

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF HUMBERTO LOSADA - :OZAH No. S.E. 14-03
MIS PRIMEROS PASITOS FAMILY DAY CARE :
:
-----X

A hearing in the above-entitled matter was held on
January 13, 2014, commencing at 9:39 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue,
Rita Davidson Memorial Hearing Room, Rockville, Maryland
20850 before:

Martin L. Grossman
Hearing Examiner

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1 MR. GROSSMAN: Okay. You have to be yes so you
2 can be heard.
3 MR. LOSADA: Yes, sir.
4 MR. GROSSMAN: Okay. All right. And you'll
5 notice that -- before we go any further, I think it would be
6 advisable to swear you in at this point. Would you raise
7 your right hand, please?
8 (Witness sworn.)
9 MR. GROSSMAN: Okay. Thank you. Now, you'll
10 notice that in Exhibit 22, which is the technical staff
11 report, that discusses the facts of your case. Have you
12 read that report?
13 MR. LOSADA: Yes, sir.
14 MR. GROSSMAN: Okay. And does it accurately
15 contain the facts of your case?
16 MR. LOSADA: Yes, sir.
17 MR. GROSSMAN: All right. Do you wish to adopt
18 the factual findings made in the staff report, Exhibit 22,
19 as part of your evidence in the case?
20 MR. LOSADA: Yes, sir.
21 MR. GROSSMAN: Okay. Thank you. The Planning
22 Board letter, Exhibit 23, more or less echoes the staff
23 report so I don't have to go through that. Also, there are
24 certain conditions recommended in the technical staff
25 report. Did you read those conditions that they propose on

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1 page 2 of the report?
2 MR. LOSADA: Yes, sir.
3 MR. GROSSMAN: Do you agree to meeting those
4 conditions if they're imposed? You have to answer yes or no
5 --
6 MR. LOSADA: Yes, sir.
7 MR. GROSSMAN: -- so the court reporter can take
8 it down. Okay. All right. Now also, I asked my staff to
9 give you a copy of a document I prepared which is entitled
10 OZAH's typical conditions in this type of case. Did you
11 receive a copy of that?
12 MR. LOSADA: I received these other copy.
13 MR. GROSSMAN: Yes. Exhibit 25.
14 MR. LOSADA: These other copy.
15 MR. GROSSMAN: Okay. You received a list of the
16 exhibits and I believe the one you're holding in your right
17 hand is the OZAH, does it say on top OZAH's typical --
18 MR. LOSADA: OZAH typical conditions, yes.
19 MR. GROSSMAN: Okay. Have you had a chance to
20 look at that?
21 MR. LOSADA: Yeah. I already, I already read it.
22 MR. GROSSMAN: Okay. And are those conditions
23 agreeable to you?
24 MR. LOSADA: Yes, sir.
25 MR. GROSSMAN: Okay. All right. Now, and that's

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1 Exhibit 25 in the file. Now, you've included pictures in
2 the file.
3 MR. LOSADA: Yes, sir.
4 MR. GROSSMAN: Mostly in Exhibit 17. Do you
5 happen to have that electronically? Do you have electronic
6 copies of it from your camera that you took?
7 MR. LOSADA: Um --
8 MR. GROSSMAN: Like a disc of those? It's not
9 crucial if you don't have one.
10 MR. LOSADA: I have but not here.
11 MR. GROSSMAN: Not here.
12 MR. LOSADA: Yeah. Yeah, but I have in my camera,
13 in my phone that I took all those pictures.
14 MR. GROSSMAN: Okay. If you could provide us with
15 a copy electronically, it makes it easier for us. It's not
16 a requirement. So I'll leave the record open for a week or
17 so after the hearing to allow time for you to do that as
18 well as to receive the transcript.
19 MR. LOSADA: Okay.
20 MR. GROSSMAN: It just makes it simpler for me in
21 writing the report, although I notice that there are a
22 number of them already reproduced in the technical staff
23 report. Let me see whether or not it's necessary in this
24 case given what's in the technical staff report. Yes. It
25 would be helpful to have those additional photos so if you

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1 have the, in your camera, if you can reproduce it and drop a
2 contact disc, a CD off at our office.
3 MR. LOSADA: Yes.
4 MR. GROSSMAN: Can you do that?
5 MR. LOSADA: No problem.
6 MR. GROSSMAN: Okay. If you can do that before
7 the record closes, as I say, it will be helpful to us just
8 so we don't have to scan them in.
9 MR. LOSADA: Oh, okay.
10 MR. GROSSMAN: To the extent that we --
11 MR. LOSADA: I understand.
12 MR. GROSSMAN: -- will use them in our reports.
13 Also, let's see. You made a statement in this case which is
14 Exhibits 5 and 6 and your resume. Do you have that? Did
15 you produce that on your computer?
16 MR. LOSADA: The pictures?
17 MR. GROSSMAN: No. Your statement that you filed
18 in the case, Exhibit 5 and 6 which is, your Exhibit 5 is
19 your statement and then Exhibit 6 is your resume.
20 MR. LOSADA: My resume, yes, sir. I have that.
21 MR. GROSSMAN: You have that on your computer?
22 MR. LOSADA: Yeah. My resume.
23 MR. GROSSMAN: Can you e-mail that Ms. Forbes?
24 MR. LOSADA: Mrs. Ellen?
25 MR. GROSSMAN: Yes, to Ellen. Right.

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1 MR. LOSADA: Yes.
2 MR. GROSSMAN: To Ms. Forbes. And if you could e-
3 mail a copy of that electronically, that would be helpful to
4 us also. Then I won't have to scan that in.
5 MR. LOSADA: Okay, sure.
6 MR. GROSSMAN: Okay?
7 MR. LOSADA: Perfect. No problem.
8 MR. GROSSMAN: Thank you.
9 MR. LOSADA: You're welcome.
10 MR. GROSSMAN: Okay. I wanted to mention
11 something I noticed when I was reviewing the file last week.
12 I noticed that there was a discrepancy between the location,
13 the description of the location on the zoning map, which is
14 Exhibit 8, and the property records. The zoning map calls
15 your property Lot 20, the property records and technical
16 staff call it Lot 33, so I e-mailed technical staff to ask
17 them about that and I included that e-mail exchange in the
18 record.
19 MR. LOSADA: Uh-huh. Yes, sir.
20 MR. GROSSMAN: And they said it was just a mistake
21 on the zoning map.
22 MR. LOSADA: Oh, okay.
23 MR. GROSSMAN: And they would have it corrected.
24 MR. LOSADA: Okay.
25 MR. GROSSMAN: And so I included that e-mail

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1 exchange in the record as Exhibit 24, and that is my
2 exchange with Crystal Myers of technical staff and we, she
3 says that it's just an error in the zoning map, that she
4 would have it corrected. It's not critical here. It's
5 going to be corrected. I'm going to, I included her
6 statement in the record so that covers it. Your property
7 records clearly indicate --
8 MR. LOSADA: Okay.
9 MR. GROSSMAN: -- that it's Lot 33.
10 MR. LOSADA: Right.
11 MR. GROSSMAN: Okay. I just wanted to mention it
12 to you. Okay. Let's turn to any evidence that you have.
13 Would you care to make a statement now? If you want to make
14 a statement regarding your application?
15 MR. LOSADA: Well, yes, sir. The reason that I'm
16 working in, to have more capacity from 8 kids to 12 kids is
17 for the necessity for, for the community. They ask me all
18 the time if I have more capacity for the service that I
19 provide in the community. Not just care but also education,
20 and we provide food for the kids so they are so happy. They
21 are so much interested to keep the kids after four years, to
22 keep in my place for another level and they have to take the
23 kids to another place.
24 It's so much difficult to find a place in the
25 community to provide the three service, you know, care,

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1 education and food, because some of the place they found
2 just two, education and care, but they don't provide food
3 and all the, the quality, the balanced food that we provide,
4 so they are happy for that, you know, teaching in the
5 community how to be healthy from the beginning so we are a
6 lot of strict in that point. They are so much grateful, so
7 they are so excited to be if I have the possibility to have
8 the case until, be ready for school, six year, you know.
9 MR. GROSSMAN: Right.
10 MR. LOSADA: That is the point. So hopefully, I
11 receive help for the city to let me go and go up to provide
12 the service for the community. I will be happy to, you
13 know, to working in this, in this process.
14 MR. GROSSMAN: Okay. And you understand that if
15 this special exception is approved, you'd still need to get
16 approval from the Maryland Department of Education to have
17 up to 12 people and any other regulatory, local regulatory,
18 fire department, whatever it is, any other regulations you
19 have to meet will have to be met.
20 MR. LOSADA: Yes, sir.
21 MR. GROSSMAN: Okay. Now, would you describe your
22 drop-off and pick-up procedures?
23 MR. LOSADA: Yes, sir. We are open at 7:30. They
24 start coming after 7:30, every 15 minutes, 20 minutes, kid
25 by kid but also, I have most of the parent live in the

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1 community, a few blocks or one block, half block, so most of
2 the parent, they come in using roads, walking because
3 walking distance but I also have two parent that they have
4 kids in, two kids in the place. Do you understand that?
5 MR. GROSSMAN: You mean you have --
6 MR. LOSADA: I have a parent who have two kids in,
7 in my place.
8 MR. GROSSMAN: You have a parent who has two kids?
9 MR. LOSADA: Yes.
10 MR. GROSSMAN: Okay.
11 MR. LOSADA: Parent have two kids.
12 MR. GROSSMAN: Okay.
13 MR. LOSADA: So, for example, at the capacity that
14 I am now, it's eight kids but I have six parents because
15 they have two kids in the same place.
16 MR. GROSSMAN: Okay.
17 MR. LOSADA: So do you understand?
18 MR. GROSSMAN: Yes, yes.
19 MR. LOSADA: So that's just advantage for me so I
20 don't have problem with parking and all that stuff because I
21 have a corner lot and it's the way that you see in the
22 pictures.
23 MR. GROSSMAN: Right.
24 MR. LOSADA: So I have a lot of space. I never
25 see any congestion, traffic.

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1 MR. GROSSMAN: They never back up onto the street.
2 MR. LOSADA: No.
3 MR. GROSSMAN: I take it that when somebody does
4 arrive by car, they pull into where? Where do they pull
5 into on your lot?
6 MR. LOSADA: They --
7 MR. GROSSMAN: I'm going to pull out your --
8 MR. LOSADA: I have two spots.
9 MR. GROSSMAN: Right.
10 MR. LOSADA: So they use the spots that I have so.
11 MR. GROSSMAN: First of all, let me pull out
12 Exhibit 10 here.
13 MR. LOSADA: Yes, sir.
14 MR. GROSSMAN: This is a copy of your site plan.
15 MR. LOSADA: Uh-huh.
16 MR. GROSSMAN: Does this accurately represent
17 your --
18 MR. LOSADA: Exactly. Represent my lot, my house,
19 and the sidewalk and all that stuff.
20 MR. GROSSMAN: Did you draw this up yourself or
21 did somebody draw it up for you?
22 MR. LOSADA: I had a friend of me, he helped me to
23 draw all that stuff, this stuff.
24 MR. GROSSMAN: Okay. Yes. It's very good.
25 MR. LOSADA: Thank you.

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1 MR. GROSSMAN: A good plan.
2 MR. LOSADA: Yeah.
3 MR. GROSSMAN: Okay. And in this case, so
4 somebody drives up with a car. Do they park in your
5 driveway here? Is that what happens?
6 MR. LOSADA: Yes.
7 MR. GROSSMAN: They pull into your driveway, and
8 then what happens from there? How do they get their child
9 to the door?
10 MR. LOSADA: The use the sidewalk going to front
11 of the house. Yes.
12 MR. GROSSMAN: Where it says access to childcare.
13 MR. LOSADA: Yes, sir.
14 MR. GROSSMAN: Okay.
15 MR. LOSADA: That's the --
16 MR. GROSSMAN: They just walk up there and they,
17 and you meet them at the door or one of your staff meets
18 them at the door?
19 MR. LOSADA: Yes, sir.
20 MR. GROSSMAN: Okay.
21 MR. LOSADA: We wait in the door.
22 MR. GROSSMAN: And I take it they're always
23 accompanied by an adult.
24 MR. LOSADA: Always. All the time.
25 MR. GROSSMAN: Okay. Now, do you have a contract

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1 with your people that tells them to arrive at particular
2 times so that you won't have a conflict onto the street?
3 MR. LOSADA: I don't understand that question,
4 sir.
5 MR. GROSSMAN: Do you have an agreement, do you
6 have a written agreement with the people you provide
7 childcare?
8 MR. LOSADA: Yes, sir.
9 MR. GROSSMAN: All right. And does it tell them
10 what time, what window of time they can use to arrive and to
11 pick up their children?
12 MR. LOSADA: No. Not really. We say that we open
13 from 7:30 to 5:30 so this is free for them to come any of
14 that time, that period of time.
15 MR. GROSSMAN: Okay. And what is usually done and
16 what is one of the conditions recommended by technical staff
17 here is No. 5 on technical staff's list, the applicant must
18 provide parent agreements for all children to the hearing
19 examiner indicating that the drop off and pick up will be
20 limited to no more than five per hour not including children
21 walking to the facility. So I have a form of that in
22 Exhibit 25. It's not the same, quite the same language, No.
23 6 on my list in Exhibit 25. Vehicular arrival and departure
24 time for the children must be staggered through contractual
25 agreement between the operator of the day care home and the

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1 parents so that no more than five vehicles visit the site
2 within any one hour period to drop off or pick up children.
3 So what that condition means is that you have to
4 modify your contract that you have with your parents so that
5 you tell them, give them a window of time in which they
6 should arrive so you're guaranteeing that you're not going
7 to have more than five cars arriving in any one hour period.
8 MR. LOSADA: Yes, exactly. Exactly. Because the
9 advantage that I have because most of the parent, they live
10 around my house.
11 MR. GROSSMAN: Right.
12 MR. LOSADA: So they come in for walking.
13 MR. GROSSMAN: Well, walk-ins are not covered by
14 this. It's only a question of people who come by car.
15 MR. LOSADA: Who come by car. Yeah. I have a
16 few, a few parents who use the car.
17 MR. GROSSMAN: Right. And if they come by car,
18 you have to have some agreement, some written agreement with
19 them giving them an approximate time, you know, a window of
20 time, it doesn't have to be exactly 9:00 or exactly 8:00 or
21 whatever, but it has to give a time, approximately, when
22 they should arrive in order that you make sure that you
23 don't have more than five cars arriving in any given hour.
24 MR. LOSADA: Yes.
25 MR. GROSSMAN: Okay?

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1 MR. LOSADA: Okay, sir.
2 MR. GROSSMAN: Can you do that?
3 MR. LOSADA: Yeah. I can do that.
4 MR. GROSSMAN: Okay. All right. Also in addition
5 to Exhibit 10, which you identified, you have Exhibit 11 is
6 a landscape and lighting plan. Now, does Exhibit 11
7 accurately describe the landscaping and lighting on your
8 site?
9 MR. LOSADA: Yes, sir.
10 MR. GROSSMAN: All right. And are you planning
11 any changes to the, either your structure or anything
12 outside of your structure for this, for this special
13 exception?
14 MR. LOSADA: No, sir.
15 MR. GROSSMAN: Okay. So the lighting will not be
16 increased, is that correct?
17 MR. LOSADA: The lighting and everything is going
18 to be the same.
19 MR. GROSSMAN: Okay. All right. Also, you've
20 included a photograph. Let's see which exhibit this one is
21 in here. Exhibit 17(b)(1). Is that -- well, describe what
22 this picture is.
23 MR. LOSADA: Yeah. That describe the side of my
24 house. It's on Gardiner Avenue. Describes more the
25 playground area.

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1 MR. GROSSMAN: Okay. Did you take this photo
2 yourself?
3 MR. LOSADA: Yes, sir.
4 MR. GROSSMAN: And does it accurately depict the
5 premises? Is it accurate in showing what exists today?
6 MR. LOSADA: Yes, sir.
7 MR. GROSSMAN: And about when was this taken
8 approximately?
9 MR. LOSADA: Um --
10 MR. GROSSMAN: About what date was this taken?
11 MR. LOSADA: What date? I don't remember exactly
12 now because I took many pictures.
13 MR. GROSSMAN: Just approximately.
14 MR. LOSADA: I think it was in October.
15 MR. GROSSMAN: Okay. October of 2013?
16 MR. LOSADA: Yes, sir.
17 MR. GROSSMAN: Okay.
18 MR. LOSADA: All the picture was taken in that
19 period of time.
20 MR. GROSSMAN: Okay. And all of the exhibits that
21 you've included, all the photos in Exhibit 17 accurately
22 depict your premises?
23 MR. LOSADA: Yes, sir.
24 MR. GROSSMAN: Okay. All right. I'm going to
25 hold up Exhibit 17(b)(2). What is this depicting?

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1 MR. LOSADA: Let me see. I can't see.
2 MR. GROSSMAN: You can come up if you --
3 MR. LOSADA: Okay. Let me see.
4 MR. GROSSMAN: If it makes it easier for you to
5 see.
6 MR. LOSADA: I want to see what picture you --
7 MR. GROSSMAN: Sure.
8 MR. LOSADA: Yeah. This is just one side to take,
9 shows the playground. Basically, front of my house. I took
10 the picture to focus it more on the playground area.
11 MR. GROSSMAN: Okay.
12 MR. LOSADA: So this is the enter of my house
13 right here.
14 MR. GROSSMAN: Just to the right of the
15 photograph?
16 MR. LOSADA: Exactly, right. My place.
17 MR. GROSSMAN: Okay.
18 MR. LOSADA: That is the play.
19 MR. GROSSMAN: And so that's a fenced in play
20 area?
21 MR. LOSADA: It's fenced in. All that area is.
22 MR. GROSSMAN: Okay.
23 MR. LOSADA: Side by side and behind.
24 MR. GROSSMAN: All right. And then 17(b)(3), what
25 is that depicting?

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1 MR. LOSADA: That is the front and this is, this
2 is like corner. Like corner. This is the enter, little
3 gate to go into the playground.
4 MR. GROSSMAN: The gate to go into the playground
5 area?
6 MR. LOSADA: Yes, sir.
7 MR. GROSSMAN: Okay. And then 17(b)(4).
8 MR. LOSADA: Yeah. This is taken from close to
9 the parking, from the corner to the, to the house.
10 MR. GROSSMAN: Okay. So this is also the side of
11 your house or is this the front of the house?
12 MR. LOSADA: This is the front of the house.
13 MR. GROSSMAN: Front of the house, okay. That's
14 17(b)(4). All right. And 17(b)(5) is the top photo on this
15 page?
16 MR. LOSADA: Yes. It's the front. This is the
17 front of my house and toward the parking. This is taken
18 from the other side of the corner.
19 MR. GROSSMAN: Okay. 17(b)(6) is from the other
20 side of the corner looking at your, also at your driveway?
21 MR. LOSADA: Yes, exactly, sir.
22 MR. GROSSMAN: And I take it that, that little
23 driveway apron, that's where the people who are dropping off
24 children by car, that's where they stop.
25 MR. LOSADA: Exactly.

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1 MR. GROSSMAN: Okay. And then the path shown in
2 17(b)(5) and (6), which it looks like it's right in front of
3 the house, that's the path they follow, the children?
4 MR. LOSADA: The children come walking to the
5 front of the house.
6 MR. GROSSMAN: Okay. And this is 17(b)(7). Would
7 you identify that?
8 MR. LOSADA: Yeah. That is Dennis Avenue. I take
9 that picture to see how it is empty in that time. The --
10 MR. GROSSMAN: Okay.
11 MR. LOSADA: Dennis, Dennis and Gardiner.
12 MR. GROSSMAN: Okay. So this is from, this is
13 actually the Dennis Avenue view of your house?
14 MR. LOSADA: Yes, sir.
15 MR. GROSSMAN: Okay. All right. And I think
16 there were some other photos I recall showing, maybe it was
17 in the staff report, showing the parking on the street. Let
18 me take a look. Well, I guess we should -- we'll get to
19 this in a second. These are other photos in the technical
20 staff report as part of attachment 4. Can you identify
21 these photos?
22 MR. LOSADA: Yes, sir.
23 MR. GROSSMAN: The top photo first.
24 MR. LOSADA: Yes. I took from the corner of my
25 garden.

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1 MR. GROSSMAN: Okay.
2 MR. LOSADA: Of my garden. I took front of the
3 house.
4 MR. GROSSMAN: Okay.
5 MR. LOSADA: It's cool because there's a lot of
6 color for the trees, but the front of my house.
7 MR. GROSSMAN: Okay. This is the front of your
8 house taken from --
9 MR. LOSADA: From the corner of my garden.
10 MR. GROSSMAN: From the corner of your garden.
11 MR. LOSADA: Yes.
12 MR. GROSSMAN: Okay. And it also depicts the
13 zoning notice sign.
14 MR. LOSADA: Yes, sir. Exactly.
15 MR. GROSSMAN: All right. And then the bottom
16 photo on attachment 4 of the staff report?
17 MR. LOSADA: This is taken from the corner of the
18 front of the other side of the street.
19 MR. GROSSMAN: From Dennis Avenue you mean?
20 MR. LOSADA: Yes, exactly.
21 MR. GROSSMAN: Okay. All right. Then attachment
22 5, page 1 which has labels on it, did you take these photos
23 or were these taken by technical staff?
24 MR. LOSADA: No. I took it.
25 MR. GROSSMAN: You took them. And what do these

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1 depict?
2 MR. LOSADA: This is from Gardiner Avenue.
3 MR. GROSSMAN: Okay.
4 MR. LOSADA: To focus that that is, in the time
5 that I took that, it's empty on the street. There is no
6 traffic.
7 MR. GROSSMAN: No, no --
8 MR. LOSADA: Heavy traffic or something like that.
9 MR. GROSSMAN: Is parking permitted on Gardiner
10 Avenue?
11 MR. LOSADA: Oh, yes, sir.
12 MR. GROSSMAN: Okay.
13 MR. LOSADA: That is all my place, my driveway
14 from the corner to all that way.
15 MR. GROSSMAN: Okay.
16 MR. LOSADA: Middle of the corner.
17 MR. GROSSMAN: All right. And what about the
18 bottom photo on --
19 MR. LOSADA: I took all Gardiner, Dennis Avenue.
20 MR. GROSSMAN: Okay. That's Dennis Avenue --
21 MR. LOSADA: Yes, it is.
22 MR. GROSSMAN: -- on the bottom photo?
23 MR. LOSADA: Yes, sir.
24 MR. GROSSMAN: Okay. Is this also your house?
25 MR. LOSADA: Exactly.

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1 MR. GROSSMAN: It's depicted.
2 MR. LOSADA: Yes, sir.
3 MR. GROSSMAN: All right. Attachment 5 to the
4 staff report, page 2, what is this depicting on the top
5 photo?
6 MR. LOSADA: Yes. This is on Gardiner, closer.
7 MR. GROSSMAN: Okay. And the bottom photo?
8 MR. LOSADA: The bottom, on the bottom is, is
9 taken from the front of my house but on the other side of
10 Gardiner Avenue.
11 MR. GROSSMAN: Okay.
12 MR. LOSADA: Right here where I took on the front
13 of the house.
14 MR. GROSSMAN: Okay. Is that the intersection of
15 Gardiner and Dennis?
16 MR. LOSADA: Exactly. The intersection of each of
17 those. Thank you for helping.
18 MR. GROSSMAN: Okay. Attachment 5, page 3 of the
19 staff report. And what's the top photo?
20 MR. LOSADA: Yes. That is basically intersection
21 too. It's Gardiner and Dennis that way.
22 MR. GROSSMAN: Okay. And the bottom photo?
23 MR. LOSADA: And the bottom, yes, intersection you
24 see more of both.
25 MR. GROSSMAN: Of Gardiner --

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1 MR. LOSADA: And Dennis.
2 MR. GROSSMAN: -- and Dennis Avenue.
3 MR. LOSADA: Yes, sir.
4 MR. GROSSMAN: Okay. And then attachment 5, page
5 4. What's the top photo?
6 MR. LOSADA: It's on the other side of Gardiner
7 Avenue. I took it from my house.
8 MR. GROSSMAN: Okay.
9 MR. LOSADA: And the bottom, I took of Gardiner,
10 Gardiner Avenue.
11 MR. GROSSMAN: Okay. And all those photos
12 accurately depict the scene and the amount of parking.
13 MR. LOSADA: Yes, exactly. Along my house.
14 MR. GROSSMAN: Okay. So it's very little parking
15 or whatever there.
16 MR. LOSADA: Yes, sir.
17 MR. GROSSMAN: Okay. All right. Thank you.
18 MR. LOSADA: No problem.
19 MR. GROSSMAN: You can resume your seat. Did you
20 sign an Affidavit of Posting?
21 MR. LOSADA: Yes, sir.
22 MR. GROSSMAN: Okay. Would you bring that
23 forward? Can you bring that up to me so we can put it in
24 the record? Okay. That's it. And this will be Exhibit 26
25 as your Affidavit of Posting.

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1 (Exhibit No. 26 was marked for
2 identification.)
3 MR. GROSSMAN: And you should leave the sign there
4 until you receive my decision.
5 MR. LOSADA: Okay.
6 MR. GROSSMAN: And then you can bring it back and
7 you get a partial refund.
8 MR. LOSADA: Okay. So I have to, I have to do the
9 three items to send to Mrs. Ellen.
10 MR. GROSSMAN: Right. You have to, you have to
11 wait on the -- the sign, you can't take the sign down until
12 after you've received my decision.
13 MR. LOSADA: Yes, sir.
14 MR. GROSSMAN: We're not quite done yet though.
15 Give me a second here. Okay. I'm looking for -- oh, here
16 it is. All right. Exhibit 18 purports to be your floor
17 plan for the premises.
18 MR. LOSADA: Yes, sir.
19 MR. GROSSMAN: Does Exhibit 18 accurately depict
20 the floor plan of your premises?
21 MR. LOSADA: Yes, sir.
22 MR. GROSSMAN: Where you have, where you conduct
23 your --
24 MR. LOSADA: I have a copy.
25 MR. GROSSMAN: -- special exception?

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1 MR. LOSADA: Yes, sir.
2 MR. GROSSMAN: Okay. And then going back to the
3 photographs again, you also included photographs of the
4 interior of the premises. Can you identify for me, please,
5 on Exhibit 17(a)(1) and (2). The top photo would be Exhibit
6 17(a)(1). What is top photo?
7 MR. LOSADA: Yeah. The top. The top is the nap
8 area.
9 MR. GROSSMAN: Okay.
10 MR. LOSADA: Uh-huh.
11 MR. GROSSMAN: And 17(a)(2), the bottom photo?
12 MR. LOSADA: The bottom is the, they play area.
13 MR. GROSSMAN: Okay. And 17(a)(3), the top photo?
14 MR. LOSADA: The top photo is an extra room. It's
15 like second room.
16 MR. GROSSMAN: Okay.
17 MR. LOSADA: They play in there too and they nap
18 too. For different, it's approved for different services.
19 MR. GROSSMAN: Okay.
20 MR. LOSADA: Play or nap.
21 MR. GROSSMAN: And 17(a)(4)?
22 MR. LOSADA: The bottom is the activity area and
23 eating room.
24 MR. GROSSMAN: Okay. And 17(a)(5)?
25 MR. LOSADA: This is a changing area.

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1 MR. GROSSMAN: Okay. And 17(a)(6) is the top
2 photo?
3 MR. LOSADA: The top is the bathroom and the
4 bottom is the kitchen area.
5 MR. GROSSMAN: All right. And the bottom is
6 17(a)(7).
7 MR. LOSADA: Yes.
8 MR. GROSSMAN: And these photos accurately depict
9 the premises inside?
10 MR. LOSADA: Yes, sir.
11 MR. GROSSMAN: And you took those photos?
12 MR. LOSADA: I took, I did.
13 MR. GROSSMAN: Approximately the same time, in
14 October of 2013?
15 MR. LOSADA: Yes, sir.
16 MR. GROSSMAN: All right. Okay. Have you had any
17 complaints from neighbors about traffic, parking, noise or
18 anything else related to the childcare facility?
19 MR. LOSADA: No, sir. Any complaints. They enjoy
20 watching the kids, you know, that stuff. Most of the
21 community that live there, most of the front of the house
22 and side, is retired people really.
23 MR. GROSSMAN: Okay.
24 MR. LOSADA: So they are quiet and they like to
25 see the kids, you know, that stuff so.

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1 MR. GROSSMAN: Okay.
2 MR. LOSADA: They are happy to see the kids all
3 the time.
4 MR. GROSSMAN: All right. I think that, that
5 covers it. Is there anything else that you wanted to add?
6 MR. LOSADA: No, sir. So I think well my little
7 concern is about the three item that I have to a word that
8 you say, that you want the CD with the picture I already
9 send, right?
10 MR. GROSSMAN: Yes.
11 MR. LOSADA: So I took, my question I took many
12 picture so I have to send, because I don't know exactly what
13 the picture so I send all the picture and you see all them.
14 MR. GROSSMAN: Oh, okay.
15 MR. LOSADA: That's not a problem?
16 MR. GROSSMAN: Once again, it's not a, it's not a
17 requirement. I can, I can have them scanned in if it's a
18 problem for you so it's not a -- if you were represented by
19 Counsel here, then we require the attorney to produce it or
20 if you were a group or organization, we would require it be
21 produced. When it's an individual, we don't require it.
22 MR. LOSADA: Oh, okay.
23 MR. GROSSMAN: I'm just saying if you have it and
24 it's, and it's handy to do, then it would be helpful to us.
25 That's all.

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1 MR. LOSADA: Oh, okay. And the other point is
2 about the, the like contract that you say --
3 MR. GROSSMAN: Yes.
4 MR. LOSADA: -- with the parent.
5 MR. GROSSMAN: Yes.
6 MR. LOSADA: How would have to, how I have to say
7 in, in the contract?
8 MR. GROSSMAN: I presume you have a written
9 agreement with the parents now, is that correct?
10 MR. LOSADA: Yes, sir.
11 MR. GROSSMAN: What you would do is you would just
12 talk to the parents and say that as part of the special
13 exception, that you have to have some additional language,
14 an additional paragraph in the contract.
15 MR. LOSADA: Okay.
16 MR. GROSSMAN: And that would say that the parent
17 agrees that they will drop off their child sometime between,
18 and give whatever the hours are, between 7:30 and 9:00 or
19 7:30 and 8:30. Whatever time it is that they, that they
20 would generally drop off their child.
21 MR. LOSADA: Okay.
22 MR. GROSSMAN: And that they will pick up their
23 child between 4:30 and 5:00.
24 MR. LOSADA: 4:30.
25 MR. GROSSMAN: Whatever it is --

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1 MR. LOSADA: Okay.
2 MR. GROSSMAN: -- that they generally pick up
3 their child.
4 MR. LOSADA: Okay.
5 MR. GROSSMAN: That's for the ones who are
6 arriving by car.
7 MR. LOSADA: Okay.
8 MR. GROSSMAN: We don't control, we don't care
9 about it in terms of the children who are dropped off
10 walking because that's not, that doesn't affect other people
11 around the neighborhood. That's not traffic.
12 MR. LOSADA: Okay. It's basically with the
13 people, the contract with people who use car.
14 MR. GROSSMAN: That's correct.
15 MR. LOSADA: Okay, sir. Okay.
16 MR. GROSSMAN: And then just add a paragraph to
17 the contract and have them sign off, and you would sign off
18 saying that that's their obligation. And we understand if
19 they are missed by a few minutes or something, nobody's
20 going to come and raise a ruckus. It's just that this is --
21 the idea of this is just to control the volume of cars
22 arriving at any given time.
23 MR. LOSADA: Okay.
24 MR. GROSSMAN: So that you don't have a problem.
25 It doesn't sound like you have a problem with this.

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1 MR. LOSADA: No.
2 MR. GROSSMAN: But this would just ensure that the
3 neighborhood is protected from having cars that are backed
4 up onto the street.
5 MR. LOSADA: Okay.
6 MR. GROSSMAN: Because you only have those two
7 little spaces.
8 MR. LOSADA: Yeah.
9 MR. GROSSMAN: And we've agreed, there's a
10 provision that technical staff recommended and the Planning
11 Board agreed to waive the requirement that you have four
12 parking spaces. Ordinarily, you'd be required to have four
13 parking spaces on the site, two for the residences and two
14 for the two -- I take it you employ two non-resident
15 employees, is that correct?
16 MR. LOSADA: I have two employees.
17 MR. GROSSMAN: Right.
18 MR. LOSADA: But they use just one car.
19 MR. GROSSMAN: Okay. But ordinarily, the
20 requirement is that you have to have, in the Zoning
21 Ordinance, there's a provision in Section 59-E-3.7 is the
22 provision that says that for a childcare facility such as
23 this, you should have, in addition to the parking spaces
24 required for residents, which is two for the residents, you
25 should have a parking space on site for each non-resident

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1 employee. However, it also provides that the hearing
2 examiner can waive that requirement if it is apparent that
3 there is ample parking on the street for this, and that's
4 what technical staff has recommended that it be waived and
5 the Planning Board has agreed.
6 So you are permitted to have, if we, if that
7 waiver is granted by me, and I don't see any reason why it
8 shouldn't be here, you're permitted to have those two non-
9 resident employees park on the street. I take it that's
10 what they do ordinarily. They have one car but they park it
11 on the street, is that correct?
12 MR. LOSADA: Yes, sir.
13 MR. GROSSMAN: Okay. And then that leaves the
14 parking area that you have free for drop-offs and that you
15 would also during, as I understand, your practice is that
16 you, you, at this point, anybody who resides in your home,
17 they do not park in the parking area during operating hours
18 of the day care, you park on the street, is that correct?
19 MR. LOSADA: Yes, sir.
20 MR. GROSSMAN: Okay. And that would be a
21 requirement to the special exception also so that we can
22 assure that the people arriving by car with their children
23 are not arriving on the street so it's safe for the children
24 to get out of their cars. That's the reason. And there
25 doesn't seem to be a parking problem on the street so that's

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1 why we would waive that requirement of having two, two
2 additional parking spaces on the site. Do you understand
3 that?
4 MR. LOSADA: Yes, sir.
5 MR. GROSSMAN: So that would be part of the
6 requirement, as I indicated, in the list of OZAH's typical
7 conditions.
8 MR. LOSADA: Yes, sir.
9 MR. GROSSMAN: Okay. Did you have any other
10 comments or questions that you wanted to make?
11 MR. LOSADA: Yeah. What is -- so that's the
12 other, what is the other item that I had to, to work, you
13 say? One is the, there is that paragraph in the contract or
14 what is the other?
15 MR. GROSSMAN: There was nothing else to add to
16 the contract. That was the only thing. The other only
17 thing to give to me would be if you have, when you prepared
18 your resume and your statement.
19 MR. LOSADA: Oh, my resume.
20 MR. GROSSMAN: Yes.
21 MR. LOSADA: Copy my resume.
22 MR. GROSSMAN: Your resume and your statement,
23 Exhibits 5 and 6, your statement of what your plan is, your
24 operating statement for this thing, those are typed out.
25 MR. LOSADA: Okay.

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1 MR. GROSSMAN: And you probably prepared them on a
2 computer.
3 MR. LOSADA: Yes. I have a copy.
4 MR. GROSSMAN: You can e-mail, e-mail them to Ms.
5 Forbes so we have it in electronic form.
6 MR. LOSADA: Yes, sir.
7 MR. GROSSMAN: It's just easier than scanning it
8 in. It's more accurate, okay?
9 MR. LOSADA: Yes, sir. I can do that.
10 MR. GROSSMAN: Okay. Anything else?
11 MR. LOSADA: No, sir. I don't have more
12 questions.
13 MR. GROSSMAN: Okay. Then I take it you'd like
14 the exhibits to be in evidence. You have 26 exhibits here
15 and I take it you'd like them to be all in evidence, is that
16 correct, for me to consider?
17 MR. LOSADA: Yes, sir.
18 MR. GROSSMAN: Okay. So Exhibits 1 through 26 are
19 admitted into evidence.
20 MR. LOSADA: Oh, okay.
21 MR. GROSSMAN: Okay?
22 MR. LOSADA: Thank you.
23 (Exhibit Nos. 1 through 26
24 were received into evidence.)
25 MR. GROSSMAN: Okay. And if there's nothing

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1 further, the record in this case will close, today is the
2 13th so the record will close on January 23. That gives 10
3 days for the transcript to come in. In other words, the
4 court reporter will produce a transcript and that will be
5 filed with us within 10 days, and then within that period of
6 time also, you can file any additional materials that we
7 talked about. And the record itself of these proceedings
8 will close on January 23 which is 10 days. Is that a
9 weekend? I didn't --
10 MR. LOSADA: Yeah. January 23.
11 MR. GROSSMAN: Let's see. If it's a weekend, we
12 have to make it sort of different.
13 MR. LOSADA: So this is the process that --
14 MR. GROSSMAN: Yes. Usually have a calendar but I
15 guess that calendar only went through 2013 so that's a good
16 reason not to have it. Okay. Here it is. January 23.
17 Today's the 13th, yes. The 23rd, it's a Thursday so, yes.
18 January 23 the record will close. That will mean that from
19 that point, then I have 30 days from that point in which to
20 write my opinion and decision, okay?
21 MR. LOSADA: Okay, sir.
22 MR. GROSSMAN: And then you would have a right, if
23 you disagree with it, you would have a right to appeal it
24 within 10 days thereafter to the Board of Appeals. Okay.
25 Any other questions?

1 MR. LOSADA: No, sir. So I will be waiting. I
2 will be working this week with the items and we send to --
3 MR. GROSSMAN: Okay.
4 MR. LOSADA: -- Mrs. Ellen and that way she
5 provide you.
6 MR. GROSSMAN: Okay.
7 MR. LOSADA: So --
8 MR. GROSSMAN: Very good then. All right.
9 MR. LOSADA: Thank you so much for your time to
10 take my case.
11 MR. GROSSMAN: Well, certainly. My pleasure.
12 Then we are adjourned.
13 (Whereupon, at 10:20 a.m., the hearing was
14 concluded.)
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C E R T I F I C A T E

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

Petition of Humberto Losada
Mis Primeros Pasitos Family Day Care
OZAH No. S.E.14-03

By:

Josephine Hayes, Transcriber

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