

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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4831 WEST LANE, LLC : Case No. G-954
LOCAL MAP AMENDMENT G-954 : DPA 13-01
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A hearing in the above-entitled matter was held on
April 16, 2013, commencing at 9:47 a.m., at the Stella B.
Werner Council Office Building, 100 Maryland Avenue, Second
Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:
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On Behalf of the Respondent:
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* * * * *

Witnesses:	Direct
Christopher Kabatt	8, 52, 66, 73
David Judd	75, 85, 115, 129
Perry Berman	133, 161
Charles Irish	214

* * * * *

E X H I B I T S

Exhibit No.	Marked/Received
110	Bethesda CBD Sector Plan 106

P R O C E E D I N G S

1 MS. ROBESON: We're on the record. This is a
 2 continuation of the hearing in G-954, an application of 4831
 3 West Lane for rezoning of property to the TSR zone and
 4 Development Plan 13, let me get my, 13-01 filed by the same
 5 entity requesting an amendment to the development plan,
 6 approved by the District Council on July 10, 2007. I
 7 believe that we are on Mr. Knopf's -- are there any
 8 preliminary matters?
 9 MR. ABRAMS: Just one, Madame Examiner. We have
 10 one witness that cannot make it in tomorrow, but we are
 11 scheduled for Friday and so I would like to reserve some
 12 time on Friday for that particular witness if we don't get
 13 to him tomorrow.
 14 MS. ROBESON: That's fine.
 15 MR. ABRAMS: Okay.
 16 MS. ROBESON: All right. I don't --
 17 MS. HARRIS: I have three preliminary matters.
 18 MR. KNOFF: And is your witness available any time
 19 on Friday or limited to a certain --
 20 MR. ABRAMS: I believe so.
 21 MS. HARRIS: And who is that witness?
 22 MR. ABRAMS: That witness is --
 23 MR. KNOFF: Dan Joseph.
 24 MR. ABRAMS: Dan Joseph.
 25

1 MS. HARRIS: Okay.
 2 MR. ABRAMS: He's a member of the, you know --
 3 MS. HARRIS: Right.
 4 MR. KNOFF: We have one witness. I presume all
 5 eyewitnesses will be on Friday and we have one who has to be
 6 on earlier Friday morning because she's not available later
 7 in the day. So -- that's just, that's why I was asking when
 8 his witness was --
 9 MS. ROBESON: Okay. That's fine.
 10 MR. KNOFF: -- going to be there.
 11 MS. ROBESON: I mean we've gone out of order to
 12 adjust, especially for citizens to adjust our schedules and
 13 let them testify out of turn. So I don't have a problem
 14 with that. Yes?
 15 MS. HARRIS: We were going to identify a
 16 potential --
 17 MS. ROBESON: Yes.
 18 MS. HARRIS: -- new date just in the event that it
 19 is needed.
 20 MS. ROBESON: Yes and she said they were here. I
 21 apologize. Can I go off the record for two minutes and I'll
 22 get them? We got several.
 23 (Recess)
 24 MS. ROBESON: Okay. We had some Thursdays, but we
 25 usually stay away from Tuesdays and Thursdays because of

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1 potential conflicts with the Planning Board and the Council.
2 So we have Monday, April 29th; Friday, May 3rd; and okay, we
3 have Monday, 4/22; Monday, 4/29; and Friday, 5/3.
4 Otherwise, we're into Tuesdays and Thursdays.
5 MR. ABRAMS: I'm out of town on the 22nd and the
6 29th is fine for me. The dates in the 3rd of May, is that
7 what you had?
8 MS. ROBESON: Yes.
9 MR. ABRAMS: That's fine.
10 MS. ROBESON: Friday, May -- that's fine?
11 MR. ABRAMS: And the other date you had?
12 MS. ROBESON: I have some Tuesdays and Thursdays,
13 but --
14 MS. HARRIS: Of the dates that you identified, the
15 29th works for us and then, unfortunately, because of
16 previously scheduled other matters, we're not available
17 again until the 15th.
18 MS. ROBESON: May 15th?
19 MS. HARRIS: Yes.
20 MS. ROBESON: Mr. Knopf, are you available on the
21 29th?
22 MR. KNOFF: I am trying to -- I asked people who
23 are testifying to send me e-mails. I'm looking at the
24 e-mails to see which dates they said they couldn't be and I
25 didn't get it from everybody because I thought, the ways

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1 things were going, I thought we could make our entire
2 presentation on one day, like Friday morning, this Friday,
3 but so I'm trying to see here. The --
4 MS. ROBESON: Well, I know since we have another
5 hearing tomorrow --
6 MR. KNOFF: Right.
7 MS. ROBESON: -- I would --
8 MR. KNOFF: The 6th.
9 MS. ROBESON: -- we will try for the 29th at this
10 point.
11 MR. KNOFF: The 29th, this, let me just --
12 MS. ROBESON: That's Monday.
13 MR. KNOFF: Let's see, we're going this week until
14 the --
15 MS. ROBESON: We don't, we aren't going Thursday
16 this week.
17 MR. KNOFF: No, I know. I have another full day
18 hearing at the Planning Board, of course.
19 MS. ROBESON: Oh.
20 MR. KNOFF: Yes, I have, apparently two said they
21 could do it. I don't know. Can we -- I think it may be all
22 right, but maybe lunchtime I could try to get --
23 MS. ROBESON: Yes.
24 MR. KNOFF: -- all these --
25 MS. ROBESON: Why don't we settle on the 29th by

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1 the end of today, all right? And did you say you had more?
2 MS. HARRIS: Yes. One other preliminary matter.
3 That is Mr. Abrams had brought up the issue of building
4 coverage and the applicant providing that information to Mr.
5 Abrams, it was in reference to Exhibit 85, which was a
6 design comparison exhibit. And the building coverages
7 indicated in terms of City Homes, the Highrise Edgemoor and
8 the subject property what had, which ones had higher low
9 building coverage. I, in consultation with Mr. Landfair,
10 was simply based on visual observations. So we have no
11 information to provide.
12 MS. ROBESON: All right.
13 MS. HARRIS: Thank you.
14 MS. ROBESON: All right. Anything else? Seeing
15 nothing, Mr. Knopf, it's your turn.
16 MR. KNOFF: Right. If I recall, you had testified
17 yesterday that visitors to this building would need to park
18 in, at another location other than a building, is that
19 correct? Is that your testimony?
20 MR. KABATT: Well, what I testified was that we
21 didn't, we don't think that the residents of the building
22 would use all the parking spaces that are being proposed and
23 there is a potential for the excess spaces to be used by
24 visitors. In the event that that's not the case, there are
25 public parking garages and private garages and off-street

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1 parking in the vicinity of the site.
2 MR. KNOFF: Thank you. So, and if I recall then
3 correctly, if there are extra spaces available for visitors
4 in the garage, I think you said that you were basing that on
5 the fact that there's a certain percentage of -- you had
6 statistics or something that showed a certain percentage of
7 renters don't have cars, was that the basis of your thought
8 that there would be extra spaces?
9 MR. KABATT: The U.S. Census data does report that
10 36 percent of the rental units do not have vehicles.
11 MR. KNOFF: And that's what you were relying on,
12 that there may be extra spaces in the garage for visitors?
13 MR. KABATT: Well, that and other, just other
14 experience that I have with residential buildings in urban
15 locations.
16 MR. KNOFF: Okay. Well, when you say census,
17 that's a census figure 36 percent, is that a national census
18 figure or the census figure for this particular census tract
19 that the building is located?
20 MR. KABATT: For this tract.
21 MR. KNOFF: And what area does that tract cover?
22 MR. KABATT: Bear with me, I'll give you the exact
23 proportions. So the 30, this area, it's tract, the U.S.
24 Census tract is 7048.04 and --
25 MR. KNOFF: I can't say that brings up any

1 boundaries anyway.
 2 MR. KABATT: I'll give you that tract number. I
 3 don't have the map right here. It's, you have to print out
 4 the map to see what it is, but it's the local area right
 5 around this subject site.
 6 MR. KNOPF: Is, are we talking, do you know, we're
 7 talking about blocks, miles?
 8 MR. KABATT: It's blocks.
 9 MR. KNOPF: I see. So this would cover both -- do
 10 you know for a fact whether this covers only new luxury
 11 rentals or does it cover older buildings that would not fall
 12 under that category?
 13 MR. KABATT: It would be, it was, it would be
 14 whatsoever in this, the few block area around the site.
 15 MR. KNOPF: I see.
 16 MR. KABATT: So north and south side Montgomery
 17 Lane east of Woodmont Avenue and I believe, I recall that it
 18 extends west actually of Arlington Road, but that gets in
 19 the single family homes.
 20 MR. KNOPF: I see. There is housing to the west
 21 down Arlington? I mean does it cover all, down on
 22 Georgetown also to the west?
 23 MR. KABATT: I don't recall, I don't believe this
 24 tract goes north of Old Georgetown, but they're going to
 25 give you the tract number and provide a map at a later time.

1 MR. KNOPF: I would appreciate that if you could
 2 get that. Now you have these figures, you're talking about
 3 the 36 percent for rental. What figures do you have about
 4 condos that, whether that's -- you say -- not representing
 5 that there's a 36 percent of condo owners do not have cars?
 6 MR. KABATT: No, the data, it does give you owner
 7 occupied, but -- and that is 4 percent --
 8 MR. KNOPF: 4 percent?
 9 MR. KABATT: -- do not own vehicles.
 10 MR. KNOPF: 4, is that 4 percent? I'm sorry. I
 11 missed it.
 12 MR. KABATT: 4 percent, yes.
 13 MR. KNOPF: Okay. So -- and are you, what's your
 14 understanding as to whether this building is guaranteed to
 15 be rental or be condo?
 16 MR. KABATT: It's my understanding that they want
 17 to keep the flexibility.
 18 MR. KNOPF: So would you agree with me that even
 19 under your own analysis if this building were condo, there
 20 would be insufficient visitor parking spaces?
 21 MR. KABATT: No, I wouldn't conclude that. I
 22 would -- we use census data as a guide and then there's also
 23 your market experience of what is provided and then that is
 24 why we also identified that there are public garages and
 25 private garages and on-street parking in the area, but --

1 MR. KNOPF: Let me -- that isn't what I asked, but
 2 I did ask it properly. Would you agree with me that there
 3 was insufficient visitor parking onsite if this were a condo
 4 building, would you agree that there would need to be --
 5 visitors would probably need to park off the site?
 6 MR. KABATT: No, I, my interpretation of codes
 7 are that that includes all uses of the building. So when
 8 you go through your math of the code to get to the 123
 9 parking spaces as required, that that would include some --
 10 it would either be used by all the residents or could
 11 potentially be provided for visitors.
 12 MR. KNOPF: Potentially? But if my math is
 13 correct, 4 percent of 123 spaces is what you say is existing
 14 in the building?
 15 MR. KABATT: Well, that's what's required.
 16 MR. KNOPF: Right, but that's what you're
 17 providing, isn't it?
 18 MR. KABATT: And that's what they're --
 19 MR. KNOPF: Right.
 20 MR. KABATT: -- proposing.
 21 MR. KNOPF: But if we had 4 percent of the unit
 22 owners didn't have cars, we'd end up with what, five, six
 23 empty spaces?
 24 MR. KABATT: I think, I think the U.S. Census data
 25 in this tract, it doesn't specify whether you're simply

1 looking at condo buildings or single-family homes or town
 2 homes. So you would -- single-family homes may have more
 3 cars than the condo unit. So that's why we would use census
 4 data, but then you also look at what's provided in the
 5 marketplace and what's also experienced at other buildings.
 6 MR. KNOPF: And have you done such an analysis as
 7 what's been experienced at City Homes or at the Edgemoor
 8 Condominium in terms of availability of visitor parking,
 9 whether it's a terrible shortage or they have access or just
 10 right?
 11 MR. KABATT: We have not done a parking study yet
 12 at those locations.
 13 MR. KNOPF: I see. Well, in terms of 123 spaces,
 14 by the way, you mentioned something in response to Mr.
 15 Abrams. Do some of those spaces have to be set aside for
 16 handicap?
 17 MR. KABATT: Yes.
 18 MR. KNOPF: Okay. So there wouldn't be 123
 19 general spaces available? How many would have to be set
 20 aside for handicap?
 21 MR. KABATT: I'm not certain of that number, but
 22 it's -- whatever the ADA code is. Actually it's on the
 23 development plan.
 24 MR. KNOPF: I didn't see that. There's a lot on
 25 the development plan.

1 MR. KABATT: This is Exhibit 108 and for the, for
 2 the five --
 3 MR. KNOFF: Five?
 4 MR. KABATT: Five of those spaces would be for
 5 accessible vehicles.
 6 MR. KNOFF: Okay. And is it your experience in
 7 rental buildings that there is, when one rents an apartment,
 8 one may also rent a parking space that's assigned to him in
 9 the building I'm talking about?
 10 MR. KABATT: Different management companies are,
 11 do different things in different jurisdictions require
 12 different, some buildings you go in and you, if you rent an
 13 apartment, you, the space comes with that, but other
 14 buildings, it's separate from the lease. The parking space,
 15 you can choose whether or not to lease the parking space.
 16 MR. KNOFF: Well, what I'm getting at is if one
 17 gets a parking space as part of their lease or one rents the
 18 parking space separately, would you agree with me that then
 19 becomes what I call a reserve space and is not available for
 20 anybody just to come in as a visitor and park there?
 21 MR. KABATT: Well, I -- my personal experience is
 22 we do, if you rent a space, and this is also in other
 23 buildings, but if you rent a space, then there should be a
 24 space available for you in the garage. Again, some
 25 management companies, they will actually assign you a

1 parking space so, you know, a number in the garage and then
 2 others, just say it's 100-unit building and 75 people rent
 3 spaces, then it's -- you can park in any of the spaces that
 4 are available. They're unreserved.
 5 MR. KNOFF: I see.
 6 MR. KABATT: It's up to the management how they
 7 want to manage this.
 8 MR. KNOFF: Well, we have the situation here where
 9 there's 120 units and maybe 118 parking spaces if we deduct
 10 the handicapped. There's not a lot of extra just floating
 11 around there.
 12 MR. KABATT: Well, then in that situation the
 13 management would know how many parking spaces are, how many
 14 they leased out and if the next person to come in to lease
 15 the unit, they would, if all the other ones were occupied,
 16 they would not be able to lease the parking space --
 17 MR. KNOFF: But in terms --
 18 MR. KABATT: -- unless they were, unless they
 19 needed an ADA space.
 20 MR. KNOFF: In terms of condo buildings, is your
 21 experience that the purchaser of a condo also is offering
 22 the option of purchasing the parking space with the unit?
 23 MR. KABATT: Again, I believe that's based on the
 24 seller of the building or the reseller.
 25 MR. KNOFF: No, in a building where they offered

1 condos and didn't offer any parking spaces in that building?
 2 MR. KABATT: Well, I don't -- one is not coming to
 3 mind, but it's, I know a lot of condo buildings do like to
 4 provide parking, but it's becoming the trend more and more
 5 that buildings are trying to get below 1.0 parking --
 6 MR. KNOFF: I see.
 7 MR. KABATT: -- because they just don't use those
 8 spaces.
 9 MR. KNOFF: They're trying to get them, but you
 10 can't give us any example in Montgomery County or Bethesda,
 11 downtown Bethesda, a new building where that's the case, can
 12 you?
 13 MR. KABATT: Not off the top of my head.
 14 MR. KNOFF: Okay. Now you mentioned that if
 15 somebody, a visitor needed a space and there wasn't one on
 16 the building, in the building, I believe you mentioned that
 17 they could go to a private or public garage over by
 18 Woodmont, do I recall that testimony correctly? You said
 19 there were garages available over toward Woodmont --
 20 MR. KABATT: Yes.
 21 MR. KNOFF: -- on the other side of Woodmont
 22 actually, right?
 23 MR. KABATT: Yes.
 24 MR. KNOFF: And would you agree, do you know what
 25 this, do you know --

1 MS. ROBESON: Yes, can you move back, Mr. Kabatt?
 2 Thank you.
 3 MR. KNOFF: Do you know what this area is over
 4 here on the other side? I'm pointing to the opposite side
 5 of Arlington between --
 6 MS. ROBESON: The western side.
 7 MR. KNOFF: Excuse me, western side of Arlington,
 8 between Montgomery Lane and Edgemoor Lane? Do you know what
 9 that --
 10 MR. KABATT: That's the library.
 11 MR. KNOFF: The library? And is that the parking
 12 lot for the library?
 13 MR. KABATT: Yes, it is.
 14 MR. KNOFF: And I'm going to ask you as a traffic
 15 expert, what's your opinion if I were coming to this new
 16 building and was told there's no visitor parking, you need
 17 to park in another location, do you believe I would, a
 18 person is likely to go all the way down Montgomery Lane
 19 which, by the way, you can't go all the way down Montgomery
 20 Lane. Don't we get a one-way?
 21 MR. KABATT: You would --
 22 MR. KNOFF: You get a one-way -- isn't Montgomery
 23 Lane one-way --
 24 MR. KABATT: West.
 25 MR. KNOFF: West Lane to Woodmont? So if I wanted

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1 to go to the garage, I guess I'd have to go back out toward
2 Arlington, wouldn't I?
3 MR. KABATT: Yes.
4 MR. KNOPF: Okay. And I'd go right by that
5 parking lot to the library. Where do you think I'm going to
6 end up parking, in the library parking lot or going all the
7 way around the block and going to the private parking?
8 MR. KABATT: Well, I believe the library parking
9 lot is regulated.
10 MR. KNOPF: In, because they're having trouble,
11 patrons had trouble finding a space, right, because non-
12 patrons were using it?
13 MR. KABATT: Well, I don't -- I don't know.
14 MR. KNOPF: You don't know.
15 MR. KABATT: I can't confirm that.
16 MR. KNOPF: But you say, well, what's the
17 regulation? Is it parking meter, regulation?
18 MR. KABATT: Parking meter too.
19 MR. KNOPF: And do you know how many hours you can
20 get on a parking meter there?
21 MR. KABATT: No, I do not.
22 MR. KNOPF: Okay. Well, assuming you can several
23 hours on the parking meter, I again ask you, do you think
24 someone is likely to drive by the library and go all around
25 to pay for parking on the other side of Woodmont or they're

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1 going to go into the library parking lot?
2 MR. KABATT: I suppose if they could park in the
3 library, they could feed a meter and the library doesn't
4 frown upon that, that they could park there.
5 MR. KNOPF: Okay. Thank you. One of the --
6 MS. ROBESON: Before we go any further, I didn't
7 disclose this about the site visit because I didn't think it
8 was a big deal, but I parked at the library. I'm
9 embarrassed, but I did. So I'm just throwing that out
10 there. I did park at the library because it was the easiest
11 parking I could find. Okay. But I did pay the meter and I
12 did walk in the library, but anyway. So --
13 MR. KNOPF: I'll fully disclose I parked there
14 also.
15 MS. ROBESON: Ah-hah.
16 MR. KNOPF: That's exactly my point. Thank you.
17 One of the findings that has to be made in order to grant
18 this rezoning is that the proposed development would provide
19 for the maximum safety convenience and so on of the
20 residence. Do you think this provides for the maximum
21 convenience when there's no, there may be insufficient
22 visitor parking?
23 MR. KABATT: I would not conclude that it is
24 insufficient visitor parking.
25 MR. KNOPF: Based on what you previously stated,

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1 isn't that --
2 MR. KABATT: Yes.
3 MR. KNOPF: Let me -- well, you talked about a new
4 lay-by on Montgomery Lane, did I hear that testimony
5 correctly, that's what they've taken under consideration?
6 MR. KABATT: Well, the applicant is considering
7 it.
8 MR. KNOPF: Considering it?
9 MR. KABATT: Yes.
10 MR. KNOPF: And am I correct that the lay-by would
11 be right -- well, can you show us where the location of that
12 lay-by would be? I think you have an exhibit right behind
13 you maybe you can use?
14 MS. ROBESON: Yes, 108, you've actually marked.
15 That one is already marked with something, so you can --
16 MR. KNOPF: Although, maybe I suggest, I think --
17 did we have one with red and maybe we can keep all the lay-
18 bys on --
19 MS. ROBESON: Oh, okay.
20 MR. KNOPF: -- everything on that one --
21 MS. ROBESON: Oh, okay. Okay.
22 MR. KNOPF: -- keep it together? You know, we had
23 a --
24 MS. ROBESON: Except I --
25 MR. KNOPF: We've only --

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1 MS. HARRIS: If I could, this one, I mean the
2 Exhibit 89 has those that are marked that the applicant has
3 confirmed they are providing. I would hate for there to be
4 some confusion if it's something on there that is not
5 confirmed saying that's being proposed. So I would prefer
6 to put it on 108.
7 MS. ROBESON: I would, Mr. Knopf, I would simply
8 for technical reasons because of reproducing that for the
9 report, I would prefer that if we could put it on 108, that
10 would be easier.
11 MR. KNOPF: That's fine. What I was, I thought I
12 had a step-saving suggestion, but obviously not.
13 MS. ROBESON: No, I know. It makes too much
14 sense.
15 MR. KNOPF: Thank you. Could you point to the
16 area that's under consideration for a lay-by?
17 MR. KABATT: It would be along the property
18 frontage, so it would be on the north side.
19 MS. ROBESON: Would you kindly just, with the
20 understanding that it's approximate, would you kindly mark
21 that so we know visually approximately where you're
22 considering it?
23 MR. KABATT: And I would just say this is
24 approximate and it's, you know, the -- it's my
25 interpretation --

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1 MS. ROBESON: I understand.
2 MR. KABATT: And I also --
3 MS. HARRIS: And I want to object for one moment
4 because I think this is being taken out of context. I
5 don't, I think saying the applicant is considering it is not
6 an accurate representation of what was, what the witness
7 testified to.
8 MS. ROBESON: Well, that's what --
9 MR. KNOPF: Well, then --
10 MS. ROBESON: -- he did testify to.
11 MR. KABATT: No, I want to -- if I could just
12 clarify --
13 MS. ROBESON: No, I would like you to mark the
14 concept please that you've had discussions, and you can
15 clarify, Ms. Harris, you can have the witness clarify the
16 status --
17 MS. HARRIS: Okay.
18 MS. ROBESON: -- of those --
19 MS. HARRIS: Thank you. Okay.
20 MS. ROBESON: -- whatever.
21 MS. HARRIS: Okay.
22 MS. ROBESON: And can you -- how did you mark it?
23 Did you mark it with blue X's, is that blue ink?
24 MR. KABATT: I'm going to -- it's blue ink and it
25 will be a rectangle shape.

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1 MS. ROBESON: Okay. That's fine.
2 MR. KABATT: And, again, please don't --
3 MS. ROBESON: Just for the record.
4 MR. KABATT: Please don't take the width or --
5 MS. ROBESON: No, we're not.
6 MR. KABATT: -- the length as accurate. It's just
7 a general location.
8 MR. KNOPF: Yes, I need to get something clarified
9 in part from the witness. This seems to be a moving target.
10 I'm not sure how I handle this. This may be a lay-by that's
11 going to be proposed as part of her rebuttal later or is
12 going to spring up after the project is approved or what? I
13 mean we, I thought it was presented here as a possibility,
14 so I here for one will explore it because --
15 MS. ROBESON: That's why I'm allowing him --
16 MR. KNOPF: Okay.
17 MS. ROBESON: -- to mark it because he did bring
18 it up in his testimony.
19 MR. KNOPF: Okay. I just want to ask you as a
20 traffic expert, assume the lay-by is put in -- I understand
21 it's an assumption I put in. I want to try to understand
22 how it works. Now, let's see, if I -- let's see. If I --
23 I'm very bad at -- I'd rather use this one. Okay. If I'm
24 correct, the lay-by is around this area here, right in front
25 of the building, right, correct?

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1 MR. KABATT: Correct.
2 MR. KNOPF: Okay. Now let's say I'm going to pick
3 up a friend at the, at this building and I'm coming from
4 Arlington, let's say I'm coming --
5 MS. ROBESON: You're coming north?
6 MR. KNOPF: -- and I'm going, I'm coming, going
7 this way, I would be going -- this is west, I would be
8 coming, going north from the south, going north. I make a
9 right onto Montgomery Lane and there is the building. Now I
10 guess I have two choices. I could go past the building,
11 make a left, go down West Lane and go to the Hammerhead,
12 back up, turn around, come back out to Montgomery, make a
13 right and then I pull right into that space or I guess
14 before I get to Montgomery, I could pull into another lay-by
15 space along West Lane, is that correct? Those are options
16 available? You have to say yes.
17 MR. KABATT: That's correct. That's correct.
18 MR. KNOPF: Okay. Now isn't there another option
19 that I make a right on Montgomery Lane and as I get to West
20 Lane, make a U-turn and just pull right over there into the
21 lay-by right behind Montgomery Lane, is that another option
22 available to me?
23 MR. KABATT: Yes.
24 MR. KNOPF: And which would take less time and be
25 the quickest?

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1 MR. KABATT: The shortest distance doing a U-turn
2 or a 3-point turn at West Lane, Montgomery Lane would be.
3 MR. KNOPF: Okay. Or wouldn't there be another
4 option, I guess, I could pass -- I could -- since this is --
5 as this states here, opposite the lay-by area, is that a
6 drive area into City Homes drive, an alleyway or driveway, a
7 mews, whatever we would call it?
8 MR. KABATT: Yes, it is.
9 MR. KNOPF: Isn't that another option, I could
10 make a right into that, back out and then pull over into the
11 lay-by?
12 MR. KABATT: Sure.
13 MR. KNOPF: From a safety standpoint as a traffic
14 expert, is it good to have those kind of turns, U-turns or
15 back-up turns onto the, onto Montgomery Lane?
16 MR. KABATT: Given the low volume on Montgomery
17 Lane, I think those movements could be accommodated.
18 MR. KNOPF: So it's fine with you?
19 MR. KABATT: Yes.
20 MR. KNOPF: And does that achieve the maximum
21 safety that's one of the requirements of the zoning code, in
22 your opinion?
23 MR. KABATT: I would, I would submit that a driver
24 would know its environment around it and would not freely
25 barrel over anything in its path that it would, given the

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1 low volume on the street, that it would make a safe U-turn
2 or a 3-point turn to turn around.
3 MR. KNOFF: Let me ask another question. However
4 I got there, I'm sitting in the lay-by no matter which --
5 MS. ROBESON: Which lay-by?
6 MR. KNOFF: The one on Montgomery Lane.
7 MS. ROBESON: Uh-huh.
8 MR. KNOFF: No matter how, what route I took, but
9 I'm sitting there. Now I'm sitting there waiting for my
10 friend to come down. And the UPS truck comes down
11 Montgomery Lane and which route do you think the driver
12 would take, would make -- he sees that something, there's a
13 car sitting there in the lay-by, so he would make a right-
14 hand turn and go down West Lane, goes into West Lane, make a
15 hammerhead turn backing up and coming back and pull over to
16 an existing lay-by along West Lane or go back out to
17 Montgomery Lane and pull up in front of the building and if
18 the car is still there, just double park, or just not bother
19 to make a turn onto West Lane this close to Montgomery Lane
20 and pull up next to the car and double-parking right near
21 the building and make his delivery. Do you think that's a
22 very logical, likely scenario that rather than going down
23 West Lane and going through that whole turning motion, just
24 would pull up and double-park next to the car that's in the
25 lay-by so it would block traffic, at least one lane on

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1 Montgomery?
2 MR. KABATT: The delivery vehicles would, their
3 first, or their choice would be to go to the lay-by on West
4 Lane or the loading space on West Lane since the building,
5 because they will have to go to that service corridor.
6 MR. KNOFF: That's assuming they go to that
7 service corridor?
8 MR. KABATT: They have to.
9 MR. KNOFF: Well, let me ask you this then. Which
10 do you think would be quicker, double-parking on the lay-by
11 and walking back to that service entrance, assuming that's
12 what they're using, or making a right-hand turn and going
13 down West Lane and making a back-up turn at the hammerhead
14 and coming back and going in the parking area? Which do you
15 think would be quicker or would be perceived to be quicker
16 by the driver?
17 MR. KABATT: I would think the driver would go to
18 the loading areas on West Lane.
19 MR. KNOFF: You do?
20 MR. KABATT: Yes.
21 MR. KNOFF: I see. Now wouldn't there be --
22 let's, I left out one scenario, possibility. A car or a
23 truck going down West Lane, rather than going into West
24 Lane, wouldn't that car pull into one of the driveways at
25 4825 Montgomery and back out that way and then, heading back

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1 toward Montgomery or going in the lay-by, that would be
2 another option available?
3 MR. KABATT: Sure.
4 MR. KNOFF: And if they did back-up, I'm just
5 trying to figure out -- and there was a parked truck in that
6 lay-by. Does that then become sort of tight and back up,
7 they'd have to maneuver their car and turn around if they're
8 backing up that truck?
9 MR. KABATT: Well, again, I would submit that a
10 driver would know its vehicle and know where it could or
11 could not turn around.
12 MR. KNOFF: You have great confidence in drivers,
13 right? Okay.
14 MR. KABATT: I do.
15 MR. KNOFF: And, similarly, would you agree with
16 me you would know that UPS drivers are people that make
17 frequent deliveries who know exactly what the quickest way
18 is to get in and out of that building?
19 MR. KABATT: Yes.
20 MR. KNOFF: Now, by the way, in terms of my
21 picking my friend, do you have any information as to the
22 demographics of people who rent on this street or right
23 around the Metro generally, specifically the street in terms
24 of age? Is there not a higher than average age that
25 occupies these buildings?

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1 MR. KABATT: I do not know that.
2 MR. KNOFF: But as a traffic person, would you
3 agree with me that very, senior citizens may take longer to
4 get in and out of cars than younger people?
5 MR. KABATT: I would agree with that.
6 MR. KNOFF: Now you gave us some figures -- you
7 had given us some figures as to the amount of cars that, or
8 trips that would be generated by this building, is that, am
9 I correct?
10 MR. KABATT: Yes.
11 MR. KNOFF: And I think you, like 20 some
12 additional trips or whatever, I'm not trying to get the
13 exact numbers down. Were you -- how did you arrive at
14 those? Are there national or local charts that say for
15 every dwelling unit, rental or condo or something you can
16 expect so many trips? Is that what you used or, for the
17 base of your testimony?
18 MR. KABATT: Yes. The local area transportation
19 review guidelines provide trip rates for apartments in the
20 Bethesda CBD.
21 MR. KNOFF: And you use those?
22 MR. KABATT: Yes.
23 MR. KNOFF: And those say so many car trips per
24 unit --
25 MR. KABATT: Correct.

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1 MR. KNOPF: -- on the average? So they're all
2 averages, is this correct?
3 MR. KABATT: Yes.
4 MR. KNOPF: Including the 36 percent as an
5 average, is that correct?
6 MR. KABATT: Well --
7 MR. KNOPF: The 36 percent of the leased, of
8 rental units don't have cars, so they're all averages?
9 MR. KABATT: That's based on actual -- it's based
10 on actual data. It's not -- the census data isn't an
11 average, it's -- we'll, the data that was actually collected
12 in that tract.
13 MR. KNOPF: Averaging all the rental buildings in
14 the tract, correct?
15 MR. KABATT: Well, it's whoever responds to the
16 census data that they collect.
17 MR. KNOPF: All right. In terms of, going back to
18 the terms of the number of trips generated per unit, that's
19 referring to car trips, correct? Is there figures as to how
20 many delivery trips are generated per unit?
21 MR. KABATT: Those trip rates are derived based on
22 driveway counts and observations of buildings. So it does
23 not discriminate as to who is coming in and out of that
24 driveway.
25 MR. KNOPF: Be in -- well, it is based upon if

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1 somebody doesn't use a driveway, they just pull up in the
2 street and make deliveries, does it count those vehicle
3 trips also?
4 MR. KABATT: I'd have to go back and look at the
5 sources of the, where the Park and Planning got those trip
6 rates from, but I generally think driveway counts where if
7 there's a drop-off area, you would include that as part of
8 the trip generation for your, for that site.
9 MR. KNOPF: Well, I think you said you observed,
10 in your visits to the site, you observed some congestion on
11 the street in terms of service vehicles and delivery
12 vehicles? You saw some trucks or service vehicles parked on
13 the street, do I recall that testimony?
14 MR. KABATT: In my observations of the numerous
15 times that I've been out there --
16 MR. KNOPF: Yes.
17 MR. KABATT: -- I have not -- I saw vehicles
18 parked outside of the designated parking areas, but I have
19 not seen the double parking. I have only seen those in the
20 photos.
21 MR. KNOPF: Well, I guess what I'm asking is to
22 your knowledge you don't know whether those vehicles parked
23 outside the parking areas would be counted as part of the
24 trips of that building because they don't go in and out of
25 the building's garage or pull up right in front of the door?

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1 MR. KABATT: Right. Again, going to a general
2 trip generation site you would do, one would normally count
3 vehicles using the site's driveway --
4 MR. KNOPF: Driveway?
5 MR. KABATT: -- or if there was a designated
6 courtyard or drop-off area, that would also be included.
7 You would look at all the access points for that building.
8 MR. KNOPF: Okay. Now let me go back since
9 apparently you wanted to do that. If we could get -- which
10 was the one that was marked with the red, 106? We had --
11 MS. ROBESON: Oh, the loading exhibit?
12 MR. KNOPF: Yes.
13 MS. ROBESON: I think it's in the '80's.
14 MR. KNOPF: Oh.
15 MS. HARRIS: 89.
16 MS. ROBESON: 89.
17 MR. KNOPF: 89, sorry. I'm way off. Okay. Yes.
18 I'm trying to -- to your knowledge, would the lay-by on
19 Montgomery Lane that's under consideration be approximately
20 the same dimensions as the lay-by that's proposed on West
21 Lane?
22 MR. KABATT: I could not tell you. We haven't
23 even --
24 MR. KNOPF: Haven't done that?
25 MR. KABATT: I have not seen a design of the --

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1 MR. KNOPF: I see.
2 MR. KABATT: -- as a discussion.
3 MR. KNOPF: Well, let's look to the West Lane lay-
4 by. Does that -- that we do have the dimensions for, don't
5 we?
6 MR. KABATT: We do.
7 MR. KNOPF: Okay. And how long is that?
8 MR. KABATT: It's 40 feet, but I'll confirm.
9 That's its architectural scale. It's -- no, it's --
10 MS. HARRIS: Oh, that's an architect?
11 MR. KABATT: Yes, that's an architectural sketch.
12 MR. KABATT: It's 40 feet.
13 MR. KNOPF: 40 feet? And what, what is the
14 requirement in Montgomery County for a regular parking lot
15 for a car, for the length of the car space?
16 MR. KABATT: Within a parking lot?
17 MR. KNOPF: Well, in a parking -- what's a regular
18 parking whether it's garage, parking lot?
19 MS. ROBESON: Do you mean a space?
20 MR. KNOPF: The space, what is it for a car?
21 There's dimensions the County Code says that is normal for a
22 regular-size car you have to have a space of such and such a
23 width and such and such a length, depth, and what is that?
24 MR. KABATT: The length is 18 feet.
25 MR. KNOPF: 18 feet? So applying that standard,

1 what, we could get two cars into this lay-by?
 2 MR. KABATT: Yes.
 3 MR. KNOPF: Now and how -- well, what, how many --
 4 the type of truck, I'm going to call it a box truck, can you
 5 tell me if I'm wrong, the UPS comes with its boxes, a UPS
 6 traditional truck, I know they have different size trucks,
 7 but the normal delivery truck, is that called a box truck?
 8 MR. KABATT: I would say those are more,
 9 classified as delivery trucks than --
 10 MR. KNOPF: Well, what is the length of those?
 11 MR. KABATT: They are about, they're about 15 to
 12 20 feet.
 13 MR. KNOPF: 15 to 20? Okay. So we could get two
 14 of those in a lay-by?
 15 MR. KABATT: Yes.
 16 MR. KNOPF: The theory if, however, if the lay-by
 17 is empty and the first truck, if there is a car or a truck
 18 parked in the lay-by already that isn't pulled all the way
 19 up at the very end of the lay-by, if they left some room so
 20 they can pull out without struggling and turning the wheels,
 21 so say they're six feet from the edge, do you already got a
 22 situation where the next vehicle that wants to pull into the
 23 lay-by was going to have to do a very careful parking job,
 24 will they not? They'll have to pull up parallel, back-up
 25 and turn wheels to get into that space?

1 MR. KABATT: Well, the lay-by lanes also, they
 2 have the tapered edges so you can pull in and pull out in an
 3 easier movement than if it was a 93.
 4 MR. KNOPF: So you could go all the way up, take
 5 full advantage of the ramp to the edge until you have full
 6 advantage of the total 40 feet?
 7 MR. KABATT: Yes, you would have advantage of the
 8 40 feet and then I would also say that there's delivery
 9 vehicles, as I said yesterday, are there for about five
 10 minutes or so.
 11 MR. KNOPF: I see. And are the delivery vehicles
 12 also having, you frequently observed not, maybe not on this
 13 street, that if there's any maneuvering for parking
 14 involved, they just pull up and leave it in the street,
 15 double-parking, running in and out?
 16 MR. KABATT: I have seen UPS trucks pull along the
 17 curb and run into a building.
 18 MR. KNOPF: And you've also seen them double-park.
 19 If there's cars parked at the curb, they just pull up next
 20 to, parallel to the car and just sit here in the street and
 21 running in to do their job?
 22 MR. KABATT: In urban areas --
 23 MR. KNOPF: Yes.
 24 MR. KABATT: -- I have seen them.
 25 MR. KNOPF: You have seen them? Okay. Thank you.

1 Now if there's 120 units, and there could be 120 units in
 2 this building, right?
 3 MR. KABATT: Yes.
 4 MR. KNOPF: Okay. And if, let's assume a certain
 5 percentage of people when they're moving in have a couch,
 6 that wouldn't fit into the UPS truck, would it? It would
 7 come in a larger truck, would it not?
 8 MR. KABATT: Generally, yes.
 9 MR. KNOPF: Yes? And what size is that larger
 10 truck? I imagine there's a range of sizes, but let's go to
 11 the next one beyond the UPS, 15 feet, what are we talking
 12 about 25 feet, 20 feet, 40 feet? What are the options that
 13 could come with delivery?
 14 MR. KABATT: Anywhere from, you have 10-foot
 15 trucks, you have 14-foot trucks, 7-foot trucks, 20-foot
 16 trucks, 30-foot trucks.
 17 MS. ROBESON: What's the next -- okay.
 18 MR. KNOPF: 30-foot trucks? And a moving van?
 19 The next step would be a large moving van or there's
 20 something between 30 feet?
 21 MR. KABATT: There's the 30-foot, it's called a
 22 single unit truck, single unit vehicle, and the next design
 23 vehicle is called a WB 40.
 24 MR. KNOPF: WP?
 25 MR. KABATT: WB as in --

1 MR. KNOPF: B?
 2 MR. KABATT: -- bravo.
 3 MR. KNOPF: WB 40? Okay.
 4 MR. KABATT: That indicates that's a 40-foot
 5 trailer.
 6 MR. KNOPF: I see.
 7 MR. KABATT: There also is a single unit, 40-foot
 8 truck that the difference there is one, as the cab that
 9 articulates and the other ones does not.
 10 MR. KNOPF: So would you agree with me that if we
 11 have one of those 40-foot trucks, they wouldn't fit into the
 12 40-foot lay-by?
 13 MR. KABATT: The WB 40, well, I think the engineer
 14 has the, approximately, I'm not sure that that truck would
 15 fit in the lay-by because it then tapers, but many people
 16 testified to that.
 17 MR. KNOPF: But you don't know whether it would
 18 fit or not?
 19 MR. KABATT: Well, I understand that that WB 40
 20 truck with the tapers would be able to fit into that lay-by.
 21 MR. KNOPF: Then if the lay-by is 40 feet, they
 22 can fit a 40-foot truck into that?
 23 MR. KABATT: Yes.
 24 MR. KNOPF: And would you agree with me that he's
 25 just going to pull in? He'd have to maneuver to park that?

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1 MS. ROBESON: Mr. -- I think, Mr. Kabatt, are you
2 basing your answer on what the engineer has told you or --
3 MR. KABATT: Well, I had seen the sweeps, I just,
4 I did not run them --
5 MS. ROBESON: When you mean the sweeps, the --
6 MR. KABATT: They're --
7 MS. ROBESON: -- the exhibits?
8 MR. KABATT: The auto turns, yes, the exhibits
9 that --
10 MS. ROBESON: Okay. And you're a civil -- are you
11 a civil engineer as well?
12 MR. KABATT: My degree is in civil engineering,
13 but my work capacity is transportation.
14 MS. ROBESON: These may be more appropriate for
15 the civil.
16 MR. KNOPF: Well, the only reason I was, not the
17 only reason, the reason I was asking is he gave an opinion
18 that this was of the maximum safety, and events and so on
19 and --
20 MS. ROBESON: That's correct.
21 MR. KNOPF: -- an internal, and that an internal,
22 what was the thing, vehicular and pedestrian points of
23 interest are safe, adequate and efficient and I just want to
24 see what he based that on. But I won't pursue that.
25 MS. ROBESON: Okay.

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1 MR. KNOPF: I think I made my point. Would you
2 just let me ask another question? So far I focused only on
3 the length of the vehicle. How deep width-wise is the
4 space, the, this lay-by and would a box truck or a moving
5 truck, assume they're parked in that space, protrude into
6 the driving lane because the width is insufficient to
7 contain the whole vehicle?
8 MR. KABATT: The width of the lay-by of West Lane
9 is six feet.
10 MR. KNOPF: And what, excuse me, what did you say
11 the width is required under the County Code for a parking
12 space?
13 MR. KABATT: The width --
14 MR. KNOPF: The width.
15 MR. KABATT: -- of a --
16 MR. KNOPF: Of a normal, for a regular car when
17 you have to design a parking lot, parking spaces and
18 building, do you have -- you said it was 18 feet in length,
19 I believe, and what is the width?
20 MR. KABATT: In a parking lot --
21 MR. KNOPF: Yes.
22 MR. KABATT: -- the spaces are generally 8 feet
23 wide.
24 MR. KNOPF: 8 feet? So you're saying this is six
25 feet? I just wanted that as a reference, so okay. And how

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1 wide then is the van, a UPS, normal UPS -- not a van, a
2 truck or whatever we're going to call it, delivery vehicle,
3 why don't we do it that way, that sounds neutral?
4 MR. KABATT: Yeah. They could be, depending on
5 their size, they could be six to eight feet.
6 MR. KNOPF: Six to eight feet? So even if we had
7 a, if we had an 8-foot one, obviously some portion of that
8 vehicle will stick out into the travel lane?
9 MR. KABATT: Correct.
10 MR. KNOPF: Okay. And that would be true whether
11 it's on West Lane or on Montgomery Lane or are you saying --
12 MR. KABATT: If they were both 6-feet wide and
13 you've got an 8-foot --
14 MR. KNOPF: And you don't --
15 MR. KNOPF: -- but the truck, those --
16 MR. KABATT: Okay. So, and I just want to -- just
17 one other thing, I'm sorry, you said the box, a box truck --
18 is box truck the type of thing that you might rent from U-
19 haul as a -- I'll take that -- U-haul has all size of
20 trucks, don't they, all different sizes?
21 MR. KABATT: They do.
22 MR. KNOPF: Is a typical box truck about 26 feet
23 in length or you don't know?
24 MR. KABATT: No, there's like -- I think the sizes
25 that I went through a few minutes ago, a box truck is that

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1 general term. You can see them up to the 30-foot length,
2 but again they could be 10-foot, 14, 17, and that's the size
3 truck that we believe will be using this, coming to this
4 building.
5 MR. KNOPF: Okay. And just again, as I remember
6 correctly, you're saying that in terms for the garage, to go
7 down into the garage and use that loading facility, the
8 garage, do I understand you correctly to say that larger
9 moving van vehicles would not be going down and not using
10 that area in the garage, is that correct?
11 MR. KABATT: Right. I would understand that the
12 truck would not go into the garage.
13 MR. KNOPF: And what did you say the height of the
14 door was at the garage? Would that be another consideration
15 as to whether the vehicle can get in, not only the width and
16 the length, but the height?
17 MR. KABATT: The height, yes.
18 MR. KNOPF: What is the height of the entranceway
19 in the garage?
20 MR. KABATT: I'd have to measure it, but from
21 reviewing the plans, I recall it being about 10 feet, six
22 inches.
23 MR. KNOPF: 10 feet, six inches? And what is your
24 understanding of the height of a normal delivery vehicle?
25 MR. KABATT: Is this the UPS?

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1 MR. KNOPF: UPS.
2 MR. KABATT: The UPS trucks, delivery vehicles or
3 vans, they could be six to eight feet in length.
4 MR. KNOPF: Six to eight feet? And what about the
5 box trucks, the next time, those that are --
6 MR. KABATT: Yes, they --
7 MR. KNOPF: Do they exceed 10 feet?
8 MR. KABATT: They could be 10 feet. A 14-foot U-
9 haul truck is about 10 feet. The smaller 10-foot truck is
10 eight feet, seven inches.
11 MR. KNOPF: And I -- now I asked you about the
12 garage to go down into the garage. There, is the loading --
13 there's another loading area on that exhibit next to the
14 garage door and I guess that's in the building also, but it
15 doesn't go down into the garage. Could you point to that so
16 you both, make sure we're talking about the same thing.
17 MR. KABATT: Are you referring to the loading spot
18 marked in red --
19 MR. KNOPF: Yes.
20 MR. KABATT: -- on Exhibit 89?
21 MR. KNOPF: Right. Now does that have a garage
22 door?
23 MR. KABATT: Yes.
24 MR. KNOPF: And what would be the height there?
25 MR. KABATT: Without seeing the elevation and from

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1 my earlier review of the plans, I believe it's 11 feet.
2 MR. KNOPF: 11 feet?
3 MR. KABATT: Yes.
4 MR. KNOPF: And what's the, I believe you
5 testified and I could be, my memory could be wrong, the
6 loading area, the length of that loading area is what, how
7 many feet is that? Refresh my recollection.
8 MR. KABATT: Inside the building is 22 feet.
9 MR. KNOPF: 22 feet? I see. And if we had a
10 moving van, something that carried furniture that was able
11 to fit within that 11 feet, are vans longer than 22 feet?
12 MR. KABATT: There are some vans that are longer
13 than 22 feet.
14 MR. KNOPF: Okay. By the way, that's --
15 MR. KABATT: Some trucks are longer than that.
16 MR. KNOPF: Thank you. Did, just currently,
17 since that garage door is on here, let's assume you're
18 absolutely correct, there is visitor parking and someone
19 coming to visit. How do I get in? Do I have to first stop
20 by the front door, go in and ask the desk to --
21 MS. HARRIS: Objection. That's an operational
22 question that the traffic engineer is not, doesn't have the
23 knowledge to answer.
24 MR. KNOPF: But he said this operates at maximum
25 efficiency.

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1 MS. ROBESON: Don't --
2 MR. KNOPF: Excuse me.
3 MS. ROBESON: Just a second. I think it does go
4 to, I think it does go to onsite circulation because he's
5 trying to ascertain whether they will have to stop or not
6 stop and I assume you will have some kind of rebuttal as the
7 whole testimony has been on operations. So to the extent
8 you know, can you answer the question?
9 MR. KABATT: Yes. This building in particular,
10 those details are typically worked out at later stages and
11 not at a zoning stage, but in my experience with buildings
12 of this size and use, a visitor would contact the person
13 they're going to visit and they would either come down and
14 meet them to get them into the garage or they would go into
15 the front lobby and get a pass. Another operation is that
16 you could pull up to the garage door and they have an
17 intercom system and the person at the front desk would open
18 the door for you.
19 MR. KNOPF: So, but is it fair to say you don't
20 know at this stage what, if any, system they're going to
21 have?
22 MR. KABATT: That has not been worked out, yes, to
23 my knowledge.
24 MR. KNOPF: You said, I believe, that you've
25 observed on the street, and now I'm talking about the

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1 eastern part, near the Edgemoor and Woodmont area of the
2 street, you said you observed parking on both sides of the
3 street?
4 MR. KABATT: You're referring to Montgomery Lane?
5 MR. KABATT: Yes, I'm sorry, Montgomery Lane,
6 thank you.
7 MR. KABATT: By the Edgemoor. Yeah, there's the
8 segment of Montgomery Lane between Woodmont Avenue and West
9 Lane. There's on street parking on both the north side and
10 the south side.
11 MR. KNOPF: And I believe you testified that the
12 original master, Sector Plan did seem to indicate there was
13 only going to be parking on one side of the street?
14 MR. KABATT: Correct.
15 MR. KNOPF: Thank you. So would you -- do you
16 know why they added parking on both sides, would that not
17 indicate there was a need for more parking spaces and that's
18 why they have parking on both sides?
19 MR. KABATT: I don't know the history as to why
20 it's on both sides.
21 MR. KNOPF: Okay. I thought you also said that
22 you had seen, you had seen traffic congestion on the eastern
23 part of that street due to parked vehicles, do I recall that
24 correctly? And I thought that the -- do I recall that you
25 said that?

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1 MR. KABATT: I think I stated this a couple of
2 times, but I, in my observations in the street when I was
3 out there --
4 MR. KNOPF: Yes?
5 MR. KABATT: -- I had seen the vehicles parked
6 outside of the designated parking areas, but I have not seen
7 the double-parked vehicles.
8 MR. KNOPF: Okay. So when you say -- I'm sorry,
9 when you say outside the designated parking areas, are these
10 indentations in the curb where they're supposed to pull off,
11 I mean like lay-by areas and what is the designated parking
12 area?
13 MR. KABATT: Well, I'd say designated area because
14 the north side, they do have the cut-outs to park and then
15 there is a cut-out to a lay-by.
16 MR. KNOPF: So you're referring --
17 MR. KABATT: And there's on the south side, it's
18 curb parking.
19 MR. KNOPF: I see.
20 MR. KABATT: And if you park in between two signs
21 that say that you're allowed to park there.
22 MR. KNOPF: Parking. Okay. And you said you saw
23 parking outside of those areas?
24 MR. KABATT: On that south side vehicles would be
25 parked on the outside of those two signs, yes.

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1 MR. KNOPF: And did that mean they protruded into
2 the driving, the travel lane?
3 MR. KABATT: Well, not any more than a parked
4 vehicle, it's just that they were, again, longer than what
5 was that designated area.
6 MR. KNOPF: What I'm trying to understand is I
7 thought the lanes were rather narrow on Montgomery Lane, so
8 if they kind of parked a car along the side, there was not,
9 if it was an indentation, there might be enough room to have
10 parked car along the side and to have a full travel lane,
11 that's what I'm trying to understand, as to whether that
12 decreases the travel lane area.
13 MR. KABATT: Montgomery Lane generally --
14 MS. ROBESON: Can you clarify for me where is --
15 on the, how about 106(b)?
16 MS. HARRIS: (b)?
17 MS. ROBESON: Is that what it is? Can you just
18 clarify for me where you saw the parked cars parked
19 illegally because I'm confused about it?
20 MR. KABATT: Okay. On 106(b), I'm looking at the
21 Edgemoor Highrise.
22 MS. ROBESON: Yes.
23 MR. KABATT: And 106(b) there's the two darker
24 gray and those are the parking areas.
25 MS. ROBESON: Are they lay-bys or are they actual,

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1 designated parking areas?
2 MR. KABATT: The one to the east --
3 MS. ROBESON: Yes.
4 MR. KABATT: -- so Woodmont Avenue is the actual
5 parking spaces on the north side of the street and the one
6 on the --
7 MS. ROBESON: To the west?
8 MR. KABATT: -- west side is a lay-by.
9 MS. ROBESON: Okay. And where did you see the
10 cars illegally parked?
11 MR. KABATT: So on the south side of Montgomery
12 Lane opposite the lay-by in the parking lane is the general
13 area of the on street parking.
14 MS. ROBESON: Okay.
15 MR. KABATT: And then, so that would be where on
16 occasion you would see the vehicles parked outside of those
17 lanes.
18 MS. ROBESON: And what is the width there, the
19 same as the width past the do not enter signs to the west of
20 the do not enter signs or is it wider?
21 MR. KABATT: Montgomery Lane is -- there's some
22 variance in the exact width.
23 MS. ROBESON: That's what I recall.
24 MR. KABATT: It's generally 20 feet. It actually
25 goes from 19 to 20, approximately 21 and to 20 feet, but in

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1 this area it's generally the paving section of the travel
2 lanes, including that parking lane on the south side is
3 approximately 20 feet wide.
4 MS. ROBESON: Okay. So does the 20 feet include
5 the travel lane, I mean does the 20 feet include the parking
6 area or is the parking area in addition to the travel lane?
7 MR. KABATT: The 20 feet includes the parking area
8 on the south side of the street. It does not include the
9 cut-out, the parking area --
10 MS. ROBESON: The cuts?
11 MR. KABATT: -- on the north side.
12 MS. ROBESON: Okay. So where did you see the
13 illegal cars, illegally parked cars, not stolen?
14 MR. KABATT: They were -- so that parking on the
15 south side is generally across from the Edgemoor Highrise.
16 MS. ROBESON: Okay.
17 MR. KABATT: And this exhibit is not showing the
18 exact limits on that parking.
19 MS. ROBESON: Right.
20 MR. KABATT: But it would be, because you're
21 traveling west toward West Lane outside that parking area on
22 the south side and then also on the east side, you can see
23 there's a driveway --
24 MS. ROBESON: Yes.
25 MR. KABATT: -- or drive aisle between City Homes

1 on the east side.
 2 MS. ROBESON: So was it blocking that drive aisle
 3 through the City Homes?
 4 MR. KABATT: On my occasions being out there, I
 5 have not seen driveways to City Homes being blocked.
 6 MS. ROBESON: Okay. Okay, I'm sorry to interrupt.
 7 MR. KNOPF: No, no, that's -- you've asked --
 8 that's what I wanted to find out and you guys do better than
 9 I do. Just one minor thing, the Hearing Examiner assumed
 10 the vehicles parked were cars. Did you observe service
 11 vehicles rather than cars that parked any time along there
 12 in that area? By service vehicles I mean like panel trucks
 13 for plumbers or electricians and so on.
 14 MR. KABATT: I have seen electricians or lawn care
 15 or landscaping, I guess not really lawn care, but --
 16 MR. KNOPF: Thank you. I believe you testified
 17 your principle concern about traffic was during the a.m. to
 18 p.m., is that not your focus on number of trips and how the
 19 road operated?
 20 MR. KABATT: Yes, per the guidelines.
 21 MR. KNOPF: Right. So did you -- you personally
 22 observed the operation of the street then at those hours,
 23 a.m. peak and p.m. peak?
 24 MR. KABATT: I have been out there during a.m. and
 25 p.m. peak hours.

1 MR. KNOPF: Would you agree with me that service
 2 vehicles and delivery vehicles try to avoid the a.m. and
 3 p.m. peak and so tend to concentrate in between those peaks
 4 in terms of when they will do their work and park on the
 5 streets?
 6 MR. KABATT: I agree with that, yeah.
 7 MR. KNOPF: Thank you. Do you, are you aware of
 8 any studies or do you have any information for the Bethesda
 9 central business district, the street or even Montgomery
 10 County as to the number of service vehicles, by service
 11 vehicles I mean from repair to delivery vehicles whether
 12 it's the cleaners or computer repair guy or the painter and
 13 so on, how many units, how many trips are generated on the
 14 average year, whatever, by a rental unit or co-op or even
 15 single-family home?
 16 MR. KABATT: I don't know that off the top of my
 17 head.
 18 MR. KNOPF: You don't know? Okay. Just one other
 19 question. You said you observed some service vehicles
 20 parked on the street down by the Edgemoor, is that correct?
 21 MR. KABATT: That's correct.
 22 MR. KNOPF: Is there a, the parking on that
 23 street, is there, is it limited in terms of time by signage?
 24 MR. KABATT: It used to be 2-hour parking, but I
 25 think that limit has been --

1 MR. KNOPF: Well, if the limit was there, has your
 2 experience been that service vehicles sometimes take longer
 3 than two hours to do their work?
 4 MR. KABATT: I don't know the reason why that --
 5 you can see it on the sign, but I don't know why that was
 6 eliminated.
 7 MR. KNOPF: Are you sure it was eliminated?
 8 MR. KABATT: I recall that the signs, through your
 9 typical green and white parking signs, and when I looked at
 10 them, it looked like there was a time limit on there that
 11 had been whited out or --
 12 MR. KNOPF: Oh, whited out?
 13 MR. KABATT: -- renewed.
 14 MR. KNOPF: All right. Thank you. I have no
 15 further questions.
 16 MS. ROBESON: All right. Redirect?
 17 MS. HARRIS: Thank you. Mr. Kabatt, I first want
 18 to respond to two questions that the Hearing Examiner asked
 19 yesterday that you've had a chance to investigate. One is
 20 the question came up as to whether there are parking signs
 21 on Montgomery Lane west of West Lane. Can you -- are there
 22 parking signs on Montgomery Lane west of West Lane?
 23 MR. KABATT: I did go back and review my field
 24 notes and there are no parking signs on Montgomery Lane west
 25 of West Lane.

1 MS. HARRIS: There are no parking -- okay.
 2 MR. KABATT: Yes. So you --
 3 MS. ROBESON: That was a hard one.
 4 MS. HARRIS: I know.
 5 MS. ROBESON: Between the two wests and the two
 6 double negatives --
 7 MS. HARRIS: I know it's difficult.
 8 MS. ROBESON: Okay. Go ahead.
 9 MS. HARRIS: And the second one, which won't be
 10 quite so difficult grammatically, is, were, are there any
 11 requests, are there any no, no outlet signs at the
 12 intersection of Montgomery Lane and Arlington Road?
 13 MR. KABATT: There are. There are no outlet
 14 signs.
 15 MS. HARRIS: Okay. Thank you. And how many or
 16 were you able to observe that?
 17 MR. KABATT: Two --
 18 MS. HARRIS: Okay.
 19 MR. KABATT: -- that I saw.
 20 MS. HARRIS: Thank you. Okay. Can you please
 21 reiterate how many loading spaces are being, how many are
 22 recommended by the Montgomery County guidelines with respect
 23 to this project?
 24 MR. KABATT: There are three loading spaces
 25 proposed with this project and they're required to provide

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1 one --

2 MS. HARRIS: And is the --

3 MR. KABATT: -- per the guidelines.

4 MS. HARRIS: Okay. And is the provision of one

5 space typical in a project like this?

6 MR. KABATT: Yes.

7 MS. HARRIS: Can you give any examples of other

8 projects in Montgomery County that have, that are similarly

9 sized that have just one space or have been approved for

10 just one space?

11 MR. KABATT: Yes, in fact, I was involved in a

12 case that just went through the project plan on Old

13 Georgetown Road and Commerce Lane and both DOT and DPS, the

14 Department of Permitting Services, agreed to one loading

15 space for that building and that building so happens to be

16 about 120 units as well.

17 MS. HARRIS: Thank you. So with subject

18 properties providing three times what is normally

19 recommended, is that correct?

20 MR. KABATT: That's correct.

21 MS. HARRIS: You also testified yesterday as to

22 the possibility of a fourth loading space on Montgomery

23 Lane. In your opinion, is this necessary?

24 MR. KABATT: Absolutely not. That's why I did

25 want to clarify. Again, we think that one loading space

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1 that loading criteria calls for is adequate. We're

2 providing two additional beyond that. This fourth loading

3 space had come up because of conversations and because of

4 there being some concerns about delivery and service along

5 Montgomery Lane, so we approached DOT. I went to them and

6 just asked them if they would entertain a lay-by on that

7 lane but, again, we think that the loading we're providing

8 is more than adequate with three spaces.

9 MS. HARRIS: So is it correct to say that while

10 such a lay-by could be physically accommodated, the

11 applicant, to your knowledge, has not advocated it, is that

12 correct?

13 MR. KABATT: That's, yes, that is correct.

14 MS. HARRIS: Okay. Thank you. Will the project's

15 three loading spaces provide an improved situation with

16 respect to the loading which currently exists on the

17 property?

18 MR. KABATT: Yes, there's four buildings. They're

19 home-like structures, but they're businesses that operate in

20 there. I think there's about six or so individual

21 businesses in those four structures and they, those

22 structures, they have small parking lots for a few vehicles,

23 but they don't have designated loading areas.

24 MS. HARRIS: And, presumably, being businesses,

25 they have deliveries that are being made during the day, is

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1 that correct?

2 MR. KABATT: Yes.

3 MS. HARRIS: Okay. I'd like to revisit the

4 loading accommodations with respect to move-ins?

5 MS. ROBESON: I'm sorry, what did you say?

6 MS. HARRIS: With move-ins.

7 MS. ROBESON: Oh, okay.

8 MS. HARRIS: Moving in. What's the largest truck

9 that can be accommodated in the loading bays in the

10 building?

11 MR. KABATT: 30 feet.

12 MS. HARRIS: And is this truck intended to service

13 what type of household?

14 MR. KABATT: A 30-foot truck, according to U-

15 haul's webpage, would, could accommodate a 3 to 4-bedroom

16 home.

17 MS. HARRIS: Okay. So what does the U-haul

18 information say with respect to the type of truck that would

19 typically accommodate the average size unit in this project,

20 which is approximately 860 square feet?

21 MR. KABATT: U-haul recommends that you use a 14-

22 foot truck.

23 MS. HARRIS: And then just to be safe, we, the

24 project may have units as large as 1,100 square feet, 1,150.

25 What type, what size truck would be necessary per the U-haul

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1 information?

2 MR. KABATT: 17 feet.

3 MS. HARRIS: And so, and the loading bay can

4 accommodate a 17-foot truck, is that correct?

5 MR. KABATT: Yes.

6 MS. HARRIS: Thank you. And the lay-by, I assume,

7 can also accommodate that size truck?

8 MR. KABATT: Two of them, yes.

9 MS. HARRIS: Thank you. Okay. You testified

10 yesterday that it's common practice for moving companies to

11 transfer contents from a large moving van if someone is

12 moving across the street and those households are

13 consolidated into one van to a more reasonably sized urban-

14 type truck, is that correct?

15 MR. KABATT: That is correct.

16 MS. HARRIS: And is this a common situation in an

17 urbanized area?

18 MR. KABATT: Yes, and my experience with loading

19 for these types of buildings, it is common that these moving

20 companies have -- they move across the country. They

21 investigate what their options are at the buildings they're

22 going to and the streets that they're using to access the

23 loading facility.

24 MS. HARRIS: So, presumably, when you call up the

25 moving company and say I want to, I need you to move me over

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1 to West Lane, they would either ask or make personal
2 observation in terms of what kind of truck can be
3 accommodate at the destination?
4 MR. KABATT: That's correct.
5 MS. HARRIS: So in your opinion is it quite remote
6 that semi-size moving truck would ever be on West Lane?
7 MR. KABATT: Yes, I -- that is the case.
8 MS. HARRIS: There was some discussion about the
9 lay-by on West Lane and the potential that cars may be, that
10 it's six feet in length and the cars may be, may be slightly
11 wider than that. Is that similar, is a similar situation
12 occurring on the lay-by in front of the Highrise Edgemoor in
13 terms of the width of the lay-by and the cars?
14 MR. KABATT: Yes.
15 MS. HARRIS: And on Montgomery Lane in front of
16 the Highrise Edgemoor, how many -- that's the one-way
17 section, but how many trips during the peak hour on
18 Montgomery Lane?
19 MR. KABATT: On Montgomery Lane?
20 MS. HARRIS: Yes.
21 MR. KABATT: There's, during the peak hour it's
22 the p.m. peak hour that has more, but there's, well, that
23 one-way section, it's, that's about 110, 120, but the peak
24 on Montgomery Lane itself is 155 peak hour trips.
25 MS. HARRIS: Okay. But 120 in that section

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1 possibly?
2 MR. KABATT: Yes.
3 MS. HARRIS: And how many peak hour trips on West
4 Lane?
5 MR. KABATT: On West Lane there is, again, just to
6 make sure I have my numbers straight here, on West Lane
7 there are, today there are about 28 peak hour trips and then
8 in the future, in the future there would be about 58 peak
9 hour trips.
10 MS. HARRIS: So one car every minute, is that
11 correct?
12 MR. KABATT: Yes.
13 MS. HARRIS: So if there were, happened to be a
14 car or two cars in the lay-by, and there's one car every
15 minute on West Lane, do you foresee any problems in terms of
16 utilization of the lay-by when cars are going by West Lane?
17 MR. KABATT: No, I do not. West Lane is 22 feet,
18 will be 22 feet wide, two 11-foot travel lanes.
19 MS. HARRIS: Okay. Thank you. In terms of, you
20 testified in terms of the census information and you noted
21 that with respect to ownership it could be distorted because
22 there are single -- it doesn't distinguish between single-
23 family homes and condominiums, is that correct?
24 MR. KABATT: That's correct.
25 MS. HARRIS: And then you also noted -- is it

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1 correct that you also noted that the single-family homes
2 likely, that the car ownership could be greater in a single-
3 family home, is that correct?
4 MR. KABATT: That's correct.
5 MS. HARRIS: And then would you also -- in your
6 opinion would you also conclude that in condominium units
7 that average 2,500 square feet, that the car ownership may,
8 in fact, be greater in a condo, condo of that size versus a
9 unit whether rental or condo of 860 square feet?
10 MR. KABATT: Yes.
11 MS. HARRIS: Thank you. You testified yesterday
12 that there would some excess parking available in the
13 building and that to the extent more parking was needed,
14 guests of the residence could park in one of the nearby
15 commercial or public parking garages, correct?
16 MR. KABATT: That's correct.
17 MS. HARRIS: And you have worked on a number of
18 projects in urbanized areas?
19 MR. KABATT: Yes, both here in Montgomery County
20 and Washington, D.C., and in Arlington County.
21 MS. HARRIS: Okay. And would -- if you, if a
22 guest were not able to park in the building and had to park
23 in one of these garages two or three blocks away, is that in
24 any way unexpected given the urbanized nature of this area
25 of Bethesda?

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1 MR. KABATT: No, I think in an urbanized area
2 people expect that there, people expect to walk, you know, a
3 certain distance to get to their destination.
4 MS. HARRIS: Okay. And then how about, say you
5 visit someone in a single-family residence when you're going
6 to a dinner party, do you ever have to park two blocks away,
7 three blocks away?
8 MR. KABATT: Sure. I guess, you know, it all
9 depends on what part of the County or streets you're on, but
10 you know there's occasions where, you know, you're having a
11 party at your house and obviously your front of the house
12 isn't going to accommodate 10 vehicles and then your
13 neighbors park, so you may have to park two or three blocks
14 away to get to that house.
15 MS. HARRIS: So there's really, whether it's an
16 urbanized area such as what were, that were the size located
17 or single-family neighborhood, walking two or three blocks
18 is in no way out of the ordinary or the normal realm of
19 expectation for parking for guests?
20 MR. KABATT: No, particularly in an urbanized
21 area.
22 MS. HARRIS: So it sounds like what you're saying,
23 the only difference may be whether you're parking on the
24 street in front of a single-family home or maybe parking in
25 a parking garage, is that correct?

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1 MR. KABATT: Correct.
2 MS. HARRIS: Okay.
3 MS. ROBESON: Okay, but not so much leading the
4 witness --
5 MS. HARRIS: Okay.
6 MS. ROBESON: -- okay?
7 MS. HARRIS: Okay. Ears are wide open.
8 MS. ROBESON: Good.
9 MS. HARRIS: In response to Mr. Abrams's question
10 regarding the -- Mr. Abrams yesterday testified, or asked
11 you the question that Montgomery Avenue lane width was
12 comparable to the drive aisle way, is that correct?
13 MR. KABATT: Yes.
14 MS. HARRIS: And then you had compared -- what did
15 you compare the width --
16 MS. ROBESON: Just a second. Just a second.
17 Excuse me, I can't -- it's difficult for me to hear --
18 UNIDENTIFIED SPEAKER: Sorry.
19 MS. ROBESON: -- what Ms. Harris is saying. Ms.
20 Harris, I'm sorry, to interrupt.
21 MS. HARRIS: That's okay.
22 MS. ROBESON: Can you keep going?
23 MS. HARRIS: And then you prepared the width of
24 the lanes on Montgomery Avenue to what street that most of
25 the people in the room seem to be familiar with?

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1 MR. KABATT: Well, Connecticut Avenue in Chevy
2 Chase has 10-foot travel lanes and that -- Connecticut
3 Avenue carries approximately 3,700 peak hour trips on an
4 average day.
5 MS. HARRIS: Okay. And the --
6 MR. KABATT: And West Lane, or Montgomery Lane
7 carries, as I mentioned a few minutes ago, 155 peak hour
8 trips in a 2-lane section and they're 10-foot travel lanes.
9 MS. ROBESON: Okay. Just on that, I will also
10 disclose, and I'm familiar with the date here, the case that
11 was on Connecticut Avenue that they had a tremendous parking
12 problem because of those lanes because of drop-off and pick-
13 up. So I'm just disclosing that.
14 MS. HARRIS: Can you disclose where on the, on
15 Connecticut?
16 MS. ROBESON: I can't remember, but I can -- it
17 was 10-foot travel lanes.
18 MR. KNOPF: Yes.
19 MS. ROBESON: And that doesn't mean I'm making a
20 judgment here or anywhere, I'm just disclosing that there
21 were problems with drop-off and pick-up which were non-peak
22 hours. Now it was peak in the a.m. and non-peak in the p.m.
23 I tried to say, you know, I'm trying to give you a chance.
24 It doesn't mean I made a decision, I just, when these things
25 pop into my head, I want to be fair and let you know that

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1 I'm thinking of situations where the 10 feet wasn't, you
2 know, did create some problems.
3 MS. HARRIS: Well perhaps it would be helpful to
4 just highlight again the differences between the 10-foot
5 drive aisle, excuse me, the 10-foot wide lane, 10-foot wide
6 lane on Montgomery Lane as compared to the situation on
7 Connecticut Avenue?
8 MR. KABATT: Well, again, Connecticut Avenue
9 carries approximately 3,700 peak hour trips and --
10 MS. HARRIS: So how many cars is that a minute?
11 MR. KABATT: Well, 30, I guess.
12 MS. HARRIS: Right, exactly. That's a test.
13 MR. KABATT: Well, 36 if you --
14 MS. HARRIS: Call it 36.
15 MR. KABATT: That's one every second.
16 MS. HARRIS: Okay. Versus how many every, on
17 Montgomery?
18 MR. KABATT: Well, Montgomery Lane has 155. So if
19 you do your quick math there, that's 155 in an hour, 60
20 minutes, that's three vehicles a minute, less than three
21 vehicles a minute.
22 MS. HARRIS: So that's a significant difference?
23 MR. KABATT: 180 would be three a minute.
24 MS. HARRIS: Thank you. And the speed difference?
25 MR. KABATT: Connecticut Avenue is, I know it's

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1 posted for 30 miles an hour, but they had to put in the
2 speed camera because people were traveling higher than 30
3 miles an hour. Montgomery Lane, Montgomery Lane I don't
4 believe has a posted speed limit, but given its, if that's
5 the case, that means it's usually 25 miles an hour and given
6 its length between Arlington Road and Woodmont, when you
7 expect there to be high speeds, certainly not above 30 miles
8 an hour.
9 MS. HARRIS: Okay. Thank you. There's been a lot
10 of -- I want to go back to parking just for a moment just
11 because there's been a lot of discussion about parking in
12 terms of whether there's enough parking in the building and
13 whether there's enough guest parking. But can you comment
14 on that dynamic as it relates to the building's proximity to
15 the Metro station in terms of expectation of behaviors for
16 the guests and the residents?
17 MR. KABATT: Yes. Well, I would, I would think a
18 building of this size and this size unit, that people would
19 be attracted to living there because of its proximity to
20 Metro and because of the other options of using their means
21 of transportation besides your personal vehicle. And that's
22 even evident in the trip generation rate of .3 trips per
23 unit and that right there suggests that not everybody drives
24 a vehicle when they're going to and from say work or
25 wherever they're going during the peak hours. And also

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1 guests, I live in a rather urbanized area and when I have
2 people over, they always ask me if I can get a guest parking
3 pass in my garage and if I ask the management and if there's
4 not a directum to a parking facility, or there is on-street
5 parking in the area where I live.
6 MS. HARRIS: Thank you. Finally, opposing counsel
7 had a number of questions regarding the parking on the
8 street, noted the illegal parking, noticed that there's
9 sometimes service vehicles out on the street, are these all
10 existing conditions?
11 MR. KABATT: Yes.
12 MS. HARRIS: And is the proposed project in your
13 opinion going to do anything to exacerbate the situation?
14 MR. KABATT: No. In fact, with the three or two
15 additional loading spaces, we think we're more than
16 accommodating our building and hopefully improving the
17 situation out there today.
18 MS. HARRIS: Thank you. That concludes my
19 questions.
20 MS. ROBESON: All right. Recross, Mr. Abrams.
21 MR. ABRAMS: Yes. I want to, first of all, touch
22 on your comparison of the 10-foot lanes on Montgomery Lane
23 and Connecticut Avenue. How many lanes of traffic are there
24 on Connecticut Avenue?
25 MR. KABATT: Six.

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1 MR. ABRAMS: And how many lanes of traffic are
2 there on Montgomery Lane?
3 MR. KABATT: Two.
4 MR. ABRAMS: Now are the drop-offs and pick-ups
5 that occur or would occur on Montgomery Lane the same
6 character, frequency and type as might occur on Connecticut
7 Avenue?
8 MR. KABATT: The residential uses along
9 Connecticut Avenue is the country club. I know there --
10 I've seen on occasion the country club having people park on
11 Connecticut Avenue, but I don't know that there would
12 necessarily be UPS trucks stopping right on Connecticut
13 Avenue.
14 MR. ABRAMS: Well, if somebody attempted to stop
15 on Connecticut Avenue, say during a peak commuter rush hour
16 because they were to drop off somebody or were to pick up
17 somebody, forget about the service or delivery trucks,
18 there's a likelihood that they may end up in an accident
19 like being rear-ended, isn't that correct?
20 MR. KABATT: Well, there are buses that run along
21 Montgomery like that.
22 MR. ABRAMS: Well, let's stick with the vehicles.
23 There are buses, I understand that, but cars, that's what
24 we're talking about. In light of the difference in the
25 speed limits, the number of lanes, the amount of traffic, is

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1 there really any comparison here? Are we really comparing
2 say apples with watermelons in this case?
3 MR. KABATT: Not at all. I would say that the
4 comparison is that if a 10-foot lane is adequate on
5 Connecticut Avenue where it carries so much more, so many
6 more trips during the peak hour than Montgomery Lane, I
7 would say the comparison is that the 10-foot lane on
8 Montgomery Lane is more than that, would handle the 155 peak
9 hour trips.
10 MR. ABRAMS: Now can you provide parking and
11 loading in accord with the minimum requirements in the
12 County with parking standards or whatever you're evaluating
13 it on, can you provide that and still have a problematic and
14 incompatible parking and loading condition for a project?
15 MR. KABATT: To clarify, are you asking for any
16 project? Could you repeat the question?
17 MR. ABRAMS: Okay. If you provide parking and
18 loading based on the minimum code requirements, can you
19 still have a problematic and incompatible parking and
20 loading condition for that project?
21 MR. KABATT: I would say no. I would say the code
22 is designed to meet the, to meet the standard or to figure
23 out how to put public facilities.
24 MR. ABRAMS: And that's your experience as a
25 transportation planner, traffic engineer?

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1 MR. KABATT: Yes.
2 MR. ABRAMS: Truck sizes, you base most of your
3 testimony on U-haul type trucks?
4 MR. KABATT: Yes.
5 MR. ABRAMS: Okay. Would you consider this
6 neighborhood an upscale neighborhood?
7 MR. KABATT: I would.
8 MR. ABRAMS: Now how many of the residents of this
9 building are likely to use and move themselves in a U-haul
10 truck as opposed to using a moving van?
11 MR. KABATT: I'm not certain on who may live in
12 this building, but given the size, I would think a person
13 moving in would try to get a truck that fits the size and I
14 would, we used U-haul because 860-foot units on average,
15 it's been my experience that people do move themselves, but
16 I would also think that a moving company, if they did want
17 to pay for a moving company that they would have trucks that
18 are appropriately sized for that size unit.
19 MR. ABRAMS: Well, I think you testified
20 yesterday, your response to a question, particularly if
21 they're out-of-town movers to a project such as this and
22 they don't have a whole lot of furniture to move, that there
23 are more than one loads for a moving van before they
24 contract to come to a specific geographic area, isn't that
25 what you testified to the other day?

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1 MR. KABATT: I do know that that occurs, yes, and
2 I do remember saying that.
3 MR. ABRAMS: And it's likely to occur here, isn't
4 it?
5 MR. KABATT: But what I also did testify to was
6 that it's common practice for, once that cross country trip
7 gets to Washington, the Washington area, that it may take
8 the, or go to a facility and then redistribute the items in
9 the truck to the smaller trucks to go to the actual
10 destination.
11 MR. ABRAMS: When you say common practice, how do
12 you know it's common practice?
13 MR. KABATT: Just based on my experience on
14 projects in Washington and Bethesda and Arlington, we do not
15 have large tractor trailers coming to apartment buildings of
16 this size.
17 MR. ABRAMS: Is that based upon dealings with
18 specific moving companies, national moving companies?
19 MR. KABATT: I think it's more based on the fact
20 that residential buildings provide a certain loading
21 facility, if any at all, or on, you know, in some other
22 areas if they don't have an actual loading dock or they
23 would have to load on a street and some of these streets are
24 narrow and narrow in terms of what a large tractor trailer
25 can fit on. So they have to use some electronics.

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1 MR. ABRAMS: After people would move into this
2 project, what about new furniture deliveries, what size
3 trucks or vehicles are they going to use?
4 MR. KABATT: I would --
5 MR. ABRAMS: I'm talking about like --
6 MR. KABATT: They --
7 MR. ABRAMS: -- Crate and Barrel or --
8 MR. KABATT: Yes. They can be done 30 foot,
9 that's the 30 truck that I spoke of earlier.
10 MR. ABRAMS: Okay. Now are those trucks big
11 enough to fit into that garage or small enough?
12 MR. KABATT: They would not go into the garage,
13 no.
14 MR. ABRAMS: Would not go in?
15 MR. KABATT: They would go onto the lay-by lane or
16 if they could fit into that loading, in the building loading
17 area that goes to that service corridor.
18 MR. ABRAMS: The Old Georgetown Road and Commerce
19 Lane example, that was in a commercial area, was it not?
20 MR. KABATT: It's right next to the -- there's an
21 office building -- or next to it there's residential on the
22 south side of Old Georgetown.
23 MR. ABRAMS: But that's also across the street
24 from a public parking garage, correct?
25 MR. KABATT: There's a public parking garage on

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1 Woodmont and there's a public parking garage on the east
2 side of Wisconsin Avenue.
3 MR. ABRAMS: Well --
4 MR. KABATT: There's a private garage --
5 MR. ABRAMS: There are --
6 MR. KABATT: -- near the Metro.
7 MR. ABRAMS: -- parking garages in closer
8 proximity to that example than there are to the subject
9 example, subject property.
10 MR. KABATT: There's the --
11 MR. ABRAMS: I mean that's the point I'm trying to
12 find out.
13 MR. KABATT: There's that public parking garage.
14 It's the same one I'm referring to for this case, but it is
15 on the south side of Old Georgetown. But there are -- if
16 you, depending on which one you would go to, there's one to
17 two blocks away and that's the same as you have parking
18 options one to two blocks away on the West Lane.
19 MR. ABRAMS: Other than the library?
20 MR. KABATT: Right. The parking garage that's,
21 well, the parking garage that's on the east side of Woodmont
22 Avenue is at Edgemoor, public parking garage. That's about
23 one to -- that one would be three blocks, but there's the
24 private garages that are closer from the two blocks and
25 there's also the on-street parking on Hampden Lane.

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1 MR. ABRAMS: On Hampden Lane? Have you viewed the
2 parking conditions on Hampden Lane?
3 MR. KABATT: I'm knowledgeable of them. I --
4 MR. ABRAMS: Well, are there restrictions in terms
5 of parking on Hampden Lane?
6 MR. KABATT: I believe they're metered parking
7 spaces.
8 MR. ABRAMS: Is that one of the 25 cents for each
9 15 minutes?
10 MR. KABATT: I don't know the price.
11 MR. ABRAMS: It's not long-term parking, is it,
12 unless you're very rich?
13 MR. KABATT: I don't know the price.
14 MR. ABRAMS: How many parking spaces per unit, if
15 you know, does the new Hampden Lane residential project
16 provide?
17 MR. KABATT: I don't know that.
18 MR. ABRAMS: No further questions.
19 MS. ROBESON: Mr. Knopf.
20 MR. KNOFF: Just -- you mentioned that Connecticut
21 Avenue situation, where Connecticut Avenue, where you come
22 off the Beltway going south, has lanes of what width?
23 MR. KABATT: I that section they are wider.
24 MR. KNOFF: Right. And as you go down toward the
25 District, especially through Chevy Chase Village, don't they

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1 get to be narrower?
2 MR. KABATT: Correct.
3 MR. KNOFF: And don't they ban trucks and buses
4 from that entire area because of the narrowness of the
5 lanes?
6 MR. KABATT: There are truck restrictions, yes,
7 but buses do travel on that section of Connecticut Avenue.
8 MR. KNOFF: But, and the truck restrictions are
9 because the lanes are what, 10 feet?
10 MR. KABATT: I don't know the exact reason, if
11 it's just because the lane widths or if it was some other
12 reason why they restrict the trucks from that area.
13 MR. KNOFF: Thank you. I have no further
14 questions.
15 MS. HARRIS: I have three follow-up questions.
16 MS. ROBESON: Then I have to give recross. You do
17 have rebuttal, okay?
18 MS. HARRIS: Okay.
19 MS. ROBESON: So let's -- I'm going to excuse him
20 for now and you can use your time on rebuttal for that, all
21 right? Thank you, Mr. Kabatt. You are excused. Who is
22 your next witness?
23 MS. HARRIS: Mr. Judd, David Judd, our landscape
24 architect.
25 MS. ROBESON: All right.

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1 MS. HARRIS: Do you want us to proceed?
2 MS. ROBESON: Yes.
3 MS. HARRIS: Okay.
4 MS. ROBESON: Unless you --
5 MS. HARRIS: No, I --
6 MS. ROBESON: -- are asking for a --
7 MS. HARRIS: No, not at all. I --
8 MS. ROBESON: Please raise your right hand.
9 (Witness sworn.)
10 MS. ROBESON: Thank you. Go ahead, Ms. Harris.
11 MS. HARRIS: Thank you. For the record, please
12 state your full name, company and business address.
13 MR. JUDD: My name is, my name is David Judd, Jr.
14 I'm with Studio 39 Landscape Architecture. The address is
15 6416 Grovedale Drive, Suite 100A, Alexandria, Virginia
16 22310.
17 MS. HARRIS: And what's your current position at
18 Studio 39 and what are your responsibilities and position?
19 MR. JUDD: I'm currently a senior project manager.
20 My responsibilities include planning all the way from the
21 concepts, concept days all the way up to construction
22 documentation, mentoring staff, also development of a
23 company-wide detailed library, as well as just quality
24 control for the project as well as management
25 responsibilities.

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1 MS. HARRIS: And how long have you been employed
2 as a landscape architect?
3 MR. JUDD: 23 years and as of last Friday, nine
4 years with Studio 39.
5 MS. HARRIS: Congratulations. Please describe for
6 the record your educational experience.
7 MR. JUDD: I have a master's, well, not a
8 master's, a bachelor of landscape architecture from the
9 University of Georgia, the School of Environmental Design.
10 MS. HARRIS: And are you a licensed landscape
11 architect?
12 MR. JUDD: I'm a licensed landscape architect.
13 MS. HARRIS: Are you licensed in Maryland?
14 MR. JUDD: I am licensed in Maryland, as well as
15 Virginia, West Virginia and North Carolina and Georgia.
16 MS. HARRIS: And have you worked on projects in
17 Montgomery County?
18 MR. JUDD: Yes. I've worked on many different
19 projects in Montgomery County, including the brownstones
20 over there in Park Potomac, in both condo buildings at Our
21 Potomac with Foulger-Pratt, Building E Office Park over in
22 Park Potomac as well. I am currently working on Building D,
23 the open plaza right there and the development of Stoney
24 Springs with Winchester and several others since then.
25 MS. HARRIS: And have you ever worked on any

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1 projects in Bethesda?
2 MR. JUDD: Yes, I have. We worked on a project,
3 the garden plaza renovation which is right there on Old
4 Georgetown Road.
5 MS. HARRIS: Okay. And have you ever presented a
6 landscape project to the, before a Planning Board or
7 Commission?
8 MR. JUDD: I have. I presented to, down in
9 Georgia, in Atlanta and then the surrounding vicinities, as
10 well as Arlington, Alexandria, Falls Church, Rockville.
11 MS. HARRIS: Have you been qualified as an expert
12 before this Board --
13 MR. JUDD: I never have been qualified --
14 MS. HARRIS: -- or this Hearing Examiner?
15 MR. JUDD: -- as an expert.
16 MS. ROBESON: I'm sorry?
17 MR. JUDD: I've never had to be qualified as an
18 expert witness before in any jurisdiction.
19 MS. ROBESON: Okay, in any jurisdiction? All
20 right.
21 MR. JUDD: Right.
22 MS. HARRIS: And despite the fact that he has not
23 previously been qualified as an expert, I think his level of
24 experience and education certainly suggest that he is an
25 expert and --

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1 MS. ROBESON: Okay. Do you have any objections?
2 MR. ABRAMS: No objection.
3 MR. KNOFF: I just -- expert --
4 MS. ROBESON: In --
5 MR. ABRAMS: Landscape --
6 MS. HARRIS: -- the field of landscape
7 architecture.
8 MR. KNOFF: I have no objection.
9 MS. ROBESON: Okay. Just one thing --
10 MR. KNOFF: If, right, all you --
11 MS. ROBESON: -- when they start asking questions,
12 you really do have to answer them. You can't just say why
13 are you asking me that, okay? So I'm just giving you that
14 heads up if that's okay?
15 MR. JUDD: Yes, I've been watching.
16 MS. ROBESON: All right. Go ahead.
17 MS. HARRIS: Are you familiar with the Bethesda
18 Sector Plan?
19 MR. JUDD: Yes, I am.
20 MS. HARRIS: And are you familiar with the subject
21 local map amendment and development plan amendment?
22 MR. JUDD: Yes, I am.
23 MS. HARRIS: Can you please describe your
24 responsibilities with regard to the rezoning and the
25 development plan application?

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1 MR. JUDD: Within the project, I'm responsible for
2 the design of the approved spaces. We have some inactive
3 spaces, as well as the areas in the back and also some
4 treescape on the side.
5 MS. HARRIS: And actually before we go any
6 further, it may be helpful if we can just put up for
7 reference two exhibits --
8 MS. ROBESON: Okay.
9 MS. HARRIS: -- is that okay?
10 MS. ROBESON: That would be helpful. Do you know
11 the numbers? Is it in the 106 series?
12 MS. HARRIS: It's the landscape plan of the street
13 and then the perspective of the -- I'm sorry, the landscape
14 detail of the property and then just the perspective of the
15 public park. I probably knew them at the end of yesterday
16 and now I'm forgetting them. I think they're in the 80
17 range. Oh, I'm sorry.
18 COURT REPORTER: Do you want this one?
19 MS. HARRIS: Yes, that one and then I --
20 MS. ROBESON: Is that 76?
21 MS. HARRIS: Yes.
22 MS. ROBESON: Okay. All right.
23 MS. HARRIS: Can I just -- have you ever had an
24 opportunity to visit the site and are you familiar with the
25 surrounding area?

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1 MR. JUDD: I have visited the site and wanted to
2 make sure what we were doing, the original designs to make
3 sure that we were consistent with the adjacent properties
4 and just the street itself.
5 MS. HARRIS: And then can you please describe the
6 proposed landscape, including the public space and the
7 outdoor pass of the active recreation spaces and you're not
8 limited to the two exhibits that we just, I got tabbed,
9 but --
10 MR. JUDD: Well, I can explain it. The way the --
11 MS. ROBESON: And you're referring to Exhibit 76?
12 MR. JUDD: Exhibit, yes, exhibit, the perspective
13 on Exhibit 76.
14 MS. ROBESON: And can you move back just a little
15 bit?
16 MR. JUDD: I'm sorry.
17 MS. ROBESON: So there. Thank you.
18 MR. JUDD: Sure. The open space and the space
19 includes both active and passive components to it. We have
20 hardscape as well as landscape for the open space, the
21 decoration of open space. Also what we've got is we have
22 areas for sitting, areas for gathering in the park over here
23 that we developed with the new indentation of the building.
24 Also, some seating space along West Lane, as well as a
25 passive facility on the patio in the back, as well as a

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1 green roof, an extensive green roof on the top of the
2 building.
3 MS. HARRIS: Can you refer to the top page please?
4 MR. JUDD: This?
5 MS. HARRIS: And just go through a little bit of
6 that detail.
7 MR. JUDD: And also on Exhibit 50, 86, 86, it
8 shows the streetscape that we have. The streetscape along
9 Montgomery Avenue or, excuse me, Montgomery Lane is
10 consistent with the requirements for the Sector Plan with
11 use of the Willow X, which is the requirement for the
12 street. The seating areas, so we have street trees as well
13 as several little planting here, various shrubs, ground
14 coverings, things like that. We also carry the same theme
15 of tree material coming up West Lane.
16 I also created some seating areas and, again,
17 landscape areas. And then back in the back area, I haven't
18 quite gotten to the point of definition of these spaces, so
19 they're kind of still in the works of being designed.
20 MS. HARRIS: And those are the private spaces
21 that --
22 MR. JUDD: Those are the private spaces, yes.
23 MS. HARRIS: Okay.
24 MR. JUDD: The public spaces along the streets
25 have never been parked.

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1 MS. HARRIS: Thank you. And can you -- how did
2 the public use space improvements in the streetscape, I'm
3 sorry, excuse me one second. Has your design been
4 influenced in any way by Park and Planning staff or the
5 community?
6 MR. JUDD: Yes, definitely, it's, well, the
7 incorporation of the building redesign of the corner space
8 that gave us the opportunity to create a private park here.
9 This is one of the discussions we had with the Planning
10 Board. So with, the indention of the building gave us an
11 opportunity to create the open space, which was along the
12 mixed use street, which is, the whole concept is to create
13 more of a pedestrian flair and also incorporating the
14 different elements in lighting and streetscape, as well as
15 the paving and things like that.
16 And, again, a scenario for people to gather
17 because this is a, a local landmark over here with the
18 library, there's going to be a heavy, a heavy pedestrian
19 flow going through the street, so we're giving them an
20 opportunity to gather here, a little entrance spaces here, a
21 little bit more entrance spaces up on West Lane as well and
22 I'm also going to focus the open space on readily accessible
23 and easily seen spaces. So I'm focusing on the streetscape
24 rather than say before we had previously had the back space
25 back over here as an open space, but per discussions with

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1 the Planning Board, they asked us not to consider that open
2 space, so we designated the spaces that were more easily
3 seen as the open space.
4 MS. HARRIS: And I believe you touched on this,
5 but is there anything else you want to add in terms of how
6 the design furthers the goal of the mixed street
7 classification set forth in the Sector Plan?
8 MR. JUDD: The mixed street use, it's pedestrian
9 enhancements. So I think when we created the space, the
10 gathering space, it kind of furthers the concept of
11 gathering the pedestrians and bringing people along the
12 street and also giving them a gathering space too.
13 MS. HARRIS: And will there be bike racks provided
14 in connection with the streetscaping improvement?
15 MR. JUDD: Yes, what we've done is we've created
16 benches, as well as seating areas, both defined as like a
17 bench and/or seating areas along the front over here with
18 like I'll call it stadium seating. It's not really stadium
19 seating. And then wrapping around on West Lane, we have
20 more benches and we've also included a bike rack on West
21 Lane up here on the entry going to the building.
22 MS. HARRIS: Thank you. Can you describe the
23 landscape buffer in the north of the building adjacent to
24 the Villages of Bethesda property?
25 MR. JUDD: Right now we're just keeping it as a

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1 green space. It's landscaping, not really anything defined
2 to take them there.
3 MS. ROBESON: On that drawing, which is 86, is the
4 tan in the northern part, that's the garage access?
5 MR. JUDD: Yes, ma'am.
6 MS. ROBESON: Okay. Very good.
7 MR. JUDD: This is the access to the door.
8 MS. HARRIS: Is it correct that the landscaping
9 details on the public use space, well, on the private space
10 back by the Villages of Bethesda, that will be determined in
11 detail at the time of the site plan?
12 MR. JUDD: Yes, I believe it is.
13 MS. HARRIS: And except for the street trees which
14 are specifically identified the species in the Sector Plan,
15 I assume under the shrubbery or flowers that those details
16 will also be determined at the time of site planning?
17 MR. JUDD: They'll be flushed out later, but the
18 trees, street trees along Montgomery Lane are determined to
19 be where --
20 MS. HARRIS: Because that's what the Sector Plan
21 says?
22 MR. JUDD: That's what the Sector Plan says.
23 MS. HARRIS: Okay. Is there anything else you
24 would like to testify to with respect to the landscaping?
25 MR. JUDD: Well, I think with the space that we've

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1 created it's, we created a level and inviting space here
2 that whether the people are just walking by the street, they
3 have a place to gather and it's an interesting space. I
4 think also with the fact that with the space that we've been
5 given as well, it's relatively narrow, but I think at the
6 corner we'll definitely build those things up to kind of
7 invite you into the space and the whole idea, the concept of
8 being pedestrians is to invite the people, so --
9 MS. HARRIS: Okay. Thank you. No further
10 questions.
11 MS. ROBESON: All right. Mr. Abrams.
12 MR. ABRAMS: I want to make sure that I've got the
13 right witness.
14 MS. ROBESON: All right.
15 MR. ABRAMS: There was testimony the other day
16 about green roofs and -- I've still got the wrong one?
17 MS. HARRIS: That would be, yes, because green
18 roofs are a component of storm water management and you will
19 have your chance when Mr. Irish, the civil engineer --
20 MR. ABRAMS: Yes.
21 MS. HARRIS: -- testifies.
22 MR. ABRAMS: Okay.
23 MS. ROBESON: Okay. How about do you have any
24 questions on the other portion of the roof, because I am
25 still a little confused --

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1 MR. ABRAMS: The --
2 MS. ROBESON: -- by --
3 MR. ABRAMS: The recreational portion?
4 MS. ROBESON: Yes.
5 MR. ABRAMS: Okay.
6 MS. ROBESON: That portion.
7 MR. ABRAMS: Do you have anything to do with the
8 recreational portion of the roof?
9 MR. JUDD: Are you talking about in the upper area
10 or --
11 MR. ABRAMS: Yes, the top, the roof.
12 MR. JUDD: Yes, we will be. Yes.
13 MR. ABRAMS: Okay. Can we put up the -- I guess
14 it's Exhibit 108 that we've been marking up sort of.
15 MS. ROBESON: It's a development plan that has --
16 MR. ABRAMS: Yes, it's a copy of the development
17 plan --
18 MS. ROBESON: -- little blue marks on it.
19 MR. ABRAMS: -- with markings on it.
20 MS. ROBESON: Yes.
21 MR. ABRAMS: Okay.
22 MS. ROBESON: This is our mark-up exhibit?
23 MR. ABRAMS: Right. Now what I'd like to do,
24 Madame Examiner, is if you know, what area on the roof, and
25 say we're looking down on the project and that shows the

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1 roof, what area is the recreational component and what area
2 is the green roof component if they are separate?
3 MR. JUDD: They're basically the same space.
4 MR. ABRAMS: The same space?
5 MR. JUDD: The same space, but with the exception
6 of, I mean it hasn't been clearly defined yet because it
7 hasn't been, they still haven't flushed everything out, the
8 exact design yet, so --
9 MR. ABRAMS: Okay. So the entire roof area is
10 part of the recreational or private open space?
11 MR. JUDD: That hasn't been determined yet.
12 MR. ABRAMS: Well, if that hasn't been determined
13 yet, how do you come to the private open space, square
14 footage and percentage in the development plan?
15 MR. JUDD: For the open space, I would have to
16 defer to Bill Landfair. He was, I believe he was --
17 MR. ABRAMS: Well, he --
18 MS. HARRIS: Or Chuck Irish.
19 MR. JUDD: Or Chuck Irish. They determined --
20 MS. ROBESON: Do you swear?
21 MS. HARRIS: Promise.
22 MR. JUDD: They determined the square
23 footages that we would put.
24 MS. ROBESON: Well, are you counting anything on
25 the roof towards the open space to your knowledge?

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1 MR. JUDD: To my knowledge, I don't believe it's
2 open, public, open space, but it is considered open space.
3 Those are things I might want to --
4 MS. ROBESON: Okay. I'll defer. We'll defer.
5 MR. JUDD: Maybe I shouldn't answer that. I'm not
6 exactly sure exactly.
7 MS. ROBESON: Okay. Thanks.
8 MR. ABRAMS: All right. Let's now go down to the
9 street level. Are there going to be benches --
10 MR. JUDD: Yes, sir.
11 MR. ABRAMS: -- on Montgomery Lane?
12 MR. JUDD: Yes, sir.
13 MR. ABRAMS: And are they going to be traditional
14 benches or are they going to be just a slab? What type do
15 you recommend to the applicant?
16 MR. JUDD: I, we haven't gotten that far in the
17 design. I believe it's --
18 MR. ABRAMS: And how many benches and where would
19 they be located?
20 MR. JUDD: There are two benches that go back
21 to --
22 MS. ROBESON: If you could just name the number
23 of, what, 86?
24 MR. JUDD: Sure. Just, it was 86. We're showing
25 two benches in these locations right here on Montgomery

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1 Lane.
2 MR. ABRAMS: Okay. And that's in the 10-foot
3 setback area?
4 MR. JUDD: From the right-of-way?
5 MR. ABRAMS: Yes.
6 MR. JUDD: Yes, sir.
7 MR. ABRAMS: Now are there any benches going to be
8 provided along West Lane?
9 MR. JUDD: Yes, sir, there are two.
10 MR. ABRAMS: Where are they located?
11 MR. JUDD: They located right here at the entrance
12 of the building. Then there's also a bench located up in
13 this area over here.
14 MR. ABRAMS: Okay. Are they marked on Exhibit 86?
15 MR. JUDD: They are defined as, there are no
16 labels, but it's, graphically it's represented as a bench.
17 MS. ROBESON: They're the little, tiny rectangles?
18 MR. JUDD: Yes.
19 MR. ABRAMS: And that represents --
20 MS. ROBESON: Round.
21 MR. ABRAMS: -- a bench?
22 MR. JUDD: Yes. You can see a little bit better
23 in that one.
24 MR. ABRAMS: There had been discussion about a
25 potential lay-by on Montgomery Lane. Were you here or

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1 present for that discussion?
2 MR. JUDD: I was present.
3 MR. ABRAMS: Okay. What happens if you have a 6-
4 foot lay-by on Montgomery Lane approved? What happens to
5 the open space and the distance between the right-of-way and
6 the sidewalk and the green panel and the building?
7 MR. JUDD: I'm not really quite sure, but --
8 MR. ABRAMS: Well, in Montgomery County you're
9 aware that there are sidewalks proposed for this area?
10 MR. JUDD: Uh-huh. Yes, sir.
11 MR. ABRAMS: Are you also aware that as part of
12 the Bethesda streetscape plan you have to have green panels,
13 which means a sidewalk and a curb?
14 MR. JUDD: Yes.
15 MR. ABRAMS: And those green panels would include
16 trees as you've shown --
17 MR. JUDD: Shown --
18 MR. ABRAMS: -- in your rendered elevation?
19 MR. JUDD: Yes.
20 MR. ABRAMS: Landscape plan?
21 MR. JUDD: Yes.
22 MR. ABRAMS: Now, again, going back to Montgomery
23 Lane, how, if a 6-foot line or deep lay-by is put in
24 Montgomery Lane, how does that affect what you've shown on
25 Exhibit 86?

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1 MR. JUDD: It will be just sort of how, what was
2 shown on West Lane. Things will be stretched out and the
3 trees up and things like that.
4 MR. ABRAMS: So you would reduce the street panel
5 or eliminate the street panel?
6 MR. JUDD: It would be, it would be modified, yes,
7 but that's a design, a geometric design that I'm not really
8 quite sure about, so if you go in, yes, you'll lose some, a
9 little --
10 MR. ABRAMS: You'll lose a little bit of the green
11 street panel? You move the sidewalk?
12 MR. JUDD: You leave the sidewalk where it was.
13 Sort of what was done on West Lane but, again, spatially,
14 I'm not sure, I'm not totally, but actually worked there.
15 MR. ABRAMS: Now in terms of the open spaces which
16 were virtually designed for this project and it was filed,
17 that was in the rear of the north of the project, is that
18 correct?
19 MR. JUDD: Yes, it was.
20 MR. ABRAMS: And ultimately through discussions
21 with the Planning Commission staff and the board, that was
22 moved to the front?
23 MR. JUDD: Yes, sir.
24 MR. ABRAMS: And when it was in the original plan,
25 the green space was, I think, 14 percent of the tract area

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1 and after it was moved and that cut-out and when the
2 corridor was put in, the green, the open, public, open space
3 was reduced to 10 percent. And I think we've had
4 discussions during the course of this proceeding that
5 there's 680 square feet between what was first proposed and
6 what is currently proposed in terms of public open space.
7 Is there any reason why from a landscape architect
8 standpoint that that 680 square feet could not be put along
9 the front of the area in front of Montgomery Lane?
10 MR. JUDD: I'm not really quite sure if I follow
11 the question.
12 MR. ABRAMS: The question is we have now less
13 public open space than when we started out, okay?
14 MR. JUDD: Okay.
15 MR. ABRAMS: All right. The difference between
16 before and after is, approximately 680 square feet.
17 MR. JUDD: Okay.
18 MR. ABRAMS: Is there any reason from an
19 architectural, landscape architectural standpoint that that
20 10-foot setback could not be expanded to include additional
21 open space? Very simple.
22 MR. JUDD: I think I understand your question, but
23 I guess I have to say that the original numbers included
24 this area which was requested by the Planning Board not to
25 be considered as open space. So that's where the minus land

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1 came from.
2 MR. ABRAMS: Correct.
3 MR. JUDD: They're not considering this, so, so,
4 okay.
5 MR. ABRAMS: But you understand the purpose of it
6 is public use space?
7 MR. JUDD: Yes, readily accessible and housing.
8 MR. ABRAMS: The public is getting less public use
9 space than the applicant was originally willing to give them
10 by virtue of the earlier plan?
11 MR. JUDD: But we still need the 10 percent of
12 the zone requirement.
13 MR. ABRAMS: I understand, but I'm asking if some
14 governmental authority requires that 680 square feet to be
15 re-imposed in this plan, is there any reason why it cannot
16 be added to the frontage, the building on Exhibit 86, the
17 frontage being Montgomery Lane?
18 MR. JUDD: Well, the whole point, the
19 understanding of mixed use streets is, is creating some
20 continuity and consistency visually and all of the buildings
21 along Montgomery Lane, Edgemoor, the building over here, the
22 Montgomery Lane here, all built to be consistent facially
23 with, the building face is basically a line, very similar
24 setbacks, some a little bit further back, but very similar.
25 If you start setting back, you -- and also the West Lane a

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1 little bit over here -- when you start stepping back, you
2 start creating an uneven rhythm. And in fact, it's my
3 understanding that the way the streets are, the pedestrian
4 comes down the road, you want to create some kind of
5 coverings, rather than a lot of flexibility with the faces
6 of the building going in and out.
7 MR. ABRAMS: But does the public benefit more from
8 a straight-edge design like that or from increased green
9 space along this street?
10 MR. JUDD: I believe that maintaining consistency
11 is a better feeling. It's a better feel for -- everyone is
12 going to experience everything differently, I think, so it's
13 my understanding the way I feel about the streets and
14 stepping, a fine edge is what you want to create.
15 MR. ABRAMS: Okay. Now on Exhibit 78, 86, excuse
16 me, what are these pink areas in the 10-foot setback?
17 MR. JUDD: it is --
18 MS. ROBESON: It's a circle.
19 MR. ABRAMS: Circles?
20 MS. ROBESON: Just so in case the record
21 doesn't --
22 MR. ABRAMS: Yes.
23 MS. ROBESON: -- know what pink is.
24 MR. ABRAMS: Well --
25 MS. ROBESON: Circles. Aren't these circles?

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1 MR. ABRAMS: They're circles.
2 MR. JUDD: It's proposed landscape. It hasn't --
3 this is an artistic place. It's about where we could
4 possibly propose in this area. It has a redefined edge. It
5 could be trees, flowering trees, shrubs, ground cover.
6 MR. ABRAMS: Okay.
7 MR. JUDD: It hasn't been fully flushed out yet.
8 MR. ABRAMS: Okay. Now do you know if the Park
9 and Planning Commission when they review landscape plans has
10 either guidelines or requirements for the spacing between
11 trees at planting?
12 MR. JUDD: Yes, they do.
13 MR. ABRAMS: And what is that?
14 MR. JUDD: Well, this could go on because it's a
15 level four requirement for vertical spacing of trees.
16 MR. ABRAMS: What's that?
17 MR. JUDD: 30-foot --
18 MR. ABRAMS: 30-foot?
19 MR. JUDD: -- spacing of trees.
20 MR. ABRAMS: Okay. And why is it that particular
21 distance?
22 MR. JUDD: It's just the growth of the tree.
23 Easily you want to make sure that horticulture, if you plant
24 a tree in a correct spacing.
25 MR. ABRAMS: And is that to prevent entanglement

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1 of root systems within themselves or within structures that,
2 for buildings that are nearby?
3 MR. JUDD: It's not defined as -- that's not the
4 reason that they're spaced that way, it's just --
5 MR. ABRAMS: Is it because of the crown of the
6 tree?
7 MR. JUDD: Now it is --
8 MR. ABRAMS: Okay.
9 MR. JUDD: -- because of the tangling of trees.
10 MR. ABRAMS: So if you planted trees within the
11 green space on that specific Exhibit 86, they would have to
12 be what, small flowering trees or --
13 MR. JUDD: In this area here --
14 MR. ABRAMS: Yes.
15 MR. JUDD: -- now? Yes.
16 MR. ABRAMS: So they couldn't be of the same size
17 and distance as a, as the street trees that you've shown
18 there --
19 MR. JUDD: Right.
20 MR. ABRAMS: -- or another building? Now will the
21 roof top have any plantings at all?
22 MR. JUDD: Sedum, it will be green with sedum.
23 MR. ABRAMS: If you have a stupid lawyer, what is
24 a sedum?
25 MR. JUDD: It's a very large growing plant. The

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1 green and, again, this is a storm water issue, with the
2 capacities for late issues, as well as on the building as
3 well as depth issues for the planting medium --
4 MR. ABRAMS: Okay.
5 MR. JUDD: -- it's usually and, again, I'm sure
6 that's because of the storm water, we're finding that that,
7 it's often three to six inches of planting medium and the
8 sedum is a low-growing carpet, which is very tolerant of
9 urban conditions, as well as drought tolerant and things
10 like that.
11 MR. ABRAMS: Okay. How is this planted? Do you
12 cover the roof with coil and then plant this on top of it?
13 MR. JUDD: Exactly.
14 MR. ABRAMS: Okay. How thick is the soil there?
15 MR. JUDD: The thickest, like I said, I'm not
16 really quite sure. It varies because of the capacities. If
17 it's based on storm water capacities, there's a certain
18 depth that's required and that's just the engineer who is
19 going the calculations on that. So that would determine the
20 depth.
21 MR. ABRAMS: And is the sedum going to be planted
22 through the entire roof section as far as you know?
23 MR. JUDD: Yes, sir.
24 MR. ABRAMS: So it will cover that area which is
25 occupied by the, for recreational purposes or lounging up on

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1 the rooftop?
2 MR. JUDD: In the landscape areas that's defined
3 as, that's needed for the --
4 MR. ABRAMS: Okay. Is --
5 MS. ROBESON: The what? The green roof?
6 MR. JUDD: The green roof. It's actually the
7 green roof for the capacity --
8 MS. ROBESON: Oh.
9 MR. JUDD: -- for the storm water use.
10 MS. ROBESON: Okay. So the sedum will be part of
11 the storm water management system, but not necessarily over
12 in the remainder of the roof?
13 MR. JUDD: Correct, because there are other
14 components on the roof.
15 MR. ABRAMS: I didn't get the last part of your
16 question. Not necessarily over what?
17 MR. JUDD:
18 MS. ROBESON: It will be on the storm water
19 management -- they'll be on the part of the roof necessary
20 for storm water management, but not the balance of --
21 MR. ABRAMS: Now is the entirety of this roof
22 necessary for storm water management?
23 MR. JUDD: I can't answer that question. Mostly.
24 MR. ABRAMS: Will container plants be used on the
25 roof?

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1 MR. JUDD: It hasn't been defined yet exactly what
2 materials are going to be -- it could be a mat, it could be
3 plugs.
4 MS. ROBESON: No, I mean on the non-green roof.
5 MR. JUDD: Are you talking about in this area over
6 here?
7 MR. ABRAMS: Yes.
8 MR. JUDD: Which, on the very, the top roof?
9 MR. ABRAMS: Right. It would be below the low-
10 growing sedum, which can either come in plugs, small plants
11 or so it can mat where you just kind of roll.
12 MR. ABRAMS: No, I'm talking about taking a
13 container, putting it on the roof, it has a tree in it or a
14 bush of some sort?
15 MR. JUDD: I --
16 MS. ROBESON: Okay. Let me ask this.
17 MR. JUDD: I don't know what you're asking.
18 MS. ROBESON: Let me do this. Who can give a
19 picture, which witness is going to give us a picture of
20 everything that's going to be --
21 MS. HARRIS: Mr. Irish can, but I also would note
22 that I think part of the problem is that details in terms of
23 planting along recreational areas on rooftops is far beyond
24 the zoning scope and that's why you're hearing a little
25 bit --

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1 MS. ROBESON: So you're saying you're saving that
2 for a site plan?
3 MS. HARRIS: Mr. Irish will be able to give some
4 definition to be responsive to the questions that have been
5 asked, but the details, what types of flowers are going to
6 be planted and what types of containers on the roof, we
7 don't know that yet.
8 MS. ROBESON: So you're not proposing -- okay. I
9 think that questions were coming, at least from my
10 perspective of needing to screen the, sorry, I'm blanking
11 out --
12 MS. HARRIS: And plus --
13 MS. ROBESON: -- the --
14 MR. KNOFF: Penthouse.
15 MS. ROBESON: Penthouse. Thank you. So, anyway,
16 so --
17 MR. ABRAMS: Okay.
18 MS. ROBESON: -- that's your, that's the scope.
19 MR. ABRAMS: My, what I'm trying to determine is
20 what are you going to be able to see in the way of landscape
21 green area, would anyone call up on the roof if you are
22 standing down on the street or you are in one of the
23 townhouses across the street, what will you be able to see?
24 That's why I'm asking --
25 MS. ROBESON: To your knowledge.

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1 MR. JUDD: To my knowledge when you're looking
2 from the street looking down towards the roof line, you'll
3 never see the roof.
4 MR. ABRAMS: What, you'll never see any plantings
5 on the roof, is that what you're saying?
6 MR. JUDD: You can maybe see the tops of them, but
7 if it's not -- you're not creating a green screen if that's
8 what you're saying. But I might add also that structural
9 requirements are also contradicting what we're about to do
10 up there. It's actually --
11 MR. ABRAMS: Well --
12 MR. JUDD: So --
13 MR. ABRAMS: This was the other point of my
14 question. You have to be concerned about the lode-bearing
15 elements of the roof itself, okay? And in terms of those
16 lode-bearing elements, plant containers generally add to the
17 weight of the roof on the roof?
18 MR. JUDD: The locations and --
19 MR. ABRAMS: Or the locations, correct.
20 MR. JUDD: -- things like that are coordinated
21 with inspections to make sure it's viable.
22 MS. ROBESON: It can bear the load.
23 MR. JUDD: Exactly. It won't be proposed if it
24 can't hold the weight.
25 MR. ABRAMS: That's all I have. Thank you.

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1 MS. ROBESON: Okay. Mr. Knopf.
2 MR. KNOPF: Yes. Is, I wanted to ask a question
3 about Exhibit 76(a). Are they both on the same panel or we
4 can't have them up at the same time? Just leave that one up
5 before you get 76.
6 MS. ROBESON: Okay.
7 MS. HARRIS: He wants you to stay with 86 for now.
8 MR. JUDD: I'm sorry, this one here?
9 MR. KNOPF: You mentioned that the lay-by that was
10 under consideration for Montgomery Lane would be similar and
11 would have an indentation, similar to what you pointed out on
12 West Lane, is that correct?
13 MR. JUDD: Yes.
14 MR. KNOPF: So that's this area, I'm referring to
15 the lay-by area there and it's just a small, green panel
16 between the lay-by and the building itself?
17 MR. JUDD: Those green panels are a different
18 style. It's roughly six feet or so.
19 MR. KNOPF: Six feet? Okay. Now would you go to
20 76? We were talking about 64 before. Now the lay-by that's
21 under consideration --
22 MS. HARRIS: I want to object to that. There's a
23 continued misrepresentation of that lay-by as being under
24 consideration. That is not what the, what was set forth.
25 It's that it's physically feasible, but the applicant is not

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1 considering it.
2 MS. ROBESON: Well, you opened the door to it.
3 Your witness --
4 MS. HARRIS: Right, but we --
5 MS. ROBESON: -- opened the door.
6 MS. HARRIS: But the witness also clarified in
7 cross-examination that it's physically feasible, but it's
8 not being recommended by the applicant. It's physically
9 feasible and so the continued --
10 MS. ROBESON: Well, why did you open the door? I
11 mean I'm going to let the -- I understand your point, but it
12 was raised in your witness's testimony they have a right to
13 cross-examine on it. If you're saying you're now
14 withdrawing that from consideration, that's another matter.
15 But if it's not off the table and --
16 MS. HARRIS: We're withdrawing it and there's not,
17 so there's no need to have any further discussion on that
18 lay-by.
19 MR. KNOPF: Now by withdraw it, does that mean we
20 will have a binding element that there will be no lay-by on
21 Montgomery Lane?
22 MS. HARRIS: No, because if one were to do that,
23 then you would have to find every non-event that's going to
24 occur on the property.
25 MS. ROBESON: No, wait. I think what you're --

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1 okay. Basically it's still on the table and I think if, I
2 mean I think it's better to -- because there is a potential
3 for you to pursue this and it does go to the operational
4 issue in the compatibility of traffic. I think it's
5 simpler, there are, just like there are negative easements,
6 there are negative binding elements. So, you know, if you
7 want to put it in a binding element, you could put it in a
8 binding element. But because he raised it, I think you have
9 to, until that happens, I think we have to allow cross-
10 examination.
11 MS. HARRIS: Well, then we would proffer a binding
12 element that says that there will be no lay-bys provided on
13 Montgomery Lane along the frontage of the property.
14 MS. ROBESON: Does that satisfy you?
15 MR. KNOPF: What --
16 MS. ROBESON: Do you need a minute to think about
17 it?
18 MR. KNOPF: Yes, because -- yes, I do think --
19 what I'm concerned about is, and maybe somebody can help me
20 here --
21 MS. ROBESON: Yes, let's stay on the record for a
22 moment. Go ahead.
23 MR. KNOPF: -- is the applicant agrees to that,
24 but a site plan is decided for whatever reasons that a lay-
25 by is needed and the Planning Board proposes it.

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1 MS. HARRIS: Then it would be no different than
2 any other binding element. You'd have to come back to ZHE
3 and get an amendment that's --
4 MS. ROBESON: Right.
5 MS. HARRIS: -- not been planned.
6 MR. KNOPF: All right. Well, because -- since
7 it's probably on public property, I didn't realize that they
8 have to go back.
9 MS. ROBESON: Any modification of a binding
10 element has to come back, at least under the current zoning
11 ordinance and who knows what's going to happen under the
12 other zoning ordinance.
13 MR. KNOPF: Let me think that through.
14 MS. ROBESON: Okay. I know it's a swift-changing
15 target, so I'm going to give you five minutes because I think
16 after this witness, or 10 minutes, because I don't know how
17 your brain is moving today, but mine isn't moving quickly.
18 So we'll take 10 minutes and then we'll take a lunch break
19 after -- see, I can't remember Mr. Judd?
20 MR. JUDD: Yes, ma'am.
21 MS. ROBESON: Okay. Mr. Judd's testimony and at
22 which time, Mr. Knopf, you'll check on the April 29th.
23 Okay. So we're going to take a 10-minute break and I, if
24 you want to talk, you know, you can talk. Let's -- we're
25 off the record.

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1 (Recess)
2 MS. ROBESON: All right. We are back on the
3 record. One thing I forgot to mention is I did look back at
4 G-912 and Exhibit 27 is the Bethesda CBD Sector Plan. And
5 what I'm going to do is put a marker in G-912, cross-
6 referencing that this is now an exhibit in, I don't know how
7 kosher, well, it's kosher in saying that this is now an
8 exhibit in G-954 and as far as which exhibit number, I think
9 it's 110, but let's -- let me double-check. Okay. So it
10 will be the Bethesda master Sector Plan will be Exhibit 110,
11 Bethesda CBD Sector Plan. All right.
12 MR. ABRAMS: Will that include what is known as
13 the technical appendix?
14 MS. ROBESON: I don't see that in here. Do you
15 wish that? Can -- if you, I'll accept it in if you have a
16 copy. All I have --
17 MR. ABRAMS: I just have a copy of the page that
18 I --
19 MS. ROBESON: You want to use?
20 MR. ABRAMS: In my hands.
21 MS. ROBESON: Is --
22 MS. HARRIS: I think that's submitted as an
23 exhibit.
24 MR. ABRAMS: Because she is accepting the --
25 MS. ROBESON: Yes, I mean --

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1 MS. HARRIS: But it's not --
2 MR. ABRAMS: And this is part of the CBD Sector
3 Plan. It's not the entire technical plan.
4 MS. ROBESON: Yes, I --
5 MS. HARRIS: But it's also a separate document.
6 MS. ROBESON: But I'm going to take official
7 notice of --
8 MS. HARRIS: Okay.
9 MS. ROBESON: -- the technical appendix is
10 typically included, I've seen it numerous times --
11 MS. HARRIS: Okay.
12 MS. ROBESON: -- in an appendix of the Master
13 Plan. Why it's not in here, I don't know. What I do want
14 to make sure of is that there is a copy somewhere that I can
15 reference, so if you could locate a version of it for me,
16 that would be helpful.
17 MR. ABRAMS: Okay.
18 MS. ROBESON: Because I don't see the appendix
19 actually within the Sector Plan. So 110 will be the
20 Bethesda CBD Sector Plan. Okay. Did you come to resolution
21 of what you want to do vis-à-vis the lay-by or --
22 MS. HARRIS: Well, the applicant, as I noted right
23 before the break, we are, we would agree to a binding
24 element that there will be no lay-by on West Lane.
25 UNIDENTIFIED SPEAKER: No, not West Lane.

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1 MS. HARRIS: I'm sorry, on Montgomery Lane. Thank
2 you. That would open up a whole other case.
3 MS. ROBESON: Yes, I was like what? No, no.
4 MS. HARRIS: On Montgomery Lane. So --
5 MS. ROBESON: Okay.
6 MS. HARRIS: But we did not confer with opponent's
7 counsel on that. I thought they were going to confer
8 internally.
9 MS. ROBESON: Oh, well, I --
10 MS. HARRIS: I thought your intent for --
11 MS. ROBESON: No, it wasn't my intent. My intent
12 was to give everybody time to think about it before they
13 committed themselves, that's all. So, Mr. Knopf, do you
14 feel that, you know, I need a basis for you to have to, to
15 continue to cross-examine about the lay-by on Montgomery
16 Lane.
17 MR. KNOPF: Given, given what the concerns
18 expressed regarding the impact of the lay-by on the traffic
19 and the impact on aesthetics, we are perfectly pleased they
20 are withdrawing. That will make it a binding element. I
21 just will note that we, of course, would like to see and
22 reserve their right to comment upon the language of the
23 binding element because we have --
24 MS. ROBESON: I'm sure.
25 MR. KNOPF: -- we had some problems with the

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1 binding elements to date.
2 MS. ROBESON: Well, will you share -- typically
3 what I ask people to do or I think it's typical is that they
4 actually draft with rebuttal or whatever, draft the binding
5 element and provide a copy to counsel. If you could do that
6 prior to rebuttal, that would be helpful.
7 MS. HARRIS: Yes, I will do that.
8 MS. ROBESON: Thank you.
9 MS. HARRIS: Certainly.
10 MS. ROBESON: All right.
11 MR. KNOPF: So I will then have very brief
12 questions --
13 MS. ROBESON: Okay.
14 MR. KNOPF: -- not on that subject.
15 MS. ROBESON: Okay.
16 MR. KNOPF: I believe you testified that the,
17 excuse me, the plantings between the sidewalk -- I'm now on
18 Montgomery Lane -- the plantings between the sidewalk and
19 the building footprint because of the size of that area and
20 so on would be bushes or low-level plantings of some sort?
21 I mean what type? You couldn't put trees in there, is that
22 it?
23 MR. JUDD: You could put smaller trees.
24 MR. KNOPF: Small trees?
25 MR. JUDD: But definitely you want to plant

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1 material that's going to fit within the context of the
2 spatial limit and --
3 MR. KNOPF: Right. And that space we're dealing
4 with is how many feet roughly in terms of width?
5 MR. JUDD: 14 feet maybe or so, plus or minus.
6 MR. KNOPF: If, and those plantings you say would
7 be something that would grow like one story high?
8 MR. JUDD: Again, we haven't gotten into the
9 exact --
10 MR. KNOPF: You haven't gotten in? Well, would
11 you agree with me if you had more space than say 14 feet,
12 say you had 20 feet or 25 feet, would that permit you to put
13 in bigger plantings which might be able to provide more of a
14 buffer or screening of the building?
15 MR. JUDD: I think with the way the concourse of
16 the building, the way that it's laid out right now is
17 spatially, we're defined by that space is what we're working
18 with, so --
19 MR. KNOPF: I'm asking you to not be spatially.
20 So it's a hypothetical question, not be so confined. Let's
21 assume you had 20 or 25 feet, would that permit you to have
22 taller plantings of a different type that would, perhaps,
23 screen more of the building for people walking along the
24 street or opposite side of the street or the same side of
25 the street?

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1 MR. JUDD: Actually what we could do is with the
2 way and, again, it's not being dictated by the street trees
3 as well. We have, these are oak trees. So there's a huge,
4 huge canopies of trees over the course of time. So knowing
5 that, if there is, if there's screening that is wished upon
6 the building, we'd use larger shrub material in the area.
7 But we don't necessarily have to put another large street
8 tree right within that area, that's not a requirement for --
9 MS. ROBESON: But could you put something like a
10 flowering cherry or something or Japanese Maple? I don't
11 know, but --
12 MR. JUDD: That's within the context of the space
13 right now. Something like that would --
14 MR. KNOPF: But, and how tall do they grow?
15 MR. JUDD: With different varieties, they grow
16 different heights, but 15 to 20 feet. It all depends on the
17 variety you choose. And, again, the material we would
18 choose would fit within the --
19 MR. KNOPF: Well, let me go back again. Don't be
20 constrained by the current location of the building. Just
21 assume you have 20 or 25 feet from the sidewalk to where the
22 building started. Would that give you more options to
23 provide taller plantings of more of a screening nature than
24 what you have now in this more limited space?
25 MR. JUDD: Not necessarily because we can choose

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1 upright material if that would fit in the context of the
2 space. I mean if you have a larger like, for example, if
3 I'm in Central Park, I've got a wide open space, of course,
4 I can plant much larger material. But given this urban
5 condition, the space that we have is --
6 MS. ROBESON: Yes, but he's asking you to, whether
7 you could plant larger trees if the space was bigger?
8 MR. JUDD: Possibly, yes.
9 MS. ROBESON: You're saying you can plant some
10 trees now --
11 MR. JUDD: Yes.
12 MS. ROBESON: -- so maybe it doesn't have to be
13 bigger, but what he's saying is if you have more space, you
14 would have more choice maybe in plant material, bigger plant
15 material?
16 MR. JUDD: If you have more space, there's that
17 opportunity if that's what the answer, what he's looking
18 for. But, again --
19 MS. ROBESON: And your attorney can get that to
20 you on redirect. So --
21 MR. KNOPF: I'm just, I think my curiosity had
22 something to do with it, street trees that are planted, you
23 said that when they get to mature, they'll be a very large
24 canopy, is that it, that the canopy then will overhang the
25 sidewalk and go to the building where the building is

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1 currently located?
2 MR. JUDD: Some of the buildings down the road
3 with the City Homes, as well as the Edgemoor eventually.
4 MR. KNOPF: And what do we mean by eventually when
5 they get mature, are you talking about five years?
6 MR. JUDD: Oh, no.
7 MR. KNOPF: 50 years?
8 MR. JUDD: Years down the road.
9 MR. KNOPF: Years?
10 MR. JUDD: Yes.
11 MR. KNOPF: So would that not -- if one were
12 interested in providing screening of the building to some
13 degree that one could screen that, wouldn't it not be
14 possible to plant trees in the area between the sidewalk and
15 the building that might have to be replaced 25, 30 years
16 from now when the street trees reach maturity, but at least
17 up until that time as providing much more screening?
18 MR. JUDD: So basically you're saying that if the
19 plant material right now, you're talking about we would have
20 to take it out later on down the road?
21 MR. KNOPF: I'm talking about what, 15, 20, 25
22 years you may have to replace it, yes, some of the plant
23 material if the trees mature and actually all of them grow
24 and reach --
25 MR. JUDD: But, again, also you have to figure out

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1 the material that we're deciding on. Like if the tree
2 grows, the branches are going to get much higher and much
3 higher and this plant, they will choose them at the lower
4 level and stay within the under-story of the tree, of the
5 contact with them, the shape of the oak tree. It, they
6 don't necessarily have to be replaced.

7 MR. KNOPF: Okay. Well, my last question is, I'm
8 still a little bit lost, what I'm getting at is, and this
9 is, I'm a lawyer, that's why I'm asking you as an architect,
10 if one could plant, say you had 20, 25 feet between the
11 sidewalk and the building, another row of trees? So as the
12 two rows of trees grew, the street trees and the ones next
13 to the building you would have an arch to walk under and you
14 would be at least what, 15, 20, 25 years until they got
15 maturity, you would have more street?

16 MR. JUDD: The horticulture wouldn't necessarily
17 be the best thing to do because within that context, they
18 would be within 15, 15 feet of each other and horticulture
19 with them, with the branching structure, I know that's not
20 the, necessarily the best thing to do.

21 MR. KNOPF: Would they be -- if we move the
22 building back 20 feet, 25 feet, would they be within 15 feet
23 of each other?

24 MR. JUDD: Well, because you can't plant, you
25 don't want to plant the tree so close to the building. If

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1 you start planting larger trees --

2 MR. KNOPF: Right.

3 MR. JUDD: -- the canopies get larger and so do
4 the root structures. So that's why we choose smaller trees
5 next to the buildings so they don't damages --

6 MR. KNOPF: Right.

7 MR. JUDD: -- damage the structural interior of
8 the building.

9 MR. KNOPF: But you said that under the guidelines
10 that Mr., in response to Mr. Abrams's questions, the street
11 trees are going to be planted 30 feet apart?

12 MR. JUDD: Uh-huh.

13 MR. KNOPF: Couldn't you plant them between those
14 30 feet along the building closer to the trees, some other
15 trees, and eventually as they matured after years and years
16 and years, then maybe you'd have to prune or remove them?

17 MR. JUDD: Hypothetically -- there's a lot of
18 hypotheticals we could possibly do.

19 MR. KNOPF: I'm sure you could. Thank you. I
20 have no further questions.

21 MS. ROBESON: Thank you. Redirect?

22 MS. HARRIS: Yes. I want to refer to the plan
23 that shows the landscape planting along the street.
24 Focusing just on the northern side of the street, the
25 suggestion that just came up of putting a double row of

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1 trees in front of the subject property, from the landscaping
2 standpoint, do you have, qualitatively, what's your opinion
3 on doing that given the existing landscape being, that's
4 been established by the other three buildings on the street?

5 MR. JUDD: It would not be consistent with that.

6 MS. HARRIS: Excuse me?

7 MR. JUDD: It would not be consistent with
8 everything that's located right on the street itself.

9 MS. HARRIS: Would it be aesthetically desirable?

10 MR. JUDD: To add another row of street trees? I
11 think it kind of defeats the character that's being created.

12 MS. HARRIS: Okay. And given that the Bethesda
13 Sector Plan called for a continuous street edge, in your
14 opinion to the landscaping recommendations such as they are
15 in the Bethesda Sector Plan, were they designed to take in
16 mind the space that would be provided given the building
17 setback?

18 MR. JUDD: I guess they're kind of related more to
19 the, within the right-of-way.

20 MS. HARRIS: Okay.

21 MR. JUDD: So like the builders were taking into
22 account what was going to the public, outside the right-of-
23 way.

24 MS. HARRIS: And then just one final question
25 which is if one were for some reason, and this is making,

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1 just assuming that one would want to mask the building and
2 landscaping at the ground level, did you testify that given
3 the amount of landscaping that does exist on the north side
4 of the sidewalk to the face of the building, that in fact
5 there are some landscaping type materials that could be
6 grown in that space to reach that goal?

7 MR. JUDD: Yes.

8 MS. HARRIS: Thank you.

9 MS. ROBESON: I just have one question. It will
10 be easy.

11 MR. JUDD: Okay.

12 MS. ROBESON: Mr. Abrams pointed out -- are you
13 familiar with the -- there is a point, a lot is being placed
14 on, a lot of emphasis is being placed on having this
15 straight pedestrian edge, all right? And so you don't want
16 to move the building back further, some of which may or may
17 not be driven by an agreement with the neighbors. I don't
18 know. But if you look at 106(b) over there, and there is an
19 alley directly across from the subject property on City
20 Homes, and --

21 MR. JUDD: Right here?

22 MS. ROBESON: No, no, down there. Yes. Mr. --

23 MR. JUDD: I'm sorry, here.

24 MS. ROBESON: Did you point -- I couldn't see what
25 you were doing. Yes. And the person at the end of that

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1 alley is looking at a blank, another building to the south,
2 and so the emphasis is what are they going -- what kind of
3 perception are they going to have given that this building
4 is now to the north? And I think that that is where the
5 concerns about can we get any more green space because, yes,
6 there's this great pedestrian edge, but to me the pedestrian
7 edge -- there's a lot about this area that has not, I think,
8 gone maybe according to plan in my perception. But, you
9 know, you've already got cut-outs in the pedestrian area
10 along the Edgemoor Highrise. You've got driveways, cut-outs
11 on West Lane. So I guess my question is how, what are you
12 going to tell those people as far as how this is going to
13 impact them from a landscape point-of-view?
14 MR. JUDD: Well, visually they're not looking into
15 a driveway. They're looking at the landscape and also
16 looking into the corner park.
17 MS. ROBESON: No, they're looking --
18 MR. JUDD: Well, if you're looking through this
19 way, then --
20 MS. ROBESON: They're not looking into the corner
21 park because the end, the northern units are, but the
22 southern units aren't.
23 MS. HARRIS: May I ask --
24 MR. JUDD: I guess --
25 MS. HARRIS: -- for clarification? Was your

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1 question --
2 MS. ROBESON: Please don't -- go ahead.
3 MS. HARRIS: I'm not clear. When you said there's
4 someone at the southern end of the alley, where, the person
5 that --
6 MS. ROBESON: Mr. Abrams, do you know the -- you
7 had a question the other day. Can you tell them what
8 units -- do you know what units I'm referring to? Just
9 while I have the architect here, what about showing him on
10 Exhibit 106(b), which is the one behind you, Mr. Abrams.
11 MR. ABRAMS: The first or second, so I can --
12 MS. ROBESON: Any unit in the southernmost portion
13 of the alley.
14 MR. KNOPF: I know exactly.
15 MR. ABRAMS: Is this it?
16 MS. ROBESON: Well, you don't have to pick a
17 particular -- if you have the end --
18 MR. ABRAMS: If you have end unit --
19 MS. ROBESON: That's right.
20 MR. ABRAMS: -- on this stick here --
21 MS. ROBESON: Yes.
22 MR. ABRAMS: -- this building up against the
23 property line above the wall --
24 MS. ROBESON: Yes.
25 MR. ABRAMS: -- our point was basically your view

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1 is going this way.
2 MS. ROBESON: That's correct.
3 MR. ABRAMS: And that's, that's the view.
4 MS. ROBESON: So in light of -- do you still stick
5 with your argument that the 15-foot setback to the north is
6 set in stone and that there's, on the northern part of the
7 building, northern part of your building --
8 MR. JUDD: Up here? I'm sorry.
9 MS. ROBESON: Okay. That's -- so do you still
10 stick to your argument in light of that configuration that
11 the building absolutely has to be where it is? Don't look
12 at your attorney. I'm asking you the question.
13 MR. JUDD: I mean with the configuration of the
14 building the way it is, especially how the units are laid
15 out, I think it needs to be where it's located right now.
16 MS. ROBESON: Why? You're already going back
17 1,000 feet or 500, you know, you're already creating a cut-
18 out, so why, what's the big deal if it's another 10 feet?
19 MR. JUDD: Well, I guess --
20 MS. ROBESON: I really --
21 MR. JUDD: I guess --
22 MS. ROBESON: I'm trying to translate this
23 planning concept of having this straight street edge, you
24 know, when there's already been so many variations --
25 MR. JUDD: Right.

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1 MS. ROBESON: -- here, because you've got all the
2 cut-outs on the town, town homes too.
3 MR. JUDD: Right.
4 MS. ROBESON: So what's the big deal?
5 MR. JUDD: I think what it is also is it is a town
6 home development. It's a completely different building
7 type. These other buildings are much taller over here. And
8 then being set back over here, I guess maybe, can I maybe
9 ask another question to you is is the view from here and a
10 view from here are, they're experiencing two different
11 things and I didn't quite follow what, the question you were
12 asking about rather than (indiscernible)?
13 MS. ROBESON: Yes, they have a 70-foot building to
14 the south, the City town homes stick there, yes, they have a
15 70-foot high building to the south, all right? So they are
16 not going to see anything from the south. The only thing
17 that they're going to see to the north is your, whatever
18 your setback is. And my question is, why is it -- and there
19 have already been variations in the setback on the street.
20 So I guess this planning concept of not being able to move
21 that building north and south, it, I'm having a little
22 trouble understanding that unless there's some agreement
23 with the neighbors to the north that's driving it.
24 MR. JUDD: This 15-foot?
25 MS. ROBESON: Yes.

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1 MR. JUDD: I believe it's, the 15-foot is being
2 driven, I believe, by the building.
3 MS. ROBESON: Okay. But from totally a landscape
4 architect point-of-view, totally -- don't look at Ms.
5 Harris.
6 MR. JUDD: I'm not looking, I'm not looking at
7 her.
8 MS. HARRIS: I'm actually looking at the plan.
9 MS. ROBESON: Yes, okay.
10 MS. HARRIS: I have not made eye contact.
11 MR. JUDD: No, no.
12 MR. BRALEY: I'm sorry. I'm sorry. So totally,
13 and I have not made a decision in this case, but I am
14 searching for a justification.
15 MR. JUDD: I think a space is more important, a
16 quality space rather than a quantity space. For example, in
17 Japan, there may be small spaces that create, made impacts
18 and they're no bigger than a 10 by 10-foot area.
19 MS. ROBESON: Yes, but these people can't see your
20 circular thing.
21 MR. JUDD: True, but I guess when I was looking at
22 -- in this particular view, corridor right through here -
23 -
24 MS. ROBESON: Yes.
25 MR. JUDD: -- is -- I believe these are garages.

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1 So basically you're looking at garages all the way up to
2 this point right here. And I guess what I was saying about
3 the, I was also kind of including the step area over here as
4 part of that open space because it is a seating area.
5 MS. ROBESON: What's the, I'm sorry, what's the
6 step area?
7 MR. JUDD: Going back to --
8 MS. ROBESON: Oh, there's a step coming out of the
9 circular --
10 MR. JUDD: Exactly. Right.
11 MS. ROBESON: Yes, okay.
12 MR. JUDD: And, I guess going back to 77, this is
13 the view right through here, so it's capturing a part of a
14 component that within --
15 MS. ROBESON: The park or whatever --
16 MR. JUDD: And it's a seating area as well. So
17 it's not just stacked, it's elevated seats, elevated steps
18 that you can use as seats. And also you've got a tree
19 centered on here, so you're not looking right directly into
20 a, approach, or a building, you're looking --
21 MS. ROBESON: Well, that tree is not set in stone?
22 MR. JUDD: No, but I think also with the canopy of
23 the tree because this issue -- it's going to be spreading
24 out and filling in the space. So --
25 MS. ROBESON: I just want you to understand why

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1 they're asking those questions --
2 MR. JUDD: Right.
3 MS. ROBESON: -- because, you know, it is a factor
4 here.
5 MS. HARRIS: May I ask the witness two other
6 questions to follow-up?
7 MS. ROBESON: Oh, sure. Let me just -- so let me
8 understand your answer again. What is your answer?
9 MR. JUDD: I don't think, I think the setback as
10 it is right now is ample to provide what we need to do with
11 the landscape material. Adding a visual feat I don't think
12 is necessary.
13 MS. ROBESON: And why is that?
14 MR. JUDD: Because the quality of space.
15 MS. ROBESON: And what does quality of space mean?
16 MR. JUDD: That is, that could be a subjective
17 thing.
18 MS. ROBESON: I know. That's why you're --
19 MR. JUDD: Well --
20 MS. ROBESON: -- that's why you're an expert.
21 MR. JUDD: Right. Well, and I think also is this
22 is kind of going back to being more, where they experience
23 the different space. You could, if you --
24 MS. ROBESON: No, tell me, just right now what I
25 want to focus on is what is quality of space? What is it

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1 about that space that they see that's going to make
2 everything all better?
3 MR. JUDD: We have landscape base, landscape base
4 between the hierarchy of the plant material, different
5 colors, different textures, things like that, so visually
6 there's interest with that. Also it's not like you're
7 seeing a sheer wall of one different component. You see the
8 tail-end of these steps right here, so it's a different
9 architectural component --
10 MS. ROBESON: Okay.
11 MR. JUDD: -- you're seeing. You see the little
12 parts of this area. You see a large tree --
13 MS. ROBESON: Okay.
14 MR. JUDD: -- or a portion of the large tree.
15 MS. ROBESON: Okay.
16 MR. JUDD: And also the landscaping material
17 between the space of the sidewalk and the building. So
18 quality of space, visually I think it's interesting. It's
19 not a bland, we're not creating a bland visual corridor that
20 someone over here, if you're looking out, okay. A bland, it
21 might --
22 MS. ROBESON: And that's why you're here. That's
23 why I'm asking you. Okay.
24 MS. HARRIS: Thank you.
25 MR. JUDD: Did that your answer question?

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1 MS. ROBESON: It did.
2 MR. JUDD: Okay.
3 MS. HARRIS: I want to refer to Exhibit 61, which
4 was previously submitted and shown. It's the view of the
5 corridor, which I think may be helpful to follow-up on the
6 Hearing Examiner's question. Now this is not the, just for,
7 to be clear, Exhibit 61 is not this alley, but it's the one
8 that's a little bit further to the east --
9 MS. ROBESON: All right. But --
10 MS. HARRIS: -- that's representative.
11 MS. ROBESON: Okay. But --
12 MS. HARRIS: I'm just trying to orient the
13 exhibits.
14 MS. ROBESON: Yes, but you're -- I can't even
15 remember if we've had testimony on where that exhibit -- but
16 I know it's, I know that it's an alley --
17 MS. HARRIS: Okay.
18 MS. ROBESON: -- from City Homes. So -- or
19 hypothetically were that the alley, what's your question?
20 MS. HARRIS: Okay. Two or three questions. First
21 of all, can you scale approximately the distance of the
22 entire row of the City Homes?
23 MR. JUDD: Roughly 105 feet --
24 MS. HARRIS: Okay.
25 MR. JUDD: -- from the building.

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1 MS. HARRIS: So the 105 feet of the City Homes
2 added to the 73 feet of the distance between the City Homes
3 and the subject property provides for a total distance
4 between that end southern townhouse and the face of our
5 building is what, 173, about 173 feet. So if -- imagine 173
6 feet, which is half a football field, I guess, and imagine
7 that you set back something five feet or 10 feet more from a
8 perception standpoint, perceivable, unperceivable?
9 MR. JUDD: Unperceivable, I think.
10 MS. HARRIS: The other question is if you look at
11 those townhouses, there are slight bay windows it looks like
12 in the parking alley, correct?
13 MR. JUDD: In this area here?
14 MS. HARRIS: Yes.
15 MR. JUDD: Yes.
16 MS. HARRIS: So I guess my question is it your
17 opinion from what vantage point you're in, that southernmost
18 townhouse, which is the one that was of concern --
19 MS. ROBESON: Well, any of them really, but just
20 go from the southernmost so we can --
21 MS. HARRIS: -- the view from that southernmost
22 townhouse, would there actually even be a view to -- would
23 they be seeing their other residents of the City Homes or
24 are they even going to be able to view the West Lane
25 building?

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1 MR. JUDD: It's a canyon that's been created
2 there, so if you're sticking your head out, I think you could
3 see --
4 MS. HARRIS: What?
5 MR. JUDD: -- it just means -- you can see in the
6 canyon of the parking door, the garage doors --
7 MS. ROBESON: But can you see the building?
8 MS. HARRIS: From that southernmost townhouse?
9 MR. JUDD: If you, I think if you look through,
10 around then possibly I think if you're looking --
11 MS. HARRIS: Okay. Okay. And then if you moved a
12 little bit further to the middle of the row or a little bit
13 further north, arguably you may be able to see the second --
14 MR. JUDD: As you get closer.
15 MS. HARRIS: But, okay, and at the same point is
16 the, as you move closer, further north, is the impact from
17 this building less than it would be on the southernmost
18 units?
19 MR. JUDD: As you move, as you move forward, yes.
20 MS. HARRIS: Okay. Thank you.
21 MS. ROBESON: Okay?
22 MS. HARRIS: Yes.
23 MS. ROBESON: Is that it?
24 MS. HARRIS: I'm sorry. Okay. Yes, that
25 concludes our questions.

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1 MS. ROBESON: And recross, Mr. Abrams?
2 MR. ABRAMS: Were you testifying as to the back
3 view of the townhouses or the front windows of the
4 townhouses? In other words, there's a front and back --
5 MR. JUDD: Right.
6 MR. ABRAMS: -- correct?
7 MR. JUDD: So you come out this, the area that we
8 just talking about?
9 MR. ABRAMS: Yes, would you exercise with what
10 views there are.
11 MR. JUDD: The area we were just talking about
12 through the questions was the rear of the building.
13 MR. ABRAMS: Okay. What about the front windows
14 of some of those townhouses?
15 MR. JUDD: They're facing the opposite direction.
16 These guys are facing the opposite direction.
17 MR. ABRAMS: Well, it depends upon which stick
18 you're talking about.
19 MR. JUDD: True. True.
20 MR. ABRAMS: And if you have a bay window, what's
21 your projection now?
22 MR. JUDD: Okay.
23 MR. ABRAMS: Okay. So there really isn't any to
24 out and turn if you could just stand in your bay window and
25 look out that, in that direction, yes or no?

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1 MR. JUDD: Sure.
2 MS. ROBESON: No?
3 MR. ABRAMS: Sure?
4 MS. ROBESON: Okay. Yes or no?
5 MR. JUDD: Yes. Yes. Yes.
6 MS. ROBESON: Okay. I just didn't hear.
7 MR. JUDD: Okay.
8 MR. ABRAMS: That's all the questions I have.
9 MS. ROBESON: All right. Mr. Knopf?
10 MR. KNOPF: Yes. In response to the questions,
11 you said that one could look out and could see the street
12 tree through that? Am I correct that you, what's required
13 for landscaping for those street trees is not an evergreen
14 tree, is that correct?
15 MR. JUDD: It's a willow and a deciduous tree.
16 MR. KNOPF: It's deciduous? Okay. And the last
17 question I have for you is you indicated that as you got
18 closer, I think that's what you said, as you got closer to
19 Montgomery Lane from those townhouses, the view, it would
20 have, the building would have less impact, is that what you
21 said?
22 MR. JUDD: No, I didn't say that the building had
23 less impact.
24 MR. KNOPF: Okay. I'm sorry. I thought you said,
25 well, you indicated something had less impact as you moved

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1 toward Montgomery Lane or that --
2 MS. ROBESON: I thought you did say it would have
3 less impact.
4 MR. JUDD: Walking towards the building would have
5 less impact than --
6 MR. KNOPF: No, no, as the --
7 MS. ROBESON: Oh, maybe it was Hampden Lane?
8 MR. KNOPF: No. I thought you said as you went,
9 in units in the townhouses, you moved closer to Montgomery
10 Lane?
11 MR. JUDD: As you --
12 MR. KNOPF: Now I'm giving you walk, I'm sorry,
13 standing in the units, the townhouse units, as you got
14 closer to --
15 MR. JUDD: But what happens then?
16 MR. KNOPF: You said it would have less impact
17 from those units as you looked out from those units?
18 MR. JUDD: And I'm not really quite sure if I'm
19 following your question, the impact of the building --
20 MR. KNOPF: The impact of the building.
21 MR. JUDD: -- to the setback? I believe --
22 MR. KNOPF: Yes.
23 MR. JUDD: -- that the building was set back --
24 MR. KNOPF: To the setback.
25 MR. JUDD: -- between 5 foot --

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1 MR. KNOPF: Right.
2 MR. JUDD: -- I think a 5-foot setback additional,
3 I don't think that would be perceivable. I think that's
4 what I --
5 MR. KNOPF: Right.
6 MR. JUDD: -- had mentioned.
7 MR. KNOPF: But I thought you had indicated it was
8 less impact. I was trying to understand in what context you
9 had said that.
10 MR. JUDD: I guess I remember that. I guess what
11 I meant by that was that additional five feet would not be,
12 would not make that much more of an impact.
13 MR. KNOPF: I see.
14 MR. JUDD: If that --
15 MR. KNOPF: Well, all right, but would you agree
16 with me that as you got closer to the building, the
17 building, because you are closer --
18 MR. JUDD: It gets larger.
19 MR. KNOPF: -- yes, it gets larger and it's more
20 impact?
21 MR. JUDD: Yes.
22 MR. KNOPF: Thank you.
23 MS. ROBESON: That's it? Okay. We're going to
24 take an hour for lunch. If you could double-check your
25 schedules on April 29th --

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1 MR. KNOPF: We seem to be all right.
2 MS. ROBESON: Okay. And everyone else is?
3 MR. ABRAMS: I'm fine.
4 MS. ROBESON: Okay. So we will add April 29th as
5 a hearing date after this Friday. Okay. So with that,
6 we'll be back at 1:50.
7 MR. KNOPF: We may not need it all.
8 MS. ROBESON: We may not need it, but we can
9 reserve it.
10 (Recess)
11 MS. ROBESON: All right. Are the parties ready?
12 MR. ABRAMS: Yes.
13 MS. ROBESON: Are you ready? Okay. Excuse me.
14 We're back on the record and I see Mr. Berman. I take it
15 that you did confirm the 29th is okay with you?
16 MR. KNOPF: Yes, just we may have to take somebody
17 out of order, but yes.
18 MS. ROBESON: Well, we'll work with you on that.
19 MR. KNOPF: Yes, that's fine.
20 MS. ROBESON: All right. Mr. Berman, please raise
21 your right hand.
22 (Witness sworn.)
23 MS. ROBESON: Then, Ms. Harris --
24 MS. HARRIS: Thank you. Please state for your,
25 state your full name and primary occupation for the record?

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1 MR. BERMAN: My name is Perry Berman and I'm a
2 city planner and I'm also a commercial real estate agent.
3 MS. HARRIS: And how long have you been employed
4 as a city planner?
5 MR. BERMAN: I have been a city -- I was afraid
6 you were going to ask me that. I'm a city planner for 40,
7 for approximately 40 years.
8 MS. HARRIS: And your professional educational
9 background is?
10 MR. BERMAN: I have a master's in public
11 administration with a concentration in planning from NYU.
12 I've done undergraduate work at Queens College in political
13 science. I have -- am a licensed commercial real estate
14 agent and I am the chair of the Builder's Industry
15 Association Subcommittee on Entry Level Housing.
16 MS. HARRIS: Thank you. And have you testified as
17 an expert before the Zoning Hearing Examiner previously?
18 MR. BERMAN: Yes. I've testified on several
19 occasions, the most recent was Towne Crest on G-910. That
20 was the Gaithersburg vicinity Master Plan. I've also been
21 before the Board, I think, before the Hearing Examiner last
22 year on Roy Rogers's special exception in Burtonsville and
23 several others in the past, several other cases as well.
24 MS. HARRIS: And have you been qualified as an
25 expert in Sector Plans?

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1 MR. BERMAN: Yes.
2 MS. ROBESON: Not with, not with me he hasn't.
3 But what are you seeking to qualify him in?
4 MS. HARRIS: As an expert and maybe I need to
5 provide --
6 MS. ROBESON: I qualified him as an expert in land
7 use planning.
8 MS. HARRIS: Okay.
9 MS. ROBESON: And there was a distinction that the
10 applicant was trying to make, so I --
11 MS. HARRIS: Well, if I may then --
12 MS. ROBESON: -- go ahead.
13 MS. HARRIS: Can you please -- because I would
14 like to have him qualified as an expert with respect to the
15 Bethesda Sector Plan. So --
16 MR. ABRAMS: Well --
17 MS. ROBESON: Well, I don't think that you can be
18 an expert in a particular plan. It's just -- do you have an
19 objection?
20 MR. ABRAMS: Yes. I mean it's not a recognized
21 field. He has special expertise as, you know, as a land
22 planner or urban planner because he's worked in the field,
23 but to qualify him as an expert in this very narrow area I
24 think goes way beyond the process that we've been using over
25 the years.

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1 MS. ROBESON: And that was the discussion and I do
2 agree with that. So I'll qualify him as an expert in land
3 use planning --
4 MS. HARRIS: That is fine.
5 MS. ROBESON: -- if that's acceptable?
6 MS. HARRIS: That's acceptable. And then through
7 testimony, he'll explain his vast experience with respect to
8 the Sector Plan.
9 MS. ROBESON: And are you going to tell us about
10 another mistake in the -- you're going to tell us the true
11 meaning. Okay. Go ahead.
12 MS. HARRIS: So you've been qualified as an expert
13 in the field of land planning, is that correct?
14 MS. ROBESON: Land use planning, yes.
15 MR. KNOFF: I'm a little confused because he said
16 he was, he stated he was a licensed real estate agent. Was
17 that another area you're going to have him qualified?
18 MS. HARRIS: No, I think he was just giving his
19 broad range of experience in real estate related matters.
20 MS. ROBESON: So solely --
21 MR. BERMAN: I didn't want to hide anything.
22 MS. ROBESON: Not to limit you because it's a
23 broad cap, but land use planning is what --
24 MS. HARRIS: Land use planning. Thank you. Are
25 you familiar with subject local map amendment and

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1 development plan before the Hearing Examiner today?
2 MR. BERMAN: Yes, I am.
3 MS. HARRIS: Thank you. Can you please describe
4 what you were asked to do by the applicant?
5 MR. BERMAN: The applicant asked me to take a look
6 at the application and compare that to the goals and
7 objections of the Bethesda Sector Plan.
8 MS. HARRIS: And can you please describe your
9 responsibilities, well, let me, first of all, how long were
10 you employed at Maryland Park and Planning Commission?
11 MR. BERMAN: I worked for 28 years for Park and
12 Planning Commission.
13 MS. HARRIS: Okay. And can you please describe
14 your responsibilities in the preparation and supervision of
15 the 1994 Bethesda Sector Plan?
16 MR. BERMAN: I was chief of community planning and
17 I supervised the entire gate, the entire, this Master Plan.
18 I had the responsibility of supervising most of the Master
19 Plans during, done, that were done in the '90's and '80's,
20 and as such I established the goals of the plan, reviewed
21 the goals of the plan and reviewed the key language
22 recommendations, attended all the various hearings and work
23 sessions and was the key point person for the professional
24 staff before the Council and the Planning Board on these
25 Master Plans.

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1 MS. HARRIS: And did those activities include
2 reaching, outreach to the community such as the Bethesda CAC
3 or --
4 MR. BERMAN: Right. Right.
5 MS. HARRIS: -- other similar organizations?
6 MR. BERMAN: We had a team. We have teams of
7 people who worked on each of the Master Plans and my job was
8 to supervise each of the teams and make sure the teams were
9 doing that. But that --
10 MS. ROBESON: By CAC, you mean the Citizens
11 Advisory Committee?
12 MR. BERMAN: The Citizens Advisory Committee.
13 That's -- thank you. And since Bethesda Master Plan was
14 more controversial than some of the other plans we were
15 doing, I made sure that I was attending most of the
16 important meetings and hearings. And I also at that time
17 assumed the lead responsibility for the hot job site. So I
18 worked on the redevelopment of the hot job site in terms of
19 the concept in the Master Plan.
20 MS. HARRIS: Thank you. And what was the central
21 role of, excuse me, the central goal of the Sector Plan?
22 MR. BERMAN: Right. The Sector Plan followed the,
23 took a look at the 1976 Sector Plan and looked at that and
24 saw what occurred over that time period and on whether we
25 could do a better job than that plan envisioned and see

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1 what, whether those goals were being achieved. In our
2 judgment, the number one problem with the '76 plan was that
3 it was not creating enough housing and that the TSR area was
4 not creating enough housing and that we wanted to steer the
5 direction of the area toward, of Bethesda towards much more
6 of a balanced community and the TSR area was one of the key
7 locations that we felt necessary to see if we can encourage
8 development. We were not happy with what had occurred since
9 1976.
10 MS. HARRIS: So was the effort to --
11 MS. ROBESON: When you -- I'm sorry. I had this
12 question in G-910 and this time I'm going to clarify it for
13 my own information. You say we. Who is we?
14 MR. BERMAN: We, well, it all depends --
15 MS. ROBESON: Is it the planning staff?
16 MR. BERMAN: It, certainly the staff, the
17 professional staff --
18 MS. ROBESON: Yes.
19 MR. BERMAN: -- has the responsibility to prepare,
20 as you know, the staff draft.
21 MS. ROBESON: Right.
22 MR. BERMAN: And that sets the tone for the
23 discussion. But as it goes along, other people become the
24 we. The Planning Board then accepts that.
25 MS. ROBESON: Well, how do I know which we we're

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1 talking about?
2 MR. BERMAN: Let's talk about the final product
3 then.
4 MS. ROBESON: Why don't, well, don't you talk --
5 MR. BERMAN: Or --
6 MS. ROBESON: -- about when you're talking about
7 the staff draft --
8 MR. BERMAN: Yeah.
9 MS. ROBESON: -- just identify --
10 MR. BERMAN: Thank you.
11 MS. ROBESON: -- either say I --
12 MR. BERMAN: That would be helpful.
13 MS. ROBESON: -- or who the we is.
14 MR. BERMAN: Right. Thank you.
15 MS. ROBESON: That would be helpful. Go ahead,
16 Ms. Harris.
17 MS. HARRIS: Just for clarification purposes, so
18 when Mr. Berman talks about the Sector Plan, we're assuming
19 he's talking -- unless he clarifies otherwise, he's talking
20 about the final plan that was approved and adopted, correct?
21 MS. ROBESON: All right. So the we is the
22 Planning Board and the County Council?
23 MR. BERMAN: That's correct. That would be --
24 MS. ROBESON: Okay.
25 MR. BERMAN: That would be the sum total of that

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1 process.
2 MS. ROBESON: The we?
3 MR. BERMAN: Yes, the we to 3-year process.
4 MS. ROBESON: Okay. I just wanted to understand
5 that.
6 MR. BERMAN: The we at the beginning of the
7 discussion was the 1976 plan. We took a look at we, the
8 staff took a look -- I better not use that pronoun. The
9 planning staff took a look at what had occurred since 1976.
10 And when we, the staff took that issue to the Planning
11 Board, we said we were not, the staff was not satisfied with
12 the development of the, in terms of housing. The Planning
13 Board accepted that and said, yes, go forth and encourage
14 more housing in the Bethesda area. Come up with a plan that
15 did that. We then prepared that plan and that thought, that
16 concept was then incorporated by the County Council when
17 they adopted the plan.
18 MS. HARRIS: And page 29 of the Sector Plan makes
19 some introductory remarks about housing and what's desired
20 there. Can you just sort of touch on that please?
21 MR. BERMAN: Well, the plan, let me get my section
22 plan, I don't have that reference quite in front of me, but
23 I will tell you that the plan talked -- could you show me
24 the, okay.
25 MS. HARRIS: We're on this page, primarily the --

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1 MR. BERMAN: Reading from the plan, page 29, the
2 plan talks about, number one, promote a variety in choice in
3 housing of quality design, durable construction types of
4 neighborhoods. But I think you're talking about --
5 MS. HARRIS: I'll find you the section. Hold on
6 one second.
7 MR. BERMAN: I have it. Okay.
8 MS. ROBESON: Well, can he just testify --
9 MR. BERMAN: Okay. Basically, it's --
10 MS. HARRIS: Okay. Yes.
11 MR. BERMAN: -- it talks about providing, page 29
12 talks about in addition to the need for more affordable
13 housing, there is a market demand for rental housing that is
14 high-quality, that in many areas existing than they want
15 more rental housing and that the rental housing should be
16 higher quality than the existing garden apartments that
17 occurred, that are there now.
18 MS. HARRIS: Okay.
19 MR. BERMAN: Or then.
20 MS. HARRIS: They're -- what were the, you touched
21 on this, but what are the, what were the reasons for the
22 desire to have more housing in the Bethesda Sector Plan?
23 MR. BERMAN: Well, there are a variety of
24 different reasons why the plan supported more housing, the
25 vitality of an area to make it more 24-hour and the desire

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1 was not to have an all-office development where everybody
2 left and the streets were quiet at night. To provide for
3 housing close to jobs so that it would reduce the amount of
4 long-distance trips and the plan actually talks about even
5 jobs for a variety of different housing types for not only
6 just for the people who would shop in the stores, but for
7 the people who actually worked in the stores, particularly
8 the restaurants. The restaurant business in Bethesda is
9 very important and it's very important to have people who
10 can actually live in Bethesda who work in those restaurants.
11 But the support of use in Metro obviously, the
12 fact that Bethesda was a great place to live and more people
13 should live in this wonderful area that, what the, Bethesda
14 has evolved to and to support the local retail. They --
15 this is not only a goal for this CBD, but this type of goal
16 is for housing is recommended in other CBD's like Silver
17 Spring and Wheaton. But this is a particular, a major part
18 of the Bethesda plan of 1994.
19 MS. HARRIS: And in terms of -- and was one of the
20 overarching goals, you mentioned this, was the provision of
21 MPDU's within both the Sector Plan area and then more
22 specially the TSR area. Can you comment on that?
23 MR. BERMAN: Yes. One of the problems in the
24 planning for Bethesda was the edge of Bethesda.
25 MS. HARRIS: The edge?

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1 MR. BERMAN: The edges of around Bethesda.
2 MS. HARRIS: Okay.
3 MR. BERMAN: And if we were going to increase the
4 housing area that we wanted to look at, the staff wanted to,
5 where would be the appropriate places to do that? And we
6 struggled with that because, as you know, the -- Bethesda is
7 ran by very active civic associations and wonderful single-
8 family neighborhoods. So the thought was to try to
9 concentrate the housing as much as possible not on the edge,
10 but more towards the center of town as we give a distance.
11 And the TSR area was that place that we would want to put
12 the housing. If we weren't able to get the high-density
13 housing we wanted in, excuse me, we, the plan, and -- we
14 would have to find, and staff would have to find another
15 area. And we didn't think that that was going to be a good
16 place to put housing on the edge. So the TSR was that
17 predominate area that we've put a lot of eggs, housing eggs
18 in that basket. Sorry for the --
19 MS. HARRIS: Can you explain or do you have any
20 knowledge of why -- the explanation for the 35-foot zone
21 recommended height zone along Arlington Road in the TSR
22 area?
23 MR. BERMAN: That gets back to transitioning to
24 the residential area. Again, it's not a reflection upon
25 the -- it's more of a reflection on the residential on the

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1 outside of the area than the concern to proffer the area
2 from the middle --
3 MS. HARRIS: Okay.
4 MR. BERMAN: -- from the middle of a TSR. The --
5 we would have probably, the staff would have recommended a
6 higher density, higher on Arlington Road except for the
7 concern for transitioning to the residential area to the
8 west. And that same kind of, if you look at the Master
9 Plan, you can see that the Master Plan are broken down into
10 districts and that each district was done -- we looked at
11 each district and one of the issues of the districts was to
12 transition from the main part of Bethesda to the residential
13 area. In some, in this case we have a library in this area.
14 We have a wonderful library along Arlington Road and that
15 was a good buffer, but then we thought the 35 feet would be
16 another, another step --
17 MS. HARRIS: Okay.
18 MR. BERMAN: -- and then the higher density as you
19 get closer to the Wisconsin Avenue.
20 MS. HARRIS: Okay. Thank you. Were there any
21 changes made in the TSR zone in order to promote the goals
22 that you just identified?
23 MR. BERMAN: Right. It's not unusual that as part
24 of this process that the zoning ordinance that implements
25 the Master Plan needs to be tinkered with to see, to make

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1 sure that the zoning is, is working along with the Master
2 Plan goals. One of that was to, so we amended the TSR zone
3 or the County amended the TSR zone to, one, provide for
4 greater building coverage than had been before; and, two,
5 allow for wider range of commercial uses; and, three, to
6 allow for smaller assembly complaint.
7 MS. HARRIS: And does the TSR zone and, provide
8 for any necessary setbacks?
9 MR. BERMAN: Yes it, it does, but the key to all
10 of that was to have flexibility with it in terms of setbacks
11 and to allow for the development to proceed as, in an urban
12 format.
13 MS. HARRIS: Okay. I just wanted you to bring, I
14 want you to --
15 MR. BERMAN: Yes.
16 MS. HARRIS: -- rethink your one question --
17 MR. BERMAN: Let me look --
18 MS. HARRIS: -- and may I refer to the zoning
19 ordinance section --
20 MS. ROBESON: Wait a minute, rethink what?
21 MS. HARRIS: No, I'm sorry. I wanted to, I wanted
22 to, for Mr. Berman to clarify a section based on zoning,
23 clarify a statement that he just made based on 59C 8.4,
24 because I believe he mis-spoke.
25 MR. BERMAN: I believe I did.

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1 MS. ROBESON: Okay.
2 MS. HARRIS: So can you review 59C 8.4 and let,
3 and tell me whether there are any setback requirements
4 within the new TSR zone?
5 MR. BERMAN: I don't see any.
6 MS. HARRIS: So there are none?
7 MR. BERMAN: None.
8 MS. HARRIS: So that -- the omission or
9 elimination of setbacks in the TSR zone, in addition to
10 emphasizing a greater lot coverage, what do you think was
11 trying to be achieved with those tougher standards?
12 MR. BERMAN: Bigger, bulkier buildings. If you
13 have more lot coverage, then the buildings get bigger and
14 wider and certainly on the setback requirements that was,
15 that, again, the geometry is that the buildings get larger.
16 So -- and the same is true with small assembly requirements.
17 We had a hard time, the properties were a hard time being
18 assembled and so we, Council, through the trio of amendments
19 that allow for projects to proceed with assemblage, but we
20 wanted to encourage dense development at this location.
21 MS. HARRIS: Thank you. What was the intention of
22 the designation of Montgomery Lane as a mixed street?
23 MS. ROBESON: And can you clarify -- when you
24 answered this question, who you're speaking of?
25 MR. BERMAN: Thank you. The adopted plan, let me

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1 start off the adopted plan rather than we.
2 MS. ROBESON: Okay.
3 MR. BERMAN: The adopted plan provides for
4 Montgomery Lane as a mixed street and the rationale for that
5 was that, for two reasons. One, the plan recognized that
6 the --
7 MS. ROBESON: Well, okay, go ahead.
8 MR. BERMAN: Okay. That's --
9 MS. ROBESON: Yes, go ahead.
10 MR. BERMAN: Okay. The plan recognized that in
11 one of the goals of an urban village was to have a
12 pedestrian-friendly mixed street with --
13 MS. ROBESON: What's mixed mean?
14 MR. BERMAN: Mixed street means it's -- a mixed
15 street is a street that works for both cars and for people
16 at the same time and that you, if you -- that type of street
17 classification evokes the streets of Europe. When you
18 travel to Europe, you see many streets which are pedestrian
19 streets or mixed streets where they have people walking,
20 what we would think of would be the right-of-way and cars
21 going through. The sense, the planning, general planning
22 philosophy is that that creates a sense of a more intimacy
23 and more friendliness of the street. It is not a suburban
24 concept. It is an urban concept. It is one that says
25 that -- and we're seeing it more and more -- you'll be

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1 seeing more mixed streets as part of the redevelopment of
2 other parts of the County.
3 Maryland Avenue in Rockville right here in front
4 of the courthouse I would say is a mixed street. You can
5 see cars, you see trucks and the way the pavement is
6 handled, that is a mixed street, one form of mixed street.
7 Ellsworth Street in Silver Spring is, and behind the, behind
8 the AFI theater is a mixed street where you have a
9 commercial area, a retail area and you have cars and you
10 have pedestrians and sometimes they close the street,
11 sometimes they open the street. They -- you'll see that as
12 part of the development of the redevelopment of White Flint
13 Mall as that develops, that, they'll have a series of both
14 public and private use. So that is one of the ways of
15 trying to create more urbanity or more charm to a
16 neighborhood.
17 MS. ROBESON: Now --
18 MR. BERMAN: The --
19 MS. ROBESON: -- I'm back at the nomenclature --
20 MR. BERMAN: Yes.
21 MS. ROBESON: -- of how you -- the plan didn't do
22 this because the plan is a, not a person. But in your
23 opinion, it's your opinion that this is what was meant by
24 the Council?
25 MR. BERMAN: Yes.

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1 MS. ROBESON: Is that what you're saying or is
2 this what staff meant?
3 MR. BERMAN: I think you will see in the plan that
4 that's what Council meant. There was no, to my
5 recollection, the process of this particular recommendation,
6 there was no change in that recommendation throughout the
7 process. The other reason was the Council realized and the
8 plan realized that --
9 MS. ROBESON: Not the plan, the Council?
10 MR. BERMAN: Well, the Council --
11 MS. ROBESON: Somebody did realize?
12 MR. BERMAN: The plan realized, the plan realized.
13 MS. ROBESON: No, no, no, it can't be the --
14 MR. BERMAN: Well, the plan reflected, the plan
15 reflected a --
16 MS. ROBESON: Whose concern?
17 MR. BERMAN: The community's concern that --
18 MS. ROBESON: All right.
19 MR. BERMAN: -- the traffic along Montgomery Lane
20 would be very high unless you discourage traffic from going
21 through it because of its location on the way to the Metro
22 station.
23 MS. ROBESON: Okay.
24 MR. BERMAN: And as part of that concern that was
25 expressed by the community and recognized by the plan and

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1 adopted by the Council, there was a series of steps to
2 discourage through traffic through Montgomery Lane and that
3 was part of this rationale for creating a mixed street on
4 that street. It's the only street in the TSR that has that
5 and that concern was reflected by the narrowness of the
6 pavement, the widening of the sidewalks, and other things
7 which have subsequently changed, come along by DOT's
8 interpretation of that provision in the code, in the Master
9 Plan.
10 MS. HARRIS: So if I understood what you just said
11 correctly, are you -- was, the staff was concerned that
12 there could potentially be cut-through traffic and so
13 decided to design something which ended up having the name
14 of a mixed street to limit or, not prevent, but to limit
15 cut-through traffic?
16 MR. BERMAN: That was one of the -- that was one
17 reason. The other reason was to create a sense of urbanity
18 along that street.
19 MS. HARRIS: Okay. And do you think that the
20 design of the street has been successful in achieving that
21 goal?
22 MR. BERMAN: I have -- I believe so.
23 MS. HARRIS: Okay. At the same time, the zoning
24 ordinance recommended in the sector, well, the Sector Plan
25 recommended certain levels of development along that street.

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1 Was there any, was there anticipation of how much
2 development that mixed street could accommodate and what
3 would be developed there?
4 MR. BERMAN: Yes, the plan reflects an estimate of
5 about 100 units per acre and from the development statistics
6 I've seen, and that are in the record, the, on average the
7 development density on this street would be around 56 units
8 per acre, assuming the development of the, of this
9 application I believe.
10 MS. HARRIS: So in your view, the development of
11 this -- the approval of this application and the development
12 would still be consistent with the objectives of the mixed
13 street and the functioning of the mixed street?
14 MR. BERMAN: That's correct.
15 MS. HARRIS: Okay. Thank you. The Sector Plan is
16 almost 20 years old. Can you comment, and you referred
17 many, a lot of discussion during the course of this hearing
18 in terms of the various recommendations of the Sector Plan.
19 Can you comment on the age of the Sector Plan and how it
20 relates to the relevancy of some of these recommendations?
21 MR. BERMAN: Right. The -- it's clearly an old
22 plan. As we've talked in the other case, it's an old plan.
23 And I think that the plans do show their age and I, this
24 Sector Plan had a, like all of us, the Sector Plan had in
25 the beginning of it a place, a statement that says that,

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1 quote, "Master Plans generally look ahead in time, horizon
2 about 20 years from the adoption. Though it is intended
3 that they will be updated and revised every 10 years, it is
4 recognized that the original circumstances at the time of
5 plan adoption will change over time and the specifics of a
6 Master Plan may become less relevant as time goes on." And
7 that's the forward in that plan.
8 And I, that was crafted, I remember that, and we
9 at the time during this time period, all the plans that we
10 worked on put that provision in as a way of saying -- and it
11 was, this, the Council put in, it was done at the Council's
12 behest. There was some discussion about all the
13 illustrations, do the illustrations, how exact are those?
14 Do we really think the illustrations should be followed
15 exactly and we, we the plan ended up saying, no, they're
16 just in --
17 MS. ROBESON: No, no, no, no. It's not we, the
18 plan.
19 MR. BERMAN: The, it's the plan.
20 MS. ROBESON: In your opinion --
21 MR. BERMAN: Thank you.
22 MS. ROBESON: -- the Council said --
23 MR. BERMAN: The Council said, thank you, that the
24 illustrations in the plan were just illustrations and that
25 they were examples, one type of, one form of development,

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1 not that the plan, that there are many different types of
2 forms of development and these illustrations are just that,
3 illustrations. But what the plan does say that, that, that
4 as time goes on, the specifics of each Master Plan must
5 become less relevant. I would say personally and
6 professionally I don't think the general goal is to have
7 more housing. That is, that probably will not change my
8 opinion when the --
9 MS. ROBESON: You mean that isn't -- you're saying
10 that's not outdated?
11 MR. BERMAN: That's not, that's not outdated.
12 MS. ROBESON: The goal of housing?
13 MR. BERMAN: That's the principle core of growth.
14 MS. ROBESON: So are you -- okay. Go ahead.
15 MS. HARRIS: Thank you. And then, so the
16 provision of housing is a core goal that didn't change.
17 Would you say that the provision of affordable housing is a
18 core goal that did not change?
19 MR. BERMAN: That change will not change. That is
20 still a core goal.
21 MS. HARRIS: Okay. And how about housing near
22 Metro?
23 MR. BERMAN: That is a core goal.
24 MS. HARRIS: And how about diversity in housing?
25 MR. BERMAN: That is still a core goal.

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1 MS. HARRIS: Okay. Do -- in your opinion, are the
2 residential units on Montgomery Lane that have been
3 developed since the adoption of the plan, are they
4 representative of what was envisioned by the plan, are they
5 representative of what, what the plan wanted to see develop
6 there?
7 MS. ROBESON: What the Council wanted?
8 MS. HARRIS: What the Council -- I'm sorry, I did
9 it as well.
10 MS. ROBESON: I'm sorry to be -- it's important,
11 though.
12 MS. HARRIS: Right.
13 MS. ROBESON: And I need to know the context from
14 which you're testifying. So go ahead.
15 MR. BERMAN: I think the Council would, the
16 Council's adopted plan talks about diversity of housing type
17 and --
18 MS. ROBESON: Or you can talk on staff's
19 perspective, but go ahead.
20 MR. BERMAN: But just be precise? I've got that.
21 MS. ROBESON: Yes.
22 MR. BERMAN: Thank you. I've got that. The plan
23 perspective talks about diversity of housing types and
24 diversity, and a diversity of housing types. I would say
25 the plan would not be -- could you restate your question? I

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1 want to make sure --
2 MS. HARRIS: Yes.
3 MR. BERMAN: -- I'm getting it right.
4 MS. ROBESON: Sorry, I won't interrupt again.
5 MS. HARRIS: That's okay.
6 MS. ROBESON: But it is, it is important.
7 MS. HARRIS: In terms of -- is the housing that
8 currently exists on Montgomery Lane, is it reflective of
9 what the Council intended in its adoption of the Bethesda
10 Sector Plan, particularly as it relates to density,
11 diversity and affordability?
12 MR. BERMAN: Could -- I'm going to answer as me
13 individually and in this case I would say that --
14 MS. HARRIS: You individually as having been --
15 MR. BERMAN: -- as a --
16 MS. HARRIS: -- the plan --
17 MR. BERMAN: -- the plan author.
18 MS. HARRIS: Okay.
19 MR. BERMAN: One of the plan authors. I would say
20 as one of the plan authors, I would not be satisfied with
21 what was in the, what's occurred along Montgomery Lane
22 today.
23 MS. HARRIS: And what's lacking in your mind?
24 MR. BERMAN: Small units, cheaper units, more
25 rental, more affordable housing. I think that the density

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1 that has occurred on Montgomery lane is not as intense as
2 what was envisioned by either the author of the plan or, in
3 fact, the plan itself, but -- the plan itself.
4 MS. HARRIS: And when you say the plan itself,
5 which --
6 MS. ROBESON: Go ahead.
7 MS. HARRIS: The County Council's, what the County
8 Council intended when they adopted the plan?
9 MR. BERMAN: That's correct.
10 MS. HARRIS: Okay. Thank you.
11 MR. KNOPF: Excuse me. Now I'm lost. Who is the
12 author of the plan? He said it was envisioned by the
13 author. Is that the staff?
14 MS. HARRIS: I think --
15 MR. KNOPF: That's you? That's the Council? The
16 Planning Board? I'm getting a little lost here.
17 MR. BERMAN: Do you want me to respond to that?
18 Is that a question?
19 MS. HARRIS: Yes.
20 MR. BERMAN: Okay. The author of the plan, when I
21 just stated that, I was referring to the staff of Park and
22 Planning Commission. That is the author. The County
23 Council adopts the plan clearly.
24 MS. HARRIS: Right.
25 MR. BERMAN: However, it was written by the staff

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1 and it went through a 3-year process of being --
2 MS. ROBESON: So it was a collective -- okay. So,
3 but I think -- okay. But you were involved -- when you're
4 answering as the author, you're answering as one of the
5 authors, correct?
6 MR. BERMAN: One of the authors. That's correct.
7 MS. ROBESON: Okay. Does that satisfy --
8 MR. KNOPF: It helps. Thank you.
9 MS. ROBESON: Okay.
10 MS. HARRIS: Before the lunch break there was some
11 discussion about the City Homes and their view of the
12 subject property. And so my question to you is if you were
13 buying one of the end cap units, and perhaps it would be
14 helpful to put up 106?
15 COURT REPORT: 106(b).
16 MS. HARRIS: (b)? Thank you. I've got that all
17 shuffled around. So this is 106(b)? So if you were buying
18 one of the end-cap units which faces north --
19 MS. ROBESON: In the City Homes?
20 MS. HARRIS: -- in the City Homes, first of all,
21 are you familiar with the fact that Montgomery County sales
22 contracts have a provision regarding reviewing Master Plans?
23 MR. BERMAN: Yes, I am.
24 MS. HARRIS: And what is that obligation?
25 MR. BERMAN: The obligation --

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1 MR. ABRAMS: Objection. This goes beyond the
2 expertise of a land planner. It gets into the commercial
3 real estate licensing act.
4 MS. HARRIS: Absolutely not. I'd say anyone
5 that's ever purchased a house in Montgomery County could
6 probably answer that question.
7 MS. ROBESON: I think it's a fair question because
8 it is a provision that's come up in many, many zoning
9 hearings as far as, you know, attempts to say buyer beware.
10 So go ahead.
11 MS. HARRIS: So that -- can you briefly explain
12 first what that provision in the standard sales contract
13 provides?
14 MR. BERMAN: That requires a buyer of a home to
15 check a box on there, a settlement sheet that they've been
16 shown and aware of the Master Plan recommendation is for
17 that particular area.
18 MS. HARRIS: And if one would have satisfied that
19 obligation when they were purchasing those end units, what
20 would they have determined by reviewing the Bethesda Sector
21 Plan?
22 MR. BERMAN: Well --
23 MS. ROBESON: Go ahead.
24 MR. BERMAN: I, when I worked at Park and Planning
25 initially, I answered questions like that all the time.

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1 People would come to us and say I'm buying a house, what
2 does the Master Plan recommend and please translate this
3 Master Plan and I would have said to someone that this
4 Master Plan recommends high-density housing in an area
5 within X amount of feet of the Metro station, that the
6 height of the building is going to be pretty high and that
7 the recommendations for along the street edge would be
8 buildings along the street edge and that you would have a,
9 and that there would be a variety of housing types likely to
10 be developed along that street and that the street would be
11 narrow and the pavement would be narrow and that it would be
12 mixed street and that you would find, there would not be a
13 suburban-type street situation in front of your house.
14 MS. HARRIS: Would it have been likely for you to
15 have said to the owner, the potential purchaser of one of
16 those end units, refer them to perhaps what the experience
17 looks like further east on the street?
18 MR. BERMAN: I would have pointed out the other
19 tall buildings that were on the street like the Chase. Now
20 the Chase and some of the other buildings were built before
21 the TSR zoning height was lowered or discussed, but I would
22 indicate and show them a copy of the, if they wanted, the
23 zoning ordinance, but I would indicate that, I would show
24 them the height map, for example, in the Master Plan and I
25 would show them various, our intention to increase the

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1 amount of housing in that area.
2 MS. HARRIS: And would you, would it be reasonable
3 to expect that this potential purchaser given the Sector
4 Plan and its recommendations would have an expectation to,
5 one, see other buildings; two, see building penthouses; and,
6 three, perhaps see tops of buildings?
7 MR. BERMAN: Yes, I would.
8 MS. HARRIS: Do you have any other comments, final
9 comments that you may want to make about the development
10 plan or the Sector Plan or how they relate to one another?
11 MR. BERMAN: Well, it is my judgment --
12 MS. HARRIS: Yes.
13 MR. BERMAN: It is my judgment that the plan is
14 consistent with the Sector Plan, I, and that it accomplished
15 the goals of the Sector Plan. I've read the staff report,
16 the technical staff report. I've read the Planning Board's
17 judgments on that and I feel comfortable making those
18 recommendations.
19 MS. HARRIS: Thank you. That concludes Mr.
20 Berman's testimony.
21 MS. ROBESON: Okay. Mr. Abrams?
22 MR. ABRAMS: Yes, ma'am?
23 MS. ROBESON: You're up.
24 MR. ABRAMS: Okay. Now how is work, when you were
25 down at Park and Planning as the chief of community plans,

1 how was work assigned to the staff in terms of plan
 2 preparation?
 3 MR. BERMAN: Well, I was responsible for making
 4 those internal staff recommendations within my division,
 5 within my division, community planning division, and then I
 6 would work with the other division chiefs to match up the
 7 transportation staff, the urban design staff and make sure
 8 that those staffs were compatible and available.
 9 MR. ABRAMS: Now who were the staff people that
 10 you assigned to make or the point people? Were they urban
 11 designers, planners, transportation people, who?
 12 MR. BERMAN: They were both. The lead planner in
 13 this particular plan was Don Downing who was a community
 14 planner. He was assisted by -- remember Don -- okay, and
 15 Karen Koon, who was the urban designer.
 16 MR. ABRAMS: How about Carolyn Hufbauer?
 17 MR. BERMAN: And Carolyn Hufbauer.
 18 MR. ABRAMS: Who lives with three people?
 19 MR. BERMAN: That's correct, Carolyn.
 20 MR. ABRAMS: Okay. Now what were their
 21 responsibilities, not yours, theirs?
 22 MR. BERMAN: They prepared the reports and the
 23 recommendations. They did the day-to-day work on it and
 24 they would come and develop the recommendations and I would
 25 review those.

1 MR. ABRAMS: Did they write the text in the --
 2 MR. BERMAN: They wrote it. They generally wrote
 3 it or I re-wrote it, but they had the first shot at it.
 4 MR. ABRAMS: So most of the final work product of
 5 the staff draft came from those three individuals?
 6 MR. BERMAN: I don't know if I'd characterize
 7 that. I would say that the initial ones certainly.
 8 MR. ABRAMS: When did the staff work start on the
 9 Sector Plan?
 10 MR. BERMAN: I don't have an exact date. My -- I
 11 would say three or, maybe four years before adoption. I
 12 don't have the staff draft plan. I don't remember.
 13 MR. ABRAMS: 1990, '91, that area?
 14 MR. BERMAN: I wouldn't dispute that statement.
 15 MR. ABRAMS: Okay. Now during that period of time
 16 before the staff draft came out, what did these three
 17 individuals do besides drafting language?
 18 MR. BERMAN: They attended a lot of community
 19 meetings and met with lots of property owners. They did
 20 their research. They prepared various reports.
 21 MR. ABRAMS: So when somebody called in from the
 22 community and wanted to set up a meeting with the people who
 23 were involved in this, they were directed to these three
 24 people or --
 25 MR. BERMAN: That's correct.

1 MR. ABRAMS: Now how many other Master Plans or
 2 Sector Plans were being worked on at about the same time in
 3 '90, '91 through '94?
 4 MR. BERMAN: I would say -- I don't remember
 5 exactly, but I would say typically I did three, four, five
 6 plans at a time.
 7 MR. ABRAMS: As chief of community plans, what
 8 other tasks did you perform at the time the Sector Plan was
 9 being processed?
 10 MR. BERMAN: Well --
 11 MR. ABRAMS: What else did you do?
 12 MR. BERMAN: I was involved in any major planning
 13 issue that was going on at the same time.
 14 MR. ABRAMS: And this was county-wide?
 15 MR. BERMAN: County-wide issues, county-wide
 16 issues, administrative issues, personnel issues, a whole
 17 host of other issues.
 18 MR. ABRAMS: Did you work on the regulatory side
 19 too?
 20 MR. BERMAN: Not too much. Not too much, unless
 21 it was a big case.
 22 MR. ABRAMS: So you were kind of spread pretty
 23 thin at this point in time?
 24 MR. BERMAN: I wouldn't answer that affirmatively.
 25 MR. ABRAMS: Okay. So, Mr. Downey and Ms.

1 Hufbauer and it was Karen Koon did you say?
 2 MR. BERMAN: Karen Koon.
 3 MR. ABRAMS: Yes, who was the third person?
 4 MR. BERMAN: Karen, Don Downey, Carol Hufbauer,
 5 and Karen Koon was the urban design.
 6 MR. ABRAMS: Okay. Did they attend work
 7 sessions --
 8 MR. BERMAN: Yes.
 9 MR. ABRAMS: -- on the County Council?
 10 MR. BERMAN: Yes.
 11 MR. ABRAMS: Did they attend meetings with the
 12 community?
 13 MR. BERMAN: Yes.
 14 MR. ABRAMS: Did they respond to the Planning
 15 Board in terms of issues that the Planning Board members
 16 had?
 17 MR. BERMAN: Absolutely.
 18 MR. ABRAMS: And did they attend the County
 19 Council public hearings and work sessions on the plan?
 20 MR. BERMAN: Sometimes yes and sometimes no.
 21 Before the County Council, we would try to reduce the amount
 22 of staff to the absolute minimum.
 23 MR. ABRAMS: But they were the most knowledgeable
 24 people with respect to the evolution of this plan and what
 25 it contained?

1 MR. BERMAN: Well, yes, that's what their
2 assignments were.
3 MR. ABRAMS: At the time of the adoption of the
4 Sector Plan, what projects were already constructed in this
5 TSR zone area?
6 MR. BERMAN: Well, I'm sorry, I'm not going to
7 give you a good answer on that. I would have to say it's
8 the Chase.
9 MR. ABRAMS: You can give me a bad answer.
10 MR. BERMAN: I'll give you a bad answer.
11 MS. ROBESON: Any answer as long as it's true.
12 MR. BERMAN: I'd rather not. I probably can give
13 you a couple buildings, the Chase and the Edgemoor and, but
14 that's --
15 MR. ABRAMS: Those were the projects up to
16 Woodmont Avenue?
17 MR. BERMAN: Yes, right.
18 MS. ROBESON: The Edgemoor Highrise?
19 MR. BERMAN: The high rise. The high rise.
20 MR. ABRAMS: Do you know which projects had been
21 approved at that time, but not yet constructed?
22 MR. BERMAN: Do I know? I've seen the list.
23 MR. ABRAMS: But you don't remember which ones?
24 MR. BERMAN: Right. Well, I know that there's
25 some projects along Montgomery Lane, but I don't know --

1 MR. ABRAMS: But don't remember which ones? Okay.
2 Would this type of information have been considered, in
3 other words, what's there as well as what was approved, and
4 this would be the period of '91 through '94 when the
5 evolution of the Sector Plan would -- those projects have
6 been considered in what was ultimately recommendations in
7 the Sector Plan for this district?
8 MR. BERMAN: That would have been part of the
9 equation, yes.
10 MR. ABRAMS: Okay. In what way would they be
11 considered? Why would they be important?
12 MR. BERMAN: Well, in this case I think that we
13 would look at the buildings that were built and see whether
14 they were compatible with the intent of the Master Plan and
15 we would look at those and say is this the kind of form that
16 we're looking for and is this the, is this something that --
17 what we looked at, frankly, was, as I said before, what was
18 not occurring. In this area we said what was not occurring
19 was more important. What's more important was not occurring
20 and what was not occurring in this area was much
21 development.
22 MR. ABRAMS: What projects were approved after the
23 adoption of the Sector Plan in this district?
24 MR. BERMAN: I'm sorry, I can't give you an answer
25 to that. I don't know.

1 MR. ABRAMS: Are you familiar with the Holladay
2 project for this property?
3 MR. BERMAN: Yes, I am.
4 MR. ABRAMS: Do you know the height and density of
5 that project?
6 MR. BERMAN: I know it's less and I think it was
7 55 feet height and it was less, but it did include the, yes,
8 I know some of the elements of that. That included density
9 for the roads and things like that.
10 MR. ABRAMS: Do you know that it was found to be
11 compatible by the District Council?
12 MR. BERMAN: Yes.
13 MR. ABRAMS: Do you know that it was also found to
14 be in accord with the Sector Plan of the District Council?
15 MR. BERMAN: Yes, I know that.
16 MR. ABRAMS: Now most of the projects include
17 subsequent to the 1994 Sector Plan adoption. Were those
18 projects of a height and an FAR dwelling unit density less
19 than the subject application?
20 MR. BERMAN: Yes, they were. It's one project
21 that I'm aware of that was built less. I suspect, I will
22 take that back, there were more than one.
23 MR. ABRAMS: More than one? And these were less
24 than the Sector Plan recommends?
25 MR. BERMAN: That's correct.

1 MR. ABRAMS: Now who has the ultimate
2 responsibility for approving those projects?
3 MR. BERMAN: In the TSR case? If they're TSR, the
4 County Council.
5 MR. ABRAMS: County Council? Now would you say
6 that they made a conscious effort after reviewing the entire
7 facts of each one of those cases and come to a decision with
8 reference to Sector Plan conformance and compatibility?
9 MR. BERMAN: They had to, otherwise they wouldn't
10 have approved it.
11 MR. ABRAMS: Okay. Now did you work on any of the
12 projects which were adopted after the Sector Plan when you
13 were with the Park and Planning Commission?
14 MR. BERMAN: No, I left in 1996.
15 MR. ABRAMS: Okay.
16 MR. BERMAN: So I don't believe I did.
17 MR. ABRAMS: Okay. In private practice have you
18 worked on any projects in this district?
19 MR. BERMAN: No, I have not.
20 MR. ABRAMS: Now were requirements of MPDU
21 provisions in effect at the time of the adoption --
22 MR. BERMAN: Yes.
23 MR. ABRAMS: -- of the Sector Plan? They were --
24 MR. BERMAN: The subsequent changes after that,
25 but yes.

1 MR. ABRAMS: Okay. Was one of the goals and
2 intentions for recommendations of the Sector Plan to provide
3 significantly more MPDU's?

4 MR. BERMAN: I don't recall a statement in that,
5 in the plan. I think the statement was -- I don't think it
6 said there was any -- I don't believe there was a,
7 significantly more MPDU's. It said a range of housing
8 prices and more affordable housing.

9 MR. ABRAMS: Okay. If this were a goal which you
10 might have overlooked in the Sector Plan, has this been
11 accomplished?

12 MR. BERMAN: No, it hasn't been accomplished.

13 MR. ABRAMS: And the fact that it had not been
14 accomplished, again, in this assumption, would be the
15 responsibility of what body of officials?

16 MR. BERMAN: Well, I think we've seen what body of
17 officials because the District Council did change a text
18 amendment subsequent to the adoption of the plan by
19 increasing, allowing for additional height for MPDU's.

20 MR. ABRAMS: Okay. I think you indicated that one
21 of the other goals and recommendations of the Sector Plan is
22 to provide high-density housing in the district?

23 MR. BERMAN: That's correct, sir.

24 MR. ABRAMS: Has this been accomplished?

25 MR. BERMAN: Not as high as we had hoped as the

1 adherence to the Sector Plan in the view of the staff and in
2 your personal view, who was responsible for the non-
3 adherence?

4 MR. BERMAN: Well, the staff would be. And then
5 ultimately if the staff recommendations that the staff
6 report, and that subsequently the, whoever approved it,
7 which in this case would be the District Council.

8 MR. ABRAMS: Okay. Now is the height limit of 65
9 feet in the TSR district to be read in conjunction with the
10 Sector Plan description of this area being high rise?

11 MR. BERMAN: I -- let me think about that for a
12 second. That's a good question.

13 MR. ABRAMS: Well, take your time.

14 MR. BERMAN: Thank you. I appreciate that,
15 Stanley. I think the 65 feet is a reasonable height and it,
16 the plan said high rise, or it said mid-rise, but I would
17 say that that's -- it's an acceptable number.

18 MR. ABRAMS: Well, isn't the description of the
19 TSR district low-rise, high-density?

20 MR. BERMAN: That's correct.

21 MR. ABRAMS: Okay. 65 feet, is that low-rise in
22 the staff review opinion when this was adopted?

23 MR. BERMAN: I think it is.

24 MR. ABRAMS: So anything above 65 feet would be
25 mid-rise?

1 plan intended.

2 MS. ROBESON: As staff, as you intended?

3 MR. BERMAN: As I intended and as the plan
4 commits. How is that?

5 MR. ABRAMS: Did the Sector Plan recommend low-
6 rise buildings in this district?

7 MR. BERMAN: Yes.

8 MR. ABRAMS: Are the big Edgemoor and the Hampden
9 Lane project on Hampden Lane examples of low-rise buildings?

10 MR. BERMAN: Yes. Well, no, but there is --

11 MR. ABRAMS: The big Edgemoor, do you know what
12 I'm referring to?

13 MS. ROBESON: The high rise.

14 MR. BERMAN: The high rise? No, absolutely not.

15 MR. ABRAMS: Okay.

16 MR. BERMAN: No.

17 MR. ABRAMS: The same goes --

18 MR. BERMAN: Yes.

19 MR. ABRAMS: -- for Hampden Lane?

20 MR. BERMAN: Right.

21 MR. ABRAMS: Okay. Were these the same people
22 responsible for making these decisions, has made the other
23 decisions with respect to density?

24 MR. BERMAN: Yes.

25 MR. ABRAMS: Okay. Now if there had been non-

1 MR. BERMAN: Well, I think that you'd have to read
2 that in the context of the County Council's change on the
3 MPDU legislation. The County Council, as you know, when it
4 adopted the MPDU ordinance, permitted townhouses to occur in
5 single-family houses in the R-60 zones, R-90 zones and one
6 time there was only single-family zones. The Council said
7 because we feel that there's an increase in need for
8 moderate-priced dwelling units, that zone now all of a
9 sudden permits townhouses. I think that is analogous to
10 this situation in the case that Council said normally 65
11 feet is the number, but because we think MPDU's are very
12 important to provide, we'll allow you to go five feet more
13 to allow for MPDU's. That is the same rationale that they
14 did when they approved, when the Council approved townhouses
15 and single-family homes, single-family zones.

16 MR. ABRAMS: The ability to use that particular --
17 when was that amendment adopted first of all, do you
18 remember?

19 MR. BERMAN: I believe, I can't, I'd just be
20 guessing two years, but I'm sorry, I don't know.

21 MR. ABRAMS: When that amendment is sought to be
22 utilized, that is not a matter of right, is it? It's a part
23 of the discretionary approval?

24 MR. BERMAN: It's a matter of the applicant
25 seeking that. The applicant has a matter of right to

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1 approve that. Certainly it can't be required by the
2 District Council. Is that your question?
3 MR. ABRAMS: No. My question is part of the
4 discretionary approval whether the Planning Board is doing
5 site planning review or the County Council is doing
6 development plan approval, can the Council or the Planning
7 Board say we're going to stick to the limit say in a Sector
8 Plan rather than -- and you have to absorb --
9 MR. BERMAN: Well, it's --
10 MR. ABRAMS: -- the MPDU's in the context of those
11 limits?
12 MR. BERMAN: It is presumed, I presume over the
13 years that when the County Council approves a height change
14 from 65 to 70 feet, it knows, the Council knows that an
15 applicant can come in and apply for an increase of five feet
16 above this height in the Sector Plan. That the Council
17 knows that their height limited in the Master Plans and all
18 guidelines in the Master Plans, height limits and that,
19 therefore, they took action that permits a developer to
20 apply for that. Otherwise, they wouldn't -- and I'm, I was
21 not -- and I'm, I've seen them do that many times, take
22 action that -- you have to assume they know what they're
23 doing.
24 MR. ABRAMS: Mr. Berman, in projects which are
25 presented to the Planning Commission, particularly a

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1 preliminary plan and site plan, do many of those projects
2 ever achieve the highest number that they request in terms
3 of dwelling units per acre or some other density formula?
4 MR. BERMAN: No, that's on a case-by-case basis.
5 MR. ABRAMS: Right. And most of them that you
6 have observed or are familiar with have been approved for
7 density less than originally requested?
8 MR. BERMAN: I don't know that, but it would not
9 be unusual.
10 MR. ABRAMS: Would not be unusual? Now can you
11 focus on page 82 of the Sector Plan?
12 MR. BERMAN: Uh-huh.
13 MR. ABRAMS: The middle paragraph.
14 MR. BERMAN: Yes, yes, sir.
15 MR. ABRAMS: Okay. And specifically I want you to
16 focus on the sentence that says, quote, "The plan
17 anticipated that some projects will incorporate higher
18 densities and the full 2.5 FAR density," and then in parens
19 it says about 100 dwelling units per acre, closed parens,
20 "Would be allowed." End quote. Are you familiar with that
21 language?
22 MR. BERMAN: Yes, I am.
23 MR. ABRAMS: Now wasn't the intent here at the
24 time that the Sector Plan was adopted to limit the density
25 to 2.5 FAR with 100 dwelling units per acre irrespective of

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1 being allowed to have any density bonus?
2 MS. HARRIS: Objection.
3 MR. ABRAMS: What?
4 MS. HARRIS: Either last, earlier in this hearing
5 it was stipulated and recognized that the Council has
6 repeatedly allowed 3.05 FAR in heights in excess, we were
7 just talking about density now, density --
8 MS. ROBESON: Well --
9 MS. HARRIS: -- in excess of the 2.5. And so I
10 don't know why we're rehashing this issue again.
11 MS. ROBESON: Because he's holding himself out as
12 an expert or knowing a lot about this plan and so I think
13 it's a fair question to ask. Mr. Abrams, can you restate
14 that question?
15 MR. ABRAMS: Yes. Wasn't the intent when the
16 Sector Plan was adopted with this language in it, wasn't the
17 intent here to limit the density, the 2.5 FAR for dwelling
18 units per acre, irrespective of being allowed to request any
19 bonus or MPDU's?
20 MR. BERMAN: Well, the, as we just said, the MPDU
21 provision was adopted subsequent to this change to the
22 statement.
23 MR. ABRAMS: Well, you could get an MPDU bonus
24 back in 1994?
25 MR. BERMAN: But you could not get an extra floor.

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1 MR. ABRAMS: I'm not -- that wasn't the question,
2 Mr. Berman.
3 MR. BERMAN: Well, you said --
4 MR. ABRAMS: The question is FAR.
5 MR. BERMAN: -- 2.5 FAR --
6 MR. ABRAMS: Right.
7 MR. BERMAN: -- so if you have an extra floor, you
8 can get an extra, I think --
9 MR. ABRAMS: Well, if they have more land you can
10 get it too.
11 MR. BERMAN: No, you get more development. You
12 can't get more FAR.
13 MR. ABRAMS: Well, but the maximum was 2.5 FAR
14 with that range of up to 100 dwellings?
15 MR. BERMAN: Well, I would, I would disagree with
16 the about 100. It doesn't say up to. That's a --
17 MR. ABRAMS: All right.
18 MR. BERMAN: That's sort of informational
19 statement, the 100 units per acre. That's not a fixed
20 guideline as to be that's the number. It says about.
21 That's just an approximation and it's in parentheses.
22 That's the way I read it.
23 MR. ABRAMS: Okay. Yet you let that get by in
24 terms of remaining in the text of the plan despite being the
25 author of the plan?

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1 MS. HARRIS: He said -- objection. The witness
2 said it was an estimation. He didn't say he overlooked it.
3 He clearly clarified what he, what the intent of that was.
4 MR. ABRAMS: It was an estimation based upon your
5 experience in handling projects with FAR, different FAR's?
6 MR. BERMAN: This plan and the staff that wrote
7 the plan said that about 100 dwelling units per acre would
8 be -- okay? That is, was a way of the staff, and adopted by
9 the Council, an illustration of what the density could be.
10 It didn't say, there's no limit on that. If you had a
11 limit, you are familiar with other ways the plan limits
12 development and has limited development. We would say no
13 more than, you would no more than this, no more than that.
14 Our other plan said that.
15 MS. ROBESON: Like the height?
16 MR. ABRAMS: So, excuse me.
17 MS. ROBESON: Like the height and the FAR?
18 MR. BERMAN: The height, the height issue and,
19 yes, the height is a guideline and that over time has now
20 become more than the guideline. It's been a standard.
21 However --
22 MS. ROBESON: What about the FAR?
23 MR. BERMAN: Again, I would say that's been, the,
24 it's been superseded by further Council actions by the
25 MPDU's that, that trump this plan. It's the recommendation

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1 that if the Council knowingly, that if the District Council
2 knew you, pursuant that they knew that there were plans I
3 mean that said 2.5 FAR by provision for more MPDU's, they're
4 saying --
5 MS. ROBESON: But I guess I heard your counsel say
6 if somebody pulled this plan to know what was going on, they
7 should be prepared to deal with this building. But the fact
8 is if you pulled this plan and you wouldn't be prepared for
9 what's proposed necessarily.
10 MR. BERMAN: And I agree with you, but that's the
11 law.
12 MS. ROBESON: Yes.
13 MR. BERMAN: That's correct.
14 MS. ROBESON: That's correct.
15 MR. BERMAN: But that is the law. But the --
16 MS. ROBESON: Okay. I'm sorry to interrupt.
17 MR. BERMAN: Uh-huh.
18 MS. ROBESON: I'm sorry to interrupt, Mr. Abrams.
19 MR. BERMAN: It is, we ran into the same problem
20 with the change in MPDU's that allow townhouses and single-
21 family houses --
22 MS. ROBESON: Okay.
23 MR. BERMAN: -- I'm very familiar with that. If
24 you bought a plan that said that there would be single-
25 family --

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1 MS. ROBESON: Oh, I see what you're saying.
2 MR. BERMAN: -- and now the MPDU ordinance came
3 after that plan and said now you can have townhouses --
4 MS. ROBESON: Right.
5 MR. BERMAN: -- all storm regulations, their
6 regulations are already changing, so if the standard of the
7 street changes, it's the best we have. It doesn't mean it's
8 100 percent, but it gives you a pretty good idea what's
9 happening.
10 MR. ABRAMS: Regulations are always changing?
11 MR. BERMAN: Yes.
12 MR. ABRAMS: The Sector Plans don't change that
13 much, do they?
14 MR. BERMAN: No, well, they get older.
15 MR. ABRAMS: Just like we do.
16 MS. ROBESON: Really, I'm starting to feel very
17 old.
18 MR. KNOPF: It is, does age.
19 MR. BERMAN: There is a new Sector Plan coming.
20 MS. ROBESON: What part of me doesn't matter any
21 more?
22 MR. ABRAMS: There --
23 MR. BERMAN: There's a new Sector Plan coming.
24 MS. ROBESON: No.
25 MR. ABRAMS: There was an opportunity, there has

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1 been an opportunity since the adoption of that language to
2 resolve say the Hearing Examiner's dilemma by amending the
3 Sector Plan, isn't that correct?
4 MR. BERMAN: There is a process for minor Master
5 Plan amendments.
6 MR. ABRAMS: But that hasn't occurred?
7 MR. BERMAN: There is -- recently the County
8 Council put a system in for regulating minor Master Plan
9 amendments.
10 MR. ABRAMS: That hasn't occurred with reference
11 to this --
12 MR. BERMAN: This has not occurred on this
13 property, no.
14 MR. ABRAMS: Now the TSR zone has a maximum
15 density of 2.5 FAR?
16 MR. BERMAN: That's -- well --
17 MR. ABRAMS: The court reporter can't pick up the
18 up and down or back and forth --
19 MR. BERMAN: Yes.
20 MR. ABRAMS: -- head motion. Is the answer yes?
21 MR. BERMAN: Yes.
22 MR. ABRAMS: The density under the zoning
23 ordinance allows a building to exceed, according to your 2.5
24 FAR, for the purposes of accommodating MPDU's, is that
25 right?

1 MR. BERMAN: Yes, sir.
 2 MR. ABRAMS: There's no right to the exercise of
 3 that type of exceeding of the density limits in the Sector
 4 Plan, it's all part of the discretionary approval, correct
 5 or incorrect?
 6 MR. BERMAN: That's -- I wouldn't say it's, again,
 7 it is the -- an application is filed. It complies with the,
 8 it refers to the Master Plan that is before, that was
 9 adopted and also references all subsequent legislation.
 10 And, for example, let's say it's storm water management.
 11 Storm water management is adopted since the Sector Plan.
 12 That affects the way the development occurs. If the storm
 13 water management requires different kinds of standards or
 14 setbacks, that applicant has to meet those. I don't see --
 15 and so the development on that piece of property changes to
 16 reflect that. There's the same issue here with the MPDU and
 17 the technical staff refers to that on page 3 of the
 18 technical staff report on how this particular MPDU provision
 19 is applied in the same way. It's the same as any traffic
 20 study or any other regulation that occurs since the Sector
 21 Plan.
 22 MR. ABRAMS: In the language that is quoted from
 23 the Sector Plan, the Council chose to use the qualifier full
 24 density, is that correct?
 25 MR. BERMAN: That's the word.

1 MR. ABRAMS: Why did they choose to use that
 2 terminology?
 3 MR. BERMAN: At the time that was their
 4 expectation.
 5 MR. ABRAMS: So at the time it was their
 6 expectation that full density of 2.5 FAR included MPDU's
 7 which were allowed at that time, plus any bonus density
 8 which was allowed at that time?
 9 MR. BERMAN: I don't remember, Mr. Abrams, whether
 10 the -- I can't speak to the TSR zone, how it dealt with
 11 MPDU's at the time. You know, as you know, Mr. Abrams, some
 12 MPDU's, some of the MPDU's go above the standard height and
 13 standard and allow for extra density within and some are
 14 counted only up to the maximum of that zone. It's not a
 15 consistent way zone has dealt with MPDU's. I'm sorry, I
 16 can't speak to the specifics of the TSR zone.
 17 MR. ABRAMS: Well, words mean something, do they
 18 not?
 19 MR. BERMAN: Of course, sir.
 20 MR. ABRAMS: So full means something in the
 21 context of this sentence in the Sector Plan?
 22 MR. BERMAN: As I said, it was the expectation at
 23 that time.
 24 MR. ABRAMS: I guess the absence of words also
 25 means something, correct?

1 MR. BERMAN: Yes, sir.
 2 MR. ABRAMS: Okay. So if the word full was
 3 deleted, wouldn't it be merely a repetition of the TSR
 4 zoning ordinance density standard at that time?
 5 MR. BERMAN: Yes, that's correct.
 6 MR. ABRAMS: So it must mean something to be put
 7 in there, but you can't speak to it, is that correct?
 8 MR. BERMAN: I can't recall what that word meant.
 9 MR. ABRAMS: Now when you say that we, again,
 10 staff, I assume, in your testimony today, prepare the goals
 11 and objectives of the Sector Plan, what about the goals and
 12 objectives of the citizens, the Planning Board and the
 13 County Council? Aren't they also part of this overall
 14 package of consideration?
 15 MR. BERMAN: Of course, sir.
 16 MR. ABRAMS: Of course. And you said that the
 17 problem with the 1976 Sector Plan is not creating enough
 18 housing?
 19 MR. BERMAN: That's correct.
 20 MR. ABRAMS: Okay. Has this occurred since the
 21 adoption of the 1994 Sector Plan?
 22 MR. BERMAN: I'm sorry, I didn't hear the last
 23 part.
 24 MR. ABRAMS: Has this occurred, in other words,
 25 creating enough housing since the --

1 MR. BERMAN: I've -- there have been a good deal
 2 of more housing built in Bethesda, but I don't believe --
 3 again, this is my personal judgment, not the plan's judgment
 4 or the current staff, it's about my that there has not been
 5 enough affordable housing built in Bethesda and enough, and
 6 I would say that there's still a strong demand for more
 7 housing in Bethesda.
 8 MR. ABRAMS: Okay. And I think one of the goals
 9 you indicated in the Sector Plan is to put more high-density
 10 housing in the TSR zone?
 11 MR. BERMAN: That's correct.
 12 MR. ABRAMS: What about the CBD 2 zone and the CBD
 13 1 zone? Hasn't there been more high-density housing put in
 14 those zones?
 15 MR. BERMAN: Yes, there are. There have been a
 16 good deal.
 17 MR. ABRAMS: And we're talking about such areas
 18 along Wisconsin Avenue, Fairmont Avenue? Fairmont Avenue,
 19 by the way, is that close by? Is it a mixed street?
 20 MR. BERMAN: I don't --
 21 MR. ABRAMS: In the Sector Plan?
 22 MR. BERMAN: I can't recall.
 23 MR. ABRAMS: The section 59C 8.4 of the zoning
 24 ordinance, this came up with regard to no setback
 25 requirements --

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1 MR. BERMAN: Uh-huh.
2 MR. ABRAMS: -- in the TSR zone?
3 MR. BERMAN: Yes.
4 MR. ABRAMS: Okay. What were the setback
5 requirements in the TSR zone before this amendment?
6 MR. BERMAN: I don't know.
7 MR. ABRAMS: Borderline?
8 MR. BERMAN: I can't recall.
9 MR. ABRAMS: And in terms of the mixed street
10 rationale, I think one of the elements is that it becomes
11 pedestrian-friendly, mixed street with cars and pedestrians
12 sort of mixed together?
13 MR. BERMAN: Well, in this case they have separate
14 right-of-ways, clearly, the sidewalks.
15 MR. ABRAMS: Well, yes. But it's to accommodate
16 both?
17 MR. BERMAN: That's correct.
18 MR. ABRAMS: Okay. Now if you introduced more
19 cars onto a mixed street, don't you lessen the desirability
20 of the street for pedestrians?
21 MR. BERMAN: No. This is an urban area, it's a
22 very urban area. This is an urban area within 1,000 feet of
23 the Metro station. One would assume and one would hope that
24 they have been, there would be a series, there would be a
25 lot of cars and a lot of people on the streets. This is not

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1 Aspen Hill. This is not -- it's a different kind of
2 neighborhood.
3 MR. ABRAMS: Is the answer yes or no to my
4 original question or do you want me to repeat the original
5 question?
6 MR. BERMAN: I'd like you to answer, repeat the
7 question.
8 MR. ABRAMS: Okay. If you introduce more cars
9 into a mixed street such as Montgomery Lane, don't you
10 lessen the desirability of the street for pedestrian, and I
11 might say bicycle use?
12 MR. BERMAN: It makes it more difficult for the
13 pedestrians.
14 MR. ABRAMS: You can stop beating your wife, Mr.
15 Berman.
16 MR. BERMAN: It makes it more difficult.
17 MR. ABRAMS: Okay. A mixed street is, is that
18 really a special type of street which is to be treated
19 differently than other streets in the CBD --
20 MR. BERMAN: Yes.
21 MR. ABRAMS: -- Sector Plan?
22 MR. BERMAN: Yes.
23 MR. ABRAMS: Now I think you said the
24 illustrations in the Sector Plan were just illustrations?
25 MR. BERMAN: That's correct.

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1 MR. ABRAMS: Okay. In your experience as being a
2 member of the Park and Planning Commission staff, don't
3 these illustrations sort of get cast in concrete with the
4 staff members and try to get applicants to adhere as closely
5 as possible to those illustrations?
6 MR. BERMAN: That's why it's a two-edge sword. We
7 are very -- it has always been a problem to put an
8 illustration of what could happen as, A, an expectation that
9 it will happen, or, as you said, or what must happen. So
10 it's a very difficult discussion. That's why we use the
11 word illustration. But, and this, every Sector Plan has
12 that difficulty of you try to say what could happen, what
13 would likely happen, what does it all look like, but it
14 doesn't mean it will happen or should. It means this is one
15 of many ways that it could happen. That's the intention of
16 it.
17 MR. ABRAMS: Well, one of the illustrations and
18 intentions, I guess, in the Sector Plan was, with reference
19 to Montgomery Lane, was the straight edge --
20 MR. BERMAN: That's correct. Yeah.
21 MR. ABRAMS: Why is that more important in terms
22 of an illustration than any other illustrations?
23 MR. BERMAN: Well, there was -- there's more to
24 that -- there's another diagram in the plan which talks
25 about a straight edge. There's another diagram that shows

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1 that the edge should be straight along -- not just in that
2 pictorial, but another diagram in urban design elements or
3 what was desirable and that straight edge is part of that.
4 Do you want me to find that example, but there is an
5 example.
6 MR. ABRAMS: No, I'll take your word for that.
7 MR. BERMAN: Okay.
8 MR. ABRAMS: It's in here. I think the last
9 question I have for you is just as a purchaser of a unit
10 might have certain expectations in terms of the neighborhood
11 and would come to a person like yourself on the staff and
12 say, you know, what's going to happen in this neighborhood
13 and I think you said you would basically reiterate what the
14 Master Plan has recommended for that area, is that a fair
15 characterization?
16 MR. BERMAN: That's correct.
17 MR. ABRAMS: Okay. What about if somebody came to
18 your and your staff member at this point in time and they
19 asked you the question of, I see this vacant parcel of land
20 next to Montgomery Lane, is there anything approved on that
21 parcel and what would you say?
22 MR. BERMAN: If there wasn't, we would say there
23 wasn't.
24 MR. ABRAMS: If there was, would you tell them?
25 MR. BERMAN: Oh, yes.

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1 MR. ABRAMS: And if there was, would you tell them
2 what was approved?
3 MR. BERMAN: Yes, we would.
4 MR. ABRAMS: Okay. But you don't remember what's
5 approved on this specific parcel, do you?
6 MR. BERMAN: I know there is an approved site plan
7 on this property, development plan.
8 MR. ABRAMS: I have no further questions of this
9 witness. Thank you, Mr. Berman.
10 MR. BERMAN: Thank you, Mr. Abrams, a pleasure.
11 MS. ROBESON: Mr. Knopf?
12 MR. KNOPF: Could we take a 5-minute break now?
13 MS. ROBESON: Oh, sure.
14 MR. KNOPF: Start --
15 MS. ROBESON: A 5-minute break.
16 MR. ABRAMS: 5-minute break?
17 MR. KNOPF: Five minutes. Thank you.
18 (Recess)
19 MS. ROBESON: Okay, Mr. Knopf, are you ready?
20 MR. KNOPF: Yes.
21 MS. ROBESON: Mr. Berman, are you ready?
22 MR. BERMAN: Yes, I am.
23 MS. ROBESON: All right.
24 MR. KNOPF: Thank you. Mr. Berman, as I
25 understand it, you're saying this project in your opinion

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1 meets the goals of the Sector Plan?
2 MR. BERMAN: That's correct.
3 MR. KNOPF: Am I correct that you said that --
4 MS. ROBESON: Stop one second. Do you mind
5 shutting the door or actually if you shut the -- try
6 shutting the door.
7 MR. KNOPF: She can shut the door.
8 MS. ROBESON: If I shut the door, it gets hot.
9 MR. KNOPF: Hot.
10 MS. ROBESON: So that's the only reason. Thank
11 you for, thank you for doing that and I'm sorry to
12 interrupt.
13 MR. KNOPF: It's quite all right. And was I
14 correct that you said among the goals of the Sector Plan
15 sought to achieve, where I think I'm quoting, smaller,
16 cheaper units --
17 MR. ABRAMS: Can we take a break for a second? I
18 think we have a flood.
19 MS. ROBESON: A what?
20 MR. ABRAMS: A flood.
21 MR. KNOPF: Oh.
22 MS. ROBESON: Okay. Just, we'll --
23 MR. KNOPF: I'm not doing well at all, am I?
24 MS. ROBESON: We're just having a pause. We're
25 not off the record.

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1 MS. HARRIS: I'm fine, thank you.
2 MR. ABRAMS: Okay.
3 MS. ROBESON: You sure?
4 MS. HARRIS: Yes.
5 MS. ROBESON: Because I can still see --
6 MS. HARRIS: No, it's --
7 MS. ROBESON: Okay. All right.
8 MR. KNOPF: Let me try again.
9 MS. ROBESON: Let's start over.
10 MR. KNOPF: I believe you said that the goal, some
11 of the goals to be achieved by the Sector Plan were smaller
12 units, cheaper units, more affordable housing and rental
13 housing as part of the diversity?
14 MR. BERMAN: That's correct.
15 MR. KNOPF: Okay. Is any one of those goals a
16 binding element in this proposal?
17 MR. BERMAN: I'm not aware of that.
18 MR. KNOPF: So are you aware that smaller,
19 cheaper, more affordable housing and rental units, none of
20 those might be met here as the finally, the building is
21 built?
22 MR. BERMAN: I am not aware of what they are.
23 MR. KNOPF: Okay. Well, but you said that this
24 building met the goals?
25 MR. BERMAN: I don't -- it's as proposed, but I

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1 don't know if they're binding elements.
2 MR. BERMAN: Oh, as proposed? So would you agree
3 with me that it would be consistent with the Sector Plan to
4 make those binding elements as part of this development
5 plan?
6 MR. BERMAN: I believe what is a binding element
7 and what is not is a responsibility of the hearing here and
8 the applicant, not my judgment.
9 MR. KNOPF: But would you agree with me that if
10 the units were not smaller, cheaper and more affordable
11 housing or rental they would not meet the goals of the
12 setback?
13 MR. BERMAN: It would be more desirable if they,
14 if that's, if those types of units were developed, yes.
15 MR. KNOPF: More desirable?
16 MR. BERMAN: Desirable, would be an excellent,
17 excellent --
18 MR. KNOPF: In your opinion, would it then meet
19 the goals of the Sector Plan with those absent?
20 MR. BERMAN: Yes.
21 MR. KNOPF: It still would?
22 MR. BERMAN: I'm sorry, I'm sorry, I'm not hearing
23 you all completely.
24 MR. KNOPF: If the units --
25 MR. BERMAN: Yes.

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1 MR. KNOPF: If the units were not small --
2 MS. ROBESON: Just a second. Let him --
3 MR. BERMAN: That's --
4 MS. ROBESON: There you go.
5 MR. BERMAN: Thank you. I'm sorry.
6 MS. ROBESON: That's all right. Go ahead.
7 MR. KNOPF: If this plan were changed, the
8 development plans now proposed were changed, you would have
9 much larger units so there would be fewer units and,
10 therefore, fewer MPDU's and the units would be say expensive
11 condominium units, would this project then meet, in your
12 opinion, the goals of the setback?
13 MR. BERMAN: I would, I would, I would probably
14 have to find it compatible with the goals. I would not be
15 as supportive of it. The --
16 MR. KNOPF: And what would be left for it to be
17 compatible with?
18 MR. BERMAN: I would -- I think there is a real
19 need for affordable housing in this area and more rental
20 housing, yes, if that's your question. But an applicant is
21 free to propose a unit type of mixture.
22 MR. KNOPF: Let me try again. If there's no
23 rental housing and less the number of MPDU's that are here
24 proposed, considerably less, and the, and it is expensive
25 and the units are large, in your opinion would this project

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1 meet the goals of the Sector Plan?
2 MR. BERMAN: As you're aware, there's a site plan
3 that was approved, a development plan that was approved
4 prior to this development plan. It was different in
5 character. That was approved, and that was approved by the
6 District Council and, I'm sorry, District Council and that
7 was made, that was acceptable.
8 MR. KNOPF: No, I was asking about your opinion.
9 MR. BERMAN: Okay. Then I'll rephrase. In my
10 opinion, there is unfortunately no finding that we can make,
11 the, we being the staff that can require a developer to meet
12 mixture of housing types. There is no finding. If you come
13 in for a subdivision, I can't deny you if you are not
14 building more cheaper rental housing. So I would approve it
15 because there's no finding not to.
16 MR. KNOPF: Please --
17 MS. ROBESON: Well, I think his question is would
18 the project still further the Sector Plan goal.
19 MR. BERMAN: We would have the --
20 MS. ROBESON: Not --
21 MR. BERMAN: -- in my opinion --
22 MS. ROBESON: In your opinion?
23 MR. BERMAN: -- my opinion, my opinion would be
24 that it would be approvable.
25 MS. ROBESON: Okay.

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1 MR. BERMAN: Okay?
2 MR. KNOPF: We're almost there. Would the
3 approvable, but would it meet, apart from approving criteria
4 that you had testified, as I understand it today, that there
5 is certain goals, requirements of the Sector Plan and
6 certain goals and this project met those and, therefore, you
7 favored it, you thought it was fit and met all those goals
8 and requirements and I'm saying if we removed smaller units,
9 cheaper units, rental units and lowered the number of
10 moderately priced dwelling units, in your opinion would it
11 meet those goals? I'm not asking you whether it would
12 satisfy enough goals to get approved or not. I'm just
13 asking you whether it would meet the goals to get approved
14 or not. I'm just asking you whether it would meet the goals
15 that you had made.
16 MR. BERMAN: It would meet the goals.
17 MR. KNOPF: It would meet the goals?
18 MR. BERMAN: It would meet the goals because the
19 goals, there's a difference, sir, between goals and what is,
20 and what the regulations --
21 MR. KNOPF: Ah.
22 MR. BERMAN: -- provide.
23 MR. KNOPF: I see.
24 MR. BERMAN: There's a difference. They're on, as
25 I said, there are goals and sometimes there are not findings

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1 that one could make during the process to support every
2 single goal.
3 MR. KNOPF: Well, let's talk about another goal.
4 I'm not quite sure. You had mentioned having more dwelling
5 units, I don't, but is that a goal that was -- that was what
6 the Sector Plan was trying to accomplish, is that correct?
7 MR. BERMAN: Yes. In other, for example, we had a
8 project in Silver Spring. We had to approve it, had to
9 approve it. It was much less dense than we recommended. It
10 was next to the Metro station. It was Cameron Townhouse
11 projects. It was not -- but the plan recommended a much
12 bigger building, much higher building. At the time the
13 market didn't support that and we, we, the staff, excuse me,
14 recommended approval to the County Council of that
15 application. We were not happy with that recommendation,
16 but there was no way of denying that recommendation.
17 MR. KNOPF: Well, okay, let me try to back up so
18 we get this clear. I thought you were saying that the we,
19 meaning staff, Planning Board, Council, the whole board had
20 in mind by the Sector Planning to try to encourage more
21 dwelling units in this area?
22 MR. BERMAN: That's correct.
23 MR. KNOPF: That is correct? And as I understand
24 it, that would be driving many of the recommendations of the
25 Sector Plan?

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1 MR. BERMAN: That's correct.
2 MR. KNOPF: Okay. Now let's look at that for a
3 minute. Are you -- I think you mentioned that prior to the
4 current Sector Plan there was, the Chase was built?
5 MR. BERMAN: Right.
6 MR. KNOPF: Am I pointing to the case?
7 MR. BERMAN: Correct.
8 MR. KNOPF: And is there a Chase 1 and Chase 2?
9 MR. BERMAN: I think so.
10 MR. KNOPF: I am pointing now behind the Edgemoor
11 building on Montgomery Lane. There is a, fair to say, a
12 high rise building higher than the Montgomery Lane Chase 1
13 and Chase 2? And are you familiar with the Christopher?
14 MR. BERMAN: Yes.
15 MR. KNOPF: And is your understanding they were
16 all built under the prior --
17 MR. BERMAN: Prior, that's correct.
18 MR. KNOPF: -- sector? And is it your
19 understanding that under the prior Sector Plan you could go
20 higher in height and more dwelling units than what this new
21 1994 Sector Plan is?
22 MR. BERMAN: That's correct.
23 MR. KNOPF: So if the -- so they lowered it from
24 the 70, the prior Sector Plan was 1976, am I correct?
25 MR. BERMAN: Yes.

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1 MR. KNOPF: So they lowered the height and the
2 number of units from 76 to 94. Is that consistent with what
3 you're telling me, that they want to put in the most
4 dwelling units, that was why they raised, that they did the
5 1994 Sector Plan? Isn't that inconsistent?
6 MR. BERMAN: The way -- I would say that there,
7 what the hope was that providing for more building coverage
8 was the issue rather than the, allowing for more building
9 coverage was it and less assemblage were, would be
10 sufficient to allow, to spur more development.
11 MR. KNOPF: Or would you agree with me that
12 allowing more building coverage assemblage and a higher
13 height would, in fact, provide for more DU's, dwelling
14 units?
15 MR. BERMAN: The -- I'll restate what I said. The
16 goal was to increase the amount of housing in that area and
17 the extra -- but it was felt that that the development that
18 had occurred prior to the, under the existing TSR of zoning
19 was not as desirable as we'd like to see in the future.
20 MR. KNOPF: What is the height limit of the TSR
21 zone?
22 MR. BERMAN: At the time there was no height
23 limit.
24 MR. KNOPF: And it's still true today?
25 MR. BERMAN: That's correct.

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1 MR. KNOPF: So theoretically we wanted more
2 dwelling units that could go to the sky in theory, is that
3 correct?
4 MR. BERMAN: Well --
5 MR. KNOPF: No height limit?
6 MR. BERMAN: Well, okay. Assuming they were
7 compatible.
8 MR. KNOPF: Yes. But also consuming, didn't they
9 put a height limit, though? Doesn't the Sector Plan put a
10 height limit?
11 MR. BERMAN: Well, it's a guideline. I would
12 consider that a guideline.
13 MR. KNOPF: Oh, a guideline? And that guideline
14 is 65 feet for the street?
15 MR. BERMAN: That's correct.
16 MR. KNOPF: Is there not, call it guidelines,
17 that's not to indicate I agree with the terminology, isn't
18 there a guideline that you tent from higher at the Metro to
19 go down 35 feet at Arlington?
20 MR. BERMAN: Well, there's a -- I think that
21 you're considering it to be a straight, straight tent.
22 There are, yes, you start at a higher point and you go
23 lower, but it doesn't mean that the -- the issue is whether
24 the starting point and the ending point doesn't, necessarily
25 doesn't mean that there can't be a bump or two along the

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1 way.
2 MR. KNOPF: That wasn't my question, but let's --
3 I'm just asking do you recognize that the Sector Plan does
4 provide for certain height -- I'll use your term guidelines?
5 MR. BERMAN: Thank you.
6 MR. KNOPF: That's true, right?
7 MR. BERMAN: That's true.
8 MR. KNOPF: Okay. So it would be -- and you also
9 mentioned, like I said, you could go to the sky, you said,
10 well, as is compatible. So is it not fair to say that the
11 driving force for the Sector Plan was not to maximize the
12 number of units, but was to provide for units in development
13 that was consistent with these other requirements such as
14 height and compatibility?
15 MR. BERMAN: I would say that those all were the
16 same and the question is how to balance all those
17 conflicting goals. That's always the question, how to
18 balance it all.
19 MR. KNOPF: You'd have to have balance. So would
20 you agree with me that it would be inappropriate in deciding
21 whether to approve a project that you had just looked at the
22 number of dwelling units?
23 MR. BERMAN: I don't think any, I don't think we
24 look just at the number of units.
25 MR. KNOPF: I see. Or just look at the number of

1 MPDU's?
 2 MR. BERMAN: Or the MPDU's.
 3 MR. KNOFF: All right. Well, now you had, in
 4 fact, the Sector Plan does more than just have a 65-foot
 5 guideline on this street. Doesn't it talk in terms of three
 6 stories and 6-story buildings?
 7 MR. BERMAN: Yes, it does.
 8 MR. KNOFF: Six to 3-story buildings?
 9 MR. BERMAN: Uh-huh.
 10 MR. KNOFF: And as a matter of fact, to explore
 11 further what you said, if I was going to buy a house, excuse
 12 me, a unit somewhere along Edgemoor --
 13 MR. BERMAN: That's a saw house.
 14 MR. KNOFF: Well, okay, I --
 15 MR. BERMAN: A home.
 16 MR. KNOFF: I don't want to be exclusive, I want
 17 to be inclusive. If I were to buy a unit --
 18 MR. BERMAN: A unit.
 19 MR. KNOFF: -- and I went to you in the -- when
 20 did you say you left, in --
 21 MR. BERMAN: In '96.
 22 MR. KNOFF: -- and I said to you what can, how is
 23 this street supposed to be developed, would you tell me this
 24 is supposed to be three to six stories as an urban village?
 25 MR. BERMAN: No, I wouldn't tell you that.

1 MR. KNOFF: Oh, you wouldn't?
 2 MR. BERMAN: I would say that that's a guideline,
 3 that there are examples in the area of higher buildings than
 4 that.
 5 MR. KNOFF: On that street?
 6 MR. BERMAN: In that district.
 7 MR. KNOFF: In the district? Okay.
 8 MR. BERMAN: In the district or neighborhood. I
 9 would say that there is a guideline in the plan that calls
 10 for 65 feet and that the likely, then that property across
 11 the street would likely develop.
 12 MR. KNOFF: And you wouldn't say as to how it
 13 would develop in terms of appearance or character?
 14 MR. BERMAN: I would give you some ranges of
 15 things that I could foresee.
 16 MR. KNOFF: Well, I did consult you, but I just
 17 happened to read the Master Plan. Would you agree with me
 18 to be a fair impression I would get from reading the Master
 19 Plan that that was to be developed as an urban village with
 20 three to six story buildings at a 65-foot height limit?
 21 MR. BERMAN: I -- you could interpret it that way,
 22 but I don't think you should. I think you should interpret
 23 it that high-density housing is in that area as well and
 24 that within that district there are -- I, again, you're
 25 asking for what's the -- there's no way to predict that the

1 MPDU ordinance would change, right? There's no way to
 2 predict that. There's no way to predict storm water
 3 regulations would change.
 4 MR. KNOFF: And the change in the MPDU ordinance
 5 would change from three to six stories and having low-rise
 6 urban village concept?
 7 MR. BERMAN: It permits to go higher than the
 8 Master Plan. It permits it to go higher than the Master
 9 Plan. Why didn't --
 10 MR. KNOFF: So if I --
 11 MR. BERMAN: -- District Council do that?
 12 MR. KNOFF: Well, so if I had been allowed to have
 13 three stories, maybe now I can go to four stories?
 14 MR. BERMAN: That's correct. That was the
 15 intention of the County Council.
 16 MR. KNOFF: All right. Let me -- well, now you
 17 also mentioned, I believe, that the Master Plan, the age of
 18 the Master Plan was a factor in your considerations because
 19 things have changed. I'm not trying to put words in your
 20 mouth, but is that a fair statement?
 21 MR. BERMAN: That's a fair --
 22 MR. KNOFF: Okay. Are you aware of the, that the
 23 County Council as recently as last year approved a project,
 24 which I believe we've been calling 4901 Hampden --
 25 MR. BERMAN: Uh-huh.

1 MR. KNOFF: -- that decreased the number of
 2 dwelling units considerably and as a result of that
 3 decrease, obviously also decreased the number of MPDU's that
 4 go with it. Are you aware of that?
 5 MR. BERMAN: I'm not that aware. I'm aware of
 6 that case and I've looked at the file, but I'm not exactly
 7 sure what happened in that case.
 8 MR. KNOFF: Are you aware of the original plans
 9 for that site were at 100 feet in height and the Council
 10 rejected it because it was too high and the developer came
 11 back with a 70-foot height on three sides of the 60-foot
 12 height portion on Montgomery Lane?
 13 MR. BERMAN: I'm not aware of that.
 14 MR. KNOFF: You're not aware? Well, assuming
 15 that's the case, would that not be inconsistent with your
 16 testimony that what is driving the Sector Plan has to be the
 17 maximum number of dwelling units and things like that?
 18 MS. HARRIS: Objection. The witness did not say
 19 what was driving --
 20 MR. KNOFF: Right.
 21 MS. HARRIS: -- the Sector Plan was maximizing the
 22 number of units.
 23 MR. KNOFF: I, increase, I thought he did.
 24 MS. HARRIS: It was a mis-characterization.
 25 MS. ROBESON: I thought he -- what?

1 MS. HARRIS: I believe that was a mis-
 2 characterization on the part of Mr. Knopf.
 3 MR. KNOFF: I thought that's what he said.
 4 MS. ROBESON: It was my understanding he said --
 5 MS. HARRIS: One of?
 6 MR. KNOFF: No, he said it was --
 7 MS. ROBESON: I thought he said he went through
 8 three or four major goals and one of them was that. So if
 9 you want to rephrase your question?
 10 MR. KNOFF: We, didn't you say, I believe that we
 11 rephrased that maximizing the number of units was a core
 12 goal?
 13 MR. BERMAN: I don't ever use the word maximize.
 14 I said increase.
 15 MR. KNOFF: Increase?
 16 MR. BERMAN: Increase, that actually, that's
 17 correct. I never said maximize.
 18 MR. KNOFF: Okay.
 19 MR. BERMAN: There's a big difference.
 20 MR. KNOFF: I'm never wrong. I thought -- well,
 21 whatever. Let's --
 22 MS. ROBESON: Yes. If he doesn't agree, the
 23 transcript will tell us.
 24 MR. KNOFF: Whatever. Well, would you agree with
 25 me that the Council's, assuming, I understand you're not

1 familiar with this, assuming the Council just last year
 2 lowered considerably the density, the number of dwelling
 3 units in the building, including lowering the number of
 4 MPDU's, would you agree with me that that is inconsistent
 5 with your understanding that a core element of the Sector
 6 Plan is to have dwelling units --
 7 MR. BERMAN: As I said, I wasn't --
 8 MR. KNOFF: -- dwelling units and MPDU's?
 9 MR. BERMAN: -- familiar with that case enough to
 10 comment on that.
 11 MR. KNOFF: I see. Well, if you were to be
 12 advised that the Council lowered the height and rejected the
 13 building at 100 feet as too high and lowered it to 70 feet,
 14 would that be an indication to you that the Council still
 15 found, to find a better word, alive and well, the Sector
 16 Plan recommendations regarding height for at least this
 17 street?
 18 MR. BERMAN: I would -- yes, it said -- that's
 19 correct.
 20 MR. KNOFF: All right. Now the Sector Plan, we
 21 had a lot of talk about 100 dwelling units, whether that was
 22 maximum or average or whatever. But when the Sector Plan on
 23 that page talked about 100 dwelling units and the FAR, they
 24 were talking about the entire TSR district, were they not?
 25 MR. BERMAN: That's correct.

1 MR. KNOFF: And that district --
 2 MR. BERMAN: That's an average statement.
 3 MR. KNOFF: An average? And that district goes,
 4 it covers quite a lot of streets other than Montgomery Lane,
 5 is that correct?
 6 MR. BERMAN: That's correct.
 7 MR. KNOFF: So as a planner, if you wanted to have
 8 the average of 100 or even over 100, if the Sector Plan said
 9 on the particular location you shouldn't go above 65 feet
 10 and you should have from three to six stories, would that be
 11 the street that you would look at to put in more dwelling
 12 units than other places in the zone that didn't have that
 13 restriction?
 14 MR. BERMAN: I would have looked at, well, I will
 15 say what the Planning Board said and the Planning staff said
 16 on this application, which is that this application and this
 17 site plan is approvable and is ordered, and is compatible
 18 and is approved based upon the Master Plan. That's the
 19 judgment of the Planning Board and the Planning staff.
 20 MR. KNOFF: The Planning Board and Planning staff
 21 also said the building next door, Sandy Springs, 4825
 22 Montgomery Lane, I believe that has a density -- that was
 23 only four units and that has a density of way below even the
 24 minimum 45 and the Planning Board staff approved that.
 25 MR. BERMAN: Yeah. As I said, that's, but that

1 was, that application. This is this application. And I
 2 think that -- anyways, that's what I stated.
 3 MR. KNOFF: Okay. Well, I understand what the
 4 Planning Board staff said and what the Planning Board said.
 5 I want to know what you said because you were saying in your
 6 opinion what this Sector Plan required as you understood it
 7 and I guess my question is if -- is that consistent with
 8 putting, your understanding of the Sector Plan that you had
 9 an average of 100 at least, would you say your opinion is
 10 that you shouldn't try to put that average or above that
 11 average on this particular street because of the peculiar
 12 requirements of the street in the Sector Plan?
 13 MR. BERMAN: I don't see that.
 14 MR. KNOFF: You don't see that?
 15 MR. BERMAN: I don't see that.
 16 MR. KNOFF: Okay. All right. Actually, Mr.
 17 Abrams said to you words have meanings, don't they? So let
 18 me ask you what do the words urban village have in the
 19 Sector Plan if you say, well, forget it? And three to six
 20 stories, what did that mean if you say forget it?
 21 MR. BERMAN: Do you have question? What do you
 22 want -- what's your question?
 23 MR. KNOFF: Well, what I want to know is how do
 24 you ignore and what grounds do you justify ignoring those,
 25 that language?

1 MR. BERMAN: Well, let's take the words urban
2 village. Urban means high density or means a -- it does not
3 meet suburban standards in terms of compatibility. In my
4 judgment it means there's congestion, it means activity on
5 the street, it means a lot of different things, but it
6 doesn't mean -- it means an urban area. That's what that
7 means, urban village. A village could mean that there is a
8 community there, an urban community and I think that's what
9 the plan recommended.

10 MR. KNOPF: Well, I'm referring to page 84 of the
11 Sector Plan where it's referring to this urban village,
12 Montgomery Lane, and it uses the term proposed low rise high
13 density. Isn't that inconsistent with what you just said?

14 MR. BERMAN: Yes, that's --

15 MR. KNOPF: All right. Thank you. You answered
16 the question. Just one minute please. Oh, I believe, if I
17 quoted you right, I think you said that the, in amending the
18 TSR zone to provide coverage, more coverage, assemblage was
19 easier and so on, you said that they -- that the TSR zone
20 sought to, and I have quotes after this, sought to achieve,
21 quote, "Bigger, bulkier buildings."?

22 MR. BERMAN: That's an accurate statement. I did
23 say that.

24 MR. KNOPF: And is that -- given the guidelines or
25 provisions, whatever you want to call it, for this

1 particular street, do you think that we, whichever we is,
2 had in mind that bigger and bulkier buildings were to go on
3 Montgomery Lane?

4 MR. BERMAN: Higher, higher, less open space, more
5 building coverage will create a bigger building on the lot.
6 Yes, I mean that's my, that is what would happen.

7 MR. KNOPF: It would happen if one were then to
8 ignore the 65-foot height limit?

9 MR. BERMAN: That's -- I'm not going to answer.

10 MS. ROBESON: Well, and I, when I read this, what
11 I see them doing, and maybe I'm wrong, but what I see them
12 doing is by this low rise urban village, what they did is
13 they decreased open -- they increased the footprint of the
14 building, but decreased the height. That's how I read the
15 plan. They had higher heights permitted along the road and
16 then they imposed these height limits because what they
17 wanted to have as a -- to me I read the plan that what they
18 wanted to have was a transition between the CBD core and the
19 R-60 on the other side of Arlington. And when I read the --
20 even in the, on page 80, the description, it looks to me
21 like they increased the footprint so they could have high
22 density at lower heights.

23 MR. BERMAN: That's correct. I would think that's
24 a correct assessment and then the Council on top of that,
25 subsequent to that said you can go one more floor, you can

1 go up to 70 feet higher than the Master Plan if you provide
2 MPDU's. So you end up an application such as this, which is
3 a bigger building, wider building, less open space according
4 to the zone and higher than was probably a little, you know,
5 five feet higher than was conceived of in the Master Plan.

6 MS. ROBESON: Well, I guess my question is about,
7 okay, I'm sorry to interrupt.

8 MR. KNOPF: No, that's quite all right. That's --
9 I think that's on everybody's mind. Can I ask a question or
10 are you still --

11 MS. ROBESON: No, you go ahead.

12 MR. KNOPF: Okay. What you said that the Council
13 had in mind in your opinion to add additional height because
14 of the MPDU's, is it your opinion they had in mind to add
15 that irrespective of compatibility concerns and height
16 concerns in Sector Plans?

17 MR. BERMAN: No. No.

18 MR. KNOPF: Thank you. Excuse me one second. I
19 have no further questions. Thank you, Mr. Berman.

20 MR. BERMAN: Thank you.

21 MS. ROBESON: All right. Redirect, Ms. Harris?

22 MS. HARRIS: No, thank you.

23 MS. ROBESON: Okay. Mr. Berman, thank you. You
24 may be excused.

25 MR. BERMAN: Thank you.

1 MS. HARRIS: Can we take another 5-minute break
2 just with the understanding that we probably won't take
3 another one after this one?

4 MS. ROBESON: Oh, sure.

5 MS. HARRIS: Is that all right?

6 MS. ROBESON: How many more witnesses do you have?

7 MS. HARRIS: One.

8 MS. ROBESON: One more witness. And who is it?

9 MS. HARRIS: Mr. Irish.

10 MS. ROBESON: That's the civil --

11 MS. HARRIS: The long-awaited Mr. Irish.

12 MS. ROBESON: Engineer, the rooftop man? Yes,
13 let's take five minutes and then we'll end the hearing after
14 Mr. Irish, okay?

15 MS. HARRIS: Okay. I'm not sure I have --

16 MR. ABRAMS: End the hearing at direct or are we
17 going into cross?

18 MS. ROBESON: It depends on how long direct is. I
19 mean I'd like to keep it until 5:30 --

20 MR. ABRAMS: So would I.

21 MR. KNOPF: Half a day.

22 MS. ROBESON: -- at the latest. I don't know if
23 you got in trouble last night or what was going on, but --

24 MR. ABRAMS: It's going to cost me.

25 MS. ROBESON: But three days in a row, I find by

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1 the third day you're kind of --
2 MR. KNOFF: Yes.
3 MS. HARRIS: Yes, these back-to-back --
4 MS. ROBESON: So, you know, if we can get through
5 him by 5:00, between 5:00 and 5:30, that would be good. And
6 tomorrow we'll be in the room downstairs.
7 MS. HARRIS: And if we can't get through him, then
8 I'll -- when that time approaches, I'll let you know when
9 we're about to start another subject matter.
10 MS. ROBESON: That sounds good. So we have a
11 coherent place to -- okay, that's great. Thank you.
12 (Recess)
13 MS. ROBESON: All right. Everyone ready? We're
14 back on the record. We'll try and stop around 5:00 or 5:15,
15 wrap it up. My stamina is going, so okay, go ahead.
16 MS. HARRIS: We need to swear the witness.
17 MS. ROBESON: Oh, yes we do.
18 MS. HARRIS: Maybe we should stop right now?
19 MS. ROBESON: Yes, I know. Please raise your
20 right hand.
21 (Witness sworn.)
22 MS. HARRIS: Thank you. Please state your full
23 name and primary occupation?
24 MR. IRISH: Charles A. Irish, Jr. I'm a civil
25 engineer and land surveyor.

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1 MS. HARRIS: And how long have you been employed
2 as a civil engineer?
3 MR. IRISH: For about 40 years.
4 MS. HARRIS: And could you please describe your,
5 excuse me, your educational background and your professional
6 designations or accreditations?
7 MR. IRISH: I graduated from the --
8 MR. ABRAMS: I would --
9 MS. ROBESON: Stipulate?
10 MR. ABRAMS: -- stipulate to his qualifications as
11 a civil engineer.
12 MS. HARRIS: And I also would like him to be
13 qualified as an expert in the field of site development.
14 MR. ABRAMS: What's that?
15 MS. HARRIS: Site development.
16 MS. ROBESON: Site development?
17 MS. HARRIS: Yes.
18 MS. ROBESON: And what is that expertise?
19 MS. HARRIS: It goes beyond the scope of civil
20 engineering. It relates to the development of buildings in,
21 with respect to the various components, including the
22 contributions to site plans, to some civil engineering
23 components such as elevations and things, and maybe Mr.
24 Irish, who has been qualified as an expert in site
25 development, can explain it more eloquently --

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1 MS. ROBESON: Yes.
2 MS. HARRIS: -- than I can.
3 MS. ROBESON: Can you explain it, Mr. -- or we can
4 start tomorrow. No, go ahead.
5 MR. IRISH: Civil engineering is more focused on
6 roads and utilities. I've been developing my practice on
7 site development design, whether it be subdivision or site
8 planning, or development plans, rezoning projects. I've
9 worked on projects in Montgomery County since 1973 and if I
10 had to characterize them, they would all be site --
11 MS. ROBESON: But --
12 MR. IRISH: -- site development.
13 MS. ROBESON: But we have a number of civil
14 engineers come in here and talk about housing designs, the
15 site and they're all qualified as civil engineers. Isn't
16 that part of civil engineering?
17 MR. IRISH: It's --
18 MS. ROBESON: Well, let me hear from -- I didn't
19 mean to cut you off. Let me hear from you all if you have
20 an issue with this.
21 MR. ABRAMS: My understanding is the same as what
22 you've just expressed. You know, I view civil engineers are
23 going into design elements of a project because that's part
24 of their discipline and their practice. So I mean I think
25 it's all part of civil engineering.

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1 MS. ROBESON: Mr. Knopf.
2 MR. KNOFF: I don't understand that as a
3 recognized expertise.
4 MS. ROBESON: I would like to just keep it to the
5 recognized expertise if possible.
6 MR. IRISH: I have been recognized as an expert in
7 site planning. I do not recall the case, but I know it's
8 been at least one time.
9 MS. ROBESON: Yes, but I don't know the context of
10 that case and typically the engineers will come in and say,
11 well, we had to design this this way and we do design it
12 this way.
13 MS. HARRIS: I just want to make sure that given
14 Mr. Irish's experience and knowledge of zoning ordinance,
15 Sector Plans, and the process in and of itself, that when
16 he -- if, in fact, he testifies to some extent to those
17 things, that it's recognized that that's all within the
18 realm of what a civil engineer and a project like this would
19 be doing.
20 MS. ROBESON: Give me an example of what you're
21 going to testify to as far as Sector Plan compliance?
22 MS. HARRIS: Well, there was a number of issues
23 about the recommended height and so he's going to touch on
24 that in the context, starting with the context of the
25 elevation of the, of the ground elevation or the elevations

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1 of tops of roofs or things like that, but he will go further
2 than that given his experience, again, of doing this for 40
3 years and putting into the context of how that fits into the
4 recommendations of the Sector Plan.
5 MR. KNOFF: It sounds to me like we're getting a
6 third land planner.
7 MS. HARRIS: No.
8 MR. KNOFF: You've already had two.
9 MS. HARRIS: I don't think you'll hear anything
10 different from Mr. Irish that you would have heard on any
11 other case that he has testified on and there's been plenty
12 of them.
13 MR. ABRAMS: Well, I'm a little concerned about
14 the last element, compliance with the Sector Plan.
15 MS. ROBESON: I am too and the reason is because,
16 you know, I thought the woman from Coalition for Smarter
17 Growth, I can't remember who --
18 MS. HARRIS: Cheryl Clark?
19 MS. ROBESON: That was almost like back door
20 expert testimony and I know you're an expert. I would --
21 what are your qualifications as far as -- the answer is I'm
22 going to keep it as civil engineering, all right?
23 MS. HARRIS: Okay. So he's qualified as an expert
24 in the field of civil engineering. And as we've noted
25 before to the extent, he can testify in regard to something

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1 else, you'll give it the weight to which you think is
2 appropriate.
3 MS. ROBESON: Well, then I get -- what, can you
4 proffer what he's going to say about the Master Plan?
5 MS. HARRIS: Well, why don't -- we could --
6 MS. ROBESON: Because he's not a planner, what's
7 he going to say about the Master Plan?
8 MS. HARRIS: I don't have an example.
9 MS. ROBESON: Because what I don't want to have is
10 a gazillion objections constantly either, so if it's not
11 that --
12 MS. HARRIS: I don't think that you will have
13 objections, or maybe you would. That was naive of me,
14 wasn't it?
15 MS. ROBESON: Okay. This is Bethesda. It's --
16 MS. HARRIS: I, believe me, we well aware of that.
17 MS. ROBESON: An urban environment generates a lot
18 of input.
19 MS. HARRIS: Clearly. Why don't we -- I would
20 suggest that we just commence. If there's an issue when we
21 get to it, then we'll discuss it at the time. Does that
22 make sense? Otherwise, we're --
23 MS. ROBESON: All right. He's qualified as an
24 expert in civil engineering. Go ahead, Ms. Harris.
25 MS. HARRIS: Are you familiar with the local map

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1 amendment, development plan amendment, applications which
2 are the subject of this application?
3 MR. IRISH: Yes.
4 MS. HARRIS: Thank you. See, I told you.
5 MR. KNOFF: Thank you very much.
6 MS. ROBESON: Wait, are you --
7 MS. HARRIS: Can you please describe the scope of
8 services that VIKA was responsible for with respect to the
9 rezoning application?
10 MR. IRISH: We were responsible for the surveying,
11 the planning and the land planning and the civil engineering
12 all relative to the rezoning application. We assembled the
13 submission, parts that we were responsible for. It included
14 the development plan, the development plan amendment,
15 certified zoning map, surrounding area map, public use space
16 exhibit, natural resource inventory, forest conservation
17 exemption, existing conditions plan, storm water management
18 concept plan.
19 MS. HARRIS: And did VIKA prepare a civil
20 engineering report that was part of the submission in this
21 case?
22 MR. IRISH: Yes. It was part of Mr. Landfair's
23 land use report.
24 MS. HARRIS: Thank you. And have you and other
25 members of your firm made a personal inspection of the

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1 subject property?
2 MR. IRISH: We have.
3 MS. HARRIS: And have you evaluated the water,
4 sewer, gas and other utilities at this location with respect
5 to their availability to serve the project?
6 MR. IRISH: We have. There's adequate utilities
7 to serve the project. There's gas, electric, power, water,
8 sewer, storm drain availability adjacent to the site. Water
9 and sewer categories, W-1, S-1, which means lines exist that
10 can be tapped into. There's an 8-inch sewer in Montgomery,
11 8-inch water in Montgomery, as well as West Lane. There's a
12 storm drainage system in Montgomery Lane on the, across the
13 street that we'll be extending it across Montgomery and up
14 West Lane to serve the storm water management system. All
15 of that will be designed per Montgomery County DPS
16 standards. There's gas mains in Montgomery and West Lane.
17 There's overhead power lines in both Montgomery and West
18 Lane.
19 MS. HARRIS: And are there storm water management
20 concept plans instead of the original control plans as part
21 of this project?
22 MR. IRISH: The storm water management concept
23 plan, while not required at this stage, has been prepared,
24 submitted, reviewed and approved by Montgomery County
25 permitting services. A concept sediment and erosion control

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1 plan will be required as part of the preliminary plan
2 process. As part of that process, as part of the site plan
3 process, an updated storm water management concept will be
4 required, as well as a conceptual sediment erosion control
5 plan. Once site plan is approved, then final construction
6 documents will be required for both sediment control and
7 storm water management, among other engineering documents.
8 MS. HARRIS: And there's a lot of discussion about
9 storm water management. Can you please describe the storm
10 water management -- I believe we should have stopped.
11 MS. ROBESON: Green roof.
12 MS. HARRIS: The storm water management measures
13 as well as how sediment will be managed?
14 MR. IRISH: Sure.
15 MS. HARRIS: Thank you.
16 MR. IRISH: Do you want me to do sediment control
17 first? That's --
18 MS. ROBESON: Whatever.
19 MR. IRISH: -- fairly -- sounds like there's going
20 to be questions on the evidence. Sediment control, as I'm
21 sure you're aware at this point, the project has an
22 underground garage. So part of the construction will
23 involve excavating down. So run-off that would fall into
24 the site would go into the hole and you wouldn't typically
25 run off on adjacent properties. If there are places where

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1 we think that would occur, there would be a silt fence
2 constructed. The silt fence will allow the water to filter
3 through, but hold the sediment back.
4 The, at the bottom of the hole there will be a
5 sediment tank that the run-off would drain to a corner of
6 the hole, be pumped into the sediment tank and then once it
7 settles out from there, it would then be pumped out into the
8 storm drainage system once it's cleaned. There would also
9 be a construction entrance to allow the construction -- with
10 the gravel area so that the dump trucks and construction
11 vehicles can have their tires washed off before they exit
12 onto the public highways that that there would be minimized
13 tracking of mud on the streets.
14 As far as storm water management is concerned,
15 several years ago the state legislature and the County
16 Council, both in their infinite wisdom, chose to approve a
17 storm water management bill that is commonly referred to as
18 ESD to the MEP, which we're getting like the Federal
19 Government with an acronym, anyway, environment site design
20 to the maximum extent practical.
21 In Montgomery County, we have the strictest ESD
22 regulation in the state. In Montgomery County for a
23 redevelopment project, which this is, you're required to
24 provide environment site design to the maximum extent
25 practicable for the site treating 100 percent of the

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1 impervious area, essentially take it back, make calculations
2 as if it were a forest and compare the difference. Other
3 jurisdictions are 50 percent.
4 In a new project, you have that requirement as
5 well as the first inch of run-off has to be treated that
6 way. There's no MEP. It has to be treated that way.
7 So what is ESD? It's typically treating run-off
8 in a manner similar to the way it would be treated naturally
9 in a forested area. Now in an urban area, it's difficult to
10 do that because we don't have large, open spaces where you
11 could accomplish that. We also have soil that is over the
12 years been either contaminated or disturbed or whatever to
13 where it's not -- or you just won't get infiltration rates.
14 So typically we are importing a situation to create this
15 filtration through soil and plants rather than through our
16 official measures that have routinely been used in the past.
17 The measures that we have approved in the concept
18 plan thus far are basically threefold. They would be a
19 portion of the roof will be green roof. There will be micro
20 bio-filtration planters around part of the site and then
21 within West Lane under the sidewalk area, a portion of it
22 will have what's referred to as silva cells.
23 MR. KNOFF: Excuse me, what?
24 MR. IRISH: Silva, S-I-L-V-A, cells.
25 MR. KNOFF: Thank you.

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1 MR. IRISH: Do you want me to --
2 MS. HARRIS: I think --
3 MR. IRISH: -- elaborate on any of that?
4 MS. HARRIS: I would like you to elaborate on the,
5 for the benefit of, the green roof concept please.
6 MR. IRISH: There are --
7 MS. ROBESON: Can you move your chair a little
8 toward this way because I have --
9 MR. IRISH: More facing you?
10 MS. ROBESON: Yes, just a little so they can see
11 you too. I just have trouble hearing you when you're --
12 MR. IRISH: I'm trying to articulate.
13 MS. ROBESON: I know. Thank you.
14 MR. IRISH: There are a variety of ways to design
15 and construct a green roof. We use the term extensive and
16 intensive. Intensive means a, typically a deeper soil, more
17 intense planting. Extensive is a lighter weight soil, less
18 soil volume and more of a basic planting. We have an
19 extensive green roof approved for, conceptually for this.
20 It doesn't mean we couldn't elaborate and go further if that
21 fit in with the ultimate design, but we're at the conceptual
22 phase now. So basically we've agreed at this point that
23 about 6,000 square feet of the rooftop area will be devoted
24 to some form of green roof.
25 Green roof is basically -- I'd say it's just

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1 painted green, but it's not that simple. You have to have
2 soil and plants on top of the roof. The preferred method is
3 where you have trays that can be delivered to the site with
4 the plants already planted in them and you essentially place
5 them on the roof with protection of the waterproof membrane.
6 Then if one of those -- if the plants are not thriving in
7 one of those trays or you want to switch them around, lift
8 the trays out, you can substitute around. They do grow
9 together to where it makes it a little bit difficult to do
10 that, but it's much easier to maintain than where you just
11 throw the soil on the roof and then plant it. That can be
12 done. You need to protect, certainly protect the roof
13 membrane.
14 The roof itself is typically designed very similar
15 to a normal roof. It's got roof drains in it and the water
16 that filters through the soil that is not taken up by the
17 plants would then flow through to the typical roof and then
18 flow to the drainage, the roof drainage system and it would
19 be piped off. The area of the roof that would receive
20 rainfall on a green roof would then be piped to, directly to
21 the storm drain. It's deemed as having been treated at that
22 point for quality, so it can then go directly to the storm
23 drain.
24 Other areas of the roof where we can't do a green
25 roof for whatever reason, the runoff from those areas would

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1 go through the building system in a different pipe and go to
2 another treatment facility whether it be the bio planters
3 along West Lane, along the building there, or on the
4 northern edge of the building in the famous 15, infamous 15-
5 foot strip. Below grade is a storm, we're a proposing a
6 storm water management vault, if you will, that will provide
7 treatment through more conventional methods than used in
8 urban areas. We -- like the use of a, what's called a storm
9 filter, it involves several cartridges that have a material
10 in them that literally filters the water so the water would
11 get into the vault, filter through these cartridges and be
12 piped out clean. They're very easy to maintain.
13 MS. ROBESON: Okay. So you're not having any like
14 bio-retention planter or anything like that?
15 MR. IRISH: No, there will be.
16 MS. ROBESON: There will be?
17 MR. IRISH: Micro bio-retention planter, not
18 typical in the standpoint where you would just grade out an
19 area. You would have a planter that would be elevated that
20 would have, water would outlet into the top of that --
21 MS. ROBESON: Right.
22 MR. IRISH: -- there would be plants in that, in
23 there, then there would be the plant media and then lower
24 down in the planter would be gravel and then an under drain
25 such that once the water filtered through all that was no

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1 longer supplying nourishment to the plants, but then would
2 be piped off into the storm drain system.
3 MS. HARRIS: But just to clarify so that there's
4 no misunderstanding, the component that --
5 MR. IRISH: Like the --
6 MS. HARRIS: -- you just described, where would
7 that be located?
8 MR. IRISH: Along the building. There may be
9 someone on the courtyard side, but right now we're showing
10 them, I believe, along West Lane.
11 MS. ROBESON: So the ground up?
12 MR. IRISH: At ground level, yes. Yes. I mean
13 they could be on the -- I said the courtyard, which is the
14 area to the west of the upper portion of the building, the
15 private space area --
16 MS. ROBESON: Yes.
17 MR. IRISH: -- there may be some in there.
18 MS. HARRIS: I recognize that at this stage the
19 roof plan is highly conceptual and as is the storm water
20 management, but can you give a rough estimate, or do you
21 have a rough estimate of what percentage of the overall roof
22 will be devoted to the, to the green roof?
23 MR. IRISH: I said 6,000 square feet
24 approximately. I don't recall the actual footprint of the
25 building, well, whatever that percentage --

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1 MS. HARRIS: Okay.
2 MR. IRISH: -- works out to.
3 MS. HARRIS: And the outdoor area that's
4 anticipated on top of the room for recreational purposes,
5 that could be -- they could utilize that, a portion of the
6 green roof, is that correct?
7 MR. IRISH: In theory they could. It depends on
8 how it's designed. The purpose of the green roof is to
9 treat the runoff, so it doesn't matter whether you have a
10 plant that you can just look at or a plant that you -- an
11 area that you could more heavily plant an area that could be
12 part of a formal garden per se. So it's really more a
13 function of what the program, how they program for the
14 building would involve and what amenities the owner will be
15 looking to put on the roof. But within the area that we're
16 talking about, there's a lot of options.
17 MS. HARRIS: Thank you. Does the application
18 require preparation of the preliminary forest conservation
19 plan?
20 MR. IRISH: This one does not. The site is exempt
21 from forest conservation due to its size and that exemption
22 has been confirmed by Park and Planning.
23 MS. HARRIS: Okay. Is there any information you
24 want to add in terms of the existing tree cover or the trees
25 subject to the forest conservation plan or is that, is there

1 anything more?
 2 MR. IRISH: Well, I certainly can answer your
 3 question. There's two significant trees on the site which
 4 would be 24-inch or larger and they're both pin oaks. One of
 5 them, I believe, is not in very good condition and they both
 6 will come out as part of the construction. If we were to go
 7 ahead, or Edgemoor at Arlington North were to proceed, they
 8 would probably come out as part of their construction
 9 because they're basically on the property line.

10 MS. HARRIS: Thank you.

11 MR. IRISH: There's also a specimen tree on the,
 12 what's it, 4825 Montgomery, the Sandy Spring builder site
 13 that will be coming out as part of their construction as
 14 well. If we were to proceed, then we could get a variance
 15 for any possible interference with the root zone. Our
 16 construction wouldn't kill the tree and wouldn't go as a
 17 result of that, but more than likely there's no doubt in my
 18 mind that variance would be approved. The, but timing of
 19 the construction might be that if we're both under
 20 construction at the same time, it would be necessary because
 21 their tree would have to come down.

22 MS. HARRIS: Thank you. Pursuant to Zoning
 23 Ordinance Section 59 D 1.61(d), and based on your
 24 professional experience, does the proposed development plan
 25 tend to prevent erosion of the soil and preserve any natural

1 vegetation and any other natural features on the site?
 2 MR. IRISH: The design that has occurred thus far
 3 and will continue to be provided will certainly make sure
 4 that erosion control is appropriately managed and I believe
 5 I described how that would occur. So it certainly would be
 6 satisfied under the final permit plans and would be approved
 7 by Department of Permitting Services before construction.
 8 Given that the site is exempt from forest conservation or
 9 even though it is exempt from forest conservation, there are
 10 no forested areas on the site, just a few trees, the two
 11 larger ones I mentioned. There's no flood plains or
 12 protected soil or rock on the property through the other
 13 natural features that would be, that would need to be
 14 preserved and protected.

15 MS. HARRIS: And then Section 59 C 8.25 requires
 16 the development plan to provide for any easements or
 17 dedications shown on the Sector Plan or that the Planning
 18 Board deems necessary. In the case of the subject
 19 development plan, are there any such easements or
 20 dedications?

21 MR. IRISH: There are dedications proposed. The
 22 Sector Plan recommends that Montgomery Lane have a 52-foot
 23 right-of-way. It is 52 feet in some areas where development
 24 has occurred in front of this site on our side of the street
 25 itself. It's only 25 feet from the center, so we would

1 dedicate that additional 12 feet to make it 52. West Lane
 2 is not mentioned in the Sector Plan in terms of a desired
 3 right-of-way width, so with the prior application the
 4 transportation planning, the Holladay application, the
 5 transportation planning staff recommended that a 50-foot
 6 right-of-way be provided for West Lane. In that application
 7 as well as this one, given that the current right-of-way is
 8 45 feet, we would propose to dedicate 2 1/2 feet on our side
 9 so the, there would be 25 feet from the center line of the
 10 existing right-of-way to our new right-of-way line. So we
 11 would be dedicating 2 1/2 feet along our West Lane frontage
 12 and will be dedicating one foot along on Montgomery Lane
 13 frontage.

14 MS. HARRIS: Thank you. A lay-by is proposed
 15 along the West Lane frontage. Would you describe the
 16 proposed improvements to West Lane, as well in terms of
 17 operations, please describe how the lay-by and how the
 18 additional dedication will allow for vehicle maneuverability
 19 in West Lane?

20 MR. IRISH: Sure. The -- West Lane is currently
 21 about 18 feet wide from curb to curb and is in the
 22 hammerhead turnaround area. The plan as proposed by
 23 transportation planning staff we agreed to by the prior
 24 applicant and this applicant is to widen that pavement to 22
 25 feet. In addition, the prior applicant received approval to

1 construct a lay-by on the west side of West Lane
 2 approximately six feet wide and 40 feet long. This
 3 applicant has agreed to install that as well. Thus, there
 4 will be 28 feet of paving from the curb of the lay-by to the
 5 curb on the other side of the road, 22 feet of basic paving
 6 curb to curb, plus the additional six feet for the lay-by.
 7 The size of the vehicles that will be using the lay-by are
 8 less than eight feet wide, so there will be 20 feet left
 9 available for two cars to easily pass West Lane when a
 10 vehicle is using the lay-by. The location of the lay-by
 11 that we're proposing is essentially the same as what was
 12 approved as part of the preliminary plan No. 1 in 2008,
 13 0050, and site plan 8, 2008, 0030, for the Holladay project.

14 MS. HARRIS: And did DOT weigh in on this lay-by?

15 MR. IRISH: It did. We discussed it with Greg
 16 Leck, the County Department of Transportation, and he felt
 17 that this lay-by in itself would satisfy the loading
 18 requirements for the project and was comfortable with it
 19 being, he was comfortable with it in prior applications,
 20 comfortable with it being permitted and built as part of
 21 this application.

22 MS. HARRIS: And during the prior application,
 23 were the details of the lay-by determined at the time of the
 24 preliminary plan?

25 MR. IRISH: I'm sorry, say that again?

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1 MS. HARRIS: At the, during the prior application,
2 were the details of the lay-by determined at preliminary
3 plan?
4 MR. IRISH: Yes.
5 MS. HARRIS: And so to the extent that we've heard
6 conversation about potentially shifting the lay-by north or
7 south, would those be worked out --
8 MR. IRISH: Yes.
9 MS. HARRIS: -- at preliminary plan?
10 MR. IRISH: Typically that's where you would do
11 it, where the basic geometry would be approved at that level
12 and then the final plans would be part of a storm drainage
13 plan that would be reviewed by DPS and permitted in
14 conjunction with the building permit.
15 MS. HARRIS: Thank you. One of the long-awaited
16 questions from Mr. Irish had to do with the turning radius
17 of the various loading vehicles. So with that, if you could
18 turn to Exhibit 88?
19 MR. IRISH: I just happen to have it here.
20 MS. HARRIS: You're efficient.
21 MR. IRISH: I heard that you didn't like people
22 fumbling for exhibits, so I hopefully have all of mine
23 ready.
24 MS. ROBESON: Well, that is a different -- thank
25 you.

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1 MS. HARRIS: We have improved on that front.
2 MS. ROBESON: Yes, it's much smoother.
3 MS. HARRIS: Yes.
4 MS. ROBESON: Thank you.
5 MR. IRISH: Exhibit 88 shows at the top how
6 vehicles --
7 MS. ROBESON: Can you move just there? I can see
8 it now. Thank you.
9 COURT REPORTER: Should we move this down?
10 MS. ROBESON: No, I think he's -- thanks, but I
11 think it's okay.
12 MS. HARRIS: The type of vehicles that we'll be
13 using, the size of vehicles that will be used in the garage
14 will be those vehicles that would be limited to a height of
15 about 8-foot, seven or eight inches. Eight foot six is the
16 height requirement for an accessible van. U-haul has a
17 truck that is 8' 7" and it's the size of the vehicle that
18 many of our move-ins would use. So in addition to allowing
19 them to use the lay-by on West Lane, if we add another inch
20 or so to the height in the garage, then that vehicle could
21 also use the space that will be dedicated in the garage and
22 they would be able to use the loading bay that we added on
23 to the exterior of the building. So those vehicles would
24 have three spaces that they could use.
25 So walking through this, the upper left two

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1 sketches --
2 MS. ROBESON: And that's Exhibit 88?
3 MR. IRISH: Exhibit 88, this is a copy of it, the
4 furthest to the upper left is a passenger vehicle making a
5 left turn into the garage. The next one, moving left to
6 right, is a passenger vehicle leaving the garage. The sweep
7 of the vehicle is shaded in blue and at the end, either end
8 of the shaded path, you can see the vehicle. We concede
9 that it easily presented out of the garage.
10 The SU-30 box truck is a standard AASHTO vehicle
11 that is typically used to, for larger deliveries. It's
12 basically a 30-foot long vehicle. So it's a truck much
13 larger than any of our move-ins would need, but what we've
14 shown in the two exhibits on the upper right are how that
15 vehicle, if they, if it were to find itself on West Lane, or
16 if it were coming to the project for some reason, how it
17 could pull in up to the, head easterly onto hammerhead, back
18 in a little bit to the garage entrance and then pull out so
19 that it could either turn around if it found itself there by
20 mistake or turn around so it could then back into the lay-by
21 which would be in this location, which is just to the left
22 of the vehicle on the third exhibit from left to right.
23 The four at the bottom are different -- let's go
24 to the right half of the bottom.
25 MS. ROBESON: The two on the right?

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1 MR. IRISH: The two on the lower right. That is
2 that SU-30 vehicle again, which as I said is larger than
3 what we would expect for any of the deliveries to the
4 project, but the -- not the one furthest to the right, but
5 the one just next to it shows how that vehicle could come in
6 to the turnaround, the hammerhead, and back into the loading
7 bay. It would also show how it could, the way it would
8 leave the loading bay would be to pull out towards the
9 hammerhead, back slightly into the garage entrance and then
10 pull out. So that would require a back and forth movement.
11 The height of the loading bay wouldn't accommodate
12 an SU-30 anyway, so it would basically use the movement at
13 the upper right. It would show backing into the garage
14 entrance, pulling out and if we had a delivery from them,
15 they would have to use the lay-by.
16 MR. KNOFF: Excuse me, I'm sorry. Did you say
17 would or would not be able to use the garage? I missed it.
18 MR. IRISH: An SU-30 would not, would have a
19 height that would exceed the --
20 MR. KNOFF: Thank you.
21 MR. IRISH: -- the height of the loading dock.
22 MR. KNOFF: Thank you.
23 MS. ROBESON: Wait, the loading dock, but not the
24 garage?
25 MR. IRISH: Not the first part of the garage.

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1 Once you get down --
2 MS. ROBESON: Right.
3 MR. IRISH: -- into the garage, the height would
4 be limited --
5 MS. ROBESON: Okay.
6 MR. IRISH: -- to about 8-foot, seven or eight
7 inches.
8 MS. ROBESON: So we can use the garage entrance to
9 back up and turn around?
10 MR. IRISH: Correct.
11 MS. ROBESON: Okay.
12 MR. IRISH: Now the lower left, the two on the
13 lower left are a WB-40 vehicle, which is in lay terms a
14 tractor trailer. It's a vehicle that we really don't think
15 is going to be on this project. We certainly wouldn't
16 expect it for move-ins or deliveries or anything. But it
17 shows how that vehicle could get itself turned around if it
18 somehow found itself in that location. Similar to the SU-30
19 in the upper right, we would pull into the hammerhead, back
20 slightly down the garage entrance and then in the second
21 from the lower left shows how it would pull out. It too
22 could fit in the lay-by, but again we really don't expect
23 there to be any vehicles like that serving the project.
24 MS. HARRIS: Could you please -- there's been a
25 lot of discussion about Fedex trucks and UPS trucks. So

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1 just to be clear, in terms of size, can you compare the
2 Fedex truck or UPS truck to the SU-30?
3 MR. IRISH: They're all smaller.
4 MS. HARRIS: Okay.
5 MR. IRISH: We actually measured a Fedex truck
6 delivering to our office, so we've got reasonable
7 dimensions. 20, the Fedex truck was 23 feet long, nine
8 foot, eight inches high and the UPS truck was, I'm sorry,
9 eight feet wide, 23 feet long and nine foot, eight inches
10 high. The UPS truck was seven foot, nine inches wide, 25
11 feet long and 10 feet, one inch high.
12 MR. KNOPF: Excuse me. Could you just do that
13 slower so I can get --
14 MR. IRISH: Sure.
15 MR. KNOPF: I don't want to have to be asking
16 like --
17 MR. IRISH: I thought you were the one that wanted
18 to hurry it along, so --
19 MR. KNOPF: I appreciate that.
20 MS. ROBESON: No, that was me. No.
21 MR. IRISH: He said it too.
22 MS. ROBESON: Okay.
23 MR. IRISH: Okay. Can you give the FedEx,
24 FedEx --
25 MR. ABRAMS: And UPS.

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1 MR. IRISH: FedEx truck, eight feet wide, 23 feet
2 long, nine feet, eight inches high. UPS box truck seven
3 feet, nine inches wide, 25 feet long, 10 feet, one inch
4 high.
5 MS. HARRIS: And so while you're turning the
6 diagram set forth on Exhibit 88, it doesn't show the
7 turning movement for FedEx truck or a UPS truck. Can you
8 just briefly explain where, whether those could be
9 accommodated in a loading bay and --
10 MR. IRISH: Certainly.
11 MS. HARRIS: -- what it would involve?
12 MR. IRISH: They would be, they would involve less
13 sweep than the SU-30 vehicles and the height of the loading
14 space that we're proposing in the garages is basically 10
15 feet. I mentioned the UPS truck was 10 feet, one inch. I
16 believe if you look at maybe adding an inch to the height
17 there to accommodate it so they --
18 MS. ROBESON: It's a loading space?
19 MR. IRISH: In this loading space.
20 MS. ROBESON: Okay.
21 MR. IRISH: The FedEx truck is less than 10 feet
22 high, so it would certainly be able to back in there as
23 well. So this movement down in the lower right shows an SU-
24 30 doing, well, an SU-30 wouldn't fit, the FedEx truck or
25 the UPS truck being shorter would at least do this movement

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1 or better. We don't have a template for that vehicle, so I
2 can't say whether it would have to make this double movement
3 to come out or not, but it can certainly make --
4 MS. ROBESON: So you're saying it --
5 MR. IRISH: The upper right, it can --
6 MS. ROBESON: -- it's possible?
7 MR. IRISH: -- make the movement to turn --
8 MS. ROBESON: Right.
9 MR. IRISH: -- the three-point turn, one, two,
10 three, to make the turn to pull out and most likely stop in
11 the lay-by.
12 MS. HARRIS: Thank you. There's been extensive
13 testimony regarding the heights and the setbacks of the
14 building, so much so that it, I think the record is a little
15 bit unclear. So I'm hoping that you can clarify for us the
16 heights and setbacks.
17 MR. IRISH: Sure.
18 MS. HARRIS: I think it was thrown away.
19 MR. IRISH: Are you sure you don't want to take a
20 break until tomorrow now?
21 MS. HARRIS: After this, maybe is a good time to
22 take a break.
23 MS. ROBESON: Yes, this may be a good time. Is
24 this a good time for you guys?
25 MR. ABRAMS: Yes, ma'am. It's been a good time

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1 since 2:00.
2 MS. HARRIS: On January 11th you meant?
3 MS. ROBESON: Since we are starting a new topic,
4 we will adjourn for today, continue this case to 9:30
5 tomorrow in the First Floor Auditorium. You do have to --
6 we don't have this room tomorrow, so you do have to remove
7 the duplicate exhibits. I think the one exhibit that's, has
8 to stay here is 108 and then there's one where he wrote on
9 the back. He wrote on the back of a bar graph one.
10 MS. HARRIS: Right. Okay.
11 MS. ROBESON: That has to stay here.
12 MS. HARRIS: Should the other ones go across the
13 hall or should we take them with us?
14 MS. ROBESON: You can do, you can put them in our
15 library --
16 MS. HARRIS: Okay.
17 MS. ROBESON: -- if you want to do it that way
18 rather than having to cart them home, that's fine, okay?
19 MR. ABRAMS: Madame Examiner --
20 MS. ROBESON: Yes?
21 MR. ABRAMS: -- for purposes of clarification as
22 to what he's talking about today, different types of
23 trucks --
24 MS. ROBESON: Yes.
25 MR. ABRAMS: -- okay, if you have -- don't go to

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1 any special trouble, but if you have it, do you have any
2 photographs of what these trucks look like when you talk
3 about SU-30 and whatever the other ones are? And I know
4 what a FedEx truck looks like.
5 MR. IRISH: Not photographs, but I have the ASHKO
6 sketch that would show the vehicle.
7 MR. KNOPF: Well, that -- well, anything.
8 MR. ABRAMS: Well, that's, yes.
9 MR. IRISH: We can copy that --
10 MR. ABRAMS: Yes, right.
11 MR. IRISH: -- and provide it for --
12 MR. ABRAMS: Whatever numbers and designations
13 you've referred to, I'd like to see what they are.
14 MR. IRISH: Well, there were three that we
15 referred to, the P vehicle, which is a passenger vehicle --
16 MR. ABRAMS: Yes.
17 MR. IRISH: -- which is basically your --
18 MR. ABRAMS: Okay.
19 MR. IRISH: -- your Cadillac El Dorado --
20 MR. ABRAMS: No, not mine.
21 MR. IRISH: -- that doesn't, well, the Volkswagen
22 or the Mini Cooper would fit --
23 MR. ABRAMS: Okay.
24 MR. IRISH: -- well within that. And then the SU-
25 30, which is the 30-foot box truck, and the WB-40, which is

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1 in lay terms a tractor trailer with a, basically a 40-foot
2 long trailer.
3 MR. ABRAMS: Okay.
4 MS. ROBESON: And just for the transcript, ASSHTO
5 is A-A-S-H-T-O?
6 MR. IRISH: That's correct.
7 MS. ROBESON: And can you just tell us what that
8 is when you refer to that?
9 MR. IRISH: I hope I get it right. It's American
10 Association of State Highway and Transportation Officials.
11 MS. ROBESON: Okay. Thank you.
12 MR. KNOPF: Before we adjourn, I'm trying to get
13 a, some information so I can schedule my witnesses.
14 MS. ROBESON: Okay.
15 MR. KNOPF: We have various, sudden problems with
16 the workers and somebody whose mother is dying. And I'm
17 just trying to, I guess, nail down -- I'm thinking, I'm just
18 throwing this out there, but I consider that tomorrow,
19 presuming we finish with Mr. Irish and then Mr. Abrams would
20 present his case and I would like to then be able to say
21 that my case would start on Friday, so I would have the
22 witnesses not come and sit here tomorrow and waste their
23 time.
24 MR. ABRAMS: When are you going to take rebuttal
25 from the applicant?

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1 MS. ROBESON: Well, we have an extra day now. Is
2 this, is Mr. Irish your last witness?
3 MS. HARRIS: Yes.
4 MS. ROBESON: Okay.
5 MR. IRISH: Saved the best for last.
6 MS. ROBESON: And I think Mr. Abrams said that his
7 case was short, correct, or not?
8 MR. ABRAMS: It's like a morning and an hour.
9 MS. ROBESON: Well, what we could do is this. We
10 could -- if you wish, we could go as far as Mr. Abrams's
11 case -- okay. Thank you. We can -- I lost my train of
12 thought. We can go forward with as long as your case takes
13 on tomorrow and then just take -- we'll lose a half a day
14 and then have your -- do you think your case is going to
15 take more than a day?
16 MR. KNOPF: No.
17 MS. ROBESON: Okay. Then --
18 MR. KNOPF: Even with cross-examination I
19 wouldn't, well, I can't speak for them, but I doubt it.
20 MS. ROBESON: Okay. And then we can finish your
21 rebuttal on the 29th. Do you have a problem with that?
22 Okay. So we'll go ahead and do it that way if it's okay
23 with everyone. So now I just got a note, the Board of
24 Appeals changed their schedule. They're not going to use
25 this room tomorrow. So we can have this room tomorrow. So

1 you can leave your exhibits here, okay? So with that, we'll
2 adjourn in this room tomorrow at 9:30. Thank you.

3 MS. HARRIS: Thank you.

4 MR. KNOPF: Thank you very much. That works out.

5 (Whereupon, at 4:49 p.m., the hearing was
6 concluded.)

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1 C E R T I F I C A T E
2 DEPOSITION SERVICES, INC., hereby certifies that
3 the attached pages represent an accurate transcript of the
4 electronic sound recording of the proceedings before the
5 Office of Zoning and Administrative Hearings for Montgomery
6 County in the matter of:

7 4831 WEST LANE, LLC
8 LOCAL MAP AMENDMENT G-954, DPA 13-01

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By:

Tracy Hahn, Transcriber

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