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# Transcript of Administrative Hearing, Day 3

**Date:** April 30, 2019  
**Case:** Natasha N. Romano

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Conducted on April 30, 2019

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3</p> <p>4 -----X</p> <p>5 NATASHA M. ROMANO :</p> <p>6 Applicant : Case No.: CU 19-06</p> <p>7 -----X</p> <p>8</p> <p>9</p> <p>10 HEARING - DAY 3</p> <p>11 BEFORE HEARING EXAMINER LYNN A. ROBESON</p> <p>12 Rockville, Maryland</p> <p>13 Tuesday, April 30, 2019</p> <p>14 12:30 p.m.</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 No.: 242266</p> <p>24 Pages: 1 - 186</p> <p>25 Transcribed by: Christian Naaden</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 LYNN ROBESON - HEARING EXAMINER</p> <p>4</p> <p>5 ON BEHALF OF NATASHA N. ROMANO:</p> <p>6</p> <p>7 BENJAMIN A. KLOPMAN, CHTD</p> <p>8 216 NORTH ADAMS STREET</p> <p>9 ROCKVILLE, MD 20850</p> <p>10 PHONE: (301) 424-0677</p> <p>11 FAX: (301) 340-6947</p> <p>12</p> <p>13 ON BEHALF OF THE HUBER AND CHALKI FAMILIES:</p> <p>14</p> <p>15 WILLIAM J. CHEN, JR.</p> <p>16 THE LAW OFFICE OF WILLIAM J. CHEN JR., LLC</p> <p>17 200A MONROE STREET SUITE 200</p> <p>18 ROCKVILLE, MD 20850</p> <p>19 PHONE: (301) 279-9500</p> <p>20 FAX: (301) 294-5195</p> <p>21</p> <p>22 WITNESSES ALSO PRESENT:</p> <p>23</p> <p>24 JOSEPH DAVIS</p> <p>25</p>
<p>1 Transcription of the hearing held at:</p> <p>2</p> <p>3</p> <p>4 MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE</p> <p>5 HEARINGS</p> <p>6 100 Maryland Avenue</p> <p>7 County Office Building, Room 200</p> <p>8 Rockville, MD 20850</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Pursuant to agreement, before Joseph Velazquez,</p> <p>15 Digital Reporter in and for the State of Maryland.</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>1 P R O C E E D I N G S</p> <p>2 HEARING OFFICER ROBESON: Good morning.</p> <p>3 MR. KLOPMAN: Good afternoon.</p> <p>4 HEARING OFFICER ROBESON: Afternoon. It's all</p> <p>5 running together. Is the court reporter ready?</p> <p>6 COURT REPORTER: I am.</p> <p>7 HEARING OFFICER ROBESON: Okay. I'm calling the case</p> <p>8 of CU 19-06 application of Natasha Romano DBA Warrior One</p> <p>9 Studio for major home occupation at 12632 Falconbridge Dr.</p> <p>10 North Bethesda, Maryland. This is -- will the parties again</p> <p>11 identify themselves for the record?</p> <p>12 MR. KLOPMAN: Again, good afternoon, Madam Hearing</p> <p>13 Examiner. My name is Ben Klopman. This is Natasha Romano to</p> <p>14 my right. And for the record, you said North Bethesda. It's</p> <p>15 North Potomac.</p> <p>16 HEARING OFFICER ROBESON: I wouldn't want to mess</p> <p>17 with that. You're right. So it's North Potomac. Okay. Mr.</p> <p>18 Chen, do you want to identify yourself for the record?</p> <p>19 MR. CHEN: Yes. Thank you. Madam Examiner, my name</p> <p>20 is Bill Chen and I represent the parties that have been in</p> <p>21 opposition, Ms. Woodhouse [ph] and Mr. and Mrs. Hooper [ph].</p> <p>22 HEARING OFFICER ROBESON: Okay. Thank you. Hopefully</p> <p>23 [inaudible] preliminary matter cropped up overnight. This is</p> <p>24 --</p> <p>25 MR. KLOPMAN: Not on my -- not on the applicant</p>

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2 (5 to 8)

<p>5</p> <p>1 [inaudible] Your Honor. 2 HEARING OFFICER ROBESON: Okay. All right. So I 3 believe that we are on your witness, Mr. Chen. 4 MR. CHEN: Yes. If I may? 5 HEARING OFFICER ROBESON: Yes. 6 MR. CHEN: Thank you. My next witness would be Mr. 7 J. Davis. 8 HEARING OFFICER ROBESON: Mr. Davis, please raise 9 your right hand. Do you solemnly affirm under penalties of 10 perjury that the statement you're about to make are the 11 truth, the whole truth and nothing but the truth? 12 MR. DAVIS: Yes. 13 HEARING OFFICER ROBESON: Thank you. Go ahead, Mr. - 14 - 15 MR. CHEN: Thanks very much. Mr. Davis, what is your 16 address? 17 MR. DAVIS: 172 -- 18 HEARING OFFICER ROBESON: Hold on one second. Okay. 19 There -- there was an issue with the mic. Proceed, Mr. Chen. 20 MR. CHEN: Thank you very much. Mr. Davis, could you 21 please give us your address? 22 MR. DAVIS: 172 Tuckers Road Pawleys Island, South 23 Carolina 29585. 24 MR. CHEN: What is your occupation? 25 MR. DAVIS: I'm a land planner.</p>	<p>7</p> <p>1 County and Frederick County Circuit Courts. I've been 2 recognized as an expert before the Montgomery County Hearing 3 Examiners including Hearing Examiner Mr. Grossman [ph], 4 current hearing examiner, and as well as Ms. [inaudible]. 5 MR. CHEN: And what type of cases have you been 6 involved in? 7 MR. DAVIS: I've been [inaudible] involved zoning 8 cases. They've involved special exception conditional use 9 cases. 10 MR. CHEN: And in addition to the agencies that you 11 just identified, have you also been recognized as an expert 12 by the Montgomery County Property Review Board? 13 MR. DAVIS: Yes. I have. And are you familiar with 14 the Property Review Board? 15 HEARING OFFICER ROBESON: No. 16 MR. DAVIS: Okay. The Property Review Board, it's 17 established by the state of Maryland. Each county has a 18 property review board. And its responsibility is to help to 19 mediate in disputes concerning land value associated with 20 [inaudible] public [inaudible]. This has helped facilitate 21 discussions between State Highway Administration and property 22 owners. 23 HEARING OFFICER ROBESON: Okay. 24 MR. CHEN: And what area did your testimony center 25 on?</p>
<p>6</p> <p>1 MR. CHEN: And how long have you been a land 2 planner? 3 MR. DAVIS: Forty-six years. 4 MR. CHEN: Okay. Mr. Davis, you've given us a copy 5 of your resume CV. Is that right? 6 MR. DAVIS: Correct. 7 MR. CHEN: For the record, Madam Examiner, that's 8 pre-filed and it's exhibit number 39. 9 HEARING OFFICER ROBESON: Yes. 10 MR. CHEN: Does the CV exhibit 39 accurately 11 summarize your background as a land planner? 12 MR. DAVIS: Yes. 13 MR. CHEN: Okay. Have you testified as a land 14 planner? 15 MR. DAVIS: Yes. I have. 16 HEARING OFFICER ROBESON: Expert in land planning? 17 MR. CHEN: And that would be as an expert? 18 MR. DAVIS: Yes. 19 MR. CHEN: In what area? 20 MR. DAVIS: Land planning. 21 MR. CHEN: Okay. What courts or agency tribunals 22 have recognized you as an expert witness? 23 MR. DAVIS: Okay. I've been recognized by both the 24 Montgomery County and Frederick County Boards of Appeal. Also 25 been recognized as an expert land planning by both Montgomery</p>	<p>8</p> <p>1 MR. DAVIS: Land planning. My job was to help to 2 determine what would be highest and best use for the 3 properties. 4 MR. CHEN: Okay. And have you also been recognized 5 as an expert by the Maryland Attorney General's Office? 6 MR. DAVIS: Yes. I have. I was recognized as an 7 expert for land planning so that I was able to assist the 8 assistant state attorneys working at the State Highway 9 Administration for takings cases involving state roadway 10 projects. 11 MR. CHEN: And what background, if any, do you have 12 with the local government Planning Boards? 13 MR. DAVIS: Okay. During my public sector career, I 14 advised the Planning Boards and the county council and 15 hearing examiners and boards of appeal in both Prince 16 George's and Montgomery County on a full range of planning 17 zoning, subdivision, and development activities. 18 MR. CHEN: You also were employed by Montgomery 19 County. Is that correct? 20 MR. DAVIS: That's correct. 21 MR. CHEN: In what capacity? 22 MR. DAVIS: I was the director of redevelopment for 23 the county. 24 MR. CHEN: Okay. Madam Examiner, I would submit Mr. 25 Davis as an expert witness in land planning. And if Mr.</p>

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<p style="text-align: right;">9</p> <p>1 Klopman would like to cross-examine?</p> <p>2 MR. KLOPMAN: I just have one question. Have you</p> <p>3 ever been rejected as an expert?</p> <p>4 MR. DAVIS: No.</p> <p>5 MR. KLOPMAN: I have no other.</p> <p>6 HEARING OFFICER ROBESON: He has qualified here</p> <p>7 several times. He's an expert in land planning. So I'll go</p> <p>8 ahead and so qualify you.</p> <p>9 MR. DAVIS: [inaudible] my brevity, Your Honor.</p> <p>10 MR. CHEN: Are you familiar, sir, with the</p> <p>11 requirements of the Montgomery County zoning ordinance?</p> <p>12 MR. DAVIS: Yes. I am.</p> <p>13 MR. CHEN: In particular, are you familiar with the</p> <p>14 requirements for what are currently called conditional uses</p> <p>15 but previously had been identified as special exceptions?</p> <p>16 MR. DAVIS: Yes.</p> <p>17 MR. CHEN: Does your expertise include expressing a</p> <p>18 professional opinion as to whether a land use proposal such</p> <p>19 as a conditional use complies with the requirements of the</p> <p>20 Montgomery County zoning ordinance and other governmental</p> <p>21 land use regulations and laws?</p> <p>22 MR. DAVIS: Yes.</p> <p>23 MR. CHEN: Is evaluation of a proposed land use</p> <p>24 including conditional usage include compliance with local</p> <p>25 government and state government laws and regulations?</p>	<p style="text-align: right;">11</p> <p>1 use, dealing with the local area review ordinances, and trade</p> <p>2 ordinances and things like that.</p> <p>3 MR. CHEN: With regard to special exceptions, have</p> <p>4 you had experience with updates for those standards of that</p> <p>5 type of land uses?</p> <p>6 MR. DAVIS: Yeah. I think, you know, as an example</p> <p>7 of -- of a major project that I was able to work on, it was</p> <p>8 back in 1999 and it involved special exception legislation</p> <p>9 that dealt with the clarification.</p> <p>10 This was a tax amendment with the county council was</p> <p>11 very interested in, in terms of updating standards associated</p> <p>12 with the special exception process. Primarily, it was</p> <p>13 involved with dealing with inherent uses, non-inherent uses</p> <p>14 to make sure they were codified properly in the ordinance.</p> <p>15 Another aspect of that legislation I think was very</p> <p>16 important was that the Planning Board and council at that</p> <p>17 time had concerns about the Board of Appeals in terms of</p> <p>18 master plans and whether or not the Board of Appeals was</p> <p>19 fully recognizing the importance of master plans as part of</p> <p>20 that decision process.</p> <p>21 So there was -- part of that was to deal with</p> <p>22 changing the -- the special exception section of the</p> <p>23 ordinance to make sure that the consistency of master</p> <p>24 plannings became a more important aspect of that.</p> <p>25 This tax amendment was ZTA 99004. And I think that</p>
<p style="text-align: right;">10</p> <p>1 MR. DAVIS: Yes.</p> <p>2 MR. CHEN: Have you provided your expert testimonies</p> <p>3 in these areas both as a public -- I use the word public or</p> <p>4 governmental witness as well as private individuals?</p> <p>5 MR. DAVIS: Yes. First of all, in terms of my</p> <p>6 experience, my most recent experience has been in private</p> <p>7 sector.</p> <p>8 So in terms of my private sector experience, I</p> <p>9 provided expert testimony, analysis for, you know, a variety</p> <p>10 of zoning cases, subdivision cases, development site plans,</p> <p>11 public takings cases, and, of course, special exceptions</p> <p>12 conditional use applications.</p> <p>13 MR. CHEN: You've had some experience with</p> <p>14 legislation in land use regulation. Is that right, sir?</p> <p>15 MR. DAVIS: Yes. In terms of my public sector</p> <p>16 experience, most of my special exception work involved</p> <p>17 preparation of zoning legislation associated with -- with the</p> <p>18 special exception programs.</p> <p>19 I worked with helping to develop the legislation, as</p> <p>20 well as presenting them to the Planning Board and to the</p> <p>21 county council for their action.</p> <p>22 In addition, I have worked in the past in terms of</p> <p>23 helping to advise the special exception review staff of</p> <p>24 Parking Planning with various issues and new changes to the</p> <p>25 ordinance dealing with such things as inherent, non-inherent</p>	<p style="text-align: right;">12</p> <p>1 was probably a fairly significant item of legislation for the</p> <p>2 county.</p> <p>3 MR. CHEN: It was a comprehensive piece of</p> <p>4 legislation.</p> <p>5 MR. DAVIS: Yeah. I think it was in terms of dealing</p> <p>6 with the aspects. I mean, this was not a rewrite. I was</p> <p>7 involved in the rewrite.</p> <p>8 MR. CHEN: I understand that. I wasn't implying a</p> <p>9 rewrite of the zoning ordinance. We're talking about special</p> <p>10 exceptions.</p> <p>11 MR. DAVIS: Correct.</p> <p>12 MR. CHEN: Okay. Did that involve, indeed, any</p> <p>13 assistance to local boards?</p> <p>14 MR. DAVIS: Yes. In the -- particularly between the</p> <p>15 time of about 2002, 2003, I actually worked with the Board of</p> <p>16 Appeals. They came down to Parking Planning and I was able to</p> <p>17 work with them in terms of dealing with local area review</p> <p>18 requirements in terms of how that had to be reviewed, the</p> <p>19 importance of it, what it all involved and what is the policy</p> <p>20 and the importance of it in terms of the special exception</p> <p>21 applications, particularly with requirements that depending</p> <p>22 on whether or not a preliminary plan was approved at the time</p> <p>23 of what was then a special exception.</p> <p>24 You'd have to -- if there was no preliminary plan</p> <p>25 coming in with the board where the Planning Board would deal</p>

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<p>13</p> <p>1 with, then the Board of Appeals would have to then address 2 the questions of -- of public facility adequacy. 3 MR. CHEN: Have you had occasion to review the 4 application of Natasha Romano that is pending before the -- 5 MR. DAVIS: Yes. I have. Yes. I have. 6 MR. CHEN: Okay. And what type of activity does the 7 application propose? 8 MR. DAVIS: This has a major impact, a yoga studio 9 home occupation. 10 MR. CHEN: And what are the inherent adverse effects 11 associated with the physical or operational characteristics 12 of this particular type of use? 13 MR. DAVIS: Okay. In terms of the inherent effects, 14 that would include things such as how many people are going 15 to be coming to the site, how often they come to the site, 16 daily/weekly basis, that sort of thing. 17 We also would be concerned about the amount of auto 18 traffic that would be associated with the use. Parking is a 19 very important issue in terms of the location of the parking 20 and meeting of the parking requirements of the ordinance. 21 And then, again, you'd have to look to see if 22 there's other activities that would be associated with the 23 use that could generate issues such as looking at noise, 24 light, and other operational effects that would normally be 25 associated with the use.</p>	<p>15</p> <p>1 But in particular, it doesn't meet the parking 2 requirements for major impact home occupation. This concern 3 applies to both the onsite parking that's been proposed as 4 well as the on-street parking that's been proposed. 5 MR. CHEN: Let me, if I may, [inaudible] exhibit 6 number? 7 HEARING OFFICER ROBESON: It is 90 -- I have 97. 8 MR. CHEN: Mr. Davis, I'm showing you a document 9 identified as exhibit 97. Can you identify it please? 10 MR. DAVIS: Yes. This is division 6.2 parking queue 11 [inaudible]. This is contained in Montgomery County Zoning 12 Board. 13 MR. CHEN: Do you have a copy of that? 14 MR. KLOPMAN: Yes. I do. 15 MR. CHEN: For ease of language, Madam Examiner -- 16 let me back up. Sir, is division 6.2 of the zoning ordinance 17 essentially what would be commonly known as the parking 18 requirements contained in the zoning ordinance? 19 MR. DAVIS: That's correct. 20 MR. CHEN: Okay. So without objection, rather than 21 going by the formal title of this division, Madam Examiner, 22 I'm just going to refer to it as the parking requirements or 23 some such generic -- 24 HEARING OFFICER ROBESON: Okay. Do you -- I mean, 25 these are -- this is the [inaudible].</p>
<p>14</p> <p>1 I would -- I would just point out that assuming that 2 a yoga studio home occupation conditional use can be located, 3 say, in a residential zone or the R200 zone in particular, I 4 think it's important that the analysis that involves the 5 physical and operational effects of a conditional use should 6 be sure to take into account not just what the use is but 7 also taking into account the [inaudible] location of the home 8 occupation and whether or not a inherent use is actually an 9 inherent use or whether it rises to a level of a non-inherent 10 use. 11 So I just think that's an important aspect of it 12 because, as we know, non-inherent adverse effect, you know, 13 by itself could lead to the denial of an application. 14 MR. CHEN: Okay. And with regard in particular to 15 the Romano application, do you have an opinion as to whether 16 the application complies with requirements of the county 17 zoning ordinance? 18 MR. DAVIS: Yes. 19 MR. CHEN: What do you say? 20 MR. DAVIS: I feel it does not meet the -- it does 21 not meet the intent of the ordinance. 22 MR. CHEN: Okay. Can you explain that? 23 MR. DAVIS: Yes. It does not comply with a number of 24 I think -- a number of zoning requirements that are 25 important.</p>	<p>16</p> <p>1 MR. CHEN: Yes. 2 HEARING OFFICER ROBESON: Do you have any objection 3 [inaudible]? I almost think it's more of an aid so we can 4 refer to it, but as I said, in zoning hearings, we mark them 5 as exhibits. 6 MR. KLOPMAN: I understand that's the practice, Your 7 Honor. I wasn't [inaudible] based on what you told me 8 yesterday. 9 HEARING OFFICER ROBESON: Okay. 10 MR. CHEN: And just -- just for the record, this is 11 a copy of the section -- 12 HEARING OFFICER ROBESON: You may want to have the 13 witness state who made the highlights. 14 MR. CHEN: I was going to ask that. Well, 15 [inaudible]. Now, what are the highlights and how were they 16 made? 17 MR. DAVIS: The highlights -- 18 MR. CHEN: Throughout -- throughout the [inaudible] 19 whole document. 20 MR. DAVIS: These are sections of [inaudible] I 21 identified as I thought having application in this particular 22 application and that I wanted to be able to highlight as part 23 of my testimony concerning the case. 24 HEARING OFFICER ROBESON: Okay. 25 MR. CHEN: Okay. Before we get into specific parts</p>

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<p>17</p> <p>1 of exhibit number 97, have you read the report of the 2 technical stamp of the Parking Planning Commission, which is 3 exhibit 64A? 4 MR. DAVIS: Yes. I have. 5 MR. CHEN: And -- Let me do this. Does the staff 6 report address the issue of on-street parking? 7 MR. DAVIS: It does. What I see as the primary basis 8 of the technical staff report in terms of support 9 recommending approval of the application is that they 10 identified the parking -- the number of parking of spaces 11 that are required for the use, which as we've had testimony 12 thus far would be involving 10 students or clients of the 13 yoga studio as well as an occasional substitute instructor. 14 So we're talking about a total of 11 parking spaces 15 for the use. The home occupation is being conducted by a 16 resident, so the resident parking would qualify for her. 17 MR. CHEN: Okay. 18 MR. DAVIS: So we're talking about 11 parking spaces 19 that are required for this particular use. 20 HEARING OFFICER ROBESON: Eleven plus two for the 21 residential [inaudible] 22 MR. DAVIS: Correct. That's correct. They are in 23 addition. 24 HEARING OFFICER ROBESON: So a total of 13. 25 MR. DAVIS: Correct.</p>	<p>19</p> <p>1 questions. 2 MR. CHEN: Candidly, Madam, that's why I'm kind of 3 jumping a little bit. There are other parts I want to -- 4 HEARING OFFICER ROBESON: That's okay. Keep going. 5 MR. DAVIS: The -- this particular provision, I'd 6 like to read it for the record. 7 MR. KLOPMAN: What page is this on? 8 HEARING OFFICER ROBESON: If you look at 97, the 9 very first page. 10 MR. KLOPMAN: Oh, it's the very first page. Okay. 11 HEARING OFFICER ROBESON: And it's the largest 12 yellow. 13 MR. KLOPMAN: Okay. 14 HEARING OFFICER ROBESON: Okay. Go ahead, Mr. Davis. 15 MR. DAVIS: Any on-street parking space in a right 16 of way counts toward the minimum number of required parking 17 spaces if the space is (a) not located in a parking lot 18 district, (b) a budding or confronting the subject property, 19 (c) constructed by the applicant, and (d) for a retail 20 service establishment, for restaurant use or a car share 21 space. 22 MR. CHEN: Now, does this section apply to this 23 application? 24 MR. DAVIS: No. 25 MR. CHEN: In your opinion?</p>
<p>18</p> <p>1 HEARING OFFICER ROBESON: Okay. 2 MR. CHEN: But two of them are for the residents are 3 deemed to be satisfied by garage parking. Is that correct? 4 MR. DAVIS: That's correct. 5 MR. CHEN: Okay. Now, in this particular case, where 6 are the parking spaces for the conditional use, not the 7 residents, the conditional use being proposed? 8 MR. DAVIS: Okay. There are five -- I believe the 9 five parking spaces that are being proposed on the property 10 itself. And then I believe there were six parking spaces that 11 are being proposed along the streets. 12 MR. CHEN: Now, the ones that are on site are in -- 13 on the driveway. Is that correct? 14 MR. DAVIS: That's correct. 15 MR. CHEN: Okay. Not some other portion of the 16 property. It's the driveway. 17 MR. DAVIS: Correct. 18 MR. CHEN: Okay. And does the staff in this report 19 recognize the circumstance of utilizing on-street parking? 20 MR. DAVIS: They do. 21 MR. CHEN: Okay. And how -- what regard does the 22 staff support that proposition, meaning on-street parking? 23 MR. DAVIS: Okay. In the staff report, they refer to 24 section 6.2.3.A.5, which in the handout -- 25 HEARING OFFICER ROBESON: That was one of my</p>	<p>20</p> <p>1 MR. DAVIS: No. In my opinion, this application does 2 not apply to the situation. 3 MR. CHEN: Why? 4 MR. DAVIS: Okay. First of all, there are -- the way 5 this section is constructed, you have to meet four separate 6 criteria. 7 And the four criteria, the first one I'd argue 8 doesn't really play a role here. It's not located within a 9 parking lot district. That's, in effect, satisfied. Budding 10 or confronting the subject property, that's fine. That's the 11 situation. C and D are not satisfied. 12 The -- there is no parking in the right of way that 13 was constructed by the applicant. And I believe in testimony 14 yesterday, Ms. Romano verified that she had not constructed 15 any parking space. 16 MR. CHEN: You don't mean yesterday. Yesterday was 17 April 29th. Ms. Romano testified -- 18 MR. DAVIS: Oh, that's right. Gee, how the months 19 fly. 20 MR. CHEN: So you're referring to Ms. Romano's 21 testimony? 22 MR. DAVIS: Yes. As I recall, she had made that 23 comment. 24 MR. CHEN: Okay. 25 MR. DAVIS: D is for -- is that the -- is that this</p>

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<p>21</p> <p>1 parking must be the minimum parking associated with a retail 2 service establishment or restaurant use or car share space. 3 And this application does not involve any of those three 4 uses. 5 MR. CHEN: Okay. If I may just stop you briefly for 6 a moment. Sir, let me show you a document that's marked as 7 exhibit number 98. Would you take a look at that? Can you 8 identify this? 9 MR. DAVIS: Yes. This is also from the Montgomery 10 County Zoning Ordinance. It's division 3.5. It deals with 11 commercial uses. 12 MR. CHEN: And directing your attention to the 13 second page -- 14 MR. DAVIS: Yes. 15 MR. CHEN: Specifically section 3.5.3.B1. 16 MR. DAVIS: Yes. 17 MR. CHEN: Can you identify that or -- 18 MR. DAVIS: Yes. This is the restaurant that's noted 19 in the parking provision I just read. One of the -- one of 20 the three uses noted was a restaurant use, and it's a 21 definition of a restaurant. 22 MR. CHEN: And in your opinion, does the use 23 proposed by the application, the yoga studio, is that a 24 restaurant under the zoning ordinance? 25 MR. DAVIS: No.</p>	<p>23</p> <p>1 MR. CHEN: And it's section 59 3.5.11B entitled 2 Retail/Service Establishment. 3 MR. KLOPMAN: Okay. 4 MR. DAVIS: And you asked me to read it? 5 MR. CHEN: Yes. 6 MR. DAVIS: It's retail/service establishment means 7 a business providing personal services or sale of goods to 8 the public. Retail/service establishment does not include 9 animal services [inaudible]. 10 MR. CHEN: Okay. Now, this is one of the sections 11 also referred to in section 6.2.3A5 that the staff relied 12 upon. Isn't that correct? 13 MR. DAVIS: That's correct. 14 MR. CHEN: Okay. Is the use that is being proposed 15 in this application, a yoga studio, a retail/service 16 establishment? 17 MR. KLOPMAN: Your Honor, I object to that. I mean, 18 that's really, you know -- he -- that's for you to decide 19 whether it's a personal services. 20 HEARING OFFICER ROBESON: Well, that's within his 21 realm as an expert to -- 22 MR. KLOPMAN: All right. I withdraw the objection. 23 MR. CHEN: Go ahead. 24 MR. DAVIS: Can you repeat it? 25 MR. CHEN: Yes. Is the proposal --</p>
<p>22</p> <p>1 MR. CHEN: Okay. Go to the next page. 2 MR. DAVIS: Yes. 3 MR. CHEN: And I'm directing now your attention to 4 section 3.5.3. -- oh, goodness. I apologize -- B entitled 5 Retail/Service Establishment. 6 MR. DAVIS: Yes. 7 MR. CHEN: If I may have Examiner's just 8 consideration for a minute. I don't think I've got the full 9 correct citation number for that section. 10 I believe this is 3.5.1 -- oh, goodness -- 10B. I 11 could be mistaken on that, but -- and I'll double-check that 12 at a break. But I think that's the section. Do you see that, 13 sir? 14 MR. DAVIS: Yes. The Retail/Service Establishment. 15 MR. CHEN: Wait a minute. It's 11B, 11, not 10. 16 MR. DAVIS: Yes, 11B is correct. 17 MR. CHEN: Okay. And what is the definition? 18 MR. KLOPMAN: Is that different than what's on the 19 third page here? 20 MR. CHEN: It's on -- 21 HEARING OFFICER ROBESON: You know, the top of the 22 page has the section. 23 MR. CHEN: That's right. This is -- the one I'm 24 directing his attention is on the third page. 25 MR. KLOPMAN: Okay.</p>	<p>24</p> <p>1 HEARING OFFICER ROBESON: It will be up to me to 2 decide if I disagree with him, but go ahead. 3 MR. CHEN: Thank you. Is the proposed conditional 4 use a retail/service establishment under the zoning 5 ordinance? 6 MR. DAVIS: No. It's not. 7 MR. CHEN: Why? 8 MR. DAVIS: Because it deals with retail products. 9 It deals with the sale of -- sale of goods. And this 10 particular case, it's dealing with a service that's provided. 11 MR. CHEN: And, if I may, is a yoga studio use 12 recognized under the zoning ordinance? 13 MR. DAVIS: Yes. Yes. It is. It says a -- It's 14 identified in section 59.3.5.10E as health clubs and 15 facilities. 16 And in terms of the definition of that use, health 17 clubs and facilities means any establishment designed to 18 enhance the physical conditioning and general health of 19 participants. Health clubs and facilities include dance, 20 martial arts, and yoga studios. 21 MR. CHEN: And it expressly identifies yoga studios 22 as that type of use. 23 MR. DAVIS: Correct. 24 MR. CHEN: And -- 25 HEARING OFFICER ROBESON: That was 3.5.10E? Is that</p>

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<p style="text-align: right;">25</p> <p>1 one of the recreational uses? Maybe I wrote it down -- where 2 does it identify yoga expressly? 3 MR. DAVIS: It's 59.3.5.10E health clubs and 4 facilities. 5 HEARING OFFICER ROBESON: Okay. 6 MR. CHEN: Madam Examiner, I forget the -- the 7 exhibit number, but I gave you -- 8 HEARING OFFICER ROBESON: The classification table? 9 MR. CHEN: I gave you that, and there was a little 10 memo where I quoted from that section. 11 HEARING OFFICER ROBESON: Okay. All right. 12 MR. CHEN: So -- so your classification table is 13 [inaudible] what I refer to as the mini memo that I gave you 14 yesterday. 15 HEARING OFFICER ROBESON: Yes. I remember it. 16 MR. CHEN: I gave -- Yeah. And I gave you both in 17 the memo I quote from that section, and one of the 18 attachments was the use table. 19 HEARING OFFICER ROBESON: I do remember that. Okay. 20 MR. CHEN: Mr. Davis, let me show you what's been 21 marked as exhibit 99. Can you identify this, sir? 22 MR. DAVIS: Yes. This is division 1.4 of -- 23 MR. KLOPMAN: Can I have it first? 24 MR. CHEN: Oh, yeah. I apologize. 25 MR. KLOPMAN: I'm sorry. Making sure that I don't</p>	<p style="text-align: right;">27</p> <p>1 MR. CHEN: Okay. Directing your attention to D down 2 below to the right. 3 HEARING OFFICER ROBESON: Yeah. 4 MR. CHEN: Entitled Car Share. 5 MR. DAVIS: That's -- 6 HEARING OFFICER ROBESON: I see. I see. Okay. Go 7 ahead. 8 MR. DAVIS: And that's governed by the -- in 9 subsection D, it's entitled Car Share Spaces, and it deals 10 with a parking facility over 50 spaces of which car share 11 services can conduct their business in terms of that. And 12 that certainly does not apply in this situation of this 13 application either. 14 MR. CHEN: Accordingly, is the proposed conditional 15 use the type of use that is identified under section 16 6.2.3.A5? 17 MR. DAVIS: The car share? 18 MR. CHEN: Well, I think you already said it's not a 19 -- I think you already said it's not an opinion whether the 20 conditional use for a yoga studio is a car share space. 21 MR. DAVIS: No. It's not a car share space. 22 MR. CHEN: Okay. Why? 23 MR. DAVIS: It's not a car share space because it 24 doesn't meet the definition of a car share space. 25 MR. CHEN: Okay. Now, given your testimony with</p>
<p style="text-align: right;">26</p> <p>1 get too far behind. Number 99? 2 MR. CHEN: Yes. What is 99? 3 MR. DAVIS: Division 1.4 defined terms. 4 MR. CHEN: Okay. Directing your attention to the 5 second page. Do you see the highlighted section under -- 6 under C? 7 MR. DAVIS: Yes. It's car share space, parking space 8 intended for use by the customer or the vehicle sharing 9 service to park in service vehicles. 10 MR. CHEN: That's one of the uses identified in 11 section 6.2.3A.5. Is that correct, sir? 12 MR. DAVIS: That's correct. So we have now 13 identified each of those three uses. 14 MR. CHEN: Before you go any further. 15 MR. DAVIS: Yes. 16 MR. CHEN: Is the proposed yoga conditional use a 17 car share space? 18 MR. DAVIS: No. It's not. In fact, that same page of 19 division where we just looked at the standard for the -- the 20 on-street parking [inaudible] you see car share spaces 21 [inaudible] -- 22 MR. CHEN: This is exhibit number 97. 23 HEARING OFFICER ROBESON: Ninety-seven? 24 MR. CHEN: Exhibit 97. It's division 6.2. 25 HEARING OFFICER ROBESON: Yeah.</p>	<p style="text-align: right;">28</p> <p>1 regard to each of these uses, as well as the provision in 2 subsection C on construction, do you see that? 3 MR. DAVIS: Yes. 4 MR. CHEN: Okay. Accordingly, based upon your 5 testimony, do you have an overall opinion as to whether or 6 not the proposed yoga studio conditional use complies with 7 the requirements of section 6.2.3.A5? 8 MR. DAVIS: In my opinion, this section does not 9 apply to this application at all. 10 MR. CHEN: And the reason for that is? 11 MR. DAVIS: The reason is that this is not -- 12 particularly as it relates to subsection C and D, we're not 13 dealing with spaces within the street that were constructed 14 by the applicant, and it's not one of the uses that would be 15 -- that the -- this parking in this street was designed to 16 serve. I guess -- 17 MR. CHEN: Go ahead. 18 MR. DAVIS: I'd like to comment that, you know -- 19 MR. CHEN: Well, before you comment, accordingly, do 20 you agree with the information in the staff report about the 21 application of this section to this particular application? 22 MR. DAVIS: No. I strongly disagree. 23 MR. CHEN: Why? 24 MR. DAVIS: Because I believe that, again, this 25 particular section of the ordinance does not apply to the</p>



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<p>29</p> <p>1 application, and it cannot be used as a basis for allowing 2 offsite parking for this conditional use on a tertiary 3 residential street or a secondary residential street. 4 MR. CHEN: Can you help us to understand where this 5 provision might apply? 6 MR. DAVIS: Yes. In my opinion, section 6.2.3.A.5 7 would probably -- it's meant to really apply to a specific 8 situation in a more urbanized area of the county where you 9 have commercial and mixed use development wherein through 10 smart birth planning, you want to make sure that you have the 11 opportunity to have parking in closer proximity to particular 12 kinds of uses. So I do not see this as applying within a 13 residential neighborhood at all. 14 MR. CHEN: How does your opinion affect this 15 application? 16 MR. DAVIS: In my opinion -- 17 MR. KLOPMAN: Your Honor, I want to object to that 18 question. How does his opinion affect the application? That 19 seems to be -- affect the application? 20 HEARING OFFICER ROBESON: Well, you can -- you can 21 say how -- 22 MR. CHEN: Well, fine. I'll -- 23 MR. KLOPMAN: He's already said his opinion. But I 24 don't think that -- I don't understand the question. 25 HEARING OFFICER ROBESON: Okay. That's fair. Can you</p>	<p>31</p> <p>1 with the master plan, and the answer would be no because it 2 doesn't comply with the earlier standard. 3 So I -- what I find important here is to understand 4 that the -- this -- this mistake that was made I believe in 5 terms of the application of a parking provision in error, I 6 think that it becomes a cascading problem that affects the -- 7 the rest of the application. So I think it's a very important 8 issue. 9 MR. CHEN: Now, in addition to the parking 10 requirements, are there other aspects of the application that 11 are controlled by the zoning ordinance? 12 MR. DAVIS: Yes. 13 HEARING OFFICER ROBESON: Well, before you leave 14 parking requirements, I frankly -- one thing I was concerned 15 about, I have never seen tandem parking, unattended tandem 16 parking. Are you going to address the tandem parking? 17 MR. CHEN: Yes. 18 HEARING OFFICER ROBESON: Okay. Then I'll be quiet. 19 MR. CHEN: As I said, we're trying to jump on some 20 that you had -- 21 HEARING OFFICER ROBESON: Okay. It's fine. 22 MR. CHEN: I apologize. 23 HEARING OFFICER ROBESON: No. It's okay. 24 MR. CHEN: Now, my last question was were there 25 other provisions of the zoning ordinance that are implicated</p>
<p>30</p> <p>1 rephrase that? 2 MR. CHEN: Yeah. Well, you've -- as I understand 3 your opinion, sir, you've already expressed your opinion as 4 to how this application does not comply with the section that 5 we've been dealing with in the zoning ordinance. Is that 6 correct? 7 MR. DAVIS: Correct. 8 MR. CHEN: Okay. Has this failure to comply with 9 this section of the zoning ordinance had any consequence for 10 the other provisions of the zoning ordinance that are 11 applicable to this conditional use application? 12 MR. DAVIS: Yes. 13 MR. CHEN: How is that? 14 MR. DAVIS: I think that the way -- the way this is 15 structured -- 16 MR. CHEN: When you say this -- 17 MR. DAVIS: This being the way the zoning ordinance 18 is structured to deal with the conditional uses, oftentimes 19 if you have one standard and you meet it or if you don't meet 20 it, it kind of cascades through to other provisions. 21 For example, if you don't meet the requirements of 22 the zoning ordinance, then you're not going to be in 23 accordance with the master plan. 24 And there's a -- there would be a separate 25 requirement that would say is this application in accordance</p>	<p>32</p> <p>1 by the application? 2 MR. DAVIS: Yes. 3 MR. CHEN: Okay. Have you evaluated the application 4 in conjunction with those other provisions of the zoning 5 ordinance? 6 MR. DAVIS: Yes. I have. 7 MR. CHEN: Okay. 8 MR. DAVIS: So in addition, I believe that the 9 application does not fully satisfy other requirements and 10 standards that are -- would apply to a home occupation yoga 11 studio. 12 MR. CHEN: Okay. Now, before you do that, because 13 I'm going to ask -- my next is 100 -- I believe it's -- 14 HEARING OFFICER ROBESON: Yes. Is this another 15 zoning ordinance provision? 16 MR. CHEN: Yes. Mr. Davis, I'm showing you a 17 document that's marked as exhibit 100. Can you identify it, 18 sir? 19 MR. DAVIS: Yes. 20 MR. CHEN: What is it? 21 MR. DAVIS: This is section 59.3.3.3.H.5. 22 HEARING OFFICER ROBESON: Just a second, Mr. Davis. 23 Mr. Klopman, I'm going to admit this subject to the 24 explanation. 25 MR. KLOPMAN: Same as with the others.</p>

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<p>33</p> <p>1 HEARING OFFICER ROBESON: Okay.</p> <p>2 MR. CHEN: In layman's terms, what is this section?</p> <p>3 MR. DAVIS: This is sort of the general require --</p> <p>4 This is in the special exception use section. Subsection H</p> <p>5 deals with home occupation.</p> <p>6 One is sort of the general requirements for all home</p> <p>7 occupations. And then subsection 5 deals with the home</p> <p>8 occupation major impact. And I just wanted to highlight a</p> <p>9 couple of things within this section that I think are --</p> <p>10 pertain to the -- to this particular case.</p> <p>11 If you look -- if you look at the -- under the</p> <p>12 definition of home occupation that's highlighted and then</p> <p>13 under the following section, section 2 standard -- use</p> <p>14 standards for all home occupations, I wanted to highlight or</p> <p>15 to note for you subsections 2 and 4.</p> <p>16 With 2, it's really more in the form of a question</p> <p>17 or an uncertainty I had in terms of reviewing the case, which</p> <p>18 is the statement that the use must be subordinate to the use</p> <p>19 of the dwelling for residential purposes and require no</p> <p>20 external modifications.</p> <p>21 The problem I have with that is that it's been very</p> <p>22 tough to sort of understand definitively where -- what</p> <p>23 exactly this use involves, what activities are with it, and</p> <p>24 where in the home the activities are occurring.</p> <p>25 And I do recall from testimony back in March, the</p>	<p>35</p> <p>1 other provisions of that division that are applicable to this</p> <p>2 application?</p> <p>3 MR. DAVIS: Yes.</p> <p>4 MR. CHEN: Okay. If I may, let's -- going back to</p> <p>5 exhibit number 97. You got it, Mr. Davis?</p> <p>6 MR. DAVIS: Yes.</p> <p>7 MR. CHEN: Okay. Let's -- let's go through those</p> <p>8 provisions of division 6.2 that are applicable to the</p> <p>9 conditional use application.</p> <p>10 MR. DAVIS: All right. We'll begin with section</p> <p>11 6.2.1, which is intent. The intent of the vehicle and bicycle</p> <p>12 parking queuing and loading requirements is to ensure that</p> <p>13 adequate parking is provided in a safe and efficient manner.</p> <p>14 Under applicability, subsection A [inaudible]</p> <p>15 6.2.2.A, any use must provide off-street parking that permits</p> <p>16 a vehicle to enter and exit the property.</p> <p>17 Now, this is -- this application applies in terms of</p> <p>18 that applicability under the use requirement towards the end</p> <p>19 of that second line. This represents, in effect, a change of</p> <p>20 use from a residence, from a --</p> <p>21 HEARING OFFICER ROBESON: I'm sorry. Sorry to</p> <p>22 interrupt. What line are you on?</p> <p>23 MR. DAVIS: I'm on subsection A 6.2.2A under</p> <p>24 division 6.2.</p> <p>25 HEARING OFFICER ROBESON: Okay. I know where you</p>
<p>34</p> <p>1 first hearing session, there was discussion that in addition</p> <p>2 to the yoga studio room, sometimes classes are offered -- and</p> <p>3 it may have been the living room</p> <p>4 There was mention of a fireplace. And there was a</p> <p>5 question of based on the ambiance or whatever, it was felt</p> <p>6 that it was appropriate to have a class there.</p> <p>7 So I'm -- I'm curious about how much of the floor</p> <p>8 area is really available for the use so we can get a</p> <p>9 definitive answer to how much.</p> <p>10 Also, under one of the standards that I'll discuss</p> <p>11 later in 7.3, there's the requirement for a waiting room for</p> <p>12 a home occupation.</p> <p>13 And I'm not sure that it's ever been explained where</p> <p>14 that particular room is located. So I'm just concerned to</p> <p>15 make sure that, in fact, less than half or less than 33</p> <p>16 percent of the home, you know, is -- is utilized for the use.</p> <p>17 MR. CHEN: Okay. With that background on this</p> <p>18 particular use, I want to now take you back to division 6.2.</p> <p>19 MR. DAVIS: Okay. Before we do, can I just mention</p> <p>20 that the indoor waiting room must be provided requirement is</p> <p>21 in subsection 5, which deals with home occupation major</p> <p>22 impact.</p> <p>23 MR. CHEN: Okay. Now, beyond the requirements in</p> <p>24 division 6.2 that we've already addressed in that specific</p> <p>25 subsection that the technical staff had addressed, are there</p>	<p>36</p> <p>1 are. Okay. Go ahead.</p> <p>2 MR. DAVIS: And, again, this is -- involves a use</p> <p>3 change from I'd argue as this has morphed from a residence,</p> <p>4 we're now at the low impact home occupation with an</p> <p>5 application for a high impact home occupation conditional</p> <p>6 use.</p> <p>7 So I think that that represents, in effect, a change</p> <p>8 of use. That warrants to bring it under this section.</p> <p>9 MR. CHEN: You mean -- you said high impact.</p> <p>10 MR. DAVIS: Yes. High impact.</p> <p>11 MR. CHEN: Is that the same as a major impact?</p> <p>12 MR. DAVIS: A major impact are the same.</p> <p>13 MR. CHEN: Okay.</p> <p>14 MR. DAVIS: The ordinance speaks in terms of major</p> <p>15 impact.</p> <p>16 MR. CHEN: Okay. All right.</p> <p>17 MR. DAVIS: Your calculation required parking, I</p> <p>18 think that that section is okay. I think we're all generally</p> <p>19 in agreement that we're talking about 11 total parking</p> <p>20 spaces. And that number derives from the way it's calculated</p> <p>21 in 6.2.4. However, in general, there's a couple of issues I</p> <p>22 wanted to note.</p> <p>23 MR. CHEN: Okay. Hold on one second. Directing your</p> <p>24 atten -- you just said it's identified. I think you're</p> <p>25 referring to subsection 6.2.4B. Is that right? The table?</p>

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<p>37</p> <p>1 MR. DAVIS: Yes. That's right.</p> <p>2 MR. CHEN: Okay. Now, how do you get -- you may --</p> <p>3 and I apologize if I'm asking a repetitive question. But I</p> <p>4 think it was only mentioned in passing. How do you get to 11</p> <p>5 spaces?</p> <p>6 MR. DAVIS: If you look at the -- under section</p> <p>7 59.6.2.4B, that'll list -- that lists all the uses from the</p> <p>8 use tables and shows the required parking.</p> <p>9 If you look at the bottom of what's identified as</p> <p>10 page, I guess, 6.6 of this section, it identifies home</p> <p>11 occupation low impact, home occupation major impact. In</p> <p>12 effect, the requirement is the same for both uses.</p> <p>13 You have the non-resident employee requirement, one</p> <p>14 space per employee. Plus, you add in for each client allowed</p> <p>15 per hour, which in this case would be per session, and that</p> <p>16 would be 10 students.</p> <p>17 So it's the 10 plus 1. And remember the 11 are in</p> <p>18 addition to the 2 required -- minimum required spaces for the</p> <p>19 residence.</p> <p>20 MR. CHEN: Okay. How do you get from 10 to 11?</p> <p>21 MR. DAVIS: Ten would be for the number of students.</p> <p>22 One would be for when you have a non-resident employee, in</p> <p>23 this case would be a substitute instructor.</p> <p>24 MR. CHEN: Okay. You were going on with addressing</p> <p>25 the division 6.2.</p>	<p>39</p> <p>1 MR. DAVIS: Yes. This is -- this is actually from</p> <p>2 the county website. I should probably discuss this with</p> <p>3 subsection B, which --</p> <p>4 HEARING OFFICER ROBESON: Wait. Tell me exactly</p> <p>5 where you got this.</p> <p>6 MR. DAVIS: We got this from the Montgomery County</p> <p>7 website, and it's from DPS, Department of Permitting</p> <p>8 Services. And it's the Maryland accessible parking spaces.</p> <p>9 MR. CHEN: When you say we, you mean you. Is that</p> <p>10 right?</p> <p>11 MR. DAVIS: Yes.</p> <p>12 MR. CHEN: What is this document? What does this</p> <p>13 document do?</p> <p>14 MR. DAVIS: What it does is it lays out the table</p> <p>15 down towards the bottom of the first page, identifies how</p> <p>16 many spaces for handicap parking are required based upon the</p> <p>17 size of the development.</p> <p>18 MR. CHEN: Okay. And how does that implicate the</p> <p>19 application that's before [inaudible]?</p> <p>20 MR. DAVIS: Okay. In a -- in a situation of 1 to 25</p> <p>21 spaces, it's required 1 handicap parking space has to be</p> <p>22 provided, and the handicap space that has to be provided has</p> <p>23 to be a van accessible parking space, which is somewhat</p> <p>24 larger than what I call the normal size handicap space.</p> <p>25 MR. CHEN: Does this requirement apply to the</p>
<p>38</p> <p>1 MR. DAVIS: Yes. And actually it's 6.2.3. I want to</p> <p>2 note number four under that, under subsection A. Any parking</p> <p>3 space provided for handicap persons --</p> <p>4 MR. KLOPMAN: What page?</p> <p>5 HEARING OFFICER ROBESON: It's the first page. The</p> <p>6 zoning ordinance unfortunately it has so many numbers and</p> <p>7 letters that it's very hard to keep up with. It's 6.2.3.A4.</p> <p>8 MR. KLOPMAN: Okay. I just needed to know what page</p> <p>9 it was.</p> <p>10 HEARING OFFICER ROBESON: Yeah.</p> <p>11 MR. DAVIS: Thank you. I thought it was just my age.</p> <p>12 HEARING OFFICER ROBESON: No. It's not. Well, it</p> <p>13 could be my age.</p> <p>14 MR. CHEN: But it's definitely mine.</p> <p>15 MR. DAVIS: Subsection 4 says any parking space</p> <p>16 provided for handicap persons would count toward the minimum</p> <p>17 number of parking spaces required.</p> <p>18 MR. CHEN: Let me hold you there just for a minute.</p> <p>19 HEARING OFFICER ROBESON: Well, isn't there a</p> <p>20 separate section in my recollection that requires the</p> <p>21 handicap?</p> <p>22 MR. DAVIS: Just below it, Ma'am. In subsection B.</p> <p>23 HEARING OFFICER ROBESON: Oh. Yeah.</p> <p>24 MR. CHEN: Showing you a document that's been marked</p> <p>25 exhibit 101. Can you identify this?</p>	<p>40</p> <p>1 incident application?</p> <p>2 MR. DAVIS: Yes. It does.</p> <p>3 MR. CHEN: Can you please explain that?</p> <p>4 MR. DAVIS: Yes. Under -- if you look at subsection</p> <p>5 B of section 6.2.3 Calculation of Parking --</p> <p>6 MR. KLOPMAN: Back to 97. Is that right? Is that</p> <p>7 right?</p> <p>8 MR. DAVIS: Yes. 6.2.</p> <p>9 HEARING OFFICER ROBESON: 6.2.3B handicap spaces.</p> <p>10 MR. DAVIS: Yes. That reads the applicant must</p> <p>11 provide the minimum number of parking spaces required for</p> <p>12 handicap persons under state law. So this document that is</p> <p>13 exhibit 101 reflects the current requirements under state law</p> <p>14 for parking, for handicap spaces.</p> <p>15 MR. CHEN: And that dovetails back to that</p> <p>16 subsection B that you just --</p> <p>17 MR. DAVIS: That's correct. And so what it means for</p> <p>18 this application is that there is one handicap parking space</p> <p>19 required that has not been provided for in the application.</p> <p>20 MR. CHEN: Okay. Moving on.</p> <p>21 HEARING OFFICER ROBESON: It's my recollection --</p> <p>22 but I don't know if you looked into it. It's my recollection</p> <p>23 that the handicap space has to be accessible at all times. Is</p> <p>24 that correct or not correct?</p> <p>25 MR. DAVIS: That's correct. And that I'll get to in</p>

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<p>41</p> <p>1 the designed [ph] spaces.</p> <p>2 HEARING OFFICER ROBESON: Okay. All right.</p> <p>3 MR. CHEN: Next up section of 6.2.</p> <p>4 MR. DAVIS: Okay. There's no motorcycle/scooter</p> <p>5 parking, car share spaces. E, F, G --</p> <p>6 HEARING OFFICER ROBESON: Now where are you? 6.2 --</p> <p>7 MR. DAVIS: 6.2.3.</p> <p>8 HEARING OFFICER ROBESON: Point 3. Okay. Go ahead.</p> <p>9 MR. DAVIS: And I discussed B under handicap spaces.</p> <p>10 C, D, E, F do not apply.</p> <p>11 G, I'm just noting it because it deals with offsite</p> <p>12 parking, and that's because under the zoning ordinance, you</p> <p>13 can locate minimum required parking up to a quarter mile away</p> <p>14 from a property.</p> <p>15 But in doing so in terms of utilizing any kind of</p> <p>16 offsite parking, we're talking about -- here about private</p> <p>17 property.</p> <p>18 You have to have -- you have to meet certain</p> <p>19 standards for that. It can either be plat restricted, deed</p> <p>20 restricted under some sort of joint ownership agreement and</p> <p>21 for the property.</p> <p>22 This doesn't apply here simply because nothing has</p> <p>23 been asked for in terms of off-street parking other than off</p> <p>24 -- excuse me -- for offsite parking other than the parking</p> <p>25 that's in the right of way, and that's governed by a</p>	<p>43</p> <p>1 have a home which is a residential use with two parking</p> <p>2 spaces, the other requirements that are noted, the exemptions</p> <p>3 apply.</p> <p>4 That does not apply here because we're not talking</p> <p>5 about a detached home. We're talking about a major impact</p> <p>6 yoga studio home occupation. So the requirements of this</p> <p>7 section are applicable.</p> <p>8 Under B, I've already mentioned that it is possible</p> <p>9 to park up to a quarter mile away from the entrance of the</p> <p>10 establishment served, but that's -- you have to meet very</p> <p>11 specialized conditions associated with that.</p> <p>12 Now, access. Each parking space must have access to</p> <p>13 a street or alley open to use by the public. Vehicle access</p> <p>14 crossing primary pedestrian bicycle trench must be limited</p> <p>15 whenever possible.</p> <p>16 This is going to become important as we -- if you</p> <p>17 move to the right side of the page to number six, that</p> <p>18 discusses the valet parking. Excuse me. Let's slip up to --</p> <p>19 HEARING OFFICER ROBESON: Five.</p> <p>20 MR. DAVIS: -- number 5 above. And that addresses</p> <p>21 tandem parking. Tandem parking is allowed for dwelling units.</p> <p>22 Tandem parking is sometimes called stacked parking. That's</p> <p>23 where you have cars parked one behind the other.</p> <p>24 And tandem parking is allowed for dwelling units. So</p> <p>25 for this particular application, you could have two parking</p>
<p>42</p> <p>1 different section of the zoning ordinance.</p> <p>2 H, subsection H is not applicable. Adjustments to</p> <p>3 vehicle parking on the next page, none of that provision</p> <p>4 [inaudible] I guess it is does not apply.</p> <p>5 MR. KLOPMAN: May I just object? If things aren't</p> <p>6 applicable, why do we have to go through --</p> <p>7 MR. CHEN: Yeah. Can -- and just in the interest of</p> <p>8 saving time, can you jump --</p> <p>9 MR. DAVIS: I will.</p> <p>10 MR. CHEN: [inaudible]</p> <p>11 MR. KLOPMAN: We have a hard enough time with the</p> <p>12 applicable stuff.</p> <p>13 MR. DAVIS: Under vehicle parking spaces, we've</p> <p>14 already talked about that, so we can move through that</p> <p>15 section. Okay. The next section would be 6.2.5, which deals</p> <p>16 with the vehicle parking designed standard.</p> <p>17 HEARING OFFICER ROBESON: Which one?</p> <p>18 MR. DAVIS: 6.2.5.</p> <p>19 HEARING OFFICER ROBESON: Okay. Oh, this is -- okay.</p> <p>20 Go ahead.</p> <p>21 MR. DAVIS: All right. A, building type exemptions.</p> <p>22 These standards or some of the standards don't apply if you</p> <p>23 meet one of the three criteria listed there. One is for</p> <p>24 detached house.</p> <p>25 That applies -- what that is saying is that when you</p>	<p>44</p> <p>1 spaces in tandem in the driveway if that was for the parking</p> <p>2 for the residence. As we know, parking in a garage can count</p> <p>3 towards the minimum required parking.</p> <p>4 I believe it is a two-car garage in this situation.</p> <p>5 So the tandem parking really doesn't come into play here</p> <p>6 unless there are other people in the house who have a car.</p> <p>7 Then you could be able to tandem park those.</p> <p>8 Two parking spaces in tandem must have a combined</p> <p>9 minimum dimension 8 1/2 feet by 36 feet. When used for</p> <p>10 residential purposes, both tandem parking spaces must be</p> <p>11 assigned to the same dwelling unit.</p> <p>12 So that is really -- and then coupled with 6 because</p> <p>13 6 also includes tandem parking. If you look at 6B, it says</p> <p>14 that for valet spaces, valet spaces do not require individual</p> <p>15 striping and may use tandem or mass parking vehicles.</p> <p>16 So in other words, tandem parking under the code,</p> <p>17 the code being the zoning ordinance, is allowed for the</p> <p>18 parking for residents or -- and that's two spaces -- or for</p> <p>19 valet parking. And that's all.</p> <p>20 Okay. Subsection D deals with marking. And that also</p> <p>21 comes into play in this -- in this instance. As we know, the</p> <p>22 application as it's before us, does not address any of these</p> <p>23 requirements.</p> <p>24 So I'm just noting these are, in effect,</p> <p>25 deficiencies of the application that they don't address or</p>

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<p style="text-align: right;">45</p> <p>1 satisfy the requirements.</p> <p>2 There's marking. Spaces have to be marked, and this</p> <p>3 also gets -- begins getting us into some of the discussion</p> <p>4 for, Madam Hearing Examiner, the handicap parking spaces for</p> <p>5 making -- assuring that there's proper access, pedestrian</p> <p>6 access to those handicap spaces and general pedestrian</p> <p>7 circulation within the parking.</p> <p>8 I want to just note size of spaces because I've</p> <p>9 noticed that in the technical staff report there was a</p> <p>10 photograph showing parking on the street, and I believe there</p> <p>11 were dimensions associated with that.</p> <p>12 And it showed a seven-foot wide parking space. I --</p> <p>13 I believe that in the application, in terms of the technical</p> <p>14 staff report, they relied on this table under E, size of</p> <p>15 spaces.</p> <p>16 And the seven-foot is applicable for a parallel</p> <p>17 parking spot. But this is for onsite parking. This is not for</p> <p>18 parking in a public street. For parking in a public street,</p> <p>19 the minimum width standard is eight feet.</p> <p>20 MR. CHEN: Where do you get that?</p> <p>21 MR. DAVIS: That's based on the standards for the --</p> <p>22 the design standards for the various types of streets in</p> <p>23 Montgomery County.</p> <p>24 MR. CHEN: And we're going to come to that later on</p> <p>25 I think?</p>	<p style="text-align: right;">47</p> <p>1 MR. CHEN: No. I believe it's 59A.</p> <p>2 HEARING OFFICER ROBESON: The staff report?</p> <p>3 MR. CHEN: Oh, the staff -- No. I'm referring to the</p> <p>4 parking plan that the applicant has submitted. And they --</p> <p>5 what they've done is there are two exhibits 59A.</p> <p>6 MR. DAVIS: Oh, I see.</p> <p>7 HEARING OFFICER ROBESON: Okay. I -- okay. I didn't</p> <p>8 realize that.</p> <p>9 MR. KLOPMAN: 59A is the -- I'm sorry. I don't know</p> <p>10 if you wanted to hear it from me.</p> <p>11 MR. CHEN: Just for reference purposes, it is</p> <p>12 exhibit 59. It's Mr. Klopman's letter of February --</p> <p>13 HEARING OFFICER ROBESON: All right. I've got it.</p> <p>14 MR. CHEN: And there's a -- there's two --</p> <p>15 HEARING OFFICER ROBESON: I see it.</p> <p>16 MR. CHEN: There's [inaudible]</p> <p>17 HEARING OFFICER ROBESON: I apologize. Go ahead.</p> <p>18 That was my nameplate falling down.</p> <p>19 MR. CHEN: There are two pages marked 59A. One page</p> <p>20 has got 11 and one page has 10.</p> <p>21 HEARING OFFICER ROBESON: Okay. I -- I do see it.</p> <p>22 The one page has measurements.</p> <p>23 MR. CHEN: [inaudible] but they have different</p> <p>24 numbers. One is 10. One is 11.</p> <p>25 HEARING OFFICER ROBESON: Thank you.</p>
<p style="text-align: right;">46</p> <p>1 MR. DAVIS: Yes.</p> <p>2 MR. CHEN: Okay. But you're just noting that now</p> <p>3 that --</p> <p>4 MR. DAVIS: I'm just noting that because I believe</p> <p>5 that's where the seven feet came from.</p> <p>6 MR. CHEN: In the staff report.</p> <p>7 MR. DAVIS: In the staff report.</p> <p>8 MR. CHEN: Okay.</p> <p>9 MR. DAVIS: I've already --</p> <p>10 MR. CHEN: Go ahead.</p> <p>11 MR. DAVIS: I've already discussed subsection 5, the</p> <p>12 tandem parking, the tandem parking associated with valet</p> <p>13 parking for reference purpose. We're not interested in F.</p> <p>14 Drive aisles do come into play in this application.</p> <p>15 MR. CHEN: How is that?</p> <p>16 MR. DAVIS: That's because we're talking about --</p> <p>17 right now the application is showing six onsite spaces. Now -</p> <p>18 -</p> <p>19 MR. CHEN: Six onsite?</p> <p>20 MR. DAVIS: Excuse me. Five onsite and six on the</p> <p>21 street. If the -- if it's --</p> <p>22 HEARING OFFICER ROBESON: Are there six on the</p> <p>23 street?</p> <p>24 MR. CHEN: If you look at 59A --</p> <p>25 HEARING OFFICER ROBESON: 64A?</p>	<p style="text-align: right;">48</p> <p>1 MR. CHEN: I assume, Mr. Davis, that's where you're</p> <p>2 getting your 11 as far as referring to the plan. Is that</p> <p>3 right?</p> <p>4 MR. DAVIS: Yes. And I believe what -- what that</p> <p>5 showed was that there's five spaces in the driveway and six</p> <p>6 spaces on the street.</p> <p>7 MR. CHEN: Okay. All right. You were on --</p> <p>8 MR. DAVIS: Drive aisles.</p> <p>9 MR. CHEN: G, drive aisles. Yes.</p> <p>10 MR. DAVIS: Yes. The point I want to make here is</p> <p>11 that if it's determined that there can be no parking within</p> <p>12 the public right-aways for both the secondary residential</p> <p>13 street and the tertiary residential street as not being</p> <p>14 permitted, then for this application to proceed, they would</p> <p>15 have to locate all 11 spaces on their property.</p> <p>16 And that would mean then that the driveway, in</p> <p>17 effect, becomes a driveway aisle to where there would be</p> <p>18 parking spaces designed and constructed in accordance with</p> <p>19 the requirement to the zoning ordinance.</p> <p>20 And so that's why I have mentioned that because</p> <p>21 there are dimensions then for drive aisles. And it talks</p> <p>22 about whether it's an interior drive aisle or exterior drive</p> <p>23 aisle.</p> <p>24 MR. CHEN: That's fine. Go ahead.</p> <p>25 MR. DAVIS: Okay. Under subsection K, this deals</p>

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<p>49</p> <p>1 with facilities for conditional uses in residential detached 2 zones. Any off-street parking facility for conditional use 3 that is located in a residential detached zone where three or 4 more parking spaces are provided must satisfy the following 5 standards. 6 One is the location. Each parking facility must be 7 located and maintain a residential character and a pedestrian 8 in front of the street. 9 Setbacks, B, subsection B I think is important here. 10 The minimum side-parking setback equals two times the minimum 11 side setback required for the detached house. 12 So what we're talking about here would be if, for 13 example, there were a bank of parking places that would be 14 located off of the current driveway facing out towards 15 Falconbridge Terrace, those parking places -- excuse me. 16 The setback between the -- what would be the 17 property line or the street line, the edge of the right of 18 way and the side yard setback line, there would have to be 19 twice what the normal set building setback would be. So 20 that's on the order of 20 feet. 21 HEARING OFFICER ROBESON: And you're saying that 22 this applies because it's a change of use? 23 MR. CHEN: [inaudible] 24 MR. DAVIS: And this -- well, this applies to any 25 conditional use in a residential detached zone.</p>	<p>51</p> <p>1 R200 zone. Parking for any vehicle -- 2 HEARING OFFICER ROBESON: Wait. Back up. Are you 3 saying does the parking meet the side setbacks or not? 4 MR. DAVIS: Currently it probably does. But I'm 5 talking about if they had to design and build parking spaces 6 to accommodate -- 7 HEARING OFFICER ROBESON: Oh, on the pro -- okay. 8 MR. DAVIS: Onsite. Because if -- if they're not 9 allowed to park along the street, then it has to be on the 10 property. 11 HEARING OFFICER ROBESON: Right. 12 MR. DAVIS: And then the question is, is there 13 enough room on the property? Is the property large enough to 14 be able to accommodate the zoning ordinance required parking 15 standard? 16 HEARING OFFICER ROBESON: Okay. I'm following you. 17 MR. CHEN: But the applicant's not proposing that. 18 MR. DAVIS: No. They're not proposing that. That's 19 why I'm saying -- I'm not sitting here trying to design a 20 parking area for that. 21 HEARING OFFICER ROBESON: I understand. 22 MR. DAVIS: I'm just trying to say what the 23 requirements are for that. 24 MR. CHEN: Okay. I think you mentioned subsection M 25 on the next page.</p>
<p>50</p> <p>1 HEARING OFFICER ROBESON: Right. Okay. Go ahead. 2 MR. DAVIS: Okay. Now, there -- there is I believe a 3 variance that was approved for this property a number of 4 years ago for the construction of a garage. I have not seen a 5 particular variance that predates the, you know, the online 6 information associated with -- 7 HEARING OFFICER ROBESON: Okay. 8 MR. DAVIS: -- that database. But my -- I -- it's my 9 understanding that when they -- when that garage was built 10 that there was probably a need for a side yard variance. So 11 I'm just assuming that's what it was. 12 If so, I just have the question, would the minimum 13 setback take into account a variance for the garage or does 14 it not? So that's just as a question. 15 HEARING OFFICER ROBESON: Well, you'd -- you'd have 16 to look at the variance and see what the variance says. 17 MR. DAVIS: Right. I'm -- I'm saying that because if 18 one were to prepare a parking plan for this site, those are 19 the kind of issues I have to take into account. 20 HEARING OFFICER ROBESON: Oh, I see. 21 MR. DAVIS: Okay. Subsection L is not applicable. 22 HEARING OFFICER ROBESON: Let's focus on the 23 applicable ones. 24 MR. KLOPMAN: Thank you, Your Honor. 25 MR. DAVIS: Subsection M, surface parking in the</p>	<p>52</p> <p>1 MR. DAVIS: Yes. This is surface parking in the R200 2 zone, number 1, subsection 1 under M. Parking for any vehicle 3 in the area between the lot line in the front or side street 4 building must be on surface parking areas. 5 In other words, there's no grass parking. Except as 6 provided in section 6.2.5.M.3, the maximum surface parking 7 area between the lot line in the front or side street 8 building line excluding surface parking in a driveway is -- 9 and it's under subsection A, applies to the R200 zone. 10 And it says that it can only take up 30 percent or 11 320 square feet, whichever is greater. So this becomes a bit 12 of a problem to address that particular requirement with 13 surface parking. Again, the 320 square feet equates to two 14 parking spaces. 15 Moving to subsection 5, one vehicle may be parked 16 for every 160 square feet of surface parking area. So if -- 17 MR. KLOPMAN: I'm sorry. What page is that on? 18 MR. CHEN: Same as -- same. 19 MR. DAVIS: Same page. 20 MR. KLOPMAN: Oh, it's on [inaudible] same -- I got 21 it -- same. It wasn't highlighted. 22 MR. DAVIS: Right. 23 MR. KLOPMAN: That's what threw me off 24 MR. DAVIS: So I just did a quick calculation of 11 25 parking spaces in 160 square feet per parking space, which</p>

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<p>53</p> <p>1 comes from the ordinance.</p> <p>2 That would be 1760 square feet minimum that would be</p> <p>3 required for that number of parking spaces. I'm -- I'm not</p> <p>4 saying it all has to be at one location, and I'm not trying</p> <p>5 to design it.</p> <p>6 But that's something that has to be taken into</p> <p>7 account as to where you can locate the parking on the site</p> <p>8 and whether there's enough space to do that and meet the --</p> <p>9 meet the requirements.</p> <p>10 Subsection 6.26 does not -- this deals with</p> <p>11 [inaudible] department. Doesn't apply. The next section is</p> <p>12 6.2.9 parking lot landscaping --</p> <p>13 MR. CHEN: You skipped 6.27 and 6.28. Are they</p> <p>14 applicable?</p> <p>15 MR. DAVIS: Yes. Because they don't -- they don't</p> <p>16 apply to this.</p> <p>17 MR. CHEN: All right. Thank you.</p> <p>18 HEARING OFFICER ROBESON: Well, is there a bicycle</p> <p>19 parking space? We have problems with that with child</p> <p>20 daycares.</p> <p>21 MR. KLOPMAN: There's a picture --</p> <p>22 HEARING OFFICER ROBESON: Okay. I'm going to -- I do</p> <p>23 recall a pic -- photo in the file. So I'll say right now</p> <p>24 there is one. Go ahead, Mr. Davis. Whether it meets the</p> <p>25 standards or not, I don't know. But go ahead. You can address</p>	<p>55</p> <p>1 must have landscape islands that are a minimum of 100</p> <p>2 contiguous square feet each comprising a minimum of five</p> <p>3 percent of the total area of the surface parking lot.</p> <p>4 Subsection C, a landscape area may be used for storm</p> <p>5 water management. And I'm saying that simply because under --</p> <p>6 if there were to be a parking plan proposed here, DPS may</p> <p>7 have requirements associated with storm water management.</p> <p>8 Tree canopy requirement, that's subsection 2. So</p> <p>9 we're talking about Section C2. Each parking lot must</p> <p>10 maintain a minimum tree canopy of 25 percent coverage or 20</p> <p>11 years of growth as defined in the Planning Board's trees</p> <p>12 technical mandate.</p> <p>13 Three, perimeter planting. A perimeter planting area</p> <p>14 for a property that abuts an agricultural, rural residential</p> <p>15 or residential detached zone property that's improved with</p> <p>16 residential use must be a minimum of 10 feet wide. That's for</p> <p>17 perimeter planting around the parking area.</p> <p>18 Subsection 2 has to contain a hedge fence or wall a</p> <p>19 minimum of six feet high. Three, have a canopy tree planted</p> <p>20 every 30 feet on the center and, four, have a minimum two-</p> <p>21 story -- two under story trees planted for every canopy tree.</p> <p>22 Now, the perimeter planting area for a property,</p> <p>23 this is now subsection B of the perimeter planting.</p> <p>24 HEARING OFFICER ROBESON: Where? Wait, 629?</p> <p>25 MR. DAVIS: Yes. 629.</p>
<p>54</p> <p>1 that on rebuttal if you wish. Okay. Go ahead, Mr. Davis.</p> <p>2 MR. DAVIS: Okay. Parking lot landscaping, outdoor</p> <p>3 lighting applicability. Surface parking lot with 10 or more</p> <p>4 spaces is one of the requirements.</p> <p>5 And, again, I've noted, are we talking about 11 in</p> <p>6 the yard or not? Then on subsection 3, property with a</p> <p>7 conditional use requiring five to nine spaces that abuts a</p> <p>8 residential detached zone property improved with a</p> <p>9 residential use.</p> <p>10 So that's -- that means that the landscaping and</p> <p>11 outdoor lighting requirements would apply whether it's 5 to 9</p> <p>12 or whether it's more than 10.</p> <p>13 Okay. Then there's the requirements for five to nine</p> <p>14 under subsection B. And really what this -- what this</p> <p>15 requires under number 1 is that there has to be a parking</p> <p>16 setback. If not specified, then there's a minimum of eight</p> <p>17 feet wide.</p> <p>18 MR. CHEN: What page are you on?</p> <p>19 MR. DAVIS: I'm on page -- this is section 6.2.9B.</p> <p>20 MR. CHEN: And what page is it? At the bottom</p> <p>21 there's a page.</p> <p>22 MR. DAVIS: [inaudible]. Now, that's B so that</p> <p>23 applies to five to nine parking spaces. C applies to 10 or</p> <p>24 more parking spaces.</p> <p>25 And under landscape area A, a surface parking lot</p>	<p>56</p> <p>1 HEARING OFFICER ROBESON: Page 6-17.</p> <p>2 MR. CHEN: I'm on 18.</p> <p>3 MR. DAVIS: Eighteen.</p> <p>4 HEARING OFFICER ROBESON: Oh. Okay. I'm sorry.</p> <p>5 MR. DAVIS: And this is under C, parking lot</p> <p>6 requirements for 10 or more spaces.</p> <p>7 HEARING OFFICER ROBESON: This is if they had to put</p> <p>8 everything onsite.</p> <p>9 MR. DAVIS: Correct.</p> <p>10 HEARING OFFICER ROBESON: Yes. Okay.</p> <p>11 MR. DAVIS: Now, perimeter planting areas for a</p> <p>12 property that abuts any other -- it says a right of way --</p> <p>13 okay -- must be -- must have a planting area of six feet</p> <p>14 wide.</p> <p>15 So the planting area, assuming we're talking side</p> <p>16 and front yard here, would -- would really be governed by</p> <p>17 subsection B, which is only six feet wide for the planting</p> <p>18 area. And items two, three and four are also a little</p> <p>19 different than what I just read.</p> <p>20 MR. KLOPMAN: Your Honor, may I interrupt? Why are</p> <p>21 we going over this? This is something that's in a conditional</p> <p>22 application?</p> <p>23 HEARING OFFICER ROBESON: Are you almost done with</p> <p>24 this?</p> <p>25 MR. DAVIS: Yes. Because there's only one more</p>

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15 (57 to 60)

<p>57</p> <p>1 section.</p> <p>2 HEARING OFFICER ROBESON: I'm going to let him</p> <p>3 finish.</p> <p>4 MR. KLOPMAN: All right. I should have piped up</p> <p>5 earlier. Sorry.</p> <p>6 HEARING OFFICER ROBESON: Because I think 6.2.10 is</p> <p>7 the last section of this.</p> <p>8 MR. KLOPMAN: Oh, no. That one I -- that one I had</p> <p>9 no problem with. It's this one.</p> <p>10 HEARING OFFICER ROBESON: Yes. Well, he's almost</p> <p>11 done.</p> <p>12 MR. DAVIS: All right. That's all I need to say</p> <p>13 about these things. What I'm trying to demonstrate is that</p> <p>14 with parking required for major use home occupation, if you</p> <p>15 get into more than three spaces, there are parking</p> <p>16 requirements that come into play.</p> <p>17 HEARING OFFICER ROBESON: I agree.</p> <p>18 MR. DAVIS: And I'm just trying to make sure that</p> <p>19 it's in the record as to what would've been required for this</p> <p>20 particular application.</p> <p>21 HEARING OFFICER ROBESON: Now, 6.2.9 on page 6-17,</p> <p>22 parking lot requirements for conditional uses requiring five</p> <p>23 to nine spaces. Do they meet that?</p> <p>24 MR. DAVIS: No.</p> <p>25 HEARING OFFICER ROBESON: Now, what's -- I believe</p>	<p>59</p> <p>1 redo it in accordance with the design standards here, you'll</p> <p>2 take care of -- that would take care of a lot of the problem</p> <p>3 that --</p> <p>4 HEARING OFFICER ROBESON: No. Redo -- No. You mean</p> <p>5 redo the parking plan.</p> <p>6 MR. DAVIS: Yes.</p> <p>7 HEARING OFFICER ROBESON: No. That's not what I</p> <p>8 mean. What I mean, is if they put the landscaping in that's</p> <p>9 required -- and I know that staff said it's existing site</p> <p>10 design, but we've never really -- they must not read our</p> <p>11 opinions. But if they put the landscaping in as required in</p> <p>12 6.2.9B, would that make the site distance issue worse?</p> <p>13 MR. DAVIS: No.</p> <p>14 HEARING OFFICER ROBESON: No. Okay.</p> <p>15 MR. DAVIS: And the reason I say that is that none</p> <p>16 of this would be occurring in the right of way. So you'd have</p> <p>17 all of the parking shifted. So you have the driveway coming</p> <p>18 in now. Sometimes there's a car parked in the apron area</p> <p>19 [ph].</p> <p>20 HEARING OFFICER ROBESON: Yes.</p> <p>21 MR. DAVIS: It's in the right of way. That helps to</p> <p>22 contribute to some of the problem.</p> <p>23 HEARING OFFICER ROBESON: Okay.</p> <p>24 MR. DAVIS: But if you were able to locate the</p> <p>25 parking in the property --</p>
<p>58</p> <p>1 that staff -- well, let me ask you this. This is what I was</p> <p>2 thinking about. If they met that, if they put it in site,</p> <p>3 I've heard of some testimony about visibility problems at</p> <p>4 that intersection with Falconbridge Terrace. Would --</p> <p>5 MR. CHEN: Falconbridge Terrace and Falconbridge</p> <p>6 Drive. Right?</p> <p>7 HEARING OFFICER ROBESON: No. I think Falconbridge -</p> <p>8 - I thought it was exiting Falconbridge Terrace --</p> <p>9 MR. CHEN: Onto --</p> <p>10 HEARING OFFICER ROBESON: -- onto Falconbridge</p> <p>11 Drive.</p> <p>12 MR. CHEN: Yes. We're talking the same thing. It's</p> <p>13 right at that intersection.</p> <p>14 HEARING OFFICER ROBESON: Yes.</p> <p>15 MR. DAVIS: Are you talking about the driveway? Or</p> <p>16 are you talking about the intersection?</p> <p>17 HEARING OFFICER ROBESON: The intersection.</p> <p>18 MR. DAVIS: Yeah.</p> <p>19 HEARING OFFICER ROBESON: If they put landscaping</p> <p>20 in, would that exacerbate the site distance issue?</p> <p>21 MR. DAVIS: No. I don't think so because the -- what</p> <p>22 this would be doing would be trying to soften the effect of</p> <p>23 the parking that would be on the lot.</p> <p>24 HEARING OFFICER ROBESON: That's already blocking --</p> <p>25 MR. DAVIS: Yes. No. But it would be -- well, if you</p>	<p>60</p> <p>1 HEARING OFFICER ROBESON: No. I'm not talking -- I</p> <p>2 mean, -- I'm talking existing conditions, just the way it is</p> <p>3 right now with the tandem spaces, just assume there's no</p> <p>4 issue with the tandem spaces.</p> <p>5 MR. DAVIS: Okay.</p> <p>6 HEARING OFFICER ROBESON: Okay.</p> <p>7 MR. CHEN: You mean they could have tandem spaces or</p> <p>8 use them --</p> <p>9 HEARING OFFICER ROBESON: Just assume that. Or he's</p> <p>10 an expert. He can assume that -- that tandem spaces are</p> <p>11 permissible.</p> <p>12 My question is, if you put the required screening</p> <p>13 along the driveway to [inaudible] because a lot of times when</p> <p>14 we get residential conditional uses, they put screening in.</p> <p>15 Would that make a site distance problem worse because the</p> <p>16 bushes would also -- could also block the site distance?</p> <p>17 MR. DAVIS: I don't believe it would be creating any</p> <p>18 additional problem associated with it simply because all the</p> <p>19 planting would be away from the street so that cars moving</p> <p>20 towards the street --</p> <p>21 HEARING OFFICER ROBESON: So it wouldn't be an</p> <p>22 additional problem?</p> <p>23 MR. DAVIS: I don't see that.</p> <p>24 HEARING OFFICER ROBESON: Okay.</p> <p>25 MR. DAVIS: Okay?</p>



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16 (61 to 64)

<p>61</p> <p>1 MR. CHEN: Okay.</p> <p>2 MR. DAVIS: I think we're --</p> <p>3 HEARING OFFICER ROBESON: Now, you were going to get</p> <p>4 to the parking waiver, which I'd like to hear about.</p> <p>5 MR. DAVIS: Okay.</p> <p>6 HEARING OFFICER ROBESON: What your opinion is aside</p> <p>7 from the fact that the parking waiver should have been</p> <p>8 noticed with the application.</p> <p>9 MR. KLOPMAN: It was noticed, though. It is in a</p> <p>10 notice that was issued by Mr. Roseman [ph].</p> <p>11 HEARING OFFICER ROBESON: It is?</p> <p>12 MR. KLOPMAN: Yes. It is.</p> <p>13 MR. CHEN: Excuse me. Go ahead. Finish.</p> <p>14 HEARING OFFICER ROBESON: No. Okay. When you get to</p> <p>15 rebuttal, if I'm wrong, I can't have both sides talking at</p> <p>16 once.</p> <p>17 MR. KLOPMAN: Fine, Your Honor.</p> <p>18 HEARING OFFICER ROBESON: If I'm wrong, please,</p> <p>19 please correct me.</p> <p>20 MR. KLOPMAN: Okay.</p> <p>21 MR. CHEN: We can resolve that right now. I'll</p> <p>22 [inaudible] address that.</p> <p>23 HEARING OFFICER ROBESON: Okay.</p> <p>24 MR. CHEN: I just want an opportunity to address it,</p> <p>25 too.</p>	<p>63</p> <p>1 hearing and said we want a parking waiver. I don't know what</p> <p>2 kind of parking waiver. They want -- all that council said</p> <p>3 was we want a parking waiver. Period. You can -- it's in the</p> <p>4 --</p> <p>5 HEARING OFFICER ROBESON: Transcript.</p> <p>6 MR. KLOPMAN: Well, we're certainly willing to</p> <p>7 submit a parking waiver. We thought that once it was noted</p> <p>8 that the hearing was --</p> <p>9 HEARING OFFICER ROBESON: Well, yeah.</p> <p>10 MR. CHEN: That's not what the law says.</p> <p>11 HEARING OFFICER ROBESON: Not typically. I will tell</p> <p>12 you that you have to apply for a parking waiver, address the</p> <p>13 standards of 6.2.10 and 6.2.1 tell and put so that we can put</p> <p>14 in a notice how many parking spaces we can subsequently</p> <p>15 notice how many parking spaces you're requesting the waiver</p> <p>16 for.</p> <p>17 MR. CHEN: Or any other waiver of the -- of that</p> <p>18 division.</p> <p>19 HEARING OFFICER ROBESON: Or any other waiver of</p> <p>20 that division. Correct. So now, only -- I think only a waiver</p> <p>21 of the number of parking spaces. If you look at 6.2.10 -- do</p> <p>22 I have 6.2.10?</p> <p>23 MR. CHEN: It should be in exhibit number</p> <p>24 [inaudible]</p> <p>25 HEARING OFFICER ROBESON: I saw it.</p>
<p>62</p> <p>1 MR. KLOPMAN: It says in the notice that was issued</p> <p>2 --</p> <p>3 HEARING OFFICER ROBESON: Do you know what exhibit</p> <p>4 the notice is?</p> <p>5 MR. KLOPMAN: I have the exhibits. Let's see. Yes. I</p> <p>6 have it.</p> <p>7 HEARING OFFICER ROBESON: Is it the hearing notice?</p> <p>8 MR. CHEN: Sixty, Exhibit 60.</p> <p>9 HEARING OFFICER ROBESON: Sixty?</p> <p>10 MR. KLOPMAN: Yes. It's 60 and it says please --</p> <p>11 HEARING OFFICER ROBESON: Thank you.</p> <p>12 MR. KLOPMAN: It says please also take notice that</p> <p>13 the parking facility proposed by the applicant may require a</p> <p>14 waiver pursuant to zoning ordinance 59.6.2.10 of parking</p> <p>15 space requirements under the code.</p> <p>16 HEARING OFFICER ROBESON: Okay.</p> <p>17 MR. CHEN: If I may respond.</p> <p>18 HEARING OFFICER ROBESON: Yes.</p> <p>19 MR. CHEN: That's not a waiver. Okay. That is not a</p> <p>20 waiver. Under the law, the applicant has to file the</p> <p>21 application. All the examiner is doing here or whoever issued</p> <p>22 this is that it may require a waiver. Secondly, as --</p> <p>23 HEARING OFFICER ROBESON: Oh. You didn't apply for</p> <p>24 the waiver?</p> <p>25 MR. CHEN: No. He stood up the first day of the</p>	<p>64</p> <p>1 MR. KLOPMAN: It's the last page, Your Honor.</p> <p>2 HEARING OFFICER ROBESON: I thought 6.2.10 only puts</p> <p>3 the notice requirement on the number of parking spaces and</p> <p>4 not the other provisions of the chapter. Maybe you can -- I</p> <p>5 have so many -- ah-ha. I've got it.</p> <p>6 MR. KLOPMAN: It's 97, Your Honor.</p> <p>7 HEARING OFFICER ROBESON: I've got it.</p> <p>8 MR. KLOPMAN: It's the last page.</p> <p>9 HEARING OFFICER ROBESON: Any request for a waiver</p> <p>10 of the vehicle parking space requirement under 6.2.4B</p> <p>11 requires application notice.</p> <p>12 MR. CHEN: Madam [inaudible]</p> <p>13 HEARING OFFICER ROBESON: Well, what I'd really like</p> <p>14 to do -- well, let's -- I don't want to get too out of order.</p> <p>15 So go ahead with your testimony.</p> <p>16 MR. CHEN: Okay.</p> <p>17 MR. DAVIS: Where -- we are at the parking waiver</p> <p>18 section 6.2.10. This gets technical I think at this point. So</p> <p>19 I'm -- I'm really -- I have to focus on this because it's</p> <p>20 going to be referring back to --</p> <p>21 HEARING OFFICER ROBESON: And they're your notes?</p> <p>22 MR. DAVIS: Yes.</p> <p>23 HEARING OFFICER ROBESON: Okay.</p> <p>24 MR. DAVIS: Yes. Basically what we have is a</p> <p>25 situation where there was -- it was -- a notice went out to</p>

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17 (65 to 68)

<p>65</p> <p>1 say that there could be a waiver. At this point, we have not 2 heard a specific request as to which section of the parking 3 regulations are being asked to be waived. 4 Now, it's mentioned that -- you had mentioned that 5 the request for a waiver of the vehicle parking space 6 requirement. 7 That would be the minimum numbers of spaces required 8 would be require application notice in accordance with 9 section 7.5.2.D. We don't even know if that's what's being 10 requested. 11 HEARING OFFICER ROBESON: I understand. 12 MR. DAVIS: I'm -- I don't know. Right now the 13 application before us has no waiver request. It's parking 14 cars on the street, which I don't think is -- is approvable. 15 And it has parking on the property, which does not meet the 16 parking standards of the ordinance. 17 So the question is, is this -- it's hard to even get 18 into a discussion of waivers if the waiver isn't here on the 19 table. I mean, I have my own opinion as to whether a waiver 20 of any standard would be appropriate in this case. 21 But I'm just saying that we don't have a -- really 22 have a waiver request before us as part of this application. 23 HEARING OFFICER ROBESON: I understand what you're 24 saying. 25 MR. CHEN: Quite frankly, we can't address it</p>	<p>67</p> <p>1 street parking -- assume -- just assume for these purposes -- 2 I think the standard in 6.2.1 is safe and efficient and 3 adequate. 4 Or can you at least opine based on what you've heard 5 today whether the parking is -- let me get the standard right 6 -- adequate, safe and efficient? Based on what you've heard 7 in the hearing, without any particular proposal in front of 8 you. 9 MR. DAVIS: My opinion is no. 10 HEARING OFFICER ROBESON: And what's the basis for 11 that? 12 MR. DAVIS: Because I believe that the parking in 13 the street represents a non-inherent adverse effect for this 14 application because of its -- of the effects associated with 15 congestion, safety that have been discussed at the public 16 hearing. 17 So I think that's a problem. The onsite parking I 18 don't believe meets the requirements of the parking ordinance 19 even as it exists today or as it's proposed. I believe that 20 constitutes another non-inherent adverse effect for this 21 application. 22 I believe that the -- the lot is too small. This is 23 a cluster development in the R200 zone. The normal lot size 24 in that zone is 20,000 square feet. This particular lot is 25 13,700 square feet I believe.</p>
<p>66</p> <p>1 without knowing what is being sought. 2 HEARING OFFICER ROBESON: Is there any -- okay. Let 3 me think how to do this. Is there any scale drawing showing 4 staff's layout, scaled drawing? 5 MR. KLOPMAN: There's -- there's a -- 6 HEARING OFFICER ROBESON: To scale. 7 MR. KLOPMAN: The only scale document would be -- or 8 -- or -- 9 HEARING OFFICER ROBESON: But that doesn't show 10 staff's proposal. 11 MR. KLOPMAN: The staff's proposal was -- 12 HEARING OFFICER ROBESON: Page 4 of 64A, but that's 13 -- that -- that's not scaled. 14 MR. KLOPMAN: It's page 8 that's [inaudible] 15 HEARING OFFICER ROBESON: Oh, I guess I should ask 16 the witness. That's not accurate because -- it's a copy. 17 MR. DAVIS: I haven't been able to find any drawings 18 associated with this case [inaudible] something that could 19 actually be scaled. 20 HEARING OFFICER ROBESON: Okay. Let me -- let me 21 think how to do this. I want to get to something. What I want 22 to know is whether as descri -- I know you don't have 23 anything before you. 24 I do know that. Is there anything -- do you believe 25 that the arrangement with the tandem parking and the on-</p>	<p>68</p> <p>1 It -- that's about 30 percent less than what would 2 be the normal minimum lot size. And I think that the problems 3 of being able to adequate locate parking on this lot is a 4 function of the small size of the lot. 5 So I see two, two non-inherent adverse effects, and 6 they both deal with parking, one onsite and one offsite in 7 the street right of way. 8 HEARING OFFICER ROBESON: What's the onsite non- 9 inherent adverse effect? 10 MR. DAVIS: That is that the -- the parking 11 arrangement that is there -- 12 HEARING OFFICER ROBESON: The tandem. 13 MR. DAVIS: Yes. That problem has been noted by a 14 number of witnesses who have said that there is -- that they 15 don't have proper site distance. There's congestion issues. 16 There's safety issues with that type of access. 17 And while I'm trying to assume for a moment that -- 18 that that's what would be talked about for this -- for this 19 conditional use application, the -- I still -- I have a tough 20 time assuming that that would be an acceptable situation here 21 at this particular location. 22 HEARING OFFICER ROBESON: And what about on-street? 23 MR. DAVIS: The on-street parking, I believe that 24 that provides too big an opportunity for additional 25 congestion, safety hazard. I have not had an opportunity yet</p>

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18 (69 to 72)

<p>69</p> <p>1 to identify the -- what I would call the surrounding area for 2 this application. 3 HEARING OFFICER ROBESON: Yeah. I -- I know I'm 4 going out of order. 5 MR. CHEN: Okay. 6 HEARING OFFICER ROBESON: I want to finish through 7 the parking. Okay. So too much -- okay. Now, pavement -- 8 paved width of these roadways. 9 MR. DAVIS: Correct. 10 HEARING OFFICER ROBESON: What are the -- what is -- 11 do you have that? 12 MR. DAVIS: Yes. 13 HEARING OFFICER ROBESON: And what is Falconbridge 14 Terrace? 15 MR. DAVIS: Falconbridge Terrace, the pavement width 16 is 23 feet, 4 inches. That's the asphalt paving width. 17 HEARING OFFICER ROBESON: Curb to curb? 18 MR. DAVIS: When you had in the curb to curb, curb 19 face to curb face add two feet. So that makes it 25 feet, 4 20 inches. 21 HEARING OFFICER ROBESON: So if cars are parked on 22 both sides and the width is 7 feet, then you've got about -- 23 you've got a one-way situation. 24 MR. DAVIS: Well, first of all, I would -- I would 25 say that the parking lot -- the parking space width is 8 feet</p>	<p>71</p> <p>1 I'm talking about for access now would be for emergency 2 apparatus access. There's an executive regulation that 3 controls the minimum width -- well, actually the regulation 4 controls a lot of features in terms of the fire and rescue 5 services. 6 MR. CHEN: I'm going to hold you there just for one 7 second since we're out of order on everything. 8 HEARING OFFICER ROBESON: When was this subdivision 9 built? 10 MR. DAVIS: Early eighties, 1983 or so. 11 HEARING OFFICER ROBESON: Oh, but it's a cluster. 12 MR. DAVIS: It is a cluster plan. Yes. 13 MR. CHEN: If I may. 14 HEARING OFFICER ROBESON: Yes. 15 MR. CHEN: [inaudible] file that exhibit -- 16 HEARING OFFICER ROBESON: Yes. I have it. The fire 17 code regulations. 18 MR. CHEN: Yes. Executive regulation 8-16. If I may, 19 I'm handing the witness and the Examiner an excerpt from that 20 executive regulation. 21 MR. KLOPMAN: What number is this? 22 MR. CHEN: Well, it's an excerpt from -- 23 HEARING OFFICER ROBESON: It's 85A. 24 MR. KLOPMAN: [inaudible] 25 HEARING OFFICER ROBESON: It's already marked in the</p>
<p>70</p> <p>1 on a public street. 2 MR. CHEN: Required. 3 MR. DAVIS: Required. 4 HEARING OFFICER ROBESON: 8.5. Well, whatever. Go 5 ahead. I'm not -- 6 MR. DAVIS: And the issue is -- here's the main 7 issue. 8 HEARING OFFICER ROBESON: Okay. Wait. Let me get 9 back to -- so that's Falconbridge Terrace. 10 MR. DAVIS: Yes. 11 HEARING OFFICER ROBESON: What is Falconbridge 12 Drive? 13 MR. DAVIS: Same. It is the same. 14 HEARING OFFICER ROBESON: Twenty-three? 15 MR. DAVIS: Yes. Falcon -- Falconbridge Drive -- 16 HEARING OFFICER ROBESON: I thought that was wider. 17 Twenty-three, four inches? 18 MR. DAVIS: Yes. Both streets are. At this -- the 19 location of this property, that's the width of those two 20 streets. 21 MR. CHEN: You've measured this yourself? 22 MR. DAVIS: Yes. I personally measured it. Now, when 23 you're -- 24 HEARING OFFICER ROBESON: Okay. 25 MR. DAVIS: All right. In terms of access, and what</p>	<p>72</p> <p>1 record. 2 MR. CHEN: If you want to give it a separate exhibit 3 number, I don't -- 4 HEARING OFFICER ROBESON: No. 5 MR. CHEN: Literally what you have in your hand is 6 already in record. Now, I interrupted you, Mr. Davis. I think 7 you wanted to talk about this regulation in response to the 8 Hearing Examiner. 9 MR. DAVIS: Yes. If you look at page 15 of the 10 executive regulation, it talks about fire department 11 apparatus access. 12 It says the director -- and in this circumstance, 13 the director is director of Department of Permitting Services 14 -- must review and approve fire department apparatus access 15 for all new development and any changes made to fire 16 department apparatus access. 17 The next -- on page 17 towards the bottom, there's a 18 section that's identified as section 18.2.3.4.1.1.1 with the 19 fire department apparatus access. 20 Fire department apparatus access must be at least 20 21 feet wide unless specifically exempted in this regulation or 22 is approved by the director. 23 Clear width may include but is not limited to 24 multiple features of the cross-section such as travel lanes, 25 bike lanes, load bearing shoulders. Clear width excludes</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 obstructive features such as but not limited to parking lanes 2 and mountable curb -- and non-mountable curbs. 3 On-street parking is allowed on one side. This is on 4 one side. This is under subsection A -- is allowed on one 5 side if the load bearing fire department apparatus access is 6 at least 28 feet. That's the standard. 7 The 20 feet is an important minimum standard for 8 emergency apparatus access in the county. 9 HEARING OFFICER ROBESON: Now, are they talking 10 about driveway access? Or are they talking about on-street 11 access? 12 MR. DAVIS: This is -- this is on-street access. The 13 -- the two streets, Falconbridge Terrace, Falconbridge -- 14 Falconbridge Drive, neither one of those provide for a safe 15 access, the minimum of 20 feet of access with a car parked on 16 one side, not [inaudible] 20 feet. That's a problem. 17 MR. CHEN: What is -- just while I got you there. 18 What is the required width for on-street parking? 19 MR. DAVIS: If you're going to have on-street 20 parking, there is -- I'd have to refer to a standard. But 21 when you're talking about where -- where you are allowed to 22 have on-street parking, you have to have a parking lane. 23 We have -- what we have here are two travel lanes on 24 both of these streets. There are no parking lanes. There is 25 no designated parking. So there are standards in the county</p>	<p style="text-align: right;">75</p> <p>1 Now, if it's residential parking, this would be what 2 I'd call the overflow parking, not the minimum required 3 parking. People do park, and it's an accepted pattern. 4 There is many, many, many streets in Montgomery 5 County, throughout the country that are sized similar to this 6 in the same type of circumstance wherein people have parties. 7 They know there's going to be parking up and down the street. 8 That creates sort of a temporary situation. 9 But we're talking about what amounts to -- because - 10 - and I'm saying because of the size associated with this 11 home occupation, they can't locate the parking on their 12 property or -- I don't know. 13 I mean, I'm not aware that they've tried. But the 14 problem is, is that you're creating a -- a real problem of 15 commercial parking in a residential community. I'm not aware 16 of that in my 46 years of being allowed -- 17 HEARING OFFICER ROBESON: Well, I have to say I've 18 never seen on-street parking except for the -- except for 19 child daycares. Maybe I have. I'd have to think about it. 20 MR. CHEN: While we're still on this point, if I 21 may, given the requirements of executive regulation 8-16, 22 assuming there is on-street parking authorized for this 23 conditional use, will there be the minimum clearance space 24 for fire apparatus? 25 MR. DAVIS: No.</p>
<p style="text-align: right;">74</p> <p>1 for a secondary street, for example, that can have a parking 2 lane on it. 3 HEARING OFFICER ROBESON: Well, I know, for 4 instance, childcare in 6.2.4, you're specifically permitted 5 to park on the street if under certain circumstances but not 6 -- that's the only instance I know of. 7 MR. DAVIS: Correct. And that's because it's 8 typically a drop-off/pick-up kind of situation. 9 HEARING OFFICER ROBESON: Right. 10 MR. DAVIS: So that's -- I mean, these are -- again, 11 these are the county requirements. I think it's important to 12 understand that the street functions -- and these are 13 residential streets. 14 They're not intended to be commercial streets. They 15 don't have designated parking along those streets. Now, does 16 that mean that parking is not allowed? No. 17 Because within the residential areas, we know that 18 people do park along them. So if they're not allowed to park, 19 the county would have a sign posted. They do that near the 20 corners and that exists in this neighborhood. 21 So the -- the real issue is that we're talking about 22 minimum required parking for use. You can't use these 23 tertiary streets or the secondary street that has no parking 24 lane for what would be on-street parking simply because 25 you're then interfering with the lane movement.</p>	<p style="text-align: right;">76</p> <p>1 MR. CHEN: Do you want to explain that? 2 MR. DAVIS: Yes. 3 HEARING OFFICER ROBESON: Well, I think he just did. 4 MR. CHEN: Okay. Fine. If it's clear to the -- 5 HEARING OFFICER ROBESON: No. It's clear. 6 MR. CHEN: Okay. Fine. I withdraw the question. Are 7 we done with this interlude or? 8 HEARING OFFICER ROBESON: Is there any scale drawing 9 of the extent to which the last car in the tandem parking is 10 under the Planning Board plan encroaches into the apron? It 11 looks from the Planning Board report like it does encroach 12 into the apron. 13 MR. CHEN: And you've got -- you've got evidence 14 that happens. 15 MR. KLOPMAN: I don't see it that way. It looks like 16 it's before the apron from page [inaudible] 17 HEARING OFFICER ROBESON: But I -- I don't have a 18 scaled drawing. 19 MR. KLOPMAN: No. 20 MR. CHEN: You do have the photograph. 21 HEARING OFFICER ROBESON: I see it. 22 MR. CHEN: Well, I apologize. I don't know -- when 23 you say it, I [inaudible] what you're referring to. But if 24 you go to the photographs that my clients have offered, 25 there's at least one where the white car occupies the entire</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 apron.</p> <p>2 HEARING OFFICER ROBESON: Yes. Okay. I don't -- I'm</p> <p>3 going to let Mr. Davis finish his testimony.</p> <p>4 MR. CHEN: If I --</p> <p>5 HEARING OFFICER ROBESON: I may have more questions,</p> <p>6 but go ahead and finish your testimony.</p> <p>7 MR. CHEN: Give me one second. You took me out of</p> <p>8 order.</p> <p>9 HEARING OFFICER ROBESON: I know. I know. I got you</p> <p>10 -- everyone mixed up. So go ahead.</p> <p>11 MR. CHEN: Okay. I -- I think we concluded with</p> <p>12 division 6.2. I could be mistaken, but we were last on</p> <p>13 6.2.10.</p> <p>14 MR. DAVIS: That was the waiver.</p> <p>15 MR. CHEN: Okay. Now --</p> <p>16 MR. DAVIS: I haven't gotten into the general</p> <p>17 requirements.</p> <p>18 MR. CHEN: Stop. Our next exhibit number I think is</p> <p>19 102.</p> <p>20 HEARING OFFICER ROBESON: Mm-hmm. Yes.</p> <p>21 MR. CHEN: One second. Mr. Davis, I'm handing you a</p> <p>22 document marked as exhibit 102. Can you identify it?</p> <p>23 MR. DAVIS: Yes. This -- this document is excerpts</p> <p>24 from division 7.3 regulatory approvals. This is in the zoning</p> <p>25 ordinance.</p>	<p style="text-align: right;">79</p> <p>1 MR. DAVIS: Yes. This drawing is a map that I</p> <p>2 prepared -- actually I just utilized the GIS system that the</p> <p>3 county has available. And it's a map of what I am defining as</p> <p>4 a surrounding area for the evaluation of the issues</p> <p>5 associated with this conditional use application.</p> <p>6 MR. CHEN: Okay.</p> <p>7 HEARING OFFICER ROBESON: Are you finished with the</p> <p>8 foundation or?</p> <p>9 MR. CHEN: No. I'm just about to.</p> <p>10 HEARING OFFICER ROBESON: Okay.</p> <p>11 MR. CHEN: [inaudible]. Okay. Could you briefly just</p> <p>12 identify what that area is orally?</p> <p>13 MR. DAVIS: Yes. Basically the area would be on the</p> <p>14 -- it's bounded on the west side by Jones Lane, the north --</p> <p>15 it would go as far up as Lloydminster Drive.</p> <p>16 On its eastern boundary, it would follow the west</p> <p>17 side of the Pepco right of way. But you can see there's a</p> <p>18 little area that extends across the right of way. And that</p> <p>19 would be a number of homes that are directly accessing</p> <p>20 Falconbridge Drive to the area.</p> <p>21 It would extend south down to the area where you</p> <p>22 have Carry Back Drive extending sort of west to east. But in</p> <p>23 terms of more specific, I would not include lots that front</p> <p>24 on and are served by Jones Lane directly.</p> <p>25 HEARING OFFICER ROBESON: Why didn't you include</p>
<p style="text-align: right;">78</p> <p>1 HEARING OFFICER ROBESON: I'm going to let it in,</p> <p>2 Mr. --</p> <p>3 MR. KLOPMAN: I understand.</p> <p>4 MR. CHEN: These are for conditional uses. Is that</p> <p>5 correct?</p> <p>6 MR. DAVIS: That -- yes. That's correct.</p> <p>7 MR. CHEN: Okay. And similar to what you did with</p> <p>8 the division 6.2, I want to use this exhibit to take you</p> <p>9 through 7.3.</p> <p>10 MR. DAVIS: Correct.</p> <p>11 MR. CHEN: Okay. Have you reviewed the information</p> <p>12 that my clients have submitted in the -- this case that</p> <p>13 reports their experiences and observations with the Romano</p> <p>14 studio operations?</p> <p>15 And in particular, I'm referring you to the series</p> <p>16 of exhibits that Ms. Woodhouse [ph] submitted including</p> <p>17 exhibits 45 and 46 and the subsequent ones.</p> <p>18 MR. DAVIS: Yes. I have reviewed that.</p> <p>19 MR. CHEN: Okay. Do you have an opinion as to -- as</p> <p>20 to the geographic area that would be affected by the proposed</p> <p>21 Romano conditional use?</p> <p>22 MR. DAVIS: Yes. I do.</p> <p>23 MR. CHEN: Okay. Hold on one second. Let me show you</p> <p>24 a document that's been marked as exhibit 103. Mr. Davis, can</p> <p>25 you identify exhibit 103?</p>	<p style="text-align: right;">80</p> <p>1 that? I thought they would be included.</p> <p>2 MR. DAVIS: I felt that from the standpoint of their</p> <p>3 access in terms of normal travel --</p> <p>4 HEARING OFFICER ROBESON: I see.</p> <p>5 MR. DAVIS: They wouldn't be part of it. But I would</p> <p>6 -- I would agree that from the context if they're going to</p> <p>7 visit or see someone in the neighborhood, then it could be</p> <p>8 included in it.</p> <p>9 I was trying to -- what I was trying to do was move</p> <p>10 from what I saw the staff define as something I thought was</p> <p>11 just too narrow to be able to properly evaluate the effects</p> <p>12 of the parking on the street in terms of possible congestion</p> <p>13 issues.</p> <p>14 I was trying to find an area, a larger area to get a</p> <p>15 more realistic view of what the effects would be. I didn't</p> <p>16 want to go too far field, but I just felt that it's important</p> <p>17 to recognize that this is a community.</p> <p>18 It has a system of streets. But there's -- this is</p> <p>19 one of the -- this intersection of Falconbridge Drive and</p> <p>20 Falconbridge Terrace are actually critical intersections</p> <p>21 within this community.</p> <p>22 The area I've delineated includes about 260 dwelling</p> <p>23 units. And 87 of those units are townhouses. It's also one of</p> <p>24 these issues that if you look at Falconbridge Terrace where</p> <p>25 the cul-de-sac area is, if there was something happening at</p>

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21 (81 to 84)

<p style="text-align: right;">81</p> <p>1 the intersection, they don't get in and out at all.</p> <p>2 For the most part, as you move farther away, there</p> <p>3 do become opportunities that open up if there's a problem to</p> <p>4 get around it. But the point is, is that if there is a</p> <p>5 problem in the vicinity of that intersection, be it</p> <p>6 congestion or a bottleneck or be it an emergency, an accident</p> <p>7 or something like that, it's going to create an -- an adverse</p> <p>8 effect I think in terms of the community.</p> <p>9 And I would say that this is, again, one of the</p> <p>10 aspects of my believing that there's a non-inherent adverse</p> <p>11 effect for the on-street parking associated with this.</p> <p>12 But I just wanted to make sure that we were able to</p> <p>13 identify an area that I felt would be appropriate for the</p> <p>14 discussion that we have to have.</p> <p>15 MR. CHEN: For the reasons you just gave.</p> <p>16 MR. DAVIS: Correct.</p> <p>17 MR. CHEN: And you prepared this document.</p> <p>18 MR. DAVIS: Yes. I did.</p> <p>19 HEARING OFFICER ROBESON: Mr. --</p> <p>20 MR. CHEN: For offerings.</p> <p>21 HEARING OFFICER ROBESON: Okay. Mr. Klopman, do you</p> <p>22 have any objection?</p> <p>23 MR. KLOPMAN: No. Your Honor.</p> <p>24 HEARING OFFICER ROBESON: Okay. It's admitted.</p> <p>25 MR. CHEN: Thank you. There's been some testimony</p>	<p style="text-align: right;">83</p> <p>1 Keep in mind that those documents were prepared</p> <p>2 before the release of the technical staff report and before</p> <p>3 the Planning Board meeting and before discussions of the</p> <p>4 waiver. I -- again, the waiver became a big issue.</p> <p>5 MR. CHEN: Right. But you've heard nothing that</p> <p>6 would change anything you expressed in that exhibit?</p> <p>7 MR. DAVIS: I have not.</p> <p>8 MR. CHEN: Same, directing your attention to exhibit</p> <p>9 number 41, which is the preliminary planning report.</p> <p>10 MR. DAVIS: I'm comfortable with that.</p> <p>11 MR. CHEN: Okay.</p> <p>12 MR. DAVIS: And that was prepared as I took an</p> <p>13 initial look at the situation. This was really prepared for</p> <p>14 the clients in terms of trying to identify from my</p> <p>15 perspective issues and things that I felt could be addressed.</p> <p>16 MR. CHEN: And both of those exhibits are your work</p> <p>17 product based upon your review of the information on the</p> <p>18 application that was available to you at the time you</p> <p>19 prepared them.</p> <p>20 MR. DAVIS: Yes. That's correct.</p> <p>21 MR. CHEN: Okay. And nothing that you've heard since</p> <p>22 then has any material change to either document. No? Okay.</p> <p>23 Okay. Okay. Now with regard to the geographic area that you</p> <p>24 have depicted on exhibit 103 for the reasons I understand</p> <p>25 that you've identified that area.</p>
<p style="text-align: right;">82</p> <p>1 about the intersection of Falconbridge Drive and Jones Lane.</p> <p>2 I think some people have characterized it as major where the</p> <p>3 main entrance's subdivision [inaudible]. Do you agree with</p> <p>4 that characterization?</p> <p>5 MR. DAVIS: Definitely. Yes.</p> <p>6 MR. CHEN: Why is that again?</p> <p>7 MR. DAVIS: It's a prominent entrance. I mean, it's</p> <p>8 -- you have Lloydminster and you have Falconbridge Drive. I</p> <p>9 would say for the area I've identified as a community, those</p> <p>10 are the two key entrances and exits to Jones Lane and then to</p> <p>11 Darnestown Road or [inaudible] Road I guess.</p> <p>12 MR. CHEN: Okay. Just real quick. Exhibit number 40</p> <p>13 has been pre-filed. That is your summary statement. Is that</p> <p>14 correct? Exhibit 40.</p> <p>15 MR. DAVIS: Can you show me?</p> <p>16 MR. CHEN: Want me to give you a copy of it?</p> <p>17 MR. DAVIS: Oh, the summary statement. I'm sorry. I</p> <p>18 know exactly what you're speaking to. Okay. Yes.</p> <p>19 MR. CHEN: Since the commencement of these</p> <p>20 proceedings, particularly the hearings, has anything</p> <p>21 transpired, anything you heard change your evaluation in that</p> <p>22 summary statement?</p> <p>23 MR. DAVIS: No. I don't believe that anything has. I</p> <p>24 mean, I certainly feel I gained more information about the</p> <p>25 application as we've gone through the process.</p>	<p style="text-align: right;">84</p> <p>1 You testified earlier today about I believe what you</p> <p>2 characterized as a bottleneck circumstance. [inaudible] back</p> <p>3 to that testimony. Can you explain utilizing this exhibit</p> <p>4 that proposition that exists in your opinion?</p> <p>5 MR. DAVIS: Yes. With the -- I'll begin with the</p> <p>6 location of the -- of the home occupation proposed. It's at</p> <p>7 the southeast corner of the intersection of Falconbridge</p> <p>8 Terrance and Falconbridge Drive.</p> <p>9 The parking in that particular area right at that</p> <p>10 intersection I think is -- is problematic because of the</p> <p>11 amount of traffic that we utilize that for their access in</p> <p>12 and out of the community along that area.</p> <p>13 As I said, there's 260 dwellings that would be</p> <p>14 affected on a daily basis with this parking arrangement. And</p> <p>15 I -- I believe that -- I believe it's a problem in a</p> <p>16 residential community. It can be problem enough with</p> <p>17 residential parking that can occur on these streets.</p> <p>18 But I see it as a more serious problem to try and</p> <p>19 introduce the minimum required commercial parking for use</p> <p>20 particularly at a location like this that tends to be a key</p> <p>21 location within the community in terms of access.</p> <p>22 MR. CHEN: You've heard the testimony, haven't you,</p> <p>23 of the individual -- the individuals who testified in favor</p> <p>24 of the conditional use application?</p> <p>25 MR. DAVIS: Mm-hmm.</p>

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22 (85 to 88)

<p style="text-align: right;">85</p> <p>1 MR. CHEN: And there was testimony about traffic on 2 this road system. Isn't that correct? 3 MR. DAVIS: Yes. 4 MR. CHEN: Okay. And they expressed their opinions 5 about accessing parking. Is that right? 6 MR. DAVIS: That's correct. 7 MR. CHEN: You heard all that testimony. 8 MR. DAVIS: Yes. 9 MR. CHEN: Do you agree with them? 10 MR. DAVIS: No. I don't agree with them. 11 MR. CHEN: Why? 12 MR. DAVIS: I believe that this use -- and, again, I 13 mentioned earlier, one of the -- I've seen as a problem with 14 trying to deal with this use is that it's -- it's not clearly 15 defined in terms of its full scope of operations. 16 We'll hear people talk about, well, there's five 17 cars in the driveway or there's cars along the side of the 18 road. But if -- with 11 parking spaces required, if 6 of 19 those are going to be on the street, I think that that is 20 going to be a problem. 21 And one of the things I find interesting is that, in 22 effect, this use has been operating at a higher level than it 23 was approved or should be operating based on a low impact 24 situation. 25 I think that the number of violations, citations and</p>	<p style="text-align: right;">87</p> <p>1 you know, for my review, I thought that that was a letter 2 from a resident that I thought was really to point and 3 identify concerns. 4 MR. CHEN: If I may -- 5 HEARING OFFICER ROBESON: Okay. 6 MR. CHEN: The correct pronunciation is Hayashi, H- 7 a-y-a-s-h-i. And it's exhibit 22(t). I apologize. Since we 8 jumped into the other part, I'm trying to get caught up. 9 HEARING OFFICER ROBESON: I understand. 10 MR. CHEN: Okay. Let me deal with this. 11 HEARING OFFICER ROBESON: Why don't we do this? 12 Let's -- let's take until 2:30, take a break until 2:30. I 13 think that's like seven, five to seven minutes. And you can 14 get back organized, and we'll be back on the record. 15 MR. CHEN: Okay. 16 HEARING OFFICER ROBESON: All right? 17 MR. CHEN: Sure. 18 HEARING OFFICER ROBESON: Okay. We're back on the 19 record. I believe Mr. Chen -- 20 MR. CHEN: Yes. Thank you, Madam Examiner. Mr. 21 Davis, I want to go back to exhibit number 102. That is 22 division 7.3. 23 MR. DAVIS: Okay. 24 MR. CHEN: Regulatory approval. 25 MR. DAVIS: All right.</p>
<p style="text-align: right;">86</p> <p>1 order of abatement from the district court, I think that 2 those all serve to demonstrate there's a problem here. But I 3 think -- I'm not -- I don't know how it gets helped by the 4 subject application. 5 MR. CHEN: And in addition to hearing the testimony 6 of the individuals who testified in support of the 7 application, I believe you also heard the testimony of my 8 clients. 9 MR. DAVIS: Yes. 10 MR. CHEN: And you have also had I understand seen 11 the exhibits that had been provided including the 12 photographic exhibits of activity on the road. Is that 13 correct? 14 MR. DAVIS: Correct. 15 MR. CHEN: Okay. Is that photographic evidence 16 consistent with the opinion that you've just expressed? 17 MR. DAVIS: Yes. As far as I'm concerned, I think 18 that it's -- it is. Could I also mention there was one letter 19 that was submitted that I felt was particularly interesting? 20 And I think it was a lady by the name of Ms. Hayashi I 21 believe her name is. 22 MR. CHEN: Yes. 23 MR. DAVIS: It was -- this was a letter submitted. 24 It's a part of the record. And actually from my perspective, 25 trying to look at -- trying to glean information from the --</p>	<p style="text-align: right;">88</p> <p>1 MR. KLOPMAN: Give me a second to find it. 2 MR. CHEN: Yes. I believe, Madam Examiner, this is 3 where we left off and went down that -- 4 HEARING OFFICER ROBESON: When I went down the bunny 5 hole. Okay. Go ahead. Go ahead, Mr. -- 6 MR. DAVIS: Thank you very much. 7 MR. CHEN: Okay. Mr. Davis, directing your attention 8 to exhibit 102, I know you identified it before, but please, 9 what is this document? 10 MR. DAVIS: Okay. Division 7.3 of the zoning 11 ordinance deals with the regulatory approvals for conditional 12 use applications. 13 MR. CHEN: Okay. And have you evaluated the pending 14 application in conjunction with the requirements of division 15 7.3? 16 MR. DAVIS: Yes. I have. 17 MR. CHEN: Okay. Could you please report your 18 findings and opinion, sir? 19 MR. DAVIS: All right. And, again, what I'll do is 20 address those sections that are applicable to the case. 21 Section 7.3.1 conditional use's applicability and 22 description. Subsection 3 deals with conditional use 23 application must satisfy the conditions and binding elements 24 of consistent with any effective previous approvals on the 25 subject property.</p>

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23 (89 to 92)

<p style="text-align: right;">89</p> <p>1 Two points I'd like to make about that section. One</p> <p>2 is that this is an approved cluster development and as a</p> <p>3 cluster development, you know, there are limitations in terms</p> <p>4 of being able to modify the approved cluster plan.</p> <p>5 I don't know that that provision was [inaudible]</p> <p>6 with this because that sends you back into the subdivision</p> <p>7 arena.</p> <p>8 But the second part, again, deals with the previous</p> <p>9 variance that was granted. And I would just point out that</p> <p>10 for any parking if there were to be a parking plan submitted</p> <p>11 for this, it would have to be conscious of the variance. And</p> <p>12 as to whether or not the variance affects, applies to it,</p> <p>13 does not apply to it --</p> <p>14 MR. KLOPMAN: I'm just going to object because this</p> <p>15 is taking -- we're already in the second hour. And we're</p> <p>16 talking about things that don't pertain to the conditional</p> <p>17 use application. I mean, if something does happen, that's</p> <p>18 fine, but it hasn't happened.</p> <p>19 HEARING OFFICER ROBESON: Well, I'm going to let him</p> <p>20 continue because it does -- it does apply to the standard.</p> <p>21 But what you're saying is you don't know.</p> <p>22 MR. DAVIS: Correct.</p> <p>23 HEARING OFFICER ROBESON: Okay.</p> <p>24 MR. KLOPMAN: That was going to be the second note I</p> <p>25 was going to say.</p>	<p style="text-align: right;">91</p> <p>1 HEARING OFFICER ROBESON: Okay.</p> <p>2 MR. DAVIS: So again, I think that we have a</p> <p>3 situation where agencies who are affected by it haven't had</p> <p>4 opportunity to see.</p> <p>5 HEARING OFFICER ROBESON: All right.</p> <p>6 MR. DAVIS: Okay. Under application requirements,</p> <p>7 again, I just talked about one being the need for</p> <p>8 authorization from the county.</p> <p>9 Subsection 2, the applicant must submit the</p> <p>10 following for review, proof of ownership for authorization.</p> <p>11 Again, that goes back to one being which is the need for</p> <p>12 authorization from DOT to do this.</p> <p>13 I would -- I would like to mention at this point</p> <p>14 that typically how that section is utilized in the county is</p> <p>15 that when a new home is built, there's an access point to a</p> <p>16 public road.</p> <p>17 Then they get approval from DOT for the driveway</p> <p>18 apron or for the access to the public street. That's how this</p> <p>19 -- those sections are primarily --</p> <p>20 MR. CHEN: Because that area is in the right of way.</p> <p>21 MR. DAVIS: Correct.</p> <p>22 HEARING OFFICER ROBESON: What area?</p> <p>23 MR. DAVIS: The parking in the streets.</p> <p>24 HEARING OFFICER ROBESON: The --</p> <p>25 MR. CHEN: The apron.</p>
<p style="text-align: right;">90</p> <p>1 MR. DAVIS: I don't know because there's not</p> <p>2 information here to help --</p> <p>3 HEARING OFFICER ROBESON: He's saying it's your</p> <p>4 burden of proof to prove. That's what he's saying I believe.</p> <p>5 MR. DAVIS: Yes.</p> <p>6 HEARING OFFICER ROBESON: Okay. Go ahead.</p> <p>7 MR. DAVIS: Application requirements, B, if any land</p> <p>8 or right of ways owned or controlled by the state, county or</p> <p>9 any other entity or agency, written authorization from that</p> <p>10 entity or agency must be submitted with the application.</p> <p>11 If there -- well, there is a proposal for parking in</p> <p>12 the public street within the public right of way. That would</p> <p>13 require the agency approval. That would be the Department of</p> <p>14 Transportation. And that has to be submitted with the</p> <p>15 application, and we do not have that.</p> <p>16 HEARING OFFICER ROBESON: Did staff talked to DOT?</p> <p>17 Is there anything in the staff report about checking with</p> <p>18 DOT?</p> <p>19 MR. CHEN: I defer to the exhibit. I've read it.</p> <p>20 Your memory is probably better than mine. But frankly, I'm</p> <p>21 not aware of anything that I've seen. Mr. --</p> <p>22 MR. DAVIS: I checked because I was curious to see</p> <p>23 if this application had been before the Development Review</p> <p>24 Committee of the Parking Planning Commission. I could find no</p> <p>25 record of that.</p>	<p style="text-align: right;">92</p> <p>1 HEARING OFFICER ROBESON: Oh, I get you. Okay.</p> <p>2 MR. DAVIS: The apron for their driveway was already</p> <p>3 approved. That was done as part of the original development.</p> <p>4 HEARING OFFICER ROBESON: Right. Right. That's what</p> <p>5 I was going to say. Okay. Go ahead.</p> <p>6 MR. DAVIS: Okay. Statement of how the proposed</p> <p>7 development satisfies the criteria to grant the application.</p> <p>8 I don't feel that they've been able to demonstrate that</p> <p>9 because, frankly, once we're through with this, I think</p> <p>10 you'll see there's a lot of sections that aren't even</p> <p>11 addressed.</p> <p>12 HEARING OFFICER ROBESON: Okay. Well, keep going</p> <p>13 then.</p> <p>14 MR. DAVIS: Okay. Traffic statement or study</p> <p>15 accepted for review by the planning director.</p> <p>16 When I was reviewing this prior to the hearing,</p> <p>17 there was no traffic statement and I felt that that was</p> <p>18 actually an item that would have rendered this incomplete. I</p> <p>19 do know that you did send them a letter --</p> <p>20 HEARING OFFICER ROBESON: Yes.</p> <p>21 MR. DAVIS: -- noting that that was a requirement. I</p> <p>22 did look at the traffic statement. I don't know if you've</p> <p>23 received anything back from the technical staff --</p> <p>24 HEARING OFFICER ROBESON: No. I never have.</p> <p>25 MR. DAVIS: -- concerning that. The problem I have</p>



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24 (93 to 96)

<p style="text-align: right;">93</p> <p>1 with it is that the statement that was submitted, it's not 2 really what I would call definitive. There's a lot of, well, 3 it could be this. It could be that. 4 It could be this many people. Maybe we'll change the 5 time if that helps the situation. I think, again, it's -- 6 it's the importance of being able to know definitively what 7 is the full scale and scope of the operation that's before 8 us. 9 And this is -- the need for that traffic statement 10 is primarily to determine if there's -- if it goes over a 11 certain number of trips, then it would trigger the need for a 12 local area review and the submission of a traffic study. 13 In this case, that's not required. So it's a traffic 14 statement that really is necessary to demonstrate what are 15 the number of units involved with it and just to go through 16 that process. I just feel the statement submitted is not 17 definitive. 18 Let me see. Existing -- okay. If we skip down to 19 subsection K, number 3 -- 20 MR. CHEN: You skipped over J, or are you going to 21 roll back to that? 22 MR. DAVIS: Written description of operational 23 features of the proposed use, for that I have the same 24 comment I made about the other. I just don't feel that it -- 25 anything's been quite definitive enough in terms of the</p>	<p style="text-align: right;">95</p> <p>1 parking requirements, there was a -- a need to really have a 2 plan of the parking layout and how that would work. 3 And I think that this is looking to say that they 4 have plans of the development showing the parking. 5 HEARING OFFICER ROBESON: But this says only if 6 exterior changes are proposed. 7 MR. DAVIS: This is a change in use and when you go 8 back to 6.2, that triggers it. 9 HEARING OFFICER ROBESON: Right. 10 MR. DAVIS: Uh, landscaping and lighting, again, 11 there's nothing shown for landscaping and lighting, which 12 would be required for the on-site parking area. Um, moving 13 along, I'm not going to deal with the subsection three on the 14 top of the next page. 15 I guess it's yeah, subsection three, deals with the 16 applicant must submit initial application. Now, whether it's 17 -- has to be determination by the planning director that it's 18 complete. 19 HEARING OFFICER ROBESON: I thought we had that in 20 the record. 21 MR. DAVIS: I think you do, but the point is, is I 22 think that there's items missing from this that render that 23 kind of -- 24 HEARING OFFICER ROBESON: Well, that -- I noticed 25 the traffic statement wasn't there, so --</p>
<p style="text-align: right;">94</p> <p>1 overall operations. 2 HEARING OFFICER ROBESON: I don't know what you mean 3 by that. 4 MR. DAVIS: I think that -- one of the things that I 5 find concerning is yesterday in the testimony that was 6 provided at the -- in the morning, I -- I heard like five 7 different aspects of the use that could be allowed on the 8 property. 9 So again, I don't -- I don't feel that we have a 10 real grasp of all of the activities that are going to be 11 occurring associated with the use. 12 HEARING OFFICER ROBESON: Okay. 13 MR. DAVIS: Okay. Looking at K, which deals with 14 exterior changes or proposed plans of the proposed 15 development. This deals with the plans. I'm looking at 16 subsection three, it's III, Roman numeral three. 17 HEARING OFFICER ROBESON: Mm-hmm. 18 MR. DAVIS: Layout of all sidewalks, trail paths, 19 roadways, parking. 20 MR. CHEN: You dealt -- have you dealt with that 21 already? 22 MR. DAVIS: The parking? 23 MR. CHEN: Yes. 24 MR. DAVIS: I believe we have dealt with -- the 25 point I would make is that under the section 6.2.5 of the</p>	<p style="text-align: right;">96</p> <p>1 MR. DAVIS: And -- and there's -- I think there's 2 other aspects without having the on-site parking plan. That's 3 a problem. Um, that -- move through to necessary findings. 4 This is sub -- this is section E, 59.7.3.1E, necessary 5 findings. 6 Um, you have to find that it satisfies any 7 applicable previous approval of the site. I mentioned again 8 the Board of Appeals case, but that's a variance and that -- 9 I don't know if it has application parking or not. 10 Satisfies requirements of the zone. The use 11 standards of 59.3 I think that -- I don't feel that all of 12 that has been met. Substantially conforms with the 13 recommendation of the applicable master plan. 14 MR. CHEN: Well, let's roll back to B. 15 MR. DAVIS: Okay. 16 MR. CHEN: Can you just elaborate on the basis for 17 why you believe that that requirement has not been met? You 18 can refer to your prior testimony. 19 MR. DAVIS: It's the -- you know, the main -- the 20 main problem with that is the waiting room that's never been 21 really identified as to where it's located on the site. That 22 might be the -- that's the -- probably the 59th reissue I'm 23 concerned about. 24 Um, and then I mentioned about substantially 25 conforms with the recommendations of the applicable master</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 plan.</p> <p>2 MR. CHEN: Do you want to deal with that now or do</p> <p>3 you want to do it separately?</p> <p>4 HEARING OFFICER ROBESON: That's fine.</p> <p>5 MR. DAVIS: Fine with me.</p> <p>6 HEARING OFFICER ROBESON: Just I want to keep going.</p> <p>7 MR. DAVIS: Okay.</p> <p>8 HEARING OFFICER ROBESON: Because I don't want to go</p> <p>9 late tonight.</p> <p>10 MR. CHEN: Okay. If I may.</p> <p>11 MR. DAVIS: Yes.</p> <p>12 MR. CHEN: Um, pre-filed as Exhibit 42 is an excerpt</p> <p>13 from the Potomac [inaudible] master plan. Okay, Mr. Davis, do</p> <p>14 you have an opinion as to whether or not the pending</p> <p>15 conditional use application substantially complies with the</p> <p>16 2002 Potomac subregion master plan?</p> <p>17 MR. DAVIS: I believe that it does not comply or</p> <p>18 conform to the to the 2002 uh, Potomac subregion master plan.</p> <p>19 MR. CHEN: Why?</p> <p>20 MR. DAVIS: Um, the master plan contains a special</p> <p>21 exception policy on pages 35 and 36 and I believe that there</p> <p>22 are issues and problems with this application that are in</p> <p>23 conflict with the special exception policy.</p> <p>24 MR. CHEN: Will you explain that, please?</p> <p>25 MR. DAVIS: Yes, I will. Beginning on page 35, under</p>	<p style="text-align: right;">99</p> <p>1 that's in conflict with the plan.</p> <p>2 In terms of the recommendations, the plan is specific about</p> <p>3 limit the impacts of existing special exceptions in</p> <p>4 established neighborhoods. Increase the scrutiny in reviewing</p> <p>5 special exception applications for highly visible sites.</p> <p>6 I think that's important, because I have -- I have issues</p> <p>7 from the standpoint of the technical staff report that was</p> <p>8 prepared for this where the technical staff report concluded</p> <p>9 that it was in accordance with the plan simply because they</p> <p>10 didn't find any problems with the plan from the standpoint of</p> <p>11 either division three or division seven or division six.</p> <p>12 So if you don't see problems, I find that to be a</p> <p>13 sort of inadequate analysis. Not that there wouldn't be</p> <p>14 problems, but they should have demonstrated how it did comply</p> <p>15 with the master plan in terms of meeting [inaudible].</p> <p>16 MR. CHEN: Is this a highly visible site?</p> <p>17 MR. DAVIS: Yes, it is. I would call this a highly</p> <p>18 visible site because of its location at this key intersection</p> <p>19 within the community.</p> <p>20 MR. CHEN: Thank you. Go ahead.</p> <p>21 MR. DAVIS: At the bottom of page 35 it says sites</p> <p>22 along these corridors -- uh, well, that really is talking</p> <p>23 about the item above, about excessive concentration. Uses</p> <p>24 that might diminish safety or reduce capacity of roadways</p> <p>25 with too many access points or conflicting turn movements</p>
<p style="text-align: right;">98</p> <p>1 the special exception policy, it states that this plan</p> <p>2 endorses guidelines for locating special exception uses in</p> <p>3 residential areas.</p> <p>4 And that's important, because as we know, there's many --</p> <p>5 there's a considerable amount of residential zoning,</p> <p>6 commercial zoning, in the area and there are a number of uses</p> <p>7 that -- special exception, conditional uses that are</p> <p>8 important. So that I don't have any problem with.</p> <p>9 Special exception uses as identified. This is the next</p> <p>10 paragraph?</p> <p>11 HEARING OFFICER ROBESON: Mm-hmm.</p> <p>12 MR. DAVIS: Special exception uses as identified in</p> <p>13 the Montgomery County zoning ordinance may be approved by the</p> <p>14 Board of Appeals or the hearing examiner if they meet the</p> <p>15 specific standards and requirements for use and the general</p> <p>16 conditions for special exceptions as set forth in the zoning</p> <p>17 ordinance. Okay?</p> <p>18 I believe that the application fails to meet that</p> <p>19 particular recommendation of the plan.</p> <p>20 MR. CHEN: For the reasons you've already expressed?</p> <p>21 MR. DAVIS: Yes.</p> <p>22 MR. CHEN: But do you want to elaborate further?</p> <p>23 MR. DAVIS: I think that -- for the reasons that</p> <p>24 I've already expressed. I think that the parking issues that</p> <p>25 we have are very significant issues and and I think that</p>	<p style="text-align: right;">100</p> <p>1 should be discouraged.</p> <p>2 I believe this goes directly to the issue of the</p> <p>3 bottleneck situation that we're talking about with the</p> <p>4 parking that's being allowed in the public street.</p> <p>5 MR. CHEN: Again, I reference you to the exhibits</p> <p>6 that Ms. Woodhouse has offered into evidence that reflect</p> <p>7 photographically and narratively the traffic situation. Is</p> <p>8 that where you're going?</p> <p>9 MR. DAVIS: Yes.</p> <p>10 MR. CHEN: Okay.</p> <p>11 MR. DAVIS: On page 36, the master plan says that in</p> <p>12 the design and review of special exception uses --</p> <p>13 [inaudible] conditional uses. The following guidelines shall</p> <p>14 be followed in addition to those stated for special exception</p> <p>15 uses in the ordinance.</p> <p>16 I believe that subsections B and C apply. I'll read</p> <p>17 those. Parking should be located and landscaped to minimize</p> <p>18 commercial appearance. Situations where side or rear yard</p> <p>19 parking is available, front yard parking should be allowed</p> <p>20 only if it can adequately be landscaped and screened.</p> <p>21 C, efforts should be made to enhance or augment the</p> <p>22 screening and buffering as viewed from a buddy residential</p> <p>23 areas. I think that this is very important, because this goes</p> <p>24 to the heart of the screening and landscaping that's needed</p> <p>25 for the on-site parking that's proposed.</p>

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26 (101 to 104)

<p>101</p> <p>1 And again, if the -- I suppose on the one hand, 2 we're assuming that if there were street parking, we'd be 3 talking about five spaces on the site, but if we were talking 4 about 11 spaces on the site. 5 HEARING OFFICER ROBESON: Well, just talk about five 6 spaces for now. 7 MR. DAVIS: Then I think that this still comes into 8 play. This is still a problem. 9 HEARING OFFICER ROBESON: Okay. 10 MR. DAVIS: Landscaping and screening. So that's -- I think 11 that, again, I had mentioned earlier in my testimony about 12 tax amendment 99004 and the changes there and I think that, 13 again, it was very important at that time, the county council 14 and planning board wanted to make sure that the master plans 15 were being adhered to as part of the special exception, 16 conditional use process. 17 And I was -- having been a former planner and 18 division chief at the Park and Planning Commission, was a 19 little bit surprised to see that the treatment that I feel 20 that was given in terms of the master plan here, even if they 21 had concluded it was right, they should have at least 22 analyzed it and I don't believe there was any analysis of the 23 master plan. 24 MR. CHEN: I've got -- I need to ask you a question. 25 You've just expressed your opinion about the landscaping</p>	<p>103</p> <p>1 MR. KLOPMAN: Objection as to leading. I think that 2 was a leading question. 3 HEARING OFFICER ROBESON: No. Uh, it -- just -- I'm 4 going to let it in. 5 MR. KLOPMAN: Thank you. 6 MR. DAVIS: The problems that were being noted by 7 the neighbors in the surrounding area, I think dealt with a 8 combination of things. One would be the tandem parking in the 9 driveway. That's one. And second, allowing cars to be parked 10 closer to the street. 11 Now, again, the -- that creates a visual problem, 12 parking that's in the right of way, and they just pull up on 13 the apron. That can be problematic and and so I think that 14 that goes to the heart of what they were talking about. 15 MR. CHEN: How does that correlate, however, to your 16 testimony that there would not be, as I understand it, 17 correct me if I'm wrong, that there would not be a line of 18 sight problem with landscaping? 19 MR. DAVIS: Because it would be on the property. It 20 would be -- it would be outside of the right of way and you 21 have room within the right of way, if you maintain the clear 22 sight distances, then you don't have a problem with the 23 visibility for safe ingress, egress. That would help improve 24 it. 25 MR. CHEN: Okay. You're saying assuming the right of</p>
<p>102</p> <p>1 requirements of the master plan. Is that opinion consistent 2 with the colloquial and the answers you gave to the hearing 3 examiner relative to the issue of blockage of the sighting 4 distances? 5 MR. DAVIS: Yeah. It is a problem with sight 6 distance coming into the property. 7 MR. CHEN: Yeah. Okay. Are they consistent? 8 MR. DAVIS: Um, yes. 9 MR. CHEN: How so? 10 MR. DAVIS: Because the landscaping that's 11 associated with these parking areas is going to be outside of 12 the right of way and I think that that -- that is an 13 assurance of sight distance. When you can keep the full right 14 of way, and particularly where this driveway is. 15 Remember, it's a 60 foot right of way, so there is 16 space. That's why you see these larger aprons where -- where 17 you can get additional cars in. Well, the point is, is that 18 if everything was held onto the property, then -- and then 19 you had the landscaping, it wouldn't be a problem. 20 It wouldn't be a problem. This is -- 21 MR. CHEN: Does that apply then to the testimony 22 that has been received by my clients relative to the uh, 23 sight distance problems at this intersection? 24 MR. DAVIS: Yes. 25 MR. CHEN: How?</p>	<p>104</p> <p>1 way area is clear then. 2 MR. DAVIS: Correct. 3 MR. CHEN: Okay. [Inaudible] thank you. 4 MR. DAVIS: Plus you have parking on the street. So 5 when you take all these factors working together, it creates 6 a problem. 7 MR. CHEN: I think that -- where were we back on? 8 MR. DAVIS: On seven? 9 MR. CHEN: Yeah, I apologize. I'm lost in my 10 documents here. 11 HEARING OFFICER ROBESON: Well, you were doing the 12 master plan, so now you're in harmonious. 13 MR. CHEN: Yes, D, thank you, subsection D. 14 HEARING OFFICER ROBESON: And I don't think you've 15 described the character of the neighborhood. You've described 16 the surrounding area. 17 MR. DAVIS: Um, in terms of -- of the neighborhood I 18 can comment to the -- to that. I mean, I've been through the 19 community. I see this as -- as a fairly standard or 20 traditional neighborhood in the county. 21 It's sort of indicative of the period of -- the 22 period of 1970s, 1980s, 1990s. It's that vintage of 23 development. It was developed under cluster development. So 24 the developments do contain open space areas within them. 25 There are, I think amenities like the sidewalks and</p>

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27 (105 to 108)

<p>105</p> <p>1 the nearby parks. Nearby -- it has amenities associated with 2 it that I think help to encourage mobility through the 3 community. Um, there's, you know, encouraging bicycling I 4 think is important too.</p> <p>5 So I see this as a fairly traditional kind of 6 neighborhood in the county and I would -- what I would say is 7 different from some others in the county would be that the 8 roads here have the closed system, which means that they have 9 the curb and the gutter.</p> <p>10 So if you look in a neighborhood with secondary 11 streets, and there are some in this area, where they're open 12 section roads. You have a much better opportunity to be able 13 to park off of the pavement on the shoulders and not 14 interrupt anything else.</p> <p>15 When I lived in the county, over in the eastern part 16 of the county, I lived on an open section secondary street 17 and we didn't -- we tended not to have the kind of issues 18 that you will have in this community when you allow the 19 parking along the side of the street.</p> <p>20 HEARING OFFICER ROBESON: Okay.</p> <p>21 MR. CHEN: And takes us down to F.</p> <p>22 MR. DAVIS: Um, actually, I think I'm on D.</p> <p>23 [Inaudible]</p> <p>24 MR. CHEN: Oh, I'm sorry. Yes.</p> <p>25 MR. DAVIS: Oh, yeah, and we -- is harmonious with</p>	<p>107</p> <p>1 required residential parking.</p> <p>2 And yesterday, as part of the testimony where it was 3 mentioned that a neighbor on the other side, how many parking 4 places did they have on their site and how many were on the 5 street. I think it's different when you're dealing with a 6 resident who lives there and based on the circumstance of how 7 many people are in the house may have more cars.</p> <p>8 They can park on the street. I'm saying they can.</p> <p>9 I'm not saying they must or that they can't, because I think 10 that they can, but there's a risk associated with that and 11 that's not -- I don't think it's necessarily good for the 12 neighborhood, but it's not illegal.</p> <p>13 The police aren't going to come and give a ticket 14 for it. Now, if there was no parking on a site and they 15 parked on the street, DPS could get involved and say, "Where 16 are your two parking spaces that belong on the lot?"</p> <p>17 So we're dealing here with a typical residence on 18 this street has a requirement of two spaces. We're talking 19 about now a home occupation use that in addition to the two 20 spaces for residential use, we're talking about 11 more 21 spaces.</p> <p>22 That's a very sizable increase and my position is 23 that that is so sizeable that I think that this raises this - 24 - this home occupation use almost out of the realm of being 25 considered home occupation in the introduction of a</p>
<p>106</p> <p>1 and will not alter the character of the surrounding 2 neighborhood in a manner inconsistent with the plan. I think 3 we were basically just talking about that in terms of the --</p> <p>4 HEARING OFFICER ROBESON: Well, you didn't say 5 whether it was or you described what the neighborhood was 6 like.</p> <p>7 MR. DAVIS: I did. And to bring this subsection D 8 into play, I do not believe that the proposed plan is 9 harmonious with and will not alter the character of the 10 surrounding neighborhood in a manner that's inconsistent with 11 the plan.</p> <p>12 And here, I believe, we are talking about the master 13 plan.</p> <p>14 MR. CHEN: But do you have an opinion as to whether 15 or not the proposed conditional use is in harmony with the 16 character of the surrounding neighborhood?</p> <p>17 MR. DAVIS: I don't believe it is, because I believe 18 that the key location that we're talking about, you're 19 bringing in an element of congestion and safety that I think 20 is just going to be adverse to the community.</p> <p>21 MR. CHEN: Is -- is that because it's a commercial 22 use?</p> <p>23 MR. DAVIS: Primarily. I recognize that in these 24 communities, there is residential parking and there's parking 25 for residential activities, but you don't have the minimum</p>	<p>108</p> <p>1 commercial land use at what is a very critical point within 2 the community. So.</p> <p>3 MR. CHEN: Okay. Are you done with D?</p> <p>4 MR. DAVIS: I'm done with D.</p> <p>5 MR. CHEN: Okay. F?</p> <p>6 MR. DAVIS: Um, F, yeah, looking at F1. This is 7 getting into the APF, and actually this isn't a true APF 8 issue. I was looking at fire protection and the public roads 9 in terms of adequacy and this is intended as part of the 10 finding of adequate public facilities.</p> <p>11 I might not be happy that I think this is helping 12 fire protection or public roads, but it's not an adequacy 13 issue, performance issue.</p> <p>14 HEARING OFFICER ROBESON: Great.</p> <p>15 MR. CHEN: Okay.</p> <p>16 MR. DAVIS: Okay. Um, G, is will not cause undue 17 harm to the neighborhood as a result of a non-inherent 18 adverse effect alone or the combination of an inherent, non- 19 inherent adverse effect in any of the following.</p> <p>20 Use, peaceful enjoyment, economic value two is 21 traffic also with number two is lack of parking.</p> <p>22 MR. KLOPMAN: Your Honor, haven't we covered this?</p> <p>23 Hasn't he talked about this?</p> <p>24 HEARING OFFICER ROBESON: Uh, I don't know what he's 25 going to say. If he's going to say something new.</p>

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28 (109 to 112)

<p>109</p> <p>1 MR. KLOPMAN: I thought he has.</p> <p>2 MR. DAVIS: What I'm going to say is that I believe</p> <p>3 that subsections one -- excuse me, subsections two and three</p> <p>4 are not met with this application. I believe that there will</p> <p>5 be traffic problems. I will -- I do think there's lack of</p> <p>6 parking associated with it.</p> <p>7 And under number three, I think that this will be a</p> <p>8 problem in terms of health, safety, welfare of the</p> <p>9 neighboring residents, visitors and employees. I believe that</p> <p>10 this rises to a level of a non-inherent adverse effect in</p> <p>11 this case.</p> <p>12 MR. CHEN: Why?</p> <p>13 MR. DAVIS: Because of the -- because the lot is too</p> <p>14 small to be able to deal with the parking on site, so they're</p> <p>15 trying to go off site with the parking and then we have a</p> <p>16 problem with congestion.</p> <p>17 Those are two non-inherent adverse effects. It's</p> <p>18 kind of one or the other kind of issue. Okay? Subsection</p> <p>19 three. The fact that proposed use satisfies all specific</p> <p>20 requirements to approve condition of use.</p> <p>21 Does not present a presumption. The use is</p> <p>22 compatible with nearby properties and in itself is not</p> <p>23 sufficient for prior conditional reviews approval. I believe</p> <p>24 that this particular use is not compatible with the</p> <p>25 community.</p>	<p>111</p> <p>1 MR. DAVIS: I believe that this application fails to</p> <p>2 meet key sections of the county zoning ordinance relative to</p> <p>3 the operation of a major impact yoga studio home occupation.</p> <p>4 I believe that there's considerable problems with regard to</p> <p>5 parking and that's division 6.2.</p> <p>6 I believe there are problems with 7.3. I also</p> <p>7 believe that the application is not in conformance with the</p> <p>8 master plan. I think that the application will not be</p> <p>9 compatible with the uses in the neighborhood.</p> <p>10 I do not agree with the staff report.</p> <p>11 MR. CHEN: Have you identified, from your opinion,</p> <p>12 all of those areas?</p> <p>13 MR. DAVIS: I believe I have.</p> <p>14 MR. CHEN: Okay. Now, were they addressed in the</p> <p>15 staff report?</p> <p>16 MR. DAVIS: No. Uh, the staff report basically just</p> <p>17 did a check off saying this is okay, that's okay, that's</p> <p>18 okay. No discussion of issues. No analysis of issues.</p> <p>19 MR. CHEN: And have you read the planning board</p> <p>20 recommendation?</p> <p>21 MR. DAVIS: Yes, I have.</p> <p>22 MR. CHEN: Do you agree with the planning board</p> <p>23 recommendation?</p> <p>24 MR. DAVIS: No.</p> <p>25 MR. CHEN: Why?</p>
<p>110</p> <p>1 I believe that the lot is too small for the proposed</p> <p>2 use and I believe that what's happening is we're getting as</p> <p>3 conditional use application that is at a scale and scope that</p> <p>4 is not compatible with the neighborhood.</p> <p>5 MR. CHEN: Okay.</p> <p>6 MR. DAVIS: And I think that's it.</p> <p>7 MR. CHEN: For that division?</p> <p>8 MR. DAVIS: For that division.</p> <p>9 MR. CHEN: Okay. Now, I want to take you back for a</p> <p>10 moment to the staff report, okay?</p> <p>11 MR. DAVIS: Okay.</p> <p>12 MR. CHEN: Did the staff report identify and analyze</p> <p>13 the history of violations and citations that were issued by</p> <p>14 DPS to Ms. Romano?</p> <p>15 MR. DAVIS: The technical staff report did identify,</p> <p>16 I believe, I'd call it some of the complaints and violations.</p> <p>17 It did now have any -- it did not indicate anything about the</p> <p>18 order of or notice of abatement that was issued by the court.</p> <p>19 Um, and didn't comment on anything about the</p> <p>20 complaint that was filed after the order of the abatement.</p> <p>21 MR. CHEN: Okay. And in this particular -- uh, did</p> <p>22 you -- do you agree with the final conclusions and</p> <p>23 recommendations of the staff report?</p> <p>24 MR. DAVIS: Uh, no, I do not.</p> <p>25 MR. CHEN: Why?</p>	<p>112</p> <p>1 MR. DAVIS: I don't agree with it, because it's</p> <p>2 really based on the presentation and report provided from the</p> <p>3 technical staff and I'm afraid that this -- they, in effect,</p> <p>4 adopted with one difference, the um, recommendations of the</p> <p>5 staff in the technical staff report.</p> <p>6 The one that they did not adopt was the technical</p> <p>7 staff had recommended a maximum of 40 persons per week coming</p> <p>8 to the site and the and the planning board felt comfortable</p> <p>9 with 60 as recommended in the application.</p> <p>10 MR. CHEN: How did the staff report and the planning</p> <p>11 board recommendation deal with safety issues?</p> <p>12 MR. DAVIS: Safety issues were not even addressed in</p> <p>13 the technical staff report. Did you -- did you include the</p> <p>14 planning board recommendation in that?</p> <p>15 MR. CHEN: Yep.</p> <p>16 MR. DAVIS: Okay. In terms of the planning board</p> <p>17 recommendation they just commented that they did not agree</p> <p>18 with staff in terms of the reduction to 40 versus the 60</p> <p>19 applied for and recommended approval with the 60.</p> <p>20 MR. CHEN: Okay. By the way strike that. [Inaudible]</p> <p>21 HEARING OFFICER ROBESON: I'm just saying it's not</p> <p>22 3:00. He's been on for --</p> <p>23 MR. CHEN: I'm just about there. I just want to make</p> <p>24 sure --</p> <p>25 HEARING OFFICER ROBESON: I just want to make sure</p>

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<p>113</p> <p>1 they have enough time for rebuttal.</p> <p>2 MR. CHEN: Got you, okay.</p> <p>3 HEARING OFFICER ROBESON: Because I -- it could be</p> <p>4 that cross examination is lengthy as well.</p> <p>5 MR. CHEN: Okay.</p> <p>6 MR. KLOPMAN: How late are we going?</p> <p>7 HEARING OFFICER ROBESON: Well, I'd like to get out</p> <p>8 by 5:00.</p> <p>9 MR. CHEN: I apologize. Some of this has already</p> <p>10 been dealt with by questions and I -- and I -- they're in my</p> <p>11 thing -- my notes and I'm -- I'm passing over them now. I</p> <p>12 just want to make sure I've got them all covered.</p> <p>13 Do you have an opinion as to whether or not the</p> <p>14 hearing examiner is authorized to allow on street parking for</p> <p>15 this conditional use?</p> <p>16 MR. DAVIS: Um, in my opinion, in terms of the -- of</p> <p>17 the on street parking, I would say I don't believe that the</p> <p>18 hearing examiner has the ability or the authority under the -</p> <p>19 - under the zoning ordinance to be able to allow to locate in</p> <p>20 the right of way without the prior approval of the Department</p> <p>21 of Transportation.</p> <p>22 MR. CHEN: Okay. And --</p> <p>23 MR. KLOPMAN: Without prior approval --</p> <p>24 HEARING OFFICER ROBESON: Of D-O -- uh.</p> <p>25 MR. DAVIS: DOT.</p>	<p>115</p> <p>1 step.</p> <p>2 I -- I believe that the history of this application</p> <p>3 warrants some consideration of the fact that operationally, I</p> <p>4 believe what we have is a noninherent adverse effect</p> <p>5 associated with the past history of this site.</p> <p>6 I say that in that I've read the Butler decision in</p> <p>7 the past and I know that there's been discussion of this type</p> <p>8 of issue of violations and -- and conduct.</p> <p>9 HEARING OFFICER ROBESON: All right. You done?</p> <p>10 MR. CHEN: I have no further questions.</p> <p>11 HEARING OFFICER ROBESON: All right. Mr. Klopman, do</p> <p>12 you need a break or are you ready to go at him?</p> <p>13 MR. KLOPMAN: No, no. I just want to go at him, Your</p> <p>14 Honor. Hopefully will not be that long. Mr. Davis, when were</p> <p>15 you first retained in this case?</p> <p>16 MR. DAVIS: Uh, I believe it was in January.</p> <p>17 MR. KLOPMAN: Can you give me whether it was the</p> <p>18 beginning, middle or end?</p> <p>19 MR. DAVIS: Probably in the beginning of January.</p> <p>20 Again, I'm not certain. Sometime in January, because</p> <p>21 certainly by February I was I had put in the preliminary</p> <p>22 report and prepared for the, uh -- no, it was the February</p> <p>23 11th date.</p> <p>24 So probably more like middle, maybe early part of</p> <p>25 January.</p>
<p>114</p> <p>1 HEARING OFFICER ROBESON: I assume this is a county</p> <p>2 road?</p> <p>3 MR. DAVIS: Correct.</p> <p>4 MR. CHEN: And what are your final conclusions and</p> <p>5 opinions?</p> <p>6 HEARING OFFICER ROBESON: Well, we've just been</p> <p>7 through that.</p> <p>8 MR. KLOPMAN: I mean, have we covered all of you --</p> <p>9 HEARING OFFICER ROBESON: Do you have anything you</p> <p>10 haven't covered?</p> <p>11 MR. DAVIS: The only thing I'd like to summarize</p> <p>12 that -- maybe I have covered it, but maybe one -- in summary,</p> <p>13 I would just like to say that there are -- there are at least</p> <p>14 two non-inherent adverse effects that I've identified</p> <p>15 associated with this use.</p> <p>16 One dealing with the potential effects of on street</p> <p>17 parking and the other is with the parking on site. There's a</p> <p>18 third one, but it's not one I don't -- I'm not sure that this</p> <p>19 is something that's come up and it really deals with the</p> <p>20 operational aspect of this case.</p> <p>21 And that is when I look at the -- the number of</p> <p>22 violations, citations, order of abatement when I look at --</p> <p>23 at all of -- all of what has occurred with this, from its</p> <p>24 beginnings as a no impact home occupation to a low impact</p> <p>25 occupation and now they're asking to go further to the next</p>	<p>116</p> <p>1 MR. KLOPMAN: Okay. And who specifically contacted</p> <p>2 you about the case?</p> <p>3 MR. DAVIS: Uh, Mr. Chen.</p> <p>4 MR. KLOPMAN: And had you worked with Mr. Chen</p> <p>5 before?</p> <p>6 MR. DAVIS: Yes, I have.</p> <p>7 MR. KLOPMAN: On how many times have you worked with</p> <p>8 Mr. Chen?</p> <p>9 MR. DAVIS: Um, probably two -- two prior cases. I'm</p> <p>10 currently working with him on two others in addition to this.</p> <p>11 MR. KLOPMAN: Two prior cases and two pending cases</p> <p>12 and this case?</p> <p>13 MR. DAVIS: Correct.</p> <p>14 MR. KLOPMAN: Okay. And that's over what period of</p> <p>15 time?</p> <p>16 MR. DAVIS: The last maybe year and a half.</p> <p>17 MR. KLOPMAN: And how much time would you say you've</p> <p>18 devoted to this case?</p> <p>19 MR. DAVIS: Hmm, just in the last month, I've</p> <p>20 probably put in somewhere around 15, 20 hours.</p> <p>21 MR. KLOPMAN: Well, I'm talking about --</p> <p>22 MR. DAVIS: Probably total --</p> <p>23 MR. KLOPMAN: Total, from -- from January to now.</p> <p>24 MR. DAVIS: Maybe 40 to 50 hours.</p> <p>25 MR. KLOPMAN: And how much are you charging for</p>

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<p>117</p> <p>1 that?</p> <p>2 MR. DAVIS: \$250 an hour.</p> <p>3 MR. KLOPMAN: Okay. And you were here for the March</p> <p>4 4 hearing the entire day; correct?</p> <p>5 MR. DAVIS: Correct.</p> <p>6 MR. KLOPMAN: And you sat next to Mr. Chen the</p> <p>7 entire time; correct?</p> <p>8 MR. DAVIS: Yes, I did.</p> <p>9 MR. KLOPMAN: And you helped him with the</p> <p>10 examinations and gave him questions to ask and that kind of</p> <p>11 stuff?</p> <p>12 MR. DAVIS: No, I didn't -- not at that time. There</p> <p>13 were questions that came forward. Um, I don't recall that I</p> <p>14 gave him any questions to ask.</p> <p>15 MR. KLOPMAN: Did you help him prepare for the --</p> <p>16 for the hearing?</p> <p>17 MR. DAVIS: Um, he did his own preparation. I did my</p> <p>18 preparation. We coordinated. I live 500 miles away.</p> <p>19 MR. KLOPMAN: Yeah.</p> <p>20 MR. DAVIS: So --</p> <p>21 MR. KLOPMAN: You -- you -- all these exhibits that</p> <p>22 you -- you've provided today and Mr. Chen's brought in, you</p> <p>23 did the highlighting and --</p> <p>24 MR. DAVIS: Um, not all the highlighting. He -- he</p> <p>25 did a yellow highlighter of things I marked on a piece of</p>	<p>119</p> <p>1 happened in this case; correct? That's your understanding?</p> <p>2 MR. DAVIS: Yes, I -- I would say that it -- there</p> <p>3 was a citation issued and I -- I suppose someone said if you</p> <p>4 want to continue doing this, then you need to go forward with</p> <p>5 the major home occupation.</p> <p>6 MR. KLOPMAN: Yes.</p> <p>7 MR. DAVIS: Application.</p> <p>8 MR. KLOPMAN: And the planning board and the</p> <p>9 planning board staff, as you understand it would require --</p> <p>10 would tell Ms. Romano what she needed to submit. I mean, she</p> <p>11 would go -- she would go there, submit what she had and if</p> <p>12 there was something missing, they would tell her.</p> <p>13 Is that your experience?</p> <p>14 MR. DAVIS: My experience with zoning applications</p> <p>15 and subdivision applications, which I -- I worked directly</p> <p>16 with those types of applications. We would -- there would</p> <p>17 sometimes be a meeting with an applicant prior to the</p> <p>18 submission of a plan.</p> <p>19 We would try and give them advice in terms of</p> <p>20 procedure process, but we didn't tell them how to do the</p> <p>21 plan. We didn't tell them what to put on the plan. We weren't</p> <p>22 doing the plan.</p> <p>23 MR. KLOPMAN: I'm -- but if there was a problem with</p> <p>24 the submission, you would meet with them and you would try to</p> <p>25 tell them maybe you should focus on this or maybe you should</p>
<p>118</p> <p>1 paper.</p> <p>2 MR. KLOPMAN: Okay. You marked it, he highlighted.</p> <p>3 MR. DAVIS: Yes.</p> <p>4 MR. KLOPMAN: I thought you said earlier that you</p> <p>5 highlighted, that's why I asked you. Now, you were on the</p> <p>6 staff of the planning board for approximately 30 years for</p> <p>7 the planning board for Montgomery County?</p> <p>8 MR. DAVIS: Uh, 32 years total. Probably 25 years,</p> <p>9 24 years in Montgomery County.</p> <p>10 MR. KLOPMAN: Okay. And as I understand the process,</p> <p>11 the applicant goes to the planning board staff and makes an</p> <p>12 application for the conditional use [inaudible] correct?</p> <p>13 MR. DAVIS: They file the application with the</p> <p>14 staff, correct.</p> <p>15 MR. KLOPMAN: Right. And in your experience, have</p> <p>16 you seen the situation where somebody has a low impact home</p> <p>17 certificate or minor home occupation certificate and it turns</p> <p>18 out that more people are coming and they -- they -- they</p> <p>19 change -- they -- they apply for a major to comply?</p> <p>20 MR. DAVIS: I -- I know that happens. I haven't -- I</p> <p>21 didn't review special exception applications.</p> <p>22 MR. KLOPMAN: Okay. But you're -- you're aware that</p> <p>23 that does happen?</p> <p>24 MR. DAVIS: It does happen.</p> <p>25 MR. KLOPMAN: And that's what appears that have</p>	<p>120</p> <p>1 focus on that, and to get you -- to get your ducks in a row?</p> <p>2 MR. DAVIS: Yes. And you're saying before it's filed</p> <p>3 or --</p> <p>4 MR. KLOPMAN: During the whole process.</p> <p>5 MR. DAVIS: There is a -- there is a process and</p> <p>6 that process is called the Development Review Committee.</p> <p>7 MR. KLOPMAN: Mm-hmm.</p> <p>8 MR. DAVIS: Park and planning and this is an inner</p> <p>9 agency committee and all zoning case -- not all, but most</p> <p>10 zoning cases, all subdivision cases, site planning cases,</p> <p>11 project plan cases, the full range of development cases that</p> <p>12 are dealt with in the county go through that.</p> <p>13 MR. KLOPMAN: Okay.</p> <p>14 MR. DAVIS: Of concern to me, and this has been a</p> <p>15 concern for many years, special exceptions, now conditional</p> <p>16 uses, I -- I'm surprised that there are still cases that are</p> <p>17 not going to the Development Review Committee that probably</p> <p>18 should.</p> <p>19 Now, I'll tell you, with this case coming in as a</p> <p>20 home occupation, it's probably not one that would have risen</p> <p>21 to the top to say, my gosh, this has to go to the development</p> <p>22 review committee.</p> <p>23 But certainly when it was submitted for review,</p> <p>24 there should have been certain triggers as the staff member</p> <p>25 went through the application, that things were not there or</p>

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<p>121</p> <p>1 things needed and there should have been a very -- there</p> <p>2 should have been a discussion to say, hey, there's a problem</p> <p>3 with this case.</p> <p>4 MR. KLOPMAN: And that's your -- you had that</p> <p>5 opinion. That's your opinion early on in the -- in your</p> <p>6 review of the case; correct?</p> <p>7 MR. DAVIS: Correct.</p> <p>8 MR. KLOPMAN: Now, the plan -- the staff had a told</p> <p>9 everybody, there was a notice issued. I'm talking about the</p> <p>10 planning board staff, that there was a hearing before the</p> <p>11 actual planning board and that, I believe, was February 21st.</p> <p>12 MR. DAVIS: Yes.</p> <p>13 MR. KLOPMAN: And you were aware of that hearing,</p> <p>14 weren't you?</p> <p>15 MR. DAVIS: Yes. I watched it on web cast.</p> <p>16 MR. KLOPMAN: Okay. But you didn't attend the</p> <p>17 hearing?</p> <p>18 MR. DAVIS: No.</p> <p>19 MR. KLOPMAN: And you didn't file anything with the</p> <p>20 planning board before the hearing?</p> <p>21 MR. DAVIS: I didn't see the staff report until</p> <p>22 about a week before.</p> <p>23 MR. KLOPMAN: But you never -- you never submitted</p> <p>24 any of the things that you've told today to the hearing</p> <p>25 examiner. You never told the planning board about the -- your</p>	<p>123</p> <p>1 that is a home occupation.</p> <p>2 MR. KLOPMAN: But 100 percent of the time this</p> <p>3 structure is a residence that's used as a residence. Would</p> <p>4 you agree with that?</p> <p>5 MR. DAVIS: I'm not sure I agree with that. I think</p> <p>6 that if you have a conditional use, that it's a multi-use.</p> <p>7 You have a residence and you have a conditional use.</p> <p>8 MR. KLOPMAN: But you recognize that it is being</p> <p>9 used, at least partly, as a residential use.</p> <p>10 MR. DAVIS: Yes. Hopefully a majority of it.</p> <p>11 MR. KLOPMAN: And -- and in this case, you would</p> <p>12 agree that the majority of the time is for a residential use?</p> <p>13 MR. DAVIS: I want to say yes, but I'm -- I've said</p> <p>14 many times today that it's not -- I don't see it definitive</p> <p>15 enough in terms of the level of activity associated with the</p> <p>16 use to be able to make any kind of a --</p> <p>17 MR. KLOPMAN: Well, the application says that it</p> <p>18 wants [inaudible] Ms. Romano is asking to have six yoga</p> <p>19 classes two on Monday, one in the morning, one in the</p> <p>20 evening.</p> <p>21 MR. DAVIS: Yes.</p> <p>22 MR. KLOPMAN: And then one on Wednesday morning, one</p> <p>23 on Friday morning, one on Saturday morning and one on</p> <p>24 Thursday, late afternoon. You understand that?</p> <p>25 MR. DAVIS: I'm aware of that.</p>
<p>122</p> <p>1 concerns that you had; correct?</p> <p>2 MR. DAVIS: No.</p> <p>3 MR. KLOPMAN: So it is correct what I said? It is</p> <p>4 correct what I said. You didn't share your concerns with the</p> <p>5 planning board; correct?</p> <p>6 MR. DAVIS: That's correct.</p> <p>7 MR. KLOPMAN: Okay. Um, and as you've already</p> <p>8 indicated, the planning board met on February 21st and they</p> <p>9 did grant the application and they did allow --</p> <p>10 MR. DAVIS: The recommended approval of it.</p> <p>11 MR. KLOPMAN: The recommended approval, okay, and</p> <p>12 you saw that.</p> <p>13 MR. DAVIS: Mm-hmm.</p> <p>14 MR. KLOPMAN: And it's a fair statement that you've</p> <p>15 never testified regarding a -- a conditional application</p> <p>16 involving a home yoga studio, is that correct?</p> <p>17 MR. DAVIS: That's correct.</p> <p>18 MR. KLOPMAN: Now, you understand this is a home</p> <p>19 yoga studio in the sense that it's a house. Ms. Romano lives</p> <p>20 at the house with her husband and her children.</p> <p>21 MR. DAVIS: Yes.</p> <p>22 MR. KLOPMAN: And it's a house, 100 percent of the</p> <p>23 time. It's a residence 100 percent of the time.</p> <p>24 MR. DAVIS: It's a residence that a portion of the</p> <p>25 floor area is going to be devoted to a commercial occupation</p>	<p>124</p> <p>1 MR. KLOPMAN: Okay. And she's also indicated that</p> <p>2 she's willing -- you read in the traffic statement, that</p> <p>3 she's willing to reduce or change the times so that they're</p> <p>4 not in peak hours so that that would have a -- a -- wouldn't</p> <p>5 affect the traffic.</p> <p>6 Would have a less impact on the traffic. You read</p> <p>7 that; correct? In the traffic statement.</p> <p>8 MR. DAVIS: I read -- I read that in the statement,</p> <p>9 but again, I did not feel that that statement was definitive</p> <p>10 enough to be worthwhile.</p> <p>11 MR. KLOPMAN: Well, but the statement did indicate</p> <p>12 that we're willing to -- in a sense, we're willing to modify</p> <p>13 that schedule to make it more palatable to everybody, in a</p> <p>14 sense.</p> <p>15 MR. DAVIS: Well, I'm sitting here staring at a</p> <p>16 chronology of violations associated with this use and I'm</p> <p>17 having trouble thinking of it as just being a straightforward</p> <p>18 proposal. I don't see this as straightforward.</p> <p>19 MR. KLOPMAN: I didn't -- I don't think you answered</p> <p>20 my question. But I'll move on, because in the sake of getting</p> <p>21 through this. Um, you'll understand that the classes</p> <p>22 themselves are an hour and 15 minutes long; correct?</p> <p>23 MR. DAVIS: Correct.</p> <p>24 MR. KLOPMAN: Okay. Okay. So that's -- on five of</p> <p>25 the days, or yeah, no, four of the days, that's the entire</p>



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<p>125</p> <p>1 impact in the -- in the neighborhood; correct?</p> <p>2 MR. DAVIS: If that's how long the classes are. If</p> <p>3 they don't run over. If they don't do this, don't do that.</p> <p>4 MR. KLOPMAN: There's nobody that's -- you haven't</p> <p>5 heard anybody testify that any of the classes are longer than</p> <p>6 one hour and 15 minutes, have you?</p> <p>7 MR. DAVIS: I didn't -- I'm not sure I heard anybody</p> <p>8 say it was just an hour and 15 minutes.</p> <p>9 MR. KLOPMAN: Okay. All right.</p> <p>10 MR. DAVIS: I think they just said they attended the</p> <p>11 class.</p> <p>12 MR. KLOPMAN: Well, the record will -- the record</p> <p>13 will speak for itself, but you've been here for both</p> <p>14 hearings, so you've heard all the testimony?</p> <p>15 MR. DAVIS: Correct.</p> <p>16 MR. KLOPMAN: Okay. Um, and then in terms of the --</p> <p>17 the violations that you spoke with or rather -- pardon me,</p> <p>18 going to your your summary of your opinions. You use -- you</p> <p>19 say that there would be 12 people per class. That's what you</p> <p>20 were told. Is that correct?</p> <p>21 MR. DAVIS: That was the application when it was</p> <p>22 filed.</p> <p>23 MR. KLOPMAN: Well, did you read in the appli -- you</p> <p>24 read the application, didn't you?</p> <p>25 MR. DAVIS: Mm-hmm.</p>	<p>127</p> <p>1 You heard that, didn't you?</p> <p>2 There were at least four or five people that</p> <p>3 testified within the classes.</p> <p>4 MR. DAVIS: Yes. I did hear a range of -- of numbers</p> <p>5 in terms of people attending the class.</p> <p>6 MR. KLOPMAN: In a typical class, two to seven</p> <p>7 people would attend and that would mean that Ms. Romano would</p> <p>8 have two additional cars at her -- if -- if you use your</p> <p>9 analysis of one car per student, that would mean there'd be</p> <p>10 another two cars. Correct?</p> <p>11 MR. DAVIS: If -- for how -- what's the number we're</p> <p>12 talking about? Tell me the number of students.</p> <p>13 MR. KLOPMAN: If there was seven.</p> <p>14 MR. DAVIS: Okay, seven, that's seven spots. You</p> <p>15 have two for the residents, then plus you need one more for</p> <p>16 the instructor, who --</p> <p>17 MR. KLOPMAN: Well, the instructor is Ms. Romano on</p> <p>18 the overwhelming majority of the time, it's Ms. Romano.</p> <p>19 There's a substitute teacher that's there occasionally.</p> <p>20 MR. DAVIS: Then that's a required parking space. So</p> <p>21 I think we're talking, for your situation of seven, so we're</p> <p>22 talking about eight spaces, so that would be six in addition</p> <p>23 to the two residential spaces.</p> <p>24 MR. KLOPMAN: And the two residential spaces would</p> <p>25 be in the garage.</p>
<p>126</p> <p>1 MR. KLOPMAN: And you read page two of the</p> <p>2 application, didn't you?</p> <p>3 MR. DAVIS: I didn't memorize the application.</p> <p>4 MR. KLOPMAN: Okay, well, I'll refresh your</p> <p>5 recollection, just very quickly. You read the whole</p> <p>6 application, didn't you?</p> <p>7 MR. DAVIS: I went through the entire package of</p> <p>8 everything.</p> <p>9 MR. KLOPMAN: And there's a statement of the case in</p> <p>10 the application.</p> <p>11 MR. DAVIS: Yes.</p> <p>12 MR. KLOPMAN: Okay. And it says given the</p> <p>13 therapeutic benefits that have been experienced by the</p> <p>14 participants of the yoga sessions and that the yoga classes</p> <p>15 do not adversely impact the neighborhood at all, the</p> <p>16 conditional use for at least eight, but up to 10 people</p> <p>17 should be granted. Did you read that?</p> <p>18 MR. DAVIS: Yes. I saw a number of documents that</p> <p>19 showed different numbers of people in the class.</p> <p>20 MR. KLOPMAN: Okay.</p> <p>21 MR. DAVIS: My focus has really been on what I saw</p> <p>22 as a maximum number.</p> <p>23 MR. KLOPMAN: But you were in the hearing and you</p> <p>24 heard multiple people who attend these classes say that the</p> <p>25 range for the typical class is between two and six or seven.</p>	<p>128</p> <p>1 MR. DAVIS: Okay, that's fine.</p> <p>2 MR. KLOPMAN: Okay? And because this is a</p> <p>3 neighborhood, as you've described it, most of the houses have</p> <p>4 two -- all the houses have two car garages; correct?</p> <p>5 Excluding the town homes.</p> <p>6 MR. DAVIS: Um, I didn't count all of the garage</p> <p>7 spaces.</p> <p>8 MR. KLOPMAN: Okay. But they all have garages and</p> <p>9 they all have driveways.</p> <p>10 MR. DAVIS: Yes.</p> <p>11 MR. KLOPMAN: And you've been to Ms. -- Ms.</p> <p>12 Woodhouse's house; correct?</p> <p>13 MR. DAVIS: No. I haven't. I've been next door to</p> <p>14 it.</p> <p>15 MR. KLOPMAN: Okay, you've been to the Huber's</p> <p>16 house?</p> <p>17 MR. DAVIS: Correct.</p> <p>18 MR. KLOPMAN: And so you've dealt specifically with</p> <p>19 the Huber's or did you deal with both --</p> <p>20 MR. DAVIS: Both.</p> <p>21 MR. KLOPMAN: Okay.</p> <p>22 MR. DAVIS: Mm-hmm.</p> <p>23 MR. KLOPMAN: And did you see where -- where Mrs.</p> <p>24 Woodhouse and her husband park? They park in the driveway;</p> <p>25 correct?</p>

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<p>129</p> <p>1 MR. DAVIS: Uh, I believe that's true.</p> <p>2 MR. KLOPMAN: And did you see where the Huber's</p> <p>3 park? They park in the driveway; correct?</p> <p>4 MR. DAVIS: Yes.</p> <p>5 MR. KLOPMAN: And they have about four cars;</p> <p>6 correct?</p> <p>7 MR. DAVIS: Yes.</p> <p>8 MR. KLOPMAN: Okay and that's what you observed.</p> <p>9 MR. DAVIS: I observed three. I don't think I saw</p> <p>10 more than that at the house.</p> <p>11 MR. KLOPMAN: Okay. You -- one of your complaints</p> <p>12 when you filed the -- your preliminary statement was that</p> <p>13 there was no drawing in the file that had been submitted. Is</p> <p>14 that correct?</p> <p>15 MR. DAVIS: Correct.</p> <p>16 MR. KLOPMAN: And then we submitted on February</p> <p>17 21st, Exhibit 59A. Um, yes, 59A, a drawing to scale. You see</p> <p>18 that -- you -- you've seen this, haven't you?</p> <p>19 MR. DAVIS: I have seen that drawing. Um, I don't</p> <p>20 know how to scale it is. Can I --</p> <p>21 MR. KLOPMAN: Well, it has -- it has measurements on</p> <p>22 it. It has the measurements of the front of -- of Ms.</p> <p>23 Romano's house and the side of Ms. Romano's house.</p> <p>24 The front being along Falcon Bridge Drive and the</p> <p>25 side being around -- along Falcon Bridge [inaudible].</p>	<p>131</p> <p>1 you indicated that a drawing was required; correct?</p> <p>2 MR. DAVIS: Yes.</p> <p>3 MR. KLOPMAN: And then in response to that, we filed</p> <p>4 this drawing, 59A; correct?</p> <p>5 HEARING OFFICER ROBESON: Why -- can you -- why</p> <p>6 don't you show it to him?</p> <p>7 MR. KLOPMAN: Well, I thought maybe he had it in</p> <p>8 front of him. I just --</p> <p>9 MR. DAVIS: I don't think I have it in front of me.</p> <p>10 I have seen it but let me look at it.</p> <p>11 MR. KLOPMAN: No, I'm coming over there. You don't</p> <p>12 have to get up. I thought you had it, I'm sorry.</p> <p>13 MR. DAVIS: Yes. I have seen this and it does say</p> <p>14 scale one foot -- one inch is ten feet.</p> <p>15 MR. KLOPMAN: Okay. And there's a second drawing</p> <p>16 with similar -- with similar measurements to scale.</p> <p>17 MR. DAVIS: Yes.</p> <p>18 MR. KLOPMAN: You would agree that even using the --</p> <p>19 the car measurements that you described as being proper, that</p> <p>20 you could fit four cars -- you could fit four cars along</p> <p>21 Falcon Bridge Drive on the street along the -- along Ms.</p> <p>22 Romano's property line.</p> <p>23 Would you agree with that?</p> <p>24 MR. DAVIS: No.</p> <p>25 MR. KLOPMAN: Well, it says there's four -- there's</p>
<p>130</p> <p>1 MR. DAVIS: Does it say on the drawing what the</p> <p>2 scale is?</p> <p>3 MR. KLOPMAN: Um, yes, it says scale one inch --</p> <p>4 excuse me. It says one-inch equals ten feet. It says it right</p> <p>5 here on the bottom.</p> <p>6 MR. DAVIS: Okay. That's fine.</p> <p>7 MR. KLOPMAN: Okay.</p> <p>8 MR. DAVIS: Then that would -- that would be a scale</p> <p>9 drawing and you -- you had that -- you said that I had said</p> <p>10 it in what document?</p> <p>11 MR. KLOPMAN: Yeah, in your -- I'm sorry, I might</p> <p>12 not have used the right you said it in your preliminary</p> <p>13 planning report, which I guess you prepared for the Huber's</p> <p>14 and Ms. Woodhouse and her husband; correct?</p> <p>15 MR. CHEN: Objection.</p> <p>16 MR. KLOPMAN: I thought that's what he testified to.</p> <p>17 MR. CHEN: The document he's using was filed after</p> <p>18 the filing of the preliminary report.</p> <p>19 HEARING OFFICER ROBESON: Well, let him --</p> <p>20 MR. CHEN: Okay. I mean, I guess --</p> <p>21 HEARING OFFICER ROBESON: -- ask the question.</p> <p>22 MR. KLOPMAN: No, I -- I hadn't gotten to the</p> <p>23 question yet.</p> <p>24 MR. CHEN: Okay.</p> <p>25 MR. KLOPMAN: In your -- in your preliminary report,</p>	<p>132</p> <p>1 enough space for four cars.</p> <p>2 MR. DAVIS: No. You're showing four. That doesn't</p> <p>3 mean it's enough of anything. In fact, it's wrong. It has to</p> <p>4 be eight feet. That's the county standard.</p> <p>5 MR. KLOPMAN: Well, that's why I'm ask --</p> <p>6 MR. DAVIS: For on street parking and it's not in a</p> <p>7 parking lane, it's in a driving lane.</p> <p>8 MR. KLOPMAN: I was just talking to you about the</p> <p>9 size of the cars. If they are increased to eight feet long,</p> <p>10 it's -- it still would fit in the nine, eight feet</p> <p>11 measurement that's on here.</p> <p>12 HEARING OFFICER ROBESON: Wait a minute. It -- okay,</p> <p>13 go ahead. Is it eight feet long or eight feet wide?</p> <p>14 MR. DAVIS: Eight feet wide.</p> <p>15 MR. KLOPMAN: Yeah, you said -- eight feet wide and</p> <p>16 how long?</p> <p>17 MR. DAVIS: Uh, it would either be 21 or 22, I don't</p> <p>18 have the standard [inaudible].</p> <p>19 MR. KLOPMAN: Okay. All right, that's fine.</p> <p>20 MR. DAVIS: See, again, the standards you used were</p> <p>21 for onsite parking, not on street parking.</p> <p>22 MR. KLOPMAN: All right, I'm moving on, Mr. Davis. I</p> <p>23 just want to get through this so that --</p> <p>24 HEARING OFFICER ROBESON: I have a question. I'm</p> <p>25 just -- did you -- is this what you actually submitted to</p>

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<p>133</p> <p>1 staff?</p> <p>2 MR. KLOPMAN: No.</p> <p>3 HEARING OFFICER ROBESON: So there's a separate</p> <p>4 scaled drawing?</p> <p>5 MR. KLOPMAN: No. No.</p> <p>6 HEARING OFFICER ROBESON: Because the scale -- I'm</p> <p>7 just using my thumb. I'm not sure the -- well, whatever. Who</p> <p>8 has the original of this?</p> <p>9 MR. KLOPMAN: Where is the original of this?</p> <p>10 [Inaudible]</p> <p>11 MR. KLOPMAN: The person who prepared it was --</p> <p>12 MALE: We have an architect who prepared that.</p> <p>13 HEARING OFFICER ROBESON: Okay. That should have</p> <p>14 been submitted, because once you copy it -- I can tell right</p> <p>15 now that this isn't to scale. So that should have been</p> <p>16 submitted to us so we can actually scale it.</p> <p>17 Now, you can submit it, if you wish. I, um.</p> <p>18 MR. KLOPMAN: You mean the correct size of this?</p> <p>19 This is not the right size.</p> <p>20 HEARING OFFICER ROBESON: Correct, because I --</p> <p>21 MR. KLOPMAN: I see what you're saying.</p> <p>22 HEARING OFFICER ROBESON: That's all. The original.</p> <p>23 MR. KLOPMAN: Yeah.</p> <p>24 HEARING OFFICER ROBESON: Once you copy it, the</p> <p>25 scale disappears.</p>	<p>135</p> <p>1 MR. KLOPMAN: Okay and did the -- you -- Ms.</p> <p>2 Woodhouse -- did Ms. Huber tell you or did Ms. Huber tell you</p> <p>3 that Ms. Romano had reached out and tried to find out what</p> <p>4 their concerns were about the use of the yoga studio?</p> <p>5 MR. DAVIS: No. And when you mentioned the Huber's</p> <p>6 tell me, you know, I utilize their history information when I</p> <p>7 was preparing.</p> <p>8 MR. KLOPMAN: But you said you met with them;</p> <p>9 correct?</p> <p>10 MR. DAVIS: After that. I didn't meet with them</p> <p>11 until just before [inaudible].</p> <p>12 MR. KLOPMAN: At any time. At any time, did the</p> <p>13 Huber's ever tell you that Ms. Romano reached out to try to -</p> <p>14 - uh, to find out what their concerns were and was willing to</p> <p>15 try to address those concerns?</p> <p>16 MR. DAVIS: I don't recall specifically that coming</p> <p>17 up.</p> <p>18 MR. KLOPMAN: Did Ms. Woodhouse tell you --</p> <p>19 MR. CHEN: Objection. What's the relevancy of this?</p> <p>20 MR. KLOPMAN: Well, the relevance is -- what I'm</p> <p>21 trying -- you're talking about -- they're making a conclusion</p> <p>22 based upon violations and it sounds like we -- we never tried</p> <p>23 to do anything to appease the two people that are</p> <p>24 complaining, the two opponents, and we did.</p> <p>25 MR. DAVIS: That's --</p>
<p>134</p> <p>1 MR. KLOPMAN: We'll submit the original [inaudible].</p> <p>2 HEARING OFFICER ROBESON: Okay. Or you can correct</p> <p>3 me if I'm wrong, but this -- once you copy it, it's not many</p> <p>4 times to scale.</p> <p>5 MR. CHEN: Um, are you, by what I just heard, saying</p> <p>6 you're going to accept factual information after --</p> <p>7 HEARING OFFICER ROBESON: You'll get a chance to</p> <p>8 respond.</p> <p>9 MR. CHEN: Okay. Okay.</p> <p>10 HEARING OFFICER ROBESON: I mean, it should have</p> <p>11 been --</p> <p>12 MR. CHEN: You're right. I'm not --</p> <p>13 HEARING OFFICER ROBESON: It should have been in the</p> <p>14 application and why --</p> <p>15 MR. CHEN: I don't know why we've gone through this</p> <p>16 when his preliminary report was filed on one date and</p> <p>17 subsequently they filed it --</p> <p>18 HEARING OFFICER ROBESON: Well, just -- go ahead.</p> <p>19 I'm going to let him continue his questioning.</p> <p>20 MR. CHEN: Okay.</p> <p>21 MR. KLOPMAN: Okay. All right, thank you, Your</p> <p>22 Honor. You note in your preliminary report -- all the</p> <p>23 information on the violations was given to you by the Huber's</p> <p>24 and Woodhouse's, is that correct?</p> <p>25 MR. DAVIS: Correct.</p>	<p>136</p> <p>1 HEARING OFFICER ROBESON: But just a second, I don't</p> <p>2 think that's a question for him. All right? You had the cross</p> <p>3 examination of the actual people.</p> <p>4 MR. KLOPMAN: Yeah.</p> <p>5 HEARING OFFICER ROBESON: Who -- who you believed</p> <p>6 were complaining, so I don't think the expert is the best</p> <p>7 testimony as to that.</p> <p>8 MR. CHEN: I object on relevancy in any event, but -</p> <p>9 -</p> <p>10 HEARING OFFICER ROBESON: I understand.</p> <p>11 MR. KLOPMAN: You indicated before that in this --</p> <p>12 well, pardon me. In your summary or your preliminary planning</p> <p>13 report, you indicated that the street width of Falcon Bridge</p> <p>14 Drive, I believe, and if you're looking at -- I'm looking at</p> <p>15 page three.</p> <p>16 Is reported to be about 23 feet wide.</p> <p>17 MR. DAVIS: Yes.</p> <p>18 MR. KLOPMAN: So somebody told you that it was 23</p> <p>19 feet?</p> <p>20 MR. DAVIS: No. What I did was I try to, using</p> <p>21 Google Maps, deal with it. When I measured the road width, I</p> <p>22 did it when I was at the site. I knew from the plats and</p> <p>23 things what the right of way width was and I -- I try to use</p> <p>24 Google Earth to try and -- and figure that out.</p> <p>25 So those were estimates that I gave. Approximations.</p>

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<p>137</p> <p>1 MR. KLOPMAN: Going back to some of the documents 2 that Mr. Chen reviewed with you. 3 Um, you indicated earlier that referring to the 4 parking [inaudible] and loading, 6.2, which is Exhibit 97, 5 that when you analyzed 6.22, pardon me, 6.2.35, it was your 6 opinion that you had certain opinions about whether that 7 applied. 8 And one of them, you said that it didn't apply 9 because it was not a -- you said, a retail slash service 10 establishment or restaurant use. Correct? 11 MR. DAVIS: Correct. 12 MR. KLOPMAN: And -- 13 MR. DAVIS: That's subsection D you're referring to? 14 MR. KLOPMAN: Yes. 15 MR. DAVIS: Yeah. 16 MR. KLOPMAN: And then you -- you pulled out Exhibit 17 number 98, which is 3.5.1B and that defines retail slash 18 service establishment, which means a business providing 19 personal services. Correct? 20 MR. DAVIS: Let me look at that. 21 MR. KLOPMAN: It's Exhibit 98. 22 MR. DAVIS: It's here somewhere, because it couldn't 23 have gone far. 24 MR. KLOPMAN: Well, I don't have it, so. 25 MR. DAVIS: 7.3?</p>	<p>139</p> <p>1 MR. KLOPMAN: Well, that's if that's a -- well, I'm 2 not going to argue with you. That would be improper. But 3 personal services is what Ms. Romano, when teaching something 4 to a -- to a student in terms of how to do yoga, she's 5 providing a service. Would you agree with that? 6 MR. CHEN: Objection. Go ahead. 7 MR. DAVIS: I don't know if that's a service or not, 8 but it's certainly not going to -- from my -- from my 9 perspective, whether it did or not, it still doesn't meet C, 10 subsection C. I'm -- I'm -- 11 MR. KLOPMAN: I'm [inaudible]. 12 MR. DAVIS: I'm disinclined to agree with you, 13 simply because a yoga studio is specifically identified as a 14 health and fitness. 15 MR. KLOPMAN: Well, you recognize that this is a 16 house with a room that's used as a yoga studio; correct? 17 MR. DAVIS: Yes. 18 MR. KLOPMAN: And that the room itself is 21 feet by 19 18 feet; correct? 20 MR. DAVIS: Yes. 21 MR. KLOPMAN: And that's 378 square feet; correct? 22 MR. DAVIS: Sure. 23 MR. KLOPMAN: And that's less than 11 percent of the 24 square footage of the house, which is 3220 square feet. 25 Correct? You're just going to agree with me.</p>
<p>138</p> <p>1 MR. KLOPMAN: No, 3.5.1B page 3-58. Have you got it? 2 MR. DAVIS: I was trying -- no, I was trying -- 3 here we go. That's -- oh. 4 MR. KLOPMAN: Does it not -- 5 HEARING OFFICER ROBESON: Do you have it? 6 MR. DAVIS: I don't think I have it. 7 HEARING OFFICER ROBESON: Mr. Chen, can you give him 8 a copy? 9 MR. CHEN: [Inaudible] 10 MR. DAVIS: I will. Okay. I see this is a 11 description of the retail service establishment. 12 MR. KLOPMAN: And it says it includes a business 13 providing personal services. 14 MR. DAVIS: Right. 15 MR. KLOPMAN: And Ms. Romano is teaching yoga; 16 correct? To students. That's what she's doing in her home -- 17 the home studio in her house. 18 MR. DAVIS: I don't believe that that comes under 19 personal services, since it's also defined under health club. 20 I think that that's -- that is more the controlling feature. 21 A personal service could be something like uh, beauty salon 22 or something like that. 23 But this is -- I think that yoga studio is 24 identified in this same section as being part of a health and 25 fitness.</p>	<p>140</p> <p>1 MR. DAVIS: I'll agree with you. 2 MR. KLOPMAN: Okay, thank you. 3 MR. DAVIS: Now, I can agree with that number, but I 4 don't know where it's going. I don't know how it related to 5 this question. 6 MR. KLOPMAN: Well it's -- 7 HEARING OFFICER ROBESON: Okay, you know you are 8 going to get closing arguments. 9 MR. KLOPMAN: I know. I'm going to -- I -- I've made 10 my point, I think. I hope. 11 MR. DAVIS: What's his point? 12 HEARING OFFICER ROBESON: His point is the actual 13 physical development of the site is a lot residential and I'm 14 not going to characterize it, but it's not all personal 15 services. Go ahead. Is that your point? 16 MR. KLOPMAN: It's not -- it's not all a yoga 17 studio. A yoga studio, under the commercial -- under the 18 commercial statute that they've relied on, that doesn't take 19 into account it's a yoga studio standing by itself. 20 It's not a -- a room in a house that's used as a residence 21 100 percent of the time. And I think there's a big -- and I 22 think there's a big difference. 23 HEARING OFFICER ROBESON: I understand. I see what 24 you're saying. I'd like to save it for argument. 25 MR. CHEN: Thank you.</p>

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<p>141</p> <p>1 MR. KLOPMAN: And your -- your arguments about the</p> <p>2 master plan, again, they're all based upon the fact that you</p> <p>3 don't think that there's -- um, it's all -- it's all the same</p> <p>4 thing, in other words.</p> <p>5 You don't think that there's -- that the application is</p> <p>6 compliant and that -- that violates the master plan. Is that</p> <p>7 -- is that essentially in summary what you're saying?</p> <p>8 MR. DAVIS: No. What it essentially is, is that the</p> <p>9 master plan has guidance and recommendations contained in</p> <p>10 this special policy to say what they feel is important for</p> <p>11 the protection of -- of the residential communities and this</p> <p>12 application doesn't address it at all.</p> <p>13 If anything, I believe that it is contrary to the</p> <p>14 intent of the master plan.</p> <p>15 MR. KLOPMAN: And -- and that's based -- that --</p> <p>16 that's your opinion knowing that these classes are very</p> <p>17 limited. They're a small number a week and a small time</p> <p>18 frame.</p> <p>19 MR. DAVIS: It has nothing to do with the activity.</p> <p>20 It has to do with the with the physical characteristics of</p> <p>21 the site relative to how well it meets the parking and</p> <p>22 providing landscaping and -- and improving appearance.</p> <p>23 That has nothing to do with the use of -- in terms of the the</p> <p>24 activity that's happening. This all has to do with the</p> <p>25 physical characteristics.</p>	<p>143</p> <p>1 clubs and facilities land use, is that correct?</p> <p>2 MR. DAVIS: Correct.</p> <p>3 MR. CHEN: Just to clear up something the question</p> <p>4 about measurements for both Falcon Bridge Drive and Falcon</p> <p>5 Bridge Terrace.</p> <p>6 MR. DAVIS: Yes.</p> <p>7 MR. CHEN: Did you actually go out, physically</p> <p>8 yourself, and measure the widths of those two streets?</p> <p>9 MR. DAVIS: Yes. I did.</p> <p>10 MR. CHEN: And you gave that information to the</p> <p>11 hearing examiner on examination.</p> <p>12 MR. DAVIS: Correct.</p> <p>13 MR. CHEN: Okay. And it's your understanding there's</p> <p>14 going to be substitute teachers at this yoga studio?</p> <p>15 MR. DAVIS: Yes.</p> <p>16 MR. CHEN: And as I understand it, at the time that</p> <p>17 you prepared your preliminary opinion and the summary, you</p> <p>18 did not have the benefit of the maps or the parking shown on</p> <p>19 Exhibit 59A. Is that correct?</p> <p>20 MR. DAVIS: Uh, what is that Exhibit 59A?</p> <p>21 MR. CHEN: It's the one -- it's the hand write --</p> <p>22 MR. DAVIS: Oh, the hand write, correct. You're</p> <p>23 correct.</p> <p>24 MR. CHEN: Um, now and Mr. Klopman said that his</p> <p>25 client's testimony has been that the typical class will be a</p>
<p>142</p> <p>1 MR. KLOPMAN: But the house itself isn't changed. It</p> <p>2 looks exactly like every other house in the neighborhood.</p> <p>3 Correct?</p> <p>4 MR. DAVIS: Yeah. It's -- it's very similar.</p> <p>5 MR. KLOPMAN: Okay. Just give me a second, Your</p> <p>6 Honor. I think I'm done.</p> <p>7 MR. CHEN: Can I have that back?</p> <p>8 MR. DAVIS: Yes.</p> <p>9 MR. KLOPMAN: Yeah, Your Honor, that's all I have.</p> <p>10 HEARING OFFICER ROBESON: Thank you. Mr. Chen,</p> <p>11 redirect. And I call your attention to the fact that it's</p> <p>12 3:30.</p> <p>13 MR. CHEN: Okay. I'm not going to be long; I don't</p> <p>14 think.</p> <p>15 HEARING OFFICER ROBESON: Okay.</p> <p>16 MR. CHEN: Mr. Davis Mr. Klopman directed your</p> <p>17 attention to the retail service establishment use.</p> <p>18 MR. DAVIS: Yes.</p> <p>19 MR. CHEN: Uh, is that the same type of use as a</p> <p>20 health clubs and facilities use?</p> <p>21 MR. DAVIS: No. I don't believe so.</p> <p>22 MR. CHEN: Okay. In fact, they're two different</p> <p>23 types of land uses, is that correct?</p> <p>24 MR. DAVIS: That's correct.</p> <p>25 MR. CHEN: And a yoga studio is a type of health</p>	<p>144</p> <p>1 certain number under 10. Is that right?</p> <p>2 MR. DAVIS: Correct.</p> <p>3 MR. CHEN: Is that -- is the typical class that is</p> <p>4 represented by the applicant the correct [inaudible] basis</p> <p>5 for determining whether or not the conditional use is</p> <p>6 compatible or compliant with the zoning ordinance?</p> <p>7 MR. DAVIS: No. I -- I think that they're making a</p> <p>8 request for an expansion of use to the -- to a number.</p> <p>9 MR. CHEN: Right.</p> <p>10 MR. DAVIS: And that number becomes the measure by</p> <p>11 which you determine if it's appropriate, compatible and how</p> <p>12 you measure its effects.</p> <p>13 MR. CHEN: Okay. Well, is there any obligation, sir,</p> <p>14 for you or my clients or me to contact the technical staff at</p> <p>15 the park and planning commission relative to this</p> <p>16 application?</p> <p>17 MR. DAVIS: No.</p> <p>18 MR. CHEN: Uh, was there any obligation on you or my</p> <p>19 clients or I to contact the planning board?</p> <p>20 MR. DAVIS: No.</p> <p>21 MR. CHEN: That's all I've got.</p> <p>22 HEARING OFFICER ROBESON: All right. We're going to</p> <p>23 take a five-minute break and then we're going to go -- or I</p> <p>24 can make it a 10-minute break.</p> <p>25 MR. KLOPMAN: No.</p>

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<p>145</p> <p>1 HEARING OFFICER ROBESON: Five-minute break. And</p> <p>2 we'll go to rebuttal. All right? You may be excused.</p> <p>3 MR. DAVIS: Thank you.</p> <p>4 MR. KLOPMAN: Okay. I'm going to call on Natasha</p> <p>5 Romano too.</p> <p>6 HEARING OFFICER ROBESON: On rebuttal?</p> <p>7 MR. KLOPMAN: Mm-hmm.</p> <p>8 HEARING OFFICER ROBESON: Okay. Ms. Romano, you're</p> <p>9 still under oath.</p> <p>10 MR. KLOPMAN: Do you want this?</p> <p>11 MS. ROMANO: Yes. I'll take that.</p> <p>12 MR. KLOPMAN: Um, Ms. Romano, you've been in the</p> <p>13 hearing the entire time. Uh, yesterday and today, and you've</p> <p>14 made notes -- you have made yourself notes and you want to</p> <p>15 make a statement to respond to some of the things that were</p> <p>16 said. Please go ahead and do that.</p> <p>17 MS. ROMANO: Okay. I prepared something on my own.</p> <p>18 Um, and because -- I am a little bit nervous, I would like to</p> <p>19 just read it through.</p> <p>20 HEARING OFFICER ROBESON: That's fine.</p> <p>21 MS. ROMANO: So, Your Honor, I would like to address</p> <p>22 and clarify a few points brought up throughout this hearing</p> <p>23 and give you an opportunity to hear from me directly. Warrior</p> <p>24 One Yoga has grown over the years.</p> <p>25 It has grown more than just a business. The people</p>	<p>147</p> <p>1 with all the other abutting neighbors. I offered many</p> <p>2 compromises and alternate solutions, none of which was</p> <p>3 accepted.</p> <p>4 I also gave my personal contact information and</p> <p>5 asked that she reach out to me with any concerns about my</p> <p>6 home business. I did that with the Huber's as well and I did</p> <p>7 that with all of my abutting neighbors, but I never heard</p> <p>8 about any concerns.</p> <p>9 My assumption was the opposition concerns had to do</p> <p>10 with parking, so I instructed all students to park away from</p> <p>11 their houses and as a result, they parked on Falcon Bridge</p> <p>12 Terrace, which did create congestion.</p> <p>13 As soon as this came to my attention, I asked that</p> <p>14 the parking be spread out. I learned this was also</p> <p>15 unacceptable by the opposition. Through the suggestion of the</p> <p>16 planning board, a parking strategy had been implemented and</p> <p>17 followed.</p> <p>18 And there's a lot of pictures that show the cars</p> <p>19 that fit in the driveway and we -- I followed what planning</p> <p>20 board suggested. During this time, as complaints came in, I</p> <p>21 was told numerous times that the best way to work it out</p> <p>22 would -- would be to work it out with the complaining</p> <p>23 neighbors.</p> <p>24 So until it got to the point where applying for a</p> <p>25 conditional use permit -- or, well, applying for a</p>
<p>146</p> <p>1 that come to the studio are more than customers to me. They</p> <p>2 have become my friends and my family. So when the business</p> <p>3 outgrew the home occupancy license, I was more concerned with</p> <p>4 the needs of my students.</p> <p>5 I made various attempts to appease the opposing</p> <p>6 neighbors. Starting with face to face communication. I</p> <p>7 believe that's the neighborly thing to do. I went to all the</p> <p>8 abutting neighbors, starting off with an apology for any</p> <p>9 inconvenience they may have felt and asked if there was</p> <p>10 anything I could do to maintain peace in our neighborhood.</p> <p>11 I was trying to find solutions and work with anyone</p> <p>12 that had a concern, because I do respect all of my neighbors.</p> <p>13 When I approached Mr. and Mrs. Huber, Mrs. Huber very</p> <p>14 adamantly stated that she did call the county and threatened</p> <p>15 to continue to do so.</p> <p>16 I asked the Huber's what I could do to --</p> <p>17 HEARING OFFICER ROBESON: No -- just a second. No</p> <p>18 head shaking, please. Go ahead.</p> <p>19 MS. ROMANO: So I -- I did. I complied with their</p> <p>20 demands about trash can placement and leaf debris, but I was</p> <p>21 met with so much anger and hostility that I didn't feel</p> <p>22 comfortable or safe approaching them and resorted to going</p> <p>23 through legal counsel to address their concerns.</p> <p>24 When I approached Ms. Woodhouse, I apologized for</p> <p>25 any inconveniences she may have experienced, just as I did</p>	<p>148</p> <p>1 conditional use permit is very costly. Has been very costly,</p> <p>2 in terms of time, energy and money.</p> <p>3 Frankly, my small business may not even survive. I</p> <p>4 would not have proceeded with this application if there were</p> <p>5 any other alternative. During the conditional use application</p> <p>6 and in order to clarify the use of the alternate studio</p> <p>7 location, such as the carriage house, a brief history is in</p> <p>8 order.</p> <p>9 Originally, the class schedule at my own studio was</p> <p>10 Monday, Wednesday, Friday, Monday evenings and Thursday</p> <p>11 afternoon, as depicted in the statement of the case. In an</p> <p>12 effort to comply with the home occupancy permit, I moved</p> <p>13 Monday, Wednesday, Friday morning classes to the carriage</p> <p>14 house location and moved the less attended Wednesday and</p> <p>15 Sunday classes to my home studio.</p> <p>16 This all took time. I don't know where it lands in</p> <p>17 the violations, but it was -- you know, one violation was to</p> <p>18 get the home occupancy license. Another one was moving</p> <p>19 classes around. Another one was setting up telling my</p> <p>20 students and setting up ways to limit the classes.</p> <p>21 People would show up and I -- I felt bad; I didn't</p> <p>22 want to turn them away. So that was my mistake. I recognize</p> <p>23 that. So moving the classes was a temporary measure only</p> <p>24 until approval would be given or the next step would occur.</p> <p>25 The use of the carriage house is up for contract</p>

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<p>149</p> <p>1 every year and it's not always available for use, but my home 2 studio has equipment that other locations don't and I won't 3 go into further detail on why it's a better location than the 4 other places, but everybody favors it. 5 It's -- it's the neighborhood place. The class 6 schedule. Yes, there have been yoga activities outside of the 7 proposed schedule. The class schedule has changed over the 8 years from time to time. 9 At one time, my daughter and her friends wanted a 10 group of classes. I've taught many neighborhood kids at my 11 home studio. I've taught Girl Scouts, Boy Scouts, the 12 neighborhood Potomac Women's Club, other donated classes. 13 I have offered free classes to those who can't 14 afford it. Sadly, much of this flexibility will be eliminated 15 from this point forward and it has been. I understand what 16 Warrior One classes will be limited to the proposed schedule. 17 The Sunday class was a class that was not for 18 profit. The profit was used to pay a teacher so I could take 19 and learn for my own peace and tranquility. This class has 20 since been eliminated, along with the Acro Vinyasa club, 21 which was nothing different, really, then a book club or a 22 Bible study or meeting that met once or sometimes twice a 23 month. 24 Of course, Ms. Hearing Examiner, whatever your 25 ruling is, I'll follow to the letter of the ruling, and that</p>	<p>151</p> <p>1 a day in whatever breakup that is 60 a week restrictions, and 2 all yoga activities would fall under these. 3 I'd like to add the yoga activities happen in one 4 room, primarily. My earlier testimony referred to my personal 5 practice. I'm not used to testifying and I felt confused as 6 to where it was going. 7 Um, I was asked where I practice yoga, and yes, I 8 personally do practice yoga in different parts of my home, 9 but it's not where I share my yoga practice. The yoga 10 practice and the yoga activities that will fall under this, 11 are in that room and that room only. 12 So thank you for your time and consideration. That's 13 all. 14 HEARING OFFICER ROBESON: Okay. So you -- I have a 15 question. 16 MS. ROMANO: Please. 17 HEARING OFFICER ROBESON: I was a little confused 18 about what you believe the -- your application encompasses. 19 Does it -- because I didn't see anything about the private 20 lessons or the Thai massages in your statement of 21 justification. 22 So are you saying that you're going to continue 23 those activities as long as they're within 10 a day? 24 MS. ROMANO: Yes. I [inaudible]. 25 HEARING OFFICER ROBESON: So you could -- so theor -</p>
<p>150</p> <p>1 also has since been eliminated. In the case of my private 2 instruction, that will be limited to the overall weekly visit 3 number that would fall under the 10 a day, 60 a week 4 aggregate. 5 This is usually one car that parks in my driveway, 6 sometimes no times in a day and up to three times in a day. 7 Again, that varies. For the record, I'd like to make a 8 sincere offer of my commitment to any concerned neighbor that 9 the ruling of the hearing examiner will be strictly followed. 10 We have all been struggling and suffering through 11 this. Underneath all the angst, stress, pictures, charts, I 12 believe we all want the same thing. To just live in peace in 13 our homes, in our environment. 14 So regardless of the outcome, we can choose to 15 forgive, to move on in a peaceful and considerate manner. I 16 know I'm committed to maintaining a scenario that creates 17 minimal to no impact on the neighborhood. 18 I'm also committed to follow the rules and to abide 19 by Your Honor's decision in this case. Your Honor, I believe 20 the parking evolution has been finalized and implemented in a 21 manner that, at least I felt, was recommended by the planning 22 board. 23 And has minimal impact on the community. I'm not an 24 expert, but I do -- I do -- I do know my community. Should 25 you grant this application, I will strictly adhere to the 10</p>	<p>152</p> <p>1 - I'm just trying to figure out what you are asking for, 2 because it's not clear. It was not clear to me after reading 3 the first day. So you're asking for, say, six people show up 4 to a class on a Monday morning. 5 MS. ROMANO: Mm-hmm. 6 HEARING OFFICER ROBESON: That means you could have 7 four private lesson Thai massage classes and -- but do you 8 have times for those or no? 9 MS. ROMANO: Well, first of all, I -- I will follow 10 whatever you decide. 11 HEARING OFFICER ROBESON: Well, I want to know what 12 you're applying for. 13 MS. ROMANO: Okay. 14 HEARING OFFICER ROBESON: That's what I'm here to -- 15 MS. ROMANO: So, yes. So it probably wouldn't be 16 Monday, because I have a Monday morning and then a Monday 17 evening but the -- for example, if I had, let's say 18 Wednesday, I had a morning class and I had six people in the 19 class, then I might have a private or two later in the day. 20 All within -- all yoga activities under the 21 [inaudible]. 22 HEARING OFFICER ROBESON: What are all the yoga 23 activities? 24 MS. ROMANO: They -- they are the classes, they are 25 private instruction, which includes Thai massage and private</p>

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<p>153</p> <p>1 instruction and then I have equipment in my home. Uh, they're</p> <p>2 hanging silks and I use them in my classes and in my private</p> <p>3 group -- in my private instruction.</p> <p>4 So it can be -- that's pretty much all that is</p> <p>5 encompassed in that.</p> <p>6 HEARING OFFICER ROBESON: So you have classes, you</p> <p>7 have private instruction and then you have the Thai massage,</p> <p>8 which is a subset?</p> <p>9 MS. ROMANO: Falls under the private, yeah, because</p> <p>10 I only do that one on one.</p> <p>11 HEARING OFFICER ROBESON: Okay. And what is your</p> <p>12 plan for the Acro Nasa Yoga Club?</p> <p>13 MS. ROMANO: Oh, Acro -- well --</p> <p>14 HEARING OFFICER ROBESON: I'm sorry, Acra Vinya.</p> <p>15 MS. ROMANO: That's okay. That's okay. Um, when I</p> <p>16 learned that it was at question, I removed it. Um, I saw it</p> <p>17 really as a club, because that's what the name is. That's the</p> <p>18 name implies. Um.</p> <p>19 HEARING OFFICER ROBESON: But you accept money for</p> <p>20 it?</p> <p>21 MS. ROMANO: That covers the costs. There are costs</p> <p>22 associated with it. I don't profit from it. The costs that I</p> <p>23 -- the -- the monies that I bring in, pays for the teacher</p> <p>24 that teaches it. I don't teach it.</p> <p>25 HEARING OFFICER ROBESON: Um, you heard --</p>	<p>155</p> <p>1 HEARING OFFICER ROBESON: Okay. Mr. Chen?</p> <p>2 MR. CHEN: Um, just some clarification, maybe. As I</p> <p>3 understand your testimony, Ms. Romano, the problems that my</p> <p>4 clients have identified in this proceeding are no longer the</p> <p>5 case.</p> <p>6 They don't -- they're not problems anymore. Is that</p> <p>7 right?</p> <p>8 MS. ROMANO: I was answering a question from the</p> <p>9 hearing examiner, so.</p> <p>10 HEARING OFFICER ROBESON: Well, you can answer this</p> <p>11 one.</p> <p>12 MS. ROMANO: Repeat the question, please?</p> <p>13 MR. CHEN: Yeah. Um, I understood you to say a</p> <p>14 moment ago that at one time -- this is, I thought pretty much</p> <p>15 a quote, at one time there were complaints, but you were</p> <p>16 inside and you didn't see that there was any problems and</p> <p>17 that those problems are no longer the case.</p> <p>18 MS. ROMANO: Yes.</p> <p>19 MR. CHEN: Okay. And the Acro Vinyasa, I apologize</p> <p>20 for mispronouncing.</p> <p>21 MS. ROMANO: It's fine.</p> <p>22 MR. CHEN: But you're saying that club will no</p> <p>23 longer occur its activities, yoga activities will no longer</p> <p>24 occur at your residence?</p> <p>25 MS. ROMANO: Not --</p>
<p>154</p> <p>1 MS. ROMANO: But I've taken that out.</p> <p>2 HEARING OFFICER ROBESON: You heard Ms. Woodhouse</p> <p>3 and Mr. and Mrs. Huber. Do you feel their complaints are</p> <p>4 unreasonable?</p> <p>5 MS. ROMANO: You know, I have given a lot of thought</p> <p>6 to this and I think at one point they weren't. I'm sorry, at</p> <p>7 one point, their complaints were reasonable. Um, I think the</p> <p>8 -- the business grew to a point and I didn't realize what was</p> <p>9 going on outside of my room, because I was inside and</p> <p>10 everybody was kind of parking outside.</p> <p>11 Um, so I can see how there was a problem and I can</p> <p>12 see where the pictures come from and I can see all that. But</p> <p>13 a lot has happened since then. Um, and that doesn't exist</p> <p>14 anymore and that's not -- it's not an accurate depiction of</p> <p>15 what's going on or what would continue to go on.</p> <p>16 HEARING OFFICER ROBESON: Uh, Mr. -- let's see, I</p> <p>17 guess it would be you, Mr. Klopman. Do you want to -- do you</p> <p>18 have any questions of -- more questions of her based on my</p> <p>19 question?</p> <p>20 MR. KLOPMAN: Um, no, not based on your questions,</p> <p>21 but what I was going to ask is there are some pictures that</p> <p>22 are already in the record that I was going to show it to her,</p> <p>23 but I really don't want to spend the time on it.</p> <p>24 If they're admitted into evidence -- if all the</p> <p>25 pictures are in, I don't have to do that.</p>	<p>156</p> <p>1 HEARING OFFICER ROBESON: No nodding to the witness,</p> <p>2 please.</p> <p>3 MS. ROMANO: Not no. It will not occur. Now, this is</p> <p>4 where -- I -- I really would like a little clarification,</p> <p>5 maybe, from the hearing examiner, because if no money is</p> <p>6 exchanged, if it is my group of friends coming over to do</p> <p>7 whatever, and in this case it happens to be Acro Vinyasa, is</p> <p>8 that allowed?</p> <p>9 HEARING OFFICER ROBESON: Well.</p> <p>10 MR. CHEN: Excuse me, if I may make clarification of</p> <p>11 that. You're referring to Acro Vinyasa, is that right?</p> <p>12 MS. ROMANO: Mm-hmm.</p> <p>13 MR. CHEN: But you said, as I understand it, there's</p> <p>14 no profit.</p> <p>15 MS. ROMANO: There is no profit.</p> <p>16 MR. CHEN: But the payment is for the people</p> <p>17 teaching the course?</p> <p>18 MS. ROMANO: It is.</p> <p>19 MR. CHEN: So when you say no money exchange, you</p> <p>20 don't mean no money at all exchanged. You're -- as far as the</p> <p>21 Acro Vinyasa club is concerned, it's you're not pocketing</p> <p>22 money.</p> <p>23 The money goes to the teacher. Is that right?</p> <p>24 MS. ROMANO: Because she has -- she has training and</p> <p>25 skills and there's also equipment and --</p>



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<p>157</p> <p>1 HEARING OFFICER ROBESON: No, you -- you need to</p> <p>2 answer his question.</p> <p>3 MS. ROMANO: Okay.</p> <p>4 MR. CHEN: Who gets the money?</p> <p>5 MS. ROMANO: Um, the other teacher does.</p> <p>6 MR. CHEN: Okay.</p> <p>7 MS. ROMANO: But I'd like to -- I don't even know if</p> <p>8 I'm putting myself in a hole by saying this, but what if</p> <p>9 there was no exchange of money? Then is that just --</p> <p>10 MR. CHEN: I'd rely on your attorney to answer that</p> <p>11 question. Um, you also mentioned hanging silks.</p> <p>12 MS. ROMANO: Mm-hmm.</p> <p>13 MR. CHEN: What -- what type of activity is that?</p> <p>14 MS. ROMANO: That's a yoga activity.</p> <p>15 MR. CHEN: It's a type of yoga activity? And that --</p> <p>16 you teach that?</p> <p>17 MS. ROMANO: It's part of the classes.</p> <p>18 MR. CHEN: And so there's -- there's payment for</p> <p>19 hanging silks?</p> <p>20 MS. ROMANO: Yes.</p> <p>21 MR. CHEN: So am I correct in understanding that all</p> <p>22 -- the complete, all yoga activity, are the classes that you</p> <p>23 described, the private classes that have been described, the</p> <p>24 Thai massage, hanging silks and the Acro Vinyasa club.</p> <p>25 They're all yoga activities?</p>	<p>159</p> <p>1 MS. ROMANO: Yeah.</p> <p>2 MR. CHEN: But your testimony is that on any given</p> <p>3 day when less than 10 people appear for the class, that you</p> <p>4 would be able to have, and I know you don't know what it</p> <p>5 might be today, but you might have private classes or Thai</p> <p>6 massage classes, so long as you don't exceed 10.</p> <p>7 MS. ROMANO: Yes.</p> <p>8 HEARING OFFICER ROBESON: Well --</p> <p>9 MR. CHEN: Okay.</p> <p>10 HEARING OFFICER ROBESON: I'm just looking through</p> <p>11 your application and it's a big file and I wasn't the initial</p> <p>12 hearing examiner, but I will say to you, you're supposed to</p> <p>13 tell us everything you want at the beginning so all these</p> <p>14 people can review it. Okay?</p> <p>15 So they know what the impact is.</p> <p>16 MS. ROMANO: Mm-hmm.</p> <p>17 HEARING OFFICER ROBESON: I don't see anywhere where</p> <p>18 you can have additional people if you don't make the six</p> <p>19 students.</p> <p>20 MR. KLOPMAN: Your Honor, let me explain to you the</p> <p>21 [inaudible].</p> <p>22 HEARING OFFICER ROBESON: I -- I don't -- I am so --</p> <p>23 I want her.</p> <p>24 MR. KLOPMAN: Okay.</p> <p>25 HEARING OFFICER ROBESON: To -- to tell me.</p>
<p>158</p> <p>1 MS. ROMANO: They are. I don't -- the Acro Vinyasa</p> <p>2 club is something that I didn't consider part of my -- my</p> <p>3 application, the yoga business, it was purely my --</p> <p>4 MR. CHEN: You've said that. Are there any other</p> <p>5 yoga activities, whatsoever, other than what I've just</p> <p>6 identified?</p> <p>7 MS. ROMANO: No.</p> <p>8 MR. CHEN: And as I understand your testimony, if</p> <p>9 there is a day when, on a scheduled class, less than 10</p> <p>10 people appear, none -- in that circumstance, you may have</p> <p>11 private lessons on that day for the number of students --</p> <p>12 equal to the number of students who did not appear for the 10</p> <p>13 person class. Is that right?</p> <p>14 MS. ROMANO: Ask that again?</p> <p>15 MR. CHEN: Okay. Well, I think the example that the</p> <p>16 examiner gave was let's say on Monday you have a class</p> <p>17 schedule and it's -- you can have up to 10. Only six show up.</p> <p>18 As I understand your testimony, on that day, particular days,</p> <p>19 as an example only, you might have private classes or Thai</p> <p>20 massage for the four slots that were not present during the</p> <p>21 class?</p> <p>22 MS. ROMANO: Theoretically. But I can't -- I can't</p> <p>23 necessarily control that. Like if I have a class --</p> <p>24 MR. CHEN: I -- oh, I know -- I know you can't</p> <p>25 control it.</p>	<p>160</p> <p>1 MS. ROMANO: I will.</p> <p>2 HEARING OFFICER ROBESON: That it's not in your</p> <p>3 application and it causes me concern that you don't realize</p> <p>4 at this point it's not in your application.</p> <p>5 MS. ROMANO: It -- it wasn't something -- I -- I</p> <p>6 really thought this was about parking and the amount of</p> <p>7 people at one time.</p> <p>8 HEARING OFFICER ROBESON: Well, it --</p> <p>9 MS. ROMANO: I didn't -- I really didn't think one</p> <p>10 person at a time.</p> <p>11 HEARING OFFICER ROBESON: But do you selectively</p> <p>12 decide what you think is important and comply with that?</p> <p>13 MS. ROMANO: I've never been through this process,</p> <p>14 Your Honor. I -- I really don't know and I -- I started this</p> <p>15 with --</p> <p>16 HEARING OFFICER ROBESON: Why did you not comply</p> <p>17 with your prior approvals?</p> <p>18 MS. ROMANO: I really struggled with turning people</p> <p>19 away. I -- I really did and it wasn't for a profitable thing,</p> <p>20 because a lot of the people that were coming, some of them</p> <p>21 came for free.</p> <p>22 Some of them came for a very nominal fee, but they</p> <p>23 came for a long time. They came for -- they've been coming</p> <p>24 for years and years. They're -- and they need yoga and I --</p> <p>25 HEARING OFFICER ROBESON: Okay. I -- I understand</p>

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<p>161</p> <p>1 your commitment. You call it your community. I understand</p> <p>2 your commitment to your community. Um, well, Mr. Chen, do you</p> <p>3 have more questions?</p> <p>4 MR. CHEN: No.</p> <p>5 HEARING OFFICER ROBESON: As I read this to say if</p> <p>6 this is approved, and I haven't decided yet, if it's</p> <p>7 approved, I will tell you right now that I read your</p> <p>8 application as 10 classes, up to 10, that's it, because part</p> <p>9 of this process is review of all the impacts of the use.</p> <p>10 Who knows what the -- people have to know what</p> <p>11 you're proposing so there may be impacts you don't realize?</p> <p>12 MS. ROMANO: Mm-hmm.</p> <p>13 HEARING OFFICER ROBESON: Um.</p> <p>14 MR. KLOPMAN: You mean 10 per class?</p> <p>15 HEARING OFFICER ROBESON: Ten -- or no six classes</p> <p>16 at the time proposed, 10 per class, tops. Max. No Thai</p> <p>17 massage, no private teaching, and I hesitate to tell you,</p> <p>18 quite frankly, that the Acra Vinyasa club is a permitted use,</p> <p>19 because it's just another enforcement issue, because you</p> <p>20 know, do you really want us to go down through your books and</p> <p>21 figure out if all however many people, all that is going to</p> <p>22 the teacher.</p> <p>23 Is it going into your bank account? It's an enforcement issue</p> <p>24 and I know -- I hear that you're very committed, but I have</p> <p>25 those concerns. So now is your opportunity to -- to say part</p>	<p>163</p> <p>1 HEARING OFFICER ROBESON: The license.</p> <p>2 MS. ROMANO: The minor, because that's what I have.</p> <p>3 Um, I --</p> <p>4 HEARING OFFICER ROBESON: Who issues that? DPS? Um.</p> <p>5 MALE: Yes.</p> <p>6 MS. ROMANO: [Inaudible] So that's -- I -- I just</p> <p>7 want to have --</p> <p>8 HEARING OFFICER ROBESON: What do you think about</p> <p>9 the tandem parking? Are you -- what if somebody decides they</p> <p>10 have to leave early and they're parked in?</p> <p>11 MS. ROMANO: So we've kind of come across that and</p> <p>12 amongst the few we usually park in such a way where if you</p> <p>13 have to leave early, you're kind of the last one that pulls</p> <p>14 out.</p> <p>15 HEARING OFFICER ROBESON: And everybody knows that</p> <p>16 ahead of time?</p> <p>17 MS. ROMANO: And for the most part -- yeah, and for</p> <p>18 the most part, it's rare when that happens. Mostly everybody</p> <p>19 leaves at the same time.</p> <p>20 HEARING OFFICER ROBESON: Okay.</p> <p>21 MS. ROMANO: And -- and we're now aware of like,</p> <p>22 okay, who is parking last? You go so that there's no bottle</p> <p>23 neck and there's no issues.</p> <p>24 HEARING OFFICER ROBESON: All right. Um, anyone else</p> <p>25 have any questions?</p>
<p>162</p> <p>1 of being a -- well, now is your opportunity to say do you</p> <p>2 still want to conditional use if you can't have the people --</p> <p>3 the private lessons and the Thai massage?</p> <p>4 MS. ROMANO: I understood the current following the</p> <p>5 five and 20. I was thinking that if we asked for 10 and 60,</p> <p>6 it would all fall under that.</p> <p>7 HEARING OFFICER ROBESON: Well, I'll go back through</p> <p>8 the record. I didn't see that in there. Because when I was</p> <p>9 reading the transcript from March 4, I kept seeing things</p> <p>10 like the Thai massage, the personal enjoyment, um.</p> <p>11 MS. ROMANO: So the personal enjoyment, that is</p> <p>12 because I switched around the classes and I've -- like I</p> <p>13 said, I've eliminated those. I just want to run my little</p> <p>14 business, that's all. And I will do whatever is granted.</p> <p>15 Um, my attempt through this application is to just do that,</p> <p>16 just to get to be able to maintain what I've been doing.</p> <p>17 Nothing more. It's not an expansion. It's just to maintain</p> <p>18 what I've been doing.</p> <p>19 HEARING OFFICER ROBESON: Do you think you have a</p> <p>20 right to have the home business?</p> <p>21 MS. ROMANO: Um, I think -- well, I now know, that I</p> <p>22 am permitted to have a home occupancy.</p> <p>23 HEARING OFFICER ROBESON: A home occupancy, a home</p> <p>24 occupation.</p> <p>25 MS. ROMANO: Uh, the limited use.</p>	<p>164</p> <p>1 MR. KLOPMAN: I have a question based upon something</p> <p>2 that you asked.</p> <p>3 HEARING OFFICER ROBESON: Absolutely.</p> <p>4 MR. KLOPMAN: I want everybody to be on the same</p> <p>5 page. If the schedule is what you -- what we've asked, six,</p> <p>6 on the days indicated, there's no classes on Tuesday, there's</p> <p>7 no classes on Thursday -- I mean, on Tuesday.</p> <p>8 There's no classes on Tuesday. Would is there an</p> <p>9 issue if she has a Thai massage with one person on a Tuesday?</p> <p>10 Is that?</p> <p>11 HEARING OFFICER ROBESON: In my opinion?</p> <p>12 MR. KLOPMAN: Mm-hmm.</p> <p>13 HEARING OFFICER ROBESON: Yes. That's what I can't</p> <p>14 figure out about this application. It's kind of a moving --</p> <p>15 in my opinion, at this point, and I'm going to give you</p> <p>16 opportunity to respond. It's a little bit of a moving target</p> <p>17 and we don't usually get that and the staff report did not</p> <p>18 contain a lot of analysis as to, I mean, as to why their</p> <p>19 findings were based on their findings.</p> <p>20 So if you set it -- and I'll go back through your</p> <p>21 application.</p> <p>22 MR. KLOPMAN: I'm not sure it's in there. I think</p> <p>23 what happened, Your Honor, if I can just explain it to you.</p> <p>24 HEARING OFFICER ROBESON: Yeah.</p> <p>25 MR. KLOPMAN: That the hearing --</p>

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<p>165</p> <p>1 HEARING OFFICER ROBESON: At what hearing?</p> <p>2 MR. KLOPMAN: At the March 4th hearing.</p> <p>3 HEARING OFFICER ROBESON: At the March 4th hearing,</p> <p>4 okay.</p> <p>5 MR. KLOPMAN: The first day. There was testimony</p> <p>6 about the uses and at that testimony -- after that testimony</p> <p>7 Ms. Romano advised the hearing examiner that she would -- you</p> <p>8 know, she viewed that the 60, because as you've heard from</p> <p>9 other witnesses that is typically between two and seven.</p> <p>10 Okay? So there would be an ability to have -- she testified,</p> <p>11 I believe, at the hearing, that she has, you know, one or two</p> <p>12 people come to a Thai massage or personal yoga you know, a</p> <p>13 couple times a week.</p> <p>14 So that, to kind of satisfy everybody, because it was an</p> <p>15 offer, actually, to say, listen, you've gone through all of</p> <p>16 these other things. Ms. Romano said I won't do the -- I won't</p> <p>17 do the -- I won't -- I'll eliminate one, I'll eliminate the</p> <p>18 [inaudible].</p> <p>19 HEARING OFFICER ROBESON: [Inaudible]</p> <p>20 MR. KLOPMAN: The fight club, is easier for me to</p> <p>21 say. I'll eliminate that and I'll eliminate the Sunday and</p> <p>22 I'll even include the -- the -- the one or two -- the couple</p> <p>23 that she has Thai massage or personal yoga and I'll include</p> <p>24 that in the 60, because that is easy to do, because she's not</p> <p>25 going to have -- the only reason it's 10, Your Honor, and I</p>	<p>167</p> <p>1 I understand Brandywine painfully, but I think</p> <p>2 there's a sense of fairness involved in this and this</p> <p>3 applicant has had this application pending since November</p> <p>4 following multiple instances of citations and a court order.</p> <p>5 They've admitted they met with the parking planning</p> <p>6 commission staff. Now, moving -- calling it a moving target</p> <p>7 is a kindness and I -- and I appreciate that, but there's a</p> <p>8 point where you say this is it and respectfully, on the last</p> <p>9 rebuttal witness.</p> <p>10 HEARING OFFICER ROBESON: Well, you have a point.</p> <p>11 MR. KLOPMAN: Well, I did -- I did say this on March</p> <p>12 4th. I did -- I did raise this at March 4th. Maybe I didn't</p> <p>13 use the word amend, but I did say -- I -- I don't have the</p> <p>14 language in front of me, but I clearly said that this is what</p> <p>15 Ms. Romano was willing to do and that that's -- that -- it</p> <p>16 made everybody aware of it and Mr. Chen even asked questions</p> <p>17 about it.</p> <p>18 MR. CHEN: That's --</p> <p>19 MR. KLOPMAN: Let me -- can I finish, please?</p> <p>20 MR. CHEN: Go ahead.</p> <p>21 MR. KLOPMAN: So the -- so the surprise element</p> <p>22 really isn't there, because I made this clear on the record.</p> <p>23 I did and there was no equivocation. It wasn't we -- we --</p> <p>24 if.</p> <p>25 HEARING OFFICER ROBESON: Okay. I can read the</p>
<p>166</p> <p>1 tried to make this clear, is because of these specialty</p> <p>2 donation classes.</p> <p>3 And -- because she doesn't have 10, because most of</p> <p>4 the time -- this is the --</p> <p>5 HEARING OFFICER ROBESON: Okay, well, now you're in</p> <p>6 oral argument or you're testifying, so.</p> <p>7 MR. KLOPMAN: Well, that -- that was the -- that was</p> <p>8 the thought process.</p> <p>9 HEARING OFFICER ROBESON: You know, normally the</p> <p>10 process is that if you want to add something to an</p> <p>11 application, you have to file an amendment. Now, I can take</p> <p>12 an amendment at a hearing. Um, no, don't say anything,</p> <p>13 because Brandywine says I can.</p> <p>14 And I can take an amendment at a hearing. My problem</p> <p>15 is that I don't have any review from anybody with expertise</p> <p>16 and I -- so if you want to formally amend your application to</p> <p>17 say, you know, I'll take that right now.</p> <p>18 MR. CHEN: I object. My clients have been through</p> <p>19 months of this.</p> <p>20 HEARING OFFICER ROBESON: Well, I --</p> <p>21 MR. CHEN: My clients have -- have had to</p> <p>22 participate in a -- in a proceeding with substantial not</p> <p>23 really time, but financial cost. We are literally, literally</p> <p>24 on the last rebuttal witness and the hearing examiner is now</p> <p>25 saying how about amending the application.</p>	<p>168</p> <p>1 transcript.</p> <p>2 MR. CHEN: That was my [inaudible].</p> <p>3 HEARING OFFICER ROBESON: And I'm going to take it</p> <p>4 under advisement, okay? I'm trying to be fair to both sides.</p> <p>5 So what are we -- uh, any more questions of Ms. Romano?</p> <p>6 MR. KLOPMAN: No.</p> <p>7 HEARING OFFICER ROBESON: Mr. Chen?</p> <p>8 MR. KLOPMAN: Nope.</p> <p>9 HEARING OFFICER ROBESON: On the record? No. Okay.</p> <p>10 Now, you submitted a memo that Mr. Klopman has not had a</p> <p>11 chance to reply to.</p> <p>12 MR. KLOPMAN: I have thought about it. I do have a -</p> <p>13 -</p> <p>14 HEARING OFFICER ROBESON: Well, we can do closing</p> <p>15 statements now.</p> <p>16 MR. CHEN: May I offer some additional information?</p> <p>17 I've got two more memos.</p> <p>18 HEARING OFFICER ROBESON: Okay.</p> <p>19 MR. CHEN: And they're -- you know, I'm going to</p> <p>20 file them today regardless of what happens, but they're going</p> <p>21 to be filed today. They -- they don't present new evidence.</p> <p>22 HEARING OFFICER ROBESON: Wait, you have two more</p> <p>23 what?</p> <p>24 MR. CHEN: Memos.</p> <p>25 HEARING OFFICER ROBESON: Mr. Chen, that doesn't</p>

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<p>169</p> <p>1 give him -- what's your proposal for Mr. -- just a second. 2 What's your proposal for Mr. -- what are -- okay, first, what 3 are you filing? 4 MR. CHEN: I'm filing additional memos of law and I 5 can do that. 6 HEARING OFFICER ROBESON: On what topics? 7 MR. CHEN: Um, one -- hang on. I've got it. Plus, by 8 the way, case citations and case excerpts to give the hearing 9 examiner, all which is law. There will be -- 10 HEARING OFFICER ROBESON: Well, why can't you -- 11 that's what we normally do in our closing statements. 12 MR. CHEN: Yeah, I'm going -- that's right. What 13 you're going to get is on paper what normally orally you get. 14 Now, this case is heavily laden with compliance, with many 15 provisions of the zoning ordinance and that's where the memos 16 go. 17 HEARING OFFICER ROBESON: It's certainly heavily 18 laden. 19 MR. CHEN: Yes. And I mean, please, I respect the 20 hearing examiner, but it is, as you stated, there are many 21 provisions of the zoning ordinance that are applicable to 22 multiple issues in this case and I am going to be filing 23 today memos addressing those matters. 24 Now I -- I think that it's proper for me to do that. 25 It's well within my client's rights to do that. If I were</p>	<p>171</p> <p>1 way to do it. Believe me, Your Honor, I would -- I was hoping 2 to be done with this today and I'm sure you were. 3 HEARING OFFICER ROBESON: I was. 4 MR. CHEN: Me too. 5 HEARING OFFICER ROBESON: But I know -- he does have 6 the right to do it and I'm not sure I want to drag everybody 7 back for oral arguments. So I think what I'm going to do is 8 you can submit those. You -- if you want to give your final 9 arguments closing statement today, you can do that. 10 MR. CHEN: He's the applicant. The burden is on him. 11 Excuse me, I apologize, using the word him. The burden is on 12 the applicant. 13 HEARING OFFICER ROBESON: Yes. 14 MR. KLOPMAN: Your Honor, I would be just as fine to 15 come back and do the closing arguments. It would probably be 16 better for me. 17 HEARING OFFICER ROBESON: I'm not. 18 MR. KLOPMAN: It's 4:20. 19 HEARING OFFICER ROBESON: Yeah. Uh, let me take a 20 break. I want to go get our office our office and my personal 21 calendar are in the office, so I'm just going to go get them 22 and be right back. All right? So we're off the record. 23 What I'd like to do is, Mr. Chen, I'm going to take 24 in your arguments. Well, I'm going to accept your written 25 arguments. Um, so let's do that.</p>
<p>170</p> <p>1 presenting new evidence, that would be a wholly different 2 issue, but this is all law and discussion of evidence in the 3 record. 4 HEARING OFFICER ROBESON: Well, I'm going to give 5 Mr. Klopman ten days to respond. 6 MR. CHEN: Fine. I don't have any problem with that. 7 Having said that quite frankly, rather than asking for an 8 opportunity to respond to his memos, my suggestion is then 9 you schedule -- close the record factually today. 10 I mean, it is done today, and you schedule one or 11 two hours for oral argument only after the filing of his 12 memos. 13 HEARING OFFICER ROBESON: Mr. Klopman, do you have a 14 -- a position on that? 15 MR. KLOPMAN: Well, the -- you know, I just find it 16 -- I'm incredulous that Mr. Chen would argue about something 17 I raised on March 4th and then lay this on the -- and -- have 18 complained that this just happened and now he's lying on 19 these legal memos at the, you know, 4:15. 20 And I don't think there's another way to do it, 21 though, Your Honor, because out of fairness, I can't really 22 respond to what he's going to say. 23 HEARING OFFICER ROBESON: Not today, you can't. 24 Clearly. And I wouldn't expect you to. Um. 25 MR. KLOPMAN: So I don't know if there's a better</p>	<p>172</p> <p>1 MR. CHEN: Okay. 2 HEARING OFFICER ROBESON: Are you going to bring the 3 -- did you -- 4 MR. CHEN: Uh, I've got multiple copies, yes. Do you 5 want to mark them like normal? Like often is the case? 6 HEARING OFFICER ROBESON: Yes. 7 MR. CHEN: I know they're not factual evidence. 8 HEARING OFFICER ROBESON: I know. 9 MR. CHEN: Okay. Yes, I have several memos. 10 HEARING OFFICER ROBESON: It just helps us identify 11 them when we do our reports. 12 MR. CHEN: Right. Um, by the way, just a short 13 thing. I ask you please to read the transcript based upon Mr. 14 Klopman's representation that he's made in the last -- 15 HEARING OFFICER ROBESON: I did read it very 16 carefully once. I will read -- nope. I will read it. I will 17 read it again, okay? I am going to read it. 18 MR. CHEN: Thank you. And, okay why don't -- what's 19 our next exhibit number? 20 HEARING OFFICER ROBESON: 104. 21 MR. CHEN: If you'd bear with me, I'm going to mark 22 and go through and, um. 23 HEARING OFFICER ROBESON: No. What -- what are you 24 going to mark? 25 MR. CHEN: The memos and the case excerpts. You</p>

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<p>173</p> <p>1 don't want me to mark them?</p> <p>2 HEARING OFFICER ROBESON: What do you mean? Mark the</p> <p>3 exhibit number?</p> <p>4 MR. CHEN: Yeah, on it.</p> <p>5 HEARING OFFICER ROBESON: Oh, I thought you were</p> <p>6 going to mark them up.</p> <p>7 MR. CHEN: No. No.</p> <p>8 HEARING OFFICER ROBESON: Okay.</p> <p>9 MR. CHEN: I'm just going to put an exhibit number</p> <p>10 on the documents that I'm going to offer and present today.</p> <p>11 HEARING OFFICER ROBESON: Just hurry and do it. I'm</p> <p>12 normally a nice person.</p> <p>13 MR. KLOPMAN: Are you asking -- am I -- I was</p> <p>14 looking at something, [inaudible].</p> <p>15 HEARING OFFICER ROBESON: You're not -- you don't</p> <p>16 need to do anything at the moment.</p> <p>17 MR. KLOPMAN: Your Honor, I'll do anything that you</p> <p>18 want me to do. If you want to --</p> <p>19 HEARING OFFICER ROBESON: Well, I would like you --</p> <p>20 after he's finished, I want to get these where I can account</p> <p>21 for them and so they're -- nobody forgets them and then I'd</p> <p>22 like you to look at dates. I want to give you 10 days, unless</p> <p>23 you don't need 10 days, but my thought was I'd give you 10</p> <p>24 days.</p> <p>25 MR. KLOPMAN: I'll [inaudible].</p>	<p>175</p> <p>1 Exhibit 104, which is entitled noninherent adverse effects</p> <p>2 and 104A, is an excerpt from the Butler decision. Exhibit 105</p> <p>3 is a memo entitled No On-Street Parking.</p> <p>4 MR. KLOPMAN: I will. I will. She already said</p> <p>5 [inaudible].</p> <p>6 MR. CHEN: Exhibit 106.</p> <p>7 MR. KLOPMAN: How about this suggestion, Your Honor,</p> <p>8 why don't we just file written closing arguments?</p> <p>9 HEARING OFFICER ROBESON: That's what I was saying.</p> <p>10 MR. KLOPMAN: Just totally and not come back at all.</p> <p>11 I thought we were going to -- I misunderstood. I thought we</p> <p>12 were going to file responses and then come back and argue</p> <p>13 them too.</p> <p>14 HEARING OFFICER ROBESON: I thought that's what you</p> <p>15 were proposing.</p> <p>16 MR. KLOPMAN: I was --</p> <p>17 HEARING OFFICER ROBESON: Okay. Well, there was a</p> <p>18 miscommuni- -- it sounds like there was a miscommunication.</p> <p>19 MR. KLOPMAN: Yeah, you know it's late, Your Honor.</p> <p>20 HEARING OFFICER ROBESON: No, I know, and it's been</p> <p>21 a long couple of days.</p> <p>22 MR. KLOPMAN: I thought that that's what you were</p> <p>23 talking about.</p> <p>24 HEARING OFFICER ROBESON: Oh, no. I would prefer to</p> <p>25 do written closings.</p>
<p>174</p> <p>1 HEARING OFFICER ROBESON: It's up to you.</p> <p>2 MR. KLOPMAN: Your Honor, as I told you, you know,</p> <p>3 I'm limited here, so I could probably use the 10 days.</p> <p>4 HEARING OFFICER ROBESON: Okay. Then let's -- let's</p> <p>5 do -- so 10 days from today is --</p> <p>6 MR. KLOPMAN: May 9th.</p> <p>7 HEARING OFFICER ROBESON: Thank you. I still have to</p> <p>8 count it out. So Mr. Klopman's response is due May 9th and</p> <p>9 this is to all his memos. Go wild. Uh.</p> <p>10 MR. KLOPMAN: How many are there?</p> <p>11 HEARING OFFICER ROBESON: Well, I'm waiting. I think</p> <p>12 there's two, he said.</p> <p>13 MR. CHEN: There's more than two.</p> <p>14 MR. KLOPMAN: There's more than two? Maybe give me</p> <p>15 15 days. If they're -- I'm serious. If there are five memos -</p> <p>16 -</p> <p>17 HEARING OFFICER ROBESON: No, that's fine.</p> <p>18 MR. KLOPMAN: -- then, I mean, my God. This was the</p> <p>19 [inaudible] if anybody remembers what that is.</p> <p>20 HEARING OFFICER ROBESON: I do.</p> <p>21 MALE: 1912.</p> <p>22 HEARING OFFICER ROBESON: Of course I was a history</p> <p>23 major.</p> <p>24 MR. KLOPMAN: Oh, well there you go.</p> <p>25 MR. CHEN: Um, I'm handing out two documents. One is</p>	<p>176</p> <p>1 MR. KLOPMAN: Then that's -- we'll do written</p> <p>2 closings.</p> <p>3 HEARING OFFICER ROBESON: Um.</p> <p>4 MR. CHEN: Exhibit 106 is a memo entitled Deny</p> <p>5 Because Applicant Will Not Abide by Approval Conditions.</p> <p>6 Exhibit 106A is the excerpt from [inaudible] Exhibit 44,</p> <p>7 which is the circuit court memo order.</p> <p>8 Exhibit 106B is the -- an excerpt from --</p> <p>9 HEARING OFFICER ROBESON: Wait, wait, 106A is what?</p> <p>10 Excerpt from 46?</p> <p>11 MR. CHEN: Yes.</p> <p>12 HEARING OFFICER ROBESON: A?</p> <p>13 MR. CHEN: Uh, 44.</p> <p>14 HEARING OFFICER ROBESON: Forty-four.</p> <p>15 MR. CHEN: Exhibit 106B is an excerpt from</p> <p>16 [inaudible] Exhibit 43. Exhibit 106C is an excerpt from the</p> <p>17 Butler decision.</p> <p>18 HEARING OFFICER ROBESON: I thought you already put</p> <p>19 Butler in --</p> <p>20 MR. CHEN: Different part of Butler. You made</p> <p>21 mention of it yesterday and you were correct that it does</p> <p>22 make reference.</p> <p>23 HEARING OFFICER ROBESON: Oh, is this for the</p> <p>24 history of violation?</p> <p>25 MR. CHEN: Yes.</p>

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45 (177 to 180)

<p>177</p> <p>1 HEARING OFFICER ROBESON: Okay. Are you finished?</p> <p>2 MR. CHEN: Uh, let me just please check.</p> <p>3 MR. KLOPMAN: Tell me when I can be heard, Your</p> <p>4 Honor.</p> <p>5 HEARING OFFICER ROBESON: How much more do you have</p> <p>6 to do, Mr. Chen?</p> <p>7 MR. CHEN: I might be done. I'm just taking a quick</p> <p>8 look. Um, there are two exhibits that are already in the</p> <p>9 record.</p> <p>10 HEARING OFFICER ROBESON: Yes.</p> <p>11 MR. CHEN: That I'm going to give the examiner,</p> <p>12 especially since we're not going to have the oral argument</p> <p>13 and I'm going to use their exhibit numbers.</p> <p>14 MR. KLOPMAN: This is great.</p> <p>15 MR. CHEN: I'm handing the examiner the copy of</p> <p>16 Exhibit 70, which is the email.</p> <p>17 HEARING OFFICER ROBESON: Do you want to see it, Mr.</p> <p>18 Klopman?</p> <p>19 MR. CHEN: I believe it's a copy of it.</p> <p>20 MR. KLOPMAN: Yeah. I do.</p> <p>21 MR. CHEN: This is the email to the [inaudible].</p> <p>22 HEARING OFFICER ROBESON: Mr. Salazar?</p> <p>23 MR. CHEN: Yes.</p> <p>24 HEARING OFFICER ROBESON: Mm-hmm.</p> <p>25 MR. CHEN: And I'm also handing the examiner Exhibit</p>	<p>179</p> <p>1 do that within the time for, let's see.</p> <p>2 MR. KLOPMAN: I would ask for 20 days, Your Honor,</p> <p>3 given that -- the number of things that he's giving me. I</p> <p>4 mean, really, I mean, they're just like -- this is --</p> <p>5 MR. CHEN: Just the original of the one exhibit?</p> <p>6 HEARING OFFICER ROBESON: No, no, he's talking about</p> <p>7 all of everything. He can -- I was going to say he can submit</p> <p>8 it with his closing statement, unless, uh.</p> <p>9 MR. KLOPMAN: I can submit it earlier than that.</p> <p>10 HEARING OFFICER ROBESON: Okay, why don't --</p> <p>11 MR. KLOPMAN: I'll submit it --</p> <p>12 HEARING OFFICER ROBESON: Because he's got to have a</p> <p>13 right to look at it, so.</p> <p>14 MR. KLOPMAN: Right. I'll get it to you within seven</p> <p>15 days. I mean --</p> <p>16 HEARING OFFICER ROBESON: Just all of a sudden I was</p> <p>17 reminded of -- wasn't there something that goes, I can do</p> <p>18 that -- but anyway.</p> <p>19 MR. KLOPMAN: That's Name That Tune, Your Honor.</p> <p>20 HEARING OFFICER ROBESON: Maybe that was it. Yes.</p> <p>21 I'm sorry.</p> <p>22 MR. CHEN: Exhibit 108 are two citations on</p> <p>23 [inaudible].</p> <p>24 HEARING OFFICER ROBESON: What is the other one? Oh,</p> <p>25 traffic and parking.</p>
<p>178</p> <p>1 number 22T.</p> <p>2 HEARING OFFICER ROBESON: [Inaudible] Yashi. Okay.</p> <p>3 MR. CHEN: Give me a minute, because I may be done.</p> <p>4 Just -- oh. What's my next number? Seven? 107?</p> <p>5 MR. KLOPMAN: If these are already in the record,</p> <p>6 Your Honor, what --</p> <p>7 HEARING OFFICER ROBESON: Some are, some aren't. Are</p> <p>8 these already in the record?</p> <p>9 MR. CHEN: No. No. In a closing argument, it's not</p> <p>10 unusual to offer it.</p> <p>11 HEARING OFFICER ROBESON: Okay. I just want to</p> <p>12 finish by 5:00, because --</p> <p>13 MR. CHEN: Exhibit number -- marked 107, are</p> <p>14 excerpts of court decisions involving parking and traffic.</p> <p>15 HEARING OFFICER ROBESON: Okay. I'm going to let --</p> <p>16 do you have more to mark?</p> <p>17 MR. CHEN: Yeah.</p> <p>18 HEARING OFFICER ROBESON: Okay. I'm going to let Mr.</p> <p>19 Klopman speak, because I really don't want to delay for --</p> <p>20 for this. So.</p> <p>21 MR. KLOPMAN: Two things, Your Honor. One is we --</p> <p>22 you had talked before about allowing us to submit the</p> <p>23 original of the parking drawings. Can we have leave to do</p> <p>24 that?</p> <p>25 HEARING OFFICER ROBESON: If you can -- yes. You can</p>	<p>180</p> <p>1 MR. KLOPMAN: Don't you already have a file of all</p> <p>2 these, uh -- just making a joke.</p> <p>3 HEARING OFFICER ROBESON: I know. I understand.</p> <p>4 MR. KLOPMAN: A poor one. And the third thing, Your</p> <p>5 Honor, that I was going to raise was --</p> <p>6 HEARING OFFICER ROBESON: Yeah. The third thing.</p> <p>7 MR. KLOPMAN: Was is it your understanding, make</p> <p>8 sure my understanding is correct, we have moved to amend to -</p> <p>9 - to the 60 60-10, including all yoga activities? That's what</p> <p>10 we asked that we could do. I want to make sure that that's --</p> <p>11 HEARING OFFICER ROBESON: Well, you can say that for</p> <p>12 the record and I'm going to take under advisement.</p> <p>13 MR. KLOPMAN: Right. And I just want to make one</p> <p>14 last statement and you're going to read what happened at the</p> <p>15 other -- at the March 4th date.</p> <p>16 HEARING OFFICER ROBESON: I am going to scrutinize</p> <p>17 it.</p> <p>18 MR. KLOPMAN: Okay.</p> <p>19 HEARING OFFICER ROBESON: Really. Seriously. I know</p> <p>20 this is important. I can tell from both sides how important</p> <p>21 it is and I'm taking everything seriously.</p> <p>22 MR. KLOPMAN: I understand that and I'm just saying</p> <p>23 that we made -- that was the intent of our testimony and I</p> <p>24 made reference to it, but we're making -- we're making a</p> <p>25 formal amendment and we did allow -- we did make it -- I was</p>

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<p>181</p> <p>1 hoping we made it clear.</p> <p>2 Mr. Chen obviously has a different opinion.</p> <p>3 MR. CHEN: All I'm saying -- first of all, what you</p> <p>4 just heard is now backpedaling from what the gentleman said</p> <p>5 10 minutes ago when he said it was clearly, unequivocally we</p> <p>6 asked for an amendment.</p> <p>7 Now he's saying, well, we intended something. If I</p> <p>8 may finish, please. No such request was ever made at the</p> <p>9 March 4 hearing and I will abide by the hearing examiner</p> <p>10 reading the transcript.</p> <p>11 HEARING OFFICER ROBESON: Okay, that's -- now we're</p> <p>12 kind of arguing.</p> <p>13 MR. KLOPMAN: Okay. I'm done.</p> <p>14 HEARING OFFICER ROBESON: And so that's something</p> <p>15 that we can do in closing argument. Now, let's get to the</p> <p>16 dates. So in seven days, you'll submit the scale -- the</p> <p>17 accurate scale. Not that you intended to be inaccurate, it's</p> <p>18 just --</p> <p>19 MR. KLOPMAN: Right, that it's not.</p> <p>20 HEARING OFFICER ROBESON: -- you may not have known,</p> <p>21 um.</p> <p>22 MR. KLOPMAN: That's correct.</p> <p>23 HEARING OFFICER ROBESON: Okay. So one, two, three,</p> <p>24 four, five, six, seven, so the scale drawing is due May 7th.</p> <p>25 MR. KLOPMAN: Okay.</p>	<p>183</p> <p>1 HEARING OFFICER ROBESON: Monday.</p> <p>2 MR. KLOPMAN: Go ahead. How about May 21st?</p> <p>3 HEARING OFFICER ROBESON: That's fine.</p> <p>4 MR. KLOPMAN: Thank you. Are we done, Mr. Chen, with</p> <p>5 the filings?</p> <p>6 MR. CHEN: I don't have -- I don't think I have any,</p> <p>7 Your Honor, more.</p> <p>8 MR. KLOPMAN: [Inaudible]</p> <p>9 HEARING OFFICER ROBESON: And I apologize for the</p> <p>10 air -- the HVAC. Our office is being renovated and our</p> <p>11 building is --</p> <p>12 MR. CHEN: Is the earlier date for Mr. Klopman to do</p> <p>13 something?</p> <p>14 HEARING OFFICER ROBESON: The scale drawing is due</p> <p>15 on May 7th.</p> <p>16 MR. CHEN: What about May 9th? What is --</p> <p>17 MR. KLOPMAN: There's no May 9th.</p> <p>18 HEARING OFFICER ROBESON: There -- I crossed that</p> <p>19 out.</p> <p>20 MR. CHEN: Okay, thank you.</p> <p>21 HEARING OFFICER ROBESON: And written closing</p> <p>22 statements are due from both sides on the 21st.</p> <p>23 MR. KLOPMAN: Is that enough time to get it to him?</p> <p>24 [Inaudible]</p> <p>25 HEARING OFFICER ROBESON: All right. Anything else?</p>
<p>182</p> <p>1 HEARING OFFICER ROBESON: Now, except for that scale</p> <p>2 drawing and the transcript, and I may have to ask for an</p> <p>3 expedited transcript here, nothing else -- the record is</p> <p>4 closed. Except for that scaled drawing, closing arguments and</p> <p>5 the transcript, the record is closed, okay?</p> <p>6 So we keep getting letters in and I'm sure you can't</p> <p>7 disseminate to everyone, but we're not going to accept</p> <p>8 outside letters at this point, okay? Um, okay.</p> <p>9 Let's -- let's set a time for written -- a date for written</p> <p>10 closing arguments and written closing arguments, even though</p> <p>11 office hours are 8:00 to 5:00 or 8:30 to 5:00, we ask that</p> <p>12 they be in at 4:30, because sometimes we have -- our staff</p> <p>13 has to date stamp them and sometimes they're sitting around</p> <p>14 at 5:20 or 5:50, well, not 5:50.</p> <p>15 MR. KLOPMAN: Do you want them by email or in hand</p> <p>16 delivery?</p> <p>17 HEARING OFFICER ROBESON: I will accept them by</p> <p>18 email.</p> <p>19 MR. KLOPMAN: Okay.</p> <p>20 HEARING OFFICER ROBESON: With a hard copy to follow</p> <p>21 for our files. So we need a date for that and Mr. Klopman,</p> <p>22 you've, uh.</p> <p>23 MR. KLOPMAN: I said 20 days.</p> <p>24 HEARING OFFICER ROBESON: Twenty days, so May 20th?</p> <p>25 MR. KLOPMAN: What day of the week is that?</p>	<p>184</p> <p>1 Any other matters?</p> <p>2 MR. KLOPMAN: Thank you, Your Honor.</p> <p>3 HEARING OFFICER ROBESON: All right. We're</p> <p>4 adjourned.</p> <p>5 (Off the record at 4:40:05 p.m.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</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>185</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Joseph Velazquez, Digital Reporter in and for the</p> <p>3 State of Maryland, do hereby certify that on April 30, 2019,</p> <p>4 the witness Natasha Niklas Romano, was sworn before me at the</p> <p>5 aforementioned location, and that I am neither counsel for,</p> <p>6 related to, nor employed by any of the parties to this case</p> <p>7 and have no interest, financial or otherwise, in its outcome.</p> <p>8 IN WITNESS WHEREOF, I have hereunto set my hand this</p> <p>9 30th day of April, 2018.</p> <p>10</p> <p>11</p> <p>12</p> <p>13 </p> <p>14 _____</p> <p>15 DIGITAL REPORTER IN AND FOR THE</p> <p>16 STATE OF MARYLAND</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>186</p> <p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, Chris Naaden, a transcriber, hereby declare under</p> <p>3 penalty of perjury that to the best of my ability from the</p> <p>4 audio recordings and supporting information; and that I am</p> <p>5 neither counsel for, related to, nor employed by any of the</p> <p>6 parties to this case and have no interest, financial or</p> <p>7 otherwise, in its outcome, the above 186 pages contain a</p> <p>8 full, true and correct transcription of the tape-recording</p> <p>9 that I received regarding the event listed on the caption on</p> <p>10 page 1.</p> <p>11</p> <p>12 I further declare that I have no interest in the</p> <p>13 event of the action.</p> <p>14 </p> <p>15</p> <p>16 May 3, 2019</p> <p>17 Chris Naaden</p> <p>18</p> <p>19 (242266, Administrative Hearing, Natasha Romano, 4-30-19)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	