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Transcript of OZAH Hearing

Date: December 12, 2022

Case: Tzeng and Lai, In Re:

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Transcript of OZAH Hearing
December 12, 2022

<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 ADO 23-01</p> <p>4</p> <p>5 -----x</p> <p>6 In Re: :</p> <p>7 License Application of Tzeng and Lai :</p> <p>8 -----x</p> <p>9</p> <p>10 HEARING BEFORE HEARING EXAMINER KATHLEEN E. BYRNE</p> <p>11 Conducted Virtually</p> <p>12 Monday, December 12, 2022</p> <p>13 9:28 a.m. EST</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No: 472688</p> <p>24 Pages: 1 - 40</p> <p>25 Transcribed by: Nicole Mastrosimone</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3</p> <p>4 NANA YAA JOHNSON</p> <p>5 MONTGOMERY COUNTY OFFICE OF ZONING AND</p> <p>6 ADMINISTRATIVE HEARINGS</p> <p>7 100 Maryland Avenue</p> <p>8 County Office Building, Room 200</p> <p>9 Rockville, Maryland 20850</p> <p>10 240-777-6660</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Also present:</p> <p>15 Joe Lorete, PD tech</p> <p>16 Gena Lai</p> <p>17 Bertrand Tzeng</p> <p>18 Kathleen Byrne</p> <p>19 Dave Johnson</p> <p>20 Clifton Bouma</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 Hearing, conducted virtually.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Before Joe Lorete Notary Public in and for the</p> <p>11 State of Maryland.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 P R O C E E D I N G S</p> <p>2 Whereupon,</p> <p>3 MS. BYRNE: Joe Lorete is here. He is recording</p> <p>4 and will be transcribing this hearing on behalf of the</p> <p>5 Office. So one of the most important things is that we</p> <p>6 enunciate clearly, we don't speak over each other. I'm at</p> <p>7 fault for that just as much as the next guy. So what I'll</p> <p>8 do is, when we get started, I'll have everybody go ahead and</p> <p>9 state their name, spell their first and last name so</p> <p>10 Mr. Lorete has all of that, and we'll go from there.</p> <p>11 So I'm going to get started with my little spiel</p> <p>12 here before we jump in and talk about the appeal. So this</p> <p>13 is a public hearing, and this is an appeal of a denial of a</p> <p>14 accessory dwelling unit apartment, and the code sections</p> <p>15 that are pertinent here today include Section 2919 of the</p> <p>16 Montgomery County Code, as well as 2926 of the code.</p> <p>17 Specifically, the appeal comes from Section</p> <p>18 59.3.3.3A.2.Ciii. When you look at the code, it's a series</p> <p>19 of dots, right? So 59 is the zoning code. So 59 is</p> <p>20 incorporated into the licensing section. So when you apply</p> <p>21 for a license, the permit and licensing section has to look</p> <p>22 to see that you are compliant with the zoning portion of it.</p> <p>23 So that 59.3.3.3A.2Ciii, that's the zoning portion of it</p> <p>24 that folds into the licensing.</p> <p>25 So specifically, you disagree with the decision.</p>

December 12, 2022

<p style="text-align: right;">5</p> <p>1 The decision stated that your square footage was too large. 2 So we'll get into that in a moment. 3 So the first thing that I'd like to do is have the 4 parties identify themselves. So, Ms. Lai and Mr. Tzeng, 5 could you identify yourselves and spell your first and last 6 names? 7 MS. LAI: My name is Gena Lai. First name is 8 spelled G-E-N-A. Last name is spelled L-A-I. 9 MR. TZENG: And my name is Bertrand Tzeng. 10 Spelled B-E-R-T-R-A-N-D. Last name is spelled T-Z-E-N-G. 11 MS. BYRNE: Okay. I don't think we have any 12 additional opposition or support. Mr. Johnson? 13 MR. JOHNSON: Yes. Good morning. Dave Johnson. 14 I'm an inspector with Montgomery County Department of 15 Housing and Community Affairs, and it's D-A-V-I-D 16 J-O-H-N-S-O-N. Thank you. 17 MS. BYRNE: Thank you. So just a few little Teams 18 issues. Since it's just a small little group, it seems like 19 everybody is on. We're fine. So if you're not speaking, 20 you can go ahead and mute. We don't have to worry about the 21 telephone callers. I will be recording this, but this 22 recording is simply for the transcription services. So in 23 the event they need to go back and see something and hear 24 something that they didn't capture, that's the sole reason 25 for recording it. So while we're talking about that, I'm</p>	<p style="text-align: right;">7</p> <p>1 that. You can ask questions of Mr. Johnson. Let's see. 2 And then we'll have preliminary matters as well. The way 3 that this will normally work is I swear in all of the 4 witnesses, and we discuss what exhibits are going to be 5 submitted, if you wish any additional exhibits to be 6 submitted. And then you could have a closing statement or 7 an ending statement. 8 All right. So without any further ado, if you 9 don't mind, let's swear everybody in at the same time right 10 now so we don't have to worry about it. 11 (The parties were sworn.) 12 MS. BYRNE: Awesome. Thank you. Perfect. That's 13 all I need. There's nothing worse than getting halfway 14 through the hearing and realizing you didn't swear everybody 15 in, so I try to do that right from the very, very beginning. 16 But the first thing that we need to discuss is the 17 preliminary matter of filing. So in an e-mail that I had 18 sent to you previously, Mr. Tzeng and Ms. Lai, is that the 19 code says that you have 30 days after the denial of the 20 director's decision in order to object or in order to appeal 21 that. And that decision was dated on June 16, 2022. We 22 didn't receive your objection until November. So could you 23 please explain the entire process from when you received the 24 decision, and what your efforts were in order to resolve and 25 appeal that before we go further?</p>
<p style="text-align: right;">6</p> <p>1 going to hit the start record button. I do not want 2 transcription. I need to change that setting. Hold on one 3 moment. There we go. 4 Since it is such a small group, normally what I 5 would say is, if you have an issue, put it in chat. If not, 6 we can just use the raise your hand function, or we can 7 politely interrupt each other. But I think the way that the 8 flow normally goes is the applicant, or the objector in this 9 situation, Mr. Tzeng and Ms. Lai, you will go first. 10 Mr. Johnson will then explain why the decision was, what the 11 decision was. I can ask questions of all of you in order to 12 get a better understanding of what's happening. If there 13 are documents that you want to share -- so Ms. Johnson in 14 our office put up the exhibits. There are seven exhibits, 15 including your objection, acceptance of the accessory 16 apartment application, denial, supplemental objection form, 17 the hearing notice, and then the e-mail exchanges back and 18 forth that we've had recently. So all of that is online. 19 So if there's anything that you want me to pull up and us 20 look at together, just let me know, and I will go ahead and 21 do that and share screen with everyone. 22 Okay. Let's see what else as far as our little 23 housekeeping goes before we jump in. So since it's small, 24 you can have an opening statement, if you want. You can 25 have a closing statement, if you want. It's kind of up to</p>	<p style="text-align: right;">8</p> <p>1 MR. TZENG: Yeah. Absolutely. And thank you, 2 Kathy. And thank you for being here and your time to 3 consider this matter. I think the timing came from our 4 efforts to determine the best course of action after working 5 with Dave and his office with the inspection and the finding 6 about our proposed ADU, in particular the square footage 7 requirement. I don't think the facts are in contest. 8 There's some background facts that we would have liked to 9 have been considered as part of the ADU permit review 10 process. And leading to the timing, I think there's some 11 question, certainly on our part, about what venue or what 12 approach was the proper one to consider that. And so when 13 we were in discussions with Dave and his office, DHCA, 14 regarding their finding and their determination, there was 15 also discussed additional opportunities to present our case 16 to consider a waiver, or consider some kind of equitable 17 review of our application, given that the square footage 18 requirement, as we understand it, was the sole issue with 19 the apartment, and that, even by that benchmark, the 20 apartment was not grossly over. It was 1,300 square feet. 21 MS. BYRNE: Right. So before we go down the road 22 of merit, right, because that's where you are, you're 23 saying, you know, was it -- is it really 1,300 square feet; 24 is that such a big deal, right? So that talks to the merit, 25 right? That talks to the element. So what I want to know</p>

December 12, 2022

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<p>1 is you got the letter, right?</p> <p>2 MR. TZENG: Right.</p> <p>3 MS. BYRNE: What did you do next? Right? Give me</p> <p>4 dates. Give me times. Give me who did you reach out to,</p> <p>5 how did you -- what did you determine your next steps were?</p> <p>6 Because, if I'm being perfectly honest, June to November,</p> <p>7 that's a really long time. Right? I mean, the code is very</p> <p>8 clear that you have 30 days. And the code is also very</p> <p>9 clear on the limited scope of review that OZA has. Right?</p> <p>10 So let's talk first about what you did next.</p> <p>11 MR. TZENG: Sure.</p> <p>12 MS. LAI: If I could just intercede --</p> <p>13 MS. BYRNE: Sure.</p> <p>14 MS. LAI: -- briefly, the language of the code, I</p> <p>15 understand that the intent is that filing should be made</p> <p>16 within 30 days after the director's report is issued. I did</p> <p>17 read this after we decided, okay, let's go ahead and file an</p> <p>18 appeal with OZA. The language does say that if the filing</p> <p>19 is delivered by mail, the postmark on the letter must be no</p> <p>20 later than 30 days. That's for mail. It doesn't talk about</p> <p>21 delivery in person. It says time for filing requests for</p> <p>22 waivers or objections will be accepted for filing within 30</p> <p>23 days after the director's report is issued, and it says OZA</p> <p>24 will not accept requests for waivers or objections before</p> <p>25 the director issues his report. I understand the intent,</p>	<p>1 supposed to -- it wasn't clear to us that the appeal to OZA</p> <p>2 was the right way to go.</p> <p>3 MS. BYRNE: And you should definitely talk more</p> <p>4 about that.</p> <p>5 MR. TZENG: Yeah.</p> <p>6 MS. BYRNE: But before we get into that, so you --</p> <p>7 so I've just heard from you that the way you read it you</p> <p>8 didn't have to file within 30 days. But tell me what steps</p> <p>9 you took after you got the director's decision to determine</p> <p>10 what your next options were --</p> <p>11 MR. TZENG: Yeah.</p> <p>12 MS. BYRNE: -- and like who you talked to, when</p> <p>13 you talked to someone, like all of that? Because if you</p> <p>14 talked to someone in July and then you didn't pick it back</p> <p>15 up until October, right, like there has to be some urgency</p> <p>16 here in order to resolve that. So I want to hear from you</p> <p>17 what steps you took.</p> <p>18 MR. TZENG: Yeah. So in the weeks after we got</p> <p>19 the decision, I went onto both websites, the OZA website and</p> <p>20 the Board of Appeals website, because those are two avenues</p> <p>21 that had been mentioned in our discussions with DHCA in</p> <p>22 terms of next steps. And so I spent a lot of time looking</p> <p>23 at the two processes, or the processes for this appeal that</p> <p>24 we're doing now, as well as the process of applying to the</p> <p>25 Board of Appeals, and I also spent a significant amount of</p>
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<p>1 but the language does not prohibit filings after 30 days if</p> <p>2 made by means other than mail.</p> <p>3 MS. BYRNE: Well, the way that the -- I understand</p> <p>4 that that's your interpretation, but that's actually</p> <p>5 incorrect. Right? There are deadlines given for times for</p> <p>6 filing. And what it does say is that you can file it. It</p> <p>7 must be postmarked, or it can be hand-delivered in person</p> <p>8 within that 30-day timeframe. That's the time limit within</p> <p>9 which you are supposed to deliver it. So if you're telling</p> <p>10 me there are reasons why you couldn't deliver it within 30</p> <p>11 days, then that's what I want to hear. Now, with COVID,</p> <p>12 like, our phone number has been up on the website the whole</p> <p>13 time. We have arranged to meet people here to drop off and</p> <p>14 pick up. There's someone in the office every Tuesday and</p> <p>15 Thursday. And then you would have been given directions in</p> <p>16 order to send it by mail as well as e-mail it. So tell</p> <p>17 me -- so what your statement to me is that, the way you read</p> <p>18 it, it didn't restrict you from filing later? Is that what</p> <p>19 you're saying?</p> <p>20 MS. LAI: That is one piece of the story, but the</p> <p>21 other piece, and obviously the more important part of story</p> <p>22 is what my husband was starting to talk about, which is his</p> <p>23 research into what is the correct next step. And we did</p> <p>24 spend some time trying to figure this out. He did a lot of</p> <p>25 research. And so it wasn't clear to us that we were</p>	<p>1 time going -- checking the last three years' worth of</p> <p>2 decisions that have been issued by each body. All this was</p> <p>3 in an effort to determine, you know, since we were -- our</p> <p>4 situation was less one of saying, arguing that our apartment</p> <p>5 complied with the literal letter of especially the square</p> <p>6 footage requirement, but instead looking to more of an</p> <p>7 equity type of review, trying to determine which path would</p> <p>8 do that. And, you know, that took a significant amount of</p> <p>9 time, and it's still led to a fair amount of uncertainty on</p> <p>10 our part. You know, for instance, the -- I'm not saying</p> <p>11 this as a pointing-fingers way. It was just -- it was very</p> <p>12 difficult for us to get a sense of clarity about, given our</p> <p>13 circumstances, which seems to be unique in the context of</p> <p>14 ADU applications where we're just talking about the square</p> <p>15 footage, as opposed to a parking space type of matter, or in</p> <p>16 the context of the Board of Appeals variance process, most</p> <p>17 of which having to do with attached garages versus accessory</p> <p>18 apartments. We weren't left with a lot of clarity about</p> <p>19 which path was the correct one. And so we had --</p> <p>20 MS. LAI: We also consulted -- tried to consult</p> <p>21 with --</p> <p>22 MR. TZENG: And so, yeah, the next step was to try</p> <p>23 to reach out to legal counsel to try to advise us, and I</p> <p>24 reached out to a number of attorneys through some contacts</p> <p>25 and acquaintances. And I spent the next couple of weeks</p>

December 12, 2022

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1 after that, you know, making followup calls. But, to be
 2 honest, we did not get any response. You know, we didn't
 3 get people returning our calls to consult with us on the
 4 zoning matter. I can't tell you why that is. I can
 5 speculate that, you know, perhaps they felt it wasn't worth
 6 their time. But, needless to say, Kathy, we spent the
 7 intervening weeks trying to find a path and trying to
 8 determine what was the best way forward. And we did -- we
 9 didn't get any certainty. And, you know, after a certain
 10 point in time into the summer, you know, it did fall off our
 11 radar.

12 MS. LAI: And so we did realize that we needed to
 13 continue to pursue the matter, and put forth the filing when
 14 we did. And so, recognizing that that wasn't ideal and
 15 probably wasn't within the intent of the procedural
 16 requirements, again hoping that we can all work on a way
 17 forward that's most sensible and reasonable and efficient
 18 for everyone, because this -- these facts do seem to fall
 19 outside of what's been done before.

20 MS. BYRNE: Right. I'm going to -- so David or
 21 Cliff, maybe one of you guys can answer this. So when
 22 someone gets denied an application and they get the letter
 23 and you get the followup call, what's the normal protocol in
 24 your office?

25 MR. JOHNSON: Dave Johnson here. Yeah. The

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1 normal protocol is when I conducted the inspection -- in
 2 this case, the inspection was conducted, according to my
 3 records, on March 16 of this year -- I write up a
 4 preliminary inspection report. And that outlines the items
 5 that will need to be complied with in order to conduct the
 6 reinspection, and then we look forward to having an
 7 approval, and then I returned that to Mr. Bouma in
 8 licensing, and then they arranged to have that license
 9 issued or denied based on my findings.

10 In this case, on the 16th of March during the
 11 inspection, which was primarily trying to get that square
 12 footage, I communicated to the applicant that, you know, the
 13 case didn't look as if it would immediately allow me to pass
 14 it, because it was over that 1,200 square feet. However, we
 15 were going to work with them to get them put in the right
 16 direction so that they could file an appeal, should they
 17 wish to do so. And later that day I sent an e-mail to the
 18 applicant explaining the method to move forward with, you
 19 know, appealing our decision, and asked him to reach out to
 20 Mr. Bouma in licensing and also my supervisor to, you know,
 21 request the hearing be set and to give him the guidance the
 22 applicants required to appeal that decision.

23 MS. BYRNE: Okay. And so, Mr. Bouma, when people
 24 reach out to licensing to appeal -- because I have the
 25 director's letter, and there's no language in the director's

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1 letter about appealing. Right? So I knew that there had to
 2 be a step two, and so Mr. Johnson explained that, you know,
 3 when someone gets that what the next steps are. So what
 4 happens in your office?

5 MR. BOUMA: Right. So I sent over that letter,
 6 and then I also sent over -- I spoke to somebody at OZA and
 7 also to the supervisor, Mr. Eloisa, about what to do,
 8 because it's a new procedure for myself as well.

9 MS. BYRNE: Okay.

10 MR. BOUMA: But I sent over the information about
 11 how to appeal along with the letter and the information for
 12 OZA.

13 MS. BYRNE: So there's a specific handout that's
 14 sent that says, if you don't agree, can do X, Y and Z, or --

15 MR. BOUMA: I typed up an e-mail and sent all the
 16 information.

17 MS. BYRNE: Okay. So there was an e-mail from
 18 your office?

19 MR. BOUMA: Yes, I sent an e-mail.

20 MS. LAI: So with all due respect, the e-mail
 21 pointed us to OZA's website. OZA's website specifies a
 22 number of different procedures, and it was not entirely
 23 clear which we were supposed to use. And so, ultimately, we
 24 did pick one, but that was another reason for the delay.

25 MS. BYRNE: All right.

16

1 MR. TZENG: I think there's also a lack of
 2 clarity, and I think understandable on all sides because
 3 it -- like I said, when I was looking at the cases both for
 4 OZA and for Board of Appeals, I couldn't find a case that
 5 fit our specific facts, especially an ADU that had a
 6 square-footage concern. And so it wasn't clear to me that
 7 the -- you know, which venue was the one to apply to to seek
 8 relief. And, you know, I understand, you know, even with
 9 the communications we received about the OZA process, a lot
 10 of the guidance we received, understandably, was about the
 11 process of preparing an appeal. And I'm not -- not that
 12 anyone can answer this particular question, because it just
 13 wasn't there in the decision record, but just a lot of open
 14 questions about whether that appeals process was one that
 15 could resolve the question about the square footage, the
 16 question of finding equitable relief or resolution.

17 MS. BYRNE: Okay. All right. So that's helpful.
 18 All right. So I'm going to hold off making a decision on
 19 whether or not the late filing is fatal to your appeal. All
 20 right? So let's just get into the merits, and then we'll
 21 talk about where -- let's just go ahead and get into the
 22 merits.

23 All right. So tell me, Ms. Lai and Mr. Tzeng, why
 24 you think that -- well, just, I guess, tell me. Tell me --
 25 tell me why you're appealing and what it is that OZA can do

December 12, 2022

17

1 for you.

2 MR. TZENG: Thank you, Kathy. So we recognize

3 that this apartment is unique among apartments that go

4 through the ADU process, and there are some unique

5 circumstances through which, you know, we came to acquire it

6 that we hope will be considered. So first of all -- and I'm

7 not sure to what extent this has been submitted into the

8 record. We certainly don't have the files. But when we

9 bought the ADU and the house to which it's attached from

10 the -- the seller had built the ADU, and originally it had

11 been built for different purposes, specifically to serve as

12 a registered living unit for the seller's parents. And so,

13 again, we don't have access to the records, so we can't tell

14 you too specifically about the nature of the disposition.

15 What we understand is that when the seller built it, he

16 followed the steps I believe it was DHCA, and it was

17 registered as an RLU and met the requirements for the RLU as

18 built, square footage included. And so when we bought the

19 house and the apartment, it was -- one of the factors was

20 our intent to eventually do the same. That seemed like the

21 perfect opportunity to use that apartment for either Gena's

22 mom or my parents in the future. In the meantime, we

23 thought it made sense to rent it out and then found out

24 later about the ADU requirements. And at the time the

25 timing was such that the zoning I think it was ZTA 1901 was

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1 still being considered by the council. There was some

2 question about what the ultimate law would look like, and

3 what kind of square footage requirement it would have. And

4 I think it was around that time that the RLU requirements

5 were going away.

6 Long story short, we bought an apartment that was

7 built and registered as an RLU. We had every intent of

8 putting it to a useful purpose either as an RLU eventually,

9 or as now an ADU. We have not modified the property. So in

10 order to change it would involve a fair amount of effort,

11 expense and construction in order to fit it within the

12 confines of, you know, what the requirements say now square

13 footage wise. You know, to my recollection, with the

14 inspection that Dave conducted, you know, we also have been

15 working with DHCA on this licensing for some time, and I

16 don't believe there's a concern with any other aspect of the

17 ADU, its fitness, its suitability, its quality, its

18 location, other requirements. It's pretty rare in that

19 there aren't many two-plus bedroom apartments available in

20 this area at this price range. And so it's a very appealing

21 one, especially one for a young family or a married couple

22 just starting out in their careers, you know, all of which,

23 I think, fit the profile of the kind of people who want to

24 rent it in this location, being very close to, you know,

25 Walter Reed and the NIH.

19

1 For all those reasons, you know, we feel that the

2 apartment meets the spirit of what the ADU requires. You

3 know, we've complied in every other aspect. And I think the

4 records will show, you know, ever since we started working

5 with DHCA we have proactively, you know, paid licensing

6 fees, you know, with -- regardless of its ultimate posture

7 or formal status at that moment, but we have paid the

8 licensing fees and we continue to, you know, intend to

9 comply with licensing as long as we can get it licensed.

10 And we're just looking to do so in a way that minimizes

11 burden and effort and expense to all sides.

12 MS. BYRNE: Okay.

13 MS. LAI: And you may be aware, Ms. Byrne, that

14 the ADU application process already involves a posting of

15 the sign. We posted it for more than 30 days and received

16 no complaints, and so it's pretty clear that within our

17 neighborhood there's no nuisance factor. And so, from a

18 policy standpoint, it's really a technical lack of

19 compliance with the code, but there is no public harm in any

20 way.

21 MS. BYRNE: Okay. Anything else you guys wanted

22 to tell me about your history in the -- how long have you

23 owned the property, or when did you buy it?

24 MS. LAI: We bought it in -- we moved in in 2013.

25 MS. BYRNE: Okay. And so, to your knowledge,

20

1 before you owned it, it was occupied by the previous

2 sellers' parents?

3 MR. TZENG: Yes. Absolutely.

4 MS. BYRNE: Okay.

5 MS. LAI: And if at some point in the future our

6 parents should need our assistance, then we would have them

7 move into the unit.

8 MR. TZENG: Yeah.

9 MS. BYRNE: Yeah. So it's been empty since or --

10 MS. LAI: No. We have been renting it out to a

11 couple who work at Walter Reed. They're young doctors just

12 starting out.

13 MR. TZENG: Their medical residency.

14 MS. LAI: Yes.

15 MR. TZENG: I would also add -- sorry.

16 MS. BYRNE: It's okay.

17 MR. TZENG: -- that I think one of the reasons the

18 apartment is the way it is and, quite frankly, why it's at

19 the square footage it is is that the seller built it for his

20 parents. They had originally -- they had originally owned

21 the house, the property. And so what we understand from the

22 history was, you know, he took over the house, and he built

23 this house that we now occupy. And in order to keep his

24 parents with him, you know, he built a very generously

25 sized -- again, it's a two-plus bedroom -- apartment for

December 12, 2022

21	<p>1 them. And then for other circumstances, they couldn't --</p> <p>2 they had to put it on the market. That's where we came in.</p> <p>3 MS. BYRNE: Okay. Anything else you guys want to</p> <p>4 tell me about the history or the property?</p> <p>5 MR. TZENG: I think those are the basics.</p> <p>6 MS. BYRNE: Okay. All right. Thank you.</p> <p>7 Mr. Johnson, can you tell me soup to nuts,</p> <p>8 application, inspection?</p> <p>9 MR. JOHNSON: Yes, ma'am. So I've received the</p> <p>10 application for the ADU from licensing. Mr. Bouma's office.</p> <p>11 And when I received those applications, I then reached out</p> <p>12 to the property owner to schedule preliminary inspection</p> <p>13 where we go out at the property and check for compliance. I</p> <p>14 met with the property owner at the property on March 16th of</p> <p>15 this year. Then we took a walk through the property, and I</p> <p>16 inspected it, and it needed -- it met -- looking at my</p> <p>17 notes, it met all our requirements. The exception was the</p> <p>18 square footage. My understanding was an inspector had been</p> <p>19 to that site previous to my inspection and found the square</p> <p>20 footage was over, and my purpose was then to remeasure and</p> <p>21 see if we could come up with a measurement that put us</p> <p>22 within that 1,200 square feet. We were unable to do so and</p> <p>23 resolved that we were at 1,300 square feet, 100 square feet</p> <p>24 over the 1,200 limit outlined in the zoning legislation. So</p> <p>25 I wrote up a preliminary inspection report. And at the time</p>	23
22	<p>1 really at the end of the inspection, I communicated to the</p> <p>2 applicant that, you know, in these situations, we have</p> <p>3 limited ability to just provide a waiver and say it's okay</p> <p>4 and move forward. The process for this is he would need to</p> <p>5 file an appeal, and he would need to reach out to -- I do</p> <p>6 not handle those. Although I'm familiar with the process, I</p> <p>7 don't handle those. I direct our applicants to reach out to</p> <p>8 licensing, who will follow up with the applicant to get them</p> <p>9 put in the right direction in the way of filing that appeal.</p> <p>10 So, upon concluding the inspection, I issued a</p> <p>11 preliminary inspection report. That inspection report was</p> <p>12 issued that day. And then I followed up with the applicant</p> <p>13 by e-mail instructing the applicant that, you know, because</p> <p>14 of the square footage, if the applicants wish to move</p> <p>15 forward with having that property licensed as an ADU in</p> <p>16 Montgomery County, they would, you know, want to consider</p> <p>17 filing an appeal, and then, you know, that we have some</p> <p>18 resolution through that, and that I couldn't provide the</p> <p>19 specifics. However, I directed them both to Mr. Bouma</p> <p>20 within licensing, and my supervisor, should they have any</p> <p>21 questions regarding the process and that sort of thing. And</p> <p>22 you know, ultimately, you know, we just -- just to speak to</p> <p>23 the square footage, we have no real objection between a</p> <p>24 1,200 square foot and a 1,300 square foot ADU. It met our</p> <p>25 requirements otherwise, and it's just we're simply not able</p>	24
	<p>1 to approve them if they're over that 1,200 square feet.</p> <p>2 MS. BYRNE: Question. I guess is square</p> <p>3 footage -- how often is square footage an issue for you?</p> <p>4 MR. JOHNSON: It is I would say rarely an issue.</p> <p>5 It's usually worked out during the initial preliminary</p> <p>6 inspection. We don't often already have renters in there.</p> <p>7 We don't often have a property that was prepared in such a</p> <p>8 way that would be a possible conversion to an ADU. So</p> <p>9 square footage is typically discussed between our office --</p> <p>10 and it could be, and I would defer to licensing that square</p> <p>11 footage may be something that they encounter quite often,</p> <p>12 and then I do not receive the application for the</p> <p>13 preliminary inspection.</p> <p>14 MS. BYRNE: Got it.</p> <p>15 MR. JOHNSON: When I receive the application and I</p> <p>16 meet with the applicants, it's typically in discussion how</p> <p>17 they want to lay out the property. They know the limits of</p> <p>18 the square footage. A great deal of our applications are</p> <p>19 for basements, and in which case there is no limit. As long</p> <p>20 as the ADU is limited to the basement, there's no square</p> <p>21 footage --</p> <p>22 MS. BYRNE: Okay. That's helpful.</p> <p>23 Okay, Mr. Bouma?</p> <p>24 MR. BOUMA: Yes.</p> <p>25 MS. BYRNE: So, I guess, how often do you run</p>	
	<p>1 across the square footage issue?</p> <p>2 MR. BOUMA: So not especially often. Generally</p> <p>3 speaking, if that's the case, we inform the owners that the</p> <p>4 application cannot be accepted. I've been out on leave, but</p> <p>5 I was looking at the property record this morning, and it</p> <p>6 looks like there's been a little bit of a history with this</p> <p>7 property. I myself have only been working with the owners</p> <p>8 since May of 2021, but it appears that a previous owner did</p> <p>9 have an accessory dwelling unit -- or sorry. Pardon me --</p> <p>10 registered living unit, and so that is correct. But I</p> <p>11 cannot speak to what the registered living unit requirements</p> <p>12 were, or what the measurements were. But it looks like the</p> <p>13 Office of Landlord Tenant received a complaint in 2016 from</p> <p>14 the tenants, and at that point we became aware that the</p> <p>15 property had sold and communication was sent. And then it</p> <p>16 looks like -- again, I'm going off the case notes here. I</p> <p>17 was not involved until a later date. It looks like the</p> <p>18 owners were informed early that the property was too large</p> <p>19 as far back as 2018, and that they could possibly modify the</p> <p>20 unit to apply again. So they did apply in 2021. And after</p> <p>21 speaking with the supervisor, Mr. Eloisa, he said that we</p> <p>22 could allow the inspection to proceed to verify the size of</p> <p>23 the apartment, and then they could appeal the denial at that</p> <p>24 point, if they wish to. So that was what we did.</p> <p>25 MS. BYRNE: Okay. Mr. Tzeng, Ms. Lai, do you have</p>	

December 12, 2022

25

1 any questions for Mr. Johnson or Mr. Bouma, or anything
 2 additional that you want to add after hearing that?
 3 MR. TZENG: No.
 4 MS. LAI: No.
 5 MS. BYRNE: Okay. All right. So just for
 6 everybody's education and information --
 7 MS. LAI: I'm sorry, Ms. Byrne.
 8 MS. BYRNE: Sure. Go ahead.
 9 MS. LAI: I was not aware of a complaint.
 10 MR. TZENG: Oh, I can speak to that. There was a
 11 complaint. It was a former tenant with the deposit, the
 12 security deposit.
 13 MS. LAI: Oh.
 14 MR. TZENG: He moved out.
 15 MS. LAI: Okay.
 16 MR. TZENG: Yeah.
 17 MS. BYRNE: Okay. All right. So you guys are
 18 going to be landlords here potentially, for, you know, the
 19 foreseeable future. Things that you need to know and things
 20 that you need to understand. You have to act timely. You
 21 really a hundred percent do. And when there's a deadline in
 22 there, there's no modification to that. Building codes,
 23 housing codes, they're pretty straightforward. They're
 24 pretty strict. So when Mr. Johnson said he could not grant
 25 you a waiver, he's a hundred percent right on that. And

26

1 when Mr. Bouma talks about, like, the history and what the
 2 law might have been then and what the law is now, it's --
 3 because I know you guys say -- you talk about equity, and
 4 that just doesn't seem right, it just doesn't seem fair,
 5 right, that this was built this way, it was an RLU, it
 6 doesn't really impact -- you know, Mr. Johnson's like it
 7 doesn't matter to them whether it's a hundred square feet or
 8 not, but the code is what the code is. Right?
 9 One of the reasons why I e-mailed you is because
 10 what OZA -- what I'm looking for in order to determine your
 11 objection is what, if anything, did housing and licensing do
 12 incorrectly. Right? So your objection would be that they
 13 were wrong, or there's something there, but that's not
 14 necessarily the case. Right?
 15 So your path -- and sometimes the best way to
 16 explain how codes are set up is to think about -- and it's
 17 the holidays, right? Are you familiar with Russian nesting
 18 dolls? Right? You have the -- how like all the dolls are
 19 inside, and you can have like a blue set, a red set, and a
 20 green set. Right? And then as you go down, you go down
 21 three or four layers of each one of those dolls, then, you
 22 know, you could go up to the almost second small one, and
 23 they would connect in some way. Right? So when we look at
 24 the housing code, right, and it says that you can have an
 25 accessory dwelling unit if you meet X, and it incorporates

27

1 that 59.3.3.3A2Ciii, that 59 takes you from that accessory
 2 dwelling unit in the housing code and puts you into the
 3 zoning code. There's a section in the zoning code, Section
 4 7.3.2 variance, and what it says is the Board of Appeals may
 5 grant a variance from any requirements of this chapter. The
 6 square footage requirement for the ADO comes from the zoning
 7 code. Right? Because Mr. Johnson has his code. And then
 8 it says go to the red Russian nesting doll. Right? He's
 9 the blue Russian nesting doll. Go to this section in the
 10 red Russian nesting doll, match it up, right, make sure that
 11 it works. So the Board of Appeals has the ability to grant
 12 you a variance to square footage. So when you talk about
 13 history, equity, uniqueness, that's a variance factor.
 14 That's not a factor of me looking at what Mr. Johnson did,
 15 looking at what Mr. Bouma did, looking at the facts and the
 16 history to see did housing and licensing not connect the
 17 dots correctly, or, you know, is your objection valid
 18 because of something that happened on their end. Right?
 19 What you have, or what you've explained to me is a unique
 20 circumstance in that this property was built prior to your
 21 ownership and was a previously-licensed RLU.
 22 But you heard from Mr. Bouma that his records
 23 reflect back in 2018 that you guys were, like, well, you
 24 could modify it to slice off 100 square feet, that -- if
 25 there was a way around that, that would not be considered

28

1 the accessory dwelling living space. And then you would
 2 apply that way. Right? That's one way to reduce it. And
 3 then you fit, right? You fit in the existing doll. If you
 4 want the 1,300 square feet, OZA can't give that to you.
 5 Right?
 6 So I'm the hearing officer, and I can't give you
 7 legal advice. Mr. Johnson can't give you any kind of legal
 8 advice. Mr. Bouma can't give you any kind of legal advice.
 9 They can tell you in their bucket what they look at and how
 10 it impacts you. Okay? So one of the reasons why I asked if
 11 you had applied to the Board of Appeals for a variance is
 12 because, if you get that variance, then Mr. Johnson can look
 13 at that and say, okay, this is the one thing that will get
 14 me around this requirement. Right? So if the BMZA comes
 15 back and provides to Mr. Bouma a variance, right, he's still
 16 going to -- Mr. Johnson's still going to go out and is going
 17 to measure it at 1,300 square feet. If the Board of Appeals
 18 grants you relief from the 1,200 square-foot requirement,
 19 that's a factor into whether or not you get your license.
 20 Right? Because now there is something outside the letter of
 21 the law. So when Mr. Johnson said I can't grant you a
 22 waiver and Mr. Bouma said I can't grant you a waiver, well,
 23 when I look at the code, OZA can't grant you a waiver. OZA
 24 can grant you a parking waiver. Right? That's very clear
 25 in the code. But any -- only the Board of Appeals can grant

December 12, 2022

29

1 a variance to any condition in Chapter 59, right, the red
 2 Russian nesting doll. Right? That's where your square
 3 footage comes in. Okay?
 4 So things that for me were problematic is that it
 5 took you guys a long time to do this, right, that you did
 6 let it drop off of your radar. And I get it, things get
 7 busy. But you have to understand that Mr. Johnson is very
 8 confined in what he can do. Mr. Bouma is very confined in
 9 what he can do. Right? There is no such thing as equity or
 10 waiver for them. All right? And like I don't know -- I
 11 don't even think equity is the right term. It's uniqueness.
 12 Right? They have to look -- you have to fit in the box.
 13 Right? And if you don't fit in the box, they can't help you
 14 get there. There's another way to do that.
 15 So, Mr. Johnson and Mr. Bouma, does that -- what I
 16 just explained, does that make sense to you both, or like,
 17 you know, do you agree with me a hundred percent here?
 18 MR. JOHNSON: Dave here. Yes, that rings true
 19 with me. And from my perspective in this case, it certainly
 20 has for sure. Thank you.
 21 MS. BYRNE: All right.
 22 MR. BOUMA: This is Mr. Bouma. Yes. I would just
 23 say that that's true. There's only so much that I can or
 24 can't do. I have to do what, you know, the regulations
 25 allow or don't allow.

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1 MS. BYRNE: Right. And so that's where -- those
 2 guys are operating within their function. And it's
 3 probably -- I think the hard part here is there's no bright
 4 line that connects you, right, and that you would ordinarily
 5 come here. But please know anything that comes into Chapter
 6 59 that you need some kind of variance to, or you need a
 7 number altered so to speak, other than for parking for ADU,
 8 that falls within the Board of Appeals. So can you tell me
 9 where you are, if anywhere, in your application for the
 10 Board of Appeals for a variance to square footage?
 11 MS. LAI: Yeah. I mean, we've begun to pull
 12 together the required documentation. It's a challenge
 13 because not all of the things seem to apply. For example,
 14 there's a certification relating to the surrounding parcels.
 15 And I think that hopefully we can get in touch with someone
 16 there to walk through what they need and what they don't. A
 17 lot of these things just don't apply to our situation, and
 18 so it's really -- it's a little bit daunting because it's
 19 not clear whether they will be able to help us and direct us
 20 in the right direction.
 21 MS. BYRNE: Well, they will. They will be able to
 22 tell you, because I'm reading directly from the code. So
 23 it's Chapter 59.7.3.2 variance. A, the Board of Appeals may
 24 grant a variance from any requirement of this chapter.
 25 Right? And then B gets into application requirements, which

31

1 is form and documentation. They may or may not tell you
 2 that you need certain things or not. A lot of people get
 3 variances -- and Mr. Johnson and Mr. Bouma probably see this
 4 all the time -- for dwellings outside. Right? So the
 5 typical variance would be if you were to build this addition
 6 today and, say, you got too close to your lot line. Right?
 7 You would need a variance to allow the construction of the
 8 addition, and you would have to show why you deserve that
 9 variance, what's unique about this particular property,
 10 what's justified about this or that. So what you explained
 11 to me today as to why you asked for the relief from the
 12 objection was the history of your property, the uniqueness
 13 in the construction, how it was created, how it was
 14 originally licensed as an RLU. All of that is relevant to
 15 whether or not 1,300 square feet is a big deal. Right?
 16 That 100 square foot variance, are you entitled to that 100
 17 square-foot variance. So what I heard Mr. Bouma say was, if
 18 you shaved a hundred feet off, somehow, somewhere, blocked
 19 it off, if you have like, a laundry room that's there, you
 20 know, like -- you know, what's worth it to -- like what's
 21 the path of least resistance for you, because right now the
 22 only thing standing in your way of this license is a hundred
 23 square feet. So if you want to keep it exactly the same,
 24 you're going to have to ask for a variance from the Board of
 25 Appeals, and you are going to have to follow their lead.

32

1 Now Barbara Jay is the executive director. She's got staff
 2 over there as well. The Board of Appeals was copied on
 3 those e-mails. You can e-mail them directly and say I see
 4 all of these things, this is what we're asking; do you
 5 really need all of these things. Right?
 6 So, you know, I would hop on that as soon as
 7 possible, because what I'm going to do, I'm going to leave
 8 this open. All right? I'm going to leave this whole appeal
 9 open, because right now I've just explained to you that I
 10 can't grant you the relief that you're seeking. Right? I
 11 don't have the ability to grant you a variance to square
 12 footage. I'm limited in did housing or licensing make some
 13 kind of error. Right? But I think we've all agreed that
 14 they haven't made an error. I'm not even going to go into,
 15 you know, the first thing that could be the fatal flaw,
 16 which is the fact that it took you so many months to
 17 actually file your appeal. So what I'm going to do is I'm
 18 just going to leave this open. I'm not going to make a
 19 decision. I'm not going to close the record. All right?
 20 And I want you to apply -- you either need to apply to the
 21 board. You can withdraw your appeal and shave 100 feet
 22 off -- and Mr. Bouma and Mr. Johnson, please tell me if I'm
 23 saying anything incorrectly with your application process.
 24 So if they were to shave 100 feet off, would they reapply,
 25 or ask for a reinspection? Like how does that work.

December 12, 2022

33

1 MR. JOHNSON: I would defer to Mr. Bouma on that.
 2 My anticipation is that it would simply be a reinspection at
 3 this point, at least from my perspective.
 4 MS. BYRNE: Okay. Mr. Bouma?
 5 MR. BOUMA: To be completely honest with you, I am
 6 not sure. I would have to look. I believe they might have
 7 to reapply at this point because I believe we did issue a
 8 formal denial of the application.
 9 MS. BYRNE: Okay. That makes sense to me from
 10 flow purposes, that you would have to reapply. What I want
 11 to see is -- Mr. Bouma, is there any waiting period at all
 12 for anything like that, or can you apply as many times as
 13 you want and get accepted or rejected as many times as you
 14 want without penalty?
 15 MR. BOUMA: To my knowledge, there is no waiting
 16 period. There's just the filing fee that, you know, would
 17 not be refunded if it's denied.
 18 MS. BYRNE: Okay. All right. So then I think no
 19 matter what, from what I'm hearing from Mr. Bouma, is you're
 20 going to have to reapply because you've gotten a denial.
 21 I've just explained to you that I actually can't provide you
 22 the relief that you're seeking. So whether you decide to
 23 shave off 100 feet, or whether you decide to get a variance
 24 from the Board of Appeals and then go back and reapply with
 25 this, the Board said I could have this 100 square feet, you

34

1 know, then that impacts what Mr. Bouma can do and that
 2 impacts what Mr. Johnson, you know, what he's --
 3 Mr. Johnson's still going to see 1,300 square feet if he
 4 goes out there and you make no changes. Right? But if the
 5 Board grants you this 100 square-foot variance, then that
 6 impacts what Mr. Bouma can do. Right?
 7 So what I'm going to do is I'm going to leave this
 8 open, this record open for 30 days. Okay? You guys need to
 9 move it, right, and make some decisions here in the next
 10 couple of weeks. If you haven't applied to the BMZA or to
 11 the Board, or you haven't withdrawn your application to us,
 12 right, for this appeal, then I will render a decision.
 13 Okay? If you have applied to the Board, then I will extend
 14 my decision until after the Board renders theirs. Does that
 15 make sense.
 16 MR. TZENG: Absolutely.
 17 MS. LAI: Yeah.
 18 MS. BYRNE: Yeah. Go ahead.
 19 MR. TZENG: As a followup, if we get a variance
 20 from the Board of Appeals and this hearing is still open,
 21 what impact does that have on the process you mentioned
 22 earlier about reapplying to Mr. Bouma for -- we still have
 23 to do that?
 24 MS. BYRNE: You would 100 percent still have to do
 25 that. So if the Board grants the variance, there's like --

35

1 there's no reopening the old process. Right? So what I --
 2 really at the end of the day what I would end up doing is
 3 saying -- is redirecting you back to them through my opinion
 4 to grant that, or, you know, to review the application if
 5 the Board granted that 100 square --
 6 MR. TZENG: Sure.
 7 MS. BYRNE: I mean, it's -- the hard part is I'm
 8 really, really limited in what I can do here.
 9 MR. TZENG: Right. Do you anticipate our having a
 10 followup hearing in order to close out that step?
 11 MS. BYRNE: No, because what I'll do is I'll leave
 12 it open. I'll leave the record open 30 days for you to make
 13 this decision, whether you're going to appeal to the Board
 14 or whether you're going to shave 100 square feet off and
 15 reapply. Right? If you make a decision to appeal to the
 16 Board, I will leave it open until the decision of the Board
 17 is rendered, and that will be an exhibit you can submit to
 18 me.
 19 MR. TZENG: Okay. And the stakes involved there
 20 are whether your decision is a redirect for us to reapply,
 21 or --
 22 MS. BYRNE: Correct.
 23 MR. TZENG: -- rejection, I guess?
 24 MS. BYRNE: Right. Right. Right. So if the
 25 Board says no, then it's a hard no. If the board says yes,

36

1 then I will redirect you to apply, given this instance. So
 2 at the end of the day, one's a denial and one's a redirect.
 3 MR. TZENG: Got it.
 4 MS. BYRNE: That's where you are. So you have
 5 some choices to make here in the next few days. But if I
 6 don't see an application within 30 days to the Board, I'll
 7 just go ahead and write my decision based on the information
 8 that I have. All right? But, again, this does not impact
 9 you for reapplying in the future based on what you decide to
 10 do at the Board, or whether or not you decide to shave 100
 11 feet off.
 12 MR. TZENG: Great.
 13 MS. BYRNE: All right. Anything else anybody
 14 would like to say?
 15 MR. TZENG: Well, we really appreciate everyone's
 16 time. And thank you, Ms. Byrne, your explanation was
 17 immensely helpful about the different paths.
 18 MS. LAI: Yeah. Thank you very much to everyone.
 19 This has been an educational process.
 20 MS. BYRNE: Yeah. Just, you know, Mr. Bouma is
 21 super helpful. Mr. Johnson's super helpful. They know what
 22 they're doing. You know, and as a landlord, there's so much
 23 out there that you just have to be on the lookout for. But
 24 if I can give you one piece of advice, if there's a day that
 25 you have to do something by, please do it. Don't like --

December 12, 2022

37

1 that -- you know, they put the days in there for a reason,
 2 and it's usually to do something by. And, yeah, just --
 3 those things are fatal. Like sometimes you don't even get
 4 to make your argument if you don't hit the date. Okay?
 5 MS. LAI: We appreciate your understanding.
 6 MR. TZENG: Yeah. We appreciate it.
 7 MS. BYRNE: Sure. All right. Well, I appreciate
 8 that.
 9 Mr. Lorete, before we jump off, did you get all
 10 the spellings that you needed?
 11 THE REPORTER: Yes. I'm pretty much good on
 12 spelling.
 13 MS. BYRNE: Excellent. All right. All right. I
 14 appreciate everyone's time. Like I said, I will leave this
 15 record open. So 30 days from today would technically be
 16 the -- we don't count today, so it would be the -- there's
 17 31 days in December, so it will be Thursday, January --
 18 we'll just do Thursday, January 12 because we start counting
 19 the next day, and there's 31 days. Right? Yeah.
 20 MR. TZENG: And they're calendar days, not
 21 business days?
 22 MS. BYRNE: Right. Calendar days. Always
 23 calendar days. All right. So you have my e-mail. So
 24 please e-mail me, you know, by the 12th to verify if you put
 25 the application in, or if you wish to withdraw your

38

1 objection to this body because if you -- like I said, if you
 2 choose to shave off 100 square feet somehow, then you're
 3 just starting over with a new square footage. Okay? So
 4 those are the two things I'll be looking for, either the
 5 appeal, or a withdrawal. And then, if I get nothing, then
 6 I'm going to write the decision.
 7 MR. TZENG: Understood. Thank you.
 8 MS. BYRNE: All right. Sounds good. Thank you
 9 all.
 10 MS. LAI: Thank you very much.
 11 (The hearing concluded at 10:24 a.m.)
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39

1 CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC
 2 I, Joe Lorete, the officer before whom the
 3 foregoing deposition was taken, do hereby certify that said
 4 proceedings were electronically recorded by me; and that I
 5 am neither counsel for, related to, nor employed by any of
 6 the parties to this case and have no interest, financial or
 7 otherwise, in its outcome.
 8 IN WITNESS WHEREOF, I have hereunto set my
 9 hand and affixed my notarial seal this 19th day of December,
 10 2022.
 11
 12 *Joe Lorete*
 13 _____
 14 Joe Lorete, Notary Public
 15 For the State of Maryland
 16
 17
 18
 19
 20
 21
 22
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 24
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1 CERTIFICATE OF TRANSCRIBER
 2 I, Nicole Mastrosimone, do hereby certify that
 3 the foregoing transcript is a true and correct record of the
 4 recorded proceedings; that said proceedings were transcribed
 5 to the best of my ability from the audio recording and
 6 supporting information; and that I am neither counsel for,
 7 related to, nor employed by any of the parties to this case
 8 and have no interest, financial or otherwise, in its
 9 outcome.
 10
 11
 12 *Nicole Mastrosimone*
 13 _____
 14 Nicole Mastrosimone
 15 December 19, 2022
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A			
a2ciiii	acquaintances	13:1, 13:9,	also
27:1	12:25	24:20, 25:2,	3:14, 8:15,
ability	acquire	34:14	9:8, 11:25,
22:3, 27:11,	17:5	again	12:20, 14:20,
32:11, 40:5	across	13:16, 17:13,	15:6, 15:7,
able	24:1	20:25, 24:16,	16:1, 18:14,
22:25, 30:19,	act	24:20, 36:8	20:15
30:21	25:20	agree	altered
about	action	15:14, 29:17	30:7
4:12, 5:20,	8:4	agreed	although
5:25, 7:10, 8:6,	actually	32:13	22:6
8:11, 9:10,	10:4, 32:17,	ahead	always
9:20, 10:22,	33:21	4:8, 5:20,	37:22
11:4, 12:12,	add	6:20, 9:17,	among
12:14, 12:18,	20:15, 25:2	16:21, 25:8,	17:3
15:1, 15:7,	addition	34:18, 36:7	amount
15:10, 16:9,	31:5, 31:8	all	11:25, 12:8,
16:10, 16:14,	additional	4:10, 6:11,	12:9, 18:10
16:15, 16:21,	5:12, 7:5,	6:18, 7:3, 7:8,	another
17:14, 17:24,	8:15, 25:2	7:13, 11:13,	15:24, 29:14
18:2, 19:22,	administrative	12:2, 13:16,	answer
21:4, 26:1,	1:1, 3:6	15:15, 15:20,	13:21, 16:12
26:3, 26:16,	ado	15:25, 16:2,	anticipate
27:12, 31:9,	1:3, 7:8, 27:6	16:17, 16:18,	35:9
31:10, 34:22,	adu	16:19, 16:23,	anticipation
36:17	8:6, 8:9,	17:6, 18:22,	33:2
absolutely	12:14, 16:5,	19:1, 19:11,	any
8:1, 20:3,	17:4, 17:9,	21:6, 21:17,	5:11, 7:5, 7:8,
34:16	17:10, 17:24,	25:5, 25:17,	13:2, 13:9,
accept	18:9, 18:17,	26:18, 29:10,	18:16, 19:19,
9:24	19:2, 19:14,	29:21, 30:13,	22:20, 25:1,
acceptance	21:10, 22:15,	31:4, 31:14,	27:5, 28:7,
6:15	22:24, 23:8,	32:4, 32:5,	28:8, 28:25,
accepted	23:20, 30:7	32:8, 32:13,	29:1, 30:24,
9:22, 24:4,	advice	32:19, 33:11,	33:11, 39:5,
33:13	28:7, 28:8,	33:18, 36:8,	40:7
access	36:24	36:13, 37:7,	anybody
17:13	advise	37:9, 37:13,	36:13
accessory	12:23	37:23, 38:8,	anyone
4:14, 6:15,	affairs	38:9	16:12
12:17, 24:9,	5:15	allow	anything
26:25, 27:1,	affixed	14:13, 24:22,	6:19, 19:21,
28:1	39:9	29:25, 31:7	21:3, 25:1,
according	after	almost	26:11, 30:5,
14:2	7:19, 8:4,	26:22	32:23, 33:12,
aciii	9:16, 9:17,	along	36:13
4:23	9:23, 10:1,	15:11	anywhere
	11:9, 11:18,	already	30:9
		19:14, 23:6	

<p>apartment 4:14, 6:16, 8:19, 8:20, 12:4, 17:3, 17:19, 17:21, 18:6, 19:2, 20:18, 20:25, 24:23</p> <p>apartments 12:18, 17:3, 18:19</p> <p>appeal 4:12, 4:13, 4:17, 7:20, 7:25, 9:18, 11:1, 11:23, 14:16, 14:22, 14:24, 15:11, 16:11, 16:19, 22:5, 22:9, 22:17, 24:23, 32:8, 32:17, 32:21, 34:12, 35:13, 35:15, 38:5</p> <p>appealing 14:19, 15:1, 16:25, 18:20</p> <p>appeals 11:20, 11:25, 12:16, 16:4, 16:14, 27:4, 27:11, 28:11, 28:17, 28:25, 30:8, 30:10, 30:23, 31:25, 32:2, 33:24, 34:20</p> <p>appears 24:8</p> <p>applicant 6:8, 14:12, 14:18, 22:2, 22:8, 22:12, 22:13</p> <p>applicants 14:22, 22:7, 22:14, 23:16</p>	<p>application 1:7, 6:16, 8:17, 13:22, 19:14, 21:8, 21:10, 23:12, 23:15, 24:4, 30:9, 30:25, 32:23, 33:8, 34:11, 35:4, 36:6, 37:25</p> <p>applications 12:14, 21:11, 23:18</p> <p>applied 28:11, 34:10, 34:13</p> <p>apply 4:20, 16:7, 24:20, 28:2, 30:13, 30:17, 32:20, 33:12, 36:1</p> <p>applying 11:24</p> <p>appreciate 36:15, 37:5, 37:6, 37:7, 37:14</p> <p>approach 8:12</p> <p>approval 14:7</p> <p>approve 23:1</p> <p>area 18:20</p> <p>aren't 18:19</p> <p>arguing 12:4</p> <p>argument 37:4</p> <p>around 18:4, 27:25, 28:14</p> <p>arranged 10:13, 14:8</p> <p>asked 14:19, 28:10,</p>	<p>31:11</p> <p>asking 32:4</p> <p>aspect 18:16, 19:3</p> <p>assistance 20:6</p> <p>attached 12:17, 17:9</p> <p>attorneys 12:24</p> <p>audio 40:5</p> <p>available 18:19</p> <p>avenue 3:7</p> <p>avenues 11:20</p> <p>aware 19:13, 24:14, 25:9</p> <p>away 18:5</p> <p>awesome 7:12</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b-e-r-t-r-a-n-d 5:10</p> <p>back 5:23, 6:17, 11:14, 24:19, 27:23, 28:15, 33:24, 35:3</p> <p>background 8:8</p> <p>barbara 32:1</p> <p>based 14:9, 36:7, 36:9</p> <p>basement 23:20</p> <p>basements 23:19</p> <p>basics 21:5</p>	<p>became 24:14</p> <p>because 8:22, 9:6, 11:13, 11:20, 13:18, 14:14, 14:24, 15:8, 16:2, 16:12, 22:13, 26:3, 26:9, 27:7, 27:18, 28:12, 28:20, 30:13, 30:18, 30:22, 31:21, 32:7, 32:9, 33:7, 33:20, 35:11, 37:18, 38:1</p> <p>bedroom 18:19, 20:25</p> <p>been 8:9, 10:12, 10:15, 11:21, 12:2, 13:19, 17:7, 17:11, 18:14, 20:9, 20:10, 21:18, 24:4, 24:6, 24:7, 26:2, 36:19</p> <p>before 1:10, 2:10, 4:12, 6:23, 7:25, 8:21, 9:24, 11:6, 13:19, 20:1, 37:9, 39:2</p> <p>beginning 7:15</p> <p>begun 30:11</p> <p>behalf 4:4</p> <p>being 8:2, 9:6, 18:1, 18:24</p> <p>believe 17:16, 18:16, 33:6, 33:7</p>
---	---	--	--

<p>benchmark 8:19 bertrand 3:17, 5:9 best 8:4, 13:8, 26:15, 40:5 better 6:12 between 22:23, 23:9 big 8:24, 31:15 bit 24:6, 30:18 blocked 31:18 blue 26:19, 27:9 bmza 28:14, 34:10 board 11:20, 11:25, 12:16, 16:4, 27:4, 27:11, 28:11, 28:17, 28:25, 30:8, 30:10, 30:23, 31:24, 32:2, 32:21, 33:24, 33:25, 34:5, 34:11, 34:13, 34:14, 34:20, 34:25, 35:5, 35:13, 35:16, 35:25, 36:6, 36:10 body 12:2, 38:1 both 11:19, 16:3, 22:19, 29:16 bought 17:9, 17:18, 18:6, 19:24 bouma 3:20, 14:7, 14:20, 14:23,</p>	<p>15:5, 15:10, 15:15, 15:19, 22:19, 23:23, 23:24, 24:2, 25:1, 26:1, 27:15, 27:22, 28:8, 28:15, 28:22, 29:8, 29:15, 29:22, 31:3, 31:17, 32:22, 33:1, 33:4, 33:5, 33:11, 33:15, 33:19, 34:1, 34:6, 34:22, 36:20 bouma's 21:10 box 29:12, 29:13 briefly 9:14 bright 30:3 bucket 28:9 build 31:5 building 3:8, 25:22 built 17:10, 17:11, 17:15, 17:18, 18:7, 20:19, 20:22, 20:24, 26:5, 27:20 burden 19:11 business 37:21 busy 29:7 button 6:1 buy 19:23 byrne 1:10, 3:18,</p>	<p>4:3, 5:11, 5:17, 7:12, 8:21, 9:3, 9:13, 10:3, 11:3, 11:6, 11:12, 13:20, 14:23, 15:9, 15:13, 15:17, 15:25, 16:17, 19:12, 19:13, 19:21, 19:25, 20:4, 20:9, 20:16, 21:3, 21:6, 23:2, 23:14, 23:22, 23:25, 24:25, 25:5, 25:7, 25:8, 25:17, 29:21, 30:1, 30:21, 33:4, 33:9, 33:18, 34:18, 34:24, 35:7, 35:11, 35:22, 35:24, 36:4, 36:13, 36:16, 36:20, 37:7, 37:13, 37:22, 38:8</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 37:20, 37:22, 37:23 call 13:23 callers 5:21 calls 13:1, 13:3 came 8:3, 17:5, 21:2 can't 13:4, 17:13, 28:4, 28:6, 28:7, 28:8, 28:21, 28:22, 28:23, 29:13, 29:24, 32:10, 33:21</p>	<p>cannot 24:4, 24:11 capture 5:24 careers 18:22 case 8:15, 14:2, 14:10, 14:13, 16:4, 23:19, 24:3, 24:16, 26:14, 29:19, 39:6, 40:7 cases 16:3 certain 13:9, 31:2 certainly 8:11, 17:8, 29:19 certainty 13:9 certificate 39:1, 40:1 certification 30:14 certify 39:3, 40:2 challenge 30:12 change 6:2, 18:10 changes 34:4 chapter 27:5, 29:1, 30:5, 30:23, 30:24 chat 6:5 check 21:13 checking 12:1 choices 36:5 choose 38:2</p>
--	---	--	---

<p>ciii 4:18 circumstance 27:20 circumstances 12:13, 17:5, 21:1 clarity 12:12, 12:18, 16:2 clear 9:8, 9:9, 10:25, 11:1, 15:23, 16:6, 19:16, 28:24, 30:19 clearly 4:6 cliff 13:21 clifton 3:20 close 18:24, 31:6, 32:19, 35:10 closing 6:25, 7:6 code 4:14, 4:16, 4:18, 4:19, 7:19, 9:7, 9:8, 9:14, 19:19, 26:8, 26:24, 27:2, 27:3, 27:7, 28:23, 28:25, 30:22 codes 25:22, 25:23, 26:16 come 21:21, 30:5 comes 4:17, 27:6, 28:14, 29:3, 30:5 communicated 14:12, 22:1 communication 24:15</p>	<p>communications 16:9 community 5:15 complaint 24:13, 25:9, 25:11 complaints 19:16 completely 33:5 compliance 19:19, 21:13 compliant 4:22 complied 12:5, 14:5, 19:3 comply 19:9 concern 16:6, 18:16 concluded 38:11 concluding 22:10 condition 29:1 conduct 14:5 conducted 1:11, 2:1, 14:1, 14:2, 18:14 confined 29:8 confines 18:12 connect 26:23, 27:16 connects 30:4 consider 8:3, 8:12, 8:16, 22:16 considered 8:9, 17:6, 18:1, 27:25</p>	<p>construction 18:11, 31:7, 31:13 consult 12:20, 13:3 consulted 12:20 contacts 12:24 contest 8:7 context 12:13, 12:16 continue 13:13, 19:8 conversion 23:8 copied 32:2 correct 10:23, 12:19, 24:10, 35:22, 40:3 correctly 27:17 could 5:5, 7:6, 7:22, 9:12, 14:16, 16:15, 21:21, 23:10, 24:19, 24:22, 24:23, 25:24, 26:22, 27:24, 32:15, 33:25 couldn't 10:10, 16:4, 21:1, 22:18 council 18:1 counsel 12:23, 39:5, 40:6 count 37:16 counting 37:18 county 1:2, 3:5, 3:8,</p>	<p>4:16, 5:14, 22:16 couple 12:25, 18:21, 20:11, 34:10 course 8:4 court 39:1 covid 10:11 created 31:13</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>d-a-v-i-d 5:15 date 24:17, 37:4 dated 7:21 dates 9:4 daunting 30:18 dave 3:19, 5:13, 8:5, 8:13, 13:25, 18:14, 29:18 david 13:20 day 10:8, 14:17, 22:12, 35:2, 36:2, 36:24, 37:19, 39:9 days 7:19, 9:8, 9:16, 9:20, 9:23, 10:1, 10:11, 11:8, 19:15, 34:8, 35:12, 36:5, 36:6, 37:1, 37:15, 37:17, 37:19, 37:20, 37:21, 37:22,</p>
--	---	---	---

<p>37:23 deadline 25:21 deadlines 10:5 deal 8:24, 23:18, 31:15 december 1:12, 37:17, 39:9, 40:16 decide 33:22, 33:23, 36:9, 36:10 decided 9:17 decision 4:25, 5:1, 6:10, 6:11, 7:20, 7:21, 7:24, 11:9, 11:19, 14:19, 14:22, 16:13, 16:18, 32:19, 34:12, 34:14, 35:13, 35:15, 35:16, 35:20, 36:7, 38:6 decisions 12:2, 34:9 defer 23:10, 33:1 definitely 11:3 delay 15:24 deliver 10:9, 10:10 delivered 9:19 delivery 9:21 denial 4:13, 6:16, 7:19, 24:23, 33:8, 33:20, 36:2 denied 13:22, 14:9,</p>	<p>33:17 department 5:14 deposit 25:11, 25:12 deposition 39:3 deserve 31:8 determination 8:14 determine 8:4, 9:5, 11:9, 12:3, 12:7, 13:8, 26:10 dhca 8:13, 11:21, 17:16, 18:15, 19:5 different 15:22, 17:11, 36:17 difficult 12:12 direct 22:7, 30:19 directed 22:19 direction 14:16, 22:9, 30:20 directions 10:15 directly 30:22, 32:3 director 9:25, 32:1 director's 7:20, 9:16, 9:23, 11:9, 14:25 disagree 4:25 discuss 7:4, 7:16 discussed 8:15, 23:9 discussion 23:16</p>	<p>discussions 8:13, 11:21 disposition 17:14 doctors 20:11 documentation 30:12, 31:1 documents 6:13 doing 11:24, 35:2, 36:22 doll 27:8, 27:9, 27:10, 28:3, 29:2 dolls 26:18, 26:21 done 13:19 dots 4:19, 27:17 down 8:21, 26:20 drop 10:13, 29:6 due 15:20 during 14:10, 23:5 dwelling 4:14, 24:9, 26:25, 27:2, 28:1 dwellings 31:4</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 6:17, 7:17, 10:16, 14:17, 15:15, 15:17, 15:19, 15:20, 22:13, 32:3, 37:23, 37:24 e-mailed 26:9</p>	<p>e-mails 32:3 each 4:6, 6:7, 12:2, 26:21 earlier 34:22 early 24:18 education 25:6 educational 36:19 efficient 13:17 effort 12:3, 18:10, 19:11 efforts 7:24, 8:4 either 17:21, 18:8, 32:20, 38:4 electronically 39:4 element 8:25 eloisa 15:7, 24:21 else 6:22, 19:21, 21:3, 36:13 employed 39:5, 40:7 empty 20:9 encounter 23:11 end 22:1, 27:18, 35:2, 36:2 ending 7:7 entire 7:23 entirely 15:22 entitled 31:16</p>
---	--	---	---

<p>enunciate 4:6</p> <p>equitable 8:16, 16:16</p> <p>equity 12:7, 26:3, 27:13, 29:9, 29:11</p> <p>error 32:13, 32:14</p> <p>especially 12:5, 16:5, 18:21, 24:2</p> <p>est 1:13</p> <p>even 8:19, 16:8, 29:11, 32:14, 37:3</p> <p>event 5:23</p> <p>eventually 17:20, 18:8</p> <p>ever 19:4</p> <p>every 10:14, 18:7, 19:3</p> <p>everybody 4:8, 5:19, 7:9, 7:14</p> <p>everybody's 25:6</p> <p>everyone 6:21, 13:18, 36:18</p> <p>everyone's 36:15, 37:14</p> <p>exactly 31:23</p> <p>examiner 1:10</p> <p>example 30:13</p> <p>excellent 37:13</p> <p>exception 21:17</p>	<p>exchanges 6:17</p> <p>executive 32:1</p> <p>exhibit 35:17</p> <p>exhibits 6:14, 7:4, 7:5</p> <p>existing 28:3</p> <p>expense 18:11, 19:11</p> <p>explain 6:10, 7:23, 26:16</p> <p>explained 15:2, 27:19, 29:16, 31:10, 32:9, 33:21</p> <p>explaining 14:18</p> <p>explanation 36:16</p> <p>extend 34:13</p> <p>extent 17:7</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 32:16</p> <p>factor 19:17, 27:13, 27:14, 28:19</p> <p>factors 17:19</p> <p>facts 8:7, 8:8, 13:18, 16:5, 27:15</p> <p>fair 12:9, 18:10, 26:4</p> <p>fall 13:10, 13:18</p> <p>falls 30:8</p> <p>familiar 22:6, 26:17</p>	<p>family 18:21</p> <p>far 6:22, 24:19</p> <p>fatal 16:19, 32:15, 37:3</p> <p>fault 4:7</p> <p>fee 33:16</p> <p>feel 19:1</p> <p>fees 19:6, 19:8</p> <p>feet 8:20, 8:23, 14:14, 21:22, 21:23, 23:1, 26:7, 27:24, 28:4, 28:17, 31:15, 31:18, 31:23, 32:21, 32:24, 33:23, 33:25, 34:3, 35:14, 36:11, 38:2</p> <p>felt 13:5</p> <p>few 5:17, 36:5</p> <p>figure 10:24</p> <p>file 9:17, 10:6, 11:8, 14:16, 22:5, 32:17</p> <p>files 17:8</p> <p>filing 7:17, 9:15, 9:18, 9:21, 9:22, 10:6, 10:18, 13:13, 16:19, 22:9, 22:17, 33:16</p> <p>filings 10:1</p>	<p>financial 39:6, 40:8</p> <p>find 13:7, 16:4</p> <p>finding 8:5, 8:14, 16:16</p> <p>findings 14:9</p> <p>fine 5:19</p> <p>first 4:9, 5:3, 5:5, 5:7, 6:9, 7:16, 9:10, 17:6, 32:15</p> <p>fit 16:5, 18:11, 18:23, 28:3, 29:12, 29:13</p> <p>fitness 18:17</p> <p>flaw 32:15</p> <p>flow 6:8, 33:10</p> <p>folds 4:24</p> <p>follow 22:8, 31:25</p> <p>followed 17:16, 22:12</p> <p>followup 13:1, 13:23, 34:19, 35:10</p> <p>foot 22:24, 31:16</p> <p>footage 5:1, 8:6, 8:17, 12:6, 12:15, 14:12, 16:15, 17:18, 18:3, 18:13, 20:19, 21:18, 21:20, 22:14, 22:23, 23:3, 23:9, 23:11, 23:18, 23:21, 24:1,</p>
--	--	--	--

<p>27:6, 27:12, 29:3, 30:10, 32:12, 38:3 foregoing 39:3, 40:3 foreseeable 25:19 form 6:16, 31:1 formal 19:7, 33:8 former 25:11 forth 6:18, 13:13 forward 13:8, 13:17, 14:6, 14:18, 22:4, 22:15 found 17:23, 21:19 four 26:21 frankly 20:18 function 6:6, 30:2 further 7:8, 7:25 future 17:22, 20:5, 25:19, 36:9</p>	<p>give 9:3, 9:4, 14:21, 28:4, 28:6, 28:7, 28:8, 36:24 given 8:17, 10:5, 10:15, 12:12, 36:1 go 4:8, 4:10, 5:20, 5:23, 6:3, 6:9, 6:20, 7:25, 8:21, 9:17, 11:2, 16:21, 17:3, 21:13, 25:8, 26:20, 26:22, 27:8, 27:9, 28:16, 32:14, 33:24, 34:18, 36:7 goes 6:8, 6:23, 34:4 going 4:11, 6:1, 7:4, 12:1, 13:20, 14:15, 16:18, 18:5, 24:16, 25:18, 28:16, 31:24, 31:25, 32:7, 32:8, 32:14, 32:17, 32:18, 32:19, 33:20, 34:3, 34:7, 35:13, 35:14, 38:6 good 5:13, 37:11, 38:8 gotten 33:20 grant 25:24, 27:5, 27:11, 28:21, 28:22, 28:23, 28:24, 28:25, 30:24, 32:10, 32:11, 35:4</p>	<p>granted 35:5 grants 28:18, 34:5, 34:25 great 23:18, 36:12 green 26:20 grossly 8:20 group 5:18, 6:4 guess 16:24, 23:2, 23:25, 35:23 guidance 14:21, 16:10 guy 4:7 guys 13:21, 19:21, 21:3, 25:17, 26:3, 27:23, 29:5, 30:2, 34:8</p>	<p>hear 5:23, 10:11, 11:16 heard 11:7, 27:22, 31:17 hearing 1:10, 2:1, 4:4, 4:13, 6:17, 7:14, 14:21, 25:2, 28:6, 33:19, 34:20, 35:10, 38:11 hearings 1:1, 3:6 help 29:13, 30:19 helpful 16:17, 23:22, 36:17, 36:21 here 4:3, 4:12, 4:15, 8:2, 10:13, 11:16, 13:25, 24:16, 25:18, 29:17, 29:18, 30:3, 30:5, 34:9, 35:8, 36:5 hereby 39:3, 40:2 hereunto 39:8 history 19:22, 20:22, 21:4, 24:6, 26:1, 27:13, 27:16, 31:12 hit 6:1, 37:4 hold 6:2, 16:18 holidays 26:17 honest 9:6, 13:2, 33:5 hop 32:6</p>
<p>G</p>		<p>H</p>	
<p>g-e-n-a 5:8 garages 12:17 gena 3:16, 5:7 gena's 17:21 generally 24:2 generously 20:24 getting 7:13</p>		<p>halfway 7:13 hand 6:6, 39:9 hand-delivered 10:7 handle 22:6, 22:7 handout 15:13 happened 27:18 happening 6:12 happens 15:4 hard 30:3, 35:7, 35:25 harm 19:19</p>	

<p>hope 17:6 hopefully 30:15 hoping 13:16 house 17:9, 17:19, 20:21, 20:22, 20:23 housekeeping 6:23 housing 5:15, 25:23, 26:11, 26:24, 27:2, 27:16, 32:12 however 14:14, 22:19 hundred 25:21, 25:25, 26:7, 29:17, 31:18, 31:22 husband 10:22</p>	<p>incorporated 4:20 incorporates 26:25 incorrect 10:5 incorrectly 26:12, 32:23 inform 24:3 information 15:10, 15:11, 15:16, 25:6, 36:7, 40:6 informed 24:18 initial 23:5 inside 26:19 inspected 21:16 inspection 8:5, 14:1, 14:2, 14:4, 14:11, 18:14, 21:8, 21:12, 21:19, 21:25, 22:1, 22:10, 22:11, 23:6, 23:13, 24:22 inspector 5:14, 21:18 instance 12:10, 36:1 instead 12:6 instructing 22:13 intend 19:8 intent 9:15, 9:25, 13:15, 17:20, 18:7 intercede 9:12 interest 39:6, 40:8</p>	<p>interpretation 10:4 interrupt 6:7 intervening 13:7 involve 18:10 involved 24:17, 35:19 involves 19:14 issue 6:5, 8:18, 23:3, 23:4, 24:1, 33:7 issued 9:16, 9:23, 12:2, 14:9, 22:10, 22:12 issues 5:18, 9:25 items 14:4</p>	<p>29:15, 29:18, 31:3, 32:22, 33:1, 34:2 johnson's 26:6, 28:16, 34:3, 36:21 july 11:14 jump 4:12, 6:23, 37:9 june 7:21, 9:6 justified 31:10</p>
<p style="text-align: center;">I</p> <p>ideal 13:14 identify 5:4, 5:5 immediately 14:13 immensely 36:17 impact 26:6, 34:21, 36:8 impacts 28:10, 34:1, 34:2, 34:6 important 4:5, 10:21 include 4:15 included 17:18 including 6:15</p>		<p style="text-align: center;">J</p> <p>j-o-h-n-s-o-n 5:16 january 37:17, 37:18 jay 32:1 job 1:23 joe 2:10, 3:15, 4:3, 39:2, 39:14 johnson 3:4, 3:19, 5:12, 5:13, 6:10, 6:13, 7:1, 13:25, 15:2, 21:7, 21:9, 23:4, 23:15, 25:1, 25:24, 27:7, 27:14, 28:7, 28:12, 28:21, 29:7,</p>	<p style="text-align: center;">K</p> <p>kathleen 1:10, 3:18 kathy 8:2, 13:6, 17:2 keep 20:23, 31:23 kind 6:25, 8:16, 18:3, 18:23, 28:7, 28:8, 30:6, 32:13 knew 15:1 know 6:20, 8:23, 8:25, 12:3, 12:8, 12:10, 13:1, 13:2, 13:5, 13:9, 13:10, 14:12, 14:19, 14:20, 15:2, 16:7, 16:8, 17:5, 18:12, 18:13, 18:14, 18:22, 18:24, 19:1, 19:3, 19:4, 19:5, 19:6, 19:8, 20:22, 20:24, 22:2, 22:13, 22:16,</p>

<p>22:17, 22:22, 23:17, 25:18, 25:19, 26:3, 26:6, 26:22, 27:17, 29:10, 29:17, 29:24, 30:5, 31:20, 32:6, 32:15, 33:16, 34:1, 34:2, 35:4, 36:20, 36:21, 36:22, 37:1, 37:24 knowledge 19:25, 33:15</p>	<p>late 16:19 later 9:20, 10:18, 14:17, 17:24, 24:17 laundry 31:19 law 18:2, 26:2, 28:21 lay 23:17 layers 26:21 lead 31:25 leading 8:10 least 31:21, 33:3 leave 24:4, 32:7, 32:8, 32:18, 34:7, 35:11, 35:12, 35:16, 37:14 led 12:9 left 12:18 legal 12:23, 28:7, 28:8 legislation 21:24 less 12:4 let's 6:22, 7:1, 7:9, 9:10, 9:17, 16:20, 16:21 letter 9:1, 9:19, 12:5, 13:22, 14:25, 15:1, 15:5, 15:11, 28:20</p>	<p>license 1:7, 4:21, 14:8, 28:19, 31:22 licensed 19:9, 22:15, 31:14 licensing 4:20, 4:21, 4:24, 14:8, 14:20, 14:24, 18:15, 19:5, 19:8, 19:9, 21:10, 22:8, 22:20, 23:10, 26:11, 27:16, 32:12 liked 8:8 limit 10:8, 21:24, 23:19 limited 9:9, 22:3, 23:20, 32:12, 35:8 limits 23:17 line 30:4, 31:6 literal 12:5 little 4:11, 5:17, 5:18, 6:22, 24:6, 30:18 living 17:12, 24:10, 24:11, 28:1 location 18:18, 18:24 long 9:7, 18:6, 19:9, 19:22, 23:19, 29:5 look 4:18, 4:21, 6:20, 14:6,</p>	<p>14:13, 18:2, 26:23, 28:9, 28:12, 28:23, 29:12, 33:6 looking 11:22, 12:6, 16:3, 19:10, 21:16, 24:5, 26:10, 27:14, 27:15, 38:4 lookout 36:23 looks 24:6, 24:12, 24:16, 24:17 lorete 2:10, 3:15, 4:3, 4:10, 37:9, 39:2, 39:14 lot 10:24, 11:22, 12:18, 16:9, 16:13, 30:17, 31:2, 31:6</p>
<p style="text-align: center;">L</p>		<p style="text-align: center;">M</p>	
<p>l-a-i 5:8 lack 16:1, 19:18 lai 1:7, 3:16, 5:4, 5:7, 6:9, 7:18, 9:12, 9:14, 10:20, 12:20, 13:12, 15:20, 16:23, 19:13, 19:24, 20:5, 20:10, 20:14, 24:25, 25:4, 25:7, 25:9, 25:13, 25:15, 30:11, 34:17, 36:18, 37:5, 38:10 landlord 24:13, 36:22 landlords 25:18 language 9:14, 9:18, 10:1, 14:25 large 5:1, 24:18 last 4:9, 5:5, 5:8, 5:10, 12:1</p>	<p>late 16:19 later 9:20, 10:18, 14:17, 17:24, 24:17 laundry 31:19 law 18:2, 26:2, 28:21 lay 23:17 layers 26:21 lead 31:25 leading 8:10 least 31:21, 33:3 leave 24:4, 32:7, 32:8, 32:18, 34:7, 35:11, 35:12, 35:16, 37:14 led 12:9 left 12:18 legal 12:23, 28:7, 28:8 legislation 21:24 less 12:4 let's 6:22, 7:1, 7:9, 9:10, 9:17, 16:20, 16:21 letter 9:1, 9:19, 12:5, 13:22, 14:25, 15:1, 15:5, 15:11, 28:20</p>	<p>license 1:7, 4:21, 14:8, 28:19, 31:22 licensed 19:9, 22:15, 31:14 licensing 4:20, 4:21, 4:24, 14:8, 14:20, 14:24, 18:15, 19:5, 19:8, 19:9, 21:10, 22:8, 22:20, 23:10, 26:11, 27:16, 32:12 liked 8:8 limit 10:8, 21:24, 23:19 limited 9:9, 22:3, 23:20, 32:12, 35:8 limits 23:17 line 30:4, 31:6 literal 12:5 little 4:11, 5:17, 5:18, 6:22, 24:6, 30:18 living 17:12, 24:10, 24:11, 28:1 location 18:18, 18:24 long 9:7, 18:6, 19:9, 19:22, 23:19, 29:5 look 4:18, 4:21, 6:20, 14:6,</p>	<p>14:13, 18:2, 26:23, 28:9, 28:12, 28:23, 29:12, 33:6 looking 11:22, 12:6, 16:3, 19:10, 21:16, 24:5, 26:10, 27:14, 27:15, 38:4 lookout 36:23 looks 24:6, 24:12, 24:16, 24:17 lorete 2:10, 3:15, 4:3, 4:10, 37:9, 39:2, 39:14 lot 10:24, 11:22, 12:18, 16:9, 16:13, 30:17, 31:2, 31:6 ma'am 21:9 made 9:15, 10:2, 17:23, 32:14 mail 9:19, 9:20, 10:2, 10:16 make 27:10, 29:16, 32:12, 32:18, 34:4, 34:9, 34:15, 35:12, 35:15, 36:5, 37:4 makes 33:9 making 13:1, 16:18 many 18:19, 32:16, 33:12, 33:13</p>

<p>march 14:3, 14:10, 21:14 market 21:2 married 18:21 maryland 1:2, 2:11, 3:7, 3:9, 39:15 mastrosimone 1:25, 40:2, 40:15 match 27:10 matter 7:17, 8:3, 12:15, 13:4, 13:13, 26:7, 33:19 matters 7:2 maybe 13:21 mean 9:7, 30:11, 35:7 means 10:2 meantime 17:22 measure 28:17 measurement 21:21 measurements 24:12 medical 20:13 meet 10:13, 23:16, 26:25 meets 19:2 mentioned 11:21, 34:21 merit 8:22, 8:24</p>	<p>merits 16:20, 16:22 met 17:17, 21:14, 21:16, 21:17, 22:24 method 14:18 might 26:2, 33:6 mind 7:9 minimizes 19:10 modification 25:22 modified 18:9 modify 24:19, 27:24 mom 17:22 moment 5:2, 6:3, 19:7 monday 1:12 montgomery 1:2, 3:5, 4:16, 5:14, 22:16 months 32:16 more 10:21, 11:3, 12:6, 19:15 morning 5:13, 24:5 most 4:5, 12:16, 13:17 move 14:18, 20:7, 22:4, 22:14, 34:9 moved 19:24, 25:14 much 4:7, 29:23, 36:18, 36:22,</p>	<p>37:11, 38:10 must 9:19, 10:7 mute 5:20 myself 15:8, 24:7</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 4:9, 5:7, 5:8, 5:9, 5:10 names 5:6 nana 3:4 nature 17:14 necessarily 26:14 need 5:23, 6:2, 7:13, 7:16, 14:5, 20:6, 22:4, 22:5, 25:19, 25:20, 30:6, 30:16, 31:2, 31:7, 32:5, 32:20, 34:8 needed 13:12, 21:16, 37:10 needless 13:6 neighborhood 19:17 neither 39:5, 40:6 nesting 26:17, 27:8, 27:9, 27:10, 29:2 new 15:8, 38:3 next 4:7, 9:3, 9:5, 9:10, 10:23,</p>	<p>11:10, 11:22, 12:22, 12:25, 15:3, 34:9, 36:5, 37:19 nicole 1:25, 40:2, 40:15 nih 18:25 normal 13:23, 14:1 normally 6:4, 6:8, 7:3 notarial 39:9 notary 2:10, 39:1, 39:14 notes 21:17, 24:16 nothing 7:13, 38:5 notice 6:17 november 7:22, 9:6 nuisance 19:17 number 10:12, 12:24, 15:22, 30:7 nuts 21:7</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>object 7:20 objection 6:15, 6:16, 7:22, 22:23, 26:11, 26:12, 27:17, 31:12, 38:1 objections 9:22, 9:24 objector 6:8 obviously 10:21</p>
---	--	---	---

<p>occupied 20:1 occupy 20:23 october 11:15 office 1:1, 3:5, 3:8, 4:5, 6:14, 8:5, 8:13, 10:14, 13:24, 15:4, 15:18, 21:10, 23:9, 24:13 officer 28:6, 39:2 often 23:3, 23:6, 23:7, 23:11, 23:25, 24:2 oh 25:10, 25:13 okay 5:11, 6:22, 9:17, 14:23, 15:9, 15:17, 16:17, 19:12, 19:21, 19:25, 20:4, 20:16, 21:3, 21:6, 22:3, 23:22, 23:23, 24:25, 25:5, 25:15, 25:17, 28:10, 28:13, 29:3, 33:4, 33:9, 33:18, 34:8, 34:13, 35:19, 37:4, 38:3 old 35:1 one 4:5, 6:2, 8:12, 10:20, 12:4, 12:19, 13:21, 15:24, 16:7, 16:14, 17:19, 18:21, 20:17, 26:9, 26:21,</p>	<p>26:22, 28:2, 28:10, 28:13, 36:24 one's 36:2 online 6:18 only 24:7, 28:25, 29:23, 31:22 open 16:13, 32:8, 32:9, 32:18, 34:8, 34:20, 35:12, 35:16, 37:15 opening 6:24 operating 30:2 opinion 35:3 opportunities 8:15 opportunity 17:21 opposed 12:15 opposition 5:12 options 11:10 order 6:11, 7:20, 7:24, 10:16, 11:16, 14:5, 18:10, 18:11, 20:23, 26:10, 35:10 ordinarily 30:4 originally 17:10, 20:20, 31:14 other 4:6, 6:7, 10:2, 10:21, 18:16, 18:18, 19:3,</p>	<p>21:1, 30:7 otherwise 22:25, 39:7, 40:8 out 9:4, 10:24, 12:23, 12:24, 14:19, 14:24, 17:23, 18:22, 20:10, 20:12, 21:11, 21:13, 22:5, 22:7, 23:5, 23:17, 24:4, 25:14, 28:16, 34:4, 35:10, 36:23 outcome 39:7, 40:9 outlined 21:24 outlines 14:4 outside 13:19, 28:20, 31:4 over 4:6, 8:20, 14:14, 15:5, 15:6, 15:10, 20:22, 21:20, 21:24, 23:1, 32:2, 38:3 owned 19:23, 20:1, 20:20 owner 21:12, 21:14, 24:8 owners 24:3, 24:7, 24:18 ownership 27:21 oza 9:9, 9:18, 9:23, 11:1, 11:19, 15:6, 15:12, 16:4,</p>	<p>16:9, 16:25, 26:10, 28:4, 28:23 oza's 15:21</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pages 1:24 paid 19:5, 19:7 parcels 30:14 pardon 24:9 parents 17:12, 17:22, 20:2, 20:6, 20:20, 20:24 parking 12:15, 28:24, 30:7 part 8:9, 8:11, 10:21, 12:10, 30:3, 35:7 particular 8:6, 16:12, 31:9 parties 5:4, 7:11, 39:6, 40:7 pass 14:13 path 12:7, 12:19, 13:7, 26:15, 31:21 paths 36:17 pd 3:15 penalty 33:14 people 10:13, 13:3, 14:23, 18:23, 31:2</p>
--	---	--	--

<p>percent 25:21, 25:25, 29:17, 34:24</p> <p>perfect 7:12, 17:21</p> <p>perfectly 9:6</p> <p>perhaps 13:5</p> <p>period 33:11, 33:16</p> <p>permit 4:21, 8:9</p> <p>person 9:21, 10:7</p> <p>perspective 29:19, 33:3</p> <p>pertinent 4:15</p> <p>phone 10:12</p> <p>pick 10:14, 11:14, 15:24</p> <p>piece 10:20, 10:21, 36:24</p> <p>please 7:23, 30:5, 32:22, 36:25, 37:24</p> <p>point 13:10, 20:5, 24:14, 24:24, 33:3, 33:7</p> <p>pointed 15:21</p> <p>pointing-fingers 12:11</p> <p>policy 19:18</p> <p>politely 6:7</p> <p>portion 4:22, 4:23</p> <p>possible 23:8, 32:7</p> <p>possibly 24:19</p>	<p>posted 19:15</p> <p>posting 19:14</p> <p>postmark 9:19</p> <p>postmarked 10:7</p> <p>posture 19:6</p> <p>potentially 25:18</p> <p>preliminary 7:2, 7:17, 14:4, 21:12, 21:25, 22:11, 23:5, 23:13</p> <p>prepared 23:7</p> <p>preparing 16:11</p> <p>present 3:14, 8:15</p> <p>pretty 18:18, 19:16, 25:23, 25:24, 37:11</p> <p>previous 20:1, 21:19, 24:8</p> <p>previously 7:18</p> <p>previously-licen- sed 27:21</p> <p>price 18:20</p> <p>primarily 14:11</p> <p>prior 27:20</p> <p>proactively 19:5</p> <p>probably 13:15, 30:3, 31:3</p> <p>problematic 29:4</p>	<p>procedural 13:15</p> <p>procedure 15:8</p> <p>procedures 15:22</p> <p>proceed 24:22</p> <p>proceedings 39:4, 40:4</p> <p>process 7:23, 8:10, 11:24, 12:16, 16:9, 16:11, 16:14, 17:4, 19:14, 22:4, 22:6, 22:21, 32:23, 34:21, 35:1, 36:19</p> <p>processes 11:23</p> <p>profile 18:23</p> <p>prohibit 10:1</p> <p>proper 8:12</p> <p>property 18:9, 19:23, 20:21, 21:4, 21:12, 21:13, 21:14, 21:15, 22:15, 23:7, 23:17, 24:5, 24:7, 24:15, 24:18, 27:20, 31:9, 31:12</p> <p>proposed 8:6</p> <p>protocol 13:23, 14:1</p> <p>provide 22:3, 22:18, 33:21</p> <p>provides 28:15</p> <p>public 2:10, 4:13,</p>	<p>19:19, 39:1, 39:14</p> <p>pull 6:19, 30:11</p> <p>purpose 18:8, 21:20</p> <p>purposes 17:11, 33:10</p> <p>pursue 13:13</p> <p>put 6:5, 6:14, 13:13, 14:15, 21:2, 21:21, 22:9, 37:1, 37:24</p> <p>puts 27:2</p> <p>putting 18:8</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quality 18:17</p> <p>question 8:11, 16:12, 16:15, 16:16, 18:2, 23:2</p> <p>questions 6:11, 7:1, 16:14, 22:21, 25:1</p> <p>quite 20:18, 23:11</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radar 13:11, 29:6</p> <p>raise 6:6</p> <p>range 18:20</p> <p>rare 18:18</p> <p>rarely 23:4</p> <p>reach 9:4, 12:23,</p>
--	---	--	---

<p>14:19, 14:24, 22:5, 22:7 reached 12:24, 21:11 read 9:17, 10:17, 11:7 reading 30:22 real 22:23 realize 13:12 realizing 7:14 really 8:23, 9:7, 19:18, 22:1, 25:21, 26:6, 30:18, 32:5, 35:2, 35:8, 36:15 reapply 32:24, 33:7, 33:10, 33:20, 33:24, 35:15, 35:20 reapplying 34:22, 36:9 reason 5:24, 15:24, 37:1 reasonable 13:17 reasons 10:10, 19:1, 20:17, 26:9, 28:10 receive 7:22, 23:12, 23:15 received 7:23, 16:9, 16:10, 19:15, 21:9, 21:11, 24:13 recently 6:18</p>	<p>recognize 17:2 recognizing 13:14 recollection 18:13 record 6:1, 16:13, 17:8, 24:5, 32:19, 34:8, 35:12, 37:15, 40:3 recorded 39:4, 40:4 recording 4:3, 5:21, 5:22, 5:25, 40:5 records 14:3, 17:13, 19:4, 27:22 red 26:19, 27:8, 27:10, 29:1 redirect 35:20, 36:1, 36:2 redirecting 35:3 reduce 28:2 reed 18:25, 20:11 reflect 27:23 refunded 33:17 regarding 8:14, 22:21 regardless 19:6 registered 17:12, 17:17, 18:7, 24:10, 24:11 regulations 29:24 reinspection 14:6, 32:25,</p>	<p>33:2 rejected 33:13 rejection 35:23 related 39:5, 40:7 relating 30:14 relevant 31:14 relief 16:8, 16:16, 28:18, 31:11, 32:10, 33:22 remeasure 21:20 render 34:12 rendered 35:17 renders 34:14 rent 17:23, 18:24 renters 23:6 renting 20:10 reopening 35:1 report 9:16, 9:23, 9:25, 14:4, 21:25, 22:11 reporter 37:11, 39:1 request 14:21 requests 9:21, 9:24 required 14:22, 30:12 requirement 8:7, 8:18, 12:6, 18:3, 27:6, 28:14, 28:18, 30:24</p>	<p>requirements 13:16, 17:17, 17:24, 18:4, 18:12, 18:18, 21:17, 22:25, 24:11, 27:5, 30:25 requires 19:2 research 10:23, 10:25 residency 20:13 resistance 31:21 resolution 16:16, 22:18 resolve 7:24, 11:16, 16:15 resolved 21:23 respect 15:20 response 13:2 restrict 10:18 returned 14:7 returning 13:3 review 8:9, 8:17, 9:9, 12:7, 35:4 right 4:19, 7:8, 7:9, 7:15, 8:21, 8:22, 8:24, 8:25, 9:1, 9:2, 9:3, 9:7, 9:9, 10:5, 11:2, 11:15, 13:20, 14:15, 15:1, 15:5, 15:25, 16:17, 16:18, 16:20, 16:23, 21:6, 22:9,</p>
--	---	--	--

<p>25:5, 25:17, 25:25, 26:4, 26:5, 26:8, 26:12, 26:14, 26:17, 26:18, 26:20, 26:23, 26:24, 27:7, 27:8, 27:10, 27:18, 28:2, 28:3, 28:5, 28:14, 28:15, 28:20, 28:24, 29:1, 29:2, 29:5, 29:9, 29:10, 29:11, 29:12, 29:13, 29:21, 30:1, 30:4, 30:20, 30:25, 31:4, 31:6, 31:15, 31:21, 32:5, 32:8, 32:9, 32:10, 32:13, 32:19, 33:18, 34:4, 34:6, 34:9, 34:12, 35:1, 35:9, 35:15, 35:24, 36:8, 36:13, 37:7, 37:13, 37:19, 37:22, 37:23, 38:8 rings 29:18 rlu 17:17, 18:4, 18:7, 18:8, 26:5, 27:21, 31:14 road 8:21 rockville 3:9 room 3:8, 31:19 run 23:25 russian 26:17, 27:8,</p>	<p>27:9, 27:10, 29:2 <hr/>S<hr/>said 16:3, 24:21, 25:24, 28:21, 28:22, 33:25, 37:14, 38:1, 39:3, 40:4 same 7:9, 17:20, 31:23 say 6:5, 9:18, 10:6, 13:6, 18:12, 22:3, 23:4, 26:3, 28:13, 29:23, 31:6, 31:17, 32:3, 36:14 saying 8:23, 10:19, 12:4, 12:10, 32:23, 35:3 says 7:19, 9:21, 9:23, 15:14, 26:24, 27:4, 27:8, 35:25 schedule 21:12 scope 9:9 screen 6:21 seal 39:9 second 26:22 section 4:15, 4:17, 4:20, 4:21, 27:3, 27:9 sections 4:14 security 25:12</p>	<p>see 4:22, 5:23, 6:22, 7:1, 21:21, 27:16, 31:3, 32:3, 33:11, 34:3, 36:6 seek 16:7 seeking 32:10, 33:22 seem 13:18, 26:4, 30:13 seemed 17:20 seems 5:18, 12:13 seller 17:10, 17:15, 20:19 seller's 17:12 sellers 20:2 send 10:16 sense 12:12, 17:23, 29:16, 33:9, 34:15 sensible 13:17 sent 7:18, 14:17, 15:5, 15:6, 15:10, 15:14, 15:15, 15:19, 24:15 series 4:18 serve 17:11 services 5:22 set 14:21, 26:16, 26:19, 26:20,</p>	<p>39:8 setting 6:2 seven 6:14 share 6:13, 6:21 shave 32:21, 32:24, 33:23, 35:14, 36:10, 38:2 shaved 31:18 short 18:6 should 9:15, 11:3, 14:16, 20:6, 22:20 show 19:4, 31:8 sides 16:2, 19:11 sign 19:15 signature-5tmlq 39:12 signature-b7fzpz 40:12 significant 11:25, 12:8 simply 5:22, 22:25, 33:2 since 5:18, 6:4, 6:23, 12:3, 19:4, 20:9, 24:8 site 21:19 situation 6:9, 12:4, 30:17 situations 22:2 size 24:22 sized 20:25</p>
---	---	--	---

<p>slice 27:24</p> <p>small 5:18, 6:4, 6:23, 26:22</p> <p>sold 24:15</p> <p>sole 5:24, 8:18</p> <p>some 8:8, 8:10, 8:16, 10:24, 11:15, 12:24, 17:4, 18:1, 18:15, 20:5, 22:17, 26:23, 30:6, 32:12, 34:9, 36:5</p> <p>somebody 15:6</p> <p>somehow 31:18, 38:2</p> <p>someone 10:14, 11:13, 11:14, 13:22, 15:3, 30:15</p> <p>something 5:23, 5:24, 23:11, 26:13, 27:18, 28:20, 36:25, 37:2</p> <p>sometimes 26:15, 37:3</p> <p>somewhere 31:18</p> <p>soon 32:6</p> <p>sorry 20:15, 24:9, 25:7</p> <p>sort 22:21</p> <p>sounds 38:8</p> <p>soup 21:7</p> <p>space 12:15, 28:1</p>	<p>speak 4:6, 22:22, 24:11, 25:10, 30:7</p> <p>speaking 5:19, 24:3, 24:21</p> <p>specific 15:13, 16:5</p> <p>specifically 4:17, 4:25, 17:11, 17:14</p> <p>specifics 22:19</p> <p>specifies 15:21</p> <p>speculate 13:5</p> <p>spell 4:9, 5:5</p> <p>spelled 5:8, 5:10</p> <p>spelling 37:12</p> <p>spellings 37:10</p> <p>spend 10:24</p> <p>spent 11:22, 11:25, 12:25, 13:6</p> <p>spiel 4:11</p> <p>spirit 19:2</p> <p>spoke 15:6</p> <p>square 5:1, 8:6, 8:17, 8:20, 8:23, 12:5, 12:14, 14:11, 14:14, 16:15, 17:18, 18:3, 18:12, 20:19, 21:18, 21:19, 21:22, 21:23, 22:14, 22:23, 22:24,</p>	<p>23:1, 23:2, 23:3, 23:9, 23:10, 23:18, 23:20, 24:1, 26:7, 27:6, 27:12, 27:24, 28:4, 28:17, 29:2, 30:10, 31:15, 31:16, 31:23, 32:11, 33:25, 34:3, 35:5, 35:14, 38:2, 38:3</p> <p>square-foot 28:18, 31:17, 34:5</p> <p>square-footage 16:6</p> <p>staff 32:1</p> <p>stakes 35:19</p> <p>standing 31:22</p> <p>standpoint 19:18</p> <p>start 6:1, 37:18</p> <p>started 4:8, 4:11, 19:4</p> <p>starting 10:22, 18:22, 20:12, 38:3</p> <p>state 2:11, 4:9, 39:15</p> <p>stated 5:1</p> <p>statement 6:24, 6:25, 7:6, 7:7, 10:17</p> <p>status 19:7</p> <p>step 10:23, 12:22, 15:2, 35:10</p> <p>steps 9:5, 11:8,</p>	<p>11:17, 11:22, 15:3, 17:16</p> <p>still 12:9, 18:1, 28:15, 28:16, 34:3, 34:20, 34:22, 34:24</p> <p>story 10:20, 10:21, 18:6</p> <p>straightforward 25:23</p> <p>strict 25:24</p> <p>submit 35:17</p> <p>submitted 7:5, 7:6, 17:7</p> <p>suitability 18:17</p> <p>summer 13:10</p> <p>super 36:21</p> <p>supervisor 14:20, 15:7, 22:20, 24:21</p> <p>supplemental 6:16</p> <p>support 5:12</p> <p>supporting 40:6</p> <p>supposed 10:9, 11:1, 15:23</p> <p>sure 9:11, 9:13, 17:7, 25:8, 27:10, 29:20, 33:6, 35:6, 37:7</p> <p>surrounding 30:14</p> <p>swear 7:3, 7:9, 7:14</p> <p>sworn 7:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>t-z-e-n-g 5:10</p>
--	--	---	---

<p>taken 39:3 takes 27:1 talk 4:12, 9:10, 9:20, 10:22, 11:3, 16:21, 26:3, 27:12 talked 11:12, 11:13, 11:14 talking 5:25, 12:14 talks 8:24, 8:25, 26:1 teams 5:17 tech 3:15 technical 19:18 technically 37:15 telephone 5:21 tell 10:16, 11:8, 13:4, 16:23, 16:24, 16:25, 17:13, 19:22, 21:4, 21:7, 28:9, 30:8, 30:22, 31:1, 32:22 telling 10:9 tenant 24:13, 25:11 tenants 24:14 term 29:11 terms 11:22 th 14:10, 21:14,</p>	<p>37:24, 39:9 thank 5:16, 5:17, 7:12, 8:1, 8:2, 17:2, 21:6, 29:20, 36:16, 36:18, 38:7, 38:8, 38:10 theirs 34:14 themselves 5:4 thing 5:3, 7:16, 22:21, 28:13, 29:9, 31:22, 32:15 things 4:5, 25:19, 29:4, 29:6, 30:13, 30:17, 31:2, 32:4, 32:5, 37:3, 38:4 think 5:11, 6:7, 8:3, 8:7, 8:10, 16:1, 16:2, 16:24, 17:25, 18:4, 18:23, 19:3, 20:17, 21:5, 26:16, 29:11, 30:3, 30:15, 32:13, 33:18 thought 17:23 three 12:1, 26:21 through 7:14, 12:24, 17:4, 17:5, 21:15, 22:18, 30:16, 35:3 thursday 10:15, 37:17, 37:18 time 7:9, 8:2, 9:7, 9:21, 10:8,</p>	<p>10:13, 10:24, 11:22, 12:1, 12:9, 13:6, 13:10, 17:24, 18:4, 18:15, 21:25, 29:5, 31:4, 36:16, 37:14 timeframe 10:8 timely 25:20 times 9:4, 10:5, 33:12, 33:13 timing 8:3, 8:10, 17:25 today 4:15, 31:6, 31:11, 37:15, 37:16 together 6:20, 30:12 took 11:9, 11:17, 12:8, 20:22, 21:15, 29:5, 32:16 touch 30:15 transcribed 1:25, 40:4 transcriber 40:1 transcribing 4:4 transcript 40:3 transcription 5:22, 6:2 tried 12:20 true 29:18, 29:23, 40:3 try 7:15, 12:22,</p>	<p>12:23 trying 10:24, 12:7, 13:7, 14:11 tuesday 10:14 two 11:20, 11:23, 15:2, 38:4 two-plus 18:19, 20:25 type 12:7, 12:15 typed 15:15 typical 31:5 typically 23:9, 23:16 tzeng 1:7, 3:17, 5:4, 5:9, 6:9, 7:18, 8:1, 9:2, 9:11, 11:5, 11:11, 11:18, 12:22, 16:1, 16:23, 17:2, 20:3, 20:8, 20:13, 20:15, 20:17, 21:5, 24:25, 25:3, 25:10, 25:14, 25:16, 34:16, 34:19, 35:6, 35:9, 35:19, 35:23, 36:3, 36:12, 36:15, 37:6, 37:20, 38:7</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>ultimate 18:2, 19:6 ultimately 15:23, 22:22 unable 21:22 uncertainty 12:9</p>
--	---	---	--

<p>understand 8:18, 9:15, 9:25, 10:3, 16:8, 17:15, 20:21, 25:20, 29:7</p> <p>understandable 16:2</p> <p>understandably 16:10</p> <p>understanding 6:12, 21:18, 37:5</p> <p>understood 38:7</p> <p>unique 12:13, 17:3, 17:4, 27:19, 31:9</p> <p>uniqueness 27:13, 29:11, 31:12</p> <p>unit 4:14, 17:12, 20:7, 24:9, 24:10, 24:11, 24:20, 26:25, 27:2</p> <p>until 7:22, 11:15, 24:17, 34:14, 35:16</p> <p>urgency 11:15</p> <p>use 6:6, 15:23, 17:21</p> <p>useful 18:8</p> <p>usually 23:5, 37:2</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>valid 27:17</p> <p>variance 12:16, 27:4, 27:5, 27:12,</p>	<p>27:13, 28:11, 28:12, 28:15, 29:1, 30:6, 30:10, 30:23, 30:24, 31:5, 31:7, 31:9, 31:16, 31:17, 31:24, 32:11, 33:23, 34:5, 34:19, 34:25</p> <p>variances 31:3</p> <p>venue 8:11, 16:7</p> <p>verify 24:22, 37:24</p> <p>versus 12:17</p> <p>virtually 1:11, 2:1</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>waiting 33:11, 33:15</p> <p>waiver 8:16, 22:3, 25:25, 28:22, 28:23, 28:24, 29:10</p> <p>waivers 9:22, 9:24</p> <p>walk 21:15, 30:16</p> <p>walter 18:25, 20:11</p> <p>want 6:1, 6:13, 6:19, 6:24, 6:25, 8:25, 10:11, 11:16, 18:23, 21:3, 22:16, 23:17, 25:2, 28:4, 31:23, 32:20, 33:10, 33:13, 33:14</p> <p>wanted 19:21</p>	<p>way 6:7, 7:2, 10:3, 10:17, 11:2, 11:7, 12:11, 13:8, 13:16, 19:10, 19:20, 20:18, 22:9, 23:8, 26:5, 26:15, 26:23, 27:25, 28:2, 29:14, 31:22</p> <p>we'll 4:10, 5:2, 7:2, 16:20, 37:18</p> <p>we're 5:19, 5:25, 11:24, 12:14, 19:10, 22:25, 32:4</p> <p>we've 6:18, 19:3, 30:11, 32:13</p> <p>website 10:12, 11:19, 11:20, 15:21</p> <p>websites 11:19</p> <p>weeks 11:18, 12:25, 13:7, 34:10</p> <p>went 11:19</p> <p>weren't 12:18</p> <p>whereof 39:8</p> <p>whereupon 4:2</p> <p>whether 16:14, 16:19, 26:7, 28:19, 30:19, 31:15, 33:22, 33:23, 35:13, 35:14, 35:20, 36:10</p> <p>whole 10:12, 32:8</p> <p>wise 18:13</p>	<p>wish 7:5, 14:17, 22:14, 24:24, 37:25</p> <p>withdraw 32:21, 37:25</p> <p>withdrawal 38:5</p> <p>withdrawn 34:11</p> <p>within 9:16, 9:22, 10:8, 10:10, 11:8, 13:15, 18:11, 19:16, 21:22, 22:20, 30:2, 30:8, 36:6</p> <p>without 7:8, 33:14</p> <p>witness 39:8</p> <p>witnesses 7:4</p> <p>work 7:3, 13:16, 14:15, 20:11, 32:25</p> <p>worked 23:5</p> <p>working 8:4, 18:15, 19:4, 24:7</p> <p>works 27:11</p> <p>worry 5:20, 7:10</p> <p>worse 7:13</p> <p>worth 12:1, 13:5, 31:20</p> <p>write 14:3, 36:7, 38:6</p> <p>wrong 26:13</p> <p>wrote 21:25</p>
--	---	---	---

Y	21:24, 22:24, 23:1, 28:18 1,300 8:20, 8:23, 21:23, 22:24, 28:4, 28:17, 31:15, 34:3 10 38:11 100 3:7, 21:23, 27:24, 31:16, 32:21, 32:24, 33:23, 33:25, 34:5, 34:24, 35:5, 35:14, 36:10, 38:2 12 1:12, 37:18, 37:24 16 7:21, 14:3, 14:10, 21:14 19 39:9, 40:16 1901 17:25 <hr/> 2	240 3:10 28 1:13 2919 4:15 2926 4:16 <hr/> 3	
Z	zoning 1:1, 3:5, 4:19, 4:22, 4:23, 13:4, 17:25, 21:24, 27:3, 27:6 zta 17:25 <hr/> .2 4:18, 4:23, 27:4, 30:23 .3 4:18, 4:23, 27:1, 30:23 <hr/> 0	30 7:19, 9:8, 9:16, 9:20, 9:22, 10:1, 10:8, 10:10, 11:8, 19:15, 34:8, 35:12, 36:6, 37:15 31 37:17, 37:19 <hr/> 4	
1	200 3:8 2013 19:24 2016 24:13 2018 24:19, 27:23 2021 24:8, 24:20 2022 1:12, 7:21, 39:10, 40:16 20850 3:9 23 1:3 24 38:11	40 1:24 472688 1:23 <hr/> 5	
1,200	59 4:19, 27:1, 29:1, 30:6 59.3 4:18, 4:23, 27:1 59.7 30:23 <hr/> 6		
14:14, 21:22,	6660 3:10 <hr/> 7		
	7.3 27:4 777 3:10 <hr/> 9		
	9 1:13		