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# Transcript of Hearing

**Date:** April 19, 2021

**Case:** Babu d/b/a Montessori

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Conducted on April 19, 2021

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2                   FOR MONTGOMERY COUNTY, MARYLAND	2
3 -----x	3   FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE
4 JAYANTHI BABU,                   :	4   HEARINGS:
5 D/B/A LOVEDALE MONTESSORI,     :	5               DEREK J. BAUMGARDNER, HEARING EXAMINER
6       Applicant.               :   Case No.: CU 21-05	6
7 -----x	7   FOR THE APPLICANT:
8	8               SEAN P. HUGHES, ESQUIRE
9	9               MILLER, MILLER & CANBY
10	10              200-B Monroe Street
11                   HEARING	11              Rockville, MD 20850
12       BEFORE HEARING EXAMINER DEREK J. BAUMGARDNER	12              (301) 762-5212
13                   Conducted Virtually	13
14                   Monday, April 19, 2021	14   Also Present:
15                   9:31 a.m. EDT	15       Nana Yaa Johnson, OZAH Staff
16	16       Jon S. Frey, OZAH Staff
17	17
18	18
19	19
20	20
21	21
22	22
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<p style="text-align: center;">EXHIBITS</p> <p>HEARING EXHIBITS ID ADMIT</p> <p>Exhibit 24 12/22/20- Applicant's Acceptance on Requirements for Posting of Signs -- 72</p> <p>Exhibit 25 1/28/2021- Motion to Amend Application 34 72</p> <p>Exhibit 26 2/19/2021- Motion to Amend Application 40 72</p> <p>Exhibit 27 2/25/2021- Applicant's Pre-Hearing Submission 34 72</p> <p>Exhibit 28 3/2/2021- Notice of Public Hearing and Motion to Amend -- 72</p> <p>Exhibit 29 Proof of Ownership -- 72</p> <p>Exhibit 30 3/11/2021- Letters of Support Map -- 72</p> <p>Exhibit 31 3/18/2021- Affidavit of Posting 18 72</p> <p>Exhibit 32 Email from Sean Hughes re: exterior stairs and elevation, 4/9/21 64 72</p> <p>Exhibit 33 Email from Sean Hughes re: exhibit to be presented at hearing, 4/9/21 -- 72</p> <p>Exhibit 34 Emails between Sara Behanna and Sean Hughes, 4/12/21 -- 72</p> <p>Exhibit 35 Email submitting Planning Board recommendation, 4/12/21 -- 72</p> <p>Exhibit 36 Email from Sean Hughes, 4/12/21 34 72</p> <p>Exhibit 37 Email from Sean Hughes, 4/13/21 24 72</p>	<p>happens to be called Microsoft Teams.</p> <p>First of all, if you're having any problems logging in to Teams or connecting or any technical issues, please give our office a phone call at 240-777-6663.</p> <p>While -- while we're doing this hearing, please make sure to mute yourselves when you are not speaking or when you're not answering a question either from counsel or a community member. When there is background noise, it tends to interfere with the proceedings.</p> <p>We'll be using a feature on Microsoft Teams here today called the raise your hand feature. If you put your cursor towards the top of your screen, the middle right, there is a selection for -- it's an emoticon with a raised hand. If you have a question, you can physically raise your hand on the screen, you can also click on this virtual raise your hand feature. That lets me know that you have a question or have some issue that would like to be addressed.</p> <p>Looks like we have a number of people logged in. If everyone can turn on their cameras just so we can make sure that things are functioning properly. I see Mr. Hughes. I'm not seeing any of our witnesses.</p> <p>MR. CINIERO: Mr. Baumgardner, this is Geoff Ciniero, Civil Engineer. I can't turn mine on just because of the way that my setup is. I apologize.</p>

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<p>9</p> <p>1 HEARING EXAMINER BAUMGARDNER: Okay. Thank you.</p> <p>2 All right. We have some folks. We have Ms.</p> <p>3 Johnson from our office, the court reporter, Mr. Frey in</p> <p>4 case we have any technical issues. Okay. Great.</p> <p>5 I just wanted to make sure that everyone who can</p> <p>6 use the video function is able to use the video function.</p> <p>7 Thank you all very much.</p> <p>8 Microsoft Teams also has a chat feature, a text</p> <p>9 chat feature, that we will not be using during this</p> <p>10 hearing. So please do not try to use that chat feature.</p> <p>11 While folks are testifying, if you can, please wait</p> <p>12 until the questioner has finished their question before you</p> <p>13 start your response. On the other side of that coin, if</p> <p>14 you are the person asking the question, please wait until</p> <p>15 the witness has finished their answer before starting your</p> <p>16 next question. This is helpful for me and for the court</p> <p>17 reporter so that there's not crosstalk during a hearing and</p> <p>18 that we can easily identify who is speaking when they are</p> <p>19 speaking.</p> <p>20 If the Applicant through counsel can identify</p> <p>21 themselves and identify their witnesses who are going to be</p> <p>22 testifying here today.</p> <p>23 MR. HUGHES: Yes, sir. Thank you. This is Sean</p> <p>24 Hughes, Counsel for the Applicant. Applicant is Ms.</p> <p>25 Jayanthi Babu, who's on. Our witnesses are Geoff Ciniero,</p>	<p>11</p> <p>1 logged in both ways. Just in case, so that's --</p> <p>2 MS. BABU: Oh, my -- volume on my computer is</p> <p>3 muted, so it's just the phone and the video on the</p> <p>4 computer.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Got it. Thank you.</p> <p>6 Seeing no one else identifying themselves as a</p> <p>7 member of the community or otherwise unrepresented, I think</p> <p>8 that is all of the folks that we have logged in here today.</p> <p>9 The file does not note that there is any known</p> <p>10 opposition to this case, but if folks from the community</p> <p>11 are going to be logging in or calling in, they're welcome</p> <p>12 to testify or ask questions of the witnesses; however,</p> <p>13 again, I do not see anyone logged in either via phone or</p> <p>14 through the virtual platform other than our Applicant,</p> <p>15 counsel, court reporter, and witnesses for the Applicant,</p> <p>16 and OZAH staff.</p> <p>17 So the way this case is going to work, like all of</p> <p>18 our other cases, the Applicant will be given the</p> <p>19 opportunity to give -- to give an opening statement. They</p> <p>20 will then go through the examination of their witnesses and</p> <p>21 try their case in chief. If there are any questions of</p> <p>22 those witnesses, including from myself, we will ask those</p> <p>23 questions after counsel has finished their direct</p> <p>24 examination. Applicant will be given the opportunity to</p> <p>25 give a closing statement, if they wish, and then we will</p>
<p>10</p> <p>1 we have Joe Caloggero, and Dennis DeLizzio, and they are</p> <p>2 all on.</p> <p>3 HEARING EXAMINER BAUMGARDNER: Great. Mr. Court</p> <p>4 Reporter, did you need any spellings for those names? They</p> <p>5 are listed on the screen.</p> <p>6 THE REPORTER: Yes. I don't need any spellings. I</p> <p>7 can see them on the screen. Thank you though.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Great. Thank you.</p> <p>9 Great.</p> <p>10 Is there anyone logged in who is not represented by</p> <p>11 an attorney or who is not the Applicant or a witness</p> <p>12 identified by Counsel for the Applicant? Please either</p> <p>13 raise your virtual hand, your physical hand, or otherwise</p> <p>14 let me know.</p> <p>15 Seeing none, I do see one caller with the last four</p> <p>16 digits 3531. If you would like to identify yourself for</p> <p>17 the record, you are more than welcome to.</p> <p>18 MS. BABU: It's Jayanthi. I just have my phone on</p> <p>19 as well as my computer on just because I was having issues</p> <p>20 with volume on my computer.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Got it. Understood.</p> <p>22 Thank you very much, ma'am.</p> <p>23 There are times when two devices can cause</p> <p>24 interference during the hearing. I don't hear any right</p> <p>25 now. So as long as that continues, you are welcome to be</p>	<p>12</p> <p>1 close the hearing for today.</p> <p>2 Mr. Hughes, were there any preliminary issues you</p> <p>3 wanted to address before we get into the case in chief?</p> <p>4 MR. HUGHES: Yes, briefly, just to get your</p> <p>5 guidance, sir.</p> <p>6 So one is -- I'd asked you this last time, so I</p> <p>7 think I know the answer -- is just as far as the exhibits,</p> <p>8 I will attempt to remember to ask that they all be brought</p> <p>9 in towards the end of the hearing.</p> <p>10 The other one is -- and I guess I should bring it</p> <p>11 up now -- is I think that I will need to ask for two or</p> <p>12 three what I believe are minor items as possible motion to</p> <p>13 open or amend for your review, and they had been kind of</p> <p>14 laid out, and I will lay them out briefly when I do an</p> <p>15 intro and also through our witnesses, but just to give you</p> <p>16 a real quick idea what they are.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>18 MR. HUGHES: One is required -- was -- was</p> <p>19 requested per condition of approval number 3 from staff and</p> <p>20 the Planning Board, and that was that before the hearing we</p> <p>21 submit a revised Conditional Use Site Plan to show the</p> <p>22 location for one long-term biking spot -- bicycle spot, and</p> <p>23 we have done so, and that is Exhibit 36. So that was per</p> <p>24 the condition of approval from staff and Planning Board.</p> <p>25 The other two are ones that I have or we have</p>

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<p style="text-align: right;">13</p> <p>1 brought on. We believe they're pretty -- relatively minor 2 but certainly something for your consideration. 3 The first one we will talk about once we get into 4 the hearing is related to condition of approval number 5, 5 which talks about six special events during the year -- 6 fairly typical for these types of things where they might 7 be outside of normal hours, after hours, that might allow 8 families and such to attend. So condition of approval 9 number 5 does recommend allowing up to six special events. 10 What we wanted to have some testimony on is, and 11 for your consideration, is to possibly tweak that just a 12 tiny bit, not to ask for any more than six, but we 13 should've asked, or wanted to ask and I didn't, that it 14 possibly include the weekends too. And we'll have 15 testimony on this, but the reason is to try to allow more 16 participation, first of all, by our families that may have 17 trouble coming after hours during the workweek, and number 18 two is our client wants to hopefully have, like, an open 19 house every year for the community, for neighbors to come, 20 and we think that that might be better served on a Saturday 21 or Sunday. So that's something we'll have testimony, we're 22 hoping you can consider. 23 And then the second one, there has been a little 24 bit of dialogue on this. And the -- and we have supplied 25 what has been marked as potential Exhibit 32, and so the</p>	<p style="text-align: right;">15</p> <p>1 consideration, sir. 2 HEARING EXAMINER BAUMGARDNER: Okay. Great. Thank 3 you. Per our rules, OZAH was made aware of the request to 4 modify. There just wasn't enough time between that request 5 and this hearing to send out notice prior to the hearing, 6 but our rules allow for that motion at the hearing itself. 7 So I will certainly entertain that motion, and we will hear 8 from any -- if there are any objections to that. 9 What I would suggest, Mr. Hughes, is that we're 10 going to be leaving the record open for ten days after this 11 hearing anyway. That will allow Planning staff time to 12 opine on -- on that particular motion with regard to the 13 bike space, the special events, or that interior stair and 14 the rear portion of the building bump out and the reduction 15 of the deck. That will -- that will allow Planning staff 16 just a little bit of time to comment on that, if they would 17 like to, after today's hearing. 18 Are there any objections from -- to that particular 19 motion to at least entertain those changes during today's 20 hearing so Mr. Hughes can ask his witnesses questions 21 regarding those? 22 And since there is no one else logged in, and I'm 23 not seeing any objections, the motion is granted. We will 24 hear testimony on those three items through Mr. Hughes' 25 direct examination of witnesses, and we will give those ten</p>
<p style="text-align: right;">14</p> <p>1 short answer of that slight tweak for your consideration is 2 -- we do believe it's minor, and we have talked for staff 3 -- I don't want to talk for staff, but we have talked to 4 them, and they seem positive with it, and they did not seem 5 to have any issues, but, again, I know I can't speak for 6 them. 7 But what it is is we had a planned new deck on the 8 back side of the house, and we're -- now we want to ask, in 9 consideration of reducing the size of that deck, to then 10 allow roughly half of the deck to go away, and instead 11 we're going to do a bump out of the back of the house to 12 allow new stairs inside the house. The exhibit may say 13 exterior stairs, but we meant that the back side of the 14 house, so it would be stairs that allow up and down to the 15 basement. And that is just to allow a little more 16 functionality inside for the children in the daycare. 17 So it only picks up about -- we'll have our 18 witnesses talk about that, but roughly 130 square feet, but 19 the deck was going to be taking up some of that. And so 20 that's -- that's something -- that's the third -- other 21 than that, we were -- my client is -- is very thrilled with 22 staff's report and all the conditions of approval and all 23 the help that staff at Planning has given us and also 24 through your staff at OZAH. 25 So those are the preliminary items for your</p>	<p style="text-align: right;">16</p> <p>1 days for Planning or other folks the opportunity to submit 2 any written documentation regarding those three requested 3 amendments. 4 All right. We will get started with our case in 5 chief, if you're ready to proceed, Mr. Hughes. 6 MR. HUGHES: Yes. Thank you. 7 HEARING EXAMINER BAUMGARDNER: All right. 8 MR. HUGHES: There's -- 9 HEARING EXAMINER BAUMGARDNER: Yes. 10 MR. HUGHES: I thought somebody else had a 11 question. 12 HEARING EXAMINER BAUMGARDNER: I don't believe so. 13 MR. HUGHES: Okay. I'm ready to proceed. Thank 14 you very much. 15 OPENING STATEMENT ON BEHALF OF THE APPLICANT 16 MR. HUGHES: So I'll be very brief with a short 17 opening. We do have several witnesses. I will try to be 18 succinct as possible as I think staff did a really nice job 19 with their Staff Report. 20 So as -- as -- as staff has laid out in their 21 report and our also Statement of Justification application 22 package, this is a conditional use to operate a daycare 23 center, 42 children, at 23126 Frederick Road in Clarksburg. 24 It is a R-200 zone, .60 acre, 2,134-square-foot single -- 25 longstanding single-family established home.</p>

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<p>17</p> <p>1 Applicant is the owner of the property. She 2 proposes to utilize the building with minimal alterations 3 to the building and the site. Attendees will be ages of 4 three to pre-kindergarten age. It will operate from 7:30 5 a.m. to 6:30 p.m., Monday through Friday, with six -- 6 hopefully up to six special events. Outdoor play for the 7 children would be in the rear yard. It's presently fenced 8 and will remain so.</p> <p>9 I had mentioned three minor -- we believe three 10 minor tweaks that we'd like to -- and we will have 11 testimony on for the Hearing Examiner to consider.</p> <p>12 And, with that, I -- I thank you, and I will call 13 my first witness, which is the Applicant, Ms. Jayanthi 14 Babu.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Great. And, Ms. 16 Babu, can you please give us your name, your address for 17 the record please, and please spell your name.</p> <p>18 MS. BABU: I am Jayanthi Babu, spelled 19 J-A-Y-A-N-T-H-I, B-A-B-U. And I live at 4 Stonebridge 20 Court, Germantown, Maryland 20874.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Okay. Thank you, 22 ma'am. And can you raise your right hand please.</p> <p>23 THE REPORTER: Do you solemnly swear or affirm 24 under the penalties of perjury that the testimony you shall 25 give will be the truth, the whole truth, and nothing but</p>	<p>19</p> <p>1 MS. BABU: Just yesterday.</p> <p>2 MR. HUGHES: Okay. Great. And it --</p> <p>3 MS. BABU: (Inaudible.)</p> <p>4 MR. HUGHES: -- was still standing? Still 5 standing. Okay.</p> <p>6 MS. BABU: Yes.</p> <p>7 MR. HUGHES: Great. Thank you. Thank you very 8 much. Can you give us a brief overview of your educational 9 and professional background?</p> <p>10 MS. BABU: I have a bachelor's degree in nutrition, 11 food service management and dietetics, a diploma in 12 information systems management, a master's in history. I 13 also have a master's in education from Loyola University 14 Maryland and a diploma in Montessori education primary from 15 the Association Montessori Internationale, which is 16 AMI/USA. I'm also a Montessori alum for -- from my primary 17 years.</p> <p>18 Professionally, I have worked with children ages 19 two to nine for the last 18 years of which 15 have been 20 with (indiscernible) children in different Montessori 21 schools.</p> <p>22 MR. HUGHES: Great. And is it -- I know you've -- 23 you've expressed your passion to me. Is it fair to say 24 that this is a -- this opportunity is -- is -- is 25 potentially a dream come true for you, to have your own</p>
<p>18</p> <p>1 the truth?</p> <p>2 MS. BABU: I do.</p> <p>3 THE REPORTER: Thank you.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Thank you very much. 5 Mr. Hughes, the floor is yours.</p> <p>6 MR. HUGHES: Thank you, sir.</p> <p>7 DIRECT EXAMINATION OF JAYANTHI BABU</p> <p>8 MR. HUGHES: Ms. Babu, good morning. You and your 9 husband own the subject property which is the property at 10 23126 Frederick Road in Clarksburg; correct?</p> <p>11 MS. BABU: Correct.</p> <p>12 (Exhibit 31 identified.)</p> <p>13 MR. HUGHES: Great. And do you recall the 14 Affidavit of Posting for the signs that you signed and was 15 notarized the middle of March? Do you remember doing that?</p> <p>16 MS. BABU: Yes, I do.</p> <p>17 MR. HUGHES: Okay. And that is in the record as an 18 exhibit. That is Exhibit 31.</p> <p>19 And, Ms. Babu, have you been -- you and your 20 husband been following and making sure the sign has stayed 21 up and been steady, and is it true that it has stayed up 22 and been steady throughout the whole time period?</p> <p>23 MS. BABU: Yes, we have.</p> <p>24 MR. HUGHES: Okay. And you've checked the sign as 25 recently as the last few days; is that correct?</p>	<p>20</p> <p>1 school, daycare center/school?</p> <p>2 MS. BABU: Yes. Yes.</p> <p>3 MR. HUGHES: Great.</p> <p>4 MS. BABU: I have always wanted to continue 5 teaching and do the best I can for the children that I can.</p> <p>6 MR. HUGHES: Great. Can you -- can you tell us 7 briefly what a typical day will be like at -- at the 8 school, daycare/school?</p> <p>9 MS. BABU: We will be opening doors at 7:30 a.m. 10 and be ready for the arrival of children at that time.</p> <p>11 Children who come in by eight o'clock can have a little, 12 quick, simple breakfast, and then as children come in, they 13 will greet their friends and settle in. And the teachers, 14 in this case being me, we will start going around giving 15 lesson plans for the day. We will have a three-hour work 16 period in the morning, and snack will be available for the 17 children between 9:30 and 11, and they can eat it anytime 18 between those hours.</p> <p>19 At 11:30, we go out to play. And at noon, children 20 who go home from a half-day morning will be dismissed. The 21 rest, who stay full day, will wash up, eat lunch and clean 22 up and followed by another short work period.</p> <p>23 At 2:30, we will go out to play again. And at 3 24 p.m., dismissal starts, and it goes on until six. So the 25 children who stay longer than three o'clock will get</p>

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<p>21</p> <p>1 another opportunity to eat snack, continue with their 2 schoolwork or artwork, play with indoor toys until they get 3 picked up. And when the weather permits, we will 4 definitely be having an opportunity to go outside and play 5 again. 6 We will clean up by 5:30 and get the classroom 7 ready for the next day and be done by six. 8 MR. HUGHES: Great. Thank you. And I know this is 9 in the application, but what you're requesting is for up to 10 42 children; correct? 11 MS. BABU: Correct. 12 MR. HUGHES: And you are also -- the application 13 and the Staff Report talks about having up to five staff 14 including yourself. That's correct? 15 MS. BABU: Correct. 16 MR. HUGHES: True? Okay. Thank you. And can you 17 tell us what mechanisms you have to -- when there is 18 outside playtime, as you mentioned -- to -- to make sure 19 that the children are safe and it's not too loud? 20 MS. BABU: We will have all the staff members out 21 on the playground with the children when it is playtime. 22 That way we will maintain the safety of the children and 23 make sure that they don't get too loud. The outdoor area 24 will be safe for creative play where they can -- the 25 children can hone their large motor movements and develop</p>	<p>23</p> <p>1 MR. HUGHES: Yep. And true that the ages of the 2 children will be three years old to pre-kindergarten; 3 correct? 4 MS. BABU: True. 5 MR. HUGHES: Can you tell us just briefly about 6 your plans for drop-off and pickup of the children? 7 MS. BABU: We plan on having -- since we're opening 8 at 7:30 a.m., we will have a slow trickle of children all 9 the way up to nine, 9:30 or so. So we are planning on 10 giving families, like, a little timeslot, depending on 11 their needs, to make sure that they are dropped off within, 12 like, a 15-minute window progressively from 7:30 onward, so 13 we do not clog up the system, the traffic system. 14 And dismissal will be much easier because we have 15 most -- about, you know, a third of the children leaving at 16 noon and then dismissal is from 3 p.m. all the way to 6 17 p.m. and, again, it depends on what time parents are 18 available to come and pick up their children, and again it 19 would be like 15-minute intervals when they get picked up 20 as well. 21 (Exhibit 7 identified.) 22 MR. HUGHES: Great. And you had -- you had 23 mentioned this 15-minute interval. Is it correct that we 24 did submit something that you obviously helped design, the 25 Schedule of Arrival Times, which I believe is Exhibit 7-b?</p>
<p>22</p> <p>1 their core strength. 2 The yard is going -- it's fenced, and so it will 3 keep the children in, and there is ample vegetation and 4 landscaping which act as sound buffers. And the backyard 5 is naturally undulated, and so it will keep the sounds in. 6 MR. HUGHES: Great. 7 MS. BABU: It will be contained. 8 MR. HUGHES: Thank you. And you -- you agree with 9 condition of approval number 6, correct -- from the 10 Planning Board that says outside hours for the children 11 will be between 8 a.m. and 6:30 p.m.; correct? 12 MS. BABU: Correct. 13 MR. HUGHES: Okay. And you're not requesting any 14 overnight care for the children at this facility, are you? 15 MS. BABU: No, not at all. 16 MR. HUGHES: Okay. And it's true that your staff 17 and your operations and structures will comply with all 18 state and local regulations? Is that -- is that correct? 19 MS. BABU: Absolutely, yes. 20 MR. HUGHES: Okay. Also true that your -- your 21 property and your structure is not located in a townhome or 22 a duplex building; correct? 23 MS. BABU: No. 24 MR. HUGHES: Okay. 25 MS. BABU: It is a single-family home.</p>	<p>24</p> <p>1 Do you remember that item? 2 MS. BABU: Yes, I do. 3 MR. HUGHES: Okay. Thank you. And so you're -- 4 you're -- you're confident that there's adequate area for 5 discharge and pickup of the children as has been designed; 6 correct? 7 MS. BABU: Yes, I do. So based on our pickup and 8 drop-off schedule, we have staff that would be outside to 9 help with arrival and dismissal. We expect families to 10 come walking because we are primarily inside a community. 11 And we are expecting children to be carpooled as well by 12 families which have multiple children or with neighbors. 13 And we have enough parking space, and there is a flow of 14 traffic coming in and out of the property. I think all of 15 those will help with the area for discharge and pickup. 16 And I think the staff has also agreed in their 17 report -- I'm not sure which page it is -- but they agreed 18 that there will be enough space for area for discharge and 19 pickup of the children. 20 (Exhibit 37 identified.) 21 MR. HUGHES: Correct. The Staff Report is Exhibit 22 37-a, and I believe you're referencing page 21. Is that 23 correct? Is that your recollection? 24 MS. BABU: Yes. Actually, I have it up here. 25 MR. HUGHES: Okay.</p>

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<p>25</p> <p>1 MS. BABU: Yes, it is.</p> <p>2 MR. HUGHES: Okay. Thank you. Let me ask you a</p> <p>3 few other questions about the area and the project.</p> <p>4 Certainly you're -- we -- we can agree you're not a land</p> <p>5 use planning expert; however, you know the property and the</p> <p>6 area quite well. Is that -- is that fair to say?</p> <p>7 MS. BABU: Yes, that is correct.</p> <p>8 MR. HUGHES: And is it your understanding then</p> <p>9 that, in your -- your opinion, it conforms to the Master</p> <p>10 Plan recommendations for this Clarksburg area?</p> <p>11 MS. BABU: I do.</p> <p>12 MR. HUGHES: And -- and you also saw that</p> <p>13 professional planning staff in their Exhibit 37-a on page</p> <p>14 22, they did so also, and -- and --</p> <p>15 MS. BABU: Yes.</p> <p>16 MR. HUGHES: -- I guess the Planning Board as well</p> <p>17 by their recommendation; correct?</p> <p>18 MS. BABU: Yes.</p> <p>19 MR. HUGHES: Okay. Thank you. And is it your --</p> <p>20 your view that the application is harmonious with and will</p> <p>21 not alter the character of the neighborhood in a manner</p> <p>22 that's inconsistent with this Master Plan?</p> <p>23 MS. BABU: Yes, I do. The building has been -- is</p> <p>24 an existing residential structure, which is on 355 and</p> <p>25 Woodport. It already has a lot of trees and plants and a</p>	<p>27</p> <p>1 Staff Report and I wanted to ask you about is it talks</p> <p>2 about whether this requested conditional use, in</p> <p>3 conjunction with any existing special exception or</p> <p>4 conditional use, if it will -- essentially if it will</p> <p>5 increase the number to an amount that's too much for an</p> <p>6 area essentially. And do you believe that your -- if this</p> <p>7 is approved that your conditional use will be, along with</p> <p>8 any others in the area, will essentially equate to having</p> <p>9 too many in the area or an impact disproportionate? Do you</p> <p>10 believe that that would be the case?</p> <p>11 MS. BABU: I do, and I think again on the Staff</p> <p>12 Report they have, you know, agreed that it would be a good</p> <p>13 addition, and it won't be too many.</p> <p>14 MR. HUGHES: Okay. Yeah. Thank you. And I know</p> <p>15 it was a word-full, a long question to ask. I think that</p> <p>16 the -- again, staff -- Exhibit 37-a, Staff Report, page 22,</p> <p>17 they evaluated it. Is that -- is that what you see on the</p> <p>18 Staff Report you're looking at?</p> <p>19 MS. BABU: Yes.</p> <p>20 MR. HUGHES: Okay.</p> <p>21 MS. BABU: E, Will not, when evaluated in</p> <p>22 conjunction with -- and, yeah. That's what I'm looking at.</p> <p>23 MR. HUGHES: And, in fact, there's only one other</p> <p>24 -- there's only identified one other special exception from</p> <p>25 1976. It's 1,000 feet south, and it's a nursery, a</p>
<p>26</p> <p>1 fence, and we will be adding more landscaping. And with</p> <p>2 the recommended conditions that the staff and the Planning</p> <p>3 Board have given us, I believe that the proposed use will</p> <p>4 be in harmony with the general character of the</p> <p>5 neighborhood, and I believe that we will be providing a</p> <p>6 much needed service to the community, and we plan on being</p> <p>7 long-term participants and positive, involved members of</p> <p>8 the community.</p> <p>9 MR. HUGHES: Yeah. On the lines -- just real</p> <p>10 briefly on that about the service, do you recall -- I think</p> <p>11 at the Planning Board hearing, at least one of the Planning</p> <p>12 Board members did emphasize that that's something that the</p> <p>13 Planning Board is very supportive in knowing that the</p> <p>14 county is really in need of additional daycare. Is that</p> <p>15 your recollection?</p> <p>16 MS. BABU: Yes, it is.</p> <p>17 MR. HUGHES: Okay. And also to the topic that we</p> <p>18 were just talking about, being harmonious with the</p> <p>19 neighborhood, do you also believe or recall that was in</p> <p>20 Staff Report, again Exhibit 37-a? That's the big Staff</p> <p>21 Report which I'm going to be referencing, and I have</p> <p>22 already quite a bit during this hearing. On page 22, where</p> <p>23 they talked about this, is that correct?</p> <p>24 MS. BABU: That is correct.</p> <p>25 MR. HUGHES: Okay. Another item that is in the</p>	<p>28</p> <p>1 horticultural. Is that correct?</p> <p>2 MS. BABU: That is correct.</p> <p>3 MR. HUGHES: Thank you. One second please. Okay.</p> <p>4 And do you concur -- this is again Staff Report and</p> <p>5 page 24 -- do you concur with staff's position that your</p> <p>6 use here will not cause undue harm to the neighborhood as a</p> <p>7 result of a noninherent adverse effect alone or the</p> <p>8 combination of the inherent and noninherent effect? Do you</p> <p>9 agree with their position there?</p> <p>10 MS. BABU: Yes.</p> <p>11 MR. HUGHES: Okay. Are there -- it's -- it's --</p> <p>12 isn't it true that there are in fact no existing zoning</p> <p>13 approvals on your property here, your subject property?</p> <p>14 MS. BABU: Yes.</p> <p>15 MR. HUGHES: Okay. And let me ask you a little bit</p> <p>16 about something I brought up earlier, which is condition of</p> <p>17 approval number 5 that was from staff and adopted by the</p> <p>18 Planning Board unanimously in their recommendation of</p> <p>19 approval. It talks about allowing for up to six special</p> <p>20 events outside normal business hours, up to 9 p.m.;</p> <p>21 correct?</p> <p>22 MS. BABU: Yes.</p> <p>23 MR. HUGHES: And is it true you'd like to ask the</p> <p>24 Hearing Examiner to consider a small -- we believe is a</p> <p>25 small modification to that in that we want to ask that it</p>



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<p>29</p> <p>1 be possible if they also be held on weekends? Is that 2 true?</p> <p>3 MS. BABU: Yes, please.</p> <p>4 MR. HUGHES: And can you explain to the Hearing 5 Examiner why you're asking for him to consider this?</p> <p>6 MS. BABU: Well, we are open until six o'clock. 7 And if we have after-hour events, we will be starting by 8 seven, and it won't go any later than nine; however, when 9 parents come to pick up their children and go back, they 10 probably have less than an hour to get home, feed their 11 children, put them in bed, turn around and come back to 12 school for the events that we have planned, which can get a 13 little tricky. And so we might not have enough 14 participants from the parents if all of our events are held 15 during the weekdays.</p> <p>16 And, also, if we have something over the weekend, 17 we can have, like, open houses for the community members to 18 come and see what we do and have a picnic or just a 19 community goodwill thing that, you know, would encourage 20 parents to bring their children to us and see what a 21 wonderful job we do.</p> <p>22 MR. HUGHES: That's great. And -- and so you're 23 asking -- you're not certain which -- whether some would be 24 on during the week, if we're granted this modification, or 25 if some are on the weekends. You just want to have the</p>	<p>31</p> <p>1 MR. HUGHES: Oh, oh.</p> <p>2 HEARING EXAMINER BAUMGARDNER: -- quick follow-up 3 questions for --</p> <p>4 MR. HUGHES: My apologies. Yes, sir.</p> <p>5 HEARING EXAMINER BAUMGARDNER: That's all right.</p> <p>6 EXAMINATION OF JAYANTHI BABU BY HEARING EXAMINER 7 HEARING EXAMINER BAUMGARDNER: Ms. Babu, are you 8 still there?</p> <p>9 MS. BABU: Yes, sir.</p> <p>10 HEARING EXAMINER BAUMGARDNER: So you do not 11 currently live in this property; correct?</p> <p>12 MS. BABU: No, I do not.</p> <p>13 HEARING EXAMINER BAUMGARDNER: Okay. And the -- 14 what is the property being currently used for?</p> <p>15 MS. BABU: Right now, it's just an empty space 16 waiting for children to be filled -- to fill the space in a 17 school. It's empty at the moment.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Got it. And -- and 19 if you are aware, what was it last used for, and when?</p> <p>20 MS. BABU: We bought the property in the summer of 21 2019. Up until then, it was used as a residential property 22 by a bunch of youngsters.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Okay. All right.</p> <p>24 That's all I had, Mr. Hughes.</p> <p>25 MR. HUGHES: Thank you, Mr. Hearing Examiner. I'd</p>
<p>30</p> <p>1 flexibility that they could be at either/or. Is that 2 correct?</p> <p>3 MS. BABU: Yes, please.</p> <p>4 MR. HUGHES: Okay. Sorry, one second. My -- our 5 light went out here. If I don't move enough, the light 6 goes out.</p> <p>7 Well, thank you for your testimony. Before I close 8 out with you, I just want to ask you if you had anything 9 else you wanted to say about this opportunity that we're 10 presenting and your -- your wish to hopefully get approval 11 here. Is there anything else you want to add for the 12 record or for the Hearing Examiner?</p> <p>13 MS. BABU: I just want to say that this is a 14 passion. It's taken me two and a half years to find the 15 right property, and I'm looking forward to opening it. I'm 16 sincerely hoping -- hoping that we will open September 17 2021, and -- I don't know. I'm sorry I'm getting all 18 emotional about this, but it is my passion.</p> <p>19 MR. HUGHES: That's okay. We know this means a lot 20 to you, and we know you've -- you know, you and your team 21 have worked hard. So thank you for -- for your testimony.</p> <p>22 Mr. Hearing Examiner, I'd like to move on and call 23 our first professional witness, Mr. Geoff Ciniero, please.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Sure. I did have 25 one or two --</p>	<p>32</p> <p>1 like to call Geoff Ciniero, the civil engineer, please.</p> <p>2 MR. CINIERO: My name is Geoff Ciniero, Civil 3 Engineer and Owner of CMS Associates LLC. The address of 4 my business is 4925 Ellis Lane, Ellicott City, Maryland.</p> <p>5 Educational background --</p> <p>6 MR. HUGHES: Hold on one second.</p> <p>7 MR. CINIERO: Yes.</p> <p>8 MR. HUGHES: Mr. Hearing Examiner, did you have 9 everyone be sworn in, or do you need to have him before I 10 ask him questions, sir?</p> <p>11 HEARING EXAMINER BAUMGARDNER: I do need to have 12 him sworn in.</p> <p>13 Mr. Ciniero, if you can raise your right hand, and 14 I trust that you are actually raising your right hand.</p> <p>15 MR. CINIERO: Yes, sir.</p> <p>16 HEARING EXAMINER BAUMGARDNER: And, sir, do you 17 swear or affirm under the penalties of perjury that the 18 testimony you're about to give is the truth, the whole 19 truth, and nothing but the truth?</p> <p>20 MR. CINIERO: Yes.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Great. Thank you 22 very much.</p> <p>23 Mr. Hughes, the floor is yours.</p> <p>24 MR. HUGHES: Thank you.</p> <p>25 DIRECT EXAMINATION OF GEOFFREY CINIERO</p>

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<p>33</p> <p>1 MR. HUGHES: Yes. Mr. Ciniero, can you please tell 2 us a little bit about your educational/professional 3 background? 4 MR. CINIERO: My educational background: Bachelor 5 of Science in Civil Engineering at Clemson University. 6 I've been in the business of civil engineering/land 7 development for 33 -- 32, 33 years, in the last going on 12 8 years at my own business, which is CMS Associates LLC, and 9 have done the range of-- of projects from government to 10 overseas to local to -- to institutional type of projects, 11 and the main part of my business is in Maryland. I do a 12 lot of work in Prince George's and Montgomery County, 13 Howard County, Anne Arundel County, and am licensed as a 14 professional engineer in six different states, which I do 15 work on and off throughout. 16 MR. HUGHES: And does one of those states include 17 Maryland, sir? 18 MR. CINIERO: Yes, sir. Yes, sir. 19 MR. HUGHES: Okay. Thank you. Thank you. Have 20 you ever been qualified as an expert in civil engineering 21 at a hearing like this? 22 MR. CINIERO: Yes, sir. 23 MR. HUGHES: Do you know if it's ever been in 24 Maryland and/or in Montgomery County? 25 MR. CINIERO: Has not been in Montgomery County,</p>	<p>35</p> <p>1 MR. HUGHES: Mr. Ciniero, can you briefly walk us 2 through your Site Plan, which was Exhibit 25-c, or still 3 is, but then you have a slightly tweaked one which is 4 Exhibit 36, and that just added -- and we will talk about 5 this -- but I believe that just added the bike space. 6 Correct? 7 MR. CINIERO: I'd be happy to. Are they going to 8 put it up on the screen, or am I just going off of what 9 they're seeing and -- and -- 10 HEARING EXAMINER BAUMGARDNER: Yes. 11 MR. HUGHES: Yes, we did -- 12 HEARING EXAMINER BAUMGARDNER: We can put it up on 13 the screen. Give me one second. 14 MR. HUGHES: Thank you, Mr. Hearing -- I would say 15 -- 16 MR. CINIERO: Thank you very much. 17 MR. HUGHES: -- Exhibit 36, Mr. Hearing Examiner. 18 Because I believe that it's the same as 25-c except it does 19 show the -- what we will talk about, a bike spot. 20 HEARING EXAMINER BAUMGARDNER: You got it. 21 MR. HUGHES: Thank you. 22 HEARING EXAMINER BAUMGARDNER: Let me see if I can 23 find it here. 24 MR. CINIERO: Thank you, sir. 25 HEARING EXAMINER BAUMGARDNER: Should be up on your</p>
<p>34</p> <p>1 but it has been in Maryland. Yes. 2 MR. HUGHES: Okay. Thank you. 3 (Exhibit 27 identified.) 4 MR. HUGHES: Mr. Hearing Examiner, his -- his 5 résumé is part of Exhibit 27, our prehearing statement. I 6 would like to offer him as an expert in the field of civil 7 engineering. 8 HEARING EXAMINER BAUMGARDNER: He is so designated 9 as an expert in civil engineering and admitted as such for 10 the purpose of this hearing. 11 Mr. Hughes, I'm sorry, was -- has he ever been 12 admitted in a jurisdiction in the state of Maryland for an 13 administrative hearing or a court? 14 MR. HUGHES: Yeah. Let me -- he had mentioned -- I 15 don't know if he'll recall. He said not in Montgomery 16 County, but he has been in Maryland. 17 Mr. Ciniero, do you remember which jurisdictions 18 you may have been admitted as an expert witness in? 19 MR. CINIERO: Anne Arundel and Howard County, both. 20 HEARING EXAMINER BAUMGARDNER: Okay. 21 MR. HUGHES: Thank you. 22 MR. CINIERO: Yes. 23 HEARING EXAMINER BAUMGARDNER: He is so admitted. 24 MR. HUGHES: Thank you, sir. 25 (Exhibit 25 and Exhibit 36 identified.)</p>	<p>36</p> <p>1 screen shortly. 2 MR. CINIERO: Beautiful. 3 MR. HUGHES: Yes. 4 MR. CINIERO: I got it. I got it. 5 MR. HUGHES: I see it. Thank you. 6 MR. CINIERO: So the -- let me start with what -- 7 what truly exists out there now. The -- there is an 8 existing house that you'll see labeled down there. It's 9 labeled as, Existing house, one-story with basement, and 10 then so a -- basically, a walkout condition in the back. 11 There is a driveway that accesses off of Frederick 12 Road, Route 355. 13 MR. HUGHES: Okay. 14 MR. CINIERO: It is a -- it is a simple, typical 15 ten-foot wide residential driveway. We're unsure, but 16 we're -- we're -- we're kind of assuming because there 17 exists a parking lot in the front now, just kind of like an 18 asphalt area that was extended out there, that we think 19 that might've been used for the -- kind of like a -- a -- 20 not a model home but a place to visit for the homes when 21 they were being built behind this property. There'd be no 22 other reason for that large of asphalt. 23 So there already existed what seemed to be parking 24 out front, so our -- our design for this project was to 25 kind of integrate that into what we did. We worked with</p>

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<p>37</p> <p>1 the Fire Marshal, State Highway, and the County to try to 2 create a flow-through type access to the property without 3 having to come in and off of Route 355, and we did that by 4 providing a larger fire access, and this -- the -- the size 5 of that, the 20 feet and 35 feet that you see off of 6 Woodport, is mainly just for the fire trucks, to make sure 7 they can get in and out. 8 But we -- we added that so that people can come off 9 of 355 into Woodport Road, down into that drive -- 10 driveway, drop their young people off, and then exit off of 11 355, and the intent was to -- to have a right out only, and 12 then -- and that's -- that's been worked through State 13 Highway. They have no problem with that. 14 We do have the -- the required parking spaces on 15 site, including the accessible space. The drawing that you 16 do have up does show what Sean had mentioned was the one 17 long-term, weather-protected bike parking space, which is 18 right at the end of the accessible aisle on the accessible 19 space. 20 And the only -- and this -- this plan right here 21 doesn't show it, but as to what Sean had mentioned -- Mr. 22 Hughes had mentioned before, the proposed deck in the back 23 with the stairs, we have added a bump out where the stairs 24 exist now and to kind of move the stairs over in the 25 footprint of the deck on the right.</p>	<p>39</p> <p>1 hearing; is that correct? 2 MR. CINIERO: Yes, sir. 3 MR. HUGHES: Okay. Great. And, in your 4 professional opinion, is it true that the application meets 5 all the development -- required development standards for 6 the R-200 zone? 7 MR. CINIERO: It does. Yes, sir. 8 MR. HUGHES: And is it true that you in fact show 9 -- you have a chart on your -- on your Site Plan -- I 10 believe it's in the top right area -- is that correct? 11 That shows each of the requirements and what we meet? 12 There it is. 13 MR. CINIERO: That is -- that -- that is correct, 14 requirement of the County to do that part of planning, and 15 that's what we've shown. Yes. 16 MR. HUGHES: Yep. And Planning staff concurred 17 that -- that we met or exceeded all of those in their -- 18 their Staff Report, Exhibit 37-a, on page 11; correct? 19 MR. CINIERO: That is correct. 20 MR. HUGHES: Okay. Thank you. Let's see. And 21 this also -- I think you -- you talked a little bit about 22 parking, but it meets all the required parking rules for 23 the county; correct? 24 MR. CINIERO: That is correct. Yes, sir. 25 MR. HUGHES: And it also -- is it true it also</p>
<p>38</p> <p>1 You'll also notice to the right of the deck, 2 there's a large circle or a tree. That tree has been 3 designated as a -- what we consider now as a champion 4 maple. It's a type of maple tree in the county. It's like 5 85 percent of the state champion tree of -- of -- of the 6 state of Maryland. So we've kept pretty much all our 7 development up towards the top to -- to kind of stay away 8 from that -- that tree and to preserve it. Our tree -- our 9 tree plan does designate that and -- and takes steps to 10 make sure that -- that it is -- it is of least impact to -- 11 to what we're doing here. 12 In the rear of the property, we had provided a 13 stormwater management. The site itself did not perk, so -- 14 or infiltrate to the standards of the State of Maryland, so 15 it is a micro-bioretenention facility that -- that the 16 underdrain for it pipes into an existing easement and 17 existing storm drain structure down below to the property 18 next to it, and that -- that storm drain goes to a facility 19 downstream, so it all stays underground at that point. 20 MR. HUGHES: Excellent. Thank you. And you 21 mentioned a little bit, but is it your -- your 22 understanding that the addition of showing a long-term 23 bicycle space, that was required by condition of approval 24 number 3 from the Planning Board and Planning staff that we 25 add that and show that and provide that before this</p>	<p>40</p> <p>1 meets all the screening requirements? 2 MR. CINIERO: It does. Yes, sir. That -- that is 3 not shown on here, but we have an approved Landscape Plan 4 from Park and Planning which shows that -- that, all of 5 that landscaping which shows the screening. 6 (Exhibit 26 identified.) 7 MR. HUGHES: And -- and correct it's your 8 Landscaping Plan or in particular Exhibit 26-a and b; 9 correct? 10 MR. CINIERO: That is correct. 11 MR. HUGHES: Yep. And is it also -- so, related to 12 that, it meets all the preliminary landscaping 13 requirements? Is that your understanding as well? 14 MR. CINIERO: Yes, sir. 15 MR. HUGHES: And there's also some rules about 16 outdoor lighting and that it must ensure that illumination 17 is 0.1 foot-candles or less at any lot line it abuts. Is 18 it correct that you did a Lighting Plan and it does meet or 19 exceed use requirements? 20 MR. CINIERO: Yes. The Lighting Plan was designed 21 to actually beef up the existing lighting, which was really 22 just made for a porch light, so that it was adequate and 23 safe for the vehicular and pedestrian movement. And it 24 doesn't create any -- any unreasonable spillage over into 25 the neighboring lots and/or the roadways.</p>

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<p>41</p> <p>1 MR. HUGHES: Okay. And -- and staff concurred with 2 that again in their Staff Report on page 18; is that 3 correct? 4 MR. CINIERO: Correct. 5 MR. HUGHES: Thank you. And, at this time, it's 6 correct that there's not any request for additional signage 7 above what -- what is permitted, which is pretty small in 8 this county, but we're not asking for any additional 9 signage above that limit at this point; is that correct? 10 In the application. 11 MR. CINIERO: Not at this point. 12 MR. HUGHES: And it's true that if we -- if -- if 13 and when they want it, they would have to go through any -- 14 the Sign Review Board for any waivers? Is that your 15 understanding? 16 MR. CINIERO: That is correct. It would be a 17 process. We would have to get approval through the 18 regulations of the County, yes. 19 MR. HUGHES: Okay. And is it your -- is it your 20 understanding there are no streams, floodplains, wetlands, 21 or environmental buffers on or affecting the site? Is that 22 correct? 23 MR. CINIERO: That is correct. 24 MR. HUGHES: Okay. And regarding forest 25 conservation, you got a -- helped get an exemption request.</p>	<p>43</p> <p>1 So when this addition was being proposed within 2 that deck area, we actually did go back to the 3 environmentalist at the County who reviewed this plan to 4 make sure that it would not have any impact and -- no 5 impact from the standpoint of we would take care of those 6 steps to make sure that no trucks were brought back there, 7 that kind of thing, and the type of construction was such 8 that -- that it limited any kind of damage to the critical 9 root zone. And he had no problem with it. 10 And it's something that we have to, after this -- 11 this hearing, if everything's favorable, go back and get it 12 -- get this plan reapproved with that addition on there 13 with those -- those conditions. 14 MR. HUGHES: Right. And so we know where we're 15 having to ask the permission for the Hearing Examiner and 16 he, as he mentioned earlier, he may send it back to staff 17 to weigh in on it. And we -- we understand there's -- 18 those things have potential to have to happen, but we feel 19 reasonably confident that -- that they can happen from our 20 perspective; correct? 21 MR. CINIERO: That -- that is correct. We wanted 22 to make sure before we came into this hearing that we -- we 23 talked to everybody that would have input on it to make 24 sure nobody had an overall issue and that we would just 25 have to work out the details. Correct.</p>
<p>42</p> <p>1 That was approved back in November. Is that correct? 2 MR. CINIERO: That is -- that is correct. And a 3 part of that was to get the -- the tree -- the tree plan 4 done to help save that larger tree. Yes, sir. 5 MR. HUGHES: Okay. And you just mentioned a tree 6 -- tree plan. So there's a Tree Save Plan that's been 7 submitted and accepted by staff; is that correct? 8 MR. CINIERO: That -- accepted and approved. Yes, 9 sir. 10 MR. HUGHES: Okay. And we've had a little bit of 11 discussion about this request or asking for for a slight 12 change to the deck and the bump out. Is there any 13 additional impact to -- to the Tree Save Plan with that 14 potential modification that you want to talk about? 15 MR. CINIERO: There -- there is an impact only 16 because the -- the -- even -- we were -- we were very 17 careful with the environmental people with the County to 18 make sure that -- that everything we did back -- back here 19 in this backyard -- you can even see the extent of the -- 20 the critical root zone -- the theoretical critical root 21 zone because it doesn't go through the house -- of that 22 large tree. And so we even had to identify what typical 23 footers we might put in the deck and -- and to make sure 24 that things were hand dug, there were no trucks brought 25 back there and everything.</p>	<p>44</p> <p>1 MR. HUGHES: Right. Thank you. You're aware in 2 the code it talks about for -- for a daycare center in a 3 R-200 zone, when we're asking for over 30 persons or 4 children here, that it must be located on a site that 5 contains a minimum of 500 square feet of land per person. 6 Is that your understanding of the code section? 7 MR. CINIERO: That is correct. 8 MR. HUGHES: And, in this case, it's .6 acres, so 9 that's about 26,136 square feet for 42 children, so is it 10 correct or your understanding that we do exceed pretty 11 easily the over 500 per person? Is that -- 12 MR. CINIERO: Yes. 13 MR. HUGHES: -- your understanding? 14 MR. CINIERO: Yes, sir. That would go over 600 15 square feet or more, so, yeah. 16 MR. HUGHES: Yeah. And is it true that in their 17 Staff Report, again Exhibit 37-a, on page 22, they 18 confirmed that, their -- their view of that? Is that 19 right? 20 MR. CINIERO: That is correct. 21 MR. HUGHES: Great. Thank you. And this -- this 22 -- it's correct that this property is a platted lot? Is 23 that your understanding? 24 MR. CINIERO: That it -- that is correct. 25 MR. HUGHES: Yep. And it's served by -- I'm sorry.</p>

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<p>45</p> <p>1 Go ahead.</p> <p>2 MR. CINIERO: Bear with me a second. I want to</p> <p>3 make sure that I don't mistake that.</p> <p>4 This -- this plat, to my knowledge -- I mean that</p> <p>5 -- oh, sorry -- this -- this -- this lot is platted, Plat</p> <p>6 No. 289. I apologize for the delay.</p> <p>7 MR. HUGHES: Thank you. No, no. Thank you. And</p> <p>8 it's -- it's served by public water and public sewer?</p> <p>9 MR. CINIERO: Yes, it is.</p> <p>10 MR. HUGHES: And it has fire/police stations nearby</p> <p>11 to this heavily developed area? Is it -- that your</p> <p>12 understanding?</p> <p>13 MR. CINIERO: It does, yes. And a fire hydrant</p> <p>14 within 400 feet, which is a fire marshal requirement as</p> <p>15 well.</p> <p>16 MR. HUGHES: Thank you. And it's on a public road;</p> <p>17 correct?</p> <p>18 MR. CINIERO: That is correct.</p> <p>19 MR. HUGHES: And is it correct that staff, Planning</p> <p>20 staff, determined that the Stormwater Management Plan was</p> <p>21 acceptable?</p> <p>22 MR. CINIERO: Yes. The Water Quality -- the Water</p> <p>23 Quality Plan was approved as a concept, yes.</p> <p>24 MR. HUGHES: So it actually -- I should back up a</p> <p>25 little bit. So DPS helped review this and Planning staff</p>	<p>47</p> <p>1 on the property overall?</p> <p>2 MR. CINIERO: In a standalone, it would. Yes. And</p> <p>3 -- and we really don't want to -- because of where we sit</p> <p>4 in the water quality area of the county, we don't want to</p> <p>5 increase that. So there's three spaces out front, labeled</p> <p>6 as "3." You can see that area. That is right now new</p> <p>7 asphalt and -- and that we're going to make that Grasscrete</p> <p>8 or basically a pervious type material so that that trades</p> <p>9 off the impervious that we're going to create with the bump</p> <p>10 out. It'll actually -- actually --</p> <p>11 MR. HUGHES: Okay.</p> <p>12 MR. CINIERO: -- actually reduce the current</p> <p>13 percentage of impervious when this all takes place by doing</p> <p>14 that.</p> <p>15 MR. HUGHES: Okay. Yeah. So the correct proposal</p> <p>16 of 18.7, you're going to say -- you're saying we're staying</p> <p>17 at 18.7 or we may even reduce it; is that correct?</p> <p>18 MR. CINIERO: May -- we may -- yes, sir. May even</p> <p>19 reduce it.</p> <p>20 MR. HUGHES: Okay. Thank you. So, in your</p> <p>21 professional opinion, are there any material issues with</p> <p>22 this design or plan use at the location?</p> <p>23 MR. CINIERO: Material issues?</p> <p>24 MR. HUGHES: Any major concerns from your</p> <p>25 perspective --</p>
<p>46</p> <p>1 also weighed in on it. Is that the review that they had?</p> <p>2 Is that your understanding?</p> <p>3 MR. CINIERO: That is correct, yes.</p> <p>4 MR. HUGHES: Okay. And you had mentioned a micro-</p> <p>5 bioretention. The preliminary/final Water Quality Plan</p> <p>6 proposed to meet the required stormwater management by</p> <p>7 using such a system and -- and other tools; is that</p> <p>8 correct?</p> <p>9 MR. CINIERO: That is correct. We're at the right</p> <p>10 step in the process beyond things we can't do on the site,</p> <p>11 including infiltration, so we are at the right place for</p> <p>12 doing this type of structure.</p> <p>13 MR. HUGHES: Great. Thank you. And you're --</p> <p>14 we've talked about this potential alteration with the bump</p> <p>15 out. You're aware that the architect, Mr. DeLizzio, he's</p> <p>16 going to talk about -- a little bit more about that in</p> <p>17 additional testimony. Is that your understanding?</p> <p>18 MR. CINIERO: Yes.</p> <p>19 MR. HUGHES: Okay. And so it's your understanding</p> <p>20 that this can involve a small reduction in the size of the</p> <p>21 deck to allow this addition, small addition, to bump out of</p> <p>22 the house for the stairs? Is that your understanding?</p> <p>23 MR. CINIERO: That is correct.</p> <p>24 MR. HUGHES: And, based upon that small alteration,</p> <p>25 would that result in any overall change to the impervious</p>	<p>48</p> <p>1 MR. CINIERO: Oh.</p> <p>2 MR. HUGHES: -- professional, as a civil engineer?</p> <p>3 MR. CINIERO: Not at all. I think -- I think it's</p> <p>4 worked out really well for the -- for the -- for an</p> <p>5 existing type of facility. They're tough to work with, and</p> <p>6 I think this has worked out really nice.</p> <p>7 MR. HUGHES: Great. In your -- in your experience</p> <p>8 as a civil engineer, do you -- and we talked about some of</p> <p>9 this, but do you view this request as meeting all the</p> <p>10 requisite county engineering requirements?</p> <p>11 MR. CINIERO: It does. It currently meets all of</p> <p>12 that, and I don't see any problems -- you know, saying we</p> <p>13 move forward, that it -- that it gets fully approved, and</p> <p>14 built per county standards. So, yes.</p> <p>15 MR. HUGHES: Thank you very much. Mr. Hearing</p> <p>16 Examiner, those will be my direct questions for Mr.</p> <p>17 Ciniero.</p> <p>18 EXAMINATION OF GEOFFREY CINIERO BY HEARING EXAMINER</p> <p>19 HEARING EXAMINER BAUMGARDNER: Thank you. A couple</p> <p>20 quick follow-ups, sir. Just so I'm clear on your</p> <p>21 testimony, the micro-bioretention pond at the rear of the</p> <p>22 property, that's being added with this application? Is</p> <p>23 that correct?</p> <p>24 MR. CINIERO: That is correct. Yes, sir.</p> <p>25 HEARING EXAMINER BAUMGARDNER: So right now there's</p>

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<p>49</p> <p>1 no stormwater mitigation on the site?</p> <p>2 MR. CINIERO: There is not.</p> <p>3 HEARING EXAMINER BAUMGARDNER: Okay. And then,</p> <p>4 second, the ingress and the egress to the property, the --</p> <p>5 for lack of a better term, the entrance off of Woodport and</p> <p>6 the exit onto Frederick Road, does that entrance currently</p> <p>7 exist off of Woodport, or is that just curb?</p> <p>8 MR. CINIERO: It does not. It's curbed and a</p> <p>9 grassed hill right there. Yes, sir.</p> <p>10 HEARING EXAMINER BAUMGARDNER: That's being added</p> <p>11 for this use?</p> <p>12 MR. CINIERO: That is correct.</p> <p>13 HEARING EXAMINER BAUMGARDNER: And then, lastly, if</p> <p>14 you can just go over very quickly again, I'm looking on the</p> <p>15 Site Plan, the updated Site Plan, which is Exhibit -- was</p> <p>16 it -- the 36-a. Where were those -- where was that paving</p> <p>17 on the front of the property that is going to be removed to</p> <p>18 account for the increase in impervious surface added with</p> <p>19 the proposed bump out?</p> <p>20 MR. CINIERO: Good question. Do you -- do you see</p> <p>21 the -- as you come in the entrance -- let's say -- let's</p> <p>22 say you come in the entrance off of Woodport. Immediately</p> <p>23 once you get into the site, off to your left are three</p> <p>24 parking spaces. Do you -- do you see where they are?</p> <p>25 HEARING EXAMINER BAUMGARDNER: Yes.</p>	<p>51</p> <p>1 MR. CINIERO: That's -- that's that space and a</p> <p>2 half because the other space and a half right now are</p> <p>3 currently Grasscrete. That other -- that's current asphalt</p> <p>4 that will be in that -- where that "3" is that will be</p> <p>5 changed into Grasscrete rather than asphalt. So we'll take</p> <p>6 that asphalt out and put in a different material.</p> <p>7 HEARING EXAMINER BAUMGARDNER: Got you. And that</p> <p>8 doesn't in any way alter the parking arrangement or not --</p> <p>9 the parking requirements under the code?</p> <p>10 MR. CINIERO: Not -- not at all. In fact, it's</p> <p>11 common to have either -- either pavers or impervious pavers</p> <p>12 or Grasscrete or something like that which -- which could</p> <p>13 be considered pervious in parking spaces to help with water</p> <p>14 quality.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Got it. Thank you.</p> <p>16 Those were my only follow-up questions.</p> <p>17 MR. HUGHES: Thank you, Mr. Hearing Examiner. I</p> <p>18 would like to call next the traffic engineer, Mr. Joe</p> <p>19 Caloggero.</p> <p>20 MR. CALOGGERO: Hi. Good morning.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Good morning, sir.</p> <p>22 Give me one second while I flip pages here.</p> <p>23 MR. CALOGGERO: Sure.</p> <p>24 HEARING EXAMINER BAUMGARDNER: If anyone's</p> <p>25 wondering, if you can't see, I take lots of notes, so</p>
<p>50</p> <p>1 MR. CINIERO: Okay. The -- the -- there's a hatch</p> <p>2 that is a part of -- off to the left of that right now that</p> <p>3 is kind of like a honeycomb hatch.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Right.</p> <p>5 MR. CINIERO: That -- that is Grasscrete, which we</p> <p>6 -- we had anticipated upfront to put in. What's next to</p> <p>7 that is asphalt, because that's what's existing there now,</p> <p>8 so that those -- what would be the space and a half, that</p> <p>9 is not hatched, that honeycomb, would now become a</p> <p>10 honeycomb hatch which would represent the Grasscrete. So</p> <p>11 that's that area. And that area would exceed the -- the</p> <p>12 square footage that the bump out would be.</p> <p>13 HEARING EXAMINER BAUMGARDNER: All right. So</p> <p>14 correct me if I'm wrong. I'm holding my cursor over a</p> <p>15 particular part of the property, and it's next to the</p> <p>16 currently hatched honeycomb texture on the plan. Is that</p> <p>17 this area that's going to be added?</p> <p>18 MR. CINIERO: No. No, no, not at all. Actually,</p> <p>19 where you -- where you have that cursor, move down and to</p> <p>20 your right a little bit.</p> <p>21 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>22 MR. CINIERO: And right where you see the "3" and</p> <p>23 the -- and the octagon --</p> <p>24 HEARING EXAMINER BAUMGARDNER: Oh, I've got you.</p> <p>25 Here.</p>	<p>52</p> <p>1 that's why my head's down, writing notes in my barely</p> <p>2 legible writing.</p> <p>3 MR. CALOGGERO: And I'll be looking to the right,</p> <p>4 not to ignore you but to review my notes.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Got it.</p> <p>6 (Laughter.)</p> <p>7 HEARING EXAMINER BAUMGARDNER: And, sir, what is</p> <p>8 your full name and business address?</p> <p>9 MR. CALOGGERO: It is Joseph James Caloggero. I'm</p> <p>10 at -- vice president with the The Traffic Group, 9900</p> <p>11 Franklin Square Drive, Suite 8, Baltimore, Maryland 21236.</p> <p>12 HEARING EXAMINER BAUMGARDNER: And, sir, can you</p> <p>13 raise your right hand please. And, sir, do you swear or</p> <p>14 affirm under the penalties of perjury that the testimony</p> <p>15 you're about to give is the truth, the whole truth, and</p> <p>16 nothing but the truth?</p> <p>17 MR. CALOGGERO: Yes, I do.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Thank you very much.</p> <p>19 Mr. Hughes, the floor is yours.</p> <p>20 MR. HUGHES: Thank you.</p> <p>21 DIRECT EXAMINATION OF JOSEPH CALOGGERO</p> <p>22 MR. HUGHES: Mr. Caloggero, can you tell us a</p> <p>23 little bit about your professional and educational</p> <p>24 background?</p> <p>25 MR. CALOGGERO: Sure. I received a Bachelor of</p>

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<p>53</p> <p>1 Science in Civil Engineering in 1991 from West Virginia 2 University, continued my -- my studies for my master's 3 degree, however, fell short of obtaining said degree, and 4 -- and have been working for three organizations: Maryland 5 State Highway Administration -- well, beginning of my 6 career, Parsons Brinckerhoff, Quade &amp; Douglas, in New 7 Jersey, and then I've been with The Traffic Group for -- 8 this year, it'll be 21 years.</p> <p>9 MR. HUGHES: Congrats on that. Have you -- during 10 your career, have you ever been qualified as an expert in 11 transportation planning and/or traffic engineering?</p> <p>12 MR. CALOGGERO: Yes, I have, numerous times.</p> <p>13 MR. HUGHES: Okay. And do you know if any of those 14 have been in the state of Maryland and/or Montgomery 15 County?</p> <p>16 MR. CALOGGERO: Yes. I have -- I have been 17 qualified as an expert in Montgomery County in front of a 18 hearing examiner and in front of the Planning Board.</p> <p>19 MR. HUGHES: Do you know -- you mean on -- do you 20 know roughly when that was, how many years ago, if you have 21 an idea?</p> <p>22 MR. CALOGGERO: Oh my gosh. I would guess five 23 years ago.</p> <p>24 MR. HUGHES: Okay. Thank you.</p> <p>25 And, Mr. Hearing Examiner, again, his résumé is</p>	<p>55</p> <p>1 size and uses.</p> <p>2 So based on -- based on that determination, we 3 prepared what is called a trip generation, and it's showing 4 up on the screen now, that you see our trip generation for 5 the daycare center for -- which we're showing here 42 6 students. We have 33 a.m. total peak hour trips. A peak 7 hour trip is one hour between -- or the highest one hour 8 between 7 a.m. and 9 p.m. [sic]; the evening would be one 9 hour between 4 p.m. and 6 p.m. typically. This is showing 10 17 inbound trips, 16 outbound trips for totals of 33 trips 11 for both peak hours.</p> <p>12 And then what we do is we follow the LATR 13 guidelines, the MNCPPC LATR guidelines, and we -- we 14 convert those trips into total person trips. And based on 15 said calculations, we have 43 total person trips in the 16 morning and evening. And since those trips are less than 17 50 total person trips, an LATR study is not required, and 18 that was reviewed and approved by the county agencies.</p> <p>19 MR. HUGHES: Thank you very much.</p> <p>20 (Exhibit 20 identified.)</p> <p>21 MR. HUGHES: And thank you, Mr. Hearing Examiner, 22 for showing that. I believe that's Exhibit 20.</p> <p>23 Mr. Caloggero, is that your understanding? Your -- 24 your -- the item up there is your -- is your report and 25 data, and that's Exhibit 20? Is that your understanding?</p>
<p>54</p> <p>1 also part of the record as Exhibit 27, our prehearing 2 statement. I would like to offer him as an expert in 3 transportation planning and traffic engineering.</p> <p>4 HEARING EXAMINER BAUMGARDNER: He is so designated 5 as an expert in traffic engineering and transportation 6 planning and admitted as such for the purposes of this 7 hearing.</p> <p>8 MR. HUGHES: Thank you, sir.</p> <p>9 Mr. Caloggero, it's correct you were asked to 10 review the traffic plan for this use and provide a traffic 11 report regarding the use; correct?</p> <p>12 MR. CALOGGERO: That is correct.</p> <p>13 MR. HUGHES: And can you tell us briefly about the 14 methodology of your report and your findings and 15 conclusions?</p> <p>16 MR. CALOGGERO: Absolutely. So what we typically 17 do is -- is learn more about the operations of the site. 18 And the way this site would operate, we determined, it 19 would act similar to a daycare where it would have similar 20 pickup and drop-off.</p> <p>21 And once we made that determination, what we use, 22 it's called the Institute of Transportation Engineers Trip 23 Generation Manual, so it's a national manual that is 24 utilized to generate trips into and out of sites, and it's 25 based on national statistics and studies of similar site</p>	<p>56</p> <p>1 MR. CALOGGERO: That is my understanding. Yes. It 2 matches what I have here.</p> <p>3 MR. HUGHES: Thank you. And so the bottom line is, 4 you said, was, based upon these little numbers, a traffic 5 study was not needed; correct?</p> <p>6 MR. CALOGGERO: That is correct.</p> <p>7 MR. HUGHES: And that County Planning staff agreed 8 with that?</p> <p>9 MR. CALOGGERO: That is correct.</p> <p>10 MR. HUGHES: Okay. Now the County Planning staff 11 did ask for a traffic light study; correct?</p> <p>12 MR. CALOGGERO: That is correct, a traffic signal 13 warrant analysis.</p> <p>14 MR. HUGHES: And what was the result of that?</p> <p>15 MR. CALOGGERO: The results of the traffic signal 16 warrant analysis, very basically, was that a traffic signal 17 was not required based on the complete study itself.</p> <p>18 MR. HUGHES: Thank you. Thank you. So, in your 19 professional opinion then, is the surrounding 20 transportation network going to be impacted in any material 21 way by this proposed use?</p> <p>22 MR. CALOGGERO: No, it will not.</p> <p>23 MR. HUGHES: And staff -- staff concurred with that 24 as well; is that your understanding?</p> <p>25 MR. CALOGGERO: That is correct. It is in the</p>

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15 (57 to 60)

<p>57</p> <p>1 Staff Report. I have that --</p> <p>2 MR. HUGHES: Thank you.</p> <p>3 MR. CALOGGERO: -- page -- on page 12 and, I</p> <p>4 believe, 13.</p> <p>5 MR. HUGHES: Page 12 and 13 of the Staff Report,</p> <p>6 which is Exhibit 37-a?</p> <p>7 MR. CALOGGERO: Yes.</p> <p>8 MR. HUGHES: Okay. And staff also determined, is</p> <p>9 it your understanding, that internal pedestrian</p> <p>10 circulation, walkways with the recommended conditions will</p> <p>11 provide adequate movement of pedestrian traffic? Is that</p> <p>12 your understanding? Is that something you looked at? Or,</p> <p>13 if not, tell me still.</p> <p>14 MR. CALOGGERO: That is my understanding as well.</p> <p>15 MR. HUGHES: Okay. And is it also your</p> <p>16 understanding, per the code, that each parking space must</p> <p>17 have access to a street or alley open to use by the public?</p> <p>18 MR. CALOGGERO: That is my understanding, yes.</p> <p>19 MR. HUGHES: Okay. And that's the case here since</p> <p>20 we're on two public roads; correct?</p> <p>21 MR. CALOGGERO: Correct.</p> <p>22 MR. HUGHES: Yep. Excellent. Okay.</p> <p>23 Well, those -- Mr. Hearing Examiner, those are my</p> <p>24 direct questions for this witness as well, sir.</p> <p>25 HEARING EXAMINER BAUMGARDNER: Thank you, Mr.</p>	<p>59</p> <p>1 which are very credible, that the traffic coming into this</p> <p>2 site for parents and other folks dropping off children was</p> <p>3 that folks are going to be carpooling and you're going to</p> <p>4 have multiple children in a car, if they're siblings or</p> <p>5 friends or whatever it might be. What I'm looking at, what</p> <p>6 I'm thinking about in my head as we're going over this</p> <p>7 testimony, is that if there are 42 individual cars coming</p> <p>8 in with 42 individual children, that's a fairly intense use</p> <p>9 of a formerly single-family dwelling.</p> <p>10 But just so that the record is clear and that this</p> <p>11 is clear for me, the idea here is that through folks</p> <p>12 walking their kids to school and through carpooling and</p> <p>13 other -- through public transit as well that we're not</p> <p>14 going to have 42 individual cars coming in Woodport Road</p> <p>15 through a relatively small site and then exiting onto</p> <p>16 Frederick Road; is that correct?</p> <p>17 MR. CALOGGERO: That is correct. And could you</p> <p>18 bring up my letter again? I think that will be helpful.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>20 (Indiscernible.)</p> <p>21 MR. HUGHES: And it's Exhibit 20, I believe, Mr.</p> <p>22 Hearing Examiner.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>24 MR. CALOGGERO: Just so we're both looking at the</p> <p>25 same document.</p>
<p>58</p> <p>1 Hughes.</p> <p>2 EXAMINATION OF JOSEPH CALOGGERO BY HEARING EXAMINER</p> <p>3 HEARING EXAMINER BAUMGARDNER: I'm looking -- just</p> <p>4 for ease of use, I'm looking at the Site Plan from before</p> <p>5 for the access to the property, and this was Exhibit --</p> <p>6 MR. HUGHES: 36 --</p> <p>7 HEARING EXAMINER BAUMGARDNER: -- 36-a. Correct.</p> <p>8 MR. HUGHES: Uh-huh.</p> <p>9 HEARING EXAMINER BAUMGARDNER: So just so I'm clear</p> <p>10 from Mr. Caloggero, when the -- when the ITE is used for</p> <p>11 purposes of trip calculation, I'm assuming or presuming</p> <p>12 that that takes into account, I guess, averages for</p> <p>13 particular industries for the number of individuals coming</p> <p>14 into and out of a -- a site; is that correct?</p> <p>15 MR. CALOGGERO: That is absolutely correct. And</p> <p>16 then what they do to further explain is they'll -- they'll</p> <p>17 base the new calculations on -- on different variables,</p> <p>18 whether it is the square footage of the facility, the</p> <p>19 number of students, or the number of teachers, and the old</p> <p>20 studies would provide that type of information. ITE</p> <p>21 gathers all this information and comes up with rates and</p> <p>22 equations on how to calculate new projections based on</p> <p>23 these totals.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Thank you. The</p> <p>25 testimony thus far from the Applicant and Mr. Ciniero,</p>	<p>60</p> <p>1 HEARING EXAMINER BAUMGARDNER: You bet.</p> <p>2 MR. CALOGGERO: And so what -- what will also help</p> <p>3 here is if you look at your times --</p> <p>4 HEARING EXAMINER BAUMGARDNER: Um-hmm.</p> <p>5 MR. CALOGGERO: -- so the times of pickup and drop-</p> <p>6 off, so they're -- they're kind of spread out between 7:30</p> <p>7 and 8:30 a.m.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Um-hmm.</p> <p>9 MR. CALOGGERO: So -- so that's going to also help</p> <p>10 with your traffic operations. So even if per se -- let's</p> <p>11 just call it on a bad day, there happened to be 42 cars</p> <p>12 coming in. It's -- it's -- it's, you know, one car more</p> <p>13 than -- more than a minute arriving at a time. So there's</p> <p>14 going to be plenty of gaps, plenty of opportunities for</p> <p>15 people to come in, drop off your students or child and come</p> <p>16 to Frederick Road or Maryland 355 and make your right out.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Okay. And in your</p> <p>18 analysis, was there any analysis done of the potential</p> <p>19 queueing either on Frederick or on Woodport?</p> <p>20 MR. CALOGGERO: No. We wouldn't anticipate the --</p> <p>21 the traffic on Woodport is minor, so I wouldn't anticipate</p> <p>22 much queueing on Woodport. The same as internally on the</p> <p>23 site there seems to be plenty of space for -- for queueing</p> <p>24 on-site as well.</p> <p>25 HEARING EXAMINER BAUMGARDNER: Okay. Thank you.</p>



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16 (61 to 64)

<p>61</p> <p>1 Those were all the questions I had, Mr. Hughes. 2 MR. HUGHES: Thank you very much. I would like to 3 call our last witness, Mr. Dennis DeLizzio. 4 MR. DeLIZZIO: Yes. Sean, can you hear me? 5 MR. HUGHES: Yes. And hold on one second, Dennis. 6 You sound great. We're going to let the Hearing Examiner 7 -- I think he's going to want to swear you in as well. 8 MR. DeLIZZIO: Okay. 9 HEARING EXAMINER BAUMGARDNER: That's correct, sir. 10 Can you -- can you please give us your full name 11 and your business address? 12 MR. DeLIZZIO: My name is Dennis DeLizzio. I'm the 13 president of DeLizzio Architects &amp; Planners, PC, at 17 West 14 Jefferson Street, Suite 106, Rockville, Maryland. 15 HEARING EXAMINER BAUMGARDNER: And, sir, do you 16 have the ability to get on camera? 17 MR. DeLIZZIO: Yes. Unfortunately, not with this 18 program, no. I'm sorry. 19 HEARING EXAMINER BAUMGARDNER: Okay. That's fine. 20 Sir, can you raise your right hand please? And I 21 trust that you are actually raising your right hand. 22 MR. DeLIZZIO: I actually am, yes. 23 HEARING EXAMINER BAUMGARDNER: And, sir, do you 24 swear or affirm under the penalties of perjury that the 25 testimony you're about to give is the truth, the whole</p>	<p>63</p> <p>1 that was a Montgomery County hearing, or was that a City of 2 Gaithersburg? Do you recall? 3 MR. DeLIZZIO: No. It was a Montgomery County 4 hearing. 5 MR. HUGHES: Thank you. And roughly -- if you 6 know, roughly about how many years ago was that? 7 MR. DeLIZZIO: Oh, jeez. You're testing my memory, 8 but it was probably about five or six years ago at least. 9 MR. HUGHES: Okay. Thank you. 10 And, Mr. Hearing Examiner, his -- his résumé is 11 also in Exhibit 27, our prehearing statement. I would like 12 to offer Mr. DeLizzio as an expert in the field of 13 architecture. 14 HEARING EXAMINER BAUMGARDNER: He is so designated 15 as an expert in architecture and is admitted for the 16 purposes of this hearing. 17 MR. HUGHES: Thank you. 18 Mr. DeLizzio, is it true that the proposal here is 19 -- is to reuse the existing residential structure, which 20 was built in '54, with minor site improvements to it? Is 21 that your understanding? 22 MR. DeLIZZIO: That is correct. The existing 23 structure is a midcentury, one-story brick rambler with a 24 sloping roof and a walkout basement. There are no changes 25 to the residential character of the building. And even the</p>
<p>62</p> <p>1 truth, and nothing but the truth? 2 MR. DeLIZZIO: I do. 3 HEARING EXAMINER BAUMGARDNER: Mr. Hughes, the 4 floor is yours. 5 MR. HUGHES: Thank you. 6 DIRECT EXAMINATION OF DENNIS DELIZZIO 7 MR. HUGHES: Mr. DeLizzio, can you tell us a little 8 bit about your educational/professional background? 9 MR. DeLIZZIO: Okay. I graduated from The Catholic 10 University of America in 1976 with a Master of 11 Architecture. Since then, I have been practicing 12 architecture continuously. I'm licensed in the states of 13 Maryland, Virginia, and DC. I opened up my own firm in 14 1990. And for the past 30 years, two of our primary 15 project types have been educational buildings and private 16 residential. 17 MR. HUGHES: Great. Thank you. During your -- 18 your professional career, have you ever been qualified as 19 an expert at a zoning hearing like this in architecture? 20 MR. DeLIZZIO: Yes, I have, actually two or three 21 times with your firm. The most relevant example was the 22 Primary Montessori School in Gaithersburg, Maryland, which 23 was granted the special exception. 24 MR. HUGHES: And that was -- that was in 25 Gaithersburg, but it was in Montgomery County proper, and</p>	<p>64</p> <p>1 proposed ramp and deck will be built with typical 2 residential materials like wood structure and vinyl 3 railings. 4 MR. HUGHES: Thank you. So it will continue to 5 conform to the residential character of the surrounding 6 neighborhood as asked? 7 MR. DeLIZZIO: Yes. That -- that is correct. 8 MR. HUGHES: Thank you. There has been some 9 discussion about a slight bump out and change we want to do 10 to the deck. Can you tell us a little bit about the 11 desired alteration to the -- to the structure? This minor 12 alteration, can you tell us what it is and why we're asking 13 for it? 14 MR. DeLIZZIO: Okay. Well, when we -- 15 MR. HUGHES: And let me -- let me -- 16 MR. DeLIZZIO: -- (inaudible) -- 17 MR. HUGHES: -- let me -- I'm sorry, let me 18 apologize for one sec. 19 (Exhibit 32 identified.) 20 MR. HUGHES: And this, I believe, would be, Mr. 21 Hearing Examiner, this is Exhibit 32, the architectural 22 plan with a slight alteration that he can talk to that's in 23 the exhibit list. 24 Sorry, Mr. DeLizzio. 25 HEARING EXAMINER BAUMGARDNER: Let me pull it up.</p>

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17 (65 to 68)

<p>65</p> <p>1 MR. HUGHES: Thank you, sir.</p> <p>2 So, Mr. DeLizzio, once this comes up, you -- while</p> <p>3 you're explaining what we're asking for, there's a 39 --</p> <p>4 there's two pages here, and you can tell us about the</p> <p>5 existing and then the slight alteration that -- we believe</p> <p>6 slight -- that we're asking for.</p> <p>7 So, I'm sorry. I'll stop talking and let you talk,</p> <p>8 sir.</p> <p>9 MR. DeLIZZIO: Well, if you look at the -- the</p> <p>10 original proposal that's part of the record, in the rear of</p> <p>11 the house, if you've got -- actually, if you -- well, what</p> <p>12 you're looking at right now is the existing conditions, and</p> <p>13 --</p> <p>14 MR. HUGHES: Yeah.</p> <p>15 MR. DeLIZZIO: -- the existing conditions show no</p> <p>16 deck in the rear of the house.</p> <p>17 MR. HUGHES: Okay.</p> <p>18 MR. DeLIZZIO: And you just might note that little</p> <p>19 room on the ground level and the roof of that little room</p> <p>20 on the upper floor.</p> <p>21 Now if you go to A002 please, the original proposal</p> <p>22 shows on the upper level a deck going all the way from the</p> <p>23 left-hand rear of the house all the way over to the roof of</p> <p>24 that little room.</p> <p>25 One of the upgrades that we have to make to this</p>	<p>67</p> <p>1 places with the proposed deck that would be going out in</p> <p>2 the back.</p> <p>3 MR. HUGHES: Okay. And, as you said, this is at</p> <p>4 the back, center of the house; correct?</p> <p>5 MR. DeLIZZIO: It's at the back, center of the</p> <p>6 house and would not be visible at all from the main street</p> <p>7 and be barely visible from the -- from the side street.</p> <p>8 MR. HUGHES: Right. And in fact --</p> <p>9 MR. DeLIZZIO: This existing little room -- the</p> <p>10 existing little room and the roof would be blocking more</p> <p>11 than half of this additional structure.</p> <p>12 MR. HUGHES: Got you. Thank you. Thank you.</p> <p>13 Okay. Mr. Hearing Examiner, I think those -- those</p> <p>14 are the questions I have for Mr. DeLizzio on direct, sir.</p> <p>15 And he would -- he would be my last witness with the</p> <p>16 opportunity to potentially recall if there are any</p> <p>17 questions or items that you or the public may have.</p> <p>18 EXAMINATION OF DENNIS DELIZZIO BY HEARING EXAMINER</p> <p>19 HEARING EXAMINER BAUMGARDNER: So I'm looking at</p> <p>20 this exhibit, and just so I understand this for the record,</p> <p>21 so what you have on your screen now is Exhibit 32-a, which</p> <p>22 is listed as A001; correct?</p> <p>23 MR. HUGHES: Correct.</p> <p>24 MR. DeLIZZIO: Yes.</p> <p>25 HEARING EXAMINER BAUMGARDNER: And that is the</p>
<p>66</p> <p>1 existing structure is that as opposed to a residential type</p> <p>2 of stairway that gets from the first floor down to the</p> <p>3 basement, we have to actually have a real fire stair since</p> <p>4 this is an educational building. Excuse me. The original</p> <p>5 proposal was to convert the interior stairway into an</p> <p>6 enclosed fire stair. When we evaluated the floor plan, it</p> <p>7 was greatly desired to take that necessary fire stair and</p> <p>8 put it to the outside of the building, so we would just</p> <p>9 free up more space on the inside and create a much more</p> <p>10 flexible classroom area.</p> <p>11 The exterior stairway that is being pointed at,</p> <p>12 it's an enclosed stair. It's not an open fire stair; it's</p> <p>13 an enclosed fire stair. And, again, it would be -- it</p> <p>14 would be built in the same exterior materials as the -- as</p> <p>15 the residence, and the roof of the structure would be no</p> <p>16 higher than the existing roof of the -- of the residence.</p> <p>17 MR. HUGHES: Thank you. And this -- this slight</p> <p>18 alteration -- in our view, slight alteration -- we're</p> <p>19 asking for, can you explain either the amount or</p> <p>20 approximate amount of additional square footage that that</p> <p>21 would add to the structure? Do --</p> <p>22 MR. DeLIZZIO: Yeah, it would --</p> <p>23 MR. HUGHES: -- you have that available?</p> <p>24 MR. DeLIZZIO: -- only be about -- about 135 square</p> <p>25 feet to the structure. And, again, it's really trading</p>	<p>68</p> <p>1 existing -- if we were to go to the property today, the</p> <p>2 existing basement plan and the existing first floor plan?</p> <p>3 MR. DeLIZZIO: Correct, yes.</p> <p>4 HEARING EXAMINER BAUMGARDNER: And I'm holding my</p> <p>5 cursor -- well, I'm circling my cursor on the back of the</p> <p>6 property where it's indicated there is an existing very</p> <p>7 small deck and then an existing patio; is that correct?</p> <p>8 MR. DeLIZZIO: Yes. Excuse me, sir. Except that's</p> <p>9 -- that's the front of the property.</p> <p>10 HEARING EXAMINER BAUMGARDNER: Oh, I'm sorry.</p> <p>11 MR. DeLIZZIO: The part of the -- that's the front</p> <p>12 door that faces Clarksburg Road.</p> <p>13 HEARING EXAMINER BAUMGARDNER: Oh, got it. So --</p> <p>14 MR. DeLIZZIO: The area where we're -- yes. Go</p> <p>15 ahead.</p> <p>16 HEARING EXAMINER BAUMGARDNER: Got it. So back</p> <p>17 here is the rear of the property --</p> <p>18 MR. DeLIZZIO: Correct.</p> <p>19 HEARING EXAMINER BAUMGARDNER: -- where there is</p> <p>20 currently no deck?</p> <p>21 MR. DeLIZZIO: Currently there is no deck, just</p> <p>22 those stairs coming out of what was a kitchen.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Got it. So if we go</p> <p>24 down to what you had just testified about regarding A002,</p> <p>25 which is the second page of the same exhibit, and then we</p>


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18 (69 to 72)

<p style="text-align: right;">69</p> <p>1 --</p> <p>2 MR. DeLIZZIO: Yes, um-hmm.</p> <p>3 HEARING EXAMINER BAUMGARDNER: -- and then we look</p> <p>4 at the first floor plan, we have what is proposed to be the</p> <p>5 new deck at the rear of the property, and then --</p> <p>6 MR. DeLIZZIO: Correct.</p> <p>7 HEARING EXAMINER BAUMGARDNER: -- the fire stair,</p> <p>8 which I believe is this one right here that I'm circling</p> <p>9 with the cursor?</p> <p>10 MR. DeLIZZIO: That's correct.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Okay. So this fire</p> <p>12 stair is going to be enclosed, and that's the bump out that</p> <p>13 we've been speaking about right here. So this is an</p> <p>14 enclosed fire stair?</p> <p>15 MR. DeLIZZIO: That's correct, yes.</p> <p>16 HEARING EXAMINER BAUMGARDNER: Okay. So originally</p> <p>17 this deck would've taken up more space, but we're shrinking</p> <p>18 the deck down, per Mr. Hughes' explanation and your</p> <p>19 testimony and Mr. Ciniero's testimony as well, and</p> <p>20 replacing at least part of this deck with this enclosed</p> <p>21 fire stair which is required by the fire -- by the fire</p> <p>22 department and DPS because this building is being converted</p> <p>23 into an educational use; is that correct?</p> <p>24 MR. DeLIZZIO: That is correct.</p> <p>25 HEARING EXAMINER BAUMGARDNER: Okay.</p>	<p style="text-align: right;">71</p> <p>1 HEARING EXAMINER BAUMGARDNER: Let me take this</p> <p>2 exhibit down. And, Mr. Hughes, am I correct that that was</p> <p>3 your final witness?</p> <p>4 MR. HUGHES: Yes, sir.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Okay. Is there any</p> <p>6 member of the public or any other person that is logged on</p> <p>7 or called in that has any questions for any of the</p> <p>8 witnesses? Looks like we have one guest logged in. Are</p> <p>9 there any questions for any of the witnesses that we've</p> <p>10 heard from today? You can raise your virtual hand. You</p> <p>11 can somehow signal to me that you have a question.</p> <p>12 Seeing none, are there any individuals that would</p> <p>13 like to testify regarding this application that have not</p> <p>14 been given the opportunity to testify thus far in today's</p> <p>15 hearing? You can raise your virtual hand, your physical</p> <p>16 hand, or otherwise indicate to me that you have a question</p> <p>17 or that you would like to testify about this application.</p> <p>18 Seeing none and noting that our only call-in</p> <p>19 participant is the Applicant, Ms. Babu, that would conclude</p> <p>20 the evidentiary portion of this proceeding.</p> <p>21 Mr. Hughes, I turn it back over to you if you need</p> <p>22 -- if you would like to make any closing remarks.</p> <p>23 MR. HUGHES: Yes. I'll be very brief. Thank you.</p> <p>24 First, I would like to ask for your guidance on the</p> <p>25 proper -- best and proper way to move, ask that all the</p>
<p style="text-align: right;">70</p> <p>1 (Exhibit 11 identified.)</p> <p>2 MR. HUGHES: Mr. Hearing Examiner, if I could, just</p> <p>3 -- just to further help because you're doing a nice job</p> <p>4 explaining this, better than I did, but also the -- what</p> <p>5 may come into a little bit of play is his initial or our</p> <p>6 initial Exhibit 11, which were our building plans, which I</p> <p>7 believe would've shown as is, like it does here, but also</p> <p>8 shows the full deck, if you -- if you needed to see it. It</p> <p>9 comes into play a little bit, although I believe the one</p> <p>10 you had up before it obviously is our -- our -- what we're</p> <p>11 asking for at this point.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Got it. Thank you.</p> <p>13 And the only reason for these questions is I'm just trying</p> <p>14 to visualize what the current or what the existing plan was</p> <p>15 and then the proposed modification so that I'm clear in my</p> <p>16 head as to what that --</p> <p>17 MR. DeLIZZIO: Yes, sir.</p> <p>18 HEARING EXAMINER BAUMGARDNER: -- as to what that</p> <p>19 change is. So I'm currently looking at Exhibit 11-a and</p> <p>20 11-b for the deck that was the former plan prior to the</p> <p>21 proposed modification.</p> <p>22 MR. DeLIZZIO: Yes, sir.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Okay. That was the</p> <p>24 only follow-up question I had for this witness.</p> <p>25 MR. HUGHES: Thank you.</p>	<p style="text-align: right;">72</p> <p>1 exhibits be moved into evidence.</p> <p>2 HEARING EXAMINER BAUMGARDNER: Sure. So we have</p> <p>3 listed on our website the exhibits that had been submitted</p> <p>4 for this case. They are hereby deemed admitted. Prior to</p> <p>5 the hearing, I reviewed all the exhibits, and then we went</p> <p>6 through a number of them here today, but they are all</p> <p>7 admitted into the record for this case.</p> <p>8 (Exhibit 1 through Exhibit 37 admitted.)</p> <p>9 MR. HUGHES: Thank you, sir.</p> <p>10 CLOSING STATEMENT ON BEHALF OF THE APPLICANT</p> <p>11 MR. HUGHES: So, yeah. Just very briefly. First</p> <p>12 of all, again, I would like to thank -- I would like to</p> <p>13 thank OZAH -- OZAH staff and the planning staff from Park</p> <p>14 and Planning and also my client and her development team</p> <p>15 who've worked hard to get us here, and we appreciate the</p> <p>16 time today.</p> <p>17 We do believe that, as Staff Report noted, and as</p> <p>18 Planning Board in their unanimous Recommendation of</p> <p>19 Approval -- we believe that the application does meet all</p> <p>20 the code requirements, and we certainly believe since it</p> <p>21 meets all -- we believe it meets all the code requirements,</p> <p>22 it certainly meets the spirit of it. And we thinks it's --</p> <p>23 as Ms. Babu stated, she's excited for this hopeful</p> <p>24 opportunity. She is going to provide an important service</p> <p>25 to the community and one that she's very good at. We</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 believe -- as I said, we believe that through all this 2 evidence and confirmation from Planning staff, etcetera, 3 that it does meet all the code criteria. 4 And we ask that the Hearing Examiner publicly 5 approve this item and also to include what -- again, what 6 we deem as minor edits, but late minor edits, the first one 7 being, per condition of approval number 3, a request by the 8 Planning Board and Planning staff that we amend the -- the 9 Conditional Use -- Conditional Use Site Plan to add the 10 bike spot, which has been done, that we also have asked 11 that the six special events allow for some flexibility, 12 that they potentially be on weekends as well so that we can 13 possibly have some of those on weekends and allow greater 14 participation by the families of the daycare. And also the 15 Babus have expressed to me that they want to potentially be 16 able to have an open house for their neighbors and a nice 17 way to have a barbeque or such, so we'd like that to be 18 considered. 19 And the last one is the one which we've had a fair 20 amount of discussion about, about this slight change -- 21 again, we believe a slight change -- to the rear where the 22 deck is being reduced in size, and, as Mr. DeLizzio 23 explained, I believe 130-plus square feet of addition for 24 the bump out of the stairs. And Mr. Ciniero explained that 25 it would not impact the overall impervious, would not</p>	<p style="text-align: right;">75</p> <p>1 That is all I have. Again, if the -- if anyone 2 does not agree with my decision, you will have ten days 3 from the date of the written report and decision to file an 4 appeal with the Board of Appeals. Other than that, that is 5 all we have today. 6 Any other final matters or thoughts, Mr. Hughes, 7 before we close today's hearing? 8 MR. HUGHES: No. Other than, again, just thank you 9 for your time and your staff's time. We appreciate it. 10 HEARING EXAMINER BAUMGARDNER: Thank you all very 11 much. This ends the -- this hearing for today on OZAH Case 12 No. CU 21-05, requesting a conditional use for a daycare 13 center for 42 persons located at 23126 Frederick Road, 14 Clarksburg, Maryland. We thank you all very much for your 15 time and attention and wish you all a pleasant day. Thank 16 you all very much. 17 (Off the record at 5:18 p.m.) 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">74</p> <p>1 increase it and such. So we believe that this is a very 2 positive use for the county. 3 We believe that the application does meet the 4 criteria, and we appreciate your time, and we ask that you 5 will hopefully find that it does meet so and grant 6 approval. So, thank you for your time, Mr. Hearing 7 Examiner. 8 HEARING EXAMINER BAUMGARDNER: And thank you, Mr. 9 Hughes. And thank you for all of our witnesses and the 10 Applicant here today. We also thank our court reporter for 11 being on the line. We are going to hold this record open 12 for ten days. 13 Just to be clear for the record, I'm not referring 14 the matter back to Planning, but we are going to hold the 15 record open for Planning to comment, if they wish to do so, 16 on those three minor modifications, specifically the 17 special events and the bump out since we've already heard 18 back from them -- or actually the condition with the bike 19 spot is being complied with by the Applicant. That email 20 to Planning will become part of the record as well. 21 So, again, I didn't want the Applicant to think 22 that we were referring it back to Planning, that we'd have 23 to come back for a new hearing. We're merely holding it 24 open for ten days to allow Planning to have the opportunity 25 to comment, if they wish to do so.</p>	<p style="text-align: right;">76</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, Caleb Welsh, the officer before whom the foregoing 3 proceedings were taken, do hereby certify that said 4 proceedings were electronically recorded by me; and that I 5 am neither counsel for, related to, nor employed by any of 6 the parties to this case and have no interest, financial or 7 otherwise, in its outcome. 8 9  10 _____ 11 Caleb Welsh, Court Reporter 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

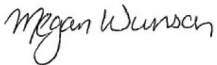
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Conducted on April 19, 2021

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CERTIFICATE OF TRANSCRIBER

I, Megan Wunsch, do hereby certify that  
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counsel for, related to, nor employed by any of the parties  
to this case and have no interest, financial or otherwise,  
in its outcome.



Megan Wunsch, AAERT CET  
April 25, 2021

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Transcript of Hearing  
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