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Transcript of Hearing

Date: September 6, 2019

Case: Hannah Weiser Child Care, In Re:

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Transcript of Hearing
Conducted on September 6, 2019

1 (1 to 4)

1	1	1	3
2	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	2	A P P E A R A N C E S
3	FOR MONTGOMERY COUNTY, MARYLAND	3	FOR MONTGOMERY COUNTY OFFICE:
4	-----x	4	MARTIN L. GROSSMAN, HEARING EXAMINER
5	IN RE: :	5	JENN VARGAS, DPS-SZPE
6	HANNAH WEISER CHILD CARE, : Case No.: CU 16-07	6	KATHLEEN REILLY, PLANNING DEPARTMENT
7	:	7	FOR THE APPLICANT:
8	-----x	8	HANNAH WEISER
9	HEARING	9	CHRIS WEISER
10	Rockville, Maryland	10	49205 Fernwood Road
11	Friday, September 6, 2019	11	Bethesda, Maryland 20817
12	9:34 a.m.	12	
13		13	ALSO PRESENT:
14		14	JOE WEBSTER, COMPLAINANT
15		15	KAREN WEBSTER, COMPLAINANT
16		16	9203 Fernwood Road
17		17	Bethesda, Maryland 20817
18		18	
19		19	
20		20	
21		21	
22		22	
23	Job: 260379	23	
24	Pages: 1 - 103	24	
25	Transcribed by: Molly Bugher	25	
2	2	4	4
1	Revocation Hearing held at:	1	C O N T E N T S
2	Montgomery County Office of Zoning and Administrative	2	PAGE
3	Hearings:	3	TESTIMONY:
4	100 Maryland Avenue	4	MS. VARGAS 14
5	County Office Building	5	Hannah Weiser 19
6	Room 200	6	Chris Weiser 26
7	Rockville, MD	7	Joe Webster 37
8	(240) 777-6660	8	Kathleen Reilly 59
9		9	
10		10	
11		11	EXHIBITS
12		12	EXHIBITS INTRODUCED AT HEARING:
13		13	NUMBER DESCRIPTION PAGE
14		14	Exhibit 99 Webster diagram 41
15		15	Exhibit 100 Webster Memo 42
16		16	Exhibit 101 Photo 49
17		17	EXHIBITS PREVIOUSLY SUBMITTED:
18		18	NUMBER DESCRIPTION
19	Pursuant to agreement before Micahel Pawela, court	19	Exhibits 1 through 100
20	reporter and notary public, in and for the State of Maryland.	20	
21		21	
22		22	
23		23	
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25		25	

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2 (5 to 8)

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<p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Ms. Weiser --</p> <p>3 MS. WEISER: Hello.</p> <p>4 HEARING EXAMINER GROSSMAN: Would you come forward</p> <p>5 please and have a seat in the chair?</p> <p>6 MS. WEISER: My husband is here as well as the --</p> <p>7 HEARING EXAMINER GROSSMAN: All right. Well, he is not</p> <p>8 technically a party. You can have him up here I guess if we</p> <p>9 have an extra seat.</p> <p>10 MS. WEISER: Okay. Is it okay for him to speak or do</p> <p>11 you --</p> <p>12 HEARING EXAMINER GROSSMAN: If you call him as a</p> <p>13 witness, but we will get to that in a minute after I call the</p> <p>14 case. All right.</p> <p>15 And Ms. Vargas, could you come forward please and have</p> <p>16 a seat?</p> <p>17 And Ms. Reilly. All right.</p> <p>18 And the Webster's, you here? Okay. Perhaps we can --</p> <p>19 Ms. Reilly, would you pull over a little bit and we could</p> <p>20 have the Webster's sit up here too, as they are Complainants</p> <p>21 and parties here.</p> <p>22 MS. WEBSTER: Are you going to need me up here too?</p> <p>23 HEARING EXAMINER GROSSMAN: Not if you don't wish to</p> <p>24 come. You can stay where you are.</p> <p>25 MS. WEBSTER: Okay. He's the talker.</p>	<p>1 MR. WEBSTER: Robert Joseph Webster, 9203 Fernwood</p> <p>2 Road, Bethesda, Maryland 20817.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Let me first</p> <p>4 explain how we will proceed today and then I'll give you a</p> <p>5 little background. This type of hearing is governed by Rule</p> <p>6 8.0 to 8.6 of OZAH, that's the Office of Zoning and</p> <p>7 Administrative Hearings, rules of procedure for zoning,</p> <p>8 conditional uses Board of Appeals referral cases. Among</p> <p>9 other things, those Rules provide the following: 8.2,</p> <p>10 official notice. The hearing examiner must take official</p> <p>11 notice of the entire record of the conditional use preceding.</p> <p>12 And I -- that is here in the large file and I do so now. And</p> <p>13 I take official notice of that entire record.</p> <p>14 Rule 8.3, order of presentation. That's also specified</p> <p>15 in our rules. The order of presentation is specified. It</p> <p>16 states DPS presents it's evidence of the alleged</p> <p>17 noncompliance. B, the person alleged to be in violation,</p> <p>18 that would be Ms. Weiser here, presents evidence in support</p> <p>19 of its case. C, any other persons wishing to present</p> <p>20 evidence are heard. D, DPS rebuttal evidence is heard. E,</p> <p>21 property owners sur (phonetic) rebuttal. F, sur rebuttal</p> <p>22 from any other person who presented evidence. And G, closing</p> <p>23 arguments. And I'm going to explain a little bit how that</p> <p>24 will apply here in a second.</p> <p>25 Rule 8.4, show cause hearings; all of the rules</p>
6	8
<p>1 HEARING EXAMINER GROSSMAN: You're Ms. Webster?</p> <p>2 MS. WEBSTER: Yes I'm the listener.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Okay. Is</p> <p>4 everybody ready to proceed? All right. The court reporter</p> <p>5 is also. I'm going to call the case.</p> <p>6 This is a hearing to show cause why conditional uses CU</p> <p>7 16-07, Hannah Weiser, shall be revoked based on unresolved</p> <p>8 department of permitting services notice of violation of</p> <p>9 condition 21 of the grant of the conditional use. My name is</p> <p>10 Martin Grossman. I'm the hearing examiner here and I will</p> <p>11 conduct this hearing, take evidence, and I will write a</p> <p>12 report and decision on this show cause proceeding.</p> <p>13 I've already done it, but I will ask the parties to</p> <p>14 identify themselves for the record, starting with Ms. Weiser.</p> <p>15 MS. WEISER: I'm Hannah Weiser.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay.</p> <p>17 MR. WEISER: I'm Christopher Weiser, property owner.</p> <p>18 MS. VARGAS: Jennifer Vargas, department of permitting</p> <p>19 services.</p> <p>20 HEARING EXAMINER GROSSMAN: All right.</p> <p>21 MS. REILLY: Kathleen Reilly, planning department.</p> <p>22 MR. WEBSTER: Joe Webster.</p> <p>23 HEARING EXAMINER GROSSMAN: All right. And Mr.</p> <p>24 Webster, since I don't know that you are in the record, would</p> <p>25 you state your full name and address, please?</p>	<p>1 governing public hearings including prehearing procedures</p> <p>2 apply to the show cause hearing. And for this case, that</p> <p>3 means that all witnesses are sworn in, as we always do here.</p> <p>4 They are all subject to cross-examination. A court reporter</p> <p>5 takes everything down and there is a transcript of these</p> <p>6 proceedings. In this case, I would ask a 48 hour turnaround,</p> <p>7 that's 48 business hours on the transcript because the</p> <p>8 hearing examiner's ruling is due 15 days after the record</p> <p>9 closes in the case. And the record close may be delayed in</p> <p>10 this case. We will talk about that in a second.</p> <p>11 Finally, rule 8.6, decision and conditional use</p> <p>12 compliance cases. The hearing examiner may reaffirm or</p> <p>13 revoke the conditional use or amend, add to, delete, or</p> <p>14 modify the existing terms or conditions. So there is a lot</p> <p>15 of flexibility here on how the hearing examiner handles the</p> <p>16 resolution of the case.</p> <p>17 So as these rules apply here, per these rules we will</p> <p>18 hear first from the department of permitting services, from</p> <p>19 Ms. Vargas, to describe the alleged violation here. We will</p> <p>20 then hear from Ms. Weiser and any witnesses that she wishes</p> <p>21 to call. Then we will hear from Joe and/or Karen Webster if</p> <p>22 they wish to testify, and any other community witnesses. I</p> <p>23 would then like to hear from the county's planning</p> <p>24 department, Ms. Reilly, concerning the alleged violation and</p> <p>25 if any corrective steps must be taken or should the condition</p>

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3 (9 to 12)

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<p>1 I have imposed, condition 21, when I grant the conditional 2 use, should that be modified. 3 Then we would hear any rebuttal from the department of 4 permitting services, any sur rebuttal from Ms. Weiser and 5 others. And then ultimately closing arguments. So that's 6 how the rules would apply in this case. All right. 7 Let me give a little background for the record here. 8 Conditional use 16-07 was granted by the hearing examiner, 9 and in that case it was I, on July 8, 2016, to permit the 10 applicant, Hannah Weiser to operate a child day care center 11 for up to 15 children in her home at 9205 Fernwood Road in 12 Bethesda, Maryland. The subject site is Lot 1, Block 8 of 13 the Green Tree Manner subdivision and is owned R90. The 14 hearing examiner's decision imposed 22 conditions on the 15 conditional use including condition 21, which allowed a 16 waiver of zoning ordinance, sections 59.6.2.9.B.1.A.B and .C, 17 but required that the parking lot landscaping, "be in 18 accordance with the revised landscape and lighting plan." 19 On June 18, 2019 based on a complaint from the abutting 20 neighbors, Joe and Karen Webster, and that's in Exhibit 82, 21 and a field inspection, the department of permitting services 22 issued a notice of violation, that's Exhibit 83 in this case, 23 directing that the conditional use holder come into 24 compliance with the condition 21 by June 25, 2019. 25 On July 9, 2019 Jennifer Vargas, a permitting service</p>	<p>1 holder be required to submit a landscape plan certified by a 2 licensed landscape architect or arborist that shows proposed 3 evergreen landscaping materials and plantings required, be a 4 minimum of five feet in height at the time of planting, that 5 will sufficiently screened the parking area from the abutting 6 residential property along the southern property line. The 7 landscape plan should also be reviewed by the department of 8 permitting services staff for compliance with the approved 9 development conditions." 10 All right. That's the background of this case and 11 what's been filed to date. So after we hear from Ms. Vargas, 12 Ms. Weiser you indicated you wish to testify, I presume. 13 MS. WEISER: I do, yes. 14 HEARING EXAMINER GROSSMAN: And you wish to call your 15 husband? 16 MS. WEISER: I can testify. It's okay. 17 HEARING EXAMINER GROSSMAN: Well, I mean, do you wish 18 to call any witnesses in addition to yourself? 19 MS. WEISER: Yes, my husband will speak as well, 20 Christopher Weiser. 21 HEARING EXAMINER GROSSMAN: Okay. Do you have any 22 other witnesses? 23 MS. WEISER: No, Your Honor. 24 HEARING EXAMINER GROSSMAN: Okay. All right. Mr. 25 Webster, do you wish to testify today?</p>
10	12
<p>1 inspector with the department of permitting services center 2 report of the violations to the hearing examiner. That's 3 Exhibit 84. The notice of violation remains unresolved. And 4 on July 26, 2019 the hearing examiner issued an order 5 directing the conditional use holder and property owner, in 6 this case, the same person, Ms. Weiser, to show cause at this 7 hearing why the conditional use should not be revoked. And 8 that's in accordance with zoning ordinance section 9 59.7.3.L.4, which requires the hearing examiner to issue that 10 show cause order. 11 That's why we're here today. At my request, both 12 department of permitting services and the planning department 13 inspected the services again a short time ago and issued 14 reports to me. The department of permitting services report, 15 which is Exhibit 94 with attachments in Exhibit 94-A, was 16 filed by Inspector Vargas on August 29, 2019. The planning 17 department report, Exhibit 96 with attachments 96-A, was 18 filed on September 4, 2018. 19 Both reports indicate the current state of landscaping 20 on the site does not comport with the final approved 21 landscaping plan. And the planning department's report 22 recommends -- and I will read the last paragraph, the 23 conclusory paragraph. "Staff found that a violation has not 24 been corrected by the conditional use holder. Staff 25 recommends to the hearing examiner that the conditional use</p>	<p>1 MR. WEBSTER: Yes. 2 HEARING EXAMINER GROSSMAN: Okay. Mrs. Webster, do you 3 wish to testify today? 4 MS. WEBSTER: No. 5 HEARING EXAMINER GROSSMAN: You're shaking your head 6 no. Okay. All right. Are there any members of the 7 community who wish to testify who here today not to be called 8 by anybody? I take it Mr. Webster, you're not calling any 9 additional witnesses yourself? 10 MR. WEBSTER: That's true. We are not calling any 11 other witnesses. 12 HEARING EXAMINER GROSSMAN: All right. And I see no 13 hands in response to my question. Are there any other 14 preliminary matters before we get to hearing testimony in 15 this case? 16 Mr. Webster, yes. 17 MR. WEBSTER: There was an error or an omission on the 18 memo from Kathleen Reilly dated September 4. After I'm sworn 19 in, could I make a clarification of that error before we 20 proceed? 21 HEARING EXAMINER GROSSMAN: Absolutely, yes. Well, 22 we're going to proceed in the normal course of this, but you 23 can bring this up as you get to your testimony since would be 24 making under oath, okay. 25 MR. WEBSTER: All right. All right.</p>

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13	<p>1 HEARING EXAMINER GROSSMAN: Any other preliminary</p> <p>2 matters? Okay. All right.</p> <p>3 So let's hear from Ms. Vargas first. I see there is no</p> <p>4 microphone set up up here. Can you do that, please?</p> <p>5 COURT REPORTER: Sure.</p> <p>6 MS. VARGAS: Do you want to move this one between both</p> <p>7 of us?</p> <p>8 COURT REPORTER: This one should be fine. It should be</p> <p>9 fine there, I think.</p> <p>10 MS. VARGAS: Okay.</p> <p>11 HEARING EXAMINER GROSSMAN: In the past we've had</p> <p>12 witnesses testify from the table, but I think it's better if</p> <p>13 everybody can see the witnesses. So recently I've been</p> <p>14 having them up here. So Ms. Vargas, would you step forward,</p> <p>15 please?</p> <p>16 By the way, I don't know if I mentioned it, but this is</p> <p>17 probably the last hearing my office will conduct in this room</p> <p>18 prior to the renovation. We are being renovated and we are</p> <p>19 all being moved. As of next week we will be moved out of</p> <p>20 this building for about a year into the Broome School. So if</p> <p>21 you have anything to file, it will actually be received</p> <p>22 there.</p> <p>23 Have a seat, please.</p> <p>24 MS. VARGAS: Thank you.</p> <p>25 HEARING EXAMINER GROSSMAN: All right. Would you state</p>	15
14	<p>1 your full name and business address, please?</p> <p>2 MS. VARGAS: Jennifer Vargas, 255 Rockville Pike,</p> <p>3 Second floor, Department of Permitting Services.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. And your title</p> <p>5 is?</p> <p>6 MS. VARGAS: Code enforcement official.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay. Would you raise your</p> <p>8 right hand, please?</p> <p>9 Do you swear or affirm to tell the truth, the whole</p> <p>10 truth and nothing but the truth under penalty of perjury?</p> <p>11 MS. VARGAS: Yes.</p> <p>12 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>13 proceed. Tell us why we are here today and what the</p> <p>14 department of permitting services has to say.</p> <p>15 MS. VARGAS: On April 4 we received a complaint from</p> <p>16 Joe and Karen Webster detailing that the conditional use</p> <p>17 holder, Ms. Weiser, has -- had removed some mature trees that</p> <p>18 were along the southern line of the property, stating that on</p> <p>19 or about on Friday, March 29 of 2019, the trees were cut down</p> <p>20 and removed. Mr. -- Joe and Karen Webster are the neighbors</p> <p>21 on the southern property line 9203 Fernwood Road. They did</p> <p>22 not have any -- they do not have any knowledge nor</p> <p>23 communication prior to removal.</p> <p>24 They stated that the trees were 10 feet tall arborvitae</p> <p>25 stretching from the property corner at Fernwood Road</p>	16
	<p>1 extending 41 feet east where in fact the conditional use.</p> <p>2 They also attached some photos detailing the arborvitae where</p> <p>3 they were before, and some pictures after the removal of the</p> <p>4 trees. At that time, I discussed the matter with my manager.</p> <p>5 And on April 8, 2019, I went out and did a site visit and</p> <p>6 confirmed that indeed the trees were removed and that in</p> <p>7 their place were very small shrubberies of trees.</p> <p>8 It did not meet the screening requirement for condition</p> <p>9 21. At that time, I discussed this with my managers and we</p> <p>10 tried to come up with a plan of how to address this issue.</p> <p>11 So we discussed this also with Ms. Weiser in trying to come</p> <p>12 up with my -- trying to come up with a solution as to how to</p> <p>13 correct this action. Through the conversations and with some</p> <p>14 other discussions, my managers and I decided that it was best</p> <p>15 to issue an NOV and ask Ms. Weiser to correct the violation.</p> <p>16 HEARING EXAMINER GROSSMAN: All right, an NOV is a</p> <p>17 notice of violation?</p> <p>18 MS. VARGAS: Yes, a notice of violation. I issued that</p> <p>19 notice of violation -- let's see here. I issued the notice</p> <p>20 of violation on June 18, 2019 with a compliance date of June</p> <p>21 25, 2019. Afterwards -- after June 25, 2019, the corrective</p> <p>22 action was still -- the violation was still not corrected.</p> <p>23 And at that time we decided to notify you, Mr. Grossman, the</p> <p>24 office of zoning administrative hearing, notifying you of an</p> <p>25 ongoing violation on the conditional use property. And this</p>	

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17	<p>1 didn't make a recommendation for changing the conditional use</p> <p>2 or how to resolve this other than the notice of violation.</p> <p>3 Is it my understanding that the department of permitting</p> <p>4 services feels it is not his role to make such suggestions,</p> <p>5 but that's a planning department issue. Is that correct?</p> <p>6 MS. VARGAS: Correct.</p> <p>7 HEARING EXAMINER GROSSMAN: All right. I will open the</p> <p>8 floor now as for cross-examination first by -- oh, is there</p> <p>9 anything else you wish to say?</p> <p>10 MS. VARGAS: Not at this time.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. Ms. Weiser, do you</p> <p>12 have any questions of Ms. Vargas?</p> <p>13 MS. WEISER: I do. Do you need me to stand or --</p> <p>14 HEARING EXAMINER GROSSMAN: No, you're fine.</p> <p>15 MS. WEISER: Good morning. We did speak before you</p> <p>16 issued the notice of violation a number of times, correct?</p> <p>17 MS. VARGAS: Yes.</p> <p>18 MS. WEISER: Both over phone and email?</p> <p>19 MS. VARGAS: Yes.</p> <p>20 MS. WEISER: So when we spoke, we told you a little bit</p> <p>21 about why we removed those trees and then we did speak about</p> <p>22 why we replaced them with ones we had?</p> <p>23 MS. VARGAS: Yes.</p> <p>24 MS. WEISER: Okay. And so when we spoke -- as we</p> <p>25 understood -- well, when we spoke, the reason you issued the</p>	19	<p>1 time. But in any event, it's not uncommon. All right.</p> <p>2 Thank you, Ms. Vargas. Would you kindly step down and remain</p> <p>3 in the room in case recall is needed.</p> <p>4 By the way, I apologize if the temperature gets a</p> <p>5 little warm in here. The air-conditioner here has been on</p> <p>6 the fritz, which it's much better today, which is a</p> <p>7 relatively low temperature day. I was at a hearing all data</p> <p>8 was 98 degrees outside and it got -- it was 80 degrees by</p> <p>9 10:00 a.m. in here and the air-conditioner was broken. They</p> <p>10 were unable to fix it. Now they've tried a number of times</p> <p>11 we've all decided that since we're going to be moving out in</p> <p>12 a week, there's no point spending a lot of money putting in a</p> <p>13 new compressor here. So we are stuck with what we are stuck</p> <p>14 with.</p> <p>15 In any event, all right. The order of procedure calls</p> <p>16 next for Ms. Weiser to testify. Ms. Weiser, would you state</p> <p>17 your full name and address, please?</p> <p>18 MS. WEISER: Hannah Rose Weiser, I'm the property owner</p> <p>19 49205 Fernwood Road, Bethesda, Maryland 20817.</p> <p>20 HEARING EXAMINER GROSSMAN: And you're the holder of</p> <p>21 the conditional use 1607?</p> <p>22 MS. WEISER: Correct, I am the holder of this</p> <p>23 conditional use.</p> <p>24 HEARING EXAMINER GROSSMAN: And also the property</p> <p>25 owner?</p>
18	<p>1 show cause hearing was what exactly again?</p> <p>2 MS. VARGAS: The reason for the show cause hearing was</p> <p>3 because the violation was not corrected.</p> <p>4 MS. WEISER: Okay, but when we spoke, was there a</p> <p>5 recommendation you provided of what we could do to resolve</p> <p>6 the violation?</p> <p>7 MS. VARGAS: My recommendation was to meet the</p> <p>8 condition of the hearing examiner's report.</p> <p>9 MS. WEISER: So when we spoke on a number of occasions,</p> <p>10 we requested information about how we could meet that. For</p> <p>11 example, perhaps with a different kind of shrubbery or with a</p> <p>12 fence. Is that correct?</p> <p>13 MS. VARGAS: Again, that is not my decision. As the</p> <p>14 enforcement official, I can only enforce what the condition</p> <p>15 states. So all I can tell you is to meet the condition as it</p> <p>16 was written.</p> <p>17 MS. WEISER: Okay. Thank you, that's it.</p> <p>18 HEARING EXAMINER GROSSMAN: All right. Mr. Webster, do</p> <p>19 you have any questions of this witness?</p> <p>20 MR. WEBSTER: Not this time.</p> <p>21 HEARING EXAMINER GROSSMAN: Well, this is the time.</p> <p>22 MR. WEBSTER: All right. No.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay. It reminds me of</p> <p>24 sometimes lawyers say, I reserve the right to do this or</p> <p>25 that. They don't necessarily have that right at a later</p>	20	<p>1 MS. WEISER: I'm one of the joint property owners. My</p> <p>2 husband, Christopher Weiser, is another owner of the</p> <p>3 property.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. Would you raise</p> <p>5 your right hand, please?</p> <p>6 Do you swear or affirm to tell the truth, the whole</p> <p>7 truth and nothing but the truth under penalty of perjury?</p> <p>8 MS. WEISER: Yes.</p> <p>9 HEARING EXAMINER GROSSMAN: All right. You may</p> <p>10 proceed.</p> <p>11 MS. WEISER: Thank you, Your Honor. We appreciate the</p> <p>12 opportunity to address the complaints regarding the altered</p> <p>13 landscaping at our home and the subsequent finding by DPS of</p> <p>14 a failure to comply with a condition of our conditional use.</p> <p>15 In July 2016 the hearing examiner approved our request</p> <p>16 for conditional use 16-07 to operate an in-home daycare</p> <p>17 center for infants and toddlers. There are 22 conditions</p> <p>18 imposed on this use. At the time the conditional use was</p> <p>19 granted, the property was subject to two landscaping</p> <p>20 requirements found in the Montgomery County zoning ordinance.</p> <p>21 Section 59.6.2.10 of the ordinance describes requirements for</p> <p>22 parking facility, landscaping, and screening. Law section</p> <p>23 59.6.5.2B describes screening requirements between abutting</p> <p>24 lots in a residential detached zone.</p> <p>25 With respect to the parking facility requirements, the</p>

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6 (21 to 24)

<p>21</p> <p>1 hearing examiner waived the landscaping requirements as part 2 of condition 21, requiring instead that the landscaping be in 3 accordance with the revised landscaping plan. Additionally, 4 we requested alternative compliance with the screening 5 requirements between abutting properties due to the 6 difficulty of meeting this stringent screening requirements 7 in a small residential space. While the hearing examiner 8 noted that alternative compliance appeared to be amply 9 warranted, he determined that the existing landscaping met 10 the requirements of the ordinance.</p> <p>11 However, over the past three years, the screening that 12 existed on the southern property line deteriorated 13 substantially. A number of snowstorms and other natural 14 causes led to the row of evergreen arborvitae bushes dying or 15 becoming severely damaged. On various occasions we tried to 16 replace individual bushes with mature specimens of the same 17 species, but were unable to keep them alive. We believe that 18 the damage screening was an eyesore for the neighborhood and 19 no longer provided adequate screening between the properties.</p> <p>20 On March 29 we removed all of the bushes on the side of 21 the property line and the next day we replaced them with 22 evergreen bushes of a different species. We chose these 23 bushes in consultation with staff at a local nursery that 24 applies to what plans will provide the best screening given 25 the conditions of the site. We believe the new bushes</p>	<p>23</p> <p>1 As a result of these ordinance changes, we believe that the 2 screening in place is now compatible with residential 3 neighborhood and thus meets the letter and intent of the new 4 zoning ordinance. We ask that the conditions accompanying 5 our conditional use be updated to reflect the new zoning 6 ordinance put in place after our conditional use was 7 approved. Thank you.</p> <p>8 HEARING EXAMINER GROSSMAN: Well, before I open you to 9 cross examination, let me just ask you a couple questions. 10 You are correct in saying that the zoning ordinance was 11 modified because it was found that the detailed requirements 12 for screening, both parking lot and general screening, as 13 applied to single-family homes did not make sense. Instead, 14 the whole emphasis was put on compatibility.</p> <p>15 In your case, in fact we didn't apply the standards. 16 We waived them because of that same consideration. And we 17 made the decision based on compatibility, which included 18 screening from the neighbors. If you are no longer providing 19 the screening that was considered compatible at the time, how 20 does the change in the zoning ordinance make it okay?</p> <p>21 MS. WEISER: That's a great question, and thank you. 22 We are trying to provide better screening. We felt the 23 current screening that was there at the time the conditional 24 use was granted was okay, but it did deteriorate as noted in 25 Exhibit 2 from our prehearing statement. You will see that</p>
<p>22</p> <p>1 continue to meet the requirements of the revised landscaping 2 plan and support the residential character of the property 3 and surrounding neighborhood.</p> <p>4 We also note that shortly after the approval of our 5 conditional use, material changes were made in the Montgomery 6 County zoning ordinance regarding landscaping requirements 7 for conditional uses in single-family detached houses such as 8 ours. At the recommendation of the office of zoning and 9 administrative hearing, the hearing examiner requested that 10 the zoning ordinance be amended to extend single-family 11 detached houses where most of the details screening 12 requirements, screening standards for conditional uses, with 13 the exception of compatibility.</p> <p>14 In fact, the experience of our conditional use was used 15 as precedent to support for the new zoning amendment. We 16 believe the approved amendment number 16-13 made two relevant 17 changes to our conditional use, changes relevant to our 18 conditional use. First the screening requirement for 19 abutting properties at 59.6.5.2 were revised or no longer 20 apply to conditional uses for single-family detached houses.</p> <p>21 Second, the parking facility requirements including 22 landscaping and screening requirements were also revised to 23 apply to conditional uses require at least five parking 24 spaces better than three. As noted in the hearing examiner's 25 report, a conditional use only requires for parking spaces.</p>	<p>24</p> <p>1 was significant damage to those existing trees, which is 2 going to happen over the life of a conditional use.</p> <p>3 Because of that damage, we replaced those bushes with 4 ones we were told would be able to withstand the weather and 5 the shady conditions of that area. Our intent was to improve 6 the screening and the compatibility with the neighborhood by 7 putting in those new plants.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. I don't 9 question your intent. The question is the result and that's 10 why we are hearing today from the planning department as to 11 whether or not your bona fides intent actually resulted in 12 screening that's adequate from the neighbors. You identified 13 your prehearing statement, that's Exhibit 90 in the record 14 with a series of attachments. Let me turn first for cross- 15 examination to Mr. Webster. Do you have any questions of 16 this witness?</p> <p>17 MR. WEBSTER: Yes. I would like to ask if Hannah 18 Weiser recalls that the first 20 feet of emerald green 19 arborvitae between the street and the existing rivers birch 20 tree was healthy and thriving and above 10 feet in height.</p> <p>21 MS. WEISER: I'm sorry Mr. Webster, I'm not a plant 22 expert. Those ones were not as deteriorated as the rest of 23 them. But I couldn't speak to their health and how well they 24 were going to withstand future conditions.</p> <p>25 MR. WEBSTER: All right. Between the rivers birch</p>

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25	<p>1 tree, which is 21 feet from the corner of your fence, those</p> <p>2 trees were -- had some damage and were not real healthy.</p> <p>3 Would you agree to that?</p> <p>4 MS. WEISER: I'm sorry. Are you referring to the trees</p> <p>5 from the fence to your birch tree on your property?</p> <p>6 MR. WEBSTER: Yes.</p> <p>7 MS. WEISER: Correct.</p> <p>8 MR. WEBSTER: About 20 feet, linear feet.</p> <p>9 MS. WEISER: Yes, those were damaged and unhealthy.</p> <p>10 MR. WEBSTER: All right. Mr. Grossman, I have some</p> <p>11 photos --</p> <p>12 HEARING EXAMINER GROSSMAN: I will allow you to</p> <p>13 introduce them, but if you want to use them for cross-</p> <p>14 examination purposes -- is that what you want to do?</p> <p>15 MR. WEBSTER: No, I like to use that as a rebuttal to</p> <p>16 clarify her comment that she is not an arborist and can't</p> <p>17 testify to the health. I have some photos that testify that</p> <p>18 they are healthy.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay. I will allow you to</p> <p>20 introduce that when you testify. But if you want to use them</p> <p>21 in the course of your cross-examination now, you can do that</p> <p>22 if you feel that that's what you want to do. If you want to</p> <p>23 actually introduce them for purposes of your testimony, you</p> <p>24 can do it while you are testifying.</p> <p>25 MR. WEBSTER: I will do it later.</p>	27	<p>1 intended -- why you chose the plants you chose to put in the</p> <p>2 property and to replace the damaged arborvitae?</p> <p>3 MR. WEISER: Sure. So one thing we notice with</p> <p>4 arborvitae as they became damaged over snowstorms, that they</p> <p>5 don't grow back. So if they have any damage on the sides or</p> <p>6 anything, that damage is permanent. So we took out these</p> <p>7 bushes, we obviously don't know a lot about particular plans.</p> <p>8 So we went to Sun Nurseries, which is up in Woodbine,</p> <p>9 Maryland. And we asked the staff, given the fact that this</p> <p>10 property -- this property line exists under a large birch, I</p> <p>11 think you call it a birch tree, it's particularly shady.</p> <p>12 I don't know if that was there when the arborvitae were</p> <p>13 first planted. But over the years, we've replaced with that</p> <p>14 same arborvitae we noticed that almost full shade during the</p> <p>15 day as well as kind of rainy conditions. This meant that we</p> <p>16 can keep any arborvitae healthy and strong. Not to mention</p> <p>17 the fact that there are other large, damage, but large</p> <p>18 arborvitae that are also shading the new ones we were</p> <p>19 planning.</p> <p>20 So we removed all those. We asked the nursery staff</p> <p>21 what would be an appropriate plant that would be shade</p> <p>22 tolerant and would generally grow as fast as possible, would</p> <p>23 be evergreen so it could get typically about 10 feet tall to</p> <p>24 provide screening. And this is what they recommended. They</p> <p>25 had two options. They had schip cherry laurel and I think</p>
26	<p>1 HEARING EXAMINER GROSSMAN: Okay.</p> <p>2 MR. WEBSTER: And no further questions.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. Does anybody</p> <p>4 else have any questions of Ms. Weiser? Seeing no hands --</p> <p>5 all right ma'am. Do you wish to call your husband as a</p> <p>6 witness?</p> <p>7 MS. WEISER: I do.</p> <p>8 HEARING EXAMINER GROSSMAN: All right.</p> <p>9 HEARING EXAMINER GROSSMAN: Mr. Weiser, will you state</p> <p>10 your full name and address, please?</p> <p>11 MR. WEISER: Christopher John Weiser, 9205 Fernwood</p> <p>12 Road, Bethesda, Maryland 20817.</p> <p>13 HEARING EXAMINER GROSSMAN: And could you -- you are</p> <p>14 already raising right hand.</p> <p>15 MR. WEISER: Oh, I'm sorry.</p> <p>16 HEARING EXAMINER GROSSMAN: Do you swear or affirm to</p> <p>17 tell the truth, the whole truth and nothing but the truth</p> <p>18 under penalty of perjury?</p> <p>19 MR. WEISER: Yes, I do.</p> <p>20 HEARING EXAMINER GROSSMAN: All right. Are you the co-</p> <p>21 owner of the property in question?</p> <p>22 MR. WEISER: Yes, Your Honor.</p> <p>23 HEARING EXAMINER GROSSMAN: All right. You may proceed</p> <p>24 with your questions.</p> <p>25 MS. WEISER: Thank you. Can you please describe why we</p>	28	<p>1 the other one was viburnum or something. We thought that</p> <p>2 these look a little bit better and they had sufficient stock</p> <p>3 in place that day when we were there to go ahead and buy</p> <p>4 them.</p> <p>5 HEARING EXAMINER GROSSMAN: I'm going to interrupt you</p> <p>6 for second because you are testifying about what somebody</p> <p>7 else told you. That is actually not hearsay. Hearsay is</p> <p>8 generally defined as an extrajudicial declaration offered to</p> <p>9 prove the truth of the matter asserted therein. I take it</p> <p>10 that is not being offered here by Mr. Weiser to suggest that</p> <p>11 that's necessarily true, but rather to indicate why the</p> <p>12 Weisers acted in the fashion that they did.</p> <p>13 So it's technically not a hearsay question. Although</p> <p>14 hearsay, to some extent, is allowed in this kind of</p> <p>15 administrative proceeding. If however, he goes to some</p> <p>16 central issue, I usually don't allow it in. Here is not even</p> <p>17 hearsay since is being offered not to prove that it's true,</p> <p>18 but rather that this is the reason for the action. I take it</p> <p>19 that's the case, Mr. Weiser.</p> <p>20 MR. WEISER: Yes, Your Honor.</p> <p>21 HEARING EXAMINER GROSSMAN: All right.</p> <p>22 MR. WEISER: We also -- if it helps, there are also</p> <p>23 exhibits in here that I believe you added that tried to show</p> <p>24 some various plant websites that we found online describing</p> <p>25 this particular species and its rate of growth and how high</p>

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<p>29</p> <p>1 it should get.</p> <p>2 HEARING EXAMINER GROSSMAN: You said you added. You</p> <p>3 mean your wife added?</p> <p>4 MR. WEISER: My wife added them.</p> <p>5 MS. WEISER: Thank you. And at the time the</p> <p>6 conditional use was granted, there was also alternative</p> <p>7 compliance to our northern property line. Can you please</p> <p>8 describe approximately what the height of those shrubbery</p> <p>9 are?</p> <p>10 MR. WEISER: Sure. So on our northern property line,</p> <p>11 the time we receive the conditional use, there were I believe</p> <p>12 four, I think they are azaleas. They are about two feet tall</p> <p>13 or maybe two and a half feet tall. So as part of the</p> <p>14 conditional use, we are required to add three additional</p> <p>15 bushes. I think the conditional you said what those bushes</p> <p>16 should be. So we ended up putting four crepe myrtles in</p> <p>17 behind on that property line.</p> <p>18 MS. WEISER: Would you say those are of a similar</p> <p>19 height and aesthetics what we have on our southern property</p> <p>20 line now?</p> <p>21 MR. WEISER: Yes. I mean, the azaleas are probably a</p> <p>22 little bit shorter than what is currently on the southern</p> <p>23 property line. And then the crepe myrtles or maybe a foot</p> <p>24 taller than what's there right now.</p> <p>25 MS. WEISER: So the northern property line and southern</p>	<p>31</p> <p>1 above the six foot tall fence to try and screen their</p> <p>2 backyard from the kids playing outside.</p> <p>3 MS. WEISER: Would you say those plants and the ones in</p> <p>4 the front of the property were selected because they were</p> <p>5 fast-growing?</p> <p>6 MR. WEISER: Yes, definitely.</p> <p>7 HEARING EXAMINER GROSSMAN: I think the question here</p> <p>8 today is about the screening on the southern property line</p> <p>9 along -- beside the driveway area. Not in the back. Is that</p> <p>10 correct?</p> <p>11 MR. WEISER: Yes, Your Honor.</p> <p>12 MS. WEISER: In our conversations we spoke about ways</p> <p>13 we could possibly provide additional screening. Were there</p> <p>14 any other ideas you might have to screen the property?</p> <p>15 MR. WEISER: Yeah. So when Ms. Vargas first told us</p> <p>16 about the violation, I think one thing we asked about was</p> <p>17 could we please put in a six foot tall privacy fence. So</p> <p>18 there is an existing six foot tall privacy fence that</p> <p>19 obviously cuts off our front and back yards, and there is a</p> <p>20 gate. So we offered that we could immediately or over the</p> <p>21 course of a few weeks, put up a matching fence along that</p> <p>22 southern property line to provide immediate screening, six</p> <p>23 feet tall.</p> <p>24 We wouldn't have to worry about the weather or other</p> <p>25 storms or trying to keep bushes alive. We offered that. I</p>
<p>30</p> <p>1 property line have similar screening at this moment?</p> <p>2 MR. WEISER: Yeah.</p> <p>3 MS. WEISER: And there was originally a conditional use</p> <p>4 to the northern property line. There was an alternative</p> <p>5 compliance granted to that screening?</p> <p>6 MR. WEISER: Yes.</p> <p>7 MS. WEISER: Thank you.</p> <p>8 HEARING EXAMINER GROSSMAN: I take it the Websters are</p> <p>9 on your southern property line?</p> <p>10 MR. WEISER: Yes.</p> <p>11 MS. WEISER: Correct. Was there additional screening</p> <p>12 that was planted on our property in the backyard area while</p> <p>13 not required by the conditional use?</p> <p>14 MR. WEISER: Yes, we did plant additional screening on</p> <p>15 the southern property line. In the backyard there are five,</p> <p>16 roughly -- they are little bit taller than the fence. So</p> <p>17 roughly like seven to nine feet tall. (inaudible) right now.</p> <p>18 Pine looking trees at the moment, I think they are cypress.</p> <p>19 MS. WEISER: Thank you. And those were also one of the</p> <p>20 exhibits in our pre-hearing statement to show those. Why</p> <p>21 were those put into place on the property?</p> <p>22 MR. WEISER: I think they were -- Mr. Webster asked for</p> <p>23 additional screening on our southern property line. So while</p> <p>24 it wasn't required as part of the conditional use, we went</p> <p>25 ahead and planted some additional bushes that would grow</p>	<p>32</p> <p>1 think the response we got was, it seemed okay. My</p> <p>2 understanding was they went back to the Websters. The</p> <p>3 Websters didn't agree to a fence. So DPS was reluctant to</p> <p>4 approve that, whatever the right terminology is.</p> <p>5 MS. WEISER: Thank you. I have no more questions.</p> <p>6 HEARING EXAMINER GROSSMAN: All right. Cross-</p> <p>7 examination? Mr. Webster?</p> <p>8 MR. WEBSTER: Yes. Please describe again why you</p> <p>9 thought that someone had approached us regarding the six foot</p> <p>10 tall fence. I don't recall that.</p> <p>11 MR. WEISER: Our understanding talking to DPS was that</p> <p>12 we -- DPS asked us how we would like to fix the violation.</p> <p>13 So our response was that we would like to put up a six foot</p> <p>14 tall privacy fence. We thought that was the easiest, best</p> <p>15 method that would work for everybody.</p> <p>16 HEARING EXAMINER GROSSMAN: And this is on the southern</p> <p>17 side at the driveway?</p> <p>18 MR. WEISER: Yes, sir. Yes, Your Honor.</p> <p>19 HEARING EXAMINER GROSSMAN: Okay.</p> <p>20 MR. WEISER: We submitted that to DPS. A couple of</p> <p>21 weeks later perhaps, we heard back that -- I think they</p> <p>22 didn't feel comfortable making that determination, whether or</p> <p>23 not the fence would be appropriate. One reason we received</p> <p>24 was that she had talked to you about it and that you did not</p> <p>25 approve of it.</p>

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<p>33</p> <p>1 MR. WEBSTER: All right. No other questions.</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Have you looked</p> <p>3 at -- maybe I should actually ask this of Ms. Weiser. You</p> <p>4 don't have to come forward. Have you seen the report filed</p> <p>5 by Ms. Reilly who's about to testify?</p> <p>6 MS. WEISER: I have seen the report.</p> <p>7 HEARING EXAMINER GROSSMAN: And the suggestion in there</p> <p>8 about how to resolve this issue, what's your response to</p> <p>9 that?</p> <p>10 MS. WEISER: Your Honor, a licensed arborist is quite</p> <p>11 the expense. We put these plans in intending to meet the</p> <p>12 conditions of our conditional use. We were trying to violate</p> <p>13 any of the rules. We often try to go above what's required</p> <p>14 of our use to help make our neighbors happy, providing the</p> <p>15 community -- the service we provide to our community. A</p> <p>16 licensed arborist would be quite expensive to provide a</p> <p>17 landscaping plan and was set a precedent that could cause a</p> <p>18 burden to other single-family homes that might not have a</p> <p>19 conditional use on their property.</p> <p>20 It also seems a bit strange given the material changes</p> <p>21 that have been put into the new zoning ordinance only about a</p> <p>22 month after our conditional use was granted, which waives all</p> <p>23 these requirements.</p> <p>24 HEARING EXAMINER GROSSMAN: Well, it doesn't -- it</p> <p>25 never waived compatibility.</p>	<p>35</p> <p>1 that one side when the other side sets a precedent for a</p> <p>2 having -- I'm sorry, Your Honor. I'm pregnant and having</p> <p>3 severe morning sickness. It's distracting. I apologize.</p> <p>4 HEARING EXAMINER GROSSMAN: Do you need a break?</p> <p>5 MS. WEISER: No, I just need a minute for some water.</p> <p>6 The northern property line was granted alternative</p> <p>7 compliance. So requiring much higher restrictions for the</p> <p>8 southern property line when there is a conditional use --</p> <p>9 when our conditional use has that condition for the northern</p> <p>10 property line, just seems a bit arbitrary. I'm concerned</p> <p>11 also again about the precedent it creates for other</p> <p>12 homeowners who might be in a similar situation.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. Well I'm not</p> <p>14 going to worry about precedent here. I'm going to try to</p> <p>15 solve the problem here. And then if it's that the</p> <p>16 president -- there is nothing -- decisions in individual</p> <p>17 conditional use cases are not a binding precedent in the same</p> <p>18 way decisions in a Court would be a bonding precedent or even</p> <p>19 ultimately other decisions that go up to a higher level. So</p> <p>20 it's not quite the same thing. Each conditional use case is</p> <p>21 very site-specific. In any event, I understand your answer.</p> <p>22 Is there anything further for Mr. Weiser?</p> <p>23 MS. WEISER: No, thank you.</p> <p>24 HEARING EXAMINER GROSSMAN: Thank you. All right. I</p> <p>25 would like to hear now from Kathy Reilly. Oh, you know what?</p>
<p>34</p> <p>1 MS. WEISER: Correct.</p> <p>2 HEARING EXAMINER GROSSMAN: What essentially it did was</p> <p>3 to move the responsibility to the hearing examiner based on</p> <p>4 the evidence presented to the hearing examiner usually by the</p> <p>5 technical staff and planning department to determine what</p> <p>6 amount of screening would be necessary to ensure</p> <p>7 compatibility.</p> <p>8 MS. WEISER: Correct.</p> <p>9 HEARING EXAMINER GROSSMAN: So it didn't really remove</p> <p>10 the requirements. It changed it from the much more detailed</p> <p>11 about it and looked at the zoning ordinance and requirements</p> <p>12 that still apply to some kinds of uses, but no longer to</p> <p>13 single-family homes. It was very detailed and exactly what</p> <p>14 sort of vegetation has to be planted. It didn't make sense</p> <p>15 for that level of detail for a private neighborhood.</p> <p>16 It might be even destructive for the neighborhood to</p> <p>17 have that kind of set up, to be required and so on. And so</p> <p>18 it made sense to have it as strictly a compatibility issue.</p> <p>19 So it didn't really change that fundamental question we have</p> <p>20 to face.</p> <p>21 MS. WEISER: Your Honor, the northern property line</p> <p>22 which did receive alternative compliance really mirrors our</p> <p>23 southern property line in terms of the height. It seems</p> <p>24 arbitrary to require a licensed arborist and a minimum height</p> <p>25 and additional screening, detailed screening requirements for</p>	<p>36</p> <p>1 I may actually have stepped out of the order. I think I</p> <p>2 indicated before we would have the Websters come up next.</p> <p>3 MS. REILLY: Okay.</p> <p>4 HEARING EXAMINER GROSSMAN: So Mr. Webster?</p> <p>5 MR. WEBSTER: Yes.</p> <p>6 HEARING EXAMINER GROSSMAN: You are invited up to the</p> <p>7 hot seat.</p> <p>8 MR. WEBSTER: Thank you.</p> <p>9 HEARING EXAMINER GROSSMAN: If you have notes you want</p> <p>10 to take with you, you can.</p> <p>11 MR. WEBSTER: That's all right.</p> <p>12 HEARING EXAMINER GROSSMAN: And be careful. We have</p> <p>13 wires set out across here. Don't trip on those.</p> <p>14 By the way, this is the first such hearing, show course</p> <p>15 hearing, that's been conducted by my office in my</p> <p>16 recollection, because it used to be that what's now call</p> <p>17 conditional uses were special exceptions handled by the board</p> <p>18 of appeals. Some of that jurisdiction when the zoning</p> <p>19 ordinance was changed the hearing examiner made the final</p> <p>20 decision in conditional use cases subject to appeal to the</p> <p>21 board of appeals unlike special exception cases in which the</p> <p>22 board of appeals made the final decision. And enforcement of</p> <p>23 it was more the board of appeals than in my office. So this</p> <p>24 procedure is somewhat new here in that this is the first such</p> <p>25 hearing we've held.</p>

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37	1 All right Mr. Webster, when you state your full name 2 and address, please? 3 MR. WEBSTER: Robert Joseph Webster, 1903 Fernwood 4 Road, Bethesda, Maryland 20817. 5 HEARING EXAMINER GROSSMAN: Would you raise your right 6 hand, please? 7 Do you swear or affirm to tell the truth, the whole 8 truth and nothing but the truth under penalty of perjury? 9 MR. WEBSTER: Yes. 10 HEARING EXAMINER GROSSMAN: All right. You may proceed 11 Mr. Webster. 12 MR. WEBSTER: May I start by an attempt to clarify an 13 error or admission? 14 HEARING EXAMINER GROSSMAN: Certainly. 15 MR. WEBSTER: In respect to the September 4 letter to 16 Martin Grossman from Kathleen Reilly, page 1. 17 HEARING EXAMINER GROSSMAN: Will you pull that out if 18 you would? That would be Exhibit 96 I believe. Yes, page 1. 19 MR. WEBSTER: The very last paragraph has an error or 20 omission. In fact, the 21 feet -- and the error is because 21 the arborvitae had died or were damaged by storms. In fact, 22 there were 21 feet of emerald green arborvitae that extended 23 from the property corner east to the rivers birch tree at 24 9203, which is my property. And the first -- I'm sorry. It 25 was -- there were 21 feet were in extremely healthy	39	1 submit. 2 HEARING EXAMINER GROSSMAN: I will let you introduce 3 those as well. 4 MR. WEBSTER: All right. May I borrow a pen from 5 someone? 6 HEARING EXAMINER GROSSMAN: Sure. 7 MR. WEBSTER: I left mine on the table. 8 HEARING EXAMINER GROSSMAN: Hold on one second. 9 MR. WEBSTER: Thank you. 10 HEARING EXAMINER GROSSMAN: Okay. 11 MR. WEBSTER: Shall I put an X or circle or how would 12 you prefer it? 13 HEARING EXAMINER GROSSMAN: To say healthy and draw 14 lines -- the outline of where the healthy ones are and then 15 where the unhealthy or the questionable ones were so 16 indicate. 17 MR. WEBSTER: All right. Is there any date when this 18 overhead photo was taken? 19 HEARING EXAMINER GROSSMAN: It would have been prior to 20 the last hearing. I have no problem using a more up-to-date 21 diagram if we have one here. I'm just trying to have 22 something that you can visually show where you are saying the 23 -- and we do have the landscaping plan. 24 MS. WEISER: Your Honor, Exhibit 2 for my prehearing 25 statement has a plan.
38	1 condition. The remaining 20 feet were in questionable 2 condition in respect to health. Continuing east along the 3 property line from the rivers birch tree to the fence, those 4 arborvitae were damaged, and uncared, for and unhealthy. 5 HEARING EXAMINER GROSSMAN: Perhaps it would be helpful 6 if we had a diagram up there that we can look at so you can 7 explain to me exactly where it is on here that we are talking 8 about. And maybe the best thing to use, I think, Exhibit 37- 9 A from the -- 10 MS. VARGAS: Report. 11 HEARING EXAMINER GROSSMAN: The original report of the 12 file. And perhaps you could indicate -- I'm sorry we don't 13 have a larger -- 14 MR. WEBSTER: All right. That's fine. 15 HEARING EXAMINER GROSSMAN: Indicate on here -- notate 16 on there -- and we're going to give that a new exhibit number 17 for this purpose -- where it is, the trees that were healthy. 18 He said there were 21 feet of healthy. 19 MR. WEBSTER: Yes. 20 HEARING EXAMINER GROSSMAN: And then you had said 21 21 feet were questionable. 22 MR. WEBSTER: Yes. 23 HEARING EXAMINER GROSSMAN: And would you indicate -- 24 draw on that diagram where you -- 25 MR. WEBSTER: Yes, and I also have some photos to	40	1 HEARING EXAMINER GROSSMAN: Okay. Let's look at that. 2 MS. WEISER: Picture of the arborvitae he's referring 3 to. 4 HEARING EXAMINER GROSSMAN: Yeah. Maybe that -- 5 MS. WEISER: I -- 6 HEARING EXAMINER GROSSMAN: Well, those are photos of 7 the trees themselves. It doesn't the show -- 8 (Crosstalk) 9 MS. WEISER: Would have -- 10 HEARING EXAMINER GROSSMAN: Pardon me? 11 MS. WEISER: The next page has the -- 12 HEARING EXAMINER GROSSMAN: The next page? 13 MS. WEISER: A picture of the property line. 14 HEARING EXAMINER GROSSMAN: Okay. 15 The only trouble with that is that once again, it's not 16 a diagram. It's a photograph of the trees. And what I 17 wanted to see is where exactly on the property we are talking 18 about. 19 MR. WEBSTER: All right. It doesn't print very well, 20 but these were the healthy trees. 21 HEARING EXAMINER GROSSMAN: Okay. 22 MR. WEBSTER: X is approximately where my rivers birch 23 tree is. That rivers birch is about 50 feet tall right now. 24 HEARING EXAMINER GROSSMAN: Okay. 25 MR. WEBSTER: The unhealthy trees were from here to the

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41	<p>1 corner of Hannah Weiser's fence.</p> <p>2 HEARING EXAMINER GROSSMAN: Okay. Let me take a look</p> <p>3 at that. And I'm going to put a new exhibit number on it.</p> <p>4 MR. WEBSTER: It's quite crude, but I did write -- and</p> <p>5 while they were unhealthy, they still provided screening.</p> <p>6 HEARING EXAMINER GROSSMAN: Okay. So this will be</p> <p>7 now -- one cross out the prior exhibit number. And this</p> <p>8 would be Exhibit 99. And we will say Mr. Webster, diagram of</p> <p>9 the location of healthy and --</p> <p>10 MR. WEBSTER: Unhealthy.</p> <p>11 HEARING EXAMINER GROSSMAN: Unhealthy screening on</p> <p>12 southern property line. All right. If anybody needs to see</p> <p>13 this, they're welcome to look at that. All right. Yes, sir.</p> <p>14 And you said you had some photographs that you wanted to</p> <p>15 introduce?</p> <p>16 MR. WEBSTER: Yes, I have several copies if you would</p> <p>17 like me to provide a copy to everyone else.</p> <p>18 HEARING EXAMINER GROSSMAN: That would be great. All</p> <p>19 right.</p> <p>20 MR. WEBSTER: Would you like me to provide a set to</p> <p>21 Hannah Weiser?</p> <p>22 HEARING EXAMINER GROSSMAN: I appreciate that. Thank</p> <p>23 you.</p> <p>24 MR. WEBSTER: All right.</p> <p>25 HEARING EXAMINER GROSSMAN: And then he said you have</p>	43	<p>1 Do you want to identify the photographs now that you</p> <p>2 attached? Or do you want to continue with your narration?</p> <p>3 MR. WEBSTER: The photographs are part of the</p> <p>4 narration.</p> <p>5 HEARING EXAMINER GROSSMAN: Okay. So you can proceed</p> <p>6 as you will and just identified the photos as you discuss</p> <p>7 them.</p> <p>8 MR. WEBSTER: All right. Exhibit 1, page 1 is a</p> <p>9 photograph, three photographs taken from 2012, I don't</p> <p>10 remember which month, where a car left Fernwood Road and</p> <p>11 crashed through my front yard into what is now Hannah</p> <p>12 Weiser's property. At that time it was not Hanna Weiser's</p> <p>13 property.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay.</p> <p>15 MR. WEBSTER: And at that time the vehicle did knock</p> <p>16 down at least three arborvitae. I believe it was four, but I</p> <p>17 can't testify to that. I believe one, this small stunted</p> <p>18 arborvitae described in a minute is out of view behind the</p> <p>19 arborvitae on the left side of those photos.</p> <p>20 HEARING EXAMINER GROSSMAN: I see the automobile. Is</p> <p>21 that a garbage can that's in front of it that was knocked</p> <p>22 over?</p> <p>23 MR. WEBSTER: Yes, I had grass recycling can there.</p> <p>24 HEARING EXAMINER GROSSMAN: Okay. Gotcha.</p> <p>25 MR. WEBSTER: So the car proceeded through those</p>
42	<p>1 an additional copy too or it should've be --</p> <p>2 MR. WEBSTER: If Ms. Reilly or someone else wants</p> <p>3 one --</p> <p>4 HEARING EXAMINER GROSSMAN: Yes, as I said, Ms. Reilly</p> <p>5 is about to testify. So that would be good.</p> <p>6 MR. WEBSTER: Yes, he's got one, one, two, three, and</p> <p>7 I've got the rest.</p> <p>8 MS. VARGAS: No, I believe that's part of your</p> <p>9 complaint.</p> <p>10 MS. WEBSTER: Well, he added something.</p> <p>11 (Crosstalk)</p> <p>12 HEARING EXAMINER GROSSMAN: Let me mark this as an</p> <p>13 exhibit.</p> <p>14 MS. VARGAS: Okay. Thank you.</p> <p>15 HEARING EXAMINER GROSSMAN: And this will be Exhibit</p> <p>16 100, is memo from Joseph -- is it Joseph?</p> <p>17 MR. WEBSTER: Yes, Robert Joseph. I go by Joe.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay, Mr. -- regarding</p> <p>19 Reilly. All right. Since it's short, just let me just take</p> <p>20 a quick look at it.</p> <p>21 MR. WEBSTER: I haven't completely finished my</p> <p>22 testimony.</p> <p>23 HEARING EXAMINER GROSSMAN: Yeah, I'm not going to cut</p> <p>24 you off. I just want to take a look at it while we are</p> <p>25 talking about it.</p>	44	<p>1 arborvitae in 2012 and knock down at least three of them and</p> <p>2 I believe four. Those arborvitae, they were emerald green</p> <p>3 arborvitae, were never repositioned or planted nor cared for</p> <p>4 by the owner at that time. And they were never properly</p> <p>5 replanted nor cared for, watered, nor fertilized, that I have</p> <p>6 any reason to believe by Hannah Weiser after she acquired</p> <p>7 ownership of that property. So that's the reason from that</p> <p>8 rivers birch tree 21 feet east, that those trees were stunted</p> <p>9 and damaged, due to that auto accident.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay.</p> <p>11 MR. WEBSTER: Also, there was an ice storm</p> <p>12 approximately 2012, winter, that did some damage on those</p> <p>13 emerald green arborvitae on the east side of that rivers</p> <p>14 birch. I believe the main reason for the damage was that car</p> <p>15 crash.</p> <p>16 For some reason, Hannah Weiser decided to pull out one</p> <p>17 emerald green arborvitae to the left of that birch tree.</p> <p>18 That would be west of the birch tree. And she replanted it</p> <p>19 with a small tree, a small emerald arborvitae, which I have a</p> <p>20 photo here from Hannah Weiser's prehearing statement on March</p> <p>21 29, 2009. That shows the emerald green arborvitae in a state</p> <p>22 of disarray. They were tipped over and not very healthy.</p> <p>23 HEARING EXAMINER GROSSMAN: This is page 2 of what</p> <p>24 you've labeled Exhibit 1, which is now Exhibit 100. Is that</p> <p>25 correct?</p>

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12 (45 to 48)

45	1 MR. WEBSTER: (inaudible). 2 HEARING EXAMINER GROSSMAN: You're talking about was 3 depicted on the page -- what's labeled Exhibit 1, page 2? 4 MR. WEBSTER: No, page 2 reveals those were healthy 5 emerald green arborvitae, they were, past tense, to the west 6 side of that rivers birch tree. The stunted emerald green 7 arborvitae that are depicted by the two bottom photographs on 8 the east side of the rivers birch tree, those are the ones 9 standing from when the vehicle crashed through that fence and 10 into the arborvitae. 11 HEARING EXAMINER GROSSMAN: And the rivers birch tree 12 you are referencing, is that the tree that shown on Exhibit 13 1, page 2, top photograph on the right-hand side? 14 MR. WEBSTER: Yes. 15 HEARING EXAMINER GROSSMAN: Okay. 16 MR. WEBSTER: It's also visible in the other two photos 17 on Exhibit 1, page 1. 18 HEARING EXAMINER GROSSMAN: Yes. Okay. And then going 19 to -- well, it's Exhibit 1, page 2 I think it's talking about 20 Oh, I see. It's also visible and page 1. 21 MR. WEBSTER: Yes. 22 HEARING EXAMINER GROSSMAN: Okay. And now turning to 23 Exhibit 1, page 3, as you've labeled that. 24 MR. WEBSTER: Yes. 25 HEARING EXAMINER GROSSMAN: And once again, as part of	47	1 HEARING EXAMINER GROSSMAN: And do they accurately 2 depict the scene as it exists today? 3 MR. WEBSTER: Yes. 4 HEARING EXAMINER GROSSMAN: All right. So that's 5 Exhibit 100 and labeled Exhibit 1, page 3. Okay. And page 6 four? 7 MR. WEBSTER: The same, a different perspective showing 8 a driveway full of cars. 9 HEARING EXAMINER GROSSMAN: Okay. All right. What 10 else? 11 MR. WEBSTER: Exhibit 1 page four, those cars were near 12 100 percent screened prior to the removal of those 10 foot 13 plus arborvitae. 14 HEARING EXAMINER GROSSMAN: Right. 15 MR. WEBSTER: So that's why we are requesting that the 16 10 foot arborvitae be replaced. 17 HEARING EXAMINER GROSSMAN: All right. 18 MR. WEBSTER: And also Mr. Grossman -- Karen, do I have 19 more photos of this? Is this the only copy? 20 MS. WEBSTER: No, that's the one that's in Hannah's 21 prehearing statement I think. 22 MR. WEBSTER: All right. Will you bear with me just a 23 minute while I try to find that package? 24 HEARING EXAMINER GROSSMAN: Absolutely. Take your 25 time.
46	1 Exhibit 100 in this case. 2 MR. WEBSTER: Yes, that shows existing. 3 HEARING EXAMINER GROSSMAN: All right. So this is 4 existing now? 5 MR. WEBSTER: Yes. 6 HEARING EXAMINER GROSSMAN: Looking towards the Weiser 7 property from your property. Is that correct? 8 MR. WEBSTER: Yes, correct. 9 HEARING EXAMINER GROSSMAN: Okay. And so will you see 10 like a wooden rail fence and very little growth of -- there 11 is one larger tree, I'm not sure what kind, all the way on 12 the left side of the photograph. 13 MR. WEBSTER: Yes, that's an emerald green arborvitae 14 also. 15 HEARING EXAMINER GROSSMAN: Okay. 16 MR. WEBSTER: Actually, that's a row of three trees, 17 but the angle of the photograph, only one tree can be 18 determined, as you said. 19 HEARING EXAMINER GROSSMAN: I see. And then when you 20 look at it the bottom photograph on that page, you do see 21 other trees? 22 MR. WEBSTER: Yes. Yes. 23 HEARING EXAMINER GROSSMAN: Okay. All right. Did you 24 take these photographs yourself? 25 MR. WEBSTER: Yes.	48	1 MR. WEBSTER: Before we move on to that, could I wind 2 up this clarification of the September 4 memo? 3 HEARING EXAMINER GROSSMAN: Yes, certainly. 4 MR. WEBSTER: All right. That concludes my statement 5 on the clarification of the memo. In fact, that whole 41 6 feet of arborvitae were not damaged, or stunted, or dead. In 7 fact, from the rivers birch tree west to the property corner 8 were in fact very healthy specimens. 9 HEARING EXAMINER GROSSMAN: So you are saying 10 essentially 20 to 21 feet of them were damaged or unhealthy 11 and the others were not? 12 MR. WEBSTER: True. 13 Okay. Mr. Grossman, this shows one tree. I do not 14 have copies. 15 HEARING EXAMINER GROSSMAN: Okay. 16 MR. WEBSTER: I can provide them if anyone -- that was 17 in Hannah Weiser's package from several months ago. 18 HEARING EXAMINER GROSSMAN: Okay. And what is this 19 depicting in your -- 20 MR. WEBSTER: That short emerald green arborvitae is a 21 tree that for some reason Hannah Weiser caused to be planted 22 when -- after the car crossed over that tree, it was dead 23 essentially. For some reason she put that one out there. 24 HEARING EXAMINER GROSSMAN: All right. So -- 25 MR. WEBSTER: And the bottom photo shows how those

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13 (49 to 52)

49	<p>1 trees were. And I believe they were in that condition when</p> <p>2 the inspections were made, the various inspections prior to</p> <p>3 the conditional use was approved.</p> <p>4 HEARING EXAMINER GROSSMAN: All right. So the -- these</p> <p>5 photographs that you just handed me, since they've been</p> <p>6 referenced here, one make Exhibit 101, photos of -- I guess</p> <p>7 these all are depicting unhealthy trees on the order. Is</p> <p>8 that correct?</p> <p>9 MR. WEBSTER: Yes. And the bottom one, which depicts</p> <p>10 Hannah Weiser's fence on the left and tipped over trees,</p> <p>11 shows the condition of those trees. They were uncared for</p> <p>12 and never replanted. They survived in that position, but</p> <p>13 they were not real healthy or visually appealing.</p> <p>14 HEARING EXAMINER GROSSMAN: All right. I note that</p> <p>15 there is a photograph attached to Ms. Weiser's prehearing</p> <p>16 statement. It's not marked with a number. Let me make sure</p> <p>17 I get the number correct here. And for some reason, that</p> <p>18 particular photograph does not --</p> <p>19 MR. WEBSTER: Could you -</p> <p>20 HEARING EXAMINER GROSSMAN: I'm going to hold up there.</p> <p>21 Yeah, does not have an ID on it in our file.</p> <p>22 MR. WEBSTER: All right. That was a car going by</p> <p>23 Hannah Weiser's, as I recall.</p> <p>24 MS. WEISER: Your Honor, I believe that's part of</p> <p>25 Exhibit 2 that you are referencing, but I can't --</p>	51	<p>1 HEARING EXAMINER GROSSMAN: Okay. So all the ones that</p> <p>2 were directly along the property line?</p> <p>3 MS. WEISER: The property line, correct.</p> <p>4 HEARING EXAMINER GROSSMAN: Whether they were healthy</p> <p>5 or not?</p> <p>6 MS. WEISER: Correct.</p> <p>7 HEARING EXAMINER GROSSMAN: Okay. So explain to me, if</p> <p>8 you would, why did you remove the healthy ones?</p> <p>9 MS. WEISER: Your Honor, we removed the healthy ones</p> <p>10 because -- I'm sorry. We removed the healthy ones because we</p> <p>11 felt that the entire line was difficult -- line of plants was</p> <p>12 difficult to help maintain. They had experienced severe</p> <p>13 damage. While Mr. Webster testified that there was never any</p> <p>14 replanting from his 2012 photos, there clearly had been</p> <p>15 replanted plants that were damaged, as you can see in the</p> <p>16 photos that were taken and used as part of your Hearing</p> <p>17 Examiner's report. I believe it's page 14 shows there been</p> <p>18 replaced screening from when that car accident -- sorry that</p> <p>19 was from before we on the property.</p> <p>20 When we planted the new plants, you will notice we move</p> <p>21 them forward from the southern property line and further from</p> <p>22 the fence so that they wouldn't be as far in the shade, but</p> <p>23 to keep the line in the compatibility of the community. To</p> <p>24 keep the line plants the same we moved all of them so they</p> <p>25 would be of the same species, outside of the shade, and along</p>
50	<p>1 HEARING EXAMINER GROSSMAN: You can call it Exhibit 2,</p> <p>2 but I just -- for our -- in our file here, I don't see a --</p> <p>3 for some reason there is a -- it was 90-D I guess, and that</p> <p>4 was crossed out and I don't know what that is but there is a</p> <p>5 different 90-D. Yes, there is a different 90-D. So what I'm</p> <p>6 going to do is, just we make sure that we have it all, we</p> <p>7 will call it 90-M. And this is the photo I'm referencing and</p> <p>8 you are -- attached to your statement. And Ms. Weiser, what</p> <p>9 is that depicting and on what date?</p> <p>10 MS. WEISER: That was depicting the southern property</p> <p>11 line on March 30, prior to the removal of the arborvitae.</p> <p>12 HEARING EXAMINER GROSSMAN: Okay. So that's the photo</p> <p>13 of the southern property line on March 30, 2019?</p> <p>14 MS. WEISER: Correct, Your Honor. Oh, I'm sorry, Your</p> <p>15 Honor, it's March 29th. They were replanted the following</p> <p>16 day.</p> <p>17 HEARING EXAMINER GROSSMAN: So March 29, 2019, that's</p> <p>18 prior to removal. Did you remove all of those trees that are</p> <p>19 depicted along the southern property line, healthy and</p> <p>20 unhealthy?</p> <p>21 MS. WEISER: Up to the three that border the street.</p> <p>22 HEARING EXAMINER GROSSMAN: I'm sorry. Can you say</p> <p>23 that again?</p> <p>24 MS. WEISER: Up to the three that border the street,</p> <p>25 Your Honor are the ones that are --</p>	52	<p>1 the same line because we couldn't keep all the plants. And,</p> <p>2 because, as Mr. Webb testified, many of them were dead.</p> <p>3 HEARING EXAMINER GROSSMAN: Okay.</p> <p>4 MS. WEISER: So we thought it would be better for the</p> <p>5 screening aesthetics and the community if there was one line</p> <p>6 of plants that was removed from the state, further away from</p> <p>7 the fence so that we wouldn't have that same type of damage</p> <p>8 and that they were all the same species instead of the half</p> <p>9 and half row.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. So it's to keep it</p> <p>11 consistent along the entire row.</p> <p>12 MS. WEISER: Correct. And for the shading purposes, we</p> <p>13 were trying to remove it away from that shade of the birch</p> <p>14 tree.</p> <p>15 HEARING EXAMINER GROSSMAN: Okay. Mr. Webster did you</p> <p>16 want to respond to that?</p> <p>17 MR. WEBSTER: Yes. To the best of my knowledge there</p> <p>18 were never any new plantings after the car crashed through</p> <p>19 that row of Barbara (inaudible).</p> <p>20 There were in fact, somewhat pulled back into a</p> <p>21 vertical and upright position but there were never any</p> <p>22 replanting done. Now, sometime as I recall, after Hannah</p> <p>23 Weiser bought the property, she did in fact put that one</p> <p>24 arborvitae just to the west side of the Rivers Birch Tree,</p> <p>25 and that subsequently died. It was -- I believe it was</p>

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14 (53 to 56)

<p>53</p> <p>1 uncared for and unwatered and maybe perhaps planted 2 improperly. I can't state that categorically true. 3 HEARING EXAMINER GROSSMAN: All right. And what I'm 4 mostly addressing here is the question of what screening is 5 appropriate between your two properties and will provide 6 adequate screening for you. I take it that you feel that 7 what the Weiser's have put up now is insufficient? 8 MR. WEBSTER: Yes. 9 HEARING EXAMINER GROSSMAN: Because the height isn't 10 sufficient. 11 MR. WEBSTER: Yes. 12 HEARING EXAMINER GROSSMAN: And you are concerned 13 because they removed not just the unhealthy ones but the 14 healthy ones of a sufficient height; is that correct? 15 MR. WEBSTER: Yes, particularly the healthy ones which 16 provide the major screening from our perspective, yes. Yes, 17 stunted damaged trees to the east of the Rivers Birch even 18 though they were stunted and damaged and tipped over, leaning 19 over, they did provide some screening to us and they were not 20 objectionable at all to us. 21 HEARING EXAMINER GROSSMAN: All right. All right, is 22 there anything else you wanted to add? 23 MR. WEBSTER: Yes. In respect to a wood fence, a 6- 24 foot-tall fence, whether it be wood or any other product, 25 that would be out of character with the neighborhood, and</p>	<p>55</p> <p>1 be corrected on it? 2 MS. WEBSTER: Well, (inaudible) it's out of order and I 3 don't know if John Webster (inaudible) it. I don't know if 4 that's him, or if it's somebody else. 5 MR. WEBSTER: Yes, we don't know if that John Webster 6 first made -- 7 HEARING EXAMINER GROSSMAN: Where do you see John 8 Webster? I see a -- 9 MR. WEBSTER: On page 8. 10 MS. VARGAS: Your Exhibit list. 11 (Crosstalk) 12 HEARING EXAMINER GROSSMAN: On the exhibit list itself? 13 MS. VARGAS: Yes. 14 MR. WEBSTER: Yes. 15 HEARING EXAMINER GROSSMAN: Okay. 88. 16 MS. WEBSTER: 89. 17 MS. VARGAS: I think it's just a mistype. 18 HEARING EXAMINER GROSSMAN: Yes, it's just a typo. 19 I'll correct that. So that should be Joseph Webster, right? 20 MR. WEBSTER: Yes. 21 (Crosstalk) 22 MR. WEBSTER: And that was from the year 2016; is that 23 a correct here, I don't -- 24 HEARING EXAMINER GROSSMAN: That's what it says on 25 here. This is July 14, 2016 on the document itself. And</p>
<p>54</p> <p>1 furthermore, the best I recall is that the County does not 2 allow any fencing past the corner of the house. So I would 3 object to any kind of wood fence, or a structure of that 4 nature. 5 HEARING EXAMINER GROSSMAN: In terms of the area around 6 the driveway? 7 MR. WEBSTER: Yes. 8 HEARING EXAMINER GROSSMAN: You're not talking about in 9 the back? 10 MR. WEBSTER: No, existing is fine. Existing is fine. 11 HEARING EXAMINER GROSSMAN: All right. All right. 12 Anything else? 13 MR. WEBSTER: Do I have anything else Karen? 14 MS. WEBSTER: Number 89. 15 MR. WEBSTER: Yes I do. Please let me find that number 16 89. 17 MS. WEBSTER: On page number 89 something is not 18 correct about that. 19 MR. WEBSTER: Where is that? 20 MS. WEBSTER: On those big -- 21 HEARING EXAMINER GROSSMAN: There is a and Exhibit 89 22 if that is what you are referring to -- 23 MS. WEBSTER: Yes. 24 HEARING EXAMINER GROSSMAN: -- which is part of your 25 submission. And your wife is saying that something needs to</p>	<p>56</p> <p>1 it's your letter to the Court of Appeals. 2 MR. WEBSTER: All right. 3 HEARING EXAMINER GROSSMAN: You requested a hearing due 4 to certain ambiguity. All right. You indicate that 5 regarding the Hearing Examiner's report and decision of 6 butting and confronting property owners are Joseph and K.S. 7 Webster being parties of record hereby file a written request 8 to present oral argument before the Board of Appeals and so 9 on. 10 MR. WEBSTER: Yes. 11 HEARING EXAMINER GROSSMAN: By the way, I do not 12 believe you were parties of record in that case. I don't 13 think you ever appeared before me. As I recall it in that 14 hearing -- 15 MR. WEBSTER: That's true. That's true. 16 HEARING EXAMINER GROSSMAN: So you were not parties of 17 record when you went to the Board of Appeals. You are 18 parties of record here in this proceeding, but you were not 19 back then before us. 20 MS. WEBSTER: And you know it might be the same thing 21 as 66. 22 HEARING EXAMINER GROSSMAN: It may well be. All right. 23 MR. WEBSTER: And I would like to submit this, an ad 24 from a local nursery. 25 HEARING EXAMINER GROSSMAN: All right.</p>

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15 (57 to 60)

57	<p>1 MR. WEBSTER: Showing that emerald green arborvitae are</p> <p>2 low-cost and very easy to -- they come burlapped in a ball</p> <p>3 and they are easy to plant, which I would submit would have</p> <p>4 been a better alternative than cutting down healthy, live,</p> <p>5 emerald green arborvitae's, which was the extent of her --</p> <p>6 HEARING EXAMINER GROSSMAN: Exhibit 1 or 2 is</p> <p>7 (inaudible) Garden Nursery ad showing prices. Well, it's</p> <p>8 shows various tree prices.</p> <p>9 (Exhibit 1 was introduced into the record.)</p> <p>10 MR. WEBSTER: Yes, there is an emerald green arborvitae</p> <p>11 there.</p> <p>12 HEARING EXAMINER GROSSMAN: I see that.</p> <p>13 MR. WEBSTER: 5 feet to 6 feet tall.</p> <p>14 HEARING EXAMINER GROSSMAN: Emerald green arborvitae.</p> <p>15 It looks like it's 63.99 for a tree 5 to 6 feet tall. I'm</p> <p>16 not sure if that's 5 to 6 feet is the planting height are the</p> <p>17 ultimate height.</p> <p>18 MR. WEBSTER: Planting height.</p> <p>19 HEARING EXAMINER GROSSMAN: It doesn't say here, I</p> <p>20 don't think. It just says 5 to 6 feet.</p> <p>21 MR. WEBSTER: I did call and talk with them and was</p> <p>22 assured it was planting height.</p> <p>23 HEARING EXAMINER GROSSMAN: Okay.</p> <p>24 MR. WEBSTER: And Karen and I would be extremely happy</p> <p>25 if that tree were -- were that emerald green arborvitae were</p>	59	<p>1 HEARING EXAMINER GROSSMAN: Would you raise your right</p> <p>2 hand, please?</p> <p>3 Do you swear or affirm to tell the truth, the whole</p> <p>4 truth, and nothing but the truth under penalty of perjury?</p> <p>5 MS. REILLY: Yes.</p> <p>6 HEARING EXAMINER GROSSMAN: All right. And can you</p> <p>7 tell us what part you have played in the conditional use in</p> <p>8 question initially and now?</p> <p>9 MS. REILLY: I am tasked in area 1 of the planning</p> <p>10 deport and I reviewed the conditional use and recommended it</p> <p>11 for approval. And per the Hearing Examiner's request, I was</p> <p>12 asked to write a memo and do a site visit on this violation.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. And did you, as</p> <p>14 a result of that, right the memorandum which is a label</p> <p>15 Exhibit 96 with attachments and labeled 96-A, the photographs</p> <p>16 of the premises?</p> <p>17 MS. REILLY: Yes.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay. Do you want to</p> <p>19 describe what your -- did you inspect the premises as a</p> <p>20 result of my request?</p> <p>21 HEARING EXAMINER GROSSMAN: Yes, I did. And can you</p> <p>22 tell me what you found, and what your conclusion is?</p> <p>23 MS. REILLY: I found that the evergreen trees that were</p> <p>24 along the southern property line had been removed. They were</p> <p>25 a height in excess of 10 feet, I believe. And they were</p>
58	<p>1 replanted along that property line.</p> <p>2 HEARING EXAMINER GROSSMAN: And how many of those trees</p> <p>3 would you think it would take to sufficiently screen?</p> <p>4 MR. WEBSTER: Approximately 14. As I recall, about 30</p> <p>5 inch centers. And four to 1 foot, whatever that arithmetic</p> <p>6 is, but it's about 14.</p> <p>7 MS. WEBSTER: You can count them off the pictures.</p> <p>8 HEARING EXAMINER GROSSMAN: Okay. All right. Anything</p> <p>9 else?</p> <p>10 MR. WEBSTER: Not at this time.</p> <p>11 HEARING EXAMINER GROSSMAN: All right, Ms. Weiser, do</p> <p>12 you have cross-examination questions?</p> <p>13 MS. WEISER: No questions, Your Honor.</p> <p>14 HEARING EXAMINER GROSSMAN: Okay. Anybody else? Do</p> <p>15 you want to briefly cross-examine your husband? This is your</p> <p>16 chance.</p> <p>17 MS. WEBSTER: I do that every day.</p> <p>18 HEARING EXAMINER GROSSMAN: All right, Mr. Webster,</p> <p>19 thank you very much for coming down. All right. Let's turn</p> <p>20 to Ms. Reilly. Would you come forward please?</p> <p>21 All right, would you state your full name, title, and</p> <p>22 business address, please?</p> <p>23 MS. REILLY: Kathleen A Riley. I'm the coordinator of</p> <p>24 the Montgomery County planning deport, 8787 Georgia Ave.,</p> <p>25 Silver Spring, Maryland.</p>	60	<p>1 replaced with a much shorter tree which appears to be</p> <p>2 evergreen. I'm not a landscape architect so I don't know if</p> <p>3 it's evergreen or not. But it was just much shorter. So</p> <p>4 they would be in violation of the approved conditional use.</p> <p>5 HEARING EXAMINER GROSSMAN: Okay. Now you said it</p> <p>6 appeared to be a violation. Do the current trees that are</p> <p>7 planted there, whatever the vegetation is, do they provide</p> <p>8 sufficient screening, in your opinion as a land planner, to</p> <p>9 the next-door neighbors?</p> <p>10 MS. REILLY: No.</p> <p>11 HEARING EXAMINER GROSSMAN: All right. And what is</p> <p>12 your suggested remedy as to that?</p> <p>13 MS. REILLY: I believe you read that into the record.</p> <p>14 The suggested remedy was to plant additional evergreen</p> <p>15 plantings on materials a minimum of 5 to 8 feet.</p> <p>16 HEARING EXAMINER GROSSMAN: Okay. You also suggested</p> <p>17 that an arborist, a landscape architect or an arborist be</p> <p>18 hired to create this plan, and then it be run by your office</p> <p>19 for review.</p> <p>20 MS. REILLY: Correct. And you heard Ms. Weiser state</p> <p>21 that that's a very expensive proposition to hire a</p> <p>22 professional on this. Is there any reason why a plan could</p> <p>23 not be devised to correct this problem which would then be</p> <p>24 run by your office for review, not prepared by an arborist or</p> <p>25 a landscape architect? But just one that would be submitted</p>

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16 (61 to 64)

61	<p>1 for review by your office?</p> <p>2 MS. REILLY: The policy of the planning department is</p> <p>3 for conditional uses to have a landscape, or a lighting plan,</p> <p>4 or both prepared by a landscape architect or an arborist. In</p> <p>5 this case, we were just asking for -- or staff would be</p> <p>6 asking for a landscape plan prepared by, as I mentioned.</p> <p>7 The value of that is that if somebody prepared -- if an</p> <p>8 applicant prepared a landscape plan that was insufficient, or</p> <p>9 planting materials that were not correct staff would be</p> <p>10 required to tell them what to do. We feel, and planning</p> <p>11 department staff and the policy of the submission is that you</p> <p>12 have an arborist there. It protects the applicant in terms</p> <p>13 of any materials that they provide. They also have</p> <p>14 protection from the landscape architect if there's problems</p> <p>15 with the plantings later on down the line with the health of</p> <p>16 it. That's the planning department's policy.</p> <p>17 HEARING EXAMINER GROSSMAN: Ideal, but expensive, if I</p> <p>18 summarize the two points of view there. What about the</p> <p>19 suggestion by Mr. Webster that he would be satisfied, in</p> <p>20 terms of screening, if the applicant replaced what they have</p> <p>21 now with 5 to 6 foot tall emerald green arborvitae.</p> <p>22 MS. REILLY: That's up to the hearing examiner. I --</p> <p>23 HEARING EXAMINER GROSSMAN: Oh I realize I have to make</p> <p>24 a call. But I'm asking your opinion.</p> <p>25 MS. REILLY: I'm not a landscape architect. I don't</p>	63	<p>1 photographs of the premises, which you attached and labeled</p> <p>2 as Exhibit Number 96-A. And did you take these photographs</p> <p>3 yourself?</p> <p>4 MS. REILLY: Yes.</p> <p>5 HEARING EXAMINER GROSSMAN: All right. And do they</p> <p>6 accurately depict the premises as they now exist?</p> <p>7 MS. REILLY: Yes.</p> <p>8 HEARING EXAMINER GROSSMAN: All right. When did you</p> <p>9 take these photographs?</p> <p>10 MS. REILLY: August 8.</p> <p>11 HEARING EXAMINER GROSSMAN: Okay. Of 2019?</p> <p>12 MS. REILLY: Yes.</p> <p>13 HEARING EXAMINER GROSSMAN: All right. And looking at</p> <p>14 the last photograph in the attachment of 96-A it appears to</p> <p>15 be a line of plants. Is that the line of the plants that now</p> <p>16 exists along this other property line that's in question?</p> <p>17 MS. REILLY: Yes, it is.</p> <p>18 HEARING EXAMINER GROSSMAN: Okay. That is the southern</p> <p>19 property line up to the point where there's a fence.</p> <p>20 MS. REILLY: Correct.</p> <p>21 HEARING EXAMINER GROSSMAN: Okay. And how tall would</p> <p>22 you say those current plants are?</p> <p>23 MS. REILLY: I did not measure them. I believe the</p> <p>24 Applicant provided -- the conditional use holder provided a</p> <p>25 statement said they were 2-1/2 or 3 feet in height</p>
62	<p>1 know if those trees would work or not, and I'm not an</p> <p>2 arborist. The Applicant demonstrated in her pictures the</p> <p>3 tree damage from those trees and said it was a maintenance</p> <p>4 issue, trying to maintain them and she replaced them with</p> <p>5 something else.</p> <p>6 The question -- the issue here is the height of the</p> <p>7 existing landscaping.</p> <p>8 HEARING EXAMINER GROSSMAN: Right.</p> <p>9 MS. REILLY: The planning department feels the height</p> <p>10 is not appropriate for the screening. That's it. So in</p> <p>11 terms of the arborvitae, again, you would need a landscape</p> <p>12 architect or an arborist to determine whether they would be</p> <p>13 sufficient, whether they would grow. If the Applicants would</p> <p>14 be on the hook for additional maintenance if they didn't they</p> <p>15 would have to replace them with something else. That's why</p> <p>16 we're asking them to do something now that could be one and</p> <p>17 done.</p> <p>18 That you would work with somebody who could find</p> <p>19 something for you, even supplement what you have there and</p> <p>20 that would be it.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. There are</p> <p>22 various --</p> <p>23 MS. REILLY: Because if they are in violation again</p> <p>24 this hearing is going to happen again.</p> <p>25 HEARING EXAMINER GROSSMAN: So you took various</p>	64	<p>1 (inaudible).</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Okay. Mr.</p> <p>3 Webster had some concern about language in your report. Do</p> <p>4 you have any response to that?</p> <p>5 MS. REILLY: Well, in preparing this memo the hearing</p> <p>6 examiner requested staff relied on the submittal from the</p> <p>7 conditional use holder who stated that the trees had died or</p> <p>8 were damaged and that was the reason for the replacement, and</p> <p>9 that was of the focus of this memo.</p> <p>10 HEARING EXAMINER GROSSMAN: Okay. So you weren't</p> <p>11 opining as to how many had died, you were just saying that</p> <p>12 some were --</p> <p>13 MS. REILLY: The health. We, as always, we go with</p> <p>14 what the conditional use holder submitted.</p> <p>15 HEARING EXAMINER GROSSMAN: All right. And Mr.</p> <p>16 Webster's key beef in addition to the fact that the current</p> <p>17 plantings don't provide sufficient training is that only half</p> <p>18 of them, approximately, were actually damaged or died and the</p> <p>19 other half were removed, nevertheless. Yes?</p> <p>20 MS. REILLY: Yes. Yes.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. Do you have</p> <p>22 anything else you want to add?</p> <p>23 MS. REILLY: No.</p> <p>24 HEARING EXAMINER GROSSMAN: All right. Cross-</p> <p>25 examination, Ms. Weiser?</p>

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17 (65 to 68)

65	<p>1 MS. WEISER: Yes, Your Honor. Ms. Riley, you mentioned</p> <p>2 that the one and done would be getting the arborist and they</p> <p>3 would provide us with a solution and something of -- a plant</p> <p>4 to plant in that area. And that would be a one and done</p> <p>5 solution; is that correct?</p> <p>6 MS. REILLY: One and done might have been a phrase --</p> <p>7 MS. WEISER: Sure.</p> <p>8 MS. REILLY: But let me just say if you got it -- my</p> <p>9 intent of answering that question was that an arborist and a</p> <p>10 landscape architect would help you get a planting that was</p> <p>11 sufficient and you could not get -- chances are they're going</p> <p>12 to recommend something that is going to grow healthy, be</p> <p>13 stable in maintenance issues, and I believe there may be some</p> <p>14 type of guarantee with the trees as well when you work with</p> <p>15 them.</p> <p>16 MS. WEISER: And that would afford further disputes and</p> <p>17 possible hearings by the --</p> <p>18 MS. REILLY: Correct. And that's why we ask for that,</p> <p>19 yes.</p> <p>20 MS. WEISER: At a cheaper expense?</p> <p>21 MS. REILLY: It might. Yes, it might.</p> <p>22 MS. WEISER: Okay. And how tall would you say that</p> <p>23 fence would need to be?</p> <p>24 MS. REILLY: I don't have --</p> <p>25 HEARING EXAMINER GROSSMAN: I'm not going to order a</p>	67	<p>1 would make them compatible?</p> <p>2 MS. REILLY: Five feet would be a minimum.</p> <p>3 MS. WEISER: Okay. Knowing that they grow at a height</p> <p>4 of two feet per year would you say that's not sufficient time</p> <p>5 to meet that five-foot height?</p> <p>6 MS. REILLY: Correct.</p> <p>7 MS. WEISER: At five-feet do you believe the parties --</p> <p>8 the Websters would be able to see over them at the driveway?</p> <p>9 MS. REILLY: I don't know. I can't opine on that.</p> <p>10 HEARING EXAMINER GROSSMAN: And by the way. Compatible</p> <p>11 is not just a question of whether it's consistent with other</p> <p>12 places in the neighborhood. But it's also a question of</p> <p>13 whether it provide sufficient screening for the neighbors.</p> <p>14 MS. WEISER: Sufficient screening.</p> <p>15 HEARING EXAMINER GROSSMAN: That's a big part of</p> <p>16 compatibility.</p> <p>17 MS. WEISER: I understand that, which is why am asking</p> <p>18 the question about 5 feet. Would that provide sufficient</p> <p>19 screening at 5 feet? I'm 5 feet 2, I can still see over</p> <p>20 that. Wouldn't they still be able to see --</p> <p>21 HEARING EXAMINER GROSSMAN: Mr. Webster has said that</p> <p>22 would satisfy him, at least as a starting point.</p> <p>23 MS. WEISER: And Ms. Reilly, just to clarify from</p> <p>24 earlier, my last question. You mentioned the arborist as a</p> <p>25 possibility of doing plants. I understand in the existing</p>
66	<p>1 fence.</p> <p>2 MS. REILLY: I don't have an opinion on that.</p> <p>3 MS. WEISER: Thank you. Okay.</p> <p>4 MS. REILLY: I would also say you have also engaged a</p> <p>5 nursery and they may have a landscape architect on staff</p> <p>6 there.</p> <p>7 MS. WEISER: Thank you.</p> <p>8 MS. REILLY: That you could work with them and because</p> <p>9 you already have an existing relationship with them they may</p> <p>10 be (inaudible).</p> <p>11 MS. WEISER: Thank you.</p> <p>12 MS. REILLY: If you choose to go that way.</p> <p>13 MS. WEISER: And Ms. Reilly, I just have a couple of</p> <p>14 questions about screening.</p> <p>15 MS. REILLY: Uh-huh.</p> <p>16 MS. WEISER: As I understand that we need to provide</p> <p>17 screening that is compatible with the neighborhood. Would</p> <p>18 you say those plants are compatible with the neighborhood?</p> <p>19 HEARING EXAMINER GROSSMAN: Which ones?</p> <p>20 MS. WEISER: The plants that are existing there now.</p> <p>21 MS. REILLY: The 3 foot tall plants?</p> <p>22 MS. WEISER: Correct.</p> <p>23 MS. REILLY: Not at that height they are not</p> <p>24 compatible.</p> <p>25 MS. WEISER: Not at that height. And which height</p>	68	<p>1 requirements and the 2016 zoning ordinance this was a based</p> <p>2 on you are allowed to put screening, a fence in to meet the</p> <p>3 screening requirements; is that correct?</p> <p>4 MS. REILLY: I want to clarify something that you said.</p> <p>5 MS. WEISER: Sure.</p> <p>6 MS. REILLY: There was an amendment to the zoning</p> <p>7 ordinance after your conditional use was permitted. And that</p> <p>8 amendment to the ordinance was issued was that the result of</p> <p>9 a text amendment introduced by the Hearing Examiner.</p> <p>10 HEARING EXAMINER GROSSMAN: You have to keep your voice</p> <p>11 up.</p> <p>12 MS. REILLY: Okay. It was introduced by -- that text</p> <p>13 amendment was offered by the Hearing Examiner's office. And</p> <p>14 the screening requirement that was modified was for the</p> <p>15 number of parking -- parked cars with conditional use. It</p> <p>16 used to be more than five or nine, and I believe you had</p> <p>17 that. Now you have less than that so that part of the</p> <p>18 screening requirements went away.</p> <p>19 The part of the screening requirement that you are</p> <p>20 still required to comply with is the screening requirement</p> <p>21 from your conditional use, adjacent to the residential</p> <p>22 property. And that's another part of the ordinance. And</p> <p>23 that screening requirement did not go away. So if you</p> <p>24 fence -- it says a wall or a fence for feet height under</p> <p>25 option A.</p>

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18 (69 to 72)

69	<p>1 MS. WEISER: So a four foot high fence on the --</p> <p>2 MS. REILLY: That's what the ordinance says.</p> <p>3 HEARING EXAMINER GROSSMAN: Will let me step in here</p> <p>4 for a second, Ms. Reilly. Actually there are more than one</p> <p>5 part was modified in the zoning ordinance, and you are</p> <p>6 correct, there are two different parts of the zoning</p> <p>7 ordinance regarding screening.</p> <p>8 One is specifically about parking areas, and the other</p> <p>9 is general screening. Both of them are actually modified and</p> <p>10 there is a general provision, and then there was actually a</p> <p>11 removal of a reference to a portion of it. But also, even</p> <p>12 the general requirement that were very specific requirements</p> <p>13 for general screening were modified to say that the question</p> <p>14 was compatibility. And it's -- you're looking, I see you're</p> <p>15 looking at the portion which specifies the screening.</p> <p>16 MS. REILLY: The screening.</p> <p>17 HEARING EXAMINER GROSSMAN: But you're not looking at</p> <p>18 the more general language before that says it doesn't apply</p> <p>19 anymore to a single-family home. So that all was modified in</p> <p>20 one way or another, and it no longer -- and the more detailed</p> <p>21 requirements and no longer apply to single-family homes. And</p> <p>22 I think with good reason. And the Council obviously agreed.</p> <p>23 MS. WEISER: Your Honor, do you mind, I have a copy of</p> <p>24 that with highlighted that I can provide Ms. Reilly.</p> <p>25 HEARING EXAMINER GROSSMAN: Sure.</p>	71	<p>1 And why I would -- my wife and I would like to ask of</p> <p>2 the Hearing Commissioner to find that something, and emerald</p> <p>3 green arborvitae would be an appropriate plant to place. A</p> <p>4 minimum of 5 feet as that photo shows -- that advertisement</p> <p>5 shows.</p> <p>6 HEARING EXAMINER GROSSMAN: Do you have a question of</p> <p>7 Ms. Reilly? This is cross-examination. Which I'm going to</p> <p>8 take that as an addition to your testimony, but do you have a</p> <p>9 question of Ms. Reilly?</p> <p>10 MR. WEBSTER: Only that Hannah Weiser's property is</p> <p>11 higher than ours, so we agree with you that the three foot or</p> <p>12 three foot and a half Schips Laurel are inadequate.</p> <p>13 HEARING EXAMINER GROSSMAN: Well that's not -- there's</p> <p>14 not an opportunity for further testimony. This is -- do you</p> <p>15 have a question?</p> <p>16 MR. WEBSTER: All right. No. I'm sorry.</p> <p>17 HEARING EXAMINER GROSSMAN: Okay. I'm going to take</p> <p>18 that as part of your testimony. Any other questions of Ms.</p> <p>19 Reilly?</p> <p>20 MS. WEISER: No.</p> <p>21 HEARING EXAMINER GROSSMAN: All right. Ms. Reilly, do</p> <p>22 you have anything that you need to add?</p> <p>23 MS. REILLY: No.</p> <p>24 HEARING EXAMINER GROSSMAN: All right. Well thank you</p> <p>25 very much for coming down here and helping out.</p>
70	<p>1 MS. WEISER: Ms. Reilly, the requirements from 2016</p> <p>2 about a month before this got replaced was that four feet</p> <p>3 high -- four feet --</p> <p>4 MS. REILLY: Okay.</p> <p>5 MS. WEISER: -- high fence that we were discussing as</p> <p>6 one of the options to meet that screening compatibility.</p> <p>7 Down here, it shows, except single-family detached</p> <p>8 homes have now been removed from those aforementioned</p> <p>9 requirements. However, as the Hearing Examiner mentioned</p> <p>10 uses must have screening that shows compatibility with the</p> <p>11 surrounding neighborhood is still in place as a requirement.</p> <p>12 And we can leave --</p> <p>13 MS. REILLY: Now I have it up here. Thank you.</p> <p>14 MS. WEISER: No more questions, Your Honor.</p> <p>15 HEARING EXAMINER GROSSMAN: All right. Any other</p> <p>16 cross-examination of Ms. Reilly.</p> <p>17 HEARING EXAMINER GROSSMAN: Mr. Webster?</p> <p>18 MR. WEBSTER: Yes. We haven't discussed at all the</p> <p>19 grade from 9203, which is our property to 9205. It goes</p> <p>20 uphill. So as you go up you need a higher plant to provide</p> <p>21 the screening for our property that those 10 foot tall</p> <p>22 emerald green arborvitae provided. So that's why I keep</p> <p>23 harping, keep repeating that tall emerald green arborvitae</p> <p>24 plant provided adequate, excellent screening visually and</p> <p>25 with respect to noise transmission.</p>	72	<p>1 Ms. Weiser, since Mr. Webster added to his testimony,</p> <p>2 do you have any additional cross-examination questions of him</p> <p>3 on that additional testimony?</p> <p>4 MS. WEISER: No, Your Honor.</p> <p>5 HEARING EXAMINER GROSSMAN: All right. Thank you.</p> <p>6 Okay. Let's see. So the next question is, isn't there any</p> <p>7 rebuttal testimony that anybody wishes to offer?</p> <p>8 MS. VARGAS: Jenn Vargas, DPS again.</p> <p>9 HEARING EXAMINER GROSSMAN: Yes. Come on up there so</p> <p>10 everybody can see you.</p> <p>11 MS. VARGAS: Oh.</p> <p>12 HEARING EXAMINER GROSSMAN: All right, Ms. Vargas?</p> <p>13 MS. VARGAS: Yes. As the code enforcement official for</p> <p>14 this conditional use, I just request of the Hearing Examiner</p> <p>15 whatever decision you do make to make it enforceable by our</p> <p>16 department because of the language used in the condition and</p> <p>17 within the Hearing Examiner report, it made it a little bit</p> <p>18 more difficult for me to make a determination of whether she</p> <p>19 met the condition or not.</p> <p>20 HEARING EXAMINER GROSSMAN: Right.</p> <p>21 MS. VARGAS: And therefore, we just ask that whatever</p> <p>22 condition that you do decide to amend, or that make it</p> <p>23 enforceable for DPS.</p> <p>24 HEARING EXAMINER GROSSMAN: You want a lawyer to issue</p> <p>25 something clear? That doesn't seem fair.</p>

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19 (73 to 76)

73	<p>1 MS. VARGAS: That's all.</p> <p>2 HEARING EXAMINER GROSSMAN: All right. Well, hold on</p> <p>3 one second.</p> <p>4 MS. VARGAS: Oh.</p> <p>5 HEARING EXAMINER GROSSMAN: Any cross-examination</p> <p>6 questions?</p> <p>7 MS. WEISER: No, Your Honor.</p> <p>8 MR. WEBSTER: No.</p> <p>9 HEARING EXAMINER GROSSMAN: Okay. Thank you.</p> <p>10 All right. I think it's time for closing arguments and</p> <p>11 so I will leave that to Ms. Weiser first.</p> <p>12 MS. WEISER: You want me to come up here?</p> <p>13 HEARING EXAMINER GROSSMAN: You can stay right there.</p> <p>14 MS. WEISER: Oh.</p> <p>15 HEARING EXAMINER GROSSMAN: This is argument and --</p> <p>16 MS. WEISER: Your Honor, the pictures Mr. Webster put</p> <p>17 forth from 2012 shows a significant gap due to an accident</p> <p>18 that was prior to our ownership of the home.</p> <p>19 HEARING EXAMINER GROSSMAN: Right.</p> <p>20 MS. WEISER: Later on in 2016 we saw some screening</p> <p>21 that was considered sufficient at the time you did your</p> <p>22 Hearing Examiner report on July 8, 2016. As you can see,</p> <p>23 there seems to be a history of deterioration of these</p> <p>24 arborvitae for whatever reason. We see this continued</p> <p>25 deterioration with the arborvitae of that were there at the</p>	75	<p>1 that he was upset about the replacement of those plants. It</p> <p>2 was our intent to improve the aesthetics and screening. The</p> <p>3 specific plants we chose are based on the recommendations by</p> <p>4 the nursery, and specifically are supposed to grow at least 2</p> <p>5 to 3 feet a year, as we show in our exhibit in the prehearing</p> <p>6 statement. Exhibit 10, shows information on that growth from</p> <p>7 our research, but then also from the nursery. Those were put</p> <p>8 in at a large expense already. We're happy to put in a fence</p> <p>9 which would be a matter of a few hundred dollars, whereas a</p> <p>10 licensed arborist at possibly \$1,000 based on the plants --</p> <p>11 the 14 plants at the price that Mr. Webster put forward for</p> <p>12 you, it's kind of a large expense to add to what we've</p> <p>13 already provided trying to meet the conditions of this</p> <p>14 conditional use.</p> <p>15 We've also spent extra money trying to screen other</p> <p>16 areas of the property to help appease our neighbors. Our</p> <p>17 concern with the deteriorating arborvitae is not just with</p> <p>18 the screening. We also have children that play on this</p> <p>19 property, including our own and coming forward we don't want</p> <p>20 trees falling on children. So we removed the damage trees</p> <p>21 and were trying to put entries that would work well.</p> <p>22 If you find that those are not sufficient to meet the</p> <p>23 compatibility of the neighborhood, where happy to put a fence</p> <p>24 in, and we feel that would be something that would avoid</p> <p>25 these further disputes. Plants are just not a guarantee.</p>
74	<p>1 time. You can see through them. So when we talk about</p> <p>2 screening, we saw sufficient holes where they can see our</p> <p>3 property.</p> <p>4 Mr. Webster mentioned that offense is something that we</p> <p>5 can't put in on the property. As we understand the</p> <p>6 requirements for fences in Montgomery County it's certainly</p> <p>7 something that we can do, and in fact, there is an existing</p> <p>8 fence they are at this time.</p> <p>9 HEARING EXAMINER GROSSMAN: I would have to look back</p> <p>10 at the zoning ordinance to see whether or not it is</p> <p>11 prohibited, as Mr. Webster suggested, as I don't recall off</p> <p>12 the top of my head.</p> <p>13 MS. WEISER: Many people on our street have fences that</p> <p>14 are going to the point they are allowed to on the street, at</p> <p>15 a minimum of 6 feet.</p> <p>16 HEARING EXAMINER GROSSMAN: In the front yards?</p> <p>17 MS. WEISER: And it's something that we explored as an</p> <p>18 option when we first spoke with Ms. Vargas. In fact, we had</p> <p>19 proactively called her when we understood there was an issue.</p> <p>20 We spoke with Mr. Webster on the day that we replaced -- over</p> <p>21 the two day. That we replaced those plants, Mr. Webster was</p> <p>22 present at one point. He saw us about midway through when we</p> <p>23 were removing the plants. We let him know we were removing</p> <p>24 them.</p> <p>25 The second day after we had replaced them we understand</p>	76	<p>1 They can die, they can deteriorate even with a licensed</p> <p>2 arborist saying they will be healthy and great, something can</p> <p>3 go wrong. So if there really is a significant screening</p> <p>4 issue your concern about we would be happy to put a fence in</p> <p>5 quickly that would provide additional privacy.</p> <p>6 That also would be consistent with our new neighbors on</p> <p>7 the -- sorry his last name is escaping me now. He's going to</p> <p>8 be putting a fence in on the northern property line of our</p> <p>9 properties, and we've agreed for him to do that and are happy</p> <p>10 to do that.</p> <p>11 HEARING EXAMINER GROSSMAN: Also along the driveway</p> <p>12 area?</p> <p>13 MS. WEISER: Uh-huh. So he's going to be putting one</p> <p>14 in on that side and were happy to put one in on the other</p> <p>15 side.</p> <p>16 HEARING EXAMINER GROSSMAN: What sort of a fence are</p> <p>17 you --</p> <p>18 MS. WEISER: Not because of the daycare.</p> <p>19 HEARING EXAMINER GROSSMAN: What sort of a fence are</p> <p>20 you talking about?</p> <p>21 MS. WEISER: Extending the fence that we have now among</p> <p>22 our two property lines, just forward.</p> <p>23 HEARING EXAMINER GROSSMAN: Is that a six foot tall</p> <p>24 fence?</p> <p>25 MS. WEISER: It will be a six foot tall fence.</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 HEARING EXAMINER GROSSMAN: Board on board thing?</p> <p>2 MS. WEISER: Uh-huh. And so we would be happy to do</p> <p>3 the same. And you will notice along Fernwood Road there are</p> <p>4 many houses that have exactly that fencing put in place.</p> <p>5 HEARING EXAMINER GROSSMAN: Okay.</p> <p>6 MS. WEISER: I do want to just state we tried to</p> <p>7 replace the arborvitae that was there not just one time, but</p> <p>8 three times. We keep the landscaping of our home very nice</p> <p>9 as you can see from the photos. We do spend a lot of time</p> <p>10 trying to fertilize, protect the landscaping. We have</p> <p>11 regular people to come in and mow the property. We're trying</p> <p>12 to provide something that has a good aesthetics and is</p> <p>13 compatible with the neighborhood.</p> <p>14 And when we found out about this issue we tried to do</p> <p>15 our best to correct it a number of times before we ended up</p> <p>16 here in front of you. So it is our intent to try to continue</p> <p>17 to do that. If you find that it is necessary that we need to</p> <p>18 provide screening, we just hope that you would ask for a</p> <p>19 fence to avoid further issues of these types that took a lot</p> <p>20 of County resources, as well as our own, to be here today.</p> <p>21 The other thing that we would ask is that you do</p> <p>22 consider updating our conditional use and removing those</p> <p>23 conditional use requirements. I understand there are still</p> <p>24 compatibility requirement, but removing they conditionals out</p> <p>25 of those 22 to reflect the new ordinance.</p>	<p style="text-align: right;">79</p> <p>1 HEARING EXAMINER GROSSMAN: All right.</p> <p>2 MS. WEISER: Thank you, Your Honor.</p> <p>3 HEARING EXAMINER GROSSMAN: Mr. Webster?</p> <p>4 MR. WEBSTER: Mr. Grossman.</p> <p>5 HEARING EXAMINER GROSSMAN: Yes, sir.</p> <p>6 MR. WEBSTER: Regarding the four foot fence, the --</p> <p>7 HEARING EXAMINER GROSSMAN: Well, I think they're</p> <p>8 saying six foot fence.</p> <p>9 MS. WEISER: Correct.</p> <p>10 MR. WEBSTER: Well, a six foot fence, that does not</p> <p>11 provide us with the visual blockage that we're looking for as</p> <p>12 the 10 foot tall arborvitae did. Since Hannah Weiser's</p> <p>13 property is uphill from hours, the first four or five feet of</p> <p>14 screening is of little avail. But what we're looking for is</p> <p>15 the tall height that the 10 foot arborvitae provided. The</p> <p>16 trees, shrubs, whatever, shrubs or trees would need to be</p> <p>17 that tall to give us the visual blockage that we need, the</p> <p>18 screening, and the audio screening that we need.</p> <p>19 The low fence from our property is a very little merit.</p> <p>20 It's the height that we need. And that's why I keep</p> <p>21 suggesting the emerald green arborvitae because I know they</p> <p>22 grow fast and I know that in prior years that fence row, that</p> <p>23 property line was adequately screened visually and noise</p> <p>24 wise. So a four foot fence would --</p> <p>25 HEARING EXAMINER GROSSMAN: Six foot fence is what</p>
<p style="text-align: right;">78</p> <p>1 HEARING EXAMINER GROSSMAN: Okay. Well, I'm not going</p> <p>2 to look at every condition in the conditional use. There's</p> <p>3 only, by law, I think there is only an ordinance when we hold</p> <p>4 this type of proceeding, the only thing I can address is the</p> <p>5 issue that's raised in the notice.</p> <p>6 MS. WEISER: Okay.</p> <p>7 HEARING EXAMINER GROSSMAN: So that's that one</p> <p>8 condition and I would certainly look at that. But that's the</p> <p>9 only thing I can look at legally --</p> <p>10 MS. WEISER: Correct.</p> <p>11 HEARING EXAMINER GROSSMAN: -- given the zoning</p> <p>12 ordinance language.</p> <p>13 MS. WEISER: Okay.</p> <p>14 HEARING EXAMINER GROSSMAN: And by the way, I don't</p> <p>15 think anyone questions your bona fides in all of this. This</p> <p>16 is a question of making sure that the screening that is there</p> <p>17 is adequate to provide compatibility.</p> <p>18 MS. WEISER: Right. And to that point I do want to</p> <p>19 just point out that when you issued your Hearing Examiner's</p> <p>20 report back in 2016 you found the northern property line to</p> <p>21 be sufficient with heights that were below the five feet, Ms.</p> <p>22 Reilly mentioned today. The plants that we put in our higher</p> <p>23 than those, and so based on that one side of the property</p> <p>24 line, we had hoped that you would consider the other being</p> <p>25 sufficient.</p>	<p style="text-align: right;">80</p> <p>1 they're --</p> <p>2 MR. WEBSTER: A six foot fence would not solve that</p> <p>3 problem. Six foot is just at the beginning of where our</p> <p>4 visual line starts because Hannah Weiser's property is uphill</p> <p>5 from hours.</p> <p>6 HEARING EXAMINER GROSSMAN: Well, you're talking about</p> <p>7 audio, audible screening, I'm not sure that the trees provide</p> <p>8 any more than a fence would. Neither one, just from my past</p> <p>9 experience when listening to experts in this area provides</p> <p>10 much in the way of sound screening.</p> <p>11 MR. WEBSTER: Well, it provided --</p> <p>12 HEARING EXAMINER GROSSMAN: It provides some, but not</p> <p>13 much.</p> <p>14 MR. WEBSTER: It provided some of what we had with the</p> <p>15 10 foot arborvitae vis a vis what we have now. There was</p> <p>16 substantial audio screening.</p> <p>17 HEARING EXAMINER GROSSMAN: Is there a play -- excuse</p> <p>18 me one second. Do the children play at all in the front yard</p> <p>19 area?</p> <p>20 MS. WEISER: Just our own.</p> <p>21 HEARING EXAMINER GROSSMAN: Pardon me?</p> <p>22 MS. WEISER: We're on a very busy road. It's a very</p> <p>23 loud, there are many cars so generally they play in the</p> <p>24 backyard which is fenced in and safe.</p> <p>25 HEARING EXAMINER GROSSMAN: You said generally, meaning</p>

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21 (81 to 84)

81	1 that they -- 2 MS. WEISER: Our daughter, Haley, we sometimes are with 3 in the front of our property. 4 HEARING EXAMINER GROSSMAN: Okay but your children that 5 your supervising as part of -- 6 MS. WEISER: They're in the back of the question. 7 HEARING EXAMINER GROSSMAN: Let me finish the question. 8 MS. WEISER: Sorry. 9 HEARING EXAMINER GROSSMAN: So the children your 10 supervising as part of the child called care facility always 11 play only in the back when they're outside? 12 MS. WEISER: Correct, Your Honor. 13 HEARING EXAMINER GROSSMAN: Okay. All right. Sir, I'm 14 sorry I interrupted you but I just wanted to clarify that 15 issue. 16 MR. WEBSTER: The skip laurel, or schip laurel, however 17 it's pronounced that Hannah Weiser has planted, I'm not sure 18 what the growth rate is on those trees, but that's under 19 perfect conditions. And it's very rare that a perfect 20 condition ever exists. So I would suggest that we would have 21 to wait at least four or five years before we had the type of 22 screening, if in the schip laurels do grow to a substantial 23 height. I know the emerald green arborvitae did and that's 24 why I keep referring back to emerald green arborvitae. 25 And Hannah Weiser's comment about us being -- having a	83	1 MR. WEBSTER: I don't know. I -- 2 MS. WEBSTER: There might be about two all the way 3 through to Democracy. 4 MR. WEBSTER: All right my wife said there might be 5 about two. 6 HEARING EXAMINER GROSSMAN: Well, she hasn't been sworn 7 in so I can't -- 8 MR. WEBSTER: All right. All right, well I recall now, 9 that there might be a couple north on Fernwood, north of 10 Hannah Weiser's. And I do not know if those fences are by 11 permit or just bootlegged. 12 HEARING EXAMINER GROSSMAN: Mrs. Weiser, do you have 13 any and publish information as to the rate at which the schip 14 laurels grow? 15 MS. WEISER: Yes, Your Honor. As part of our 16 prehearing statement -- 17 HEARING EXAMINER GROSSMAN: Okay. 18 MS. WEISER: -- Exhibit 10. 19 HEARING EXAMINER GROSSMAN: All right. Let me look for 20 that for a second. If I have it here. 21 MS. WEISER: Your Honor, do you need a copy of Exhibit 22 10? 23 HEARING EXAMINER GROSSMAN: Do you have an extra copy 24 handy? I have it in the file here -- 25 MS. WEISER: You can use ours.
82	1 conversation at the property line was after all of the 2 arborvitae had been cut. 3 MS. WEISER: Your Honor, I'm sorry -- 4 HEARING EXAMINER GROSSMAN: Well, hold on. Let him 5 finish. 6 MR. WEBSTER: We were in the yard, working in the yard 7 that day. I was in the yard working, and I know they were 8 cutting the dead -- the damaged arborvitae on the east side 9 of the rivers birch, and I had no quarrel with that. They 10 were diseased and unhealthy specimens. When I went back 11 several hours later, in fact, all the healthy arborvitae on 12 the west side of that rivers birch had also been removed. 13 And that's what caused my greatest stress. 14 HEARING EXAMINER GROSSMAN: All right. Do you -- we 15 talked about the fence that you had. Do you have a -- other 16 than your concern about it's not tall enough, do you have any 17 problem with a six foot fence there? 18 MR. WEBSTER: Yes. 19 HEARING EXAMINER GROSSMAN: Just the question that it 20 wouldn't provide sufficient screening, in your mind? 21 MR. WEBSTER: Yes. It's out of character with the 22 neighborhood. 23 HEARING EXAMINER GROSSMAN: And is Mrs. Weiser 24 incorrect that there are other properties that, in fact, in 25 the neighborhood that have front yard fencing such as that?	84	1 HEARING EXAMINER GROSSMAN: -- I just didn't 2 apparently -- thank you. 3 MS. WEISER: We've highlighted it. I believe it's a 4 purplish color in the printout area where it points out the 5 height. 6 HEARING EXAMINER GROSSMAN: All right. So this is page 7 1 of 5 from The Tree Center. And it's schip laurel shrubs. 8 Large evergreen that will grow to 18 feet. Visual screen or 9 hedge. It's hearty and it rapidly produces a tall dense 10 screen. You can grow a 10 foot hedge in four years from 11 planting. If you leave it to grow without clipping, your 12 plant will grow around a tree perhaps 18 feet tall and 10 to 13 20 feet across. 14 MS. WEISER: Your Honor, if you don't have the exhibits 15 you can also see the pictures of what they're expected to 16 look like from other properties. 17 HEARING EXAMINER GROSSMAN: Okay. Apparently if that 18 information is correct the issue is one really of timing 19 here. That apparently grow to provide the screening that you 20 seek, it's just that currently not at the height that would 21 do it. Is it possible to get that same type of shrub at a 22 higher level now? To begin at five feet rather than the two 23 and a half feet or whatever it is that you currently have? 24 MR. WEISER: Can I answer? 25 HEARING EXAMINER GROSSMAN: Sure. Go ahead.

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22 (85 to 88)

85	<p>1 MR. WEISER: You could get, I think there was a four</p> <p>2 foot specimen that they add, so I think we got the two foot,</p> <p>3 and it's now at three. I think if you get the four foot one,</p> <p>4 it's still the same width so they keep it like sheared on the</p> <p>5 sides.</p> <p>6 HEARING EXAMINER GROSSMAN: Right.</p> <p>7 MR. WEBSTER: So you still have like gapping in</p> <p>8 between. The other -- I mean from our perspective at the</p> <p>9 time we didn't do it. A, we were a little concerned whether</p> <p>10 or not they would survive, which they all seem that they</p> <p>11 have. Two, they were like two or three times the cost of</p> <p>12 getting a larger one. So I think you can see one of our</p> <p>13 exhibits was a receipt. I think we spent close to \$500 to</p> <p>14 put those in. I think to get the next larger up it was going</p> <p>15 to be like \$1,200. And at that point in our minds, we</p> <p>16 thought a fence would be much more reasonable.</p> <p>17 HEARING EXAMINER GROSSMAN: What does it cost to put in</p> <p>18 a fence?</p> <p>19 MR. WEBSTER: So we put -- myself and my brother-in-law</p> <p>20 put in our fence in the back to meet the conditional</p> <p>21 originally. We did out the materials, I figure it would be</p> <p>22 about three, or \$350 to do the fence.</p> <p>23 MS. WEISER: And, Your Honor, would you like a copy of</p> <p>24 what they are expected to look like?</p> <p>25 HEARING EXAMINER GROSSMAN: Okay. If you already</p>
86	<p>1 submitted it I have it in the file.</p> <p>2 MS. WEISER: I did.</p> <p>3 HEARING EXAMINER GROSSMAN: I just don't have it handy</p> <p>4 outside the file.</p> <p>5 MS. WEISER: With regard to the fence, that was also</p> <p>6 put through on the conditional use 15-02, which I think you</p> <p>7 were also the Hearing Examiner for. You noted that it was --</p> <p>8 HEARING EXAMINER GROSSMAN: What's the name of the</p> <p>9 applicant?</p> <p>10 MS. WEISER: Lily Pad Daycare. It's my twin sister.</p> <p>11 HEARING EXAMINER GROSSMAN: Oh yes.</p> <p>12 MS. WEISER: Leah Hanlon.</p> <p>13 HEARING EXAMINER GROSSMAN: That was right on Old Joyce</p> <p>14 Town Road.</p> <p>15 MS. WEISER: That's right on -- about a mile from us.</p> <p>16 And it was found that that existing six foot board-on-board</p> <p>17 fence as efficiently screens the use in that use.</p> <p>18 HEARING EXAMINER GROSSMAN: Right.</p> <p>19 MS. WEISER: I'm sorry. I miss understood, but the</p> <p>20 fence was required to be added to block the visual of the</p> <p>21 cars in the neighborhood.</p> <p>22 HEARING EXAMINER GROSSMAN: Right. Okay. Anything</p> <p>23 further anybody wishes to add?</p> <p>24 MS. WEISER: Your Honor, I would just say that 10 feet</p> <p>25 is double the height of what Ms. Reilly is suggesting today</p>
87	<p>1 of 5 feet.</p> <p>2 HEARING EXAMINER GROSSMAN: Well, I presume that what</p> <p>3 she's suggesting is what would be a minimal amount and that</p> <p>4 they would grow?</p> <p>5 MS. WEISER: Correct.</p> <p>6 HEARING EXAMINER GROSSMAN: So that was the concept.</p> <p>7 To me, it sounds like what you have there ultimately would be</p> <p>8 sufficient. It's a question of what happens over the next</p> <p>9 two years, I suppose. If it's going to grow a couple of feet</p> <p>10 a year it would ultimately be sufficient, I think. Mr.</p> <p>11 Webster, from what you've testified that would be the case</p> <p>12 also, it's just a question of these next two years.</p> <p>13 Do you have any suggestions as to what's the best way</p> <p>14 to handle it? Because ripping them all out and putting in</p> <p>15 the five foot trees of the type that haven't survived in the</p> <p>16 past may not be the best thing for you either.</p> <p>17 MR. WEBSTER: So the reason those trees didn't survive</p> <p>18 was because of that vehicle crash into the property line.</p> <p>19 The trees -- the arborvitae on the west side of the rivers</p> <p>20 birch, in fact, were thriving and healthy. And they require</p> <p>21 zero maintenance. And they were a minimum of 10 feet tall.</p> <p>22 I expect when they were removed they were 12 feet tall. And</p> <p>23 they provided adequate screening.</p> <p>24 So I leave it up to your office, whatever seems to be</p> <p>25 the appropriate answer. We are not -- we are opposed to a</p>
88	<p>1 wood fence along there or any other type of solid fence of</p> <p>2 that nature.</p> <p>3 HEARING EXAMINER GROSSMAN: All right. All right. The</p> <p>4 zoning ordinance -- well, first of all we should move in all</p> <p>5 of the exhibits. I take it that everybody wants all the</p> <p>6 exhibits to come into evidence. So some of them, of course,</p> <p>7 are in already from the prior proceedings. But additional</p> <p>8 exhibits beginning with Exhibit 82. So Exhibits 82, through</p> <p>9 102 will be admitted into evidence concerning this matter in</p> <p>10 addition to the ones I've already taken official notice of</p> <p>11 prior.</p> <p>12 Anybody object to any of that?</p> <p>13 MS. WEISER: No.</p> <p>14 MR. WEBSTER: No.</p> <p>15 HEARING EXAMINER GROSSMAN: Then they are admitted as</p> <p>16 well as any further submissions I should ask for here. And</p> <p>17 that's certainly a question in my mind. I am debating</p> <p>18 whether to just close the record or ask for some additional</p> <p>19 submission, as was suggested by Ms. Reilly.</p> <p>20 And I'm loath to burden you with extra expenses. On</p> <p>21 the other hand, there is the clarity provided by an expert's</p> <p>22 plan, would be helpful in this case where you have, you know,</p> <p>23 concern of the neighbor. And maybe that would be the best</p> <p>24 way to go. And that's the way I am leaning, to require that.</p> <p>25 Under the zoning ordinance I have to make a decision in</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 this case within 15 days, although the OZHA's rules which are 2 also approved by the Council allow me to extend my time on 3 that. That is from when the record closes. I almost never 4 extend my time. But in this case I may keep the record open 5 to allow that kind of additional filing. The more I think 6 about it, and in spite of the expense, I think the best way 7 to go here would be to require something from a landscape 8 architect, or an arborist to specify what's the best way to 9 provide screening and that's at least 5 feet tall and that 10 will grow to at least 8 to 10 feet tall along the southern 11 property line in order to provide a compatible situation with 12 the neighbor. 13 And it may be that that arborist will say what's there 14 now is the best way to go. But I don't want to prejudge 15 that. And so what I'm going to do is require that that be 16 filed. How long would it take you to get that sort of a 17 report in from an arborist or a landscape architect? 18 MS. WEISER: Your Honor, but we've never worked with a 19 licensed architect or an arborist before. 20 HEARING EXAMINER GROSSMAN: A landscape architect. 21 MS. WEISER: A landscape architect before. 22 HEARING EXAMINER GROSSMAN: How much time do you want? 23 MS. WEISER: I guess probably 30 days, Your Honor. 24 HEARING EXAMINER GROSSMAN: Well, that's a little long, 25 but all right. I'll give you the 30 days. And I'm going to</p>	<p style="text-align: right;">91</p> <p>1 MS. WEISER: Sorry, no it looks like a large range. I 2 just want to make sure we all understand the potential cost 3 of this request. 4 HEARING EXAMINER GROSSMAN: Well, I understand that 5 there may be a cost but when I consider the alternatives, one 6 alternative is if a fence, as you've suggested, your 7 neighbors object to that. There isn't any -- there isn't 8 sufficient evidence before me to decide whether or not that 9 would be consistent with the other things in the 10 neighborhood. And it wouldn't ultimately provide the higher 11 screening that the Websters request. 12 In the absence of sufficient evidence about this I want 13 to make sure that you have a situation that is compatible 14 with the neighbors, so I think that's the way to go. That is 15 what was suggested by the planning department and they can -- 16 the Websters can review it. The planning department can 17 review it. The department of permitting services views 18 itself as the enforcement agency, not the planning agency so 19 they're not going to offer an opinion as to whether it's 20 sufficient. 21 But it will give me the ability to frame an appropriate 22 condition which will modify the current condition 21 so that 23 people have the clarity that the department of permitting 24 services requests; and will provide adequate screening for 25 the neighbors. It may be that the landscape architect will</p>
<p style="text-align: right;">90</p> <p>1 allow a response from both the Websters and the planning 2 department. So please have a copy of that submitted not just 3 to my office, but also to the planning department and to DPS, 4 and to the Websters. And if it can be done before the 30 5 days that would be good too. And so that would be, today is 6 of the 6th of September. So that would be October 6. 7 MS. WEISER: I'm sorry, Your Honor. If you could just 8 provide a little more clarity on exactly what you want us to 9 provide. 10 HEARING EXAMINER GROSSMAN: I want a landscape plan 11 from a professional in this area that is an arborist or a 12 landscape architect saying what plantings should be, the type 13 and location of plantings to provide adequate screening of at 14 least five feet and ultimately higher than that, along the 15 southern property line from the location of your current 16 fence to the front of the property. So as to sufficiently 17 screening your next-door neighbor to the south, the Websters. 18 MS. WEISER: And just so I can clarify is there a time, 19 you mean at planting five feet? 20 HEARING EXAMINER GROSSMAN: Yes. At planting at least 21 five feet. 22 MS. WEISER: Your Honor. I'm sorry we just found out 23 the cost of what you're asking, it's going to be about 4,000. 24 HEARING EXAMINER GROSSMAN: I don't know if that's the 25 case. I don't know --</p>	<p style="text-align: right;">92</p> <p>1 say the best solution would be to leave what's in there, and 2 even though it's not five feet now, it will be five feet 3 within six months and so that may solve a problem. I don't 4 know. I have no idea what they're going to say. But I need 5 some evidentiary base here upon which to make this decision. 6 MS. WEISER: Your Honor, another option of planting at 7 least five foot, by planting a second row that we don't have 8 to (inaudible) the existing ones. Is that an option as well? 9 HEARING EXAMINER GROSSMAN: Say that again? 10 MS. WEISER: Would another option the planting a second 11 row of plants at least five feet tall of the type that our 12 neighbor specifies or the type that is it there now so that 13 we would not have to conjecture about whether or not they 14 will meet that height. 15 HEARING EXAMINER GROSSMAN: Oh, you mean a row of 16 the -- 17 MR. WEBSTER: Five feet. 18 HEARING EXAMINER GROSSMAN: -- cypress. Is that what 19 you're saying? 20 MS. WEISER: Either the arborvitae that was there 21 before of that type, or the current ones that are now, a 22 second row. 23 HEARING EXAMINER GROSSMAN: Mr. Webster? 24 MR. WEBSTER: I would support that. Planting there 25 identical distance from the fence approximately 30 inch on</p>

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24 (93 to 96)

93	<p>1 center I would support five or six feet emerald green 2 arborvitae, yes. 3 MS. WEISER: Would you support a similar -- the same 4 species? We're just trying to keep the -- 5 HEARING EXAMINER GROSSMAN: The same species as what? 6 MS. WEISER: As what's in there now at five feet if we 7 can obtain them as a first choice. 8 HEARING EXAMINER GROSSMAN: What about that? 9 MR. WEBSTER: I don't know anything about a schip 10 laurel. I do know the arborvitae was extremely healthy and 11 happy until that automobile crashed through it. 12 HEARING EXAMINER GROSSMAN: Well, I mean -- look, if 13 there is something that the neighbors can agree to because 14 essentially this is a screening question, I would be happy to 15 modify the requirements so as to enforce whatever is 16 agreeable to the neighbors. So -- 17 Yes, Mr. Webster? 18 MR. WEBSTER: And furthermore, we may be willing to 19 trim that rivers birch tree up some. And I don't know what 20 some maintenance. But trim it up to provide better sunlight, 21 if that -- if some arborist or Sun Landscape suggested. 22 Those emerald green arborvitae need full sun. My brief 23 recollection is they don't need full sun, full sun provides 24 optimum conditions but they are healthy and happy and less 25 than 100 percent sun.</p>	95	<p>1 that through DGS, which you know brought us here. 2 HEARING EXAMINER GROSSMAN: Well, I don't understand. 3 You want me to order the arborist report rather than that? 4 MS. WEISER: No, Your Honor. Were just asking that you 5 consider today, either doing the existing plants plus the 6 fence that's there to provide the screening our neighbors are 7 asking for, or, instead of the fence, if that's something 8 that you're not comfortable with, a second row that's already 9 five feet so that an arborist isn't required to make sure it 10 will eventually get there. 11 HEARING EXAMINER GROSSMAN: Well, once again. I'm 12 loath to order even the second row without making sure that 13 that's going to be appropriate given the Websters' concerns 14 until I hear back from the Websters as to that. I think the 15 safest way here is to have the neighbors agree as to what 16 would be the appropriate solution. And that would be my 17 inclination, to give the neighbors an opportunity and maybe 18 if you feel that you need some form to discuss it with, maybe 19 either Ms. Vargas would volunteer to meet with you at the 20 same time, or -- 21 MS. VARGAS: No, I oppose that right now. No. 22 HEARING EXAMINER GROSSMAN: She says she's not 23 interested in that. 24 Yes, Mr. Webster? 25 MR. WEBSTER: In prior conversations they have always</p>
94	<p>1 HEARING EXAMINER GROSSMAN: Okay. Would everybody 2 prefer if I just hold off for a couple of weeks to give you 3 in the Websters time to talk to each other as to what would 4 be an agreeable solution? 5 MS. WEISER: Your Honor, we've had difficulty in the 6 past coming to solutions outside of a formal form. We're 7 concerned that we would possibly come to an agreement, 8 instituted, and then finds ourselves here again years later. 9 HEARING EXAMINER GROSSMAN: Well, it would have to be 10 something that was submitted to me jointly in writing. So it 11 would be enforced as a joint agreement. There wouldn't be 12 any disparity or difficulty in interpreting it because it 13 would just say -- it sounds to me like you have the essence 14 of a possible solution here without my forcing something down 15 everybody's throat. 16 MS. WEISER: Well, I - 17 MR. WEBSTER: I would support that. 18 HEARING EXAMINER GROSSMAN: All right. 19 MS. WEISER: We're here in this foreman, we spent a lot 20 of your time and resources -- 21 HEARING EXAMINER GROSSMAN: That's what I'm here for. 22 MS. WEISER: It would be great if we could come to a 23 solution now that would provide an option that you're aware 24 of rather than kind of be opening it to a longer period to 25 determine a reasonable solution. We were attempting to do</p>	96	<p>1 been with Hannah Weiser and/or her husband Chris. The 2 conversations have always been essentially adversarial. 3 HEARING EXAMINER GROSSMAN: Right. 4 MR. WEBSTER: However, your suggestion of restoring -- 5 I believe you suggested restoring the 41 feet of plant 6 material as it existed before with a minimum of 5 foot, that 7 5 to 6 foot picture that I provided you, that would be very 8 appropriate. And I believe -- it seems like to me that we 9 could agree on it in writing. If Hannah Weiser would agree 10 to something like that. Replanting a prior line, the prior 11 planting line on about 30 inch centers, those emerald green 12 arborvitae. I would be very comfortable with that. 13 HEARING EXAMINER GROSSMAN: Well I understand. 14 MR. WEBSTER: I even agree to prune up my rivers birch 15 tree if they need additional sun. 16 HEARING EXAMINER GROSSMAN: I understand. But they are 17 suggesting also that the schip laurel instead of the 18 arborvitae. I don't know which is the best for that. It 19 seems to me that if you can't reach an agreement I can have 20 an arborist make the -- require that you submit something so 21 that I can make a fact-based decision as to what's at best 22 here. 23 If you can reach an agreement, and maybe what you've 24 tentatively suggested as a second row of five feet tall schip 25 laurel might be agreeable at this stage. And given the</p>

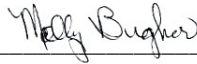
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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 information it would also give Mr. Webster an opportunity to 2 look into the information about schip laurels and maybe he 3 would be agreeable to it. Maybe it doesn't have to be an 4 adversarial context here. 5 MS. WEISER: Your Honor, if you do put in a condition 6 that does require whatever type of plan, is it still 7 something -- because we're allowed on our property to put a 8 fence in that we're still allowed to put one in? 9 HEARING EXAMINER GROSSMAN: No. I think that if in 10 fact is what's required is a specific type of screening, 11 that's what you would have to have. In other words, what 12 will come out of this has to be a plan enforceable by the 13 Department of permitting services for the conditional use, 14 and it would specify whether or not you have a fence there, 15 or some type of shrubbery, or some type of trees. It would 16 have to be specified. 17 This is what I'm going to do. I'm going to keep the 18 record open and give you all two weeks to talk to each other 19 about this and see if you can come to an agreement as to what 20 should be at this location. If you can agree, or if you 21 can't agree you file something and say two weeks, which will 22 be Friday, the 6th of October -- I mean September 20. 23 It will be a joint filing by the CU holder and the 24 Websters. Or if you can't agree, separate filings. The 25 Websters are not required to do this. You are not required</p>	<p style="text-align: right;">99</p> <p>1 That has to be between them, and to come back to you. 2 HEARING EXAMINER GROSSMAN: Right. It's not a question 3 of mediation. It's just a question of one said they submit a 4 plan -- 5 MS. REILLY: Right. 6 HEARING EXAMINER GROSSMAN: -- I am going to, if they 7 jointly submitted fine. If it's not jointly submitted then I 8 will order something else. That will then be submitted to 9 the Websters and to the planning department, and a courtesy 10 copy to the department of permitting services, and then I 11 will ask for the planning department to opine as to whether 12 that sufficient in the opinion of the planning department, as 13 I routinely do in all -- and it's built into all conditional 14 use cases are reviewed by the planning department. 15 MS. WEISER: And to clarify, is that a landscaping plan 16 for the whole property that -- 17 HEARING EXAMINER GROSSMAN: Well, I'm not going to 18 change before the only issue before me, and by statute the 19 only issue I can consider, is the condition 21 thing. But I 20 do need a plan that's enforceable. So you can keep the rest 21 of it the same as was in the prior plan, but for along the 22 southern property line in the area we're talking about it has 23 to specify what the new planting requirements are so that 24 that's enforceable by the department of permitting services. 25 I'm not going to change anything else in the plan. I'm</p>
<p style="text-align: right;">98</p> <p>1 to make a -- you're not a conditional use holder, I can't 2 require you to do it. If you desire to join in this, you 3 have two weeks to do that. If you desire not to you can file 4 something. The conditional use holder has to file something 5 by September and 20 on this point. 6 I will then make a decision based on what's filed, as 7 to what I order ultimately. I am going to need a revised 8 landscape plan that's going to show all the required 9 plantings all over your property so that it can be 10 enforceable. 11 Yes, Ms. Vargas? 12 MS. VARGAS: I just want to make it clear for both Mr. 13 and Mrs. Webster and Ms. Weiser that DPS is not the 14 department that they need to seek guidance for in regards to 15 this matter that you're requesting for them to have something 16 submitted by the 20th. 17 HEARING EXAMINER GROSSMAN: All right. I think 18 everybody understands that Ms. Reilly doesn't want to be in 19 that position either, I think. 20 MS. REILLY: Well, I want to clarify, I spoke with our 21 associate General Counsel before I testified, and Ms. Coleman 22 could not be here today. She basically said the planning 23 board policy is any agreed private agreements between two 24 property owners cannot be enforced by the planning board. So 25 we cannot mediate a dispute between the two property owners.</p>	<p style="text-align: right;">100</p> <p>1 not allowed to them as it comes before me as an amendment 2 request, or as an enforcement request. The only thing before 3 me as an enforcement request is along the southern property 4 line along the parking area. 5 MR. WEISER: And so to provide guidance to the arborist 6 or the landscape architect it needs to be five feet how 7 quickly? 8 HEARING EXAMINER GROSSMAN: Well, right now you don't 9 have to do the arborist until you talk to the Websters to see 10 if there's some agreement as to what you can all agree to. 11 MS. WEISER: And I -- 12 HEARING EXAMINER GROSSMAN: This is an effort to avoid 13 you having to go to the additional expense of the arborist 14 because it appears to me that the neighbors can work it out. 15 You both, and when I say the neighbors, I mean not just the 16 Websters, but you and the Websters can work it out. If you 17 can't, you can't. And then I'll work it out. 18 And the next step will be something from the arborist 19 if you can't work it out. 20 MR. WEISER: Okay . 21 MS. WEISER: So you would like a landscaping plan by 22 September 20th that reflects agreement -- 23 HEARING EXAMINER GROSSMAN: Yes. 24 MS. WEISER: Or you would like a statement of our 25 agreement?</p>

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26 (101 to 104)

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<p>1 HEARING EXAMINER GROSSMAN: Well, the statement of your 2 agreement and a plan that reflects that agreement. 3 Does that seem like a reasonable way to work this out, 4 Mr. Webster? 5 MR. WEBSTER: Yes. 6 HEARING EXAMINER GROSSMAN: Look, if the parties can't 7 work it out then I'll work it out. That's my job. But it's 8 always best, obviously, if the parties can work it out. 9 All right. So in terms of the record, that September 10 20. I'm going to keep the record open to an indefinite date 11 at this point, and I will order a specific record closing 12 date, or additional findings as need be from an arborist, and 13 reply dates from everybody if necessary after we see what's 14 filed on September 20. 15 And I hope you all can work it out because that's 16 certainly the best solution, you know as it's strictly a 17 matter of compatibility and screening. So I think reasonable 18 people can work this type of things out. 19 All right. So I will be issuing a report until after I 20 issue an order based on the September 20th, 2019 (inaudible). 21 Is that sufficient time? I think it is, two weeks to get 22 together on this? 23 MR. WEBSTER: Yes. 24 HEARING EXAMINER GROSSMAN: Everybody agree? All 25 right, then. We've admitted the exhibits and we are</p>	<p>1 CERTIFICATE OF TRANSCRIBER 2 I, Molly Bugher, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording and supporting 6 information; and that I am neither counsel for, related to, 7 nor employed by any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Molly Bugher 13 DATE: September 10, 2019 14 15 16 17 18 19 20 21 22 23 24 25</p>
102	
<p>1 adjourned until the follow-up order the record remains open. 2 MS. WEISER: Okay. 3 HEARING EXAMINER GROSSMAN: Thank you all for coming 4 down, and have a good weekend. 5 (Off the record at 11:49 a.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	