OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:	*	
Natasha Romano d/b/a Warrior One Yoga	*	
Applicant	*	
	*	
Natasha Romano	*	
Casey Greenberg	*	
Rhonda Gaynor	*	
Scott White	*	
Jaimee Gniadek	*	
Sarah Herrington	*	
Desrene Sesay	*	
Deena Klopman	*	
Paul J. Yanoshik	*	
Sandra Thomas	*	
Leslie MacDonald	*	
	*	
For the Application	*	
	*	
Benjamin Klopman, Esquire	*	
Attorney for the Applicant	*	
* *		OZAH Case No. CU 19-06
Margaret Agresti	*	
Bhaskar Patel	*	
Elizabeth Carol Woodhouse	*	
Lauren Huber	*	
Jean Marie Huber	*	
Craig Edward Huber	*	
Joe Davis	*	
Ronald Daniellan	*	
	*	
Opposing the Application	*	
	*	
William Chen, Esquire	*	
Attorney for Ms. Woodhouse, Rodrigo	*	
Fuad Chuaqui, and Mr. and Ms. Huber	*	
* *		

Before: Lynn A. Robeson, Hearing Examiner

HEARING EXAMINER'S REPORT AND DECISION

I. STATEMENT OF THE CASE

Filed on November 7, 2018, Ms. Natasha Romano (Ms. Romano or Applicant) seeks a conditional use for a major home occupation to increase the intensity of her current low-impact home occupation of a yoga studio. Exhibit 1. Ms. Romano does business as Warrior One Yoga. Exhibit 6. The property is located at 12632 Falconbridge Drive, North Potomac, Maryland 20878, and is zoned R-200. *Id.*

OZAH scheduled a tentative hearing date of February 19, 2019, for which the Applicant requested a postponement to March 4, 2019. On January 29, 2019, OZAH issued notice for the March 4th hearing date. Exhibit 28. Shortly afterwards (on February 21, 2019), the Applicant added a parking plan and other items to the application. Exhibit 59. OZAH issued a Notice of Motion to Amend the application. Exhibits 59(c), 60. The Notice stated, "[p]lease also take notice that the parking facility proposed by the Applicant may require a waiver, pursuant to Zoning Ordinance §59.6.2.10, of parking space requirements under the Code." Exhibit 60.

Staff of the Montgomery County Planning Department (Planning Staff or Staff) issued its report recommending approval of the application on February 21, 2019. Exhibit 64(a). Staff based its approval on compliance with the following seven conditions (*Id.* at 2):

1. The maximum number of client visits per week is forty (40), and no more than ten (10) client visits per day (excluding deliveries customary to the residential use).

2. The permitted hours of operation for the home occupation are limited as follows:

Monday	9:15 a.m. to 10:30 a.m., 7:45 p.m. to 9:00 p.m.
Tuesday	None
Wednesday	9:15 a.m. to 10:30 a.m.
Thursday	5:00 p.m. to 6:15 p.m.
Friday	9:15 a.m. to 10:30 a.m.
Saturday	8:45 a.m. to 10:00 a.m.
Sunday	None

3. Up to five (5) vehicles visiting the home occupation may be parked on the lot at the same time and shall be parked only on the paved driveway area.

4. Applicant must advise visitors against utilizing neighboring driveways to maneuver vehicles.

5. All activities associated with the home occupation shall be conducted in the yoga studio area as indicated on the Applicant's site plan.

6. Music or other amplified sound associated with the home occupation must comply with Chapter 31B, Noise Control Regulations of the Code of Montgomery County Regulations.

7. The Applicant may employ up to one non-resident employee in any 24-hour period and must register employees with the Department of Permitting Services (DPS). If an allowed non-employee is on duty, a maximum of nine (9) clients are permitted at one time.

At the request of the Applicant, the Planning Board increased the number permitted visits by clients to 60 a week. The Board did not explain its rationale for the increase. Exhibit 64.

The March 4, 2019, public hearing proceeded as scheduled. Witnesses testified both in support of and against the application. Their testimony is summarized in this Report and Decision (Report) where pertinent. The public hearing was continued to April 29, 2019, and again to April 30, 2019. 3/4/19 T. 261; 4/29/19 T. 364. On April 11, 2019, the application was reassigned to the undersigned Hearing Examiner.[1] The Hearing Examiner requested the Applicant to file a traffic statement in accordance with Section 59-7.3.1.B.2.g of the Zoning Ordinance because one had not been submitted with the application. Exhibit 83. The Applicant did so on April 23, 2019.

Both sides submitted additional exhibits in advance of the public hearing. Exhibits 85-88. The April 29th and 30th, public hearings proceeded as scheduled. At the end of the hearing held on April 30, 2019, the record was left open for the Applicant to file a scaled drawing of the parking plan proposed, which had not been included in the application. 4/30/19 T. 182. It was also left open to receive written closing statements from both parties, to be submitted on May 21, 2019.

[1] The Hearing Examiner for the March 4, 2019, public hearing was Mr. Lutz Prager. The case was reassigned to the undersigned Hearing Examiner due to a serious illness in Mr. Prager's family. Exhibit 80.

Shortly after the hearing adjourned, those in opposition requested that they have 10 days to respond to the Applicant's Closing Statement. Exhibit 109. With agreement from both parties, the Hearing Examiner granted this request but allowed the Applicant an additional opportunity to submit a response to the Opposition's Closing Statement by June 7, 2019. Exhibit 116.

All post-hearing submissions were timely made and the record closed on June 7, 2019. Exhibits 119, 123, 124.[2] Due to the number of factual and legal issues disputed in this case, the Hearing Examiner issued an order extending the time for issuing her decision to July 22, 2019.[3]

II. FACTUAL BACKGROUND

A. Subject Property

The subject property consists of approximately 13,764 square feet. It is located in the southeast quadrant of the intersection of Falconbridge Drive and Falconbridge Terrace in the Potomac Chase subdivision in North Potomac. The subdivision is part of a larger development known as "Fox Hills North". Exhibit 7. The general location of the property is shown in the vicinity map in the Staff Report (Exhibit 64(a), p. 1, on the following page). The property is improved with a single-family home, a two-car garage and driveway. Exhibit 64(a), p. 4. Staff advises that the driveway is 70 feet long from the curb line to the garage door. *Id.* Existing landscaping consists of ornamental trees and shrubs which, according to Staff, is typical of the residential neighborhood. *Id.* The driveway is not landscaped.

An aerial view of the property, included in the Staff Report, is shown below (Exhibit 64(a), p. 4, also on the following page).[4]

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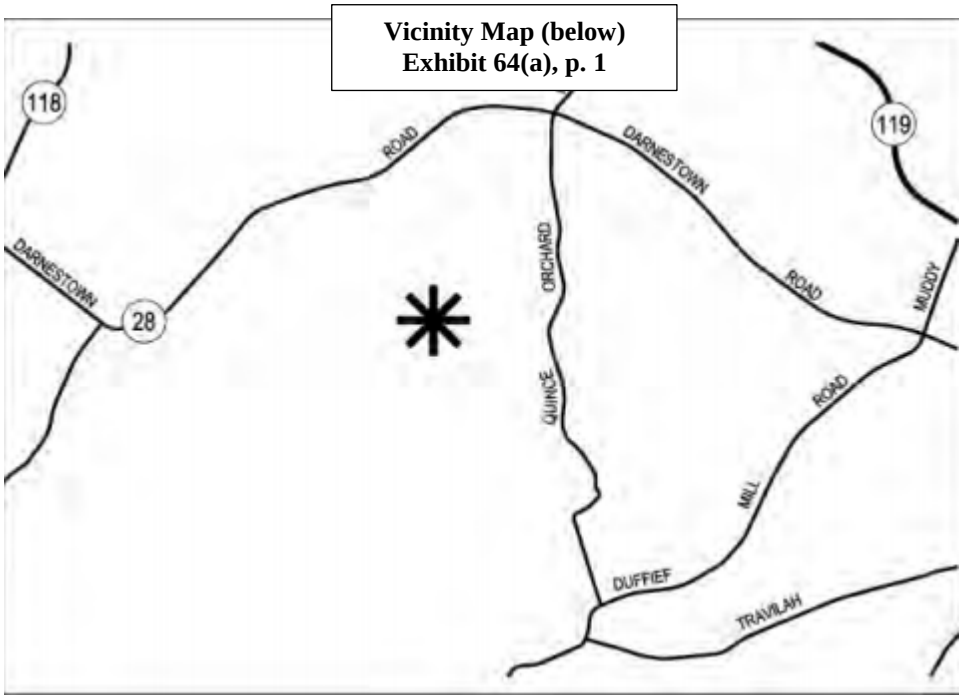
[2] After the record closed, the Hearing Examiner received correspondence from Mr. Chen alleging that evidence outside the record was included in Mr. Klopman's last (June 7, 2019) submittal. Mr. Klopman submitted a response denying this. Because both came after the record closed, the Hearing Examiner does not consider either. All evidence in this Report is accompanied by the exhibit number where it is identified in the record prior to June 7, 2019.

[3] The Zoning Ordinance provides that conditional use decisions are due 30 days after the close of the record. The Hearing Examiner may extend this time by order. *Zoning Ordinance*, §59-7.3.1.E.1.F.a.1.

[4] The Hearing Examiner has marked items of significance to her decision.

Vicinity Map (below)
Exhibit 64(a), p. 1



Jones Lane Elementary School (one block west)

Woodhouse Property

Huber Property

Falconbridge Drive

Falconbridge Terrace

Aerial View of Subject Property
Exhibit 64(a), p. 4

Romano Property

Staff advises that a stop sign is located on Falconbridge Terrace at the intersection with Falconbridge Drive. Parking within 30 feet of the stop sign is prohibited by State law. *Md. Transportation Code Ann*. § 21-1003(o). Those in opposition submitted photographs of "no parking" signs east of Ms. Romano's driveway on Falconbridge Drive (Exhibit 46, p. 46, below):

The property is located one block east of Jones Lane Elementary School. A photograph showing the property's proximity to the school is on the next page. Staff advises that the right of way abutting Ms. Romano's property is 27 feet along Falconbridge Terrace and 68 feet wide along Falconbridge Drive. Later in its report, Staff notes that the paved width of the road is 25 feet. Exhibit 64(a), pp. 11, 13. Mr. and Mrs. Jack and Betty Ross, who live on Falconbridge Terrace, submitted a letter and photographs of the intersection demonstrating that the width of Falconbridge Drive immediately west of the intersection (closer to the school) is 36 feet. Falconbridge Drive narrows to 24 feet in front of Ms. Romano's property. Exhibit 55. Mr. Joseph Davis, the opposition's expert in land use planning, testified that he physically measured the paved width of Falconbridge Drive and Falconbridge Terrace abutting Ms. Romano's property. Both roads are 23 feet, 4 inches wide. The paved width including curb and gutter is 25 feet. 4/30/19 T. 68-70.

B. Surrounding Area

The "neighborhood" or "surrounding area" of the property is delineated in conditional uses in order to test the compatibility of the use with the properties directly impacted. Thus, the

"surrounding area" encompasses those areas that will be directly affected by the proposed use. The surrounding area is then "characterized" to determine whether the proposed use will adversely affect the existing character of those properties.

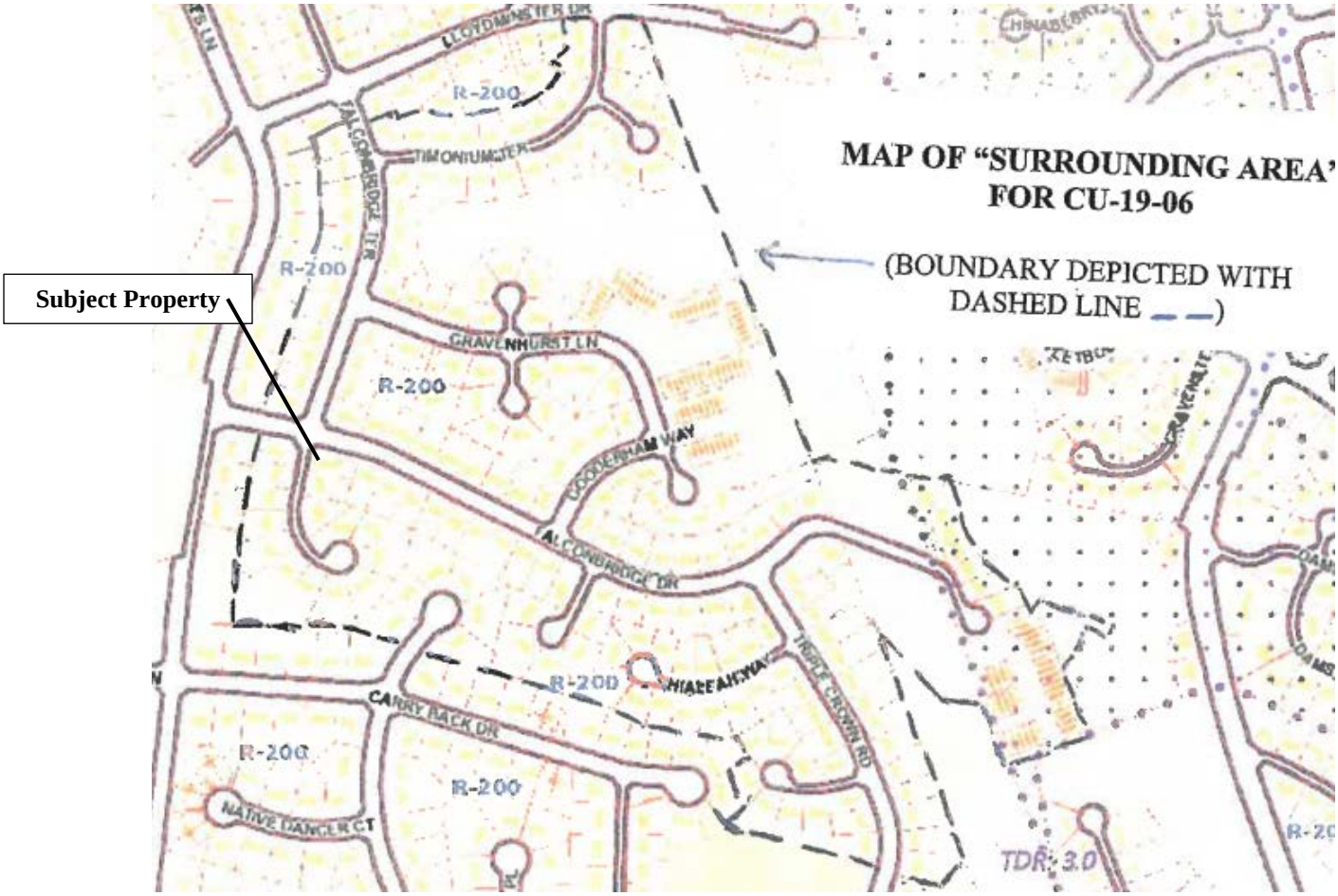
The parties here disagree on what constitutes the "surrounding area." Ms. Romano adopts the Planning Staff's delineation, which consists of the area within a 250-foot radius of the subject property (Exhibit 64(a), p. 5, shown below). Staff characterizes the area as consisting of single-family houses and street rights-of-way. *Id.*

Mr. Craig Huber, who has lived across the street diagonally from the Romano property for 21 years, testified that many more homes are directly impacted by the use. There are three main entrances and exits to the neighborhood. People use Falconbridge Drive and Lloydminster to enter from Jones Lane. People also use Triple Crown Road to Horse Center Road to exit via Quince Orchard Road. Using residents' input, he determined that the method of exiting was a matter of convenience, practicality, and the directness of the route. People that live on Falconbridge Drive nearest Jones Lane are probably going to use Falconbridge Drive rather than making additional

turns on secondary roads to use Lloydminster. He split the homes nearer to Lloydminster and Falconbridge roughly in half and assumed half would reach Jones Lane by Lloydminster and half would exit by Falconbridge Drive. 4/29/19 T. 295-296. He submitted an "aerial view" of the properties affected, below (Exhibit 79(e)):

Mr. Davis opined that Staff's defined area was far too narrow to capture all of the properties impacted by operation of the yoga studio. 4/30/19 T. 80. He agreed with the testimony of residents that characterize the intersection of Jones Lane and Falconbridge Drive as a major entrance to the community. He reiterated Mr. Huber's testimony that the two main entrances from Jones Lane are Falconbridge Drive and Lloydminster Drive. 4/30/19 T. 82. Thus, those who regularly use the Jones Lane entrance are impacted by traffic safety and congestion caused by on-street parking on the narrow roads. The surrounding area he delineated includes approximately 260 dwelling units. If congestion occurs at the intersection, people in those residences will not be able to get in

or out of the community. Nor will those on Falconbridge Terrace. 4/30/19 T. 81. In his opinion, the surrounding area is bounded to the west by Jones Lane, on the north by Lloydminster Drive, on the east by the Pepco right-of-way, and on the south by Carry Back Drive, as shown in Exhibit 103 (shown below). 4/30/19 T. 79-80.



Davis Map of Surrounding Area
Exhibit 103

Mr. Davis views the character of the surrounding area as a fairly traditional neighborhood of the type developed between 1970's through 1990's. It is a cluster development, which utilizes smaller lots to create more open space. 4/30/19 T. 104. Cluster developments include amenities

like sidewalks and open space, and parks that encourage mobility throughout the community. These developments differ from the traditional character of developments of this vintage because the roads have a closed system, with curb and gutter. *Id.* at T. 105.

The Hearing Examiner finds that Mr. Davis' expert testimony is reinforced by lay testimony from Mr. Huber and the correspondence submitted.[5] She adopts Mr. Davis' delineation of the surrounding area as well as his characterization of the neighborhood because the evidence demonstrates that the intersection serves as a major entrance to the community. Even if this were *not* the entrance to the community, Staff's defined neighborhood is unusually small and does not even encompass all of the adjoining blocks, which would obviously be directly impacted by traffic from the proposed use.

The Hearing Examiner finds Mr. Davis' characterization of the neighborhood more pertinent than Staff's description.[6] Staff lists only two characteristics of the neighborhood—single-family homes and rights-of-way—that are present in every single-family detached development. Mr. Davis' characterization highlights that characteristics of the cluster development that are relevant to this particular application. This includes the narrow road pavement and smaller lots utilized to preserve open space throughout the community.

C. History of Zoning Violations

At the public hearing, a significant amount of testimony focused on Ms. Romano's serial violations of the Zoning Ordinance. Because of its relevance to the Hearing Examiner's decision, she includes this here. Before listing the events, the Hearing Examiner explains how the Zoning

[5] The letter from Board of the Foxhills North Homeowners Association mentions that the intersection is at an entrance to the community. Exhibit 29.

[6] While the Hearing Examiner does not agree with Staff's analysis on several issues in this Report, it appears that Staff did not have the benefit of the evidence presented at OZAH's public hearing regarding the scope of the Applicant's activities and their impacts.

Ordinance regulates home occupations.

The Zoning Ordinance recognizes three levels of home occupations. The first, a "Home Occupation (No Impact) does not require a permit. Employees are prohibited and all visits (clients and deliveries) are limited to five (5) per week. No more than two vehicles may be parked on-site. *Zoning Ordinance*, §59-3.3.3.H.3. The second tier of intensity is a "Home Occupation (Low Impact)." Low-impact home occupations may have 20 client visits a week with a maximum of five per day. One outside employee is permitted. The low-impact home occupation must register with the Montgomery County Department of Permitting Services (DPS). *Id.*, §59-3.3.3.H.4.c. The registrant must sign an affidavit that he or she "will take whatever action is required by DPS to bring the Home Occupation (Low Impact) into compliance if complaints of noncompliance are received and verified." *Id.*, §59-3.3.3.H.4.c. The highest intensity of permitted home occupations is the one applied for here, a "Home Occupation (Major Impact)." It requires approval of a conditional use and must meet the criteria set forth in this Report. *Id.*, §59-3.3.3.H.5.

According to Ms. Romano, she began her business in 2007.[7] 4/29/19 T. 16. Ms. Woodhouse, who has lived directly across the street from the Romano property for 17½ years (4/29/19 T. 114), testified that neighbors began to notice that Ms. Romano's clientele was growing and creating problems. Ms. Woodhouse stated that these activities were going on for years before she knew about the scheduled classes. She would observe cars coming at regular times each week and she knew that a class was going on. Even without the schedules, the vehicular traffic is so regular and repetitive that you don't need the schedules to know when the classes occur. *Id.* at T. 173.

[7] Some letters of support from Ms. Romano's clients suggest that she began the business earlier than that, although it's not necessary to resolve the issue. Exhibit 57.

Ms. Woodhouse testified that, beginning in 2017, she filed several complaints with the Department of Permitting Services (DPS). 4/29/19 T. 174. Screen shots of some of these (from DPS' website) are included in Exhibit 45. Her first complaint, in January, 2017, stated that she saw as many as 10-12 people leaving classes. Exhibit 45. A DPS Zoning Inspector observed the property and, on January 22, 2017, determined that Ms. Romano had violated the maximum limit (five visits a week) on her no-impact home occupation. *Id.* At the time, Ms. Romano had not registered for a low-impact home occupation with DPS. *Id.* at T.122. About a month later (in February, 2017), DPS found that the violation had been "corrected" once it approved Ms. Romano's application to register as a "low-impact home occupation", which permits a maximum of five persons a day to visit the property. Exhibit 45.

Ms. Woodhouse testified that, even after registering the low-impact home occupation, the number of individuals attending Ms. Romano's classes exceeded the maximum limit. 4/29/19 T. 191. After a few months, on May 18, 2017, Ms. Woodhouse filed another complaint. *Id.* This one stated, "[h]ome occupation exceeds the number of allowed customers. Numerous yoga classes of about 5-10 customers are held each week. Some of the regular class times are Saturdays 8:45 a.m., Mondays 9:15 am and 7:45 pm, Wednesday 9:15 am, Thursdays 4:45 pm and Fridays 9:15 am. Mondays are a peak day with a 9:15 am class of about 10 customers and a second class at 7:45 pm." Exhibit 45. DPS inspectors observed seven individuals leaving a class and opened an enforcement case. *Id.* When DPS re-inspected on June 14, 2018, the inspector observed five people leaving a class and noted, "Violation corrected." *Id.* at T. 191-193.

Ms. Woodhouse complained again to DPS on July 12, 2017. *Id.* at T. 193; Exhibit 45. Her complaint stated again that she had observed numerous classes exceeding five individuals. *Id.* DPS issued another notice of violation because the inspector observed more than five individuals

leaving classes. *Id*. According to Ms. Woodhouse, the number of individuals exceeding the five permitted varied, but most of the time, it was well above five. DPS re-inspected on August 18, 2017, and found that the class size was within the maximum of five persons. 4/29/19 T. 194. DPS closed their enforcement case. Exhibit 45, p. 2.

Ms. Woodhouse testified that she contacted DPS approximately six times between 2017 and 2018. 4/29/19 T. 193. DPS continued to inspect the property to before they ultimately issued a citation to Ms. Romano for "failure to observe home occupation standards 'more than five visits a day'". 4/29/19 T. 197. Exhibit 45. Of the six times she complained, DPS found Ms. Romano in compliance only once. 4/29/19 T. 199, 202.

The civil citation case against Ms. Romano proceeded to trial in the Maryland District Court. Ms. Romano testified that she did not appear at the court hearing because the DPS inspector told her "not to worry about it, go apply for the conditional use, and that he would take care of it."[8] 3/4/19 T. 61. The District Court issued an Order of Abatement against Ms. Romano on August 21, 2018. T. 122. The Order mandated that Ms. Romano refrain from violating the Montgomery County Zoning Ordinance and "cease exceeding the maximum number of visits which is more than five per day…" Exhibit 45. Even after receiving the Court's abatement order, Ms. Woodhouse testified, the violations continued. She testified that DPS informed her that Ms. Romano was found in violation of the home occupation limits on October 4, 2018, and received a warning for that violation. 4/29/19 T. 123.

Ms. Romano applied for this conditional use on November 7, 2018. Despite the court order, another DPS complaint was filed on January 17, 2019, complaining that Ms. Romano was "[r]unning business out of home residence with many people coming and going at once. Taking

[8] The Hearing Examiner give weight Ms. Romano's testimony that she was told by the Zoning Inspector that he would "take care" of things at the District Court hearing.

up neighborhood parking, increasing traffic volume and disruptive to peace of community." Exhibit 45, p. 3. This time, DPS deferred action on the complaint pending the outcome of this case. *Id.*

Those in opposition submitted screen shots from Warrior One's website and social media to show the number and intensity of classes held since 2015. These screen shots show classes that were attended by well above five persons, even after Ms. Romano received her low impact home occupation approval from DPS. Samples of these screen shots are shown on the following page and later in this report.

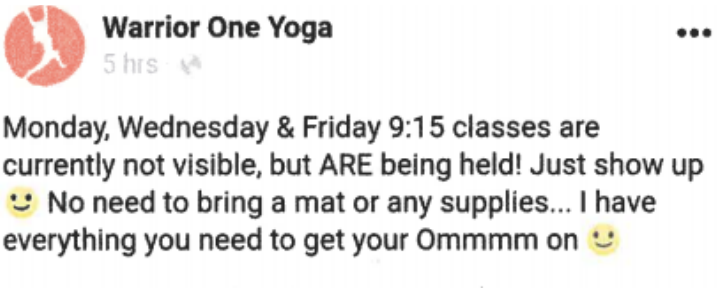
12 Clients/Class Held November 8, 2015
(Exhibit 46, p. 7)

8 clients/February 14, 2018
Exhibit 46, p. 12

12 clients/February 25, 2018
Exhibit 46(a), p. 13

Ms. Romano responds that the large classes are primarily "donation" classes she holds, or "specialty classes." 3/4/19 T. 40. According to her, she filed the conditional use to be able to accommodate the donation classes. *Id.*

Those in opposition also submitted class schedules from Warrior One's website during 2018 and 2019, some after the abatement order issued by the District Court. Exhibit 46, pp. 21-34. These schedules show between 6 and 10 classes per week at Ms. Romano's home studio. Those in opposition submitted the screen show to support their argument that classes were also held outside the schedule (Exhibit 46, p. 22, on the next page):



Ms. Romano testified that she did not abide by the limits of her low-impact home occupation out of a concern for the health of her community (*i.e.*, her clients). She testified (3/4/19 T. 61):

> So there was a time…where I really was trying to balance and juggle the needs of the community with the abatement, with the surveillance I was under [from the Hubers]. And I struggled quite frankly with fulfilling the needs of the community. As I said earlier, there are people that come to me in pain. There are people that come to me for relief. I did struggle turning some people away at times.

After filing this application, she testified she has taken measures to comply with her low-impact home occupation approval. She has complied with the parking plan recommended by the Planning Board and approved by EMS.[9] *Id.* She also moved some of her classes from her home to the Carriage House in Kentlands and another in Potomac. *Id.* at T. 37. She also stated that the continued violations occurred because moving the classes took time. 4/30/19 T. 148.

Ms. Romano and her supporters stated that she has tried everything to address the complaints of the neighbors, particularly those of Mrs. Huber. They describe a "parking evolution". 3/4/19 T. 51-52. Initially, Ms. Romano told clients to park anywhere that was not near the Hubers' residence.[10] *Id.* As a result, more cars began parking on Falconbridge Terrace. When a neighbor from Falconbridge Terrace brought parking/traffic issues there to Ms. Romano's

[9] There is nothing from the Montgomery County Department of Fire and Rescue Services, the agency responsible for reviewing zoning applications, indicating that they have reviewed or approved the proposed parking plan.
[10] The Hearing Examiner describes the relationship alleged between Ms. Romano and Mrs. Huber in Part III.C.7 because Ms. Romano attacks the credibility of Mrs. Huber's as a "personal vendetta."

attention, according to Ms. Romano, she addressed that as well. 3/4/19 T. 52. That neighbor now supports the use, according to Ms. Romano. *Id.*; Exhibit 59(e). Another client, Ms. Rhonda Gaynor, testified that Ms. Romano asked them only to park on the portion of Falconbridge Drive that abuts her property. Ms. Gaynor began to park only on the street abutting Ms. Romano's home. More recently, Ms. Romano asked clients to park in the driveway, and Ms. Gaynor complies with that. 3/4/19 T. 169-170. At different times, they were told to spread parking out through the neighborhood and not park near the house. More recently, they were told to conform to the diagram recommended by the Planning Board and to use the spots right next to the house. *Id.* at T. 173.

At the hearing, Ms. Woodhouse testified that she has observed that many more classes and other activities are being held at the Romano residence than included in the original application (4/29/19 T. 135).

> So there were many types of classes that were not mentioned in the application that - such as the private classes. And I don't think that she [Ms. Romano] addressed of the scale of those activities even in the hearing. They are not in the application at all. In the hearing, when asked how many customers were involved in private lessons, Ms. Romano's answer was, again, I'm quoting here from page 71, again, that varies. One, it all varies and depends on need. And I can tell you, because I regularly work from home, that there is a steady flow of customers during the day from late morning to midafternoon and that's most of the weekdays that I worked at home

Ms. Woodhouse expressed concern that classes left out of the conditional use application had just as much impact on the community because Ms. Romano had testified that the classes had "moved temporarily."(4/29/19 T. 138). Ms. Romano asserts that she has tried to be responsive to complaints from the neighbors and is committed to abiding by the class schedule proposed in her application. 3/4/19 T. 25, 61. Her closing argument states that, if approved, she will abide by all conditions placed on the conditional use. Exhibit 119.

D. Proposed Use

Ms. Romano testified that she has resided on the property since 2002. She graduated from the University of Maryland with an accounting degree, but then did multiple yoga teacher trainings. 3/4/19 T. 20. She got involved with yoga after she was injured and found yoga so beneficial that people took notice. They then asked if she could teach them. Since then, she has received over 1,000 hours of yoga experience in addition to three teacher trainings. 3/4/19 T. 21.

She started yoga classes in her home with one or two people. Her business spread through word of mouth. 3/4/19 T. 22. Mrs. Romano believes that her yoga studio is important to the Fox Hills community because a large part of the Warrior One community there. She is getting her conditional use approval for them because they mean everything to her. The Zoning Inspector suggested she do this and not give up. 3/4/19 T. 54.[11]

According to Ms. Romano, the house was originally the model home for the subdivision. She converted the sales office into the yoga studio. The studio in the home is 21-feet by 18-feet. *Id.* at T. 24. Ms. Romano is not sure of the size of her home because "she is not good with numbers." *Id.* at T. 25.

At present, according to Ms. Romano, the size of the classes varies. Attendance can be seasonal and may depend on whether an individual is in need. In her application, Ms. Romano states that class sizes in the past have varied between two and 12 people. Exhibit 64, Attachment 1. Ms. Romano testified that she proposes to have no more than 10 people if the conditional use is granted. *Id.*

According to Ms. Romano, she began the conditional use process when some of her students had a run in with one of her neighbors, Mrs. Huber, at some point in January/February,

[11] Again, the Hearing Examiner gives no weight to Ms. Romano's representations about communications from DPS inspectors.

2017.[12] 3/4/19 T. 30-31. As a result, she had to manage "community need" with "surveillance" by the Hubers. *Id.* T. 33.

Many of those in support, all of whom are clients of Ms. Romano's, testified that Ms. Romano helped them through serious physical or mental health issues. 3/4/19 T. 120-122, 188, 251; 4/29/19 T. 78. Several supporters testified that they like the atmosphere of the home studio better than commercial gyms, which they feel are intimidating and unwelcoming. 3/4/19 T. 167, 252. Another client who lives along Falconbridge Drive believes that the studio has a positive impact on the neighborhood and goes there almost every day. 4/29/19 T. 95.

1. Scope of Application

Other than the six classes originally requested, the parties dispute what activities the application includes. During the hearing, Ms. Romano revealed activities that she currently conducts that were not included in her application. According to Ms. Romano, she amended her original application during the first day of hearings. Exhibit 119, pp. 2-3. Whether her testimony constituted a cognizable amendment is discussed in Part III.A. of this Report. The Hearing Examiner describes the evolution of the application here.

As noted, Ms. Romano's written application originally asked only for 6 classes of up to 10 people at the times listed in Condition #2 of Planning Staff's Report. Exhibit 9. The application lists the class times as the business's "hours of operation," which is incorporated into Condition No. 2 of the Staff Report. Exhibit 9; Exhibit 64(a). Thus, the application as presented and reviewed by the Planning Staff and Planning Board included only six one-hour and fifteen minute classes with up to 10 people. Staff recommended capping the number of visits at 40 per week. Exhibit

[12] The Hearing Examiner notes that Ms. Romano did not begin the conditional use process until more than a year after her purported "run-in" with Ms. Huber described below; she did begin it after receiving a warning from DPS for violation of the Court's abatement order. Again, Ms. Romano's feelings about Mrs. Huber are discussed more extensively later in this Report.

64(a). After Staff published its report, apparently Ms. Romano requested an increase in the number of recommended weekly visits. The record reveals that Ms. Romano informed Planning Staff that she wanted to include the "donation" classes on January 31, 2019. Exhibit 34.

The donation classes are mentioned again in Ms. Romano's Pre-Hearing Statement, filed on February 4, 2019. In this document, she states that she is requesting a maximum of 10 clients per class because she would like to have "donation" classes that, in the past, have been attended by 10-12 people. Exhibit 32, p. 2.

During the first day of the public hearing, Ms. Romano initially reiterated the same scope of activity (*i.e.*, the six classes with a maximum of 10 students.) 3/4/19 T. 22. She described the donation classes as those where she donates the proceeds to charity. These classes have occurred on holidays, such as Thanksgiving morning and Memorial Day, and happen a "handful" of days a year. 3/4/19 T. 37, 41. Those in opposition introduced a number of screen shots from social media demonstrating that well more than five individuals have attended these classes. A sample is shown below (Exhibit 46, p. 17):

Ms. Romano also divulged for the first time at the hearing that some of the screen shots submitted by those in opposition depict "specialty" classes, such as yoga and brain health, which bring specialized information to meet the needs of her community. *Id.* at 40. She asked for a maximum of 10 people per class because she likes to give back to the community, including these classes. She states that the screen shots submitted by those in opposition are "not timed" but are used for "different reasons for marketing." *Id.* These classes are frequently taught by outside instructors, which is not mentioned in her application or pre-hearing statement. According to Ms. Romano, the specialty classes are held once a year. She testified that she charges a fee for "costs incurred." According to her, the costs include the instructor's fee, which is variable, and equipment such as "blankets, bolsters, blocks, straps." 3/4/19 T. 94-96. A web advertisement for the specialty class submitted by those in opposition informs clients to register for specialty classes through Warrior One. A screen shot of one of the specialty classes, again with more than five in attendance, is shown below (Exhibit 46, p. 14):

Screen Shot of a "Specialty Class"
March 12, 2018
Exhibit 46(a), p. 14

Another extra-application activity revealed by Ms. Romano on cross-examination is her participation in the Acro Vinyasa Flight Club (Club). Initially, Ms. Romano described

participation as being "involved in a club…that is a yoga activity that is now part of my classes. It's a club that I belong to." 3/4/19 T. 68. Ms. Romano testified that the attendance at Club classes varies and she does not have a maximum number. The maximum she's had is eight individuals. According to her, Club activities are periodic. When the Hearing Examiner asked how frequently the Club met, Ms. Romano testified that it met one time in February, 2019. When asked what the maximum would be, she responded that it would be twice a month "but that's evolved too, like close to." 3/4/19 T. 70.

Screen shots from the Warrior One website, submitted by those in opposition, show that Club classes were regularly held on Friday nights four times in February, three times in March, twice in May, and three times in June, 2018. (Exhibit 46, pp. 11-13, on the following page.) These classes occurred after Ms. Romano had received several violation notices and the citation from DPS. An advertisement posted in January, 2019, advertises classes scheduled for January 18, February 1, March 1, and March 15, 2019. Exhibit 46(a), p. 18.

The same 2019 advertisement for the Club classes announces that the fees will be $25 for "drop-ins" and $100 for a "five pack." *Id.* Ms. Romano explains that she offers the discount because a lot of couples come to that class. 3/4/19 T. 79. She contends, however, that she makes no profit on the Club classes because fees cover only expenses. She described the expenses incurred as the cost of the outside instructor and "other costs." *Id.*

Ms. Romano originally testified that the Club classes were not part of her application because they are for her personal enjoyment. 3/4/19 T. 81. When asked to clarify whether the Club classes were included in her application, Ms. Romano testified (3/4/19 T. 83-85):

> MR. CHEN: But your testimony is you reserve the right to have those personal classes and the club classes at your house nonetheless.

Exhibit 46(a), p. 15
2018 Schedule of Club Classes

MS. ROMANO: There's no plan to do so. You know, if your dad's health is poor…if I'm entitled and I'm allowed to have a club, then I'll have it. If not, then I have another location.

MR. CHEN: That wasn't my question.

MS. ROMANO: Okay.

MR. CHEN: Please. You reserve the right to have these other types of yoga classes. And they are not part of the conditional use application that has been before the Examiner in this case; isn't that correct?

MS. ROMANO: I'm holding to what is in the application. So whatever the application, there's where I'm going to follow my yoga classes. My personal enjoyment is separate from that.

MR. CHEN: Respectfully, I'm not talking about what you call your yoga classes. I'm talking about your club classes and your personal enjoyment classes. You're still going to have them even after this proceeding is concluded; isn't that right?

MS. ROMANO: No, I'm not.

MR. CHEN: You're never going to have any more club classes at your house and never have any more personal enjoyment class—

MS. ROMANO: The Acrovinyasa [sic] club has temporarily been moved. But as far as my personal, you know, I don't know. I might refer to you Mr. Hearing Examiner. Where is the line? I might need some guidance there. Because I have –

MR. PRAGER [Hearing Examiner]: Answer the question. What is your intention?

MS. ROMANO: Well, my intention is to continue to—is to follow the conditional use and what's on the application and practice yoga as I always do.

MR. CHEN: Okay. When you say, and practice…yoga as you do, that includes the club and the personal enjoyment classes; isn't that correct?

MS. ROMANO: That can include. Yes.

MR. CHEN: Both?

MS. ROMANO: Not the Club. That is being moved. I might have friends over and we might go into a tree pose.

Mr. PRAGER: What was that? Might go into what?

MS. ROMANO: I said we might go into a tree pose, meaning, you know, we – I'm just looking out in the group and I'm thinking of my good friend out there, Melissa, who came over and she—it was her birthday. It wasn't for a club. No payment was exchanged. It was just personal enjoyment.

MR. CHEN: I'm not talking about that. I thought…I made that clear earlier. Now are you saying that you're your never ever going to have any more Acro club classes, yoga classes at your house?

MS. ROMANO: Yes.

Several times during the hearing, Ms. Romano likened the Club to a book club or prayer meeting and asked the Hearing Examiner to opine whether it could be regulated under the conditional use if it was non-profit, and later, even if no money was exchanged. *See, e.g.* 3/4/19 T. 76, 4/30/19 T. 156-157. She repeatedly stated, however, the Club classes would be held within the schedule of classes listed in her application and would not be held on-site. In her Closing

Statement, she adds the caveat she will voluntarily move the Club to an off-site location *if the conditional use is approved.* (Emphasis supplied) Exhibit 119, p. 7.

Other yoga activities Ms. Romano currently performs outside of her original application include private lessons. When first asked about activities other than classes and the Club, Ms. Romano initially testified that she taught her children's friends yoga, and classes varied in size from five to six people. When asked how frequently she had the lessons, she responded, "A handful of times and until they got tired of it." 3/4/19 T. 70. When asked whether the handful of times was per week, month or year, she replied: "Per year. It's a period of time. I actually have witness testimony for that."

When later asked directly whether she gave personal yoga lessons, she acknowledged that she did. *Id.* at 71. When asked the frequency of the lessons, she replied (*Id.*):

> Again that varies. One. It all varies and depends on need. And again this is why I'm asking for the conditional use.

The above reply prompted a question why Ms. Romano hadn't included this in her conditional use application, to which she replied, "Because it's not part of the class schedule." The highest number of people she's had during a private lesson is two individuals. All of these activities occur in the studio. 3/4/19 T. 70-71.

Ms. Jaimee Gniadek, a client of Ms. Romano's, testified during her cross-examination that she has received instruction in Thai massage at 11:00 a.m. on many Wednesdays for the past two years. 3/4/19 T. 244-245. Ms. Romano gave her a free class and she once received a gift certificate from friends. 3/4/19 t. 246. According to Ms. Gniadek, Ms. Romano occasionally has other appointments that follow hers. 3/4/19 T. 246. On rebuttal, Ms. Romano testified that the Thai massages are a subset of personal yoga lessons. 4/30/19 T. 153. When the Hearing Examiner

asked why Ms. Romano had not included the private lessons on her application, she replied, "…I really thought this was about parking and the amount of people at one time." 4/30/19 T. 160.

In addition to the private lessons, the Club and the specialty classes, Ms. Romano revealed that she holds yoga classes at the studio for her personal enjoyment. These are taught by outside instructors. Ms. Romano uses outside instructors either to fill in for her when she cannot be at regular classes or to conduct classes for her personal enjoyment. 3/4/19 T. 80. She initially testified that these classes did not have a set schedule, as they were held when she had a personal need. As an example, when her father was ill, she took such a class and four or five people came. 3/4/19 T. 74. Because these are for her own needs, the number of these classes vary. *Id*. When asked by the Hearing Examiner to describe the frequency of these classes between December, 2018, and February, 2019, she testified that she has held two or three personal enjoyment classes in December and January, and none in February. 3/4/19 T. 77-78. On rebuttal, however, Ms. Romano acknowledged that she has held weekly Sunday night classes for her personal enjoyment. She testified that these were not for profit and were nothing different than "a book club or a Bible study or meeting that met once or sometimes twice a month." 4/30/19 T. 149.

Ms. Romano testified that her "personal enjoyment" classes may include friends, but also may include people who are not friends (3/4/19, T. 70):

> MR. CHEN: They [personal enjoyment classes] are not part of the schedule. These are different people that come. Some may be friends, I understand. Some may not be friends.
>
> They're just people that you know and they're coming for personal enjoyment yoga classes. And you do not view them as being part or regulated by the conditional use process.
>
> MS. ROMANO: No. Because they're my personal enjoyment.

Ms. Romano charges individuals attending the personal enjoyment classes a fee. She testified that she does not make a profit on those classes because the fee covers only costs incurred. At one point, however, Ms. Romano testified that she felt there was a "blurred line" between her "personal enjoyment" classes and the classes she believes are part of her business because some of her yoga students are her friends. 3/4/19 T. 66.

The record is not entirely clear whether Ms. Romano intended the personal enjoyment classes to be included in the application. She first indicated that she did not intend to include them. 3/4/19 T. 72-73. Now she adds that she will include them if the application is granted.

Also unclear was whether she held classes outside or in other areas of the home. When Ms. Romano first testified about yoga activities outside of the classes proposed in her conditional use application, Ms. Romano stated that she did not agree that all yoga-related activity is restricted to the yoga studio. When asked where the activities not listed in her application were conducted, the following exchange occurred (3/4/19 T. 65-66):

> MS. ROMANO: All over my home. Yeah. We meditate in the dining room. We meditate in the kitchen. I'll meditate in front of my fireplace. I brought my yoga students into my backyard.
>
> MR. CHEN: So you have your yoga activity with your students throughout your house and in your backyard.
>
> MS. ROMANO: It's primarily in the yoga studio. But some of my yoga students are also my friends. And there is a blurred line, if you will. And I have some testimony to that.

After taking a lunch break during the public hearing, Ms. Romano returned to testify that the business activities would be conducted in the studio, "primarily." 4/30/19 T. 64. She stated that her earlier testimony referred to her "personal practice." *Id.* She also testified that "any personal enjoyment classes" would be governed by the schedule in the conditional use application. 3/4/19 T. 90.

On the last day of hearings, the Hearing Examiner asked Ms. Romano to list what she was asking for in the application. She responded that she wanted to include classes and private instruction (including the Thai massage). 4/30/19 T. 154. Ms. Romano would like to use the number of client visits remaining after classes (a maximum of 10 visits minus those who attended the class) for private lessons throughout the day. Thus, if she has six people in a morning class, she would be permitted to have four private lessons during the day (up to a maximum of 10 visits per day and 60 per week). 4/30/19 T. 152. Private instruction usually requires only one car parking in her driveway. 4/30/19 T. 150. Ms. Romano could not say when the lessons would occur or provide hours of operation for the business. 4/30/19 T. 153. She testified her Sunday personal enjoyment class have been eliminated along with the Club. According to her, she "removed" the Club from her application because she realizes it bothers the neighbors. 4/30/19 T. 154. Despite this testimony, she again asked the Hearing Examiner again to opine whether the Club classes were subject to zoning regulations because she does not make a profit on them. Stating, "I don't know if I'm putting myself in a hole by saying this," she also asked the Hearing Examiner whether the Club classes would be subject to the conditional use process if no money changed hands. 4/30/19 T. 157.

In her written Closing Argument, submitted *after* the hearing, Ms. Romano refines the requested conditional use application to apply only to "for profit" yoga activities at her home, including the private lessons. Exhibit 119, p. 6. In a footnote, however, Ms. Romano states that she will no longer have Club or personal enjoyment classes at her home *if the application is granted* (Exhibit 119, p. 7, n. 9).

2. Description of Operations

a. Hours of Operation

In her original application, Ms. Romano stated that the studio's "hours of operation" consisted of the six one-hour and fifteen minute classes requested, which was incorporated as a recommended condition in the Staff Report. Exhibit 9; Exhibit 64(a). The schedule of classes listed as the business's "hours of operation" in her application include the following (Exhibit 9):

Monday	9:15 a.m. to 10:30 a.m., 7:45 p.m. to 9:00 p.m.
Tuesday	None
Wednesday	9:15 a.m. to 10:30 a.m.
Thursday	5:00 p.m. to 6:15 p.m.
Friday	9:15 a.m. to 10:30 a.m.
Saturday	8:45 a.m. to 10:00 a.m.

As noted, Ms. Romano was unable to provide business hours to the Hearing Examiner for the "amended" application on rebuttal. Since no hours of operation have been proffered, the Hearing Examiner must treat the hours as unlimited as she doesn't have sufficient information to determine them independently and the additional hours have not been reviewed by Staff, as required by the Zoning Ordinance. *Zoning Ordinance,* §59-7.3.1.D.3.

b. Staffing

As noted, Ms. Romano's original application did not mention outside instructors. She now acknowledges that she uses outside instructors for her "personal enjoyment" classes and when she cannot teach scheduled classes.

c. *Limits on Maximum Number of Attendees/Visitors*

Ms. Romano agrees with the Planning Board that the application should include caps on visits at 10 per day and 60 per week. To ensure the number of clients will stay within the limits of the conditional use, Ms. Romano has implemented a sign-up system. In the past, people could show up whenever they wished. Now, however, clients sign-up for classes in advance through a

software app. The system limits the classes to the permitted number, and then generates a waiting list if more people wish to attend. 3/4/19 T. 42.

With regard to private lessons, Ms. Romano acknowledged that she could not control the number of people attending class each morning, so she couldn't control the number of appointments throughout the day that she could make in advance. 4/30/19 T. 159. For the record, Ms. Romano makes a sincere offer of her commitment to any concerned neighbor that the ruling of the Hearing Examiner will be strictly followed. *Id.*

d. Other Operations

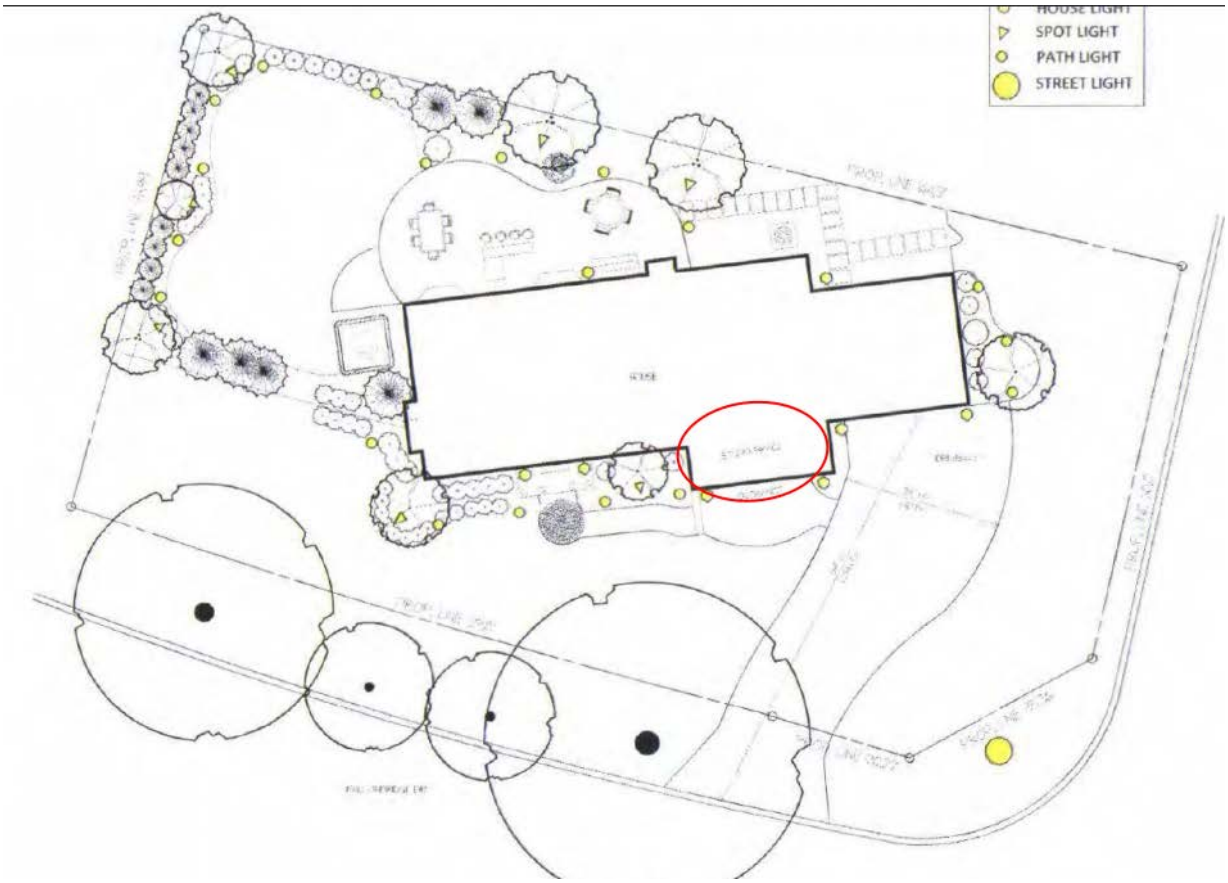
Ms. Romano does not plan to have goods stored on the premises. Nor will the business have any signs on the property. *Id.* T. 23-25. "Mellow" music is played during class. No one has ever complained to her about the music. *Id.* T. 50. The house is setback "a pretty big distance" from the curb on the other side of the street. She believes it would be hard to hear the music. *Id.* T. 51. The doors of the studio are generally closed, although when the weather is nice, she opens them up. She testified that the homeowners' association told her she could have the doors open. *Id.* T. 51.

3. Landscape/Lighting Plan

Ms. Romano does not propose any physical changes to the existing improvements, lighting, or landscaping on the site. Nor does she propose to screen the parking area. A copy of the landscape plan is reproduced on the following page (Exhibit 17).

4. Parking

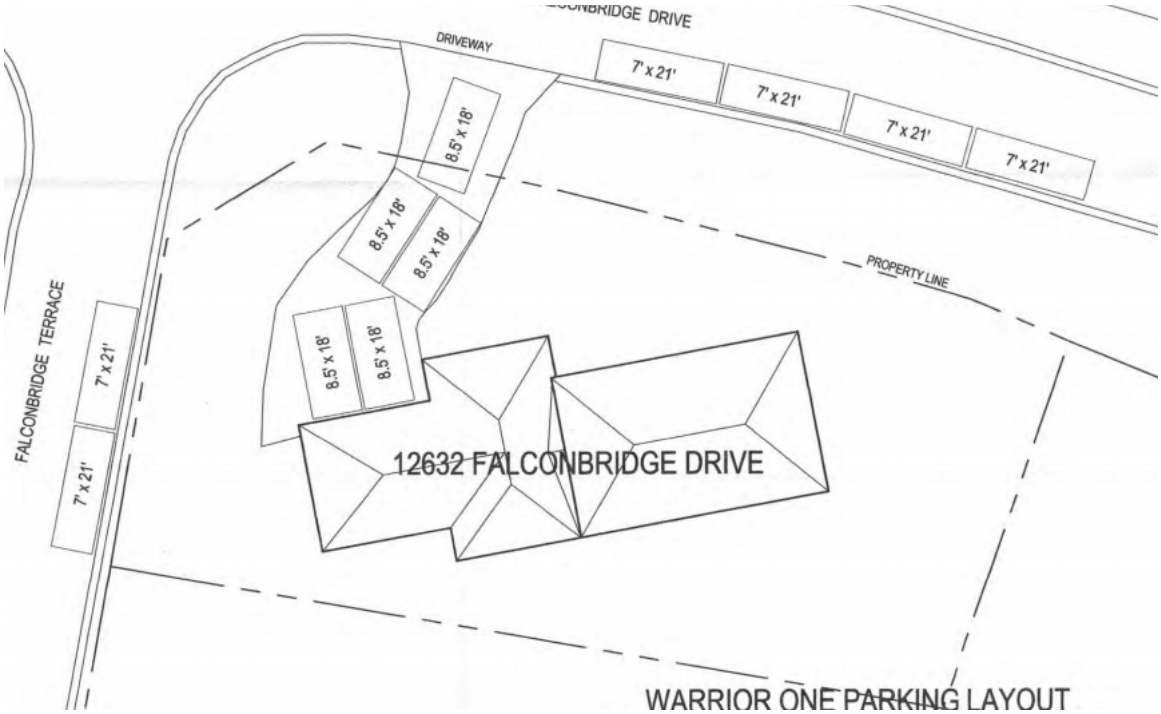
Ms. Romano proposes to park five cars in her driveway in tandem (or stacked), two cars on Falconbridge Terrace abutting her property, and three cars along Falconbridge Drive abutting her property. The tandem parking calls for double rows of vehicles. One row is three cars in



length. The Staff Report contains an aerial view of the parking as proposed (Exhibit 64(a), p. 8, shown below:

An attachment to the Staff Report includes a photograph of the tandem parking (Exhibit 64(a)):

The parties dispute how much of Ms. Romano's street frontage is available for parking and how many cars can park on the frontage available. At the Hearing Examiner's request, the Applicant submitted a scaled drawing of the parking proposed (Exhibit 113, below):



Applicant's Scaled Parking Plan
Exhibit 103

E. Community Response

There are numerous letters in the record both supporting and opposing the application.

The bulk of those in support are from clients of Ms. Romano's, although there are some from adjoining property owners and other individuals both within and outside Fox Hills North. In large part, these letters are uniform. They stress the importance of yoga to the community because it builds healthy lifestyles, recite how yoga and Ms. Romano helped the writer recover from mental stress or serious illnesses, and insist that "the neighborhood is NOT inconvenienced" (emphasis in original) by vehicles driving to and from the site. *See, e.g.*, Exhibit 18(a) through (mmm). Clients state that they have never observed parking or traffic issues when attending classes. (Exhibit 18(a) through (e), (s), (bb), (nnn), (ooo), (ppp), (uuu); Exhibit 59(e). Others state that there is ample parking in Ms. Romano's driveway and on the streets surrounding the intersection of Falconbridge Terrace and Falconbridge Drive. Exhibits 18(s), (t), (v), (w), (y), (sss), (ttt); Exhibit 59(e), Exhibit 88(f). Some dismiss the complaints of those in opposition as "frivolous" or state that they have no idea why anyone would want to "interfere" with their yoga activities. Some wonder why the client's use of resident's driveways to perform three-point turns to exit the neighborhood has "caused consternation with some neighbors." Exhibits 88(f), 18(k), and 18(mm). Others stress the benefits of yoga in a small setting, away from the hustle and bustle of other business locations, which they say are four and five miles away.[13] Exhibits 18(z), 18(aa). Several support the proposed use because they believe in small business. Others state that many individuals walk to the class, both providing benefits to the environment and lessening the traffic impacts. One individual believes that Ms. Romano has a right to have a home business and plans to contact her

[13] The opposition disputes this assertion, stating that there are yoga studios closer than four miles. Exhibit 57. The Hearing Examiner does not resolve this issue because a showing of "need" is not required for this conditional use. *See, Zoning Ordinance*, §59-7.3.1.E.5 and 6. The proximity of other yoga studios is therefore irrelevant to the outcome of this case.

congressman if Ms. Romano's conditional use is denied. Exhibits 18(ee), (ff), (gg), (ooo), (qqq), 88(f). Some stress the "community" that Ms. Romano has built, which they feel is a "hub" where neighbors meet neighbors, new friendships are established, neighborhood news is exchanged, pet and childcare advice given and group outings are planned. Exhibit 18(cc).

Those in opposition paint a starkly different story. Several letters in opposition are from homeowners on Falconbridge Terrace (there are also some in support from that street as well). Almost all of these raise safety concerns for residents living on that street. These complain that the cars parked in the "no-parking" zone near the intersection block resident's ability to see oncoming traffic at the intersection. Exhibit 22(e). One states that sight distance from Falconbridge Terrace is blocked when cars park in Ms. Romano's driveway. Exhibit 22(t). Several advise that the width of the travel lane on Falconbridge Terrace is reduced to one vehicle (and sometimes less) when cars are parked on both sides of the Falconbridge Terrace, making it difficult to drive on the street. Exhibit 22(f), (g), (m). The travel width is also reduced when vehicles do not park close enough to the curb. Exhibit 22(g). According to some, driving on the street is "precarious" when classes are in session. Exhibit 22(m). They worry that emergency apparatus and delivery vehicles will not be able to enter the street when needed. Exhibit 22(e). Several express their concern about the safety of children in the area, particularly as they walk to the nearby Jones Lane Elementary School. Because Falconbridge Terrace has no sidewalks, children must walk in the streets. Exhibits 22 (m), (p). Several believe that the yoga classes end up funneling traffic onto Falconbridge Terrace. People use the cul-de-sac to turn around and return to Jones Lane so they don't have to perform three-point turns on Falconbridge Drive to exit the neighborhood. Residents also complain that the vehicles using the cul-de-sac for this purpose travel more quickly than appropriate. Exhibits 22(a), (e), (f). Residents report experiences having

difficulty driving along Falconbridge Terrace because yoga students are standing in the street talking, sometimes with car doors open, after class. One reports when they ask students to move, the response was in a "hostile tone." Exhibits 22(e), (f), and (t); Exhibit 55.

The Rosses, who provided the photographs showing the difference in width between Falconbridge Drive east and west of the Romano property, detailed the congestion caused when parking occurs on both sides of the street at the entrance to the community. They assert that delivery trucks have not been able to pass through the narrowed travel lanes. They further point out that driveway parking does not alleviate the congestion on the streets because the class sizes require on-street parking. Exhibit 55.

Residents elsewhere in the Fox Hill North community echo these concerns. Some report experiencing congestion on Falconbridge Drive when cars are parked on both sides of the road because this leaves only a single travel lane. Several point out that the property is at a highly visible entrance to the neighborhood, which experiences the heaviest traffic. Other residents note that many children and adults traverse the intersection to walk, go to school, jog, and bike. One resident states that it is difficult to negotiate driving around cars while at the same time watching for children. *See, e.g.*, Exhibits 22(g), (l). Another finds that on-street parking blocks their view of on-coming traffic approaching on Falconbridge Drive because Ms. Romano's residence is on a hill approaching the intersection. Exhibit 22(o). Others state that clients exiting Ms. Romano's classes do three-point turns (sometimes utilizing private driveways) on Falconbridge Drive to exit the neighborhood via Jones Lane. Exhibits 22(e), (q).

The Fox Hills North Homeowner's Association, which includes Ms. Romano's property, took no position on the application because it a "no-impact" home-based business under the Maryland Homeowners Association Act. Exhibit 29; *Md. Real Property Code*, §11B.111.1(d).

State law now prohibits a homeowner's association from enforcing covenants prohibiting "no-impact" home businesses unless the Association adopts to specific provision in their covenants to do so. *Md. Real Property Code,* §11B-111.1(d). According to the Association's attorney, the Board of Directors concluded that the proposed use was a "no-impact" home business because it required no external changes to the home, was subordinate to the use as a home, and did not emit sounds detectable to neighbors. The Board did, however, have the following comments.

The Board asked the Hearing Examiner to ensure that the Applicant provided the parking required under Section 59-6.2.4 of the Zoning Ordinance (Exhibit 29, p. 1):

> This is particularly important because the property where this use is proposed is a corner property, very close to the entrance to the community. Parents of students who use the nearby Jones Lane Elementary School frequently park on Falconbridge Drive, which is the street leading up to the subject property, and walk their children up Falconbridge Drive and across Jones Lane in the morning and across Jones Lane and down Falconbridge Drive in the afternoon. There is also a stop sign on the corner of the subject property, along with "no parking" sign on both sides of the stop sign. Thus, while there may be long sections of road frontage on both sides of this corner property, not all of it may be utilized by visitors to the site.

The Board noted that the application at one point states that the maximum number of students requested is 10 while at another point the application states the maximum may be "occasionally 12" attendees. The Board recommended that the minimum number of visits be limited to 10 because they did not believe there was sufficient parking for 12. *Id.* at 2-3.

Finally, while the Board did not object to the six class times proposed, it recommended a condition stating that class times may not correspond to the start or end of the school day. The Board advised that current start/end times are 9:00 a.m. and 3:25 p.m., but urged that the restriction apply if the school day changes in the future. *Id.* at 3.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. These standards are both specific to a particular type of use, as set forth in Article 59.3 of the Zoning Ordinance, and general (*i.e.*, applicable to all conditional uses), as set forth in Division 59.7.3 of the Zoning Ordinance. The specific standards applied to a home occupation, major impact are under Section 59-3.3.3.H of the Zoning Ordinance.

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (*Zoning Ordinance*, §7.1.1.), the Hearing Examiner concludes that the Applicant has failed to prove that the use proposed is compatible with the neighborhood, consistent with the Master Plan, and in compliance with all requirements of the Zoning Ordinance. She further finds that two non-inherent operational characteristics and one non-inherent physical characteristic unduly and adversely impact the neighborhood. For these reasons, she denies the conditional use application.

A. Scope of Yoga Activities Included in the Application

The Hearing Examiner departs from the traditional format of OZAH's conditional use decisions because of the unusual situation where she must first decide the scope of Ms. Romano's application and whether it was adequately amended it to include the yoga activities not listed in her original application.

Ms. Romano contends that the following exchange, which occurred *after* the additional activities were revealed, constituted the "amendment" (3/4/19 T. 103):

> MR. KLOPMAN [counsel for Ms. Romano]: So, I just want to make it clear. If you receive a conditional use as you requested, for 60 people a week as the top people coming to your house for yoga related activities, will you comply with that.
>
> MS. ROMANO: Absolutely.
>
> MR. KLOPMAN: Okay. And that would be for all yoga activities.

MS. ROMANO: All yoga activities…

MR. KLOPMAN: Okay. And then when you were talking before about personal yoga and the classes, you got kind of mixed up; correct?

MS. ROMANO: I did.

MR. KLOPMAN: Okay.

MS. ROMANO: I really did.

MR. KLOPMAN: The personal yoga, are they classes?

MS. ROMANO: No.

MR. KLOPMAN: Okay. Great. And you also testified about sometimes you have individual sessions; correct?

MS. ROMANO: Yes.

MR. KLOPMAN: For one or maybe two people.

MS. ROMANO: Yes.

MR. KLOPMAN: You'll conclude that -- you're willing –

MS. ROMANO: That's within the 60 –

MR. KLOPMAN: The 60 people.

MS. ROMANO: Absolutely.

MR. KLOPMAN: Absolutely. And the people that come and teach your classes, those people of course will be counted against the 60.

MS. ROMANO: Yes.

MR. KLOPMAN: Okay. Great. And you also testified about sometimes having individual sessions, correct?

MS. ROMANO: Yes.

MR. KLOPMAN: You'll conclude [sic] that – you're willing

MS. ROMANO: That's within the 60—

MR. KLOPMAN: The 60 people.

MS. ROMANO: Absolutely.

She also contends that Staff recognized that she intended to include the private lessons in her application when it described the operations as consisting of "group exercises, limited class size, and held by appointment only." Exhibit 119, p. 7, Ftn. 8; Exhibit 64(a), p. 11. The Hearing Examiner notes, however, that the Staff Report also refers to class times as the business's "hours of operation."

Ms. Romano relies on the Court of Special Appeals decision in *Brandywine Senior Living at Potomac LLC v. Paul*, 237 Md. App. 195 (2018), *cert. denied sub nom. Paul v. Brandywine Senior Living*, 460 Md. 21, 188 A.3d 927 (2018), to support her argument. In that case, the court upheld the Hearing Examiner's action permitting an amendment to a conditional use plan during a multi-day public hearing.

She also relies on OZAH Rule 4.2(j), which permits the Hearing Examiner to "waive minor procedural defects or errors that do not affect substantive rights of the parties of record in order to proceed on the merits." Ms. Romano contends that the amendment has only minor consequences because the neighborhood complaints were generated by the classes (and attendant on-street parking and congestion) rather than the private lessons. Exhibit 119, p. 7-8. Ms. Romano finds it "difficult to understand why they would object to such an amendment made to cap "all for-profit yoga activities" in an "effort by Ms. Romano to bring about peace in the neighborhood." *Id.* at 8. She argues further that the amendment doesn't violate substantive rights because it requires no changes to the home. *Id.*

Those in opposition contend that the Applicant failed to amend the application because she did not provide them notice and an opportunity to respond. They cite to the number of times in this

record that the Applicant has described the application as consisting of six one-hour and fifteen minute classes at the times specified in the application. Exhibit 123, p. 11-12. They point out that the Applicant's expert realtor, Mr. Yanoshik, who testified *after* Ms. Romano's purported amendment, described the use as consisting only of classes listed in the original application. They further note that Ms. Romano's stated that the reason for the application was to increase class sizes to comply with zoning laws, rather than to hold private lessons throughout the day. *Id.*

For several reasons, the Hearing Examiner finds that the few lines of testimony during the first day of hearings failed to place the parties, including the Hearing Examiner, on notice that Ms. Romano was amending her application to add additional activities.

OZAH's Rules of Procedure permit amendments to an application during a public hearing, (OZAH Rule 22(c)) but due process and fundamental fairness limits the Applicant's ability to do so. The *Brandywine* case relied on by the Applicant upheld the Hearing Examiner's authority to permit amendments during a hearing primarily because those in opposition had clear notice and an opportunity to respond:

> After Brandywine submitted revised plans, the hearing examiner accepted the plans into evidence after providing appropriate notice to all parties. Furthermore, the hearing examiner provided the opposing parties the opportunity to respond to the amended application.

Brandywine, supra, at 217. Citing a prior case, *Concerned Citizens of Great Falls, Maryland v. Constellation-Potomac, LLC,* 122 Md. App. 700 (1998), the Court held that "amendments to a conditional use plan during the course of a hearing *for the purpose of enhancing compatibility, with sufficient notice to opposing parties and an opportunity to respond*, is permitted." (Emphasis supplied). *Id.*

The Hearing Examiner finds that the few lines of testimony purporting to constitute the "amendment" were insufficient to place the parties on notice that Ms. Romano was amending the

application. First, even though the additional activities clearly could impact on peak period traffic (Ms. Romano never gave any schedule for those activities), she never disclosed or even mentioned them in a Traffic Statement submitted on April 23, 2019, *well after* the first hearing. As the opposition notes, the Traffic Statement describes the application as "six (6) one hour fifteen minute yoga classes per week in accordance with the schedule described in the application." (Exhibit 87(a), p. 2). If Ms. Romano had intended to include the activities revealed on cross-examination as an amendment, then they should have been mentioned in her Traffic Statement, even if only to clarify whether or not the lessons would occur during the peak periods. Even the Applicant's expert realtor, who testified after Ms. Romano at the public hearing, described the proposed use as the limited number of classes listed on the application. 4/29/19 T. 65-66. The single exchange that she contends "amended" the application did not even use that term; rather, the term was used for the first time in rebuttal, *after* the extra-application activities had been made public.

Further, the multiple contradictions in Ms. Romano's testimony during the first day of hearings, and her unforthcoming and confusing responses to both the Hearing Examiner and opposition counsel, made it difficult to discern the scope of the activities she presently conducts, much less that they were being added to the application. The Hearing Examiner and counsel for the opposition had to direct Ms. Romano to answer questions directly on several occasions. 3/4/19 T. 69, 76, 84, 89, 94. On one occasion, the Hearing Examiner reminded Ms. Romano that she was under oath. 3/4/19 T. 75. On rebuttal, this Hearing Examiner found her demeanor calculating rather than straightforward. Ms. Romano shed tears, but then quickly recovered. Even while crying she continued to push the Hearing Examiner for an interpretation that her "personal enjoyment" classes were not subject to the conditional use, trying to see if different scenarios (*i.e.*, no exchange of money) would be acceptable. Although she hesitated and averted her eyes when the Hearing

Examiner asked whether she believed Mrs. Huber's complaints were reasonable, she responded in the affirmative. Now, in her closing argument, she again argues that the opposition's concerns are not reasonable and Ms. Huber is driven by a personal vendetta. Exhibit 119.

Even Ms. Romano's closing argument fails to recognize her "amended" application. In it, Ms. Romano minimizes the impact of the commercial use, asserting that her "home" is not a yoga studio. She rationalizes this assertion by stating that (Exhibit 123, p. 10):

> The classes are one hour and fifteen minutes long for a total of 7.5 hours per week. This equates to 4.5% of an entire week (7 days x 24 hours a day) during which Ms. Romano's home is also used as a residence by the Romano family.

Under Ms. Romano's "amendment," however, far more time could be devoted to yoga studio. Under Ms. Romano's proposal, that she be allowed to have lessons up to the amount of maximum number of visits daily visits permitted, she also could not identify hours of operation. If no one shows up for a class, she could have ten one hour sessions per day, and the yoga studio could operate for 10 hours of the day.

Nor is the scope of her "amendment" clear enough to provide those in opposition a chance to respond. She appeared to be working through the details of the operation on the stand during rebuttal, when she could not address the Hearing Examiner's questions on hours of operation. More importantly, application seems to morph back and forth as to whether she her "personal enjoyment" classes are included. Initially she testified that she was simply a member of the Club, but added that the classes were "now part of her schedule." She initially indicated that the personal enjoyment classes were not included in the application, but returned from lunch to state that they would be held in accordance with the conditional use schedule. Finally, in closing argument, she states that only her "for profit" activities are covered by the application, although she offers to hold some of the Club and Sunday "personal enjoyment" classes off-site if the application is approved.

Because the Hearing Examiner finds that the testimony was not sufficient to give notice that the application was being amended, the *Brandywine* case is inapposite to the facts here. Because Ms. Romano did not clearly state that she wished to amend the application until she was the last witness on the last day of hearings, the Hearing Examiner finds that those in opposition did not have a meaningful opportunity to respond, particularly as Ms. Romano could not clearly articulate the scope of the amendment use even then.

Nor does the Hearing Examiner find that OZAH Rule 4.2.10 permits Ms. Romano's "amendment." That Rule permits the Hearing Examiner to "waive minor procedural defects or errors that do not affect substantive rights of the parties of record in order to proceed on the merits." Because of the confusion regarding whether personal enjoyment classes were in or out of the conditional use schedule, the Hearing Examiner does not share Ms. Romano's opinion the "amendment" expressed is minor—the few lines relied upon from the first day of hearings do not specify this, nor did they clarify that Ms. Romano (in her closing statement) now seeks approval only for activities on which she makes a profit.

The Hearing Examiner is not prepared to adopt Ms. Romano's unsupported assertion that the addition of personal yoga lessons is minor. She argues this because there are no external modifications to the home. All of the adverse impacts in this case, however, stem from external operations of the use. Further, there is absolutely no evidence in the record as to what the impact of the amendment because the scope remains unclear. The purpose of the conditional use process is to explore the impacts of a proposed use after review by Planning Staff, residents, and the Hearing Examiner. Thus, the Hearing Examiner does not accept the Applicant's untested assertion that there are no impacts from adding private instruction to the application.

Nor does the Hearing Examiner agree that Ms. Romano's application should be limited to "for profit" activities. Ms. Romano asked numerous times whether activities for which she makes no profit are subject to the Zoning Ordinance and the denial of this conditional use.[14] The Hearing Examiner's answers Ms. Romano's question in the affirmative.

In Maryland, zoning ordinances regulate land *uses* rather than profits from those activities. *County. Council of Prince George's County. v. Zimmer Dev. Co.*, 444 Md. 490, 503 (2015)("Maryland, like its sister states, delegates to local political subdivisions significant authority to regulate land use."). Many non-profit and institutional uses are subject to the Zoning Ordinance and must get zoning approval. *See, e.g.,* OZAH Case No. CU 17-12, Korean Community Center (non-profit private club and cultural center); OZAH Case No. CU 16-04, PEPCO Darnestown Substation (utility); Board of Appeals Case No. S-596, Eastgate Recreation Association (swim and tennis club).

Further, the question whether a particular activity is associated with a business or use cannot be addressed solely by whether a single activity is profit-making. Many businesses conduct activities that are not money-making in and of themselves, but further other business purposes, such as promotion, advertising, or good will. Ms. Romano herself testified that she includes photographs of donation classes and specialty classes on her website for marketing reasons. Indeed, Ms. Romano testified that she initially filed this application in order to permit her "donation" classes, a non-profit activity, because of their larger size. She herself testified that the line is "blurred" becomes some students are friends. This is true may be true for many activities related to a business.

[14] Ms. Romano had the opportunity to address this issue before the District Court but did not do so and may be estopped from this argument. Because the Hearing Examiner does not have information on the District Court case, she does not decide this here.

Nor does the evidence support a finding that Ms. Romano makes no profit on the described activities. The Hearing Examiner finds that Ms. Romano has failed to prove that the activities she alleges are solely for her "personal enjoyment" are (1) unrelated to her business, and (2) non-profit.

The evidence demonstrates that the advertisements for Club classes and specialty classes were displayed with Warrior One's e-mail address or logo. The "five pack discount" offered for Club classes also proves problematic. The 2019 advertisement for the Club offers "drop-in" classes for $25.00 per person and a "five-pack" for $100. Ms. Romano's explanation for this is that many couples come to the Flight Club. The Hearing Examiner has tried but failed to ascertain why a discount offered to *individuals* has any impact on couples when dependent solely on the number of classes each person purchases. There is absolutely no evidence that couples trade off the discounted classes.

Further, Ms. Romano testified that attendance at Club classes varies. It is difficult to understand how variable attendance at a set per person fee targets only the costs of having the class. The costs for the class are the same whether 2 or 12 people attend. Ms. Romano has submitted no evidence that the cost of the instructor, and the yoga equipment, which does not have to be replaced at every class, equals the sum collected in total for all her personal enjoyment classes on a weekly basis.

The *only* evidence in this record Ms. Romano receives no profit from these classes (the Club, specialty, and personal enjoyment classes) is her own testimony. Even here, her testimony is vague on what constitutes costs. For the Club classes, she identified only the instructor's fee and "other costs." The most detailed description she gave was for the costs associated with the specialty classes where she stated that the costs include the instructor, a heater to warm the room, and yoga equipment such as blankets, bolsters, blocks, and straps. 3/4/19 T. 96.

On several occasions, Ms. Romano likened the classes to a "book club" or prayer meeting that occurs once or twice a month. 4/30/19 T. 149. There is *no* evidence in this record that the scale of Ms. Romano's "personal enjoyment" classes, which have included at a minimum weekly Sunday classes and Friday classes on a weekly or semi-monthly basis, are factually equivalent to a "book club" or prayer meeting. Even then, the Zoning Ordinance does not explicitly regulate book clubs or prayer meetings. It does specifically regulate yoga studios and home occupations, whether for-profit or not. It also regulates private clubs, whether for-profit or not. *Zoning Ordinance,* §59-3.4.8. Based on the record before her, the Hearing Examiner finds that Ms. Romano has failed to demonstrate that her "personal enjoyment" classes are similar to a prayer meeting or book club.

Those in opposition urge the Hearing Examiner to look at Ms. Romano's violation history when deciding this case. As the Hearing Examiner stated at the hearing, attempting to prove which classes are for profit and not for profit would be an enforcement nightmare. Given Ms. Romano's violation history, the Hearing Examiner will not consider that, as the "non-profit" activities could be just as impactful on the neighborhood.

The Hearing Examiner does not find credible Ms. Romano's testimony regarding her personal enjoyment and non-profit classes. The testimony was contradictory, vague, and evasive. The Hearing Examiner found her demeanor on rebuttal calculating rather than straight-forward. The Applicant has failed in her burden to prove that the "non-profit" classes she described at the hearing, including the Acro Vinyasa Flight Club, specialty classes, personal enjoyment, and donation classes are unrelated to her home occupation business. The Hearing Examiner does not accept her invitation to regulate only "for-profit" classes.

B. Standards of approval

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met and the use does not cause undue adverse impacts at a particular location. Pre-set legislative standards are both specific and general. General standards are those findings that must be made for all conditional uses. *Zoning Ordinance*, §7.3.1.E. Specific standards are those which apply to the particular use requested, in this case, a major impact home occupation.

C. Necessary Findings (§59-7.3.1.E.1)

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E. of the Zoning Ordinance. Standards pertinent to this approval, and the Hearing Examiner's findings for each standard, are set forth below:

> *E. Necessary Findings (Section 59-7.3.1.E)*
>
> *1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:*
>
> > *a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

Conclusion: Staff concluded that this requirement had been met. Mr. Davis testified that the zoning map shows that there is a variance registered for the property, however, his testimony was intended to show that additional parking to support the use may not be able to be constructed on the property. 4/30/19 T. 51-53, 89. The evidence is sufficient to find that this standard has been met.

> *b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

Conclusion: This subsection requires an analysis of the standards of the R-200 Zone contained in Article 59-4; the use standards for major impact home occupation contained in Article 59-3; and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.C, D, and E, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds that the application fails to satisfy these requirements.

1. Master Plan Conformance and Compatibility

> *c. substantially conforms with the recommendations of the applicable master plan;*
>
> *d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;*

These two criteria overlap. In order to determine whether the application meets these standards, the Hearing Examiner must first resolve disputed facts related to parking, traffic conditions, and aesthetics. For that reason, the Hearing Examiner addresses both standards here, beginning with the disputed issues.

A. Compatibility of the Yoga Studio with the Surrounding Area

The key factual issues to be resolved are whether the parking plan proposed generates congestion and safety problems for the community, and whether the lack of screening for the on-site parking is compatible with the neighborhood. Like the community correspondence in this case, the testimony of Ms. Romano's clients and that of the opposition are almost a tale of two worlds. Because of the number of separate issues, the Hearing Examiner breaks these down by topic. The Hearing Examiner includes here some of the testimony of the personal relationships between the parties only because Ms. Romano relies on this to discredit the opposition's testimony.

1. Congestion and Safety Issues Caused by On-Street Parking[15]

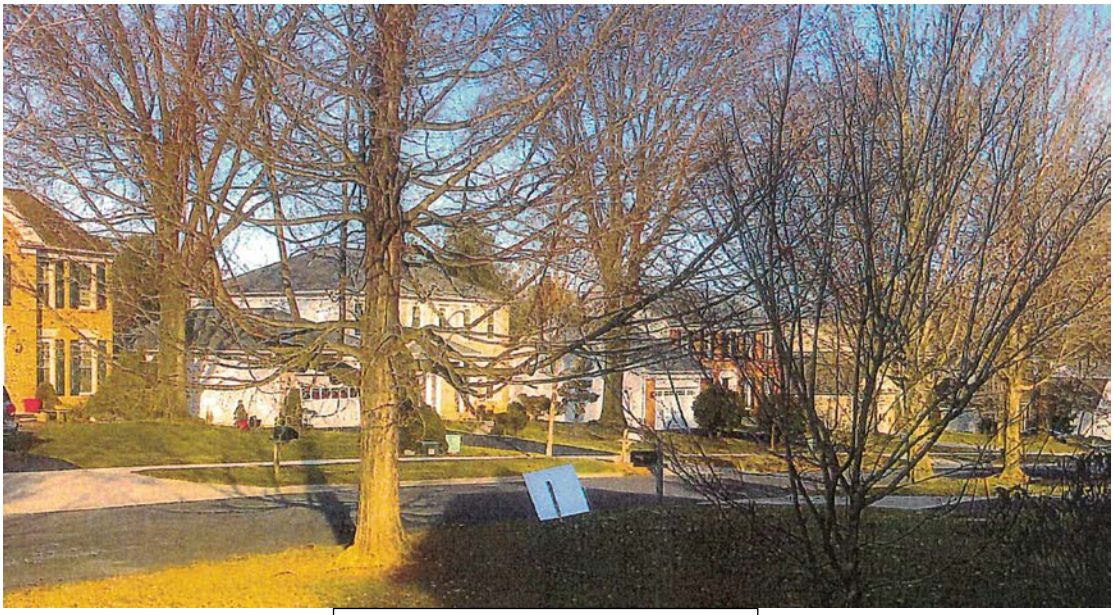
a. Applicant's Testimony and Evidence

Ms. Romano's clients testified that the neighborhood surrounding Ms. Romano's house is extremely quiet and they have never experienced any traffic safety problems. When they go to class, they see little or no traffic and have no trouble parking. 3/4/19 T. 168-169, 173-174, 231-232, 253; 4/29/19 T. 35. Ms. Jaimee Gniadek, a client of Ms. Romano's, testified that she has never observed a traffic issue even when she arrives for class between 8:30 a.m. and 9:00 a.m. 3/4/19 T. 228-229. When classes are in session, she observes only one or two more cars than is typical. *Id.* T. 230-231. Nor does she experience problems driving on Falconbridge Terrace. She often visits one of the houses abutting the subject property on that road because a friend of her son's lives there. She has a big Expedition and has never had a problem turning into the cul-de-sac to pick him up. *Id.* T. 231-232. She frequently drives past the property on certain weekdays because she picks her son up from activities at the school. The only difference between nighttime and daytime conditions is that there are a few more cars because people have adult children that live at home. *Id.* T. 247. She testified that the width of Falconbridge Drive may accommodate four cars. *Id.* T. 231-232. According to Ms. Sara Herrington, another client of Ms. Romano's, no cars have parked along the street since they began parking in accordance with Planning Staff's recommendations. When she leaves, she rarely has to wait for a car to pull out. 4/29/19 T. 253-254. One client testified that she has parked on the street once because she had to leave early, although this is rare. 3/4/19 T. 179/

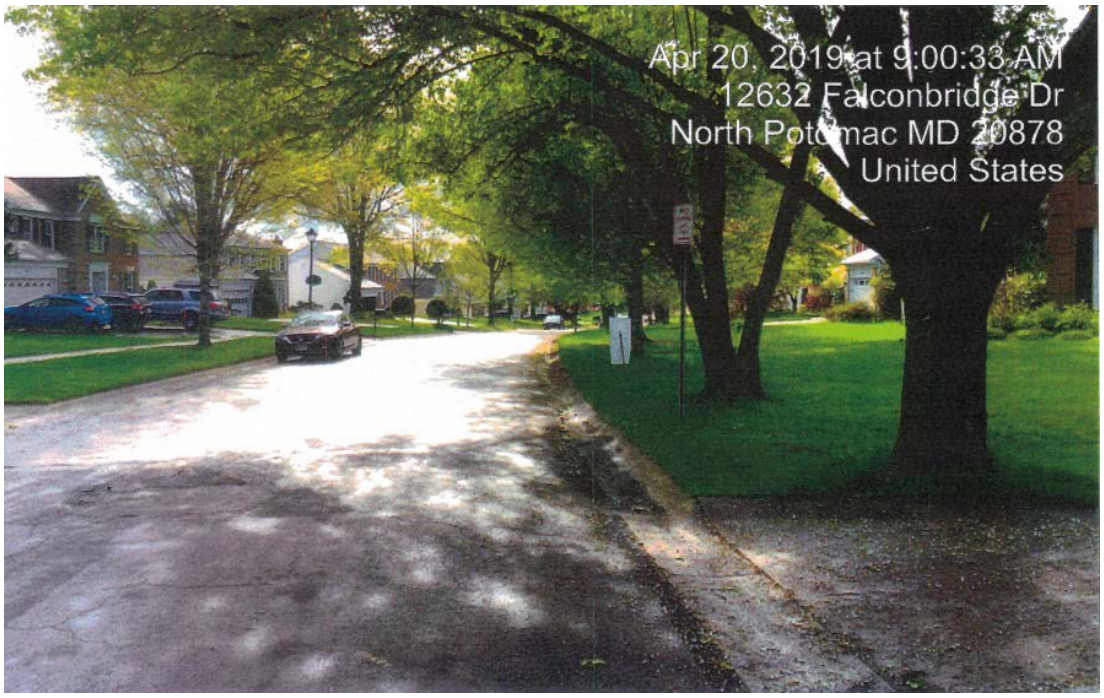
[15] Whether the Zoning Ordinance permits on-street parking to count toward the minimum number of spaces is discussed separately in Part III.E.1 of this Report. The Hearing Examiner addresses only the compatibility of the on-street parking with the surrounding area in this section.

Ms. Romano's clients testified that on-street parking in general is light at the intersection. Several testified that a photograph on page 4 of the Staff Report (shown on page 7 of this Report) represented typical conditions when class is in session. 3/4/19 T. 231-232; 4/29/19 T. 35. Mrs. Deena Klopman testified that she travels through the intersection of Falconbridge Drive and Falconbridge Terrace multiple times a day. She has been very cognizant since November of the cars and traffic. Even Saturday mornings, there is simply not very many cars parked on the street. *Id.* T. 45. According to her, there are usually no cars parked on Falconbridge Drive after 8:30 a.m. and there are only one or two cars in the evening. During the day, there are virtually no cars parked on the street. 4/29/19 T. 35. She doesn't understand how cars parking and leaving for five minutes could cause an adverse impact. *Id.* T. 44-45. Ms. Klopman estimated that it takes her fifteen seconds to park, 20 seconds to pull out and leave. There is no interaction with the neighborhood while they are in classes. 4/29/19 T. 34-35. Ms. Romano submitted photographs to demonstrate there was little to no on-street parking during the day along her property frontage. She also introduced photographs depicting the tandem parking on the driveway. Samples of these are on the following page. Exhibit 88(a). Some supporters testified that they have never seen school children when they arrive for morning classes because they are already at school by the time they arrive for the 9:15 a.m. class. 3/4/19 T. 122.

The Applicant argues that traffic and parking issues are mitigated because people walk, bike or carpool to class. While several testified that clients walk and bike to the studio, almost all that testified drove to class even when they lived nearby or a few minutes away by car. 3/4/19 T. 191, 134, 244-245 256; 4/29/19 T. 18-19, 32-33. Three testified that they walked at times, particularly when the weather was nice. T. 32-33, 193-194; 4/29/19 T. 33, 95-96. Ms. Leslie MacDonald testified that she lives about five houses from the studio and usually walks. She also



March 7, 2019 4:43 pm (above)
Exhibit 88(a)



April 20, 2019
Exhibit 88(a)

Tandem Parking/April 20, 2019
Exhibit 88(a)

knows of approximately four people in the neighborhood who walk. 4/29/19 T. 95-96. Two individuals testified that they sometimes biked or carpooled to the studio. 3/4/19 T. 193, 252-253.

Ms. Romano testified that the Montgomery County Emergency Medical Services has approved the parking plan (3/4/19 T. 33). On cross-examination, she acknowledged that she has never filed an apparatus access plan with EMS. 3/4/19 T. 101. Planning Staff recommended approval of the parking plan utilizing on-street parking and tandem parking in the driveway. Exhibit 64(a).

As noted, the Applicant asserts that there is ample on-street parking along the street frontage abutting Ms. Romano's property to accommodate the parking. Romano asserts that five cars can easily park on the driveway, four vehicles can park on-street along Falconbridge Drive, and two vehicles can park on the street along Falconbridge Terrace. For the private sessions, the one or two attendees can easily park on Ms. Romano's driveway. Exhibit 119, p. 9. The scaled

drawing submitted at the Hearing Examiner's request shows space for four 21-foot long spaces utilizing approximately 90 feet of frontage along Falconbridge Drive. Exhibit 113(a). It shows two spaces on Falconbridge Terrace.

An attachment to the Staff Report indicates at one point that there is 80 feet of frontage along Falconbridge Drive and 74 feet of frontage along Falconbridge Terrace available for parking. Staff states that the frontage along Falconbridge *Road* is 150 feet, but later states that there is "160 feet of linear curb space which should be more than sufficient to accommodate five extra vehicles (assuming 25 linear feet per vehicle.) Exhibit 64(a), p.4, 11. The latter appears to refer the total amount of frontage on both Falconbridge Drive and Falconbridge Terrace.

Staff dismissed the residents' complaints about on-street parking as follows (Exhibit 64(a), p. 13):

> The project complies with all applicable development standards in the zoning ordinance. The roadway is approximately 25 ft. wide from curb-to-curb, with a 5 ft. sidewalk on the north side of the Falconbridge Drive. There is no sidewalk on Falconbridge Terrace, which is a cul-de-sac street and no through traffic. There are no parking restrictions on either street, except for a certain distance to the stop signs, where no parking is allowed. Adequate sidewalks are present for pedestrians to travel to and from the school.

b. Opposition's Testimony and Evidence

Those in opposition testified that the yoga studio has caused congestion and unsafe conditions for pedestrians, bikers/joggers, and vehicular traffic. Mr. Davis testified the proposed use at this location is not compatible with the surrounding area because the lot is too small to accommodate the scale of the use, which in turn exacerbates its impact on the neighborhood. T. 110. As already summarized, Mr. Davis opined that the intersection serves as a major entrance to the community. Thus, congestion at the intersection affects the approximately 260 homes on a daily basis. This is because the on-street parking proposed encroaches and can eliminate travel

lanes in front of the Romano's house, which creates a bottleneck at the intersection. 3/4/19 T. 82-84.

Mr. Davis testified on-street parking prohibits the required emergency apparatus access to homes on both Falconbridge Drive and Falconbridge Terrace. The narrow street width does not meet Montgomery County Fire Code requirements when cars are parked on one or both sides of the street. The Code requires a "clear width" of 20 feet for emergency apparatus. Clear width for emergency apparatus may include multiple features of a roadway cross-section, including travel lanes, bike lanes, and a load-bearing shoulders. Clear width also includes features such as a parking lanes and non-mountable curbs. The regulations specify that on-street parking is allowed on one side of the road if the load-bearing clear width is at least 28 feet. The 20-foot required on-street access is an important minimum standard for emergency apparatus access in the County. T. 72-73; Exhibit 85(a).

MCDOT attributes a width of 8.5 feet for vehicles parking on the street. 4/30/19 T. 45. Because Falconbridge Drive and Falconbridge Terrace are only 23 feet wide, neither provide safe fire access for emergency vehicles while cars are parked even one side the street. T. 73. Staff applied a vehicle width of seven feet, used for on-site parking. The 7-foot width used by Staff is acceptable for on-site parking only. 4/30/19 T. 132. The parking spaces proposed are in a driving lane rather than a parking lane. T. 132.

In addition to impairing access for emergency apparatus, the proposed on-street parking adversely affects safety because it provides too big an opportunity for additional congestion. If cars are parked on both sides of the street, there remains only a single travel lane 6'4" in width, not counting the gutter. 4/30/19 T. 68-70. He opined that, in order to have on-street parking, there

must be a parking lane. At this location, the road has only two travel lanes and no parking lanes. *Id.* at T. 73.

In Mr. Davis' opinion, Ms. Romano has failed to meet the requirements of Section 59-7.3.1.B.1. That section requires the Applicant to have authorization or consent from the owner of any land used for the conditional use. If a use will occur on a right-of-way or other land owned by a government agency, the government agency must consent to the use. Here the operative department would be the Department of Transportation. He could find no record that this application had been before the Development Review Committee, so he does not believe MCDOT has approved of the parking arrangement. The same section requires an applicant to submit proof of ownership or authorization from the owner of the land held by a government agency. Again, there is nothing in the record to support whether the agency had ever been contacted about the use of the right-of-way for parking. 4/30/19 T. 90-91.

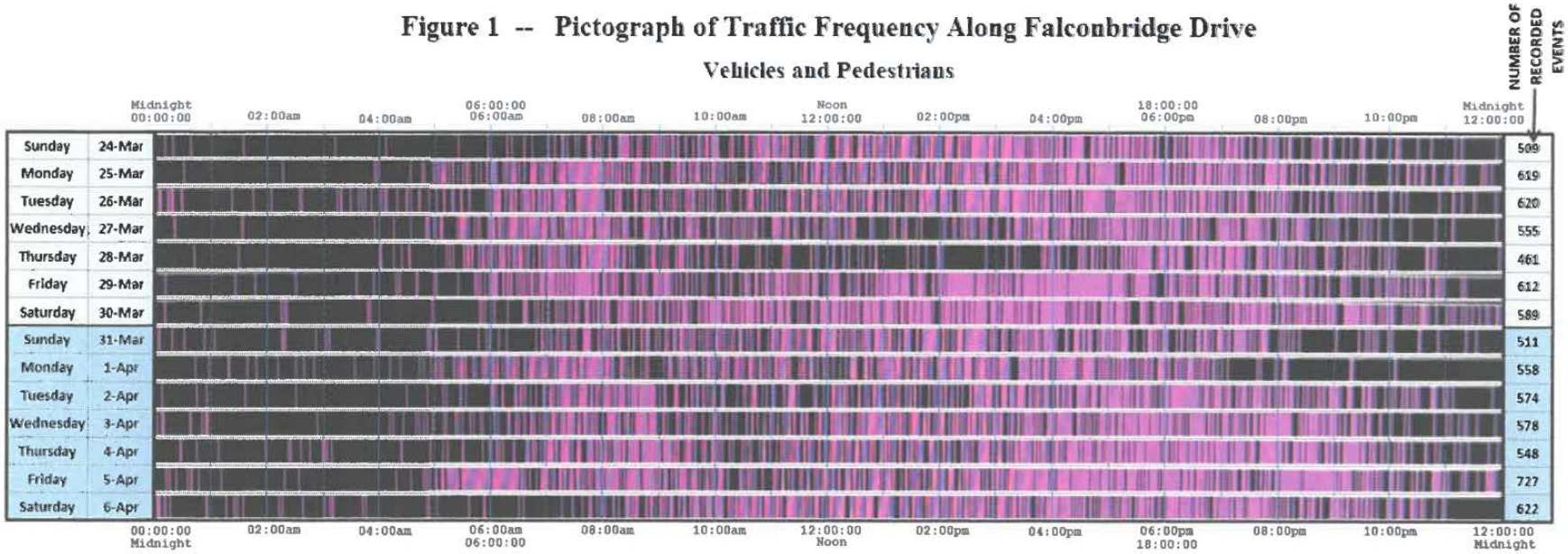
In his opinion, Falconbridge Drive and Falconbridge Terrace were designed for residential uses, rather than for commercial uses and traffic. Tertiary or secondary streets with no parking lanes can't be used to meet the on-site parking requirements in the Zoning Ordinance because the parking interferes with lane movement. 4/30/19 T. 74. Regular business use of on-street parking differs from purely residential parking. He opined that people do use the street for "overflow" parking. There are many streets in the county that are of similar size where people park on the street for parties, etc. However, these create a temporary, but not a permanent, situation rather than the sustained parking generated by this use. T. 75. Because of the size and scale of the proposed yoga studio and the smaller size of the lot, in his opinion, the proposed use is unable to provide parking on-site. T. 76. Mr. Davis testified that, in his 46 years as a planner, he has never

seen an operation of this size, located on these smaller residential streets, that relies on on-street parking. T. 76.

Those in opposition assert that traffic through the intersection is not as light as alleged by supporters. Mr. Huber, a mechanical engineer, submitted a "pictograph" he created to show the level of traffic and pedestrian activity in front of their home on Falconbridge Drive. He believes that the still pictures submitted by the Applicant may depict a level of activity that can be misrepresented because there can be a sliver of time when the stills show what you wish them to show. He wanted to show the level of activity on Falconbridge Drive over a longer period than a fraction of a second. His home security system contains a sensor that is triggered by motion. The system generates a graph when played back. He directed the security sensor toward Falconbridge Drive in front of his house for a period of two weeks. Mr. Huber set the camera to pick up people along the sidewalk and cars along Falconbridge Drive. It does not trigger for anyone parking in the Romano driveway. He also set it so that moving branches wouldn't trigger the camera. 4/29/19 T. 304. The area covered by the sensor is shown in red on the next page (Exhibit 79(d)). The pictograph generated from the motion sensor shows activity in purple. The data demonstrates a daily activity level of between 500 to over 700 events per day, whether they are pedestrians or vehicles. The graph also demonstrates that the hours between 6:00 a.m. and 8:30 a.m. on weekdays have a high frequency of events because that is rush hour. Frequency diminishes during mid-day, and then picks up again in the afternoon. Activity falls slightly off on the weekends and starts later in the morning. 4/29/19 T. 301-303.

Mr. Davis agreed that the volume of traffic at the intersection is larger than the Applicant states because it serves as a major entrance to the community. The problem becomes more serious if the proposed use has insufficient on-site parking for the commercial aspect and because

Area Targeted by Mr. Huber's Security System
Exhibit 79(d)



"Pictograph" Showing Number and Times of Events Triggering Motion Sensor Over Two Weeks
Exhibit 79(d)

on-street parking creates bottlenecks that affect the a larger section of community. T. 84. In addition, the operation of the use (as revealed during the hearing) is not clearly defined in the application, according to Mr. Davis. He heard references to student lessons that occur outside of classes, Thai massage that occurs outside of classes, and specialty classes that are outside of the regular schedule. With this activity as well as the classes, the on-street parking is even more problematic. In his opinion, the number of violations for exceeding the limits of the home occupation approval, along with the order of abatement, also signal that there is a problem with managing the use and its impact on on-street parking. 4/30/19 T.85- 86.

Ms. Elizabeth Woodhouse also believes that the use has a broader impact on the community than just the houses nearby on Falconbridge Drive and Falconbridge Terrace. She confirmed that the intersection is located at the entrance to the neighborhood, so many residents along Falconbridge Drive must pass through the intersection to leave or enter the neighborhood. Similarly, the homes around the cul-de-sac of Falconbridge Terrace have trouble entering and exiting the street. Residents that walk are also affected. 4/29/19 T. 140-141.

Ms. Woodhouse strongly disagrees with the descriptions of driving and parking conditions given by Ms. Romano's students. 4/29/19 T. 142. She has observed traffic similar to any vibrant community where people are going to work or doing their daily activities. Even if there is parking for the yoga studio on one side of the street, bottlenecks occur when a resident parks on the other side of the street. *Id.* at T. 141-142. Ms. Woodhouse testifies that she usually leaves for work between 9:00 and 9:30 a.m. after she takes her son to school. When she is getting ready to go, she often has to wait for cars to go by until she can pull out of the driveway, so there is still activity in the neighborhood. She does not know why people that came to the classes never saw her trying to go to work. *Id.* at T. 133-134. She testified that, on a typical day, one would see people walking

and cars passing along the street. Usually, more cars are parked on the street than is shown in the photograph. T. 145.

She described the activity she's observed when the studio is in operation. Those in opposition submitted photographs to demonstrate the activity when classes are in session.[16] Ms. Woodhouse testified that the cars driven by Ms. Romano's clients have lined Falconbridge Drive in front of her house when class is in session. They often park in the street not just abutting Ms. Romano's property, but also her property as well. This is in addition to the on-street parking from neighborhood residents, as they can park there as well. 4/29/19 T. 117.

According to Ms. Woodhouse, a bottleneck forms when one or two cars park on both sides of Falconbridge Drive because the travel lane becomes very narrow. *Id.* at T. 117. She has observed this happen both on Falconbridge Drive and on Falconbridge Terrace. This causes people to have to wait to pass in the side spaces because there may be room only for one car to move through. One of her neighbors wrote a letter to OZAH (Exhibit 22(q)) describing the problems he'd had getting a delivery truck to reach his home due to the yoga studio parking on Falconbridge Terrace. Another resident of Falconbridge Terrace who submitted a letter (Exhibit 22(e)) describes how the yoga customers were standing next to their parked cars on the street chatting and blocked the through traffic with their cars and the people on the street. He asked the students to move out of the street so he could pass to go to work. According to him, the yoga students told him to wait. 4/29/19 T. 118. She and these neighbors feel strongly that it's frustrating just to try to live their normal lives. T. 118. Those in opposition submitted photographs taken between 2015 and 2019 depicting the narrowed lanes while classes are in session. Exhibit 46(a). Samples of these are shown on the following page.

[16] Ms. Woodhouse testified that they matched the times of photographs with the times of classes posted on Warrior One's website. 4/29/19 T. 130.

Exhibit 46(a), p. 37

November 19, 2018
Exhibit 46(a), p. 44

Falconbridge Drive
December 3, 2018
Exhibit 46(a), p. 45

Falconbridge Terrace
January 4, 2019/Ex. 46(a), p. 47

Mrs. Jean Huber began to notice the number of cars visiting the Romano residence increase in 2016. Some would park in front of Mrs. Huber's home. They even had problems mowing the yard at times when a Tesla parked in front. She would not mow the lawn next to a Tesla. People visiting the Huber's house began asking about all of the cars parked in front. There were times that her own family were unable to park their cars in front of their own house. 4/29/19 T. 223. Ms. Huber strongly disagreed that the photograph on page 4 of the Staff Report represented typical conditions in the neighborhood. She testified that there are frequently vehicles, walkers, and bikers using the streets or the sidewalks and she often has to wait to pull out of her driveway. T. 239. She often sees children that fall behind a larger group running to catch up. Those are the individuals she is most concerned about. T. 239.

Mr. Bhaskar Patel lives in the surrounding neighborhood and bought his property because it is quiet. 3/4/19 T. 142. All of the driveways back up to each other so that people do not have accidents or conflicts trying to get out of the homes. When he drives next to Ms. Romano's location, he finds it very confusing because there is oncoming traffic on both sides, either going out or coming in. Cars are parked on the street at numerous locations. He finds this difficult to drive comfortably without creating an accident. When he has passed the Romano home on several occasions, he has observed that cars are parked on the street instead of the driveway even when spaces in the driveway were open. *Id.*

Ms. Margaret Agresti, who lives on Hialeah Way about 2½ blocks from Warrior One Studio, testified that she and her husband changed the time they go to the gym twice a week to avoid conflicts with Ms. Romano's morning class letting out. She finds it very difficult to get down Falconbridge Drive when that occurs. She believes it is dangerous. *Id.* T. 201, 203. Ms. Agresti has observed a change in conditions after Ms. Romano filed the conditional use

application. At the public hearing, she stated, "…now I understand why. She's moved her class. So I was wondering where all the cars had gone, because they used to park on both sides of the street." *Id.* at 204. She testified that the parking photograph from the Staff Report represents existing conditions "when classes are not in session." *Id.* at 217. She also testified that there are two additional businesses along Falconbridge Drive, a party planning business and a landscaping business. While they don't have as many customers, they each have large truck deliveries and employees. The landscaping business has a snowplow that travels down Falconbridge Drive. One of these business is about a block away and the other business is about two blocks away. *Id.*

Traffic congestion occurs even if only one car is parked on the street, according to Ms. Woodhouse. This is because vehicles are forced into the wrong travel lane to pass the parked vehicle. Mr. Huber testified that they have had three cars hit in front of their house over the past eight years. One time, their car was totaled and one time the car required $1,100 of work. He observed one of the accidents because he was checking to see if the car parked on the street was at a location that didn't affect the Woodhouses. There were cars parked on the other side of Falconbridge Drive abutting Ms. Romano's property. A car driving west on Falconbridge Drive had to drive in the wrong lane to avoid the cars parked nearer the yoga studio. At the same time, a large SUV came from the opposite direction and moved closer to the Huber's property to avoid hitting the westbound car. The SUV misjudged the distance from the Huber's car and sideswiped it. While he didn't verify at the time that a class was occurring, he believes it represents the difficulties in using on-street parking on Falconbridge Drive to support her business. He believes that they may experience more danger because of the slight curve of Falconbridge Drive in front of their house. 4/29/19 T. 305-306. Photographs submitted by those in opposition show these events (Exhibit 46(a), on the following page).

Vehicle Driving in Wrong Lane to Avoid Cars Parked During Classes (Ex. 46(a), p. 54)

Vehicle Driving in Wrong Lane to Avoid Car Exiting Ms. Romano's Property (Exhibit 46(a), p. 43)

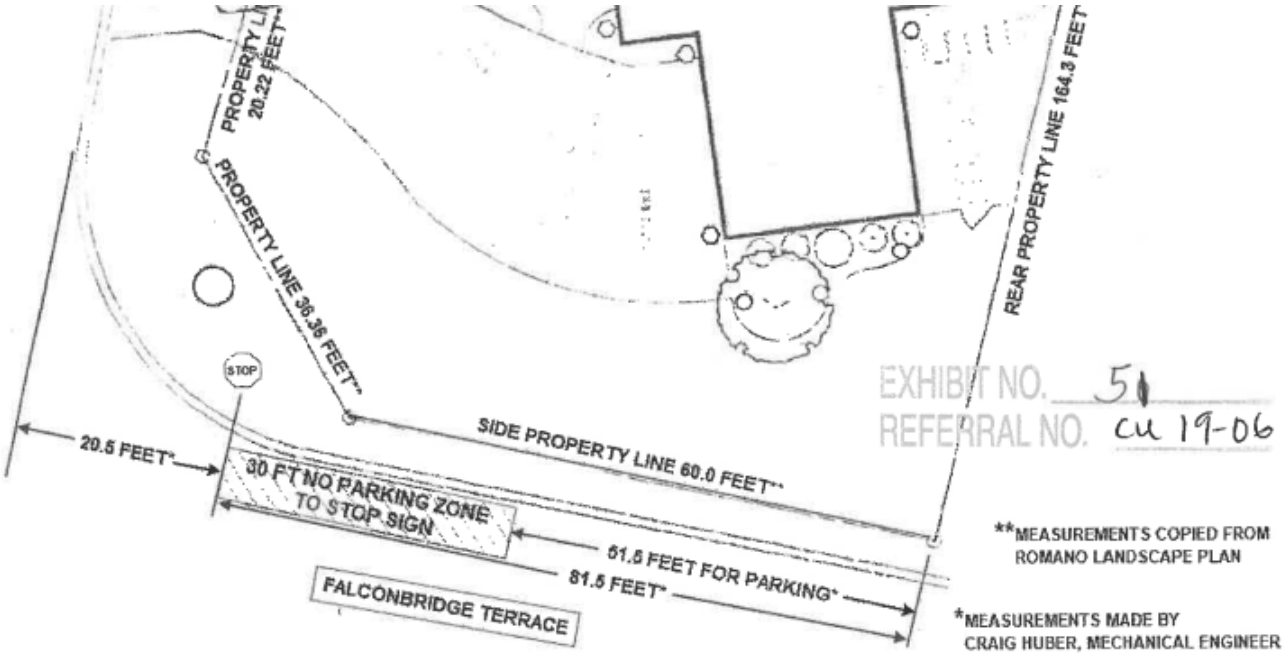
Ms. Woodhouse testified that the travel lane is narrowed further when Ms. Romano's clients do not park close to the curb. According to those in opposition, plows do not remove snow from the curb and gutter on the residential streets and Ms. Romano has failed in the past to clear parking spaces. Those in opposition submitted several pictures of instances where Ms. Romano's clients parked further from the curb than permitted. Exhibit 46(a), pp. 48, 50, 53-55. The Hearing Examiner includes a sampling of these below and on the following page.

Those in opposition also dispute how many on-street spaces are available for parking abutting Ms. Romano's property. Mr. Huber testified that he and his son, both of whom are mechanical engineers, noticed that there was an error on the landscape plan submitted by Ms.

Cars Parked Away from the Curb/January 7, 2019
Exhibit 46(a), p. 50

Cars Parked Away from the Curb During Inclement Weather/January 14, 2019
Exhibit 46(a), p. 53.

Romano. The error exaggerated the dimension for the amount of frontage available for parking (excluding the 30-foot "no-parking" zone) on Falconbridge Terrace. They both noted that some of the numbers didn't match up. They physically measured the street frontage, less the 30-foot no parking zone, as being only 51½ feet. He inserted what he believed to be the actual distance on Ms. Romano's landscape plan 4/29/19 T. 300. An excerpt from opposition's exhibit showing the area available for parking on Falconbridge Terrace is reproduced below (Exhibit 51, on the next page).



Huber Exhibit of Available Parking on Falconbridge Terrace (Ex. 51)

2. Sight Distance

The issue here is whether parking in the stacked or tandem parking, on-street parking, or parking in the "no parking" areas along Falconbridge Drive and Falconbridge Terrace impairs sight distance at the intersection. The Applicant presented no specific testimony on whether parking for the yoga studio restricts or blocks sight distance. The Applicant did submit photographs of tandem parking (shown on page 34 and 54 of this Report), to demonstrate that five cars can physically fit in the driveway clear of the apron.

Mr. Davis opined the tandem parking in the driveway restricted the sight distance for those exiting Falconbridge Terrace because it causes drivers to park in the apron. 4/30/19 T. 103-104. Ms. Woodhouse testified that her own visibility of traffic when exiting her driveway is impaired when cars are parked on her side of the street. 4/29/19 T. 118. The stacked parking impairs visibility from Falconbridge Terrace because it generates a "wall" of cars that block the view of

Falconbridge Drive. *Id.* Her neighbor almost had an accident when pulling out of Falconbridge Terrace because she could not see oncoming traffic along Falconbridge Drive. *Id.* T. 118-119. She also testified that a picture she took on March 30, 2019, was taken eight minutes before a picture taken by Ms. Romano. Ms. Romano's picture shows the perspective from the front of the home on Falconbridge Drive, but does not show how the site distance is obstructed when leaving Falconbridge Terrace. 4/29/19 T. 128. Both pictures are shown below (Exhibits 79(a) and 88(a)).

Applicant's March 30, 2019, View of Tandem Parking from Subject Property Exhibit 88(a)

Opposition's March 30, 2019, View Of Tandem Parking (from Falconbridge Terrace Exhibit 79(a)

Other photographs submitted by those in opposition (below) show cars parked in the apron of Ms. Romano's driveway, further restricting sight distance:

February 9, 2019 (Vehicle Parked in Driveway Apron Exhibit 79(a)

Vehicle Parked in Driveway Apron and Sight Distance from Falconbridge Drive toward Falconbridge Terrace (Ex. 46(a), p. 57)

Vehicle Parked in Apron/Sight Distance From Falconbridge Terrace toward Falconbridge Drive

Those in opposition assert that Ms. Romano's clients have not observed the "no parking" restrictions along Falconbridge Terrace and Falconbridge Drive abutting Ms. Romano's property. Those in opposition submitted photographs demonstrating parking violations that occurred on July 13, 2018, July 14, 2018, November 29, 2018, January 4, 2019, January 14, 2019. Exhibit 46(a), p. 40, 41, 44, 52. The Hearing Examiner reproduces one of these photographs that shows parking along Falconbridge Terrace too close to the intersection. Exhibit 46(a), p. 40.

3. Tandem Parking[17]

Staff's recommended parking plan calls for double rows of stacked parking. One of the rows three vehicles in length. Exhibit 64(a), p. 4. The Staff Report does not analyze the safety, compatibility or operational problems raised by those in opposition. The Applicant submitted photographs (shown earlier) that depict five vehicles parked clear of the apron. Ms. Gaynor, a client of Ms. Romano's testified that she adheres to the parking diagram recommended by Staff. 3/4/19 T. 169-170. One of those in support testified that she once parked on the street because

[17] Whether Zoning Ordinance permits unattended tandem parking for this use is addressed in Part III.E.1 of this Report. The Hearing Examiner addresses only compatibility issues here.

she had to leave class early and didn't want to get boxed in. She added, though, that it's extremely rare to leave early. 3/4/19 T. 171-172. When the Hearing Examiner asked Ms. Romano whether there were any problems with vehicles being blocked in, she replied, "amongst the few we usually park in such a way where if you have to leave early, you're kind of the last one that pulls out." 4/30/19 T. 163. .

Ms. Woodhouse testified that tandem or stacked parking in Ms. Romano's driveway generates safety problems. At the end of classes, vehicles are delayed when students stand chatting after class. 4/29/19 T. 120. The same problem occurs when classes follow another appointment earlier on the schedule. She has observed cars simultaneously maneuvering around each other on the driveway (some in the grass) at the same time that others try to enter traffic.[18] At the same time, clients are attempting to make U-turns on the street to exit the neighborhood via Jones Lane. The cars leaving class can sometimes create a chaotic scene. T. 120. Ms. Woodhouse also submitted a series of photographs (Exhibit 79(a), on the following page) that shows two blocked cars maneuvering at the same time to exit the property. 4/29/19 T. 132. The SUV closest to the garage had to do a three-point turn on Ms. Romano's property (including the grass) to exit. *Id.*

Ms. Agresti testified that she is an original homeowner in the Fox Hills North neighborhood. She moved there primarily because it was quiet and peaceful. T. 201-202. Walking is very important to Ms. Agresti and she tries to walk in the evenings or at night. Since her retirement in 2004, she walks during the day as well. T. 202. She testified that she was almost hit by a car when walking on Falconbridge Drive across from the Romano's house. She was walking down the sidewalk across the street from the studio. The vehicle pulled into a driveway to make a U-turn to leave the neighborhood from Jones Lane. The woman driving the vehicle was speaking

[18] Staff recommended the tandem driveway parking only if vehicles did not use the grass. Exhibit 64(a).

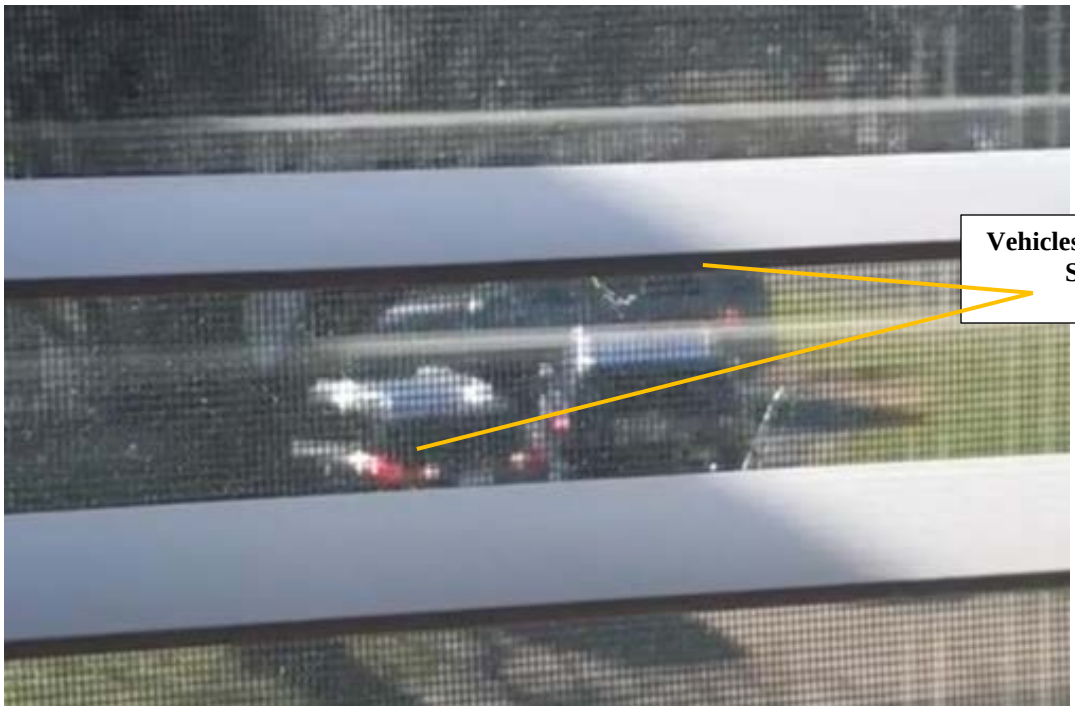


Exhibit 79(a)

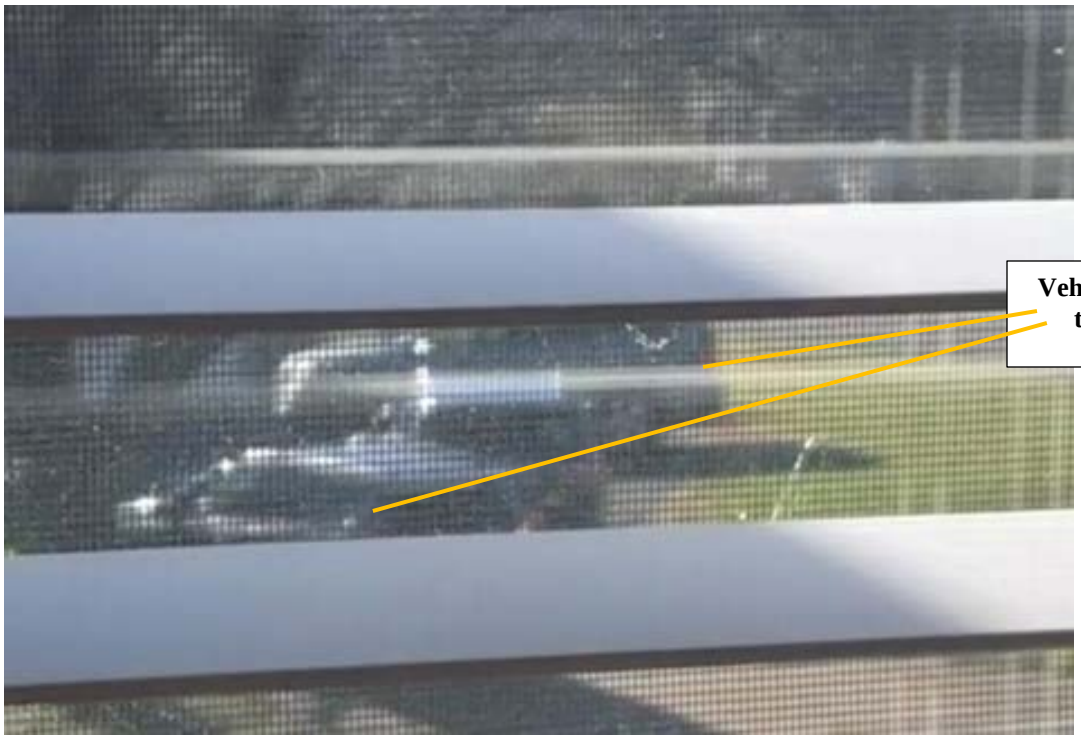


Exhibit 79(a)

on her cell phone. Ms. Agresti waited behind the car for the woman to notice her, but the woman continued speaking on the cell phone. Ms. Agresti began to walk on the apron behind her,

but then the woman began to back up. The incident occurred right after Ms. Agresti had had a hip replacement and wasn't stable on her feet. 3/4/19 T. 202.

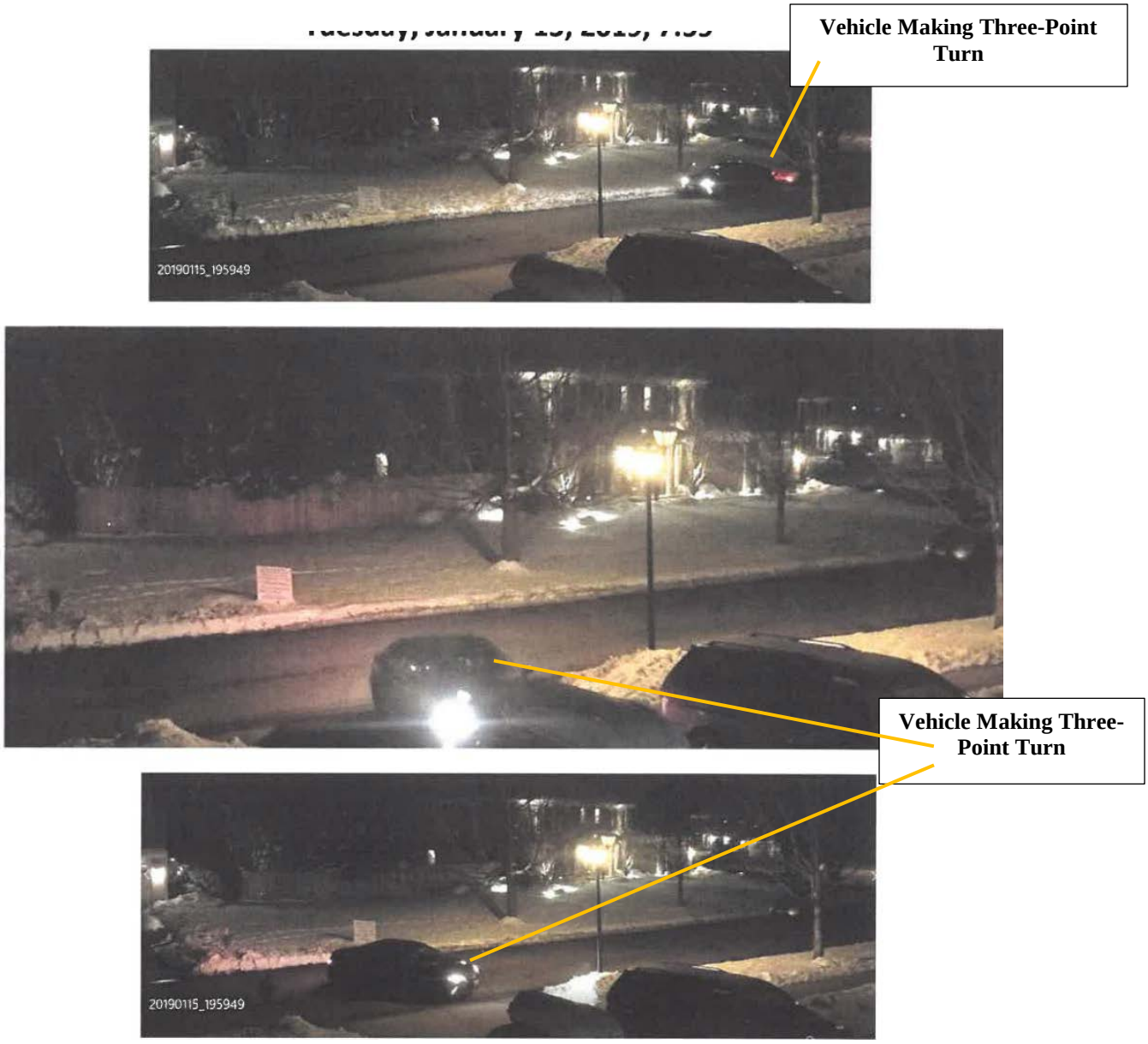
Mrs. Huber described being almost hit by a vehicle when she walked down her own driveway. She didn't expect the car to be there and wasn't paying attention. The driver waived to say sorry and she stopped. The driver then turned the vehicle around and parked in front of Ms. Woodhouse's home and went over to Ms. Romano's residence. *Id.* T. 223-224.

Ms. Huber described another incident that occurred in her driveway in the fall of 2018. She testified that she came home from a very early morning doctor's appointment. She went to pull into her driveway, and someone was already in there. She tried to hand-wave them to leave, but the driver just hand-waved her to go by. After a while, the driver pulled out of Mrs. Huber's driveway. The vehicle wasn't fully in the driveway; the driver was just past the apron and sidewalk. Mrs. Huber pulled in and expressed her anger to the client. T. 248. Mrs. Huber stated that the week before, Ms. Romano had had 10 classes at her residence, six of them either in the evenings or weekends. The classes impacted Mrs. Huber. T. 243.

At another time, Ms. Huber's daughter began pulling into their driveway shortly after Mrs. Huber arrived home. Someone else pulled into the driveway and her daughter had to slam on her brakes to avoid the vehicle. 4/29/19 T. 226.

Ms. Woodhouse has observed Ms. Romano's students use the neighbor's (and her own) driveway to turn around many times. When this occurs at night, the headlights from client's vehicles shine into their home. She has also observed cars doing three-point turns in the street. Once, she saw a car parked in the street drive in reverse the entire length of the Romano's frontage so they could reverse into the driveway and then pull out onto Falconbridge Drive heading to Jones Lane. T. 120-121. All of these maneuvers cause the headlights to shine into their home. Mrs.

Huber has observed this as well. T. 229. Ms. Woodhouse stated that these types of maneuvers cause her safety concerns for children and adults in the neighborhood. T. 121. The opposition submitted photographs of cars reversing in the street, using a driveway to turn around, and making a three-point turn in the middle of Falconbridge Drive to exit the neighborhood. Exhibit 46(a), pp. 61-63. The Hearing Examiner reproduces the photograph of a client's vehicle using Ms. Huber's driveway to turn around to demonstrate the impact of headlights pointing toward the house (Exhibit 46(a), p. 61, below):.



Client Vehicle Using Huber Driveway to Reverse Directions
January 15, 2019

4. Parking Area Screening

Staff described the existing landscaping as "typical" of a suburban residential neighborhood. Exhibit 64(a), p. 4. Staff failed to address screening of the parking area in this case because it concluded that the site was "grandfathered" from having to comply with the screening under Section 59-7.7.1.A.1 (discussed in Part II.E.2 of this Report.)

Mr. Davis testified that the parking area screening requirements are applicable to this case. He noted that the parking requirements apply to any "change in floor area, capacity, *use*, or parking design…" *Zoning Ordinance,* §59-6.2.2.A (emphasis supplied); 4/30/19 T. 35. He opined that the unscreened parking is incompatible with the surrounding area 4/30/19 T. 100. He believes that this goal of the Plan could have been met by screening the on-site parking. This would not have further restricted the site distance at the corner of Falconbridge Terrace because that is caused by parking in the apron of the driveway. T. 102. That is because the rights-of-way (as opposed to the paved width of the road) are large. If landscaping is kept within the boundaries of the property and outside of the right-of-way, there should be sufficient space to see oncoming traffic. T. 102.

Ms. Woodhouse compared the view of the parking as a "wall of cars" that one would not "expect to see in a residential neighborhood." 4/29/19 T. 119. According to her, the "wall" was so noticeable that she observed a jogger stop and take a picture of Ms. Romano's driveway. *Id.* This is more problematic because the intersection is near the entrance to the community. 4/29/19 T. 120. Those in opposition submitted photographs of the tandem parking, reproduced above.

5. Credibility of Witnesses

The Applicant attacks credibility of different opposition witnesses based on a variety of reasons. Ms. Romano believes that Mrs. Huber is motivated by personal animus. Exhibit 119, p. 19. According to her, this began after Mrs. Huber became angry when a client of Ms. Romano's

used Mrs. Huber's driveway to turn around. This discussion, in January or February, 2017, prompted Ms. Romano to file the conditional use.[19] 3/4/19 T. 31-32. At the time, Ms. Romano attempted to approach the Hubers in a reasonable manner but was told by her husband that the business had really "gotten under her skin." Ms. Huber then came out of the home and spoke to Ms. Romano "very aggressively." 3/4/19 T. 31. Ms. Romano testified that Mrs. Huber told her that she had filed the complaints with DPS and intended to file more. *Id*. Even after Mrs. Huber denied that under oath (4/29/19 T. 230) and Ms. Woodhouse testified that she made the majority of the complaints (4/29/19 T. 199), Ms. Romano continued to accuse Mrs. Huber of filing the complaints. 4/30/19 T. 146. As described previously, Ms. Romano believes she has done everything possible to appease the Huber's. 4/30/19 T. 146.

Ms. Romano testified that Mrs. Huber's and Ms. Woodhouse's bias is demonstrated by the fact that they complained to DPS before speaking with her personally. Ms. Romano feels that when she attempted to discuss the matter calmly, Mrs. Huber became heated and angry to the point where Ms. Romano had to contact her attorney. 4/29/19 T. 257-258. Her attorney hand-delivered a letter to Mrs. Huber in March, 2018. The letter accused the Hubers of speaking with hostility toward people visiting Ms. Romano's property, trespassing on Ms. Romano's property, removing tree branches from her property, and making "unjustified complaints" about how the Hubers have handled tree debris on their property. Exhibit 48. The letter accuses the Hubers of making complaints to DPS and threatening to make more. *Id.* Although the letter states that it is "difficult" to see why the use is objectionable, it invites the Hubers to meet with Ms. Romano to share their concerns. It also threatens legal action against Mrs. Huber for any "additional hostile conduct

[19] The record reveals that the conditional use application was filed in November, 2018, more than year after the discussion described by Ms. Romano. The Hearing Examiner notes that timing of the application correlates more closely with the warning issued by DPS after the District Court abatement order.

toward Ms. Romano's visitors..." *Id.* Ms. Romano's attorney sent a follow-up letter a month later, demanding to know whether the Hubers would "identify their reasonable concerns" about operation of the yoga studio. Exhibit 49.

One supporter echoes Ms. Romano's argument that Mrs. Huber has a "personal vendetta" that has generated Ms. Romano's problems. Exhibit 119, p. 19. Ms. Sandra Thomas testified that the Huber's had prowled around Ms. Romano's property and that the parking issues were created by one neighbor—the Hubers. According to her, the Hubers have posted a video camera and complained about things like trash cans being in the wrong position, the snow shovel, and leaves blowing from one yard to the other. 4/29/19 T. 76. At one point during her testimony, Ms. Thomas turned in her seat and pointed an angry finger at Ms. Huber's daughter because she was so upset. 4/29/19 T. 80. She does not understand the palpable feeling of disdain and acrimony from the Hubers. When asked by the Hearing Examiner where Ms. Thomas had learned of the alleged actions taken by the Hubers, she replied "From Natasha." *Id.* T. 76. Ms. Thomas then testified that the whole case is really about the Hubers' "inexplicable" personal vendetta against Ms. Romano. *Id.* T. 79. Ms. Thomas gets upset when she sees the Huber's daughter. She "cannot fathom" the inordinate amount of time and anger that the Hubers have spent to fight a peaceful yoga studio and can't understand that it can really be just about parking, particularly as Ms. Romano has tried everything to please the neighbors. *Id.* at T. 81. Ms. Thomas was unaware that the County had prosecuted Ms. Romano for violating the Zoning Ordinance, as was another of Ms. Romano's clients. 4/29/19 T. 86; 3/4/19 T. 127.

Mrs. Huber believes that many of the "peace-loving" students have targeted Mrs. Huber as the cause of the DPS's enforcement actions. She has never made a complaint to DPS, nor has anyone in her family. She denied trespassing on Ms. Romano's property. 4/29/19 T. 231. Mrs.

Huber acknowledged that Ms. Romano did come by to talk to the Hubers about her application. She also admitted that she was a "bit heated" because, when she did tell Ms. Romano her concerns, Ms. Romano responded that she had a right to have her business there. 4/29/19 T. 225-226. At the time, Ms. Romano had registered for the low-impact home occupation, which permitted five visits per day and up to 20 per week. T. 226. After her discussion, according to Ms. Huber, Ms. Romano's violations of her low-impact home occupation continued. Mrs. Huber didn't respond to Mr. Klopman's letters because she was intimidated by them and didn't wish to pay an attorney because her children were in college.

Mr. Huber feels that Ms. Romano has targeted his wife in the community. According to him, Ms. Romano's response to the complaints about the studio has focused almost exclusively on the Hubers' character, and particularly that of his wife, rather than the merits of their objections. T. 292. She was intent on having as many customers as she wanted at her home studio, regardless of the Huber's concerns. In his opinion, it didn't matter what the Huber's concerns were, she wanted to make money. T. 293. Mr. Huber believes it is clear that Ms. Romano has waged a widespread defamatory attack against his family, and especially his wife Jean. He testified that Ms. Thomas, who has never met Mrs. Huber, has described his wife as stalking and prowling around their property when clearly the photographs were taken from the Huber's side of the street. She has accused his wife of inciting members of the community to fight rather than to inform of the planned expansion. T. 294. Ms. Romano has told her supporters that Mrs. Huber filed the complaints, which is not true. T. 294.

The Applicant also attacks Ms. Agresti's motivations for opposing this application. Apparently, this stems contradictory information Ms. Romano included in her original application. Exhibit 14. The application proposes a maximum of 12 persons per class in one place; in another

it states the maximum will be 10 persons. Exhibit 9. Ms. Agresti distributed a flyer to the community representing that the application proposed a maximum of 12 people per class. When asked why, Ms. Agresti testified that she didn't know which number in the application to believe. 3/4/19 T. 206. Afterwards, Ms. Agresti sent the flyer to another section of the neighborhood alerting them to the hearing, again stating that there would be a maximum of 12 persons per class. When asked why she did not change the flyer, Ms. Agresti testified that Mr. Klopman had represented to the homeowner's association that he would be amending the application. Before sending the flyer a second time, she checked and the application had not been amended. Ms. Agresti denied that the second flyer stated that a maximum of 20 people would be attending classes. 3/4/19 T. 205-214.

The Applicant claims Mr. Davis' expert testimony should be ignored in its entirety because he "acted as an advocate" rather than an objective expert. To support her argument, she states that Mr. Davis is paid for his work and has testified as an expert witness for Mr. Chen in other cases.

6. Findings and Conclusions on Compatibility

a. Compatibility

After a careful review of the entire record, the Hearing Examiner agrees with Mr. Davis' expert opinion that the failure to have sufficient on-site parking generates a cascading effect of adverse consequences that are incompatible with the neighborhood. Even if implemented without error or misjudgment by clients, the weight of the evidence demonstrates that the on-street and tandem parking proposed will endanger the safety of residents and create traffic congestion for those in the surrounding area.

Simple math dictates that the on-street parking does not leave the required amount of access for emergency vehicles. The best evidence of the paved width of Falconbridge Drive and

Falconbridge Terrace comes from Mr. Davis because he physically measured it. He found that the width (exclusive of curb and gutter) is 23 feet, 4 inches. Access for emergency vehicles requires a clear width of 20 feet (without on-street parking) or 28 feet (with on-street parking.) The width remaining when cars park on the street clearly doesn't meet this standard, regardless of whether one measures vehicle width at 7 or 8.5 feet.[20] Mr. Davis also testified that when cars are parked on both sides of the road, the road contains only one travel land of 6-feet, 4-inches width. Nothing in the application prohibits on-street parking on the opposite side of the road by residents or visitors. In fact, for the reasons below, the Hearing Examiner agrees with Mr. Davis' expert testimony that the tandem parking arrangement will encourage on-street parking in front of properties other than Ms. Romano's.

The lack of required emergency access is of particular concern to the Hearing Examiner because the evidence demonstrates that the intersection is at a major entrance to the community. The expert testimony of Mr. Davis and the lay testimony of Mr. Huber support this. Comments from the Fox Hills North Board of Directors also describe the intersection this way.[21] If emergency access at this intersection is impeded, it could delay emergency response times not just for Ms. Romano and her immediate neighbors, but also the 260 homes affected by this use. While Ms. Romano may have testified in good faith that EMS has approved this use, there is nothing in the record from the Montgomery County Department of Fire and Rescue Service indicating that they have reviewed or approved emergency access here.

The Hearing Examiner also finds that the on-site and tandem parking arrangement impair the sight distances approaching the intersection of Falconbridge Terrace and Falconbridge Drive

[20] 23.4 feet paved width – 8.5 feet vehicle width= 14.9 feet. 23.4 feet paved width – 7 feet vehicle width = 16 feet.
[21] The Hearing Examiner finds Mr. Huber's testimony credible because he explained in detail how he arrived at his conclusions and he testified in a calm and measured manner.

even when vehicles do not park in the apron of the driveway. Ms. Romano did not address this issue at all, nor did Staff. Those in opposition, however, submitted photographs demonstrating that the tandem parking restricts sight distance from Falconbridge Terrace even when cars do not park in the apron. Similar photographs demonstrate that the tandem parking impairs visibility from Falconbridge Drive approaching the intersection as well.

The weight of evidence in this case also reveals that on-street parking even on just one side generates safety issues. It requires vehicles to use the wrong travel lanes in order to pass, a finding also supported by simple math. While this of itself should end the question, those in opposition submitted photographs where vehicles used the opposite travel lanes to avoid on-street parking. The Hearing Examiner finds Mr. Huber's testimony of the dangers credible for the reasons already stated. His family's vehicles have been hit three times when parking on the street. He actually observed one of the accidents, caused when oncoming vehicles had to use the incorrect travel lanes to avoid cars parked along Ms. Romano's property.

The Hearing Examiner also finds that Ms. Romano has failed to prove that the tandem parking can or will be managed without generating safety issues. The Hearing Examiner finds from the testimony and evidence that vehicles perform U-turns in the street and in residents' driveways after class to exit the community. She also finds credible, and documented by photographs, that clients' attempts to avoid making U-turns yielded maneuvers that are just as dangerous, such as reversing along Ms. Romano's frontage (around a car parked on the street. The Applicant addressed this only by testifying that she has asked clients not to perform these U-turns and avoid residents' driveways. Staff recommended approval only with the condition that Ms. Romano "encourage" clients not to do this. Photographs taken *after* Ms. Romano filed this application demonstrate, however, that these maneuvers still occur.

The weight of evidence demonstrates that the three-point turns in residents' driveways are dangerous. The Hearing Examiner finds credible Mrs. Huber's and Mrs. Agresti's testimony that using neighbor's driveways to turn around nearly caused personal injury. She also finds credible Ms. Huber's testimony that Ms. Romano's clients have interfered with her access to the driveway, causing a member of her family to brake suddenly. Despite the Applicant's allegations that Mrs. Huber is motivated by a "personal vendetta", the Hearing Examiner found Mrs. Huber's testimony on this calm and factual, as discussed below. Her testimony is further supported independently by Ms. Agresti's testimony.

The photographs submitted by those in opposition also demonstrate and support Ms. Woodhouse's and Mrs. Huber's testimony that the U-turns, use of driveways, and cars reversing along Ms. Romano's frontage cause lights to shine in their windows after dark. Ms. Romano attacks all of these complaints, asserting without any evidence that these are "everyday life experiences," or they are "unreasonable." Exhibit 119, pp. 17, 21. She also alleges that Ms. Woodhouse "assumes" that the lights are coming from clients of the studio. *Id.* at 17. The Applicant tries to diminish Mrs. Huber's testimony of near misses entering her driveway because she used the phrase "slam" on her brakes. *Id.* at 20. She argues that the Mrs. Huber's account must be inflated because Mrs. Huber's vehicle must have been going slowly before turning in to her driveway. *Id.*

The Hearing Examiner doesn't find any of these arguments persuasive. Screening residential homes and the community from the glare of headlights is a typical factor taken into account in zoning cases. The Applicant has submitted *no* evidence for its factual proposition that any of the impacts cited above are everyday occurrences. Ms. Woodhouse testified that she correlated her photographs with scheduled class times and submitted a copy of Warrior One's

schedule showing the classes occurring at the time the photographs were taken. Nor does the Hearing Examiner find Mrs. Huber's use of the term "slam" sufficiently inflated to discount her testimony. Even when vehicles are travelling at slow speeds, they may have to brake suddenly when something unexpected occurs.

The Hearing Examiner also finds that the on-street and tandem parking proposed will cause congestion in the neighborhood. Key to this determination is quantifying the volume of traffic that flows through the intersection. The Hearing Examiner finds that the weight of the objective evidence demonstrates that the intersection of Falconbridge Drive and Falconbridge Terrace is busier than represented by the Applicant. Mr. Huber's "pictograph" utilizing more objective data demonstrates that 500 to 727 vehicles or pedestrians pass along Falconbridge Drive near the intersection on a daily basis. This is consistent with Mr. Davis' expert testimony, other witness lay testimony, and comments from the Fox Hills North Homeowner's Association, that the intersection is a major entrance to the community. According to Mr. Davis, it serves approximately 260 homes. Even the Applicant acknowledges that Falconbridge Drive is the "main street" through the community. Exhibit 119, p. 21.

In contrast, the testimony of Ms. Romano's supporters is anecdotal and with little objective support. The Applicant submits photographs from only a few days to demonstrate on-street parking conditions. By their own admission, clients "interaction" with the community is brief. Most of their time is spent in the studio rather than observing conditions outside. Ms. Romano's testimony on rebuttal reaffirms that those in the studio may not be aware of conditions on the street during class. When the Hearing Examiner asked her whether she felt the Huber's concerns were reasonable, she testified that she "didn't realize what was going on outside of my room, because I was inside and everybody was kind of parking outside." 4/30/19 T. 154. One of those who

supported the application acknowledged that the intersection is busy at rush hour, and testified that people use Falconbridge Drive as a "cut-through" to get to work in the morning. While he stated that that wasn't the case in the evening because people's destinations are their homes, the Hearing Examiner doesn't find this persuasive. This is because the same people that travel the intersection in the morning may return the same way to exit out of the neighborhood in the evening. There is no objective traffic study in evidence to determine peak periods at the intersection. Ms. Gniadek's testimony that that Falconbridge Drive in front of Ms. Romano's house is wide enough to accommodate four vehicles is clearly incorrect. Ms. Klopman testified that she has been particularly careful to observe traffic conditions since November, 2018. However, Ms. Agresti testified that on-street parking had been reduced since this application has been filed the classes have been moved. For these reasons, the testimony on current traffic conditions is not persuasive because the use as proposed *will require* clients to park on the street, generating the unsafe conditions described herein. Unlike the testimony from those opposed, there is a dearth of objective evidence specifying times and conditions, and whether classes were in session, supporting their testimony

From this record, the Hearing Examiner agrees with Mr. Davis' testimony that the tandem parking will encourage on-street parking, generating congestion and safety problems. Key to this finding is a determination of the number of parking spaces available along Ms. Romano's frontage. Both Staff and the Applicant's numbers have varied throughout this case. In closing argument, the Applicant asserts that there are four spaces along Ms. Romano's Falconbridge Drive frontage and two along the Falconbridge Terrace frontage, for a total of 11 spaces for clients of the yoga studio, five in the driveway and six on the street.

The Hearing Examiner concludes that there are only five on-street spaces available for parking along Ms. Romano's property. She finds that Mr. Huber's measurement of the Falconbridge Drive frontage (*i.e.,* 51½ feet) is most persuasive because he actually measured it. Using Staff's measurement for the length of a vehicle (*i.e*., 25 feet long), there is room for only two spaces on that road. The scaled drawing submitted by the Applicant shows that there are four spaces along Falconbridge Drive. Unlike Staff's measurement, the Applicant's drawing uses a 21-foot vehicle length without any rationale. Nor does the drawing show where the "no-parking" area along Falconbridge Drive is located. After scaling the drawing, the Hearing Examiner finds that the parking spaces shown extend for approximately 90 feet of Ms. Romano's frontage. Staff, however, concluded that unrestricted area for parking along Falconbridge Drive is only 80 feet. Using Staff's measure of vehicle length rather than the Applicant's (*i.e.,* 25 feet rather than 21 feet), there is room for only three, rather than the four cars shown by the Applicant.

Thus, the parking plan admits no room for client error or for "overflow" parking on the street abutting Ms. Romano's property. For the reasons set forth in Section III.E.1 of this Report, the proposed use requires a total of 12 spaces—two for the residents and 10 for clients.[22] With only five parking spaces on the street, "overflow" parking spaces for clients who do not wish to be blocked cannot be accommodated along Ms. Romano's frontage.

The evidence supports Mr. Davis' expert testimony that unattended tandem parking will generate demand for on-street spaces. This is supported by the photographs submitted by those in opposition demonstrating that (at least prior to the Planning Staff's recommendation for tandem parking), clients regularly parked on the street even though spaces on the driveway were open. It is also consistent with Mr. Bhatel's testimony. He regularly observed that there were most, if not

[22] The original application did not include outside instructors.

all, cars were parked on the street rather than in the driveway. Ms. Gaynor testified that she parked on the street once because she had to leave early, even after the tandem parking plan was implemented, although she noted that it was rare she had to leave early.

After viewing the photographs of multiple vehicles maneuvering to exit the tandem parking in the driveway, the Hearing Examiner finds that it is unrealistic to assume that tandem parking will be adhered to on a long-term basis. She is not reassured by Ms. Romano's vague testimony on rebuttal that "if someone has to leave early, "you're kind of the last one that pulls out." 4/30/19 T. 163. The photograph of multiple cars maneuvering to free themselves from the tandem parking also supports Ms. Woodhouse testimony the end of classes a "chaotic" scene with cars maneuvering on the driveway and making U-turns or other maneuvers in the street. For this reason, she adopts Mr. Davis' testimony that the tandem parking will encourage additional on-street parking, generating the congestion and safety issues amply demonstrated by those in opposition.

The Applicant argues that the Hearing Examiner should rely on the opinion of Planning Staff, who found that use has minimal impact. While the Hearing Examiner may rely on Staff's opinion, she does not do so in this case because she agrees with Mr. Davis that their Report does not adequately analyze the impacts of the use that have been presented at the hearing.

Staff delineated an unusually small "surrounding area", as attested by Mr. Davis. Staff did not take into account the fact that the entrance serves as the entrance to the community, and traffic from almost 260 homes must pass through the intersection to enter and exit the community. Thus, the direct impact of the proposed yoga studio affects far more people than considered by Staff.

Further, while Staff states at one point states that the paved width of the right-of-way is 25 feet, it did not analyze the impact on congestion and safety due to reduced and narrowed travel lanes. Staff relied on the fact that MCDOT permits *residential* on-street parking. As pointed out

by Mr. Davis, regular and frequent reliance on on-street parking for a commercial business differs significantly with residential overflow parking.

The Hearing Examiner also disagrees with the Applicant's arguments as to why the use has a minimal impact. *See,* Exhibit 119, p. 14. She does not agree with the argument that clients interact with the neighborhood only when they park, walk into Ms. Romano's house, and leave. The safety problems are generated by parking, not the individuals' "interaction" with the neighborhood. When parking is considered, the neighborhood "interaction" is a minimum of one-hour and fifteen minutes per class (depending on whether there are one or two classes a day).

From this record, the Hearing Examiner finds that parking for this scale of use is like a balloon. When squeezed at one point, it expands at another, as demonstrated by the "parking evolution" described by Ms. Romano and her supporters. The evidence is insufficient to demonstrate that problems for a use of this scale on these narrow roads can be safely accommodated.

The Hearing Examiner determines that screening and landscaping of the parking area may and should have been considered in this case for the reasons set forth in Section III.E.2 of this Report. She agrees with Mr. Davis that unscreened tandem parking shown in the photographs is incompatible with the surrounding area. When fully utilized, one row of vehicles extends from the house an unusually long distance and many times into the apron of the driveway, as evidenced by the photographs. Few spaces are visible through the double rows extending from the house because cars are not parked exactly side by side. This supports Ms. Woodhouse's description of a "wall" of parking inappropriate for a residential area. While there is some evidence in the record that residents in the community, including the Hubers, parked in tandem at times, there is no

evidence that the tandem parking is three rows deep, extends into the apron and will occur on a regular basis.

Mr. Davis testified that the driveway could be screened without impacting sight distance at the intersection of the driveway. He opined that additional landscaping of the parking facility would not impact site distance; it would only soften the impact of the parking proposed. 4/30/19 T. 59.

b. Findings on the Credibility of Witnesses

The Applicant in this case has spent an inordinate amount of time attacking the credibility of those in opposition. This is demonstrated in her closing argument, where she again attacks the motivations of the parties.

Despite Ms. Romano's testimony on rebuttal that she found the Hubers' complaints reasonable (4/30/19 T. 154), she now argues that Mrs. Huber's testimony should be discredited because her complaints are unreasonable, are everyday occurrences, and stem from "personal animus" toward Ms. Romano. *Id.* at 19-22. The Hearing Examiner did not observe animus from Mrs. Huber during the public hearing. Most of Mrs. Huber's testimony was calm, supported by the significant number of photographs submitted by those in opposition, and consistent with the testimony of other witnesses. The one time that Mrs. Huber appeared upset (her voice quavered) was when she testified that Ms. Romano has blamed her for actions she has not taken, casting her as the "bad guy" in the community. Based on Mrs. Huber's calm demeanor and consistent testimony, the Hearing Examiner believes that Mrs. Huber did not take the actions complained of by Ms. Romano (*i.e.,* filing complaints with DPS, trespassing on Ms. Romano's property, or filing police reports about landscaping). This is particularly true because Ms. Woodhouse testified that she filed most of the DPS complaints. Even if Mrs. Huber had filed the complaints, however, the

number of violations actually found by DPS and the abatement order issued by the District Court indicates that the complaints were warranted rather than from animus. The fact that Mrs. Huber may have had heated exchanges in the past did not affect her testimony.

What is far more evident to the Hearing Examiner than any animus *from* Mrs. Huber is the animus *toward* Ms. Huber displayed by Ms. Romano and some of her supporters. The most obvious example of this is the testimony of Ms. Thomas. Her testimony was quite emotional and her anger was palpable, particularly when she turned in her seat and pointed accusatorily at the Huber's daughter. The Hearing Examiner believes that Ms. Thomas testified sincerely about her feelings, but also finds that these feelings stemmed from information provided by Ms. Romano. The only "animus" apparent to the Hearing Examiner came from those in support. The Hearing Examiner finds this discredits their testimony.

Many of Ms. Romano's arguments to discredit the opposition's testimony ignore her own responsibility to comply with the Zoning Ordinance. She argues that the Hearing Examiner should discount Ms. Woodhouses and Mrs. Huber's testimony because they didn't try to discuss their concerns first with Ms. Romano and Ms. Woodhouse filed anonymous complaints with DPS. Exhibit 119, pp. 17-18, 20. She reserves particular ire against Mrs. Huber because Mrs. Huber didn't respond to the two letters from her attorney. According to Ms. Romano, she would have addressed their concerns, as she did with a neighbor on Falconbridge Terrace. Exhibit 119, pp. 17-18.

This argument diverts the focus from Ms. Romano's serial non-compliance with the Zoning Ordinance, even after a court order, and places those in opposition on trial for a requirement that doesn't exist. It is the Applicant's responsibility to ensure compliance with the Zoning Ordinance *regardless* of whether a neighbor complains. The evidence demonstrates that Ms. Romano did *not*

cease violating the Zoning Ordinance even after personal discussions with either Ms. Romano or Ms. Woodhouse. Nor do the actions of Ms. Romano represent a "neighborly" attempt to work things out. The two letters from her attorney accuse Mrs. Huber without evidence of taking actions she denied under oath, dismisses the validity of her complaints, and threaten to sue her.

Nor does the Hearing Examiner see any reason that Ms. Agresti's testimony should be discounted. The incorrect information about the application was distributed by *Ms. Romano* before Ms. Agresti placed it in the flyer. Ms. Agresti is correct that the application was never formally amended. Like Ms. Romano's testimony of her "amendment" during the public hearing, the scope of the application has been unclear to the Hearing Examiner throughout the hearing, and changed even in closing statements (restricting it to "for-profit" activities.). It is Ms. Romano's responsibility to clarify what she is requesting, rather than discredit those who rely on information she provides.

The Applicant attempts to minimize the impact of the use by parsing down whether classes will occur at the times those who opposed the application at the hearing will be home. Exhibit 113, pp. 15, 16. This ignores the consistent testimony that 260 homes are affected by this use because the property sits at a major entrance to the community. It also ignores the numerous letters in opposition, complaining of the adverse impacts of the use.

Some of the Applicant's arguments discrediting the testimony of those in opposition are highly speculative or mischaracterize testimony. One states that Ms. Agresti's testimony should be ignored because it "strains credulity" that she didn't mention her accident in the flyer she distributed. *Id.* at 16. The Hearing Examiner finds absolutely no basis for this assertion. Ms. Romano attacks Mr. Patel's testimony that he's observed parking in the street rather than the driveway. According to Ms. Romano, this contravenes the "overwhelming evidence" in the

Applicant's photographs showing cars parked in the driveway. Exhibit 119, p. 15. Mr. Patel, however, actually testified that there have been "several occasions" when he has observed no cars parked on the driveway on the Romano property—not that he has never observed any cars parked in the driveway. 3/4/19 T. 146.

The Applicant argues that Mr. Davis' expert testimony should be entirely ignored because he is paid and he acted as an advocate. Exhibit 119, p. 12. That fact that Mr. Davis is a paid witness does not prevent the Hearing Examiner from accepting his testimony. Even the case cited by the Applicant instructs that the weight to be given an expert's opinion is based on the "soundness of his reasons given…" *Walker v. Grow*, 170 Md. App. 255 (2006). As discussed at length above, the Hearing Examiner found Mr. Davis reasoning sound and supported by the weight of evidence in the record of this case. Because of the soundness of his reasons and the consistency with objective evidence, the Hearing Examiner does not find his testimony should be discounted simply because he was paid by those in opposition.

The Applicant's arguments attacking the credibility of the opposition's testimony are speculative and inaccurate. The Hearing Examiner will not delve into every one. The weight of evidence in this case heavily favors those in opposition because it is consistent, clear, covers a much longer period of time and is documented by far more objective data or photographs than that of the Applicant.

B. Conformance with the Master Plan

The property lies within the geographic area covered by the 2002 *Potomac Subregion's Master Plan* (Plan). Staff advises that the Plan contains no site specific recommendations regarding this property. Exhibit 64(a), p. 10.

One of the Plan's primary goals is to "[r]ely on the land use framework established by earlier plans to strengthen and support the Subregion's residential communities." *Plan,* p. 1. To this end, the Plan contains guidelines for the siting of conditional uses (formerly special exceptions) to protect existing residential communities. *Plan,* p. 35. The overall policy guides that conditional uses meet the Master Plan's goals if they (1) conform to the specific and general standards of the Zoning Ordinance, and (2) meet the Master Plan's guidelines that protect residential communities. *Id.*

The Plan's includes the following specific guidelines for conditional uses pertinent to this case (*Id.*):

- Limit the impacts of existing special exceptions [conditional uses] *in established neighborhoods*. Increase the scrutiny in reviewing special exception applications for highly visible sites …

- Protect the Chesapeake & Ohio Canal National Historic Park, major transportation corridors *and residential communities* from incompatible design of special exception uses. (Emphasis supplied)

The Plan goes on to explain that, "[u]ses that might diminish safety or reduce capacity of roadways with too many access points or conflicting turning movements should be discouraged." *Plan,* p. 36. To further mitigate the non-residential impacts of conditional uses, the Plan sets contains guidelines for screening parking. These recommend that parking (1) be screened to "minimize commercial appearance," (2) be located in rear yards where possible, and (3) permit front yard parking only when it can be adequately landscaped and screened to buffer views from residences. *Id.*

Planning Staff concluded that the impacts of the proposed were sufficiently limited because (Exhibit 64(a), pp. 10-11):

> The home occupation will be conducted entirely within the house and, as recommended, is limited to no 40 visits per week and no more than 10 persons at

> one time. This could equal to four yoga sessions per with 10 clients per session. Or, it could equal, six yoga session per week with 6 clients per session, or any combination thereof so long as client visits do not exceed the recommended maximums.
>
> The general operations of the proposed yoga studio consist of group exercises, limited class size, and held by appointment only. Yoga activities would not produce hazards, noise, vibration, smoke, dust, odor, or light glare. Therefore, the home occupation would not unreasonably interfere with the use and enjoyment of property in the neighborhood, nor cause material harm to neighbors. With respect to the Chesapeake & Ohio Canal National Historical Park, the Property is located approximately two miles northeast of the park. The Project would, therefore, have no impact on the park.
>
> * * *
>
> The Project does not propose any new construction. The yoga studio operations will be conducted completely inside the existing residence. With respect to vehicle parking on the property, as conditioned, the Project is compatible with the residential nature of the neighborhood as parking vehicles on private driveways is customary and allowed.

The Applicant adopts Staff's analysis of compliance with the Master Plan. Exhibit 119, p. 23. The opposition's expert land planner, Mr. Davis, testified that the application fails to conform to the Master Plan for several reasons. First, according to Mr. Davis, the use fails to comply with all requirements of the Zoning Ordinance.[23]

He also opined that the on-site parking generates very significant problems that conflict with the Plan's goals. The Plan is specific about limiting the impacts of existing special exceptions in established neighborhoods. T. 99-100. Having been a former division chief at the Planning Department, he was surprised by the lack of analysis supporting Staff's finding on the Plan. They should have at least made an analysis. 4/30/19 T. 101.

In his opinion, the home occupation is situated at a "highly visible" location because it lies at a key entrance to much of the community. *Id.* at T. 99. The Plan also recommends that parking

[23] These requirements are discussed in detail throughout this Report.

be located and landscaped to minimize the commercial appearance and that front yard parking should be allowed only when it can be adequately landscaped. *Id.* at T. 100. The parking plan proposes unscreened front yard parking. In his opinion, this goes to the heart of the Master Plan's goals. *Id.* at T. 100. The goal of the Plan could have been met by screening the on-site parking without impacting the sight distance problems generated by parking in the apron of the driveway. *Id.*, T. 102. That is because the rights-of-way (as opposed to the paved width of the road) are large. If landscaping is kept within the boundaries of the property, there should be sufficient space to see oncoming traffic. *Id.*

Mr. Davis testified the parking proposed generates safety issues and, for that reason, conflicts with the Master Plan's goal to prohibit uses that diminish the safety or reduce the capacity of roadways with too many conflicting turning movements. *Id.* In his opinion (as described above),the on-street parking generates the safety concerns described by the neighbors and reduce the capacity of the Falconbridge Drive with too many conflicting turning movements. 4/30/19 T. 99, 101.

Conclusion: The Hearing Examiner agrees with the opposition that the use fails to conform to the Master Plan. The Plan makes clear that one of its overarching goals is to protect existing residential neighborhoods, both in terms of safety and compatibility. For the reasons stated above, the record demonstrates that the use will generate significant safety issues, contravening the Plan's goal to "diminish safety or reduce capacity of roadways with too many access points or conflicting turning movements ...." The Hearing Examiner further finds that the unscreened front yard parking specifically contravenes the design guidelines in the Plan and is out of character with the surrounding area.

The Applicant relies on the Staff Report to support a finding that the use is in compliance with the Master Plan. Staff, however, focused almost entirely on the fact that all yoga activities would occur inside the yoga studio and that no exterior alterations would be made to the dwelling. Staff failed to consider the major impacts of the use—all of which stem from external conditions. Partly because Staff incorrectly assumed that landscaping could not be reviewed, it recommended approval of a parking plan that directly contravenes a specific goal of the Master Plan (*i.e.*, to screen front yard parking) that could have been met. The Hearing Examiner finds that Staff's recommendations are not persuasive on the issue of Master Plan compliance in this case.

2. Adequate Public Facilities and Services

> *f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
>
> > *i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*
> >
> > *ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

Conclusion: Planning Staff found that this standard did not apply to this application because no new construction is proposed. Exhibit 64(a), p. 16. This is incorrect. As noted above, the requirement for an adequate public facilities (APF) test is determined by whether "the impact of the conditional use is equal to or less than what was approved," regardless of whether new

construction is planned. In this case, the only evidence of record is that the property was subdivided for single family residences. As the yoga studio will be adding 20 trips a day to the existing single-family residence, it must assumed that this standard applies to the use.

Because the application does not require an approved preliminary plan, the Hearing Examiner must determine whether road and transit capacity is adequate under Section 50-35(k), as implemented by the Subdivision Staging Policy (Council Resolution 18-671, adopted on November 15, 2017) and the Planning Board's Local Area Transportation Review (LATR) guidelines. *Local Area Transportation Review Guidelines, Spring, 2017 (LATR Guidelines).* Applications that are expected to generate fewer than 50 trips are exempt from LATR review, but must submit a "Transportation Study Exemption Statement" (Traffic Statement) to demonstrate that the number generated by the proposal will be under 50-trip maximum. *LATR Guidelines,* p. 17.

To that end, the Hearing Examiner requested the Applicant to submit a Traffic Study Exemption Statement on April 17, 2019, after the first day of hearings. Exhibit 83. As noted above, the Traffic Statement mentions only the proposed classes. Exhibit 87. These are capped at 10 visits per day, which would generate 20 trips per day. Based on this information, the Hearing Examiner finds that the application is exempt from LATR review.[24]

As to the remaining public facilities (*i.e.*, stormwater, water and sewer, fire and police), the Hearing Examiner gleans from the owner's dedication on the submitted plat that the homes are served by public water and sewer. Exhibit 7. As there are no changes to the home, it is reasonable to assume that the existing stormwater is adequate and was approved as part of the original

[24] Even if the Hearing Examiner accepted Ms. Romano's position that the application was amended to include private instruction, she provided no evidence stating the times proposed for this activity. Thus, the Hearing Examiner would not be able to determine whether the use impacted peak periods or not.

subdivision. It may also be assumed that fire and police services are sufficiently close to serve the use for the same reason. The Hearing Examiner finds that the proposed conditional use will be served by adequate public facilities.

3. Inherent/Non-Inherent Adverse Effects

> *g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
>
> > *i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
> >
> > *ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
> >
> > *iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are **"**adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations." *Zoning Ordinance,* §1.4.2. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use. Typically, Planning Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an a major home occupation. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified ***or*** adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Staff found that typical operational characteristics of a major home occupation conditional use are (Exhibit 64(a), p. 17):

- Vehicle, bicycle, and pedestrian trips to and from the Property;
- Parking for residents and employees;
- Varied hours of operation; and
- Noise or odors associated with the vehicles.

Staff concluded that there were no non-inherent adverse impacts from the proposed use, stating (*Id.*):

> These characteristics are inherent and typically associated with similar uses and do not exceed what is normally expected. Recommended hours of operations are limited to 75 minute session [sic] and outside of peak trip generation time. Residential uses adjoining the property in all directions are well-buffered from the Project in distance and by existing landscape.
>
> Non-inherent characteristics are unique to the physical location, operation, or size of a proposed use. The project would cause no adverse effect with regard to inherent or non-inherent characteristics, or combination thereof, or in any of the following categories: the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;

> traffic, noise, odors, dust, illumination or lack of parking; or the health, safety or welfare of neighboring residents, visitors or employees.[25]

The Applicant relies primarily on Staff's recommendation, as well as expert testimony that the use would not adversely affect property values. Exhibit 119, p. 23. Mr. Paul Yanoshik, the Applicant's expert realtor, opined that a business with between five to 10 clients visiting on the dates stated in the schedule will have no impact on the marketability of homes in the neighborhood. 4/29/19 T. 65-66. He testified that he reviewed the MLIS for homes near Ms. Romano's in the last couple of years and there has not seen an impact on prices. In his opinion, younger homebuyers are looking more and more at places like "Kentlands Lakelands" where people like to have walkability and things to do in the neighborhood. *Id.* at 47. He opined that a business operating on a limited basis, like a yoga studio, could be a plus as baby boomers move out and younger families move in. T. 67-68. He also testified that traffic is not a problem because the roads are 40-feet wide. T. 69-70. He testified that there is "very light" suburban on-street parking along Falconbridge Drive. T. 70. On cross-examination, Mr. Yanoshik testified that he had never actually measured the road width, but assumed that they are 40-feet wide. According to him, the roads in the neighborhood are wider than most areas. T. 71.

Mr. Davis opined that the inherent adverse effects associated with the physical and operational characteristics of a major home occupation include the frequency and volume of visitors to the site, the ability of the site to accommodate parking, and noise. 4/30/19 T. 14. In his opinion, it is also important, when determining non-inherent adverse impacts, to look at whether the use proposed, the location of the home occupation, and whether or not an inherent use rises to the level of a non-inherent use. T. 14.

[25] The 9:15 a.m. classes and the 5:45 p.m. classes do occur during the peak period defined in the LATR Guidelines. The Applicant has offered to adjust the times of these classes. The Hearing Examiner does not address this because she denies the application. Exhibit 119, p. 2, Ftn. 1.

In his opinion, there are several non-inherent operational and physical characteristics that adversely affect the community. These stem primarily from the lack of on-site parking, which generates a "cascading" effect that negatively impacts many aspects of the application. 4/30/14 T. 31. In his opinion, the inability to provide required parking on-site because of the small size of the lot is a non-inherent characteristic of the site. The lot is part of a cluster development. The lot is 13,700 square feet, about 30% less than would be permitted in the R-200 Zone in a non-cluster development. *Id.* at T. 68.

Nor in his opinion is the Applicant able to construct the needed parking on-site were she to choose to do so. The parking area would have to have 11 spaces (assuming there is an outside instructor). This means that the driveway would fall under the requirements for a "drive aisle" under the Zoning Ordinance. In his opinion, there is insufficient space for a drive aisle. T. 48. If additional on-site parking were added, it could not meet the minimum side-parking setback required, which is two times the minimum side setback required for the detached house. Therefore, if the Applicant were to add a bank of parking spaces off the current driveway toward Falconbridge Terrace, there would need to be a 20-foot setback from the right-of-way. In addition, there was a variance approved for this property a number of years ago for the construction of the garage. He was unable to view the exact variance because it predates when the Board began posting online; however, it is possible that added on-site parking would require the variance to be amended. T. 50.

The scale of the use combined with the small lot size, in his opinion, forces the application to rely on on-street parking, another non-inherent operational characteristic that adversely impacts the safety of residents. As described above, he opined that the proposed on-street parking adversely affects safety because it provides too big an opportunity for additional congestion and

fails to accommodate emergency apparatus. In his opinion, tandem parking is another non-inherent operational characteristic of the use. There are safety issues, such as those described above with that type of access and the presence of a car in the driveway apron blocks the site distance needed to enter the intersection safely. *Id.* at T. 68.

A non-inherent physical characteristic of the proposed use is the property's location at a major entrance to the community, in Mr. Davis opinion. When congestion occurs at this location, a large number of people are affected (*i.e.,* 260 homes) and will not be able to get in or out of the community, including those on Falconbridge Terrace. When congestion occurs at that intersection, it creates an adverse effect on the larger community. T. 81.

Mr. Davis opined that the parking on-street and in tandem will cause traffic problems if approved and adversely impact the health and safety of the residents. He believes that this rises to the level of a non-inherent adverse effect in this case. The lot is too small to be able to deal with the parking on-site, so they're trying to go off-site, which will generate congestion. T. 109.

Mr. Daniellan, an expert realtor, testified that he lives in Fox Hills Greens, which was the first development in Potomac Chase. It is just south of Jones Lane. The same developer built Fox Hills North, which is adjacent to Fox Hills Greens, about three or four years later. The foundations of the two subdivisions are generally the same. The homes are the same sizes and fall into the developer's three series, which were lower, then middle, then higher-priced homes. The zoning for Fox Hills North yielded lots that were on average 10,000 square feet. It was developed as a cluster subdivision. Fox Hills Green was developed with an average 15,000 square foot lot. The houses at Fox Hills Green are 45 feet from the street with 20 – 25 foot side setbacks. The Fox Hills North houses are 25 feet from the street, with side setbacks of 12 or 13 feet on one side and

the other makes up the difference. The latter is because it's a cluster subdivision. 4/29/19 T. 334-336.

According to Mr. Daniellan, he has sold five homes in Fox Hills North and 14 sales and/or listings in Fox Hills Greens. Mr. Daniellan testified that too much on-street parking can impair the sales value of homes in the area. *Id.* at T. 337. As an example, Fox Hills Green had a series of very nice homes on a court. At the top of the court was a large building that looks like one of the large houses. It was, in fact, a quadraplex or four townhouses. He listed a single-family home adjacent to these townhouses and it took 133 days to sell. The owner had to lower the sales price. T. 337-338. In his opinion, the number of cars parked on the cul-de-sac with the townhomes (which could be between 8 and 12 vehicles) negatively affected the sales price. T. 338. Two other properties were up for sale in the same year, which he also listed. One, a corner lot that sometimes has trouble selling, sold for $288,000. The property on the cul-de-sac sold for 264,000. T. 339. When they showed the house on the corner, many people would ask him what was going on in the cul-de-sac. When they informed the prospective buyer that they were townhouse units, the buyers would indicate that they did not want to live near that. T. 339.

He opined that times proposed for the yoga classes coincide with the times that realtors would be showing houses, particularly in the spring and summer. The lockboxes work from 8:00 a.m. to 10:00 p.m. but most show during the daytime. *Id.* at T. 340.

Mr. Daniellan opined that the yoga studio would negatively impact property values of surrounding homes because of the on-street parking, similar to his experience in Fox Hills Green. When owners look at properties near the studio, they will also want to know what's going on. Once prospective buyers are informed that the business is located there, it will cut down substantially the number of people who will want to actually continue even to go through the

house. The ultimate result will be that the house will take longer to sell, resulting in a lower price. *Id.* at T. 342.

Conclusion: The Hearing Examiner agrees with Staff that the inherent effects of a yoga studio include client trips to and from the site, parking, varied hours, and noise. The Hearing Examiner finds that the use as proposed has several non-inherent characteristics that warrant denial of the application because they unduly (1) interfere with the use and peaceful enjoyment of abutting neighbors *and* the surrounding community, (2) generate traffic congestion and traffic safety problems, and (3) adversely impact the health and welfare of those in the surrounding area.

The Hearing Examiner finds that there are two non-inherent operational characteristics and one non-inherent physical characteristic of the use as proposed. She agrees with Mr. Davis for the reasons he stated that the small size of the lot combined with the scale of the use force reliance (1) on-street and (2) tandem parking, both of which are non-inherent operational characteristics of a home occupation. As noted below, on-street parking is not permitted for this use in this Zone, nor is tandem parking. Mr. Davis testified that in his 46 years as a planner, he has never seen a use of this scale rely on on-street parking on this narrow residential streets. She also finds that the property's location at the entrance to the community constitutes a non-inherent physical characteristic. Location at the community's entrance causes the use to impact a large number of people and locates the unscreened commercial aspects at a highly visible location. It generates the unsafe maneuvers used by clients to reverse direction and to return to Jones Lane because it is the closest exit. Clients do not wish to take the much longer route to use another exit.

The Hearing Examiner has already found that the on-street and tandem parking as proposed are dangerous, inefficient, unmanaged, and create congestion for those entering and exiting the neighborhood. The breadth of this impact goes beyond the Hubers and Ms. Woodhouse, as

reflected in the letters from residents complaining of precarious driving conditions both along Falconbridge Terrace and Falconbridge Drive, the testimony of Ms. Agresti, and the expert testimony of Mr. Davis. Of particularly concern is the fact that on-street parking eliminates the required amount of access for emergency vehicles, which could delay response time for the 260 homes in the surrounding area that use the intersection.

In contrast, Staff's recommendation contains little analysis of the impacts of the use as presented at OZAH's public hearing. Staff also found that residential uses adjoining the property in all directions are well-buffered from the property by distance and existing landscape. This may be true when the home occupation is not in operation, but is starkly belied by the photographs of parking and traffic congestion when classes are in session.

The Hearing Examiner does not find either expert realtor's opinions persuasive. Neither submitted sales data to support their conclusions. While Mr. Yanoshik testified that he reviewed MLIS listings "for the last few years" in the area, he did not provide data for these sales or the locations of the properties sold. He also testified that that the roads in Fox Hills North were 40 feet wide, and asserted they were wider than in most areas. Mr. Daniellan gave a concrete example of a situation where the sales price of a home was reduced by on-street parking, but it was a single example and not supported by any additional data.

C. Development Standards of the Zone (Article 59.4)

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the R-200 Zone, contained in Article 59-4 of the Zoning Ordinance. "Development standards" include minimum lot area, width, and coverage, as well as density and required setbacks of the relevant zone. While the Applicant proposes no new

construction, Staff provided a table showing that the Applicant meets the current standards (Exhibit 64(a), p. 9):

Table 1 – Development Standards

Development Standards (R-200 Cluster Development)	Required	Proposed
Minimum Lot Area	10,000 sq. ft.	13,764
Minimum Lot Width		
At front lot line	25 ft.	149 ft.
At building line	N/A	N/A
Maximum Lot Coverage	25%	Less than 25%
Minimum Building Setback		Determined at site plan
Front	25 ft.	20 ft.
Side	25 ft.	38 ft.
Side Street	25 ft.	25 ft.
Rear	40 ft.	10 ft.
Maximum Density	2.18 units per acre	0.32 units per acre
Minimum Parking Setback Rear	30 ft.	10 ft. (existing garage) 35 ft. (parking on drive)
Side	24 ft.	25 ft. (existing garage) 25 ft. (parking on drive)

Conclusion: There is no evidence in the record that the existing structure violates the development standards of the R-200 Zone. This standard is met.

D. Specific Use Standards for a Major Home Occupation (Section 59.3.3.3.H.5)

In addition to the more general "Necessary Findings" required for a conditional use (in Part C of this Report and Decision), the Applicant must also demonstrate that he or she complies with specific standards for the particular conditional use requested. The Zoning Ordinance contains standards for all home occupations (*i.e.*, no-impact, low-impact and major-impact) and specific standards for major home impact occupations. The standards for all home occupations are in Section 59-3.3.3.H.1 and 2 of the Zoning Ordinance, below.

1. Standards Applicable to All Home Occupations (Sections 59-3.3.3.H.1 and 2)

Section 59-3.3.3.H.1. Standards for All Home Occupations

a. Defined

Home Occupation (Major Impact) means a Home Occupation that is limited to 2 non-resident employees in any 24-hour period and is regulated under Section 7.3.1, Conditional Use.

Conclusion: The Hearing Examiner cannot locate where Staff explicitly addressed these standards. The Hearing Examiner addresses this based on the evidence submitted by the Applicant. The original application did not include any non-residential employees. Therefore, this standard has been met.

Section 59-3.3.3.H.2.

b. To maintain the residential character of the dwelling:

i. The use must be conducted by an individual or individuals residing in the dwelling unit.

Conclusion: Ms. Romano testified that she and her husband reside in the existing dwelling and produced SDAT records to demonstrate residency.[26] 3/4/19 T. 20; Exhibit 4. This standard has been met.

ii. The use must be conducted within the dwelling unit or any accessory building and not in any open yard area. The use must be subordinate to the use of the dwelling for residential purposes and require no external modifications that detract from the residential appearance of the dwelling unit.

Conclusion: The evidence is somewhat equivocal whether Ms. Romano intends to use the back yard. While Ms. Romano testified that she has brought students into her back yard (3/4/19 T. 66),

[26] Staff states that Ms. Romano submitted a "legal description." Exhibit 64(a), p. 20. In many instances, submission of a deed and a legal description do not serve as proof of residency, as the applicant may own the property and lease it. Where residency is a Code requirement that must be met, the best proof is a current valid Maryland driver's license. SDAT records are also acceptable proof, which the Applicant submitted. *See, e.g., Montgomery County Code,* §29-19(b)(1)(B).

she also testified that all activities for the home occupation will occur primarily in the yoga studio. Exhibit 9. From this evidence, the Hearing Examiner finds that the use as proposed meets the requirement that all yoga activities will occur inside the existing residential home.

Solely from the standpoint of space utilized and external modifications, the Hearing Examiner finds that these aspects of the use are subordinate to the principle dwelling. However, the unscreened parking in the driveway and the number of cars that must be parked on the street do have an inordinate impact that is not subordinate to a typical residence. Because the Hearing Examiner denies this application on other grounds, she does not reach this issue because it wasn't explicitly addressed by the parties.

iii. Exterior storage of goods or equipment is prohibited.

Conclusion: Staff reports that the Applicant will have no exterior storage of goods and equipment, and this is stated in the application. Exhibits 64(a), and 9. Therefore, the application as proposed meets this standard.

> *iv. The maximum amount of floor area used for the Home Occupation must not exceed 33% of the total eligible area of the dwelling unit and any existing accessory building on the same lot, or 1,500 square feet, whichever is less.*

Conclusion: Staff reports that the area used for the studio consists of 378 square feet. It finds that the studio is 18% of the total floor area of the dwelling, which is 3,220 square feet. Exhibit 64(a), p. 4, 6. The Hearing Examiner finds that the studio comprises approximately 12% of the total dwelling.[27] In a closing statement submitted after the public hearing, Ms. Romano now argues that her garage will be the required waiting room, but doesn't provide the amount of space in the garage. Because those in opposition had no opportunity to respond to this argument, the Hearing

[27] 378 square feet ÷ 3,220 square feet = .117.

Examiner does not address the garage/waiting room and finds (based on the size of the studio) that this standard has been met.

> *v. An existing accessory building may be used for the Home Occupation, but external evidence of such use is prohibited. Only one accessory building may be used and it must be an eligible area.*

Conclusion: Ms. Romano's application states that no accessory buildings will be used for the home occupation. Exhibit 9, p. 6. Thus, this standard is inapplicable to the application as proposed.

> *vi. Equipment or facilities are limited to:*
>
> *(a) domestic or household equipment;*
> *(b) office equipment; or*
> *(c) any equipment reasonably necessary for art production, handcrafts, or making beer or wine.*

Conclusion: Ms. Romano's application states, "[T]he only equipment to be used will be yoga mats supplied by the attendees of the yoga classes." Exhibit 9, p. 6. The photographs submitted by those in opposition amply demonstrate that Ms. Romano uses a variety of props for her classes, including hanging silks (on which clients hang from a silk attached to the ceiling of her home studio) and other aids. Ms. Romano testified that the fees charged for her specialty classes cover "equipment, yoga, blankets, bolsters, blocks, straps." On rebuttal, she acknowledged that she uses load-bearing hanging silks in her classes. 4/30/19 T. 153. Ms. Gniadek testified that she preferred the home studio to the Carriage House because there are a number of props that they use there that they cannot use at the Carriage House. She did not explain why they cannot be used at the Carriage House. When the Hearing Examiner asked why Ms. Romano could not have props for five or six people at the Carriage House, Ms. Gaynor replied, "Well, I'm thinking of particularly she has something that hangs from her ceiling, so no." 3/4/19 T. 184.

There is no evidence in the record to support a finding that the hanging silks and other yoga "props" are domestic or household equipment, office equipment, necessary for art production, handcrafts, or making beer or wine. Ms. Romano failed to address this issue during the entire three days of hearings. The Hearing Examiner finds that she has failed to demonstrate that this requirement for a home occupation has been met.

> *vii. Any equipment or process that creates a nuisance or violates any law is prohibited in the operation of a Home Occupation.*

Conclusion: Both staff and Ms. Romano have failed to address this issue and the Hearing Examiner has no evidence that the load-bearing hanging silks and other props meet any applicable code or safety requirements or have been safely installed. Ms. Romano has failed to meet her burden of proof that this standard has been met.

> *viii. A Home Occupation is prohibited to use, store, or dispose of:*
>
> *(a) a quantity of a petroleum product sufficient to require a special license or permit from The Fire Marshal; or*
>
> *(b) any material defined as hazardous or required to have a special handling license under State and County law.*

Conclusion: Ms. Romano's application states that none of these products or materials are required for yoga classes. Exhibit 9, p. 6. This requirement has been met.

> *ix. Truck deliveries are prohibited, except for parcels delivered by public or private parcel services that customarily make residential deliveries.*

Conclusion: Ms. Romano's application states that none of the prohibited truck deliveries are needed for the yoga classes. The Hearing Examiner interprets this to mean that she will not have truck delivers outside of parcel services.

> *x. Display or storage of merchandise to be delivered must not be visible outside of the residence and must be contained within the maximum floor area available for the Home Occupation.*

Conclusion: Staff did not address this. Ms. Romano states that the requirement is inapplicable to yoga classes. Exhibit 9, p. 6. The Hearing Examiner interprets this to mean she will not have merchandise delivered. This standard is met.

> *xi. The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.*

Conclusion: Again, Ms. Romano states in her application that this is inapplicable to use for yoga classes, which the Hearing Examiner interprets to mean that this activity is not proposed in the application. This standard is met.

> *xii. A second kitchen in the home for catering or making food for off-site delivery or sales is prohibited.*

Conclusion: Again, Ms. Romano states that this requirement is inapplicable to yoga classes. For the same reason as above, the Hearing Examiner finds that this standard has been met.

> *xiii. The maintenance or repair of motor vehicles for compensation is prohibited.*

Conclusion: Ms. Romano reiterates that this is not applicable to yoga classes. For the same reason as above, this standard has been met.

2. Specific Standards Applicable to Major Impact Home Occupations

> *Where a Home Occupation (Major Impact) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:*
>
> *i. The maximum number of visits and deliveries is determined by the Hearing Examiner.*

Conclusion: The Hearing Examiner does not reach this issue because she denies the application due its adverse impacts on the surrounding area.

ii. An indoor waiting room must be provided.

Conclusion: The opposition contends that Ms. Romano fails to meet this requirement because the application does not indicate where the waiting room is located. Mr. Davis points out this clouds the issue of whether the use exceeds the maximum of 33% of the dwelling. T. 34. In closing statements, the Applicant argues that the requirement is unnecessary and states that her garage may as the waiting room. Exhibit 123, p. 11. As those opposed to the application never had the opportunity to address it, the Hearing Examiner does not consider it. The Applicant does not meet this requirement.

iii. In-person sale of goods is limited to:
(a) the products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or hand-crafts performed by a resident of the dwelling; and
(b) a maximum of 5 sales per month of items ordered for delivery at a later date to customers at other locations (delivery of goods must occur off-site).

Conclusion: Ms. Romano does not propose any sales of goods. This standard is inapplicable to the application.

iv. Display or storage of goods is limited to:
(a) the products listed in Section 3.3.3.H.5.b.iii.(a); and
(b) samples of merchandise that may be ordered by customers for delivery at other locations.

Conclusion: Ms. Romano does not propose any display or storage of goods. This standard is inapplicable to the application.

v. Display or storage of merchandise to be delivered must not be visible outside of the residence and must be contained within the maximum floor area available for the Home Occupation.

Conclusion: Ms. Romano does not propose any display or storage of goods. This standard is inapplicable to the application.

> *vi. The Hearing Examiner may grant a conditional use for a Home Occupation (Major Impact) on the same site as a Home Occupation (Low Impact), a Home Occupation (No Impact), or a Home Health Practitioner (Low Impact) if it finds that both together can be operated in a manner that satisfies Section 3.3.3.H.5 and Section 7.3.1, Conditional Use.*

Conclusion: This application is for the same use as the existing Home Occupation (Low Impact) and is not a separate home occupation. Therefore, this standard does not apply to the application.

> *vii. The Hearing Examiner must not grant a conditional use for a Home Occupation (Major Impact) where the site is already approved for any other conditional use under Section 7.3.1, Conditional Use.*

Conclusion: The record does not reveal any other conditional uses approved for this property. This standard is inapplicable.

> *viii. The applicant must provide valid proof of home address as established by Executive regulations under Method 2 of Chapter 2 (Section 2A-15).*

Conclusion: The standards applicable to all home occupations already requires proof of residency, although it doesn't mention the requirement to comply with Executive Regulations. *Zoning Ordinance,* 59-3.3.3.H.2.b. Staff has not advised whether there are any Executive Regulations governing this. The Hearing Examiner finds that Ms. Romano's uncontroverted testimony and SDAT records sufficient to prove that she resides at the dwelling.

> *ix. Screening under Division 6.5 is not required.*

Conclusion: Division 6.5 requires specific types of screening around the perimeter of properties with conditional uses. The above requirement exempts home occupations from the perimeter landscaping requirement, although it does not exempt them from the requirement that the use be compatible with the surrounding area or comply with the Master Plan. Based on the photographs

in evidence in this case, the Hearing Examiner finds that perimeter screening is compatible with the surrounding area.

> *x. In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.*

Conclusion: The subject property lies within the R-200 Zone. This standard is inapplicable.

E. General Development Standards (Article 59.6)

1. Parking

While no exterior changes to the existing dwelling are proposed, several of the parking requirements in Division 6.2 apply to this conditional use because it is a change of use from a purely a single-family dwelling:

> *Section 6.2.2. Applicability*
>
> *A. Under Division 6.2, any use must provide off-street parking that permits a vehicle to enter and exit the property.* ***Any change in floor area, capacity, use****, or parking design requires recalculation of the parking requirement under Division 6.2, and may be subject to a payment under Chapter 60.* (Emphasis supplied). *The parking ratios of Division 6.2 do not apply to any:*
>
> *1. structure on the National Register of Historic Places; or*
> *2. expansion or cumulative expansions of less than 500 square feet in gross floor area or impervious cover.*
>
> *B. An applicant must not reduce the area of an existing off-street parking facility below the minimum number of parking spaces required under Division 6.2 unless a parking waiver under Section 6.2.10 is approved. (Emphasis supplied).*

Section 6.2.4 of the Zoning Ordinance set out the following formula to determine the number of on-site parking spaces required for home occupations in Residential zones:

Home Occupation (Low Impact) Home Occupation (Major Impact)	Non-Resident Employee	1.00
	plus, Each Client Allowed per Hour	1.00
	(in addition to residential spaces)	

Planning Staff determined that the use proposed here required a total of 12 parking spaces—one for each of the maximum number of clients and two for the residence. Mr. Davis testified that the use requires a total of 13 spaces based on Ms. Romano's testimony that she employs outside instructors to teach classes. The spaces for the dwelling would count toward the spaces for Ms. Romano. Therefore, the total parking required is 13 spaces – 11 for the yoga studio (one for each client and one for an outside instructor) and 2 for the dwelling. *Id.* at T. 17. The two for the residents are located in the garage. T. 18. *Id.* at T. 37.

The Hearing Examiner finds that the use requires 12 on-site parking spaces because the original application did not include outside instructors and she finds that Ms. Romano failed to amend the application to incorporate them. Planning Staff recommended approval of Ms. Romano's parking plan by counting on-street spaces toward the 12 minimum required spaces. Staff apparently relied on Section 59-6.2.3.A.5 of the Zoning Ordinance, which states:

> *5. Any on-street parking space in a right-of-way counts toward the minimum number of required parking spaces if the space is:*
>
> *a. not located within a Parking Lot District;*
> *b. abutting or confronting the subject property;*
> *c. constructed by the applicant; and*
> *d. for a Retail/Service Establishment or Restaurant use, or a car-share space.*
>
> *Any such space removed by a public agency at a later date is not required to be replaced on-site.* [28]

a. On-Street Parking

The parties disagree on whether on-street parking may be counted toward the minimum number of required parking spaces under the Zoning Ordinance. The Applicant argues that a yoga studio provides a "personal service" and therefore falls within the definition of "retail/service

[28] To the Hearing Examiner's knowledge, the only other instance where it is explicitly permitted by the Zoning Ordinance is for family or group child day care facilities. *See, Zoning Ordinance,* §59-6.2.4.

establishment" for which on-street parking is permitted. 4/30/19 T. 138; Exhibit 119, p. 13. They argue that yoga classes are no different than teaching piano students or tutoring. *Id.* Those in opposition argue that the Zoning Ordinance does *not* permit on-street parking to count toward the minimum number of parking spaces required for a home occupation. Ms. Romano also urges the Hearing Examiner to rely on Staff's determination. Exhibit 119, p.

Mr. Davis disagrees with Staff that Section 59-6.2.3.A.5 permits on-street parking to count toward the minimum number of spaces because it doesn't meet *each* of four prongs required by the Zoning Ordinance. The parking: (1) cannot be located in a parking lot district, (2) must be abutting or confronting the subject property, (3) must be constructed by the applicant, and (d) must be dedicated to a retail service establishment, for restaurant use or a car share space. *Id.* at T. 19. While the parking here meets the first and second prongs, the parking does not meet prongs three and four. The parking was not constructed by the applicant and it does not serve any of the three uses specified—it is not a retail service establishment, a restaurant use, or a car share space.[29] *Id.* at T. 20. He opined that a yoga studio does not qualify as a retail service establishment. The definition of retail/service establishment in Section 59-3.5.11B mentions the provision of personal services, bit isn't applicable to a yoga studio because the bulk of the definition refers to the sale of goods. This is reinforced by the fact that a yoga studio is explicitly included in the definition of "health clubs and facilities". Section 3.5.10.E of the Zoning Ordinance states, "[H]ealth clubs and facilities include dance, martial arts, and yoga studios." T. 24.

Mr. Davis further opined that the parking proposed in this application does not come within the definition of "car share space" as defined in the Zoning Ordinance. A car share space is defined as a parking spaced intended for use by the customer or the vehicle sharing service to park service

[29] Ms. Romano testified that she did not construct the on-street parking. 3/4/19 T. 98.

vehicles. T. 26. The on-street parking proposed by Ms. Romano is not a car share space because the definition states that it must be associated with a parking facility of over 50 spaces. T. 27.

In Mr. Davis' opinion, Section 6.2.3.A.5 of the Zoning Ordinance can't be used as a basis for allowing off-site parking for a conditional use on a tertiary or secondary residential street. The section permitting on-street parking to meet the required parking minimum was meant to apply to a specific situation in a more urbanized area of the county where you have commercial and mixed use development that utilizes "smart growth" principles, which encourage people to have parking in closer proximity to particular kinds of uses. He does not believe this was intended to apply in a residential neighborhood at all. T. 29.

Conclusion: Courts construe zoning ordinances in the same manner as statutes. *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, n. 17 (2007)(We interpret ordinances under the same canons of construction that we apply to the interpretation of statutes.) *Bourgeois v. Live Nation Entm't, Inc.*, 430 Md. 14, 26–27 (2013) (Courts apply the same rules of statutory construction for statutes to municipal ordinances as well). These rules, designed to effectuate the Council's intent in passing the legislation, instruct that words should be read according to their ordinary meanings, no language be "read out" of the statute as superfluous or meaningless, and that the results of an interpretation not present "absurd" results. *Conaway v. State*, 2019 Md. LEXIS 327, *21-22 (July 11, 2019).

Applying these criteria, the Hearing Examiner agrees with Mr. Davis' expert testimony that on-street parking is permitted only when it meets all four prongs of Section 6.2.3.A.5 or is otherwise explicitly permitted by the Zoning Ordinance. The Zoning Ordinance specifically permits on-street parking in particular circumstances. *See, Zoning Ordinance* §59-6.2.4 (child day care), §59-6.2.3.G (off-site parking by agreement). To read the Zoning Ordinance to permit any

use to use on-street parking would render these sections meaningless. Nor is there any evidence that the Council intended to permit on-street parking for every use.

Such an interpretation also contravenes the plain language of the Section 59-6.2.3.A.5.c. Before on-street parking may be counted toward meeting the parking requirements, it must be "constructed by the applicant." This mandate supports Mr. Davis' expert testimony that the provision was intended to apply to developments constructed by one developer, which the Hearing Examiner finds both credible and far more logical than the Applicant's interpretation.

The final requirement for the exemption from on-site parking in §59-6.2.3.A.5.c is that the parking be for a "Retail/Service Establishment or Restaurant use, or a car-share space." The spaces on the public right of way clearly do not meet the definition of a "car share" space. The Hearing Examiner disagrees with both the Applicant and the opposition that a yoga studio is a "personal service" or that it is a "health facility" within the meaning of this section of the Zoning Ordinance. For the purposes of zoning classification, the use being applied for here is neither a retail/service establishment nor a yoga studio, but a "major home occupation," which is classified under the Zoning Ordinance as an accessory residential use.[30] *Zoning Ordinance*, §59-3.1.6. Because it is separately classified, it does not fulfill the requirement of Section 59-6.2.3.A.5.d that on-site parking must support a retail/service establishment as that term is used in the Zoning Ordinance. For these reasons, on-street parking may not be counted toward the minimum number of required spaces for a home occupation under §59-6.2.3.A.5. Therefore, the application fails to meet the requirements of Section 59-6.2.4.

[30]The opposition also argues that a yoga studio is not a permissible home occupation because it isn't independently listed as a conditional use in the zone. Exhibit 91. Because she finds that the proposed use does not meet the standards for a home occupation, the Hearing Examiner doesn't address the issue.

Ms. Romano attacks Mr. Davis' testimony by alleging that he acted as an "advocate" when he testified that yoga was not a "service" under the definition of "Retail/Service Establishment." Exhibit 119, p. 13. This is based on Ms. Romano's completely unsupported argument teaching yoga is the same as tutoring a student or giving piano lessons. The Hearing Examiner finds no evidence in this record that the uses are equivalent to Ms. Romano's home studio, nor does she find any reason to discount Mr. Davis' testimony because he gave detailed reasons for his interpretation of the Zoning Ordinance.

Ms. Romano also accuses Mr. Davis of acting as an advocate when he testified that on-street parking couldn't be counted because Ms. Romano didn't build the streets adjoining her property. She alleges that the requirement to build a parking lot completely undermines the laws authorizing a person to engage in major home occupations. *Id.* Many conditional uses in single-family detached homes have been required to have sufficient on-site parking, *particularly* when they are on the scale of this one. The on-site parking requirements are there to ensure that parking is adequate, safe and efficient and does not generate safety and congestion issues. *Zoning Ordinance,* §59-6.2.1. There is no evidence to support Ms. Romano's assertion that every major home occupation will be discouraged, particular given the number of parking spaces required by this application.

b. Handicapped Parking

The Zoning Ordinance requires the applicant to provide handicapped accessible spaces in accordance with Maryland law (*Zoning Ordinance,* §59-6.2.4.B):

> *B. Handicapped Spaces*
> *The applicant must provide the minimum number of parking spaces required for handicapped persons under State law.*

Maryland law requires one handicapped space for business open to the public that can accommodate between one and 25 people. Exhibit 101. Mr. Davis testified that the handicapped space must be kept clear at all times and must be van accessible, requiring a larger parking space. 4/30/19 T. 39-40. Staff did not address this issue.

Conclusion: The parking plan submitted does not meet this requirement because it fails to show a handicapped accessible space. In addition, the tandem parking arrangement does not lend itself to the requirement to keep the space open at all times. If the handicapped spot is closest to the street, non-handicapped vehicles would have to maneuver around handicapped space to reach the interior stacked spaces. If the handicapped spot is closer to the home, the handicapped vehicle could easily be parked in.[31] While handicapped spaces may be counted toward the minimum parking requirements, the tandem parking proposed here interferes with its use. In any event, no handicapped space is provided in this application and this standard has not been met.

c. Tandem parking:

Mr. Davis opined that the unattended tandem (or stacked) parking proposed for the yoga studio is not permitted under the Zoning Ordinance. While tandem parking may be permitted for a dwelling, the spaces for the dwelling are in the garage. Nor does the parking plan meet the minimum required dimension for tandem spaces, which is 8.5 by 36 feet. Nor, in his opinion, does the tandem comply other provisions of the Zoning Ordinance. Because the use is "morphing" from residential to commercial, according to him, it must with the Zoning Ordinance to provide off-street parking that permits a vehicle to enter and exit the property. 4/30/19 T. 35.

[31] While the Zoning Ordinance permits a waiver of "any requirement" of Section 59-6.2, no one has presented any evidence that waiver of this requirement is permitted by State law. Therefore, the Hearing Examiner does not address it.

Conclusion: The Hearing Examiner could find nothing in the record from the Applicant addressing this issue. The Zoning Ordinance restricts tandem parking to dwelling units and differentiates between tandem parking used for commercial versus residential purposes. *Zoning Ordinance,* §69-6.2.5.E. There is no evidence that the tandem spaces meet the size requirements of the Zoning Ordinance. Based on the evidence in this case, the Hearing Examiner finds that the Applicant has failed to prove that the tandem parking proposed is permitted by the Zoning Ordinance.

d. Parking Waiver

The fact that the application fails to meet the parking standards of the Zoning Ordinance does not end the controversy. That is because the Applicant may seek a parking waiver to deviate from the required parking requirements. *Zoning Ordinance,* §6.2.10. The Zoning Ordinance permits waivers of "any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1." The Zoning Ordinance "application notice" be given for any waiver request. This requires the Applicant to send notice of the waiver request when she files her application. Notice must be sent to "to all abutting and confronting property owners; civic, homeowners, and renters associations that are registered with the Planning Board and located within 1/2 mile of the site; any municipality within 1/2 mile…" In order to grant a waiver, the Hearing Examiner must find that the waivers requested will "ensure that adequate parking is provided in a safe and efficient manner." *Zoning Ordinance,* §§6.2.10, 6.2.1.

Nothing in the record reveals that the Applicant requested a waiver of the parking requirements when she filed this application in November, 2018. The Staff Report, issued on February 11, 2019, failed to mention the need for a waiver, apparently because Staff erroneously concluded that on-street parking was permitted. The first mention of a "parking waiver" is

contained in a Notice of Motion to Amend issued by OZAH on February 29, 2019, which stated, "[P]lease also take notice that the parking facility proposed by the Applicant *may* require a waiver." (emphasis supplied). Exhibit 60. The next mention of a parking waiver occurred at the beginning of the first day of the public hearing, when Ms. Romano's attorney stated (3/4/19 T. 19):

> And lastly, there is in the notice there was a reference to a parking waiver. And if parking is found to be a problem by Your Honor, for these six, one hour and 15 minute classes, we'd ask for a parking waiver.

Because the Hearing Examiner has already found that the parking proposed is inadequate, unsafe and inefficient, the Hearing Examiner does not need to address this issue because any waiver does not meet the intent of the Zoning Regulations in §59-6.2.1. *Zoning Ordinance,* §59-6.2.10. However, because of the number of parking requirements that the application does not meet, the Hearing Examiner finds that the scope waiver requested is unclear even had adequate notice been provided. Ignoring the procedural defects in requesting the waiver, the Hearing Examiner finds from the evidence that the combination of tandem and on-street parking does not ensure that adequate parking is provided in a safe and efficient manner as required by the Zoning Ordinance.

2. Site Landscaping and Screening (Divisions 6.2 and 6.5)

a. Perimeter Screening Requirements

For many conditional uses, the Zoning Ordinance regulates screening of both the perimeter of the property (Section 59-6.5.2.B) and parking areas (Section 6.5.2.9). As noted, major home occupation conditional uses are not required to comply with the perimeter landscaping requirements (although compatibility remains an issue). *See,* §59-3.3.3.H.5.b.ix (Screening under Division 6.5 is not required.)

b. Parking Lot Screening

Conclusion: Staff concluded (Exhibit 64(a), p. 12):

> Landscaping is not part of this review because the landscaping plan is not being modified. Further, pursuant to section 59-7.7.1.A.1, the landscaping is conforming (grandfathered) and may be continued so long as the floor area, height, or footprint of the structure is not increased. The Project is exempt from Section 59-6.5 (screening requirements) as provided by Section 59-3.3.3.H.5.b.ix. This standard is satisfied.

Section 6.2.9 of the Zoning Ordinance regulates screening of parking areas for conditional uses that require 5 – 9 parking spaces. Nothing in the Zoning Ordinance explicitly exempts single-family detached structures or home occupations from the requirement to screen parking areas. Section 6.2.9 provides the following standards for screening of parking areas:

> *B. Parking Lot Requirements for Conditional Uses Requiring 5 to 9 Spaces*
>
> *If a property with a conditional use requiring 5 to 9 parking spaces is abutting Agricultural, Rural Residential, or Residential Detached zoned property that is vacant or improved with an agricultural or residential use, the parking lot must have a perimeter planting area that:*
>
> *1. satisfies the minimum specified parking setback under Article 59-4 or, if not specified, is a minimum of 8 feet wide;*
> *2. contains a hedge, fence, or wall a minimum of 4 feet high; and*
> *3. has a minimum of 1 understory or evergreen tree planted every 30 feet on center.*

The Hearing Examiner may waive the above requirements for parking lot screening "to the extent necessary to ensure compatibility." *Id.*, §7.3.1.E.1.b. Mr. Davis testified that the parking area screening requirements apply to this application because it constitutes a change in use under Section 6.2. (above). 4/30/19 T. 56. The Applicant provides no screening, apparently because of Staff's decided the use was grandfathered.

Conclusion: The Hearing Examiner disagrees with Staff that the parking area is exempt from the screening requirement by the grandfathering provisions of Section 59-7.7.1.A.1. Section 7.7.1.A.1

of the Zoning Ordinance grandfathers existing site design, defined as, "[T]he external elements between and around structures that give shape to patterns of activity, circulation, and form. Site design includes landforms, driveways, parking areas, roads, sidewalks, trails, paths, plantings, walls or fences, water features, recreation areas and facilities, lighting, public art, or other external elements."

Staff justifies its conclusion by stating that the "landscaping plan" here is not being modified. The record does not demonstrate that any "landscaping plan" has ever been approved for this property. Rather, the existing landscaping has been installed by the property owner based on the purely residential use of the property. Under Staff's theory, new conditional uses in single-family homes would *never* be subject to the screening and compatibility requirements of either the Master Plan or the "necessary findings" for conditional uses. This is inconsistent with existing law and OZAH decisions.

In 2016, the District Council adopted a Zoning Text Amendment (ZTA) specifically intended to make screening more flexible for conditional uses in single-family detached structures. *Montgomery County Ordinance No. 18-15*, §2, entitled "Conditional Use-Screening," (adopted September 20, 2016). Now codified in Section 59-6.5.2.B, the amendment exempts conditional uses in detached house building types from the detailed plant and spacing requirements for perimeter landscaping, but retains the requirement that "[A]ll conditional uses must have screening that ensures compatibility with the surrounding neighborhood." If Section 7.7.1.A.1 (grandfathering) is read to negate the need for any screening for all conditional uses in single-family detached structures, the ZTA would have been entirely unnecessary and the requirement for compatibility is nugatory.

OZAH's decisions have held that the grandfathering under Section 59-7.7.1.A.1 does *not* eliminate the need to address the requirement of compatibility for a new or expanded conditional use, which is at the heart of the conditional use process. *Mayor & Council of Rockville v. Rylyns*

Enters., 372 Md. 514, 541 (2002)("conditional uses [are those] which may be conditionally compatible in each zone, but which should not be allowed unless specific statutory standards assuring compatibility are met by the applicant at the time separate approval of the use is sought.")

Simply because "site design" may be grandfathered, the independent requirement of compatibility must still be addressed. In CU 18-09, Application of Inspire LLC, an application for a private educational institution, the Hearing Examiner wrote:

> The Hearing Examiner agrees that where there is an existing legal structure and site design, "grandfathering" under 2014 Zoning Ordinance §59.7.7.1.A.1. obviates the need for compliance with the standards of the Zone set forth in 2014 Zoning Ordinance §59.4.4.7.B. (*i.e.*,, lot size, density, coverage, building setbacks and height); however, that does not mean that the existing site design is automatically compliant with all applicable development standards, since the requirements of the specific conditional use set forth in Article 59-3 must be followed, and there is an overarching requirement for compatibility when an applicant seeks a new conditional use. *See* Zoning Ordinance §59.7.3.1.E.1.b. … An unchanged site design may be adequate for compatibility under an existing use but may be completely insufficient under a newly proposed conditional use that may impose greater burdens on the neighbors. Fortunately, that is not the case here, where the newly proposed use appears to be less intensive than the existing use. Tr. 20-21, 51, 48-53.

CU 18-09, Hearing Examiner's Report and Decision, p. 24. This applies particularly when an existing conditional use is significantly expanded:

> The Hearing Examiner concludes that the grandfathering provision was not intended to automatically approve an existing parking facility when a new conditional use is proposed to utilize it. As mentioned previously, a new use, especially if it is one with vastly expanded community impacts, cannot expect to utilize an existing parking facility without any adjustments for increased need brought on by the expanded use.

Id. at 34.

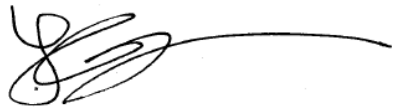
Failure to review parking area screening restricts the County's ability in this case to achieve the goals of the Master Plan. Mr. Davis correctly testified that the Plan contains specific guidelines for screening and buffering of parking facilities that this application does not meet. The Hearing Examiner disagrees with Staff that a property, with *no* approved landscape plan, is automatically

exempt from Master Plan guidelines when a new conditional use is added to the existing residence. To do so would read out the requirements for compliance with the Master Plan for *all* existing uses that seek to add a conditional use on the property.

For the above reasons, the Hearing Examiner finds that the application fails to comply with the minimum standards for parking lot screening. The Hearing Examiner finds that the unscreened parking proposed in the driveway fails to mitigate the commercial and unsafe aspects of this use, rendering it incompatible with the surrounding area.

IV. DECISION AND ORDER

For the foregoing reasons, and after a complete review of the entire record, the Hearing Examiner determines that the Applicant's request for a condition use to operate a major home occupation at 12632 Falconbridge Drive, North Potomac, Maryland, 20878, be, and hereby is, DENIED.



Lynn A. Robeson
Hearing Examiner

NOTICE OF APPEAL RIGHTS

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in Zoning Ordinance §59.7.3.1.F.1.c. **PLEASE TAKE NOTICE THAT THE BOARD OF APPEALS MAY TEMPORARILY MOVE TO A DIFFERENT LOCATION TO ACCOMMODATE INTERIOR CONSTRUCTION AT ITS CURRENT LOCATION. PARTIES OF RECORD SHOULD VERIFY THE BOARD'S CURRENT LOCATION BY CALLING OR E-MAILING THE BOARD.**

The Board of Appeals may be contacted at:
Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600
http://www.montgomerycountymd.gov/boa/

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: http://www.montgomerycountymd.gov/boa/.