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Transcript of Administrative Hearing

Date: October 30, 2017

Case: Bank of America Drive Thru

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Conducted on October 30, 2017

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 - - - - -x</p> <p>4 In Re: : Case No.</p> <p>5 Bank of America Drive Thru : 17-17</p> <p>6 - - - - -x</p> <p>7</p> <p>8</p> <p>9 HEARING</p> <p>10 Before Hearing Examiner Lynn Robeson</p> <p>11 Rockville, Maryland</p> <p>12 Thursday, October 30, 2017</p> <p>13 10:02 a.m.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job: 165630</p> <p>24 Pages: 1 - 86</p> <p>25 Transcribed by: Molly Bugher</p>	<p>3</p> <p>1 Severna Park, MD 21146</p> <p>2</p> <p>3 BILL CAMP</p> <p>4 BANK OF AMERICA</p> <p>5</p> <p>6 EDWARD STEERE</p> <p>7 VALBRIDGE PROPERTY ADVISORS</p> <p>8 11100 Dovedale Court</p> <p>9 Marriottsville, MD 21104</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 SOMER T. CROSS, Land Planner</p> <p>4 MILLER, MILLER & CANBY</p> <p>5 200 B Monroe Street</p> <p>6 Rockville, MD</p> <p>7</p> <p>8 SOO LEE-CHO, ESQ.</p> <p>9 MILLER, MILLER & CANBY</p> <p>10 200 B Monroe Street</p> <p>11 Rockville, MD</p> <p>12</p> <p>13 FERNANDA ASSURIAN, Manager</p> <p>14 BANK OF AMERICA</p> <p>15 22 N. Summit Avenue</p> <p>16 Gaithersburg, MD</p> <p>17</p> <p>18 BRADFORD FOX</p> <p>19 BOHLER ENGINEERING</p> <p>20 16701 Melford Boulevard, Suite 310</p> <p>21 Bowie, MD 20715</p> <p>22</p> <p>23 NICK DRIBAN</p> <p>24 LENHART TRAFFIC CONSULTING</p> <p>25 645 Baltimore Annapolis Boulevard, Suite 214</p>	<p>4</p> <p>1 C O N T E N T S</p> <p>2 PAGE</p> <p>3 TESTIMONY OF SOMER T. CROSS 11</p> <p>4 TESTIMONY OF FERNANDA ASSURIAN 27</p> <p>5 TESTIMONY OF BRADFORD FOX 38, 78</p> <p>6 TESTIMONY OF NICK DRIBAN 57</p> <p>7 TESTIMONY OF EDWARD STEER 67</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 PAGE</p> <p>11 Exhibit 36 Affidavit of sign posting 06</p> <p>12 Exhibit 37 Resume of Somer Cross 11</p> <p>13 Exhibit 38 Walnut Hill Shopping Center 18</p> <p>14 APF Test</p> <p>15 Exhibit 39 Shopping Center Composite Plan 18</p> <p>16 Exhibit 40(a) Rendered architectural drawings, 36</p> <p>17 east elevation</p> <p>18 Exhibit 40(b) Rendered architectural drawings, 36</p> <p>19 south elevation</p> <p>20 Exhibit 40(c) Rendered architectural drawings, 36</p> <p>21 west elevation</p> <p>22 Exhibit 40(d) Rendered architectural drawings, 36</p> <p>23 north elevation</p> <p>24</p> <p>25</p>

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5				7			
1	PAGE			1	So seeing no opposition do you want to go forward Ms. Cho?		
2	Exhibit 41	Resume of Bradford Fox	38	2	SOO LEE-CHO: Sure. Thank you. For the record Soo Lee-		
3	Exhibit 42	Updated Composite Plan	48	3	Cho with the law firm of Miller, Miller & Canby on behalf of		
4	Exhibit 43	Photometric study	52	4	the applicant, Bank of America National Association. Just		
5	Exhibit 44	Resume of Nick Driban	57	5	very briefly I would just run through the names of the		
6	Exhibit 45	Resume of Edward Steere	69	6	intended witnesses. I will have Somer T. Cross, as the land		
7	Exhibit 46	Photo of existing Monument sign	81	7	planner, start. Then we will have Fernanda Assurian who is a		
8	Exhibit 47	Disk with exhibits	82	8	representative of the Bank Financial Center, a manager. Then		
9				9	Bradford Fox of Bohler Engineering will be our civil		
10				10	engineer site design expert. We have Nick Driban of Lenhart		
11				11	Traffic Consulting to be the traffic engineer expert in this		
12				12	case; and then finally Edward Steere of Valbridge Property		
13				13	Advisors providing the market analysis. He did the needs		
14				14	study required by the conditional use.		
15				15	LYNN ROBESON: Okay.		
16				16	SOO LEE-CHO: So very briefly, it's a very		
17				17	straightforward case, conditional use for a drive-through		
18				18	associated with a commercial use, in this case the Bank		
19				19	branch facility. The subject property is located within a		
20				20	shopping center called Walnut Hills Shopping Center. The		
21				21	site is about 8.28 acres of land. It consists of two parcels		
22				22	which we will explain.		
23				23	LYNN ROBESON: You mean the shopping center site, not		
24				24	the special exception site?		
25				25	SOO LEE-CHO: Correct. The shopping center site as a		
6				8			
1	P R O C E E D I N G S			1	whole consists of two parcels. The conditional use area		
2				2	which is a corner of the shopping center is a pad site, does		
3	LYNN ROBESON: And I assume the parties are ready.			3	cover both parcels so we will go through that.		
4	SOO LEE-CHO: Yes, we are ready. Thank you.			4	LYNN ROBESON: Oh. Okay. I get -- I see. It -- Okay, I		
5	LYNN ROBESON: Okay. I'm calling the case of CU 17-17,			5	get it. You don't have to explain it. I'll wait.		
6	Application of Bank of America National Association for			6	SOO LEE-CHO: Yes. The issues -- it's a straightforward		
7	Property on South Frederick AV, Gaithersburg, Maryland.			7	case. The issues that we'll be talking about first really is		
8	Okay. Do you want to -- are there any -- is there any			8	procedural in nature because this is a site, the shopping		
9	preliminary matters? I did get -- we did get the Storm			9	center was developed 1967 I believe, under the C2 zone. And		
10	Water Management Concept Plan, so that's in the record.			10	it was developed under the C2 zone in its earliest		
11	SOO LEE-CHO: Right. Correct. And you have the			11	iteration, so there are some later C2 zone requirements that		
12	Affidavit of the sign posting?			12	are not as -- are not applicable, the first issue. The other		
13	LYNN ROBESON: I see that. I will mark that as Exhibit			13	issue is because it's a C2 zone there is a provision in the		
14	36. Okay. Anything else?			14	current zoning ordinance, the 2014 zoning ordinance and that		
15	SOO LEE-CHO: I think for preliminaries that is all			15	allowed sites like this to modestly increase in density, up		
16	that I had. I can start with a brief opening.			16	to 10 percent of GFA without triggering the new zones, the		
17	LYNN ROBESON: Okay. Let me just ask before we start,			17	CRT zones development standards; and we will walk the		
18	is there anyone here that is not going to be called by Ms.			18	Hearing Examiner through those provisions. In light of that,		
19	Cho? Okay. Seeing no --			19	even though the development standards that are applicable to		
20	BILL CAMP: I'm not.			20	this case is mostly C2, the use is what brings us before you		
21	LYNN ROBESON: You're not? Are you here to testify in			21	for a conditional use approval because the use now, the		
22	support or opposition?			22	drive-through use is under the new zoning ordinance required		
23	BILL COURT: No. I'm with CDRE for representing Bank of			23	as a conditional use approval, as opposed to previously,		
24	America.			24	under the C2 zone in the 2004 zoning ordinance drive-		
25	LYNN ROBESON: Oh. I see. Okay. All right. All right.			25	throughs were part and parcel to bank facilities. They were		

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3 (9 to 12)

<p>9</p> <p>1 not separate uses of themselves that required a special 2 exception. But because of the use, being under the new code, 3 that's what we're here for. 4 LYNN ROBESON: I guess my only question is, when I read 5 771(c) it looks like to me you could go under the old 6 standards completely. Did someone give you an opinion that 7 you have to go -- well, I guess you're right. I understand. 8 Because it's a conditional use now -- 9 SOO LEE-CHO: Well, and we will walk you through that. 10 LYNN ROBESON: Okay. 11 SOO LEE-CHO: On 771(c) we did get an opinion. It was 12 the opinion of Technical Staff and the Planners at Park and 13 Planning that that provision, because it specified only 14 standards and procedures of the C2 zone and not uses so that 15 grandfathering provision was read quite explicitly. So that 16 because uses were not incorporated in what was grandfathered 17 they felt that the use of the drive-through had to go 18 through the new zoning laws. 19 LYNN ROBESON: Well, we just went through a case, 20 Starbucks, same situation, different rationale, came to the 21 same conclusion, but a different rationale. Because as I 22 read -- as you parse through the exemptions; the 23 developments, the standards, and procedures included the 24 sustentative standards, but I'm not going to argue about it. 25 It's -- you know in Starbucks that was a drive-through</p>	<p>11</p> <p>1 LYNN ROBESON: Okay. 2 SOO LEE-CHO: Ms. Cross, can you please state your 3 name, business address, and profession? 4 SOMER T. CROSS: My name is Somer Cross. I work at 5 Miller, Miller, & Canby, at 200 B Monroe Street, Rockville. 6 My title is research attorney/in-house land use planner. 7 SOO LEE-CHO: Ms. Cross, have you ever qualified as an 8 expert in the field of land planning in a zoning case 9 before? 10 SOMER T. CROSS: I have before the Montgomery County 11 Hearing Examiner, Marty Grossman. 12 LYNN ROBESON: Okay. Is her resume in the -- 13 SOO LEE-CHO: No, not yet. 14 LYNN ROBESON: Okay. 15 SOO LEE-CHO: Did you want her to cite the case that 16 she was accepted as an expert? 17 SOMER T. CROSS: It was conditional use 17-12, the 18 Korean Community Service Center. 19 LYNN ROBESON: Okay. That was a tough one. If you went 20 through that I'm going to qualify you as an expert. I'm 21 going to mark that as Exhibit 37, affidavit of Somer Cross. 22 I mean, I'm sorry, resume of Somer Cross. Okay. Go ahead. 23 SOO LEE-CHO: Great. Ms. Cross, can you please describe 24 and identify for the Hearing Examiner the two parcels that 25 comprise the shopping center property?</p>
<p>10</p> <p>1 Starbucks; we came to the same conclusion that they got the 2 development standards of the C2 but the use standards of the 3 conditional use. So one way or the other -- I have to go to 4 back and look at that. So I may come -- anyway. Go -- keep 5 going and -- 6 SOO LEE-CHO: Yes. We are very well aware of the 7 Starbucks case and really that was a discussion point with 8 Technical Staff and the basis of the conclusion in this case 9 that we needed to get a conditional use approval for the 10 drive-through. 11 LYNN ROBESON: Okay. 12 SOO LEE-CHO: There are some -- 13 LYNN ROBESON: However you want to cut it. 14 SOO LEE-CHO: There are some distinctions from the 15 Starbucks case that Ms. Cross will cover. 16 LYNN ROBESON: Okay. 17 SOO LEE-CHO: So that it's not a complete -- yeah. 18 LYNN ROBESON: Right. 19 SOO LEE-CHO: Same situation. So with that we'll just 20 move forward with Ms. Cross's testimony. 21 LYNN ROBESON: Okay. Please raise your right hand. Do 22 you solemnly affirm under penalties of perjury that the 23 statements you are about to make are the truth, the whole 24 truth and nothing but the truth? 25 SOMER T. CROSS: I do.</p>	<p>12</p> <p>1 SOMER T. CROSS: Yes. As it Ms. Lee-Cho mentioned 2 earlier, this property is actually combined two parcels. One 3 is Parcel B which is about 7.87 acres and then all along the 4 frontage of Route 355, Frederick Avenue -- 5 LYNN ROBESON: Can you move the -- 6 SOO LEE-CHO: Yeah. 7 LYNN ROBESON: -- zoning map and -- or if you have some 8 other exhibit. There, that's good. 9 SOMER T. CROSS: So as you can see on this exhibit, a 10 neighborhood, which you have a -- do you want to make an 11 exhibit number or? 12 LYNN ROBESON: I think that that is already in the 13 record. 14 SOO LEE-CHO: This is -- 15 LYNN ROBESON: Is that in the Technical Staff Report? 16 SOO LEE-CHO: Yes, it's an excerpt from the Technical 17 Staff. 18 LYNN ROBESON: Yeah, that's fine. 19 SOMER CROSS: Okay. The red line is the entire parcel. 20 The area here that is not under the cross-hatch is the 21 portion of the property that is in the County. The sliver 22 here that runs all along the front -- street frontage is a 23 part of an equity case of abandonment of Route 355 that 24 reverted to the Walnut Tree Shopping Center -- or Walnut 25 Hills Shopping Center. This property is actually still in</p>

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<p>13</p> <p>1 the City of Gaithersburg and will require a site plan 2 approval for them for the activity. There are no structures 3 proposed in the portion of the property that will fall in 4 this (inaudible) 5 LYNN ROBESON: Not even storm water? 6 SOMER T. CROSS: It's some landscaping, but the actual 7 bank structure and awnings, those are all in the County 8 property so we've spoken with City Staff and it will be an 9 administrative approval of the site plan. 10 LYNN ROBESON: Okay. 11 SOO LEE-CHO: Okay. So can you then walk us through the 12 grandfathering provisions of the 2014 Zoning Ordinance and 13 which one is applicable in this case? 14 SOMER T. CROSS: So as the Hearing Examiner already 15 mentioned, it is a similar case procedurally to the 16 Starbucks case of 17-06, where the Hearing Examiner found 17 that the standards to be applied where the pre-October 30th, 18 2014 Zoning Ordinance or what's also referred to as the 2004 19 Zoning Ordinance, but the use standards were the applicable 20 zoning ordinance standards. That case applied 7.7.1(b) which 21 allowed a modification of a preapproved plan. In this 22 situation it's a shopping center that was developed back in 23 1967. There are no preliminary plans. There are no site 24 plans on record. What the zoning ordinance also allows, 25 under 7.7.1(c) is the limited right to expand an already</p>	<p>15</p> <p>1 LYNN ROBESON: Well, I guess they argued that the 2 utilities and everything were already at the pads. It had 3 been -- the plan of the shopping center was to have a pad 4 site there. Are you saying that this -- that's not the case 5 here? 6 SOO LEE-CHO: That is not the case here. That was not 7 the -- the pad site didn't exist before 2014. 8 LYNN ROBESON: Okay. Go ahead. 9 SOMER T. CROSS: So applying 7.7.1(c) again allows for 10 either the lesser of 30,000 square feet or 10 percent 11 increase in the existing development. Right now there is a 12 shopping center that totals about 99,857 square feet. We're 13 asking for a pad site development of a bank building of 14 3,120 square feet which is 3.1 percent of the existing 15 structure, so it's less than 10 percent and therefore 16 allowed under this 7.7.1(c). There are additional 17 requirements under C2 that it also has to apply with C1, 18 that if the building does not exceed the height limits and 19 density of the property zoning in effect as of October 29th, 20 2014 the height limits of the C2 is 42 feet; this building's 21 only 21 so we would apply that. That it not be closer to a 22 residential detached zone that is vacant or improved with a 23 single unit living use than any other existing structure. 24 The surrounding property on the northern side is a City of 25 Gaithersburg zoned property for (inaudible) district which</p>
<p>14</p> <p>1 developed property. And that would be either the lesser of 2 30,000 square feet or 10 percent of the gross floor area 3 already in existence. The property currently has a -- 4 LYNN ROBESON: I'm sorry. How did you distinguish this 5 from Starbucks? 6 SOMER T. CROSS: Instead of applying 7.7.1(b) -- 7 LYNN ROBESON: Oh, because there's no preliminary plan? 8 SOMER T. CROSS: Exactly. We are at item (c). 9 LYNN ROBESON: But I -- okay. I remember I didn't say 10 that it was the extension of the preliminary plan. It was, I 11 thought it was existing site design; 771(a) existing site 12 design. But I could be wrong. 13 SOMER T. CROSS: I -- 14 SOO LEE-CHO: If I might. We discuss this with Legal 15 Counsel at Park and Planning as well. They initially looked 16 at the site design provision. However, the improvements that 17 we're talking about are not existing. You know, the bank pad 18 and there's another retail pad that the shopping center is 19 developing. That was -- that's not an existing use. It is 20 -- that was brought before the zoning change in 2014. So 21 those sections of the grandfathering provisions don't apply. 22 Those sections are applicable to existing improvements on 23 the ground. And so because we are moving forward with 24 additional density for a bank pad site and a retail site, we 25 fall under 771(c).</p>	<p>16</p> <p>1 is a commercial zone. The property across the street is 2 residentially zoned but it's developed with a church and not 3 with a single family site, so we would meet that 4 requirement. And then there are no -- there is no site plan 5 in existence so no site plan amendment would be required and 6 therefore we would meet the requirements of C1. 7 LYNN ROBESON: Okay. 8 SOO LEE-CHO: Okay. Can you walk us through then, what 9 C2 development standards under the 2004 Zoning Ordinance are 10 in fact applicable in this case? 11 SOMER T. CROSS: So the 2004 Zoning Ordinance would 12 require in the C2 a height requirement under C-4.351 an FAR 13 requirement under C-4.352 and setback requirements under C- 14 4.353. There is an additional green area requirement; 15 however, this property development predates the green area 16 requirements from the zoning ordinance and would be 17 grandfathered. 18 SOO LEE-CHO: Can you explain a little bit further 19 about that? 20 SOMER T. CROSS: So while the entire site would not 21 have to comply with the green area requirement, the Bank of 22 America pad site has provided additional green area and 23 would exceed the 10 percent requirement for that conditional 24 use area. 25 SOO LEE-CHO: Can you now talk about the parking rates</p>

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<p>17</p> <p>1 that are applicable in this case and which zoning ordinance 2 does it fall under and why? 3 SOMER T. CROSS: So to make things more complicated. 4 There was a 2015 adequate public facilities review of this 5 property and at that point the applicant for the Walnut 6 Hills Shopping Center did request that the parking standards 7 to be pulled out of the old zoning ordinance and the current 8 -- 9 LYNN ROBESON: Wait. Wait. Say that again. 10 SOMER T. CROSS: In 20 -- 11 LYNN ROBESON: Pulled out? 12 SOMER T. CROSS: So in 2015 the applicant asked that 13 the current zoning parking standards be applied. So while 14 they were allowed to use the C2 parking standards, in 2015 15 they said, can we please apply the current 2014 zoning 16 ordinance which is allowed to be separated from the rest of 17 the development standards by the non-conformity provision of 18 7.7.1(b)3(b) where the applicant may apply to amend the 19 parking requirements of a previously approved application in 20 a manner that satisfies the parking requirements of Section 21 6.2.3, and 4. 22 SOO LEE-CHO: Now who was the applicant in that 2015 23 APF approval? 24 SOMER T. CROSS: The entire shopping center. 25 SOO LEE-CHO: I have for submission into the record the</p>	<p>19</p> <p>1 makeup of this case, and if the Hearing Examiner has no 2 further questions to ask on that -- 3 LYNN ROBESON: No. Good. Let's move forward to the -- 4 SOO LEE-CHO: Then we'll move on to -- 5 LYNN ROBESON: -- meat of the issue. 6 SOO LEE-CHO: Okay. So could you please describe the 7 surrounding neighborhood boundary that has been delineated 8 by Technical Staff and how it compares to the one that you 9 provided in the Statement of Justification? 10 SOMER T. CROSS: Yes. So in the Statement of 11 Justification on Page 3, the applicant -- 12 LYNN ROBESON: What exhibit is the Statement of 13 Justification? 14 SOO LEE-CHO: It is an Exhibit 29(b) 15 LYNN ROBESON: I think I have it; (b)? 16 SOO LEE-CHO: Yes. 17 LYNN ROBESON: Okay. I have it. Go ahead. 18 SOO LEE-CHO: Okay. On Page 3 of that exhibit, the 19 applicant identified the surrounding neighborhood area as a 20 marked by a red dashed line. I created that image just for 21 simplicity of using identifiable street crossings and 22 intersections that made it just easier to identify a 23 neighborhood. Staff, in their Staff Report on Page 4 has 24 identified a much smaller neighborhood, surrounding 25 neighborhood area. As you can see on the exhibit provided it</p>
<p>18</p> <p>1 Staff Report, Technical Staff Report which I do not believe 2 the Hearing Examiner has in the record of that APF review. 3 In addition, I want to introduce the concept plan that was 4 associated with that APF review. 5 LYNN ROBESON: Okay. Thank you. I'm only laughing 6 because this was supposed -- this zoning ordinance was 7 supposed to simplify everything. Okay. This would be Walnut 8 Hill -- 38 will be Walnut Hill Shopping Center APF test. 9 SOO LEE-CHO: Ms. Cross, the Concept Plan that I just 10 introduced into the record, can you identify where -- 11 LYNN ROBESON: Just a second. 12 SOO LEE-CHO: Okay. 13 LYNN ROBESON: And then the Concept Plan will be, how 14 do you call this? The -- 15 SOO LEE-CHO: We call it the Composite Plan because it 16 shows the entire shopping center. 17 LYNN ROBESON: Okay. So 39 will be Shopping Center 18 Composite Plan. Okay. Go ahead. 19 SOO LEE-CHO: This Shopping Center Composite Plan is 20 actually found in the Adequate Public Facilities Planning 21 Board Staff Report that you just entered into the record on 22 Page 8. The larger version that you were just handed is much 23 more legible and also provides the tabulation. 24 LYNN ROBESON: I see. Okay. Okay. 25 SOO LEE-CHO: Now, if we are clear on the procedural</p>	<p>20</p> <p>1 is within the immediate area, the immediate impact area and 2 we're fine accepting Staff's delineation of the surrounding 3 neighborhood. 4 LYNN ROBESON: Okay. Why are you fine with it? Do you 5 want to opine as to -- 6 SOMER T. CROSS: It's -- 7 LYNN ROBESON: -- just for the record so I have it in 8 the record. 9 SOMER T. CROSS: Sure. The technical determination of 10 the surrounding neighborhood while there is no such 11 standard. It's usually what is considered the immediate 12 impact area. If you look at the larger scale area that we 13 provided in the Staff Report -- or in the Statement of 14 Justification, looking at the residential streets and their 15 lack of interconnectedness I don't feel like the impact of 16 the neighborhood, the impact of the shopping center and the 17 specifically the new Bank would impact the larger area. 18 LYNN ROBESON: Okay. Thanks. 19 SOO LEE-CHO: All right. Now I'd like to go through 20 some of the necessary findings. First, being Section 21 59731(e)1(a) which asks whether this application satisfies 22 any applicable previous approval on the subject site or not. 23 You indicated in your previous -- in your testimony that 24 there was no preliminary plan, a site plan applicable to 25 this C2 zone. But does this site -- is it consistent with</p>

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6 (21 to 24)

<p>21</p> <p>1 the 2015 APF approval?</p> <p>2 SOMER T. CROSS: Yes. In 2015 the APF approval, the</p> <p>3 shopping center requested an additional 9,999 square feet of</p> <p>4 floor space. This is the first development application since</p> <p>5 that 2015 review and is only, as I said, before only for</p> <p>6 3,120 square feet.</p> <p>7 LYNN ROBESON: Okay.</p> <p>8 SOO LEE-CHO: Now, looking at Section 59731(e)1(b)</p> <p>9 which talks about the satisfaction of the required C2 zone,</p> <p>10 which I will have our civil engineer cover the details of</p> <p>11 that. Could you speak to the specific use standards found</p> <p>12 under Division 593 for a drive-through use, and determine,</p> <p>13 in your opinion, whether it complies with all the specific</p> <p>14 use standards.</p> <p>15 SOMER T. CROSS: So in 593.5.14 where it is a</p> <p>16 conditional use, the use will not create a traffic hazard.</p> <p>17 We have a traffic engineer here today who will discuss that</p> <p>18 a lot further but in my opinion, I will not see a traffic</p> <p>19 problem with the queuing lane as proposed. Number two, it</p> <p>20 must not preempt frontage on any highway or public road in a</p> <p>21 way that reduces the visibility of the existing commercial</p> <p>22 use. As you can see from the conditional use area is off to</p> <p>23 the northwest corner of the site which will be offset enough</p> <p>24 that it will not impact any of the existing shopping center,</p> <p>25 and their view from 355, Frederick Road, or Frederick</p>	<p>23</p> <p>1 applicability in this case? I guess we've already done that</p> <p>2 but maybe --</p> <p>3 SOMER T. CROSS: So 596 are the new standards and as we</p> <p>4 talked before the new standards should not apply except for</p> <p>5 the parking rate as previously requested in the 2015</p> <p>6 adequate public facilities review. However, in the Staff</p> <p>7 Report I noticed that Staff has reviewed for queuing spaces</p> <p>8 and found that that would meet the requirements. There are</p> <p>9 three existing monument signs which are in compliance with</p> <p>10 the old standards and again, the rest of the 6 does not</p> <p>11 apply.</p> <p>12 LYNN ROBESON: Are those monument signs? I couldn't --</p> <p>13 wasn't sure from the Staff Report, are they existing for the</p> <p>14 shopping center or are these new for --</p> <p>15 SOMER T. CROSS: There are three existing monument</p> <p>16 signs for the staff, or for the shopping center. There is</p> <p>17 one at the southern corner of Frederick Avenue and that is</p> <p>18 for the stores off to the southeast. There's a monument sign</p> <p>19 in the middle which is for the grocery store which is the</p> <p>20 main tenant in the middle, and also shows the name of the</p> <p>21 entire shopping center. And then there is a third monument</p> <p>22 sign on the northwest corner and that is for the shops over</p> <p>23 on the north --</p> <p>24 LYNN ROBESON: But the building's going to have</p> <p>25 signage?</p>
<p>22</p> <p>1 Avenue. Product displays, parked vehicles, and other</p> <p>2 obstructions that adversely affect the visibility at</p> <p>3 intersections are at entrances and exits are prohibited.</p> <p>4 This is a request for a bank, and does not usually require</p> <p>5 any kind of product display.</p> <p>6 LYNN ROBESON: Well, you wouldn't -- you're not going</p> <p>7 to have any product displays, right?</p> <p>8 SOMER T. CROSS: Exactly. And then when a drive-through</p> <p>9 occupies a corner lot it must be located a minimum of 20</p> <p>10 feet from the intersection of the rights-of-way. This actual</p> <p>11 property takes up an entire block, therefore it is in</p> <p>12 effect, two corners, but the egress and ingress of the site</p> <p>13 remain the same. It is off of North Westland Drive and that</p> <p>14 is more than 90 feet from the intersection of South</p> <p>15 Frederick Avenue.</p> <p>16 SOO LEE-CHO: And just for the record I didn't know if</p> <p>17 you cited the section of the zoning ordinance from which you</p> <p>18 were reading from and opining. If you could state the --</p> <p>19 LYNN ROBESON: She did.</p> <p>20 SOO LEE-CHO: Did? Okay.</p> <p>21 LYNN ROBESON: It's 593.5.14.</p> <p>22 SOO LEE-CHO: Yes.</p> <p>23 SOMER T. CROSS: E)2(b).</p> <p>24 SOO LEE-CHO: Great. Then very quickly can you just go</p> <p>25 through the 596 and -- sections and opine as to their</p>	<p>24</p> <p>1 SOMER T. CROSS: The building will have signage.</p> <p>2 LYNN ROBESON: Have you analyzed whether that complies</p> <p>3 with the zoning ordinance?</p> <p>4 SOMER T. CROSS: That will be presented at another</p> <p>5 time. We don't have sign plans at this point. The Staff just</p> <p>6 requested the permits be submitted after approval.</p> <p>7 LYNN ROBESON: Well, I guess there is case law saying</p> <p>8 that we can't defer -- we can't defer to a future approval.</p> <p>9 We have to say whether you meet the standards or not now. We</p> <p>10 can't defer it to a future approval. We can't defer it to a</p> <p>11 future approval.</p> <p>12 SOO LEE-CHO: Well, I will be introducing rendered</p> <p>13 architectural that show the locations of future proposed</p> <p>14 wall signage.</p> <p>15 LYNN ROBESON: Okay.</p> <p>16 SOO LEE-CHO: The applicant --</p> <p>17 LYNN ROBESON: Do you have anybody that can say what</p> <p>18 code it meets and whether it meets -- I'm not sure whether</p> <p>19 you're under 2004 or 2014.</p> <p>20 SOO LEE-CHO: I suspect that the Department of</p> <p>21 Permitting Services is not enforcing 2004 sign ordinance any</p> <p>22 longer. So any new sign permits that are filed would be</p> <p>23 reviewed under the 2014 requirements.</p> <p>24 LYNN ROBESON: Okay.</p> <p>25 SOO LEE-CHO: But Applicant would accept a condition</p>

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<p>25</p> <p>1 that whatever sign --</p> <p>2 LYNN ROBESON: Well, see, that's what I can't do. I</p> <p>3 can't condition on a future approval, an unknown approval.</p> <p>4 Believe it or not, but we can't. Staff doesn't always --</p> <p>5 well, let's -- do you have the renderings?</p> <p>6 SOO LEE-CHO: Yes.</p> <p>7 LYNN ROBESON: Because what I can do is, is we can get</p> <p>8 the renderings over to the sign people at -- we can leave</p> <p>9 the record open. If we can get the renderings over to the</p> <p>10 sign people at DPS you know, we can get an answer.</p> <p>11 SOO LEE-CHO: We can do that.</p> <p>12 LYNN ROBESON: And then, if I have the -- let me think</p> <p>13 about it. I don't want to over complicate it but we really</p> <p>14 can't -- I wish --</p> <p>15 SOO LEE-CHO: We (crosstalk)</p> <p>16 LYNN ROBESON: We can't defer --</p> <p>17 SOO LEE-CHO: The complexity of the sign issue is that</p> <p>18 because it is part of a larger shopping center there are</p> <p>19 measurements that take into account the other tenant signage</p> <p>20 that then is balanced with what then is allowed for the bank</p> <p>21 signage. It is a standalone building.</p> <p>22 LYNN ROBESON: Yeah, they have a --</p> <p>23 SOO LEE-CHO: So it has a --</p> <p>24 LYNN ROBESON: They usually have it apportioned among</p> <p>25 --</p>	<p>27</p> <p>1 site had five or six people queuing up, ready to go; there</p> <p>2 were people walking around. And I feel like the</p> <p>3 recommendations of Bank of America to add more pedestrian</p> <p>4 crosswalks within the parking lot will help activate the</p> <p>5 entire shopping center.</p> <p>6 LYNN ROBESON: I saw those. Okay.</p> <p>7 SOO LEE-CHO: With that, I have nothing further for Ms.</p> <p>8 Cross.</p> <p>9 LYNN ROBESON: Okay. Thank you.</p> <p>10 SOMER T. CROSS: Thank you.</p> <p>11 SOO LEE-CHO: Next, I will call Ms. Assurian.</p> <p>12 LYNN ROBESON: Good morning.</p> <p>13 FERNANDA ASSURIAN: Good morning.</p> <p>14 LYNN ROBESON: Please raise your right hand. Do you</p> <p>15 solemnly affirm under penalties of perjury that the</p> <p>16 statements you are about to make are the truth, the whole</p> <p>17 truth, and nothing but the truth?</p> <p>18 FERNANDA ASSURIAN: I do.</p> <p>19 LYNN ROBESON: Okay.</p> <p>20 SOO LEE-CHO: Ms. Assurian, can you please state your</p> <p>21 full name for the record, business address and title and</p> <p>22 position with the Bank?</p> <p>23 FERNANDA ASSURIAN: Okay. My full name is (inaudible)</p> <p>24 Fernanda Assurian. I am located in 22 North Summit Avenue,</p> <p>25 Gaithersburg, Maryland 2877 (sic). And I'm a financial</p>
<p>26</p> <p>1 SOO LEE-CHO: Yes. But if there is a design -- a</p> <p>2 concept plan and we don't -- we haven't checked whether</p> <p>3 there is a overall shopping center signage plan that was</p> <p>4 ever processed so we would have to check that.</p> <p>5 LYNN ROBESON: Well, let's get the -- we'll get the</p> <p>6 renderings in and then sort it out.</p> <p>7 SOO LEE-CHO: All right. For the next section which --</p> <p>8 LYNN ROBESON: I think if I -- well, go ahead. Just go</p> <p>9 ahead.</p> <p>10 SOO LEE-CHO: So next I want to ask Ms. Cross to run</p> <p>11 through for us the general findings and for this section I</p> <p>12 would just ask her to -- if she has anything to add or</p> <p>13 supplement to what was provided in the Technical Staff</p> <p>14 Report.</p> <p>15 SOMER T. CROSS: I have reviewed the Staff Report.</p> <p>16 Consideration of these necessary findings and I would</p> <p>17 completely agree with Staff that it would be in compliance</p> <p>18 with the Master Plan. It's harmonious. It does not alter the</p> <p>19 character of the area. There are no other conditional uses</p> <p>20 found within the Staff Report neighborhood boundary. It</p> <p>21 seems to be complete -- served by adequate public facilities</p> <p>22 and there is no harm due to non-inherent effects that I</p> <p>23 could foresee. I will say I did a site visit at the property</p> <p>24 at about 1:30, 2:00 on a Tuesday and it was a very active</p> <p>25 site. The bus stop that's located right in front of this pad</p>	<p>28</p> <p>1 center manager.</p> <p>2 LYNN ROBESON: Okay. Can you make sure that the court</p> <p>3 reporter has the spelling, correct spelling, of your name</p> <p>4 before you leave?</p> <p>5 THE COURT REPORTER: I've got it.</p> <p>6 FERNANDA ASSURIAN: Yes. I gave the business card.</p> <p>7 LYNN ROBESON: Oh, you've got it. Okay.</p> <p>8 FERNANDA ASSURIAN: Yes.</p> <p>9 LYNN ROBESON: All right. Go ahead.</p> <p>10 SOO LEE-CHO: Ms. Assurian, first, would you state for</p> <p>11 the record whether you are authorized on behalf of the Bank</p> <p>12 to agree to be bound by the testimony and exhibits presented</p> <p>13 today --</p> <p>14 FERNANDA ASSURIAN: Yes, I --</p> <p>15 SOO LEE-CHO: -- and by any conditions and that the</p> <p>16 Hearing Examiner may include in the granting of this</p> <p>17 Conditional use?</p> <p>18 FERNANDA ASSURIAN: Okay. I am authorized to speak on</p> <p>19 behalf of the Bank.</p> <p>20 SOO LEE-CHO: So we'll just ask you to quickly describe</p> <p>21 some of the operational components that we described in the</p> <p>22 statement of operations which is in Exhibit 29(c) in the</p> <p>23 record. First, could you describe the size and number of</p> <p>24 drive-through lanes that we are requesting?</p> <p>25 FERNANDA ASSURIAN: Yes. We are adding two drive-</p>

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<p style="text-align: right;">29</p> <p>1 through lanes with one bypass and we will have an ATM at the 2 lobby. 3 LYNN ROBESON: Okay. 4 SOO LEE-CHO: What will be housed in the facility? 5 FERNANDA ASSURIAN: We -- in the facility we're going 6 to have a breakroom, a kitchen. We're going to have offices, 7 and we're going to have restrooms. We will have storage 8 rooms and teller lines and anything -- what we're going to 9 be able to receive clients. 10 SOO LEE-CHO: Will the drive-through have any teller 11 service -- 12 FERNANDA ASSURIAN: No -- 13 SOO LEE-CHO: -- connected to the facility? 14 FERNANDA ASSURIAN: No. The (inaudible) as today they 15 are self-service ATM where the client will be able to 16 perform all the bank -- as I say financial activities as 17 paying credit card (inaudible) deposit checks, cash checks 18 and it's a (inaudible) service. Maybe in the future we be 19 will be having the, as they say, ATAs. What we have during 20 (inaudible) are remote teller access. What I mean to say is 21 like a -- in between, let's say 7:30 and 8:00 p.m. the 22 client will be able to talk to someone remotely (inaudible). 23 LYNN ROBESON: Oh, I see. Okay. 24 SOO LEE-CHO: But that teller is not sitting in the 25 bank facility --</p>	<p style="text-align: right;">31</p> <p>1 SOO LEE-CHO: Okay. So it sounds like the number of 2 employees in the facility is -- there's no relationship to 3 the drive-through use, but we did provide information about 4 the number of employees for this Bank. What are those 5 numbers? 6 FERNANDA ASSURIAN: The numbers of the employees, what 7 we have inside of the financial center is to -- for the 8 public who will be walk in or they have appointments. 9 LYNN ROBESON: How many? 10 FERNANDA ASSURIAN: Usually we have six employees 11 during the busy business hours. What do you say starts after 12 noon between 1:00 and 4:30 p.m. But we will never, ever have 13 than six employees at one time in the financial center. 14 SOO LEE-CHO: But what is the maximum number of full- 15 time and part-time equivalent number of -- 16 FERNANDA ASSURIAN: Equivalent to -- 17 SOO LEE-CHO: -- assigned to this facility? 18 FERNANDA ASSURIAN: (inaudible) 20. 19 SOO LEE-CHO: Okay. All right. 20 LYNN ROBESON: Okay. But at one time six? 21 FERNANDA ASSURIAN: At one given time -- 22 LYNN ROBESON: No more than six at one time? 23 FERNANDA ASSURIAN: No. No. What I'm saying is 20 24 employees because we're going to have partners. 25 LYNN ROBESON: You have 20 total employees.</p>
<p style="text-align: right;">30</p> <p>1 FERNANDA ASSURIAN: No. No, no, no. 2 SOO LEE-CHO: -- at Walnut Hill? 3 FERNANDA ASSURIAN: No. The teller is not located in 4 the financial center. It's a remote location. 5 LYNN ROBESON: So this is not a drive-through with the 6 typical tubes that have -- that transfers papers -- 7 FERNANDA ASSURIAN: No. 8 SOO LEE-CHO: -- back and forth from the -- 9 FERNANDA ASSURIAN: This teller for Bank of America now 10 is a self-service ATMs. The self-service ATMs, as I 11 explained before, can help the clients with all financial 12 transactions. We don't need a teller helping the clients. 13 LYNN ROBESON: Okay. 14 SOO LEE-CHO: So the hours of operation that we 15 described in the statement of operations, does that 16 necessarily apply then to the drive-through ATM? 17 FERNANDA ASSURIAN: No. The drive-through ATM, they are 18 24 hours, seven days and we will not -- this is for 19 (inaudible) operations. The (inaudible) what we call. 20 SOO LEE-CHO: Okay. But it's in the statement we did 21 provide hours of operation for the facility. What are those 22 hours of operation? 23 FERNANDA ASSURIAN: Those I have here; Monday through 24 Friday 7:00 to 8:00 p.m., Saturday 7:30 to 6:00 p.m., and 25 Sunday 11:00 a.m. to 4:00 p.m.</p>	<p style="text-align: right;">32</p> <p>1 FERNANDA ASSURIAN: Twenty, yes. 2 SOO LEE-CHO: But we did indicate in our statement that 3 we would have no more than 12 employees at any one time. So 4 what do you mean by six? 5 FERNANDA ASSURIAN: The six, they are the one they are 6 housing for the (inaudible) operations of the financial 7 center. 8 SOO LEE-CHO: I see. So what are the other -- 9 FERNANDA ASSURIAN: (inaudible) 10 SOO LEE-CHO: -- what are the other employees that get 11 us to 12 that could be at the site? 12 FERNANDA ASSURIAN: Okay. The 12 will be inspectors, 13 auditors, business partners, coaches and anybody what is 14 necessary to come to the financial center. 15 LYNN ROBESON: Okay. So is the maximum number of 16 employees that could be on site at any one time, is that 12, 17 or is it 6? 18 FERNANDA ASSURIAN: Okay. Working there, housing, it's 19 six, but it could be fluctuating as we have meetings. 20 LYNN ROBESON: Okay. So I guess the question is for 21 parking purposes and traffic purposes is it 12? Is that the 22 maximum you're saying you could have on site at one time? 23 FERNANDA ASSURIAN: Twelve would be the maximum if we 24 have a meeting. But for the daily activities of the 25 financial --</p>

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<p>33</p> <p>1 SOO LEE-CHO: Typical. 2 FERNANDA ASSURIAN: -- typical it's a six. 3 SOO LEE-CHO: Okay, so -- 4 LYNN ROBESON: Okay. So are you asking for 12 or 6? 5 FERNANDA ASSURIAN: Twelve. 6 LYNN ROBESON: Twelve. Okay. I've got you. 7 SOO LEE-CHO: We will have other experts, but the 8 analysis was done with 12. 9 FERNANDA ASSURIAN: Thank you. Thank you. 10 SOO LEE-CHO: Can you speak to trash removal and 11 typical operations for the Bank as to why a dumpster for the 12 site is not necessary? 13 FERNANDA ASSURIAN: Due of the nature of the business 14 we have daily financial data, we don't have a dumpster. It's 15 not necessary because we talk about privacy here. As we -- 16 this moment what we talk about breach of our clients' 17 information, we are really concerned about that. We have a 18 service who will come in the (inaudible) financial data and 19 it's shredded, you know, in house. It's located in house. We 20 don't ever, ever use a dumpster for the type of waste. 21 SOO LEE-CHO: And do you also have the kitchen waste 22 taken off site? 23 FERNANDA ASSURIAN: Yes. The kitchen waste as we are 24 talking always we start -- actually we start this like three 25 years ago to be involved with the -- what we are doing right</p>	<p>35</p> <p>1 FERNANDA ASSURIAN: No, I would not. 2 SOO LEE-CHO: Exactly. 3 FERNANDA ASSURIAN: And just for the records, USBs say 4 the other -- the (inaudible) is what we receive. They park 5 in the associates' parking space, and it takes like three 6 minutes because they cannot come farther than the lot and 7 the financial center. And the (inaudible) receive the mail. 8 SOO LEE-CHO: Okay. And do you have many other type of 9 deliveries? 10 FERNANDA ASSURIAN: No. Because what I say, right now 11 we have a centralized, let's say we complete the work in the 12 financial center and we ship out. So this is once a day as 13 well. So they come, it's prepared for them, they go away and 14 it's a three minutes. US Mail it comes once a day, it's also 15 handled by the (inaudible) what some -- under two minutes. 16 We really don't need a loading space. It's for security 17 reasons. 18 SOO LEE-CHO: Okay. Great. Can you -- I'm going to have 19 Ms. Assurian introduce the architectural, the rendered 20 versions. 21 LYNN ROBESON: Okay. 22 SOO LEE-CHO: Or discuss it. So for the record -- 23 LYNN ROBESON: Are they in the record already? 24 SOO LEE-CHO: The colored -- the rendered -- 25 FERNANDA ASSURIAN: (crosstalk)</p>
<p>34</p> <p>1 now we (inaudible) we tried to use reusable resources. But 2 we have the cleaning service who comes and remove the 3 existing trash. 4 SOO LEE-CHO: Okay. And is that on a daily basis? 5 FERNANDA ASSURIAN: Yes, for the new financial center, 6 yes. 7 SOO LEE-CHO: Okay. And can you speak to why there is 8 not a designated loading space near the front of the Bank 9 for what reasons that that's not preferred? 10 FERNANDA ASSURIAN: Okay. We are dealing security here. 11 As a financial institution we are receiving shipment in and 12 shipment out of negotiables; cash and negotiables. We need 13 to be very much very mindful of the security at this time at 14 this time and this moment. We are not receiving negotiables 15 every day, so it has to be as close as possible of one 16 entrance, what we can protect, our negotiables and our 17 people as well, our associates. 18 SOO LEE-CHO: Is there a typical time of day that you 19 have, you know the Dunbar trucks, the security trucks come 20 by? 21 FERNANDA ASSURIAN: Okay. We don't have a designated 22 time and date because it's for security reasons as well. 23 SOO LEE-CHO: That's a good point. 24 FERNANDA ASSURIAN: About the -- 25 LYNN ROBESON: Certainly you wouldn't say it here.</p>	<p>36</p> <p>1 SOO LEE-CHO: -- ones are not. 2 LYNN ROBESON: Okay. Let's take them in. 3 SOO LEE-CHO: The black and white line drawings were 4 submitted with the prehearing submission. 5 LYNN ROBESON: Oh. Okay. Well, let's get the colored 6 ones in. So these will be rendered architectural? 7 SOO LEE-CHO: Yes. 8 LYNN ROBESON: Thank you. I'm going to make these 9 40(a); 40(a) is the east elevation; 40(b) is the south; 10 40(c) is the west; and 40(d) is the north. Okay. 11 SOO LEE-CHO: All right. Ms. Assurian, if you could 12 speak to just describing for the record the rendered 13 architectural that you have before you. 14 FERNANDA ASSURIAN: Yes. In general, the sign is just 15 pretty much a standard, all Bank of America and will not 16 alter any of the signage, what we have in the -- actually 17 right now in the shopping center. We have -- each side the 18 logo Bank of America because as was described the shopping 19 center will be reflecting all the passing by clients and 20 it's pretty much standard. It's self explanatory and then 21 each side of the building we will have one sign, with the 22 Bank of America and the logo. 23 SOO LEE-CHO: Okay. I think that's all I have unless 24 you have any questions for Ms. Assurian. 25 LYNN ROBESON: No. Thank you.</p>

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10 (37 to 40)

<p>37</p> <p>1 FERNANDA ASSURIAN: Thank you.</p> <p>2 SOO LEE-CHO: Thank you. Next I'd like to call Brad</p> <p>3 Fox, our civil engineer.</p> <p>4 LYNN ROBESON: Okay. Before we start with Mr. Fox, is</p> <p>5 this the example of the graphic of the signage that you were</p> <p>6 speaking of?</p> <p>7 SOO LEE-CHO: Yes.</p> <p>8 LYNN ROBESON: Mr. Fox, please raise your right hand.</p> <p>9 Do you solemnly affirm under penalties of perjury that the</p> <p>10 statements you are about to make are the truth, the whole</p> <p>11 truth, and nothing but the truth?</p> <p>12 BRADFORD FOX: I do.</p> <p>13 LYNN ROBESON: Okay. Go ahead Ms. Lee-Cho.</p> <p>14 SOO LEE-CHO: Mr. Fox, please state your name, business</p> <p>15 address, and profession for the record, please.</p> <p>16 BRADFORD FOX: Bradford Lee Fox. Business address is</p> <p>17 16701 Melford Boulevard, Suite 310, Bowie, Maryland 20715.</p> <p>18 I'm a civil engineer with Bohler Engineering.</p> <p>19 SOO LEE-CHO: Mr. Fox, have you ever qualified as an</p> <p>20 expert witness in a zoning case before this Hearing</p> <p>21 Examiner?</p> <p>22 BRADFORD FOX: Yes; the aforementioned Starbucks case,</p> <p>23 Starbucks Burtonsville.</p> <p>24 LYNN ROBESON: I thought you looked familiar.</p> <p>25 BRADFORD FOX: Yes.</p>	<p>39</p> <p>1 SOO LEE-CHO: Which is in the record.</p> <p>2 LYNN ROBESON: Yes, let's just identify it so we can --</p> <p>3 SOO LEE-CHO: It is part of the plan set that was</p> <p>4 submitted, updated plan set 35(b) it's one of --</p> <p>5 LYNN ROBESON: Okay.</p> <p>6 SOO LEE-CHO: It's Sheet 3 of 7.</p> <p>7 BRADFORD FOX: Sheet 3 of 7.</p> <p>8 LYNN ROBESON: Okay. Thank you.</p> <p>9 BRADFORD FOX: All right. And this shows the existing</p> <p>10 center. The corner in question at 355 and North Westland is</p> <p>11 currently developed with parking --</p> <p>12 LYNN ROBESON: Do you mind moving it? The first</p> <p>13 exhibit is blocking part of the site, so I just want to make</p> <p>14 sure I can follow your testimony. Thank you very much.</p> <p>15 BRADFORD FOX: So in this corner the -- 355 and North</p> <p>16 Westland, it's currently all a paved parking lot with a</p> <p>17 little landscaping. There is a bus stop located down in this</p> <p>18 corner. And there's existing drive aisle's to North Westland</p> <p>19 Drive, and then on the far right side of the sheet you can</p> <p>20 see the existing drive aisle in from 355.</p> <p>21 SOO LEE-CHO: Before we go further, could you identify</p> <p>22 using this Existing Conditions Plan, Exhibit 35(b), Sheet 3</p> <p>23 where along that corner is the parcel, the sliver parcel</p> <p>24 that's in the City of Gaithersburg? And what improvements</p> <p>25 are shown within that sliver parcel?</p>
<p>38</p> <p>1 LYNN ROBESON: Okay. I will -- and you're currently</p> <p>2 licensed in Maryland?</p> <p>3 BRADFORD FOX: Yes.</p> <p>4 LYNN ROBESON: Okay. I'll except him in as an expert in</p> <p>5 civil engineering and we'll mark --</p> <p>6 SOO LEE-CHO: And site design? (inaudible) profession.</p> <p>7 LYNN ROBESON: Okay. Well, don't bring -- I'll do site</p> <p>8 design in this case because I don't have any opposition with</p> <p>9 the caveat that if there's -- I'm not going to litigate</p> <p>10 whether site design is a separate --</p> <p>11 SOO LEE-CHO: Is there a profession, site design?</p> <p>12 LYNN ROBESON: That's why I've never -- we've -- well</p> <p>13 anyway --</p> <p>14 SOO LEE-CHO: I don't know what other expert to use for</p> <p>15 site design. Especially --</p> <p>16 LYNN ROBESON: Well, we really don't usually have an --</p> <p>17 we usually just have civil engineering expert, but anyway.</p> <p>18 I'll do it. Forty-one is the resume of Mr. Fox. Okay. Go</p> <p>19 ahead Ms. Lee-Cho.</p> <p>20 SOO LEE-CHO: All right. Mr. Fox, could you please</p> <p>21 begin by describing the site layout, driveway access, drive-</p> <p>22 through configuration, queuing space, and all of the other</p> <p>23 improvements we are proposing?</p> <p>24 BRADFORD FOX: Certainly. We'll start with the existing</p> <p>25 conditions of the site which is the exhibit on the right.</p>	<p>40</p> <p>1 BRADFORD FOX: I'll point out the parcel and then we'll</p> <p>2 talk about the improvements on the other sheet. In the</p> <p>3 Existing Conditions there's a row of parking that fronts</p> <p>4 along 355 which would be almost entirely within that sliver.</p> <p>5 The sliver is designated by a line that cuts through those</p> <p>6 (inaudible) spaces.</p> <p>7 LYNN ROBESON: Okay. I see it.</p> <p>8 BRADFORD FOX: And it mirrors the right-of-way.</p> <p>9 LYNN ROBESON: Okay.</p> <p>10 BRADFORD FOX: So it parallels the right-of-way.</p> <p>11 SOO LEE-CHO: And where is it identified, the legal</p> <p>12 description identified on that Plan, for the sliver parcel?</p> <p>13 BRADFORD FOX: Right here.</p> <p>14 LYNN ROBESON: Oh, when you say right here --</p> <p>15 BRADFORD FOX: I know. I'm sorry, in the bottom center</p> <p>16 of the plan.</p> <p>17 LYNN ROBESON: Okay.</p> <p>18 BRADFORD FOX: There is a reference to the lands of</p> <p>19 Daniel, Daniel & Daniel, with the (inaudible) folio.</p> <p>20 LYNN ROBESON: Okay. Thank you.</p> <p>21 BRADFORD FOX: Where it calls out the --</p> <p>22 LYNN ROBESON: Thank you.</p> <p>23 BRADFORD FOX: -- the sliver parcel. All right. And</p> <p>24 here are the proposed conditions. Once again we're on the</p> <p>25 same corner. The building has been located --</p>

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11 (41 to 44)

<p>41</p> <p>1 LYNN ROBESON: Can you put that one up there? Sorry. We 2 don't have high tech like the Planning Board so -- Okay. 3 Thank you. I appreciate it. That just helps me figure out 4 where our -- 5 BRADFORD FOX: Okay. 6 LYNN ROBESON: -- where things are changing. 7 SOO LEE-CHO: So to identify the exhibit that Mr. Fox 8 is now speaking to. It's Sheet 4 of 7. Same exhibit, 35(b). 9 LYNN ROBESON: Okay. 10 BRADFORD FOX: So picking up where we left off, on the 11 existing condition, in the proposed conditions we will be 12 locating two separate storm water management facilities, one 13 bio-retention and one pervious paving within the sliver that 14 is within the City of Gaithersburg. And then I'll talk a 15 little bit more about the proposed building. So -- 16 LYNN ROBESON: What are those -- at the side and the -- 17 there's two bottom like spikes that come into the -- it 18 looks like into the City of Gaithersburg. What are -- yes, 19 those, and to the side as well. That one, yes. What are 20 those? 21 BRADFORD FOX: The one that extends in North Westland 22 would be the water service for the new building. The one in 23 the 355 here is a sewer service. 24 LYNN ROBESON: Oh, okay. 25 BRADFORD FOX: And then we're also providing pedestrian</p>	<p>43</p> <p>1 LYNN ROBESON: Northeast? 2 BRADFORD FOX: Yeah. This would be the northwest corner 3 of this -- 4 LYNN ROBESON: Oh, I see what you're saying. Okay. 5 BRADFORD FOX: Yes. As it extends out to North Westland 6 there is a sidewalk that runs from that corner towards North 7 Westland where the applicant has agreed to provide striped 8 crosswalks -- 9 LYNN ROBESON: Okay. 10 BRADFORD FOX: -- to that sidewalk in two locations. 11 One from another existing building that is very close to 12 North Westland Drive in the extreme northern end of the 13 overall property. 14 SOO LEE-CHO: Could you elaborate on that point? Does 15 that crosswalk striping now being provided by the Bank 16 provide connectivity to an existing sidewalk on North 17 Westland? 18 BRADFORD FOX: Yes. The goal was to provide an access 19 from North Westland Drive. The existing sidewalk does not 20 meet all ADA criteria so therefore the crosswalks do not. 21 But it does provide a striped pedestrian connection -- 22 LYNN ROBESON: Okay. 23 BRADFORD FOX: -- to North Westland. The main 24 connection to the Bank pad would be from Route 355. It's 25 also very near to the existing --</p>
<p>42</p> <p>1 access which is a sidewalk that extends out to the existing 2 sidewalk. 3 LYNN ROBESON: Sidewalk. Okay. I understand. Thank you. 4 BRADFORD FOX: All right. And those are all within the 5 public right-of-way which is why they appear to spike out. 6 LYNN ROBESON: Okay. Thank you. 7 BRADFORD FOX: So the building is located in this 8 corner and has the drive-through wrapping the site. We 9 looked at a couple of alternatives and arrived at this one 10 for being the best to provide queuing, safety and, you know, 11 ease of access. The drive-through configuration you enter 12 from the main driveway that extends across the front of the 13 shopping center building. And it's closest to North Westland 14 Drive. You enter the queue there. There's the two drive 15 through lanes along the bypass lane, a stop bar at the exit 16 that precedes the pedestrian access from 355 that we already 17 discussed, and provides for safe pedestrian travel to the 18 front of the store and also into the building. At the 19 request of Staff, we extended the pedestrian access at the 20 face of the building to an existing sidewalk. It's tough to 21 describe, but this would be the grocery store. 22 LYNN ROBESON: Okay. "This" is the northeast quadrant? 23 Or in the northeast corner of Exhibit 35(b) Sheet 4? 24 BRADFORD FOX: Correct, yes. Would be the northwest 25 corner of the grocery store, shopping center, and is --</p>	<p>44</p> <p>1 LYNN ROBESON: Bus stop. 2 BRADFORD FOX: -- bus stop. Yeah. All right. And I'll 3 touch on storm water management features again. The storm 4 water management is along 355 in two locations; one which is 5 away from the conditional use area and is an existing area 6 of parking that's now being replaced with pervious pavement. 7 This would be in the southeast corner of the site. 8 SOO LEE-CHO: Can you point that out for her? 9 LYNN ROBESON: Of the special exception area? 10 BRADFORD FOX: Yes. 11 LYNN ROBESON: Okay. 12 BRADFORD FOX: That's outside of that conditional area, 13 it would be over here. This is just a removal of existing 14 impervious and replacement with permeable pavement. All 15 right. The other would be at the exit lane from the drive- 16 through with a bio-retention and then at the entrance lane 17 into the drive-through there is a planter box that is 18 providing storm water management. 19 LYNN ROBESON: Okay. All right. 20 SOO LEE-CHO: Mr. Fox, what is your understanding will 21 be the requirements of the City of Gaithersburg with regard 22 to those storm water management improvements and features to 23 be located within their jurisdiction? Like, what is your 24 understanding of the permitting requirements? 25 BRADFORD FOX: My understanding is that they were going</p>

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12 (45 to 48)

<p>45</p> <p>1 to defer to Montgomery County DPS, and provide 2 administrative staff approval. 3 LYNN ROBESON: Okay. But you don't have any -- I mean I 4 have to condition it on their approval because I can't -- 5 SOO LEE-CHO: Yes. And I believe that the Technical 6 Staff Report addressed that issue with (inaudible) 7 condition. 8 LYNN ROBESON: Yeah. Okay. I just wanted to make sure 9 you were okay with that condition. Okay. 10 SOO LEE-CHO: All right. I think that the only other 11 thing I have -- oh. We have to go through the C2 development 12 zone standards. All right. So can you take us through the C2 13 zone? The applicable standards and how we comply? 14 BRADFORD FOX: Yes. Then the answer is (inaudible) get 15 through the table that's shown on Sheet 4 of 7, and we'll 16 just go straight down through it. The building height in the 17 C2 zone permitted was 42 feet. This table is structured for 18 the overall shopping center, the approximately 8½ acres that 19 we've been discussing. 20 LYNN ROBESON: Yes. 21 BRADFORD FOX: So the maximum building height, although 22 the Bank is only 20 feet, the max building height occurs 23 elsewhere on the site; it's 36 feet for the main shopping 24 center building. All right. Same thing with building 25 setbacks, they are also for the overall shopping center site</p>	<p>47</p> <p>1 standards in 2004 when they enacted the 10 percent minimum. 2 So it only provides 7.4 percent for the overall shopping 3 center property. There is a footnote that speaks to this. 4 The original development was constructed in 1967 which 5 required 0 percent green area and the 10 percent green area 6 requirement first came into existence with the 1972 zoning 7 ordinance. Okay. In regards to our area of the conditional 8 use, just for consideration, we're providing 32, 9 approximately 32 percent of green area for the area of the 10 conditional use, well over the 10 percent. 11 LYNN ROBESON: In the special exception -- conditional 12 use area? 13 BRADFORD FOX: Correct. Yeah. The floor area ratio, 14 once again, this is for the overall shopping center 15 property; allowable is 1.5 FAR. We are at 0.2 FAR. The 16 building area with all things considered including the 17 additional retail and the Bank would be 109,000, 18 approximately 109,000 square feet. All right. Do you want to 19 go -- 20 SOO LEE-CHO: Yeah. Can we talk about the parking? And 21 you heard Ms. Cross mention the 2015 APF approval and 22 introduce the Composite Plan. Can you provide the updated 23 parking numbers for the site? 24 BRADFORD FOX: Yes. 25 LYNN ROBESON: Is that in the record? Did you file</p>
<p>46</p> <p>1 so the front was a 10 foot minimum from 355. This bank 2 corner -- 3 LYNN ROBESON: Those were the good old days. Go ahead. 4 BRADFORD FOX: Yes. So the Southwest corner of the Bank 5 to that right of way was 42 feet so that distance occurs on 6 our conditional use area. The rear, there was no setback, 7 but (inaudible) less than three feet. The existing building, 8 shopping center building is 46 feet to the northeast lot 9 line. And then on the side it's not applicable but the -- it 10 occurs on the site 2.7 feet from the existing building to 11 the north lot line is the closest point, which would be the 12 building that's shown on Sheet 4 to the rear of our proposed 13 Bank. 14 LYNN ROBESON: Okay. 15 BRADFORD FOX: All right. The green area ratio is 10 16 percent min was required by the C2. The existing lot pretty 17 -- 18 LYNN ROBESON: When you say, lot, you're talking about 19 the whole center? 20 BRADFORD FOX: Yes. 21 LYNN ROBESON: Both parcels in the whole center? 22 BRADFORD FOX: Correct. 23 LYNN ROBESON: Okay. 24 BRADFORD FOX: So the overall shopping center property 25 was developed before the current C2 or the previous C2</p>	<p>48</p> <p>1 that with 35? 2 SOO LEE-CHO: No. 3 LYNN ROBESON: Is that in the record? 4 SOO LEE-CHO: So this is new. This is new. 5 LYNN ROBESON: Okay. Can -- I'll mark -- can you just 6 mark it 42? And this will be Composite Plan. 7 SOO LEE-CHO: Updated. 8 LYNN ROBESON: Updated Composite Plan. 9 SOO LEE-CHO: Please tell us how this -- the Composite 10 Plan has been updated. 11 BRADFORD FOX: So the Composite Plan has been updated 12 it shows the most recent bank layout in the corner for the 13 conditional use and also it shows the storm water management 14 features for both the proposed bank site and also the 15 proposed retail building which is not a part of this 16 conditional use, but was included in the 2015 ABF 17 (crosstalk). 18 LYNN ROBESON: Okay. 19 BRADFORD FOX: All right. In addition, the parking 20 table that's shown on Exhibit 42 has been updated to take 21 into account the reduced parking area ratios as required by 22 the CR zone. So we have a large surplus of parking as now 23 shown in that table. 24 SOO LEE-CHO: And just for the Hearing Examiner's 25 benefit, who requested the update to the parking table?</p>

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13 (49 to 52)

<p>49</p> <p>1 BRADFORD FOX: Yes.</p> <p>2 SOO LEE-CHO: For information purposes.</p> <p>3 BRADFORD FOX: That was requested by Staff because it</p> <p>4 was zoned CR. Under the 2014 standard we met both the</p> <p>5 regular --</p> <p>6 LYNN ROBESON: We just don't like parking (inaudible)</p> <p>7 BRADFORD FOX: Yes. Yes.</p> <p>8 LYNN ROBESON: The retail likes it but --</p> <p>9 BRADFORD FOX: Mm-hmm</p> <p>10 LYNN ROBESON: Anyway. I digress. Go ahead.</p> <p>11 BRADFORD FOX: All right.</p> <p>12 SOO LEE-CHO: Okay.</p> <p>13 BRADFORD FOX: And I think that's everything that I</p> <p>14 wanted to mention about Exhibit 42.</p> <p>15 SOO LEE-CHO: Oh, can you speak specifically to the</p> <p>16 parking immediately around the bank pad site and whether the</p> <p>17 Bank patrons will have the ability under the lease to park</p> <p>18 in the other shopping center spaces?</p> <p>19 LYNN ROBESON: Good question. That was one of my</p> <p>20 questions.</p> <p>21 BRADFORD FOX: There are four spaces immediately in</p> <p>22 front of the Bank's front door, including one ADA accessible</p> <p>23 spot. In addition all spaces on the shopping center are</p> <p>24 shared by all tenants.</p> <p>25 LYNN ROBESON: So there's a cross easement for parking?</p>	<p>51</p> <p>1 SOO LEE-CHO: 59(e)1.4.</p> <p>2 LYNN ROBESON: E. Okay. I'm -- okay.</p> <p>3 BRADFORD FOX: All right.</p> <p>4 SOO LEE-CHO: All right. Moving on. Can you speak to</p> <p>5 Section 59(e)'s landscaping requirements and how we comply?</p> <p>6 BRADFORD FOX: Certainly. I'll bring up another</p> <p>7 exhibit.</p> <p>8 LYNN ROBESON: Those are the parking landscaping?</p> <p>9 SOO LEE-CHO: Correct.</p> <p>10 BRADFORD FOX: Yes. So here we have Sheet 6 of 7 from</p> <p>11 the Conditional Use Plan set. And the --</p> <p>12 LYNN ROBESON: Is that in the record?</p> <p>13 SOO LEE-CHO: Yes, 35 --</p> <p>14 LYNN ROBESON: At 35(b)?</p> <p>15 SOO LEE-CHO: Correct.</p> <p>16 LYNN ROBESON: Okay.</p> <p>17 BRADFORD FOX: The site requires a minimum of 5 percent</p> <p>18 of the internal area to surface parking to be landscaped</p> <p>19 with shade trees. We've provided that. Our site is just the</p> <p>20 surface parking would be the four spaces here and we also</p> <p>21 have looked at the drive-through and queuing area also. And</p> <p>22 we provide that we would need about 283 square feet for 5</p> <p>23 percent based on that parking area. And these, even just</p> <p>24 counting the internal areas here we're over that with</p> <p>25 approximately 350 square feet of landscaping.</p>
<p>50</p> <p>1 Okay. What is your required, just out of curiosity, I mean</p> <p>2 if you have shared parking there's plenty of spaces, but</p> <p>3 what is your required --</p> <p>4 BRADFORD FOX: We are a little over 3000 square feet</p> <p>5 and the ratio that we are (inaudible) is 3.5. To be safe we</p> <p>6 would call it 12 spaces, but it's not reflected in the</p> <p>7 plans. Staff wanted us to look at the entire site as a</p> <p>8 whole. So the --</p> <p>9 LYNN ROBESON: So the entire site -- so with all the</p> <p>10 uses with your use and the existing shopping center you have</p> <p>11 the entire site complies with the CRT Zone standards?</p> <p>12 BRADFORD FOX: Yes. The entire site meets the parking</p> <p>13 requirements based on the existing tenants plus all</p> <p>14 proposed.</p> <p>15 LYNN ROBESON: Okay.</p> <p>16 BRADFORD FOX: Okay.</p> <p>17 SOO LEE-CHO: Just going through the additional C2 zone</p> <p>18 development standards can you opine as to the applicability</p> <p>19 of the loading section, 59(e)1.4 of the 2004 zoning</p> <p>20 ordinance?</p> <p>21 BRADFORD FOX: Yes. In the 2004 zoning ordinance they</p> <p>22 stated that adequate loading should be provided. As we heard</p> <p>23 earlier the Bank, for security reasons, does not want a</p> <p>24 designated loading space.</p> <p>25 LYNN ROBESON: What was the cite to the 2004 59(c)</p>	<p>52</p> <p>1 LYNN ROBESON: Okay.</p> <p>2 BRADFORD FOX: So all right. The 10 foot landscape</p> <p>3 strip, if you think back to the existing conditions, the</p> <p>4 parking was right up along the right of way, and now we've</p> <p>5 moved that interior to the site and provided over that</p> <p>6 minimum 10 foot landscape strip.</p> <p>7 SOO LEE-CHO: Can you address outdoor lighting</p> <p>8 requirements, Section 59(e)2.6 of the 2004 ordinance and how</p> <p>9 we comply?</p> <p>10 BRADFORD FOX: Yes.</p> <p>11 SOO LEE-CHO: This is a new exhibit.</p> <p>12 LYNN ROBESON: This is a photometric study?</p> <p>13 SOO LEE-CHO: Yes.</p> <p>14 LYNN ROBESON: Okay. This will be 43 is the photometric</p> <p>15 study. Did you -- thank you. We are very high tech here.</p> <p>16 BRADFORD FOX: Yes. I'll speak to some points on the</p> <p>17 photometric plan. It was not prepared by me but upon review</p> <p>18 of it you can see that there are lights provided at the</p> <p>19 front of the building for safety and security and that is</p> <p>20 the closest point to the existing shopping center where</p> <p>21 there's already lighting provided for the parking. In</p> <p>22 addition along the perimeter there is lighting provided</p> <p>23 facing in towards the Bank and those light levels drop very</p> <p>24 quickly as you move --</p> <p>25 LYNN ROBESON: What are the light levels at the</p>

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14 (53 to 56)

<p>53</p> <p>1 perimeter?</p> <p>2 BRADFORD FOX: The light levels at the perimeter -- the</p> <p>3 lighting designer might have provided an average. I'm going</p> <p>4 to look for that. If not, I can pull an approximate.</p> <p>5 LYNN ROBESON: But you're not -- they're -- you're not</p> <p>6 under the requirement that it be 0.5 foot candles?</p> <p>7 BRADFORD FOX: That would be the current code.</p> <p>8 LYNN ROBESON: No, that was the old code too.</p> <p>9 SOO LEE-CHO: Well, the old code is cited at 59(e)2.6</p> <p>10 and it simply provides that adequate lighting shall be</p> <p>11 provided for surface parking lots used at night and lighting</p> <p>12 shall be installed and maintained in a manner not to cause</p> <p>13 glare or reflection into --</p> <p>14 LYNN ROBESON: Oh. I'm thinking of the special</p> <p>15 exception. There was a requirement that --</p> <p>16 SOO LEE-CHO: Right. But those are not applicable --</p> <p>17 LYNN ROBESON: We're doing the --</p> <p>18 SOO LEE-CHO: -- the uses under --</p> <p>19 LYNN ROBESON: Yes. Okay. Yes. Okay.</p> <p>20 BRADFORD FOX: The proposed preliminary lighting faces</p> <p>21 towards the building it's cut off the face and where it also</p> <p>22 is adjacent to public right-of-ways that have street</p> <p>23 lighting for the public right-of-way along North Westland</p> <p>24 and also down 355.</p> <p>25 LYNN ROBESON: Okay.</p>	<p>55</p> <p>1 case. It was 59(e)2.6 for the lighting, outdoor lighting.</p> <p>2 LYNN ROBESON: Yeah.</p> <p>3 SOO LEE-CHO: And you did look at the landscape</p> <p>4 provisions of 59(e) parking lots. In that case the 2004</p> <p>5 parking rates applied because they did not --</p> <p>6 LYNN ROBESON: Right. Right.</p> <p>7 SOO LEE-CHO: -- but that's the only distinction.</p> <p>8 LYNN ROBESON: I was just trying to separate out what's</p> <p>9 applicable.</p> <p>10 SOO LEE-CHO: Yeah. I've been doing that for a while on</p> <p>11 this case.</p> <p>12 LYNN ROBESON: Okay. I apologize. Go --</p> <p>13 SOO LEE-CHO: That's okay.</p> <p>14 LYNN ROBESON: -- is that --</p> <p>15 SOO LEE-CHO: So just to round out the outdoor lighting</p> <p>16 testimony, did you state that the site faces any, or abuts</p> <p>17 any residential premises?</p> <p>18 BRADFORD FOX: The properties across the -- across 355</p> <p>19 would be zoned residential but currently --</p> <p>20 SOO LEE-CHO: But that's not -- that's confronting. So</p> <p>21 the standard on the outdoor lighting is whether there's a</p> <p>22 glare or reflection into abutting or facing residential</p> <p>23 properties.</p> <p>24 LYNN ROBESON: Well, isn't it facing?</p> <p>25 SOO LEE-CHO: Well, facing through a right-of-way.</p>
<p>54</p> <p>1 LYNN ROBESON:</p> <p>2 SOO LEE-CHO: All right. And does the site face any --</p> <p>3 did you just say whether it faced a --</p> <p>4 LYNN ROBESON: Wait. If you look at -- I'm sorry. Now</p> <p>5 I'm --</p> <p>6 SOO LEE-CHO: You're thinking of the special exception</p> <p>7 --</p> <p>8 LYNN ROBESON: Well, I'm thinking of that but --</p> <p>9 SOO LEE-CHO: -- standards.</p> <p>10 LYNN ROBESON: -- there's also -- you've -- isn't</p> <p>11 across the street residential?</p> <p>12 SOO LEE-CHO: Yes. But it's whether you face or abut</p> <p>13 any residential premises is the standard.</p> <p>14 LYNN ROBESON: No. I'm talking about the new zoning</p> <p>15 ordinance. That's in Article 6 of the new zoning ordinance</p> <p>16 which you say doesn't apply because you're under the</p> <p>17 development standards of the --</p> <p>18 SOO LEE-CHO: Old.</p> <p>19 LYNN ROBESON: -- zoning ordinance.</p> <p>20 SOO LEE-CHO: With the exception of parking.</p> <p>21 LYNN ROBESON: Right.</p> <p>22 SOO LEE-CHO: Because of the (inaudible). So if you</p> <p>23 look at the Starbucks case you --</p> <p>24 LYNN ROBESON: I think it's 6.4.4.(e).</p> <p>25 SOO LEE-CHO: That was not applied in the Starbucks</p>	<p>56</p> <p>1 LYNN ROBESON: Okay. Just tell me is there glare across</p> <p>2 355?</p> <p>3 BRADFORD FOX: No. No there is no glare across 355. If</p> <p>4 you look at the aerial photo --</p> <p>5 LYNN ROBESON: They already have street lights in the</p> <p>6 right-of-way, correct?</p> <p>7 BRADFORD FOX: Correct.</p> <p>8 LYNN ROBESON: And do you have full cut off fixtures in</p> <p>9 your lighting?</p> <p>10 BRADFORD FOX: Yes. These will be full cut off and</p> <p>11 they'll face the interior. And by the time we get to the</p> <p>12 back of curb we're at zero along North Westland and .1, .2</p> <p>13 (crosstalk)</p> <p>14 LYNN ROBESON: Okay. That's good. Okay.</p> <p>15 SOO LEE-CHO: All right. So finally I would just ask</p> <p>16 you to cover general finding 597.31(e)1(f) which is the</p> <p>17 adequate public facilities finding. Is it your opinion that</p> <p>18 this application meets that requirement? And why?</p> <p>19 BRADFORD FOX: Yes. It is my opinion that it means that</p> <p>20 requirement. I was also involved with that APF that is</p> <p>21 Exhibit 38, the Walnut Hill Shopping Center APF test. And</p> <p>22 during that time we went through the APF with this site in</p> <p>23 mind and now we're putting this into practice.</p> <p>24 LYNN ROBESON: Okay. Thank you.</p> <p>25 SOO LEE-CHO: And that APF is still valid, is it not?</p>

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<p>57</p> <p>1 BRADFORD FOX: Yes.</p> <p>2 SOO LEE-CHO: All right. Thank you.</p> <p>3 BRADFORD FOX: All right.</p> <p>4 LYNN ROBESON: Thank you.</p> <p>5 SOO LEE-CHO: Next I would call our --</p> <p>6 LYNN ROBESON: Next victim, Ms. Lee-Cho.</p> <p>7 SOO LEE-CHO: -- traffic engineer, Nick Driban. For Mr.</p> <p>8 Driban I will need to go through voir dire for just --</p> <p>9 LYNN ROBESON: Okay. Do we have his resume in the</p> <p>10 record?</p> <p>11 SOO LEE-CHO: We will.</p> <p>12 LYNN ROBESON: Yes. This will be 49, no I mean 44.</p> <p>13 Well, let me just -- please raise your right hand. Do you</p> <p>14 solemnly as affirm under penalties of perjury that the</p> <p>15 statements you are about to make are the truth, the whole</p> <p>16 truth, and nothing but the truth?</p> <p>17 NICK DRIBAN: Yes.</p> <p>18 LYNN ROBESON: Okay. Before we start are you trying to</p> <p>19 qualify as a traffic engineer or a transportation planner or</p> <p>20 both?</p> <p>21 SOO LEE-CHO: I have him as traffic engineering and</p> <p>22 planning.</p> <p>23 LYNN ROBESON: Okay. Go ahead.</p> <p>24 SOO LEE-CHO: Mr. Driban, please state your name,</p> <p>25 business address, and profession for the record.</p>	<p>59</p> <p>1 planning. And at that time we had a renewal of our contract</p> <p>2 with Montgomery County, the County Department of</p> <p>3 Transportation so we were conducting traffic engineering and</p> <p>4 transportation planning analyses for them. And I've been</p> <p>5 with Lenhart Traffic now for about eight months.</p> <p>6 LYNN ROBESON: Okay.</p> <p>7 NICK DRIBAN: And I'm the Associate Vice President of</p> <p>8 that.</p> <p>9 LYNN ROBESON: Okay.</p> <p>10 SOO LEE-CHO: Are you registered as a professional</p> <p>11 traffic engineer in the State of Maryland?</p> <p>12 NICK DRIBAN: I am a professional engineer in the state</p> <p>13 of Maryland and a professional traffic operations engineer.</p> <p>14 LYNN ROBESON: Okay.</p> <p>15 NICK DRIBAN: Certified (inaudible)</p> <p>16 LYNN ROBESON: I will accept him --</p> <p>17 SOO LEE-CHO: I would submit --</p> <p>18 LYNN ROBESON: -- as an expert.</p> <p>19 SOO LEE-CHO: Thank you. It's hard to say no to that,</p> <p>20 right?</p> <p>21 LYNN ROBESON: Yes.</p> <p>22 SOO LEE-CHO: Okay. Mr. Driban, did you prepare this</p> <p>23 Traffic Statement submitted in support of this conditional</p> <p>24 use application?</p> <p>25 NICK DRIBAN: I did.</p>
<p>58</p> <p>1 NICK DRIBAN: Full name is Charles Nicholas Driban. I</p> <p>2 go by Nick. And business is traffic engineering. I work for</p> <p>3 Lenhart Traffic Consulting Incorporated; and the business</p> <p>4 address is 645 Baltimore Annapolis Boulevard, Suite 214,</p> <p>5 Severna Park, Maryland, 21146.</p> <p>6 SOO LEE-CHO: Okay. Can you please describe your</p> <p>7 education and professional training?</p> <p>8 NICK DRIBAN: Yes. I have a bachelor's of science in</p> <p>9 civil engineering from Penn State University. I've worked in</p> <p>10 the field of traffic engineering and transportation planning</p> <p>11 for about 11 years now on both the public and private sides.</p> <p>12 My first six years were with a company called STV</p> <p>13 Incorporated where I was a traffic engineer and</p> <p>14 transportation planner. We had an on call contract at that</p> <p>15 time with Montgomery County so from the beginning of my</p> <p>16 career I've worked in this area doing traffic engineering.</p> <p>17 After that I was with the Maryland State Highway</p> <p>18 Administration in the asset management division responsible</p> <p>19 for reviewing traffic impact studies and had oversight of</p> <p>20 the District 3 area which encompasses Montgomery County. So</p> <p>21 I was the -- one of the -- I was the primary reviewer for</p> <p>22 Montgomery County traffic impact studies for two years. I</p> <p>23 went back to STV for three years where I was the head of the</p> <p>24 traffic operations department overseeing technical staff,</p> <p>25 which is again, traffic engineering and transportation</p>	<p>60</p> <p>1 SOO LEE-CHO: Can you please describe the approach or</p> <p>2 method of analysis that was employed for the traffic</p> <p>3 statement and describe for the Hearing --</p> <p>4 LYNN ROBESON: Well, before you do that. I'm sorry. I'm</p> <p>5 trying to -- what local area transportation review</p> <p>6 guidelines -- did you use the one that they are using? They</p> <p>7 have -- Park and Planning has guidelines as you probably</p> <p>8 know that haven't been formally adopted yet. Where those the</p> <p>9 guidelines you used or?</p> <p>10 NICK DRIBAN: So this -- the original traffic impact</p> <p>11 study that incorporated the additional square footage that</p> <p>12 the Bank is being included under --</p> <p>13 LYNN ROBESON: Right.</p> <p>14 NICK DRIBAN: Was conducted in 2015 and followed the</p> <p>15 2015 LATR guidelines.</p> <p>16 LYNN ROBESON: Okay. Have you updated it to meet the</p> <p>17 current guidelines?</p> <p>18 NICK DRIBAN: So at that time an adequate public</p> <p>19 facilities approval was granted for an additional 9999</p> <p>20 square feet --</p> <p>21 LYNN ROBESON: Oh, so this is -- oh that -- okay. So</p> <p>22 this is included -- I hate -- I mean -- this is all fine.</p> <p>23 It's just -- so you're saying that the 2015 APF approval is</p> <p>24 still valid?</p> <p>25 NICK DRIBAN: Yes. So the 2015 APF approval was for an</p>

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<p>61</p> <p>1 additional 9999 square feet.</p> <p>2 LYNN ROBESON: Yeah, but did it include the conditional</p> <p>3 use?</p> <p>4 NICK DRIBAN: So that square footage, the way the</p> <p>5 traffic analysis is conducted at the time was for additional</p> <p>6 square footage for the shopping center and we use, in</p> <p>7 transportation engineering, traffic engineering, the ITE</p> <p>8 trip generation manual. It's kind of--</p> <p>9 LYNN ROBESON: For a shopping center.</p> <p>10 NICK DRIBAN: Yes. And a shopping center includes pad</p> <p>11 sites. The definition within the trip generation manual says</p> <p>12 that the square footage for that shopping center encompasses</p> <p>13 any pad sites which could be, you know, fast food, banks,</p> <p>14 any number of things that are counted within the square</p> <p>15 footage of the overall shopping center.</p> <p>16 LYNN ROBESON: Okay. I believe him.</p> <p>17 SOO LEE-CHO: Okay. Were you asked to provide any</p> <p>18 additional analyses for the Bank use and the drive-through</p> <p>19 use in particular in this case?</p> <p>20 NICK DRIBAN: Yes. Staff requested that we conduct</p> <p>21 analyses on queuing for the drive-through as well as</p> <p>22 operations for the site access point to the overall shopping</p> <p>23 center on North Westland Drive located in --</p> <p>24 SOO LEE-CHO: (inaudible)</p> <p>25 NICK DRIBAN: Sure.</p>	<p>63</p> <p>1 that can queue within the space in which we determined to be</p> <p>2 roughly eight to nine vehicles and there's some documented</p> <p>3 research from ITE that looks at the maximum queues for</p> <p>4 different types of uses in drive-throughs and this is</p> <p>5 research dating back, you know, 30, 40 years, and they found</p> <p>6 that the maximum queue observed at a bank drive-through was</p> <p>7 8 vehicles for 15 sites that they looked at across the</p> <p>8 country. And their sort of conclusion from that was people</p> <p>9 aren't willing to tolerate a longer queue than that within a</p> <p>10 bank drive-through. They'll come back later or -- there's a</p> <p>11 -- in this case there's an ATM in the lobby. So there are</p> <p>12 other options.</p> <p>13 LYNN ROBESON: Okay. All right.</p> <p>14 SOO LEE-CHO: And just -- did you state the number of</p> <p>15 queuing spaces calculated for the site?</p> <p>16 NICK DRIBAN: Yes. There are eight to nine spaces</p> <p>17 within -- between the two drive-through lanes and then the</p> <p>18 space that wraps around the northwest side of the building.</p> <p>19 And that doesn't include any space within the bypass lane.</p> <p>20 SOO LEE-CHO: And are the car the vehicles that are</p> <p>21 shown on the Site Plan Sheet 4, are they indicative of that</p> <p>22 queuing space?</p> <p>23 NICK DRIBAN: Yes.</p> <p>24 LYNN ROBESON: Okay.</p> <p>25 NICK DRIBAN: So that's showing eight vehicles and you</p>
<p>62</p> <p>1 LYNN ROBESON: And you're looking at Exhibit 35(b)</p> <p>2 Sheet 4, the site spec -- Conditional Use Site Plan.</p> <p>3 SOO LEE-CHO: Yes.</p> <p>4 NICK DRIBAN: Yes. So on this exhibit it is the site</p> <p>5 access point that's on the, I think it's the northwest</p> <p>6 corner of the site in the far --</p> <p>7 LYNN ROBESON: Of the conditional use site?</p> <p>8 NICK DRIBAN: Of the conditional use site.</p> <p>9 LYNN ROBESON: Okay.</p> <p>10 NICK DRIBAN: Yeah. So we conducted traffic analyses</p> <p>11 for queuing and for that site access point and the queuing</p> <p>12 evaluation looked at the number of vehicles that could queue</p> <p>13 within the drive-through space and also looked at the layout</p> <p>14 of the drive-through as it was configured. And in order to</p> <p>15 make sure that traffic could operate safely and efficiently</p> <p>16 within there and that the queuing space was adequate for the</p> <p>17 number of vehicles that would be generated by the Bank. And</p> <p>18 we found that queuing was adequate and that the layout was</p> <p>19 appropriate in terms of keeping traffic away from the main</p> <p>20 spine road of the site that runs from North Westland Road to</p> <p>21 South Westland Road and generally facilitating traffic</p> <p>22 operations most effectively.</p> <p>23 LYNN ROBESON: Do you ever find -- how do you determine</p> <p>24 that queuing is adequate?</p> <p>25 NICK DRIBAN: So we looked at the number of vehicles</p>	<p>64</p> <p>1 could probably squeeze one more in there.</p> <p>2 SOO LEE-CHO: Did Technical Staff find your method of</p> <p>3 analysis acceptable?</p> <p>4 NICK DRIBAN: They did.</p> <p>5 SOO LEE-CHO: Are you familiar with the specific --</p> <p>6 well, conditional use standards of Section 3514(e)2(b) of</p> <p>7 the 2014 zoning ordinance?</p> <p>8 NICK DRIBAN: Yes.</p> <p>9 SOO LEE-CHO: In particular the first requirement that</p> <p>10 the use of the proposed location will not create a traffic</p> <p>11 hazard or traffic nuisance because of its location in</p> <p>12 relation to similar uses, et cetera. Have you reviewed that</p> <p>13 section?</p> <p>14 NICK DRIBAN: I have.</p> <p>15 SOO LEE-CHO: All right.</p> <p>16 NICK DRIBAN: Can you opine as to this application's</p> <p>17 compliance with that specific use standards?</p> <p>18 NICK DRIBAN: Yes. We concur with Staff findings in</p> <p>19 this case. They found that the pad site located in the</p> <p>20 northwest corner of the site, next to the site access</p> <p>21 location is relatively isolated from the rest of the</p> <p>22 shopping center site which allows vehicles entering and</p> <p>23 exiting the drive-through to avoid creating a traffic hazard</p> <p>24 for any other vehicles within the site. You can kind of see</p> <p>25 that the entrance to the drive-through and, especially the</p>

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<p>65</p> <p>1 exit, are relatively removed from the rest of the shopping 2 center traffic. And -- 3 LYNN ROBESON: Did you have to do queuing up at the 4 access point at North Westland? 5 NICK DRIBAN: We did, yes. They asked -- Staff asked 6 that we evaluate traffic operations at that access point and 7 North Westland Drive is a low-volume road and we found that 8 the average queue during the highest hour, the peak hour was 9 less than one vehicle. It was about 12 to 13 feet so there's 10 really not a queuing issue exiting the site onto North 11 Westland Drive. And the site is -- access is a right into 12 the drive through lane. So you don't have vehicles, you 13 know, queuing up trying to get into the drive-through lane. 14 LYNN ROBESON: And then they can either go straight and 15 exit onto Frederick Avenue, 355 or they take a left at the 16 end of the lane and travel back to the access? 17 NICK DRIBAN: Correct. There are a number of access 18 points. The site actually has six access points which -- the 19 overall shopping center site has six access points which we 20 are not intending to change. But you can exit from two 21 locations -- exit the shopping center from two locations on 22 North Westland Drive, two locations on South Westland Drive 23 or back onto Frederick Avenue. 24 LYNN ROBESON: Okay. 25 SOO LEE-CHO: Can you opine as to the traffic patterns</p>	<p>67</p> <p>1 of the previous study in 2015 for adding an additional 9999 2 square feet. And based on the trip generation analysis that 3 we used which is the industry standard from ITE trip 4 generation manual this use would be included as part of 5 those trips generated as a pad site within a shopping 6 center. So that adequate public facilities finding would 7 apply to the site. 8 LYNN ROBESON: Okay. 9 SOO LEE-CHO: That's all I have. 10 LYNN ROBESON: Thank you. 11 NICK DRIBAN: Thank you. 12 SOO LEE-CHO: Finally, I will call Mr. Edward Steere. 13 LYNN ROBESON: You've been patient, Mr. Steere. 14 SOO LEE-CHO: Mr. Steere should be familiar to you too. 15 LYNN ROBESON: He is. 16 SOO LEE-CHO: As well. 17 LYNN ROBESON: Please raise your right hand. Do you 18 solemnly affirm under penalties of perjury that the 19 statements you're about to make are the truth, the whole 20 truth, and nothing but the truth? 21 EDWARD STEERE: I do. 22 LYNN ROBESON: Okay. Go ahead Ms. Lee-Cho. 23 SOO LEE-CHO: Mr. Steere, can you please state your 24 name, business address, and profession for the record? 25 EDWARD STEERE: My name is Edward Steere. I work at</p>
<p>66</p> <p>1 and whether any turning movements will cross sidewalks and 2 pedestrian ways and cause any disruption to pedestrian 3 circulation? 4 NICK DRIBAN: I believe that the traffic is well 5 configured for the pedestrian -- the proposed pedestrian 6 facilities. There are pavement markings and signage proposed 7 at the exit to the drive-through for the new pedestrian 8 connection there, which would facilitate safe and efficient 9 traffic operations. 10 LYNN ROBESON: And then you have a crosswalk, right, 11 between the -- you have a crosswalk going all the way to the 12 existing sidewalk for the shopping center? 13 NICK DRIBAN: Correct; which was requested by Staff to 14 help facilitate pedestrian operations through there. And in 15 terms of that crosswalk the Bank's impact is less than 30 16 vehicles per hour during the peak hours so it's really not a 17 substantial amount of additional traffic that would be 18 crossing that new pedestrian crossing. 19 LYNN ROBESON: Okay. 20 SOO LEE-CHO: All right. Finally, just to touch upon 21 the general finding of adequate public services with regard 22 to public roads, found in Section 59731(e)1(f) can you opine 23 as to this application's compliance with that requirement? 24 NICK DRIBAN: Yes. As I stated earlier this additional 25 square footage for the shopping center was approved as part</p>	<p>68</p> <p>1 Valbridge Property Advisors now. Oh, I let me get the 2 address right here. Just moved; 11100 Dovedale Court, 3 Marriottsville, Maryland 21104. And I should explain -- 4 LYNN ROBESON: Didn't I see you in Starbucks? 5 EDWARD STEERE: Yes. 6 LYNN ROBESON: Were you -- yeah. 7 EDWARD STEERE: So one change -- 8 LYNN ROBESON: And you told me where all the Dunkin 9 Donuts were. 10 EDWARD STEERE: I did. 11 LYNN ROBESON: Yes. 12 EDWARD STEERE: Did you check them all out? 13 LYNN ROBESON: Huh? No. I -- never mind. I -- I 14 digress. 15 EDWARD STEERE: Now I'm going to tell you where all the 16 banking facilities are. 17 LYNN ROBESON: Good. 18 EDWARD STEERE: So this, just to clarify -- 19 SOO LEE-CHO: Well, before we go to -- 20 EDWARD STEERE: Okay. 21 SOO LEE-CHO: -- the new study. I have Mr. Steere's 22 resume for the record and I would just ask, Mr. Steere, have 23 you testified or qualified as an expert before this -- 24 EDWARD STEERE: Yes, I have. 25 SOO LEE-CHO: -- body before. With that I would submit</p>

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18 (69 to 72)

<p>69</p> <p>1 him as an expert in market analysis. 2 LYNN ROBESON: Thank you so much. Okay. Go ahead Ms. 3 Lee-Cho. That's 45, by the way. 4 SOO LEE-CHO: Yes. All right. Mr. Steere, did you 5 prepare the needs study that was submitted in support of 6 this conditional use application? 7 EDWARD STEERE: Yes, I did. 8 SOO LEE-CHO: Before we get into the study itself, 9 could you just clarify for the record that your -- 10 EDWARD STEERE: The business? 11 SOO LEE-CHO: The business transition that occurred 12 from the time that you prepared the study to today? 13 EDWARD STEERE: Yes. So at the -- 14 LYNN ROBESON: Well, wait. Let me just -- I don't think 15 I've actually qualified you yet. 16 SOO LEE-CHO: Oh. 17 LYNN ROBESON: But you have testified before the 18 Hearing Examiner as an expert in market analysis, correct? 19 EDWARD STEERE: Correct. 20 LYNN ROBESON: Okay. I'm going to -- 21 SOO LEE-CHO: Yes. 22 LYNN ROBESON: -- formally accept him -- 23 SOO LEE-CHO: Thank you. 24 LYNN ROBESON: -- as an expert in market analysis. 25 EDWARD STEERE: So I'm not sure when exactly, you know,</p>	<p>71</p> <p>1 buffer between neighborhoods without road connections. So 2 the -- as you go north of this facility on Frederick Road 3 you get into a more commercial area and other dense 4 neighborhoods, the Lake Forest Mall area and you go south 5 and you're heading to Rockville and then a little bit 6 northeast you have the old town of Gaithersburg, so each of 7 these are different centers. What we had in this particular 8 neighborhood is Walnut Hill and Rosemont (phonetic) and the 9 Walnut Hill shopping center which is the isolated single 10 service center for these two residential neighborhoods. So 11 using that as my boundary, I looked through what the -- I 12 used census data to determine what peoples -- the household 13 makeup is and what peoples banking practices were in that 14 area. In a nutshell, what we came down to is that there are 15 no other banking facilities in this neighborhood right now. 16 The facility that this neighborhood probably used the most 17 before was closed, and it was south of Route 370. So to get 18 there these folks would have driven down the highway and 19 across the road to get to a drive up bank facility. So what 20 we have now is a neighborhood service center, a grocery 21 store and other service uses, but no banking facilities, no 22 drive-up banking facilities. There is an ATM in the 7-Eleven 23 and I believe in the Weis, but nothing more than that. The 24 -- that's the first major parameter that we ran into. The 25 other is that in this particular area more than one-fifth of</p>
<p>70</p> <p>1 which company I was with the last time I was in front of 2 this Board. But the -- when I prepared this analysis the 3 business was Litman, Frizzell & Mitchell in Columbia, 4 Maryland. And since that time I had taken the business model 5 and moved it to another company, Valbridge Property 6 Advisors. So although the report is titled as Litman, 7 Frizzell & Mitchell, I am not there. 8 LYNN ROBESON: Okay. 9 SOO LEE-CHO: So can you please describe the approach, 10 method of analysis that you employed for the needs study and 11 your conclusions? 12 EDWARD STEERE: So the important part of my needs study 13 was actually in the neighborhood. What I do is I take and 14 define a space where this facility will serve and use in the 15 neighborhood that Ms. Cross proposed in her report worked 16 very well. And it's significant in the market analysis to 17 identify what that market is. Sometimes we use a drive time 18 analysis as we would for Dunkin Donuts or Starbucks. But 19 other times it's more of a neighborhood base, and this is a 20 neighborhood banking business. It's not necessarily 21 something people rely on a drive time to go use. So looking 22 at the neighborhood that was already proposed here by the 23 applicant made sense because it's bounded by railroad tracks 24 and an interstate highway and then in the northern and 25 northwestern sides of it, it was more or less an isolated</p>	<p>72</p> <p>1 the residents use Bank of America so they have to travel 2 somewhere else to use the banking services they've already 3 elected to use. That's a significant share, one-fifth of the 4 population among all the different banks in the region. So 5 we then looked at where the competitive supply of Bank of 6 America and other banks were. The Bank of America sites that 7 are nearby, by distance don't sound far, but by driving it's 8 difficult and they are not convenient. So if you lived in 9 Walnut Hill subdivision and you needed to travel south to go 10 to work, for example, heading towards this direction the 11 closest facility is actually north of their communities so 12 they would have to drive into another congested area to get 13 to another Bank of America facility or to go down to 14 Rockville. Likewise the -- there were 13 other banks in 15 about a 10 minute drive time area as well which put Lake 16 Forest Mall and Rockville and Gaithersburg so all of the 17 banking facilities were far enough away that they were more 18 are less inconvenient to access. 19 LYNN ROBESON: How -- I'm sorry. How far away were they 20 in times of drive time? 21 EDWARD STEERE: Approximately 10 minutes, or 3 miles 22 depending on the time of day. And so normally I would do a 23 study like this on a lot of numbers but this one had a lot 24 more planning principle behind it than numbers. I do have 25 numbers for all of this but on theory the accessibility for</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 this community made this the paramount concern. As I pointed 2 out, more than one-fifth of the residents or households in 3 this community are banking with Bank of America now. 4 Frederick Road is also a major thoroughfare with, I believe 5 it was more than 29,000 average vehicle trips per day, and 6 so there is significant pass-through traffic that will find 7 this site more accessible than many of the other ones that 8 are existing north of it as well. We found that some of the 9 other banking sites were in business parks. They're really 10 oriented to the business park; they're not oriented to a 11 community. They're oriented to a shopping center or some 12 other, like the mall, for example. It's not -- it's a 13 destination, it's not a neighborhood convenience. 14 SOO LEE-CHO: Mr. Steere, you heard from Ms. Cross that 15 the Technical Staff had proffered a more narrow and smaller 16 neighborhood area. Did that -- would that that alter your 17 analysis in any way? 18 EDWARD STEERE: It really -- 19 LYNN ROBESON: And I'll bring up a -- 20 EDWARD STEERE: Yeah. It -- the Technical Staff 21 neighborhood area can easily be summarized by being a 22 nonresidential portion of the community. They've picked up 23 the commercial strip all along Route 355 with the churches 24 that are across the street. It isn't a neighborhood so to 25 speak. It's just a business community. Additionally there</p>	<p style="text-align: right;">75</p> <p>1 coming from, not necessarily the business customers that are 2 next door in the shopping center. 3 LYNN ROBESON: Right. 4 SOO LEE-CHO: All right. And did Technical Staff find 5 your needs study and conclusions acceptable? 6 EDWARD STEERE: Yes, they did. 7 SOO LEE-CHO: Okay. That's all I have. 8 LYNN ROBESON: Okay. You may be excused. Is there 9 anything else? Anyone else? 10 SOO LEE-CHO: I have no further witnesses. 11 LYNN ROBESON: Okay. The one outstanding issue, I think 12 what I can do is this. With I'm looking at 40, Exhibit 40 13 which is the graphic. I think that may be enough -- 14 MALE: Ms. Robeson, can I get -- 15 LYNN ROBESON: Sorry. Oh I see. I didn't even see it 16 there. I think that may be enough to craft a condition 17 saying it has to be substantially similar to the graphics 18 shown on Exhibit 40. And I don't think I need to refer it 19 over to DPS. 20 SOO LEE-CHO: I'm getting a nod of the head. That's a 21 good thing. 22 LYNN ROBESON: Okay. So what I'm going to do, we 23 usually keep the record open for 10 days to get the 24 transcript because we can't start writing the decision, or 25 we can't finish the decision at least without the</p>
<p style="text-align: right;">74</p> <p>1 are thousands of business employees that are working in this 2 particular area as well which would -- the Bank facility 3 would also serve. 4 LYNN ROBESON: But that's not a market area. That's 5 just -- 6 EDWARD STEERE: That's just a commercial neighborhood. 7 LYNN ROBESON: -- a direct impact of the use. 8 EDWARD STEERE: Right. That's just a commercial 9 neighborhood. It's where most of the traffic is going to be 10 focused. It's not what I would call a market area. 11 SOO LEE-CHO: So you would say -- well, this area has 12 been described and reiterated by the Hearing Examiner as a 13 direct impact area. But your characterization of the broader 14 neighborhood for purposes of your study, was it broader? 15 EDWARD STEERE: Yes. So my neighborhood matched that of 16 Ms. Cross. So it went into the Walnut Hill neighborhood just 17 to the northeast and the Rosemont neighborhood in the 18 southwest, and a little bit north and south of this, well, 19 not south. It went down to Route 370 so it was just a little 20 bit further north past Central Avenue. So it picked up an 21 actual neighborhood that -- where the customers would be 22 coming from. 23 LYNN ROBESON: Right. Right. 24 EDWARD STEERE: When I look at market area I'm looking 25 at who's it's serving, and it's the customers, where they're</p>	<p style="text-align: right;">76</p> <p>1 transcript. Even though we take notes on all those numbers 2 like Mr. Fox testified to, we need the transcript. So 10 3 days from today is November 9th, which I believe is a 4 Thursday so I'm going to hold the record open -- well, let 5 me do it until the 10th because the transcripts have been 6 late. I'm going to leave the record open until November 7 10th. And then I have 30 days to write my decision, and if 8 you disagree, of course Ms. Lee-Cho knows this, if you 9 disagree with my decision you have 10 days to appeal that, 10 or request oral argument from the Board of Appeals. Okay. So 11 right now the record will close on 11/10 and I think that's 12 it for now. Do you have any -- 13 SOO LEE-CHO: I have one point just highlight for you 14 in the Staff Report because in addition to the wall signage 15 that we are showing in the architectural the Staff Report 16 mentions an existing monument sign at that nearest corner, 17 that we're -- at this point we're not sure what we're doing 18 with that, if anything. But it was -- 19 LYNN ROBESON: Whether you're going to add a Bank of 20 America or not to it? 21 SOO LEE-CHO: Correct. Correct. So that -- it is on our 22 site plan and is identified as an existing monument sign. 23 And it's referenced in the Technical Staff as something we 24 reserve for future modification if allowable under the sign 25 ordinance.</p>

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20 (77 to 80)

<p>77</p> <p>1 LYNN ROBESON: Okay. But you're not changing the 2 configuration of the monument; it would just be -- are you? 3 Or are, you know -- 4 SOO LEE-CHO: Um -- 5 LYNN ROBESON: Usually with those identification signs 6 they just allot -- well, let me ask you this. Would the 7 monument sign, and if anybody wants to testify, would it 8 basically consist of Bank of America with a logo? 9 SOO LEE-CHO: Yes. The complexity with that monument 10 sign is that it straddles our property line. It's actually 11 technically located more in the right-of-way than on our 12 property. And we are -- 13 LYNN ROBESON: When you say our property, you mean 14 Walnut Hill Shopping Center's property? 15 SOO LEE-CHO: Correct. Correct. And so it is unclear at 16 this point whether a panel can be added to the existing 17 monument because of its location being in the right-of-way 18 or whether it needs to be moved out of the right-of-way. So 19 -- and -- 20 LYNN ROBESON: But that's not on the conditional use 21 site, correct? 22 SOO LEE-CHO: It is. 23 LYNN ROBESON: It is? 24 SOO LEE-CHO: It's shown on our plan as -- darn. 25 LYNN ROBESON: Someday we'll get high tech. Okay, let</p>	<p>79</p> <p>1 whole shopping center? 2 SOO LEE-CHO: A shared sign. 3 BRADFORD FOX: A shared sign. 4 SOO LEE-CHO: A shared tenant -- 5 LYNN ROBESON: So it's like a tenant identity sign? 6 SOO LEE-CHO: Correct. 7 LYNN ROBESON: Okay. I see the tree here, when I say 8 here, it's just above the monument sign. Would the tree 9 interfere with the monument sign? 10 BRADFORD FOX: It depends on whether or not we'd have 11 to prune. I don't know the exact location of any limbs. 12 LYNN ROBESON: Right. Okay. Is there, within this area 13 in the southwest corner of the sight between the conditional 14 use LOD and the drive aisles, is there an area where you 15 could put -- move the existing monument sign? 16 BRADFORD FOX: Yes. Because of the relocation and the 17 existing conditions the paving comes all the way out to 18 here, but because of where we put the drive aisle there's a 19 large landscaped area where the sign could be relocated 20 where it would be best. 21 LYNN ROBESON: And it wouldn't -- it wouldn't interfere 22 with traffic -- do you think if it was moved it would meet 23 the current sign requirements? Have you done that study? 24 BRADFORD FOX: No. 25 LYNN ROBESON: Okay. Well, that's -- I'll have to see.</p>
<p>78</p> <p>1 me -- do you have a -- I just really -- Mr. -- can anybody 2 that's a witness testify about this? Would it be Mr. Fox? 3 SOO LEE-CHO: Yes. 4 BRADFORD FOX: Yeah. 5 LYNN ROBESON: Do you mind coming forward? I'm looking 6 at 35(b) Sheet 4. Can you -- is the monument -- is the 7 monument sign, the shaded area with a, I guess it's a B next 8 to it? 9 BRADFORD FOX: Yes. The B does not refer to the 10 monument sign. It's referring to the storm drain structure 11 nearby. 12 LYNN ROBESON: Okay. 13 BRADFORD FOX: But the shaded area where it is labeled 14 with existing monument sign is the existing monument sign 15 location. 16 LYNN ROBESON: Okay. Let me ask you this. If you had to 17 move the existing monument sign have you done any 18 preliminary look at whether it could be moved slightly to 19 the north? Is there storm water management in there? 20 BRADFORD FOX: There is not storm water management in 21 there. There is an existing tree here and I would say that 22 we could (inaudible) onto the property in the vicinity of, 23 you know, moving it northeast and that would be a great 24 location. 25 LYNN ROBESON: And that's an existing sign for the</p>	<p>80</p> <p>1 The other option is that you come in for a minor 2 modification. 3 SOO LEE-CHO: That's what I'm trying to avoid. 4 LYNN ROBESON: I know that. I'm trying to work with you 5 on this, but -- what proximity from -- is this monument sign 6 shown anywhere? 7 SOO LEE-CHO: You mean a visual? 8 LYNN ROBESON: Yeah. 9 SOO LEE-CHO: I have an email from Emily Tettlebaum 10 that had a picture of it. 11 LYNN ROBESON: How far do you, Mr. Fox, how far do you 12 think it would have to move from the location shown on the 13 site plan? 14 BRADFORD FOX: Currently it straddles that right-of-way 15 so it would be about the length of the sign right now. So 16 approximately -- 17 LYNN ROBESON: So -- 18 BRADFORD FOX: -- 5 to 10 feet. 19 LYNN ROBESON: Five to 10 feet. 20 BRADFORD FOX: Mm-hmm. 21 LYNN ROBESON: Okay. I'm going to take -- Ms. -- Mr. 22 Fox, don't go away. Have you seen the sign? 23 BRADFORD FOX: Yes, I have seen the sign. 24 LYNN ROBESON: Is that the sign on this photo that Ms. 25 Lee-Cho just gave me?</p>

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21 (81 to 84)

<p>81</p> <p>1 BRADFORD FOX: Yes.</p> <p>2 LYNN ROBESON: Okay. I'm going to mark this as Exhibit</p> <p>3 46. So in your opinion as a civil engineer, you think the</p> <p>4 movement of the sign to bring in out of the right-of-way</p> <p>5 would 5 to feet 10 feet?</p> <p>6 BRADFORD FOX: Mm-hmm.</p> <p>7 LYNN ROBESON: Okay. And then 46 will be photo of</p> <p>8 existing monument sign. All right.</p> <p>9 SOO LEE-CHO: I think with that we are done.</p> <p>10 LYNN ROBESON: Okay.</p> <p>11 SOO LEE-CHO: Thank you for your indulgence.</p> <p>12 LYNN ROBESON: All right. With that the record is going</p> <p>13 to close on November 10th. You have 30 days. Anything else</p> <p>14 Ms. Lee-Cho before I adjourn?</p> <p>15 SOO LEE-CHO: The only other thing is I have a disk</p> <p>16 with resumes and everything that we've introduced into the</p> <p>17 record.</p> <p>18 LYNN ROBESON: Do you have the disk; does it have this</p> <p>19 composite plan?</p> <p>20 SOO LEE-CHO: Yes.</p> <p>21 LYNN ROBESON: Okay.</p> <p>22 SOO LEE-CHO: Well, I mean the architectural</p> <p>23 (inaudible)</p> <p>24 LYNN ROBESON: Oh. No. The Composite -- does it have</p> <p>25 this?</p>	<p>83</p> <p>1 LYNN ROBESON: Okay. I am going to adjourn the public</p> <p>2 hearing. The record will close November 10th, and my report</p> <p>3 will be out 30 days, at least -- or at most 30 days from</p> <p>4 November 10th. And then you have the right to request oral</p> <p>5 argument within 10 days of the date the report is issued.</p> <p>6 All right.</p> <p>7 SOO LEE-CHO: We have provided the updated site plan</p> <p>8 set and the storm water approval plans to --</p> <p>9 LYNN ROBESON: Yes.</p> <p>10 SOO LEE-CHO: -- Technical Staff. We have not provided</p> <p>11 the updated Composite Plan to the Technical Staff.</p> <p>12 LYNN ROBESON: Oh.</p> <p>13 SOO LEE-CHO: Would you like them to get that as well?</p> <p>14 Are you going to be asking them to --</p> <p>15 LYNN ROBESON: I have -- I'm required -</p> <p>16 SOO LEE-CHO: Yeah.</p> <p>17 LYNN ROBESON: -- to ask them. I tell you what. We'll</p> <p>18 leave -- we can do one of two things. I can give them two</p> <p>19 weeks or I can ask them to comment in 10 days. Two weeks, I</p> <p>20 don't let them have more than two weeks normally to look at</p> <p>21 the plan. Do you have a preference whether we keep the</p> <p>22 record open for 10 days or 14 days?</p> <p>23 SOO LEE-CHO: I mean the shorter the better from my</p> <p>24 perspective.</p> <p>25 LYNN ROBESON: I know. Okay.</p>
<p>82</p> <p>1 SOO LEE-CHO: It has the new one, but not this old one.</p> <p>2 This is --</p> <p>3 LYNN ROBESON: Okay. It has the updated one?</p> <p>4 SOO LEE-CHO: It has the updated one. I can send you --</p> <p>5 LYNN ROBESON: Does it have this?</p> <p>6 SOO LEE-CHO: Yes.</p> <p>7 LYNN ROBESON: Okay.</p> <p>8 SOO LEE-CHO: I can send you the --</p> <p>9 LYNN ROBESON: No, I don't need that.</p> <p>10 SOO LEE-CHO: -- original one.</p> <p>11 LYNN ROBESON: No, I need the updated one.</p> <p>12 SOO LEE-CHO: No? The updated one.</p> <p>13 LYNN ROBESON: The updated one is fine. Okay. All</p> <p>14 right.</p> <p>15 SOO LEE-CHO: And is the updated one marked? Can we</p> <p>16 mark it? That would be Exhibit 42. Okay. Perfect.</p> <p>17 LYNN ROBESON: He's good. Okay. I'm going to mark the</p> <p>18 disk as -- I just lost my exhibit list.</p> <p>19 SOO LEE-CHO: Okay.</p> <p>20 LYNN ROBESON: Well, the disk will be the next exhibit.</p> <p>21 I don't know where my exhibit list went, but I think it's --</p> <p>22 we're at 47.</p> <p>23 SOO LEE-CHO: Forty-seven, mm-hmm.</p> <p>24 LYNN ROBESON: Okay. Now with that, anything else?</p> <p>25 SOO LEE-CHO: I think that's it.</p>	<p>84</p> <p>1 SOO LEE-CHO: So --</p> <p>2 LYNN ROBESON: Well, I'll ask them -- the problem is</p> <p>3 I've got to ask them to review it and if you don't like what</p> <p>4 they say then you get time, so, you know, I can only give</p> <p>5 them, like five days or six days to review it and then I</p> <p>6 have to give you time.</p> <p>7 SOO LEE-CHO: Typically, I would be concerned. Here I'm</p> <p>8 -- the plan sets that we submitted --</p> <p>9 LYNN ROBESON: Yeah.</p> <p>10 SOO LEE-CHO: I don't anticipate an issue with -- from</p> <p>11 Technical Staff.</p> <p>12 LYNN ROBESON: Okay.</p> <p>13 SOO LEE-CHO: So --</p> <p>14 LYNN ROBESON: Okay. Well, we'll leave it at that then</p> <p>15 and I'll ask them to get their comments in within six days</p> <p>16 and then you have four days to respond.</p> <p>17 SOO LEE-CHO: Yeah. And in the meantime I will get the</p> <p>18 composite -- do you want them to comment on the composite</p> <p>19 plan is my question.</p> <p>20 LYNN ROBESON: I will -- yes.</p> <p>21 SOO LEE-CHO: Okay.</p> <p>22 LYNN ROBESON: No. Actually, only the site plan. That's</p> <p>23 fine.</p> <p>24 SOO LEE-CHO: They already have that.</p> <p>25 LYNN ROBESON: Yes. The one you forwarded.</p>

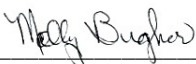
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22 (85 to 88)

85

1 SOO LEE-CHO: Mm-hmm.
2 LYNN ROBESON: Yes.
3 SOO LEE-CHO: Okay.
4 LYNN ROBESON: Let's leave it there.
5 SOO LEE-CHO: Okay.
6 LYNN ROBESON: And not complicate it. Okay.
7 SOO LEE-CHO: All right.
8 LYNN ROBESON: All right. With that the -- we're going
9 to adjourn the hearing. Thank you very much.
10 SOO LEE-CHO: Thank you.
11 LYNN ROBESON: And I'm sure we'll be in touch.
12 (Off the record at 12:00.)
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1 CERTIFICATE OF TRANSCRIBER
2 I, MOLLY BUGHER, do hereby certify that the foregoing
3 transcript is a true and correct record of the recorded
4 proceedings; that said proceedings were transcribed to the
5 best of my ability from the audio recording and supporting
6 information; and that I am neither counsel for, related to,
7 nor employed by any of the parties to this case and have no
8 interest, financial or otherwise, in its outcome.
9 
10 _____
11 Molly Bugher
12 DATE: November 7, 2017
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