

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

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:
PETITION OF SHIRLEY VESPER, : Case No. S-2850
MICHAEL VESPER and CREATIVE : OZAH No. 12-40
CHILDRENS LEARNING CENTER, INC., :
:
- - - - -X

A hearing in the above-entitled matter was held on
January 25, 2013, commencing at 9:36 a.m. at the Office of
Zoning and Administrative Hearings, Stella B. Werner Council
Office Building, 100 Maryland Avenue, Rita Davidson Memorial
Hearing Room, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

A P P E A R A N C E S

For the Petitioners:

Stephen Orens, Esq., For Petitioner
Miles & Stockbridge
11 N. Washington Street, Suite 700
Rockville, Maryland 20850

Shirley Vesper, Petitioner

Victoria Bryant, Expert, Land Planning/Landscape
Architecture

Stephen E. Crum, Expert, Civil Engineer

Richard Washburn, Expert, Architect

Carl Wilson, Expert, Traffic Engineer

For the Opposition:

Philip E. Winter

Gloria Winter

C O N T E N T S

Witness:	Direct	Cross	Redirect
Victoria Bryant	23	83	103
Stephen E. Crum	107	126	--
Richard Washburn	138	--	--
Carl Wilson	153	175	184

Witnesses:	Direct	Cross	Redirect
Shirley Vesper	185	203	209
Gloria Winter	210	--	--
Philip Winter	220	--	--

E X H I B I T S

Exhibit No.		Marked/Received
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P R O C E E D I N G S

1
2 MS.ROBESON: This is a continuation of a public
3 hearing in the matter of Petition of Michael and Shirley
4 Vesper and Creating Memories Children's Learning Center,
5 Board of Appeals Case S-2850, OZAH Case number 12-40, an
6 application for a special exception to permit a child
7 daycare facility at 22929 Frederick Road in Clarksburg,
8 Maryland, on land in the R-200 zone.
9 The property is identified as parcel 696 in the
10 Garnkirk Subdivision. This hearing is conducted on behalf
11 of the Board of Appeals. My name is Lynn Robeson, and I'm
12 the hearing examiner. I'm going to take all the testimony
13 and evidence on the case. I'll write a report and
14 recommendation to the Board of Appeals who will make the
15 final decision. Will the parties identify themselves, for
16 the record?
17 MR. ORENS: Thank you, Madam Examiner. For the
18 record, Steve Orens with Miles and Stockbridge, on behalf of
19 the co-applicants. To my left is Shirley Vesper --
20 MS. ROBESON: Okay.
21 MR. ORENS: -- who is co-applicant. Michael
22 Vesper will raise his hand.
23 MS. ROBESON: All right.
24 MR. ORENS: The other individuals who are with me
25 today are Victoria Bryant and Steve Crum of Macris,

1 Hendricks and Glascock.
2 MS. ROBESON: Yes.
3 MR. ORENS: Carl Wilson of the Traffic Group, and
4 Richard Washburn, who is the project architect. The
5 individual who is not here is George Spano from
6 Polysonics --
7 MS. ROBESON: Right.
8 MR. ORENS: -- who conducted a sound study, as
9 requested by the Planning Board.
10 MS. ROBESON: Okay. Is he coming later or --
11 MR. ORENS: Well, we have his written report, and
12 we will put that in the record. If there is a reason for
13 him to be here, he has a hearing in Baltimore at 11:30
14 today.
15 MS. ROBESON: That's not good.
16 MR. ORENS: And that was pre-scheduled before the
17 Planning Board told us we had to have a noise study. So
18 it's up to you, Madam Examiner, how you want to handle it.
19 MS. ROBESON: Okay. Let me see. Is there anyone
20 here. I see two individuals who are not identified by
21 Mr. Orens.
22 MS. WINTER: Are you talking about us?
23 MS. ROBESON: Yes. You. You narrowed it down.
24 MS. WINTER: We're property owners.
25 MS. ROBESON: Are you here in opposition to this?

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1 MS. WINTER: We're here to question.
2 MS. ROBESON: Okay. Can you come forward?
3 MS. WINTER: We have questions.
4 MS. ROBESON: Would you kindly come forward and
5 just identify yourself for the record?
6 MS. WINTER: I'm Gloria Winter. And I am, my
7 husband and I own the property behind --
8 MS. ROBESON: Okay. We can get to that. Just for
9 now, just state your name and address, for the record.
10 MS. WINTER: Gloria Winter, 22921 Frederick Road.
11 MS. ROBESON: Okay.
12 MR. WINTER: And I'm her husband. I'm Philip
13 Winter, at 22921 Frederick Road, Clarksburg, Maryland.
14 MS. ROBESON: All right. And you have questions?
15 Well, you are welcome to sit up here at the recording mike.
16 You have the ability to cross-examine witnesses, and it's
17 generally helpful for one of you, at least, to come here.
18 You also have to sit up here. You also have the opportunity
19 to present your own statement, if you would like to do that.
20 MR. WINTER: Okay.
21 MS. WINTER: We do have statements, and we have
22 questions, not only our questions, but my daughter and her
23 husband's questions, who live next door, to the property.
24 MS. ROBESON: Okay. Well, you can pose the
25 questions on your own behalf, all right.

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1 MS. WINTER: Okay.
2 MS. ROBESON: So one of you, or it's helpful if at
3 least one of you take a seat here.
4 MR. WINTER: Okay.
5 MS. WINTER: We can both.
6 MS. ROBESON: Whoever wants to be the attorney
7 today. Not the attorney. Actually, that's unauthorized
8 practice.
9 MR. ORENS: The spokesperson.
10 MS. ROBESON: Spokesperson. Yes. Thank you, Mr.
11 Orens. Okay. We do, just for your benefit, the Winters
12 benefit, this is an informal proceeding, but we do have
13 certain formalities. The testimony is under oath, both your
14 testimony and the applicant's testimony, subject to cross-
15 examination and certain objections.
16 There is an opening statement, which is not
17 testimony. It's just presenting your case. And then a
18 closing statement as well. We're here today on an
19 application for a special exception, which is a little bit
20 of a misnomer because it's a statutorily, it's permitted use
21 if you can prove that you meet all the conditions set forth
22 in the zoning ordinance. And there is a long list of what
23 you have to meet.
24 The conditions are set forth in the Technical
25 Staff Report. Have you had the opportunity to, I don't know

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1 if you were at the Planning Board hearing. Have you had the
2 opportunity to review the Technical Staff Report?
3 MR. WINTER: Mr. Orens sent us a plat of the
4 property. The staff reports we haven't had an opportunity
5 to look at.
6 MS. ROBESON: Okay.
7 MR. WINTER: As far as, he did send us various
8 documents.
9 MS. WINTER: We do have proposals, I guess you
10 would call them.
11 MR. WINTER: Yes.
12 MR. ORENS: For clarity, Ms. Robeson, we sent Mr.
13 and Mrs. Winter the statement of operations, the special
14 exception site plan, and the planning report that was in the
15 record.
16 MS. ROBESON: Right.
17 MR. ORENS: I don't think we sent you the
18 documents that we're talking about.
19 MS. ROBESON: Well, it's generally not the
20 applicant's duty to provide the Technical Staff Report to
21 you. That's sort of your responsibility to get it.
22 MR. WINTER: I understand.
23 MS. WINTER: Well, he did request it.
24 MS. ROBESON: From Park and Planning?
25 MS. WINTER: No, from --

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1 MR. WINTER: No, Mr. Orens wasn't responsible to
2 give us that.
3 MS. ROBESON: Yes. Well, it is in the file. I
4 think it's Exhibit No. 19, and I encourage you, one of you
5 or both of you, at some point, I actually have a duplicate
6 copy. So you're welcome to take this copy.
7 MR. WINTER: Okay.
8 MS. ROBESON: Okay.
9 MR. ORENS: Madam Examiner, I think it would be
10 useful, also, and I, looking, I don't think I have a
11 duplicate copy, of the Planning Board chair's letter to
12 Board of Appeals Chair Titus, dated December 19. We can
13 make a copy during a break and give it to them. Oh, we do
14 have an extra copy. There you go.
15 MR. WINTER: Thanks.
16 MS. WINTER: Yes.
17 MR. WINTER: You said we can make a statement to
18 begin with?
19 MS. ROBESON: Yes, but we're not there yet.
20 MR. WINTER: Okay.
21 MS. ROBESON: Because first I need to ask, are
22 there any preliminary matters? I understand, I have an
23 unsigned Affidavit of Posting here, so I assume there is an
24 issue with the posting?
25 MR. ORENS: Yes, there is. Although the sign

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1 managed to survive super storm Sandy, it apparently did not
2 survive a lot of high school kids going past the property or
3 something else. We believe the sign came down sometime
4 within the last two weeks.
5 Mr. and Mrs. Winter recalled not seeing it in the
6 last week, week and a half. When Mr. Crum went out
7 yesterday to inspect, do the final inspection prior to the
8 hearing, he noticed the sign was gone. He contacted me.
9 And what I propose is we will repost the property today, and
10 we will modify the Affidavit of Posting, and then submit a
11 supplemental affidavit before the record closes.
12 MS. ROBESON: And how long do you propose to
13 repost it?
14 MR. ORENS: As long as you ask us to. We will
15 post it today and it will be there until --
16 MS. ROBESON: Did you have -- when is the last
17 time one of your people --
18 MR. ORENS: Two weeks ago.
19 MS. ROBESON: Two weeks. So we're looking at a
20 gap of two weeks.
21 MR. ORENS: Two weeks.
22 MS. ROBESON: Okay. What I'd like to do, then,
23 is, is it being reposted today?
24 MR. ORENS: It will be reposted. We have to make
25 arrangements to get the sign over there and repost it today.

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1 MS. ROBESON: Okay. I was speaking with Technical
2 Staff about, they were confused about some of the revisions
3 since your --
4 MR. ORENS: There is a confusing statement that
5 you alerted us to yesterday. And I believe I did submit
6 something in writing.
7 MS. ROBESON: You did.
8 MR. ORENS: But there was a, I guess we could call
9 it an oops in the planning report when it was revised after
10 the Technical Staff had recommended approval and recommended
11 that the condition on the number of children in the play
12 area be 25, as we had requested. And the Planning Board
13 asked for a noise study to show that it was 25.
14 MS. ROBESON: Right.
15 MR. ORENS: We revised the statement of operation,
16 and I have to take responsibility for missing, when I
17 reviewed the planning report, I missed the number 20. That
18 should have been 25.
19 MS. ROBESON: This is not, I don't mean to say
20 gotcha. My point was, I've got to leave the record open for
21 like 15 days --
22 MR. ORENS: That's fine.
23 MS. ROBESON: -- simply to allow staff time to
24 look at this and see if they want to comment further, or
25 what they want to do. So if we could keep, if you can get

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1 the sign posted today or tomorrow, that will at least allow
2 anyone else who wants, I'm going to leave the record open
3 during that time so that we can get any additional comments.
4 MR. ORENS: Not a problem. The staff, just for
5 clarity in the record, the planning staff was provided with
6 copies of all of the documents that are in the record --
7 MS. ROBESON: I saw that.
8 MR. ORENS: -- on or about December 31st.
9 MS. ROBESON: I saw that, and I didn't think that
10 anybody was, I didn't assume anybody was trying to pull one
11 over or anything like that. I think it's just a technical
12 thing with a lot of moving parts.
13 MR. ORENS: Just for the record, my colleague,
14 Rebecca Walker, who is also with Miles and Stockbridge, has
15 just come into the room.
16 MS. ROBESON: Welcome.
17 MR. ORENS: My other colleague, Casey Cirner, is
18 otherwise occupied at the moment --
19 MS. ROBESON: I understand that.
20 MR. ORENS: -- with her new baby, which was born
21 48 hours after she presented this case to the Planning
22 Board.
23 MS. ROBESON: Well, she was really pushing it.
24 Well, no, I don't want to say that.
25 MR. ORENS: Accurate though it may be.

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1 MS. WALKER: Accurately, though. Correct.
2 MR. ORENS: Okay.
3 MS. ROBESON: All right. With that, are there any
4 other preliminary matters?
5 MR. ORENS: We do have, with a typo, the affidavit
6 that is required for applicants for childcare facilities.
7 And we have that for the record also. Do you want that now
8 or --
9 MS. ROBESON: No, let's do it when --
10 MR. ORENS: When Ms. Vesper testifies.
11 MS. ROBESON: -- is Ms. Vesper going to testify?
12 Okay. Let's do it then.
13 MR. ORENS: All right.
14 MS. ROBESON: Opening statements. Mr. Orens, you
15 get the first shot.
16 MR. ORENS: Thank you. Some of what I would say
17 in opening statement, as the hearing examiner has already
18 indicated, this is a special exception for childcare
19 facility, on a tax parcel that is shown on this exhibit
20 which we -- let me interrupt myself. Do you have the
21 exhibit list?
22 MS. ROBESON: I do. Do you need to look at it?
23 MR. ORENS: Well, I just need to know what the
24 next exhibit number is.
25 MS. ROBESON: It would be 31.

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1 MR. ORENS: Thank you. Okay. I'm going to mark
2 the exhibit that shows the rendered childcare facility
3 property as Exhibit No. 31.
4 (Exhibit No. 31 was marked
5 for identification.)
6 MS. ROBESON: Now, just for the Winters' sake, you
7 have the opportunity to object to an exhibit if you feel for
8 some reason it's inaccurate or something. So just to let
9 you know.
10 MR. WINTER: There are some slight inaccuracies,
11 but just the way the house is positioned a little bit, and
12 surveyed on the property, according to, if that's based on
13 the plat --
14 MS. ROBESON: Okay.
15 MR. WINTER: -- in conjunction with my daughter's.
16 MS. ROBESON: Okay.
17 MR. WINTER: But it's minimal. As far as that,
18 that looks like a depiction of what the property --
19 MS. ROBESON: Well then, you can bring that up on
20 cross-examination when you get to ask questions.
21 MR. WINTER: Okay.
22 MS. ROBESON: Okay. I'm sorry, Mr. Orens.
23 MR. ORENS: No, that's fine. I have also marked
24 the aerial photograph as Exhibit No. 32, and as I'm sure Mr.
25 and Mrs. Winter recognize, this is not a photograph taken

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1 this week.
2 (Exhibit No. 32 was marked
3 for identification.)
4 MR. WINTER: No.
5 MR. ORENS: It shows certain projects that are now
6 completed as being under construction. But with regard
7 to the existing and surrounding neighborhood that is
8 outlined in white ink on the aerial photograph, Exhibit No.
9 32, is it an accurate representation of what it purports to
10 represent. And Ms. Bryant will so testify when she explains
11 what the exhibit it.
12 But what we wanted to show was the residential
13 community that was there, how this area of Clarksburg is
14 being developed under the Clarksburg Master Plan, and where
15 the road network is, and the existing relationship between
16 the subject property outlined in red, and the main road that
17 provides access to it, which is Frederick Road.
18 MS. ROBESON: Okay. So that will be 32, aerial
19 photograph of subject property.
20 MR. ORENS: Now, as I said, this is a tax parcel,
21 which means that we will be submitting an application to the
22 Planning Board for approval of a preliminary plan of
23 subdivision, and recording a plat following that. And the
24 Planning Board at that time will consider some of the issues
25 that the hearing examiner also will consider.

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1 Adequate public facilities will be primarily
2 determined by the Planning Board at that hearing, but it is
3 an issue before the examiner today. The property is
4 currently served by a septic field and public water. And
5 Mr. Crum will testify about the public facilities.
6 The existing power lines and phone lines are above
7 ground, and are expected to remain above ground, and not be
8 put underground as they are in some of the newer
9 developments.
10 The property is not served by public sewer, even
11 though public sewer is serving properties to the northwest
12 of the area. And that's primarily due to where those sewer
13 lines are. They're not in Route 355. And the topography,
14 because the existing lines are higher, topographically, than
15 the subject property. And we've not yet been able to figure
16 out how to make that flow uphill.
17 So the septic fields are serving the property, and
18 will continue to serve the property. However, as Mr. Crum
19 will testify, the existing septic system in the front of the
20 property will be relocated to the rear, with the tank that's
21 in the front being retrofit to accommodate the daycare
22 facility, and the number of individuals who will be at the
23 daycare facility.
24 The septic field and reserve areas that have been
25 marked on the plan have been approved by the County as the

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1 storm water management water quality plan that have been
2 approved by both the Planning Board for policy reasons, and
3 by the Department of Permitting Services and Department of
4 Environmental Protection.
5 Clarksburg is a special protection area, although
6 there are no streams or other similar natural resources on
7 the property. We're also requesting, in connection with
8 the -- can the Examiner see this?
9 MS. ROBESON: Yes, I can. Thank you.
10 MR. ORENS: We are also requesting, in connection
11 with the special exception, a parking waiver so that the
12 access driveway, which is going to, the existing access
13 driveway is going to be rebuilt. It's going to be widened,
14 and it's going to be repaved so that the site distance is
15 appropriate and the commercial nature of the driveway is
16 maintained where today it's just, it's an old fashioned
17 residential driveway.
18 But the drive isle will be the furthest away from
19 Mr. Winter's property and is separated from the adjacent
20 residential property by three pipe stems and an existing
21 shared driveway that provides access to the five houses that
22 are in this area here.
23 And the boundary, there is a topographical
24 difference which, again, Mr. Crum will discuss, given the
25 boundary elevation difference, the sight, S-I-G-H-T, type

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1 fence, and landscaping that will be there, we will, it meets
 2 the requirements and purpose of the parking setback in the
 3 zoning ordinance. We are not asking for any other waivers.
 4 A waiver is not required along the front of the property due
 5 to the Master Plan right-of-way with Frederick Road.
 6 The existing house is shown here, in red, and is
 7 marked, existing building on Exhibit No. 31. And the modest
 8 addition to the rear is also shown as outlined behind the
 9 existing property. The architect will testify, it's very
 10 similar to someone taking an older house and adding a
 11 bedroom or a new kitchen in the rear of the property.
 12 Extensive landscaping is proposed, and with regard
 13 to the play area, again Mr. Crum will testify as will Ms.
 14 Bryant, as to why the play area is where it is. One of the
 15 reasons the play area is where it is, is that the septic
 16 trenches in the rear of the property are required by
 17 regulation to be an undisturbed soil and not to have
 18 activities that would compact the soil. So we are
 19 restricted as to where the play area can be.
 20 As the examiner knows, the Planning Board did look
 21 very carefully at this issue. And they asked that we have a
 22 noise study prepared. It was always the intent to have a
 23 six-foot tall, again, sight type fence along the southern
 24 property line that would face the Winter property.
 25 George Spano at Polysonics, who prepared the noise

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1 study, has recommended, and we have agreed, to use a Trex,
 2 T-R-E-X, fence. That is one of the only fences that we are
 3 aware of that has a noise attenuation rating which will
 4 further reduce an ambient noise that is from the children in
 5 the play area.
 6 The proposal is to have 25 children out there, a
 7 maximum of 25 children out there at any one time. Play
 8 areas and the sounds of children playing are inherent
 9 characteristics of a childcare center, and the noise levels
 10 at the property line will be within the County's standards
 11 of 65 dba, probably significantly less with the Trex fence
 12 installed.
 13 As the examiner pointed out, the request is for a
 14 center that will accommodate 52 children at any one time in
 15 attendance. The six staff will attend them. The parking
 16 facility has been designed so that there is adequate
 17 parking, based on the County code requirement for childcare
 18 centers.
 19 And the drive aisle has been located furthest away
 20 from the Winter property. The parking spaces are designed
 21 so that cars entering, parking and leaving, will not shine
 22 headlights to the closest property. And we are proposing to
 23 have shade trees along the perimeter of the parking
 24 facility.
 25 And after talking to Mr. Winter this morning, I

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1 have asked Ms. Bryant whether she can put a, maybe five-foot
 2 high fence along the back of the parking, so that it would
 3 block any headlights in the early morning hours during the
 4 winter months, as the sun does not come up in time for the
 5 6:30 opening.
 6 The other issue, the other point that we were
 7 asked by the Planning Board to address was ingress and
 8 egress to the property during the peak hours from Frederick
 9 Road. And a gap study was prepared by the Traffic Group.
 10 And Mr. Wilson will testify about that. And I believe we
 11 have submitted that into the record.
 12 I think, I think that covers it, at the moment.
 13 Our first witness will be Victoria Bryant --
 14 MS. ROBESON: Okay. I'll ask Ms. Bryant.
 15 MR. ORENS: -- when you are ready for her to
 16 testify.
 17 MS. ROBESON: Okay.
 18 MR. ORENS: Does Mr. Winter have something he
 19 would like to --
 20 MS. ROBESON: Mr. Winter --
 21 MR. WINTER: May I use his exhibits?
 22 MS. ROBESON: Yes.
 23 MR. ORENS: Absolutely.
 24 MS. ROBESON: Just with a caution.
 25 MR. WINTER: Yes.

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1 MS. ROBESON: This is not your time to testify or
 2 cross-examine.
 3 MR. WINTER: I just want to tell you who I am and
 4 where we are located.
 5 MS. ROBESON: Okay. That's testimony.
 6 MR. WINTER: It is?
 7 MS. ROBESON: Yes.
 8 MR. WINTER: Okay.
 9 MS. ROBESON: Yes, because you know what, I
 10 haven't sworn anybody in yet. You can tell me what you
 11 intent to prove.
 12 MR. WINTER: Okay. That's fine.
 13 MS. ROBESON: That's the purpose of the opening
 14 statement. Or you can wait for your testimony and lay it
 15 all out at that point.
 16 MR. WINTER: I would like to make a brief
 17 statement.
 18 MS. ROBESON: You may.
 19 MR. WINTER: Okay. My name is Phil Winter. There
 20 weren't this many people here last time we came in. We are
 21 adjacent property owners, and I am not here so much in
 22 opposition as more or less, I guess in a sense we are in
 23 opposition, but my wife and I are here today to protect our
 24 interests in the properties, in the neighborhood in general
 25 because we are lifelong residents there.

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1 And what we intend to do is basically ask
2 questions of a technical nature and explain the relevance of
3 what they are doing and what our concerns are. And that's
4 basically it.
5 MS. ROBESON: Did you go to law school?
6 MR. WINTER: No. I was an assessor for 30 years
7 in Montgomery County.
8 MS. ROBESON: Okay.
9 MR. WINTER: And I've been in a lot of hearings,
10 but --
11 MS. ROBESON: Okay. Great. All right. Do you
12 want to call Ms. Bryant?
13 MR. ORENS: Okay.
14 MR. WINTER: Before she starts, may I ask a
15 procedural question?
16 MS. ROBESON: Certainly.
17 MR. WINTER: Can I ask her questions as she
18 speaks, or later? Or how do you do that?
19 MS. ROBESON: She gets to testify, and then you
20 have to wait until she's finished testifying, and then you
21 can ask questions.
22 MR. WINTER: But I can ask her then. Okay.
23 MS. ROBESON: Now, you know, if something occurs
24 to you, you can jot it down so you don't forget.
25 MR. WINTER: Yes, that's, okay.

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1 MS. ROBESON: Okay. Ms. Bryant, please raise your
2 right hand.
3 (Witness sworn.)
4 MS. ROBESON: All right.
5 DIRECT EXAMINATION
6 BY MR. ORENS:
7 Q Would you please state your full name and business
8 address for the record?
9 A My name is Victoria Bryant. I am from the firm of
10 Macris, Hendricks and Glascock at 9220 Wightman, W-I-G-H-T-
11 M-A-N, Wightman Road, Suite 120, Montgomery Village,
12 Maryland.
13 Q And what are your responsibilities at Macris,
14 Hendricks and Glascock?
15 A I am the vice president of planning and landscape
16 architecture for the firm. I do oversee our landscape
17 architecture department and our planning department. We do
18 subdivisions, preliminary plans, site plans, sketch plans,
19 project plans.
20 Q I'm handing you a document. Can you identify
21 that, please?
22 A This is my resume.
23 Q And would you very briefly describe your
24 experience and educational background and qualifications as
25 a landscape architect?

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1 A I have two degrees. One is a bachelor's of
2 horticulture from the University of Maryland, and my second
3 one is a bachelor's of landscape architecture from the
4 University of Maryland.
5 I have been working at my current company since
6 1995. Prior to that I was working for the University of
7 Maryland for five years, at which time I had gotten a
8 landscape architecture degree, and had gone to the private
9 sector.
10 At the University of Maryland we did master
11 planning as well as landscape design. And then in my
12 current position, again, we do land planning, site
13 development, subdivision, landscape plans, and similar
14 projects.
15 Q Have you previously testified as an expert in land
16 planning and landscape architecture before administrative
17 bodies in Montgomery County?
18 A Yes, I have.
19 Q Before which bodies have you testified?
20 A I've presented before this body and also the
21 Planning Board.
22 MS. ROBESON: Okay. I was just looking through
23 the exhibit list. Her resume is already in. I thought her
24 resume is already in here. Is that correct, as an exhibit?
25 MR. ORENS: I'm not sure whether it is or not. I

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1 do have a copy which we'll mark as Exhibit No. 33, and
2 submit that.
3 (Exhibit No. 33 was marked
4 for identification.)
5 MS. ROBESON: All right. Okay.
6 MR. ORENS: If I may approach. I've given a copy
7 of the resume to Mr. and Mrs. Winter.
8 MS. ROBESON: Okay. So 33 will be resume of Ms.
9 Victoria Bryant. And I take it you are offering her as an
10 expert in --
11 MR. ORENS: Land planning and landscape
12 architecture.
13 MS. ROBESON: Okay. She has testified numerous
14 times as an expert here. So if there, unless there is an
15 objection, I'm going to qualify her as an expert in land
16 planning and landscape architecture. Any objection? Okay.
17 MR. ORENS: Thank you.
18 BY MR. ORENS:
19 Q A couple of preliminary questions, if I may, Ms.
20 Bryant. Are you familiar with the Montgomery County zoning
21 ordinance, specifically those provisions that relate to the
22 standards for development in the R-200 zone, and with the
23 special exception requirements for special exceptions in
24 general, and childcare centers in particular?
25 A Yes, I am.

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1 Q And have you had an opportunity to visit the
2 subject property and the surrounding area?
3 A Yes, I have. I have visited twice in the last six
4 months. Once was several months back, and then again the
5 second time was yesterday afternoon.
6 Q If you would please approach the exhibits and in
7 somewhat of a narrative fashion, Ms. Bryant, would you tell
8 the hearing examiner the zoning category of the subject
9 property, whether the requested special exception is
10 permitted as a special exception use, and then describe the
11 property and surrounding area?
12 A Okay. Our property, looking at Exhibit No. 32, is
13 outlined in red here. And it's along 355 or Frederick Road
14 in the Clarksburg, Maryland, area. It's zoned R-200, which
15 is a special exception use in the R-200 zone. So for the
16 daycare facility.
17 Q It will be a conditional use of the new zoning
18 ordinance if ever enacted. Continue.
19 MS. ROBESON: Good qualifier there, Mr. Orens.
20 MR. ORENS: I've always loved the term special
21 exception, because it's neither special nor an exception.
22 MS. ROBESON: Exactly.
23 THE WITNESS: If you continue to look at Exhibit
24 No. 32, the surrounding area is a solid white line on
25 Exhibit No. 32 that represents the surrounding area as we

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1 defined in our planning report.
2 BY MR. ORENS:
3 Q What are the boundaries? How did you determine
4 the boundary?
5 A Okay. The boundaries are, to the north, the
6 dividing line between, just north of Suncrest Avenue. To
7 the north of us is an RMX-2 piece of property. So we pulled
8 the surrounding neighborhood down into the R-200 zone. So
9 basically all R-200.
10 We came down behind the R-200, wrapped back up to
11 Timber Creek Lane, following it on the west side, and coming
12 down to essentially Shawnee Lane, that ends in a little cul-
13 de-sac here. You come down Shawnee Lane, and then come up
14 and follow along the back end of the R-200 properties that
15 abut 355 on the west side. And again, we're avoiding the
16 property to the north of us, which is a planned subdivision.
17 MS. ROBESON: Well, I had a question because
18 Technical Staff, their neighborhood did include those.
19 THE WITNESS: Was larger.
20 MS. ROBESON: And I guess the question is not, in
21 my mind, the question of the surrounding area does not shout
22 the same zoning. It's to identify that, you know, what
23 properties are going to have an impact. So I guess my
24 question is, why, what was your analysis on excluding those
25 other communities?

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1 Because it seems to me, on one hand you're arguing
2 that it meets the Master Plan because it's right near all
3 that residential. So assuming that you're going to be using
4 it. So that's my question on that.
5 THE WITNESS: I don't disagree with what the staff
6 said. I could see how you could do a bigger thing. I don't
7 think it makes much difference in terms of what we're doing.
8 We kind of looked at it and said, if you look at the transit
9 corridor definition, and the language that's associated with
10 the 355, this area, it talks about the single-family
11 residences that abut 355, and develop in that area. So
12 that's kind of, that's why we picked this, because that
13 represents what the Master Plan was calling for.
14 I think, you know, the staff had come all the way
15 up to Stringtown Road, and used the Seneca Creek, and then
16 came out a little farther south. And I think that, so they
17 are slightly different. Further south would have included
18 just more R-200. So this portion of what staff included
19 would have just included more of the same type of property
20 that you had.
21 The RMX-2 to the north, again, that has, we
22 exclude that because it was a different zone, and it's a
23 much more compact development than what we have.
24 BY MR. ORENS:
25 Q Let me interrupt, if I may, just to ask you this

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1 question. If the hearing examiner were to adopt the
2 planning staff's definition of the surrounding area rather
3 than yours, would that change your opinion as to Master Plan
4 compliance and impact on surrounding area?
5 A No, it would not.
6 MS. ROBESON: And why not?
7 THE WITNESS: I think the same, as I said, the
8 properties to the south of us are, again, R-200, and similar
9 in nature to the current properties. In addition, the
10 community that we did pick has such a large variety of sizes
11 and shapes to it that by including the properties to the
12 north, which generally tend to be a little smaller, I think
13 still just adds to the diversity of this smaller sub-
14 neighborhood that has been created.
15 BY MR. ORENS:
16 Q Ms. Bryant, directing your attention for a moment
17 to section 59-G-1.21(a)(7) --
18 MS. ROBESON: I'm sure she can quote that.
19 BY MR. ORENS:
20 Q -- one of the requirements for approval of a
21 special exception is a finding that the proposed use will
22 not, when evaluated in conjunction with existing and
23 approved special exceptions in the neighboring one-family
24 residential area, increase the number, intensity, or scope
25 of special exception uses sufficiently to affect the area

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1 adversely or alter the predominantly residential nature of
2 the area.

3 Now, in terms of the two definitions of
4 surrounding area, in your opinion, does it matter which
5 definition is chosen to determine that the request is in
6 compliance with the provision I just read?

7 A No, I do not think it would have any impact. One
8 of the special exceptions actually falls within our
9 definition of the neighborhood. And the other one that's
10 nearby actually is outside of both definitions of the
11 neighborhood.

12 MS. ROBESON: Which is the special exception -- I
13 couldn't find, I'm not clear, where is the special exception
14 within the neighborhood?

15 THE WITNESS: The special exception within the
16 neighborhood is the Green Gardens, which is the, it's
17 actually the fourth property to the north of ours.

18 MS. ROBESON: Okay.

19 THE WITNESS: Since we're kind of a panhandle,
20 physically it looks like it's the second property north of
21 us.

22 BY MR. ORENS:

23 Q For future clarity, if you would just outline that
24 property with the yellow highlighter, that would be useful,
25 because I know I, if I had to remember exactly where it was,

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1 I think I could do that until tomorrow.

2 A All right.

3 MS. ROBESON: Okay. Thank you.

4 BY MR. ORENS:

5 Q Thank you.

6 A It's not showing up very well.

7 MS. ROBESON: We'll figure it out.

8 BY MR. ORENS:

9 Q Good enough. Thank you. Moving right along now,
10 would you continue your description of the subject property
11 and the surrounding area, especially the adjacent
12 residential neighborhood, in terms of how it's developed and
13 how the Master Plan proposes it?

14 A Okay. Directly to the south of us, we have a
15 single-family residence, and to the west of us is a large
16 10-plus acre residential facility. To the north is a part
17 of a five-lot subdivision that has three panhandles and a
18 single lot in the back with no frontage. And then there is,
19 so there's five altogether, and the fifth one actually has
20 most of the frontage along the parking lot, because this is
21 right along the side.

22 And adjacent property across the street, we have
23 several large tracts of forested, undeveloped property, and
24 a small community along Coolbrook Lane of individual single-
25 family homes. And then a little further south on the

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1 opposite site of 355 we have Lakewood Church of Good, which
2 is a church facility. And it has a parking lot in the front
3 with a building kind of retrofitted into a church.

4 And you go a little further down, we have a series
5 of small, undeveloped parcels, and then a couple of
6 individual single-family homes sitting there along
7 Birchcrest Lane, which is a little windy road, and the
8 buildings are sort of in the forest.

9 Q What is the --

10 A Then you have single-family homes --

11 Q Okay.

12 A -- lining Timber Creek Lane.

13 Q Now, the subject property, what is its existing
14 circumstances in terms of the central use?

15 A It is a, right now it is a single-family home, one
16 story with a walkout on the northern side of the building.
17 So it's not out the back. It's out the north end of the
18 building.

19 The property slopes from the rear or the west side
20 down to 355. It's relatively gradual until you get to about
21 10 feet off the front of the building, and then it's a
22 pretty steep slope down from there to the street.

23 Q Are there any significant trees, water courses, or
24 stream valleys on the property?

25 A There are no environmental, environmentally

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1 sensitive areas. There's no wetlands, no stream valley
2 buffers, no specimen trees, no significant trees on site.

3 Q Is this property subject to or required to submit
4 a forest conservation plan?

5 A We have submitted an NRI and received an exemption
6 from the forest conservation law.

7 Q You have with you a copy of Exhibit No. 14(a),
8 which is the zoning vicinity map. Just for closure on the
9 zoning issue, if you would, mark that as -- a copy of 14(a),
10 Madam Examiner?

11 MS. ROBESON: Yes, 14(a) duplicate. Just say
12 that.

13 BY MR. ORENS:

14 Q Okay. And again, point out the subject property
15 and its existing zoning as shown on the official map.

16 A The subject property, P696, is highlighted in
17 yellow on the plan. It is approximately in the center, and
18 it is part of the R-200 zone.

19 Q Okay. You can put that back in there, if you
20 would. Can you describe, using Exhibit 31, and whatever
21 other exhibit you need, describe what is proposed on the
22 subject property in terms of physical characteristics?

23 A Okay. We are proposing a new driveway entrance
24 in. And if you can look on Exhibit No. 31, there is a dark
25 gray line at Frederick Road. That shows the existing

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1 driveway. So this line right here is the existing driveway.
2 So we're widening the driveway to approximately 20-foot wide
3 at the entrance.
4 As you come up the driveway, there will be four
5 parking spaces on the right hand side with a handicapped van
6 accessible space, an entry feature with storm water
7 management on the northern face of the proposed building,
8 proposed existing building. And then the driveway pulls up,
9 and then you have an additional 11 spaces to the rear of the
10 building.
11 As you come in to the building, people who park at
12 a lower level can come in through a sidewalk that will take
13 you into the basement of the existing building. And the
14 existing building is in the front, is existing today. And
15 the proposed building will be put on the rear of the
16 existing building.
17 But you come in through the basement, or you can
18 come in, as you park on the upper level, you'll come in
19 through the back door, come in through a little porch on the
20 back that takes you to the upper level.
21 And then we have, we're proposing a lot of
22 landscaping along the northern boundary, and shade trees
23 that will buffer and shade, reduce the heat or the urban
24 heat index off the parking lot.
25 As you come back, this path will take you to the

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1 south to the playground area that has access both from the
2 lower level through a staircase, and the upper level through
3 a sidewalk to the play area that is directly on the west
4 side of the building.
5 Q Can you move just slightly, so I can see also?
6 That will be fine. Continue.
7 A And the septic field for the proposed use will be
8 basically this large green space in the back of the
9 building.
10 Q Do we have an exhibit that shows the septic
11 trenches?
12 A Yes, we do.
13 Q That would be --
14 A A new exhibit. I'm going to go to the impervious
15 area exhibit, because it will be a little bit easier to
16 read.
17 Q And that would be Exhibit No. 34?
18 (Exhibit No. 34 was marked
19 for identification.)
20 MS. ROBESON: If you could just write duplicate on
21 that, that would be --
22 THE WITNESS: Okay.
23 BY MR. ORENS:
24 Q Describe what the exhibit is, please?
25 A The exhibit is the impervious area exhibit, which

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1 is showing how much hard surface area we are proposing on
2 the site. But actually, since we've turned the topographic
3 lines off, it's easier to see the septic lines on this plan.
4 If you look at, again, at the rear or the
5 northwest portion of the property, you'll see a dark heavy
6 line that kind of zigzags back and forth. That represents
7 the septic field.
8 Q Could you, again, using the yellow marker, outline
9 the septic field area?
10 MS. ROBESON: Well, if we do that, let's mark it
11 as a new exhibit, because it's different.
12 MR. ORENS: Okay. That is Exhibit No. 34.
13 MS. ROBESON: 34.
14 MR. ORENS: And I think you already marked it.
15 MS. ROBESON: Outline septic --
16 THE WITNESS: Just take duplicate off?
17 MS. ROBESON: I'm just going to say, outline
18 septic field.
19 MR. ORENS: Okay.
20 THE WITNESS: Do you want to remove the word
21 duplicate under it?
22 MS. ROBESON: Yes, please.
23 THE WITNESS: The septic field is contained within
24 an easement. So that's why I highlighted it in yellow.
25 BY MR. ORENS:

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1 Q Thank you very much. Continue describing, if you
2 would, well, finish the proposed development of the
3 property, going back to Exhibit No. 31. Now, the parking
4 area, if you have this handy, if not I'll ask Mr. Crum, what
5 is the distance between the parking spaces on the north
6 side, and the southern property line of the subject
7 property?
8 A It is approximately 105 feet.
9 Q 105 feet. And if you know, what is the distance,
10 the additional distance between the property line and the
11 existing residence on the Winter property?
12 A It's approximately 30 feet.
13 Q Only 30 feet?
14 A Yes.
15 Q So the total distance between the closest point of
16 the parking spaces and the Winter house are 130 feet?
17 A Yes.
18 Q Now, what are you showing there in terms of
19 landscaping around the parking lot?
20 A We are showing large shade trees, which are
21 October glories, and then down along the -- well, let me
22 actually refer to my landscape plan for this.
23 Q Okay.
24 A Let me see if I can get this piece.
25 Q And is that already an exhibit, Madam Chairman?

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1 MS. ROBESON: Is this the landscape plan?
 2 THE WITNESS: This is the landscape plan. We have
 3 added the storm water management list, too. Is that Park
 4 and Planning's request?
 5 MS. ROBESON: I think --
 6 THE WITNESS: I don't know.
 7 MR. ORENS: It's part of Exhibit No. 6.
 8 MS. ROBESON: I think it's 20(a). There was a
 9 revised one --
 10 THE WITNESS: Yes.
 11 MS. ROBESON: -- that you submitted.
 12 MR. ORENS: Yes.
 13 MS. ROBESON: Let me just see, dated 11/19/12. Is
 14 that what this is?
 15 THE WITNESS: This is 6/15/12, although I signed
 16 it 11/20 -- oh, no, no, you're right. 11/19/12. Yes,
 17 you're right.
 18 MS. ROBESON: Okay. So that is 20(a).
 19 MR. ORENS: And so this is a duplicate of 20(a).
 20 MS. ROBESON: And just write duplicate. Thank
 21 you. Are the shade trees deciduous?
 22 THE WITNESS: Yes, they are.
 23 MS. ROBESON: Okay. I was just curious.
 24 THE WITNESS: We don't have a lot of evergreen
 25 shade trees in this region.

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1 MS. ROBESON: I know. I just didn't know what
 2 autumn glories were.
 3 THE WITNESS: It refers to the color. They turn
 4 red, depending on what kind of -- these are a red maple.
 5 They actually do have yellow-leafed maples that are red
 6 maples.
 7 MS. ROBESON: Okay.
 8 THE WITNESS: But it's a particular species. So
 9 we have red maples surrounding the parking lot. We have an
 10 evergreen hedge along the southwest edge of the parking that
 11 abuts 355. And then when it turns the corner, then we have
 12 a hedge of Junipers right along the edge.
 13 And then along the western border of the building
 14 we have a series of plant material known as, predominantly
 15 related to storm water management. But there are some
 16 landscape plant materials in there.
 17 And then there is just lawn along the southern end
 18 of the upper parking lot. And then running along the
 19 northern boundary between the parking facility and the
 20 northern homes we have a series of arborvitaes, hollies, and
 21 some low growing shrubs that are predominantly then
 22 associated with storm water management. There's a storm
 23 water management swale between the parking lot and the
 24 fence.
 25 And then on top of that, we have a little bit of a

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1 retaining wall, and then a sight type, again that's
 2 S-I-G-H-T, sight type fence running along the property line
 3 for the length of the parking facility.
 4 MS. ROBESON: Okay. I was confused in the, I
 5 don't know if it was the land planning report. It said
 6 there was a six-foot sight type fence on top of the
 7 retaining wall, and then four feet -- I can't remember. How
 8 does that retaining wall work in conjunction with, and if
 9 you're not the person to ask, just stop me.
 10 BY MR. ORENS:
 11 Q Would you please identify the exhibit that you
 12 just put up?
 13 A This is site details SX3. So this is the detail
 14 pages for the site plan.
 15 Q And is that already in the record? There was a
 16 version of that submitted, Madam Examiner.
 17 MS. ROBESON: 4(c), site detail?
 18 MR. ORENS: Correct.
 19 MS. ROBESON: Do you know if it's changed?
 20 THE WITNESS: 17.
 21 MS. ROBESON: Revised site detail.
 22 THE WITNESS: 17(c).
 23 MS. ROBESON: SX3 dated 10/10/12?
 24 MR. ORENS: Correct.
 25 THE WITNESS: Yes.

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1 MS. ROBESON: Okay.
 2 MR. ORENS: So that is a duplicate of Exhibit No.
 3 17(c). And if you would describe what it depicts?
 4 MS. ROBESON: I missed that one, just going
 5 through.
 6 THE WITNESS: This exhibit shows several different
 7 details associated with the site plan, sidewalks, curbs,
 8 handrails. But the one we are most interested in here is
 9 the retaining wall section, which is the lower left hand
 10 corner of Exhibit 17(c) that shows that there will be -- on
 11 the exhibit. There's a property line on the furthest left
 12 hand side, and that is the property line that divides the
 13 existing residence on the left hand side, and then our
 14 property on the right hand side.
 15 MS. ROBESON: Okay.
 16 THE WITNESS: So here is the finished grade.
 17 There's a wall here and then there's a flight -- no, I'm
 18 sorry, I've got that backwards.
 19 MS. ROBESON: Okay. All right.
 20 THE WITNESS: This is the residence.
 21 MS. ROBESON: I've got you.
 22 THE WITNESS: It's right. I'm sorry. That's
 23 right. This is right. Sorry. So there's a little bit of
 24 a, about one and a half feet of height on our side, and then
 25 the grade drops down. I am looking for it. Also this one.

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1 So that's what the detail of how the wall looks, and then
2 the fence sits on top of it.
3 MS. ROBESON: I see. Okay. I understand where
4 the four feet came from. You were measuring from one side
5 versus the other side. Because at one point it said a two-
6 foot high retaining wall. But that's on the property side.
7 Okay.
8 THE WITNESS: Six feet maximum.
9 MS. ROBESON: Yes.
10 THE WITNESS: It has to do with the zoning. We
11 can't have more than a six-foot fence.
12 MS. ROBESON: Right, without a variance.
13 THE WITNESS: Inside the building restriction
14 line.
15 MR. ORENS: Six and a half, I think.
16 THE WITNESS: Six and a half. Yes.
17 MS. ROBESON: Okay. All right. Thank you for
18 explaining that.
19 BY MR. ORENS:
20 Q Does the fence comply with the height restrictions
21 in the R-200 zone?
22 A Yes, it does.
23 Q Okay. And you said it's a sight type fence, and
24 the landscaping we are proposing is going to be where?
25 A The landscaping we're proposing is on our side of

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1 the property. So it is between our building and the fence
2 will be landscaped.
3 Q Okay. I want to move back to the parking spaces
4 behind the building, if you will. And the shade trees that
5 you were showing. If the hearing examiner were to impose a
6 condition that a low wall or hedge or other material be
7 installed there to prevent headlights from intruding beyond
8 the parking spaces, is there sufficient room to do that?
9 A Yes, there is sufficient room. Typically, we
10 would plant in between the shade tree and the back of the
11 curb. Just to let you know, the grade in this area is about
12 618 to 622. And the adjacent property owner is at about 26.
13 So we've got four feet of grade change there to begin with.
14 Most of it is just a gradual slope, but there is a little
15 bit of a steeper-ness right adjacent to the parking.
16 MS. ROBESON: The parking is higher?
17 THE WITNESS: The parking is lower.
18 MS. ROBESON: Lower. Okay.
19 THE WITNESS: Five feet.
20 MS. ROBESON: Okay.
21 BY MR. ORENS:
22 Q What impact, if any, does the grade differential
23 have on the visibility of headlights on the adjoining
24 Winter property?
25 A It will put the, standing here, I think it will

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1 put about a foot of the car to become non-visible. But
2 that's about it. So I think that a little bit of a hedge or
3 a fence would be helpful.
4 And I think that there is, the adjacent property
5 owner has a hedge of Leland cypresses, I believe, that run
6 from about the midpoint of this building back, along the
7 property line.
8 MS. WINTER: I have a picture of that. So they
9 have a little --
10 MS. ROBESON: And we'll get that when it's your
11 turn.
12 THE WITNESS: Okay. They have a little bit of
13 screening, though, to begin with. But I think it would be a
14 good idea to put something there.
15 BY MR. ORENS:
16 Q Would you describe the play area, in terms of its
17 physical characteristics and how it will be enclosed, if at
18 all? And if you can, explain why the play area is where it
19 is?
20 A Okay. A new exhibit. LX2, which I think is
21 already in there.
22 MS. ROBESON: That is. I think it's --
23 BY MR. ORENS:
24 Q That would be a copy of Exhibit -- I think we're
25 back in the Exhibit No. 17 area. Is that LX1?

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1 A This is LX2.
2 Q LX2, so that would be 17(e). What is Exhibit
3 17(e)?
4 A This is the landscape details. This shows the
5 details of planting plants, and planting hedges and then
6 various types of play equipment, and the fence that we're
7 proposing.
8 So just to give you an idea, we have a little play
9 bench, a little sandbox. I believe this is for little kids
10 to play on; a Little Tykes, which is a slightly older age
11 group facility. And then we have the playground surface,
12 which is an engineered wood fiber that it's going to have.
13 So that's the general play equipment that's out there,
14 purposed to the appropriate age group of the children that
15 will be at the daycare facility.
16 Q Now, what enclosure, if any, is proposed for the
17 play area?
18 A We have two fences that are going to be provided.
19 We have a chain link fence with a black vinyl coating on it
20 that will be basically on three sides of the play area.
21 Q How high is it?
22 A That one is a six-foot chain link fence.
23 Q Okay, and the --
24 A I think it's just to keep the children protected
25 and confined while they are outdoors.

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1 Q Yes.

2 A On the fourth edge of the play area, which is the

3 side that faces the Winter property, they are proposing a

4 sight type fence, but is the Trex fence. And it is a fence

5 that has been identified as being, having some sound

6 attenuation qualities. And there is some information in the

7 report about that, the qualities of the fence.

8 Q May I interrupt the flow and mention a Trex,

9 T-R-E-X, fence. And I'm going to mark as Exhibit No. 35

10 this document and ask you if you can identify it?

11 (Exhibit No. 35 was marked

12 for identification.)

13 MS. ROBESON: Thank you.

14 MR. ORENS: Here, you can have another one. And

15 for the record, I did give a copy of that to Mr. and Mrs.

16 Winter.

17 MS. ROBESON: I saw you.

18 THE WITNESS: Trex fencing, this is --

19 MS. ROBESON: Wait, wait. I'm going to call this,

20 how would you describe this? Information on Trex fencing?

21 MR. ORENS: Trex fencing description and detail.

22 MS. ROBESON: Okay. Go ahead.

23 THE WITNESS: Okay. This is their marketing

24 brochure with some information about the product that the

25 Trex company sells. And on this second sheet, there is some

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1 data about the material and what it does. It does discuss

2 briefly some of their, in an unscientific way, some of the

3 sound issues.

4 MS. ROBESON: Where is that discussion? Under the

5 second page, safe and sound?

6 THE WITNESS: I think there are some -- I'm sorry,

7 I saw the grateful neighbors. I thought it did, but I don't

8 see it here. But we have a report from --

9 MR. ORENS: Speaking of which, I just handed you

10 what I've marked as Exhibit No. 36, a copy of which has been

11 provided to Mr. and Mrs. Winter. And if you would describe

12 what Exhibit No. 36 is?

13 (Exhibit No. 36 was marked

14 for identification.)

15 MS. ROBESON: Well, let me get a name for it.

16 MR. ORENS: Polysonics sound report.

17 MS. ROBESON: Sound. Okay. Now, one thing about

18 this is, generally we require, the rules require that expert

19 reports come in 10 days prior to the hearing. And we don't

20 have the expert here to be cross-examined either. So what

21 I'm going to do, we're leaving the record open anyway.

22 MR. ORENS: Sure.

23 MS. ROBESON: I am going to leave the record open

24 so the Winters have the opportunity to study this report and

25 if you have any questions or any objections, you can submit

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1 those within the time frame. And if necessary, we will

2 have --

3 MR. ORENS: Is that enough time?

4 MR. WINTER: How long?

5 MR. ORENS: 15 days.

6 MR. WINTER: 15 days should be sufficient.

7 MS. ROBESON: You know, you get to put in your two

8 cents about this report.

9 MR. ORENS: I suspect it will be more like a

10 nickel because Mr. Winter told me that his son-in-law is an

11 acoustical engineer. And I would suspect that he and George

12 Spano will have some discussions, and that there will be

13 additional information coming.

14 And if, in fact, there is, I would appreciate the

15 opportunity, if necessary, to have Mr. Spano respond to it.

16 And if the examiner so chooses, we will present Mr. Spano at

17 a follow-up hearing.

18 MS. ROBESON: I think that is the safest way to do

19 it, since he's not here for cross-examination.

20 MR. ORENS: I fully understand that.

21 MS. ROBESON: So what we would do is leave the

22 record open for 15 days. And if you decide that you want to

23 come in and ask Mr. Spano questions during that time, you

24 can submit that request in writing.

25 MR. ORENS: And we will not object.

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1 MS. ROBESON: Okay.

2 MR. WINTER: Okay. So procedurally, you won't

3 have another hearing, will you?

4 MS. ROBESON: We can.

5 MR. WINTER: Okay. I see.

6 MS. ROBESON: If you decide that you want to ask

7 the author of this --

8 MR. WINTER: I see.

9 MS. ROBESON: -- questions, you would have two

10 options within the 15 days. You may either just submit

11 comments or, you know, submit something in writing saying

12 why you agree or disagree with it. Or you have the option

13 during that time to say, we want to cross-examine Mr. Spano

14 on the accuracy of his report.

15 If you say, we want to cross-examine Mr. Spano,

16 then I will extend the time for the hearing, and we'll

17 reschedule another hearing so that you can come in and

18 cross-examine him.

19 MR. WINTER: Well, hearings are expensive, but if

20 on an informal basis we can talk to Spano is it?

21 MR. ORENS: George Spano.

22 MR. WINTER: Spano.

23 MS. ROBESON: Well, I have to give you the

24 options.

25 MR. WINTER: I understand.

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1 MS. ROBESON: So whatever you decide, you need to
2 tell me in 15 days.
3 MR. WINTER: If we need to. Okay. Okay.
4 MS. ROBESON: Okay. All right.
5 BY MR. ORENS:
6 Q Now, the Polysonics report pretty much speaks for
7 itself, but if you would just, well, let me first ask you
8 this question. Are you familiar with the report?
9 A Yes, I am.
10 Q Have you read it?
11 A Yes, I have.
12 Q And are you aware of the Planning Board's
13 recommendation as to conducting the study?
14 A Yes.
15 Q And if you would just very, very briefly summarize
16 Mr. Spano's conclusion with regard to noise impact on the
17 adjacent property?
18 A Okay. Based off of some data that he collected at
19 the applicant's Adamstown facility, trying to replicate as
20 much of the existing, proposed situation here at their
21 existing facility. He came up with the conclusion that it
22 was mostly between 60 and 65 dba's at what would be the
23 equal distance of the property in our particular situation,
24 with an occasional screech from a small child.
25 MS. ROBESON: I notice he said girls.

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1 THE WITNESS: Girls. He did.
2 MS. ROBESON: I object to that. No. Go ahead.
3 THE WITNESS: So, based off of those findings, he
4 made some assumptions and assumed that that would be, the
5 Winters would experience a similar type of situation at the
6 property line.
7 MS. ROBESON: Although it's above, isn't the sound
8 ordinance 65 dba?
9 THE WITNESS: During the day Montgomery County
10 noise code is 65 dba at daytime hours. So it --
11 MS. ROBESON: Because I'm seeing 75 dba. Oh,
12 that's from cars and trains.
13 THE WITNESS: From the trains.
14 MR. ORENS: That's the -- right.
15 MS. ROBESON: Got you. Got you.
16 THE WITNESS: We're a little bit of apples and
17 oranges here.
18 MS. ROBESON: I see what you're saying.
19 THE WITNESS: But based on that, he thinks that it
20 would be basically extra prudent that we use one of these
21 Trex fences which have been screened, have been demonstrated
22 to show a five to 10 dba reduction in noise.
23 MS. ROBESON: Why isn't the Trex fence on the
24 northeast as well?
25 THE WITNESS: Northeast.

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1 MS. ROBESON: Of the play area.
2 THE WITNESS: Towards the rear of the property?
3 MS. ROBESON: Yes.
4 THE WITNESS: There is no resident back there for
5 the sound to bother.
6 MS. ROBESON: I know, but isn't the Winters'
7 house?
8 THE WITNESS: The Winters' house is this gray
9 dashed line.
10 BY MR. ORENS:
11 Q Would you highlight it, please?
12 MS. ROBESON: I was just wondering if, I mean,
13 you're right up at the 60 to 63 dba level. Right?
14 THE WITNESS: Yes.
15 MS. ROBESON: And I guess my question, and I know
16 you're not the expert on this, would additional Trex fencing
17 on the northeast side of the playground further attenuate
18 the noise? And I know you're kind of in a pickle --
19 THE WITNESS: Right.
20 MS. ROBESON: -- so that's fine.
21 THE WITNESS: The general intent with using the
22 chain link was just to get as much view into the space.
23 MS. ROBESON: Maybe you could address that at some
24 point while we have the record open, and just see if you
25 object, what your position would be on a condition, well,

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1 (a) would it further attenuate the noise. That would be the
2 first question. And (b) whether you would object to a
3 condition putting the Trex fencing on that area as well.
4 MR. ORENS: We'll have Mr. Spano address the first
5 question, and Ms. Vesper, when she testifies later today,
6 will address the second.
7 MS. ROBESON: Yes. If, you know, again, it
8 depends on whether it really will or it really won't.
9 MR. ORENS: The little I do know about noise is
10 that it travels in a straight line, so that the --
11 MS. ROBESON: Well, you're not testifying now.
12 MR. ORENS: I know that.
13 MS. ROBESON: So let's get through this.
14 MR. ORENS: Okay.
15 MS. ROBESON: And we can sort out what we want to
16 do after we go through all the witnesses.
17 MR. ORENS: Understood. Okay.
18 BY MR. ORENS:
19 Q Anything else on Mr. Spano's?
20 A He does mention that the people to the north would
21 not be impacted at all by the sounds of this.
22 Q Okay. Are you familiar with section 59-G-1.21 of
23 the zoning ordinance, which is in that little box on my
24 cheat sheet here?
25 A Yes.

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1 Q And what does that say?

2 A Get my little cheat sheet. The standards of

3 evaluation for a special exception, and the things that --

4 MS. ROBESON: I'm sorry to keep interrupting.

5 MR. ORENS: No, no.

6 MS. ROBESON: I have one last question before you

7 start into the standards. What about the sign? The

8 Planning Board said the sign was too big. What, are you

9 still proposing that sign, because you haven't described it?

10 Go ahead.

11 BY MR. ORENS:

12 Q My omission. Please respond to the examiner's

13 question.

14 A Okay. On Exhibit No. 17(c) duplicate in the upper

15 left hand corner, we have our sign detail, which is the same

16 detail that was here at the Planning Board.

17 Q What's the size of the sign?

18 A The sign area is three by five, which is 15 square

19 feet. And it is five feet high.

20 Q Will it be illuminated?

21 A It will not be illuminated. It is the standard

22 sign and logo for the Vespers.

23 Q I'm sorry to interrupt.

24 MS. ROBESON: And what's your response to the

25 Planning Board's finding that it was too large?

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1 THE WITNESS: Exhibit No. 31, which is the

2 rendering, there's a little black line on here. That's

3 where the sign is now. We haven't really talked about it,

4 but we are dedicating approximately 30 feet of dedication to

5 355. And so that puts this sign about 60 feet back from the

6 actual edge of the asphalt on 355.

7 So we feel like it's actually perfectly

8 scaled and won't actually be very large, considering the

9 speed at which cars are driving by, and the distance from

10 the road to the sign itself. And the engineer will talk a

11 little bit more about the improvements to 355. But they're

12 not any time in the near future.

13 MS. ROBESON: Okay.

14 BY MR. ORENS:

15 Q I didn't understand the last thing you said, Ms.

16 Bryant.

17 A Sorry. The distance from the --

18 Q No, no. The very last thing you said.

19 A Steve Crum, the engineer, will talk about --

20 Q Okay.

21 A -- the improvements to 355.

22 Q Is Mr. Crum going to testify about the zoning

23 ordinance division 59-E standard for signs in residential

24 zones, or would you do that?

25 A I can do that.

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1 Q Would you please?

2 A It is a two square foot -- I don't actually have

3 it memorized.

4 MS. ROBESON: It's all right.

5 THE WITNESS: But it basically calls for --

6 MS. ROBESON: Just paraphrase it.

7 BY MR. ORENS:

8 Q Let me rephrase the question. Will it be

9 necessary for the applicants to secure a sign variance from

10 the Sign Review Board in order to utilize the proposed sign?

11 A Yes, it would. The standard is two square feet.

12 Q And would it be appropriate for the hearing

13 examiner to impose a condition that the approval of the

14 sign, that there must be an approved sign variance in order

15 for the sign as requested to be installed? If not a smaller

16 compliant sign would be required.

17 A Yes.

18 Q Thank you.

19 MS. ROBESON: All right.

20 BY MR. ORENS:

21 Q Now, inherent and non-inherent, if you would tell

22 us what section 59-G-1.2.1, don't read it, but essentially,

23 what does it pertain to?

24 A It basically pertains to the granting of the

25 special exception and being, it must be consistent with the

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1 general neighborhood and the location and adverse effects,

2 and in relationship to its use within the County.

3 Q Now, you are familiar with the Technical Staff

4 report, are you not?

5 A Yes, I am.

6 Q I would like to direct your attention to page 12

7 of the staff report. You can use my page 12, because it's

8 highlighted.

9 A Right.

10 Q And are you familiar with the seven criteria that

11 the Board, hearing examiner, and the planning staff used to

12 determine whether or not a use is, or an operational

13 characteristic is inherent or non-inherent? What are those

14 seven criteria?

15 A The seven criteria are size, scale, scope,

16 lighting, noise, traffic, and the environment.

17 Q And are those considered to be inherent or non-

18 inherent?

19 A Those are considered to be inherent.

20 Q So a certain level of noise from a play area would

21 be considered an inherent characteristic?

22 A Yes.

23 Q And traffic would also be considered an inherent

24 characteristic?

25 A Yes. And they go on to list nine inherent items

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1 actually associated with daycare facilities.
2 Q And what are they?
3 A The building and the outdoor areas for the play
4 area, the parking lot, the lighting, noise generated by the
5 children, drop-off and pickup, outdoor play areas, long
6 hours of operation, the employees that are going to the
7 facility, and vehicle trips to and from the site.
8 Q In your opinion as a land planner, are there any
9 non-inherent characteristics associated with this use?
10 A The staff has identified a non-inherent component
11 as being the request for the waiver along the north boundary
12 in their staff report. The question is whether it gets to
13 being, I guess, rises to the level of non-inherent.
14 We feel that it clearly does not adversely
15 impact the adjacent property owner for a couple of reasons
16 we stated which was, we have the sight type fence and our
17 retaining wall. There is a topographic grade change between
18 us and the adjacent property owners.
19 The parking, when you come into the parking, the
20 vehicles will come in or pull in, so they will point south
21 when they pull in. When they back up, they will again point
22 kind of southwest and drive out to the west. So there are
23 no headlights in the evening hours that will be shining into
24 the residence to the north.
25 Again, we've provided an extensive amount of

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1 buffering along our property line. They actually already
2 have some buffering on their property that we don't have
3 shown on our exhibit. And again, they have a series of
4 three pipe stems that basically prohibits any real
5 development or use for the first 75 feet.
6 MS. ROBESON: How many feet?
7 THE WITNESS: 75 feet. Each pipe stem is 25 feet
8 wide.
9 MS. ROBESON: Okay.
10 THE WITNESS: That's the standard in the County.
11 And so, and then we're approximately 180 or more feet away,
12 for each of the individual homes. And actually, the exhibit
13 shows that.
14 BY MR. ORENS:
15 Q Under the zoning ordinance, would the parking area
16 be considered a, quote, parking facility?
17 A Yes, it would.
18 Q And a parking facility plan is required?
19 A Yes, it is.
20 Q And the waiver that is being requested, is that a
21 waiver from one of the parking facility plan requirements?
22 A Right.
23 Q And are you familiar with the basis upon which a
24 parking facility waiver can be approved?
25 A Yes.

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1 Q And what is it?
2 A The waiver can be approved via the -- sorry.
3 Q Let me help you out.
4 A Right.
5 Q There's a reference to the objectives of the
6 parking facility plan.
7 A Okay. That's what you are asking me. I'm sorry.
8 Q Okay. Now --
9 A Yes. There are four criteria. The health,
10 safety, and welfare of the adjacent uses, the adjacent
11 public roads that the facility abuts, the safety of the
12 pedestrians and motorists within the facility, the safety of
13 traffic within the parking facility, and the location and
14 exit from the facility, and then the appropriate amount of
15 lighting.
16 And we can meet all of those objective, for a lot
17 of the reasons I already stated. That the, you know, the
18 buffering, the additional buffering we have provided along
19 this edge more than compensates for the space that would
20 have been required of us. We are asking for an 18-foot
21 difference, but, you know, we've certainly exceeded that
22 requirement in terms of, something that people cannot see
23 the parking facility through.
24 And then pedestrian safety, because all the
25 parking is located on the same side of the building, people

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1 will be less inclined to wander down the drive isles to get
2 to the building. And it is generally considered a safe
3 layout.
4 The circulation within, the traffic engineer will
5 talk a little more about that, but it is, we have provided
6 adequate turn around space and parking for people provided.
7 The location of the entrance, again, the traffic engineer
8 will talk about the sight distance, but we have widened it
9 to make it a little more comfortable getting in and out of.
10 And then the appropriate lighting, which I haven't
11 covered yet, but we are --
12 Q In your opinion, then, will the approval of the
13 waiver have any adverse effect on compliance with the
14 criteria in 59 --
15 A E-4.2.
16 Q Thank you.
17 A No, it will not.
18 Q You mentioned lighting, so why don't we go to
19 that.
20 A Okay.
21 Q And then we can talk, go back to the standards. I
22 believe that the photometric plan is already in the record,
23 Madam Examiner.
24 MS. ROBESON: It is.
25 MR. ORENS: And that would be, I think Exhibit No.

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1 17(f).
2 BY MR. ORENS:
3 Q What is Exhibit No. 17(f)? What does it show?
4 A It is the lighting photometrics for the site.
5 Q Where are the lights?
6 A We have two kinds of lights. We have a, what we
7 call a shoebox, which is a square shaped pole -- a square
8 shaped light fixture on a pole. And there --
9 Q How high are the poles?
10 A The poles are 12-feet tall, and that includes to
11 the top of the fixture. There are two of them. They're
12 labeled as type A on this plan. There is one on the lower
13 parking area in front of the building, and then there one in
14 the upper parking area. They are on the parking spaces side
15 of the parking facility.
16 And then there are two type B fixtures, which are
17 called wall packs, which are little square boxes that sit
18 next to their doors. And they are there to highlight the
19 exits of the building. There are other safety lighting
20 associated with the exits too. But this is just for general
21 purposes.
22 Q When will the lights be on?
23 A When will the lights be on?
24 Q When, the time of the day?
25 A They will be turned off, let's say this, when

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1 staff leaves.
2 MS. ROBESON: Which would be at 6:30?
3 THE WITNESS: A little after 6:30, because I
4 think staff is allowed to stay a couple of minutes after.
5 BY MR. ORENS:
6 Q Exhibit No. 17(f), I think.
7 A (F), okay.
8 Q It's got all those little numbers --
9 A Yes.
10 Q -- spread out. What do they represent?
11 A They represent the foot candles that are produced
12 by the light fixtures.
13 Q What is the County standard for foot candle
14 measurements at a property line in the special exception?
15 A 0.1.
16 Q I'm sorry?
17 A .1.
18 Q 0.1?
19 A Yes.
20 Q And referring to the exhibit, what is the actual
21 foot candle measurement as determined by the foot candle
22 study?
23 A Zero. We have no light spillage at the property
24 line.
25 Q Okay. Thank you. Anything else about lights?

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1 MS. ROBESON: And are the fixtures like cut off?
2 Do they --
3 THE WITNESS: They're full cut off.
4 MR. ORENS: Full cut off.
5 THE WITNESS: They shoot just down on the, that is
6 compliant. They are just a square box. And that's the good
7 thing about them. Because all sides of the lower level is
8 open, everything shoots down.
9 MS. ROBESON: Okay.
10 BY MR. ORENS:
11 Q Luminaire will be --
12 A It's 150-watt pale light, so it's a white light.
13 Q All right. Going back to inherent and non-
14 inherent. Based upon your testimony with regard to both
15 lighting and the parking facility, in your opinion is the
16 waiver appropriate, and will the waiver result in a non-
17 inherent adverse impact that has not been mitigated?
18 A Yes.
19 Q It will not.
20 A Yes.
21 Q Okay. Let's move on, if we can, to the standards
22 themselves for approval of special exception. Are you
23 familiar with the provisions in section 59-G-1 and 59-G-2,
24 as they apply to this case?
25 A Yes.

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1 Q Okay. I'm going to ask you, in the interest of
2 time, if you would, in a narrative fashion, go through those
3 provisions and explain factually and in your opinion, why
4 the proposed special exception complies with the general and
5 specific standards for approval of a childcare facility for
6 52 children in the R-200 zone?
7 A Okay. As I stated earlier in Master Plan, we're
8 in the transit corridor area of the Master Plan, Clarksburg
9 Master Plan. It's the Clarksburg Master Plan in Hyattstown
10 special planning area, study area.
11 The Master Plan contains specific recommendations
12 about this site. And it makes no specific location
13 recommendations about daycare facility, other than that
14 there will be a profound need for it, because it is a
15 community of transition, and there's, I forget the numbers
16 of residential homes going up in the area, and that they
17 suspect that it will be a big need in the community. So as
18 the community moves forward.
19 So they ask that it be located near transit,
20 housing, and one other, employment. And we feel that we are
21 very close to the Town Center and to the proposed
22 developments just to the north of us, in addition to the
23 existing single-family homes here. So we are also located
24 in the transit corridor. So we are not far from transit.
25 It is over, the transit stop, there is one going to be

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1 approximately at Shawnee and Observatory Drive, and one a
2 little farther north on 355.
3 Q If I may interrupt, in your opinion, then, is the
4 proposed special exception consistent with the Master Plan
5 recommendations and objectives?
6 A Yes, it is.
7 Q And in case I did not ask you this, is this a
8 permissible special exception in the R-200 zone?
9 A You did ask me that, and yes, it is.
10 Q Okay. Continue.
11 A It says in the Master Plan, so there's a series of
12 objectives to, you know, what are the impacts to the
13 community. Is it of a size and scale that is appropriate
14 with the community? The existing building now is typical of
15 the neighborhood that exists today, existing 20 years, 10
16 years ago, 15 years ago.
17 It is a brick rancher style, sometimes two-story,
18 mainly one-story buildings in the neighborhood. And that's
19 what's there today. And they're proposing a modest addition
20 to the back; that again, this would be something, and it's
21 also generally to the rear, although there are some
22 elevation changes that are being made that the architect
23 will talk about.
24 So, but just from a footprint on the ground, it
25 is, if you look at the Winter property, which is, again,

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1 pretty typical. They are pretty identical, the existing
2 building. And we're just adding a small, 1000-plus foot
3 addition to the end of it.
4 If you also look at Exhibit No. 32, to the north
5 of us is the Town Center and all the major development that
6 is --
7 MS. ROBESON: Can you point that out on that
8 exhibit?
9 THE WITNESS: It's a little off. It is, basically
10 what looks like this construction area right here, although
11 it's being composed, and it goes back that way.
12 MS. ROBESON: Back north?
13 THE WITNESS: Yes, north and then, you know,
14 something like that around --
15 MS. ROBESON: Okay. So you're pointing at the
16 area, at the gray area on Exhibit No. 32 that is above, what
17 is that road in blue there?
18 THE WITNESS: That is Stringtown Road.
19 MS. ROBESON: Okay.
20 THE WITNESS: The very northern end of the
21 property, and then just -- they have different community
22 names, but the Town Center is the one --
23 MS. ROBESON: Okay.
24 THE WITNESS: But we have a lot of development
25 occurring north of the property on 355. And all of those

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1 buildings are much larger, more modern scale, bulk, size,
2 homes. And then almost everything to the south of us is
3 starting to be the traditional residences that have existed
4 there.
5 So this more in keeping, this is a nice transition
6 between the two. From the front, it's not going to look
7 significantly different in scale from the adjacent property,
8 but it will help, the roof pitches and stuff are designed
9 more to look like the newer architecture that's going into
10 the building. I think from that perspective it will work
11 well.
12 The noise we've kind of talked about, you know,
13 the generation of noise from the children. We think we can
14 comply with the County's requirements for the dba at the
15 property line. There is also a restriction on the number of
16 children, 25 at one time, and the hours that they are out.
17 So it's 9:30 to, let me show you this, 9:30 to 11:30 and
18 2:30 to 6:30.
19 BY MR. ORENS:
20 Q Let me interrupt again, if I may. And I know that
21 the architect will go into great detail, but as a land
22 planner, do you have an opinion as to whether the renovated
23 building and the site as designed will maintain a
24 residential appearance, and whether the structure will
25 continue to mimic, if you will, a single-family home?

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1 A Yes, I do. I've seen a lot of these daycare
2 facilities. And this is one that I think, you would be hard
3 pressed to figure out if this was a residence versus a
4 commercial space, minus the little cupola on the top.
5 Q Go back to, if we can go back to Exhibit No. 32
6 for a moment, and the surrounding area and the nearby
7 residential neighborhood. And I think you may have
8 mentioned this earlier. Are there any existing approved,
9 valid, operating special exceptions in the neighborhood as
10 either you or the staff define it?
11 A There was the one, which is the Green Gardens just
12 to the north of us. It's been operating since 1976 or '79.
13 And it's still under operation now. It is a horticultural
14 nursery and a commercial greenhouse. They don't sell
15 anything from there. They package it up, take it out, and
16 put it into people's yards for them.
17 Q Are there any other special exceptions --
18 A There is.
19 Q -- approved special exception within the defined
20 neighborhood?
21 A Not within the defined neighborhood.
22 Q Are there any along Frederick Road that the
23 hearing examiner needs to be aware of?
24 A There is one that is just south of what is shown
25 on Exhibit No. 32. It's on the plan at Old Baltimore Road

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1 and 355. It's the Goddard School. It is a daycare
2 facility, and it is currently under construction.
3 Q Is it a daycare facility or a private --
4 A It is actually a daycare facility.
5 Q It is actually daycare.
6 A We had a question about that, and it is a daycare
7 facility.
8 MS. ROBESON: How big is that?
9 THE WITNESS: It's big. Let me get the answer for
10 you. It has a maximum of 283 children with 163 daycare, 120
11 school-age children, and 41 staff.
12 MS. ROBESON: Okay.
13 THE WITNESS: So it is a completely different --
14 MS. ROBESON: And just for the record, I think I
15 saw in your more recent statements the Avalon School. Can
16 you just clarify here what the status of the Avalon School
17 is? Is it Avalon School?
18 THE WITNESS: It's Avalon School.
19 MS. ROBESON: Yes.
20 THE WITNESS: They were S-2685. I spoke to
21 Katherine Freeman, and they had an extension of that
22 approval up to October '11, October of 2011. So it was a
23 year and a half ago. And they have not, they have not
24 applied for a new extension. And as far as we can
25 determine, there have been no building permits pulled. So

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1 that would be the thing that would have cemented it for
2 them. So as far as our understanding is, it's expired.
3 MS. ROBESON: Okay.
4 BY MR. ORENS:
5 Q Do we have any information, verifiable information
6 as to what, if anything, is happening on that property?
7 A No, not to my knowledge.
8 Q Okay.
9 A There's still a sign up.
10 Q Okay. Now, given the two special exceptions that
11 you did identify one within and the other outside the
12 boundaries of the surrounding area, will approval of this
13 special exception increase the number, density, or scope of
14 special exception uses that would be inconsistent with the
15 Master Plan, or adversely affect the residential nature of
16 the adjacent residential community?
17 A No. I do not think so. I think it is
18 appropriately located and of the proper scale.
19 Q In your opinion, based on your testimony, will the
20 proposed addition to the building and the proposed use be
21 detrimental to the use, peaceful enjoyment, economic value,
22 or development of surrounding properties, or the general
23 neighborhood at the subject site, irrespective of any
24 adverse effects the use might have if established elsewhere
25 in the R-200 zone?

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1 A No, I do not believe so.
2 Q Why?
3 MR. WINTER: I have an objection to that. Is she
4 testifying as an appraiser now?
5 MS. ROBESON: No, she's testifying --
6 MR. WINTER: You've given a lot of latitude here
7 in talking about various areas. But as far as your
8 proffering an opinion that the value isn't adversely
9 affected by any of the surrounding properties. Is that --
10 MS. ROBESON: Typically, we do have land planners
11 testify as to the impact on adjacent properties, and the
12 value of adjacent properties. That doesn't prevent you --
13 MR. WINTER: Okay.
14 MS. ROBESON: -- from presenting your own
15 testimony.
16 MR. WINTER: Okay. I was, I didn't see it in her
17 qualifications, so I didn't --
18 MS. ROBESON: No, I understand. That's a good
19 point.
20 MR. WINTER: That was kind of -- okay.
21 MS. ROBESON: But this is typically covered by
22 land planners in this type of hearing.
23 MR. WINTER: I don't mean to be contrary either.
24 I just --
25 MS. ROBESON: No, you're fine. You're fine. Go

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1 ahead, Ms. Bryant.
2 THE WITNESS: Okay. The scale of the building is
3 very residential in nature, and the hours of operation,
4 although they are considered long, they are during the work
5 hours, that's from 6:30 to 6:30 are the hours this facility
6 is open.
7 So it should have little impact on the use of the
8 adjacent properties during the hours that most people are
9 home, during the evenings on the weekdays, and on the
10 Saturdays and Sundays it wouldn't be open. So the noise
11 issues and traffic issues are part of the regular comings
12 and goings of most people in the neighborhood in terms of
13 the time and the volumes of people.
14 BY MR. ORENS:
15 Q In terms of the building itself, what are the
16 actual setbacks, front, sides, rear?
17 A They are in excess of what's required.
18 MS. ROBESON: Exclusive of the parking facility is
19 what you're saying.
20 THE WITNESS: Yes. Excluding.
21 MR. ORENS: Excluding. Right. Correct. The
22 building itself.
23 MS. ROBESON: Okay.
24 MR. ORENS: The footprint of the building as
25 modified.

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1 MS. ROBESON: Okay.
2 BY MR. ORENS:
3 Q And what are we looking at now?
4 A This is the site development plan for special
5 exception, SX2.
6 MS. ROBESON: Is 17(b)?
7 BY MR. ORENS:
8 Q Yes. 17(b). And what does 17(b) show?
9 A 17(b) is our site plan that shows all the
10 engineering and grading, septic setbacks, water/sewer
11 connections. And you will see on here we have the setbacks
12 are based off the R-200, which is a two-foot building
13 setback. Not two-foot, sorry, 12-foot side yard setback to
14 the north, and a 13-foot side yard setback to the south that
15 has the two side yards have to equal 25, and you can't have
16 one less than 12. So that's the 12 and the 13. Our rear
17 setback is 30, and our front setback is, sorry, that setback
18 is 40 feet. Sorry, I'll bring that toward you.
19 Q What is the height of the building as modified?
20 A 18, sorry 17.85 feet.
21 Q And is that within the height limit of the R-200
22 zone?
23 A Yes, it's 50 feet.
24 Q And in your opinion, then, will the structure, as
25 modified, continue to be in conformity with the general

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1 character of the neighborhood as either you or the planning
2 staff have defined it, considering population, density,
3 design, scale, and bulk?
4 A Yes, and we have so stated already.
5 MR. ORENS: I will ask the traffic engineer to
6 talk about the traffic report.
7 MS. ROBESON: Okay.
8 BY MR. ORENS:
9 Q We have already covered this, but just to make
10 sure I'm going down the list of the zoning ordinance
11 standards, for the record. In your opinion, will the
12 proposed use, with the addition to the building, cause any
13 objectionable noise, vibration, fumes, odor, dust,
14 illumination, glare, or physical activities at the subject
15 site, irrespective of any adverse effect these might have if
16 elsewhere?
17 A We did talk about the noise already, so I won't go
18 back into that. The trash pickup is very residential. It
19 will be two trash cans that will be taken down to the
20 street.
21 Q No dumpster?
22 A No dumpster. There's no transformer on site, so
23 there is no noise generated by that. And again, I'll let
24 the traffic engineer talk about the traffic and the comings
25 and goings from the parking lot.

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1 Q And you talked about illumination and glare?
2 A The illumination I've already covered. And
3 deliveries, there are no food deliveries, so this would be
4 an occasional UPS truck or Fed Ex truck.
5 Q And will the proposed child daycare center
6 adversely affect the health, safety, security, morals, or
7 general welfare of residents, visitors, or workers in the
8 area at the subject site, irrespective of any adverse
9 effects the use might have if established elsewhere in the
10 R-200 zone?
11 A No. The little kids will not corrupt anybody.
12 Q And the subject property is not a record lot is
13 it?
14 A It is not.
15 Q And will it be required that subdivision approval
16 be obtained from the Planning Board?
17 A Yes, it will.
18 Q Okay. Directing your attention now to 59-G-
19 2.13.1(a) and (b), and if you could just very briefly
20 summarize how the application complies with both of those
21 provisions?
22 A Okay. One, we must submit a plan that shows the
23 location and loading and unloading spaces, which we've
24 already submitted. A number of parking spaces must be in
25 compliance with the 59-E-3.7, which they are. 59-E-3.7

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1 requires that there be one space for every staff member, and
2 there are six. And then one space for every six children, I
3 think. Yes, for six children, which the schedule is 14
4 point something spaces, so we have 15 spaces.
5 There is a comment about existing spaces available
6 on adjacent, which we are not asking for adjacent property
7 parking. And we're not asking for a reduction in the number
8 of spaces. We are given no requirement. There is adequate
9 discharge and pickup of children.
10 The applicant will go into this a little more, but
11 the general procedure for dropping their children off is to
12 come into the parking facility. Park your car. Get out of
13 the car. Walk your child into the facility. Have them sign
14 in, and then leave. So there is no, you know, pulling up
15 front and letting the kid get out and run into the building.
16 It's not allowed. So everybody will park and will exit the
17 building after they drop their children off.
18 Q Did you mention how many parking spaces are
19 required for this?
20 A Yes. 15 are required and we have 15 proposed.
21 Q Okay.
22 A And the petitioner has an affidavit that she
23 signed. That was the other part of that.
24 Q In your opinion, will the drop-off and pickup area
25 for students be adequate?

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1 A Yes. Adequate and safe.
2 Q Section 59-E-2.82 governs locations of access
3 driveways in residential zones. Are you familiar with that
4 provision?
5 A Yes, I am.
6 Q And does the driveway, as shown on the plan, which
7 was modified from the existing driveway, am I correct?
8 A Yes.
9 Q Does that comply with section 59-E-2.1(a)(2).
10 A Yes, to the best of my knowledge it does.
11 Q Okay. The setback of the parking facility from
12 Frederick Road, how far is it from the actual existing
13 paving?
14 A From 355 to the -- I'm sorry.
15 Q Yes.
16 A Maybe I need to clarify. 355 to the parking in
17 the front of the building?
18 Q Right. Right.
19 A From the existing pavement to the parking facility
20 is 60 feet. From the existing right-of-way its 45, and then
21 the proposed Master Plan right-of-way it's, right.
22 MR. ORENS: Examiner's indulgence for a moment.
23 MS. ROBESON: Yes. While he's reviewing that, I
24 just had one, on that sign, you have a picture of the sign
25 on the revised site details plan, which I think is 17(c)?

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1 THE WITNESS: Right.
2 MS. ROBESON: Okay. Is that the sign you're
3 proposing? Is that the actual sign that you're proposing
4 for the special exception?
5 THE WITNESS: Yes.
6 MS. ROBESON: And I assume you're moving it then,
7 because that --
8 THE WITNESS: It would be identical. This is the
9 Adamstown sign.
10 MS. VESPER: Correct.
11 THE WITNESS: We're not taking it and physically
12 moving it to the other location.
13 MS. ROBESON: Okay.
14 THE WITNESS: We'll have another one made.
15 MS. ROBESON: So it's going to be 30 feet -- how
16 far back from the road is it going to be?
17 THE WITNESS: It's approximately 60. Let me give
18 you the actual number. From the pavement, it's 56 feet.
19 Sorry. And then from the existing right-of-way it's 42, and
20 from the proposed right-of-way it's about 11 feet.
21 MS. ROBESON: Okay. All right. I'm sorry to --
22 BY MR. ORENS:
23 Q No, no. Just for total clarity, if I may follow-
24 up on the examiner's question, the sign that you have a
25 photograph of on Exhibit --

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1 A 17(c).
2 Q -- that is not located on the subject property is
3 it?
4 A Not at the moment.
5 Q Well, the picture that you are --
6 A Yes, that is not on the subject property.
7 Q The intent of the picture is to show the sign, not
8 the setback of the sign, from an existing street here in
9 Montgomery County?
10 A That's correct.
11 MS. ROBESON: Okay.
12 BY MR. ORENS:
13 Q Which brings us to screening. Are you familiar
14 with section 59-E-2.9 of the zoning ordinance that regards
15 screening in residential zones that apply to special
16 exceptions?
17 A Yes.
18 Q And in your opinions, does the proposed exception,
19 with the waiver, comply with the screening requirements
20 and -- comply with the screening requirements?
21 A Yes, it does. We are required to have a solid
22 fence, or a minimum of a three-foot hedge. We actually have
23 a solid fence, three-foot hedge, evergreen trees, a mix of
24 all of those, in excess of that.
25 Q I'm inquiring, did I miss something?

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1 MS. ROBESON: Well, they are so redundant that I'm
2 sure somewhere along the way --
3 THE WITNESS: We do meet the screening
4 requirement, I don't think I mentioned this, for the shade
5 trees for the --
6 MS. ROBESON: The parking areas?
7 THE WITNESS: -- the parking area.
8 MS. ROBESON: The shading, the 30 percent?
9 THE WITNESS: 30 percent. We're at 33 percent.
10 MS. ROBESON: Okay.
11 MR. ORENS: Thank you, Ms. Bryant.
12 THE WITNESS: I think that's it.
13 MR. ORENS: No further questions.
14 MS. ROBESON: All right. Now it is your time.
15 MR. WINTER: May I ask you a question?
16 MS. ROBESON: Yes.
17 MR. WINTER: Could we take a five-minute break?
18 MS. ROBESON: We may. Let me just, before we --
19 MR. ORENS: Thank you, Mr. Winter.
20 (Discussion off the record.)
21 MS. ROBESON: Before we take a break, very
22 quickly, I just have one, just wanted to ask something for
23 your transportation expert to think about. Is there any
24 traffic safety issue that would justify the size of that
25 sign, given that it's -- don't answer. You don't have to

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1 answer now, because we really are going to take a break. So
2 I will actually give you 10 minutes.
3 MR. WINTER: Thank you.
4 MS. ROBESON: So we'll be back in 10 minutes.
5 Thank you.
6 MR. ORENS: Thank you.
7 (Whereupon, at 11:21 a.m., a brief recess was
8 taken.)
9 MS. ROBESON: Mr. Winter, this is your time. Is
10 it Winter?
11 MR. WINTER: Winter, no S.
12 MS. ROBESON: No S. Okay.
13 MR. WINTER: No S.
14 MS. ROBESON: Winter.
15 MR. WINTER: And one L in Philip.
16 MS. ROBESON: It's your turn to ask questions of
17 Ms. Bryant.
18 MR. WINTER: Okay. Can I go a little bit beyond
19 that?
20 MS. ROBESON: No. You will get the time to --
21 MR. WINTER: Well, I just want people to know
22 where I'm coming from as far as why we're here, and the
23 questions that -- okay. I'll just stick to what she
24 testified about.
25 MS. ROBESON: I have faith that it will be self-

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1 evident.
2 MR. WINTER: Okay. All right.
3 CROSS-EXAMINATION
4 BY MR. WINTER:
5 Q My main concern, and it was one of those last
6 statements that you made having to do with value, at this,
7 I'm concerned about the impact that this will have, not only
8 on my daughter's property, I own the 10 acres behind this
9 property as well.
10 A Yes.
11 Q And I just want to make sure we're comparing
12 apples to apples and oranges to oranges, as far as densities
13 and zoning requirements --
14 MS. ROBESON: Okay.
15 BY MR. WINTER:
16 Q -- so we're not mixing a residential with a
17 commercial.
18 MS. ROBESON: And so your question is?
19 BY MR. WINTER:
20 Q And my question is, they've done all these studies
21 based on this Adamstown, which she didn't testify to, but
22 the, other than seeing the sign. But how does the Adamstown
23 facility, which I understand is about a 52 student facility,
24 how does that compare by way of the size of this lot versus
25 the Adamstown?

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1 A I have not actually visited the Adamstown
2 facility.
3 Q Okay.
4 A So I can't answer that question.
5 MS. ROBESON: That may be a question you may want
6 to reserve for Ms. Vesper.
7 MR. WINTER: Yes. I just wanted to know if she --
8 because some of the testimony related to that.
9 THE WITNESS: It is in Frederick County, so they
10 are under different rules and regulations up there than we
11 are.
12 BY MR. WINTER:
13 Q Okay. But they are under the State regulations
14 COMAR --
15 A Yes.
16 Q -- as well. Okay. All right. Someone else is
17 going to address the sewer and septic issues --
18 MR. ORENS: That is correct.
19 BY MR. WINTER:
20 Q -- as I understand? Okay. All right. One of the
21 big things that you testified to was the lot coverage, and
22 where things had to be. And one big concern that we have is
23 that tot lot. It's right outside the bedroom windows there.
24 And evidently, the noise guy, Spano, George?
25 A George, yes.

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1 Q All right. He's not here to ask these questions.
2 But it sounded to me that he had some reservations as far as
3 the decibel levels there.
4 A He did.
5 Q And that you're trying to mitigate it with this
6 fence. And that's something that I'll have to investigate,
7 and I know my son-in-law will want to investigate it. So
8 that tot lot, is that on the green space area, the setback?
9 A It is not. The setback in the sight type fence
10 are one and the same. So the playground is 13 feet off the
11 property line.
12 MS. ROBESON: Well, what is the minimum, what is
13 the required setback?
14 THE WITNESS: There's not a required setback for
15 the playground. There is a required setback for the
16 building and for the parking. And there are requirements
17 involving fences if they get over a certain height.
18 MS. ROBESON: Right. Okay, so it's setback 13
19 feet from the property line?
20 THE WITNESS: It just happens to coincide with the
21 setback on that side of the building, but it's not required.
22 BY MR. WINTER:
23 Q Now, is the setback, what's the setback from the
24 property line to the tot lot?
25 A The tot lot is setback 13 feet from the property

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1 property to the tot lot is 13 feet?
2 A Yes.
3 Q And you're going to put up a six-foot fence there.
4 And my daughter's house is above the property. And did you
5 all consider that in your screening? Because they're not on
6 the same elevation. This property here is considerably
7 lower than her property. I have an exhibit here that shows
8 that, if you want it. But --
9 MS. ROBESON: Well, you can do that in your
10 testimony.
11 BY MR. WINTER:
12 Q Okay. Did you consider that?
13 A We do consider it from a screening standpoint. I
14 can't talk about the sound issue. That's not my specialty.
15 Q Well, you testified as to the sound issue, and
16 that's why I'm asking.
17 A I testified as to what the report said about the
18 sound. You're getting outside the --
19 MS. ROBESON: That's one of the questions. That's
20 why we're leaving the record open.
21 MR. WINTER: Yes. For -- okay.
22 MS. ROBESON: Following up on his question, I
23 think what he's getting at is, is the six-foot fence going
24 to adequately screen the tot lot from his daughter's
25 property, given the difference in elevation. Is that your

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1 question?
2 MR. WINTER: Absolutely.
3 MS. ROBESON: Okay.
4 MR. WINTER: You couldn't have phrased it better.
5 MS. ROBESON: So can you answer that?
6 THE WITNESS: I can. There are, again, we are
7 lower than the adjacent property. And I don't know what the
8 finished floor level is in the adjacent property. I could
9 tell you what the grades around the outside of the building
10 are, but I would have to send a survey crew in.
11 MS. ROBESON: What is the grade differential?
12 THE WITNESS: The grade that comes in at kind of
13 the middle, bisects the middle of both is 26. And we are
14 down, this is a little confusing but this is the 26 contour
15 that comes through here. And then you have the 24 contour
16 that's here. So it's plus or minus 24 feet, 624 feet above
17 elevation versus the 26.
18 But my understanding is they have a similar
19 condition that we have which is that this end of the
20 building pops out a little bit. So their finished floor is
21 elevated above the surrounding grade around the building.
22 MS. ROBESON: Okay.
23 THE WITNESS: But I don't know what that distance
24 is. I've not been inside the house. So there is a grade
25 difference there. Let me see if there is -- we don't have a

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1 spot elevation there.
2 BY MR. WINTER:
3 Q Well, would that make a difference to you, if I
4 told you it was about three feet?
5 A Right. I --
6 MS. ROBESON: Assume.
7 THE WITNESS: Assume.
8 MS. ROBESON: You're an expert.
9 THE WITNESS: I can assume. That's all I can do.
10 BY MR. WINTER:
11 Q Just assuming --
12 MS. ROBESON: So, hypothetically.
13 THE WITNESS: Hypothetically.
14 BY MR. WINTER:
15 Q -- assuming it's three feet.
16 A Right. So that would put you at 29 versus 24.
17 MS. ROBESON: So, we're talking five feet.
18 THE WITNESS: Yes, there's five feet of difference
19 between the two there.
20 MS. ROBESON: And if you have a six-foot fence,
21 and I know you have, I see you have some shade trees there.
22 THE WITNESS: We have some shade trees and we have
23 some evergreen trees. They are typically going to pop out
24 about 10-15 feet.
25 MS. ROBESON: The shade trees or the evergreens?

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1 THE WITNESS: The evergreens. The evergreens.
2 MS. ROBESON: The evergreens.
3 THE WITNESS: The shade trees will get 50-60 feet
4 taller.
5 MS. ROBESON: Taller.
6 THE WITNESS: And then a little deciduous tree.
7 So there is, there is additional screening above the six-
8 feet in terms of the plant material. And it is evergreen,
9 the lower plant material, not the shade trees.
10 BY MR. WINTER:
11 Q Okay. You made reference to the parking. You can
12 jump over to that for a minute. Those cars, when you pull
13 in, will be going towards my property --
14 A Right.
15 Q -- toward my 10-acres. And then when you park,
16 that will be facing directly at my daughter's house.
17 A Correct.
18 Q And you have how many spaces total?
19 A We have 15 spaces total.
20 Q Above the building?
21 A This side of it?
22 Q Yes.
23 A 11.
24 Q 11. So when you back out, so the lights will come
25 in and they'll come out. Now, you made mention that you

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1 could put a wall up there?
2 A A wall or some screening along the parking.
3 Q When you say screening, what do you mean by that?
4 Just trees? Or do you mean a fence?
5 A No, the County typically wants a three-foot
6 evergreen hedge at the time of planting. So that would be
7 the minimum size.
8 Q And is that it?
9 A That's, well, it can grow larger, but that's the
10 standard minimum size that the County requires under their
11 parking facilities.
12 Q Yes, I realize that. I just --
13 A That's not, we can certainly do whatever. But
14 that is the minimum.
15 Q Well, I just wanted to point out that's a concern,
16 and you had testified to that, and it has an adverse impact
17 if it does come into the property.
18 A Yes, I mean, the County, just to let you know, the
19 County perceives this as a significant amount of distance
20 between the parking facility and your property, that they
21 don't require the screening.
22 Q At 6:00 a.m. they might think it is.
23 A But that's, and I -- it does help that you do have
24 a little bit of screening there already on your side of the
25 property.

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1 Q Yes. She has screening that's about maybe four
2 feet inside her property, I believe. But it does not go
3 between --
4 A Yes. There is a gap in this area.
5 Q -- those two houses. There is a big gap there.
6 The other thing, I kept hearing the word, modest addition.
7 Now, on the floor plan of the existing building, is there
8 not about 1,500 square feet?
9 A I was note -- I've got it written down somewhere.
10 Sorry.
11 Q Just --
12 A I had a little, I thought it was a little more
13 than that.
14 MS. ROBESON: The footprint.
15 BY MR. WINTER:
16 Q The footprint.
17 A The footprint.
18 Q The footprint of the building existing.
19 A I want to let the architect answer that question.
20 I know what the overall square footage is of everything. So
21 he can tell you what the footprints are.
22 Q Well, it's --
23 MS. ROBESON: Assuming.
24 BY MR. WINTER:
25 Q Assuming it's 1,500 maybe 12 square feet, you're

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1 putting a 1,900 square foot addition, or did that get scaled
2 back?
3 A It's 1,000.
4 Q Oh, it's 1,000? It got scaled back?
5 A But again, I don't know what the footprint is.
6 MS. ROBESON: I don't know if it got scaled back,
7 but I thought it was --
8 THE WITNESS: It was 1,150 square foot addition.
9 MS. ROBESON: -- I thought it was 1,100 something.
10 THE WITNESS: It's two stories. It does have a
11 basement.
12 BY MR. WINTER:
13 Q So it's 1,100 then 1,100 underneath it?
14 A I can't answer that question. No, so I've got to
15 talk to somebody else about that.
16 MS. ROBESON: Hold that thought.
17 BY MR. WINTER:
18 Q All right. Now, the basement area, which have you
19 been in the house?
20 A I have not been in the house. I've been around
21 the house, but not in the house.
22 Q Okay.
23 A The architect can answer those questions.
24 Q Okay. The architect. Just bear with me a moment.
25 So you're saying the coverage is within range of about 22

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1 and a half percent. Now, the septic field, why does -- you
2 can't testify to that. That's someone else. Okay.
3 You were talking about special exceptions around
4 here. Now, the Green Gardens, besides this lot or the net
5 will be after dedication, if my math is correct, should be
6 about 36,000 square feet after you subtract the 30-foot
7 setback?
8 A It's more like 41, I think.
9 Q Maybe it's -- that's what it is now.
10 A No, it's --
11 Q Is it 44 now?
12 A Yes, it's 44 now.
13 Q Okay. So it will be about 41. With Green
14 Gardens, how large is that lot?
15 A I don't know the actual acreage on it.
16 MR. ORENS: I'm not sure, Madam Examiner, I
17 understand the relevance of this.
18 MR. WINTER: Well, the relevance is, I'm really
19 after the fact that this is a density issue for me right
20 now. And I know Green Gardens is about five acres.
21 BY MR. WINTER:
22 Q And my question is, you're talking about these
23 special exceptions. The Avalon School was about 10.6 acres.
24 And I'm going from memory, give or take an acre here. And
25 the various special exceptions, you mentioned the school

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1 that was, and I had heard about that, your Goddard School.
2 A Goddard School, yes.
3 Q That lot down there that has 200 and some odd
4 students, how large is that property? Do you know?
5 MR. ORENS: Objection.
6 THE WITNESS: I don't know.
7 MR. ORENS: Answer this.
8 THE WITNESS: I don't know.
9 BY MR. WINTER:
10 Q Okay. If you don't --
11 A But let me just say this, that the code requires a
12 certain amount of square footage on the lot per child.
13 Q Yes.
14 A It's 500 square feet per child.
15 Q Okay.
16 A And we're at 788. So we exceed, significantly,
17 the amount of square footage per child required by the
18 zoning ordinance.
19 Q Okay.
20 MS. ROBESON: Are you saying that the square
21 footage of all the special exception uses should be -- I'm
22 not clear on what you're saying, your relevance.
23 MR. WINTER: All right. The relevance is this.
24 They're putting 52 students, as I understand it, along with
25 six --

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1 MS. ROBESON: Staff.
2 MR. WINTER: -- staff. And it could be a little
3 bit more at times, could be less. I don't know. But
4 whatever you all approve, evidently, on an acre of ground.
5 I know what the Green Gardens special exception is. It's a
6 lawn care service. They go out. And we hear a little bit
7 of noise when then clean up the property. You know, that's
8 the only adverse effect that we have at our property
9 concerning that.
10 MS. ROBESON: So you're talking about -- that's a
11 hard comparison to make because they are such different
12 uses.
13 MR. WINTER: That's correct. But you asked her if
14 there were special exceptions around. And these are
15 definitely different. They're not as intensive as far as
16 the number of people that you --
17 MS. ROBESON: On site?
18 MR. WINTER: On site. But let me preface this
19 remark with something. We want you to be able to use the
20 property. That's not the --
21 MS. ROBESON: Okay. Okay.
22 MR. WINTER: -- it's the --
23 MS. ROBESON: You really need to stick to
24 questions.
25 MR. WINTER: Okay.

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1 MS. ROBESON: And I'm trying to get to what you
2 question is. I think your question is intensity in terms of
3 activity on the site.
4 MR. WINTER: My questions mainly revolve or mainly
5 concern the affect that it's going to have, not so much on
6 the 10-acre property behind. It's the investment that my
7 daughter has made in her property.
8 MS. ROBESON: Okay. All right.
9 MR. WINTER: And that's where I'm coming from. So
10 she testified that it would not adversely affect the value.
11 MS. ROBESON: Okay. Well, she's already said that
12 that's in her opinion. If you have, you know, since you're
13 an --
14 MR. WINTER: Well, my opinion as an appraiser --
15 MS. ROBESON: Okay. No, this is not your time.
16 MR. WINTER: -- is totally different --
17 MS. ROBESON: I know.
18 MR. WINTER: -- than hers.
19 MS. ROBESON: And you have a time to get to that.
20 I'm just trying to keep the hearing right now in the
21 property order --
22 MR. WINTER: Okay.
23 MS. ROBESON: -- so we can get through. Take your
24 time.
25 BY MR. WINTER:

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1 Q Okay. One question I had, on these other, as far
2 as the community, you're a land planner, if the Avalon
3 School goes through --
4 MR. ORENS: Objection. The Avalon School can't go
5 through.
6 BY MR. WINTER:
7 Q All right. If that property is developed in
8 accordance with -- are you familiar with it?
9 MS. ROBESON: Hypothetically. Hypothetically.
10 BY MR. WINTER:
11 Q Hypothetically, would that affect traffic counts
12 and all of that?
13 A If the Avalon School hypothetically what?
14 MR. ORENS: I'm going to object to that, Madam
15 Examiner, because --
16 THE WITNESS: I'm not sure what you're asking.
17 MR. ORENS: -- if the Avalon School property were
18 to come to the County with another proposal after the
19 approval of this proposal, they have to accommodate their
20 traffic based on the existing background traffic, which
21 would include this property.
22 MS. ROBESON: Where is, okay, where is the Avalon
23 School property?
24 MR. WINTER: It's on the other side of me.
25 THE WITNESS: It's on the other side of them.

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1 MS. ROBESON: Okay.
2 MR. WINTER: It's right there. No, you answered
3 the question. I didn't know who had to accommodate who.
4 And you answered it.
5 MR. ORENS: They accommodate this.
6 MR. WINTER: And I have no problem --
7 MS. ROBESON: Last come accommodates everybody
8 else.
9 MR. WINTER: Okay. I have no problem with that
10 answer, and I appreciate it, because then they have to come
11 up with their own standards. Is that it?
12 MS. ROBESON: Well they --
13 MR. ORENS: You can answer that question.
14 THE WITNESS: Yes, that is true. They come back
15 before the Board.
16 BY MR. WINTER:
17 Q They have to come back before this Board and they
18 can't rely on what they did before. Do they have to do new
19 traffic studies --
20 A Yes.
21 Q -- traffic counts, and all that sort of thing?
22 A Right. They will have to -- enough time has
23 elapsed that they will have to update all of their studies.
24 Q So if they spent a half a million dollars on all
25 those studies, it's basically their tough luck.

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1 A Yes.
2 Q Is that it? Okay.
3 MS. ROBESON: Are they subdivided? Do you know?
4 THE WITNESS: I don't know.
5 MR. WINTER: Pardon?
6 MS. ROBESON: Is the Avalon property subdivided?
7 MR. WINTER: No, it has --
8 MS. ROBESON: Let her answer.
9 THE WITNESS: No, there are parcels. They are not
10 subdivided.
11 MS. ROBESON: But they would still need, well,
12 then the Board would, they would still need APF approval.
13 THE WITNESS: Yes, there would need APF in that
14 preliminary plan of subdivision.
15 MR. ORENS: That's correct.
16 MR. WINTER: Well, as far as any more questions
17 for her, my questions would be directed at others, I'm sure.
18 MS. ROBESON: I hear you and they are good
19 questions. So let's let -- do you have any redirect? Go
20 ahead.
21 MR. ORENS: Just a few. Just a few.
22 REDIRECT EXAMINATION
23 BY MR. ORENS:
24 Q You were asked, Ms. Bryant, about lot coverage.
25 Does the, the lot coverage, I think you said was 22 and a

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1 half percent. Is that in compliance with the R-200 zone?
2 A Yes.
3 Q The number of parking spaces that are provided,
4 are they the number of spaces that are required for a
5 childcare facility of 52 children and six employees?
6 A Yes.
7 Q And does the hearing examiner and the Board of
8 Appeals oppose, as we expect they will, a condition that the
9 number may not exceed 52? That's the maximum, is it not?
10 A Yes.
11 Q Can't go above it. Might have fewer, but you
12 can't go above it. In terms of the number of children on
13 site, are there requirements, if you know, with regard to
14 classroom interior size to accommodate the number of
15 students proposed?
16 A You'd have to ask the architect that question.
17 Q Okay. Then I will. The side yard setback, the
18 tot lot, you said was setback 13 feet. What is the zoning
19 requirement for the setback, if it were a building, and a
20 fence, of course, is a structure?
21 A The requirement is 13-feet.
22 Q So it meets the building restriction line on the
23 east side?
24 A Yes, it does.
25 Q And the fence, the six-foot fence can be installed

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1 without a variance, is that correct?
2 A That's correct.
3 Q Other than the photograph of the sign for
4 illustrative purposes, were you intending to compare this
5 property with Adamstown?
6 A No.
7 Q And is the net track area within the size
8 requirement for approval of this special exception use under
9 the zoning ordinance?
10 A Yes, it is.
11 MR. ORENS: I think that's it.
12 MS. WINTER: I have a question for Ms. Bryant.
13 The six-foot fence, that's the maximum height allowed, six-
14 foot fence at the west, at the southern end of the tot lot?
15 THE WITNESS: We can go up to six and a half feet.
16 MS. WINTER: Is there any extension that can be
17 added to a fence as a sound barrier if that is determined to
18 be an issue that the six-foot fence is not adequate to block
19 sound?
20 THE WITNESS: I would have to check the zoning
21 ordinance. I can't tell you off the top of my head.
22 MS. ROBESON: Maybe that's something you could
23 check on the break and discuss it with Mrs. Winter.
24 MS. WINTER: Because having been a resident --
25 MS. ROBESON: Okay. I'm going to get through this

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1 witness. So Mr. Orens, do you have any redirect based on
2 her question?
3 MR. ORENS: No, I do not.
4 MS. ROBESON: Okay.
5 MR. ORENS: Thank you.
6 MR. WINTER: Can I ask her one question?
7 MS. ROBESON: No.
8 MR. WINTER: No, I can't? Okay.
9 MS. ROBESON: No, but what you can do is, if you
10 want to raise an issue, you can write it down and put it in
11 your testimony. Or, it may be that one of the other
12 witnesses can answer it.
13 MR. WINTER: Okay.
14 MS. ROBESON: Okay. Who is your next witness?
15 MR. ORENS: My next witness is Stephen Crum, the
16 engineer. Mr. Crum.
17 MS. ROBESON: And then we'll take a lunch break
18 about 1:00, if you can hang on that long.
19 MR. ORENS: Ms. Bryant was the longest of the
20 testimonies.
21 MS. ROBESON: Okay.
22 MR. ORENS: As is typical. As is typical.
23 MS. ROBESON: There's too many standards.
24 Somebody asked me once, why are our reports so long. And I
25 said, well, you have too many standards. Okay. Go ahead.

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1 Please raise your right hand.
2 (Witness sworn.)
3 DIRECT EXAMINATION
4 BY MR. ORENS:
5 Q Mr. Crum, would you please spell your full name,
6 your profession, and your business address, for the record?
7 A My name is Stephen Crum. My business address is
8 9220 Wightman Road in Montgomery Village, Maryland.
9 Q And what is our profession?
10 A I'm a civil engineer.
11 Q And are you a licensed civil engineer?
12 A I hold a professional engineer's license, yes.
13 Q And what is your position with Macris, Hendricks
14 and Glascock?
15 A I'm one of the shareholders and one of the
16 engineers.
17 Q What are you principally in charge of at Macris,
18 Hendricks and Glascock?
19 A Principally, I'm in charge of residential land
20 development.
21 Q I'm showing you a document which I believe is
22 going to be Exhibit No. 36.
23 (Exhibit No. 36 was marked
24 for identification.)
25 BY MR. ORENS:

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1 Q What is that?
2 A My resume.
3 MS. ROBESON: Why don't you -- that's not in the
4 record.
5 MR. ORENS: No, it's not.
6 MS. ROBESON: If you could --
7 MR. ORENS: I have given a copy to Mr. and Mrs.
8 Winter, and may I approach?
9 MS. ROBESON: So 36 will be Stephen Crum Resume.
10 BY MR. ORENS:
11 Q Mr. Crum, would you briefly describe your
12 educational background?
13 MS. ROBESON: Well, let's do this, since time
14 is -- unless you want to go through the voir dire.
15 MR. ORENS: No, I don't, unless you want to.
16 MS. ROBESON: Let me ask you, have you ever
17 testified as an expert in civil engineering. Are you
18 proposing to qualify him as --
19 MR. ORENS: Yes.
20 MS. ROBESON: -- an expert in civil engineering?
21 MR. ORENS: Yes.
22 MS. ROBESON: And you said you're licensed. Are
23 you licensed in Maryland?
24 THE WITNESS: I am.
25 MS. ROBESON: And have you ever testified as an

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1 expert in civil engineering in a court or administrative
2 hearing?
3 THE WITNESS: Yes, ma'am.
4 MS. ROBESON: And where was that?
5 THE WITNESS: I've testified before you before.
6 MS. ROBESON: That's right. So I am going to,
7 unless I hear an objection, I'm going to qualify you as an
8 expert in civil engineering.
9 MR. ORENS: Thank you.
10 BY MR. ORENS:
11 Q Okay. Mr. Crum, are you, just a quick general
12 questions. Are you familiar with the Montgomery County
13 zoning ordinance?
14 A Yes.
15 Q And the Montgomery County comprehensive water
16 supply and sewer systems plan?
17 A Yes, I am.
18 Q And are you familiar with the standards and
19 requirements for storm water management and water quality
20 plans?
21 A Yes, I am.
22 Q And are you familiar with the standards and
23 requirements for special exceptions as they pertain to your
24 area of expertise, civil engineering?
25 A Yes, I am.

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1 Q And you've already said you've testified. Are you
2 familiar with the subject property?
3 A I am.
4 Q And you are the person who went out there and
5 discovered the sign was missing, is that correct?
6 A I am.
7 Q So you've obviously been there very recently.
8 A Yes.
9 Q Okay. Using the exhibits, if you would, would you
10 describe the existing physical characteristics of the
11 property, surrounding area, emphasizing the area to the
12 south where the Winter property is located, and describe the
13 changes in that physical environment that will result if
14 this special exception is approved. If you do that in a
15 narrative fashion, we can save some time.
16 A Certainly. I'm going to speak to Exhibit No.
17 17(b), which is the site development plan for special
18 exception. And Ms. Bryant has covered most of this, but
19 generally, the site slopes from east to the west, towards
20 Maryland 355.
21 There is, the rear of the property is more gently
22 sloping than the front of the property, and the property to
23 the south, the Winter property, the elevations continue to
24 rise from 355. And the structure on, the dwelling on the
25 Winter property is slightly higher than the existing

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1 dwelling on the subject property.
2 Again, Ms. Bryant has covered most of this, but
3 the intention is to build an addition to the rear, install a
4 playground to the south and to create a parking facility
5 both in front of and to the rear of the existing structure.
6 Q Will there be any changes in terms of the existing
7 driveway? And if so, what will those changes be?
8 A Yes. Currently the driveway is a residential
9 driveway to Maryland 355. We will be improving it to a
10 commercial driveway per the Maryland State Highway
11 Administration standards, with a minimum width of 20 feet
12 and the requisite radiuses, and the pavement flares at the
13 driveway.
14 Q Was a sight distance study prepared for this?
15 A It was. It was done by our traffic engineer.
16 Q While we're talking about the front area, is there
17 a fire hydrant anywhere near the property?
18 A There is a fire hydrant directly in front of the
19 property, to the north of the existing driveway.
20 Q What public utilities serve the property at the
21 present time?
22 A Currently, public facilities include water,
23 electric, power, telephone.
24 Q What about public sewer?
25 A There is no public sewer serving the subject

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1 property.
2 Q Is the subject property suitable for connection to
3 the existing public sewer that is located to the north and
4 west?
5 A It is not.
6 Q Why?
7 A The sewer that exists behind the, number one, it's
8 behind the new residences to the west. And --
9 MS. ROBESON: Wait a minute. Are you talking
10 about the flag lot or the pipe stem?
11 THE WITNESS: The flag lots, yes, the pipe stem
12 lots. It's actually behind the dwellings.
13 MS. ROBESON: Okay.
14 THE WITNESS: So it runs across the rear of those
15 lots, and this structure is downhill from the inverted at
16 sewer. So in order to accommodate it, number one, we would
17 either need an easement from one of the neighbors so there
18 would be an extensive public extension. There would be a
19 pressure sewer, which WSSC tends not to like.
20 MS. ROBESON: Right. Right.
21 BY MR. ORENS:
22 Q The, what I'm going to refer to as the dry
23 utilities, cable, electric, telephone, are they above ground
24 on poles or underground?
25 A Currently they are overhead along Maryland 355.

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1 MS. ROBESON: All of them, television and --
2 THE WITNESS: Yes.
3 BY MR. ORENS:
4 Q Is cable underground?
5 A I don't know about cable. The power and telephone
6 is overhead.
7 Q Typically cable is about 18 inches underground.
8 MS. ROBESON: Okay. Yes.
9 BY MR. ORENS:
10 Q Where are the poles located?
11 A There is an existing utility pole opposite the
12 middle and the front of the dwelling, and there is another
13 power pole on the north side of the common driveway that
14 serves the panhandle part.
15 Q One quick question in terms of public sewer. If
16 you can decipher the County public records, what is the
17 sewer service category for the subject property?
18 A Currently, if you look at the County's website,
19 and WSSC's website, the sewer category is zero, which
20 doesn't exist. So we believe that it's probably six and
21 that the County has titled it incorrectly.
22 MS. ROBESON: Okay. I've never --
23 MR. ORENS: No one knows why.
24 MS. ROBESON: Zero, is that a code for zero
25 chance.

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1 MR. ORENS: Well, it is, actually.
 2 THE WITNESS: If you ask the folks at DEP, they'll
 3 tell you that the reason it's zero is because they don't
 4 know what the answer is. So they keep it as zero.
 5 MS. ROBESON: All right.
 6 BY MR. ORENS:
 7 Q Well, we know it's not category one.
 8 A We know it's not one.
 9 Q Or three. Is there a septic system that currently
 10 exists to serve the property?
 11 A Yes, there is.
 12 Q And where is that located?
 13 A It's located in the front of the property. There
 14 are two seepage pits which would have been the method of on-
 15 site sewerage disposal in the sixties when the structure was
 16 built there.
 17 Q Are there plans to modify the septic system, the
 18 on-site system.
 19 A Yes. We will modify the existing system. The
 20 intention is to abandon the existing seepage pits and
 21 construct new septic fields to the rear of the property.
 22 There will be a new septic tank in front of the dwelling,
 23 and a pump chamber, because, again, this is up hill. And we
 24 will pump sewerage from the septic tank to the drainage
 25 fields.

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1 Q Has the new septic on-site sewerage disposal
 2 system been approved by any governmental authorities?
 3 A Yes, it has. It's been approved by Montgomery
 4 County for well and septic. A permit was issued May 31st,
 5 2011, to the Vespers. The system has not been installed
 6 yet, but they do have a permit to install it.
 7 Q And does that approval remain valid?
 8 A It does.
 9 Q Very, very briefly, describe the steps that one
 10 must take to secure approval of an on-site sewerage disposal
 11 system or septic system?
 12 A In Montgomery County the first tests that are done
 13 are called water table tests. They are generally done in
 14 the springtime of the year. The County monitors groundwater
 15 conditions throughout the County, and they determine when
 16 they are going to open what they call a wet season.
 17 You perform the water table test to determine what
 18 the depth of the water table is below the existing grade.
 19 If there seems to be sufficient room between the surface of
 20 the soil and the water table, then you would do percolation
 21 tests. Those can be done anytime during the year. The
 22 results of those percolation test then are used to design a
 23 septic system based on the average percolation rates from
 24 the test that was done.
 25 Q Now, is that, were those steps and processes

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1 followed in this case?
 2 A Yes, they were.
 3 Q And describe the septic system. Is it a tank? Is
 4 it a single trench? What is it?
 5 A As I said, there will be a septic tank, a new
 6 septic tank installed in front of the dwelling. There will
 7 be a pump chamber that takes the effluent from the septic
 8 tank and then pumps it to the field. The trenches are, they
 9 will be two-feet wide and four-feet deep. They are filled
 10 with aggregate and a perforated pipe.
 11 Q Now, it looks to me that you've got a long, wide
 12 area for the septic field. Why is that?
 13 A The County requires that these septic systems have
 14 replacement fields, and so what we've accommodated is not
 15 only the initial systems, but also the replacement fields.
 16 Q Would it be permissible to relocate the tot lot on
 17 top of the septic field trenches?
 18 A Generally, the County requires that septic fields
 19 be installed in undisturbed soil. Although the rear of the
 20 lot is not steeply sloping, it slopes steeper than what a
 21 play area can be constructed on. So in order to move the
 22 play area to the septic fields, we would have to grade over
 23 them. And that wouldn't be allowed.
 24 In addition, the play structures do have
 25 foundations, which would also disturb the soil column, and

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1 it would also not be permissible. So generally putting the
 2 play area behind the dwelling in the septic area is not
 3 going to be allowed by Montgomery County.
 4 Q Thank you. What is a special protection area and
 5 why do we care?
 6 A A special protection area were created by the
 7 County Council to protect areas of the County that have
 8 sensitive streams, or streams that were in particularly high
 9 quality waters. Clarksburg was declared one of the areas
 10 that is a special protection area.
 11 Q That's the entire Clarksburg area?
 12 A The entire Clarksburg Master Plan area, yes.
 13 Q And are there any differences between the
 14 submission requirements and approval of storm water
 15 management that are effective in special protection areas as
 16 compared to other areas in the County?
 17 A Yes.
 18 Q And what are they?
 19 A In special protection areas instead of submitting
 20 what's known as a storm water concept, you submit a water
 21 quality plan. A water quality plan, the first step is to
 22 schedule a meeting with Montgomery County Department of
 23 Permitting Services, Montgomery County Department of
 24 Environmental Protection, and the Maryland-National Capital
 25 Park and Planning Commission.

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1 And at that meeting with the applicant and the
2 applicant's engineer, collectively the group comes up with
3 what is going to be required as we lay a storm water
4 management to protect the waters of the special protection
5 area.
6 Q Was that process followed?
7 A It was.
8 Q And to what result?
9 A The water quality plan was approved by Montgomery
10 County Department of Permitting Services, and that approval
11 was confirmed by the Planning Commission staff.
12 Q And was the water quality plan, well, let me
13 rephrase that. Does the Planning Board have any authority
14 with regard to approval of water quality plans?
15 A They need to, approve is the correct term, but
16 they do review it as part of their analysis of the water
17 quality process. Their staff approves it.
18 Q You were present, were you not, when the Planning
19 Board considered this application?
20 A Yes, I was.
21 Q And do you recall whether or not the Planning
22 Board was asked to whether in fact they did vote to approve
23 the water quality plan as recommended by their staff, within
24 their jurisdiction?
25 A Within their jurisdiction, they did.

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1 MR. ORENS: Now, Madam Examiner, I'm not certain
2 whether the, bear with me for one second.
3 MS. ROBESON: Are you wondering about the approval
4 of the water quality plan?
5 MR. ORENS: Not by the Planning Board, because I
6 know that that --
7 MS. ROBESON: They have one sentence, or a
8 sentence or two in their recommendation on the special
9 exception. But what I don't have in the record is the staff
10 report. And I was going to ask if you can submit the staff
11 application on the water quality plan --
12 MR. ORENS: Absolutely.
13 MS. ROBESON: -- into the record.
14 MR. ORENS: Bear with me for one moment.
15 MS. ROBESON: You don't have to do it immediately.
16 I mean, that can be done later, but I would like it in the
17 record.
18 MR. ORENS: Absolutely. During the break, I will
19 make a copy of the report that I do have. The next exhibit
20 number would be --
21 MS. ROBESON: 37.
22 (Exhibit No. 37 was marked
23 for identification.)
24 BY MR. ORENS:
25 Q -- 37. And I'm handing you a two-page document

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1 that needs to be stapled together. Could you identify what
2 that is, please?
3 A This is the letter from the Department of
4 Permitting Services approving the preliminary final water
5 quality plan for this applicant.
6 MS. ROBESON: Okay so --
7 MR. ORENS: Why don't we use your copy because
8 yours is a single page, as Exhibit No. 37. I'll give that
9 copy to Mr. Winter.
10 MS. ROBESON: Thank you.
11 BY MR. ORENS:
12 Q And what is Exhibit No. 37?
13 A It's the letter from the Montgomery County
14 Department of Permitting Services approving the preliminary
15 final water quality plan.
16 MS. ROBESON: Okay. I'm just going to call it DPS
17 approval of preliminary water quality plan.
18 BY MR. ORENS:
19 Q Okay. I'm now going to show you what will be
20 marked as Exhibit No. 38.
21 (Exhibit No. 38 was marked
22 for identification.)
23 BY MR. ORENS:
24 Q Can you identify that, please?
25 A This is the preliminary final water quality plan

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1 staff report prepared by the Maryland-National Capital Park
2 and Planning Commission.
3 MS. ROBESON: Okay.
4 BY MR. ORENS:
5 Q And are you familiar with that report?
6 A I am.
7 Q And is that the report that the Planning Board had
8 before it on November 29th?
9 A It is.
10 Q We'll never forget the date. Okay. We'll submit
11 that --
12 MS. ROBESON: Okay. That will be 38?
13 MR. ORENS: That will be Exhibit No. 38. And if
14 you would approach the examiner with that. Thank you.
15 MR. WINTER: Now, is that the approved one?
16 MR. ORENS: That is the staff report --
17 MR. WINTER: The staff report.
18 MR. ORENS: -- from, that was approved by the
19 Planning Board when it voted.
20 BY MR. ORENS:
21 Q A few final questions, Mr. Crum. Ms. Bryant
22 testified that the property is a tax parcel, is that
23 correct?
24 A That's correct.
25 Q In order to -- what, if any further approvals will

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1 be required following the special exception assuming it's
 2 approved in order to develop the subject property?
 3 A In accordance with chapter 50 in the Montgomery
 4 County code, this property will need to go through the
 5 subdivision process to create a record lot in order to
 6 obtain a building permit.
 7 Q And in terms of civil engineering, are there any
 8 physical characteristics of the property that would, in your
 9 opinion, preclude the approval of a preliminary plan of
 10 subdivision for the subject property?
 11 A In my opinion, no.
 12 Q Okay. If you know, what issues will be addressed
 13 again by the Planning Board as part of their review and
 14 analysis of the preliminary plan application?
 15 A The subdivision process examines roads and
 16 streets, environmental features, public facilities, water
 17 and sewerage. There might be something else.
 18 Q Do you, you heard Ms. Bryant testify about the
 19 exemption from forest conservation. Do you agree with that?
 20 A Yes. Yes, I do.
 21 Q And there is a document that establishes that, I
 22 believe?
 23 A Yes, there is.
 24 MR. ORENS: Okay. I have no further questions.
 25 MS. ROBESON: Okay. I just have a few. The staff

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1 report mentioned a public utility easement area. And I
 2 wondered if you could point that out, and how it relates to
 3 the septic tank.
 4 THE WITNESS: The public utility easement is a 10-
 5 foot strip adjacent to the new right-of-way line when we do
 6 that, go through subdivision.
 7 MS. ROBESON: Right.
 8 THE WITNESS: Since this hasn't gone through
 9 subdivision yet, we're showing the Master Plan right-of-way
 10 line here, and the 10-foot PUE would be this 10-foot strip
 11 immediately to the rear of that.
 12 MS. ROBESON: Okay. Now --
 13 THE WITNESS: The staff report was concerned that
 14 there's a small replacement field, if necessary, septic
 15 field --
 16 MS. ROBESON: Right.
 17 THE WITNESS: -- in the front of the house. That
 18 initially was encroached on the 10-foot PUE. We've moved it
 19 outside of the 10-foot PUE.
 20 MS. ROBESON: So it no longer encroaches on the --
 21 THE WITNESS: It no longer encroaches.
 22 MS. ROBESON: And does any landscaping encroach?
 23 THE WITNESS: There is some --
 24 MS. ROBESON: I think you said at one point you
 25 were going to put a cable or a, I don't know if it was a

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1 pipe to handle if any of the utilities were underground.
 2 Can you just address that?
 3 THE WITNESS: Sure. We're screening the front
 4 corner of the parking lot with vegetation and this one tree,
 5 shade tree, will actually encroach into the 10-foot PUE.
 6 MS. ROBESON: And you're pointing to Exhibit --
 7 THE WITNESS: 20.
 8 MS. ROBESON: Okay. And the tree you're pointing
 9 to is the closest tree to the right-of-way?
 10 THE WITNESS: Yes, it is.
 11 MS. ROBESON: Yes. Okay.
 12 THE WITNESS: And that tree will end up in the 10-
 13 foot PUE, and if necessary, we can install conduits up front
 14 that would accommodate the underground utilities, so that
 15 the utility company wouldn't need to re-excavate through
 16 this area if and when they ever decided to use the 10-foot
 17 PUE.
 18 MS. ROBESON: Okay.
 19 BY MR. ORENS:
 20 Q Is there anything in the 10-foot PUE now?
 21 A Currently there is --
 22 Q Underground, I mean, other than possible cable?
 23 A I think maybe one of the seepage pits is in the --
 24 Q I'm sorry?
 25 A One of the seepage pits might be in the PUE.

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1 Q Are there any public utilities there?
 2 A No.
 3 Q Any electric --
 4 A No.
 5 Q -- power lines?
 6 A No.
 7 MS. ROBESON: But that's the seepage pit for the
 8 existing --
 9 THE WITNESS: Existing, which is going to be
 10 available.
 11 MS. ROBESON: And where is your tank in relation
 12 to --
 13 THE WITNESS: The tank is just outside of the 40-
 14 foot building restriction line.
 15 MS. ROBESON: To the northeast?
 16 THE WITNESS: Yes.
 17 MS. ROBESON: And where, how is it pumped to the
 18 field?
 19 THE WITNESS: There will be pressure lines that
 20 leave the pump chamber and proceed south, and then --
 21 MS. ROBESON: Around the tot lot area?
 22 THE WITNESS: Around the tot lot. And there will
 23 be two initial fields.
 24 MS. ROBESON: Right. And the reserve field.
 25 THE WITNESS: Well, the two initial fields is that

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1 the pumps alternate so that it goes to one field, and then
2 the next time the pump actuates, it goes to the other field.
3 MS. ROBESON: And where, is there a separate field
4 that's your reserve field?
5 THE WITNESS: The reserve fields are down the hill
6 and uphill of the initial fields.
7 MS. ROBESON: Okay. All right. That was my
8 question. And one more question. I'm sorry. What material
9 is the playground made of? Do you know, going to be made
10 of? Is it impervious or pervious?
11 THE WITNESS: It's not impervious. It actually is
12 an engineered material that is designed for fall protection.
13 It is pervious. There is an under-drain system that keeps
14 it dry so that it doesn't deteriorate.
15 MS. ROBESON: Okay.
16 THE WITNESS: It is ADA accessible.
17 MS. ROBESON: Okay. All right. Thank you. Just
18 a second. I want to make sure he's, Mr. Orens, is finished.
19 MR. ORENS: I am done.
20 MS. ROBESON: Okay. Go ahead, Mrs. Winter.
21 CROSS-EXAMINATION
22 BY MS. WINTER:
23 Q Okay. The five lots, the five large homes on
24 fairly small lots just to the north of the subject property,
25 what do they, aren't they connected to sewer?

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1 A They are.
2 Q They are large homes.
3 A They are connected to sewer.
4 Q Because earlier it was just a general indication
5 that sewer was way far away. That's pretty close.
6 A Well, it's --
7 Q Right there.
8 A Right here.
9 Q Right next to it.
10 A Yes.
11 Q And that connects to Timber Creek?
12 A Yes.
13 Q The sewer that is in Timber Creek, which is
14 downhill?
15 A Correct.
16 Q Okay. So why can't this property connect to that?
17 A Because this structure is lower than the invert of
18 the sewer that serves these properties.
19 Q Okay.
20 A That sewer is --
21 MS. ROBESON: So you would need a grinder pump to
22 pump it up.
23 THE WITNESS: We would need to pump to it. Yes.
24 BY MS. WINTER:
25 Q Okay. My other question is, I understand why you

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1 can't put the tot lot on the septic field. Can you trade?
2 Can you put the tot lot there and change the septic field
3 shape?
4 A The septic field has to be where the percolation
5 tests were done. And we didn't do any percolation tests in
6 this area. The test were done in the rear, and one was done
7 in the front.
8 Q One more.
9 A Sure.
10 Q What size, do you have a holding tank?
11 A Yes.
12 Q And it's 2,000 gallons?
13 A A septic tank, 2,000 gallons.
14 Q Can the septic field be smaller with a larger
15 tank?
16 A No.
17 Q Why not?
18 A Because the septic field is designed on the
19 percolation rate of the soils, not the size of the tank.
20 The tank --
21 Q And is that a large enough tank?
22 A Yes.
23 Q Because our tank is 1,900 gallons, and we have to
24 get it pumped on not a yearly basis, but every few years.
25 MR. ORENS: Objection.

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1 BY MS. WINTER:
2 Q So isn't that 52 kids and six adults seem like way
3 more than --
4 MS. ROBESON: Okay. What's your objection? Just
5 a second. There's an objection.
6 MR. ORENS: We know nothing about the tank on
7 Ms. Winter's property. We know nothing about its physical
8 characteristics, when it was installed, how it would relate
9 to this tank. And what issues they may have there with that
10 tank, I think are irrelevant to what will be the situation
11 when a state-of-the-art system is being installed.
12 MS. ROBESON: Well, I think that's a point you can
13 make on redirect. I think it's a fair question. So can you
14 answer the question as to why this tank might perform better
15 than Mrs. Winter's tank?
16 THE WITNESS: Well, all I can answer is that the
17 tank that we intend to install is 2,000 gallons. That's
18 what the permit is issued for. Montgomery County well and
19 septic has approved that size tank.
20 A larger tank only would decrease the frequency
21 that the tank needs to be pumped. It does not affect the,
22 how big the field or where the field can be.
23 BY MS. WINTER:
24 Q I have one more question. I just want to give you
25 a for instance. If Montgomery County said you cannot put

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1 the tot lot there, what would you do? How would you
 2 accommodate? There's absolutely no possible way to make a
 3 change? Is that what you're saying?
 4 A Well --
 5 MR. ORENS: It calls for speculation, really.
 6 MS. ROBESON: Yes.
 7 MR. WINTER: Okay.
 8 MS. ROBESON: That's a story for another day. I
 9 mean, what we're dealing with is this plan, and having --
 10 that does call for speculation. They could, perhaps,
 11 redesign the whole site. But the question before us is, is
 12 this site compatible with the community. Yes, Mr. Winter?
 13 MR. WINTER: I have several questions --
 14 MS. ROBESON: All right.
 15 MR. WINTER: -- that I couldn't get answered
 16 before. So I can ask him, right?
 17 MS. ROBESON: Okay. Well, this is -- and yes.
 18 You can try. There's two other experts, I see back there.
 19 MR. WINTER: It has to do with the -- okay, you
 20 can stop me. That's all right.
 21 MS. ROBESON: Okay. Go ahead.
 22 BY MR. WINTER:
 23 Q To begin with, the tank that you're putting in
 24 front, how far off the house is it? What's the distance
 25 from the house? Is it 50 feet or more?

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1 A It is 35 feet.
 2 Q It's 35 feet.
 3 MR. ORENS: Just show him where you were
 4 measuring. I couldn't see it either.
 5 THE WITNESS: I was measuring between the base of
 6 the house and the septic tank.
 7 BY MR. WINTER:
 8 Q And that's within the regulations, health
 9 regulations?
 10 A Yes.
 11 Q Okay. I just wanted to know is why. Which way
 12 are you pumping the effluent?
 13 A We're pumping it to the south and then, or south
 14 or east, and then we're pumping around the southern part of
 15 the place.
 16 Q Is that going in the 13-foot setback? Is that
 17 where it --
 18 A No, it actually --
 19 Q Going under the tot lot?
 20 A Slightly, yes. On the end of the edge.
 21 Q Okay. So it's being pumped to the south. Okay.
 22 The septic system in the back.
 23 A Yes.
 24 Q When you said you had to have a backup system,
 25 what does that accommodate, as far as that system in the

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1 back? What was the, just the size and square footage, and
 2 the number of people now, or is it designed for expansion of
 3 this facility?
 4 A It's not designed for expansion. It's designed
 5 for 52 students and six staff.
 6 Q Can it be expanded, based on what you have there?
 7 A No.
 8 MR. ORENS: Objection.
 9 MR. WINTER: No, I just --
 10 MS. ROBESON: Let it go. Let it go.
 11 MR. WINTER: Okay. Okay.
 12 BY MR. WINTER:
 13 Q You mentioned grinder pump, I believe you did.
 14 And down below us they used a grinder pump. Would a grinder
 15 pump, is that, on this property, can you use a grinder pump?
 16 A We will be using a pump in order to get the
 17 effluent to the septic field. To get to the public system,
 18 again, we'd either need, well, the system that's behind the
 19 existing houses --
 20 Q Yes.
 21 A -- does not come to a public right-of-way. So in
 22 order to get to that system --
 23 Q You would have to --
 24 A -- we'd have to get an easement from --
 25 Q Okay.

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1 A -- this property owner. And then we would have to
 2 extend the public system in Maryland 355. And all of that,
 3 first we'd have to get a category change for the property --
 4 Q Okay. I see.
 5 A -- to put it in the right category to even be
 6 allowed to approach WSSC.
 7 MS. ROBESON: Or a category.
 8 THE WITNESS: Or a category.
 9 BY MR. WINTER:
 10 Q Okay. I've just got a couple more questions.
 11 This facility right now, if it was scaled back, would that
 12 septic system have to be as large as it is? And that's in
 13 reference to the question my wife asked as far as if that's
 14 designed for a 52-student facility, if it were a 40-student,
 15 or a 45, or a 30, would it make a difference as far as the
 16 size of the septic system? You're the civil engineer.
 17 A Yes, it would. The septic system is sized for the
 18 number of persons that use it. So it would be --
 19 Q So conceivably a smaller, it could be.
 20 A Yes.
 21 Q And you'd be able to put your backup system in
 22 there?
 23 MS. ROBESON: In where?
 24 MR. WINTER: He said that he had to make provision
 25 just in case it failed.

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1 MS. ROBESON: Yes, he does.
2 MR. WINTER: And so, if he has to make provision
3 for that, and you scaled back, let's say to 40 students, I'm
4 using it as a hypothetical.
5 MS. ROBESON: Okay.
6 MR. WINTER: He still would --
7 MS. ROBESON: Will he have less reserve field, is
8 what you're saying?
9 BY MR. WINTER:
10 Q Yes. And how large is the tot lot, for instance,
11 in conjunction to that? See, I don't think we're talking
12 about a real big area here. And that seems to be a
13 contention that we have.
14 MS. ROBESON: Well, okay.
15 THE WITNESS: The play area is about 1,800 square
16 feet.
17 BY MR. WINTER:
18 Q It's all 1,800 square feet?
19 A Yes.
20 Q So conceivably, if that were a smaller facility,
21 that may be able to be moved?
22 A Hypothetically, if there was, if --
23 MS. ROBESON: But that, okay. All right. I
24 understand your point.
25 MR. WINTER: Well, I know, I want to know if it's

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1 factually possible.
2 MS. ROBESON: We just, it's factually possible,
3 but it's a little speculative at this time because we don't
4 know where everything perks.
5 MR. ORENS: I do have an objection, for the
6 record.
7 MS. ROBESON: And so I understand and I take
8 notice of your point that potentially it could get smaller,
9 and you can rearrange the tot lot somewhere else. But I
10 think the purpose of the hearing today is to focus on what
11 is being proposed. Because any site can, you know, if she
12 reduced it to 20 kids, any site could be rearranged. So I
13 think the purpose of the hearing today is to focus on what
14 is being proposed and how that impacts you.
15 MR. WINTER: Well, my question really, what it is
16 getting down to, if they've maximized, if this is a maximum
17 proposal, and it creates concerns or problems with adjacent
18 properties, then --
19 MS. ROBESON: Well, go ahead.
20 MR. WINTER: -- you have to, is it an all or none,
21 or is that it?
22 MS. ROBESON: Let me just explain what the legal
23 standard is. I'm not allowed to deny a special exception
24 just based on speculation that something could go wrong. I
25 am required, if I hear valid concerns, all right, and your

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1 points are raising valid concerns on, as far as screening
2 and differential and parking headlights, you know, those are
3 valid concerns.
4 But I'm not allowed to just say, if you could
5 rearrange the site, why don't you do this, because, so what
6 I need, to make a decision, from you is, your evidence as to
7 concrete concerns that are likely to happen, and not just,
8 well, couldn't you -- we don't like the tot lot there, so
9 can you hypothetically rearrange it.
10 MR. WINTER: So if we give you a formal statement
11 within the next 15 days and provide it --
12 MS. ROBESON: Well, it could be a formal
13 statement, but the purpose -- okay.
14 BY MR. WINTER:
15 Q Okay. I have one last question mainly having to do
16 with, my daughter's septic field is in the front of her
17 property. And she has three pits, I believe, that are
18 probably about 150-feet in length, and built to standard.
19 Will anything that you're doing there by way of drainage
20 conceivably have an effect on her field out front?
21 A It's my professional opinion, no.
22 MR. WINTER: Okay. Do you have any more
23 questions?
24 MS. WINTER: No.
25 MS. ROBESON: Any redirect, Mr. Orens?

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1 MR. ORENS: No.
2 MS. ROBESON: Okay. Thank you, Mr. Crum. It's
3 12:45. I'm going to suggest -- do you have three more
4 witnesses?
5 MR. ORENS: Yes.
6 MS. ROBESON: Traffic, architecture and the
7 applicant?
8 MR. ORENS: Right.
9 MS. ROBESON: Okay. Let's take a 45-minute lunch
10 break, if that's not pushing people too much, and we'll be
11 back at 1:30. All right.
12 MR. ORENS: Yes.
13 MS. ROBESON: And we'll see if it's snowing.
14 Hopefully not.
15 (Whereupon, at 12:42 p.m., a luncheon recess was
16 taken.)
17 MS. ROBESON: Would you kindly tell me who your
18 next witness is?
19 MR. ORENS: Yes. My next witness is the gentleman
20 to my right, Mr. Richard Washburn, who is the architect of
21 the project.
22 MS. ROBESON: Okay, please raise your right hand.
23 (Witness sworn.)
24 MS. ROBESON: Okay. Go ahead, Mr. Orens.
25 MR. ORENS: Thank you, Madam Examiner.

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1 DIRECT EXAMINATION
2 BY MR. ORENS:
3 Q What is your profession, Mr. Washburn?
4 A Architect.
5 Q And are you a licensed architect in the State of
6 Maryland?
7 A I am licensed in Maryland and --
8 Q Where else?
9 A 13 other states around here.
10 Q Then don't tell us all of them.
11 A I can give you a list.
12 Q I'm showing you what I'm going to -- well, what's
13 the next exhibit number? I lost track.
14 MS. ROBESON: I should have checked that. 39.
15 BY MR. ORENS:
16 Q Okay. I'm showing you an exhibit that's marked as
17 Exhibit No. 39.
18 (Exhibit No. 39 was marked
19 for identification.)
20 BY MR. ORENS:
21 Q What is that?
22 A That's my resume.
23 Q Okay.
24 A Which lists them.
25 Q Would you just briefly summarize your experience

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1 as an architect and what your responsibilities are at CMW
2 Group?
3 A I am the president and the principal architect
4 there. We're located on Church Street in Frederick,
5 Maryland. We've been there for about 15 years. I started
6 architecture in 1966, and I got registered in 1983, 30 years
7 ago in Ohio. And like I say, a bunch of other states.
8 Q Have you previously testified in an administrative
9 proceeding elsewhere other than Montgomery County as an
10 expert in architecture?
11 A I have.
12 Q Where is that?
13 A Over in Carroll County, the Town of Mount Airy,
14 Manassas, Virginia, Frederick County and Frederick City.
15 Q Is this your first foray into Montgomery County
16 administrative process?
17 A Well, at this position as the expert witness.
18 We've done a lot of work in Montgomery County, but we have
19 not had to do this process.
20 Q You mean actual design work?
21 A We've actually designed work, and it got built,
22 yes.
23 MR. ORENS: Okay. Madam Examiner, I'll submit Mr.
24 Washburn as an expert in architecture. And I will put his
25 resume as Exhibit No. 39.

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1 MS. ROBESON: Okay.
2 MR. ORENS: I have given a copy to Mr. and Mrs.
3 Winter.
4 MS. ROBESON: All right. Seeing no objections to
5 admitting him as an expert in architecture, I will do so.
6 BY MR. ORENS:
7 Q Okay. Since you have worked previously in design
8 projects in the County, in preparation for this hearing,
9 have you become familiar with the appropriate provisions of
10 the Montgomery County zoning ordinance as they pertain to
11 architectural requirements for special exception uses?
12 A Yes. I have reviewed this with Ms. Bryant so that
13 we could make sure we followed the zoning regulations.
14 Q Would you approach the large exhibit and first of
15 all, have you been out to the subject property and the
16 surrounding area?
17 A I have. I took these pictures.
18 Q And are you familiar with the existing structure
19 that's on the property?
20 A Yes.
21 Q And when you were out there, did you observe the
22 area and the development on adjacent nearby properties?
23 A Yes.
24 Q And if we could mark as Exhibit No. 40 the
25 rendered drawings. And, I think, Mr. Washburn, the two

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1 photographs of the existing house would be Exhibits No.
2 41(a) and 41(b), and the rendering would be --
3 (Exhibit Nos. 40-41 were marked
4 for identification.)
5 MS. ROBESON: Okay. So 40 is the rendered
6 elevations, and then 41(a) is the front, photograph of the
7 front view.
8 MR. ORENS: Right.
9 MS. ROBESON: Okay. And (b) is the rear view, I
10 assume.
11 BY MR. ORENS:
12 Q Can you please describe, based on Exhibits No.
13 41(a) and (b), the existing structure?
14 A Existing is a single level residential three-
15 bedroom house and a basement. The basement is shown a
16 little bit on the side detail.
17 Q What is the material, building materials, the
18 exterior materials?
19 A It's all brick, standard windows, shingled roof,
20 chimney. But right now it's brick on all four sides.
21 Q And currently it's a single story with a walkout.
22 Where is the walkout?
23 A The walkout is the garage overhead door which was
24 here at the time this picture was taken.
25 Q And is that on the same side as the Winter

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1 residence, or is that on the other side?
2 A That is on the other side.
3 Q Okay.
4 A That is on the new driveway side.
5 Q Now, referring if we can to the rendered drawings,
6 would you please describe the modifications that are
7 proposed for the existing building?
8 A Okay. First of all, on the front view, as we have
9 added a porch, and the whole roof has been raised to a
10 higher pitch. We've not raised the eave height of it.
11 We've only raised the pitch of the roof.
12 We've added dormers. We've, you know, maintained
13 the signing, the painted brick stays there but we, you know,
14 paint it fresh. And the shutters stay on the windows. But
15 we've revised the entrance door. It was on the left of the
16 window. Now it's on the right of the window. It's actually
17 an exit for that room on the front side.
18 Then on the side we just were talking about, the
19 driveway entrance side will now have an entrance on the
20 lower level that was the garage door. Again, that doesn't
21 change much except for the raised pitch of the roof and the
22 dormers.
23 And the rear side, we'll call it, is the side that
24 has an addition on the side. And you can see the difference
25 the back has. What will happen there is, again, we had a

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1 reverse gable so that we kept the mass down, so that the
2 back addition doesn't get above the front roof. We have
3 another entrance on the side or rear area here.
4 And then this is the side that is pretty much
5 unchanged, except for the little piece of addition on the
6 back. But you've still got your chimney, still got the
7 shingled roof. You've still got the eight foot eave height.
8 Q What is the height of the building, as modified?
9 A As modified, I think it's, from the upper grade, I
10 should have a dimension drawing, but the existing eave
11 height is eight feet. This is probably what, another 12 or
12 14 feet above that. So 24 feet, 25 feet high at the ridge.
13 Q Now, have you reviewed the zoning ordinance
14 requirements for structures, special exception structures in
15 the R-200 zone?
16 A I have.
17 Q And as a result of that, are you familiar with
18 those standards as they relate to architecture and the
19 residential appearance of special exception uses in
20 residential zones?
21 A Yes. And that's pretty much what we designed
22 around. We wanted to maintain the residential appearance of
23 the structure, and maintain, like I said, the punch windows,
24 you know, those real large panels of glass. We have all
25 residential materials, based on that requirement in the

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1 regulations.
2 Q Is the building, as far as the exterior, and we'll
3 get to the interior in a moment, is it compliant with the
4 Americans with disabilities act, in terms of access?
5 A Well, yes, that's a tougher one for, we deal with
6 the interior making sure that's accessible. But as you can
7 see, we have grade entrances on the lower level, grade
8 entrances on the upper level.
9 Q So that is compliant.
10 A That is compliant.
11 Q Bear with me for a minute.
12 MS. ROBESON: What are the proposed exterior
13 materials?
14 THE WITNESS: Well, the painted brick. The brick
15 that's there now will be painted, because we're adding, you
16 know, the extra eight in the pitch of the roof.
17 MS. ROBESON: Right.
18 THE WITNESS: In addition to that, there is a
19 hardy board siding.
20 MS. ROBESON: Okay.
21 THE WITNESS: And standard windows, basic
22 materials.
23 MS. ROBESON: That was my question was the siding.
24 THE WITNESS: The siding is only on the addition.
25 It's still brick maintained on the rest of the building.

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1 MS. ROBESON: Okay.
2 BY MR. ORENS:
3 Q And I think you said --
4 A I'm not going to cover it, just paint it.
5 Q It's hardy board?
6 A Hardy board.
7 Q And what is hardy board?
8 A It's a cement-based siding, as opposed to vinyl.
9 It's not going to be a vinyl, you know, or previously
10 aluminum. It's substantial. Lasts forever.
11 Q In terms of the bulk and mass of the building, as
12 renovated, as an architect, do you have an opinion as to
13 whether or not it is similar to, consistent with, the
14 residential character of the surrounding neighborhood?
15 A Yes. And I think it's to maintain its residential
16 scale and the proportions of the addition are in keeping
17 with the size of the existing building. Again, it fits well
18 with the neighborhood. It doesn't, you know, look like it
19 doesn't belong there. It fits in. The addition will look
20 something like a bedroom in the back of the house, or an
21 additional kitchen or something like that.
22 Q Is the rear addition visible if you're standing on
23 Frederick Road, if you dare to stand on Frederick Road, and
24 look at the building? Can you see the addition from the
25 front?

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1 A No, not from straight on.
2 Q And --
3 A The roof pitch was kept down.
4 Q Okay. I think you already answered this question,
5 but the building materials that you've chosen, are they
6 residential in character, and do they, are they similar to
7 the materials that you find in residential communities and
8 in the surrounding neighborhood?
9 A That's right. We have painted brick. We have the
10 siding. We have the standard window shutters, asphalt
11 shingles, you know, all those are residential materials.
12 Q Okay. Now, did you and your partner also design
13 the interior of the expanded building?
14 A Yes.
15 Q And what parameters were you given? Were you
16 aware of the proposed use?
17 A Yes.
18 Q And the requirements for that use when the
19 interior was redesigned?
20 A That's correct. The basement area --
21 Q Let's, before we start, let's mark that as Exhibit
22 No. 42. And Exhibit No. 42 would be the floor plans for the
23 interior of the building.
24 (Exhibit No. 42 was marked
25 for identification.)

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1 BY MR. ORENS:
2 Q 42 is, which level is that?
3 A The basement, the lower level. Yes.
4 Q That's the basement level. And Exhibit No. 43
5 would be the upper level.
6 (Exhibit No. 43 was marked
7 for identification.)
8 BY MR. ORENS:
9 Q When it's completed, Mr. Washburn, is it still a
10 one-story building?
11 A Yes. It still has a one-story building with a
12 basement.
13 Q Let's go back to the exterior elevation just for a
14 moment, because I would like you to describe, if you would,
15 the dormers, and what function those dormers serve?
16 A Okay. I knew that was going to be there.
17 Q That is a change.
18 A The dormers, there are two dormers on the front,
19 and they let light into the interior space on the first
20 floor. There is no floor level there, but there is a volume
21 ceiling in there, to keep this otherwise little house
22 feeling open. And the same thing happens on the addition.
23 We've added a dormer on the addition as well, and a volume
24 ceiling in that one room in the back.
25 Q But that does not reflect another story of

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1 habitable space?
2 A That's correct.
3 Q Now, going to the next exhibit, if you would, and
4 if you would describe the interior space. And tell the
5 examiner which level you are talking about as you describe
6 it?
7 A Okay. This is the lower level. We talked about
8 that entrance off of the parking area that has a handicapped
9 parking space right here. You come into the lower level.
10 You have one classroom on the lower level, some utility
11 spaces, a restroom, handicap accessible, an a storage area
12 under the new addition on the same level.
13 Q The storage area under the new addition, are there
14 any windows in that area?
15 A Well, there are high windows, like a basement
16 window.
17 Q Like a basement.
18 A Yes.
19 Q And has it been designed as a classroom, or
20 strictly for storage?
21 A Strictly for storage.
22 Q What else do you have on the lower level?
23 A Okay. Then we have the second exit out the back,
24 a stairway that gets you outside, which is code, but also to
25 the play area. There's an interior stairway that was up

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1 into the first level, and then, like I say, the utility
2 spaces and a small serving kitchen. It's strictly a counter
3 and a sink.
4 Q Okay. And anything else on the lower level?
5 A Just the utilities.
6 Q Okay.
7 A One classroom.
8 Q Moving upstairs to the upper level.
9 A On the upper level --
10 Q And that is Exhibit number?
11 A And that's 43.
12 Q Exhibit 43. You were talking about 42. Okay.
13 A I was. Now, so on this upper level we have the
14 access here from the upper parking lot, let's say, and come
15 into the back door or the main entrance which is on the
16 upper level. There's an office there. You have three
17 classrooms. You have the interior stair going back down.
18 You have the restroom facilities. Let's see, did I say a
19 little office. And then I talked about the front door is
20 now an exit to that classroom, and then the additional door
21 goes into this classroom. So each classroom has a door
22 outside.
23 Q Now, is that a code requirement for a daycare
24 facility?
25 A That's typical of a daycare facility, yes.

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1 Q Okay. Just to put everything in the context of
2 the zoning ordinance, section 59-G-1.21(a)(4) requires that
3 the renovated structure be in harmony with the general
4 character of the neighborhood, considering, in terms of
5 architecture, design, scale and bulk. Do you have an
6 opinion, and if so, what is it, as to whether or not the
7 renovated building will be in harmony with the general
8 character of the neighborhood?
9 A I believe in my personal opinion that it will, and
10 it will be improved from what is there now, and will be a
11 good addition to the community.
12 Q May I assume that your personal and professional
13 opinions are identical?
14 A Yes, as a matter of fact.
15 MS. ROBESON: It's your professional opinion that
16 counts.
17 THE WITNESS: If I'm wrong, the team is not happy.
18 BY MR. ORENS:
19 Q Section 59-G-1.23(g) refers to building
20 compatibility in residential zones. And it requires that
21 "Any reconstructed or altered building under a special
22 exception must be well-related to the surrounding area in
23 its citing, landscaping, scale, bulk, height, materials and
24 texture, and must have a residential appearance where
25 appropriate." Let me take that in segments if I may. The

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1 citing of the building does not change from what it already
2 is?
3 A That does not change.
4 Q And the addition will be to the rear?
5 A Correct.
6 Q And it will be part of the building
7 architecturally?
8 A Well, it will look like it belongs.
9 Q In terms of the footprint, what is the relative
10 size of the addition as compared to the existing structure?
11 A Okay. The existing condition is --
12 Q I'm talking about footprint now.
13 A Yes. Well, the footprint is, and that's shown
14 here, of course, on the basement. You've got about 1,300 or
15 1,400 square feet of existing basement footprint. And just
16 about 600 square feet on the addition. So it's a
17 percentage.
18 Q Now, in terms of scale, bulk, height and building
19 materials and textures, will the renovated building be
20 compatible with the residential character of the surrounding
21 neighborhood?
22 A Yes. Again, we didn't raise the eave height. We
23 only changed the pitch of the roof form. And all the
24 materials are compatible with residential construction.
25 Q And I think you already said that it will have a

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1 residential appearance?
2 A Yes.
3 Q Did I leave anything out?
4 A No.
5 MR. ORENS: I don't think so. That's all I have.
6 MS. ROBESON: Mr. and Mrs. Winter, do you have any
7 questions of the architect?
8 MR. WINTER: I have one statement. This might be
9 wrong, but I think he did a very nice job.
10 MR. ORENS: No objection.
11 MR. WINTER: No, it certainly is compatible with
12 the new homes, and it certainly is an improvement on what
13 you have there.
14 THE WITNESS: Okay.
15 MR. ORENS: Thank you, Mr. Washburn.
16 MR. WINTER: I don't know if my wife has anything
17 to say.
18 MS. WINTER: I agree.
19 MR. ORENS: Our next witness, and we're getting
20 close to the end, is our traffic consultant. Mr. Wilson,
21 would you join us at the table.
22 MS. ROBESON: Please raise your right hand.
23 (Witness sworn.)
24 MS. ROBESON: Go ahead.
25 DIRECT EXAMINATION

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1 BY MR. ORENS:
2 Q State your full name, your profession, and where
3 you work?
4 A My name is Carl Wilson. I'm a senior project
5 manager with the Traffic Group. Our business address is
6 9900 Franklin Square Drive, Suite H, in Baltimore, Maryland.
7 I am a traffic engineer and transportation planner with the
8 Traffic Group. I've been employed there for about nine
9 years. And I've spent about 14 years in the traffic
10 engineering and transportation planning field.
11 Q I'm going to show you what has been marked as
12 Exhibit No. 43?
13 MS. ROBESON: 44.
14 (Exhibit No. 44 was marked
15 for identification.)
16 BY MR. ORENS:
17 Q 44. And what is that?
18 A That's a copy of my resume.
19 Q And I've given a copy of Mr. Wilson's resume to
20 Mr. and Mrs. Winter. And the first question, Mr. Wilson,
21 what does PTOE mean?
22 A That stands for professional traffic operations
23 engineer. That's a designation that's attained through the
24 Institute of Transportation Engineer, after you can certify
25 that your knowledge and ability in transportation operation.

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1 Q It has nothing to do with feet.
2 A No.
3 Q Sorry. What is your, if you would, briefly
4 describe your educational background and your experience,
5 and whether you've previously testified as an expert in
6 transportation planning?
7 A Sure. I have both a bachelor and master's degree
8 from the University of Maryland. I'm a licensed
9 professional engineer in the State of Maryland. I've never
10 testified before this particular board, but I have qualified
11 as an expert in Baltimore County, Prince George's County,
12 multiple other jurisdictions throughout the State. I've
13 testified across the street at the Board of Appeals and for
14 the city.
15 Q I would submit Mr. Wilson as an expert in
16 transportation planning and traffic engineering.
17 MS. ROBESON: All right. Any objections? I will
18 accept him as an expert in those areas.
19 BY MR. ORENS:
20 Q Thank you. You may have heard me ask others this
21 same question. Are you familiar with the subject property
22 and the surrounding road network and area?
23 A Yes, I am.
24 Q And have you visited the site and the surrounding
25 area?

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1 A I have, yes.
2 Q Have you observed the road conditions and the
3 physical characteristics of the road network that serves
4 this property?
5 A Yes.
6 Q And are you familiar with the Clarksburg and
7 vicinity Master Plan as it relates to the transportation
8 element?
9 A Yes, I am.
10 Q And the recommendations that it has regarding the
11 area in which this property is located?
12 A Yes.
13 Q Are there any specific Master Plan road
14 improvement recommendations for Frederick Road? Now,
15 Frederick Road is a State road, am I correct?
16 A That's correct. Yes.
17 Q Are there any recommendations or significant
18 improvement that are apparently programmed in the plan for
19 355 in this particular area?
20 A No, there's not.
21 Q What roads, in your professional opinion, are
22 directly impacted by the proposed site generated traffic?
23 A The primary area of impact is really going to be
24 limited to Frederick Road in this case. Daycare, this
25 particular daycare is not going to general a tremendous

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1 amount of traffic. And the characteristic traffic for a
2 daycare is that it's going to be a lot of pass by traffic.
3 That's traffic that's already using the road network, and is
4 passing by on the way to their final destination such as
5 work, or on the way back from work to home.
6 Q Okay. Let me go back, if I may, to Frederick
7 Road. What is the Master Plan right-of-way with that road?
8 A It's 120 feet, basically a four-lane divided
9 roadway.
10 Q And currently it's improved as what?
11 A Currently it's two travel lanes, one in each
12 direction. It's undivided. There's approximately a three
13 to five-foot shoulder on either side of the road.
14 Q Now, are you familiar --
15 MS. ROBESON: Is there anything, I'm sorry --
16 MR. ORENS: I'm sorry. Go ahead.
17 MS. ROBESON: Is there anything the CTP or CIP for
18 to bring --
19 THE WITNESS: Not currently, no.
20 MS. ROBESON: No improvements at all, not even --
21 okay.
22 THE WITNESS: No, nothing right now.
23 MR. ORENS: Until a developer is willing to build
24 it.
25 MS. ROBESON: Okay.

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1 BY MR. ORENS:
2 Q When we first started this process, Mr. Wilson, we
3 had a process known as PAMR, policy area mobility review.
4 Do we still have that?
5 A No. PAMR is no longer around.
6 Q And what, if anything, has taken its place?
7 A TPAR, which is the transportation policy area
8 review. That became effective on January 1st, 2013. And
9 it's my understanding there was a presentation to the
10 Planning Board yesterday to try to really hammer out some of
11 the details as to how that is going to actually operate.
12 Q They still don't know.
13 MS. ROBESON: Well, which standard applies to this
14 application? TPAR?
15 MR. ORENS: TPAR.
16 MS. ROBESON: Go ahead.
17 MR. ORENS: It would be the standard when the
18 building permits are issued.
19 MS. ROBESON: Right.
20 THE WITNESS: Well, I was just going to say, it's
21 really applicable when it becomes part of the preliminary
22 plan.
23 MS. ROBESON: Right. That's what I'm thinking
24 through. Okay.
25 THE WITNESS: So yes, it will be subjected to TPAR

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1 once they file for preliminary plan.
2 BY MR. ORENS:
3 Q And does TPAR also divide planning areas and
4 County policy areas?
5 A Yes, it does.
6 Q And in what policy area is the property?
7 A This is in Clarksburg. And just speaking of TPAR,
8 LATR, the local area transportation review, is still in
9 effect and is essentially unchanged with TPAR.
10 Q Well, how many, I'll jump ahead here if I may.
11 A Sure.
12 Q In order to ask you this question. Have you
13 determined how many a.m. and p.m. vehicle trips will be
14 generated by the proposed use?
15 A Yes.
16 Q And what is that?
17 A This site will generate 28 trips during the
18 morning peak, and 28 trips during the evening peak.
19 Q Under the local area transportation review
20 guidelines, is this property subject to the submission of a
21 full traffic study?
22 A It's not. LATR requires a traffic impact study
23 for developments that general 30 or more peak hour trips.
24 Q What was required for this project?
25 A For this project, we did a review of the

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1 transportation are, and submitted that to Park and Planning
2 for review.
3 Q And --
4 A Basically, a transportation statement.
5 Q I believe that is in the record as Exhibit No. 12.
6 And are you looking at Exhibit No. 12 now?
7 A Yes, I am.
8 Q What's the date of that?
9 A That's dated May 24th, 2012.
10 Q Now, based on your study, first of all, do you
11 know the operational characteristics of the proposed
12 childcare center as it would relate to trip generation, and
13 what is that?
14 A Yes. In terms of the trip generation, the 28
15 trips are going to be roughly half in and half out during
16 the peak period. And that makes sense because parents
17 aren't going to spend a tremendous amount of time dropping
18 off their children. They're going to drop them off and
19 leave. So it's basically going to be half the trips
20 arriving, and half of the trips departing during that same
21 period.
22 Q Just so that we have a complete record, if you
23 know, what are the maximum number of children that will be
24 in attendance?
25 A 52.

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1 Q And how many teachers and staff will there be?
2 A Six.
3 Q And did you take those numbers into account when
4 you analyzing the traffic impact?
5 A Yes. Basically, in order to determine the trip
6 generation, the rates that we use are established by Park
7 and Planning Commission. And the rates are based on the
8 number of teachers at the site. So basically, six is the
9 variable that we use to generate the trips. And obviously
10 there is the capacity of the children is all related to
11 that. So again, the trips are 28 during each peak period.
12 And that's based on the number of teachers at the site.
13 Q You were present when the prior witnesses
14 testified as to the character of the property as a tax
15 parcel. And that it would go through the preliminary
16 subdivision plan. Will the Planning Board and staff during
17 that process again look at the LATR and TPAR requirement?
18 A Yes, they will.
19 Q And in terms of road capacity, the policy area,
20 this is, I don't think this has changed from PAMR to TPAR,
21 is there adequate vehicle capacity in the policy area?
22 A Yes, there is.
23 MS. ROBESON: Would it pass TPAR?
24 THE WITNESS: There's two elements to TPAR, and
25 the first one has to do with the highway capacity. The

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1 second element of TPAR relates to transit.
2 MS. ROBESON: Right.
3 THE WITNESS: And in terms of transit, it's, the
4 component really deals with the headways, basically, the
5 amount of time that's allocated in between bus trips. It's
6 the amount of time in between trips.
7 MS. ROBESON: Right.
8 THE WITNESS: And this area is a relatively rural
9 type of are, and it's actually unsatisfactory, based on the
10 transit component. And what will happen is that Park and
11 Planning in coordination with MC-DOT are going to develop a
12 structure for mitigation, basically a fee that will have to
13 be paid by the applicant at the time of preliminary plan.
14 And they will comply with that, as required.
15 MS. ROBESON: Okay.
16 BY MR. ORENS:
17 Q As a follow-up, Mr. Wilson, in terms of satisfying
18 LATR and TPAR requirements, is there anything in connection
19 with this proposal that would cause it not to be approvable
20 under TPAR?
21 A No, it would be approvable.
22 MS. ROBESON: It's just how much mitigation you
23 have to pay.
24 MR. ORENS: Pay for.
25 THE WITNESS: And that's still unclear right now.

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1 MS. ROBESON: Okay. That's what I was --
2 THE WITNESS: The process is brand new.
3 BY MR. ORENS:
4 Q You indicated that there are 28 vehicle trips
5 generated, a.m. and p.m.?
6 A Yes, that's correct.
7 Q And you've split them directionally 50/50?
8 A Yeah. For a case like this, you know, we expect
9 that the people that are going to be using this daycare,
10 given the surrounding residential, we expect that the
11 traffic is going to be coming from relatively evenly both
12 directions.
13 Q Do you know whether or not your traffic statement
14 was reviewed by the transportation planner for planning area
15 three of Park and Planning?
16 A Yes, Mr. Ki Kim did review the traffic statement.
17 Q And what was his conclusion?
18 A He agreed with the findings of the traffic
19 statement.
20 Q Now, I want to turn, if I may, to the access to
21 the property. If you would, put up the regular drawing,
22 which I think is the best one to demonstrate what we have.
23 MS. ROBESON: Can you just identify what exhibit
24 that is? I don't --
25 THE WITNESS: Exhibit No. 31.

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1 MS. ROBESON: Okay.
2 BY MR. ORENS:
3 Q Now, referring to Exhibit No. 31, if you would,
4 describe first the parking area as a function, and then the
5 driveway access to that parking area.
6 A Sure. There's the parking area you see here where
7 a total of 15 spaces are provided, which is adequate per the
8 code. To the rear of the parking area, this is going to be
9 primarily the teacher parking area, where those are the
10 vehicles that are going to be staying on site. And that's
11 why the distribution is not exactly 50/50, because there are
12 going to be obviously teachers that are arriving and staying
13 on-site.
14 Closer to the front of the site, that's going to
15 be the spots that are used by the parents dropping off the
16 children. And per our code, there is one handicapped spot
17 provided as well within that 15.
18 The driveway will operate under stop control to
19 Frederick Road. There is essentially one lane traveling in
20 and one lane traveling out. There is an adequate throat
21 area within the driveway to provide storage for
22 approximately two vehicles waiting to exit the site at the
23 same time.
24 Q What, if any, physical modifications to the
25 driveway access are proposed?

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1 A The driveway is going to be widened from its
2 existing condition. All that widening is going to be
3 occurring to the south or east from its current position
4 because it's up as close to the property line, I believe, as
5 it can be.
6 In addition, the height of the driveway is
7 actually going to be increased by a few inches. And that is
8 to increase the sight distance along Frederick Road.
9 MS. ROBESON: To get it to 325?
10 THE WITNESS: That's correct. Yes.
11 MS. ROBESON: Okay.
12 THE WITNESS: There is, there is a curve in the
13 road, a vertical curve in the road that somewhat restricts
14 the sight distance to about 315 feet today.
15 MS. ROBESON: Okay.
16 THE WITNESS: Montgomery County requires a sight
17 distance for a posted speed of 40 miles per hour to be 325
18 feet. It is actually that close, with the way the curves
19 work. I personally measured the sight distance out here,
20 and basically I came up with 315 feet under the existing
21 conditions. But given that additional two inches, that is
22 actually going to make the difference out there to find an
23 additional 10 feet or so of sight distance.
24 MS. ROBESON: Okay.
25 BY MR. ORENS:

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1 Q Well, that answers my next question, whether there
2 was a sight distance study performed, and the results of it.
3 Is there anything else you need to add with regard to sight
4 distance?
5 A Well, it has been submitted to Park and Planning
6 and has been reviewed and approved by Ki Kim and planning
7 staff.
8 Q Now you're talking, when you talk sight distance,
9 you're talking about both directions, is that correct?
10 A Yes. To the right, the sight distance is not
11 restricted. Really, it's the sight distance looking to the
12 left, as a result of the vertical coverage over the road.
13 Q The existing, I guess, background traffic on 355
14 and any pipeline traffic, have you determined whether or not
15 the vehicles entering or exiting the driveway will have
16 adequate time to exit the driveway or enter the driveway
17 from either direction? If you have an opinion as to that,
18 please tell us what you based it on.
19 A There's a couple of things that we've looked at in
20 order to determine the adequacy. LATR requires us just to
21 look at the critical lane volume at intersections. That's a
22 relatively simplistic planning tool.
23 The first thing that we did, to go above and
24 beyond that, was to look at highway capacity manual.
25 Highway capacity manual looks at the way that's actually

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1 encountered by vehicles that are waiting to turn out of a
2 site or to turn into a site.

3 What we found with the highway capacity manual,
4 and for this analysis, we actually used a more conservative
5 number of assuming that 75 percent of all site trips are
6 going to be arriving from the north.

7 And what we found with that analysis is that in
8 the morning peak period the southbound traffic entering the
9 site will have a level of service A, basically having less
10 than eight seconds of delay getting in. Leaving the site to
11 turn left they're going to experience a delay of 13.1
12 seconds on average leaving.

13 In the evening we found, using the same numbers of
14 75 percent from the north, we found that left turn
15 experience as a level of service B, with 10.9 seconds of
16 delay, and the exiting movement would experience 24 seconds,
17 an average of 24 seconds of delay for level of service C
18 conditions. Those are all considered acceptable, and it's
19 really not a lot of time to wait to exit a driveway like
20 this.

21 MS. ROBESON: How much stacking do you have in
22 that throat?

23 THE WITNESS: There's approximately space for two
24 cars. And again, what we're finding is that there's going
25 to be a maximum of 14 trips leaving during that peak period.

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1 So this is a relatively small daycare.

2 MS. ROBESON: Right.

3 THE WITNESS: You know, when it comes down to it.
4 So there is, with only 14 cars leaving during the peak hour,
5 there's not going to be a tremendous amount of stacking. If
6 there is, again, there is two spaces within the throat, but
7 it could even queue back further into the site.

8 MS. ROBESON: That was my question. Can people
9 back out of a -- is there enough room to allow people to
10 back out of a space --

11 THE WITNESS: Yes.

12 MS. ROBESON: -- and then stack in another --

13 THE WITNESS: Yes, and they could still stack as
14 far back as they needed to on-site, if necessary, obviously
15 with the exception of these first spaces where if,
16 hypothetically, the queue were to extend back, they'd have
17 to wait for the traffic to clear before they got out. But
18 again, we're talking about 14 cars per hour, which is not a
19 tremendous number.

20 MS. ROBESON: Did you, well, I don't want to jump
21 the gun. You, if you'd just continue, and then I'll keep my
22 question until after.

23 BY MR. ORENS:

24 Q Okay. You were present, were you not, when the
25 Planning Board considered this?

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1 A Yes.

2 Q And the question of adequate gap time, was that
3 discussed by the Planning Board?

4 A Yes.

5 Q And what were you requested to do as a result of
6 that discussion?

7 A Prepare a gap study.

8 Q And did you do that?

9 A We did, yes.

10 Q And I have given a copy of that -- this is not in
11 your record at the present time. I have given a copy of
12 that to Mr. and Mrs. Winter.

13 MS. ROBESON: I thought we got that.

14 MR. ORENS: Oh, you did get that? I'm sorry.

15 MS. ROBESON: Exhibit No. 28(a).

16 MR. ORENS: Exhibit No. 28(a). Okay.

17 THE WITNESS: December 11, 2012.

18 MR. ORENS: Yes.

19 MS. ROBESON: Yes.

20 THE WITNESS: Yes.

21 BY MR. ORENS:

22 Q Okay. So I forgot. And would you describe what a
23 gap study is?

24 A Yes. Basically, for this gap study, what we did
25 was, we videotaped traffic operations here along Frederick

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1 Road for the morning and evening peak periods. We used two
2 days in December when school is in session, the beginning of
3 December, December 3rd and 4th, 2012. So school was in
4 session. Normal weather conditions. Everything was
5 completely normal as any average day.

6 Then after the video is collected, we took it back
7 to the office and we have special software and modules that
8 are used where people push buttons so actually, it actually
9 locks the traffic in real time through here to determine
10 what amount of gap is available.

11 Now, the gap is the amount of time that's
12 available in between cars passing through the intersection.
13 So you need a certain amount of gap to be able to exit the
14 site, or to access the site.

15 AASHTO, the American Association of Safe Highway
16 Transportation Officials dictates the size of the gaps that
17 should be available for any road. For a left turn for the
18 minor street, which is at the driveway access, you want a
19 gap of seven and a half seconds, the right turn from the
20 minor street, six and a half seconds.

21 Does that make sense, because you have less lanes
22 to cross there. And the left turn from the major street is
23 five and a half seconds to turn into the site. And that's
24 irrespective of the speed limit. The approach speed is what
25 dictates the sight distance requirements.

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1 What we found, we looked at it two different ways.
2 You have the northbound traffic along Frederick Road.
3 That's what's used to look at the right turn from the stop,
4 because you're only looking to the left for the right turn,
5 to make your right turn, you're only looking left, so we're
6 concerned with the northbound traffic only.
7 And that's actually the same thing for the
8 southbound left turn into the sight. They're only concerned
9 about the gap for the northbound direction. So there's more
10 gaps, obviously, available for that.
11 The software that we use actually looks at the
12 combined direction as well in order to determine the left
13 turn leaving there, because they need to look both ways to
14 make sure they have their adequate gap.
15 And what we found is that the summary within that
16 letter shows the number of gaps that were found. The
17 minimum number of gaps was left turn from the site during
18 the a.m. peak, that was 52 available gaps. So we're talking
19 about 14 trips that are going to be leaving the site. And
20 there's more than 52 opportunities for them to do that.
21 Now, another thing that I'll say about that is
22 that some of these gaps are very large. They are, more of
23 the gaps are concentrated toward the smaller numbers. But
24 once you get above gaps that are 16 or 17 or 18 seconds, you
25 could possibly get more than one vehicle leaving within that

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1 same gap. So even though we're only 52, there's actually
2 the opportunity for more vehicles to leave than this
3 actually shows.
4 MS. ROBESON: Now, did you adjust this gap study
5 for, you can't adjust it for a pipeline development, a
6 development approved but not built, right?
7 THE WITNESS: No, not for those. No.
8 MS. ROBESON: Okay.
9 THE WITNESS: This is just based on existing
10 conditions.
11 MS. ROBESON: Okay.
12 BY MR. ORENS:
13 Q And based upon the analysis you did, will there be
14 adequate gaps to allow for a safe and efficient access into
15 and exiting from the driveway to the proposed daycare
16 center?
17 A Yes, there will. And that's consistent with what
18 we found in the HCM analysis, that the delay is relatively
19 minimal for the site.
20 Q Now, in terms of compliance with the zoning
21 ordinance, are you familiar with the general and specific
22 requirements as they pertain to traffic elements of special
23 exception uses?
24 A Yes.
25 Q And in terms of that, will the traffic generated

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1 by this proposed use adversely affect the surrounding area
2 in terms of physical issues and additional traffic?
3 A No, we believe the road system can accommodate the
4 traffic.
5 Q Anything else?
6 A We did pull crash data from SHA's website,
7 basically for the last three years, and we found minimal
8 activity out there. There was really nothing with red flags,
9 any kind of safety concerns or anything else in particular
10 at the site access point.
11 Q Now, the crash data that the State Highway
12 Administration and the County, for that matter, maintain,
13 what type of information is available publically?
14 A Basically, it's State Police records that SHA
15 maintains. And those are records where vehicles are either
16 undrivable away from the scene or there is personal injury
17 involved. So this doesn't account for fender benders.
18 There's no way to obtain that information.
19 MS. ROBESON: I have a teenager. I know all about
20 fender benders.
21 MR. ORENS: You just brought back some very
22 unpleasant memories.
23 MR. WINTER: Me too.
24 MS. ROBESON: I'm telling you.
25 MR. ORENS: Anyway --

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1 MS. ROBESON: Sorry. I digressed.
2 BY MR. ORENS:
3 Q If you would, with reference to the rendered
4 drawing, which is Exhibit number 31, if you look very
5 closely at that near the driveway, there's a little black
6 dot. Do you know what that is?
7 A That's the proposed sign for the site.
8 Q If you would please pull up the exhibit that has a
9 picture of the sign on it. Now, the distance between that
10 black dot and the existing, and as far as we can tell, long
11 term paved width of Route 355, what's the distance between
12 that sign and the road?
13 A 56 feet.
14 Q And will that sign provide adequate identification
15 of the property to motor vehicle drivers who are
16 approaching?
17 A Yes.
18 MR. ORENS: I think that's it.
19 MS. ROBESON: Are there any safety concerns as far
20 as having a two-foot square sign versus a -- I'm sorry, a
21 four-foot square sign, as opposed to the 15 feet?
22 THE WITNESS: Not in my opinion. What's going to
23 happen is that since you have such a distance from where
24 that sign is located, the driver is going to be pulling up
25 far in front of that sign. So in terms of the sight

1 triangle that driver is going to have, that's going to be
 2 well behind their field of vision when they're looking onto
 3 Frederick Road. So that sign is set so far back that it's
 4 not going to be an issue.
 5 MS. ROBESON: Okay. I had a question on the
 6 special events. And we don't, I don't know yet how many
 7 people, but it's about parking and traffic circulation.
 8 Because we have a number of these child daycare cases, and
 9 one of the issues is during special events, when, you know,
 10 grandparents come, and that kind of thing, how are you going
 11 to accommodate that from a parking and circulation
 12 standpoint.
 13 Have you had the opportunity to look at that
 14 issue? Because I don't know how big these classes are, but,
 15 you know, usually there's some testimony about how they are
 16 going to handle on-site -- I assume there is no parking on
 17 355, correct?
 18 THE WITNESS: That is correct, yes. The shoulders
 19 are only three to five feet wide on 355.
 20 MS. ROBESON: So all of the parking for special
 21 events are going to have to occur on this paved area.
 22 THE WITNESS: Yes.
 23 MS. ROBESON: The parking facility on-site.
 24 THE WITNESS: Yes.
 25 MS. ROBESON: Okay. Well, maybe on rebuttal.

1 Okay. All right.
 2 THE WITNESS: Yes. I was going to say, for what
 3 we looked at for this, we were focusing on the peak hours
 4 only for the analysis.
 5 MS. ROBESON: I understand. Okay.
 6 MR. ORENS: Ms. Vesper will be testifying.
 7 MS. ROBESON: Okay. Mr. Winter --
 8 MS. WINTER: I --
 9 MS. ROBESON: I'm sorry to interrupt. Are you
 10 finished with your questions?
 11 MR. ORENS: I'm finished, yes.
 12 MS. ROBESON: Okay. Go ahead.
 13 CROSS-EXAMINATION
 14 BY MR. WINTER:
 15 Q I'm a little confused. You were talking about the
 16 stacking, and I'm an expert on a lot of things, but not
 17 this. Okay. You're talking about 14 trips or cars. When
 18 you have 52 students, am I missing something here? Wouldn't
 19 52 cars come in, conceivably --
 20 A What we're looking --
 21 Q -- along with the --
 22 A The number 14 is what is established by Park and
 23 Planning as the rates that are going to happen during the
 24 most intense hour. So what's going to happen is that the
 25 daycare is going to open up early in the morning, prior to

1 the morning peak hour, at 6:30 in the morning.
 2 Q Okay.
 3 A So there's going to be more trips that are
 4 occurring. But we're focusing on the peak hour.
 5 MS. ROBESON: And why don't you tell, well, you
 6 didn't do a traffic study, but generally, what are, how do
 7 you identify the peak hours?
 8 THE WITNESS: The peak hours, typically, if we
 9 were doing a traffic impact study for this to comply with
 10 LATR if it was more than 30 trips, we'd go out and count
 11 traffic in Montgomery County from 6:30 to 9:30 and then
 12 again from 4:00 to 7:00. And during that time, we would
 13 determine what the heaviest amount of volume is, and the
 14 heaviest hour of those three.
 15 MR. WINTER: Yes.
 16 THE WITNESS: And that's what we would use for our
 17 analysis to move forward.
 18 BY MR. WINTER:
 19 Q So these students aren't going to be arriving at,
 20 you don't, all at the same time?
 21 A No, they're going to be spread out. Because there
 22 is going to be like a before-care type of program at the
 23 site, as well as, you know, parents have different needs to
 24 take care of. So they have different times to arrive. So
 25 the arrival times, and even the departure times in the

1 afternoon, are spread out. And Ms. Vesper --
 2 Q Okay, well, she's going to address that then.
 3 A Yes. Ms. Vesper will testify more on that.
 4 Q Okay, because I, you know, from a layman's
 5 standpoint, you say, well, daycare, you're going to have 52
 6 people coming in, and you're going to have the six or eight
 7 people that are working there, and you're going to figure
 8 those 52 cars are going to leave. And if it's all at one
 9 time during the morning --
 10 A Right. And again, if it was all at one time, it
 11 would be a completely different situation. The way the
 12 rates are determined, you know, for us to say that it's 28
 13 trips, Park and Planning has done studies, the Maryland-
 14 National Park and Planning Commission has done studies at
 15 other daycares throughout Montgomery County.
 16 Q Okay.
 17 A And they do the same thing where they'll look at
 18 it from those peak periods and determine how many cars are
 19 coming in or leaving during that time. And they compare
 20 that to the number of staff. So, for example, if you had 10
 21 staff on site, we'd be saying there's obviously going to be
 22 more trips. So they establish a rate, you know, based on
 23 the number of staff. And that's what we use to determine
 24 the peak number.
 25 Q Yes, well, an observation as far as, you brought

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1 up the safety issue, I believe. Right now, you're saying
2 basically, if I got this right, you're going to raise the
3 driveway two inches, and that blind hill where my driveway
4 comes out --
5 A Yes, under the existing --
6 Q -- you're going to be able to see traffic coming?
7 A From a distance of approximately 325 feet. 325
8 feet is the requirement for Park and Planning for a road
9 that's posted at 40 miles per hour. You have to see 325
10 feet for that oncoming traffic.
11 Q Yes. Okay.
12 MR. ORENS: Is there a height requirement there?
13 THE WITNESS: Yes. And basically, that sight
14 distance is established, how we arrived at that 325 and how
15 I said I observed 115 --
16 MR. WINTER: Yes.
17 THE WITNESS: What we do is, we go out there. And
18 there's two components that you look at. There is the
19 driver eye height. That's established at three and a half
20 feet above pavement.
21 BY MR. WINTER:
22 Q Okay.
23 A Because essentially that's where you're sitting if
24 you're in a car. You're sitting at about, your eye is about
25 three and a half feet off the ground. The approaching car

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1 that I'm looking for when I'm turning out of that driveway,
2 we get a height of 2.75 off the ground. And we actually
3 have a tool when we go out there to measure this.
4 Q Okay.
5 A It's basically a big wooden pole that's got
6 markings on it that we, we actually physically sit in the
7 driveway and get our eye at that three and a half foot
8 height, you know, through one pole. We go down the road and
9 push it to a place where we can't see any further, and then
10 we measure the distance in between. So sort of the existing
11 condition. We found that it's 315 feet of sight distance.
12 If I had raised myself up another two inches on
13 that pole, that buys me up to 325 feet, which is acceptable
14 per the County code.
15 Q Assuming everyone is going 40.
16 A Well, we actually did do a speed study out there,
17 in all seriousness.
18 Q Okay.
19 A And what we found is that the travel speed is just
20 a little bit higher than 40. It's basically 44. It's the
21 85th percentile of speed that's out there.
22 Q Yeah.
23 A 85th percentile, in traffic engineering terms, is
24 what we look at as the design speed, because 15 percent of
25 the people, we say, are just going too fast and there is

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1 nothing we can do about it.
2 Q Okay.
3 A 85 percent of the people are normal. So we say
4 that 85 percent of the people are traveling at 44 or less.
5 Q Okay. Well, the fender bender thing is real out
6 there, because traffic stops right there. They come up over
7 that hill, and I'm cleaning up stuff in front of the house
8 all the time, as well as trash people throw out.
9 But where I'm going with this is, I don't see
10 fatal accidents out there, and you say your studies, and
11 that was a big concern of ours as far as the safety issue.
12 And you've addressed it. But you certainly do have, you
13 haven't done a complete traffic study, so you wouldn't know,
14 as far as how many accidents there are.
15 A Well, quite frankly, we wouldn't know the fender
16 benders even if we did --
17 Q Oh, you wouldn't?
18 A No, because that data is just not available.
19 Q Okay.
20 A You know, because essentially, it's a fender
21 bender. And the police actually don't even file a report,
22 so there's really not a record of it. Even if it goes to
23 insurance or whatever, and there is not anything in the
24 State Police database to show that.
25 Q And you did one day's worth of study, is that it,

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1 on a Monday, was it?
2 A The study that we did, the gap study was done on a
3 Monday afternoon, and then followed up on a Tuesday morning.
4 Q Morning.
5 A And that's typical for a traffic engineering
6 study --
7 Q Okay.
8 A -- where it's just a single peak hour. The
9 volumes that we measured during that study are consistent
10 with the other traffic counts that SHA has taken on the
11 road. So the numbers are what we would expect them to be.
12 And that's something we look at, you know, whenever we do a
13 just a single day data collection, which is standard in the
14 industry, just to do that single day.
15 Q Okay.
16 BY MS. WINTER:
17 Q Could that have possibly been a good day, good
18 traffic?
19 A Well --
20 Q That traffic is extremely, I mean, I have lived
21 there for 61 years. I have been observing, I have been
22 observing this traffic a whole lot longer than you have.
23 It's extremely variable.
24 MR. ORENS: I'm sorry. I'm sorry. I have to
25 object.

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1 MR. WINTER: Why?
2 MS. ROBESON: And the basis?
3 MR. ORENS: Well, it's not a question. She's
4 testifying, and it's an inappropriate time for her to make
5 that statement.
6 MS. WINTER: Well, may I rephrase as a question?
7 MS. ROBESON: Yes.
8 BY MS. WINTER:
9 Q Could your study have possibly been done on a good
10 day when there were no significant traffic problems?
11 MR. ORENS: Go ahead.
12 THE WITNESS: Well, again, the measure that we
13 tend to do as professionals is, there's always lots of data
14 available for us to look at. It doesn't always show the
15 same thing. For example, there's no other gap studies
16 available in this area. But we did look at the volumes.
17 And we also did the speed study.
18 MS. ROBESON: Did you look at volumes from SHA?
19 THE WITNESS: Yes.
20 MS. ROBESON: And was it consistent with the
21 volumes?
22 THE WITNESS: Yes. Yes, that was what I was
23 getting at, was that the volumes that we looked at from
24 SHA's traffic counts in the area, we were consistent with
25 those numbers. In fact, the HCM analysis is even based on

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1 HCM's, or the State Highway's numbers.
2 MS. ROBESON: Okay.
3 BY MS. WINTER:
4 Q Well, this is just baffling to me. Are you aware
5 that --
6 MS. ROBESON: Okay. Just a second. We're going
7 to leave that. You will get a chance.
8 MS. WINTER: Okay.
9 MS. ROBESON: And I'm not trying to shut you down
10 in any way. I'm simply trying to move the hearing forward.
11 And we'll get to your observations and points of view in a
12 minute. Okay.
13 MR. WINTER: Uh-huh.
14 MS. ROBESON: Anymore questions, just questions?
15 MR. WINTER: No.
16 MS. ROBESON: Okay. Mr. Orens.
17 MR. ORENS: Just one.
18 REDIRECT EXAMINATION
19 BY MR. ORENS:
20 Q In terms of the standards that the State Highway
21 Administration and the County has with regard to traffic
22 entering and exiting in a daycare, are the numbers that you
23 use based on factual information that the number of children
24 entering, or the vehicles entering and exiting do not come
25 all at one time during the peak hour, but are spread out?

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1 A Yes.
2 Q And what is that, again, if you could just say
3 what that spread was? What is anticipated?
4 A Well, again anytime we look at a use such as this,
5 we expect that that traffic is going to be distributed
6 throughout the peak hour, especially for a daycare, you
7 know, during an earlier peak that's --
8 MS. ROBESON: When you say peak hour, I mean, what
9 are the basic arrival times?
10 MR. ORENS: Ms. Vesper will testify to that.
11 MS. ROBESON: Okay. Go ahead.
12 THE WITNESS: Yes, to briefly answer that, they
13 are going to be arriving any time from 6:30 in the morning
14 until probably about 9:00 or so, which is typically when,
15 10:00, when a program is going to start. But during that
16 peak hour, we also expect the traffic to be distributed. We
17 don't expect all 14 parents to come at once. You know,
18 it's -- anytime you have a use such as this where they are
19 basically dropping off for before care, it's when the
20 parents are ready. And, you know, not everybody is going to
21 be showing up at exactly the same time.
22 MS. ROBESON: Okay.
23 MR. ORENS: Nothing further.
24 MS. ROBESON: All right. Now, I know you are
25 waiting anxiously.

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1 MR. ORENS: We have one more witness.
2 MS. ROBESON: I know you do. We have one more
3 witness, and then you will have the floor. It will be your
4 turn. I'm just, because it's hard when you have a lot of
5 experts. But that's the way our procedures work. Okay. I
6 assume your next witness is Mrs. Vesper?
7 MR. ORENS: That is correct.
8 MS. ROBESON: Please raise your right hand?
9 MR. ORENS: And if you would identify yourself,
10 please, and then raise your right hand.
11 (Witness sworn.)
12 MS. ROBESON: Okay. Proceed.
13 DIRECT EXAMINATION
14 BY MR. ORENS:
15 Q Ms. Vesper, would you please identify yourself,
16 your business occupation and your business address, for the
17 record?
18 A Shirley Vesper. I am the director, as well as a
19 teacher at a facility in Adamstown, Maryland, which is
20 Frederick County. The company name is Creating Memories
21 Children's Learning Center, Incorporated. And our business
22 address is 5529 Adamstown Road, Adamstown, Maryland 21710.
23 Q And are you and Michael Vesper co-applicants for
24 this special exception?
25 A We are.

1 Q And are you acting on behalf of yourselves as well
2 as on behalf of the business entity?

3 A Yes, I am.

4 Q Identify the business entity, if you would?

5 A Creating Memories Children's Learning Center,
6 Incorporated.

7 Q And we'll get to the affidavit in a little while,
8 but if you would just describe your background, your
9 experience as a daycare provider?

10 A Sure. I have gone to school and taken all the
11 needed classes to be able to be accredited in a teaching
12 capacity for the infant, toddler, preschool, school age, as
13 well as be a director of a facility. In the State of
14 Maryland there is something called a qualification. So it
15 is basically, they call it an orange card. And my orange
16 card does state all of those credentials.

17 Q And do you hold any certificates as a result of
18 your --

19 A The certificates are all, it is called an orange
20 card. But I take CPR, first aid, and all the different
21 continued educational courses that we must take to maintain
22 my certification in the State of Maryland.

23 Q Now, you own the subject property, is that
24 correct?

25 A I do, with Michael Vesper.

1 Q And after you, or while you were investigating the
2 property, did you become familiar with the special exception
3 standards or requirements in Montgomery County that apply to
4 a daycare center?

5 A I did.

6 Q And did you, during that period of time, have any
7 conversation with government officials or representatives of
8 the Department of Permitting Services?

9 A I did.

10 Q And as you worked with your consultants to plan
11 the project, did you taken into account the information and
12 suggestion that you received from the Department of
13 Permitting Services?

14 A I did.

15 Q And you are aware, are you not, of the standards
16 that apply to daycare, both under the Montgomery County
17 zoning ordinance and under the State regulations that
18 govern childcare providers?

19 A I do.

20 Q And do you understand that if the special
21 exception is approved that the Board of Appeals will impose
22 conditions on how you may operate the daycare center?

23 A I do.

24 Q And that you are bound by those conditions?

25 A I am.

1 Q And that if you violate those conditions you can
2 be called before the Board to explain yourself --

3 A I understand. And I do.

4 Q -- and would be at risk. I want you to describe
5 how the facility will operate, how all of the children will
6 be -- how many children will be there, how many teachers
7 will be there. And while you're doing that, if you would
8 follow-up on Mr. Wilson's testimony, recent testimony with
9 regard to arrival time and departure time.

10 A Okay. The facility will have 52 children and six
11 teachers on-site. That does not mean that's how many will
12 be enrolled. You do sometimes have what's called a shared
13 spot, so you may have a before school child and an after
14 school child. They are considered two different children,
15 even though they share a spot, if that makes sense. So
16 although it's 52 students in the building at one time, that
17 does not necessarily mean the enrollment of the facility.

18 Q Typically, based on your experience, how long have
19 you operated your existing facility?

20 A The existing facility is five years, but I have
21 been doing childcare for eight.

22 Q In your experience, would you expect all 52
23 children to arrive at the same time?

24 A No.

25 Q What would you expect?

1 A They phase from 6:30 to 10:00 a.m. Shifts do
2 depend, sometimes there's two or three at one time.
3 Sometimes there's four to five families at one time. There
4 are many sibling families, so although there's 52 students
5 arriving, there's very many, one of our families has three
6 kids, one has two children. So there are different families
7 that are arriving.

8 10:00 is normally when we see most of our students
9 on site, obviously, minus the dentist appointments, doctor's
10 appointments, there are 11:00 or 12:00 that they arrive.

11 Q Now, will you be operating seven days a week or
12 just Monday through Friday?

13 A Monday through Friday.

14 Q And what time will you start, and what time will
15 you end?

16 A 6:30 a.m. to 6:30 p.m.

17 Q And what time will the teacher arrive in the
18 morning? Hopefully. Your best wish.

19 A Hopefully they don't call. I'm just kidding.
20 6:25, 6:20 at the earliest.

21 Q And how long do they stay after the children?

22 A Usually about 10 minutes to 6:40, possibly 6:45.

23 Q I want to digress for a minute. I want to talk
24 about lighting. You heard the testimony, and of course you
25 are familiar with the proposed lighting plan for the

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1 property.

2 A Correct.

3 Q When will those lights be turned on? When will

4 they be turned off?

5 A They would be turned on when the teachers arrive,

6 so that would 6:20 to 6:25 in the morning. And they would

7 be turned off at 6:45 when they depart the building. During

8 the years where that's needed, or the times of year that's

9 needed. During the summer months, the morning still may be

10 needed. I'm not 100 percent sure. But I know in the

11 evenings the lighting would not be applicable.

12 Q Will they be controlled also by a motion sensor?

13 A No.

14 Q So they won't be going on and off automatically?

15 A All night long, no.

16 Q All right. Going back to the operation,

17 typically, what type of programs are you going to offer for

18 what age children?

19 A We offer full-time care for infant through five

20 years of age, and then before and after school care for five

21 to 12 years of age.

22 Q And --

23 A If we are licensed to do so.

24 Q A question came up during the testimony by Mr.

25 Wilson. The hearing examiner asked about special events.

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1 Are there, will there be any special events, and if so can

2 you describe how many there will be and what typically you'd

3 see?

4 A Typically, there are approximately three special

5 events a year, and that is the holiday, Christmas holiday

6 event, a graduation ceremony, and then possibly one other,

7 our birthday, anniversary, we do sometimes celebrate.

8 Those are phased per class. Our largest classroom, at this

9 facility, I believe is 15 -- I may not put that, but

10 normally there is no more than 15 students. But at our

11 current facility we do it in shifts of 10 students.

12 So what happens is the two's and three's classroom

13 has 10 students. Those families would come, and they would

14 leave. And we do 15-minute increments so that it gives them

15 a chance to vacate the building before the next families

16 arrive.

17 So, and we always close early for that, currently.

18 So we'll close at 5:00 on those days. And then we'll start

19 the 5:00 to 5:15, the presentation. The next one starts at

20 5:35, and phase them.

21 Q Based on your --

22 MS. ROBESON: So they could possibly be during

23 peak hour? You do them in the evening, is that what you're

24 saying?

25 THE WITNESS: Some of them, one of them is in the

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1 evening, and one of them could possibly be on a Saturday.

2 Again, this isn't every year. This isn't -- I'm just

3 saying, we could possibly go up to three.

4 MS. ROBESON: A year.

5 MR. WINTER: A year.

6 MS. ROBESON: Okay.

7 BY MR. ORENS:

8 Q Three a year.

9 A Correct.

10 Q And based on your experience in conducting these

11 events, will there be adequate on-site parking to

12 accommodate the families of the 10 or 15 children?

13 A Based on my experience at our current facility,

14 there will be.

15 MS. ROBESON: So you have -- okay. So you don't

16 anticipate more than 15 cars showing up?

17 THE WITNESS: And the current facility, we have

18 not had parking issues with our extra-curricular events, I

19 would call them. So based on experience, the answer is no,

20 we should not have any issues here.

21 MS. ROBESON: When you say you close for the

22 special events, does that mean that all the other grades

23 have to be out of the facility before the special event

24 starts?

25 THE WITNESS: The way, well, one of ours is off-

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1 site. So the holiday, at our current facility, the holiday

2 is off-site. So it's not even --

3 MS. ROBESON: Okay.

4 THE WITNESS: That's our current facility.

5 MS. ROBESON: Okay.

6 THE WITNESS: But the graduation, for example, I

7 just our four's and five's classroom. So that is 10

8 students. So what happens is, yes, all of the building is

9 gone and then we will host that event. And those 10

10 students, with their families, would graduate pre-K. That's

11 one of the events.

12 MS. ROBESON: Okay.

13 BY MR. ORENS:

14 Q And then they would leave the facility?

15 A And then they would leave the facility, correct.

16 But yes, everyone is gone before the event starts. And that

17 is so we have a teacher available to help me with the event.

18 Q Now, how many teachers will you have at this

19 facility?

20 A This facility will have six teachers.

21 Q And will one of those serve as the director of the

22 school?

23 A That is correct.

24 Q And what will the responsibilities of the director

25 be, in addition, obviously, to being in a classroom?

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1 A Staffing, scheduling, making sure we comply with
2 all the licensing and State regulations.
3 Q If it was observed, hypothetically, that there was
4 any sort of issue in the parking lot, parking facility, that
5 required attention, is there somebody who would be
6 designated to take responsibility and go out and make sure
7 that there are no issues out there?
8 A On a daily basis or do you mean when --
9 Q Only when --
10 A -- only when needed.
11 Q Only when it is observed that there was a problem?
12 A Yes. If there was an issue, meaning that there
13 was parents that wanted to stay for longer than two or three
14 possible minutes, to grab their children and leave, yes,
15 there would be a person that would help them along.
16 Q In your eight years of experience, and your five
17 years' operating the center in Adamstown, have you
18 considered it necessary to designate someone full-time to be
19 out in the parking lot?
20 A No.
21 MS. ROBESON: How would you know there was a
22 problem out there?
23 THE WITNESS: In the mornings --
24 MS. ROBESON: We get this issue a lot with
25 daycares.

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1 THE WITNESS: Sure.
2 MS. ROBESON: And so my question is, how --
3 THE WITNESS: The entryway, you can tell. To be
4 completely honest, when I'm in my building currently, the
5 entryway, I can see a lot going on, as well as how many
6 families are coming and going.
7 MS. ROBESON: What about this building?
8 THE WITNESS: So I could see a parent arrive, and
9 if they haven't departed, there's going to be a concern.
10 Normally, I go in the classroom. "Is there something I can
11 do for you?" "Is there something that you might need," to
12 help them get what they need and be able to vacate. It's
13 usually the evening, not the morning. The morning is pretty
14 quick. They want to get to work. So usually it's the
15 evening that I'm assisting them, finding a water cup, so
16 it's a little bit faster for them to vacate so there is no
17 issues in the parking.
18 MS. ROBESON: Okay.
19 THE WITNESS: Water cups are a big issue in the
20 evenings. Just saying.
21 BY MR. ORENS:
22 Q Okay. Okay. Where was I? Now, you've obviously
23 worked with the architects in designing the building. The
24 area under the addition, the basement portion of the
25 addition, how will that be used?

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1 A It's storage.
2 Q It's not going to be a classroom?
3 A No.
4 Q Just for storage. And if you could, again, from
5 your perspective as the operator, if you could use the floor
6 plans and describe the activities that are going to go on,
7 on each floor, briefly?
8 A Okay. Exhibit No. 42, lower level basement,
9 parents are going to park. They're going to come in. Most
10 of the students that are in the basement are going to use
11 this facility, based on experience.
12 So they will come in. The sign-in and sign-out
13 sheets are located in the classroom, so when they come in
14 they will greet the teacher. Good morning. Sign your
15 children in. And this is one classroom, so there would be a
16 teacher that would greet the children, make sure that they
17 are safe, signed in, and the parent would leave.
18 On Exhibit No. 43, which is the upstairs, they are
19 going to come in the back, which is an entryway with an
20 office, and they are going through the same policy. They
21 are going into the classroom, drop the children off, greet
22 the teacher, sign-in the children, and vacate.
23 Q Okay. While you're there, if you would find the
24 exhibit, the rendered site plan. I want to ask you about, I
25 want to ask you about the play area.

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1 A Okay.
2 Q What type of equipment, and just describe what
3 happens in the play area?
4 A Normally, in a play area, the teachers will take
5 the students, based on weather, based on many factors,
6 obviously. It can't be too hot, can't be too cold, can't be
7 raining, can't be snowing. But with the conditions being
8 optimum and able, we take two classrooms out at a time.
9 Q How many children would that be?
10 A The most that it could be is 25, which is why
11 we're asking for 25. On average it's about 20 students.
12 And we have two teachers out for safety because if there is
13 an issue that we need, we do have walkie-talkies, so we can
14 walkie-talkie each other at the doors. But should there be
15 a need, there is a teacher there for the children, in case
16 there was a 9-1-1, we need to get them inside quickly, we
17 like to have two teachers for safety.
18 Q How long are they out?
19 A They go out for, they must go out, by licensing
20 law, if conditions apply, for 15 minutes. Obviously, if
21 it's chilly, 15 minutes is the longest they are going to be
22 out with their appropriate weather attire. If it's a
23 beautiful day, and we can enjoy the outdoors, we're normally
24 out about 25 minutes, because of bladders, which I guess is
25 not the most appropriate word, but --

1 Q Mr. Winter and I understand.
 2 A Okay. Their bladders are not able to stay too
 3 much longer than that, or their diapering, it's being
 4 saturated, which would not be appropriate.
 5 Q And what are the periods of time during the day
 6 that the children would be outdoors, weather permitting?
 7 A Weather permitting, we usually start taking them
 8 out 9:00-9:30, and they are back in by 11:30, because that
 9 is lunch. And quiet time is from 12:00 to 12:30 until 2:30.
 10 They do afternoon snack from 2:30 until 3:00, and then they
 11 start phasing back out, usually until 5:00.
 12 Sometimes, I guess, if it's absolutely gorgeous,
 13 we would stay a little bit later, but again, usually it's
 14 about 5:00-5:30 they will come in, especially this time of
 15 year. It's dark. So we bring them in at 4:45.
 16 Q How would you describe the noise level of children
 17 playing, based on Adamstown and your experience?
 18 A Based on experience, truthfully, the children,
 19 well, obviously, I would know, but the children aren't very
 20 loud. There are spikes of children screaming. That does
 21 occur. They are children. Boys and girls.
 22 But normally, it's, when they first get out,
 23 because they're so excited to go outside, so they run out,
 24 and it's pretty, whew. And then the teachers are able to
 25 calm and send them to different stations, so the smaller

1 groups tend to be a little quieter.
 2 Q In your opinion as an operator, would it be
 3 appropriate to fully enclose the play area in a sight type
 4 fence?
 5 A I would not prefer it. I like natural light. I
 6 like the children to see the world around them. So
 7 optimally, I would prefer not to have them all enclosed in.
 8 That, to me, would feel rather claustrophobic. But that is
 9 the choice of the hearing.
 10 Q Now, you're familiar with the Trex fence that
 11 Polysonics has proposed?
 12 A I've seen it, yes.
 13 Q And are you agreeable to install a six-foot high
 14 Trex fence along the boundary of the play area that is
 15 adjacent to Mr. Winter's property?
 16 A Yes.
 17 Q And the other sides, obviously, the building is
 18 adjacent to it at some point. What will the fencing look
 19 like, be like, on the other two sides, the other three
 20 sides?
 21 A It is a chain link fence that is vinyl, I believe
 22 that's the materials, wrapped. It is maintenance free.
 23 Q Okay. And have you used the product before, or
 24 similar product?
 25 A Our current facility has all four sides with the

1 chain link fence.
 2 Q Okay.
 3 A We don't have it.
 4 Q The hearing examiner's indulgence for a moment.
 5 What type of equipment, typically, would you have in the
 6 play area?
 7 A This right here is a, it's called an all about.
 8 It is a small piece of equipment for the older students.
 9 And then there is what's called a tot tree. And it's about
 10 this tall, about that wide. And it has a little opening and
 11 some little toys inside of it to play with.
 12 Q Okay.
 13 A And there is a sandbox for them to enjoy. And
 14 that's above-ground, not on the ground.
 15 Q Now, moving to the other side of the property for
 16 a moment, you were here during the testimony of the
 17 landscape architect with regard to the fencing, the
 18 retaining wall, and the landscaping. And do you agree to
 19 install those elements, as shown on the plan, and as Ms.
 20 Bryant testified?
 21 A Yes.
 22 Q Yes?
 23 A Yes. We will.
 24 Q If the hearing examiner were to require a hedge, a
 25 three-foot high hedge or similar materials on the parking

1 space side of the proposed shade trees, is that an
 2 acceptable condition?
 3 A Yes.
 4 Q In terms of food service, the architect mentioned
 5 that there was a, not really a kitchen, but a service type
 6 kitchen.
 7 A Uh-huh.
 8 Q How will that be used, and what food service will
 9 be provided?
 10 A Sure. We do a.m. and p.m. snack at our facility.
 11 And we go to Costco. So I actually go to Costco and bring
 12 it to the facility. The parents supply lunch.
 13 Q Any large trucks coming to deliver?
 14 A Well, nothing except for our FedEx. Yes. Which
 15 every now and then come with supplies.
 16 Q Any dumpsters or similar facilities?
 17 A Two trash cans.
 18 Q And in terms of transportation, isn't there a
 19 Montgomery County Public School bus route that is in front
 20 of the property?
 21 A There is a stop, and I apologize. I'm not as
 22 familiar with this as they are, but I believe this is where
 23 it is, the shared driveway?
 24 Q Yes.
 25 A Okay. At the bottom of the shared driveway there

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1 is a public stop. We would like to utilize that for our
2 before and after school children, but I have not checked
3 with Montgomery County Public Schools to ensure that we are
4 allowed to put our children on the bus.
5 Q Okay. But is it your intention to --
6 A The intention is to do that.
7 Q -- have that conversation with the
8 superintendent's office?
9 A Yes.
10 MS. ROBESON: Actually, I think they have to,
11 well, anyway, that's a thing for another day. Okay. Go
12 ahead.
13 BY MR. ORENS:
14 Q Anything else?
15 A No.
16 Q Then I'm finished. No further questions.
17 A I'll sit down, unless he wants me to do the --
18 MS. ROBESON: Okay. Mr. Winter, would you like to
19 take a break now, or would you like to wait until it's your
20 turn to testify? You're going to be asking questions.
21 MR. WINTER: I just have a few questions.
22 MS. ROBESON: Okay. Go ahead.
23 MR. WINTER: Very few. I could use a break but,
24 I'll wait.
25 CROSS-EXAMINATION

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1 BY MR. WINTER:
2 Q Just some clarification.
3 A Sure. Sure.
4 Q Is the fencing going on the back of the property,
5 too, chain link? Are you fencing in the entire property in
6 the back?
7 A No. No. We are not. We are fencing in the
8 playground area only.
9 Q Okay. So --
10 A I just wanted to make sure I said that right.
11 Q That's the only fencing that's going up?
12 A Correct.
13 Q Okay.
14 A And that is for the children, so that they are
15 secure.
16 Q Okay. The other question I had, at your Adamstown
17 facility, do you have off-street parking there?
18 A Off-street parking, no.
19 Q So people, when they pull up, they have to pull on
20 the property?
21 A Correct.
22 Q They don't park out on the street?
23 MS. ROBESON: That's, just for the record, that's
24 on-street.
25 BY MR. WINTER:

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1 Q On-street. All right. I'm sorry.
2 A My apologies.
3 Q On-street.
4 MS. ROBESON: On-street is parking on the public
5 street.
6 MR. WINTER: I'm sorry.
7 THE WITNESS: I got confused, too. I apologize
8 MR. WINTER: I'm confused.
9 MS. ROBESON: I just didn't want the record to --
10 BY MR. WINTER:
11 Q Do you park on the street?
12 MR. ORENS: We all heard you say it, and none of
13 us said anything.
14 THE WITNESS: I apologize.
15 BY MR. WINTER:
16 Q Okay.
17 A The cars park inside of the parking facility, 100
18 percent on our parking facility. There is no on-street
19 parking.
20 Q Okay. There is no on-street. Sorry.
21 A Sorry. My apologies, too.
22 Q On-street is --
23 A It's okay. I got confused, too.
24 Q All right. Let's see. I might have just one or
25 two. Let me see. All right. Five to 12 year olds. How

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1 many of those do you plan on?
2 A I don't, unfortunately, our enrollments are based
3 on each year, so we don't have -- like a traditional
4 childcare center will say there's a room of school-age kids,
5 and there's one to 15. We base ours based on enrollments.
6 So what happens is, and based on the teaching team that we
7 have.
8 Q Yeah.
9 A So if you have six teachers, that, of course, per
10 ratio, you can only have so many students --
11 Q Yeah.
12 A -- and then so many age groups, as well as what
13 the enrollments are.
14 Q I'm just wondering how many are going to be on
15 that tot lot. What do they do when they get there?
16 A Every year --
17 Q When they get off the bus or after school, what do
18 you do with them?
19 A My apologies. I thought you were asking how many
20 would be enrolled each year. And I don't have that number
21 because it changes every year, based on enrollments. As far
22 as what the children do when they get off of the bus or
23 before, they are doing center activities. They are doing
24 homework activities, after school. They do play on the
25 playground. They are doing arts and crafts, music, inside

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1 of the building.
2 MS. ROBESON: But according to your statement of
3 operation, they are only going to be on the playground
4 between the times of, what was it, 9:00 and --
5 THE WITNESS: 11:30, around about, because of
6 lunch.
7 MS. ROBESON: And then 2:30 to 6:30?
8 THE WITNESS: Correct.
9 BY MR. WINTER:
10 Q That's correct?
11 A That is correct.
12 MS. ROBESON: Okay. So even if they get to the
13 center at 6:30 in the morning, you're not going to go on the
14 playground until 9:00?
15 THE WITNESS: No, it would be too chilly, and it
16 would not be good conditions. No, we don't go out at 6:30.
17 BY MR. WINTER:
18 Q What I'm concerned about is, when they get off the
19 bus or whenever, and you're watching them, are they just let
20 loose on the tot lot with somebody, or are they, is it
21 structured where they're indoors. And if they are outdoors,
22 how long, or how long are they out there?
23 A It is a structured environment, so when they get
24 off, the first thing they would do is have snacks. They
25 would be brought indoors for a snack. They would do their

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1 homework and have center time. And then they would be
2 scheduled outside play, just like all the other classrooms.
3 Q Just like the other ones, 15, 10 minutes?
4 A Correct. All the other classrooms are scheduled.
5 They all have scheduled times. And they come in, and the
6 next group goes out. And they come in and the next group
7 goes out.
8 Q Okay.
9 A So it's scheduled.
10 Q All right. I'm asking questions for my daughter,
11 too.
12 A Sure. Sure. No, I'm trying to understand them.
13 Q The last question, the last question I have, and
14 this might be a little sensitive, have you had zoning
15 problems or complaints, or neighbor complaints at the
16 Adamstown facility?
17 A We have not had any zoning --
18 Q In eight years or five years?
19 A We have not had one violation or neighbor ever
20 come over and complain in five years while we've been open.
21 Q None of them have ever come over?
22 A Honestly. I am oath. None of them have come
23 over.
24 Q If they did come over, would you accommodate them?
25 A I can't speculate. I don't know what they would

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1 come over and ask me. So I'd have to -- that would be --
2 MS. ROBESON: She would try.
3 THE WITNESS: Yes, I would try, based on what
4 their need was.
5 MR. ORENS: If there was a legitimate complaint
6 made by a neighbor, how would you handle it?
7 MS. ROBESON: I think that was a throw away.
8 BY MR. WINTER:
9 Q I've coached a lot of kids, so I know what they
10 are capable of. They can climb a six-foot fence.
11 A They're angels.
12 Q No, they're not. Not all of them.
13 MS. ROBESON: Okay, just a second. Is that the
14 end of your questions?
15 MR. WINTER: That's all of mine. I don't know if
16 Gloria has a question or not.
17 MS. WINTER: No, I don't have any further
18 questions.
19 REDIRECT EXAMINATION
20 BY MR. ORENS:
21 Q What is this that I am showing you?
22 A The affidavit of a special exception applicant.
23 Q And whose signatures are on it?
24 A Shirley Vesper and Michael Vesper.
25 Q And did you execute this affidavit --

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1 A I did.
2 Q -- in connection with the special exception?
3 A I did.
4 MS. ROBESON: And this is the affidavit that says
5 you're going to comply with all the State licensing laws and
6 all of that kind of stuff?
7 (Exhibit No. 45 was marked
8 for identification.)
9 THE WITNESS: That is correct.
10 MS. ROBESON: Okay.
11 MR. ORENS: That's the applicant's case.
12 MS. ROBESON: All right. I will tell you, we are
13 going to take a 10-minute break. I will tell you that the
14 Board of Appeals here is closing, apparently, because it is
15 snowing. So I have to take a break to make sure I get my
16 keys and I don't get locked out. And --
17 MR. ORENS: Good plan.
18 MS. ROBESON: I don't know the conditions. So
19 we'll do that shortly. Okay. We'll do that right now. So
20 if you can be back at 3:10, it's now, you've been so
21 patient, it's now your turn to testify.
22 MR. WINTER: It's not going to be long.
23 MS. ROBESON: Okay.
24 (Whereupon, at 2:59 p.m., a brief recess was
25 taken.)

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1 MS. ROBESON: We left off, it is Mr. and Mrs.
2 Winter's turn to say what you'd like to say about the
3 special exception.
4 MR. WINTER: Okay. Do you want to go first?
5 MS. WINTER: I can.
6 MR. WINTER: Do you want?
7 MS. WINTER: Sure.
8 MR. WINTER: I don't like to over shadow my wife.
9 MR. ORENS: Smart man.
10 MR. WINTER: 40 years smart.
11 STATEMENT OF GLORIA WINTER
12 THE WITNESS: I have, I think you've already
13 surmised this, I've lived at this particular property my
14 entire life. It's that whole huge section there, a lot of
15 that was my parents original farm, and my grandparents
16 before that.
17 MS. ROBESON: Wow.
18 THE WITNESS: Starting off at around 200 acres, I
19 think 130 some when I was a kid, and then down to the 10-
20 acres that we bought from my mother in the seventies.
21 MS. ROBESON: So you've seen a lot of change.
22 THE WITNESS: Yes. And I have observed traffic
23 ever since I was 16. So I have been doing it for a long
24 time. I want to say that I like the plans very much. I
25 think it's a very attractive building. And I think a

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1 daycare center is an asset to a community.
2 My concern, my main concern, and you probably have
3 surmised this also, is the little play area being right
4 outside my daughter's window, and the elevation difference,
5 I don't think that six foot fence is going to take care of
6 any noise issues.
7 I do know that my daughter's property and my
8 property are, as I said, higher in elevation. We are on a
9 ridge.
10 MS. ROBESON: Can you show me on the aerial
11 photograph where your property is.
12 THE WITNESS: Yes. I can show you on these
13 photographs that I made several copies of. I don't know who
14 would want them.
15 MS. ROBESON: Okay. If you can share them with
16 Mr. Orens.
17 THE WITNESS: This is just a little map. Anybody
18 can look at them.
19 MS. ROBESON: I'm going to, but I'm required to
20 give them an exhibit number. So this will be Exhibit No.
21 46(a), 46(b), and 46(c). And these are aerial photographs
22 of, are these your property?
23 (Exhibit No. 46 was marked
24 for identification.)
25 THE WITNESS: Just a tiny portion of my property

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1 is shown on them.
2 MS. ROBESON: Your daughter's property?
3 THE WITNESS: My daughter's property and the
4 subject property.
5 MS. ROBESON: Oh, I see. So it's aerial
6 photographs of subject property and 22925 Frederick Road.
7 MR. WINTER: Gloria, show them where we are on the
8 map.
9 THE WITNESS: Okay. The subject property is here,
10 our daughter's is here. Our property is the driveway and
11 this 10-acre, approximately 10-acre property here.
12 MS. ROBESON: Okay.
13 THE WITNESS: The house is right here.
14 MS. ROBESON: All right. I've got to -- the
15 transcript that the Board is going to make their decision,
16 it doesn't know, when you say, it's here, they don't know
17 what you are looking at. So is there any way to kind of
18 describe the boundaries of your property. It's --
19 THE WITNESS: The boundary is right there.
20 MS. ROBESON: Well, that's what I'm --
21 MR. ORENS: Look at the tax map.
22 THE WITNESS: Is this the parcel number, P-660.
23 MR. WINTER: That's us.
24 MS. ROBESON: P-660. And you're looking at which
25 exhibit?

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1 MR. WINTER: 32.
2 THE WITNESS: 32.
3 MS. ROBESON: 32. Okay. So you're P-660, and
4 your daughter's property is?
5 THE WITNESS: P-710.
6 MS. ROBESON: Okay. All right. Thank you. All
7 right. So we're looking now at Exhibit No. 46(a), which is
8 the aerial photograph of your daughter's property and this
9 property.
10 THE WITNESS: Okay. So the subject property is
11 the one to the left. My daughter's property, the one to the
12 right. My daughter's property and our property share the
13 wide driveway, so you can see what's what.
14 MS. ROBESON: I do.
15 THE WITNESS: And ours goes on back. And the
16 small corner back here is just a little corner of our
17 property. You can actually see kind of a delineation
18 between ours and the subject property.
19 MS. ROBESON: That darker green line?
20 THE WITNESS: Yes. That little area, having been
21 mowed at different times.
22 MS. ROBESON: And this is on the top photograph,
23 46(a).
24 THE WITNESS: Yes.
25 MS. ROBESON: Okay.

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1 THE WITNESS: Yes. So there is a difference in
2 elevation and height from my daughter's house to the subject
3 house. And we do live on kind of a high point there, her
4 house and my house, which would be back here.
5 MS. ROBESON: That would be to the upper right of
6 the photo.
7 THE WITNESS: Upper, yes.
8 MS. ROBESON: Of 46(a).
9 THE WITNESS: Yeah. We are on a high ridge. The
10 sound issues I have being high is that the sound all around
11 us just comes right up. I can tell you the score of the
12 football game going on at Clarksburg High School a quarter
13 of a mile down the road. I can hear the elementary school
14 kids, Clarksburg Elementary, which is a half-mile away.
15 There's just something about that piece of
16 property. And I'm certainly not a sound engineer, but the
17 sound is just, it sweeps all up here.
18 MR. WINTER: It funnels in.
19 THE WITNESS: So that's the concern I have with
20 the child tot lot being right outside my daughter's bedroom
21 window. So ideally, if that could be moved to another part
22 of the property, which I am told it can't. But if there is
23 any way that can be moved, if there's a cut-back in the
24 number of children, so that the septic field can be
25 rearranged some way, I would say, that's my main concern.

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1 My other concern is traffic. I don't think
2 there's been an adequate traffic study done there. Having
3 lived there all my life, there are many days the traffic
4 just totally stops.
5 MR. ORENS: I'm sorry, totally?
6 THE WITNESS: Totally --
7 MR. WINTER: It stops.
8 THE WITNESS: -- stops.
9 MR. ORENS: Stops.
10 THE WITNESS: Yes. Morning traffic going south,
11 it can be totally stopped. Evening traffic coming home, it
12 can be stopped. It's -- some days it's not. Some days it's
13 flowing. It has a lot of do with 270. If there's a problem
14 on 270, everybody bails to 355. So it's extremely variable.
15 And I would say it's bad more often than not.
16 The main problem I see in traffic, and there are,
17 as my husband said, there are a lot of accidents out there.
18 We are constantly scraping up broken glass in front of our
19 driveway, the reason being, and I believe Mr. -- the traffic
20 expert --
21 MR. WILSON: Mr. Wilson.
22 THE WITNESS: -- Mr. Wilson, I believe you gave
23 the exact distance between the subject driveway and my
24 driveway, was 320 feet. Is that correct?
25 MR. WILSON: No, the sight distance --

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1 THE WITNESS: Site distance.
2 MR. WILSON: -- currently is 315 feet.
3 THE WITNESS: 315.
4 MR. WILSON: So that's just slightly over the
5 crest of the hill there.
6 THE WITNESS: Yes.
7 MR. WILSON: Which is just past your driveway, I
8 believe.
9 MS. ROBESON: When you say the hill, looking --
10 THE WITNESS: My driveway, this is a hill.
11 MS. ROBESON: Okay.
12 THE WITNESS: I can show you from the other
13 pictures.
14 MS. ROBESON: Okay.
15 THE WITNESS: Let's switch to --
16 MS. ROBESON: 46(b) I see a couple of A's in the
17 road.
18 THE WITNESS: Are you looking at this one?
19 MS. ROBESON: Yes.
20 THE WITNESS: Okay.
21 MS. ROBESON: That's marked 46(b).
22 THE WITNESS: This is the subject driveway.
23 Looking up at the very peak of the road there is my
24 driveway, at the very top. My driveway comes out at the
25 very top here.

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1 MS. ROBESON: I'm sorry. Is the A marking the
2 subject property's driveway?
3 THE WITNESS: Yes.
4 MS. ROBESON: Okay. And then, so your driveway is
5 at the very top.
6 THE WITNESS: At the very top.
7 MS. ROBESON: I see.
8 THE WITNESS: At the very top. The problem is not
9 so much pulling in and out of that driveway, it's traffic
10 potentially backing up either from the center of town on
11 355, the center of town, Clarksburg, or perhaps there could
12 be a few people lined up to pull into this driveway. The
13 problem is the traffic approaching north on 355, if it's not
14 heavy at that point, but backed up on this side, this
15 happens all the time. Cars zoom over the crest of the hill,
16 and crash, rear end people that are stopped, because you
17 can't see. You can't see as you travel north on 355. It's
18 hard to explain.
19 MS. ROBESON: No, I understand what you're saying
20 is, cars are backed up to the north of your driveway, which
21 is at the peak of the hill. And once they come --
22 THE WITNESS: They will just zoom over that hill.
23 MS. ROBESON: I understand.
24 THE WITNESS: And there are a lot of speeders on
25 355.

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1 MS. ROBESON: Okay.
2 THE WITNESS: And I can't tell you how many fender
3 benders. I don't know of any deaths out there. There are
4 frequent fender benders. Myself, I mean, I had a fender
5 bender because somebody hit me from the rear.
6 MR. WINTER: Turning left.
7 THE WITNESS: Yes, as a matter of fact. I was
8 going south and turned left. I think there are more
9 accidents when traffic is a little more open, but for some
10 reason, someone is stopped just over the crest. Someone
11 zooms over the hill and then --
12 MS. ROBESON: Okay.
13 THE WITNESS: -- that's why. So that's a concern,
14 multiple people trying to turn in and out at the center.
15 And the other thing, this I don't get. I realize you have
16 trips and you have pass-bys, but they all go in and out the
17 same. So that, to me, makes no difference. I think another
18 20 --
19 MS. ROBESON: Well, I think that they are, one is
20 testing system wide road capacity, and what you're talking
21 about is the particular circulation and exit and egress at
22 this site.
23 THE WITNESS: So that's my main concern about
24 traffic, in that it is extremely variable. It can be just
25 crawling. It can be dead stopped. Or it can be just

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1 sailing along like that. That's basically it.
2 MS. ROBESON: Okay.
3 THE WITNESS: But overall, I just want to say, I
4 think a daycare center could be an asset, is an asset to the
5 community. My concern is that it could devalue my
6 daughter's property because of a noise issue from the tot --
7 MS. ROBESON: The play area.
8 THE WITNESS: -- the play area. Yes. That's my
9 main concern. Or it could be, it could be bothersome to her
10 and her husband.
11 MS. ROBESON: Okay.
12 THE WITNESS: So that's basically it.
13 MS. ROBESON: Mr. Orens, do you have any questions
14 for Mrs. Winter?
15 (Discussion off the record.)
16 MR. ORENS: Did you swear her?
17 MS. ROBESON: No, I didn't.
18 THE WITNESS: I told the truth.
19 MR. ORENS: Do you want to do that all over again?
20 MS. ROBESON: Raise your right hand.
21 (Witness sworn.)
22 MR. ORENS: That's what happens when it snows.
23 THE WITNESS: Yes, I invite any of you to drive up
24 355 now that it's snowing and observe firsthand what I'm
25 talking about.

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1 MR. ORENS: I really don't think I have any
2 questions. I think that the testimony that Ms. Winter has
3 given is pretty much in line with what she's been saying all
4 along. And thank you for taking the time to be here.
5 MS. ROBESON: Mr. Winter.
6 MR. WINTER: My name is Philip Winter.
7 (Witness sworn.)
8 STATEMENT OF PHILIP WINTER
9 THE WITNESS: Just to follow-up on the traffic
10 issue. My daughter goes to work at 7:00. She goes to the
11 Pentagon, or outside the Pentagon. She works for the
12 government. I'm not supposed to tell you who. But she has
13 to turn right almost every morning.
14 And Andy, her husband, works in Annapolis, and the
15 traffic is that congested in the morning where they almost
16 always turn right to go up to Stringtown to go over and get
17 on 270 and go to work.
18 MS. ROBESON: Okay.
19 THE WITNESS: At 8:00, it may not be that way, or
20 it could be. But Laura gets so frustrated, and I think it
21 really has more to do with the high school and with all the
22 buses, because there is an awful lot of public
23 transportation, more so than you would imagine.
24 MS. ROBESON: Laura is your daughter?
25 THE WITNESS: Laura is my daughter.

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1 MS. ROBESON: Okay.
2 THE WITNESS: And Andy is my son-in-law. Andy
3 had, he asked me a few questions having to do with what kind
4 of studies and all were done. My son-in-law was in the RAF.
5 And he's in Spectrum. He's an engineer with sound,
6 communication, and all that. And he's pretty much an expert
7 on anything in this area. And so I promised him I would get
8 the information that he required to go over it. And he may
9 very well want to talk to George about a few issues.
10 My main concern, I am a certified general
11 appraiser.
12 MS. ROBESON: Okay.
13 THE WITNESS: And I worked in Montgomery County
14 for 30 years, and the last 10 years I'm self-employed. And
15 I'm a tax consultant, real estate. And I've been in real
16 estate ever since I got out of college.
17 My daughter is convinced this is going to hurt the
18 value of her property, and especially if somebody were to
19 come out, let's say she wanted to rent the property, or she
20 wanted to sell it one day, that this would be a very
21 legitimate concern that someone would not want to be there.
22 She does have about the same size lot. I think
23 it's a little bit over an acre, as well. Both of those
24 lots, the one my daughter lives on, and the one that the
25 Vespers own, Gloria's parents owned that, all of that land.

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1 They owned both of those parcels as well.
2 They donated the one where my daughter lives to
3 the church. And the church sold it, and then we had to buy
4 it back basically, the Methodist Church. We were members of
5 it. Not so much anymore. But as far as my concern --
6 MS. ROBESON: Sorry.
7 THE WITNESS: No.
8 MR. WINTER: Yes, sorry.
9 MS. ROBESON: It kind of sunk in what you were
10 saying.
11 THE WITNESS: Okay. Well, there've been some
12 issues there. As far as this particular project, I want to
13 see them succeed, and I want them to do well, because I
14 think they are an asset in the community.
15 And I think that in Clarksburg we've been told so
16 many things, and you talk about height restrictions and all
17 of that. We've got to all live with the sins of the past,
18 all the zoning problems and mistakes that have been made.
19 So I just want to make sure that if there is a
20 special exception granted to a piece of property, that it's
21 adhered to completely, and it doesn't affect the value of my
22 daughter's property. She's lived on this property, not this
23 one, but she grew up there. She want to all the schools,
24 you know, Clarksburg, Rocky Hill, and all of that.
25 She does have a vested interest there. She bought

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1 that property the height, you know, young people --
2 MS. ROBESON: Right.
3 THE WITNESS: -- you know, she bought her property
4 at the height of the market. God knows how many tens of
5 thousands of dollars she's put in to cleaning it up and
6 everything.
7 MS. ROBESON: Right.
8 THE WITNESS: But she does have very substantial
9 investment there. And I know you're not supposed to look at
10 your home like that, but it really is, especially for young
11 people.
12 I think you all have answered most of the
13 questions that we had. And I can tell you as an appraiser,
14 I honestly don't know at this, you know, if this effects the
15 value of the property adversely or not. You know, you buy a
16 house on 355 you do have the opportunity for a special
17 exception. And this is a legitimate use for that property.
18 I have no problems with that.
19 But the density, the density has been the big
20 issue. And when I look at the checkered past of Clarksburg,
21 and certain things that I assumed this property, how it was
22 going to be developed, and I found that kind of -- well, I
23 thought it was 12 students. It ends up being 52. I was not
24 aware that there was going to be an addition on the back.
25 I assumed that the whole thing was going to be

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1 fenced in. And that's not a real big thing with me, as far
2 as them having to fence in the whole property, but I do want
3 adequate buffers. And I do own the property in the back. I
4 don't want their leach field to end up on me. And I don't
5 want their leach fields to encroach upon my daughter's
6 property.
7 As to utilities with cable and everything, it's
8 all out there as far as Verizon and everything. The only
9 thing out front that you had was the water. And I really
10 think they've put on a nice production.
11 MS. ROBESON: Okay.
12 THE WITNESS: Okay
13 MS. ROBESON: Well, thank you.
14 THE WITNESS: And they've been very open with us,
15 as far as the data that they've given us.
16 MS. ROBESON: Okay.
17 THE WITNESS: I'd like to see the tot lot maybe in
18 another place, though.
19 MR. ORENS: I have no questions of Mr. Winter.
20 MS. ROBESON: Okay. Do you have any rebuttal?
21 MR. ORENS: No.
22 MS. ROBESON: Okay. All right. So what we do now
23 is closing statements. And Mr. Orens, do you have a closing
24 statement?
25 MR. ORENS: I promised everybody I would be brief

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1 because it is snowing. And they only predicted one inch. I
2 think they meant per hour, but I'm not sure. I want to,
3 first, I want to thank Mr. and Mrs. Winter for being here
4 and for their polite and candor and cooperation with us. I
5 know that Mike and Shirley look forward to being your
6 neighbors and being good neighbors, and operating a facility
7 that we believe will not have any of the effects, adverse
8 impacts that you're concerned about.
9 I did notice the Exhibit No. 46(a) which shows
10 the, the great picture that shows the relative positions of
11 the house of the subject property, and the home occupied by
12 Mr. and Mrs. Winter's daughter. And it's clear, if you look
13 at that picture an compare it to Exhibit No. 31(a) where the
14 play area is, the play area is not immediately adjacent to
15 the side of the Winter property.
16 The distance to the parking area is substantial.
17 And we believe that even without the hedge there would not
18 be any light intrusion. But we are perfectly willing to
19 take that extra step and put in a hedge along the rear
20 parking spaces that are closer to the Winter house, so that
21 there won't be any issue there whatsoever.
22 I think when the final review of the noise study
23 is done, you will see that that as Polysonics concluded, the
24 decibel level at the property line is within the County
25 standards. With the Trex fence it will be below that. And

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1 the distance to the adjacent house even adds additional
2 space; that there is no real need for a wall along the rear
3 of the property. It's a substantial backyard.
4 And I believe that Mr. Spano will confirm that
5 noise does travel in a straight line. It is not going to
6 spill out, if you will, over the property line, in a manner
7 that would adverse any of the surrounding properties.
8 MS. ROBESON: You know, I know this is your
9 closing statement, I just had a thought. I didn't see any
10 amplified music being proposed.
11 MR. ORENS: There is not.
12 MS. ROBESON: Would your client object to a
13 condition relating to no amplified music, which is typical.
14 MS. VESPER: What is amplified music? My
15 apologies.
16 MR. ORENS: A loud speaker. A loud speaker or --
17 MS. ROBESON: Any kind of electronic volume --
18 MR. ORENS: Think of a boom box, a radio.
19 MS. VESPER: Okay. Yes, that's fine.
20 MR. ORENS: That's fine.
21 MS. ROBESON: Okay.
22 MR. ORENS: The only sounds that you will hear are
23 what one of my clients said, the joyful noise of children
24 playing.
25 MS. ROBESON: Okay.

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1 MR. ORENS: We are not proposing, we have not
2 asked for approval of any amplified outdoor sounds.
3 MS. ROBESON: Okay.
4 MR. ORENS: And the lights, as we indicated, are
5 full cut-off. They will not intrude. And they will be on
6 only on an as-needed basis.
7 The application, in our view, satisfies every
8 single one of the conditions required by the zoning
9 ordinance. There are no adverse effects that are non-
10 inherent of the criteria and under the code.
11 We don't necessarily agree that the setback along
12 the parking area is a non-inherent adverse impact, but to
13 the extent that you may find that it is, it has been fully
14 mitigated with all of the requirements and purposes and
15 objectives of the parking facilities standards have been met
16 or will be exceeded by the landscaping and the fence the way
17 the parking area is situated.
18 The traffic on Frederick Road is a main north-
19 south highway. The school that Mr. Winter referred to is
20 down here, again, this is something I should never do. It
21 is on Exhibit No. 32, it is at the very bottom near Foreman
22 Boulevard. Foreman Boulevard is shown on Exhibit No. 32.
23 The school is in that area, south of it, is past the subject
24 property by a considerable distance. And whatever but
25 traffic that there is there is not going to affected one way

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1 or the other by site-generated traffic.
2 So with all of that, we agree with the examiner
3 that the record should remain open. As we indicated
4 earlier, we will repost the sign, not today, but we will
5 repost the sign by Monday, and we will leave it up there so
6 long as the matter is pending.
7 And I would ask that if Mr. and Mrs. Winter do
8 submit something, that I be given an opportunity through
9 you, and respond to it before the record closes.
10 MS. ROBESON: That was, well, now, we actually
11 have -- well, finish your closing argument.
12 MR. ORENS: I think I am finished. Thank you. I
13 want to thank the examiner for your time and attention on
14 this lovely day.
15 MS. ROBESON: Okay. Would you like to make a
16 closing statement summarizing your position?
17 MR. WINTER: Well, my position is that I expect
18 the County to protect the rights of all the citizens,
19 Ms. Vesper's, as well as ours, and my daughter's, and to use
20 your good judgment, because you all are much more equipped
21 expertise-wise, especially, to deal with matters like this.
22 This isn't your first rodeo, as they say.
23 MS. ROBESON: Not my first special exception
24 rodeo, no.
25 MR. WINTER: No. It's pretty obvious. Thank you

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1 for indulging us, because like I said when we came in, we
2 don't, well, Gloria goes to the community meetings. I stay
3 away from as many meetings as possible.
4 MS. ROBESON: Okay.
5 MR. WINTER: Thank you.
6 MS. ROBESON: What I realized is the 15 days ends
7 on February 9th, which is a Saturday. So we won't require a
8 submission of anything, I'm going to keep the record open
9 until the 11th, February 11th.
10 Now, I would ask, unless you think this is a
11 problem, Mr. Winter, if you could get us anything you want
12 it to say in writing about the sound, the noise study.
13 Would it give you enough time to give you, give me something
14 in writing by February 7th? That's --
15 MR. WINTER: That's fine. That shouldn't be a
16 problem.
17 MS. ROBESON: Because that will allow Mr. Orens,
18 counting the weekend, that would let me give Mr. Orens four
19 days to respond, or four or five days to respond. If you
20 say the sound studies all wet, don't listen to it, that
21 gives him five days to respond. So if you don't have a
22 problem, I'd like to make your comment due --
23 MR. WINTER: The 7th. That's fine.
24 MS. ROBESON: And that would be February 7th. Is
25 that all right with you. Or would you prefer the 6th.

1 MR. ORENS: The 7th is fine. The 11th, my only
2 hesitance about the 11th is, I don't know George Spano's
3 availability to respond. But why don't we say it's going to
4 be the 11th.

5 MS. ROBESON: Well, I can increase the time that
6 the record will be open if that's helpful.

7 MR. ORENS: I want to close it a quickly as
8 possible.

9 MS. ROBESON: That's what I thought.

10 MR. ORENS: I will determine on Monday whether
11 it's an issue. If it is not an issue, one way or the other,
12 I will let your office know.

13 MS. ROBESON: Okay. So right now I'm leaving it
14 open until the 11th. One more thing, Mr. Winter. In that
15 time frame if you decide you want to ask, cross-examine Mr.
16 Spano on the record, you have to submit a request within
17 that time frame.

18 MR. WINTER: Okay.

19 MS. ROBESON: Okay. So with that, I am going to
20 adjourn the hearing and leave the record open until February
21 11th with Mr. Winter's, any response to the sound study due
22 by February 7th. All right.

23 MR. WINTER: And if we find that it's okay, we
24 just notify you?

25 MS. ROBESON: You're not required to respond.

1 MR. WINTER: Well, good form would mean that.

2 MS. WINTER: How do we make a request?

3 MS. ROBESON: You submit something in writing with
4 a copy to Mr. Orens.

5 MS. WINTER: To Mr. Orens, okay.

6 MS. ROBESON: Okay.

7 MR. ORENS: It doesn't have to be, you know,
8 formal or anything. Just a letter.

9 MR. WINTER: Okay. I don't know if there was
10 already a form to do so or what.

11 MS. ROBESON: Well, we require something signed.

12 MR. ORENS: Signed.

13 MS. ROBESON: When it's from an applicant or a
14 party. We require something signed. So whatever you send
15 to our office has to be signed. All right. All right. And
16 with that, we'll adjourn.

17 MR. ORENS: Thank you.

18 MR. WINTER: Thank you.

19 (Whereupon, at 3:38 p.m., the hearing was
20 concluded.)
21
22
23
24
25

. Digitally signed by Teresa S. Hinds

ELECTRONIC CERTIFICATE

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

Petition of Shirley and Michael Vesper and
Creating Memories Children's Learning Center, Inc.
Case No. S-2850

By:

Teresa S. Hinds, Transcriber

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