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Transcript of Hearing

Date: May 1, 2020

Case: Way Station, Inc.

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Conducted on May 1, 2020

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2	FOR MONTGOMERY COUNTY, MARYLAND	2	FOR MONTGOMERY COUNTY OFFICE OF ZONING AND	
3	- - - - -x	3	ADMINISTRATIVE HEARINGS:	
4	WAY STATION, INC., : Case No. CU 20-01	4	LYNN ROBESON HANNAN - HEARING EXAMINER	
5	Applicant. :	5		
6	- - - - -x	6	ON BEHALF OF THE APPLICANT:	
7		7	JOHN S. KLINE, ESQUIRE	
8	HEARING	8	MILLER, MILLER & CANBY	
9	BEFORE HEARING EXAMINER LYNN ROBESON HANNAN	9	200-B Monroe Street	
10	Conducted Virtually	10	Rockville, MD 20850	
11	Friday, May 1, 2020	11	(301) 762-5212	
12	9:31 a.m.	12		
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<p>5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER: This is a public</p> <p>3 hearing in the application of Way Station, Inc.,</p> <p>4 requesting a conditional use for a 16-bed</p> <p>5 residential care facility at 20629 Boland Farm</p> <p>6 Road, Germantown, Maryland.</p> <p>7 My name is Lynn Robeson. I'm the hearing</p> <p>8 examiner for this case, which means that I'm going</p> <p>9 to listen to all the testimony, take evidence, and</p> <p>10 write a written report and decision on whether to</p> <p>11 grant this use.</p> <p>12 If you disagree with my decision, then you</p> <p>13 have the ability to appeal this case to the board</p> <p>14 of appeals within ten days of the date of my</p> <p>15 decision/award on this hearing.</p> <p>16 Due to the governor's order limiting</p> <p>17 gatherings of more than ten people, we're having</p> <p>18 this hearing remotely through Microsoft Teams.</p> <p>19 Mailed notice of the hearing and the</p> <p>20 motion to amend this application mentioned the</p> <p>21 possibility of having this hearing remotely and</p> <p>22 contained instructions to look at OZAH's website.</p> <p>23 A meeting invitation with instructions to join has</p> <p>24 been posted on OZAH's website along with the</p> <p>25 exhibit list and many of the exhibits we'll be</p>	<p>7</p> <p>1 Can the court reporter turn off her video.</p> <p>2 Do you know how to do that? Thank you.</p> <p>3 Go ahead, Mr. Kline.</p> <p>4 MR. KLINE: Sure. To repeat, Jody Kline</p> <p>5 of the law firm Miller, Miller & Canby, excuse me,</p> <p>6 offices in 200-B Monroe Street here in Rockville,</p> <p>7 and I am in my office at the present time. And</p> <p>8 I'm prepared to give you a list of the witnesses</p> <p>9 we'd be calling if you want me to do so at this</p> <p>10 time.</p> <p>11 HEARING EXAMINER: No, my main concern is</p> <p>12 whether there is anybody who is not going to be</p> <p>13 called by you.</p> <p>14 Okay. With that, we also have the</p> <p>15 affidavit of posting in the record as Exhibit 56,</p> <p>16 and I'm going to accept that into the record.</p> <p>17 (Exhibit 56 was received into the record.)</p> <p>18 HEARING OFFICER: Are there any prelim --</p> <p>19 MR. KLINE: Ms. Robeson, if I might add,</p> <p>20 since that was given to you based on an inspection</p> <p>21 on Wednesday, someone did drive by the property</p> <p>22 yesterday. Notwithstanding the heavy winds, those</p> <p>23 signs remain posted as of Thursday, and we're</p> <p>24 hopeful they're still there this morning.</p> <p>25 HEARING EXAMINER: Okay. That's fine.</p>
<p>6</p> <p>1 discussing today.</p> <p>2 A couple of rules that we have to be --</p> <p>3 they're rules, anyway, but we have to extra</p> <p>4 sensitive to them. One is to eliminate crosstalk</p> <p>5 to the extent possible. Try to let someone finish</p> <p>6 unless it's an objection before interrupting so</p> <p>7 that the court reporter is able to understand</p> <p>8 everything that people say. This is both being</p> <p>9 recorded in Microsoft Teams but we also have our</p> <p>10 normal court reporter here.</p> <p>11 I will ask periodically whether there's</p> <p>12 anyone who's joined the meeting that's not going</p> <p>13 to be called by Mr. Kline, and if there's anyone</p> <p>14 that knows now they would like to testify that</p> <p>15 would not be called by Mr. Kline, can you please</p> <p>16 identify yourselves.</p> <p>17 Okay. Hearing none, we're going to</p> <p>18 proceed.</p> <p>19 Will the parties identify themselves for</p> <p>20 the record.</p> <p>21 MR. KLINE: Good morning, Madam Hearing</p> <p>22 Examiner. For the virtual record, my name is John</p> <p>23 Kline.</p> <p>24 HEARING EXAMINER: Now I'm going to</p> <p>25 interrupt you.</p>	<p>8</p> <p>1 Thank you. I'll accept your representation that</p> <p>2 that's the case.</p> <p>3 Now, are there any preliminary matters?</p> <p>4 I think there's one, Mr. Kline, which is</p> <p>5 your proposed amendment that we were not able to</p> <p>6 notice. Mr. Kline?</p> <p>7 MR. LEVY: I think Mr. Kline's internet</p> <p>8 connection has been lost.</p> <p>9 HEARING EXAMINER: Okay. We'll give him a</p> <p>10 minute to come back on.</p> <p>11 Nana, he's leaving -- I think he's leaving</p> <p>12 and rejoining.</p> <p>13 MS. JOHNSON: Yeah, did you call me? Do</p> <p>14 you need --</p> <p>15 HEARING EXAMINER: Yes, we can't get Jody,</p> <p>16 but I think he's leaving the meeting and</p> <p>17 rejoining.</p> <p>18 MS. JOHNSON: Should I call him or --</p> <p>19 HEARING EXAMINER: Why don't -- can you --</p> <p>20 yeah.</p> <p>21 MS. JOHNSON: I've got his line.</p> <p>22 MR. LEVY: I'm in -- I can also text him</p> <p>23 and find out what they're -- what they're doing.</p> <p>24 HEARING EXAMINER: Well, no, don't. And</p> <p>25 for the record, you're Mr. Levy, Andrew Levy?</p>

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3 (9 to 12)

<p>9</p> <p>1 MR. LEVY: Yes. Yes, ma'am.</p> <p>2 HEARING EXAMINER: Okay. Don't say</p> <p>3 anything else. We'll deal with it.</p> <p>4 MR. LEVY: Thank you, your Honor.</p> <p>5 HEARING EXAMINER: We're off the record</p> <p>6 for a moment.</p> <p>7 (Off the record.)</p> <p>8 HEARING EXAMINER: For the record, this is</p> <p>9 Jon Frey, F-r-e-y. He is from DPS and he is</p> <p>10 monitoring the hearing for technical issues with</p> <p>11 the Microsoft Teams.</p> <p>12 MR. FREY: Yeah, Lynn, everyone else is</p> <p>13 signed in. It looks like we're all just --</p> <p>14 microphones are muted, and we're just sort of in a</p> <p>15 pause mode right now, but I do not see the person</p> <p>16 in question signed on, no.</p> <p>17 HEARING EXAMINER: Mr. Kline?</p> <p>18 MR. FREY: Jody Kline, yeah, looks like</p> <p>19 he's come in now.</p> <p>20 HEARING EXAMINER: Mr. Kline?</p> <p>21 MR. FREY: Well, his -- let me see here.</p> <p>22 It looks like his microphone is open also at this</p> <p>23 point. Let's see if I can pin him in here. Just</p> <p>24 a second.</p> <p>25 MR. KLINE'S ASSISTANT: I'm trying to</p>	<p>11</p> <p>1 default settings for our Teams to use the laptop</p> <p>2 camera and speaker, and now we can hear you and,</p> <p>3 obviously, you can see me.</p> <p>4 HEARING EXAMINER: Okay.</p> <p>5 MR. KLINE'S ASSISTANT: So, I'm going to</p> <p>6 switch the laptop out, and I will point it at</p> <p>7 Mr. Kline. Unfortunately, can't get the main</p> <p>8 camera to work right now.</p> <p>9 HEARING EXAMINER: Okay. So, we're back</p> <p>10 on the record.</p> <p>11 MR. KLINE'S ASSISTANT: Does that work</p> <p>12 still?</p> <p>13 HEARING EXAMINER: Yes, I can see.</p> <p>14 Okay. Mr. Kline.</p> <p>15 MR. KLINE: Good morning again.</p> <p>16 HEARING EXAMINER: Please turn off any</p> <p>17 device -- other devices you have open because --</p> <p>18 if you don't have any, that's fine.</p> <p>19 MR. KLINE: And everybody shakes their</p> <p>20 head. Nothing else is open, so we don't think</p> <p>21 there should be any background interference.</p> <p>22 HEARING EXAMINER: Okay. We're back on</p> <p>23 the record. We're back on the record. Please --</p> <p>24 are there --</p> <p>25 MR. KLINE: Wait a minute. When we</p>
<p>10</p> <p>1 change our -- our settings.</p> <p>2 MR. KLINE: Ms. Robeson, can you hear us?</p> <p>3 HEARING EXAMINER: Just a second. Just a</p> <p>4 second. I don't know who is speaking.</p> <p>5 MR. KLINE: Ms. Robeson, can you hear us?</p> <p>6 HEARING EXAMINER: I cannot. I hear</p> <p>7 something in the background.</p> <p>8 MR. KLINE'S ASSISTANT: Hold on. I'm</p> <p>9 sorry. I'm trying to change some settings.</p> <p>10 MR. FREY: Lynn, I can see Jody Kline's</p> <p>11 image on the screen, but I can't see their</p> <p>12 microphone. He's -- looks like she's not able to</p> <p>13 have her microphone on mute at this point.</p> <p>14 HEARING EXAMINER: Okay. Who -- just a</p> <p>15 second. Who's in the -- the court reporter is</p> <p>16 going to get really confused when we're all</p> <p>17 talking. Okay?</p> <p>18 Who is -- just a second. Who's in the</p> <p>19 purple mask?</p> <p>20 MR. KLINE'S ASSISTANT: Hi. My name is</p> <p>21 Summer Cross. I'm with Miller, Miller & Canby. I</p> <p>22 am sitting in the room with Jody Kline and</p> <p>23 Mr. Rose, and we had some technical difficulties</p> <p>24 where the camera and speaker system just</p> <p>25 completely went out. So, I have changed the</p>	<p>12</p> <p>1 were -- our presentation was aborted, you were</p> <p>2 asking me about the motion to amend. I had</p> <p>3 submitted one. I understood the timing</p> <p>4 constraints of being able to advertise it in time.</p> <p>5 I am prepared at a certain point in the</p> <p>6 presentation today to explain how that fits into a</p> <p>7 solution that we would like to talk to you about</p> <p>8 after the presentation of what I'll call a prima</p> <p>9 facie case itself, if you're comfortable with</p> <p>10 that.</p> <p>11 HEARING EXAMINER: That's fine except --</p> <p>12 well, let me ask right now. Is there anyone right</p> <p>13 off the bat that has a -- in this meeting that has</p> <p>14 an objection to Mr. Kline making the motion to</p> <p>15 amend the application?</p> <p>16 Okay. Hearing none, we can proceed that</p> <p>17 way if that makes more sense.</p> <p>18 MR. KLINE: And if I can elaborate on</p> <p>19 that, Ms. Robeson, to explain how I'd like to</p> <p>20 present the case. Do you -- is it timely for me</p> <p>21 to go through that sequence for you now?</p> <p>22 HEARING EXAMINER: Yes.</p> <p>23 MR. KLINE: Fine. So, both for you and</p> <p>24 for the reporter, we have five witnesses scheduled</p> <p>25 to testify today. Maybe it's even six, now that I</p>

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4 (13 to 16)

<p>13</p> <p>1 think about it. There would be Scott Rose, a 2 representative of Way Station and Sheppard Pratt. 3 Thank you. John Sekerak, S-e-k-e-r-a-k, a land 4 liner and landscape architect; Ms. Kim Currano, 5 K-u-r-a-n-o. 6 HEARING EXAMINER: K-a-r-r -- 7 MR. KLINE: I'm sorry. C. I'm sorry. 8 Excuse me. Thank you. C-u-r-r-a-n-o. 9 HEARING EXAMINER: Now, please let -- 10 okay. Go ahead. 11 MR. KLINE: Go ahead. 12 HEARING EXAMINER: You know, I have to go 13 off the record. 14 (A discussion was held off the record.) 15 HEARING EXAMINER: Okay. We're back on 16 the record. I'm still hearing the echo but -- and 17 just keep in mind that when we're -- even though 18 we're off the record of the transcript, this tape 19 recording is still going to hear what you say to 20 each other, so I'm just warning you of that. 21 Okay. You have Ms. Kim Currano. 22 MR. KLINE: Mister -- 23 HEARING EXAMINER: You were going through 24 the witnesses. 25 MR. KLINE: Fine. Continuing, Mr. Bruce</p>	<p>15</p> <p>1 So, I'd like to, basically, go through the 2 whole case and then come back with Mr. Rose, 3 Mr. Sekerak, and Mr. Levy to kind of explain how 4 we would like to try and modify the application to 5 solve the problem that we have from a -- with the 6 condition and, as you've seen, a bit of an 7 invitation from Park and Planning for us to try 8 and bring something back to them that they could 9 look at again. 10 Would you be comfortable with that 11 process? 12 HEARING EXAMINER: I agree that that's 13 (inaudible). The easiest thing for me would be if 14 you could tell me the exhibits in advance that 15 each witness is going to refer to. 16 MR. KLINE: Yes, ma'am. We have 17 coordinated with Ms. Johnson to make a list of 18 those, and each of our witnesses will tell you 19 which one of those so you can pull them up from 20 your quick list rather than having to go through 21 the whole record to find them. 22 HEARING EXAMINER: Okay. 23 MR. KLINE: Right. So, that having been 24 said, I have no other opening statement, and I 25 appreciate your -- your generosity in letting us</p>
<p>14</p> <p>1 Zavos, Z-a-v-o-s, architect; Ms. Nicole White, 2 transportation and traffic engineer expert; and 3 Andrew Levy, Esquire. And it is -- you've always 4 been very -- sort of allowed the applicant to kind 5 of present its case the way he'd like but, by the 6 same token, there's sort of a certain sequence 7 you're used to seeing. 8 And what I would like to do is, basically, 9 go through the presentation of everybody on the 10 team that I just mentioned but deferring the 11 discussion dealing with condition number two in 12 the planning board and staff's recommendation 13 regarding number of employees at any given time. 14 I know you've had a conversation with 15 staff of Department of Planning Commission. That 16 is an issue for us. And what I'd like to do is 17 defer the discussion on that to what I'll call 18 "part two" simply because it requires getting into 19 so much depth about the staffing issues. 20 You were kind to suggest some things you'd 21 like to know, and we're prepared to address all 22 those, but we've also gone into a tremendous 23 amount of detail on staffing issues, and I just 24 feel I'd lose the flow of the case if I tried to 25 do that at the beginning.</p>	<p>16</p> <p>1 kind of do a bifurcated hearing. 2 I think, in the end, one of the goal is to 3 have a bit more of a dialogue rather than a 4 presentation, and I think this -- the format I'm 5 talking about will facilitate that a lot more. 6 That having been said, I'm going try and 7 rotate the laptop so that Mr. Rose can be seen 8 without doing so that I screw up all the cables 9 that are holding our system together. Thank you. 10 HEARING EXAMINER: Thank you. 11 Mr. Rose, would you please raise your 12 right hand. 13 SCOTT ROSE, 14 having been duly affirmed, testified as follows: 15 HEARING EXAMINER: Okay. Go ahead, 16 Mr. Kline. 17 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT 18 BY MR. KLINE: 19 Q Mr. Rose, I think I heard you spell your 20 name or maybe I spelled it for you earlier but -- 21 so in the -- what I guess I'll call the 22 professional questions, would you explain your 23 relationship -- 24 HEARING EXAMINER: State your name and 25 address for the record.</p>

<p>17</p> <p>1 MR. KLINE: Thank you.</p> <p>2 A My name is Scott Rose, last name R-o-s-e.</p> <p>3 The address -- I represent Way Station,</p> <p>4 Incorporated. The address is 230 West Patrick</p> <p>5 Street, Frederick, Maryland 21701, P.O. Box 3826.</p> <p>6 BY MR. KLINE:</p> <p>7 Q And when the conditional use application</p> <p>8 was filed, what was your job title at that time?</p> <p>9 A My job title at the time was president and</p> <p>10 CEO of Way Station. I, since then, have been</p> <p>11 promoted to be chief of rehabilitation and</p> <p>12 recovery services for Sheppard Pratt, which is Way</p> <p>13 Station's parent corporation.</p> <p>14 Q But you are authorized to speak on behalf</p> <p>15 of the applicant today?</p> <p>16 A Yes, and, in fact, most of the services of</p> <p>17 Way Station I oversee in my new role, as well as</p> <p>18 similar services in two other wholly-owned</p> <p>19 subsidiaries of Sheppard Pratt. So, this program</p> <p>20 is under my leadership.</p> <p>21 Q So, can you give us an overview of what is</p> <p>22 Way Station.</p> <p>23 A Sure. Way Station is a 501(c)(3)</p> <p>24 nonprofit corporation founded in 1978. Excuse me.</p> <p>25 We serve -- we provide community based services to</p>	<p>19</p> <p>1 Station for 30 years. So, I've grown up in the</p> <p>2 organization and been with Sheppard -- we</p> <p>3 affiliated in 1996, so I've been with Sheppard</p> <p>4 since then. And in my new role with Sheppard</p> <p>5 Pratt, it's been a year.</p> <p>6 Q And since our category of application is a</p> <p>7 residential care facility, is this just merely</p> <p>8 providing shelter? What occurs at a Way Station</p> <p>9 facility?</p> <p>10 A Sure. We provide essential necessary</p> <p>11 mental health services so that people can live in</p> <p>12 the community and not in hospitals. These</p> <p>13 services include counseling support, teaching</p> <p>14 skills to allow people to self-manage symptoms of</p> <p>15 their mental illness, as well as co-occurring</p> <p>16 physical health conditions, teaching independent</p> <p>17 living skills and social rec activities and</p> <p>18 providing case management.</p> <p>19 Q Would you explain for the hearing examiner</p> <p>20 what was the trigger that initiated this process</p> <p>21 and how has that evolved given our current</p> <p>22 situation with Coronavirus.</p> <p>23 A Sure. It's a pilot program, in that it's</p> <p>24 a very unique program in collaboration with the</p> <p>25 six Montgomery county hospitals. Several years</p>
<p>18</p> <p>1 approximately 3,000 adults and children with</p> <p>2 mental illness and/or developmental disabilities</p> <p>3 in four Maryland counties.</p> <p>4 We also serve approximately a thousand</p> <p>5 homeless veterans who may or may not have a</p> <p>6 disability, providing them employment support.</p> <p>7 Q How many Way Station homes are there,</p> <p>8 residences are there?</p> <p>9 A There are about 75 in four Maryland</p> <p>10 counties.</p> <p>11 Q And you mentioned Sheppard Pratt and your</p> <p>12 current employment at Sheppard Pratt. What's the</p> <p>13 relationship between Way Station and Sheppard</p> <p>14 Pratt? You said one is the parent, but can you</p> <p>15 explain to us how it works.</p> <p>16 A Way Station is wholly-owned subsidiary of</p> <p>17 Sheppard Pratt. Sheppard Pratt is also a</p> <p>18 501(c)(3) nonprofit. Sheppard Pratt has been</p> <p>19 around for 150 years. Sheppard Pratt has been --</p> <p>20 has a national reputation, has been recognized by</p> <p>21 U.S. News & World Report as being one of the top</p> <p>22 psychiatric hospitals in the country for the past</p> <p>23 20 years.</p> <p>24 I've also been -- just to give a little</p> <p>25 background on myself, I've also been at Way</p>	<p>20</p> <p>1 ago, all six of the county hospitals formed a</p> <p>2 partnership called Nexus Montgomery.</p> <p>3 Nexus Montgomery approached us. We not</p> <p>4 approached them, they approached us a</p> <p>5 year-and-a-half ago asking for help for us to</p> <p>6 develop this home to help them with their critical</p> <p>7 need that they have, and that is that there are</p> <p>8 adults with mental illness that are in their</p> <p>9 emergency rooms and their psychiatric inpatient</p> <p>10 units -- all six have psychiatric inpatient</p> <p>11 units -- that don't need to be there but they</p> <p>12 don't have a place to go.</p> <p>13 And this is a critical -- has been a</p> <p>14 critical need for them because they want to be</p> <p>15 able to transition these folks out so that they</p> <p>16 can have more space and resources in their</p> <p>17 emergency rooms to serve folks that may or may not</p> <p>18 have mental illness and in the inpatient units.</p> <p>19 This need was so critical to them that not</p> <p>20 only did they come to us to develop a program but</p> <p>21 their -- they've offered us \$900,000 to help</p> <p>22 towards the startup operational costs. I</p> <p>23 reference that just as an indicator of the level</p> <p>24 of need that they felt was necessary for the</p> <p>25 broader Montgomery County community.</p>

<p style="text-align: right;">21</p> <p>1 That was a year-and-a-half ago. Now, 2 under this pandemic, the need has gone from 3 critical to urgent. The hospitals are scrambling 4 to increase capacity and, so, the more they can 5 move folks out that don't need to be in the 6 hospital so that that frees up the staff and the 7 resources to be able to serve COVID patients in 8 the emergency rooms and inpatient units. 9 And quite frankly, we in the hospitals are 10 bracing ourselves for the next 12 to 18 months 11 until there's a vaccine. So, we'll get through -- 12 the curve will flatten here but then there will be 13 another wave. So, this is an essential program 14 for -- for a long time. 15 Another interesting aspect of this program 16 and this home is that Way Station staff will be 17 embedded in the six hospitals. We will only be 18 receiving referrals for this home from the six 19 hospitals, and our staff will be embedded in the 20 hospitals to facilitate, streamline the referral 21 process, to assess, to join hospital treatment 22 teams on discharge and even transporting the 23 individuals from the hospitals to the home. 24 So, it's a -- it's a needed service and 25 it's done in close collaboration with these</p>	<p style="text-align: right;">23</p> <p>1 And this is critically important because, of 2 course, these are individuals, again, were stuck 3 in hospitals, don't need to be there but don't 4 have the services and the place to go. 5 Part of what we're doing, part of our goal 6 is community integration of people with 7 disabilities, and it's critically important that 8 they live in a normalized home environment because 9 that's part of integration. 10 The second aspect is that this is very 11 large. It's a huge building. It's 11,000 square 12 feet, so it's got ample room for 16 single 13 bedrooms. And let me just remark, pause. That's 14 also a critical clinical piece here. It's 15 stressful for anybody -- any adult to have to live 16 with somebody else in the same bedroom, 17 particularly if you have mental illness. So, 18 that's important in terms of space. 19 Also, ample space for offices to do 20 private counseling, as well as staff offices, and 21 ample room for a sufficient common area. Again, 22 one of the independent living skills that we teach 23 is socialization. So, you need common area to 24 teach socialization. 25 So, you know, it's unique in that it's</p>
<p style="text-align: right;">22</p> <p>1 hospitals. 2 Q Let's kind of get down in the trenches of 3 fine-grain analysis. You mentioned 16 4 residents -- 5 A Correct. 6 Q -- referred by hospitals to home. Are 7 they all adult or are there any children included? 8 A No, they'll all be adult. 9 Q And you -- you mentioned the care that's 10 provided. Is there anything you would add at this 11 point in time about any additional treatment 12 that's done? 13 A No, it's all the services that I talked 14 about. There's going to be even more emphasis on 15 the case management piece, recall that was the 16 last service I listed, because part of our role 17 then is to help the individuals find permanent 18 places to live. 19 Q Well, then, let me take you to the 20 physical side of it. Why is this building so 21 unique and so complementary with your program? 22 A Yeah, it's perfect, and when I went to 23 look at it, I knew that was the place, for three 24 reasons. First, it is a home. It looks like a 25 home. It is a home. It's in a nice neighborhood.</p>	<p style="text-align: right;">24</p> <p>1 very, very large and, yet, it also is a home and 2 looks like a home and, so, those are important. 3 Finally, the location is just ideal. It's 4 very close to 270, and that's really critical 5 because we want to have as much accessibility to 6 the six Montgomery County hospitals as possible 7 because we're right on Route 270. 8 Q Normally I would probably start getting 9 into hours of operations and staffing but, as I 10 said, we'd like to defer that to a later part of 11 the case. So, let me ask you some other but still 12 important operational questions. 13 How will the residents be served meals? 14 How do they get to eat? 15 A (Inaudible) meals. Again, a large part of 16 what we do is teaching independent living skills, 17 so meal preparation is what -- one of the things 18 that we'll be doing. So, we're not going to be 19 cooking for them. We're going to be helping them 20 to cook. 21 We also see that as a prevocational skill. 22 We hope that many of our residents, if they aren't 23 employed before they went to the hospital, can 24 become employed. And, so, prevocational skills 25 like meal preparation is helpful if you're going</p>

<p>25</p> <p>1 to be working in the food industry.</p> <p>2 Q Based on your experience with other Way</p> <p>3 Station facilities or homes, do residents have</p> <p>4 private automobiles?</p> <p>5 A No, they're not going to have them at the</p> <p>6 home. First off, most of the folks that we serve</p> <p>7 are going to be low income, so they're not going</p> <p>8 to own automobiles. Secondly, it's a program rule</p> <p>9 not to bring an automobile. We want folks here,</p> <p>10 again, part of this goal is teaching socialization</p> <p>11 skills, so we want them part of the family. And,</p> <p>12 finally, they're not -- the call, we are driving</p> <p>13 them from the hospital to the home, so there would</p> <p>14 be no need for a car anyway.</p> <p>15 Q So, if the residents need to be</p> <p>16 transported some way, how were you planning on</p> <p>17 handling that?</p> <p>18 A Well, staff will -- for individual</p> <p>19 appointments, staff will be transporting residents</p> <p>20 in their own cars. We also will have two vans to</p> <p>21 use for social rec -- social rec activities that</p> <p>22 are groups.</p> <p>23 Q And when the application was filed, you</p> <p>24 anticipated those vans were to be stored on the</p> <p>25 property?</p>	<p>27</p> <p>1 That's one of the reasons they're coming to us</p> <p>2 from the hospitals rather than to their families</p> <p>3 to live.</p> <p>4 Q And can you control the visitation when --</p> <p>5 if they do want to come, can you control that?</p> <p>6 A Sure, sure, absolutely. We -- visit --</p> <p>7 visitation will only be by appointment only, and</p> <p>8 we're not going to have visiting hours because we</p> <p>9 want to discourage visitation. Recall, this is a</p> <p>10 home for these residents and we really don't want</p> <p>11 strangers to many of the residents coming in. We</p> <p>12 want their privacy protected.</p> <p>13 Secondly, we really want the limited staff</p> <p>14 resources to be focussed on helping the residents</p> <p>15 and not hosting visitors. So, it will be by</p> <p>16 appointment only.</p> <p>17 Q Could you, for the hearing examiner,</p> <p>18 explain the efforts you made to contact neighbors</p> <p>19 surrounding the property and what feedback you got</p> <p>20 from them, maybe, first of all, where you went and</p> <p>21 then, secondly, what was the reaction, first of</p> <p>22 all?</p> <p>23 A Sure. Sure. Recall that the overarching</p> <p>24 goal here is our mission is community integration</p> <p>25 of people with disabilities in the community and</p>
<p>26</p> <p>1 A Yes, yes, but we've changed our mind about</p> <p>2 that. We want more onsite parking, those two</p> <p>3 broad spaces, so we will just park the -- store</p> <p>4 the vans offsite.</p> <p>5 HEARING EXAMINER: Can I interpret for a</p> <p>6 moment. You said the residents aren't going to</p> <p>7 drive but staff will drive the residents' cars.</p> <p>8 Are the residents' cars going to be onsite?</p> <p>9 A No. I'm sorry. I should clarify. Staff</p> <p>10 will drive their own cars.</p> <p>11 HEARING EXAMINER: Oh, staff will drive</p> <p>12 staff cars.</p> <p>13 A Yes.</p> <p>14 HEARING EXAMINER: So, are there going to</p> <p>15 be any cars attributable to the residents onsite.</p> <p>16 A No. No.</p> <p>17 HEARING EXAMINER: Okay. Keep going. I'm</p> <p>18 sorry to interrupt.</p> <p>19 MR. KLINE: Oh, not a problem. That is</p> <p>20 kind of a critical issue, so I'm glad you asked it</p> <p>21 now.</p> <p>22 Q Do the residents ever have visitors?</p> <p>23 A Not that often. Most of the -- sadly,</p> <p>24 most of the residents do not have families</p> <p>25 connected enough in their lives to come visit.</p>	<p>28</p> <p>1 not in hospitals. And we take that seriously.</p> <p>2 So, community outreach is an essential part.</p> <p>3 Community integration for people with</p> <p>4 disabilities happens much more effectively if</p> <p>5 communities welcome people with disabilities</p> <p>6 rather than tolerate them.</p> <p>7 So, I-- despite the fact that I'm now in</p> <p>8 my roll overseeing 1500 staff in 10 counties, I</p> <p>9 personally went to the neighborhood because I knew</p> <p>10 how important that was. I went three different</p> <p>11 times and knocked on doors, including a Sunday, so</p> <p>12 that I could try to reach people when they were</p> <p>13 in, and I was able to personally talk to 9</p> <p>14 residents -- neighbors in 9 of the 10 residences.</p> <p>15 Q Those are houses on Boland Farm Road?</p> <p>16 A These are houses on Boland Farm Road.</p> <p>17 There is -- across the street, there is a</p> <p>18 residential development but it doesn't front</p> <p>19 Boland Farm and it has different roads. So, I</p> <p>20 went to all on our block on Boland Farm.</p> <p>21 It was -- it was a positive experience. I</p> <p>22 introduced myself and talked about the home. I</p> <p>23 gave each person a business card, and I even wrote</p> <p>24 my personal cell phone on the number or on the</p> <p>25 card and invited them to call if they had</p>

<p>29</p> <p>1 questions afterwards or any concerns. 2 I was really pleased and heartened. No 3 one expressed concerns and nobody called me 4 afterwards. 5 And if I could just pause for a second, 6 this is another reason why this house, this home, 7 is ideal. It's got the structure, the location, 8 but it also has a welcoming neighborhood. 9 One of those neighbors was the fire 10 station. So, of course, I spoke with one of the 11 shift captains. 12 In addition to the neighborhood -- 13 neighborhood outreach, I also reached out to some 14 government officials and met with them. I met 15 with the Upcounty regional director for Department 16 of Health and Humans Services. I met with 17 Councilman Craig Rice. And then upon his 18 recommendation, I also met with the Chief of 19 Germantown Police Mark Plazinski. 20 So, I felt like we reached out to 21 neighbors and stakeholders, and I was heartened by 22 the welcoming response. 23 Q Mr. Rose, you're familiar with the 24 technical staff report and the planning board's 25 recommendation on the application?</p>	<p>31</p> <p>1 any institutional cooking, and it's not a gas 2 station like across the street. 3 In terms of dust, we're not going to have 4 a -- a wood shop or anything like that where there 5 would be sawdust. 6 And activity, you know, we're not -- it's 7 not sports fields. We're not going to be playing 8 volleyball out front and all that sort of thing. 9 And in terms of illumination, I think 10 Mr. Sekerak is going to speak, but we're going to 11 be actually reducing the outside lighting than is 12 here now. So, I'm confident to say that answer. 13 MR. KLINE: Ms. Robeson, I've completed my 14 questions of Mr. Rose. As you can tell, he likes 15 to talk about what he's doing, so if you have any 16 questions, I'm sure he'd be glad to answer them. 17 HEARING EXAMINER: Well, I'm going to save 18 it for the amendment. 19 MR. KLINE: Very good. That's very good. 20 A Sure. 21 MR. KLINE: That's fine. In which case, 22 that completes our testimony with Mr. Rose. And, 23 so, we would call our next witness, Mr. Sekerak, 24 virtually. 25 HEARING EXAMINER: Okay. Mr. Sekerak --</p>
<p>30</p> <p>1 A Yes, I am. 2 Q Are the conditions in those two documents 3 acceptable to the applicant or do you have any 4 reservations about any of the conditions? 5 A Yes, all conditions are acceptable except 6 for condition number two, and I understand we're 7 going to talk about that later. 8 Q Mr. Rose, sort of a wrap-up question, 9 based on your familiarity with the operation of 10 how a Way Station home operates -- 11 A Sure. 12 Q -- do you feel that this facility can be 13 operated so that it will not cause any undue harm 14 to the surrounding neighborhood due to noise, 15 odors, dust, illumination, or activity of the 16 residents? 17 A Absolutely. This is -- this is a home. 18 The -- the individuals who will be in there are 19 residents. The fact of their disabilities is not 20 going to create any more of the things that you 21 talked about. You know, it's not a music studio, 22 so there's not going to be a lot of noise. 23 It's not a fire station like next door, so 24 there's not going to be noise. 25 In terms of odor, we're not going to be</p>	<p>32</p> <p>1 MR. SEKERAK: Good morning. 2 HEARING EXAMINER: -- do you have a 3 camera? 4 MR. SEKERAK: Good morning. Yes, I do, 5 and I'm concerned that you're not able to see me. 6 MR. KLINE: There we go. 7 HEARING EXAMINER: Okay. Mr. Sekerak, 8 please raise your right hand. 9 JOHN SEKERAK, 10 having been duly affirmed, testified as follows: 11 HEARING EXAMINER: Please state your name 12 and address for the record. 13 A Again, good morning. My name is John 14 Sekerak. That's J-o-h-n, and the last name is 15 S-e-k-e-r-a-k. I'm a land use planner and 16 landscape architect with Stantec, offices at 20440 17 Century Boulevard in Germantown. 18 HEARING EXAMINER: Okay. Mr. Kline. 19 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT 20 BY MR. KLINE: 21 Q Real quickly, Mr. Sekerak, how long have 22 you been a land -- practicing land use planning 23 and landscape architect? 24 HEARING EXAMINER: Okay. Mr. Kline, he 25 has qualified before as an expert in landscape</p>

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<p>33</p> <p>1 architecture. I can't remember the case or cases. 2 Let me just ask is there anyone in the meeting 3 that has any objection to qualifying him as an 4 expert in land planning? 5 Okay. Hearing none -- was that what you 6 were going to do, Mr. Kline? I guess I kind of 7 jumped in. 8 MR. KLINE: No. Thank you. Yes, 9 Mr. Sekerak's resume is in the record and it's 10 part of Exhibit 53. 11 (Exhibit 53 was identified on the record.) 12 HEARING EXAMINER: All right. 13 MR. KLINE: I was going to ask to qualify 14 him as an expert in landscape architecture, as 15 well, and he has qualified in that category, as 16 well. 17 HEARING EXAMINER: Are you -- are you -- 18 can you just give me a brief summary of -- 19 MR. KLINE: Sure. 20 HEARING EXAMINER: Mr. Sekerak, can you 21 give me a brief summary of your qualifications in 22 landscape architecture. You've qualified before 23 us as a landscape architect? 24 A Yes, both as a landscape architect and as 25 a land use planner. So, I'm certified as an AICP</p>	<p>35</p> <p>1 HEARING EXAMINER: How about now? No? 2 MR. KLINE: No. 3 HEARING EXAMINER: I uploaded the Mac to a 4 different -- this would -- that is not my vacation 5 planning. Jon Frey? 6 MR. KLINE: Ms. -- Ms. Robeson, may I 7 suggest an alternative. The same exhibit is a 8 page in the staff report, if you wanted to try and 9 pull up the staff report. I can get you the page 10 and we could work off of that one. 11 HEARING EXAMINER: I apologize. Hold on 12 one second. 13 Jon, I've got them on my desktop. 14 MR. FREY: Okay. 15 HEARING EXAMINER: I've got the exhibit he 16 wants open in Adobe on my home computer but, for 17 some reason, it's not sharing. 18 MR. FREY: When you go to the sharing 19 screen, can you see the document miniature size? 20 HEARING EXAMINER: No, I just see my 21 desktop. 22 MR. FREY: Okay. On your desktop, is the 23 document open? 24 HEARING EXAMINER: Yes -- no, not on 25 the -- well, it comes up in Adobe.</p>
<p>34</p> <p>1 certified planner, and I'm also licensed in 2 Maryland. My license number is 950 in landscape 3 architecture. 4 HEARING EXAMINER: Okay. Okay. I'll 5 qualify him as both. 6 MR. KLINE: Thank you very much. 7 BY MR. KLINE: 8 Q Mr. Sekerak, I guess what we'd like to 9 start with is probably just to try to give you an 10 orientation of the neighborhood. I wonder if you 11 could pull up the zoning -- the zoning vicinity 12 map, Exhibit Number 8, and so that Mr. Sekerak can 13 use that as an exhibit. 14 (Exhibit 8 was identified on the record.) 15 HEARING EXAMINER: Okay. 16 A It is labeled as "Surrounding Area 17 Delineation" but it is Exhibit 8. 18 HEARING EXAMINER: Exhibit 8. I 19 apologize. I'm not -- here we go. 20 MR. KLINE: That is not the site. 21 A I would love to have a house there. 22 HEARING EXAMINER: Well, I have to tell 23 you, I just -- 24 MR. KLINE: I take it we are just seeing 25 some of your vacation planning photos.</p>	<p>36</p> <p>1 MR. FREY: Okay. But when you -- when you 2 open it, it should open -- does it replace your 3 desktop with the Adobe? 4 HEARING EXAMINER: That's a good question. 5 Let me just see if I can do that. 6 I apologize everyone. 7 Yes, it's my desktop with the Adobe. 8 MR. FREY: Now try and display it, please. 9 HEARING EXAMINER: It's still -- you 10 are -- again -- 11 MR. FREY: Okay. Let me -- let me go to 12 your website and see if I can open it up for you. 13 MR. KLINE: Ms. Robeson, if I could -- 14 HEARING EXAMINER: Let's do this. Hold on 15 one second. I could take it off my desktop. 16 MR. KLINE: Ms. Robeson, if I might 17 suggest an alternative, Mr. Sekerak has it as 18 available if you would be willing to share the 19 screen so he could pull up the same exhibit. 20 MR. FREY: Lynn, if you want to, we can 21 have him do that if he's willing. 22 HEARING EXAMINER: Okay. Let's do that. 23 I apologize. 24 MR. FREY: Okay. Now, to do this, what 25 you'll see is a floating task bar when you move</p>

<p>37</p> <p>1 your mouse into the window. The box with an arrow 2 in it, if you click the box with an arrow in it, 3 it should get to a place where you can see your 4 document. If you can do it, it should display 5 your document. There you go. 6 A Let me rotate it. 7 HEARING EXAMINER: You may want to 8 maximize your -- 9 A I'm sorry. I need to rotate it. 10 MR. FREY: Yes. 11 A Is it displaying for you? 12 HEARING EXAMINER: Yes. 13 MR. FREY: Yes. 14 BY MR. KLINE: 15 Q All right. John, hey, John, first of all, 16 you need to explain what this is because it is not 17 what is figure two in the staff report that I was 18 referring to? 19 A Yes, the staff report included a different 20 exhibit for a different -- well, for the accessory 21 dwelling unit down the street. 22 This is a surrounding area delineation 23 exhibit that was included in the original 24 application. It shows -- an aerial photograph and 25 property line shows the subject property in</p>	<p>39</p> <p>1 Confronting homes on the north side of 2 Boland Farm Road are also, you know, a series of 3 single-family detached homes in the -- well, the 4 community is referred to as the Seneca Vista 5 community. Those are the R200 TDR zone. 6 Within that community but directly 7 confronting our subject property are -- is a court 8 of single-family homes and townhomes, again in the 9 R200 TDR. 10 Diagonally to the northeast is an 11 automobile filling station. 12 Radiating out from that area, there is a 13 tremendously wide variety of zones, uses, more 14 single-family detached, more townhomes, 15 multifamily homes, a lot of institutional uses, 16 you know, churches, schools, community colleges, 17 commercial, and offices. 18 The -- I'll move on to the delineation of 19 neighborhood. On this exhibit, it's -- I've 20 delineated what I felt was the neighborhood in 21 red. I came across this by, you know, many site 22 visits, studying the travel patterns, my knowledge 23 of the area, and reviewing the neighborhoods 24 defined in the other nearby special exceptions. 25 So, this neighborhood is delineated by</p>
<p>38</p> <p>1 relationship to immediate neighborhood and some of 2 the other surrounding area. 3 North is a bit diagonal on this exhibit, 4 so if you'll -- I think it would be easier if I 5 just simply refer to north as plan north straight 6 up and won't worry about the degree of -- 7 HEARING EXAMINER: The north arrow is down 8 in the right-hand corner; correct? 9 A Correct. When I refer to the north 10 property line, for instance, it will be the -- the 11 property line that forms Boland Farm Road 12 right-of-way. 13 Okay. The subject properties is outlined 14 in the slightly bolder yellow, the label site 15 audit in the middle of the display. It's a 16 24,225-square-foot lot. It's on the south side of 17 Boland Farm Road. 18 Just to the east of the property is 19 Montgomery County Fire Station Number 34. That's 20 the building itself, and the parking for that 21 facility wraps around to the south of the subject 22 property. 23 To the west, a series of single-family 24 detached homes, like the fire station and the 25 subject property, all in the R200 zone.</p>	<p>40</p> <p>1 Observation Drive to the west. That's classified 2 as an arterial road. 3 To the north are the homes that front on 4 Boland Farm Road. Now, they front Boland Farm but 5 they are not fronting on Boland Farm Road, and 6 I'll describe that. They are the long 7 representation. Other access is internal to 8 the Seneca Vista community. There's street trees 9 six-foot board-on-board site-type privacy fence 10 and generous buffer plantings all along that 11 right-of-way. 12 So, again, just -- just to kind of 13 characterize them that they have frontage on 14 Boland Farm Road but they are not fronting on 15 Boland Farm Road. 16 And then the gas station to the -- on the 17 north side of Boland Farm Road further to the -- 18 to the east. 19 The east limitation of the neighborhood is 20 Maryland Route 355, a controlled major highway. 21 And to the south, the southern property 22 lines of the fire station and the other 23 single-family homes along Boland Farm Road. 24 Q What do you characterize the -- or what is 25 the character of the neighborhood as you've</p>

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11 (41 to 44)

<p>41</p> <p>1 defined it in this exhibit?</p> <p>2 A Predominantly single-family homes with</p> <p>3 the -- with the notable exception of the very</p> <p>4 nearby gas station for commercial use and the</p> <p>5 dominant feature being the -- the institutional</p> <p>6 use of the fire station.</p> <p>7 Q I mentioned Exhibit 2 on page four of the</p> <p>8 technical staff report which does define a</p> <p>9 different surrounding neighborhood from staff's</p> <p>10 perspective.</p> <p>11 (Exhibit 2 was identified for the record.)</p> <p>12 Q Could you give the hearing examiner an</p> <p>13 idea of what those boundaries were and why you</p> <p>14 think yours is a more realistic neighborhood for</p> <p>15 this case.</p> <p>16 A It's the same to the east and the west,</p> <p>17 but it does span considerably to the north, all</p> <p>18 the way up to Shakespeare Road, and to the south</p> <p>19 down to Maryland Route 118.</p> <p>20 And let me be clear. My conclusions would</p> <p>21 apply to either of these two neighborhoods</p> <p>22 regarding impacts to the neighborhoods. I just</p> <p>23 don't believe that the apartment use, you know,</p> <p>24 residence up on Shakespeare or the car wash users</p> <p>25 down on 118 are really going to have any</p>	<p>43</p> <p>1 neighborhood?</p> <p>2 A It has the uses I described for ours but</p> <p>3 more of the single-family detached, more of the</p> <p>4 townhouses, but it would add the additional uses</p> <p>5 of large amounts of multifamily and much more</p> <p>6 commercial uses. It would be certainly easier to</p> <p>7 demonstrate a lack of unacceptable effects in that</p> <p>8 larger context.</p> <p>9 HEARING EXAMINER: Unacceptable what?</p> <p>10 A Effects --</p> <p>11 HEARING EXAMINER: Okay.</p> <p>12 A -- of the use in that much larger context</p> <p>13 considering, you know, it would be diluted by a</p> <p>14 larger area and more diverse existing uses.</p> <p>15 BY MR. KLINE:</p> <p>16 Q Would a fair characterization be that your</p> <p>17 zoning neighborhood is more residential than the</p> <p>18 staff's defined zoning neighborhood in character?</p> <p>19 A Both are -- are very predominantly</p> <p>20 residential. The staff's would lend more towards</p> <p>21 the multifamily aspects of it and some more</p> <p>22 commercial.</p> <p>23 Q The commercial being located down in the</p> <p>24 Southeast quadrant of the intersection of 355</p> <p>25 Germantown Road with a number of pad sites in</p>
<p>42</p> <p>1 appreciation of this site for its use but, again,</p> <p>2 I'm comfortable addressing either.</p> <p>3 HEARING EXAMINER: Does Shakespeare show</p> <p>4 on this exhibit you have?</p> <p>5 A No, it does not. You would need to look</p> <p>6 at staff's recommended staff report. Again,</p> <p>7 that's page 84.</p> <p>8 BY MR. KLINE:</p> <p>9 Q Well, let me suggest this. If the hearing</p> <p>10 examiner was interested, we should be able to pull</p> <p>11 own the zoning -- the city map, Exhibit 18, and</p> <p>12 maybe you could highlight. Are -- are we -- can</p> <p>13 we do that or is that not --</p> <p>14 (Exhibit 18 was identified on the record.)</p> <p>15 HEARING EXAMINER: I have the staff</p> <p>16 report. Thank you. Keep going.</p> <p>17 MR. KLINE: Sure. Okay.</p> <p>18 Q Sorry, John. Go ahead.</p> <p>19 A Again, I feel the neighborhood on the</p> <p>20 surrounding area and neighborhood delineation</p> <p>21 exhibit is appropriate, but I would have no</p> <p>22 problem discussing the balance of the case with</p> <p>23 the much more expansive neighborhood --</p> <p>24 HEARING EXAMINER: How would you</p> <p>25 characterize the much more -- the staff's</p>	<p>44</p> <p>1 other commercial uses?</p> <p>2 A Right, an automobile filling station, a</p> <p>3 car wash, and a Burger King fast food.</p> <p>4 Q Thank you. Did you want to say anything</p> <p>5 else about surrounding neighborhood?</p> <p>6 A Nothing comes to mind.</p> <p>7 Q Okay. You gave us sort of the location of</p> <p>8 the site. Were there any other features about</p> <p>9 the -- okay. Can you identify the features of the</p> <p>10 site that are relevant in terms of how it's going</p> <p>11 to operate and how it's going to look?</p> <p>12 A Under existing conditions or under</p> <p>13 proposed? Now, I would pull up the appropriate</p> <p>14 exhibit for either of those.</p> <p>15 Q Good -- good question. Yes, I would say</p> <p>16 if we could have the existing conditions plan up,</p> <p>17 which is Exhibit 9, number 9.</p> <p>18 (Exhibit 9 was identified on the record.)</p> <p>19 A Is that displaying for everybody?</p> <p>20 Q Yes.</p> <p>21 HEARING EXAMINER: Yes.</p> <p>22 MR. KLINE: We can see it. All right.</p> <p>23 And who's operating the cursor now? Does the</p> <p>24 hearing examiner have it back now?</p> <p>25 HEARING EXAMINER: No.</p>

Transcript of Hearing
Conducted on May 1, 2020

12 (45 to 48)

<p>45</p> <p>1 MR. KLINE: Are you comfortable leaving it 2 with Mr. Sekerak? 3 HEARING EXAMINER: Yeah, the key is 4 don't -- when you present, you can mute people, 5 and if you accidentally mute someone, you know, we 6 have to do a redo. So, that is the key. 7 A All right. I will be careful not to touch 8 any microphone buttons. 9 HEARING EXAMINER: Well, it's not a 10 microphone button, but go ahead. 11 BY MR. KLINE: 12 Q All right. So, Mr. Sekerak, so you told 13 us where it's located, and you've told us, I 14 guess, the size. The shape is pretty self- 15 obvious. How about going from access, how do you 16 get onto the property? 17 A It's a residential driveway from Boland 18 Farm Road onto the property. It -- 19 Q And you have your -- you have your cursor 20 on the apron of the driveway now or was there? 21 A Yes. 22 Q Okay. 23 A That is the driveway apron. 24 Q Okay. 25 A And I'll -- I'll stop using the -- the</p>	<p>47</p> <p>1 HEARING EXAMINER: Okay. SDAT would tell 2 us. 3 A Right. Right. Just very familiar with 4 the -- 5 HEARING EXAMINER: For the court reporter, 6 that's all caps, SDAT. 7 Okay. Go ahead. 8 A Okay. I'm very familiar with the 9 neighborhood. I was involved in the subdivision 10 of the -- the lots to the west. And just 11 reviewing aerial photographs, it's a -- it's 12 obvious that this home predated the fire station, 13 also. 14 The property slopes from -- downward from 15 the front to the back, again, because of the 16 walkout basement type of condition but, you know, 17 gentle slopes in the front yards and backyards are 18 relatively flat. 19 It described where the paving is. Those 20 areas that are not paved are heavily landscaped 21 with typical residential plantings of, you know, 22 Cherry, Arborvitae, Crepe Myrtle, Pine, Yews, 23 Junipers, et cetera. 24 The important feature is a six-foot 25 privacy fence that goes the entire length of the</p>
<p>46</p> <p>1 cursor and do it more verbally descriptive. 2 The property itself has -- you know, it 3 has a two-story brick home with a walkout 4 basement, two-car garage. It's served by a lot of 5 existing parking, pavement, about a good third of 6 the front yard, the entire side yard and 7 effectively the entire rear yard, also. 8 It's -- it has no sidewalk along the 9 frontage of this property, but there is sidewalk 10 on both to the east in front of the fire station 11 and to the west in front of the string of 12 single-family homes on westward. There is no 13 sidewalk on the other -- on the north side of 14 Boland Farm Road. 15 Q So, does your comment about the sidewalk 16 not in front of our property, does that indicate 17 our property was, I guess, developed before 18 Montgomery County had a program to try and 19 maximize sidewalks with new development? So, this 20 house predated the fire station and the houses to 21 the west? 22 A Correct. 23 HEARING EXAMINER: Well, do you know it 24 predated it or are you just speculating? 25 A No, it did. It -- yeah.</p>	<p>48</p> <p>1 east, south, and west property lines. 2 Lighting -- there are a number of -- let's 3 see. There are six pole lights on the property at 4 the moment, about ten feet high, globe -- globe 5 tops. Also, along the fence that I had mentioned, 6 about -- 7 HEARING EXAMINER: How many pole lights? 8 A Two, four, six. 9 HEARING EXAMINER: Okay. Go ahead. 10 A Also, along the tops of the fence are 11 smaller globe lights. About every fifth of the 12 posts has those. 13 There are two signs on the property, a 14 round mounded sign right behind the curb in the 15 middle front of the property and another sign on 16 the -- on the building itself advertising the 17 existing use as the Germantown Urology and Kidney 18 Stone Center. 19 BY MR. KLINE: 20 Q Mr. Sekerak, I'm not sure where you're 21 going next, but how about telling us -- tell us 22 what's Boland Farm Road. What -- what does it 23 look like? How does it function? 24 A It's classified as arterial in the master 25 plan. It's a very wide road in front of our</p>

<p style="text-align: right;">49</p> <p>1 property. The right-of-way width is 80 feet. The</p> <p>2 paving width is 50 feet. Both of those dimensions</p> <p>3 diminish slowly as you proceed westward, but it's</p> <p>4 still, you know, a very wide road for a road with</p> <p>5 only one lane in each direction.</p> <p>6 It is curb and gutter. The markings on</p> <p>7 that wide expansive paving are for, you know, the</p> <p>8 west driving lane, a center turn lane in both</p> <p>9 directions, and then the eastbound lane.</p> <p>10 And in front of our property --</p> <p>11 HEARING EXAMINER: I'm sorry. Could you</p> <p>12 say those again.</p> <p>13 A Sure. So, the roadway is --</p> <p>14 HEARING EXAMINER: In front of your</p> <p>15 property, what -- how many lanes?</p> <p>16 A One lane in each direction, travel</p> <p>17 lanes --</p> <p>18 HEARING EXAMINER: Yeah.</p> <p>19 A -- with a center turn lane.</p> <p>20 HEARING EXAMINER: Like a suicide lane?</p> <p>21 A I'm sorry. What lane?</p> <p>22 HEARING EXAMINER: Okay. A left or right</p> <p>23 lane?</p> <p>24 A Yes, I -- I believe you said, "suicide</p> <p>25 lane," and --</p>	<p style="text-align: right;">51</p> <p>1 side.</p> <p>2 But the south side has no restrictions on</p> <p>3 parking on signage, and there's, you know, more</p> <p>4 than enough width for the -- for a -- you know,</p> <p>5 on-street parking and marked as such. Not the</p> <p>6 individual spaces but there is a stripe indicating</p> <p>7 that, you know, parking is available.</p> <p>8 Now, that precedes well down the street,</p> <p>9 but as I mentioned before, the width diminishes as</p> <p>10 you go westward, and at some point you get to</p> <p>11 where there would be enough paving for it but it's</p> <p>12 just not striped for -- for parking.</p> <p>13 HEARING EXAMINER: Where, approximately,</p> <p>14 would that be? How many -- say how many houses</p> <p>15 down? Do you know?</p> <p>16 A The third house down from where -- you</p> <p>17 know, westward is where it gets too narrow to</p> <p>18 have -- well, you know, where on-street parking</p> <p>19 would not -- would no longer be appropriate.</p> <p>20 HEARING EXAMINER: Okay.</p> <p>21 A It accommodates, all told, about 11</p> <p>22 on-street parking spaces.</p> <p>23 BY MR. KLINE:</p> <p>24 Q How many of the those would be in the</p> <p>25 frontage immediately in front of our property?</p>
<p style="text-align: right;">50</p> <p>1 HEARING EXAMINER: Yes.</p> <p>2 BY MR. KLINE:</p> <p>3 Q It's a term of art, John?</p> <p>4 A Yes, and I'm familiar with it. I'm glad</p> <p>5 the hearing examiner chose it because --</p> <p>6 HEARING EXAMINER: I know.</p> <p>7 A So, yes, it's a little out of character</p> <p>8 because of, you know, the very slow speeds in --</p> <p>9 in -- on a road like this, but yes, it would be a</p> <p>10 suicide lane.</p> <p>11 HEARING EXAMINER: What is the speed?</p> <p>12 A Posted at 35.</p> <p>13 HEARING EXAMINER: And then is there</p> <p>14 parking -- so they've got three lanes. Each lane</p> <p>15 is -- you've got 50 feet of pavement and three</p> <p>16 lanes.</p> <p>17 A And the balance of the pavement is striped</p> <p>18 for on-street parking on the south side of the</p> <p>19 road.</p> <p>20 HEARING EXAMINER: On your side of the --</p> <p>21 on the property's side of the road.</p> <p>22 A Correct, on the south side of the road.</p> <p>23 The north side of the road, A, doesn't</p> <p>24 have it available by -- just by the markings and,</p> <p>25 B, it is also signed as no parking on the north</p>	<p style="text-align: right;">52</p> <p>1 A Three within the extents of our property.</p> <p>2 Between the two driveways, our subject driveway</p> <p>3 and our next-door neighbor's driveway, there's</p> <p>4 room for four cars.</p> <p>5 Q And then you said how many more further</p> <p>6 down to the west?</p> <p>7 A At least another seven --</p> <p>8 Q Thank you.</p> <p>9 A -- depending how tightly they parked. And</p> <p>10 that's interspersed amongst the existing --</p> <p>11 HEARING EXAMINER: Wait a minute. I</p> <p>12 thought you said the road accommodates eleven</p> <p>13 spaces, three within your property, then adjacent</p> <p>14 properties would have four?</p> <p>15 A No, three in front of our property, one</p> <p>16 more before you get to the -- our next-door</p> <p>17 neighbor's driveway, and I'll put my cursor there.</p> <p>18 HEARING EXAMINER: Okay.</p> <p>19 A And then west of our neighbor's property</p> <p>20 on down, interspersed amongst the other driveways,</p> <p>21 another seven.</p> <p>22 HEARING EXAMINER: Okay. And then what</p> <p>23 about the fire station?</p> <p>24 A One -- it's not marked one way or another,</p> <p>25 but I just wouldn't recommend parking in front of</p>

<p>53</p> <p>1 the subject property's mailbox or so close to the 2 fire station's -- 3 HEARING EXAMINER: Okay. Oh, I see. I 4 see. Okay. Go ahead. 5 BY MR. KLINE: 6 Q Mr. Sekerak, do you have occasion -- well, 7 you've mentioned you visited the property. Do you 8 have occasion to periodically visit the property 9 now? 10 A Yes, it's, you know, right on my commuting 11 route. So, I'm -- I've been -- during the past 12 year, I've been there very often. 13 My observations regarding on-street 14 parking are that it's -- you know, existing use of 15 it is sparsely, and I've been there all times of 16 day and, well, not the middle of the night, but as 17 recently as 8:00 last evening, there were four 18 cars along the length of that. And that's when, 19 you know, the residents are home and when it would 20 have the most use. 21 I've seen it often there is few as one or 22 two cars, but never have I observed more than four 23 cars along -- along that stretch. And I attribute 24 that much to all those single-family homes on the 25 south side of Boland Farm Road have two-car</p>	<p>55</p> <p>1 Does the subject property have a past 2 zoning history and can you describe it for us? 3 A Yeah, I'm going to change the exhibit at 4 this point, so give me a moment. I'm going to 5 Exhibit 47, which is the applicant's supplementary 6 prehearing statement. 7 (Exhibit 47 was identified on the record.) 8 A And, Ms. Robeson, if you'd let me know if 9 you can see that and you're ready for me to 10 proceed. 11 HEARING EXAMINER: Go ahead. 12 A All right. Go to page four of that, and 13 that's the board of appeals opinion approving 14 S-2415, a special exception for a nonresident 15 medical practitioner, and that was in 2000. 16 And I'm going to scroll down on Exhibit 47 17 to page 11, and that -- let me -- so, it's the 18 same orientation as -- this is north, and that's 19 a -- a section of the site plan for that 2000 20 special exception plan. 21 You'll note the existing building is very 22 consistent with existing conditions, but please 23 notice the configuration of the parking on -- on 24 that plan. 25 BY MR. KLINE:</p>
<p>54</p> <p>1 garages, two-car-width driveways, and because of 2 the yard 200 setbacks, enough depth to fit, you 3 know, two cars front to back within those 4 driveways, so a minimum of six car spaces 5 available for each of those single-family homes. 6 And a couple of them, like our next-door 7 neighbor, are -- also have expanded the width of 8 their driveway, so they could fit eight cars, if 9 they were so inclined, on their lot. 10 As I described, Seneca Vista Estates 11 across the street is oriented internally to its 12 community. It has its own on-street parking. 13 There's no need for any of them to utilize the 14 Boland Farm on-street parking. 15 HEARING EXAMINER: Okay. Thank you. 16 BY MR. KLINE: 17 Q Mr. Sekerak, have you exhausted your 18 description of the site features in the -- under 19 the existing conditions? 20 A Yes. Yeah, I believe that -- 21 HEARING EXAMINER: Or are you just 22 exhausted? 23 BY MR. KLINE: 24 Q Fine. Let me -- let me change the 25 subject then.</p>	<p>56</p> <p>1 Q So, your cursor is identifying what I'll 2 call the southern limits of the asphalt on the 3 property? 4 A Correct. The driveway, in its current 5 location, it accesses the existing two-car garage 6 and with a number of parking spaces along the side 7 of that drive aisle, along the east side of that 8 drive aisle. 9 Q And this is a copy of the site plan taken 10 from the board of appeals records for that special 11 exception; correct? 12 A Correct. Yes. 13 Q Very good. What happened over time on 14 this property? 15 A Analyzing aerial photographs taken over -- 16 over the course of time since then, and I'll go 17 down to the 2002 aerial photograph of the 18 conditions, and that's page 14 of Exhibit 47, 19 it's -- it shows -- so, we're dealing with 20 different orientations here, but you can show 21 that -- see that the parking in -- at that year, 22 at that point, was consistent with the approved 23 special exception. 24 Sometime between then and 2012, and I'm on 25 page 15 now of Exhibit 47, you can see how the</p>

<p>57</p> <p>1 parking -- the pavement was expanded all the 2 way -- well, further towards the western property 3 line and also down kind of consuming most of the 4 side -- that side yard, so the side of the house 5 and towards the south of the house. So, again, 6 that was 2012.</p> <p>7 And go to the next page.</p> <p>8 Q And, John, before we leave that, John, 9 there is no record, is there, in the -- the 10 records of the board of appeals of a request to 11 modify the parking, so this is inconsistent with 12 the approved special exception plan.</p> <p>13 A That's correct.</p> <p>14 Q Okay. Please continue.</p> <p>15 A So, page 16 is an aerial photograph taken 16 in 2014, and you can see the -- how the -- you 17 know, the paving from the previous photo extended 18 here, and that paving had then been extended to 19 effectively consume the entire rear yard of the 20 property.</p> <p>21 Q So, let me try it this say. So, when you 22 did your field investigation and saw this, you 23 reported to the client that the existing 24 operations were inconsistent with the approved 25 special exception plan for the doctor who resides</p>	<p>59</p> <p>1 was approved in 1993. It was recorded by Plat 2 19216 soon thereafter.</p> <p>3 There was a condition of approval of that 4 preliminary plan, condition number two, by the 5 planning board, that states, "Agreement with the 6 planning board to limit development to a single- 7 family dwelling with a resident medical 8 practitioner." And we're amending that 9 preliminary plan application in order to, you 10 know, make this the -- this conditional use 11 application, you know, or this conditional use 12 acceptable from a subdivision standpoint, also.</p> <p>13 So, we've -- we've already applied for 14 that subdivision amendment. It is 111 -- I'm 15 sorry. Let me start again -- 11993011A, and it's, 16 you know, a pending application awaiting 17 resolution of this conditional use case. It has a 18 planning board date scheduled for July 23rd.</p> <p>19 Q Thank you. Mr. Sekerak, would you bring 20 up the exhibit of the conditional use site plan 21 that we filed or -- and then amended -- not the 22 last one yet -- just to -- and use that as the 23 exhibit to explain to the hearing examiner what 24 the client's initial proposal was for the use of 25 the property.</p>
<p>58</p> <p>1 there; correct?</p> <p>2 A That's correct, sir. We brought it to his 3 attention. We -- and the applicant team that 4 arranged a meeting with the Department of 5 Permitting Services, Zoning and Site Plan 6 Enforcement Division, just to discuss this with -- 7 with them, made them aware of them -- of the 8 situation, and let them know of our proposed 9 conditional use application.</p> <p>10 And they concluded that they would, you 11 know, stay any enforcement activity, knowing that 12 this corrective action was being pursued, and an 13 email exchange with the DPS Zoning and Site Plan 14 Enforcement is included in page 47 of the staff 15 report where they -- again, they concluded to stay 16 any enforcement as long as a conditional use was 17 being diligently pursued that would correct any of 18 these ills.</p> <p>19 Q So, before I ask you what you're going to 20 do to cure the problem that we've just observed, 21 would you please describe the preliminary -- the 22 subdivision history of the property and why we 23 need to do something about that, as well.</p> <p>24 A The property was the subject of 25 preliminary plan of Subdivision 1-93011, and that</p>	<p>60</p> <p>1 A Okay. This is Exhibit 32G, and it's the 2 site plan for conditional use, and I'll -- 3 (Exhibit 32G was identified on the 4 record.)</p> <p>5 Q So, you're showing -- you're showing a 6 magnified version of the site plan now?</p> <p>7 A Yes. Yes, zooming in a bit on the -- the 8 extent of the property.</p> <p>9 In terms of our -- our proposal, very 10 little change -- well, the only change to the 11 building itself will be the addition of an 12 elevator to provide accessible -- accessibility to 13 all levels of the home. And I'll let Mr. Zavos 14 elaborate more on that later but, again, the home 15 itself is a two-story brick with a walkout 16 basement.</p> <p>17 I had previously mentioned the lack of 18 sidewalk along Boland Farm Road, and we are 19 proposing to fix -- fix that gap in the parking -- 20 I'm sorry -- in the pedestrian use along the south 21 side of Boland Farm Road. So, we're connecting 22 the sidewalks to our east and to our west and 23 providing a lead walk from that to our front door 24 and providing associated ramp to provide 25 accessible access to the front door.</p>

<p>61</p> <p>1 The more significant change is that we're 2 removing a large amount of the existing pavement. 3 It was, lack of better term, fairly indiscriminate 4 in how it was done, simply large expansive 5 pavement in the front yard, the entire side yard, 6 and effectively the entire rear yard. 7 We're able to remove some pavement, and 8 that's displayed in this hatching pattern on the 9 plan is where a number of space -- areas where, 10 we'll call it, extraneous paving, not necessary 11 for an efficient parking layout is being removed 12 the -- in two strategic locations to bring it -- 13 the location of parking into conformance with the 14 existing zoning ordinance for both the front yard 15 and the west -- west yard, which is closest to the 16 single-family home to -- to our west. 17 Q And when you say that, what is the 18 corrective measure, what is the standard you're 19 addressing to be in compliance with? 20 A For the front yard, under the current 21 code, and this differs from what it was when the 22 special exception was originally approved in terms 23 of the setback requirements for parking for 24 conditional use or parking in a residential 25 zone -- under current code, it's 10 feet for the</p>	<p>63</p> <p>1 Q So, what -- well, I know that we have a 2 parking waiver request pending, and I know you're 3 going to get to that, but why don't you just kind 4 of explain to us what parking we are proposing on 5 this plan and where it is located. 6 A On this plan -- 7 HEARING EXAMINER: Can I interrupt for a 8 minute? 9 MR. KLINE: Yes, ma'am. 10 A Of course. 11 HEARING EXAMINER: The question -- I know 12 you're not at the amendment yet, but if you 13 have -- but I do want you to address it. If you 14 have -- if you have 16 employees -- no. Under 15 the -- with 16 employees, your requirement under 16 the code is 12. All right. And I know you've got 17 the space in the garage that you're proposing. 18 My question is if I don't have 12 spaces, 19 you also need a waiver not just from the setbacks 20 but also from the number of parking spaces. And 21 that waiver was never note -- that waiver, believe 22 it or not, is required to be in the application 23 notice, but that waiver has never been noticed. 24 If you stay between 11 spaces, which is 25 what this shows, then there's a waiver provision</p>
<p>62</p> <p>1 front -- for the front yard. 2 So, we had slight encroachment into that, 3 and you could see it in relationship to the 4 10-foot PUE, public utility easement, that 5 parallels Boland Farm Road. 6 And also to the -- and then to the west, 7 the current requirement for parking setback for 8 conditional use in a residential zone is twice the 9 building setback when it adjoins another 10 single-family home. 11 So, the side yard setback in the R200 zone 12 is 12 feet, so the required parking setback would 13 be 24. So, we're able to bring it in conformance 14 with the current code in those two areas. 15 And it also had the additional benefits of 16 being able to provide stormwater management onsite 17 where none exists today. 18 Q And your cursor is pointing at what right 19 now? 20 A It's at a dry well location that's in 21 the -- in the newly accommodated setback area on 22 the -- along the west property line. It also 23 provides effective areas for additional plantings 24 where we can do -- well, buffering -- buffering 25 and shade for the -- for the property.</p>	<p>64</p> <p>1 that was never noticed. The setbacks were 2 noticed. The number of spaces weren't. So, I 3 just want you to be aware that that's an issue, 4 too. 5 Now, we're not there yet, I know, so I'm 6 going to let Mr. Sekerak continue his discussion 7 of the original plan and what it proposed. 8 A I'm perfectly comfortable with addressing 9 that at this point. And I'm coming over to the 10 parking tabulation on the same Exhibit 32G, and 11 that's where it demonstrates -- it calculates and 12 demonstrates both the required parking and the 13 parking being provided. 14 HEARING EXAMINER: But that was 10 -- that 15 was for fewer -- fewer employees, 13 employees. 16 A Yes. Yes, absent the shift change, 17 that's -- that's what we were -- 18 BY MR. KLINE: 19 Q Well, let's not get ahead of ourselves 20 here. Let's just break down what the ordinance 21 requires with just the raw numbers and where 22 they're located on the site. 23 A Okay. The 0.25 parking spaces per bed and 24 0.5 employee -- per employee, so that was the 25 parking spaces, you know, the required provided on</p>

<p>65</p> <p>1 that tabulation.</p> <p>2 I'll go back over to the building</p> <p>3 itself -- I don't know where the -- the site</p> <p>4 itself and explain where those are located.</p> <p>5 The ADA space is necessarily provided</p> <p>6 right in front of the garage, a convenient</p> <p>7 location for access to the front door, where we</p> <p>8 would simply be replacing some of the existing</p> <p>9 asphalt with some concrete to make it -- the slope</p> <p>10 tolerances of the -- a better facility for</p> <p>11 accessibility.</p> <p>12 Q Mr. Sekerak, your cursor seems to be a</p> <p>13 little bit generous in the size of the handicapped</p> <p>14 space. Where will the handicapped vehicle be</p> <p>15 parked?</p> <p>16 A It was, you know, oversized for the</p> <p>17 purposes of the ADA space and the ADA -- the</p> <p>18 associated ADA accessible aisle, so, 8-foot wide</p> <p>19 space, 8-foot wide aisle, but we didn't want to --</p> <p>20 that would, just by its appearance, look awkward</p> <p>21 in front of a -- a garage that's, you know, at</p> <p>22 least 20 feet wide.</p> <p>23 So, for -- to keep this as residential</p> <p>24 appearance, we chose just to put a concrete pad in</p> <p>25 front of the entire width of the garage.</p>	<p>67</p> <p>1 Q So, Mr. Sekerak, do all of these parking</p> <p>2 spaces you show meet the zoning standards for</p> <p>3 appropriate setbacks?</p> <p>4 A Not to the east and to the south. The</p> <p>5 current -- they do to the north and to the west.</p> <p>6 Current code requires parking for a conditional</p> <p>7 use in a single-family zone to be set back the</p> <p>8 equivalent of the rear -- rear yard building</p> <p>9 setback, and in that case, it's 30 feet; and twice</p> <p>10 the side yard setback. So, the side yard --</p> <p>11 required side yard setback is 12 feet. Twice</p> <p>12 would be 24 feet. The existing pavement is within</p> <p>13 two or three feet of both of those side and rear</p> <p>14 property lines.</p> <p>15 Q So, the application is requesting a</p> <p>16 parking waiver on the east side of 3 feet -- I'm</p> <p>17 sorry, yeah, 3 feet -- no, the other way, 21?</p> <p>18 A Yes.</p> <p>19 Q All right. Reducing the 24-foot setback</p> <p>20 to 3.</p> <p>21 A Correct.</p> <p>22 Q And in the rear where you had a 30-foot</p> <p>23 setback, you can provide two, so you're requesting</p> <p>24 a waiver of 28 there.</p> <p>25 A Correct.</p>
<p>66</p> <p>1 Q So, where are the other spaces on the site</p> <p>2 then?</p> <p>3 A Okay. Three spaces in the front yard, you</p> <p>4 know, set back 14 feet from Boland Farm Road so</p> <p>5 that we could meet the 10-foot setback, plus some</p> <p>6 additional plantings, buffer plantings, that we</p> <p>7 would put at that location, also provides an area</p> <p>8 for a shade tree there.</p> <p>9 All right. And then we --</p> <p>10 Q You say -- you say, "there." You just</p> <p>11 pointed your cursor. Describe where you pointed</p> <p>12 the cursor.</p> <p>13 A And I can -- I can describe that better</p> <p>14 with the landscape plan --</p> <p>15 Q That would be fine.</p> <p>16 A -- just that we are removing paving in the</p> <p>17 front yard at strategic locations for plantings.</p> <p>18 The -- we're utilizing the existing</p> <p>19 drive -- 20-foot-wide drive aisle on the east side</p> <p>20 of the house as it accesses the rear yard. And,</p> <p>21 remember, this is kind of going -- going down a</p> <p>22 gentle slope to the rear yard, which is at the</p> <p>23 lower level, at the basement level, of the house.</p> <p>24 And back there, there are seven spaces located</p> <p>25 with 20-foot-wide drive aisles.</p>	<p>68</p> <p>1 Q All right. Was there any discussions with</p> <p>2 staff about trying to maximize that separation</p> <p>3 primarily to accommodate more landscaping, and</p> <p>4 what were you able to achieve, if anything?</p> <p>5 A The discussion of landscaping along those</p> <p>6 two is moot because of an ironic -- parts of the</p> <p>7 zoning ordinance that don't require buffer</p> <p>8 plantings for parking when they're next door to an</p> <p>9 existing parking lot, such as is this case.</p> <p>10 HEARING EXAMINER: Where is that? It's</p> <p>11 two or something.</p> <p>12 MR. KLINE: I'm sorry. You're looking for</p> <p>13 a code requirement?</p> <p>14 HEARING EXAMINER: Yes.</p> <p>15 MR. KLINE: Okay. I see. Yeah.</p> <p>16 A 59 6.2.9.C.3.B.IV. It's in the parking</p> <p>17 tabulation. That would be easier. Let me do that</p> <p>18 on Exhibit 32G. I didn't go over to that section</p> <p>19 of the face of the plan, down in the parking</p> <p>20 design standards under perimeter planting area</p> <p>21 widths for the east and the south.</p> <p>22 HEARING EXAMINER: Okay. So -- I never</p> <p>23 ran into that one before. All right. So, you're</p> <p>24 saying setbackwise, you don't comply, but</p> <p>25 landscapingwise, it does.</p>

<p>69</p> <p>1 A Correct. Correct. We're directly 2 adjoining the fire station parking lot, which 3 is -- you know, wraps around those two property 4 lines, those two -- 5 HEARING EXAMINER: What about the south 6 side? 7 A Go back over to the plan. South of our 8 property is also the -- is -- is the majority of 9 the parking -- fire station parking. 10 HEARING EXAMINER: Okay. 11 BY MR. KLINE: 12 Q So, Mr. Sekerak, go ahead and finish up. 13 A Yeah. No landscape -- no buffer 14 landscaping are required along those two sides. 15 We're directly adjoining institutional use with 16 its parking along those two properties. 17 On the fire station property, there are a 18 lot of mature evergreen trees, Leland Cypress 19 trees all along the south property line, and they 20 wrap up the east property line for, you know, 21 almost halfway up the east property line. 22 And, remember, that the three sides of our 23 property also have the six-foot privacy fence. 24 HEARING EXAMINER: Right. 25 BY MR. KLINE:</p>	<p>71</p> <p>1 practical advantage to increasing that -- that 2 setback, considering the adjoining use and the 3 six-foot privacy fence. 4 Q And on the south side, is there any way to 5 shave off anymore of the existing paving and still 6 have adequate parking widths and driveways given 7 the location of the footprint of the building? 8 A Not -- not to be able to efficiently 9 maneuver the cars in and out of that rear yard 10 area. 11 Q So, you've done the best you can in terms 12 of providing the separation from the adjacent 13 properties on the east to the south? 14 A That's correct. 15 Q Okay. Very good. Probably I should have 16 asked this earlier, but does this -- does this 17 conditional use application, in conjunction with 18 any others in the neighborhood, change the 19 character of the neighborhood? And I guess to 20 answer that you need to tell us what other special 21 exceptions or conditional use exists in either 22 your zoning neighborhood or the staff's zoning 23 neighborhood. 24 A Yeah, I'd be happy to describe that. 25 Ms. Robeson, would you like me to pull up an</p>
<p>70</p> <p>1 Q So, Mr. Sekerak, your -- I guess the 2 thrust of your testimony is we're not asking to, 3 basically, put paving this close to the property 4 line, we're just using existing paving that is 5 there. 6 A Correct, in a very appropriate location. 7 Q Fine. 8 A And removing paving in less appropriate 9 locations. 10 Q And as I look -- I guess I'd like to ask 11 you can you increase the amount of separation. 12 And I'll take it -- break it down to two parts. 13 So, looking at the exhibit you have on the 14 screen right now, I see a dimension of 20 feet 15 wide from the -- I guess the curb line of the east 16 side of the property to a planting area and 17 showing the width of the driveway. 18 So, you -- can you increase the amount of 19 buffer in any way and still have an adequate drive 20 lane to get to the back property line? 21 A 20 feet is the minimum for a two -- two- 22 way traffic. And there are existing -- right by 23 that 20-foot dimension on the east side of the 24 house, those are the heating and air-conditioning 25 units for the home, but mostly there's no</p>	<p>72</p> <p>1 exhibit for that or simply describe it? 2 HEARING EXAMINER: Just describe it. 3 A Okay. At the far end of Boland Farm Road, 4 at the southeast quadrant of that intersection 5 with Observation, is a special exception S-2789 6 for an accessory dwelling unit. 7 And then the automobile filling station 8 that I had described earlier, diagonally across 9 the street from the subject property, that's the 10 subject of special exception S-1630. Those are 11 the two special exceptions. Conditionally, it 12 says, "within my defined neighborhood." 13 I did buildings within the staff's 14 neighborhood. The 7-Eleven at the intersection of 15 White and 355 has S-2207 assigned to it on the 16 zoning map, but I had not looked into whether or 17 not that was still active or not. The gas station 18 is still operating but it has been going through 19 the zoning changes and, again, I don't know if 20 that's a -- could just be a historical special 21 exception. May not be active. 22 HEARING EXAMINER: What, the gas station? 23 A No, the gas station is operating. 24 HEARING EXAMINER: Okay. 25 A Whether or not the special exception is</p>

<p>73</p> <p>1 still --</p> <p>2 HEARING EXAMINER: (Inaudible.)</p> <p>3 A Pardon me?</p> <p>4 HEARING EXAMINER: Which one are you not</p> <p>5 sure is still operating?</p> <p>6 A The 7 -- at the intersection -- I'm sorry.</p> <p>7 They are both operating.</p> <p>8 HEARING EXAMINER: Okay.</p> <p>9 A Both are operating. The special exception</p> <p>10 for the one across the street from the subject</p> <p>11 property, that special exception is still</p> <p>12 applicable. I just hadn't looked -- looked into</p> <p>13 the other special exception for automobile filling</p> <p>14 station. That was in the staff's neighborhood but</p> <p>15 not --</p> <p>16 HEARING EXAMINER: I see. With the</p> <p>17 proximity of the gas station and this use, would</p> <p>18 this result in an overconcentration of -- I'm</p> <p>19 talking at the gas station across the street,</p> <p>20 would this result in an overconcentration of</p> <p>21 conditional uses in the area?</p> <p>22 A The gas station preceded the special</p> <p>23 exception -- the special exception before this</p> <p>24 subject property, the medical practitioners, you</p> <p>25 know, the construction of the -- of the home and</p>	<p>75</p> <p>1 property?</p> <p>2 A All right. I've pulled up Exhibit 32I,</p> <p>3 which is the landscape and lighting plan for</p> <p>4 conditional use.</p> <p>5 (Exhibit 32I was identified on the</p> <p>6 record.)</p> <p>7 A I'm trying to move that over some.</p> <p>8 So, this is the landscape plan. And as I</p> <p>9 had mentioned before, the -- the existing site, in</p> <p>10 those areas that are not paved, is very heavily</p> <p>11 landscaped already in the traditional landscape</p> <p>12 plantings of, you know, perennial trees and</p> <p>13 evergreen shrubs and the such.</p> <p>14 And, so, in that context, and also the</p> <p>15 context of -- please remember the six-foot privacy</p> <p>16 fence that runs along the entire west, south, and</p> <p>17 east sides of the property. But it did give us</p> <p>18 opportunity to, you know, provide some additional</p> <p>19 plantings in these strategic locations, and they</p> <p>20 are, you know, Nixon shade trees, understory</p> <p>21 trees, and the buffering shrubs along the --</p> <p>22 buffering the three parking spaces from Boland</p> <p>23 Farm Road right-of-way.</p> <p>24 HEARING EXAMINER: Okay. I -- I don't</p> <p>25 have a lot of questions on the -- on the landscape</p>
<p>74</p> <p>1 its use as a medical practitioner's office, so</p> <p>2 it -- it preceded it and it was there when that</p> <p>3 medical practitioner's use was approved.</p> <p>4 The accessory dwelling unit</p> <p>5 is unnoticeable in terms of its use at the far end</p> <p>6 of Boland Farm Road.</p> <p>7 HEARING EXAMINER: Well, they aren't even</p> <p>8 special exceptions anymore, so -- but I guess my</p> <p>9 question is, from a concentration of uses, what</p> <p>10 does this special exception -- the special</p> <p>11 exception make the area more commercial or less</p> <p>12 commercial?</p> <p>13 A Oh, less commercial. We're replacing a</p> <p>14 medical practitioner's office with a residential</p> <p>15 use.</p> <p>16 HEARING EXAMINER: Okay.</p> <p>17 BY MR. KLINE:</p> <p>18 Q Mr. Sekerak, let me change subjects again</p> <p>19 into an area you're very comfortable with. Were</p> <p>20 you responsible for preparing the landscape plans</p> <p>21 that were part of this application?</p> <p>22 A Yes, I am.</p> <p>23 Q Do you want to pull up a copy of the</p> <p>24 landscape plan and walk us through what the</p> <p>25 applicant's proposal is to try and beautify the</p>	<p>76</p> <p>1 plan, and I'm not sure it's productive to spend a</p> <p>2 lot of time on it given that we've got quite a few</p> <p>3 other areas to cover.</p> <p>4 Do you disagree with the staff report</p> <p>5 recommending approval of the landscape plan?</p> <p>6 A I do not.</p> <p>7 HEARING EXAMINER: Okay.</p> <p>8 A It was a constructive dialogue with --</p> <p>9 with the planning staff that resulted in this --</p> <p>10 this plan that works well for both the staff and</p> <p>11 for the applicant.</p> <p>12 HEARING EXAMINER: Okay.</p> <p>13 BY MR. KLINE:</p> <p>14 Q Mr. Sekerak, I guess implicitly then in</p> <p>15 your comment -- your answer to the question I</p> <p>16 hadn't asked you, and that is does the landscaping</p> <p>17 plan meet all of those various requirements of</p> <p>18 Chapter or Section 59.6 dealing with coverage</p> <p>19 setbacks, et cetera?</p> <p>20 A Yes, it does.</p> <p>21 Q Thank you. Since this is called a</p> <p>22 landscaping and lighting plan, I know you alluded</p> <p>23 to the lighting fixtures earlier, but would you</p> <p>24 just kind of explain to us why you believe it</p> <p>25 meets the lighting requirements set forth in the</p>

<p>77</p> <p>1 zoning ordinance.</p> <p>2 A The existing conditions are that it's</p> <p>3 heavily lit. I didn't see any discussion of or --</p> <p>4 you know, of lighting in the previous special</p> <p>5 exception, but between the pole lights and the</p> <p>6 lights on the fence posts, it's -- it was heavily</p> <p>7 lit, more so than -- far more so than what's</p> <p>8 necessary for our proposed use.</p> <p>9 Wasn't able to calculate the proposed</p> <p>10 lighting because we are proposing no new lighting,</p> <p>11 but I did go out there late one evening with a</p> <p>12 light meter and took measurements, you know,</p> <p>13 photometric measurements of existing conditions</p> <p>14 with all the lights turned on. A couple of them</p> <p>15 were, you know, not operational but for the most</p> <p>16 part all along the perimeter of the property.</p> <p>17 Those -- the results of those calculations</p> <p>18 are on the site plan for conditional use. They</p> <p>19 were a maximum of .6 and as low as .1. It is</p> <p>20 important to remember though that much of that was</p> <p>21 spillover from, for instance, the parking lot pole</p> <p>22 lights, item 20, or whatever feet high on the</p> <p>23 adjoining fire station property or the street</p> <p>24 lights on poles. So, it was impossible to</p> <p>25 differentiate how much was being done by, you</p>	<p>79</p> <p>1 0.5 footcandles. So, it's just patently obvious</p> <p>2 that when the pole lights and the lights on top of</p> <p>3 the fence are removed and, in addition to that,</p> <p>4 the applicant has agreed to remove the security</p> <p>5 lights at the -- at the west end of the house,</p> <p>6 it's patently obvious it would be less.</p> <p>7 HEARING EXAMINER: Okay. Thank you.</p> <p>8 BY MR. KLINE:</p> <p>9 Q Mr. Sekerak, will be there a sign</p> <p>10 associated with the proposed use?</p> <p>11 A There -- no proposed sign. Like lighting,</p> <p>12 we are not proposing any new lights, and we are</p> <p>13 moving many of the existing lights. And when it</p> <p>14 comes to signage, there's no proposed sign --</p> <p>15 signage. And I had mentioned the two existing</p> <p>16 signs on the property, a ground-mounted sign next</p> <p>17 to the street and the sign on the side of the</p> <p>18 building -- on the front of the building.</p> <p>19 The sign on the street is -- I did measure</p> <p>20 it -- I would guess about five by seven feet</p> <p>21 including the -- the brick support.</p> <p>22 HEARING EXAMINER: Are they being removed?</p> <p>23 A Yes.</p> <p>24 HEARING EXAMINER: Okay. Thank you.</p> <p>25 BY MR. KLINE: .</p>
<p>78</p> <p>1 know, the existing lights.</p> <p>2 HEARING EXAMINER: What about the west</p> <p>3 side?</p> <p>4 A No additional lighting there other than</p> <p>5 the two light posts and the globe -- globe lights</p> <p>6 on the top of the existing fence. Oh, and -- I'm</p> <p>7 sorry.</p> <p>8 HEARING EXAMINER: How were the</p> <p>9 footcandles there; do you know?</p> <p>10 A And want to also mention there were</p> <p>11 security lights up on the eve that are motion</p> <p>12 activated.</p> <p>13 HEARING EXAMINER: Okay.</p> <p>14 A Regarding your question of the west side</p> <p>15 were .5 footcandles in the worst condition, which</p> <p>16 would have been right underneath one of those pole</p> <p>17 lights.</p> <p>18 HEARING EXAMINER: Okay.</p> <p>19 A Now, the requirements for lighting in this</p> <p>20 situation on the west side that you were</p> <p>21 discussing is .1 maximum of proposed lighting</p> <p>22 because it's running a single-family detached</p> <p>23 home.</p> <p>24 HEARING EXAMINER: Right.</p> <p>25 A For the other three property lines, it's</p>	<p>80</p> <p>1 Q Mr. Sekerak, going back to your expertise</p> <p>2 as a land use planner, would you tell us what the</p> <p>3 Germantown Area master plan, the 2009 employment</p> <p>4 area sector plan recommends for the subject</p> <p>5 property, if anything.</p> <p>6 A The -- the properties within the Seneca</p> <p>7 Meadows milestone district study area, and that's</p> <p>8 found on page 66 of the master plan, there's no</p> <p>9 specific guidance for the -- for the subject</p> <p>10 property. It did confirm the zoning for the --</p> <p>11 all these properties in the neighborhood,</p> <p>12 including the R200 for the subject property. And</p> <p>13 a residential care facility is permitted by</p> <p>14 conditional use in the R200 zone.</p> <p>15 Q Is it your opinion then that the</p> <p>16 application is in accordance with the spirit and</p> <p>17 intent of the area master plan?</p> <p>18 A Absolutely.</p> <p>19 Q Based on your analysis of the items you've</p> <p>20 talk about today, do you believe the application</p> <p>21 meets all the dimensional and numerical</p> <p>22 development standards set forth in the zoning</p> <p>23 ordinance for the zone and for the use but for the</p> <p>24 parking setback waivers you've discussed?</p> <p>25 A Correct, with the exception of those, the</p>

<p>81</p> <p>1 one side yard and the rear yard for parking 2 setback, even though no mention of landscape 3 required along there, just the setback of the 4 parking, with the exception of those two, yes, it 5 is in conformance with the development standards 6 of the zoning ordinance.</p> <p>7 Q In your professional opinion, does the 8 proposed use satisfy the requirement of 9 Section 59.3.3.2.E2b that the height density 10 coverage and parking of the proposed use are 11 compatible with the surrounding uses?</p> <p>12 A Yes, and the applicable section -- 13 subsection of that section is IIb. The other 14 sections, you know, referred to limited use or 15 other conditions that don't apply here, but -- 16 but -- but IIb, yes, it does.</p> <p>17 The building is traditionally designed 18 single-family detached home with residential 19 landscaping. The existing home predated other 20 homes in the neighborhood other than -- and other 21 buildings other than the gas station, and the 22 parking is sensitively located to be largely out 23 of sight in the rear yard and takes advantage of 24 the unique opportunity of orienting it towards the 25 much larger parking expanses on the adjoining</p>	<p>83</p> <p>1 paving, the extent of the existing -- but since 2 we're ameliorating that in this case and, you 3 know, that -- I don't feel that that is a 4 noninherent impact.</p> <p>5 Same goes for the commercial signs. 6 That's not inherent in terms of its existing 7 condition, but we're comparing the proposed use 8 for impacts to the community and, so, both of 9 those would be ameliorated.</p> <p>10 Q From your land use perspective, do you 11 believe that the proposed use will have -- be -- 12 allow for useful and peaceful enjoyment of the 13 development potential surrounding properties?</p> <p>14 A Yes, it caused no harm. We are converting 15 a medical office use to a residential use on an 16 amazingly appropriate site considering the context 17 of its relationship to the neighborhood.</p> <p>18 Q Last, anything about the proposed use that 19 would have an adverse effect on the health, 20 safety, or welfare of neighboring residents, 21 visitors of the property, or employees on the 22 property?</p> <p>23 A No harm to either -- any of those parties.</p> <p>24 MR. KLINE: Ms. Robeson, I have no further 25 questions of Mr. Sekerak.</p>
<p>82</p> <p>1 property.</p> <p>2 Q In your professional opinion, will the 3 proposed use be harmonious with and not alter the 4 character of the surrounding neighborhood?</p> <p>5 A Yes, it will be harmonious. It will not 6 alter what is now predominantly residential 7 character of the neighborhood. It predated most 8 of the other buildings in the area. We're 9 replacing a medical office use with a residential 10 use. And I think the most significant change, if 11 you will, to the character of the neighborhood 12 will be the removal of the commercial signs.</p> <p>13 Q On the issue of inherent and noninherent 14 characteristics of the use, do you feel that from 15 a professional point of view that the proposed use 16 will cause any undue harm because of those 17 inherent or noninherent uses associated with this 18 kind of facility?</p> <p>19 A It will not cause undue harm. You know, 20 inherent items such as a large building or, you 21 know, additional trips, there's sufficient parking 22 is all accommodated here.</p> <p>23 Not inherent, the staff report indicated 24 the existing parking being a noninherent 25 characteristic, but since we are -- or existing</p>	<p>84</p> <p>1 HEARING EXAMINER: Okay. For the record, 2 is there anyone that is not going to be called by 3 Mr. Kline who would like to ask Mr. Sekerak any 4 questions?</p> <p>5 Okay. Hearing none, Mr. Kline, you can 6 call your next witness.</p> <p>7 MR. KLINE: I'd like -- I want to make 8 sure that Ms. Kim Currano is on the line and is 9 available to testify.</p> <p>10 Kim, are you there?</p> <p>11 MS. CURRANO: I am here. I don't know if 12 you can hear me or see me.</p> <p>13 MR. KLINE: We don't see you or our end.</p> <p>14 HEARING EXAMINER: Okay. Let me --</p> <p>15 MR. KLINE: John, to the point, maybe you 16 need to stop sharing so that we can get this back 17 into the hearing examiner's hands.</p> <p>18 MS. CURRANO: Can you see me now?</p> <p>19 MR. KLINE: Thank you.</p> <p>20 HEARING EXAMINER: Okay. Ms. Currano, 21 please raise your right hand.</p> <p>22 KIM CURRANO, 23 having been duly affirmed, testified as follows:</p> <p>24 HEARING EXAMINER: Please state your name 25 and business address for the record.</p>

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22 (85 to 88)

<p>85</p> <p>1 A Sure. My name is Kim Currano, last name 2 spelled C-u-r-r-a-n-o. I work at Stantec. The 3 address is 20440 Century Boulevard, Suite 240 in 4 Germantown. 5 HEARING EXAMINER: Okay. Go ahead, 6 Mr. Kline. 7 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT 8 BY MR. KLINE: 9 Q And what is your profession, Ms. Currano? 10 A I'm a professional engineer registered in 11 the State of Maryland. 12 Q How long have you been practicing civil 13 engineering? 14 A 19 years. 15 Q Apropos or mindful of how the hearing 16 examiner handled this before, have you ever 17 qualified as an expert in the subject of civil 18 engineering before the hearing examiner, in 19 particular, Ms. Robeson? 20 A Yes, I have been qualified before. 21 Q Do you remember the case itself? 22 A Daycare at Four Corners, Number S-270. 23 HEARING EXAMINER: Oh. 24 MR. KLINE: That may not be a good -- 25 HEARING EXAMINER: Oh, yes, I remember</p>	<p>87</p> <p>1 anything about the sprinkling system or should I 2 just leave that to the architect, because that's 3 an interesting feature? 4 A I will defer on that. 5 Q Very good. We'll ask Mr. Zavos that 6 question. 7 From a storm water management point of 8 view, looks like you actually got to accomplish 9 something that really made a big improvement on 10 the property. So, could you describe the storm 11 water management concept and what you're 12 accomplishing and how you're handling it. 13 A Of course. Right now there is no storm 14 management available on the property, and we will 15 be reducing the pervious area which does provide 16 storm management having less runoff come off the 17 product. In addition to that, we are treating 18 most of the roof with a dry well in the rear of 19 the property. 20 Q And that was a dry well located in what 21 I'll call the southwest corner of the property? 22 A That's correct. It will be a grass once 23 the pavement is removed. 24 Q Very good. And do you have approval from 25 the Department of Permitting Services of the storm</p>
<p>86</p> <p>1 that one. Okay. Competent. Are you licensed to 2 practice in the State of Maryland? 3 A Yes, I am. 4 HEARING EXAMINER: Okay. I'll qualify her 5 as an expert in civil engineering. 6 A Thank you. 7 MR. KLINE: Thank you very much. 8 Q Ms. Currano, was there anything in the 9 extensive testimony we got from Mr. Sekerak about 10 site features that would relate to civil 11 engineering issues that you want to maybe either 12 go back and bring to our attention or highlight in 13 some fashion? 14 A No, I think he did an excellent job. 15 Q Okay. Very good. So, then let me kind of 16 break it down to the basics. Can you tell us how 17 are we going to provide the water and sewer 18 service to the public -- to this use? 19 A Well, this existing site does have water 20 and sewer available. We will be upsizing the 21 waterline to provide more water for the water 22 sprinkler inside the building, but the existing 23 mains are available in the frontage of the 24 property and in Boland Farm Road. 25 Q Are you in a position to be able to say</p>	<p>88</p> <p>1 water management concept plan? 2 A Yes, the concept plan is approved. 3 MR. KLINE: If I recall correctly, 4 Ms. Robeson, that letter is an attachment -- or 5 I'm sorry -- it's part of the -- in the appendix 6 of the staff report. 7 HEARING EXAMINER: Right. 8 BY MR. KLINE: 9 Q Okay. I guess it's going to be pretty 10 simple to ask you the final question, that is are 11 there any other public -- could you address other 12 public facilities and their availability and 13 adequacy, primarily fire, which maybe is 14 self-evident, but fire and police protection. 15 A Of course. Fire department is right next 16 door, and then the police station is about a 17 little -- a mile-and-a-half away or about a 18 five-minute drive, which is the Germantown Police 19 Station. 20 Q Ms. Currano, from a civil engineering 21 point of view, is there any adverse effects that 22 could flow from the proposed use that would have a 23 damaging effect on surrounding properties? 24 A No. 25 MR. KLINE: I have no further questions of</p>

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23 (89 to 92)

<p>89</p> <p>1 Ms. Currano. 2 HEARING EXAMINER: Okay. Just briefly. 3 And there are utilities to this site, electric -- 4 A Correct. 5 HEARING EXAMINER: -- gas or telephone, 6 all that type of thing? 7 A Those are correct, yes, dry utility access 8 are available to this property. 9 HEARING EXAMINER: Okay. Is -- Mr. Kline, 10 do you have any questions based on my question 11 there? 12 MR. KLINE: No, ma'am. 13 HEARING EXAMINER: Is there anyone in the 14 meeting that will not be called by Mr. Kline who 15 wishes to ask Ms. Currano a question? 16 Okay. Hearing none, Mister -- you may be 17 excused, Ms. Currano. 18 And, Mr. Kline, do you want to call your 19 next witness? 20 MR. KLINE: Our next -- excuse me. Our 21 next witness would be Mr. Bruce Zavos, please. 22 Mr. Zavos, are you available? 23 MR. ZAVOS: I am. Let me get this 24 adjusted properly. Yes, I'm here. Can you hear 25 me?</p>	<p>91</p> <p>1 mastered it, for 39 years. 2 Q And you are -- 3 HEARING EXAMINER: But you have mastered 4 it. Let me just say, to qualify as an expert 5 witness, you don't want to say that. 6 A Okay. I have mastered it. 7 Q And -- or the other way of saying it, 8 you're not practicing anymore. It's serious now. 9 A That's right. 10 Q You're authorized to practice architecture 11 in what jurisdictions? 12 A In Maryland, Virginia, D.C., West 13 Virginia, Pennsylvania, and pending in Delaware. 14 Q Have you ever qualified as an expert in 15 the field of architecture in a proceeding such as 16 this before a hearing examiner or some board or 17 court of law? 18 A Yes, I have, at the D.C. Court of Appeals. 19 Q Could you just give us an explanation of 20 the nature of the case. 21 HEARING EXAMINER: Well, if D.C. has 22 defined as an expert -- were you qualified as an 23 expert in architect -- an expert in architecture? 24 A Yes. 25 HEARING EXAMINER: I'll accept him as an</p>
<p>90</p> <p>1 MR. KLINE: Yes, sir. 2 MR. ZAVOS: Wonderful. 3 HEARING EXAMINER: Mr. Zavos, can you 4 please raise your right hand. 5 BRUCE ZAVOS, 6 having been duly affirmed, testified as follows: 7 HEARING EXAMINER: Please state your name 8 and business address for the record. 9 A My name is Bruce Zavos. I'm the principal 10 at Zavos Architecture & Design, 323 West Patrick 11 Street, Frederick, Maryland 21701. 12 HEARING EXAMINER: Okay. Go ahead, 13 Mr. Kline. 14 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT 15 BY MR. KLINE: 16 Q Mr. Sekerak, what is your profession? 17 A I'm a registered architect. 18 Q You are registered in the State of 19 Maryland? 20 A I am. 21 Q Do you remember your number? 22 A I wrote it down. 5980. 23 Q Thank you. How long have you been 24 practicing architecture? 25 A I've been practicing, still haven't</p>	<p>92</p> <p>1 expert in architecture. 2 MR. KLINE: Thank you very much. 3 Q So, I guess my first question, Mr. Zavos, 4 is is there much architecture involved in this 5 project, since we've got a building sitting out 6 there now? So, could you please explain, when 7 your client came to you, the program and what you 8 folks have done to the building to make it ready 9 for the program for Way Station. 10 A Sure. Mr. Rose came to us. He described 11 his residential facility that he was thinking 12 about. He -- he showed us the plans of the 13 existing residential facility and outlined the 14 intended program for the facility. 15 We were very enthusiastic, as it is an 16 existing residential building, approximately 17 11,000 square feet, but laid out such that there 18 were numerous exam rooms that would very easily 19 and readily be able to be converted to bedrooms. 20 The community spaces, the common spaces, 21 living room, kitchen, et cetera, were adequate to 22 meet the needs of the program. 23 The exterior of the building, as we know, 24 is residential in nature. It has some deferred 25 maintenance items that needed to be done, but very</p>

<p>93</p> <p>1 little upgrades needed to be done to the exterior. 2 The only thing that we saw that would have 3 any footprint impact was making sure that all 4 three levels were accessible. 5 Q So, how does that have an effect on 6 footprint? 7 A What we proposed and have designed is an 8 elevator at the rear, I guess on the south side of 9 the residence, that connects all the floors, and a 10 small vestibule area. The square footages are 11 very minimal. It's 64 square feet for the 12 elevator and 60 square feet for the vestibule. 13 And, again, it's all on the south side, so there's 14 no impact on the north, west, or east side and is 15 not visible from the street. 16 MR. KLINE: Ms. Robeson, do you -- would 17 you like to see that elevation, and in which case 18 you control it, but we can pull it up and explain 19 it in more detail if you would like to do that. 20 HEARING EXAMINER: No, I don't think that 21 the architecture is the huge issue here. I'm 22 concerned about getting to -- because you did such 23 a good job, Mr. Zavos. 24 A Thank you very much. 25 HEARING EXAMINER: Is there a reason we</p>	<p>95</p> <p>1 see from the elevations that are on the screen as 2 we speak, that it is a traditional two-story semi- 3 colonial house with a two-car garage on the east 4 side. The materials are masonry and fiberglass 5 shingle roof, double-hung muntin windows with a 6 center hallway with a circular window at the top, 7 which is all consistent with residential design. 8 The hip roof is also very residential in nature. 9 This building was designed as a house and 10 clearly represents that traditional sort of semi- 11 Georgian type of architecture. 12 Q Could we scroll up and see, because we're 13 only into what's the -- it says, "south 14 elevation," but we need to see the back of the 15 building. Could we scroll up and find our -- or 16 actually go to 32, the other elevation drawing, 17 32F. Yeah, that's still the front. It appears at 18 both 32F and G. 19 A Okay. Come down to the exterior 20 elevations. 21 MR. SEKERAK: 32E. 22 Q There we go. Great. 23 (Exhibits 32E and F were identified on the 24 record.) 25 Q Yeah, can you -- so, can you describe --</p>
<p>94</p> <p>1 need to go into it? 2 MR. KLINE: Let me phrase it this way. 3 HEARING EXAMINER: Let me just say, the 4 architecture that is represented -- tell me why 5 the architecture that's represented -- I've seen 6 your elevations. 7 A Uh-huh. 8 HEARING EXAMINER: Tell me why -- which 9 are on the website. Tell me why that is 10 consistent with the residential character of the 11 neighborhood. 12 And if we could pull the -- if we could 13 pull the arc -- elevations up quickly, I think 14 they're 32-something. 15 A Can I do that? 16 HEARING EXAMINER: Jon -- 17 MR. KLINE: We're prepared to do it here. 18 A Here we go. Okay. 19 HEARING EXAMINER: Here we go. Okay. 20 Never mind, Jon. 21 Okay. Go ahead. Can you tell me why 22 these are compatible with the character of the 23 neighborhood. 24 A The surrounding area is residential in 25 nature. This is a residential building. You can</p>	<p>96</p> <p>1 locate where the elevator shaft is or the elevator 2 tower is and how it blends into the residential 3 character of the building. 4 A What we did is, again, you have certain 5 requirements to make an elevator work. We removed 6 one dormer on the rear and added a new dormer that 7 extended out to cover the elevator shaft. We have 8 a brick base that is similar material to the 9 existing brick, and we used a cementitious board 10 on the outside with some vertical accent pieces. 11 If you take a look at the east elevation, 12 you can see how that works throughout the east 13 side and the north side and also on the west side. 14 MR. KLINE: Ms. Robeson, was there 15 anything else you wanted to hear about? 16 HEARING EXAMINER: No, that's fine. 17 MR. KLINE: Very good. Okay. 18 Q Well, then let me just ask you, because I 19 thought it was important, we heard the comment 20 from Ms. Currano about the sprinkler system, does 21 that have any kind of a physical feature on the 22 exterior of the building and what are the 23 advantages it gives to this place as a shelter for 24 residents? 25 A This is an MFPA13 system which both</p>

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25 (97 to 100)

<p>97</p> <p>1 protects the inhabitants, as well as the 2 structure. It's, basically, one of the higher 3 levels. It is not a 13R, which is just 4 specifically to protect residents. It does not 5 have any significant impact on the exterior. On 6 the interior, typically we will just have heads, 7 as necessary. I think it's 144 square feet per 8 head. Again, no significant impact on the 9 exterior of the building.</p> <p>10 Q Thank you. And the last question is you 11 heard the testimony about the kitchen and the 12 residents cooking their own meals. Will you need 13 to do anything to the existing facilities and deal 14 with the Health Department as it relates to use of 15 the kitchen?</p> <p>16 A I do not think so. It's my understanding 17 this is a warming kitchen. This is not a 18 commercial kitchen.</p> <p>19 Q Mr. Zavos, I guess what I'd like you to do 20 is restate the answer to the question the hearing 21 examiner asked you a minute ago, and that is, in 22 your professional opinion, is the existing 23 structure modified as you've described it in this 24 Exhibit 32E compatible with the character of the 25 surrounding neighborhood?</p>	<p>99</p> <p>1 the exhibit from the website?</p> <p>2 MR. SEKERAK: That was me.</p> <p>3 HEARING OFFICER: That was you.</p> <p>4 MR. SEKERAK: And I have since unshared my 5 screen.</p> <p>6 HEARING EXAMINER: Okay. It's not 7 unsharing. It's that you've got to give back 8 control to me.</p> <p>9 MR. SEKERAK: Okay.</p> <p>10 HEARING OFFICER: Well, let me do this. 11 You -- you handled it well. Let's get to the next 12 witness and --</p> <p>13 MR. KLINE: Well, you make a good point 14 because Ms. White will probably not need an 15 exhibit, and we will need them in the hands of 16 Mr. Rose and Mr. Sekerak for what I'll call the 17 second part of the presentation. So, maybe just 18 leaving it wherever it is right now is the way to 19 do it.</p> <p>20 HEARING EXAMINER: Okay. So, let's just 21 proceed.</p> <p>22 MR. KLINE: Very good.</p> <p>23 Ms. White, are you available?</p> <p>24 MS. WHITE: I am.</p> <p>25 MR. KLINE: Fine. Can we see your face,</p>
<p>98</p> <p>1 A It is compatible with the surrounding 2 neighborhood.</p> <p>3 MR. KLINE: I have no further questions of 4 Mr. Zavos.</p> <p>5 HEARING EXAMINER: Thank you.</p> <p>6 Is there anyone that is not going to be 7 called by Mr. Kline, is there anyone in this 8 meeting that would like to ask Mr. Zavos a 9 question?</p> <p>10 Okay. Hearing none, we can -- we can 11 proceed. Who is your next witness?</p> <p>12 MR. KLINE: Thank you. Good way to -- I 13 have one -- I have essentially one more witness to 14 complete what I call my prima facie case, and 15 that's Nicole White, and that will be fairly quick 16 to get her testimony, ten minutes probably or so.</p> <p>17 HEARING EXAMINER: Okay. One question. I 18 tried to take control of the meeting back and 19 somebody denied my request. Can I ask who that 20 was.</p> <p>21 MR. KLINE: Well, it would have to be 22 Mr. Sekerak, wouldn't it?</p> <p>23 MR. SEKERAK: I have unshared my screen, 24 and other than that, I haven't been --</p> <p>25 HEARING EXAMINER: Well, who is pulling up</p>	<p>100</p> <p>1 please, so we can get you sworn in.</p> <p>2 MS. WHITE: I see my face. Do you not see 3 it?</p> <p>4 MR. KLINE: Unfortunately, we don't see it 5 on this.</p> <p>6 MS. WHITE: I don't know. I mean I can 7 see my face. I don't know --</p> <p>8 HEARING EXAMINER: If you go down -- there 9 you go.</p> <p>10 MR. KLINE: There you go. Thank you.</p> <p>11 MS. WHITE: Okay.</p> <p>12 HEARING EXAMINER: Ms. White, would you 13 please raise your right hand.</p> <p>14 NICOLE WHITE, 15 having been duly affirmed, testified as follows:</p> <p>16 HEARING EXAMINER: Okay. Please state 17 your name and business address for the record.</p> <p>18 A Nicole White, Symmetra Design, I'm a 19 principal at Symmetra Design, and our address is 20 727 15th Street, Northwest, Washington, D.C. 21 20005.</p> <p>22 MR. KLINE: You ready for me, Ms. Robeson?</p> <p>23 HEARING EXAMINER: Yes. Go ahead.</p> <p>24 MR. KLINE: Sure.</p> <p>25 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT</p>

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26 (101 to 104)

<p>101</p> <p>1 BY MR. KLINE:</p> <p>2 Q What is your profession, Ms. White?</p> <p>3 A Traffic engineer and transportation</p> <p>4 planner.</p> <p>5 Q Do you think you know how many times</p> <p>6 you've qualified as an expert in those two</p> <p>7 categories before the hearing examiners in</p> <p>8 Montgomery County?</p> <p>9 A I don't know the number, no.</p> <p>10 Q But more than a few?</p> <p>11 HEARING EXAMINER: But you have before the</p> <p>12 hearing examiner?</p> <p>13 A Yes, I have.</p> <p>14 HEARING EXAMINER: Okay. I'll accept her</p> <p>15 as an expert. Her CV is in the -- in the record,</p> <p>16 and I didn't see she was both a traffic engineer</p> <p>17 and transportation planner, so I will qualify her</p> <p>18 in those fields.</p> <p>19 MR. KLINE: Thank you.</p> <p>20 Q Ms. White, were you asked to prepare a</p> <p>21 traffic analysis for the proposed use?</p> <p>22 A Yes.</p> <p>23 Q And that resulted in a report dated</p> <p>24 September the 6th, as I recall, which is an</p> <p>25 exhibit in the record of the case. So, could I</p>	<p>103</p> <p>1 A Yes, it is.</p> <p>2 Q And to your review, did the original</p> <p>3 conditional use plan show a circulation system</p> <p>4 that was safe, adequate, and efficient for</p> <p>5 vehicles and pedestrians?</p> <p>6 A Yes, it is.</p> <p>7 MR. KLINE: I have no further questions of</p> <p>8 Ms. White.</p> <p>9 HEARING EXAMINER: All right. Is there</p> <p>10 anyone on this meeting that will not be called by</p> <p>11 Mr. Kline who would like to ask Ms. White any</p> <p>12 questions?</p> <p>13 Okay. Hearing none, you may be excused.</p> <p>14 THE WITNESS: Thank you very much.</p> <p>15 HEARING EXAMINER: Okay. Mr. Kline.</p> <p>16 MR. KLINE: Well, Ms. Robeson, we're at a</p> <p>17 point now where I'd like to go to when I call</p> <p>18 Scott Rose and John Sekerak, to -- to get into the</p> <p>19 issue of parking and the staffing. And what we</p> <p>20 would like to introduce you to is a proposal that</p> <p>21 we've tried to develop to address the -- the</p> <p>22 parking issue on the site.</p> <p>23 We're glad to start it now. I have a</p> <p>24 feeling just the mere explanation of the staffing</p> <p>25 element, Mr. Rose did a tremendous amount of</p>
<p>102</p> <p>1 ask you to just explain your methodology and your</p> <p>2 findings and conclusions, please.</p> <p>3 A Absolutely. So, in accordance with the</p> <p>4 Local Area Transportation Review Guidelines, we</p> <p>5 looked at trip generation. We found that because</p> <p>6 the project is projected to generate fewer than 50</p> <p>7 peak hour person trips, that a transportation</p> <p>8 study exemption was adequate.</p> <p>9 HEARING EXAMINER: Okay. And that's in</p> <p>10 the record, your traffic statement.</p> <p>11 A Yes, it is. I believe it's Exhibit 17.</p> <p>12 (Exhibit 17 was identified on the record.)</p> <p>13 HEARING EXAMINER: Right.</p> <p>14 MR. KLINE: Yeah. Correct. Thank you.</p> <p>15 Q Ms. White, just then maybe take it down to</p> <p>16 the -- where the rubber hits the road, have you</p> <p>17 had a chance to take a look at the original</p> <p>18 conditional use plan, and did you have an opinion</p> <p>19 about the circulation patterns on the site?</p> <p>20 A No, they -- everything seems to work</p> <p>21 adequately as has been previously described.</p> <p>22 Q Fine. Thank you. Therefore, in your</p> <p>23 opinion, is the transportation network in the</p> <p>24 surrounding neighborhood adequate to accommodate</p> <p>25 the proposed use?</p>	<p>104</p> <p>1 detail work, I don't know if you've had a chance</p> <p>2 to see the staffing schedule, but I'd like him to</p> <p>3 explain to you when people are coming and going</p> <p>4 and what are the maximum numbers and when they're</p> <p>5 there.</p> <p>6 What I'm leading up to is would you like</p> <p>7 to take a break for lunch or do you want to try</p> <p>8 and push forward?</p> <p>9 HEARING EXAMINER: I think it's better if</p> <p>10 we take a break for lunch. I need to try to get</p> <p>11 control of the meeting back. So, now, I will say</p> <p>12 we're not going to -- we're going to go off the</p> <p>13 record for the court reporter's perspective.</p> <p>14 (A recess was taken.)</p> <p>15 HEARING EXAMINER: We're back on our</p> <p>16 official record.</p> <p>17 Okay. Thank you, Jon, and thank both</p> <p>18 Johns.</p> <p>19 Mr. Kline, I'm going to turn it over to</p> <p>20 you.</p> <p>21 MR. KLINE: Good afternoon. First of all,</p> <p>22 Ms. Roberson, thank you very much for letting me</p> <p>23 kind of deviate from our normal practice in how a</p> <p>24 case proceeds before you and flows before you and</p> <p>25 let me do what I'm calling a bifurcated hearing.</p>

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27 (105 to 108)

<p>105</p> <p>1 It allows me, I think, to create -- or us to 2 create an environment where we can have a bit more 3 of a dialogue rather than a question-answer 4 format, and I really think it'll be a lot more 5 efficient way to try to accomplish what we'd like 6 to do. 7 What I'd like to do is start off by asking 8 Mr. Levy to testify because he's got, basically, a 9 lot of familiarity and specialization in 10 disability law and Fair Housing law, and we'd like 11 to just provide you with sort of background of the 12 context in which this case comes to you. 13 So, if you're ready, I'd like to call -- 14 HEARING EXAMINER: Well, I would prefer 15 not to go into Mr. Levy because I don't think -- 16 I'm not sure we need to. I've got his memorandum 17 in the record and -- 18 MR. KLINE: I understand. 19 HEARING EXAMINER: -- and the fact -- the 20 question is -- the question is can this -- you 21 know, is it a reasonable accommodation. Now, I 22 understand what he wrote, and he wrote that 23 parking isn't -- you know, a few parking problems 24 shouldn't get rid of a reasonable accommodation, 25 and I agree with that.</p>	<p>107</p> <p>1 correct. 2 HEARING EXAMINER: And then you've got -- 3 so, the real question is for practice -- you've met 4 the zoning ordinance. All right. The practical 5 thing is how are you going to deal your -- you've 6 got three spaces on the street, so you're shy one 7 space. 8 So, I would rather hear testimony on how 9 this is practically going to work and if it -- if 10 you can demonstrate it practically works, because 11 that's the meat of my discussion, then I don't 12 need to get to the ABA or the ethics. 13 MR. KLINE: You boiled it down to a very 14 simple situation. We understand, and I think we 15 can proceed from that point. What, I guess, my 16 question then was -- 17 HEARING EXAMINER: I did read his memo. 18 MR. KLINE: Yeah. 19 HEARING EXAMINER: So -- and I guess my 20 question -- and the other question I had is you've 21 only got -- wait. Let me get it here. In your 22 supplemental -- I think it was your supplemental 23 statement -- 24 MR. KLINE: Yes, ma'am. 25 HEARING EXAMINER: -- you've only got 16</p>
<p>106</p> <p>1 The problem -- the question to me is are 2 there parking problems. And that's what I want to 3 solve and not necessarily -- if we can solve the 4 parking issues, we don't need to worry about the 5 reasonable accommodations. And I do understand 6 what he said, but, you know, his memo assumed that 7 there's not going to be much of an impact. 8 So, what I want to get to is the impact of 9 the parking, and to do that, I mean my thought is 10 if the residents -- first of all, the -- you're at 11 11 spaces now. Okay. Correct? 12 MR. KLINE: Yes, ma'am, ten plus one 13 handicapped. 14 HEARING EXAMINER: Right. If we add the 15 space in the garage, you've got the number of 16 spaces, basically, in the original zoning 17 ordinance; correct? 18 MR. KLINE: You've got the math right. 19 THE COURT: So, it becomes a case of 20 logistics, can this work with 12 parking spaces. 21 Now, what you just told me is that -- and 22 I've read through -- I actually printed the shift 23 changes. So, what you've got is essentially no 24 resident vehicles; correct? 25 MR. KLINE: Correct. Yes, that is</p>	<p>108</p> <p>1 employees for one -- I don't know -- an hour. It 2 looks like it's one hour. Am I wrong? 3 MR. KLINE: Well -- and that leads me up 4 to would you like Mr. Rose to explain that chart 5 or is it self-explanatory, you -- right now and 6 all you need to hear is what is the worst hour -- 7 the worst case scenario. 8 HEARING EXAMINER: I would like to know 9 why there's 16 employees in that one worst case 10 scenario, and my other question is can the shifts 11 be adjusted so that overlap isn't there. 12 MR. KLINE: I understand. So, we'll keep 13 Mr. Levy maybe if something comes up and you said, 14 "Hey, maybe I would like to know something about 15 Fair Housing law," but let's figure that's 16 not necessary. 17 HEARING EXAMINER: And, also, I have -- 18 sorry to interrupt. I have to send it back to 19 staff for the additional parking space in the 20 garage. 21 MR. KLINE: Sure. Then let me tell you 22 what I would like to try and accomplish today. I 23 would like to present to you a modification of the 24 conditional use plan that would show how a 25 combination of different permutations of parking</p>

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28 (109 to 112)

<p>109</p> <p>1 would be more than adequate to satisfy the maximum 2 of 16 employees over a given point in time, have 3 you tell us what you think is the best combination 4 of available spaces given our needs and the impact 5 on the public streets, and then with that, file an 6 amended conditional park --</p> <p>7 HEARING EXAMINER: If you can show that -- 8 if you can show -- to me, the best scenario, 9 definitely not a one-way drive aisle because 10 that's just asking for, in my -- I'm not an expert 11 presenting testimony here, but in my experience, 12 staff has been reluctant to do that.</p> <p>13 What I'm thinking is of proposing a 14 condition of approval that no residents have cars 15 on site. Okay? Then I would like to hear from 16 you whether any of staff is going to take mass 17 transit. And then I'd like to hear from you how 18 the parking space in the garage is going to work, 19 because if you -- to me, if you have both taken 20 mass transit, there's no resident cars on site, 21 then you -- and Mr. Sekerak -- Sekerak, I'm sorry, 22 I should know that -- testified that you have 11 23 on-street spaces, something like that, so I guess 24 what I'd like to hear is how many employees are 25 going to tele -- telecommute --</p>	<p>111</p> <p>1 would be page 19 of the -- of Exhibit 47. 2 SCOTT ROSE, 3 having been previously duly affirmed, testified 4 further, as follows: 5 MR. ROSE: So, just to frame this, I 6 understand we're not going over Fair Housing, but 7 just to frame this, this is really under that 8 component of necessary, why the -- these 9 individuals with disabilities need these services. 10 Just to make the note because it's going to come 11 -- it's going to come to play with your question, 12 Ms. Robeson, about can we just shift the -- can we 13 just make the -- accommodate the schedules 14 differently. 15 You know, the link here is a mental health 16 staffer is necessary for people with mental 17 illness as guide dogs are for people that are 18 blind. And, so, that's sort of a starting point, 19 and that's why I don't want to compromise or I 20 don't want to reduce that staffing because that 21 really does have an effect on how many folks I can 22 serve in the community and outside the hospital. 23 So, the chart that you're looking at now 24 is schedules by position, and it talks about all 25 the positions that are going to be coming to the</p>
<p>110</p> <p>1 MR. KLINE: You have that in your mind, 2 don't you? 3 HEARING EXAMINER: Yeah. -- take transit. 4 I'm interested in hearing why this overlap of 16 5 and whether the shifts can be adjusted to avoid 6 that number even by an hour. 7 MR. KLINE: Ms. Robeson, that gives me a 8 very good checklist, and what I would do is start 9 with, instead of having Mr. Rose go through every 10 number you see on these charts, explaining why he 11 has a period of time when he does have 16 people 12 on site -- 13 HEARING EXAMINER: That would be -- 14 MR. KLINE: -- and why that's the case. 15 So, we'll just pick it up from that point, and I'm 16 not even going to do a question-answer. Mr. Rose, 17 you can tell, knows this very well and will just 18 explain it all to you. 19 Mr. Rose. 20 THE WITNESS: Sure. 21 HEARING EXAMINER: Thank you. 22 MR. KLINE: Of course. 23 MR. SEKERAK: This is John Sekerak. Would 24 you like the charts up on the screen? 25 MR. ROSE: Yes. Start with page 3, which</p>	<p>112</p> <p>1 site. The residential counselors, up at the top, 2 Monday through Friday, that's where -- that's the 3 bulk of the reason why that one hour that you 4 referred to during the week is going to get the 5 16. 6 You can see that it is different kinds of 7 schedules. Unfortunately, the way to cover 24/7, 8 especially when you're going into weekends, it 9 isn't as easy as everyone starts at the same time 10 and ends at the same time. You can see that some 11 of these counselors are working eight-hour shifts 12 and some are working ten-hour shifts. 13 The rule of thumb is that we want to have 14 a one-to-four ratio of counselors to residents 15 during the day and one-to-five at night. And 16 you'll see there are some floating positions going 17 back and forth. Excuse me. Hold on a second. 18 Then you get to the managers. I put that 19 loosely because, you know, in our parlance, 20 managers generally are staff that supervise other 21 staff, and five of these eight are not actually 22 supervising other staff but they are not the 23 direct counselors doing the shifts. And you can 24 see that most of them are working during the week; 25 however, five of the eight do have -- do have some</p>

<p>113</p> <p>1 offsite responsibilities. 2 Saturday through Sunday is somewhat 3 similar from a standpoint of residential 4 counselors. 5 So, then, when we go to -- John, if you 6 would move us to page 17. 7 HEARING EXAMINER: Did you say -- 8 A I'm sorry. 9 HEARING EXAMINER: -- some managers are 10 not always on site? 11 A Correct. Correct. 12 HEARING OFFICER: Any idea of, like, why 13 is that? 14 A Okay. And that would be -- I purposely 15 put a break between those, the managers, so the 16 bottom five then have some offsite 17 responsibilities. Well, look at the in-reach 18 coordinators. There's three of those positions. 19 Recall that I talked about embedding Way Station 20 staff in the hospitals. 21 HEARING EXAMINER: Right. 22 A Those three in-reach coordinators are 23 going to be spending a lot of times in the 24 hospitals doing the discharge planning meeting, 25 transporting the clients. However, they will be</p>	<p>115</p> <p>1 shift change of those residential counselors. 2 And let me explain. We've purposely have 3 an overlap because you want the folks that are 4 going off to be able to do their documentation, as 5 well as let the new staff coming in know about 6 particular needs of residents. So, it's essential 7 that we have that overlap, but that's where you 8 get eight there. 9 And then I'm assuming all eight of the 10 managers, for the reasons that I stated before, 11 could be there for that 2 to 3. 12 Let me point out that you'll notice that 13 several of these positions, these manager 14 positions, don't work Monday through Friday. 15 They're splitting their shift so that they're able 16 to cover the weekends. And what that means is 17 that 16 is really going to be happening Tuesday, 18 Wednesday, Thursday, because Monday and Friday, 19 it's going to be 14. 20 Now, I went to this great length to do 21 this. As you can see, it's very confusing to try 22 to chart that out. It actually -- actually took 23 me eight hours on Easter Sunday to work through 24 that. But the reason I wanted to do that is 25 because, A, I wanted to make it kind of like --</p>
<p>114</p> <p>1 on site, as well. 2 And part of what is essential for us to be 3 able to serve these folks is, the worst case 4 scenario, on that 2 to 3 shift change, it's very 5 possible that I'm going to need all eight of those 6 managers there because that is a critical time 7 during shift change to be exchanging information, 8 able for the in-reach coordinators to be able to 9 talk about how the new clients, the new residents 10 coming in, what their needs are. 11 So, yes, it's possible that from 2 to 3 12 during the week, not all 16 will show up, but I 13 really want to be prepared for the possibility 14 that that does happen because, if it does, the 15 reason it would be -- happen is because it's 16 clinically needed. 17 So, did you have any other questions about 18 that page? 19 HEARING EXAMINER: No. That's helpful. 20 A Okay. Exactly. 21 Thank you, John. 22 So, you can see that zeroing in on the row 23 that has the 16, that, you are quite right, 24 Ms. Robeson, it's one hour from 2 to 3 where there 25 will be 16 folks, and that's because you have the</p>	<p>116</p> <p>1 it's kind of like the reason I went through the 2 neighborhood myself. I wanted -- I knew I would 3 be testifying before you, and I wanted to, A, make 4 sure that I was absolutely right about how many 5 staff we needed to serve people in the community 6 outside of hospitals, and I wanted to make sure 7 that I was proposing something that I really could 8 guarantee from a matter of compliance. 9 So, that's why I did this personally, and 10 that's why I'm confident in saying that we will 11 make sure there are no more than 16 employees at 12 any given time on site. 13 HEARING EXAMINER: Okay. 14 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT 15 BY MR. KLINE: 16 Q And maybe I can go back, and maybe I 17 should have started with this, but would you 18 accept a condition that none of the residents 19 would -- 20 A Yes. 21 Q -- have personal automobiles? 22 A Yes, absolutely. 23 Q And then the second part is, I don't think 24 we've probably have adequately addressed, how many 25 of your employees are likely to come by mass</p>

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30 (117 to 120)

<p>1 transit?</p> <p>2 A Very few, Ms. Robeson, and the reason is,</p> <p>3 recall that when folks need transportation to</p> <p>4 appointments or whatnot, it's going to -- it's</p> <p>5 staff that are going to be transporting them. And</p> <p>6 most of our folks are not going -- are going to</p> <p>7 own their own cars and they're going to want to</p> <p>8 drive. So, that's why -- that's why I'm making</p> <p>9 the assumption that it could be up to 16.</p> <p>10 MR. KLINE: And, Ms. Robeson, I think you</p> <p>11 and I are used to seeing group residential</p> <p>12 facilities more in the vein of assisted living or</p> <p>13 nursing homes --</p> <p>14 HEARING EXAMINER: Exactly.</p> <p>15 MR. KLINE: -- where there are a lot of</p> <p>16 staff coming by public transportation because of</p> <p>17 the nature of their roles, and as Mr. Rose</p> <p>18 explained to me, "Jody, my people are</p> <p>19 professionals. They have master's degrees and the</p> <p>20 like. They're just not likely to be using public</p> <p>21 transportation to get to this location."</p> <p>22 So, we don't think that's something we can</p> <p>23 rely on very much to discount the number of</p> <p>24 parking spaces needed. Thank you. Go ahead.</p> <p>25 A Well, so that -- do you have any other</p>	<p>117</p> <p>1 is -- this is for, at most, an hour.</p> <p>2 HEARING EXAMINER: There's four spaces --</p> <p>3 A Yes.</p> <p>4 HEARING EXAMINER: I thought there were</p> <p>5 three spaces in front of your property.</p> <p>6 A Well, there are three spaces that fit</p> <p>7 squarely within our property line in front of our</p> <p>8 property, but there's an additional space before</p> <p>9 you get to the driveway of our neighbor. So, I'm</p> <p>10 just making the --</p> <p>11 HEARING EXAMINER: Oh, being in front --</p> <p>12 in front of his property.</p> <p>13 A Yes, and I don't know -- John can tell us.</p> <p>14 I don't know if that also -- if a car parked there</p> <p>15 would be partly on our line and partly on his</p> <p>16 line. I don't know.</p> <p>17 MR. KLINE: Ms. Robeson, there is -- I'm</p> <p>18 not sure I have the right page, but there is a</p> <p>19 sketch in the supplemental prehearing statement of</p> <p>20 where those spaces are located relative to the</p> <p>21 driveway on our property and the driveway on the</p> <p>22 adjacent property.</p> <p>23 HEARING EXAMINER: I see it.</p> <p>24 A So, is it partly on our property?</p> <p>25 Q Yeah.</p>
<p>118</p> <p>1 questions about the chart, Ms. Robeson?</p> <p>2 HEARING EXAMINER: I guess my question is,</p> <p>3 and, you know, I'm looking at this and I see all</p> <p>4 the variables that you're trying to manage, so I</p> <p>5 can see that it's difficult, but is there any way</p> <p>6 that you could keep some of the -- the managers</p> <p>7 off site for that peak period?</p> <p>8 A I really can't. Honestly, if I thought I</p> <p>9 could have, I would have, but I -- that's the</p> <p>10 point at which I start compromising the quality of</p> <p>11 the program. As I said, there are reasons why I</p> <p>12 really need those three in-reach coordinators to</p> <p>13 be there at that time because that shift change is</p> <p>14 so critical in terms of conveying information. I</p> <p>15 need the supervisors there because they're the</p> <p>16 ones ultimately supervising the folks.</p> <p>17 So, what I would ask us to consider is</p> <p>18 that -- you know, that -- that we look at that</p> <p>19 additional garage space, that takes us to 12, and,</p> <p>20 as I recall John Sekerak's testimony, if we don't</p> <p>21 want to put anymore spaces on site, as I recall</p> <p>22 his testimony, there's actually four spaces</p> <p>23 between our driveway and the next neighbor's</p> <p>24 driveway, so we don't even have to get into the</p> <p>25 other seven on the other side. And, again, this</p>	<p>119</p> <p>1 A Okay.</p> <p>2 MR. KLINE: And just by background, I</p> <p>3 would say I have been trying to push the applicant</p> <p>4 toward coming up with onsite parking spaces,</p> <p>5 thinking that you would say, "Hey, Jody I'd rather</p> <p>6 have you park on site than off site," if you felt</p> <p>7 that the waiver of the width of the drive line,</p> <p>8 you get four spaces onsite, is not the optimum way</p> <p>9 to do it, we do have those spaces available. They</p> <p>10 just have to be --</p> <p>11 HEARING EXAMINER: Yeah, that's true. I</p> <p>12 guess my question is how are you going to make it</p> <p>13 one -- how are you going to control traffic.</p> <p>14 MR. KLINE: Sure.</p> <p>15 HEARING EXAMINER: It'd have been to be a</p> <p>16 two-way drive aisle but one at a time, I mean that</p> <p>17 cannot move.</p> <p>18 MR. KLINE: No. Don't worry. We</p> <p>19 understand the question and we've talked about it.</p> <p>20 And if you don't mind, I'd probably shift over to</p> <p>21 John Sekerak because he and I have talked about</p> <p>22 it, or would you rather save that for later?</p> <p>23 HEARING EXAMINER: Well, let's -- let's go</p> <p>24 into all the options. I understand the shift</p> <p>25 changes.</p>

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31 (121 to 124)

<p>121</p> <p>1 Mr. Rose, did you want to add anything?</p> <p>2 A No, I think, you know, just -- also, just</p> <p>3 to explain why there was confusion in collecting</p> <p>4 the data, because it is -- it takes a long time to</p> <p>5 sort all that out, and whether the onsite counted</p> <p>6 shift changes and all that, so that's sort of how</p> <p>7 we -- that's how it got confused.</p> <p>8 So, I think now we're moving to the third</p> <p>9 component of the Fair Housing accommodation</p> <p>10 request and that is the reasonableness of it, and</p> <p>11 I guess, in closing, I would propose that either</p> <p>12 us parking onsite -- having more spaces onsite or</p> <p>13 helping offsite at those brief times is not going</p> <p>14 to fundamentally alter the character of the</p> <p>15 neighborhood, which you know is a threshold for</p> <p>16 determining a combination to be unreasonable in a</p> <p>17 planning/zoning context.</p> <p>18 HEARING EXAMINER: Right.</p> <p>19 MR. KLINE: Ms. Robeson, if you're</p> <p>20 comfortable with where we are at this point in</p> <p>21 time, what I -- what I might ask Mr. Sekerak to do</p> <p>22 is what I call review the bidding and just kind of</p> <p>23 run through for you our --</p> <p>24 HEARING EXAMINER: Let me just see if</p> <p>25 there's any questions for Mister -- is there</p>	<p>123</p> <p>1 Q Okay. Following from that, would you be</p> <p>2 able to get another space then beside the</p> <p>3 handicapped space?</p> <p>4 A There's plenty of width in front of the</p> <p>5 garage, as is typically the case, for two cars,</p> <p>6 and that includes with the -- the accessible aisle</p> <p>7 for the ADA space. So, there could be another</p> <p>8 space there.</p> <p>9 HEARING EXAMINER: That would be a tandem</p> <p>10 space.</p> <p>11 A If you did that in addition to the garage,</p> <p>12 yes, that would be a tandem space at that</p> <p>13 location.</p> <p>14 HEARING EXAMINER: How -- that second</p> <p>15 space, does that impinge on the 20-foot drive</p> <p>16 aisle?</p> <p>17 A No, it does not.</p> <p>18 HEARING EXAMINER: And -- but you've got</p> <p>19 the full handicapped space there.</p> <p>20 A Yes, eight-foot ADA space, an eight-foot</p> <p>21 accessible aisle, because it's the only one there</p> <p>22 so it will be van accessible, and there's still</p> <p>23 room for another space coming here.</p> <p>24 HEARING EXAMINER: So, you could do</p> <p>25 another space, another single space, the 12th</p>
<p>122</p> <p>1 anyone who's not going to be called by Mr. Kline</p> <p>2 who would like to ask questions of Mr. Rose?</p> <p>3 Okay. Hearing none, go ahead, Mr. Kline.</p> <p>4 JOHN SEKERAK,</p> <p>5 having been previously duly affirmed, testified</p> <p>6 further, as follows:</p> <p>7 EXAMINATION BY COUNSEL ON BEHALF OF THE APPLICANT</p> <p>8 BY MR. KLINE:</p> <p>9 Q So, Mr. Sekerak, can you kind of array the</p> <p>10 available parking options we have. Over lunch, I</p> <p>11 said to Mr. Rose we have a menu and we wanted to</p> <p>12 offer you the menu and then have you select what</p> <p>13 you thought was the best combination for the site.</p> <p>14 So, John, why don't you start with what we call</p> <p>15 the easy one.</p> <p>16 A All right. This is John Sekerak and I've</p> <p>17 got page 20 of Exhibit 47 displayed on the screen</p> <p>18 at this point. And let me begin by apologizing</p> <p>19 for the crudeness of -- of the graphics.</p> <p>20 The -- the ease -- the easy one, the slam</p> <p>21 dunk, is to simply utilize the -- the garage</p> <p>22 space. So, as you're facing the house, it would</p> <p>23 be the garage space on the left of the two-car</p> <p>24 garage. And I have my cursor at the -- at that</p> <p>25 now.</p>	<p>124</p> <p>1 space could be there, or you could have a space in</p> <p>2 the garage that has to go over the handicap</p> <p>3 stripes but doesn't block the van, the parking</p> <p>4 spot. So, you could -- you could have two tandem</p> <p>5 spaces there.</p> <p>6 A Yes, well, yes. Two, yes. By definition,</p> <p>7 the two spaces would be in tandem.</p> <p>8 BY MR. KLINE:</p> <p>9 Q Okay. Okay. Right, one and one and ten.</p> <p>10 And I've gone back to a question you were asking</p> <p>11 earlier this morning. I think you were saying,</p> <p>12 "Jody, there's -- is there an advertising</p> <p>13 requirement for that," and maybe I've got the</p> <p>14 wrong space, but we don't believe that -- tandem</p> <p>15 is allowed in this situation, John; is that</p> <p>16 correct?</p> <p>17 A Tandems are allowed for dwelling units --</p> <p>18 HEARING EXAMINER: Right.</p> <p>19 A -- such as single-family homes.</p> <p>20 HEARING EXAMINER: That is right. That's</p> <p>21 right. You're right.</p> <p>22 A And if we use them both, that would be the</p> <p>23 thirteenth space. It would be more than what the</p> <p>24 code requires, so, arguably, it wouldn't need a</p> <p>25 waiver, but that -- I'm -- I am not clear on that</p>

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32 (125 to 128)

<p>125</p> <p>1 to know, and I'll defer to brighter people than 2 me -- the code along those lines. 3 HEARING EXAMINER: I looked at that once 4 for a conditional use in a home. Okay. Well, so, 5 you've got -- 6 MR. KLINE: You'll have to give us the 7 name of that opinion so we can go find out what 8 you decided. 9 HEARING EXAMINER: Oh, darn it. I believe 10 it was a yoga studio. 11 MR. KLINE: I understand. I'll betcha I 12 know where one that is, too. Okay. That's 13 Warrior One; right? 14 HEARING EXAMINER: Yes. 15 MR. KLINE: That's what I thought. 16 Q Okay. Well, then, John, so, in the space 17 available associated with the garage, there's an 18 opportunity for, hopefully, two spaces. 19 MR. KLINE: Ms. Robeson, there is another 20 sketch that does show where Mr. Sekerak has shown 21 the four spaces along the driveway. Sounds like 22 you've seen it and looked into it. 23 Q John, how did you and Mr. Rose talk about 24 managing that or advertising it, that it was a 25 one-lane road during certain periods of time, to</p>	<p>127</p> <p>1 careening around a corner. 2 If need be, you know, a couple of signs in 3 each direction. At the corner of the house, there 4 is a, simply, "Watch for oncoming cars," if 5 that -- that would help. But, again, personally 6 I'm unconcerned that it is -- can easily be self- 7 managing, like we do on public roads. 8 Q So, let me ask -- let me ask a question, I 9 guess, of both you and Mr. Rose, and that is could 10 we put a sign up that says, "These spaces are 11 restricted to shift change parking," for that 12 limited period of time? 13 A Yes. 14 Q So, the -- and that way we would capture 15 the four incoming people that come in in the 16 afternoon, the shift changes, and then they move 17 their cars and get out of the way. 18 MR. KLINE: Mr. Rose, maybe you should 19 answer that. 20 MR. ROSE: Yes, we can do that, of course. 21 MR. KLINE: So, Ms. Robeson, we can, 22 basically, and that's why I use the term -- we can 23 get the parking down to only the period of time 24 when we have those overlap of people -- 25 HEARING EXAMINER: Yeah.</p>
<p>126</p> <p>1 minimize the amount of conflicts and movement on 2 the site? 3 A Okay. So, I'm staying on the same exhibit 4 where it's pointing to the four spaces. With that 5 20-foot drive aisle, a parallel space dimension is 6 7 by 21. So, that would leave 13 feet remaining 7 for the drive aisle. So, two small cars could 8 pass within there. I wouldn't recommend it for 9 two larger cars. 10 In terms of managing it, it's not -- not 11 dissimilar to what we experience in -- on public 12 streets, on occasions, in tight-knit neighborhoods 13 navigating through Chevy Chase, for instance, 14 where there's a certain amount of width, parking 15 on one side. You see an approaching car, you 16 would simply pull -- pull to one side before 17 proceeding through the narrow -- narrow 18 passageway. We've all experienced that. 19 The -- I am -- personally I am not 20 concerned about the conflicts in this case because 21 you'll readily be able to see the -- an oncoming 22 car. Lord knows that we're talking low traffic 23 speeds here. You'd be going, you know, five miles 24 an hour. Nobody is -- you know, just the 25 configuration of this doesn't let anybody come</p>	<p>128</p> <p>1 MR. KLINE: -- in which case the only 2 people leaving are the people probably parked in 3 the back already anyway, and it's a one-way 4 movement for them to go, although I should shut up 5 and stop testifying. 6 Q But there are -- there are signage and 7 practical aspects that make you feel comfortable, 8 John, that a drive line of 13 feet of width would 9 be adequate for the limited period of time that 10 we're talking about? 11 A Yes, very infrequent occurrences, low 12 travel speeds, plenty of sight lines, and not to 13 put too many options on the table, you know, if 14 you're uncomfortable with the length of the 15 one-way-at-a-time traffic, we could certainly 16 eliminate the southernmost, for instance. 17 HEARING EXAMINER: That's what I wondered. 18 A Yeah, so it's -- 19 HEARING EXAMINER: Yeah. Okay. 20 A Four fits there, but it's not necessarily 21 four. So, it's just part of your options on how 22 to -- how you mix and match all these. 23 BY MR. KLINE: 24 Q And then, John, I guess it's self-evident 25 what the parking on the street is like. Two</p>

<p>129</p> <p>1 questions relating to that: In your opinion, 2 would cars that had to park off site, if that was 3 the option we came up with, would it restrict the 4 flow of traffic or cause any safe and efficient 5 movements on the street? Do you see any problems 6 with that?</p> <p>7 A Well, heavens no. As I mentioned before, 8 50 feet of paving width, they're wide lanes, and 9 it's only one -- one travel lane in each 10 direction. So, it's -- the width or the lined for 11 the on-street parking is more than what's 12 necessary to accommodate a car.</p> <p>13 If you'd like, you can go to street view 14 on Google.</p> <p>15 HEARING EXAMINER: I'm sorry. I missed 16 that last sentence. I was writing something else. 17 Can you do that again. The width is -- is more --</p> <p>18 A It's far more than what's necessary for a 19 parallel parking space.</p> <p>20 HEARING EXAMINER: Width of what though?</p> <p>21 A The -- the striped area for the on-stripe 22 parking.</p> <p>23 HEARING EXAMINER: Oh.</p> <p>24 A On-street parking. Sorry. And -- and to 25 get a visual of that, you could go to Google</p>	<p>131</p> <p>1 to parking -- as compared to parking on site? 2 Which do you think works best?</p> <p>3 A An endearing quality to either one is that 4 it -- neither one involves more paving. You know, 5 we're simply utilizing paving that -- that is 6 there.</p> <p>7 And I -- and for the four spaces on the 8 side or three spaces on the side, again, I'm -- I 9 am unconcerned about the inconvenience of the very 10 rare occasions where somebody has to pause shortly 11 to let an oncoming car pass or proceeding. So -- 12 and that just, you know, simply gets them off -- 13 off the street. So, I guess there's a slight 14 preference there.</p> <p>15 But the on-street parking is -- you know, 16 we're putting in a public sidewalk where none 17 currently exists and has a lead walk to the front 18 door, so that's almost as good.</p> <p>19 Q So, Ms. Robeson, I'd love to keep talking 20 about it until we've answered all your questions, 21 but as you can see, we have multiple options and, 22 ultimately, we want to have -- come up with one 23 that you feel is the optimum for the situation.</p> <p>24 So, we're at a point where we'd love your 25 guidance as to what you think the amended</p>
<p>130</p> <p>1 Street View. I believe that has one car -- 2 MR. KLINE: Hey, John -- 3 HEARING EXAMINER: -- 14 aerial. 4 MR. KLINE: My bad.</p> <p>5 Q Hey, John -- wait a minute, John. Is that 6 photograph you just pulled up, is that in the 7 record?</p> <p>8 A It is not. My apologies. I forgot. I -- 9 my -- that screen was -- I was bringing it up for 10 my own -- my own use but --</p> <p>11 HEARING EXAMINER: Well, I do have the 12 2014 aerial that shows the roof -- the parking 13 area striped, so -- I think it does. I see two 14 lanes and the middle lane.</p> <p>15 A Take a look at any aerial photograph or 16 street view that shows a car there and you'll see 17 that there is considerable width to accommodate. 18 BY MR. KLINE:</p> <p>19 Q Well, I'd like to go back and -- because I 20 think the hearing examiner has been very candid to 21 tell -- to tell us what are her concerns or 22 apprehensions about the different options we've 23 got. From a land use planning point of view or a 24 site designer point of view, do you think there's 25 a preference for having parking on the street as</p>	<p>132</p> <p>1 conditional use plan should look like and show 2 that you would feel comfortable considering 3 favorably.</p> <p>4 HEARING EXAMINER: Yeah. I have to send 5 it back to staff.</p> <p>6 MR. KLINE: Sure.</p> <p>7 HEARING EXAMINER: They're -- my 8 inclination is there's a way to do this, but I 9 would like to -- I can't -- well, A, I'm required 10 to send it back to staff. And I would like their 11 feedback as to the possible options. I like the 12 idea of limiting those side parking spaces to -- 13 to, you know, the shift change.</p> <p>14 Does that do anything -- that wouldn't do 15 anything to -- isn't there a requirement in site 16 access that you have to have a certain size drive 17 aisle?</p> <p>18 MR. SEKERAK: Yes. This is John Sekerak. 19 Yeah, and on Exhibit 47, page -- where I sketched 20 the four spaces, and there's an arrow pointing to 21 it --</p> <p>22 HEARING EXAMINER: Right.</p> <p>23 MR. SEKERAK: It does -- would require a 24 waiver for drive aisle width, and I've cited that 25 section.</p>

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34 (133 to 136)

<p>133</p> <p>1 HEARING EXAMINER: Oh, I didn't see that. 2 Okay. And then the second space by the 3 handicapped parking space, what does that require 4 a waiver for? 5 A It is unclear. Arguably for tandem space, 6 to allow a tandem space for something other than, 7 you know, for a dwelling unit. Now, this is, 8 obviously, residential, so it's not much of a 9 departure to use it in this case, but as, you 10 know, a -- it's -- the only -- the only argument I 11 have -- would have for it not needing a waiver is 12 that it's over and above the required -- minimum 13 number of required spaces. So -- 14 HEARING EXAMINER: And does the space in 15 the garage, does that need a waiver? 16 MR. SEKERAK: By itself, it does not. 17 MR. KLINE: Ms. Robeson, you probably 18 couldn't hear but I think Mr. Rose wanted to add 19 something to Mr. Sekerak's response. 20 MR. ROSE: Well, I haven't seen the 21 ordinance, so I don't know, but this is considered 22 a single-family dwelling. In terms of the law 23 treating it just because it's got a number of 24 people with disabilities -- it is considered a 25 single-family dwelling, so I don't know whether</p>	<p>135</p> <p>1 MR. KLINE: Well, let me -- let me tell 2 you why I keep harping back on that point because 3 the -- the discussion that our team has been 4 having for the last probably week or so has been, 5 "Jody, why is it that we meet the parking 6 requirement on site with what we've got today, yet 7 there seems to be a risk that that's a problem 8 with that," and my answer was -- is I felt you 9 would be concerned that if we could only get the 10 car -- the parking spaces we needed by relying on 11 offsite parking when we have an obligation to 12 provide onsite parking, at least for code 13 requirement, but maybe even from the practical 14 amount of use. 15 So, I've been thinking that we ought to be 16 trying to maximize the onsite spaces, and then the 17 offsite spaces are sort of an attractive surplus. 18 If you -- if you're -- if you're comfortable with 19 some spillover onto the public street, then my 20 concerns are a little bit less. 21 So, I -- I envision us making the same 22 presentation to staff that we just made to you, 23 and they will give you back their comments. And 24 at some point in time, we'll come back to you with 25 a conditional -- met a conditional use plan with a</p>
<p>134</p> <p>1 that would meet the criteria of one dwelling -- of 2 a dwelling unit. 3 MR. KLINE: So, Ms. Robeson -- 4 HEARING EXAMINER: Is there just one 5 kitchen in the -- there's just one kitchen; right? 6 MR. ROSE: Yes. Yes. Yes. 7 MR. KLINE: So, Ms. Robeson, maybe what -- 8 I thought -- I was thinking we would maybe leave 9 this with a little guidance on your part, but I 10 understand why you'd like to hear from staff 11 first, so maybe what we need to do, if you agree 12 with it, and leave the record open to do it, we 13 would, basically, make the same submission to 14 staff of Department of Planning that we just 15 briefed you on -- 16 HEARING EXAMINER: Well, I'm going to 17 send -- I'm going to send this over to them with a 18 summary of your testimony then just for the 19 record, and then -- and then you can work with 20 them about these possibilities. 21 MR. KLINE: Okay. 22 HEARING EXAMINER: I, frankly, couldn't 23 tell you right now whether it's better to have 24 them all on site or, you know, a certain number on 25 the street for one hour. So, I guess --</p>	<p>136</p> <p>1 combination of spaces adequate to satisfy both the 2 code requirements and the practical requirements 3 of not more than 16 employees on site at any given 4 time. 5 HEARING EXAMINER: Right. 6 MR. KLINE: And Mr. Rose asked for only 7 one qualifier. That is -- and that is put the 8 signs up and say it's reserved for the shift 9 changes, but don't put a time on it because he 10 said, "Jody, I could very well make this 2:30 to 11 3:30 tomorrow, and I don't want to have Barbara 12 Cox out there citing me for using those parking 13 spaces during hours because I had to change my 14 shift hours." 15 And I thought as long as it said, "To be 16 reserved for incoming shift workers," that would 17 solve the problem. 18 MR. ROSE: Yes. Yes. And just to frame 19 it up in terms of a summary, at least for why that 20 flexibility is important, you know, and I won't 21 belabor the point, but just to go quickly through 22 those three criteria, it's necessary that we have 23 up to 16 folks and that we have the flexibility to 24 have up to 16 folks when we need it. 25 I've demonstrated that it's going to be</p>

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35 (137 to 140)

<p>137</p> <p>1 very infrequent, but I really need the flexibility 2 to, you know, do that with the staffing. 3 In terms of the equal opportunity, which 4 is the second criteria, clearly, if I don't have 5 the flexibility of that staffing, there's less 6 people that will be living in the community and 7 more people in the hospital. 8 And then in terms of reasonableness, I 9 really defer to staff and to you. I am fine 10 either way. To me, at least from the Fair Housing 11 standpoint, since the threshold question of 12 unreasonableness is that it would have to 13 fundamentally alter the character of the 14 neighborhood, whether we have all four be on the 15 street or the -- or four on site or a combination 16 thereof, none of that is going to fundamentally 17 alter the character of the neighborhood. So, we 18 would ask for that. 19 And, really, and I -- what we're asking 20 for is the ability to just apply the parking 21 ordinance standard as it's written, which, you 22 know, would not narrow to it has to be 2:00 to 23 3:00. 24 It's -- and since we're conceding on no 25 resident parking, of course, as you know, the --</p>	<p>139</p> <p>1 and I understand the need for you to have the 2 shift overlap. 3 I'm sorry. Did I interrupt you, 4 Mr. Kline? 5 MR. KLINE: No, I was -- you probably 6 noticed I have a little grin on my face because 7 the last entry on my outline of questions is, 8 "Scott Rose wrap-up statement." You just got it. 9 MR. ROSE: Just did it. You don't need to 10 hear from me again. 11 HEARING EXAMINER: No, you're very 12 eloquent. You make a compelling case. 13 MR. ROSE: I appreciate your patience and 14 your listening. 15 HEARING EXAMINER: Okay. So, what I'm 16 going to do is take your sketch here, and I know 17 you may submit additional materials to staff 18 outside of your record, but I'm going to take your 19 sketch that's on the screen now, which is 47, and 20 send it over to staff. I do have to -- I have to 21 do it anyway because it's an amendment. Your 22 clarifications have been helpful. And I'm going 23 to ask her to look at, you know, what she 24 recommends the best options are, you know. 25 So, it's not like we're out to kill this.</p>
<p>138</p> <p>1 the parking ordinance is envisioning that 4 of 2 those 12 spaces would be for resident parking -- 3 or zone. 4 So, I guess, when we look about 5 reasonableness, I think we're requesting that -- 6 or suggesting that this is quite reasonable and 7 isn't going to fundamentally alter the character 8 of the neighborhood. And I really need those 9 employees to be able to do this. 10 And then I would finally circle back to 11 where we started in terms of the hospitals, not 12 only did they desperately need this a 13 year-and-a-half ago, but that -- that has gone 14 from critical to urgent. And the hospitals and we 15 have got to have the flexibility that is afforded 16 in the parking standard of 16 at any given time 17 and not limit that because we're now into a whole 18 new world that we're going to be into for 12 to 19 18 months. 20 HEARING EXAMINER: Oh, okay. 21 MR. KLINE: Ms. Robeson -- 22 HEARING EXAMINER: I -- I understand 23 you've made a case. You've answered a lot, and 24 part of this hearing helps me to understand your 25 request. And you've filled in a lot of blanks,</p>	<p>140</p> <p>1 I just want to know what the best options are and 2 whether we can make it work or not. 3 So -- so, that -- that's kind of where I 4 am. And I -- I don't know enough right now to 5 know. The good thing is, I think, that all the 6 options you've discussed do not require amending 7 paving or anything like that, so that your 8 landscape and the other plans will continue to be 9 valid, and it's just a matter of finding -- 10 finding the best configuration of the parking 11 spaces. 12 MR. KLINE: If I can interject one 13 question. I don't know if you can see 14 Mr. Sekerak's head is nodding up and down because 15 his question to me today was, "Jody, does this 16 mean if we could come up with some plan that you 17 would want us to amend the conditional use plan or 18 would you want other plans that are derivative of 19 that, like the landscaping plan, to show the new 20 striping or the new spacing or is that sort of not 21 necessary because that's not the essence of what 22 those separate plans are?" 23 HEARING EXAMINER: Is -- for me, as long 24 as -- oh, I shouldn't say this. For me, as long 25 as it's on the site plan, that's fine, but I don't</p>


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36 (141 to 144)

<p>141</p> <p>1 do the enforcement, so if it's -- if it's in --</p> <p>2 you know, it's something typically DPS likes to</p> <p>3 have one plan to look at that's identical.</p> <p>4 MR. KLINE: Well, I assume that your</p> <p>5 ultimate report and decision would say, "All</p> <p>6 construction activity on site to be in accordance</p> <p>7 with Exhibit blank," whatever it is.</p> <p>8 HEARING EXAMINER: It does.</p> <p>9 MR. KLINE: And, so, that's the plan that</p> <p>10 would go to DPS for enforcement purposes.</p> <p>11 HEARING EXAMINER: Well, they get the</p> <p>12 landscape --</p> <p>13 MR. KLINE: Do they? Okay.</p> <p>14 HEARING EXAMINER: Yes, they get the</p> <p>15 landscape and lighting and they get the</p> <p>16 conditional use.</p> <p>17 MR. KLINE: Okay.</p> <p>18 HEARING OFFICER: They don't, you know, we</p> <p>19 don't share the -- you know, the elevations and</p> <p>20 the illustrative plans and things like that, but</p> <p>21 they do get the landscape and lighting and</p> <p>22 conditional use because we've had -- because they</p> <p>23 enforce you're bound by the landscape plan.</p> <p>24 MR. KLINE: Correct.</p> <p>25 HEARING EXAMINER: So, to answer your</p>	<p>143</p> <p>1 How -- how much time do you think you'll need to</p> <p>2 comment?</p> <p>3 MR. KLINE: Our -- our turnaround would be</p> <p>4 quite quick. I'm not so concerned about it. I</p> <p>5 had actually estimated staff would probably need</p> <p>6 about three weeks but --</p> <p>7 HEARING EXAMINER: Well, I can --</p> <p>8 MR. KLINE: You have more influence with</p> <p>9 them than I do.</p> <p>10 HEARING EXAMINER: What?</p> <p>11 MR. KLINE: You have more influence with</p> <p>12 them than I do. But, no, our turnaround time</p> <p>13 would be --</p> <p>14 HEARING EXAMINER: Check back. Out of an</p> <p>15 abundance of caution, I'm going to leave the</p> <p>16 record open until June 1st, not for anything, but</p> <p>17 only for submission of a revised parking plan and</p> <p>18 any -- for some -- the revised parking plan for</p> <p>19 staff's -- or the revised site plan with parking,</p> <p>20 revised staff review of the parking plan, and then</p> <p>21 any comments you want to make on staff's comments.</p> <p>22 So, I'm going to -- I'm going to leave the</p> <p>23 time frame -- I'm going to try to see the earliest</p> <p>24 staff could get it out, and then -- but we'll just</p> <p>25 say June 1st for the record to close. If, for</p>
<p>142</p> <p>1 question, it has to be on both.</p> <p>2 MR. KLINE: No problem. No problem. John</p> <p>3 just wanted to make sure that we didn't come back</p> <p>4 with a plan and then have you say, "Oh, by the</p> <p>5 way, you need to do these, too." So, we'll just</p> <p>6 go ahead and be very comprehensive in what we do.</p> <p>7 I think John said, "We probably won't do</p> <p>8 the tree save plan because that's a different</p> <p>9 feature, but the landscape plan, we'll do it, as</p> <p>10 well."</p> <p>11 HEARING EXAMINER: That's fine.</p> <p>12 MR. KLINE: Very good. That's very</p> <p>13 helpful. We just want to get it right next time.</p> <p>14 HEARING EXAMINER: So, I guess the best</p> <p>15 thing for me to do, I have to check with -- staff</p> <p>16 on this is Elsa Bett?</p> <p>17 MR. KLINE: Yes, ma'am.</p> <p>18 HEARING EXAMINER: Let met check -- well,</p> <p>19 I have to pick a time now. I'm going to send</p> <p>20 these over right after this hearing.</p> <p>21 I'm going to leave the record open. I</p> <p>22 have the ability to leave it open for 30 days. My</p> <p>23 guess is staff is going to need probably two weeks</p> <p>24 to review and come up with a recommendation, and</p> <p>25 then you can comment on staff's recommendation.</p>	<p>144</p> <p>1 some reason, that's not enough, we can extend it.</p> <p>2 Hopefully, it won't be -- I mean it will be</p> <p>3 enough.</p> <p>4 So -- and I will send over a little</p> <p>5 summary of what's going on with the -- with the --</p> <p>6 Mr. Sekerak's handdrawn plan about the potential</p> <p>7 for different options.</p> <p>8 MR. KLINE: Sketchy though it may be.</p> <p>9 HEARING EXAMINER: But he is not sketchy,</p> <p>10 so that's --</p> <p>11 MR. KLINE: No, but I actually -- I asked</p> <p>12 him to put it in there because I thought it was a</p> <p>13 great plan. I thought it really made it look --</p> <p>14 it's conceptual. We're looking at options. We</p> <p>15 wanted the feedback.</p> <p>16 HEARING OFFICER: And just one thing. I'm</p> <p>17 willing to live -- if it's a little problematic if</p> <p>18 we have to rely on spaces on street that aren't in</p> <p>19 front of your property, but you do have three</p> <p>20 spaces, a little flexibility for that period of</p> <p>21 time to use those three spaces.</p> <p>22 So, I -- I'm less concerned if you can use</p> <p>23 the three spaces for that shift change, and we</p> <p>24 won't identify specific times, but for the shift</p> <p>25 change. I'm less concerned about those</p>

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37 (145 to 148)

<p>145</p> <p>1 on-street -- using those on-street spaces in front 2 of your property even though, if we could, it 3 would be nice to avoid the on-street spaces in 4 front of somebody else's property. But I 5 understand the reasonable accommodation, the ADA 6 and the FHA, so we will go from there. 7 MR. ROSE: Thank you. Well, Ms. Robeson, 8 thank you so much for listening. This has been a 9 long process. I appreciate you letting me go 10 through the detail of these charts and whatnot. 11 As I said, it was important for me to delve into 12 it so I could know what we need and assure 13 compliance, and I appreciate your patience in 14 listening to us and trying to figure out a 15 solution to this. 16 HEARING EXAMINER: No, it's -- it's good 17 use. 18 Okay. Anything else, Mr. Kline? 19 MR. KLINE: Your second virtual hearing I 20 think has gone very well even though we both lost 21 each other for a while. 22 HEARING EXAMINER: But I think I've 23 figured out what happened. 24 Okay. I forgot to ask if there was 25 anybody on the line that has any questions of</p>	<p>147</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC 2 I, Victoria Lynn Wilson, the officer 3 before whom the foregoing proceedings were taken, 4 do hereby certify that the foregoing transcript is 5 a true and correct record of the proceedings; that 6 said proceedings were taken by me stenographically 7 and thereafter reduced to typewriting under my 8 direction; and that I am neither counsel for, 9 related to, nor employed by any of the parties to 10 this case and have no interest, financial or 11 otherwise, in its outcome. 12 IN WITNESS WHEREOF, I have hereunto set my 13 hand and affixed my notarial seal this 11th day of 14 May, 2020. 15 My commission expires May 31, 2023. 16 17  18 _____ 19 VICTORIA LYNN WILSON 20 E-NOTARY PUBLIC 21 22 23 24 25</p>
<p>146</p> <p>1 Mr. Rose or Mr. Sekerak -- Sekerak. Sorry. 2 Okay. Hearing none, then we're going to 3 adjourn this meeting. We're going to keep the 4 record open until June 1st, 2020. I'm going to 5 email staff and try to get a timeline from them 6 when they can get back with an answer to us. 7 Okay? 8 MR. KLINE: Perfect. 9 HEARING EXAMINER: Thank you very much. 10 And with that -- 11 MR. KLINE: Thank you very much. 12 HEARING EXAMINER: -- we adjourn the 13 hearing. 14 MR. KLINE: Thank you. 15 HEARING EXAMINER: Okay. 16 (Off the record at 1:56 p.m.) 17 18 19 20 21 22 23 24 25</p>	

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