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Transcript of Hearing

Date: December 11, 2020

Case: Nachel Enterprises, LLC

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Transcript of Hearing
Conducted on December 11, 2020

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<p style="text-align: right;">1</p> <p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: :</p> <p>5 Nachel Enterprises, LLC. : Case No. H-138</p> <p>6 -----x</p> <p>7</p> <p>8</p> <p>9 HEARING</p> <p>10 Before Hearing Examiner Lynn Robeson Hannan</p> <p>11 Conducted Virtually</p> <p>12 Friday, December 11, 2020</p> <p>13 9:30 a.m. EST</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 341525</p> <p>24 Pages: 1 - 53</p> <p>25 Transcribed by: Jerome E. Harris, CDLT-204</p>	<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE APPLICANT:</p> <p>3 DAVID W. BROWN, ESQUIRE</p> <p>4 KNOPF & BROWN</p> <p>5 401 East Jefferson Street</p> <p>6 Suite 206</p> <p>7 Rockville, Maryland 20850</p> <p>8 (301)545-6100</p> <p>9</p> <p>10</p> <p>11 ON BEHALF OF MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>12 ADMINISTRATIVE HEARINGS:</p> <p>13 SARA BEHANNA, ADMINISTRATIVE SPECIALIST II</p> <p>14 100 Maryland Avenue</p> <p>15 County Office Building</p> <p>16 Room 200</p> <p>17 Rockville, Maryland 20850</p> <p>18 (240)777-6660</p> <p>19</p> <p>20</p> <p>21 ALSO PRESENT:</p> <p>22 Jon S. Frey - IT</p> <p>23</p> <p>24</p> <p>25</p>																																																
<p style="text-align: right;">2</p> <p>1 Hearing before Hearing Examiner Lynn Robeson</p> <p>2 Hannan, held virtually.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to agreement, before Lee Utterback,</p> <p>10 AAERT CER, Notary Public in and for the State of Maryland.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">4</p> <p>1 C O N T E N T S</p> <table><tr><td>2 OPENING STATEMENT</td><td>PAGE</td></tr><tr><td>3 By Mr. Brown</td><td>7</td></tr><tr><td>4</td><td></td></tr><tr><td>5 EXAMINATION OF ROBERT TJADEN</td><td>PAGE</td></tr><tr><td>6 By Mr. Brown</td><td>10</td></tr><tr><td>7</td><td></td></tr><tr><td>8</td><td></td></tr><tr><td>9</td><td></td></tr><tr><td>10 E X H I B I T S</td><td></td></tr><tr><td>11 (Exhibits retained by hearing examiner)</td><td></td></tr><tr><td>12 Exhibits referenced:</td><td>PAGE</td></tr><tr><td>13 Exhibit 36(c)</td><td>9</td></tr><tr><td>14 Exhibit 6</td><td>11</td></tr><tr><td>15 Exhibit 31(b)</td><td>12</td></tr><tr><td>16 Exhibit 42</td><td>14</td></tr><tr><td>17 Exhibit 36(d)</td><td>16</td></tr><tr><td>18 Exhibit 41</td><td>19</td></tr><tr><td>19 Exhibit 36(b)</td><td>43</td></tr><tr><td>20</td><td></td></tr><tr><td>21</td><td></td></tr><tr><td>22</td><td></td></tr><tr><td>23</td><td></td></tr><tr><td>24</td><td></td></tr><tr><td>25</td><td></td></tr></table>	2 OPENING STATEMENT	PAGE	3 By Mr. Brown	7	4		5 EXAMINATION OF ROBERT TJADEN	PAGE	6 By Mr. Brown	10	7		8		9		10 E X H I B I T S		11 (Exhibits retained by hearing examiner)		12 Exhibits referenced:	PAGE	13 Exhibit 36(c)	9	14 Exhibit 6	11	15 Exhibit 31(b)	12	16 Exhibit 42	14	17 Exhibit 36(d)	16	18 Exhibit 41	19	19 Exhibit 36(b)	43	20		21		22		23		24		25	
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<p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER HANNAN: This is the case of -- just</p> <p>3 give me one second -- case of Local Map Amendment No. H-138,</p> <p>4 Nachel Enterprises, LLC requesting rezoning from the R-60 and</p> <p>5 NR-0.75, H-50 Zone to the NRF-0.75, H-50 Zone.</p> <p>6 The subject property is at 7 -- 7212 Carroll Avenue,</p> <p>7 Takoma Park, Maryland 20912.</p> <p>8 My name is Lynn Hannan, I'm the hearing examiner in</p> <p>9 this case.</p> <p>10 And what we're going to do today is take all the</p> <p>11 evidence and testimony, so whatever you need to say, it needs</p> <p>12 to be done now. You have a right -- if you disagree with my</p> <p>13 recommendation, you have the right to request oral argument</p> <p>14 before the Montgomery County Council within ten days of the</p> <p>15 date that I issue my report. But that is on the basis of you</p> <p>16 can't introduce any new -- new evidence. So all the evidence</p> <p>17 you want to put in has to be done here.</p> <p>18 A few things, a few procedural aspects on our -- the</p> <p>19 remote hearings. There -- we try not to what they call</p> <p>20 crosstalk, which means try not to interrupt each other. And</p> <p>21 the reason is that it -- the court reporter and Microsoft</p> <p>22 Teams cannot always pick it up.</p> <p>23 So what we have been doing, if you hover over the</p> <p>24 bottom center of your screen, you will see a hand. If you</p> <p>25 wish to speak, raise your hand, and then everybody can stop</p>	<p>1 Okay. I -- and the other thing before I forget,</p> <p>2 please state your email address as well as your business</p> <p>3 address for the record when it -- when you're called to</p> <p>4 testify. And that really helps us get notifications to you</p> <p>5 more quickly.</p> <p>6 Okay. I see one phone number. 301 461-8790. Can</p> <p>7 that person identify themselves?</p> <p>8 THE COURT REPORTER: Yes. For the record, it's the</p> <p>9 court reporter.</p> <p>10 HEARING EXAMINER HANNAN: Oh, Mr. Utterback. Okay.</p> <p>11 That's right.</p> <p>12 All right. So hearing none, Mr. Brown, do you have</p> <p>13 any preliminary matters?</p> <p>14 MR. BROWN: No preliminary matters. I -- I do want</p> <p>15 to make a brief opening statement before you do any evidence.</p> <p>16 HEARING EXAMINER HANNAN: Okay. That's fine.</p> <p>17 MR. BROWN: So you're ready for me now?</p> <p>18 HEARING EXAMINER HANNAN: Yes.</p> <p>19 MR. BROWN: Okay. I really want to start with an</p> <p>20 apology. When it comes to Local Map Amendments, I do not</p> <p>21 profess to be a switch hitter batting from either side of the</p> <p>22 plate. You've seen me before batting from the other side of</p> <p>23 the plate, and that's where I usually am, and do not profess</p> <p>24 the expertise to hit from the other side.</p> <p>25 But what happened in this case was that I was called</p>
6	8
<p>1 speaking, and I can recognize that person. Now, if you can't</p> <p>2 get it right for the first couple of times, you know, we'll</p> <p>3 go -- I understand that this is a new technology.</p> <p>4 The other thing is this is -- Microsoft Teams</p> <p>5 generates a recording of this, so we also have a court</p> <p>6 reporter on this call. And the reason is sometimes the</p> <p>7 Microsoft Teams recording -- that the reason we record the</p> <p>8 Microsoft Teams meetings is to help the court reporter if</p> <p>9 they have any questions. But it's not a hun -- it's not the</p> <p>10 official transcript. So that's why this is being recorded as</p> <p>11 well as having the court reporter.</p> <p>12 It also helps -- when you testify, it also helps if</p> <p>13 you tell me in advance before you start testifying the</p> <p>14 exhibits, if any, that you're going to refer to. And the</p> <p>15 reason is I share them on my screen. I have the exhibits</p> <p>16 that I think are most important, but it really helps to have</p> <p>17 them in advance.</p> <p>18 So with that, will the parties identify themselves</p> <p>19 for the record.</p> <p>20 MR. BROWN: I'll start. David Brown of Knopf &</p> <p>21 Brown, counsel for the Applicant.</p> <p>22 HEARING EXAMINER HANNAN: Okay. Now, I see one phone</p> <p>23 number in the list of people. Can you -- is there -- first</p> <p>24 of all, let me say, is there anyone here not represented by</p> <p>25 Mr. Brown that would like to testify?</p>	<p>1 upon to present to you a claim of mistake in zoning. And you</p> <p>2 know, I thought there was a pretty good case there because</p> <p>3 what we have involved here is a 14 hundred square foot R-60</p> <p>4 Zone parcel that is essentially useless as an R-60 Zone</p> <p>5 parcel land lot, and undevelopable, but quite useful to my</p> <p>6 clients if in fact it had been rezoned along with the other</p> <p>7 property that they have.</p> <p>8 But I was persuaded by Staff at the Planning Board</p> <p>9 that that was really not the best way to go because they were</p> <p>10 not going to support the idea that there was some mistake in</p> <p>11 the zoning, and they felt that even if you agreed with me, I</p> <p>12 would have trouble getting the Council persuaded that there</p> <p>13 was some mistake in the zoning.</p> <p>14 So in taking the path of least resistance, we</p> <p>15 followed the recommended path of the Planning Board to</p> <p>16 proceed with what amounts to a relatively minor Local Map</p> <p>17 Amendment to convert that R-60 Zone property into essentially</p> <p>18 the same zone as the other property. And in the process, the</p> <p>19 -- the Staff recommended, the Planning Board Staff,</p> <p>20 recommended approval, as did the Planning Board.</p> <p>21 And I want to be -- I want to be clear to you today</p> <p>22 that we explicitly accept and -- and for purposes of this</p> <p>23 hearing, all of the findings and recommendations of the Staff</p> <p>24 and the Planning Board.</p> <p>25 Today, I would like our -- our -- our principal land</p>

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3 (9 to 12)

9	11
<p>1 planner, Mr. Robert Tjaden, to testify and to describe</p> <p>2 generally the evolution of this project, and why it complies</p> <p>3 with the requirements for the Local Map Amendment.</p> <p>4 But perhaps first I should ask him -- I'll let you</p> <p>5 know that we have put his résumé in. I believe it's Exhibit</p> <p>6 36(c). And I would like Mr. Tjaden, when he's sworn in, to</p> <p>7 first talk about his experience in land use planning so that</p> <p>8 I can qualify him as an expert.</p> <p>9 HEARING EXAMINER HANNAN: All right. Mr. Tjaden,</p> <p>10 please raise your right hand.</p> <p>11 MR. TJADEN: Yes, ma'am.</p> <p>12 Whereupon,</p> <p>13 ROBERT TJADEN,</p> <p>14 being first duly sworn or affirmed to testify to the truth,</p> <p>15 the whole truth, and nothing but the truth, was examined and</p> <p>16 testified as follows:</p> <p>17 HEARING EXAMINER HANNAN: Okay. Can you state your</p> <p>18 business address and your email address for the record.</p> <p>19 THE WITNESS: Yes, ma'am. Tjaden Design Associates</p> <p>20 at 22405 Fitzgerald Drive in Gaithersburg, Maryland. My</p> <p>21 email address is bobby@tjaden.design.</p> <p>22 HEARING EXAMINER HANNAN: All right. Go ahead, Mr.</p> <p>23 Brown.</p> <p>24 EXAMINATION BY COUNSEL FOR THE APPLICANTS:</p> <p>25 BY MR. BROWN:</p>	<p>1 over this project in whatever narrative form you think is --</p> <p>2 will best persuade or -- or help the hearing examiner</p> <p>3 understand why this application conforms to the requirements</p> <p>4 for the Local Map Amendment.</p> <p>5 A Sure.</p> <p>6 HEARING EXAMINER HANNAN: Okay. Before you do that,</p> <p>7 are you going to refer to the Floating Zone Plan?</p> <p>8 THE WITNESS: That -- that would be one of the</p> <p>9 exhibits we'll -- we'll reference, but I'd also like to call</p> <p>10 up Exhibit 6.</p> <p>11 HEARING EXAMINER HANNAN: Okay. Hold on one second,</p> <p>12 please.</p> <p>13 THE WITNESS: Sure.</p> <p>14 HEARING EXAMINER HANNAN: The Aerial Photograph?</p> <p>15 THE WITNESS: Yes, ma'am.</p> <p>16 HEARING EXAMINER HANNAN: Okay. Just a second.</p> <p>17 Okay. You should be seeing it.</p> <p>18 THE WITNESS: Yes, ma'am.</p> <p>19 HEARING EXAMINER HANNAN: A little blurry, but --</p> <p>20 THE WITNESS: It'll still work for our purposes here.</p> <p>21 A So when we began working with the client, our initial</p> <p>22 findings, we looked back at historical -- basically in this</p> <p>23 case historical aerial images just to try to understand the</p> <p>24 narrative of how the site had been used in the past.</p> <p>25 And this specific example in Exhibit 6 is a photo</p>
10	12
<p>1 Q Mr. Tjaden, is that your résumé in the -- in the</p> <p>2 Exhibit 36(c)?</p> <p>3 A Yes, sir.</p> <p>4 Q Could you briefly describe for us what's -- what is</p> <p>5 shown on that résumé in terms of your experience in land use</p> <p>6 planning?</p> <p>7 A Yes, sir. I -- I worked with the State of Maryland</p> <p>8 as a landscape architect, for University of Maryland System</p> <p>9 for quite a while, looking at different issues such as we'll</p> <p>10 be talking about today, from a land acquisition perspective.</p> <p>11 And then, since I've owned my own company in the last five</p> <p>12 years, we've worked with a variety of clients for -- and also</p> <p>13 a variety of uses. Usually they're commercial agricultural</p> <p>14 across the state, different counties and Montgomery County.</p> <p>15 But we -- we've worked through some complexities just as</p> <p>16 you've described earlier today.</p> <p>17 MR. BROWN: So Hearing Examiner Hannan, I would</p> <p>18 respectfully request that you qualify Mr. Tjaden as an expert</p> <p>19 in land planning.</p> <p>20 HEARING EXAMINER HANNAN: Okay. I will so qualify</p> <p>21 him.</p> <p>22 MR. BROWN: Thank you.</p> <p>23 Q Mr. Tjaden, I'm not going to -- I'm not experienced</p> <p>24 in asking land use planners a lot of questions, so I'm</p> <p>25 basically going to ask you to basically go over this pro -- go</p>	<p>1 from 1998 which clearly says the bank line that goes around</p> <p>2 this parcel, that it appears that it in -- is included with</p> <p>3 the subject parcel.</p> <p>4 And if you scroll down, the next image is from 2008,</p> <p>5 I believe. And that is -- that is also still the case there,</p> <p>6 20 years after -- I'm -- I'm sorry, the -- yeah, ten -- ten</p> <p>7 years after. And then -- and then obviously now, that is</p> <p>8 still the case because that parcel is still being used by the</p> <p>9 client for purposes of the subject parcel, for the -- for the</p> <p>10 Montessori School.</p> <p>11 So this -- this -- this was really our -- our major</p> <p>12 finding that we thought we had a pretty good argument for --</p> <p>13 for going through this process to start with.</p> <p>14 HEARING EXAMINER HANNAN: Why was that left -- was</p> <p>15 that some kind of buffer for the -- where the -- well, it</p> <p>16 doesn't matter. You're not change mistakes, so go ahead.</p> <p>17 THE WITNESS: Yes, ma'am.</p> <p>18 A And -- and if you don't mind going back to, as you</p> <p>19 had before, Exhibit 31(b). That -- that shows pretty clearly</p> <p>20 though with -- with the color coding as -- as is required for</p> <p>21 the submission, shows pretty clearly kind of where we stand</p> <p>22 currently and -- and why we're here. So you can see there's a</p> <p>23 little bit of a -- a -- whatever you want to call that -- a</p> <p>24 little bit of a mishmash there of all the different zones that</p> <p>25 kind of come together in that one spot.</p>

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13	<p>1 To the left, obviously, we see the residential -- the</p> <p>2 residential median densities and -- I can't really read all</p> <p>3 these now, but the -- but you can tell. There we go. And</p> <p>4 then, we have commercial residential zone and residential mul</p> <p>5 -- multiunits. And then, we have where Mr. -- Mr. Singh's</p> <p>6 properties are here in the pink.</p> <p>7 So we -- we saw this initially as what we saw as a</p> <p>8 mistake, honest mistake, it's a small parcel and -- but again,</p> <p>9 it -- it kind of makes sense for it all to be -- to be with</p> <p>10 this one since it's been in use with this one for over -- over</p> <p>11 20 years.</p> <p>12 So that -- that was the basis of our argument to go</p> <p>13 -- to go through this process, as you can see.</p> <p>14 HEARING EXAMINER HANNAN: I think you have a pretty</p> <p>15 good argument, but that's okay, we're not there.</p> <p>16 THE WITNESS: Okay. Okay.</p> <p>17 HEARING EXAMINER HANNAN: I mean a change mistake</p> <p>18 argument, but never mind.</p> <p>19 THE WITNESS: Yes, ma'am.</p> <p>20 A And again, you know, and -- and the client -- I may</p> <p>21 be jumping again a little bit here, but the client has had</p> <p>22 some -- some pretty nice plans thought through for how to use</p> <p>23 this to expand his drive-in business in Downtown Takoma Park.</p> <p>24 And his business and uses and everything he's done to date</p> <p>25 conforms pretty well with the Takoma Park Master Plan, and</p>	15	<p>1 THE WITNESS: -- our findings looking through the --</p> <p>2 the specific requirements for the Commercial Revitalization</p> <p>3 Overlay Zone, the School provides economic vitality to the</p> <p>4 citizens of Takoma Park. It is -- it is a commercial</p> <p>5 enterprise, as Item 1 says.</p> <p>6 Item 2, Promote an enhanced pedestrian environment</p> <p>7 and improved circulation. Many children attend the daycare</p> <p>8 arrive by walking with their parents using the existing</p> <p>9 sidewalks of Carroll Avenue.</p> <p>10 And let's see what else here.</p> <p>11 (Inaudible) bicycle parking.</p> <p>12 Item 3, substantially conform with the Master Plan</p> <p>13 vision for specific existing commercial areas.</p> <p>14 And we said that the Planning Department Staff Report</p> <p>15 to the Board stated that, The Proposed Floating Design is</p> <p>16 consistent with Takoma Park Master Plan, which -- which we</p> <p>17 also agreed with.</p> <p>18 Combination of residential with commercial uses. The</p> <p>19 School is located at the Takoma Junction, a small commercial</p> <p>20 area within the residential neighborhood, and provides a</p> <p>21 pretty valuable service for -- for the surrounding areas.</p> <p>22 Without planning approval, the maximum building</p> <p>23 height is 30 feet. The Takoma Park Montessori Floating</p> <p>24 Zoning Plan proposes a height limitation of 25 feet, which is</p> <p>25 below the -- the maximum building height as described.</p>
14	<p>1 specifically which was requested, the Commercial</p> <p>2 Revitalizations Overlay Zone, his business conforms with that.</p> <p>3 And so we -- we think that this expansion and this proposed</p> <p>4 rezone for this 14 hundred square foot parcel would bode well.</p> <p>5 HEARING EXAMINER HANNAN: Okay. Can you just address</p> <p>6 was it you who submitted the compliance with the CROZ Overlay</p> <p>7 Zone?</p> <p>8 THE WITNESS: Yes -- yes, ma'am.</p> <p>9 HEARING EXAMINER HANNAN: Can you just, since you're</p> <p>10 under oath, and that isn't under oath, can you just briefly</p> <p>11 go through that and your rationale, please.</p> <p>12 THE WITNESS: Yes. Let me -- that's Exhibit 42</p> <p>13 you're referencing?</p> <p>14 HEARING EXAMINER HANNAN: Yes.</p> <p>15 THE WITNESS: Yes. Would you like me to go through</p> <p>16 piece-by-piece here?</p> <p>17 HEARING EXAMINER HANNAN: Just -- just if you could</p> <p>18 for the record while you're under oath summarize, you can</p> <p>19 summarize it or just say those are your findings and</p> <p>20 you've --</p> <p>21 THE WITNESS: Yes -- yes, ma'am.</p> <p>22 HEARING EXAMINER HANNAN: -- prepared them. You can</p> <p>23 --</p> <p>24 THE WITNESS: Yes, ma'am. So that --</p> <p>25 HEARING EXAMINER HANNAN: -- say that.</p>	16	<p>1 And finally, Item 6, A site plan is required for the</p> <p>2 proposed design, and we -- we agree with that, everything to</p> <p>3 date that -- that is still the plan moving forward that --</p> <p>4 before any construction begins, before any -- any site</p> <p>5 improvements move forward, site -- site plan approval will --</p> <p>6 will go forward.</p> <p>7 HEARING EXAMINER HANNAN: Right. Okay. Thank you.</p> <p>8 THE WITNESS: Yes, ma'am.</p> <p>9 HEARING EXAMINER HANNAN: Mr. Brown.</p> <p>10 MR. BROWN: I want to make sure that -- I want to</p> <p>11 point Mr. -- Mr. Tjaden to Exhibit 36(d) -- d as in Delta.</p> <p>12 BY MR. BROWN:</p> <p>13 Q And I don't know if you saw this, Mr. Tjaden, before</p> <p>14 now, but what we did was obtain the consent of the adjacent</p> <p>15 property owner in the R-60 Zone just behind this property to</p> <p>16 the location of the -- of the building that is proposed to be</p> <p>17 built back there.</p> <p>18 I wonder if you agree with -- with my point of view</p> <p>19 that because the setback was going to be zero at that point</p> <p>20 from the lot line, that it was important to notify that</p> <p>21 adjacent property owner and obtain their consent?</p> <p>22 A Yes, sir.</p> <p>23 MR. BROWN: And I would like to ask the Hearing</p> <p>24 Examiner if -- because I didn't see it in the -- in the file,</p> <p>25 whether or not the -- the information on the -- on the Storm</p>

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5 (17 to 20)

17	1 Water Waiver Letter from Takoma Park was -- from the City of 2 Takoma Park was in the record? 3 HEARING EXAMINER HANNAN: Oh, I haven't seen that. 4 MR. BROWN: I believe Mr. Brownlee has a copy of 5 that. He's -- he's -- he's prepared to submit that to you 6 because what -- Mr. Brownlee, was that submitted to the 7 Hearing Examiner? 8 I have a copy -- 9 MR. BROWNLEE: Yes, I believe so. 10 MR. BROWN: -- that says -- I have a copy here that 11 says it was sent to you, Ms. Hannan, on December 8th at 2:48 12 p.m. 13 HEARING EXAMINER HANNAN: Okay. 14 MR. BROWN: I'll just read it to you as -- as it 15 says. It's from Mr. Brownlee. The concept Storm Water 16 Management is included in the Floating Zone Plan. There are 17 two micro fire retention areas identified in an area labeled 18 SWM Future Loading shown on the plan. Takoma Park will not 19 require an SWM plan until the time of site plan submission. 20 HEARING EXAMINER HANNAN: Oh, okay. I do think 21 that's in there. I -- 22 MR. BROWN: And the letter is attached. 23 HEARING EXAMINER HANNAN: Okay. I -- I do believe 24 it's in there. I can't tell you at the moment which exhibit 25 it is, but I do recall seeing that. What's the date of that	19	1 HEARING EXAMINER HANNAN: So -- 2 MR. BROWN: Have you -- have you looked at Exhibit 41 3 from Mr. Elza -- from Elza Hisel McCoy on this issue? 4 HEARING EXAMINER HANNAN: Yes, but it's wrong. I 5 have looked at it, and you can't -- you don't have to go into 6 the finer details, but you do have to have something that 7 supports the foundation for them approving this. So if I say 8 -- I can't just pass everything off to Site Plan. And that's 9 the problem with that, to be honest. 10 So you know, I was thinking about this the other day, 11 or actually, yesterday, and the thought is this is -- is this 12 subject to the State of Maryland -- what were your -- let me 13 get the Staff Report up if I can. What were the traffic 14 numbers? 15 MR. BROWN: Mr. Brownlee, do we have our traffic man 16 on the line today? 17 HEARING EXAMINER HANNAN: Well, I think it's -- no -- 18 MR. BROWNLEE: No. 19 HEARING EXAMINER HANNAN: -- I think it's in the 20 Staff Report. 21 MR. BROWN: Okay. 22 HEARING EXAMINER HANNAN: Which I think is 30(b). 23 Okay. So let me see if I can share this. But really, I 24 can't -- I -- I have to have some basis. That's a specific 25 requirement. So I have to have some basis for saying yes, it
18	1 email? 2 MR. BROWN: December 8th. If it's -- 3 HEARING EXAMINER HANNAN: Okay. 4 MR. BROWN: If it's missing, Mr. Brownlee will 5 forward it. 6 HEARING EXAMINER HANNAN: That's fine. Okay. 7 MR. BROWN: Couple of other points. The Applicant, 8 the owner of the Applicant, whom I call for simplified 9 purposes Guru, is here today, and he is -- he has basically 10 agreed with all of your requests for binding elements except 11 for the one that limits the enrollment to 47 students. His 12 request is, if it's acceptable to you, that that limitation 13 be shown on the site plan because they might in the future 14 decide that they would be willing to do a traffic study if 15 they decided that it was feasible and practicable to increase 16 the enrollment. I think that approach provides a greater 17 flexibility. But he is here to answer any questions or any 18 concerns you might have concerning doing it that way. 19 HEARING EXAMINER HANNAN: Well, I have to make a 20 finding under the Finding of Approval that this meets the 21 LATR Guideline, and so I can't just say oh, you know. And I 22 have to have binding elements that limit -- you know, that 23 support my finding, or I can't make the finding. You follow 24 what I'm saying, Mr. Brown? 25 MR. BROWN: Yes.	20	1 meets this standard. So I can't say yes, it meets this 2 standard, and then know that you're going to change the 3 standard. 4 Now, my thought was is there still a requirement, is 5 this subject to the State of Maryland's requirement that you 6 have a certain amount of space per child? 7 MR. BROWN: Page 12. 8 HEARING EXAMINER HANNAN: Thank you. I hope I'm -- 9 sorry to have to scroll like this. 10 See, you're right at the edge. And the problem is if 11 I say okay, no problem, you're exempt, and then I don't hold 12 to that, then I have no basis for saying you're exempt. 13 So I guess the other thing is we could back out 12 -- 14 what's the maximum number of students you can have in 12 15 hundred square feet? 16 MR. BROWN: Without the -- without the traffic study, 17 it's 47. Based on Department of Planning's analysis. 18 HEARING EXAMINER HANNAN: Right. 19 MR. BROWN: But if a traffic study is done, that 20 number may change, and they get -- 21 HEARING EXAMINER HANNAN: Yes, I -- 22 MR. BROWN: -- they increase. 23 HEARING EXAMINER HANNAN: I understand that but 24 that's -- I'm saying that's not good enough, because I can't 25 take it to the Council saying it's going to generate 49 peak

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6 (21 to 24)

21	<p>1 hour trips, and it's not. Okay. So and it -- it's not me; 2 it's the Council that has to make the determination, so I 3 can't say it's exempt when it's not going to be exempt. What 4 I'm getting at is can you do this a different way. If you 5 put a 12 -- if you made the binding element 12 hundred square 6 feet, what's the maximum number of students you can have? 7 The State of Maryland has regulation on how many square feet 8 per child you -- you can have. 9 MS. SINGH: It's -- it's 35 square feet per child. 10 HEARING EXAMINER HANNAN: So what's 12 hundred 11 divided by 35? 12 MR. SINGH: Well, 34. 13 HEARING EXAMINER HANNAN: What? 14 MS. SINGH: 34. 15 MR. SINGH: 34. 16 HEARING EXAMINER HANNAN: Well, how are you going to 17 get 47 then? 18 MS. SINGH: No, it's the total property they're 19 talking about, just not that 12 hundred square feet. Already 20 existing school. The already existing school, and then the 21 -- 22 HEARING EXAMINER HANNAN: Okay. So I got you. So if 23 you add 12 hundred square feet to what you're -- what you 24 have existing -- 25 MS. SINGH: Yeah.</p>
22	<p>1 HEARING EXAMINER HANNAN: -- how many children? 2 I've got to find some way to say this is exempt, and 3 the -- that this finding is supported, and I -- if -- if you 4 want to break it down by square footage, you know, I don't 5 know, but I can't just say no worries when you're going to 6 change it. 7 And you're right on the cusp. You're one trip below. 8 I see a hand up from Mr. Brownlee and I see a hand up 9 for -- it just says ingh. 10 MR. BROWN: That's Mr. Singh. 11 HEARING EXAMINER HANNAN: Oh, it doesn't have that -- 12 mine doesn't have the S for some reason. 13 Mr. Singh, do you want to say something, or are you 14 thinking? 15 MR. SINGH: Ma'am -- give me one second here. 16 MS. SINGH: I don't know if what -- what I already 17 said is what we were going to say; that we -- we could keep 18 34 kids in the new area, but that limits us to 32 -- 34 plus 19 -- 20 MR. SINGH: 33. 21 HEARING EXAMINER HANNAN: But how many can you keep 22 in the new addition? 23 MS. SINGH: New addition is how much? 12 or 13? 24 MR. SINGH: Thousand two -- 25 MS. SINGH: Yeah.</p>
23	<p>1 HEARING EXAMINER HANNAN: 1,200 divided by 35, right? 2 MS. SINGH: Yeah, that's -- 3 MR. SINGH: Yeah. 4 MS. SINGH: -- 34 kids. 5 MR. SINGH: 34 kids. 6 HEARING EXAMINER HANNAN: So why -- oh, so you want 7 flexibility for -- 8 MS. SINGH: Don't you have the house that -- 9 MR. BROWNLEE: Okay. Yes, to go up to the 57. 23 in 10 the current building, 34 in the -- 11 HEARING EXAMINER HANNAN: When you say -- 12 MR. BROWNLEE: -- new building. 13 HEARING EXAMINER HANNAN: -- current, is that the -- 14 it -- it looks to me like you had a house, residential house, 15 that's part of the daycare, and then the masonry house, 16 correct? 17 MS. SINGH: It is -- we haven't decide -- it is, 18 yeah, it is a part of the daycare, yeah. 19 HEARING EXAMINER HANNAN: So how many children can 20 you have in the addition? 21 MS. SINGH: How much is the addition? 22 MR. SINGH: So as a -- besides the, ma'am, existing 23 23, and the 12 hundred square foot area will be about 34. So 24 it depends on the enrollment also; how many kids are going to 25 come. At this moment, we -- the school is closed. Earlier,</p>
24	<p>1 there were only 22 kids. So the -- the total maximum 2 attendee, 57 there, according to -- 3 HEARING EXAMINER HANNAN: Where? 4 MR. SINGH: In the -- in the hou -- in the exist -- 5 when we are going to have a extension for this construction. 6 12 hundred square feet area and the existing 800 of 75 square 7 feet area -- 8 HEARING EXAMINER HANNAN: Okay. Okay. Forget that 9 though. Let's try -- let's work at it this way. 10 How many children can you have just in the addition? 11 34, correct? 30 -- well, I would have to round up. 34.285. 12 MR. SINGH: 34 can be. 13 MS. SINGH: Yeah. 14 MR. SINGH: They're also keeping, you know, when -- 15 when education people are coming, they are also looking at 16 the shelves and everything and then -- then they're 17 calculating area. So -- 18 HEARING EXAMINER HANNAN: Well, what I'm thinking is 19 -- what I'm thinking is that you're only proposing through 20 this Local Map Amendment the addition? 21 MR. SINGH: Yes. 22 HEARING EXAMINER HANNAN: Correct? 23 MR. SINGH: Yeah. 24 HEARING EXAMINER HANNAN: Now, typically, when we go 25 to LATR, which is the Local Area Transportation Review</p>

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7 (25 to 28)

25	<p>1 Guidelines, they don't credit -- they don't -- they only 2 count the trips from the addition. So what did Staff -- hold 3 on. Let's -- let's go back. How did Staff work this out? 4 MR. BROWN: They used total enrollment. 5 HEARING EXAMINER HANNAN: Okay. They shouldn't have 6 -- well, anyway. Let me do this. We're going to leave the 7 record open for ten days because that's how long it takes us 8 to get the transcript. I'm wondering if Staff's analysis is 9 correct, because it seems to me that they should not have 10 counted total enrollment. They should have -- okay. 11 Obviously can -- can you mute -- 12 I'm wondering if they should have not counted the 13 number -- let me put it this way. If you -- perhaps we could 14 do a binding element in the -- for just the addition because 15 what's existing there now is not adding new trips. You 16 follow what I'm saying, Mr. Brown? 17 MR. BROWN: I think you're proposing a binding 18 element that limits the enrollment in the new addition to -- 19 HEARING EXAMINER HANNAN: 30 -- 20 MR. BROWN: -- a number below 50. 21 HEARING EXAMINER HANNAN: 30 -- well, you could do 22 that. No, it should be 35. All you can get under the State 23 of Maryland Guidelines in the new addition is 35 students. 24 MR. BROWN: Well, I don't think Mr. Singh would have 25 a problem with a binding element that limited the enrollment</p>	27	<p>1 -- I need a binding el -- a binding element says this is how 2 we -- you know, this -- I find -- say I recommend approval, I 3 can't say it now one way or the other, but say I do, and I 4 have to base it on right now without a quote item on the plan 5 that says the addition is going to be 12 hundred square feet, 6 I have to assume you're going to have, you know, five 7 thousand. So what I'm saying is if we back out the traffic 8 to say the traffic from the new addition, but then I need to 9 know, I need a binding element saying that the new addition 10 is going to be 12 hundred square feet, and not more. 11 MR. BROWN: So let me ask Mr. Singh if you have a 12 problem with limiting the size of the building that we're 13 adding to 12 hundred square feet? 14 MR. SINGH: I -- at -- at this moment, I don't know 15 total how many square footage is coming, and we're talking 16 about construction, we've already submitted drawings. There 17 is a, you know, part pathway where there's no -- not -- 18 nothing is there. Only if I calculate total, it comes about 19 12 hundred something or 13 hundred something. I have -- I 20 have -- I can calculate -- look at it, the drawings, and give 21 the next scheduled dates. 22 MR. BROWN: Mr. -- Mr. Brownlee, how does this figure 23 into what you are familiar with? 24 MR. BROWNLEE: Yeah. From -- 25 HEARING EXAMINER HANNAN: Wait, I don't have Mr. --</p>
26	<p>1 in the addition to 35 students. 2 Is that correct, Mr. Singh? 3 MR. SINGH: Yes. 4 HEARING EXAMINER HANNAN: Because it seems to me I'm 5 not sure Staff analysis is correct because we don't have to 6 limit the enrollment in the entire daycare because that's not 7 adding new trips. The only thing that's adding new trips is 8 the -- the addition, correct? Am I incorrect on that? 9 MR. BROWN: I think you're correct on all of the -- I 10 think you're completely correct on this analysis. 11 HEARING EXAMINER HANNAN: So I'm -- then, I think 12 what we need to do, I'm going to send it back to Staff for 13 their -- you know, I have to send it back to Staff for their 14 comment. You -- you can tell me now whether you would agree 15 to such a condition. 16 MR. BROWN: I believe you have that consent. Mr. 17 Singh has just said so. 18 HEARING EXAMINER HANNAN: Okay. So and then, the 19 other thing we should do, if we're going to do it that way, 20 can you -- I would need a binding element limiting the 21 addition to 12 hundred square feet. Max. Whatever max you 22 want to put on it. 23 MS. SINGH: So let me -- the addition is 12 hundred 24 square feet. We can any way not have more than 35 kids? 25 HEARING EXAMINER HANNAN: No, I know but I'm talking</p>	28	<p>1 first of all, I just realized I've been talking to people 2 without putting them under oath or identifying themselves for 3 the record. And that's -- that's my fault. My head was 4 involved in resolving this problem. 5 So first, let me take Mr. Brownlee, please raise your 6 right hand. 7 Do you solemnly affirm under penalties of perjury 8 that the statements you have made and will make are the 9 truth, the whole truth, and nothing but the truth? 10 MR. BROWNLEE: I do. Yes. 11 HEARING EXAMINER HANNAN: And Mr. Singh, or -- please 12 raise your right hand. 13 Do you solemnly affirm under penalties of perjury 14 that the statements you're about to make are the truth, the 15 whole truth, and nothing but the truth? 16 MR. SINGH: I do, ma'am. 17 HEARING EXAMINER HANNAN: Okay. And the kind lady 18 sitting next to you, can she identify herself for the record, 19 please. 20 MS. SINGH: Yeah, I'm Manjit Singh. 21 HEARING EXAMINER HANNAN: Okay. Can you spell that 22 for the court reporter. 23 MS. SINGH: Yeah, it's M-A-N-J-I-T, and the last name 24 is Singh, S-I-N-G-H. 25 HEARING EXAMINER HANNAN: Okay. Can you please raise</p>

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29	<p>1 your right hand.</p> <p>2 Do you solemnly affirm under penalties of perjury</p> <p>3 that the statements you are about to make are the truth, the</p> <p>4 whole truth, and nothing but the truth?</p> <p>5 MS. SINGH: Yes, I do.</p> <p>6 HEARING EXAMINER HANNAN: Okay. I'd like before we</p> <p>7 go farther, I'd like each of you to state your name, business</p> <p>8 address, and email for the record.</p> <p>9 MR. BROWNLEE: You want me to go first?</p> <p>10 HEARING EXAMINER HANNAN: Yes, Mr. Brownlee.</p> <p>11 MR. BROWNLEE: Yeah. David Brownlee, at 5621 Sonoma</p> <p>12 Road, Bethesda, Maryland 20817. And my email is Davidc, as</p> <p>13 in cat, Brownlee@gmail.com.</p> <p>14 HEARING EXAMINER HANNAN: Thank you.</p> <p>15 Mr. Singh.</p> <p>16 MR. SINGH: Hi. I am Gucharan Singh, and my email</p> <p>17 address is guruworldbank@gmail.com.</p> <p>18 HEARING EXAMINER HANNAN: Okay.</p> <p>19 MS. SINGH: And I'm Manjit Singh. My office address</p> <p>20 is 7212 Carroll Avenue, Takoma Park, Maryland, and my email</p> <p>21 address is manjits@gmail.com.</p> <p>22 HEARING EXAMINER HANNAN: Thank you so much. I got</p> <p>23 so involved in trying to resolve the issue, I neglected my</p> <p>24 quasi-judicial duties.</p> <p>25 So Mr. Singh, are you saying that you would like to</p>	31	<p>1 get to what you're talking about.</p> <p>2 MR. TJADEN: Okay. Can you pull up Exhibit 31(b)</p> <p>3 again, ma'am?</p> <p>4 HEARING EXAMINER HANNAN: I -- I'm going there. I --</p> <p>5 sometimes my computer -- give me one moment, please.</p> <p>6 Okay. Now it should work. Okay. Here we are.</p> <p>7 So this is the -- what I'm referring to is the hatch</p> <p>8 lines that span the two zones. Is that the add -- that's the</p> <p>9 addition, correct?</p> <p>10 MR. SINGH: Yes. Yes.</p> <p>11 HEARING EXAMINER HANNAN: Okay. So it says 12</p> <p>12 hundred -- well, it says approximately 12 hundred square</p> <p>13 feet.</p> <p>14 MS. SINGH: That includes that little triangle also</p> <p>15 in the back? The little one, yeah, all of it is 12 hundred?</p> <p>16 David?</p> <p>17 MR. SINGH: 12 hundred is this one here.</p> <p>18 HEARING EXAMINER HANNAN: Is which one?</p> <p>19 MS. SINGH: The one where you have the arrow, that</p> <p>20 one.</p> <p>21 MR. SINGH: This one.</p> <p>22 HEARING EXAMINER HANNAN: The yellow?</p> <p>23 MR. SINGH: No, that --</p> <p>24 MS. SINGH: Yeah, the yellow, but what about the</p> <p>25 little things behind the existing? Yeah, this one, how much</p>
30	<p>1 -- before we set a maximum, are you --</p> <p>2 MR. SINGH: Yeah.</p> <p>3 HEARING EXAMINER HANNAN: -- are you saying you would</p> <p>4 like to do some more calculation?</p> <p>5 MR. SINGH: The -- the cal -- according to the</p> <p>6 drawing, I'm just looking at the calculation, it -- we've</p> <p>7 shown total 14 hundred square feet area. Out of 14 hundred</p> <p>8 square feet area, we are going to use only around 11 hundred</p> <p>9 -- 11 hundred fifty. So with 14 hundred --</p> <p>10 HEARING EXAMINER HANNAN: Wait, I -- I couldn't hear</p> <p>11 because of the phone, please.</p> <p>12 MR. SINGH: Yeah. The total area is, ma'am, which</p> <p>13 we're going to extend will be 14 hundred square feet. So if</p> <p>14 the binding is for 14 hundred square feet, then it is okay.</p> <p>15 HEARING EXAMINER HANNAN: Well, that's the land area.</p> <p>16 MR. SINGH: Yeah.</p> <p>17 HEARING EXAMINER HANNAN: I want the building area.</p> <p>18 MS. SINGH: We have this triangle also.</p> <p>19 MR. SINGH: So build -- I -- I will calculate and</p> <p>20 I'll -- I'll send it to Mr. Brownlee.</p> <p>21 MS. SINGH: David -- David, do you have the area for</p> <p>22 the little triangle on the back? That should be added to the</p> <p>23 12 hundred. I can't find it right now.</p> <p>24 MR. BROWNLEE: I don't. Does Bobby have that amount?</p> <p>25 HEARING EXAMINER HANNAN: Wait, let me see if I can</p>	32	<p>1 is that -- how much --</p> <p>2 MR. SINGH: Give me a second.</p> <p>3 MS. SINGH: Because we're constructing that also.</p> <p>4 MR. SINGH: So the construction is this only, is this</p> <p>5 one, this total triangle as well as this stair, and then the</p> <p>6 pathway, this one.</p> <p>7 HEARING EXAMINER HANNAN: So what is the square</p> <p>8 footage of the future addition? Entirely?</p> <p>9 MR. SINGH: 12 hundred, plus this one. I don't</p> <p>10 remember this. See, this triangle, I don't know. This area</p> <p>11 is 12 hundred --</p> <p>12 HEARING EXAMINER HANNAN: Mr. Tjaden, Mr. Tjaden, can</p> <p>13 you calculate the area of the triangle?</p> <p>14 MR. TJADEN: We -- we can. I guess I just want to</p> <p>15 clarify for the record is that the numbers we have shown here</p> <p>16 and what's shown graphically, this is just basically a</p> <p>17 concept just to show what the client has in mind. So this is</p> <p>18 in no means for construction purposes or to say that this is</p> <p>19 what's going to be built. So as I -- I hope it's apparent</p> <p>20 the client is still ongoing trying to figure out the</p> <p>21 specifics of his construction.</p> <p>22 HEARING EXAMINER HANNAN: Okay. I need a maximum --</p> <p>23 MS. SINGH: Adding.</p> <p>24 HEARING EXAMINER HANNAN: -- square footage of the</p> <p>25 addition. That's what I need. Maximum. It doesn't have --</p>

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33	<p>1 so that we can figure out the traffic, so it doesn't -- and</p> <p>2 we don't have to do it now. You can submit it later.</p> <p>3 MR. TJADEN: Sure.</p> <p>4 HEARING EXAMINER HANNAN: But that's what I need to</p> <p>5 support a finding that you're exempt from a traffic -- just</p> <p>6 the addition is exempt from a traffic study.</p> <p>7 MR. SINGH: Okay.</p> <p>8 HEARING EXAMINER HANNAN: Otherwise, I'd have to</p> <p>9 limit enrollment in the addition, which it sounds to me like</p> <p>10 you're not ready to do that either. So -- so that's my</p> <p>11 recommendation to get through this.</p> <p>12 MR. SINGH: Sure. I will give the calculation, of</p> <p>13 course. I mean, just --</p> <p>14 HEARING EXAMINER HANNAN: You don't have to -- you</p> <p>15 don't have to do it now. What I have to do, we get a tran --</p> <p>16 I can't issue my report until we get the transcript. And</p> <p>17 that's by contract. I have to wait ten calendar or -- I</p> <p>18 forget if it's -- ten calendar days for that. So I can leave</p> <p>19 the record open to get the additional calculation.</p> <p>20 MR. SINGH: Sure.</p> <p>21 HEARING EXAMINER HANNAN: It doesn't have to be</p> <p>22 exact, but it has to be a maximum.</p> <p>23 MR. SINGH: Sure.</p> <p>24 HEARING EXAMINER HANNAN: And then, back out of that,</p> <p>25 I have to know from the square footage that the enrollment is</p>	35	<p>1 MR. SINGH: Addition, yeah.</p> <p>2 HEARING EXAMINER HANNAN: Or not new students. Just</p> <p>3 students in the addition.</p> <p>4 MR. SINGH: Addition.</p> <p>5 HEARING EXAMINER HANNAN: So if you cap it, I got to</p> <p>6 go back to the Staff Report to get the trip generation rate,</p> <p>7 so hold on one second.</p> <p>8 MS. SINGH: The 10 and 15, now there's three in each.</p> <p>9 MR. SINGH: Only (inaudible) --</p> <p>10 HEARING EXAMINER HANNAN: Okay. Let me see what they</p> <p>11 did for the trip generation rate. That's I think they came</p> <p>12 up with their own numbers, as one of you pointed out to me.</p> <p>13 I'm sorry to scroll through this like this. I hope it --</p> <p>14 sometimes I get seasick when --</p> <p>15 MR. BROWNLEE: It should be next page, page 12.</p> <p>16 There.</p> <p>17 HEARING EXAMINER HANNAN: Thank you.</p> <p>18 You didn't say what trip generation rate. The 47</p> <p>19 students is only -- that was for the entire thing, right?</p> <p>20 MR. BROWNLEE: Yes.</p> <p>21 HEARING EXAMINER HANNAN: Okay. But if you have 50</p> <p>22 students in the addition, you can't have -- can you have 50</p> <p>23 students?</p> <p>24 MR. SINGH: It is not possible. It is not possible</p> <p>25 in any way. It cannot be more than 37 --</p>
34	<p>1 -- for the new addition is going to be under 50 trips.</p> <p>2 MR. SINGH: Right.</p> <p>3 MS. SINGH: It should be under 50 trips. I don't</p> <p>4 anticipate -- 34 minus 50 will be how much?</p> <p>5 HEARING EXAMINER HANNAN: Well --</p> <p>6 MS. SINGH: 16. I don't have 16 in that little --</p> <p>7 HEARING EXAMINER HANNAN: Yeah, however you want to</p> <p>8 boil -- peel the potato, however you want to work it out, I</p> <p>9 need some binding element that is going to limit the traffic.</p> <p>10 MS. SINGH: So let's put it at 50 because the</p> <p>11 existing -- the 12 hundred square foot is 34 kids, and the</p> <p>12 little triangle, I don't anticipate having 16 kids in there.</p> <p>13 Maybe, but not more than --</p> <p>14 HEARING EXAMINER HANNAN: What is 50? I can't put it</p> <p>15 at 50 because then you need a traffic study. That's what I'm</p> <p>16 saying.</p> <p>17 MS. SINGH: Okay.</p> <p>18 MR. SINGH: Yeah.</p> <p>19 MS. SINGH: 47 would be how much? So you can put it</p> <p>20 at below 50?</p> <p>21 HEARING EXAMINER HANNAN: Wait a minute. Wait a</p> <p>22 minute. Are you talking enrollment?</p> <p>23 MS. SINGH: Yeah. No. Yeah, right?</p> <p>24 HEARING EXAMINER HANNAN: Okay. You're talking new</p> <p>25 students in the addition?</p>	36	<p>1 MS. SINGH: 34 plus --</p> <p>2 HEARING EXAMINER HANNAN: Wait. Are you talking</p> <p>3 students in the addition?</p> <p>4 MS. SINGH: Yeah.</p> <p>5 MR. SINGH: Yes.</p> <p>6 HEARING EXAMINER HANNAN: Well, I'm going to have to</p> <p>7 refer it back to Staff and have them calculate it. I mean, I</p> <p>8 could give it a shot. I can't find his -- what trip</p> <p>9 generation rate he used. There is somewhere in this report,</p> <p>10 I think, the trip generation rate.</p> <p>11 MR. BROWN: Ms. Robeson, let me see if I could cut</p> <p>12 through this and ask you one question. Would you -- would</p> <p>13 you find -- would you be able to make the finding that you</p> <p>14 need if Mr. Singh said that the enrollment in the addition</p> <p>15 will be -- will be no greater than 47 students?</p> <p>16 HEARING EXAMINER HANNAN: Let me think.</p> <p>17 Yes. If Staff goes along with my argument, that my</p> <p>18 position -- you know, I have to refer to Staff to see, make</p> <p>19 sure they agree that we're just looking at the trips from the</p> <p>20 addition. So the answer --</p> <p>21 MR. BROWN: So Mr. --</p> <p>22 HEARING EXAMINER HANNAN: -- to your question is yes.</p> <p>23 MR. BROWN: So Mr. Singh, are you willing today to</p> <p>24 say that there will not be more than 47 students in the new</p> <p>25 addition at any time?</p>

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10 (37 to 40)

37	<p>1 MR. SINGH: Yes, 47 to one, yes.</p> <p>2 MS. SINGH: Addition?</p> <p>3 MR. SINGH: Yes.</p> <p>4 MR. BROWN: So we are prepared to have a binding</p> <p>5 element limiting the enrollment in the addition, whatever</p> <p>6 size it may turn out to be, to 47 students. It will probably</p> <p>7 be less but that would be the maximum.</p> <p>8 MS. SINGH: Yes.</p> <p>9 MR. SINGH: Yes.</p> <p>10 HEARING EXAMINER HANNAN: Okay. Let me check then.</p> <p>11 I'm going to check with Staff and make sure that I'm -- that</p> <p>12 they don't have a problem with my interpretation that we're</p> <p>13 only looking at the trips from the new addition. Okay?</p> <p>14 MR. BROWN: Okay. We'll revisit this if they do not</p> <p>15 -- if they do have a problem.</p> <p>16 HEARING EXAMINER HANNAN: Right. All right.</p> <p>17 Anything else?</p> <p>18 MR. BROWN: I -- I just want to say that I don't</p> <p>19 think that I had submitted to you a covenant yet with the</p> <p>20 binding elements because there was, you know, some</p> <p>21 uncertainty as to what those binding elements were going to</p> <p>22 be.</p> <p>23 HEARING EXAMINER HANNAN: Right.</p> <p>24 MR. BROWN: Based on -- I'm going to prepare a draft</p> <p>25 set of covenants and have Mr. Singh sign them that limits the</p>	39	<p>1 MS. SINGH: So if there's a choice, then I have to do</p> <p>2 daycare. That's more binding for me than a private</p> <p>3 educational institution. If there is no choice. If there</p> <p>4 has to be a choice and only one can be used, then I'll do the</p> <p>5 daycare. They have any --</p> <p>6 HEARING EXAMINER HANNAN: Hold on. Is -- is a</p> <p>7 private educational institution permitted in the NRF Zone?</p> <p>8 Mr. Brown, do you know?</p> <p>9 MR. BROWN: Yes. I've got the code right here. Just</p> <p>10 give me a second.</p> <p>11 It is a permitted use in the NR Zone. I'm looking at</p> <p>12 the table. As is a daycare facility for over 30 persons.</p> <p>13 They're both permitted uses in the NR Zone.</p> <p>14 HEARING EXAMINER HANNAN: Okay. Well, we have to --</p> <p>15 now I don't know, though, if we go with a private educational</p> <p>16 institution, I don't know the trip gen -- whether the trip</p> <p>17 generation rates are the same.</p> <p>18 MS. SINGH: Let's do it --</p> <p>19 MR. BROWNEE: The study that the Planning Department</p> <p>20 did used the code for daycare.</p> <p>21 HEARING EXAMINER HANNAN: Okay. Well, we're -- we're</p> <p>22 going to have to pick one or the other.</p> <p>23 MS. SINGH: Daycare. I am going to pick the daycare.</p> <p>24 HEARING EXAMINER HANNAN: Okay.</p> <p>25 MR. BROWN: All right. That's what our binding</p>
38	<p>1 height of the -- the building to 25 feet; that limits the use</p> <p>2 of the building to the whatever the official name of it is,</p> <p>3 private educational or daycare, what -- whatever you --</p> <p>4 whatever is appropriate, and --</p> <p>5 HEARING EXAMINER HANNAN: Well, with that --</p> <p>6 MR. BROWN: -- at -- at the moment.</p> <p>7 HEARING EXAMINER HANNAN: Okay. That's fine. Go</p> <p>8 ahead. I'm sorry.</p> <p>9 MR. BROWN: How -- how would you like to see that</p> <p>10 phrased? We will -- we'll do it whatever way works for you.</p> <p>11 HEARING EXAMINER HANNAN: This is for over 30</p> <p>12 children so I think it's a daycare center under --</p> <p>13 MR. BROWN: Okay.</p> <p>14 HEARING EXAMINER HANNAN: You can look it up, but</p> <p>15 it's -- well, you -- I -- I can give you the -- hold on.</p> <p>16 I'll give you the citation. It's a day -- it's a daycare</p> <p>17 center if it's over 30 children.</p> <p>18 MS. SINGH: And I also --</p> <p>19 MR. BROWN: I know what you're talking about.</p> <p>20 MS. SINGH: I also need the name also of private</p> <p>21 educational institution because I have both the certificates,</p> <p>22 I need both the certificates. So I don't know if what have</p> <p>23 to be included, but it is a private educational institution.</p> <p>24 I do need approval from them also.</p> <p>25 HEARING EXAMINER HANNAN: Well, I can't -- okay.</p>	40	<p>1 element will be.</p> <p>2 HEARING EXAMINER HANNAN: Okay. So we're looking at</p> <p>3 binding elements to the height, which is 25 feet to use, and</p> <p>4 the maximum enrollment in the new addition. Correct?</p> <p>5 MR. BROWN: Unless you have more re -- unless you</p> <p>6 have more requests.</p> <p>7 HEARING EXAMINER HANNAN: I've pestered you enough.</p> <p>8 Okay. So the one outstanding issue, wait till I --</p> <p>9 before you submit the binding or the covenant, Mr. Brown,</p> <p>10 wait till I check with Staff about -- you think that his</p> <p>11 analysis of 49 trips was based on the entire enrollment,</p> <p>12 right, not just for the new addition?</p> <p>13 MR. BROWN: That's what it says in the Staff Report.</p> <p>14 It says --</p> <p>15 HEARING EXAMINER HANNAN: I am a little uncomfortable</p> <p>16 not having in the record anything. It doesn't have to be the</p> <p>17 exact size but the approximate size of the entire addition.</p> <p>18 It -- it doesn't have to be binding but wait, what I'm seeing</p> <p>19 now is that this is 12 hundred square feet just in the R-60.</p> <p>20 Or what is now R-60, correct? So if anyone could give me an</p> <p>21 approximation just so I can have it in the report. It's not</p> <p>22 binding; just an approximation.</p> <p>23 MR. TJADEN: If -- if I may, the other -- the other</p> <p>24 limitation is --</p> <p>25 HEARING EXAMINER HANNAN: Mr. Tjaden, Mr. Tjaden?</p>

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11 (41 to 44)

41	<p>1 Oh, I got you. Okay. Go ahead.</p> <p>2 MR. TJADEN: Yes, so just so it's -- looking at the</p> <p>3 order, the other limitation would be square footage for storm</p> <p>4 water requirement. So I mean, it's not like -- there's --</p> <p>5 there's a variety of cases that are going to limit the code</p> <p>6 size moving forward. And I guess that's why we said Site</p> <p>7 Plan would kind of take care of all these things.</p> <p>8 HEARING EXAMINER HANNAN: Yeah. I just -- that's</p> <p>9 true, but as I said, there's distance of basic rush but it's</p> <p>10 a limitation, I do have standards that can't be deferred.</p> <p>11 And so I'm just getting -- and as I said, I'm not asking for</p> <p>12 -- I'm -- I'm not asking for the square footage to be</p> <p>13 binding. I just want the -- some estimate of the total</p> <p>14 square footage in the record. That it's not binding. It's</p> <p>15 just so the Council has a basic idea of what they're</p> <p>16 approving.</p> <p>17 MR. TJADEN: So --</p> <p>18 HEARING EXAMINER HANNAN: You can say -- you can say</p> <p>19 approximately.</p> <p>20 MR. TJADEN: Sure. So based -- based on the Floating</p> <p>21 Zone Plans we submitted, and again, this is conceptual, you</p> <p>22 are correct, it looks like it was 12 hundred square feet on</p> <p>23 the parcel, the 14 hundred square foot parcel, and it would</p> <p>24 be about 800 square feet that we have graphically shown</p> <p>25 conceptually on the other parcel. So that's a total of on</p>	43	<p>1 they're going to use for the -- when they're calculating,</p> <p>2 they are not calculating wall-to-wall. They're calculating</p> <p>3 with -- with all -- what you call it?</p> <p>4 MS. SINGH: When Office of Child Care comes, they're</p> <p>5 going to look at the shelves in there, they are going to look</p> <p>6 at any other additions that are made. So depending on how</p> <p>7 she measures it after I get the room ready, I don't know</p> <p>8 whether 51 is what I will be able to have. Maybe 47 should</p> <p>9 be good for us I think.</p> <p>10 HEARING EXAMINER HANNAN: Okay. So I just want to</p> <p>11 clarify that so there's no -- no misunderstanding.</p> <p>12 Now, I did have one final question on parking, and</p> <p>13 maybe this is for Mr. Tjaden. Your parking is technically</p> <p>14 offsite because it's not -- I think you need a waiver on</p> <p>15 parking. And this is another thing that I have to say.</p> <p>16 Parking can -- sufficient parking can be accommodated. Okay.</p> <p>17 So Staff didn't, I don't think, even calculated the parking</p> <p>18 requirement. But I just need something in the record that</p> <p>19 says -- that says parking will comply with the law, and how</p> <p>20 you're going to do it. Just an -- it doesn't -- it -- it has</p> <p>21 to be more probable than not.</p> <p>22 MR. TJADEN: I don't -- I --</p> <p>23 MR. BROWN: I'd like to refer you to Exhibit 36(b),</p> <p>24 which is my Justification Statement.</p> <p>25 HEARING EXAMINER HANNAN: Yeah.</p>
42	<p>1 that graphic that you have, 31(b), graphically, again</p> <p>2 conceptually, that is 18 hundred square feet total that is</p> <p>3 shown in the hatched area.</p> <p>4 HEARING EXAMINER HANNAN: Well, I'm just going to say</p> <p>5 approximately 18 hundred square feet. And I'm not making a</p> <p>6 finding. Okay. I'm just so the Council -- it's my job so</p> <p>7 the Council knows. You know, they don't like it if they</p> <p>8 don't know what they're approving. So have some idea of the</p> <p>9 concept.</p> <p>10 So anyway, I'm not going to make that a binding</p> <p>11 element. I'm just going to say approximately eight hundred</p> <p>12 square feet.</p> <p>13 MR. SINGH: 18 hundred square feet.</p> <p>14 HEARING EXAMINER HANNAN: And as we're talking about</p> <p>15 the binding elements again, the 47 is in the entire new</p> <p>16 addition, correct? Not just the R-60 portion but the entire</p> <p>17 new addition, correct?</p> <p>18 MR. BROWN: That's right. That's right.</p> <p>19 HEARING EXAMINER HANNAN: Okay. Okay. Is that the</p> <p>20 -- so if it's roughly 18 hundred square feet --</p> <p>21 MR. SINGH: That's --</p> <p>22 HEARING EXAMINER HANNAN: -- that's 51 students, if I</p> <p>23 divide by 35. So are you still okay with the maximum</p> <p>24 enrollment in the new addition of 47?</p> <p>25 MR. SINGH: Yes, because there are lot of places</p>	44	<p>1 MR. BROWN: Page -- page 4 --</p> <p>2 HEARING EXAMINER HANNAN: Okay.</p> <p>3 MR. BROWN: -- reads as follows: Three parking spaces</p> <p>4 will be provided onsite. This is sufficient under 5962.4B in</p> <p>5 that there will be six or fewer employees and the requirement</p> <p>6 is .5 spaces per employee for this use outside a parking lot</p> <p>7 district.</p> <p>8 HEARING EXAMINER HANNAN: Well, do I have -- Mr.</p> <p>9 Tjaden, do you agree with that? I need somebody under oath.</p> <p>10 MR. TJADEN: Yes, yes, ma'am. So when -- when we</p> <p>11 looked at that because we're -- and you may disagree with</p> <p>12 this, but we looked at the site from a wholistic perspective</p> <p>13 about what the client is (indiscernible) on a day-to-day</p> <p>14 basis, which is the adjacent property as well. And that's</p> <p>15 really where they have their administrative functions out of</p> <p>16 that facility, which is where we saw the staff function</p> <p>17 primarily being. So because we're not really propose -- with</p> <p>18 this specific part of the project, we are not proposing any</p> <p>19 construction, we are not changing the site functionality for</p> <p>20 all intents and purposes. So --</p> <p>21 HEARING EXAMINER HANNAN: Right, but --</p> <p>22 MR. TJADEN: -- the site will continue to function as</p> <p>23 it has, and in conformance with the Master Plan, we're</p> <p>24 encouraging a walkable community and using existing</p> <p>25 infrastructure and not putting in more impermeable surfaces</p>


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12 (45 to 48)

45	1 for parking. 2 HEARING EXAMINER HANNAN: There's something in the 3 CROZ Zone, or maybe it's the Master Plan, that encourages 4 waivers of parking? 5 MR. TJADEN: We would have to look at that 6 specifically. Thank you. 7 MR. BROWNLEE: I would think that Mr. Singh owns both 8 properties, and if he decides at some point to sell the other 9 property, he would reserve three parking spaces for the 10 school. 11 MS. SINGH: Yeah. 12 MR. BROWNLEE: Is that correct, Mr. Singh? 13 MS. SINGH: Yes. 14 MR. SINGH: Yes. 15 MR. BROWNLEE: So the three parking spaces which are 16 required are available to the school. 17 HEARING EXAMINER HANNAN: I'm just trying to figure 18 out a place in the Zoning Ordinance. There is something in 19 the Zoning Ordinance that allows share -- sorry, I just -- 20 there is something. You can use on-street parking but you 21 really don't have much of a frontage. There's something, 22 offsite parking by agreement. An applicant may satisfy the 23 required number of vehicle parking spaces through offsite 24 parking on property located within one half mile. 25 MR. TJADEN: And that's the parking lot directly	47	1 the street frontage, but your street frontage is mostly the 2 access so -- 3 MR. BROWNLEE: Mr. Brown, can Mr. Singh have a joint 4 agreement with himself, because he owns both properties? 5 MR. BROWN: I really don't understand what the 6 problem is. The -- 7 HEARING EXAMINER HANNAN: The problem is -- 8 MR. BROWN: What -- 9 HEARING EXAMINER HANNAN: The problem is the parking 10 is technically offsite. 11 MR. BROWN: I don't -- I don't think that's correct. 12 There are three -- what we said was there were going to be 13 three parking spaces onsite. 14 HEARING EXAMINER HANNAN: But they're not on the 15 property. 16 MR. TJADEN: That -- that's correct, Mr. Brown. 17 HEARING EXAMINER HANNAN: They're not -- 18 MR. BROWN: That's all right. All right. 19 HEARING EXAMINER HANNAN: -- on the same -- they're 20 not on the same lot. 21 MR. BROWN: All right. I didn't realize that. 22 I don't know what -- I don't know exactly what form 23 it would take, but we'll figure out a way to comply with 24 subparagraph G. 25 HEARING EXAMINER HANNAN: Well, you can -- you may
46	1 across the street where we're referencing. 2 HEARING EXAMINER HANNAN: So now, it has to be under 3 the control -- I'm going to go through -- let me share my 4 screen so you can read this requirement, okay. Because as I 5 have it up on the -- and I want to know from someone under 6 oath -- 7 Okay. Here it is. G -- this is 623G of the Zoning 8 Ordinance. It has to be a property under control of the 9 involved party; be approved by the deciding body -- oh. 10 Through a -- if the offsite property is plat restricted, deed 11 restricted or it's under a joint use agreement. 12 So is it your intention to -- as owners of both 13 properties, to do a joint agree -- joint use agreement if 14 necessary? 15 MR. BROWN: There is a platted access easement for 16 the two properties. 17 HEARING EXAMINER HANNAN: Okay. But I need parking 18 space. I'm saying if necessary. It's my recollection, but I 19 can't find it in the Master Plan right now. It's my 20 recollection that they will approve waivers, but I can't say 21 that. So I can say in the decision that you would have the 22 ability to use the joint use agreement or you know, so I need 23 someone to say that, if parking can't be provided onsite, or 24 a waiver isn't granted. 25 Now, if you're a daycare, you can count parking on	48	1 not have to. If it's Site Plan, they waive the onsite 2 parking requirements. I mean, in a way it's almost merger 3 you have now. Zoning merger, but -- 4 MR. BROWN: Well, I guess we would -- I guess you 5 could say that we will ask for a waiver by virtue of the fact 6 of the jointly owned adjacent property which is going to be 7 made available for parking. 8 HEARING EXAMINER HANNAN: Okay. 9 MR. BROWN: And you can put into your Staff Report 10 that we have the intention to ask for that waiver of Site 11 Plan. 12 HEARING EXAMINER HANNAN: All right. Anything else? 13 MR. BROWN: I guess my -- I guess my last request of 14 you, Examiner Hannan, is are there any questions you have 15 about my analysis of compliance with the zoning requirements 16 as set forth in my Amended Pre-Hearing Justification 17 Statement, Exhibit 36(b)? 18 HEARING EXAMINER HANNAN: Well, over the last few 19 days, as I was going through this case, I have pretty much 20 pestered you with all my questions. And I apologize that it 21 was piecemeal, I had another deadline due, so I was -- I 22 wanted to get much -- as much as I could before the hearing 23 so we could work out these issues. So not at the present. 24 MR. BROWN: Thank you very much. With that -- 25 HEARING EXAMINER HANNAN: So listen --

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13 (49 to 52)

49	1 MR. BROWN: -- I would -- 2 HEARING EXAMINER HANNAN: Go ahead, I'm -- I 3 apologize. 4 MR. BROWN: I would just like to -- just like to 5 conclude that we request that you recommend approval subject 6 to the various conditions that -- and -- and open items 7 that -- that remain. 8 HEARING EXAMINER HANNAN: Okay. Thank you. Thank 9 you, everyone. 10 Now, what I'm going to do is leave the record open 11 for ten calendar days. Well, I better make it ten business 12 days just to get the transcript. So that would be -- that's 13 Monday, the 21st. 14 I'm going to ask Staff if they can get me a 15 recommendation with the binding elements and on the LATR for 16 traffic. Within that time, I'm going to ask them if they can 17 get it to me by Wednesday, the 16th, and then you'll have the 18 ability to comment by -- if you disagree, by the 21st. 19 MR. BROWN: Sounds good. 20 HEARING EXAMINER HANNAN: Okay. Thank you very much 21 to everyone. Is there anything else anybody wants to say? 22 You're all shellshocked. Okay. 23 MR. TJADEN: No, ma'am, thank you. 24 MR. SINGH: Thank you. 25 HEARING EXAMINER HANNAN: All right. With that, I'm	51	1 MS. SINGH: Thank you. 2 MR. TJADEN: Thank you. 3 MR. SINGH: Thank you. 4 (Off the record at 10:46 a.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
50	1 going to adjourn this hearing and the record will close 2 12/21. Subject to getting the binding elements and a 3 covenant -- oh, you also have to put the binding elements in 4 textual form on the Floating Zone Plan. I forgot to mention 5 that. So when you get that -- what I would do is forward the 6 binding elements you propose, Mr. Brown, to me and Staff, and 7 then I'll follow up with a -- a letter. I mean, I'll follow 8 up with an email to Staff saying -- well, I'm going to send 9 the email today to Staff about calculating the traffic. But 10 send the binding elements to myself and Staff. Your proposed 11 binding elements. 12 MR. BROWN: I will do that early next week. 13 HEARING EXAMINER HANNAN: Okay. All right. I guess 14 that's all my checkmarks. 15 MR. BROWN: Your thoroughness is appreciated. 16 HEARING EXAMINER HANNAN: You will also need to 17 submit a new FCP with the binding elements on it. Okay? 18 MR. BROWN: Yes, ma'am. 19 HEARING EXAMINER HANNAN: All right. With that, 20 thank you, and we will, I'm sure, be still communicating. So 21 with that, I'm going to adjourn this hearing with the record 22 to close 12/21. 23 MR. BROWN: Thank you. 24 HEARING EXAMINER HANNAN: All right? 25 MR. BROWNEE: Thank you very much.	52	1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Lee Utterback, AAERT CER, the officer before 3 whom the foregoing proceedings were taken, do hereby certify 4 that said proceedings were electronically recorded by me; and 5 that I am neither counsel for, related to, nor employed by 6 any of the parties to this case and have no 7 interest, financial or otherwise, in its outcome. 8 IN WITNESS WHEREOF, I have hereunto set my hand 9 and affixed my notarial seal this 11th day of December, 2020. 10  11 _____ 12 Lee Utterback, AAERT CER, Notary Public 13 for the State of Maryland 14 15 16 17 18 19 20 21 22 23 24 25

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14 (53 to 56)

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CERTIFICATE OF TRANSCRIBER

I, Jerome E. Harris, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Jerome E. Harris

Jerome E. Harris, CDLT-204
December 15, 2020

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