

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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:
PETITION OF LAYHILL LEARNING : Case No. S-2857
CENTER, INC., d/b/a :
ABC LEARNING CENTER : OZAH No. 13-06
:
- - - - -X

A hearing in the above-entitled matter was held on
February 11, 2013, commencing at 10:27 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

For the Petitioner:
Rebecca Walker, Esq.
For the Opposition:
Daniel Wilholm
Janet DeLac MacNab

C O N T E N T S

	Direct	Cross	Redirect	Recross
Monika Mahabare	5	--	80	--
By Mr. Wilholm	--	40	--	84
By Ms. MacNab	--	45	--	87
Janet DeLac MacNab	90	95	--	--
Daniel L. Wilholm	108	118	--	--
Michael Lenhart	135	140	--	--
Les Powell	147	155	--	--

E X H I B I T S

Exhibit No.	Marked/Received
1-54 Premarked	-- 165
55 Parent Contract	29 165
56 Lighting Study	38 165
57 Google Earth Photo of site	105 165
58 Letter of GCCA	111 165
59 Petition of Parents	159 165

1 to proceed?
2 MS. WALKER: I am, yes.
3 MR. PRAGER: Let me just, before you do, say that
4 we've had a number of exhibits being filed in the past week
5 as I understand it. We are now on Exhibit No. 54. And that
6 includes exhibits received as a result of the hearing last
7 week, as well as a Google area vicinity map, which is
8 Exhibit No. 52, a CD of Exhibit Nos. 44 and 47, which is
9 Exhibit No. 51, and an e-mail from Ms. Walker with two
10 copies or variations of the single thing, the Montgomery
11 County zoning map. And as I understand it, a letter of
12 opposition was received from a Ms. Joan Stogis, or Stogis,
13 S-T-O-G-I-S.
14 MS. WALKER: Which exhibit number? I'm sorry, I
15 don't have an updated exhibit list. I wasn't aware of these
16 additional ones being added. We got a list on Thursday that
17 was only through 50, which was everything from the hearing.
18 MR. PRAGER: Right. Well, these are the ones that
19 you submitted, plus the Stogis letter. And that's been
20 given Exhibit No. 54. All right. Call your next witness,
21 please.
22 MS. WALKER: The petitioner would call Monika
23 Mahabare.
24 MR. PRAGER: Would you step up, please? Would you
25 raise your right hand?

1 P R O C E E D I N G S

2 MR. PRAGER: Good morning. This is a continuation
3 of the hearing on the petition of the Layhill Learning
4 Center, Incorporated, doing business as the ABC Learning
5 Center, S-2857. When we last met here, we were still
6 listening to the applicant's case. Let me first find out,
7 for the record, if counsel for the petitioner is here?
8 MS. WALKER: Yes. Present. Thank you.
9 MR. PRAGER: And would you state your name,
10 please?
11 MS. WALKER: Yes. Rebecca Walker with the law
12 firm of Miles and Stockbridge.
13 MR. PRAGER: All right. And when we were last
14 here, we had some opposition seated at counsel table. Mr.
15 Wilholm, are you here?
16 MR. WILHOLM: Yes, sir.
17 MR. PRAGER: Would you state your full name,
18 please?
19 MR. WILHOLM: I'm Daniel L. Wilholm. I live at
20 904 Cannon Road, Colesville.
21 MR. PRAGER: All right. And Ms. MacNab, you were
22 sitting at counsel table and you will again, please. Would
23 you identify yourself?
24 MS. MACNAB: My name is Janet MacNab.
25 MR. PRAGER: All right. Ms. Walker, are you read

1 (Witness sworn.)
2 MR. PRAGER: State your full name, please.
3 THE WITNESS: Monika Mahabare.
4 MR. PRAGER: All right. Would you spell your last
5 name?
6 THE WITNESS: M-A-H-A-B-A-R-E.
7 MR. PRAGER: And would you come a little bit
8 closer so that we're sure that your voice will be picked up?
9 MS. WALKER: Thank you.
10 DIRECT EXAMINATION
11 BY MS. WALKER:
12 Q Ms. Mahabare, if you could please state --
13 MR. PRAGER: I'm sorry. Let me just, I didn't ask
14 for your address.
15 THE WITNESS: 3911 Arbor Crest Way, Rockville,
16 Maryland 20853.
17 MR. PRAGER: And what was the name of that street?
18 THE WITNESS: Arbor Crest Way.
19 MR. PRAGER: Okay.
20 BY MS. WALKER:
21 Q And that's your personal address?
22 A Yes.
23 Q Okay. If you could, please state your occupation
24 and business address, for the record?
25 A Director of ABC Learning Center, 170 Randolph

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1 Road, Silver Spring, 20904.
2 Q Thank you. And are you the owner of the subject
3 property at 170 Randolph Road?
4 A Yes.
5 Q And if you could just describe for the hearing
6 examiner your background and experience in operating child
7 daycare centers briefly?
8 A I'm certified in child daycare center as a
9 director. I'm certified in the State of Maryland as a
10 teacher.
11 Q Okay. And have you run other daycare centers in
12 the State?
13 A Yes.
14 Q And approximately how long have you been in the
15 daycare business?
16 A 20 years.
17 Q Okay. And if you could describe your educational
18 background?
19 A I'm a certified daycare center.
20 Q Okay. For early childhood education?
21 A Early childhood education.
22 Q Okay. And do you hold any certifications relating
23 to the director's position?
24 A Yes.
25 Q And is that certified by the State of Maryland?

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1 A Yes.
2 Q And are you familiar with the standards and
3 requirements for special exceptions in Montgomery County?
4 A Yes.
5 Q And do you have any other properties that are
6 subject to special exceptions, maybe outside of Montgomery
7 County?
8 A Yes.
9 Q So you're very familiar then, with operating a
10 business under a special exception?
11 A Yes, ma'am.
12 Q Okay. And are you familiar with County and State
13 licensing and requirements for child daycare centers?
14 A Yes, ma'am.
15 Q Okay. And just to note by reference, we had
16 submitted Exhibit No. 22(c) in the record previously. This
17 is Ms. Mahabare's affidavit. And have you had the
18 opportunity to review this affidavit?
19 A Yes.
20 Q And did you sign it?
21 A Yes.
22 Q Okay. And you're comfortable with the contents,
23 indicating you're going to be abiding by State and County
24 law, as required?
25 A Yes.

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1 MR. PRAGER: Would you please speak up? It's hard
2 to hear you. I have a hard time hearing you. I'm not sure
3 it's being picked up by the microphone, so just enunciate
4 clearly and speak up, please.
5 THE WITNESS: Okay.
6 BY MS. WALKER:
7 Q Is it your, if you could just tell us, will the
8 operation of the proposed daycare center comply with all of
9 the County and State requirements you've indicated you're
10 familiar with?
11 A Yes.
12 Q And as well as with the childcare center standards
13 for the Montgomery County zoning ordinance?
14 A Yes.
15 Q And do you understand that the Board of Appeals
16 will likely impose conditions, and the hearing examiner can
17 recommend conditions on the operation of the center?
18 A Yes.
19 Q Okay. And it's your intent to abide by any such
20 conditions?
21 A Yes, ma'am.
22 Q Did you assist myself in the preparation of the
23 statement of operations and any revisions to you in this
24 case?
25 A Yes.

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1 Q Okay. And just for the hearing examiner's
2 reference, that's Exhibit No. 22(a) in the record. Does the
3 statement accurately detail the proposed and existing
4 operations of the site?
5 A Yes.
6 Q Okay. And were you --
7 MR. PRAGER: I'm sorry, what was the answer to
8 that? Please speak up.
9 THE WITNESS: Yes. Yes, sir.
10 BY MS. WALKER:
11 Q Were you present during the Park and Planning
12 Commission hearing where they had made a recommendation on
13 this application before the Planning Board in January?
14 A Yes.
15 Q And there was a condition that Park and Planning
16 indicated that the center should, based upon your testimony,
17 cease operations at 6:00, and that staff would leave by
18 6:30, is that correct?
19 A Yes.
20 Q Okay. And that is, indeed, the correct hours in
21 the evening, of operation?
22 A Yes.
23 Q Okay. And if you could, just tell me, and that's
24 different, I should say, from the statement of operations
25 that was previously submitted, correct? There's a half

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1 hour difference there?
2 A Uh-huh.
3 Q Okay. But the 6:00 end time for the pickup of
4 children, that's it?
5 A 6:00.
6 Q And if parents were to pick up after that time,
7 will there be a penalty?
8 A Yes.
9 Q Okay. What is the current attendance of the
10 students at your center?
11 A Thirty.
12 Q Okay. And how many current staff are there?
13 A Six.
14 Q And does that include the director?
15 A Yes.
16 Q Okay. And what are you requesting through this
17 application?
18 A Sixty-two student, 11 staff.
19 Q Okay. And that includes the director, again?
20 A Yes.
21 Q Okay. What are the hours, if you could detail for
22 us, of the proposed center, and days of the week that you
23 operate?
24 A Monday through Friday, 6:30 to 6:30.
25 Q With children being there from what hours?

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1 A 7:00 to 6:00.
2 Q Okay. So the extra half hour in the morning, and
3 extra half hour in the evening is for your staff to come and
4 go?
5 A To come in and --
6 Q Okay. And what are the ages of the children that
7 you accommodate through your current program, and also
8 through the modification that you're requesting?
9 A Six weeks to 8 years old.
10 Q Okay. And do you have a before and after school
11 program as well?
12 A Yes, I do.
13 Q And are all of the children primarily enrolled
14 full-time in your program?
15 A Yes.
16 Q With the exception of before and after care?
17 A Yes.
18 Q Okay. And does the number of staff on-site vary
19 based upon the number of children that are present?
20 A Yes, ma'am.
21 Q And is there a ratio that's set by the State for
22 that?
23 A Yes, ma'am.
24 Q And do you meet that requirement?
25 A Yes, ma'am.

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1 Q Okay. Do you host events throughout the year
2 which the parents of the children can attend?
3 A Yes, ma'am.
4 Q And are those events held on-site or off-site?
5 A Off-site.
6 Q And where are they held?
7 A Pilgrim Hill Park on Randolph Road.
8 Q On Randolph Road. Okay. And what, approximately
9 are the types of events that you would hold there?
10 A Christmas parties, back-to-school night, anything
11 like, you know --
12 Q Anything where a large --
13 A -- special events.
14 Q -- group of parents would be there.
15 A Families would come in and, you know, birthdays.
16 Q Okay. So you would get permission from the Parks
17 Department to hold it off-site, and that would be
18 prearranged?
19 A Uh-huh. Right. Yes.
20 Q And I think you testified, I just want to make
21 sure that you are clear, the hours of operation you
22 testified, but the days of the week, did you tell me what
23 those were?
24 A Monday through Friday.
25 Q Monday through Friday. So no operations on

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1 Saturdays or Sundays?
2 A No.
3 Q Okay. And do you operate a summer camp at the
4 site?
5 A Yes, I do.
6 Q And is the children who attend the summer camp
7 essentially the same children that attend that are school
8 age kids that are doing before and after care at your
9 center?
10 A Yes, ma'am.
11 Q Okay. So what are the ages, approximately, of
12 those kids?
13 A It's like 3 to 8.
14 Q Okay. So some of the younger children --
15 A Stays on site.
16 Q -- they are part of your summer camp, we'll call
17 it?
18 A Yes.
19 Q Okay. And does the, what's the main difference
20 between the summer camp and the daycare center operations
21 during the year?
22 A Summer camp is we go outside on field trips
23 between 10:00 to 2:00.
24 Q 10:00 a.m. to 2:00 p.m.?
25 A Yes.

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1 Q Okay. And how often are those field trips?
2 A Twice a week.
3 Q During the summertime only?
4 A Yes, summer only.
5 Q And how is transportation handled for those field
6 trips?
7 A We'll get private assist, like school buses.
8 Q Okay, and safe to say if they are occurring from
9 10:00 a.m. to 2:00 p.m., that they are in off-peak hours?
10 A Yes.
11 Q Are there any field trips, those are field trips
12 during the summer you've just testified to. Are there any
13 field trips during the school year?
14 A There is one, yes.
15 Q And which one is that?
16 A Pumpkin patch.
17 Q Okay. And how do you pick-up and drop-off for
18 those?
19 A The same, buses.
20 Q Okay. In the off-peak hours as well?
21 A Off-peak hours, when buses and private
22 transportation.
23 Q Private, okay, so chartered school buses,
24 essentially?
25 A Not actually charter. We select private buses.

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1 Q Okay.
2 A And the school buses.
3 Q Okay. And with regard to the, I'm just going to
4 take you now to your operations on the site itself within
5 the building, do you occupy the entire structure to provide
6 child daycare services, or are there any other uses going
7 on?
8 A No other uses, only childcare.
9 Q And with regard to your use of it, if you could
10 just describe, sort of, the main level of the center as it's
11 currently configured, and tell us what changes you're
12 proposing?
13 A There is many levels. There is three classrooms,
14 three bathrooms.
15 Q Okay. And that's currently.
16 A Currently.
17 Q And will it still be three classrooms and three
18 bathrooms after this proposal is implemented?
19 A Yes, ma'am.
20 Q Okay. And what other uses are on that main level?
21 A We have director office. We have kitchen
22 preparation area.
23 Q Okay. And how about the, it's accessible from a
24 sidewalk from the parking facility, is that correct?
25 A Yes, ma'am. Yes, ma'am.

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1 Q Okay. And you use the front entrance of the
2 building? Is that your main entrance?
3 A That's the main entrance, yes.
4 Q Okay. And then going now to the lower level of
5 the structure, how many classrooms are there?
6 A There will be two classrooms with two bathrooms.
7 Q Okay. And that's under this proposal?
8 A Yes.
9 Q And there's a mechanical room there currently?
10 A Yes.
11 Q Okay. And is that, any changes to that being
12 proposed?
13 A Yeah, we're going to open it up and make it
14 smaller and use it as a classroom.
15 Q Okay. And do the upper and the lower levels have
16 direct access to the playground facilities?
17 A Yes, ma'am.
18 Q Okay. And what about the stairs? They connect to
19 all of both levels of the house together?
20 A Yes. Yes.
21 Q And do you have a security system and fire alarm
22 monitoring system?
23 A Yes, we do.
24 Q Turning now to the playground and the outdoor
25 activities, looking at the rendered drawing, let me make

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1 sure I refer to the correct exhibit. This is Exhibit No. 44
2 in the record.
3 MR. PRAGER: Just a moment. Forty-four, did you
4 say?
5 MS. WALKER: Yes.
6 MR. PRAGER: All right. Well, this will require a
7 search so have a seat. Well, it's alluded me, but why don't
8 we continue.
9 BY MS. WALKER:
10 Q For the record, I'm just going to the rendered
11 site plan which is in evidence as Exhibit No. 44. The area
12 that I am pointing to that is to the rear of the structure,
13 is that where the proposed new recreational facilities will
14 be?
15 MR. PRAGER: You're pointing to the southeast, is
16 that correct?
17 MS. WALKER: Correct.
18 THE WITNESS: Yes.
19 MS. WALKER: Immediately behind the existing
20 structure. Yes.
21 BY MS. WALKER:
22 Q It is the area that's proposed to be improved with
23 a new parking facility located within the limits of
24 disturbance. Is that more or less where your current play
25 area is?

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1 A Yes.
2 Q Okay. So you're proposing a relocated --
3 A Playground.
4 Q To relocate the play area --
5 A Yes.
6 Q -- to a more centralized facility behind the
7 existing home?
8 A Yes.
9 Q And will that be fenced?
10 A Yes, ma'am.
11 Q Okay. Can you just, how is it fenced?
12 A It's a four-foot chain link fence with a six-foot
13 board-on-board fence.
14 Q Okay. And the board-on-board fence is located on
15 the property perimeter?
16 A Yes.
17 Q With the four-foot chain link fence being inset to
18 sort of corral the children, if you will?
19 A Yes.
20 Q Okay. And will all the recreation occur in the
21 rear yard?
22 A Yes.
23 Q Okay. And are you aware if there are any
24 conditions proposed that would limit the number of children
25 outside at any one time?

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1 A Yes, 15 children --
2 Q Okay.
3 A -- at one time.
4 Q Okay. And that number is a feasible number for
5 you to operate within, the 15 children?
6 A Yes, ma'am.
7 Q And so if that does become a condition of
8 approval, you feel you can abide by that?
9 A Yes, ma'am.
10 Q And what are the hours that the children use the
11 recreational facilities?
12 A 3:00 to 6:00 until dark. Sometimes it's 5:30 is
13 dark. We'll bring them inside. In morning it's like 9:30
14 to 12:00.
15 Q And those are staggered according to the
16 classrooms?
17 A Yes.
18 Q Okay. And how long is each group, approximately,
19 outside for?
20 A Thirty to 45 minutes.
21 Q Okay. And the current play equipment that's
22 located on your property, is that proposed to remain or will
23 it be replaced as part of the enrollment?
24 A It will be replaced and upgraded.
25 Q Okay. And will there be a soft mulched or soft

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1 paved area for the new playground equipment?
2 A Yes.
3 Q Okay. And is there currently one for the
4 existing?
5 A Yes.
6 Q And does that meet the State standards?
7 A Yes.
8 Q And you indicated that the playground was enclosed
9 with a four-foot chain link fence?
10 A Yes, ma'am.
11 Q And that's existing or proposed?
12 A Existing.
13 Q With regard to the operations and the deliveries
14 that come to the site, as far as people who bring anything
15 to the site, can you just briefly describe what sorts of
16 deliveries you receive there?
17 A It's regular mail, Fed Ex, UPS, just the
18 residential.
19 Q All residential services.
20 A Services.
21 Q Nothing of a commercial nature? No diaper
22 delivery?
23 A No.
24 Q No other deliveries to the site. And what about
25 trash and recycling? How are those handled?

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1 A It's residential trash cans we have. And, you
2 know, we have a service who comes and picks it up. But it's
3 residential.
4 Q Okay. Strictly residential receptacles. Nothing
5 of a dumpster on site --
6 A No, ma'am.
7 Q -- or anything of that nature?
8 A No.
9 Q Okay. And how is food obtained for the site? Do
10 you serve food at the facility, correct --
11 A Yes. Yes.
12 Q -- for the children? What do you serve there?
13 Breakfast and lunch?
14 A Breakfast, lunch, and snack.
15 Q Okay. And snacks as well?
16 A Uh-huh.
17 Q Okay. And how do you obtain that food that is
18 served at the facility?
19 A We bring it ourselves.
20 Q Okay. So you, as the director would do the
21 shopping --
22 A Yes.
23 Q -- and then bring it to the site as part of your
24 normal trips to the site?
25 A Trips, yes.

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1 Q Okay. So again, there is no delivery or anything
2 else?
3 A No.
4 Q Okay. And as far as curriculum supplies, how do
5 you handle that?
6 A We get it from UPS and Fed Ex and we bring it
7 ourselves.
8 Q Okay. As far as transportation for the school-age
9 children, you said that you had children up to age 8, so
10 assuming 5 to 8 is the children who would be school-age, is
11 that correct?
12 A Uh-huh. Yes, ma'am.
13 Q Okay. How do they get to public school if they
14 are at your center for before and after care?
15 A Public school bus. It's Jackson Road Elementary
16 School. That's our district, and the bus comes to pick them
17 up in front of our center, and drops them in front of our
18 center.
19 Q Okay. And do you have a staff that walk them to
20 and from the school bus?
21 A Yes, ma'am.
22 Q Okay. And do you know, as part of your
23 application you're requesting signage for your site?
24 A Yes, ma'am.
25 Q Okay. Is there presently any signage on site?

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1 A Yes, very small.
2 Q Like a temporary sign?
3 A Temporary sign, yes.
4 Q Okay. And is that along Randolph Road currently?
5 A Yes.
6 Q Okay. And the sign that you're requesting is
7 about two-by-three feet. Are you aware if that needs a sign
8 variance, or if that's permitted in the zone?
9 A Need a sign variance, yes.
10 Q Okay. And if a sign variance is not obtained for
11 that, would you locate a sign in the same spot, just within
12 the size that's allowed for the zone?
13 A Yes, ma'am.
14 Q With regard, turning now to your history as an
15 operator of the special exception, were you party to the
16 case when it was originally approved in 2002?
17 A Yes, ma'am.
18 Q Okay. So you testified at that time as well?
19 A Yes.
20 Q Okay. And you've been the operator since that
21 time?
22 A Since that time, yes.
23 Q Okay. So you're familiar, it's safe to say, with
24 the requirements for opening and maintaining a daycare
25 center with the State and the County?

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1 A Yes, ma'am.
2 Q Okay. Has your facility been inspected by the
3 State?
4 A Yes.
5 Q Okay. And as well by the County?
6 A Yes.
7 Q Okay. And who comes from the State to inspect
8 your facility?
9 A Licensing specialist and from State it's the
10 permitting office.
11 Q Okay, so you have somebody from the permitting
12 office who comes to inspect on behalf of the County?
13 A Yeah.
14 Q And is that because you have a special exception?
15 A Right.
16 Q Okay. And then you also have somebody who is a
17 licensing specialist from the State. Is that the Department
18 of Education from the State?
19 A Department of Education of the State, yes.
20 Q And are you aware of any outstanding violations of
21 either State or County regulations?
22 A No, ma'am. There's no violations whatsoever.
23 Q And in the roughly 11 years that you've been
24 operating at this site, are you aware as to whether there
25 have been any State licensing complaints filed against your

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1 facility at all?
2 A No, ma'am.
3 Q Okay. And they would typically provide you notice
4 if there were an issue?
5 A Right.
6 Q Okay. And I take it, then, you're familiar with
7 the code of Maryland regulations for indoor and outdoor play
8 areas, and learning areas for a daycare center?
9 A Yes, ma'am. Yes, ma'am.
10 Q Okay. And do you believe that the proposed
11 modifications to your center comply with the indoor and the
12 outdoor requirements as stated by Comar and the State of
13 Maryland?
14 A Yes, ma'am.
15 Q Okay. And do you know whether the State will
16 independently verify the measurements shown on your plans
17 when you apply for your license?
18 A Yes, ma'am. They come and check the whole
19 facility. They count the area. They will check the
20 measurement, whatever need to be done they will, before they
21 issue the license.
22 Q Okay. But your current license, have you been
23 inspected under that --
24 A Yes.
25 Q -- as far as verification of the area of the

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1 equipment and everything you've just testified to?
2 A Yes.
3 Q Okay. And obviously they've granted you a
4 license. It's in the record.
5 A Yes.
6 Q So that license remains in good standing?
7 A Yes, ma'am.
8 Q And for example, if the verification were to show
9 less square footage than what you've shown on your plans,
10 when the State specialist comes out, what would you do at
11 that time?
12 A Whatever the students they will license to us,
13 that's all we will have.
14 Q So if they said, you only have room for 60
15 children, instead of 62, then you would not enroll more than
16 that?
17 A We'll have 60 only. Yes.
18 MR. PRAGER: Let her finish, please, before you
19 ask your question.
20 MS. WALKER: Sorry. Do you want me to repeat
21 that, for the record?
22 MR. PRAGER: Yes.
23 BY MS. WALKER:
24 Q Okay. If the state, for example, were to only
25 say, you have room for 60 children rather than 62, what

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1 would you do?
2 A We would have only 60 children.
3 Q Okay. Only 60?
4 A Yes.
5 Q And do you know whether there was a complaint
6 received shortly after you opened in 2005 from an adjoining
7 neighbor?
8 A Yes.
9 Q And do you know, how was that resolved? What was
10 the issue?
11 A There was, a tree was dying on the property, and
12 we couldn't figure out why it was dying, so we put the six-
13 foot, the neighbor asked us to put the fence. So we did put
14 the fence right away, six feet fence, board-on-board.
15 Q Okay. So that was not a part of your original
16 special exception approval. You requested that subsequent
17 to the approval?
18 A Yes, ma'am.
19 Q Okay. And did you get that permitted through the
20 County and through the special exception process?
21 A Yes. Yes, ma'am.
22 Q Okay. So the Board of Appeals, do you know
23 whether they modified your special exception to allow that?
24 A Yes, they did, modify.
25 MR. PRAGER: You have the wrong assumption. It

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1 was not the Board of Appeals. It was the hearing examiner.
2 THE WITNESS: Yes.
3 MS. WALKER: Excuse me. You are correct.
4 BY MS. WALKER:
5 Q That the hearing examiner modified that for you at
6 your request?
7 A Yes, ma'am.
8 Q And that six-foot board-on-board fence remains
9 today, on site?
10 A Yes, ma'am.
11 Q Okay. And do you know, other than that one
12 complaint, whether there have been any other complaints from
13 adjoining owners, or anyone in the general public regarding
14 the current operation of the center?
15 A No, ma'am.
16 Q You're not aware of any complaints?
17 A No, I'm not aware.
18 Q And have you had any complaints from the civic
19 association, since you've opened your facility in 2005?
20 A No, ma'am.
21 MS. WALKER: I'm going to actually offer a new
22 document into evidence.
23 BY MS. WALKER:
24 Q Do you have a contract with your parents who
25 enroll their children at your center?

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1 A Yes.
2 Q Okay. I'm going to show you this document as well
3 as copies, so you can give them to the opponents. Is this
4 your current contract, what I am handing you?
5 MR. PRAGER: Would you enlightened me, too,
6 please?
7 MS. WALKER: Yes, absolutely. I wasn't sure if
8 you wanted me to offer it first, or to you. Thank you.
9 MR. PRAGER: Thank you.
10 MS. WALKER: For the record, I have given a copy
11 of the Layhill Learning Center, Inc., contract to all
12 parties, as well as the hearing examiner and the witness.
13 BY MS. WALKER:
14 Q Is this your contract that your parents sign upon
15 enrolling their children into your center?
16 A Yes, ma'am.
17 Q Okay. I'd like to offer this into evidence as
18 Exhibit --
19 MR. PRAGER: No. 55.
20 MS. WALKER: -- No. 55.
21 (Exhibit No. 55 was marked
22 for identification.)
23 MR. PRAGER: Now, let Mr. Wilholm and Ms. MacNab
24 look at it, and let me take a look at it myself.
25 MS. WALKER: Certainly.

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1 MR. PRAGER: Mr. Wilholm, have you had a chance to
2 complete reading this?
3 MR. WILHOLM: Yes, sir, I have.
4 MR. PRAGER: How about you, Ms. MacNab?
5 MS. MACNAB: I have.
6 MR. PRAGER: All right. You may continue your
7 questioning.
8 MS. WALKER: Thank you. And I'll just note, this
9 is now Exhibit No. 55, is that correct?
10 MR. PRAGER: Yes.
11 BY MS. WALKER:
12 Q Okay. Ms. Mahabare, looking at the contract
13 that's now been marked as Exhibit No. 55, it indicates at
14 the top, this is Layhill Learning Center. And it has two
15 addresses. What are those two addresses?
16 A It's the daycare center addresses.
17 Q Both of which that you own and operate?
18 A Yes. Yes, ma'am.
19 Q Okay. And for the record, the 170 Randolph Road,
20 is the operative one in this case?
21 A Yes, ma'am.
22 Q Okay. And you also, just for the record, it's
23 entitled, Enrollment Agreement, and it's dated annually, is
24 that correct?
25 A Correct. Uh-huh.

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1 Q And looking at this, do you ask that a specific
2 pickup and drop-off time is indicated for the parents?
3 A Yes, ma'am.
4 Q And this contract is something that is signed by
5 all parents who are looking to enroll their child?
6 A Yes, ma'am.
7 Q Okay. And do they tell you the time that they are
8 going to pick up or drop off?
9 A Yes.
10 Q Or do you tell them?
11 A We'll sit down and see what time they have it,
12 what time we have it. We'll add just like a half hour
13 picking up, like if they have to go to work around 10:00, so
14 we'll ask them to be here at 9:30.
15 Q Okay.
16 A You know.
17 Q So you work with the parents --
18 A Yes.
19 Q -- to come up with a time that works for their
20 schedules?
21 A Time, right.
22 Q Now, based upon your transportation management
23 plan that was approved during your initial special
24 exception, do you recall that, the terms of that agreement?
25 A Yes, ma'am.

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1 Q And if you did not, for example, have a time slot
2 that was available for a parent, and they wanted to pick up,
3 for example, if somebody wanted to drop off their child at
4 8:30, if you did not have a time slot available at 8:30 per
5 your transportation management plan, would you enroll that
6 child?
7 A No.
8 Q Okay. And looking at the bullet points that you
9 have where under it, it says, I understand the following
10 agreement. And there are several bullet points in this
11 exhibit.
12 A Uh-huh.
13 Q You indicate that a late fee will be charged after
14 6:00 p.m. and specified time. Is that referring to the time
15 above where the parents have committed to picking up and
16 dropping off?
17 A Yes, ma'am.
18 Q Okay. And there is a fine if parents do not
19 follow that policy?
20 A Yes.
21 Q Okay. And were you present, you testified you
22 were present during a January 17th, Planning Board hearing?
23 A Uh-huh.
24 Q Did you hear the Board's discussion of a proposed
25 condition, condition number eight?

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1 A Yes.
2 Q Okay. And that, for the record, that proposed
3 condition read, morning drop-offs must be limited to no more
4 than 11 vehicles per half hour period from 7:00 a.m. to
5 10:00 a.m., and afternoon pickups must be limited to 11
6 vehicles per half hour, from 3:00 to 6:00 p.m. These drop-
7 off and pickup periods must be established by contract
8 between the applicant and the clients?
9 A Yes, ma'am.
10 Q Is that correctly summarizing that condition that
11 was proposed?
12 A Yes.
13 Q Can you meet that condition and are you okay with
14 the terms of that operationally?
15 A I'm okay with the terms.
16 Q And your current transportation management plan,
17 just for the record, did that plan restrict you to no more
18 than six vehicles per half-hour period, from 7:00 to 9:30?
19 A Yes, ma'am.
20 Q And then the same six vehicle limit from 4:00
21 until 6:30?
22 A Yes.
23 Q Okay. And I believe you already testified, what's
24 the mechanism in place for parents to abide by this term, in
25 the contract?

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1 A It's signed.
2 Q Okay. They're signed. And also, I should note,
3 you testified this morning that all the children, except for
4 perhaps the before and after school children were enrolled
5 full-time. But on your contract, you have several other
6 time slots available. Do you not have any children enrolled
7 in those time slots currently?
8 A I --
9 Q So, for example, if you're looking at the school
10 program, you have half-day, four days a week, three days a
11 week. Do you have any children that are currently on a
12 modified schedule?
13 A No, I don't have.
14 Q Okay. So that was correct, what you stated
15 previously, that currently the children there are enrolled
16 on a full-time basis?
17 A Full-time. Uh-huh.
18 Q Okay. And with regard to the children that come
19 to and from your center, do you have siblings that are
20 currently enrolled?
21 A Yes, ma'am.
22 Q And is it your opinion, based upon your
23 experience, that the increase in enrollment will also
24 include a representative number of sibling traffic as well?
25 A Yes, ma'am.

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1 Q Okay. And with regard to your staff who work on-
2 site, do any of them take public transportation currently?
3 A Yes.
4 Q Have you ever, to your knowledge, had a problem
5 with people parking on the property and being able to access
6 the site safely, as far as your staff or the children that
7 you enrolled, or coming for pickup and drop-off?
8 A They access it safely. There is no issue until
9 now.
10 Q Okay. I'm sorry, say that again? No issue --
11 A Until now.
12 Q -- that you are aware of?
13 A No.
14 Q Okay. When you say, until now, I just want to be
15 clear. You're not aware of an issue?
16 A I'm not aware of any issues.
17 Q Okay. And there was, were you present during the
18 last hearing before the hearing examiner on this
19 application?
20 A Yes.
21 Q Okay. And did you hear some of the discussion
22 regarding the State of Maryland regulations for sleeping
23 areas and cribs?
24 A Yes.
25 Q Are you aware of whether or cribs are mobile or

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1 whether they are stationary?
2 A It's mobile.
3 Q Okay. And do you know, you said you had been
4 inspected by the State for licensing purposes. Did the
5 State approve those as being included in your square footage
6 calculation, or excluded from the square footage
7 calculation?
8 A Excluded from.
9 Q So they are allowed to remain as part of the
10 square footage that you have proposed on the floor plans
11 that are in this case, is that correct?
12 A Yes, ma'am.
13 Q So based upon that, are you assuming that that
14 would remain the same?
15 A Yes.
16 Q Okay. So when the State comes out and inspects,
17 if they had an issue with that, they would, I presume there
18 is a dialogue there? How does that work when the inspector
19 comes out? Are you present?
20 A Yes, we are present. Every time they come out and
21 inspect the facility, we have to be there. They come
22 anytime, unannounced, and they want to make sure, you know,
23 everything should be right. So if the crib is not proper or
24 anything, we have to replace it within 24 hours.
25 Q Okay. And if they, and then do they come back and

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1 re-inspect --
2 A Yes.
3 Q -- to confirm that you have met their
4 requirements?
5 A Requirements. Yes.
6 Q Okay. And they have never indicated that there is
7 a problem with the square footage, and the inclusion of the
8 sleeping area in the square footage calculation?
9 A No.
10 Q Okay. The hearing examiner's indulgence for just
11 a minute to make sure I ask this witness all of the
12 questions I have. When you were present during the last
13 hearing, did you hear the discussions with regard to the
14 lighting on your building?
15 A Yes.
16 Q And as you may recall, I'll paraphrase, the
17 hearing examiner expressed a concern with regard to the
18 number of lighting fixtures --
19 A Yes, ma'am.
20 Q -- that were proposed. And have you had a new
21 study commissioned in order to address some of those
22 concerns?
23 A Yes, ma'am.
24 MS. WALKER: Okay. I'm going to submit this now,
25 if I could, and I'll provide copies. We have a large scale

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1 copy, as well, that we will submit into the record. But for
2 right now, I have 11 by 17's. They're a little easier to
3 read. For the record, copies are being provided to the
4 opponents, as well as to the hearing examiner and the
5 witness.
6 MR. PRAGER: We will mark this as Exhibit No. 56.
7 (Exhibit No. 56 was marked for
8 identification.)
9 MR. PRAGER: Mr. Wilholm, have you had a chance to
10 look at this exhibit?
11 MR. WILHOLM: Yes, sir.
12 MR. PRAGER: Ms. MacNab?
13 MS. MACNAB: I have. I don't understand it,
14 though.
15 MR. PRAGER: All right. Ms. Walker?
16 MS. WALKER: Yes.
17 MR. PRAGER: You have some questions you want to
18 ask your witness about this?
19 MS. WALKER: I do.
20 BY MS. WALKER:
21 Q If you will, if you note the date, it's in the
22 lower right hand corner. That is the date this was revised.
23 It reads as February 7th, 2013. Is that the date that was
24 subsequent to the first hearing that we had here?
25 A Yes.

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1 Q Okay. And looking at this, as you may recall,
2 there were seven light fixtures shown on the building
3 previously. I believe this one shows there are five. Is
4 that correct?
5 A Yes.
6 Q Okay. And is that in response to the concerns by
7 the hearing examiner regarding the number of light fixtures?
8 A Yes, ma'am.
9 Q Okay. And the parking facility, I believe that
10 this currently shows five light poles, is that correct?
11 A Yes.
12 Q Okay. And calling your attention to the schedules
13 that are on the left hand side, it indicates that there is a
14 nine-foot mounting pole. Is this taller or shorter than
15 what was previously proposed?
16 A Shorter.
17 Q Shorter. Okay. And the wattage is listing as 70-
18 watt. Is that more or less than what was previously
19 proposed?
20 A Less.
21 Q So it's safe to say that you are proposing to
22 limit the number of fixtures on the house, as well as lower
23 the wattage of what you are proposing?
24 A Yes, ma'am.
25 Q Okay. And based upon what your experts tell you

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1 this plan means, do you feel comfortable that this is going
2 to meet the requirements for people to safely enter and exit
3 your property?
4 A Yes, ma'am.
5 Q Okay. And are you willing to be bound by this
6 exhibit if it is something that is recommended and requested
7 by the hearing examiner as far as the number and height of
8 the poles, as well as the wattage of the fixtures?
9 A Yes, ma'am.
10 MS. WALKER: I think that is all I have at this
11 time for this witness.
12 MR. PRAGER: All right. Mr. Wilholm, do you have
13 any questions for this witness?
14 MR. WILHOLM: Yes, sir.
15 MR. PRAGER: All right.
16 CROSS-EXAMINATION
17 BY MR. WILHOLM:
18 Q In the testimony and on your, I guess it's a
19 contract with the applicants you have ABC Learning Center in
20 Beltsville. Could you --
21 MR. PRAGER: Which exhibit are you referring to?
22 MR. WILHOLM: Exhibit No. 55, sir.
23 MR. PRAGER: All right.
24 BY MR. WILHOLM:
25 Q There is ABC Learning Center located in

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1 Beltsville. Could you explain your relationship to that
2 center, what your involvement is with it?
3 A Well, I'm the owner of the center.
4 Q Do you, are you active and involved in any of the
5 day-to-day activities there?
6 A Yes, ma'am. Yes, sir.
7 Q Could you explain what those activities are?
8 A Activities, I go and look at the facility every
9 day during the day, check to make sure everything is safe,
10 the work is going properly, teacher is teaching the students
11 and stuff like that, regular things.
12 Q How much time do you spend there versus at 170
13 Randolph Road facility?
14 A A couple of hours a day.
15 Q At that center, and then I assume the rest of the
16 day at the --
17 A Is in Randolph Road, yes.
18 Q -- Randolph Road. Okay. On the fine, again on
19 Exhibit No. 55, you said there is a fine if they don't meet
20 the specified drop-off window. How often has that fine been
21 levied?
22 A Not so often.
23 Q Once a week, once a month?
24 A No. We give them grace period, if one day they
25 make by traffic accident, something comes up, we waive the

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1 fee. Second time, we warn them. Third time, we make sure
2 we charge them.
3 Q Okay. And on, the trick is finding the exhibit
4 number on this one. On the floor plan, on the first floor
5 you have three classrooms, and you have two in the basement?
6 A Basement, yes.
7 Q Do you ever, and you've got different ages. Each
8 classroom has an age associated with it.
9 A Age associated.
10 Q Do you ever move kids from one classroom to
11 another to accommodate teachers not being there or space
12 limitations or whatever?
13 A I didn't get that question proper.
14 Q Well, for example, Group B, and I'll try and read
15 this.
16 A I have to see what you are saying.
17 Q But anyway, there is an age limit. It looks like
18 three-year-old?
19 A Uh-huh.
20 MR. PRAGER: What are you referring to?
21 MR. WILHOLM: I'm actually referring to the Park
22 and Planning plan. But I also think it's in Exhibit -- let
23 me find it. Yes, that one. The exhibit number there is --
24 MS. MACNAB: 5(c)? I'm guessing.
25 MR. PRAGER: Could you help us out, Ms. Walker?

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1 Do you know what exhibit that is?
2 MS. WALKER: I believe it's marked correctly,
3 since I believe I marked it during the last hearing.
4 MR. WILHOLM: There is, on the list, 5(c) is a
5 floor plan. So --
6 MS. WALKER: That's correct.
7 BY MR. WILHOLM:
8 Q Okay. Anyway, on --
9 MS. MACNAB: It's actually your writing that I
10 couldn't tell if that was a 5 or an S?
11 MS. WALKER: Yes. It's 5(c).
12 BY MR. WILHOLM:
13 Q Anyway, on Group B, my eyes are getting old;
14 anyway, this is for 3-year olds?
15 A Uh-huh.
16 Q And you have 3-year-olds, 10 students, one staff.
17 A Right.
18 Q My question is, if the State -- let me do it this
19 way. If the State was to find that this was not enough
20 space for 10 children, would you move some of the children
21 to one of the other areas? How would you accommodate that?
22 MS. WALKER: Objection. The witness testified if
23 she did not have enough room for the enrollment, that she
24 would not enroll those students.
25 THE WITNESS: Yeah, there would no --

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1 MS. WALKER: So you're asking her to --
2 MR. PRAGER: The objection is overruled, but
3 please answer his question, if you understand it, and if
4 not, please rephrase it.
5 BY MR. WILHOLM:
6 Q Do you understand it?
7 A I do not understand. I will not move the children
8 from one place to another, because they're supposed to play
9 in groups. We would have to do like, infant, it has to stay
10 infant. Three year has to stay in 3-year-old class.
11 Q That answers my question. Thank you.
12 A Three has to stay in 3-year-old class and stuff
13 like that. We cannot move infant to threes. But 3-year-old
14 to infant is not, we cannot mismatch the groups.
15 Q That answers my question. Sorry about the
16 confusion.
17 A No. It's okay.
18 Q I was trying to figure out how to ask the
19 question. On the food that you bring in, I guess I'm trying
20 to remember what you said, Didn't you say you bring, you
21 get food every day and bring in?
22 A No, we'll do the groceries once a week.
23 Q Once a week?
24 A Yes.
25 Q And where do you store the food when you bring it

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1 in?
2 A We buy weekly food. We have cabinet to store the
3 food.
4 Q In the kitchen?
5 A Yes.
6 MR. WILHOLM: I think I'm through. No more
7 questions.
8 MR. PRAGER: Ms. MacNab?
9 CROSS-EXAMINATION
10 BY MS. MACNAB:
11 Q First thing I'd like to ask you, your
12 certification is with the State of Maryland?
13 A Yes.
14 Q Do you have a degree?
15 A Yes.
16 Q You have a college degree?
17 A Yes. Bachelor degree, yes.
18 Q In what?
19 A Bachelor in art.
20 Q In art. Okay. Can you tell me if, let's just go
21 about the lunches. You said you bring grocery shopping in
22 every day and you --
23 A Not every day, ma'am.
24 Q I mean once a week.
25 A Once a week.

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1 Q Once a week. My fault. And you store it in the
2 cabinets.
3 A Uh-huh.
4 Q There is nothing that needs to go in the
5 refrigerator?
6 A We have a refrigerator. Yes. It has to go in the
7 refrigerator.
8 Q So right now you have lunches for 30 children in
9 that refrigerator, correct? In that refrigerator and in the
10 cabinets. 30 children is a lot of food. I know.
11 MS. WALKER: Objection. She's putting words in
12 the witness's mouth and not allowing her to answer the
13 question.
14 MR. PRAGER: Yes. Just ask the question.
15 BY MS. MACNAB:
16 Q Okay. So my question is, you store the food
17 either in the cabinets or in the refrigerator for 30
18 children?
19 A Uh-huh.
20 Q How do the staff eat?
21 A How do the staff eat?
22 Q Do they eat of that food?
23 A No, they bring their own lunches.
24 Q So what will happen when you move from 30 to 60,
25 again as far as storing of food?

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1 A We have enough space to store the food.
2 Q For 60 children?
3 A Yes, ma'am.
4 Q Will that food be stored in the kitchen?
5 A Cabinet in kitchen and refrigerator.
6 Q Will it be store, will it be fixed in the kitchen?
7 A Yes, fixed in the kitchen, yes.
8 Q Is this the same kitchen that the children will be
9 going through to go downstairs?
10 A Yes.
11 Q And to come back upstairs?
12 A Yes.
13 Q And the same way with the staff?
14 A I don't get the question.
15 Q That they're going to be walking through the
16 kitchen to go downstairs?
17 A Walking through the kitchen.
18 Q The 25 --
19 MR. PRAGER: If you don't understand --
20 BY MS. MACNAB:
21 Q It's 25 --
22 MR. PRAGER: Wait. Just wait. Please don't ask
23 questions when you're being questioned. She asked you a
24 question of whether or not the staff has to go downstairs
25 through the kitchen?

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1 THE WITNESS: Yes, it is. They have to go
2 downstairs through the kitchen. Yes.
3 BY MS. MACNAB:
4 Q Doesn't that seem like a health issue?
5 A No, ma'am.
6 Q How often is your place cleaned?
7 A Once a week.
8 Q It's cleaned once a week.
9 A We clean --
10 Q With 30 children?
11 A Yes.
12 MR. PRAGER: Let her finish answering the
13 questions.
14 THE WITNESS: Once a week. Every day between
15 naptime, all teachers clean their classroom. Between 1:00
16 to 3:00 kids take a nap. A regular activity, regular toys,
17 regular things has to be cleaned every day. Once a week we
18 clean the whole school. Once a month we wash all the
19 carpets.
20 BY MS. MACNAB:
21 Q Can you explain about the fire alarm system? Or
22 you said you had a fire system.
23 A Yes.
24 Q Explain that to me?
25 A It's connected to the fire station. There's pull

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1 stations, each exit doors. There's pull station in the
2 kitchen. There's everywhere is pull station. So I'm not
3 understanding what you want to know.
4 Q Do you have smoke alarms?
5 A Yes, we do have smoke alarms. Yes.
6 Q And your pull station?
7 A In case of emergency, we can pull the station.
8 Fire truck will be there in three minutes, ambulance will be
9 there in three minutes. The same like school systems.
10 Q Where do the children store their coats and hats
11 and mittens and scarves?
12 A In their classrooms.
13 Q Some of the classrooms, I saw no storage things.
14 MR. PRAGER: Ms. MacNab, when you find the exhibit
15 you're referring to, would you identify it.
16 MS. MACNAB: In 10(p).
17 MR. PRAGER: 10(p)?
18 MS. MACNAB: Yes.
19 MR. PRAGER: Just a moment, please. Would you
20 bring that to the witness so she can see what you're
21 pointing to.
22 BY MS. MACNAB:
23 Q Okay, so the children --
24 MR. PRAGER: Wait. You may ask your question.
25 BY MS. MACNAB:

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1 Q So which room is that? Is that group B or group A
2 or --
3 A This is the -- that's the one, yes.
4 Q Okay.
5 MS. WALKER: I'm sorry. I'm unclear for the
6 record what this and that are. If you could refer to them
7 by their name on the exhibit, it would be helpful. If, Ms.
8 MacNab, if you're doing the questioning, I just don't
9 understand. I can't see and I can't understand what exhibit
10 and area you are talking about.
11 MR. PRAGER: What area -- no, no, no. Identify
12 it.
13 MS. WALKER: You just need to refer to it as it's
14 listed on the exhibit. So if you're talking about Group A,
15 Group B, Group C, those rooms, so that we can understand.
16 MS. MACNAB: I asked, I asked her the question.
17 MS. WALKER: I understand but you --
18 MS. MACNAB: Okay, I asked --
19 MR. PRAGER: Wait, wait.
20 MS. MACNAB: I asked Monika what room is this.
21 MR. PRAGER: Please, Ms. MacNab, only one person
22 can talk at a time. Ms. Walker properly said, she doesn't
23 understand what you're referring to. By pointing to
24 something, it doesn't help us with the record, because
25 that's transcribed, and it becomes part of the transcript.

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1 So you have shown her Exhibit 10(p). What, now I'm going to
2 ask the witness, what room is that, currently?
3 THE WITNESS: Three-year-old classroom.
4 MR. PRAGER: And the 3-year-old classroom, you
5 call that Group what?
6 THE WITNESS: Group, three's and four's, 10 kids.
7 MR. PRAGER: I understand, but you have, you may
8 approach the exhibit and say what group does that refer to
9 on that exhibit?
10 THE WITNESS: This is --
11 MR. PRAGER: Wait. Wait. When you are ready to
12 testify, you may sit down again. Look at the exhibit. Can
13 you identify the group number or letter, rather?
14 THE WITNESS: That's it.
15 MR. PRAGER: What Exhibit --
16 THE WITNESS: Exhibit B.
17 MR. PRAGER: So it's Group B?
18 THE WITNESS: Group B. Yes.
19 MR. PRAGER: All right.
20 THE WITNESS: That shows half of the classroom.
21 It's not showing though where the groups are. That's the
22 other side of the part. Half the room is there. There's
23 hooks and, you know, cabinets and play areas there.
24 BY MS. MACNAB:
25 Q The picture that I'm looking at has one window in

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1 it.
2 A This -- sorry.
3 Q And one window on this wall and one window on this
4 wall.
5 MR. PRAGER: Is that a question?
6 BY MS. MACNAB:
7 Q Here there's two windows and two windows, and this
8 is one large window. This is two windows, right? This
9 picture does not show this floor plan. And I'm just trying
10 to figure out --
11 MR. PRAGER: Well, let the witness answer. There
12 seems to be, or there may be some discrepancy between the
13 picture that's being shown and the floor plan. Would you
14 like to elucidate as to what the difference is?
15 THE WITNESS: Yes. This room has five windows,
16 and half of the classroom is shown, half of is not. Half of
17 the classroom has toys and books where kids can put their
18 coats, hats, mittens, everything.
19 BY MS. MACNAB:
20 Q All right. I'm going to have to take your word on
21 that, because there is no way that I can see that this is
22 here.
23 MR. PRAGER: Are you talking to yourself or are
24 you talking to --
25 MS. MACNAB: I do not see how this fits this plan.

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1 MR. PRAGER: All right.
2 MS. MACNAB: I'm just making sure that I say that.
3 BY MS. MACNAB:
4 Q And you said that they throw their coats on this
5 wall that I am not seeing?
6 A Yes.
7 Q So there is another question that I wanted to ask.
8 I heard you say you have 8-year-olds. So this one is 12 2-
9 year olds, and 10 3-year-olds. And six infants and nine
10 toddlers. I don't see anywhere there are 8-year-olds on
11 this list. And where are they put?
12 A Okay.
13 MR. PRAGER: You're referring to the floor plan
14 for the building? Is that what you're referring to?
15 BY MS. MACNAB:
16 Q That's correct. Like this one ways there's 10 4-
17 year-olds, 15 5-year olds, 12 2-year-olds, 10 3-year-olds
18 and 16 children under 2, before 2, 18 months.
19 A Currently, we do not have any 8 years old. We
20 have only 5 years old. And what this is proposing right
21 now, 5 to 8 can be one group. That will be downstairs. And
22 the 4 years will be one group. The ratio is for 5 to 8 is
23 one to 15. For 4 years old it's one to 10. Three years old
24 is one to 10. Two years old is one to 16. Infant is 1 to
25 3. Toddler is 1 to 3. So the 5 years old and 8 years old

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1 goes together downstairs.
2 Q So this is 15 five to 8-year-olds?
3 A Yes.
4 Q Is there a difference in size between a 5-year-old
5 and an 8-year-old?
6 MS. MACNAB: Objection. There's no relevance to
7 that question.
8 MR. PRAGER: Well, there may not be, but she can
9 answer the question.
10 THE WITNESS: What do you mean, size?
11 BY MS. MACNAB:
12 Q Well --
13 A State requires us to, 5 to 8-years old can be one
14 classroom.
15 Q And this is the classroom you would put them in?
16 A Yes, ma'am.
17 Q And how would they leave in case of a fire?
18 A There's two exits going up. One is going up. One
19 is in the ground floor.
20 Q And can you show me where that is? Where would
21 these children leave for a fire?
22 MR. PRAGER: What exhibit are we still on?
23 MS. MACNAB: We're still on 5(c).
24 THE WITNESS: Okay. This is the exit. This is the
25 exit out.

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1 MS. MACNAB: So they would go --
2 MR. PRAGER: Wait.
3 THE WITNESS: There's a small, there's no
4 partition here. Okay. This is a classroom. They would go
5 up here in the staircase, about 10 step staircase, seven,
6 eight or nine staircase. They go up and they'll drop on the
7 playground. From here, they go up and to the playground.
8 MR. PRAGER: You're referring now to an exit door
9 on --
10 THE WITNESS: Exit doors.
11 MR. PRAGER: -- that looks like it's at the top
12 end. I don't know if that's actually north, or wherever
13 that is, but it's the top of the depiction of the lower
14 floor, is that correct?
15 THE WITNESS: Right.
16 BY MS. MACNAB:
17 Q In summer camp, you said that the children go on
18 trips.
19 A Yes.
20 Q What kind of trips do they go on?
21 A Field trips, like play wise, we go to Butler's
22 Orchard. You know, it's like activity trips.
23 Q Can you specify?
24 MS. WALKER: Objection. I'm not sure of the
25 relevance for a zoning case as to where the children are

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1 going when they are off-site.
2 MR. PRAGER: I'll sustain that objection. Ms.
3 MacNab, your next question?
4 BY MS. MACNAB:
5 Q I was concerned, also, about the same picture from
6 the --
7 MR. PRAGER: Wait. Which picture is that.
8 MS. MACNAB: I'm sorry. It's still 10(p).
9 MR. PRAGER: All right.
10 BY MS. MACNAB:
11 Q I'm concerned about the heat on the floor.
12 A Right.
13 Q If that is for the 2-year-olds, you don't have a
14 problem with them touching it?
15 A It's not hot. The air comes out. It's not that
16 somebody can get hurt with it. This is oil heating. I
17 don't know if you have it in your house or not, but just the
18 boards, you know, inside there is pipes. The warm, you
19 know, warm heat comes out. There's nothing hot in there for
20 kids to touch. Last 10 years I have no problem anybody
21 getting hurt. Not one single accident or anything like that
22 with the kids.
23 Q Do you have a sprinkler system in this place?
24 A No.
25 Q What kind of, size bus comes into the parking

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1 area?
2 A There is no size bus comes in parking area. They
3 stand in the street. And then we bring the kids in the
4 street, and then they load up for the field trips, near
5 where the mailbox is, near the entrance is, that's the, we
6 go there.
7 Q I guess going back to the 8-year-olds, do you have
8 additional storage for their stuff?
9 A What kind of storage?
10 Q The things that they bring?
11 A They have hooks for backpacks and all that. The
12 last thing was required what storage we need, we had to do
13 it. We have cabinets and stuff like that in the class to do
14 their storage, supplies and stuff like that.
15 Q And then the last question is, how many bathrooms
16 do you have for 62 children?
17 A We're going to have two downstairs, and three
18 upstairs.
19 MS. MACNAB: All right. Thank you. No other
20 questions.
21 MR. PRAGER: All right. I have a number of
22 questions for you.
23 THE WITNESS: No problem.
24 MR. PRAGER: First of all, I'm a little bit
25 confused, so just straighten me out.

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1 THE WITNESS: Okay. Sure.
2 MR. PRAGER: You seem to have a number of
3 different names throughout this proceeding, and I'm just not
4 sure what your name is?
5 THE WITNESS: Monika Mahabare.
6 MR. PRAGER: All right. Now, but who is --
7 THE WITNESS: Hirah Morah (phonetic sp.)?
8 MR. PRAGER: -- Hirah Morah.
9 THE WITNESS: That's me.
10 MR. PRAGER: All right. And explain. Is that a
11 maiden name or how does that work?
12 THE WITNESS: No. My father gave me Hirah Morah
13 name. That's my father's name. After marriage, in our
14 culture, we have to take husband's name. So I had to take
15 his name.
16 MR. PRAGER: Right. And that's where the Monika
17 comes from?
18 THE WITNESS: Yes.
19 MR. PRAGER: All right. So now, explain to me,
20 you are not the applicant. The applicant is something
21 called the Layhill Learning Center, Incorporated?
22 THE WITNESS: Uh-huh.
23 MR. PRAGER: What is your relationship with the
24 Layhill Learning Center, Incorporated?
25 THE WITNESS: I'm the primary take care of the

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1 Learning Center.
2 MR. PRAGER: You're the primary what?
3 THE WITNESS: Owner. It's my responsibility.
4 MR. PRAGER: Are you the president?
5 THE WITNESS: Yes. I'm the president.
6 MR. PRAGER: What other officers are there of the
7 corporation?
8 MS. WALKER: If I could, for the hearing examiner,
9 this is actually in Ms. Mahabare's affidavit as number
10 three. It's a closed corporation.
11 MR. PRAGER: I understand. But what are there,
12 are there any other officers?
13 THE WITNESS: No, sir.
14 MR. PRAGER: All right. Now, the ownership of the
15 building is not Layhill Learning Center, Incorporated, but
16 it lists Morah Harabe (phonetic sp.).
17 THE WITNESS: Yes.
18 MR. PRAGER: Are you also Morah Harabe?
19 THE WITNESS: Yes. That's my old name.
20 MR. PRAGER: That's your old name?
21 THE WITNESS: Yes.
22 MR. PRAGER: All right. But again, I'm not quite
23 sure the relationship between Hirah Morah and Morah Harabe.
24 Again, the name change confuses me.
25 THE WITNESS: That's the same name, sir.

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1 MR. PRAGER: It's the same name?
2 THE WITNESS: Yes. It's one person. That's me.
3 MR. PRAGER: All right. Have you ever lived in
4 this house at 170 Randolph Road?
5 THE WITNESS: No, sir.
6 MR. PRAGER: All right. In Exhibit No. 9, the
7 deed that you executed, you said,
8 "The grantee hereby certifies under penalty
9 of perjury, that the land conveyed in said deed is
10 residentially improved, owner occupied real
11 property, and that the residence will be occupied
12 by me or us."
13 Was that statement false, or how does that relate to how
14 you've used that house since you acquired it?
15 THE WITNESS: I never used the house as a living.
16 MR. PRAGER: I understand. But you signed a deed
17 saying that you would.
18 THE WITNESS: I don't know how to answer that.
19 MR. PRAGER: All right. In 2002, when you applied
20 for a special exception, you didn't propose to have a sign
21 at the site at all.
22 THE WITNESS: Correct.
23 MR. PRAGER: But why do you need a sign now?
24 THE WITNESS: Because people have a hard time to
25 get into our site. They doesn't know if it's the daycare

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1 center, and now they think it's just a house. So just to
2 identify the people to see that's the daycare center.
3 MR. PRAGER: So you realize that you're in a
4 residential neighborhood.
5 THE WITNESS: Right.
6 MR. PRAGER: That putting up a sign makes it look
7 a little more commercial than it is now.
8 THE WITNESS: Yes.
9 MR. PRAGER: And you understand that that's one of
10 the objections, or could be one of the objections that
11 people have?
12 THE WITNESS: Yes.
13 MR. PRAGER: But am I to understand from answers
14 you gave to your counsel's questions that if you have a sign
15 at all, it can be reduced to the size that is permitted by
16 zoning without a variance, is that correct?
17 THE WITNESS: Yes.
18 MR. PRAGER: Now, I was a little surprised this
19 morning by your testimony. And I'm not sure I understand it
20 fully. Everything that I had seen on the exhibits that had
21 been offered thus far spoke of children through the age of
22 five.
23 THE WITNESS: Uh-huh.
24 MR. PRAGER: And this morning, for the first time
25 in the proceeding, I heard of children up to the age of

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1 eight. When did you decide that you were going to have
2 children beyond the age of, let's say, 6, assuming that 5-
3 year-olds can attend there until their sixth birthday? Why
4 was that not disclosed previously?
5 THE WITNESS: I thought it was disclosed
6 previously. I always told I wanted 5 to 8, until 8-year-
7 olds, because there is sibling waiting for us. So I always
8 say I wanted until 8 years old.
9 MR. PRAGER: Well, you said you were going to have
10 15 5-year-olds.
11 THE WITNESS: Five to 8.
12 MR. PRAGER: Well, it didn't say that, as far as I
13 know. Perhaps your counsel can find it in the record. But
14 I haven't seen it, or at least I don't recall it. What is
15 the, how do you intend to mix that group? How many 5-year-
16 olds, how many 8-year-olds, and --
17 THE WITNESS: By State law, we're allowed 5 to 8
18 together. So if we have sibling, like 6 years old, 7 years
19 old, after school, we want to take them. If it's not, we're
20 keeping 5 to, you know, whatever the range is, they are 5-
21 year-old class. This is, like few we get sometimes. It's
22 not too many, One or two siblings.
23 MR. PRAGER: In this, in Exhibit No. 22(a), which
24 is the petitioner's first revised statement in support of
25 special exceptions, have you read that statement? Have you

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1 read that statement? Don't look to your counsel.
2 THE WITNESS: I don't know which one is that.
3 MR. PRAGER: All right. Well, I've just
4 identified it.
5 THE WITNESS: If I can look at it.
6 MR. PRAGER: It's petitioner's first revised
7 statement in support of special exception.
8 THE WITNESS: Yes, I did read it.
9 MR. PRAGER: All right. It says, the existing
10 before and after, this is on page 3, footnote five,
11 "The existing before and after care program
12 currently accommodates two children both of whom
13 are in kindergarten" --
14 THE WITNESS: Right.
15 MR. PRAGER:
16 -- "Five years old, and attend Jackson Road
17 Elementary School."
18 And now I'm skipping some words.
19 "The site is approximately, 2.2 miles from
20 the site. A Montgomery County operated school bus
21 currently picks up these children in front of the
22 site at 170 Randolph Street at 12:30 p.m., and
23 returns them to the site at 3:30 p.m."
24 Do you intend to have more children using the school bus, or
25 are these exceptional?

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1 THE WITNESS: If we get more children to use the
2 school bus, yes, we want to have more school ages, like 5
3 years and 6 years, who goes to half-day kindergarten.
4 MR. PRAGER: So these are children who go to the
5 kindergarten in the morning?
6 THE WITNESS: Yes.
7 MR. PRAGER: Is that correct?
8 THE WITNESS: Yes.
9 MR. PRAGER: But then you say --
10 THE WITNESS: Midday, midday. They go at like
11 12:30 and come back 3:30.
12 MR. PRAGER: I see. These are all midday classes?
13 THE WITNESS: Yes.
14 MR. PRAGER: And how do they, how do the children
15 get to the bus?
16 THE WITNESS: Teacher walks to the bus, to the
17 mailbox, and bus stops there and we let them get in the bus,
18 and then we come back.
19 MR. PRAGER: So at the time that they go to the
20 bus, there are only five people at the site?
21 THE WITNESS: Six people.
22 MR. PRAGER: Well, five in the building, and one
23 taking them out?
24 THE WITNESS: Right. Yes.
25 MR. PRAGER: But I don't understand because you,

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1 apparently, often are not there during the day because you
2 have this other Learning Center in Beltsville. Specify when
3 you, what your times are, first at Beltsville?
4 THE WITNESS: Beltsville I go probably between
5 like 1:00 to 3:00 to go check around and see. Some days I
6 go morning. You know, it depends on the, you know, some
7 days the kids are less in the site, Randolph Road, because
8 of the sick, because of the weather permitting. Then I go
9 morning, if there is less kids and, you know, more than
10 enough staff. So days I go between like 1:00 to, you know,
11 3:00, stuff like that. It's various times, not particular
12 time I'll be there, because we already have director there.
13 MR. PRAGER: You have a director there?
14 THE WITNESS: Other site.
15 MR. PRAGER: Which site?
16 THE WITNESS: Beltsville site.
17 MR. PRAGER: You have a director at the Beltsville
18 site?
19 THE WITNESS: Uh-huh.
20 MR. PRAGER: And you, I gather, I infer, are the
21 director of the Randolph Road site, is that correct?
22 THE WITNESS: Yes.
23 MR. PRAGER: And how many hours in a typical week
24 are you absent from the site at Randolph Road?
25 THE WITNESS: I'm there every day between 8:30 to

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1 until 6:00, and between that time I will go out and come
2 back.
3 MR. PRAGER: Yes, and how many hours would you say
4 per week are you absent?
5 THE WITNESS: Fifteen to 20 hours.
6 MR. PRAGER: All right. I haven't calculated how
7 many hours the school is in operation, but you're there
8 somewhat more than half time, is that correct?
9 THE WITNESS: Yes. Yes.
10 MR. PRAGER: And you're absent a little less than
11 half time, is that correct?
12 THE WITNESS: Yes.
13 MR. PRAGER: You now have six staff members.
14 THE WITNESS: Yes.
15 MR. PRAGER: Including yourself?
16 THE WITNESS: Yes.
17 MR. PRAGER: Tell me please, when the current
18 staff arrives? How many arrive first thing in the morning?
19 THE WITNESS: First thing in the morning, like
20 6:30 one staff arrives, check the facility, make sure it's
21 ready for the facility. If there's anything we need to get
22 done. Then 7:00 a few children start coming in. Then
23 8:30 --
24 MR. PRAGER: That's children. I'm asking now
25 about staff?

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1 THE WITNESS: It depends on the children, how many
2 children will get in. 10 staff comes in.
3 MR. PRAGER: All right. Yesterday, or I'm sorry,
4 Friday, tell me about your staffing pattern?
5 THE WITNESS: Okay. 7:00 first staff. 8:30
6 second staff. 9:00 third staff. 9:30 fourth staff. And
7 then between 9:00 there will be two staff comes in.
8 MR. PRAGER: And when do they leave?
9 THE WITNESS: Once kids go down, some kids go
10 3:30. Some kids go 4:30. Some kids go 4:00, 5:30. Latest
11 is 6:00.
12 MR. PRAGER: Yes, but you're still talking about
13 children. I want to know about staff. When does the staff
14 leave?
15 THE WITNESS: One leave like 4:00. Then another
16 leave at like 4:30. Then another leave 5:00. And two leave
17 6:00.
18 MR. PRAGER: All right. And how will that change
19 when you have 11 staff members?
20 THE WITNESS: We have to let two staff come in the
21 morning, then one comes 8:00. It depends on how many kids
22 we get for the slots. How many kids is coming, that's the
23 way we need to staff. I cannot just tell you, okay, I'm
24 going to bring 7:00 three staff. There's no kids. 8:00. I
25 have to see how many kids is coming in at that period of

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1 time, then we have to put the staff in.
2 MR. PRAGER: All right. Well, this, so how does
3 the staff know ahead of time when to show up?
4 THE WITNESS: We let them know how many kids is
5 coming in. But, you know, we look at the record. We look
6 at the time, who's coming in at 7:00. We have sign-in,
7 sign-out sheets every day, and see how many kids come in
8 that period of time, how many staff we need. Then we staff
9 that way.
10 MR. PRAGER: Walk me through this, because I'm
11 still a little confused. Friday you told me what the
12 pattern is. Now, based on the pattern on Friday, will you
13 then say, that's what happened, and we will duplicate that
14 arrival schedule on Monday? Or how does it work? How do
15 you know when the kids will come and when they will be
16 dropped off?
17 THE WITNESS: We have sign-in sheet. We know how
18 many kids come in at what time.
19 MR. PRAGER: But that's after the fact. They
20 don't sign in until they're there.
21 THE WITNESS: No, we have a record all this time
22 who's coming in 7:00, who's coming in 8:00, who's coming in
23 7:30, how many kids coming in 7:30. So if there's more than
24 10 kids, we need another staff in there. If we have babies
25 in there, we need another staff in there. It's like there's

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1 requirements for the children. Depends on how many children
2 we have on the site, we have to have another staff.
3 MR. PRAGER: I guess it must be a problem with
4 communication, because I'm still not sure. When you say a
5 sign-in sheet, is this a schedule that you maintain of when
6 parents may bring their children?
7 THE WITNESS: No. Once they're coming in the door
8 they have to sign the child in.
9 MR. PRAGER: Right. When they sign up, let's say
10 10 of them arrive at 7:00, and you have one staff member,
11 you then make a telephone call to have somebody else come
12 in?
13 THE WITNESS: We do not have 10 kids come in at
14 one time. So we would not have that problem. We never, we
15 don't have that problem at all. And we're not going to have
16 10 kids coming at same time. We will make sure, talk to
17 parents, the schedule. This is the schedule you sign up, so
18 you need to come at this time. Then we can tell the staff.
19 If there is more than like certain amount of kids, we're
20 going to bring another staff in.
21 MR. PRAGER: All right. So is the staff on-call?
22 THE WITNESS: Yes.
23 MR. PRAGER: So they are not employees with fixed
24 schedules?
25 THE WITNESS: They are employees.

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1 MR. PRAGER: But not with fixed schedules?
2 THE WITNESS: Not fixed schedule, no.
3 MR. PRAGER: And that would be true in the future,
4 is that correct?
5 THE WITNESS: Yes. Yes.
6 MR. PRAGER: Who do you have directing traffic, if
7 anyone?
8 THE WITNESS: Myself or there is another director
9 there, assistant director.
10 MR. PRAGER: And who is that?
11 THE WITNESS: Ms. Sharon Simson.
12 MR. PRAGER: Sharon Simson?
13 THE WITNESS: Yes.
14 MR. PRAGER: Spell that for us.
15 THE WITNESS: Sharon, S-H-A-R-O-N, S-I-M-O-S-M,
16 Simson, S-I-M-S-O-N. Sharon.
17 MR. PRAGER: Let me turn to this contract that was
18 presented this morning. It's Exhibit No. 55. Do you still
19 have a copy of that before you?
20 THE WITNESS: Yes, I do.
21 MR. PRAGER: It says, a late fee will be collected
22 after 6:00 p.m. and specified time. Where on your contract,
23 if anywhere, does it specify for a parent or whoever signs
24 this contract what the time is that they may arrive or
25 leave?

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1 THE WITNESS: There is, top of the box, there is
2 indicated specific time drop-off and pickup time.
3 MR. PRAGER: I see. And you say a late fee will
4 be collected.
5 THE WITNESS: Uh-huh.
6 MR. PRAGER: How about an early fee? Suppose they
7 come earlier than anticipated?
8 THE WITNESS: I did not collect any early fee yet.
9 I did not have that problem.
10 MR. PRAGER: All right. How much, on a monthly
11 basis, how much revenue have you generated on the basis of
12 early or late fees?
13 THE WITNESS: We do not get that fees. Teacher
14 get that fees. Not so much, but --
15 MR. PRAGER: I don't understand what not so much
16 means?
17 THE WITNESS: We don't have so much problem like
18 that, picking up late and stuff like that.
19 MR. PRAGER: I understand, but not so much is not
20 a figure. I would like to have something more specific.
21 THE WITNESS: Amount. Around \$150, month.
22 MR. PRAGER: For what period?
23 THE WITNESS: Late fees.
24 MR. PRAGER: No, I say for what period?
25 THE WITNESS: One month.

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1 MR. PRAGER: For one month?
2 THE WITNESS: Yes.
3 MR. PRAGER: So you actually collect \$150 in a
4 month in late fees?
5 THE WITNESS: Yes.
6 MR. PRAGER: So that's, at \$5 for five minutes,
7 and a dollar every additional -- I'll have to do the
8 arithmetic. I can't figure it out like this, off the top of
9 my head. And that's fairly typical that it's \$150 per month
10 would you say? It varies, I know.
11 THE WITNESS: Various, various. Sometimes it's
12 \$80. Sometimes it's, teachers tell, you know, I get the
13 idea from teachers. They tell us, okay, so and so was late,
14 and I collect this much fee. So teachers get that fee
15 because they had to stay for that class for that child.
16 MR. PRAGER: What's the most you've ever
17 collected?
18 THE WITNESS: I don't personally collect anything,
19 but my staff collects the payments for the late fee, and
20 they get that fee. The company doesn't get the fee.
21 MR. PRAGER: So you keep no records? Is that what
22 you're saying?
23 THE WITNESS: No. From late fee, no, I do not
24 have.
25 MR. PRAGER: You keep no records from the late

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1 fees?
2 THE WITNESS: No.
3 MR. PRAGER: All right. In 2006, there was a show
4 cause proceeding which resulted in an administrative
5 modification of your special exception where there was a
6 finding that petitioners, and I'm quoting now, quote,
7 "Petitioner failed to adequately
8 establish the required landscape buffer. Either
9 they failed to plant all the required plantings,
10 or they failed to plant specimens of a size and
11 quality that would survive, or they failed to
12 properly maintain the plants, or conditions were
13 simply were not suitable for the species they
14 selected."
15 What provisions do you currently have for
16 landscaping?
17 THE WITNESS: We have already six plants around
18 the perimeter, around the property line. That time what
19 happened, plant the Leyland Cypress and whatever required,
20 the landscape architect, but somehow we couldn't understand
21 why the pieces was dying, all the tree was dying. So the
22 neighbor told us, if you put the fence, that will help him,
23 you know, better. So we did right away.
24 MR. PRAGER: Well, I understand what you did. I'm
25 asking now, how do you maintain the landscaping of the

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1 property?

2 THE WITNESS: We'll find the, get the best quality

3 of the trees wherever they're required.

4 MR. PRAGER: But do you have landscaping services

5 throughout the year?

6 THE WITNESS: Yes, we do have. Yes, we do have

7 that.

8 MR. PRAGER: And who does the landscaping?

9 THE WITNESS: We have landscaping company.

10 MR. PRAGER: And what is the name of the

11 landscaping company?

12 THE WITNESS: Ocho Landscaping.

13 MR. PRAGER: Spell that, please.

14 THE WITNESS: I'm not sure how to spell, but

15 that's what the name is O-C-H-O Landscaping.

16 MR. PRAGER: And how frequently do they come?

17 THE WITNESS: For summer they come once a week to

18 cut the grass. They come three or four times a year to

19 prune the trees. If there is damage from strong tree falls

20 down, they come right away to cut the other trees. If there

21 is plant is dying, they will come and replace the plants.

22 MR. PRAGER: And do you have an annual contract

23 with this company?

24 THE WITNESS: Yes, we do have.

25 MR. PRAGER: Tell me a little bit about your play

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1 activity outside. You testified, I believe, that the

2 children are out in the mornings. And I'm just talking

3 about the mornings now, from 9:30 to 12:00.

4 THE WITNESS: Right.

5 MR. PRAGER: And do you have, do you specify when

6 what children go outside, what age groups go outside?

7 THE WITNESS: Yes.

8 MR. PRAGER: And explain then, what you do?

9 THE WITNESS: Infant and toddler and 2's go

10 outside together.

11 MR. PRAGER: At what time?

12 THE WITNESS: 9:30.

13 MR. PRAGER: And for how long?

14 THE WITNESS: A half hour.

15 MR. PRAGER: All right.

16 THE WITNESS: 10:00.

17 MR. PRAGER: All right.

18 THE WITNESS: They comes in, then we'll send the 3

19 years old outside for 45 minutes. Then we send 4 years old,

20 4 and 5 we send outside for 45 minutes.

21 MR. PRAGER: You send 4 and 5's out together.

22 THE WITNESS: Together.

23 MR. PRAGER: Now, when you have, when you expand

24 your program, how will that work?

25 THE WITNESS: We'll send the infant and toddler

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1 and 2 years old. It depends. No more than 15. Then we'll

2 send the older 2's and 3's together. Then 4's and 5's,

3 we're going to send together.

4 MR. PRAGER: But there are 15 5-year-olds, or

5 perhaps even some 8-year-olds --

6 THE WITNESS: Morning --

7 MR. PRAGER: -- and that adds up to more than 15

8 children, if you add fours and fives at the same time.

9 THE WITNESS: We will not send more than 15

10 children.

11 MR. PRAGER: So how does it work?

12 THE WITNESS: We will see how many children are

13 there. Sometimes there's not 15 children in the school age,

14 because they go to school. There is no 8 years old during

15 the day.

16 MR. PRAGER: I understand. Ms. Walker, I'm going

17 to ask that we get, as an exhibit, how this is going to be

18 distributed when she, if she gets up to 62 children. So I

19 will ask that there be a schedule.

20 MS. WALKER: For outdoor recreational use?

21 MR. PRAGER: For outdoor activities, yes.

22 MS. WALKER: Okay. That's not a problem.

23 MR. PRAGER: And that would also, I was asking

24 only about the mornings, but I would also like it, I

25 understand that the children are between 3 and 6, I believe

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1 you testified, in the afternoons?

2 THE WITNESS: Yes.

3 MR. PRAGER: And sometimes only until 5:30, is

4 that right?

5 THE WITNESS: Until dark, yes.

6 MR. PRAGER: Until dark.

7 THE WITNESS: Until dark.

8 MR. PRAGER: And there are no children outside

9 between 12:00 and 3:00, is that --

10 THE WITNESS: No.

11 MR. PRAGER: You say, no, there are not?

12 THE WITNESS: There are not, sir.

13 MR. PRAGER: There is, there are a number of

14 letters in support of your application that don't have any

15 sort of addresses. For example, I have an exhibit here from

16 somebody called Alexis Bright, B-R-I-G-H-T --

17 THE WITNESS: Uh-huh.

18 MR. PRAGER: -- whose daughter, Krisian Stevens

19 (phonetic sp.) apparently had graduated.

20 THE WITNESS: From our school, yes.

21 MR. PRAGER: Where does she, he or she live? Do

22 you know?

23 THE WITNESS: Silver Spring near the 29 and I'm

24 not sure exactly.

25 MR. PRAGER: How far away would you say?

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1 THE WITNESS: Two miles.
2 MR. PRAGER: Two miles. And what about Elias and
3 Alem Degafa. That's D-E-G-A-F-A.
4 THE WITNESS: I don't know, sir. I don't know
5 their address.
6 MR. PRAGER: You don't know?
7 THE WITNESS: No.
8 MR. PRAGER: And Juliet and Kyalo Kibua, and I'll
9 spell all of that, J-U-L-I-E-T and K-Y-A-L-O, last name
10 K-I-B-U-A.
11 THE WITNESS: I don't recall that name.
12 MR. PRAGER: Where would you say your current
13 group of 30 children, how many would you say live within
14 half a mile of the center?
15 THE WITNESS: Maybe 10 to 12.
16 MR. PRAGER: About one-third?
17 THE WITNESS: One-third.
18 MR. PRAGER: A little more than one-third.
19 THE WITNESS: More than one-third, yes.
20 MR. PRAGER: A little bit over one-third. And do
21 you do advertising for your center at Randolph Road?
22 THE WITNESS: No.
23 MR. PRAGER: You testified about the number of
24 employees, I'm sorry. Let me start that all over again.
25 You had testified that some of your employees used public

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1 transportation, is that correct?
2 THE WITNESS: Yes.
3 MR. PRAGER: How many currently?
4 THE WITNESS: Two.
5 MR. PRAGER: And how do they arrive?
6 THE WITNESS: Public bus, Ride-On 10.
7 MR. PRAGER: And the others arrive by --
8 THE WITNESS: Cars.
9 MR. PRAGER: -- arrive by car. Now, when you were
10 testifying before about your staff and arrival and
11 departures, do any of the staff leave during the day and
12 come back at some other time during the day?
13 THE WITNESS: No.
14 MR. PRAGER: So once they're there, they are there
15 for however long it takes, and leave and do not come back?
16 THE WITNESS: Right.
17 MR. PRAGER: When you testified back in 2002, and
18 you said ultimately you'd like to expand to 56 children, do
19 you remember that testimony?
20 THE WITNESS: Yes.
21 MR. PRAGER: What has caused you to increase the
22 size from 56 to 62?
23 THE WITNESS: We have place for 62 children.
24 That's why we wanted 62.
25 MR. PRAGER: And that's, you've calculated the

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1 space available, and you believe that --
2 THE WITNESS: That's the accurate space.
3 MR. PRAGER: -- 62 would be --
4 THE WITNESS: The number of space.
5 MR. PRAGER: -- what you can accommodate?
6 THE WITNESS: Yes.
7 MR. PRAGER: You've gotten a lot of questions
8 about food preparation and such, just to let me understand.
9 The kitchen consists of what, besides a refrigerator?
10 THE WITNESS: A stove, oven, sink, microwave,
11 cabinets.
12 MR. PRAGER: Is that it?
13 THE WITNESS: That's it.
14 MR. PRAGER: All right. All right. I think that
15 exhausts my questions for the moment. Ms. Walker, do you
16 have any follow-up questions?
17 MS. WALKER: Bear with me just one moment. Just
18 about with regard to the food preparation.
19 REDIRECT EXAMINATION
20 BY MS. WALKER:
21 Q Does the State inspect that area, as well, when
22 they come through your facility to ensure it meets their
23 requirements?
24 A Yes, ma'am.
25 Q And with regard to the teachers and the staffing,

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1 let's say that you had a child. Do you have an overflow
2 person, if you will, or a flexible person who is not
3 assigned to a classroom all the time?
4 A Yes.
5 Q And who is that person?
6 A Myself.
7 Q Okay. So if you're on site and there were, let's
8 say, one more child than would be allowed by the State in,
9 let's say, the infant classroom, as a certified teacher and
10 the daycare director, could you lawfully go into that room
11 and act as a teacher --
12 A Yes.
13 Q -- until the teacher could then arrive?
14 A Yes.
15 Q Has this instance occurred where you have to do
16 so?
17 A Yes.
18 Q Okay. They do this at my daycare center, so I
19 understand. And let me see. With regard to that, the staff
20 are assigned to a specific room, I believe you testified.
21 If, let's say, there was a lower ratio of children to staff
22 in one room, and a higher in another, would the children
23 move, or would the staff member move to accommodate that?
24 A I don't get your question.
25 Q So if, let's say, hypothetically speaking, there

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1 were five children in the infants and there were, I think
2 two teachers that requires in that room?
3 A Yes. Yes.
4 Q And let's say you had three assigned to that room,
5 for whatever reason, and there was more children in the
6 other, let's say the 4-year-old room needed another teacher
7 because somebody stayed longer, or came earlier, there was
8 an issue. Could you move the teacher from the infants to
9 the other room?
10 A Yes.
11 Q Is that how you would accommodate that condition?
12 A Yes, yes.
13 Q So if you're not on site, for example, and
14 somebody needed some flexibility, you would move the
15 teachers, not the children?
16 A Not the children, no.
17 Q Okay.
18 A We do not mix up the children.
19 Q Okay. And I believe you heard the hearing
20 examiner ask for a schedule of outdoor recreational use. I
21 assume that you're able to provide that?
22 A I will provide that. Yes.
23 Q Is it true that you do not, you don't have a
24 schedule currently for the proposed new enrollment?
25 A No, I do not.

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1 Q So you will create that --
2 A Create that.
3 Q -- and provide that to the hearing examiner?
4 A Yes. Yes.
5 Q Did there come a time when you were aware that the
6 State Department of Assessments and Taxation had listed your
7 property as a primary residential use?
8 A No, I wasn't aware of it.
9 Q But there did come a time when you were made aware
10 of that, correct?
11 A Yes.
12 Q And did you subsequently contact anyone to fix
13 that situation?
14 A Yeah, we contacted our permitting office, Park
15 and, somebody, yes.
16 Q You contacted the appropriate agency.
17 A Appropriate agency. Somebody, yes.
18 Q And did you pay back taxes as a result of that
19 erroneous designation of it as your primary dwelling?
20 A Yes.
21 Q Okay. And so has that issue been resolved at the
22 State?
23 A I'm not sure yet, but we already got the tax bill
24 to pay for it, and we did pay for it.
25 MS. WALKER: Okay. No further questions.

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1 MR. PRAGER: Mr. Wilholm, any follow-up?
2 MR. WILHOLM: Yes.
3 RE-CROSS-EXAMINATION
4 BY MR. WILHOLM:
5 Q On the hearing examiner's question of where people
6 live, I don't know if this is appropriate, and you can tell
7 me if it is, but --
8 MR. PRAGER: I'm sure Ms. Walker will make an
9 objection if it isn't.
10 BY MR. WILHOLM:
11 Q I would like to see a list of the people that you
12 have now and what address is the home address.
13 MS. WALKER: I will object to that, as to the
14 relevance. There is no requirement in the zoning ordinance
15 that the people live within a direct vicinity. I believe
16 what this is alluding to, and the traffic requirements that
17 make certain assumptions, based upon traffic engineering
18 standards. But there is no requirement that people live
19 within a half mile or any other vicinity of the center in
20 order to use it.
21 And these are matters of private contract, as
22 well. I mean, I don't think that the parents will really
23 appreciate their personal information being disseminated in
24 that way.
25 MR. PRAGER: Well, there is a way to get around

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1 that. We could get number of children from particular
2 streets. Let me think about that. For the moment, let's
3 keep that open. And you remind me, Mr. Wilholm, when you
4 conclude the testimony, that that's an outstanding request.
5 MR. WILHOLM: Yes, sir.
6 BY MR. WILHOLM:
7 Q On the, I'm not sure what exhibit number this is.
8 This is the I guess the actual application, petitioner's
9 first revised statement.
10 MR. PRAGER: That's I believe --
11 MR. WILHOLM: You were referring to that before.
12 MR. PRAGER: Yes. It's 22(a).
13 BY MR. WILHOLM:
14 Q 22(a). Okay. On page three of that document, it
15 says,
16 "The current center provides for three
17 children, each of them being present for a full
18 day, and six staff members, including the
19 director."
20 I guess I was thinking the staff, the director was going to
21 be there the whole day when I read that, but you're saying
22 that's not the case. Maybe I don't have a question there.
23 MR. PRAGER: Well, she's already testified she's
24 not there already.
25 MR. WILHOLM: She already testified. Anyway, the

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1 last is more of a comment to the hearing examiner. \$150, if
2 you assume worst case --
3 MS. WALKER: Objection. This is cross-
4 examination.
5 MR. PRAGER: Let him at least phrase it.
6 MR. WILHOLM: Just trying to get at the \$150, how
7 many over, people are paying over, and at a minimum, it's
8 like 30 people.
9 MS. WALKER: Objection.
10 MR. PRAGER: I'm not sure, I don't know what your
11 objection is, and I don't know what his statement is.
12 MR. WILHOLM: I'm just trying to get at --
13 MS. WALKER: It's not a question is what my
14 objection is. That he's here to question on cross-
15 examination of the witness, rather than make statements at
16 this time.
17 MR. WILHOLM: I'll pass.
18 MR. PRAGER: You'll pass. Ms. MacNab.
19 MS. MACNAB: I can pick up on that. It was said
20 that she paid, got \$150 a month for late fees. And if it
21 was \$5 for every time that was in, that would be 30 children
22 a month currently. So that would be --
23 MR. PRAGER: Well, no.
24 MS. WALKER: Objection.
25 MR. WILHOLM: That's the same question.

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1 MR. PRAGER: A, that's not a question and B,
2 that's faulty arithmetic, because, and that's why I couldn't
3 figure it out, because it's also a dollar for every minute
4 after the first five minutes. So it's hard to figure out
5 what that is. But do you have a question?
6 RE CROSS-EXAMINATION
7 BY MS. MACNAB:
8 Q I do, and that's again going back to these
9 pictures that they gave us. On 10(n) which is the cribs.
10 MR. PRAGER: Just a moment. Yes, 10(n).
11 BY MS. MACNAB:
12 Q I believe in 2010 that drop down cribs, in 2011,
13 cribs that had drop down rails were to be eliminated from
14 homes and daycares, but especially daycares.
15 MR. PRAGER: Is that a question?
16 BY MS. MACNAB:
17 Q My question is, why does this crib show that it
18 has a drop-down rail?
19 MS. WALKER: Objection. This has nothing to do
20 with the zoning of the site for a special exception.
21 MR. PRAGER: The objection --
22 MS. MACNAB: It does have to do with safety.
23 MR. PRAGER: The objection will be sustained.
24 This has to do with zoning, and not with the quality of the
25 daycare activity. So are there any other questions?

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1 MS. MACNAB: No, I will direct that to the State.
2 Thank you.
3 MR. PRAGER: Good. Do you have any follow-up
4 questions, based on those questions?
5 MS. WALKER: No. I don't believe so at this time.
6 MR. PRAGER: All right. I have none. It is now
7 10 after 12:00, or 12 after 12:00. Mr. Wilhelm, just give
8 me an estimate. Obviously, you can't predict about cross-
9 examination. How long do you think your testimony in chief
10 will be?
11 MR. WILHOLM: I, based on the last, on the
12 February 1st, I prepared another letter. I prepared to
13 present that. And then that will be all I have to say. So
14 I can read it or just present it.
15 MR. PRAGER: All right. And Ms. MacNab, how long
16 do you think your testimony will be?
17 MS. MACNAB: Probably not more than a half hour.
18 MR. PRAGER: You think it will be a half hour.
19 All right. I'll tell you what. We will have a 10-minute
20 recess at this point, and when we come back, Mr. Wilhelm,
21 you will testify, and then we'll see how long your testimony
22 takes and whether or not the cross-examination can be
23 completed at about 1:00. We'll adjourn for lunch.
24 MS. WALKER: If I could ask the hearing examiner
25 to maybe modify that schedule. To be frank, we received a

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1 letter from Mr. Wilhelm, which I believe is what he's going
2 to testify to, at like 7:30 last night. I don't know that
3 my traffic engineer has had a chance to fully review it, and
4 I certainly haven't had a chance to speak with him about it.
5 I'd ask, if that's the basis for his testimony, if
6 we could may be recess for lunch now, to allow me time to
7 talk with my traffic engineer. I can't really prepare for a
8 cross-examination on something that I haven't had the
9 opportunity to confer with my experts on, because he's
10 manipulated the numbers of the expert for the basis of his
11 testimony.
12 MR. PRAGER: All right. Well, I have not yet had
13 a chance to look at that exhibit either, so perhaps that's a
14 good idea. On the other hand, what about Ms. MacNab. There
15 is no particular order that we need to do this in. Are you
16 prepared to testify at this point?
17 MS. MACNAB: I have to go to the restroom.
18 MR. PRAGER: I understand, but we're going to do a
19 10-minute recess, and then we will start with you when we
20 come back. You may step back.
21 MS. WALKER: Thank you.
22 MR. PRAGER: All right. We'll be in recess until
23 about 25 after 12:00.
24 (Whereupon, at 12:13 p.m., a brief recess was
25 taken.)

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1 MR. PRAGER: All right. We're back on the record.
2 Ms. MacNab, would you come up here, please, and have a seat
3 in the front.
4 MS. MACNAB: Yes. Can I have some water?
5 MR. PRAGER: Yes. Ms. MacNab, would you raise
6 your right hand?
7 (Witness sworn.)
8 MR. PRAGER: And would you state your full name
9 and address?
10 THE WITNESS: My name is Janet DeLac MacNab, and I
11 live at 12435 Meadowood Drive in Silver Spring, 20904.
12 MR. PRAGER: And would you spell you middle name?
13 THE WITNESS: DeLac, D-E-L-A-C.
14 MR. PRAGER: All right. Ms. MacNab, you may
15 testify.
16 STATEMENT OF JANET D. MACNAB
17 THE WITNESS: My name is Janet DeLac MacNab, and
18 currently, I am a part-time ESOL teacher at Burnt Mills
19 Elementary School. ESOL is English as a Second Language. I
20 have students that are from K to fourth grade, and the
21 lesson plans that I make vary, so that a kindergartener who
22 is 4 years, 5 years old, has a total different lesson plan
23 than a child who is in the fourth grade or in the third
24 grade.
25 I am also a volunteer for the Montgomery County

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1 Park Police. I am, in the 80s, I operated a small daycare
2 in my own home. I was licensed by Montgomery County so I'm
3 also familiar with daycare. I felt that it was a privilege
4 to take care of my neighbors' children.
5 I opposed the ABC special exception because it is
6 a commercial venture disguised as a community daycare. The
7 testimonies of the patrons were outside the 20904 zone.
8 None of the parents were from my neighborhood. The 20904
9 zone has listed 26 daycare centers, and there were many
10 others that were not listed.
11 Although it may be true that the owner has a
12 waiting list, there are others in the area that are not
13 filled. She does not need to change our neighborhood from a
14 residential area to a commercial zone to benefit her.
15 I oppose also the increase in the parking space,
16 because it does not reflect the residential zoning of the
17 neighborhood. The sloping driveway, where more than --
18 because the driveway is sloping, more than several cars can
19 be seen from the road, which also indicates that it is a
20 business. The parking space will cause more runoff, and
21 that runoff will go into Northwest Branch.
22 In order to allow for the increase of children in
23 the play area, the time for each child is cut, so that
24 additional children would be allowed to play outdoors.
25 Children need time to play outside, especially on play

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1 equipment, to develop their muscles and release energy.
2 These necessary cuts would lessen the time for each child to
3 be playing outside.
4 The children are getting shortchanged once again
5 in order to have a commercial operation of 62 children. The
6 site is too small to adequately prepare for the children. I
7 am concerned that you are minimally meeting the
8 requirements. You are doing exactly what you need to do.
9 When I am told that a room can meet the
10 requirements by borrowing space from another room, it does
11 little to prove to me that it, in fact, does meet the
12 requirements.
13 Currently, with 30 children, the bathrooms seem
14 substandard. I have never seen this setup in any other
15 daycare. The kitchen is used as a pass through for 25
16 students and their staff to walk through and go to the
17 basement. This would indicate an unhealthy arrangement.
18 The house, which is small, is clearly zoned
19 residential, and it is chopped up to meet the minimal
20 requirements. If a student gives me the minimal
21 requirements in a class, then he gets the minimal grade of a
22 C or a D.
23 It is of concern that it is not limited to one
24 room meeting the minimal requirements, but that all rooms
25 are measured in such a way, so that they are not just barely

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1 making it.
2 I'm also concerned as to who prepares the food if
3 all the staff is working with the children. Because I heard
4 that you go, as a director, to other areas, you may not be
5 there when somebody is needing to do the food, or in
6 addition, someone would have to leave a classroom in order
7 to escort somebody out to the bus. That would leave
8 somebody with either too much children to watch, or them not
9 having supervision at all.
10 If you were to visit the homes in my neighborhood,
11 you would see beautiful homes and lovely yards, and gardens
12 filled with active wildlife. Most the neighbors have been
13 here since the seventies. There are young families moving
14 in with children, and several of these neighbors have
15 visited ABC in search of a daycare facility, but they either
16 felt unwelcomed or had concerns about the establishment.
17 Senator Karen Montgomery stated that she is in
18 opposition of the special exception since it is zoned in a
19 residential area. And I would like to read her letter.
20 MS. WALKER: Objection. It's in evidence already,
21 in the record.
22 MR. PRAGER: It's in evidence, but there is no
23 harm in having it read in the record. You may read it.
24 THE WITNESS:
25 "The area of Silver Spring where the ABC

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1 Learning Center is located, is zoned in a
2 residential neighborhood. An increase in the
3 maximum capacity of this child daycare facility
4 risks changing the nature of this neighborhood
5 into a commercial area.”
6 “Furthermore, 62 children under the age of 6
7 is far too many to be in such a small space, which
8 is 3,137 square feet. And it is located on a busy
9 road. I thank you for your consideration. Karen
10 Montgomery.”
11 I also want to read this statement from the
12 original hearing, which granted the very first exception.
13 “The site is to be limited to 30 to prevent” --
14 MR. PRAGER: I'm sorry. Let me interrupt you.
15 I'm not quite sure. You're reading from the transcript of
16 that hearing? Or are you reading from the decision in that
17 hearing?
18 THE WITNESS: The decision.
19 MR. PRAGER: All right. Thank you.
20 THE WITNESS: And the only thing I actually have,
21 that I have as a quote is that,
22 “Beyond 30 would damage the fabric of this
23 delicate neighborhood.”
24 And that's in the decision.
25 “Beyond 30 would damage the fabric of this

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1 delicate neighborhood.”
2 Please hear me, there are no other special
3 exceptions of this magnitude in this area. We want it to
4 stay that way.
5 MR. PRAGER: Are you finished with your statement?
6 THE WITNESS: I am finished with my statement.
7 MR. PRAGER: All right. Ms. Walker, you may ask
8 questions.
9 CROSS-EXAMINATION
10 BY MS. WALKER:
11 Q Ms. MacNab, could you just repeat for me your
12 address?
13 A Sure. It's 12435 Meadowood Drive.
14 Q And where, approximately how far are you from the
15 ABC Daycare, or excuse me ABC Learning Center?
16 A I'm between three and four blocks. I can walk it.
17 And I frequently walk it.
18 Q If you could, using the aerial photograph, just
19 show me where, exactly, you live? And I'll put that up for
20 you.
21 A Sure.
22 Q This is Exhibit No. 46.
23 A Here is Meadowood. I live here.
24 MR. PRAGER: I'm sorry, I can't see it.
25 THE WITNESS: I'm sorry. I'm sorry. My fault. I

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1 live right here. Meadowood.
2 MR. PRAGER: So you live south of the --
3 THE WITNESS: I do.
4 MR. PRAGER: -- south of the site by, you
5 estimate, about four --
6 THE WITNESS: I said three or four blocks. Going,
7 walking through the neighborhood, I would come up Meadowood,
8 across Shaw, and then enter Delford, which is right here.
9 So let's see, one, this would be two, three, I don't know,
10 this is not actually a street, so this would be three, and
11 this would be four. So you can't get to the back of it.
12 You can see --
13 BY MS. WALKER:
14 Q I'm sorry, why is that not a street, the one that
15 you just pointed to, the one that's labeled as --
16 A No.
17 Q -- that you just said this is not actually a
18 street.
19 A I mean, his is not, this is the same street, I
20 meant. This, when I walk on Shaw, I don't have to walk to a
21 different street. I'm still walking on Two Farm when I go
22 up here. So this is one, and then over one, two, and then
23 here to Delford, three, and there here is Delford, four.
24 Q But this is not on Delford. This is on Randolph
25 Road.

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1 A I know, but you can't, in order to get to
2 Randolph, I would have to walk out here and over here.
3 Q Which is out Gaffin Road and then out to Randolph,
4 for the record?
5 A But there is, there is a paper street right --
6 there is a paper street right here. So I could walk up
7 this. I think they are the third, no, they aren't -- I
8 could walk up the Shepherds driveway, I believe, to --
9 Q On their private property? Is that what you do?
10 Is that your testimony?
11 A No. I just happen to know, I know the people
12 along Delford.
13 Q Okay. But for --
14 MR. PRAGER: Have a seat, unless you're going to
15 ask her some more questions about that exhibit.
16 MS. WALKER: No, I will not ask about that
17 exhibit.
18 BY MS. WALKER:
19 Q So is it true that you are not within sight and
20 sound of the subject property?
21 A Oh, that's correct. Absolutely.
22 Q So can you tell me how you are differentiated from
23 the general public in this matter?
24 A I don't understand that. I am, I live in that
25 neighborhood.

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1 Q Okay.

2 A All right. And I enter at Hammond Place,

3 Hammonton place. All right. We don't want, I don't want,

4 and I know my neighbors don't want Randolph Road to look

5 like Rockville Pike.

6 Q I understand that. But that doesn't differentiate

7 you from anyone else who lives in the 20904 ZIP code, or

8 Montgomery County, or anyone who happens to drive by the

9 site. So I'm asking you to differentiate, what is your

10 basis for your opinion, so that you are different than the

11 general public at large that drive past this center?

12 A I am the Greater Colesville Civic Association

13 representative for that area.

14 Q So you are acting now on behalf of Greater

15 Colesville, because your --

16 A No. I am --

17 Q Would you please, so I can finish the question.

18 You testified in this matter that you are here as an

19 individual?

20 A I am here as an individual, who is a member of the

21 Meadowood neighborhood. And the Meadowood neighborhood has

22 its own blog.

23 Q Does the Meadowood neighborhood include this site?

24 A Yes, because I know people on the blog.

25 Q Can you delineate for me on the aerial photograph

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1 where is the Meadowood neighborhood that you're referring

2 to?

3 A No. I don't know it by memory.

4 Q But you feel that this site is definitely located

5 within that area?

6 A Because of people who are on the blog. I know

7 that Eve's on the blog, and she lives on Delford.

8 Q But this is, again, on Randolph, not on Delford.

9 A Right, but so I'm guess that it goes --

10 Q You're guessing. I'm asking. Do you know --

11 MR. PRAGER: Wait, wait. Let her finish. You're

12 guessing what?

13 THE WITNESS: Well, since I don't know the, I

14 didn't establish the blog. Okay. But the blog is bounded

15 by main streets. So I'm guessing that the main street that

16 it's bounded by is Randolph, New Hampshire, and I don't

17 know, and then I don't know what the street is that crosses

18 the other way. I just know, you know, the different

19 neighbors that are on the blog.

20 MR. PRAGER: All right.

21 BY MS. WALKER:

22 Q Okay, is that --

23 A It would really be, I mean, it would just be

24 guessing that it would stop at Delford and not go through to

25 Randolph. And I'm honestly saying, I don't know.

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1 MR. PRAGER: Ms. Walker.

2 MS. WALKER: Thank you, Ms. MacNab. I just, as a

3 procedural matter, wanted to object, make an objection to

4 the hearing examiner, to Ms. MacNab being considered a party

5 of record, as that term is interpreted under the laws of the

6 State of Maryland. I don't see where she's differentiated

7 herself in such a fashion as to be deemed to be afforded

8 party status before these proceedings. I know the hearing

9 examiner will probably reserve on that --

10 MR. PRAGER: He would.

11 MS. WALKER: -- but I just want to make my

12 objection noted in that regard.

13 BY MS. WALKER:

14 Q You also indicated during your testimony, Ms.

15 MacNab, that you live in the 20904 ZIP code, is that

16 correct?

17 A That's correct.

18 Q And you also, I believe, referenced that the

19 children who are using the center do not live in that ZIP

20 code. Is that correct? I don't want to put words in your

21 mouth. Is that a correct characterization of what you

22 stated?

23 A I do not know of any neighbors in the 20904 zone

24 that have their children in that --

25 Q Okay. It's fair to say that you don't know all of

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1 the neighbors in that zone, correct?

2 A Yes, that's correct.

3 Q And is there any requirement in the zoning

4 ordinance that the children who attend a daycare center live

5 within that ZIP code?

6 A No.

7 Q Do you know whether there is, I should say that?

8 A No, I do not know that there is, nor was I

9 stipulating that. I was stipulating the fact that ABC wants

10 to --

11 Q I understood. I heard your testimony.

12 MR. PRAGER: Let her finish.

13 MS. WALKER: I'm not sure that she's responsive to

14 the question.

15 MR. PRAGER: All right.

16 THE WITNESS: I'm sorry that you don't think I'm

17 responsive to the question. It seems to me that ABC is

18 situated in our neighborhood to be a daycare for our

19 neighborhood children.

20 BY MS. WALKER:

21 Q I'm not sure what the basis for your saying that

22 is. It's not part of my question and it's not part of the

23 applicant's testimony. So that's why I'm objecting to your

24 continuing to answer. It's not a personal thing at all.

25 It's just, I asked you a question about the 20904 ZIP code,

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1 and the requirements, and I'm just not hearing, I heard your
2 answer on that. So if I could please ask my next question.
3 MR. PRAGER: You may.
4 MS. WALKER: Thank you.
5 BY MS. WALKER:
6 Q With regard to, you talked about neighborhood
7 need, is there a requirement in the Montgomery County zoning
8 ordinance that neighborhood need be considered for a child
9 daycare center? Do you know whether there is?
10 A Well, I didn't know that I was supposed to be up
11 on the regulations. All right.
12 MR. PRAGER: Answer her question.
13 THE WITNESS: The answer is, no, I don't know.
14 But I will also say that I am not one who is totally up on
15 the regulations because that's not my area of expertise.
16 BY MS. WALKER:
17 Q Just so you understand, I'm only asking you these
18 questions based upon your testimony. So you testified that
19 there were daycare centers in the area that were not filled,
20 and that you understood ABC had a wait list. So that's why
21 I'm asking you about neighborhood need.
22 I just want you to understand, I'm not sort of
23 pulling these questions. I'm not trying to badger you in
24 any way. These are based upon what you testified to. So
25 that's what the basis for the question was. I just want you

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1 to understand that.
2 And are you, with regard to special exceptions,
3 and in fact this is a zoning proceeding, are you aware that
4 there is a legislative compatibility that's already pre-
5 determined to exist when a special exception is allowed in a
6 zone?
7 A I can't answer that question unless you phrase it
8 in such a way that you take out the legalese and speak it
9 into common English.
10 Q When the County Council determines that a special
11 exception is allowed in the zone, there is an analysis that
12 goes on. And I'm just asking whether you're aware of the
13 fact that that process exists, and that some special
14 exceptions are allowed in zones, and some are not, for
15 example.
16 A And what would the analysis be?
17 Q I'll withdraw the question.
18 MR. PRAGER: Okay.
19 BY MS. WALKER:
20 Q And are you aware, you testified regarding Ms.
21 Montgomery's letter which is in evidence in the record, are
22 you aware as to whether this area where this is located is
23 in her district?
24 A Yes, I am.
25 Q Do you believe this is in her district?

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1 A No. I know it isn't.
2 MS. WALKER: Okay. Thank you. No further
3 questions.
4 MR. PRAGER: You said, it is not?
5 THE WITNESS: It is not. I happen to see her at a
6 meeting and ask her, I was concerned about it. And she did
7 it because of the fact that she was a State Senator, and we
8 were both talking about children and daycare.
9 MR. PRAGER: Mr. Wilholm, did you have any
10 questions for Ms. MacNab? And yours have to be questions,
11 not statements and not leading questions.
12 MR. WILHOLM: I have no questions.
13 MR. PRAGER: You have no questions. All right. I
14 have a couple of, perhaps only one. You testified that cars
15 can be seen from the road. Other than your say so, do you
16 have any photographic evidence of that?
17 THE WITNESS: I do. I went to Google and found it
18 on Google Earth. So I didn't take these pictures.
19 MR. PRAGER: Would you show that picture to Ms.
20 Walker and to Mr. Wilholm? Okay. Do you have another copy
21 so I can take a look at it?
22 THE WITNESS: Can I look in my bag?
23 MR. PRAGER: Sure. Go off the record for a
24 moment.
25 (Whereupon at 12:44 p.m. a brief recess was

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1 taken.)
2 MR. PRAGER: All right. We're back on the record.
3 You didn't present this in your testimony, but I elicited
4 it. So we will mark this as Exhibit number, I believe it's
5 56.
6 MS. WALKER: And actually, I'm sorry, Mr.
7 Examiner, 56 was our revised photometric, so I think it's
8 57.
9 MR. PRAGER: 57. Thank you.
10 (Exhibit No. 57 was marked for
11 identification.)
12 MR. PRAGER: Now, you say you didn't take this
13 picture, is that correct?
14 THE WITNESS: No, sir. If you go to Google Earth
15 and you ask to see photos of the site, it can give you a 360
16 view.
17 MR. PRAGER: All right. And you have been by this
18 site before?
19 THE WITNESS: Yes.
20 MR. PRAGER: And can you state authoritatively
21 that this picture shows the building on the site for which
22 the petition has been filed?
23 THE WITNESS: I can.
24 MR. PRAGER: And we're talking about 170 --
25 THE WITNESS: It's 170 Randolph Road.

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1 MR. PRAGER: -- Randolph Road. And when did you
2 do this, this photo?
3 THE WITNESS: Last, I did the original date of the
4 hearing. It's not a, it's not a -- it's a file, meaning,
5 it's not taking it at that time. It probably took it, it
6 took it at an earlier time.
7 MR. PRAGER: Okay.
8 THE WITNESS: And you can see the trees are green.
9 So it's a stored photo. That's what I was trying to say.
10 It's a stored photo, so it's not a photo that was taken --
11 MR. PRAGER: So based on your familiarity with the
12 site, do you think it is a fairly accurate rendition of the
13 site as it currently is, leaving aside the difference in
14 spring or winter foliage?
15 THE WITNESS: Yes. It's a very good
16 representation.
17 MR. PRAGER: All right. Ms. Walker, do you have
18 any questions?
19 BY MS. WALKER:
20 Q Do you have any idea of the date, approximately,
21 of when the photo was taken from Google Earth? Maybe I
22 might have missed you saying that.
23 A No, I didn't say that. I said, I copied it off
24 the web.
25 Q But you don't know when it was taken?

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1 A No. But I'm sure you could go, I'm sure I could
2 go back and get that date and mail it to you.
3 Q All right. And also, do you know whether these
4 photos are taken from somebody standing on the street, or
5 whether there is any change in the position of the camera at
6 the time that they take these photos? For example, could it
7 be mounted on a pole, putting it higher than street view?
8 A It's my understanding they are done in a car.
9 Q But do you know whether the camera is, say,
10 located in the passenger seat, or located on a pole above
11 the vehicle?
12 A I do not know. I'm not from Google Earth.
13 MS. WALKER: I'm going to object, for the record,
14 to this exhibit.
15 MR. PRAGER: Well, the exhibit will be what it is.
16 Your objection is overruled. Mr. Wilholm, did you have any
17 questions, further questions?
18 MR. WILHOLM: No, sir.
19 MR. PRAGER: All right. It's now 10 of 1:00. We
20 will resume at 1:30. Mr. Wilholm will be testifying at that
21 point.
22 (Whereupon, at 12:48 p.m., a luncheon recess was
23 taken.)
24
25

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AFTERNOON SESSION

1 AFTERNOON SESSION
2 MR. PRAGER: All right. We will be on the record
3 now. Mr. Wilholm, you were to testify at this point. Would
4 you come up here, please. Will you raise your right hand,
5 please?
6 (Witness sworn.)
7 MR. PRAGER: Please state your full name.
8 STATEMENT OF DANIEL WILHOLM
9 THE WITNESS: I'm Daniel Wilholm. I live at 904
10 Cantor Road in Colesville.
11 MR. PRAGER: All right. And you have signed a
12 couple of letters stating that you are here as the president
13 of the Greater Colesville Citizens Association, is that
14 correct?
15 THE WITNESS: Yes, sir.
16 MR. PRAGER: And just before I let you testify,
17 could you tell me a little bit about the Greater Colesville
18 Citizens Association and what authorization they gave you to
19 testify in this case?
20 THE WITNESS: I'm the president. You know, we --
21 well, before I get into that, our boundaries, we go to the
22 Northwest Branch on here to Paint Branch on the east side,
23 up to just north of the ICC and down to the south below this
24 map. So we're 3,500 households in the area. It covers
25 everything on this map.

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1 MR. PRAGER: And what map are you talking about?
2 THE WITNESS: That's Exhibit --
3 MS. MACNAB: 48.
4 THE WITNESS: What is it?
5 MS. MACNAB: 48.
6 THE WITNESS: 48. You know, the Greater
7 Colesville Citizens Association executive committee meets
8 once a month, and we talked about this and the board voted
9 to oppose this special exception.
10 MR. PRAGER: All right. And they designated you
11 as the representative to appear, is that correct?
12 THE WITNESS: Yes, sir.
13 MR. PRAGER: All right. You may testify.
14 THE WITNESS: The first thing I'd like to start
15 off was to clarify, just for the record, Karen Montgomery,
16 Senator Karen Montgomery, is in District 14, which straddles
17 our boundaries. South of Randolph Road is in District 20.
18 North of Randolph Road is in District 14. So Karen
19 Montgomery represents the areas just directly across the
20 street from the subject property. So granted, she's not in,
21 technically in the area, but she's kind of represents our
22 area.
23 I provided an earlier letter on January 21st,
24 which is Exhibit No. 35. Based on the testimony of last
25 month, on February 1st, I've written a new letter, which

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1 I've given a copy to the hearing examiner and I e-mailed it
2 to the applicant. And I'd like to go over that.
3 MR. PRAGER: All right. And this is a letter that
4 you handed me a few moments ago?
5 THE WITNESS: Yes, sir.
6 MR. PRAGER: And I believe you submitted
7 yesterday, is that correct?
8 THE WITNESS: I'm formally submitting it now, sir.
9 MR. PRAGER: Pardon?
10 THE WITNESS: I'm submitting it currently, now.
11 You hadn't seen this before this.
12 MR. PRAGER: Well, I had gotten something --
13 THE WITNESS: I e-mailed it yesterday.
14 MR. PRAGER: Yes, to Talon Forbes yesterday.
15 THE WITNESS: Yes, sir.
16 MR. PRAGER: And this is the same letter?
17 THE WITNESS: Yes.
18 MR. PRAGER: Except this version that you just
19 handed me, are there any differences other than the fact
20 that this version is signed and he one that you e-mailed
21 yesterday was not?
22 THE WITNESS: The only other difference is on, I
23 forgot to, I had the word project, as opposed to projected,
24 about halfway down on the first page.
25 MR. PRAGER: All right.

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1 THE WITNESS: That's the only other difference.
2 MR. PRAGER: All right. Well, we will name this
3 or label it, rather, as Exhibit 58. And we'll substitute
4 that for what you submitted yesterday on the understanding
5 that those are the only two changes, the addition of E-D to
6 projects, and that this version is signed and the other as
7 not. Do you have any objection to that substitution, Ms.
8 Walker?
9 (Exhibit No. 58 was marked for
10 identification.)
11 MS. WALKER: No, sir.
12 MR. PRAGER: All right. Good. Go ahead, Mr.
13 Wilholm.
14 THE WITNESS: The first area is, on the traffic,
15 we feel there is a traffic safety issue with the U-turns on
16 Randolph Road, especially at Oxley Road. The traffic found
17 in the Lenhart traffic consultant report, Exhibit No. 43(g)
18 is based on the peak period from both the morning and
19 evening.
20 That report is primarily aimed at addressing the
21 LATR and PATR requirements. Those requirements don't
22 address the safety of U-turns. The projected increase in U-
23 turns for both morning and evening are shown in the attached
24 table. And there's a table here where I show the number of
25 people in the building, staff and children, number of auto

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1 trips, based on testimony we've heard, and the day and what
2 the future number of U-turns, both morning and evening. And
3 this is projected reasonable assumptions, which I'll get
4 into.
5 The turns occur, U-turns occur more than just the
6 peak one hour. They occur as a minimum over the two hours,
7 and the children come in over more than two hours of the
8 overall, a little bit longer period of time.
9 The numbers in the table are consistent with Mr.
10 Lenhart's numbers on page nine of his report, where he had
11 13 parents leaving the site during the peak one hour. Well,
12 I have 26 parents leaving over two hours, so that's
13 basically double the time, double the number of parents.
14 This is exactly half of my 26, which covers the entire
15 morning.
16 The table is based on reason assumption that half
17 the parents make U-turns in the morning, half in the
18 afternoon. When U-turns are required for either morning or
19 evening, two U-turns are required, one coming in, and one
20 going out.
21 The accident data from the State Highway
22 Administration, Exhibit No. 41, shows in the transmittal
23 letter, that 26 police reported accidents occurred over the
24 three-year period ending in 2011. And this large amount was
25 over a very short distance between Hammonton Place and

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1 Locksley Road. And this, in the letter, I estimated this is
2 two-tenths of a mile. And I kind of clocked it this morning
3 and it was about a quarter of a mile. So it's hard to
4 measure such a short distance in a car.
5 As we all know, police tell the public not to
6 report small accidents, so the number of total accidents in
7 this short stretch is much greater. The last page of the
8 State Highway Administration report shows 15 of these
9 reportable accidents occurred at Locksley. Of these, all of
10 them could have related to U-turns except those with an
11 animal or a bike, of which leaves 13.
12 Mr. Lenhart agreed the accident coding is not
13 precise, even assuming the police officer assessment of the
14 cause of the accident was precise, which we would not expect
15 to be. The residents of Colesville feel that 13 reportable
16 accidents, and an unknown number of unreported accidents at
17 Locksley over a three-year period is excessive.
18 Line of sight it good at this point, so the
19 question is, what is causing them? We believe that the
20 existing large number of U-turns at this intersection is the
21 primary cause. Any driver knows that U-turns take longer
22 than a left turn, and once the turn is made, it takes some
23 distance before the speed can be increased; thus is more
24 likely that a U-turn will result in an accident than normal
25 left turns or through traffic.

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1 The primary people making U-turns on Locksley will
2 be those entering from 170, Randolph Road. The proposed
3 increase in children and staff will lead to more U-turns.
4 We have a similar situation at two other intersections in
5 Colesville. One is at New Hampshire and Wolf Drive, which
6 is by the post office, if you know the area. Many people
7 making the U-turn from southbound New Hampshire, and at the
8 same time cars are pulling out of Wolf Drive and turning
9 right to go on the red to go northbound.

10 There are frequent near misses, since the drivers
11 making the turn on red can't tell until it is almost too
12 late that the people from southbound New Hampshire are
13 making a U-turn rather than a left turn. The same situation
14 occurs from westbound U-turns on Randolph with the
15 northbound U-turns from New Hampshire.

16 The second subject is setback waivers. GCCA still
17 opposes the side yard waiver for the parking because it
18 would increase the amount of noise and fumes at 160 Randolph
19 Road, and elsewhere in the neighborhood.

20 I pointed out in the aerial photo at the last, on
21 February 1st, from the Planning Department Exhibit No. 49,
22 that three cars are currently parking facing the back of the
23 property rather than facing the wooden fence on the east
24 side. Mr. Powell confirmed that the condition shown in the
25 photo is still the current situation. With the new special

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1 exception the parking lot will be configured so that these
2 three cars will face the wooden fence.

3 Also from the photo, at least six cars currently
4 park facing the fence. This is somewhat different
5 impression than was presented by the applicant where they
6 were implying 10 spaces currently exist and face the fence.
7 The effect of the change in orientation, increased number
8 will cause more noise and fumes to spill over the property
9 line and into the pool and house which, according to the
10 photo, is about 30 feet from the fence.

11 Also, if the application is approved, we also urge
12 that the entire parking lot be brought up to current setback
13 standards. It is common practice to require the entire area
14 to be brought up to current standards when changes are made.

15 The additional noise and exhaust fumes from the
16 parking will mostly impact the residents at 160 Randolph
17 Road, but will also affect the entire neighborhood. We also
18 expect that the additional noise and fumes will decrease the
19 value of not only 160 Randolph, but also the other immediate
20 neighbors.

21 Having 21 parking spots and that many vehicles
22 during the day is such a scale that it presents a commercial
23 character, not a residential character to the property.
24 This property is zoned residential, and the surrounding
25 properties in all directions are also residential.

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1 The additional parking will increase the amount of
2 storm water runoff. This additional runoff will likely
3 impact downhill properties. The increased amount of runoff
4 is a problem that often comes before GCCA when new
5 development is approved. And this is a thing that, I've
6 been involved with GCC for 30 years, and this is a common
7 problem that we have.

8 The testimony on the lights we covered earlier
9 today. The reduction to nine feet is a good step. We would
10 like to see it no more than eight feet on the poles, and
11 request that that be changed and if necessary we can agree
12 with more poles.

13 We disagree with the testimony concerning interior
14 spaces relate to State standards. The applicant has defined
15 specific areas of the house for each age group. That is
16 appropriate to do in terms of matching the toys, the
17 furniture, to the age group, and also to match the age group
18 to the required number of staff to be with them.

19 Since there are very defined areas in each age
20 group, at least 35 square feet per child must be provided
21 for each area. Areas B and E don't satisfy that requirement
22 based upon how the applicant is using the space. Extra
23 space in one area is not available for the use in another
24 area.

25 And I go through here and also contend that the

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1 cribs, while they've got wheels on them, they, I don't
2 consider them as particularly mobile in the sense that they
3 make the space not available for daily activities.

4 Lastly we noticed from the testimony of those who
5 have children attending a daycare facility, none of them
6 live within the area defined by Mr. Powell as a local
7 neighborhood. Actually, none of them live within GCCA
8 boundaries, which is a much larger area. The closest parent
9 was about four miles away. The point is that the facility
10 is not serving the needs of the local community.

11 We also point out that the applicant does not live
12 in the house, or even in the community. Often, a condition
13 of special exception is that the owner must live in the
14 house. This means that she is not using residential
15 building -- this means that she is using a residential
16 building for a commercial use, which we don't view as being
17 compatible with the residential neighborhood. So thank you
18 very much.

19 MR. PRAGER: Would you have anything to add to the
20 letter?

21 THE WITNESS: Some of my points the applicant
22 spoke at this morning saying, if the state comes in and
23 finds that the square footage is not sufficient, she would
24 reduce the number of kids in that area, which is a good
25 thing for her to say. I appreciate that. That's, I think,

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1 all I have.

2 MR. PRAGER: All right. Do you have any cross-

3 examination?

4 MS. WALKER: Just a few questions. Hopefully not

5 too many for Mr. Wilholm. He's been so nice through all

6 these proceedings, I should note.

7 CROSS-EXAMINATION

8 BY MS. WALKER:

9 Q I'm just looking at your chart, and I'm just

10 trying to understand a little bit more about where your

11 numbers are coming from. So we're just going to go through

12 this Exhibit No. 58, and the chart that's shown on the first

13 page. You've got staff listed as four, and children listed

14 as 26. And I'm just trying to figure out, can you tell me

15 where those numbers came from?

16 A Actually, the number of people is six and 30, and

17 the applicant testified that two of her staff take public

18 transportation. So from a U-turn standpoint, they're not

19 autos. They don't count. So I took six minus two, and

20 that's how I got to the four.

21 Q So that's how you got to the four. What about the

22 26?

23 A It's 30 students now, and I think there's a Park

24 and Planning, to some extent, he or she said there's some

25 siblings going. So the number of cars would be less. And I

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1 came up with 26 based on what I heard her say.

2 Q Okay. But you don't have any formula or any

3 guidelines or anything like that, that you used to come up

4 with these numbers?

5 A No, just kind of what I heard.

6 Q And you don't know if any of the children take

7 public transit, for example, or anything else?

8 A I thought I heard her, or somebody say they don't,

9 none of the kids take public transit, only two of the staff

10 members.

11 Q But you're basing this on the anecdotal, whatever

12 you heard from the applicant? I just want to be clear.

13 A Between that and the written testimony, yes.

14 Q Okay. And then the same, also, for the looking at

15 your expansion, using the same ratio, and not even your

16 nomenclature?

17 A The same ratio. I assumed the same condition,

18 same ratio numbers would apply so that, you know, you end up

19 with less people driving because you've got a bigger sample

20 but the same ratios.

21 Q Okay. And how is this consistent with Mr.

22 Lenhart's report?

23 A His report was focusing on the one peak hour. This

24 is focusing, like in the morning and one hour at night.

25 This is focusing on two hours, or maybe a little bit more.

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1 Q Okay. And why did he use a peak hour versus a

2 more lengthened analysis? Do you know?

3 A Well, he was addressing LATR and PAMR standards

4 which are focused on one hour. So he did, in my opinion, did

5 the correct thing. I'm not objecting with his numbers, I'm

6 just saying, he's focused on one hour. I'm focusing on two

7 plus.

8 Q Okay. But for the purposes of what we're required

9 to do as an applicant for a special exception, are we

10 required to do the peak hour analysis, or are we required to

11 do more than that?

12 A I'm addressing this from a safety standpoint, not

13 a traffic engineering, not a volume issue.

14 Q Okay.

15 A So I'm not objecting to his volume calculations.

16 Q Okay. So I think then that's a no. Is that

17 correct?

18 MR. PRAGER: Before you answer that, I have

19 forgotten what the question is. What are you asking him to

20 respond yes or no to?

21 MS. WALKER: I just want him to, are we required

22 to use a two-hour standard or a one-hour standard in

23 evaluating the peak traffic?

24 THE WITNESS: Well, peak traffic, by definition,

25 you're one hour.

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1 BY MS. WALKER:

2 Q One hour. Okay.

3 A But also the requirements, they have to be, I

4 guess the hearing examiner or somebody has got to find, from

5 a safety standpoint. And this is trying to address the

6 safety standpoint.

7 Q Okay. Bear with me just one moment. You make a

8 statement at the very bottom of page one of your letter

9 which is Exhibit No. 58, that the table is based upon a

10 reasonable assumption. Obviously, that's supposed to be

11 that, there's a typo there, that half the parents make U-

12 turns in the morning, and half in the afternoon. Is that

13 based upon some distribution?

14 A No, my assumption is, the people are going to turn

15 one period or the other, and I just split them half in the

16 morning, half at night. It could be two-thirds in the

17 morning or one-third at night, or vice-versa. In terms of

18 total number of U-turns, it doesn't make a difference where

19 you assume they are making U-turns, you know, what period of

20 the day they are making U-turns.

21 Q So it doesn't matter when they make the U-turns?

22 A Well, they're going to make so many U-turns during

23 each work day, each Monday through Friday. They're going to

24 make, the 58, the bottom line is, the 58 U-turns total, 58

25 times two, 58 morning and night, is what I have. But it

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1 could be a different mix, but it's going to be the sum of
2 those two numbers.

3 Q But you're assuming that people are going in the
4 exact same direction that they come and leave in, correct?

5 A Yes, I am.

6 Q So if somebody, if say one other parent were to
7 pick up versus drop-off, which that schedule were to change,
8 which we heard people testify that it's not always the same
9 person that picks up and drops off, wouldn't that change
10 your analysis here?

11 A It, for one individual person, it may make a
12 difference, may or, but some other people may do the reverse
13 and may have four U-turns as opposed to no U-turns. So I
14 would think for this large number of people that the
15 averages are going to work out to the numbers that are shown
16 here.

17 Q Okay. And looking at the accident data that was
18 submitted by Mr. Lenhart as part of his testimony, looking
19 now at the Exhibit number, this was part of Exhibit No. 41.

20 MR. PRAGER: Just a moment. Go ahead, Ms. Walker.

21 BY MS. WALKER:

22 Q Thank you. You're referring, in your letter, to
23 the accident data. I don't expect you to have memorized it.
24 I would be happy to --

25 A Your assumption is correct. I did not memorize

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1 it.

2 Q -- show it to you to ask my question. It would
3 not be fair otherwise. And just for the record, showing Mr.
4 Wilholm a copy of Exhibit No. 41, which is the document
5 titled, State Highway Administration, Office of Traffic and
6 Safety. And this is a line diagram that we are looking at
7 here. Is that correct, Mr. Wilholm?

8 A Yes.

9 Q Okay. And for the purposes of your U-turns, you
10 are looking at the largest block, I'll say, of vehicles,
11 which is towards the left hand side of the page at Locksley
12 Drive, is that correct?

13 A Yes.

14 Q Okay. And you did not look at any of the other
15 intersections in your written testimony or your oral
16 testimony, correct?

17 A No, just at that intersection.

18 Q Okay. And looking at this intersection and
19 looking at the data that's been provided by the State
20 Highway Administration, and Mr. Lenhart went through this as
21 well in his testimony, there are various codes, would you
22 agree, that are coded on this sheet that explain the basis
23 for an accident?

24 A Yes, and I appreciate his education, because I
25 learned a lot from his testimony.

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1 Q He did do a very nice job, as did the hearing
2 examiner in questioning him.

3 A Yes. I learned a lot from the discussion.

4 Q So looking at the codes that are here, there are
5 various, you know, for example, A and G at the bottom
6 translates to, you know, angle. Then there's RE, rear end.
7 So you seem to make an assumption in your letter, and
8 correct me if I am wrong because I didn't have a lot of time
9 with it, but you seem to make an assumption that almost all
10 of these trips are U-turns. But I'm not sure where that
11 assumption comes from.

12 A Well, there will be, they will be attributed to U-
13 turns. We don't know --

14 Q How do you know, if it's a rear end that it's a U-
15 turn?

16 A We don't know.

17 Q And what about an angle?

18 A An angle could be a U-turn or it could be actually
19 making a left. The RE could be the same thing. The one it
20 wouldn't be is a bike, and there's a cat.

21 Q What about a fixed object?

22 A It depends on what, that could have been a car
23 stopped.

24 Q Well, that would be a rear end if it were,
25 wouldn't it?

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1 A I don't know how they code. Mr. Lenhart would
2 have to answer that.

3 Q Okay.

4 A There's also, somewhere in here there is animal,
5 but anyway, I excluded that one, too.

6 Q Okay. But you're just making the assumption then,
7 as you state in your letter, that these are primarily U-
8 turns.

9 A Primarily U-turns.

10 Q They are left, and you, and I should note, down
11 here, I think we can agree, there is a separate U-turn
12 category on this. Is that correct?

13 A Yes, but there is nobody, on that, there's no U-
14 turns listed.

15 Q Correct. There are no U-turns listed on the
16 accident report.

17 A I'm assuming a lot of those -- but we don't know
18 for sure. It's a guessing game, educated guess.

19 Q I'm just asking, you do agree, though, that there
20 is a U-turn category on here?

21 A Yes.

22 Q And none of these trips are listed at U-turns at
23 Locksley at the intersection that you've identified that
24 you've analyzed?

25 A That's a correct statement.

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1 Q Thank you. Bear with me one moment, Mr. Examiner.
2 MR. PRAGER: Yes.
3 BY MS. WALKER:
4 Q In your discussion in your letter and in your
5 testimony you talked about the setback waiver that's being
6 requested by the applicant. I believe, based upon your
7 testimony, and correct me if I am wrong, that almost all the
8 impacts, you're saying, would be to the adjoining property
9 owner at 160 Randolph Road?
10 A That would be the primary one, because they are
11 much closer than the other property owners. But the others
12 would be affected, but to a much lesser extent.
13 Q Okay. And are you aware whether that property
14 owner has submitted a letter in support of this proposal?
15 A He has.
16 MS. WALKER: Okay. Okay. That's all I have.
17 Thank you.
18 MR. PRAGER: Mr. Wilholm, I have a couple of
19 questions for you. Your testimony is based on your general
20 knowledge of traffic, sort of like my general knowledge of
21 traffic, which is no to have much in the way of expertise.
22 Do you have any expertise in traffic studies?
23 THE WITNESS: I'm not a licensed traffic engineer,
24 but I've dealt a lot with traffic studies for 20-30 years,
25 20 years. I've been involved in task forces dealing with

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1 transportation, largely, some of them dealing with traffic
2 experts with a group of us with traffic experts. I'm also
3 involved in quite a few other transportation stuff at this
4 point.
5 MR. PRAGER: I don't want to get too deeply into
6 your background, but just explain a little bit more about
7 the, what your transportation knowledge is based on
8 specifically.
9 THE WITNESS: My work, I actually get paid as an
10 engineer and for communications. A lot of the technology
11 and mathematics for that, and the mathematics for
12 transportation are the same. But I've gone through, studied
13 the highway capacity manual, at least with the LATR and I've
14 testified and been involved with the planning staff a lot on
15 LATR and PAMR and that kind of stuff.
16 MR. PRAGER: How many times have you testified in
17 this type of hearing, and this type of hearing being a
18 zoning hearing, not necessarily a special exception hearing,
19 would you say?
20 THE WITNESS: This is only my second time with a
21 special exception in 30 years.
22 MR. PRAGER: No, but my question was broader than
23 that. How many times in zoning cases?
24 THE WITNESS: Well, zoning cases or subdivision
25 plans, a lot of it's with subdivision plans, site plans,

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1 things like that, probably once a quarter type of thing.
2 MR. PRAGER: All right. For how many years?
3 THE WITNESS: Probably on this one, say 25 years.
4 MR. PRAGER: All right. Now, there's an
5 ambiguity, or at least to me there is an ambiguity. And the
6 final sentence on page one, it says, when U-turns are
7 required for either morning or evening, two U-turns are
8 required for each trip, one going to the center and one
9 leaving. You're assuming that somebody is coming from the
10 west, does a U-turn, goes east, and then does another U-turn
11 to return to the west. Is that correct?
12 THE WITNESS: Yes. That's a correct assumption.
13 MR. PRAGER: And if somebody is coming from his or
14 her home and turns, coming from the west, turns to the east
15 and goes back home, how is that reflected in your analysis?
16 THE WITNESS: I'm assuming they're continuing in
17 the same direction they were going to get to the center.
18 MR. PRAGER: And what do you base that assumption
19 on?
20 THE WITNESS: Because most of the time, the people
21 are going to work or coming from work. So my assumption,
22 which is an assumption, is that they are going to continue
23 whichever direction they are traveling.
24 MR. PRAGER: But --
25 THE WITNESS: It's possible that they may not do

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1 that, as you're questioning. It's possible they may come in
2 one way and go back out the same way.
3 MR. PRAGER: All right. And would that change
4 your, if we could determine the traffic patterns, would that
5 change your opposition if it turned out that, in fact, many
6 of the people head back the way they came? Would that make
7 a difference in your opposition to this, and the basis of
8 your opposition to this petition?
9 THE WITNESS: It would lower the numbers, you
10 know, if there was a significant number of them. But I
11 would still be opposed to, I still think safety is a
12 concern.
13 MR. PRAGER: All right.
14 THE WITNESS: And you know, 26 traffic accidents
15 and reportables, we think is excessive for even today.
16 MR. PRAGER: I'm not sure I fully understand the
17 import of your statement about the cars facing the fence as
18 opposed to facing the back. You seem, and I don't know what
19 the number is, and I'm not going to pull it out, the exhibit
20 number, but as you know, there are a certain number of
21 spaces already allowed to face the fence, and they are now
22 going to be building to face, spaces that will face the
23 rear, and also additional spaces that will face there. What
24 was the import of your statement that you found some cars
25 already facing the back?

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1 THE WITNESS: What I was, and the testimony that
2 was presented, I believe that 11, I believe that it's 11
3 cars currently face the fence, when the actual number is
4 more like six or seven cars face the fence, and the three
5 point to the back. So there is less space, less number of
6 cars facing the fence.
7 So when they need to reconfigure the parking lot,
8 they need to reconfigure more of the parking lot than they
9 would if all 11 of them were facing the fence up front.
10 MR. PRAGER: All right. You testified about the
11 lighting, and you heard this morning, and perhaps have had a
12 chance to look at the proposed new lighting plan, which
13 reduces the number of lights on the building from seven to
14 five, and reduces the size and I think the number of lights
15 at the parking lot and driveway, reducing the light
16 standards to eight feet. Does that change your objection to
17 the lighting fixtures?
18 MS. WALKER: Excuse me, Mr. Examiner, they are
19 nine feet.
20 MR. PRAGER: I'm sorry. Nine feet. I take it
21 back.
22 THE WITNESS: I was going to say that. The number
23 or reduction of lights on the building is great. You know,
24 I was proposing, I wasn't aware that the applicant was going
25 to come in and say nine feet. That's a massive, in my

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1 opinion, a big improvement over, it started with 14 feet,
2 then I think it went to 12 feet, now nine feet. That's all
3 improvement. So it's getting pretty close to my eight feet.
4 So I'm not sure one foot is going to make that much
5 difference.
6 MR. PRAGER: All right.
7 THE WITNESS: But the bottom line is, it needs to
8 look residential.
9 MR. PRAGER: Right. And you would think that, in
10 your estimation, eight feet looks more residential than nine
11 feet, is that correct?
12 THE WITNESS: It's more residential than 12 feet
13 or 14 feet. I'm not sure --
14 MR. PRAGER: Yes, but --
15 THE WITNESS: I'm not sure I'm going to, nine feet
16 would be acceptable, because I'm not sure I'll be able, or
17 anybody else will be able to make a distinction between nine
18 feet and eight feet.
19 MR. PRAGER: All right. You heard the testimony
20 last week about, I believe it was, I hate to say this, I
21 apologize to everybody, but I'm getting Mr. Powell and Mr.
22 Howell --
23 MS. WALKER: I'll accept the responsibility for
24 that one, Mr. Examiner. I think that's my fault.
25 THE WITNESS: You need to pick one name for all

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1 the different ones next time.
2 MS. WALKER: Yes.
3 MR. PRAGER: I believe it was Mr. Powell, and
4 perhaps you can enlighten me, who testified about the number
5 of special exceptions in the area.
6 MS. WALKER: Yes. That is correct.
7 MR. PRAGER: Now, since we have Exhibit No. --
8 MR. WILHOLM: Janet, could you read the exhibit
9 number, or somebody.
10 MS. MACNAB: Sure.
11 THE WITNESS: No, the one you have posted.
12 MS. MACNAB: Forty-eight.
13 MR. PRAGER: Number 48, Exhibit No. 48, which has
14 a number of pink areas, which I believe he testified were
15 the special exceptions.
16 THE WITNESS: That's what I recall him testifying.
17 MR. PRAGER: Okay. Do you, by any chance, given
18 your role, and this is not an examination of you, but do you
19 know what those special exceptions are that exist currently
20 in that area?
21 THE WITNESS: I would guess, you know, dog
22 grooming. I don't know for a fact, but there's a dog
23 grooming, doctor's offices, things like that.
24 MR. PRAGER: You don't know for a fact.
25 THE WITNESS: No, sir.

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1 MR. PRAGER: And I noticed that in your letter,
2 you do not, you being the Civic Association, do not complain
3 about the number of special exceptions in the area, is that
4 correct?
5 THE WITNESS: I did not comment on that subject.
6 MR. PRAGER: You didn't comment. So can I assume
7 that lack of comment means that there was no particular
8 objection based on --
9 THE WITNESS: I didn't think there was enough of
10 them out there to meet the standards of the zoning ordinance
11 to be an excessive quantity.
12 MR. PRAGER: All right. When you say, you didn't,
13 that's in your role as the president --
14 THE WITNESS: President, yes, sir.
15 MR. PRAGER: -- representative --
16 THE WITNESS: Yes, sir.
17 MR. PRAGER: -- of the Colesville Community
18 Association -- Citizens Association. Sorry. Now, you saw
19 Ms. MacNab's photograph. It is introduced as Exhibit No.
20 57.
21 THE WITNESS: Yes, I --
22 MR. PRAGER: Can you testify as to the accuracy or
23 validity of that photo? Would you estimate, based on your
24 experience, that that photo accurately shows what would be
25 seen by a car or pedestrian coming by that area?

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1 THE WITNESS: Yes, I think that's an accurate
2 representation.
3 MR. PRAGER: All right. Do you have anything
4 further to say --
5 THE WITNESS: No, sir.
6 MR. PRAGER: -- as part of your testimony? Ms.
7 Walker, based on my questioning, do you have any?
8 MS. WALKER: Just one question.
9 BY MS. WALKER:
10 Q Have you previously testified as an expert with
11 regard to transportation planning or traffic review?
12 A No, not as an expert.
13 Q You testified that you had testified about once a
14 quarter, approximately, before other administrative bodies.
15 Is that in your capacity as GCCA president?
16 A That, or I'm also transportation chair of the
17 committee for Montgomery County Civic Fed, and I'm also
18 transportation working group for Committee for Montgomery.
19 So I'm in the transportation. And lastly, I'm on the County
20 Executive's Steering Committee on Transit. So I'm on that
21 as well.
22 Q So it's fair to say you have an interest in
23 transit, even though you don't necessarily have an expertise
24 in that area?
25 A I don't have the certificates and stuff, formal

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1 training, but I consider myself knowledgeable on the
2 subject.
3 MS. WALKER: Fair enough. Nothing further.
4 MR. PRAGER: All right. You may step down, Mr.
5 Wilholm. Ms. Walker, do you have any rebuttal testimony?
6 MS. WALKER: I do. I have two witnesses I'd like
7 to recall for the purposes of rebuttal. The first would be
8 Mr. Lenhart.
9 MR. PRAGER: All right. Mr. Lenhart. Mr.
10 Lenhart, you've previously been sworn. Your testimony at
11 this point will also be under oath, and you will also be
12 subject to the rules of perjury.
13 THE WITNESS: Okay.
14 DIRECT EXAMINATION
15 BY MS. WALKER:
16 Q Mr. Lenhart, have you had the opportunity to
17 review the letter submitted from Greater Colesville Citizens
18 Association dated February 10th, 2013, known as Exhibit No.
19 58 in this case?
20 A Yes, I have.
21 Q Okay. And you've had the opportunity to review
22 that and compare it with your traffic study that was
23 prepared in conjunction with this case?
24 A Yes.
25 Q Which you previously testified to?

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1 A Yes.
2 Q And with the idea being to compare the two, the
3 table that's submitted on Mr. Wilholm's Exhibit No. 58 on
4 the first page, is that consistent with your traffic study?
5 A It is not.
6 Q And can you briefly explain why it is not
7 consistent?
8 A Yes. For a number of reasons, but first, in
9 looking at the existing, he has two scenarios, one with the
10 existing staff and children, and the projected auto trips,
11 and then one with the expanded staff and children, and the
12 projected auto trips. As testified by Mr. Wilholm, he was
13 attempting to come up with a two-hour study period, looking
14 at the traffic volumes to and from the site.
15 MR. PRAGER: I think he said two hours or more,
16 was his testimony, I believe.
17 THE WITNESS: Okay. So in looking at the
18 existing, as Mr. Wilholm indicated, I think he had credited
19 the staff by two people, in consideration of the fact that
20 they would take transit. So they had four auto trips for
21 staff, and then 26 auto trips for the children. But there
22 was no evidence to indicate how he came up with that 26
23 other than what appeared to me as kind of picking the number
24 out of the air that seemed to fit my existing traffic
25 volumes and the traffic impact study on page 9, times two.

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1 So if you take page 9 from my traffic impact
2 study, you can see that there are 13, I'm sorry, yes, 13
3 right turns out of intersection number two, which is the
4 driveway to the ABC daycare center. So 13 in one hour. It
5 appears that he simply just doubled it to get how many trips
6 you would have out in two hours.
7 And then kind of back that into the number of
8 children, equating to 26 auto trips, which is not correct
9 because he's, the 13 in my report includes staff and
10 children. And he's counting them separately. Staff is four
11 and children is 26. So he's over-counting the number of
12 trips, number one.
13 Number two, coming up with a random assumption
14 that 30 children translates into 36 auto trips over two or
15 more peak hours. And again, there's no basis for that. And
16 it does not match up with my report.
17 Then taking the expanded at the bottom, he comes
18 up with 54 auto trips, which as I believe he testified, he
19 simply took the ratio that he used in the existing center,
20 and doubled it, essentially doubled it to go from 30 to 62
21 children.
22 And that is not consistent with the approved
23 traffic impact study which the trip generation rates from
24 the impact study are the adopted, approved rates contained
25 in the local area transportation review guidelines. And the

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1 traffic for this facility will not double when you go from
2 30 to 62 children. It would go from 28 trips in the morning
3 peak hour, to 36 trips in the evening peak hour.
4 MR. PRAGER: And where are you looking at the
5 moment?
6 THE WITNESS: I'm looking at page 16 of the
7 traffic impact study, Exhibit No. 5. It's an increase of a
8 total of eight trips, which would equate to about a third,
9 30 to 40 percent increase. Mr. Wilhelm's testimony is that
10 the traffic would double. And I believe he testified that
11 he just used some assumptions, based on what he heard in the
12 testimony to come up with this number.
13 My numbers are based on adopted standard practices
14 that are quantified in the local area transportation review
15 guidelines. And he has over-stated the impact by at least
16 50 percent, based on comparison of my numbers. So no, it's
17 not consistent.
18 BY MS. WALKER:
19 Q Thank you. Is it possible, though, the accidents
20 at Locksley Lane are attributable to U-turns, as Mr. Wilholm
21 assumed?
22 A No, it is not possible.
23 Q How do you know that?
24 A Mr. Wilholm indicates in his letter, and if I
25 could just read what he wrote again. And I'm quoting from

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1 his letter.
2 "All of these accidents could be related to
3 U-turns except for those with an animal or bike,
4 which leaves 13 accidents at the Locksley Lane
5 accident."
6 And then he states that,
7 "Mr. Lenhart agreed that the accident coding
8 is not precise even assuming the police officer
9 assessment of the cause of the accident was
10 precise, which we would not expect it to be."
11 I would expect the police officer's coding to be
12 precise or fairly precise. In these accidents, there are
13 no, there is specific coding, if there is a U-turn accident
14 that the police officer would code it as a U-turn accident.
15 Of all of these accidents, an angle accident, rear end
16 accidents, bicycle, side swipes, fixed objects, none of
17 those are even remotely close to what would be considered a
18 U-turn accident.
19 The only one that is remotely close would be a
20 left-turn accident. And there was one left-turn accident.
21 It was coded as a left turn, not as a U-turn. I would
22 presume that, police officers write these reports all the
23 time. They are experts in what they do. Yet mistakes could
24 be made. But I would expect that a left turn is a left
25 turn, if that's what it was coded as. And certainly he

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1 would not make mistakes regarding the other 12 accidents.
2 It's just not possible for these to be related to U-turn
3 accidents.
4 MS. WALKER: I have nothing further.
5 MR. PRAGER: All right. Mr. Wilholm, do you --
6 now this is, you may get up later and testify if you wish,
7 but at the moment, this is just questions of Mr. Lenhart.
8 CROSS-EXAMINATION
9 BY MR. WILHOLM:
10 Q Did you testify before that going from your peak
11 hours to the two plus hours that the traffic was going to be
12 spreading from the LATR to a longer period of time?
13 A If you use the LATR peak hour, peak 60 minutes, I
14 honestly don't recall exactly how I described it. I don't
15 believe that I said it was, to take two hours, it would
16 simply double the one hour, because that's not the case it
17 is. The LATR has trip generation rates for the peak hour.
18 And by definition, that's the highest volume 60 minutes
19 that's out there.
20 It's not reasonable to assume that if 7:00 to 8:00
21 a.m. is the peak hour, it's not reasonable to assume that
22 you have the exact same volume from 8:00 to 9:00, or from
23 6:00 to 7:00. The peak is the peak. Usually, the hour
24 before or the hour after is lower than the peak. So you
25 wouldn't just take the peak and double it to get a two-hour

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1 volume. It would be lower than double. It could be a
2 little lower. It could be substantially lower.
3 Q For 62 children, what would be your estimate of
4 how many trips would come in there in the morning, not the
5 hour, but anywhere during the morning?
6 A There are, the guidelines provide for an estimate
7 for the hour. It's not, there's nowhere in the guidelines,
8 or anywhere in any technical manuals that I'm aware of for
9 any standard practice or methodology that requires you to
10 look at a several hour period. It's all one-hour period.
11 The formulas are based on one hour.
12 So for me to say, over two hours you would get X,
13 would be almost as much of a guess as anybody else in the
14 room saying, it would be X. It's all based on an hour.
15 That's a standard practice in how you look at these things.
16 And typically, the hourly operations, the level of
17 service, the design on the street, the sight distance, that
18 all plays into safety. So if you have acceptable
19 operations, you have good sight distance, you have
20 everything else in place, generally you can make an
21 assumption.
22 And if you have accidents to back it up, accident
23 data to back it up, you can make an assumption that you have
24 safe conditions. If you start again into over-congested
25 state or have poor site distance, you may have potential

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1 enjoyment of the neighborhood because it's already located
2 on a major highway?
3 THE WITNESS: I don't know that I'm saying that.
4 I guess it's case-by-case. In this case, because it is
5 located on a major highway, all of the activity, in and out
6 of the center, is on the major highway. There's a grade
7 elevation that helps protect the traffic, the noise of cars
8 accelerating, decelerating on the major highway, because of
9 that grade elevation. And in this case, I don't believe
10 there would be an impact to the neighborhood.
11 MR. PRAGER: All right. Any further questions,
12 Ms. Walker?
13 MS. WALKER: No. Thank you.
14 MR. PRAGER: All right. You're dismissed.
15 THE WITNESS: Thank you.
16 MR. PRAGER: Wait, I'm sorry. Stay there for a
17 moment, because I may have raised some things that Mr.
18 Wilholm, did you have anything further to ask?
19 MR. WILHOLM: No, sir.
20 MR. PRAGER: And Ms. MacNab, did you have anything
21 further to ask?
22 MS. MACNAB: No.
23 MR. PRAGER: All right. Now you're dismissed. Ms.
24 Walker, would you call your next witness?
25 MS. WALKER: Yes. I call Mr. Powell again.

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1 MR. PRAGER: Mr. Powell, I want to remind you that
2 you're still under oath, and that you are still subject to
3 the law of perjury --
4 THE WITNESS: Yes, sir.
5 MR. PRAGER: -- in your testimony.
6 DIRECT EXAMINATION
7 BY MS. WALKER:
8 Q Thank you, Mr. Powell. And just to clarify a few
9 points of your testimony from February 1st, you testified on
10 that date regarding 59-G-1.21(a)(5) of the zoning ordinance.
11 And just for everyone's enjoyment, I'll read that section
12 briefly. (a)(5) states,
13 "That it will not be detrimental to the use,
14 peaceful enjoyment, economic value, or development
15 of surrounding properties or the general
16 neighborhood at the subject site, irrespective of
17 any adverse effects the use might have if
18 established elsewhere in the zone."
19 Are you familiar with that provision?
20 A Yes.
21 Q And I believe you testified on the first that in
22 your expert opinion the economic value of the surrounding
23 properties and general public would not be detrimentally
24 approved, excuse me, not be detrimentally affected by the
25 special exception proposal, is that correct?

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1 A Yes.
2 Q And I believe you also indicated in response to a
3 question from the hearing examiner that you have not done a
4 study with regard to the value of the property, such as
5 appraisal or anything of the like?
6 A Correct.
7 Q Can you just state the basis for your opinion that
8 the value of the surrounding properties and the general
9 neighborhood will not be adversely affected by the special
10 exception application?
11 A Well, the fact that it's a current --
12 MR. PRAGER: No, let me just say, I will allow him
13 to testify, but what is this rebuttal testimony? He had an
14 opportunity to address, you had an opportunity to address
15 that at the time of the hearing?
16 MS. WALKER: Well, there's been a discussion
17 raised in the letters from the civic association that
18 there's some sort of detrimental impact to the neighborhood.
19 They say detrimental to economic value --
20 MR. PRAGER: Well, why don't you -- I'm sorry, to
21 interrupt you. Why don't you rephrase your question, based
22 on the letter.
23 MS. WALKER: Okay. I'll do that. Thank you.
24 BY MS. WALKER:
25 Q Based upon the letter dated February 10th, 2013,

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1 from Greater Colesville Citizens Association, have you had
2 the opportunity to review that letter?
3 A Yes, I have.
4 Q Okay. And in response to that letter, looking
5 particularly at page two and page three, they indicate,
6 "Detrimental to economic value and causes objectionable
7 noise and fumes." You testified that you did not believe
8 that was the case, at the February 1st hearing. Is that
9 correct?
10 A That's correct.
11 Q Can you please explain your analysis for that and
12 how it differs from the suppositions in that letter?
13 A Well, it's a current existing special exception
14 and we are not proposing any exterior modifications to the
15 building itself. The parking that's there will be extended,
16 but the parking seen in the earlier photographs is being
17 reoriented, and the lighting is all going to be on timers.
18 We've agreed to that.
19 The children are still going to be only 15 allowed
20 out at a time, and we still have, or we have the condition
21 of the 11 drop off at any one half-hour, I believe, or the
22 limitations during the coming and going. And so, I believe,
23 based on that, and those, the new conditions we have when we
24 go up to 62 children, that there won't be any more adverse
25 effect to it.

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1 Q And do you think that operational items I'll say
2 you've just described, the coming and going of children,
3 parents, staff, existence of outdoor play, parking areas,
4 are those all inherent to a special exception daycare use,
5 in your opinion?
6 A Yes, they are.
7 Q And would these operational characteristics occur
8 on any daycare center, regardless of its location elsewhere
9 in the zone?
10 A Yes, it would.
11 Q Okay. And looking particularly at the parking
12 layout, and I'll call your attention to what has been listed
13 as Exhibit No. 57, and was presented by Ms. MacNab during
14 her testimony --
15 A Yes.
16 Q -- have you had the opportunity to review this
17 photograph? What is, if you could just briefly tell us,
18 what is your -- do you have any knowledge as to how these
19 photographs are taken?
20 A Yes.
21 Q I'll ask it that way.
22 A Yes. They have a tool called street view, in
23 which they go through --
24 Q The they is whom?
25 A I'm sorry, Google.

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1 Q Thank you.
2 A Goes through snapping pictures through the
3 neighborhood. It's quite interesting. I've seen it in my
4 own neighborhood. I've seen pictures of these all over the
5 Internet. And what they do is they have a camera mounted on
6 a pole that's sticking five, six feet up in the air, while
7 they drive by, slowly taking pictures of everyone's
8 neighborhood.
9 Q So do you believe that the photo is somewhat
10 distorted what you're seeing here?
11 A You can tell by the shape of the vehicles that the
12 photo is distorted. Whether that was in the printing
13 process or not, I don't know. But there is some stretch to
14 that.
15 Q Okay. And looking at this, what I was doing is
16 the substance for which it was offered, which is the fact
17 that there are cars that are visible from view on Randolph,
18 as I count them, three cars. If you could look at this and
19 tell me if you agree? Of course, handing the witness a copy
20 a copy of Exhibit No. 57.
21 A Yes.
22 Q How many cars do you see are visible on that?
23 A I see three cars.
24 Q And would that be inconsistent with a property
25 that's nearly an acre in size in a residential zone, that

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1 three cars would be viewable from the street?
2 A Not at all. I have two on my quarter acre.
3 Q And looking at the vehicle orientation, have you
4 been to, you testified I believe previously that you have
5 been to the site and were familiar with it. There was a
6 question, I believe, raised both in the letter as well as
7 Ms. MacNab's testimony about the orientation of the
8 vehicles.
9 And you previously testified that the parking
10 configuration, as shown on the plans, was correct. And I
11 believe that's what Mr. Wilholm's letter was going to. But
12 then they are indicating that the cars are not facing where
13 intuitively they think they should. Is that an accurate
14 assessment? Can you explain a little bit more about that?
15 A Yes, I could. I noticed when I was out there the
16 Wednesday before the 1st, that the vehicles were parked just
17 like they are here. And I think there was also an aerial
18 shown where they even showed one vehicle parked correctly
19 towards the fence. And that was exactly the way it was the
20 day I was out there.
21 But what I also noticed is they have the wheel
22 stops in the correct area, but the people aren't using
23 those. And the wheel stops are over at the nose in, where
24 the nose in parking is. And what's happened is, over the
25 years, the paint stripes have worn off of the pavement, so

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1 that you can only see the paint stripes in certain areas.
2 So I think people are pulling in and parking where it might
3 be most convenient for them to get inside.
4 Q But when you look at the actual configuration of
5 the asphalt or the improvements, if you will, what is on our
6 drawing, listed as an existing location, is indeed the
7 correct --
8 A Yes, it is.
9 Q So it's just that the vehicles are orienting
10 themselves, let's say, differently than what's shown on
11 there.
12 A Yes.
13 Q But under the new proposal, is it correct that all
14 of the vehicles would be tucked in against that, the side of
15 the site that is nearest to the wooden board-on-board fence
16 facing the other way?
17 A There are two that would be parallel parked up
18 near the building.
19 Q Under your alternative parking plan?
20 A Yes. It's one adjacent to the building otherwise.
21 Q Okay.
22 A And then the rest of them are nose in along the
23 side, and then the remainder is in the back of the building.
24 Q So looking at the site, the photograph that Ms.
25 MacNab has put into the record, those vehicles would be nose

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1 in, you're saying, to the fence, so therefore those would
2 not be visible. Are those vehicles parked in what will be
3 essentially the new drive isle into the rear parking?
4 A Yes, they're in the drive isle to the new parking.
5 Q Okay. Sorry. So looking at that photograph, if
6 you were to actually use that as the basis, you would say
7 that does show the existing condition, but it is not
8 reflective of the proposed, based upon your testimony?
9 A That's correct.
10 Q Okay. And based upon your testimony, the new
11 parking will be primarily located in what portion of the
12 site in relation to the house?
13 A The rear yard.
14 Q Which would be furthest back from Randolph Road?
15 A Yes. Yes.
16 Q And did you have an opinion as to how much of that
17 would be visible from the street?
18 A I would just be making an estimate. It's hard to
19 say. Really, because if the one space adjacent to the house
20 is filled, it's actually going to block a lot of the parking
21 at the back of the house.
22 Q But even still, I mean, having one or two or three
23 spaces, what would you say? Do you have an opinion as to
24 what's typical for the number of cars on a --
25 A The zoning ordinance requires that you provide at

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1 least two parking spaces because in most cases, that's what
2 you have at a single family. But in these days and ages
3 we're finding it's increasingly more like three to four,
4 depending on the age of the drivers or the age --
5 Q And do you design residential subdivisions for
6 part of what you do?
7 A I do.
8 Q So you do look at the parking?
9 A I most certainly do.
10 MS. WALKER: No further questions.
11 MR. PRAGER: Mr. Wilhelm.
12 MR. WILHOLM: No questions.
13 MR. PRAGER: Ms. MacNab?
14 CROSS-EXAMINATION
15 BY MS. MACNAB:
16 Q I guess I wanted to ask about the special
17 exceptions. I mean, do you know if the other special
18 exceptions in the area have the same number of cars coming
19 and going in them?
20 A No, I don't know. It would be based on their
21 uses.
22 Q And do you know what their uses are?
23 A No, I don't know what all their uses are.
24 MR. PRAGER: Ms. MacNab, raise your voice, please.
25 BY MS. MACNAB:

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1 Q I asked him if he knew what the uses of the
2 special exceptions are.
3 MS. WALKER: I'm going to object. This wasn't
4 based upon our rebuttal.
5 MR. PRAGER: It wasn't. But he's already
6 testified last week that he did not know. So you don't have
7 to answer the question again.
8 THE WITNESS: Yes, sir.
9 MS. MACNAB: Okay.
10 MR. PRAGER: All right. The only question I have,
11 you mentioned that the paint stripes have faded and I'm not
12 quite sure what you said about the wheel stops, but I got
13 the impression that parking at the moment is on the spaces
14 rather random, is that correct?
15 THE WITNESS: That would be a very good word for
16 it.
17 MR. PRAGER: All right. Now, you understand that
18 there is supposed to be somebody, this is a rhetorical
19 question. It is not for you to answer. There is someone
20 supposed to be out there directing traffic.
21 All right. I have no further questions. Do you
22 have any questions?
23 MS. WALKER: Nothing further.
24 MR. PRAGER: Okay.
25 MR. WILHOLM: Nothing further.

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1 MR. PRAGER: All right. You're excused. Thank
2 you very much. Good. Well, we're almost at the end. So
3 let me go off the record for a moment.
4 (Whereupon, at 2:44 p.m. a brief recess was
5 taken.)
6 MR. PRAGER: There is a request that I make, just
7 simply so that we can complete the record, because there
8 have been footnotes and other things about surveys that
9 shall indicate a different square footage for the lot, I
10 would like to have a copy of the most recent survey.
11 MS. WALKER: Boundary survey?
12 MR. PRAGER: Boundary survey.
13 MS. WALKER: Okay.
14 MR. PRAGER: With the square footage, placed in
15 the record. I've already requested that I get a copy of the
16 schedule of outdoor activity. Mr. Layhill, I'm sorry. Now
17 I'm getting -- there was a discussion, let's put it that
18 way, of street addresses of parents. I received, and I'm
19 not even sure that this has been given to any of the
20 parties, but there was this morning a submission of Parents
21 of Layhill Learning Center who signed a statement in support
22 of this special exception. Are you aware --
23 MS. WALKER: I do not have that. No.
24 MR. PRAGER: So it is not something you submitted?
25 MS. WALKER: No.

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1 MR. PRAGER: Is this something that you submitted?
2 MS. MAHABARE: I just now submitted. Somebody
3 from school, like parents, submitted that. They signed up
4 the petition. Somebody mailed it in.
5 MS. WALKER: I believe that was a grass roots
6 effort by the parents who may attend the center, have
7 children who do. It's not something the center has
8 sponsored or that we have submitted on behalf of the
9 applicant.
10 MR. PRAGER: Okay. But you're aware --
11 MS. MAHABARE: Yes, I am aware of it.
12 MR. PRAGER: -- of it. And are you aware that the
13 letterhead has Layhill Learning Center?
14 MS. MAHABARE: Yes.
15 MR. PRAGER: All right. So it is, indeed,
16 something that was generated, perhaps informally, but --
17 MS. MAHABARE: Yes.
18 MR. PRAGER: -- with our sanction, is that
19 correct?
20 MS. MAHBARE: Yes.
21 MR. PRAGER: All right. We will admit that. Now,
22 unfortunately, do you have a copy of that here? All right.
23 We'll have a brief recess while I try to get it from across
24 the hall, because I don't think I have a copy of it. And
25 that will be an exhibit that will be entered into the

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1 record.
2 (Exhibit No. 59 was marked for
3 identification.)
4 (Whereupon, at 2:48 p.m., a brief recess was
5 taken.)
6 MR. PRAGER: Back on the record. I am going to
7 refer to what was received this morning by the Office of
8 Zoning and Administrative Hearings. It's dated February
9 11th, that is the date of the receipt or at least the date
10 acknowledging the receipt, although the letter itself is
11 dated Thursday, February 7th. And it says, Layhill Learning
12 Center, Incorporated, and then gives the address, and even
13 has a sort of a teddy bear looking figure at the top. So I
14 assume that this was, indeed, on your letterhead.
15 MS. MAHABARE: Yes.
16 MR. PRAGER: All right. But you say you didn't,
17 you did not generate this?
18 MS. MAHABARE: I didn't generate it. Teacher
19 generate it.
20 MR. PRAGER: A teacher. But you were aware of it.
21 MS. MAHABARE: Yes, I was aware of it. Yes.
22 MR. PRAGER: All right. Now, the main point of
23 this is not to deal with the letter as such, but a number of
24 parents, obviously, have signed this letter. Most of them,
25 though, not each of them. I think all but one or two, or

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1 three, also gave their addresses. So as far as I'm
2 concerned, they forfeited any sort of privacy that they have
3 in terms of names and addresses.
4 Mr. Wilholm, I'm going to ask for a list of names
5 and addresses of all of the people who currently send their
6 children to this Randolph Street Road site. What I like to
7 ask is, a listing by names, first the names and addresses of
8 those people who signed this exhibit, which is Exhibit No.
9 59.
10 And then for the rest, anybody who is not listed
11 on this sheet, I would like to have a listing of the street
12 and block number, not necessarily the address, or the name
13 of the individual or individuals who are sending their
14 children to the school, but the address by block number and
15 street of all the rest of the people, those who have not
16 signed this.
17 And when say those who have signed it to have
18 their name and address, they have signed it even if they
19 haven't given their address, they've presumed that their
20 addresses should be known for purposes of this, because
21 otherwise they can't be identified. So anybody whose name
22 appears on Exhibit No. 49 should be listed by name and
23 address. All right.
24 MS. WALKER: I'm going to lodge a continuing
25 objection to this. I'm just not sure what the basis is for

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1 it. The current enrollment is not necessarily reflective of
2 what new additional students who would come to the site.
3 MR. PRAGER: I understand.
4 MS. WALKER: There's no requirement --
5 MR. PRAGER: But one of the things that has
6 happened in this case, as happens frequently in cases, is
7 people write in, claim to have an interest in the project,
8 and live outside the area. I want to know, I don't know how
9 many of these people will be impacted or not by the expanded
10 daycare center, whether or not they will be impacted by the
11 fumes, odors, noises, other considerations that are involved
12 in determining a special exception, and how many will not.
13 And it also will have some reflection on the amount of
14 traffic and where the traffic is coming from.
15 MS. WALKER: I don't, if I may, I mean, they're
16 not submitting this letter, and again, I barely have had the
17 opportunity to review it.
18 MR. PRAGER: I understand.
19 MS. WALKER: But they're not submitting it for the
20 purpose of talking about whether they themselves are
21 impacted. They're submitting it, I believe, for the
22 purposes of sort of singing the praises, if you will, of the
23 school, and that it's a benefit to the area, and certainly
24 to themselves as having their children there.
25 MR. PRAGER: I understand your objection, but it's

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1 going to be overruled. So this is what I would like to
2 have.
3 MS. WALKER: If I could also ask, in the interest
4 of trying to have some confidentiality or some semblance of
5 privacy for these parents, that I understand you have --
6 some of these folks have already submitted letters into the
7 record. And that's fine. I mean, to identify those folks.
8 But I think that people who have maybe signed the petition
9 but have not appeared here before you or taken any other
10 individual effort, might have a concern. I know I would.
11 You know, I can support the daycare, but that
12 doesn't mean I want my address and name being disseminated
13 to anybody who could then contact us.
14 MR. PRAGER: Well, except, let me interrupt you.
15 This is clearly part of the record. So it is public record.
16 At this point, it is a public record.
17 MS. WALKER: No, I understand that.
18 MR. PRAGER: And so, whatever their motivations
19 were, it really is irrelevant.
20 MS. WALKER: For the folks that, I mean, we've got
21 18 signatures on that. There's 30 people who are enrolled
22 at the center now. That's roughly half of the people. So
23 for the other folks, I mean, we don't have any indication --
24 you're just asking us, as I take it, to provide their lot
25 and I guess really street and block, I guess is --

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1 MR. PRAGER: Their street and block. That's
2 correct.
3 MS. WALKER: But I don't know that that's -- okay.
4 MR. PRAGER: That will not identify any particular
5 individual as such.
6 MS. WALKER: Could it be understood that this is
7 for the sole purpose of this hearing, and this proceeding,
8 for the hearing examiner, and that these folks are not to be
9 contacted by any outside parties?
10 MR. PRAGER: Oh yes. Yes.
11 MS. WALKER: Okay.
12 MR. PRAGER: I mean, that's true.
13 MS. WALKER: I don't want there to be any issue of
14 harassment of these folks.
15 MR. PRAGER: Obviously not. But anything that is
16 in the public record is subject to misuse and harassment.
17 MS. WALKER: Certainly. In this case we're going
18 to have people and their children. So I think there's a
19 certain level of concern.
20 MR. PRAGER: No, I understand. And so to make it
21 clear, that plus the survey plus the outdoor schedule of
22 play should be submitted. How long will it take you to
23 submit that, do you think? You can confer with your client.
24 (Discussion off the record.)
25 MS. WALKER: I would say if we could have maybe 10

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1 days to get everything together.
2 MR. PRAGER: Okay. Today is the 11th. The 21st,
3 I believe is a weekday. So you have until the 21st, at
4 which point the record will close with the exception of the
5 transcript of the two hearings, and the record will remain
6 open to receive those two.
7 MS. WALKER: If I may, typically the applicant is
8 afforded at least three to five days after the record is
9 closed, to submit any response to anything that is submitted
10 into the record that they haven't had the opportunity to
11 review.
12 MR. PRAGER: And what is it that you think that
13 you need?
14 MS. WALKER: Three days extra from the close of
15 the record.
16 MR. PRAGER: No, I understand, but what is it that
17 you think you will --
18 MS. WALKER: Well, for example, if something
19 completely new comes -- anybody can submit anything while
20 the record is open. So the concern would be if somebody
21 were to submit something right --
22 MR. PRAGER: Well, let me then frame it
23 differently. The record is closed as of the close of this
24 afternoon's hearing with the exception of those items that I
25 have mentioned.

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1 MS. WALKER: Okay.
2 MR. PRAGER: So there is nothing that will --
3 MS. WALKER: So there is no additional period.
4 MR. PRAGER: No additional period. So, Ms.
5 Walker, I don't know whether this is actually necessary, but
6 it seems to be formal. Do you want to move the admission of
7 all of the exhibits that you have presented?
8 MS. WALKER: I do. I'd like to move the admission
9 of all the exhibits that have been presented as part of the
10 applicant's case in chief, as well as rebuttal in this
11 matter, noting the objections, where applicable, to other
12 exhibits that were submitted.
13 MR. PRAGER: All right. Mr. Wilholm, do you move
14 the admission of your exhibits?
15 MR. WILHOLM: Yes, sir, I do.
16 MR. PRAGER: And, Ms. MacNab?
17 MS. MACNAB: I do too.
18 MR. PRAGER: All right. So the exhibits are
19 hereby admitted. And I'll give you all one last chance. If
20 there is anything that needs to be said yet, Ms. Walker,
21 anything?
22 (Exhibit Nos. 1-59 were
23 admitting into the record.)
24 MS. WALKER: No. I'll waive my closing. I don't
25 have anything further. I think we've certainly covered it.

1 MR. PRAGER: Mr. Wilholm?
 2 MR. WILHOLM: I think we've covered it.
 3 MR. PRAGER: Ms. MacNab?
 4 MS. MACNAB: Except I still oppose. So I don't
 5 have anything additional.
 6 MR. PRAGER: All right. The hearing is hereby
 7 adjourned, and the record is closed except as stated before.
 8 Thank you very much for bearing with us.
 9 MS. MACNAB: Thank you for your time.
 10 MR. WILHOLM: Thank you for your time.
 11 MS. WALKER: Thank you.
 12 (Whereupon, at 3:03 p.m., the hearing was
 13 concluded.)
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. Digitally signed by Teresa S. Hinds

ELECTRONIC CERTIFICATE

DEPOSITION SERVICES, INC., hereby certifies that
 the attached pages represent an accurate transcript of the
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 of:

Petition of Layhill Learning Center, Inc.
 Case No. S-2857

By:

 Teresa S. Hinds, Transcriber

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