

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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PETITION OF HANNAH WEISER : CU 16-07
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A hearing in the above-entitled matter was held on June 3, 2016, commencing at 9:38 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

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Hannah Weiser	6	--	--	--
Leah Hanlon	33	--	--	--
Robin Rice	36	--	--	--

E X H I B I T S

Exhibit No.	Marked/Received
47 Basement and First Floor Plans	20

P R O C E E D I N G S

1 MR. GROSSMAN: This is a public hearing in the
2 matter of Hannah Weiser, OZAH No. CU 16-07, an application
3 for a conditional use pursuant to Zoning Ordinance Section
4 59-3.4.4.4(E) to allow a child daycare center for up to 15
5 children in her home at 9205 Fernwood Road in Bethesda. The
6 subject site is Lot 1, Block 8 of the Greentree Manor
7 Subdivision, and it is zoned R-60. A conditional use is
8 required for childcare facility for nine or more children in
9 the R-60 zone.

10 My name is Martin Grossman, I'm the hearing
11 examiner, which means I will take evidence here and write a
12 report and decision in the case. All right, for the record
13 would you identify yourself again, please?

14 MS. WEISER: Hi, I'm Hannah Wesier, I'm the
15 property owner.

16 MR. GROSSMAN: Or, property co-owner.

17 MS. WEISER: Co-owner. My husband does own it as
18 well. I'm also an attorney here in the State of Maryland
19 and I work over at Montgomery College, I'm an associate
20 professor there.

21 MR. GROSSMAN: Great. All right. And, Ms.
22 Hanlon?

23 MS. HANLON: My name is Leah Hanlon, I'm Hannah's
24 sister, and I'm also another daycare owner.

1 MR. GROSSMAN: Okay. And, I see that we have
2 another person in the audience. Ma'am?

3 MS. RICE: My name is Robin Rice, I've been a
4 daycare provider for 33 years. I've got some comments and
5 suggestions.

6 MR. GROSSMAN: All right. Are you in support, in
7 opposition, or just want to make some comments?

8 MS. RICE: Support.

9 MR. GROSSMAN: I see nobody else in the audience
10 here. I do note that there was an opposition letter from
11 your next door neighbor, a copy of which we forwarded to
12 you. All right, let me say a few things about the nature of
13 the proceedings here. It's a combination of formality and
14 informality. We follow pretty much the same procedures as
15 in a courtroom. If there was somebody here to cross-examine
16 you, you'd be subject to cross-examination. All witnesses
17 are sworn in. There's a court reporter who takes everything
18 down and we usually put a copy of the transcript up on our
19 website while the case is pending, although it takes a week
20 to 10 days before we get the transcript.

21 This is an application for a conditional use which
22 is not a variance, as some people have thought of it in the
23 past, which is one reason they changed the name. It used to
24 be called the special exception, now called a conditional
25 use, which more accurately says what it is, which is a use

1 that's permitted under the zoning ordinance if conditions
2 are met, certain specific conditions for this type of
3 conditional use, and general conditions that apply to all
4 conditional uses.

5 Okay. Let me go to some preliminary matters. Let
6 me swear the witnesses in.

7 (Witnesses sworn.)

8 MR. GROSSMAN: The second thing, there was a
9 motion to amend. That was opposed by your next door
10 neighbor, Eric Reed of 1907 Fernwood Road. Mr. Reed's
11 concerns go to the merits of the application, and I don't
12 consider them to be valid points in opposition to an
13 amendment to the application. So I hereby grant the
14 application or the motion to amend the application.
15 However, you should address Mr. Weiser's concerns -- I'm
16 sorry --

17 MS. WEISER: That's okay.

18 MR. GROSSMAN: Bad morning. You should address
19 Mr. Reed's concerns in your presentation today.

20 MS. WEISER: Okay.

21 MR. GROSSMAN: And also, as we had mentioned to
22 you, there is a co-owner to the site, and I see that my
23 administrative assistant, who is always a couple of steps
24 ahead of me, has already included a letter, notarized
25 letter, from Christopher Weiser indicating his consent to

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1 the application. And that's Exhibit 46. And, I also notice
2 that your Affidavit of Posting is in the file as Exhibit 45.
3 Let's turn to the question of Technical Staff's recommended
4 conditions. Do you accept the conditions that were
5 recommended by the Technical Staff as amended by the
6 Planning Board?
7 MS. WEISER: We do. The only issue we took was
8 with the other stripes, 12(d). They would like us to mark
9 and stripe each individual parking and loading space to
10 provide for orderly and safe on-site vehicular movement
11 subject to approval by MCDPS.
12 MR. GROSSMAN: Right. And the Planning Board
13 indicated that we should explore your alternative
14 suggestions to improve residential appearance, which you
15 will certainly be permitted to do. But other than that
16 concern or their indication that they would not agree to a
17 waiver of those provisions, do you have any other --
18 MS. WEISER: Everything else they recommended --
19 understand and are okay with.
20 MR. GROSSMAN: All right. And, they also made a
21 number of findings of fact. Do you agree to accept their
22 findings of fact as your evidence in the case?
23 MS. WEISER: Yes.
24 MR. GROSSMAN: All right. One other matter which
25 I raised with Staff and got a response is that they hadn't

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1 addressed in their original presentation the question of
2 stormwater management. And they responded with a suggestion
3 of an additional condition. Do you accept that? Do you
4 have anything else to say about that?
5 MS. WEISER: We would like to dispute that and
6 there's a couple of reasons. One of the reasons, you know,
7 first of all, financially it's very expensive. It's at
8 least \$2,765 just to submit that fee. And then on top of
9 that, it seems from what I understand, and correct me if I'm
10 wrong but, from the website regarding the permitting
11 services, it looks like the sediment control, it's to
12 prevent sediment from leaving a construction site during
13 construction activity. We don't plan to do significant
14 construction in the home. The only construction we're doing
15 is a small expansion of the driveway. Also, this says that
16 it requires a permit for land disturbing activity in
17 Montgomery County that disturbs 5,000 square feet of land or
18 more, and that's not the case here. So we're hoping that
19 that's something that will not be an issue and that we don't
20 need to have as a condition on the file.
21 MR. GROSSMAN: Why don't we do this. Since this
22 came up before you had an opportunity to respond directly,
23 I'll keep the record open after today for you to respond
24 directly in writing to Technical Staff with your points, and
25 I believe they also consulted the Department of Permitting

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1 Services, and then let's see what they have to say in
2 response before I render any decision on that.
3 MS. WEISER: Okay.
4 MR. GROSSMAN: Does that reasonable?
5 MS. WEISER: Yes. Thank you.
6 MR. GROSSMAN: All right. Do you have any other
7 preliminary matters to discuss procedural or otherwise?
8 MS. WEISER: No, thank you.
9 MR. GROSSMAN: All right, then do you wish to make
10 an opening statement or go directly to presenting whatever
11 evidence you have?
12 MS. WEISER: Sure. We want to open up this
13 daycare because we do feel there's a strong demand in the
14 community, and that goes to some concerns that were brought
15 up from our neighbor. But also something that needs to be
16 addressed as part of the application. And I just want to
17 reinstate the fact that the Bethesda Master Plan highly
18 supports having daycares in the area. In fact, it speaks to
19 this demand and there's some data speaking to the fact that
20 it's not a major disturbance to the community. However, we
21 want to make sure that we don't disturb the residential
22 appeal of the community. And so part of that is in our
23 application you'll notice we've limited the outdoor play to
24 be more within the hours people are generally at work.
25 We've also worked, you know, significantly with

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1 your technical staff regarding how to make sure there's safe
2 ingress and egress in the property, and we don't have any
3 big changes happening to the outside of the home, as well as
4 the interior. When we purchased the home about eight months
5 ago, it was set up really to already have a daycare which is
6 part of our interest. We're about to have our first child
7 and we need a place for our child to have care. My sister
8 owns a daycare about two miles away in the community, and
9 they always have a waitlist full of children hoping to
10 attend the daycare service.
11 We have friends in the community who need places
12 for their children to go, some of whom I work with. And on
13 top of that, we're able to offer jobs in the community by
14 providing these daycares. And so, you know, the big piece
15 of this, which I would dispute from our neighbor and also
16 speak to for application, is the big part of this is meeting
17 that demand for me as a parent, and also for others in the
18 community.
19 MR. GROSSMAN: All right. I think that Mr. Reed
20 mentioned there was another daycare provider across the
21 street?
22 MS. WEISER: There is. There's another daycare
23 provider across the street. They generally, you'll notice
24 on the sign, appeal for two to five year olds, so they don't
25 help infants, which is where the significant demand is.

1 They also don't have any current openings, and they will not
2 actually accept waitlist members. That was as of a couple
3 of days ago when we contacted them. My sister's daycare she
4 owns a couple miles by has 30 current people on the waitlist
5 waiting for daycare, and there's another property being
6 built about a mile down the road at Bethesda, Montgomery Row
7 is the name, where we expect to have additional needs for
8 care. There's two elementary schools near my home both
9 Ashburton and Wingate, as well as a middle school. And,
10 there's also a high school nearby. So there's a big need
11 and we expect it to increase.

12 MR. GROSSMAN: All right. Now, was that part of
13 your opening statement or is that part of your evidence in
14 the case? I swore you in beforehand because in these
15 hearings it sometimes gets a little blurred.

16 MS. WEISER: Okay. That was part of the evidence
17 I would like to put forward in the case regarding the
18 demand.

19 MR. GROSSMAN: All right. What else do you have
20 to say in terms of evidence what else do you want to present
21 in the case?

22 MS. WEISER: You know, really, a lot that we've
23 put forward is fine. I don't know if you want me to address
24 right now the objections of Eric?

25 MR. GROSSMAN: Certainly.

1 MS. WEISER: Okay. I'm going to do that first
2 then. He spoke to a negative impact on the community. I
3 would argue in fact that it's a very positive impact for the
4 community in that we offer jobs and childcare for those who
5 are very much in need. This isn't some business that's, you
6 know, going to be very disruptive. In fact, there is
7 another one across the street that's been operating without
8 issue for some time now. So, you know, I think that that's
9 something where it's clear that it can have a positive
10 impact and the Bethesda Master Plan also supports that in
11 many ways.

12 A couple ways you'll see, it notes that in recent
13 studies of small child care centers serving seven to 20
14 children, it suggests that these centers have few negative
15 impact including traffic, parking, on the surrounding
16 community. In addition to that, he noted some concerns
17 regarding increased vehicle traffic. Specifically, that
18 Fernwood Road is already a main road that runs through the
19 community, and currently experiences a heavy flow of vehicle
20 traffic and volume. We addressed this concern in the
21 application. Fernwood Road is typically a busy road. I
22 agree with that. There already is a lot of commuter
23 traffic, and we've worked with your technical staff to make
24 sure that intersection was safe, and to provide a way to
25 come in and out of the home that would not be disruptive.

1 You know, it's already busy. Having a few extra cars will
2 not be something that would be noticeable to our neighbor.
3 And the figure 1 parking we have in our application speaks
4 to that. We worked on that with technical staff.

5 MR. GROSSMAN: Also, I presume the timing of
6 arrivals and pick-ups will be established by your contracts
7 with the people which will allow them to be a staggered, and
8 avoid too many cars arriving at one time?

9 MS. WEISER: You're very correct. So we do have
10 staggered pick-ups and drop-offs in the morning and the
11 afternoon sessions. And so we will be signing agreements
12 with our parents to make sure that it's not as disruptive
13 then, and also allow safety for the children and parents in
14 the driveway. He also spoke to increased neighborhood
15 noise. Again, as I stated in the application, outdoor play
16 is going to be limited between 9:00 an 5:00 to 10 children
17 outside. We don't expect it to be very loud, you know, a
18 huge increase. On top of that, you know, I live on that
19 road and it's loud. It's a busy neighborhood already. So
20 it's not the best place to dispute it being more or less.

21 He also spoke to the close proximity to the other
22 daycare facility at 6601 --

23 MR. GROSSMAN: Before you address that, I should
24 mention that I usually include a condition in daycare
25 matters that no outdoor music or amplified sounds be played.

1 MS. WEISER: Okay. And that's reasonable. He
2 noted a close proximity to this other daycare at 6607
3 Greentree Road. It is close by to our home, and I think
4 that actually speaks to why in many ways this daycare is a
5 good thing for the neighborhood, as that one has been
6 operating well and has not been disruptive. He claims
7 there's not a demand because that one's there. Again, I
8 would argue we have 30 people waiting on this waitlist at a
9 daycare nearby that we hope to offer the opportunity in my
10 home to have services. Also, that daycare doesn't have any
11 openings right now, and doesn't expect to for some time
12 which is why they're not taking a waitlist at all at this
13 time.

14 So, on top of that, the demand, while documented
15 in the Bethesda Master Plan, as I mentioned before and I do
16 also address this in detail in the application, Part V of
17 the master plan clearly notes that it endorses the provision
18 of child daycare. It supports measures to help create a
19 sense of community and to reinforce community cohesion.
20 They way we meet the special needs for child daycare also
21 relates to our sense of community that cares about its
22 residents. And recommendations for meeting childcare needs
23 includes the support of the provision of residential and
24 employment based childcare services. They speak to clear
25 demand in the community in the Bethesda/Chevy Chase area

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1 that's increasing due to a growing child population, and the
2 high level of employment in the area.

3 MR. GROSSMAN: I don't recall whether the Staff,
4 when they talked about that and referenced pages in the
5 master plan. Do you have page references for those?
6 MS. WEISER: I do. That's page 155, Section 6.22.
7 That speaks to the demand. And Section 3.12, Special
8 Exceptions, Part V, speaks to the need to, the positive
9 impact on the community that it has. In addition to that,
10 in Section 6.22, again on page 155, to provide childcare
11 opportunities to residents and employees with varying
12 locational and program preference. The plan supports the
13 location of these centers in both neighborhood and
14 residential employment settings. Changes in neighborhood
15 and employer supported child daycare facilities and programs
16 may be needed to better address the scarce supply of centers
17 for children of ages two and under, and for all-day child
18 daycare centers.

19 We've experienced that personally. My sister can
20 speak more to that. Our family owns a daycare in the D.C.
21 area, and she owns one nearby in Maryland, and we've been
22 looking to find more opportunities because of longstanding
23 waitlists to help more children get care. It's been very
24 difficult to find a commercial space that would allow that.

25 MR. GROSSMAN: Have you spoken to Mr. Reed about

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1 his concerns?

2 MS. WEISER: I have not. You know, I did speak to
3 both of my neighbors. I have one that abuts my property to
4 the -- behind my property -- and he and his wife were very
5 supportive, and felt others in the community would be as
6 well. Our other neighbor who we share a fence line with was
7 also very supportive. Mr. Reed's actually, I don't know you
8 can see on the plat, if you have the exhibit --

9 MR. GROSSMAN: I looked at the map to see where he
10 was exactly. He's just to the north of you, I guess.

11 MS. WEISER: Yeah. And he's -- there's a yard
12 separating us, which I believe is public land, and then
13 there's a small cul-de-sac which he's on. So we actually
14 haven't seen each other yet. And so I didn't speak with him
15 personally about it. And I didn't expect a problem, as both
16 of our neighbors that we are actually close with, supported
17 it and felt the community would support it.

18 MR. GROSSMAN: It's usually a good idea and it can
19 avoid some of these concerns.

20 MS. WEISER: I agree. I should have spoken with
21 him sooner. The other concern he brought up about the
22 safety and welfare of the children, we fully support making
23 sure the children are safe and well, and I believe your
24 technical staff feel the same. And so we've worked with
25 them throughout the past eight months to make sure that we

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1 were applying for a space that would be safe and would help
2 the children. Because of that, we've actually added a new
3 fence in the front and the rear of the home. It was already
4 fenced in on all sides, but we make it a little newer and
5 nicer, and also added a gate already, which they had asked
6 for in their recommendations. So that the children will be
7 safe inside that fence line. On top of that, as you can
8 see, you know, from the drawings here, the parking area,
9 they'll be with their parents. They're not on the road, and
10 they'll be walking safely in. The other daycare has been
11 doing that just fine for some time now.

12 MR. GROSSMAN: All right. I mean, for the most
13 part, the care of the children is the province of the state
14 educational people, not this zoning authority. And so you
15 have to meet whatever regulations they require.

16 MS. WEISER: Right. So, you, know, I understand
17 Eric's concern, Mr. Reed's concerns. I think we address
18 those concerns very clearly and in detail in the
19 application. The first submission of it, and then again
20 upon amendment. And so hopefully you'll agree with some of
21 my responses to Eric today. We did just receive this, as
22 you know, only a few days ago.

23 MR. GROSSMAN: Yes. You mean his objection?
24 MS. WEISER: Yes.
25 MR. GROSSMAN: Yes.

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1 MS. WEISER: I know he objected earlier in May,
2 but we received it Monday or Tuesday.

3 MR. GROSSMAN: Right. We don't usually send them
4 out. People are expected -- the applicants to check the
5 file. But we saw since we were communicating with you
6 anyway, I thought it would be a good idea.

7 MS. WEISER: Yes. We've been checking without
8 issue until a few weeks ago.

9 MR. GROSSMAN: Okay. All right. There are a
10 number of photographs and, of course you have plans. What's
11 the exhibit number for your plan, site plan?

12 MS. WEISER: The plat is Exhibit 4 and the survey
13 is Exhibit 5. Is that what you're requesting?

14 MR. GROSSMAN: No. I mean, what's your -- usually
15 there is something that's officially designated as the site
16 plan. I mean, maybe you could consider the Technical Staff's
17 diagram on page 8. And you had a form of that in the file,
18 but I didn't see the proposed pedestrian path on your
19 documents.

20 MS. WEISER: Okay. Yeah, and I understand they
21 added that in their report and that's something that we
22 agree with and support. We will be adding a proposed
23 pedestrian path. We spoke to that and it wasn't in the
24 figures but, it was in the application. Is that what you're
25 saying?

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1 MR. GROSSMAN: Yes. I mean, we should have
2 something in the file, a diagram, we call a conditional use
3 site plan, that specifies everything that's going to be on
4 the site, and which you can't really change after it's
5 specified without coming back and asking for leave to do so.
6 And, so I guess while the record is open, you should submit
7 a plan that has that proposed pedestrian path on it as well.
8 MS. WEISER: Can we use the Figure 8, staff and
9 applicant's proposed --
10 MR. GROSSMAN: Absolutely. But you have to blow
11 it up in a way that we can use it as the plan. And while
12 we're on page 8, does that plan as depicted accurately
13 represent your intentions for the subject site?
14 MS. WEISER: Yes.
15 MR. GROSSMAN: And does the diagram and the
16 measurements, do they accurately represent what is intended
17 on the site?
18 MS. WEISER: Yes.
19 MR. GROSSMAN: Okay. I take it since it appears
20 to be a relatively recent aerial photo, do you know what the
21 date of the aerial photo is?
22 MS. WEISER: It was about a few months ago. We
23 originally submitted, as you can see, a bigger six,
24 something that looked kind of similar, and we've been
25 working with your technical staff to come to an agreement on

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1 what you now see in Figure 8.
2 MR. GROSSMAN: Okay. Now, the Technical Staff
3 Report also contained a number of photographs, both aerial
4 and otherwise, of the site. And, also an example of your
5 proposed sign on various pages. Do these photographs
6 included in the Technical Staff Report accurately portray
7 the scene as it exists now?
8 MS. WEISER: Yes, they do.
9 MR. GROSSMAN: Are these photos they took, or are
10 these ones you submitted, because I know you had a number of
11 photos you submitted as well?
12 MS. WEISER: Some of the ones that we took, and
13 some of the ones that they added as well. They did a site
14 visit that had some different pictures. For example, on
15 page 3 and 4, those were pictures that they took when they
16 did their site visit. The picture of the sign is something
17 we gave as a sample. The picture, Figure 6, was one we
18 created as well as Figure 7.
19 MR. GROSSMAN: And they have various captions
20 under the photos. Do those captions accurately describe?
21 MS. WEISER: Yes.
22 MR. GROSSMAN: Okay. You have a floor plan, did
23 you not?
24 MS. WEISER: Yes.
25 MR. GROSSMAN: What exhibit was that?

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1 MS. HANLON: I actually don't see it on the
2 exhibit list. But it was submitted, and it's on the CD that
3 was provided as well.
4 MS. HANLON: I have a copy with me if you want to
5 submit it as another exhibit.
6 MR. GROSSMAN: Sure. If it's not already in
7 there. I thought there was something there, but we can mark
8 it also as an exhibit.
9 MS. HANLON: And that is on the CD that you were
10 provided as well.
11 MR. GROSSMAN: Okay. Maybe that's where I saw it,
12 because I usually go through things on the CD.
13 MS. HANLON: Yeah.
14 MR. GROSSMAN: This will be Exhibit 47. And I was
15 handed two documents, so one is the basement floor plan, and
16 one is the first floor plan. Both of them have in addition
17 to the printed area, they have blue ink on them. I take it
18 that was -- that you put in?
19 MS. HANLON: Uh-huh.
20 MR. GROSSMAN: So that adds to the description of
21 the floor plan, is that correct?
22 MS. HANLON: Yes.
23 MR. GROSSMAN: So 47A is the basement floor plan,
24 and 47B is the first floor floor plan.
25 (Exhibit No. 47 was marked for

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1 identification.)
2 MS. HANLON: Just to clarify, we don't intend to
3 use the main floor of the home that you see in Exhibit 47B
4 on the main level. However, one of the exits to the floor
5 plan you see on Exhibit 47A runs up the stairs through the
6 main level, so we provided both to show that exit.
7 MR. GROSSMAN: You say you intend to use it. You
8 don't to intend to use it as part of the childcare?
9 MS. HANLON: Correct. We plan to use it as one of
10 the exits.
11 MR. GROSSMAN: And presumably for a functioning of
12 your home?
13 MS. HANLON: Uh-huh.
14 MR. GROSSMAN: Now you also submitted a number of
15 photographs. I guess before we get to that, you also
16 submitted the diagram that I had talked about in the
17 Technical Staff Report that would become the site plan and
18 shows the sidewalk, I think without the sidewalk area you
19 have submitted the parking, or I'm not sure which one of
20 these in your submissions -- let's see that was Exhibit,
21 part of Exhibit 35 of your amended conditional use
22 statement, and then you had in addition to the picture of
23 the proposed, what the sign would like it -- and by the way,
24 the sign, you'd have to get a permit for the sign, and if it
25 exceeds two square feet in a residential area, you'd have to

1 get the variance from the sign review board. If it does not
2 exceed two square feet, usually you don't have to get that
3 variance. But you can check. If you're varying from any of
4 the zoning ordinance specifications for signs in residential
5 areas, then you have to seek a variance. In any event, once
6 you got the permit for the sign, you'd have to submit it to
7 our office and then we'd have that on the file.

8 But anyway, you have conceptual parking and other
9 diagrams. I'm not sure which one exactly was the one that
10 Staff used to then add the sidewalk area. Maybe you do have
11 this, let's see. Future walkway. Is this Figure 1,
12 parking, in that exhibit, part of Exhibit 35, is that any
13 different from the one in the Staff, other than the fact
14 that they made theirs blue?

15 MS. WEISER: No, it's not.

16 MR. GROSSMAN: All right, maybe we could use that
17 as the -- if it's exactly the same. Well, I guess theirs
18 also has color coded the parking area, which you then have
19 that on the next page, but you don't have the walkway in
20 there. So I guess it would be helpful to have one that
21 combines both the way Staff did it.

22 MS. WEISER: Okay.

23 MR. GROSSMAN: Now, the other photographs in
24 Exhibit 14, they're not captioned. So is there anything
25 that describes those photographs in the record now?

1 MS. WEISER: We describe the inside of the home in
2 the application. Those pictures were provided to just give
3 the Technical Staff and yourself just a better idea of what
4 the inside of the home would look like.

5 MR. GROSSMAN: Okay.

6 MS. WEISER: They're not captioned.

7 MR. GROSSMAN: Why don't we have you identify, and
8 actually, rather than my marking it, I'll let you mark it,
9 caption in these photographs on here, and you say out loud
10 what they are as you do so. This is on Exhibit 14.

11 MS. WEISER: Would you like me to approach?

12 MR. GROSSMAN: Yes. And then what we'll do is,
13 just mark each page in here, a, b, c, d, etcetera, so we can
14 identify these better, and then say what they are. You also
15 have some photographs, I see in Exhibit 13, mostly external,
16 but some internal, and you could do the same for these, if
17 you would, Ms. Weiser.

18 MS. WEISER: So page 1A.

19 MR. GROSSMAN: Yes.

20 MS. WEISER: Okay. Page 1 --

21 MR. GROSSMAN: Well, it's not 1, it's whatever
22 that exhibit number is.

23 MS. WEISER: Exhibit 14.

24 MR. GROSSMAN: So it'd be 14A.

25 MS. WEISER: 14A, the first picture is the

1 interior living room area.

2 MR. GROSSMAN: What floor is that on?

3 MS. WEISER: On the ground level of the home.

4 MR. GROSSMAN: Is that what you call the first
5 floor on your plan or?

6 MS. WEISER: We generally all it the basement.

7 MR. GROSSMAN: Pardon me?

8 MS. WEISER: Basement.

9 MR. GROSSMAN: So that's part of the --

10 MS. WEISER: That is part of the daycare. These
11 are all photos of the daycare here.

12 MR. GROSSMAN: Oh, okay.

13 MS. WEISER: The next picture that you'll see,
14 Exhibit 14B is the double entry to the daycare facility.

15 You'll notice on Exhibit 14C, this is our planned sleeping
16 area for the children. All this space is open right now.

17 You'll see another picture of that space from a different
18 angle, Exhibit 14D. There's also a closet area for storage
19 there. This is again another angle coming in from the
20 stairs, Exhibit 14E, just coming into the daycare if you
21 were to come through the main level.

22 MR. GROSSMAN: All right. You didn't have an E
23 already?

24 MS. WEISER: I don't believe so. I believe the
25 last was D. Because A, B on the first page, C, D on page 3.

1 Page 4 we're on Exhibit E was the entry from main floor.
2 This also shows the windows. Exhibit F, this shows the
3 hallway. You'll notice on the next page, Exhibit 14G, this
4 shows the bathroom area, and additional sink and stairway.
5 Below it you'll see another photo, Exhibit 14H, it shows the
6 hallway and another window. It looks like some of the
7 pictures are repeated. The pictures are repeated on the
8 next two pages. So Exhibit 14I is a repeat photo of --
9 would it be easier to take them off the record.

10 MR. GROSSMAN: It would be if they're just
11 identical and just happen to be copies submitted.

12 MS. WEISER: They are.

13 MR. GROSSMAN: We don't need them.

14 MS. WEISER: So the next two pages we've remove
15 from the record. And on the last page, this is just a
16 sample picture of the outdoor area.

17 MR. GROSSMAN: That would be a play area?

18 MS. WEISER: Uh-huh. The play area. And that
19 would be Exhibit I or Exhibit 14. As you requested, I'm also
20 pulling now Exhibit 13 which shows the exterior of the home.
21 Exhibit 13A. This is showing the left -- I'm sorry -- the
22 back play area of the home, the rear play area. Exhibit 13B
23 shows the front of the home. Exhibit 13C shows another angle
24 of the outdoor play area. You'll notice that we have a large
25 fenced in yard for the kids. Exhibit 13D shows another angle

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1 of the front of the home. And again, Exhibit E for Exhibit
2 13. I would suggest we remove the picture below which is an
3 interior photo. I understand this exhibit is for the
4 exterior photos. And there's repeat photos on the next two
5 pages.
6 MR. GROSSMAN: Okay. Remove them too, please.
7 MS. WEISER: I'm going those both to you now,
8 thank you.
9 MR. GROSSMAN: Great. Thank you. Was there a
10 landscaping plan that you submitted? I see pictures on page
11 18 of the Staff Report showing existing landscaping in
12 Figures 13 and 14, and of course there were some landscaping
13 parking waivers requested.
14 MS. WEISER: Exhibit 6 speaks to the lighting and
15 landscape plan, which we worked with Technical Staff to
16 develop.
17 MR. GROSSMAN: Yeah, okay, I see that, Exhibit 6.
18 And is that the final plan after going through the Staff
19 review?
20 MS. WEISER: Yes.
21 MR. GROSSMAN: Now, I notice it also designates
22 location of lighting. Are there any plans to change the
23 external lighting?
24 MS. WEISER: We are going to based on one of the
25 Staff recommendations, add lighting along the pathway we'll

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1 be adding to the home. We have currently lighting, which I
2 don't believe is in the application, which was added
3 recently along the existing driveway.
4 MR. GROSSMAN: Okay.
5 MS. WEISER: Just extra lighting. There's also a
6 light in the front of the home and at the entrance to the
7 daycare that's currently there.
8 MR. GROSSMAN: Okay. You should submit then an
9 amended landscaping and lighting plan to show whatever the
10 lighting would be after you finalize that.
11 MS. WEISRE: Okay, with that Staff recommendation
12 included?
13 MR. GROSSMAN: Because you don't want the
14 Department of Permitting Services to come along and say this
15 is not on your plan.
16 MS. WEISER: We will submit an amended landscaping
17 and lighting plan that reflects the Staff recommendations
18 and outside additional lighting.
19 MR. GROSSMAN: Okay. Under the zoning ordinance
20 lighting is not reviewed unless it's new or replacement of
21 fixtures. This would be some new lighting, so we would have
22 to review that. One of the issues that applies in
23 residential areas is that you must not exceed 0.1 foot-
24 candles at the property lines. Or at least the side and the
25 rear property lines. And you shouldn't be reflecting light

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1 into the neighbor's property, so that any lighting that you
2 add would have to meet those criteria and would usually --
3 lighting has to be screened in a way and addressed in a way
4 that it prevents that leakage of lighting that would disturb
5 the other neighbors. So, I just wanted to make sure you're
6 aware of that when you select whatever lighting fixtures you
7 are selecting.
8 MS. WEISER: Right. And to clarify, we are hoping
9 to do ground solar lights so that they do not disrupt the
10 neighbors and meet those requirements.
11 MR. GROSSMAN: All right. So the only new
12 lighting you'd be adding would be those ground solar lights?
13 MS. WEISER: Correct.
14 MR. GROSSMAN: Is there any other evidence you
15 wish to present before we ask Ms. Rice for her comments?
16 MS. WEISER: There is one more piece of
17 information, which I apologize. I noted we were okay with
18 all the recommendations that were currently on the Staff
19 recommendation list, page 2 of the Staff Report. Item No. 7
20 is something that was added pretty recently to some of the
21 recommendations we had discussed with them, and it involves
22 providing one long term weather protected bicycle parking
23 space on site. The exact location and type of bicycle space
24 should be coordinated with MCDPS prior to issuance of a use
25 and occupancy permit for the proposed use. We would like to

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1 dispute that one recommendation. We have plenty of areas
2 for bicycle parking, and we feel that it will add extra time
3 as well as money to this process to specifically work on
4 this piece in getting a designated space. We can allow the
5 bicycles both inside the home and we have a garage facility
6 and a very large driveway area. Also, the lack of sidewalks
7 on Fernwood Road, we don't expect to have a lot of
8 bicyclists with their children coming to the daycare.
9 MR. GROSSMAN: What was the number of that
10 condition again?
11 MS. WEISER: Condition 7. Also we had, in the
12 beginning, opening statement addressed Staff recommendation
13 12(d).
14 MR. GROSSMAN: Yes.
15 MS. WEISER: Is that something that we can discuss
16 at this time?
17 MR. GROSSMAN: Sure. Before we leave 7, that
18 calls for a weather-protected bicycle parking space on the
19 site. Do you have that --
20 MS. WEISER: Yes.
21 MR. GROSSMAN: Perhaps when you submit these other
22 items to Staff, you can address that as well. So let's hear
23 their response to whatever you suggest before I make a
24 decision on that.
25 MS. WEISER: Okay, thank you. 12(d) was something

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1 that the Planning Board suggest that we speak with you about
2 some alternatives for. They had asked that we mark and
3 stripe each individual parking and loading space, and as I
4 understand it, their reasoning was to make sure if the
5 parent was coming into the home, their care would not be,
6 you know, a foot forward or something that would cause an
7 issue.

8 MR. GROSSMAN: Right, it's a safety issue because
9 you have your access point that's adjacent to the marked
10 parking spaces.

11 MS. WEISER: Absolutely. And so if you look at
12 the figure that they have in their Staff Report regarding
13 the parking on page 8, you'll notice that the parking that's
14 designated for staff, which will be there regularly on a
15 daily basis, is set so, you know, if they were to pull
16 forward or back at all, you know it's really already in
17 place. Having those lines there are not, we don't feel are
18 not going to significantly impact where staff parks their
19 vehicles. We expect they'll have a good understanding of
20 that. The parents are actually coming in and out on the
21 interior of the U, so if one were to pull up an extra foot
22 or the other to be behind a foot, there's plenty of space
23 both in front and behind to accommodate for that. We feel
24 that the marks on the driveway itself will take away from
25 the residential feel of the home then unnecessarily. We

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1 understand there's concern from Mr. Reed, and we want to
2 make sure that we try to keep that neighborhood look. We're
3 already going to be adding a one-way sign to make sure that
4 it's safe. And so by adding the stripes as well, we just
5 think it unnecessarily takes away from that residential feel
6 of the home. We think we can meet those same safety
7 requirements.

8 MR. GROSSMAN: Is there any way to demark these
9 parking spaces in a way that would not detract from the
10 residential look? So if you didn't have white lines
11 perhaps, is there some other way that you are suggesting
12 that that could be done so that people wouldn't -- it would
13 be clear to people where they're supposed to be parking and
14 so on.

15 MS. WEISER: We can clearly speak with our staff
16 and make sure they understand exactly where they're supposed
17 to be parking. And their spots are really the ones where if
18 they were to go up or backwards it would cause an issue on
19 site. With the parents, again, there's plenty of space open
20 and before, and most parents come in on a daily basis, so we
21 can speak to the parents in that agreement we're creating
22 with them, to make sure they understand exactly where those
23 spots are.

24 MR. GROSSMAN: But I'm talking about rather than
25 oral communication or in addition to oral communication, I'm

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1 talking about some physical marking that would not be as
2 distracting as a full stripe that would demark the spaces.
3 Maybe a little indication on the end of each spot rather
4 than a full stripe that would have a less residential
5 appearance.

6 MS. WEISER: Sure. That's something that we could
7 do, and hopefully in a color maybe that's similar to the
8 actual driveway?

9 MR. GROSSMAN: Right. Because people pulling in
10 would see that, whereas from the street it would be less
11 evident. But when they're pulling in, they could see a
12 green mark or whatever it is.

13 MS. WEISER: That's a very reasonable solution, so
14 we'd be happy to do that.

15 MR. GROSSMAN: Okay. You could show that on your
16 site plan by the way.

17 MS. WEISER: Okay.

18 MR. GROSSMAN: Because I think there should be,
19 for the safety sake, should be something that assures that
20 people know where the end of the spot is, and where the edge
21 of the spot is.

22 MS. WEISER: That's very reasonable.

23 MR. GROSSMAN: All right. Anything else you
24 wanted to present?

25 MS. WEISER: There's nothing else to present. I

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1 just want to close in saying again, we know personally about
2 a very strong demand in the community for this. This is
3 something I took interest in, my husband and myself as
4 owners of the home. We moved to Bethesda area because I'm a
5 Montgomery College teacher. I'm in the community and I
6 wanted to be closer to the community. We're now expecting
7 our first child and we need to make sure we had a place for
8 that child to go, and so that was a self-interest in
9 developing the daycare center.

10 Having my sister have a nearby daycare, lots of
11 advice and expertise, and that daycare has a very good
12 reputation, and has for some time. We struggle to find new
13 locations to help our existing clients, and potential
14 clients who are looking for care and just don't have a place
15 to take their children. A waitlist full of infants, parents
16 who are working, looking to find a provider. And so we're
17 really hoping that you do approve this conditional use so
18 that we're able to provide that service in our home. Thank
19 you.

20 MR. GROSSMAN: All right.

21 MS. WEISER: I would like to allow, if it's okay
22 with you, my sister as well the opportunity to speak.

23 MR. GROSSMAN: Certainly.

24 MS. HANLON: Hi, again, my name is Leah Hanlon. I
25 own Lilly Pads Child Care in Bethesda.

1 MR. GROSSMAN: You should state your address for
2 the record.

3 MS. HANLON: It's 9913 Old Georgetown Road,
4 Bethesda, Maryland 20814. I've been operating for over
5 seven years. In that time, there's been an extreme demand
6 for infants. I constantly have a waitlist and the people
7 sit on it for usually at least a year to two years. By the
8 time a spot opens up, they've typically found care either
9 from a nanny or a center, or some other option. I'm well
10 aware the county has been starting to strike down more on
11 unlicensed childcare. We are a licensed childcare that has
12 had a very good track record. I employ staff. I have
13 people from Montgomery College come in as volunteers to get
14 experience. Many of the children who come to my daycare
15 live in the neighborhood, which happens to abut her
16 neighborhood. So it's the same group of children. Pretty
17 much everyone on my waitlist would be willing to go to her
18 location, and I have 30 people. And I actually brought it
19 with me just to show you how many people are on. These
20 people pay to get on the list in hopes that a spot will open
21 up, because they really want this care. So, I think to be
22 able to offer the type of care that they're looking for
23 versus yes, the centers have two year long waitlists also,
24 but a lot of the parents coming to my daycare and that would
25 be going to her daycare, are looking for a more intimate

1 personalized experience, and that's why these smaller
2 daycares I really think are a benefit to the community. But
3 there's also something to be said versus a nanny, because
4 it's a more professional daycare where the state licenses
5 it, make sure you have certain requirements met. So I
6 really think this would be a great addition to the
7 community. I think neighbors would appreciate it. And it's
8 on -- the way her house goes is actually a great way for
9 commuting into Bethesda, near NIH, and all these different
10 places, so. I just want to say I support this and I've been
11 helping with it, and I think it would be a great addition to
12 the community.

13 MR. GROSSMAN: All right. Ms. Weiser, I take it
14 you don't want to brutalize your sister with cross-
15 examination?

16 MS. WEISER: Not at all. No. I fully support.
17 And I would add to it, I think having the -- as a teacher,
18 the fact that she has an experience with the kids allowed to
19 learn from each other, both younger and older kids. She
20 offers a great curriculum including a music class, and a
21 themed week. Those are the kind of opportunities I think a
22 lot of parents are looking for. And in the centers, you
23 just don't get that same experience. Thank you.

24 MR. GROSSMAN: All right. Ms. Rice, would you
25 step forward, please. Can you state your full name and

1 address?

2 MS. RICE: My name is Robin Rice. My address is
3 5913 Wildflower Court in Derwood, Maryland.

4 MR. GROSSMAN: All right. You've already been
5 sworn in. And I should have given you the opportunity to
6 cross-examine these ladies too. Do you have any cross-
7 examination questions for them?

8 MS. RICE: No. Just a comment. I'm thrilled to
9 have young women trying to do what I did a long time ago.

10 MR. GROSSMAN: All right. You may testify as you
11 please.

12 MS. RICE: In my special exception, the first one
13 out of six, I had an opposition neighbor and he testified
14 that I was doing childcare without a license and he
15 presented evidence with pictures of children and me in the
16 front of my property in Bethesda. They were all gorgeous
17 pictures of my own children. Okay. We spent a considerable
18 amount of time going over the fact that I can care for my
19 own children on my own property in the front yard. While
20 this is ancient history, one of the only ones that I know
21 that has actually gone through not just a special exception,
22 but gone through two actually being licensed for the 13 to
23 30 category, has had an issue with one of her neighbors with
24 the same issue that children were in the front part of the
25 property and not in the backyard where the conditional use

1 requires them to be, and again, it was families and friends.
2 It was not clients' children. My special exception has the
3 word client children in it, and I think that's very helpful
4 when you've got five government agencies that are inspecting
5 you trying to make sure you're in compliance with
6 everything. If you use the words clients' children in the
7 conditional use.

8 MR. GROSSMAN: Okay.

9 MS. RICE: Okay.

10 MR. GROSSMAN: So, in other words, when there's a
11 limit placed on the number of children you're saying it
12 should be the number of client children so as to distinguish
13 between the children whose parents are running the show?

14 MS. RICE: Correct. Because you don't lose your
15 residential rights to have children come to your property.
16 You could still have kids come over. You could still do boy
17 scout, cub scout meetings. You can have parties. You can
18 have weddings. The sister can come over to Lilly Pad's with
19 her baby, and say hi without being counted as a client
20 child. And unless the hearing examiner writes down that
21 word client child, the other government agencies are going
22 to wonder whether you meant that it's okay for her sister to
23 come over with her baby and say hi.

24 MR. GROSSMAN: I understand. Nobody has suggested
25 that before, and I think that's an interesting idea.

1 MS. RICE: Another thing is when you write down
2 the number of children, the wording at one time is pretty
3 important because if you have, for example, Jill coming in
4 the morning as a client child, and Mary comes in the
5 afternoon as a client child, that can be looked on, okay,
6 well, that's two kids.

7 MR. GROSSMAN: Right. I understand.

8 MS. RICE: When we're looking at one space. In
9 the non-residential staff member is very important too when
10 you're limiting the number of staff because the sisters
11 might have each other on the staff member list, the
12 husband's might be on it, the cousins, the children, you
13 know, the staff member list when you look at the names can
14 be quite extensive, for substitutes et cetera. But the
15 number of non-residential staff members that are on the
16 property is a good verbiage to use.

17 MR. GROSSMAN: That's usually designated because
18 clearly they come either by public transportation or by car,
19 and they're occupying parking spaces creating traffic. So
20 that's usually designated in those.

21 MS. RICE: Correct. Another case that I tried to
22 make some comments in was -- the hearing examiner was
23 receptive. When you're looking at the plan of operation,
24 we're thinking how many staff members we need to care for the
25 children and for the MSDE regulations. And, I'm presuming

1 the number is three staff members that are needed. If one's
2 a residential staff member, you only need two. But if the
3 resident person is going to the doctor's, you need three.
4 But from a zoning perspective, you really need to have
5 permission for four, because what happens to be in compliance
6 with the MSDE regulations is the staff member that's coming
7 to the property to work as a second shift is going to park
8 their car, go into the building, go into the area, go into
9 the divided room, take over caring for the children and then
10 the other person is going to be coming out. So, in one of
11 the special exceptions the hearing examiner allowed a five
12 minute overlap in case there was a --

13 MR. GROSSMAN: So this point is some overlap
14 should be allowed when you have a part-time non-resident
15 assistant --

16 MS. RICE: Correct. Because if one of the
17 conditions is that you must comply with the state
18 regulations, and the state regulations will not allow the
19 staff member in a shift change to be counted if they're in
20 the driveway or the staff member that's in the building to
21 leave until the other one's actually in the building. So in
22 one of the special exceptions the hearing examiner wrote up
23 a five minute overlap.

24 MR. GROSSMAN: Okay.

25 MS. RICE: To make it a little bit more helpful,

1 the staff members need to be regulated and conditioned by
2 the hearing examiner because they create parking. But non-
3 resident staff members that don't have cars have a
4 negligible effect on the traffic and parking, zoning
5 conditions.

6 MR. GROSSMAN: Right.

7 MS. RICE: A really good permission would be to
8 allow additional staff members without cars. As long as
9 they don't have a car, let us have some more. We can take
10 better care of the kids. We can offer people part-time
11 jobs. We can allow high school students to work for a
12 couple of hours, if you can just put that condition that
13 staff members without cars are permitted.

14 MR. GROSSMAN: There was a concern in the Staff
15 Report that although they are very close to the intersection
16 of, what is it, Fernwood and Greentree, that there's no
17 sidewalk that makes that connection, and that might be a
18 hazard if we were having staff members walking from a bus
19 stop for example there without a sidewalk.

20 MS. WEISER: For the record, if we can note though
21 that there is an application for a sidewalk in progress, and
22 so we hope that's something that the county will put in
23 place soon. It's been done basically up to our neighbors
24 yard line and not through to ours.

25 MR. GROSSMAN: Up to your northern neighbors yard

1 line?

2 MS. WEISER: Up to our -- the northern neighbors
3 it's missing, and the southern neighbors it's missing. The
4 one next to the southern neighbors it's missing as well.
5 However, at that point then the sidewalk begins.

6 MR. GROSSMAN: Okay.

7 MS. RICE: A large portion of the extra staff
8 members that we might like to be able to have come aren't so
9 much paid adult people as they are high school students that
10 might be popping off the school bus to be able to help out a
11 couple of hours and be a staff member that way.

12 MR. GROSSMAN: But that was still a concern about
13 where the bus stop is versus where no sidewalk connection.
14 I don't know where the school bus stop is.

15 MS. WEISER: The school bus, I believe, would stop
16 in front of the home, correct?

17 MS. RICE: Yeah.

18 MS. WEISER: A school bus she's saying, public
19 transportation. I understand your concern.

20 MR. GROSSMAN: Right. I don't know. Where does
21 the school bus stop?

22 MS. RICE: They stop in different sections and let
23 the kids out all over the neighborhood.

24 MR. GROSSMAN: Right. I'm just saying that and
25 more specifically in this case, do we know where the school

1 bus has been stopping?

2 MS. WEISER: I don't have a child attending school
3 right now at my home.

4 MR. GROSSMAN: You're working on it.

5 MS. WEISER: So I don't know for sure. As I
6 understood it, it would be in front of the home.

7 MS. RICE: It's just a comment that that has no
8 negligible impact from a zoning perspective to allow staff
9 members that don't have cars to be able to come. You could
10 write something up about how they're getting there with a
11 bus versus a school bus. And the older siblings also can
12 come during the summer and help out. And then, there's not
13 even another car and they get dropped off in the driveway.

14 MR. GROSSMAN: I understand your point, Ms. Rice.

15 MS. RICE: One of the conditions frequently in the
16 conditional use or special exceptions is limiting the number
17 of children outside at one time. We cannot be in compliance
18 with the MSDE regulations, which require us to be in
19 compliance with the fire regulations, of all of the children
20 cannot go outside at the same time because of fire drills.
21 We're required to do a fire drill once a month, and they all
22 have to go out. So if zoning doesn't allow that, then we
23 have to make a decision of being in compliance with zoning
24 and not letting them all out. We're not being in compliance
25 with the fire marshal.

1 MR. GROSSMAN: I understand.

2 MS. RICE: Okay.

3 MR. GROSSMAN: So there will be a limit on outside
4 play except fire drills they can all go out is the idea.

5 MS. RICE: I'm very passionate personally about
6 limiting outside play, which this is their hearing, okay,
7 and they're perfectly willing to divide the kids into the
8 maximum of 10. I personally think it's sutortious (phonetic
9 sp.) because I -- and even from a zoning perspective what
10 you want to do is care for siblings and the MSDE regulations
11 prohibit siblings from being in the same room because of
12 financial feasibility. The infants are together in one room
13 and the pre-schoolers are in another room.

14 What's so attractive to the parents of that
15 residential childcare is that the two rooms usually just
16 have baby gate dividers, and you can see your brother on the
17 other side of the gate. Okay, but you can't hug them, you
18 can't kiss them, you can't play with them because you've got
19 to be divided by this dumb baby gate all day long when
20 you're inside. When you go outside though, the kids are
21 allowed together, and the older brother can push the baby on
22 the swing, play with him, give him a kiss, that kind of a
23 thing.

24 And the way that the hearing examiners conditions
25 in previous hearings except for mine, I can take them all

1 out, is restrictive. And I just keep envisioning this
2 little kid with his nose on the glass window looking at the
3 brother outside, and not being able to go outside and play.
4 You've got Easter egg roll. You're hiding the Easter eggs
5 and you've got to keep half the kids inside watching the
6 other ones find the Easter eggs. It's just a little --
7 there's got to be a better way.

8 MR. GROSSMAN: Well, I understand your point. I
9 think it's food for thought. On the other hand, the balance
10 against that is the additional noise that's made by
11 additional children outside, and we have to take into
12 consideration the neighbors.

13 MS. RICE: Absolutely. And I totally agree with
14 that. I currently live by a neighbor who has his radio on
15 all day long, seven days a week. I love the music
16 sometimes, but it is always, always on. I think if you
17 could give -- and one of the conditional uses is recent, had
18 some sort of an exception that five times a year you could
19 do -- everybody could go out. You're planting the garden, I
20 think was one of the issues in one of them. Where everybody
21 could go out to do this event of putting the plants in the
22 garden. Okay. Whether we're required by regulations for
23 the kids to go outside, and if the weather is bad, you might
24 only have a very small window of time to get the kids out to
25 be in compliance with MSDE.

1 I think a good balance between lots of kids
2 outside and doing them in groups is that if you have them
3 all go outside at the same time, that the amount of time
4 that you're outside be reduced. For example, this plan is
5 for the two groups to go out in separate groupings, which is
6 fine and should be allowed. But, if they're doing it in
7 separate groupings and the MSDE regulations require a time
8 period, I don't know specifically, but let's say it's half
9 an hour, 45 minutes that they need to be outside twice a
10 day. Well, if you do that in two groups, the neighbors got
11 noise for an hour and a half twice a day, that's three
12 hours. If you allow them to go outside all together for the
13 45 minutes or whatever an appropriate amount of time would
14 be, now you've got peace and quiet completely, and you've
15 only got about an hour and a half of the children making
16 noise.

17 I think if you allowed either option for the
18 providers, let them all go outside because we're doing
19 Easter egg hunt, or the weather is bad, or let's do it in
20 groups today, or let's do a little bit of an overlap. But
21 to completely restrict the kids from going outside all
22 together, we'd be out of compliance with fire drills. We
23 might be out of compliance because of the weather. And I
24 just think it's real sad.

25 MR. GROSSMAN: All right. The fire drills I

1 understand. That I understand your point on the remainder
2 of that is, I guess there's a trade off between the amount
3 of time outside and the number of children. What is the
4 state requirement for outside play?

5 MS. RICE: I don't like quoting things without
6 really reading it but, they have to go outside twice a day,
7 and it's kind of an appropriate amount of time. And just
8 the general flow for childcare is that the parents come in
9 and we're inside between 8:00 and 9:00 or so. Then we check
10 the weather. If the weather is going to be really hot or if
11 it's raining now, we might go outside first and then come in
12 and do table time, pre-school activities, or we might do the
13 pre-school activities first because it's raining or it's bad
14 weather now, and then go back outside.

15 But pretty much between 9:00 and 11:00 or so, that
16 two hours, you want to be outside for about half that time.
17 So about an hour. And you want the kids to be inside for
18 about an hour, because you've got a lot of educational
19 requirements and just a good facility that I think these
20 ladies are going to do, and are doing, requires them to come
21 inside and do their circle time and their reading, and their
22 arts and their crafts, and that type of an activity.

23 So the 9:00 to 12:00 time period is really cut to
24 9:00 to 11:00 for the outside time, depending on weather.

25 MR. GROSSMAN: Right, but what I was trying to get

1 at is, let's say that the state required them to be outside
2 for at least an hour a day. Then the question is, does that
3 become two hours of outside time if you split the group up,
4 or is it better in terms of the neighborhood to have one
5 hour with all the kids? So I just wondered what that amount
6 of time was in the state regulation, and perhaps Ms. Weiser
7 when you submit your additional submission, you can let me
8 know what that time requirement is.

9 MS. RICE: I don't think there's a specific amount
10 of minutes that they're required, but it's twice a day, I
11 think.

12 MS. WEISER: There's not. I would say like from
13 this point, I agree with you. Like everything you're saying
14 makes so much sense, you can tell you've been doing this a
15 long time.

16 MR. GROSSMAN: But I'm going to give you an
17 opportunity to respond after Ms. Rice finishes, and to
18 cross-examine her, if you wish.

19 MS. WEISER: Okay.

20 MS. RICE: I just wish you would consider giving
21 the providers the option of everybody go outside for a
22 shorter period of time, and let's divide them into groups on
23 other days. But let the provider have the option of which
24 one to do, because it is a very weather -- that we have to
25 take a look at.

1 MR. GROSSMAN: Right. I certainly will consider
2 it, depending on what they say after you finish your
3 testimony.

4 MS. RICE: Okay. This is theirs, not mine. Some
5 of the conditional uses that I've looked at don't -- the
6 hearing examiner doesn't understand that well the
7 regulations as far as group sizes are concerned. Because
8 this application is for 15 children, you would not require
9 them to have fifty percent of the children go outside in two
10 groups because that would be 7 and a half children. It's
11 impossible. But when you're looking at the MSD --

12 MR. GROSSMAN: Or illegal probably.

13 MS. RICE: But the groups sizes for childcare is a
14 three to one ratio for infants as a staff member. But the
15 group size is six. And it's kind of like having a mom and a
16 dad. They have a qualified teacher and an aide, the
17 qualified teacher has to be with the children in a group.
18 So, the group of six infants that I believe they're planning
19 on having would have a qualified teacher and an aide. That
20 group has to move together in and out. If the aide is 18
21 years old or older, they are allowed to take half of the
22 children outside, the staff ratio of three, and leave the
23 three babies inside to sleep with the other staff member.

24 But if the staff member is under the age of 18,
25 they cannot take half of their group, the pre-school group

1 of 10. They can't take half of them outside because they
2 can't be alone with the children. They have to be age 18.

3 MR. GROSSMAN: So how are you applying this
4 comment to whatever we put on as a condition?

5 MS. RICE: That when you're looking at children
6 going outside, you can't look at 50 percent of an odd
7 number. It doesn't work. And the movement of the children
8 to be in compliance with MSDE is by group, because the group
9 has a qualified teacher and an aide, and sometimes they
10 cannot be split up, depending on the age of the aide. And
11 it's better for them to be together. So they're grouping is
12 six infants and I wish they would amend their application so
13 that they could do 10 pre-schoolers, because that's the
14 group size at staff ratio for that. That would be 16 kids
15 instead of 15. But again, it's their application.

16 MR. GROSSMAN: It's a little late to amend it at
17 the -- I mean it can be amended at the hearing, but then I'd
18 have to send out notice and so on, so that people could
19 respond if the child size changed and so on.

20 MS. RICE: Landscaping and fencing is one thing --
21 is a one time expense and I think that is one way that you
22 can make neighbors happy, or at least try to, versus --

23 MR. GROSSMAN: Before you leave this -- I'm not
24 sure how you resolve your last comment into some
25 modification of a condition. The condition that's

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1 recommended here by the Technical Staff is no more than 10
2 children are permitted to play outdoors at any one time.
3 That allows a group of nine or 10 in each case. So, I'm not
4 sure how your last comment affects that condition.
5 MS. RICE: That is fine because they're using the
6 biggest group size that they have as one of the
7 possibilities, instead of doing the 50 percent.
8 MR. GROSSMAN: Right.
9 MS. RICE: So that's fine.
10 MR. GROSSMAN: Okay.
11 MS. RICE: It works just fine, except for the fire
12 drills and the poor kids that can't be with their siblings.
13 MR. GROSSMAN: Well that's -- the fire drill is a
14 legal issue I think that has to be addressed, but the other
15 is more of a social issue.
16 MS. RICE: My brothers had to go to boarding
17 school for four years in a different country, so I've been
18 very passionate about sibling separation. So excuse me on
19 that one. The gentleman, Eric, who is in opposition, uses a
20 point that the other daycare meets the demand for the
21 neighborhood. If that is accurate, then these ladies when
22 they go through the entire process and get the license won't
23 be able to get any customers. So, then everything is kind
24 of irrelevant.
25 MR. GROSSMAN: Well, it would moot it, but they've

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1 submitted testimony which refutes it, so.
2 MS. RICE: Correct. But if --
3 MR. GROSSMAN: I don't think he had any direct
4 evidence of that assertion.
5 MS. RICE: Correct. But, the future is going to
6 tell whether he is correct with his complaint or the ladies
7 are correct with theirs. Okay. When I -- I went through
8 the special exception process six times, and one of the
9 things that never seems to be mentioned is what the positive
10 parts of a neighborhood to have childcare in the
11 neighborhood. One of the people in opposition to my first
12 application in Bethesda, she lived a block over, and it's a
13 bit morbid, but she was killed and nobody knew it for six
14 days. Because the peaceful and quiet enjoyment and privacy
15 of the Bethesda neighborhood was so strong, until she didn't
16 show up in church, we didn't know that she'd been killed.
17 My next door neighbor, when I was doing family
18 daycare there, she --
19 MR. GROSSMAN: Well, I don't think it's -- it's
20 not disputed that there's a benefit to neighbors to having
21 childcare. It's part of the master plan recommendations,
22 and it's not really disputed that there is a benefit to
23 having childcare facilities in neighborhoods.
24 MS. RICE: I just wanted to try to get into the
25 record the fact that neighbors can end up changing their

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1 minds when they find out later on about the benefits. My
2 one neighbor had a tree fall from -- one neighbors tree fell
3 through my shed that the neighbors didn't like, and then
4 through the roof of her house. Because I was home, because
5 I was a childcare provider, because I had parents picking up
6 because we knew that there was going to be -- a tornado went
7 through Bethesda, it was decades ago. There were adults
8 around. We got her from her house, into our house. I had
9 plastic stuff for the arts and crafts, we put it on top of
10 the roof of her house. We took care of her. We were there.
11 We were home. It's a benefit.
12 MR. GROSSMAN: Right. I understand your point,
13 but I think the connection is too attenuated between the
14 fact that you have a childcare and somebody would be home,
15 and concluding that if you didn't have a childcare they
16 wouldn't be people home in the neighborhood. So, I don't
17 know if I can reach any kind of global conclusions from
18 that. There are other benefits from childcare.
19 MS. RICE: That's fine. Statistically we're
20 talking about the noise of children and the affect on the
21 property. If you statistically take the 365 days of the
22 year, you subtract the weekends which you will prohibit, and
23 they don't want I'm presuming to care for children, and you
24 subtract the 10 federal holidays, a couple of snow days, the
25 day after Thanksgiving, Christmas, day after Christmas, I

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1 think the statistic comes to 68 percent of the time,
2 calendar days that the use is actually in operation. And
3 that can be cut in half because usually the hours are about
4 12 hours where we're permitted to care for children.
5 MR. GROSSMAN: You cite that statistic as evidence
6 that the imposition on the neighbors is not that great? Is
7 that what you're saying?
8 MS. RICE: It's 68 percent. Statistically,
9 factually 68 percent of the time.
10 MR. GROSSMAN: Right. But is that the reason why
11 you reference that statistic?
12 MS. RICE: Yes. And I think that one is correct.
13 You did discuss the interior space of the facility. The
14 fire marshal ends up dividing the building or approving the
15 building in three different ways. One is called play, where
16 the kids are allowed to play. One is called napping. You
17 have to have a smoke detector where the kids nap. And the
18 third one, they like to right down off limits. I don't like
19 them writing down off limits. I like them to write down
20 something called walk through. The off limits makes a whole
21 lot of the sense, for example, in your garage. Children
22 don't belong in the garage playing or sleeping, it should be
23 just off limits. But, if there's an emergency you need to
24 take the child through the garage to get into the car. If
25 there's a hail storm, maybe taking the children through the

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1 garage to get into the parents cars is the best.
2 MR. GROSSMAN: But this is a fire marshal issue.
3 It's not something I have any jurisdiction over.
4 MS. RICE: It's as fire marshal -- it's just
5 because you looked at the floor plan.
6 MR. GROSSMAN: Right.
7 MS. RICE: Okay.
8 MR. GROSSMAN: We have a floor plan in the file.
9 I don't make any decisions. Floor planning is also a
10 question regarding the amount of space required per child
11 under the state regulations. That's specified in the floor
12 plan, but we don't make any allocation of space as part of
13 any ruling we make.
14 MS. RICE: Okay. And my last comment is, there's
15 some -- some of the conditional uses do request social type
16 of activities, professional activities. I'm allowed five a
17 year, and I do CPR and first aide classes. Sometimes we
18 have the -- Santa Claus comes and the parents join us. It's
19 just something that I do. But I didn't see that in theirs.
20 But that's a nice thing to be allowed to do.
21 MR. GROSSMAN: Okay. All right. Do you wish to
22 cross-examine Ms. Rice?
23 MS. WEISER: I want to thank you for coming out
24 from the community to support us. We didn't know she'd be
25 coming today. But you made some good points. Thank you.

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1 There was just one comment I wanted to --
2 MR. GROSSMAN: Do you have any cross-examination?
3 MS. WEISER: No questions, no.
4 MR. GROSSMAN: Ms. Hanlon? Okay. You may reply.
5 MS. WEISER: We've been speaking a lot about the
6 noise and I can tell you, and I'm sure your Technical Staff
7 can attest to the fact that this is a busy intersection and
8 it's loud already. If you're on the Fernwood Road, you're
9 just going to have noise. I've been there about nine months
10 now, and I can say it's just loud. You know, there's
11 traffic coming through heading downtown, heading to
12 Bethesda, and going to 270, and those cars would easily out
13 do the noise coming from the children. On top of that, it's
14 a neighborhood community where there's children outdoors
15 playing all the time. There's cul de sac's where they have
16 big basketball hoops out and they're playing. And that
17 includes our neighbors that aren't supportive, which are the
18 ones directly next to our property. And so, you know, in
19 terms of the noise --
20 MR. GROSSMAN: They haven't submitted anything
21 indicating --
22 MS. WEISER: They have not. Verbally they've
23 stated that to me.
24 MR. GROSSMAN: Which is hearsay clearly, because
25 you're offering it to prove the truth of what's asserted

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1 therein.
2 MS. WEISER: Right. I just wanted to bring that
3 up about the noise.
4 MR. GROSSMAN: I would say, by the way, some
5 amount of hearsay is allowed in these administrative
6 proceedings. That kind of hearsay I am concerned about
7 allowing. I'll allow documents in that may contain hearsay,
8 that kind of thing. But I think this kind of, saying this
9 neighbor is in favor of it. To say you haven't received any
10 opposition other than Mr. Reed's is something different, and
11 I do accept that.
12 MS. WEISER: Thank you. That's understandable and
13 I respect that. And thank you for making that point. I did
14 just want to speak to the fact that it's a loud area
15 already, and so the level of noise from the children. We
16 made this recommendation hoping to get approval from you and
17 working with your Technical Staff by limiting the outdoor
18 play. Obviously, it would be preferable to allow all 15
19 children to be outside if that were the case, but we don't
20 want to limit the time they're allowed to be outside due to
21 some of the weather restrictions and things that Robin
22 stated.
23 MR. GROSSMAN: Okay.
24 MS. WEISER: There's a number of conditions here
25 that we --

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1 MR. GROSSMAN: So you would prefer a limit on a
2 number of children that can be outside rather than a time
3 limit?
4 MS. WEISER: Correct. If all 15 could be outside,
5 that's great. We've agreed to these recommendations and,
6 you know, we've been working with your staff for quite some
7 time trying to get this to be approved.
8 MR. GROSSMAN: Okay. And I certainly would make a
9 fire drill exception. Nobody has mentioned that to me ever
10 before.
11 MS. WEISER: Yeah, it didn't cross my mind either.
12 So, thank you Robin, good point.
13 MR. GROSSMAN: Is there anything further that
14 anybody wants to submit? I take it that you'd like to have
15 all the exhibits admitted into evidence?
16 MS. WEISER: Yes, please.
17 MR. GROSSMAN: And I hereby admit into evidence
18 exhibits 1 through 47 and their subparts, as well as the
19 additional submissions that you will be sending as a result
20 of our earlier discussions here. And as I recall from my
21 notes here, that would include the final site plan showing
22 the -- similar to what's on page 8 in the Staff Report, but
23 also showing the sidewalk there. As well as a response to
24 the Technical Staff regarding their stormwater management
25 permit issue. Of course, all of this would be submitted

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1 simultaneously to our office and to Technical Staff, and I'm
2 going to give them some time period to respond. An amended
3 lighting and landscaping plan. Also, your submission
4 regarding the bicycle issue in Condition 7. And so a final
5 exhibit 6, a final landscaping plan, let's see. Then you're
6 going to let me know what the time requirement for outdoor
7 play is by the state, if you can locate that. And you're
8 going to note on your landscape and lighting plan that the
9 lighting, the only additional lighting will be these ground
10 solar lights, which will be compliant with the zoning
11 ordinance. Was there anything else that we covered that you
12 were going to be submitting?
13 MS. WEISER: Not that I have, no.
14 MR. GROSSMAN: All right. How much time do you
15 want to submit it, it's really up to you.
16 MS. WEISER: One week.
17 MR. GROSSMAN: That'd be fine with me. So it's
18 June 3 now, so that would be by June 10.
19 MS. WEISER: Thank you, that works.
20 MR. GROSSMAN: And then we'll give Technical Staff
21 10 days to respond. So they'd respond by June 20. And then
22 I'm going to give you an opportunity, how much time do you
23 want to respond to whatever Technical Staff says?
24 MS. WEISER: I'm sorry. We misunderstood. We
25 thought that you were saying that the whole thing -- if

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1 there's anyway we can hopefully get it in sooner, maybe
2 Tuesday of next week. This has been a lengthy process
3 already. We're happy to get it in in the next few days.
4 MR. GROSSMAN: That's fine if you can do it. But,
5 if I change -- right now I'm announcing it at a public
6 hearing. I don't have to issue a notice about it. If you
7 change that, then I have to actually issue something formal
8 and that's, you know, expensive and problematic.
9 MS. WEISER: Correct.
10 MR. GROSSMAN: So, I just want to make sure you've
11 given yourself enough time.
12 MS. WEISER: Wednesday, June 8th, I believe is the
13 date, would be great.
14 MR. GROSSMAN: Okay, so by June 8, you'd submit
15 what you're doing, and then by let's say June 17, Staff
16 responds. And how much time do you want after that to
17 respond, if you wish to respond. You wouldn't be required
18 to respond, but if they said, if they were negative about
19 whatever you submitted, you might want an opportunity to
20 respond.
21 MS. WEISER: June 22nd, please.
22 MR. GROSSMAN: Okay. So by June 22nd, and the
23 record will close at the close of business on June 22nd.
24 Does that sound reasonable?
25 MS. WEISER: Yes, very.

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1 MR. GROSSMAN: Is there anything else that we need
2 to cover today?
3 MS. WEISER: No, thank you for your time.
4 MR. GROSSMAN: All right. Thank you. And thank
5 you, Ms. Rice for coming down here and sharing your
6 thoughts, they're very helpful. Okay. Then we are
7 adjourned.
8 (Whereupon, at 11:02 a.m., the hearing was
9 concluded.)
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1 C E R T I F I C A T E
2 DEPOSITION SERVICES, INC., hereby certifies that
3 the attached pages represent an accurate transcript of the
4 electronic sound recording of the proceedings before the
5 Office of Zoning and Administrative Hearings for Montgomery
6 County in the matter of:
7 Petition of Hannah Weiser
8 CU 16-07
9
10
11 By:
12
13
14
15 Keena Lukacinsky, Transcriber
16
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