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# Transcript of Hearing

**Date:** March 15, 2021  
**Case:** E&M Investment, LLC

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<div>1</div> <div>OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</div> <div>FOR MONTGOMERY COUNTY, MARYLAND</div> <div>-----x In Re: :</div> <div>E &amp; M INVESTMENT, LLC : Case No. CU 21-03</div> <div>-----x</div> <div>MOTION TO DISMISS HEARING</div> <div>Before Hearing Examiner Lynn A. Roberson</div> <div>Rockville, Maryland</div> <div>Monday, March 15, 2021</div> <div>9:30 EST</div> <div>Job: 360496</div> <div>Pages: 1 - 86</div> <div>Transcribed by: Molly Bugher</div>	<div>3</div> <div>C O N T E N T S</div> <div>PAGE</div> <div>OPENING STATEMENTS 13</div> <div>TESTIMONY OF MOHAMED MATOPE 15</div> <div>TESTIMONY OF SHAHRIAR ETEMADI 25</div> <div>TESTIMONY OF JOHN SEKERAK 28, 63</div> <div>TESTIMONY OF SERGIO RODRIGUEZ 58</div> <div>CLOSING STATEMENTS 84</div> <div>E X H I B I T S Exhibit</div> <div><div>DescriptionID / ADMIT Exhibit 1</div><div>ApplicationX/84</div><div>Exhibit 2Signed intake checklistX/84</div><div>Exhibit 3Table of contentsX/84</div><div>Exhibit 4Letter of representationX/84</div><div>Exhibit 5Authorization letterX/84</div><div>Exhibit 6NLAO and HOAX/84</div><div>Exhibit 7Statement of justification49/84</div><div>Exhibit 8Licensee DetailsX/84</div><div>Exhibit 9S-160, Petition George B. PatrickX/84</div><div>Exhibit 10Traffic volume map 2018X/84</div><div>Exhibit 12Neighborhood area plan33/84</div><div>Exhibit 13Nonconforming use public rec.42/84</div></div>
<div>2</div> <div>A P P E A R A N C E S</div> <div>ON BEHALF OF APPLICANT, E &amp; M INVESTMENT, LLP</div> <div>SEAN P. HUGHES, ESQUIRE</div> <div>MILLER, MILLER &amp; CANBY ROCKVILLE LAW FIRM</div> <div>200B Monroe St</div> <div>Suite B</div> <div>Rockville, Maryland 20850</div> <div>(301) 761-4139</div>	<div>4</div> <div>E X H I B I T S</div> <div>(Cont'd)</div> <div><div>ExhibitDescriptionID / ADMIT</div><div>Exhibit 15Aerial Image, Vicinity MapX/84</div><div>Exhibit 16Existing conditions planX/84</div><div>Exhibit 17Conditional use site planX/84</div><div>Exhibit 18Landscape PlanX/84</div><div>Exhibit 19FC Law Applicability for CU SE X/84</div><div>Exhibit 20(a) Architectural Plan Sheet CS146/84</div><div>Exhibit 20(b) Architectural plan sheet A10246/84</div><div>Exhibit 21Traffic study exemption letterX/84</div><div>Exhibit 22Certified zoning vicinity mapX/84</div><div>Exhibit 25(a) Updated drawing plan page site29/84</div><div>Exhibit 25(b) Fire Plan and approval letterX/84</div><div>Exhibit 25(c) Revised traffic study exemption27/84</div><div>Exhibit 25(d) Revised Applicant statementX/84</div><div>Exhibit 27Notice of hearing (correct)X/84</div><div>Exhibit 28Notice of motion to amendX/84</div><div>Exhibit 29Letter from Gail WardX/84</div><div>Exhibit 30Final Planning Board report29/84</div><div>Exhibit 30(a) Attachments CombinedX/84</div><div>Exhibit 34(a) Weiser OZHA report78/84</div><div>Exhibit 34(b) Weiser Planning Staff report79/84</div><div>Exhibit 35(a) Lopez OZHA report81/84</div><div>Exhibit 35(b) Lopez Planning Staff ReportX/84</div></div>

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<p>1 EXHIBITS</p> <p>2 (Cont'd)</p> <p>3 Exhibit Description ID / ADMIT</p> <p>4 Exhibit 36 Applicant's pre-hearing submission 25/84</p> <p>5 Exhibit 37(a) Staff report for admin subdivision 81/84</p> <p>6 Exhibit 37(b) Resolution for Admin subdivision 81/84</p> <p>7 Exhibit 39 Planning Staff Report CU 21-04 81/84</p> <p>8 Exhibit 40 Aerial photo of subject property 67/84</p> <p>9 Exhibit 41 Photos of subject property 67/84</p> <p>10 Exhibit 42 Photos of sidewalk at and around 68/84</p> <p>11 Exhibit 43 SDAT property search X/84</p> <p>12 Exhibit 44 SHA Accessibility Policy</p> <p>13 and Guidelines 55/84</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 couple of features to keep in mind. Number one, if you</p> <p>2 would like to ask a question or if there is a community</p> <p>3 member that would like to ask a question of a witness, or</p> <p>4 counsel, or myself, please use the raise your hand feature.</p> <p>5 It should be on the top, middle, slightly off to the right</p> <p>6 of your screen.</p> <p>7 As well, in the middle where the participant tab is</p> <p>8 located, if you click on that participant tab it will bring</p> <p>9 all the participants for today's hearing in a column on your</p> <p>10 right. And one of those buttons will also allow you to</p> <p>11 raise your hand. That lets me know that there is a question</p> <p>12 or that something needs to be addressed during the hearing.</p> <p>13 If you have any problems with Microsoft Teams, please</p> <p>14 call our office at 240-777-6663 or go to our website at</p> <p>15 <a href="http://www.MontgomeryCountyMD.gov/OZHA/virtual-meeting.html">www.MontgomeryCountyMD.gov/OZHA/virtual-meeting.html</a>. This</p> <p>16 hearing is being recorded. I will turn the recording</p> <p>17 feature on right now. There should be a notification on</p> <p>18 your screen towards the top of your window indicating that</p> <p>19 this hearing is being recorded. As I mentioned earlier, we</p> <p>20 also have the benefit of a court reporter. So we have two</p> <p>21 methods of recording this proceeding here today.</p> <p>22 Some very basic ground rules for these public hearings</p> <p>23 and specifically for virtual hearings. Number one, please</p> <p>24 mute yourselves when you're not speaking. Often times there</p> <p>25 is background noise; pets, children, doors, music. I've</p>
6	8
<p>1 PROCEEDINGS</p> <p>2 HEARING EXAMINER BAUMGARDNER: -- 21. This is a public</p> <p>3 hearing on the Montgomery County Office of Zoning</p> <p>4 and Administrative in OZHA case number CU 21-03 requesting a</p> <p>5 conditional use for a home health practitioner located at</p> <p>6 9221 Colesville Road, Silver Spring, Maryland, all located</p> <p>7 within Montgomery County, Maryland.</p> <p>8 My name is Derek Baumgardner and I'm the hearing</p> <p>9 examiner for this case, which means that I will listen to</p> <p>10 today, take in evidence, and write a decision. You may</p> <p>11 request an appeal to the board of appeals within 10 days of</p> <p>12 the date of that decision.</p> <p>13 I'm looking through our list of attendees. I see we</p> <p>14 have the witnesses that were identified by counsel. Mr.</p> <p>15 Hughes, good morning, sir. And we have the court reporter.</p> <p>16 MR. HUGHES: Good morning.</p> <p>17 HEARING EXAMINER BAUMGARDNER: We thank you very much</p> <p>18 for joining us here today. And OZHA staff, I'm not seen</p> <p>19 anyone else who is logged in at this point, but we certainly</p> <p>20 welcome public participation if any folks from the community</p> <p>21 would like to participate.</p> <p>22 As you by no doubt can see, we are currently</p> <p>23 conducting OZHA hearings using a virtual platform. This one</p> <p>24 is called Microsoft Teams. Hopefully you all have used this</p> <p>25 before. If not, welcome to this platform. They are a</p>	<p>1 heard them all. Sometimes they can disturb the hearing, but</p> <p>2 in the virtual world that we are living in right now, don't</p> <p>3 worry if a child goes in the background or if something gets</p> <p>4 your attention. We are just dealing with that right now.</p> <p>5 Second, when you are speaking, please remember to</p> <p>6 unmute yourselves if you're being asked a question by</p> <p>7 counsel or by myself. The chat feature that we do have on</p> <p>8 Microsoft Teams has been disabled. So you're not able to</p> <p>9 text a chat in the Teams platform to myself or to OZHA</p> <p>10 staff. So again, that raise your hand feature will allow us</p> <p>11 to recognize you and answer any questions that you might</p> <p>12 have.</p> <p>13 Also, I don't think we will have this issue this</p> <p>14 morning, but when folks are testifying, please limit</p> <p>15 crosstalk. So if one individual is being questioned, please</p> <p>16 allow counsel to ask their questions and then a response be</p> <p>17 given. Also, if you are the one answering questions, please</p> <p>18 wait until Mr. Hughes has finished his question to answer</p> <p>19 yours. This is for the benefit of both myself and the court</p> <p>20 reporter so that we can get all of that testimony in and</p> <p>21 there are not voices over voices over voices.</p> <p>22 Right now I would like to identify the parties for the</p> <p>23 record starting with counsel. And Mr. Hughes, if you can,</p> <p>24 identify the Applicant and then the witnesses that you will</p> <p>25 be calling today.</p>

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<p>9</p> <p>1 MR. HUGHES: Yes, good morning. Thank you, Mr. Hearing 2 Examiner. Sean Hughes here for Miller, Miller, &amp; 3 Camby The Applicant, our client, is Mr. Mohamed Matope, and 4 we had three expert witnesses, John Sekerak from Stantec, 5 Shariar Etemadi from STS, and Sergio Rodriguez also from 6 Stantec. Thank you, sir.</p> <p>7 HEARING EXAMINER BAUMGARDNER: Thank you all for being 8 with us here today. We also have Ms. Nonna Johnson who is 9 our OZHA staff. She is logged in and available by phone if 10 anyone is having any trouble with the virtual hearing 11 process.</p> <p>12 Is there -- I don't see anyone logged in that I don't 13 recognize, but just for the record, is there anyone who is 14 participating here today who is either not already listed in 15 the record or would like to testify? If so, please raise 16 your hand or somehow indicate that you are here to testify 17 either in support or in opposition of this application. 18 Seeing none, great. We will move on to the general process 19 of these hearings.</p> <p>20 As most of you have done this before, there is really 21 no difference between the virtual hearing platform and a 22 live hearing. The Applicant will go first. They will be 23 able to provide an opening statement through counsel. 24 Counsel will then put on their case in chief. They will go 25 through their witnesses. Anyone participating who would</p>	<p>11</p> <p>1 in as we go through them if you like. Or we can wait until 2 the end and then move them into the record formally as a 3 bulk item. But they are listed with individual exhibit 4 numbers.</p> <p>5 MR. HUGHES: Thank you. I will try to remember to ask 6 you at the end. Sometimes when we get toward the end I am 7 excited to wrap up. But I'm making a note of it. Thank 8 you.</p> <p>9 HEARING EXAMINER BAUMGARDNER: Not a problem. I will 10 also make a note to bring that up just so that's clear in 11 the record, that all those exhibits will be moved into the 12 record.</p> <p>13 MR. HUGHES: Thank you.</p> <p>14 HEARING EXAMINER BAUMGARDNER: Having gone through all 15 the exhibits, I can also recommend that they will be part of 16 the record and I have reviewed them. So we don't have to 17 necessarily go through each and every exhibit. You're 18 welcome to be brief in examining your witnesses. We don't 19 need duplicative of testimony or evidence in the record. But 20 you're welcome to go to the witnesses however you see fit. 21 Without any other issues to address, we will open it up to 22 Mr. Hughes to start our case here today.</p> <p>23 MR. HUGHES: Thank you, Mr. Hearing Examiner. Again, 24 Sean Miller here from Miller, Miller, &amp; Camby. One other 25 somewhat procedural item. The affidavit of posting is in</p>
<p>10</p> <p>1 like to ask any questions of those witnesses will be able to 2 after their testimony has concluded. If I have any 3 questions of the witnesses, I will do that again, after the 4 testimony has concluded.</p> <p>5 There is no opposition that I am aware of. At the 6 conclusion of counsel's case, will again ask if there is any 7 member from the public that would like to ask any questions 8 or otherwise participate in today's hearing. Since there is 9 no opposition, counsel and the Applicant will be given the 10 opportunity to provide a closing statement if they so wish 11 and that will essentially wrap up today. Let me see if I'm 12 forgetting anything.</p> <p>13 Mr. Hughes, were there any other procedural issues or 14 matters that you wanted to bring up before we start your 15 case in chief?</p> <p>16 MR. HUGHES: Thank you, Mr. Baumgardner. Just one 17 question. With the exhibit list and items, would they be 18 considered in the record? Or would you want me during the 19 hearing or at the end asked that they be moved in 20 officially?</p> <p>21 HEARING EXAMINER BAUMGARDNER: They are technically 22 part of the record and then we would move to admit them 23 usually at the end of today's hearing. With no opposition, 24 I've been through the record. I have reviewed all the 25 exhibits as they currently are. We can certainly move them</p>	<p>12</p> <p>1 the record, but we can recertify that either through myself 2 or through our witness, but the sign is nice and sturdy and 3 has been at the whole time and we checked on it regularly. 4 Thank you.</p> <p>5 So with your permission, I will just do a brief 6 opening. And Mr. Hearing Examiner, you may have a -- and we 7 will try to be succinct as we can. Montgomery County -- 8 as you are seeing it, it's pretty thorough code 9 requirements. But we will be fishing there. As you may -- 10 as you alluded to, you may see -- where very happy overall 11 with the staff report and the planning Board recommendation. 12 We do believe that they agreed that we meet all the criteria 13 for the conditional use requested.</p> <p>14 So we are going to have our witnesses kind of confirm 15 those positions. But we are also going to put, as you may 16 have seen from some of our exhibits, we're going to put a 17 fair amount of effort after we say thank you and hopefully 18 we prove our case, the overall case, we do have some 19 significant concerns about one condition, condition number 20 eight. So we will also that with your permission, I would 21 kind of like to move our witnesses through the conditional 22 use criteria and then kind of have a mini review at the end 23 just a focus on conditional approval recommended number 24 eight. That's what I would like to do with your permission.</p> <p>25 HEARING EXAMINER BAUMGARDNER: Sure, that would be</p>

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<p>13</p> <p>1 fine.</p> <p>2 MR. HUGHES: Thank you. So a quick overview of the</p> <p>3 application. Yes, if that -- and first of all, we would</p> <p>4 think the staff report, they did a good job as they always</p> <p>5 do. Very thorough, very nice report. So is that 9221</p> <p>6 Colesville Road in Silver Spring, which is really -- it's</p> <p>7 justalmost in between downtown Silver Spring area where the</p> <p>8 business district is on Colesville Road and Georgia Avenue</p> <p>9 where they meet and you start heading towards the Beltway,</p> <p>10 495. It's almost in the middle of those two areas. So as</p> <p>11 you'reheading towards the Beltway, that you kind of get out</p> <p>12 of the downtown district. It traditional homes that were</p> <p>13 built in the '30s, '40s, and '50s. And it's a little bit</p> <p>14 before we get down the hill towards Oswego Creek.</p> <p>15 And then a traditional neighborhood. The history of</p> <p>16 the property as it was a home doctor's office. Many of us</p> <p>17 likemyself grew up going to a doctor's office in a home and</p> <p>18 a dental office in the home. From about 1959 on, it was a</p> <p>19 -- a doctor had a practice there and then it continued all</p> <p>20 theway officially until 2012 when it was revoked. It seems</p> <p>21 that, and there is some information in the record about</p> <p>22 this, that the doctor passed away in 2007, but revocation</p> <p>23 did not occur until 2012.</p> <p>24 There was also -- it's in the record as well. I</p> <p>25 apologize. But sometime around the mid-'90s or late '80s I</p>	<p>15</p> <p>1 MR. MATOPE: Yes.</p> <p>2 HEARING EXAMINER BAUMGARDNER: And sir, do you swear or</p> <p>3 affirm under the penalties of perjury that the testimony</p> <p>4 you're about to give is the truth, the whole truth and the</p> <p>5 whole truth?</p> <p>6 MR. MATOPE: I do.</p> <p>7 Thank you, very much. Mr. Hughes, the floors yours.</p> <p>8 MR. HUGHES: Thank you. Good morning, Mr. Matope.</p> <p>9 MR. MATOPE: Good morning.</p> <p>10 MR. HUGHES: Can you for the record -- well actually I</p> <p>11 think they have your name. So I won't do that. Can you</p> <p>12 tell us a little bit about your educational background?</p> <p>13 MR. MATOPE: So my educational background is that I am</p> <p>14 a registered nurse. I came to this country in 1997. I was</p> <p>15 an international student. So I went to -- I went ahead and</p> <p>16 dida degree in nursing and also I have a master of business</p> <p>17 administration in management areas.</p> <p>18 MR. HUGHES: Wonderful. Thank you. Can you tell us a</p> <p>19 little bit about after you got your educational background</p> <p>20 here, a little bit about your professional background?</p> <p>21 MR. MATOPE: So my professional background, I started</p> <p>22 outas a registered nurse in hospital settings. So I worked</p> <p>23 inseveral hospitals in the area including Fairfax Hospital.</p> <p>24 I worked at Children's National Medical Center in</p> <p>25 Washington, D.C. So most of my time as a nurse I worked in</p>
<p>14</p> <p>1 believe, the doctor's son became a doctor and he also wanted</p> <p>2 to practice there. So at that point at they had to ask for</p> <p>3 special exception to have a nonresidential doctor working</p> <p>4 there, but it was the two of them essentially. So it's had</p> <p>5 a similar use for close to 50 some of the last 60</p> <p>6 something years.</p> <p>7 What we are asking for something very similar. Mr.</p> <p>8 Matopeand his wife are -- you make up E and M for Elizabeth</p> <p>9 and Mohamed, the Applicant, and he is a registered nurse</p> <p>10 thatyou will hear about any of the home -- they have a home</p> <p>11 health practitioner business and they would like to -- they</p> <p>12 recentlypurchased the house and are making some renovations</p> <p>13 to it. They are planning on moving into it. And if we are</p> <p>14 fortunate enough to get an approval, they will also operate</p> <p>15 their business.</p> <p>16 As it's been requested here they will have up to six</p> <p>17 employees outside of them. Although really two will be</p> <p>18 there all day that our jobs. The other four really are out</p> <p>19 in the field for the bulk of the day if not the large</p> <p>20 majority of the day. So that's kind of a little bit the</p> <p>21 history of the property and what we are requesting. With</p> <p>22 that, I would like to call my first witness, the Applicant,</p> <p>23 Mr. Mohamed Matope.</p> <p>24 HEARING EXAMINER BAUMGARDNER: Mr. Matope, would you</p> <p>25 please raise your right hand, please?</p>	<p>16</p> <p>1 apediatric with pediatric patients. And so far I have been</p> <p>2 a nurse for over 20 years.</p> <p>3 And up until eight years ago after we started out this</p> <p>4 business, we started this business 10 years ago; years ago I</p> <p>5 startedgetting busy and I stopped working in the hospitals.</p> <p>6 But most of my experiences is in hospital settings. So I</p> <p>7 workedin different areas including ICU, emergency room, and</p> <p>8 I did traveling medicine too.</p> <p>9 MR. HUGHES: Thank you. So your current business,</p> <p>10 primarily you guys provide medical services to people while</p> <p>11 they are in their homes? You go to their home; is that</p> <p>12 correct?</p> <p>13 MR. MATOPE: Yes, so two people, yes, home. But most</p> <p>14 of our employees, they work out in the field. So this is a</p> <p>15 home care business. Most of our job is done in the</p> <p>16 patients' houses.</p> <p>17 MR. HUGHES: Thank you.</p> <p>18 MR. MATOPE: So they --</p> <p>19 MR. HUGHES: Thank you. Sorry about that. And your</p> <p>20 nursing license is active; that's correct?</p> <p>21 MR. MATOPE: Yes, it's correct.</p> <p>22 MR. HUGHES: Okay. And you and your wife own the</p> <p>23 property at 9221 Colesville Road; correct?</p> <p>24 MR. MATOPE: Yes, that's correct.</p> <p>25 MR. HUGHES: And who is E&amp;G investments, LLC?</p>

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<p>17</p> <p>1 MR. MATOPE: My wife and I are the participants, the</p> <p>2 principle of E&amp;G Investment, LLC.</p> <p>3 MR. HUGHES: Thank you. And is it true today you're</p> <p>4 asking permission for you and your wife to operate E &amp; M as</p> <p>5 noted in the application, the home practitioner's office at</p> <p>6 your property?</p> <p>7 MR. MATOPE: Yes.</p> <p>8 MR. HUGHES: Okay. Let's see; and so it's correct that</p> <p>9 the plan is for you, your wife, and your children to live</p> <p>10 there and operate the facility if you are granted approval;</p> <p>11 is that correct?</p> <p>12 MR. MATOPE: Yes, that's correct.</p> <p>13 MR. HUGHES: Okay. And is it also true, Mr. Matope,</p> <p>14 that the business operations will only occur in the</p> <p>15 residence? You will not have any business operations out in</p> <p>16 the yard or the rest of the property? Is that true?</p> <p>17 MR. MATOPE: Yes, that's true.</p> <p>18 MR. HUGHES: Okay. And the business will be</p> <p>19 subordinated to the use of the house and the property as your</p> <p>20 home for you and your wife and kids, correct?</p> <p>21 MR. MATOPE: Yes, that's correct.</p> <p>22 MR. HUGHES: And this particular property is a house,</p> <p>23 it's a single-family residence dwelling; is that correct?</p> <p>24 MR. MATOPE: Yes, it's correct.</p> <p>25 MR. HUGHES: Thank you. And you are aware that is not</p>	<p>19</p> <p>1 you make sure that your -- although we know you're not</p> <p>2 having a lot of patients coming there. That's not the plan.</p> <p>3 But the ones that come you supposed to inform them of your</p> <p>4 proper address and where to park. Is that something you</p> <p>5 guys plan to do?</p> <p>6 MR. MATOPE: Yes.</p> <p>7 MR. HUGHES: Okay. And for your standard patients,</p> <p>8 they must have appointments? They can't just walk in? You</p> <p>9 can't have walk-ins? You understand that?</p> <p>10 MR. MATOPE: Yes, I do.</p> <p>11 MR. HUGHES: And you also understand it does allow you</p> <p>12 -- the code if you're granted approval, doesn't allow you</p> <p>13 for emergency appointments that might not have a set time</p> <p>14 period or outside of normal hours. Do you understand that</p> <p>15 opportunity?</p> <p>16 MR. MATOPE: Yes.</p> <p>17 MR. HUGHES: Okay. Now in this case, you did go ahead</p> <p>18 and -- you filed the County filing fee for this conditional</p> <p>19 use for just under \$10,000; is that correct?</p> <p>20 MR. MATOPE: Yes.</p> <p>21 MR. HUGHES: Okay. And you've also retained</p> <p>22 consultants or experts to help you with this process</p> <p>23 including me and my law firm, the engineering firm, Stantec;</p> <p>24 is that correct? To help you with this?</p> <p>25 MR. MATOPE: Yes.</p>
<p>18</p> <p>1 permissible to have exterior storage of goods or equipment</p> <p>2 for the business? You can't store it outside; is that</p> <p>3 correct?</p> <p>4 MR. MATOPE: Yes.</p> <p>5 MR. HUGHES: And also that you understand and agree</p> <p>6 that the type of equipment or facilities are limited to</p> <p>7 office and medical equipment in this case, correct?</p> <p>8 MR. MATOPE: Yes.</p> <p>9 MR. HUGHES: Thank you. And you all plan to -- you</p> <p>10 know you must dispose of medical waste according to the</p> <p>11 standard of state and federal regulations, correct?</p> <p>12 MR. MATOPE: Yes.</p> <p>13 MR. HUGHES: Okay. And one of the things also in the</p> <p>14 code for what you are asking for says that truck deliveries</p> <p>15 must be limited to kind of the standard residential ones;</p> <p>16 UPS, FedEx, Amazon, et cetera. That's what you will have</p> <p>17 and you won't have a large otherwise truck deliveries; is</p> <p>18 that true?</p> <p>19 MR. MATOPE: Yes, that's true.</p> <p>20 MR. HUGHES: Okay. And should the County need any</p> <p>21 additional -- as you move through any other approvals, if</p> <p>22 they need any proof of ownership of the property, you will</p> <p>23 be willing to provide so, correct?</p> <p>24 MR. MATOPE: Yes.</p> <p>25 MR. HUGHES: One of the thing the code also asks, is</p>	<p>20</p> <p>1 MR. HUGHES: And also Mr. Etemadi from CTS, the traffic</p> <p>2 engineer?</p> <p>3 MR. MATOPE: Yes.</p> <p>4 MR. HUGHES: Okay. You are also working on some</p> <p>5 renovations inside for the office side and your residential</p> <p>6 side and paying the contractors, and permit fees and such,</p> <p>7 correct?</p> <p>8 MR. MATOPE: Yes.</p> <p>9 MR. HUGHES: Okay. Very good. And those a lot of the</p> <p>10 fees and costs you expected; is that true to say?</p> <p>11 MR. MATOPE: Yes.</p> <p>12 MR. HUGHES: Okay. Now let me ask you just briefly</p> <p>13 about condition number 8. Are you aware of this condition</p> <p>14 that has been proposed by the Planning Board and staff?</p> <p>15 MR. MATOPE: Yes, I do.</p> <p>16 MR. HUGHES: Okay. What is your understanding of what</p> <p>17 that would entail for you? What would that involve to you</p> <p>18 potentially?</p> <p>19 MR. MATOPE: Yeah, that would involve ripping up the</p> <p>20 sidewalks and replacing with a new sidewalk and that's going</p> <p>21 to involve moving of the utility poles that is sitting there</p> <p>22 right in the middle there, the sidewalks.</p> <p>23 MR. HUGHES: Did you understand that -- yeah, it's</p> <p>24 quite possible some of the utility poles may have to be</p> <p>25 removed as part of that process. Is that your</p>

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<p>21</p> <p>1 understanding?</p> <p>2 MR. MATOPE: Yes.</p> <p>3 MR. HUGHES: And have you been told by your consultants</p> <p>4 or other people that this might be a pretty involved and</p> <p>5 lengthy time period and costly one?</p> <p>6 MR. MATOPE: Yes, I was told. They say the cost of</p> <p>7 moving the utility pole is between \$60,000 to \$200,000. And</p> <p>8 the cost of replacing the sidewalks is \$20,000 to \$30,000.</p> <p>9 MR. HUGHES: Okay. Let me switch over -- so if you are</p> <p>10 -- if we are fortunate enough to get approval here, what</p> <p>11 will this mean to you and your family to have this</p> <p>12 conditional use and allow you to have the home business</p> <p>13 operate for your medical practice?</p> <p>14 MR. MATOPE: Can you repeat the question again? I'm</p> <p>15 sorry.</p> <p>16 MR. HUGHES: Yeah. What will this mean? Will it be</p> <p>17 exciting? Or what will this mean to you and your family if</p> <p>18 you get approval to operate the business and live in that</p> <p>19 residence?</p> <p>20 MR. MATOPE: Yeah, this conditional approval will place</p> <p>21 a lot of burden on our businesses because the cost that we</p> <p>22 are -- there is no part of our planning or budget. We are</p> <p>23 afraid with this now and with what's going on now with the</p> <p>24 pandemic, our revenue has been -- our business has been</p> <p>25 impacted with the Covid and everything else. And with this</p>	<p>23</p> <p>1 specific area that you are currently focusing on?</p> <p>2 MR. MATOPE: Where focused in the home care business.</p> <p>3 So home care business, it has so many areas of home care.</p> <p>4 But we -- for now, majority of our patients are pediatrics.</p> <p>5 HEARING EXAMINER BAUMGARDNER: Okay. And my last</p> <p>6 question is for condition number 8 and the current state of</p> <p>7 repair of the existing sidewalk and existing driveway. Can</p> <p>8 you just give me an idea? Is it newer concrete or asphalt?</p> <p>9 Is it degrading concrete or asphalt? What is the current</p> <p>10 state of that sidewalk and then any kind of driveway apron</p> <p>11 or the driveway itself?</p> <p>12 MR. MATOPE: Yes, the current state of the sidewalk is</p> <p>13 good. There is no problem. But I think what they are</p> <p>14 askingus to do is to expand it. Right now I think the size</p> <p>15 of the sidewalk is 4 feet. And condition number 8, I think</p> <p>16 is asking us to expand it to make it 8 feet. I mean, 5</p> <p>17 feet.</p> <p>18 HEARING EXAMINER BAUMGARDNER: Okay. Those were all</p> <p>19 the questions I had of this witness. Thank you very much,</p> <p>20 sir.</p> <p>21 Mr. Hughes, I will leave it up to you for your next</p> <p>22 witness.</p> <p>23 MR. HUGHES: Yes, thank you Mr. Baumgardner. And I</p> <p>24 would say to you last questioned him, we will also have a</p> <p>25 little more testimony come from Mr. Rodriguez and Mr.</p>
<p>22</p> <p>1 extracost the project is really going to bring a big burden</p> <p>2 toour business and we will -- it's going to shake us up. I</p> <p>3 mean, that's for sure.</p> <p>4 MR. HUGHES: I understand. Thank you. Thank you.</p> <p>5 Okay. Mr. Hearing Examiner, I would like to, next witness,</p> <p>6 please. Thank you, Mr. Matope.</p> <p>7 MR. MATOPE: Thank you.</p> <p>8 HEARING EXAMINER BAUMGARDNER: Sure. I did have a</p> <p>9 couple of quick follow-up questions for Mr. Matope. The</p> <p>10 first, do you and your family currently live in the</p> <p>11 property, 9221 Colesville Road?</p> <p>12 MR. MATOPE: No, we do not currently live there. The</p> <p>13 property is still under renovations, but we are planning to</p> <p>14 move.</p> <p>15 HEARING EXAMINER BAUMGARDNER: Okay. And the LLC, E &amp;</p> <p>16 MInvestment LLC, are you and your wife equal members of the</p> <p>17 LLC?</p> <p>18 MR. MATOPE: Yes, that's correct.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Are there any other members</p> <p>20 of the LLC other than yourself and your wife?</p> <p>21 MR. MATOPE: No.</p> <p>22 HEARING EXAMINER BAUMGARDNER: Are there -- is there a</p> <p>23 specific area of the home medical services that you -- that</p> <p>24 your company will be providing or does provide to folks?</p> <p>25 Is it pediatrics or general health? Neurology? Is there a</p>	<p>24</p> <p>1 Sekerak. And you can obviously ask them a little bit more</p> <p>2 about that. Yes, my next witness would be Mr. Shariar</p> <p>3 Etemadi, please.</p> <p>4 HEARING EXAMINER BAUMGARDNER: And before we get to</p> <p>5 that witness, I am seeing that we have a call in. Let me</p> <p>6 just unmute the call in and find out if this individual</p> <p>7 wanted to ask Mr. Matope any questions. If I can do that.</p> <p>8 We do have a call in from a -- well, last four digits 4995.</p> <p>9 Are you there? So they are present. They are not unmuting</p> <p>10 their phone. All right.</p> <p>11</p> <p>12 Then we will move on. So that was Mr. Etemadi; is that</p> <p>13 correct?</p> <p>14 MR. HUGHES: Yes. And Mr. Baumgardner, I'm sure you</p> <p>15 willcheck in again later on with -- if there is a caller or</p> <p>16 two. And we certainly welcome their opportunity if they</p> <p>17 justwant to listen. But if they change their mind and want</p> <p>18 tohave questions of us or anything, we simply would welcome</p> <p>19 that.</p> <p>20 HEARING EXAMINER BAUMGARDNER: Great, thank you.</p> <p>21 Mr. Etemadi, can you raise your right hand, please?</p> <p>22 And sir, do you swear or affirm under the penalties of</p> <p>23 perjury that the testimony you are about to give is the</p> <p>24 truth, the whole truth and nothing but the truth?</p> <p>25 MR. ETEMADI: I do.</p>

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<p>25</p> <p>1 HEARING EXAMINER BAUMGARDNER: Mr. Hughes, the floor is 2 yours. 3 MR. HUGHES: Thank you. Mr. Etemadi, can you identify 4 your business address? 5 MR. ETEMADI: It's 6449 Red Keel, Columbia, Maryland 6 21044. 7 MR. HUGHES: Thank you. And what's the name of the 8 business? And is it your business? Is that correct? 9 MR. ETEMADI: Yes, STS Consulting. 10 MR. HUGHES: Thank you. Mr. Etemadi, have you ever 11 been qualified as an expert in transportation planning and 12 traffic engineering? 13 MR. ETEMADI: Yes. 14 MR. HUGHES: Okay. Mr. Baumgardner, his resume is -- 15 you kind of alluded to it earlier. As part of Exhibit 36, 16 our prehearing statement. I would like, with your 17 permission, offer him as an expert in those fields of 18 transportation planning and traffic engineering. 19 HEARING EXAMINER BAUMGARDNER: He is so accepted as an 20 expert in traffic engineering and transportation planning. 21 MR. HUGHES: Thank you. 22 Mr. Etemadi, you are asked to review the traffic plan 23 for this use and provide a traffic report regarding it; is 24 that true? 25 MR. ETEMADI: Yes.</p>	<p>27</p> <p>1 conclusionof our report is that this proposed establishment 2 is not going to have any impact on the transportation 3 system. 4 MR. HUGHES: Thank you. And thank you Mr. Hearing 5 Examiner. I believe you have Exhibit 25(c) up, which is Mr. 6 Etemadi's report dated 1/13/21. 7 HEARING EXAMINER BAUMGARDNER: That's correct. 8 MR. HUGHES: Thank you. And Mr. Etemadi, the county 9 planning staff concurred with your conclusions and your 10 position that there was no traffic study needed, correct? 11 MR. ETEMADI: Correct, yes. 12 MR. HUGHES: Okay. So in your professional opinion, is 13 the surrounding transportation network going to be impacted 14 in any material way by the proposed use here? 15 MR. ETEMADI: No. 16 MR. HUGHES: Thank you, sir. Mr. Hearing Examiner, I 17 would like to, next witness who is John Sekerak from 18 Stantec. John -- I'm going to have Mr. Sekerak go through a 19 lot of the conditional use criteria. And then he is one 20 person that towards the end I would like to recall when I 21 focus on condition approval number 8, sir. 22 HEARING EXAMINER BAUMGARDNER: Not a problem at all. 23 Mr. Sekerak, would you please raise your right hand? 24 And sir, do you swear or affirm under penalties of 25 perjurythe testimony you're about to give is the truth, the</p>
<p>26</p> <p>1 MR. HUGHES: And can you just very briefly, because it 2 is minor even for a nonexpert like me. The traffic is 3 pretty low. But can you just briefly describe what your 4 traffic report -- how you came to it what it says? Its 5 conclusions? 6 MR. ETEMADI: Yes. We have actually looked at the 7 number of employees and the patients who are going to be at 8 the site during the peak hours. We actually looked at the 9 worst-case scenarios and at the most, we're going to have 8 10 trips during the peak hours or peak periods in the morning, 11 and the same number, 8 trips during the p.m. peak period or 12 peak hours. We are not exactly sure if they're going to be 13 concentrated in one peak hour, but during the peak period. 14 So that is a very low traffic generating site and is 15 notrequired to do a local area transportation review, which 16 means that we have to do a traffic study to test the 17 adequacy of public facilities relating to transportation. 18 The intersections nearby, there are two of them. We 19 examined them and basically they are operating within 20 congestion standards. We have a very good access to 21 transit, which is basically like 20, 25 minutes' walk to 22 Silver Spring Metro stations. 23 We have so many bus services going by the site. The 24 site is located at 200 feet away from a bus stop where we 25 have bus services every 20 minutes during the day. So the</p>	<p>28</p> <p>1 whole truth, and nothing but the truth? 2 MR. SEKERAK: I do. 3 HEARING EXAMINER BAUMGARDNER: Thank you, and welcome. 4 Mr. Hughes, the floor is yours. 5 MR. HUGHES: Thank you. Mr. Sekerak, can you state for 6 the record your work address? 7 MR. SEKERAK: I work at the multidisciplinary 8 consultancy firm of Stantec at 22440 Century Boulevard in 9 Germantown, Maryland. 10 MR. HUGHES: Thank you. And what is your profession? 11 MR. SEKERAK: I'm a land-use planner certified by the 12 American Institute of Certified Planners. And I'm a 13 landscape architect licensed in the State of Maryland among 14 others. 15 MR. HUGHES: And how long have you been in those fields 16 as a professional? 17 MR. SEKERAK: 37 years. 18 MR. HUGHES: Okay. Mr. Hearing Examiner, his resume is 19 also part of Pre-hearing Statement Exhibit Number 36. I 20 would like to offer him as an expert in land planning and 21 landscape architecture. 22 HEARING EXAMINER BAUMGARDNER: He is so designated as 23 an expert in land-use planning and landscape architecture. 24 MR. HUGHES: Thank you. Mr. Sekerak, I'm going to 25 reference Exhibit 30, the staff report in figure 1, to help</p>



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<p>29</p> <p>1 you identify some things. But if you also want to identify 2 another exhibit, perhaps your site plan which is I believe 3 Exhibit 25(a), feel free to let us know. But can you just 4 tell us a little bit about the general land-use patterns in 5 area? 6 MR. SEKERAK: Sure. Generally single-family detached 7 residences with land-use patterns typically of R60 zone 8 land-use and it includes some institutional uses. 9 Specifically, a major feature is Colesville Road, US Route 10 29 going diagonally past the property. In the opposite 11 diagonal area is Sligo Creek, Stream Valley Park and Sligo 12 Creek Parkway are two significant features. 13 Regarding those institutional uses I referenced, there 14 is a place of worship right across Colesville Road from the 15 subject property and another place of worship a little 16 further to the southwest. And at the intersection of Dale 17 Drive and Colesville Road, also the intersection is the Toll 18 House restaurant. But other than that, this is dominantly 19 single-family detached residential area. 20 MR. HUGHES: Thank you. And what is the zoning of the 21 property, sir? 22 MR. SEKERAK: R60. 23 MR. HUGHES: Okay. And can you tell us just briefly 24 about the abutting and confronting properties that you 25 haven't touched on yet?</p>	<p>31</p> <p>1 a skew? 2 MR. SEKERAK: That is -- plan north is straight up. 3 HEARING EXAMINER BAUMGARDNER: Got it. So let's use 4 that as our base. So if you see the proposed site in blue, 5 that nearby special exception in pink would be I guess 6 directly due north. So I guess we can use that as our 7 basis. 8 MR. HUGHES: Very good. Thank you, sir. Go ahead Mr. 9 Sekerak. Or did you finish answering the question? My 10 apologies. 11 MR. SEKERAK: No. Then again, I guess if the church is 12 directly due north, then the adjoining dental practice, 13 which on this exhibit is shown as S-2122, is to our 14 northeast. That has again, a dental practice. It has 15 parking in front of the building. And I understand it has 16 -- it includes a residence. 17 To our southwest, the abutting property is a single- 18 family residence and it appears to have an ancillary medical 19 use also. To the rear of the property are single- 20 family detached homes fronting on Kingsbury Drive, the 21 residential street to the interior of the neighborhood. 22 MR. HUGHES: Thank you. 23 MR. SEKERAK: On this exhibit, note that the blue 24 identifying the property is a little bit too far to the 25 southwest due to a mapping error in GIS. It actually</p>
<p>30</p> <p>1 MR. SEKERAK: Sure. Across Colesville Road I had 2 mentioned the existing place of worship. And next door to 3 that is single-family detached residence. Directly abutting 4 our property to the northeast is a dental practice. 5 HEARING EXAMINER BAUMGARDNER: And Mr. Sekerak, I'm 6 sorry to interrupt you. Can you kind of level set for us 7 the directions? Because it's kind of a weird set up. Can 8 you tell us what you believe the directions are so we can 9 all be on the same page? I think we've had a little bit of 10 discussions with this with staff and others because of the 11 way things sit here. 12 MR. SEKERAK: Right. Knowingly it enough it's right on 13 the diagonal. So which way is north on the property is 14 somewhat interpretive. So I'd be happy to describe that to 15 the Northeast, Southwest. Or if the Hearing Examiner would 16 like to just consider the abutting property to our north of 17 the north, I can work with that. Or if the Colesville Road 18 intersection is considered to the north of the property, I 19 would be happy to do that also. 20 HEARING EXAMINER BAUMGARDNER: Is the figure that 21 should be displayed now, which is figure 2, the staff 22 defined neighborhood -- can you all see that? 23 MR. HUGHES: Yes. 24 HEARING EXAMINER BAUMGARDNER: All right. Is this 25 current figure -- is that based on the compass? Or is that</p>	<p>32</p> <p>1 directly abutting the dental practice to our northeast. 2 MR. HUGHES: Okay. 3 HEARING EXAMINER BAUMGARDNER: It looks like they are 4 invading their neighbor a little bit. 5 MR. HUGHES: And thank you, Mr. Sekerak. Can you tell 6 us a little bit about the zoning neighborhood? And 7 reference I guess again would be some staff report which I 8 believe that or Exhibit 30 and figure 2, which I think -- 9 where we just looking at figure 2 or 3? I apologize. Yes. 10 Is there anything more you want to tell us about the zoning 11 neighborhood? 12 MR. SEKERAK: Well, it does -- the exhibit that you're 13 seeing here now defined by the staff, does differ from what 14 the Applicant had submitted with our initial application. 15 There is no substantive difference in terms of it's all 16 dominantly single-family detached neighborhood. They are 17 not too different in overall size, and shape. But I will 18 describe the differences because it does impact whether or 19 not some additional existing special exceptions, conditional 20 uses are or are not within the neighborhood. So I guess I 21 would ask that you bring up Exhibit 12, which is the 22 Applicants' surrounding neighborhood delineation. 23 HEARING EXAMINER BAUMGARDNER: Sometimes it takes a 24 while to load. 25 MR. SEKERAK: So it doesn't seem like we're going to be</p>

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<p>33</p> <p>1 able to toggle between the two exhibits.</p> <p>2 HEARING EXAMINER BAUMGARDNER: Here we go. Here we go.</p> <p>3 Sometimes it works great. Other times it's a little bit</p> <p>4 slow to the uptake. All right. This should be on your</p> <p>5 screen now.</p> <p>6 MR. SEKERAK: Yes. And if you would like to get the</p> <p>7 orientation the same, if you could rotate it</p> <p>8 counterclockwise 90 degrees.</p> <p>9 HEARING EXAMINER BAUMGARDNER: I don't think I have the</p> <p>10 ability to do that, but I am properly oriented.</p> <p>11 MR. SEKERAK: Okay.</p> <p>12 HEARING EXAMINER BAUMGARDNER: You can continue your</p> <p>13 testimony.</p> <p>14 MR. SEKERAK: Yeah. With the understanding that North</p> <p>15 is to the right of the page. Yeah.</p> <p>16 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>17 MR. SEKERAK: I will describe the differences.</p> <p>18 MR. HUGHES: And just briefly, Mr. Sekerak, but yes, please</p> <p>19 point out the key differences.</p> <p>20 MR. SEKERAK: All right. The Applicants' neighborhood</p> <p>21 did include Sligo Park -- a stream Valley Park as part of</p> <p>22 the neighborhood. It is a real contributing element to the</p> <p>23 character of the neighborhood and it's only a very small</p> <p>24 distance away, only one property removed from the subject</p> <p>25 property. I used the Parkway itself and its very large</p>	<p>35</p> <p>1 that any relationship is lost by the time you travel from</p> <p>2 one to the other.</p> <p>3 And again, I -- it doesn't change the findings in terms</p> <p>4 of the character of the neighborhood. Just as we discussed,</p> <p>5 are there any other special exceptions or conditional uses</p> <p>6 within the neighborhood is why I'm even wasting your time</p> <p>7 with this discussion.</p> <p>8 MR. HUGHES: Okay. And we will probably -- we are</p> <p>9 going to touch upon that and just a little bit I think, that</p> <p>10 second part, or the part you just raised. Let me ask you a</p> <p>11 bit more about the property. Are there any relevant</p> <p>12 environmental features for this application or for review</p> <p>13 related to this application?</p> <p>14 MR. SEKERAK: No. It's -- there are no environmental</p> <p>15 features such as streams, wetlands, floodplain, et cetera.</p> <p>16 There is one large tree in the rear yard. There are other</p> <p>17 trees and shrubs typical of a residence on there. It is</p> <p>18 mostly lawn. It slopes gently from the southwest of the</p> <p>19 Northeast about 14 feet over the length of the property,</p> <p>20 which is only about 6 percent average slope. It has the</p> <p>21 existing home, ancillary shed, a carport, and the existing</p> <p>22 parking place. When it comes to environmental features it</p> <p>23 is very typical of the residences in this area.</p> <p>24 MR. HUGHES: Thank you. And I'm going to ask, probably</p> <p>25 just to see if you can just to speed up on one area here.</p>
<p>34</p> <p>1 intersection as a delineating factor. To the southeast I</p> <p>2 included those properties that are on the intersection of</p> <p>3 Dale Drive and Colesville Road, all four quadrants of that</p> <p>4 intersection.</p> <p>5 MR. HUGHES: Okay.</p> <p>6 MR. SEKERAK: The restaurant use, the parking port is</p> <p>7 on the other quadrant of the use. So I didn't want to sever</p> <p>8 one use area from some within the neighborhood, some</p> <p>9 outside. And I did include the church also at that</p> <p>10 intersection since that's within line of sight of the</p> <p>11 property. To the east of our property the -- or I'm sorry,</p> <p>12 the staff did go further the back into that neighborhood.</p> <p>13 And I do not mean to quibble there. There is no real</p> <p>14 defining area. It's just a judgment of how deep into that</p> <p>15 neighborhood the thing could extend.</p> <p>16 However, on the other side of Colesville Road, staff</p> <p>17 had gone considerably deeper into that neighborhood and I do</p> <p>18 differ with that. Colesville Road is a six lane, classified</p> <p>19 as a major highway. And that's the type of feature that</p> <p>20 provides a delineation for a residential neighborhood. So I</p> <p>21 only included those properties on the other side that do</p> <p>22 front on Colesville Road and within line of sight of the</p> <p>23 property. Those other residences much further back into the</p> <p>24 neighborhood have no relationship to the site in terms of</p> <p>25 sight or sound. And the circulation around is so circuitous</p>	<p>36</p> <p>1 Talking about the R60 zoning development standard for the</p> <p>2 zoning code, that is that I will refer to Exhibit 30, the</p> <p>3 staff report, and page 14 and also on your -- let me back</p> <p>4 that up. It lays out all the standards. And is it fair to</p> <p>5 say we meet or exceed all standards under section 59 4.49B?</p> <p>6 MR. SEKERAK: Yes, the staff has a nice tabulation of</p> <p>7 that and they are also included on the base of the site plan</p> <p>8 for conditional use, which was Exhibit 25(a).</p> <p>9 MR. HUGHES: Thank you.</p> <p>10 MR. SEKERAK: And both are very consistent with each</p> <p>11 other and they demonstrate that the existing property is in</p> <p>12 conformance with all the development standards of the R60</p> <p>13 zone.</p> <p>14 MR. HUGHES: Okay. And then I'm going to ask you about</p> <p>15 parking requirements for 59 6.2.4, which are also shown up</p> <p>16 on the same Exhibit 30 of staff report, page 14, and also in</p> <p>17 your Exhibit 25(a), your site plan. Can you tell us about</p> <p>18 the parking requirements?</p> <p>19 MR. SEKERAK: The staff, as you indicated on the</p> <p>20 tabulation on page 14 and the tabulation on the face of the</p> <p>21 site plan for conditional use, again 25(a), both come to the</p> <p>22 same conclusion regarding number of spaces required and the</p> <p>23 number of spaces provided. There is a slight difference in</p> <p>24 how they -- we arrived at that.</p> <p>25 So for consistency, I would recommend that -- use the</p>

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<p>37</p> <p>1 tabulation on the face of the site plan, which indicates 2 that one space is required for the home healthcare 3 practitioner. And then we limit the number of clients on 4 site at any time to one. That was as we had proposed 5 initially with the -- in the statement of operations, et 6 cetera and on the face of the site plan. And that's all 7 that's necessary for Mr. Matope's practice. 8 MR. HUGHES: So you are pointing this out -- your 9 recommendation for the hearing examiner to consider is this 10 -- the numbers are the same for you and staff, but there is 11 a slight difference that you are recommended be handled the 12 way you just stated; is that correct? 13 MR. SEKERAK: That's correct, 10 required, 10 14 proposed. Let's see. But if the staff recommended 15 condition and the Planning Board's recommending condition 16 of two parking spaces -- let's see. A parking space for 17 each patient on site at any one time be two, then -- then 18 according to our calculations, we would not be meeting the 19 minimum number of requirements. So we recommend that the 20 condition of approval be amended to be one patient on site 21 at any one time. 22 MR. HUGHES: And Mr. Matope is proposing a maximum of 23 two a day. Because again, almost all his stuff really is 24 going to be a people's homes and even with that, didn't we 25 propose that it would be one at a time. There will not be</p>	<p>39</p> <p>1 MR. HUGHES: Keep going. I'm sorry. 2 MR. SEKERAK: The second waiver necessary is for the 3 width of the drive aisle behind those spaces is, as you can 4 see, a dimension on the plan is 18 feet from the back of 5 those spaces to the edge of the existing parking. And a 6 typical requirement for two-way traffic for perpendicular 7 spaces would be 20 feet. So we are requesting 18 being 8 sufficient. 9 With both waivers concerning the very low traffic 10 volumes, very low traffic speeds on such a small parking 11 facility, we feel that the -- utilizing the existing parking 12 is efficient and safe and satisfies the intent of the -- 13 that section of the code, 59.6.2.1 ensuring safe, efficient 14 access within a parking facility. Staff recommended 15 approval of the conditions and the Planning Board except of 16 them also. 17 MR. HUGHES: For both those waivers, correct? 18 MR. SEKERAK: For both waivers, correct. 19 MR. HUGHES: Thank you. Let me ask you a quick 20 question just related to a good question the hearing 21 examiner had earlier to Mr. Matope. Can you tell us -- 22 well first of all, you've been out on the site several times 23 to visit it; is that correct? 24 MR. SEKERAK: That's correct. 25 MR. HUGHES: And can you weigh in on the status of the</p>
<p>38</p> <p>1 two patients at the same time, correct? 2 MR. SEKERAK: Correct, a maximum of 10 over the course 3 of a week. But on site at any one time would be limited to 4 one. 5 MR. HUGHES: Very good. And staff -- overall, staff -- 6 well, were there any waivers involved here with the parking? 7 MR. SEKERAK: Yeah, two waivers are necessary. The 8 site has, as we mentioned, an existing parking facility that 9 had served the historical land use for the property for 10 decades. Records indicate that that had accommodated 11 11 spaces. We are showing a configuration that readily 12 accommodates 10 parking spaces. But for those 10 spaces, 13 you can see the -- 3 of the spaces are in tandem, exactly 14 what you are looking on Exhibit 25(a). 15 The single-family residence allows for tandem spaces. 16 So two of those tandem spaces are allowed for the residence. 17 We are requesting a waiver to allow two other tandem spaces. 18 You heard Mr. Matope's testimony, the nature of most of the 19 employees are out in the field during the course of the day. 20 So we don't feel that these tandem spaces would be any -- it 21 would be efficiently used; the few times when they would 22 need to be used. The employees would be there and be able 23 to move a vehicle if it became necessary. 24 MR. HUGHES: Thank you. 25 MR. SEKERAK: The --</p>	<p>40</p> <p>1 sidewalk or the driveway apron? 2 MR. SEKERAK: Yeah, it doesn't appear to be new 3 concrete in terms of the, like, coloredness of it. But it 4 certainly -- no need for improvements or replacement or 5 repair of -- the sidewalk and the driveway are in perfectly 6 good condition. 7 MR. HUGHES: Thank you. Is there any bicycle parking 8 required for this project? 9 MR. SEKERAK: No. 10 MR. HUGHES: Okay. Thank you. Mr. Sekerak, based on 11 your professional opinion, does this application conform 12 with the master plan here? 13 MR. SEKERAK: Yes, the master plan is the 2000 North 14 and West Silver Spring Master Plan adopted in August 2000. 15 The text of the master plan does not specifically address 16 this particular property. It does recommend the R60 zoning 17 for the property and the entire neighborhood; however, it's 18 defined. And it recommends preservation of the existing 19 character of the existing residential neighborhoods. There 20 is some discussion of a specific section on special 21 exceptions, but again, nothing specific about this property. 22 And it really focuses on other locations within the master 23 plan area. 24 MR. HUGHES: Thank you. And can you explain whether 25 this conditional use will cause an excessive concentration</p>

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<p>41</p> <p>1 of such uses in the neighborhood? And you could touch upon 2 what we alluded to earlier about any relevant special 3 exceptions, conditional uses, or otherwise in the area. 4 MR. SEKERAK: Yes. The staff had initially identified 5 a daycare center across Colesville Road. 6 MR. HUGHES: And Mr. Sekerak, let me see. We should 7 probably go Exhibit -- staff report, Exhibit 30, and I think 8 it's item 3. I apologize. We had it up earlier. 9 Table 2 or 3 in the staff report. Yeah, sorry, 10 Mr. Hearing Examiner, I apologize. 11 HEARING EXAMINER BAUMGARDNER: Is that right? 12 MR. SEKERAK: Figure 2, page 4. 13 HEARING EXAMINER BAUMGARDNER: I'm trying to find it 14 too. So I remember it. 15 MR. HUGHES: Yeah, there it is. Yes, thank you. Thank you, 16 sir. 17 MR. SEKERAK: Okay. So the large pink area identified 18 across Colesville Road from the subject property is a place 19 of worship. It had a special exception for a daycare at one 20 point and that have been revoked in -- I forget what year, 21 but it's been long revoked as unnecessary as a daycare 22 center in a place of worship. Also identified the adjoining 23 dental practice as a special exception. And that was the 24 S-2122 you see identified on the property. That application 25 was denied. So there's never been a special exception</p>	<p>43</p> <p>1 certainly doesn't create an oversaturation of special 2 exceptions or conditional uses within either of the 3 neighborhoods. 4 MR. HUGHES: Thank you. And is this use, the 5 conditional use we're asking for, is this permitted in the 6 R60 where this property is? 7 MR. SEKERAK: Yes, permitted with the approval of a 8 conditional use. 9 MR. HUGHES: Thank you. And your professional opinion 10 Mr. Sekerak, if this application, this use, harmonious with 11 the character of the surrounding neighborhood? 12 MR. SEKERAK: Yes. Medical use has been ancillary to 13 this home and a contributing element to the character of the 14 neighborhood since 1959 until very recently. 15 MR. HUGHES: Thank you. And will the proposed use 16 alter the character of the neighborhood in your opinion? 17 MR. SEKERAK: No. Again, a medical use ancillary to 18 the home has been a contributing element to the character of 19 the neighborhood for decades. 20 MR. HUGHES: And from a land-use perspective, will it 21 cause any loss of use with peaceful enjoyment or development 22 of potential surrounding properties? 23 MR. SEKERAK: No. The property is being returned to 24 include the ancillary use in the residence it's been for 25 decades. And there are no proposed changes to the property</p>
<p>42</p> <p>1 there. It is operating as a pre-existing nonconforming use. 2 MR. HUGHES: And Mr. Hearing Examiner, that is I 3 believe Exhibit 13, is a copy of their nonconforming use 4 public record for Montgomery County, showing they have 5 nonconforming use for that use there. 6 HEARING EXAMINER BAUMGARDNER: Got it. Noted. 7 MR. HUGHES: Okay. 8 MR. SEKERAK: The other two special exceptions 9 indicated on there are for accessory dwelling units. At the 10 time they were approved accessory apartments. That's what 11 they were referred to. Again, the one to the east is not 12 within the neighborhood that the Applicant had provided with 13 the initial application. Again, I don't mean to quibble 14 about how far back that direction the neighborhood goes 15 because that would be -- may or may not be within the 16 neighborhood, just depending upon how Mr. Baumgardner 17 defines the neighborhood. 18 MR. HUGHES: Right. 19 MR. SEKERAK: The one on the other side of Colesville 20 Road is -- I don't believe that's within the practical 21 neighborhood for use of this benign impact. But those will 22 be the only two existing special exceptions or conditional 23 uses within -- possibly within either of those two 24 neighborhoods. So the subject application certainly doesn't 25 -- and since it's in conformance with the master plan,</p>	<p>44</p> <p>1 other than some additional plantings. 2 MR. HUGHES: Okay. Thank you. And I think you -- 3 maybe you've already said this. But it's consistent with 4 the intent and purpose of the area master plan; is that 5 correct? 6 MR. SEKERAK: Yes, it maintains the R60 zoning, 7 preserves the existing character of the neighborhood by 8 returning it to its historical use. 9 MR. HUGHES: And it's compatible with the terms of use 10 and design with the surrounding properties? 11 MR. SEKERAK: Yes, no proposed changes to the existing 12 residential appearance. 13 MR. HUGHES: Can you tell us a little bit about 14 lighting on the property? 15 MR. SEKERAK: The existing lighting is residential in 16 nature. It doesn't cause any unreasonable glare onto the 17 adjoining properties. And no additional lighting is 18 proposed with this application. 19 MR. HUGHES: Thank you. And how about signage? Is 20 there any signage proposed? 21 MR. SEKERAK: Yeah, there is no existing signage now. 22 The Applicant anticipates a single double-sided sign along 23 Colesville Road. 24 MR. HUGHES: Okay. 25 MR. SEKERAK: That would be reviewed and approved by</p>

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<p>45</p> <p>1 the Montgomery County Sign Review Board.</p> <p>2 MR. HUGHES: Thank you. Thank you. Does this use</p> <p>3 satisfy any applicable previous approvals on the subject</p> <p>4 site?</p> <p>5 MR. SEKERAK: Yeah, there were no other approvals that</p> <p>6 remain for the site. Again, there was a previous special</p> <p>7 exception, but nothing at this point to be in conformance</p> <p>8 with.</p> <p>9 MR. HUGHES: Thank you. Okay. I'm going to ask you</p> <p>10 little bit about the section related to healthcare</p> <p>11 practitioners. Is there any screening required for this</p> <p>12 application?</p> <p>13 MR. SEKERAK: There is not.</p> <p>14 MR. HUGHES: Okay. Can you tell us about the maximum amount</p> <p>15 of floor area permitted and what's being proposed here?</p> <p>16 MR. SEKERAK: All right. That's Exhibit 20(a) and</p> <p>17 20(b). Since is difficult to go between them, I guess I</p> <p>18 would recommend 20(b).</p> <p>19 MR. HUGHES: 20(b), which is the first floor plan from</p> <p>20 the architect, yes. Mr. Hearing Examiner, if you have 20,</p> <p>21 it would be 20(b), the first floor plan. And if not, we</p> <p>22 certainly can just talk to it if it's not coming up handy.</p> <p>23 HEARING EXAMINER BAUMGARDNER: Good point.</p> <p>24 MR. HUGHES: Yeah. John, can you tell us a little bit</p> <p>25 about that -- well, there it is. Thank you, very much.</p>	<p>47</p> <p>1 at the front door of the office use.</p> <p>2 MR. HUGHES: And that --</p> <p>3 MR. SEKERAK: So the left-hand corner of that footprint</p> <p>4 is the reception area.</p> <p>5 MR. HUGHES: Okay. And that's a requirement for this</p> <p>6 code, correct? That there be a waiting room or reception</p> <p>7 area?</p> <p>8 MR. SEKERAK: Correct.</p> <p>9 MR. HUGHES: Okay. Very good. And is -- let me back</p> <p>10 up one second. Okay.</p> <p>11 HEARING EXAMINER BAUMGARDNER: Are there any</p> <p>12 examination rooms on the first floor? So when a patient</p> <p>13 visits will they go into one of the staff offices?</p> <p>14 MR. SEKERAK: I would need to leave that to Mr. -- I'm</p> <p>15 uncomfortable --</p> <p>16 HEARING EXAMINER BAUMGARDNER: Understood.</p> <p>17 MR. SEKERAK: Finding on that on that absent Mr.</p> <p>18 Matope's input.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Got it.</p> <p>20 MR. MATOPE: So all the meeting will be taking place at</p> <p>21 the conference room there, that is behind the waiting area.</p> <p>22 HEARING EXAMINER BAUMGARDNER: Okay, thank you.</p> <p>23 MR. MATOPE: Yes.</p> <p>24 MR. HUGHES: Yeah, for the record, that was Mr. Matope,</p> <p>25 Mr. Hearing Examiner.</p>
<p>46</p> <p>1 Can you tell us what the proposed square footage of the</p> <p>2 office is?</p> <p>3 MR. SEKERAK: All right; 20(a) has the calculations on</p> <p>4 there, but this is a better graphic demonstration of that.</p> <p>5 So I'm perfectly fine staying with this one. And I can</p> <p>6 describe the numbers. The planned office area you see with</p> <p>7 the crosshatching on the first floor there is 1,195 square</p> <p>8 feet, which is less than the code maximum of 1,500 square</p> <p>9 feet, and it's less than the code maximum of 33 percent of</p> <p>10 the overall square footage of the house. The house is 5,507</p> <p>11 square feet. This is just that portion of the house is</p> <p>12 being used for the office use on the first floor.</p> <p>13 MR. HUGHES: Thank you. And that's also -- and so we are</p> <p>14 looking at Exhibit 20(b).</p> <p>15 MR. SEKERAK: (b).</p> <p>16 MR. HUGHES: And that's also in staff report Exhibit</p> <p>17 30, not that we need to go there Mr. Hearing Examiner.</p> <p>18 Exhibit 30, page 6, figure 4.</p> <p>19 Is that correct Mr. Sekerak? Is that your</p> <p>20 understanding?</p> <p>21 MR. SEKERAK: Yes, it is. And while we have this up</p> <p>22 just to save time later on, because I'm anticipating a</p> <p>23 question of yours later.</p> <p>24 MR. HUGHES: Ah, there we go.</p> <p>25 MR. SEKERAK: There is a waiting area, a reception area</p>	<p>48</p> <p>1 HEARING EXAMINER BAUMGARDNER: Thank you.</p> <p>2 MR. HUGHES: Okay. John, Mr. Sekerak, are there any</p> <p>3 accessory buildings being used as part of this application?</p> <p>4 MR. SEKERAK: No, there are not. There is an existing</p> <p>5 structure, the storage shed, but it's simply for the</p> <p>6 residential -- typical garden shed for the residential use.</p> <p>7 MR. HUGHES: Okay, thank you. And going -- talking</p> <p>8 briefly about the parking, can you tell us where the parking</p> <p>9 is located?</p> <p>10 MR. SEKERAK: Mr. Baumgardner, if you could go back to</p> <p>11 the site plan, 25(a)?</p> <p>12 HEARING EXAMINER BAUMGARDNER: Yeah, 25(a), thank you.</p> <p>13 MR. SEKERAK: So as you can see, there is no additional</p> <p>14 parking being proposed. The existing parking is along the</p> <p>15 south side and to the rear of the existing residence. Some</p> <p>16 of it is just three of the spaces are utilized in the</p> <p>17 existing carport. They are outlined in a</p> <p>18 dashed line. There is one ADA accessible space with a ramp</p> <p>19 up to the office. Again, it's all existing. We would</p> <p>20 simply be striping it with this configuration.</p> <p>21 MR. HUGHES: Thank you. And under the code, the</p> <p>22 hearing examiner can set the hours of operation, number of</p> <p>23 patients, et cetera. Can you tell us what's being proposed</p> <p>24 here or being asked for?</p> <p>25 MR. SEKERAK: That indicated in the statement of</p>

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<p style="text-align: right;">49</p> <p>1 justification, which I understand is Exhibit 7. The 2 practitioner use would be between 8:00 a.m. and 5:30 p.m. 3 Monday through Friday, but with the rare exception of 4 emergency patient visits outside of those established hours. 5 And as the Applicant discussed earlier, the Applicant 6 anticipates seeing 10 spaces outside per week, but no more 7 than one patient at any one time. 8 MR. HUGHES: Thank you. And are there any on-site sale 9 of goods planned or proposed here? 10 MR. SEKERAK: No. No. 11 MR. HUGHES: Okay. And the code also said the hearing 12 examiner may grant a conditional use for major home 13 healthcare practitioner as we are asking for here, on the 14 same site as a low-impact one or no impact if they find they 15 can work together. But are there any -- what's being 16 proposed here, is there anything other than this major 17 impact for the home healthcare being proposed here? 18 MR. SEKERAK: Those findings are not applicable. No 19 other conditional use is proposed for the site. 20 MR. HUGHES: Okay. I think you already answered this, 21 but the hearing examiner, the authority does not give him 22 the opportunity to grant a conditional use like we are 23 asking for here if there is already one approved on a 24 property. Are there any active approvals, conditional use, 25 or special exception on this property?</p>	<p style="text-align: right;">51</p> <p>1 simply be, usually done. So regarding the first inherent 2 proposal is estimated to generate well below the 50 peak 3 hour trips necessary for LATR review. And the site is on 4 Colesville Road, which is again, a six lane major highway. 5 Access to it is readily available without sending any trips 6 through adjoining residential neighborhoods, impacting that. 7 With the approval of the requested waivers, there is 8 adequate parking available on-site. The existing facility 9 can readily accommodate 10 spaces. The previous special 10 exception had accommodated 11, for instance. But we are 11 able to accomplish that without any modifications to the 12 existing -- to the site or the existing parking facility. 13 MR. HUGHES: Okay. 14 MR. SEKERAK: And again, that third is -- there are no 15 proposed changes to the exterior of the structures or the 16 site other than some additional plantings. They have an 17 existing plumbing unit. The carport and shed are all 18 proposed to remain as they are today. 19 MR. HUGHES: Thank you. 20 MR. SEKERAK: Oh, regarding non-inherent, staff did not 21 determine any and I agree. 22 MR. HUGHES: Okay, very good. And I think you just 23 mentioned this, but -- and so there is no new structures 24 being proposed here; is that correct? 25 MR. SEKERAK: That's correct. No site improvements</p>
<p style="text-align: right;">50</p> <p>1 MR. SEKERAK: There is not. 2 MR. HUGHES: Okay. 3 MR. SEKERAK: Nothing active. 4 MR. HUGHES: Are there adequate public services or 5 facilities at the location? 6 MR. SEKERAK: Yes. Well, in terms of public 7 facilities, the proposed use will have no impact to the 8 schools in the area. Mr. Etemadi already previously 9 addressed the transportation, but the traffic, vehicular, 10 and pedestrian impacts will be de minimus. Fire rescue, 11 police services are very nearby and it's in water and sewer 12 category 1 and it's currently served by existing public 13 water and sewer services. 14 MR. HUGHES: Thank you. And what's your professional 15 opinion on any non-inherent and inherent conditions from 16 this use and impact they could have? 17 MR. SEKERAK: Staff has identified inherent physical 18 and operational characteristics. And they include one, 19 vehicular trips to and from site. Two, parking for 20 residential and proposed use. And three, physical changes 21 to the site out of character with the surrounding 22 neighborhood, which is odd since we are not providing or 23 proposing any physical changes to the site. 24 But otherwise, I wouldn't disagree with those as 25 inherent characteristics of this type of use. It would</p>	<p style="text-align: right;">52</p> <p>1 other than some additional plantings consistent with a 2 residential use. 3 MR. HUGHES: Very good. So essentially, what's being 4 proposed to the exterior of this property, if anything? 5 MR. SEKERAK: Nothing. 6 MR. HUGHES: Okay. Thank you. So is it your 7 professional overall opinion that the proposed use will be 8 compatible with the nearby residential properties and you 9 concur with staff's view on this as well? 10 MR. SEKERAK: I agree on both those points. It has 11 been an established part of this community for decades. So 12 it would be very consistent with that. 13 MR. HUGHES: Thank you Mr. Sekerak. 14 Mr. Hearing Examiner, with your permission what I would 15 like to propose now is -- that kind of wraps up so to speak 16 our case in chief. But as I mentioned before, I do want to 17 put some time into talking about condition of approval 18 proposed number 8. And with your permission, I would like 19 to do just a very brief opening just to kind of lay the line 20 of what we're going to talk about, give Mr. Sekerak a short 21 breath to have a sip of coffee or something. Then I would 22 call Mr. Rodriguez quickly and have Mr. Sekerak up to 23 finish. 24 Would that be all right, Mr. Hearing Examiner? 25 HEARING EXAMINER BAUMGARDNER: That will be fine. I</p>

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<p>53</p> <p>1 did have one quick follow-up question either for counsel or 2 Mr. Sekerak. The proposed signage, I know that it would 3 have to go before the Sign Review Board, but is there a sign 4 contemplated right now? Or would that be something that 5 would occur in the somewhat near future?</p> <p>6 MR. SEKERAK: I would be happy to address that. With 7 conversations with Mr. Matope, we are -- we have identified 8 the location of one sign and we anticipate it to be double- 9 faced, but one sign setback a minimum of 5 feet from the 10 property line as required and a maximum of 5 feet high as 11 required. It would not be illuminated in any way. The code 12 limits to assign on a residential property like this to 2 13 feet. That would be woefully ineffective along a roadway, 14 the characteristics of Colesville Road. So we are 15 anticipating probably a 5 square foot sign. That would 16 require a waiver by the Sign Review Board.</p> <p>17 HEARING EXAMINER BAUMGARDNER: Okay. I only ask 18 because we typically include that in our discussion of the 19 proposed operation of the use with the understanding that it 20 would go before the Sign Review Board anyway. I wanted to 21 make sure that I included that information at a basic level 22 in our report. That was my only follow-up question.</p> <p>23 So Mr. Hughes, you can -- I have no problem with going 24 with your plan to address the condition number 8. And you 25 can call your next witness if you like.</p>	<p>55</p> <p>1 that first of all, it's a guideline. 2 Second of all, it doesn't even apply here. We will 3 show that. It doesn't kick in. It doesn't become the type 4 of highway use where it really is applicable. Yes, thank 5 you for putting up number 8. I should have started with 6 that. It says the Applicant must widen existing 4 foot 7 sidewalk along Colesville Road to 5 feet, preserving the 8 existing 1 foot grass buffer along the site's Colesville 9 Road frontage. Another possible theory from staff is it's 10 applicable for the County Master Plan. There may have been 11 some discussion also about whether it could be applicable 12 under subdivision -- section 50, subdivision -- but this is 13 not applicable because we are not going to a subdivision. 14 And then under the State Highway guideline, a lot of the 15 focus 16 is on ADA requirements. And the ADA law is a minimum 17 sidewalk of 36 inches. Right now this is that 48 inches and 18 they are asking for 60. So it certainly meets the law.</p> <p>19 Again, so we believe that condition of approval is a 20 draft. It's a recommendation that is discretionary. And we 21 are also going to talk about some precedent that shows even 22 if it was applicable here, which we don't believe it is, 23 there is discretion to not utilize it or not make that 24 condition be required.</p> <p>25 Again, the starting point here, we are kind of stepping</p>
<p>54</p> <p>1 MR. HUGHES: Thank you. Thank you Mr. Hearing 2 Examiner. Let me just if I could, a brief kind of set the 3 table and then I would call Mr. Rodriguez.</p> <p>4 HEARING EXAMINER BAUMGARDNER: Okay.</p> <p>5 MR. HUGHES: So what I could say on this is that we are 6 hopeful to show via testimony of our next two witnesses that 7 this condition of approval is -- first of all, we don't 8 believe it's applicable. But even if it is applicable, we 9 are also going to bring in some precedent that shows it can 10 be waived, it can be modified and such. So here are where 11 the theories where it could potentially come in that has 12 kind of come through staff and/or Planning Board.</p> <p>13 First one is reference to SHA documents, State Highway 14 Administration documents. And first of all, it is a 15 guideline. That's what's on the menu itself. The exhibit 16 is Exhibit 44. And we don't need to pull it up right now. 17 We will be talking about it some but Exhibit 44 is called 18 accessibility policy and guidelines for pedestrian 19 facilities along the State Highway. It says policy and 20 guidelines.</p> <p>21 But we will show that it is not applicable in the 22 situation. By its own definition and does not fit into 23 where it would kind of kick in and be applicable even by its 24 own definition of when a situational use or modification, if 25 it would be classified as a modification. So our theories</p>	<p>56</p> <p>1 back and kind of understand Mr. Matope and some other folks 2 who are not in land development and even myself quite 3 honestly scratch my head. We cannot be doing any less to 4 the exterior of the property here, almost cannot do any 5 less. He is modifying the inside of the house. He is not 6 expanding the house. He's not adding new structures. He's 7 not adding new parking. He is not modifying the entrance or 8 driveway. He is not putting additional pavement in the 9 backyard. He is not touching the sidewalk. He is not 10 touching the road. He's not touching the right- 11 of-way.</p> <p>12 Now, I will concede we are putting a few trees at the 13 back of the property, landscaping, and he is hoping to put 14 up a small sign. But really could almost not do any less to 15 the exterior of the property. And in spite of that, he is 16 being asked to have a very, very significant lift here on 17 top of the normal expected processes and costs and 18 expenditures for an application for Montgomery County. To 19 ask him to add 12 inches -- and unfortunately, you can't 20 just add 12 inches.</p> <p>21 Although, that would be pretty involved too because 22 there is a ton of -- you'll hear testimony, a ton of review 23 that needs to go through coordination not really even with 24 the County. It's with the State Highway and the utility 25 companies. You can't just add 12 inches of cement, which</p>

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<p>57</p> <p>1 would be a lot cheaper, but still involved.</p> <p>2 And the sidewalk was testified to, the sidewalk and</p> <p>3 driveway apron, that they are in fine, functional shape. And</p> <p>4 you will hear testimony that it's 4 feet everywhere in this</p> <p>5 area, the sidewalks are. So it's just that we're kind of</p> <p>6 scratching our heads as to what the benefit is. And</p> <p>7 certainly the benefit is minuscule compared to the very</p> <p>8 significant amount of time, effort, and cost that this will</p> <p>9 bring to Mr. Matope. So with that, I would like to call my</p> <p>10 first witness on this topic, Mr. Sergio Rodriguez.</p> <p>11 HEARING EXAMINER BAUMGARDNER: All right. Let me do</p> <p>12 that.</p> <p>13 With that, Mr. Rodriguez, can you please raise your</p> <p>14 right hand, please?</p> <p>15 And sir, do you swear or affirm under the penalties of</p> <p>16 perjury that the testimony you're about to give is the</p> <p>17 truth, the whole truth, and nothing but the truth?</p> <p>18 MR. RODRIQUEZ: I do.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Thank you, very much.</p> <p>20 Mr. Hughes, the floor is yours.</p> <p>21 MR. HUGHES: Thank you. Mr. Rodriguez, could you state</p> <p>22 your business address please?</p> <p>23 MR. RODRIQUEZ: Yes, I work at Stantec at 20440</p> <p>24 Century Boulevard, Suite 247 at Germantown, Maryland 20874.</p> <p>25 MR. HUGHES: Thank you. And what is your profession,</p>	<p>59</p> <p>1 sidewalk from 4 to 5 feet; is that correct?</p> <p>2 MR. RODRIQUEZ: Yes, I heard it.</p> <p>3 MR. HUGHES: Okay. And based upon your professional --</p> <p>4 well, let me back a little bit. Do you deal with</p> <p>5 engineering and construction projects that involve highways</p> <p>6 and roads and dealing with utility companies and State</p> <p>7 Highway?</p> <p>8 MR. RODRIQUEZ: Yes, I do.</p> <p>9 MR. HUGHES: Okay. And is that something you've dealt with</p> <p>10 over the span of your career?</p> <p>11 MR. RODRIQUEZ: Yes.</p> <p>12 MR. HUGHES: Okay. Based on your professional</p> <p>13 experience in this business, could you tell us what would be</p> <p>14 involved in such a project from a civil engineering</p> <p>15 standpoint?</p> <p>16 MR. RODRIQUEZ: Correct. As you stated before,</p> <p>17 expanding the sidewalk -- I wouldn't call it expanding. I</p> <p>18 will just call it reconstruct the sidewalk since as you</p> <p>19 mentioned before just adding a foot of concrete to the</p> <p>20 existing sidewalk is not feasible. Structurally it would</p> <p>21 not work. And in this case, SHA, which is the agency who</p> <p>22 owns this, will not allow that.</p> <p>23 So in order to go through this process, we had to go</p> <p>24 through a couple of steps. We had to go through survey</p> <p>25 process. We had to establish our boundary. So we had to</p>
<p>58</p> <p>1 Mr. Rodriguez?</p> <p>2 MR. RODRIQUEZ: I am a civil engineer. I have a</p> <p>3 Master's degree in engineering many years ago.</p> <p>4 MR. HUGHES: Okay, thank you. And how long have you</p> <p>5 been practicing as a civil engineer?</p> <p>6 MR. RODRIQUEZ: I've been practicing as a civil</p> <p>7 engineer for 18 years, close.</p> <p>8 MR. HUGHES: Thank you. And Mr. Hearing Examiner</p> <p>9 again, his resume is an Exhibit 36, our prehearing</p> <p>10 submission. And I would like to offer him as an expert in</p> <p>11 the field of civil engineering.</p> <p>12 HEARING EXAMINER BAUMGARDNER: Has he been admitted in</p> <p>13 any OZHA case or any court case in the past?</p> <p>14 MR. HUGHES: Good question. I will let him answer. I</p> <p>15 don't believe in Montgomery County. I believe in Howard</p> <p>16 County somewhat recently he was admitted as an expert. Is</p> <p>17 that fair, Mr. Rodriguez?</p> <p>18 MR. RODRIQUEZ: That is correct, Howard County.</p> <p>19 HEARING EXAMINER BAUMGARDNER: Okay. Having review the</p> <p>20 resume with that information, he is so admitted as an expert</p> <p>21 in civil engineering.</p> <p>22 MR. HUGHES: Thank you.</p> <p>23 Mr. Rodriguez, you heard Mr. Sekerak's description of</p> <p>24 -- related to condition of approval number 8, and the point</p> <p>25 of -- potentially expanding the existing functional legal</p>	<p>60</p> <p>1 get that topographic survey and boundary survey. We had to</p> <p>2 do additional research for underground utilities every time</p> <p>3 we are going to dig. So we have to get that information.</p> <p>4 Then we have to get through SHA, through their approval of</p> <p>5 the sidewalk we want to put in.</p> <p>6 And once the sidewalk and plan preparation is</p> <p>7 established, we have to go through -- this will include the</p> <p>8 entrance. The apron entrance will need to be redo also once</p> <p>9 we remove the sidewalk we have to come up with new</p> <p>10 standards. Then assuming we would have to go to some</p> <p>11 waivers request with SHA. We have to go through the 1 foot</p> <p>12 grass strip waiver which is particular -- it's a 3 foot</p> <p>13 grass strip which is required.</p> <p>14 Then a second waiver, we have to request a 48 inch</p> <p>15 sidewalk at the place where the pole is located, the</p> <p>16 existing pole is located. Another part of the process, we</p> <p>17 have to go through DPS. DPS is Department of Permitting</p> <p>18 Services in Montgomery County. They are the actual ones who</p> <p>19 actually provide the permits. We have to run permits</p> <p>20 through (indiscernible) control. We have run permits</p> <p>21 through traffic control plans. We have to do some --</p> <p>22 public improvement easement at the property since the</p> <p>23 sidewalk is slightly encroaching into the property. So we</p> <p>24 have to go through a public improvement easement for this</p> <p>25 property. There's got to be a restoration bond that needs</p>



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16 (61 to 64)

<p style="text-align: right;">61</p> <p>1 to be provided. So there is a lot of steps and agencies 2 that are required to be involved in this process. 3 MR. HUGHES: Thank you. And in your professional 4 opinion, are you able to talk about a rough estimate on the 5 time and cost that could be involved in this? 6 MR. RODRIQUEZ: Yes. So this is looking at a normal 7 case scenario through the agencies and the permitting and 8 all the processes it would take, I would say, no less than 9 six months. That's our starting point. Costs, as Mr. 10 Matope mentioned, reconstruction of the entire sidewalk 11 could come around \$30,000. 12 The relocation of the utility pole, that's the biggest 13 unknown here because that creates a big ripple effect. Once 14 you relocate one pole, you have to see how that is attached 15 to the other poles and you have to redo the wiring of the 16 other poles. That's a lot of -- it can create a big ripple 17 effect in this case. So he mentioned it can be very costly 18 to relocate one utility pole. He mentioned something around 19 \$150,000 to \$200,000. Yeah, it can be in that range. 20 MR. HUGHES: And that's if the poles have to be 21 removed. It is not a definite they would have to be 22 removed. But in your experience, it's definitely a 23 possibility. Is that fair to say? 24 MR. RODRIQUEZ: Yes, definitely it's a possibility. 25 MR. HUGHES: Okay. So is it fair to say in your</p>	<p style="text-align: right;">63</p> <p>1 would go up significantly. 2 Mr. Rodriguez mentioned the traffic control plan. So 3 while they are reconstructing the driveway apron and 4 possibly relocating telephone poles, they would have to shut 5 down the curb lane of US Route 29 during the construction. 6 And during the entire time of the construction phase they 7 would have to be redirecting pedestrians to the other side 8 of US 29 for the entire length between Dale Drive and Sligo 9 Creek Parkway. 10 Back to -- you know, it sounds so benign; just widen 11 the 4 foot sidewalk to 5 feet. So again, the ADA 12 requirement is 3 feet. They are asking us to -- you know, 13 we've got 4 feet. They are asking us to widen it to 5 14 feet. So the disconnect there is stark relative to the 15 time, cost, and position not only to the Applicant, but to 16 the traveling public during the construction. 17 And the involvement of the different agencies being 18 that -- the State Highway Administration primarily, DPS for 19 sediment control, and the utility companies; getting 20 everybody to agree on this thing when it's really not 21 necessary is really quite an imposition. Mr. Rodriguez did 22 mention that the existing survey for the property, just the 23 house location survey for the purposes of the recent 24 purchase of the thing, does indicate that the existing 25 sidewalk already does encroach on the private property</p>
<p style="text-align: right;">62</p> <p>1 professional opinion, this would be a multi-month to a year 2 process of significant cost to Mr. Matope? 3 MR. RODRIQUEZ: Yes. 4 MR. HUGHES: Very good. Thank you, Mr. Rodriguez. With 5 that I would like to recall Mr. Sekerak, Mr. Hearing 6 Examiner. 7 HEARING EXAMINER BAUMGARDNER: He is so recalled. And 8 Mr. Sekerak, just as a reminder, you are still under oath. 9 MR. SEKERAK: I understand. 10 MR. HUGHES: Thank you Mr. Sekerak. I think Mr. 11 Rodriguez did a pretty nice job of laying out all the 12 potential or what would be involved potentially here with 13 approval of condition number 8 acting upon it. But are 14 there any additional details you want to add to that? Or 15 did that cover in your mind? 16 MR. SEKERAK: Well, I could talk all day about this. 17 But he is right. We would need to survey the property. In 18 order to not move poles, we would need waivers from the 19 same SHA document that staff had referenced. So if we are 20 unsuccessful with that -- and that would be for permission 21 to leave it at 48 inches just within the area of the poles 22 and leaving the 1 foot grass strip as opposed to 3 foot. If 23 we are unsuccessful with either one of those neighborhoods, 24 the costs go up considerably and it involves dealing with 25 utility companies. The length of the time of the review</p>	<p style="text-align: right;">64</p> <p>1 already. 2 So in order to expand that, we would need to do a 3 public improvement easement so that the future -- so the 4 walking public could walk across the private property and 5 the State Highway Administration could maintain the sidewalk 6 in the future. That public improvement easement would be 7 also encroaching on the public utility easement and that's 8 always fun for getting all the right required signatures for 9 utility companies in order to further encumber their 10 easement that they enjoy. 11 MR. HUGHES: Thank you. And can you remind us; what 12 improvements is Mr. Matope, is he making to the exterior of 13 the property? 14 MR. SEKERAK: Again, some plantings in the rear of the 15 yard. There is absolutely no impact to the public right- 16 of-way. If he needed to build a new driveway or anything 17 out in the public right-of-way, that's when SHA's 18 jurisdiction would kick in. But at this point, there is -- 19 they have no jurisdiction for a conditional use application. 20 MR. HUGHES: Thank you. Mr. Sekerak, are you aware of 21 any master plan requirements that mandate this existing, 22 functional, legal 4 foot sidewalk be required to be 23 increased to 5 feet for this application? 24 MR. SEKERAK: No, there is not. I thoroughly analyzed 25 the master plan. I did for the purposes of looking for</p>

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<p>65</p> <p>1 anything that would address something like this. Just like 2 anymaster plan, there is -- it's replete with references to 3 where a good pedestrian circulation is important for master 4 plan area. And again, that's not unusual for any master 5 plan. But nothing about there being insufficient width of 6 the existing sidewalks.</p> <p>7 Curiously, there is one reference that indicates that 8 there may be instances where it would be appropriate to 9 reduce the width of pedestrian that for sidewalks, on page 10 73 of the master plan. But nothing that would be compelling 11 regarding widening existing sidewalks, perfectly good, 12 functional existing sidewalks.</p> <p>13 MR. HUGHES: Thank you. And we're going to dig into 14 the SHA guidebook and a little bit. But are you aware of 15 any law under SHA's authority that requires a sidewalk to go 16 from 4 to 5 feet?</p> <p>17 MR. SEKERAK: No, I'm not.</p> <p>18 MR. HUGHES: Any federal ADA laws that would require 19 it?</p> <p>20 MR. SEKERAK: No, the minimum width for ADA route is 3 21 feet and we've got 4 feet.</p> <p>22 MR. HUGHES: And it's -- is it true that the sidewalks 23 are 4 feet all in and around this area of Colesville Road 24 where there is sidewalk?</p> <p>25 MR. SEKERAK: Yes. Yes. The hearing examiner brought</p>	<p>67</p> <p>1 just described. Both sides of the street, 4 foot wide 2 sidewalks, 1 foot green strip is the majority of the length. 3 It obviously changes where there are driveway aprons such as 4 the subject property or the church entrance right across the 5 street or in front of the dental practice abutting our 6 property. So it does change in those types of 7 characteristics as the context -- but for the length of time 8 where there are no driveway entrances or the stream 9 crossing, there is a 4 foot wide sidewalk with a 1 foot 10 green strip.</p> <p>11 MR. HUGHES: Thank you. And would you like to -- Mr. 12 Hearing Examiner, could you please pull up Exhibit 42? I 13 think it's five or six photos of sidewalks.</p> <p>14 And Mr. Sekerak, if you could, just tell us what they 15 are roughly, or what they're showing.</p> <p>16 MR. SEKERAK: Okay. This is near the Sligo Creek 17 Parkway intersection where the guard rail is there because 18 it is crossing Sligo Creek itself. And then we just 19 progress, the photographs are progression going up 20 Colesville Road towards downtown Silver Spring. So this is 21 the property, the next property, which is right -- the 22 dental practice right next door to our site. And again, 23 their parking area is the front of the building. It's got 24 two driveway entrances. So that's why you see it expanded 25 along those lines.</p>
<p>66</p> <p>1 up some photos, recent photos I'd taken of the area just 2 along the course of Colesville Road all the way from Sligo 3 Creek Parkway to Dale Drive indicating that it changes from 4 -- in different locations where it's right behind the curb. 5 It generally can be characterized as a 4 foot wide sidewalk 6 with 1 foot of green strip. And that applies on both sides 7 of Colesville Road in that length of road between Sligo 8 Creek Parkway and Dale Drive. The residential streets 9 deeper into the neighborhoods on either side of Colesville 10 Road have no sidewalks.</p> <p>11 MR. HUGHES: Thank you. Let's get into some of those 12 visuals you reference. If I could ask, Mr. Hearing 13 Examiner, we're going to look at Exhibits 40 through 42, 40 14 being an aerial photo. I will ask Mr. Sekerak if you could 15 utilize these items to tell us a little bit more about the 16 existing sidewalk in and around this area of Mr. Matope's 17 property.</p> <p>18 So here is 40 Mr. Sekerak. And it's a little dark, I 19 sent them. My apologies. But if you want to talk to this. 20 And then 41 is the photos of the property and area. And 21 then 42 is photos of the sidewalk of the property and the 22 area. So Mr. Sekerak, as you so wish, please tell us a 23 little bit about the existing sidewalk in and around the 24 area.</p> <p>25 MR. SEKERAK: Along Colesville Road, pretty much as I</p>	<p>68</p> <p>1 The next photograph will be our property. So 4 foot 2 wide sidewalk, 1 foot of green strip. And then the next one 3 would be going further up the hill towards Dale Drive. The 4 adjoining property, yes, underneath that undergrown -- 5 it could use some edging, but that is a 4 foot wide sidewalk 6 on the other side of the driveway entrance to the adjoining 7 property.</p> <p>8 MR. HUGHES: Yes.</p> <p>9 MR. SEKERAK: And the next one is that photograph is up 10 at the Dale Drive intersection.</p> <p>11 MR. HUGHES: Very good. Thank you. Are you aware of 12 --</p> <p>13 HEARING EXAMINER BAUMGARDNER: Just for the record, 14 these are collective Exhibit 42 showing a series of 15 photographs that were just described by Mr. Sekerak and Mr. 16 Hughes, of the existing sidewalk along the property and the 17 corridor.</p> <p>18 MR. HUGHES: Thank you, Mr. Baumgardner.</p> <p>19 MR. SEKERAK: And that is consistent with the character 20 of the sidewalks on the other side of Colesville Road also.</p> <p>21 MR. HUGHES: Thank you. Mr. Sekerak, are you aware of 22 any grand or large-scale plans by the County or the state 23 government to expand the sidewalk in this area to 5 feet?</p> <p>24 MR. SEKERAK: Not that I'm aware of or that were 25 identified by SHA, DOT, Park and Planning during their</p>

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18 (69 to 72)

<p>69</p> <p>1 review of the application.</p> <p>2 MR. HUGHES: And in your opinion, is there any pressing</p> <p>3 need to do so there?</p> <p>4 MR. SEKERAK: No, 4 foot is a perfectly adequate width</p> <p>5 for pedestrian circulation in this area; 4 foot is more</p> <p>6 preferable than the ADA required minimum of 3 feet. 5 feet</p> <p>7 might be nicer, but there is no need or requirement in order</p> <p>8 for that to happen.</p> <p>9 MR. HUGHES: Thank you. And what is -- are you aware</p> <p>10 of SHA's, State Highway Administration's position on Mr.</p> <p>11 Matope just adding 12 inches to the existing concrete? Is</p> <p>12 that an option?</p> <p>13 MR. SEKERAK: That's not practical or feasible from a</p> <p>14 construction or end-product standpoint. It's not widening</p> <p>15 the existing sidewalk. It's replacing the existing sidewalk</p> <p>16 with a 5 foot wide sidewalk.</p> <p>17 MR. HUGHES: Is it your understanding that is State</p> <p>18 Highway Administration's official position on this</p> <p>19 particular request as well?</p> <p>20 MR. SEKERAK: Yes, it is. They confirmed that during</p> <p>21 the Planning Board hearing. The representative of the State</p> <p>22 Highway Administration was asked that very question and he</p> <p>23 agreed that is not a widening, it's a replacement.</p> <p>24 MR. HUGHES: Okay.</p> <p>25 MR. SEKERAK: Not that that has a substantive</p>	<p>71</p> <p>1 lift, like you described, especially when you compare it to</p> <p>2 the very slight incremental improvement that it would</p> <p>3 provide to the public or certainly to this particular</p> <p>4 property owner.</p> <p>5 MR. HUGHES: Thank you. Let me ask you a little bit about</p> <p>6 the State Highway Administration's booklet titled --</p> <p>7 it's Exhibit 44 titled Accessibility Policy and Guidelines</p> <p>8 for Pedestrian Facilities Along State Highways. First of</p> <p>9 all, you agree it says guideline in the title; is that</p> <p>10 correct?</p> <p>11 MR. SEKERAK: Yes, it is guidelines. And let's be</p> <p>12 clear that none of this is necessary for accessibility</p> <p>13 accommodations. It would improve -- sure, 5 foot wide</p> <p>14 sidewalk would provide better accessibility than a 4 foot,</p> <p>15 similar to a 4 foot provides better accessibility to the</p> <p>16 minimum 3 foot. But this is not an accessibility</p> <p>17 requirement. This is just an SHA guideline for new</p> <p>18 projects, effectively.</p> <p>19 MR. HUGHES: Thank you. Thank you, Mr. Hearing</p> <p>20 Examiner for pulling up Exhibit 44. I would ask if we could</p> <p>21 please go to page 6.</p> <p>22 And Mr. Sekerak, I believe you have a copy with you as</p> <p>23 well. Can you -- can I refer you to page 6, the middle of</p> <p>24 the page where it explains the implementation and when ADA</p> <p>25 accommodations kick in? Can you read us those three</p>
<p>70</p> <p>1 difference in the cost or length of time. The cost and the</p> <p>2 imposition of this exaction is not the amount of concrete</p> <p>3 itself. The substantive costs are the length of time of the</p> <p>4 approvals and such.</p> <p>5 MR. HUGHES: And if the County and State are not needing or</p> <p>6 planning to make some grant improvements here, are you aware</p> <p>7 of any reason why it should occur here?</p> <p>8 MR. SEKERAK: No. The other areas along here would not</p> <p>9 anticipate any other sidewalks being improved anytime soon.</p> <p>10 I mean, this is R60, predominantly residential area that is</p> <p>11 extremely stable land-use, R60 residential. You wouldn't be</p> <p>12 anticipating any redevelopment of this area where additional</p> <p>13 right-of-way improvements would be --</p> <p>14 could be performed. This would probably, for all intents</p> <p>15 and purposes in the foreseeable future, be the only 5 foot</p> <p>16 segment of sidewalk in the neighborhood.</p> <p>17 MR. HUGHES: It would kind of be an island by itself,</p> <p>18 is that fair to say?</p> <p>19 MR. SEKERAK: Yes. Yes.</p> <p>20 MR. HUGHES: Okay. So is it your professional opinion</p> <p>21 that condition of approval 8 is a very heavy lift for Mr.</p> <p>22 Matope and it's not required under federal, state, or county</p> <p>23 law?</p> <p>24 MR. SEKERAK: That's correct. I don't see any</p> <p>25 requirements for it. But also, it is -- is a very heavy</p>	<p>72</p> <p>1 sentences under implementation section? Third to last</p> <p>2 paragraph on that page.</p> <p>3 MR. SEKERAK: Yeah.</p> <p>4 MR. HUGHES: Take your time.</p> <p>5 MR. SEKERAK: This is the applicability section of</p> <p>6 the -- of this document. "So SHA understands the need to</p> <p>7 include ADA accommodations in our projects. We also</p> <p>8 understand what to provide regarding ADA elements such as</p> <p>9 curb cuts, sidewalk ramps, and typical surfaces. The</p> <p>10 challenge is to know when to provide the accommodations and</p> <p>11 the scope of the accommodations." So again, this --</p> <p>12 MR. HUGHES: So it's fair to say it states it's a</p> <p>13 challenge to know when to provide the ADA accommodations?</p> <p>14 MR. SEKERAK: Yes, that often is the case. And then it</p> <p>15 goes into detail about the types of projects that would</p> <p>16 require it. It's not difficult in this case because there</p> <p>17 is no project. There are no improvements. There are no</p> <p>18 impacts to the public right-of-way. So it's clear this is</p> <p>19 inapplicable in this case.</p> <p>20 MR. HUGHES: So along those lines, could you just</p> <p>21 quickly read the first two sentences under the "when"</p> <p>22 paragraph there on the same page?</p> <p>23 MR. SEKERAK: "The ADA standards for accessible design</p> <p>24 uses the term alteration as a mechanism that would initiate</p> <p>25 the need to provide ADA compliance. Alteration is described</p>

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19 (73 to 76)

<p style="text-align: right;">73</p> <p>1 as a change that affects or could affect accessibility to 2 theusability of a facility. This includes roadways, parks, 3 and ride lots, rest area buildings, or a part of a 4 facility." 5 MR. HUGHES: So it seems that the term alteration is a 6 key to whether an ADA accommodation for a project kicks in? 7 MR. SEKERAK: Yeah, that's the purpose of their 8 description in this section of the document. 9 MR. HUGHES: Okay. 10 MR. SEKERAK: It -- 11 MR. HUGHES: Are we altering anything here? 12 MR. SEKERAK: We are not. 13 MR. HUGHES: Are we touching the right-of-way? 14 MR. SEKERAK: We are not. 15 MR. HUGHES: Are we touching the road? 16 MR. SEKERAK: We are not. 17 MR. HUGHES: Are we touching the sidewalk? 18 MR. SEKERAK: We are not. 19 MR. HUGHES: How about the driveway? 20 MR. SEKERAK: We are not. 21 MR. HUGHES: The parking area? 22 MR. SEKERAK: We are not. 23 MR. HUGHES: Okay. In your opinion, could we be doing 24 any less outside on this property? 25 MR. SEKERAK: We could not to the public right-of-way.</p>	<p style="text-align: right;">75</p> <p>1 MR. SEKERAK: "Level 1 is considered to be repair in 2 kind or in place. These projects include routine 3 maintenance or repair work that generally do not impact, 4 disturbed, or modify pedestrian usability. Resurfacing 5 projects are not considered routine maintenance and do not 6 fall under Level 1." 7 MR. HUGHES: Is it your understanding, is Level 1 -- 8 would it require what we are being asked to do here? 9 MR. SEKERAK: It provides more examples of types of 10 projects that would not require the types of improvements 11 that we are asked to be doing here. 12 MR. HUGHES: Thank you. 13 MR. SEKERAK: So for instance, if for whatever reason 14 we needed to replace some sidewalk, it puts into some 15 context of when we would then need to replace the entire 16 portion of sidewalk under the standards of these guidelines. 17 MR. HUGHES: Exactly. Could you read the first bullet 18 there on that page? Still on page 8. 19 MR. SEKERAK: "The repair of drainage pipes or inlets 20 that result in a small portion of a sidewalk being removed 21 and replaced. This type of work will require only that the 22 sidewalk be repaired in kind and no additional 23 installation/upgrade of sidewalk or curb ramps would be 24 required. This would not be considered Level 1 if a 25 significantly length greater than 100 feet of sidewalk is</p>
<p style="text-align: right;">74</p> <p>1 Absolutely nothing. 2 MR. HUGHES: Thank you. I'm going to ask you just I 3 think -- well, maybe one or two more things quickly. 4 And I will try to speed up, Mr. Hearing Examiner. Are 5 you able to read please, the second to last sentence in the 6 last paragraph still on that same page 6 7 that starts with, "basic repair or maintenance"? 8 MR. SEKERAK: "Basic repair or maintenance activities 9 such as repairing a pothole, restriping a roadway in kind, 10 repairing guard rail, or even a spot sidewalk repair 11 typically would not trigger ADA compliance." 12 MR. HUGHES: All right. So those wouldn't even 13 require ADA compliance, correct? And we are doing a lot 14 less than those. Is that fair to say? 15 MR. SEKERAK: Right. It's describing examples of 16 minimal projects that still at that level would not require 17 these types of improvements. 18 MR. HUGHES: Okay, thank you. 19 Mr. Hearing Examiner, could I please ask that you move 20 up two pages in this item to page 8? It's still Exhibit 21 44, SHA guideline book it. I'm summarizing what it's 22 called. 23 Mr. Sekerak, towards the bottom of page 8 under the 24 section entitled, "Level 1," could you read the first two 25 sentences there that starts with, "Level 1 is considered"?</p>	<p style="text-align: right;">76</p> <p>1 removed." And we're proposing -- 2 MR. HUGHES: So -- 3 MR. SEKERAK: -- to remove zero. 4 MR. HUGHES: Yeah, right. So it essentially says you can 5 remove up to 100 feet and still not to put in additional 6 upgrades. And we are doing 0 feet; is that correct? 7 MR. SEKERAK: That's correct. 8 MR. HUGHES: Okay, thank you. I think this is the last 9 one. I apologize. Could you read the second bullet to us? 10 The one just underneath the one you just read? 11 MR. SEKERAK: "Utility repairs or relocations that 12 result in a small portion less than 100 feet of sidewalk 13 being removed and replaced would require only repair in kind 14 and would not trigger any new installation or upgrades to 15 existing sidewalk or curb ramps." 16 MR. HUGHES: Okay. So there again, if you're doing in 17 kind for up to 100 feet, you would not have to do any -- it 18 would not trigger any new installation or upgrade to 19 existing sidewalk, correct? 20 MR. SEKERAK: That's correct. 21 MR. HUGHES: And we are -- again, we are doing not even 22 1 foot. We are doing 0 feet here, correct? 23 MR. SEKERAK: That's correct. 24 MR. HUGHES: Okay. So is it your professional opinion, 25 since we're doing no exterior alterations, that</p>

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20 (77 to 80)

<p style="text-align: right;">77</p> <p>1 this doesn't even fall within the SHA guideline book?</p> <p>2 MR. SEKERAK: That's correct. Our discussion of the</p> <p>3 bookbegan with what I consider the applicability section of</p> <p>4 the document. And it really should not apply to this</p> <p>5 proposal, this application. And then it describes where</p> <p>6 eventhose projects that the document would be applicable to</p> <p>7 would still not require improvements such as replacing a 4</p> <p>8 foot,perfectly good 4 foot wide sidewalk with a 5 foot wide</p> <p>9 sidewalk.</p> <p>10 MR. HUGHES: Thank you. I guess I can understand how</p> <p>11 SHA and/or planning staff might -- and/or the Board might</p> <p>12 want to ask for wider sidewalks. But are you aware of any</p> <p>13 legal reasoning behind such a request?</p> <p>14 MR. SEKERAK: I am not. There are no -- I'm not aware</p> <p>15 of any and none have been brought to my attention.</p> <p>16 MR. HUGHES: All right. Okay. Thank you. I would</p> <p>17 like to shift to come to the last subject area that I'm</p> <p>18 going to ask you to talk about, Mr. Sekerak.</p> <p>19 So I think -- let me step back for a second. Our</p> <p>20 position is that that we talked about, it doesn't even</p> <p>21 apply. But let's say for a second that the hearing examiner</p> <p>22 believed that it did apply. Are you aware of any county</p> <p>23 precedent that supports the position to not require</p> <p>24 expanding sidewalks any recent county precedents on this</p> <p>25 topic?</p>	<p style="text-align: right;">79</p> <p>1 existing site has no sidewalk of any width. It just has no</p> <p>2 sidewalk. And the discussion in the staff report is very</p> <p>3 specific on --</p> <p>4 MR. HUGHES: Page 14; is that correct?</p> <p>5 MR. SEKERAK: Bottom of page 14.</p> <p>6 MR. HUGHES: Thank you, Mr. Hearing Examiner.</p> <p>7 HEARING EXAMINER BAUMGARDNER: Sure.</p> <p>8 MR. SEKERAK: Where they recognize that there is no</p> <p>9 existing sidewalk in there. The advising agency said, hey,</p> <p>10 wouldn't it be great if we had a sidewalk. Park and</p> <p>11 Planning staff made a the --</p> <p>12 MR. HUGHES: Mr. Sekerak, which part on page 14? Are</p> <p>13 we looking at the last paragraph or two; is that correct?</p> <p>14 MR. SEKERAK: The last paragraph, correct.</p> <p>15 MR. HUGHES: Yeah, thank you.</p> <p>16 MR. SEKERAK: And staff concluded that staff does not</p> <p>17 support the recommendation of installing a 5 foot sidewalk</p> <p>18 because the Applicant's expense outweighs the public</p> <p>19 benefit. And again, this is where there are impacts to the</p> <p>20 right-of-way, whether it's no sidewalk, and they choose not</p> <p>21 to impose that exaction on that Applicant.</p> <p>22 There are other similar types of examples of this, but</p> <p>23 this was the one that caught my eye because there is a</p> <p>24 specific discussion in the staff report recognizing it and</p> <p>25 stating that the costs are not proportional to the benefit.</p>
<p style="text-align: right;">78</p> <p>1 MR. SEKERAK: Yes. Let me see. What are the exhibits?</p> <p>2 MR. HUGHES: Exhibit 34. Mr. -- I don't know if we need to</p> <p>3 goto it, but it is Exhibit 34 which is CU case 2016-07. Is</p> <p>4 that what you're talking about, Mr. Sekerak?</p> <p>5 MR. SEKERAK: Yes, it is. Yes, it is.</p> <p>6 MR. HUGHES: Okay. Can you tell us a little bit about</p> <p>7 thatone and why it might be interesting to talk about here?</p> <p>8 MR. SEKERAK: Sure. The exhibits include both the</p> <p>9 hearing examiner's report and the staff report. This is</p> <p>10 just one example of the --</p> <p>11 MR. HUGHES: And I apologize. Let me interrupt. I'm</p> <p>12 sorry. I should have set it up better. So Exhibit 34(b)</p> <p>13 is the staff report and I think that's something that</p> <p>14 perhaps you might lead to shortly; is that correct?</p> <p>15 MR. SEKERAK: Sounds good. Yes, please.</p> <p>16 MR. HUGHES: Okay. Continue. My apologies.</p> <p>17 MR. SEKERAK: No worries. This is an example of a</p> <p>18 conditional use application. In this case it's for child</p> <p>19 daycare facility. It's a change of use from strictly just</p> <p>20 being an existing residents to a day care facility. The</p> <p>21 upshot is that this is a project that does include site</p> <p>22 improvements in order to accommodate the proposed use. Most</p> <p>23 substantively and includes improvements within the public</p> <p>24 right-of-way. So they are impacting the public</p> <p>25 right-of-way. This is for a child daycare center. And the</p>	<p style="text-align: right;">80</p> <p>1 Andin that case, the benefit would have been significant as</p> <p>2 opposedto the minor incremental benefit that is being asked</p> <p>3 of this Applicant.</p> <p>4 MR. HUGHES: Thank you. And is it correct that in that</p> <p>5 casethe Planning Board accepted staff's opinion and did not</p> <p>6 require the sidewalk construction?</p> <p>7 MR. SEKERAK: That's correct.</p> <p>8 MR. HUGHES: And is it also your understanding that</p> <p>9 the OZHA decision also agreed by not requiring that</p> <p>10 position?</p> <p>11 MR. SEKERAK: That's correct.</p> <p>12 MR. HUGHES: Okay. Are there any other relevant recent</p> <p>13 casesthat you want to briefly touch upon on this same topic</p> <p>14 area?</p> <p>15 MR. SEKERAK: There are others. I don't know if the</p> <p>16 hearing examiner would like me to go into details.</p> <p>17 MR. HUGHES: Okay, fair enough. You want to just</p> <p>18 reference the exhibit numbers and/or the cases?</p> <p>19 MR. SEKERAK: Let me see.</p> <p>20 MR. HUGHES: Maybe I could help out.</p> <p>21 MR. SEKERAK: Yeah, Exhibit 35(a), 35(b), 37(a), 37(b),</p> <p>22 and Exhibit 39 are all examples of -- well, in some cases</p> <p>23 where there was -- there was not an exaction for sidewalk</p> <p>24 improvements, whether there was existing sidewalk that was</p> <p>25 only4 feet wide or no existing sidewalk. It was just there</p>

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81	<p>1 was no discussion in the staff reports or discussion where 2 they chose not to do the improvements. 3 MR. HUGHES: Thank you. 4 HEARING EXAMINER BAUMGARDNER: So we -- 5 MR. HUGHES: Go ahead, sir. 6 HEARING EXAMINER BAUMGARDNER: For the record, Mr. 7 Hughes, Exhibit 35(a), Isaac Lopez for daycare, this hearing 8 examiner was the author of that report. So I am familiar 9 with the facts of that case. And it was a very recent case 10 as well. 11 MR. HUGHES: Thank you. 12 Mr. Sekerak, so in your professional opinion, can you 13 explain if there is a nexus here between conditional 14 approval number 8 and the proportionality of such work? 15 MR. SEKERAK: I do not believe there is a nexus there. 16 It is a significant cost in time and money for a pedestrian 17 facility that the Applicant -- the application does not rely 18 on for pedestrian network. The existing pedestrian network 19 is-- it's sufficient, adequate, and is not impacted by this 20 application. So there is no nexus there. 21 MR. HUGHES: Thank you. So is it fair to say in your 22 professional opinion, conditional approval number 8 is not 23 mandatory or required under the law for this use or 24 application? 25 MR. SEKERAK: I agree with that conclusion.</p>	83	<p>1 logged in, but in case my eyes are deceiving me, I will open 2 it up to any other members of the community that are logged 3 in or who have called in here today to either offer their 4 own testimony or to ask any questions of our three witnesses 5 here today. 6 Going once, going twice, seeing no hands raised or any 7 other indication that the public would like to testify or 8 ask any questions of these witnesses for this application, 9 the testimony evidence is now closed. 10 Mr. Hughes, you're welcome to get your brief closing at 11 this time. 12 MR. HUGHES: And so I don't forget, Mr. Hearing 13 Examiner, before I do that but I asked that all the exhibits 14 be moved in, please? 15 HEARING EXAMINER BAUMGARDNER: Absolutely. All 16 exhibits in this case are hereby admitted into evidence. 17 They are listed on OZHA's webpage. They are Exhibits 1 18 through 44 including a couple of sub exhibits, 34(a), (b), 19 et cetera. So Exhibits 1 through 44 are hereby admitted 20 into evidence. 21 (Applicant's Exhibits 1 through 44 were admitted 22 into evidence.) 23 MR. HUGHES: Thank you, very much. Yeah, so a very 24 brief closing. Thank you for the time. I appreciate the 25 assistance with the exhibits. So overall here is again, Mr.</p>
82	<p>1 MR. HUGHES: Thank you. 2 MR. SEKERAK: It's not required, it's not practical, 3 and it's not necessary if there is no nexus and therefore 4 certainly not proportional. 5 MR. HUGHES: Thank you, very much. Mr. Hearing 6 Examiner, that would be the conclusion of our -- unless 7 there is -- I will certainly welcome questions from you 8 unless there are any other participants to join the call 9 that might require me to recall anything. But I believe I'm 10 done with questioning of my witnesses. And the only thing I 11 would have left is a very brief 60 second closing when you 12 tell me that the time is right. 13 HEARING EXAMINER BAUMGARDNER: Thank you. I only had 14 one follow-up question. What is the total linear feet of 15 the sidewalk in question here? 16 MR. SEKERAK: 225 feet including as it crosses the 17 driveway apron. 18 HEARING EXAMINER BAUMGARDNER: That's the only follow- 19 up question I had. Thank you, Mr. Sekerak. 20 I am going to just bring up briefly, we do have that 21 one caller who is still on mute. The last four digits of 22 that phone number are 4995. If that caller would like to 23 ask any questions about any of the witnesses here today, you 24 are certainly welcome to. You're welcome to unmute yourself 25 or otherwise make yourself known. I don't see anyone else</p>	84	<p>1 Matope is very appreciative and excited of the planning 2 staff report and the Planning Board support of his 3 application. We were, as I said at the Planning Board 4 hearing, the staff was fantastic. Their communication was 5 amazing. They were very responsive to us. They did a very 6 thorough report. We were very pleased with everything in it 7 except for one item, which obviously everyone is aware of 8 which we spent a lot of time on our hearing today, which was 9 conditional approval number 8. 10 So we would ask that Mr. Hearing Examiner, you please 11 grant the approval as is, except for we would ask that you 12 strongly consider the removal of condition of approval 13 number 8 for all the significant reasons we went through 14 today, which first what we believe it doesn't apply. And 15 even if it did apply, we believe there is an opportunity and 16 precedent that it could be removed. 17 So we would certainly welcome any follow-up questions, 18 but we appreciate the time and we would ask that the hearing 19 examiner hopefully approve this application and hopefully 20 would remove condition of approval number 8. With that, I 21 will close out. 22 HEARING EXAMINER BAUMGARDNER: Thank you all very much 23 for your time and your testimony. This concludes this 24 hearing on conditional use application 2103 to use the 25 premises 9221 Colesville Road in Silver Spring, Maryland as</p>

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1 a home health practitioner major impact.  
2 OZHA will issue our report and decision within 30 days  
3 from the date of this hearing. Once that decision is  
4 issued, any party will have 10 days to appeal that decision  
5 to the Board of Appeals. Any conclusory remarks or follow-  
6 up items that we need to address today?

7 MR. HUGHES: No, not from me I don't believe, Mr.  
8 Hearing Examiner. Thank you.


9 HEARING EXAMINER BAUMGARDNER: All right. Thank you  
10 all very much for your time and attention. And have a good  
11 rest of your day.

12 MR. HUGHES: Thank you.  
13 (The recording was concluded.)  
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1 CERTIFICATE OF TRANSCRIBER

2 I, Molly Bugher, do hereby certify that the foregoing  
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8 financial or otherwise, in its outcome.  
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13 Molly Bugher, CDLT-161  
14 March 23, 2021  
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