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Transcript of Administrative Hearing

Date: January 7, 2019

Case: Norma Caceres Group Day Care, In Re

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Conducted on January 7, 2019

1 (1 to 4)

1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS	3	A P P E A R A N C E S
2	FOR MONTGOMERY COUNTY, MARYLAND	2	FOR MONTGOMERY COUNTY OFFICE OF ZONING AND
3	-----x	3	ADMINISTRATIVE HEARINGS:
4	IN RE: :	4	LYNN A. ROBESON, HEARING EXAMINER
5	THE APPLICATION OF : Case No.: CU 19-02	5	
6	NORMA CACERES GROUP DAY CARE :	6	FOR THE APPLICANT:
7	-----x	7	JOSE CACERES
8		8	
9	HEARING	9	ALSO PRESENT:
10	Rockville, Maryland	10	BRYAN CACERES, Translator
11	Monday, January 7, 2019	11	
12	9:49 a.m.	12	
13		13	
14		14	
15		15	
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23	Job: 223927	23	
24	Pages: 1 - 15	24	
25	Transcribed by: Molly Bugher	25	
2		4	
1	Conditional Use 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	Transcript of proceedings 5
4	100 Maryland Avenue	4	
5	County Office Building	5	
6	Room 200	6	EXHIBITS
7	Rockville, MD	7	EXHIBITS INTRODUCED AT HEARING:
8	(240) 777-6660	8	NUMBER DESCRIPTION PAGE
9		9	2 Staff Report 11
10		10	
11		11	EXHIBITS PREVIOUSLY SUBMITTED:
12		12	NUMBER DESCRIPTION
13		13	1 9/07/18 - Application for Conditional Use
14		14	2 9/07/18 - Statement of Applicant and detailed
15	Pursuant to agreement before Lee Utterback, a digital	15	information.
16	reporter and notary public, in and for the State of Maryland.	16	(a) Diagrams of covered porch
17		17	(b) Proposed Floor Plan
18		18	(c) Forest conservation waiver
19		19	(d) Photos of daycare center space
20		20	(e) Emergency Escape Plan (Family Child Care
21		21	Home)
22		22	(f) Transportation Statement for Day Care
23		23	(g) Affidavit of Compliance
24		24	3 9/07/18 - List of adjoining/confronting property
25		25	owners

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2 (5 to 8)

<p>5</p> <p>1 EXHIBITS PREVIOUSLY SUBMITTED CON'D: 2 NUMBER DESCRIPTION 3 4 9/07/18 - List of Civic associations and HOAs 4 5 9/07/18 - Land Instrument Intake Sheet 5 6 9/07/18 - Notarized deed from Grantor Nurina 6 Widago. 7 7 9/07/18 - Plat 8 8 9/07/18- Property Deed 9 9 9/07/18- Affidavit of Grantee(s) 10 10 9/07/18- SDAT: Real Property Search 11 11 9/07/18- Letter of Consent from Jose Caceres 12 & Juan Caceres to operate a Group Day Care 13 Facility at 10712 Douglas Ave. 14 12 9/07/18- Certified Zoning Map 15 13 9/07/18- Checklist from MNCPPC 16 14 9/07/18- Applicant's acceptance of requirement 17 for Posting of signs. 18 15 12/5/18- Notice of Hearing Scheduled for 19 January 7, 2019. 20 16 12/6/18- Technical Staff Report of 11130/18 21 recommending approval with conditions. 22 17 12/13/18- Email from Lynn Robeson to Garry Meus 23 letting him know staff report needs some 24 supplemental information (Article 6). 25 ///</p>	<p>7</p> <p>1 PROCEEDINGS 2 HEARING EXAMINER ROBESON: Calling the case of 3 CU 19-02, application of Jose and Norma Caceres. This is a 4 public hearing in the matter of requesting a conditional use 5 for approved daycare for 12 children for property located at 6 10712 Douglas Avenue, Silver Spring, Maryland 20871. Okay. 7 My name is Lynn Robeson. I'm the hearing examiner in the 8 case. I'm going to listen to everything you have to say in 9 this case, and I will make a decision. I have 30 days from 10 the close of the record to make the decision. And you have a 11 right to -- if you don't like what I decide, you have the 12 right to request oral argument before the Board of Appeals 13 within 10 days of the date of my decision. Now, Mr. Caceres, 14 have you had the opportunity to refute the Staff Report in 15 the case? 16 BRYAN CACERES: He has not. 17 JOSE CACERES: Huh? 18 HEARING EXAMINER ROBESON: Okay. If you're going to 19 translate, I have to have you raise your right hand. Do you 20 solemnly affirm, under penalties of perjury, that you will 21 translate accurately for the applicant in this case, and not 22 add or subtract anything he says? 23 BRYAN CACERES: Yeah. 24 HEARING EXAMINER ROBESON: You -- 25 BRYAN CACERES: I swear.</p>
<p>6</p> <p>1 EXHIBITS PREVIOUSLY SUBMITTED CON'D: 2 NUMBER DESCRIPTION 3 18 12/13/18- Email from Garry Meus saying he will 4 describe in more detail the neighborhood 5 context at the Planning board hearing meeting 6 with an attached picture of the long-term 7 bicycle parking space. 8 (a) Picture of long-term bicycle parking space 9 19 12/13/18- Email from Lynn Robeson saying it will 10 be okay to raise before planning board, stating 11 some staff have added it to their power points and 12 then the Planning Board's transmittal letter 13 20 12/13/18- Email from Patrick Butler to Lynn 14 Robeson pointing her to the pages in staff 15 report where long-term biking parking space 16 information is included 17 21 12/13/18- Email exchange between Lynn Robeson and 18 Patrick Butler acknowledging long-term biking 19 parking is included in staff report 20 21 22 23 24 25</p>	<p>8</p> <p>1 HEARING EXAMINER ROBESON: Okay. Now -- Mr. -- this is 2 informal, but we do have certain formalities. You can put 3 your hand down. One is that everything we say is under oath. 4 So I need you to raise your right hand. 5 JOSE CACERES: I will. 6 HEARING EXAMINER ROBESON: Do you solemnly affirm under 7 penalties of perjury that the statements you're about to make 8 are the truth, the whole truth, and nothing but the truth? 9 JOSE CACERES: Yes. 10 HEARING EXAMINER ROBESON: Okay. Now, what I'm going 11 to do, this is the Staff Report, and this Staff Report 12 contains all the technical requirements of what you have to 13 meet. Now they recommended approval subject to some 14 conditions that that are on page 2. And so, rather than ask 15 you to say everything, I'm going to ask you, you know, to say 16 okay, I meet all these requirements. I'm going to ask you to 17 look at the Staff Report, tell me if it's accurate, and tell 18 me whether you want to adopt it as its -- as your own 19 testimony. Okay? 20 JOSE CACERES: Okay. 21 HEARING EXAMINER ROBESON: So we're going to go off the 22 record. I'm going to give you 10 minutes. Look at it, see 23 if it's accurate, and we'll come back in 10 minutes. 24 JOSE CACERES: Okay. 25 (Off the record at 9:52)</p>


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3 (9 to 12)

<p>9</p> <p>1 (On the record at 10:04)</p> <p>2 HEARING EXAMINER ROBESON: Okay.</p> <p>3 BRYAN CACERES: Sorry.</p> <p>4 HEARING EXAMINER ROBESON: Oh, that's okay. There's</p> <p>5 water there if you want some. We're back on the record.</p> <p>6 We're just taking a moment so Mr. Caceres can help his cough.</p> <p>7 BRYAN CACERES: Yeah.</p> <p>8 HEARING EXAMINER ROBESON: Okay. Did you have the</p> <p>9 opportunity to read through the staff report?</p> <p>10 JOSE CACERES: Yeah.</p> <p>11 HEARING EXAMINER ROBESON: It goes through the</p> <p>12 technical requirements. Do you wish to adopt that as your</p> <p>13 own testimony?</p> <p>14 JOSE CACERES: Uh-huh. Yeah.</p> <p>15 BRYAN CACERES: We wish to adopt it.</p> <p>16 HEARING EXAMINER ROBESON: No, he has to say it.</p> <p>17 BRYAN CACERES:</p> <p>18 JOSE CACERES: Yes. Yes, ma'am.</p> <p>19 HEARING EXAMINER ROBESON: Okay. And did you see the</p> <p>20 conditions of approval on page 2 of the Staff Report?</p> <p>21 Because those are going to be -- I'll read them. These</p> <p>22 are -- you're going to have to meet these conditions so it</p> <p>23 says, "A group daycare must be limited to up to 12 children</p> <p>24 and up to 3 non-resident staff plus the applicant." Do --</p> <p>25 did he -- do you want to?</p>	<p>11</p> <p>1 JOSE CACERES: Uh-huh.</p> <p>2 HEARING EXAMINER ROBESON: Okay. "Before the --</p> <p>3 outdoor play is limited to playtime to one hour in the</p> <p>4 morning, no earlier than 9:00 a.m., and one hour in the</p> <p>5 afternoon."</p> <p>6 JOSE CACERES: Okay.</p> <p>7 HEARING EXAMINER ROBESON: Okay. You agree to that.</p> <p>8 Now, one thing we typically -- we usually do is to ensure --</p> <p>9 we -- to make sure that you meet that requirement condition</p> <p>10 that only two vehicles for every 15 minutes, we ask that</p> <p>11 you -- in the contracts with the parents, we ask that you</p> <p>12 assign them times to come so that you can make sure that only</p> <p>13 two come in 15 minutes. Do you have an issue with that? And</p> <p>14 do you need to translate that?</p> <p>15 JOSE CACERES: No, that's okay.</p> <p>16 HEARING EXAMINER ROBESON: That's okay?</p> <p>17 JOSE CACERES: Uh-huh.</p> <p>18 HEARING EXAMINER ROBESON: Okay. Now, you've submitted</p> <p>19 a -- if you want to come up just for a moment. You've</p> <p>20 submitted a site plan which is Exhibit 2, here. And some</p> <p>21 photographs. Do these still fairly, and accurately represent</p> <p>22 the property as it exists today, both the site plan Exhibit 2</p> <p>23 and the photographs?</p> <p>24 JOSE CACERES: Yeah. It's same.</p> <p>25 HEARING EXAMINER ROBESON: Okay. All right. Okay.</p>
<p>10</p> <p>1 JOSE CACERES: Okay. Uh-huh, yes.</p> <p>2 HEARING EXAMINER ROBESON: Yes?</p> <p>3 JOSE CACERES: Uh-huh.</p> <p>4 HEARING EXAMINER ROBESON: Okay. Here's the second.</p> <p>5 "The daycare hours of operation are limited to Monday through</p> <p>6 Friday 6:45 a.m. to 5:30 p.m." Do you want to --</p> <p>7 JOSE CACERES: Yes.</p> <p>8 HEARING EXAMINER ROBESON: Okay. You agree to that.</p> <p>9 "Scheduled parent drop off/pickup -- drop off and pickup are</p> <p>10 to be staggered so that the maximum of two vehicles are</p> <p>11 entering and exited the site during any --</p> <p>12 BRYAN CACERES: (Coughing) oh, I'm sorry.</p> <p>13 HEARING EXAMINER ROBESON: It's okay. Take a moment.</p> <p>14 You need more water?</p> <p>15 BRYAN CACERES: No, that's good. Because this is an</p> <p>16 allergy.</p> <p>17 HEARING EXAMINER ROBESON: Oh.</p> <p>18 BRYAN CACERES: Uh-huh.</p> <p>19 HEARING EXAMINER ROBESON: Okay. "Scheduled parent</p> <p>20 drop off and pickup to be staggered so that a maximum of two</p> <p>21 vehicles are entering and exiting the site during any 15</p> <p>22 minute period."</p> <p>23 JOSE CACERES: Okay.</p> <p>24 HEARING EXAMINER ROBESON: Do you -- you're okay with</p> <p>25 that?</p>	<p>12</p> <p>1 Well, without any -- now we also -- you can go sit down. In</p> <p>2 these cases we also typically add conditions that you have to</p> <p>3 comply with all licenses and permits that you need from other</p> <p>4 agencies. For instance, you'll probably need a license from</p> <p>5 the state. Do you agree to that?</p> <p>6 JOSE CACERES: Yes.</p> <p>7 HEARING EXAMINER ROBESON: Okay. Well, with -- you</p> <p>8 know, there's no one here in opposition so you've adopted the</p> <p>9 Staff Report as your own testimony. So do you have anything</p> <p>10 else you want to stay in support of the application?</p> <p>11 JOSE CACERES: No, this is everything is good.</p> <p>12 HEARING EXAMINER ROBESON: Okay. Well, thank you for</p> <p>13 coming.</p> <p>14 BRYAN CACERES: Thank you.</p> <p>15 HEARING EXAMINER ROBESON: I'm sorry you had a hard</p> <p>16 time parking. And what we do now is, it takes us 10 days to</p> <p>17 get the transcript, so we keep the record open from 10 days</p> <p>18 from today, which would be January 17th.</p> <p>19 JOSE CACERES: Okay.</p> <p>20 HEARING EXAMINER ROBESON: I have 30 days to write an</p> <p>21 opinion. My guess is it's not going to take that much time,</p> <p>22 but that's when you should expect my decision. You will get</p> <p>23 a notice in the mail of my decision. You can also check</p> <p>24 OZHA's web -- the Office of Zoning and Administrative</p> <p>25 Hearings, their website. Because once we issue them we put</p>

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4 (13 to 16)

<p>13</p> <p>1 them online. Okay?</p> <p>2 JOSE CACERES: Okay.</p> <p>3 HEARING EXAMINER ROBESON: All right. So with that,</p> <p>4 I'm going to adjourn the hearing and keep the record open for</p> <p>5 10 days to get the transcript.</p> <p>6 JOSE CACERES: Okay.</p> <p>7 HEARING EXAMINER ROBESON: And that's all.</p> <p>8 JOSE CACERES: Okay. One question.</p> <p>9 HEARING EXAMINER ROBESON: Yes, stay on the record.</p> <p>10 JOSE CACERES: The sign for the zoning. You said that</p> <p>11 were through today or is waiting for a couple of day more?</p> <p>12 HEARING EXAMINER ROBESON: No, you have to keep it up</p> <p>13 for at least 10 days --</p> <p>14 JOSE CACERES: Ten days.</p> <p>15 HEARING EXAMINER ROBESON: -- to see if anybody appeals</p> <p>16 to the Board of Appeals. Now, nobody's here, but you have to</p> <p>17 keep it up at least for that amount of time.</p> <p>18 JOSE CACERES: Okay.</p> <p>19 HEARING EXAMINER ROBESON: Then you can take it down</p> <p>20 and return it to us and get \$100 back for the sign fee.</p> <p>21 JOSE CACERES: Okay.</p> <p>22 HEARING EXAMINER ROBESON: Okay? Anything else?</p> <p>23 JOSE CACERES: No, that's it.</p> <p>24 HEARING EXAMINER ROBESON: Any other questions?</p> <p>25 JOSE CACERES: No.</p>	<p>15</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Molly Bugher, do hereby certify that the foregoing</p> <p>3 transcript is a true and correct record of the recorded</p> <p>4 proceedings; that said proceedings were transcribed to the</p> <p>5 best of my ability from the audio recording and supporting</p> <p>6 information; and that I am neither counsel for, related to,</p> <p>7 nor employed by any of the parties to this case and have no</p> <p>8 interest, financial or otherwise, in its outcome.</p> <p>9</p> <p>10 </p> <p>11 _____</p> <p>12 Molly Bugher</p> <p>13 DATE: January 14, 2018</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>14</p> <p>1 HEARING EXAMINER ROBESON: I think it's 10 days. If</p> <p>2 you go after the hearing, ask our administrative assistant.</p> <p>3 I can't remember if it's 10 or 30 days, but then you can take</p> <p>4 it down.</p> <p>5 JOSE CACERES: Okay.</p> <p>6 HEARING EXAMINER ROBESON: Okay?</p> <p>7 JOSE CACERES: All right.</p> <p>8 HEARING EXAMINER ROBESON: All right.</p> <p>9 JOSE CACERES: Okay.</p> <p>10 HEARING EXAMINER ROBESON: With that I'm going to</p> <p>11 adjourn the hearing now.</p> <p>12 (Off the record at 10:13 a.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	