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Transcript of Administrative Hearing

Date: August 20, 2019
Case: 1784 Capital Holdings, LLC

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Conducted on August 20, 2019

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1	OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS FOR MONTGOMERY COUNTY, MARYLAND -----X IN RE: : 1784 CAPITAL HOLDINGS, LLC, : Case No.: CU 19-03 -----X HEARING Rockville, Maryland Tuesday, August 20, 2019 9:31 a.m. Job: 259525 Pages: 1 - 315 Transcribed by: Christian Naaden	3	A P P E A R A N C E S FOR MONTGOMERY COUNTY OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS: MARTIN L. GROSSMAN, HEARING EXAMINER FOR THE APPLICANT: ERIN E. GIRARD 7200 WISCONSIN AVENUE SUITE 800 BETHESDA, MD 20814 PHONE (301) 961-5153 FOR THE RESPONDENT: MICHELE M. ROSENFELD THE LAW OFFICE OF MICHELE ROSENFELD LLC 1 RESEARCH COURT SUITE 450 ROCKVILLE, MD 20850 PHONE: (301) 204-0913
2	Conditional Use Hearing held at: Montgomery County Office of Zoning and Administrative Hearings 100 Maryland Avenue County Office Building Room 200 Rockville, MD (240) 777-6660 Pursuant to agreement before Miles Tag, a digital reporter and notary public, in and for the State of Maryland.	4	C O N T E N T S TRANSCRIPT OF PROCEEDINGS PAGE 5 EXHIBITS (retained): Exhibit 40 Site Plan 99 Exhibit 53 Statement of Justification 295 Exhibit 56 Résumé of Patrick Phillips 281 Exhibit 62H Report of Patrick Phillips 281 Exhibit 59 Technical Staff's Opinion 9 Exhibit 60 Letters in Support 47 Exhibit 70 Letters in Opposition 47 Exhibit 85 Letter from Applicant 47 Exhibit 86 Applicant's Suggested Conditions 48 Exhibit 87 Exterior Signage Plans 52 Exhibit 88 Applicant's Fees for Reschedule 56 Exhibit 89 Email Exchange 86 Exhibit 90 Conditional Use Site Plan 140 Exhibit 91 Letter of Authorization 240 Exhibit 92 Memo regarding Truck Traffic 270

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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS</p> <p>2 [Part 1]</p> <p>3</p> <p>4 (On the record at 9:32:51 a.m.)</p> <p>5 HEARING OFFICER GROSSMAN: All right. You all ready to</p> <p>6 proceed? Court reporter? All right. Then I'll call the case.</p> <p>7 This is the resumption of the public hearing begun on</p> <p>8 August 9, 2019 in the matter of CU1903, an application by</p> <p>9 1784 Capital Holdings, LLC pursuant to zoning ordinance</p> <p>10 section 59.3.6.8.D.2.B for a conditional use to allow</p> <p>11 construction and use of a 126,955 square foot self-storage</p> <p>12 facility known as Kensington Storage at 10619 Connecticut</p> <p>13 Avenue on the southeast corner of the intersection of</p> <p>14 Connecticut Avenue and Payers Mill Road in Kensington,</p> <p>15 Maryland.</p> <p>16 The applicant's revised plan would also include a</p> <p>17 restaurant and artist studio space. The site which is</p> <p>18 identified as part of lot two Lorainer Nol's [ph] Estate</p> <p>19 consists of 1.06 acre property owned by Mountain View</p> <p>20 Burleson, LLC.</p> <p>21 The applicant is the contract purchaser and the site is</p> <p>22 in the CRT2.5 C2.0 R2.08 H75 commercial residential town</p> <p>23 zone. It's subject to the 2012 Kensington sector plan.</p> <p>24 This hearing is conducted by the officer's zoning and</p> <p>25 administrative hearings. My name is Martin Grossman. I'm the</p>	<p style="text-align: right;">7</p> <p>1 ERIN GIRARD: Erin Girard with Linowes & Blocher on</p> <p>2 behalf of the applicant.</p> <p>3 MICHELE ROSENBAUM: Michele Rosenbaum on behalf of the</p> <p>4 town of Kensington. With me is the mayor, Tracy Furman.</p> <p>5 HEARING OFFICER GROSSMAN: Good morning, Mayor Furman.</p> <p>6 Okay. Are there anybody -- are there any people here who wish</p> <p>7 to be heard who are not witnesses to be called by either of</p> <p>8 the parties who've announced themselves, either the applicant</p> <p>9 or the town of Kensington?</p> <p>10 All right. I see no hands today. Okay. Let me explain a</p> <p>11 little bit about the nature of the proceedings. I did this</p> <p>12 last time but it's always a good idea to a public hearing to</p> <p>13 do so.</p> <p>14 We proceed pretty much the way a courtroom does.</p> <p>15 Witnesses are all sworn in. There's a court reporter who</p> <p>16 takes everything down. The last -- the transcript of the</p> <p>17 August 9 proceeding is available on our website.</p> <p>18 We post our transcripts and -- on our website so that</p> <p>19 people can view them at their leisure. The rules of evidence</p> <p>20 are similar to, although not identical to, a courtroom.</p> <p>21 This is an application for a conditional use, which is a</p> <p>22 permitted use if certain specified standards are met that is</p> <p>23 spelled out in the zoning ordinance. It's not a variance. It</p> <p>24 is a use that is permitted if these conditions are met.</p> <p>25 All right. Let me turn to some preliminary matters and</p>
<p style="text-align: right;">6</p> <p>1 hearing examiner and I will write a report and decision in</p> <p>2 this case.</p> <p>3 The hearing was begun on August 9, 2019 because the</p> <p>4 continuance motion from the town of Kensington arrived too</p> <p>5 late to get notice out to the community.</p> <p>6 And the hearing examiner addressed some preliminary</p> <p>7 matters, took testimony from four community members present</p> <p>8 who wished to be heard and without objection, and after oral</p> <p>9 argument granted the motion of the town of Kensington to</p> <p>10 postpone the bulk of the hearing to today so that Michele</p> <p>11 Rosenbaum who entered her appearance for the town of</p> <p>12 Kensington can get up to speed on the case.</p> <p>13 Attorney Sue Ellen Ferguson agreed that her law firm</p> <p>14 counsel Barrett L would pay reasonable costs of about \$7,000</p> <p>15 for transportation and appearance of the applicant's experts.</p> <p>16 All counsel agreed to resumption date of August 20, 2019</p> <p>17 that is today, which was announced on the public record so</p> <p>18 written notice was not needed.</p> <p>19 The hearing examiner allowed the receipt of the town's</p> <p>20 late file pre-hearing statement after the applicant's counsel</p> <p>21 conceded that postponement of the bulk of the hearing mooted</p> <p>22 her objection.</p> <p>23 The hearing examiner posed some legal questions for the</p> <p>24 parties to address at the resumed hearing. Will the parties</p> <p>25 identify themselves please for the record?</p>	<p style="text-align: right;">8</p> <p>1 to eliminate the need for counsel to frantically take notes,</p> <p>2 I've actually made copies for counsel of the preliminary</p> <p>3 matters I'm about to read off.</p> <p>4 So Ms. Girard? Thank you very much, if you would hand</p> <p>5 this to counsel, as well. This is essentially identical to</p> <p>6 what I'm about to read.</p> <p>7 MICHELE ROSENBAUM: Thank you.</p> <p>8 HEARING OFFICER GROSSMAN: I know I can't read my notes</p> <p>9 at 10 minutes after I've taken it and if it gets a little</p> <p>10 warm in here, I understand that might be a problem with the</p> <p>11 thermostat and we'll try to reset that because I know it's</p> <p>12 going to be quite hot out today.</p> <p>13 All right. First matter. A, does the applicant agree to</p> <p>14 the findings by technical staff and the planning board other</p> <p>15 than with regard to the master plan compliance issues and</p> <p>16 access and circulation issues?</p> <p>17 ERIN GIRARD: So the general findings -- I'm sorry, I</p> <p>18 just want to clarify exactly.</p> <p>19 HEARING OFFICER GROSSMAN: Yes.</p> <p>20 ERIN GIRARD: Because obviously I think you've what we</p> <p>21 take issue with, but the general findings; yes?</p> <p>22 HEARING OFFICER GROSSMAN: Well, I'm not sure exactly</p> <p>23 what you mean in general is, are there any findings other</p> <p>24 than those that pertain to master plan interpretation? That</p> <p>25 is in this case sector plan interpretation and the question</p>

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<p>9</p> <p>1 of access and circulation.</p> <p>2 Other than those, are there any findings that you take</p> <p>3 issue with in this case by technical staff? If you want, I'll</p> <p>4 let you think about that.</p> <p>5 ERIN GIRARD: Yeah. If you could just --</p> <p>6 HEARING OFFICER GROSSMAN: I have more specific</p> <p>7 questions as you go down the list here.</p> <p>8 ERIN GIRARD: Sure.</p> <p>9 HEARING OFFICER GROSSMAN: B, what's the applicant's</p> <p>10 position on technics -- technical staff's opinion?</p> <p>11 That's exhibit 59, page 12, that only 15 percent of the</p> <p>12 gas station trips can be used to offset new trips from the</p> <p>13 proposed use. And you can have your traffic engineer address</p> <p>14 that, but I'm --</p> <p>15 ERIN GIRARD: And he's prepared to do so.</p> <p>16 HEARING OFFICER GROSSMAN: Okay. Fine.</p> <p>17 ERIN GIRARD: So yes. We did read -- and -- and just so</p> <p>18 the hearing examiner knows, we didn't know any of these</p> <p>19 issues until the staff approach was posted.</p> <p>20 HEARING OFFICER GROSSMAN: I see.</p> <p>21 ERIN GIRARD: I think in a typ- -- and I'll get into</p> <p>22 that in my opening statement, but in a typical case, a lot of</p> <p>23 these issues would have been vetted before we got here.</p> <p>24 HEARING OFFICER GROSSMAN: Okay.</p> <p>25 ERIN GIRARD: But in this case, we didn't see any of</p>	<p>11</p> <p>1 circulation plans?</p> <p>2 And they're spelled out in exhibit 59 pages 10 to 11 and</p> <p>3 I've summarized them in items one through nine on this list</p> <p>4 of preliminary matters. I'll just briefly read them.</p> <p>5 Number one, locating access on Canada -- Connecticut</p> <p>6 Avenue is not ideal and that it introduces a conflict point</p> <p>7 for drivers, pedestrians, and cyclists with a high volume 35</p> <p>8 minute mile per hour state road. The angled exit introduces</p> <p>9 safety concerns.</p> <p>10 The posed access and Connecticut Avenue exceeds what --</p> <p>11 exceeds what is allowed by the zoning ordinance for a two way</p> <p>12 access in the CR zone by approximately three feet.</p> <p>13 The proposed entry is too wide and increases the</p> <p>14 potential for a future bicycle vehicle and pedestrian vehicle</p> <p>15 conflict. So that's number one.</p> <p>16 Number two, they reckon they discuss the applicants</p> <p>17 should evaluate the feasibility of alternative options such</p> <p>18 as moving the proposed curb cut to Plyers Mill Road or</p> <p>19 examining separate points dedicated to ingress only or egress</p> <p>20 only.</p> <p>21 The applicant could additionally explore serving the</p> <p>22 site via the proposed shared access only. However, the</p> <p>23 existing curb cut on Metropolitan Avenue is too close to the</p> <p>24 intersection of Metropolitan Avenue and Plyers Mill Road.</p> <p>25 Existing left turns out of the site are challenging and</p>
<p>10</p> <p>1 this until the staff report issues, so we didn't have a</p> <p>2 chance to address it. So I feel like there's more issues than</p> <p>3 there typically would be, but that's one of them and we will</p> <p>4 address that.</p> <p>5 HEARING OFFICER GROSSMAN: Okay. Where in your</p> <p>6 submission C, where in your submissions do you address the</p> <p>7 specific requirements for the general development standards</p> <p>8 under zoning ordinance article 596, on which I must make</p> <p>9 findings per section 59731E1B?</p> <p>10 For example, which of your submissions shows me how your</p> <p>11 proposal satisfies section 5961 on site access? I didn't see</p> <p>12 anything in your materials that addressed the specific</p> <p>13 requirements for site access and they laid -- laid out in</p> <p>14 that section?</p> <p>15 ERIN GIRARD: We'll -- we'll find that.</p> <p>16 HEARING OFFICER GROSSMAN: Okay.</p> <p>17 ERIN GIRARD: I'm sorry.</p> <p>18 HEARING OFFICER GROSSMAN: All right.</p> <p>19 ERIN GIRARD: I wasn't ready for some of these, so I</p> <p>20 didn't have them --</p> <p>21 HEARING OFFICER GROSSMAN: I understand.</p> <p>22 ERIN GIRARD: Prepared.</p> <p>23 HEARING OFFICER GROSSMAN: Does the applicant, and this</p> <p>24 is D, does the applicant degree to staff's various</p> <p>25 recommended -- recommendations for changing your access and</p>	<p>12</p> <p>1 trucks attempting to make this movement would obstruct</p> <p>2 traffic. The proposed use is problematic from a -- from a</p> <p>3 traffic safety perspective.</p> <p>4 ERIN GIRARD: Would you like me to address them each as</p> <p>5 you go?</p> <p>6 HEARING OFFICER GROSSMAN: I'm going to allow you to --</p> <p>7 to address it through your witnesses if you like, because</p> <p>8 really that's what I'm going to be relying on. But these are</p> <p>9 issues raised by the technical staff and I didn't see</p> <p>10 addressed in your materials.</p> <p>11 ERIN GIRARD: Yeah. Our -- our engineer has -- we -- he</p> <p>12 will be prepared, trust me.</p> <p>13 HEARING OFFICER GROSSMAN: Okay.</p> <p>14 ERIN GIRARD: I'll go over it with him.</p> <p>15 HEARING OFFICER GROSSMAN: All right. Number three is</p> <p>16 the applicants should provide a truck circulation plan for</p> <p>17 staff review. Any modifications to adjacent intersections</p> <p>18 should account for the needs of the design of vehicle.</p> <p>19 By the way, I mean, I realize that if this is approved,</p> <p>20 this preliminary plan, sketch, plan review and so on; so some</p> <p>21 of the more technical details would await that if this</p> <p>22 conditional use is approved.</p> <p>23 On the other hand, I have to make certain findings. I</p> <p>24 don't have to make a finding on the adequacy -- adequacy of</p> <p>25 public facilities because since they'll be preliminary plan,</p>

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<p>13</p> <p>1 the zoning ordinance requires that that finding be made not 2 by the hearing examiner but by the planning board. 3 However, I do have to make a certain findings about 4 access, safety, and traffic safety. So I do need some 5 evidence regarding that. 6 The less important is the, you know, something like the 7 local area transportation review because once again, I'm not 8 making a finding on -- on adequacy of -- of public facilities 9 or services. 10 Number four, no clear pedestrian path is defined 11 fronting Connecticut Avenue within applicants Hardscape 12 Plaza. 13 The applicants should show clearly the delineated 14 pedestrian paths in its preliminary plan submission. These 15 paralleled partway and should include an adequate buffer 16 separating pedestrians from traffic. 17 Number five, the applicant proposes one curb ramp at the 18 northwest corner of its property to facilitate pedestrian 19 crossings over Plyers Mill Road as shown the curb ramp 20 orients pedestrians into the corner of the intersection, 21 which is unsafe individuals with visual impairments. 22 In order to be acceptable, the applicant should provide 23 a curb ramp perpendicular to Plyers Mill Road. These are all 24 comments once again and suggestions by technical staff. They 25 may become requirements by technical staff, but in any event</p>	<p>15</p> <p>1 movement of items into and out of storage facility. 2 Because the carter is adjacent to vehicle parking, if 3 the conditional use is approved, the applicant should provide 4 wheel stops to protect pedestrians from cars backing into 5 spaces. 6 So that -- that summarizes those observations on those - 7 - those pages. So you know, I would like to know what the 8 applicant's plans are in regard to those comments. All right. 9 Moving to a different -- the legal question, which I 10 raised initially at the August 9 proceeding. Don't I have to 11 give significant deference to the planning board's 12 interpretation of its own sector plan? And you can address 13 that question now if you'd like. 14 ERIN GIRARD: So as the hearing examiner's aware, under 15 section 59712, planning staff makes a review -- reviews and 16 recommends on the conditional use. The planning board also 17 reviews and makes a recommendation and the hearing examiner 18 has the decision. 19 So our -- our -- our position is that the hearing 20 examiner's on equal footing with the planning board with 21 regard to make -- having to make a finding of compliance with 22 the sector plan. 23 Although the planning board and staff do drafts sector 24 plans, the -- the district council ultimately is the one that 25 proves it and it's not at all unusual for the district</p>
<p>14</p> <p>1 right now they are suggestions and observations. 2 Six, consult with SHA State Highway Administration to 3 determine whether additional pedestrian crossing 4 infrastructure is required. Considering that Connecticut 5 Avenue is one of the bordering -- budding roads. 6 Seven, pedestrian access to this site would be improved 7 by tightening the curved radius at the northeast corner of 8 the intersection of Connecticut Avenue and Plyers Mill Road. 9 This would allow -- this would slow turns, reduce 10 crossing distances, and allow space for the installation of 11 separate curb ramps. 12 That kind of detail of course is more a question of 13 preliminary plan, but I -- I do -- just to be complete about 14 what they -- they've indicated, I've put that -- put that in 15 this -- in summary. 16 Number eight, as shown on the plan, the applicant's 17 driveway crossing is not acceptable. The applicant should 18 eliminate the curb ramps, detectable warning strips and high 19 visibility markings shown and instead provide a flush 20 concrete sidewalk across the site's driveway with a maximum 21 cross slope of two percent. 22 And nine, internal pedestrian circulation is provided in 23 the parking lot via a seven foot wide striped corridor 24 between the proposed surface parking spaces in the building. 25 The carter is at grade of the parking lot to facilitate the</p>	<p>16</p> <p>1 council to make significant changes to a master plan sector 2 plan when it's before them. 3 The -- so the hearing exam, as I noted the -- big -- 4 once the district council approves a sector plan, the 5 planning board has no choice but to adopt it. So in its final 6 form, it is very much a function of what the district council 7 wants, even more so than what the planning board wants. 8 And then once it comes into effect, as I noted for 9 conditional use, the planning board reviews and makes a 10 recommendation and then defers it to the -- or recommends to 11 the hearing examiner what should happen. 12 I would also argue that the -- like the planning board 13 relying on a staff report, and this is clear in Maryland law, 14 the hearing zone -- examiner should only rely on a planning 15 board's recommendations if it's thorough well-conceived and 16 contain adequate findings of fact. 17 And for that we're citing Park and Planning versus 18 versus the greater Baden-Aquasco Citizens Association. So I 19 think that -- 20 HEARING OFFICER GROSSMAN: You have a citation for that? 21 ERIN GIRARD: I do, 412, Maryland 73. So I think that -- 22 HEARING OFFICER GROSSMAN: What's the -- what's the name 23 of it again? 24 ERIN GIRARD: MNC PPC et al versus greater Baden, B-a-d- 25 e-n hyphen Aquasco, A-q-u-a-s-c-o, Citizens Association, et</p>

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<p>17</p> <p>1 al.</p> <p>2 HEARING OFFICER GROSSMAN: And what's the date of that</p> <p>3 decision?</p> <p>4 ERIN GIRARD: 2009.</p> <p>5 HEARING OFFICER GROSSMAN: Okay.</p> <p>6 ERIN GIRARD: And similar to that, the hearing examiner</p> <p>7 must weigh the evidence as noted in -- now I got to get this</p> <p>8 cite.</p> <p>9 That opinion testimony of -- opinion testimony is of no</p> <p>10 greater probative value than is allowed by the soundness of</p> <p>11 its foundation of reason and fact. And that is --</p> <p>12 HEARING OFFICER GROSSMAN: Well, that is -- I agree with</p> <p>13 that general proposition. And I -- that's well -- well</p> <p>14 founded.</p> <p>15 ERIN GIRARD: Okay. I can give you a citation.</p> <p>16 HEARING OFFICER GROSSMAN: It's okay.</p> <p>17 ERIN GIRARD: Okay. So -- so our position is that if you</p> <p>18 actually look at the staff report, it's deficient, the staff</p> <p>19 report and the planning board's letter, it's deficient in a</p> <p>20 number of ways. It analyzes the sector plan.</p> <p>21 And in fact, at the end of the day, the planning board</p> <p>22 was split as to whether or not to recommend approval of the</p> <p>23 conditional use and did not actually adopt staff's rationale</p> <p>24 as contained in this report.</p> <p>25 As you know, usually the staff report or the planning</p>	<p>19</p> <p>1 As you can see in the planning board's letter, they talk</p> <p>2 about why we relied on staff saying there is a need for</p> <p>3 residential in this area, even though there's a moratorium.</p> <p>4 And we, you know, we think that there will be patient</p> <p>5 and -- and wait for something that is more -- I don't have</p> <p>6 the exact language but perfectly in line with the sector</p> <p>7 plan.</p> <p>8 So it really wasn't -- the planning board itself didn't</p> <p>9 get into the sector plan analysis as -- as relied or as -- as</p> <p>10 set forth by staff. They really went into other territory and</p> <p>11 that's reflected in their letter.</p> <p>12 HEARING OFFICER GROSSMAN: All right. And I mean, a</p> <p>13 connected question before we get into the legal issues</p> <p>14 surrounding that, the Maryland code provisions, is whether or</p> <p>15 not those legal provisions in Section 24 201 of the land use</p> <p>16 article in the Maryland code, whether those provisions also</p> <p>17 give a heightened need to pay attention to what the town of</p> <p>18 Kensington said in its resolution.</p> <p>19 Doesn't that have, in addition to the -- to the -- the -</p> <p>20 - the right amount of case law saying one should allow --</p> <p>21 should give great deference to the interpretation of an</p> <p>22 agency of its own regulations.</p> <p>23 Here we have an additional code provision which asks us</p> <p>24 to give some deference; does it not? To the opinions of the</p> <p>25 town of Kensington above and beyond what would normally be</p>
<p>18</p> <p>1 board would adopt the rationale and the reasoning of the</p> <p>2 staff and it did not do so here. So I think that's in very --</p> <p>3 a very important factor.</p> <p>4 HEARING OFFICER GROSSMAN: You mean, it didn't</p> <p>5 specifically state we adopt it or --</p> <p>6 ERIN GIRARD: Correct.</p> <p>7 HEARING OFFICER GROSSMAN: You mean that they took --</p> <p>8 ERIN GIRARD: They didn't incorporate by reference, they</p> <p>9 didn't -- it really -- their letter goes through the</p> <p>10 discussion that was had during the hearing.</p> <p>11 And as I'll flush out more in my opening statement, I</p> <p>12 think that much of the criteria that they talked about as far</p> <p>13 as the recommendations were irrelevant to the findings that</p> <p>14 need to be made for conditional use. But at the end of the</p> <p>15 day, they did not actually adopt staff's position regarding</p> <p>16 sector plan compliance.</p> <p>17 HEARING OFFICER GROSSMAN: Didn't they reach essentially</p> <p>18 the same conclusion for essentially the same reason that it</p> <p>19 didn't fulfill -- I mean, the 3-2 majority didn't fulfill the</p> <p>20 goals and recommendations of the sector plan?</p> <p>21 ERIN GIRARD: It does in a different way. Basically what</p> <p>22 it says -- what the planning board said and which is</p> <p>23 reflected in their letter is we want to wait. We don't really</p> <p>24 like this. We don't -- we're going to wait for something</p> <p>25 better.</p>	<p>20</p> <p>1 considered in the evidence.</p> <p>2 ERIN GIRARD: It does in that it requires the</p> <p>3 supermajority vote. I don't -- I don't know that it</p> <p>4 necessarily -- I mean, it requires deference in that way, but</p> <p>5 not in the way we actually have looked at the cases, the case</p> <p>6 that you're citing to with the -- you know, you have to give</p> <p>7 deference to -- deference to an agency's interpretation of</p> <p>8 its own rules.</p> <p>9 And we think that that's actually very distinguishable</p> <p>10 from what's happening here. I mean, under the code, the</p> <p>11 hearing examiner has -- has the requirement to make a finding</p> <p>12 of sector plan, master plan compliance.</p> <p>13 HEARING OFFICER GROSSMAN: Right.</p> <p>14 ERIN GIRARD: And it's not -- it's not akin to the case</p> <p>15 law that talks about the reviewing court that's looking at an</p> <p>16 agency and how it interprets its rules. So we -- we think</p> <p>17 that that's actually a different line of case law.</p> <p>18 HEARING OFFICER GROSSMAN: Okay. All right. Do you have</p> <p>19 anything else to say on that specific point about the</p> <p>20 deference thing before I ask counsel for the town Kensington?</p> <p>21 ERIN GIRARD: Only that, and again, I'll hit this more</p> <p>22 in my own opening statement, that -- that really in our</p> <p>23 opinion again, that the -- that even if deference was owed,</p> <p>24 it can only be owed to the extent that the planning board's</p> <p>25 conclusions are -- are sound and we intend to prove through</p>

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<p style="text-align: right;">21</p> <p>1 our experts that the weight of the evidence actually goes the</p> <p>2 other way.</p> <p>3 HEARING OFFICER GROSSMAN: Okay. Ms. Rosenbaum?</p> <p>4 MICHELE ROSENBAUM: Thank you. With respect to the</p> <p>5 question of whether or not you need to give significant</p> <p>6 deference to the board's interpretation of its own sector</p> <p>7 plan, I submit that you do.</p> <p>8 I think that in particular, given the provisions of the</p> <p>9 land use code of 24 201B and C, that in fact it's required</p> <p>10 that you give difference.</p> <p>11 And so those code provisions provide that absent of</p> <p>12 planning board vote overturning the town's resolution, that</p> <p>13 really their determination on this issue, I think as we'll</p> <p>14 argue later is -- is dispositive. I think even --</p> <p>15 HEARING OFFICER GROSSMAN: When you say dispositive, you</p> <p>16 mean that I don't have authority to have a different -- reach</p> <p>17 a different decision or do you mean that it's influential or</p> <p>18 persuasive?</p> <p>19 MICHELE ROSENBAUM: I -- I -- I -- I submit that you</p> <p>20 don't have the authority to reach a different decision and</p> <p>21 we'll get into that in more -- more detail as we move</p> <p>22 forward.</p> <p>23 But even -- even assuming for argument's sake that you</p> <p>24 don't agree with that conclusion, I do think that the fact</p> <p>25 that the planning board's is really the keeper of the master</p>	<p style="text-align: right;">23</p> <p>1 HEARING OFFICER GROSSMAN: Okay. Fair enough. All right.</p> <p>2 Let's go on to the other legal questions and I know this is F</p> <p>3 and on my list and on the legal question addressed to both</p> <p>4 the applicant and the town of Kensington.</p> <p>5 Kensington is Maryland code land use [inaudible] we just</p> <p>6 talked about Section 24 201D requires a two-thirds council</p> <p>7 majority of ruling against the position of the town of</p> <p>8 Kensington in a zoning matter, but does not require counsel</p> <p>9 action and other land use matters under Section 24 201C.</p> <p>10 As a legal matter, is the conditional use decision a</p> <p>11 zoning matter or a land use matter within the meaning of this</p> <p>12 section?</p> <p>13 And as I asked the last time, I'd like to see some</p> <p>14 legislative history on this question because conditional uses</p> <p>15 do not generally go to the counsel.</p> <p>16 Well, they did not go to the counsel not even generally,</p> <p>17 but by as a matter of zoning ordinance provision that decided</p> <p>18 by the hearing examiner subject to appeal to the board of</p> <p>19 appeals on the hearing examiner record.</p> <p>20 And then after that if there's a disagreement, it goes</p> <p>21 to the circuit court. So that still leaves this question that</p> <p>22 I posed, is this a land use matter or a zoning matter within</p> <p>23 the meaning of the Maryland code? Ms. Girard?</p> <p>24 ERIN GIRARD: Yes. We looked at this quite extensively</p> <p>25 and attempted to find the legislative history that you were</p>
<p style="text-align: right;">22</p> <p>1 plans at the end of the day, the planning board, they draft</p> <p>2 them, they submit them to the district council.</p> <p>3 The district council adopts it in its final form that</p> <p>4 it's sent back to the planning board for approval.</p> <p>5 And the planning board, I think under general case law,</p> <p>6 is considered to be the entity that really carries great</p> <p>7 weight in terms of a master plan is sec- -- sector plan</p> <p>8 recommendations.</p> <p>9 That does not mean absent the operation of the land use</p> <p>10 code, which I'll talk about later, that under ordinary</p> <p>11 circumstances you would not have the discretion to find in</p> <p>12 manner different from the planning board.</p> <p>13 I think generally speaking you would give their</p> <p>14 testimony and their findings weight, but I don't think you're</p> <p>15 bound by them. But I do think that in this particular case,</p> <p>16 that's not the outcome.</p> <p>17 HEARING OFFICER GROSSMAN: All right. Do you have any</p> <p>18 case law about that to cite on this decision?</p> <p>19 MICHELE ROSENBAUM: I would cite you to Archer's Glen</p> <p>20 and I'm -- I'm sorry, I don't have the citation with me at</p> <p>21 the moment, but I will provide that to you after we have a</p> <p>22 break and I have an opportunity to pull it up.</p> <p>23 HEARING OFFICER GROSSMAN: That's fine.</p> <p>24 MICHELE ROSENBAUM: With -- with respect to giving</p> <p>25 deference to planning board interpretation of sector plans.</p>	<p style="text-align: right;">24</p> <p>1 looking for. We tracked it all the way back to 1939. And</p> <p>2 that's where we hit a wall.</p> <p>3 We couldn't find -- we know that as of 1939, the</p> <p>4 district counsel had -- had referred to the board of appeals,</p> <p>5 the power over special exceptions, conditional uses.</p> <p>6 But we weren't able to find any -- and that doesn't mean</p> <p>7 we won't keep looking, but as in the last week, we haven't</p> <p>8 been able to find anything that sheds any light as to -- as</p> <p>9 to whether -- whether the -- the district council gave it to</p> <p>10 the board of appeals because it was a land use matter, not a</p> <p>11 zoning matter.</p> <p>12 So in that regard, we're referring to Maryland code</p> <p>13 annotative land use 22 301, which provides the district</p> <p>14 council may adopt zoning laws and authorize the board of</p> <p>15 appeals, the district counsel, or an administrative office or</p> <p>16 agency designated by the district counsel, to grant special</p> <p>17 exceptions on conditions that are necessary to carry out the</p> <p>18 purposes of this division.</p> <p>19 So that's -- that's the relevant code provision. But</p> <p>20 again, that's been in effect since at least 1939. I would</p> <p>21 note that the Maryland code defines zoning law as zoning</p> <p>22 ordinance, zoning regulations, zoning code in any similar</p> <p>23 legislative action to implement zoning controls in a local</p> <p>24 jurisdiction.</p> <p>25 And that's land use article 14-101Q. In contrast, if you</p>

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<p>25</p> <p>1 look at the case law, County Counsel versus Prince George's 2 County versus Zimmer Development Company, 444 Maryland 490, 3 that's a 2015 case. 4 HEARING OFFICER GROSSMAN: What's -- give me the -- 5 start slowly with the name again. 6 ERIN GIRARD: Sorry. County Counsel at Prince George's 7 versus Zimmer Development Company. That's 444 Maryland 490 -- 8 HEARING OFFICER GROSSMAN: 444 Maryland -- 9 ERIN GIRARD: 490. 10 HEARING OFFICER GROSSMAN: 2015 -- 11 ERIN GIRARD: 2015 case. 12 HEARING OFFICER GROSSMAN: Okay. 13 ERIN GIRARD: It defines land use planning, planning is 14 the broader term planning concerns, quote the development of 15 a community not only with respect to the uses of lands and 16 buildings, but also with respect to streets, parks, civic 17 beauty, industrial, etc. 18 If you then compare that language to section 7.3.1.A.1 19 of our zoning ordinance that refers to conditional use as 20 being a use of any property for a conditional use. So the 21 language actually tracks quite nicely. 22 We also note that under chapter seven of the zoning 23 ordinance, conditional use approvals are noted under 24 regulatory approvals and in that way are akin to a site plan 25 and are separate and distinct from zoning and rezoning</p>	<p>27</p> <p>1 ERIN GIRARD: I'm simply saying someone else agrees with 2 this position. 3 HEARING OFFICER GROSSMAN: All right. 4 ERIN GIRARD: Not saying you're controlled by it. I'm 5 just citing it based on someone else's -- 6 HEARING OFFICER GROSSMAN: They seem to assume just 7 didn't really justify -- 8 ERIN GIRARD: Why there was no discussion. 9 HEARING OFFICER GROSSMAN: But they seem to assume that 10 it was a land use rather than zone. 11 ERIN GIRARD: Right. I would also draw the hearing 12 examiner's attention to Anna Rundle County v. Bell and that's 13 442 Maryland -- 14 HEARING OFFICER GROSSMAN: Hold -- hold on. 15 ERIN GIRARD: Sorry. I tend to get carried away. 16 HEARING OFFICER GROSSMAN: I can't write too fast and I 17 certainly can't read it after I do it if I write it down and 18 Anna Rundle County versus -- 19 ERIN GIRARD: V. Bell. 20 HEARING OFFICER GROSSMAN: Say that again? 21 ERIN GIRARD: V. Bell. 22 HEARING OFFICER GROSSMAN: V. Bell? Okay. 23 ERIN GIRARD: 442 Maryland 539. 24 HEARING OFFICER GROSSMAN: What's the year of that? 25 ERIN GIRARD: 2015.</p>
<p>26</p> <p>1 actions such as local map amendments. 2 We also wanted to draw your attention to the fact -- 3 HEARING OFFICER GROSSMAN: So let me -- so your position 4 is, in answer to my question, aside from the justification 5 for your position, your position is that this is a land use 6 manner and not a zoning matter? 7 ERIN GIRARD: Correct. 8 HEARING OFFICER GROSSMAN: Is that what you're saying? 9 ERIN GIRARD: Yes. And again, just looking at the 10 definitions, we also want to draw your attention to the fact 11 that on page one of the staff report, it references 24 201C 12 as the applicable provision that is also categorizing it as 13 land use planning. 14 HEARING OFFICER GROSSMAN: I'm not sure. I mean, once 15 again, I -- I do think that there's a deference required to 16 agency interpretation of its own rules. 17 However, the court, the -- the case law is very clear 18 that in terms of legal interpretations, that is what the law 19 is. The agency is not entitled to that deference. 20 The -- the reviewing judicial equates as judicial 21 authority should decide the law as what the law means. So I'm 22 not sure that the staff's opinion on whether which section 23 applies really should influence. 24 ERIN GIRARD: I don't disagree at all. 25 HEARING OFFICER GROSSMAN: Okay.</p>	<p>28</p> <p>1 HEARING OFFICER GROSSMAN: What's that stand for? 2 ERIN GIRARD: On page 554 it says administrative land 3 use actions, whether reached via quasi-judicial or special or 4 executive processes encompass a wide variety of things, 5 including dot, dot, dot, special exceptions. 6 So again, that is categorizing in -- in our minds 7 special exceptions as land use rather than zoning. 8 HEARING OFFICER GROSSMAN: Okay. For anybody that 9 doesn't know it in the audience, these conditional uses used 10 to be called special exceptions. 11 They're the same thing except that the counsel felt, and 12 I agree, that the term special exception was somewhat 13 misleading because it's really not an exception to the -- to 14 the zoning ordinance. 15 It's a use permitted in the zoning ordinance. So that's 16 why they substituted the term conditional use. 17 ERIN GIRARD: And then one more citations. I'll read it 18 slower. Mayor and Counsel of Rockville versus Rylns, Inc. R- 19 y-l-n-s., that's 372 Maryland 514, a 2002 case. 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: And that actually cites to Stan Abrams, 22 who I'm sure you're familiar with. 23 HEARING OFFICER GROSSMAN: I know him. 24 ERIN GIRARD: And his writings that his special 25 exception or conditional use refers to a permissive land use</p>

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<p>29</p> <p>1 category authorized by a zoning or administrative body 2 pursuant to the existing provisions of the zoning laws. 3 So in that case, it's seems to be distinguishing it -- 4 putting it more in a land use category than in a zoning 5 category. 6 HEARING OFFICER GROSSMAN: Okay. 7 ERIN GIRARD: And then finally, I would just know as a 8 matter of statutory interpretation, the fact that the -- that 9 section B of that land use article refers to the district 10 council and planning board, both of whom clearly under the 11 code have jurisdiction over local map amendment, sectional 12 map amendments, and etc. in zoning actions as we typically 13 think of them. 14 It refers to it specifically, whereas C which refers to 15 the land use planning refers only to the County planning 16 board. 17 So we think as a matter of statutory interpretation, the 18 fact that the district -- the fact that the district council 19 is involved in B and not involved here, that this would put 20 the conditional use under the land use planning category. 21 HEARING OFFICER GROSSMAN: All right. Before it turn to 22 Ms. Rosenbaum, the legislative history I was actually seeking 23 was something that showed how these code provisions in the 24 Maryland code were derived. You've given me some history 25 about the conditional uses --</p>	<p>31</p> <p>1 and C is a vote to overturn a land use resolution. 2 And as you'll note, the zoning resolution requires a 3 two-thirds majority vote of both the district council and the 4 County planning board. And if it's a land use resolution, 5 then it's only a vote of the planning board. 6 So as you know, there has been a resolution adopted by 7 the town and that resolution specifically opposes a 8 conditional use 19-03 and any related zoning and land use 9 authorizations. 10 So the resolution adopted by the town is specific to 11 both zoning actions and land use actions. 12 And in going back through the transcript and when I 13 first was thinking about this, it does seem as if the 14 question really turns on whether or not the district counsel 15 has a role in this, but I really think that the outcome is 16 the same regardless of whether you determine that this is a 17 zoning action or a land use action. 18 And I think that once you look at the case law and the 19 statutory construct that you will -- or we concluded that 20 it's actually both. 21 It is both a zoning action and a land use action. And I 22 will explain why. I do have a legal memo that I will hand 23 into you and we did -- I did some legislative research with 24 respect to 24-201 given time, I was only able to do it online 25 and I will tell you that it's very sparse.</p>
<p>30</p> <p>1 ERIN GIRARD: Oh, as far as why the town of Kensington 2 and -- 3 HEARING OFFICER GROSSMAN: Yeah. I mean, what did the -- 4 why did they make the distinction they did? Why did the -- 5 the legislature, the Maryland legislature make the 6 distinction it did between zoning matters and land use 7 matters? 8 I -- I wondered how that provision arose and that would 9 perhaps tell me whether or not they intended to include 10 special exception/conditional use matters within zoning 11 matters or within the land use matters. 12 ERIN GIRARD: Okay. We can take another look at what 13 we've pulled and see if there's any light on that. 14 HEARING OFFICER GROSSMAN: All right. Ms. Rosenbaum? 15 MICHELE ROSENBAUM: Yes. Thank you. Before I start, I 16 actually would like to hand out a copy of 24 201, just so you 17 can have it for reference while -- 18 HEARING OFFICER GROSSMAN: I have it here so you can. 19 MICHELE ROSENBAUM: Oh, you do. You have it printed? 20 Okay. And an answering this, I think I'm going to be 21 answering both of the legal questions that you had -- have -- 22 have in your memo here because I think they're -- they're 23 directly related. 24 And when you look at the -- the structure of 24 201, 25 there's B is the vote to overturn a zoning res- -- resolution</p>	<p>32</p> <p>1 I will give you a copy of the house bill 708 as it was 2 originally introduced. It was amended in non-substantive way. 3 It really was the purpose provision that was amended. And 4 then there was a fiscal note. And -- 5 HEARING OFFICER GROSSMAN: There was no committee 6 report? 7 MICHELE ROSENBAUM: Not online that I was able to find. 8 So I don't know if that means a trip to Annapolis, but in any 9 event I was unsuccessful in finding any more information than 10 that on the general assembly website. 11 HEARING OFFICER GROSSMAN: I'm sure that whatever exists 12 in the world is somewhere online. 13 MICHELE ROSENBAUM: It may well be. It may well be. 14 So in looking at this and trying to evaluate whether 15 this conditional use is a zoning or a land use action, I 16 actually had been highlighting the provisions that Ms. Girard 17 has cited and I will say that the two of us were looking in - 18 - in the same -- same areas for -- for an answer to this and 19 we clearly come up with different answers, but land use code 20 22-301, which Ms. Girard cited, authorizes the district 21 council to adopt zoning laws that authorize the board of 22 appeals, the district counsel or an administrative office or 23 agency designated by the district counsel to grant 24 conditional uses on conditions that are necessary to carry 25 out the purpose of this division.</p>

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<p>33</p> <p>1 And actually the state law still says special 2 exceptions, but I'm going to use the term conditional uses 3 just for consistency. 4 And that's land use code 22-301A1. And then if you go on 5 22-301 2 goes on to state that any zoning law adopted under 6 this subsection shall contain appropriate standards to ensure 7 that any conditional use that is granted is consistent with 8 the general purpose and intent of the zoning laws. 9 So looking at this, not only are the code provisions 10 that establish the way that a conditional use would be -- the 11 process by which a conditional use is established under 12 County law, but the authority of the hearing and the of the 13 hearing examiner and the board of appeals both come from 14 these zoning laws. 15 The general conditions are in the zoning law. The 16 application processes in the zoning law and the authority of 17 the hearing examiner and the board of appeals is established 18 under the zoning law. 19 When I read Mayor and Counsel of Rocklin -- of Rockville 20 vs Rylns also cited by Ms. Girard, what struck me is the fact 21 that the courts have recognized the conditional use as a 22 zoning mechanism administered by an administrative entity. 23 And I'll quote, the special exception use is a valid 24 zoning mechanism that delegates to an administrative board 25 limited authority to allow enumerated uses, which the</p>	<p>35</p> <p>1 MICHELE ROSENBAUM: And -- and -- and I -- and I do 2 understand that and appreciate that because, you know, in 3 reading the cases there is some fluidity between zoning and 4 land use planning and the courts struggle with it on a 5 regular basis. But -- 6 HEARING OFFICER GROSSMAN: That's why I wondered whether 7 -- whether, you know, whether the code provisions -- whether 8 the Maryland legislature thought about it that way, why did 9 they make this unusual distinction between zoning and -- and 10 other land use? 11 MICHELE ROSENBAUM: That's correct. And -- and it seems 12 to me that the reason why they did is because even though 13 they are related, they are separate functions and in support 14 of that, I cite the Zimmer case also referenced by Ms. 15 Girard. 16 So my -- my position on this is that the authority for 17 the grant of special -- of conditional uses, the enabling 18 legislative authority that establishes the hearing examiner 19 in the office of the board of appeals, all derive from the 20 zoning code and from zoning law at the state level. And so 21 this is in fact a zoning action. 22 And even though it seems counterintuitive, I think 23 conditional use also falls under the umbrella of a land use 24 action. 25 A conditional use approval is subject to an affirmative</p>
<p>34</p> <p>1 legislature has determined to be permissible absent any fact 2 or circumstance negating presumption. And that's the Rylns 3 case, 372 Maryland 514. So -- 4 HEARING OFFICER GROSSMAN: 514 is the page reference? 5 MICHELE ROSENBAUM: Is not the page reference. I will -- 6 HEARING OFFICER GROSSMAN: What's the page reference? 7 MICHELE ROSENBAUM: Get you the page reference. It's 814 8 A second, 469, and the page references 485. 9 HEARING OFFICER GROSSMAN: All right. So it's 814 -- 814 10 A second -- 11 MICHELE ROSENBAUM: 469. 12 HEARING OFFICER GROSSMAN: 469. 13 MICHELE ROSENBAUM: At 485. And I -- there's -- they 14 cite Schultz versus Peretz [ph] in support of that concept. 15 So -- 16 HEARING OFFICER GROSSMAN: The only thing is that I'm 17 never quite sure that they're using it -- 18 MICHELE ROSENBAUM: In the same way that I'm -- 19 HEARING OFFICER GROSSMAN: In the same way we were 20 talking about here as the distinction between zoning and land 21 use. They -- 22 MICHELE ROSENBAUM: Right. 23 HEARING OFFICER GROSSMAN: It's easy to have to have 24 loose language, you know, when the context is completely 25 different.</p>	<p>36</p> <p>1 finding that the application substantially conforms with the 2 recommendations of the applicable master plan and is 3 disharmonious with and will not alter the character of the 4 surrounding neighborhood in a manner inconsistent with the 5 master plan. 6 And that's zoning code 7.3.1.E.1.B and C. The courts 7 recognize that when there's a statutory requirement for 8 consistency with a master plan including as part of a 9 conditional use or special exception proceeding, it's one of 10 the planning tools placed in the County hands by the assembly 11 to provide for orderly growth of the County. 12 And that's Board of County Commissioners of Cecil County 13 versus Gaster 285 -- 14 HEARING OFFICER GROSSMAN: Hold on one second. Board of 15 County Commissioners -- 16 MICHELE ROSENBAUM: Gaster. 17 HEARING OFFICER GROSSMAN: Hold on. Of Cecil? 18 MICHELE ROSENBAUM: Right. 19 HEARING OFFICER GROSSMAN: Versus -- 20 MICHELE ROSENBAUM: G-a-s-t-e-r. And that's 285 Maryland 21 233 at 250 and that's a 1979 case. And I'll also refer you to 22 Coffee versus Park and Planning, which is an 82 case, which 23 basically expanded the same principle to the counties in the 24 regional district. So the planning board -- 25 HEARING OFFICER GROSSMAN: There's a cite to that?</p>

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<p>37</p> <p>1 MICHELE ROSENBAUM: Yes. It is 411 A second, 1041 and 2 that's a 1982 case. So the planning board did spend 3 considerable time evaluating the sector plan. They sent you a 4 letter. 5 I -- I disagree with Ms. Girard as to the strength of 6 that letter and we'll talk about that more in a little while. 7 But the board's determination with respect to consistency 8 with the master plan is a quote action related to land use 9 planning. 10 So I think that the condition -- and you also generally 11 need to make a determination with respect to that. So I think 12 this is an action related to land use planning. Now, why does 13 the land use code apply in this case? It doesn't limit act -- 14 HEARING OFFICER GROSSMAN: Well, are you saying that 15 it's not a zoning matter? I mean, you -- 16 MICHELE ROSENBAUM: I'd say this a zoning matter and a 17 land use. 18 HEARING OFFICER GROSSMAN: So it's both. 19 MICHELE ROSENBAUM: About matter, so it's both. 20 HEARING OFFICER GROSSMAN: I mean, maybe you could -- 21 MICHELE ROSENBAUM: Under that -- 22 HEARING OFFICER GROSSMAN: Maybe you could -- one could 23 certainly argue that every zoning matter is also a land use 24 matter, but perhaps not every land use matter is a zoning 25 matter.</p>	<p>39</p> <p>1 article about the authority of the hearing examiner being so 2 limited, it says the planning board cannot. 3 MICHELE ROSENBAUM: It says any two -- a two-thirds 4 majority vote of the planning board is required to take any 5 action related to land use planning. 6 And so it's a passive voice. I don't see that as being 7 an action by the -- an action limited to a planning board 8 determination. It's an action of any type related to any land 9 use -- land use action or zoning action within the town of 10 Kensington. 11 HEARING OFFICER GROSSMAN: I think you'd go too far with 12 that -- that concept. I don't think there's any -- 13 MICHELE ROSENBAUM: And -- 14 HEARING OFFICER GROSSMAN: I don't think there's any 15 evidence of that intent by the legislature to say that if 16 it's just a land use matter that it required -- that the 17 hearing examiner is bound by the -- by the town of 18 Kensington's resolution. 19 But there's a serious question, I think, you know, if in 20 fact it's a zoning matter, whether or not the hearing 21 examiner is bound unless the counsel then somehow gets a 22 crack at it and says, and two-thirds of the council vote to 23 go against the town of Kensington, which is why I raised the 24 question. Because -- 25 MICHELE ROSENBAUM: Certainly.</p>
<p>38</p> <p>1 MICHELE ROSENBAUM: I -- 2 HEARING OFFICER GROSSMAN: So I think that's the 3 distinction. So but you would say that a conditional use is 4 both a land use matter and a zoning matter. 5 MICHELE ROSENBAUM: I -- I do think that it's both. 6 HEARING OFFICER GROSSMAN: And the applicant says no, 7 it's just the land use matter. Is that right Ms. Girard? 8 MICHELE ROSENBAUM: That's -- that is their position. 9 And I have some additional statutory analysis that I really 10 am not going to take the time to go through at the moment. I 11 do have a written memorandum that I'll submit -- 12 HEARING OFFICER GROSSMAN: Okay. 13 MICHELE ROSENBAUM: But here's the -- here's the bottom 14 line. I'll cut to the chase, whether it is a zoning matter, a 15 zoning action, or a land use action -- under a land use 16 action, a two-thirds majority vote of the County planning 17 board is required to take any action related to land use 18 planning within the town of Kensington. 19 The planning board did not vote by two-thirds majority 20 to overturn the town's resolution. And so under state law, 21 absent that supermajority vote, I think the town's resolution 22 stands and you cannot take an action contrary to their 23 opposition. By the same token, and using -- 24 HEARING OFFICER GROSSMAN: When you're saying I can, I 25 mean, it doesn't say anything in that -- in that land use</p>	<p>40</p> <p>1 HEARING OFFICER GROSSMAN: If I -- if I decide that the 2 -- the applicants entitled to a condition conditional use 3 here, where does it go? And then we'll turn to that in next - 4 - next question, I guess. 5 MICHELE ROSENBAUM: Well, and -- and by the same token, 6 under the -- under the zoning, it does say two-thirds 7 majority vote of both the district council and the planning - 8 - planning board is required to take any action. 9 And again, the -- the action is -- it's a passive, it's 10 any -- so in that respect, I do think that it's applicable to 11 this -- this proceeding at the administrative level because 12 it doesn't specify that it's an action by the district 13 counsel or an action by the planning board. 14 And I recognize that you -- you don't agree with me, at 15 least at the moment. 16 But it also makes sense in this respect if the planning 17 board does not vote to override the town resolution and it 18 comes here, and then if you vote against the -- the town, 19 then perhaps it does go to the district council. 20 But assuming the planning board has not adopted a 21 supermajority vote in opposition to the town's position, it 22 stops here. There is the -- the issue becomes moot. 23 It does not matter whether or not there is a process by 24 which this gets to the counsel because the planning board has 25 already made that a dispositive determination.</p>

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11 (41 to 44)

<p>41</p> <p>1 HEARING OFFICER GROSSMAN: Once again, I don't agree 2 with that because clearly the zoning ordinance doesn't 3 provide -- doesn't make the planning board a deciding entity 4 here. 5 It makes the hearing examiner after a due process 6 hearing and a full record, makes the hearing examiner the 7 determiner of whether the conditional use will be granted 8 subject to appeal to the board of appeals. 9 So clearly, it was not the intent of the zoning 10 ordinance to make the -- the planning board, the decider in 11 these cases. So I don't think that your -- the rationale that 12 you would suggest here -- 13 MICHELE ROSENBAUM: And -- and I would agree with you 14 that that was not the intent of the district counsel when it 15 adopted the zoning code in the process for the reviewing of 16 approval or denial of conditional uses. 17 I -- but I will say that this provision was adopted by 18 the general assembly in 2007 and it's a matter of state law 19 and state law trumps the county code in that respect. And so 20 -- 21 HEARING OFFICER GROSSMAN: It does when it's 22 inconsistent. 23 MICHELE ROSENBAUM: And you're looking at the -- that's 24 -- 25 HEARING OFFICER GROSSMAN: That's --</p>	<p>43</p> <p>1 it. 2 Regardless of the outcome of your conclusions with 3 respect to this particular interpretation, I want to be 4 absolutely clear that we think that the record, with respect 5 to conformance with the sector plan, is very strong; that 6 there should be deference given to the planning board's 7 interpretation. 8 Certainly great weight given to the towns 9 interpretation, particularly in light of the provisions of 10 state code that give such deference to the town's views on 11 those issues. 12 So I don't want you to leave with the impression that we 13 don't -- that -- that we don't also think that regardless of 14 your conclusions on this legal issue, that we're waiving in 15 any way the merits of [inaudible] -- 16 HEARING OFFICER GROSSMAN: No. I certainly don't have 17 that impression. 18 MICHELE ROSENBAUM: Okay. 19 HEARING OFFICER GROSSMAN: All right. So let's turn to 20 the next question on the list here, which is a related legal 21 question G, still another but related legal question. 22 Even if Section 24 201B is the applicable section, would 23 it have to go to the counsel if I ruled against the town of 24 Kensington and was upheld by the board of appeals? Isn't the 25 OZAH acting as the counsel's appointee for this purpose under</p>
<p>42</p> <p>1 MICHELE ROSENBAUM: And -- and my -- my position is that 2 this does not mean that the hearing examiner doesn't go 3 through the process and -- and render a decision. 4 But I think with respect to a determination of 5 consistency with the sector plan, and whether or not this 6 should be approved, that the -- the state law provides that - 7 - that has been determined by the failure of the board to 8 override the town resolution. 9 HEARING OFFICER GROSSMAN: Well, I'm certainly going to 10 go through with the process and make a decision because if 11 you're wrong in your interpretation, then -- and I would not 12 to make a decision, then it would lead the process truncated. 13 And -- 14 MICHELE ROSENBAUM: And -- and I'm not in any way 15 suggesting that this truncates the process. 16 HEARING OFFICER GROSSMAN: Well, yes. You are. You're -- 17 you're suggesting if I accepted your view today, then I would 18 end the process now and say, well, the planning board decided 19 and under state law, trumped the zoning ordinance, I don't 20 have to do anything else. 21 MICHELE ROSENBAUM: Well, you know, on one level, I -- I 22 agree with you and since it's an unsettled question of law, 23 it seems to me we will go through the process -- 24 HEARING OFFICER GROSSMAN: Right. 25 MICHELE ROSENBAUM: And you will make a determination on</p>	<p>44</p> <p>1 the zoning ordinance; Ms. Girard? 2 ERIN GIRARD: Yes. I mean, yes. We believe that the -- 3 that the hearing examiner and board appeals are acting as the 4 district councils appointee under land use 22 301. 5 This is just one of those cases where there's just no 6 means under the code to get there. I don't know how you -- 7 what we do have is the delegation, what we don't have is any 8 way for this to get kicked to the district council under the 9 statutory framework in place right now. 10 So I think just as a matter of statutory interpretation, 11 in fact, it needs to stop here. 12 HEARING OFFICER GROSSMAN: Ms. Rosenbaum? 13 MICHELE ROSENBAUM: Well, I do think that it would need 14 to go to the district council. 15 HEARING OFFICER GROSSMAN: How does it get there? 16 MICHELE ROSENBAUM: And again, I -- I note that this 17 state -- the state code provisions were adopted long after 18 the county special exception conditional use provisions were 19 adopted. 20 And I don't think it's ever come up. And so it's never 21 been addressed procedurally. But it does say a two-thirds 22 majority vote of both the district council and the planning - 23 - planning board is required. 24 District council is a defined term. It is the county 25 counsel sitting as the nine members of the county counsel in</p>

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12 (45 to 48)

<p>45</p> <p>1 their zoning capacity and it requires a two-thirds majority 2 vote. I don't know how you get two-thirds of one person. So 3 it -- the -- the -- 4 HEARING OFFICER GROSSMAN: Well, I have enough to spare. 5 MICHELE ROSENBAUM: Yeah. The -- the -- the two-thirds 6 requirement, the fact that the district counsel is the 7 defined term, I think that the state law requires that in 8 fact go to the dis- -- district counsel. 9 I'm in a conundrum. I don't have an answer as to how it 10 gets there because I simply think that the provisions of 24- 11 201 of the land use code have never been implemented as part 12 of the county code. 13 But notwithstanding that, I do think that that's what 14 the state law requires and it ultimately would require a vote 15 of district council to overturn. 16 HEARING OFFICER GROSSMAN: Yeah. I don't know. And maybe 17 there's no satisfactory answer to all of this, but certainly 18 raises some unusual questions. 19 So I -- I did want to give the parties an opportunity to 20 be heard on these issues and I'm willing to listen to any 21 great suggestions that people may have on this, but I don't 22 see how it gets there exactly, procedurally, especially since 23 you have a code provision that says, goes to the board of 24 appeals and into court. So I think you -- it does raise 25 concerns.</p>	<p>47</p> <p>1 give counsel for the applicant a copy and one to give her an 2 opportunity time to respond. Thank you. 3 You find the exhibit list buried under all of this. By 4 the way, you -- as you can see from the exhibit list, what 5 we've tried to do is break down the -- the many supporting 6 letters and the many opposing letters with the two separate 7 exhibits. 8 So all of the letters of support are in Exhibit 60, 9 right now A through S and the letters of opposition are in 10 exhibit 70 A through four part KKK, KKKK. Four K's whatever 11 that is. All right. 12 This will be the memorandum from the -- I guess this is 13 from the town of Kensington in effect. Right, Ms. Rosenfeld, 14 would you -- 15 MICHELE ROSENFELD: Yes. 16 HEARING OFFICER GROSSMAN: Okay. It would be Exhibit 85, 17 memorandum of law [inaudible] land use article Sections 24 18 201B and C by the Town of Kensington. All right. Ms. Girard, 19 you have done your list of potential conditions. 20 ERIN GIRARD: Yes. And just -- just for context, what we 21 did is we went through a number of recent conditional uses, 22 what ones are standard. We tried to anticipate, just based on 23 what we've heard, some of the issues that we thought were 24 concerns as far as use of the ground floor, the number of 25 parking spaces.</p>
<p>46</p> <p>1 MICHELE ROSENBAUM: Thank you. 2 HEARING OFFICER GROSSMAN: All right. 3 MICHELE ROSENBAUM: Yeah. It seems like that this 4 perhaps raises the question, offers an opportunity for some 5 legislative cleanup regardless of the outcome of this case. 6 HEARING OFFICER GROSSMAN: All right. Well, hope- -- 7 hopefully this will never happen again. 8 Well, all right. Let's turn to H, and if I do grant the 9 conditional use, what conditions would the applicant and the 10 opposition think satisfactory to protect the community? 11 Recognizing of course that -- that whatever conditions 12 would be suggested by the opposition, would the understanding 13 that they still stick to their -- their opposition? I 14 understand that, but if in fact it is granted, are there 15 conditions that would be desirable and I turn first to Ms. 16 Girard. 17 I mean, you can submit a list if you want because -- 18 okay. You have that with you? That's good. 19 ERIN GIRARD: Yes. 20 HEARING OFFICER GROSSMAN: I also thought that Ms. 21 Rosenbaum, you said you had a -- a memorandum of law -- 22 MICHELE ROSENBAUM: Yes. 23 HEARING OFFICER GROSSMAN: That you wanted to submit. 24 MICHELE ROSENBAUM: Yes. I do. 25 HEARING OFFICER GROSSMAN: Why don't we submit that,</p>	<p>48</p> <p>1 So you'll see some conditions dealing with that and then 2 some other ones, such as the access to Metropolitan is 3 through an easement of an adjacent property owner. So we've 4 put in that condition. We -- we tried to cover what we 5 thought were basic ones -- 6 HEARING OFFICER GROSSMAN: Okay. 7 ERIN GIRARD: -- you know, and -- and trying to 8 anticipate what the community may want to see, but obviously, 9 we're open to -- and -- and we did also hit, and that may 10 need to be modified, about some of the circulation issues in 11 the current [inaudible] and what have you, which we'll 12 address in greater detail per our conversation this morning - 13 - 14 HEARING OFFICER GROSSMAN: Okay. 15 ERIN GIRARD: -- but we did try to address the fact that 16 our preliminary claim would be of plumbing and to deal with 17 some of those issues. 18 HEARING OFFICER GROSSMAN: All right. And this will be 19 Exhibit 86, which is applicant's suggested CU conditions. All 20 right. 21 Ms. Rosenfeld, do you have a list -- a similar list -- 22 oh, I don't know if it's similar, but a list of conditions? 23 MICHELE ROSENFELD: I -- I do have a list and I can talk 24 you through them. I had -- I do intend to submit them in 25 writing just for clarity, but I can go through them verbally</p>

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13 (49 to 52)

<p>49</p> <p>1 if -- initially.</p> <p>2 HEARING OFFICER GROSSMAN: Well, I -- I -- I prefer, I</p> <p>3 guess, to have them in writing. I think that would make it</p> <p>4 simpler rather than going through it all now.</p> <p>5 MICHELE ROSENFELD: I agree. I'm -- I'm happy to submit</p> <p>6 them.</p> <p>7 HEARING OFFICER GROSSMAN: Okay.</p> <p>8 MICHELE ROSENFELD: We -- we do have -- we do have</p> <p>9 proposed conditions.</p> <p>10 HEARING OFFICER GROSSMAN: Okay. All right. All right.</p> <p>11 Turning to our next item. Oh, by the way, did either of you</p> <p>12 locate any other self-storage special exceptions or</p> <p>13 conditional uses?</p> <p>14 ERIN GIRARD: No. And to be honest, when we first filed</p> <p>15 the application, we had done that exercise --</p> <p>16 HEARING OFFICER GROSSMAN: Okay.</p> <p>17 ERIN GIRARD: -- because we were looking for inherent,</p> <p>18 non-inherent and all that --</p> <p>19 HEARING OFFICER GROSSMAN: Right.</p> <p>20 ERIN GIRARD: -- and we couldn't find one either.</p> <p>21 HEARING OFFICER GROSSMAN: I could not find one in my</p> <p>22 own search. How about you, Ms. Rosenfeld, did you find</p> <p>23 anything?</p> <p>24 MICHELE ROSENFELD: I did not.</p> <p>25 HEARING OFFICER GROSSMAN: Okay. You know, maybe other -</p>	<p>51</p> <p>1 HEARING OFFICER GROSSMAN: I saw one sign on the colored</p> <p>2 renderings, as pointed out by staff. It didn't say, I don't</p> <p>3 think, exactly what staff said it said, but it -- but there</p> <p>4 was a sign --</p> <p>5 ERIN GIRARD: Right.</p> <p>6 HEARING OFFICER GROSSMAN: -- depicted in -- in the</p> <p>7 rendering.</p> <p>8 ERIN GIRARD: Right. So this is -- this adds more detail</p> <p>9 to it. As you'll see in the conditions, I did include</p> <p>10 something about, you know, if there's a variance required in</p> <p>11 -- signage is governed both by the County and by the Town of</p> <p>12 Kensington. So obviously, that's something that's going to</p> <p>13 need -- to need -- need to be worked through.</p> <p>14 This is what we're proposing at this point and time, but</p> <p>15 I -- we've tried to craft the condition to govern that. We'll</p> <p>16 obviously have to go through and get the necessary permits,</p> <p>17 variances as they're required and then submit the final plan.</p> <p>18 HEARING OFFICER GROSSMAN: Right. What I was getting at,</p> <p>19 in this question, is that your plans in general should say</p> <p>20 there's going to be a sign here, let's say a -- a -- an entry</p> <p>21 sign or a wall sign, something, as to the more technical</p> <p>22 question of whether or not it meets all of the requirements.</p> <p>23 We would have to look at that, because that is one of the</p> <p>24 things we're required to review --</p> <p>25 ERIN GIRARD: Mm-hmm.</p>
<p>50</p> <p>1 - in other jurisdictions, I don't know, but -- all right.</p> <p>2 Item I, if you think the technical staff and the planning</p> <p>3 board are wrong with regard to the master plan and access</p> <p>4 issues, please have qualified expert or experts explain the</p> <p>5 basis for such opinions and/or adopt on what you said on</p> <p>6 Pages 4 to 14 of your revised statement in supporting your</p> <p>7 application.</p> <p>8 Although, those really don't address access issues, but</p> <p>9 they do address your -- your master plan argument. I'm not</p> <p>10 suggesting that your experts have to repeat everything</p> <p>11 they've said that you've said there, but they can adopt that</p> <p>12 in -- in part as what they say.</p> <p>13 All right. J, how would the parties define the</p> <p>14 neighborhood? Do you agree with staff's definition, Exhibit</p> <p>15 59, Page 5?</p> <p>16 ERIN GIRARD: We do and I believe Ms. Phillips -- or Mr.</p> <p>17 Phillips will testify to that one.</p> <p>18 MICHELE ROSENFELD: We agree to it as well.</p> <p>19 HEARING OFFICER GROSSMAN: Okay. Okay. K, applicant's</p> <p>20 submissions do not appear to mention signage, signage plan.</p> <p>21 Your plan should reflect it. So that was a question I raised</p> <p>22 with you the last time. What about that?</p> <p>23 ERIN GIRARD: So we did have a preliminary -- the</p> <p>24 colored renderings reflected some signage. This [inaudible] -</p> <p>25 -</p>	<p>52</p> <p>1 HEARING OFFICER GROSSMAN: -- and also the com- -- the</p> <p>2 question of compatibility, however, it also has to go through</p> <p>3 review by Department of Permitting Services. I'm not sure</p> <p>4 about the Town of Kensington --</p> <p>5 ERIN GIRARD: Right.</p> <p>6 HEARING OFFICER GROSSMAN: -- that you can deal with</p> <p>7 that, but as far as -- and -- and if it varies from what is</p> <p>8 allowed by the zoning ordinance would have to have a sign</p> <p>9 variance, as they say --</p> <p>10 ERIN GIRARD: Correct.</p> <p>11 HEARING OFFICER GROSSMAN: -- but -- which is different</p> <p>12 from an overall variance just as a tree variance --</p> <p>13 ERIN GIRARD: Correct.</p> <p>14 HEARING OFFICER GROSSMAN: -- is different from -- in</p> <p>15 any event.</p> <p>16 ERIN GIRARD: Yes. So this is the signage as -- that</p> <p>17 we're proposing now and I have a couple copies for you. And</p> <p>18 we understand that the Town will need to review this.</p> <p>19 HEARING OFFICER GROSSMAN: Right. All right. So this is</p> <p>20 Exhibit 87 and there appear to be numerous subparts. So it</p> <p>21 is, let's say, exterior signage plans and this is Exhibit 87.</p> <p>22 All right. So we'll have 8- -- I'm going to keep them in</p> <p>23 this -- I presume your copies are in the same order.</p> <p>24 ERIN GIRARD: Yes. As far as -- they should be.</p> <p>25 HEARING OFFICER GROSSMAN: And then -- so there'll be</p>

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<p>53</p> <p>1 87A, B, C, D, E, F, G, H, I, J, K, L through M subparts. And 2 I'm not going to take the time here to label each of those -- 3 MICHELE ROSENFELD: Uh, Mr. Grossman, I have -- 4 HEARING OFFICER GROSSMAN: -- but it would be 87A 5 through M. Yes. Are you missing a page? 6 MICHELE ROSENFELD: Mine has different elevations and 7 then I have several pages A, several pages B -- 8 HEARING OFFICER GROSSMAN: Your -- yours are actually 9 labeled with an A and B. 10 MICHELE ROSENFELD: -- several C and a D. 11 HEARING OFFICER GROSSMAN: Wait a minute -- wait a 12 minute, where are you? Oh, you -- oh, you're talking about -- 13 you're talking about the blue lettering on the -- on the 14 plans themselves or -- 15 ERIN GIRARD: I think he was -- I think -- 16 HEARING OFFICER GROSSMAN: I'm -- I'm labeling each page 17 as a different -- 18 MICHELE ROSENFELD: I see. I got it. 19 HEARING OFFICER GROSSMAN: -- subexhibit, because that's 20 the way you generally do it. 21 MICHELE ROSENFELD: I got it. 22 HEARING OFFICER GROSSMAN: So overall, this is Exhibit 23 87, exterior signage plans and then A through M are the each 24 page within that. Okay. 25 All right. Turning to the next thing, item L, according</p>	<p>55</p> <p>1 HEARING OFFICER GROSSMAN: -- photometric plans 2 ordinarily show exactly at the lot lines so that we can -- 3 ERIN GIRARD: And we can -- we're happy to add that, but 4 -- but she is prepared to address it. 5 HEARING OFFICER GROSSMAN: All right. The staff report 6 mentions two existing special exceptions on the site TBA-1332 7 and S-104 and I raised this question on August 9, are they 8 still active and if the conditional use is granted, will the 9 applicant take steps to have them revoked by the board of 10 appeal? 11 ERIN GIRARD: You -- we have proposed condition number - 12 - I haven't looked at them long enough to have it burned in 13 my memory, but there's a condition that we are suggesting 14 that we would abandon those special exceptions upon approval 15 of a -- a new conditional use for the property. 16 One was -- one was reaffirmed as -- as recently as 2005, 17 one is for automobile sales and another is for rental -- 18 HEARING OFFICER GROSSMAN: Right. 19 ERIN GIRARD: -- but obviously, those would go away with 20 approval of a conditional use. 21 HEARING OFFICER GROSSMAN: Okay. I think I've pretty 22 much covered the field here. Are there any other preliminary 23 or procedural matters, Ms. Girard? 24 ERIN GIRARD: We, just this morning, got the final 25 number we needed for the fees.</p>
<p>54</p> <p>1 to staff, Exhibit 59, Page 16, the parking lot does not 2 contain the required landscape areas nor does it show the 3 minimum required tree canopy will be provided as required by 4 Section 5- -- 596.2.9. 5 Staff also suggests that your open space should feature 6 art or amenities that highlight Kensington's character. 7 Please address these issues or have somebody address these 8 issues. 9 ERIN GIRARD: Our landscape architect is prepared to do 10 so. 11 HEARING OFFICER GROSSMAN: Okay. M, staff reports 12 Exhibit 59, Page 16, that the photometric plan does not show 13 that lighting will be reduced to the 0.5 foot candle or less 14 along lot lines as required by Section 596.4.4D. Are you 15 correcting that? 16 ERIN GIRARD: We don't think it needs correction. The -- 17 the -- the number that staff seems to be -- it's quite a -- 18 it's quite a number of feet off the property line. Our 19 architect can explain -- 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: -- but -- but where that number is shown 22 you can -- she can explain how it will be .5 when it hits the 23 property line. 24 HEARING OFFICER GROSSMAN: Well, ordinarily -- 25 ERIN GIRARD: It's a distance [inaudible].</p>	<p>56</p> <p>1 HEARING OFFICER GROSSMAN: Okay. 2 ERIN GIRARD: So I wanted to -- it's broken down and 3 we're happy to provide further information regarding any of 4 these numbers. 5 HEARING OFFICER GROSSMAN: These are the fees that you 6 incurred as a result of the postponement -- the last-minute 7 postponement? 8 ERIN GIRARD: Correct. 9 HEARING OFFICER GROSSMAN: Okay. So this is Exhibit 88, 10 applicant's fees resulting from last-minute postponement and 11 that's Exhibit 88. 12 And I note that the total here that -- on your list is 13 \$8,782, which is well above the -- the \$7,000, which was your 14 estimate on August 9, which was -- was itself above the 15 initial estimate of \$4,000 to \$5,000. And so let me look at 16 this for a second. 17 ERIN GIRARD: Yeah. And we apologize, we were doing it 18 back of napkin and then we tried to do a better back of 19 napkin, but we obviously needed to -- the architect and -- 20 and the applicant, in particular, didn't have all those 21 numbers at the ready. 22 HEARING OFFICER GROSSMAN: Now, well, all of these 23 experts were here, the landscape architect, the traffic 24 engineer, the architect -- 25 ERIN GIRARD: Correct.</p>

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15 (57 to 60)

<p>57</p> <p>1 HEARING OFFICER GROSSMAN: -- civil engineer and the 2 land planner all were -- 3 ERIN GIRARD: Present. We were anticipating moving -- we 4 were ready to move forward. 5 HEARING OFFICER GROSSMAN: Right. Okay. And the legal 6 fees, those are your fees? 7 ERIN GIRARD: Correct. I did not include the fees of my 8 associate to try to keep the number down. 9 HEARING OFFICER GROSSMAN: Okay. All right. We'll, 10 obviously, give the Town of Kensington an opportunity to 11 reply, because you might want to check with Suellen Ferguson 12 since -- 13 MICHELE ROSENFELD: Certainly. 14 HEARING OFFICER GROSSMAN: -- she indicated that her law 15 firm would pick up up to \$7,000 -- 16 MICHELE ROSENFELD: Mm-hmm. 17 HEARING OFFICER GROSSMAN: -- but did not go over that. 18 So I'd -- 19 MICHELE ROSENFELD: Correct. 20 HEARING OFFICER GROSSMAN: -- like to hear back -- 21 MICHELE ROSENFELD: And -- 22 HEARING OFFICER GROSSMAN: -- from Ms. Ferguson, Council 23 Baradel Law Firm -- 24 MICHELE ROSENFELD: Certainly. And -- 25 HEARING OFFICER GROSSMAN: -- about this.</p>	<p>59</p> <p>1 await a response from Council Baradel or Ms. Ferguson on the 2 issue, but technically, it should also come from the Town of 3 Kensington, because technically, it's the Town of Kensington 4 that's before me, but as I indicated before, I have no 5 intention of imposing on any fees that will ultimately be 6 bore by the Town of Kensington. Okay. Any other preliminary 7 matters, Ms. Rosenfeld? 8 MICHELE ROSENFELD: No. Thank you. 9 HEARING OFFICER GROSSMAN: All right. Well, it wasn't 10 one of the shortest preliminary, but I -- I felt that I would 11 save you a little bit of scribbling time by at least printing 12 them out for you. 13 Okay. I guess that moves us on to the next question, 14 which is opening statements unless anybody has anything else. 15 Just make an opening statement, Ms. Girard? 16 ERIN GIRARD: I do. 17 HEARING OFFICER GROSSMAN: All right. 18 ERIN GIRARD: As I alluded to a couple minutes ago -- 19 and usually, I'm not one for long opening statements, because 20 I like to get right to the meat of matters, but I think in 21 this case, given the unusual fact pattern in -- in the case 22 here, it's worth reviewing how we landed here and why -- you 23 know, why everyone isn't in -- in better agreement. 24 The client began this process in March, 2018 meeting 25 with -- as -- as we always do, meeting with staff, meeting</p>
<p>58</p> <p>1 MICHELE ROSENFELD: -- and -- and my only question with 2 respect to legal fees, because I may get this question, is 3 was their work incurred in connection with the last hearing 4 that was -- my -- my question is -- 5 ERIN GIRARD: That number was -- 6 MICHELE ROSENFELD: -- was preparation for that 7 duplicative of work that would've gone into today? We did 8 have a substantive hearing, at least on part of -- 9 ERIN GIRARD: Yeah. And that number reflects that. 10 MICHELE ROSENFELD: Okay. 11 ERIN GIRARD: I actually took out a couple hours that 12 were, you know, preparation and that obviously would carry 13 forward to today. So I did account for that. 14 MICHELE ROSENFELD: All right. Thank you. 15 HEARING OFFICER GROSSMAN: Yeah. I would think that also 16 that Ms. Rosenfeld is referring to the fact that we had four 17 witnesses. So the time spent on those four witnesses was part 18 of the hearing that -- 19 ERIN GIRARD: Right. 20 HEARING OFFICER GROSSMAN: -- that she -- they should be 21 charged for. 22 ERIN GIRARD: Correct. I did not include that. 23 HEARING OFFICER GROSSMAN: All right. 24 MICHELE ROSENFELD: Thank you. 25 HEARING OFFICER GROSSMAN: Well, in any event, I will</p>	<p>60</p> <p>1 with the Town. 2 We met with staff on three occasions and the Town and 3 really understanding that a self-storage use is perhaps not 4 everybody's ideal, but we wanted to vet the issue to see if 5 it was worth moving forward, if we would be able to get a 6 level of support that would allow us to move forward. 7 And as I mentioned, three -- on three different 8 occasions, we met with staff that we redesign the building, 9 we added artist studio space on the ground floor and very -- 10 felt very positive coming out of those meetings. In fact, if 11 you look at Exhibit 62F, that's a May 30th letter from the 12 Development -- Development Review Board out of the Town of 13 Kensington. 14 It refers to the fact that they un- -- were unanimously 15 in favor of the preliminary design acknowledging the fact 16 that we came out of those meetings feeling positive and that 17 we had a project that could be supportable by the -- by the 18 Town and the -- and the staff understanding, obviously, 19 there's still a lot of work to be done, but a preliminary 20 [inaudible]. 21 We filed this conditional use site plan on September 21, 22 2018 and did not get comments. As I noted earlier, once you 23 file, there's back and forth with staff, you get technical 24 comments, is this curb cut right, those kinds of things and - 25 - and we did not get that, it was very quiet.</p>

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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 We then got a letter in October from the Town noting 2 that they were going to oppose the project due to lack of 3 retail and we know they were concerned about the re- -- 4 reveals. 5 The preliminary design you could see through to the 6 storage doors and that was a real concern for them. We also 7 got a call from staff, there was a change in staff and the 8 new staff person called and said they also had concerns on 9 the same day, ironically. We then began a process of trying 10 to address those issues working through from November, 2018 11 to March, 2019. 12 The record here does not reflect all of those changes, 13 because obviously, we want to minimize the number of times we 14 amend the conditional use plan, but there were significant 15 changes, I think, as you can see, just from comparing the 16 first rendition to the final one as far as architecture. 17 The architecture was significantly revised. The 18 incorporation of arti- -- artist studio and gallery space is 19 en- -- entirely new. The ground floor was revamped to 20 minimize the storage space and put in what will hopefully be 21 a single restaurant, again, to get -- 22 HEARING OFFICER GROSSMAN: Well, let me stop you for a 23 second. I -- I'm going to let you go on and -- and say 24 whatever you want to say, but -- but how does that really -- 25 how does this history really affect what I -- I am willing to</p>	<p style="text-align: right;">63</p> <p>1 improper statutory -- or a proper way to look at it from the 2 statutory framework. 3 We raised that issue in a response issue to the Town, on 4 62C in the record, where we laid that, you know, we've tried 5 to work with you, but this is what the Hearing Examiner and 6 the County actually needs to look at and we believe that 7 we're within that framework. 8 Then the staff report issued -- you know, we -- it 9 became apparent we weren't going to reach agreement. The 10 staff report issued on July 15th -- and as I noted, they -- 11 that was the first time, unlike every other case that is a 12 conditional use that I've ever worked on, where you get 13 comments, it's an iterative thing, we got a staff report that 14 dumped all these comments that we're going to have to address 15 through today and were never given the opportunity, which I 16 think fairness would've dictated, to respond to a number of 17 these things. 18 So there's a lot more -- I don't want it to be 19 understood that this was a sloppy plan because all of these 20 issues were not addressed, it really was that it was not an 21 interactive process, as we believe it should've been, and we 22 weren't given the opportunity to, you know, modify the curb 23 cut and what have you. 24 So there's a lot more issues that we're going to have to 25 address through this and some of them, as you noted, can be</p>
<p style="text-align: right;">62</p> <p>1 look at the -- 2 ERIN GIRARD: I understand. 3 HEARING OFFICER GROSSMAN: -- the plans that are before 4 me and the recommendations made by the Town of Kensington and 5 the -- the technical staff and the planning board as to what 6 the final -- and of course, other submissions by -- by others 7 on these final plans. The history doesn't really bear -- and 8 I -- I assume the bonafides of both sides, it's not that -- 9 that's not really the question. 10 ERIN GIRARD: I understand. I -- I do think it's 11 important, because I think that the final product, it kind of 12 sheds some light on where we belie- -- why we believe the 13 Town and staff ended up where it was and why we think that 14 their analysis is faulty and perhaps not genuine. 15 HEARING OFFICER GROSSMAN: Yeah. Well, I'll let you go 16 ahead. 17 ERIN GIRARD: So -- so just, you know, I'm going as 18 quickly as I can, but -- so we had consi- -- we got a to- -- 19 an issu- -- a letter from the Town after having community 20 meetings, doing all this outreach, revising the plans. The 21 Town issued a letter on April 9th, this is Exhibit 62B, that 22 basically says they were not supporting the project for a 23 lack of community support. 24 And as the Hearing Examiner knows, we don't zone by 25 plebiscite, this is the -- the re- -- you -- that was an</p>	<p style="text-align: right;">64</p> <p>1 pushed to preliminary plan. 2 But the staff report very much, you know, in our mind, 3 is one-sided. It -- it mentions sector plan compliance, but 4 really doesn't -- doesn't give a nod to anything that I think 5 any objective person would say does comply with the sector 6 plan, such as the plaza out front, bike lanes. 7 There's no discussion of the positives at all. It's -- 8 it's very, very negative and just goes after -- goes after 9 their -- their theories about why it doesn't meet the sector 10 plan and we'll address those with our experts here today. 11 Then on July 25 -- 25th, as we noted, there was the 12 planning board hearing and it was described in the letter, 13 which is in the record at 64A, the planning board's 14 discussion included a number of issues that we believe are 15 completely relevant to these proceedings, including who owns 16 the property and whether it could be combined with the 17 adjacent property, other potential locations for the self- 18 storage facility, could it be moved to somewhere else, the 19 likely success of the facility and if it was successful, it 20 would remain for a very long time. 21 The planning board also relied on staff's repre- -- 22 representations that there was a demand for residential uses 23 in the Town even though the area is a residential moratorium 24 and as the Hearing Examiner knows, we're not looking at 25 alternate uses here, we're looking at the proposed use and</p>

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17 (65 to 68)

<p>65</p> <p>1 its impacts and doesn't meet the criteria of the code.</p> <p>2 HEARING OFFICER GROSSMAN: Well, I think wasn't that</p> <p>3 stated in -- in reference to the -- there is a -- there is</p> <p>4 language in the -- the sector plan about --</p> <p>5 ERIN GIRARD: Mixed use.</p> <p>6 HEARING OFFICER GROSSMAN: -- about -- well, also about</p> <p>7 residential uses.</p> <p>8 ERIN GIRARD: Wanting a resi- -- wanting residential</p> <p>9 generally --</p> <p>10 HEARING OFFICER GROSSMAN: Yeah.</p> <p>11 ERIN GIRARD: -- but not to this property specifically.</p> <p>12 HEARING OFFICER GROSSMAN: Okay.</p> <p>13 ERIN GIRARD: And so, you know, as we'll get into again,</p> <p>14 staff has been very clear in our conversations with them and</p> <p>15 it comes through in the sector plan that their interpre- --</p> <p>16 interpretation of mixed use really has to be ground-floor</p> <p>17 retail and residential above and as you'll see, we -- we</p> <p>18 completely disagree with that. The planning board majority</p> <p>19 also found --</p> <p>20 HEARING OFFICER GROSSMAN: I would like to hear -- by --</p> <p>21 by the way, I have a question of definition of mixed use. Do</p> <p>22 you have some -- you say you disagree with -- with their</p> <p>23 position on it and I would like to hear from both sides as to</p> <p>24 definition of mixed use and where that definition comes from.</p> <p>25 ERIN GIRARD: We have an expert for that.</p>	<p>67</p> <p>1 HEARING OFFICER GROSSMAN: Your point is they didn't use</p> <p>2 the words, we adopt staff's --</p> <p>3 ERIN GIRARD: As they typically would.</p> <p>4 HEARING OFFICER GROSSMAN: Okay.</p> <p>5 ERIN GIRARD: So we're here today in the hopes and</p> <p>6 belief that, you know, it's unusual for an applicant to move</p> <p>7 forward with a negative -- after having gotten a nega- --</p> <p>8 negative recommendation from the Town, from staff and from</p> <p>9 the planning board, but looking at this objectively and</p> <p>10 looking at it in the statutory framework in which it belongs</p> <p>11 we feel very strongly that this conditional use should be</p> <p>12 approved and that taking an objective look at it and applying</p> <p>13 the correct standards we'll be able to get there.</p> <p>14 As I noted, we will have experts discuss such things as</p> <p>15 the sector plan compliance and again, included in the record</p> <p>16 this, again, was in reference to our letter to the Town, the</p> <p>17 Sienna court case, which is Exhibit 62E and we discussed this</p> <p>18 in front of the planning board as well it's not a reported</p> <p>19 decision, but the planning board was a party and it was a</p> <p>20 very similar case in that they stretched the [inaudible] --</p> <p>21 well, sector plan to try to stop a self-storage use that they</p> <p>22 felt wasn't compliance and the --</p> <p>23 HEARING OFFICER GROSSMAN: I wouldn't --</p> <p>24 ERIN GIRARD: -- the court ultimately --</p> <p>25 HEARING OFFICER GROSSMAN: -- I wouldn't go too far on -</p>
<p>66</p> <p>1 HEARING OFFICER GROSSMAN: Okay.</p> <p>2 ERIN GIRARD: So we will get into that. So the planning</p> <p>3 board majority ultimately found, and this is reflected in</p> <p>4 their letter on Page 3, that the sector plan did not</p> <p>5 contemplate self-storage on this property and that approval</p> <p>6 may preclude another use at this location that is entirely</p> <p>7 consistent with the sector plan and that's language that I</p> <p>8 couldn't pull up precisely earlier, but again, there's no</p> <p>9 reference to the -- to the actual standards other than the</p> <p>10 sector plan in saying it doesn't contemplate, which, as the</p> <p>11 Hearing Examiner knows, it's - it's rare for a sector plan to</p> <p>12 say what should and should not go in a -- in a given</p> <p>13 location.</p> <p>14 And importantly, as I noted before, the planning board</p> <p>15 did not incorporate staff's rationale or report in its</p> <p>16 recommendation. So one thing that --</p> <p>17 HEARING OFFICER GROSSMAN: Well, that incorporated by</p> <p>18 reference, specifically.</p> <p>19 ERIN GIRARD: By reference.</p> <p>20 HEARING OFFICER GROSSMAN: You might argue it</p> <p>21 incorporated it by what it said in the letter, but -- but --</p> <p>22 ERIN GIRARD: I -- I --</p> <p>23 HEARING OFFICER GROSSMAN: -- I -- I understand your</p> <p>24 point.</p> <p>25 ERIN GIRARD: Yes.</p>	<p>68</p> <p>1 - on Sienna. I mean, I have read the case and it doesn't</p> <p>2 apply here as far as I can tell. It's an unpublished circuit</p> <p>3 court decision --</p> <p>4 ERIN GIRARD: Right.</p> <p>5 HEARING OFFICER GROSSMAN: -- not even an appellate</p> <p>6 court decision and they can have unpublished opinions too.</p> <p>7 Even their -- their unpublished opinions technically don't</p> <p>8 set a precedent. An unpublished circuit court decision really</p> <p>9 doesn't, but also it's inapplicable to a conditional use case</p> <p>10 concerning the planning board rejection of a preliminary plan</p> <p>11 and permitted use --</p> <p>12 ERIN GIRARD: But the language in it was the same --</p> <p>13 HEARING OFFICER GROSSMAN: -- property.</p> <p>14 ERIN GIRARD: -- sector plan compliance. That applies</p> <p>15 both to a preliminary plan and to a conditional use.</p> <p>16 HEARING OFFICER GROSSMAN: I mean, what I would apply</p> <p>17 here are the standards set up in cases like Montgomery County</p> <p>18 versus Butler and other cases which discuss conditional uses</p> <p>19 --</p> <p>20 ERIN GIRARD: Yes. And we certainly will.</p> <p>21 HEARING OFFICER GROSSMAN: -- not -- not Sienna.</p> <p>22 ERIN GIRARD: Yes. And we certainly will get to those</p> <p>23 and I will -- I will discuss those further, but --</p> <p>24 HEARING OFFICER GROSSMAN: I also want to --</p> <p>25 ERIN GIRARD: -- but the id- -- idea being -- and -- and</p>

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18 (69 to 72)

<p>69</p> <p>1 -- and the Hearing Examiner is right, Butler saying that 2 these are -- this is a permissible use as long as certain 3 criteria are met and we feel like that was not the standard 4 that was applied by the planning board. In fact, there was a 5 discussion about it in front of the planning board. 6 It -- it was seen more as do we like it or do we not. 7 That was kind of the -- the standard that was applied. 8 HEARING OFFICER GROSSMAN: -- well, I also want to 9 mention one other thing, Sienna predated the Terrapin Run 10 case and the modifications for the land use article in the 11 Maryland Code, which emphasized following master plan 12 recommendations. 13 In other words, Terrapin Run came out and said that it 14 was the court's decision that came out and said, well, 15 consistent with, conforming to, other language that -- that 16 was more loosey-goosey than the State Legislature liked and 17 then came out with -- with modifications to the land use 18 article, which we were very specific about what a -- how to 19 follow master plan recommendations or not undercut them, in 20 any event. 21 There are legal questions that surround that point too, 22 because the way the -- the -- the provisions were written in 23 the amendments to the land use article make it under -- 24 unclear whether their specific interpretations apply to 25 conditional use -- individual conditional use decisions as</p>	<p>71</p> <p>1 HEARING OFFICER GROSSMAN: Well, it doesn't have to be a 2 physical or operational characteristic of the use itself as 3 opposed to the site. I mean, the other provision you don't 4 mention there is that site conditions can yield non-inherent 5 adverse effects -- 6 ERIN GIRARD: I -- 7 HEARING OFFICER GROSSMAN: -- and -- and here that -- 8 isn't that the -- the basis for staff and the planning 9 board's reference there, that is that it's -- the site 10 condition is that where the site is located might have 11 significant adverse consequences or how this -- this use fits 12 on this site at this location could have adverse consequences 13 on the community. 14 ERIN GIRARD: Well, I think that the -- and we went back 15 through a number of OZAH opinions regarding what are inherent 16 and non-inherent and were having a hard time fitting what the 17 Town and staff said into any of those. I agree with you 18 completely that if there's an unusual shape of the site, if, 19 you know, we've had some with stream [inaudible] buffers, 20 there -- there's a number -- 21 Usually, it is something that is a physical or 22 operational characteristic, but for instance, staff said the 23 use will potentially discourage neighboring property owners 24 from redeveloping in a manner consistent with deactivating 25 use envisioned in the plan. So again, it's speculative, at</p>
<p>70</p> <p>1 opposed to legislative changes because of the way they 2 defined the word action in -- in these code provisions. 3 But in any event, all I'm saying is Sienna is -- is a 4 weak read for any of this. So I wouldn't go too far. 5 ERIN GIRARD: Actually, that was about all I was going 6 to touch on. 7 HEARING OFFICER GROSSMAN: All right. 8 ERIN GIRARD: But, you know, our position is relevant to 9 some degree. And then finally, I just wanted to hit on a 10 sector plan compliance kind of -- is the elephant in the room 11 on this case, but I -- I did want to note that the inherent 12 and non-inherent analysis by staff and the Town was incorrect 13 and did not apply the correct standard. 14 I mean, the obvious language of Section 59142 refers to 15 adverse effects created by physical or operational 16 characteristics of the conditional use and the -- the effects 17 that both -- the Town noted that the project, "harkens" back 18 to the old Kensington albeit with newer architecture and not 19 the vision. 20 It creates an inherent and non-inherent adverse effect - 21 - impact and that's not -- I don't -- I don't think that you 22 can argue that harkening back to old architecture is a -- is 23 a physical or operational characteristic that rises to the -- 24 a non-inherent adverse effect and obviously, we may get into 25 that throughout this case, but --</p>	<p>72</p> <p>1 best and it -- 2 HEARING OFFICER GROSSMAN: Well, no. But I mean, 3 developing is -- is one of the specific items that I have to 4 make a finding on, whether there is undue impacts and -- 5 which might've been the very first one in that -- in that 6 code for which -- and let me read it so that we're not -- 7 moving forward here on -- on different understanding. 8 This is in 59731E1G, well, I have to make a finding that 9 in order to improve the conditional use, it will not cause 10 undue harm to the neighborhood as a result of non-inherent 11 adverse effect alone or in combination of an inherent and a 12 non-inherent adverse effect in any of the following 13 categories, the use, peaceful enjoyment, economic value or 14 development potential of abutting and confronting properties 15 of the general neighborhood. 16 ERIN GIRARD: Right. 17 HEARING OFFICER GROSSMAN: So isn't that -- doesn't that 18 fit right into that category? 19 ERIN GIRARD: Again, I don't know -- if you're saying 20 the non-inherent, perhaps it's not spelled out appropriately, 21 at least in my mind in the staff report. You would have to 22 argue that the non-inherent characteristic is the location, I 23 guess, and that -- and that its impact, you know -- and 24 again, that will potentially discourage without, as -- as you 25 know, to -- to make a statement without any basis to that</p>

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19 (73 to 76)

<p>73</p> <p>1 opinion is -- is legally insufficient in our minds, but --</p> <p>2 HEARING OFFICER GROSSMAN: Okay.</p> <p>3 ERIN GIRARD: -- you know, we -- we have -- and again,</p> <p>4 we'll -- we'll get into this through the expert testimony,</p> <p>5 but we have serious concerns about what staff and the Town</p> <p>6 are characterizing as inherent and non-inherent adverse</p> <p>7 impacts.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 ERIN GIRARD: And -- and to -- on that note -- and in</p> <p>10 fact, we wanted to -- to note is anyone looking at the plans</p> <p>11 we think could see the architecture of the building, the way</p> <p>12 that the parking is screened, the way that the two floor- --</p> <p>13 ground floors are used, the -- the massing and all of that.</p> <p>14 To an incredible degree, this use actually ameliorates</p> <p>15 the typical adverse impacts associated with a typical self-</p> <p>16 storage facility.</p> <p>17 So in that regard, we think it's actually above and</p> <p>18 beyond and -- and not less.</p> <p>19 HEARING OFFICER GROSSMAN: Okay. All right. Ms.</p> <p>20 Rosenfeld, did you wish to make an opening statement now,</p> <p>21 reserve it until you begin your case? How did you want to</p> <p>22 proceed?</p> <p>23 MICHELE ROSENFELD: I'd like to reserve until I begin my</p> <p>24 case. Thank you.</p> <p>25 HEARING OFFICER GROSSMAN: All right. How many witnesses</p>	<p>75</p> <p>1 you had listed before, Shane Albers [ph], Michele Bach, Matt</p> <p>2 Clark --</p> <p>3 ERIN GIRARD: Ke- -- Kelly McKone will be here in -- in</p> <p>4 place --</p> <p>5 HEARING OFFICER GROSSMAN: Pardon me?</p> <p>6 ERIN GIRARD: Kelly McKone will be here in place of</p> <p>7 Shane Albers. We had -- we had identified our other</p> <p>8 representation of 1784.</p> <p>9 HEARING OFFICER GROSSMAN: Okay. I'm sorry, who is --</p> <p>10 ERIN GIRARD: Kelly McKone to my right.</p> <p>11 HEARING OFFICER GROSSMAN: -- in -- in place of?</p> <p>12 ERIN GIRARD: Shane Albers.</p> <p>13 HEARING OFFICER GROSSMAN: Okay. And how does Mr. McKone</p> <p>14 spell his name?</p> <p>15 ERIN GIRARD: M-c- --</p> <p>16 ROBERT KELLY MCKONE: M-c- --</p> <p>17 ERIN GIRARD: -- k-o-n-e.</p> <p>18 HEARING OFFICER GROSSMAN: All right. Then Michele Bach,</p> <p>19 Matt Clark, Brad Fox, Brian Biddle and Patrick Phillips?</p> <p>20 ERIN GIRARD: Correct.</p> <p>21 HEARING OFFICER GROSSMAN: Okay.</p> <p>22 ERIN GIRARD: Yeah. We understand Mary Means, she was</p> <p>23 the one who the Town wanted to cross-examine. She's not</p> <p>24 technically part of our case-in-chief, but she does want to</p> <p>25 speak and we had delayed her to today so that she would be</p>
<p>74</p> <p>1 do you have, Ms. Rosenfeld?</p> <p>2 MICHELE ROSENFELD: Three.</p> <p>3 HEARING OFFICER GROSSMAN: Okay. And who would they be?</p> <p>4 MICHELE ROSENFELD: They would be Ms. Tracey Furman, the</p> <p>5 mayor of the Town of Kensington, Councilmember Conor Crimmins</p> <p>6 and Councilmember Darin Bartram.</p> <p>7 HEARING OFFICER GROSSMAN: Conor Crimmins --</p> <p>8 MICHELE ROSENFELD: C-r-i-m-m-i-n-s.</p> <p>9 HEARING OFFICER GROSSMAN: -- and Councilmember --</p> <p>10 MICHELE ROSENFELD: -- B-a-r-t-r- --</p> <p>11 HEARING OFFICER GROSSMAN: Wait, stop. Name, please.</p> <p>12 MICHELE ROSENFELD: Oh, I'm sorry, Darin.</p> <p>13 HEARING OFFICER GROSSMAN: Darin, D-e-r- --</p> <p>14 MICHELE ROSENFELD: I -- can you help me with the</p> <p>15 spelling?</p> <p>16 TRACEY FURMAN: D-a-r-i-n.</p> <p>17 MICHELE ROSENFELD: D-a-r-i-n.</p> <p>18 HEARING OFFICER GROSSMAN: Last name?</p> <p>19 MICHELE ROSENFELD: Bartram, B-a-r-t-r-a-m -- u-m.</p> <p>20 TRACEY FURMAN: No. That's a joke, sorry. A-m.</p> <p>21 MICHELE ROSENFELD: I'll let you go on record.</p> <p>22 TRACEY FURMAN: I know. B-a-r-t-r-a-m.</p> <p>23 HEARING OFFICER GROSSMAN: Okay. Let me come back to my</p> <p>24 list here.</p> <p>25 And I take Ms. Girard, you're going to call the people</p>	<p>76</p> <p>1 under cross with -- by the Town.</p> <p>2 HEARING OFFICER GROSSMAN: So Mary Means is a witness to</p> <p>3 be called by you or not to be called by you?</p> <p>4 ERIN GIRARD: She -- sh- -- well --</p> <p>5 HEARING OFFICER GROSSMAN: I asked for anybody in the --</p> <p>6 in the audience who's --</p> <p>7 ERIN GIRARD: -- I -- I can ask how -- we can handle it</p> <p>8 however you want to. She's not technically one of our</p> <p>9 witnesses, but she is -- she has been active in the community</p> <p>10 and she -- we do actually intend to qualify her as an expert,</p> <p>11 but not -- she's not -- she --</p> <p>12 HEARING OFFICER GROSSMAN: I don't think you intend to</p> <p>13 qualify her as an expert, because you would have to have</p> <p>14 given the notice of that.</p> <p>15 ERIN GIRARD: Okay. Well, I mean, she'll -- she can --</p> <p>16 again, she's not -- she's not associated with the applicant,</p> <p>17 she's not paid by the applicant, we just know that she's in</p> <p>18 the favor of the -- of the application and she definitely has</p> <p>19 the background to qualify.</p> <p>20 HEARING OFFICER GROSSMAN: Is she a member of the</p> <p>21 community? Is that --</p> <p>22 ERIN GIRARD: Correct. She's a neighbor.</p> <p>23 HEARING OFFICER GROSSMAN: Okay. And her name is Mary</p> <p>24 Means, M-e-a-n-s.</p> <p>25 ERIN GIRARD: N-s.</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 HEARING OFFICER GROSSMAN: All right. Okay. All right. I 2 -- I think what we'll do is we'll take a -- a five-minute 3 break here before we call the first witness and then I'll 4 come back at about 11:15. 5 ERIN GIRARD: Okay. 6 HEARING OFFICER GROSSMAN: Calling maintenance now to 7 see if we can get them to do something instantly about this 8 temperature in the room. 9 (Off the record at 11:05:54 a.m.) 10 (Back on the record at 11:19:02 a.m.) 11 HEARING OFFICER GROSSMAN: All right. Ms. Girard, call 12 your first witness, please. 13 ERIN GIRARD: I'm calling Brad Fox. 14 HEARING OFFICER GROSSMAN: All right. [inaudible] at 15 that box. 16 BRAD FOX: All right. 17 HEARING OFFICER GROSSMAN: Would you raise your right 18 hand, please? Do you swear or affirm to tell the truth, the 19 whole truth and nothing but the truth under penalty of 20 perjury? 21 BRAD FOX: I do. 22 HEARING OFFICER GROSSMAN: All right. Would you state 23 your full name and address, please? 24 BRAD FOX: Bradford Lee Fox, work address of 16701 25 Melford Boulevard, Suite 310, Bowie, Maryland 20715.</p>	<p style="text-align: right;">79</p> <p>1 BRAD FOX: Conditional use for a Starbucks drive-thru in 2 Burtonsville and a conditional use for a Bank of America at 3 the Walnut Hill Shopping Center. 4 HEARING OFFICER GROSSMAN: Okay. All right. Based on 5 your licensing and credentials, as indicated in the -- your 6 Exhibit 22A and you've been conceding that you are an expert 7 in civil engineering, I accept you as such. 8 ERIN GIRARD: Mr. Fox, are you familiar with the 9 conditional use property, the surrounding area in application 10 number CU19-03? 11 BRAD FOX: I am. I'll describe it a little bit exactly 12 where the site is located. This site sits at the corner of 13 Connecti- -- Connecticut Avenue and Plyers Mill Road. The -- 14 it's bounded on the west side by Connecticut -- Connecticut 15 Avenue, the north side by Plyers Mill. It's adjacent to 16 Metro- -- Metropolitan Avenue, we'll talk about that in a 17 little bit, and then on the south side or the CSX railroad 18 tracks. 19 ERIN GIRARD: Okay. And have you analyzed the 20 suitability of subject property for the proposed con- -- 21 conditional use from a civil engineering standpoint? 22 BRAD FOX: I have during the preparation of the 23 documents and the required research necessary for the 24 conditional use filing. We went through all those items. 25 ERIN GIRARD: And can you review the findings of your</p>
<p style="text-align: right;">78</p> <p>1 HEARING OFFICER GROSSMAN: All right. You may proceed, 2 Ms. Girard. 3 ERIN GIRARD: Okay. Mr. Fox's resume is in the record at 4 22A. 5 HEARING OFFICER GROSSMAN: Okay. 6 ERIN GIRARD: He has previously qualified as an expert 7 in civil engineering in the Starbucks case 17-06 and Walnut 8 Hill 17-17. We can go through his expert qualifications, but 9 if Michele -- 10 MICHELE ROSENFELD: We -- we have no ex- -- no objection 11 to his designation as an expert. 12 ERIN GIRARD: Then we'll move his admission in civil 13 engineering. 14 HEARING OFFICER GROSSMAN: Okay. Let me see, this is 22A 15 you said? 16 ERIN GIRARD: 22A, I think. 17 MICHELE ROSENFELD: 22A. 18 HEARING OFFICER GROSSMAN: All right. So you're licensed 19 as a civil engineer in Maryland, Mr. Fox? 20 BRAD FOX: Correct. 21 HEARING OFFICER GROSSMAN: And it's -- your license 22 number is 37966? It's on your resume on 22A. 23 BRAD FOX: Yes. 24 HEARING OFFICER GROSSMAN: And you previously testified 25 as an expert in which cases?</p>	<p style="text-align: right;">80</p> <p>1 civil engineering analysis, please? 2 BRAD FOX: Yes. So I described the existing site 3 location. The current site is a gas station. So the -- there 4 was some geotechnical work done on that from another firm 5 that, you know, bounded some of the things that we could do 6 from a stormwater perspective. 7 Other than that the environmental constraints we looked 8 at were the Forest Conversation Law, which this site 9 qualified for a forest conservation exemption. 10 That's another exhibit in the -- in the record. And then 11 the site's pretty flat, but it falls off on all sides to the 12 neighboring properties. There's a sharp drop to the CSX 13 right-of-way to the south and also the neighbor to the east. 14 ERIN GIRARD: Can you describe the existing public 15 facilities around the property? 16 BRAD FOX: Yes. Site's served by water and sewer. It's 17 in an urban location. So we don't anticipate any issues 18 there. There's storm drainage that we're planning on tying 19 into along Plyers Mill, because we feel like that's the best 20 location. Currently, there's no stormwater management that 21 exists onsite. 22 The -- the project is proposing to provide environmental 23 site design to the maximum extent practical, which is the -- 24 the County standard and we'll be tying those stormwater 25 management facilities into that storm drain along Plyers</p>

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21 (81 to 84)

<p>81</p> <p>1 Mill.</p> <p>2 The -- on both frontages, there's also existing utility</p> <p>3 poles that the applicant is not planning on -- on touching</p> <p>4 and therefore, we've, you know, maintained the necessary</p> <p>5 setbacks from those utility poles. It's a very large system</p> <p>6 that serves a lot of the neighboring and surrounding areas.</p> <p>7 ERIN GIRARD: And the -- I think you've touched on most</p> <p>8 of the proposed public facilities, but stormwater, in</p> <p>9 particular, has that been under review by the Department of</p> <p>10 Permitting Services?</p> <p>11 BRAD FOX: Correct. We've been working with the De- --</p> <p>12 Department of Permitting Services on that approval. You know,</p> <p>13 as -- as DPS pointed out, it's not necessary for a</p> <p>14 conditional use approval to have stormwater management at</p> <p>15 hand, but we proactively went through that to make sure that</p> <p>16 the proposed development would be able to comply with the --</p> <p>17 the stormwater management requirements when we go forward to</p> <p>18 the sketch prelim and site plan process.</p> <p>19 ERIN GIRARD: Do you anticipate any -- any revisions to</p> <p>20 the plans we needed as part of the stormwater review?</p> <p>21 BRAD FOX: Minor revisions are always necessary as we go</p> <p>22 through and work out the finer details with -- with DPS, but</p> <p>23 I don't anticipate anything that's insurmountable.</p> <p>24 ERIN GIRARD: Okay. Can you review, from a civil</p> <p>25 engineering standpoint, the proposed improvements and</p>	<p>83</p> <p>1 only be addressed in the preliminary plan. I need to have</p> <p>2 plans that can be approved for the conditional use if the</p> <p>3 conditional use is approved and if the plans are going to</p> <p>4 radically change because the access is completely different,</p> <p>5 staff suggests pretty strongly that a Connecticut Avenue</p> <p>6 accessway and an -- and an in and out on location is truly</p> <p>7 problematic from a safety and traffic point of view. So what</p> <p>8 are the alternatives?</p> <p>9 BRAD FOX: The alternatives, other than Connecticut</p> <p>10 Avenue, would be to put it on the frontage at Plyers Mill if</p> <p>11 we were to maintain an access that was on one of the sites</p> <p>12 frontages.</p> <p>13 The issue of putting it on Plyers Mill, both Connecticut</p> <p>14 Avenue and Plyers Mill are -- both have medians. So it would</p> <p>15 be a right-in/right-out along Plyers Mill.</p> <p>16 As we approach the intersection with Metropolitan</p> <p>17 Avenue, I don't think we'd want to push all of the side</p> <p>18 access closer to that intersection due to the already</p> <p>19 confusing configuration of that intersection. So we would be</p> <p>20 pushing the right-in/right-out away from that intersection</p> <p>21 and closer to Connecticut Avenue.</p> <p>22 That would lead to a site distance issue for vehicles</p> <p>23 that were turning right at Connecticut Avenue and not being</p> <p>24 able to see a vehicle pulling out of the right-in-/right-out.</p> <p>25 That sit- -- that site distance issue is alle- -- alleviated</p>
<p>82</p> <p>1 circulation patterns?</p> <p>2 BRAD FOX: Yes. I'm going to flip through to another</p> <p>3 exhibit. This would be, it looks like --</p> <p>4 ERIN GIRARD: What exhibit number is that?</p> <p>5 BRAD FOX: -- 40.A.3.</p> <p>6 HEARING OFFICER GROSSMAN: 40.A what?</p> <p>7 BRAD FOX: .3.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 BRAD FOX: So currently, as it exists, the former gas</p> <p>10 station has two depressed curb entrances along Connecticut</p> <p>11 Avenue and two depressed curb entrances along Plyers Mill,</p> <p>12 noting that that was likely not going to be possible to</p> <p>13 maintain those, we've reduced it to one right-in/right-out</p> <p>14 along Connecticut Avenue.</p> <p>15 It's located as far as we could push it away from the</p> <p>16 intersection of Connecticut Avenue and Plyers Mill and still</p> <p>17 be on our frontage and also respect the large bridge that</p> <p>18 goes over the -- the CSX railroad. So that's where our right-</p> <p>19 in/right-out is located. There were some comments about the</p> <p>20 configuration of that from staff.</p> <p>21 Those comments can be addressed during the prelim site</p> <p>22 and sketch plan phase and also it's a state highway right-of-</p> <p>23 way. So we'll need to comply with state highway's</p> <p>24 recommendations and requirements for that right-in/right-out.</p> <p>25 HEARING OFFICER GROSSMAN: Well, I'm not sure it can</p>	<p>84</p> <p>1 if you go to the Connecticut Avenue frontage. It's a</p> <p>2 straighter shot down Connecticut Avenue looking across the</p> <p>3 bridge and down towards Howard.</p> <p>4 HEARING OFFICER GROSSMAN: So Mr. Fox, are you telling</p> <p>5 me that there are no viable alternatives to a Connecticut</p> <p>6 Avenue entrance that was critiqued by the staff?</p> <p>7 BRAD FOX: I'm telling you that we located the entrance</p> <p>8 in the best place we thought along the site's frontage. If --</p> <p>9 if it was -- if Connecticut Avenue was deemed not appropriate</p> <p>10 or, you know, there was an objection from state highway about</p> <p>11 opening that, we'd be denying access to this property.</p> <p>12 HEARING OFFICER GROSSMAN: So you're saying that the</p> <p>13 answer to my question is, yes, that there are no viable</p> <p>14 alternatives, in your opinion, to an entry on Connecticut</p> <p>15 Avenue?</p> <p>16 BRAD FOX: That's correct.</p> <p>17 HEARING OFFICER GROSSMAN: Okay.</p> <p>18 BRAD FOX: And staff's notes about modifying the</p> <p>19 entrance for width and -- and minimizing the -- the actual</p> <p>20 openings there, that can be addressed during the preliminary</p> <p>21 plan process, those -- those tweaks to the configuration.</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 ERIN GIRARD: Mr. Fox, are you aware if there's been any</p> <p>24 preliminary conversations with SHA about that access point?</p> <p>25 BRAD FOX: I am. I believe there was an email received</p>

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22 (85 to 88)

<p>85</p> <p>1 from SHA.</p> <p>2 ERIN GIRARD: You can proceed.</p> <p>3 BRAD FOX: Okay. All right. So those are the -- that's -</p> <p>4 -</p> <p>5 HEARING OFFICER GROSSMAN: I'm sorry, Mr. Fox, I missed</p> <p>6 your statement --</p> <p>7 BRAD FOX: Mm-hmm.</p> <p>8 HEARING OFFICER GROSSMAN: -- I was just writing a note.</p> <p>9 BRAD FOX: Mm-hmm.</p> <p>10 HEARING OFFICER GROSSMAN: What did you say about the</p> <p>11 con- -- con- -- connection with SHA?</p> <p>12 BRAD FOX: Yeah. SHA did provide an email that said that</p> <p>13 -- I'm paraphrasing, that they -- they agreed with the</p> <p>14 location along Connecticut Avenue.</p> <p>15 HEARING OFFICER GROSSMAN: Okay. Okay. Do we have a copy</p> <p>16 of that?</p> <p>17 ERIN GIRARD: I do. I was going to submit it as part of</p> <p>18 the traffic, but I can submit it now.</p> <p>19 HEARING OFFICER GROSSMAN: You might as well since it's</p> <p>20 just been referenced. Yeah.</p> <p>21 ERIN GIRARD: Okay. And I'm going to need to ma- -- have</p> <p>22 copies made. I apologize; I wasn't anticipating we were going</p> <p>23 to need --</p> <p>24 HEARING OFFICER GROSSMAN: Okay. Do you want to show it</p> <p>25 counsel first?</p>	<p>87</p> <p>1 HEARING OFFICER GROSSMAN: Shown on -- you mean what's</p> <p>2 there -- I mean, on the pla- -- on the conditional use site</p> <p>3 plan?</p> <p>4 BRAD FOX: No. It would've been shown on the initial</p> <p>5 concepts and renderings of the site --</p> <p>6 HEARING OFFICER GROSSMAN: Okay.</p> <p>7 BRAD FOX: -- and your meeting with staff prior to</p> <p>8 submitting the conditional use application.</p> <p>9 HEARING OFFICER GROSSMAN: And you got no feedback,</p> <p>10 you're saying, from staff regarding the critiques that are</p> <p>11 outlined in their staff report, Exhibit 59?</p> <p>12 BRAD FOX: Correct. Nothing about --</p> <p>13 MICHELE ROSENFELD: And Mr. Grossman, I just want the</p> <p>14 record to be clear we are talking about staff from park and</p> <p>15 planning. That's -- that's --</p> <p>16 HEARING OFFICER GROSSMAN: Oh, yeah.</p> <p>17 BRAD FOX: Correct.</p> <p>18 ERIN GIRARD: Correct. Yeah. [inaudible]</p> <p>19 HEARING OFFICER GROSSMAN: Is there another staff that</p> <p>20 we're talking about?</p> <p>21 ERIN GIRARD: The Town of Kensington.</p> <p>22 HEARING OFFICER GROSSMAN: I see. Okay. Yes. Thank you -</p> <p>23 - thank you for the clarification.</p> <p>24 BRAD FOX: All right. In addition to the entrance along</p> <p>25 the site frontage along Connecticut Avenue, the developers</p>
<p>86</p> <p>1 ERIN GIRARD: Sure.</p> <p>2 HEARING OFFICER GROSSMAN: Okay. This will be Exhibit 89</p> <p>3 and that is -- all right.</p> <p>4 So this is an email exchange of April 9, 2018 between</p> <p>5 Phillip Hummel [ph] [inaudible] and Quesi Woodruff [ph] of</p> <p>6 SHA regarding Connecticut Avenue access. Okay. Thank you. I'm</p> <p>7 sorry, go ahead.</p> <p>8 ERIN GIRARD: And Mr. Fox, before you continue, I just</p> <p>9 wanted to ask did you have any conversations with staff about</p> <p>10 any of their comments that were reviewed in the staff report?</p> <p>11 Was there any back and forth regarding curb cut sizes,</p> <p>12 locations, any of that?</p> <p>13 BRAD FOX: No. We might've discussed it in passing some</p> <p>14 of the original architectural renderings that we took in</p> <p>15 there, but it was largely focused on just the architectural</p> <p>16 layout. First, we saw the specific detail about the</p> <p>17 configuration of the entrances and the bike lanes was -- when</p> <p>18 the staff report was issued.</p> <p>19 ERIN GIRARD: Okay. You can proceed.</p> <p>20 BRAD FOX: Okay.</p> <p>21 HEARING OFFICER GROSSMAN: So you're saying that you</p> <p>22 didn't get any feedback from staff at all regarding access</p> <p>23 during your meetings?</p> <p>24 BRAD FOX: Mm-mm. It is shown on there the configuration</p> <p>25 and those --</p>	<p>88</p> <p>1 also approached the neighboring property owner for the</p> <p>2 ability to have a secondary exit that would go out to</p> <p>3 Metropolitan and through their existing -- that site's</p> <p>4 existing exit onto Metropolitan.</p> <p>5 HEARING OFFICER GROSSMAN: And who is that owner?</p> <p>6 BRAD FOX: The legal entity is the Kensington Joint</p> <p>7 Venture.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 BRAD FOX: Okay. So to provide that secondary access,</p> <p>10 we're opening a -- a drive aisle into their adjacent parking</p> <p>11 lot and then utilizing their existing access onto</p> <p>12 Metropolitan.</p> <p>13 ERIN GIRARD: Just making sure it's [inaudible] --</p> <p>14 HEARING OFFICER GROSSMAN: Okay.</p> <p>15 BRAD FOX: Okay.</p> <p>16 ERIN GIRARD: -- on the list.</p> <p>17 BRAD FOX: One other -- one other thing I'll note --</p> <p>18 HEARING OFFICER GROSSMAN: I don't think there's a</p> <p>19 question pending.</p> <p>20 BRAD FOX: Oh, sorry.</p> <p>21 ERIN GIRARD: Well, if there's other things you wanted</p> <p>22 to -- that you forgot in your analysis, please --</p> <p>23 BRAD FOX: Yeah. I'll continue going on the circulation.</p> <p>24 HEARING OFFICER GROSSMAN: Okay.</p> <p>25 BRAD FOX: We've also looked at truck circulation and</p>

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23 (89 to 92)

<p>89</p> <p>1 the applicant likes to provide truck loading bays within 2 their property. 3 They're located about the midpoint in the building there 4 and the turning radii coming out of that, those two recessed 5 loading bays is sufficient to make that turn and exit the 6 site. 7 HEARING OFFICER GROSSMAN: So you don't have a truck 8 circulation plan that -- that technical staff was -- was 9 calling for, but you're saying that your analysis is that 10 there is adequate room for trucks circulation? 11 BRAD FOX: Correct. And we'll provide those circulation 12 diagrams at the time of preliminary plan. 13 HEARING OFFICER GROSSMAN: Okay. Ms. Girard, is this 14 witness going to address the other circulation questions also 15 that we have? 16 ERIN GIRARD: Yes. I'm trying to -- 17 HEARING OFFICER GROSSMAN: Okay. 18 ERIN GIRARD: -- half of them are for civil and half of 19 them are for traffic. 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: So I'm just trying to peruse through 22 exactly who should address what. And I believe you already -- 23 but going through them, Mr. Fox. So one of the issues was the 24 angled exit and the width. So it's your opinion that that 25 could be modified with minimal -- well, why don't you --</p>	<p>91</p> <p>1 conflicting standard there is SHA wants to move a larger 2 volume of traffic through that intersection to keep traffic 3 moving whereas park and planning seeks to narrow that down to 4 slow down traffic and also to -- to shorten the pedestrian 5 distances. 6 Every finding that they list there, it's a -- it's a 7 negotiation between those two parties to determine, you know, 8 what state highway's vision is for this intersection and what 9 they need it to perform at versus, you know, what can be 10 provided from an urban planning perspective and -- and the -- 11 the narr -- narrowing of that radius. So -- 12 ERIN GIRARD: Okay. And you're familiar with the staff 13 report; correct? 14 BRAD FOX: Correct. 15 ERIN GIRARD: And you're familiar with their comments 16 that were also discussed this morning about, for instance, 17 adding wheel stops to protect pedestrians -- illuminating a 18 curb ra -- or adding detectable warning strips, high 19 visibility markings, flush concrete. Is it, in your opinion, 20 that these can be addressed with minimal impact to the -- 21 with the current plan at the time of site plan or preliminary 22 plan? 23 BRAD FOX: Correct. Whether we add wheel stops or 24 provide ballers to protect the pedestrians along that flush 25 area does not represent a material change to the conditional</p>
<p>90</p> <p>1 rather than -- 2 HEARING OFFICER GROSSMAN: Right. 3 ERIN GIRARD: -- me telling you what your opinion is, 4 how about you tell me what your opinion is? 5 BRAD FOX: And just for clar -- clarity, we're talking 6 about the pedestrian access that goes across Plyers Mill Road 7 to the north at the corner of Connecticut and Plyers Mill, 8 I'll address that one. 9 The -- the proposed conditional use plan sought to 10 maintain that existing condition. 11 If it's deemed that from a pedestrian safety or from a 12 change in standards that the realignment of that would wor -- 13 - work better, we'll address that with state highway during 14 their plan approval process for their work within the right- 15 of-way. 16 The reconfiguration of that pedestrian ramp is -- is not 17 a significant change. There will be a pedestrian access point 18 at that corner; it's just how do we configure it for -- best 19 for -- best for pedestrian safety. 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: And I apologize if you were saying -- I 22 was reading earlier the -- so the pedestrian -- so the curb 23 radii turning from the intersection of Connecticut to Plyers 24 Mill Road could that be tightened, in your opinion? 25 BRAD FOX: With the approval of SHA, the -- the</p>	<p>92</p> <p>1 use plans. The -- the at-grade crossing for the intersection 2 is something that we can certainly work out with staff and 3 state highway during the preliminary plan process. 4 HEARING OFFICER GROSSMAN: So you're saying that all of 5 the circulation plans on the distinguished [inaudible] access 6 issues -- 7 BRAD FOX: Mm-hmm. 8 HEARING OFFICER GROSSMAN: -- all the circulation 9 deficiencies that were noted by technical staff can be 10 resolved without any major changes? 11 BRAD FOX: Yes. I don't anticipate the relocation of any 12 access points, pedestrian or vehicular. So therefore, the 13 rest is just minor configurations to either the grade, the -- 14 whether the crosswalk is painted or not, whether we provide 15 truncated domes or not and then minor alignment changes. 16 HEARING OFFICER GROSSMAN: Okay. By the way, I have an 17 extra copy, if you want, of the list of preliminary matters 18 if you want your witnesses to have the -- access to that 19 which lists, in question D1 through 9, those comments. So I'm 20 going to give this. 21 So you might le -- leave this for the other witnesses 22 as well. That lists the comments on D1 through 9 that staff 23 had made on this general as to access and circulation. 24 ERIN GIRARD: Thank you. And Mr. Fox, if you can just 25 take a minute, I -- by my count, I think we've hit all but</p>

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24 (93 to 96)

<p>93</p> <p>1 four, but if you could review and make sure that you --</p> <p>2 BRAD FOX: Certainly.</p> <p>3 ERIN GIRARD: -- have provided [inaudible].</p> <p>4 HEARING OFFICER GROSSMAN: Any others that -- yeah, that</p> <p>5 you think you should address.</p> <p>6 BRAD FOX: I think we touched on all of them.</p> <p>7 HEARING OFFICER GROSSMAN: Okay. And just --</p> <p>8 BRAD FOX: I don't think there was anything else.</p> <p>9 HEARING OFFICER GROSSMAN: -- we've got a few more for</p> <p>10 the next witness, but thank you.</p> <p>11 ERIN GIRARD: Was there anything else you wanted to</p> <p>12 cover from your analysis?</p> <p>13 BRAD FOX: No.</p> <p>14 ERIN GIRARD: Okay. Then Mr. Fox, in your opinion and</p> <p>15 from an engineering perspective, will the proposed</p> <p>16 conditional use cause any objectionable noise, odors, dust or</p> <p>17 elimination?</p> <p>18 BRAD FOX: No. The proposed use will not cause any</p> <p>19 objectionable noise, odors, dust or elimination.</p> <p>20 HEARING OFFICER GROSSMAN: On the elimination part,</p> <p>21 there was an observation --</p> <p>22 BRAD FOX: Mm-hmm.</p> <p>23 HEARING OFFICER GROSSMAN: -- oh, you're going to</p> <p>24 address that with another witness?</p> <p>25 ERIN GIRARD: Correct. Architect.</p>	<p>95</p> <p>1 understanding of the size of trucks that would be accessing</p> <p>2 this location?</p> <p>3 BRAD FOX: Well, that might be a -- an operational</p> <p>4 question. I can answer it from the zoning perspective. The</p> <p>5 zoning code requires us to either use a SU 30 truck, which is</p> <p>6 a long fixed-axle truck or WB --</p> <p>7 HEARING OFFICER GROSSMAN: I'm sorry, which is a what</p> <p>8 long?</p> <p>9 BRAD FOX: I forget the exact length of it, but it is</p> <p>10 similar to the largest -- it's -- it's actually slightly</p> <p>11 largest -- larger than the largest U-Haul truck that's</p> <p>12 offered.</p> <p>13 That would be something that we would most likely see in</p> <p>14 a self-storage facility. So a -- a U-Haul truck and that's</p> <p>15 what we based the 10 -- yes, the 10 x 30 loading zone based</p> <p>16 on that truck.</p> <p>17 The -- the zoning code also, for larger commercial,</p> <p>18 retail establishments, grocery stores, things like that,</p> <p>19 could require a WB-40. That's not warranted in this case</p> <p>20 based on the use. The WB-40 is a small, what you would call,</p> <p>21 a semi-truck.</p> <p>22 MICHELE ROSENFELD: So when I think of a tractor</p> <p>23 trailer, I think 18-wheeler.</p> <p>24 BRAD FOX: Mm-hmm.</p> <p>25 MICHELE ROSENFELD: What would a small semi --</p>
<p>94</p> <p>1 HEARING OFFICER GROSSMAN: All right.</p> <p>2 ERIN GIRARD: From an engineering perspective, will the</p> <p>3 proposed conditional use cause undue harm to the use,</p> <p>4 peaceful enjoyment or development potential of abutting or</p> <p>5 confronting properties or the general neighborhood?</p> <p>6 BRAD FOX: No. From an engineering perspective, we're</p> <p>7 taking a existing site with no stormwater management, we're</p> <p>8 providing stormwater management for that site, we're not in</p> <p>9 violation of any of the setbacks the -- to the neighboring</p> <p>10 properties and we have -- we have worked to locate the</p> <p>11 entrances as they -- as they could best be located.</p> <p>12 ERIN GIRARD: And finally, from an engineering sta- --</p> <p>13 perspective, will the proposed conditional use cause any</p> <p>14 undue harm to the health, safety or welfare of the</p> <p>15 neighboring residents, visitors or employees?</p> <p>16 BRAD FOX: No. From an engineering perspective, health,</p> <p>17 safety or welfare, we are -- the -- the minor modifications</p> <p>18 to the pedestrian access would be the only one from an</p> <p>19 engineering perspective and we'll work to address that during</p> <p>20 the preliminary plan and make that to the current agreed-upon</p> <p>21 standards with both SHA and park and planning.</p> <p>22 ERIN GIRARD: Nothing further.</p> <p>23 HEARING OFFICER GROSSMAN: Cross-examination?</p> <p>24 MICHELE ROSENFELD: Yes. Thank you. Mr. Fox, with</p> <p>25 respect to the truck circulation on the site, what is your</p>	<p>96</p> <p>1 BRAD FOX: The --</p> <p>2 MICHELE ROSENFELD: -- like how would it correlate to</p> <p>3 that?</p> <p>4 BRAD FOX: Yeah. The -- the -- the tractor doesn't vary</p> <p>5 much; it's the trailer that varies. The WB-40 is a smaller</p> <p>6 trailer. It's not going to be a large grocery store trailer.</p> <p>7 That's a WB-67. The WB-40 would be a smaller tractor trailer</p> <p>8 that would serve a more urban environment, but I don't</p> <p>9 anticipate that here.</p> <p>10 HEARING OFFICER GROSSMAN: Let -- let me interrupt. You</p> <p>11 say you don't anticipate that.</p> <p>12 BRAD FOX: Mm-hmm.</p> <p>13 HEARING OFFICER GROSSMAN: Do you mean that the -- the</p> <p>14 rules for use of this facility would prohibit it or do you</p> <p>15 mean you don't think that somebody will show up with one of</p> <p>16 those trucks?</p> <p>17 BRAD FOX: You'd be required to have a CDL so they'd</p> <p>18 have a --</p> <p>19 HEARING OFFICER GROSSMAN: What's a CDL?</p> <p>20 BRAD FOX: Sorry, Commercial Driver's License.</p> <p>21 HEARING OFFICER GROSSMAN: Okay.</p> <p>22 BRAD FOX: Okay. So they would -- they would need to --</p> <p>23 you know, it would have to be a private moving company or</p> <p>24 something. It's not going to be a -- an individual, such as</p> <p>25 myself driving one of those trucks.</p>

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25 (97 to 100)

<p style="text-align: right;">97</p> <p>1 HEARING OFFICER GROSSMAN: Well, yes, but wouldn't you 2 anticipate that in a storage facility, you might have a 3 private moving company come in with some stuff? 4 BRAD FOX: I would leave that as an operational question 5 for the owner just to explain how many times that they 6 actually see those larger trucks at the site. 7 HEARING OFFICER GROSSMAN: Well, I -- I guess it's not a 8 question of how many times. 9 BRAD FOX: Mm-hmm. 10 HEARING OFFICER GROSSMAN: The question I guess I would 11 ask is is that loading area large enough to handle the WB-40, 12 if I got that number correct, trailer -- 13 BRAD FOX: Mm-hmm. 14 HEARING OFFICER GROSSMAN: -- that you say is a 15 possibility, although, not a frequent possibility? 16 BRAD FOX: Mm-hmm. That loading zone is drawn to the 10 17 x 30 standard in the zoning code. The zoning code allows you 18 to select either the SU-30 or the WB-40 from a zoning 19 perspective and accommodate either one of those loading 20 spaces based on the use that you're proposing. 21 HEARING OFFICER GROSSMAN: Well, I'm not sure that 22 answered my question. 23 BRAD FOX: Yeah. 24 HEARING OFFICER GROSSMAN: Is that area, the 10 x 30 25 that you selected, large enough to accommodate the WB-40</p>	<p style="text-align: right;">99</p> <p>1 MICHELE ROSENFELD: If you could approach the exhibit -- 2 HEARING OFFICER GROSSMAN: And that exhibit is solely 3 conditional on the site plan, 40A3? 4 MICHELE ROSENFELD: ABC is the site plan. Correct. 5 BRAD FOX: Mm-hmm. 6 MICHELE ROSENFELD: Would you please show me and 7 describe geographically where that entrance to the adjoining 8 property would be located? 9 BRAD FOX: Yes. Between the applicant's property and the 10 neighboring property along the north-south property line. The 11 drive aisle will go from the proposed se- -- self-storage 12 property through and into the -- the existing. 13 HEARING OFFICER GROSSMAN: Why don't you use that, 14 because you didn't actually touch the -- 15 MICHELE ROSENFELD: And if I can hand you a yellow -- 16 HEARING OFFICER GROSSMAN: Yeah. Here's -- here's a -- 17 MICHELE ROSENFELD: All right. 18 HEARING OFFICER GROSSMAN: -- I don't want them -- 19 MICHELE ROSENFELD: Okay. 20 HEARING OFFICER GROSSMAN: -- to mark it up. 21 BRAD FOX: Right. It's [inaudible]. 22 HEARING OFFICER GROSSMAN: Well, that's the -- it's not 23 the exhibits from the file. So you can if you wanted to. 24 BRAD FOX: Okay. 25 HEARING OFFICER GROSSMAN: But you can use a -- point it</p>
<p style="text-align: right;">98</p> <p>1 trailer size? 2 BRAD FOX: No. It's not. 3 HEARING OFFICER GROSSMAN: Okay. So it would have to be 4 a prohibited vehicle for this use unless you change that 5 loading area; correct? 6 BRAD FOX: Correct. 7 HEARING OFFICER GROSSMAN: Okay. 8 MICHELE ROSENFELD: Are you aware of the fact that there 9 is restaurant use potentially proposed at this location? 10 BRAD FOX: I am. 11 MICHELE ROSENFELD: And do you know whether or not 12 larger trucks make deliveries to restaurants during the 13 course of making deliveries to several locations that receive 14 food products? 15 BRAD FOX: That's largely dependent on the restaurant 16 use. There are -- it -- it varies. 17 MICHELE ROSENFELD: Okay. But irrespective of the source 18 of the trucks, whether it's the storage facility or a 19 restaurant, the parking area circulation will not accommodate 20 the larger WB-40 trucks; correct? 21 BRAD FOX: That's correct. 22 MICHELE ROSENFELD: You discussed an access easement 23 across the adjoining property. I believe you said the owner 24 was Kensington Joint Venture. 25 BRAD FOX: Mm-hmm.</p>	<p style="text-align: right;">100</p> <p>1 -- show me where exactly you're talking about. 2 BRAD FOX: Yes. It's going to come through here where 3 we've aligned the drive aisle access and out and through -- 4 and into the Metropolitan access. 5 HEARING OFFICER GROSSMAN: Okay. So that would be in the 6 northeast section; right, at the access area that you've 7 indicated on it? 8 BRAD FOX: Correct. 9 HEARING OFFICER GROSSMAN: Okay. 10 MICHELE ROSENFELD: And how wide is that easement? Well, 11 how wide is the entrance at the property boundary where it 12 would lead the subject property to the adjoining property? 13 BRAD FOX: We had proposed a 20-foot drive aisle. 14 MICHELE ROSENFELD: And doe- -- do you have an exhibit 15 that shows how that easement would be placed on the adjoining 16 property and where it would enter onto Metropolitan? 17 BRAD FOX: These middle be- -- between the two property 18 owners and therefore, it could either be a blanket easement 19 for joint access, they could request access to the other 20 property, we can request additional access through their 21 property. The boundary of that easement I have not 22 [inaudible]. 23 MICHELE ROSENFELD: Is it your understanding that it 24 would be potentially a cross-easement that would allow 25 vehicular traffic from the adjoining property onto the</p>

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26 (101 to 104)

<p>101</p> <p>1 subject property?</p> <p>2 BRAD FOX: If Kensington Joint Venture requested that as</p> <p>3 the [inaudible] party, I believe that they could request</p> <p>4 that.</p> <p>5 MICHELE ROSENFELD: And could you show me the traffic</p> <p>6 circulation pattern for vehicle entering the subject property</p> <p>7 from Connecticut Avenue --</p> <p>8 BRAD FOX: Mm-hmm.</p> <p>9 MICHELE ROSENFELD: -- through to the adjoining</p> <p>10 property? How would -- what would that look like?</p> <p>11 BRAD FOX: You'd be taking a right in off of Connecticut</p> <p>12 Avenue. Coming through here is the -- is the [inaudible]</p> <p>13 visiting site.</p> <p>14 HEARING OFFICER GROSSMAN: So through here, Connecticut,</p> <p>15 you'd be entering going northbound on Connecticut Avenue --</p> <p>16 BRAD FOX: Correct.</p> <p>17 HEARING OFFICER GROSSMAN: -- make a -- a right-in at</p> <p>18 the southern -- southwestern side of the -- of the site --</p> <p>19 BRAD FOX: Mm-hmm.</p> <p>20 HEARING OFFICER GROSSMAN: -- and then you'd proceed in</p> <p>21 a southeasterly direction and then make a left turn going</p> <p>22 northeast?</p> <p>23 BRAD FOX: Correct.</p> <p>24 HEARING OFFICER GROSSMAN: Okay.</p> <p>25 BRAD FOX: You would continue northeast until you got to</p>	<p>103</p> <p>1 MICHELE ROSENFELD: And have you done any truck radius</p> <p>2 analysis with respect to the ability of vehicles to -- I'm</p> <p>3 talking now about the largest vehicles to safely maneuver</p> <p>4 through the adjoining property and then make a turn onto</p> <p>5 Metropolitan?</p> <p>6 BRAD FOX: No. [inaudible] intent that if the truck was</p> <p>7 visiting a loading area, [inaudible] loading area and then</p> <p>8 come back out and turn onto Connecticut Avenue.</p> <p>9 MICHELE ROSENFELD: So it's your testimony that all</p> <p>10 truck traffic would be diverted to Connecticut Avenue?</p> <p>11 BRAD FOX: It's not our plan to restrict it. What I'm</p> <p>12 saying is that a truck is going to seek the easiest path out.</p> <p>13 And so the easiest path out would come back to Connecticut</p> <p>14 Avenue.</p> <p>15 MICHELE ROSENFELD: And why would that be the easiest</p> <p>16 path?</p> <p>17 BRAD FOX: Rather than negotiating through the drive</p> <p>18 aisle and the neighboring parking lot, they went out to the</p> <p>19 Metropolitan.</p> <p>20 MICHELE ROSENFELD: And is that because you anticipate</p> <p>21 that turning opportunities would be constrained, that they</p> <p>22 wouldn't have the room to make those turns?</p> <p>23 BRAD FOX: Not a -- not a truck driver, but I would want</p> <p>24 to get back out on the main road as soon as I could. So I</p> <p>25 would get back onto Connecticut Avenue.</p>
<p>102</p> <p>1 the drive-out, you would then turn back southeast --</p> <p>2 northeast again and exit out to Metropolitan Avenue.</p> <p>3 HEARING OFFICER GROSSMAN: So you -- you'd make a right</p> <p>4 turn heading kind of southeast and then make a left turn --</p> <p>5 BRAD FOX: Left turn --</p> <p>6 HEARING OFFICER GROSSMAN: -- heading northeast?</p> <p>7 MICHELE ROSENFELD: And would the parking be -- do you</p> <p>8 anticipate that the parking is going to be striped so that</p> <p>9 that is the -- it's a one-way, you enter from Connecticut and</p> <p>10 you have to go out on Metropolitan or could a vehicle turn</p> <p>11 around and then --</p> <p>12 BRAD FOX: A vehicle --</p> <p>13 MICHELE ROSENFELD: -- get back to Connecticut Avenue?</p> <p>14 BRAD FOX: Yes. A vehicle -- a passenger vehicle would</p> <p>15 either be able to park in the -- in the parking spaces on</p> <p>16 site or if there were no parking spaces and they did not want</p> <p>17 to exit on the Metropolitan, they could turn around in the</p> <p>18 loading area and then exit out of the right-out onto</p> <p>19 Connecticut Avenue.</p> <p>20 MICHELE ROSENFELD: And at the moment, do you anticipate</p> <p>21 that the entry from the adjoining property is an</p> <p>22 ingress/egress? Would somebody be able to enter the adjoining</p> <p>23 property from Metropolitan and then use the easement --</p> <p>24 future easement to enter the subject property?</p> <p>25 BRAD FOX: Yes.</p>	<p>104</p> <p>1 MICHELE ROSENFELD: And at that location leaving from</p> <p>2 the adjoining property onto Metropolitan, is that a -- a free</p> <p>3 left and free right?</p> <p>4 BRAD FOX: It is -- yes. You're able to make a left turn</p> <p>5 into the intersection of Metropolitan and Plyers Mill or a</p> <p>6 right turn on Metropolitan.</p> <p>7 MICHELE ROSENFELD: And do you anticipate any</p> <p>8 limitations on truck traffic entering the subject property</p> <p>9 from the adjoining site?</p> <p>10 Would -- would a truck be able to come down</p> <p>11 Metropolitan, make a left into the adjoined property and then</p> <p>12 access the subject property?</p> <p>13 BRAD FOX: I don't know why that would be [inaudible].</p> <p>14 MICHELE ROSENFELD: One moment, please.</p> <p>15 HEARING OFFICER GROSSMAN: Sure.</p> <p>16 MICHELE ROSENFELD: If a truck delivers and then is</p> <p>17 ready to leave the site and is headed toward Connecticut and</p> <p>18 wants to go south on Connecticut, how would that happen?</p> <p>19 BRAD FOX: Depending on size of the truck, they have to</p> <p>20 make the U-turn on Connecticut. If they were not able to make</p> <p>21 that, they'd have to go up and find a -- a network of service</p> <p>22 streets to -- to make a series of lefts or right to go turn</p> <p>23 around.</p> <p>24 MICHELE ROSENFELD: And how far up do you have to go to</p> <p>25 make a U-turn on Connecticut?</p>

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27 (105 to 108)

<p>105</p> <p>1 BRAD FOX: I do not know if it's restrictive at this 2 light. 3 MICHELE ROSENFELD: And you're saying that still would 4 be preferable to going through the adjoining property and 5 accessing Metropolitan? 6 BRAD FOX: It all depends on the anticipated route 7 [inaudible]. If any vehicle would want to head south on 8 Connecticut, they would most likely want to go out the 9 Metropolitan entrance. 10 MICHELE ROSENFELD: I have no further questions. Thank 11 you. 12 HEARING OFFICER GROSSMAN: Any redirect? 13 ERIN GIRARD: Just two points of clarification, so just 14 to be crystal clear, because if I'm a truck and let's say 15 WAZE tells -- I go wherever WAZE tells me -- 16 BRAD FOX: Mm-hmm. 17 ERIN GIRARD: -- WAZE says to come out to Metropolitan, 18 am I going to have any problems accessing from the loading 19 dock onto Metropolitan as far as circulation is concerned? 20 BRAD FOX: The existing uses on that property have truck 21 traffic. They go in and out of that entrance and we're not 22 proposing any modifications to that. So we would not 23 anticipate any issues. 24 ERIN GIRARD: As far as your studies of the site and 25 making that right-hand turn into the access, is there any</p>	<p>107</p> <p>1 BRAD FOX: If you were trying to cut through the site 2 and avoid the light at Connecticut Avenue and Plyers Mill, 3 they're going to end up stopped at that same light making a 4 right, because the only way to go is -- is north on 5 Connecticut Avenue. 6 HEARING OFFICER GROSSMAN: Any other requests? 7 MICHELE ROSENFELD: Yes. Thank you. 8 HEARING OFFICER GROSSMAN: Question is restricted to 9 those two. 10 MICHELE ROSENFELD: Yes. If you were driving north on 11 Connecticut, would there be an advantage to cutting through 12 the subject property to get to the Metropolitan and avoid the 13 light at Connecticut and Plyers Mill? 14 BRAD FOX: You -- the existing site has two entrances 15 and two -- on both Connecticut Avenue and Plyers Mill. When I 16 was out there, I didn't witness any cut-thru traffic in that. 17 I don't see a reason why if they were trying to make a 18 right from Connecticut Avenue to Plyers Mill that they would 19 take the circuitous route through the right and underneath 20 our building and then out through the other parking lot just 21 to avoid a right turn at that light. 22 MICHELE ROSENFELD: But it's certainly feasible? 23 BRAD FOX: Certainly feasible. 24 MICHELE ROSENFELD: No further questions, Mr. Grossman. 25 ERIN GIRARD: Me neither.</p>
<p>106</p> <p>1 restrictions? 2 BRAD FOX: No. 3 ERIN GIRARD: Okay. 4 HEARING OFFICER GROSSMAN: Right turn into which access? 5 ERIN GIRARD: In- -- in- -- onto the adjacent property. 6 I'm leaving the loading bay, I'm going northeast and I'm 7 making that turn onto the adjacent property to access 8 Metropolitan. I just -- 9 HEARING OFFICER GROSSMAN: Okay. 10 ERIN GIRARD: -- I'm asking if the -- if there's any 11 issues with a truck making that turn. 12 BRAD FOX: No. 13 HEARING OFFICER GROSSMAN: Okay. 14 ERIN GIRARD: And in -- in your opinion, if there -- is 15 there any benefit for trucks, visitors, whatever to access -- 16 so if I'm coming in from Metropolitan, is there a benefit to 17 going through the site to get to Connecticut? 18 BRAD FOX: I don't see any, because you'd be restricted 19 to the right turn heading north. 20 ERIN GIRARD: Okay. 21 BRAD FOX: So if they were trying to avoid the light, 22 they would end up back up at like -- 23 ERIN GIRARD: That's fine. 24 MICHELE ROSENFELD: I'm sorry, if they were trying to 25 avoid the light --</p>	<p>108</p> <p>1 HEARING OFFICER GROSSMAN: All right. Hold on one 2 second. The zoning ordinance poses some access requirement 3 questions, this is from 596.1.3A1, any development must allow 4 a vehicle, pedestrian or bicycle to enter and exit the 5 property to and from a street or an abutting site safely. In 6 your opinion, would your present access allow that? 7 BRAD FOX: Yes. 8 HEARING OFFICER GROSSMAN: And A2, must limit vehicle 9 access across a primary pedestrian, bicycle or transit route 10 whenever feasible. Does this current plan allow that or limit 11 it so as such? 12 BRAD FOX: Yes. 13 HEARING OFFICER GROSSMAN: And 3, it must allow a 14 vehicle to enter and exit any onsite parking area in a 15 forward motion. Does your -- does your plan allow -- 16 BRAD FOX: Yes. 17 HEARING OFFICER GROSSMAN: -- it in that -- in that 18 fashion? 19 BRAD FOX: Sorry, can you read it again? 20 HEARING OFFICER GROSSMAN: Does your plan allow a 21 vehicle to enter and exit any onsite parking area in a 22 forward motion? 23 BRAD FOX: Yes. 24 HEARING OFFICER GROSSMAN: And 4, it requires that the 25 development must allow a vehicle to access any pad site from</p>

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28 (109 to 112)

<p>109</p> <p>1 within this site. I'm not sure if that applies here, but you 2 can answer if it does. 3 BRAD FOX: Sorry, can you read the wording again? 4 HEARING OFFICER GROSSMAN: Any development must, and 5 this is A4, allow a vehicle to access any pad site from 6 within the site. It may not apply, you can tell me. 7 BRAD FOX: Yeah. Yeah. By definition, I don't -- I don't 8 think that we meet the pad site. The -- the project is only 9 proposing a single building. 10 HEARING OFFICER GROSSMAN: All right. What about the 11 driveway access dimensions that are required for the zone, 12 there's some question raised about that by -- by staff. Did 13 you expect this witness to address that or your other 14 witness? 15 BRAD FOX: Certainly. 16 HEARING OFFICER GROSSMAN: Okay. What about the -- the 17 width of the driveway? You said it was three feet too wide -- 18 BRAD FOX: Mm-hmm. 19 HEARING OFFICER GROSSMAN: -- on your Connecticut Avenue 20 entry. 21 BRAD FOX: Yeah. And the -- I'll -- I'll address this 22 separately. The onsite layout is in accordance with the 23 zoning ordinance -- the current zoning ordinance. 24 The entrance from Connecticut Avenue, that does fall 25 within the state highway right-of-way and will be subject to</p>	<p>111</p> <p>1 you're accessing from a state road or not, in your practice? 2 BRAD FOX: In my practice, state highway governs that 3 entrance. 4 HEARING OFFICER GROSSMAN: And it doesn't matter that 5 the -- that it's wider than the -- the County zoning 6 ordinance permits? 7 BRAD FOX: The County will raise that question to state 8 highway and state highway will evaluate whether or not they 9 want to reduce that entrance to the -- to the 30 feet. 10 HEARING OFFICER GROSSMAN: Well, if it's reduced, would 11 it still be feasible as an entry point? 12 BRAD FOX: Yes. Yes. Right now -- let me just double- 13 check the numbers. Right now we're using a right-in lane 14 width of 12 feet and a right-out lane width of 12 feet. So it 15 simply comes down to how we configure those two 12-foot lanes 16 within that 30 feet required referenced by staff. 17 HEARING OFFICER GROSSMAN: All right. I don't know about 18 how this applies, Section 6- -- 596.1.4E as in Edward, unless 19 the road is classified as a residential road a vehicle must 20 access a corner lot with only one driveway or a thru-lot from 21 the street with the lower roadway classification. Now, I 22 don't know if you'd classify Connecticut Avenue and Plyers 23 Mill as a residential road, you tell me. 24 And if it's not, this provision would indicate that a 25 vehicle must access a corner lot, which this is with only one</p>
<p>110</p> <p>1 their standards for a right-in/right-out entrance. 2 HEARING OFFICER GROSSMAN: Well -- but let's go back to 3 the question posed by our zoning ordinance, does it -- does 4 it meet the requirements of our zoning ordinance? The 5 technical staff says it's three feet wider than is allowed. 6 BRAD FOX: Agreed. Yes. For that -- 7 HEARING OFFICER GROSSMAN: You don't think it has to 8 meet because it's on a -- a state road? You don't think it 9 has to meet the Montgomery County Zoning Ordinance 10 requirements? 11 BRAD FOX: There's a -- there's a couple of different 12 ways that we could measure it. If we provide a pedestrian 13 refuge in the -- the center island of the right-in/right-out, 14 does that then become two separate entrances? 15 If we're looking at the overall 30 feet between the curb 16 line for the right-in and the curb line for the -- for the 17 right-out, we can restrict that down, but then do we have to 18 then give up some of the -- the concrete median or the 19 pedestrian refuge to make that happen? So it's a balancing 20 act. 21 HEARING OFFICER GROSSMAN: Well, I'm not the expert, you 22 have to answer me. 23 BRAD FOX: Okay. 24 HEARING OFFICER GROSSMAN: My question is do you have to 25 comply with the Montgomery County Zoning Ordinance when</p>	<p>112</p> <p>1 driveway, then it says from the street with the lower roadway 2 classification. What about that provision? 3 BRAD FOX: So in this case, Plyers Mill would likely 4 have the lower classification. It's certainly lower volume. 5 The question would be are they both considered arterials? I 6 was looking to see what the staff report referenced them as. 7 The reason it's not -- the access is not located on 8 Plyers Mill is due to the site distance issue that was 9 referenced earlier and also the distance between the 10 Connecticut Avenue intersection and the Metropolitan Avenue 11 intersection. 12 HEARING OFFICER GROSSMAN: Well, I think those reasons 13 are important, Mr. Fox, but I'm saying -- but I have a 14 statutory provision. 15 BRAD FOX: Mm-hmm. 16 HEARING OFFICER GROSSMAN: So that's what I'm trying to 17 find out how that -- that applies, assuming that your reasons 18 for it are -- are -- are -- are important, but since this 19 presumably is not a residential road -- 20 BRAD FOX: Mm-hmm. 21 HEARING OFFICER GROSSMAN: -- it does say a vehicle must 22 access a corner lot with only one driveway. So -- and it says 23 with the lower -- the one driver with a lower roadway 24 classification -- you know, from the street with a lower 25 roadway classification. So is that not saying that you'd have</p>

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29 (113 to 116)

<p>113</p> <p>1 to enter from Plyers Mill rather than from Connecticut 2 Avenue? 3 I don't know which makes more sense. I mean, I 4 understand your point about safety and that's really 5 important, but -- 6 BRAD FOX: Yeah. 7 HEARING OFFICER GROSSMAN: -- I just have a statutory 8 provision here and no- -- 9 BRAD FOX: Yeah. 10 HEARING OFFICER GROSSMAN: -- and nobody has asked to -- 11 to vary from that, as far as I know. 12 BRAD FOX: Mm-hmm. My clarification would be would the 13 ability to vary from that provision be part of the site plan 14 process or part of the conditional use process? 15 HEARING OFFICER GROSSMAN: It'd be part of a variance 16 process. It's a statutory provision, but I mean, one could 17 argue -- I mean, your counsel can argue about that. I'm just 18 saying that, you know, it wasn't addressed -- none of this 19 was addressed, as far as I could tell on paperwork, filed by 20 the applicant. 21 So I'm just -- when I went over all these statutory 22 provisions, I said, gee, does that apply here? And if so, 23 how? And that's why I'm asking you the question. You want to 24 -- 25 ERIN GIRARD: If I may, yeah --</p>	<p>115</p> <p>1 ERIN GIRARD: Right. 2 HEARING OFFICER GROSSMAN: I haven't seen any of that 3 justified. Would you -- would you say that given the 4 provision that I just read from Section 596.1.4E that you'd 5 have to have alternative compliance? 6 ERIN GIRARD: If in fact they're both considered 7 residential roads, which I -- I just would need to check if 8 they're not [inaudible]. 9 HEARING OFFICER GROSSMAN: No. It says, unless the road 10 is classified as a residential or -- so if it's not a res- -- 11 if neither is a residential road -- 12 ERIN GIRARD: Right. 13 HEARING OFFICER GROSSMAN: -- then this would apply and 14 it says, a vehicle must access from the cor- -- and so on. So 15 -- 16 ERIN GIRARD: Right. Do you think [inaudible] -- 17 HEARING OFFICER GROSSMAN: You can [inaudible] it and -- 18 and -- 19 ERIN GIRARD: Yeah. 20 HEARING OFFICER GROSSMAN: -- and file something at the 21 end or -- or address it here with -- with another witness, 22 but it seems to me you've got a -- an issue there -- 23 ERIN GIRARD: Mm-hmm. 24 HEARING OFFICER GROSSMAN: -- on how to comply with the 25 zoning ordinance.</p>
<p>114</p> <p>1 HEARING OFFICER GROSSMAN: -- Ms. Girard -- 2 ERIN GIRARD: -- I just want to -- I -- I don't disagree 3 that it's not detailed. I don't -- the issue really hadn't 4 come up. I just want to clarify that under the zoning 5 ordinance, when one uses the term variance, in -- in our 6 world, that has a very specific meaning -- 7 HEARING OFFICER GROSSMAN: Right. 8 ERIN GIRARD: -- but I think that there's an alternative 9 compliance section in Section 6 of the -- division 6 of the 10 zoning ordinance that allows for -- 11 HEARING OFFICER GROSSMAN: That's at -- 12 ERIN GIRARD: -- the planning board, at least at the 13 site plan -- 14 HEARING OFFICER GROSSMAN: -- 6.8, I think, and -- 15 ERIN GIRARD: Yeah. The site plan and preliminary plan 16 stage typically and I've had this exact issue come up before 17 where it is an alternative compliance request and grant of 18 the planning board. 19 HEARING OFFICER GROSSMAN: Right. If you can meet, 20 that's true and -- and I should've mentioned that. There are 21 -- there are -- there's a waiver provision for certain 22 parking issues. 23 There's also a alternative compliance provision, which 24 has a -- a whole series of criteria which you must meet in 25 order to qualify.</p>	<p>116</p> <p>1 ERIN GIRARD: Mm-hmm. 2 HEARING OFFICER GROSSMAN: All right. Any cross- 3 examination based on my questions? I'll say Ms. Girard, you 4 can go first based on my questions. 5 ERIN GIRARD: I -- I don't have any. 6 HEARING OFFICER GROSSMAN: Okay. Ms. Rosenfeld. 7 MICHELE ROSENFELD: I just would ask if the witness 8 knows the road classifications of both of those streets. 9 BRAD FOX: I didn't provide it here. Connecticut Avenue 10 is a -- designated as a 120-foot wide major highway and then 11 the Plyers Mill Road is a -- designated as a 100-foot wide 12 arterial. 13 MICHELE ROSENFELD: Thank you. 14 HEARING OFFICER GROSSMAN: Okay. So none of them -- 15 neither one of them fit within the residential road 16 classification? 17 BRAD FOX: Correct. 18 HEARING OFFICER GROSSMAN: But this provision 6.1.4E 19 would apply unless it's varied by either a variance or by 20 alternative compliance? 21 BRAD FOX: Yes. And the reasons that I have [inaudible] 22 for safety and site distance would be part of the 23 justification for the alternative compliance. 24 HEARING OFFICER GROSSMAN: Okay. All right. I -- I think 25 we're finished with poor Mr. Fox. Thank you, sir. Before we</p>

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30 (117 to 120)

<p>117</p> <p>1 go onto the next witness, if Ms. Means is here, it occurs to 2 me that we shouldn't keep a -- a citizen who wants to testify 3 sitting here while we go through the entire process. If 4 counsel both agree, we would have Ms. Means testify. 5 MICHELE ROSENFELD: That's acceptable to me, Mr. 6 Grossman. 7 HEARING OFFICER GROSSMAN: All right. Ms. Means. Ms. 8 Means, would you state your full name and address, please? 9 MARY MEANS: Mary Catherine [ph] Means. I live at 3419 10 Pendleton Drive, Silver Spring, Maryland 20902. 11 HEARING OFFICER GROSSMAN: Okay. And did you write down, 12 on the sign-in sheet, your email address and so on -- 13 MARY MEANS: Yes. I did. 14 HEARING OFFICER GROSSMAN: Okay. Would you raise your 15 right hand, please? Do you swear or affirm to tell the truth, 16 the whole truth and nothing but the truth under penalty of 17 perjury? 18 MARY MEANS: I do. 19 HEARING OFFICER GROSSMAN: All right. You may proceed. 20 MARY MEANS: I had a statement that I was prepared to 21 give when we first met. 22 HEARING OFFICER GROSSMAN: All right. 23 MARY MEANS: So [inaudible] play on this. For -- I'm 24 Mary Means. I've lived, for 10 years, at the address I just 25 gave, about a mile from the site in question.</p>	<p>119</p> <p>1 McKone, I learned that Kelly had been listening and 2 responding to the community input for months and was doing an 3 amazing amount of revising the initial concept multiple 4 times. 5 And I saw how the creative solution that had emerged for 6 this site's challenging constraints would more than meet the 7 Town and County's desire to bring pedestrian level vitality 8 to this really important location. 9 I wasn't alone in responding with excitement that day, 10 but others in the room, representatives of a couple of nearby 11 civic associations could only see storage units and remained 12 adamantly opposed. 13 In fact, one person said, as long as there's a single 14 storage unit in it, I'm opposed. So believing as I do that 15 the project is a very good one with tremendous community 16 benefit is why I became involved. 17 I became involved as a private citizen, because I've 18 dealt with, not in my backyard, for my entire career and I 19 sometimes very much believe that the -- the correct response 20 should be yes, in my backyard and I consider the Kensington 21 area to be my backyard. 22 Reading the staff report and particularly listening to 23 the staff's presentation to the planning board I was 24 surprised to hear them say, paraphrase in effect, the 25 restaurant and artist studios are permitted by the plan in</p>
<p>118</p> <p>1 I'm retired now, but by way of introduction, for 30 2 years, my small but mighty community planning firm helped 3 public interest clients, town, cities, counties, states, 4 universities and nonprofits create plans that enjoyed broad 5 community support and that moved easily into implementation. 6 Part of this was because we were known for our 7 commitment to genuine community engagement and sometimes the 8 assignments we had, which were always for public interest, 9 were high conflict projects, such as extension of a light 10 rail line or a redevelopment of public housing. 11 These always brought out a -- a high level of emotional 12 concern by a small number of people who were passionately 13 opposed to it. 14 In these situations and for those clients, our goal was 15 really to widen the conversation to enable many voices to be 16 heard by the decision makers, not just those who are trying 17 to stop it from happening. 18 A few months ago when I was asked to take a look at a 19 concept that involved a self-storage facility on the site in 20 question, like most people, my initial response was 21 incredulity, what a stupid idea. 22 But I accepted my neighbor's invitation to a coffee to 23 meet the development, Mr. McKone and look at the project. In 24 her living room, with other neighbors from a number of 25 neighborhoods around and the development team, including Mr.</p>	<p>120</p> <p>1 zoning, so we'll focus on the self-storage units -- the self- 2 storage units, which is not. 3 And so they did, but to excess. They proceeded to speak 4 of the deadening effect of self-storage facilities as though 5 the ground and second-floor uses of the building didn't 6 exist. 7 In fact, as though those two stories didn't exist. They 8 then cited the sector plan's recommendation that this site be 9 part of an assemblage of land for conventional mixed use 10 redevelopment. 11 They implied this was possible to assemble sites by 12 erroneously stating that the adjoining site was under the 13 same ownership, which it is not and the owner had already 14 said no to Mr. McKone's overtures about trying to do that 15 same thing. A plan can only spell out policies for desired 16 uses and conditions. 17 It can't dictate market forces. A plan cannot will 18 something to happen when it is not financially feasible. For 19 -- excuse me. 20 For a variety of well-documented reasons, neither 21 residential nor office uses on this site will generate enough 22 sufficient revenue to make the desired restaurant, artist 23 studios and generous public improvements financially 24 possible. 25 The commitment that Mr. McKone has made to lessening the</p>

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<p>121</p> <p>1 visual appearance of the upper stories has been demonstrated, 2 it's been quite impressive. Aside from the upper stories' use 3 being self-storage, the Town and County are getting exactly 4 what was envisioned in the plan. If those were tiny 5 apartments instead of storage units, we wouldn't be here 6 today. 7 The Town of Kensington would not be fighting to stop it, 8 yet those apartments would generate more traffic and consume 9 much more of the parking that's needed by a ground-floor 10 restaurant. 11 Civic associations under that circumstance would 12 probably vent about traffic and parking, but would probably 13 love to have a quality restaurant and artist studios. 14 I live a little over a mile from the site and I pass 15 through the Town of Kensington often during a typical week. 16 My neighbors and I shop in the hardware store, eat pizza, 17 enjoy the farmer's market and buy our groceries in the Town 18 of Kensington. All those businesses could not survive without 19 all of us patronizing them. 20 Though, technically, we're not citizens of the town, 21 it's our main street too and I know main streets and how they 22 work. 23 Forty years ago I led the team at the National Trust for 24 Historic Preservation that invented the Main Street Approach, 25 which is the conceptual framework and methods that have now</p>	<p>123</p> <p>1 zoning ordinance -- 2 MARY MEANS: Mm-hmm. 3 HEARING OFFICER GROSSMAN: -- which includes a whole 4 variety of -- of provisions and -- and requirements, which 5 include, of course, the sector plans a major part, but not to 6 see whether or not there are alternative things here. 7 MARY MEANS: Mm-hmm. 8 HEARING OFFICER GROSSMAN: Nor do I, as I've said 9 earlier, count noses or letters or the volume or intensity of 10 the feelings of people. 11 MARY MEANS: Mm-hmm. 12 HEARING OFFICER GROSSMAN: That's not -- that's not part 13 of what I perceive is my job on this. Cross-examination, Ms. 14 Girard? 15 ERIN GIRARD: Yes. Ms. Means, you -- you noted that you 16 first became involved when you went to a community meeting 17 that was held by a neighbor; correct? 18 MARY MEANS: Mm-hmm. Yes. 19 ERIN GIRARD: And you've had discussions with the then 20 and -- and subsequently with the applicant, but has he -- 21 have they ever engaged you in a professional capacity to 22 speak on behalf of the application? 23 MARY MEANS: No. No. 24 ERIN GIRARD: And so your testimony here is completely 25 independent?</p>
<p>122</p> <p>1 been used by thousands of small towns and historic city 2 corridors to bring life back to their -- their downtowns and 3 their older commercial areas. 4 In fact, Maryland's Main Street Program and D.C.'s Main 5 Street Program are both participating in that program today 6 40 years later. 7 Recently, my work, particularly, my role with the Main 8 Street Revitalization Movement was given national recognition 9 by the American Planning Association, which cited me as 10 2019's planning pioneer. 11 I think the proposed development at 10619 Connecticut is 12 an excellent and possibly the only viable solution for 13 enlivening this important gateway to Kensington. I know from 14 experience that when brave officials say yes to good projects 15 and help them come to fruition. Within weeks of a ribbon 16 cutting, virtually no one remembers why people had been so 17 upset. 18 So I wanted to encourage decision makers here at the 19 County to be brave and embrace innovation for the good of 20 everyone. 21 HEARING OFFICER GROSSMAN: All right. If it relieves 22 your mind, I don't consider alternatives as one of the items 23 here. My -- 24 MARY MEANS: Mm-hmm. 25 HEARING OFFICER GROSSMAN: -- my duty is to look at the</p>	<p>124</p> <p>1 MARY MEANS: Correct. 2 ERIN GIRARD: And can you review, just in a little more 3 detail, your professional and educational background? 4 MARY MEANS: Okay. My first professional job was at the 5 National Register for Historic Places where I was pretty much 6 in charge of the review process for determining eligibility 7 for listing of properties on the National Register. I went 8 from there to the National Trust for Historic Preservation, a 9 national nonprofit hired to open their regional office in 10 Chicago for the Midwest. 11 While in that capacity, providing technical assistance 12 to hundreds of towns and cities throughout the Midwest. I 13 noted a couple of patterns that we're developing, 14 particularly having to do with the impact of -- on small 15 towns, their downtowns. So I started a demonstration project 16 that was supposed to end in three years and we'll do a book 17 and a film. 18 It took off like crazy and it's still going today 40 19 years later. Many, many communities have found it helpful. I 20 left the National Trust for Historic Preservation in the mid- 21 '80s and spent some time at the American Institute of 22 Architects Foundation heading their shift to a lot more 23 public engagement. 24 I then went into consulting and became a partner in 25 ultimately the o- -- the owner of a small consulting firm,</p>

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<p>125</p> <p>1 which I ran for 30-something years doing national work, 2 almost always for towns and cities or public agencies. I 3 retired about five years ago, although, I still accept the 4 occasional interesting place from an interesting person -- 5 ERIN GIRARD: So you're -- 6 MARY MEANS: -- that doesn't involve multiple trips. 7 ERIN GIRARD: -- so you're a planner by trade? 8 MARY MEANS: I -- I am a planner. Yes. I'm a -- a 9 graduate of Michigan State University and the University of 10 Delaware and had a little fellowship at Harvard School of 11 Design. 12 ERIN GIRARD: And so you're familiar -- I imagine, over 13 your years of experience, you're familiar with sector plans, 14 master plans -- 15 MARY MEANS: Yes. 16 ERIN GIRARD: -- and how they inform -- 17 MARY MEANS: Yes. I've actually won several awards at a 18 national and state level for work on comprehensive plans and 19 other forms of land use plans. 20 ERIN GIRARD: And you mentioned having been at the 21 planning board hearing and reviewing the staff report? 22 MARY MEANS: Yes. 23 ERIN GIRARD: And what -- I know you mentioned you're 24 surprised at how it was presented, but can you give us some 25 more thoughts on -- on -- on the staff report and the -- and</p>	<p>127</p> <p>1 been some testimony -- I believe you were here on the first 2 day, some testimony and some exhibits put in your record as 3 to the historic significance. Did you have an opinion of that 4 -- of the existing building? 5 MARY MEANS: Yes. Yes. That is a gas station and yes, it 6 is an example of what is called the Googie style. I doubt if 7 it would -- if -- if I were still at the National Register of 8 Historic Places, the National Register accepts things of 9 local significance as well as state or national and it might, 10 might, might be eligible as a contributing building to a 11 historic district. I can't imagine that it would go much 12 farther than that. 13 ERIN GIRARD: I figured that. You're not calling for it 14 sav- -- being saved? 15 MARY MEANS: No. As a matter of fact, I -- my firm did 16 the plan for Arlington -- the historic preservation plan for 17 Arlington and in it, we developed a -- a series of grading 18 buildings, because you're not going to be able to save 19 everything when you're in the crosshairs of this Metropolitan 20 area. 21 And we developed a series of interventions that would be 22 appropriate for the different categories. There was a 23 building that actually came up pretty soon after this was 24 adopted that was a 1950s Lustron House made by the Lustron 25 Company. It was part of mass manufacturing. A developer was</p>
<p>126</p> <p>1 the analysis that was performed on this project? 2 MARY MEANS: Well, I'm not really prepared to go into 3 the detail of the staff report. The part that really struck 4 me was the description -- the -- the kind of casual dismissal 5 of the uses that are being proposed for the bottom two floors 6 of this building. 7 It was that those are perfectly okay, they -- they fall 8 within our -- our policies. So we're going to focus on the 9 other and in doing so, the focus on it completely ignored -- 10 it -- it -- it is almost as though it disappeared them and 11 just moved the storage units down to ground level and that 12 struck me as, wait a minute, is this a hit job? 13 I don't want to put it quite that way, but I sort of 14 felt that way emotionally is why is this happening this way? 15 ERIN GIRARD: Okay. And are you familiar with the sector 16 plan itself? 17 MARY MEANS: Yes. I am. 18 ERIN GIRARD: And in your opinion -- I mean, just I'm 19 not trying to qualify her as an expert, but she does have a 20 long history in planning. 21 Would you -- is it your opinion that it complies with 22 the sector plan? 23 MARY MEANS: Yes. 24 ERIN GIRARD: And you -- you mentioned historic 25 preservation as well, that you started the his- -- there's</p>	<p>128</p> <p>1 going to remove it for a larger development. 2 It was -- according to the procedures, it was recorded 3 and dismantled and put in storage. It's now at the Ohio 4 Historical Center as the centerpiece of their exhibit on the 5 '50s of the Lustron Company in -- in Columbus. 6 So to me, an appropriate treatment for this is recording 7 it and possibly dismantling it if sufficient funding is 8 available to do that. 9 ERIN GIRARD: And you've reviewed the plans -- the 10 architectural plans and all? 11 MARY MEANS: Yes. 12 ERIN GIRARD: And you believe this would be an 13 appropriate use for this section of Kensington? 14 MARY MEANS: Yes. 15 ERIN GIRARD: It would be harmonious with this area? 16 MARY MEANS: Yes. I really do. 17 ERIN GIRARD: Okay. That's all I have. 18 HEARING OFFICER GROSSMAN: By the way, the reason why, 19 despite your credentials, you're not being qualified as an 20 expert is that that requires -- for due process, it requires 21 notice to the other side -- 22 MARY MEANS: Mm-hmm. 23 HEARING OFFICER GROSSMAN: -- that there's going to be 24 an expert testifying, give them an opportunity to -- to 25 prepare to respond. All right. Cross-examination.</p>

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<p style="text-align: right;">129</p> <p>1 MICHELE ROSENFELD: Yes. Thank you, Mr. Grossman. During 2 the course of your testimony, you offered your opinion that 3 the project is not financially feasible. 4 MARY MEANS: Mm-hmm. 5 MICHELE ROSENFELD: What factual evidence in the record 6 supports that conclusion? 7 MARY MEANS: I think I'd rather leave that for another 8 of the expert witnesses who is qualified -- 9 MICHELE ROSENFELD: Okay. 10 MARY MEANS: -- but all of my discussions with 11 colleagues in development, with development firms that have 12 looked at this site and [inaudible] -- 13 HEARING OFFICER GROSSMAN: Well, no. Let's not -- let's 14 not give essentially what is hearsay. Hearsay is -- 15 MARY MEANS: Okay. 16 HEARING OFFICER GROSSMAN: -- is usually defined as an 17 extrajudicial declaration often to prove the truth of the 18 matter asserted therein. 19 So this witness was about to say what somebody else had 20 said and that presumably would be then taken for the truth of 21 what they've said. So in this kind of proceeding, a certain 22 amount of hearsay is permitted, but it seems to me not on 23 this type of thing. 24 MARY MEANS: Okay. 25 HEARING OFFICER GROSSMAN: So I won't let you answer</p>	<p style="text-align: right;">131</p> <p>1 MICHELE ROSENFELD: There are a series of -- of findings 2 that the hearing examiner needs to make -- 3 MARY MEANS: Mm-hmm. 4 MICHELE ROSENFELD: -- in order to approve or deny this 5 application. Is your financial testimony specifically related 6 to any of those findings? 7 MARY MEANS: I don't believe so. 8 MICHELE ROSENFELD: I have no further questions. 9 HEARING OFFICER GROSSMAN: Okay. All right. Thank you 10 very much, Ms. Means for coming down here -- 11 MARY MEANS: Mm-hmm. 12 HEARING OFFICER GROSSMAN: -- and sharing your -- your 13 views. All right. Before we go to the next witness, I have a 14 question for the parties. 15 Do you want to break now for lunch, it's 12:35, and come 16 back at -- at 1:15? I have a little concern, because the 17 cafeteria sometimes runs out of food for folks. So -- 18 ERIN GIRARD: We appreciate that. 19 HEARING OFFICER GROSSMAN: -- so what's your pleasure, 20 Ms. Girard? 21 ERIN GIRARD: I -- that's fine with me. 22 MICHELE ROSENFELD: Now would be fine. Thank you. 23 HEARING OFFICER GROSSMAN: All right. All right. So 24 we'll break now and let's say we'll come back at 1:15. All 25 right.</p>
<p style="text-align: right;">130</p> <p>1 that as to what somebody else tells you. 2 MARY MEANS: How about if I were to say that the common 3 sense that I've developed in 30 years of planning and working 4 with developers, knowing the purchase price of this property, 5 the size of it, the permitted height of it and the income 6 that can be generated by restaurants and artist studios 7 there's a common sense side that says that those uses would 8 not generate sufficient income to provide the level of 9 amenity. 10 HEARING OFFICER GROSSMAN: What -- what uses? What -- 11 MARY MEANS: Pardon? 12 HEARING OFFICER GROSSMAN: -- what uses would not 13 generate -- 14 MARY MEANS: Residential or office. 15 HEARING OFFICER GROSSMAN: Okay. 16 MICHELE ROSENFELD: And have you reviewed any financial 17 pro formas or any financial analysis on this project? Aside 18 from your common sense, have you reviewed any financial 19 background or data in developing your opinion? 20 MARY MEANS: No. I haven't. 21 MICHELE ROSENFELD: And are you -- with respect to the 22 financial feasibility project, are -- are you issuing an 23 opinion with respect to any of the specific findings that the 24 hearing examiner needs to make under the zoning code? 25 MARY MEANS: Could you repeat that, please?</p>	<p style="text-align: right;">132</p> <p>1 (Off the record at 12:31:28 p.m.) 2 (Back on the record at 1:22:10 pm.) 3 HEARING OFFICER GROSSMAN: Back on the record again. 4 Thank you. Call your next witness. 5 ERIN GIRARD: I'll call Matt Clark. 6 HEARING OFFICER GROSSMAN: All right. Sir, would you 7 state your full name and address please? 8 MATT CLARK: Matthew Clark. Place of business is Land 9 Design Incorporated. 200 South Peyton Street, Alexandria, 10 Virginia. 11 HEARING OFFICER GROSSMAN: Would you raise your right 12 hand please? Do you swear or affirm to tell the truth, the 13 whole truth, and nothing but the truth under penalty of 14 perjury? 15 MATT CLARK: I do. 16 HEARING OFFICER GROSSMAN: All right. You may proceed. 17 ERIN GIRARD: Mr. Clark, what's your occupation and how 18 long have you been engaged in that occupation? 19 MATT CLARK: For the record, I am a landscape architect 20 originally licensed in Virginia 2000. Also licensed in 21 Maryland, Delaware, Pennsylvania, and New York. 22 ERIN GIRARD: And what's your professional and 23 educational background? 24 MATT CLARK: I have an undergraduate degree from the 25 University of Vermont in urban forestry and a master's degree</p>

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<p>133</p> <p>1 in landscape architecture from the State University of New 2 York College of Environmental Science and Forestry. I didn't 3 want to say it that long, but -- 4 ERIN GIRARD: Can you review your work experience in the 5 field of landscape architect? 6 MATT CLARK: Yeah. I've -- as I said, I've been working 7 in the area since approximately, well, June 1997. I work 8 mainly on urban mixed-use with a focus on site design and 9 construction documentation. 10 ERIN GIRARD: Okay. Have you ever testified as an expert 11 witness before? 12 MATT CLARK: No. 13 ERIN GIRARD: Okay. Mr. Clark's resume is Exhibit 55 in 14 the record. And we move his admission as an expert in 15 landscape architecture. 16 HEARING OFFICER GROSSMAN: Hold on one second. Let me 17 pull that up. 55. Okay. And I've got a nice picture of 18 yourself in there, Mr. Clark. 19 MATT CLARK: Probably the only one. 20 HEARING OFFICER GROSSMAN: All right. And your Maryland 21 license is 3349 is that professional landscape architect; 22 correct? 23 MATT CLARK: Yes. 24 HEARING OFFICER GROSSMAN: Okay. Ms. Rosenfeld, do you 25 have questions for this witness expertise?</p>	<p>135</p> <p>1 necessarily someone with a specific degree but somebody who 2 can offer evidence that will be beyond the kind of laymen on 3 the particular subject and will be of assistance to the 4 factfinder in making a decision. 5 And clearly based on Mr. Clark's resume and his 6 testimony here today and his license by the state of 7 Maryland, he is an expert in landscape architect, and I 8 accept him as such. 9 And now you can tell your wife that you're an expert in 10 something, or your significant other. Something I've never 11 had the -- the -- I -- I always claim -- I say to my wife, 12 you know, who knows more about medicine than I do? And she 13 says, everybody; you know? This happens with any field. So -- 14 MATT CLARK: Well, fortunately or unfortunately, she 15 works with me and is a landscape architect herself. 16 HEARING OFFICER GROSSMAN: There you go. Oh. By the way, 17 before we go further, two things. One is on the -- the sign 18 plans that you handed me, have you given a copy to technical 19 staff and the planning board? 20 ERIN GIRARD: No. 21 HEARING OFFICER GROSSMAN: Okay. You must do that. 22 ERIN GIRARD: Okay. 23 HEARING OFFICER GROSSMAN: You should do that when you 24 leave here today or tomorrow if you can. 25 ERIN GIRARD: I can get a hard copy now. We were --</p>
<p>134</p> <p>1 MICHELE ROSENFELD: Yes. I do. Mr. Clark, when w- -- 2 when were you licensed in the state of Maryland? 3 MATT CLARK: 2007. 4 MICHELE ROSENFELD: And what projects have you worked on 5 in the state of Maryland? 6 MATT CLARK: King Farm, Fallsgrrove, Crown Farm. Those 7 are the -- the main ones that I can think of off the top of 8 my head. 9 MICHELE ROSENFELD: And about what percentage of your 10 annual practice would you say occurs in -- relates to project 11 in the state of Maryland? 12 MATT CLARK: I'll answer this with a layered answer. 13 From approximately '97 to 2004 or so, I would say probably 60 14 percent of my work was here in Maryland. That dropped off 15 until probably two years ago or so. And I would say at this 16 point in the game, probably 30 percent, 30 to 40 percent. 17 MICHELE ROSENFELD: Mr. Grossman, I -- I have no 18 objection to this designation as an expert. 19 HEARING OFFICER GROSSMAN: Let me just mention 20 something. But this is a process [inaudible] people don't 21 know that, called voir dire. 22 That is when somebody is offered to testify as an 23 expert. Questioning is allowed, asked of his or her 24 credentials. 25 And an expert in the law is not necessarily --</p>	<p>136</p> <p>1 HEARING OFFICER GROSSMAN: Okay. 2 ERIN GIRARD: -- going to send everything electronically 3 at the end of today. 4 HEARING OFFICER GROSSMAN: Yeah. A hard copy would be a 5 -- a start because the zon- -- zoning ordinance requires that 6 any amendments to plans, any amendments to the application, 7 which is in effect what this is, must go back to the -- to 8 the -- actually, it says planning board, but staff can decide 9 whether or not it's necessary to have it go back before the 10 planning board for the review, and that they be given time to 11 consider it. 12 Although, strangely enough, it says not more than 30 13 days. I'm not sure exactly why it has it phrased that way. 14 Usually I give them 10 days for this kind of thing. But just 15 mentioning that. 16 The other thing is I printed out copies of the Division 17 6.8, Section 6.8.1 which is the alternative method -- method 18 of compliance. I have copies for both of you ladies if you 19 don't have code with you. 20 And if you plan to pursue this for the access or any 21 other provisions to which this is applicable in Division 6 -- 22 or I should call that Article 6. It applies to certain 23 specific divisions within it. Then that's another thing that 24 should be taken up and -- and run by staff as well as -- as 25 well as the hearing examiner.</p>

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<p>137</p> <p>1 ERIN GIRARD: Sure.</p> <p>2 HEARING OFFICER GROSSMAN: Okay. All right. Returning to</p> <p>3 Mr. Clark; you have questions?</p> <p>4 ERIN GIRARD: Yes. Are you familiar with the conditional</p> <p>5 use property surrounding [inaudible] application number CU19-</p> <p>6 03?</p> <p>7 MATT CLARK: Yes.</p> <p>8 ERIN GIRARD: Can you review your -- your design concept</p> <p>9 for the landscaping and open space proposed in the</p> <p>10 application?</p> <p>11 MATT CLARK: Okay. Is i- -- it is okay if I read from</p> <p>12 some notes? Okay.</p> <p>13 HEARING OFFICER GROSSMAN: Sure.</p> <p>14 MATT CLARK: I'm going to talk about the -- the main</p> <p>15 plaza at the corner of Connecticut and Plyers Mill as well as</p> <p>16 the building orientation and some of the -- the balance of</p> <p>17 the site. The building itself is oriented to the intersection</p> <p>18 of Plyers Mill and Connecticut Avenue roughly to the -- to</p> <p>19 the northwest.</p> <p>20 Fronting onto Connecticut Avenue and Plyers Mill is an</p> <p>21 approximately 8,000 square-foot plaza. It's a combination of</p> <p>22 hardscaping and landscaping with space for informal</p> <p>23 gatherings.</p> <p>24 The plaza is generally arranged with landscape fronting</p> <p>25 onto the adjoining roadways with a more open interior section</p>	<p>139</p> <p>1 that.</p> <p>2 MATT CLARK: Absolutely. Approach the --</p> <p>3 HEARING OFFICER GROSSMAN: Sure.</p> <p>4 MATT CLARK: -- the plan? I'll take the -- the first</p> <p>5 one, which was the -- I guess the landscape as it relates to</p> <p>6 the parking --</p> <p>7 HEARING OFFICER GROSSMAN: Right.</p> <p>8 MATT CLARK: -- particularly. It's -- it's worth noting</p> <p>9 on the plan here. Okay. So the -- the parking is generally</p> <p>10 east and south of the building.</p> <p>11 The building itself, although it's -- it's not exactly</p> <p>12 easy to see here, actually extends to this -- this portion of</p> <p>13 the covering -- essentially covers the parking; okay? So this</p> <p>14 area itself is actually under building which leaves these</p> <p>15 parking spaces here [inaudible] --</p> <p>16 HEARING OFFICER GROSSMAN: By that you mean there's a --</p> <p>17 there's an overhang?</p> <p>18 MATT CLARK: There is an o- -- the building goes over.</p> <p>19 It is --</p> <p>20 HEARING OFFICER GROSSMAN: Okay.</p> <p>21 MATT CLARK: -- cantilevered over.</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 MATT CLARK: And [inaudible] --</p> <p>24 ERIN GIRARD: [Inaudible] for the hearing examiner to --</p> <p>25 MATT CLARK: Actually --</p>
<p>138</p> <p>1 immediately adjoining the building.</p> <p>2 The plaza contains several pockets of landscape located</p> <p>3 within planters, lawn areas, and street trees. Overall, the</p> <p>4 site has approximately 6,900 square-feet of planted area. The</p> <p>5 façade along the plaza, which would be the one facing to the</p> <p>6 -- the northwest here is designed so the first-floor uses</p> <p>7 will front directly onto and engage the plaza.</p> <p>8 Further out from the plaza and running along the west</p> <p>9 and northern edge of the site is a dedicated bike lane that</p> <p>10 wraps the property between Connecticut Avenue and Plyers Mill</p> <p>11 Road.</p> <p>12 The eastern, which would be this side down here, and</p> <p>13 southern edges of the property, are perimetered, or bounded</p> <p>14 by, rather, with landscaped material. And that's the -- the</p> <p>15 overall description of it.</p> <p>16 HEARING OFFICER GROSSMAN: I mean, what about questions</p> <p>17 raised by technical staff about landscape required for</p> <p>18 parking areas, including tree canopy. I might mention while</p> <p>19 we're -- we're at this.</p> <p>20 I don't know if it's your area. Parking setbacks I don't</p> <p>21 recall being mentioned, but there are parking lot setback</p> <p>22 requirements also in the zoning ordinance, and I wondered</p> <p>23 about that.</p> <p>24 And then there was the question raised about some</p> <p>25 artwork or other things for the open-space area. I'd address</p>	<p>140</p> <p>1 ERIN GIRARD: If you want to just draw that line --</p> <p>2 MATT CLARK: Yeah. Okay.</p> <p>3 ERIN GIRARD: -- it may be easier for everyone to see.</p> <p>4 MATT CLARK: Yeah. So that -- that is really the</p> <p>5 building footprint for all practical purposes, with this</p> <p>6 parking and drive aisle going underneath the building.</p> <p>7 HEARING OFFICER GROSSMAN: Okay. So you've indicated</p> <p>8 that in -- in yellow highlight.</p> <p>9 MATT CLARK: Yes.</p> <p>10 HEARING OFFICER GROSSMAN: And it extends much further</p> <p>11 than I realized somehow, out from the -- from what's</p> <p>12 indicated as the building over the parking.</p> <p>13 I -- I read cantilevered but somehow I didn't realize it</p> <p>14 was that much. Can you also mark that -- let's make that an</p> <p>15 exhibit and we'll say -- where are we on our exhibit list</p> <p>16 here?</p> <p>17 MATT CLARK: Want me to just [inaudible]</p> <p>18 ERIN GIRARD: Yeah. Just write it, like, at the bottom.</p> <p>19 HEARING OFFICER GROSSMAN: Right at the bottom there.</p> <p>20 It'll be Exhibit 90 and that is conditional use site plan.</p> <p>21 Plan with highlight showing building coverage -- what would</p> <p>22 you call that overhang? That -- that cantilevered overhang?</p> <p>23 MATT CLARK: Yeah. I --</p> <p>24 HEARING OFFICER GROSSMAN: What would you ca- -- is</p> <p>25 there a word for that in -- in the -- in the planning lingo?</p>

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<p>141</p> <p>1 MATT CLARK: I think it's overhand. I mean, --</p> <p>2 HEARING OFFICER GROSSMAN: All right.</p> <p>3 MATT CLARK: -- I think that's -- I think you nailed it.</p> <p>4 HEARING OFFICER GROSSMAN: First time. All right.</p> <p>5 Including overhang. Okay.</p> <p>6 MATT CLARK: Should I continue on that?</p> <p>7 HEARING OFFICER GROSSMAN: Yes please.</p> <p>8 MATT CLARK: I -- I did -- did a quick calculation of</p> <p>9 the -- the total area of the parking lot from, you know,</p> <p>10 front to back, everything included, and it's about 18,000</p> <p>11 square-feet. Of this, this area under the overhang --</p> <p>12 HEARING OFFICER GROSSMAN: Yes.</p> <p>13 MATT CLARK: -- is approximately 8,428 square-feet or 46</p> <p>14 percent of the parking is actually under a building.</p> <p>15 HEARING OFFICER GROSSMAN: Okay.</p> <p>16 MATT CLARK: So the -- if -- if -- I haven't run the</p> <p>17 numbers on this. If you were to take that out of the</p> <p>18 equation, the -- the -- the exposed parking, for lack of a</p> <p>19 better word, the parking that can have water hit it, from --</p> <p>20 from above, is about 10,000 square-feet.</p> <p>21 HEARING OFFICER GROSSMAN: So you -- so all right. You</p> <p>22 said 46 percent of the parking --</p> <p>23 MATT CLARK: Mm-hmm.</p> <p>24 HEARING OFFICER GROSSMAN: -- is under the building?</p> <p>25 MATT CLARK: Yes.</p>	<p>143</p> <p>1 MATT CLARK: We can actually add -- well, I'm going to</p> <p>2 grab another exhibit here. Pull this up here.</p> <p>3 HEARING OFFICER GROSSMAN: Which one is that?</p> <p>4 MATT CLARK: This is the -- it's the -- the site</p> <p>5 landscape plan [inaudible]</p> <p>6 HEARING OFFICER GROSSMAN: Okay. That's -- that's --</p> <p>7 MATT CLARK: [Inaudible] which --</p> <p>8 HEARING OFFICER GROSSMAN: I'll give you the -- the --</p> <p>9 it'll be 40-something I believe. All right. Amended landscape</p> <p>10 plans, 40d and there are five subparts to it. Let's see.</p> <p>11 Which one are you looking at?</p> <p>12 MATT CLARK: L5101 is the sheet number. I don't know if</p> <p>13 that helps you at all.</p> <p>14 HEARING OFFICER GROSSMAN: No. I -- I don't have that</p> <p>15 designation but there's -- one is a materials plan, two is</p> <p>16 hardscape details, paving, three is hardscape details site</p> <p>17 furnishings, four is planting plan.</p> <p>18 MATT CLARK: That's the one.</p> <p>19 HEARING OFFICER GROSSMAN: All right. So it's -- it's</p> <p>20 40d [inaudible] 4.</p> <p>21 MATT CLARK: 40d 4.</p> <p>22 HEARING OFFICER GROSSMAN: Mm-hmm.</p> <p>23 MATT CLARK: Right now, the -- the area immediately</p> <p>24 adjacent to the parking lot both on the south, east, and to a</p> <p>25 lesser extent on the north [inaudible] we've got on the south</p>
<p>142</p> <p>1 HEARING OFFICER GROSSMAN: And so -- and --</p> <p>2 MATT CLARK: Parking area.</p> <p>3 HEARING OFFICER GROSSMAN: Okay. Of the parking area.</p> <p>4 MATT CLARK: Correct.</p> <p>5 HEARING OFFICER GROSSMAN: So you're suggesting that --</p> <p>6 I suppose that you can't have plantings there because they'd</p> <p>7 die?</p> <p>8 MATT CLARK: They're under -- yeah. They're under a</p> <p>9 building. Absolutely.</p> <p>10 HEARING OFFICER GROSSMAN: That's -- I've never faced</p> <p>11 that issue before. I -- I guess that's a reason for varying</p> <p>12 from, you know, planting requirements. But go ahead. You tell</p> <p>13 me.</p> <p>14 MATT CLARK: Well, I think where I was going after that</p> <p>15 was if you -- if you back that area out and -- and -- which I</p> <p>16 did, you have about 10,000 square-feet of exposed parking</p> <p>17 area.</p> <p>18 And the -- the code wants us to have 25 percent of that</p> <p>19 perimeter or area around that covered in landscape. And</p> <p>20 that's something that we could absolutely work with -- with</p> <p>21 staff on to make sure we've got.</p> <p>22 I haven't comped it right now. I mean, we may be there</p> <p>23 for all I know.</p> <p>24 HEARING OFFICER GROSSMAN: What about the tree canopy</p> <p>25 issue?</p>	<p>144</p> <p>1 side a fairly large massing of evergreen trees that are six</p> <p>2 to eight feet in height when they're installed, 15 feet or so</p> <p>3 when they grow out to -- to full maturity.</p> <p>4 Along the eastern side, because of the proximity to the</p> <p>5 adjoining property, it's basically shrubs. So we -- we</p> <p>6 couldn't f- -- fit any additional shade trees in here.</p> <p>7 That being said, I think on the south side or even</p> <p>8 possibly on the north side, if we need to trade some of these</p> <p>9 out and put in true shade trees, we could absolutely do that.</p> <p>10 HEARING OFFICER GROSSMAN: Okay. Well, it's a question</p> <p>11 of compliance with statutory provisions. And once again, they</p> <p>12 are subject to alternative compliance. They're also subject</p> <p>13 in this particular area to compatibility --</p> <p>14 MATT CLARK: Right.</p> <p>15 HEARING OFFICER GROSSMAN: -- evaluation. And so those</p> <p>16 would be issues. They haven't really been addressed as I --</p> <p>17 as far as I know, in any of the papers submitted by the</p> <p>18 applicant.</p> <p>19 Have those -- Ms. Girard, have those issues been</p> <p>20 addressed at all on the question of -- of whether or not if</p> <p>21 you can't meet the statutory requirements for the amount of</p> <p>22 planting and -- and the amount of tree cover, whether you are</p> <p>23 seeking alternative compliance on that or you're seeking to</p> <p>24 say it's compatible and therefore the hearing examiner has</p> <p>25 the ability to --</p>

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<p>145</p> <p>1 ERIN GIRARD: Unfortunately, I'm going to have to add 2 that to the list -- 3 HEARING OFFICER GROSSMAN: All right. 4 ERIN GIRARD: -- of the other one. This just wasn't -- 5 it wasn't raised until we saw the staff report and -- 6 MATT CLARK: And -- and we haven't comped these 7 particular trees up, so I -- I don't have the answer for that 8 specifically. Okay. Okay. 9 ERIN GIRARD: Okay. 10 HEARING OFFICER GROSSMAN: What about setbacks? I mean, 11 that's another question. I -- I didn't actually see that 12 mentioned in the staff report. Maybe it is, but parking lot 13 setback issues. The -- 14 ERIN GIRARD: I don't recall -- we can certainly have -- 15 HEARING OFFICER GROSSMAN: There are specific -- 16 ERIN GIRARD: -- for architects -- 17 HEARING OFFICER GROSSMAN: -- parking lot setback 18 [inaudible] 19 ERIN GIRARD: There are. I was always under -- I was 20 under the stand -- understanding that we complied with those. 21 I can certainly have the architect speak to those. 22 HEARING OFFICER GROSSMAN: You may have. I just don't 23 remember seeing that in -- 24 ERIN GIRARD: Right. Our architect can speak to that, 25 unless you feel capable.</p>	<p>147</p> <p>1 -- later submission? 2 MATT CLARK: I can talk about it now actually. 3 HEARING OFFICER GROSSMAN: Well, here's the [inaudible] 4 the -- the -- ordinarily, everything has to be presented -- 5 MATT CLARK: Right. 6 HEARING OFFICER GROSSMAN: -- at a hearing so the other 7 side has an opportunity -- 8 MATT CLARK: Right. 9 HEARING OFFICER GROSSMAN: -- to respond to it. So the 10 more you push off here into -- 11 MATT CLARK: Well then yeah. 12 HEARING OFFICER GROSSMAN: -- future submissions, the 13 more it raises the question of we're going to have to have 14 another hearing. 15 MATT CLARK: Oh no. I meant subsequent questions here. 16 But I can talk -- 17 HEARING OFFICER GROSSMAN: Okay. 18 MATT CLARK: -- about that right now as a matter of 19 fact. 20 HEARING OFFICER GROSSMAN: Okay. 21 MATT CLARK: The notion of incorporating public art. I 22 think this -- this is an early design. Obviously we're not at 23 the final site plan or anything like that. But there is a 24 great opportunity within this plaza, both within some of 25 these plant beds, on this building, this area here to</p>
<p>146</p> <p>1 MATT CLARK: No. I definitely do not want to speak to 2 the -- 3 HEARING OFFICER GROSSMAN: Okay. 4 MATT CLARK: -- setbacks [inaudible] 5 ERIN GIRARD: You were describing your landscape and 6 open space design. 7 MATT CLARK: Right. 8 ERIN GIRARD: Did we sidetrack you? Are you done? 9 MATT CLARK: I think we -- we talked about the -- the 10 parking landscaping -- 11 HEARING OFFICER GROSSMAN: Yes. 12 MATT CLARK: -- and you had two other points. Well, one 13 of them was the setbacks. 14 HEARING OFFICER GROSSMAN: Right. Right. 15 MATT CLARK: The other one was the notion of public art. 16 HEARING OFFICER GROSSMAN: Yes. 17 MATT CLARK: And I -- if I can get to that in a follow- 18 up statement -- 19 HEARING OFFICER GROSSMAN: Sure. Absolutely. 20 MATT CLARK: We'll talk about that. For sure. 21 ERIN GIRARD: [Inaudible] 22 HEARING OFFICER GROSSMAN: When you say follow-up 23 statement, you mean not today or you -- you -- 24 MATT CLARK: Well, I was -- as -- 25 HEARING OFFICER GROSSMAN: [Inaudible] as part of a la-</p>	<p>148</p> <p>1 incorporate public art. 2 HEARING OFFICER GROSSMAN: And that's the northwest 3 corner. 4 MATT CLARK: That would be the northwest. Yeah. 5 HEARING OFFICER GROSSMAN: The actual corner. 6 MATT CLARK: Yeah. The northwest area. And I think given 7 the fact that the -- the uses, or the proposed uses within 8 the building would have artists. 9 I think we can absolutely incorporate public art or even 10 rotating art installations, that sort of thing. But -- 11 HEARING OFFICER GROSSMAN: Okay. 12 MATT CLARK: -- absolutely. 100 percent. 13 ERIN GIRARD: And Mr. Clark, are you familiar with the 14 approved and adopted Kensington Sector plan and its 15 recommendations with respect to the subject property and 16 surrounding area? 17 MATT CLARK: Yes. 18 ERIN GIRARD: Are you familiar with Kensington design 19 guidelines and its recommenda- -- and their recommendations 20 with respect to the subject property and surrounding area? 21 MATT CLARK: Yes. 22 ERIN GIRARD: Can you discuss how you think this project 23 complies with both the sector plan and the design guidelines? 24 MATT CLARK: Yeah. I think I'll -- I'll -- I'll speak to 25 the -- the notion of the sector plan first. I do believe that</p>

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<p>149</p> <p>1 this is supporting of -- of mixed-use development which was 2 one of the -- the comments directly under the analysis area 3 TC-5 which was -- was part of the sector plan. 4 I think that it also located -- noted that parking, for 5 example, should be located to the rear, and -- and we've 6 talked about that. You all had hit on some of the earlier 7 comments under the analysis, this particular analysis area of 8 access to the site. 9 So I won't go into that again. But I think as far as 10 these two other elements, absolutely. 11 With regard to the design guidelines, the -- they 12 basically hit on four kind of main goals, one of which is 13 Kensington character. The second is pedestrian connections. 14 The third is pedestrian-oriented development and the fourth 15 was transitions. 16 HEARING OFFICER GROSSMAN: All right. Let me just get 17 this down. Kensington character. 18 MATT CLARK: Yeah. 19 HEARING OFFICER GROSSMAN: What was Number 2? 20 MATT CLARK: Pedestrian connections. 21 HEARING OFFICER GROSSMAN: Hold on. Number 3? 22 MATT CLARK: Pedestrian-oriented development. 23 HEARING OFFICER GROSSMAN: Number 4? 24 MATT CLARK: And the fourth was transitions. 25 HEARING OFFICER GROSSMAN: Okay.</p>	<p>151</p> <p>1 MATT CLARK: North. 2 HEARING OFFICER GROSSMAN: North, northwest. 3 MATT CLARK: North by -- 4 HEARING OFFICER GROSSMAN: Northeast; right? 5 MATT CLARK: Northwest. Depending on where the 6 pedestrian goes at that point, they have an opportunity to 7 either engage the building directly going through kind of 8 what I call the main part of the plaza, or if perhaps they're 9 going across the intersection, to go outward and then across. 10 This -- this kind of tale of two paths here comes back 11 together at the northern part of the site and then continues 12 back along Plyers Mill. 13 I think what we've done here in terms of creating a -- a 14 safe pedestrian environment here is we're using certainly the 15 -- the bike lane, the proposed bike lane out there as kind of 16 an outboard buffer to both Connecticut and Plyers Mill. 17 And we're using landscape to further kind of define both 18 pedestrian zones and the plaza itself. So I think in terms of 19 creating direct and safe routes of pedestrian travel, I think 20 it's -- it absolutely check that box. 21 HEARING OFFICER GROSSMAN: Okay. 22 MATT CLARK: The second one that I mentioned was the use 23 of trees and plants to complement pedestrian character. 24 Again, as I noted, we're kind of using this -- and again, I 25 apologize. I keep getting up. We're using essentially this</p>
<p>150</p> <p>1 MATT CLARK: Within each one of these kind of chapters 2 if you will, there are a set of objectives and supporting 3 guidelines to help achieve them. I think the -- the two that 4 are most applicable from -- from my perspective as a 5 landscape architect to this site are pedestrian connections 6 and the pedestrian-oriented development. 7 So I'd like to go through a couple of the objectives and 8 goals underneath that. Under the -- kind of the purview of 9 pedestrian connections, one of the -- the primary goals was 10 create a high-quality pedestrian network. And there were 11 several guidelines below that. 12 The first was create direct and safe routes for 13 pedestrian travel. The second was to use trees, plants to 14 complement the pedestrian character and the historic 15 neighborhood or historic district area and incorporate 16 amenities and visual interest for the -- for pedestrians. 17 I think the -- the plan that we've created right now as 18 far as safety for pedestrians, starting in the -- the 19 southwest corner of the site and touched the bottom of the 20 [inaudible] earlier. The main pedestrian pa- -- pathway comes 21 up and actually intersects into this plaza area here. At this 22 point -- 23 HEARING OFFICER GROSSMAN: Proceeds north? 24 MATT CLARK: Proceeds north. 25 HEARING OFFICER GROSSMAN: Okay.</p>	<p>152</p> <p>1 green swath around here, and to a lesser extent, on the 2 northeast corner. 3 HEARING OFFICER GROSSMAN: So around here being --? 4 MATT CLARK: Oh. Yeah. I apologize. Along the -- the 5 western perimeter of the site and across the northern 6 [inaudible] 7 HEARING OFFICER GROSSMAN: Okay. 8 MATT CLARK: And then the very northeastern section. In 9 all instances here, we have the -- the pathway, if you will, 10 is immediately approximate to landscape. So we're bringing 11 people close -- as close as we can to the landscape. 12 And I think that the -- the use particularly along the 13 western side and the northern side where you -- we have trees 14 and under plantings, everything, I think would create a -- a 15 very nice pedestrian experience; okay? 16 The third thing was incorporate amenities and visual 17 interest for pedestrians. And we -- we actually kind of 18 touched on this a little bit earlier, was the notion of 19 incorporating public art. 20 We got the use or proposed use right in the building 21 right there. So again, I think this becomes -- and this -- 22 this would be a bad way to describe this, but a -- a canvas 23 for public art within this plaza area set back against the 24 landscape. 25 So from my perspective, I -- I think those three</p>

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<p>153</p> <p>1 guidelines help achieve the -- the high-quality pedestrian 2 network in this area. 3 HEARING OFFICER GROSSMAN: Okay. 4 MATT CLARK: The second primary objective under 5 pedestrian connections was the notion of create a variety of 6 public open spaces. 7 And I think the way it was -- was written in the design 8 guidelines was that for the whole Kensington sector plan, it 9 was create a variety of public open spaces, of which this 10 would be one. 11 There were a couple specific guidelines under that. The 12 first one was public open space on private property should be 13 accessible from sidewalk. The second was locate open space in 14 areas of high visibility. And the third was incorporating 15 seating at the public open spaces. 16 I believe that this first one, public open space on 17 private property should be accessible. We're absolutely 18 there. We can access it from the -- the south along 19 Connecticut Avenue. 20 We can access this site from the roughly northwest 21 across the -- the intersection and from the -- I guess the 22 due east along Plyers Mill. 23 HEARING OFFICER GROSSMAN: By the way, I have a pointer 24 if you want to use that. Would that help you at all? 25 MATT CLARK: You know what? I would love that actually.</p>	<p>155</p> <p>1 MATT CLARK: Yeah. Roughly along that crescent there. 2 HEARING OFFICER GROSSMAN: Right. 3 MATT CLARK: That -- that landscape crescent. What we've 4 planned conceptually is to have fixed seating there, but it's 5 not just going to be straight shots and -- fastened and stuff 6 like that. 7 We believe there's a real nice opportunity here to use 8 seating almost to become a kind of public art and have this 9 kind of respect and respond to these -- these planters. So 10 it'll become kind of an art form in and of itself. 11 So I think in terms of incorporating seating, we've -- 12 we've done that as well. Those are kind of the -- the -- the 13 three guidelines and -- and -- that supported the objective 14 create variety in public open spaces. 15 The next kind of -- the big -- oh. And I'm sorry, there 16 was some other thing. I missed it. Was the notion of design 17 flexible spaces to accommodate variety of users. When you 18 look at this -- and I'm probably going to burn somebody's 19 eyes out. When you look at this, we have landscape out here, 20 certainly out along the roads. 21 Up against the building, we've really left this 22 primarily as hardscape. And -- and that, to our mind, is 23 really speaking to the notion of we want the users in this 24 building to inform how that space is used. So making a very 25 flexible space for -- for end users here.</p>
<p>154</p> <p>1 Thank you. So I think from -- from that accessibility 2 standpoint, we're -- we're pretty good there. Locate open 3 space scenarios of high visibility. Clearly, we've heard 4 other speakers talk about this. This is a very visible 5 location. 6 We're at the corner of, you know, Connecticut and Plyers 7 Mill. And then the notion of incorporating seating into 8 public open spaces. 9 This -- this plaza has a couple different types of 10 seating in it. We've got both movable seating or -- which 11 would be kind of -- or could be, rather, located immediate 12 approximate to the -- the building itself. So this might be 13 for the restaurant or some -- whatever users in there. 14 We've got fixed seating to the -- kind of the -- roughly 15 the south of it and over here to the -- I'll call it north, 16 northeast. And they have the seating in these locations, as 17 well as a -- another one back over there along the trail. 18 The selection for that seating is directly from the 19 Kensington design guidelines. They give a specific make and 20 model, so we've done that. 21 But I think the really interesting piece of this is 22 going to be with respect to the planters in here. And this is 23 not a final design by any s- -- 24 HEARING OFFICER GROSSMAN: In the nor- -- in the 25 northwest corner.</p>	<p>156</p> <p>1 We don't really know what that's going to be at this 2 point, so we're kind of leaving that as a bit of a blank 3 canvas right now. 4 HEARING OFFICER GROSSMAN: Don't we know what it's going 5 to be? 6 MATT CLARK: I don't know how it'll work operationally 7 because I -- I don't understand who the -- for example, the - 8 - the specific restaurant is or anything like that. I'm 9 trying to basically build them a framework and let them fill 10 in -- give me some guardrails -- 11 HEARING OFFICER GROSSMAN: Okay. 12 MATT CLARK: -- and then work within that. So that 13 starts to -- to talk to the -- the flexibility of that space. 14 You know, the -- the balance of the site is -- is landscape 15 and some of the -- the utility [inaudible]. The other big 16 chapter was the notion of pedestrian-oriented development 17 under the design guidelines. 18 And the -- and the primary objective they listed there 19 was to enhance the pedestrian experience through careful 20 orientation of buildings. So I'm going to jump in some other 21 experts' areas here but I'll just kind of go through it. 22 The four guidelines that they had were orient buildings 23 to face sidewalks, vary building massing, reduce the visual 24 impact of parking structures, and reduce the in- -- visual 25 impact of parking stations or gas stations rather. Some of</p>

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<p>157</p> <p>1 these clearly aren't applicable.</p> <p>2 But in terms of the building orientation, with the way</p> <p>3 this is set right now with the building facing to the</p> <p>4 northwest, absolutely orients the sidewalk, which in our case</p> <p>5 is a really big sidewalk in terms of it being an open space.</p> <p>6 The very -- the -- in terms of the building massing --</p> <p>7 and again, you'll -- you'll hear about this a little bit more</p> <p>8 when -- when Michele talks. The building is actually stepped</p> <p>9 back so that the building itself that interacts with our open</p> <p>10 space -- and again, I see everything through the lens of my</p> <p>11 open space -- is actually only -- I think it's about 20 feet</p> <p>12 high or something.</p> <p>13 So it's not six stories or anything like that. But it</p> <p>14 steps back to a higher structure. And again, Michele can talk</p> <p>15 about that in more detail. But I do believe that the building</p> <p>16 massing is varied and it's not oppressive. The third one was</p> <p>17 the -- reduce the visual impact of parking structures.</p> <p>18 HEARING OFFICER GROSSMAN: Before you --</p> <p>19 MATT CLARK: Oh. Sorry.</p> <p>20 HEARING OFFICER GROSSMAN: -- you move the massing</p> <p>21 issue. One of the community witnesses testified on August 9</p> <p>22 that there was -- she had a concern about the impressions of</p> <p>23 the back of the building from Howard Avenue.</p> <p>24 MATT CLARK: Mm-hmm.</p> <p>25 HEARING OFFICER GROSSMAN: Do you have any response to</p>	<p>159</p> <p>1 resources.</p> <p>2 And two of the points in there, which -- which were</p> <p>3 touched on earlier, one the -- one part of the document</p> <p>4 talked about street jurisdictions and we covered this, that</p> <p>5 it is Maryland State Highway going around this. So I won't</p> <p>6 belabor that point.</p> <p>7 But I will say that in this resource, there's a -- a</p> <p>8 very specific section on street furnishings. Covers waste</p> <p>9 receptacles, benches, things of that nature. Bike racks. And</p> <p>10 our plans, preliminary though they may be, or early though</p> <p>11 they may be, we selected all those site furnishings straight</p> <p>12 from the design guidelines. So that should match up in that</p> <p>13 regard. So I think I've probably given you a really long</p> <p>14 answer to your question.</p> <p>15 ERIN GIRARD: And it -- it did feel -- I know we</p> <p>16 reference the guidelines a lot. Is it your -- most of that is</p> <p>17 also in the sector plan or --?</p> <p>18 MATT CLARK: From what I read in the -- in the sector</p> <p>19 plan as far as the -- what was it? The -- the TC-5, you know,</p> <p>20 designation or whatever, I only really saw two or three key</p> <p>21 points. And I -- I might have missed some things.</p> <p>22 The first one was the notion of the mixed-use</p> <p>23 development with street level shops on Connecticut and Plyers</p> <p>24 Mill.</p> <p>25 Parking should be to the rear and then the -- the third</p>
<p>158</p> <p>1 that?</p> <p>2 MATT CLARK: I can't speak to that.</p> <p>3 HEARING OFFICER GROSSMAN: Okay. Let the architect --</p> <p>4 MATT CLARK: I've already --</p> <p>5 HEARING OFFICER GROSSMAN: -- address that.</p> <p>6 MATT CLARK: -- jumped over the wrong line.</p> <p>7 HEARING OFFICER GROSSMAN: Okay.</p> <p>8 MATT CLARK: Reduce the vi- -- the third one was reduce</p> <p>9 the visual impact of parking structures. And I think, as we</p> <p>10 talked about it before, the f- -- the fact that, you know,</p> <p>11 almost half of the parking is under cover; addresses that to</p> <p>12 a large degree.</p> <p>13 And the fact that it is biased to the east side of the</p> <p>14 site so that the building, in effect, becomes the -- the</p> <p>15 block for that.</p> <p>16 Now, it's true. There is parking visible on -- on the</p> <p>17 south side of the site down by the tracks here. And we're --</p> <p>18 we're doing a level best there to mitigate that with</p> <p>19 landscape and in terms of -- of screening.</p> <p>20 So I think that in large part, we've done what we can do</p> <p>21 in terms of -- of meeting these -- these guidelines or</p> <p>22 guidelines and objectives.</p> <p>23 One thing I -- I will note, there was a -- there was a</p> <p>24 fifth chapter in the -- the design guidelines and it wasn't</p> <p>25 specifically oriented toward design aspiration. It was purely</p>	<p>160</p> <p>1 one was the access of the site off Plyers Mill. So I -- I</p> <p>2 didn't dive much deeper into that [inaudible]</p> <p>3 ERIN GIRARD: Those -- those are put together with the</p> <p>4 property.</p> <p>5 MATT CLARK: Yeah.</p> <p>6 ERIN GIRARD: More generally, is there language in the</p> <p>7 sector plan relating to what you just -- just discussed?</p> <p>8 Defining public spaces.</p> <p>9 MATT CLARK: There is some reference back and forth, but</p> <p>10 off the top of my head, I can't nail it down specifically. I</p> <p>11 definitely stayed with the design guidelines as -- as my</p> <p>12 guiding principle more than anything.</p> <p>13 ERIN GIRARD: Which -- is it your understanding that the</p> <p>14 design guidelines arised from the sector plan?</p> <p>15 MATT CLARK: Yeah. Absolutely.</p> <p>16 ERIN GIRARD: Oh. One issue that staff raised -- this is</p> <p>17 Number 4 on that sheet, which I believe it's still up there.</p> <p>18 But that no clear pedestrian path is defined fronting</p> <p>19 Connecticut Avenue within the applicant's [inaudible] plaza.</p> <p>20 The applicant should show clearly delineated pedestrian paths</p> <p>21 on its preliminary plan submission. East [inaudible] and</p> <p>22 should include an adequate buffer separating pedestrians from</p> <p>23 traffic.</p> <p>24 MATT CLARK: So are they -- they're -- again, our -- our</p> <p>25 pedestrian pathway -- as it comes along here, we get to this</p>

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<p>161</p> <p>1 decision point where we can either go that way or we can go 2 out here and which would run parallel to the -- 3 HEARING OFFICER GROSSMAN: Once again, for -- for the 4 record -- 5 MATT CLARK: Yes. I'm sorry. 6 HEARING OFFICER GROSSMAN: -- could you identify the 7 location? 8 MATT CLARK: Yeah. The pedestrian pathway, starting at 9 the southeastern corner -- or southwestern corner of the site 10 proceeds in a northerly direction to about the midpoint of 11 the building. At that point, we encounter the main part of 12 what I call the plaza. 13 Pedestrians have the option then to go in a -- kind of a 14 northwesterly direction and run parallel to the bike path 15 which also runs parallel to the street. And that wraps around 16 and continues on to the northern part of the site and 17 [inaudible] grass is on the eastern side. 18 The other option for a pedestrian is at that decision 19 point to go through the plaza and match up the same way. We 20 don't have that specifically marked out on the plan, but that 21 was -- that was the idea. And I don't know if that answers 22 that question or not. 23 ERIN GIRARD: Do you think in working with staff you 24 could accommodate something -- 25 MATT CLARK: Absolutely.</p>	<p>163</p> <p>1 substantial compliance with the Kensington sector planning 2 design guidelines? 3 MATT CLARK: From a landscape architecture perspective? 4 Absolutely. 5 ERIN GIRARD: And from a landscape architect standpoint, 6 do you believe the conditional use would cause any 7 objectionable noise, odors or dust at the subject site? 8 MATT CLARK: No. 9 ERIN GIRARD: That's all I have. 10 HEARING OFFICER GROSSMAN: Cross-examination? 11 MICHELE ROSENFELD: Just a -- a general question. From 12 the landscaping on the south side of the project -- 13 MATT CLARK: Yes. 14 MICHELE ROSENFELD: -- have you reviewed any of that 15 with CSX or do you know if they have any design restrictions 16 for landscape materials adjacent to the railway tracks? 17 MATT CLARK: To my knowledge, we have not reviewed CSX. 18 MICHELE ROSENFELD: Okay. So if they have limitations on 19 the type of landscaping that you could locate there you're 20 not -- 21 MATT CLARK: We would have -- 22 MICHELE ROSENFELD: -- aware of them? 23 MATT CLARK: Yeah. We would have to [inaudible] 24 MICHELE ROSENFELD: But you would have to comply with 25 them.</p>
<p>162</p> <p>1 ERIN GIRARD: -- that would -- 2 MATT CLARK: Yes. Absolutely. 3 ERIN GIRARD: -- satisfy the -- their concern there. 4 MATT CLARK: Mm-hmm 5 ERIN GIRARD: Okay. So Mr. Clark, from a landscape 6 architecture standpoint, do you believe the proposed 7 conditional use would be compatible with and in harmony with 8 the character of the surrounding area? 9 MATT CLARK: I do. 10 ERIN GIRARD: And from a landscape architect standpoint, 11 would -- do you believe the proposed conditional use would 12 cause any undue harm to [inaudible] peaceful enjoyment, 13 economic value or development potential rebutting or 14 confronting properties for the general neighborhood? 15 MATT CLARK: I do not. I think it would be completely 16 compatible and -- and not cause any undue stress on the 17 neighbors. 18 ERIN GIRARD: And from a landscape architecture 19 standpoint, will the proposed improvements cause any adverse 20 effects on the health, safety, or welfare of the neighboring 21 residents, visitors, or employees in the area? 22 MATT CLARK: I don't believe so. 23 ERIN GIRARD: And I believe you already answered this, 24 but just to make it crystal clear, from a landscape 25 architecture standpoint, do you believe the project is in</p>	<p>164</p> <p>1 MATT CLARK: I don't know if there's an overlay easement 2 or anything like that. 3 MICHELE ROSENFELD: Okay. 4 HEARING OFFICER GROSSMAN: Well, isn't that something 5 you really have to know in order to -- 6 MATT CLARK: Well, I mean, insofar as the fact that it 7 hasn't shown up on any survey basis and everything we've 8 located is on our property at this point in the game. We 9 haven't -- 10 HEARING OFFICER GROSSMAN: So maybe -- 11 MATT CLARK: Yeah. We have -- 12 HEARING OFFICER GROSSMAN: -- you have to comply with 13 it. 14 MATT CLARK: Yeah. Well, yeah. 15 HEARING OFFICER GROSSMAN: They may not like it but we 16 might have to lump it. I don't know. 17 MATT CLARK: They might have to accept it. 18 MICHELE ROSENFELD: And Mr. Grossman, I have no further 19 questions for -- for this witness, but I do have a procedural 20 matter I'd like to take up when we're concluded with this -- 21 HEARING OFFICER GROSSMAN: Okay. 22 MICHELE ROSENFELD: With this testimony. 23 HEARING OFFICER GROSSMAN: Anything further? 24 ERIN GIRARD: No. That's it. 25 HEARING OFFICER GROSSMAN: All right. Thank you very</p>

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<p>165</p> <p>1 much --</p> <p>2 MATT CLARK: Thank you.</p> <p>3 HEARING OFFICER GROSSMAN: -- Mr. Clark. Once again,</p> <p>4 congratulations on being an expert and -- and very clear</p> <p>5 well-organized --</p> <p>6 MATT CLARK: There's a first time for everything.</p> <p>7 HEARING OFFICER GROSSMAN: Clear, well-organized</p> <p>8 presentation. Thank you. Yes, Ms. Rosenfeld? What's the</p> <p>9 procedural --?</p> <p>10 MICHELE ROSENFELD: Yes. Like you, I was unaware until</p> <p>11 Mr. Clark testified how deep the cantilevered portion of this</p> <p>12 building went into the site.</p> <p>13 I candidly misread the plans and thought it was along --</p> <p>14 a few feet along the rear of the building, which may simply</p> <p>15 be a -- a sidewalk or a pathway.</p> <p>16 In looking at more detailed plans that were included in</p> <p>17 Exhibit 87, there are issues that -- there -- there are</p> <p>18 questions that I would have for Mr. Fox, if he could be</p> <p>19 called back.</p> <p>20 And I call your attention particularly to Page C of</p> <p>21 Exhibit 87 where it's for the first time clear to me the</p> <p>22 depth of this overhang. There is a post on the outer corner</p> <p>23 of the overhang.</p> <p>24 HEARING OFFICER GROSSMAN: Let's just making sure that</p> <p>25 we're looking at the same one. Can you hold that up?</p>	<p>167</p> <p>1 witness stand again please. All right. I'll let you question</p> <p>2 him, Ms. Rosenfeld.</p> <p>3 MICHELE ROSENFELD: All right. Mi- -- Mr. Fox, thank you</p> <p>4 for coming back. I appreciate it.</p> <p>5 BRAD FOX: Mm-hmm.</p> <p>6 MICHELE ROSENFELD: I don't know if you have a copy of</p> <p>7 Exhibit 87 that you can look at. If not, I would be able to</p> <p>8 provide you a copy.</p> <p>9 BRAD FOX: I -- I was just looking at it.</p> <p>10 MICHELE ROSENFELD: Okay.</p> <p>11 BRAD FOX: So -- in the audience.</p> <p>12 MICHELE ROSENFELD: And comparing Page 87 Exhibit C with</p> <p>13 the site plan exhibit that you were referencing earlier, does</p> <p>14 the cantilever of the building go -- extend to the end of the</p> <p>15 parking spaces that abut the adjoining property? How -- how</p> <p>16 far out does it extend?</p> <p>17 BRAD FOX: Yeah. So this is the site plan that was</p> <p>18 highlighted --</p> <p>19 MICHELE ROSENFELD: Correct.</p> <p>20 BRAD FOX: -- by Mr. Clark. If you look carefully, there</p> <p>21 -- the columns that are shown on the renderings are actually</p> <p>22 shown on the site plan also.</p> <p>23 And similar to any parking garage or parking structure</p> <p>24 that you have visited, we've located those columns and in</p> <p>25 coordination with the architect, at the ends of the parking</p>
<p>166</p> <p>1 MICHELE ROSENFELD: Yes. Of course. It's called signage</p> <p>2 outline north elevation.</p> <p>3 HEARING OFFICER GROSSMAN: Okay. Got it.</p> <p>4 MICHELE ROSENFELD: Mine looks like this. Oh. And there</p> <p>5 are a couple of other pages that I would draw your attention</p> <p>6 to. The ne- -- the next one is signage outline south</p> <p>7 elevation Page D which is essentially a flip of that.</p> <p>8 And then E outli- -- signage outline east elevation. And</p> <p>9 if I'm l- -- looking at this rendering correctly, from the</p> <p>10 rear it appears that there are vertical poles from the</p> <p>11 building into the parking lot.</p> <p>12 And to me, that raises questions, again, particularly</p> <p>13 with respect to trucks and larger trucks, with respect to</p> <p>14 circulation, safety, the -- the ability for vehicles to</p> <p>15 maneuver within the site itself, and access to the building.</p> <p>16 So I -- I realize it's unusual, but it was only after</p> <p>17 reviewing this and hearing the testimony that the -- that</p> <p>18 line of questioning came to me.</p> <p>19 HEARING OFFICER GROSSMAN: Yeah. I'm sure Ms. Girard</p> <p>20 would not --</p> <p>21 ERIN GIRARD: I don't.</p> <p>22 HEARING OFFICER GROSSMAN: -- object to that. Okay.</p> <p>23 ERIN GIRARD: I'm just glad I told him to stay. I said,</p> <p>24 you never know. And there you go.</p> <p>25 HEARING OFFICER GROSSMAN: Fox, would you take the</p>	<p>168</p> <p>1 stalls. So they fall on the parking lines and outside of the</p> <p>2 [inaudible] lines.</p> <p>3 So they are -- they are shown on here. We -- we are</p> <p>4 planning for that coordination. We do understand the</p> <p>5 cantilevered building and we're planning on accommodating.</p> <p>6 MICHELE ROSENFELD: And so the -- is -- is there one</p> <p>7 pole per parking space or is it -- does it span the width of</p> <p>8 more than one parking space?</p> <p>9 BRAD FOX: Currently -- and I don't know if you want to</p> <p>10 take a closer look.</p> <p>11 MICHELE ROSENFELD: I do actually. Thank you.</p> <p>12 BRAD FOX: I could -- I could better explain it.</p> <p>13 Generally speaking, we have a -- a column at every two</p> <p>14 parking spaces.</p> <p>15 ERIN GIRARD: Along the rear of the parking spaces that</p> <p>16 abut the adjoining parking.</p> <p>17 BRAD FOX: And also along the parking [inaudible] to</p> <p>18 [inaudible] so there's additional columns there.</p> <p>19 MICHELE ROSENFELD: So there are a total of three rows</p> <p>20 of columns underneath the cantilevered portion of the</p> <p>21 building?</p> <p>22 BRAD FOX: I would urge you to ask the architect about</p> <p>23 the columns.</p> <p>24 MICHELE ROSENFELD: Okay.</p> <p>25 BRAD FOX: But it is for site circulation and vehicular</p>

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<p>169</p> <p>1 circulation. The intent is to locate those columns where they 2 don't [inaudible] parking [inaudible] 3 MICHELE ROSENFELD: And so with respect to the trucks 4 that we were talking about earlier, the large trucks, would 5 be they be able to pull out from under the building between 6 those columns? 7 BRAD FOX: Yes. If we go back to where the loading areas 8 are, the loading areas are recessed and so they have the 9 distance to pull out of the loading area before they even 10 enter the perpendicular [inaudible] for the [inaudible] 11 spaces. Those columns have been recessed out even further to 12 accommodate that loading. 13 MICHELE ROSENFELD: And so is there only means of 14 [inaudible] through the end of the drive aisle into the 15 adjoining property? 16 BRAD FOX: No. They would be able to turn on demand. 17 MICHELE ROSENFELD: Turn on demand. Okay. And then do 18 you know with respect to the largest trucks that we were 19 talking about [inaudible] you'll probably remember the number 20 faster than I'll find it. Oh. The WB -- not the WB-40s. 21 ERIN GIRARD: SU-30s. 22 MICHELE ROSENFELD: The SU-30s. Thank you. Do you know 23 if the height of the cantilevered portion of the building is 24 high enough to allow them to enter the loading base. 25 BRAD FOX: It is. The county also sets a minimum zoning</p>	<p>171</p> <p>1 address is 901 East Madison Street, Phoenix, Arizona, 85034. 2 HEARING OFFICER GROSSMAN: Okay. Would you raise your 3 right hand please? Do you swear or affirm to tell the truth, 4 the whole truth and nothing but the truth under penalty of 5 perjury? 6 MICHELLE BACH: I do. 7 HEARING OFFICER GROSSMAN: All right. You may proceed. 8 ERIN GIRARD: Ms. Bach, what's your occupation? 9 MICHELLE BACH: Architectural designer. 10 HEARING OFFICER GROSSMAN: I'm sorry. You have to speak 11 up because of the fan. 12 MICHELLE BACH: Sorry. 13 HEARING OFFICER GROSSMAN: Architectural what? 14 MICHELLE BACH: Designer. 15 HEARING OFFICER GROSSMAN: Designer. Okay. 16 ERIN GIRARD: And how long have you been engaged in this 17 occupation? 18 MICHELLE BACH: Six years. 19 ERIN GIRARD: And what's your professional and 20 educational background? 21 MICHELLE BACH: I have a bachelor's degree from 22 Washington State University in architecture and a master's 23 degree in architecture from the University of Nebraska at 24 Lincoln. 25 ERIN GIRARD: And are you a member of any professional</p>
<p>170</p> <p>1 height on that. And what I would request that you ask the 2 actual height of the cantilever from the architect. 3 MICHELE ROSENFELD: Okay. 4 BRAD FOX: Once she's up here. 5 MICHELE ROSENFELD: Okay. I will do that. All right. 6 Thank you. Thank you very much, Mr. Fox. Thank you, Mr. 7 Grossman. 8 HEARING OFFICER GROSSMAN: Do you have any redirect? 9 ERIN GIRARD: No. I don't. 10 HEARING OFFICER GROSSMAN: All right. Thank you, Mr. 11 Fox. I didn't -- I didn't realize even when we had to -- Mr. 12 Clark up there that the overhang was not just an overhang, 13 but it's actually part of the whole building. It's -- the 14 whole building is cantilevered over. 15 ERIN GIRARD: Sits above it. 16 HEARING OFFICER GROSSMAN: Not just a -- a ledge out 17 there. 18 ERIN GIRARD: Correct. 19 HEARING OFFICER GROSSMAN: Right. All right. Are we 20 ready for the next victim? 21 ERIN GIRARD: The moment you've been waiting for, the 22 architect. We're calling Michele Bach. 23 HEARING OFFICER GROSSMAN: All right. All right. Ms. 24 Bach, would you state your full name and address please. 25 MICHELLE BACH: Michele Alexandria Bach, and my work</p>	<p>172</p> <p>1 architectural societies or organizations? 2 MICHELLE BACH: I am an active member of the Arizona 3 chapter of the APA, the Association for Planning. 4 ERIN GIRARD: And can you review your work experience in 5 the field of architecture? 6 MICHELLE BACH: In the last six years, I have worked 7 directly in a commercial architecture setting with four of 8 those years being specializing in self-storage, design and 9 zoning cases associated with those self-storage, full zoning 10 cases, conditional uses, special uses. 11 And in the Maryland area, I did recently just work on a 12 case in area 1 for Westbard Self-Storage. 13 ERIN GIRARD: And y- -- have you ever had to testify as 14 an expert witness in the field of architecture? 15 MICHELLE BACH: No. 16 HEARING OFFICER GROSSMAN: Well, I'm going to stop you 17 for a second. West part self-storage? Is that -- you said 18 Maryland. On Westbard Avenue or --? 19 MICHELLE BACH: Yes. It's -- it's in Bethesda, Maryland. 20 HEARING OFFICER GROSSMAN: Yeah. I'm familiar with 21 Westbard Avenue in Bethesda. 22 MICHELLE BACH: So -- 23 HEARING OFFICER GROSSMAN: I'm just wondering -- it 24 didn't come across here as a conditional use or anything. 25 What -- what was your --</p>

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<p>173</p> <p>1 ERIN GIRARD: It's an industrial zone.</p> <p>2 MICHELLE BACH: Yeah.</p> <p>3 ERIN GIRARD: It's [inaudible] right.</p> <p>4 HEARING OFFICER GROSSMAN: Okay.</p> <p>5 MICHELLE BACH: Yeah. It's -- yeah. Just another self --</p> <p>6 HEARING OFFICER GROSSMAN: Okay.</p> <p>7 MICHELLE BACH: Closed self-storage case that I have to</p> <p>8 the area since --</p> <p>9 HEARING OFFICER GROSSMAN: Okay.</p> <p>10 MICHELLE BACH: -- I'm from Arizona. Most of my cases</p> <p>11 are in Arizona.</p> <p>12 HEARING OFFICER GROSSMAN: Would be lo- -- logical. Yes.</p> <p>13 ERIN GIRARD: And your resume is in the record at -- as</p> <p>14 Exhibit 22c.</p> <p>15 HEARING OFFICER GROSSMAN: Okay. Let me take a look at</p> <p>16 that.</p> <p>17 ERIN GIRARD: And we're moving her admission as an</p> <p>18 expert architect.</p> <p>19 HEARING OFFICER GROSSMAN: All righty. Hold on a second.</p> <p>20 Now, are you licensed in Maryland?</p> <p>21 MICHELLE BACH: The firm that I work under is licensed</p> <p>22 in Maryland.</p> <p>23 HEARING OFFICER GROSSMAN: Okay. And what firm is that?</p> <p>24 MICHELLE BACH: RKA, Robert Kubicek Architects. They're</p> <p>25 the ones who have signed and sealed the drawings, the</p>	<p>175</p> <p>1 do. You've not been qualified as an expert in any</p> <p>2 administrative or judicial proceedings?</p> <p>3 MICHELLE BACH: No. I have not.</p> <p>4 MICHELE ROSENFELD: I have no -- no further questions,</p> <p>5 but Mr. Grossman, I would object to Ms. Bach being admitted</p> <p>6 as an expert architect. Her backgrounds in training and</p> <p>7 experience I would say carry some weight with respect to the</p> <p>8 testimony that she might give, but I -- I would object to her</p> <p>9 admission as an expert.</p> <p>10 HEARING OFFICER GROSSMAN: Respond to that?</p> <p>11 ERIN GIRARD: I -- I -- as you noted previously, I -- I</p> <p>12 don't think that licensure in Maryland is a -- is necessarily</p> <p>13 dispositive as to whether or not you should be qualified as</p> <p>14 an expert.</p> <p>15 I think that Ms. Bach has been practicing in this</p> <p>16 specific area of self-storage architecture design for a</p> <p>17 number of years and that that in combination with her</p> <p>18 master's and her participation in architect -- in societies</p> <p>19 would qualify her -- handily qualify her as an expert.</p> <p>20 HEARING OFFICER GROSSMAN: A- -- and as I stated before,</p> <p>21 it's not even any particular educational degree that</p> <p>22 qualifies somebody as an expert. Rather you can qualify as an</p> <p>23 expert if you have knowledge that is beyond the account of a</p> <p>24 laymen in a particular area and would help the factfinder in</p> <p>25 making a decision.</p>
<p>174</p> <p>1 architect of record for the project.</p> <p>2 HEARING OFFICER GROSSMAN: Okay.</p> <p>3 MICHELLE BACH: I'm currently in the process of being</p> <p>4 licensed, but education and internship hours, I haven't fully</p> <p>5 completed my licensure yet.</p> <p>6 HEARING OFFICER GROSSMAN: You haven't completed your</p> <p>7 licensure in Maryland or even in Arizona?</p> <p>8 MICHELLE BACH: Even in Arizona.</p> <p>9 HEARING OFFICER GROSSMAN: All right. So you're not a</p> <p>10 licensed architect?</p> <p>11 MICHELLE BACH: No.</p> <p>12 HEARING OFFICER GROSSMAN: Okay.</p> <p>13 MICHELLE BACH: I work under licensed architect.</p> <p>14 HEARING OFFICER GROSSMAN: And the -- so your -- I see</p> <p>15 on your resume Exhibit 22c, RKA Architects Inc. Is that the</p> <p>16 firm you're talking about?</p> <p>17 MICHELLE BACH: Yes.</p> <p>18 HEARING OFFICER GROSSMAN: Okay.</p> <p>19 MICHELLE BACH: Mm-hmm.</p> <p>20 HEARING OFFICER GROSSMAN: And they are licensed in</p> <p>21 Arizona. And are they licensed in Maryland as well?</p> <p>22 MICHELLE BACH: Yes. They are.</p> <p>23 HEARING OFFICER GROSSMAN: Okay. All right. Questions</p> <p>24 Ms. Rosenfeld?</p> <p>25 MICHELE ROSENFELD: I -- I have [inaudible] and -- and I</p>	<p>176</p> <p>1 Of course, these other questions about her background</p> <p>2 and whether or not she's licensed, so on, goes to the weight</p> <p>3 to be given to the evidence. But --</p> <p>4 ERIN GIRARD: Mm-hmm.</p> <p>5 HEARING OFFICER GROSSMAN: But -- but I will accept her</p> <p>6 as an expert in architecture with those qualifications.</p> <p>7 ERIN GIRARD: I mean, Ms. Bach, are you familiar with</p> <p>8 the conditional use property of the surrounding area in</p> <p>9 application number 19-03?</p> <p>10 MICHELLE BACH: Yes.</p> <p>11 ERIN GIRARD: Can you review the design concept for the</p> <p>12 building proposed in the application?</p> <p>13 MICHELLE BACH: I can. I'm going to walk through --</p> <p>14 HEARING OFFICER GROSSMAN: Yeah.</p> <p>15 MICHELLE BACH: -- the exhibit.</p> <p>16 HEARING OFFICER GROSSMAN: Would you like the -- the</p> <p>17 pointer. Oops. I'm sorry.</p> <p>18 MICHELLE BACH: That's okay.</p> <p>19 HEARING OFFICER GROSSMAN: There we go.</p> <p>20 MICHELLE BACH: I have several boards that I'd like to</p> <p>21 walk through to --</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 MICHELLE BACH: -- to talk about --</p> <p>24 HEARING OFFICER GROSSMAN: sure.</p> <p>25 MICHELLE BACH: -- the exhibit. So I'll have to get up</p>

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<p>177</p> <p>1 to change them.</p> <p>2 HEARING OFFICER GROSSMAN: All right.</p> <p>3 MICHELLE BACH: And I -- I do want to touch on the basis</p> <p>4 of the overhang since it has come up --</p> <p>5 HEARING OFFICER GROSSMAN: Yes.</p> <p>6 MICHELLE BACH: -- in the last few es- -- experts. So</p> <p>7 just the -- the design of it and the function of it. I'm</p> <p>8 going to start with the site plan but only go briefly through</p> <p>9 it since Brad Fox and Mr. Clark have already kind of gone</p> <p>10 through them.</p> <p>11 As we know, we come off of Connecticut Avenue to -- into</p> <p>12 the building or off the Metropolitan Ave. Those are our two</p> <p>13 site accesses that we're going through. And that we are</p> <p>14 defining the front of the building as the western elevation</p> <p>15 which faces Connecticut Avenue. It does have a tilted angle</p> <p>16 to it that also faces Plyer Mill to gain the full landscape</p> <p>17 of public plaza. So with that, I'm just going to switch</p> <p>18 these.</p> <p>19 HEARING OFFICER GROSSMAN: I know that's an exhibit we</p> <p>20 already have. I've seen that one. Now, what's the number on</p> <p>21 that one? What's --</p> <p>22 MICHELLE BACH: This is Exhibit 40C.</p> <p>23 HEARING OFFICER GROSSMAN: Okay.</p> <p>24 MICHELLE BACH: Roman Number I. So this is the building</p> <p>25 elevation, which faces the hard intersection on the northwest</p>	<p>179</p> <p>1 HEARING OFFICER GROSSMAN: All right. And what about the</p> <p>2 -- the restaurant area? Is that the entire first level?</p> <p>3 MICHELLE BACH: Yes.</p> <p>4 HEARING OFFICER GROSSMAN: Okay.</p> <p>5 MICHELLE BACH: Hmm-hmm, yes. With the exception of the</p> <p>6 north. The very far northeast corner has the rental office</p> <p>7 for the substorage.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 MICHELLE BACH: But that's a small, 800-square feet of</p> <p>10 the entire first floor.</p> <p>11 HEARING OFFICER GROSSMAN: Okay.</p> <p>12 MICHELLE BACH: So the reasoning behind having,</p> <p>13 splitting the second floor in the way we did -- I know back</p> <p>14 on August 9th Judith with the Artisan Maker Studio spoke to</p> <p>15 there's a certain amount of square footage that she also can</p> <p>16 have that would be viable for her.</p> <p>17 So we've worked with her to -- to find that space. And</p> <p>18 then also putting on a front to activate the roof garden that</p> <p>19 we are -- the -- the second floor roof patio garden space for</p> <p>20 the Artisan Studio Makers to use that and use it as an</p> <p>21 outdoor artist retreat, have yoga in the morning or whatever</p> <p>22 they see fit to activate that space.</p> <p>23 HEARING OFFICER GROSSMAN: Is that in the front of the</p> <p>24 building --</p> <p>25 MICHELLE BACH: Yeah.</p>
<p>178</p> <p>1 corner of Connecticut Avenue and Plyers Mill. Now, as we can</p> <p>2 see, this is a three-year rendering of the graphical</p> <p>3 representation that our landscape architect walked through of</p> <p>4 the community plaza on the main floor, activating our retail</p> <p>5 space; which, you know, in our plans has been defined as a</p> <p>6 restaurant.</p> <p>7 We also want to leave that open for retail use as it</p> <p>8 hasn't been completely defined who that end operator will be.</p> <p>9 But there is roughly just over 6,000 square feet dedicated to</p> <p>10 that, the whole first floor with the exception of the self-</p> <p>11 storage office, which also is considered a business use, not</p> <p>12 a storage use, that office.</p> <p>13 So that makes our whole first floor commercial use. As</p> <p>14 we go up in the building, the second level is 8,000 square</p> <p>15 feet of it dedicated to the artist studio makers. To, again,</p> <p>16 it's all oriented on what we are considering the front, the</p> <p>17 west elevation of Connecticut Avenue.</p> <p>18 HEARING OFFICER GROSSMAN: Is that the whole second</p> <p>19 floor, by the way?</p> <p>20 MICHELLE BACH: It is the entire first -- the -- the</p> <p>21 front half of the second floor.</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 MICHELLE BACH: So everything that faces Connecticut</p> <p>24 Avenue and half of what faces Plyer Mill. So that that whole</p> <p>25 activation happens at the streetscape.</p>	<p>180</p> <p>1 HEARING OFFICER GROSSMAN: -- of the -- the open space</p> <p>2 that you're talking about, the rooftop space?</p> <p>3 MICHELLE BACH: Yeah, that's right.</p> <p>4 HEARING OFFICER GROSSMAN: Okay. That's right along the</p> <p>5 edge -- edge of the front of the building.</p> <p>6 MICHELLE BACH: Hmm-hmm. That -- that's this whole edge</p> <p>7 right here.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 MICHELLE BACH: So and then the -- in our design, we</p> <p>10 have these large expansive windows right here. That is our</p> <p>11 idea that they slide open and they're all operable. Again, on</p> <p>12 --</p> <p>13 HEARING OFFICER GROSSMAN: That's the --</p> <p>14 MICHELLE BACH: -- nice days.</p> <p>15 HEARING OFFICER GROSSMAN: That's the -- what you were</p> <p>16 pointing to was the second floor --</p> <p>17 MICHELLE BACH: Yeah.</p> <p>18 HEARING OFFICER GROSSMAN: -- where the artists --</p> <p>19 MICHELLE BACH: On the second floor.</p> <p>20 HEARING OFFICER GROSSMAN: -- would have their space.</p> <p>21 MICHELLE BACH: The -- the same concept runs on the</p> <p>22 first floor, again to activate in interior and exterior</p> <p>23 space. Also plays into our landscape design of really</p> <p>24 creating an interactive pedestrian feel of the first and</p> <p>25 second. As -- another thing to note is -- is the setbacks.</p>

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<p>181</p> <p>1 And I know we were talking about pedestrian scale. The</p> <p>2 first floor, including the -- the railing from the second</p> <p>3 floor does reach about 20 feet before the building steps</p> <p>4 back.</p> <p>5 And the building steps back anywhere from 25 to 30 feet</p> <p>6 from the second floor up to the sixth floor. This also helps</p> <p>7 emphasize that when you're a pedestrian, you know,</p> <p>8 interacting in the plaza or -- or walking by just as a</p> <p>9 traveler, that you're only interacting with essentially a</p> <p>10 one-story building.</p> <p>11 You're not interacting with a six-story building that's</p> <p>12 right in your face. The -- the step back helps emphasize a</p> <p>13 pedestrian scale.</p> <p>14 Then as we move up, the third and -- third through sixth</p> <p>15 floor is all dedicated, the entire footprint, to self-</p> <p>16 storage.</p> <p>17 The second half of the second floor that's in what I</p> <p>18 would consider the rear of the building, which would be the</p> <p>19 east elevation, that faces Metropolitan Road, is also</p> <p>20 dedicated to storage. This is not really an active elevation,</p> <p>21 which we felt was a -- a good use to fit the -- the rest of</p> <p>22 the self-storage and --</p> <p>23 HEARING OFFICER GROSSMAN: What do you mean it's not an</p> <p>24 active elevation? What does that mean?</p> <p>25 MICHELLE BACH: We don't have any pedestrian activity</p>	<p>183</p> <p>1 be about six inches wide. So the --</p> <p>2 HEARING OFFICER GROSSMAN: I'm sorry. What will be six</p> <p>3 inches wide?</p> <p>4 MICHELLE BACH: The wall. The -- the thickness of the</p> <p>5 wall.</p> <p>6 HEARING OFFICER GROSSMAN: I see.</p> <p>7 MICHELLE BACH: So half of that thickness is imbedded</p> <p>8 with those windows.</p> <p>9 HEARING OFFICER GROSSMAN: I see.</p> <p>10 MICHELLE BACH: And the second half is backed with the</p> <p>11 structural framing --</p> <p>12 HEARING OFFICER GROSSMAN: Okay.</p> <p>13 MICHELLE BACH: -- and interior walls.</p> <p>14 HEARING OFFICER GROSSMAN: All right.</p> <p>15 MICHELLE BACH: So you can't physically see through. So</p> <p>16 nighttime lighting from any interior corridors we won't see</p> <p>17 any of that.</p> <p>18 And then the building -- in our past practices we like</p> <p>19 to use black faux windows. It gives a better impression of a</p> <p>20 office building so that you have nice window glazing</p> <p>21 throughout the whole building.</p> <p>22 The design of our upper floors is also playing into more</p> <p>23 of a residential feel to have as many windows, including the</p> <p>24 types of amolian [ph] designs that we have to bring in this</p> <p>25 mixture of industrial and historic and modern kind of all</p>
<p>182</p> <p>1 going on on the rear of our -- of our property. It -- it's</p> <p>2 parking and then faces the other existing uses adjacent to</p> <p>3 us, which I believe is a -- it's just other commercial uses</p> <p>4 and 7-11 gas station. So having -- we -- we're interpreting</p> <p>5 the west and north elevations as our -- our public activation</p> <p>6 spaces.</p> <p>7 HEARING OFFICER GROSSMAN: Okay. One of the community</p> <p>8 witnesses testified that the windows above the second floor</p> <p>9 were not really windows. What -- would you --</p> <p>10 MICHELLE BACH: Yes.</p> <p>11 HEARING OFFICER GROSSMAN: -- expand on that?</p> <p>12 MICHELLE BACH: Yeah. So going into our -- the third</p> <p>13 through sixth floor, as you can see there's a lot of window</p> <p>14 glazing in them. But they are all spandrel windows.</p> <p>15 HEARING OFFICER GROSSMAN: They're all what?</p> <p>16 MICHELLE BACH: Spandrel.</p> <p>17 HEARING OFFICER GROSSMAN: What is that?</p> <p>18 MICHELLE BACH: So they're like faux windows.</p> <p>19 HEARING OFFICER GROSSMAN: Okay.</p> <p>20 MICHELLE BACH: They -- they are faux glass. They are</p> <p>21 recessed into the building, so that they're flush with the</p> <p>22 building design. They are just backed with a certain color.</p> <p>23 And in a structural framing sense, the -- the wall is</p> <p>24 anywhere from six to eight inches. We will be doing this</p> <p>25 building in structural steel framing, so it will most likely</p>	<p>184</p> <p>1 mixed, where we have brick materials, metal siding panels and</p> <p>2 a stucco-fine finish elevation to -- to kind of bring in.</p> <p>3 Again, we've also -- speaking on the materials, we've</p> <p>4 used the faux brick for the first and second floor to also</p> <p>5 highlight the community, commercial-activated space by</p> <p>6 changing the materials in that while we're recessing the</p> <p>7 metal panel and stucco materials behind that to help I</p> <p>8 wouldn't want to say hide but not as emphasize the dower as</p> <p>9 we are the base.</p> <p>10 HEARING OFFICER GROSSMAN: Would -- would a pedestrian</p> <p>11 on the street be able to tell the difference between those</p> <p>12 windows that you plan, the faux windows, and real windows?</p> <p>13 MICHELLE BACH: No. I mean, at nighttime yes, if the --</p> <p>14 because if the lights were on on the first or second floor</p> <p>15 obviously you're going to see into, unless there's blinds</p> <p>16 drawn from a restaurant or something.</p> <p>17 During the day there's -- there's no difference between</p> <p>18 the sun reflectivity on the faux windows and the real</p> <p>19 storefront windows.</p> <p>20 HEARING OFFICER GROSSMAN: Okay.</p> <p>21 MICHELLE BACH: So and the first and second floor are</p> <p>22 all real storefront windows.</p> <p>23 HEARING OFFICER GROSSMAN: Okay.</p> <p>24 MICHELLE BACH: So I -- I want to flip around to the</p> <p>25 east side just to touch a little bit on the overhang.</p>

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<p>185</p> <p>1 HEARING OFFICER GROSSMAN: Sure.</p> <p>2 MICHELLE BACH: Which I'm actually going to -- so just</p> <p>3 real quick, because then I'm going to put this board up. This</p> <p>4 is Exhibit 40C, Roman Numeral II.</p> <p>5 And this is elevation taken further south on Connecticut</p> <p>6 Avenue. This is the Connecticut Avenue entrance, where we can</p> <p>7 start to see that this is the building overhang in the back.</p> <p>8 So here, and I don't think this has an exhibit number.</p> <p>9 HEARING OFFICER GROSSMAN: I think that does have an</p> <p>10 exhibit number. Let's see. Hold on a second while I give it</p> <p>11 to you.</p> <p>12 MICHELE ROSENFELD: It's 40B but we're not sure between</p> <p>13 whether it's 1 or 2, based on how it's described on the</p> <p>14 Exhibit list.</p> <p>15 HEARING OFFICER GROSSMAN: All right.</p> <p>16 MICHELE ROSENFELD: It does say double elevation forty -</p> <p>17 -</p> <p>18 MICHELLE BACH: Well, this is the second one, so --</p> <p>19 MICHELE ROSENFELD: So we'll assume it's 2?</p> <p>20 HEARING OFFICER GROSSMAN: Yes.</p> <p>21 MICHELLE BACH: So in particular the south elevation</p> <p>22 here --</p> <p>23 HEARING OFFICER GROSSMAN: Yes.</p> <p>24 MICHELLE BACH: So this is what is facing --</p> <p>25 HEARING OFFICER GROSSMAN: CSX.</p>	<p>187</p> <p>1 which is missed on this information.</p> <p>2 HEARING OFFICER GROSSMAN: Right here being against the</p> <p>3 portion of the building that's not the [talking over each</p> <p>4 other]?</p> <p>5 MICHELLE BACH: Yeah. It's not against it. It's -- it's</p> <p>6 slightly away from it because we don't have -- back, if you</p> <p>7 remember, on the site plan exhibit that Brad went through, we</p> <p>8 do have that striped pedestrian walkway, so we don't -- we</p> <p>9 have -- that has to be clear of any obstructions so we don't</p> <p>10 have any columns coming down from that. So it's right on just</p> <p>11 past the sidewalk line on the parking petitions.</p> <p>12 HEARING OFFICER GROSSMAN: Okay.</p> <p>13 MICHELLE BACH: So all of these columns fall roughly</p> <p>14 every two parking stalls, which is roughly 18 to 20 feet</p> <p>15 apart. So we have three rows of them, which is really a</p> <p>16 structural spanning issue.</p> <p>17 We're spanning our building 40 feet to reduce the load</p> <p>18 and the cost of the structural beams needed for that</p> <p>19 cantilever. The more columns we can fit in reduces the size</p> <p>20 of beam that we need to have structurally.</p> <p>21 HEARING OFFICER GROSSMAN: So only partially</p> <p>22 cantilevered. The rest of it's supported from the outside --</p> <p>23 MICHELLE BACH: I would say --</p> <p>24 HEARING OFFICER GROSSMAN: -- the -- the beams on the</p> <p>25 outside.</p>
<p>186</p> <p>1 MICHELLE BACH: -- Howard Avenue and the railroad</p> <p>2 tracks.</p> <p>3 HEARING OFFICER GROSSMAN: Okay.</p> <p>4 MICHELLE BACH: So as you come in off of Connecticut</p> <p>5 Avenue here, you drive along this driveway. This is the full</p> <p>6 building overhang. It is -- I don't have the exact number in</p> <p>7 here, but I believe 14 feet 6 inches clear. That's actually a</p> <p>8 fire code standard, so that we can get a fire truck still</p> <p>9 under there.</p> <p>10 HEARING OFFICER GROSSMAN: Okay. So the overhang is 14</p> <p>11 feet, you said --</p> <p>12 MICHELLE BACH: Fourteen feet six inches I believe.</p> <p>13 HEARING OFFICER GROSSMAN: Six inches high off -- off</p> <p>14 the --</p> <p>15 MICHELLE BACH: That's clear -- clear space.</p> <p>16 HEARING OFFICER GROSSMAN: Clear? Clear, okay.</p> <p>17 MICHELLE BACH: Hmm-hmm. Clear space.</p> <p>18 HEARING OFFICER GROSSMAN: And how far out does it</p> <p>19 extend?</p> <p>20 MICHELLE BACH: Just roughly 40 feet.</p> <p>21 HEARING OFFICER GROSSMAN: Okay.</p> <p>22 MICHELLE BACH: I'm kind of noticing on here there's a</p> <p>23 couple lines missing actually. But here is one column.</p> <p>24 HEARING OFFICER GROSSMAN: Right.</p> <p>25 MICHELLE BACH: There should be another one right here,</p>	<p>188</p> <p>1 MICHELLE BACH: Well, I would say that the whole entire</p> <p>2 thing is being supported from the beams because we have three</p> <p>3 rows of the beams. And the third row falls just on the inside</p> <p>4 line of the exterior finished wall.</p> <p>5 HEARING OFFICER GROSSMAN: Where is the middle row of</p> <p>6 beams?</p> <p>7 MICHELLE BACH: So that's what I was saying.</p> <p>8 HEARING OFFICER GROSSMAN: Okay.</p> <p>9 MICHELLE BACH: There's -- there's an error in this</p> <p>10 drawing.</p> <p>11 HEARING OFFICER GROSSMAN: I see.</p> <p>12 MICHELLE BACH: We are missing some rows of columns.</p> <p>13 This one -- they're all -- they're all in a perfect line, so</p> <p>14 you're going to see the one --</p> <p>15 HEARING OFFICER GROSSMAN: Right.</p> <p>16 MICHELLE BACH: -- that is on the further extent, but</p> <p>17 there should be another column right here, and then another</p> <p>18 one about 10 feet away from that.</p> <p>19 And then there's the span of the last couple feet of the</p> <p>20 first row of parking stalls, plus the 24-foot wide driveway.</p> <p>21 And then there's this last row of columns in the second-</p> <p>22 furthest east row of parking stalls.</p> <p>23 HEARING OFFICER GROSSMAN: So if it's -- if there are</p> <p>24 three layers of columns that would be actual support, why is</p> <p>25 called cantilevered?</p>

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<p>189</p> <p>1 MICHELLE BACH: It's actually called an overhang, not a 2 cantilever. 3 HEARING OFFICER GROSSMAN: I see. 4 MICHELLE BACH: And the reason why we call it an 5 overhang is just because there's no physical building below 6 it. 7 HEARING OFFICER GROSSMAN: Right. 8 MICHELLE BACH: It's all being supported by an open 9 structure. 10 HEARING OFFICER GROSSMAN: I know. It was just referred 11 to in the staff report -- 12 MICHELLE BACH: So -- 13 HEARING OFFICER GROSSMAN: -- as -- as cantilevered, so 14 I -- 15 MICHELLE BACH: Yeah. 16 HEARING OFFICER GROSSMAN: -- but that's not the case? 17 MICHELLE BACH: We would -- 18 HEARING OFFICER GROSSMAN: It's -- it's over -- 19 MICHELLE BACH: We would refer to it as an overhang. 20 HEARING OFFICER GROSSMAN: Which is better than a 21 hangover, right? 22 MICHELLE BACH: Yeah. Yeah. 23 HEARING OFFICER GROSSMAN: All right. 24 MICHELLE BACH: I'd also like to mention that there -- 25 there is two basement levels of this facility, which also</p>	<p>191</p> <p>1 HEARING OFFICER GROSSMAN: What is that? 2 MICHELLE BACH: It's the outline, which is this building 3 that runs all along here. And then further to the west I 4 believe it's an extra space self-storage. 5 HEARING OFFICER GROSSMAN: I see. So -- so I didn't see 6 it on the -- it's not on the plans, per se. There's a 7 building all the way along -- 8 MICHELLE BACH: Along the -- the east elevation. 9 HEARING OFFICER GROSSMAN: And that would not -- 10 MICHELLE BACH: It would be an adjacent property. 11 HEARING OFFICER GROSSMAN: That would not change, I take 12 it? 13 MICHELLE BACH: Correct. It's owned by a different 14 property owner. 15 HEARING OFFICER GROSSMAN: I'm going to take a minute, 16 if you would, so -- to just look at something here. 17 MICHELLE BACH: That's, I believe, the Kensington Joint 18 Venture property. 19 HEARING OFFICER GROSSMAN: Okay. And you say -- what is 20 the use of that building? 21 MICHELLE BACH: I believe it's an extra space self- 22 storage. 23 HEARING OFFICER GROSSMAN: Okay. All right. Yeah. I 24 mean, I see it on the technical staff report, but I didn't 25 realize what it was until you just said this, that it would</p>
<p>190</p> <p>1 plays into the sidewalk being designed the way that it is. 2 For the waterproofing and landscaping, we can't put that 3 on top of basement structures, so we can put, as Brad Fox has 4 mentioned, bollards and parking stops to prevent any vehicle 5 from potentially overhanging onto the sidewalk space. But we 6 can't put a fully-formed curb. 7 HEARING OFFICER GROSSMAN: Now this back with all the 8 columns there, that would be visible from Metropolitan, I 9 take it, and from whichever the streets were. 10 MICHELLE BACH: Connecticut. So actually there's only a 11 couple of those columns that will be visible, and those are 12 the ones on the end, which is why they're wrapped in the 13 brick to still follow the elevation materials from the 14 streetscape. These ones that fall in the middle -- 15 HEARING OFFICER GROSSMAN: Yes. 16 MICHELLE BACH: -- that are painted to match the 17 building, the structural steel will be painted to match the 18 building, are hidden by the adjacent property because these 19 columns only go 14.5 feet tall. 20 So the adjacent building is actually screening these 21 from the street view. 22 HEARING OFFICER GROSSMAN: Well, which -- can you put up 23 the plan and show me what adjacent building is screening 24 that? 25 MICHELLE BACH: This building here --</p>	<p>192</p> <p>1 shield the -- okay. 2 MICHELLE BACH: So speaking on the shielding, that -- 3 that is also a reason why our windows do not exist on that 4 east Metropolitan Ave elevation. They start at the third 5 floor, third level of the elevation because that's the 6 elevation that will no longer be screened -- 7 HEARING OFFICER GROSSMAN: I see. 8 MICHELLE BACH: -- by the building. 9 HEARING OFFICER GROSSMAN: And are -- are those also all 10 -- all faux windows there? 11 MICHELLE BACH: Yes. On levels three through six, yes. 12 Those ones will be. 13 HEARING OFFICER GROSSMAN: Okay. When you say third 14 through six -- 15 MICHELLE BACH: Yeah, because the -- 16 HEARING OFFICER GROSSMAN: Three foot -- the -- the 17 others aren't windows? 18 MICHELLE BACH: Yeah, they -- 19 HEARING OFFICER GROSSMAN: There's no windows below the 20 third level? 21 MICHELLE BACH: Yeah. The other two elevations are the - 22 - the back of house of the restaurant -- 23 HEARING OFFICER GROSSMAN: Right. 24 MICHELLE BACH: -- and the -- the storage office. And 25 then the second level is the -- the remainder rear portion I</p>

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<p>193</p> <p>1 was mentioning about the artist studios are in the front west 2 side of the elevation. 3 HEARING OFFICER GROSSMAN: Okay. 4 MICHELLE BACH: And the remainder is storage units, so 5 that second back is -- is storage units, which -- 6 HEARING OFFICER GROSSMAN: Okay. 7 MICHELLE BACH: -- what -- you know, we -- it has the 8 same function as the three through six, but since you can't 9 see the elevation because of the adjacent self-storage -- 10 HEARING OFFICER GROSSMAN: Okay. 11 MICHELLE BACH: -- there was [talking over each other] 12 HEARING OFFICER GROSSMAN: And all those poles, the 13 three layers of support poles, they will not interfere with 14 the flow of traffic through that -- under the overhang? 15 MICHELLE BACH: No. That's why we've purposely placed 16 them on the parking stripes. And they're every 20 feet, so it 17 doesn't happen every parking stall. And then we have made 18 sure that the 24-foot driveway width is clear of any 19 obstruction. 20 HEARING OFFICER GROSSMAN: So -- so those -- each layer 21 of poles is at least 24 feet apart from the other layer 22 poles? 23 MICHELLE BACH: No the -- the poles going south to north 24 are roughly 20 feet apart from each other. And going east to 25 west, the second and third row is just over 24, because</p>	<p>195</p> <p>1 MICHELLE BACH: Then we have the just-over 24 feet, 2 because it's not right at the end of the parking stall so 3 it's a little more than 24 feet of clear space for the 4 driveway. 5 HEARING OFFICER GROSSMAN: Okay. 6 MICHELLE BACH: So that's unobstructed. With the second 7 -- or the third row, I'm sorry, of columns happening at the 8 end of the east parking strip to help support the far eastern 9 end of the building. 10 HEARING OFFICER GROSSMAN: Okay. 11 ERIN GIRARD: One thing, so as was mentioned before that 12 the design, as it stands today, is not as it was submitted. 13 It's been revised, correct? 14 MICHELLE BACH: That's correct. 15 ERIN GIRARD: And can you briefly describe the design 16 evolution, particularly what suggestions were made by the 17 town that you tried to incorporate into the revised design? 18 MICHELLE BACH: Yes. So the biggest being the 19 orientation to Connecticut Ave and Plyers Mill. We started 20 off with a design that had our building a lot more recto- 21 linear, and didn't have that angle on it. 22 Through several staff iterations, it came about in 23 design streets [ph] that they really wanted us to create this 24 open community plaza. 25 HEARING OFFICER GROSSMAN: They being?</p>
<p>194</p> <p>1 that's the driveway. 2 HEARING OFFICER GROSSMAN: And how about the first to 3 second, east to west? 4 MICHELLE BACH: I believe -- I believe they're 10 feet 5 apart. 6 HEARING OFFICER GROSSMAN: So that's just for the 7 pedestrian path? 8 MICHELLE BACH: Hmm-hmm. 9 HEARING OFFICER GROSSMAN: I see. 10 MICHELLE BACH: Well, that's just in the parking stall 11 because it -- it runs on the parking strip. So -- 12 HEARING OFFICER GROSSMAN: Well, as I understood, that 13 first row of columns is not right against the wall because 14 leaving -- leaving space for pedestrians, right? So -- 15 MICHELLE BACH: Correct. That first row happens right 16 here. 17 HEARING OFFICER GROSSMAN: Okay. Right at the -- right 18 at the eastern out thing of the pedestrian walkway? 19 MICHELLE BACH: Correct, correct. 20 HEARING OFFICER GROSSMAN: All right. And then you have 21 another -- 22 MICHELLE BACH: So that this pedestrian walkway is 23 clear, and then roughly another 10 feet is the second row. 24 But they both fall on the parking stripe. 25 HEARING OFFICER GROSSMAN: I see.</p>	<p>196</p> <p>1 MICHELLE BACH: The Montgomery County staff, planning 2 staff. 3 HEARING OFFICER GROSSMAN: Okay. 4 MICHELLE BACH: So we worked through several designs 5 with them to help re-orient the building and pull it back in 6 certain areas to create the angle that we see today, this 7 angle right here, to help soften the edge of the northern 8 portion of the building. Which then allowed for us to create 9 this entire open plaza and -- and then really activate that 10 whole center with a commercial use on the first floor. 11 HEARING OFFICER GROSSMAN: Okay. 12 MICHELLE BACH: Along with that was following that 13 activation up, we had originally started on just activating 14 the first floor, which then through iterations brought us to 15 the second floor of activating that space as well. 16 And then by adding the setback for again a more 17 pedestrian scale feeling of our building, that we added that 18 second-story roof part in to again bring people out from the 19 second floor to a street space and help to activate a second 20 floor as well as a first floor space. 21 ERIN GIRARD: But as far as materials and such, was -- 22 particularly with regard to the town, did they suggest that 23 you look at -- at a precedent to redesign the building? 24 MICHELLE BACH: Yeah. So originally our building was 25 using all brick materials to fit more in a historic character</p>

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<p>197</p> <p>1 of town.</p> <p>2 And through some design meetings they had suggested that</p> <p>3 we look at the recently-approved Solero Project. So we looked</p> <p>4 at that.</p> <p>5 We went through some of the approved documents, and they</p> <p>6 do have a mixture of a contemporary industrial field, which</p> <p>7 is why we pulled some of those elements into our re-design,</p> <p>8 particularly in our [inaudible] design of our windows, and</p> <p>9 creating more of a warehouse look with those, and then mixing</p> <p>10 both the -- a modern take on metal paneling with the -- the</p> <p>11 brick.</p> <p>12 HEARING OFFICER GROSSMAN: And this was the suggestion</p> <p>13 of the town of Kensington, you say?</p> <p>14 MICHELLE BACH: Yes. Yes.</p> <p>15 HEARING OFFICER GROSSMAN: Okay.</p> <p>16 ERIN GIRARD: And the idea being that that -- the Solero</p> <p>17 Project was in relative proximity to the site and that they</p> <p>18 would be compatible, that the architecture was similar? Is</p> <p>19 that true?</p> <p>20 MICHELLE BACH: That's true. The Solero Project, I</p> <p>21 believe, is on Metropolitan Avenue, I guess southeast of the</p> <p>22 site. So in the -- the same general neighborhood.</p> <p>23 ERIN GIRARD: And you touched on this briefly, but just</p> <p>24 getting back to the hearing examiner's point about someone</p> <p>25 talking about the view of the building from Howard Avenue. I</p>	<p>199</p> <p>1 residential feel.</p> <p>2 HEARING OFFICER GROSSMAN: How tall is that building</p> <p>3 behind it?</p> <p>4 MICHELLE BACH: The extra space, I'm not entirely sure.</p> <p>5 I'd have to go back and measure that.</p> <p>6 HEARING OFFICER GROSSMAN: Oh. Just to give me an idea,</p> <p>7 how many floors?</p> <p>8 MICHELLE BACH: A two-story, two-story building.</p> <p>9 HEARING OFFICER GROSSMAN: Okay.</p> <p>10 MICHELLE BACH: Okay. So an idea --</p> <p>11 HEARING OFFICER GROSSMAN: We can't really [talking over</p> <p>12 each other]</p> <p>13 MICHELLE BACH: It is lower than [talking over each</p> <p>14 other]</p> <p>15 HEARING OFFICER GROSSMAN: You can't [inaudible].</p> <p>16 MICHELLE BACH: It does sit lower. There is an elevation</p> <p>17 change. It's only a couple feet though. So that building at a</p> <p>18 two-story building, anywhere from 24 to 28 feet tall. But</p> <p>19 then again taking into effect the elevation change. If you</p> <p>20 measured it directly across our building we'd be sitting at</p> <p>21 anywhere in the 20-foot mark.</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 ERIN GIRARD: And can you review for us the site</p> <p>24 lighting associated with the proposed use?</p> <p>25 MICHELLE BACH: Yeah. So our site lighting, we've done</p>
<p>198</p> <p>1 know we talked about it a little bit from Metropolitan, but</p> <p>2 can you address what the building would look like?</p> <p>3 MICHELLE BACH: Yeah. So as we -- Howard Avenue falls</p> <p>4 south of the railroad tracks here. So what they have antique</p> <p>5 row in the town of Kensington on.</p> <p>6 So from two angles we would have here on this southern</p> <p>7 portion of the building would be this. So as you're coming up</p> <p>8 to the intersection of Connecticut Avenue and Howard, that</p> <p>9 you would see this portion.</p> <p>10 If you are further east on Howard Avenue, not quite all</p> <p>11 the way to the intersection yet, Howard and Connecticut</p> <p>12 Avenue, you would be looking this portion of the side.</p> <p>13 I would also like to mention that there is a significant</p> <p>14 elevation change from Howard Avenue to our site. So Howard</p> <p>15 Ave is significantly lower in height. So you would see the</p> <p>16 top portion of our building.</p> <p>17 HEARING OFFICER GROSSMAN: Top portion of the southeast</p> <p>18 facing it?</p> <p>19 MICHELLE BACH: Correct.</p> <p>20 HEARING OFFICER GROSSMAN: Okay.</p> <p>21 MICHELLE BACH: Correct.</p> <p>22 HEARING OFFICER GROSSMAN: Which is the windowed</p> <p>23 portion?</p> <p>24 MICHELLE BACH: Yes, which is the windowed portion. So</p> <p>25 you're going to see more of this elevation here for the</p>	<p>200</p> <p>1 an exterior photometric analysis so far. We don't have an</p> <p>2 interior one as of yet.</p> <p>3 But again, the third through sixth floor is all faux</p> <p>4 windows, so you won't see any interior lighting from there</p> <p>5 protruding to the exterior of the site anyway.</p> <p>6 The first and second floors are a combination of wall</p> <p>7 pack units, which are -- are small building lights faced</p> <p>8 downward and shielded, as well as decorative sconces around</p> <p>9 the commercial store-front windows. And then under the</p> <p>10 building overhang, there is ceiling-mounted lighting to light</p> <p>11 up the parking lot.</p> <p>12 All lighting is LED and the boundaries, I know there's a</p> <p>13 comment in the staff report that there's a few spots where it</p> <p>14 hits a 0.7 and there's a 0.5 maximum. We are -- our</p> <p>15 electrical engineer on the lighting exhibit, which Erin, you</p> <p>16 might have renamed that exhibit.</p> <p>17 HEARING OFFICER GROSSMAN: 40E is your amended</p> <p>18 photometric plan.</p> <p>19 MICHELLE BACH: 40E, okay.</p> <p>20 HEARING OFFICER GROSSMAN: And then you have various</p> <p>21 supplements.</p> <p>22 MICHELLE BACH: Yeah. Those are just the -- the cut</p> <p>23 sheets for the lights --</p> <p>24 HEARING OFFICER GROSSMAN: Okay.</p> <p>25 MICHELLE BACH: -- for the lighting fixtures themselves.</p>

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<p>201</p> <p>1 HEARING OFFICER GROSSMAN: Well, you have a preliminary 2 -- 40E V, Roman Numeral V, is preliminary photometric plan, 3 and then 40E VI is preliminary lighting. 4 MICHELLE BACH: Yeah. So the -- the -- the V, the 5 photometric plan. 6 HEARING OFFICER GROSSMAN: Right. 7 MICHELLE BACH: The preliminary photometric plan has the 8 lumen count numbers on it. The places where I've identified 9 that there is a 0.7 are actually anywhere from 5 to 10 feet 10 from the property line still. 11 So this is just a matter of us, we need to go back to 12 our electrical engineer and make sure that he shows the rows 13 of zeros along it. he just stopped it at the -- the number of 14 the lumen counts. 15 HEARING OFFICER GROSSMAN: Well, zero, whatever it is -- 16 MICHELLE BACH: Whatever it is -- 17 HEARING OFFICER GROSSMAN: -- at the property line. 18 MICHELLE BACH: -- at -- at the property line. And we 19 will adhere to what the code standard is of 0.5 and -- 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: One thing I forgot to ask about. I know 22 you established word that -- that you were considering in 23 front of the -- of the building. Can you adjust the parking 24 step-backs? 25 MICHELLE BACH: Yeah. So according to the Montgomery</p>	<p>203</p> <p>1 but you'd want to make sure that -- that you're either 2 meeting the setback requirements for parking lots of this 3 size, and I don't know if the overhang part of it makes a 4 difference in that or not. 5 ERIN GIRARD: Right. 6 HEARING OFFICER GROSSMAN: And make sure that you're 7 compliant with that. 8 MICHELLE BACH: Sure. We'll -- we'll definitely look 9 into that. 10 ERIN GIRARD: And you had referenced the Kensington 11 Sector Plan. Are you familiar with the approved and adopted 12 Kensington Sector Plan and -- and associated design 13 guidelines? 14 MICHELLE BACH: Yes. 15 ERIN GIRARD: And can you review for us why you believe 16 this project substantially complies with the Kensington 17 Sector Plan? 18 HEARING OFFICER GROSSMAN: Well, I don't know that she's 19 testified that it has. 20 ERIN GIRARD: Could you [talking over each other] -- 21 HEARING OFFICER GROSSMAN: You are leading us there. 22 ERIN GIRARD: -- review for us if you think the -- and 23 if and how the project might comply with the Kensington 24 Sector Plan and Design Guidelines? 25 MICHELLE BACH: Yeah. So just kind of touching, based on</p>
<p>202</p> <p>1 County Zoning Code, the parking set-back is defined by the 2 Build 2 area, that it needs to -- parking needs to be behind 3 the Build 2 area on either the front set-back or the side 4 step-back. 5 And we are defining the western edge, Connecticut 6 Avenue, as the front of our building. On the site plan, all 7 of our parking falls behind that. 8 There is also on the Kensington sector plan a request 9 that all the parking happen in the rear of the building, 10 which we have designed the site for that to happen as well. 11 HEARING OFFICER GROSSMAN: Well, there's more than that 12 in the Zoning Ordinance. There are specific sections that 13 deal with parking setbacks. I'd have to pull -- I don't have 14 it in front of me now, but -- 15 MICHELLE BACH: Yeah. In -- in the CRT zone -- 16 HEARING OFFICER GROSSMAN: Yeah. 17 MICHELLE BACH: -- the -- the parking setback, at least 18 what I had looked up and I may have missed a section, was 19 that the requirements were, you know, behind the -- the VTA, 20 which is the Build 2 area for the front and side. 21 HEARING OFFICER GROSSMAN: All right. Well, yeah. I'm 22 not going to argue with you about it. I just don't -- I don't 23 remember. 24 MICHELLE BACH: Sure. 25 HEARING OFFICER GROSSMAN: I would have to look it up,</p>	<p>204</p> <p>1 some points that I've already mentioned, as well as both our 2 civil engineer, our landscape architect have also mentioned 3 one of the large points is orienting the building towards 4 sidewalks and creating a pedestrian-level orientation with 5 that. 6 I believe by orienting it towards the active 7 intersection of Plyers Mill and Connecticut Avenue that we 8 have addressed that in the Sector Plan and the Design 9 Guidelines. 10 And as well as there is with the pedestrian level to 11 create signage and architectural details at the pedestrian 12 level, which we have also tried, in pulling, and you'll see 13 this in the signage package that was entered as an exhibit 14 today, that we have placed a large majority of our signage 15 all on the landscape planters, the first and second story 16 building awnings, to keep that all at a pedestrian scale, 17 while pushing the monumental portion of the building by the 18 self-storage back, the 25 to 30 feet. 19 There is a comment about the -- the plan recommending 20 taller buildings in the core of the town's center. We believe 21 we're also meeting that by -- by creating the height of the 22 building we are. 23 We are staying within the zoning code. That's allowed 24 onsite. Also again creating setbacks and step backs in -- in 25 the building design to again enhance that -- that pedestrian</p>

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<p>205</p> <p>1 level.</p> <p>2 HEARING OFFICER GROSSMAN: Let me interrupt you for one</p> <p>3 second. Do you have an electronic copy of these plans that</p> <p>4 you filed today?</p> <p>5 MICHELE ROSENFELD: Yes. We were going to submit them at</p> <p>6 the end of the day. We can submit them now if [talking over</p> <p>7 each other] --</p> <p>8 HEARING OFFICER GROSSMAN: No. The end of the day is</p> <p>9 fine ,as long as I get an electronic copy.</p> <p>10 MICHELE ROSENFELD: You will by the end of the day.</p> <p>11 HEARING OFFICER GROSSMAN: Thank you. And I think that</p> <p>12 something that might have been lost in your answer was the</p> <p>13 more general question that Counsel was asking you as to</p> <p>14 whether in your opinion the proposed design here meets the</p> <p>15 criteria architecturally of the Sector Plan and Design</p> <p>16 Guidelines.</p> <p>17 It's an overall question. I think that was what you were</p> <p>18 asking initially.</p> <p>19 MICHELLE BACH: Yeah. I -- I would say yes as a defined</p> <p>20 answer to that, for several reasons that, you know, have</p> <p>21 already been iterated by other expert witnesses. But just to</p> <p>22 re-iterate that the orientation that's talked about in the</p> <p>23 Sector Plan, the pedestrian scale, the Kensington character</p> <p>24 by falling into some of the same design characteristics as</p> <p>25 the -- the Solero Project that was recently approved.</p>	<p>207</p> <p>1 impacts on the health, safety or welfare of the neighboring</p> <p>2 residents, visitors or employees in the area?</p> <p>3 MICHELLE BACH: No.</p> <p>4 ERIN GIRARD: And just to reiterate, from an</p> <p>5 architectural standpoint, do you believe the project is in</p> <p>6 substantial compliance with the Kensington Sector Plan and</p> <p>7 Design Guidelines?</p> <p>8 MICHELLE BACH: Yes, I do.</p> <p>9 ERIN GIRARD: And from an architectural standpoint, do</p> <p>10 you believe that proposed conditional use would cause any</p> <p>11 objectionable noise, odors, dust, elimination, glare or</p> <p>12 physical activity on the site?</p> <p>13 MICHELLE BACH: No.</p> <p>14 HEARING OFFICER GROSSMAN: You have to speak up because</p> <p>15 --</p> <p>16 MICHELLE BACH: Sorry. No.</p> <p>17 HEARING OFFICER GROSSMAN: -- we can't hear you over the</p> <p>18 fan.</p> <p>19 MICHELLE BACH: No, I do not.</p> <p>20 ERIN GIRARD: That's all I have.</p> <p>21 HEARING OFFICER GROSSMAN: All right. Cross examination?</p> <p>22 MICHELE ROSENFELD: Yes, thank you. Ms. Bach, have you</p> <p>23 ever designed another building that combines both self-</p> <p>24 storage and other uses, such as retail or commercial?</p> <p>25 MICHELLE BACH: Yes, I have.</p>
<p>206</p> <p>1 Bringing in a coordination with our material pallet of</p> <p>2 industrial windows and brick and stucco to -- to kind of fit</p> <p>3 those design standards.</p> <p>4 ERIN GIRARD: And the massing as well?</p> <p>5 MICHELLE BACH: And the massing as well, for the overall</p> <p>6 request for taller buildings in the core, and then the -- the</p> <p>7 setbacks to create that pedestrian and -- and setback feel of</p> <p>8 the building.</p> <p>9 ERIN GIRARD: So Ms. Bach, from an architectural</p> <p>10 standpoint, do you believe the proposed conditional use will</p> <p>11 be architecturally compatible with and in harmony with the</p> <p>12 character of the surrounding neighborhood, considering the</p> <p>13 design, scale and bulk?</p> <p>14 MICHELLE BACH: Yes, I do, for the things that I have</p> <p>15 already mentioned.</p> <p>16 ERIN GIRARD: And from an architectural standpoint do</p> <p>17 you believe that the proposed conditional use would cause</p> <p>18 undue harm to the use, peaceful enjoyment and development</p> <p>19 potential -- or -- of abutting or confronting properties in</p> <p>20 the general neighborhood?</p> <p>21 MICHELLE BACH: No. I actually think it will enhance it,</p> <p>22 considering the current condition. I understand there's a --</p> <p>23 an outdoor market on it, but it is in a closed gas station.</p> <p>24 ERIN GIRARD: And from an architectural standpoint, do</p> <p>25 you believe the proposed improvements would cause any adverse</p>	<p>208</p> <p>1 MICHELE ROSENFELD: And could you just briefly describe</p> <p>2 what those look like?</p> <p>3 MICHELLE BACH: So a project recently opened. It's in</p> <p>4 Tucson, Arizona. The first floor has commercial storefront</p> <p>5 uses on it. It's a smaller facility. This -- and just over</p> <p>6 3,000 square feet of commercial use, but it is the -- the</p> <p>7 front elevation of that.</p> <p>8 It's got a full, covered walkway that's 20 feet wide to</p> <p>9 allow for pedestrian coverage. It is in Arizona, so having it</p> <p>10 fully covered was a must. And then the top two levels of it</p> <p>11 are self-storage.</p> <p>12 MICHELE ROSENFELD: What was the total square footage of</p> <p>13 that building?</p> <p>14 MICHELLE BACH: I -- I would -- I don't know that off</p> <p>15 the top of my head.</p> <p>16 MICHELE ROSENFELD: Ball -- ball park.</p> <p>17 MICHELLE BACH: Just over 100,000 square feet.</p> <p>18 MICHELE ROSENFELD: So it had three -- 3,000 square feet</p> <p>19 of retail and or storefront and --</p> <p>20 MICHELLE BACH: It's -- it's in between 3,000 to 4,000</p> <p>21 square feet. It's on the front elevation of our first floor,</p> <p>22 because it's following a similar characteristics to this</p> <p>23 Kensington one.</p> <p>24 It's where the activation of the street is. That is</p> <p>25 where we have put the commercial use.</p>

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<p>209</p> <p>1 MICHELE ROSENFELD: Okay. All right, thank you. What is 2 the total square footage of the first floor, the ground-level 3 floor of this building? 4 MICHELLE BACH: 8,553 square feet. 5 MICHELE ROSENFELD: And what is the total square footage 6 of the second floor? 7 MICHELLE BACH: 16,622 square feet. 8 MICHELE ROSENFELD: And what is the total square footage 9 of the third floor? 10 MICHELLE BACH: The same as the second, 16,622. 11 MICHELE ROSENFELD: And -- 12 MICHELLE BACH: The second, 16,622. The second though 13 sixth floors are the same. 14 MICHELE ROSENFELD: Okay. And the square footage for the 15 two floors that are underground? 16 MICHELLE BACH: 24,885 square feet. 17 MICHELE ROSENFELD: Each? 18 MICHELLE BACH: Each. 19 MICHELE ROSENFELD: Okay. And earlier you testified that 20 all of the ground floor is dedicated to the restaurant use, 21 save a -- an office for the leasing office. Is that correct? 22 MICHELLE BACH: Correct. And I misspoke. I said it was 23 around 800, and it's 900 square feet. 24 MICHELE ROSENFELD: The office, the leasing office is 25 900 square feet?</p>	<p>211</p> <p>1 MICHELE ROSENFELD: So looking -- go back again to the 2 site plan with the parking area and the parking base. 3 Did I understand you to say that there are bollards at 4 some point on the out -- outer -- where the outdoor doors of 5 the parking base would be to make sure that trucks that pull 6 in don't extend into the pedestrian path? Is that correct? 7 MICHELLE BACH: Currently they are not on the plan. This 8 is something throughout today's hearing that we can put if 9 there is a concern about backing up space. That we could put 10 either wheel stops or bollards at the western edge of this 11 parking to ensure that there is no overhang into the 12 pedestrian walkway. 13 MICHELE ROSENFELD: And -- and actually I was asking 14 about the parking -- the unloading bays -- 15 MICHELLE BACH: Hmm-hmm. 16 MICHELE ROSENFELD: -- in the interior? 17 MICHELLE BACH: Yeah. 18 MICHELE ROSENFELD: Would -- would the same happen 19 there? 20 MICHELLE BACH: No. So the best way to describe this -- 21 these two loading bays, there is an exterior roll-up door on 22 them. It functions exactly like a residential garage does. So 23 the -- when somebody needs access to it, a tenant that is 24 already registered to be in that building, they get an access 25 code to use that gate.</p>
<p>210</p> <p>1 MICHELLE BACH: Hmm-hmm. 2 MICHELE ROSENFELD: So what does that leave available 3 for restaurant use? 4 MICHELLE BACH: There's 6,337 square feet. You need to 5 factor in that is the -- the rentable space of the 6 restaurant, so it's not including the two stairwells, the 7 elevator lobby. Those are functions of the building that's 8 cannot be added towards leasable area. 9 MICHELE ROSENFELD: Okay. And then I believe you 10 testified that the front half of the second floor would be 11 available for the art gallery -- 12 MICHELLE BACH: Yes. 13 MICHELE ROSENFELD: -- the -- the artists studio space? 14 MICHELLE BACH: Just over 8,000 square feet. It's 8,141 15 square feet of that 16,622, which again that 16,622 is also - 16 - that's -- that's the gross number, so it's factoring in 17 hallways, two -- two stairs, an elevator lobby. 18 MICHELE ROSENFELD: So what's the total usable space for 19 the artists space? 20 MICHELLE BACH: 8,141 square feet. 21 MICHELE ROSENFELD: And all combined, the remaining 22 three through stories -- three through six and the two 23 underground is a total of how much square footage for the 24 storage use? 25 MICHELLE BACH: 126,955 square feet.</p>	<p>212</p> <p>1 They -- the door will open. They can pull in and the 2 door will close. It is actually a design feature that this 3 particular developer has in all of his projects, given the -- 4 the site constraints, to allow a climate-controlled area for 5 loading and unloading. 6 So if it's snowing, if it's raining. If it's 100 degrees 7 outside that there is an interior -- it also helps get all 8 loading and unloading activity out of the public view. 9 MICHELE ROSENFELD: I see that these two bays -- are 10 they 10 feet wide each? 11 MICHELLE BACH: Yes. 12 MICHELE ROSENFELD: Is that -- 13 MICHELLE BACH: They're 10 feet by 30 feet deep with 14 additional pedestrian walkways around that. 15 MICHELE ROSENFELD: And so some of the trucks that we 16 were talking about earlier, like the S -- SU -- SB? SU-30. 17 MICHELLE BACH: U, thank you. 18 MICHELE ROSENFELD: SU-30? Are -- are they greater than 19 30 feet in length? 20 MICHELLE BACH: Now, so the loading stalls are set up 21 for the SU-30. It is the larger semi tractor/trailer trucks 22 that would be in question. 23 MICHELE ROSENFELD: The WD40s? 24 MICHELLE BACH: The WD40s. 25 MICHELE ROSENFELD: And do you know how long WB40s are?</p>

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<p>213</p> <p>1 MICHELLE BACH: No, not off the top of my head.</p> <p>2 MICHELLE ROSENFELD: No? Are they longer than 30 feet?</p> <p>3 MICHELLE BACH: Yes.</p> <p>4 MICHELE ROSENFELD: Okay.</p> <p>5 HEARING OFFICER GROSSMAN: I'm sorry, Ms. Bach. Did you</p> <p>6 say they are set up for the WB40s?</p> <p>7 MICHELLE BACH: No. They're set up for the SU-30s, which</p> <p>8 is just over the largest U-Haul truck. The largest U-Haul</p> <p>9 truck is 27 feet long.</p> <p>10 So by having the 30-foot stall factors in the SU-30</p> <p>11 truck to fit within the enclosed loading with the additional</p> <p>12 five feet of pedestrian walkway around all three sides of the</p> <p>13 loading.</p> <p>14 MICHELE ROSENFELD: I -- I think I've heard the U-Haul-</p> <p>15 sized truck referenced a couple of times. Is this facility</p> <p>16 going to be operated by U-Haul?</p> <p>17 MICHELLE BACH: No. It's just U-Haul offers one of the</p> <p>18 largest fleets, and kind of one of the -- the -- the largest</p> <p>19 rental-truck beds. So we usually just reference them because</p> <p>20 they have the largest fleet.</p> <p>21 MICHELE ROSENFELD: So is there going to be a</p> <p>22 prohibition on trucks larger than 30 feet from accessing this</p> <p>23 site?</p> <p>24 MICHELLE BACH: I don't know that answer right now.</p> <p>25 MICHELE ROSENFELD: Okay. Okay. Let's -- let's assume</p>	<p>215</p> <p>1 truck-loading stall.</p> <p>2 For the SU-30, which the site is set up for, there have</p> <p>3 been discussions that they would also use the -- the loading</p> <p>4 area. There is a sliding, like a six-foot sliding glass door</p> <p>5 here that gets you into this elevator lobby. So you could --</p> <p>6 HEARING OFFICER GROSSMAN: Here being? Identify [talking</p> <p>7 over each other] --</p> <p>8 MICHELLE BACH: In the loading -- in this loading area</p> <p>9 on the northeast side of the loading.</p> <p>10 HEARING OFFICER GROSSMAN: Okay.</p> <p>11 MICHELLE BACH: There is -- it shows it on the floor</p> <p>12 plan, but there -- there is a -- a sliding door for access to</p> <p>13 this interior elevator lobby and stairwell. There is a</p> <p>14 potential for adding a secondary, six-foot loading stall</p> <p>15 here. That --</p> <p>16 HEARING OFFICER GROSSMAN: Here being?</p> <p>17 MICHELLE BACH: On the -- on the southwest portion of</p> <p>18 the loading stall. So that whoever the restaurant retail use</p> <p>19 is, they could also use the -- the loading stalls and do it</p> <p>20 an interior unloading and loading.</p> <p>21 That has not been fully defined because we do not know</p> <p>22 who the end user, the restaurant is, and whether they would</p> <p>23 prefer to have their loading on the exterior or use this</p> <p>24 interior loading area as well.</p> <p>25 MICHELE ROSENFELD: And so if you were to put the</p>
<p>214</p> <p>1 for the moment that I -- I personally on the beltway all the</p> <p>2 time see these really large, 18-wheeler moving trucks.</p> <p>3 MICHELLE BACH: Hmm-hmm.</p> <p>4 MICHELE ROSENFELD: If one were to arrive at this site,</p> <p>5 ready to unload, where would they park?</p> <p>6 MICHELLE BACH: So I think this is something that us as</p> <p>7 a design team would have to take back to our plans and maybe</p> <p>8 relook at that answer, since it wasn't originally set up for</p> <p>9 that. those larger WB40 moving trucks, they do happen, but</p> <p>10 they're very far and few between.</p> <p>11 Even in facilities that do offer the space, they rarely</p> <p>12 use them. They pull up in the driveway space, load, unload</p> <p>13 and leave. So it is something that we'll have to look at in</p> <p>14 our site plan.</p> <p>15 MICHELE ROSENFELD: And I would have the same question</p> <p>16 with respect to a truck of that size, a WB40 that would</p> <p>17 deliver food supplies to a restaurant --</p> <p>18 MICHELLE BACH: Yeah.</p> <p>19 MICHELE ROSENFELD: -- which also is not unheard of.</p> <p>20 Where would -- where would they park and where would their</p> <p>21 delivery entrance be, irrespective of the loading bays? Or</p> <p>22 would they use the loading bays?</p> <p>23 MICHELLE BACH: Yes. So in -- in respect to the WB40</p> <p>24 truck, regardless of who's using it, a moving company or</p> <p>25 restaurant use, we're going to have to look further into that</p>	<p>216</p> <p>1 loading on the exterior, would you then lose parking spaces?</p> <p>2 MICHELLE BACH: Well, we could potentially label one of</p> <p>3 them as we -- we are over parked to the zoning code. So we</p> <p>4 could potentially re-organize one as a loading stall. But</p> <p>5 again, without knowing who that end user is, I don't really</p> <p>6 want to speculate where that loading is going to happen.</p> <p>7 MICHELE ROSENFELD: And so if one of those -- if one of</p> <p>8 the WD40 trucks were to arrive and whether it's to serve the</p> <p>9 restaurant or the lobby or the arts studio, I don't know what</p> <p>10 their delivery needs would be, and parked in the drive aisle,</p> <p>11 how would that affect circulation?</p> <p>12 MICHELLE BACH: Our -- our drive aisle is set up for</p> <p>13 two-way traffic, so there is an opportunity that maybe there</p> <p>14 is restrictive hours on the site. Loading has to happen at</p> <p>15 some certain hour in the morning or in the evening where</p> <p>16 there's not -- the restaurant may not be open yet, so there's</p> <p>17 no traffic for the restaurant use or the storage use or the</p> <p>18 artists makers.</p> <p>19 That's all things we'll have to work through in our --</p> <p>20 our prelim site plan to -- to kind of define those access</p> <p>21 hours if that's the route that we go.</p> <p>22 MICHELE ROSENFELD: Okay. Of the 126,955 square feet</p> <p>23 dedicated to the storage units, how many units does that</p> <p>24 reflect?</p> <p>25 MICHELLE BACH: With the nature of how this project has</p>

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<p style="text-align: right;">217</p> <p>1 proceeded, we actually have not fully outlined the third 2 through sixth floor, so we do not have a number for those 3 units yet because they have not been drawn. 4 MICHELE ROSENFELD: But in your general experience of 5 designing these facilities, there -- I -- I would assume 6 there's a range -- 7 MICHELLE BACH: There is a range. 8 MICHELE ROSENFELD: -- that you expect. What might that 9 be? 10 MICHELLE BACH: There is a range. It also depends on the 11 market analysis for the average square footage of the site 12 for -- for that unit. 13 And that average square footage could range anywhere 14 from 65 square feet per unit up to 125 square feet. Again, 15 without doing our full unit analysis on the project I don't 16 know what that average number is. 17 I -- to find a mean I would also need a calculator, 18 which I don't have right now. 19 MICHELE ROSENFELD: Well, we could -- I'm sure we can 20 get you one. 21 HEARING OFFICER GROSSMAN: So if it was an average of 22 100 square feet -- 23 MICHELLE BACH: Yes. 24 HEARING OFFICER GROSSMAN: -- you'd have about -- 25 MICHELLE BACH: So you would --</p>	<p style="text-align: right;">219</p> <p>1 MICHELE ROSENFELD: Okay. So with that many units, if 2 you have two or three people arriving at once to load or 3 unload, where do people queue if both of the loading bays are 4 full? 5 MICHELLE BACH: They can always access -- there's -- 6 there's another elevator on this east elevation. Not 7 elevator, I'm sorry, an exterior door that goes into the 8 elevator lobby. So they can park in any of these parking 9 stalls outside and enter through the exterior door. 10 And sometimes that may be all somebody needs if they're 11 just bringing a couple things in at a time and don't need to 12 unload a full vehicle or -- or a truck. 13 MICHELE ROSENFELD: Assuming it's a vehicle that would 14 fit in that parking space? 15 MICHELLE BACH: The parking spaces are nine and feet by 16 -- are 18.5 feet by -- sorry. 18 feet by 8.5 feet wide, just 17 a standard parking stall. So any -- a residential vehicle 18 would fit in that spot. 19 MICHELE ROSENFELD: And would the -- would the SU30s 20 also fit in those spaces? The U-Haul -- the largest U-Haul 21 trucks that you were talking about? 22 MR. BACH: Not -- not the -- the length of them, no. 23 Smaller U-Haul trucks would but not the maximum would because 24 the length is too long, which is why we have the two larger 25 loading bays for the maximum SU30 truck.</p>
<p style="text-align: right;">218</p> <p>1 HEARING OFFICER GROSSMAN: -- 1,000 to -- to 1,200 2 units? Is that -- 3 MICHELLE BACH: Well, you would take the 126,955. You 4 would have to subtract an estimate of all of our hallways, 5 stairwells and elevators because that space is not leasable. 6 Then on that number you would divide that by the 100. So 7 126,955, if we had a 68 to 70 percent efficiency, 70 percent 8 of that 126,955 and then divide that number by the 100 would 9 give you an estimate for the units. 10 HEARING OFFICER GROSSMAN: Okay. Then so I -- 11 MICHELLE BACH: I can't do that in my head, I'm sorry. 12 HEARING OFFICER GROSSMAN: I'm guestimating in my head 13 that's 1,000 units. 14 MICHELLE BACH: It -- it -- probably close to that. 15 HEARING OFFICER GROSSMAN: Okay. 16 MICHELE ROSENFELD: And what kind of -- do -- do you 17 know the kind of turnover that you would have in 18 approximately 1,000 units? 19 MICHELLE BACH: That -- that's all dependent on -- 20 sometimes you have tenants in there for three months. 21 Sometimes you have tenants in there for years. It -- it just 22 depends on who it is. 23 Where there is -- usually when somebody moves in, they 24 don't come back until they're ready to move out. So I mean, 25 that -- that's probably more of an operational question.</p>	<p style="text-align: right;">220</p> <p>1 MICHELE ROSENFELD: Do you have a single parking space 2 where if you there were a need for overflow parking for even 3 the SU30s that is provided for on the site? 4 MR. BACH: Wait, we're only show two. I believe, based 5 on our parking ratio, there's only requirement to show two, 6 so that is what we're doing. 7 MICHELE ROSENFELD: And where -- you have two -- 8 MR. BACH: We have two total loading spaces provided, 9 are the two that are interior -- 10 MICHELE ROSENFELD: Interior. 11 MR. BACH: Technical staff said that they -- that's what 12 was required in that [inaudible] report, it's two loading 13 spaces [inaudible] there. 14 MICHELE ROSENFELD: With respect to the type of windows 15 that -- that you're providing, do I understand correctly that 16 you don't see light from the inside of the building to the 17 outside? 18 MR. BACH: On levels three through six, yes. 19 MICHELE ROSENFELD: Okay. So from sundown to sunup -- 20 MR. BACH: No light. 21 MICHELE ROSENFELD: -- you wouldn't see any -- any -- 22 MR. BACH: Activity -- 23 MICHELE ROSENFELD: -- activity inside the building 24 whatsoever? 25 MR. BACH: Correct. You wouldn't see it at any time</p>

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<p style="text-align: right;">221</p> <p>1 because the window is 100 percent closed. So whether it's 2 daylight or nighttime, you're not going to see anybody 3 walking through corridors during the day. You won't see any 4 interior hallway lights or storage unit lights on at night 5 admitting through the window because they're all faux 6 windows. 7 MICHELE ROSENFELD: And is -- is that different from a 8 typical experience with a residential building where at night 9 you might see lights on after dark in -- in residential 10 units? 11 MR. BACH: Uh, yeah, in residential units or even in 12 office units, you would see if somebody's working late and 13 there are blinds in their office are open, you wouldn't be 14 able to see inside their office. 15 So this is another design characteristic for us to hide 16 the self-storage use too. 17 MICHELE ROSENFELD: Is there something -- strike that. 18 The activities that are anticipated to occur in the art 19 space, their -- their galleries, their showings -- 20 MR. BACH: Mm-hmm. 21 MICHELE ROSENFELD: -- I think there was some pretty 22 generous numbers of the number of people that might attend 23 those events, you know several hundred at a time. Where -- 24 where would you anticipate parking for those events to occur? 25 MR. BACH: So from what I understand, there is, I think,</p>	<p style="text-align: right;">223</p> <p>1 MR. BACH: Primarily Metropolitan Avenue. This portion 2 would be seen from the intersection of Metropolitan and 3 Plyers Mill, but otherwise a -- a vast majority of it is 4 facing Metropolitan -- 5 MICHELE ROSENFELD: Okay. 6 MR. BACH: -- just by the orientation nature of the 7 site. 8 MICHELE ROSENFELD: All right. Is it facing more toward 9 the south, the south -- 10 MR. BACH: I would say -- 11 MICHELE ROSENFELD: -- west? 12 MR. BACH: -- I would say the southeast. 13 MICHELE ROSENFELD: Southeast? And the other elevation 14 that we see on the lower portion for -- 15 MR. BACH: This is facing due south. 16 MICHELE ROSENFELD: Okay. And do you know if any portion 17 of either of those elevations would be visible from Howard 18 Avenue, which is below the self-storage facility that you 19 were talking about earlier? 20 MR. BACH: Yeah. 21 MICHELE ROSENFELD: The existing self-storage facility? 22 MR. BACH: Yeah. So as I mentioned before, this south 23 elevation would be seen from Howard Avenue. However, Howard 24 Avenue is a significant grade difference from where our site 25 is. It's lower.</p>
<p style="text-align: right;">222</p> <p>1 once a month an open house. I think this is a question 2 operationally that -- that they're working through of not 3 only on our site providing as much parking as available, 4 maybe there's a valet service, maybe there's a commitment 5 with an adjacent property owner. 6 That's all something I believe is being worked through 7 with the owner. 8 MICHELE ROSENFELD: Okay. If we could take a look at the 9 two elevations facing the rear of the building, as I think 10 you described it. And the up -- and this is Exhibit -- we 11 could -- do you know what number this is? 12 MR. BACH: 4- -- 13 HEARING OFFICER GROSSMAN: I think it's written on it, 14 isn't it? 15 MICHELE ROSENFELD: I can't read it. 16 MR. BACH: No, it's not written on that one. It's 40 -- 17 [talking in background, inaudible]. 18 MICHELE ROSENFELD: 40B2. 19 MR. BACH: -- 40- -- 40B2. 20 HEARING OFFICER GROSSMAN: 40B2. 21 MICHELE ROSENFELD: Okay. The elevation that's shown on 22 the upper half of the sheet -- 23 MR. BACH: Yes. 24 MICHELE ROSENFELD: -- can you remind me again which 25 street that faces?</p>	<p style="text-align: right;">224</p> <p>1 So any portion of our -- there's also the railroad road 2 tracks and a -- and a very dense existing landscape buffer -- 3 tree canopy tree buffer. I don't know the exact elevation of 4 Howard Ave, I've just -- I've driven it several times and 5 know this just by view that any portion of it that you would 6 see would be the top half of the building. 7 There's also a consideration of site -- site distance 8 and what it is that you see from the building from so far 9 away. 10 MICHELE ROSENFELD: And would any portion of the 11 building on the upper half of the sheet be visible from that 12 location as well? 13 MR. BACH: Yes. So that would be the same thing that you 14 would see this top portion of the building from Howard 15 Avenue. 16 MICHELE ROSENFELD: And do you know if the properties 17 would -- on -- on -- on Howard Avenue that could see those 18 portions of the building, do you know if it's located in the 19 town's historic district? 20 MR. BACH: I do not know that off the top of my head. I 21 -- I do know that the property, the north elevation of the 22 property that is directly south of us is the site of Safeway, 23 so it's not the front of their building, the face of their 24 building faces Connecticut Avenue, I think. 25 But it -- but it is the side elevation of that property.</p>

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<p>225</p> <p>1 And then Howard Ave is that first portion of where our site 2 falls. It is all that -- that Safeway lot. So any portion of 3 the historic like antique row is all actually behind the 4 extra space lot and further to the east. 5 MICHELE ROSENFELD: But that doesn't mean that none of 6 this building's visible to those properties; correct? 7 MR. BACH: You cannot see those buildings from our site. 8 From their site, they have a potential of seeing the top 9 portion -- 10 MICHELE ROSENFELD: Okay. 11 MR. BACH: -- of our building. Yes. 12 MICHELE ROSENFELD: Mr. Grossman, if I may have just a 13 moment to -- 14 HEARING OFFICER GROSSMAN: Yes. 15 MICHELE ROSENFELD: -- talk with [inaudible]. I -- I 16 just -- clarification on a question I asked earlier. The two 17 floors below ground -- 18 MR. BACH: Mm-hmm. 19 MICHELE ROSENFELD: -- you told me they were 24,885 20 square feet -- 21 MR. BACH: Yes. 22 MICHELE ROSENFELD: -- is that per floor or -- 23 ERIN GIRARD: Combined. 24 MICHELE ROSENFELD: -- combined? 25 MR. BACH: Per floor.</p>	<p>227</p> <p>1 MR. BACH: No. In initial iterations the plan actually 2 had four, two separate ones, but through requests to add more 3 retail and restaurant space, we didn't need the extra loading 4 spaces for storage. 5 So we actually reduced those down to -- to two, because 6 there was -- there was no need for them because the retail 7 side grew. 8 ERIN GIRARD: That's all I have. 9 HEARING OFFICER GROSSMAN: Any re-cross? 10 MICHELE ROSENFELD: No, thank you. 11 HEARING OFFICER GROSSMAN: Well, thank you very much. 12 You're now an expert too. 13 MR. BACH: I guess so. Thank you for that. 14 HEARING OFFICER GROSSMAN: Thank you. Okay. Perhaps 15 before the next witness, we should take a five-minute break. 16 You might consider, I'm not sure how much longer your -- the 17 remaining witnesses will take and then we also have to hear 18 from the opposition, you may consider if you can stay late 19 and would ask the court reporter the same thing. 20 I can certainly stay late today. If we can finish today 21 that would be good. What's you feeling about all that? 22 MICHELE ROSENFELD: I know my client has to catch a 23 plane. How -- how late would we -- could we go? I can -- 24 HEARING OFFICER GROSSMAN: I'm -- 25 MICHELE ROSENFELD: -- obviously, [inaudible] --</p>
<p>226</p> <p>1 MICHELE ROSENFELD: So I'm curious, if your first floor 2 is 8,553 square feet, and you've got 24,885 square feet below 3 that, does it extend below the parking lot? 4 MR. BACH: Yes, that does. 5 MICHELE ROSENFELD: And how does that work? 6 MR. BACH: [inaudible] light on. So this is outlined, 7 our -- our first floor. Actually, yeah. So it's [inaudible] 8 grounds, I had to orient myself here for a second. The 9 basement outline extends out further into our driveway and 10 parking lot. 11 So there is another dashed line that extend past here 12 and the driveway down the middle of the south drive to the 13 east, which follows the whole parking -- east parking north. 14 And then again comes back west and then connects again to the 15 [inaudible], so this extra square footage that wraps parking 16 and drive aisle is what makes [inaudible]. 17 MICHELE ROSENFELD: So the basement basically mirrors 18 the footprint of the overhang with a little bit of extra on 19 either end? 20 MR. BACH: Correct. 21 MICHELE ROSENFELD: All right. Thank you. 22 HEARING OFFICER GROSSMAN: Any redirect? 23 ERIN GIRARD: Just one question. You mentioned there was 24 a question about the two loading spaces in that [inaudible]. 25 Has the plan always proposed to two loading spaces?</p>	<p>228</p> <p>1 HEARING OFFICER GROSSMAN: -- I'm a night owl so, I can 2 go late. 3 MICHELE ROSENFELD: I'm not. [laughing] 4 HEARING OFFICER GROSSMAN: Well, how late can you go 5 before -- 6 MICHELE ROSENFELD: I -- I have flexibility. I would 7 also like to talk to my clients who have been here all day. 8 See what their schedules provide for. 9 HEARING OFFICER GROSSMAN: Okay. 10 ERIN GIRARD: Especially if we can talk -- 11 MICHELE ROSENFELD: [inaudible]. 12 ERIN GIRARD: -- about it when we come back -- 13 HEARING OFFICER GROSSMAN: All right. So -- 14 MICHELE ROSENFELD: Because they're the ones who would 15 be the last ones -- 16 HEARING OFFICER GROSSMAN: Right. 17 MICHELE ROSENFELD: -- to testify. So let me just -- 18 HEARING OFFICER GROSSMAN: Well, maybe we can take them 19 out of order if -- if everybody wants to do that. 20 MICHELE ROSENFELD: Okay. 21 HEARING OFFICER GROSSMAN: Okay. 22 MICHELE ROSENFELD: Let me coordinate with them. 23 HEARING OFFICER GROSSMAN: Let's come back at 3:30 okay? 24 Or a little before that. 25 MICHELE ROSENFELD: Thank you.</p>

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<p>229</p> <p>1 (Off the record at 03:19:06 p.m.)</p> <p>2 (Back on the record at 03:33:39 p.m.)</p> <p>3 HEARING OFFICER GROSSMAN: So what have you decided</p> <p>4 [inaudible]?</p> <p>5 MICHELE ROSENFELD: In --</p> <p>6 ERIN GIRARD: [inaudible] give me a couple minutes?</p> <p>7 MICHELE ROSENFELD: Sure.</p> <p>8 ERIN GIRARD: Clients would --</p> <p>9 MICHELE ROSENFELD: I'll -- I'll fill him on the general</p> <p>10 --</p> <p>11 ERIN GIRARD: Okay.</p> <p>12 MICHELE ROSENFELD: -- idea.</p> <p>13 ERIN GIRARD: [inaudible]</p> <p>14 MICHELE ROSENFELD: The -- our theory, talking to each</p> <p>15 other, was that we probably -- no matter how late we're going</p> <p>16 to go and I don't think we want to push to 9:00, we probably</p> <p>17 are not going to finish tonight --</p> <p>18 HEARING OFFICER GROSSMAN: Okay.</p> <p>19 MICHELE ROSENFELD: -- just based on who's left and what</p> <p>20 the testimony's going to be. So we were starting to</p> <p>21 coordinate on a potential other hearing date.</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 MICHELE ROSENFELD: That's what -- but we didn't get all</p> <p>24 that coordination quite all the way.</p> <p>25 ERIN GIRARD: One of our witnesses is available next</p>	<p>231</p> <p>1 HEARING OFFICER GROSSMAN: All right.</p> <p>2 ERIN GIRARD: -- and do it.</p> <p>3 HEARING OFFICER GROSSMAN: What about Thursday?</p> <p>4 [talking in background, inaudible]</p> <p>5 HEARING OFFICER GROSSMAN: I mean, we have a meeting --</p> <p>6 [talking in background, inaudible]</p> <p>7 HEARING OFFICER GROSSMAN: -- regarding the move --</p> <p>8 [talking in background, inaudible]</p> <p>9 HEARING OFFICER GROSSMAN: -- my offices has to move --</p> <p>10 [talking in background, inaudible]</p> <p>11 HEARING OFFICER GROSSMAN: -- yeah, so that is</p> <p>12 tentatively set for 11:00 o'clock in this room but I guess</p> <p>13 that could be moved and my -- somebody else could attend from</p> <p>14 my office --</p> <p>15 ERIN GIRARD: Okay.</p> <p>16 HEARING OFFICER GROSSMAN: -- if Thursday worked out for</p> <p>17 everybody.</p> <p>18 MICHELE ROSENFELD: It looks like it's going to work out</p> <p>19 for everybody on our side.</p> <p>20 ERIN GIRARD: And you just have to move from</p> <p>21 [inaudible].</p> <p>22 MALE: No problem. [inaudible].</p> <p>23 ERIN GIRARD: Just give us one second.</p> <p>24 HEARING OFFICER GROSSMAN: Sure.</p> <p>25 [talking in background, inaudible]</p>
<p>230</p> <p>1 week.</p> <p>2 MICHELE ROSENFELD: Okay.</p> <p>3 HEARING OFFICER GROSSMAN: I'm away Monday and Tuesday</p> <p>4 of next week.</p> <p>5 ERIN GIRARD: Okay.</p> <p>6 HEARING OFFICER GROSSMAN: I mean, --</p> <p>7 MICHELE ROSENFELD: Could we -- could we call that</p> <p>8 witness today? Take them out of order and then take the other</p> <p>9 two?</p> <p>10 HEARING OFFICER GROSSMAN: Let me ask you another</p> <p>11 question.</p> <p>12 MICHELE ROSENFELD: Sure.</p> <p>13 HEARING OFFICER GROSSMAN: I mean, I guess -- I mean, to</p> <p>14 -- what -- what's the feeling about tomorrow? Although I have</p> <p>15 an early morning appointment in downtown, but I probably</p> <p>16 would be back by 11:00. But what's -- what's anybody feeling</p> <p>17 about that?</p> <p>18 [talking in background, inaudible].</p> <p>19 ERIN GIRARD: No, I -- I --</p> <p>20 HEARING OFFICER GROSSMAN: Is that a --</p> <p>21 ERIN GIRARD: -- I have a -- I have something scheduled</p> <p>22 from 12:00 to 2:00 --</p> <p>23 HEARING OFFICER GROSSMAN: Okay.</p> <p>24 ERIN GIRARD: -- that's already been reschedule once. I</p> <p>25 can't schedule --</p>	<p>232</p> <p>1 ERIN GIRARD: Because they're out.</p> <p>2 HEARING OFFICER GROSSMAN: I'm going to be in Texas</p> <p>3 visiting my grandchildren, which is a higher priority.</p> <p>4 [laughing]</p> <p>5 MALE: Much higher.</p> <p>6 MICHELE ROSENFELD: I'm pretty sure we're not going to</p> <p>7 30-37 [ph] so --</p> <p>8 HEARING OFFICER GROSSMAN: No, not again. That's -- I</p> <p>9 set the all-time record.</p> <p>10 MICHELE ROSENFELD: Then we'd have to -- so, the problem</p> <p>11 with the middle to end of next week is, we're -- one of your</p> <p>12 people is missing.</p> <p>13 ERIN GIRARD: Yes. Yeah, he -- he's missing all week.</p> <p>14 MICHELE ROSENFELD: So that pushes us into the</p> <p>15 [inaudible].</p> <p>16 [talking in background, inaudible].</p> <p>17 ERIN GIRARD: It's Thursday, so -- well, Thursday</p> <p>18 [inaudible] September [inaudible].</p> <p>19 MICHELE ROSENFELD: Right.</p> <p>20 ERIN GIRARD: Thursday of August -- Thursday, the 22nd</p> <p>21 of August.</p> <p>22 MICHELE ROSENFELD: Right.</p> <p>23 ERIN GIRARD: Is what we're talking about.</p> <p>24 MICHELE ROSENFELD: Or it looks we'll slide into</p> <p>25 September. We can't do that.</p>

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<p>233</p> <p>1 ERIN GIRARD: Right.</p> <p>2 HEARING OFFICER GROSSMAN: And if you slide to</p> <p>3 September, you'll be in a different place all together. We'd</p> <p>4 -- our temporary quarters are in a --</p> <p>5 MICHELE ROSENFELD: With air condition- --</p> <p>6 HEARING OFFICER GROSSMAN: [Inaudible] school.</p> <p>7 MICHELE ROSENFELD: Will it be cool?</p> <p>8 HEARING OFFICER GROSSMAN: I don't guarantee air</p> <p>9 conditioning. On Twin Brook Parkway. It's a big room though</p> <p>10 [inaudible].</p> <p>11 MICHELE ROSENFELD: We probably won't go all day.</p> <p>12 [inaudible].</p> <p>13 [talking in background, inaudible]</p> <p>14 HEARING OFFICER GROSSMAN: I mean, my last hearing is</p> <p>15 scheduled -- here is scheduled for September 6, that's a</p> <p>16 Friday. And -- and we -- we'll probably move early the next</p> <p>17 week if we have to be out -- we're required to be out by the</p> <p>18 end of that week. Yeah. Packing too.</p> <p>19 ERIN GIRARD: At least you don't have any paper to move.</p> <p>20 HEARING OFFICER GROSSMAN: Yeah. About 50 years of</p> <p>21 paper.</p> <p>22 ERIN GIRARD: Right.</p> <p>23 [talking in background, inaudible]</p> <p>24 HEARING OFFICER GROSSMAN: Well, we can proceed, and you</p> <p>25 guys can get together after a -- if we do continue it, for a</p>	<p>235</p> <p>1 MICHELE ROSENFELD: Mr. McKone, what's your -- what's</p> <p>2 your education and professional background?</p> <p>3 ROBERT KELLY MCKONE: I graduated from the University of</p> <p>4 Arizona in 1982. Majored in real estate. I have been in</p> <p>5 commercial real estate ever since.</p> <p>6 Sometimes I don't want to do the math to figure out how</p> <p>7 long I've been doing it, but I was mostly in brokerage, it</p> <p>8 was CB- -- CBRE Cushman and Wakefield. For the last five</p> <p>9 years I've been work- -- I've been a part of 1784 developing</p> <p>10 substorage.</p> <p>11 MICHELE ROSENFELD: So can you review your experience</p> <p>12 with 1784 and your -- and the design and construction of the</p> <p>13 self-storage facilities?</p> <p>14 ROBERT KELLY MCKONE: Sure. I -- I oversee all the real</p> <p>15 estate aspects of the company; negotiate the deals, go</p> <p>16 through entitlements. I work with the management companies</p> <p>17 once we get them open. Basically, any and all real estate</p> <p>18 aspects.</p> <p>19 HEARING OFFICER GROSSMAN: What's your official title</p> <p>20 [inaudible]?</p> <p>21 ROBERT KELLY MCKONE: Executive Vice President, Real</p> <p>22 Estate. So right now, we have four facilities open. We have</p> <p>23 two under construction.</p> <p>24 We have seven that are about to break ground in the next</p> <p>25 two to four, five months. And then we have seven more under</p>
<p>234</p> <p>1 day close to this one, we have to announce it at the Public</p> <p>2 Records, so before we adjourn --</p> <p>3 MICHELE ROSENFELD: Right.</p> <p>4 HEARING OFFICER GROSSMAN: -- for the day, I'd have to</p> <p>5 announce a time, date, place. Okay? So but let's -- let's get</p> <p>6 moving and see how far we go before --</p> <p>7 MICHELE ROSENFELD: Okay.</p> <p>8 HEARING OFFICER GROSSMAN: -- we --</p> <p>9 MICHELE ROSENFELD: Sure. My next witness is Kelly</p> <p>10 McKone.</p> <p>11 HEARING OFFICER GROSSMAN: All right. Mr. McKone, I</p> <p>12 thought -- I bet you thought we were never going to get to</p> <p>13 you.</p> <p>14 ROBERT KELLY MCKONE: Yeah.</p> <p>15 HEARING OFFICER GROSSMAN: All right. Will you state</p> <p>16 your full name and address, please?</p> <p>17 ROBERT KELLY MCKONE: It's Robert Kelly McKone. Business</p> <p>18 address is 8777 North Gainey Center Drive, Suite 191,</p> <p>19 Scottsdale, Arizona 85258.</p> <p>20 HEARING OFFICER GROSSMAN: All right. Would you raise</p> <p>21 your right hand, please? You swear or affirm to tell the</p> <p>22 truth, the whole truth and nothing but the truth under</p> <p>23 penalty of perjury?</p> <p>24 ROBERT KELLY MCKONE: I do.</p> <p>25 HEARING OFFICER GROSSMAN: All right. You may proceed.</p>	<p>236</p> <p>1 contract going through entitlement similar to this. So that's</p> <p>2 our activity of where we are right now.</p> <p>3 MICHELE ROSENFELD: And are any of those mixed-use</p> <p>4 projects?</p> <p>5 ROBERT KELLY MCKONE: Yeah, the one in Tucson that</p> <p>6 Michele talked a little bit about as part of our entitlement</p> <p>7 process, the city won't -- the town of Oro Valley, it's just</p> <p>8 north of Tucson, wanted a mixed use and originally they</p> <p>9 wanted the whole second -- the whole first floor and we ended</p> <p>10 up getting it down to about 3800 square feet.</p> <p>11 MICHELE ROSENFELD: And can you review for us how you</p> <p>12 sold this proposed location for your -- this proposed</p> <p>13 facility?</p> <p>14 ROBERT KELLY MCKONE: Yeah, this site was pre- --</p> <p>15 presented to us a couple years ago, and as we do with any</p> <p>16 site -- any -- any site we look at, we do a thorough</p> <p>17 underwriting of the area; do a feasibility analysis.</p> <p>18 We look at the demographics, population; income. Usually</p> <p>19 our trade area's about a three-mile radius normally. We have</p> <p>20 a gentleman we use that has been in substorage for over 30</p> <p>21 years.</p> <p>22 HEARING OFFICER GROSSMAN: Well, he must be -- have --</p> <p>23 claustrophobic by now.</p> <p>24 ROBERT KELLY MCKONE: Yeah, exac- -- he was a past</p> <p>25 president of the Self-Storage Association. He was inducted</p>

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<p style="text-align: right;">237</p> <p>1 into the hall of fame, very widely respected in the business. 2 He does all our feasibility reports and basically through 3 that analysis we thought that the location worked, had more - 4 - over 400,000 square feet of unmet demand. And you know, 5 because of the location and the visibility it -- it was 6 something we were excited about. 7 MICHELE ROSENFELD: And so much was made in the staff 8 report about proximity to other storage facilities, so you 9 don't see that as being a problem? 10 ROBERT KELLY MCKONE: Not when you have over 400,000 of 11 unmet demand. 12 MICHELE ROSENFELD: Okay. And what were the steps you 13 took to vet this project? 14 ROBERT KELLY MCKONE: Well, what we do on top of what I 15 just said is, we'll -- once we get a property tied up, we'll 16 meet with the applicable municipalities. In this case, we 17 were -- we were given the -- the advice that get the town 18 behind you and it's a little easier with the County, so we 19 seek to do that. 20 And we met with, I believe it was, the design review 21 board and showed them our -- our plans. And after the first 22 meeting, what I remember is, that we were told -- we were 23 asked where to send the letter of support. 24 And so we met with the County and went through a number 25 of iterations with them, and they were very supportive in</p>	<p style="text-align: right;">239</p> <p>1 ROBERT KELLY MCKONE: Well, our plans as we -- as we 2 discussed, it's a -- you know, we get this 100- -- it's a 3 126,00 square feet of storage, that's gross, but when you get 4 -- put in the loss factor, we'll be under 100,000, probably 5 be 88- to 90,000 square feet, if you use up 70 to 70 -- 68 to 6 75 percent efficiency. 7 It's all -- buildings are all the dif -- all different 8 depending upon how much efficiency you can get out of it. So 9 that and then -- and through the negotiations and -- and 10 requests by the town and County, we -- you know, we had the 11 restaurant. 12 Hopefully, it's a one really cool regional restaurant 13 that people are excited about and takes the whole space. And 14 then through actually Judith with Artists and Makers was -- 15 was referred to us by a council person at a neighborhood 16 meeting and thought that they would be a great use to help us 17 get it over the finish -- 18 HEARING OFFICER GROSSMAN: You're talking about 19 Kensington Town council member or -- 20 ROBERT KELLY MCKONE: Yeah. 21 HEARING OFFICER GROSSMAN: -- [inaudible]. 22 ROBERT KELLY MCKONE: Yeah, Kensington. I'm sorry. 23 Kensington -- 24 HEARING OFFICER GROSSMAN: We have a -- 25 ROBERT KELLY MCKONE: -- council member.</p>
<p style="text-align: right;">238</p> <p>1 what we were doing, that the head of architect of the County 2 was bringing out his tissue paper drawing up some revisions 3 he thought. 4 So we really, really -- I mean, we're used to working 5 with municipalities because you're not going to get it done 6 if you don't. 7 So there's got to be compromise in the air and -- and I 8 think, you know, not to reiterate a lot of things, you can 9 see from where we started to where we ended up, you know, 10 what we'd done to try to accommodate -- to accommodate that, 11 so -- 12 MICHELE ROSENFELD: And through these efforts of -- of 13 redesign, was it your idea that you were redesigning it to -- 14 to meet the comments and -- 15 ROBERT KELLY MCKONE: Yeah, absolutely. 16 MICHELE ROSENFELD: -- and guidance with this actual [??] 17 plan? 18 ROBERT KELLY MCKONE: Absolutely. There's no other 19 reason to do it unless you need to, you know, and -- 20 MICHELE ROSENFELD: And -- 21 ROBERT KELLY MCKONE: -- we were asked to, so we did. 22 MICHELE ROSENFELD: -- and what -- can you just review, 23 obviously we've -- we've had your experts go through this 24 site, it's up. But generally, your plans for the property and 25 -- and the facility and its hours and how it operates?</p>	<p style="text-align: right;">240</p> <p>1 HEARING OFFICER GROSSMAN: -- Montgomery council -- 2 ROBERT KELLY MCKONE: I'm sorry. Yeah. Kensington. 3 HEARING OFFICER GROSSMAN: -- [inaudible]. 4 ROBERT KELLY MCKONE: He introduced me to Judith and -- 5 and, so, that's how we started negotiating with her and -- 6 and -- and have basically got a -- a handshake on -- on her 7 occupying the 8100 square feet and change in the property. 8 MICHELE ROSENFELD: And regarding the proposed access 9 for the project, there was talk about the proposed ingress 10 egress easement across the adjacent property. Did y- -- have 11 you had preliminary conversations with that owner -- 12 ROBERT KELLY MCKONE: Yes. 13 MICHELE ROSENFELD: -- about that? And did they -- 14 ROBERT KELLY MCKONE: It's part of our deal with them, 15 yeah. 16 MICHELE ROSENFELD: -- did they -- at the request of 17 staff, did they provide you with a letter of authorization? 18 ROBERT KELLY MCKONE: Yes. 19 MICHELE ROSENFELD: Can I submit this for the record? I 20 don't think it ever made it in from the planning board, so I 21 just wanted to [inaudible]. 22 HEARING OFFICER GROSSMAN: Okay. Thank you. This will 23 be, if I can find the exhibit list -- 24 ROBERT KELLY MCKONE: 91. 25 HEARING OFFICER GROSSMAN: Yeah, here it is. Yes. 91 is</p>

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<p>241</p> <p>1 a letter of authorization from Kensington Joint Venture for 2 vehicular access easement. Okay. 3 MICHELE ROSENFELD: And with regard to the adjacent 4 property which has been identified as -- as another self- 5 storage facility, with -- are you familiar that the sector 6 plan envisions potential assemblage of the two properties? 7 HEARING OFFICER GROSSMAN: Yes. 8 MICHELE ROSENFELD: And did you explore that 9 possibility? 10 ROBERT KELLY MCKONE: Yes. We explored the possibility 11 of -- of acquiring the 7-Eleven property as well as the 12 status of the extra space. 13 And the extra space is on a long-term ground lease and I 14 think has somewhere around 15 years to go, so -- before that 15 lease expires. 16 And I think that the extra space has options to renew. 17 I'm not a hundred percent correct, but I think that that's 18 tied -- that's -- that's tied up for a long time. 19 MICHELE ROSENFELD: Sorry -- 20 ROBERT KELLY MCKONE: And then we had discussions, but 21 we just couldn't come to terms on the 7-Eleven and we didn't 22 feel we needed it bad enough to pay what they wanted. 23 MICHELE ROSENFELD: So in -- through your efforts, you 24 don't think an assemblage in the near term is -- 25 ROBERT KELLY MCKONE: No.</p>	<p>243</p> <p>1 the building has been designed such that it reduces the scale 2 of the project? 3 ROBERT KELLY MCKONE: Oh, yeah. I think based on what 4 we've done, I mean, a lot of the comments that we got from 5 both the town and -- and the County was, you know, try to 6 make the third through sixth floor go away and make it look 7 like the self -- the self-storage is -- is not -- is not 8 there. I mean, and I think based on what we've done with the 9 pop out of -- of the first and second floor, it accentuates 10 that part of the building much more than it did through the 11 original plan. 12 MICHELE ROSENFELD: And did you have a comment -- I -- 13 your architect opined us the number of units. Did you think 14 her -- the thousand -- 15 ROBERT KELLY MCKONE: Yeah, I mean, -- 16 MICHELE ROSENFELD: -- [inaudible]. 17 ROBERT KELLY MCKONE: -- it's close. I mean, I -- I 18 think we'd end up somewhere around, you know, 85- to 88,000 19 net square footage that would ac- -- actually occupy units. 20 So at, you know, at a 100 square foot average or 8-, 900, 21 maybe it's a little bit more than that, but I don't -- I 22 don't think you clear a thousand. 23 MICHELE ROSENFELD: And did you -- 24 ROBERT KELLY MCKONE: I hope we do. That means we just 25 get to lease more units.</p>
<p>242</p> <p>1 MICHELE ROSENFELD: -- possible? 2 ROBERT KELLY MCKONE: No. The owner said it isn't. 3 MICHELE ROSENFELD: Okay. In the proposed project, you 4 know, essentially maxes out the height and FAR allowed by the 5 zoning and some have critiqued that. Can you explain for us 6 the -- the economic reasons why you're balancing uses as you 7 are? 8 ROBERT KELLY MCKONE: Well, based on what I'm having to 9 pay for the property, I -- I -- I need to maximize -- you 10 know, the storage rents are probably the highest rents I'll 11 get. I may -- the -- the restaurant may be a little bit more, 12 but the -- the Artists and Makers' rent is substantially less 13 and -- then what market is or what we could get out of 14 storage spaces. 15 So it's basically through the request of the town and 16 the County we're willing to do that to create what the sector 17 plan's looking for in regard to creating activity and people 18 walking -- you know, people activity on the corner, and, so, 19 in order to get the deal, we're -- we're able -- or to try to 20 get the deal, we're -- we were willing to do that, but I need 21 to -- I need to get a -- I need to maximize what I'm allowed 22 to get per FAR and -- and -- and -- and other requirements 23 that -- that we have to live by based on the zoning and the 24 site. 25 MICHELE ROSENFELD: And do you believe the massing of</p>	<p>244</p> <p>1 MICHELE ROSENFELD: And did you have a comment about 2 expected turnover in your experience with these types of 3 facilities, how often the units turn over? 4 ROBERT KELLY MCKONE: The average day in a self-storage 5 is, I think the most recent study that came out was somewhere 6 around eight months. I mean, some people are just there to 7 accommodate a move. 8 Some are there for many years. And then -- but the 9 average is probably -- it's under a year, probably eight, 10 nine months. 11 MICHELE ROSENFELD: Okay. Can you review the proposed 12 operations of the facility? 13 ROBERT KELLY MCKONE: Sure. We will have, obviously, a 14 management office on site that we talked about on the first 15 floor. We'll probably have no more than two employees. Our 16 operations, office hours would be somewhere -- they vary a 17 little bit but basically 8:00 to 6:00, seven days a week. 18 We provide access for people to come and get their stuff 19 between 6:00 and 10:00. And the entire -- you know, the 20 property is controlled by a -- we have a lot of security, 21 security -- security to get in with a key-pad system. We have 22 lots of security cameras. 23 You know, we're very, very conscious on all our projects 24 about a very clean, safe environment. And -- and we try to 25 create -- we try to create -- when I try -- we try to create</p>

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<p style="text-align: right;">245</p> <p>1 is when somebody walks into our facility and they walk out, 2 they go, that was a little nicer than I expected. And -- and 3 the cleanliness. 4 I mean, most -- most of the people that make the 5 decisions for storage, it's been found, are females, so we 6 want them to feel very safe and comfortable and clean and -- 7 and -- you know, outgoing staff and make renting a storage 8 locker, you know, an enjoyable -- enjoyable experience. 9 HEARING OFFICER GROSSMAN: Mr. McKone, I -- I -- would 10 you repeat the hours again? I thou- -- thought you said 8:00 11 to 6:00 then I heard you say -- 12 ROBERT KELLY MCKONE: 8:00 to 6:00 would be the office 13 hours -- 14 HEARING OFFICER GROSSMAN: Okay. 15 ROBERT KELLY MCKONE: -- where somebody would be there. 16 And then we would allow access for people to come in and out, 17 but it would not be access to the building between -- what 18 we've done in some -- from 6:00 to 10:00 at night. 19 HEARING OFFICER GROSSMAN: What do you mean they would 20 not be access to the building? What do you mean -- 21 ROBERT KELLY MCKONE: Well, they wouldn't -- the office, 22 I'm sorry. 23 HEARING OFFICER GROSSMAN: I see. 24 ROBERT KELLY MCKONE: There wouldn't be anybody in the 25 office.</p>	<p style="text-align: right;">247</p> <p>1 But very, very rarely are you seeing anything larger 2 than the biggest U-Haul. 3 MICHELE ROSENFELD: So would you be comfortable with 4 adding to the conditions or restriction on the WB40s? 5 ROBERT KELLY MCKONE: Yeah, I'd like to talk to our 6 engineers. I mean, if we can accommodate it. I mean, -- 7 MICHELE ROSENFELD: Even if it's restriction of hours? A 8 restriction in some form to make sure that it doesn't -- 9 ROBERT KELLY MCKONE: Oh, yeah. I mean, I -- 10 MICHELE ROSENFELD: -- [inaudible]. 11 ROBERT KELLY MCKONE: -- restriction of off hours, 12 absolutely. 13 MICHELE ROSENFELD: Okay. 14 ROBERT KELLY MCKONE: We would do that anyway. 15 MICHELE ROSENFELD: I'm trying to decide which to go 16 first. A question was also raised about the parking for 17 events such as the -- to Artists and Makers' studio, their -- 18 ROBERT KELLY MCKONE: Mm-hmm. 19 MICHELE ROSENFELD: -- first Friday. 20 ROBERT KELLY MCKONE: Mm-hmm. 21 MICHELE ROSENFELD: How do you propose handling that? 22 ROBERT KELLY MCKONE: Well, I mean, our plans are -- our 23 parking is -- is in excess of what's required. So the impetus 24 is on us to make it work. 25 You know, I mean, at the first Friday there's been a lot</p>
<p style="text-align: right;">246</p> <p>1 HEARING OFFICER GROSSMAN: Okay. So the -- 2 ROBERT KELLY MCKONE: Like af- -- 3 HEARING OFFICER GROSSMAN: -- access -- 4 ROBERT KELLY MCKONE: -- after hours would be 6:00 to 5 8:00 -- 6 HEARING OFFICER GROSSMAN: They could access the -- 7 their own stuff they've stored -- 8 ROBERT KELLY MCKONE: Correct. 9 HEARING OFFICER GROSSMAN: -- in other words. 10 ROBERT KELLY MCKONE: Correct. 11 HEARING OFFICER GROSSMAN: Okay. And that would be 6:- - 12 - 6:00 to 10:00 -- 13 ROBERT KELLY MCKONE: Correct. 14 HEARING OFFICER GROSSMAN: -- p.m.? Okay. 15 MICHELE ROSENFELD: And you've been present for the 16 discussions about the WB40s? 17 ROBERT KELLY MCKONE: Yeah. I mean, you know, we've 18 designed this -- I mean, major- -- great majority of your 19 traffic are people in their -- loading up their SUVs and 20 their trucks, normal trucks. 21 And occasionally you'll get a U-Haul; very rarely do you 22 get an 18-wheeler. When those show up, you have to make 23 accommodations and come at off hours and, you know, those 24 guys are paid to do it and so they work around your sc- -- 25 your schedule and the activity.</p>	<p style="text-align: right;">248</p> <p>1 of numbers of -- of -- of Artists and Makers. There's been a 2 lot of numbers thrown out, but I mean, it's probably 100 to 3 150 people. 4 And my understanding, a lot of them would -- could 5 either come via public transit or walk or whatever. We've got 6 four different sites we're looking in the area that could 7 accommodate additional parking. So I think there's -- there's 8 -- there's options there. 9 And obviously I need to make something work. I -- I'm 10 already complying to what's required. So if I don't take care 11 of it, I'm not going to have a restaurant in there very long. 12 So I need to make it work and we'll figure something out. 13 MICHELE ROSENFELD: Okay. And so that's the genesis of 14 condition -- proposed condition number seven on Exhibit 86? 15 ROBERT KELLY MCKONE: Right. 16 MICHELE ROSENFELD: Okay. And the -- the planning staff 17 raised in their staff report -- which I guess first of all, 18 you're familiar with the planning staff report. 19 ROBERT KELLY MCKONE: Right. 20 MICHELE ROSENFELD: And they raised a number of issues 21 regarding sector plan compliance and circulation. Were you in 22 communications with staff leading up to the issuance steps 23 where -- on those issues? 24 ROBERT KELLY MCKONE: Yes. 25 MICHELE ROSENFELD: And what -- what was your</p>

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<p>249</p> <p>1 understanding of the primary issue with -- per the sector 2 plan compliance? 3 ROBERT KELLY MCKONE: Well, I mean, the main thing is I 4 -- the -- you know, anybody would have given their right arm 5 to have something else in there other than self-storage, 6 rather it was apartments or -- or office. 7 But the main things that we got out of that and what we 8 really tried hard to do for both the town and the County was 9 to come up with a plan that really created what they wanted 10 in the sector plan, to have a mixed use, which we have, and - 11 - and to create the people scape and the people activity and 12 the environment with the restaurants and people come and -- 13 and with Artists and Makers I think there's a lot -- a ton of 14 potential with people there and -- with the artists and a 15 very unique environment. 16 And to me the best part of it all is -- is the -- the 17 lack of parking that's needed for a self-storage facility 18 that doesn't add to the parking issue you already else have. 19 Anything else is going to add to it, so, we're trying to be 20 sensitive to providing that, that environment. 21 MICHELE ROSENFELD: And how about with regard to the 22 traffic and circulation issues, were you aware of those 23 before -- 24 ROBERT KELLY MCKONE: No. 25 MICHELE ROSENFELD: -- the staffing plan?</p>	<p>251</p> <p>1 what's there. You got two ga- -- three -- three gas stations 2 and a firehouse. 3 And I think you look at this project and what it does to 4 kick things off, and -- and is -- is -- is a huge improvement 5 over what's there now. 6 MICHELE ROSENFELD: And in your opinion would the 7 proposed conditional use cause undue harm to the peaceful 8 enjoyment, economic value or development potential of 9 abutting and confronting properties of the general 10 neighborhood? 11 ROBERT KELLY MCKONE: No. 12 HEARING OFFICER GROSSMAN: I'm not sure he's in a 13 position to really answer that -- 14 MICHELE ROSENFELD: I'm not asking him -- 15 HEARING OFFICER GROSSMAN: -- as a non-expert. 16 MICHELE ROSENFELD: -- as an expert -- 17 HEARING OFFICER GROSSMAN: Right. 18 MICHELE ROSENFELD: -- I'm just asking, you know, in his 19 -- 20 HEARING OFFICER GROSSMAN: I'll -- I'll -- we'll let it 21 in and give it a -- due weight but -- 22 MICHELE ROSENFELD: Okay. 23 HEARING OFFICER GROSSMAN: -- he's not -- 24 MICHELE ROSENFELD: If -- 25 HEARING OFFICER GROSSMAN: -- qualified as an expert.</p>
<p>250</p> <p>1 ROBERT KELLY MCKONE: No. 2 MICHELE ROSENFELD: And in light of the staff's and 3 town's positions, what measures did you take to -- to further 4 evaluate the viability of the project? 5 ROBERT KELLY MCKONE: Now, we had a number of community 6 meetings. You know, the feedback we got from both the town 7 and -- and the County was that they were getting a lot of 8 opposition and we were hearing a lot of support. 9 And you know, opposition's always louder and -- because 10 the people that are support usually don't come or fewer of 11 them come. But we -- we -- we've talked to a lot of -- you 12 know, we had a lot of people through letters and -- and -- 13 that were -- were very, very supportive, so. 14 MICHELE ROSENFELD: And if the condition use is granted 15 subject to the resolution, the varied circulation 16 transportation issues identified in the staff report, are you 17 confident that these issues can be adequately addressed? 18 ROBERT KELLY MCKONE: Yes. 19 MICHELE ROSENFELD: And in light of your testimony and 20 based on your familiarity with the plans and the expert 21 reports submitted in the application, do you believe the 22 proposed conditional use will be in harmony with the 23 character of the neighborhood? 24 ROBERT KELLY MCKONE: I think you -- well, I mean, you 25 look at those four corners now, I think it'll greatly improve</p>	<p>252</p> <p>1 MICHELE ROSENFELD: -- if the application is granted 2 subject to reasonable conditions acceptable to the applicant, 3 is it the applicant's intention to construct and operate the 4 improvements in accordance with the plans and specifications 5 submitted with the application and the conditions and -- 6 HEARING OFFICER GROSSMAN: Absolutely. 7 MICHELE ROSENFELD: That's all I have. 8 HEARING OFFICER GROSSMAN: I'm going to ask you a 9 question -- 10 ROBERT KELLY MCKONE: Sure. 11 HEARING OFFICER GROSSMAN: -- then. I -- I also wanted 12 to ask Mayor Furman, and that is, is there any room at all -- 13 and I'm not suggesting you should because you're entitled to 14 have this plan evaluated exactly as it's submitted -- is 15 there any room at all for further change if the town of 16 Kensington was to -- were to say, well, we could actually 17 handle this if it were changed in some way? 18 ROBERT KELLY MCKONE: Well, we've done that. I mean, -- 19 HEARING OFFICER GROSSMAN: I know you've done it -- 20 ROBERT KELLY MCKONE: -- that's where we ended up. 21 HEARING OFFICER GROSSMAN: -- I understand. 22 ROBERT KELLY MCKONE: We've already done that. I mean, I 23 -- I'm open to what it might be, but it's also got to be 24 something that, you know, it's got to work for both of us. 25 HEARING OFFICER GROSSMAN: Right. Okay. And then, as I</p>

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<p>253</p> <p>1 said --</p> <p>2 ROBERT KELLY MCKONE: Yeah.</p> <p>3 HEARING OFFICER GROSSMAN: -- you're entitled to have</p> <p>4 this plan as it is evaluated. So but I just thought I'd ask.</p> <p>5 All right. Cross-examination?</p> <p>6 ERIN GIRARD: Yes, thank you. The Tucson, Arizona</p> <p>7 facility that was mentioned earlier, the mixed-use facility,</p> <p>8 as I recall the ratios were about 100,000 square feet of</p> <p>9 storage unit and 3,000 of retail.</p> <p>10 HEARING OFFICER GROSSMAN: 3800.</p> <p>11 ERIN GIRARD: 3800 --</p> <p>12 ROBERT KELLY MCKONE: Mm-hmm.</p> <p>13 ERIN GIRARD: -- of retail?</p> <p>14 ROBERT KELLY MCKONE: Mm-hmm.</p> <p>15 ERIN GIRARD: And what kind of use is that retail?</p> <p>16 ROBERT KELLY MCKONE: Well, we just finished the</p> <p>17 building, so we're leasing it. We have a number of prospects</p> <p>18 that we're looking at.</p> <p>19 We're actually talking to Judith about possibly doing it</p> <p>20 there. So we're trying to explore that before we go</p> <p>21 elsewhere, but we got -- we've got -- we have other people</p> <p>22 that are interested but I'm kind of holding them at bay for</p> <p>23 now.</p> <p>24 ERIN GIRARD: Maybe I'm confused. I'm talking about the</p> <p>25 facility in Tucson, Arizona.</p>	<p>255</p> <p>1 ERIN GIRARD: Okay.</p> <p>2 ROBERT KELLY MCKONE: So and then we've had -- we had an</p> <p>3 artist looking for about 800 feet. And then we have -- we had</p> <p>4 one other one. What did they do? I think it was they're</p> <p>5 insurance.</p> <p>6 ERIN GIRARD: Okay.</p> <p>7 ROBERT KELLY MCKONE: Insurance office.</p> <p>8 ERIN GIRARD: And you had said that --</p> <p>9 ROBERT KELLY MCKONE: In that example, it's -- it's</p> <p>10 important to know, I think, I don't -- I don't know where</p> <p>11 you're going with this, but is that we have no -- we -- they</p> <p>12 -- we just need to lease it to something other than storage.</p> <p>13 It's not restrictive at all, so --</p> <p>14 ERIN GIRARD: Okay. You had mentioned, I -- I'm not sure</p> <p>15 if you would start out at 3800 square feet or -- or something</p> <p>16 larger, but you had indicated that you would want to reduce</p> <p>17 the amount of retail in the Tucson site.</p> <p>18 ROBERT KELLY MCKONE: I did.</p> <p>19 ERIN GIRARD: And -- and had -- had the numbers started</p> <p>20 out larger than 38-?</p> <p>21 ROBERT KELLY MCKONE: They wanted the -- the first time</p> <p>22 we met, they wanted to have the entire first floor to be</p> <p>23 mixed use.</p> <p>24 ERIN GIRARD: And how much square footage was that</p> <p>25 entire first floor? Ballpark.</p>
<p>254</p> <p>1 ROBERT KELLY MCKONE: so am I.</p> <p>2 ERIN GIRARD: Okay. And --</p> <p>3 ROBERT KELLY MCKONE: Yeah.</p> <p>4 ERIN GIRARD: -- Judith is --</p> <p>5 ROBERT KELLY MCKONE: She's --</p> <p>6 ERIN GIRARD: -- has a presence --</p> <p>7 ROBERT KELLY MCKONE: -- we're --</p> <p>8 ERIN GIRARD: -- down there as well?</p> <p>9 ROBERT KELLY MCKONE: She -- we're talking about it --</p> <p>10 ERIN GIRARD: Okay.</p> <p>11 ROBERT KELLY MCKONE: -- yeah.</p> <p>12 ERIN GIRARD: Okay. All right.</p> <p>13 ROBERT KELLY MCKONE: She's one of my prospects --</p> <p>14 ERIN GIRARD: Perfect.</p> <p>15 ROBERT KELLY MCKONE: -- yeah.</p> <p>16 ERIN GIRARD: Okay.</p> <p>17 ROBERT KELLY MCKONE: She's in the lead.</p> <p>18 ERIN GIRARD: And ca- -- I don't need the names of</p> <p>19 particular companies, but sort of just generally the types of</p> <p>20 other businesses --</p> <p>21 ROBERT KELLY MCKONE: We have one --</p> <p>22 ERIN GIRARD: -- that would be interested.</p> <p>23 ROBERT KELLY MCKONE: -- that was a -- they are kind of</p> <p>24 a sales -- the guy is -- has -- has -- has seminars for</p> <p>25 people that -- in sales.</p>	<p>256</p> <p>1 ROBERT KELLY MCKONE: Michele may help -- is it -- it's</p> <p>2 20-</p> <p>3 MICHELE ROSENFELD or BACH: 20- --</p> <p>4 HEARING OFFICER GROSSMAN: I'm sorry --</p> <p>5 ROBERT KELLY MCKONE: -- 20-ish.</p> <p>6 HEARING OFFICER GROSSMAN: -- how does this bear on what</p> <p>7 I have to decide?</p> <p>8 ROBERT KELLY MCKONE: 20- -- 20,000-ish.</p> <p>9 HEARING OFFICER GROSSMAN: Hold on one second.</p> <p>10 ROBERT KELLY MCKONE: Oh, okay.</p> <p>11 HEARING OFFICER GROSSMAN: [inaudible]</p> <p>12 ERIN GIRARD: That -- that was my last question --</p> <p>13 HEARING OFFICER GROSSMAN: All right.</p> <p>14 ERIN GIRARD: -- on -- on this. Have you -- would --</p> <p>15 this -- this is specific to this property, have you ever</p> <p>16 operated a restaurant or artist gallery space?</p> <p>17 ROBERT KELLY MCKONE: Have I personally?</p> <p>18 ERIN GIRARD: Mm-hmm.</p> <p>19 ROBERT KELLY MCKONE: No, I've been in real estate my</p> <p>20 whole career.</p> <p>21 ERIN GIRARD: Somebody with your company?</p> <p>22 ROBERT KELLY MCKONE: No, the -- we have a management</p> <p>23 company that all overseas it -- the restaurant will manage</p> <p>24 themselves.</p> <p>25 We don't -- I don't need anybody to manage it. As long</p>

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<p>257</p> <p>1 as they pay my rent -- as long as they pay their rent and 2 keep it clean, we're in good shape; they follow the terms of 3 the lease. They don't need to be managed. 4 ERIN GIRARD: Okay. So -- so would you -- 5 ROBERT KELLY MCKONE: As in -- as in any commercial 6 building. You -- 7 ERIN GIRARD: So you would imagine that you would -- you 8 would expect to lease directly to whatever tenant. You -- you 9 don't anticipate having a management company -- 10 ROBERT KELLY MCKONE: No, I don't -- I don't -- 11 ERIN GIRARD: -- take care of the leasing of those 12 facilities? 13 ROBERT KELLY MCKONE: We might hi- -- we might hire 14 somebody to find us a tenant, yeah. I mean, if that's your 15 question, I have leased to restaurants -- 16 ERIN GIRARD: Okay. 17 ROBERT KELLY MCKONE: -- through my career. It was a 18 while ago, but now -- yeah, we would probably hire whoever 19 the best restaurant broker in town is that knows all the 20 local -- the kind of restaurants that the town wants, and I 21 want. 22 I think I probably -- I want something better than they 23 want but, yeah, if given the chance, I'll prove it to them 24 but whoever -- yeah, we would -- we would hire a broker to do 25 that, but we wouldn't have anybody manage them in the</p>	<p>259</p> <p>1 they're going to -- 2 MICHELE ROSENFELD: Yeah, we have two more that'll 3 probably more than fill up the day. 4 ERIN GIRARD: You have -- 5 MICHELE ROSENFELD: We have -- 6 ERIN GIRARD: -- traffic -- 7 MICHELE ROSENFELD: -- traffic and land tenant. 8 [talking over each other, inaudible] 9 HEARING OFFICER GROSSMAN: Who's next on your list, 10 Mister -- 11 MICHELE ROSENFELD: The traffic. 12 HEARING OFFICER GROSSMAN: Okay. Well, while we're all 13 thinking about it, let's the traffic. 14 MICHELE ROSENFELD: Okay. Brian Biddle. 15 TRACEY FURMAN: Oh, this is uncomfortable. 16 HEARING OFFICER GROSSMAN: You're not -- that's the hot 17 seat, you're not supposed to be comfortable on a -- on a nice 18 warm day like today. 19 All right. Mr. Biddle would you state your full name and 20 address, please before I swear you? 21 BRIAN BIDDLE: Brian Anthony Biddle. Business address, 22 645 Baltimore Annapolis Boulevard, Suite 214, Severna Park, 23 Maryland 21146. 24 HEARING OFFICER GROSSMAN: Now, I can see you've already 25 raised your right hand, so I'll ask you, do you swear or</p>
<p>258</p> <p>1 property, other than the manager we have. 2 ERIN GIRARD: If you would give me a moment, please. 3 HEARING OFFICER GROSSMAN: Okay. 4 ERIN GIRARD: Do you know how high the ceilings are on 5 the first level of the facility? 6 ROBERT KELLY MCKONE: How high are they? Fourteen feet. 7 [talking in background, inaudible] 8 ERIN GIRARD: I have no further questions. 9 HEARING OFFICER GROSSMAN: Any redirect? 10 MICHELE ROSENFELD: No. 11 HEARING OFFICER GROSSMAN: All right. Thank you very 12 much -- 13 ROBERT KELLY MCKONE: Thank you. 14 HEARING OFFICER GROSSMAN: -- Mr. McKone. Appreciate it. 15 So question, do we want to take Mayor Furman out of order? Or 16 what's your pleasure, counsel? 17 ERIN GIRARD: Oh, actually, she's not the -- 18 TRACEY FURMAN: I'm not going anywhere. 19 ERIN GIRARD: -- one who's -- who's a problem -- 20 HEARING OFFICER GROSSMAN: Okay. 21 ERIN GIRARD: -- it's a different witness. 22 MICHELE ROSENFELD: I would say keep going if there are 23 -- there are [inaudible]. 24 [talking over each other, inaudible] 25 ERIN GIRARD: Yeah, but we're not sure how much longer</p>	<p>260</p> <p>1 affirm to tell the truth, the whole truth and nothing but the 2 truth under penalty of perjury? 3 BRIAN BIDDLE: I will. 4 HEARING OFFICER GROSSMAN: All right. 5 MICHELE ROSENFELD: Mr. Biddle, what's your occupation? 6 BRIAN BIDDLE: I'm a transportation engineer. 7 MICHELE ROSENFELD: And how long have you been engaged 8 in that occupation? 9 BRIAN BIDDLE: Over 25 years. 10 MICHELE ROSENFELD: And what's your professional 11 educational background? 12 BRIAN BIDDLE: I have a bachelor's of science in civil 13 engineering from Penn State University and I have a master of 14 science in civil engineering from the University of Maryland. 15 MICHELE ROSENFELD: And are you a member of any 16 professional societies or organizations? 17 BRIAN BIDDLE: Chi Epsilon National Civil Engineering 18 Honor Society. 19 HEARING OFFICER GROSSMAN: And what was that -- that 20 first part of that? Because you're -- 21 BRIAN BIDDLE: Chi Epsilon -- 22 HEARING OFFICER GROSSMAN: Chi Epsilon -- 23 BRIAN BIDDLE: -- Epsilon Civil Engineering Honor 24 Society, the Institute of Transportation Engineers, the 25 American Society of Civil Engineers and Maryland section of</p>

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<p>261</p> <p>1 the Intelligent Transportation Systems.</p> <p>2 MICHELE ROSENFELD: Can you review your work experience</p> <p>3 in the field of transportation engineer?</p> <p>4 BRIAN BIDDLE: I've been in Maryland my entire life.</p> <p>5 I've been working in Montgomery County my entire life. I've</p> <p>6 worked primarily as a consultant for the agencies, that</p> <p>7 includes State Highway in District 3, in downtown doing work</p> <p>8 throughout Montgomery County. I've worked for the County the</p> <p>9 bulk of my career.</p> <p>10 I know the area very well. I do traffic operation</p> <p>11 studies to traffic design, to highway design, anything that's</p> <p>12 transportation related.</p> <p>13 HEARING OFFICER GROSSMAN: What work have you done for</p> <p>14 the County?</p> <p>15 BRIAN BIDDLE: I manage two consecutive on-call traffic</p> <p>16 engineering consulting contracts with the DOT.</p> <p>17 HEARING OFFICER GROSSMAN: Okay.</p> <p>18 MICHELE ROSENFELD: And have you ever testified as an</p> <p>19 expert witness in the field of transportation?</p> <p>20 BRIAN BIDDLE: I have.</p> <p>21 MICHELE ROSENFELD: Have you testified before the Office</p> <p>22 of the Hearing Examiner?</p> <p>23 BRIAN BIDDLE: I have. And I remember what it was, it</p> <p>24 was conditional use 18-07. The last one was 8/14/2018.</p> <p>25 HEARING OFFICER GROSSMAN: What was 18-07, do you</p>	<p>263</p> <p>1 MICHELE ROSENFELD: Can you review the findings and</p> <p>2 conclusions of your analysis?</p> <p>3 BRIAN BIDDLE: So basically, at the preliminary level of</p> <p>4 the project you -- you -- subdivision stating policy requires</p> <p>5 you to go to the [inaudible] Transportation Review</p> <p>6 Guidelines.</p> <p>7 There you take a preliminary look at the -- the trip</p> <p>8 generation to see if it falls into a traffic statement or if</p> <p>9 it falls into doing a full, more -- full detailed study. For</p> <p>10 this use, there was a vested gas station which had trips that</p> <p>11 were allowed to be credited against new trips that are</p> <p>12 generated from the proposed use.</p> <p>13 The proposed use was evaluated. The trip generation and</p> <p>14 -- the County and just about everybody uses the -- the ITE,</p> <p>15 the Institute of Transportation Engineers', trip generation</p> <p>16 manual and subsequent handbooks to develop trip generation</p> <p>17 estimates.</p> <p>18 The County has a specific, you know, adjustment factors</p> <p>19 for the various policy areas. So IT is used to establish</p> <p>20 trips. You go into LATR, you adjust those trips to the policy</p> <p>21 area for fa- -- for specific vehicular primary trips --</p> <p>22 HEARING OFFICER GROSSMAN: Just for the record, LATR is?</p> <p>23 BRIAN BIDDLE: Local Area Transportation Review. That's</p> <p>24 the -- department planning's guidelines to -- to doing any</p> <p>25 traffic analyses.</p>
<p>262</p> <p>1 remember [inaudible]?</p> <p>2 BRIAN BIDDLE: That was Clarks Hill -- Clarksburg Animal</p> <p>3 Hospital.</p> <p>4 HEARING OFFICER GROSSMAN: Okay.</p> <p>5 BRIAN BIDDLE: Yeah.</p> <p>6 MICHELE ROSENFELD: And Mr. Bibble's resume is Exhibit</p> <p>7 83 in the record and [inaudible] admission as an expert in</p> <p>8 traffic engineering.</p> <p>9 HEARING OFFICER GROSSMAN: Any questions?</p> <p>10 ERIN GIRARD: No objections.</p> <p>11 HEARING OFFICER GROSSMAN: All right. Based on your</p> <p>12 resume and on your education and background, we accept you as</p> <p>13 an expert in traffic engineering.</p> <p>14 MICHELE ROSENFELD: Mr. Bibble, are you familiar with</p> <p>15 the conditional use property, surrounding area in Application</p> <p>16 Number CU19-03?</p> <p>17 BRIAN BIDDLE: I am and --</p> <p>18 MICHELE ROSENFELD: And are you familiar with the</p> <p>19 County's adequate public facilities ordinance?</p> <p>20 BRIAN BIDDLE: Yep.</p> <p>21 MICHELE ROSENFELD: Have you analyzed the suitability of</p> <p>22 the proposed conditional use and other proposed uses for the</p> <p>23 subject property for -- from a transportation engineering</p> <p>24 standpoint?</p> <p>25 BRIAN BIDDLE: We have.</p>	<p>264</p> <p>1 They break that out into person trips that is primary</p> <p>2 automobile, walking, transit, or automobile passenger and you</p> <p>3 look to -- you know, if -- if it's a traffic statement, if</p> <p>4 it's less than 50 person trips, you just document all of that</p> <p>5 and submit it to park and planning and we had done that.</p> <p>6 HEARING OFFICER GROSSMAN: In other words, once you</p> <p>7 deducted out the existing --</p> <p>8 BRIAN BIDDLE: Right.</p> <p>9 HEARING OFFICER GROSSMAN: -- trips from the proposed</p> <p>10 new trips --</p> <p>11 BRIAN BIDDLE: Mm-hmm.</p> <p>12 HEARING OFFICER GROSSMAN: -- you didn't reach the</p> <p>13 threshold that's --</p> <p>14 BRIAN BIDDLE: That's correct.</p> <p>15 HEARING OFFICER GROSSMAN: -- required for a LATR study?</p> <p>16 BRIAN BIDDLE: Correct.</p> <p>17 HEARING OFFICER GROSSMAN: Now, staff, as I mentioned</p> <p>18 earlier, raised a question about the nu- -- the number of --</p> <p>19 BRIAN BIDDLE: Mm-hmm.</p> <p>20 HEARING OFFICER GROSSMAN: -- trips you discounted, and</p> <p>21 they said in their report that only 15 percent of the gas</p> <p>22 station trips should count. Can you respond to that?</p> <p>23 BRIAN BIDDLE: Yeah. Originally when the analysis was</p> <p>24 done, one aspect of the retail component of what was existing</p> <p>25 and what was proposed was left out, that's specifically pass</p>

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<p>265</p> <p>1 by.</p> <p>2 And a primary trip would be me coming here today. A</p> <p>3 pass-by trip would be any of us going home and stopping off</p> <p>4 at a gas station or a grocery store. So there's data to</p> <p>5 reflect whether you're a pass-by trip or a -- a primary trip.</p> <p>6 We accounted -- we didn't deduct any of that in the traffic</p> <p>7 statement that was submitted to department of planning for</p> <p>8 either the existing use or the proposed use.</p> <p>9 Staff, we'd actually communicated with staff and they</p> <p>10 were fine with it and then we didn't get this comment until</p> <p>11 we got the -- the report. They were -- indicate that only 15</p> <p>12 percent is allowed to be credited. That is not in LATR</p> <p>13 guidelines, nor is that an ITE pass-by rate which the County</p> <p>14 would default to. Those rates are actually like -- because I</p> <p>15 wrote it down -- 62 percent is pass-by in the morning for a</p> <p>16 gas station and it's 58 in the evening.</p> <p>17 We have not resubmitted the statement but we have</p> <p>18 recalculated, and utilizing both what the County has asked</p> <p>19 for with only allowing 15 percent and what ITE would account</p> <p>20 for for the existing use, as well as the County we did not</p> <p>21 deduct any pass-by rates for the retail use as opposed --</p> <p>22 restaurant.</p> <p>23 So either way you slice it, we're less than 50 net</p> <p>24 person trips.</p> <p>25 HEARING OFFICER GROSSMAN: So if -- in other words,</p>	<p>267</p> <p>1 that, but for storage, or a restaurant, most of the time they</p> <p>2 know where they're going so it's a new trip, so.</p> <p>3 BRIAN BIDDLE: Yeah, the restaurant pass-by -- let me</p> <p>4 dig it out, but there's a small percentage gap.</p> <p>5 HEARING OFFICER GROSSMAN: Okay.</p> <p>6 MICHELE ROSENFELD: The staff report also raises issues</p> <p>7 regarding circulation to and from the site. Did you have any</p> <p>8 conversations with staff about that prior to the issuance of</p> <p>9 the staff report?</p> <p>10 HEARING OFFICER GROSSMAN: We had prior to the staff</p> <p>11 report and there was no issue at that point.</p> <p>12 MICHELE ROSENFELD: And -- and then the staff report</p> <p>13 issue then there were issues identified. Do you have any</p> <p>14 comments on -- on those regarding on-site circulation, curb</p> <p>15 cuts, all that, and Brad covered some of it but I understand</p> <p>16 there's a degree of [inaudible].</p> <p>17 BRIAN BIDDLE: Brad covered a lot of it, but we deal a</p> <p>18 lot with State Highway, they generally like to see reduction</p> <p>19 in access points.</p> <p>20 I think as [inaudible] has done it, the access point</p> <p>21 further to the south on Connecticut maximizes the distance to</p> <p>22 the signalized intersection, that's ideal from the State</p> <p>23 Highway's point of view and then taking the two en- -- exit -</p> <p>24 - or entrance points off of Plyers Mill, it's favorable to</p> <p>25 State Highway and to the operation.</p>
<p>266</p> <p>1 going back to the most extreme example of that, if you</p> <p>2 accepted staff's position that all but 15 percent are -- are</p> <p>3 pass-bys for gas station use, and you applied that --</p> <p>4 BRIAN BIDDLE: Mm-hmm.</p> <p>5 HEARING OFFICER GROSSMAN: -- to the number of trips</p> <p>6 predicted by the ITE stats --</p> <p>7 BRIAN BIDDLE: Mm-hmm.</p> <p>8 HEARING OFFICER GROSSMAN: -- you would still not reach</p> <p>9 the threshold for an LATR study?</p> <p>10 BRIAN BIDDLE: Correct.</p> <p>11 HEARING OFFICER GROSSMAN: Okay. Okay. Is that written</p> <p>12 that -- do you submit something that said any of that?</p> <p>13 BRIAN BIDDLE: We have not yet.</p> <p>14 HEARING OFFICER GROSSMAN: Okay.</p> <p>15 MICHELE ROSENFELD: We can.</p> <p>16 HEARING OFFICER GROSSMAN: I think that should be</p> <p>17 something in the record that demonstrates the math on that.</p> <p>18 MICHELE ROSENFELD: Okay.</p> <p>19 HEARING OFFICER GROSSMAN: You could also include your</p> <p>20 statistics of what ITE allows as gas station pass-bys. I</p> <p>21 mean, I assume that there would be a large portion of pass- -</p> <p>22 - people don't necessarily start out just to go to the gas</p> <p>23 station. They often say, oh, gas station, they stop.</p> <p>24 BRIAN BIDDLE: Mm-hmm.</p> <p>25 HEARING OFFICER GROSSMAN: So that would account for</p>	<p>268</p> <p>1 I know the -- the back entrance, the -- the -- the</p> <p>2 easement and we talked about that long and hard. The only</p> <p>3 thing I would add to that is that staff did provide to us a</p> <p>4 recent, I think it's 2014, analysis of that intersection.</p> <p>5 It is not ideal, I would give you that, but their</p> <p>6 analyses indicated the level of service, which is an</p> <p>7 operational evaluation of how an intersection works -- take a</p> <p>8 moment, it's A through F.</p> <p>9 HEARING OFFICER GROSSMAN: Did you say how an</p> <p>10 intersection works or Howard intersection?</p> <p>11 BRIAN BIDDLE: How it's working. How it's functioning.</p> <p>12 HEARING OFFICER GROSSMAN: No, I know, but the --</p> <p>13 there's a Howard Avenue there. You're not talking about the</p> <p>14 Howard Avenue?</p> <p>15 BRIAN BIDDLE: No, no, no. How -- how the intersection -</p> <p>16 -</p> <p>17 HEARING OFFICER GROSSMAN: Okay.</p> <p>18 BRIAN BIDDLE: -- [inaudible] --</p> <p>19 HEARING OFFICER GROSSMAN: I just -- I --</p> <p>20 BRIAN BIDDLE: -- of Metropolitan and Plyers Mill is --</p> <p>21 is functioning --</p> <p>22 HEARING OFFICER GROSSMAN: Okay.</p> <p>23 BRIAN BIDDLE: -- you know, A, is a good -- a good</p> <p>24 thing, like letter grade in -- in school to F. It's operating</p> <p>25 at a level service A from a 2014 evaluation.</p>

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<p style="text-align: right;">269</p> <p>1 And I wouldn't anticipate growth to have made that go 2 any further. It -- it might be a B, but -- and the 3 intersection is fine. We understand some of the concerns that 4 have been raised, primarily related to trucks that -- I don't 5 know if that's -- you have the -- the truck mem has been 6 introduced. 7 MICHELE ROSENFELD: It has not. 8 BRIAN BIDDLE: There's been a lot of discussion and 9 Lenhart Traffic's done a lot of work with self-storage 10 facilities and a lot of these questions have been raised by 11 staff on other projects. 12 We -- you know, IT is based on doing [inaudible] at 13 existing facilities. We have counted daily counts at a number 14 of self-storage facilities in the county. There's a memo that 15 we provided to -- I have extra copies of it -- 16 MICHELE ROSENFELD: That's what I was looking for -- 17 BRIAN BIDDLE: -- that details the -- ITE actually has 18 information on trucks and they don't have a lot of 19 information but it's generally 2 to 15 percent of the traffic 20 counts are trucks. 21 We looked at it and Ms. Girard has the -- the memo, but 22 if you looked at, you know, a mid-point of 15 percent, say 8 23 and a half percent I think we have in here, we would have a 24 truck entering in the peak hours and peak hours are generally 25 the highest hour in the morning and the highest hour in the</p>	<p style="text-align: right;">271</p> <p>1 MICHELE ROSENFELD: And you -- can you just read into 2 the record the -- the conclusion of that report which is the 3 second to last paragraph? 4 ERIN GIRARD: Mr. Grossman -- 5 HEARING OFFICER GROSSMAN: Yes. 6 ERIN GIRARD: -- first, I'd like to note an objection. 7 HEARING OFFICER GROSSMAN: Yes. 8 ERIN GIRARD: This is an expert report being provided to 9 us during the course of expert testimony. 10 It's a memorandum from Lenhart Traffic Consulting to the 11 file from Nick Driban -- 12 BRIAN BIDDLE: Driban. 13 ERIN GIRARD: -- Driban. Who's not identified and we, of 14 course, have not had any opportunity to review or evaluate 15 this. 16 I would ask that we be provided an opportunity to review 17 this and call the witness back for cross examination for the 18 purpose of questions on this memo should we determine that 19 would be appropriate after we've had a chance to review it. 20 HEARING OFFICER GROSSMAN: Ms. [inaudible]. 21 MICHELE ROSENFELD: We're fine with that. 22 HEARING OFFICER GROSSMAN: Okay. 23 MICHELE ROSENFELD: And -- and just to clarify, Nick 24 Driban was the one who -- 25 HEARING OFFICER GROSSMAN: He was on the list.</p>
<p style="text-align: right;">270</p> <p>1 evening. 2 That's what staff will look at. And we'd have eight 3 trucks during the day. The IT data has no information on 4 whether that's a light truck or a heavy truck. We've talked 5 about SU30s, which are the biggest U-Haul type truck. The 6 typical truck is a smaller vehicle, we call that a light 7 truck. 8 The data that we've collected, which is a part of this 9 memo, at two other facilities in the county, which, I think 10 we did within the last couple years, indicated very low 11 volume of trucks, no tractor-trailer type vehicles, all U- 12 Haul type trucks, very limited number, mostly passenger 13 vehicles utilizing self-storage. 14 HEARING OFFICER GROSSMAN: So -- 15 MICHELE ROSENFELD: Just to put this in context this is 16 in response to staff's assertions and their staff report that 17 they would expect a large number of trucks -- 18 BRIAN BIDDLE: Mm-hmm. 19 MICHELE ROSENFELD: -- generated by self-storage use. 20 HEARING OFFICER GROSSMAN: So we're making this Exhibit 21 92, the memo to the file by Nick Driban -- 22 BRIAN BIDDLE: Mm-hmm. 23 HEARING OFFICER GROSSMAN: -- re truck traffic I guess 24 anticipated for this storage facil- -- facility. 25 BRIAN BIDDLE: Mm-hmm.</p>	<p style="text-align: right;">272</p> <p>1 MICHELE ROSENFELD: -- was here before -- 2 HEARING OFFICER GROSSMAN: Yeah. 3 MICHELE ROSENFELD: -- but he couldn't be here this 4 week, so. 5 HEARING OFFICER GROSSMAN: All right. 6 ERIN GIRARD: I'm still catching up on -- 7 HEARING OFFICER GROSSMAN: Right. 8 ERIN GIRARD: -- names -- 9 HEARING OFFICER GROSSMAN: Fair -- 10 ERIN GIRARD: -- names in the file -- 11 HEARING OFFICER GROSSMAN: -- fair enough on both sides. 12 Okay. 13 ERIN GIRARD: Thank you. 14 BRIAN BIDDLE: So do you want me to read it from -- the 15 conclusion that's basically -- 16 MICHELE ROSENFELD: Oh, yes. 17 BRIAN BIDDLE: -- these type of facilities that we've 18 seen in Montgomery County are generating mostly passenger car 19 or -- or light -- you know, typical truck traffic and maybe 20 at most a U-Haul, nothing larger than that. 21 MICHELE ROSENFELD: And just out of curiosity because 22 the issue was raised before, in your experience with SHA you 23 -- you -- you said that you've dealt with them a lot -- 24 BRIAN BIDDLE: Mm-hmm. 25 MICHELE ROSENFELD: -- do you have an opinion on the</p>

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<p style="text-align: right;">273</p> <p>1 curb cut on Connecticut Avenue and whether the question that</p> <p>2 Brad fielded earlier as to whether SHA can demand a wider</p> <p>3 curb cut than maybe the ordinance requires?</p> <p>4 BRIAN BIDDLE: Generally, as Brad stated, the State will</p> <p>5 work with the -- the local municipality of the county and</p> <p>6 they can modify that as long as the -- the design vehicle can</p> <p>7 -- can traverse the -- the access point. And there's a</p> <p>8 balancing act, as Brad said, for getting the vehicles in and</p> <p>9 out and then that island for pedestrian refuge and -- and</p> <p>10 we're only talking three feet so I -- I don't think that that</p> <p>11 would be a problem.</p> <p>12 MICHELE ROSENFELD: Okay. Is there anything else you'd</p> <p>13 like to add regarding your analysis of the site from a</p> <p>14 transportation engineer's perspective?</p> <p>15 BRIAN BIDDLE: I don't think I have anything else.</p> <p>16 HEARING OFFICER GROSSMAN: I mean, that wasn't the only</p> <p>17 concern was the width of that access, and also according to</p> <p>18 staff, endangering pedestrians, and bicyclists in terms of</p> <p>19 its location and design. What about that?</p> <p>20 BRIAN BIDDLE: Well, generally the island in an urban</p> <p>21 area, I think AASHTO is the American Association of State</p> <p>22 Highway Transportation Officials.</p> <p>23 They're the ones that establish highway design criteria</p> <p>24 that state highway and the county and just about everybody</p> <p>25 else defaults to. They want an island to be 75 square foot. I</p>	<p style="text-align: right;">275</p> <p>1 can refuge. This is a -- it's going to be a challenge as we</p> <p>2 move up and down the corridor that getting bicycle</p> <p>3 compatibility throughout the state is a challenge for State</p> <p>4 Highway.</p> <p>5 They've told me that. And it may evolve and this is --</p> <p>6 there's nothing wrong with that. And Brad's team has proposed</p> <p>7 this and it's at now -- right now, the safest in my opinion.</p> <p>8 HEARING OFFICER GROSSMAN: Well, it's the safest of the</p> <p>9 alternative choices given what the proposed facility is at</p> <p>10 this location. It still leaves the question. It could be the</p> <p>11 safest but not safe. And that's why I asked you in your</p> <p>12 opinion if it's safe.</p> <p>13 BRIAN BIDDLE: Yeah. Anything can happen. It's a right</p> <p>14 in, right out. Someone could make a left out of there and go</p> <p>15 the wrong way on Connecticut.</p> <p>16 Anything can happen. But in terms of the current</p> <p>17 standards that State Highway has for bicycle facilities along</p> <p>18 state highways and pedestrian facilities, this meets the</p> <p>19 state standards.</p> <p>20 HEARING OFFICER GROSSMAN: Okay.</p> <p>21 ERIN GIRARD: Mr. Biddle, based on your analysis and</p> <p>22 from a transportation-engineering standpoint, do you believe</p> <p>23 the proposed development will be in harmony with the</p> <p>24 character of the Shawnee neighborhood considering traffic</p> <p>25 conditions?</p>
<p style="text-align: right;">274</p> <p>1 don't know how big that one is, but I'm sure that's more than</p> <p>2 adequate for pedestrian refuge.</p> <p>3 Again, it's that balancing act in terms of the bicycle -</p> <p>4 - forgive me, I don't have good eyes. I was on the bike</p> <p>5 commission for [inaudible] County as a public member;</p> <p>6 cyclists want to be on the right side of the road. I haven't</p> <p>7 seen any issue with that.</p> <p>8 I knew the master plan and the sector plans, given the</p> <p>9 bicycle direction we want to take. They wanted as a</p> <p>10 protective facility and I think [inaudible] and Brad have</p> <p>11 come up with that and in the safest way that can be</p> <p>12 accommodated.</p> <p>13 HEARING OFFICER GROSSMAN: Well, let's assume it's the</p> <p>14 safest way it can be accommodated under the current plan. I</p> <p>15 guess the fundamental question is, and raised by staff's</p> <p>16 analysis, is it safe?</p> <p>17 Whether or not it's the safest you can come up with for</p> <p>18 this entry point, is it safe for pedestrians and bicyclists</p> <p>19 interacting with vehicular traffic?</p> <p>20 BRIAN BIDDLE: As it's proposed, it is. The</p> <p>21 channelization island provides refuge from both a bicycle</p> <p>22 point of view. They can stop if they want to, but pedestrians</p> <p>23 can refuge. If it was a typical curb cut and it was 35 feet</p> <p>24 wide, they would have to traverse that.</p> <p>25 And at one stage with vehicles coming in and out, they</p>	<p style="text-align: right;">276</p> <p>1 BRIAN BIDDLE: Yeah. I do. And I think we've heard</p> <p>2 throughout the day from a number of people that self-storage</p> <p>3 is actually a lower traffic generator. So I think this would</p> <p>4 be more problematic if it was something other than self-</p> <p>5 storage cause it's the demand, and the traffic volumes aren't</p> <p>6 that high .</p> <p>7 ERIN GIRARD: For an order of magnitude because it's</p> <p>8 been raised. Residential would be significantly high or</p> <p>9 significantly low?</p> <p>10 HEARING OFFICER GROSSMAN: You have to answer yes or no.</p> <p>11 We can't take --</p> <p>12 BRIAN BIDDLE: Yes. Yep. Yes.</p> <p>13 ERIN GIRARD: From a transportation-engineering</p> <p>14 standpoint, would the proposed conditioning have any</p> <p>15 detrimental effect on vehicular, or pedestrian traffic, or</p> <p>16 safety?</p> <p>17 BRIAN BIDDLE: It will not. And I think that the side</p> <p>18 elements have enhanced both bicycle and pedestrian safety.</p> <p>19 ERIN GIRARD: From a transportation-engineering</p> <p>20 standpoint, will the proposed development cause undue harm to</p> <p>21 the health, safety or welfare of neighboring residents,</p> <p>22 visitors or employees?</p> <p>23 BRIAN BIDDLE: No.</p> <p>24 ERIN GIRARD: And in conclusion, in your expert opinion</p> <p>25 from a standpoint of traffic, is the proposed conditioning</p>

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<p style="text-align: right;">277</p> <p>1 and development suitable for the same compatible with the</p> <p>2 surrounding neighborhood?</p> <p>3 BRIAN BIDDLE: It is.</p> <p>4 ERIN GIRARD: That's all I have.</p> <p>5 HEARING OFFICER GROSSMAN: Do you have cross-</p> <p>6 examination?</p> <p>7 MICHELE ROSENFELD: Yes. I think that you testified</p> <p>8 earlier that the level of service at the intersection of</p> <p>9 Metropolitan Piers Mill was A?</p> <p>10 BRIAN BIDDLE: That's correct.</p> <p>11 MICHELE ROSENFELD: Based on a 2014 analysis.</p> <p>12 BRIAN BIDDLE: Yeah. Staff had provided a summary count,</p> <p>13 which provides not only the traffic data and the peak hours,</p> <p>14 but also the level of service.</p> <p>15 MICHELE ROSENFELD: Okay. Are you aware of any more</p> <p>16 recent analysis that shows that it's at a lower level than</p> <p>17 that?</p> <p>18 BRIAN BIDDLE: I'm not.</p> <p>19 MICHELE ROSENFELD: During the course of your evaluation</p> <p>20 of this project, did you review, or evaluate the internal</p> <p>21 circulation of the drive aisles, the parking spaces, the</p> <p>22 loading dock? Was that part of the scope of your review?</p> <p>23 BRIAN BIDDLE: Generally, on an LATR traffic statement,</p> <p>24 it is not common on it, but I think Brad has provided.</p> <p>25 MICHELE ROSENFELD: And during the course of your</p>	<p style="text-align: right;">279</p> <p>1 hand please? Do you swear or affirm to tell the truth, the</p> <p>2 whole truth and nothing but the truth under penalty of</p> <p>3 perjury?</p> <p>4 PATRICK PHILLIPS: I do.</p> <p>5 HEARING OFFICER GROSSMAN: All right. You may proceed.</p> <p>6 ERIN GIRARD: Mr. Phillips, what's your occupation?</p> <p>7 PATRICK PHILLIPS: I am a real estate development</p> <p>8 consultant.</p> <p>9 ERIN GIRARD: And how long have you been engaged in this</p> <p>10 occupation?</p> <p>11 PATRICK PHILLIPS: I have been working in this field for</p> <p>12 about 35 years. For the last -- until recently, I was</p> <p>13 spending the last nine years as the global CEO of the Urban</p> <p>14 Land Institute or ULI.</p> <p>15 ERIN GIRARD: Okay. And touched on it, but your</p> <p>16 professional educational background?</p> <p>17 PATRICK PHILLIPS: Right. I actually started out in the</p> <p>18 design professions. I was trained originally as a landscape</p> <p>19 architect. I taught for a couple of years.</p> <p>20 And then I went back to graduate school and completed a</p> <p>21 master's in public administration with a focus on public</p> <p>22 finance and management, having become more interested in the</p> <p>23 policy and economic factors affecting real estate decision</p> <p>24 making.</p> <p>25 ERIN GIRARD: And are you a member of any professional</p>
<p style="text-align: right;">278</p> <p>1 review, did you review, or evaluate the access from this</p> <p>2 property onto the adjoining property through the easement</p> <p>3 area?</p> <p>4 BRIAN BIDDLE: We did not.</p> <p>5 MICHELE ROSENFELD: Okay. That's fine. Just clarifying</p> <p>6 the scope of your testimony. All right. Reserving the right</p> <p>7 to question in connection with the Exhibit 92, I have no</p> <p>8 further questions for this witness.</p> <p>9 HEARING OFFICER GROSSMAN: Okay. Any redirect to that</p> <p>10 point?</p> <p>11 ERIN GIRARD: No.</p> <p>12 HEARING OFFICER GROSSMAN: All right. Thank you, sir.</p> <p>13 Appreciate it. All right. Next victim.</p> <p>14 ERIN GIRARD: This one may be wrong, so I just want to</p> <p>15 make sure to the extent we wanted to call it.</p> <p>16 HEARING OFFICER GROSSMAN: Yeah. Let's go.</p> <p>17 ERIN GIRARD: Let's go? Then I'm calling Patrick</p> <p>18 Phillips.</p> <p>19 HEARING OFFICER GROSSMAN: You're a brave man. All</p> <p>20 right. Sir, would you state your full name please and</p> <p>21 address?</p> <p>22 PATRICK PHILLIPS: Yes. My name is Patrick L. Phillips,</p> <p>23 with two Ls, P-H-I, double-L, I-P-S. I'm at 4440 Van Ness</p> <p>24 Street Northwest in Washington, DC, 20016.</p> <p>25 HEARING OFFICER GROSSMAN: Would you raise your right</p>	<p style="text-align: right;">280</p> <p>1 societies or organizations?</p> <p>2 PATRICK PHILLIPS: I am. I'm a -- I could remain an</p> <p>3 active member of the Urban Land Institute. In addition, I'm a</p> <p>4 member of Lambda Alpha, which is the land economics honorary</p> <p>5 fraternity.</p> <p>6 ERIN GIRARD: And have you published anything in these</p> <p>7 fields?</p> <p>8 PATRICK PHILLIPS: I have. I've been a contributor or</p> <p>9 author of -- a primary author of eight books. Mostly</p> <p>10 published by ULI, including The Mixed-use Development</p> <p>11 Handbook, the downtown --</p> <p>12 HEARING OFFICER GROSSMAN: What's ULI?</p> <p>13 PATRICK PHILLIPS: ULI is the Urban Land Institute. Both</p> <p>14 the organization that I remain a member of as well as the</p> <p>15 organization that I used to serve as CEO of.</p> <p>16 HEARING OFFICER GROSSMAN: Okay.</p> <p>17 PATRICK PHILLIPS: So the publications include The</p> <p>18 Downtown Development Handbook, Flexible Zoning Book,</p> <p>19 Entertainment and Retail Destination Book. ULI's a very</p> <p>20 practical organization and these books are intended to share</p> <p>21 best practices among those involved in development projects.</p> <p>22 ERIN GIRARD: And have you qualified as an expert</p> <p>23 witness before?</p> <p>24 PATRICK PHILLIPS: I have, yes.</p> <p>25 ERIN GIRARD: And when and where and what [inaudible]?</p>

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<p>281</p> <p>1 PATRICK PHILLIPS: I have qualified in the U.S. Court of 2 Federal Claims, on a land valuation issue at the Soldiers' 3 and Airmen's Home, at The Federal District Court in Texas 4 related to retail or impacts on retail businesses of roadway 5 construction in Kansas City and in Pennsylvania on issues 6 related to the definition of mixed-use. And then numerous 7 local administrative proceedings like this one. 8 ERIN GIRARD: Okay. Mr. Phillips résumé is exhibit 56. 9 He also has a report that's Exhibit 62H. And we are moving 10 his admission as an expert in both real estate economics and 11 urban planning and development. 12 HEARING OFFICER GROSSMAN: Okay. Hold on one second. You 13 said it was exhibit? 14 ERIN GIRARD: 56, résumé; 62H, report. 15 HEARING OFFICER GROSSMAN: Okay. [Inaudible] résumé. 16 ERIN GIRARD: You said [inaudible] economics and? 17 ERIN GIRARD: Urban planning and development. 18 HEARING OFFICER GROSSMAN: Can't seem to get to the 19 bottom of 56 here. Here it is. All right. And what was the 20 other publication that you said that he submitted a report in 21 this case? 22 ERIN GIRARD: Report 62H. 23 HEARING OFFICER GROSSMAN: 62H. Okay. 24 ERIN GIRARD: It's more a memorandum in responding to 25 staff. Probably [inaudible].</p>	<p>283</p> <p>1 development. 2 It's a global organization. I was the global CEO, so the 3 top staff executive. But the muscle behind ULI is its 4 members. There are a number, these days about 45,000 around 5 the world, and they're involved in all disciplines. A 6 prominent segment of the membership is developers. 7 Developers come in all stripes these days from small 8 entrepreneurs to large institutions. So then a third of our 9 members are our developers; about a third represent investors 10 and other sources of capital that funds development both 11 public and private. 12 And the remaining is a combination of the professional 13 disciplines involved including legal, and architecture, and 14 planning, and engineering, and so forth as well as public 15 sector members, academics and members of nonprofit 16 organizations. 17 ERIN GIRARD: Thank you for that. And Mr. Phillips, are 18 you familiar with the subject property surrounding area and 19 application number CU19-03? 20 PATRICK PHILLIPS: Yes. I am. 21 ERIN GIRARD: And are you familiar with the approved and 22 adopted Kensington Sector Plan and its recommendations with 23 respect both to the property and the surrounding area? 24 PATRICK PHILLIPS: I am, yeah. 25 ERIN GIRARD: And are you familiar with the requirements</p>
<p>282</p> <p>1 HEARING OFFICER GROSSMAN: All right. 62H. All right. To 2 the planning board? 3 ERIN GIRARD: Correct. 4 HEARING OFFICER GROSSMAN: Okay. All right. Did you have 5 any questions regarding this witness's qualifications? 6 ERIN GIRARD: No. I don't. 7 HEARING OFFICER GROSSMAN: All right. And what were the 8 two areas you wished him to be -- 9 ERIN GIRARD: Real estate economics and urban planning 10 and development. 11 HEARING OFFICER GROSSMAN: And urban planning and 12 development. 13 All right. Based on Mr. Phillips qualifications as he 14 outlined and as indicated in his resume and his prior 15 testimony as an expert, I accept him as an expert in real 16 estate economics and urban planning and development. 17 ERIN GIRARD: I'm actually going to put Mr. Phillips in 18 the spot a little bit, because as an active member of ULI 19 myself, it's assumed that people know what that is. But I 20 just -- could you just spend a minute and explain having been 21 at the global, what it is and what its membership is 22 comprised of? I think that is relevant for his expertise. 23 PATRICK PHILLIPS: Sure. ULI is often characterized, I 24 think truthfully, as the world's leading member organization 25 focused on issues involving real estate and urban</p>	<p>284</p> <p>1 of the zoning ordinance with respect to conditional uses in 2 self-storage conditional uses, in particular? 3 PATRICK PHILLIPS: I am, yes. 4 ERIN GIRARD: And are you familiar with the July 15th, 5 2019 staff memorandum of the planning board regarding the 6 conditional use, particularly its analysis regarding sector 7 planning compliance? 8 PATRICK PHILLIPS: Yes. 9 HEARING OFFICER GROSSMAN: That's Exhibit 59? 10 ERIN GIRARD: Mm-hmm. Do you agree with the defined 11 neighborhood depicted on page five of the Stafford? 12 PATRICK PHILLIPS: I do. 13 ERIN GIRARD: Could you review your analysis of the 14 conditional uses compliance with the sector plan and your 15 responses to staff's analysis? 16 PATRICK PHILLIPS: Sure. Yeah. Happy to. I address three 17 interrelated aspects of the proposal. 18 One, whether or not it should really be classified as a 19 mixed-use project, which is certainly a stated objective of 20 the sector plan, and I think relevant in terms of approval of 21 the conditional use as a result. 22 Whether alternative uses, such as office or housing, are 23 viable on the site; and then third, how the project economics 24 work to advance the objectives of the sector plan. 25 HEARING OFFICER GROSSMAN: Yeah. [Inaudible] in one of</p>

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<p>285</p> <p>1 the -- the mixed-use question I saw in your memo Exhibit 62H 2 to the planning board that you had in effect defined mixed- 3 use to include this particular proposal. 4 It was a question I raised last week, I guest August 9th 5 also as to what exactly mixed-use meant in our zoning 6 ordinance. And I don't know if anybody's come up with 7 anything that defined it either in our zoning ordinance. 8 I didn't see it in a definition section, but or in any 9 case law. Have either of you run into something that defines 10 mixed-use? Can it be as Mr. Phillips suggests, two uses such 11 as the ones planned here, or must it have a residential 12 component to it? 13 ERIN GIRARD: Speaking for the town of Kensington at the 14 moment, I don't have any legal authority for you, but we will 15 be addressing that through our testimony. The question of 16 mixed-use and what is it and in the context of this 17 application. 18 HEARING OFFICER GROSSMAN: Okay. I mean, maybe the town 19 of Kensington has some regulation or rule or something that 20 addresses that term. I just don't know. 21 ERIN GIRARD: And as far as the applicant, I mean, when 22 the issue first was raised by staff and staff was really 23 pushing the idea of mixed-use had to include residential, we 24 did the analysis that you were discussing. We looked in the 25 code, we looked in the case law. We looked in popular</p>	<p>287</p> <p>1 producing uses, significant functional and physical 2 integration and conformance to a coherent plan. 3 HEARING OFFICER GROSSMAN: And that's from -- that was 4 from -- 5 PATRICK PHILLIPS: That was from ULI. They first 6 postulated that in 76. They incorporated it in their Mixed- 7 use Development Handbook and most of their literature ever 8 since. 9 This project in fact meets that standard, which I think 10 is about the strictest definition of mixed-use that I've 11 seen. In practical terms today, what people often refer to as 12 mixed-use involves a commercial building with retail below. 13 You do come across mixed-use projects that have three or 14 more uses in a fully integrated way, usually in places like 15 Hong Kong or Shanghai, but not always. So not all of them 16 include housing. Not all of them include any particular use, 17 but the idea is that uses are mixed together. 18 And I think this project meets that test. Now, what's 19 interesting is of course the staff report as was noted 20 earlier in the day by focusing in on the conditional use 21 only, which is the self-storage use immediately discounts the 22 value of the other uses. 23 And when you look at the value of the other uses 24 relative to the sector plan objectives, that's where I think 25 that the -- really the staff report does -- really does not</p>
<p>286</p> <p>1 publications and that's largely how we ended up at urban land 2 institute with Mr. Philips as a known authority as to land 3 use issues. And so -- 4 HEARING OFFICER GROSSMAN: You didn't check MAD 5 Magazine, now? 6 ERIN GIRARD: I don't know. If it came up on the Google 7 search, we might know. 8 HEARING OFFICER GROSSMAN: All right. I'm sorry for 9 interrupting. 10 PATRICK PHILLIPS: That's all right. I'll start by 11 addressing that specific question, because I do think both 12 the conventional definition of mixed-use as well as the 13 Kensington sector planner, in fact, agnostic has two 14 particular uses. 15 I think the question is as it relates to Kensington 16 sector plan is whether or not mixed-use helps to create the 17 vibrant pedestrian environment that the town seeks. And I'll 18 come back to that question later. 19 But I think the objective definition, the best objective 20 definition of mixed-use is the one that the urban land 21 institute first postulated back in 1976 which is that, and I 22 think this is actually, even though I think it's too strict 23 for practical use today, it actually does apply reasonably 24 well to our [inaudible] project here. 25 That is that the project includes, three or more revenue</p>	<p>288</p> <p>1 serve the town well or the county well. 2 This fatal flaw of the staff analysis in my view, is to 3 not consider this project as a fully integrated whole as a 4 mixed-use project. 5 HEARING OFFICER GROSSMAN: Well, let me ask you this 6 then. I'll come back to that mixed-use question. Is there 7 anything in the literature that -- not just the pure 8 definition that you gave us from ULI, but also talks about 9 the quantity of the uses that are combined? 10 So how much of a non-storage use does it take to make it 11 a truly mixed-use if only 10.2 percent, or whatever it is 12 here, is the other elements combined in fact, is that 13 sufficient to make this truly a mixed-use in the sense that 14 planners see it? 15 PATRICK PHILLIPS: Right. Like many things, this is in 16 the eye of the beholder. And it's all about perception and 17 design. 18 I think that the way the project is designed and 19 operated has a great deal to do with whether or not it comes 20 across -- it's perceived to be a mixed-use project. I would 21 agree that the strict proportion, the number of square feet 22 in this particular project devoted to this, the non-storage 23 uses is a relatively small percentage. 24 But that ignores the fact about where that -- those uses 25 are. They're on the street level and the second level. They</p>

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<p style="text-align: right;">289</p> <p>1 are in the immediate zone of perception of the pedestrians, 2 of the motorists, of the people who are experiencing this 3 building. 4 So I think it's both the quantity, but it's not just the 5 quantity. I think it's where these are, how they're managed, 6 the nature and quality of those uses, how they interact with 7 one another, how they interact with the public space. It's a 8 more complex equation than that. 9 HEARING OFFICER GROSSMAN: Okay. 10 PATRICK PHILLIPS: So my first point is that I think 11 this is clearly a mixed-use development and deserves the 12 consideration that the town and the county grant mixed-use 13 developments when they think about which projects should 14 receive conditional use approval. 15 The second point that I examined was that of alternative 16 uses. And again, the reason for that was the implicit in the 17 sector plan I think, and explicit in some of the certainly 18 the planning board hearing. 19 And in some of the staff testimony in their report, was 20 that the plans envisioned that a higher density, more 21 pedestrian friendly downtown would be delivered by a project 22 that had housing or office space above. 23 I think they were fine. Even though they dismissed it in 24 the staff report, I think they were fine with the restaurant 25 and arts uses, but the challenge seemed to be accepting the</p>	<p style="text-align: right;">291</p> <p>1 My function is to look at this plan and this proposal 2 and say whether it comports with the zoning ordinance. Does 3 anybody disagree with that? 4 ERIN GIRARD: No. And Mr. Phillips will certainly speak 5 to that. But I think that you can't ignore the fact that that 6 was an issue for staff, that's included in the planning 7 board's rationale, and that's an issue for the town. 8 So I feel we should get a chance to rebut than waiting 9 for the next best thing. If we passed this by, we'll get 10 residential. We're not going to dwell on it, but I think just 11 to complete the record we're responding to those assertions. 12 HEARING OFFICER GROSSMAN: All right. I mean, I'll let 13 the witness testify about it, but I have to say, I don't 14 think, and I think you agree with me, and I think that Ms. 15 Rosenfeld agrees with me, it's not something I should be 16 considering, whether they're alternatives or not. 17 I mean, it is possible that the town of Kensington is 18 making an unwise decision if this witness is correct. But 19 they could still have an opinion about it, which they've 20 voiced as the technical staff in the planning board. 21 ERIN GIRARD: And Mr. Grossman if I may, I do agree with 22 you that the financials of this project are not grounded in 23 the zoning ordinance findings that you need to make. 24 I also disagree with the assertion that the town's 25 position is grounded in financial considerations or viability</p>
<p style="text-align: right;">290</p> <p>1 storage uses of above. 2 So that again is a very conventional solution these 3 days, and often we refer to it as mixed-use even though it 4 might just have two uses. 5 The challenge here in Kensington though is that -- is 6 the market demand and the sufficient revenue to produce 7 feasible set of uses involving office and housing just don't 8 exist. 9 Now, they may in the future, but I think it's the market 10 has a long way to go to support market rate housing or 11 multitenant office at a scale that's envisioned and desired 12 by the town sector plan at this location. 13 If the -- while I did not do a full market feasibility 14 study or financial analysis of the project, it's clear based 15 on a scan of the market that the rental rates are 16 insufficient to support new construction at this location. 17 And that's particularly true with a building this size. 18 Because for either office or residential, the parking demand 19 would be such that you'd have to either go down underground 20 parking or create structured parking. Either of those 21 solutions would cost so much as just to exacerbate the 22 feasibility problem. 23 HEARING OFFICER GROSSMAN: But you're asking you address 24 alternatives and whether they would be viable, and I don't 25 think that's my function.</p>	<p style="text-align: right;">292</p> <p>1 considerations. I've proffered in our testimony with Michele, 2 if they're grounded in the conditions and the findings that 3 you need to make pursuant to the zoning code. 4 HEARING OFFICER GROSSMAN: Right. Well, that's what it 5 seems from the submissions I've received from town. Okay. 6 PATRICK PHILLIPS: Well, let me conclude with the final 7 point, which is that the projects, the way the development 8 economics of the project work, I believe advances both -- 9 optimizes the public benefits of the project and advances the 10 sector plan objectives, which I think is the critical point 11 here. 12 So this is a lot like most mixed-use projects. There is 13 a single-use that typically produces the bulk of the net 14 operating income. 15 And in this case, it's sufficient as the applicant, I 16 think testified a little while ago, to support those 17 animating ground floor and second floor uses. And those would 18 not be financially feasible on their own. 19 And as I noted, I don't think there are other 20 alternatives for the upper floors that would make them 21 financially feasible. So I think self-storage is one use. It 22 may be the only use that enables the creation of a taller, 23 more substantial building at this location. 24 The creation of a high quality urban public space that 25 enhances the connectivity of this site to its surroundings; a</p>

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<p style="text-align: right;">293</p> <p>1 retail presence at the ground floor and an artist and maker 2 studio on the second floor. 3 And all of those things, the way I read the sector plan 4 are highly consistent with it. Staff report expressed some 5 concern about the viability of the ground floor and second 6 floor uses if the upstairs were self-storage instead of 7 housing or office. 8 They also suggested that the lack of housing or office 9 in the upper floors would impact the pedestrian intensity on 10 the street. And I just wanted to note that I disagree with 11 that. I think that it's clear that the restaurant will 12 require a far larger customer base than the people who might 13 live or work upstairs. 14 And the pedestrian activity, in fact, I think is going 15 to be enhanced by these uses because it'll be a destination 16 draw from the surrounding neighborhoods. We just had a 17 conversation about parking. 18 I think remote parking perhaps over on Howard in the 19 Antiques District would be great because those people would 20 then walk to this location perhaps to eat or visit a gallery. 21 HEARING OFFICER GROSSMAN: You don't think that a 22 restaurant's chances of success are significantly improved by 23 having five stories of residences above them? 24 PATRICK PHILLIPS: Very minor. If you do the math, and 25 you look at the purport -- at the proportion of incomes of</p>	<p style="text-align: right;">295</p> <p>1 and it animates these ground floor uses and so forth. And the 2 design, I think is substantially better than a conventional 3 project. 4 This is a trend that we see in the self-storage 5 industry. The sponsors of these projects are having to do a 6 better job. 7 They're having to produce higher-quality buildings in 8 order to afford the land in these more urban locations, which 9 are very desirable as Mr. McKone suggested because of the 10 population density around them. 11 So I understand the town's position with respect to 12 this, but I do think that this project is -- represents the 13 next stage of evolution of self-storage. 14 ERIN GIRARD: And you became involved in this project 15 right around or shortly before the staff report was drafted? 16 PATRICK PHILLIPS: I did, yes. 17 ERIN GIRARD: And your memorandum is largely in 18 responsive to staff's analysis? 19 PATRICK PHILLIPS: Correct. 20 ERIN GIRARD: And so without having had a traditional 21 part, have you reviewed the statement of justification that's 22 included in the exhibit 53 in the record? 23 PATRICK PHILLIPS: I have, yes. 24 ERIN GIRARD: And in that, as the hearing examiner noted 25 earlier, pages four to 14, there's a more detailed analysis</p>
<p style="text-align: right;">294</p> <p>1 those residents that are spent dining out, and if you look at 2 all of their competitive options, and you calculate or 3 estimate rather what proportion of that spending will be done 4 on site, and then how that translates to the viability of the 5 restaurant, it's meaningful. 6 But it's less than five percent. Well, less than five 7 percent. So those were my three points. It's a mixed-use 8 project. And without doubt, the alternative uses I think are 9 problematic. 10 And in my view the development economics and the mixed- 11 use nature of this project advance the sector plan 12 objectives, I think this is the highest and best use of the 13 property. 14 ERIN GIRARD: The staff report also expressed fears that 15 the self-storage here would create a self-storage hub and 16 that it would have a deadening effect. I think you touched on 17 the deadening effect a little bit. But then it would have an 18 adverse impact on the development of neighboring properties. 19 Can you speak to that? 20 PATRICK PHILLIPS: Sure. Yeah. That's an understandable 21 point of view if you're looking at the previous generations 22 of self-storage facilities not only in Kensington but 23 throughout this region. 24 I think what's being proposed is a very innovative and 25 contemporary example of self-storage in that it is mixed-use</p>	<p style="text-align: right;">296</p> <p>1 of the compliance of the proposed project with specific 2 sector plan criteria. You've reviewed that? 3 PATRICK PHILLIPS: I have. 4 ERIN GIRARD: And what are your thoughts on that 5 analysis? 6 PATRICK PHILLIPS: I agree. I agree that there's 7 consistency across each of those points. 8 HEARING OFFICER GROSSMAN: Now, before we leave that 9 actually, I'm looking at page four now, that analysis. And 10 one of the questions we just discussed about that residences 11 over the other uses such as a restaurant, I note there's a 12 quotation from the sector plan in the very first part of this 13 on page four. 14 It says, Kensington Town Center will be a lively and 15 active place with streets that are welcoming and comfortable 16 for residents, workers and visitors. It will be reachable by 17 walking and bicycle from Kensington neighborhoods, which can 18 reduce the vehicle miles traveled, conserve energy and 19 reduced carbon emissions. 20 I was a little disturbed when I went to look at the 21 sector plan that you left off the last sentence of that 22 paragraph. 23 And that last sentence reads, the town centers will also 24 broaden housing choices for an array of ages and incomes. 25 Which it seems to me if you were addressing what the sector</p>

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<p style="text-align: right;">297</p> <p>1 plan seeks, that would be irrelevant sentence to have in that 2 first part of your bullet point, your first bullet point. Not 3 to leave it off. 4 ERIN GIRARD: Honestly, I apologize for that. I allot 5 many sector plans and master plans call for residential in a 6 given area. 7 It's not specific to the -- if it were specific to this 8 property that had to be residential and we left that off, I'm 9 not saying that it should've been left out here, but I'm 10 saying general recommendations about residential within a 11 given area. 12 I think this isn't residential, so to say that 13 residential had to go here clearly there wouldn't -- 14 HEARING OFFICER GROSSMAN: I'm not saying it has to go 15 there. I'm just saying that to fully convey what the sector 16 plan seeks, it seems to me that your first bullet point taken 17 from sector plan page one ought not to leave off the last 18 sentence, which also mentions that it would broaden housing 19 choices in the center of Kensington and a town -- Kensington 20 Town Center for an array of ages and incomes. So I was 21 concerned about that. All right? You may go further. 22 ERIN GIRARD: Okay. I guess on that point, Mr. Phillips, 23 are you aware of any recommendations in the sector plan that 24 call for residential on the site specifically? 25 PATRICK PHILLIPS: No. Not specifically, no.</p>	<p style="text-align: right;">299</p> <p>1 concern. I think the presence of the previous two raise that 2 legitimate concern. I think in this case, again, this one is 3 qualitatively very different than the previous ones, but it 4 is a tradeoff. 5 And I think again, the ability to get the benefits of a 6 substantial building at a prominent intersection, animated 7 and activated at the ground floor use, high quality public 8 space in addition to the artists and maker studios is an 9 acceptable trade-off. I think the risk of being seen as a 10 self-storage, a concentration that's immutable and forever is 11 relatively low. 12 HEARING OFFICER GROSSMAN: Okay. 13 ERIN GIRARD: And in your opinion will the [inaudible] 14 proposed conditional use cause undue harm? Have I said that? 15 HEARING OFFICER GROSSMAN: You can repeat it. 16 ERIN GIRARD: It's getting late in the day. In your 17 opinion, will the proposed conditional use cause undue harm 18 to the use peaceful enjoyment, economic value or development 19 potential of a budding and confronting property or the 20 general neighborhood? 21 PATRICK PHILLIPS: Now again, I think in most cases this 22 will be improved. 23 ERIN GIRARD: And in your opinion, will the proposed 24 conditional use cause any undue harm to the health, safety or 25 welfare of neighboring residents, visitors or employees.</p>
<p style="text-align: right;">298</p> <p>1 ERIN GIRARD: In your opinion, were the proposed 2 conditional use comply with the standards and requirements of 3 the zone of the zoning ordinance governing self-storage 4 conditional uses and section 59731E of the zoning ordinance 5 governing conditional uses in general? 6 PATRICK PHILLIPS: Yes. I believe it will. 7 ERIN GIRARD: And in your opinion, will the proposed 8 conditional use be harmonious with the character of the 9 surrounding neighborhood? 10 PATRICK PHILLIPS: I do. I, like some others, believe 11 that this would represent a substantial improvement and 12 reflect well on the neighborhood around it. 13 ERIN GIRARD: And in your opinion, will the proposed 14 conditional use cause undue harm to use peaceful enjoyment, 15 economic value or development potential of a budding and 16 confronting properties or the general neighborhood? 17 PATRICK PHILLIPS: No. Just the opposite. 18 HEARING OFFICER GROSSMAN: And what about the issue 19 that's been raised by the town, by others about whether or 20 not having a third self-storage facility in this area, and 21 especially right in the middle of such a prominent place in 22 the town center, would discourage other kinds of development 23 in the area that the town and that the sector plan wants to 24 encourage? 25 PATRICK PHILLIPS: Yeah. Again, an understandable</p>	<p style="text-align: right;">300</p> <p>1 And your expert opinion, is the proposed conditional use 2 suitable for this site in compliance with the Kensington 3 Sector Plan and compatible with the surrounding area? 4 MR. PHILLIPS : I believe it is, yes. 5 ERIN GIRARD: That's all I have. 6 HEARING OFFICER GROSSMAN: All right. Cross-examination? 7 MICHELE ROSENFELD: Yes. Thank you. Mr. Phillips, you -- 8 in your testimony, you talked about comments or discussion in 9 the staff report, the Planning Board staff report related to 10 the financial viability of this project and that part of your 11 testimony was intended to address those sections. Would you 12 please point me to the provisions of the staff report that 13 you are refuting? 14 PATRICK PHILLIPS: Yeah. It wasn't about the general 15 viability of the overall project. I think the viability of 16 the self-storage as well accepted by the staff. The point 17 that I was referring to was a concern by the staff that the 18 lack of residents or workers in the upper floors would 19 somehow negatively impact buy-ability of the restaurant in 20 particular. 21 MICHELE ROSENFELD: And can you show me where that is in 22 the staff report? 23 PATRICK PHILLIPS: Yeah. Let me find it. I think the 24 paragraph that speaks to that is on page eight. The first 25 full paragraph down to the bullet points, which is really</p>

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<p>301</p> <p>1 about the level of activity and the critical mass of 2 pedestrian traffic along sidewalks. And the -- do you see it 3 there? 4 MICHELE ROSENFELD: Are you talking about the sentence 5 that says the proposed use itself will not create a critical 6 mass of activity along the sidewalks? 7 PATRICK PHILLIPS: Correct. Yeah. 8 MICHELE ROSENFELD: Anything else in that paragraph? 9 PATRICK PHILLIPS: No. I think that's what it was. I 10 think perhaps my characterization but also reflected 11 conversations that I had had with Ms. Girard, following her 12 conversations with the staff. So those were conveyed in that 13 way. 14 MICHELE ROSENFELD: Okay. Based on your understanding of 15 the operations of the of the self-storage facility itself, do 16 you have an opinion as to whether or not a six-story 17 residential building on this property would generate more 18 street front activity than this proposed use would? 19 PATRICK PHILLIPS: I think at the margin, it probably 20 would. I don't think that's on a viable use at all. But sure, 21 if you put six floors of residents or office workers or hotel 22 guests above a restaurant, you'd probably get a few more 23 folks generated by that building. 24 MICHELE ROSENFELD: Generated by that building. 25 PATRICK PHILLIPS: My point is that the restaurant and</p>	<p>303</p> <p>1 standard is not codified anywhere in Montgomery County 2 Zoning? 3 PATRICK PHILLIPS: No. As far as I know. 4 MICHELE ROSENFELD: And in your experience with local 5 jurisdictions, do local jurisdictions draw on things like 6 sector plans and staff reports and other supporting documents 7 in trying to determine what a mixed-use is at a particular 8 location? 9 PATRICK PHILLIPS: Yes. I think they do. I think that 10 it's an evolving concept. Here, we have a project that we 11 wouldn't have seen 10 years ago. This is a new paradigm for 12 both towns as well as for real estate developers. 13 And I think we have to ask ourselves is this consistent 14 with the spirit of mixed-use and does it advance the 15 objectives of a particular plan? In this case, the sector 16 plan. I think it does. 17 MICHELE ROSENFELD: And so going to paragraph 21 of the 18 Kensington Sector Plan -- do you have a copy? 19 PATRICK PHILLIPS: I don't have a full copy. 20 HEARING OFFICER GROSSMAN: I have a copy. 21 MICHELE ROSENFELD: Actually, Mr. Grossman. I'm not sure 22 there is a full copy in the record. 23 PATRICK PHILLIPS: Okay. Can I have [inaudible]? Thank 24 you. 25 HEARING OFFICER GROSSMAN: I don't have a binder.</p>
<p>302</p> <p>1 the maker space in this particular building, will also create 2 a destination for others in the surrounding neighborhoods and 3 who want to come to Kensington for this experience. 4 MICHELE ROSENFELD: Right? No. I understand that. But 5 you would agree, wouldn't you, that the self-storage unit 6 component itself does not generate a great deal with 7 pedestrian traffic? 8 In fact, the design model that we heard was that the 9 entire facility is designed to encourage people to approach 10 from the rear so that nobody ever sees it loading or 11 unloading. 12 PATRICK PHILLIPS: Sure. It's a very functional 13 experience. Right. 14 MICHELE ROSENFELD: The ULI definition of mixed-use that 15 you've referenced is certainly one frame of reference with 16 prospect to mixed-use. In your experience, do different 17 jurisdictions identify or codify mixed-use in different ways? 18 PATRICK PHILLIPS: I've been involved in three cases 19 where that question has been litigated. So I think it's not 20 something that's well defined, in fact. 21 And again, I think that ULI's definition is a bit too 22 strict to reflect standard practice these days. But the point 23 that I wanted to make in using it was that it's agnostic as 24 to use. 25 MICHELE ROSENFELD: Okay. And to your knowledge, the ULI</p>	<p>304</p> <p>1 PATRICK PHILLIPS: Which page we were? 2 MICHELE ROSENFELD: Page 21. 3 PATRICK PHILLIPS: Yeah. 4 MICHELE ROSENFELD: So the first full paragraph there. 5 The town center is envisioned as a walkable, attractive place 6 with local convenience retail, housing, dining and 7 entertainment, offices and neighborhood services, in a 8 compact development pattern with a variety of buildings along 9 Connecticut Avenue. 10 Does that describe to you a mixed-use type of setting in 11 the town center? 12 PATRICK PHILLIPS: Yes. 13 MICHELE ROSENFELD: Okay. The next sentences; properties 14 with the potential to support mixed-use developments with 15 parking structures could have five to six story buildings. 16 While most other properties that do not mix uses would have 17 street activating retail and services in one or two story 18 buildings with surface parking. 19 It seems to me that this recommendation encourages 20 higher buildings with underground parking and surface parking 21 for lower density uses. It does not support structured 22 parking. 23 Can you reconcile for me or do you have an opinion as to 24 how you reconcile this recommendation from the master plan 25 with this proposal, which goes to six stories and has no</p>

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<p>305</p> <p>1 underground parking?</p> <p>2 PATRICK PHILLIPS: That's the magic of it. It's the only</p> <p>3 way you can get a substantial building on this site without</p> <p>4 structured parking.</p> <p>5 MICHELE ROSENFELD: And on what do you base that</p> <p>6 opinion?</p> <p>7 PATRICK PHILLIPS: My experience and the numbers. I</p> <p>8 mean, if you look at the supportable rents for office or</p> <p>9 housing, the most conventional uses that would go up to six</p> <p>10 stories. You just can't get the rent then an operating income</p> <p>11 to support the development costs because of the parking</p> <p>12 demand for us to either into a structure or underground or a</p> <p>13 combination of both.</p> <p>14 So what you have here is, in my view, a solution to that</p> <p>15 dilemma. This project reconciles what the challenge between</p> <p>16 creating substantial building on a prominent site that's</p> <p>17 financially viable and activating the street.</p> <p>18 MICHELE ROSENFELD: And have you been privy to any</p> <p>19 financial analysis or economic pro formas for developing this</p> <p>20 site?</p> <p>21 PATRICK PHILLIPS: Only the numbers that I researched</p> <p>22 myself in analytics, I haven't seen the developer's pro</p> <p>23 forma.</p> <p>24 MICHELE ROSENFELD: Okay. And where do you derive those</p> <p>25 numbers from?</p>	<p>307</p> <p>1 the zoning ordinance or section that required some financial</p> <p>2 viability, a conservation, which ultimately the council</p> <p>3 decided to take out, not in these particular provisions, but</p> <p>4 elsewhere in the code.</p> <p>5 MICHELE ROSENFELD: I'd like to turn to page two of your</p> <p>6 memorandum, which is Exhibit 62H. In this, the second full</p> <p>7 paragraph under the heading alternative use uses lack of</p> <p>8 market demand.</p> <p>9 You say, however, Kensington does not currently</p> <p>10 represent an established submarket for moderate density</p> <p>11 multifamily or for multi-tenant office.</p> <p>12 And then you go on. I'm not going to read the full</p> <p>13 paragraph. Is this statement in here for the proposition that</p> <p>14 moderate density multifamily or multitenant use just is not</p> <p>15 an appropriate use or a viable use in the Kensington Town</p> <p>16 Center?</p> <p>17 PATRICK PHILLIPS: What I was trying to do was establish</p> <p>18 a baseline for the viability as we were just talking about</p> <p>19 for alternative uses on this particular site.</p> <p>20 And what I found again in looking at other competitive</p> <p>21 submarkets in Montgomery County is that Kensington, while it</p> <p>22 does have some apartment buildings and well, it certainly has</p> <p>23 some office buildings, it's not in a position right now to</p> <p>24 generate the rents that'll support new construction.</p> <p>25 MICHELE ROSENFELD: Okay. And when you say moderate</p>
<p>306</p> <p>1 PATRICK PHILLIPS: I've created hundreds of pro formas</p> <p>2 in metropolitan Washington for all kinds of uses.</p> <p>3 MICHELE ROSENFELD: And so to the -- did you create a</p> <p>4 pro forma specific to this property?</p> <p>5 PATRICK PHILLIPS: Back of the envelope pro forma, yeah.</p> <p>6 Didn't include it in my report but did enough to understand</p> <p>7 that the leap required to get from today's position to what</p> <p>8 would be required to produce financial viability for housing</p> <p>9 or office was simply too great.</p> <p>10 MICHELE ROSENFELD: Mr. Grossman, I have two responses</p> <p>11 to that. The first is as I think we've recognized the</p> <p>12 financial viability of the project is not a consideration</p> <p>13 before you. It's not one of the findings that you need to</p> <p>14 reach.</p> <p>15 HEARING OFFICER GROSSMAN: Right.</p> <p>16 MICHELE ROSENFELD: On the other hand, if the financial</p> <p>17 viability of the project is something that is an issue in</p> <p>18 this case that is going to be considered, then I would</p> <p>19 request that the back of the envelope calculations and any</p> <p>20 other supporting financial analysis that the expert has</p> <p>21 prepared, be provided to us so that we can review.</p> <p>22 HEARING OFFICER GROSSMAN: Not an issue for me.</p> <p>23 MICHELE ROSENFELD: Thank you.</p> <p>24 HEARING OFFICER GROSSMAN: It will not be an issue that</p> <p>25 I will evaluate in my report and decision. There once was in</p>	<p>308</p> <p>1 density multifamily, can you describe to me what that means?</p> <p>2 PATRICK PHILLIPS: Yeah. Four to six story residential</p> <p>3 with retail on the ground floor.</p> <p>4 MICHELE ROSENFELD: With respect -- going back to the</p> <p>5 lack of residential -- let me start again. Exhibit 62H again,</p> <p>6 your memorandum, page three. You say the lack of residence or</p> <p>7 office workers in the upper floors has only a small impact on</p> <p>8 the market ability of the restaurants and or uses. And you've</p> <p>9 touched on this earlier.</p> <p>10 Recognizing that an office, a residential or office</p> <p>11 building isn't going to on its own support a restaurant or</p> <p>12 retail, isn't it fair to say that there is a cumulative</p> <p>13 impact that as you increase the housing stock in a given</p> <p>14 area, it -- well, rising tide floats all boats.</p> <p>15 So if there were residential here and then in other</p> <p>16 places as well, it would make any retail or residential use</p> <p>17 more viable.</p> <p>18 ERIN GIRARD: I'm going to object. We seem to be having</p> <p>19 it both ways. We don't want to talk about alternate uses, but</p> <p>20 then we want to ask about alternate uses.</p> <p>21 HEARING OFFICER GROSSMAN: Well, I would agree with you,</p> <p>22 but I think you asked for it to be both ways so I've got to</p> <p>23 be fair to the other side. I mean, I'm not [inaudible].</p> <p>24 ERIN GIRARD: Yeah. I mean, I explained why we did what</p> <p>25 we did. I feel we were trying to be responsive.</p>


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78 (309 to 312)

<p>309</p> <p>1 HEARING OFFICER GROSSMAN: Right. I asked both sides. 2 Both sides indicated to me that they agreed that it was not 3 an issue that is before me, whether alternative uses and that 4 I should -- so both sides agree with that. And then both 5 sides want to put on some evidence about it. And this is the 6 cross-examination, so I'm certainly going to give it a leeway 7 to do that. 8 ERIN GIRARD: Okay. 9 PATRICK PHILLIPS: Could you repeat the question for me? 10 MICHELE ROSENFELD: Do you remember the question? 11 PATRICK PHILLIPS: I think you said that won't 12 additional housing either on this side or in the surroundings 13 continue to or increase the support of the restaurant. 14 MICHELE ROSENFELD: Right. And I think my real question 15 is, to the extent that they are cumulative impacts as you can 16 increase the residential housing of any kind in a community, 17 particularly in a town center, doesn't it help support the 18 retail and residential -- retail and commercial? 19 PATRICK PHILLIPS: Sure. The more buying power, the 20 better that's accessible to the site. But again, I don't 21 think residential in particular is viable on this particular 22 site. And then if it were, it would reflect a very small 23 percentage of the sales required to support the rents at the 24 restaurant site. 25 MICHELE ROSENFELD: Okay. Mr. Grossman, if I may have</p>	<p>311</p> <p>1 TRACEY FURMAN: [Inaudible]. 2 HEARING OFFICER GROSSMAN: You had one witness, I 3 thought, who could not make it for example, on Thursdays. How 4 about Thursday? 5 TRACEY FURMAN: [Inaudible]. I think he can make this 6 Thursday. 7 ERIN GIRARD: Right. Yeah. It sounds like Thursdays are 8 going to work. 9 MICHELE ROSENFELD: I think what I'd like to do is find 10 out what our next day will be and then -- 11 HEARING OFFICER GROSSMAN: Okay. 12 ERIN GIRARD: It sounds like Thursday unfortunately 13 you're not -- is not going to work for Mr. McKone. 14 HEARING OFFICER GROSSMAN: Okay. 15 MICHELE ROSENFELD: Okay. All right. Then yes, we will - 16 - 17 HEARING OFFICER GROSSMAN: So all right. So you want to 18 put on -- 19 MICHELE ROSENFELD: To be quite honest, it's late in the 20 day and I'm tired. But if it means, I mean, I don't want to 21 compromise the applicant's ability to have their witnesses 22 here. 23 It sounds like Thursday is not going to work. Could we 24 just have a moment to confer? 25 HEARING OFFICER GROSSMAN: Sure. And I apologize to</p>
<p>310</p> <p>1 just a moment. 2 HEARING OFFICER GROSSMAN: Sure. 3 MICHELE ROSENFELD: Mr. Grossman, I have no further 4 questions. 5 HEARING OFFICER GROSSMAN: All right. Any redirect? 6 ERIN GIRARD: Only one. On the provision of page 21, 7 that Ms. Rosenfeld drew your attention to about the parking 8 structure. In your experience, does parking structure 9 necessarily equate to underground parking? 10 PATRICK PHILLIPS: No. 11 ERIN GIRARD: And are you aware of the overhang that 12 essentially shields some of the parking here? So would you 13 call this a typical surface parking lot? 14 PATRICK PHILLIPS: It's a bit of a hybrid. It's not 15 strictly speaking just surfaces protected, but is -- I 16 wouldn't call a structured [inaudible]. 17 ERIN GIRARD: That's all. 18 HEARING OFFICER GROSSMAN: Any re-cross? 19 MICHELE ROSENFELD: No. Thank you. 20 HEARING OFFICER GROSSMAN: All right. Thank you very 21 much, Mr. Phillips. I appreciate it. 22 PATRICK PHILLIPS: I know the whole crowd appreciates 23 it. 24 HEARING OFFICER GROSSMAN: All right. So shall we 25 proceed with the town's first witness?</p>	<p>312</p> <p>1 everybody for keeping you in this non air conditioned 2 conditions with me, but consider it a hot date. All right. 3 You want -- 4 ERIN GIRARD: Could we go off the record for a moment? 5 HEARING OFFICER GROSSMAN: Sure. 6 ERIN GIRARD: We're sure hoping that September 3rd works 7 for you because that works for all the parties. 8 HEARING OFFICER GROSSMAN: September 3rd. Well that's a 9 Wednesday. 10 ERIN GIRARD: Tuesday. 11 HEARING OFFICER GROSSMAN: It's a Tuesday? 12 ERIN GIRARD: It's the Tuesday after Labor Day. 13 HEARING OFFICER GROSSMAN: Okay. Tuesday after Labor 14 Day? Well, my wife hasn't told me that I have any 15 obligations. All right. Let's do that. 16 ERIN GIRARD: Okay. Great. Thank you. 17 HEARING OFFICER GROSSMAN: And I don't think that 18 council comes back into session until the following Tuesday, 19 so I think we'd be okay. Said that would be September 3, 20 2019. You realize you're giving me two hearings in one week. 21 I'm a bit old. 22 ERIN GIRARD: Well, we originally landed on the sixth 23 and I go, wait a minute. 24 HEARING OFFICER GROSSMAN: I know. I have one already. 25 Okay. So since we're all agreed, I'll just announce it on the</p>

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<p>313</p> <p>1 public record at this time that this hearing after recess was 2 today. 3 Maybe we'll go on further if you all want to, but we 4 don't have to I suppose. But this hearing after recess today 5 will resume on September 3, 2019 at 9:30 a.m. in this room; 6 that is, the board of appeals and OZAH hearing room. It has a 7 name I've known for 15 years. I can't recall it right now. 8 And on the second floor of the counsel office building 9 at 100 Maryland Avenue, Rockville Maryland. All right. So 10 that's all the notice that will go out. Did I say that 11 sufficiently? I think I did. It's the Davidson Memorial 12 Hearing Room. There you go. 13 Jason [inaudible] office at room 200. Okay. Is there 14 anything further we should be handling today? I should say 15 that I asked you Mr. Bradford the electronic copy of what you 16 submitted, so it's still like that. And also of any other 17 exhibit that you submitted today. Okay. Not just the plans, 18 but there were some other text exhibits. 19 ERIN GIRARD: Yes. Sure. So if you could email me that 20 tomorrow, that would be fine. Or if you have it with you now, 21 you can give it to me if it's on disc. 22 MICHELE ROSENFELD: Okay. Yeah. 23 HEARING OFFICER GROSSMAN: And also there were other 24 things that were to be submitted much of -- I think we all 25 went through some by both sides. Since we have a little time</p>	<p>315</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Christian Naaden, do hereby certify that the foregoing 3 transcript is a true and correct record of the recorded 4 proceedings; that said proceedings were transcribed to the 5 best of my ability from the audio recording and supporting 6 information; and that I am neither counsel for, related to, 7 nor employed by any of the parties to this case and have no 8 interest, financial or otherwise, in its outcome. 9 10  11 _____ 12 Christian Naaden 13 DATE: August 22, 2019 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>314</p> <p>1 between now and September 3, let's get them in. 2 Let's see. Today is the 20th. So how about by the 27th? 3 Does that make sense to everybody? That everything that's 4 still outstanding will be submitted? I wouldn't wait until 5 then to get the -- any anything to technical staff. I'd get 6 copies to technical staff by tomorrow, so that we give them 7 time to respond. 8 All right. We all agreed with that. Anything else that 9 needs to be covered? All right. Well, thank you all for 10 putting up with the temperature control issues here and 11 hopefully they'll have it fixed by our next session. 12 MALE: Sir, did you order the transcript? 13 HEARING OFFICER GROSSMAN: Yeah. Let's order it on the 14 48-hour turnaround. 15 MALE: 48 hour? 16 HEARING OFFICER GROSSMAN: Yeah. 17 HEARING OFFICER GROSSMAN: That would be by Thursday. 18 MALE: Thursday, the 22nd. 19 HEARING OFFICER GROSSMAN: Whatever that is on your -- 20 you have three levels. You have regular 48 hour and 24 hour. 21 This would be the 48-hour level. 22 MALE: Sure. Thank you. 23 HEARING OFFICER GROSSMAN: You're welcome. 24 (Off the record at 5:32:21 p.m.) 25</p>	