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Transcript of Hearing

Date: June 6, 2024

Case: Dong Ya LLC/Hong Chen LLC (CU 24-15)

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Conducted on June 6, 2024

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13 ALSO PRESENT: Phillip A. Hummel, Esquire	13
14 (Observing)	14
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<p style="text-align: right;">5</p> <p>1 PROCEEDINGS 2 HEARING EXAMINER LEWINTER: I apologize 3 for the delay. We were having some technical 4 difficulties as everyone can see, but it appears 5 that we are now both hybrid -- I mean we're 6 virtual and here in person, so we're effectively 7 hybrid. 8 This is a public hearing OZAH Case 9 Number CU 24-15, the application of Dong Ya LLC 10 and Hong Chen LLC to permit the conditional use of 11 an automobile filling station and convenience 12 retail store at 55 -- at 15585 and 15595 Old 13 Columbia Pike, Burtonsville, Maryland in the CRTF 14 zone. 15 My name is Andrea LeWinter and I'm 16 serving as the hearing examiner today. It is my 17 role to listen, take evidence, and write a 18 decision regarding this case. If I could have the 19 applicants and counsel introduce themselves for 20 the record. 21 MS. HARRIS: Good morning. Patricia 22 Harris with Lerch, Early & Brewer on behalf of the 23 petitioners. 24 HEARING EXAMINER LEWINTER: Thank you. 25 MR. HUMMEL: Good morning. My name is</p>	<p style="text-align: right;">7</p> <p>1 MS. HARRIS: Yeah. 2 HEARING EXAMINER LEWINTER: -- the 3 office. You've already provided her a copy or 4 will get this to her? 5 MS. HARRIS: No, I think that's the 6 original. She doesn't have a copy as far as I 7 know. 8 HEARING EXAMINER LEWINTER: Okay. So I 9 have this in hand so we can proceed on that. For 10 the record I'm just going to provide some 11 information for the record on how these 12 proceedings will progress. They are informal with 13 certain formalities. 14 Please do not interrupt while someone 15 else is speaking unless you have an objection. 16 This is because the court reporter has difficulty 17 understanding what people are saying when there is 18 crosstalk. This is particularly important in this 19 hybrid format where some people will be physically 20 present and others will be online. 21 This session is being transcribed and 22 recorded. The recording is used only as a backup 23 for the stenographer. Anyone testifying will be 24 testifying under oath and will be recorded, and I 25 may be able to -- I may ask you questions about</p>
<p style="text-align: right;">6</p> <p>1 Phillip Hummel with Miles & Stockbridge here in 2 Rockville. I'm here on behalf of Wawa. Ms. 3 Harris will be capably taking the lead here. We 4 do have a representative from Wawa who will be 5 testifying, but other than that I'm really just 6 here to primarily observe. 7 HEARING EXAMINER LEWINTER: Thank you. 8 I did not see -- I do not see anyone in 9 opposition. It is my understanding that there is 10 one individual on the virtual screen who is 11 actually part of the petitioners' cohort. She's a 12 part owner; is that correct? 13 MS. HARRIS: Yes, she is both the 14 spouse and part owner of the property. 15 HEARING EXAMINER LEWINTER: Okay. So I 16 don't see anybody online in opposition. As I'm 17 sure you're aware, Ms. Harris, if somebody shows 18 up before the close of applicant's case they would 19 be allowed to participate, but as of now we'll 20 move forward. 21 And my understanding, too, is that an 22 affidavit of posting was filled out this morning, 23 so I'll make sure to get this to Nana or maybe 24 you've already -- I'm sorry, to Ms. Johnson from 25 --</p>	<p style="text-align: right;">8</p> <p>1 your testimony. 2 The proceedings will move forward in 3 the following order: If there's any preliminary 4 motions or issues we will address those first. 5 Then if the applicant chooses you may make an 6 opening statement. Then the applicant's case in 7 chief with opportunity for cross-examination if 8 anybody appears in opposition, opposition's case 9 in chief, if anybody again appears in opposition, 10 presentation of any interested parties, 11 cross-examination of those parties, rebuttal case 12 if necessary and then closing statements, again 13 optional. 14 Approval of the petition is based on 15 the criteria set forth in the zoning ordinance 16 which is included in the planning staff report. 17 Please address all testimony to this criteria. 18 Are there any preliminary motions? 19 MS. HARRIS: There are not. 20 HEARING EXAMINER LEWINTER: Okay. So 21 Ms. Harris, would you like to make an opening 22 statement? 23 MS. HARRIS: Briefly, yes. Thank you. 24 HEARING EXAMINER LEWINTER: Okay. 25 Thank you. And just for the record, too, I do try</p>

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<p style="text-align: right;">9</p> <p>1 to take my own notes. 2 MS. HARRIS: Okay. 3 HEARING EXAMINER LEWINTER: Just it 4 helps me track the transcript later on, so if I 5 ask you just for a second to catch up I appreciate 6 that. 7 MS. HARRIS: Okay. Thank you. 8 HEARING EXAMINER LEWINTER: Thank you. 9 MS. HARRIS: Good morning. Again Pat 10 Harris with Lerch, Early & Brewer on behalf of the 11 petitioners, the property owners, Hong Chen LLC 12 and Dong Ya LLC, the owners of 15585 and 15595 Old 13 Columbia Pike. 14 This is a conditional use for an 15 automotive filling station as the hearing examiner 16 noted, and as you will hear through the testimony 17 this is essentially a continuation of the existing 18 use which is currently on the property with 19 modifications, however, and upgrades to the 20 property. 21 The owners have a pending lease with 22 Wawa and you will hear from a representative from 23 Wawa. I wanted to provide just a brief history of 24 the recent history of the property to avoid any 25 confusion, but I certainly don't want to dwell on</p>	<p style="text-align: right;">11</p> <p>1 modification of the existing special exception was 2 not appropriate and we needed to file a new 3 conditional use. 4 Hence, we withdrew the special 5 exception and we have the conditional use 6 application which is before you. It's 7 substantively the same application and the staff 8 memo from park and planning reaffirms this. 9 Through our witnesses you will hear 10 that the proposed use satisfies the specific 11 conditional use criteria for an automobile filling 12 station, that it satisfies the general criteria 13 for conditional use, it's consistent with the CRT 14 floating zone, and you'll hear more about that 15 through our land use planner. It substantially 16 conforms to the master plan and it's compatible 17 with the surrounding area. 18 We have five witnesses this morning, 19 Mr. Tony Cheng who is the property owner and the 20 applicant and his wife Jennifer Cheng is 21 participating virtually, Mr. Chris Hoffman who is 22 the representative from Wawa, Kevin Foster who is 23 a certified land planner from GLW, Tim Longfellow, 24 the civil engineer from GLW, and Nick Driban, the 25 traffic engineer from Lenhart Traffic Consulting.</p>
<p style="text-align: right;">10</p> <p>1 this. There is an existing special exception on 2 the property that's S-847-A. 3 And so given this the initial -- the 4 existing special exception the applicant initially 5 pursued an amendment to the special exception. It 6 received a favorable staff report. That's Exhibit 7 31 in the record, and there is unanimous support 8 by the planning board of that application. 9 We also had a community meeting 10 associated with that special exception, although 11 it wasn't required, in October of 2023. There 12 were only a few people that attended that meeting 13 and there was no expression of concern. 14 In fact, there was comment about the 15 favorable storm water management treatment. It 16 was a very brief meeting. We have since then had 17 another community meeting because we have filed 18 the preliminary plan in this case and no one 19 attended that, so -- 20 HEARING EXAMINER LEWINTER: Will you 21 have anybody testifying to this? 22 MS. HARRIS: Yes, yes. 23 HEARING EXAMINER LEWINTER: Okay. 24 MS. HARRIS: So in April the former 25 zoning hearing examiner determined that a</p>	<p style="text-align: right;">12</p> <p>1 We are in receipt of the questions that 2 the hearing examiner posed on June 4th and we will 3 be addressing those questions through the 4 testimony of the witnesses, and so with that 5 unless the hearing examiner has any questions 6 we're ready to call our first witness. 7 HEARING EXAMINER LEWINTER: No, you may 8 proceed. I'm sorry. You may proceed. Thanks. 9 MS. HARRIS: Thank you. And where 10 would you like the witness -- our first witness is 11 Mr. Cheng, and I didn't know whether you wanted 12 him to sit here or is that typically what you do? 13 HEARING EXAMINER LEWINTER: Yeah, 14 typically. 15 MS. HARRIS: Okay. 16 HEARING EXAMINER LEWINTER: I'm sorry. 17 Typically they can stay at the table with you. 18 MS. HARRIS: Okay. 19 HEARING EXAMINER LEWINTER: They don't 20 have to come up here. 21 MS. HARRIS: Okay. Mr. Cheng. 22 THE WITNESS: Hi. 23 HEARING EXAMINER LEWINTER: Good 24 evening, sir. If -- when you speak if you could 25 just turn your microphone on.</p>

<p>13</p> <p>1 THE WITNESS: Okay.</p> <p>2 HEARING EXAMINER LEWINTER: And if I</p> <p>3 can just swear you in if you can raise your right</p> <p>4 hand. Do you solemnly swear under the penalties</p> <p>5 of perjury that the statements you are about to</p> <p>6 make are the truth, the whole truth, and nothing</p> <p>7 but the truth?</p> <p>8 THE WITNESS: Yes, I do.</p> <p>9 HEARING EXAMINER LEWINTER: Thank you.</p> <p>10 Ms. Harris, your witness.</p> <p>11 MS. HARRIS: Thank you.</p> <p>12 EXAMINATION BY COUNSEL</p> <p>13 ON BEHALF OF THE PETITIONERS</p> <p>14 BY MS. HARRIS:</p> <p>15 Q Please state your full name and address</p> <p>16 for the record.</p> <p>17 A My name is Kuo-Chien Cheng, and the</p> <p>18 address is 9106 Shad, S-H-A-D, Lane, Potomac,</p> <p>19 Maryland, 20854.</p> <p>20 Q And can you please identify your legal</p> <p>21 interest in the property?</p> <p>22 A My wife Jennifer Cheng, who is on the</p> <p>23 line, and I own the properties and we acquire that</p> <p>24 15585 Old Columbia Pike which is part C in 1997</p> <p>25 and the 15595 Old Columbia Pike which is part D in</p>	<p>15</p> <p>1 occupied by a magic store and it's on a</p> <p>2 month-to-month lease. We have entered -- we have</p> <p>3 entered into a lease with Wawa to operate a</p> <p>4 convenience store and a gas station on the</p> <p>5 property, on both properties, parcels, part C and</p> <p>6 part D.</p> <p>7 When the -- when 7-Eleven vacate the</p> <p>8 property it will be redeveloped with the goal that</p> <p>9 it will be complete and ready for Wawa's operation</p> <p>10 in mid 2026.</p> <p>11 MS. HARRIS: Thank you. I don't have</p> <p>12 anymore questions for Mr. Cheng.</p> <p>13 HEARING EXAMINER LEWINTER: Okay.</p> <p>14 Thank you, sir.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 MS. HARRIS: Thank you. And then our</p> <p>17 next witness is Mr. Chris Hoffman with Wawa.</p> <p>18 THE WITNESS: Good morning.</p> <p>19 HEARING EXAMINER LEWINTER: Good</p> <p>20 morning, Mr. Hoffman. If you could raise your</p> <p>21 right hand. Do you solemnly swear under penalties</p> <p>22 of perjury that the statements you are about to</p> <p>23 make are the truth, the whole truth, and nothing</p> <p>24 but the truth?</p> <p>25 THE WITNESS: Yes.</p>
<p>14</p> <p>1 2005 -- 2015.</p> <p>2 Q 2015?</p> <p>3 A Yes, and Hong Chen LLC owns parcel C</p> <p>4 and Dong Ya LLC owns parcel D. Jennifer Cheng and</p> <p>5 I are owning individuals with the interest in</p> <p>6 these two LLC, and as the owner we are persuaded</p> <p>7 of looking for the conditional use for the</p> <p>8 properties.</p> <p>9 Q And can you please briefly identify the</p> <p>10 current use of the property and also the status of</p> <p>11 the current lease?</p> <p>12 A Okay. Part C which is the 15585 Old</p> <p>13 Columbia Pike occupied by 7-Eleven convenience</p> <p>14 store and a gas station for 24 hours operation,</p> <p>15 7-Eleven has occupied this property right before</p> <p>16 we acquired the properties and they have occupied</p> <p>17 since 1982 and the lease expires on August 20 --</p> <p>18 August 31st, 2025 which is this year, and it will</p> <p>19 --</p> <p>20 Q I'm sorry. Can you restate when the</p> <p>21 lease expires?</p> <p>22 A August 31st, 2024.</p> <p>23 Q Thank you.</p> <p>24 A And -- but we are working on extension</p> <p>25 to May 31st, 2025 and the parcel D currently is</p>	<p>16</p> <p>1 HEARING EXAMINER LEWINTER: Thank you.</p> <p>2 EXAMINATION BY COUNSEL</p> <p>3 ON BEHALF OF THE PETITIONERS</p> <p>4 BY MS. HARRIS:</p> <p>5 Q Good morning, Mr. Hoffman. Can you</p> <p>6 please identify -- state your full name and</p> <p>7 address for the record?</p> <p>8 A Yes. My name is Christopher Hoffman,</p> <p>9 and my business address is 260 West Baltimore</p> <p>10 Pike, Wawa, Pennsylvania, 19063.</p> <p>11 Q And can you please identify your scope</p> <p>12 of responsibilities?</p> <p>13 A Yes. My job title is real estate</p> <p>14 project engineer, and in that my responsibilities</p> <p>15 include supporting and managing the titlement and</p> <p>16 approval process -- titlement approval, permitting</p> <p>17 process of our projects in Maryland and West</p> <p>18 Virginia.</p> <p>19 Q And what is Wawa's interest in the</p> <p>20 subject property?</p> <p>21 A We have an executed lease with the</p> <p>22 property right now, and when the current lease</p> <p>23 expires we plan to redevelop the property and</p> <p>24 essentially step into the shoes operating a</p> <p>25 similar -- the same use, a gas/convenience use.</p>

17

1 Q Thank you. And can you please provide
2 for the hearing examiner -- for the hearing
3 examiner a description of Wawa's operations in
4 terms of hours, number of employees, services,
5 maintenance and gas facilities?

6 A Yes. We plan to operate a typical Wawa
7 store here which would include a 24/365 -- 24
8 hour, 365 business operating a gas and convenience
9 store. We plan to -- the store will have our
10 typical amount of employees which generally range
11 between 40 and 60 on a store of this size.

12 Our operation team believes we'll start
13 this store at around 50 employees and adjust as
14 necessary. We operate a typical three-shift
15 system generally which is how this store will
16 start. The shifts are usually something like 7:00
17 to 3:00, 3:00 to 8:00 and 8:00 to 7:00 -- or I'm
18 sorry, 3:00 to 11:00 and 11:00 to 7:00. However,
19 based on how customers utilize the store those
20 shifts can be changed.

21 We expect that this store will sell
22 approximately a little bit more than one tanker
23 worth of fuel a day, and therefore on an average
24 normal day we expect one delivery of fuel.
25 However, we will have three products in the

18

1 ground, regular, premium and diesel, and it is
2 possible from time to time that all three of those
3 products would need to be filled up on a given
4 day, so there is a potential that we'll have three
5 fuel deliveries on a rare day but generally on
6 average one per day.

7 For the deliveries to the C store we
8 expect that we generally have -- one is a general
9 provisioning delivery which comes every other day.
10 One is our Wawa dairy delivery which comes every
11 other day. Those every other days are usually
12 planned to be opposite each other, so it's one
13 large truck delivery per day for those two
14 categories of items.

15 In addition, we have a daily delivery
16 that we call our fresh channel, that that would
17 bring more perishable products to the store and
18 that is -- comes to the store daily. Generally
19 our deliveries are not specifically timed, but we
20 try to have them there before the morning rush
21 overnight.

22 We expect that we'll have trash removal
23 here twice per week and we will employ a local
24 landscaping contractor to upkeep the property with
25 lawn mowing and, you know, cleaning up of beds and

19

1 replanting from season to season and so forth.

2 Q In terms of the gas deliveries is it
3 always that you're refueling the under tank,
4 storage tank completely, or are there situations
5 where the tanker comes and is just filling it up
6 to the extent it's emptied a little bit, can you
7 explain that a little bit?

8 A Yes, of course. It's most efficient
9 for us to bring a truck full to the store and
10 completely empty it into the tanks. However, that
11 does not happen all the time. The tankers have
12 multiple compartments which can enable one truck,
13 for instance, to visit a number of stores and in
14 essence top them off, so that is another potential
15 operation we may see on the site.

16 Q And you stated that trash removal is
17 typically twice per week. As you get into
18 operations is there the instance where those times
19 get adjusted, you may realize it needs to be three
20 days a week or something more?

21 A Yes. Similar to staffing the store
22 that's generally where we're going to start and
23 we'll adjust as the store needs.

24 Q Thank you. And is there any gas
25 station service component associated with the

20

1 proposed use?

2 A No, the store will not offer any
3 typical automotive service.

4 Q Thank you. Do you expect Wawa to pump
5 more than 3.6 million gallons annually at the
6 site?

7 A So we understand that there was a
8 provision added to code to address kind of mega
9 stations which may or may not have, you know, 12
10 let's say pumps, and this store will not be that.
11 We are confident that we're going to pump over
12 that number, under that 3.6 million gallons per
13 year for a number of reasons.

14 For one again we're proposing six MPDs
15 as we call them, multiproduct dispensers here.
16 The average six MPD Wawa sells only 2.9 million
17 gallons annually which is far below that 3.6
18 million cap. Further, Maryland is our lowest
19 pumping gas state.

20 In addition, national trade groups are
21 projecting a seven percent reduction in sales over
22 the next years and that is projected to continue
23 into the future, so we don't see fuel as a growing
24 business but a shrinking one.

25 And mostly I'd say a direct comparison

<p style="text-align: right;">21</p> <p>1 of this site, if our two most recent opened stores 2 and closest stores to this one, one being, yes, 3 outside the county but in Laurel, the other being 4 in Gaithersburg, both are pumping clearly under 5 that 3.6 million cap.</p> <p>6 Q Thank you. And can you please describe 7 the design of the Wawa Convenience Store? And for 8 reference this is Exhibit 8C. I don't know if we 9 can bring up 8C. Thank you.</p> <p>10 VIDEO TECHNICIAN: 8C?</p> <p>11 MS. HARRIS: Yes.</p> <p>12 THE WITNESS: All right. What you're 13 looking at now is the proposed store's front 14 elevation. As you will note, this does not look 15 like a typical Wawa let's call it. We -- as of 16 this date we have one store that looks like this 17 opened in Richmond.</p> <p>18 This is our new prototype so it will 19 look different, but in my opinion and in our 20 opinion, you know, a better updated version of 21 what Wawas are out there today. It will have a 22 front -- this is showing the front elevation along 23 the front entrance with some store front art 24 panels and a large Wawa ID sign over the store 25 front glass.</p>	<p style="text-align: right;">23</p> <p>1 that in the future we can have the ability to 2 easily install EV chargers there.</p> <p>3 In the event we do move forward with EV 4 chargers those nine stalls will be converted into 5 eight EV charging stalls with one ADA accessible 6 aisle and at the moment as, you know, we are 7 Tesla's number one partner in businesses that have 8 Tesla super chargers installed which we think is 9 great.</p> <p>10 However, as they build their network 11 out they need new stores less and less, and so at 12 this time we are just not sure if this store is 13 going to be a store that they're interested in 14 installing, but we will pursue a number of other 15 partners as the EV market kind of evolves over the 16 next couple of years.</p> <p>17 Q Thank you. And how did you determine 18 that there was a neighborhood need for this gas 19 station?</p> <p>20 A In particular the best evidence is that 21 there is a gas station, gas convenience site here 22 that operates successfully today, so at a bare 23 minimum we know that there is enough business here 24 to sustain a store.</p> <p>25 In addition, the traffic counts on the</p>
<p style="text-align: right;">22</p> <p>1 BY MS. HARRIS:</p> <p>2 Q And for reference if you could go to 8A 3 just to have a colored version for one moment and 4 then we can move on to the next question. Is 5 there anything else you want to add based on that?</p> <p>6 A No, just this shows a bit better of the 7 remaining elevations. As you can see, the store 8 is finished with some -- a multitude of different 9 materials to try to fit in with kind of the more 10 modern look. As noted the store is a front 11 entrance only store. The rear is a -- will be for 12 loading so we will not have a rear customer 13 entrance here.</p> <p>14 Q Thank you. And will Wawa provide EV 15 charging stations, and if so where will they be 16 located and when would they be installed, and if 17 we could go to Exhibit 7C, please?</p> <p>18 A Yeah. So we acknowledge that the code 19 does not require EV charging stations for the 20 configuration of this site. However, we will 21 denote nine parking stalls at the east side of the 22 site located immediately adjacent to the trash 23 compound as EV enabled let's -- we call it, and 24 that means we have civil engineers avoid designing 25 storm water, other utilities in that area such</p>	<p style="text-align: right;">24</p> <p>1 roadways both immediately adjacent and nearby are 2 indicative of our typical counts that we look for 3 to build a store. We have -- we pulled some local 4 data.</p> <p>5 In particular the trade area has 42,000 6 residents with 14,000 homes, and just to revisit 7 on the traffic volumes Route 198 has 31,000 cars a 8 day, Route 29 had 63,000. Both of those numbers 9 we consider healthy and supportive of our 10 business.</p> <p>11 Q Thank you. And then is Wawa -- well, 12 yeah, is Wawa prepared to adhere to the conditions 13 of approval of the conditional use?</p> <p>14 A Yes, we have hundreds of stores, just 15 eclipsed or about to eclipse a thousand. Many of 16 those operate with conditions of approval and we 17 fully expect that we'd be able to operate here.</p> <p>18 MS. HARRIS: Thank you. I have no 19 further questions for Mr. Hoffman. All right. 20 Just a moment. Maybe I do.</p> <p>21 HEARING EXAMINER LEWINTER: Okay.</p> <p>22 BY MS. HARRIS:</p> <p>23 Q Oh, actually going back to the number 24 of employees, can you -- you stated that there 25 would be initially a max of 40 to 50, but it could</p>

25

1 increase to 60. Is there -- can you identify how
2 many employees at any given time there would be
3 during your peak hour shift?
4 **A Yeah, sorry about that. Yeah, so to be**
5 **clear the number I gave earlier is the total**
6 **amount of employees that, you know, would work at**
7 **that store at any time. In general we believe a**
8 **store of this size would require approximately 12**
9 **employees on its busiest shift and as little as**
10 **three to four in the overnight shift depending on**
11 **how that -- how we learn customers will utilize**
12 **the store overnight.**
13 Q And then finally going back to the
14 market report for a moment, were you aware that
15 the owner prepared -- had prepared a market report
16 by an IMST Corporation?
17 **A Yes, I am aware.**
18 Q And did you review that and did that
19 influence your decision in terms of the need for a
20 gas station and convenience store at this
21 location?
22 **A Yes, it did, and some of the figures I**
23 **gave, traffic volumes and trade area population**
24 **was also referenced in those report -- in that**
25 **report. That report also highlighted just how**

26

1 **many businesses were around that would potentially**
2 **serve as potential customers, how many other gas**
3 **stations are nearby that would be our competitors,**
4 **and the report identified eight in particular, so**
5 **just some supporting information that we used to**
6 **determine the need for the site.**
7 MS. HARRIS: Thank you.
8 BY HEARING EXAMINER LEWINTER:
9 Q Okay. If I could just ask a couple of
10 quick clarifying questions. Just to go back to
11 the number of employees I thought you said it
12 would probably start around 50 and it might
13 decrease or increase.
14 **A Uh-huh.**
15 Q So that would be 10 over the course of
16 the day that might go up or down in terms of
17 staffing?
18 **A Okay. So no. To be clear when I --**
19 **that number I gave, 50 total employees would be,**
20 **you know, one person might not work for a couple**
21 **of days. You know, that's the total number of**
22 **employees there --**
23 Q Okay.
24 **A -- for instance, you know, coming into**
25 **that store, and to be clear we don't -- you know,**

27

1 **our employees don't hop around from store to store**
2 **in the normal course of business. On occasion**
3 **that happens if we have a shortage, but generally**
4 **if you work for Wawa in a store you are assigned**
5 **to one particular store.**
6 Q Uh-huh.
7 **A And that count was representative of**
8 **that, so the store will have a total of again**
9 **somewhere between 40 and 60 people that work for**
10 **it over the course of, you know, the month, the**
11 **week, whatever you want to say. From a shift**
12 **perspective the maximum number of employees we**
13 **would generally have on -- working at any given**
14 **time would be approximately 12.**
15 Q And that would be --
16 **A On our busiest shift.**
17 Q -- at the busiest shift?
18 **A Uh-huh.**
19 Q And you said there was three shifts.
20 Would you characterize one of those as the most
21 busy or is it the -- kind of the two during the
22 day and then the quieter shift at night?
23 **A Yeah, so generally we find that most of**
24 **our stores settle into having -- being either a**
25 **really busy breakfast store or a really busy lunch**

28

1 **store. Some stores are busy both shifts. Some**
2 **are more fluid throughout the day, but in general**
3 **we would expect that one of those shifts, either**
4 **the breakfast shift or the lunch shift, and it's**
5 **hard to estimate that just from what we know now.**
6 **It's generally we open and see how it**
7 **operates, but our expectation is that this one**
8 **will operate similar to other stores and that we**
9 **will find that either the morning shift or the**
10 **afternoon shift is the busy shift that requires**
11 **that 12 -- those 12 employees to properly operate.**
12 Q So kind of worst-case scenario in an
13 extreme situation you'd have 12 in the morning and
14 12 in the afternoon and then four at night, so 28
15 max going in and out of the store in one day --
16 **A That sounds --**
17 Q -- even if there's 50 on the payroll?
18 **A Correct, that sounds like a reasonable,**
19 **yeah, estimation, yes.**
20 Q Okay.
21 **A Yeah, if this store turns out to have**
22 **two very busy shifts.**
23 Q And would you anticipate that those
24 people would be parking in the 50 spots, so there
25 might be 12 employees parking at any given time?

29

1 **A So it's hard to say. We generally do**
2 **find that we try to hire locally, and in these**
3 **types of areas a number of employees end up taking**
4 **public transportation. However, yeah, we would**
5 **generally -- we could expect potentially to have**
6 **those employees, yes, parking in the parking**
7 **field.**
8 Q And Ms. Harris, you may intend to get
9 to this with a different witness in terms of the
10 parking, but if you know, you know, is -- where
11 did the 50 parking spaces come from, why that
12 number? Was that just because of the regulations,
13 or was that because of the structure of the store?
14 **A So generally it's just our knowledge of**
15 **how these stores operate. In almost every other**
16 **hour during the day instead of that peak hour**
17 **there's going to be no need to have 50 parking**
18 **stalls.**
19 **The issue is we want to make sure we**
20 **have enough stalls to serve those busiest times**
21 **because when folks come in on their way to work,**
22 **when they come to lunch that's when we really need**
23 **those 50 stalls, and that's why we request --**
24 **that's why we're designing that many.**
25 Q Okay. So you've had other stores,

30

1 comparable stores that have needed that many
2 spots?
3 **A That's correct, yes.**
4 Q And then you talked about the need for
5 the automobile filling station, and obviously
6 that's the focus of the conditional use, but have
7 there been some studies done in terms of the need
8 for the C store itself?
9 **A So again to start we know that the**
10 **existing C store does a healthy business. Beyond**
11 **that we know that in the immediate trade area**
12 **there isn't -- there are not a great number of**
13 **let's call like larger convenience stores like us.**
14 **So we can look at a market like this**
15 **and know that, you know, with the traffic counts**
16 **that exist, with the rooftops and the day pop.,**
17 **the office population that, you know, if we build**
18 **it there'll be, you know, a decent customer base.**
19 HEARING EXAMINER LEWINTER: Okay. I
20 think that was it for me. I'm just looking real
21 quick. Okay. All right. Thank you.
22 MS. HARRIS: Thank you. Our next
23 witness will be Kevin Foster.
24 HEARING EXAMINER LEWINTER: Thank you.
25 Mr. Foster, if you could raise your right hand

31

1 when you're ready. Do you solemnly swear under
2 penalties of perjury that the statements you're
3 about to make are the truth, the whole truth, and
4 nothing but the truth?
5 THE WITNESS: I do.
6 HEARING EXAMINER LEWINTER: Thank you.
7 EXAMINATION BY COUNSEL
8 ON BEHALF OF THE PETITIONERS
9 BY MS. HARRIS:
10 Q Thank you. Mr. Foster, can you please
11 state your full name and your primary occupation?
12 **A For the record my name is Kevin Foster**
13 **and I'm a landscape architect and certified land**
14 **planner.**
15 Q And how long have you been a land
16 planner?
17 **A I graduated back in '86, so working on**
18 **38 years.**
19 Q And can you please describe briefly
20 your professional and educational background?
21 **A I have an undergraduate degree in**
22 **ornamental horticulture, a master's degree in**
23 **landscape architecture, and I've been employed as**
24 **a landscape architect and a land planner since**
25 **1986. I usually handle residential commercial**

32

1 **land planning and development in the Washington**
2 **and Baltimore region.**
3 Q Thank you. And I know the answer to
4 this, but the hearing examiner may not. Have you
5 testified before the Montgomery County hearing
6 examiner before?
7 **A I have on multiple occasions.**
8 Q And have you been previously qualified
9 as an expert in land planning?
10 **A Yes, I have.**
11 MS. HARRIS: I would move that Mr.
12 Foster be admitted as an expert in land planning.
13 His resume is included as Exhibit 19A.
14 HEARING EXAMINER LEWINTER: I have
15 reviewed his resume and he is so admitted as an
16 expert. You may proceed.
17 MS. HARRIS: Thank you.
18 BY MS. HARRIS:
19 Q Can you first start by describing the
20 scope of services that GLW performed with respect
21 to the conditional use?
22 **A Sure. I assisted or GLW assisted in**
23 **preparation of the plans for this project, helped**
24 **prepare the land use report. Part of my job is to**
25 **review the conditional use requirements and**

33

1 recommendations of all the relevant documents,
2 whether it's the zoning code or the local master
3 plans or any of the county functional plans and
4 then analyze compatibility and conformity with
5 those master plans and those codes, and GLW also
6 provides the civil engineering for the project and
7 my partner Tim Longfellow will be testifying to
8 that later.

9 Q Thank you. And using Exhibit 35 could
10 you please orient the hearing examiner to the
11 location of the property?

12 A Sure. Which number?

13 HEARING EXAMINER LEWINTER: 35.
14 BY MS. HARRIS:

15 Q 35, sorry.

16 A It should be the very last one. There
17 it is. Okay. So this is an aerial exhibit of the
18 Burtonsville basically town center. Going
19 north/south or vertically on the map is Columbia
20 Pike or Route 29. Curving left to right on the
21 plan is Old Columbia Pike or Route 198, and the
22 road angling north/south over to the left of the
23 plan is Old Columbia Pike.

24 That was the original location of 29
25 until the bypass was installed, so originally

34

1 there was a town center kind of crossroads right
2 at the intersection of 198 and old 29 and the
3 majority of the traffic now is on the bypass, but
4 there's still a very busy commercial area mostly
5 along Columbia Pike.

6 There's a number of businesses,
7 shopping centers. There's two major shopping
8 centers here in Burtonsville. One is the Giant
9 Food Shopping Center at the northeast intersection
10 of 29 and 198, and then there's the new
11 Burtonsville Crossing Shopping Center which sits
12 between old 29 and new 29 where Giant used to be
13 years ago, but that's just been renovated.

14 There's also industrial land to the
15 east of 29 and a number of landscape contractors
16 and landscape products being sold at all the
17 properties in the northeast of that intersection.

18 Q And using Exhibit 32 could you please
19 describe the existing conditions on the property?

20 A Sure. So the existing property which
21 includes two lots, parcel C and parcel D, is 3.37
22 acres, sits at the intersection -- the southwest
23 intersection of Old Columbia Pike and Route 198.
24 Currently there's a 7-Eleven convenience store and
25 gas pumps. There are currently four gas pumps on

35

1 the site and there's also a retail building, an
2 8200 square foot retail building that runs kind of
3 parallel to Old Columbia Pike that is currently a
4 mattress store.

5 The site itself has two entrances and
6 the site circulation circulates around the
7 existing store. There's parking in front of the
8 store. The C store has parking next to the C
9 store, and then there's a very large open parking
10 area to the rear of the C store which a lot of
11 trucks and trailers and construction workers use
12 to park during the day.

13 The remainder of the property has a
14 small forested area, an old storm water management
15 pond and some natural areas at the back. Just
16 adjacent to the site to the west is a McDonald's.
17 To the rear of the property there are two R-200
18 residentially zoned properties to the rear. To
19 the east is Columbia Pike and just on the opposite
20 side of Old Columbia Pike is the Zimmermans home
21 center, and just to the north of the site on the
22 opposite side of Old Columbia Pike is 198
23 Restaurant, a bank and a fast food.

24 Q And what's the total square footage
25 existing on the property?

36

1 A The total square footage. Excuse me if
2 I find the site data chart. I think it's 10,800
3 square feet is the total square footage existing
4 on the site.

5 Q And the C store or companies accounts
6 for how much of that approximately?

7 A I think 2500 square feet.

8 Q And the zoning, what is the zoning of
9 the property?

10 A The zoning is currently CRTF and it is
11 -- I'm sorry.

12 Q And this is Exhibit -- the zoning map
13 is Exhibit 4 in the record.

14 A Okay. It's CRTF 1.5 FAR with a C of 1,
15 an R of .5, and a building height of 45.

16 Q Okay. And I have additional questions
17 later about the F in that designation, but we'll
18 get to that in a moment.

19 A Okay.

20 Q And are you aware if the property is
21 currently subject to current special exception,
22 and can you give a little bit of a history of
23 special exceptions --

24 A Sure.

25 Q -- on the property?

37

1 A The current site does have a special
2 exception and -- oh -- and a lot of that was also
3 noted in the staff report from park and planning.
4 They went through a fairly concise -- I'm just
5 trying to find my example board -- there it is --
6 describing the property and the previous special
7 exceptions.
8 The original special exception was back
9 in 1987 -- excuse me, '67 when 7-Eleven -- it was
10 in March of '67 where -- it was for the standard
11 city service station and that was for two bays, a
12 general automotive and gas sales. And in '82 the
13 board of appeals approved a major amendment or
14 modification to that special exception which
15 really resulted in the 7-Eleven you see today with
16 the convenience retail, and there was also a
17 reduction of the six fuel dispensers into the four
18 that are currently there today.
19 There have been a couple of other minor
20 modifications for landscaping, moving of curbs,
21 mechanical equipment that have occurred since
22 then.
23 Q Thank you.
24 HEARING EXAMINER LEWINTER: Can I just
25 interrupt for one second?

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1 THE WITNESS: Sure.
2 HEARING EXAMINER LEWINTER: In terms of
3 the staff report would you agree that their
4 outlayer setting out of the special exception
5 history is accurate?
6 THE WITNESS: Yes.
7 HEARING EXAMINER LEWINTER: Okay.
8 Thank you.
9 BY MS. HARRIS:
10 Q And then moving to the staff report
11 which is Exhibit 31 the -- it describes the
12 general neighborhood, and do you agree with
13 staff's designation of the general neighborhood
14 for purposes of evaluating the conditional use?
15 A Yes, I do.
16 Q And can you briefly for the hearing
17 examiner explain what that general neighborhood is
18 --
19 A Sure.
20 Q -- and what is occurring within it to
21 the extent you haven't noted it?
22 A Could we bring up page six out of the
23 staff report? Yep. There it was. So this is the
24 neighborhood that was determined by staff in the
25 staff report and that we agree with. In red in

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1 the center is the subject property and in the
2 perimeter is a yellow outline of the described
3 neighborhood.
4 And it includes a couple of commercial
5 properties to the west of the subject property
6 where the McDonald's and a automotive repair and a
7 Jerry's Sub Shop is located on the opposite side
8 of the street. Basically one tenant or one
9 property deep are other CRN zoned properties of
10 restaurants mostly, and there is another
11 automobile filling station.
12 It also includes part of the Giant Food
13 Shopping Center which has a CVS, there's a
14 Starbucks, a gas station. It includes on the
15 northeast corner of 198 and old 29 an office
16 complex where, in fact, my office is located, and
17 on the opposite side of old 29 ramp is the
18 Zimmermans home center.
19 Q And are there any special exceptions or
20 what's currently referred to as a conditional use
21 located within the general neighborhood?
22 A Yes, there are I think a total of four
23 including the subject property. There's the
24 McDonald's, the Starbucks, and I think it's the
25 Roy Rogers also are special exceptions or

40

1 conditional uses.
2 Q Thank you. And you gave some history
3 regarding the special exception, but can you
4 please describe the zoning history for the
5 property?
6 A Okay. The property was originally
7 zoned C2 and the Burtonsville Crossroads
8 neighborhood plan which was done in 2012 rezoned a
9 lot of the Burtonsville area based on
10 recommendations to that master plan, and this
11 property was zoned CRN which made basically the
12 gas use a nonconforming use. Then back in 2000 --
13 let's see, what was the date of the -- I think it
14 was 2017, '16 or '17 there was a rezoning.
15 HEARING EXAMINER: I think you mean --
16 I'm sorry -- 2014?
17 THE WITNESS: Excuse me, 2014 was the
18 rezoning of the property to CRT.
19 HEARING EXAMINER: Oh, sorry. I think
20 that was 2019.
21 THE WITNESS: Right.
22 HEARING EXAMINER: I thought you were
23 talking about the CRN.
24 THE WITNESS: No, the CRN was the
25 sectional map amendment that occurred after the

<p style="text-align: right;">41</p> <p>1 neighborhood master plan, so the master plan was 2 in 2014. I think the rezoning to CRN happened in 3 approximately 2014, and then the 2017, '18 was the 4 rezoning to CRT. 5 BY MS. HARRIS: 6 Q If we could pull up Exhibit 11 -- 7 A CRTF. 8 Q -- just to verify that date, please. 9 A Yeah. 10 Q This is the floating zone map. 11 A Right. 12 Q And the date of certification. 13 A Certification is -- 14 HEARING EXAMINER LEWINTER: You need 15 him to make it bigger? 16 THE WITNESS: It looks 2019. 17 MS. HARRIS: Yes. 18 HEARING EXAMINER LEWINTER: That's what 19 I thought. 20 MS. HARRIS: That's correct. 21 THE WITNESS: Yeah, so that was the 22 rezoning of the property from CRN to CRTF which is 23 the CRT floating zone. 24 BY MS. HARRIS: 25 Q And are there binding elements</p>	<p style="text-align: right;">43</p> <p>1 which shall include a 10-foot shared use path. We 2 have a 10-foot path currently shown along the 3 frontage of 198. 4 Controlled access, that the eastern 5 access point would prohibit left turn lanes and 6 making any right turn lanes in our current plan as 7 that is just a right turn out. Future access 8 road, that we would be providing a future access 9 road to the adjacent properties and we currently 10 show a 40-foot access right of way through the 11 property and adjacent -- connecting to the 12 adjacent properties, and we're also required to 13 provide public open space as required by the 14 zoning code. 15 Q So on summary of those you'd conclude 16 that the conditional use application complies with 17 the binding elements? 18 A Yes, it does. 19 Q And the special exception modification 20 that was subsequently withdrawn pursued a parking 21 waiver because the floating zone indicates that 22 there -- as does the conditional use plan, that 23 there's parking in front of the building? 24 A Yes. 25 Q Is that waiver still needed in</p>
<p style="text-align: right;">42</p> <p>1 associated with that floating zone, and if so what 2 are they and does this project comply with those? 3 A Yes, there are a number of binding 4 elements, five to be exact, which are listed on 5 the -- on the zoning plan, and if I can find mine. 6 I think I have it in here. There were a number of 7 uses that were not allowed as part of the zoning 8 and our current use is not one of those. 9 There was a 50-foot buffer required 10 along the rear property line abutting R-200, and 11 we have between 50 and 70 feet currently located 12 there. We have to meet the landscape requirements 13 in the code and we meet the landscape requirements 14 for the parking on all four sides. I wish I could 15 find my list. 16 Q If I can refer to the land use report 17 which was Exhibit 3, page four -- page three, 18 sorry. 19 A Oh, here it is. 20 Q Oh, you have it. Okay. 21 A Yes. 22 Q Never mind. 23 A So first was the limited uses that we 24 are not a part of. The 50-foot buffer zone was 25 number two. Three was the frontage improvements</p>	<p style="text-align: right;">44</p> <p>1 connection with this conditional use? 2 A No, it is not. 3 Q And can you explain why? 4 A Yes. The CRF -- CRTF zone which is the 5 CRT floating zone in the zoning code has specific 6 requirements on what documents control the 7 development. So the perimeter setbacks are 8 controlled by the setbacks established by the 9 floating zone plan. 10 All of the other setbacks on the 11 property are to be established at site plan, and 12 it also dictates the parking standards that are 13 required, and those are the standard parking 14 requirements in the zoning code, not the CRT 15 zoning requirements, so the -- all the issues that 16 were previously discussed about parking in front 17 of the building are not an actual requirement in 18 the new zoning code for the CRTF zone. 19 Q Thank you. And we're going to drill 20 down on the specifics as we proceed with your 21 testimony regarding the conditional use plan, but 22 referring to Exhibit 7 can you provide the hearing 23 examiner with a high level overview of what we are 24 proposing in connection with this application? 25 A Sure.</p>

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1 Q And actually --
2 A **Page three.**
3 Q Yeah, thank you. Is it possible to
4 zoom in a bit? Thank you.
5 A **Great. Thank you. So the subject**
6 **property is basically in the same orientation as**
7 **the previous exhibits and what is in blue,**
8 **outlined in blue in the middle of the site is the**
9 **new Wawa convenience store. The current**
10 **convenience store is going to be removed along**
11 **with the existing canopy and four pumps, and the**
12 **existing 8200 square foot retail store is also**
13 **going to be removed.**
14 **We're going to be regrading the site,**
15 **providing new circulation, parking, storm water**
16 **management, which there currently is virtually no**
17 **storm water management on the site, and forest**
18 **conservation. We're also going to be as part of**
19 **this application building a traffic signal at the**
20 **western entrance to the property basically across**
21 **the street from the entrance to the Giant Food**
22 **Shopping Center, so that's part of this.**
23 **As I mentioned, we're also going to be**
24 **providing parking. There's loading. There's**
25 **dumpster enclosures. There's both surface quality**

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1 **storm water management, underground quantity**
2 **control storm water management, landscaping,**
3 **lighting, a typical what you would expect for a**
4 **high quality new gas station development.**
5 Q And there had been some previous
6 discrepancy about the actual square footage for
7 the new C store.
8 A **Okay.**
9 Q Can you state for the record what that
10 square footage will be?
11 A **Yeah. The square footage for the**
12 **proposed C store is 5,919 square feet.**
13 Q Thank you. And then can you very
14 briefly, and I know Mr. Longfellow is going to get
15 into this in a little more detail, but explain the
16 sidewalks along the two frontages on the property?
17 A **Okay. The proposed sidewalks that**
18 **we're showing as part of this development are a**
19 **10-foot shared use bike path across the front of**
20 **the property which is east/west along Maryland**
21 **198, and then we will be providing a 16-foot wide,**
22 **what is considered a breezeway which is a combined**
23 **bikeway and sidewalk on the Old Columbia Pike**
24 **which is the eastern property line.**
25 **There's currently an eight-foot shared**

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1 **use path there now. We're going to be creating a**
2 **16-foot breezeway and that will connect basically**
3 **across the street along Old Columbia Pike to the**
4 **existing shared use path there, and east/west**
5 **it'll be connecting to the existing shared use**
6 **path in front of Zimmermans.**
7 **On site we have two connecting**
8 **sidewalks, one along the western entrance, one**
9 **along the eastern entrance. Both come into the**
10 **site, cross the driveways and connect to the Wawa**
11 **convenience store. Adjacent to both of those**
12 **sidewalks are also public open space areas that**
13 **are going to be providing seating and shade for**
14 **users of the site.**
15 Q And were you aware that a member of the
16 public had asked for some -- for the applicant to
17 consider additional sidewalks, and if so can you
18 explain what those were and what our response was?
19 A **Yes, there's a local gentleman, and I**
20 **actually talked to him several times about it, he**
21 **was looking at a plan and thought it would be very**
22 **convenient if somebody is coming north along the**
23 **bikeway along Old Columbia Pike basically on the**
24 **side of the site, if they could just turn and go**
25 **straight up to Wawa and not have to go all the way**

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1 **to the corner. That was one suggestion.**
2 **The other was that if there was a way**
3 **to diagonally cut across the corner to get to Wawa**
4 **a little quicker, and what I explained to him was**
5 **that it would be very problematic to try to**
6 **connect the breezeway of the -- proposed breezeway**
7 **to the Wawa because there's about 20 feet of grade**
8 **change from the Old Columbia Pike onramp basically**
9 **up to where Wawa is and, you know, that would be**
10 **-- Wawa would really want to try to do something**
11 **ADA compliant and you could really only do stairs**
12 **there.**
13 **It would be virtually impossible to**
14 **come back with some massive switchback system, so**
15 **it really seemed like the -- keeping the system we**
16 **had the way it was made more sense along with just**
17 **keeping the circulation from the bikeway to the**
18 **bike path around the corner and right up in the**
19 **eastern entrance into Wawa made the most sense.**
20 Q Thank you. In terms of signage where
21 will the -- where's the existing signage and where
22 will the new signage be?
23 A **There's currently two which we'd**
24 **consider pylon signs. There's one along 198 near**
25 **the current eastern property line, and then**

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1 **there's one along the Old Columbia Pike onramp**
2 **side basically along the mattress store, and we're**
3 **basically -- they're going to be moving locations,**
4 **but we're planning on having again two pylon**
5 **signs, one located at the eastern entrance along**
6 **198, and one along the Old Columbia Pike frontage.**
7 Q Thank you. And then finally with
8 respect to this plan can you identify the location
9 of the dumpster?
10 **A The dumpster is in the southeast corner**
11 **parking lot behind Wawa with a six-foot brick**
12 **enclosure and gates.**
13 Q Thank you. Now we're going to be
14 moving to the requirements of the zoning
15 ordinance, and here there's three different
16 requirements. One is that the project comply with
17 the CRTF requirements, the specific requirements
18 of the conditional use for an automotive gas
19 station and then the general conditional use
20 criteria.
21 **A Right.**
22 Q So we can start with the CRTF and the
23 general zoning ordinance requirements.
24 **A Okay.**
25 Q If we can pull up Exhibit -- well, why

50

1 don't we -- let's go to the floating zone plan
2 first which was Exhibit 11, please. And can you
3 describe the setbacks, the height and the FAR,
4 please?
5 **A Right. Can you zoom in on the**
6 **development standards in the lower left? Yeah.**
7 **Okay. So the setbacks, as I stated previously, in**
8 **the CRTF zone the perimeter setbacks are**
9 **established by the floating zone plan, and you can**
10 **see listed front setback to the site boundary is**
11 **zero feet and side setback is zero. The side**
12 **street setback would be zero and the rear setback**
13 **abutting R-200 would be 45 feet.**
14 Q And what is the FAR?
15 **A The allowed FAR, total FAR is 1.5.**
16 Q And what is the height of the building?
17 **A Forty-five feet.**
18 Q Thank you. And then I think it's best
19 if we go to perhaps the development chart on the
20 special exception -- excuse me, the conditional
21 use plan, so that's Exhibit 7A, the cover sheet,
22 and you can zoom on in, and then can you please --
23 and to the extent the hearing examiner finds it
24 necessary we can walk through all these
25 development standards or hit the high points. I

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1 don't -- I mean, the information is here on the
2 plan.
3 HEARING EXAMINER LEWINTER: I mean, it
4 would be sufficient for me if you want to hit the
5 high points, and then if your witness can just say
6 that this is accurate, you know, for the record --
7 MS. HARRIS: Okay.
8 HEARING EXAMINER LEWINTER: -- that
9 would be sufficient.
10 MS. HARRIS: Okay. Thank you.
11 THE WITNESS: Sure. So currently
12 looking at the conditional use plan itself and the
13 setbacks are listed on the setback table, and
14 again the front setback is zero feet and currently
15 at the retail building, the retail mixed use
16 convenience store building is approximately 159
17 feet back.
18 The side street is zero and it's
19 approximately the same distance, 159 feet from Old
20 Columbia Pike. The west property line required a
21 zero. It's approximately 129 feet from the
22 McDonald's and the rear setback is 50 feet, one of
23 the binding elements, and we're approximately 144
24 feet, so we meet the requirements from the
25 floating zone plan and they are accurate.

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1 BY MS. HARRIS:
2 Q And does the canopy comply with the
3 required setbacks?
4 **A Yes, the gas canopy itself again is**
5 **part of the principal building structure, and it**
6 **would be zero front setback in the front and it's**
7 **41 feet, side street setback is zero and it's**
8 **approximately 206 feet. The west side setback**
9 **abutting the CRN zone is zero but -- is required**
10 **at zero minimum but it's 55 feet, and the rear**
11 **setback for the canopy is 50 feet and it's**
12 **approximately 278 feet.**
13 Q Thank you. And what is the maximum
14 number of parking spaces allowed under zoning?
15 **A The maximum -- well, in the CR zoning**
16 **and the new zoning code there's a -- the parking**
17 **is minimum and maximum. There's a minimum number**
18 **of spaces and a maximum and we have calculated**
19 **based on the uses on the site which are retail,**
20 **filling station and restaurant uses, and it comes**
21 **up to a total parking required of 22 spaces**
22 **minimum are required and a maximum of 52.**
23 Q And how many are being provided?
24 **A Fifty.**
25 Q Thank you. And does the application

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1 meet the bike parking requirement?
2 **A Yes, there are -- if you look at the**
3 **standards for bicycle parking there are four bike**
4 **spaces required based on the square footage of the**
5 **building. Two of those are required to be short**
6 **term which are provided basically with a bike rack**
7 **on the outside, and two of those are required to**
8 **be long term which are employee parking which are**
9 **going to be provided inside the building.**
10 Q Let's move to the landscaping. Can you
11 please describe the landscaping along the two
12 frontages of the building and then the western
13 side and the southern side of the property?
14 **A Sure. The landscaping that's required,**
15 **we have a couple of different requirements. The**
16 **landscaping under Section 6.2.9 C3 basically**
17 **controls the landscaping whenever you have parking**
18 **lots abutting streets or other properties.**
19 **So we have two street frontages that we**
20 **have parking lots or parking uses and we're**
21 **required to have a minimum of six foot in depth of**
22 **landscape area, at least a minimum of one hedge,**
23 **three foot high, and then trees 30 feet on center,**
24 **and we meet that for both frontages along 198 and**
25 **along Old Columbia Pike.**

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1 Q And then along the southern property
2 line which abuts residential section 6.5.3
3 controls. Can you explain what that requires and
4 what's being provided?
5 **A And that basically is the screening**
6 **requirements for what is considered to be**
7 **incompatible uses to some degree, and so any time**
8 **you have a use, a general building use type with a**
9 **nonindustrial use, whenever it's up against a**
10 **residentially zoned property you have to provide**
11 **the screening and there are two levels of that, A**
12 **and B.**
13 **And we have shown on our landscape plan**
14 **to comply with option B which is a 12-foot minimum**
15 **landscape width with two canopy trees, four**
16 **understory trees for every hundred linear feet,**
17 **and eight large shrubs and twelve medium shrubs**
18 **for every hundred linear feet of frontage and we**
19 **comply with that.**
20 Q And then is that section relevant to
21 the western property line?
22 **A No, it's not because it's abutting CRN**
23 **property and not a residential zone.**
24 Q Thank you. So can you confirm that the
25 development standards set forth on Exhibit 7A, the

55

1 cover sheet of the conditional use, represent the
2 required requirements of the CRTF zone in the
3 zoning ordinance and that the project complies
4 with those?
5 **A They do.**
6 Q Thank you. Now we're going to move to
7 the specific criteria that controls conditional
8 uses for automobile filling stations, and this is
9 section 5.9.3.5.13 C2.
10 **A Okay.**
11 Q I'm going to run through a number of
12 questions. How will -- please explain how the
13 access will be provided to the site.
14 **A The access to the site is provided off**
15 **of Maryland Route 198 which is a major arterial**
16 **running east/west on the property and we have two**
17 **entrances, one a full movement entrance at the**
18 **traffic light, and one a right out only.**
19 Q Thank you. And referring to the
20 photometric that was Exhibit 33 can you please
21 explain that lighting plan and what it shows?
22 **A Yes, the lighting plan that was part of**
23 **the conditional use exhibit, it shows the**
24 **footcandles proposed based on the light proposed,**
25 **both building mounted and freestanding lighting,**

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1 **and there will be -- the minimum -- the maximum**
2 **footcandles along the southern property line would**
3 **be a tenth of a footcandle and along the other**
4 **property lines the road right of way that's a half**
5 **a footcandle, and we meet all of those**
6 **requirements.**
7 Q Thank you. And I would note that
8 subsection C which related to the 3.6 million
9 gallons Mr. Hoffman testified to that, so we will
10 move to subsection D. And are there any product
11 displays or obstructions that will interfere with
12 the visibility at the driveways?
13 **A No, there are two pylon signs as I**
14 **previously testified to, but they're set far**
15 **enough back from the road right of way not to**
16 **provide any blockage for vehicles pulling out for**
17 **visibility.**
18 Q Thank you. And subsection E requires
19 that when a gas station occupies a corner lot the
20 driveways must be a minimum of 20 feet from the
21 intersection and the widths cannot exceed 30 feet.
22 Does the conditional use comply with that --
23 **A Yes, it does.**
24 Q -- with these requirements?
25 **A Yes, it does.**

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1 Q In connection with subsections 2F and
2 2G what is the distance of the pumps from the
3 property line, and also what's the distance
4 between the two entrances?
5 A Okay. Right now we comply that the gas
6 pumps themselves are plus or minus 46 feet from
7 the property line along Maryland Route 198.
8 Q And what is the distance between the
9 two entrances?
10 A The two driveways are 109 feet apart.
11 Q Okay.
12 A So they're a wealth greater than the 20
13 feet required.
14 Q Thank you. And will the proposed
15 parking be located completely off of the public
16 right of way?
17 A Yes, there are no vehicles that will
18 overhang public right of way.
19 Q And then finally with respect to this
20 section is there a car wash on the site?
21 A No car wash is proposed.
22 Q Okay. And now we're going to move to
23 the general conditional use requirements which are
24 section 7.3.1 E of the zoning ordinance. You
25 indicated that you had evaluated the master plan

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1 in connection with the preparation of this
2 application?
3 A Yes.
4 Q Does the project comply with the
5 recommendations?
6 A Yes, it does. The master plan itself,
7 the Burtonsville Crossroads Master Plan was a
8 detailed analysis of the area and this -- the area
9 that the existing special exception or conditional
10 use is being proposed is part of what's called 198
11 Main Street. It's a commercial zone so that the
12 use that we're proposing fits in with that.
13 It was to foster the creation of
14 complete community designed and scaled to serve
15 the surrounding areas with small businesses,
16 retail local services and office with open spaces
17 for local events, conservation and recreation. So
18 it was a general requirement but we definitely
19 fill the needs for small business, retail and
20 local services.
21 There were also four themes involved in
22 the master plan and they were economy,
23 connectivity, design and the environment. You
24 know, for the economy we're promoting retail uses
25 in this market. Connectivity, we're improving the

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1 streetscapes with sidewalks on the perimeter and
2 internally to the site.
3 With design we're I think, as was shown
4 with the elevations, we're certainly providing a
5 very high level of architecture to replace,
6 eliminate the current Bedding Barn, and
7 environmentally we're providing forest
8 conservation on the site. We're also providing
9 storm water management that is not there at all
10 today, so that has dramatic increase on the
11 environmental benefits for the site.
12 Q And will there be an increase in
13 landscaping on the site?
14 A Yes, there's very little landscaping
15 today and there's going to be a significant amount
16 of landscaping once the project is built.
17 Q Thank you. In your professional
18 opinion will the use be harmonious with and not
19 alter the character of the surrounding
20 neighborhood?
21 A Yes, I think it will be harmonious with
22 the surrounding neighborhood. I mean, it's
23 currently an existing gas station since 1982.
24 It's a vibrant part of the community currently.
25 My office sits directly across the street from it.

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1 I can tell you from the last 30 years of watching
2 it gets used heavily every day.
3 So Wawa is certainly going to be an
4 upgrade to that visually and also from a
5 circulation point of view because we're adding a
6 traffic light which is dramatically needed in that
7 location. If you've tried to traverse 198 you
8 would certainly see that.
9 Q And will the approval of the
10 conditional use increase the number, intensity or
11 scope of the conditional use such that it will
12 adversely affect the neighborhood?
13 A No, it will not. You know, in fact,
14 we're not increasing at all. We're replacing one
15 that currently exists.
16 Q And in your opinion are there any
17 noninherent adverse impacts associated with this
18 property?
19 A No, no, I don't think there are. You
20 know, the only noninherent condition that may have
21 been there previously, you know, was, you know, a
22 C store -- I mean the mattress store. You know,
23 you wouldn't typically find a mattress store with
24 a gas station, so I think that being eliminated
25 would certainly even eliminate that at all, but

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1 **no, I don't see any noninherent adverse impacts**
2 **associated with this use.**
3 Q And the Montgomery County zoning
4 ordinance provides that if there are noninherent
5 adverse effects then you go to a second prong of
6 the test which is would any of them cause undue
7 harm to the neighborhood with respect to the --
8 I'm going to read a list -- the use, peaceful
9 enjoyment and economic value of the abutting
10 properties, traffic, noise, odors, dust,
11 illumination or lack of parking, or the health,
12 safety or welfare of the neighboring residents.
13 So assume for a moment that the hearing
14 examiner does find a noninherent adverse effect.
15 Would any of those -- would those effects be such
16 that they would cause any of those items I just
17 identified?
18 A **No, I don't see how they could**
19 **possibly. The existing site sits on a very, very**
20 **busy road with current commercial uses. The**
21 **proposed use is going to be, you know, over 400**
22 **feet away from the closest residential home.**
23 **There's no service, no automobile repair services**
24 **here that you would typically associate with any**
25 **fumes or odors.**

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1 We're, you know, complying with the
2 lighting so there's not going to be a glare or
3 there's not lighting spilling out, and we're
4 definitely increasing the landscape and the storm
5 water management, so no, I don't see how they
6 would have any adverse effect on the surrounding
7 properties.
8 Q Thank you. You noted that there is
9 residentially zoned property to the south, and is
10 the use compatible with the residential zone?
11 A **Yes, we meet the setbacks. We're**
12 **providing the buffer that was required in the**
13 **floating zone plan. We're providing forest**
14 **conservation as part of that, so yes, it is.**
15 Q And approximately how far -- what is
16 the distance from the C store to the closest
17 house?
18 A **I think it's approximately 425 feet.**
19 Q And -- okay. And one final question,
20 and that has to do -- or a couple of final
21 questions having to do with the forest
22 conservation plan which is Exhibit 9. Was a
23 forest conservation plan approved for this
24 project?
25 A **Yes, it was approved by the planning**

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1 **board.**
2 Q And when did that occur?
3 A **During the hearing. I think it was in**
4 **February of this year.**
5 Q Okay. And just very briefly can you
6 give an overview of what that forest conservation
7 plan provides?
8 A **Yeah. So the forest conservation plan**
9 **for this particular site, there's a small amount**
10 **of wooded area, a very low quality wooded area.**
11 **Some of that is going to be impacted by the future**
12 **accesses to the adjacent property, so we're**
13 **providing for that.**
14 **So it's really requiring us to do some**
15 **reforestation to compensate for that clearing and**
16 **also some afforestation. So we're providing new**
17 **forest plantings along the rear of the property as**
18 **much as we can, and then we're also paying a fee**
19 **in lieu of for the remaining quantity.**
20 Q And was there a tree variance approved
21 in connection with the forest conservation plan?
22 A **Yes, there was a variance and there**
23 **were two trees involved. There's a white oak tree**
24 **that sits along Maryland 198 almost exactly where**
25 **the sidewalk is, along proposed sidewalk and the**

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1 **traffic light, so it's going to have to be**
2 **removed.**
3 **The planning board approved that**
4 **variance to remove that tree, and there is a**
5 **offsite tree on one of the residential properties**
6 **that would be impacted. It's not going to be**
7 **removed but a variance had to be approved to**
8 **impact the critical root zone of that tree, and**
9 **that was approved as well.**
10 MS. HARRIS: Thank you. I have no
11 further questions for Mr. Foster.
12 BY HEARING EXAMINER LEWINTER:
13 Q Okay. Just -- I'm sorry. Just real
14 quick just a couple of details that I think you've
15 covered, but I just want to make sure. You were
16 saying the C store is 425 square feet I guess from
17 the residential. Is that the residential boundary
18 property line or from the nearest residence?
19 A **I think that's from the nearest**
20 **residence.**
21 Q Okay. And do you know how far it is
22 from the property line, from the residential
23 property line?
24 A **I think that dimension is maybe listed**
25 **on the conditional use plan.**

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1 Q Okay. I mean, would that be the -- I
2 think you said 50 to 75 feet it --
3 **A Well, the 50 to 75 feet is basically**
4 **the forest conservation area.**
5 Q Okay.
6 **A The conditional use plan which is**
7 **Exhibit -- sheet 3 -- right. From the -- looking**
8 **at the land use report it was -- looks like 450**
9 **feet from the closest house and 625 feet from the**
10 **closest cluster of homes, but I wanted to -- if**
11 **you can pull up sheet three on this plan.**
12 **I was trying to see if there was a**
13 **dimension on the plan for the distance to the**
14 **property line. No, it doesn't look like there is.**
15 **I could get a scale and tell you what that is, but**
16 **the plan itself is --**
17 Q It doesn't say. Okay. And then just
18 to be clear, too, the gas station pumps are
19 actually going to be even further because --
20 **A Correct.**
21 Q -- the C store --
22 **A They're in front of the C store, yes.**
23 Q -- is the closest structure to the
24 residential line in the south; is that accurate?
25 **A Right, yes.**

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1 Q Okay.
2 **A And I did find the distance.**
3 Q Oh, great.
4 **A So the rear setback from the C store to**
5 **the residential property line is approximately 144**
6 **feet.**
7 Q Okay. I'm just trying to go from the
8 -- the lighting plan, which I don't think we
9 called up but you referenced, that exhibit and
10 Exhibit 7 which was the development chart, is it
11 your testimony that those exhibits are accurate --
12 **A Yes.**
13 Q -- renditions? Okay.
14 **A Correct. They are.**
15 Q In terms of the breezeway I was just
16 curious when I was looking at the -- I don't know
17 if we called that map up, but it had all the
18 pretty colors of the different sidewalks. I don't
19 remember which it was.
20 **A The rendering?**
21 Q It was a rendering with like -- but is
22 it actual kind of sidewalk material going across
23 the road or is it a crosswalk, like how does that
24 work?
25 **A What exhibit was it?**

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1 MS. HARRIS: Yeah, I'm looking for the
2 exhibit. I believe it may have been 7 -- hang on.
3 I'll find it.
4 MR. HUMMEL: Try Exhibit 24.
5 MS. HARRIS: 24. Yes, 24 please.
6 HEARING EXAMINER LEWINTER: Oh,
7 actually that's not the one I was thinking of.
8 MS. HARRIS: Oh.
9 HEARING EXAMINER LEWINTER: There was
10 one with like -- it had like purple and red and
11 blue. It showed all the different -- like it
12 showed the breezeway and the --
13 THE WITNESS: Oh, the circulation plan?
14 HEARING EXAMINER LEWINTER: Maybe it
15 was the circulation one.
16 THE WITNESS: 25, Exhibit 25.
17 MR. HUMMEL: This one?
18 HEARING EXAMINER LEWINTER: Yes, that's
19 the one.
20 THE WITNESS: So this takes all the
21 circulation elements and assigns them a color
22 basically.
23 BY HEARING EXAMINER LEWINTER:
24 Q Right. So the ones that are like going
25 across the street, are you actually --

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1 **A So there's a crosswalk in all those**
2 **locations.**
3 Q Okay. Okay. I just wanted to --
4 **A And they will all be at controlled**
5 **intersections, so all of those will have lights**
6 **and pedestrians will have buttons to push to be**
7 **able to cross either Old Columbia Pike or 198**
8 **either at the intersection of Old Columbia Pike or**
9 **at the new traffic light we're installing.**
10 Q So you're connecting with existing --
11 **A Yes.**
12 Q This development project is not
13 actually going to make any physical changes to the
14 roadscape, but you are going to make changes to
15 the sidewalk?
16 **A We're making changes to the sidewalks**
17 **and we're also going to be restriping all of those**
18 **crosswalks.**
19 Q Okay.
20 **A Yeah, that's going to be part of what**
21 **we're doing. There's no crosswalks currently at**
22 **the entrance. At the western entrance we're going**
23 **to be creating those. We'll be changing the ones**
24 **along 198 slightly, so there'll probably be some**
25 **restriping of those. We're not changing anything**

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1 on the opposite side of the street except at the
2 intersection where -- the traffic light we're
3 putting in --
4 Q Uh-huh.
5 A -- we will be putting in ADA ramps and
6 some small section of sidewalk on the opposite
7 side of 198 from the subject property.
8 HEARING EXAMINER LEWINTER: Okay.
9 That's Exhibit 25; is that right?
10 MS. HARRIS: Correct.
11 HEARING EXAMINER LEWINTER: Okay.
12 Okay. The other two -- so if you could just take
13 a minute, and with the storm water management I
14 appreciate that there's really nothing there now
15 and this will be an improvement over nothing, but
16 can you just explain to me why it should be
17 sufficient or if this isn't the right witness do
18 you want me to wait?
19 MS. HARRIS: Well, let me ask Mr.
20 Foster. Are you more appropriate to answer this
21 or should --
22 THE WITNESS: Well, I think Mr.
23 Longfellow is the expert at storm water
24 management, so --
25 HEARING EXAMINER LEWINTER: Then I will

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1 delay that question. No problem.
2 BY HEARING EXAMINER LEWINTER:
3 Q My last question is you were kindly
4 walking me through why the parking waiver is no
5 longer necessary. I appreciate that because I
6 know that was some confusion. Can you cite if you
7 have it accessible which current zoning ordinance
8 provisions you're looking at --
9 A Sure.
10 Q -- for that not being necessary? That
11 would just be helpful to me.
12 A Okay. So we're looking at section 5.3,
13 commercial residential floating zones.
14 Q Uh-huh.
15 A Okay. And under general requirements
16 --
17 Q Yep.
18 A -- it says parking, recreational,
19 facility, screening and landscaping must be
20 provided under article 59-6 as required for the
21 euclidean zone it establishes of the uses. So
22 59-6 are the general standards for parking and
23 landscaping, so it does not -- you're not using
24 the CRT zone standards but you're using the
25 general parking standards under 59-6.

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1 Q And those don't have a prohibition on
2 the front parking?
3 A Correct.
4 HEARING EXAMINER LEWINTER: Okay.
5 Thank you for clarifying. Those are my questions.
6 Ms. Harris, did you have any follow-up to my
7 questions?
8 MS. HARRIS: I have just one.
9 HEARING EXAMINER LEWINTER: Sure.
10 MS. HARRIS: It's not necessarily a
11 follow-up from your questions but just to clarify.
12 BY MS. HARRIS:
13 Q We noted that currently the property is
14 comprised of two parcels, parcel C and parcel D?
15 A Yes.
16 Q And there's a pending preliminary plan.
17 Can you please explain ultimately what the
18 subdivision will do?
19 A The subdivision will do two things. It
20 will combine existing parcel C and parcel D
21 together into one lot, and that's needed because
22 the proposed future C store would have sat on a
23 property line between the two parcels and that's
24 not allowed, so we need a singular parcel to do
25 that.

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1 We also needed to dedicate some right
2 of way along Maryland 198 to meet the master plan
3 requirements, and so the preliminary plan will
4 provide that dedication as well.
5 MS. HARRIS: Thank you. I have no
6 other questions for Mr. Foster.
7 HEARING EXAMINER LEWINTER: Okay. Oh,
8 and I just -- I'm sorry. I just had one quick
9 thing.
10 BY HEARING EXAMINER LEWINTER:
11 Q There were some inconsistencies in the
12 staff report. I just want to make it absolutely
13 abundantly clear in the record that the master
14 plan, the only applicable master plan is the
15 Burtonsville Crossroads plan?
16 A That's correct.
17 Q That's the only one, and that this is
18 not a residential zone, this is a CRT app zone?
19 A Correct.
20 HEARING EXAMINER LEWINTER: Thank you.
21 I have no further questions. You have no more --
22 MS. HARRIS: No, thank you.
23 HEARING EXAMINER LEWINTER: --
24 questions for this witness? If we could just take
25 a five-minute comfort break --

<p style="text-align: right;">73</p> <p>1 MS. HARRIS: Certainly. 2 HEARING EXAMINER LEWINTER: -- and then 3 you can call your next witness. 4 MS. HARRIS: Okay. 5 HEARING EXAMINER LEWINTER: I'd 6 appreciate it. Thank you. 7 MS. HARRIS: Thank you. 8 (Whereupon, a brief recess was taken in 9 the proceedings.) 10 HEARING EXAMINER LEWINTER: You're 11 good? 12 MR. HUMMEL: We're good. 13 HEARING EXAMINER LEWINTER: We're good. 14 Okay. 15 MS. HARRIS: Our next witness is Mr. 16 Tim Longfellow. 17 HEARING EXAMINER LEWINTER: Okay. Mr. 18 Longfellow, if you could raise your right hand. 19 Do you solemnly swear under penalties of perjury 20 that the statements you are about to make are the 21 truth, the whole truth, and nothing but the truth? 22 THE WITNESS: Yes, I do. 23 HEARING EXAMINER LEWINTER: Thank you. 24 Your witness. 25 MS. HARRIS: Thank you.</p>	<p style="text-align: right;">75</p> <p>1 civil engineering. 2 HEARING EXAMINER LEWINTER: I have 3 reviewed Mr. Longfellow's resume and he is so 4 qualified as an expert. 5 MS. HARRIS: Thank you. 6 BY MS. HARRIS: 7 Q Can you please describe the scope of 8 services provided by GLW with respect to the civil 9 engineering? 10 A Sure. So as part of the project we 11 undertook some field survey work. We looked at 12 the existing and proposed utilities that needed to 13 be laid out. We looked at storm drain, storm 14 water management, water and sewer, and then some 15 of the existing dry utilities as well. 16 Q Thank you. And with respect to Exhibit 17 7C can you please describe the coordination 18 between SHA and the county with respect to the 19 frontage along 198? 20 A Sure. So we've had a couple of 21 different meetings with the various transportation 22 entities and we believe we've come to a good 23 consensus. One thing of note is that the State 24 Highway Administration is currently undertaking a 25 corridor study along 198.</p>
<p style="text-align: right;">74</p> <p>1 EXAMINATION BY COUNSEL 2 ON BEHALF OF THE PETITIONERS 3 BY MS. HARRIS: 4 Q Can you please state your full name and 5 occupation for the record? 6 A Sure. Tim Longfellow, and I'm a civil 7 engineer. 8 Q And how long have you been employed as 9 a civil engineer? 10 A For 30 years I've been with GLW. 11 Q And please describe your educational 12 background and a little bit of description of your 13 professional work. 14 A Sure. So a bachelor of science degree 15 from the University of Maryland at College Park. 16 I was hired out of school to GLW, have been doing 17 civil engineering work for 30 years, residential, 18 industrial, commercial, mixed use, you know, 19 pretty much a wide spectrum of different 20 development types. 21 Q And have you been previously qualified 22 as an expert in civil engineering? 23 A Yes, I have. 24 MS. HARRIS: And Mr. Longfellow's 25 resume is 18B and we'd move him as an expert in</p>	<p style="text-align: right;">76</p> <p>1 That study has not really progressed to 2 completion, so part of this -- the study 3 considerations that they're undertaking are 4 multiple lanes, whether it's a four-lane concept, 5 a five-lane concept, things of that nature, but 6 through our interactions with them and Montgomery 7 County DOT and park and planning's transportation 8 teams we've I guess arrived at a location where 9 our proposed elements will not prohibit the state 10 from choosing either of their options along this 11 corridor for our frontage, so that entails the 12 existing conditions. 13 There's, you know, a left turn lane 14 from eastbound 198 onto northbound Old Columbia 15 Pike, three through lanes, a five-foot bike lane 16 on street currently and a right lane which is a -- 17 I guess I'll use the acronym slip lane. It's a 18 free right turn. 19 As part of our improvements we'll be 20 eliminating that slip lane, providing an 21 adjustment to the curb that will maintain the left 22 turn lane and the three through lanes and then 23 it'll provide a shoulder that would accommodate a 24 future bike lane if the state chooses to pursue 25 that.</p>

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1 And then from that point we've got a
2 10-foot buffer strip behind the curb and then
3 we've got the minimum 10-foot side path that we've
4 provided there that'll run along our frontage on
5 198 and then along the southbound 29 ramp as Mr.
6 Foster testified earlier we'll be replacing that
7 asphalt path with a 16-foot wide breezeway in
8 accordance with the master plan, bikeway master
9 plan.
10 Q Thank you. Then turning to adequate
11 public facilities have you evaluated the
12 availability of water, sewer, gas and other
13 utilities, and if so can you describe your
14 findings?
15 A Sure. Yes, we have. All of those
16 utilities are currently existing. There is --
17 there's electric that's running parallel to our
18 site frontage along 198 along with gas, water and
19 sewer. Also running parallel along 198 we will be
20 tying in new water connections in the intersection
21 along 198 where the new traffic signal will go.
22 The main reason there is there's some
23 PCCP water line pipe there, so we're going to
24 actually try to tie into another branch off of
25 that that runs north. It runs along the

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1 McDonald's. We'll pick it up there where it runs
2 a little bit north toward the shopping center
3 entrance.
4 And then there's sewer that runs along
5 the east side of the property and then comes north
6 and then runs west and we'll be reutilizing much
7 of that, and as part of the process we'll abandon
8 any of the unused water and sewer connections that
9 we need there.
10 MS. HARRIS: Thank you. And I would
11 note that Mr. Driban, our last witness, will
12 testify with respect to the traffic --
13 HEARING EXAMINER LEWINTER: Okay.
14 MS. HARRIS: -- availability,
15 transportation availability.
16 BY MS. HARRIS:
17 Q Please describe the existing proposed
18 storm water management on the property.
19 A Sure.
20 Q And I reference Exhibit 22A and B which
21 were the storm water management concept.
22 A Sure. So we do have a current storm
23 water concept approval that was dated February 2nd
24 and, you know, in the existing condition as Mr.
25 Foster noted in the southeast corner there's an

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1 area there that is recognized by DEP as a storm
2 water facility but it's really nonfunctional, so
3 it's currently not providing any storm water
4 benefit.
5 It just -- it's just not in a
6 functioning state as far as we're concerned, so in
7 order to address the proposed development we've
8 looked at the current requirements for
9 environmental site design and then with the
10 addition of the four micro-bios which are shown on
11 this screen in green we'll meet our environmental
12 site design guideline requirements.
13 And then there's an underground pipe
14 system south of the new convenience store that
15 will provide the required quantity management, and
16 that's being required mainly because we're
17 adjacent to the state highway right of way and
18 their drainage requirements are that we maintain
19 the quantity for storm water at the levels they
20 are, and in order to do that we've got to manage
21 the hundred year storm prior to it entering into
22 their ponds which are on the east side of the
23 southbound 29 ramp.
24 Q So with the construction of these
25 facilities will the storm water management

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1 situation on the property be improved?
2 A Immensely. I mean, right now there's
3 no quality control provided. As I said, the
4 quantity is not functional, so this is truly
5 beyond most of what we're required to do.
6 Typically sites are just required to meet the full
7 ESD quality control requirement. This one, due to
8 the nature of where it's located, will also have
9 the added benefit of the hundred year quantity
10 control management.
11 Q Thank you. And is this property
12 located within a special protection area?
13 A No, it's not.
14 Q So no additional requirements are --
15 what's the significance of that?
16 A There used to be significance to the
17 SPAs in that you had to add redundant storm water
18 management practices, but if you talk to the folks
19 at DPS you'll find that those things have kind of
20 narrowed and they're just requiring the
21 environmental site design and there's not really
22 much redundancy anymore for storm water purposes.
23 Q Thank you.
24 HEARING EXAMINER LEWINTER: Can you --
25 I'm sorry. Can you repeat that? You're not in an

<p>81</p> <p>1 SPA or you are in the SPA? 2 THE WITNESS: We're not. 3 HEARING EXAMINER LEWINTER: Okay. 4 MS. HARRIS: And I have no other 5 questions for Mr. Longfellow. 6 HEARING EXAMINER LEWINTER: Just give 7 me one second. 8 MS. HARRIS: Uh-huh. 9 THE WITNESS: Sure. 10 BY HEARING EXAMINER LEWINTER: 11 Q If you could just talk real quickly 12 about the kind of overlap between the open space 13 and the storm water management. 14 A Sure. So the -- I guess we've got two 15 areas of open space, and one's at the northeast 16 corner so we've got storm water facilities there, 17 two micro-bio facilities and some open space 18 there, and then in the southwest area a similar 19 situation. We've got two micro-bios that frame an 20 open space area there, and per the regs they're 21 allowed to coexist in the same areas. 22 Q So there's no storm water management, 23 not with the open space? I was just -- or is some 24 of it underground that's separate? 25 A That's correct.</p>	<p>83</p> <p>1 our water surface elevation we're just slightly 2 over the halfway range of that, and again we can't 3 get a waiver to go to a smaller pipe, save money, 4 be more efficient. It's just that's their minimum 5 requirement, so there is a little bit of extra 6 storage that's already factored into the pipes 7 themselves. 8 And then beyond that, you know, if 9 things were to get into kind of a hundred -- you 10 know, greater than in an overflow situation most 11 of that from the grading is going to end up coming 12 down into that eastern edge of the site. That 13 area slopes down into the southbound 29 ramp. 14 There's some additional state highway 15 ponds on that east side and some of that water 16 would end up probably being in those systems as 17 well, and again they're not designed to handle 18 more than that hundred year, but that's where they 19 would end -- where that water would end up. 20 There is a swell that runs along our 21 property between us and McDonald's on the west 22 side and then that wraps around on the south side 23 heading east towards that southbound 29 ramp so 24 that water would start to get collected and be 25 moving that way, but a fair amount of it would end</p>
<p>82</p> <p>1 Q Okay. 2 A So the areas that are highlighted in 3 green will be surface features that you can 4 visibly see. They'll be heavily landscaped and 5 they'll fit in really nice with the open space, so 6 they'll actually be adding a lot of landscape 7 benefits to that within the micro-bio facilities. 8 And then the pipes are south or below 9 the convenience store and those will be buried, 10 and the only thing that you'll really see there 11 are where the manhole is at the surface, and those 12 will be used to store the volume of water and 13 release that at an acceptable rate. 14 Q And I appreciate, you know, this is 15 beyond what the requirements are, but if you get 16 something bigger than a hundred year flood what 17 could potentially happen? 18 A So if we get something that's larger 19 than a hundred year flood some of that water will 20 probably be stored in our underground pipes. 21 Currently right now we're basically taking about 22 half of the storage volume in the pipes. The 23 pipes are going to be 48-inch diameter and that's 24 the minimum size that the county allows us to use. 25 So when we look at the calculations for</p>	<p>84</p> <p>1 up in our pipe system before it got released. 2 Q Okay. So just to clarify, in a hundred 3 year flood situation you're saying it would 4 probably take up about half? 5 A Just over half. 6 Q Just over half. 7 HEARING EXAMINER LEWINTER: I think 8 that was my only question. Ms. Harris, did you 9 have any follow-up? 10 MS. HARRIS: No, I don't. 11 HEARING EXAMINER LEWINTER: Okay. 12 MS. HARRIS: Thank you. 13 HEARING EXAMINER LEWINTER: You may be 14 excused. Thank you. 15 THE WITNESS: Thank you. 16 MS. HARRIS: And then our final witness 17 is Mr. Nick Driban. 18 HEARING EXAMINER LEWINTER: Mr. Driban, 19 if you can raise your right hand. Do you solemnly 20 swear under penalties of perjury that the 21 statements you are about to make are the truth, 22 the whole truth, and nothing but the truth? 23 THE WITNESS: I do. 24 HEARING EXAMINER LEWINTER: Thank you. 25 EXAMINATION BY COUNSEL</p>

<p>85</p> <p>1 ON BEHALF OF THE PETITIONERS 2 BY MS. HARRIS: 3 Q Thank you. For the record can you 4 please state your name and your occupation? 5 A Yes, good morning. For the record Nick 6 Driban. I am a traffic engineer with Lenhart 7 Traffic. 8 Q And can you please describe your 9 professional and educational background? 10 A Yes, I have a bachelor's of science in 11 civil engineering from Penn State University in 12 2006. I've been employed as a professional 13 traffic engineer for 18 years. I am a registered 14 professional engineer in the state of Maryland and 15 a registered professional traffic operations 16 engineer as well. 17 During the course of my employment I've 18 worked for a private company called STV for about 19 10 years. I was actually the access management 20 reviewer for traffic impact studies for the State 21 Highway Administration for two years, and then 22 I've been with Lenhart Traffic Consulting for the 23 remainder of that time. 24 Q And have you been previously qualified 25 as an expert in traffic engineering?</p>	<p>87</p> <p>1 the context of vehicular traffic, bicycles, 2 pedestrians, transit and just general safety 3 within the vicinity of the site. 4 Q Thank you. And I'll get to those 5 findings in a moment, but first I wanted you to 6 explain the existing and proposed driveway 7 entrances to the property. 8 A Yes. So under the existing conditions 9 there is -- there are two driveways on the western 10 side of the site. There's a full movement 11 driveway that is unsignalized today, so it's a 12 stop control for the existing 7-Eleven site and 13 also stop controlled on the leg opposite on the 14 north side which is coming out of the Burtonsville 15 Town Square Shopping Center. 16 And then there's a secondary access 17 point that is right in/right out for traffic to 18 and from eastbound Maryland 198. In the proposed 19 configuration it will remain with two access 20 points. We are proposing to signalize the 21 westernmost access point to install a traffic 22 signal. That traffic signal will be coordinated 23 with the adjacent signal at the US 29 ramps, 198 24 and the US 29 ramps. 25 And then the easternmost access point</p>
<p>86</p> <p>1 A Yes, I have. 2 MS. HARRIS: Thank you. And Mr. 3 Driban's resume is 19C, and I'd move that he be 4 qualified as an expert in traffic engineering. 5 HEARING EXAMINER LEWINTER: Yes, I've 6 reviewed that resume as well. He is qualified as 7 an expert. 8 MS. HARRIS: Thank you. 9 BY MS. HARRIS: 10 Q Can you please describe the scope of 11 services provided by Lenhart in connection with 12 the conditional use? 13 A Yes, in connection with the conditional 14 use we were first engaged to evaluate traffic 15 signal for the site access point. That would have 16 been back I think starting around 2020. 17 And since that time we've done a number 18 of studies and evaluations pertaining to the site 19 and the conditional use, including an adequate 20 public facilities evaluation for traffic as well 21 as the county's local area transportation review 22 guidelines, LATR guidelines which is what they use 23 to administer the adequate public facilities 24 policy. 25 So we've evaluated all those things in</p>	<p>88</p> <p>1 in coordination with the various agencies, 2 transportation agencies reviewing this we have 3 determined that that is most effective as a right 4 out access point only. 5 Q Thank you. And what benefits to the 6 project or the surrounding area are there from the 7 proposed traffic signal? 8 A Yeah, so there are a number of benefits 9 from the proposed traffic signal. You know, in 10 terms of the actual site circulation, getting 11 traffic into and out of the site, it will improve 12 both safety and operations by allowing, you know, 13 vehicles to come in and out of the site under a 14 controlled situation as opposed to today somebody 15 wishing to leave and turn left onto Maryland 198 16 would have to cross, you know, at least three 17 lanes of traffic and turn into the lanes there. 18 That's a much better, safer situation 19 with the traffic signal. Additionally, it'll 20 create gaps in traffic that will assist with the 21 eastern access point egress, so when that -- when 22 the signal is red traffic can more easily exit 23 from the eastern access point, and it also has -- 24 in terms of the surrounding area it will 25 facilitate the county's ongoing project to</p>

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1 connect.
2 It's the Burtonsville access road which
3 will connect behind -- on the north side kind of
4 behind the existing businesses there between the
5 shopping center road and the elementary school.
6 That's kind of northwest of the site, and so that
7 will send additional traffic to this intersection.
8 The signal will help with that. It will help with
9 the shopping center's traffic, and also I think as
10 Mr. Longfellow mentioned SHA has a project along
11 198 that the signal will be beneficial for as
12 well.
13 So there are a number of benefits in
14 the signal, and I should add as well that, you
15 know, we've been coordinating with all the
16 reviewing agencies, with park and planning,
17 Montgomery County Department of Transportation and
18 the Maryland State Highway Administration for
19 several years on this and, you know, all three
20 agencies have expressed support for the signal.
21 Q Thank you. The zoning ordinance
22 section 7.3.1 E1, F and G requires that the use be
23 served by adequate public facilities and that
24 there be no adverse impacts from traffic as a
25 result of the noninherent effects associated with

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1 the use. And my question to you is have you
2 analyzed the conditional use's compliance with
3 this provision, and if so what have you concluded?
4 A Yes. We have done a detailed analysis
5 of traffic operations and transportation impacts
6 for the site, and it's my conclusion that the site
7 is well in compliance with both of those
8 requirements. It is absolutely served by adequate
9 public facilities, and it would not have any
10 adverse impacts as a result of noninherent uses.
11 Q And you noted that you had performed an
12 LATR study which will be required in connection
13 with the preliminary plan evaluation and potential
14 approval. Can you state the major conclusions of
15 that report?
16 A Yes. So the LATR study is again the
17 county's way of evaluating transportation impacts
18 under -- in accordance with their growth and
19 infrastructure policy which governs the adequate
20 public facilities for Montgomery County, and so we
21 have -- we have completed a study.
22 It's been reviewed by the Maryland
23 State Highway Administration, by Montgomery County
24 Department of Transportation as well as the MNCPPC
25 planning staff and the conclusions of that study,

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1 you know, again done in accordance with the
2 county's very detailed guidelines are that, first
3 of all, the new trips from the site in terms of
4 actual new traffic to the area is actually very
5 minimal.
6 You know, given that this is an
7 existing gas station there are a number of trips
8 that are already on the road. When we look at
9 additional traffic, you know, again the county has
10 a very prescribed methodology for doing that and
11 for how you calculate those trips, that traffic.
12 And a lot of traffic to and from a
13 gasoline convenience store tends to be passby
14 traffic which is traffic that's already in the
15 vicinity of the site and they're just -- you know,
16 they're going to work, they're stopping in for
17 their morning coffee, or going home from work and
18 stopping in for gas, things like that.
19 And so there is -- you know, with the
20 increase in the number of fueling positions at
21 this site as well as the increase in the size of
22 the convenience store there's certainly an
23 increase in traffic, but the vast majority of that
24 traffic will be passby trips as opposed to new
25 traffic coming into the area that wasn't -- that

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1 isn't already there, so that's one finding.
2 Let me just check my notes here. And
3 then again as I mentioned before, as part of our
4 study we evaluate I think it's four or sort of
5 five areas. So the first is vehicular
6 transportation adequacy which is sort of your
7 traditional traffic impact study, how many new
8 vehicles will be coming to and from the site, and
9 what impact do they have on the roads.
10 Again the county's local area
11 transportation review guidelines have very
12 detailed requirements for adequacy thresholds in
13 terms of, you know, how intersections in the
14 vicinity are required to operate and what the
15 maximum amount of traffic they can handle is. The
16 study concludes that all of the intersections we
17 were required to study, which was a total of nine
18 intersections surrounding the site, operate well
19 within acceptable thresholds by the county
20 standards.
21 And then with respect to the other
22 modes, pedestrian, bicycle, transit, and just
23 general safety in the area, the site is able to
24 meet adequacy standards for those modes as well.
25 There will be under the county guidelines some

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1 **offsite improvements required in addition to some**
2 **of the frontage improvements that you've already**
3 **seen in terms of the bikeways and things like**
4 **that, and we'll have to extend some of those and**
5 **meet a cost cap or proportionality cap that the**
6 **county has established for additional offsite**
7 **improvements to those modes.**
8 Q Thank you. So overall what is your
9 conclusion in terms of whether the conditional --
10 where there are adequate public facilities within
11 the transportation realm to accommodate the
12 proposed conditional use?
13 **A Yes, there are. I mean, the conclusion**
14 **of the LATR study is that we meet adequacy for**
15 **each of the modes I just described as well as**
16 **general safety. Again all three agencies have**
17 **reviewed the study and it's been approved by park**
18 **and planning and DOT.**
19 We're still coordinating with SHA on
20 some final details but, you know, it's part of the
21 normal review process. So we have -- I can say
22 definitively that the site is in compliance with
23 the local area transportation review guidelines
24 and meets all applicable standards for adequacy.
25 MS. HARRIS: Thank you. I do not have

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1 anymore questions for Mr. Driban.
2 HEARING EXAMINER LEWINTER: Did you
3 want his -- I guess it's Exhibit 6, the LATR
4 report, admitted? I know we'll do that at the
5 end, but I don't know if there's anything specific
6 you wanted him to refer to.
7 MS. HARRIS: I don't -- well, I can --
8 let me ask him that question, but yes, I was going
9 to move for all exhibits to be --
10 HEARING EXAMINER LEWINTER: Yeah.
11 MS. HARRIS: -- moved into the record.
12 BY MS. HARRIS:
13 Q Is there anything specific with respect
14 to Exhibit 6, anything else that you want to
15 specifically call out?
16 **A I mean, what I gave here obviously is a**
17 **brief summary of what's essentially a 200-page**
18 **document. I'm certainly happy to answer any**
19 **additional questions, but the long and the short**
20 **of it is the site does meet, you know, all**
21 **adequacy standards of the county and we have**
22 **sign-off on that from park and planning and DOT**
23 **and we're coordinating with SHA on the last couple**
24 **of things, so if you have specific questions --**
25 BY HEARING EXAMINER LEWINTER:

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1 Q I don't, but you were the primary
2 author of the report --
3 **A Yes.**
4 Q -- correct?
5 **A Yes.**
6 Q And you stand by everything that's in
7 that report?
8 **A Yes, absolutely, yeah.**
9 Q Okay. That's basically what I wanted
10 to get on the record. I don't -- the one question
11 -- it was just a quick question. With the new
12 traffic signal are you saying it's actually going
13 to relieve some of the like passby traffic that's
14 going through the schools so it's going to help
15 the schools?
16 **A So it's sort of two related items on**
17 **that. So the county has a project that's moving**
18 **to construction right now that's called the**
19 **Burtonsville connector road.**
20 Q Okay.
21 **A And that project, again I think it's**
22 **funded -- fully funded for construction. They may**
23 **have actually started. I think construction is**
24 **scheduled for FY '24 and '25, but what that will**
25 **do is -- do we have an exhibit that's just like an**

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1 **aerial?**
2 MS. HARRIS: Yeah, I think the overall
3 -- the very last exhibit would be the best
4 perhaps.
5 THE WITNESS: Yeah, perfect. Is it
6 okay if I go and point at the screen?
7 HEARING EXAMINER LEWINTER: Absolutely,
8 sure.
9 THE WITNESS: Okay.
10 HEARING EXAMINER LEWINTER: If you can
11 just -- because it's --
12 THE WITNESS: Oh, sure.
13 HEARING EXAMINER LEWINTER: -- since
14 it's on the record --
15 THE WITNESS: Yes.
16 HEARING EXAMINER LEWINTER: -- if you
17 can just be very detailed in what you're pointing
18 to so that we can --
19 THE WITNESS: Okay. All right. So the
20 site -- what exhibit is this?
21 HEARING EXAMINER LEWINTER: 36 -- 35.
22 THE WITNESS: Okay. So on Exhibit 35
23 which is an overall aerial of the general area
24 surrounding the site, the site is outlined in a
25 red dashed line, and immediately across from the I

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<p style="text-align: right;">97</p> <p>1 guess western or sort of northwestern corner of 2 the site is the existing access to the 3 Burtonsville Town Square Shopping Center, so this 4 is the location of the proposed traffic signal. 5 The county's project is to connect the 6 existing shopping center access back behind the 7 existing businesses along the north side of 8 Maryland 198 to the existing school access, so to 9 kind of create this -- they call it the county -- 10 Burtonsville connector road and it would create a 11 loop here where, you know, traffic can come into 12 and out of the school, either way, the same thing 13 with the shopping center. 14 But essentially the result of that 15 project is that additional traffic will be 16 funneled to the intersection in question right 17 across from the site, and obviously the county has 18 studied the effects of, you know, of that 19 additional traffic and we've included that in all 20 of our work as well, but what I was trying to 21 testify to regarding the signal is that it will 22 additionally benefit the county's project. 23 They're not proposing to install a 24 signal as part of their project. You know, the 25 owner of the site in this case would be the one</p>	<p style="text-align: right;">99</p> <p>1 much as it helps -- 2 A Yes. 3 Q -- or to some extent, I don't know 4 exactly what extent, it will help the county and 5 it will help Wawa? 6 A Yeah, exactly. 7 HEARING EXAMINER LEWINTER: Okay. 8 Thank you for that. I appreciate that. That was 9 my only question. I don't know if I interrupted 10 the flow. 11 MS. HARRIS: No, you did not, and I 12 don't have anymore questions for this witness. 13 HEARING EXAMINER LEWINTER: Okay. I 14 don't either. 15 MS. HARRIS: Thank you. 16 THE WITNESS: Thank you. 17 HEARING EXAMINER LEWINTER: Was that 18 your last witness? 19 MS. HARRIS: That was, and then I just 20 have a very brief closing remarks. 21 HEARING EXAMINER LEWINTER: Okay. 22 MS. HARRIS: Did the hearing examiner 23 have any other questions before I do that? 24 HEARING EXAMINER LEWINTER: Just give 25 me one second --</p>
<p style="text-align: right;">98</p> <p>1 paying for and facilitating installation of the 2 signal, but it does benefit their project. You 3 know, we have coordinated with them on that, and 4 again we have full support from the county for 5 installation of the signal. 6 So it's not just -- you know, the 7 signal doesn't -- the point of my testimony 8 initially was that the signal doesn't just benefit 9 traffic into and out of the Wawa, but it also 10 benefits the site to the north as well as the 11 county's connector road and then potential SHA 12 improvements that could come in the future as 13 well. 14 BY HEARING EXAMINER LEWINTER: 15 Q All right. So just so I make sure I 16 understand. 17 A Yes. 18 Q Basically the county is going to be 19 creating a functional road -- 20 A Yes. 21 Q -- that loops in -- 22 A Uh-huh. 23 Q -- that's certainly going to now create 24 kind of a regular traffic stream, and having that 25 signalized intersection will help the county as</p>	<p style="text-align: right;">100</p> <p>1 MS. HARRIS: Certainly. 2 HEARING EXAMINER LEWINTER: -- just to 3 make sure. 4 (Whereupon, there was a brief pause in 5 the proceedings.) 6 HEARING EXAMINER LEWINTER: Just to 7 clarify, Ms. Harris, I think it was Mr. Foster 8 talked about having a communication with one 9 individual. Was there -- and you talked about two 10 meetings. I mean, I don't know if we got that 11 part in the record. I know it was in your opening 12 statement. 13 MS. HARRIS: I can bring Mr. Foster 14 back to ask that -- those questions. Would that 15 -- 16 HEARING EXAMINER LEWINTER: I would 17 appreciate that just because -- 18 MS. HARRIS: Sure. 19 HEARING EXAMINER LEWINTER: -- nobody 20 has appeared in opposition. 21 MS. HARRIS: Okay. 22 HEARING EXAMINER LEWINTER: So Mr. 23 Foster, you're being recalled. I'll just remind 24 that you you're still under oath. 25 THE WITNESS: Yes.</p>

<p>101</p> <p>1 BY MS. HARRIS:</p> <p>2 Q So Mr. Foster, did you participate in</p> <p>3 the October 2023 virtual civic meeting regarding</p> <p>4 the conditional use application?</p> <p>5 A I did.</p> <p>6 Q And do you recall, one, how many people</p> <p>7 attended that meeting, and also what was the</p> <p>8 nature of the --</p> <p>9 A I don't remember the exact number of</p> <p>10 people, but there was overall just general support</p> <p>11 for the project. We've never really had any</p> <p>12 opposition. Usually it's people just asking</p> <p>13 general questions to understand what the proposal</p> <p>14 was.</p> <p>15 Q Thank you. Did you -- do you recall</p> <p>16 describing the storm water management at that</p> <p>17 meeting?</p> <p>18 A Usually I'm the one giving the</p> <p>19 description of describing the site and, you know,</p> <p>20 in and out and everything that we're building,</p> <p>21 yes.</p> <p>22 Q Okay. And then did you also attend a</p> <p>23 meeting that we held in April of 2024 as the</p> <p>24 presubmission civic meeting to the filing of the</p> <p>25 preliminary plan?</p>	<p>103</p> <p>1 project you haven't heard any opposition?</p> <p>2 A I have not, no.</p> <p>3 Q Thank you. And then I apologize, this</p> <p>4 is kind of a new question, but the convenience</p> <p>5 store is approximately the same size or</p> <p>6 significantly larger than the current 7-Eleven?</p> <p>7 A It's about twice the size.</p> <p>8 Q About twice the size?</p> <p>9 A Yes.</p> <p>10 Q And do you anticipate any additional</p> <p>11 noninherent or adverse impacts from the doubling</p> <p>12 of size of the C store?</p> <p>13 A I do not because overall we're actually</p> <p>14 reducing the square footage of retail uses on this</p> <p>15 site, so no, I do not.</p> <p>16 Q And so please -- is the mattress store</p> <p>17 actually functioning now?</p> <p>18 A Yes.</p> <p>19 Q Okay. Because I thought I had read</p> <p>20 somewhere that it was empty.</p> <p>21 A It's going out of-- they're</p> <p>22 advertising everywhere that they're going out of</p> <p>23 business and having a sale, but they are still</p> <p>24 functioning.</p> <p>25 Q Okay. Okay. So there'll be</p>
<p>102</p> <p>1 A Yes, I was there.</p> <p>2 Q And how many civics attended that</p> <p>3 meeting?</p> <p>4 A Zero.</p> <p>5 Q Thank you. And then this is testing</p> <p>6 your memory perhaps. Back in 2019 before we filed</p> <p>7 the local map amendment application do you recall</p> <p>8 that civic meeting?</p> <p>9 A I do.</p> <p>10 Q And what's your general recollection of</p> <p>11 that meeting?</p> <p>12 A It was generally the same as our --</p> <p>13 basically became our second meeting where it was a</p> <p>14 few attendees but no opposition. It was all more</p> <p>15 just fact finding.</p> <p>16 Q And you submitted an affidavit of</p> <p>17 posting but the application, this application has</p> <p>18 -- was posted?</p> <p>19 A It was, yes.</p> <p>20 MS. HARRIS: Thank you. I have no</p> <p>21 other questions with respect to that.</p> <p>22 BY HEARING EXAMINER LEWINTER:</p> <p>23 Q So Mr. Foster, just to be very, very</p> <p>24 clear in your time working with this project and</p> <p>25 the time that your company has worked with this</p>	<p>104</p> <p>1 significantly less retail space, but I don't --</p> <p>2 how heavily trafficked is the current mattress</p> <p>3 store?</p> <p>4 A Not -- I mean, typical for a bedding</p> <p>5 store, you know, a few cars, you know, usually not</p> <p>6 in the beginning of the day. It tends to be</p> <p>7 afternoon and evening trips.</p> <p>8 Q Uh-huh.</p> <p>9 A But not heavily used, no.</p> <p>10 Q Because it seems like what's</p> <p>11 anticipated is a pretty -- I mean, I think the</p> <p>12 hope is that this would be a very popular --</p> <p>13 A Yes.</p> <p>14 Q -- convenience store. So again given</p> <p>15 that there will be significantly more traffic to</p> <p>16 the site even if the total retail space is less</p> <p>17 would you anticipate any adverse impact?</p> <p>18 A I would not given the current arterial</p> <p>19 nature of 198 and the fact that we're adding a</p> <p>20 traffic signal which is a dramatic change to that</p> <p>21 location, that as you just heard testimony that</p> <p>22 it's going to really benefit the whole circulation</p> <p>23 of that area, so it's certainly going to be a</p> <p>24 positive.</p> <p>25 HEARING EXAMINER LEWINTER: That was I</p>

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<p style="text-align: right;">105</p> <p>1 think the only other question I had. I'm sorry. 2 I keep forgetting to turn this off. Ms. Harris, I 3 did just introduce that new topic. I don't know 4 if you had any other questions on that. 5 MS. HARRIS: Did -- just one question. 6 HEARING EXAMINER LEWINTER: Sure. 7 BY MS. HARRIS: 8 Q Did you hear Mr. Driban's testimony? 9 A I did. 10 Q And did you hear him say that as a 11 result of the increased retail store there would 12 not be a significant increase in overall traffic 13 to the area? 14 A I did. 15 Q Okay. 16 HEARING EXAMINER LEWINTER: So is that 17 because it's passby traffic? 18 MS. HARRIS: Correct. 19 HEARING EXAMINER LEWINTER: So you're 20 saying because there's -- nobody -- I'm sorry. I 21 don't want to say nobody, but the presumption is 22 that people are not going to travel just to go to 23 the Wawa. 24 THE WITNESS: Correct. 25 HEARING EXAMINER LEWINTER: That it</p>	<p style="text-align: right;">107</p> <p>1 staff report that was Exhibit 34A, and I'll just 2 go through those four briefly. 3 One is that the use is limited to an 4 automobile filling station and a retail 5 establishment, second that there's a maximum of 6 six sets of pumps, and three, that the retail area 7 is up to 5,919 square feet, and then fourth, that 8 the applicant must obtain approval of a 9 preliminary plan and a site plan. 10 We request that all exhibits be moved 11 into evidence, and we respectfully request the 12 zoning hearing examiner's approval of the 13 conditional use. Thank you. 14 HEARING EXAMINER LEWINTER: Thank you. 15 I'll admit all the exhibits. I appreciate that 16 there are certain conditions laid out in the staff 17 report. I may have some additional ones. I think 18 they would be pretty standard given a typical OZAH 19 which I'm sure you're familiar with -- 20 MS. HARRIS: Uh-huh. 21 HEARING EXAMINER LEWINTER: -- 22 decision. You know, often have just certain 23 requirements that we, you know, ask any 24 conditional use recipient to fulfill. 25 MS. HARRIS: Yes.</p>
<p style="text-align: right;">106</p> <p>1 will just be passby traffic, more people stopping 2 through. 3 THE WITNESS: Correct, people that are 4 already on the roads. 5 HEARING EXAMINER LEWINTER: Already on 6 the roads? 7 THE WITNESS: Yes. 8 HEARING EXAMINER LEWINTER: Okay. 9 Okay. Thank you. 10 MS. HARRIS: Thank you. 11 HEARING EXAMINER LEWINTER: So if you 12 wanted to proceed with your closing arguments, I 13 guess. 14 MS. HARRIS: Thank you. I want to 15 confirm with Mr. Hummel for just one moment. 16 HEARING EXAMINER LEWINTER: Sure. And 17 then I will just ask you before you do that if you 18 want all the exhibits admitted. 19 MS. HARRIS: Thank you. So we submit 20 through the evidence and testimony presented today 21 that we have demonstrated that the petitioners' 22 proposal for an automobile filling station meets 23 the standards and requirements of the zoning 24 ordinance, and we accept the recommended 25 conditions that were set forth on the updated</p>	<p style="text-align: right;">108</p> <p>1 HEARING EXAMINER LEWINTER: But if 2 there's any concerns about that. 3 MS. HARRIS: The only thing that I 4 would note, as Mr. Hoffman testified, you know, he 5 testified to generalities with respect to a store, 6 no one ever knows the exact way a store is going 7 to function until it's operational, so to the 8 extent there are things having to do with 9 operations we request flexibility within those 10 conditions. 11 HEARING EXAMINER LEWINTER: I 12 appreciate that. Yeah, to the extent that he 13 testified I think that we can accommodate that, 14 you know, up to 60 employees and, you know, 15 certain flexibility around the three shifts I 16 wouldn't, you know, mandate that the shifts be at 17 certain times or something like that. 18 MS. HARRIS: Thank you. That's exactly 19 -- 20 HEARING EXAMINER LEWINTER: Okay. 21 MS. HARRIS: -- what I was getting at. 22 HEARING EXAMINER LEWINTER: Okay. 23 Given that and the admission of the exhibits I'm 24 going to keep the record open for 10 days. That's 25 typically for preparation of the transcript, but</p>

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<p style="text-align: right;">109</p> <p>1 if anything comes up you can certainly contact me 2 through Ms. Johnson, and the decision is due 3 within 30 days after the record closes. 4 I think nobody showed up in opposition, 5 so my understanding is that there's nobody here. 6 As you stated, the technical staff report 7 recommends granting with conditions and the 8 planning board approved the special exception 9 major modification petition that was put in. 10 This was not resubmitted to the 11 planning board which is at the discretion of 12 planning staff, so at this point planning board 13 just hasn't weighed in but that's not a 14 requirement. So given all that I will adjourn the 15 hearing for now, and anything else? 16 MS. HARRIS: Thank you. 17 HEARING EXAMINER LEWINTER: Thank you. 18 MS. HARRIS: We appreciate your time. 19 MR. HUMMEL: Thank you. 20 (Whereupon, the Zoning Hearing was 21 concluded at 11:59 a.m. EST.) 22 23 24 25</p>	<p style="text-align: right;">111</p> <p>1 CERTIFICATE OF DIGITAL REPORTER - NOTARY PUBLIC 2 I, Cody Handlir, a Notary Public in and 3 for The State of Maryland, the officer before whom 4 the foregoing proceedings were taken, do hereby 5 certify that the foregoing transcript is a true 6 and correct record of the proceedings; that said 7 proceedings were recorded by me digitally and 8 thereafter reduced to typewriting under my 9 supervision; and that I am neither counsel for, 10 related to, nor employed by any of the parties to 11 this case and have no interest, financial or 12 otherwise, in its outcome. 13 IN WITNESS WHEREOF, I have hereunto set 14 my hand and affixed my notarial seal this 13th day 15 of June, 2024. 16 My commission expires: February 28, 2027 17  18 19 20 NOTARY PUBLIC IN AND FOR 21 THE STATE OF MARYLAND 22 23 24 25</p>
<p style="text-align: right;">110</p> <p>1 CERTIFICATE OF TRANSCRIBER 2 I, Bonnie K. Panek, do hereby certify 3 that the foregoing transcript is a true and 4 correct record of the recorded proceedings; that 5 said proceedings were transcribed to the best of 6 my ability from the audio recording and supporting 7 information; and that I am neither counsel for, 8 related to, nor employed by any of the parties to 9 this case and have no interest, financial or 10 otherwise, in its outcome. 11  12 13 14 BONNIE K. PANEK 15 16 17 18 19 20 21 22 23 24 25</p>	

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