGER: Let her finish the question.
17 THE WITNESS: Yes.
18 BY MS. MACNAB:
19 Q But I don't understand. I don't see -- in other
20 words, I know what you're dealing with. I know this lot.
21 So you're either moving the, allowing the children to play
22 in the sloped area or they're playing in the, in the parking
23 lot because you only have so much area to deal with. So
24 when you take the play area and make that parking, then you
25 make the play area closer to the house, where are they going

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1 to get play area? Remember, you're not just adding a few
2 children.
3 A That --
4 Q You're doubling it. More than doubling it.
5 You're going from 30 to 62.
6 A Yes. But the amount of children going out at any
7 one time is regulated to 15.
8 Q It may be regulated to 15 but I was there once and
9 counted 18.
10 MS. WALKER: Objection.
11 MR. PRAGER: You may testify on that later. We'll
12 strike that.
13 BY MS. MACNAB:
14 Q So I just, I am concerned that there -- I don't
15 see the play area. I don't really see the play area there
16 for the children meaning I don't see the additional space.
17 I see that you're losing it but I don't see how you can go
18 from 9,000 and then claim you have 8,000.
19 A Currently, that backyard is way more than the
20 state requires for the children. Is that play area being
21 reduced? Yes. They don't use that whole area now if you
22 look at it. It's all concentrated off to one side. So what
23 they're doing is they'll be moving the play equipment to
24 within what will be an L-shaped area adjacent to the parking
25 lot. It will be limited to that 15 students, and that's

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1 where they're going to play.
2 MR. PRAGER: Ms. MacNab, do you have other
3 questions?
4 MS. MACNAB: No.
5 MR. PRAGER: Mr. Powell, I believe you said that
6 there are -- well, let me ask the question again. I don't
7 want to put words in your mouth. How many special
8 exceptions do you see in the area?
9 THE WITNESS: Within the area defined as the
10 neighborhood, there were five.
11 MR. PRAGER: All right. And now Exhibit C of
12 your, of your report, 22S, contains what I count as
13 considerably more special exceptions.
14 THE WITNESS: I'm sorry. It's six including the
15 existing special exception.
16 MR. PRAGER: I understand but let's --
17 THE WITNESS: Where the orange star is.
18 MR. PRAGER: Let me go, do you have that in front
19 of you?
20 THE WITNESS: I do.
21 MR. PRAGER: Now, next to Hammonton Road on the
22 south, I see S-872 and S-924. That's two, is that correct?
23 THE WITNESS: S-872 next to Hammonton?
24 MR. PRAGER: Well, it could be 672. It, the
25 printing is a little bit obscure. It's either 672 or 872.

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1 THE WITNESS: I believe that's for one property.
2 MR. PRAGER: But you're not sure.
3 THE WITNESS: No, I'm not.
4 MR. PRAGER: All right. Just so I can get it
5 clarified, you're saying that 872 or 672, whichever it is,
6 and 924 are for one property? Is that your testimony, your
7 belief?
8 THE WITNESS: I see where your 672 is. I'm sorry.
9 I was looking over next to Hammonton Place, not Hammonton
10 Road. The S-672 is for I believe the school across the
11 street and I just neglected to color that.
12 MR. PRAGER: All right. Now, you also have S-2191
13 on the north side of Randolph Road between Hammonton Place
14 and Hammonton Road.
15 THE WITNESS: Yes.
16 MR. PRAGER: All right. You have S-1165, S-2397,
17 S-2399 on the --
18 THE WITNESS: Those are on the same --
19 MR. PRAGER: -- on the south side.
20 THE WITNESS: Those are on the same property, and
21 S-2191 is outside of the neighborhood.
22 MR. PRAGER: Because it's across the street --
23 THE WITNESS: Yes.
24 MR. PRAGER: -- on Randolph Road.
25 THE WITNESS: I should have also colored it in

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1 just to show the amount there.
2 MR. PRAGER: And let me understand your, your
3 rationale. Why is something on the other side of Randolph
4 Road but within half a mile or less of the petitioner's
5 property, why is that outside the --
6 THE WITNESS: Well --
7 MR. PRAGER: Just let me finish my thought. Why
8 is that outside the, the neighborhood given the
9 comprehensive plan statement that the number of special
10 exceptions on Randolph Road should be limited?
11 THE WITNESS: I, in my calculation, Randolph Road,
12 because of its size of 120-foot wide right-of-way, and it's
13 also a divided highway, it's such a strong physical
14 characteristic separating the, those that I, it's defined,
15 helps define the neighborhood. And what we were talking
16 about earlier was how many special exceptions were within
17 the neighborhood. If we had talked about the special
18 exceptions along Randolph Road, yes, there are more.
19 MR. PRAGER: All right. Well, except if I
20 understand your map correctly, you put in pink a property on
21 the other side of --
22 THE WITNESS: Yes.
23 MR. PRAGER: -- Randolph Road, and that's S-1460.
24 Now you have included that in your neighborhood.
25 THE WITNESS: Yes. And as I said earlier, I

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1 should have colored in the school and I missed 2191 also
2 because there, with that exhibit, I was showing the existing
3 special exceptions.
4 MR. PRAGER: Now, that's, I don't want to
5 exaggerate but that looks like it's almost across the
6 street. It's a little bit down, farther south. Are you
7 saying that if you had six special exceptions on the north
8 side of the road opposite this particular petitioner's land,
9 that you wouldn't be counting those special exceptions
10 within the neighborhood?
11 THE WITNESS: Not within the neighborhood, no,
12 because I've defined the neighborhood edge as Randolph Road.
13 The other thing that I would like to point out to the
14 Hearing Examiner is when you drive down that road, you
15 don't, they look like houses. They don't look like there's
16 any special exception going on.
17 MR. PRAGER: The question, however, is not what
18 they look like but whether or not they're an excessive
19 number, and that's what you testified as to.
20 THE WITNESS: Yes.
21 MR. PRAGER: Not about their appearance.
22 THE WITNESS: Yes.
23 MR. PRAGER: And we don't know, by looking at
24 their appearance, the intensity of use, do we?
25 THE WITNESS: No.

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1 MR. PRAGER: In fact, this looks like an ordinary
2 residential house but it's going to have 62 children, 11
3 staff members and from taking, taking the point of view of
4 the Colesville Citizens Association, 62 cars coming and
5 going. So the appearance of the building really doesn't
6 have any, have very much to do with whether something is
7 excessive, is that correct?
8 THE WITNESS: Yes.
9 MR. PRAGER: Let's proceed up Randolph Road on
10 your exhibit. You have again, this is on the north side of
11 the road, SE-501, S-1687 and S-2180. So those are three
12 other special exceptions on Randolph Road to the north.
13 THE WITNESS: Two of them are on Randolph Road,
14 yes.
15 MR. PRAGER: That's correct. And the other one is
16 on what road, do you know?
17 THE WITNESS: No, I do not. I can let you know in
18 just a second. Sherwood Forest Drive.
19 MR. PRAGER: All right. Thank you. And you have
20 one on, on the south side of Randolph Road, S-541. First,
21 let me -- is that correct?
22 THE WITNESS: That's correct.
23 MR. PRAGER: And is that what you define as the
24 neighborhood?
25 THE WITNESS: Yes. That's what's in the

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1 neighborhood.
2 MR. PRAGER: Now, you also have, at some distance
3 away on, I believe that's New Hampshire Avenue, something
4 called CBA-2303 that you've marked in pink, is that correct?
5 THE WITNESS: Yes, that is. I believe that's a
6 dentist office.
7 MR. PRAGER: And is that within the neighborhood
8 as you define it?
9 THE WITNESS: Yes.
10 MR. PRAGER: All right. If the ones we've talked
11 about, if you would add them up, am I correct in saying
12 that, including petitioner's property, that that would make
13 nine special exceptions on your Exhibit C?
14 THE WITNESS: Yes.
15 MR. PRAGER: Thank you. Did I understand you to
16 say that the screening of the parking is provided by the
17 six-foot fence, is that correct?
18 THE WITNESS: The six-foot fence and also, the
19 existing photinia hedge along Randolph Road.
20 MR. PRAGER: All right. Now, you've proposed
21 parallel parking next to the, to the house. Will those cars
22 be seen from the road? Forgetting for the moment the rise,
23 are they protected by the hedge?
24 THE WITNESS: A portion of them is, yes.
25 MR. PRAGER: A portion of them is.

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1 THE WITNESS: Yes.
2 MR. PRAGER: But they are visible.
3 THE WITNESS: Yes.
4 MR. PRAGER: And there is no other screening
5 that's provided at this point --
6 THE WITNESS: No.
7 MR. PRAGER: -- for the new, for your new
8 configuration.
9 THE WITNESS: No.
10 MR. PRAGER: What's the condition of the hedge?
11 THE WITNESS: Very good.
12 MR. PRAGER: But you are going to put additional
13 plantings, is that correct?
14 THE WITNESS: Yes.
15 MR. PRAGER: Now, you've testified about some of
16 the, the shade trees. I notice that on your Exhibit 22I,
17 that some of them, like no. 4, 5, 6, 10, 13, are just in
18 fair condition. What, as a landscape architect, what does
19 that mean and what is the likelihood that -- well, first of
20 all, what does that mean?
21 THE WITNESS: It means that there's, there's
22 disease that could be associated with the trees, some broken
23 branches. I will testify that when I was out there
24 Wednesday, I noticed that there had been some recent pruning
25 done to the trees to get rid of some of the damaged wood,

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1 and it looks like a lot of that has been done on the
2 property to clean it up.
3 MR. PRAGER: Can you testify as an expert as to,
4 given the fair condition of some of these trees, how, what
5 their lifespan is likely to be?
6 THE WITNESS: It --
7 MR. PRAGER: You want to go through them? For
8 example, a black locust in a fair condition is likely to
9 survive for how long?
10 THE WITNESS: A black locust could survive
11 forever. They're weed trees. It's actually a tree I don't
12 recommend to be in a residential lot.
13 MR. PRAGER: And why is that?
14 THE WITNESS: Because it's a fast grower and it
15 drops quite a bit of wood, and they also are very subject to
16 Japanese Beetles.
17 MR. PRAGER: Meaning what. If they're subject to
18 Japanese Beetles, what does that mean?
19 THE WITNESS: Meaning they come out looking very
20 nice in the spring and they'll have a nice blossom in June
21 and then by August and September, they're desonated by
22 Japanese Beetles eating them and they look like they are,
23 have a brown crown on them basically.
24 MR. PRAGER: So they're not very good or they,
25 they're not the full, they're not the best tree for a shade

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1 tree.
2 THE WITNESS: No, they're not.
3 MR. PRAGER: Right. What about the black cherry?
4 THE WITNESS: Black cherry is a native species
5 that again, is not one of my favorites but they do, Park and
6 Planning does recommend planting them for attracting birds.
7 They are subject to gall though.
8 MR. PRAGER: To what? I'm sorry.
9 THE WITNESS: Gall which is a growth in the limbs
10 that will stunt that limb from growing anymore.
11 MR. PRAGER: And do any of these trees, do any of
12 the black cherry trees have that growth at the moment?
13 THE WITNESS: I did not notice those out there.
14 MR. PRAGER: Now, explain the deciduous trees, the
15 willow oak and the scarlet oaks that you're planning to have
16 at the site. First of all, when they're planted, how tall
17 will they be?
18 THE WITNESS: I'll get the schedule. It should
19 say. They are two and a half to three-inch caliper trees
20 which will be 12 to 14 feet high.
21 MR. PRAGER: At the time of planting?
22 THE WITNESS: Yes.
23 MR. PRAGER: And how tall do they grow?
24 THE WITNESS: They grow very large. They are
25 both, they can both easily get to 70 feet.

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1 MR. PRAGER: And do they have undergrowth? Will
2 they -- what I'm asking about is other than shading, will
3 they, are these trees that will also spread out so that they
4 will mask things from view?
5 THE WITNESS: It will allow grass to grow under
6 them. As they get much older, and we're talking much
7 further into the future, the roots do come up to the surface
8 as all trees do. Make it difficult to mow.
9 MR. PRAGER: How many lights are currently at the
10 site?
11 THE WITNESS: I am not sure. Currently at the
12 site, I am not sure.
13 MR. PRAGER: Do you want to consult your, your
14 statement or your, your exhibits? We'll go off the record
15 for a moment.
16 (Discussion off the record.)
17 MR. PRAGER: On the record. My question -- do you
18 need to have it read back to you?
19 THE WITNESS: The number of lights that are
20 currently at the site.
21 MR. PRAGER: Well, first, let's talk about the
22 number on the building.
23 THE WITNESS: There is one light on the building
24 and there are two light poles currently existing.
25 MR. PRAGER: All right. And how tall are those

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1 light bulbs?
2 THE WITNESS: They are seven, eight feet tall.
3 MR. PRAGER: And how many additional light
4 fixtures, first on the building itself, do you propose to
5 put?
6 THE WITNESS: There were, in the front yard, there
7 were three lights put across the front, three across the
8 back, one on this side. There are --
9 MR. PRAGER: When you say this side, you're --
10 THE WITNESS: I'm sorry. The --
11 MR. PRAGER: -- pointing to the eastern side.
12 THE WITNESS: The eastern side, yes, sir, along
13 the eastern-most --
14 MR. PRAGER: Wait, wait. That's not -- you're
15 pointing to something that's not on the building. I'm just
16 asking you for the building at the moment.
17 THE WITNESS: Okay.
18 MR. PRAGER: So seven lights all together on the
19 building.
20 THE WITNESS: That's correct.
21 MR. PRAGER: All right. Go ahead.
22 THE WITNESS: Then there are a total of five light
23 poles surrounding the parking lot.
24 MR. PRAGER: All right. Now, first of all, the
25 seven, the seven lights on the building itself, how tall are

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1 they?
2 THE WITNESS: Those are usually mounted at about a
3 height of approximately 10 feet, eight. Anywhere from eight
4 to 10 feet.
5 MR. PRAGER: All right. And do you consider, as
6 an expert, that having seven light fixtures, all of which
7 presumably will be lit until the shut off time, that that's
8 normal in a residential building?
9 THE WITNESS: Do I think it's normal? No.
10 MR. PRAGER: All right. Do normal residential
11 uses have three, did you say three light poles in the --
12 THE WITNESS: Five light poles.
13 MR. PRAGER: Five light poles in the parking lot.
14 THE WITNESS: No.
15 MR. PRAGER: No. So this would be, from a
16 lighting point of view, atypical of a residential use, is
17 that correct?
18 THE WITNESS: Yes.
19 MR. PRAGER: Now, the light poles along the
20 eastern margin, the eastern zone border, eastern border of
21 the property, how close will they be to the fence?
22 THE WITNESS: They are approximately 10 t 12 feet
23 away from the fence.
24 MR. PRAGER: So they're closer than would be
25 normal if you did not get the, the variance from the parking

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1 lot setback, is that correct?
2 THE WITNESS: Correct.
3 MR. PRAGER: Why do they need to be so close to
4 the neighboring property?
5 THE WITNESS: In order to get the proper spillage
6 and to provide it so that he gets zero light at the property
7 line, we actually have to put the source of light closer and
8 shine it towards the applicant's business so that it's not
9 spilling over into their yard. These have cut-off shields
10 that direct the light away from the adjacent house.
11 MR. PRAGER: I see. So you said in order to get
12 the, and I'm not quite sure exactly what the --
13 THE WITNESS: Foot candles.
14 MR. PRAGER: -- the language you used but I think
15 you said in order to get the proper amount of light. What
16 are the lighting standards for a parking lot?
17 THE WITNESS: For a parking lot, they vary
18 anywhere from one foot candle to a shopping center, you're
19 going to see maybe 14 foot candles.
20 MR. PRAGER: So if you took out any of these
21 proposed five lights, would that mean that you would not
22 meet the standards?
23 THE WITNESS: Possibly. I did not prepare the
24 lighting plan but I could look at it and give an educated
25 guess by looking at the foot candles.

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1 MR. PRAGER: Who did prepare it?
2 THE WITNESS: An outside consultant had prepared
3 it.
4 MR. PRAGER: And is that outside consultant going
5 to testify?
6 MS. WALKER: No. We don't expect them to.
7 MR. PRAGER: So at this point, we don't have
8 anyone who will be testifying as to what is or is not
9 feasible, is that correct?
10 THE WITNESS: Correct.
11 MR. PRAGER: The light study I'll call it, there's
12 probably a more technical word for it in terms of the number
13 of lumens at the property line, is based on the 14-foot
14 standard, is that correct?
15 THE WITNESS: No. The --
16 MR. PRAGER: I mean, sorry, 14-foot poles.
17 THE WITNESS: That's correct.
18 MR. PRAGER: So there is no study as to what would
19 happen if you reduce the level of the light poles to 12
20 feet.
21 THE WITNESS: I believe they did a new photometric
22 study with the lower poles and the outcome was that they
23 didn't have to add any poles. They just were able to lower
24 the height and come up with an acceptable foot-candle spray.
25 MR. PRAGER: Ms. Walker, is there a new

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1 photometric study that is not yet in the record?
2 MS. WALKER: The applicant has not submitted it
3 yet into the record, that is correct, and we did obtain one
4 that showed a 12-foot pole. To be quite frank, speaking
5 conversationally, we, Park and Planning didn't give us a
6 strict standard that they wanted to see. They just wanted
7 to see something less than 14, which wasn't particularly
8 helpful, so we looked at a 12-foot to determine whether or
9 not internally, we would then need to add any light fixtures
10 to the plan. And that study came back and told us, again,
11 I'm proffering here, told us, no, we didn't need to add
12 anymore fixtures.
13 But at this point, we're proposing something less
14 than 14 feet but we're open to a condition from the Hearing
15 Examiner that would tell us exactly what that standard
16 should be and we could supplement while the record is open
17 and provide the necessary plan. I will, just on, you know,
18 cross, ask Mr. Powell some questions about the current
19 lighting plan and where we might eliminate fixtures based
20 upon the foot candles which he said he could opine as to so
21 maybe that will answer some of the Hearing Examiner's
22 questions.
23 MR. PRAGER: Mr. Powell, in this -- as you say,
24 you did not prepare this, the lighting plan. In your expert
25 opinion, if the light standards were to be reduced further

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1 to, you said that the height of the, on the building is 8 to
2 10 feet, if they were to be reduced, the poles that they,
3 the parking lot were to be reduced to eight feet, would that
4 provide enough light to meet standards for the, for the
5 parking lot with the five light poles that are being
6 proposed?
7 THE WITNESS: It probably could, yes, because they
8 can always change the size of the bulb within the fixture
9 itself.
10 MR. PRAGER: Good. You've raised an interesting
11 point. Tell me about the bulbs. What is the wattage. What
12 will be the wattage on the building, on the building lights?
13 There were, I've seen that there were going to be 100-watt
14 bulbs and elsewhere, there were going to be 75-watt bulbs,
15 is that correct?
16 THE WITNESS: Yes. And --
17 MS. WALKER: If I could, I think you might be
18 asking the witness to opine to things that are on the
19 photometric plan that he doesn't have in front of him, so
20 this is Exhibit 39.
21 MR. PRAGER: All right.
22 MS. WALKER: If I can provide this, I think that
23 would be --
24 MR. PRAGER: Of course.
25 MS. WALKER: -- constructive.

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1 MR. PRAGER: Thirty-nine did you say?
2 MS. WALKER: Yes. Currently Exhibit 39 of the
3 record.
4 MS. MACNAB: Thank you.
5 MS. WALKER: You're welcome.
6 THE WITNESS: Yes. They are using 70-foot, 70
7 watts up to 100 watts as you said.
8 MR. PRAGER: And how about on the, on the, at the
9 moment on the light poles, the 12-foot light poles?
10 THE WITNESS: I would assume they use the exact,
11 and this is an assumption, that they're saying that they
12 use, would use the exact same wattage and they're just
13 lowering that pole the two feet, so I think you would have
14 the 70 up to the 100-foot watts once again. The pole lights
15 themselves are using the, along the eastern property line,
16 are using the 100-watt bulb and the fixtures around the
17 house, around the structure, are using the 70 watts.
18 MR. PRAGER: Do you know why it's necessary to put
19 seven lights on a building that is operated with, with the
20 last 10 years or so, with a single outdoor light?
21 THE WITNESS: No.
22 MR. PRAGER: Are there any standards that have to
23 be met for lighting?
24 THE WITNESS: The standards for lighting are
25 safety. If you talk to Park and Planning, they're very

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1 vague about the amount of foot candles to provide and
2 obviously, I would think a special exception falls into a
3 very gray area because you do want to keep that residential
4 feel. You don't want to go above and beyond. Myself, I
5 think the seven lights on the exterior are excessive.
6 MR. PRAGER: All right. Do you know, and perhaps
7 you're not the best person to ask this, but do you know when
8 the lights go on in the morning?
9 THE WITNESS: No, I do not.
10 MR. PRAGER: Now, in your, in your report, Exhibit
11 22, page 6, you make the statement, quote, the scale of the
12 daycare will not change from what has been previously, what
13 has previously been approved. How do you square that with
14 the idea that you're doubling the population to be served
15 and doubling the size of the staff, almost?
16 THE WITNESS: The scale of the building is not
17 changing, and the fact that you have the limited times for
18 the drop-offs and the limited time for the exterior play, to
19 all accounts, it's going to be business as usual as it is
20 like today.
21 MR. PRAGER: All right. I'm a little skeptical
22 about something doubling in size being the same but I, I
23 will not press the point. I'm sorry. Ms. Court Reporter,
24 would you play back the, his, the answer that he just gave
25 because I, there was a question I was going to formulate but

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1 I have forgotten it.
2 (Discussion off the record.)
3 THE COURT REPORTER: We're back on.
4 MR. PRAGER: All right. You were talking about
5 the limited times. What do you mean by that?
6 THE WITNESS: I was told that there would be, the
7 children would be let out at 15 at a time at certain times
8 during the day. They have different age groups that go out
9 all as one, I guess so you don't have the older ones
10 roughing up the younger ones or something.
11 MR. PRAGER: You're just talking about playtime.
12 THE WITNESS: Well, I think I'm also told that
13 that was the, for the drop-off, that you had times that you
14 had to, to be there and so that was the limited time, for
15 the drop-off.
16 MR. PRAGER: Right. Now, you heard the testimony
17 this morning of Ms. Schreiber, Ms. Keisha and Ms. Degefa
18 that there is no provision in their contracts for particular
19 times. You're making an assumption here?
20 THE WITNESS: Based on what I was told, yes.
21 MR. PRAGER: All right. Tell me why, I believe I
22 hadn't asked this question, tell me why 21 parking spaces
23 are in harmony with the general character of the
24 neighborhood.
25 THE WITNESS: Well, because they're, the majority

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1 of them are hidden so that you don't see them. You have the
2 photinia hedge out front and you have the fencing that
3 surrounds the rest of it which is a six-foot board on board
4 fence.
5 MR. PRAGER: All right. And tell me why, assuming
6 that this is correct, why are 61 auto trips in the morning
7 and 61 in the evening in harmony with the general character
8 of the neighborhood, if they are?
9 THE WITNESS: Well, I think you're asking me to
10 talk about traffic issues, but I don't think there's really
11 maybe all that many because there are multiple children in
12 one car for one thing, and I think because they don't all
13 come at one time, that they are spaced out and not
14 concentrated, that it's, and the fact that you have Randolph
15 Road, which is a major highway, you know, it doesn't, the
16 difference isn't that great overall.
17 MR. PRAGER: Uh-huh. And tell me, you haven't
18 testified as to this but one of the commission, one of the
19 revisions in the Zoning Ordinance that I and the Board have
20 to consider is the impact on property values in the
21 neighborhood. Have you done a survey as to what, what the
22 impact of this expansion will have on property values?
23 THE WITNESS: No, I have not.
24 MR. PRAGER: Now, this may not be in your field of
25 expertise and if so, just tell me. You may not -- did you

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1 know how many entrances and exits there are in the building?
2 THE WITNESS: I do not know.
3 MR. PRAGER: All right. I think those are the
4 only questions I have but I'm sure that there are others. I
5 get to write recommendations but unfortunately, you won't be
6 there to sit at my side when I do that so, Ms. Walker?
7 MS. WALKER: I just have a few follow-up questions
8 if I might.
9 REDIRECT EXAMINATION
10 BY MS. WALKER:
11 Q You testified to the existing light fixtures in
12 response to a question from the Examiner, and do you know
13 whether any of the existing light fixtures will be
14 maintained or whether they will all be replaced as part of
15 this proposal?
16 A I do not know.
17 Q Okay. And as far as location of lighting in
18 relation to improvements, you testified regarding
19 compatibility of having a fixture higher than six feet, is
20 that correct?
21 A Yes.
22 Q If one were to have a two-story dwelling, wouldn't
23 there indeed be lighting coming from windows on the second
24 story that would be greater than six feet?
25 A Most definitely, and probably also a corner

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1 spotlight that many people have on their houses.
2 Q So is it common, would you say, in a residential
3 zone --
4 A It's very common.
5 Q -- to have lighting above six feet?
6 A It's very common.
7 Q Okay. And are you aware as to whether or not
8 Montgomery County Fire and Rescue Services has issued a
9 letter approving the special exception in this case?
10 A I believe they have.
11 Q And you testified that, that goes to the 20-foot,
12 you testified in response to Mr. Wilhelm's comment that
13 there was a 20 feet clear even with the relocated parallel
14 spaces on the alternate parking design, correct?
15 A Yes.
16 Q And is 20 feet the minimum required for Fire and
17 Rescue?
18 A That is correct.
19 Q Okay. Going now to your, back to your planning
20 report, you, all right, you testified that the, bear with
21 me, that the language in the master plan, I call your
22 attention to your section on proposed development adherence
23 to master plan, there was a discussion between you and the
24 Hearing Examiner about the language that says, quote,
25 excessive special exception uses and nonresidential uses on

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1 major transportation corridors should be avoided, sites
2 along these corridors are more vulnerable to
3 overconcentration, and I'm going to call your attention to
4 this language, it says because they are more visible, and
5 then there's a reference to New Hampshire Avenue, Randolph
6 Road and Powder Mill Road.
7 So again, that because they are more visible, does
8 that not go to the fact that the grading here mitigates the
9 impact and the screening mitigates the impact?
10 A Yes, it does.
11 Q Is that the basis for your finding that these are
12 still consistent despite them being on a major corridor,
13 that this application is still consistent?
14 A Yes.
15 Q And there was some testimony regarding the two
16 parallel spaces in the alternative parking design --
17 A Yes.
18 Q -- being somewhat visible from Randolph Road.
19 Would two parking spaces being visible be inconsistent with
20 the residential character?
21 A Not at all.
22 Q Okay. And would their visibility, maybe although
23 not screened by greenery, be affected by any other
24 conditions of the site that would affect their visibility?
25 A The grading.

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1 Q Which is again?
2 A The house sits 10 feet higher than the Randolph
3 Road.
4 Q So if they were in tandem, if you will, as you've
5 shown them, perhaps the second spot, if somebody were in the
6 first --
7 A You would not see it.
8 Q -- would not be visible.
9 A That's correct.
10 Q And with regard to the photometric plan that we've
11 been discussing, Exhibit 39, do you routinely prepare those
12 as a land planner and landscape architect?
13 A We send those out for preparation.
14 Q Okay. So it's not uncommon to have an outside
15 consultant prepare that planning.
16 A No.
17 Q But you do review them routinely.
18 A Yes.
19 Q Okay.
20 A I have to make sure we have zero foot candles.
21 Q Could you look at the plan that, the copy of
22 Exhibit 39 --
23 A Yes.
24 Q -- that's been provided to you and just opine as
25 to whether or not if we were to eliminate, based upon the

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1 foot candles on the plan that are shown, if we were to need
2 to eliminate some of the light poles from the parking
3 facility, whether that would be possible.
4 A Yes. I do think it's possible.
5 Q So that could be a condition that the Hearing
6 Examiner could put in this case and you still feel that we
7 could meet the requirements.
8 A Yes, I do.
9 Q Okay.
10 MS. WALKER: Hearing Examiner's indulgence for
11 just a moment.
12 BY MS. WALKER:
13 Q You also testified that there was some
14 restrictions on the drop-off and pick-up of children for the
15 site. Are you referring to condition 8 that was submitted
16 by the Planning Board in what is Exhibit 39 to this record?
17 A Yes.
18 Q Just for the record, I'm just going to read this
19 in. It's condition 8 as requested, which the applicant
20 agreed that she was more than amenable to, indicated that
21 for the new special exception, morning drop-offs would be
22 limited to no more than 11 vehicles per half hour period
23 from 7:00 a.m. to 9:00 a.m. Afternoon and evening pick-ups
24 must be limited to 11 vehicles per half hour from 4:00 to
25 6:30 p.m. Drop-off and pick-up periods must be established

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1 by contract between the applicant and her clients. This is
2 the new condition 8 that --
3 A Correct.
4 Q -- the Board has proffered, correct?
5 A Correct.
6 MS. WALKER: That's all I have for this witness.
7 MR. PRAGER: Mr. Wilhelm?
8 MR. WILHELM: I don't think I have any questions.
9 MS. MACNAB: I don't either. I don't have any
10 questions.
11 MR. PRAGER: Mr. Powell, I would like to get a
12 little more definitive statement about the number of poles.
13 Looking at this plan, how could that be configured, what's
14 the minimum number of poles that would be necessary at the
15 12, let me pose it for the moment first as at the 12-foot
16 height?
17 THE WITNESS: I think you could get rid of two of
18 the poles.
19 MR. PRAGER: And how, how would one determine
20 whether that's possible?
21 THE WITNESS: They would send it out to the
22 manufacturer that runs a photometric study and he would then
23 determine whether that's possible.
24 MR. PRAGER: And who would determine the
25 configuration of those light poles, the spacing of them.

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1 THE WITNESS: We could recommend to them where we
2 would, where we think we could get rid of them and they
3 would then plug that into their formula and run the numbers
4 to see if it works. If not, what they commonly do to us is
5 they say well, we can't put it here but we can adjust it
6 over here and still meet the same criteria.
7 MR. PRAGER: Okay. And is the same, is that also
8 possible with the question of reducing the height to 8 to 10
9 feet?
10 THE WITNESS: Yes. That's correct. Let me back
11 up, Mr. Hearing Examiner. I'm not sure you could reduce the
12 height to eight to 10 feet and still reduce two of the
13 poles.
14 MR. PRAGER: No, but --
15 THE WITNESS: They could run a study to see if
16 that's possible, yes.
17 MR. PRAGER: That's correct. And it could be a
18 combination of those two.
19 THE WITNESS: Yes.
20 MR. PRAGER: Reducing the height of the poles but
21 perhaps leaving either five or four poles, or reducing it to
22 three but --
23 THE WITNESS: Correct.
24 MR. PRAGER: -- leaving it at 12.
25 THE WITNESS: Correct.

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1 MR. PRAGER: So one could do a varied number of
2 variables.
3 THE WITNESS: Yes.
4 MR. PRAGER: And make that determination.
5 THE WITNESS: Yes.
6 MR. PRAGER: Now, Ms. Walker asked you about
7 what's proposed in the, in new plan if this special
8 exception is, expansion is approved as to having, to
9 regulating the time of arrival and time of departure. You
10 may not be aware of this but in 2002, this initial special
11 exception, as part of the various conditions, talks about a
12 contract with the parents that has a provision imposing a
13 fine on any parent who arrives more than five minutes before
14 the assigned drop-off or pick-up time or more than five
15 minutes after the assigned drop-off time between the hours
16 of 7:00 and 9:00 and between 4:00 and 6:00 p.m. You were
17 not aware of that contract when you were testifying. Okay.
18 But you, from what I understand, you were saying that your,
19 your testimony as to compatibility with the neighborhood was
20 dependent on part on some sort of management plan that would
21 limit the number of arrivals and departures at any one time,
22 is that correct?
23 THE WITNESS: Yes.
24 MR. PRAGER: All right, Ms. Walker. Any further
25 questions?

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1 MS. WALKER: None. Not for this witness.
2 MR. PRAGER: Mr. Wilhelm?
3 MR. WILHELM: None, sir.
4 MR. PRAGER: Ms. MacNab?
5 MS. MACNAB: No, sir.
6 MR. PRAGER: Mr. Powell, you're excused. I don't
7 know whether you will be recalled for rebuttal but for the
8 time being, you're excused. We will go off the record for a
9 moment.
10 (Discussion off the record.)
11 MR. PRAGER: We will now recess for approximately
12 45 minutes and resume at approximately 10 after 1:00 this
13 afternoon. We are now off the record.
14 (Whereupon, at 12:25 p.m., a brief recess was
15 taken.)
16 MR. PRAGER: All right. We're back on the record.
17 Ms. Walker, would you please call your next witness?
18 MS. WALKER: Yes, sir. I'd like to call Mike
19 Lenhart, Lenhart Traffic Consulting.
20 MR. PRAGER: Mr. Lenhart.
21 (Witness sworn.)
22 MR. PRAGER: Would you state your full name?
23 THE WITNESS: My name is Michael Lenhart.
24 MR. PRAGER: And your address?
25 THE WITNESS: 331 Redwood Grove Court,

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1 Millersville, Maryland 21108.
2 MR. PRAGER: And that's your business address --
3 THE WITNESS: Yes.
4 MR. PRAGER: -- or is that your personal?
5 THE WITNESS: It's business.
6 MR. PRAGER: All right. Ms. Walker?
7 MS. WALKER: Thank you.
8 DIRECT EXAMINATION
9 BY MS. WALKER:
10 Q Mr. Lenhart, if you could, please state your
11 occupation for the record.
12 A I'm a traffic engineer and transportation planner.
13 Q And you, your company name as well?
14 A Lenhart Traffic Consulting.
15 Q You are the principal of that company?
16 A Yes.
17 Q Okay. And have you previously testified before
18 the Hearing Examiner in Montgomery County as an expert in
19 traffic and transportation planning?
20 A Yes.
21 Q And how long have you been a practicing traffic
22 engineer?
23 A Twenty-two, twenty-three years.
24 MS. WALKER: For the record, I have given Mr.
25 Lenhart a copy of his resume which is in evidence as 22N as

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1 in Nancy.

2 BY MS. WALKER:

3 Q If you need to refer to that, please feel free.

4 Can you please describe your educational background?

5 A I have a bachelor's degree in civil engineering

6 from University of Maryland at College Park and a master's

7 degree in traffic engineering, transportation engineering

8 from University of Maryland at College Park.

9 Q And do you hold any other certifications other

10 than your degrees?

11 A I'm a licensed professional engineer in the state

12 of Maryland, I'm a certified professional traffic operations

13 engineer with the Institute for Transportation Engineers and

14 that's it.

15 Q That's enough.

16 A That's good.

17 Q Are you familiar with the Montgomery County

18 regulations including the Zoning Ordinance, the growth

19 policies and their provisions including LATR and PAMR, also

20 known as PAMR?

21 A Yes.

22 Q And are you familiar with the standards and

23 requirements for a special exceptions in Montgomery County?

24 A Yes.

25 Q And have you previously testified before other

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1 government bodies such as boards of appeals or planning

2 commissions as an expert in traffic engineering and

3 transportation planning?

4 A Yes. In Montgomery County and many other

5 jurisdictions across the state.

6 Q Okay.

7 MS. WALKER: I'd ask that Mr. Lenhart be admitted

8 as an expert in transportation planning and traffic

9 engineering.

10 MR. PRAGER: All right.

11 MR. WILHELM: No objections.

12 MS. MACNAB: No objections.

13 MR. PRAGER: Tell me, just as a matter of

14 curiosity, what does, what does the Department of

15 Engineering Access Permits do?

16 THE WITNESS: The State Highway Administration, we

17 managed, reviewed and issued permits for work across the

18 state highway throughout the state of Maryland. Anytime a

19 project was approved, they had to come forward to get

20 permits, they would go through State Highway to get permits

21 for any work that they had to do on state highway right-of-

22 way, so I manage that division.

23 MR. PRAGER: And you say you've, your resume says

24 you've appeared before the Planning Board and a zoning

25 examiner in Montgomery County. How frequently has that

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1 happened, do you know?

2 THE WITNESS: The Planning Board, frequent. Maybe

3 a couple dozen times a year. Zoning examiner, I've been

4 before this Board maybe 12 times in the past five years.

5 MR. PRAGER: Good. I'll accept him as an, as an

6 expert.

7 MS. WALKER: Thank you.

8 MR. PRAGER: Just tell me again his, he'll be an

9 expert in what?

10 MS. WALKER: Transportation planning and traffic

11 engineering.

12 MR. PRAGER: Good. Thank you.

13 MS. WALKER: Thank you.

14 BY MS. WALKER:

15 Q Mr. Lenhart, are you familiar with the subject

16 property being 170 Randolph Road and the surrounding road

17 network?

18 A Yes.

19 Q And have you had the opportunity to visit the site

20 and the surrounding area?

21 A Yes, I have.

22 Q And when was the most recent visit?

23 A This week.

24 Q Okay. And did you prepare a study in connection

25 with this project?

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1 A I did.

2 Q Okay. And your study is in evidence. Just as a

3 housekeeping matter, you initially prepared a study which is

4 in evidence as Exhibit 11. We subsequently submitted on

5 your behalf a revised study which is now noted as Exhibit

6 43G, is that correct?

7 A Yes.

8 Q And the updated traffic impact analysis, which is

9 dated November 8th of 2012, why was that updated?

10 A That was prepared at staff's request.

11 Q Staff of?

12 A Park and Planning transportation staff, to correct

13 the PAMR fee as identified on page 20 of the report. The

14 original report from 2011 had identified a fraction of a

15 trip that would be in the mitigation and staff does not do

16 fractions of trips in the PAMR fees so they had asked us to,

17 to revise that to reflect just one trip rather than a

18 fraction of a trip.

19 Q Okay. And that corresponds to the payment of

20 11,700 that's in the Planning Board's staff report?

21 A That's correct.

22 MR. PRAGER: All right. Let me interrupt at this

23 point. My understanding is that this change was submitted

24 yesterday, is that correct?

25 MS. WALKER: Yes. We submitted a copy to the

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1 Hearing Examiner's office yesterday.
2 MR. PRAGER: Although this was dated November 8th,
3 2012. Why was it so late in being submitted?
4 MS. WALKER: Well, and I indicated this in the
5 letter to the Hearing Examiner's office, it was an oversight
6 on the part of our office. In preparation for the Planning
7 Board's hearing, they asked us to revise the report which
8 Mr. Lenhart did. We submitted it to Park and Planning
9 Commission and when we submitted some revised documents to
10 this office, it was unintentionally omitted from our
11 submittal. We, again, it's only page 20 and only the dollar
12 amount that changed for the mitigation payment. There was
13 nothing with regard to the substance of the report, the
14 counts, the data at all that was altered.
15 We did provide, as soon as we realized the mistake
16 that had been made, we provided a copy immediately to the
17 Hearing Examiner's office by electronic submittal and hand-
18 delivery, and we also provided a copy to Mr. Wilhelm on
19 behalf of Greater Colesville Civic Association as well. And
20 for today's purposes, we've also given each of the parties,
21 for the record, a copy of the updated report that was
22 submitted so they do have it. And I do not believe there is
23 any objection to it from our off the record discussions but
24 I'll let them speak for themselves on that.
25 MR. PRAGER: Yes. Mr. Wilhelm, have you had a

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1 chance to look at this report, the change?
2 MR. WILHELM: The change, I did skim it and it's
3 just a dollar amount change which is, from my point of view,
4 is not, I don't care what the dollar amount is, Park and
5 Planning staff decision what that dollar amount is. You
6 know, I -- no. I don't have a particular problem with
7 what's in the report from a traffic volume standpoint.
8 MR. PRAGER: All right. Well, let's -- we'll get
9 to that in a minute. What about you, Ms. MacNab?
10 MS. MACNAB: I looked.
11 MR. PRAGER: Have you seen it?
12 MS. MACNAB: I just looked at it.
13 MR. PRAGER: And you had an opportunity to, to
14 read the change as represented by Counsel.
15 MS. MACNAB: I did.
16 MR. PRAGER: All right.
17 MS. WALKER: And again, I apologize for the
18 oversight in not having submitted that earlier.
19 MR. PRAGER: Okay. Continue your questioning.
20 MS. WALKER: Thank you.
21 BY MS. WALKER:
22 Q Was your study that you submitted as revised
23 reviewed and accepted by the Maryland-National Capital Park
24 and Planning Commission in connection with this project?
25 A Yes, it was. This report dated November 8th, 2012

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1 was submitted to Park and Planning transportation staff in
2 November and was reviewed and approved in the report on file
3 for the Planning Board.
4 Q Excellent. Okay. And, Mr. Lenhart, if you'd like
5 to refer to what is Exhibit 46, the aerial photograph that's
6 on the easel --
7 A Yes.
8 Q -- please identify and describe the surrounding
9 road network and the critical intersections that are enabled
10 to generate traffic to access the subject property.
11 A Would you like me to go to the map and point
12 things out as I talk or just do it from here?
13 MR. PRAGER: Well, let's see. Let's see. We
14 don't have too much mobility here.
15 THE WITNESS: Okay.
16 MR. PRAGER: If you --
17 THE WITNESS: It's a fairly --
18 MR. PRAGER: From there and if I have a question,
19 I'll ask you.
20 THE WITNESS: Okay. The site is located along the
21 south side of Randolph Road about 200 feet west of Locksley
22 Lane as indicated in the round, the red square for the site
23 location. Randolph Road is a six lane divided roadway,
24 posted speed limit of 45 miles per hour. Our study
25 intersections, as scoped with transportation staff, included

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1 the intersection of Randolph Road at Kemp Mill Road down
2 toward the left side of the exhibit, Randolph Road at the
3 site access point which would, which operates as a right in,
4 right out only on eastbound Randolph Road, and Randolph Road
5 at Locksley Lane which is 200 feet east of the site and is a
6 signalized intersection as well as Kemp Mill Road is a
7 signalized intersection.
8 BY MS. WALKER:
9 Q And are you familiar with the White Oak Master
10 Plan transportation recommendations as they relate to the
11 area in which the property is located?
12 A Yes. Randolph Road is designated as a major
13 highway in the transportation plan, M-17, and identified as
14 a 120-foot right-of-way, a six lane major highway.
15 Q And are there any specific recommendations that
16 are currently programmed in that master plan for
17 implementation?
18 A Not in the vicinity of the site. The only thing
19 that has been completed since the master plan was issued is
20 the construction of the ICC in this area.
21 Q And I believe you already testified to the right-
22 of-way for Randolph which was?
23 A 120 feet.
24 Q Okay. And are you familiar with the 2008 growth
25 policy which includes the Local Area Transportation Review,

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1 intersections. Policy Area Mobility Review, or PAMR, looks
2 at the overall policy area. It's a very broad-scale look
3 where Park and Planning annually conducted updates of the
4 PAMR for each policy area to determine if the policy area
5 was failing or not through the levels of congestion in that
6 policy area. And then they established limits of failure
7 and how much mitigation is required for any development
8 that's proposed in that policy area.
9 Q And what is the mitigation percentage in this
10 area?
11 A Forty-five percent.
12 Q Okay. And you calculated in your report on page
13 20 that that equates to an \$11,700 payment on the part of
14 the applicant?
15 A Yes.
16 Q And that's been approved by Park and Planning
17 staff as well?
18 A Yes.
19 Q The sort of keepers of PAMR if you will?
20 A Yes. And the PAMR, that mitigation fee, that
21 \$11,700 per trip, is based on, it's a mitigation of the new
22 traffic that the site will generate within the policy area,
23 not, not well, we're going from 30 children to 62 children
24 and there's an increase associated with the traffic in and
25 out of the driveway. That's not what PAMR looks at.

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1 PAMR -- because a lot of that traffic in and out of the
2 driveway is, there's some portion of pass-by traffic, people
3 that are driving on their way to work and they drop their
4 kid off on the way to work and they continue on. That's not
5 a new trip in the policy area.
6 Q So there are some trips, if you will, that are
7 discounted for the purposes of PAMR.
8 A There are. So a new trip would be, you're going
9 to have, you know, an increase in staff from six to 11.
10 What would that be, you know? So you've got five additional
11 staff but they don't arrive within the same hour, you know,
12 it's going to be staggered. Those would be new trips to the
13 policy area because they're new work trips in the policy
14 area.
15 Q Okay. Thank you.
16 A Sure.
17 Q And I think you testified to this already but I
18 just want to be clear that using the trip generation rates
19 during the morning and evening peak periods, how many trips
20 is that for the morning?
21 A It's 36 in the morning and 39 in the evening.
22 Those are the total trips, the peak hour trips --
23 Q Right.
24 A -- generated.
25 Q And if you could, please describe the --

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1 MS. WALKER: Well, actually, before I go there,
2 I'm going to, I've got two photographs that Mr. Lenhart took
3 on his most recent sojourn to the property this week and
4 really, they just establish kind of the character of
5 Randolph Road and the intersections. I've provided copies
6 to the opponents of the case, and I'd like to submit these
7 into the record and allow Mr. Lenhart to testify and qualify
8 them if I may.
9 MR. PRAGER: Mr. Wilhelm, you've had a chance to
10 take a look at this?
11 MR. WILHELM: Yes, sir.
12 MR. PRAGER: And do you have any objection to its
13 introduction?
14 MR. WILHELM: No objection.
15 MS. WALKER: Thank you.
16 MR. PRAGER: And Ms. MacNab, do you have any
17 objections?
18 MS. MACNAB: No, I don't.
19 MR. PRAGER: To the introduction. All right. We
20 will label these as Exhibits 50A and 50B.
21 MS. WALKER: And for the record --
22 MR. PRAGER: Just a moment. And for purposes of
23 identification only, we will label the one with the
24 stoplight yellow as 50A and the other one as 50B.
25 (Exhibit Nos. 50A and 50B

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1 were marked for
2 identification.)
3 MR. PRAGER: All right. You may continue.
4 MS. WALKER: Thank you.
5 BY MS. WALKER:
6 Q Mr. Lenhart, did you take these photographs that
7 are now evidence as Exhibits 50A and 50B?
8 A Yes.
9 Q And can you tell me with regard to 50A what that
10 depicts?
11 A 50A is, if you are traveling east on Randolph Road
12 sitting at, in the left turn lane at Locksley Lane, there's
13 a traffic signal you can see up in the right-hand corner.
14 The intersection is signalized. This depicts the site
15 distance looking east on Randolph, if you were to make a
16 left turn, eastbound Randolph onto Locksley Lane or a U-turn
17 eastbound Randolph, U-turn back to westbound Randolph.
18 Q Okay. And the same for the second photograph?
19 A Second photograph is westbound Randolph Road at
20 Hammonton Road which is the next crossover west of the site.
21 Q Could you just approach the aerial and point --
22 A Yeah.
23 Q -- out which are the two intersections for
24 photographs 50A and 50B for clarity?
25 A Again, 50A is if you're driving east on Randolph

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1 Road sitting in the left turn lane at Locksley looking east.
2 Hammonton Place and Hammonton, I think it's Hammonton Road
3 on the south side of Randolph, if you're driving west on
4 Randolph at Hammonton looking west is the second photograph.
5 Q Thank you, Mr. Lenhart. And just going back to
6 sort of how traffic flows in and around this area, during
7 the a.m. peak period, what is the directional flow of
8 vehicles entering and exiting this site?
9 A The primary flow of traffic on Randolph Road in
10 the morning is westbound. About two-thirds of the traffic
11 on Randolph Road is oriented to the west, about a third of
12 the traffic is oriented to the east.
13 Q Okay. And is that, the reverse true then in the
14 p.m.?
15 A In the p.m., the reverse is true. It's people
16 leaving work, heading back out away from the work centers on
17 eastbound Randolph Road. It's about two-thirds/one-third.
18 Q What did your analysis of these trips to and from
19 the site show?
20 A Well, in looking at the Local Area Transportation
21 Review and looking at the study intersections, the
22 Fairland/White Oak Policy Area has a CLV, or critical lane
23 volume, threshold of 1475. That meaning anything less than
24 1475, from zero to 1475 is considered passing, anything
25 greater than 1475 is considered above the threshold and

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1 would --
2 Q And what was your study show for the subject site?
3 A The site access itself will operate at a critical
4 lane volume of 863 or better, or less. Much, much below the
5 threshold for the policy area.
6 Q So is it safe to characterize your testimony and
7 your report to say that there is not an issue with regard to
8 critical lane volume and volume of traffic on Randolph
9 Road --
10 A That's correct.
11 Q -- from a capacity standpoint?
12 A That's correct.
13 Q Okay. And did you conduct a more detailed
14 analysis of the driveway traffic conditions in connection
15 with the proposed childcare center?
16 A Yes. While it is not required by LATR -- LATR
17 simply requires you to do the critical lane volume analysis.
18 However, due to some of the concerns that we heard from the
19 community and the questions about people making right turns
20 out of the site and trying to get on around eastbound
21 Randolph Road, we conducted a more detailed analysis using
22 the Highway Capacity Manual, which is a national publication
23 kind of like the traffic engineer's Bible as it relates to
24 how you do operational analyses for roadways, signalized
25 intersections, unsignalized intersections, and it takes a

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1 much more detailed look at all the characteristics of the
2 intersection.
3 Q And the --
4 MR. PRAGER: Excuse me. You said you did this.
5 Where does it appear in your report?
6 THE WITNESS: It's not in the report. We prepared
7 a separate analysis.
8 MS. WALKER: It is Exhibit 41A in the record.
9 MR. PRAGER: All right.
10 MS. WALKER: This was prepared in response to
11 concerns expressed at the Planning Board's hearing so this
12 was not a document that was before the Planning Board but
13 something that was subsequently generated. And we were
14 asked to expound more on the safety issues of the driveway
15 access, and this goes to that point as well as the accident
16 data that he's also going to discuss. So the driveway
17 analysis is 41A as is the accident data.
18 MR. PRAGER: We'll pause for a moment while I
19 search.
20 (Discussion off the record.)
21 MR. PRAGER: I know I have it but I can't find it.
22 Do you have an extra copy?
23 MS. WALKER: Absolutely. And if I may, what I'm
24 going to provide you is a copy of both the driveway analysis
25 as well as the accident data which are both marked 41A. And

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1 for the record, copies of these were previously provided to
2 those opposing the application as well.
3 BY MS. WALKER:
4 Q Mr. Lenhart, you have copies, right?
5 A I do. I don't know if mine is in the same order
6 that yours is so in case I need to speak to it --
7 Q I will give you an extra.
8 A Thank you.
9 MS. WALKER: These were submitted, Mr. Examiner,
10 with a cover letter from my office. I don't know if that
11 helps in the location of them.
12 MR. PRAGER: All right. As usually happens when
13 I'm looking for things, it was right on the top so I don't
14 need your --
15 MS. WALKER: Oh, excellent.
16 BY MS. WALKER:
17 Q Mr. Lenhart, did you prepare --
18 MS. WALKER: If I may continue, mister --
19 MR. PRAGER: You can.
20 MS. WALKER: Thank you.
21 BY MS. WALKER:
22 Q Mr. Lenhart, did you prepare the two reports,
23 supplemental reports that are in the record as Exhibit 41A?
24 A Yes.
25 Q Okay. And were those prepared subsequent to the

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1 Planning Board's review of this matter on January the 17th?
2 A Yes.
3 Q And if you could just explain a little bit more
4 about your driveway analysis, the methodology for conducting
5 it and the result.
6 A Certainly. The, the first -- and what is the
7 highway capacity, what exhibit number is that?
8 Q They're both 41A.
9 A They're both 41A. Okay so, well.
10 Q For ease, if you want to refer to them, the
11 driveway analysis has the two-way stop control notation in
12 the top left corner.
13 A Yep. That's --
14 Q The other document with the accident data has a
15 Maryland State Highway Administration transmittal.
16 A We'll start with the highway, the two-way stop
17 control summary. There's two sheets with this. The first
18 sheet is the morning peak hour, and it takes the total
19 traffic volumes in and out of the site, takes the lane use,
20 it takes, and it's based on a gap analysis meaning that the,
21 this is a software program that's issued by the highway or
22 the Highway Capacity Manual, through there, and it takes
23 into consideration gaps in traffic flow on Randolph Road
24 based on the traffic volumes.
25 And then it, it gives you the results of what the

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1 level of service would be for the driveway exiting, the
2 egress out of the site for both the morning and evening peak
3 hour. It gives you the level of service which would be more
4 of a qualitative assessment and then also gives you delays
5 and it gives you volume and capacity ratios for the turning
6 movement out of the site. It's more, more quantitative in
7 nature.
8 The level of service or the qualitative measure is
9 based upon the delay meaning that what Highway Capacity
10 assumes is that the longer it takes you to turn or the
11 longer you sit and wait at the stop sign, the more
12 frustration a driver will experience and therefore, their,
13 their experience gets a little more frustrated the longer it
14 takes them to do it.
15 In this case, in the morning, it would take 13.6
16 seconds, which equates to a level of service, B, for a
17 person to turn right out of the driveway onto eastbound
18 Randolph Road. Meaning --
19 MR. PRAGER: Now, I heard you say that. Where
20 does that appear on your --
21 THE WITNESS: That's on the bottom. You see
22 under, there's a B at the very bottom at about the center of
23 the first page.
24 MR. PRAGER: The line that says approach delay?
25 THE WITNESS: Yes. And right above that, well,

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1 approach delay, seconds per vehicle, 13.6.
2 MR. PRAGER: Okay.
3 THE WITNESS: So 13.6. What that means is that's
4 the, the average delay for that approach meaning a person
5 might pull up, stop there, look to the west, wait for a gap
6 in through traffic and on average, that person would wait 13
7 seconds. It may take them five seconds, it may take them 20
8 seconds, you know, different cars but on average, it's 13
9 seconds. It's a level of service, B which is considered
10 acceptable by any standard. A very good level of service.
11 MR. PRAGER: And so I know, by any standard, where
12 do those standards appear?
13 THE WITNESS: Well, Montgomery County does not use
14 this. They don't have standards for this because they use
15 critical lane volume analysis and the Local Area
16 Transportation Review Guidelines. There are some other
17 jurisdictions that use the Highway Capacity Manual for
18 unsignalized analysis. Prince George's County does. Prince
19 George's County says that anything that's 50 seconds or less
20 of delay is acceptable. Anything greater than 50 seconds
21 might mean that you'd need to look at other, other things
22 like maybe a traffic signal might be needed or maybe an
23 additional turn lane to help reduce the delay. Just because
24 it's greater than 50 seconds doesn't mean that there's a
25 failing condition. It just means you might have to wait,

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1 you know, 55 seconds to make a turn.
2 In this case, it's 13 seconds in the morning peak
3 hour. If you look at the second page, the average time is
4 24 seconds and level of service, C. The other thing that
5 these two sheets show, if you look up one, two, three, three
6 lines from the 24 seconds, you'll see in the left-hand
7 column, it says 95th percentile queue length, 95th percent
8 queue length.
9 MR. PRAGER: Yes, uh-huh.
10 THE WITNESS: And then if you look over, you'll
11 see a 0.37. That tells, that tells you what the 95th
12 percent queue length for that movement's going to be,
13 meaning that the absolute longest queue you would experience
14 would be the 100 percent queue. The 95th percentile queue
15 would be a very good kind of a design queue to tell you how
16 long it might possibly be. In that case, .37 is .37
17 vehicles which in reality, it's kind of hard to have a queue
18 that's .37 vehicles long so you could assume that it would
19 be one vehicle would really be the maximum queue that you'd
20 see there at any given time.
21 BY MS. WALKER:
22 Q And again, this is from the driveway turning
23 movement.
24 A That's from the driveway turning movement, yes.
25 Q And in your review of the driveway, approximately

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1 how many cars could queue within the driveway if need be?
2 A Two to three.
3 Q But only one is typical for the a.m. and p.m. peak
4 hours. Is that, you testified it's .37 for the p.m.
5 A Yes. And that's --
6 Q Could you tell me what it is for the a.m.?
7 A Yes. It's .13 for the a.m.
8 Q Okay. So in either circumstance, less than one
9 vehicle on average.
10 A It would be a maximum of one vehicle.
11 Q Maximum of one vehicle waiting to queue, but you
12 testified that there is room for two to three as necessary
13 to keep people off of Randolph Road or impeding the traffic.
14 A Yes.
15 Q Okay. So in your expert opinion, are the gaps
16 that you testified are there based upon the two way stop
17 control analysis that you have done sufficient to
18 accommodate vehicles turning into and out of the site during
19 both a.m. and p.m. peak periods?
20 A Yes.
21 Q And are you familiar with the Zoning Ordinance
22 requirements for parking for child daycare facilities?
23 A Yes.
24 Q And have you reviewed the proposed parking
25 facility plan and the driveway access to the subject

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1 property?
2 A Yes.
3 Q Can you, and I'll refer you to Exhibit No. 44,
4 which is the rendered copy of the plan, if you could please,
5 looking at Exhibit 44, show the Hearing Examiner the parking
6 facility area, as well as the call off and the spaces that
7 are there and indicate whether you feel they are adequate or
8 not based upon the site, anticipated site trip generation
9 for the staff and comings and goings of students?
10 A Yes. The parking area, as you enter the driveway
11 from Randolph Road, the driveway is 20 feet wide, comes up
12 into the parking lot, and the parent drop-off parking is
13 oriented toward the front portion of the parking area. The
14 rear portion of the parking area is geared toward staff
15 parking. We have -- bear with me here for a second. May I?
16 MR. PRAGER: Certainly.
17 THE WITNESS: Okay.
18 MS. MACNAB: I don't think that's the --
19 THE WITNESS: I was going to ask, is this the --
20 MS. WALKER: Forty-four is the exhibits. For the
21 record, 44 is the exhibit that shows the parking with the
22 compact spaces. Exhibit 47, which Mr. Lenhart is now
23 looking at, shows the parking facility without the compact
24 spaces, the alternate parking design if you will.
25 THE WITNESS: Which one would you like me to --

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1 BY MS. WALKER:
2 Q You can use either. Actually --
3 A I guess they're similar.
4 Q -- that's going to be one of my questions to you
5 is does your analysis change depending upon whether the
6 design is as shown on 44 or --
7 A Okay.
8 Q -- as shown on 47.
9 A Okay.
10 MR. PRAGER: Is that a question?
11 MS. WALKER: Yes.
12 MR. PRAGER: Mr. Lenhart, did you understand the
13 question?
14 THE WITNESS: Yes. Yes. Let me -- I could go
15 back here. So --
16 BY MS. WALKER:
17 Q Does your analysis what your --
18 A No. My analysis would not change for either,
19 either scenario.
20 Q Okay. Thank you. Go ahead and if you could,
21 answer the question with regard to the parking configuration
22 and --
23 A Yes. So we have 22 parking spaces for 11 staff
24 and 11 parents. One of the parents is identified as a
25 handicap space. And we looked at this several different

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1 ways. One is using the Zoning Ordinance requires parking
2 for one space per employee plus one space for every six
3 children. So 11 employees would be 11 spaces and then 62
4 children divided by the six gives you 10 plus a fraction so
5 it's rounded up to 11. So we have 22 spaces. So it
6 satisfies the zoning requirements for parking.
7 Q And just for the record, that's 59-E-3.7 of the
8 Zoning Ordinance --
9 A Yes.
10 Q -- that provides that.
11 A Yes. And then we looked at it using -- the
12 Institute for Transportation Engineers has a parking
13 generation manual which provides data at, and it's real
14 world data, real world parking counts, at different land
15 uses so that planners can look at the real world data and
16 see how that applies to, you know, what you're proposing and
17 what, how many spaces you may need.
18 They have data for daycare centers and they have
19 several different ways to look at it. One is using the
20 number of children in the center. So for 62 children, how
21 many, how many parking spaces would you anticipate and gives
22 you the overall number of spaces based on staff and parents.
23 The other way that we looked at it, ITE has formulas based
24 on the number of staff. It gives you kind of a similar
25 result. And using both of those, either way you look at it,

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1 20 to 21 spaces would be the maximum number, the design
2 number of spaces that this site would need. So with 22
3 spaces, we would satisfy the design target for the ITE data.
4 MR. PRAGER: Does that appear in your report, what
5 you just testified to?
6 THE WITNESS: It's not in my, it's not in the LATR
7 report. Do you have that as an exhibit?
8 MS. WALKER: If I could, Mr. Examiner, that is
9 actually, it's not part of the LATR analysis but it is
10 something that was provided to the Park and Planning
11 Commission as an exhibit, as an attachment to their report
12 which is in the record. There's a memo dated December 10th
13 of 2012 from Mr. Lenhart to Renee Kamen who was our Park and
14 Planning staff reviewer. They've attached this in their
15 transmittal to the Hearing Examiner's office so it is, it is
16 in the record. That transmittal was --
17 THE WITNESS: Thank you, Becca. This, my letter
18 was dated December 10th, 2012. Memo to Renee Kamen of Park
19 and Planning.
20 MS. WALKER: That is Exhibit 38 in the record.
21 MR. PRAGER: You're talking about, at this point,
22 you're talking about the e-mail from Renee Kamen.
23 MS. WALKER: Ms. Kamen sends an e-mail as well as
24 a, there's a cover letter from the Planning Board and it has
25 the final, I apologize, has the final technical staff report

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1 from her as, I'm sorry, Exhibit 40. I apologize. She sent,
2 I think they inventoried them as the e-mail, the cover
3 letter and then the staff report.
4 MR. PRAGER: My question was is there anything in
5 your report that talks about what you just testified to.
6 THE WITNESS: Not in the traffic impact study or
7 the Local Area Transportation Review report. Not in that,
8 but it is included in a memo that I prepared that is
9 included in the transmittal letter from Park and Planning
10 dated January 25th, 2013 to Mr. Martin Grossman, and that
11 contains the final staff report which includes a copy of my,
12 my technical memo at the, at the back of that. It's a, it's
13 a, it is part of attachment 6 I believe to --
14 MR. PRAGER: Good. I have found it.
15 THE WITNESS: Okay. So my memo dated December
16 10th, 2012, number 4 discusses my parking analysis as I just
17 discussed it and described it.
18 MR. PRAGER: Ms. Walker?
19 MS. WALKER: Okay, thank you.
20 BY MS. WALKER:
21 Q Based upon your analysis of the site generated
22 trips and the peak period trip generation, is there adequate
23 parking and maneuvering to avoid vehicles queuing or lining
24 up on Randolph Road waiting to enter the site?
25 A Yes. Based on the individual analysis using ITE

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1 Parking Generation Manual and based on using the zoning
2 parking requirements, there will be sufficient parking on
3 site that no one will ever have to maneuver around the site
4 looking for a spot. There should always be available spots.
5 Q And based upon the site generated trips and the
6 peak period trip generation, can you discuss whether there
7 is a safety concern relating to U-turns as a result of the
8 access to the site being right in, right out. And if you'd
9 like, Mr. Lenhart, you can refer to the accident data that
10 was submitted into the record. That is, just for the
11 record, that is Exhibit 41, part of Exhibit 41A, the portion
12 titled Maryland State Highway Administration in the upper
13 left corner.
14 A As a result of the Planning Board hearing, there
15 were some questions about accident data or accidents out
16 here and whether or not safety was a concern so after the
17 Planning Board hearing, I went to State Highway
18 Administration and while Randolph Road is a County road,
19 State Highway Administration has a access management
20 division, or accident management division that maintains
21 crash data and accident data for all roadways in the state
22 of Maryland. And with Park and Planning's consent, State
23 Highway Administration compiled this report.
24 There's five pages in this document. This report
25 is a three-year review from January 1st of 1990, I'm sorry,

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1 January 1st of 2009 to December 31st of 2011, three years.
2 And they did not include 2012 data because the State Highway
3 Administration has not completed compiling the 2012 data
4 yet, so this only includes 2009, '10 and '11 data.
5 Q Just to be clear, this was not submitted to the
6 Park and Planning Commission, correct?
7 A It, it was provided to --
8 Q This was received subsequent to the hearing.
9 A After the Planning Board hearing, this was ordered
10 but this was provided to Park and Planning staff after the
11 hearing as a result of questions that came up by the
12 Planning Board members at the hearing.
13 MS. WALKER: And the Planning Board essentially
14 asked that we submit this to the Hearing Examiner for your
15 review in connection with this application which is why
16 we're doing that now.
17 BY MS. WALKER:
18 Q Mr. Lenhart, if you could please just run us
19 through the salient points I'll say of this accident data.
20 A Yes. So the cover sheet on this is a summary
21 sheet from State Highway Administration and under the
22 comments, I'll just read what the State Highway said. There
23 were 26 reported, police-reported accidents during this
24 three-year study period. The most prominent accident type
25 was rear-end collisions with 11 occurrences and of the total

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1 accidents, none involved alcohol use and 11 occurred during
2 wet surface conditions. That's kind of an overall summary.
3 I will say I did not clarify the limits of this
4 study. It goes from Randolph Road beginning a couple
5 hundred feet west of Hammonton Place and going east on
6 Randolph Road, both directions, eastbound and westbound, to
7 several hundred feet east of Locksley Lane. And as I went
8 through and I looked at more detail, and if you look at the
9 last page of this, it shows a line diagram and from the top
10 of the page to the bottom of the page, you see a long line
11 that runs up and down. That represents Randolph Road.
12 Toward the top of the page, you can see a line that
13 intersects Randolph. That represents Locksley Lane.
14 And there's an arrow pointing to the intersection
15 of Randolph and Locksley Lane that goes off to the left-hand
16 side of the page and it shows one, two, three, four, five,
17 six, about 11, roughly 11 accidents that are categorized off
18 to the left-hand side there. Those are all intersection-
19 related accidents at Locksley Lane and as noted by State
20 Highway, most of these are rear-end. One's an angle
21 accident. There's a sideswipe, a fixed object, that type of
22 nature. One is a left turn accident for somebody traveling
23 east on Randolph to turn left onto Locksley.
24 There are no U-turn accidents labeled in this.
25 Zero U-turn accidents. Likewise, if you head down to

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1 Hammonton Place toward the bottom of the page, there's one
2 accident at Randolph Road and Hammonton. That's listed as
3 an object. It's a single vehicle object, whatever, a car
4 ran into something. Maybe hit the curb or pole or
5 something. No U-turn accidents at that location either. If
6 you look up to this, toward the top to the south of Locksley
7 Lane, there are zero accidents at the driveway to the
8 daycare center. There's one there that's listed as a single
9 vehicle where they hit an animal, but there are zero
10 vehicles, zero accidents at the site driveway.
11 MR. PRAGER: Where are you, where is this?
12 THE WITNESS: If you, if you start on the right
13 side, at the top of the page -- may I approach? It might be
14 easier for me to just point.
15 MR. PRAGER: No. Tell me.
16 THE WITNESS: Okay.
17 MR. PRAGER: Kimblewick Drive, is it east of
18 Kimblewick?
19 THE WITNESS: It's on, it's on the east side of
20 Randolph if you look at this and if you go up from
21 Kimblewick, the third arrow from the top or the third arrow
22 down from the top on the east side, you'll see where it says
23 LM --
24 MR. PRAGER: Uh-huh.
25 THE WITNESS: -- 6.17, animal.

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1 MR. PRAGER: And where is that in relation to --
2 THE WITNESS: That's --
3 MR. PRAGER: -- the exit from the --
4 THE WITNESS: That's very close to the driveway.
5 MR. PRAGER: From --
6 THE WITNESS: I can't say exactly if that's at the
7 driveway or, you know, a few feet one side or the other but
8 it's close proximity. So this shows the historical data, a
9 three-year study period which is a typical study period when
10 you're looking at whether there's any sort of patterns
11 indicating a potential accident or safety concern. And
12 also, in our traffic impact study, which is Exhibit --
13 MS. WALKER: That is Exhibit 43G.
14 THE WITNESS: So the traffic impact study, which
15 is Exhibit 43G, but Exhibit 6 of that traffic impact study
16 or page 18 of that traffic impact study --
17 MR. PRAGER: Page which? I'm sorry.
18 THE WITNESS: Page 18.
19 MR. PRAGER: Yes. Go ahead.
20 THE WITNESS: This, this exhibit shows the
21 increase in site traffic due to the increase in children
22 from 30 to 62 or staffing from 6 to 11. This shows the new
23 traffic that will be generated in and out of the driveway.
24 And the U-turns going eastbound Randolph at Locksley Lane at
25 intersection 3, you can see a 2 and a 4 there for that

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1 movement, that would be the new eastbound U-turns on
2 Randolph at Locksley Lane. And likewise, toward the middle
3 of the exhibit, it says westbound U-turns at Randolph Road
4 and Hammonton Place would be 2:00 in the morning and 3:00 in
5 the evening.
6 That's the, again, the increase in U-turns due to
7 this expansion which translates, you know, two additional U-
8 turns per hour, translates to one every 30 minutes. Four,
9 which is the maximum increase in U-turns, translates to one
10 additional turn every 15 minutes which is really a
11 negligible impact and not something that would be noticeable
12 to the, to the naked eye. Just sitting and watching and
13 observing, you would not be able to tell an impact.
14 BY MS. WALKER:
15 Q And just to be clear, the reason you're talking
16 about U-turns is because that was specifically asked of you
17 at the Planning Board --
18 A Yes.
19 Q -- when coming to this body.
20 A Yes.
21 Q So based upon, just kind of bringing it back to
22 the 30,000-foot view, 26 accidents, I believe it's noted on
23 the State Highway Administration printout, in a three-year
24 period on a major highway. Is that a lot or is that --
25 A No. That's --

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1 Q -- pretty typical?

2 A That's not a lot. And then looking at the data,
3 it doesn't appear to be any, any real patterns. No real
4 safety concerns or issues stand out when looking at this.

5 Q Okay. And did you, leaving the accident data now,
6 did you review the transportation management plan, or TMP
7 initially imposed in 2002 on this special exception?

8 A Yes.

9 Q Were you traffic engineer at that time?

10 A No.

11 Q Okay.

12 A It did not have a traffic engineer at the time.

13 Q Correct. Do you know who testified regarding
14 traffic?

15 A Mr. Ed Axler did of transportation planning staff.

16 Q Okay. And have you also had the chance to review
17 the new proposal that's been suggested by Planning Board
18 staff as, I believe it's condition 8 in the transmittal to
19 the Hearing Examiner.

20 A Yes.

21 Q Okay. And do you feel that a transportation
22 management plan is necessary based upon the site generated
23 traffic data that you have?

24 A I do not believe it's necessary. And I, I don't
25 believe it's necessary because we've evaluated the site for

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1 62 children with 11 staff using all current standards and
2 guidelines, and the site and the study intersections and the
3 driveway all pass very well the current LATR standards.

4 There's really -- using the standard practices and
5 methodologies. There's no reason to put a limitation on or
6 a transportation management plan that enforces the
7 limitation on how the traffic arrives or departs from the
8 site. In looking at the original special exception
9 approval -- and this is also discussed in my December 10th,
10 2012 memo that's included in the staff report.

11 Q Exhibit 40.

12 A At the time of the original approval of this
13 special exception in 2002, the White Oak/Fairland Policy
14 Area was under a moratorium and when Mr. Axler testified, he
15 testified that if this transportation management plan were
16 in effect, that there would be a de minimis impact, there
17 would be no traffic impacts and therefore, the moratorium
18 would not hold up the approvals of the site.

19 Now, the policy area is no longer under a
20 moratorium, PAMR is in place to account for any mitigation
21 that's needed as a result of the project. Because the
22 moratorium is not there and we pass all acceptable
23 thresholds and standards, there really would be no need to
24 apply a TMP in this.

25 Q But all that being said, were you present at the

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1 Planning Board --

2 A Yes.

3 Q -- throughout the totality of those proceedings
4 and do you know whether or not the applicant agreed to be
5 bound by what is now known as condition 8 as proffered by
6 the Planning Board restricting the pick-up and drop-off
7 times, essentially a new TMP if you will?

8 A Yeah. I think she agreed.

9 Q Okay.

10 A And, you know, we can work under that but it's not
11 necessary.

12 MS. WALKER: If I could just have the Hearing
13 Examiner's indulgence for just a moment.

14 BY MS. WALKER:

15 Q If you could, just briefly explain for the Hearing
16 Examiner what are the number of trips per hour based upon
17 your analysis of the site?

18 A Number of trips per hour --

19 Q Based upon for the peak hour.

20 A The existing or total?

21 Q Both.

22 A Well, as I said before, 36 trips. And if I could
23 refer to the traffic impact study again, page 16. So the
24 very top of this exhibit shows the trip generation rates for
25 a daycare center and we already talked about what those are.

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1 Under trip generation totals, there's three, three separate
2 analyses. One's for the existing facility for six staff
3 that generates 28 morning and evening peak hour trips.
4 Those are the total trips. For the proposed facility with
5 11 staff, it generates 36 a.m. and 39 p.m. trips, and then
6 the resulting increase in trips to take it from 6 staff to
7 11 staff, it would be an additional 8 trips in the morning
8 and 11 trips in the evening.

9 Now, as we said earlier, some of those are new
10 trips to the policy area but most of those are not new trips
11 to the policy area. They're people that already live in the
12 policy area, are driving in the policy area. They need a
13 place to drop their kids off from daycare while they're
14 moving around from A to B. And so it's broken down into the
15 new trips, the primary trips, which are added to the policy
16 area, pass-by and diverted. The new trips added to the
17 policy areas would be two trips in the morning peak hour,
18 three trips in the evening peak hour, and those are what's
19 used for PAMR purposes.

20 Q So 8 and 11 new trips reflects the increase, if
21 you will, from the existing special exception that's there
22 to what we're proposing.

23 A Increase in driveway traffic, yes.

24 Q Driveway traffic for an additional 32 children.

25 A Yes.

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1 Q Okay.

2 A And those are hourly, that's per hour.

3 Q Per hour, right.

4 A The peak hour. And a lot of people say, well, you

5 know, it's 32 children, why isn't it 32 trips? And the

6 reality is you have a lot of parents with siblings, they

7 drop off two kids, sometimes three kids at once, and you

8 have people with varying degrees of flexibility and need.

9 Not everybody drops their kid off at 7:00 a.m. and picks

10 them up at 4:00 p.m. You know, it's, the 7:00 to 9:00 drop-

11 off in the morning is a pretty wide area and then in the

12 evening, you know, people picking their kids up over the

13 entire peak hour. It's not a concentrated rush of traffic.

14 Q Now, looking at the data that you have in your

15 report, are you able, you actually physically conducted a

16 count, correct --

17 A Yes.

18 Q -- of cars coming in and out of the driveway

19 during the peak hour period, is that correct?

20 A Yes.

21 Q Okay. And looking at that data, that would

22 obviously be reflective of the current enrollment of the

23 center, yes?

24 A Yes.

25 Q Okay. So looking at that data and knowing that

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1 there was an original transportation management plan from

2 2002, can you extrapolate whether or not the current center,

3 as it operates, is compliant with that transportation

4 management plan?

5 MR. PRAGER: Before you answer that, what are you

6 referring to? When you said, you said he had done that, an

7 actual survey, where is that survey?

8 MS. WALKER: I found it as part of his traffic

9 report.

10 MR. PRAGER: No, but where. Where is --

11 THE WITNESS: It's in Appendix A to our traffic

12 impact study but it's summarized, it's probably easier to

13 look at the summary which would be page, page 9. This is,

14 represents the existing peak hour traffic volumes at all

15 three study intersections including the site access point.

16 And so, yes, to answer your question --

17 BY MS. WALKER:

18 Q Let me actually, before you get to that --

19 A Yes.

20 Q -- let me make something clear for the record.

21 The original transportation management plan, or TMP, from

22 2002 was a proffer on behalf of the applicant that was then,

23 I'll say, created after the hearing and submitted into the

24 record by letter of their counsel at that time. In that

25 letter, and I'll read it into the record, what they agreed

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1 to was that morning drop-offs would be limited to no more

2 than six vehicles per half hour from 7:00 to 9:30, afternoon

3 and evening pick-ups would be limited to no more than six

4 vehicles per half hour from 4:00 until 6:30. This is

5 substantially consistent with what the Planning Board

6 suggested be the new TMP, if you will, simply increasing the

7 number of children to be reflective of the additional

8 enrollment but keeping the same general period.

9 MS. WALKER: So what I'm asking Mr. Lenhart is

10 whether he can tell from his site generated observations,

11 from his site observations whether or not the applicant is

12 currently in compliance with the limitations imposed upon

13 her.

14 BY MS. WALKER:

15 Q So if you could go ahead and, if the Hearing

16 Examiner is okay with that, answer the question that I

17 asked.

18 MR. PRAGER: Yes. Go ahead.

19 MS. WALKER: Thank you.

20 THE WITNESS: Yes. So page 9 of my report at

21 intersection 2, you see eastbound on Randolph Road, there

22 are 14 right turns into the site in the morning and then in

23 parenthesis, you see another 14. That indicates 14 right

24 turns into the site in the morning peak hour, 14 into the

25 site in the evening peak hour. If you take that and break

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1 it down to a 30 minute arrival, that means you have seven in

2 a 30 minute period.

3 BY MS. WALKER:

4 Q Do you distinguish when you come to the site

5 between which trips are staff and which trips are parents

6 dropping off students.

7 A No. That's total trips, so that includes staff

8 and parents --

9 Q Okay.

10 A -- drop-off and pick-up.

11 Q Looking at the number of seven and seeing the

12 condition that requires six drop-offs and pick-ups --

13 A Yes.

14 Q -- do you feel that the applicant is generally

15 compliant with the condition?

16 A Yes. Yes, because staff is staggered in their

17 arrival so to assume that six of those are probably parent

18 drop-offs and you might have a staff person arriving to work

19 in the morning or in the evening departing during that,

20 during that time frame is, is well within reason. And, yes,

21 I'd say this complies with the intent.

22 MS. WALKER: I think that's all I have for Mr.

23 Lenhart.

24 MR. PRAGER: All right. Mr. Wilhelm?

25 CROSS-EXAMINATION BY MR. WILHELM

1 BY MR. WILHELM:

2 Q I guess let me start off and say I don't have a
3 problem with the volume calculations as it relates to LATR
4 and PAMR so I've got questions about more of the accident
5 data and stuff like that.

6 A Okay.

7 Q On your Exhibit, guess it's 41A, the last chart,
8 this is the first time I've seen stuff from the State
9 Highway.

10 A Uh-huh.

11 Q I want to make sure I'm understanding it
12 correctly. Is it correct to assume that numbers on the
13 left, on the right side of the Randolph Road, the line going
14 north, top to bottom of the page is the ones going eastbound
15 and the ones on the other side are going westbound? Is that
16 a correct interpretation of this?

17 A I believe that would be a reasonable
18 interpretation how they break that down, yes.

19 Q Okay. And just looking at this, I think you
20 testified there was 11 accidents at Locksley Road and that
21 terminology would be going westbound. And you said none of
22 those were U-turns. I guess it's how do they, the question
23 has to do with how do they classify U-turns versus left
24 turns. I guess I'm wondering if they were making a, in the
25 left-hand turn lane going eastbound and they were actually

1 doing a U-turn, would that be classified as a, a left turn?

2 A It's, it's possible that a police officer could
3 have categorized, you know, left or U or something that
4 would have shown up as a left.

5 Q But it could have been --

6 A It could have possibly been a U.

7 Q It could have been either one.

8 MR. PRAGER: Just one person talk at a time.

9 MR. WILHELM: Okay. Sorry.

10 THE WITNESS: It could have possibly been a U-turn
11 but even if you assume that it was, it's only one, one
12 accident, one of that nature which does not indicate a
13 pattern whatsoever.

14 BY MR. WILHELM:

15 Q I'm not sure what you're referring to as one. One
16 U-turn, is that what you're saying?

17 A Even if that was a U-turn, which it's categorized
18 as a left turn which I, based on data, have to assume it was
19 a left turn to turn onto Locksley Lane, but even if it was a
20 U-turn, it does not mean that there's an accident pattern or
21 a safety issue associated with that movement.

22 Q I guess I'm thinking when there's 11 accidents
23 there, I'm thinking that compared to the other parts in this
24 study area, it seems to be an awful lot of the, what is it,
25 26 I think it was accidents. Out of the 26, there's 11 of

1 them at that one intersection going that one direction. It
2 just seems to be a heavy concentration there.

3 A Well, I'd like to clarify that when I was at the
4 State Highway Administration, you asked me earlier about
5 access management division at State Highway Administration,
6 prior to my time at access management division, I was a
7 traffic engineer for Southern Maryland State Highway
8 Administration. One of my roles and responsibilities there
9 was accident review of fatal accidents where we would look
10 at all fatal accidents, we would look at accident data such
11 as this, we would determine if there's an accident pattern,
12 we would go out, we would look at the geometric site
13 distance, any number of field conditions and accident
14 history and data and determine if there were any patterns,
15 any things that stood out as deficiencies or concerns so I
16 have quite a bit of experience in looking at this data and
17 applying it in the real world. And looking at these, yes,
18 11, if you just say there were 11 accidents out of 26, 11
19 occurred at, that's not --

20 Q At Locksley.

21 A They said, they said 11 were rear-end accidents.
22 They didn't say 11 occurred there but even though looking at
23 this, it looks like most of them occurred at Locksley Lane,
24 that doesn't mean there's a pattern, a specific accident
25 pattern. If you look at them in more detail, there was,

1 there was one angle, there were four rear-ends in one
2 direction, two in the other direction, there was a bike.
3 Which rear-ends are typically the predominant accident at
4 signalized intersections, people not paying attention. The
5 light turns red and they run into the person in front of
6 them. That's, that's fairly common and based on the
7 numbers, this doesn't stand out as any sort of a, being
8 different here than it would be at any other signalized
9 intersection.

10 But then you've got fixed object accidents, you've
11 got an animal, you've got one that's listed as other
12 conveyance. Nowhere in here do I see -- I see a lot of
13 accidents but they're all different types of accidents.
14 Some, you know, fixed objects and there's only one that's a
15 left turn.

16 There are no accident patterns in this. I look at
17 this and I see no issues that would say there's a safety
18 concern with the left turn or U-turn. We look at the
19 photographs, Exhibit 50A. Site distance is more than
20 sufficient. You can see quite a long distance up the
21 roadway to be able to make U-turns. Likewise at 50B back at
22 Hammonton Place. Substantial site distance. Again, it's
23 kind of looking at everything to, to determine if there's an
24 issue or a concern and then looking at all this data, I see
25 no concerns with U-turns.

1 Q I assume you're saying that from a design
2 standpoint as opposed to, you know, human nature being not
3 paying attention to driving and stuff like that.

4 A Well, there's two ways to look at it. One is
5 design where you look and you say does it meet the design
6 standards, you know, site distance, does it have enough site
7 distance.

8 Q Yeah. That's --

9 A Well, you look at the photos and there's, clearly,
10 there's more than enough site distance. The human nature is
11 looking at the accident data, what's happened over, when we
12 look back, has an actual safety problem developed as it
13 relates to accident data, and the accident data does not
14 support a theory that would indicate there's an accident
15 problem here.

16 Q I'm not sure I agree with you but anyway, let's
17 move on. If you look on, I guess I'll just point out to
18 everybody's thing, two, three pages back on that same
19 report --

20 MR. PRAGER: Which report are you talking to?

21 MR. WILHELM: This is from the State Highway
22 Administration. It's the first page after their cover
23 letter and --

24 MR. PRAGER: All right. Go ahead.

25 BY MR. WILHELM:

1 Q And I'm looking at the third, there are kind of
2 boxes going across, the third one that talks about time.
3 And this looks like time of day, hours during the day and
4 then a.m. and p.m. And it looks, the way I'm reading this,
5 and you can correct me if I'm reading it incorrectly, is the
6 a.m. was like four accidents occurred 8:00 in the morning,
7 three at 9:00. The pattern seems to be a lot between 7:00
8 and 9:00 in the morning and 5:00 and, or 4:00 to 7:00, 5:00
9 to 7:00 at night. The bulk of them, there's a group of them
10 around lunchtime. Is that a correct statement?

11 A You're talking about the third box down?

12 Q Third box down.

13 A That starts on the left, left side of the page.
14 It says time, a.m., p.m. and then it says --

15 Q Yes. That's what I'm talking about.

16 A Okay. I would characterize what you said to be
17 accurate, yeah. I mean, it looks like you've got one
18 accident at 4:00 a.m., one at 5:00, one at 6:00, two at
19 7:00, four at 8:00, three at 9:00 and then it tapers off
20 again. But if you look at it in terms of -- again, that
21 doesn't indicate that there's a problem at 8:00 a.m. All it
22 says -- and if you look at the traffic volumes, the volumes
23 are similar to the accidents. The volumes are lower during
24 the times of day that has less accidents, the volumes go up
25 at 8:00 a.m., so it's just a matter of there's more cars on

1 the road so you would expect there to be a likewise increase
2 in accidents during that time period.

3 And again, that doesn't, that number, four
4 accidents at 8:00 a.m. doesn't tell me anything. That might
5 be four people who hit a telephone pole down the street.
6 They, you know, they spilled their coffee on them and ran
7 off the road or something. It doesn't tell you that there's
8 a specific accident problem. If it were, you know,
9 somebody, there was a side street where there was at 8:00
10 a.m., somebody pulling out of the side street and there were
11 four accidents where they got clipped all at 8:00, the same
12 movement, then you might say well, is there an issue where
13 you're sitting at a stop sign and you're looking for a gap
14 and the sun comes up at 8:00 a.m. and perhaps during certain
15 time of the year it's causing glare and you can't see real
16 well during that short time frame and maybe there's an issue
17 there. But this doesn't give you those kind of specifics.
18 It doesn't give that detail.

19 Q Okay. Why don't we move on. On the site itself,
20 did you look to see when, you know, people pulled in to park
21 to take their kids into the building and getting ready to
22 leave, is there space on the site for them to make sure
23 they're pulling out onto Randolph Road as opposed to backing
24 out, you know?

25 A Yes.

1 Q Is backing out a concern?

2 A No. There's plenty of room on site so they can
3 get on site, park, maneuver and then drive out of the site,
4 not back out of the site.

5 Q Okay. The other question I have to do with
6 volume, could you point me again, I missed the exhibit where
7 you were looking at, or maybe it's page 9, how many people
8 were pulling out at different times of the day. Your
9 report.

10 A Pulling out at different times of the day. Can
11 you clarify what you're looking for?

12 Q Well, I'm thinking -- maybe let's do with page 9
13 of your report. And it looks like there's, you're saying 14
14 cars coming in at the peak hour --

15 A Yes.

16 Q -- and then 14 morning and evening.

17 A Yes.

18 Q And then 15 pulling out in the morning and 13 in
19 the p.m.

20 A What's in the parenthesis is the evening peak
21 hour.

22 Q Oh, okay. I've got it reversed.

23 A Yes.

24 Q Okay. But then total population of the school is,
25 you know, like, well, it's going to go from 30 to 62 plus

1 the staff so, so these numbers, to me, only represent one
2 hour and so to get the total number of staff in or parents
3 in and out is going to have to go over at least two hours if
4 not three hours. We heard earlier this morning that Park
5 and Planning is limiting 11 vehicles in and out during 30
6 minutes and that's, you know, if you assume one child per
7 car, and I realize that's not correct, but that's like 22
8 vehicles per hour times two hours is 44 vehicles and to me,
9 you need more than 44 vehicles to get a number of kids in
10 and out and staff in and out in a two hour period of time
11 and I guess I'm wondering am I missing something here?

12 Q The --

13 MS. WALKER: Object. I'm not sure what the
14 question is. I'm not sure the witness knows either.

15 MR. PRAGER: Well, let's see if the witness does.

16 THE WITNESS: I think I understand it. He's
17 saying it's over a two to three hour period in the morning,
18 it takes that much time to get everybody in and out. And so
19 are you saying why don't we look at a two to three hour
20 period?

21 BY MR. WILHELM:

22 Q Well, I'm thinking it's going to take more time to
23 get everybody in and out than two hours.

24 A Well, let me answer that in a couple of ways.
25 First, the Local Area Transportation Review Guidelines

1 provide for the traffic impact study that looks at the site
2 access, the driveway, the adjoining intersections, how do
3 people come in and out of the site. And the way a traffic
4 study is done, not only in Montgomery County but every
5 jurisdiction in the state of Maryland and anyplace else I've
6 ever worked, you look at, we'll do a traffic count in the
7 morning from 6:30 to 9:30 a.m., a traffic count in the
8 evening from 4:00 to 7:00 p.m. and then we determine from
9 those two three-hour periods what's the peak one hour, 60
10 minutes.

11 In this case, page 9 shows you at, at the site
12 access for instance, the peak hour in the morning is from
13 7:30 to 8:30, in the evening, it's from 4:45 to 5:45.
14 That's the, the most congested time of day in the morning
15 and evening peak hour for that one hour. That's when you
16 study, that one hour. You don't look at how many hours will
17 it take for people to drop off their kids and pick up their
18 kids. You want to look at the level of service during that
19 hour and that's how all --

20 Q I'm not --

21 A -- of these studies are done.

22 Q I'm not talking --

23 MR. PRAGER: Let him finish, please.

24 THE WITNESS: So the trip generation rates which
25 are standard, accepted practices, you know, not only

1 standard operating procedure for Montgomery County but for
2 all jurisdictions is you have trip generation rates that
3 show how much traffic a daycare center would generate during
4 that same peak hour, not over a two-hour period, how long
5 does it take to get the staff in and out and all of the kids
6 in and out. You're looking at the peak operations, and so
7 that's what we do. We look at the peak of the adjacent
8 street and we look at the peak of the use during that one
9 hour. And it just --

10 So, as we said before, a daycare center, it's not
11 like an office building where it's 9:00 to 5:00 and
12 everybody's got to be there by 9:00 so you've got an influx
13 of traffic at 8:45, and then everybody's hitting the door at
14 5:05. This is, you've got multiple siblings in some cases
15 per vehicle, you've got people with flexible schedules,
16 some, you know, moms that don't work and, you know, they
17 just want to put their kids in someplace for six hours to
18 socialize them and get some, you know, some training and
19 some experiences with other children and they're very
20 flexible. There's a lot of flexibility in the time periods
21 that these kids are dropped off and picked up.

22 BY MR. WILHELM:

23 Q Okay. I understood that. I'll make my point
24 later but my point was not just at the peak hour. It was
25 relating to all the ins and outs over multiple hours and

1 traffic data, accident data. I'll make my point later.

2 MR. PRAGER: Do you have any further questions?

3 MR. WILHELM: No, sir.

4 MR. PRAGER: Ms. MacNab?

5 MS. MACNAB: I do not have any questions.

6 MR. PRAGER: In your study, I'm struck by the
7 fact -- well, let me start off in a different way. First of
8 all, just clarify for me what intersections along Randolph
9 Road are signalized?

10 THE WITNESS: Kemp Mill Road is signalized and
11 Locksley Lane are signalized. It's the first traffic signal
12 on either side of the site. We did not look in either
13 direction beyond so off the top of my head, I couldn't say.

14 MR. PRAGER: All right. And Kemp Mill Road is how
15 far from the site?

16 THE WITNESS: Is there a scale on that Google map?

17 MS. WALKER: It's not to scale. This is about the
18 closest. Here's Kemp Mill.

19 THE WITNESS: If I may, very rough approximation
20 here. It looks like about three-quarter of a mile.

21 MR. PRAGER: And how much is the distance between
22 the site and Locksley?

23 THE WITNESS: Between two and three hundred feet.

24 MR. PRAGER: Is there a median break opposite the
25 center?

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1 THE WITNESS: No. There's a median that controls
2 so there's no left turns. All right in, right out.
3 MR. PRAGER: So am I correct that the opponents
4 would say that in order to have access, there has to be a U-
5 turn to enter if you're going east, to enter the, the
6 center, you have to do a U-turn, I'm sorry, if you're going
7 west, you have to take a U-turn to get into the center.
8 THE WITNESS: That's correct.
9 MR. PRAGER: Moving east.
10 THE WITNESS: U-turn at Hammonton. If you're
11 going westbound on Randolph Road and you want to access the
12 center, you have to go beyond the center maybe 1,000 feet or
13 so to Hammonton Place, make a U-turn there where there's an
14 existing cross-over with a left-turn lane. And that Exhibit
15 50B depicts a photo if you're sitting in that left-turn lane
16 waiting to make a U-turn and then you come back east on
17 Randolph and turn right into the site.
18 MR. PRAGER: I'm sorry. I'm not sure I follow.
19 On 50B --
20 THE WITNESS: Yes.
21 MR. PRAGER: -- there is a car presumably
22 traveling west.
23 THE WITNESS: That's correct.
24 MR. PRAGER: That is just past an intersection.
25 THE WITNESS: Yes.

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1 MR. PRAGER: Is that Hammonton?
2 THE WITNESS: Yes.
3 MR. PRAGER: And you say there's a left-turn lane
4 there?
5 THE WITNESS: Yes. This --
6 MR. PRAGER: It's not depicted on this, on this
7 picture.
8 THE WITNESS: I'm actually sitting in the left-
9 turn lane. I'm in my car, in the U-turn lane making U-turn
10 to go back to Hammonton, back to the site.
11 MR. PRAGER: Okay. I understand that. Is my
12 impression correct that somebody has hit something on that
13 median strip at that point? It looks like the sign has been
14 chopped down by an accident and there seems to be debris in
15 the road, is that correct?
16 THE WITNESS: Well, I don't know what that's from.
17 There was a snowstorm, you know, a couple inch or so
18 snowstorm last week. That could be debris from the snowplow
19 operations. I don't know, don't know what it's from.
20 MR. PRAGER: All right. And other than Hammonton,
21 where else can one turn or would that be the most logical?
22 THE WITNESS: That's the most logical place.
23 MR. PRAGER: Now, on 50A, you have this
24 intersection with a traffic light.
25 THE WITNESS: Yes.

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1 MR. PRAGER: It does not give a left-turn arrow,
2 is that correct?
3 THE WITNESS: That's correct.
4 MR. PRAGER: So and you say how, to get to that
5 left turn out of the driveway, how far is, what's the
6 distance did you say? You approximated.
7 THE WITNESS: Two to three hundred feet.
8 MR. PRAGER: And how easy is it for someone to
9 maneuver across three lanes of traffic in two or three
10 hundred feet?
11 THE WITNESS: You have to wait for a gap in
12 traffic, and this goes back to the highway capacity analysis
13 that we did at the driveway egress which says that in the
14 morning, the average time that a person would have to wait
15 would be 13 seconds for a gap to be able to make a right
16 turn out of the site, in the evening, 24 seconds. And
17 again, that's average. It may take you a little shorter, it
18 may take you a little longer depending on arrival rates but,
19 yes. You sit and you wait for a gap and then you turn. You
20 turn and you go across. It's not unlike many other
21 locations on arterial roads and major highways across the
22 state.
23 MR. PRAGER: But your gap analysis, am I correct
24 or am I not, deals with being able to take a right-turn
25 lane? At your right turn, one could take a right turn but

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1 not yet cross the other two lanes of traffic, is that
2 correct?
3 THE WITNESS: This assumes, the software assumes a
4 gap in traffic, not necessarily just the right, the right
5 lane frees up. It's an acceptable gap so that if it were,
6 let's assume if it were, if there were no median there and
7 there were a street on the other side and you wanted to go
8 all the way across, you'd need a gap on all the lanes to be
9 able to do so. It would be much more, much more difficult
10 because you'd have to tie-in gaps on both sides of the
11 roadway. But the software looks at a big enough gap for
12 everything to happen and in this case, the right turn is, it
13 looks for a gap big enough in all of the westbound,
14 eastbound traffic, not just the right lane of the eastbound
15 traffic. So you would have gaps. You'd just have to wait,
16 you know, for 20, 30 seconds until there's a gap and then
17 you go across.
18 A comparison to that is the signal at Locksley
19 Lane and at Kemp Mill. Those traffic signals have cycle
20 lengths that are two to three minutes in length meaning that
21 if you pull up on a side street, if you're on Kemp Mill Road
22 and it's green as you're driving up but just as you pull up
23 to the stop bar, it turns red, you have to sit and wait for
24 the cycle for that signal to come back to you, could be two
25 to three minutes. And so you sit and you wait two to three

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1 minutes. That's not unusual at a signal.
2 A lot of people, when it's unsignalized, you pull
3 up and you expect it to be immediate, I want a gap, I want
4 to go, but that's not the way it works on when you, you
5 know, you get a highway, you've got to wait for a gap. A 14
6 or 13 to 24 second delay is a very reasonable, it's much
7 shorter than you would wait if you were pulling up to a
8 traffic signal to wait for the signal to come around to your
9 time.
10 MR. PRAGER: Yes, but am I correct in saying that
11 as you just I think eluded to, that drivers accept signals
12 as, as preventing them from moving but they get to be very
13 impatient when there's no signal and they are much more
14 likely to dart out into traffic, is that correct?
15 THE WITNESS: That's correct. Highway Capacity
16 Manual takes that into consideration. When they look at
17 traffic signals, they have different levels of service than
18 they do at unsignalized intersections so if, if you pull up
19 to a signal, they assume that you're more willing to wait a
20 little bit longer before you get frustrated because you know
21 it's eventually going to come around. It's going to be
22 green and you'll go. The manual gives you slightly shorter
23 times as acceptable times for unsignalized intersections
24 because of that, you know, there's kind of a frustration
25 factor, I'm waiting but I don't have a gap.

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1 In this case, these are very good delays, they
2 meet state highway guidelines, they meet County guidelines.
3 Again, Montgomery County doesn't have a standard for this,
4 Prince George's does. This, this would satisfy any
5 jurisdiction, any, any standard of measurement that I'm
6 aware of.
7 MR. PRAGER: Well, talking about that let's go to
8 41A, your two-way stop control summaries.
9 THE WITNESS: Uh-huh.
10 MR. PRAGER: Your two pages. I notice the study
11 period hours is one-quarter of an hour. Is that, how do you
12 pick that quarter hour and how, how representative is it of
13 what you're studying?
14 THE WITNESS: What that means, the study period,
15 0.25 hours, it's, the analysis is a one hour analysis so
16 it's the peak hour. It's the entire hour. The .25 means
17 that it looks at all four quarterly increments. Every 15
18 minutes, it looks at the volume through that and it says if
19 any one of those four 15 minutes is higher than the others,
20 then the software compensates for that and it takes the
21 hourly volume and it adjusts it and makes it even a little
22 higher to account for the fact that there's variations in
23 traffic throughout the hour and that not all four 15 minutes
24 are the same. You know, one might be a little more
25 congested than the next and so it, it elevates to compensate

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1 for that. Does that make sense?
2 MR. PRAGER: It makes some sense. I'm not quite
3 sure how it, how fully it compensates so let me see if I
4 understand. Does that mean that the 15 minutes that is used
5 by the software is the peak of the peak?
6 THE WITNESS: Yes. Exactly. That's a good way to
7 describe it.
8 MR. PRAGER: All right. Explain to me these lines
9 and, and columns because I don't understand it. Let's,
10 let's start with the line under major street. It says
11 movement and it has one, two, three, four, five, six.
12 THE WITNESS: Uh-huh.
13 MR. PRAGER: What do those numbers represent?
14 THE WITNESS: So above one, two and three, you see
15 eastbound.
16 MR. PRAGER: Uh-huh.
17 THE WITNESS: Below two, well, below one, you see
18 an L, below two --
19 MR. PRAGER: Let's stay with that line for a
20 moment because --
21 THE WITNESS: Okay.
22 MR. PRAGER: -- otherwise, you'll get me entirely
23 confused.
24 THE WITNESS: Okay. All right. So you see
25 eastbound and then the, let's go to the two under it. And

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1 right under the two, you see a T.
2 MR. PRAGER: Yes. Are these --
3 THE WITNESS: Yeah. I'm trying to -- this will
4 make sense once I get through it.
5 MR. PRAGER: Sorry.
6 THE WITNESS: The, the T stands for through
7 traffic. The 1261 is the hourly volume.
8 MR. PRAGER: Wait, wait. But you -- I understand
9 you're going to get there.
10 THE WITNESS: Okay.
11 MR. PRAGER: But let me, let's do it --
12 THE WITNESS: Okay. Sorry.
13 MR. PRAGER: -- my way for the moment. Are those,
14 are those one, two, three, four, five and six the lane
15 numbers where the one would be the left lane, the two is the
16 middle lane and the three is the right lane going eastbound
17 and --
18 THE WITNESS: No.
19 MR. PRAGER: -- the same thing for westbound?
20 THE WITNESS: No. It's the movement. And the
21 one, two, three, four, five and six, it's just, it's the
22 movement. It's not -- those numbers are not anything that I
23 input. That's just the software saying that the left turn
24 is movement one, through is movement two, the right is
25 movement three --

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1 MR. PRAGER: I'm sorry. How does, how, other than
2 calculating the lanes, how does it know if it's going to be
3 left, through or right?
4 THE WITNESS: That's further down. If you look
5 down under the left column, it says, under vehicle volumes
6 and adjustments, it says --
7 MR. PRAGER: Just a moment. Let me -- where,
8 where are you now?
9 THE WITNESS: About a quarter of the way down on
10 the left, in the left column. It says vehicle volumes and
11 adjustments, one of the largest bold prints there.
12 MR. PRAGER: All right. I've got that, yes.
13 THE WITNESS: Okay.
14 MR. PRAGER: That's above, that's above the major
15 street.
16 THE WITNESS: Right.
17 MR. PRAGER: All right. Uh-huh.
18 THE WITNESS: And then continue down, major street
19 movement. If you continue down there about six or eight
20 rows, you'll see something that says lanes.
21 MR. PRAGER: Right, uh-huh.
22 THE WITNESS: And then if you look over into each
23 column, under column 1, there's zero lanes --
24 MR. PRAGER: Uh-huh.
25 THE WITNESS: -- because there's zero left turns.

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1 Column 2, it says two lanes. The problem with the highway
2 capacity software for unsignalized intersections, it doesn't
3 allow for three lanes of movement. It only allows for a
4 four-lane roadway, so two lanes in each direction. It won't
5 allow you to put in three through lanes so I assume two
6 lanes, which in this case, would give us a more conservative
7 result because if it's, if it's more traffic in two lanes,
8 which would reduce the number of gaps because it lengthens
9 the amount of vehicles per lane, so it provides a more
10 conservative result. The next column over, three, there's
11 zero right turn lanes but right under that, you see it says
12 a TR. That's a, it's a shared through and a right.
13 MR. PRAGER: All right. Now, since you mentioned
14 number 2, that number 2 is the number of lanes?
15 THE WITNESS: Yes. It should be a three but the
16 software does not allow you to do that so --
17 MR. PRAGER: Right.
18 THE WITNESS: -- we did two in this case.
19 MR. PRAGER: So, so am I correct in saying that as
20 far as you're analysis, that columns 1 and 3 are
21 insignificant, they're not, they're not useful for anything?
22 THE WITNESS: Column 1 is not useful.
23 MR. PRAGER: All right.
24 THE WITNESS: Column 3 is useful because it
25 indicates that the right-turn movement is a shared movement

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1 from the through lane.
2 MR. PRAGER: What do you mean by a shared
3 movement?
4 THE WITNESS: It's not a, it's not a separate
5 right turn lane. You know, if you're going down the road
6 and you want to make a right turn, you either, you do it
7 from the through lane where you've got through people in
8 that lane or some cases, they'll have a lane where you turn
9 over and you get into a right turn lane where there's no
10 through traffic in it. In this case, it's everything out
11 here. All the intersections are all, none of them have
12 exclusive turn lanes. It's just from the through lane.
13 MR. PRAGER: All right. So let's go down to this
14 volume vehicles per hour, 1261 in column 2.
15 THE WITNESS: Uh-huh.
16 MR. PRAGER: Where did that figure come from?
17 THE WITNESS: That comes from page 19 of my
18 traffic impact study which is --
19 MR. PRAGER: And that means?
20 THE WITNESS: Which is the total peak hour volumes
21 after the expansion of the site. That's how many --
22 MR. PRAGER: This is a projection.
23 THE WITNESS: That's a projection of the total
24 through traffic eastbound Randolph Road.
25 MR. PRAGER: And explain to me again what that

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1 projection comes from? What's your base figure and how do
2 you project it?
3 THE WITNESS: The 1261?
4 MR. PRAGER: Uh-huh.
5 THE WITNESS: We do traffic counts. That is,
6 those traffic counts are in Appendix A and the results are
7 reflected on Exhibit 3, page 9 of my traffic impact study.
8 MR. PRAGER: And so where --
9 THE WITNESS: It's probably easiest to look at
10 page 9 which --
11 MR. PRAGER: I see --
12 THE WITNESS: -- just summarizes.
13 MR. PRAGER: I see the summary but I'm trying to
14 get the underlying data.
15 THE WITNESS: Okay. So --
16 MR. PRAGER: Let me ask a different question --
17 THE WITNESS: Sure.
18 MR. PRAGER: -- maybe it will get to where I want
19 to go. When you said a traffic count, the traffic count was
20 when?
21 THE WITNESS: December of 2011.
22 MR. PRAGER: And that was on a single day?
23 THE WITNESS: Yes. You do morning peak hour for
24 three hours, evening peak hour for three hours, and then
25 that's summarized.

1 MR. PRAGER: Okay. And how do you know that that
2 particular day was not aberrational? What day of the week
3 was it for example?

4 THE WITNESS: Thursday, December 8th and the
5 stand, I mean, the reality is you have, you will have minor
6 fluctuations in traffic from day to day. That's a given.
7 You know, you're never going to get the exact same result.

8 MR. PRAGER: Of course.

9 THE WITNESS: But the guidelines, they stipulate
10 that you're supposed to count while school's in session,
11 you're not supposed to do Mondays or Fridays because they
12 are sometimes thrown off by the weekends so you have to
13 count a Tuesday, Wednesday and Thursday, non-holiday, while
14 school is in session with the understanding that any given
15 day, there's going to be a little fluctuation in traffic but
16 in general, it's going to be fairly consistent from day to
17 day with those fluctuations in mind.

18 MR. PRAGER: Right.

19 THE WITNESS: So.

20 MR. PRAGER: So and how many, again, run through
21 the calculation. You, you counted how many cars on that
22 particular day?

23 THE WITNESS: Well, we, again --

24 MR. PRAGER: At the peak, the peak hour.

25 THE WITNESS: Would you like me to explain like

1 how I got the 1261 number?

2 MR. PRAGER: Well, I thought the 1261 was a
3 projection.

4 THE WITNESS: That's a projection so --

5 MR. PRAGER: I'm asking now what was the actual
6 count.

7 THE WITNESS: 1217. That movement we counted
8 1217. Then we, we add in all of the background development,
9 the pipeline developments have been approved but not yet
10 built. Those are provided by staff. We do trip generations
11 and trip assignments for each of those, add that to the road
12 network. That took it from 1217 to 1261, and then we add
13 the site traffic in. The site traffic doesn't add to the
14 through traffic. It adds to the turns in and out of the
15 site. So that's how we come up with a total, existing plus
16 pipeline developments that are approved but not yet built
17 plus our site.

18 MR. PRAGER: All right. And so what does peak
19 hour factor mean in this case?

20 THE WITNESS: Peak hour factor, it's, again,
21 during that 15 minute look throughout the four, four
22 quarters of the peak hour, you look at, you know, which peak
23 was a little higher. And then there's a way to calculate it
24 where you, you add the four peaks up, which would be 12.
25 Since we counted 1217, it would be 1217 and you divide it by

1 a factor of the peak 15 minute period if that were, if that
2 peak 15 minutes were to occur throughout the hour and then
3 you divide your volume by that peak hour factor. It
4 inflates the number slightly so instead of 1261, it might
5 inflate it by another 10 percent to say that there are
6 fluctuations throughout the peak hour. Therefore, let's
7 inflate to assume we're looking at the peak of the peak, and
8 then that's how it's analyzed.

9 MR. PRAGER: And is, is the result in this case
10 1401? Is that where that figure comes from?

11 THE WITNESS: Hourly flow rate, yes. Yes. That's
12 correct. So that's the adjusted volume. It adjusts it
13 assuming we're going to look at the peak of the peak.

14 MR. PRAGER: And the same thing is true in the
15 right turn, that the calculation is that 18 vehicles were
16 going to turn right at some point.

17 THE WITNESS: Uh-huh.

18 MR. PRAGER: And then you inflate that by, and
19 again, it comes out to, to 20.

20 THE WITNESS: Yes.

21 MR. PRAGER: All right. Now, is this 18 a
22 calculated amount or is this a, did you, on December 8th,
23 actually look at right turns at that point?

24 THE WITNESS: We did and we counted the right
25 turns. There were actually 14 right turns into the site --

1 MR. PRAGER: Into the site.

2 THE WITNESS: -- during the peak hour. With the
3 expansion of the facility, there will be 18 right turns into
4 the site during the peak hour.

5 MR. PRAGER: All right. So we're just talking
6 about at the site. This is a, the two-way stop controlled
7 summary deals with at the site.

8 THE WITNESS: That's correct, yes.

9 MR. PRAGER: Is there any sort of study that you
10 did or did anybody else do that you can point to as to the
11 number of left turn lanes, left turns there will be at
12 Locksley Lane?

13 THE WITNESS: Other than -- well, two things.
14 Exhibit 6, page 18 of the traffic impact study, at
15 intersection 3, which is Locksley Lane, you can see going
16 eastbound on Randolph and that left turn lane, it shows that
17 there's two in the morning and four in the evening peak
18 hours. Those would be the U-turns that are, that are a
19 result of this increase and childcare.

20 MR. PRAGER: Well, maybe I don't understand
21 something. How does one determine how many people are
22 actually going to be turning left to do either a U-turn or
23 to go on Locksley Lane from, from this daycare center? Did
24 you have a, did you chart that by looking at addresses or
25 how do you do that?

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1 THE WITNESS: Well, it's based on approximation of
2 trip assignment, and we've worked with staff to come up with
3 where we think traffic's going to come to and from. And
4 Exhibit 6 also shows, on page 18 up in the math on the top,
5 the assumed trip distribution where people are going to be
6 coming to and from, so we have an assumption that 40 percent
7 of the trips are going to be coming from the east on
8 Randolph, 10 percent from the neighborhood up at, off of
9 Locksley, 10 percent from the nearby neighborhoods between
10 Locksley and Kemp Mill on the north or south side of
11 Randolph Road, and then 10 percent to the south on Kemp Mill
12 and 30 percent further west on Randolph. So that's where
13 we're assigning the, the trips from.
14 MR. PRAGER: Well, if I, if I understand this
15 correctly from what you just testified, roughly 50 percent
16 of the trips to the site come from the west and in the
17 afternoon, if they're going back to where they originated,
18 they will have to do a left-turn at, or a U-turn rather, at
19 Locksley Lane, is that correct?
20 THE WITNESS: Uh-huh. Yes.
21 MR. PRAGER: Okay. Now, so on page 7, I'm sorry,
22 page, oops, sorry, page 9, but let me back up and ask you
23 this preliminary question.
24 THE WITNESS: Uh-huh.
25 MR. PRAGER: Page 9 in the exhibit is, is your, is

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1 the current volume that is of 14 in in the morning and 14 in
2 the afternoon.
3 THE WITNESS: Yes. Yes.
4 MR. PRAGER: And since we're doubling things,
5 roughly, can I then say that it's likely that there would be
6 28 trips in and 30 trips out?
7 THE WITNESS: No.
8 MR. PRAGER: Why not?
9 THE WITNESS: Because, I mean, I see where you're
10 coming up with that, you know, just assuming 30 to 62 would
11 be double.
12 MR. PRAGER: Roughly.
13 THE WITNESS: But there's the trip generation
14 rates shown on page 16. If you look on about the center of
15 the page where it says proposed facility on the left-hand
16 side --
17 MR. PRAGER: Uh-huh.
18 THE WITNESS: -- and you look across that line, 11
19 staff, for a facility with 11 staff, in the morning peak
20 hour, that facility generates 19 trips inbound. That's
21 based on real world data, real traffic counts at existing
22 daycare facilities where Park and Planning has experience.
23 They do the counts. They know how many staff there are,
24 they know how many, how many traffic generates. They put
25 these rates together, which we talked about earlier, and

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1 this is a projection of what would be expected for 11 staff,
2 19 trips inbound. Likewise, if you look up under the
3 existing facility, just up the page or --
4 MR. PRAGER: Uh-huh.
5 THE WITNESS: If you look over at six staff, six
6 staff, you would project that there would be 15 trips
7 inbound in the morning peak hour. That's using the same
8 formula that staff has provided. Now, if you look at back
9 on page 9 of the report --
10 MR. PRAGER: Uh-huh.
11 THE WITNESS: -- we are showing in the morning
12 peak hour, 14 trips turning right into the site in the
13 morning. That's real world, what's really happening with a
14 facility with six staff.
15 MR. PRAGER: And 30 children.
16 THE WITNESS: And 30 children. The formula
17 projects that with six staff and 30 children, it would be 15
18 trips so, you know, the real world is not always going to be
19 exact with what your formula is. It's going to vary a
20 little bit but we're very close. We're one trip off what's
21 actually happening and what's projected. Likewise, if you
22 go back to page 16 and you look again at 11 staff, it
23 projects that there will be 19 trips into the site. So we
24 go back then to page 19.
25 MR. PRAGER: Yes.

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1 THE WITNESS: And the total projected traffic into
2 the site in the morning peak hours, 18 trips, which is one
3 less than what the formula projects and that's, really,
4 that's only because our existing traffic was one less than
5 what's projected by the existing figure so it kind of
6 carries through. But the fact is, there's not a, there's
7 not a linear relationship in the trip generation for these
8 centers. Because you have families with multiple siblings,
9 you have staggered drop-off hours and pick-up hours, it's
10 not a one-to-one ratio where it goes up on the same scale.
11 It's, you kind of get economies from scale, if you will,
12 that the bigger the center, the more you're able to take
13 advantage of sibling drop-offs and those types of things.
14 MR. PRAGER: And the fact that there are staggered
15 arrivals and departures doesn't reduce the number of
16 arrivals and departures. It just, that means that they
17 don't arrive during the peak hours.
18 THE WITNESS: They're not as concentrated.
19 They're spread out. That's why it's, that's why it's not
20 doubled. Like you would normally look at it and say 30 to
21 62 children, it should be twice as many turns and that's why
22 it's not twice as many.
23 MR. PRAGER: Well, they could be doubled but it
24 wouldn't be at the same time, is that, is that right?
25 THE WITNESS: If you, if you looked over the

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1 course of the day, it would probably be doubled if you took
2 a longer time horizon but again, really, you're focused on
3 the peak hour. When is the concentration of traffic
4 occurring out here, particularly on the main line so that
5 you can see how it's going to impact your, your site.
6 MR. PRAGER: Right. Let's go back to 41A --
7 THE WITNESS: Okay.
8 MR. PRAGER: --- so I understand what's going on.
9 THE WITNESS: Yes.
10 MR. PRAGER: Let's go to delay queue length and
11 level of service.
12 THE WITNESS: Uh-huh.
13 MR. PRAGER: What do those numbers mean under
14 movement? You have 1, 4, 6, 8, 9, 10, 11, 12.
15 THE WITNESS: So the 9 relates to the northbound
16 movement. If you, if you look back up, you know, we talked
17 about columns 1, 2, 3, 4, 5, 6?
18 MR. PRAGER: Uh-huh.
19 THE WITNESS: That's, those 1 through 6 are for
20 the eastbound and westbound main line flow. If you go down
21 to the Minor Street, look in the left-hand column and go
22 down to where it says Minor Street --
23 MR. PRAGER: Yes, uh-huh.
24 THE WITNESS: If you look across from there, you
25 see northbound and southbound which the 7, and then right

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1 under that, movements 7, 8, 9, 10, 11 and 12. Those relate
2 to, like movement 9 is the northbound right turn movement
3 out of the site. There are no other movements because if
4 you're northbound coming out of the site, you can't make a
5 left, you can't go through so there's nothing there and
6 there's no southbound because there's nothing across the
7 street, so 9 is the only thing that is, is relevant in this,
8 in that set. So if you look down under delayed queue length
9 under level of service --
10 MR. PRAGER: Well, let's, before you get to
11 that --
12 THE WITNESS: Uh-huh.
13 MR. PRAGER: Vehicle per hour, 18, where does that
14 figure come from? Is that a --
15 THE WITNESS: That is --
16 MR. PRAGER: -- calculated or is that a, a --
17 THE WITNESS: That's calculated.
18 MR. PRAGER: -- or observed?
19 THE WITNESS: It's our projected -- well, it's,
20 it's the adjusted movement. If you look up, look back up at
21 right about the middle of the page and look over under
22 movement number 9 --
23 MR. PRAGER: Right.
24 THE WITNESS: -- the right, you see 17.
25 MR. PRAGER: Right.

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1 THE WITNESS: Seventeen is the right turn during
2 the morning peak hour coming out of the site. That's the
3 calculated total traffic coming out of the site with the
4 expanded facility. The peak hour factor of 0.9 then adjusts
5 it up to 18 so that's where the 18 comes from. Again,
6 looking at the peak of the peak.
7 MR. PRAGER: Okay. And what, what's the next line
8 down, C?
9 THE WITNESS: C is the capacity of that movement.
10 So volume is, the volume of the movement is 18 right turns.
11 MR. PRAGER: Uh-huh.
12 THE WITNESS: The capacity, as calculated by the
13 software, is 437 meaning that this is saying that that
14 driveway can handle up to 437 right turns. Now --
15 MR. PRAGER: And what does that mean?
16 THE WITNESS: That means that's, the methodology
17 projects the potential capacity for that movement so you
18 can, so that you can then determine how is the driveway or
19 intersection operating in relation to its capacity.
20 MR. PRAGER: We're talking about capacity for cars
21 to be able to, if you had a driveway of that width with a
22 right turn, 437 cars could move out of that in an hour?
23 What --
24 THE WITNESS: Before, in an hour before it would
25 fail. That's what that means.

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1 MR. PRAGER: What do you mean by fail?
2 THE WITNESS: You'd start to experience queuing,
3 long delays, difficulty for people making the right turn out
4 of the site.
5 MR. PRAGER: I see. And then this vehicle divided
6 by capacity is the 437 into 18, is that correct?
7 THE WITNESS: Yes.
8 MR. PRAGER: Which gives you .04.
9 THE WITNESS: Yes.
10 MR. PRAGER: And how does that .04 relate to a 95
11 queue length?
12 THE WITNESS: It doesn't relate. They're two
13 separate measures of effectiveness. The .04 is simply the
14 volume divided by capacity. Just if it exceeded 1, then you
15 know that that movement was over capacity and that's an
16 indication that there could be a problem. The queue length
17 is a, it's a separate measure. It just says that you're
18 going to have less than one vehicle, and you can't have less
19 than one vehicle so the maximum queue is going to be one
20 vehicle. And then the controlled delay is, again, the
21 average time that it would take a motorist to be able to
22 make a right turn, how long they'd have to wait.
23 MR. PRAGER: And tell me again how that's
24 calculated based on any of these other figures.
25 THE WITNESS: It's based on a function of the

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1 traffic on eastbound Randolph Road and the traffic exiting
2 the site.
3 MR. PRAGER: So it's a calculation on the basis of
4 the 1401?
5 THE WITNESS: Yes. The 1401 and the 18. The 18
6 out of the site and the 1401 eastbound.
7 MR. PRAGER: And explain to me how, how that, how
8 you calculate that. Is it a --
9 THE WITNESS: The 13 --
10 MR. PRAGER: You don't divide 18 into the 1401 or
11 the 1401 into --
12 THE WITNESS: No.
13 MR. PRAGER: -- the 18 so how does it work?
14 THE WITNESS: There's a very complex number of
15 calculations that go into it and there's software, Highway
16 Capacity Manual released a software to do this so you don't
17 have to go through the calculations by hand. So I couldn't
18 tell you right here exactly what the formulas are in the
19 calculations. Only that I've done, literally, I've done
20 thousands of these studies, and this is in line with what I
21 would expect it to be based on these volumes and based on my
22 observations out there.
23 MR. PRAGER: And the line controlled delay?
24 THE WITNESS: Yes.
25 MR. PRAGER: That 13.6, I think you testified is

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1 the number of seconds?
2 THE WITNESS: Yes. So if you are exiting the
3 site, you pick up your kid or you drop them off in the
4 morning and you pull out to Randolph Road and you pull up to
5 Randolph and you stop and you look to wait, on average, you
6 would wait 13 seconds.
7 MR. PRAGER: And the LOS means what?
8 THE WITNESS: Level of service. What that does,
9 it takes the amount of time that you have to wait, the 13.6
10 seconds, and it puts that into a qualitative assessment
11 saying that level of service A through F, F being something
12 that's hard for people to tolerate and considered
13 unacceptable, A being it's very good, D being, D or E being
14 acceptable and under capacity or within capacity. It's just
15 -- Highway Capacity Manual, they've had panels look at this
16 and put together what assessments of what people consider
17 reasonable based on an unsignalized intersection. So, you
18 know, a level of service, B is a good level of service.
19 That's how they quantify or qualify a 13 second wait.
20 MR. PRAGER: All right.
21 THE WITNESS: And finally, is approach delay,
22 13.6, is that just a restatement of the --
23 MR. PRAGER: It's a restatement of the right turn
24 volume. If this intersection, if it were a shared, if there
25 were no median and you could make a left or right, then the

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1 approach delay looks at both of the left and the right
2 movements and it blends them into the overall approach
3 results.
4 THE WITNESS: How does, how does Kimblewick Road
5 figure into this, your study? We talked about Hammonton.
6 Is there, is there, going west, is there a U-turn
7 possibility at, at Kimblewick Drive?
8 MR. PRAGER: No. No, there's not. It's a right
9 in and right out only on westbound Randolph Road.
10 THE WITNESS: Do you have any idea how many staff
11 and children currently arrive by a public bus or public
12 transportation I should say?
13 MR. PRAGER: I believe one or two staff, I'm not
14 certain on that, I think the applicant could testify better
15 on that. I'm not aware of any children that arrive by
16 public transit but the applicant could shed a better light
17 on that.
18 THE WITNESS: So that was not, that was not
19 involved in your assessment, in your calculations.
20 MR. PRAGER: No. We made --
21 THE WITNESS: That's independent of --
22 MR. PRAGER: We made no assumptions that there
23 would be arrival by transit.
24 THE WITNESS: And there --
25 MR. PRAGER: We --

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1 THE WITNESS: And there is nothing, as far as you
2 know, in the standard formula that is proposed by the
3 Planning Department or the Planning Department has which
4 calculates how many, how many children or staff arrived by
5 public transportation. It assumes that they all arrive by,
6 by road on their own, is that correct?
7 MR. PRAGER: Yeah. I believe so. It takes the
8 kind of worse case vehicular trips into consideration.
9 THE WITNESS: I'm sure there are many more
10 questions that I have but I don't have them now, so Ms.
11 Walker?
12 MS. WALKER: Those were excellent questions.
13 THE WITNESS: Yes.
14 MS. WALKER: I'd just like to say that was
15 probably one of the more thorough examinations I have seen
16 on these issues so I commend you for that and for
17 understanding it all. Especially --
18 MR. PRAGER: Well, I don't understand it. That's
19 why I asked the questions.
20 MS. WALKER: Well, at least you got the highlights
21 though so thank you, Mike, for doing that. But I just
22 wanted to, one question.
23 REDIRECT EXAMINATION
24 BY MS. WALKER:
25 Q Do you know whether in 2002 when this was

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1 originally approved Mr. Axler looked at the issue of U-turns
2 as a concern raised by the community?
3 A I believe he did.
4 Q And do you know if he found there was any basis
5 for that being an issue?
6 A He, as I recall, he looked at U-turns and he, if I
7 recall correctly, he looked at accident data as well and his
8 findings were that there were no concerns regarding U-turns
9 or accident --
10 Q So is your --
11 A -- or safety issues.
12 Q Sorry. Is your testimony then now, in 2013, based
13 upon your observations in 2011 and 2012, consistent based
14 upon the current involvement that there is indeed no issue
15 with U-turns?
16 A Correct. Correct, yeah.
17 Q And one last question, and that is we've heard a
18 lot about peak hour, that you're looking at the peak hour
19 but we haven't really stated. Are you looking at the peak
20 hour because that's considered to be the most impactful to
21 the community?
22 A Yes. To the community and to those motorists, the
23 commuters that are on Randolph Road which is a major highway
24 by the master plan, and it's also standard operating
25 procedure, standard practice to look at the peak hour. The

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1 peak of the peak so to say.
2 MS. WALKER: I have no further questions.
3 MR. PRAGER: Mr. Wilhelm?
4 MR. WILHELM: I'd also like to compliment the
5 Hearing Examiner on the depth of his questions. I do have
6 one. Your set of questions --
7 MR. PRAGER: Ignorance. Ignorance pays
8 apparently.
9 MR. WILHELM: You're doing very well, sir.
10 Anyway, I, his set of questions lead me to one.
11 RE-CROSS-EXAMINATION BY MR. WILHELM
12 BY MR. WILHELM:
13 Q You testified the, going, how can I explain this,
14 going eastbound on Randolph Road, I want to go westbound so
15 I've got to go up to Locksley, go across, get into the left
16 turn lane, do a U-turn at Locksley. My question, since this
17 facility is, the driveway in this facility is kind of in the
18 middle of that left turn, how many cars do you think can be
19 in the left turn lane, I realize this is a lot of judgment,
20 but could be in the left turn for cars blocked from getting
21 across all three lanes and getting in the left turn lane?
22 A The driveway is at least 200 feet.
23 Q You said --
24 A I said 2 to 300.
25 Q -- 2 to 300 feet.

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1 A So say it's at least 200 feet which would,
2 stacking for a vehicle is 25 feet typically so you'd be able
3 to get eight, eight vehicles stacked before it backed beyond
4 the driveway.
5 Q Okay. And that's assuming people can go diagonal
6 directly across and they'll naturally have to go at some
7 kind of angle so it will be something less than that.
8 A Yeah. And looking at page 19 of our traffic
9 impact study, which is the total projected peak hour
10 volumes, the eastbound left turn lane at Locksley, eastbound
11 Randolph road at Locksley Lane, the peak, what's shown in
12 the morning is 27 vehicles and the evening, 29 vehicles for
13 that left turn. The standard kind of rule of thumb for
14 queuing is 1.25 times the turn volume. So if you've got a
15 turn volume of 29 to 30 vehicles, multiply that by 1.25 and
16 you could assume that you might have a queue of 40 to 50
17 feet at the most. That's kind of a design queue. We're 200
18 feet back and I can say, just from observations, most of the
19 time, the queue doesn't get anywhere near that far. There
20 might be, there may be an occasion where it could queue back
21 200 feet but, you know, the signal turns green or the queue
22 clears out and people can go. It's unlikely that the queue
23 would get back that far at any given time.
24 Q Thank you.
25 MR. WILHELM: No other questions.

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1 MR. PRAGER: Ms. MacNab?
2 MS. MACNAB: Actually, I do have a question. It
3 has to do --
4 MR. PRAGER: Please state it.
5 RE-CROSS-EXAMINATION BY MS. MacNAB
6 BY MS. MACNAB:
7 Q I have a question about the U-turns. You know,
8 much has been said about studying the people going up
9 Randolph Road east and coming Randolph Road west, and I know
10 that the storage lane supposedly is big enough. That's not
11 my concern. It's for the people who live in this area who
12 have to leave by Hammonton Place and try to get out to the
13 westbound road. We now have to not only watch what's coming
14 down west, what's going up east, but also those turning
15 lanes. I know that there has not been recorded an accident
16 but there certainly has been near misses. I mean, and
17 that's something that has not been alluded to or anything.
18 Most of us have been very surprised at where are all these
19 people turning at and it wasn't until recently that we
20 realized where they were coming from, and there's nothing
21 that gives us any help in getting out there. That's all. I
22 guess that's more of a comment because --
23 MR. PRAGER: It is a comment.
24 BY MS. MACNAB:
25 Q You didn't look at it.

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1 MR. PRAGER: Why don't you frame it have you taken
2 into account the fact that there is traffic coming out of or
3 crossing at Hammonton.
4 THE WITNESS: I had mentioned before, page, page
5 18 of the traffic impact study, the proposed increase from
6 30 to 62 children would result in an addition of two U-turns
7 at Hammonton going west, westbound Randolph, U-turn at
8 Hammonton to come back into the site. Two additional U-
9 turns in the morning peak hour, three additional in the
10 evening peak hour. That translates into one additional U-
11 turn every 20 to 30 minutes which is, you know, it's a
12 negligible increase. It's not something that you're going
13 to notice, you know, any additional increase in vehicles.
14 One every 20 to 30 minutes is not something that you'd be
15 able to comprehend.
16 BY MS. MACNAB:
17 Q Well, if you're coming out there in the morning,
18 you, you comprehend it because --
19 MR. PRAGER: All right. Well, that's
20 argumentative. You can testify about that later if you
21 wish. Any other questions?
22 MS. MACNAB: Nothing, sir.
23 MR. PRAGER: I have one question because Ms.
24 Walker asked you about the study in 2002. How relevant is a
25 study 10 years previous to current conditions?

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1 THE WITNESS: Mr. Axler's study related to several
2 things, trip generation of the site at that time for a 30-
3 child, 6-staff daycare. That's relevant in that we're
4 looking at an increase from that level to the proposed
5 level. He also looked at accident data and he looked at
6 site distance and he looked at the U-turn movements. Those
7 issues, the accident data we simply updated. It's relevant
8 in that we've added more supporting documentation supporting
9 the fact that there are no, no safety issues as documented
10 by actual accident data. The site distance hasn't changed.
11 You know, it's, it was the same then that it is now so
12 there's really no change in that.
13 MR. PRAGER: He didn't do a gap study, is that
14 correct?
15 THE WITNESS: Not to my knowledge. I don't
16 believe he did.
17 MR. PRAGER: Well, the Hearing Examiner at the
18 time complained that none had been done. You've now tried
19 to do that or have done that rather.
20 THE WITNESS: Yes.
21 MR. PRAGER: In this study. All right. I have no
22 further questions. Ms. Walker, do you have any follow-up?
23 MS. WALKER: Nothing further, no.
24 MR. PRAGER: All right. You are excused.
25 THE WITNESS: Thank you. Very good questions.

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1 MR. PRAGER: Thank you. Now, it is 3:30. We will
2 have a 10 minute break at this point, and you still have two
3 witnesses to present. All right.
4 (Whereupon, at 3:32 p.m., a brief recess was
5 taken.)
6 MR. PRAGER: Have a seat, please. Ms. Walker,
7 call your next witness, please.
8 MS. WALKER: I would like to call Norman Howell.
9 MR. PRAGER: And we'll go off the record for a
10 moment.
11 (Discussion off the record.)
12 MR. PRAGER: On the record.
13 MS. WALKER: Thank you.
14 (Witness sworn.)
15 MR. PRAGER: State your full name, please.
16 THE WITNESS: Norman Howell.
17 MR. PRAGER: And your address?
18 THE WITNESS: 5801 Nixon Lane, Suite 1033, North
19 Bethesda, Maryland 20852.
20 MR. PRAGER: And that's your professional address.
21 THE WITNESS: Professional address, yes.
22 MR. PRAGER: Ms. Walker?
23 MS. WALKER: Thank you. For the record, Mr.
24 Howell is going to be referring to a few exhibits during his
25 testimony that are already in the record. I thought I would

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1 mark them now so that it would be easier because they're all
2 in evidence. They're just larger versions. This drawing
3 which is labeled A-2 are the elevations of the site. That
4 is just a duplicative copy of Exhibit 5A.
5 MR. PRAGER: Just a moment. Well, I seem to have
6 everything except 5A. I'm sure I have it somewhere, but I
7 have 5B, 5C.
8 MS. WALKER: Those are the ones I'm going to next
9 actually, 5B --
10 MR. PRAGER: Do you have an extra copy for 5A?
11 MS. WALKER: Let me see. Do you want to go off
12 the record while I --
13 MR. PRAGER: Yes. We'll go off the record.
14 (Discussion off the record.)
15 MR. PRAGER: All right, Ms. Walker?
16 MS. WALKER: Should we go back on the record?
17 MR. PRAGER: Yes, please.
18 MS. WALKER: Okay. So as I was just saying, I'm
19 just making a few exhibits for Mr. Howell to testify to.
20 The first is Exhibit 5A and we're just showing a larger
21 scale copy of what is already in the record of the
22 elevations of the existing --
23 (Exhibit No. 5A was marked
24 for identification.)
25 MR. PRAGER: Have you qualified him or --

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1 MS. WALKER: I'm going to. I'm going to do that
2 next.
3 MR. PRAGER: Okay.
4 MS. WALKER: Right now, I just want to get the
5 documents in, then I'll qualify him if that's all right.
6 MR. PRAGER: All right.
7 MS. WALKER: I can do the opposite if you prefer.
8 MR. PRAGER: No. I prefer if you qualified him
9 first.
10 MS. WALKER: Okay. Okay. We can do that first.
11 DIRECT EXAMINATION
12 BY MS. WALKER:
13 Q Mr. Howell, if you will, please state your
14 occupation for the record?
15 A Architect. Registered architect.
16 Q And I have given you a copy of your resume which
17 is already in evidence as Exhibit 22. I believe it's --
18 MR. PRAGER: L.
19 MS. WALKER: L, thank you. All right.
20 BY MS. WALKER:
21 Q 22L. Feel free to refer to it if you would like.
22 Have you previously testified before the Hearing Examiner in
23 Montgomery County as an expert in architecture?
24 A Yes, I have.
25 Q And how long have you been a practicing architect?

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1 A I've been a licensed practicing architect since
2 1992.
3 Q And can you please describe your educational
4 background?
5 A I have a five year accredited professional
6 bachelor's architecture degree.
7 Q And do you hold any certifications relating to
8 your occupation as an architect?
9 A Yeah. I'm a certified architect in Maryland.
10 Q Okay. And that license is in good standing?
11 A Licensed, yeah.
12 Q And are you familiar with the Montgomery County
13 regulations, including the Zoning Ordinance?
14 A Yes, I am.
15 Q And have you previously, I believe you said you
16 did testify previously as an expert.
17 A Yeah. I testified at the previous, previously
18 approved special exception.
19 Q So you were the architect of record for this
20 project --
21 A Right.
22 Q -- when it initially went through --
23 A Right.
24 Q -- the special exception in 2002.
25 A Yes.

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1 MS. WALKER: I'd like to move that Mr. Powell be
2 qualified as an expert in architecture. Excuse me, Mr.
3 Howell. I've got Mr. Powell and Mr. Howell --
4 THE WITNESS: Mixed up.
5 MS. WALKER: -- causing me heartache today.
6 MR. PRAGER: Mr. Wilhelm?
7 MR. WILHELM: No objections.
8 MR. PRAGER: Ms. MacNab?
9 MS. MACNAB: No.
10 MR. PRAGER: All right. He'll be admitted as an
11 expert. Well, let me ask you, in, you do both residential
12 and, and commercial real estate?
13 THE WITNESS: Yes, I do.
14 MR. PRAGER: And you've testified as an expert
15 witness in both fields?
16 THE WITNESS: Only in residential so far.
17 MR. PRAGER: Okay. I will accept him as a, as an
18 expert in residential real estate, in residential
19 architecture.
20 THE WITNESS: Architecture.
21 MS. WALKER: Thank you. And just to move back to
22 the exhibits that our expert is going to testify to, Exhibit
23 5B is just a larger version we provided here at the hearing
24 which shows the elevations, or excuse me, 5A shows the
25 elevations.

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1 (Exhibit No. 5B was marked
2 for identification.)
3 MS. WALKER: I've marked now 5B in the record.
4 These are the floor plans showing the basement and the main
5 floor dwelling, of the dwelling. And finally, I'm going to
6 label 5C which shows the same floor plans for basement and
7 main floor but also includes a chart that has been prepared
8 that addresses how the project conforms to the state
9 requirements.
10 (Exhibit No. 5C was marked
11 for identification.)
12 MS. WALKER: These were --
13 BY MS. WALKER:
14 Q Did you prepare each of these drawings, Mr.
15 Howell?
16 A Yes, I did. Uh-huh.
17 Q So since you were, as you testified, the architect
18 of record for the project initially, is it safe to say that
19 you're familiar with the subject property and the
20 surrounding area?
21 A Yes, I am.
22 Q Okay. And you visited the site and the
23 surrounding area?
24 A Yes, I have.
25 Q Okay. And have you been in the existing

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1 structure?
2 A Yes, I have.
3 Q Okay. And you testified previously before the
4 Hearing Examiner in this case?
5 A Yes, I did. Uh-huh.
6 Q Excuse me, I should say in the earlier special
7 exception approved in --
8 A Earlier special exception.
9 MR. PRAGER: Yes. I was going to correct you.
10 This case is this case.
11 MS. WALKER: Yes.
12 MR. PRAGER: That was that case.
13 MR. PRAGER: Yes. Understood.
14 BY MS. WALKER:
15 Q And have you considered what modifications to the
16 structure will be required to accommodate the proposed
17 increase in enrollment for the daycare center?
18 A Yes, I have.
19 Q Are you familiar with the Montgomery County Zoning
20 Ordinance requirements for the construction of improvements
21 on properties that are subject to special exceptions?
22 A Yes, I am.
23 Q And you're familiar with the standards for special
24 exceptions as they relate to architecture?
25 A Yes, I am.

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1 Q And in what zone, do you know, is the subject
2 property classified?
3 A R-200 Zone, single-family.
4 Q And if you could briefly now, explain for me and
5 the Hearing Examiner the architectural plans for the
6 property and what is proposed to be modified.
7 A Okay.
8 Q And if you'd like, I can flip back to the earlier
9 plans.
10 A All right.
11 Q Would you like this one, the floor plan?
12 A The other one.
13 Q This one.
14 A Yeah.
15 MS. WALKER: Okay. Let the record show that the
16 architect is referring to Exhibit 5C in the record, drawing
17 labeled A-1.
18 BY MS. WALKER:
19 Q Please proceed, Mr. Howell.
20 A Yeah. The previous work involved the main level.
21 It's a two-level main level to the existing structure and a
22 lower level. The initial assignment of the 30 students and
23 six staff was confined to the main level to accommodate that
24 enrollment. What we're proposing is creating an open plan
25 for the main level, removing corridor walls and any walls

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1 that would obstruct the flow for the additional enrollment
2 and to make minor alteration and renovation in the basement
3 to accommodate the additional enrollment.
4 And the drawing is indicating, the dotted line or
5 broken line, as to where the walls are being removed, and
6 we're proposing new walls in the basement and the upper
7 floor where it's required. There was a mechanical room in
8 the basement that basically used up a lot of floor space
9 that could be assigned for students and so we propose to
10 reduce the size of that mechanical room as shown on the
11 drawing. We also propose an additional toilet to be added
12 to accommodate the additional students in the basement.
13 There is now an existing toilet that is in the basement and
14 so we would have a toilet now assigned to each of the
15 classroom in the basement as we did on the upper floor in
16 that each of the classroom have their own toilet to service
17 each of the proposed classrooms.
18 Q If I could just have you walk through sort of
19 demonstratively. If you want to approach the drawing, I
20 think it might be helpful --
21 A Okay.
22 Q -- for you to point out the ingress and egress
23 from the building.
24 A Okay. There are -- the main access to the main
25 floor is through the front door obviously. There's an

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1 ingress, egress to the back rear of the building. There are
2 two ingress, egress on this side and the rear of the
3 building, this classroom area. And in the basement, we have
4 an ingress, egress that leads out to the grade level. We're
5 also proposing an enclosed rated staircase to exit out
6 through the upper level exit, ingress, egress door.
7 Q And if I can, Mr. Powell, Mr. Howell, I'm going to
8 stop doing that now, could you take this highlighter and
9 just circle the ingress, egress locations?
10 A Okay. The main entrance is on the north --
11 Q Actually, let me get you a better color than that
12 so they can see.
13 MR. PRAGER: Well, wait just a moment. I'm not
14 quite sure what the purpose of that is since that's not
15 going to be shown in the transcript and unless you're
16 proposing to file yet another --
17 THE WITNESS: Another exhibit.
18 MR. PRAGER: -- exhibit, what's the point?
19 MS. WALKER: No. I was actually just going to do
20 it and then have him articulate how many there were and
21 then --
22 MR. PRAGER: Well, he can do that on the record
23 without --
24 THE WITNESS: Yeah. I can do that.
25 MS. WALKER: Okay. That's fine.

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1 MR. PRAGER: -- without a highlighter.
2 MS. WALKER: We can do it without showing
3 anything --
4 MR. PRAGER: Just one person talks at a time,
5 please.
6 MS. WALKER: Okay. All right.
7 BY MS. WALKER:
8 Q If you could, just count for me how many ingress
9 and egress points there are on the --
10 A Okay. On the main level, there are four. The
11 front door, back door, there's a rear exit out here, a side
12 entrance to the main level. In the basement, there is a
13 side door exit and entrance point. And for the second exit
14 out of the basement, we proposed an enclosed fire rated exit
15 stairway that leads out to the exit door at the ground floor
16 level.
17 Q So that was how many total numerically?
18 A There's actually four on the main level and one
19 perimeter exit. However, we created an exit stair that
20 leaves out and utilizes the exit door.
21 Q On the main floor.
22 A On the main floor.
23 Q And so if I have your testimony correct, there are
24 five doors that provide ingress and egress to and from this
25 structure as a whole.

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1 A As a whole, yes.
2 Q Now, you were present during Mr. Powell's
3 testimony with regard to the lighting?
4 A Yeah.
5 Q Okay. And with regard to that, can you tell me --
6 you can have a seat if you'd like -- can you tell me whether
7 there are any applicable standards regarding exit lighting?
8 A Yeah. At each of the exit points out of the
9 building, we're required to have an exit light that lights a
10 safe path exiting from the exit doors, so each of the points
11 that I've indicated previously, which is five perimeter exit
12 door, would require a lighting fixture to provide a safe
13 exit out of the building in case of an emergency.
14 Q There were currently, I believe, six fixtures
15 proposed for the --
16 A Yes. There was an additional fixture proposed
17 along the, yeah, along the front and rear of the building.
18 Q So if I'm hearing what you're saying correctly,
19 you're telling me that you need five light fixtures in order
20 to accommodate the code at the ingress, egress points from
21 the building and there is an extra, if you will, on site.
22 A On site, right.
23 Q Okay. That could be, in theory, eliminated if not
24 necessary?
25 A Yes. It was, it was added to the building only to

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1 provide additional lighting for the rear of the building in
2 case there was play activity after dark.
3 Q Okay.
4 A But it can be eliminated if it had to be.
5 Q Okay.
6 A If the operator decided not to, you know, conduct
7 or operate any play activities after dark.
8 Q Okay. And will the proposed center design by
9 compliant with the Americans with Disabilities Act?
10 A Yes, it will be. We've provided a handicap
11 parking, we've provided, there's an existing from the
12 previous work, existing handicap ramp that leads to the main
13 floor of the building and there is a handicap toilet that
14 would service a handicapped person in a wheelchair. That's
15 on the main level.
16 Q Okay. And are you familiar with the Zoning
17 Ordinance standards for approval of a special exception?
18 A Yes, I am.
19 Q In particular, 59-G-1.21 and the provisions that
20 follow. Looking at those provisions, can you please
21 describe how the existing building complies with the Zoning
22 Ordinance requirements for special exception in a
23 residential zone regarding compatibility and exterior
24 appearance?
25 A Okay. The existing building as it stands has the

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1 appearance or characteristic of the neighborhood, the
2 residential characteristic of the neighborhood. We are not
3 proposing any changes at all to the exterior of the
4 building, and the material finishes and the architectural
5 features that exist and the lighting being proposed would
6 all reflect a residential grade architectural feature. And
7 so the existing building is, is constructed from masonry
8 brick on the outside and wood siding which is typical of the
9 housing throughout that neighborhood.
10 Q Okay. And as far as the roof standard --
11 A Roof shingles, yeah.
12 Q -- residential roof shingles.
13 A Roof shingles are standard. There's no special
14 commercial application of roofing at the existing structure.
15 Q And what about the fencing? That's obviously --
16 A We have --
17 Q -- proposed to remain.
18 A Right. We have a perimeter wood fence that's six
19 foot high. It's a site tight wood pins which is typical in
20 a residential zone neighborhood, and we've also provided a
21 four-foot high chain link fence to secure the play area to
22 keep the kids from wandering off the site.
23 Q So would you say, looking at the architecture,
24 that this is in harmony with the character of the
25 neighborhood looking at design, scale and bulk?

1 A Yes, because we're not making any changes to the
2 scale or the bulk and we're preserving the exterior feature
3 of the structure.

4 Q Okay. And also looking toward compatibility in a
5 residential, the Zoning Ordinance has some language
6 regarding structures that are constructed or reconstructed
7 or altered. I think I heard you say that we're not
8 altering.

9 A Yeah. There's no exterior alterations or
10 reconstruction occurring on the outside except for the
11 improvements that I described on the site for, for the
12 fencing and the play area that's being modified.

13 Q So is it safe to characterize your testimony to
14 say that by reviewing this structure from the outside,
15 somebody would not know that it's not a residential home
16 looking strictly at the architecture --

17 A Right because --

18 Q -- of the structure?

19 A Because there are no changes being proposed at the
20 existing structure.

21 Q Okay. One moment, please. Did you look at the
22 state requirements for the number of children that are being
23 proposed for this site?

24 A Yes, I did.

25 Q Did you look at the floor plan and the space

1 Q Okay. So in this case, just looking at the
2 building, since that's more your area of qualified
3 expertise, the 35 square foot per child, that's not
4 something that is in the zoning code, is it?

5 A No. It's part of the licensing, Maryland state
6 licensing standards.

7 Q Okay. And would you, at the time of building
8 permit, submit plans that confirm the square footage as
9 being adequate to meet the state licensing?

10 A Yes. Only, only in reference to the state
11 licensing requirements in terms of capacity, proposed
12 capacity of the --

13 Q Did you work with the applicant to do so in this
14 special exception when this building was initially done?

15 A Yes. We worked out the breakdown of the proposed
16 classrooms by groups in terms of age groups for each of the
17 classrooms.

18 Q And do you know whether the state independently
19 verifies the area of the rooms --

20 A Yeah. During the --

21 Q -- as shown as part of their licensing?

22 A Right. I'm sorry. During the licensing and
23 inspection exercise, whatever we propose on the plan will be
24 inspected and confirmed during that inspection process, and
25 any last minute adjustments will be made at that point of

1 allocations?

2 A Yes, I did.

3 Q And did you prepare the chart that is located on
4 that drawing that is Exhibit 5C?

5 A Yes, I did.

6 Q Can you just briefly explain to the Hearing
7 Examiner what that, I don't expect him to read the numbers
8 from --

9 A Right. It's --

10 Q -- there but what it is?

11 A Right. It's a, it's a restatement of the license
12 standards in the state of Maryland and what it does is
13 indicate the ratio required, the minimum ratio required
14 between students and teachers and based on the student's age
15 group, indicates the maximum students per teacher and
16 indicates the -- it's basically giving an accounting of the
17 student enrollment between the ratio of the teacher and
18 student as to the minimum allowed teaching staff and also
19 somewhat indicate the outdoor requirements and indoor
20 requirements for accommodating them.

21 Q And are you aware of what the COMAR requirements
22 are as far as the amount of square footage per child?

23 A Yeah. For indoor, it's 35 square foot per child
24 and for the outdoor play area, it's 75 square foot per child
25 times, well, times half the proposed enrollment.

1 the inspection.

2 Q So if, for example, the state came out and did not
3 agree with how you had allocated the space, you do have the
4 room within this open plan system to make adjustments within
5 the rooms.

6 A Right. We can because the floor plan is now
7 flexible where we can add or subtract from each of the
8 areas.

9 Q Okay. And --

10 MS. WALKER: Hearing Examiner's indulgence for
11 just a moment.

12 BY MS. WALKER:

13 Q Looking at the main level, can you just point out
14 how many classrooms are proposed for the main level?

15 A Okay. On the main level, we have basically three
16 groups of open class, classroom proposed and they're broken,
17 they're broken down in terms of student enrollment, by
18 square footage and number of students being assigned and
19 staff.

20 Q Okay. That's all shown on Exhibit 5C.

21 A That's all shown on the, on the plans.

22 Q I don't need you to go through them all
23 individually but, and then the basement is being proposed
24 for how many classrooms?

25 A Two classrooms.

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1 Q And currently, is the basement finished?
2 A The basement is somewhat finished but not complete
3 for, for the new enrollment so there are going to be some
4 modifications and adjustments made in the basement, some
5 alterations in order to accommodate the new enrollments.
6 Q Okay. But currently, the basement is not used as
7 a full-time classroom or anything.
8 A No. It's unassigned space at the time.
9 Q Unassigned space.
10 A Right.
11 Q Okay. And when you say unassigned space, what
12 does that mean?
13 A Meaning that it's not part of the current school
14 program to, to accommodate classrooms for kids.
15 Q Not part of that state calculation if you will?
16 A Right.
17 Q The 35 square foot per child.
18 A The 35 square --
19 Q What about the bathrooms? Are those included in
20 the calculation?
21 A No.
22 Q And what about the kitchen?
23 A No, it's not.
24 Q Or the director's office?
25 A No, it's not.

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1 Q Or closets?
2 A No, it's not.
3 Q Okay.
4 MS. MACNAB: Toilet? Bathroom?
5 MS. WALKER: I'm sorry.
6 MR. PRAGER: Ms. MacNab, please wait your turn.
7 BY MS. WALKER:
8 Q I think you testified bathrooms were not included
9 in that square footage, correct?
10 A They're not included, right.
11 Q Okay.
12 MS. WALKER: I believe that's all I -- oh, I guess
13 I'll just ask.
14 BY MS. WALKER:
15 Q The design that you have, do you feel that it
16 meets all applicable building as well as zoning codes?
17 A Yes, it does.
18 Q And life safety.
19 A Right. The building --
20 Q For the safety of the children.
21 A -- currently has a fire protection system built in
22 that's connected back to the local station, fire station,
23 and also has a security alarm built in and has connected
24 smoke detectors throughout the building in all the rooms
25 that are being proposed. The only adjustments we're making

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1 is that we're taking down the, the partition walls from the
2 corridor space and now everything would be within range of
3 the smoke detectors and the fire safety system.
4 Q And in your experience as an architect who has
5 designed these sorts of facilities before, is that typical,
6 that people are going to more of an open plan design?
7 A Yeah, because it's more flexible and even the
8 furniture designs are made for a flexible space as opposed
9 to walls and fixed furnishing.
10 Q Okay.
11 MS. WALKER: And I could just, I'm going to ask
12 Mr. Howell to just review the photographs for us that are in
13 the record just to confirm that they are accurate. I think
14 I, do you have a copy of them, or do you need a copy of
15 them? These are Exhibits 10 in the record and I apologize,
16 I only have one copy so I'll have to stand here with you
17 while we go through them if that's all right.
18 MR. PRAGER: All right.
19 BY MS. WALKER:
20 Q Exhibit 10A, does that, what does that depict?
21 A That's the main entrance to the main level, and
22 it's showing the handicap ramp leading up and a set of steps
23 that services the front entrance door.
24 Q Okay. So this is the front elevation of the --
25 A Front elevation.

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1 Q -- of the site. And what is this photo depicting?
2 It's photo 10B as in boy.
3 A It's the front of the property looking towards the
4 west side of the property looking at the fenced in play
5 area.
6 Q Okay. So just providing some screening.
7 A Screening right along the --
8 Q Okay.
9 A -- front of the property.
10 Q And looking at Exhibit 10C, can you tell me what
11 that is?
12 A 10C again is another front elevation of the
13 building looking from the lower grading of the site and
14 again, depicting pretty much the driveway and handicap on
15 the outside of the building.
16 Q Okay. And how about photograph 10G?
17 A 10G is showing the rear of the property. It's,
18 again, indicating that flat area that was assigned for the
19 new relocated play equipment.
20 Q And looking at photograph 10I, what does this
21 depict?
22 A That's a screened area for the residential grade
23 trash containers.
24 Q Okay. So there's no dumpster associated with this
25 site.

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1 A There's no dumpsters being proposed.
2 Q And looking at Exhibit 10M, can you tell me what
3 this room is?
4 A I believe that's the, the entrance in the toddler
5 room.
6 Q Okay. And so that's the door there, showing
7 that's the door --
8 A An exit leading out.
9 Q -- on which elevation of the house?
10 A Leading out to the side elevation.
11 Q Okay. And looking at photograph 10, Exhibit 10X,
12 is this the basement of the current structure?
13 A Yeah. That's the basement of the current
14 structure.
15 Q Okay. As well as 10Y, also?
16 A Yes. Right. Another view of the same space.
17 Q And 10Z?
18 A That's correct.
19 Q Okay. And then is this the mechanical room you
20 were testifying to?
21 A Yeah. That's the large mechanical room.
22 Q Which is photograph 10Aa, little A.
23 A Right.
24 Q Okay. And this is the space that you indicated
25 would be modified.

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1 A Modified to, right, create more space for the new
2 enrollment.
3 Q And how are you able to modify that mechanical
4 room to remove some of the components in there?
5 A Simply just take the wall down and create a new
6 wall system around the actual mechanical equipment.
7 Q Are you redoing the mechanical equipment as part
8 of the renovation?
9 A Yeah. It's possible that before it's all over and
10 done with, we may be able to eliminate the mechanical rooms
11 period and provide the standalone quiet system for heating
12 and cooling each of those classrooms. These would be a
13 through-wall mechanical system so we may add additional
14 floor space by doing that.
15 Q Just looking to the Zoning Ordinance, Section 59-
16 G-1.21(a)(6), which states that the proposal will cause no
17 objectionable noise, vibration, fumes, odors, dust,
18 illumination glare or physical activity at the site
19 irrespective of adverse effects the use might have if
20 established elsewhere in the zone, do you believe that that
21 statement is true with regard to this application?
22 A I believe it's true.
23 Q So there are no design elements that would cause
24 any noise, vibration, fumes, odor, dust, illumination or
25 glare to the structure?

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1 A There's none.
2 MS. WALKER: I have no further questions.
3 MR. PRAGER: Mr. Wilhelm?
4 CROSS-EXAMINATION BY MR. WILHELM
5 BY MR. WILHELM:
6 Q On your floor plan that's up on the easel, you
7 have --
8 MR. PRAGER: Which is what?
9 MR. WILHELM: I'm not sure what exhibit that is.
10 MR. PRAGER: Well --
11 MS. MACNAB: A-1. A-1.
12 MR. WILHELM: That's the sheet number.
13 MR. PRAGER: I believe it's --
14 MR. WILHELM: I think that's C.
15 MR. PRAGER: It's 5C?
16 MR. WILHELM: It's 5C?
17 MR. PRAGER: No. It's 5B. 5B.
18 MR. WILHELM: 5B.
19 MR. PRAGER: The exhibit that is currently up
20 there.
21 MR. WILHELM: Okay. 5D you said?
22 MR. PRAGER: B as in boy.
23 MR. WILHELM: B, boy.
24 BY MR. WILHELM:
25 Q Anyway, in Exhibit 5B, as in boy, you have five

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1 areas and then --
2 A Classrooms.
3 Q Five rooms. It has different ages in the
4 different rooms. Is, is the intent is that only kids in
5 that one age group will be in each of those rooms?
6 A Yes. Each classroom are grouped by the age of the
7 students so, for example, in the main level, you have the
8 infant and the toddlers, which are 18 months I believe and
9 less, and then on the center classroom, I believe those are
10 two, two and three-year-old. The chart shows it but each,
11 each classroom is confined only to the age group that it
12 serves and so that's what the floor plan is indicating.
13 Q So the number of kids that are allowed will be by
14 the state standards, the 35 square feet per whatever the
15 square.
16 A The 35, right. The 35 square feet is applied to
17 each of the students irregardless of the age group.
18 Q On the square footage or on the charts, let's take
19 the one on the right, the middle one, you know, off the
20 kitchen. Could you say what those, that square footage is
21 based on?
22 A This is Exhibit 5B.
23 MS. MACNAB: That says B.
24 THE WITNESS: So this one says --
25 MS. WALKER: C.

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1 THE WITNESS: C, okay. Yeah. This chart was
2 created to highlight the actual floor area that we're
3 calculating the square footage to occupy those classroom by
4 age, group by age and the number of students that are being
5 assigned to each of those, and every area that's indicated
6 in white without the hatch mark represents the not assigned
7 square footage. So everything in hatch mark represents the
8 area that's being calculated for that particular classroom,
9 for that particular space.

10 BY MR. WILHELM:
11 Q So in the one I was trying to point out, the one
12 in the middle, the slashes --
13 A Right.
14 Q -- includes the area, so that would include the
15 closet and behind the door, where the front door.
16 A You notice that closet is no longer a closet.
17 We've eliminated the, that closet and so now we have simply
18 floor space and no longer a closet. That's been modified to
19 give us additional square footage.
20 MR. PRAGER: Where exactly are you?
21 THE WITNESS: At the entrance. Right now, there's
22 an existing closet as you enter the front door, and we
23 modified the wall system so that now you have an open area
24 and an open floor added to the square footage of that space.
25 MR. PRAGER: Mr. Wilhelm?

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1 MR. WILHELM: I guess my comments will, I'll save
2 for later.
3 MR. PRAGER: All right. Are you finished with
4 your questions?
5 MR. WILHELM: Yes, sir.
6 MR. PRAGER: Okay. Ms. MacNab?
7 CROSS-EXAMINATION BY MS. MacNAB
8 BY MS. MACNAB:
9 Q Could you tell me where the parents enter?
10 A The main entrance door.
11 Q They will enter --
12 A Front entrance, right.
13 Q They enter here.
14 A That's the control point, yeah.
15 Q They enter close to the street.
16 A Close to the street, yeah.
17 Q Okay. And then the second question is the stairs,
18 I'm very concerned about them because I don't see -- here,
19 they look like they come through the kitchen area, is that
20 true?
21 A Yeah. That's there --
22 Q They come through the kitchen.
23 A That's there to provide the internal access to the
24 lower level.
25 Q So all the children will go through the kitchen to

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1 go downstairs?
2 A Well --
3 Q Does that go downstairs?
4 A Well --
5 Q The --
6 A The children, right, the children that are
7 assigned to --
8 Q So this is --
9 MR. PRAGER: Let --
10 BY MS. MACNAB:
11 Q -- 15 of the 25.
12 MR. PRAGER: Let her finish the question. I'm
13 sorry.
14 BY MS. MACNAB:
15 Q That means 25 students will walk downstairs plus
16 their staff through the kitchen every day.
17 A Yes. Or they have the option to enter through the
18 rear door down the stairs or the -- right, the grade level
19 door.
20 Q Is this door existing right, does this door exist?
21 A All the doors are existing. We're making no
22 exterior changes to the outer structure.
23 Q So they will walk through the kitchen and
24 downstairs.
25 A That's one option.

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1 Q What's the other option?
2 A The --
3 Q Oh, going outside.
4 A Right. Going --
5 Q And then in this area here, is there a sink for
6 the people to wash their hands?
7 MR. PRAGER: Which area are you talking about?
8 MS. MACNAB: The garage area, which handles six
9 infants and nine toddlers.
10 BY MS. MACNAB:
11 Q Is there, is there a sink for the children to, the
12 staff to wash their hands?
13 A (No audible response.)
14 Q All right. I -- and then next question is when I
15 was there, I counted seven cribs and it says you only have
16 six infants so I just wanted to --
17 MS. WALKER: Objection. She's offering testimony.
18 MR. PRAGER: No. She can, she's formulating a
19 question. We're not taking it as true. She --
20 BY MS. MACNAB:
21 Q I wanted to know are you having six infants and
22 one of them is for the toddlers?
23 A No. Just --
24 Q What is the plan on that?
25 A The chart says exactly what it is assigned.

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1 MS. WALKER: I'm also going to object because this
2 question is not appropriate for this witness.
3 MR. PRAGER: Well, he --
4 MS. WALKER: The applicant is the operator of the
5 center and is the most appropriate to talk about the number
6 of cribs or how they're utilized.
7 MR. PRAGER: That's probably true but you can ask,
8 answer as well as you can.
9 THE WITNESS: Yeah. The -- what you're looking at
10 within the chart, are you able to read it from where you're
11 sitting?
12 BY MS. MACNAB:
13 Q Yes.
14 A Look at the assignment of the students by age.
15 Q I see.
16 A And what we're proposing is a new configuration of
17 classrooms by age group so anything you see on the site
18 existing is being proposed to be revised to accommodate the
19 new enrollment. We have to -- right.
20 Q So there are no more doors added. There will be
21 no more doors added. There is one door and one door there.
22 A On the basement.
23 MR. PRAGER: I mean, what are you talking about?
24 MS. MACNAB: There's --
25 MR. PRAGER: The record will not reflect --

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1 MS. MACNAB: I'm sorry.
2 MR. PRAGER: -- what you mean by there.
3 BY MS. MACNAB:
4 Q The door, this door coming down the stairs exists
5 going outside.
6 A Yes, it does.
7 Q And but I don't see -- is this it on top of here?
8 A Let me give you, let me give you the tour. If
9 you're in the basement is probably a better way to locate
10 it, if you're in the basement, this is an exit stair that
11 leads up to the upper level to this landing, and this will
12 get you in and out of the building or it can get you up to
13 the main floor level. Now we're at the kitchen.
14 Q There's a landing in between.
15 A Yes.
16 Q Okay. That's fine, yes.
17 A Yeah.
18 Q Okay. So there's a landing in between so that
19 they go down to a landing and then outside.
20 A You go down three risers here onto that, it's a
21 partial.
22 Q And then all the way down these stairs to get
23 outside.
24 A Right. It's a split landing.
25 Q But when you're downstairs, the only exit is this

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1 level, is this one.
2 A And this one. We created an exit stair, enclosed
3 rated exit stair which brings you up to this landing and
4 then out the building.
5 Q Okay.
6 A Yeah. So we created a second exit by that means.
7 Q And the last question I have is I don't understand
8 where this toilet, where is this, this toilet?
9 A I believe that's on the first floor looking
10 towards the --
11 MR. PRAGER: Excuse me. Before you answer, what
12 exhibit number are you talking about?
13 THE WITNESS: Oh, Exhibit No. 10, I can't hardly
14 read it, is it 10R or 1-C?
15 BY MS. MACNAB:
16 Q Yes. I think it's R. Yes. It's R, Exhibit 10 --
17 MR. PRAGER: 10R. Go ahead.
18 BY MS. MACNAB:
19 Q 10R.
20 A Yeah. I believe this is on the first floor level
21 where it's showing two toilet for, for toddlers or for the
22 younger kids, and the window is looking towards the rear of
23 the property.
24 Q So this is the way it exist now, this is the way
25 it will be done.

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1 A Well, the existing toilets are not being modified
2 or changed but we are adding one new toilet in the basement,
3 so all existing toilets as existing right now are going to
4 be untouched during the renovation. It will be just as you
5 see in the photograph.
6 Q Well, architecturally, does this indicate it's a
7 wall because --
8 A Yes. All the black lines indicate the wall
9 partition that exists now. This would be the, this bathroom
10 I believe we're looking at.
11 Q But there's two toilets.
12 A Yeah. Well, it -- yeah. There's two toilet
13 actually. This is just a diagrammatic toilet being shown.
14 When we actually do the calculation for the working
15 drawings, the plumbing may require additional toilets in
16 some of the bathroom based on the number of people. This is
17 not intended to depict the actual. It's just a symbolic
18 diagram to show that there's a toilet in that area.
19 MS. WALKER: It's a bathroom facility if you will.
20 THE WITNESS: It's a bathroom facility, yeah. The
21 drawings are diagrammatic so it's just a symbol to show that
22 these are toilets, existing toilets at the facility.
23 MS. MACNAB: Thank you.
24 THE WITNESS: But the number of actual fixtures
25 may, may be adjusted at point of the permit drawings.

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1 MS. MACNAB: Thank you.
2 MR. PRAGER: Any other questions?
3 MS. MACNAB: No. I think that's all I have.
4 MR. PRAGER: Okay. Mr. Howell, I have just a
5 couple of questions.
6 THE WITNESS: Sure.
7 MR. PRAGER: The first one may not be within your
8 expertise but I failed to ask it the first time. In 2002,
9 the Hearing Examiner stated that the property size was
10 43,464 square feet and now the Planning Department states
11 that it's 39,846 feet, square feet. Do --
12 THE WITNESS: Right because --
13 MR. PRAGER: Do you have any reason why there's
14 suddenly a, what amounts to a 4,000 foot, square foot --
15 THE WITNESS: Difference?
16 MR. PRAGER: -- difference in size?
17 THE WITNESS: Yeah. The, the first project, the
18 existing square footage of the site was taken from record
19 data, from County record and because of the time lapse
20 between then and now, we were required to come up with a new
21 survey, new certified survey for that site. And so the new
22 surveyor went out and did a new survey and the, the size of
23 the property was reflected in that recently taken survey.
24 MR. PRAGER: All right.
25 THE WITNESS: And that's, that's indicated on the,

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1 the, I'm not certain what exhibit that is but the SP-1 plan
2 where we noted that. We noted what's record and what was
3 taken from recent site survey.
4 MS. WALKER: Exhibit 22H if you will.
5 MR. PRAGER: All right. What about the size of
6 the house? In 2002, it was 3256 square feet, now the
7 Planning Department says it's 3137 square feet, and the tax
8 form says the primary structure is 1292 square feet. How do
9 you reconcile all those numbers?
10 THE WITNESS: Again, the exterior measurement of
11 the building was taken again in the current survey and it
12 may have varied from the original one that was done by the
13 previous surveyor.
14 MR. PRAGER: So somebody was very sloppy is what
15 you're saying.
16 THE WITNESS: That happens, yeah. Now they're
17 using more accurate measure, you know, instruments for
18 surveying than they did then.
19 MR. PRAGER: And the 1292 square feet on the
20 primary structure, what's the difference between that and
21 the 3137 square feet? Not the math, the arithmetic
22 differences, how do you get from 1292 square feet to 3137
23 square feet?
24 THE WITNESS: We included the basement area along
25 with the main floor area.

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1 MR. PRAGER: And now, the basement, however, is
2 smaller than the structure because what I gather on the main
3 level includes the garage, is that correct?
4 THE WITNESS: That's correct.
5 MR. PRAGER: And the basement floor does not
6 extend to this.
7 THE WITNESS: Does not extend to the garage, no.
8 MR. PRAGER: So if you add the main level, is the
9 main level, for tax purposes, does that include the garage
10 area?
11 THE WITNESS: I believe so. If, if the garage
12 area has been finished -- if it was an unfinished garage,
13 then maybe the tax calculation for it may be a bit different
14 but since it's now an occupiable space and it's been
15 finished to be used, maybe the tax calculation takes into
16 account the renovated garage.
17 MR. PRAGER: Or they haven't caught up to it.
18 THE WITNESS: Or they haven't, yeah.
19 MR. PRAGER: You talked about the lighting, about
20 the requirements for lighting. Explain to me, please, the,
21 besides the number of fixtures which you say are determined
22 in part, or determined wholly by the need to have them at
23 entrances and exits, is there a, is there a standard of
24 number of the wattage or the lumens that it has to be
25 generated at that point?

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1 THE WITNESS: They're not specified. The fire
2 marshal required us at every exit point from the building to
3 provide lighting, and what they typically say is adequate.
4 Adequate lighting.
5 MR. PRAGER: So if you were to put 30-watt bulbs
6 in there instead of 100-watt bulbs, that, as far as you
7 know, would meet the standard, is that correct?
8 THE WITNESS: I couldn't say yes or no to that
9 question. Again, out lighting consultant would be able to
10 determine what is the level of coverage for changing the
11 size of the lamp.
12 MR. PRAGER: All right. Two more things that I
13 wanted to ask about. One is this, the basement and egress.
14 There is the possibility of going out the side door.
15 THE WITNESS: Yes.
16 MR. PRAGER: I mean, well, on this, I'm talking
17 about 5C now, 5B, what's at the top of the page, which I
18 assume is north but I'm not sure, in any event, whatever is
19 at the top of the page, there is a door to the outside, is
20 that correct?
21 THE WITNESS: Yeah. That would be the west side
22 of the building.
23 MR. PRAGER: All right.
24 THE WITNESS: Yeah.
25 MR. PRAGER: Now, there are going to be, as I

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1 understand it, 25 children, four-year-old and --
2 THE WITNESS: Five-year-old.
3 MR. PRAGER: -- five-year-old with two staff
4 people. In case of an emergency or fire, how do you get 25
5 people out through that one door.
6 THE WITNESS: They have --
7 MR. PRAGER: Twenty-seven people I should say.
8 THE WITNESS: Well, we have created a second exit
9 by means of a --
10 MR. PRAGER: I understand but let's assume for the
11 moment that the stairs, because of a fire on the first
12 floor, on the main floor, is inaccessible. How do you get
13 them out?
14 THE WITNESS: That entire stair system that's
15 shown on the plan has a one-hour rated protection on the
16 wall, flooring and ceiling.
17 MR. PRAGER: I see.
18 THE WITNESS: So it's a protected exit out of that
19 space, so it serve just as well as if you were at a
20 perimeter exit door leaving that space in the basement.
21 MR. PRAGER: And that rating comes from the
22 manufacturer?
23 THE WITNESS: No. The fire marshal will provide
24 separation, safety separation in the exit stair.
25 MR. PRAGER: But it empties, it empties out into,

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1 I'm not quite sure whether you call it a vestibule but it's
2 in the food, next to the food area. Is that also fire
3 protected?
4 THE WITNESS: Fire -- yeah. Everything from the
5 basement level to the exit points of that staircase system
6 is protected all around. It's a one-hour fire separated
7 protected system.
8 MR. PRAGER: And what, what do you, what does one
9 hour mean in that?
10 THE WITNESS: Well --
11 MR. PRAGER: You have an hour to --
12 THE WITNESS: Yeah.
13 MR. PRAGER: -- get through?
14 THE WITNESS: Well, it's how long it would take
15 for the fire to burn through the protected wall system.
16 MR. PRAGER: And does that include smoke as well
17 as, as fire?
18 THE WITNESS: There's no, there's no smoke exhaust
19 in that stair system nor is it required, but the entire
20 building from the basement and the main level are required
21 to have smoke detectors and they're all to be interconnected
22 and they communicate with a fire alarm system that notifies
23 the local fire station.
24 MR. PRAGER: I'm just wondering about getting 25
25 small kids through a place that has a lot of smoke. Will

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1 that, your stairs --
2 THE WITNESS: The stairs, the entrance to the
3 stairs, if you're in the basement, once you're inside that,
4 that protected stair, then you're protected from any fire or
5 smoke that's --
6 MR. PRAGER: And smoke.
7 THE WITNESS: And smoke, right, right.
8 MR. PRAGER: Right, but I didn't understand that
9 through your testimony before. Okay. And there's a door in
10 the basement leading up to, to that, those fire stairs?
11 THE WITNESS: Right. To a landing that, that then
12 takes you outside directly to the --
13 MR. PRAGER: No. I understand that but in order
14 to get into the staircase, is there a door at the bottom of
15 the staircase?
16 THE WITNESS: There's a door you can, yes, there's
17 a door you enter from the lower, the lower level. That's
18 correct.
19 MR. PRAGER: All right. And my last series of
20 questions, there has not yet been any testimony about this
21 but have you had a chance to look at Exhibit 29 which was
22 submitted by Mr. Wilhelm on behalf of the Colesville
23 Citizens Association which deals with the question of square
24 footage for each age group? Have you had a chance to look
25 at that?

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1 THE WITNESS: No, I don't -- I may have glanced at
2 it quickly. I'm not certain if I --
3 MR. PRAGER: Would you -- let me see if I can give
4 you --
5 THE WITNESS: Do you have a copy?
6 MR. PRAGER: -- an extra copy of that. Well,
7 maybe in order to save time right now, since we're going to
8 be going, obviously, over, you may have to come back, and
9 this will be presumably part of any rebuttal testimony. I
10 would like to have him tell me why Exhibit 29 is either
11 irrelevant or mistaken in terms of its calculations and
12 conclusions.
13 MS. WALKER: If I may --
14 MR. PRAGER: Do you want me to do that now?
15 MS. WALKER: Well, I think I actually got this in
16 his direct testimony when I indicated that this was a
17 licensing requirement for the state of Maryland under the
18 COMAR.
19 MR. PRAGER: I understand that but I want to know
20 about the accuracy of the, of the numbers and what he
21 understands it means for, for the licensing requirement.
22 MS. WALKER: I think he testified it was 35 square
23 foot per child.
24 THE WITNESS: Thirty-five square foot.
25 MR. PRAGER: No. I understand that but -- well,

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1 do you have an extra copy of this? I do at some point. Mr.
2 Wilhelm, did you bring an extra copy of your exhibit?
3 MR. WILHELM: I have one copy, sir.
4 MR. PRAGER: While I look at this, we'll save some
5 time, I'm going to give you a copy of this exhibit and I'll
6 show you the page on which this appears. The pages aren't
7 numbered. It's the page at the top it says, quote, .03
8 indoor space, and there's a chart there. If you could read
9 through that and then I'm going to ask you some questions
10 about it.
11 MS. WALKER: For the record, the applicants didn't
12 receive copies of any of these letters that were submitted
13 to the Hearing Examiner's office so would it be possible for
14 us to review it as well?
15 MR. PRAGER: Sure. Exhibit 29.
16 MS. WALKER: For the record, there was no pre-
17 hearing submittal made by the civic association or either of
18 the opponents individually so, and they didn't send us
19 copies so we have not had the opportunity to review these
20 letters.
21 MR. PRAGER: Of course. Of course. Do you now
22 have a copy? Do you personally --
23 MS. WALKER: No. I don't have a copy.
24 MR. PRAGER: Here --
25 MS. WALKER: I have a copy of an earlier --

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1 MR. PRAGER: Here is a --
2 MS. WALKER: -- letter they submitted but I
3 believe --
4 MR. PRAGER: Here is a copy that you can look at.
5 MS. WALKER: Thank you. This is not the same
6 letter that was submitted to the Planning Board, correct?
7 MR. WILHELM: This part is I think pretty well the
8 same thing.
9 MR. PRAGER: It's dated January 21st.
10 MS. WALKER: Which was after the Planning
11 Board's --
12 MR. PRAGER: And was received by the Office of
13 Zoning and Administrative Hearings about that time or
14 shortly thereafter. It's stamped January 24th but I
15 confirmed with the office that there was some delay in
16 stamping these so it's not absolutely clear when it was
17 received.
18 MR. WILHELM: There's parts of this thing that are
19 quite different from what was submitted to the Planning
20 Board. This section is I think almost word for word the
21 same.
22 MR. PRAGER: I'm sorry I can't share anymore of
23 this but have you had a chance now to look at this, Mr.
24 Howell?
25 THE WITNESS: Yeah. I've, I've taken a look at

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1 it.
2 MR. PRAGER: There is a contention that for the,
3 in group E, the six week to two year group, and the group B,
4 the three-year-old group, that the actual square foot per
5 child is considerably less than the 35 square feet required
6 by the state. Is there something that you can say about
7 either the accuracy or the relevance of that, those
8 calculations?
9 THE WITNESS: The, the drawings was generated by
10 an AutoCAD and the dimensions of the, the outside dimensions
11 of the existing structure and inside dimensions are
12 generated from the actual survey drawings. The spaces on
13 the inside, outside of the toilet, kitchen, director's
14 office, the staircase and the mechanical closets, are
15 generated automatically by a software, AutoCAD software that
16 generates the square footage for those areas. In each case
17 on my chart, it shows an overage in each of the classroom in
18 terms of what's required for the minimum square footage to
19 occupy the number of students at 35 square foot each.
20 So looking at the chart here where they're
21 indicating in some case, we've got 41.3 square foot per
22 child, that indicate that it, it exceeds the minimum of 35
23 square foot so that's a credit toward the interior space.
24 The same thing is true for group B in which they're
25 indicating 36.6. In each case that it goes beyond the

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1 minimum 35 square foot per child for the enrollment, it
2 serves as a credit of additional space within the, the
3 facility.
4 MR. PRAGER: All right. Let me move to the
5 calculation that was made here by the, by Mr. Wilhelm or
6 somebody working for him. It says that the actual square
7 feet are less than the claimed square feet and then by
8 calculation, the actual square feet per child is less than
9 35 in the last column.
10 THE WITNESS: In which column is that, sir?
11 MR. PRAGER: The last column over to the right.
12 The shaded columns with the two shaded.
13 THE WITNESS: Oh, okay.
14 MR. PRAGER: All right. Now, the claim is made
15 that for B, group B, it falls well below the 35 square feet
16 requirement, and the same thing is true of group E, the two
17 shaded rectangles. Do you disagree with him on the actual
18 square feet?
19 THE WITNESS: Yes, I do because my square footage
20 was generated by an AutoCAD software calculation of the
21 space that's hatched out to indicate the total square
22 footage of each of those areas that's being assigned for the
23 student.
24 MR. PRAGER: Okay. Let's take for a moment just
25 a hypothetical because I'm not quite sure how this, how this

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1 works. You can elucidate me for my edification. Let's
2 assume for the moment, this is not a factual statement, but
3 let's assume that group E has 30.7 square feet per child but
4 everything else is over and well over.
5 THE WITNESS: Uh-huh.
6 MR. PRAGER: Do you calculate on the basis of any
7 particular part of the building or do you calculate, for
8 state purposes, the overall building?
9 THE WITNESS: The overall building. In other
10 words, we're looking at the occupancy of what's available as
11 usable space for assigning students so --
12 MR. PRAGER: Not --
13 THE WITNESS: -- so let's, let's, for example, say
14 that we may be coming under in one particular classroom. It
15 can be made up and assigned to another classroom that has a
16 surplus and meet an additional occupancy of 35 square foot
17 for the enrollment. And this is an exercise that takes
18 place during the site inspection by the state inspector.
19 They make the final determination. All we're indicating
20 here is what we're requesting and we've given them our best
21 estimate of what the assigned, total assigned square footage
22 are, and the final determination is made when the inspector
23 comes in and we'll make few adjustments if it has to be made
24 then.
25 MR. PRAGER: All right. So just I'm going to put

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1 this in somewhat different words, but it's not a per room
2 calculation, it's a per house.
3 THE WITNESS: Per house.
4 MR. PRAGER: Per building.
5 THE WITNESS: Per building, yeah. Total
6 occupancy.
7 MR. PRAGER: Okay. Thank you. Ms. Walker?
8 REDIRECT EXAMINATION
9 BY MS. WALKER:
10 Q I just wanted to follow up to the Hearing
11 Examiner's question and again, I haven't really had the
12 opportunity to review the --
13 MR. PRAGER: I understand.
14 BY MS. WALKER:
15 Q -- Greater Colesville letter but I did see
16 something in there about a suggestion that we should be
17 excluding cribs and other areas. And, Mr. Powell, you
18 testified you are familiar with the state regulations for
19 indoor spaces under 13A.16.05.03 of COMAR, is that correct?
20 A Yes, I am.
21 Q Okay. And looking at that, are there
22 determinations of things that may not be included in the
23 space calculations, are you aware?
24 A I am aware of that.
25 MS. WALKER: This is a public record so I'm just

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1 going to provide him with a copy of this if that's all
2 right.
3 MR. PRAGER: All right.
4 MS. WALKER: It's a copy of the state code for
5 licensing under the COMAR provisions.
6 BY MS. WALKER:
7 Q And I just call your attention to Subsection B,
8 and I'm actually going to share with you.
9 A Okay.
10 Q I have to formulate my question. But Subsection B
11 provides, is it correct, things that may be, not be included
12 in your calculation of that, is that correct?
13 A That's correct.
14 Q Of the square footage of a child. And then if you
15 go to Subsection B2, it says you have to exclude these
16 things, and I'm paraphrasing here, correct me if I'm wrong,
17 but it does allow you to include furniture that are in the
18 words of A. Could you read that for me, 2A?
19 A Children chairs and tables which are non-fixed and
20 multipurpose.
21 Q And also Sub B.
22 A Moveable equipment used for infant's care such as
23 highchair and swing.
24 Q So in looking at that, moveable equipment, if you
25 will, is where I'm going here and I'm just going to call

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1 your attention to Exhibit 10, the photographs, M if you
2 will. And this is a photo, you testified, of the infants
3 space.
4 A Yes.
5 Q And is it possible to tell, are these cribs on
6 wheels?
7 A Yeah. Cribs on wheels.
8 Q So they are moveable equipment and therefore, in
9 your opinion, could they be, and here's another actual photo
10 maybe a little clearer on 10, and do you see as well that
11 there are wheels on those cribs as moveable non-fixtured
12 equipment?
13 A Yes, I do.
14 Q So would it be your opinion then, as well as,
15 might I add, the highchair which is in photo 10O, that those
16 are --
17 MR. PRAGER: I think you made your point.
18 BY MS. WALKER:
19 Q -- mobile pieces that --
20 A Yeah.
21 Q That area could be calculated in the 35 square
22 feet.
23 A Right.
24 MS. WALKER: No further questions.
25 MR. PRAGER: Mr. Wilhelm, any questions?

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1 MR. WILHELM: Yes.
2 RE-CROSS-EXAMINATION BY MR. WILHELM
3 BY MR. WILHELM:
4 Q Looking at Exhibit 100, how about, is that wide
5 storage container in the corner mobile in your mind?
6 A I can't see. Yeah. That's -- ask of the
7 operator.
8 Q Okay. I'm not sure it's appropriate at this time
9 but I don't consider that storage, wooden container --
10 MS. MAHABARE: That's not storage.
11 MR. PRAGER: All right.
12 MS. WALKER: That's not storage.
13 MS. MAHABARE: That's not --
14 MR. PRAGER: No testimony, please. What is your
15 question?
16 MR. WILHELM: Okay. I don't have a question.
17 I'll save my statement for later.
18 MR. PRAGER: Okay. Have you finished your
19 questioning?
20 MR. WILHELM: Yes.
21 MR. PRAGER: All right. Ms. Walker, you wanted to
22 say something?
23 MS. WALKER: I just wanted to add one additional
24 item which is that under that same section that Mr. Howell
25 read from under Subsection 2F, it allows open shelving for

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1 children's daily activities and so on.
2 MR. PRAGER: Right.
3 MS. WALKER: I'd just ask the Hearing Examiner to
4 take note of this section of COMAR as a matter of public
5 record.
6 MR. PRAGER: You've cited it.
7 MS. WALKER: Thank you.
8 MR. PRAGER: I'll find it. Ms. MacNab, any
9 questions?
10 MS. MACNAB: (No audible response.)
11 MR. PRAGER: All right. Good. It is now good
12 timing in part and bad timing in another part. It's now 12
13 minutes of 5. We're going to conclude. The Office of
14 Zoning and Administrative Hearings is going to close and
15 there's some administrative things that have to be done this
16 afternoon. The court reporter is tired, I will put words in
17 your mouth, and needs to go home and there is no way we
18 could possibly finish this hearing today.
19 Now, I am told that, that in February, there are
20 four days that are unavailable, I'm sorry, five days. Let's
21 start with February 5th is unavailable, February 15th is
22 unavailable, February 18 is unavailable, February 25th is
23 unavailable and February 28th is unavailable. And also,
24 Wednesdays, the Board of Appeals uses this room so the
25 question is would you, Ms. Walker, and your people, you can

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1 consult right now, be available on the 21st or 26th or 27th?
2 MS. WALKER: I'm sorry. Did you say the 8th was
3 unavailable which would be next Friday?
4 MR. PRAGER: No. The 8th is not, is available.
5 The 8th is available but I'm -- so, well, we can do it on,
6 how about the 11th? February 11th.
7 MS. WALKER: For the record, that's Monday,
8 February the 11th?
9 MR. PRAGER: Yes.
10 MS. WALKER: If you'll give me your indulgence to
11 check with my consultants.
12 MR. PRAGER: Of course. Of course.
13 MS. WALKER: And would we convene in the morning
14 as well?
15 MR. PRAGER: Well, we'll just, is the day
16 convenient?
17 MS. WALKER: Yes.
18 MR. PRAGER: All right.
19 MS. WALKER: For the applicant.
20 MR. PRAGER: I hate to have to -- these people who
21 testified today get paid for testifying. You, Mr. Wilhelm,
22 and you, Ms. MacNab, do you not get paid for being here.
23 How does this fit in your schedule if we have the
24 continuation of the hearing on February the 11th?
25 MR. WILHELM: That's a Monday, sir?

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1 MR. PRAGER: It is.
2 MR. WILHELM: Not this coming Monday but the
3 following Monday.
4 MR. PRAGER: That's correct.
5 MR. WILHELM: I believe I'm available.
6 MR. PRAGER: You believe you're available. How
7 will you know?
8 MR. WILHELM: I don't have my calendar with me so
9 I would say yes.
10 MR. PRAGER: How about, and what about you, Ms.
11 MacNab, the 11th?
12 MS. MACNAB: I'll make myself available.
13 MR. PRAGER: Okay. What about the 12th, just to
14 make sure --
15 MS. WALKER: I am not available on that date.
16 MR. PRAGER: Okay. So, Mr. Wilhelm, if you, is
17 there any way you can check --
18 MR. WILHELM: Mondays are better for me anyway so
19 I, say I'm available on Monday.
20 MR. PRAGER: Okay.
21 MR. WILHELM: I'll make myself available.
22 MR. PRAGER: All right. So we will recess until
23 Monday, the 11th of February. The question of time. We
24 have how many more witnesses that you intend to present?
25 MS. WALKER: One.

1 MR. PRAGER: Just your client?
 2 MS. WALKER: Yes.
 3 MR. PRAGER: And, Mr. Wilhelm, you have no
 4 witnesses. You just intend to testify on your own, is that
 5 correct?
 6 MR. WILHELM: Yes sir.
 7 MR. PRAGER: On behalf of --
 8 MR. WILHELM: Greater Colesville.
 9 MR. PRAGER: -- the Greater Colesville.
 10 MR. WILHELM: And largely, my testimony will be
 11 commenting on what the letter we already have, tie it in
 12 with the testimony.
 13 MR. PRAGER: I understand. I understand. And,
 14 Ms. MacNab, you don't have anybody that you're going to call
 15 as a witness?
 16 MS. MACNAB: No. Not anyone.
 17 MR. PRAGER: Just you will be testifying.
 18 MS. MACNAB: Yes.
 19 MR. PRAGER: All right. So for those of us who
 20 like to sleep late, we're going to make it at 10:00 and I
 21 got some, the record will show that I have some grins of the
 22 people who, like me, like to stay in bed late.
 23 MS. WALKER: No objection.
 24 MR. PRAGER: All right. With that, the hearing is
 25 adjourned for today to be resumed on Monday, February 11th

. Digitally signed by Josephine Hayes
 ELECTRONIC CERTIFICATE

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 LAYHILL LEARNING CENTER, INC.
 D/B/A ABC LEARNING CENTER
 Case No. S-2857

By:

Josephine Hayes,
 Transcriber

1 at 10:00 a.m. in this room and we'll go off the record at
 2 this point.
 3 (Whereupon, at 4:52 p.m., the proceedings were
 4 concluded.)
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