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Transcript of Hearing

Date: November 5, 2021

Case: Creative Arts & Language School, Inc.

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<div>1</div> <div>MONTGOMERY COUNTY</div> <div>2</div> <div>OFFICE OF ZONING & ADMINISTRATIVE HEARINGS</div> <div>3</div> <div>100 Maryland Avenue</div> <div>4</div> <div>Rockville, MD 20850</div> <div>5</div> <div>6</div> <div>7 -----x</div> <div>8 IN THE MATTER OF: :</div> <div>9 Application from :</div> <div>10 Creative Arts & Language :</div> <div>11 Subject Property is Lot 6, : Case No. CU21-09</div> <div>12 Block B :</div> <div>13 -----x</div> <div>14</div> <div>15 Conducted Virtually</div> <div>16 Friday, November 5, 2021</div> <div>17 9:30 a.m.</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23 Job: 411562</div> <div>24 Pages: 1 - 167</div> <div>25 Transcribed by: Sheri Chism</div>	<div>3</div> <div>A P P E A R A N C E S</div> <div>2</div> <div>ON BEHALF OF THE APPLICANT:</div> <div>3</div> <div>MICHELLE ROSENFELD, ESMS. ROSENFELD: UIRE</div> <div>4</div> <div>MICHELLE ROSENFELD, LLC</div> <div>5</div> <div>1 Research Court, Ste 450</div> <div>6</div> <div>Rockville, Maryland</div> <div>7</div> <div>8 DOUGLAS TILLEY</div> <div>9</div> <div>O'CONNELL & LAWRENCE</div> <div>10</div> <div>17904 Georgia Ave</div> <div>11</div> <div>Olney, Maryland 20832</div> <div>12</div> <div>13 JOHN SEKERAK</div> <div>14</div> <div>STANTEC</div> <div>15</div> <div>6 Montgomery Village Ave, Ste 620</div> <div>16</div> <div>Gaithersburg, Maryland 20879</div> <div>17</div> <div>18 JOE MEHRA</div> <div>19</div> <div>MCV Associates</div> <div>20</div> <div>4605 C Pine Crest Office Park Drive</div> <div>21</div> <div>Alexandria, Virginia 22312</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>2</div> <div>1 Pursuant to Notice/Pursuant to agreement,</div> <div>2</div> <div>before Merinda Evans, Notary Public in and for the</div> <div>3</div> <div>State of Maryland.</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>4</div> <div>E X H I B I T S</div> <div>2</div> <div>(Not attached to the transcript.)</div> <div>3</div> <div>EXHIBIT PAGE</div> <div>4</div> <div>On Website</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>

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<p style="text-align: right;">5</p> <p>1 (9:30 a.m.)</p> <p>2 MR. BAUMGARDNER: Ms. Evans, are you our</p> <p>3 court reporter for this morning?</p> <p>4 THE REPORTER: Yes. Yes, I am.</p> <p>5 MR. BAUMGARDNER: Good morning, ma'am.</p> <p>6 Thank you for being here.</p> <p>7 So we're going to open today's hearing. The</p> <p>8 date is November 5th, 2021, time is 9:30 a.m. This</p> <p>9 is a public hearing of the Montgomery County Office</p> <p>10 of Zoning & Administrative Hearings, in Case No.</p> <p>11 CU21-09.</p> <p>12 MS. ROSENFELD: Requesting a conditional</p> <p>13 use for a daycare center for 30 persons located at</p> <p>14 the property at 6607 Greentree Road, Bethesda,</p> <p>15 Maryland all located within Montgomery County,</p> <p>16 Maryland.</p> <p>17 My name is Derek Baumgardner, I am the hearing</p> <p>18 examiner here today. Which means I will take in</p> <p>19 evidence and listen to the testimony today and write</p> <p>20 a decision based upon the evidence.</p> <p>21 You may request an appeal of that decision if</p> <p>22 you are not satisfied, to the Board of Appeals within</p> <p>23 10 days from the date of that decision.</p> <p>24 We're going to go through a brief introduction</p> <p>25 of a our process here, both the hearing process and</p>	<p style="text-align: right;">7</p> <p>1 office at 240-777-6663 any questions about access.</p> <p>2 This hearing is being recorded as of now, you</p> <p>3 should see a notification on the top of your screen</p> <p>4 indicating that the hearing is being recorded. We</p> <p>5 also have a court reporter present. I do apologize</p> <p>6 I'm getting over a cold. If I have to cough I will</p> <p>7 try to mute myself so you will not have to hear that.</p> <p>8 A couple ground rules about our hearings here</p> <p>9 today and, specifically, to the virtual hearing</p> <p>10 format. When you are not speaking, when you are not</p> <p>11 answering a question, please mute yourselves. On the</p> <p>12 top of your screen towards the right, next to the red</p> <p>13 leave bar there are a couple of controls, which allow</p> <p>14 you to control your video and your audio. The one</p> <p>15 that sort of looks like a microphone is the mute</p> <p>16 button, so again, please, mute yourself when you are</p> <p>17 not speaking or answering a question, background</p> <p>18 noise can interfere with the proceeding as well as</p> <p>19 interfere with the recording and the ability for the</p> <p>20 court reporter to take down what we are saying here</p> <p>21 today.</p> <p>22 Secondly, we will be using the raise your hand</p> <p>23 feature. Along the top right-hand side of your</p> <p>24 screen, to the left of the video and audio features</p> <p>25 are several icons. The third one in, has a little</p>
<p style="text-align: right;">6</p> <p>1 the virtual format that we're currently using. We'll</p> <p>2 go through our participants here today and get names</p> <p>3 and addresses and email addresses for the benefit of</p> <p>4 our office and the court reporter. We'll go through</p> <p>5 a couple ground rules in terms of hearings and then</p> <p>6 we will start with the hearing itself.</p> <p>7 Please let me know if you have any questions</p> <p>8 throughout the day, if you need a break. The</p> <p>9 schedule as I see it this morning, we're going to get</p> <p>10 started very shortly after we go through these</p> <p>11 preliminary matters. We're going to break at 11:45</p> <p>12 a.m. and there if we still need to complete anything,</p> <p>13 we're going to reconvene at 1:00 p.m. So, again,</p> <p>14 we're going to go from now until 11:45, with any</p> <p>15 breaks that folks need, we'll break for an hour, hour</p> <p>16 and 15 minutes or so for lunch, then we'll come back</p> <p>17 on the record again at 1:00 p.m. That is my plan.</p> <p>18 So, onto our preliminary matters before we</p> <p>19 introduce our -- the applicant, counsel and our</p> <p>20 witnesses. As you by no doubt can tell, we are using</p> <p>21 a platform called Microsoft Teams for these hearings.</p> <p>22 If you have any questions about this platform, if you</p> <p>23 have trouble logging in or being heard or if you get</p> <p>24 kicked out and you need to be logged back in, please</p> <p>25 call our office at 240-777-6663. Again, that's our</p>	<p style="text-align: right;">8</p> <p>1 smiley emoticon with a raised hand, if you have a</p> <p>2 question during today's hearing you can click on that</p> <p>3 raise your hand feature. That lets me know that</p> <p>4 there's a question or some issue that you would like</p> <p>5 to bring to my attention. I can monitor that more</p> <p>6 easily than I can monitor the screen as I'm taking</p> <p>7 down notes, so please use that virtual raise your</p> <p>8 hand feature.</p> <p>9 The chat feature, which is available on</p> <p>10 Microsoft Teams, we are not using here today. So,</p> <p>11 again, please do not use the chat feature if you have</p> <p>12 a question about something, that will not be</p> <p>13 monitored here today.</p> <p>14 When folks are asking questions or answering</p> <p>15 questions, please avoid cross talk. This is a good</p> <p>16 rule of thumb during any public hearing. If you're</p> <p>17 being asked a question, please wait until the person</p> <p>18 asking the question finishes their question before</p> <p>19 responding. Please don't interrupt folks when they</p> <p>20 are testifying or asking questions, it makes it more</p> <p>21 difficult for the recording, the court reporter and</p> <p>22 myself in order to get down questions and answers.</p> <p>23 Everyone who is logged into today will be given</p> <p>24 the opportunity to speak if they wish to do so. So</p> <p>25 don't worry about not getting in your question, we</p>

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3 (9 to 12)

<p>9</p> <p>1 will eventually make our way over to you. 2 At this time we're going to identify the 3 parties for the record and other folks who are logged 4 in. 5 Ms. Rosenfeld, are you there? 6 MS. ROSENFELD: Yes, Mr. Baumgardner, I 7 am. 8 MR. BAUMGARDNER: Good morning, ma'am. 9 Please give us your name, for the record, and 10 introduce anyone that you would like to introduce, 11 the applicant, as well as any expert witnesses that 12 you have. 13 MS. ROSENFELD: Certainly. My name is 14 Michelle Rosenfeld with the law office of Michelle 15 Rosenfeld, LLC, 1 Research Court, Ste 450, Rockville, 16 MD. I'm here with Ms. Marina Davis, who is the 17 Applicant. And the expert witnesses that we have on 18 the line are, Mr. Douglas Tilley (phonetic), 19 professional engineer and registered professional 20 licensed surveyor, John Sekerak, who is our land use 21 professional and Joe Mehra, who is our professional 22 engineer for transportation. 23 MR. BAUMGARDNER: Great. Just to make 24 sure that audio and video are working correctly, Mr. 25 Tilley, are you there?</p>	<p>11</p> <p>1 today. What is your email address, sir? 2 MR. SEKERAK: John.Sekerak@stantec.com. 3 MR. BAUMGARDNER: Thank you very much. 4 And Mr. Mehra, your full name, business address and 5 email address, please. 6 MR. MEHRA: Joe Mehra, with MCV 7 Associates, the address is 4605 C Pine Crest Office 8 Park Drive, Alexandria, Virginia 22312. And my email 9 address is J-M-E-H-R-A@MCVAINC.com. 10 MR. BAUMGARDNER: Thank you, sir. Ms. 11 Evans, did you need any more spellings or anything 12 like that? 13 THE REPORTER: No. Thank you. 14 MR. BAUMGARDNER: Okay. Thank you, ma'am. 15 And we're going to go down the list for anyone else 16 who is logged in that would like to testify here 17 today. Can I first ask if there's anyone from the 18 community who plans on testifying here today who is 19 represented by counsel, please identify yourself, for 20 the record. 21 MR. HORN: This is Paul Horn, I'm 22 representing myself. 23 MR. BAUMGARDNER: And what is your 24 address, sir? 25 MR. HORN: 9211 Fernwood Road.</p>
<p>10</p> <p>1 MR. TILLEY: Yes, sir. 2 MR. BAUMGARDNER: There you are, sir. 3 Please give us your full name, your business address 4 and a good email address for you, please. 5 MR. TILLEY: Sure. Douglas George Tilley 6 with O'Connell & Lawrence, Inc., address 17904 7 Georgia Avenue, Suite 302, Olney, Maryland 20832. 8 Best email address is simply doug D-O-U-G at 9 OCLINC.com. 10 MR. BAUMGARDNER: Thank you very much, 11 sir. Mr. Sekerak, are you there? 12 MR. SEKERAK: Good morning, yes I am. The 13 name is John -- 14 MR. BAUMGARDNER: Go ahead. Your name, 15 business address and the best email address for you. 16 MR. SEKERAK: Okay. John Sekerak, that's 17 S-E-K-E-R-A-K, I'm with Stantec, the address is 6 18 Montgomery Village Avenue, Suite 620 in Gaithersburg, 19 Maryland. 20 MR. BAUMGARDNER: Thank you, sir. And Mr. 21 Mira. There you are, sir. 22 MR. MIRA: Yes, I'm here. 23 MR. SEKERAK: I'm sorry, I didn't give my 24 email address. It's -- 25 MR. BAUMGARDNER: I'm being too quick</p>	<p>12</p> <p>1 MR. BAUMGARDNER: And the best email 2 address for you? 3 MR. HORN: phorn@verizon.net. 4 MR. BAUMGARDNER: Thank you, sir. And 5 going down the list, Mr. Sadat (phonetic)? 6 MR. SADAT: Yes. This is Agha Sadat, I'm 7 at 9207 Fernwood Road, Bethesda, Maryland, 20817 and 8 I'm representing myself. My email is agha A-G-H-A 9 @agha.name N-A-M-E. 10 MR. BAUMGARDNER: Thank you, sir. Going 11 down our list for any other individuals, I have a 12 guest logged in as Paul. 13 MR. HORN: Well, my name is Paul Horn, so 14 we just covered myself. 15 MR. BAUMGARDNER: Okay. Got it. And then 16 lastly, a Vernon? We'll come back to Vernon if that 17 individual would like to testify later. 18 All right. The general procedure for our 19 hearings today, the applicant will go first, they 20 will put on their case in chief, they would call any 21 witnesses that they would like to call. Counsel for 22 the applicant will ask those witnesses questions, if 23 there are any questions for those witnesses, the 24 other folks from the community will have the 25 opportunity to ask those questions at that time.</p>

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13	<p>1 Counsel will close their case for the applicant, 2 we'll turn it then over to testimony from the 3 community or other folks who are logged in. 4 That's your opportunity to give testimony about 5 your feelings, thoughts, opinions on the application 6 that we have here today. Counsel for the applicant 7 will have the opportunity to ask you any questions 8 regarding your testimony here today. We will turn it 9 back over to the applicant to give any closing 10 statement that they wish to give and that will be the 11 close of our hearing. Any questions about the 12 process for today's hearing that we're going to be 13 beginning shortly, from anyone involved? 14 MR. HORN: Quick question then since there's no 15 counsel representing the community based on what you 16 said, once the applicant is finished their 17 presentation, that's when we would have an 18 opportunity to ask questions? Or is it as each 19 individual finishes? Each expert? Or how does that 20 work precisely? 21 MR. BAUMGARDNER: So, Mr. Horn, after the 22 attorney for the applicant finishes asking their 23 questions of the expert, then you would have to the 24 opportunity -- 25 MR. HORN: Okay. So it's the equivalent</p>	15	<p>1 I take the case a little out of order from the way I 2 normally would. Typically I would have the applicant 3 testify, then have the civil engineer and the land 4 planner testify about the layout of the property in 5 compliance with the zoning code and then have the 6 traffic engineer testify. 7 Based on the correspondence that we've received 8 from the community members, it seems like the 9 greatest issues of concern relate to operations and 10 traffic. And so unless you think it would be unduly 11 confusing, I would suggest that we start with the 12 applicant to talk about operational issues, next have 13 Mr. Mehra talk about traffic and cueing and then go 14 into the more technical zoning conformance standards 15 with Mr. Tilley, our zoning expert, and Mr. Sekerak, 16 our land use expert. 17 So I also would welcome your thoughts on that 18 as well as the community. I don't want to start 19 without an overview of the layout of the property, 20 but I do think it's a fairly straightforward layout 21 and that that might give an opportunity to get the 22 more contested issues, as it were, before the hearing 23 early in the proceeding. 24 MR. BAUMGARDNER: That's fine with me if 25 you'd like to call the applicant first and then the</p>
14	<p>1 of cross-examination? 2 MR. BAUMGARDNER: That's exactly right. 3 MR. HORN: Thank you. 4 MR. BAUMGARDNER: You're welcome. Any 5 other questions before we get started here today? 6 Great. The exhibits are posted on our website, we 7 have the ability to pull up the exhibits that have 8 been submitted by the applicant as well as from 9 community members. So if you would like me to do 10 that, let me know at the time that you are giving 11 that testimony, I can pull those exhibits up and 12 share them. I have reviewed all the exhibits, 13 including the resumes of our expert witnesses here 14 today. We will take them as they come during the 15 hearing and then at the end of today's hearing we 16 will admit them into the record if there is no 17 objection to those individual exhibits. 18 Turning it back over to the applicant and to 19 Ms. Rosenfeld, you're welcome to start your case in 20 chief here today. 21 MS. ROSENFELD: Thank you. Good morning, 22 Mr. Baumgardner, we're happy to be here today. I 23 have sitting next to me, Ms. Marina Davis, who is the 24 applicant. 25 And just preliminarily I'd like to suggest that</p>	16	<p>1 transportation expert second. Whichever order you'd 2 like to begin with, you're welcome to start. 3 MS. ROSENFELD: Okay. Thank you. I'd 4 like to call my first witness, Ms. Marina Davis. 5 DIRECT EXAMINATION 6 MS. ROSENFELD: Ms. Davis, would you 7 please state your name and address for the record? 8 MS. DAVIS: Marina Davis and I live at 9 6607 Greentree Road, Bethesda, Maryland 20817. 10 MS. ROSENFELD: And what is your 11 connection to the applicant? 12 MS. DAVIS: It's myself. 13 MS. ROSENFELD: Okay. And do you own or 14 operate the company that has applied for this 15 application? 16 MS. DAVIS: Yes, ma'am. I am the owner. 17 MS. ROSENFELD: Okay. And what is -- 18 MR. BAUMGARDNER: Ms. -- I apologize. Ms. 19 Davis, can you please raise your right hand. 20 (Ms. Davis, applicant, sworn) 21 MR. BAUMGARDNER: Thank you very much. 22 You may continue. 23 MS. ROSENFELD: And what is the formal 24 name of the daycare center that has applied for this 25 use?</p>

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17	<p>1 MS. DAVIS: Creative Arts & Language 2 School. 3 MS. ROSENFELD: Okay. And are you 4 authorized to testify on behalf of the applicant in 5 today's proceedings? 6 MS. DAVIS: Yes. 7 MS. ROSENFELD: And what is the location 8 of the property subject to the application? 9 MS. DAVIS: 6607 Greentree Road, Bethesda, 10 Maryland. 11 MS. ROSENFELD: And do you own the 12 property that is the subject of this application? 13 MS. DAVIS: Yes, it's me and my husband. 14 MS. ROSENFELD: And as of what date did 15 you take title to the property? 16 MS. DAVIS: It's July 2021. 17 MS. ROSENFELD: Okay. Ms. Davis, I'm 18 going to show you what's been marked as Exhibit No. 19 34, which a deed recorded in the Montgomery County 20 Land Records at 63608, Page 139. Is that an accurate 21 copy of the deed that reflects your current ownership 22 of the property? 23 MS. DAVIS: Yes. 24 (Exhibit No. 34 for identification) 25 MS. ROSENFELD: And before you bought the</p>	19	<p>1 MS. ROSENFELD: Okay. And can you tell 2 on that document what date it was issued? 3 MS. DAVIS: It was issued on June 15th, 4 2012. 5 MS. ROSENFELD: Okay. And what is the 6 maximum number of students allowed under that use and 7 occupancy? 8 (Exhibit No. 36 for identification) 9 MS. DAVIS: Maximum 12 children. 10 MS. ROSENFELD: Okay. And is that an 11 accurate copy of the use and occupancy permit that 12 you've held since 2012? 13 MS. DAVIS: Yes. Yes. 14 MS. ROSENFELD: And what are you now 15 asking permission to do? 16 MS. DAVIS: We are asking permission to 17 have conditional use approval to expand the daycare 18 center to allow up to 30 children with students 19 ranging age of 3 months to 5 years old. 20 MS. ROSENFELD: Okay. And do you 21 understand that the maximum number of students that 22 would be allowed if this request is approved would be 23 30 students? 24 MS. DAVIS: Yes, I understand. 25 MS. ROSENFELD: Okay. Could you please</p>
18	<p>1 property did you lease it? 2 MS. DAVIS: Yes, we did. 3 MS. ROSENFELD: Okay. When did you first 4 occupy the subject property? 5 MS. DAVIS: In 2011. 6 MS. ROSENFELD: Okay. And when did the 7 daycare center actually open on the property? 8 MS. DAVIS: We started preparing permits 9 in 2012. We got use and occupancy permit for 10 authorizing up to 12 children. In 2013 we open a 11 home daycare with a couple teachers of seven 12 children, because one child was my own, so total 13 capacity was 8 as permitted from MSDE, Maryland 14 Department of Education. 15 MS. ROSENFELD: And after you opened in 16 2013 with 7 students, did you expand subsequently? 17 MS. DAVIS: Yes. In 2015 we were able to 18 update license for large family daycare with allowing 19 12 students since we had a use and occupancy for 12 20 students. 21 MS. ROSENFELD: Okay. And Ms. Davis, I'm 22 going to show you what is marked in the record as 23 Exhibit No. 36, could you read the name of that 24 document, please? 25 MS. DAVIS: Use and Occupancy Certificate.</p>	20	<p>1 explain to the hearing examiner your hours of 2 operation? 3 MS. DAVIS: The daycare will operate 4 Monday through Friday, between 7 a.m. to 6 p.m. with 5 maximum of 6 full-time employees. The staffing hours 6 for the 6 teachers are, approximately, from 7 a.m. to 7 3 p.m. we'll have 3 staff members, from 8:30 a.m. to 8 4:30 p.m. we'll have 1 staff member and from 10 a.m. 9 to 6 p.m. we'll have two staff members. 10 MS. ROSENFELD: Okay. And do your 11 students all arrive at the same time? 12 MS. DAVIS: No. 13 MS. ROSENFELD: And would you expect, if 14 you expanded, that your students would all arrive at 15 the same time? 16 MS. DAVIS: No. 17 MS. ROSENFELD: Okay. I'm going to show 18 you what's been marked as Exhibit 30 and on Page 2 of 19 that exhibit there is a chart that depicts the 20 anticipated student arrival and departure time, if 21 you expand to 30 students. Does that reflect your -- 22 the way that you would stagger the arrival times of 23 students? 24 MS. DAVIS: Yes. Yes. 25 MS. ROSENFELD: Okay.</p>

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6 (21 to 24)

21	<p>1 (Exhibit 30 for identification)</p> <p>2 MR. BAUMGARDNER: Ms. Rosenfeld, I'm</p> <p>3 putting up on the screen what's been marked as</p> <p>4 Exhibit 30; can everyone see that?</p> <p>5 MS. ROSENFELD: Mr. Baumgardner, I can,</p> <p>6 yes.</p> <p>7 MR. BAUMGARDNER: Just wanted to make</p> <p>8 sure. Thank you all.</p> <p>9 MR. SAADAT: Quick question. This is Agha</p> <p>10 Saadat. Can you guys depict the timing of the staff</p> <p>11 members?</p> <p>12 MR. BAUMGARDNER: So, one second. The way</p> <p>13 that we're going to proceed is that counsel will</p> <p>14 finish their questioning of the witness, then we'll</p> <p>15 turn it over for questions from anyone else to ask</p> <p>16 that witness. So we're not going to kind of go back</p> <p>17 and forth. That creates a much more even flow for a</p> <p>18 hearing, so if you can hold your question, Mr.</p> <p>19 Saadat, you can write it down and then at the</p> <p>20 conclusion of this witness's testimony we will turn</p> <p>21 it back over to questions from the community, okay.</p> <p>22 MS. ROSENFELD: And Mr. Baumgardner, just</p> <p>23 for clarity, the working hours of the staff and the</p> <p>24 student arrival and departure times are shown on page</p> <p>25 2 of the exhibit that you currently have posted, if</p>	23	<p>1 which includes an analysis of how much time it takes</p> <p>2 to drop off and pick up students?</p> <p>3 MS. DAVIS: Yes.</p> <p>4 MS. ROSENFELD: And Mr. Mehra will</p> <p>5 explain his analysis in greater detail, but in your</p> <p>6 review of that report is his report consistent with</p> <p>7 your experience at the school?</p> <p>8 MS. DAVIS: Yes.</p> <p>9 MS. ROSENFELD: Do you have vehicles</p> <p>10 backing up or cueing within your driveway?</p> <p>11 MS. DAVIS: No.</p> <p>12 MS. ROSENFELD: Okay. How often do you</p> <p>13 have visitors on the property today under COVID?</p> <p>14 MS. DAVIS: Since COVID time we created a</p> <p>15 virtual tour, so for any visitors who would like to</p> <p>16 visit us. First we offer them to visit us virtually</p> <p>17 and then if they're agreed on with everything else we</p> <p>18 have, with our policies, we will invite them, but</p> <p>19 just off the peak hours. So it's around 10 a.m. or</p> <p>20 before 4 p.m.</p> <p>21 MS. ROSENFELD: Okay. So after 10 or</p> <p>22 before 4?</p> <p>23 MS. DAVIS: Yes.</p> <p>24 MS. ROSENFELD: Okay. And do you expect</p> <p>25 to continue with that practice even after COVID</p>
22	<p>1 that would be helpful for people who are viewing.</p> <p>2 And just so you understand what charts we are</p> <p>3 referencing.</p> <p>4 MR. BAUMGARDNER: Got it. As we're going</p> <p>5 through, if you'd like to -- if you're going to be</p> <p>6 referencing an exhibit I would like to pull it up for</p> <p>7 everyone to see. So when you call up an exhibit,</p> <p>8 just give me 30 seconds or so to pull it up before we</p> <p>9 start to go through questions, please.</p> <p>10 MS. ROSENFELD: Understood. Thank you.</p> <p>11 Would you please explain how many driveways you</p> <p>12 have on your property?</p> <p>13 MS. DAVIS: We have one driveway and</p> <p>14 parking lot on Greentree Road -- on Greentree side of</p> <p>15 the house and we have a front yard parking for two</p> <p>16 cars in the garage and four cars on the Fernwood</p> <p>17 parking.</p> <p>18 MS. ROSENFELD: And would you please</p> <p>19 explain where students will be dropped off and picked</p> <p>20 up?</p> <p>21 MS. DAVIS: Students will be dropped only</p> <p>22 on Greentree Road.</p> <p>23 MS. ROSENFELD: Okay. And are you</p> <p>24 familiar with the report prepared by Mr. Mehra?</p> <p>25 Again, Mr. Baumgardner, I'm referencing Exhibit 30,</p>	24	<p>1 restrictions are lifted?</p> <p>2 MS. DAVIS: Yes, it's working well, so</p> <p>3 yes.</p> <p>4 MS. ROSENFELD: Okay. Could you please</p> <p>5 explain the staffing or the employees at the school?</p> <p>6 How many? And do they work full-time or part-time?</p> <p>7 MS. DAVIS: Yes. Right now we have three</p> <p>8 employees who lives in the house, so it's two full-</p> <p>9 time and one-part time employees who lives in the</p> <p>10 house and we have only one employee who comes in.</p> <p>11 MS. ROSENFELD: And how would that</p> <p>12 staffing change once you expanded?</p> <p>13 MS. DAVIS: The staffing will change,</p> <p>14 obviously, depending on how many employees we will</p> <p>15 require by our Maryland State Department of Education</p> <p>16 license, but with maximum of 6 employees we'll have a</p> <p>17 staggered schedule for them to work. Somebody will</p> <p>18 come early in the morning, somebody will come later</p> <p>19 in the afternoon, so it will be not more than 6</p> <p>20 employees.</p> <p>21 MS. ROSENFELD: Okay. And would you</p> <p>22 please explain the total amount of parking that you</p> <p>23 have available on the property if you expand?</p> <p>24 MS. DAVIS: We will have nine parking</p> <p>25 spots on Greentree Road and four parking spots on the</p>

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25	<p>1 Fernwood Road.</p> <p>2 MS. ROSENFELD: Okay.</p> <p>3 MS. DAVIS: Plus two car in the garage --</p> <p>4 we have a two car garage.</p> <p>5 MS. ROSENFELD: Okay. I believe that</p> <p>6 it's a total of 11, Mr. Baumgardner. We will have</p> <p>7 out civil engineer testify more specifically based on</p> <p>8 the site plan, what those numbers will be.</p> <p>9 MR. BAUMGARDNER: That's fine.</p> <p>10 MS. ROSENFELD: How do you handle trash</p> <p>11 and recycling?</p> <p>12 MS. DAVIS: The trash and recycling is</p> <p>13 handled by Montgomery County Trash and Recycling</p> <p>14 Services. We don't have any specific requirements</p> <p>15 for disposing of diapers. Diapers are placed in a</p> <p>16 plastic bag and disposed of in the county provided</p> <p>17 trash containers for pick-up as any other site</p> <p>18 generated trash.</p> <p>19 MS. ROSENFELD: Okay. Do you use the</p> <p>20 entire property for daycare?</p> <p>21 MS. DAVIS: No.</p> <p>22 MS. ROSENFELD: Okay. Could you explain</p> <p>23 what portions of the -- one moment, please. I'm</p> <p>24 going to back up one moment, Mr. Baumgardner.</p> <p>25 MR. BAUMGARDNER: Sure.</p>	27	<p>1 occur indoors, including meals, snacks and naptime.</p> <p>2 We have two fenced playground on the side, an outdoor</p> <p>3 play is regularly following daily activities, of</p> <p>4 course, weather permitting. Children activities</p> <p>5 organized by the group, based on the developmental</p> <p>6 ages. For these reasons, children using the</p> <p>7 playground will be divided by age between two</p> <p>8 playgrounds and it will be very unusual that all the</p> <p>9 children will be outside all the time at the same</p> <p>10 time.</p> <p>11 MS. ROSENFELD: Okay. Thank you.</p> <p>12 MS. ROSENFELD: Mr. Baumgardner, I'm going</p> <p>13 to reference Exhibit No. 44, a staff report.</p> <p>14 MR. BAUMGARDNER: Let me pull that up, one</p> <p>15 second, please.</p> <p>16 MS. ROSENFELD: And I will be talking</p> <p>17 about the conditions of approval.</p> <p>18 MR. BAUMGARDNER: That should be appearing</p> <p>19 on your screen shortly.</p> <p>20 MS. ROSENFELD: I do see it. And,</p> <p>21 correct, the staff recommended conditions of</p> <p>22 approval. All right. Ms. Davis, are you familiar</p> <p>23 with what is currently shown on the screen as Exhibit</p> <p>24 44, the staff report published by the planning</p> <p>25 department of the Montgomery County Planning Board?</p>
26	<p>1 MS. ROSENFELD: Can you describe the</p> <p>2 structure on the house where you currently operate?</p> <p>3 MS. DAVIS: The entire second floor, a</p> <p>4 portion of the first floor and the garage slab and a</p> <p>5 great portion of the basement are not used for</p> <p>6 daycare activities. So we dedicated for permanent</p> <p>7 residence of the home and like I already mentioned,</p> <p>8 we have two full-time employees and one part-time</p> <p>9 employee living in the house. So we are using it for</p> <p>10 a daycare facility, we are only using the first floor</p> <p>11 of our addition that used to be a dental office.</p> <p>12 MS. ROSENFELD: Okay. And do you</p> <p>13 currently operate out of an existing single family</p> <p>14 home structure?</p> <p>15 MS. DAVIS: Yes.</p> <p>16 MS. ROSENFELD: Okay. And do you live in</p> <p>17 a portion of that structure?</p> <p>18 MS. DAVIS: Yes.</p> <p>19 MS. ROSENFELD: Okay. So is it fair to</p> <p>20 say that part of the house is used for residential</p> <p>21 use and part is for the daycare?</p> <p>22 MS. DAVIS: Yes, that's correct.</p> <p>23 MS. ROSENFELD: Okay. And do you use the</p> <p>24 exterior of the site for daycare activities?</p> <p>25 MS. DAVIS: Most of the daycare activities</p>	28	<p>1 MS. DAVIS: Yes.</p> <p>2 (Exhibit No. 44 for identification)</p> <p>3 MS. ROSENFELD: And do you see on -- in</p> <p>4 Exhibit 44, proposed conditions of approval?</p> <p>5 MS. DAVIS: Yes.</p> <p>6 MS. ROSENFELD: And those conditions</p> <p>7 include a limitation of the number of students at 30</p> <p>8 and limitation on the maximum number of employees,</p> <p>9 three resident employees and three non-resident</p> <p>10 employees; do you see that?</p> <p>11 MS. DAVIS: Yes.</p> <p>12 MS. ROSENFELD: And there additionally</p> <p>13 are limitations on the hours of operation,</p> <p>14 limitations on the times that visitors may visit the</p> <p>15 property and a requirement that there be some</p> <p>16 additional screening provided around your existing</p> <p>17 parking lot fronting on Greentree. That's a summary,</p> <p>18 that's not verbatim. Do you understand that if this</p> <p>19 condition use is approved that you bound by the</p> <p>20 limitations and requirements contained in these</p> <p>21 conditions of approval?</p> <p>22 MS. DAVIS: Yes, I do.</p> <p>23 MS. ROSENFELD: Okay. Mr. Baumgardner, I</p> <p>24 have no further questions for this witness. If you</p> <p>25 do, please. I turn her over for questioning by</p>

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29	<p>1 yourself and by the community representatives.</p> <p>2 MR. BAUMGARDNER: Ms. Davis, you had</p> <p>3 mentioned that there were two -- I heard that there</p> <p>4 were two fenced playgrounds outside; is that correct?</p> <p>5 MS. DAVIS: Yes, that's correct.</p> <p>6 MR. BAUMGARDNER: Are those two fenced</p> <p>7 playgrounds, are they separated by anything other</p> <p>8 than the fence? Or are they in one fence? Can you</p> <p>9 describe those facilities for me?</p> <p>10 MS. DAVIS: There's one fence that goes</p> <p>11 from one side of the facility and another fence goes</p> <p>12 from another side of the home.</p> <p>13 MR. BAUMGARDNER: What types of games or</p> <p>14 toys or different activities are available for the</p> <p>15 children there, currently? And is there any plan to</p> <p>16 increase or enhance to outdoor equipment in the</p> <p>17 future?</p> <p>18 MS. DAVIS: We already have a swing set on</p> <p>19 both playgrounds, we have a smaller push toys on the</p> <p>20 playground. We also have like a deck on the</p> <p>21 playground. So we don't have any plans to increase</p> <p>22 any playground toys or anything like this, we have</p> <p>23 plenty.</p> <p>24 MR. BAUMGARDNER: Okay. Those were the</p> <p>25 follow-up questions I had. We'll turn it over to</p>	31	<p>1 much depending on the age of the children. For</p> <p>2 example, for pre-school age we can have one staff</p> <p>3 member for 10 children. So it's very much depending</p> <p>4 on our Maryland State Department of Education license</p> <p>5 and the ratios.</p> <p>6 So if we have one staff member for pre-school</p> <p>7 age children 4 to 5, we can have one teach for 10</p> <p>8 children.</p> <p>9 MR. SAADAT: Let me ask the question</p> <p>10 again. Based on the information you have submitted,</p> <p>11 at 3 p.m. you will have only 3 staff members?</p> <p>12 MS. DAVIS: Yes, that's correct.</p> <p>13 MR. SAADAT: At 3 p.m. you can have</p> <p>14 maximum 30 students of five years old at the</p> <p>15 property; is that correct?</p> <p>16 MS. DAVIS: Yes.</p> <p>17 MR. SAADAT: Which means you will be</p> <p>18 managing 30 five years old with only 3 staff member,</p> <p>19 that's correct?</p> <p>20 MS. DAVIS: That's the law of Maryland's</p> <p>21 Department of Education. If we have children who are</p> <p>22 pre-school age, we are allowed to have one teacher</p> <p>23 for 10 children, yes sir.</p> <p>24 MR. SAADAT: For five years old. Okay. I</p> <p>25 just want this point to be noted. We will check it</p>
30	<p>1 folks who have logged in from the community with any</p> <p>2 questions. We will start with Mr. Saadat, because he</p> <p>3 had begun a question earlier and I believe Mr. Horn</p> <p>4 also had a question as well. So, Mr. Saadat, you're</p> <p>5 welcome to ask your question of the applicant at this</p> <p>6 time.</p> <p>7 MR. SAADAT: I have multiple questions.</p> <p>8 So I will start with the staggered approach. So</p> <p>9 based on the information provided from 7 a.m. to 3</p> <p>10 p.m. there are three staff members and then from 3:30</p> <p>11 a.m. to 4:30 p.m. there is one and then from 10 to 6</p> <p>12 p.m. there is two. So that means at 3 p.m. the first</p> <p>13 two staff members leave and there are -- so exactly</p> <p>14 at 3 p.m. there are three staff members and kids</p> <p>15 start leaving around 3:30. So, basically, at 3:29 or</p> <p>16 3:30, you can have 30 students with 3 staff members;</p> <p>17 is that correct? Like, 30 students are 5 years old,</p> <p>18 I'm taking the maximum category, 5 years old kids, 30</p> <p>19 of them are being managed by 3 staff members at 3</p> <p>20 p.m.; is that correct?</p> <p>21 MS. DAVIS: These numbers are just</p> <p>22 preliminary, we will have exact numbers of staff</p> <p>23 based on our ages of the children. It depends on our</p> <p>24 licensing from Maryland Department of Education.</p> <p>25 It's not depends on the number of children, it's very</p>	32	<p>1 out like later on. I just want to make sure you are</p> <p>2 managing 30 students of 5 years old, because I do</p> <p>3 have 5 years old, he's an Autism Spectrum at the</p> <p>4 property, so I do know how much time it takes to</p> <p>5 manage those children. So we will come back to like</p> <p>6 the State regulation later on.</p> <p>7 So, basically, what you're saying, you are</p> <p>8 managing 30 students with 3 staff members at 3 p.m.,</p> <p>9 that was the first question.</p> <p>10 And the second question is, at the front of the</p> <p>11 property where the Fernwood Road meets the Greentree</p> <p>12 Road, you have a corner of the property where there's</p> <p>13 an intersection from both sides and I do see there</p> <p>14 are some kids play yard over there and that area is</p> <p>15 not fenced and that area is literally five feet away</p> <p>16 from Fernwood traffic; is that correct?</p> <p>17 MS. DAVIS: That's correct.</p> <p>18 MR. SAADAT: You should have mentioned</p> <p>19 that you have unfenced area in the property where</p> <p>20 kids are playing and there's a traffic of 35 to 30</p> <p>21 miles per hour going over that and a lot of kids are</p> <p>22 there and I do not know how three people can manage</p> <p>23 those people. I don't know how many of them will be</p> <p>24 inside, how many outside, I just want to play this</p> <p>25 point out.</p>

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33	<p>1 MS. DAVIS: We have Maryland State</p> <p>2 Department of Education inspectors come and visiting</p> <p>3 us and we don't have any complaints from them.</p> <p>4 MR. SAADAT: I just want to mention on the</p> <p>5 record that you do have unfenced area in a heavy</p> <p>6 traffic area where kids will be playing five feet</p> <p>7 away from traffic and that area is not fenced.</p> <p>8 Because you just mentioned you had two fenced area,</p> <p>9 you did not mention unfenced area.</p> <p>10 MS. DAVIS: This area is not used for</p> <p>11 childcare right now. We are -- this area is used for</p> <p>12 siblings who are coming with their parents to pick up</p> <p>13 the children, this area is used for our own children.</p> <p>14 This area is not used for childcare.</p> <p>15 MR. SAADAT: I live across the street from</p> <p>16 your house, so from my living room I have direct line</p> <p>17 of sight of this area. I can tell you I have seen</p> <p>18 multiple time more than five kids in that area. I</p> <p>19 don't know who those five kids are, but there were</p> <p>20 five kids over there at one point in time and there</p> <p>21 was heavy traffic over there.</p> <p>22 I do -- the reason I'm bringing this point is</p> <p>23 not to object what is happening, I have a Autism</p> <p>24 Spectrum who is 5 and a half years old and we have to</p> <p>25 watch out for the traffic in this area, because if</p>	35	<p>1 area. That area was not there up until like few</p> <p>2 months ago. Like recent development -- that area</p> <p>3 used to be totally wooded area and recently they have</p> <p>4 cleaned that area, they have put some swings over</p> <p>5 there, they have put some --</p> <p>6 MR. BAUMGARDEN: So, Mr. Saadat --</p> <p>7 MR. SAADAT: Yes.</p> <p>8 MR. BAUMGARDEN: -- Mr. Saadat, so we can</p> <p>9 hold -- so that's testimony, that's not a question.</p> <p>10 So when we're done with the applicant's case we can</p> <p>11 turn it back over to community members to provide</p> <p>12 that testimony. So if there are not any further</p> <p>13 questions of Ms. Davis, we're going to turn it over</p> <p>14 to Mr. Horn to ask his questions now; is that okay?</p> <p>15 MR. SAADAT: Yes.</p> <p>16 MR. BAUMGARDEN: Okay. Mr. Horn --</p> <p>17 MR. HORN: Thank you --</p> <p>18 MR. BAUMGARDEN: Sure.</p> <p>19 MR. HORN: -- for having the opportunity</p> <p>20 to appear in this very detailed process. So I have a</p> <p>21 long list of questions, so I'll go through them</p> <p>22 somewhat methodically, I hope.</p> <p>23 So let me start, Mr. Baumgardner, from the big</p> <p>24 picture and work down because I often think that is</p> <p>25 helpful. So we understand that there's need for</p>
34	<p>1 this kid can go out, my house is further away from</p> <p>2 the Fernwood Road traffic. That area is five feet</p> <p>3 away from the traffic, so I'm very concerned of the</p> <p>4 kids safety in that place.</p> <p>5 MS. DAVIS: We use this area for a nature</p> <p>6 walk that we're allowed to use any parks in</p> <p>7 Montgomery County. We, obviously, have teachers to</p> <p>8 provide childcare, safe setting for our children.</p> <p>9 We've never had any complaints. We've been in this</p> <p>10 location for more than 10 years.</p> <p>11 MR. SAADAT: I will let Paul jump in here.</p> <p>12 MR. HORN: Thank you, Agha.</p> <p>13 MR. BAUMGARDEN: So one second before we</p> <p>14 move over. Were there any other questions that you</p> <p>15 had of this witness, Mr. Saadat?</p> <p>16 MR. SAADAT: I do have it, but I will keep</p> <p>17 to those questions because I already asked too many</p> <p>18 questions and let Paul jump in and later on I will</p> <p>19 circle back.</p> <p>20 MR. BAUMGARDEN: Well, so we're going to</p> <p>21 complete your questions of this witness before we</p> <p>22 move on to Mr. Horn's questions.</p> <p>23 MR. SAADAT: I'm not, basically, positive</p> <p>24 of what she said, because there are kids over there</p> <p>25 like around 4:00, 5:00 I have seen it, in that place</p>	36	<p>1 childcare in this region, et cetera and as a frank</p> <p>2 matter after I submitted my letter regarding the</p> <p>3 application, which was very vague on its face, Ms.</p> <p>4 Davis and her daughter, I guess, were notified by her</p> <p>5 attorney and she came over the next day when I was</p> <p>6 leaving the cul-de-sac, in my car, to go someplace</p> <p>7 and we had a very nice chat.</p> <p>8 And so the gist of that chat is as follows and</p> <p>9 I'll get into specific questions about irregularities</p> <p>10 in the testimony and what's been put on file. And,</p> <p>11 basically, it was sure, we understand the need et</p> <p>12 cetera, but now what's also, I think, important,</p> <p>13 which I was not aware of, was that she was leasing</p> <p>14 the property for a period of time and bought in July</p> <p>15 of '21. We'll get into who's on the license in a</p> <p>16 second, which was on the file.</p> <p>17 So, without further --</p> <p>18 MR. BAUMGARDEN: Mr. Horn, I don't want to</p> <p>19 interrupt but we do have to ask questions of the</p> <p>20 witness at this time --</p> <p>21 MR. HORN: I'm sorry, but I'm setting up</p> <p>22 the thing. Okay. We'll go ask questions. Okay. Is</p> <p>23 the need to expand the daycare center in any need</p> <p>24 related to the need to pay off the mortgage, for</p> <p>25 properties which are very expensive in this area, yes</p>

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10 (37 to 40)

<p>37</p> <p>1 or no?</p> <p>2 MS. ROSENFELD: Mr. Baumgardner, I would</p> <p>3 object to that question. It certainly is beyond the</p> <p>4 scope of any of the standards that are subject to</p> <p>5 review in this proceeding and I suggest it's</p> <p>6 irrelevant. I would ask that my client not be</p> <p>7 required to answer that question.</p> <p>8 MR. BAUMGARDNER: I would sustain the</p> <p>9 objection. Ms. Davis can answer if -- I'll rephrase</p> <p>10 the question a little bit, Ms. Davis. Do you have</p> <p>11 children who are currently waiting or on a wait list</p> <p>12 or is there any present need for the use of the</p> <p>13 property itself to increase capacity?</p> <p>14 MS. DAVIS: Yes, that's correct. We have</p> <p>15 a waiting list of 100 people, 100 families who are</p> <p>16 looking for a spot in the future, who are looking for</p> <p>17 spots right now. We have a long list -- we have a</p> <p>18 website and people are signing up for the waitlist.</p> <p>19 We have a list of people who are waiting for</p> <p>20 childcare in our area.</p> <p>21 MR. BAUMGARDNER: Okay, thank you. Mr.</p> <p>22 Horn, does that -- I did sustain the objection, but</p> <p>23 does that answer your question?</p> <p>24 MR. HORN: No, it doesn't. Again, this is</p> <p>25 the first time I've participated in one of these</p>	<p>39</p> <p>1 Planning Board, does not have any weight with regards</p> <p>2 to my decision here today. Planning Board hearings</p> <p>3 are public, they are posted, they are -- anyone can</p> <p>4 participate in them, but I did not -- I was not</p> <p>5 there, I'm not privy to the hearing itself and,</p> <p>6 perhaps, Ms. Rosenfeld can provide a, very brief,</p> <p>7 summary of that Planning Board hearing if that would</p> <p>8 help you.</p> <p>9 MR. HORN: I read the documents so it's</p> <p>10 not necessary, I'm talking about procedural due</p> <p>11 process and it seems an important document and yet</p> <p>12 the community didn't have a chance to assess it.</p> <p>13 So moving on with my questions, let's focus on</p> <p>14 -- it seems to me that the position being taken by</p> <p>15 applicant or is being put before the Board here, is</p> <p>16 that if I live in a residential neighborhood and I</p> <p>17 have enough acreage to clear my land for parking</p> <p>18 spaces, I would be otherwise permitted to just set up</p> <p>19 a daycare center in what otherwise is a residential</p> <p>20 neighborhood. Those are the questions we're focusing</p> <p>21 on here.</p> <p>22 So let's talk a little bit about the parking on</p> <p>23 Fernwood Road. I've lived in this area for over 30</p> <p>24 years, okay, and the parking spaces off Fernwood are,</p> <p>25 basically, impossible to get in and out of if you're</p>
<p>38</p> <p>1 types of proceedings.</p> <p>2 MR. BAUMGARDNER: Sure.</p> <p>3 MR. HORN: So if I can even ask you a</p> <p>4 question. We, obviously, received notice of this</p> <p>5 hearing, but it was news to me when I saw the</p> <p>6 Montgomery County Planning Commission's document</p> <p>7 dated October 15th in the file, saying nobody</p> <p>8 appeared as a witness. And I don't know how much</p> <p>9 credence is given to that report as part of this</p> <p>10 process that you weigh for its probative value when</p> <p>11 we never received notice to appear at such a hearing</p> <p>12 to object to the points within.</p> <p>13 MR. BAUMGARDNER: Sure. Just very briefly</p> <p>14 then Ms. Rosenfeld can respond with respect to the</p> <p>15 Planning Board hearing itself. The Planning Board</p> <p>16 hearing itself, the report from staff, it is a</p> <p>17 recommendation for this body. So I include it in my</p> <p>18 decision, I have reviewed it in terms of the facts of</p> <p>19 a case. Whether or not someone appeared or did not</p> <p>20 appear at the Planning Board hearing doesn't have any</p> <p>21 weight at all in terms of this process for the</p> <p>22 (indiscernible) hearing.</p> <p>23 So the report is valuable, it gives us an</p> <p>24 understanding of the project itself and the details.</p> <p>25 But if someone does or does not appear at the</p>	<p>40</p> <p>1 backing out, because of the massive traffic.</p> <p>2 So, in other words, you're either going to back</p> <p>3 in, which is an incredibly difficult exercise during</p> <p>4 the hours described, okay, because you're backing in</p> <p>5 in traffic or you're going front in, which would</p> <p>6 require you to back out. So, essentially, you would</p> <p>7 need a flagman there to do that. So that's just an</p> <p>8 observation about it.</p> <p>9 I also concur with the -- Agha's comments about</p> <p>10 the unfenced area and the fact that if family members</p> <p>11 are coming and playing, that's only adding to the</p> <p>12 noise and other behaviors which are inconsistent with</p> <p>13 what is a residential neighborhood.</p> <p>14 So, yeah, no objection to adding two or three</p> <p>15 people. And my conversation with Ms. Davis was, oh</p> <p>16 it was not the intent to go up to the maximum of 30,</p> <p>17 this is just a zoning hearing, there's licensing</p> <p>18 requirements et cetera. But, again, as neighbors we</p> <p>19 just don't know what she's going to do and we have to</p> <p>20 assume it's going to be 30 kids, which is</p> <p>21 inconsistent. Is that correct, Ms. Davis, given the</p> <p>22 wait list that you just described, it is your intent</p> <p>23 to go up to the maximum of 30, notwithstanding the</p> <p>24 conversation we had in the cul-de-sac about putting</p> <p>25 limits on that use and the licensing requirements.</p>

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11 (41 to 44)

<p>41</p> <p>1 MR. BAUMGARDNER: So I'm going to kind of 2 hedge us in a little bit, because I'm not exactly 3 sure -- kind of where the perimeters of the question 4 was, but I will ask that the very narrow question of, 5 does Ms. Davis intend to enroll the maximum of 30 6 students in this daycare center? Is that the intent 7 of the applicant? 8 MS. DAVIS: It's just -- it's two 9 different things. There's the Maryland State 10 Department of Education, we oblige by their rules how 11 many children we can have. So there is conditional 12 use and use and occupancy certificate. If perhaps we 13 have a maximum of 30 the Maryland State Department of 14 Education will have their own measurements of how 15 many children we can have. That's most likely 16 maximum of 30, but it could be any number from 21 to 17 25 or 25 to 27. We're obliged by our licensing 18 department of how many children we may have. 19 MR. BAUMGARDNER: So just to clarify that 20 testimony in terms of this process here. You are 21 correct that the State of Maryland licenses childcare 22 facilities, but then individual jurisdictions can 23 further limit that. So the State of Maryland may say 24 you may have a maximum of 30 and that's what you've 25 committed here in your application, but as part of</p>	<p>43</p> <p>1 MS. DAVIS: Yes, I understand. 2 MR. BAUMGARDNER: Mr. Horn, any further -- 3 MR. HORN: Oh, yeah. Yes, I have some 4 more questions. And as I said before, I enjoyed 5 talking with Ms. Davis, but the objective of that was 6 to see whether she would limit by enforceable 7 agreement a certain number of students, which, 8 apparently, is not the case below the maximum of 30. 9 Ms. Davis, who is the license for the daycare 10 center under? Whose name is that held? 11 MS. DAVIS: It is under Adoracion 12 Bautista. 13 MR. HORN: And can you tell Mr. 14 Baumgardner and me as well as Agha who that person 15 is, since it is not you? Because you're the person 16 who has been described as operating the daycare 17 center since 2013. 18 MS. DAVIS: Yes, she is my employee and 19 she lives in the house. 20 MR. HORN: So you, yourself, do not have 21 -- the license is not in your name. And who -- what 22 is the -- is that correct? 23 MS. DAVIS: That's correct. 24 MR. HORN: And what is the relationship of 25 Ms. Bautista to you, please?</p>
<p>42</p> <p>1 the conditional use application process and this is 2 true in Montgomery County, it's true in most other 3 counties that I'm aware of, this process can limit 4 that even further. So if there are particular 5 aspects of this application that are concerning, you 6 know, we could limit that through this process to 7 that 25 or that 21. That's not currently on the 8 table, but I'm just saying that's, generally, how the 9 process works. So it's a two-tiered a two-layer 10 approach from the State licensing perspective. And 11 they look at different things -- they look at certain 12 things and then from the county perspective we look 13 at other things, so there's kind of a two layer 14 process there. 15 But under this application, under county code, 16 unless it's restricted further you would be allowed a 17 maximum of 30 students, if you chose to do less than 18 30 students that would, certainly, be allowed, if 19 you're approved. 20 But to just kind of lay that down a little bit 21 so that's -- so, Ms. Davis, is that your 22 understanding, that you would be -- if approved, you 23 would be permitted a maximum of 30 students at any 24 time, but that you could be restricted further based 25 upon this proceeding here today?</p>	<p>44</p> <p>1 MS. DAVIS: She's my family. 2 MR. HORN: Can you be more specific, 3 please? 4 MR. HORN: We've been in a relationship 5 together for more than 10 years. It's happened that 6 I was a provider, I had a license in another 7 location, in the same neighborhood, it was on Wilmett 8 Road. So when we were on the Wilmett Road, we found 9 this property at 6607 that was for rent or for sale 10 for more than a year, so we decided that we can rent 11 since we couldn't afford to buy it at the time. And 12 I was not able to get licensed on two properties, so 13 I offered that Adoracion Bautista to be on my license 14 and she agreed. 15 So after -- when we opened a home daycare at 16 the Greentree Road, we closed the daycare on the 17 Wilmett Road, that's how it happened. 18 MR. HORN: So just then -- just to follow- 19 up, she's your partner; is that correct? 20 MS. DAVIS: Correct 21 MR. HORN: And is she also on the deed 22 with you? 23 MS. DAVIS: No. 24 MR. HORN: Okay. So the deed is just in 25 your name?</p>

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12 (45 to 48)

45	<p>1 MS. DAVIS: Right.</p> <p>2 MR. HORN: Okay. Next question is a</p> <p>3 follow-up on our conversation. Can you -- because</p> <p>4 Mr. Baumgardner is probably asking this question</p> <p>5 himself, so in other words, if you can visualize the</p> <p>6 physical layout Agha, myself and Mr. Goertz as well</p> <p>7 as Ms. Christian, who's not appearing, we're across</p> <p>8 the street and the three of us are in a cul-de-sac.</p> <p>9 So your question might be why are the two -- one of</p> <p>10 the adjoining neighbors on the same -- right next and</p> <p>11 then across the street, why they have not filed</p> <p>12 anything in -- against this petition or application.</p> <p>13 Can you tell Mr. Baumgardner what you told me, Ms.</p> <p>14 Davis?</p> <p>15 MS. DAVIS: I told you in which regard?</p> <p>16 MR. HORN: Well, in other words, the</p> <p>17 people right across the street. If I'm Mr.</p> <p>18 Baumgardner and I'm the hearing examiner, he's</p> <p>19 probably wondering why are the people across the</p> <p>20 street in the cul-de-sac so concerned and the people</p> <p>21 who live right across Greentree and right next to</p> <p>22 them on Fernwood have not raised any objection to</p> <p>23 this expansion of your business through this zoning</p> <p>24 application?</p> <p>25 MS. DAVIS: I don't know why they don't</p>	47	<p>1 anything wrong with sharing.</p> <p>2 MR. HORN: Oh no, that's all absolutely</p> <p>3 correct. I just thought that might be helpful to Mr.</p> <p>4 Baumgardner, because if I was in his position those</p> <p>5 would be exactly the types of questions I would be</p> <p>6 asking regarding who's making these comments.</p> <p>7 So we also talked a little bit about the</p> <p>8 licensing and I don't know to what extent it's within</p> <p>9 the purview of the Zoning, but you indicated you</p> <p>10 never had problem, but yet, one of my neighbors had a</p> <p>11 granddaughter who was in your facility in years</p> <p>12 passed and our understanding was that there was an</p> <p>13 inspection because a child fell down the stairs and</p> <p>14 when the authorities came over, they found that you</p> <p>15 actually a number of children -- was over the limit;</p> <p>16 is that correct? And you were closed temporarily?</p> <p>17 MS. DAVIS: We don't have any inspections</p> <p>18 with this information.</p> <p>19 MR. HORN: I don't think that's a complete</p> <p>20 answer. I went to the website, which is difficult</p> <p>21 because they don't show passed history beyond the</p> <p>22 last year.</p> <p>23 Have you been cited, even though the situations</p> <p>24 may have been corrected, for any deficiencies in the</p> <p>25 last two years, as a result of inspection by the</p>
46	<p>1 have an objection.</p> <p>2 MR. HORN: Okay. Well, that's not what</p> <p>3 you told me, which was one, the people across the</p> <p>4 street from you have used your parking spaces in the</p> <p>5 past for events they've held, I think it's associated</p> <p>6 with the Japanese Embassy. Okay. And the people</p> <p>7 right next to you on Fernwood, okay, one of their</p> <p>8 children works in the facility; is that correct? So,</p> <p>9 essentially, they're not going to raise any</p> <p>10 objections. So I thought that might be helpful,</p> <p>11 that's why I asked you the question and you gave me a</p> <p>12 forthright answer at the time, which I appreciated.</p> <p>13 But if I'm in Mr. Baumgardner's shoes that would be,</p> <p>14 certainly, something I would be asking myself.</p> <p>15 MS. DAVIS: Yes, that's correct. One of</p> <p>16 the neighbor's -- their child is 18 years old and</p> <p>17 she's a student, she's asked us if she can help us a</p> <p>18 few hours in the afternoon around from 4 p.m. to 6</p> <p>19 p.m. and she can help us to work and make some money</p> <p>20 for her school. I agreed to that, I don't see</p> <p>21 anything wrong with that.</p> <p>22 And the people across the street from 6607</p> <p>23 Greentree Road, they are tenants of the Japanese</p> <p>24 Embassy, we share parkings. We ask them sometimes</p> <p>25 when we have events, they ask us. I don't see</p>	48	<p>1 county authorities of your facility?</p> <p>2 MS. DAVIS: No.</p> <p>3 MR. HORN: That is inaccurate. Mr.</p> <p>4 Baumgardner you can look at the site. They were</p> <p>5 cited for various items including files regarding</p> <p>6 children's information, emergency contacts, first-aid</p> <p>7 kit, as well as access to dangerous implements such</p> <p>8 as scissors and other items. So, again --</p> <p>9 MS. DAVIS: If I can --</p> <p>10 MR. HORN: -- Ms. Davis is a very nice</p> <p>11 woman and, again, Agha and I have no issue with</p> <p>12 adding three or four kids, but since she's going up</p> <p>13 to 30 we have no choice but to point out all the</p> <p>14 issues in her application.</p> <p>15 So I'm sorry to go through this process, Ms.</p> <p>16 Davis, but you, basically, have left us no option.</p> <p>17 And you swore that your testimony was -- under</p> <p>18 penalties of perjury. These inspection notices are</p> <p>19 online, okay, at checkcccmd.org. They only go back</p> <p>20 two years, there's numerous ones and you can see</p> <p>21 every single one that I've sited.</p> <p>22 In other words, if you put in your partners</p> <p>23 name and you bring them up, they're there. So yes,</p> <p>24 they've been corrected, but to say that you have had</p> <p>25 no incidences, is not truthful testimony, which is</p>

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13 (49 to 52)

<p>49</p> <p>1 very concerning and if I was the hearing officer I'd 2 be very concerned about these irregularities. 3 MR. BAUMGARDNER: Ms. Rosenfeld, would you 4 like to address any of those issues, briefly, before 5 we continue with the questions from Mr. Horn? 6 MS. ROSENFELD: I -- yes, I -- I'd like to 7 point out that Mr. Horn has ventured well beyond 8 questioning and has been testifying extensively and 9 that that's beyond the scope of what the process 10 would envision at this point in time. I will have 11 Ms. Davis respond to those questions when I get to 12 rebuttal. But I would ask that Mr. Horn be careful 13 about hearsay and limit his questions to questions 14 and not let them morph into extensive testimony and 15 beyond that I would ask that he not characterize my 16 client in an unflattering way. I understand that he 17 is not in favor of this application, but I don't 18 appreciate the direct attacks, the personal attacks 19 that he's been leveling in his testimony. 20 I just wanted to make those comments for the 21 record. 22 MR. HORN: These are not personal attacks. 23 As I indicated, I met with Ms. Davis, I think she's a 24 very nice woman and we have no issue with increasing 25 the numbers by a few. I've already said that and</p>	<p>51</p> <p>1 case, to give that testimony within the perimeters of 2 acceptable hearsay and acceptable evidentiary 3 procedure. 4 I don't think there have been character attacks 5 today, things are going fine so far and I understand 6 that things might be a little bit heated, but we're 7 going to keep our calm and keep our civility in tact. 8 Were there any follow-up -- direct questions based 9 upon Ms. Davis's testimony here today with regard to 10 operations, with regard to parking, things of that 11 note? 12 MR. HORN: I think a final question is -- 13 I had a child in daycare many, many years ago and -- 14 again, and Ms. Rosenfeld chose her words carefully 15 about anticipated and expected because it's future 16 looking as to their arrival times. But, you know, 17 given when most people have to arrive at the office, 18 assuming they have to go back to work at some point 19 post-COVID, it raises doubts in my mind about this 20 expanded time of arrival when parents may have to 21 drop their kids off. 22 Again, my frame of reference is my daughter was 23 in an independent school and they tried to increase 24 their limit by just a few kids and somehow they were 25 never able to do it because the neighbors said, no,</p>
<p>50</p> <p>1 that was the conversation I had with her. 2 The problem is, this zoning application is up 3 to 30 and I know Ms. Rosenfeld went to law school as 4 well as I did. The concept of hearsay is, we have 5 the person who made the statement right here. So to 6 use the term hearsay when the person who said it, 7 that's not hearsay at all, Ms. Rosenfeld. 8 So, again, these are not personal attacks, this 9 is an attempt to get information on the record before 10 Mr. Baumgardner. 11 MR. BAUMGARDNER: I'm going to pause for a 12 second. So limited hearsay is allowed in 13 administrative proceeding, because our rules of 14 evidence are a bit relaxed. However, there's been 15 significant testimony from Mr. Horn, which Ms. 16 Rosenfeld is correct, is out of place at this part in 17 the procedure. But things like, you know, the 18 neighbor told me this and the neighbor told me this, 19 that would be hearsay that is stretching the 20 administrative rules a bit far. 21 If those folks are not here to testify about a 22 slip and fall or about things like that would not be 23 considered here today. So we are going to limit this 24 time to questions. Again, Mr. Horn, you will have 25 your opportunity after the applicant closes their</p>	<p>52</p> <p>1 we don't want you to do that and the zoning said no. 2 So, that's how I sort of entered this process in 3 terms of the burden of proof, preponderance of the 4 evidence. So, again, wondering how this arrival time 5 would be so spread out when that's not in tune with 6 my recollections of when people have to arrive at 7 work. It's usually a very compressed time period. 8 MR. BAUMGARDNER: So, Ms. Davis, if you 9 could simply respond with just going back through the 10 arrival and pick-up times for the children and just 11 give a brief explanation of that schedule in terms of 12 number of children and when those drop offs and pick 13 ups would occur. 14 MS. DAVIS: Yes. We -- like I already 15 mentioned, we will have a staggered schedule for drop 16 off and pick up. Even though people work usually 17 from 8 or 8:30 or 9:00, we have little children and 18 most of our clients are neighbors who live in our 19 Wingate neighborhood, therefore they have no problem 20 to come in at 7 a.m. or 7:30 a.m., since most likely 21 they have other siblings to drop off to different 22 schools. 23 So we have children coming right now at 7:30 24 a.m. and we have three, four children at 7 a.m. So 25 in the future we plan to be open earlier, so it's 7</p>

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14 (53 to 56)

53	<p>1 a.m. to 6 p.m. And like I said, from 7 to 7:30, 5 2 children, from 7:30 to 8 a.m., 5 children, from 8 3 a.m. to 8:30, 8 children, from 8:30 a.m. to 9 a.m., 7 4 children, and from 9:30 to 10 a.m., 5 children. 5 MR. HORN: Thank you. Just one other 6 question following up on the outside playground area, 7 obviously, if you have infants they're not going to 8 be making much noise outside, they'll be inside. But 9 there has been, even without the expansion, 10 considerable noise of children playing outside, which 11 is understood. In other words, if you're living 12 across the street from an elementary school and you 13 move there, that's an expectation, you've come to the 14 nuisance, so to speak, okay. 15 But with the addition of all these kids beyond 16 what you already have, one can hear them, especially 17 when they're playing outside, it's like recess. And, 18 again, my question is, do you view that as consistent 19 with use within what is otherwise a residential 20 neighborhood? 21 MS. DAVIS: We also have additional noise 22 lately with the construction trucks going on 23 Greentree Road and Fernwood Road. When we moved to 24 the house we didn't have this noise, but we do have 25 it now. We just have to live our life and be</p>	55	<p>1 Autism Spectrum, so I will follow-up later on with 2 Paul and Vernon. Vernon is also on the call, his 3 name was mentioned, I think he has a mic problem, so 4 he is on the call, he can listen but he has 5 difficulty speaking. I hear his voice sometime, he's 6 the bottom of the list. So I would like you guys to 7 include him. He is not as savvy with the computer, 8 but he has joined us with the intent of participating 9 in this conversation. 10 So I need to leave in 10 minutes, but I just 11 want to mention one thing early on and I believe you, 12 Mr. Baumgardner, that at 3 p.m. there will be 30 13 students, maximum of 5 years each, I'm going with the 14 worse case scenario, I'm a data person, I go with the 15 data, with 3 staff members, that is very dangerous. 16 3 p.m., 30 students of 5 years age with 3 staff 17 members, that is very dangerous thing to do. 18 MR. BAUMGARDNER: I understand. 19 MR. SAADAT: Okay. 20 MR. BAUMGARDNER: Ms. Rosenfeld, would you 21 like any redirect of your witness? 22 MS. ROSENFELD: Yes. Thank you, Mr. 23 Baumgardner, I have several questions. With respect 24 to the parking lot on Fernwood, is there any proposed 25 expansion of the surface of that parking lot; is it</p>
54	<p>1 respectful of everybody. And we know there will be 2 new houses built on Greentree Road and will be for 3 the next five or ten years there will be a lot of new 4 noises coming out because of that, we okay with that. 5 MR. BAUMGARDNER: So, Ms. Davis, the 6 question was, is there unusually loud noise outside 7 at any particular time and will that noise increase 8 with the increased enrollment of children? 9 MS. DAVIS: The noise will not increase 10 because we can have only a certain number of children 11 to be played on the playground. So then we will have 12 a different schedule for groups of children to come 13 to the playground, but the noise will not increase. 14 MR. BAUMGARDNER: Thank you. Mr. Horn, 15 any other questions of this witness at this time? 16 MR. HORN: Not at this time. Thank you 17 for answering the questions to the best of your 18 ability. 19 MR. BAUMGARDNER: Ms. Rosenfeld, I am going 20 to give you the opportunity to do any redirect that 21 you'd like. Mr. Saadat has his virtual hand raised. 22 Was there a follow-up question that you had of Ms. 23 Davis, Mr. Saadat? 24 MR. SAADAT: Actually, I have to take my 25 son to Urgent Care, as I earlier pointed out he is</p>	56	<p>1 going to get larger? 2 MS. DAVIS: No. 3 MS. ROSENFELD: And will that be limited 4 to parking for employees only? 5 MS. DAVIS: On Fernwood? 6 MS. ROSENFELD: Yes. 7 MS. DAVIS: Yes. 8 MS. ROSENFELD: And do two of those 9 employees live on the property? 10 MS. DAVIS: Yes, actually three. 11 MS. ROSENFELD: So three of the employees 12 live on the property, so would you expect those 13 three employees, in particular, to be entering and 14 exiting the Fernwood parking lot frequently during 15 the day? 16 MS. DAVIS: No. 17 MS. ROSENFELD: How long have you been 18 working towards expansion or contemplating expansion 19 of the daycare center? 20 MS. DAVIS: Several years. 21 MS. ROSENFELD: Okay. And can you 22 describe several of the activities that you've 23 undertaken in order to pursue expansion? What did 24 you do? 25 MS. DAVIS: We had to hire a lawyer and,</p>

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15 (57 to 60)

57	<p>1 you know, we have a wonderful team, engineers and</p> <p>2 everybody else who are here today.</p> <p>3 MS. ROSENFELD: Is it accurate to say that</p> <p>4 your interest in and efforts to expand the number of</p> <p>5 children pre-dates the time that the property was put</p> <p>6 on the market?</p> <p>7 MS. DAVIS: Yes.</p> <p>8 MS. ROSENFELD: I'd like to reference you</p> <p>9 to -- point your attention to Exhibit No. 39, Mr.</p> <p>10 Baumgardner, which is the license.</p> <p>11 MR. BAUMGARDNER: Let me pull it up, one</p> <p>12 second. So pulling up Exhibit 39, the State of</p> <p>13 Maryland Department of Education Child Care license.</p> <p>14 MS. ROSENFELD: Ms. Davis, I'm showing you</p> <p>15 what's marked as Exhibit 39, which is the large</p> <p>16 family daycare home that's been mentioned is the</p> <p>17 license in the name of Adoracion Bautista, correct?</p> <p>18 (Exhibit 39 for identification)</p> <p>19 Is the applicant in this case, the Creative</p> <p>20 Arts & Language School, Inc.?</p> <p>21 MS. DAVIS: Correct.</p> <p>22 MS. ROSENFELD: And is that a Maryland</p> <p>23 corporation?</p> <p>24 MS. DAVIS: Yes.</p> <p>25 MS. ROSENFELD: And is Ms. Bautista an</p>	59	<p>1 you think that you would limit outdoor noise, would</p> <p>2 that limit the volume of noise, even though you</p> <p>3 increase the number of children?</p> <p>4 MS. DAVIS: The children in our care age</p> <p>5 from 3 months to 5 years old, so developmentally they</p> <p>6 have a different schedule. Usually younger children</p> <p>7 go outside first, therefore, they can have their</p> <p>8 lunch and naptime early and the older children go</p> <p>9 outside after the younger children come back. So</p> <p>10 we'll have a staggered schedule for children to be</p> <p>11 outdoors. Therefore, there will be no additional</p> <p>12 noise.</p> <p>13 MS. ROSENFELD: Okay. And I know you</p> <p>14 testified that you live on the property, I believe,</p> <p>15 you testified with your husband, Steve. Do the two</p> <p>16 of you have children who live with you?</p> <p>17 MS. DAVIS: Yes, we do.</p> <p>18 MS. ROSENFELD: And could you please just</p> <p>19 identify their ages?</p> <p>20 MS. DAVIS: My daughter is 11 years old.</p> <p>21 And Steve's children are 11 -- almost 11 -- 9 and 16.</p> <p>22 MS. ROSENFELD: And do they from time to</p> <p>23 time have children come over and play?</p> <p>24 MS. DAVIS: Yes, they do.</p> <p>25 MS. ROSENFELD: And do they play outside?</p>
58	<p>1 employee of the Creative Arts & Language School?</p> <p>2 MS. DAVIS: Yes.</p> <p>3 MS. ROSENFELD: And so she's an employee</p> <p>4 of the applicant?</p> <p>5 MS. DAVIS: Yes.</p> <p>6 MS. ROSENFELD: And if Ms. Bautista were</p> <p>7 to leave your employ, would another individual need</p> <p>8 to secure licensing?</p> <p>9 MS. DAVIS: Yes.</p> <p>10 MS. ROSENFELD: And is the licensing</p> <p>11 bureau aware of the fact that Ms. Bautista does not</p> <p>12 own the property where you currently operate?</p> <p>13 MS. DAVIS: Yes.</p> <p>14 MS. ROSENFELD: Okay. Has there ever been</p> <p>15 a suggestion from the Department of Education that</p> <p>16 there's anything improper or impermissible about Ms.</p> <p>17 Bautista holding a license while the property is</p> <p>18 owned by a different person?</p> <p>19 MS. DAVIS: No.</p> <p>20 MS. ROSENFELD: And one final question,</p> <p>21 assuming for the moment you do expand to 30 students,</p> <p>22 would you expect all of the children to be outside at</p> <p>23 one time?</p> <p>24 MS. DAVIS: No.</p> <p>25 MS. ROSENFELD: So, are there ways that</p>	60	<p>1 MS. DAVIS: They do.</p> <p>2 MS. ROSENFELD: Okay. So children playing</p> <p>3 outside is not necessarily limited only to daycare;</p> <p>4 is that correct?</p> <p>5 MS. DAVIS: Correct.</p> <p>6 MS. ROSENFELD: Okay. Mr. Baumgardner, I</p> <p>7 have no further questions for this witness.</p> <p>8 MR. BAUMGARDNER: Thank you. We are going</p> <p>9 to, briefly, turn it over to the guest that is logged</p> <p>10 in, Vernon. Can you hear me, Vernon?</p> <p>11 MR. GOERTZ: Can you hear me?</p> <p>12 MR. BAUMGARDNER: Yes, sir. Can you</p> <p>13 please give us your full name, your address and any</p> <p>14 email address for you, please?</p> <p>15 MR. GOERTZ: Vernon J. Goertz, 9213</p> <p>16 Fernwood Road, Bethesda. Email is VJGoertz@mac.com.</p> <p>17 MR. BAUMGARDNER: And how do you spell</p> <p>18 your last name, sir?</p> <p>19 MR. GOERTZ: G-O-E-R-T-Z.</p> <p>20 MR. BAUMGARDNER: Thank you very much.</p> <p>21 Did you have any specific questions for Ms. Davis, at</p> <p>22 this time, Mr. Goertz?</p> <p>23 MR. BAUMGARDNER: No. But I want to</p> <p>24 clarify that hearsay on the closure of the daycare</p> <p>25 when my granddaughter was there. We had to scramble,</p>

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16 (61 to 64)

<p>61</p> <p>1 our family had to scramble to find different daycare 2 when the County closed the daycare because there were 3 not enough supervising people there for the number of 4 children that they had. They had too many children, 5 evidentially, for the number of staff. And that's 6 why I don't think that's hearsay or -- that's what 7 happened. 8 MR. BAUMGARDNER: So, Mr. Goertz, we don't 9 have enough info on that right now, but at this time, 10 we're simply asking questions of Ms. Davis. If you 11 can stay on the line with us, a little bit later on 12 you're welcome to testify about your specific direct 13 experience with that incident. Is that okay? 14 MR. GOERTZ: Yes. 15 MR. BAUMGARDNER: Okay. Great. Any other 16 follow-up questions -- actually, no, we went through 17 redirect of Ms. Davis. Anything else for Ms. Davis 18 at this time, Ms. Rosenfeld? 19 MS. ROSENFELD: No, not at this time Mr. 20 Baumgardner. Thank you. 21 MR. BAUMGARDNER: Okay. We're going to 22 close her testimony for today. You are welcome to 23 call your next witness. 24 MS. ROSENFELD: Thank you. As my next 25 witness I'd like to call Mr. Joe Mehra, please.</p>	<p>63</p> <p>1 MR. BAUMGARDNER: Has Mr. Mehra ever 2 testified before either this body or any other public 3 body in Montgomery County or the State of Maryland? 4 MR. MEHRA: Yes, I have. Before the 5 hearing examiner as well as the Planning Board, 6 several planning boards, Montgomery, Prince George's 7 and others. 8 MR. BAUMGARDNER: Are there any objections 9 to admitting Mr. Mehra as an expert? I guess we'll 10 call it transportation planning or traffic 11 engineering, based upon his qualifications, academic, 12 experience, professional or otherwise; is there any 13 objection to him testifying as an expert in those 14 fields? Hearing none, he is so admitted as an expert 15 in the field of transportation planning and traffic 16 engineering for the purposes of this hearing. 17 MS. ROSENFELD: Thank you. Mr. Mehra, 18 have reviewed -- I'm sorry, are you familiar with the 19 conditional use application being considered today by 20 the hearing examiner? 21 MR. MEHRA: Yes, I do. 22 MS. ROSENFELD: And are you aware that the 23 application seeks to expand the number of students in 24 the daycare from 12 students to 30? 25 MR. MEHRA: Yes.</p>
<p>62</p> <p>1 (Witness sworn) 2 MR. BAUMGARDNER: Thank you. Ms. 3 Rosenfeld, the floor is yours. 4 MS. ROSENFELD: Okay. Mr. Mehra, would 5 you please state your name and address for the 6 record? 7 MR. MEHRA: Yeah, my name is Joe Mehra and 8 I'm with MCV Associates, located at 4605 C Pinecrest 9 Office Park Drive, Alexandria, Virginia, 22312. 10 MS. ROSENFELD: And would you please 11 explain to the hearing examiner your educational 12 background? 13 MR. MEHRA: I have a Masters Degree in 14 Engineering and I've been practicing traffic 15 engineering for almost 50 years. I'm a licensed 16 professional engineer in Maryland and I'm also 17 nationally certified as a professional traffic 18 operations engineer. 19 MS. ROSENFELD: And Mr. Baumgardner, Mr. 20 Mehra's CV is located as an exhibit -- an attachment 21 to Exhibit 26. I'm happy to do additional voir dire, 22 but unless there are questions or concerns about his 23 qualifications, I would like to, in the interest of 24 time, submit him as an expert and proceed with my 25 questions.</p>	<p>64</p> <p>1 MS. ROSENFELD: Have you reviewed the 2 application to determine whether it meets the 3 county's traffic standards for purposes of adequate 4 public facilities? 5 MR. MEHRA: Yes, I've done. 6 MS. ROSENFELD: And have you reviewed the 7 application to determine if the increase in students 8 will result in vehicle cueing that will extend beyond 9 the site boundaries? 10 MR. MEHRA: It does not extend beyond the 11 site boundaries. 12 MS. ROSENFELD: Okay. Those are the two 13 issues, substantively, that I will be asking you 14 about. But before we get into that, would you 15 please, briefly, describe to the hearing examiner the 16 location and layout of the parking areas and 17 driveways and Mr. Hearing Examiner, I would submit 18 that will be Exhibit 30A in the record, would be 19 helpful to understanding Mr. Mehra's testimony on 20 this point. 21 MR. BAUMGARDNER: Let me pull it up, one 22 second, please. So, I'm pulling what's been marked 23 as Exhibit 30; is this the correct exhibit, Ms. 24 Rosenfeld? 25 MS. ROSENFELD: I'm sorry, no, it is not.</p>

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65	<p>1 Oh, I -- no, I'm sorry, his -- the exhibit to his</p> <p>2 report is separately identified as Exhibit 38A.</p> <p>3 MR. BAUMGARDNER: Sure. So 38A we have</p> <p>4 listed as Conditional Use Plan?</p> <p>5 MS. ROSENFELD: Correct.</p> <p>6 MR. BAUMGARDNER: I'll pull that up. It</p> <p>7 should be appearing magically before you now.</p> <p>8 MS. ROSENFELD: All right. I believe</p> <p>9 that's actually the existing conditions plan. I</p> <p>10 apologize, Mr. Hearing Examiner, if we could go to</p> <p>11 38B.</p> <p>12 (Exhibit 38B for identification)</p> <p>13 MS. ROSENFELD: Okay. Mr. Mehra, in</p> <p>14 looking at Exhibit 38B, would you please explain to</p> <p>15 the hearing examiner the location of the parking lots</p> <p>16 and describe the circulation on the site?</p> <p>17 MR. MEHRA: The property is located,</p> <p>18 approximately, 500 feet from the nearest unsignalized</p> <p>19 intersection of Greentree Road and Fernwood Road.</p> <p>20 The front of the property has a circular entrance</p> <p>21 drive on Greentree Road, as you can see that's on the</p> <p>22 plan that's on the screen.</p> <p>23 This entrance provides access to five parking</p> <p>24 spaces, one of which will be a handicap accessible</p> <p>25 parking spot. This is a area that's dedicated to</p>	67	<p>1 Fernwood is off of screen or off of the exhibit, but</p> <p>2 I'm showing my cursor generally on the right-hand</p> <p>3 side of the exhibit, which is the eastern portion of</p> <p>4 the lot. So somewhere in this area there's a parking</p> <p>5 area which is you just testified about for employees</p> <p>6 and residents; is this area right here marked with</p> <p>7 several parking spaces; is that correct?</p> <p>8 MR. MEHRA: Yes, that's correct. So the</p> <p>9 total for the whole site will be 11 parking spaces.</p> <p>10 MR. BAUMGARDNER: Thank you.</p> <p>11 MR. ROSENFELD: And, Mr. Mehra, I think</p> <p>12 you heard Ms. Davis testify earlier about the number</p> <p>13 of parking spaces, but based on your review of the</p> <p>14 proposed site plan, is 11 the correct number of total</p> <p>15 parking spaces?</p> <p>16 MR. MEHRA: Yes. 11 is the correct</p> <p>17 number. So there are 5 off Greentree and 6 off</p> <p>18 Fernwood, so a total of 11.</p> <p>19 MS. ROSENFELD: And two of the parking</p> <p>20 spaces off of Fernwood are interior to the building;</p> <p>21 is that correct? They're within a garage?</p> <p>22 MR. MEHRA: That's correct.</p> <p>23 MS. ROSENFELD: Okay. So there are two</p> <p>24 issues that I'd like you to explain to the hearing</p> <p>25 examiner. The first goes to traffic adequacy, under</p>
66	<p>1 parent/guardian parking for drop off and pick up.</p> <p>2 MR. BAUMGARDNER: So, for the benefit of</p> <p>3 those watching I am putting my cursor what I believe</p> <p>4 is the area that Mr. Mehra is testifying about. It</p> <p>5 is on the left or the -- I believe this is the</p> <p>6 western portion of the property. There's a circular</p> <p>7 driveway, which I'm showing with my cursor right now.</p> <p>8 And if I understand his testimony we have one parking</p> <p>9 spot, which I am circling with my cursor in the</p> <p>10 middle of this exhibit marked as 1 and then I have 4</p> <p>11 parking spaces on the south portion of the developed</p> <p>12 portion of the lot or the south portion of the lot,</p> <p>13 1, 2, 3, four parking spaces; is that accurate, Mr.</p> <p>14 Mehra?</p> <p>15 MR. MEHRA: Yes.</p> <p>16 MR. BAUMGARDNER: Okay. You may continue</p> <p>17 your testimony.</p> <p>18 MR. MEHRA: The property also has a</p> <p>19 driveway that fronts on Fernwood Road to the rear of</p> <p>20 the property. It will have four surface parking</p> <p>21 spaces and two in the garage within the residential</p> <p>22 structure. So this parking area with six parking</p> <p>23 spaces will be used for the six employees, including</p> <p>24 the three employees who live on the property.</p> <p>25 MR. BAUMGARDNER: So it looks like</p>	68	<p>1 Montgomery County's Adequate Public Facilities</p> <p>2 ordinance, have you reviewed the application for</p> <p>3 consistency with Montgomery County's Transportation</p> <p>4 Requirements for purposes of traffic volume?</p> <p>5 MR. MEHRA: Yes, I have.</p> <p>6 MS. ROSENFELD: And would you please</p> <p>7 explain to the hearing examiner what standard applies</p> <p>8 in this case?</p> <p>9 MR. MEHRA: As per the local area</p> <p>10 transportation review or the LATR, if a site</p> <p>11 generates less than 50 peak hour person trips then</p> <p>12 only a traffic statement is required and exempt from</p> <p>13 a detailed LATR traffic study.</p> <p>14 MS. ROSENFELD: And did you do an analysis</p> <p>15 to determine whether the proposed increase of</p> <p>16 students would require that study?</p> <p>17 MR. MEHRA: Yes, I did. The computed</p> <p>18 average vehicle trip rate per student was 1.33 during</p> <p>19 the a.m. and coincidentally the p.m. peak hours also.</p> <p>20 Using these trips rates, the vehicle trip generation</p> <p>21 for 30 students are estimated to be 40 during the</p> <p>22 a.m. and p.m. peak periods. However, the daycare</p> <p>23 center is proposing to stagger the arrival and</p> <p>24 departure of the students. Based on the proposed</p> <p>25 stagger arrival and departure times, the proposed</p>

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<p>69</p> <p>1 expansion of the site to 30 students is expected to 2 generate less than 50 total weekday peak hour person 3 trips. The project is therefore exempt from LATR 4 traffic study requirements. 5 MS. ROSENFELD: Okay. Thank you. And I 6 appreciate that summary. Is the full explanation of 7 the data and of your analysis in support of this 8 conclusion on pages 2 and 3 of your traffic statement 9 -- your traffic statement being Exhibit 30? 10 MR. MEHRA: That's correct. 11 MS. ROSENFELD: Okay. The other issue 12 that I would like you to discuss with the hearing 13 examiner is the question of cueing. During the 14 course of review of this application, did planning 15 staff or transportation staff at Montgomery County 16 Planning Department of Transportation ask that you do 17 a cueing analysis to determine drop off and pick up 18 patterns at the existing daycare center? 19 MR. MEHRA: Yes. The Planning Board staff 20 asked us to do a pick up/drop off times and cueing 21 analysis for the proposed expansion to 30 students. 22 MS. ROSENFELD: And do you know why they 23 requested that? What was their concern? 24 MR. MEHRA: I think their main concern was 25 that they didn't want vehicles to cue onto Greentree</p>	<p>71</p> <p>1 vehicles that came in and what time they entered and 2 what time they left and the total dwell time for the 3 drop off is shown on the left side. And then on the 4 screen below you can see the pick up dwell time 5 between, I guess, it started at 4:50 to about 6:30 6 p.m. 7 MS. ROSENFELD: Okay. 8 MR. BAUMGARDNER: So for purposes of the 9 record, I have up on the screen Exhibit 30, which is 10 Mr. Mehra's traffic statement. 11 MS. ROSENFELD: And did you assume that 12 there would be any ride sharing or any car pooling in 13 your analysis? 14 MR. MEHRA: No, I think to be conservative 15 you assume that each one of the 30 students who came 16 to the daycare center would come in one vehicle. So 17 there was no discount taken for two siblings coming 18 in one vehicle or two siblings registered at the 19 daycare at the same time. 20 MS. ROSENFELD: Okay. Was there any other 21 factor that you considered in your analysis? Any 22 other modeling assumptions that you made? 23 MR. MEHRA: I think what you see on the 24 screen right now, of course, it's 12 students, but 25 for the future, because there's going to be a</p>
<p>70</p> <p>1 Road. 2 MS. ROSENFELD: And did you conduct that 3 analysis? 4 MR. MEHRA: Yes. We did that. 5 MS. ROSENFELD: And could you explain how 6 you conducted it and your results -- the results of 7 that analysis? 8 MR. MEHRA: On July 5th, 2021, we actually 9 observed the vehicles arriving and departing off 10 Greentree Road into the parking lot and the afternoon 11 peak periods and, essentially, we recorded the time 12 the vehicle came in and the parents or the guardians 13 got out the vehicle, went into the daycare center and 14 they came back out, sat in their care and took off. 15 So that was some of the dwell period for the drop off 16 and then the same sort of process happened in the 17 p.m. peak period. So we did both a.m. and p.m. to 18 sort of come up with the dwell times for the drop off 19 and the dwell time for the pick up periods. 20 MS. ROSENFELD: And is the -- is there a 21 chart in your report that shows a specific dwell time 22 for each vehicle that you observed? 23 MR. MEHRA: Yes. I guess, it's on the 24 screen right now, you can see the a.m. peak period on 25 the left side. So each of the 12 students or</p>	<p>72</p> <p>1 staggered arrival and departure, the -- in terms of 2 the number of vehicles that need to be parked or that 3 need to be on the site at the same time is limited 4 based on the stagger arrival and departure. So that 5 was one of the factors that was used in determining 6 the future dwell times and the future number of 7 vehicles that will be on site at one time. 8 MS. ROSENFELD: Based on your observations 9 and your analysis and in your professional judgment, 10 will there be cueing within Greentree Road during 11 student drop off or pick up if the student body is 12 increased to 30 students? 13 MR. MEHRA: I think one of the things we 14 need to go back and say is that during existing 15 conditions when we made the actual observations, 16 during our observation period there were a maximum of 17 five vehicles that came within a 15-minute period. 18 So during that 5 vehicles within a 15-minute period 19 there was no cueing, there was absolutely no cueing 20 in the existing conditions. 21 Now when we sort of project that into the 22 future, again, looking at the staggered arrival, 23 looking at the 5 parking spaces available, there's 24 going to be no cueing at all during the a.m. peak 25 period. During the p.m. in 2 15-minute slots we see</p>

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19 (73 to 76)

<p>73</p> <p>1 that there will be one vehicle that has to wait for a 2 parking space to be vacated, but that vehicle would 3 be waiting on site. 4 Further, there's a circular drive, that 5 circular drive has capacity of parking that can 6 accommodate four more vehicles. So, essentially, 7 there's more than adequate parking available on site, 8 so there will be absolutely no cueing that will 9 extend onto Greentree Road. 10 MS. ROSENFELD: Okay. In your 11 professional opinion, does the proposed expansion 12 satisfy the Adequate Public Facilities Ordinance for 13 vehicle, pedestrian and bike trips? 14 MR. MEHRA: Yes, it does. 15 MS. ROSENFELD: And in your professional 16 opinion will there be cueing onto Greentree Road 17 during student drop off or pick up as a result of the 18 proposed increased in the number of students? 19 MR. MEHRA: No. There won't be any cueing 20 onto Greentree Road. 21 MS. ROSENFELD: In your professional 22 opinion, will ingress and egress to the site from 23 Fernwood Drive be safe and efficient? 24 MR. MEHRA: I think it's, essentially, 25 what's out there today, so there's no negative</p>	<p>75</p> <p>1 I think one of the things that's important to note is 2 that most of the parents/guardians who are going to 3 be bringing the children over to the daycare live in 4 the neighborhood. And, typically, what happens is, 5 the parents or the guardians are driving to work and 6 on the way they drop off their child at the daycare 7 center. So most of the times these trips are not 8 additional trips on the roadway network, they are 9 actually already there. They are making a diverted 10 trip or they're making a stop by trip or a pass by 11 trip. 12 So, essentially, in that sense you are not 13 really adding 30 vehicles during the a.m. peak hour 14 or the p.m. peak hour, they are significantly less 15 than that. And if you look at the Institute of 16 Transportation Engineers Trip Generation Report, they 17 say daycare centers generate a significant amount of 18 pass by trips in the sense that vehicles are passing 19 by either Greentree or Fernwood and then they turn 20 into the driveway, drop off their children and then 21 continue on to work. 22 MR. BAUMGARDNER: So, in your 23 observations, can you give me an idea of the level of 24 traffic on Greentree and Fernwood either during peak 25 hour or during non-peak hour?</p>
<p>74</p> <p>1 impacts that will happen when the proposed expansion 2 occurs. 3 MS. ROSENFELD: And in your professional 4 opinion will ingress and egress to the site from 5 Greentree Road be safe and efficient? 6 MR. MEHRA: Yes. 7 MS. ROSENFELD: Okay. Mr. Baumgardner, I 8 have no further questions for Mr. Mehra at this time. 9 MR. BAUMGARDNER: Thank you. Let me go 10 through my notes really briefly, just to make sure I 11 don't have any follow-up. I just have one follow-up 12 question, Mr. Mehra. For both Greentree Road and 13 Fernwood, did you have the opportunity through your 14 traffic analysis to observe traffic either during the 15 a.m. peak, the p.m. peak or just generally speaking 16 -- did you have the ability to observe or do you have 17 knowledge about the level of traffic on Fernwood or 18 Greentree? Is it lite? Is it moderate? Is it 19 heavy? Are there periods of time where it might be 20 heavier than others? Can you provide a brief 21 explanation as to your professional opinion about the 22 level of traffic on those two roads? 23 MR. MEHRA: I think the -- I did observe 24 traffic on Greentree Road in terms of during the peak 25 periods. And I think before I answer your question,</p>	<p>76</p> <p>1 MR. MEHRA: I did not do a level of 2 service analysis, but looking at the traffic flow I 3 didn't see any major issues of concern. 4 MR. BAUMGARDNER: Opening it up to those 5 who are joining us, are there any questions -- and, 6 again, we're going to limit this to questions of Mr. 7 Mehra, based upon his testimony and the traffic 8 statement that he is provided. I see a virtual hand 9 from Mr. Horn. What are your questions for Mr. 10 Mehra, sir? 11 MR. HORN: All right. So, in advance, 12 pardon any background noise. I'll try to limit it, 13 the cleaning people are here for their Friday 14 schedule and then also, this is so detailed, I'm also 15 going to tell you in advance I've got other work to 16 do, I'm taking time off from work, so I'm going to 17 only be able to stay through when we adjourn whenever 18 that is at 11:45. 19 So, thank you, for your testimony today, 20 obviously, you've spent a lot of time in the traffic 21 area. So a couple of follow up questions. Did you 22 discuss with the applicant who's going to be 23 responsible for enforcing the staggered times? In 24 other words, is this by contract? Will people be 25 fined if they have to come early because they have an</p>

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20 (77 to 80)

77	<p>1 early morning meeting? That would seem to be central</p> <p>2 to your analysis, yes or no; did you discuss that?</p> <p>3 MR. MEHRA: First of all, it will be a</p> <p>4 condition of approval, so the applicant has to meet</p> <p>5 those conditions. I did not --</p> <p>6 MR. HORN: So, did you discuss in part of</p> <p>7 your analysis, how is that going to be enforced</p> <p>8 contractually? And then afterwards, if this approval</p> <p>9 was granted, who's going to come and see whether the</p> <p>10 stagger is being enforced?</p> <p>11 MR. MEHRA: Well, I think it's between the</p> <p>12 County and the applicant to sort of monitor and</p> <p>13 enforce them. As far as my analysis and my report is</p> <p>14 concerned, the applicant has committed to meeting the</p> <p>15 staggered arrival and departure. And based on that</p> <p>16 we have prepared our analysis and proceeded on that</p> <p>17 basis.</p> <p>18 MR. HORN: Thank you. As you heard</p> <p>19 earlier today, Ms. Davis talked about increased</p> <p>20 traffic and trucks, she's referring to the</p> <p>21 residential construction, which will be substantial</p> <p>22 where the former radio towers were. So she, herself,</p> <p>23 mentioned that in terms of adding considerable</p> <p>24 traffic during construction as well subsequent to the</p> <p>25 residential area. Did you take this into account in</p>	79	<p>1 MR. HORN: Okay. Isn't also true, Mr.</p> <p>2 Metra (sic) that depending on the child involved,</p> <p>3 whether it's an infant or a -- four year old, which</p> <p>4 we've all experienced, that the time in getting the</p> <p>5 child from the center into the car could vary</p> <p>6 significantly and that is multiplied by going from 12</p> <p>7 students -- 12 children to 30; isn't that correct?</p> <p>8 MR. MEHRA: Well, if you look at --</p> <p>9 MR. HORN: And maybe -- I'm sorry -- and</p> <p>10 maybe the parent wants to talk to the teacher if the</p> <p>11 child has had a bad day and there needs to be a</p> <p>12 conversation; isn't that true?</p> <p>13 MR. MEHRA: I think when you look at the</p> <p>14 dwell times, you can see the effect of that. There's</p> <p>15 a drop off that occurred for two minutes and then</p> <p>16 there's a pick up that occurred over a 12 minute</p> <p>17 period. So if you look at the spread of that,</p> <p>18 essentially, that's what's happening. There's either</p> <p>19 -- there's an infant that needs to be taken in, maybe</p> <p>20 takes a little more time than a four year old and,</p> <p>21 secondly, maybe some parents want to talk to the</p> <p>22 staff while they're picking them up and that's why</p> <p>23 you see this huge spread. Otherwise, typically, the</p> <p>24 time should be somewhere around two to three minutes</p> <p>25 per student drop off or pick up. But because of all</p>
78	<p>1 consideration of your analysis and that Greentree is</p> <p>2 -- you know, there's not room to pass on either side,</p> <p>3 safely, where that area -- did you take that into</p> <p>4 consideration?</p> <p>5 MR. MEHRA: I think that one of the things</p> <p>6 that I mentioned earlier is that because of the</p> <p>7 number of trips that are being generated or are going</p> <p>8 to be generated by this proposed expansion is less</p> <p>9 than 50 trips, there's no detailed LATR required. So</p> <p>10 in terms of what other developments are happening,</p> <p>11 how much traffic they will generate, what impact that</p> <p>12 will have on the roadway system is not required as</p> <p>13 part of the study, so no, I did not look at that.</p> <p>14 MR. HORN: Yes, you did not do that. And</p> <p>15 then again, some of those charts went up quickly.</p> <p>16 There was one where it said 49.5 or something, was</p> <p>17 that related to the 50 that you're talking about?</p> <p>18 MR. MEHRA: No.</p> <p>19 MR. HORN: No, so that's --</p> <p>20 MR. MEHRA: The maximum number is about 36</p> <p>21 in terms of comparison to 50. So, it's nowhere close</p> <p>22 to 50.</p> <p>23 MR. HORN: And that's 36 with the</p> <p>24 expansion?</p> <p>25 MR. MEHRA: Yes, sir.</p>	80	<p>1 these other factors that you mentioned, the dwell</p> <p>2 time varies, I mean, literally, from 2 minutes up to</p> <p>3 12 minutes and those have been factored into the</p> <p>4 analysis.</p> <p>5 MR. HORN: All right. So we could have</p> <p>6 situations where it just -- because that's just the</p> <p>7 way life is, where all these things happen at once</p> <p>8 and then you could have cueing and these other</p> <p>9 issues, so that's clearly possible, correct? Yes or</p> <p>10 no?</p> <p>11 MR. HORN: Well, there's room for nine</p> <p>12 spaces on the site, the five that are sort of</p> <p>13 dedicated and marked, but then there's a circular</p> <p>14 drive, which is an additional space that can be used</p> <p>15 temporarily if there's additional vehicles on site.</p> <p>16 So with the nine vehicles and the staggered hours --</p> <p>17 staggered arrival and departure, the cueing extending</p> <p>18 onto Greentree is almost like a non-existent, I would</p> <p>19 say.</p> <p>20 MR. HORN: You say it's highly unlikely,</p> <p>21 but they're not going to be -- the room on the</p> <p>22 driveway is only room for one car. So if one of the</p> <p>23 cars pulls into that driveway and that parent happens</p> <p>24 to have an issue that day with their child and</p> <p>25 they're at the front of that driveway nobody else can</p>

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21 (81 to 84)

81	<p>1 sort of use is successfully to enter and exit;</p> <p>2 wouldn't that be correct, sir?</p> <p>3 MR. MEHRA: Well, this is not a one way</p> <p>4 designated circular driveway, so they can enter from</p> <p>5 one side and they can leave from there also. So if</p> <p>6 somebody blocks the one side of the circular drive,</p> <p>7 you can get --</p> <p>8 MR. HORN: How would you enter? You'd</p> <p>9 have to enter backwards. In other words, I've come</p> <p>10 through the entire driveway, just to visualize this,</p> <p>11 park, which would make the most sense, assuming I'm</p> <p>12 going to quickly get my child if all the other spaces</p> <p>13 are filled, and then I come, all the parking spaces</p> <p>14 are filled, this car is at the front of the driveway</p> <p>15 and that's the parent who happened to have a raisable</p> <p>16 issue that day, where do I go? I pull in behind</p> <p>17 them, I can't -- I'm not going to back in my car.</p> <p>18 I'm basically blocked into some extent; isn't that</p> <p>19 true?</p> <p>20 MR. MEHRA: Well, if there's one vehicle</p> <p>21 in the circular drive, the vehicle behind it can</p> <p>22 always back into the parking area and then get out</p> <p>23 from the second half of the circular drive.</p> <p>24 MR. HORN: Okay. So --</p> <p>25 MR. MEHRA: There are many alternatives</p>	83	<p>1 opposed to the prior observations about inconsistent</p> <p>2 with a residential neighborhood at large.</p> <p>3 So it's been mentioned that three -- so there's</p> <p>4 six parking spaces in that Fernwood area abutting</p> <p>5 that major road with traffic, two of them would be</p> <p>6 garaged, okay, potentially, which belong to the cars</p> <p>7 to people who live in the house, as well as a third</p> <p>8 one of somebody who lives in the house. So that</p> <p>9 leaves three spaces, okay, of the four that are</p> <p>10 outside the garage, correct?</p> <p>11 MR. MEHRA: Well, I don't know if --</p> <p>12 MR. HORN: Yes.</p> <p>13 MR. MEHRA: -- there are three vehicle</p> <p>14 owners, but yes --</p> <p>15 MR. HORN: Well, that's --</p> <p>16 MR. MEHRA: -- two in the garage and four</p> <p>17 outside.</p> <p>18 MR. HORN: I'm sorry, were you not aware</p> <p>19 that three of the spaces are dedicated to people who</p> <p>20 live in the house?</p> <p>21 MR. MEHRA: No, I'm not saying that. I'm</p> <p>22 saying that that can change, but as far as I</p> <p>23 understand there are six employees -- would be six</p> <p>24 employees and there would be six parking spaces.</p> <p>25 MR. HORN: Right.</p>
82	<p>1 that people can get it and get out rather than --</p> <p>2 MR. HORN: Yeah, it resembles the giant</p> <p>3 parking lot when Walter Johnson students are</p> <p>4 dismissed, I'm quite familiar with that. Thank you.</p> <p>5 So you haven't lived on Fernwood Road, correct?</p> <p>6 You were just there observing the traffic during the</p> <p>7 current COVID environment where there is -- I've</p> <p>8 lived there for 31 years, so fortunately the traffic</p> <p>9 is still extreme, but a little bit less. But you do</p> <p>10 agree that in COVID during your other studies traffic</p> <p>11 is generally down on a lot of streets because more</p> <p>12 people are working at home; isn't that true?</p> <p>13 MR. MEHRA: Typically, yes.</p> <p>14 MR. HORN: Okay. So that's part of your</p> <p>15 observations as well. Thank you. Let me just -- one</p> <p>16 other question, your testimony has been very helpful</p> <p>17 today and, certainly, you've been looking backwards</p> <p>18 and your forward looking report is speculative in</p> <p>19 that regard based on what you've seen in the past</p> <p>20 expanding to 30 and you've answered my questions</p> <p>21 there.</p> <p>22 Lets focus on those parking spots which have</p> <p>23 been raised regarding on Fernwood. And, again, my</p> <p>24 focus on this is because, apparently, is a key</p> <p>25 technicality as to the zoning application, okay. As</p>	84	<p>1 MR. MEHRA: But which one is dedicated to</p> <p>2 which I am not privy to that.</p> <p>3 MR. HORN: You're correct. I don't think</p> <p>4 they have their name on the space like employee of</p> <p>5 them month and things like that for the parking</p> <p>6 space. But so three of the spaces we understand</p> <p>7 would be for people who live in the house, that's the</p> <p>8 testimony that's been given. So three of the spaces,</p> <p>9 which are on the outside, right, are for staff,</p> <p>10 because it is clearly intended that staff not use the</p> <p>11 parking spaces that you've been talking about nor the</p> <p>12 driveway nor our cul-de-sac across the street, where</p> <p>13 you're not allowed to park for the day if you're not</p> <p>14 a resident.</p> <p>15 So those three people would need to enter and</p> <p>16 exit into that space, okay, which I've described</p> <p>17 before, if you were listening, is extremely</p> <p>18 challenging and dangerous as I see people all the</p> <p>19 time in my 31 years who live on Fernwood Road who</p> <p>20 have to drive into their driveway and then have to</p> <p>21 back out, depending on the kindness of strangers and</p> <p>22 their awareness during rush hour, which is a very</p> <p>23 challenging task.</p> <p>24 And as you also know, the way that driveway is</p> <p>25 constructed is, some of it is obscured by walls on</p>

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22 (85 to 88)

<p>85</p> <p>1 the side, retaining walls dealing with the soil; is 2 that correct? 3 MR. MEHRA: Yes. 4 MR. HORN: So, basically, this is 5 extremely daunting and challenging task for any 6 driver. I would not look forward to that, in fact, 7 it would ruin my day knowing I would have to back up 8 into that traffic and, essentially, be a blind spot, 9 you know, not knowing it was coming -- 10 MR. BAUMGARDNER: Mr. Horn, we're waiting 11 for a question, sir. 12 MR. HORN: I'm sorry. So, in other words, 13 did you look at someone trying to back up out of 14 those spaces during rush hour? 15 MR. MEHRA: No, I did not look at that. 16 MR. HORN: No, you did not. Okay. Thank 17 you. No further questions. Thank you for your 18 testimony. 19 MR. BAUMGARDNER: Thank you, Mr. Horn. I 20 see that Mr. Goertz has his virtual hand raised. Mr. 21 Goertz, do you have a follow up question for Mr. 22 Mehra about his testimony here today regarding 23 parking or traffic? Mr. Goertz, are you there? 24 MR. HORN: It looks like he's on mute. 25 There he goes.</p>	<p>87</p> <p>1 conduct your traffic adequacy analysis in accordance 2 with the Montgomery County APFO standards? 3 MR. MEHRA: Yes, we did. 4 MS. ROSENFELD: And could you state again 5 the number of new peak hour trips that would be 6 generated assuming the full 30 students were 7 submitted? 8 MR. MEHRA: Well, the total number, not 9 the new number, the total number of trips that would 10 be generated would be 30 during the a.m. peak hour 11 and 36 during the p.m. peak hour. So these are total 12 which also includes the 12 students that are there 13 and that is part of the LATR, is the total rather 14 than the new students. 15 MS. ROSENFELD: Okay. With respect to the 16 dwell time, concern about how long students -- how 17 long vehicles would be in the parking lot. The chart 18 that you have in your a.m. and p.m. peak hour dwell 19 times, on page 3 of your report, was that based on 20 actual observations? 21 MR. MEHRA: Yes, based on actual 22 observations. 23 MS. ROSENFELD: And then in order for you 24 to determine whether or not (audio interference). 25 MR. MEHRA: I'm sorry, I lost you there.</p>
<p>86</p> <p>1 MR. BAUMGARDNER: Mr. Goertz, if you have 2 a question for Mr. Mehra about traffic or parking, 3 please go ahead. 4 MR. GOERTZ: Yes. In your report on your 5 traffic studies, it indicated that it was done during 6 the 4th of July holiday period, a few days before -- 7 a few days after the 4th of July holiday period. Did 8 you take the holiday period into account while you 9 were making your study? 10 MR. MEHRA: The thing is, we did not 11 record traffic on Greentree or Fernwood. 12 Essentially, it was the parents/guardians driving 13 into the daycare center and exiting from the daycare 14 center. Traditionally, the way it's done is that on 15 the day we did the survey, the daycare center was 16 full, all 12 students were there. Let's say if there 17 were 11 students, we would still collect the data for 18 11 students and then factor it up to 30. 19 So, essentially, the holiday weekend or the, I 20 guess, the July 8th date, would not affect that. 21 MR. GOERTZ: Thank you. 22 MR. BAUMGARDNER: Thank you. Ms. 23 Rosenfeld, do you have any redirect of this witness? 24 MS. ROSENFELD: Yes, several questions. 25 Thank you, Mr. Baumgardner. Mr. Mehra, did you</p>	<p>88</p> <p>1 MS. ROSENFELD: How did you use the 2 numbers that are shown on page 3 for the existing 3 dwell times for the current 12 students, how did you 4 use that as a basis to determine that there would be 5 no cueing if the facility expanded? 6 MR. MEHRA: Basically, we extrapolated the 7 dwell time from 12 students to 30 students, but also 8 keeping in mind the staggered arrival times and the 9 staggered departure times, so factoring both of them 10 together. And the Planning Board staff reviewed the 11 report and they accepted the results and 12 recommendations. 13 MS. ROSENFELD: Okay. And my last 14 question goes to the working hours for the staff 15 shown on page 2 of your report. The departure time 16 for 3 staff members is at 3:00; is that a peak 17 traffic hour? 18 MR. MEHRA: No. Typically, the peak hours 19 are somewhere between 4:30 to 5:30 or 5 to 6, 20 somewhere in that time frame. 21 MS. ROSENFELD: Okay. And so the 22 departure time for the 1 staff person leaving at 23 4:30, would, in your opinion, that be during peak 24 hour? 25 MR. MEHRA: Yeah, it would be, if it's</p>

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23 (89 to 92)

<p>89</p> <p>1 between 8:30 and 4:30, no.</p> <p>2 MS. ROSENFELD: Okay. And what about the</p> <p>3 2 employees leaving at 6:00, would that fall within</p> <p>4 peak hour?</p> <p>5 MR. MEHRA: Most likely not. Like I said,</p> <p>6 the peak hours are typically between 4:30 to 6 p.m.</p> <p>7 So it could be 4:30 to 5, 4:30 to 5:30, 4:45 to 5:45</p> <p>8 or 5 to 6. Somewhere in that range, that's pretty</p> <p>9 much typical peak hour in the afternoon.</p> <p>10 MS. ROSENFELD: So recognizing that three</p> <p>11 of the employees actually live on site and would not</p> <p>12 be leaving their job in the typical commuting sense,</p> <p>13 of the six potential employees, in your opinion, how</p> <p>14 many practically speaking would be departing onto</p> <p>15 Fernwood in a vehicle during a peak hour?</p> <p>16 MR. MEHRA: Probably zero.</p> <p>17 MS. ROSENFELD: Mr. Baumgardner, I have no</p> <p>18 further questions.</p> <p>19 MR. BAUMGARDNER: All right. Mr. Horn,</p> <p>20 did you have a follow up question?</p> <p>21 MR. HORN: Yeah, just a quick comment.</p> <p>22 That's -- unfortunately, that last interplay, Mr.</p> <p>23 Metro (sic), you were not there to observe -- and</p> <p>24 your designation of peak hours is totally inaccurate.</p> <p>25 Is it true that the Montgomery Ride --</p>	<p>91</p> <p>1 MR. MEHRA: Well, as I said, we did not do</p> <p>2 a detailed traffic impact study, because we weren't</p> <p>3 required to. But the peak hours that I mentioned,</p> <p>4 I'm talking about typically in Montgomery County that</p> <p>5 these are the peak hours. We have been working in</p> <p>6 Montgomery County for almost 30 years, so I have</p> <p>7 experience in terms of where the peak hours fall and</p> <p>8 stuff like that.</p> <p>9 MR. HORN: Okay. Just to focus in on that</p> <p>10 for the benefit of the hearing, you are using a</p> <p>11 generality without the specifics of this area, which</p> <p>12 are compounded. Are you aware of elementary schools</p> <p>13 and other schools in the area? So did you taken into</p> <p>14 account also the traffic -- so, as Vernon pointed out</p> <p>15 this study was done July 4th, right?</p> <p>16 MR. MEHRA: No, it's not July 4th, it was</p> <p>17 July 8th, because --</p> <p>18 MR. HORN: So during the summer -- so</p> <p>19 that's when the Wood Acres Academy, which is up the</p> <p>20 street, which has a number of students, would be</p> <p>21 closed down for the summer and that traffic going up</p> <p>22 and down Greentree would not be reflected in your</p> <p>23 study; is that correct?</p> <p>24 MR. MEHRA: I think, let me clarify one</p> <p>25 more time, we did not do a traffic study of the</p>
<p>90</p> <p>1 MR. BAUMGARDNER: Mr. Horn -- Mr. Horn, so</p> <p>2 this is the time for questions, right? So we're not</p> <p>3 going to (indiscernible) Mr. Mehra's testimony is.</p> <p>4 Do you have a specific question based upon --</p> <p>5 MR. HORN: Yes. Yes. Yes.</p> <p>6 MR. BAUMGARDNER: Okay.</p> <p>7 MR. HORN: Are you aware that the</p> <p>8 Montgomery County Ride on Bus goes down Fernwood Road</p> <p>9 and makes frequent stops on that street and it rides</p> <p>10 throughout the day, I believe it's on a 20-minute</p> <p>11 schedule; are you aware of that?</p> <p>12 MR. MEHRA: I did not look at the</p> <p>13 schedule.</p> <p>14 MR. HORN: Yes. Okay, you did not look at</p> <p>15 that and it makes frequent stops and that can cause</p> <p>16 numerous backups throughout the day. Are you also</p> <p>17 aware that the traffic light at Democracy Boulevard</p> <p>18 and Fernwood is timed in such a way causing</p> <p>19 substantial backups throughout most of the afternoon,</p> <p>20 which can extend even down to where we live on</p> <p>21 Fernwood Road opposite the parking entrance we're</p> <p>22 talking about, from 4:30 on the afternoon on, as</p> <p>23 people attempt to go up and get onto I-270, are you</p> <p>24 aware of that backup that extends all the way down</p> <p>25 Fernwood?</p>	<p>92</p> <p>1 neighborhood, it was not required.</p> <p>2 MR. BAUMGARDNER: Mr. Mehra -- Mr. Mehra,</p> <p>3 we're going to pause for a second. Mr. Horn, we're</p> <p>4 going to pause for a second. It is clear, I know</p> <p>5 this from the record, I know this from the testimony</p> <p>6 that because of the number of peak hour trips, a full</p> <p>7 traffic study is not required, so things like nearby</p> <p>8 projects, residential constructions, schools, public</p> <p>9 bus routes, all those are very relevant, they are not</p> <p>10 required to be included in the traffic analysis that</p> <p>11 Mr. Mehra has testified about.</p> <p>12 So Mr. Mehra has provided his statement, it is</p> <p>13 on the record, we have reviewed it, it has been asked</p> <p>14 about and he has provided answers, that is clear. I</p> <p>15 don't think I need to hear anymore testimony, again,</p> <p>16 because we're on recross at this point, about other</p> <p>17 things in the area. You will have your opportunity</p> <p>18 to provide that testimony when it is your turn to</p> <p>19 testify, Mr. Horn. But we're getting the same</p> <p>20 questions and answers for Mr. Mehra, because that is</p> <p>21 what he was tasked with providing, was the traffic</p> <p>22 statement and not the full traffic study.</p> <p>23 So, are there any other questions --</p> <p>24 MR. HORN: I understand that. Thank you</p> <p>25 for that explanation. It's just that on</p>

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24 (93 to 96)

93	<p>1 reexamination there was a discussion of peak periods 2 regarding the ingress and egress of the three 3 employees off of Fernwood Road, which seemed to be 4 quite relevant enough that it was done on redirect, 5 that it was relevant to the testimony. 6 So one other question, when you said my chance 7 to testify, as I've mentioned, we're taking time off 8 from work -- this is -- first of all, this is a much 9 longer process than I ever imagined in my mind, so I 10 can -- the amount of effort that goes into this is 11 just astounding to me. But, again, I can't continue 12 after the break, so I just have to go on to other 13 matters. 14 Was it intended that the guests and Vernon, we 15 actually make statements at the hearing in the second 16 part? I'm not clear on that. 17 MR. BAUMGARDNER: Correct. So that is our 18 general process, you would have the opportunity to 19 testify. Now what we also do is we hold the record 20 open for, typically, ten days after a hearing, you 21 are welcome to submit something in writing -- 22 MR. HORN: Okay. 23 MR. BAUMGARDNER: -- if you have specific 24 testimony. But, again, this is specific testimony 25 based upon your visual observations of the property</p>	95	<p>1 But in terms of the overall picture remirred in these 2 details where really my focus is that, we have no 3 issues with adding one or two, couple of kids, but, 4 apparently, my understanding of the zoning rules, 5 it's 12 up to 30, which allows the applicant to go to 6 30. There's sort of no in between. So the view of 7 myself and, you know, I'll speak for my neighbors 8 here and they can say the same thing is, we just view 9 that use as inconsistent with a residential 10 neighborhood, given the size of the property. 11 And we're getting bogged down in all this 12 traffic stuff and I know that's part of your job and 13 that's how the zoning works, but to me that's like 14 just pointing out irregularities in the process so we 15 can find some technical reason to deny the zoning 16 application to go from -- because we just believe 17 it's inconsistent with the residential nature of the 18 neighborhood as a whole. 19 MR. BAUMGARDNER: Ms. Rosenfeld, would you 20 object to allowing Mr. Horn and Mr. Goertz the next 21 15 minutes to provide that testimony, so that we can 22 break at 11:45, they can go about their day and then 23 we can reconvene at 1:00 for Mr. Sekerak's testimony? 24 MS. ROSENFELD: Yes. Actually, that's why 25 I had my hand up, I was going to say I'm perfectly</p>
94	<p>1 or your property or the roadways, so that would be 2 another opportunity for you to be able to give those 3 statements and include them into the record. 4 Now, if they're particularly controversial or 5 if there's facts in there that don't make any sense, 6 the applicant would have the ability to then counter 7 that testimony. But if we have time, it's certainly 8 possible -- I mean, we're kind of crunched at this 9 point because we only have about 15 minutes left and 10 we still have Mr. Sekerak as well. 11 Are there any follow up questions for Mr. Mehra 12 regarding his testimony? Okay. Mr. Horn, do you 13 have an idea of the amount of time that you would 14 need to provide that testimony regarding this 15 application? 16 MR. HORN: No. It's just really a minute 17 or two and, again, it's because of the process, we've 18 sort of been cornered into asking these types of 19 questions which you see on all the television shows 20 in courtroom dramas. So, in other words, just answer 21 yes or no, no explanation, you know, it's just the 22 process. 23 So, no I think it's just a minute or two would 24 be my summation, of course, I reserve the right to 25 submit further stuff into the record in written form.</p>	96	<p>1 fine with them presenting their testimony now since 2 they have taken the time to participate this morning. 3 And I do want to mention that we have both Mr. 4 Sekerak and Mr. Tilley left as witnesses. But, no, I 5 would appreciate if they could go ahead and provide 6 us with their comments. Thank you. 7 MR. BAUMGARDNER: So that's what we're 8 going to do, we're going to provide Mr. Horn and Mr. 9 Goertz the ability to testify here today. I do have 10 a hard stop at 11:45. I have a child pick up. So 11 that is my hard stop here this morning. 12 So, Mr. Horn, can you please raise your right 13 hand? 14 (Witness sworn) 15 MR. BAUMGARDNER: Thank you very much. 16 Sir, please, once again, provide us your full name 17 and your property address. 18 MR. HORN: It's Paul Horn, 9211 Fernwood 19 Road, Bethesda, Maryland, 20817. 20 MR. BAUMGARDNER: Thank you very much. So 21 what is your testimony here today, sir? 22 MR. HORN: Well, I, basically, referred to 23 it before in terms of, I'm a big picture person. 24 We're spending a lot of time today looking at all 25 these requirements which are necessary for the zoning</p>

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25 (97 to 100)

97	<p>1 process and it's -- my view is, if this exemption 2 were allowed to go up to 30, because, apparently, you 3 have no middle ground to incrementally increase this, 4 that anybody who can provide available parking spaces 5 on their property, either by clearing their own 6 property to make those spaces, could open up a 7 facility of this size in a residential neighborhood. 8 And I just think it's inconsistent with the use of a 9 residential neighborhood to allow a school, that's in 10 their title, not a daycare center, it's a school, to 11 operate with 30 children in a residential 12 neighborhood. It's just inconsistent with that use. 13 You can get bogged down in these technicalities of 14 when the expert did his study, that no traffic study 15 was required et cetera, those are all interesting 16 things, the other experts testifying regarding their 17 areas of expertise, but from a global perspective, we 18 view it as inappropriate. It's okay to operate a 19 daycare center with 12 kids, that's been going on for 20 years, no one has raised any objection. The 21 applicant did not come, as I'm aware of, and talk to 22 any of us in advance of this excessive planning and 23 cost incurred, that she's gone in this process, which 24 in retrospect is interesting to me. I would have 25 done something like that, before I undertook such an</p>	99	<p>1 down because I'm writing notes as you're testifying. 2 MR. HORN: And you don't have the power to 3 grant like -- we can give you up to 18 spots, right? 4 It's either all or nothing; is that correct? 5 MR. BAUMGARDNER: No. I absolutely have 6 the authority. 7 MR. HORN: Oh, okay. That's interesting 8 to know, I'm glad I asked that question. Because as 9 you know in the real world, and again, I think Ms. 10 Davis is a very nice person, I haven't spoken to her 11 before, but we like our neighbors and we want to get 12 along with them. 13 So to me, you know, issues of compromise and 14 settlement and negotiation are the path forward when 15 there are these disagreements. We like to have what 16 we call in my world, what is known as a win win. 17 But, again, we've been put on the defensive, we knew 18 nothing about these plans until we received the 19 zoning notice and then it's sort have been uphill 20 from that and you can tell from my questions, I've 21 attempted to do some fact finding getting at the 22 truth, but that's very helpful that you mentioned it, 23 that it's not an all or nothing. Because, 24 unfortunately, thinking it's all or nothing, is we've 25 got to stop this because we think it's inconsistent</p>
98	<p>1 activity, that did not occur. The first time we were 2 made aware of this, of course, is when we received 3 the exciting notice from your department and then 4 this has been a very interesting fact finding 5 exercise, with tons of documents put up on the 6 website and we're working people, so it's time 7 consuming to go through that and become cognizant of 8 all the information. 9 But at the end of the day, you know, regardless 10 of the technicality and the points that these people 11 can't back out onto Fernwood Road, whether there's 12 been cueing on Greentree et cetera, the fact that 13 area is not fenced in and more kids outside 14 throughout the day, okay, with their staggered times, 15 they're not all going to be outside at once, so that 16 just means there's going to be more noise throughout 17 the day as more of these kids are outside with 18 staggered playtimes. 19 It's just -- it would be the equivalent of if 20 my house was now across the street from an elementary 21 school, to some extent. And this is asking for an 22 exemption from what's already existing and we just 23 don't think that's appropriate under any zoning 24 application. 25 MR. BAUMGARDNER: Thank you. My head is</p>	100	<p>1 with the neighborhood and would create an exemption 2 which the next person could easily drive their center 3 through. So thank you. 4 MR. BAUMGARDNER: Sure. Ms. Rosenfeld, 5 any questions for Mr. Horn? And, again, we're going 6 to limit this to questions only. 7 MS. ROSENFELD: No. Thank you. 8 MR. BAUMGARDNER: Sure. Thank you very 9 much, Mr. Horn. Mr. Goertz, are you still available, 10 sir? 11 MR. GOERTZ: Yes. 12 MR. BAUMGARDNER: Thank you. Can you 13 please raise your right hand, please. 14 MR. GOERTZ: It's raised. 15 (Witness sworn) 16 MR. BAUMGARDNER: What would you like to 17 tell me here today? 18 MR. GOERTZ: The only thing I would like 19 to add to Paul's excellent commentary is that the 20 overall effect of all of this is the property value 21 of the neighbors. That's what the zoning residential 22 idea is about. People who live in residential areas 23 value that quality of having no commercial money 24 making, client driven activity in their neighborhood. 25 That's what it's all about.</p>

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26 (101 to 104)

101	<p>1 So it's hard to put a definite statistical</p> <p>2 amount on each property. But this is a well known</p> <p>3 philosophy of zoning and that's why there is zoning.</p> <p>4 And that's why there is a necessity for getting an</p> <p>5 exemption. The Plaintiff's here admit that they need</p> <p>6 an exemption to go in and avoid being denied access</p> <p>7 to a residential area. The residential area, by</p> <p>8 definition, opposed to a business. A business that</p> <p>9 they're operating here and want to expand.</p> <p>10 So that's why I think that the 12 students is</p> <p>11 one thing, up to 30 is a whole different structure.</p> <p>12 It's a whole different idea. It's a whole different</p> <p>13 category. It's not an extension of the original</p> <p>14 permit. It's a whole new idea of size and effect</p> <p>15 that it will have on the neighborhood and on the</p> <p>16 neighbors and on the neighbors property -- and our</p> <p>17 property.</p> <p>18 So that's why I'm objecting to this enlargement</p> <p>19 of -- it's almost establishing a new business,</p> <p>20 because of the size. Thank you.</p> <p>21 MR. BAUMGARDNER: Thank you very much,</p> <p>22 sir. Ms. Rosenfeld, any questions for Mr. Goertz?</p> <p>23 MS. ROSENFELD: I'm sorry, I was on mute.</p> <p>24 No. Thank you.</p> <p>25 MR. BAUMGARDNER: We are going to take --</p>	103	<p>1 -- in this case, we're talking about daycares, if</p> <p>2 there is a lower number that is within the same</p> <p>3 zoning category, for a childcare use, for example, if</p> <p>4 I find that the property is just, you know, for</p> <p>5 whatever reason, couldn't hold that many children, if</p> <p>6 there's somewhere within that range that I could</p> <p>7 place a number that I could support with the evidence</p> <p>8 that we have, that would be my decision. So I would</p> <p>9 not go back to the applicant, I would not go back to</p> <p>10 anyone else for that.</p> <p>11 Now, I'm limited to very specific numbers</p> <p>12 within a range. So if they're requesting use that</p> <p>13 has a minimum I can't go below that, because that's a</p> <p>14 different use of property, for the same reason, I</p> <p>15 can't go above that, because that is a different use</p> <p>16 of property.</p> <p>17 So within the range that is allowed under the</p> <p>18 code, I would have the ability to limit the capacity</p> <p>19 for something like a daycare operation if I found</p> <p>20 that the facts in evidence warranted that.</p> <p>21 MR. HORN: Okay. Thank you.</p> <p>22 MR. BAUMGARDNER: Sure.</p> <p>23 MR. HORN: And I assume also when you</p> <p>24 review the record, you also review the testimony of</p> <p>25 the applicant with respect to statements made that</p>
102	<p>1 we have five minutes left. We have the two</p> <p>2 witnesses, I guess, for the afternoon. We will open</p> <p>3 this back up at 1:00 p.m. for those two final</p> <p>4 witnesses and then any closing remarks by Ms.</p> <p>5 Rosenfeld. Are there any issues with that I terms of</p> <p>6 procedure or any other things that we need to finish</p> <p>7 up here this morning before we take our lunch time</p> <p>8 recess?</p> <p>9 MR. HORN: I just have a quick question.</p> <p>10 MR. BAUMGARDNER: Yes, sir.</p> <p>11 MR. HORN: Typically, how long does it</p> <p>12 take -- you mentioned the 10 days after today to</p> <p>13 submit any written testimony, I can coordinate that</p> <p>14 through Ms. Johnson. But, typically, how long does</p> <p>15 it take for someone in your position to render a</p> <p>16 decision in these matters?</p> <p>17 MR. BAUMGARDNER: We have 30 days under</p> <p>18 county code.</p> <p>19 MR. HORN: 30 days. Okay. And regarding</p> <p>20 the comments you made about, you could come down</p> <p>21 somewhere in the middle; is that somewhere that you</p> <p>22 decide unilaterally or typically if there's</p> <p>23 compromise you go back to the parties? How do you</p> <p>24 typically work that?</p> <p>25 MR. BAUMGARDNER: Depending upon what you</p>	104	<p>1 you can cross check; is that correct as well? You</p> <p>2 would do that independently?</p> <p>3 MR. BAUMGARDNER: That's correct. So part</p> <p>4 of keeping the record open for 10 days after today is</p> <p>5 to actually get the transcript from the court</p> <p>6 reporter. I have to have that in my hand so that</p> <p>7 when we prepare the written report we reference the</p> <p>8 documents, the testimony and we would reference the</p> <p>9 testimony per page of the transcript. So we would be</p> <p>10 pulling that direct testimony out.</p> <p>11 MR. HORN: Okay. Thank you very much.</p> <p>12 MR. BAUMGARDNER: You're welcome. Ms.</p> <p>13 Rosenfeld, anything further before we break for the</p> <p>14 morning?</p> <p>15 MS. ROSENFELD: No. Thank you, Mr.</p> <p>16 Baumgardner.</p> <p>17 MR. BAUMGARDNER: All right. I thank you</p> <p>18 all very much for your testimony here today. I'll</p> <p>19 see some of you back here at 1:00. We are going to</p> <p>20 go off the record at this time in C21-09. The date</p> <p>21 is November 5th, 2021. The time is 11:44 a.m. Thank</p> <p>22 you all very much. Have a good lunch and we'll some</p> <p>23 of you back at 1:00 p.m.</p> <p>24 MS. ROSENFELD: Thank you.</p> <p>25 MR. BAUMGARDNER: Thank you.</p>

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27 (105 to 108)

105	1 (Off the record 11:44 a.m.) 2 (On the record 1:02 p.m.) 3 MR. BAUMGARDNER: All right, everyone, 4 welcome back. We're going to go back on the record. 5 We're going to restart the recording. 6 All right. We are back on the record. This is 7 OZHA case CU21-09 requesting a conditional use for a 8 daycare center for up to 30 children at the property 9 located at 6607 Greentree Road in Bethesda, Maryland. 10 Ms. Evans, are you back? Our court reporter. 11 MS. EVANS: Yes, I'm here. 12 MR. BAUMGARDNER: Great. We are fully 13 back on the record. We had left off with some 14 community members who had testified regarding this 15 application. We are back for the applicant to 16 continue their case in chief. I think we had two 17 witnesses left. Ms. Rosenfeld, the floor is yours. 18 MS. ROSENFELD: Thank you very much, Mr. 19 Baumgardner. And now we'll get into what I consider 20 to be more the nuts and bolts of the application. 21 I'd like to call to the witness stand next, Mr. Doug 22 Tilley, please. 23 MR. BAUMGARDNER: Mr. Tilley, can you 24 please raise your right hand? 25 (Witness sworn)	107	1 four years or so. I've been with O'Connell & 2 Lawrence for 11 and a half years plus or minus. 3 MS. ROSENFELD: And in a capacity of a 4 civil engineer throughout that time? 5 MR. TILLEY: Yes, ma'am. 6 MS. ROSENFELD: Okay. And have you -- oh, 7 what professional licenses do you have in the State 8 of Maryland? 9 MR. TILLEY: In the State of Maryland, in 10 addition to being a registered professional land 11 surveyor I'm a licensed professional engineer. 12 MS. ROSENFELD: Okay. And have you 13 qualified as an expert witness before today? 14 MR. TILLEY: Yes, ma'am. 15 MS. ROSENFELD: Okay. And could you 16 explain the most recent? 17 MR. TILLEY: Sure. The most recent was in 18 the Montgomery County Circuit Court on a matter 19 related to access through an adjacent property with 20 civil engineering relations. I've also qualified in 21 Howard County. 22 MS. ROSENFELD: Okay. And Mr. Hearing 23 Examiner, Mr. Tilley's CV is an exhibit to Exhibit 26 24 in the record. And unless there are concerns or you 25 wish to voir dire him more, I would like to submit
106	1 MR. BAUMGARDNER: Thank you very much. 2 What is your full name and we've already had this 3 once, but we'll do it again for fun, your property 4 address and a good email address for you, please? 5 MR. TILLEY: Sure. Douglas George Tilley 6 with O'Connell & Lawrence, Inc. My address is 17904 7 Georgia Avenue, Suite 302, Olney, Maryland 20832. 8 Best email address is doug D-O-U-G@OCLINC.com. 9 MR. BAUMGARDNER: Thank you very much. 10 Ms. Rosenfeld the witness is yours. 11 MS. ROSENFELD: Yes. Thank you. Mr. 12 Tilley, what is your educational background, please? 13 MR. TILLEY: I have a Bachelor Science 14 Degree in Civil Engineering from the University of 15 Maryland, achieved in 2006. 16 MS. ROSENFELD: And are you also a 17 registered land surveyor? 18 MR. TILLEY: I am a registered 19 professional land surveyor in the State of Maryland, 20 yes. 21 MS. ROSENFELD: Okay. And what is your 22 most recent professional background? 23 MR. TILLEY: I have been the vice- 24 president of engineering and surveying for O'Connell 25 & Lawrence, I've been the vice-president for the past	108	1 him as an expert witness for civil engineering. 2 MR. BAUMGARDNER: Are there any objections 3 from anyone who has logged in, to admitting Mr. 4 Tilley as an expert in civil engineering? If so, 5 indicate, raise your virtual hand or otherwise -- 6 seeing no objections, Mr. Tilley is admitted as an 7 expert in civil engineering for the purposes of this 8 hearing. 9 MS. ROSENFELD: Okay. Thank you. Mr. 10 Tilley, I'd like to draw your attention first, to 11 Exhibit No. 1, which was identified as the 12 application for conditional use; are you familiar 13 with this document? 14 MR. TILLEY: I am. 15 (Exhibit No. 1 for identification) 16 MS. ROSENFELD: And at the time that the 17 application initially was filed, how many students 18 were we seeking as part of the conditional use 19 application? 20 MR. TILLEY: The applicant was originally 21 seeking for 35 students. 22 MS. ROSENFELD: Okay. And it subsequently 23 has been reduced? 24 MR. TILLEY: Yes, ma'am. 25 MS. ROSENFELD: To a maximum of 30?

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28 (109 to 112)

109	<p>1 MR. TILLEY: Yes, ma'am.</p> <p>2 MS. ROSENFELD: Okay. And do you know why</p> <p>3 the number of students requested was decreased?</p> <p>4 MR. TILLEY: Yes, my understanding is that</p> <p>5 the applicant didn't wish to get anywhere near 50</p> <p>6 potential trips and have to complete a complete</p> <p>7 traffic study in the area and wanted to be well</p> <p>8 within the bounds of performing a traffic impact</p> <p>9 statement.</p> <p>10 MS. ROSENFELD: Okay. Thank you. I also</p> <p>11 would like to draw your attention to Exhibit No. 21 in</p> <p>12 the record. This is a document that confirms that</p> <p>13 signs were posted consistent with requirements of the</p> <p>14 Office of Zoning and Administrative Hearings; are you</p> <p>15 familiar with this document?</p> <p>16 MR. TILLEY: Yes, I am.</p> <p>17 MS. ROSENFELD: And did you, in fact, sign</p> <p>18 this document?</p> <p>19 MR. TILLEY: I did.</p> <p>20 (Exhibit No. 21 for identification)</p> <p>21 MS. ROSENFELD: Do you know if signs were</p> <p>22 posted on the property?</p> <p>23 MR. TILLEY: They were.</p> <p>24 MS. ROSENFELD: And can you identify,</p> <p>25 generally, the locations where they were posted?</p>	111	<p>1 MS. ROSENFELD: Okay. And in the course</p> <p>2 of preparing this exhibit, did you familiarize</p> <p>3 yourself with the application materials, the property</p> <p>4 zoning and the relevant master plan?</p> <p>5 MR. TILLEY: Yes, I did.</p> <p>6 MS. ROSENFELD: And did you also review</p> <p>7 the statement of operations, statement of</p> <p>8 justification, Mr. Mehra's traffic statement and Mr.</p> <p>9 Sekerak's land use report, which I believe are</p> <p>10 Exhibits 26, 27, 28 and 30?</p> <p>11 MR. TILLEY: I did.</p> <p>12 MS. ROSENFELD: And have you reviewed the</p> <p>13 Planning Department's staff report and the Planning</p> <p>14 Board letter recommending approval of this</p> <p>15 application at Exhibits 45 and 46?</p> <p>16 MR. TILLEY: Yes, I have.</p> <p>17 MS. ROSENFELD: Okay. Thank you. Would</p> <p>18 you please describe, generally, the zoning of the</p> <p>19 property and the existing site conditions?</p> <p>20 MR. TILLEY: Sure. The property is zoned,</p> <p>21 R200. Currently the property is developed with a</p> <p>22 single-family dwelling unit, a pair of parking areas</p> <p>23 that have been well described herein, one accessible</p> <p>24 off of Greentree Road and one accessible off of</p> <p>25 Fernwood Road. A pair of fenced in playground areas</p>
110	<p>1 MR. TILLEY: Yes. They were posted</p> <p>2 fronting Greentree Road and fronting Fernwood Road.</p> <p>3 MS. ROSENFELD: Okay. And do you know if</p> <p>4 they remain on the property?</p> <p>5 MR. TILLEY: I have not been to the</p> <p>6 property recently, so I can't testify to whether they</p> <p>7 are standing at this moment.</p> <p>8 MS. ROSENFELD: Okay. All right. I'd</p> <p>9 like to draw your attention now to the expert report</p> <p>10 identified in the record as Exhibit 32.</p> <p>11 MR. TILLEY: Yes.</p> <p>12 MR. BAUMGARDNER: Ms. Rosenfeld, it looks</p> <p>13 like 32 we have broken down into letters for mostly</p> <p>14 photos; is that incorrect or is there another exhibit</p> <p>15 number?</p> <p>16 MS. ROSENFELD: It is an incorrect</p> <p>17 reference, Exhibit No. 31.</p> <p>18 MR. BAUMGARDNER: Got it. It should be up</p> <p>19 on your screen.</p> <p>20 MS. ROSENFELD: Okay. Mr. Tilley, can you</p> <p>21 just, generally, describe what Exhibit 31 is?</p> <p>22 MR. TILLEY: Yes. This is a zoning</p> <p>23 analysis and expert report that was filed in support</p> <p>24 of this application, that was authored by myself.</p> <p>25 (Exhibit No. 31 for identification)</p>	112	<p>1 and additional sort of typical site elements you</p> <p>2 would see on a standard property.</p> <p>3 The southern portion of the property is heavily</p> <p>4 wooded and there's fencing and reasonably heavily</p> <p>5 wooded tree stand area on the north side of the</p> <p>6 property.</p> <p>7 MS. ROSENFELD: And do you know what kind</p> <p>8 of structure? Is it a residential structure on the</p> <p>9 property?</p> <p>10 MR. TILLEY: Yes, it is.</p> <p>11 MS. ROSENFELD: Okay. And do you know how</p> <p>12 that property is currently being used?</p> <p>13 MR. TILLEY: It is being used both as a</p> <p>14 residential structure for someone who is living there</p> <p>15 and it's also being used as a daycare facility for 9</p> <p>16 to 12 students.</p> <p>17 MS. ROSENFELD: Okay. Could you summarize</p> <p>18 what we seek in the application pending before the</p> <p>19 hearing examiner today?</p> <p>20 MR. TILLEY: Yes. The applicant is</p> <p>21 seeking to achieve conditional use for a daycare</p> <p>22 center for 13 to 30 students.</p> <p>23 MS. ROSENFELD: And have you reviewed the</p> <p>24 application for conformance with the zoning</p> <p>25 requirements of the Montgomery County zoning code?</p>

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29 (113 to 116)

<p style="text-align: right;">113</p> <p>1 MR. TILLEY: Yes, ma'am. I have.</p> <p>2 MS. ROSENFELD: Okay. Turning to page 3</p> <p>3 of your report and sheet 1 of the site plan, where I</p> <p>4 believe it's duplicated, you have a zoning data table</p> <p>5 chart. Could you summarize that for the hearing</p> <p>6 examiner and explain whether or not the application,</p> <p>7 as presented, meets the R200 zoning standards?</p> <p>8 MR. TILLEY: Certainly. The zoning data</p> <p>9 table is a tabulation of both the design standards</p> <p>10 applicable to a typical development within the R200</p> <p>11 zone and what O'Connell & Lawrence and myself</p> <p>12 observed as the existing site or sort of total</p> <p>13 required elements associated with this individual</p> <p>14 application.</p> <p>15 So, for example, we reviewed conditions such as</p> <p>16 lot area, lot width at the front building line, lot</p> <p>17 coverage, set backs, building height, and parking</p> <p>18 requirements and found that the development as put</p> <p>19 forth within the application is I accordance with the</p> <p>20 zoning standards for the R200 zone.</p> <p>21 MS. ROSENFELD: Okay. And with respect to</p> <p>22 the parking and loading requirements for the site,</p> <p>23 would you please explain how the application</p> <p>24 satisfies those requirements?</p> <p>25 MR. TILLEY: Certainly. So to take the</p>	<p style="text-align: right;">115</p> <p>1 shows the -- of the conditional use site plan, show</p> <p>2 the proposed parking layout on the site. There's</p> <p>3 been, I believe, some prior testimony on the layout</p> <p>4 itself, but you can see that there are four standard</p> <p>5 parking spaces on the -- at the southern most parking</p> <p>6 spaces, there are four standard size parking spaces</p> <p>7 right there. There is one van accessible ADA access</p> <p>8 space directly to the north. So there's a total of 5</p> <p>9 proposed spaces on the Greentree Road side. And then</p> <p>10 there a proposed 6 total spaces show off the Fernwood</p> <p>11 Road entrance to the site, two within the garage, two</p> <p>12 in front of the garage and two on the L-shaped off</p> <p>13 shoot to the North.</p> <p>14 MS. ROSENFELD: Okay. With respect to the</p> <p>15 parking calculations, did the staff at park &</p> <p>16 planning agree with our numbers?</p> <p>17 MR. TILLEY: They did.</p> <p>18 MS. ROSENFELD: Okay. And with respect to</p> <p>19 conformance with the zoning requirements, did they</p> <p>20 also concur that we met the zoning standards for the</p> <p>21 R200 zone?</p> <p>22 MR. TILLEY: Yes, ma'am, they did.</p> <p>23 MS. ROSENFELD: Okay. Thank you. With</p> <p>24 respect to the existing structure, are there going to</p> <p>25 be exterior changes to the lighting for this</p>
<p style="text-align: right;">114</p> <p>1 easy one, loading -- there's no required loading</p> <p>2 space for this particular development, because of the</p> <p>3 type of use proposed, a daycare facility does not</p> <p>4 require a loading space</p> <p>5 For parking, there -- it's a two part</p> <p>6 computation. So first of all, we know that there is</p> <p>7 a residential use within the facility, which requires</p> <p>8 a total of two off street parking spaces. Further,</p> <p>9 since there is a daycare facility -- the daycare</p> <p>10 facility computation is based on Table 59-62(4B)</p> <p>11 within the zoning ordinance, which requires a total</p> <p>12 of three parking spaces per 1,000 square foot of</p> <p>13 gross floor area for a daycare facility.</p> <p>14 So O'Connell & Lawrence measured the amount of</p> <p>15 area that's used for the daycare facility within the</p> <p>16 residential structure, which is, approximately, 2,819</p> <p>17 square foot. That area is shown on Sheet 2 of our</p> <p>18 conditional use site plan as a hatch on the bottom</p> <p>19 right corner. I believe that's exhibit 38B is the</p> <p>20 site plan.</p> <p>21 So following a simple computation after</p> <p>22 determining that area, we determined that there were</p> <p>23 9 spaces required for the daycare use and the</p> <p>24 summation of 9 and 2 is 11 total spaces required.</p> <p>25 To meet the parking requirements, Exhibit 38B</p>	<p style="text-align: right;">116</p> <p>1 property?</p> <p>2 MR. TILLEY: There will not be exterior</p> <p>3 lighting changes.</p> <p>4 MS. ROSENFELD: Okay. Are there going to</p> <p>5 be exterior changes to any of the paved, parking or</p> <p>6 driving areas?</p> <p>7 MR. TILLEY: There will be no expansion to</p> <p>8 the paved, parking or driveway areas. There's a</p> <p>9 little bit of grading work that needs to be done to</p> <p>10 bring the site to ADA conformance with the new</p> <p>11 parking lot. But the area of asphalt will not</p> <p>12 expand.</p> <p>13 MS. ROSENFELD: So that grading will occur</p> <p>14 within what is the currently paved asphalt area?</p> <p>15 MR. TILLEY: That is correct.</p> <p>16 MS. ROSENFELD: Okay. Would you please</p> <p>17 explain to the hearing examiner the limit of exterior</p> <p>18 changes that are proposed as part of this</p> <p>19 application?</p> <p>20 MR. TILLEY: Yes. There will be striping</p> <p>21 on the property to stripe in the parking spaces that</p> <p>22 are proposed as part of Exhibit 38B. The very minor</p> <p>23 asphalt grading that needs to occur to bring the ADA</p> <p>24 parking space into conformance with suitable American</p> <p>25 Disability Act regulations. There will be a new ADA</p>

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30 (117 to 120)

117	<p>1 ramp proposed to reach from the access aisle adjacent</p> <p>2 to the van accessible space to the main door to the</p> <p>3 daycare facility which is located on the southern</p> <p>4 wall and a new set of stairs that has to be installed</p> <p>5 to reach that area and a new fire hydrant will need</p> <p>6 to be installed in the front of the property. Excuse</p> <p>7 me, on the Greentree Road side, I apologize, to</p> <p>8 accommodate fire and rescue access regulations.</p> <p>9 MS. ROSENFELD: Okay. I'd like to draw</p> <p>10 your attention to Section 59.6.2.5.K of the zoning</p> <p>11 ordinance which requires off street parking</p> <p>12 facilities to be located to meet a residential</p> <p>13 character and pedestrian friendly street. Can you</p> <p>14 please explain whether or not this provision applies</p> <p>15 and if it does, do we comply with it?</p> <p>16 MR. TILLEY: It is my belief that this</p> <p>17 provision does not apply. That particular provision</p> <p>18 is related to off street parking facilities in rear</p> <p>19 and side yards, where these are both located in front</p> <p>20 yards. So that particular requirement is not</p> <p>21 applicable to this development.</p> <p>22 MS. ROSENFELD: Okay. And I'd also like</p> <p>23 to refer your attention to Section 59.6.2.5.M2,</p> <p>24 regarding sizing of the parking pads. Could you</p> <p>25 please explain to the hearing examiner if the two</p>	119	<p>1 of parking lot landscaping and screening requirements</p> <p>2 and I believe that you had concluded that they were</p> <p>3 not required. Would you please discuss -- we are</p> <p>4 going to be providing landscaping, would you please</p> <p>5 discuss your analysis with this and what we have</p> <p>6 proffered in response to staff requests.</p> <p>7 MR. TILLEY: Certainly. So, landscaping</p> <p>8 or screening would have been required if the -- it's</p> <p>9 required where certain surface parking area abut</p> <p>10 facilities such as agricultural, rural residential or</p> <p>11 residential detached zoned properties. In this case</p> <p>12 we have adjacent, rural -- or excuse me, residential</p> <p>13 detached zoned properties to the north, but that area</p> <p>14 is already screened with fencing and with significant</p> <p>15 tree stand with understory. The remaining property</p> <p>16 simply borders -- it abuts roads, so it's all road</p> <p>17 frontage around the remainder of the property.</p> <p>18 Planning staff from the Maryland National</p> <p>19 Capital Park and Planning Commission recommended --</p> <p>20 or requested additional screening along the southern</p> <p>21 parking lot adjacent to the Greentree Road side and</p> <p>22 the applicant has agreed to that, to provide certain</p> <p>23 landscaping along the parking lot on the Greentree</p> <p>24 Road side.</p> <p>25 MS. ROSENFELD: Okay. So, in your</p>
118	<p>1 existing parking pads conform with the standards of</p> <p>2 that provision?</p> <p>3 MR. TILLEY: They do. These particular</p> <p>4 parking pads have not changed in size and</p> <p>5 configuration since prior to October 26, 2010, which</p> <p>6 is confirmed via historical data attained from Google</p> <p>7 Street View, Google Earth and you can -- and can be</p> <p>8 seen in Figure 4 of, I believe, it's page 6 -- page</p> <p>9 5, excuse me, of the report that I authored, which is</p> <p>10 Exhibit 31. You can see site imagery taken from</p> <p>11 August 28, 2010 which shows the parking layout in the</p> <p>12 same configuration as it currently exists.</p> <p>13 MS. ROSENFELD: Okay. Thank you. And is</p> <p>14 bicycle parking required?</p> <p>15 MR. TILLEY: So initially we had believed</p> <p>16 that a single bicycle parking space was to be</p> <p>17 required. That was in consideration being very sort</p> <p>18 of conservative on whether that would be necessary.</p> <p>19 During the hearing -- during the Planning Board</p> <p>20 hearing with staff, staff confirmed that no bicycle</p> <p>21 parking would be required. However, there is the</p> <p>22 possibility of storing bicycles within the structure</p> <p>23 as needed. So it does exist if necessary.</p> <p>24 MS. ROSENFELD: Okay. Mr. Tilley, on page</p> <p>25 6 of your report there's a fairly extensive analysis</p>	120	<p>1 opinion, does the application satisfy the</p> <p>2 requirements for landscaping screening?</p> <p>3 MR. TILLEY: Yes, ma'am. It does.</p> <p>4 MS. ROSENFELD: Okay. Thank you. Would</p> <p>5 you please explain to the hearing examiner whether we</p> <p>6 satisfy fire service requirements for the property?</p> <p>7 MR. TILLEY: Yes, ma'am, we do. This was</p> <p>8 one of our concerns with this project. In response</p> <p>9 to that we discussed this with fire and rescue</p> <p>10 services and prepared a statement of performance</p> <p>11 based standards, which Mr. Hearing Examiner, I</p> <p>12 believe is -- there are two exhibits attached to</p> <p>13 this, Exhibit 33 is the fire access plan and Exhibit</p> <p>14 37 is the statement of performance based design.</p> <p>15 In particular, we have met this requirement by</p> <p>16 -- the fire department allows you to perform the</p> <p>17 statement of performance based design when you have</p> <p>18 older neighborhoods. In this particular case a fire</p> <p>19 fighter or emergency services personnel is able to</p> <p>20 reach every particular part of the proposed daycare</p> <p>21 facility within a 200 foot walking path from the</p> <p>22 proposed location of the truck. The truck would have</p> <p>23 to go to Green -- it's based on a starting point on</p> <p>24 Greentree Road, that's due to the address of the</p> <p>25 property and a individual fire fighter in the</p>

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121	<p>1 proposed condition can reach every part of the</p> <p>2 daycare facility within a 200 foot walking path,</p> <p>3 which was measured by O'Connell & Lawrence personnel.</p> <p>4 Further, the proposed hydrant is a part of that</p> <p>5 statement of performance based design as well, which</p> <p>6 is shown on the conditional use site plan. So that</p> <p>7 has been approved by fire and rescue staff as part of</p> <p>8 -- and had been filed with this application for that.</p> <p>9 MR. BAUMGARDNER: We're going to pause</p> <p>10 real quick, Ms. Rosenfeld. Mr. Saadat, I see that</p> <p>11 you have your hand raised, did you have a question?</p> <p>12 MR. SAADAT: Yes. So on the northside of</p> <p>13 this property --</p> <p>14 MR. BAUMGARDNER: So, one second. So do</p> <p>15 you have a question of me or a question for this</p> <p>16 witness?</p> <p>17 MR. SAADAT: For the witness.</p> <p>18 MR. BAUMGARDNER: All right. So we'll</p> <p>19 taken your question at the end of Ms. Rosenfeld's</p> <p>20 examination. I just wanted to make sure you had --</p> <p>21 that there wasn't some issue with --</p> <p>22 MR. SAADAT: Oh no.</p> <p>23 MR. BAUMGARDNER: Okay. Great. Hold your</p> <p>24 question for a few more minutes while Ms. Rosenfeld</p> <p>25 completes her questioning of Mr. Tilley. Thank you.</p>	123	<p>1 MR. TILLEY: Yes, ma'am. There is a</p> <p>2 suitable parking area and circular driveway that has</p> <p>3 been fully analyzed and testified to already by Mr.</p> <p>4 Mehra, I've reviewed his report and based on my</p> <p>5 opinion, I agree with his conclusions here on.</p> <p>6 MS. ROSENFELD: Okay. And did planning</p> <p>7 department staff also concur with Mr. Mehra's cueing</p> <p>8 analysis?</p> <p>9 MR. TILLEY: They did.</p> <p>10 MS. ROSENFELD: Okay. Section</p> <p>11 59.3.4.4.E.2.C, says that the number of parking</p> <p>12 spaces may be reduced if the number of spaces are not</p> <p>13 required. I'm summarizing here, in your opinion, do</p> <p>14 we satisfy this requirement?</p> <p>15 MR. TILLEY: We do.</p> <p>16 MS. ROSENFELD: Okay. And we've gone</p> <p>17 through that testimony already, correct?</p> <p>18 MR. TILLEY: Yes, that's correct. The</p> <p>19 applicant is not asking for a reduction in parking</p> <p>20 staff and therefore we satisfy that condition.</p> <p>21 MS. ROSENFELD: Okay. Thank you. Section</p> <p>22 59.3.4.4.E.2.D, says for a family daycare where the</p> <p>23 provider is not a resident and cannot meet the non-</p> <p>24 resident provider requirement screening under</p> <p>25 Division 6.5 is not required. Does this provision</p>
122	<p>1 MR. TILLEY: Michele, you're muted.</p> <p>2 MR. BAUMGARDNER: Happens to me all the</p> <p>3 time.</p> <p>4 MS. ROSENFELD: Thank you. Mr. Tilley,</p> <p>5 there are provisions in the zoning code, Section</p> <p>6 3.1.6 specific to the conditional use requirements</p> <p>7 for this particular use and so, I'd like to refer you</p> <p>8 to those very specific requirements, Section</p> <p>9 59.3.4.4.E.2.A, the facility must not be located in a</p> <p>10 townhouse or duplex building type. In your opinion,</p> <p>11 do we satisfy that requirement?</p> <p>12 MR. TILLEY: Yes, we do.</p> <p>13 MS. ROSENFELD: Okay. And can you just</p> <p>14 specify on the record why?</p> <p>15 MR. TILLEY: The facility is proposed to</p> <p>16 be located in a single-family dwelling unit as</p> <p>17 opposed to a duplex or townhouse unit type.</p> <p>18 MS. ROSENFELD: Thank you. Zoning</p> <p>19 Ordinance Section 59.3.4.4.E.2.B, an adequate area</p> <p>20 for the discharge and pick up of children is</p> <p>21 provided. In your opinion, do we satisfy that</p> <p>22 requirement?</p> <p>23 MR. TILLEY: Yes, we do.</p> <p>24 MS. ROSENFELD: And could you please</p> <p>25 explain the basis of your conclusion?</p>	124	<p>1 apply to us?</p> <p>2 MR. TILLEY: It does not.</p> <p>3 MS. ROSENFELD: Okay. And why is that?</p> <p>4 MR. TILLEY: The proposed development is</p> <p>5 not a family daycare. But further, we meet all</p> <p>6 screening requirements in the first place.</p> <p>7 MS. ROSENFELD: Okay. And under -- the</p> <p>8 last one, Section 59.3.4.4.E.2.E, says in the AR</p> <p>9 zone, the agricultural zone, this use may be</p> <p>10 prohibited by Section 3.1.5 transferable development</p> <p>11 rights, does this provision apply to the subject</p> <p>12 application?</p> <p>13 MR. TILLEY: It does not. This</p> <p>14 application is located in the R200 zone, it is not in</p> <p>15 the agricultural reserve zone, so this particular</p> <p>16 provision is not applicable in this case.</p> <p>17 MS. ROSENFELD: Okay. Mr. Hearing</p> <p>18 Examiner, there are -- some of this analysis is</p> <p>19 outlined in more detail in Mr. Tilley's report. I</p> <p>20 know you have that available to you, I didn't want</p> <p>21 him to read the report into the record verbatim, so</p> <p>22 we went through this fairly quickly, but I do think</p> <p>23 we've covered all of the relevant points.</p> <p>24 A couple final questions, Mr. Tilley, in your</p> <p>25 expert opinion, does the proposed daycare center</p>

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125	<p>1 satisfy all of the requirements of the zoning code</p> <p>2 necessary for the hearing examiner to approve this</p> <p>3 application?</p> <p>4 MR. TILLEY: In my expert opinion, it</p> <p>5 does.</p> <p>6 MS. ROSENFELD: Mr. Hearing Examiner, I</p> <p>7 have no further questions of this witness at this</p> <p>8 time.</p> <p>9 MR. BAUMGARDNER: Great. Let me go</p> <p>10 through my notes real quick to see if I have any</p> <p>11 follow up questions for Mr. Tilley.</p> <p>12 Mr. Tilley, at the beginning of Ms. Rosenfeld's</p> <p>13 examination you had mentioned -- or not quite the</p> <p>14 beginning, but towards the beginning, there was a</p> <p>15 specific provision regarding parking that you said</p> <p>16 was not applicable to this application because the</p> <p>17 parking provided is in front yards. Can you go back</p> <p>18 over that real quickly again? And if you have that</p> <p>19 particular part of the code?</p> <p>20 MR. TILLEY: Sure. Bear with me for one</p> <p>21 moment, sir.</p> <p>22 MR. BAUMGARDNER: Sure. And if you need</p> <p>23 me to clarify my question, I'm happy to do so. I</p> <p>24 didn't ask it very well.</p> <p>25 (pause)</p>	127	<p>1 second. Mr. Saadat, any questions of Mr. Tilley</p> <p>2 regarding his testimony here today or the exhibits</p> <p>3 that he had referenced?</p> <p>4 MR. SAADAT: Yeah, so my question is</p> <p>5 related to on the north side of the property where</p> <p>6 the Greentree meets the Fernwood Road, it used to be</p> <p>7 a wooded area, now there is recent development, there</p> <p>8 is a shed over there. Have you identified that shed</p> <p>9 in your exhibits?</p> <p>10 MR. TILLEY: Sir, did you say the north</p> <p>11 side or are you referring to the south side?</p> <p>12 MR. SAADAT: So it is, basically, on the</p> <p>13 north side of the property. There is a shed -- you</p> <p>14 know where the triangle -- it's almost like a</p> <p>15 triangle area, between Greentree and Fernwood Road.</p> <p>16 There is a shed on this property, which never used to</p> <p>17 be there before. I saw it maybe less than a month</p> <p>18 ago. So are you showing that shed -- it's right</p> <p>19 behind the four parking spaces you are showing. It's</p> <p>20 right over there.</p> <p>21 MR. TILLEY: So the original survey for</p> <p>22 this project was conducted in August 2020, so if the</p> <p>23 shed was there at that time it would have been picked</p> <p>24 up.</p> <p>25 MR. SAADAT: Right. So that shed is a</p>
126	<p>1 MR. TILLEY: So the section of the code</p> <p>2 that I'm referring to is Section 59.6.2.5.K regarding</p> <p>3 off street parking facilities. There's a provision</p> <p>4 that states that they must be located to maintain a</p> <p>5 residential character and pedestrian friendly street</p> <p>6 and that rear and side parking setbacks must be</p> <p>7 developed in accordance with the requirements of</p> <p>8 Section 59.6.2.5.K.2, I skipped the dots there, I</p> <p>9 think you know what I'm talking about, of the zoning</p> <p>10 ordinance.</p> <p>11 The parking areas in question with this</p> <p>12 application are located in the respective front yards</p> <p>13 of Greentree and Fernwood Roads and that's why it's</p> <p>14 my belief that those setback requirements are not</p> <p>15 applicable in this case.</p> <p>16 MR. BAUMGARDNER: So, it's your opinion</p> <p>17 that the parking area off of Fernwood would be</p> <p>18 considered a front yard and not a rear yard?</p> <p>19 MR. TILLEY: Yes, sir.</p> <p>20 MR. BAUMGARDNER: I think that was the</p> <p>21 only follow up I had, Ms. Rosenfeld. Turning it over</p> <p>22 to folks who have logged in who want to ask</p> <p>23 questions. We'll start with Mr. Saadat and then</p> <p>24 we'll go -- it looks like we have Mr. Goertz, who is</p> <p>25 still logged in, so we'll check in with him in a</p>	128	<p>1 recent development and I don't know what's the</p> <p>2 purpose of that shed. Is it related to daycare?</p> <p>3 Because it is right next to the children playing</p> <p>4 area, which is unfenced. So I would like to clarify</p> <p>5 what was the purpose of that shed? Is it related to</p> <p>6 the extended purpose of daycare and all that kind of</p> <p>7 stuff. Because --</p> <p>8 MR. TILLEY: I'm sorry. I'm sorry, are</p> <p>9 you done? I'm sorry, sir.</p> <p>10 MR. SAADAT: Yeah, because that shed is a</p> <p>11 recent development and it's right next to the playing</p> <p>12 area of the kids.</p> <p>13 MR. TILLEY: Sir, I do not know the</p> <p>14 purpose of that shed. My expertise in this case is</p> <p>15 limited to civil engineering and I was not involved</p> <p>16 with any placement of a shed in the location you've</p> <p>17 described. So, unfortunately, I can't answer your</p> <p>18 question.</p> <p>19 MR. SAADAT: The reason I'm bringing it up</p> <p>20 is because that shed is a part of the structure and</p> <p>21 that is over there, so your documents are incomplete</p> <p>22 then.</p> <p>23 MR. BAUMGARDNER: Well, just so we</p> <p>24 clarify, there was a survey done, there was a land</p> <p>25 use report that was created at a certain point in</p>

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129	<p>1 time which would have indicated what was on the</p> <p>2 property. I mean, if there's been a shed placed</p> <p>3 there, you know, I -- from your -- that may be, but</p> <p>4 again, this is a time to ask questions of Mr. Tilley</p> <p>5 regarding his report and his survey.</p> <p>6 So I'm not really sure of the relevance of the</p> <p>7 shed for Mr. Tilley, but you're certainly welcome to</p> <p>8 testify about any shed when it comes to your time to</p> <p>9 testify, Mr. Saadat.</p> <p>10 MR. SAADAT: So, Mr. Tilley, you have not</p> <p>11 seen that shed in your visit of this property?</p> <p>12 MR. TILLEY: I do not know what shed</p> <p>13 you're referring to, I'm sorry, sir.</p> <p>14 MR. SAADAT: Okay. There's only one shed</p> <p>15 on the property between Greentree and Fernwood Road,</p> <p>16 that triangle area.</p> <p>17 MR. TILLEY: Sir, as I previously</p> <p>18 testified, I have not been to the property to see the</p> <p>19 signage that has been placed in a period of time. So</p> <p>20 if there's been a shed that's recently placed, I</p> <p>21 don't have knowledge of that, I'm sorry.</p> <p>22 MR. SAADAT: So, I'll reserve this</p> <p>23 question for later on. I would like to know the</p> <p>24 purpose of that shed, later on.</p> <p>25 MR. BAUMGARDNER: Okay. Would anyone else</p>	131	<p>1 MS. ROSENFELD: And Mr. Sekerak, can you,</p> <p>2 briefly, explain your educational background?</p> <p>3 MR. SEKERAK: Bachelor of Science in</p> <p>4 landscape architecture.</p> <p>5 MS. ROSENFELD: Okay. And what is your</p> <p>6 professional background?</p> <p>7 MR. SEKERAK: 37 years of practicing</p> <p>8 landscape architecture and land use planning. I'm</p> <p>9 licensed landscape architect in three states,</p> <p>10 including Maryland and I'm certified planner,</p> <p>11 certified by the American Institute of Certified</p> <p>12 Planners.</p> <p>13 MS. ROSENFELD: Okay. And have you</p> <p>14 qualified as an expert witness before?</p> <p>15 MR. SEKERAK: Many times. Most recently</p> <p>16 this year, March with the hearing examiner and June</p> <p>17 with the board of appeals.</p> <p>18 MS. ROSENFELD: Okay. Mr. Baumgardner,</p> <p>19 Mr. Sekerak's CV is an attachment to Exhibit 26 in</p> <p>20 the record and if there are no objections I'd like to</p> <p>21 submit as an expert in land use planner and a</p> <p>22 landscape architect.</p> <p>23 MR. BAUMGARDNER: Mr. Sekerak has actually</p> <p>24 appeared before me before. Are there any objections</p> <p>25 to admitting Mr. Sekerak as an expert in land</p>
130	<p>1 like to ask Mr. Tilley any questions with regard to</p> <p>2 his report or his testimony here today? Seeing no</p> <p>3 one indicating an interest in asking Mr. Tilley any</p> <p>4 questions, any redirect or follow up, Ms. Rosenfeld,</p> <p>5 for Mr. Tilley?</p> <p>6 MS. ROSENFELD: No. Thank you.</p> <p>7 MR. BAUMGARDNER: Thank you very much for</p> <p>8 your testimony, sir.</p> <p>9 MR. TILLEY: Thank you, sir.</p> <p>10 MR. BAUMGARDNER: Turning it back over to</p> <p>11 you, Ms. Rosenfeld, for your next witness.</p> <p>12 MS. ROSENFELD: Yes. And I would like to</p> <p>13 call my final witness for this morning, Mr. John</p> <p>14 Sekerak.</p> <p>15 MR. SEKERAK: Good afternoon.</p> <p>16 MR. BAUMGARDNER: Good afternoon, sir.</p> <p>17 Can you please raise your right hand?</p> <p>18 (Witness sworn)</p> <p>19 MR. BAUMGARDNER: Thank you. Please give</p> <p>20 us your full name, your business address once again</p> <p>21 and a good email address for you, please.</p> <p>22 MR. SEKERAK: My name is John Sekerak,</p> <p>23 Jr., I'm with Stantec, the address is 6 Montgomery</p> <p>24 Village Avenue, Suite 620, in Gaithersburg. My email</p> <p>25 address would be John.Sekerak@Stantec.com.</p>	132	<p>1 planning? Hearing none, he is admitted for the</p> <p>2 purposes of this hearing as an expert in land</p> <p>3 planning. Any other areas, Ms. Rosenfeld or will</p> <p>4 land planning be sufficient?</p> <p>5 MS. ROSENFELD: I think land planning will</p> <p>6 be sufficient.</p> <p>7 MR. BAUMGARDNER: All right. The witness</p> <p>8 is yours.</p> <p>9 MS. ROSENFELD: All right. Mr. Sekerak,</p> <p>10 have you prepared an expert report in connection with</p> <p>11 this application?</p> <p>12 MR. SEKERAK: Yes. Exhibit 28 was</p> <p>13 prepared in February of this year and amended in</p> <p>14 August of this year.</p> <p>15 MS. ROSENFELD: Okay. And in preparing</p> <p>16 that report did you familiarize yourself with the</p> <p>17 application materials, the property zoning and the</p> <p>18 relevant master plan?</p> <p>19 MR. SEKERAK: Yes, I have. Also, all the</p> <p>20 application materials, visited the site a number of</p> <p>21 times.</p> <p>22 MS. ROSENFELD: Okay. And did you review</p> <p>23 the statement of operations, the statement of</p> <p>24 justification and Mr. Mehra's traffic statement and</p> <p>25 MR. Tilley's zoning report?</p>

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133	<p>1 MR. SEKERAK: Yes, I have.</p> <p>2 MS. ROSENFELD: And finally, did you</p> <p>3 review the Planning Department's staff report and</p> <p>4 Planning Board letter recommending approval of the</p> <p>5 application?</p> <p>6 MR. SEKERAK: Yes, I have.</p> <p>7 MS. ROSENFELD: Okay. There are several</p> <p>8 topics I'm going to ask you to address, unless the</p> <p>9 hearing examiner raises site specific questions I'm</p> <p>10 not going to ask you to reiterate testimony that was</p> <p>11 already presented by the other witnesses, except if</p> <p>12 necessary to support your testimony.</p> <p>13 To begin with, have you identified a</p> <p>14 "surrounding neighborhood", for purposes of</p> <p>15 establishing the nearby properties that would be most</p> <p>16 directly affected by the proposed use?</p> <p>17 MR. SEKERAK: I have and it was included</p> <p>18 on page 14 of my report, Exhibit No. 28. You may</p> <p>19 want to pull that up, Mr. Examiner.</p> <p>20 (Exhibit No. 28 for identification)</p> <p>21 MR. BAUMGARDNER: It should be on your</p> <p>22 screen now.</p> <p>23 MS. ROSENFELD: Could you identify the</p> <p>24 proposed neighborhood and describe the land use</p> <p>25 characteristics of the properties within your defined</p>	135	<p>1 could be a fourth.</p> <p>2 MS. ROSENFELD: Okay. Did planning staff</p> <p>3 concur with your delineation of the neighborhood</p> <p>4 boundaries?</p> <p>5 MR. SEKERAK: Not precisely. They are</p> <p>6 very similar, certainly in size and scale. The staff</p> <p>7 did not go quite as far East as I did. They went a</p> <p>8 little bit further to the South, they went a little</p> <p>9 bit -- not as far to the North and they did include</p> <p>10 Woods academy to the West. As a whole, it's --</p> <p>11 again, I can go over the rationale for how I chose to</p> <p>12 strike that line along the -- delineated the</p> <p>13 surrounding neighborhood.</p> <p>14 The most substantive difference is their</p> <p>15 inclusion of Woods Academy, which is a private</p> <p>16 educational institution a little further West. It's</p> <p>17 not a special exception, it's on county owned</p> <p>18 property, so it is a permitted use in the R200 zone.</p> <p>19 But that would be the most substantive difference and</p> <p>20 quite honestly as I was preparing this I drove up and</p> <p>21 down along that road many times and debated about</p> <p>22 whether or not to include that in the property</p> <p>23 neighborhood.</p> <p>24 So the bottom line is, I have no problem with</p> <p>25 staff or my delineation of the neighborhood, all my</p>
134	<p>1 neighborhood?</p> <p>2 MR. SEKERAK: Okay. The subject property</p> <p>3 outlined in what appears pink, to the east the</p> <p>4 neighborhood extends over to Friar Road, those lots</p> <p>5 fronting along Friar's Road to the north, those lots</p> <p>6 fronting on Mariabel -- I'm sorry, Mariwood Road and</p> <p>7 then to the south stops at the back of the lots that</p> <p>8 are fronting along Bradley Boulevard and then to the</p> <p>9 west along Greentree Road over to Woods Academy.</p> <p>10 Now, I can -- all the uses within that are</p> <p>11 single-family detached homes. It's a mixture of R200</p> <p>12 like the subject property, a narrow band of R90 on</p> <p>13 the confronting side of Fernwood Road and then</p> <p>14 another strip of R60 zoned properties for those</p> <p>15 fronting along Friar's Road.</p> <p>16 MS. ROSENFELD: Okay. Are there other</p> <p>17 approved conditional use or special exception</p> <p>18 properties within the neighborhood?</p> <p>19 MR. SEKERAK: Yes. I had identified</p> <p>20 three, two as accessory apartments and one for a</p> <p>21 daycare center up to 15 children. Staff had</p> <p>22 identified one more up along Mariwood Road. I'd seen</p> <p>23 that number reference in the record, I was not able</p> <p>24 to find any information on there and site</p> <p>25 observations, I don't think it's active, so that</p>	136	<p>1 findings would be the same for both.</p> <p>2 MS. ROSENFELD: Okay. That was my</p> <p>3 question. Assuming the Hearing Examiner adopts the</p> <p>4 delineation offered by staff, would that change any</p> <p>5 of the findings or conclusions that we're going to</p> <p>6 discuss going forward with your testimony?</p> <p>7 MR. SEKERAK: It would not.</p> <p>8 MS. ROSENFELD: Okay. There are four</p> <p>9 letters in the record from residents within the</p> <p>10 defined neighborhood, do you know if they reside</p> <p>11 within the defined neighborhood established by you</p> <p>12 and by staff?</p> <p>13 MR. SEKERAK: They do. They're nearby on</p> <p>14 the other side of the confronting properties and a</p> <p>15 little bit south along Fernwood Road.</p> <p>16 MS. ROSENFELD: And would you be able to</p> <p>17 identify for the hearing examiner where those</p> <p>18 properties are located?</p> <p>19 MR. SEKERAK: I could if the hearing</p> <p>20 examiner could bring up that exhibit again?</p> <p>21 MR. BAUMGARDNER: Sure.</p> <p>22 MR. SEKERAK: At the southern tip of the</p> <p>23 subject property across Fernwood Road, you can see</p> <p>24 Eyebrow Court, which is also identified as Fernwood</p> <p>25 Road. There are four lots that front along that</p>

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<p>137</p> <p>1 Eyebrow Court -- nope, to the southern tip of the 2 subject property and then go -- yeah, that red -- the 3 red outline and just across Fernwood Road from that 4 -- that's the Eyebrow Court, yes. 5 MS. ROSENFELD: Okay. And are they -- 6 MR. SEKERAK: The three -- 7 MS. ROSENFELD: If you could identify 8 them? 9 MR. SEKERAK: Yeah, the three folks who 10 have participated in the hearing so far are -- and 11 I'll start at the -- of those four houses, the one 12 along the south side of the court and then going 13 counter clockwise. It would be that being the first 14 one and then the third house and the fourth house. 15 MS. ROSENFELD: Okay. Thank you. Mr. 16 Hearing Examiner I just wanted you to understand 17 where those four properties were located in the 18 context of the application. 19 Mr. Sekerak, I'm going to ask you some 20 questions regarding master plan recommendations 21 applicable to this case. What is the governing 22 master plan? 23 MR. SEKERAK: It is the 1990 Bethesda 24 Chubby Chase Master Plan. 25 MS. ROSENFELD: And does the -- I'm going</p>	<p>139</p> <p>1 this as part of the contributing character of a 2 neighborhood. And it's not just uncommon, but 3 remarkable. 4 MS. ROSENFELD: So in your report are 5 those Master Plan recommendations summarized on pages 6 5 through 7? 7 MR. SEKERAK: Yes. Well, actually three 8 -- yeah, I'm sorry -- page 3 is the Master Plan page, 9 but yes, 5 through 7, I went through each one in some 10 explanation and how it applies. And I'd be happy to 11 go over each of those, because it's a very -- again, 12 it's remarkable how applicable this application is 13 for this particular use in this Master Plan area. 14 MS. ROSENFELD: And I certainly don't 15 think you need to go through all of them, because I 16 know the hearing examiner has our report available to 17 him, but if you could pick out one or two as examples 18 of the Master Plan recommendations as they would 19 relate to this use. 20 MR. SEKERAK: Okay. On page 145 of the 21 Master Plan, community services and needs plan. It 22 identified -- the way we meet the special needs of 23 the elderly and for child daycare and for other 24 special needs group. It also relates to our sense of 25 community that cares about its residents. And the</p>
<p>138</p> <p>1 to shorthand reference it as the BCC Master Plan. 2 Does it have any property specific recommendations 3 for the subject property? 4 MR. SEKERAK: The do not discuss this 5 specific property, but there are so many 6 recommendations in there that are -- that comport 7 with our application that you would think that they 8 almost had this property in mind. 9 MS. ROSENFELD: Okay. So I -- to -- does 10 the Master Plan have specific recommendations then 11 regarding the proposed type of use? 12 MR. SEKERAK: Yes. Yes, it is replete 13 with recommendations for neighborhood serving 14 childcare services, daycare services in general and 15 then there are some even more specific 16 recommendations that strongly encouraging them within 17 single family homes and for very young children. 18 So our application for three months to five 19 years is particularly in line with the Master Plan 20 recommendations. And, again, they're many repeated 21 references for just this type of use on pages -- and 22 you can see from my report, page 5, 6, 20, 29, 33, 23 145 and 155 and, again, I just consider this 24 remarkable -- not just unusual, but remarkable, how 25 often it refers to community serving services like</p>	<p>140</p> <p>1 BCC -- some of the most critical needs are for the 2 frail elderly and for very young children. And, 3 again, that's a remarkable reference, because we are 4 providing services for the very young children, 5 again, the particular age group that this application 6 serves. 7 And the fact that it's not only compatible with 8 the neighborhood, but it contributes to the sense of 9 a residential community. 10 MS. ROSENFELD: And on page 145 does it 11 also say -- does the Master Plan also say to support 12 both residential and employment based childcare 13 services? 14 MR. SEKERAK: Yes, it does. 15 MS. ROSENFELD: And does the subject 16 property fall within one of those categories? 17 MR. SEKERAK: Yes, we are certainly the 18 residential based -- the fact that we're in a single- 19 family home, that it is an existing use that's just 20 being expanded, again, just shows the degree of 21 conformity with the Master Plan recommendation. 22 MS. ROSENFELD: And if I could turn your 23 attention -- 24 MR. SEKERAK: Well, I said there was no 25 specific reference to this property, but it does</p>

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<p>141</p> <p>1 reference continuing the R200 zoning for this 2 property and the daycare for 13 to 30 is a permitted 3 use by conditional use in the R200 zone. 4 MS. ROSENFELD: Okay. And if I could turn 5 your attention also to page 5 of your report, 6 specific to the recommendation of the BCC Plan, you 7 talk about demand for child daycare in the BCC area, 8 if you could just summarize what the Master Plan says 9 in that recommendation as well? 10 MR. SEKERAK: I'm sorry, on page 5 you 11 said? 12 MS. ROSENFELD: I believe it's on page 5 13 of your report, but I may be wrong. 14 MR. SEKERAK: I can paraphrase, but I 15 think you're referring to there's a critical need for 16 that -- 17 MS. ROSENFELD: It's page 7 of your 18 report. I don't want to send Mr. Baumgardner running 19 in the wrong direction. 20 MR. SEKERAK: Okay. 21 MS. ROSENFELD: It's page 155 of the BCC 22 Plan and it's page 7 of your report. 23 MR. SEKERAK: Right. The critical need 24 for it. It identifies the scarce supply of centers 25 for children of ages two and under, for all day child</p>	<p>143</p> <p>1 MS. ROSENFELD: Okay. Mr. Baumgardner, 2 rather than reading the full citation to the next 3 series of questions, I'm referencing Section 59.7.3.1 4 and then I'm just going from now to say E.B., E.C., 5 okay. 6 MR. BAUMGARDNER: It will take you several 7 days to repeat over and over again. 8 MS. ROSENFELD: Yes, I agree. The E.B. 9 requires that the hearing examiner find that the 10 proposed development satisfies the requirements of 11 the zone and to the extent that he finds it necessary 12 to insure compatibility, meets the general 13 requirements under Article 59.6; does this 14 application meet the zoning standards set forth in 15 E.B.? 16 MR. SEKERAK: Yes. 59.3 and 59.6 have 17 been thoroughly analyzed in the zoning analysis by 18 O'Connell and Lawrence and Mr. Tilley had previously 19 testified. I've reviewed that report thoroughly and 20 have worked with Mr. Tilley in the preparation of the 21 application and I concur with his conclusions. 22 MS. ROSENFELD: E.C. requires the hearing 23 examiner to find that the proposed development 24 substantially conforms with the recommendations of 25 the applicable Master Plan. I think you just</p>
<p>142</p> <p>1 daycare center. It goes on to say by utilizing 2 existing dwelling units, they require minimum 3 additional capital to provide the services and the 4 development of centers should be encouraged. So the 5 -- again, this is under child needs and -- you know, 6 very accurately describes our use or proposed use as 7 serving the critical need both back at the time the 8 Master Plan was adopted and you heard from the 9 operator's testimony earlier, there's a long waiting 10 list, so that critical need continues to this day. 11 MS. ROSENFELD: Okay. Mr. Sekerak, I'm 12 going to take you through some specific zoning 13 ordinance provisions and ask that you explain how the 14 application satisfies those provisions. Section 15 59.7.3.1.EA, says that the hearing examiner must find 16 that the proposed development satisfies any 17 applicable previous approval on the subject site or 18 if not that the previous approval must be amended. 19 Can you explain how the application meets this 20 requirement? 21 MR. SEKERAK: I can find no record of a 22 previous conditional use/special exception zoning 23 case, preliminary plans, site plans or similar cases 24 applicable to the subject property. So any amendment 25 would not be applicable.</p>	<p>144</p> <p>1 explained that, but if you could summarize your 2 opinion in that regard? 3 MR. SEKERAK: It clearly recommends 4 daycare facilities in general and child daycare 5 centers in particular, especially those for the very 6 young. Not only substantially conforms with the 7 recommendation, but it actually advances and it's 8 remarkable to the extent that it conforms. 9 MS. ROSENFELD: Okay. Section E.D. 10 requires the hearing examiner find that the 11 application is harmonious with and will not alter the 12 character of the surrounding neighborhood in a manner 13 inconsistent with the plan, the Master Plan. In your 14 opinion, does the application satisfy this 15 requirement? 16 MR. SEKERAK: Yes, it does. It's in an 17 existing single-family detached home and already 18 served by existing daycare. The only changes to the 19 property are necessarily for accessibility, ADA 20 compliant accessibility. The existing area of 21 parking remains the same. So not only will it not 22 alter the residential character of the neighborhood, 23 it has been and will be an important contributing 24 element to the character of the neighborhood. 25 MS. ROSENFELD: And are you familiar with</p>

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145	<p>1 the condition imposed or recommended by planning</p> <p>2 staff that there be some fencing and landscaping on</p> <p>3 the periphery of the parking area that fronts on</p> <p>4 Greentree Road?</p> <p>5 MR. SEKERAK: Yes. We had a very nice</p> <p>6 collaboration with Park & Planning staff in order to</p> <p>7 come up with the appropriate treatment under -- for</p> <p>8 this particular context and application.</p> <p>9 MS. ROSENFELD: And in your opinion does</p> <p>10 that screening help insure that the intensification</p> <p>11 of the use would remain -- would not have an adverse</p> <p>12 effect on the current characteristics of the</p> <p>13 neighborhood?</p> <p>14 MR. SEKERAK: That's correct. The parking</p> <p>15 doesn't change, but we came with a design solution,</p> <p>16 very residential in character in order to buffer the</p> <p>17 view of what is a residentially scaled parking area</p> <p>18 already.</p> <p>19 MS. ROSENFELD: Okay. Going to E.E., this</p> <p>20 requires a finding by the hearing examiner that this</p> <p>21 particular conditional use in conjunction with other</p> <p>22 existing special exception or conditional uses in the</p> <p>23 neighborhood will not adversely affect or alter the</p> <p>24 predominantly residential nature of the area. In</p> <p>25 your opinion, would the additional of this</p>	147	<p>1 structures for the very young. It wants that to</p> <p>2 balance any daycare that's also provided in any type</p> <p>3 of more commercial context. So this provides a much</p> <p>4 needed critical need for the very young children. So</p> <p>5 it actively advances those recommendations.</p> <p>6 MS. ROSENFELD: Thank you. Section E.F.,</p> <p>7 provides that if a preliminary plan is not filed</p> <p>8 concurrently with a required at the time of</p> <p>9 conditional use application that the hearing examiner</p> <p>10 is charged with finding adequate public facilities,</p> <p>11 requirements have been satisfied. In your opinion,</p> <p>12 has -- does this application meet the APFO standards</p> <p>13 and could you go through them and if needed I'll</p> <p>14 follow up with additional questions.</p> <p>15 MR. SEKERAK: Okay. The property is a</p> <p>16 recorded lot, there's no further subdivision</p> <p>17 necessary, so the applicable finding of APF is here.</p> <p>18 The property is currently adequately served by public</p> <p>19 schools, police, fire and rescue, water, sewer and</p> <p>20 storm drain. The additional children requested for</p> <p>21 this approval will not impact area schools, because</p> <p>22 these are not school aged children.</p> <p>23 Mr. Mehra thoroughly examined the traffic</p> <p>24 aspect of this and it generates less than 50 weekday</p> <p>25 peak hour trip, so it meets traffic in that sense.</p>
146	<p>1 conditional use application with the others that you</p> <p>2 previously referenced change the residential nature</p> <p>3 of the area?</p> <p>4 MR. SEKERAK: It will not. As I described</p> <p>5 earlier there are either three or four other special</p> <p>6 exception/conditional uses within the defined</p> <p>7 neighborhood, two are accessory apartments and</p> <p>8 there's one other daycare for up to 15 children. The</p> <p>9 nature of the neighborhood is just very residential</p> <p>10 in character. This remains -- the proposed use</p> <p>11 remains residential in character and with it extreme</p> <p>12 conformity with the recommendations of the Master</p> <p>13 Plan, it does not change the residential character of</p> <p>14 the neighborhood.</p> <p>15 MS. ROSENFELD: And under Section E.E.,</p> <p>16 the second clause of that provision says, a</p> <p>17 conditional use application that substantially</p> <p>18 conforms with the recommendations of a Master Plan</p> <p>19 does not alter the nature of an area. And I realize</p> <p>20 we're covering this a number of times, but can you</p> <p>21 explain how your findings with respect to the Master</p> <p>22 Plan relate to that -- that provision?</p> <p>23 MR. SEKERAK: Again, the Master Plan makes</p> <p>24 recommendations for providing childcare within the</p> <p>25 residential neighborhoods, within residential</p>	148	<p>1 And Mr. Tilley did a fine job of explaining its</p> <p>2 conformance with fire and rescue.</p> <p>3 MS. ROSENFELD: Okay. And did the</p> <p>4 Planning Department staff as well conclude the APFO</p> <p>5 standards were satisfied?</p> <p>6 MR. SEKERAK: They did. Their staff</p> <p>7 report is Exhibit 44 and their findings are on pages</p> <p>8 14 and 15.</p> <p>9 MS. ROSENFELD: Okay. Thank you. Section</p> <p>10 E.G., provides that the application will not cause</p> <p>11 undue harm to the neighborhood as a result of non-</p> <p>12 inherent adverse effects alone or the combination of</p> <p>13 an inherent and a non-inherent adverse effect in any</p> <p>14 of the following categories and those categories are</p> <p>15 set out in sub-sections one, two and three.</p> <p>16 Would you please explain -- do you have an</p> <p>17 opinion at whether or not the expansion will not</p> <p>18 cause undue harm to the neighborhood?</p> <p>19 MR. SEKERAK: It will not. I've</p> <p>20 identified a number of inherent effects attributable</p> <p>21 to daycare, there being a concentration of children</p> <p>22 and the education/caregiver staff, vehicular trips to</p> <p>23 and from the property areas for drop off, pick up and</p> <p>24 parking, outdoor play areas, noise generated by</p> <p>25 children and site lighting. Now the outdoor play</p>

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<p>149</p> <p>1 area and the noise generated by children maybe you 2 could combine that into one characteristic, because 3 you wouldn't have one without the other. 4 MS. ROSENFELD: And will any of these 5 characteristics created an adverse impact or undue 6 harm to the neighborhood? 7 MR. SEKERAK: No. Again, the vehicular 8 trips -- a unusual characteristic is that we have 9 parking areas distributed into two small areas, very 10 distinguishable from one another, access from two 11 different locations. So that's actually an advantage 12 in that we break up what otherwise would be the 13 activity or the visual impact of a parking facility 14 for a use like this. 15 So, then it lessons the impact of the 16 confronting properties on either side. So, again, 17 I've identified the inherent characteristics and that 18 really being the only non-inherent characteristic 19 that I can bring up. 20 MS. ROSENFELD: Okay. Did planning staff 21 have the same list of inherent impacts related to a 22 daycare facility? 23 MR. SEKERAK: Very similarly. They did 24 not include outdoor play areas -- I'm sorry, they did 25 include outdoor play areas, but they did not include</p>	<p>151</p> <p>1 MR. SEKERAK: I think it's 43? 2 MS. ROSENFELD: 42 and 43 A, B & C? 3 MR. SEKERAK: Yes. 4 MS. ROSENFELD: You've reviewed those 5 letters? 6 MR. SEKERAK: Yes, I have. 7 MS. ROSENFELD: And the concerns raised in 8 those letters? 9 MR. SEKERAK: Yes, I have. 10 MS. ROSENFELD: And did you hear the 11 testimony and the questioning that was presented 12 earlier by the participants in this hearing? 13 MR. SEKERAK: Yes. 14 MS. ROSENFELD: And in your opinion, will 15 the subject application cause undue harm to any of 16 those individual properties with respect to use, 17 peaceful enjoyment, traffic impacts or the other 18 considerations set out in E.G.? 19 MR. SEKERAK: No, they will not cause 20 undue harm. All my findings were in regards to the 21 neighborhood as a whole and it certainly applies to 22 these residents also since they are well within that 23 delineated neighborhood of either mine or Park & 24 Planning staffs 25 With the assurances of the limitations of the</p>
<p>150</p> <p>1 noise generated by children and so that may have just 2 been an assumption on their part. 3 Staff also included as an inherent 4 characteristic, cueing on adjacent roadways and I -- 5 that where I probably -- I differ with staff's 6 opinion along those lines, simply because here is a 7 case in point, we do not have cueing on adjacent 8 roadways, so I do not consider that inherent. Not 9 uncommon for daycare centers to need to do that -- 10 utilize the adjacent roadways for cueing, but that's 11 not the case here. 12 MS. ROSENFELD: Okay. And whether 13 inherent or not inherent it's immaterial in this 14 case? 15 MR. SEKERAK: That's correct. 16 MS. ROSENFELD: And -- and -- 17 MR. SEKERAK: So the inherent and non- 18 inherent in combination, which ever part of the side 19 of the ledger you want to put that one on, it does 20 not cause undue harm to the neighborhood. 21 MS. ROSENFELD: Okay. And you testified 22 earlier, I believe, that you reviewed the letters and 23 if you didn't I'm asking the question, have you 24 reviewed the letters filed as exhibits 42 and 42A,B 25 and C? The neighborhood correspondence?</p>	<p>152</p> <p>1 conditional use and the conditions of approval 2 recommended, it will remain compatible with the 3 entire neighborhood, including the authors of those 4 letters. 5 MS. ROSENFELD: Okay. I'm moving on to 6 Section 59.7.3.E.2, which provides that the hearing 7 examiner needs to find that the structures on the 8 property are compatible with the character of the 9 delineated residential neighborhood, in your opinion, 10 will they be compatible in light of the proposed 11 changes that are recommended on the proposed site 12 plan? 13 MR. SEKERAK: The existing single-family 14 detached home and its existing improvements of the 15 fenced in play areas and the fragmented parking 16 facilities have been a contributing residential 17 character element to the neighborhood for a number of 18 years and so will inherently continue to be 19 compatible with the characteristics of the 20 residential neighborhood. 21 MS. ROSENFELD: Okay. Section E.3. says 22 that the fact that a proposed use satisfies the 23 specific requirements to approve a conditional use, 24 doesn't create a presumption that it's compatible and 25 does not in and of itself require conditional use</p>

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153	<p>1 approval. Recognizing that provision, in your expert 2 opinion, does this application fully meet the 3 standards set forth in the zoning ordinance for 4 approval? 5 MR. SEKERAK: Yeah. I'm kind of repeating 6 myself. Yes, it's an existing home and the expansion 7 of the existing daycare center that has been an 8 intrical compatible component serving the community 9 for many years. So in addition to its satisfying the 10 zoning ordinance standards for the daycare center and 11 the zone, because of its existing characteristics it 12 is inherently compatible. 13 MS. ROSENFELD: Okay. I'm going to ask 14 you about Sections E.4., E.5., and E.6. together, 15 which, respectively, apply for an application for an 16 agricultural use, an application for certain 17 commercial and community use and a required finding 18 of need. In your opinion, do any of these three 19 sections apply to this particular application? 20 MR. SEKERAK: No, they do not. All three 21 sections are referring to either different zones or 22 different uses that are not applicable to this 23 application. 24 MS. ROSENFELD: Okay. And, again, 25 globally, my last question Mr. Hearing Examiner, in</p>	155	<p>1 MR. SAADAT: No, I'm good. Thank you. 2 MR. BAUMGARDNER: Okay. Any closing 3 thoughts, Ms. Rosenfeld, regarding this application 4 before we turn it over to those who have not yet 5 testified regarding this application? 6 MS. ROSENFELD: Yes, very briefly. There 7 were some issues raised or concerns suggested during 8 the course of the earlier testimony and questioning 9 regarding the level of staffing, regarding alleged 10 potential citations, regarding lack of notice and 11 other kinds of operational issues and I submit to the 12 hearing examiner that what's before you this 13 afternoon is a conditional use application and 14 whether or not this application satisfies the zoning 15 standards. 16 There is a separate licensing process that the 17 applicant must undergo and she will be required to be 18 bound by both the limitations and conditions imposed 19 by the conditional use as well as any limitations and 20 conditions imposed by the licensing. So I would like 21 to just suggest that those are separate and distinct 22 issues and that the focus here really is on whether 23 or not this application complies with the zoning 24 code. 25 That having been said, I think the evidence</p>
154	<p>1 your expert opinion, does the proposed daycare center 2 satisfy all of the requirements of the zoning code 3 necessary for the hearing examiner to approve this 4 application? 5 MR. SEKERAK: Yes, it does. And bear with 6 me I will read verbatim from the end of my report, 7 it's a permitted conditional use in the R200 zone. 8 It's remarkably and uncommonly consistent with the 9 recommendations, rules and objectives of the 1990 10 Bethesda Chubby Chase Master Plan. It's conformant 11 to the zoning ordinance required findings for 12 conditional use. It will be compatible and in 13 harmony with the surrounding neighborhood and land 14 uses and it advances the public interest by providing 15 a child day care center for the surrounding community 16 in conformance with and in furtherance of the 17 recommendations of the Master Plan. 18 MS. ROSENFELD: Thank you very much, Mr. 19 Sekerak. Mr. Baumgardner, I don't have further 20 questions of this witness at this time. 21 MR. BAUMGARDNER: Is there anyone who is 22 logged in that has any questions for Mr. Sekerak 23 regarding his testimony here today as a land planner? 24 Mr. Saadat. Mr. Goertz. Anyone else who is logged 25 in with us today have any questions for Mr. Sekerak?</p>	156	<p>1 presented by our expert witnesses, Mr. Mehra and Mr. 2 Tilley and Mr. Sekerak show that this application 3 falls squarely within all of the objective standards 4 of the zoning code and more importantly, not 5 necessarily more importantly, but almost somewhat 6 uniquely, with respect to the Master Plan 7 recommendations it is highly, highly compliant and as 8 Mr. Sekerak said, not only complies with but advances 9 the goals of the Master Plan. 10 And as you well know Master Plan language can 11 sometimes be ambiguous or argued different ways, but 12 here it really is uniquely clear that this 13 conditional use falls within the recommendations of 14 the Master Plan. 15 The property is largely remaining unchanged 16 with the exception of providing ADA compliance, which 17 is beneficial not only to the existing students but 18 to future students and we think that we squarely 19 comply with every single provision that's presented 20 to you and we would ask for approval of the 21 conditional use application for 30 students. 22 MR. BAUMGARDNER: Okay. Thank you very 23 much for your presentation and your examination of 24 witnesses. Turning this over to any other 25 individuals who would in support or in opposition to</p>

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157	<p>1 this particular conditional use. Now is your time to</p> <p>2 testify. If you can please stick to facts, your</p> <p>3 opinion as to the proposal and the underlying facts</p> <p>4 that might contribute to that opinion.</p> <p>5 Would anyone like to testify right now</p> <p>6 regarding this application?</p> <p>7 MR. SAADAT: Yes, I do.</p> <p>8 MR. BAUMGARDNER: So, one second. Can you</p> <p>9 raise your right hand, please?</p> <p>10 (Witness sworn)</p> <p>11 MR. BAUMGARDNER: What would you like to</p> <p>12 tell me today, Mr. Saadat?</p> <p>13 MR. SAADAT: Yes. So the few questions I</p> <p>14 asked in the morning that according to the plan given</p> <p>15 in the proposal, there are some issues which I have</p> <p>16 raised and I would let county look into that one.</p> <p>17 That according to the plan at around 3:00 there are</p> <p>18 30 kids of 5 years old, potentially, and there are</p> <p>19 only 3 staff members, that is one.</p> <p>20 And the second thing is, there's a shed</p> <p>21 over there and I did not get the answer of my shed.</p> <p>22 It's on the north side of the property, it was not --</p> <p>23 he hadn't seen it, but it is out there and as of like</p> <p>24 half an hour ago it's still there. So it's a</p> <p>25 structural development on the property, what's the</p>	159	<p>1 who, I said it earlier, who is Autism Spectrum, I'm</p> <p>2 right across this property and my wife and I take</p> <p>3 care of our son and we have a daughter as well who is</p> <p>4 12 years old, for us as parents it is the most</p> <p>5 important thing to make our kids secure, because</p> <p>6 there's a lot of traffic in this area. Because when</p> <p>7 these Autism who are non-verbal sometimes they don't</p> <p>8 act like other kids, what I'm concerned, as a parent,</p> <p>9 when kids will be playing in that area on the north</p> <p>10 side of the property, which is not fenced and there's</p> <p>11 traffic going on, I sitting in my dining room cannot</p> <p>12 eat, because I will be outside for those kids, even</p> <p>13 if those are not my kids, I will be looking after for</p> <p>14 them. And I will be extremely uncomfortable -- if</p> <p>15 there's one adult and one kid I'm okay. If there's</p> <p>16 more than one kid for one adult -- if one kid is</p> <p>17 running in this direction and one is this direction,</p> <p>18 where will that adult will go? Both sides the</p> <p>19 traffic is going and I will be very uncomfortable.</p> <p>20 And I will be looking after for those kids, because</p> <p>21 my kid or not my kid, I will be watching out for</p> <p>22 those kids.</p> <p>23 MR. BAUMGARDNER: Okay. Was there</p> <p>24 anything else that you wanted to tell me here today</p> <p>25 regarding this application?</p>
158	<p>1 purpose of it? How is it linked with the daycare, it</p> <p>2 was not told to us. So I would like to know what's</p> <p>3 the purpose of it? Because it was never there, it's</p> <p>4 a recent development and there was no mention of that</p> <p>5 shed and that's the same shed in the same area and I</p> <p>6 did bring it up and I would like county to look into</p> <p>7 it, there is a playing area which is unfenced. If</p> <p>8 county would like to take a visit this afternoon they</p> <p>9 can see that.</p> <p>10 And it was told by the owner that nobody will</p> <p>11 be playing in that area, it's only for family and</p> <p>12 friends, I believe, this is what they said, but I</p> <p>13 have seen more than five kids at a time over there.</p> <p>14 And Paul Horn said the same thing, so we would like</p> <p>15 to know very clearly like that area, which is</p> <p>16 unfenced, which the shed is there, where outside tree</p> <p>17 climbing, toys are there, there's some kind of pieces</p> <p>18 of the kids play area there, what is the use -- if</p> <p>19 there's any potential use of that area with the</p> <p>20 daycare?</p> <p>21 MR. BAUMGARDNER: Okay. And I take it</p> <p>22 from your testimony that you would not like that area</p> <p>23 to be used as part of the daycare operation; is that</p> <p>24 what you're saying?</p> <p>25 MR. SAADAT: Mr. Baumgardner, I have a kid</p>	160	<p>1 MR. SAADAT: So if I get the answers of</p> <p>2 these area, unfenced area, the shed and all that,</p> <p>3 once I get the clarity, the rest of the questions are</p> <p>4 linked to that. So until I get those answers very</p> <p>5 clearly defined, I will keep my questions to myself</p> <p>6 because all of those questions are linked to that</p> <p>7 area of the property.</p> <p>8 MR. BAUMGARDNER: Okay. But you</p> <p>9 understand that I cannot give you those answers,</p> <p>10 correct?</p> <p>11 MR. SAADAT: I know that. But I like to</p> <p>12 bring it to you because it seems like that area was</p> <p>13 totally omitted from the conversation.</p> <p>14 MR. BAUMGARDNER: Okay.</p> <p>15 MR. SAADAT: And on the ground, I would</p> <p>16 like you to comment right now, there is a shed that</p> <p>17 is -- (indiscernible) I would like county to take</p> <p>18 pictures and bring it to the proposal because that</p> <p>19 looks like it's not for adults, it is a kids playing</p> <p>20 area, which is unfenced.</p> <p>21 MR. BAUMGARDNER: Okay. I understand your</p> <p>22 concerns regarding those issues. All right. Is</p> <p>23 there anyone else who is signed on -- Mr. Goertz, you</p> <p>24 had testified earlier but if there was something you</p> <p>25 would like to add, you are welcome to add that</p>



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161	<p>1 testimony now if you'd like, sir. I think you were</p> <p>2 still muted, Mr. Goertz, if you want --</p> <p>3 MR. GOERTZ: Can you hear me?</p> <p>4 MR. BAUMGARDNER: Yes, we can hear you,</p> <p>5 sir.</p> <p>6 MR. GOERTZ: I have a problem with the</p> <p>7 Master Plan from 1990. It seems to me a long time</p> <p>8 ago and probably outdated regarding various sections</p> <p>9 of the Master Plan, which covers a pretty big area</p> <p>10 and I'd like to know if there's any more recent</p> <p>11 Master Plan or information that could be substituted</p> <p>12 as a reasonable approach to a Master Plan? I think</p> <p>13 it refers to Chubby Chase and Bethesda, two very</p> <p>14 distinct areas and I think it really should not be</p> <p>15 given too much weight.</p> <p>16 MR. BAUMGARDNER: Understood. The Master</p> <p>17 Plan that this property is subject to is that 1990</p> <p>18 Master Plan. I do not have any authority to</p> <p>19 challenge that Master Plan. I don't have the ability</p> <p>20 to second guess it or question it or test it's</p> <p>21 validity, but you are certainly welcome as a citizen</p> <p>22 to make that concern known to your city council --</p> <p>23 your county council member, but as far as I know that</p> <p>24 Master Plan is the current Master Plan, which is</p> <p>25 identified different uses and different properties --</p>	163	<p>1 Bethesda, Maryland. I'm going to leave the record</p> <p>2 open for 10 days from today's date, so that leaves us</p> <p>3 until November 15th for any further documents. We</p> <p>4 have the affidavit of posting, which is included in</p> <p>5 the record. I don't think we need anything else. I</p> <p>6 had mentioned earlier when speaking on the record</p> <p>7 with Mr. Horn, that if there was further testimony we</p> <p>8 will receive it in the next 10 days, if it's not</p> <p>9 copied to the applicant and all parties, we will</p> <p>10 certainly do so. If there's anything in that</p> <p>11 additional documentation that's objectionable the</p> <p>12 applicant would have the ability to either file a</p> <p>13 rebuttal or some written response to that testimony.</p> <p>14 Within these 10 days we will get the transcript</p> <p>15 and then we will close the record on November 15th.</p> <p>16 Our office has 30 days to issue a report, once that</p> <p>17 report is issued, anyone who is not satisfied with</p> <p>18 the contents of that report can file for oral</p> <p>19 argument in front of the Board of Appeals within 10</p> <p>20 days of the issuance of that report.</p> <p>21 Any conclusions or any final matters that we</p> <p>22 have not yet addressed, Ms. Rosenfeld?</p> <p>23 MS. ROSENFELD: Yes, Mr. Hearing Examiner,</p> <p>24 if we could admit into the record, the CVs of the</p> <p>25 expert reports, their expert reports themselves, the</p>
162	<p>1 now Master Plans are, typically, rather lengthy</p> <p>2 documents, so they are anywhere from dozens to</p> <p>3 several hundreds, in certain cases, several thousand</p> <p>4 pages long. So they're, typically, very</p> <p>5 comprehensive documents. This specific Master Plan</p> <p>6 other than the portions that we have talked about</p> <p>7 today and those are public documents that I don't</p> <p>8 have any further detail on, but that is the Master</p> <p>9 Plan that will be referenced here today and that's</p> <p>10 the Master Plan that we have to go by until it is</p> <p>11 updated.</p> <p>12 And, again, you as a resident would have the</p> <p>13 ability to contact your county council folks to,</p> <p>14 potentially, update that Master Plan, but I would</p> <p>15 leave that to you.</p> <p>16 Were there any other points that you wanted to</p> <p>17 make, Mr. Goertz?</p> <p>18 MR. GOERTZ: No, that's fine. Thank you.</p> <p>19 MR. BAUMGARDNER: Okay. Seeing no one</p> <p>20 else logged in, I imagine no one else would like to</p> <p>21 testify here today.</p> <p>22 We are going to close this public hearing. The</p> <p>23 time is 2:23 p.m. on November 5th. We are closing</p> <p>24 the public hearing in OZHA case CU21-09 for a daycare</p> <p>25 center for up to 30 children at 6607 Greentree Road,</p>	164	<p>1 documents that are referenced in there. I don't know</p> <p>2 if we need formal admission of the Planning</p> <p>3 Department Staff report, the fire access plan. I,</p> <p>4 frankly, would ask that we move admission of all of</p> <p>5 the exhibits to the extent of them are not yet</p> <p>6 considered admitted. There were no objections to any</p> <p>7 of the exhibits that were presented in the record or</p> <p>8 that were discussed today.</p> <p>9 MR. BAUMGARDNER: That is correct. The</p> <p>10 exhibits that we have are listed on our website for</p> <p>11 this hearing. They run generally consistent from</p> <p>12 Exhibit 1 through 47. There's a couple numbers in</p> <p>13 there that are missing, which are old plans or prior</p> <p>14 applications or prior plans that have been updated.</p> <p>15 So the exhibit list that is currently on our website</p> <p>16 with Exhibits 1 through 47 are hereby admitted into</p> <p>17 the record, which includes the plans, planning staff</p> <p>18 report, planning board letter, et cetera, et cetera.</p> <p>19 Was there anything else?</p> <p>20 MS. ROSENFELD: Just to address the shed.</p> <p>21 I know that's an issue of significant concern.</p> <p>22 What's not in the record, that I'll put I the record</p> <p>23 is that Ms. Davis and Mr. Holsonback, who recently</p> <p>24 bought the property were married over the summer and</p> <p>25 the shed has been installed fairly recently, it's for</p>

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42 (165 to 168)

<p>165</p> <p>1 personal residential use, you know, lawnmowers and 2 tools and bikes and that sort of thing. 3 It is not reflected on the final plan. If 4 appropriate we would be happy to submit an updated 5 plan to show that as an existing condition, but it is 6 not an operational part of the conditional use 7 application and it is for their personal and family 8 use. 9 MR. BAUMGARDNER: Thank you very much for 10 that update. With that said, I think that's all we 11 have. We thank everyone for their testimony and 12 their participation in today's hearing. And I hope 13 you have a good afternoon. 14 MS. ROSENFELD: Thank you. 15 MR. BAUMGARDNER: Thank you all very much. 16 Have a good day. And we are off the record. 17 THE REPORTER: Before you leave I want to 18 get the orders and if you want the exhibits attached. 19 MR. BAUMGARDNER: We don't need the 20 exhibits attached. We would like the transcript -- 21 typically, our office staff handles getting those 22 transcripts, so I would email or reach out to Nova 23 Johnson about that. 24 THE REPORTER: Okay. Thank you. 25 (The recording was concluded.)</p>	<p>167</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Sheri Chism, do hereby certify that 3 the foregoing transcript is a true and correct record 4 of the recorded proceedings; that said proceedings 5 were transcribed to the best of my ability from the 6 audio recording and supporting information; and that 7 I am neither counsel for, related to, nor employed by 8 and of the parties to this case and have no interest, 9 financial or otherwise, in its outcome. 10 11 12  13 _____ 14 Sheri Chism 15 16 17 18 19 20 21 22 23 24 25</p>
<p>166</p> <p>1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC 2 I, Merinda Evans, the officer 3 before whom the foregoing deposition was taken, do 4 hereby certify that said proceedings were 5 electronically recorded by me; and that I am 6 neither counsel for, related to, nor employed by 7 any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 IN WITNESS WHEREOF, I have hereunto set 10 my hand and affixed my notarial seal this 15th day 11 of November, 2021. 12  13 _____ 14 Merinda Evans, Notary Public 15 for the State of Maryland 16 17 18 19 20 21 22 23 24 25</p>	

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